DAYANANDA SAGAR UNIVERSITY

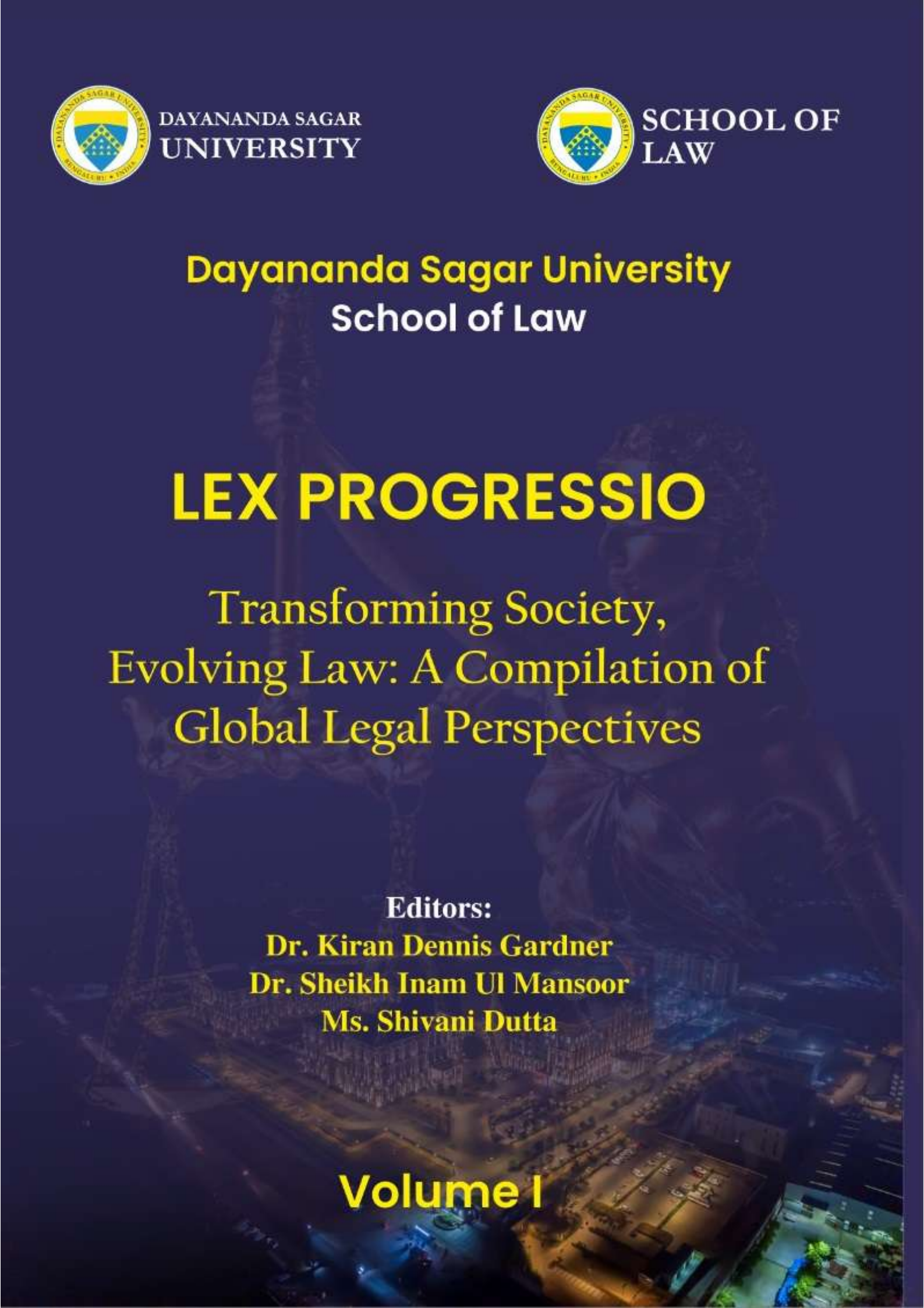
SCHOOL OF LAW

Dayananda Sagar University
School of Law

LEX PROGRESSIO

Transforming Society, Evolving Law: A Compilation of Global Legal Perspectives

Editors:
Dr. Kiran Dennis Gardner
Dr. Sheikh Inam Ul Mansoor
Ms. Shivani Dutta



Volume I

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Volume I

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Editorial Board

Prof. (Dr.) Kiran Gardner, Dean School of Law stands as a leading authority in both legal and educational domains, distinguished by her dual Doctorates in Law and Education. With a career spanning nearly four decades, she has made significant contributions to legal academia and educational reform, establishing herself as a guiding force in these fields.

Prof. (Dr.) Sheikh Inam Ul Mansoor is a highly accomplished academician. With a strong background in law and a passion for academia, Pursued his BA. LLB (Hon's) from University of Kashmir, LLM from JNU Jaipur, Certification from WIPO and Ph.D. International Trade Law from LPU Punjab.

Prof. Shivani Dutta is the founding faculty of the School of Law, DSU. She is currently pursuing her doctoral studies from the elite National Law School of India University (NLSIU), Bangalore. She pursued her BA.LL.B from M. S. Ramaiah College of Law, Bangalore and LL.M (Gold Medal) from National Law University and Judicial Academy, Assam (NLUJAA).

Prof. Sanjay Utagi has completed his LL.B and LL.M in Corporate and Commercial Laws from KSLU's Hubballi. He is enriched with an experiential learning of the procedural laws by working in the District Courts and High Court of Karnataka before stepping into academics.

Prof. Shantanu Pachahara is versatile legal professional having 7 years of teaching and research experience. He is currently pursuing his doctoral degree from Gujarat national Law University in the area of international commercial arbitration.

Prof. Arifa Sultana Choudhury is a dedicated legal educator currently serving as an Assistant Professor at the School of Law, Dayananda Sagar University, Bengaluru. She has pursued her B.A. LLB(Hons) from NLU, Assam and has completed her LLM from Nalsar University of Law, Hyderabad.

Prof. Sakshi Mehta completed her BBA LL.B. (Hons.) with a specialization in Corporate Laws and her LLM with a specialization in Law & Technology from University of Petroleum and Energy Studies (UPES), Dehradun.

Prof. Nithin Rajeev is a specialist in intellectual property and trade law, with a strong academic background from Christ University, Bangalore, and has qualified UGC-Net. He earned his B.Com. LL.B. degree from Kerala Law Academy, Trivandrum and LLM in intellectual property and trade law from School of Law, Christ University'.

Prof. Stency Mariya Mark is an assistant professor of law and has two years of prior experience. She is currently pursuing her Ph.D. at Maharashtra National Law University (MNLU) in Nagpur; she holds an LL.M. in Constitutional Law from Rajiv Gandhi National University of Law (RGNUL), Patiala, and graduated from Galgotias University, Greater Noida.

Prof. (Dr.) Prasanta Moharaj, SOL, DSU is home to esteemed educators like Dr. Prasanata Moharaj, who leads our sociology curriculum. Dr. Moharaj's teaching integrates his deep expertise in Climate Change and Environmental Sustainability, preparing students to tackle urgent global issues with informed perspectives.

Prof.(Dr.) Gajendra N has nineteen years of teaching and research experience working in premier educational institutions. He has an impressive portfolio of published books, edited book chapters and research papers in leading national and international journals.

Prof. Navaruna, a distinguished historian born in Guwahati, currently serves as an Assistant Professor (History) in the School of Law at Dayanand Sagar university. She is pursuing her Doctoral Degree at the prestigious School of Historical Studies at Madurai Kamaraj University, where she is conducting research on colonial India's prison culture.

Prof. Bharath K. M has B.A. Degree from St. Joseph's College (Autonomous), Bengaluru and M.A. in Political Science from Bangalore University. He has 07 years of teaching experience in reputed institutions.

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FOREWORD

The imparting of legal education in India has evolved considerably, from a traditional class room teaching on theoretical knowledge to a more skill-oriented approach. In addition to the mandatory subjects to be offered by any Law School in India, organising conferences, seminar at national and international platform not only provides a global exposure to the stakeholders but gives a platform to debate and deliberate on challenges in diverse areas which may be resolved with the timely intervention of the legal machinery.

One of the unique aspects of this International Conference is that it has focused on areas which are contemporary and interdisciplinary. The chapters in this book is not only a witness to the rigor and progressive ideas of the authors but also highlights the challenges across the globe. The authors examine how existing legal frameworks are adapting to resolve the issues.

As you flip through these chapters, I am sure you will be engrossed by the depth of analysis and commitment to justice that each contributor has demonstrated. Their work reflects not only a profound understanding of the challenges at hand but also a hopeful vision for the future. This book does more than identify problems; it suggests pathways forward. It invites us all—lawmakers, judges, academics, practitioners, and students—to think critically and creatively about the role of law in addressing the complexities of modern life.

The School of Law, Dayananda Sagar University indeed deserve commendation for their dedication to advancing legal scholarship. This collection is a testament to the power of collaborative inquiry and the impact of academic discourse on practical legal development. I am confident that this book will serve as an invaluable resource for those seeking to understand and address the multifaceted legal challenges of our transforming society.

In closing, I appreciate the efforts of the organizers, authors, and editors who have worked tirelessly to bring this collection to fruition. Their contributions have laid the foundation for ongoing dialogue and innovation within the legal community, ensuring that law remains not only relevant but also resilient in the face of an ever-changing world.

Hon'ble Mr. Justice P.S. Dinesh Kumar
Former Chief Justice of Karnataka High Court
Presiding Officer of Securities Appellate Tribunal.

Pro-Chancellor's Message

Legal education in India is dynamically evolving in the recent past. The Institutions imparting legal education now have to take strategic measures to enable their students to hone their advocacy skills and compete in the globalized market. School of Law, Dayananda Sagar University, is built on the foundation of my beloved father, Barrister, Dayananda Sagar. This book is a testament to our vision is to produce exemplary, globally competent, and technology enabled legal professionals with virtues of leadership and commitment through an impactful educational journey.

We are delighted to release this book which covers the diverse areas which requires the intervention of the law. This publication embodies our commitment to fostering academic dialogue, advancing legal scholarship, and addressing the profound challenges emerging in today's rapidly evolving global landscape. Law is no longer confined to traditional boundaries; it is increasingly intertwined with technological innovation, global environmental sustainability, and the protection of human dignity. This book captures the essence of these shifts, offering critical insights into how legal frameworks must evolve to meet the needs of a changing world. The School of Law, DSU has potential leadership and unwavering commitment in assembling experts from diverse fields, fostering dialogue that goes beyond academia to touch on real-world applications and implications.

I extend my deepest gratitude to the distinguished authors, scholars, and experts whose contributions have enriched this book, and to all the members of the School of Law for their dedication and hard work towards achieving this impeccable piece. I am confident that this book will serve as an invaluable resource for legal professionals, policymakers, students, and all those who are inclined in understanding and shaping the future of law in a transforming society.

It is my sincere hope that the insights captured within these pages inspire further exploration, debate, and progress toward a more just, equitable, and resilient world.

Dr. D Premachandra Sagar
Pro-Chancellor
Dayananda Sagar University.

Vice-Chancellor's Message

It is an honour and privilege to introduce this book, LEX PROGRESSIO, which compiles the thought-provoking chapters presented at the International Conference on "Global Legal Challenges in the Transforming Society," organized on 23rd November 2024 by the School of Law, Dayananda Sagar University. This volume not only reflects the wealth of knowledge shared during the conference but also highlights the critical role that legal scholars, practitioners, and policymakers play in navigating the complex and ever-changing societal landscape. In a world marked by rapid technological advancements, evolving environmental realities, and shifting paradigms of human rights, the need for a responsive and adaptive legal framework has never been more urgent.

The diverse topics covered in this compilation underscore the interdisciplinary nature of contemporary legal issues. From the intersection of law and technology, where discussions on intellectual property, cybersecurity, digital data protection, and the implications of artificial intelligence take centre stage, to the urgent human rights issues such as migration, gender identity, and disability rights, the chapters offer a comprehensive exploration of how law must evolve in tandem with society's transformations.

At Dayananda Sagar University, we believe in the power of education and research to drive meaningful change. This book is a testament to the rigorous academic work produced by our scholars and collaborators, and it reaffirms our commitment to shaping future legal professionals who are not only well-versed in the law but also attuned to the broader societal issues that law must address.

I extend my heartfelt appreciation to all the contributors, whose expertise and dedication have made this volume a meaningful addition to legal scholarship. I would also like to thank the organizing committee for their hard work and commitment to making the conference a success and for bringing this important collection to fruition.

As you explore the chapters within this book, I hope you find inspiration, insight, and a renewed sense of purpose in tackling the legal challenges of our time. It is through such collaborative efforts and continued engagement with these pressing issues that we can move toward a more just, inclusive, and sustainable global society.

Dr. Amit R. Bhat
Vice-Chancellor
Dayananda Sagar University.

Dean's Message

It is a pleasure to introduce this significant volume, a collection of chapters from the International Conference on "Global Legal Challenges in the Transforming Society," organized by the School of Law at Dayananda Sagar University. This book LEX PROGRESSIO captures the depth and breadth of discussions that took place at the conference, bringing together voices from academia, legal practice, and policy-making to address the urgent issues reshaping the legal landscape today.

In particular, this volume delves into pressing issues at the intersection of law and technology, exploring themes like intellectual property rights, digital privacy, cybersecurity, and artificial intelligence's impact on the legal profession. It also highlights the ongoing challenges in human rights law, including migration, gender identity, and disability rights—areas where legal systems must be responsive and adaptive to uphold dignity and justice for all. Environmental law and policy discussions are another highlight of this work. The urgent call for climate action, biodiversity protection, and sustainable development is a reminder that our legal frameworks must expand to support ecological resilience and environmental stewardship. The insights in these chapters underscore the role of law in achieving these vital goals. Additionally, contributions on medical law bring into focus complex issues such as mental health legislation, medical negligence, and informed consent, which are increasingly relevant in today's medical and ethical discourse.

At the School of Law, Dayananda Sagar University, we are committed to advancing legal education that prepares our students to be leaders and change makers. This book is a testament to our commitment to fostering dialogue and promoting research that addresses real-world challenges.

I extend my gratitude to the contributors, reviewers, and organizing committee whose dedication has brought this publication to life. We are proud to share these insights with the broader community, confident that this work will serve as a valuable resource for scholars, practitioners, and students alike.

Dr. Kiran Dennis Gardner
Dean, School of Law
Dayananda Sagar University.

Preface

The dynamic and ever-evolving global landscape brings with it a host of complex legal challenges. As our societies undergo rapid transformations—shaped by technological advancements, environmental concerns, and shifting social paradigms—so too must the legal systems that govern them. The International Conference on "Global Legal Challenges in the Transforming Society," organized on 23rd November 2024, by the School of Law, Dayananda Sagar University, aimed to bring together experts, scholars, practitioners, and policymakers to examine these challenges and explore innovative legal solutions. This book is a compilation of the rich and diverse contributions presented during that conference.

At its core, this book seeks to reflect the intersection of law and the key issues driving change in today's world. The chapters within are a cross-section of legal research that addresses the evolving nature of human rights, technology, environmental policy, medical law, and data protection, among other pressing concerns. The rapid pace of technological innovation, the increasing awareness of environmental sustainability, and the continuous evolution of human rights issues require a response that is both timely and forward-thinking. The contributions in this book offer a multifaceted analysis of these emerging challenges, providing much-needed clarity and insight into how the law must adapt.

One of the central themes explored in this book is the relationship between law and technology. From intellectual property to cybersecurity and digital data protection, the increasing integration of technology into every aspect of our lives has prompted new legal questions that demand urgent attention. Artificial intelligence, for instance, is reshaping industries, economies, and the legal profession itself. The chapters in this book address how the law can respond to these technological shifts while safeguarding individual rights and promoting innovation. There are discussions about the challenges posed by the digital age, including privacy concerns, surveillance, and the ethical implications of automation and AI.

Another significant area covered is human rights. In an increasingly globalized world, the question of how legal systems protect individuals—across borders—has never been more pressing. The book examines key issues such as asylum and migration, human trafficking, gender identity, and disability rights. These are issues that transcend national boundaries, requiring international cooperation and legal frameworks that are adaptable and inclusive. In addressing these, the contributors to this volume reflect the growing demand for legal protections that account for the diverse needs of an ever-changing society.

Environmental law also features prominently in this collection. As climate change continues to pose an existential threat to our planet, the role of law in regulating environmental practices and promoting sustainability has never been more critical. This book includes analyses of climate change legislation, energy law, and biodiversity protection, emphasizing the importance of integrating legal strategies with technological solutions for achieving sustainable development.

In addition to these major themes, the book touches upon medical law, particularly in the context of mental health, medical negligence, and bioethical concerns like euthanasia. As medical technology and practices evolve, so too must the laws that govern them. The chapters delve into the intersection of medical ethics and legal accountability, highlighting how law must navigate these sensitive and complex issues.

Lastly, the question of data privacy and national security in an increasingly connected world is explored in the context of artificial intelligence and the right to be forgotten. These issues are of

paramount importance, as they not only affect individuals' rights to privacy but also have broader implications for national security and international relations.

This book is not merely a record of the conference but a comprehensive resource that contributes to the ongoing academic discourse surrounding the legal challenges of our time. It reflects the collective expertise and thought leadership of the contributors, each bringing a unique perspective to the complex intersection of law, society, and technology.

As you delve into the chapters that follow, we invite you to reflect on the profound implications these issues have for legal practice, policymaking, and societal development. The questions posed in these chapters are not merely academic; they are deeply relevant to the challenges we face today and will continue to confront us in the future. It is our hope that this book will not only serve as an important academic resource but also inspire further discussion, research, and action to address the global legal challenges of our rapidly transforming society.

We express our deepest gratitude to all the contributors, the conference participants, and the organizing team for their invaluable contributions to this project. It is through their efforts that this book came to fruition, and we trust that it will serve as a meaningful resource for scholars, students, policymakers, and practitioners alike, as we all strive to navigate the legal dimensions of a transforming world.

The Editorial Team
School of Law, Dayananda Sagar University.

Acknowledgements

It is with immense gratitude that we acknowledge the collective effort that went into the successful completion of this book, which is a compilation of the chapters presented at the International Conference on "Global Legal Challenges in the Transforming Society," organized by the School of Law, Dayananda Sagar University.

First and foremost, we would like to express our heartfelt thanks to all the distinguished authors and contributors. Their dedication, expertise, and commitment to advancing legal scholarship have made this book a valuable resource. Each chapter is a testament to the intellectual rigor and thoughtfulness that our contributors bring to the pressing legal issues of our time. Their efforts to tackle complex topics with clarity and insight have enriched this publication beyond measure. We are deeply grateful to our Chancellor, Pro-Chancellor, Secretary and the Board of Governors whose unwavering support and visionary leadership have been instrumental in making this conference and publication a reality. The commitment to academic excellence and societal impact that they have demonstrated continues to inspire us all.

Our sincere appreciation goes to our Vice-Chancellor, Pro-Vice Chancellor, Registrar, and the Advisor to DSU for their guidance and encouragement throughout the process. Their commitment to fostering a culture of research and innovation has greatly contributed to the success of this initiative.

We would also like to extend our deepest thanks to the Dean of the School of Law, for her leadership and constant support in facilitating the organization of the conference and the publication of this book. Her dedication to nurturing a vibrant academic community has provided the foundation for this collaborative endeavour.

A special thanks to the organizing committee of the conference for their hard work and meticulous attention to detail in managing every aspect of the event. Without their efforts, this conference would not have been as successful as it was, and this book would not have been possible. Our gratitude extends to all the reviewers who provided constructive feedback, ensuring that the chapters met the highest academic standards. Their critical insights have played a vital role in refining the content and enhancing the quality of this publication.

Finally, we would like to thank the administrative staff, the technical team, and all those who contributed to the smooth execution of the conference and the publication process. Their behind-the-scenes efforts were crucial in bringing this project to fruition. This book stands as a collective achievement, the result of the hard work, expertise, and collaboration of many individuals. We hope it serves as a valuable resource for those working to understand and address the legal challenges facing our rapidly transforming society.

The Editorial Team
School of Law, Dayananda Sagar University

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CHAPTER I

Law and Technology

Artificial Intelligence and Data Privacy Concerns in India: A Study of India's Legal Landscape

Dr. Nimisha Mishra[1]
Ms. Pooja Thakur[2]

I. Introduction:

Considering the recent developments in the application of Artificial Intelligence (AI) technology in nearly every industry and area of society, it is imperative to comprehend the fundamentals of AI and how it operates. The fact that AI can accomplish nearly whatever a human can is no secret. For this reason, it has practically covered every sector where human efficiency is needed. The growing reliance on AI has given rise to grave worries about rights violations and data privacy. Artificial intelligence (AI) can be considered as a type of intelligence that is used to solve problems, come up with solutions, answer questions, make assumptions, or offer tactical suggestions. Because AI can do all these things, it has become increasingly important to contemporary businesses and other types of organizations. Artificial intelligence is a technology that allows machines and computer applications to act like human intelligence, learning from experience via iterative processing and algorithmic learning.[3]

Large amounts of information are combined with clever, repeated processing techniques by AI systems so they can identify patterns and features in the data they examine and learn from them. An AI system assesses and evaluates its own performance and gains new skills with each round of data processing. AI can complete hundreds, thousands, or even millions of tasks very fast because it doesn't require a break. It can also learn a lot in a short amount of time and become very good at whatever it is being trained to do. However, realizing that artificial intelligence (AI) is more than just a single computer program or application and that it is a whole field or study is crucial to comprehending how AI actually functions.

Building a computer system that can mimic human behavior and employ human-like thought processes to tackle complicated issues is the aim of AI science. AI systems employ a wide range of methods and procedures in addition to numerous technologies to achieve this goal. Let's look at these methods and tools next so that we can start to truly comprehend what artificial intelligence (AI) is capable of and how it functions.

[1] **Assistant Professor, Bharti Vishwavidyalaya Durg, Pulgaon C.G.,E-Mail: nimisha.tiwari85@gmail.com**
[2] **Assistant Professor, Bharti Vishwavidyalaya Durg, Pulgaon C.G., E-Mail:poojathakur2693@gmail.com**
[3] How does ai actually work? Colorado State University Global. (n.d.-a). https://csuglobal.edu/blog/how-does-ai-actually-work

II. How Artificial Intelligence works?

"An artificial intelligence system consists of a wide range of elements, which you might consider to be branches of the larger science of artificial intelligence.

1. Machine learning is a subset of artificial intelligence (AI) that allows computer systems, programs, or apps to learn on their own and improve their performance over time without needing to be designed to do so. Through machine learning, artificial intelligence (AI) can better accomplish its goals by identifying trends in data, gaining new perspectives, and enhancing task performance.

Example: A user's perspective on AI's machine learning (ML) capabilities could be illustrated by customized product recommendations on websites like MEESHO or AJIO.

Scenario: When a person browses a website regularly, searches for products, clicks on them, and completes purchases, the machine learning-powered AI algorithm of the platform begins to learn the user's preferences. It examines the user's behavior over time and makes customized suggestions for products.

The AI systems are capable of identifying and understanding tendencies in a user's frequent browsing and purchasing of fiction and technology-related books, and will suggest future books that fit these categories. Depending on fresh information about the user's preferences, the recommendation engine may also propose books that other users who share the same interests have already bought. The potential of AI to learn from user interactions and improve its future forecasts or suggestions without explicitly programming each decision is exemplified by this type of personalization.

2. Deep Learning: An advanced form of machine learning that makes use of data processing to help AI learn and grow. Artificial neural networks (ANNs) that imitate the biological neural networks seen in the human brain are used in Deep Learning to process data, identify patterns in the data, and derive conclusions or outcomes from positive and negative reinforcement.

In order to increase the likelihood that a desired behavior will be repeated, positive reinforcement entails rewarding the behavior with a reward or other favorable outcome.

Conversely, negative reinforcement entails eliminating an unpleasant or unfavorable circumstance when the desired behavior transpires, hence augmenting the likelihood of that behavior being repeated.

Example: Artificial intelligence (AI) can recognize and classify photos on sites like Facebook or Google Photos based on the items or persons in them. This is how it operates:

A model based on deep learning (CNN) analyses an image that a user upload. Numerous layers of neurons in this model gradually recognize patterns, starting with simple edges or colors and progressing to more intricate structures like forms, objects, or faces. With the help of millions of

training photos, the model is now able to identify objects (such a puppy, car, or human face) and automatically tag the appropriate photo without the need for human input.

Situation: Deep learning algorithms are able to recognize a photo of an animal that you provide as the word "dog" based on their previous training data analysis. With time, the AI will even be able to recognize distinct dog breeds and recommend collections of images with related subjects, such pets, scenery, or specific individuals. Features like object detection, facial recognition, and automatic photo segmentation are made possible by this deep learning capability, which gets better with usage and more data.

3. Neural Networks: a method that repeatedly examines data sets to identify patterns and extrapolate meaning from undefined data. Neural networks function similarly to the neuronal networks found in the human brain, which enables AI systems to process massive amounts of data, find patterns in the data, and respond to enquiries about the data. Assume, for illustration, that you are teaching a neural network to identify handwritten numbers (0–9). Based on how the neural network correctly classifies and interprets an image of a handwritten digit, it creates a pattern.

Input Layer: A hand written digit image of 28 by 28 pixels is sent in to the input layer and a flattened in to 784 neurons, one for each pixel. Every pixel value, which represents greyscale intensity and ranges from 0 to 255, becomes an input feature.

The hidden layers: Patterns start to appear in the buried layers, which are made up of several neurons. These layers' neurons recognize various patterns, such as edges, curves, or particular pixel groupings that correspond to different digit segments (e.g., the loop in "6" or the straight line in "1").

Output Layer: Ten neurons make up the output layer, each of which represents a digit (0–9). Predicting which output neuron has the highest likelihood to correlate to the correct digit is the network's task.

4. Cognitive Computing: Another crucial element of artificial intelligence (AI) systems that mimic human-machine interactions is cognitive computing, which enables computer models to simulate how the human brain functions when carrying out difficult tasks like interpreting speech, text, or images. Example**:** Large volumes of medical data, such as case studies, clinical research papers, treatment guidelines, and patient records, are processed by Watson. Upon receiving a patient's medical data, including test results, medical history, and symptoms, Watson leverages its cognitive computing capabilities to: Recognize the natural language used in medical input, for as when reading reports or patient records.

Analyze by contrasting the patient's information with a sizable collection of medical knowledge, such as precedents, published research, and findings from treatment trials. AI reasons by pointing

out possible diagnoses and making recommendations for treatments based on data from individual patients and supporting documentation. Learn over time by consistently adding fresh research findings, clinical data, and treatment results to enhance its suggestions.

5. Natural Language Processing: For any AI-driven system that interacts with humans in any way, whether via text or spoken inputs, natural language processing is an essential component of the AI process because it enables computers to recognize, analyze, interpret, and truly understand human language, whether it is spoken or written. An example of Natural Language Processing (NLP) is chatbots used in customer service, such as those implemented by companies like Amazon or Zomato. Example: When a user interacts with a chatbot to resolve an issue (e.g., tracking an order, refund request, or account problem), NLP enables the chatbot to understand and respond to the user's input in natural, conversational language.

A. **Analyzing Context:** NLP helps the chatbot understand the context of the query. For instance, if the user asks, "Where is my order?" NLP determines that this is related to order tracking and retrieves the relevant order information from the system.

B. **Understanding User input:** A user might type, "Where is my order?" Or "I need a refund for my last purchase." The chat bot uses NLP to interpret the meaning of these phrases, recognizing key words like" order refund and last purchase"

C. **Generating Responses":** The chatbot then formulates a **natural-language response** based on the analysis, such as, "Your order is currently out for delivery and will arrive by 7 PM today." If the user needs a refund, the chatbot may respond, "I have processed your refund. You should see the amount credited to your account within 5-7 business days."

D. Learning from Interactions: With continued interaction, the chatbot improves its understanding of user language and preferences, enhancing future responses. Scenario: A customer on Zomato types, "I want to cancel my lat order." The NLP-powered chatbot processes the sentence, identifies the user's intent to cancel an order, retrieves their most recent order information, and responds, "Your order has been canceled. A refund will be initiated shortly." This use of NLP allows for seamless, human-like conversations between users and machines, making customer support more efficient and responsive.

E Computer Vision: The ability to analyze and decipher image content using deep learning and pattern recognition is one of the most common applications of AI technologies. Similar to the captchas you see all over the internet, which learn by asking people to help them identify automobiles, crosswalks, bicycles, mountains, etc., computer vision enables AI systems to identify components of visual input.An example of Computer Vision is the use of autonomous vehicles (self-

driving cars), such as those developed by Tesla or Waymo. Example: Self-driving cars use computer vision to interpret and understand their surroundings by processing images from cameras and other sensors installed around the vehicle.

1. **Object Detection**: The vehicle's computer vision system can identify and classify objects such as pedestrians, other vehicles, traffic lights, road signs, cyclists, and obstacles (like a tree branch or roadblock) from the live video feed.
2. **Lane Detection:** The system continuously monitors the road, identifying the lane markings to ensure the vehicle stays within its lane and can also adjust when lane changes are necessary.
3. **Traffic Sign Recognition:** The car can detect traffic signs (e.g., stop signs, speed limits, yield signs) and interpret their meaning to make appropriate driving decisions. For instance, if the system detects a stop sign, the vehicle will halt at the intersection.
4. **Pedestrian Detection and avoidance:** Computer vision allows the vehicle to recognize pedestrians crossing the street. If someone suddenly steps into the road, the system will calculate the distance and stop the car to avoid a collision. Scenario: Imagine you're in a Tesla self-driving car on a busy city street. The car uses its computer vision system to detect a red traffic light ahead, a pedestrian approaching a crosswalk, and a parked car on the side of the road. The AI system processes this information in real-time, decides to slow down, and stops at the red light while avoiding any collision with the pedestrian or parked car. This ability to **"see"** and understand the surrounding environment is the core function of computer vision in autonomous driving, enabling safe and reliable navigation without human intervention[4]"

III. Data Privacy

Within the field of data protection, data privacy, also known as information privacy, addresses how data should be handled with an emphasis on adhering to data protection laws. Data privacy is primarily concerned with adhering to existing privacy rules (such as the General Data Protection Regulation GDPR or the California Consumer Privacy Act, or CCPA), as well as how data should be gathered, kept, managed, and shared with any third parties.[5]

(i) Rising Cyber Threats in India: The Impact of AI on the Surge in Cyber Cases

India had 129 cybercrime instances for every one million people in 2023. The development of AI has made cybersecurity extremely vulnerable. Sheer power, denial of service, AI-generated deep

[4] Shiksha Online, What Are the Core Subjects in Artificial Intelligence (AI)?, Updated on Dec 3, 2021 17:40 IST (https://www.shiksha.com/online-courses/articles/what-are-the-core-subjects-in-artificial-intelligence/) Last accessed 05/11/2024 18:42

[5] Vidhu Jain, AI and Privacy Concerns: Addressing Data Protection Challenges in the Indian Context, July 23, 2024(https://www.hp.com/in-en/shop/tech-takes/post/ai-privacy-concerns-data-protection-india#:~:text=Many%20users%20may%20not%20fully,data%20poses%20new%20privacy%20risks.)

fakes, and social engineering attacks are the main dangers. The prevalence of cybercrimes is rising in tandem with the affordability and accessibility of AI tools. In particular, gender-based violence against women is made possible by deep fake films. Following Chat GPT's release, fraudsters have utilized the technology to craft convincing communications, opening the door for increasingly intricate attacks that circumvent conventional security measures. Therefore, maintaining privacy in this AI-driven environment is an ongoing battle that will only intensify as AI advances.[6]

(ii) Existing Legal Framework in India Enabling Data Privacy Protection

The Information Technology Act, 2000 (IT Act)

"In order to encourage electronic commerce and guarantee safe online transactions in India, the Information Technology Act, 2000 (IT Act) was a historic piece of legislation. Although its main focus is on electronic governance and cybercrime, it establishes a fundamental framework for data protection that is becoming more and more important as artificial intelligence (AI) grows.

Key Provisions Relevant to Data Privacy

1. Section 43: Penalties for disruption to computer systems are included in this section. This includes service interruption and illegal access to data. This may have to do with data breaches that reveal private information in the context of AI.
2. Section 66E: This section deals with privacy infractions, particularly those involving the unauthorized use of personal information via taking pictures or films. This clause is essential for safeguarding individual privacy because AI technologies frequently entail data collection and processing.
3. Provision 72: Violations of privacy and secrecy are punishable under this provision. It emphasizes how vital it is to get consent before processing data, especially for AI applications that use personal information.
4. Section 79: This section offers a safe harbor for organizations that adhere to the IT Act's rules, even though it is mainly targeted at intermediaries. This calls into question the accountability of AI systems that process data through intermediary platforms.
5. Section 84A: This part gives the government the authority to make guidelines for data processing and storage, which may have an impact on AI applications that depend on huge datasets.

IV. Data Privacy and AI Concerns

Significant data privacy issues are brought up by the widespread use of AI, including:

• Informed Consent: Because AI systems frequently employ enormous volumes of personal data,

[6] Anushri_1144, Emergence of AI and Data Privacy Protection Laws, Legal Service India, https://www.legalserviceindia.com/legal/article-18214-emergence-of-ai-and-data-privacy-protection-laws.html

strong safeguards are required to guarantee that users are completely aware of how their data will be used.

A. **Data Minimization:** AI ought to function according to the principle of data minimization, utilizing only the information required to perform its operations. Although it is not specifically included in the IT Act, this idea is essential to data protection
B. **Algorithmic Transparency**: As AI systems grow more intricate, inadvertent biases and prejudice may result from algorithms' opacity. Trust must be preserved by making sure consumers are aware of how their data affects
C. **Cross-Border Data Transfers:** Given the global nature of technology, it is imperative that the IT Act particularly address the difficulties presented by AI in the context of international data flows"[7]

V. The Digital Personal Data Protection Act, 2023 (DPDP Act)

The Act passed by the Indian Parliament aims to regulate the processing of digital personal data and address concerns around privacy in the age of increasing digital transactions. While the Act is an important step towards formalizing data protection in India, it has faced several criticisms from privacy advocates, legal experts, and civil society organizations.

Lapses of Digital Personal Data Protection Act, 2023[8]

The Digital Personal Data Protection Act, 2023, seeks to improve data privacy in India, however it is heavily criticized, which may affect how well it works and how it is implemented. To guarantee a balanced strategy that upholds individual rights while encouraging innovation and economic progress, it will be essential to address these issues through modifications and stakeholder participation.Despite being a significant step in India's data privacy regulations, the Digital Personal Data Protection (DPDP) Act, 2023 has drawn criticism for possibly failing to adequately handle the complexity of data protection in the digital age.

A. **Insufficient Enforcement Systems:** The absence of strong enforcement measures in the Act is one of the biggest issues. Despite being established to handle complaints, some contend that the Data Protection Board lacks the power and resources necessary to adequately monitor

[7] Dr. Swapnil Choudhary, AI and Cyber Security with Reference to Information Technology Act, 2000 and other Laws in India, IJRASET58030, 2024-01-14, ISSN : 2321-9653, IJRASET(https://www.ijraset.com/research-paper/ai-and-cyber-security-with-reference-to-information-technology-act).

[8] Hemangini Dadwal, Shreya Singh, Deepanshu Poddar, Arnav Singh, India: Regulators must balance growth and innovation with user protection GCR, (https://globalcompetitionreview.com/guide/data-antitrust-guide/first-edition/article/india-regulators-must-balance-growth-and-innovation-user-protection) last accessed 05/11/2024 11:59 am.

adherence, particularly in light of the quick speed at which artificial intelligence and data processing technologies are developing. The Act's provisions might not be effective if they are not strictly enforced.[9]

B. **Imprecise and perplexing Provisions:** The Act's wording is vague and often confusing, especially when it comes to what constitutes "sensitive personal data," leaving a lot up for interpretation. This could erode the protection of personal data and cause organizations to get confused about their compliance obligations.[10]

C. **Government Agency Exemptions:** The DPDP Act grants government agencies exemptions in fields like law enforcement and national security, which detractors claim might be used to get around privacy protections. Concerns regarding the abuse of personal data by state bodies are raised by the absence of judicial monitoring over these exemptions**.**[11]

D. **Impact on Innovation and Small Businesses:** Another complaint is that the Act imposes a significant regulatory burden on companies, especially startups. It may be difficult for smaller businesses to compete with larger ones due to the strict regulations for gaining user consent and guaranteeing data minimization.[12]

E. **Issues with Cross-Border Data Flow:** The Act's cross-border data transfer provisions are deemed insufficient. Critics point out that the lack of precise rules regarding data localization and safeguarding data processed outside of India may expose the data of Indian residents to laxer data protection regulations elsewhere.[13]

[9] Gupta, A., & Mehra, S. (2023). Critique of the DPDP Act: Privacy, exemptions, and the balance between innovation and regulation. India Law Review, 45(2), 108-121.

[10] Rao, P. (2023, September 15). Digital Personal Data Protection Act, 2023: Ambiguities and concerns over enforcement. Privacy Law Journal, 17(3), 92-107.

[11] Sharma, R. (2023, August 10). The DPDP Act, 2023: A step forward or a regulatory burden?. Tech Policy Forum. https://www.techpolicyforum.in/dpdp-act-2023-critique.

[12] Sharma, R. (2023). Impact of the DPDP Act on innovation in India's digital economy. Journal of Digital Privacy and Security, 30(1), 75-90.

[13] Rao, P. (2023). Cross-border data flows under the DPDP Act: Challenges and concerns. International Data Protection Review, 12(4), 50-65.

F. An overview of comparison between DPDP Act 2023 and GDPR (EU)[14]

Aspect	GDPR (EU)	DPDP Act, 2023 (India)
Scope	pertains to all EU member states and companies that handle EU residents' personal data.	pertains to organizations doing business in India and those handling the personal information of Indian citizens.
Legal Basis for Data Processing	need a specific legal justification (such as consent, a contract, or a legitimate interest) before processing personal data.	Requires legal justification for data processing, much to GDPR, with a focus on consent, contracts, and legal duties.
Consent	Consent must be freely granted, clear, and informed; users are free to change their minds at any moment.	needs express, informed consent before processing sensitive data. Although "clear" consent is required, there are some exceptions.
Sensitive Data	specific data categories with more stringent processing requirements, such as racial, religious, or health data.	includes categories including biometric and health data, among others, and specifies sensitive personal data. calls for more stringent processing regulations.
Rights of Data Subjects	Numerous rights, such as the ability to access, correct, erase, or be forgotten, and move.	The "right to be forgotten" is more restricted than the GDPR's comparable rights of access, correction, and erasure.
Data Protection Officer (DPO)	requires some organizations, particularly those handling sensitive data, to appoint a DPO.	Although the DPDP Act does not necessitate it, large-scale data controllers may be required to employ a DPO.

[14] European Parliament & Council of the European Union. (2016). General Data Protection Regulation (GDPR). Regulation (EU). 2016/679. https://gdpr-info.eu/ Ministry of Electronics & Information Technology (MeitY), Government of India. (2023). Digital Personal Data Protection Act, 2023. https://www.meity.gov.in/Sharma, R. (2023). A comparative analysis of GDPR and India's DPDP Act: Regulatory frameworks for data privacy. International Journal of Privacy Law, 22(1), 45-62.

Rao, P. (2023). Data sovereignty and privacy: Examining the DPDP Act's approach to cross-border data flows. Indian Journal of Cyber Law, 15(2), 58-75.

Aspect	GDPR (EU)	DPDP Act, 2023 (India)
Data Breach Notification	mandates that impacted parties and the appropriate authorities be notified of data breaches within 72 hours.	Notification of a data breach is necessary, but the processes and timeframe are less detailed than under GDPR.
Penalties	penalties of up to €20 million or 4% of yearly worldwide sales, whichever is greater.	Depending on the severity of the offence, fines for major infractions might reach ₹500 crore (about $60 million).
Cross-Border Data Transfers	severe limitations on the transfer of personal data outside the EU in the absence of sufficient safeguards (such as Standard Contractual Clauses).	imposes limitations on cross-border data transfers and raises comparable issues with data protection in other countries.
Exemptions for Government Use	permits, but strictly monitors, exceptions for national security, law enforcement, and public authorities.	Governmental organisations involved in public order, law enforcement, and national security are granted extensive exemptions under the DPDP Act.
Enforcement Body	oversight bodies in every EU member state. Consistency is guaranteed by the European Data Protection Board (EDPB).	Data Protection Board of India, however its independence and ability to implement laws are questioned.
Data Localization	There is no need to localize data, but transfers outside of the EU need to be protected.	The government has the authority to establish data localization guidelines, and the DPDP Act promotes data localization for sensitive personal

G. Judicial approach on data privacy in India

In accordance with Article 21 of the Indian Constitution, the right to privacy was established as a fundamental right by this historic Supreme Court decision in *Justice K.S. Puttaswamy (Retd.) vs.*

Union of India (2017)[15] For AI systems that depend on enormous volumes of personal data, the decision underlined the significance of obtaining individual authorization before collecting and processing data. It established a standard for data protection issues in the future, including those incorporating artificial intelligence.

- The court struck down the following unconstitutional provisions of the Aadhar Act :
- Mandatory Aadhaar linking for mobile phones and bank accounts.
- Mandatory Aadhaar for non-beneficiaries of government welfare schemes.
- Section 57 allowing private companies to demand Aadhaar. Use of Aadhaar data by private entities without safeguards**.**

K.S. Puttaswamy vs. Union of India (2020)[16]

• Overview: This case was noteworthy because it examined the Aadhaar system, which verifies identity using biometric information and artificial intelligence.

• Decision: The Supreme Court held that the requirement to link Aadhaar to multiple services infringed against the right to privacy, adding that user consent must be obtained before data is gathered and processed and that protections against abuse must be in place.

• Relevance to AI: This case brought to light the consequences of using AI systems to handle private information, underscoring the necessity of strict data security protocols.

Shreya Singhal vs. Union of India (2015)[17]

• Overview: This case addressed the more general issues of freedom of expression and technological misuse, even though its primary focus was Section 66A of the Information Technology Act.

• Impact: Section 66A was overturned by the Supreme Court, highlighting the necessity of legislation protecting individual rights when it comes to the use of technology, particularly artificial intelligence. By promoting increased responsibility, this ruling has an indirect impact on data privacy issues in AI applications.

Petition against Facial Recognition Technology (2020)

Because of worries about data privacy and monitoring, a number of petitions have been submitted to Indian courts contesting the use of facial recognition technology by law enforcement.

Recent Developments: These cases pose significant issues regarding the ethical and legal

[15] Justice K.S. Puttaswamy (Retd.) And Anr. Vs. Union of India And Ors. Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161 August 24 2017(https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/) Last Accessed 05/11/2024 14:25 pm

[16] *Id*

[17] Shreya Singhal vs. Union of India, (2015) 5 SCC 1 Writ Petition (Criminal) No. 167 of 2012.

implications of AI technology in public surveillance as well as their adherence to data protection standards, even though particular decisions are still pending.[18]

VI. Recommendations to strengthen the current legal framework regarding data protection from AI

1. Comprehensive Data Privacy Laws Particular to AI

India ought to enact legislation specifically protecting the privacy of data in AI systems. Although broad data privacy is covered by the Digital Personal Data Protection Act, 2023 (DPDP Act), the particular difficulties presented by AI technologies are not adequately addressed. More precise rules are required for how AI processes personal data, including how it should be used, stored, and held accountable.[19]

2. Require AI-specific Data Protection Impact Assessments (DPIAs)

As with GDPR, companies that employ AI should be obliged to perform Data Protection Impact Assessments (DPIAs), which are primarily concerned with the threats AI brings to data privacy. Particularly when processing sensitive personal data, DPIAs should assess whether AI systems adhere to data protection principles including data minimisation, purpose limitation, and fairness.[20]

3. Ensure Explain ability and Algorithmic Transparency

In order to guarantee that AI systems are auditable and explicable, the legal structure ought to mandate algorithmic openness. People who are affected by AI judgements—like credit scores or employment decisions—should be able to obtain relevant information about the methods and rationales used by AI systems to make decisions regarding their personal information. This is essential for maintaining accountability and avoiding bias or discrimination in AI systems.[21]

4. Make AI Systems' Consent Mechanisms Stronger

Consent procedures ought to be stronger and easier to utilise given the complexity of AI systems. For the use of personal data in AI systems, the legislation should need express agreement after providing a detailed explanation of the data's intended use and any possible hazards. To ensure they have more control over their data, people must also be able to quickly withdraw their agreement at any moment.[22]

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[18] Petition Against Facial Recognition Technology. (2020). Background and recent developments. Supreme Court of India. https://www.sci.gov.in/petition-against-facial-recognition-technology-2020.

[19] Sharma, R. (2023). AI and data privacy: Towards a dedicated legal framework in India. Journal of Cyber Law and Policy, 21(3), 112-126.

[20] Gupta, A., & Mehra, S. (2023). The role of Data Protection Impact Assessments in AI regulations. Indian Data Privacy Review, 10(2), 57-71.

[21] Rao, P. (2023). Algorithmic transparency in AI: Legal considerations for India. International Journal of AI and Privacy, 13(1), 88-100.

[22] Mehra, S. (2023). Strengthening consent mechanisms for AI in India: A legal perspective. Indian Journal of Privacy Law, 8(4), 45-60.

5. Enhance Regulations for Cross-Border Data Transfer

Clear guidelines for cross-border data transfers must be incorporated into the current system due to the global nature of AI development. Sensitive personal data should be localised under the DPDP Act, guaranteeing that it is handled and stored in India or that it is only sent to nations with sufficient data protection regulations. More data sovereignty and privacy protection for Indian residents would result from this.[23]

6. Create an Independent Data Privacy and AI Oversight Authority

There should be a separate regulatory agency established especially to monitor the privacy of AI data. This body's main responsibilities would be to ensure that AI systems adhere to data protection laws, carry out routine audits, look into complaints, and offer advice on how AI should be used ethically in data processing. The authority ought to have the authority to enforce sanctions for AI-related privacy infractions. [24]

7. Encourage Digital Literacy and Public Awareness

The government should fund public education and digital literacy initiatives to make sure that people are aware of their rights under AI-driven data privacy legislation. This will enable people to make knowledgeable choices on the use of their data with AI, especially in areas like public surveillance, healthcare, and finance.[25]

VII. Conclusion

In conclusion, India has to take a more comprehensive and all-encompassing strategy to data protection in order to guarantee that AI and data privacy issues are sufficiently addressed. Stronger enforcement tools and new, AI-specific legislation are necessary to protect people's privacy in the face of quickly developing AI technologies. These reforms ought to prioritize accountability, openness, ethical AI development, and sufficient protections to both encourage innovation and shield citizens from the privacy threats posed by AI.

[23] Mishra, A. (2023). Cross-border data transfer and AI: Regulatory approaches for India. Privacy and Security Journal, 12(1), 78-89.

[24] Singh, V. (2023). Establishing independent oversight for AI data privacy. Journal of Technology and Law, 18(2), 92-107.

[25] Kumar, A. (2023). Public awareness and digital literacy for AI data privacy rights. Cyber Policy Review, 7(2), 33-45

Artificial Intelligence in Indian Trademark Law: Emerging Issues and Legal Perspectives

Mr. Kushal Shah[1]
Dr. Grishma Bhavsar[2]

I. Introduction

AI has become an important part of technology era, bringing efficiencies in data processing and decision-making across various fields. In IP law, AI is transforming traditional practices, enabling faster and more accurate assessments in trademark searches, infringement detection, and dispute settlement. While AI generated trademarks are becoming more common, Indian law still requires a human applicant for trademark registration. This means that business using AI to create brand identities must ensure that the trademark is registered in the name of a natural person or legal entity.[3] A trade mark is a word, phrase, symbol, and/or design that identifies and distinguishes the goods of one person from those of others. A service mark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of a service rather than goods.[4] Trademark law in India is governed by the Trade Marks Act, 1999, which provides legal protection to registered trademarks goods and services, better protection of the same, prevention of the use of fraudulent mark. Purpose of trademark law is to prevent unfair competition by applying a test of consumer confusion.[5] With the development of technology and rise of AI era, challenges arises in Indian trademark act such as AI-driven infringement detection, automated registration, and AI-generated trademarks. Existing IPR regime including copyrights and related rights provide protection to legal entity and Artificial Intelligence is not include in legal entity so that ownership question is also arise. AI impacts trademarks through goods and services marks. AI can assist in generating distinctive marks but Indian law requires that trademark ownership be held by a human or corporate entity. Additionally AI in e-commerce platforms often uses algorithms for targeted advertising, raising questions about liability in cases of infringement, like if AI misuses an established trademark.[6]

II. The Concept of Trademark

A trademark is any word, name, symbol or device used to identify and distinguish goods and/or services from those of others. Trademarks also indicate the source of the goods, even if that source is unknown to the consumer. The term trademark can provide protection to Goods and Service. A trademark is used for products whereas a service mark is used for services. In modern

[1] **PhD Research Scholar, GLS University, Ahmedabad, E mail: skushal7592@gmail.com.**
[2] **Assistant Professor, Faculty of Law, GLS University, Ahmedabad, grishma.bhavsar@glsuniversity.ac.in.**
[3] Khyati dave, Artificial Intelligence and Intellectual Property in India, parker & parker, http://www.parkerip.com/artificial-intelligence-and-intellectual-property-in-india, sept.30 2024.
[4] Dr. Jyoti Rattan, Trade Marks Law, Bharat Law House Pvt Ltd. Page No. 9.
[5] Dr. Jyoti Rattan, Trade Marks Law, Bharat Law House Pvt Ltd. Page No. 9.
[6] Dahiya Neelam, The Intersection of AI and Trademarks, , Mondaq http://www.mondaq.com/ondia/trademark/1409950/the-intersection-of-ai-and-trademarks, January 10, 2024.

times, a consumer usually does not know the manufacturer of the goods personally, unlike before the beginning of the Industrial Revolution, when there was a limited number of manufacturers and every consumer used to know the manufacturer personally. Apart from these, trademarks can be logos, shape, sounds, personal brand names, phrase, smells, colour combination etc. The rationale for granting legal protection for trademarks is that they are a type of intellectual property that demonstrates the standard of quality of products and/or services mainly based on goodwill, and provides legal protection to your brand from fraud and counterfeiting.[7] Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.[8] Trademark is a part of Intellectual Property Rights.

A. What is Trademark?

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.[9]

B. Types of Trademark

(i) General types of trademark

a. Generic Mark: A marks which represent the everyday descriptions of a product or its seller. These are common words such as shoes, watch or food.

b. Suggestive Mark: A suggestive mark is a mark that hints or suggests nature of the product or service or one of its attributes or qualities of a product without necessity relating to it in a literal sense. Example : Netflix.

c. **Descriptive Mark:** Those trademarks or service marks that only describe the product or services to which they are applied marks that are merely descriptive are not protected or accorded trademark rights as they don not identify and distinguish the source of products or services. Example: Mark Cold & creamy for ice cream is a distinctive mark.

d. Arbitrary Mark: Those trademarks or services marks that consists of a word or symbol that has nothing to do with the products or services being offered. Example: Apple is a brand named after a fruit. It is relating to electronic products famously known not just as luxury devices but also quite ironically as inedible goods.

e. **Fanciful mark:** Those marks which have been invented for the sole purpose of functioning as a trademark and have no other meaning that acting as a mark. Example: Kodak, Xerox.[10]

[7] Sneha mahawar, what is trademark, ipleader, What is a trademark - iPleaders, august 30, 2022.
[8] WIPO, what is intellectual Property, http://www.wipo.int/about-ip/en/ , Oct. 31 2024 13:47.
[9] Supra 7.
[10] Dr. Jyoti Rattan, Trade Marks Law, Bharat Law House Pvt Ltd. Page No. 19,20

(ii) Specific kinds of Mark

a. **Word marks:** Wordmark comprises any standalone word or words. They are used for business purposes Examples: Google, Nestle

b. **Shape Mark:** Shape mark is a trademark that protects the specific shape of any product. Common example of a shape mark is the unique shape of bottles or containers of the products of specific companies which no other company can copy or replicate such as the shape of Cadbury chocolate or the unique shape of the bottle of Coca-Cola.

c. **Phrase:** Phrases are short statement that capture the essence of a brand or convey its unique selling proposition. Example: Dar ke Aage Jeet hai.

d. **Colour Combination: S**pecific colour that serves as the trademark purpose of any business. The colour should have definite and unique Pantone codes. One of the most popular colour marks is the Tiffany blue colour, a specific shade of cyan used for the jewellery boxes by the jewellery company Tiffany. Under the colour mark, brands can also file their own colour combinations.

e. **Sound Mark:** Sound marks consist of distinctive sounds that are used to identify a particular brand or product. Sound marks can be registered as trademarks if thay meet certain criteria, such as being distinctive and non functional. Example: 20th Century Fox

f. **Motion Mark:** Motion mark is a unique graphics animation, animated computer sequence, or short video used by the companies for the product. Popular motion marks include Nokia's open screen with a handshake, the car door motion of Lamborghini or the animated graphics of picture companies, such as Paramount Pictures just before the beginning of the movies.[11]

C. Functions of Trademark

1. To denote origin
2. To denote quality
3. To denote connection between the trademark owner and the advertiser.

D. Features of Trademark

An ideal trademark should be attractive to sound and appearance and suggest the quality of the product. It should be distinctive from others trademarks of the same class and should be able to be registered and protected. The following are important features of a good trademark that should be considered before trademark registration

[11] Sneha mahawar, what is trademark, ipleader, What is a trademark - iPleaders, august 30, 2022

(iii) A trademark must be a mark that includes a device, heading, brand, label, ticket, signature, word, letter, name, packaging or colour combination of above attributes.

(iv) It must be short

(v) It must be ear and eye catching

(vi) It should be easy to speak and spell. A good trademark is such that the public can easily spell and speak

(vii) It should be easy to remember. A good trademark that is easy to speak and spell can be easily remembered as well. So that it becomes easy for the public to

(viii) It should not be too lengthy and complicated to be forgotten easily. If it is lengthy or complicated, people will bot bother to take the effort to memorize it and ultimately it will be forgotten

(ix) It must be distinctive

(x) The best trademarks are invented words or coined words or unique geometrical designs

(xi) It can only be suggestive of the quality of the products but not descriptive

(xii) A good trademark should not be barred under the trademarks act under the prohibited classes of trademarks.

(xiii) It must not be similar or deceptively similar to the mark of another person, therefore, a preliminary survey must be conducted before adopting any mark to find out whether any other person is using the same or similar mark.

(xiv) It must satisfy the condition of registration[12]

III. Intersection of AI and Trademark Law

As technology rapidly develop, AI is arising in various industries, and the realm of intellectual property is no exception. The development of AI raises novel issues and situations that conventional & nonconventional trademark frameworks might not be able to adequately handle. Here, we explore a number of important issues that illustrate the possible changes and difficulties in trademark law in the age of artificial intelligence.

IV. What is Artificial Intelligence?

Artificial intelligence (AI) is technology that enables computers and machines to simulate human learning, comprehension, problem solving, decision making, creativity and autonomy.[13]

[12] Dr. Jyoti Rattan, Trade Marks Law, Bharat Law House Pvt Ltd. page no. 18.
[13] Cole stryker, What is AI?, IBM, http://www.ibm.com/topic/artificial-intelligence,august 16 2024.

V. AI Generated Trademarks

AI-generated trademarks are becoming more common, in the era of technology Indian laws are provide protection to legal personalities only, Indian laws still requires a human applicant for trademark registration. This means that businesses using AI to create brand identities must ensure that the trademark is registered in the name of a natural person or legal entity.

1. **Ownership and Authorship:** The question of ownership and authorship concerning trademarks generated by artificial intelligence revolves around the principle that AI, which does not possess legal personhood, is unable to hold intellectual property rights. Consequently, ownership is generally attributed to the individual or organization that created or operates the AI system. As a result, trademarks produced by AI are typically owned by the developers of the technology, the companies that implement it, or the users who leverage its outputs. Existing trademark laws continue to apply, necessitating that Trademarks be original and distinctive. Nevertheless, as advancements in AI technology occur, there may be forthcoming legal changes that could influence the management of these rights.
2. **Risk of Infringement:** AI-generated trademarks could carry a heightened risk of infringement due to the nature of AI algorithms being trained on existing materials. This training process may inadvertently produce trademarks that closely resemble those already in use, potentially leading to legal disputes over trademark violations. The similarity between new AI-generated marks and existing ones can result in conflicts, as established trademarks may challenge the new ones on the grounds of infringement.
3. **Regulatory Guidance:** At present, the United States Patent and Trademark Office (USPTO) has not issued explicit guidelines that distinguish the regulations governing AI-generated trademarks from those applicable to traditionally created trademarks. However, the USPTO emphasizes the importance of responsible AI usage and compliance with current intellectual property laws. Consequently, although AI generated trademarks do not face distinct regulations, they are required to meet the same legal criteria as all other trademarks.[14]

VI. Visual, Conceptual, and Phonetics Similarities in the Era of AI

When determining the likelihood of confusion between two potentially conflicting trademarks, trademark law has traditionally placed a strong emphasis on visual, conceptual,

[14] Adv. Jose K. John, artificial intelligence and trademarks: new challenges and legal perspectives, legal partners, AI and Trademarks: New Challenges and Legal Insights, July 6, 2024.

and phonetic similarities. This may decline as consumers become less involved in the decision-making process when making purchases. Artificial intelligence systems use data and algorithms to recognize and distinguish between brands, potentially eschewing human cognitive processes that primarily rely on conceptual and visual cues. This brings the question whether these similarities are important in a market where AI intermediaries dominate the majority of the decision-making process. On the other hand, given the popularity of smart devices and voice-activated assistants, phonetic similarity may be more important than previously thought. The growing trend of consumers interacting with AI verbally and receiving feedback through voice commands makes phonetic similarity between trademarks more significant.

VII. The Role of AI in Decision-Making

Traditionally, the main goal of trademark law has been to avoid consumer confusion, which occurs when people confuse one brand for another based only on trademark similarities. AI systems are made to process and analyze vast volumes of data accurately, especially when they use machine learning and natural language processing. AI is able to distinguish between similar trademarks based on intricate details and large datasets, unlike human consumers. This accuracy reduces the possibility that AI will confuse one trademark for another, which could call into question the applicability of conventional consumer confusion in the context of AI-driven decision-making. The standards for determining trademark similarity may need to be revised as AI becomes more prevalent in consumer decisions. Due to its sophisticated capabilities, AI is less likely to be confused by trademarks that sound or look alike. AI is therefore capable of distinguishing between trademarks more effectively than humans, so the emphasis on visual, phonetic, and conceptual similarities may need to be changed.

VIII. The future of Goodwill and Reputation in the AI world

The elements of goodwill and reputation which are the cornerstones of trademark protection are often overlooked. In an AI-driven marketplace, ensuring that AI systems accurately reflect and respect these elements is crucial. AI systems, which rely on data and algorithms, might not fully appreciate the nuanced aspects of goodwill and reputation. While AI can analyze vast amounts of data to determine brand popularity and consumer sentiment, it lacks the human experience and emotional connection that underpin these concepts . Brands with goodwill may give less emphasis on its digital marketing as they are well established and have goodwill among people which they earned through years and therefore may not show up in the top results of a search for the best products. AI will definitely fail to give results

of such a brand with good reputation and quality product. This disconnection raises concerns about how effectively AI can recognize and preserve the goodwill and reputation that trademarks represent.

IX. New Dimensions to the Trademarks Act, 1999

The Trademarks Act, 1999, governs trademark law in India and contains provisions that may encounter challenges when AI and trademark coexist. For instance, Section 11 which discusses the relative grounds for refusal emphasizes the likelihood of public confusion due to similarity with an existing trademark. AI's precision in differentiating between trademarks could reduce such confusion, challenging this section's applicability. As AI-driven systems become more prevalent, the traditional human-centric approach to evaluating similarity and potential confusion might need modification to reflect AI's capabilities in distinguishing brands. AI's advanced data processing can minimize the risk of consumer confusion, potentially necessitating a re-evaluation of what constitutes infringement. The precise and consistent decision-making by AI may challenge the current criteria, requiring updates to ensure effective trademark protection in an AI-influenced market. Section 30 addresses the conditions under which certain uses of a trademark are not considered infringement. AI's ability to contextualize and differentiate use could influence how these limits are interpreted. The traditional legal framework may need adjustments to accommodate AI's nuanced understanding of trademark use, ensuring that the balance between protection and permissible use remains effective in the evolving digital landscape.[15] Section 29 deals with trademark infringement of registered trademark by using a mark which is identical with or deceptively similar to the trademark and a mark which is likely to cause confusion on the part of the public.[16]

X. The Role of AI in Trademark Searches

Artificial intelligence (AI) has revolutionized the way we conduct trademark searches. By leveraging cutting-edge technologies such as machine learning, natural language processing (NLP), and image recognition, AI enhances the speed and precision of trademark identification.

1. **Machine Learning and Data Insights:** Machine learning plays a crucial role by swiftly analyzing vast datasets. In the context of trademark searches, it examines numerous examples of registered trademarks and pending applications to identify patterns and

[15] Sneha Mahawar, what is trademark, ipleader, What is a trademark - iPleaders, august 30, 2022.
[16] Dr. Jyoti Rattan, Trade Marks Law, Bharat Law House Pvt Ltd. Page No. 107.

similarities. This capability helps uncover potential conflicts that may not be easily recognizable to humans.

2. **Natural Language Processing (NLP):** Natural language processing (NLP) empowers AI to comprehend and interpret the language used in trademark descriptions. This is particularly beneficial since even minor variations in wording can influence whether a trademark could be confused with another. NLP efficiently processes large volumes of text to find accurate matches.
3. **Image Recognition and Visual Analysis:** For trademarks that include logos or images, image recognition technology proves invaluable. AI can analyze and compare these visual components to identify similarities and potential conflicts. This is especially critical for brands that depend significantly on their visual identity and logos.[17]

XI. Role of AI in Trademark Infringement Detection

AI is transforming trademark infringement detection by enabling faster, more accurate identification of potential violations across digital and physical platforms. AI can be used to detect unauthorized use of trademark online, assisting business in protecting their brand integrity.[18] Here's how AI helps in detecting trademark infringement.

1. AI-Powered Monitoring and Detection

Trademark owners may quickly detect unlawful usage, counterfeit goods, and brand dilution by utilizing artificial intelligence (AI), which enables prompt intervention and enforcement actions. Maintaining brand integrity and stopping illegal activity on digital platforms require real-time brand monitoring.[19]

2. Infringing Contents

AI systems may flag non-infringing content as infringing, which could result in the unwarranted removal of legitimate listings or penalties against lawful entities.

3. AI inTrademark Dispute Resolution

AI can assist in resolving trademark disputes by providing comprehensive data analysis. By examining historical case law and predicting outcome based on precedents. AI tools can guide legal professionals to make more informed decisions.[20] AI is becoming a valuable tool

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[17] Khushi Rastogi, AI-generated trademark: innovation meets intellectual property, Legal service India E – Journal, AI-Generated Trademarks: Innovation Meets Intellectual Property, oct. 30 2024, 15:03.

[18] Dahiya Neelam, The Intersection of AI and Trademarks, , Mondaq http://www.mondaq.com/ondia/trademark/1409950/the-intersection-of-ai-and-trademarks, January 10, 2024.

[19] Khurana & Khurana Attorney, Impact of AI on trade mark law: recent development and future, IIPRD, Impact of AI on Trademark Law: Recent Developments and Future | IIPRD Blog - Intellectual Property Discussions, Oct. 30, 2024 14:48.

[20] Indie law, understanding the impacts of Artificial intelligence on trademark law, http://www.indielaw.com sept. 10, 2024.

in resolving trademark disputes, particularly by speeding up the resolution process and improving fairness and consistency in decisions.

4. **AI and Legal Concept:**

A trademark is a way of identifying a business. Trademarks are mainly used to connect branding to consumer buying behaviour. However with the emergence of artificial intelligence in the online world, some traditional concepts may become less relevant such as imperfect recollection, confusion and trademark to trademark comparison based on their phonetic, conceptual or visual impact. This is because AI has reduced the number of product options for individual consumers. E – commerce platforms are now using AI algorithms to suggest products based on the customer's search history, demographic, preferences, past purchases etc.[21]

X. Policy Recommendations and Legal Perspectives

In response to the complex legal problems faced by AI-generated trademark measures can be taken to provide a fair and equitable approach to intellectual property rights. In addressing the issue of ownership, it is necessary to establish clear guidelines that recognize the contribution of the human creator, the organization utilizing AI, and the AI system, for fair distribution of authorship.

A. Accountability Framework

A legal framework that clarifies accountability for AI-related actions in trademark registration, monitoring, and enforcement is essential. When AI systems generate trademarks on their own without human assistance, ownership and accountability issues come up. In order to create frameworks that fairly distribute culpability among AI developers, users and the AI systems themselves, courts must address the agency and accountability issues. This could include stipulations on liability for AI developers and users in cases of trademark infringement.

B. AI Transparency and Ethics:

Policies should encourage transparency in AI-driven trademark systems, requiring developers to document AI decisions and ensure non-discriminatory practices. Consider providing clear explanations of how your AI algorithms work and the basis for their decisions, especially in critical areas like healthcare, finance or legal domains.

C. Data Privacy and AI:

With the increasing role of AI in monitoring trademarks, India's trademark enforcement system must comply with data protection laws to protect individual privacy. Understand

[21]Dahiya Neelam, The Intersection of AI and Trademarks, , Mondaq http://www.mondaq.com/ondia/trademark/1409950/the-intersection-of-ai-and-trademarks, January 10, 2024.

how personal data should be collected, stored and used and take necessary measures to protect user piracy.[22]

D. International Perspectives:

The EU and the U.S. are leading discussions on AI's role in IP law, providing valuable insights for India. Following international best practices could help India align its AI and IP policies with global standards, promoting innovation while protecting trademark rights.

E. Embracing AI Innovation Responsibly:

India should promote responsible AI innovation in trademark law. Encouraging ethical AI development will support economic growth and enhance trademark protection while preventing misuse of AI technology in IP.

XI Judicial Pronouncement

Till date, there is only one proper case regarding the interaction between AI and trademarks. In the case of Lush V Amazon, the court has reprimanded the Amazon for infringing upon the Lush trademarks. Amazon brought the keyword "Lush" from the google through bidding process. And when the word "Lush" is searched on the google search engine, google redirects the link of the amazon website based on the key word. Even if the "Lush" word is searched on the Amazon's website, the AI of the website is suggesting the similar products rather the "Lush" products. Though there are no sale of Lush's products on the website but AI product system is suggesting the similar products based on the keyword search on the website which is clear indication of infringement. And court held that Amazon is liable for the infringement.[23]

XII. Conclusion

The era of artificial intelligence presents unprecedented challenges and opportunities for trademark law. The intersection of AI and Trademark raises complex legal, ethical and policy consideration that require careful review and adaption of existing legal framework. AI is reshaping Indian trademark law, creating both opportunities and challenges. While AI can streamline processes and enhance IP protection, it also raises complex issues around accountability, ethics, and privacy. India's legal framework must evolve to address these emerging issues, ensuring that trademark law remains effective in the AI era. Balancing innovation and legal protection will require thoughtful reforms, collaboration with international stakeholders, and a commitment to transparent, ethical AI practices.

[22] Dr. Jyoti Rattan, Supra note 10

[23] Komal Sharma, balanced use of AI in trademark with ethical consideration,Law Docs, Balanced use of AI in Trademark with Ethical Considerations, oct. 30 2024, 16:15.

Reforming Patent Laws for Sustainable Development: A Critical Analysis of Green Patent Policies and Legal Reforms

Ms. Rohini. S [1]

I. Introduction

Ecosystems, health, and companies are most at risk from climate change. People have raised greenhouse gas levels by burning fossil fuels, cutting down trees, and running factories. Earth is warming, seas are rising, and weather is worsening. Immediately, we must monitor the natural, social, and economic issues caused by global developments. Sustainable technologies reduce pollution and conserve resources, fighting climate change[2]. Fighting climate change with energy-efficient appliances, renewable energy, and better trash management is feasible and scalable. People will act better for the globe and last longer if societies encourage these technologies. Green patents, often called eco-patents, are for environmentally friendly concepts. New innovations may assist green resources, reduce pollution, and save energy. Legal protection and financial incentives from patents foster development[3]. This helps environmental technology thrive and spread. Green patents facilitate international technology sharing and inspire eco-friendly solutions. This enables global climate change cooperation.

Purpose of the Study

The focus of this study is how green rights aid international climate change initiatives. Because they encourage eco-friendly technology, green patents help create a low-carbon economy. Green patents promote environment-friendly ideas that reduce greenhouse gas emissions. The study will demonstrate this. Green rights are excellent, but some issues make it hard to develop environmentally friendly solutions. In emerging countries, difficult and expensive legal processes and inexperienced businesses are widespread. This paper discusses ways to fix these issues so green rights can fight climate change.

Research Question

The central research question guiding this study is: *"How do green patents contribute to mitigating climate change, and what challenges impede the innovation and implementation of sustainable technologies?"*

[1] **Research scholar at school of Law, Hindustan Institute of Technology and Science.**

[2] Habein S. Encouraging Sustainable Innovation: Is There Room for a Post-Grant Environmental Challenge in American Patent Law?. Wm. & Mary Env't L. &Pol'y Rev.. 2021;46:899.

[3] Labucay I. Is there a smart sustainability transition in manufacturing? Tracking externalities in machine tools over three decades. Sustainability. 2022 Jan 12;14(2):838.

II. Literature Review

Overview of Green Patents

Green patents, or eco-patents, protect environmentally friendly ideas. It can reduce smog, energy waste, and wasted spending. Environmentally friendly patents span energy savings, sustainable farming, waste management, pollution prevention, and renewable energy sources like solar, wind, and water[4]. In contrast to conventional patents, "green patents" promote science and the environment.

Historical Development and Significance in the Context of Sustainability

People are growing increasingly mindful of how enterprises damage the environment, leading to "green patents". In the late 2000s and early 2001s, "green patents" emerged as people cared about the environment and signed climate change accords. Eco-innovation initiatives, green technology patent categories, and international green technology accords like the Kyoto Protocol and Paris Agreement have improved[5]. It takes new technology to meet environmental goals, and green rights make it easier to produce them. Green patents stimulate private sector investment in environmental research by protecting innovators and rewarding them financially. This accelerates technical growth and makes green practices easier to find, saving the world over time.

Impact on Climate Change Mitigation

Green patents coordinate the creation, protection, and sale of environmentally friendly technologies to inspire new ideas. Patents provide inventors exclusive use of ideas, making sustainable technology financially attractive. Researchers hope to find strategies to reduce the consequences, use energy more efficiently, and reduce greenhouse gas pollution. Green patents help technology spread from developed to developing nations[6]. This transfer is crucial for global climate change mitigation by spreading adaptable new technology. Green patents ensure global availability and usability of environmentally friendly technologies through licensing and international cooperation. Research has focused on eco-friendly patents. Studies suggest that countries with robust green property systems generate environmentally friendly ideas. This reduces carbon emissions and other environmental harm. The survey found an increase in renewable energy patents and utilization[7]. Not all industries benefit from green patents. Green patents have helped with renewable energy and

[4] Huo P, Liu F. A study on the dynamic relationship between intellectual property rights and green economy development in China. Journal of Neuroscience, Psychology, and Economics. 2024 Apr 18.

[5] Wang Y, Qamruzzaman M, Kor S. Greening the future: Harnessing ICT, innovation, eco-taxes, and clean energy for sustainable ecology—Insights from dynamic seemingly unrelated regression, continuously updated fully modified, and continuously updated bias-corrected models. Sustainability. 2023 Nov 29;15(23):16417.

[6] Wang Z, Chu E, Hao Y. Towards sustainable development: How does ESG performance promotes corporate green transformation. International Review of Financial Analysis. 2024 Jan 1;91:102982.

[7] Liu Z, Hou D, Zahid RA. Intersecting paths: Corporate and green innovation in Chinese firms—A penal cointegration analysis. Plos one. 2024 Jan 17;19(1):e0295633.

waste collection, but agricultural and transportation are hesitant to adopt green innovations. Customers' demand for eco-friendly products, legislation, and government grants affect green patents.

Challenges in Green Patenting

However, various factors could slow green rights progress. The high cost of rights is problematic. Patents may be too costly and complicated for entrepreneurs and small enterprises. Legal fees to figure out the intricate patent application process, which differs by location, could increase these expenditures. Many firms struggle with more than money. A major issue is the complexity of the legal system[8]. Originality, non-obviousness, and usefulness are difficult to meet for patentability. This is true for little progress, not great ones. Because there are no global green patent processes, innovators struggle to protect their inventions. Green patents may confuse inventors, especially in developing nations. Environmental inventions are hard to patent, and many innovators lack the knowledge or skills to do so[9]. Misinformation may obscure sustainable protection and commercialization technological achievements, reducing their climate change combat potential.

Discussion on the Global Disparity in Green Patenting Efforts

Global disparities in green patent availability and use exacerbate green patent issues. Developed countries with robust technology infrastructures and supportive legislation are likely to dominate green patenting[10]. However, developing nations may face financial, IP protection, and technical knowledge issues. This difference is a serious concern for global sustainability efforts. Without equal access to green patents and the technologies they protect, developing nations may struggle to implement sustainable climate change measures[11]. Disparities in countries' environmental consequences and climate change resilience may increase. Only technology, expertise, and enabling policy and legal frameworks can close this gap in less developed regions.

III. Research Methodology

Doctrinal Research Design

The classic and popular doctrinal research methodology examines statutes, case laws, rules, and principles methodically. This technique examines authoritative legal sources to understand, analyze,

[8] Ndukwe-Nnawuchi CA. Traditional Medicine: The Case for it's Inclusion in Sustainable Development. No One Should be Left Behind (Doctoral dissertation, University of Buckingham).

[9] JI M, Zhang X. Assessing the impacts and mechanisms of green bond financing on the enhancement of green management and technological innovation in environmental conservation enterprises. Journal of the Knowledge Economy. 2023 Nov 14:1-42.

[10] Qian X, Zhang Y. Science, technology, and innovation: the next frontier in Asia-Pacific's legal framework. Asia Pacific Law Review. 2024 Jan 2;32(1):239-58.

[11] Cheung GC. High-hanging fruits and the Belt and Road Initiative: Sustainability through entrepreneurship 1. InGreen Finance, Sustainable Development and the Belt and Road Initiative 2020 Dec 21 (pp. 261-284). Routledge.

and critique present legal arrangements. Doctrinal research relies on analyzing written sources rather than collecting evidence, hence the term "library-based" research. Green patents' policy and legal aspects and greenhouse gas reduction effects are examined using the doctrinal method. This research tries to clarify several concerns about green patents, including what they are, how different jurisdictions handle them, and how a lack of legal clarity hinders sustainable technology creation and deployment.

Justification for Choosing This Methodology for Analyzing Legal and Policy Aspects

This method works well for legal research because it lets you look at green patent regulations in more depth. Because it's important to understand the legal and policy issues surrounding green patents, the doctrinal method provides a structured way to look at and understand laws, court cases, and international deals. Green patenting raises unique legal challenges that can be better understood and judged using doctrine. The researcher can identify trends, patterns, and anomalies in green patent law application across various jurisdictions by evaluating statutory provisions and case laws. This helps understand global green patenting and highlight places that may need legal changes to boost sustainable technological innovation.

Data Sources

Primary Sources

The case laws study will review green patent case laws from various countries. These judgments explain the reasons for green patent scope and enforcement rulings, as well as precedents and court interpretations and applications. Research will examine green patent rules in several countries. This category includes all national patent laws, environmental innovation standards, and provisions to encourage or easy patenting environmentally friendly technology. The report compares provisions across countries to highlight beneficial practices and identify law harmonization opportunities. The important international accords affecting green patents will also be covered. Environmental accords and agreements that address IP rights may qualify. UNFCCC, Paris Agreement, and TRIPS deal with IP in commerce. These treaties are shaping green patents globally.

Secondary Sources

Scholarly publications cover green patents and sustainability from philosophy, critique, and research. Reviewing these articles helps address knowledge gaps, understand the current state of knowledge, and contextualize policy and legal analysis. To guarantee a complete comprehension of the themes, books by sustainable development, environmental, and intellectual property law experts will be used. These resources cover green patent policy, history, and law in depth. Reports from international organizations, government agencies, and NGOs will give statistical data, policy recommendations, and case studies on green patents globally. These papers reduce the theoretical-

practical divide. We'll study successful and unsuccessful green patent campaigns to learn from them and improve our own. The practical use of legal frameworks will effect sustainable technology development and distribution in these case studies.

IV. Legal Framework Analysis

Statutory Provisions

Due to legal, economic, and environmental goals, green patent laws vary per country. Most countries' IP laws cover green patents, and some encourage eco-friendly innovation. The USPTO expedites green technology patent applications to speed up patenting. This program advances environmental technology discovery and deployment. EU patent offices actively support environmental advances as part of the EU's intellectual property strategy. The European Patent Office (EPO) has eco-friendly technology groups to improve understanding and prioritization. The Japanese government's Green Technology Program lowers environmental patent costs[12]. This supports innovation and progress. Some countries have stricter green patent laws. The worldwide green patent scenario is unique since many developing nations are still revising their laws to support and protect green technology. Because they lack money, technical expertise, and enforcement capacity, many governments struggle to adopt green patent requirements. It's apparent that green technology requires tighter local laws and global rules.

Case Law Analysis

Case law governs green patent interpretation and application. In several jurisdictions, landmark cases have established green patent issuance, enforcement, and challenge. Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co. established US patent law rules, including equivalents, that affect green patents. This case illustrated how hard it is to protect creative technologies without restricting innovation. The European Commission v. France case addressed patent law's environmental concerns, showing the EU's IP sustainability. This case underlined the significance of aligning patent restrictions with environmental goals to protect and promote green innovations[13]. Comparative case law illustrates country-specific green patent interpretation and enforcement. Green patent case law is extensive in the EU and US but scarce in developing nations. Unequal legal system growth may delay green technology spread due to structural concerns with international intellectual property law. These case laws describe green patent legal changes and how court decisions effect sustainable inventions.

[12] Rayappa MK, Arora S. Keeping up with innovation: Perspectives into the present and the future needs of the Indian food sector. Journal of the Knowledge Economy. 2021 Jun;12(2):470-88.

[13] Shou Y, Wu C, Shao J, Hu W, Lai KH. Does green technology innovation contribute to logistics companies' market value? The effects of stakeholder engagement and public attention. Transportation Research Part E: Logistics and Transportation Review. 2023 Aug 1;176:103227.

International Agreements

Green patents need international agreements to build worldwide intellectual property and environmental partnerships. International agreements like the 2015 Paris Agreement are crucial. The Paris Agreement prioritizes greenhouse gas reduction but also innovation and technology transfer. The agreement's Article 10 request to promote green innovations may change national green patent policies. To foster innovation, the Paris Agreement encourages signatory states to build fiscal and legal structures for green technologies, such as green patents.

Another major international framework is the WTO's TRIPS Agreement. All WTO members must fulfill TRIPS' minimum intellectual property protection standards, which include patent clauses[14]. There are no green patents in TRIPS, but the trade agreement's IP enforcement and patentability restrictions affect green technology protection. Member nations can employ compulsory licensing for environmentally friendly technology to meet environmental goals if they follow TRIPS laws. Due to this flexibility, some nations' intellectual property laws now support green patents as part of their environmental efforts. These international agreements affect domestic policy greatly. Countries that have signed the Paris Agreement and TRIPS must align their patent laws with environmental considerations[15]. Policies that facilitate cross-border green technology transfers, incentives for green breakthroughs, and national green patent schemes have resulted. Different states interpret green patenting legislation differently, therefore global projects aren't always successful. National cooperation is needed to make sustainable technology available to everyone and strengthen the global legal framework for green patents, as proven by international treaties.

V. Comparative Study of Legal Frameworks

Incentives for Green Patents

Several countries have made laws to encourage the creation and sharing of patents that are good for the environment. This shows that they are committed to both new ideas and long-term sustainability. It now takes the US Patent and Trademark Office less time to look over "green" rights, which protect technology that is good for the environment. This program encourages the growth of new environmentally friendly technologies and new ideas in this area by cutting down on the time it takes to bring them to market[16]. The European Union's rules on IP and the environment don't support a scheme that gives people incentives to get green patents. The European Patent Office uses

[14]Wu L, Sun J. Intelligent Manufacturing Leads the Green Trend: An Empirical Exploration of Manufacturing Companies Listed on China's Shanghai and Shenzhen A-Share Markets. Journal of China-ASEAN Studies. 2024 Jun 30;4(2):30-52.

[15]Habein S. Encouraging Sustainable Innovation: Is There Room for a Post-Grant Environmental Challenge in American Patent Law?. Wm. & Mary Env't L. &Pol'y Rev.. 2021;46:899.

[16]Labucay I. Is there a smart sustainability transition in manufacturing? Tracking externalities in machine tools over three decades. Sustainability. 2022 Jan 12;14(2):838.

"green technology classes" to locate and process environmental patents. Some EU member states offer tax refunds or cheaper patent fees to encourage eco-friendly technology. These benefits minimize costs for developers bringing environmentally friendly technologies to market.

The Japanese Green Technology Program offers many financial and procedural benefits.

This initiative expedites and decreases environmental invention patent expenses. Green innovation in Japan needs financial incentives and government support. Countries with substantial green patent benefits are more likely to prosper sustainably, according to this model comparison[17]. These incentives vary, notably across developed and developing nations. Lack of green rights and slow acceptance of green technologies are financial and technological difficulties underdeveloped countries may encounter while doing similar things. This comparative study says that green innovation needs more fair funding around the world, especially in places where environmental issues are the worst.

Support for Sustainable Technology Innovation

Multiple government programs and legal advantages for green rights encourage the creation and use of green technology. The Energiewende (energy change) program in Germany has strong policy suggestions for renewable energy. Through this program, green electronics companies can get tax breaks, funds for research and development, and help with putting their plans into action across the whole country. German law backs "green patents" as an environmentally friendly way to come up with new ideas. Because the "Made in China 2025" plan wants to ensure the country's long-term economic success, it encourages the development of environmentally friendly technologies. This includes government policies that encourage people around the world to work together on green innovations, a lot of money for research and development in green technologies, and help with turning green ideas into products[18]. The Chinese approach shows how governments, especially those in developing countries, should back technology that is good for the environment. Other countries, especially those in the Global South, find it harder to offer this kind of help because their institutions aren't strong enough and they can't afford to. Because they rely on foreign aid and collaborations to foster green innovation, many countries may struggle to produce sustainable technologies. Given regional inequalities in government support for sustainable technological

[17]Huo P, Liu F. A study on the dynamic relationship between intellectual property rights and green economy development in China. Journal of Neuroscience, Psychology, and Economics. 2024 Apr 18.

[18]Wang Y, Qamruzzaman M, Kor S. Greening the future: Harnessing ICT, innovation, eco-taxes, and clean energy for sustainable ecology—Insights from dynamic seemingly unrelated regression, continuously updated fully modified, and continuously updated bias-corrected models. Sustainability. 2023 Nov 29;15(23):16417.

innovation, international collaboration and information exchange are needed to level the playing field so all nations may benefit from the green economy.

Best Practices

If you want to know how to make the best green copyright laws, it might help to see what other countries have done that has worked. As an economic and environmental policy tool, green patent benefits have worked well for both Japan and the EU. By coordinating patent rewards with sustainability goals, these countries make sure that their legal systems support both new ideas and long-term solutions. As an alternative, one idea is to speed up the review of environmental patents, like the USPTO and the EPO do. With these methods, patenting eco-friendly technologies takes less time and costs less money. This means that inventors can get their goods to market faster. When we think about climate change, we need to quickly adopt technology that is good for the environment.

Grants for study into green technologies, lower fees, and tax breaks are all great ways to get people to spend their money. These benefits will make it easier for more innovators, especially those who work for small or medium-sized businesses, to join the green economy. This is because they will lower the financial barriers to innovation. Japan and Germany both have ecosystems for green innovation that are doing very well because they took advantage of similar benefits. Lastly, it is very important to encourage countries to work together and share information with countries that are growing[19]. By working together, these countries have a better chance of getting information and money to create technologies that are better for the environment. This way fights global warming and encourages the fair use of green technology. Strong laws, financial incentives, international teamwork, and clear legal frameworks are all important parts of a complete green patenting strategy, as these great examples show. Countries can help lessen the effects of climate change by doing these things and making an environment that supports long-term thinking and new ideas.

VI. Challenges and Barriers

A lot of things make it hard to use and support green patents, even though they can help with environmentally friendly inventions. It's expensive to get and keep up with green patents, which makes them hard for creators and small businesses to use. The costs of applying, reviewing, and keeping up with a patent application can quickly add up. Patent offices need both law and technical knowledge to do their jobs, which drives up the costs. Patents for environmentally friendly technologies are too expensive for most people to afford because they require a lot of research and

[19]Wang Z, Chu E, Hao Y. Towards sustainable development: How does ESG performance promotes corporate green transformation. International Review of Financial Analysis. 2024 Jan 1;91:102982.

development. In poor countries, it is harder for new technology developers to compete in the global market for green technology because they can't easily get money or investments.

Laws and procedures that make the process hard to follow make green rights hard to use. The patenting process is long and requires a lot of careful paperwork and review to make sure the idea is new, not obvious, and useful. It can be hard to trust green patents because most environmental breakthroughs are just improvements or additions to earlier ideas. Innovation also has to deal with the extra difficulty of having to follow various rules and guidelines in each country where they seek patent protection, because patent laws do not harmonize. The green patent process can slow down progress because it takes longer, costs more, and isn't always predictable.

Green patent systems don't work as well as they could because of issues with access, costs, the law, and public understanding. There are many good things about green patents that creators, especially those in developing countries, don't know about. Not to mention the support, which could come in the form of programs that speed up the review of patents or rewards for promoting technologies that are good for the environment. That means that entrepreneurs with big ideas might not be able to get the money they need to sell their green inventions. This is important to think about because a lot of innovators don't have easy access to patent papers, lawyers, and other things they need to get a patent. Intellectual property rights don't get enough support from institutions and schools in poor countries. Finding genuine patent information and understanding local intellectual property laws can make it hard for eco-friendly entrepreneurs to protect and promote their ideas. The difficulty of obtaining green patents legally and commercially makes them less effective at encouraging sustainable innovation. We need national and international activities including training and educating people about IP rights, simplifying the patent procedure, and funding to remedy these concerns. A green patent system that spreads climate change and sustainability concepts requires solving these issues.

VII. Conclusion

Finally, green rights promote eco-friendly technology, which fights climate change. They promote green solutions that reduce greenhouse gas emissions and prolong life. The story discusses how their expensive pricing, complex legal processes, and lack of inventor acknowledgment prevent their widespread adoption, especially in developing nations. Given these issues, the government must take targeted action and adopt appropriate reforms. If legislators and lawyers simplify the patent process, offer financial incentives, and improve support services, more people should use green patenting. New innovators must understand patentability. The future of green rights depends on overcoming these issues to promote fresh science and environmental ideals.

Navigating the Legal Landscape Exploring the Intersection of Law and Intellectual Property Rights

Mr. Supreeth Nag Hegde[1]
Ms. Chaitanya G[2]

1. Introduction

In an era where ideas hold immense value and innovation drives progress, Intellectual Property Rights (IPR) stand as the bedrock of protection for intellectual endeavors. From groundbreaking inventions to artistic creations, intellectual property rights serve as a shield against unauthorized use and a catalyst for creativity and economic advancement. In a world propelled by knowledge-based economies, the importance of safeguarding intellectual property rights cannot be overstated. Thus, comprehending the intricate interplay between law and IPR is essential for navigating the legal intricacies and ensuring the preservation of human ingenuity.

Intellectual Property Rights (IPR) are essential to the contemporary legal framework, acting as a protective shield for innovations, creativity, and knowledge-based assets in an increasingly interconnected global economy. IPR encompasses a broad spectrum of protections, including patents, trademarks, copyrights, and trade secrets, all aimed at fostering and securing the products of human intellect. With advancements in science, technology, and digital platforms, there is a pressing need to balance the protection of intellectual property with the dynamic demands of a knowledge-driven economy.

This research paper examines the intersection of law and IPR within the Indian context, specifically addressing the legal landscape's impact on sectors like agriculture and technology through legislation like the Protection of Plant Varieties and Farmers' Rights Act, 2001 and the Semiconductor Integrated Circuits Layout-Design Act, 2000. These specialized laws demonstrate how IPR is not limited to traditional domains but extends into critical areas such as plant variety protections and semiconductor designs, where safeguarding innovation is essential to national and economic interests.

Through an exploration of these topics, this paper aims to unpack the complexities of the IPR framework, focusing on the challenges, opportunities, and implications for stakeholders. One delve into questions of how legal protections, enforcement mechanisms, and international harmonization efforts shape the landscape of intellectual property. The paper will address the nuanced role of trade

[1] 3rd Year LLB student at School Of Law, Dayananda Sagar University, Email: Supreeth-llb@dsu.edu.in
[2] 2nd Year LLB student at School Of Law, Dayananda Sagar University, Email: sol23al0002@dsu.edu.com

secrets within this legal framework, exploring their significance as a competitive asset for businesses in a highly innovative economy.

The objectives of this study are twofold: to provide an analytical overview of India's IPR laws and their implications for sectors reliant on intellectual property, and to assess the effectiveness of these laws in encouraging innovation, economic growth, and cross-border cooperation. This research ultimately aims to offer insights into the current state of IPR in India and to recommend policy adjustments that would enhance the protection and utilization of intellectual property within an evolving global context.

2. History of Intellectual Property Rights: From Past to Present

The evolution of Intellectual Property Rights (IPR) is a fascinating journey from ancient times to the contemporary digital age, reflecting the changing dynamics of human innovation and creativity. What began as simple protections for individual creators has transformed into a comprehensive legal framework critical for driving global economic and technological advancement.

2.1 Early Origins of Intellectual Property Protections

The seeds of IPR can be traced to ancient civilizations where artisans and inventors sought recognition and protection for their unique creations. For instance, in ancient Greece, creators were given exclusive rights to their culinary recipes and innovative designs as early as 500 BCE. However, these were rudimentary and lacked formal codification. The Renaissance period in Europe also saw some informal protections as creators began to realize the value of their work[3].

2.2 Industrial Revolution and the Formalization of IPR

The Industrial Revolution in the 18th and 19th centuries marked a turning point in the history of intellectual property. Technological advancements led to unprecedented growth in inventions and innovations, necessitating formal protections to incentivize further development. In 1623, the British Statute of Monopolies laid down the foundation for modern patent law, granting inventors exclusive rights for a limited time. The United States followed with its own patent law in 1790, aiming to promote progress and economic growth through innovation[4].

The concept of copyright also evolved significantly during this period, with England's Statute of Anne in 1710, the first copyright law granting rights to authors. These legislative milestones established the basis for intellectual property as a means of rewarding creators and protecting their contributions.

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[3] May, Christopher. The Global Political Economy of Intellectual Property Rights: The New Enclosures. Routledge, 2000.

[4] Sherman, Brad, and Lionel Bently. The Making of Modern Intellectual Property Law: The British Experience, 1760–1911. Cambridge University Press, 1999.

2.3 Expansion and International Cooperation in the 20th Century

The 20th century witnessed the expansion and internationalization of IPR laws. The Paris Convention of 1883 provided a framework for the global protection of industrial property, including patents and trademarks. It emphasized that inventors and creators should receive equal protection in foreign countries. The Berne Convention of 1886 was another landmark treaty, establishing international standards for copyright protection and recognizing the moral and economic rights of authors. These agreements laid the groundwork for collaboration among nations in protecting intellectual property on a global scale.

The establishment of the World Intellectual Property Organization (WIPO) in 1967 further emphasized the global importance of IPR and aimed to harmonize the protection mechanisms worldwide. This era solidified the perception of intellectual property as not only a national concern but a pivotal issue in international trade and diplomacy[5].

2.4 TRIPS Agreement and the Era of Globalization

A major milestone in the globalization of intellectual property rights was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994, under the World Trade Organization (WTO). TRIPS introduced comprehensive and enforceable international standards for IPR protection and required member countries to adopt stringent laws for patents, copyrights, trademarks, and trade secrets. This agreement highlighted the increasing importance of IPR in the context of global trade and the knowledge-based economy[6].

2.5 Modern Intellectual Property Landscape and the Digital Age

With the advent of the digital era, the landscape of IPR has undergone transformative changes. The rise of the internet and digital platforms has created both new opportunities and significant challenges. Issues such as digital piracy, data privacy, and copyright infringement have called for the modernization of IPR laws. Legislation like the Digital Millennium Copyright Act (DMCA) in the United States has been introduced to address digital copyright issues. Moreover, countries are constantly revising their laws to adapt to emerging technologies such as artificial intelligence, blockchain, and biotechnology[7].

In India, the legal framework for IPR has evolved to include significant statutes like the Patents Act, 1970, the Trademarks Act, 1999, and the Copyright Act, 1957, with amendments to address contemporary challenges. Additionally, sector-specific legislation such as the Protection of Plant Varieties and Farmers' Rights Act, 2001 ensures that innovations in agriculture are safeguarded,

[5] Ganea, Peter, and Thomas Heath. International Copyright Law and Practice. Oxford University Press, 2010.
[6] Sell, Susan K. Private Power, Public Law: The Globalization of Intellectual Property Rights. Cambridge University Press, 2003
[7] Litman, Jessica. Digital Copyright: Protecting Intellectual Property on the Internet. Prometheus Books, 2006.

while the Semiconductor Integrated Circuits Layout-Design Act, 2000 provides protection for cutting-edge technological advancements.

2.6 Intellectual Property Rights Today

Today, intellectual property is a cornerstone of the global economy, encompassing a wide range of assets, from patents and trademarks to trade secrets. Legal frameworks have adapted to the changing needs of society, recognizing IPR as crucial for economic growth, innovation, and international competitiveness. The increasing focus on data-driven industries and global trade has cemented the role of intellectual property rights in fostering a robust and dynamic environment for intellectual and creative pursuits. As nations and industries continue to innovate, the evolution of IPR laws remains a testament to the enduring quest to balance protection and progress in the modern era[8].

3 Legal Framework Governing Intellectual Property Rights

3.1 International Context

The governance of intellectual property rights on the international stage is shaped by several landmark treaties and agreements designed to establish uniform standards and facilitate cooperation among nations. These frameworks underscore the global importance of protecting intellectual assets in an interconnected world economy[9].

3.2 TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights, 1994):

One of the most comprehensive and influential treaties in the realm of IPR, the TRIPS Agreement was established under the aegis of the World Trade Organization (WTO). It sets minimum standards for various forms of IP protection, including patents, copyrights, and trademarks, and mandates member states to implement these standards within their legal systems. TRIPS has been pivotal in harmonizing IPR laws worldwide and has had a profound impact on national legislation, especially in developing countries like India. It also addresses issues of enforcement and dispute resolution at the international level[10].

3.3 WIPO Conventions (World Intellectual Property Organization):

WIPO, a specialized agency of the United Nations, administers several important treaties that provide a framework for international IP protection. Key treaties include the Berne Convention for the Protection of Literary and Artistic Works (1886), which deals with copyright, and the Paris Convention for the Protection of Industrial Property (1883), which covers patents, trademarks, and

[8] Choudhary, V.K. Intellectual Property Rights in India: General Issues and Implications. Sage Publications, 2020.
[9] WIPO. "The Berne Convention for the Protection of Literary and Artistic Works." https://www.wipo.int/treaties/en/ip/berne/.
[10] World Trade Organization. "Trade-Related Aspects of Intellectual Property Rights (TRIPS)." https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.

industrial designs. WIPO has also pioneered initiatives to address emerging challenges in digital content protection, patent cooperation, and cross-border IP disputes[11].

These international agreements have established a foundational legal structure that countries are expected to adhere to, ensuring that intellectual property rights are consistently recognized and enforced across borders.

3.4 National Context (Focus on India)

India's legal framework for intellectual property rights is robust and continuously evolving, aligning with international standards while addressing domestic needs. The country has enacted various statutes and established mechanisms to safeguard IP rights, promote innovation, and foster economic growth.

- **Patents Act, 1970:**

  This Act governs the protection of inventions and innovations in India. It was amended in 2005 to become compliant with TRIPS, introducing product patents in sectors like pharmaceuticals and biotechnology. The Act outlines the procedures for patent application, examination, opposition, and enforcement. It grants exclusive rights to patent holders for 20 years, incentivizing research and development. The Patent Office plays a vital role in examining and granting patents, while Indian courts adjudicate disputes related to infringement and validity[12].

- **Copyright Act, 1957:**

  This Act provides protection to original literary, artistic, musical, and cinematographic works. It has been amended several times, most notably in 2012, to address digital copyright issues and enhance the rights of authors. The Act grants economic and moral rights to creators and ensures that their works are not exploited without permission. The Copyright Office and Copyright Board handle the registration and adjudication of copyright matters, while courts play a crucial role in infringement cases[13].

- **Trademarks Act, 1999:**

  This legislation governs the registration, protection, and enforcement of trademarks in India. It defines a trademark as any mark capable of distinguishing the goods or services of one

[11] WIPO. "The Paris Convention for the Protection of Industrial Property." https://www.wipo.int/treaties/en/ip/paris/.

[12] The Patents Act, 1970, Act No. 39 of 1970, Ministry of Law and Justice, Government of India. https://www.ipindia.gov.in/writereaddata/Portal/IPOActs/1_34_1/Patents_Act_1970.pdf

[13] The Copyright Act, 1957, Act No. 14 of 1957, Ministry of Law and Justice, Government of India. https://www.copyright.gov.in/Documents/Acts/1957.pdf.

entity from another and provides for the registration process, rights conferred by registration, and penalties for infringement. The Act also recognizes well-known trademarks and provides special protection for them. The Trademark Registry administers the registration process, and courts enforce rights and resolve disputes[14].

- **Designs Act, 2000**

  This Act provides protection to the visual design of objects, such as the shape, configuration, and pattern, which are new or original. It ensures that industrial designs are not copied or reproduced without permission, fostering innovation in aesthetics and industrial applications. The Controller General of Patents, Designs, and Trademarks oversees the registration of designs[15].

- **Semiconductor Integrated Circuits Layout-Design Act, 2000**

  This Act protects the unique layout designs of semiconductor integrated circuits, crucial for the technology and electronics industry. It prohibits the unauthorized copying and commercial exploitation of registered layout designs. The Act emphasizes India's commitment to safeguarding innovations in the rapidly advancing tech sector[16].

- **Geographical Indications of Goods (Registration and Protection) Act, 1999**

  This Act protects geographical indications (GIs), which identify products as originating from a specific region, where a specific quality, reputation, or characteristic is attributable to that geographical origin. The Act promotes the protection of traditional products and handicrafts, supporting local economies[17]

- **Trade Secrets and Confidential Information:**

  While India does not have a standalone Trade Secrets Act, trade secrets are protected through contract law, common law principles, and specific provisions under the Indian Penal Code. Businesses rely on confidentiality agreements and non-disclosure clauses to secure

[14] The Trademarks Act, 1999, Act No. 47 of 1999, Ministry of Law and Justice, Government of India. https://www.ipindia.gov.in/writereaddata/Portal/IPOActs/1_34_1/Trademarks_Act_1999.pdf.

[15] The Designs Act, 2000, Act No. 16 of 2000, Ministry of Law and Justice, Government of India. https://www.ipindia.gov.in/writereaddata/Portal/IPOActs/1_34_1/Designs_Act_2000.pdf

[16] The Semiconductor Integrated Circuits Layout-Design Act, 2000, Act No. 37 of 2000, Ministry of Law and Justice, Government of India. https://www.ipindia.gov.in/writereaddata/Portal/IPOActs/1_34_1/Semiconductor_Act_2000.pdf.

[17] Geographical Indications of Goods (Registration and Protection) Act, 1999 Ministry of Law and Justice, Government of India. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.indiacode.nic.in/bitstream/123456789/1981/1/a1999-48.pdf

proprietary information. Indian courts have upheld the protection of trade secrets, recognizing their importance in maintaining a competitive edge in various industries[18].

3.4. Role of Indian Courts and Administrative Bodies in IP Enforcement

Indian courts and administrative bodies play a crucial role in the enforcement of intellectual property rights. High Courts and the Supreme Court of India have established significant jurisprudence in IP matters, interpreting and applying laws to safeguard the interests of rights holders. Specialized tribunals, such as the Intellectual Property Appellate Board (IPAB), have been instrumental in handling appeals and disputes related to patents and trademarks[19].

Administrative bodies like the Patent Office, Trademark Registry, and Copyright Office are responsible for the registration and management of IP rights. These institutions ensure that the regulatory framework operates efficiently, balancing the interests of creators, businesses, and the public. Enforcement agencies, including the police and customs authorities, work alongside these bodies to curb piracy, counterfeiting, and other IP-related offenses[20].

The legal framework governing intellectual property rights in India reflects a commitment to fostering innovation, protecting creators, and aligning with global standards, while also addressing domestic priorities and challenges.

4. Analysis of the Intersection between Law and Intellectual Property Rights

4.1 Theoretical Intersection

The intersection of law and intellectual property rights is grounded in traditional legal concepts such as property rights and contracts. Understanding how these concepts apply to IP provides a foundation for analyzing the legal landscape and its implications for innovation and creativity[21].

a) Property Rights:

Intellectual property rights are often conceptualized as a form of property rights, albeit distinct from tangible property. The essence of property rights lies in the ability to control and derive benefits from one's creations. IP rights grant creators exclusive rights to use, reproduce, and commercialize their inventions or works, akin to ownership of physical property. This framework promotes the idea that intellectual assets are valuable and deserving of protection, thereby incentivizing innovation.

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[18] Trade Secrets Protection in India: Basheer, Shamnad. "India's Tryst with Trade Secrets: An Assessment." Journal of Intellectual Property Rights, vol. 23, no. 1, 2018, pp. 1-14.

[19] Bhattacharya, Sudipta. "The Role of Courts in the Enforcement of Intellectual Property Rights in India." Indian Journal of Law and Technology, vol. 4, 2008, pp. 45-67.

[20] Kaur, Ranjit. "The Role of Intellectual Property Appellate Board in the Enforcement of IP Rights." Journal of Intellectual Property Rights, vol. 21, no. 2, 2016, pp. 97-102.

[21] Hesse, Martin. "Intellectual Property Law: A Theoretical Overview." University of Pennsylvania Law Review, vol. 161, no. 2, 2013, pp. 407-430.

b) Contracts:

Contracts play a crucial role in the IP ecosystem, particularly in the context of licensing agreements and assignments. Creators and innovators often enter into contracts to define the terms of use, distribution, and commercialization of their IP. These agreements can include confidentiality clauses, licensing fees, and restrictions on usage, thus providing a legal framework for the exploitation of intellectual assets. The enforceability of these contracts is vital to maintaining trust and cooperation among stakeholders in the IP landscape.

4.2 Practical Implications

The theoretical intersection of law and intellectual property rights finds practical expression through significant judicial decisions and case studies that illustrate the complexities of IP enforcement and the challenges faced by rights holders.

Case Study:

Novartis AG v. Union of India (2013)[22]:

This landmark case revolved around the patentability of a cancer drug, Glivec. The Supreme Court of India denied Novartis's patent application, emphasizing the requirement of demonstrating significant enhancement in efficacy over existing drugs. This decision highlighted the balance between protecting innovation and ensuring access to essential medicines, underscoring the intersection of IP law with public health policy.

Indian Performing Right Society v. Eastern Indian Motion Pictures Association (1977[23]):

In this case, the Supreme Court recognized the rights of music composers and lyricists in relation to public performances. The court ruled that public performance rights fall within the ambit of copyright protection, illustrating how judicial interpretations can shape the practical application of IP laws.

4.3 Enforcement Challenges:

Despite the robust legal framework, enforcement of IP rights in India faces significant challenges, including widespread piracy, counterfeiting, and a lack of awareness among the public and businesses about IP rights. Enforcement agencies often struggle with limited resources and jurisdictional issues, leading to difficulties in prosecuting IP infringements effectively. Additionally, the slow pace of judicial processes can deter rights holders from pursuing legal remedies[24].

4.4 Policy Implications:

[22] 6 SCC 1.
[23] AIR 1977 SC 1443.
[24] Ghosh, Sandeep. "Intellectual Property Rights in India: A Comparative Analysis." International Journal of Intellectual Property Management, vol. 6, no. 3, 2017, pp. 225-241.

The intersection of law and IP necessitates ongoing policy discussions to address enforcement challenges. Policymakers must consider strategies to enhance IP awareness, strengthen enforcement mechanisms, and promote collaboration between private entities and law enforcement agencies. Reforms aimed at expediting the judicial process for IP disputes can also play a crucial role in fostering a conducive environment for innovation.

4.5 Comparative Analysis

A comparative analysis of the Indian legal framework for intellectual property rights with that of other jurisdictions provides insights into strengths and weaknesses, as well as best practices.

India vs. United States:

The United States has a well-established IP regime characterized by strong enforcement mechanisms and significant damages for infringement. The U.S. legal system allows for both civil and criminal remedies for IP violations, while India primarily relies on civil remedies, with criminal provisions being underutilized. Furthermore, the U.S. employs a "first-to-file" system for patents, while India transitioned from a "first-to-invent" system to a "first-to-file" approach post-2005 amendments, aligning with international norms. However, the U.S. also faces challenges related to the accessibility of medicines due to strict patent protections, a concern that India attempts to balance through its public health policies.

India vs. European Union:

The EU provides a more harmonized approach to intellectual property across member states, with robust regulations governing trademarks, copyrights, and patents. The European Patent Office facilitates patent applications, promoting a streamlined process. In contrast, India's decentralized enforcement structure often results in disparities in protection and enforcement across states. The EU's emphasis on protecting geographical indications is notable, reflecting its agricultural heritage, while India has specific provisions for geographical indications that are evolving but less comprehensive compared to EU standards.

4.6 Best Practices:

Other jurisdictions, such as Singapore and Germany, have adopted best practices that India can learn from, particularly regarding public awareness campaigns and public-private partnerships in IP enforcement. Strengthening administrative bodies and enhancing their capacity to handle IP disputes can also help improve the enforcement landscape in India.

The comparative analysis underscores the need for India to continue refining its IP laws and enforcement strategies, drawing on successful practices from other jurisdictions while addressing local challenges. This intersection of law and intellectual property rights will play a crucial role in shaping the future of innovation and creativity in India and globally.

5. Emerging Challenges and Developments

5.1 Technological Impact

The rapid advancement of technology has profoundly influenced the landscape of intellectual property (IP) law, necessitating adaptations to existing frameworks and the creation of new legal standards. Emerging technologies, such as artificial intelligence (AI) and blockchain, have introduced both opportunities and challenges in the realm of IP[25].

5.2 Artificial Intelligence[26]:

AI is revolutionizing the creation, distribution, and management of intellectual property. For instance, AI-generated works raise critical questions about authorship and copyright protection. The legal status of AI as a creator remains ambiguous, leading to debates on whether AI can hold copyright or if such rights should belong to the developers of the AI systems. Moreover, AI's ability to analyze vast amounts of data poses challenges for traditional IP enforcement mechanisms, as it can facilitate both infringement (through automated reproduction of protected works) and improved enforcement strategies (through enhanced monitoring and detection of violations).

5.3 Blockchain:

Blockchain technology offers innovative solutions for IP rights management, particularly in terms of transparency, traceability, and security. Smart contracts on blockchain platforms can automate licensing agreements, ensuring that creators receive royalties for their works in real time. Additionally, blockchain can serve as an immutable ledger for proof of ownership, potentially reducing disputes over IP rights. However, the integration of blockchain into existing IP frameworks raises questions about jurisdiction, regulation, and the compatibility of decentralized technologies with traditional IP law[27].

5.4 Cross-Border Disputes and Globalization

As the global economy becomes increasingly interconnected, cross-border disputes related to intellectual property rights are on the rise. Globalization presents unique challenges for IP enforcement, as differing legal standards and enforcement mechanisms can lead to complications for rights holders seeking protection in multiple jurisdictions[28].

5.6 Jurisdictional Issues:

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[25] O'Rourke, Megan. "Blockchain and Intellectual Property: A New Era of IP Rights Management." Harvard Journal of Law & Technology, vol. 34, no. 1, 2020, pp. 132-180.

[26] Abeywardana, K., and I. Nanayakkara. "The Challenges of Copyright Protection in the Age of Artificial Intelligence." The Computer Law & Security Review, vol. 36, no. 4, 2020, pp. 105350.

[27] Kauffman, Robert J., and George J. Avlonitis. "Intellectual Property Management: The Role of Blockchain Technology." The International Journal of Information Systems and Change Management, vol. 13, no. 4, 2021, pp. 283-299.

[28] Hegde, Sanjay. "Jurisdictional Challenges in Intellectual Property Disputes: Navigating the Global IP Landscape." Journal of International Commercial Law and Technology, vol. 10, no. 3, 2015, pp. 165-176.

Determining the appropriate jurisdiction for IP disputes can be complex, especially when the infringement occurs online or involves parties from different countries. The lack of harmonization in IP laws across jurisdictions can result in varied protections and enforcement outcomes, creating legal uncertainty for businesses and creators.

5.7 International Enforcement:

The enforcement of IP rights in a global context often faces hurdles due to differing levels of commitment to IP protection among countries. While agreements such as the TRIPS Agreement set minimum standards for protection, enforcement remains inconsistent. Rights holders may find it challenging to pursue infringement cases in jurisdictions with weaker enforcement mechanisms, leading to a "race to the bottom" where infringers exploit lenient legal environments[29].

5.8 Digital Piracy and Counterfeiting:

The rise of digital platforms has facilitated the proliferation of digital piracy and counterfeiting on a global scale. Online marketplaces can host counterfeit goods and pirated content, making it difficult for rights holders to protect their IP. This situation necessitates international cooperation and innovative enforcement strategies to combat infringement effectively[30].

5.9 Policy and Legislative Developments

In response to the evolving challenges in the IP landscape, various jurisdictions are considering or implementing policy and legislative developments aimed at strengthening IP protection and adapting to technological advancements[31].

5.10 Recent Amendments:

Countries, including India, have proposed or enacted amendments to existing IP laws to address emerging challenges. For instance, the Indian Copyright (Amendment) Act, 2021, aims to address issues related to the digital distribution of copyrighted works, introducing provisions for the regulation of online content platforms and enhancing protection for creators.

5.11 Proposed Changes:

Legislative proposals in various jurisdictions focus on updating IP frameworks to accommodate new technologies and address current challenges. These proposals may include provisions for AI-generated works, clearer definitions of digital rights, and enhanced penalties for IP infringement.

5.12 Policy Initiatives:

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[29] Teshima, Ryuichi. "International Enforcement of Intellectual Property Rights: The Case of TRIPS." International Trade Law Journal, vol. 6, no. 2, 2020, pp. 123-145.

[30] Reddy, Ranjit. "The Rise of Digital Counterfeiting and Its Impact on Intellectual Property." Business Horizons, vol. 63, no. 4, 2020, pp. 489-499.

[31] Catan, Emilia. "The Legislative Response to New Challenges in Intellectual Property Law." Intellectual Property Quarterly, vol. 2021, no. 3, pp. 235-250.

Policymakers are increasingly recognizing the need for comprehensive IP strategies that balance the interests of rights holders with public access to information and innovation. Initiatives aimed at promoting awareness of IP rights, enhancing enforcement mechanisms, and fostering collaboration between governments, businesses, and creators are essential for navigating the complexities of the modern IP landscape. The dynamic nature of emerging challenges and developments in IP law underscores the importance of adaptability in legal frameworks and proactive engagement by stakeholders to safeguard intellectual property in a rapidly changing global environment[32].

6. Recommendations and Policy Implications

6.1 Policy Suggestions for Balancing Innovation and Public Interest

To foster a balanced approach between encouraging innovation and protecting public interest, several policy measures are recommended:

Inclusive Policy Frameworks:

Governments should develop inclusive IP policies that consider the needs of various stakeholders, including small businesses, startups, and public institutions. These frameworks should emphasize accessible licensing models and alternative dispute resolution mechanisms to promote innovation without compromising public access.

a) **Flexible Licensing Models:** Encourage the use of flexible licensing agreements, such as open-source licensing and Creative Commons, which can facilitate innovation while ensuring that creators retain some rights over their work.
b) **Public Interest Exceptions:** Implement clear exceptions to IP laws that prioritize public interest, such as fair use provisions, which allow limited use of copyrighted materials without permission, especially for educational and research purposes.

6.2 Proposals for Harmonizing International and Domestic IP Laws

To tackle the challenges arising from globalization and digitalization, the following proposals are designed to harmonize intellectual property (IP) laws:

Adoption of International Standards: Countries should work to align their domestic IP legislation with international agreements, such as the TRIPS Agreement and the WIPO Copyright Treaty. This alignment can help create a more uniform global IP landscape and minimize discrepancies that often lead to enforcement difficulties.

[32] Gupta, Prashant, and Ramesh Chand. "Copyright Amendment in India: A Review of the Indian Copyright (Amendment) Act, 2021." Journal of Intellectual Property Rights, vol. 26, no. 2, 2021, pp. 108-115.

Strengthening Regional Cooperation: The establishment of regional agreements that promote the mutual recognition of IP rights can enhance cross-border enforcement and collaboration. This approach would facilitate the protection of rights holders' interests on an international scale.

Capacity Building: There should be investments in training programs and workshops aimed at legal practitioners, policymakers, and enforcement agencies. These initiatives would enhance their comprehension of both international and domestic IP frameworks, thereby ensuring the effective implementation and enforcement of IP laws.

6.3 Future Outlook on IP Regulation in India and Globally

The future of intellectual property (IP) regulation in India and globally is expected to be influenced by several pivotal trends:

a) **Integration of Emerging Technologies:** As technologies such as artificial intelligence (AI) and blockchain continue to advance, IP regulations will need to evolve to tackle new challenges. This includes addressing issues related to the ownership of works generated by AI and the effects of decentralized technologies on traditional IP enforcement mechanisms.

b) **Focus on Sustainable Innovation:** Future IP policies should emphasize sustainable innovation that responds to global challenges like climate change and public health crises. By promoting green technologies and public health initiatives through tailored IP protections, these policies can lead to more favorable societal outcomes.

c) **Global Collaboration and Adaptation:** Enhanced international cooperation will be crucial for effectively addressing cross-border IP issues and emerging challenges. Policymakers must engage in continuous dialogues to adapt IP regulations to these new realities, ensuring a balance between the interests of rights holders and the public's need for access and innovation.

7. Conclusion

In this research paper, the intricate domain of Intellectual Property Rights (IPR) is explored, focusing on its evolution, legal frameworks, and the new challenges posed by rapid technological advancements and globalization. The study reveals that while IPR has historically played a crucial role in protecting innovation and fostering economic growth, it currently faces significant challenges that require immediate attention from policymakers, legal practitioners, and scholars.

The historical development of IPR can be traced from its inception during the Industrial Revolution to the present digital age, highlighting the critical importance of international agreements such as the TRIPS Agreement, alongside domestic laws related to patents, copyrights, trademarks, and trade secrets. This analysis emphasizes the need for aligning international and national IP laws to

effectively resolve cross-border disputes and enhance enforcement strategies. Additionally, the paper examines the impact of emerging technologies, including artificial intelligence and blockchain, which have transformed the creation, distribution, and enforcement of intellectual property, introducing new complexities that challenge existing legal frameworks.

This research is significant as it illuminates the pressing issues confronting IPR in today's interconnected and technologically advanced landscape. It also highlights the necessity for legal systems to evolve to balance the interests of creators with those of the public. By providing a comprehensive overview of current challenges and suggesting actionable solutions, this paper contributes to the ongoing discourse on navigating the evolving field of intellectual property. It serves as a call to action for stakeholders to collaborate on developing policies that not only stimulate innovation but also ensure fair access for all.

It is vital for researchers to continue investigating the emerging challenges in IP law, particularly those arising from technological innovations, changes in consumer behavior, and evolving international trade dynamics. Research areas such as the regulation of AI-generated content, the influence of digital platforms on traditional copyright systems, and the role of IP in addressing global issues like climate change and public health require further exploration. Ongoing research in these domains will be essential for formulating adaptable, forward-thinking IP policies that protect intellectual property while promoting a sustainable and equitable global economy.

Given the ever-evolving nature of intellectual property, it is crucial to maintain continuous dialogue and innovation in legal reasoning and practice. By staying attuned to new trends and challenges, the legal community can better ensure that intellectual property rights serve their intended purpose of fostering creativity, innovation, and public benefit in the future.

Digital Data Protection Act, 2023 and Right to Privacy

Ms. Astha[1]

I. Introduction

Data protection and privacy rights have gained significant prominence in the digital age, as individuals and entities increasingly rely on online platforms for communication, transactions, and data storage. These rights aim to ensure that individuals have control over their personal information, maintaining a balance between data accessibility and protection. The right to privacy encompasses a broad spectrum of protections, ranging from physical privacy to informational privacy. Informational privacy specifically addresses the need to control the collection, processing, and dissemination of personal data.

The right to privacy was formally recognized in international frameworks, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, where it is regarded as a fundamental human right.[2] Many countries have since developed specific laws and regulations that focus on data protection, establishing standards for data collection, processing, and sharing.[3] These frameworks typically empower individuals by granting rights such as access to their data, the ability to correct inaccuracies, and the option to request data deletion.[4]

In India, data protection and privacy rights have evolved significantly. While the *Information Technology Act, 2000* provided the initial foundation, it was limited in scope and did not comprehensively address privacy concerns.[5] The landmark *Puttaswamy* case in 2017 recognized privacy as a fundamental right under the Indian Constitution, thereby reinforcing the need for dedicated legislation.[6] This led to the formulation of the *Digital Data Protection Act, 2023*, which aims to safeguard personal data while balancing the interests of individuals, businesses, and the state.[7]

The *Digital Data Protection Act, 2023* (DDPA) is a landmark statute in India, addressing growing concerns around data privacy in the digital economy. It introduces comprehensive protections for personal data, aiming to empower individuals while imposing obligations on organizations that handle such data. By regulating data collection, processing, storage, and sharing, the DDPA

[1]**Research Scholar, Ph.D. (Law), Fourth Year, Banaras Hindu University, Varanasi -221005, email : asthadahiya.ad@gmail.com, Mobile No. : 7838273346.**

[2]Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 183d plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 17, Dec. 16, 1966, 999 U.N.T.S. 171.

[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 (General Data Protection Regulation), 2016 O.J. (L 119) 1 [hereinafter GDPR].

[4] GDPR arts. 15–20.

[5]The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

[6]Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

[7]The Digital Data Protection Act, 2023, No. 18, Acts of Parliament, 2023 (India).

establishes a legal framework that balances privacy rights with the need for technological innovation and economic growth.[8]

One of the significant aspects of the DDPA is its emphasis on informed consent, mandating that individuals be given clear, concise information on how their data will be used before they grant permission.[9] The Act also confers rights to data subjects, including the right to access, correct, and delete their data, which aligns with international data protection standards such as the EU's GDPR.[10]

The DDPA marks a notable shift from India's previous regulatory environment, which relied primarily on the *Information Technology Act, 2000*. The new legislation places stricter obligations on data controllers and processors, helping to create accountability and transparency in data processing practices.[11] It also establishes the Data Protection Authority (DPA), an independent regulatory body empowered to oversee compliance, investigate complaints, and impose penalties for non-compliance, ensuring stronger enforcement mechanisms than under prior laws.[12] By introducing these protections, the DDPA not only enhances data privacy but also builds public trust in digital platforms, thereby fostering a safer, more reliable digital ecosystem.[13]

II. Evolution of Data Protection and Privacy laws in India

The evolution of data protection laws in India from the *Information Technology Act, 2000* (IT Act) to the *Digital Data Protection Act, 2023* (DDPA) reflects the country's growing recognition of privacy as a fundamental right in an increasingly digitalized world. Initially, the IT Act provided a foundational framework for cyber-related issues, with specific provisions addressing data protection through its Section 43A, which held companies liable for negligently handling sensitive personal information.[14] However, the scope of the IT Act was limited, lacking comprehensive privacy protections that addressed the complexities of the digital age.[15]

The 2017 Supreme Court decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* marked a critical turning point, recognizing privacy as a fundamental right under the Indian Constitution and intensifying calls for a dedicated data protection law.[16] This landmark judgment underscored the

[8] The Digital Data Protection Act, 2023, No. 18, Acts of Parliament, 2023 (India).
[9] Id. § 6.
[10] See 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 (General Data Protection Regulation), arts. 15–20, 2016 O.J. (L 119) 1 [hereinafter GDPR].
[11] The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).
[12] Digital Data Protection Act § 12.
[13] Id. § 15.
[14] The Information Technology Act, 2000, No. 21, § 43A, Acts of Parliament, 2000 (India).
[15] Id. §§ 43–45.
[16] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

inadequacy of existing regulations and set the groundwork for developing a robust privacy framework.

In response, the government introduced several drafts of data protection bills, each iteration refining provisions based on evolving technological and societal needs. After extensive consultations and revisions, the DDPA was enacted in 2023, providing a comprehensive legal framework that reflects international data protection standards, such as the EU's GDPR, while addressing India's unique digital landscape.[17] The DDPA introduces stringent requirements for data processing, defines clear rights for data subjects, and establishes a Data Protection Authority to enforce compliance, marking a significant departure from the limited protections of the IT Act.[18] This transition from the IT Act to the DDPA demonstrates India's commitment to upholding individuals' privacy rights in the digital era.

The *Digital Data Protection Act, 2023* (DDPA) emerged from a series of key legal developments in India that highlighted the need for robust data privacy protections. Initially, the *Information Technology Act, 2000* (IT Act) served as the foundational legislation for digital transactions, cybercrimes, and data security, though its data protection provisions were limited and primarily focused on sensitive personal information and corporate responsibility for data breaches under Section 43A.[19] As digital platforms grew and data became central to commerce, the IT Act's scope proved insufficient for the evolving data protection landscape.[20]

A pivotal legal milestone was the 2017 Supreme Court ruling in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, which recognized privacy as a fundamental right under Article 21 of the Indian Constitution.[21] This landmark decision underscored privacy as essential to human dignity and catalyzed the call for comprehensive data protection laws. In response, the government formed an expert committee, led by Justice B.N. Srikrishna, to draft a data protection framework. This committee's report led to the introduction of the *Personal Data Protection Bill, 2019* (PDPB), which proposed a series of rights for data subjects, obligations for data controllers, and the establishment of a Data Protection Authority.[22]

Although the PDPB, 2019, faced extensive scrutiny and underwent multiple revisions, it was eventually withdrawn, leading to the introduction of the streamlined DDPA, 2023, which

[17] See 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 (General Data Protection Regulation), 2016 O.J. (L 119) 1 [hereinafter GDPR].

[18] The Digital Data Protection Act, 2023, No. 18, §§ 6–15, Acts of Parliament, 2023 (India).

[19] The Information Technology Act, 2000, No. 21, § 43A, Acts of Parliament, 2000 (India).

[20] Id. §§ 43–45.

[21] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

[22] Committee of Experts on a Data Protection Framework for India, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians 8 (2018).

incorporates the core elements of data privacy and aligns with global standards like the GDPR.[23] The DDPA marks the culmination of India's journey toward a structured data protection regime, emphasizing data subject rights, accountability of data processors, and a regulatory body for enforcement, reflecting India's commitment to safeguarding privacy in a rapidly digitizing world.

III. Key Provisions of the Digital Data Protection Act, 2023

The *Digital Data Protection Act, 2023* (DDPA) represents a landmark step toward establishing a comprehensive privacy framework in India, tailored to meet the demands of an increasingly digital economy. The DDPA's provisions reflect a commitment to protecting personal data, ensuring accountability for entities handling data, and providing individuals with rights over their information. Here are the key provisions and features of the DDPA that shape its regulatory approach.

IV. Informed Consent and Processing of Personal Data

The cornerstone of the DDPA is the principle of informed consent, which empowers individuals to control how their data is used. Before collecting or processing personal data, data fiduciaries (entities that determine the purpose and means of data processing) must obtain the explicit, informed consent of the data principal (the individual to whom the data pertains). Consent must be freely given, specific, and informed, with data principals being fully aware of the purposes of data collection and processing.[24] Additionally, the DDPA provides data principals with the right to withdraw consent at any time, which obligates data fiduciaries to cease further processing of the data in question and erase it if required.[25] This provision aligns with global standards, including the European Union's GDPR, which places similar emphasis on consent as a foundational element of data privacy.[26]

V. Data Principal Rights

The DDPA outlines several key rights for data principals, designed to protect their autonomy over their personal data. Among these rights is the *Right to Access,* which entitles individuals to obtain information about the processing activities undertaken on their data, including what data is being processed and for what purposes.[27] The *Right to Correction* enables data principals to request rectification of inaccuracies in their data to ensure its accuracy and completeness.[28] Moreover, the DDPA includes a *Right to Erasure,* allowing data principals to request the deletion of their personal

[23] Digital Data Protection Act, 2023, No. 18, Acts of Parliament, 2023 (India).
[24] The Digital Data Protection Act, 2023, No. 18, § 7, Acts of Parliament, 2023 (India).
[25] Id.
[26] 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 (General Data Protection Regulation), 2016 O.J. (L 119) 1 [hereinafter GDPR].
[27] The Digital Data Protection Act § 11.
[28] Id.

data under specific circumstances, such as when it is no longer needed for the original purpose of collection.[29] These rights collectively reinforce individual control over personal information and reflect India's alignment with international privacy standards.

VI. Duties of Data Fiduciaries

Data fiduciaries under the DDPA bear significant responsibilities to safeguard personal data and process it transparently and responsibly. One of the core obligations of data fiduciaries is to implement adequate technical and organizational measures to secure personal data from unauthorized access, destruction, or alteration, thereby mitigating risks of data breaches.[30] Furthermore, data fiduciaries are required to establish clear policies on data processing practices, including measures for data retention and deletion once it is no longer necessary for the original purposes.[31]

Data fiduciaries are also obligated to notify the Data Protection Authority (DPA) and affected data principals in the event of a significant data breach. The notification must include details on the nature and scope of the breach, as well as remedial actions taken to minimize harm. This provision emphasizes transparency and accountability, aiming to build trust among data principals regarding how their data is managed and protected by fiduciaries.[32]

VII. Role and Powers of the Data Protection Authority (DPA)

The establishment of the DPA is one of the most crucial aspects of the DDPA, as it serves as the enforcement and regulatory body for data protection in India. The DPA is vested with the authority to oversee and ensure compliance with the provisions of the Act, including conducting audits, investigating complaints, and levying penalties for non-compliance. The DPA can impose financial penalties on data fiduciaries that violate DDPA provisions, creating a strong deterrent against malpractice and incentivizing compliance.[33]

The DPA is also responsible for issuing guidelines and clarifications to assist data fiduciaries in understanding their obligations under the law. By issuing periodic guidance and interpreting provisions in response to technological advancements, the DPA ensures that data protection practices evolve alongside the digital landscape, creating a responsive regulatory environment that can adapt to new privacy challenges.[34]

VIII. Exemptions for Government and Public Interests

[29] Id. § 12.
[30] Id. § 8.
[31] Id. §§ 8–9.
[32] Id. § 14.
[33] Id. § 16.
[34] Id. § 17.

The DDPA recognizes the need to balance individual privacy with legitimate public interests, such as national security, law enforcement, and public health. Therefore, it includes certain exemptions that allow government agencies to bypass some provisions of the Act, provided that the data processing is necessary for purposes such as public order or sovereign functions.[35] However, these exemptions are carefully regulated to prevent misuse; the DPA has the authority to oversee the application of exemptions and ensure they are applied in a manner consistent with constitutional privacy protections.

For example, government agencies may be exempted from obtaining consent when processing personal data for specified national interests, but the data processed must be limited to the purpose at hand and stored only as long as necessary. This approach balances privacy with state responsibilities, aiming to protect both individual rights and public safety in a digital context.[36]

IX. Cross-Border Data Transfers

The DDPA includes provisions regulating the cross-border transfer of personal data to ensure that data protection standards are upheld when data is transferred outside India. Personal data transfers are permitted only to countries or organizations that the central government designates as having adequate data protection safeguards.[37] This provision ensures that data principals retain their rights and protections even when their data is processed outside India, thereby addressing the concerns associated with global data flows in a digital economy.

X. Penalties and Enforcement

The DDPA establishes a stringent penalty structure for non-compliance, allowing the DPA to impose significant fines on data fiduciaries that fail to adhere to the Act's provisions. Penalties can range based on the severity of the violation, providing a financial incentive for data fiduciaries to maintain compliance and prioritize data protection.[38] Additionally, the DPA may revoke or suspend the licenses of data fiduciaries for repeated violations, further reinforcing the Act's emphasis on accountability and responsibility in data processing practices.

XI. Right to Privacy as a Fundamental Right

Judicial recognition of privacy in India has evolved significantly, culminating in its acknowledgment as a fundamental right, intrinsically tied to human dignity and autonomy. Initially, privacy was not explicitly recognized in the Indian Constitution. Early cases, such as *Kharak Singh v. State of Uttar Pradesh*, rejected privacy as a distinct constitutional right, although a dissenting

[35] Id. § 18.
[36] Id.
[37] Id. § 19.
[38] Id.

opinion hinted at the need for personal autonomy protections.[39] However, subsequent judicial interpretations gradually expanded individual rights to protect aspects of privacy, particularly in contexts involving personal freedom.

A landmark shift occurred in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, where the Supreme Court unequivocally declared privacy a fundamental right under Article 21, which guarantees the right to life and personal liberty.[40] This 2017 decision established privacy as central to human dignity, stating that it encompasses bodily autonomy, personal choice, informational privacy, and the right to be free from unwarranted state and private intrusions.[41] Recognizing privacy as a fundamental right was transformative, leading to greater scrutiny over government and corporate practices that affect personal data.

Privacy and data protection are deeply intertwined, as personal information is a critical aspect of individual privacy in the digital age. The relationship between the two has become increasingly significant as data has become a valuable resource, with entities collecting, processing, and analyzing vast quantities of personal information. Data protection is essential for enforcing privacy rights, as it provides a framework to control the collection, use, and storage of personal data, thus preventing unauthorized access or misuse. The Supreme Court in *Puttaswamy* recognized informational privacy as a fundamental aspect of privacy, highlighting that individuals must have the autonomy to control their personal data and ensure it is protected from both state and private exploitation.[42]

Following the *Puttaswamy* judgment, the need for a dedicated data protection law became evident. The government commissioned a committee, led by Justice B.N. Srikrishna, to draft a comprehensive data protection framework, which underscored the importance of protecting informational privacy through structured legal mechanisms.[43] This framework influenced subsequent bills and culminated in the *Digital Data Protection Act, 2023* (DDPA), which seeks to protect individuals' data privacy by mandating transparency, consent, and accountability in data processing activities.[44] The DDPA aligns with the principles established in *Puttaswamy*, including the right of individuals to control their data and the duty of data fiduciaries to protect personal information, demonstrating the law's role in upholding judicially recognized privacy rights.

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[39] Kharak Singh v. State of Uttar Pradesh, A.I.R. 1963 S.C. 1295 (India).
[40] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).
[41] Id. para. 251.
[42] Id. para. 243.
[43] Committee of Experts on a Data Protection Framework for India, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians 8 (2018).
[44] The Digital Data Protection Act, 2023, No. 18, Acts of Parliament, 2023 (India).

The judiciary's recognition of privacy as a fundamental right has paved the way for robust data protection in India, reflecting the essential connection between privacy and data security. As digitalization intensifies, judicial and legislative efforts to safeguard privacy reinforce individuals' rights, helping India transition toward a more privacy-conscious society.

XII Comparison with Global Data Protection Frameworks

The *Digital Data Protection Act, 2023* (DDPA) represents India's commitment to safeguarding personal data, drawing comparisons to global frameworks like the European Union's *General Data Protection Regulation* (GDPR) and the sectoral approach of the United States. By examining the similarities and distinctions in areas such as data subject rights, regulatory enforcement, cross-border data transfers, and exemptions, we can better understand India's unique approach to data privacy and protection.

Rights of Data Subjects

The DDPA establishes the rights of data principals (individuals whose data is processed) with notable similarities to the GDPR, which is recognized as one of the most comprehensive privacy frameworks worldwide. The GDPR grants EU residents a variety of rights, including the ability to access, correct, erase, restrict processing, and transfer data between service providers (data portability).[45] The DDPA similarly provides Indian citizens with rights to access, correct, and delete personal data but does not yet include data portability, reflecting a cautious approach by India toward this specific right, likely to avoid adding complexities for companies adjusting to new data practices. The DDPA's gradual framework respects data principals' autonomy, aligning with the broader trend in global privacy legislation to give individuals more control over their data.

In the United States, the approach is sector-specific, with regulations varying across industries and states rather than being unified. California's *Consumer Privacy Act* (CCPA) provides state residents with rights similar to the GDPR's, including the rights to access and deletion, but privacy laws vary elsewhere in the country based on specific industries, creating inconsistencies. India's DDPA takes a centralized approach, regulating all sectors uniformly within India.

Regulatory Authority and Enforcement

The creation of regulatory authorities is a hallmark of international data protection laws. The GDPR mandates independent supervisory bodies within each EU member state, which work collaboratively under the European Data Protection Board (EDPB) to ensure consistent enforcement across the region. These bodies have extensive powers to issue fines and suspend data

[45] 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 (General Data Protection Regulation), art. 15, 2016 O.J. (L 119) 1 [hereinafter GDPR].

processing in cases of non-compliance.[46] Similarly, the DDPA establishes a central Data Protection Authority (DPA) to enforce the Act and ensure compliance, with powers to penalize violations. However, India's DPA is structured to operate under central government oversight rather than being entirely independent. This distinction raises questions about impartiality in enforcement, especially in politically sensitive cases, contrasting with the GDPR's independent supervisory authorities, which uphold objectivity and autonomy across the EU.

In contrast, U.S. enforcement is less centralized, managed through agencies like the Federal Trade Commission (FTC) and state attorneys general. These agencies enforce data privacy through consumer protection laws rather than a unified data protection framework, limiting data protection efforts to deceptive practices or individual state laws. India's DDPA adopts a more centralized structure similar to the GDPR, which emphasizes a single dedicated authority but under a governmental body.

Cross-Border Data Transfers

Global data protection laws take varied approaches to cross-border data transfers, balancing privacy and data flow for economic purposes. The GDPR has a strict policy, only allowing data transfers to countries that meet specific data protection standards. Transfers to countries without "adequate" protections require additional safeguards, such as binding corporate rules or contractual agreements to uphold EU data subjects' rights even when processed internationally.[47] The DDPA takes a similar stance, allowing transfers only to countries designated by the central government as having adequate protections, though the standards for these designations are less defined compared to the GDPR's robust adequacy framework. This looser criterion reflects a focus on allowing data transfer flexibility, supporting international collaboration while upholding data privacy.

Meanwhile, the U.S. has no uniform policy for cross-border data transfers, instead relying on agreements like the *Privacy Shield* between the U.S. and EU (which has since been invalidated). Without a consistent framework, data protection for U.S. residents varies widely based on individual agreements. The DDPA's selective criteria for cross-border transfers indicate a focus on data sovereignty and control while remaining connected to the global data economy.

Exemptions and Public Interest

Most data protection laws recognize the need for state exceptions for purposes like national security, law enforcement, and public health. The GDPR grants member states the ability to introduce exemptions for public interest, though these must be balanced with individual privacy rights,

[46] The Digital Data Protection Act, 2023, No. 18, §§ 11–13, Acts of Parliament, 2023 (India).
[47] GDPR, supra note 1, art. 45.

ensuring government activities do not erode fundamental protections.[48] Similarly, the DDPA includes exemptions for the state, permitting processing of data for reasons such as national security and public order, though it has been criticized for allowing broad government discretion without detailed regulatory oversight, which could undermine individual privacy. This flexibility provides a means to balance state interests and individual privacy, though it contrasts with the GDPR's stricter guidelines on exemptions.

In the U.S., exemptions to privacy laws are guided more by legislation like the *Patriot Act* and *Foreign Intelligence Surveillance Act* (FISA) rather than privacy-specific regulations. These laws provide the government broad access to data for national security purposes. Exemptions within data protection laws, like the Health Insurance Portability and Accountability Act (HIPAA), include provisions for public interest purposes, a feature mirrored in the DDPA's approach to balancing privacy and public needs.

The DDPA brings India's data protection regime closer to international standards while adapting to its unique socio-economic context. The GDPR's influence is evident in DDPA provisions on consent, rights of data principals, and cross-border data transfers, yet India's approach reflects its emphasis on flexibility, regulatory oversight, and state interests. Unlike the U.S. sectoral model, the DDPA provides unified data protection across sectors, creating consistency in Indian data protection policies. While regulatory autonomy and explicit data transfer standards could be further strengthened, the DDPA represents India's commitment to a structured privacy framework that accommodates global practices and respects local needs.

This approach highlights India's commitment to privacy in an interconnected digital environment while promoting both domestic and international data relationships. The DDPA's flexible framework adapts global best practices to India's policy goals and serves as a critical step in India's transition toward a more privacy-conscious society.

XIII. Challenges in Implementation of DDPA, 2023

The *Digital Data Protection Act, 2023* (DDPA) marks a significant advancement in India's data protection landscape. However, implementing this law faces several challenges, including regulatory, infrastructural, and societal hurdles, that impact the efficacy and fairness of data protection in India.

Regulatory Oversight and Independence

The DDPA mandates the establishment of a Data Protection Authority (DPA) to monitor and enforce compliance, but concerns about the DPA's independence remain a significant issue. Unlike the EU's

[48] GDPR, supra note 1, art. 23.

General Data Protection Regulation (GDPR), which designates autonomous supervisory authorities for member states, the DDPA places the DPA under central government oversight. Critics argue that this could potentially lead to biased enforcement, especially in cases where data use or misuse involves government entities.[49] For data protection laws to be truly effective, a degree of regulatory independence is crucial to ensure objectivity and impartiality, particularly when handling sensitive or politically influenced data practices.

Infrastructural Limitations and Compliance Costs

Ensuring compliance with DDPA standards poses logistical and financial challenges, especially for small and medium-sized enterprises (SMEs) that lack robust data infrastructure. The DDPA requires data processors to implement stringent security measures to protect personal data, including data storage and encryption protocols.[50] However, the necessary technological infrastructure is costly and often challenging to maintain, especially in rural or economically constrained regions. Many organizations, particularly SMEs, may struggle to meet these compliance requirements without incurring prohibitive costs. This could limit their participation in the digital economy, potentially stifling innovation and economic growth in the sector.

Cross-Border Data Transfer Restrictions

The DDPA permits cross-border data transfers only to countries designated by the central government, but the process for selecting these countries lacks transparency. This lack of clarity may cause delays in business processes that rely on international data flows. Additionally, companies involved in cross-border transactions may face disruptions, potentially impacting their operational efficiency and ability to serve customers.[51] The DDPA's restrictive approach contrasts with the GDPR's comprehensive adequacy framework, which assesses the level of protection offered by other nations before permitting data transfers. Unclear guidelines on approved nations could lead to operational uncertainty, discouraging foreign investment and partnerships.

Public Awareness and Data Literacy

Successful data protection implementation depends on public awareness and understanding of data rights, which remain limited in India. The DDPA grants individuals rights to access, correct, and delete their data, but without adequate data literacy, the public may not fully exercise these rights.[52] Additionally, the complexity of digital data concepts and privacy principles poses challenges for users unfamiliar with such terminologies. Inadequate data literacy can hinder individuals' ability to hold data controllers accountable, limiting the act's intended protections. Increased awareness

[49] Digital Data Protection Act, No. 18 of 2023, § 8 (India).
[50] Id. § 11.
[51] Id. § 17.
[52] Id. § 20.

initiatives are essential for empowering citizens to navigate the digital landscape confidently and responsibly.

Implementing the DDPA will require addressing regulatory, infrastructural, and educational challenges to create a balanced and equitable data protection framework. An independent regulatory body, accessible compliance support for SMEs, clearer data transfer guidelines, and public data literacy initiatives will be essential to the act's success. These measures will support a cohesive data protection strategy that encourages compliance, promotes economic growth, and respects individual rights.

XIV. Future Implications and Recommendations

The Digital Data Protection Act, 2023 (DDPA) is a landmark legislation in India, aimed at safeguarding personal data and enhancing privacy rights. Its implementation has the potential to significantly impact both privacy rights and data security in the country.

Impact on Privacy Rights

The DDPA enhances individual privacy rights by granting data principals (individuals whose data is being processed) a robust set of rights concerning their personal data. These include the right to access, correct, and delete personal data, empowering individuals to manage their information actively. This legal framework is essential in fostering a culture of accountability among data handlers, compelling them to prioritize user consent and transparency in their data processing activities.[53] Moreover, the DDPA aligns with global standards such as the European Union's General Data Protection Regulation (GDPR), reinforcing the importance of privacy in an increasingly digital society.

However, while the Act strengthens individual rights, it also poses challenges. For instance, the broad exemptions for state entities in matters of national security or public interest can potentially undermine individual privacy rights. Critics argue that these provisions might lead to misuse of data under the guise of state security, necessitating a careful balance between state interests and individual privacy.[54]

Impact on Data Security

From a data security perspective, the DDPA mandates that data handlers implement stringent security measures to protect personal data. This includes data encryption, regular audits, and breach notification protocols, which are designed to mitigate risks associated with data breaches and unauthorized access. By requiring organizations to adopt best practices in data security, the Act

[53] Digital Data Protection Act, No. 18 of 2023, § 15 (India).
[54] Id. § 22.

aims to build a resilient framework that can withstand the evolving threats of cyberattacks and data misuse.[55]

However, the successful implementation of these security measures depends on the readiness and capability of organizations to comply with the new regulations. Smaller enterprises may face significant challenges in adopting these practices due to resource constraints, potentially leading to inconsistent data security levels across sectors. The government must provide guidance and support to ensure that all organizations, regardless of size, can meet the necessary security standards without compromising their operations.[56]

The DDPA has the potential to significantly enhance privacy rights and data security in India. However, it is crucial to ensure that the protections afforded to individuals are not overshadowed by exemptions and that organizations, especially SMEs, receive the support needed to implement effective data security measures.

Recommendations for enhancing privacy protections

To enhance privacy protection under the Digital Data Protection Act, 2023 (DDPA), several strategic recommendations can be implemented. These recommendations aim to strengthen individual rights, ensure organizational compliance, and foster a culture of accountability within the data ecosystem.

One fundamental recommendation is to establish an independent Data Protection Authority (DPA) with sufficient powers and resources. The DPA should operate autonomously from the government to ensure unbiased enforcement of the DDPA. It should be empowered to conduct audits, investigate complaints, and impose penalties for non-compliance. This independence is crucial for building public trust and ensuring that individual rights are prioritized over governmental interests.[57]

Public awareness campaigns are also essential for informing citizens about their rights under the DDPA. The government and the DPA should collaborate to develop educational programs that inform individuals about their data rights, including how to access, rectify, and delete their personal data.[58] By fostering a well-informed public, individuals will be better equipped to exercise their rights and hold organizations accountable for data misuse. Targeting educational institutions, community organizations, and online platforms can maximize outreach efforts.

Recognizing the challenges faced by small and medium-sized enterprises (SMEs) in implementing data protection measures, the government should offer guidance and resources tailored specifically for these businesses. This could include simplified compliance checklists, access to affordable data

[55] Id. § 10.
[56] Id. § 14.
[57] Digital Data Protection Act, No. 18 of 2023, § 8 (India).
[58] Id. § 20.

protection tools, and training programs. Providing financial incentives or grants can also assist SMEs in upgrading their data protection practices without incurring overwhelming costs.[59]

Implementing a framework for regular audits and compliance checks is essential for ensuring that organizations adhere to the DDPA. The DPA should conduct periodic reviews of data practices across sectors to identify potential violations and areas for improvement. These audits can serve as a proactive measure to prevent data breaches and instill a culture of accountability among organizations handling personal data.[60]

As technology evolves, the legal framework governing data protection should also adapt. The DDPA should include provisions for periodic reviews and updates to address emerging technologies, such as artificial intelligence and machine learning. Engaging stakeholders from various sectors, including legal experts, industry representatives, and civil society, will ensure that the DDPA remains relevant and effective in safeguarding privacy rights in a rapidly changing digital landscape.[61]

XV. Conclusion

The Digital Data Protection Act, 2023 (DDPA) marks a pivotal step in India's journey toward establishing a comprehensive framework for data protection and privacy rights. As the digital landscape continues to evolve rapidly, the need for robust legislation that safeguards individual privacy has never been more critical. The DDPA aims to address the growing concerns surrounding personal data use, providing individuals with greater control over their information and empowering them to exercise their rights.

One of the most significant aspects of the DDPA is its alignment with global standards, such as the European Union's General Data Protection Regulation (GDPR). By adopting similar principles, India signals its commitment to protecting citizens' privacy while fostering an environment conducive to international trade and investment. This alignment not only enhances consumer trust but also positions India favorably in the global market.

However, the successful implementation of the DDPA hinges on several factors, including the establishment of an independent Data Protection Authority, public awareness campaigns, and support for small and medium-sized enterprises. Additionally, continuous engagement with stakeholders and periodic reviews of the Act will be essential to address emerging technologies and evolving data practices effectively.

[59] Id. § 14.
[60] Id. § 16.
[61] Id. § 25.

Ultimately, the right to privacy is a fundamental human right that is increasingly recognized worldwide. The DDPA serves as a critical legal safeguard that reinforces this right in the context of India's digital transformation. By prioritizing privacy protection, the Act not only empowers individuals but also promotes a culture of accountability among organizations.

In conclusion, while the DDPA presents significant opportunities for enhancing privacy rights in India, its effectiveness will depend on the commitment of all stakeholders—government, businesses, and citizens alike—to uphold and respect these rights in practice. As we navigate the complexities of the digital age, a strong and adaptive data protection framework will be crucial for balancing innovation with individual privacy rights, ensuring a secure and trustworthy digital environment for all.

AI and Future of Legal Profession: Ethical Accountability under Advocates Act, 1961 and India's Emerging Data Protection Regime

Mr. Dhananjaya C[1]
Ms. Lekha Goyal[2]

I. Introduction

AI is transforming the legal profession globally. It's reshaping how legal research, document review, client engagement and other predictive analysis are conducted. This shift comes from both efficiencies and ethical complexities, especially when the regulatory framework has not evolved to address the impact on professional conduct. In India, regulatory frameworks such as the Advocates Act, 1961 and emerging data protection laws lack such specific provisions to address AI-related challenges. Thus, this noble profession faces unique challenges while incorporating these technologies in ways that align with longstanding ethical and accountability standards. Ethical concerns in the profession such as independent judgment gets detriment when these machine-driven strategies pressurize the lawyers leading to questions about who ultimately holds responsibility when AI advice is incorporated. Furthermore, obligation required to maintain client confidentiality as an absolute duty, is potentially compromised by AI systems that use cloud servers etc. Although DPDP Act, 2023 addresses board concerns around personal data processing, they fall short in mandating data fiduciary to erase the data, unless data principal withdraws the consent [3] . The exception to erase where is 'specified purpose' or for 'compliance in law', both of which don't specify standards for sensitive legal data. Similarly, many other such concerns like accountability, transparency in a 'privileged communication' [4] amongst others. Therefore, further research is needed to explore the extent of AI's impact on legal ethics, the Advocates Act, 1961 and data protection laws in India to propose a viable framework for accountable and secure AI Integration in legal services.

II. Conceptual background

Understanding AI's strengths and limitations is vital to assess its integration with India's legal profession, which operates under regulatory frameworks. In India being a country with primary legislations under the Advocates Act, 1961, there is nothing existing for the specific ethical quicksand that can result from AI driven systems.[5] These applications raise questions on

[1] **4th Year of B.B.A.LL.B, KLE Law College Bengaluru, dhananjaya.21bbl080@klelawcollege.org**
[2] **4th Year of B.B.A.LL.B, KLE Law College Bengaluru, lekha.21bbl015@klelawcollege.org**
[3] Digital Personal Data Protection Act, 2023, § 8, No. 22, Acts of Parliament, 2023 (India).
[4] Indian Evidence Act, 1872, § 126, No. 1, Acts of Parliament, 1872 (India).
[5] Advocates Act, 1961, § 49, No. 25, Acts of Parliament, 1961 (India).

transparency, algorithmic biases and accountability. This is because AI relies heavily on cloud-based platforms for data storage and processing, which may compromise client confidentiality and attorney-client privilege as a result of inadequate controls over data security.[6]

For instance, in AI-based decision-making tools, accountability becomes ambiguous. Lawyers are regulated by the Advocates Act, with the requirement that the process should be guided by an independent judgment and which in no way permits to rely on information that compromises the very integrity of their representation.[7] AI complicates this because it shifts some decision-making processes in a somewhat uncertain manner towards algorithms, thus leaving unclear who should be held accountable for adverse outcomes emanating from AI-driven insights. That situation is even more complicated as AI processes are a kind of "Black Box": by many of the processing techniques utilized in AI decision making, processes which are not translatable or understandable to most users including legal practitioners.[8]

However, the DPDP Act, 2023 remains insufficient as it does not provide specific provisions for handling sensitive client data when utilizing AI-powered legal tools. For instance, it only provides protection and erasure in some cases, while the exclusion of data processed for "specified purposes" leaves the client's confidentiality at risk.[9] This lacuna poses a crying need for legislative amendments and guidelines specifically adapted to the ethical concerns surrounding AI integration into legal practice.[10]

III. Significance of study

Tools available are AI-driven, including predictive analytics, automated contract review, and client advisory platforms, which transform the practice of law by helping streamline workflow, improve access, and accelerate mass legal data management and processing. But these emerging technologies carry risks that directly relate to the fundamental principles of professional ethics, confidentiality of clients, accountability and independent judgment, which form the backbone of the Indian legal profession as stipulated under the Advocates Act 1961. As AI technologies emerge, lack of regulation specific to AI ethics within the legal profession poses huge risks on the legal professionals and their clients. This study aims to underscore the need to reform current regulations, especially the Advocates Act 1961, and align them with the ethical standards and legal implications

[6] Paul, D, Cloud Computing and data security in the AI-driven legal profession, JLT, 78-92. (2022).
[7] Rule 7 of Section 2 of Chapter 2 of Part 6, Bar Council of India Rules.
[8] Wexler, R, When a computer program keeps you in jail: How Algorithms Affect Criminal Justice, HJLT, 275-292. (2017)
[9] Digital Personal Data Protection Act, 2023, § 8(7), No. 22, Acts of Parliament, 2023 (India).
[10] Binns, R, Fairness in machine learning: Lessons from political philosophy, Proceedings of the 2018 conference on Fairness, Accountability, and Transparency, 149-159 (2018)

amid the integration of AI into legal practices, maintaining public trust in legal systems ever increasingly reliant on algorithmic decision-making.

The other important import of this research is that the Digital Personal Data Protection Act, 2023, is critically analyzed against the backdrop of the existing scenario. Although the DPDP Act marks an important stride in the data protection regime, in terms of its current form and structure, it fails to adequately provide provisions for safeguarding the sensitive nature of client information processed by AI tools in legal practice, which cannot aptly fit in the definition of data fiduciary. This research sheds light on why such stringent data protection standards are all the more crucial for legal practitioners. This study is also very timely and relevant in light of global trends. In the United States and United Kingdom, for instance, ethical guidelines for the use of AI in law are being established, pointing to transparency, data security, and accountability[11]. Such adaptation in the legal environment of India will guarantee that AI applications promote equitable and unbiased legal practices and do not unintentionally induce bias or violate transparency.

Ultimately, the impact of this research will resonate with multiple stakeholders, such as policymakers, regulatory bodies, technology developers, and legal professionals. This research looks to suggest a framework balancing the potential benefits of AI with the ethical and legal responsibilities unique to the Indian legal context, providing actionable recommendations for regulatory reform. Through this, it anticipates that the legal space will realize AI that has the capacity to support as an excellent instrument of justice without relaxing in any way the ethical standards governing rule of law.

IV. Literature review

"AI in Legal Practice: Trends and Predictions in India"

This article delves into the discussions of the growing AI in India's legal sector, considering that while AI driven tools have the potential to improve efficiency, at the same they also raise significant ethical concerns and resistance among legal professionals. This article also addresses how AI can assist with predictive justice by automating certain legal processes and analyzing case outcomes, yet acknowledges ethical concerns like potential biases embedded in AI algorithms, which could impact a fair judgment. Another notable point is the hesitation within the legal profession regarding AI adoption due to fears of job displacement and doubts about AI's reliability. The article proposes that educational reforms focused on AI literacy could help bridge this gap, preparing future legal

[11] GOV.UK, https://www.gov.uk/government/publications/ethics-transparency-and-accountability-framework-for-automated-decision-making/ethics-transparency-and-accountability-framework-for-automated-decision-making (last visited Nov. 1, 2024)

practitioners to integrate AI responsibly. However, it does not provide specific case studies on smaller law firms or consider AI's role in improving access to justice for underserved communities, both of which are essential for understanding AI's broader social impact.[12]

"Regulating the Ethics of the Unknown: Analyzing Regulatory Regimes for AI-Based Legal Technology and Recommendations for its Regulation in India"

This paper offers a comparative analysis of AI regulatory frameworks in established jurisdictions, such as the United States and the United Kingdom, proposing that Indian could benefit from adopting similar guidelines for ethical AI implementations in legal services. Key points include the American Bar Association's (ABA) emphasis on technological competence for legal practitioners and the Solicitors Regulation Authority's ethical framework for AI use, which could inform amendments to India's Advocates Act. Goety the author also highlights India's unique regulatory challenges, like data localization, which is crucial given the new Digital Personal Data Protection (DPDP) Act, 2023. His advocacy for a "soft law" regulatory approach aligns with England's light-touch AI governance model, suggesting that guidelines rather than rigid laws may allow for responsible yet flexible AI integration. However, this paper overlooks the practical difficulties of enforcing data localization within India's complex legal frameworks and does not address how legal practitioners can balance client confidentiality with AI's reliance on vast data sets.[13]

"Shaping the Future of Law: AI, Ethics, and Policy Perspectives"

This paper provides an in depth analysis of AI's integration into legal systems, examining ethical and regulatory implications across global and Indian contexts. It stresses the need for a balanced AI governance to ensure transparency, fairness and accountability within legal practices, with particular attention to data privacy concerns. The paper advocates for amending India's Advocates Act and other ethical codes to incorporate AI-specific standards, suggesting that these adaptations are necessary to maintain public trust in AI-assisted legal processes. Additionally, the document highlights issues related to judicial independence, proposing that AI's influence in court proceedings must be carefully managed to prevent biases from influencing judicial decisions. However it does not consider how client confidentiality may be preserved in AI-assisted interactions, which would be a glaring omission since the sensitive information of the clients must be protected when dealing with them in the digital setting.[14]

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[12] Himanshu Kumar, AI in Legal Practice: Trends and Predictions in India, VKEEL, (Oct. 31, 2024 8:57 PM) https://www.vkeel.com/legal-blog/ai-in-legal-practice-trends-and-predictions-in-india

[13] Gotety, A, Regulating the Ethics of the Unknown: Analyzing Regulatory Regimes for AI-Based Legal Technology and Recommendations for its Regulation in India, NUJSLR, (2021), http://nujslawreview.org/wp-content/uploads/2021/11/14.3-Gotety.pdf

[14] Tushar R & Afhrid, (2024). Shaping the Future of Law: AI, Ethics, and Policy Perspectives, IJRAR, (2024), https://www.ijrar.org/papers/IJRAR1DOP004.pdf

"The Future of Artificial Intelligence in the Legal field"

This paper enlightens on AI's transformative ability in the practice of law, including review of documents, analytics, and compliance, which indicate that a strong case can be built up for efficiency enhancement on aspects of privacy, bias, and accountability will define more features, but this paper posits a very tight regulation to be in place as a measure of control before these tools get to a point where they might not be reasonably and transparently deployed for legal applications. This paper will outline the issue of making AI compliance tools align with obligations such as confidentiality and accountability for practitioners under the Advocates Act by pointing in risks surrounding AI compliance tools. However the paper lacks an in-depth analysis of specific techniques for bias mitigation, which are essential in avoiding discrimination in AI-assisted judgments within India's judiciary. Additionally, the article briefly mentions the potential for AI to support smaller legal practices but does not explore how AI could make legal services more accessible to low-income or underserved populations.[15]

"Technology, Data, Artificial Intelligence, Cyber Law, and Human Rights"

This paper provides an all-round analysis of the general implications of AI across all fields, including legal, taking into account ethical and human rights issues raised by data-intensive nature of AI and stressing the need for balanced regulations to protect privacy and facilitate technological progress. The paper would discuss the scope of AI in legal proceedings from assisting in judicial functions, automating legal transcriptions, to even more ambitious schemes for court proceedings. However, the ethical risks involved in the decision-making role that AI plays in those court proceedings are of significant concern. Even though it is quite exhaustive, the paper does not really dig into how AI may influence judicial impartiality or attorney-client confidentiality in the wake of increased use of cloud-based storage of legal data. These omissions are very significant in that they deal with some of the core principles of client trust and judicial fairness that could be adversely affected by the increased role AI takes in legal decision-making processes.[16]

"The Future is Now: Artificial Intelligence and the legal profession"

This article by the International Bar Association examines AI's influence on the bar globally, with its ethical, regulatory, and data governance implications. This article also calls for resultant reforms in regulation and standardized codes of conduct to manage AI's potential impacts on client data handling, confidentiality, and accountability in legal practices. The article proposes that legal professionals should receive AI-specific training to understand the ethical complexities involved in

[15] Niranjan Kumar & Shruti Kumar, The Future of Artificial Intelligence in the Legal Field, IJLSI (2024), https://ijlsi.com/wp-content/uploads/The-Future-of-Artificial-Intelligence-in-the-Legal-Field.pdf

[16] Ritika Gupta & Tanvi, Technology, Data, Artificial Intelligence, Cyber Law, and Human Rights, IJNRD (2023), https://www.ijnrd.org/papers/IJNRD2307313.pdf

AI usage. However, it does not delve into India-specific challenges, such as mandatory disclosures to clients about AI usage or data protection compliance under the Advocates Act and the new DPDP Act. Addressing these gaps would enhance the relevance of AI integration discussions within India's legal and regulatory frameworks.[17]

"AI and Its Impact on Legal Profession"

The general overview of AI's impact on various aspects of legal practice is provided in the article, including predictive analytics, legal research, and document review, while looking at efficiency gains and ethical risks. The possible ethical challenges, including data security, biases, and accountability, warns against over-reliance on AI, which might undermine human judgment in legal decisions. While comprehensive in its global perspective, the article lacks India-specific analysis on how AI regulations, particularly those addressing ethical issues, can affect legal practice. It also overlooks AI's implications on professional autonomy, particularly under the Advocates Act, which currently lacks guidance on AI-driven legal advisory roles. Exploring these Indian-specific regulatory gaps would provide a more nuanced understanding of AI's role in the country's legal framework.[18]

V. Research questions

1. Whether Advocates Act, 1961, Bar Council of India Rules, and Digital Personal Data Protection Act, 2023, addresses ethical challenges and data security in AI-driven legal practice and Whether India is prepared for the widespread integration of AI in legal services, considering regulatory, ethical, and infrastructural readiness?
2. What strategic amendments are required to strengthen accountability, transparency, and bias prevention in the deployment of AI within the legal profession?

VI.Objectives

This study aims -

1. To assess the readiness of the current legal framework, including the Advocates Act, 1961, and Bar Council of India Rules, in addressing ethical accountability challenges posed by AI in legal practice.
2. To critically analyze how Digital Personal Data Protection Act, 2023, impacts data related issues such as data security, data processing amongst others, in AI-driven legal services.

[17] International Bar Association, The Future is Now: Artificial Intelligence and the Legal Profession, (2024), https://www.ibanet.org/document?id=The-future-is-now-artificial-intelligence-legal-profession

[18] Diya Yadav, AI and Its Impact on Legal Profession, JUNIOR JUSTICE, (Oct. 31, 2024 9:15 PM) https://juniorjustice.in/f/ai-and-its-impact-on-legal-profession

3. To propose specific recommendations to existing legal and ethical standards that can pilot responsible AI integration in the legal profession.

VII. Research methodology

This study adopts a doctrinal research methodology, focusing both on primary and secondary sources. The primary sources would include legislative texts like the Advocates Act, 1961, and the Digital Personal Data Protection Act, 2023, Bar Council of India Rules as well as case law that interprets ethical duties in legal context. For secondary sources, the study incorporates scholarly publications that offer contextual insights into how India might adapt its legal standards. However, reliance on secondary sources is limited to interpretative guidance, while primary legal texts and doctrines remain central to the analysis.

VIII. AI and Legal Practice: Opportunities and Risks

The latest trends in AI technologies continue to help streamline legal research and review of documents, a time-consuming job that takes hours, now taking merely a fraction of the same amount of time. Vast legal data is now pored through by NLP and machine learning techniques so that case law, statutes, and relevant arguments may be identified with unparalleled precision. Legal research tools, such as ROSS Intelligence and Casemine, also use AI to make this process of legal analysis as fast as possible.[19] The advocates can thus more readily move through and dissect these often-complex cases. On the other hand, the Advocates Act, 1961, insights on thoroughness and an advocate's duty to preserve independent judgment.[20] A major concern is that reliance on AI outputs can inadvertently supersede human oversight, which is fundamental to the duty of due diligence. Furthermore, there's a question of accountability in case of errors in AI-driven research. If AI produces flawed analysis or misses critical citations, the advocate still bears full responsibility before the court. This issue gets a bit more pronounced when looking into the fact that in the Indian legal system, truth and accuracy are some essentials, as is pointed out in cases such as the *Bar Council of India vs A.K. Balaji*, where duty for verification of information becomes fundamental to the integrity of law practice.[21]

AI also offers critical capabilities in contract analysis, case predictions, and litigation support. In contract analysis, AI tools like Kira systems identify high-risk terms, ensure compliance, and assess implications across multiple jurisdictions.[22] AI's predictive capabilities further enable lawyers to foresee potential case outcomes, thereby helping in strategy formation. However, the "Black Box" nature of AI raises ethical concerns, inasmuch as the decision-making process of the algorithm will

[19] AI Legal Research & Document Review, ROSS Intelligence, (2024), https://rossintelligence.com
[20] Advocates Act, 1961, § 15, No.25, Acts of Parliament, 1961 (India).
[21] Bar Council of India v. A.K. Balaji, AIR 2018 SC 1382.
[22] AI-Powered Contract Review for Law Firms, Kira Systems, (2024), https://kirasystems.com

be opaque.[23] Under the Indian Evidence Act, 1872, evidence must be evaluated transparently, yet the lack of explainability of AI may not fit into this standard if the insights generated by AI will be used to affect judgments. Any tool affecting the strategy of litigation or which can predict the outcome will have to be governed in the Indian judicial system under the principles of clarity and fairness. It goes without saying that AI offers the benefits of time. Using it in a haphazard way, one need not know why the algorithm thinks what it does might bring forth unethical results in many situations.[24] Therefore, it is imperative that champions make sure the AI only complements them and is not used in place of judgment and are transparent at times of case management.

AI brings in ethical concerns, mainly about privacy and accountability. For instance, in *V.C. Rangadurai v. D. Gopalan* [25] emphasizes the trust aspect in the relationship between the advocate and his client which is undermined by AI systems that leak sensitive information inadvertently. This judgment shows that the judiciary respects confidentiality, which is one of the standards AI data-sharing mechanisms violate. Therefore, guidelines for the use of AI are necessary so that the advocates can fulfill their professional obligations without violating the data of their clients.

India's DPDP Act, 2023, is fundamentally important because it introduces a provision regrading data security, privacy, and consent.[26] Under this, the data fiduciaries have to securely process data, but such provisions exist with regard to the restriction of unauthorized access to data without obtaining their prior explicit consent from that data principal. This particular act of law becomes relevant here in the context of the AI-powered legal practices through which a framework for determining data protection for clients finds its utmost requirement to remain secretive about the AI application.

A major, though significant problem persists. Where the Data Protection Decree 2019 doesn't account for vast AI requirements about processing the data involved. Training a data-set-driven algorithm on an AI requires having ongoing access to such data without restriction in contrast with prohibitions that this DPDP Act lays against the creation, possession, processing of personal information under these pieces of legislation. Data is likely leaked on scale with regard to use of these specified purposes or for enforcing the law under DPDP Act due to this particular form of 'except'. As a consequence, whereas data protection is under the DPDP Act, its scope may thus need to be appropriately redefined to accommodate unique demands of AI in relation to legal operations.

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[23] Burrell, J, How the Machine 'Thinks': Understanding Opacity in Machine Learning Algorithms, BDS, 1-12, (2016).

[24]Indian Evidence Act, 1872, § 3, No. 1, Acts of Parliament, 1872 (India).

[25] V.C. Rangadurai v. D. Gopalan, (1979) 1 SCC 308.

[26] Digital Personal Data Protection Act, 2023, § 4 and § 7, No. 22, Acts of Parliament, 2023 (India)

Under the DPDP Act, legal practitioners who are now handling client data through AI systems may be classified as data fiduciaries. This classification binds them to strict requirements with specific guidelines for data storage, access and processing all complying with data security. To advocates and law firms, this status heightens their accountability toward both data protection laws and professional ethics codes, emphasizing the dual obligation of confidentiality and compliance.

The smaller organizations will then face the challenge that it may not have appropriate infrastructure for the secure adoption of AI-driven tools but may also fulfill the compliance standards. Given the fact that there is no separate provision in the DPDP Act for specifically dealing with AI-specific data protection related to legal practice, risk for non-compliance of advocates may increase because technological adoption could be balanced with professional accountability through amending the Act with explicit detail fiduciary duties that are uniquely applicable to AI-driven legal practices.

The Indian Supreme Court, in its landmark judgment of justice *K.S. Puttaswamy v. Union of India*,[27] recognized the right to privacy as fundamental and established a very high standard for data protection across sectors, including the legal sector. This judgment made it clear that rights to privacy need to be protected in every sphere: therefore, legal practices should handle data with care, more so when AI tools are involved. With the current features of the DPDP Act, there is room to question its ability to attain some privacy standards as presented in *Puttaswamy Case*, given the application of AI and machine learning in law, where there is uncertainty related to limitations on processing use or even training purposes related to data. These expectations would be met, once again, by enacting legislation to amend their responsibility regarding using AI services.

The promise of AI in India legal services is huge, but the preparations of India towards adopting AI is questionable. Technological infrastructure, regulatory readiness, and professional training are necessary foundations that are currently underdeveloped in many regions. The Bar Council of India has not yet provided specific guidelines or ethical standards for AI usage in law, leaving a regulatory gap. Professional education reform, including training in the ethics and use of AI, will be an important step towards readiness because the future advocates will know what to expect in terms of responsibility and risks associated with such AI-driven tools. International benchmarks, set by the standards in the US and UK, for example, would likely to guide the development of a balanced regulatory approach that will support AI adoption without compromise on the profession's ethical standards. It will be in tandem with the adoption of AI by the Bar Council, through the imposition of a regulatory regime upon the implementation of the AI and ensuring that the same responsibly integrates into the Indian jurisprudence.

[27] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

IX. Professional Accountability under Advocates Act, 1961

The Advocates Act, 1961, prescribes the codes regarding the ethical standards expected of advocates. Chapter V calls for the advocate to adopt ethical behavior, observe confidentiality towards the clients with whom they are interacting and represent such clients with fidelity.[28] The advocate needs thus to be watchful and diligent regarding performance in terms of service and also carry out duties competently to individuals without letting AI interface. Section 35 of the Advocates Act thus is at the heart of accountability because it empowers disciplinary action for "professional misconduct".[29] These breaches of ethical duties, negligence, or compromise of client interest areas that could possibly be accentuated by reliance on AI. For example, the autonomous of some processes by AI could result in errors if advocates rely solely on AI outputs without independently exercising judgment. This places statutory emphasis on the role of human judgment in legal decision-making and ensures that even while AI is integrated, there is always an onus of professional accountability on the advocate.[30]

The more extensive the AI technologies are made to be in aiding an advocate during case strategy formulation, review of documents and advice given to the clients, issues of accountability as regards legal outcomes become somewhat complex. Traditionally an advocate will be liable entirely for their respective legal advisories and outcomes, the integration of AI tools make unclear the lines of accountability even in that regard. To illustrate if an AI tool recommends a wrong legal strategy or does not detect nuance of law in automatically reviewing the documents, Indian law could impose liability squarely on the advocate's shoulders.[31]

The Advocates Act has held that advocates must ensure case-related actions and strategies fall within the highest professional standards. Therefore, advocates will have to check on whatever insights are given by an AI before taking them before the court. *Praveen C. Shah v. Kamohd. Ali* [32] also emphasized diligence as a method for safeguarding the interests of the clients, which remains a necessity when the impacts of AI on decision making are involved. Moreover, accountability can be viewed as well with regard to the legal consequences, wherein the lawyers themselves may be liable for these mistakes in AI, mainly because the act does not distinguish between the human mistakes and those ones attributed to AI.[33]

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[28] Advocates Act, 1961, § 5, No.25, Acts of Parliament, 1961 (India).
[29] Ibid.
[30] Bar Council of India v. A.K. Balaji, (2018) 5 SCC 379.
[31] Rule 1 of Section 2 of Chapter 2 of Part 6 of Bar Council of India Rules.
[32] Praveen C. Shah vs Mohd. Ali, (2001) 8 SCC 650.
[33] Information Technology Act, 2000, § 43A and 79, No. 21, Acts of Parliament, 2000 (India).

The use of AI in practice will come with professional misconduct risks, especially when confidentiality is breached or misrepresented on behalf of a client. Professional misconduct refers to an act that causes harm to client interest or the reputation of the profession according to the Advocates Act. When the AI tools process confidential data or suggest legal strategy, professional misconduct may occur as it is not handled correctly. For instance, in *R.D. Saxena v. Balram Prasad Sharma* [34], The court held that an advocate-client relationship involves a duty to trust and confidence that AI systems would infringe if the client data was mishandled. Moreover, while biased or incomplete information is churned through the use of AI tools, the fact that is brought forth is likely to be misrepresented, and therefore to breach section 35 of the Act. The Advocates, therefore, should use AI tools with caution and discretion, apply their independent judgment, and scrutinize the output before releasing it to discharge their professional obligations.[35]

X. Ethical Standards and AI under Bar Council of India Rules

The duty of confidentiality is a foundation of lawyer-client relationship, governed by the BCI Rules [36] and Indian Evidence Act, 1872 [37] in India. As per Rule 7[38], it is mandated for the advocates to maintain the confidentiality of information related to clients, thus absolution barring disclosure. The use of AI-driven platforms in law practice, however, institutes latent compliance challenges for this duty. AI platforms rely on cloud-based storage or data sharing algorithms that often lack robust, client-specific security protocols that this profession demands. Such platforms or tools could also include third-party data processors[39], leading to risks of unauthorized access of data breaches, leading to compromise in 'privileged communication'. Such a data processor can only erase the data, only when data fiduciary causes to do so, and the latter can only do so when the consent of data principle is withdrawn, however, with an exemption that such data is necessary for compliance of law[40]. AI platforms, particularly and majorly, when hosted on shared or foreign servers, may inadvertently expose sensitive client data to legal jurisdictions outside of India, jeopardizing privilege protections[41]. Digital Personal Data Protection Act, 2023, too, lacks explicit provisions for AI platforms used in any sector for that matter.

[34] R.D. Saxena vs Balram Prasad Sharma, AIR 2000 SC 2912.
[35] Burrell, J, How the Machine 'Thinks': Understanding Opacity in Machine Learning Algorithms. SJ, (2016), 1-12, https://doi.org/10.1177/2053951715622512.
[36] Rule 7 of Section 2 of Chapter 2 of Part 6 of Bar Council of India Rules.
[37] Indian Evidence Act, 1872, § 126, No. 1, Acts of Parliament, 1872 (India).
[38] Rule 7 of Section 2 of Chapter 2 of Part 6 of Bar Council of India Rules.
[39] Digital Personal Data Protection Act, 2023, 8(2), No. 22, Acts of Parliament, 2023 (India).
[40] Digital Personal Data Protection Act, 2023, § 8(7) , No. 22, Acts of Parliament, 2023 (India).
[41] Indian Evidence Act, 1872, § 126, No. 1, Acts of Parliament, 1872 (India).

Transparency in lawyer-client fosters trust and complements confidentiality, allowing clients to make informed decisions. Rule 4[42], emphasizes the advocate's responsibility to provide clients with full and frank information. The deployment of AI in legal practice makes it difficult to comply with this obligation, due to its 'black box' nature of many algorithms where the generating results are not fully transparent or easily explained to clients. AI's role in tasks like case analysis, predictive analytics or automated legal research may produce highly complicated outcomes that lack comprehensibility for both clients and advocates. As a result, clients could find it difficult to trust AI-derived recommendations, especially if risk of bias or inaccuracy is perceived by them. Furthermore, if clients are unaware that AI tools are being used in their case, they may be deprived of the ability to evaluate or question the methodology, which can erode trust and transparency in representation.

Another critical ethical challenge posed by AI in legal practices is that of risk of embedded bias within the algorithmic processes. These biases can affect the impartiality and fairness expected in legal practice, potentially leading to unethical outcomes. While AI-driven tools in legal settings offer predictive insights for case outcomes, contract analysis or risk assessments, they heavily rely on historical data which could contain biases from past cases, leading to a cycle where the discriminatory patterns are perpetuated in AI outputs. Advocates are mandated to maintain an unbiased approach in their professional duties[43], which is challenged when advocates rely on AI tools that generate results influenced by historical biases, and may inadvertently steer legal opinions or case strategies in ways that conflict with this ethical obligation. For instance, AI models trained on socio-economic disparities or underrepresentation of minorities in legal proceedings may unintentionally disadvantage similar demographics in future predictions. Advocates relying on AI must, therefore, ensure that these tools align with importance of procedural fairness and reliability in digital evidence[44].

XI. Recommendations

Given the unique challenges AI poses to legal practice, the Bar Council of India (BCI) should establish AI-specific guidelines within the BCI Rules. These guidelines could include –

1. <u>For Privileged Communications:</u> mandatory encryption, secure data storage protocols, and explicit restrictions on data-sharing mechanisms that involve third-party processors. Such

[42] Rule 4 of Chapter 2 of Part 6 of Bar Council of India Rules.
[43] Rule 6 of Chapter 2 of Part 6 of Bar Council of India Rules.
[44] Anwar PV v. PK Basheer, (2014) 10 SCC 473.

measures would ensure that AI platforms are compliant with the professional duties established under the BCI Rules.

2. Accountability in AI-Driven Decision-Making: Introducing a provision in the Advocates Act to address AI-related accountability where the Act could mandate that advocates apply independent judgment when interpreting AI recommendations, emphasizing that ultimate accountability rests with the human advocate. For instance, a guideline could clarify that while AI may assist with complex data analysis, final recommendations must be validated by advocates to ensure accuracy, thereby preventing "black box" AI errors from undermining client outcomes.
3. Transparent AI Use Disclosure Requirement: A disclosure clause in the BCI Rules would require advocates to inform clients whenever AI tools influence legal advice to uphold client trust and transparency by giving clients a clear understanding of the technology's role in their representation, enabling them to make informed decisions.
4. Mandated Bias Audits: The BCI could recommend protocols for verifying that AI outputs meet standards of impartiality, avoiding reliance on data that perpetuates historical biases by implementing bias audits.
5. Incorporating Privacy Protections: A regulatory framework under the BCI Rules could set standards for data access, storage, and client consent specific to legal AI applications, reducing the risk of data misuse or unauthorized sharing as per DPDP Act, 2023.
6. Regulatory Oversight Mechanisms: Establishing a committee within the BCI focused on AI in legal practice would help monitor compliance and manage evolving risks. This body could set certification requirements for AI tools, conduct regular compliance checks, and provide guidance for ethical AI use. This oversight could be similar to the role played by data protection authorities under the DPDP Act, ensuring that AI use remains aligned with professional ethical standards.
7. Training, Literacy and Awareness: Given AI's complexity, training programs on AI ethics and compliance for advocates would be essential to responsible adoption. Such training could emphasize the ethical nuances of AI, bias recognition, data handling under the DPDP Act, and accountability principles in AI-assisted decision-making. Awareness through public information campaigns by the BCI could include materials on how AI impacts legal representation, data protection practices, and client recourse options in cases of data misuse, resulting as a help to clients understand their rights concerning AI.

XII. Conclusion

AI in legal practice could be a great friend specially in legal research, document review and case management, however, it raises pressing challenges to ethical standards such as bias, risk to confidentiality, ambiguity in professional liability, data security and professional accountability, given the status of the current regulatory framework. Thus, the current framework under Advocates Act, 1961 and Bar Council of India Rules require substantial enhancement to accommodate the unique demands of AI-driven tools. Additionally, Digital Personal Data Protection Act, 2023 introduces important data protection principles, the absence of rules under the provisions of the statute lacks safeguarding to sector-specific data within AI-application. With strategic amendments, professional training and public awareness, India's legal framework can align more closely with the emerging realities of AI, enabling the legal profession to advance responsibility into the future.

CHAPTER II

Human Rights Law

An Analysis of the Social and Economic Progress of Scheduled Caste and Scheduled Tribes in India (1947-2024)

Dr. Abhishek Srivastava[1]

Introduction to the Concept of Scheduled Caste and Scheduled Tribes

India is a nation of diverse backgrounds, classified in different groups, religions, languages and caste. The caste system was established hundreds of years ago in the form of a Varna system to divide the duties among all the groups. The main purpose was to ensure a systematic division of the community so that everyone had a commitment towards society.

The system though turned into nightmare for some of them. The people at the bottom of the Varna system were called Shudras and were the most exploited of all the categories, the scheduled tribes' conditions were even worse. Most of the tribes lived far from the general population and were deemed out of the social circle.

Both these groups were virtually non-existent for the Indian society, torn apart by a brutal caste system that had treated a large part of their population in inhuman way, a split noticed by the Britishers, but they didn't take any step as it augmented well for them. When Mahatma Gandhi observed this division, he knew to resist the British Empire, it was crucial to unite the Indian society, a vision he took to the Independence of the Indian Constitution.

It is a prime reason when the Indian constitution was formulated it aimed at forming a society which was based on providing equal opportunity to all. It further aimed in giving an extra lift to the section which had been almost non- existent for the Indian society in form of the reservations, to the Scheduled caste and Scheduled tribes.

Definition: In general definition those communities which have been put at the lowest strata of the religious structure of Indian society and have been subject to discrimination by the people on the basis of their caste have been categorized as the Scheduled Caste. [2]

The Constitution though precisely defines it by mentioning '***Schedule' means a Schedule to the Constitution. 'Scheduled Castes' means such castes, races or tribes or parts of or groups within castes, races, or tribes as are deemed under Article 341 of the Constitution to be 2 the Scheduled Castes for the purposes of the Constitution."***

[1] **Assistant Professor (Law), Alliance University, Bengaluru**

[2] Constitutional and Civil Rights to protect Scheduled Caste and Scheduled Tribes from atrocities and witch hunting, National Human Rights Commission of India, https://nhrc.nic.in/sites/default/files/Civil%20Rights.pdf

On the other hand, Schedule Tribes are the people belonging to tribes. These tribes have their own traditions and culture. They generally suffer from the prejudice of society and sometimes due to their own mentalities, geographical isolations.[3]

The Indian Constitution defines them ***"Article 342(1) of the Constitution of India says that the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by a public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory as the case may be.***

"(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification"

Constitutional Provisions: There are numerous provisions which have been laid down by the Constitution, for promotion of Scheduled Caste and Scheduled Tribes. They are as follows:

1. Article 17- Abolition of Untouchability
2. Article 46- Promotion of Education and Economic Interest
3. Article 338- Establishment for National Commission for Scheduled Castes
4. Article 338 A- Establishment of National Commission for Scheduled Tribes

Economic and Social Development of Scheduled Tribes and Scheduled Tribes

It is pertinent to trace the economic and social progress of both the communities and the data from 1947 to 2024 of how this progress has been and the area where there is scope of improvements.

Social Development: The first major social transformation targeted by free India was the upliftment of the most downtrodden section of the society, who was not only poor but also socially non- existent. The criteria for treating them differently were based on which caste they belonged. It is a prime reason why the constitution categorized these caste and tribes in the list of scheduled caste and scheduled tribes, in 1950.

In 1951 census, a large portion of the population was constituted of scheduled caste and scheduled tribes and things hadn't changed much in most of the India as they were still

[3] Constitutional and Civil Rights to protect Scheduled Caste and Scheduled Tribes from atrocities and witch hunting, National Human Rights Commission of India, https://nhrc.nic.in/sites/default/files/Civil%20Rights.pdf

second-class citizens. It was prime reason why The Untouchability Act, 1955 (later amended as Protection of Civil Rights Act) was introduced to fight the menace of untouchability.[4]

The government's effort to bridge these differences and ensure the upliftment of these communities was commendable yet the true progress hinged significantly on the evolving mindset of society. When the census of 1971 was taken, India had a population of approximately 54 crores out of which Scheduled Caste's population was approximately 8 Crore (14.28%) and ST was approximately 4 crore (7.14%). Both these population overall formulated almost 22% of India's population which was a major number.

It has been arduous progression for these communities as society had almost refuted their efforts to be part of the main stream society. The atrocities against these communities have continued during this duration (1947-1971). In 1958, 44 Scheduled caste workers were burned to death in confined building, reason - these workers have asked to raise their wages which was abysmal. Nobody was punished as the court acquitted all the accused.[5]

By 1981, it was more than three decades since India became independent, but the situation had not much ameliorated. The atrocities on these communities continued in the 1980s as well. It forced the government to pass "**Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989"[6].** This act aims to prevent discriminatory action some of which were categorized as atrocities, against these communities. Few of the primal features of the act, which aimed at protecting these communities were:

1. To establish criminal liability for the people who commit any offence as per this act.
2. To provide for relief and compensation for victims of atrocities.
3. Provision for establishment of special authorities for implementation of the Act.
4. It also mentions the act which can be classified as atrocities
5. Under section 14 it lays provisions for the establishment of special courts

As India went through the liberalization and development though 1990s and 2000s, individuals from both these communities began integrating into the mainstream society. In past two decades the Schedule caste and Schedule tribe community have seen good amount of strides, their presence and status have improved considerably. It is however a fact that

[4]https://socialjustice.gov.in/writereaddata/UploadFile/88171674566397.pdf
[5] Constitutional and Civil Rights to protect Scheduled Caste and Scheduled Tribes from atrocities and witch hunting, National Human Rights Commission of India, https://nhrc.nic.in/sites/default/files/Civil%20Rights.pdf
[6]https://tribal.nic.in/actRules/preventionofAtricities.pdf

India is largely made up of small cities and villages where the condition has not improved much.

Economic development: In order to understand the development of the Scheduled Tribe community let us first recognize the sources of employment through which they earn their livelihood: -

1. Hunting and Foraging
2. Hill Cultivation
3. Crafts and Cottage industry
4. Folks Art
5. Agriculture Labour

The Economic development of the country in 77 years has meant that the cities has taken over the rural and forests areas thereby affecting their employment options. It has also meant that more and more Scheduled tribe people have started to migrate to the urban areas in yearning for a better quality of life. This means off late they have started to become part of a variety of new sectors like:

1. Government Jobs
2. Private sector jobs
3. Agriculture
4. Daily wage workers
5. Crafts and Cottage Industry

The Report by Anthropological Survey of India mentioned that there has been significant growth in the tribal areas with business going up by 77%, Trade by 42% and Industry by 100 %.[7]

During this research, a handful data on the Scheduled caste community members were examined, some of them were[8]

1. By 2005 only 30.91% of the Scheduled caste household had electricity compared to 61.31% in non-SC households?[9]
2. By 2005 only 9.84% SC households had access to sanitation.

[7]https://testbook.com/ias-preparation/economic-empowerment-of-sts
[8]https://ncsc.nic.in/files/ncsc/new3/202.pdf, National Commission for Scheduled Castes (NCSC) of the Government of India
[9]Supra

3. By 2024, the SC owned enterprises are 12.45% which can be said as decent in number, the % in rural area is 15.37%. [10]
4. As per 2011 census, the SC population was approximately 20.14 crore, the literacy rate was 66.1% [11]
5. As per 2011 data about 34% of the SC population is still below the poverty line compared to 9% of general caste
6. The stark difference can be found in terms of the share of a country's wealth. As per the 2011 census, they make up 16% of the country's population (20 crore out of 121 crore) but their share of wealth is only 7%.
7. Their land possession is only 7.3 % which should be at least 16%.

These facts and figures show that these two communities have progressed significantly since Independence, however the same facts also show that there is still a lot left to be desired. These figures and daily instances of atrocities against these communities in different parts of the country on a regular basis show that they have not reached to the status which we have dreamt way back at the time of independence.

Conclusion

A country with a gigantic population of 145 crore where 22% of its population still scrap to prove themselves as accepted citizens of our country, they still wrestle to cast aside the demons of the past, a past which had crushed aside their identities and forced themselves to submit to centuries of exploitation.

There is no doubt that this 33-crore population have advanced considerably in these 77 years, since independence. They have taken stride socially and can also be seen contributing significantly in the growth of the country. Their literacy rate has surged significantly in these years with percentage literacy of both men and women have shown positive improvement. Both these communities have also continued to delve more into children's education.

The economic progress that Scheduled Caste and Scheduled Tribe community have made in these eight decades, since independence, is significant. They have secured jobs in government services, private sectors, they are part of politics, higher education, they are now entrepreneurs who have launched their own start ups and are contributing to the economy.

[10]https://gipe.ac.in/caste-and-enterprise-ownership-emerging-trendsand-diversification-in-india/#:~:text=As%20per%20the%2073rd%20round,per%20cent)%20in%20rural%20areas.

[11]https://journals.sagepub.com/doi/10.1177/2455328X211073207

They are also part of the defense forces, police services, and judicial administration. This has meant that their economic progress has also seen a slow but steady growth in all these years.

Despite all the growth made by both the communities, it wouldn't be fallacious to say that they are unable to achieve the desired results which we have anticipated in the early years of freedom. It is tragic to think that a young boy was killed for horse riding because he belonged to a scheduled caste community, a woman was paraded naked for she was deemed to be witch, a man was killed for drinking water from the tap belonging to general caste. A family was not allowed to pursue the profession of their choice (selling vegetables) because they were members belonging to these communities.

It might take a few more decades, maybe much more than that to achieve those results, till then we have to ensure that these changes reach deep in the hearts of Indian rural areas so that the positive change continue.

Pursuit of Citizenship in Assam through the Gender Lens

Dr. Gitanjali Ghosh[1]
Mr. Monzur Ul Kabir Choudhury[2]

(IF THIS IS THE ABSTRACT WE MAY REMOVE) The mystical land of Assam has fascinated people for ages. It is the land of Kamrupa or Pragjyoyishpura, which finds its place even in the 3rd-century literature of the Gupta Empire, describing it as the land of Kiratas or indo-mongoloids.[3] *British Surveyor Sir Thomas Holdich bemused by Assam, said in 1912, "It is not the large flat solitudes nor the cold craggy magnificence of ice fields and snow-capped peaks of the North West that first touch the chords of memory of the shelved and antiquated Anglo-Indian official. Rather it is the butterflies and the birds, the wild beauty of Bhutan or the deep silent tiger-haunted forests and savannahs of the mystical valley of the Brahmaputra"*[4]*. Present-day Assam is approximately the same size as Czechia (formerly known as Czech Republic) and is divided basically into three geographical regions, viz., the Assam Valley, Barak Valley and the hill districts. The population of the state is diverse in terms of ethnicity, language, and culture. This can be better appreciated from the fact that there are four official languages, namely Assamese, Bengali, Bodo and Meitei. Apart from these there are also many other tribal languages, although some do not have a written script. Further, it has followers of all the major religions with Hindus in the majority being 61.47% followed by Muslims at 34.22%, Christians at 3.74% and a small percentage of Buddhists, Jain, Sikh and other minor religions. The linguistic and religious identities crisscross further with tribal and non-tribal caste identities to form a very delicate social fabric. It is indeed a melting pot of diversity.*

Introduction

Immigration in Assam has been in successive waves. Since prehistoric times, there were Rajas of provinces with relatively smaller territories. It was in the 13th century that a Shan Prince from present-day Yunnan, China, came to Assam and established what came to be known as the mighty Ahom Kingdom, which expanded from eastern Assam to the river Manas in Western Assam, thereby consolidating a large part of the present-day state. After about 600 years of rule, there was a decline of power, and a death blow was given to it by the early 19th-century Burmese invasion, which crushed the kingdom. At this stage, an Ahom prince sought the help of the British, who ruled over the neighbouring Bengal territory. This started the first Anglo-Burmese war in March 1824, which

[1] **Associate Professor of Law, Department of Law, Tezpur University**
[2] **Doctoral Researcher, Department of Law, Tezpur University**
[3] HIREN GOHAIN, Positions on Assam History, 45 EPW 37, 37 (2010).
[4] B.C.Allen, Assam, 75 JRSA 764, 764 (1927).

ended with the famous peace treaty of Yangdabo in February 1826. The history of entry of the British into Assam contrasts with other parts of India as initially there was a welcoming attitude among the natives as they were seen as saviours from the Burmese brutality. Further, after the conclusion of the war, the British initially put the Ahom back into power, although nominally.

With the advent of the British Raj, immigration started from other parts of the then India. Bengalis were inducted in government jobs due to their knowledge of the English language and also being able to communicate with the natives of Assam. Merchants from Rajasthan and Dhaka come to conduct business in the region and later held the helm of commerce in the state. In course of the rule, the colonial government developed a perception that a huge percentage of the land was underutilised. Their main objective could have been that an increase in agriculture would convert into an increase in revenue. Be that as it may, Assam Land and Revenue Regulation was enacted in 1886, and interestingly, John Locke's concept of property was introduced in the form of 'wasteland' and within it Wasteland grant rules were laid down.[5] The lands identified primarily under this category were the low-lying land on both sides of the Brahmaputra and the lands that were fit for tea plantations. Tribals from Orissa were brought to labour in the Tea Plantations set up by the British entrepreneurs who came to Assam to make a fortune. The hardy agriculturists from East Bengal were thought fit to clear the reed jungles and make the land fit for cultivation. To make it attractive for the immigrants from east Bengal, 'Assam-Bengal Railways' extended its line to Nagaon and Moirabari and also immigrant cultivators from east Bengal were given settlement of Land. With the passage of time and due to competition for resources, some anti-immigrant sentiments started to brew among the native population. It is to be mentioned here among the population generally referred to as natives, a large part has a history of immigration to Assam, albeit at a much earlier point in history. After the partition of India on religious lines, the anti-immigrant sentiments got politicised and culminated in the six-year-long agitation widely known as the Assam Movement which ended with the signing of the Assam Accord in 1985 between the Central Government, State Government and the 'All Assam Students Union'. This Accord, among other things, led to an amendment in the Citizenship Act, of 1955 and Section 6A was inserted as a special case for Assam. This provision was recently upheld by the Hon'ble Supreme Court of India in "In Re: Section 6A of the Citizenship Act 1955". The political discourse in Assam often revolves around the subject of illegal immigrants and their quantum, followed by fierce debates on demographic changes. This issue of immigration has been at the centre stage since the independence of India

[5] Sarah Hilaly, Imagining Colonial Assam: The Figuring of 'Wastelands' in its Making, 51 EPW 55, 56 (2016).

following its partition on religious lines. It has also been a milking cow for political dispensations and their opponents, albeit for different reasons.

The Citizenship Law as it stands today for Assam are, viz., Part II of the Constitution of India i.e. form Article 5 to 11 and Citizenship Act of 1955 as amended and the rules thereunder. An analysis of the provisions of the Constitution shows that it declared who were citizens at the time of its commencement. It recognises citizenship based on birth, domicile and also extends citizenship to migrants from Pakistan if they entered India before July, 19, 1948 and after this date if they were registered as per the law. The part also makes provisions persons of Indian origin who were residing abroad. This means that the constitution recognised the unique background of the Indian partition. Further the makers of our constitution also anticipated that there may be special or more elaborate provisions might be needed in future for which parliament has been empowered to make such laws as and when the need arises. The Citizenship Act of 1955 on the other hand, provides five major ways to acquire Indian citizenship. Firstly, acquiring citizenship by birth and this mode classifies those persons eligible for citizenship by birth into three subgroups i.e., those Born in India between January 26, 1950, and July 1, 1987 are automatically considered Indian citizens, regardless of parents' nationality, those born between July 1, 1987, and December 3, 2004 are considered as Indian citizens if at least one parent is an Indian citizen and for those born after December 3, 2004, are granted citizenship only if both parents are Indian citizens or if one parent is an Indian citizen and the other is not an illegal migrant. Secondly, Citizenship can be acquired by Descent and relevant for persons born to an Indian parent outside India. If such person is born on or after January 26, 1950, but before December 10, 1992 it is sufficient if either parent is an Indian citizen. Further if a person is born after December 10, 1992, the provision requires at least one parent to be an Indian citizen by birth, and the child must be registered with an Indian consulate. Third mode of acquisition is by Registration, is whereby Citizenship can be granted to the following types of persons upon registration i.e. persons of Indian origin who have resided in India for at least seven years, spouses of Indian citizens who have resided in India for seven years, minor children of Indian citizens or some other categories based on length of residence and lineage.Fourthly, another mode of acquiring by Naturalization and it is applicable to foreign nationals who have lived in India for at least 12 years (11 years of cumulative residence and the last 12 months continuously before the application). Besides, applicants must will also have to satisfy other requirements, such as knowledge of an Indian language and prove their intention to reside in India etc. Lastly, If a foreign territory becomes part of India, the government can grant citizenship to its residents by a notification in the Official Gazette.

In respect of Assam, Section 6A was inserted which basically classified immigrants from Bangladesh into two categories i.e. migrants who entered Assam from Bangladesh before 1st January, 1966 and migrants who entered Assam from the specified territory between 1st January 1966 to 24th March 1971. The first type under the provision is granted automatic citizenship and the persons under the second category are required to get registered and thereafter reside in Assam for the next 10 years from the date of detection as a foreigner and at the end of this time, they are granted citizenship. It is to be mentioned here that, during the intervening period, the voting rights of such persons shall remain suspended. This provision was challenged before the Supreme Court in the case of 'Assam Sanmilita Mahasangha v. Union of India' on the grounds of constitutional validity allegedly being violative of Articles 14 and 21. Further, it was also argued that Section 6A has an adverse impact on the culture and identity of the Indigenous population. The question of the constitutionality was referred to the constitutional bench and the bench in " In Re: Section 6A of the Citizenship Act, 1955" upheld the validity of the provision by a majority of 4:1 with Chief Justice Chandrachud drawing the following conclusions:-

"… a. Articles 6 and 7 of the Constitution prescribe a cut-off date for conferring citizenship for migrants from East and West Pakistan at the "commencement of the Constitution", that is 26 January 1950. Section 6A of the Citizenship Act confers citizenship from 1 January 1966 for those who migrated before that date. Those who migrated between 1 January 1966 and 24 March 1971, are conferred citizenship upon the completion of ten years from the date of detection as a foreigner. Section 6A confers citizenship from a later date to those who are not covered by Articles 6 and 7 of the Constitution. Thus, Section 6A is not violative of Articles 6 and 7 of the Constitution;

b. Section 6A satisfies the two-pronged reasonable classification test:

i. The legislative objective of Section 6A was to balance the humanitarian needs of migrants of Indian Origin and the impact of the migration on the economic and cultural needs of Indian States;

ii.The two yardsticks employed in Section 6A, that is migration to Assam and the cut-off date of 24 March 1971 are reasonable. Though other states share a greater border with Bangladesh, the impact of migration in Assam in terms of numbers and resources is greater. Thus, the yardstick of migration to Assam is reasonable. The cut-off date of 25 March 1971 is reasonable because the Pakistani Army launched Operation Search light to curb the Bangladeshi nationalist movement in East Pakistan on 26 March 1971. Migrants before the operation were considered migrants of the Indian partition; and

iii. Both the above yardsticks have a rational nexus with the object of Section 6A.

c. Undocumented migrants could be registered as citizens under Section 5(1)(a) of the Citizenship Act before it was amended by the Citizenship (Amendment) Act 2003 to exclude 'illegal immigrants'. Thus, the claim of the petitioner that Section 6A is unconstitutional because instead of preventing migration to Assam, it incentivizes migrants in other states to come to Assam to secure citizenship through Section 6A is erroneous;

d. The constitutional validity of legislation cannot be tested for violation of Article 355. Article 355 was included in the Constitution as a justification for the exercise of emergency powers by the Union over States;
e. Section 6A does not violate Article 29(1) of the Constitution. Article 29(1) guarantees the right to take steps to protect the culture, language and script of a section of citizens. The petitioners have been unable to prove that the ability of the Assamese to take steps to protect their culture is violated by the provisions of Section 6A;
f. Section 6A(3) cannot be held unconstitutional on the ground of temporal unreasonableness; and
g. Section 6A(2) cannot be held unconstitutional for not prescribing a procedure for registration…."

While supporting the Chief Justice's opinion of holding Section 6A valid and constitutional, Justice Surya Kant, Justice M.M.Sundresh and Justice Manoj Mishra issued the following directions-

"…In view of the conclusion drawn in paragraph 387, it is held that Section 6A of the Citizenship Act, 1955 falls within the bounds of the Constitution and is a valid piece of legislation;
(b) As a necessary corollary thereto, (i) immigrants who entered the State of Assam prior to 1966 are deemed citizens; (ii)immigrants who entered between the cut off dates of 01.01.1966 and 25.03.1971 can seek citizenship subject to the eligibility conditions prescribed in Section 6A (3); and (iii) immigrants who entered the State of Assam on or after 25.03.1971 are not entitled to the protection conferred vide Section 6A and consequently, they are declared to be illegal immigrants. Accordingly, Section 6A has become redundant qua those immigrants who have entered the State of Assam on or after 25.03.1971;
(c) The directions issued in Sarbananda Sonowal (supra) are required to be given effect to for the purpose of deporting the illegal immigrants falling in the category of direction (b) (iii) above;
(d) The provisions of the Immigrants (Expulsion from Assam) Act, 1950 shall also be read into Section 6A and shall be effectively employed for the purpose of identification of illegal immigrants;
(e) The statutory machinery and Tribunals tasked with the identification and detection of illegal immigrants or foreigners in Assam are inadequate and not proportionate to the requirement of giving time-bound effect to the legislative object of Section 6A read with the Immigrants (Expulsion from Assam) Act, 1950, the Foreigners Act, 1946, the Foreigners
(Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967; and
(f) The implementation of immigration and citizenship legislations cannot be left to the mere wish and discretion of the authorities, necessitating constant monitoring by this Court. …"

A careful perusal of the aforesaid conclusions gives us a clear picture as to where the citizenship law stands as on today with respect to Assam. The constitution bench by a clear majority has upheld the validity of the provision of Section 6A but the bench does not restrict itself there but goes on to issue directions for implementation of directions issued in the case of Sarbananda Sonowal vs. Union of India & Anr.[6] Wherein the Supreme Court held that the Illegal Migrants (Determination by Tribunals) Act, 1983 was unconstitutional as it violated Article 355 of the Constitution, which

[6] 2005 (5) SCC 665.

mandates the Union to protect states from external aggression and internal disturbance. It is to be mentioned that in this case, the court had equated immigration with external aggression. The court found that the Act was ineffective in dealing with illegal immigration. The court observed that the IMDT Act placed the burden of proving citizenship on the complainant rather than the alleged immigrant, contrary to the Foreigners Act and thereby, the court struck down the IMDT Act and directed that illegal immigrants in Assam be dealt with under the Foreigners Act, 1946 applying uniform standards across India. All of the above boils down to the fact that criteria for citizenship for immigrants from the specified territory continue to be determined by Section 6A of the Citizenship Act and persons suspected to be immigrants from the specified territory post the 1971 stream will continue to proceed under the Foreigners Act and the rules made thereunder.

Immigrants, especially those originating from erstwhile East Bengal and their descendants (most of whom domiciled in Assam for generations), are often called upon to prove their citizenship before the Foreigners' Tribunal as and when the police suspect them and a reference is made against them. These tribunals are quasi-judicial, created by "The Foreigners (Tribunals) Order, 1964" and as per Section 9 of Foreigners Act, 1946, the burden of proof lies on the person suspected, *viz.,* proceedee. The proceedee, to establish her citizenship must prove that she has documents indicating her parents' domicile in Assam prior to 1971. In addition, she must also prove a link document to establish her linkage to her Indian ancestor. Although it seems pretty straightforward, there are underlying practical difficulties. In this system, it is the woman who often fails to prove her linkage with her parents. The affected population is mostly comprised of illiterate women who were married off before they could attain the age for voting. It is also to be understood in the context that it is only in 2006 that Prohibition of Child Marriage Act was enacted before which it was legal for woman to get married under the age of 18 under certain personal laws. Further, before 1989 the age for voting was 21 and not 18 as it is today. Therefore, these women neither have birth certificates (birth at home was very common until recently) , or educational testimonials (female literacy in Assam as of 2001 is 54%) nor do they have their names reflected in the voters' list along with their parents as their names appear for the first time in their matrimonial residence identifying them as 'wife of' thereby making it almost impossible to prove their linkage with their parents in strict terms of law. The Hon'ble Supreme Court dealt with similar issue that arose during the document verification process while updating the National Register of Citizens in Assam in the case of Rupajan Begum v. Union Of India[7] wherein the Hon'ble Court allowed 'Gram Panchayat Certificate' to prove their linkage to their parents thereby acknowledging the fact that women from

[7] (2018) 1 SCC 579.

rural Assam often lack conventional documents. This judgment at that time of NRC verification provided relief to rural women who often lacked other form of documents due to the aforementioned reasons. The sifting of the burden of proof which happened after the 2005 judgment has put undue burden on the proceedee. The Foriegners' Tribunal although quasi judicial in nature demand the documents to be proved as per the Indian Evidence Act. Documents like the gram panchayat certificates etc. are considered as provate documents and needs to be proved by the maker of the documents. The issue which arises here is that neither the tribunal is powerful enough to enforce the attendance of the witness not do the witness bother or have the means to appear before the tribunal which many times are far away.[8] These problems are compounded by the patriarchial practices of not giving share of ancestral property to the daughters as landed inheritance records or revenue paying receipts could have been evidence to prove linkage and customary practices like disassociation of a woman with her own family after marriage and her association or identity only with her husbands family has made her more vulnerable.[9]

In light of the above discussions, it is abundantly clear women especially from rural and marginalized backgrounds face barriers arising out of gender biases while trying to prove themselves as bonafide Indian citizens. Challenges unique to women, especially from rural background, are lack of birth certificates due to the prevalence of home birth, lack of marriage certificates due to child marriage, change of name after marriage due to the patriarchial system of society etc. which make it difficult for the women proceedee to prove her citizenship. This in turn is leading to a generation of stateless people who will in turn be subject to worst form of human rights violations without any legal recourse. Therefore, in fitness of things, the issue should be seen holistically as a human problem and not simply as a legal issue and only then there can be a solution for the ends of justice.

[8] Bidhayak Das, Women Worst Affected by Assam's NRC/ Indian citizenship tests, HL-SENTERET 1, 1-6 (2020).
[9] Ibid.

Reproductive Justice for Women with IDD in India: A Critical Analysis

Ms, Hameeda Begum Safavi[1]

Introduction:

In India, women with cognitive disabilities face numerous challenges due to their gender and impairment, including lack of identity, femininity, sexuality, and companionship. They are often denied the opportunity to become mothers and face obstacles in their lives such as menstrual hygiene training, sex education, marriage and reproduction, contraception, pregnancy planning, prenatal care, breastfeeding instruction, the mother's role, child safety, and permanent sterilization. Women with CDs also face obstacles while exercising their sexual rights, including privacy, bodily integrity, competence, consent, autonomy, and non-discrimination.[2]

The World Health Organization (WHO) defines disability as a multifaceted phenomenon that includes activity constraints, participation limits, and impairments. Young women and teenage girls with physical or mental challenges may find it difficult to access healthcare services, particularly reproductive health care.[3] According to World Health Organization guidelines, people with disabilities have primary unmet sexual and reproductive health needs and should be able to make informed decisions. However, poor health education has hampered progress toward this aim. Gynaecologists struggle to select medications to suppress menstruation in females with significant intellectual impairments. Women with intellectual impairments face double stigma and prejudice, both because of their condition and their gender. Raising awareness of CD women's human rights can help make those rights a reality.[4]

The rights to sexual orientation and reproduction are essential human rights that are safeguarded by legislation and treaties at national, regional, and global levels. However, discussions around the United Nations Convention on the Rights of Persons with Disabilities (CRPD) demonstrate how sensitive these topics remain. Member states must ensure the full enjoyment of women's sexual and reproductive wellbeing and human rights, including entrée to safe and legal abortion care and modern contraception.[5]

This article covered numerous issues in puberty and pregnancy, as well as reproductive justice for women with cognitive limitations.

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[1] **Ph.D Sholar, Glgotias Univesity, hamida.safavi@gmail.com**

[2] Violation of Sexual and Reproductive Health Rights (SRHR): Where are the Women with Disabilities, Violation of Sexual and Reproductive Health Rights (SRHR): Where are the Women with Disabilities?

[3] Disability and Health Overview, https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html.

[4]Promoting sexual and reproductive health for persons withdisabilities,https://www.unfpa.org/sites/default/files/pub-pdf/srh_for_disabilities.pdf.

[5] Convention on the Rights of Persons with Disabilities (CRPD), https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd

Different Obstacles IDD Women Face during Reproduction:

1. Women with disabilities face barriers to accessing reproductive health care, including inaccessible facilities and resources, unaccommodating physical infrastructure, and inadequate equipment. These barriers can be exacerbated by federal laws shielding the rights of people with disabilities and preventing discrimination. Additionally, accessible transportation, particularly in rural areas, is a significant challenge, as lack of infrastructure and limited public transit systems make it difficult for disabled individuals to access healthcare services.[6]
2. The text emphasizes the need for improved accessibility of health systems, facilities, and services for women with Cognitive Disabilities, including public health education, domestic violence shelters, drug and alcohol intervention programs, home-based care, community outreach, health worker training, and reproductive services.
3. The article addresses sexual education and empowerment for IDD sufferers. Before the 1970s, women with CD resided in institutions and received medical care only from physicians. However, the transition from institutionalization to community living has favourably influenced CD's behaviour and quality of life. Currently, most women with CD get primary care in the community, but primary care education may not have kept up with this cultural transition. Primary care practitioners should be exposed to women with CD and include it in medical education.
4. Sex education is crucial for individuals with Chronic Disease (CD) as they may lack knowledge about sexuality and health. Successful education includes gender differences, safer sex, basic reproductive physiology, and communication about intimacy and sexuality. It helps women identify and report abuses and is essential for practical planning and decision-making abilities.[7]
5. Women with intellectual disability face challenges in procreation and motherhood rights, often forced to undergo hysterectomy in state-run shelter homes. They struggle with understanding physiological changes, risking sexual exploitation, unplanned pregnancy, and medical termination. Training in menstrual hygiene is also challenging.[8]

[6] Barriers in access to healthcare for women with disabilities: a systematic review in qualitative studies, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7847569/.

[7] The Importance of Access to Comprehensive Sex Education, https://www.aap.org/en/patient-care/adolescent-sexual-health/equitable-access-to-sexual-and-reproductive-health-care-for-all-youth/the-importance-of-access-to-comprehensive-sex-education/.

[8] Reproductive rights of women with intellectual disability in India, https://ijme.in/wp-content/uploads/2022/07/Reproductive-rights_53.pdf.

6. Women with cognitive impairments often face limited reproductive healthcare access, with Medicaid being a crucial insurance source. They require precise disability information for abortion services, contraceptives, and health insurance.[9]

Capacity to give consent:

1. Capacity to consent refers to an individual's ability to give informed consent for medical procedures. It involves understanding the procedure, its consequences, and the decision-making process. Mental health professionals must assess this capacity through the status, outcome, or functional approaches. The RPwD Act does not explicitly address the capacity to consent, but the MHCA defines it as consent given without force, undue influence, fraud, threat, mistake, or misrepresentation. Assessing capacity to consent can result in finding capacity present, capacity doubtful, or capacity absent.[10]
2. The capacity to give consent assessment for women with cognitive disability through psychiatrists who empower them through training to achieve the required level of capacity. The assessment process includes referral documentation, clinical status evaluation, and formal Intelligence Quotient assessment. If a woman with a cognitive disability can consent, a certificate can be prepared, and inpatient care can be considered for further evaluation. Psychiatrists must understand Article 12 of UNCRPD to guarantee equal recognition for persons with disabilities. Supporting the right to reproduction includes appropriate consent for caesarean delivery, breastfeeding training, and new mother roles.
3. Caregivers play a crucial role in education and post-delivery support. CDs may struggle with basic childcare knowledge and inconsistent interactions, making it difficult to provide an age-appropriate environment. Prenatal education is essential for infant care, and post-delivery interventions should focus on more straightforward activities. Positive reinforcement and training in handling crying babies can be helpful for these mothers.[11]
4. Women with intellectual disabilities often struggle with managing menstrual hygiene due to their understanding and mental development. Education should be tailored to the girl's understanding and explain hygiene issues clearly. Support from caregivers

[9] Challenges in Providing Reproductive and Gynecologic Care to Women With Intellectual Disabilities: A Review of Existing Literature, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9287117/.

[10] Consent in psychiatry - concept, application & implications,https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7055160/.

[11] Supporting Caregivers in Pregnancy: A Qualitative Study of Their Activities and Roles,https://journals.sagepub.com/doi/10.1177/2374373518785570.

and healthcare professionals can be helpful. Therapeutic interventions include DMPA, OCs, GnRH analogues, oral progesterone, and surgical options like implantation, tubal sterilization, and hysterectomy. Hormone replacement therapy may be effective but may have side effects. Education about puberty and menstruation can enhance knowledge, communication, and confidence, improving self-esteem and self-confidence.[12]

5. Supporting the right to reproduction among Women with Indigenous Pregnancies (WID) involves consent, breastfeeding training, and new mother responsibilities. Obstetricians may suggest delivery but are not legally responsible for refusals.

Reproductive Justice for IDD women:

Women have the right to make decisions about their children, maintain high standards of sexual and reproductive health, and make reproductive decisions without discrimination or violence. They also have the right to equality in reproductive choices, including marriage and sexual and reproductive security. They also have the right to safe and affordable family planning, safe motherhood, and the right to survive pregnancy. These rights should be the foundation for government and community-based policies.

Every individual has the right to control their sexuality and reproduction without discrimination, coercion, or violence, as well as access to a wide range of facilities, services, commodities, and information. These services include contraceptive counselling, education, prenatal care, safe delivery, post-natal care, infertility prevention, safe abortion services, HIV/AIDS prevention, as well as sexual and reproductive health information, education, and counselling.[13] A few of the rights discussed as below:

- The UNCRPD lacks a dedicated provision on reproductive rights and marginally addresses it in terms of health and respect for home and family provisions. Article 25 requires States Parties to deliver persons with incapacities with the similar range, value, and standard of free or reasonable healthcare and programs as other persons, including in sexual and reproductive health and population-based public health programmes. The right of persons with disabilities to access reproductive and family planning education and decide freely and

[12] Menstrual issues for women with intellectual disability,https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4917628/.
[13] Sexual and reproductive health and rights, https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights.

correctly about the number and spacing of children is recognized in Article 23(1)(b), UNCPRD.[14]

- The Special Rapporteur's report on the rights of persons with disabilities on sexual and reproductive health and girls and young women with disabilities outlines reproductive rights, including the right to control sexuality and reproduction decisions without discrimination, coercion, and violence, and access to various health facilities, services, goods, and information..[15]
- Sexual and reproductive health services include contraceptive counselling, information, education, communication, and services; education and services for prenatal care, safe delivery, and post-natal care; the prevention and appropriate treatment of infertility; safe abortion services; the prevention and treatment of sexually transmitted and reproductive tract infections; and sexual and reproductive health information, education, and counselling.[16]
- The UNCRPD does not have a dedicated provision on reproductive rights and marginally addresses it in provisions related to health and respect for home and the family. Article 25 requires States Parties to provide persons with disabilities with the same range, quality, and standard of accessible or affordable health care and programs as other persons, including in sexual and reproductive health and population-based public health programs.[17]
- The Committee on Reproductive and Family Planning (CRPD) has adopted a protectionist and medical view of sexual and reproductive rights, focusing on violence and force and restrictive solutions such as sex education and medical information. This view is based on an analysis of 40 concluding observations by the CRPD.[18]
- The Committee on RPD (CRPD) has a protectionist and medical view of sexual and reproductive rights, focusing on violence and force. Based on 40 observations, it has

[14] Department of Economic and Social Affairs Disability, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-25-health.html.

[15] Forms and Manifestations of SRHR Violations against Women & Girls with Disabilities, https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Facts%20-%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf.

[16] Forms and Manifestations of SRHR Violations against Women & Girls with Disabilities, https://womenenabled.org/wp-content/uploads/Women%20Enabled%20International%20Facts%20-%20Sexual%20and%20Reproductive%20Health%20and%20Rights%20of%20Women%20and%20Girls%20with%20Disabilities%20-%20ENGLISH%20-%20FINAL.pdf.

[17] Convention on the Rights of Persons with Disabilities, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

[18] The Committee on the Rights of Persons with Disabilities and its take on sexuality, https://www.tandfonline.com/doi/full/10.1080/09688080.2017.1332449.

endorsed prejudices equated with disability, failing to acknowledge the experiences of persons with disabilities with different sexual orientations and gender identities.[19]

- Reproductive rights are intertwined with the right to exercise legal capacity and protection from violence, particularly in the context of bearing and raising children. Article 23(1)(c) of the UNCRPD emphasizes that persons with disabilities (PWDs) retain their fertility on an equal basis with others but does not make any reference to forced sterilizations. The Committee on the Rights of Persons with Disabilities observed the pervasive violation of the right to legal capacity of women with psychosocial or intellectual disabilities. Forced contraception and sterilization can result in sexual violence without the significance of pregnancy, especially for women with cognitive or intellectual disabilities, women in psychiatric or other institutions, and women in custody. Section 10(2) of the RPD Act protects PWDs from being subjected to medical procedures leading to infertility without their informed consent. Despite the rampant violation of reproductive rights, the irreversible effects of forced sterilization are not proportionate to the gross violation of bodily integrity and human dignity.[20]
- The MH Act prohibits the sterilization of men or women for mental illness treatment. First, infringement can result in fines of Rs 10,000 or both, and subsequent violations can result in penalties of Rs 50,000 or both. This provision is restrictive as sterilization may be carried out for convenience and non-medicinal reasons.
- The CRPD has been chastised for its narrow focus on health problems and failure to consider the experiences of people with disabilities of every sexuality and gender identity. The RPD Act, in particular, has been attacked for its lack of concern for the rights of people with disabilities and the potential for forced sterilizations and abortions to breach the provision of 'equal protection before the law' as written forth in the MH Act.
- The Mental Health Act (MH Act) does not separately recognize the vulnerability of women with mental illness to violence. Section 20(2)(k) provides the right of a person with mental illness living in a mental health establishment to be protected from all forms of physical, verbal, emotional, and sexual abuse.[21]

[19] The Committee on the Rights of Persons with Disabilities and its take on sexuality, https://www.researchgate.net/publication/317146920_The_Committee_on_the_Rights_of_Persons_with_Disabilities_and_its_take_on_sexuality.

[20] RIGHTS OF WOMEN WITH DISABILITIES UNDER INDIAN LEGISLATIONS, http://docs.manupatra.in/newsline/articles/Upload/7102F404-0902-4EEC-BA55-F8EFC25DA6D4.pdf.

[21] Ibid

- The Indian Supreme Court (SC) has issued a decision on abortion for all women, confirming reproductive rights for women and people of all gender identities. The verdict relies on progressive government efforts to acknowledge Indian women's physical and reproductive autonomy, beginning with the legality of abortions under the MTP Act of 1971. The amendment increased the abortion time restriction from 20 to 24 weeks and included new categories of women eligible for abortions, such as rape survivors and people with disabilities.[22]
- Violations of reproductive rights disproportionately affect women because of their ability to get pregnant, and legal protection of these rights as human rights is crucial to achieving gender justice and women's equality. Many of these same rights are recognized as fundamental rights by the Indian Constitution, including the right to equality and non-discrimination (Articles 14 and 15) and the right to life (Article 21), which is understood through jurisprudence to include the rights to health, dignity, freedom from torture and ill-treatment, and privacy.[23]

Reproductive Rights, Case Study:

Reproductive rights are crucial for human rights, encompassing health, life, equality, non-discrimination, privacy, and information. India's Constitution recognizes these rights as fundamental rights, and the government has a constitutional obligation to uphold them. India is a signatory to international conventions and has a constitutional obligation to ensure legal remedies for violations of these rights.[24]

In 2017, the Supreme Court of India consistently declared privacy as a fundamental right under the Constitution, recognizing it as an inalienable right rooted in values like dignity. Privacy encompasses personal autonomy related to the body, mind, choices, and informational privacy. Reproductive rights, as recognized by the 1994 UNPIN, are vital to this autonomy. These rights include access to contraception, legal and safe abortion, the right to make decisions about reproduction free of discrimination, coercion, and violence, the right not to be subjected to harmful practices, and equal entitlement of disabled and LGBTQ persons to the same sexual and reproductive health services as all other groups.[25]

The Supreme Court has made significant progress in women's reproductive rights:

[22] Equality and individual autonomy in reproductive rights: India shows the way, https://india.unfpa.org/en/news/equality-and-individual-autonomy-reproductive-rights-india-shows-way.

[23] https://www.unwomen.org/en/news-stories/statement/2022/06/statement-reproductive-rights-are-womens-rights-and-human-rights

[24] Reproductive Rights for Women in India, https://www.legalserviceindia.com/legal/article-3372-reproductive-rights-for-women-in-india.html#google_vignette.

[25] A Womb of One's Own: Privacy and Reproductive Rights, https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights.

The Puttaswamy judgment recognized women's constitutional right to make reproductive choices as part of personal liberty under Article 21 of the Indian Constitution. The Puttaswamy judgment acknowledged the constitutional right of women to make reproductive choices as part of personal liberty under Article 21 of the Indian Constitution. This decision was based on the three-judge bench's position in Suchita Srivastava v Chandigarh Administration (2009). It emphasized reproductive rights as part of a woman's right to privacy, dignity, and bodily integrity, including carrying a pregnancy to its full term. [26]

The Suchita Srivastava case arose in the context of the Medical Termination of Pregnancy Act, 1971 (MTP Act), which governs abortions in India. Enacted two years before the landmark judgment of the US Supreme Court in Roe v Wade (1973), the MTP Act allows for legal abortions only if certain conditions are met. Under Section 3, only registered medical practitioners can terminate a woman's pregnancy if they believe in good faith that continuing the pregnancy would involve a risk to the woman's life or gravely injure her physical or mental health or that physical or mental abnormality would seriously handicap the child. If the woman has been pregnant for under 12 weeks, permission from one medical practitioner is required. If the pregnancy is between 12 and 20 weeks, the authorization of two medical practitioners is mandatory. Beyond 20 weeks, Section 5 of the act applies, which permits abortion only in situations where the medical practitioner believes that abortion is immediately necessary to save the woman's life.[27]

The act places these restrictions to balance a woman's right to privacy against the state's legitimate interest in protecting the woman's health, as well as the potentiality of human life. Another commonly-advanced justification is that restricting abortions is necessary to prevent sex-selective abortions. However, the 46-year-old act has met rising opposition over the years for its restrictive nature and failure to keep up with technological advancements in medicine. The privacy judgment significantly strengthens calls for reform, opening further avenues for Sections 3 and 5 to be challenged.[28]

The Independent Thought v. Union of India case highlighted the human rights of girls, regardless of marriage. These judgments have a significant impact on women's sexual and reproductive rights, including the right to safe abortion, which is essential for their right to bodily integrity, life, and equality[29].

Conclusion:

[26] ibid
[27] ibid
[28] supra
[29] supra

Reproductive justice for women with cognitive disabilities requires a comprehensive analysis that considers the interconnected factors of disability, gender, and reproductive rights. This includes an intersectional perspective, which acknowledges the interplay of disability, gender, race, and socioeconomic status in their experiences. A rights-based approach is essential, emphasizing autonomy, dignity, and self-determination. Women with cognitive disabilities face numerous challenges, such as limited access to information, social stigma, and healthcare barriers, which are further complicated by systemic inequalities and ableism.[30]

Intersectional advocacy efforts should adopt an intersectional approach, focusing on diverse individuals' unique needs and experiences. This includes incorporating women's voices in policy-making and advocacy initiatives. Policy and practice initiatives should remove structural barriers and promote inclusive, accessible, and rights-affirming approaches to reproductive healthcare and decision-making. This may involve implementing legal protections, providing comprehensive sexuality education, ensuring access to healthcare services, and fostering supportive environments that respect women's autonomy and agency.

Ethical considerations are crucial in discussions of reproductive justice for women with cognitive disabilities. Upholding principles of dignity, autonomy, and respect for individual choices while recognizing safeguards against exploitation, coercion, and harm is essential. Achieving reproductive justice for women with cognitive disabilities requires a nuanced understanding of their experiences, needs, and rights and a commitment to addressing systemic inequalities.

[30] Reproductive Rights, Reproductive Justice: Redefining Challenges to Create Optimal Health for All Women, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9930478/.

Rights of Transgender Individuals and their Implications

Ms. Sunita Kumari Choudhary[1]
Ms. Vaishnavi[2]

Introduction

Transgender is a broad term that can be used to describe people whose gender identity is different from the gender they were thought to be when they were born. “Trans” is often used as shorthand for transgender. To treat a transgender person with respect, you treat them according to their gender identity, not their sex at birth. So, someone who lives as a woman today is called a transgender woman and should be referred to as “she” and “her.” A transgender man lives as a man today and should be referred to as ”he” and ”him. Transgender people are also one among us, they are also people who have same dreams, goals as us but sometimes they might not succeed it because of the discrimination they go through. Transgenders have a gender identity that doesn’t match the sex they were assigned at birth, and they may choose to express or live in the gender that feels right for them. Just like anyone else, they can be doctors, teachers, artists, parents, or anything else. Approaching transgender identities with compassion without judgement or prejudice is the actual change in our society, but this does not happen in most of the cities, areas, or places Often, the Transgender individuals face discrimination and barriers to get equal rights, such as challenges in educating sectors, healthcare, promoting them, Advocating for the Transgender rights etc.

In this paper, we will critically examine the social, physical Discrimination the transgenders face. Whether are they getting equal rights as an Equal Individuals of India. What are systematic changes that have been made in favour of them and what are unfavourable to them. and why there is no any kind of progress in their development after NALSA Judgement. and what are the remedies for it.

In preparing this article we accessed academic papers, as well as documentation published by international agencies, governments and associated institutions, and community, based organisations. Our search strategy made use of various data bases, including Google and Google Scholar databases, J store, etc

Discrimination that Transgenders Face

Transgenders around the world are subjected to levels of violence and discrimination that offend the human conscience: they are caught in a spiral of exclusion and marginalisation: often bullied at school, rejected by their family, pushed out onto the streets, and denied access to employment. when they are persons of colour, belong to ethnic minorities or are migrants, living with HIV, or sex workers, they are particularly at risk of violence, including of killing, beatings, mutilation, rape and

[1] **Student at School of Law, Dayananda Sagar University.**
[2] **Student at School of Law, Dayananda Sagar University.**

other forms of abuse and maltreatment and in order to practice their right to recognition before the law, trans persons are often victim to violence in health-care settings such as forced psychiatric evaluations, unwanted surgeries, sterilization or other coercive medical procedures, often justified by discriminatory medical classifications.

Trans individuals are particularly vulnerable to human rights violations when their name and sex details in official documents do not match their gender identity or expression. Today, however, the vast majority of trans and gender-diverse persons in the world do not have access to gender recognition by the State. At the root of the acts of violence and discrimination lies the intent to punish based on preconceived notions of what the victim's gender identity should be, with a binary understanding of what constitutes a male and a female, or the masculine and the feminine. These acts are invariably the manifestation of deeply entrenched stigma and prejudice, irrational hatred and a form of gender-based violence, driven by an intention to punish those seen as defying gender norms. For years, mental health diagnoses have been misused to pathologize identities and other diversities.

In 2017, the UN Special Rapporteur on the right to health stated that reducing trans identities to diseases aggravated stigma and discrimination. In 2019, the World Health Assembly adopted the eleventh revision of the International Classification of Diseases (ICD-11), which removed trans-related categories from the chapter on mental and behavioural disorders. The revision de-pathologizes trans identities and is considered an important step forward to ensure trans persons can live free from violence and discrimination It is important to note that for a long time, pathologization has had a deep impact on public policy, legislation and jurisprudence, thus permeating in all realms of State action around the world and the collective conscience. Eradicating the conception of some forms of gender as a pathology from everyday life will be a longer process that will require further measures to that end.[3]

Judgement which evolved the rights of Transgender Communities

Facts of the Case

The case concerns legal gender recognition of transgender people, and whether the lack of legal measures to cater for the needs of persons not identifying clearly as male or female contradicts the Constitution. Pre-existing Indian law only recognised the binary genders of male and female, and lacked any provision with regard to the rights of transgender people, which advocates in India have also defined as "third gender". The gender of a person has been assigned at birth and would

[3] http://student.manupatra.com/
National legal service Authority v Union of India, (2014) 5 SCC 438
https://antidiscrimination.nsw.gov.au/discrimination/types-of-discrimination/transgender-discrimination.html

determine his or her rights in relation to marriage, adoption, inheritance, succession, taxation and welfare. Due to the absence of legislation protecting transgender people, the community faced discrimination in various areas of life.

ISSUES:

The Court had to decide whether persons who fall outside the male/female gender binary can be legally recognised as "third gender" persons. It deliberated on whether disregarding non-binary gender identities is a breach of fundamental rights guaranteed by the Constitution of India. It referred to an "Expert Committee on Issues Relating to Transgender" constituted under the Ministry of Social Justice and Empowerment to develop its judgement.

Judgement:

The court was constituted of two judges. The leading judgment was given by Judge K.S. Radhakrishnan, whose judgment was endorsed by Judge A.K. Sikri. The Court declared that numerous steps were necessary in order for centre and state governments to comply with the constitutional rights to life, equality before the law, non-discrimination and freedom of expression. In reaching its decision, the Court stated that gender identity is an integral part of the personality and one of the most basic aspects of self-determination, dignity and freedom. Thus, no one can be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy as a requirement for legal recognition of their gender identity.

Psychological gender is to be given priority over biological sex. The Court held that the right to choose one's gender identity is integral to the right to lead a life with dignity and therefore falls within the scope of the right to life **(Article 21).** Safeguarding the rights of transgender people was especially called for due to the increasing universal recognition and acceptance of transgender issues. The Court noted that Article 21 has been broadly interpreted to include all aspects that make a person's life meaningful. It protects the dignity of human life, personal autonomy and privacy. As recognition of one's gender identity lies at the heart of the right to dignity and freedom, it must be protected under Article 21 of the Constitution.

With regard to the right to equality before the law **(Article 14)**, the Court recalled that the state shall not deny "any person" equality before the law or equal protection of the laws. Article 14, in ensuring equal protection, imposes a positive obligation on the state "to ensure equal protection of laws by bringing in necessary social and economic changes". Article 14 is a right enjoyed by "any person", transgender people are entitled to equal legal protection of the law in all spheres, including employment, health care, education and civil rights. Discrimination on the grounds of sexual orientation and gender identity impairs equality before the law and equal protection of the law and violates **Article 14, Articles 15 and 16** prohibit discrimination in certain areas based on a list of

grounds, including sex. The reference to "sex" is to be understood as prohibiting all forms of gender bias against transgender people.

Furthermore, Article 15 includes a requirement to take affirmative action for the advancement of socially and educationally disadvantaged groups. The Court notes that transgender persons have not been afforded special provisions as envisaged under Article 15(4) for the advancement of the socially and educationally backward. They constitute such a group and the state is bound to take some affirmative action to remedy the injustice done to them for centuries.

In addition, the Court stated that expressing one's gender identity through words, dress, action or behaviour is included in the right to freedom of expression **(Article 19)**. Privacy, self-identity, autonomy and personal integrity are fundamental rights protected by Article 19. As gender identity lies at the core of one's personal identity, gender expression and presentation, it has to be protected under Article 19(1)(a) of the Constitution. Often the state and its authorities, either due to ignorance or otherwise, fail to digest the innate character and identity of transgender persons, which it must do in order to realise their Article 19 rights. On these bases, the Court upheld transgender persons' right to self-identify their gender. The Court declared that the Centre and State governments must grant legal recognition of gender identity as male, female or third gender.

After the NALSA Judgement

On a daily basis, starting from a young age, the transgender and the non-binary community are forced to face systematic discrimination and prejudice based on their gender or sexual orientation in different spheres of life. Thus, to create a high degree of awareness including promoting their livelihood and cultural rights and advocating the struggles of the community, March 31 is marked as the International Transgender Day of Visibility.

Even though, legally, India has accepted the transgender community as the "third gender" and given them legal recognition through the (NALSA v Union of India), the rights guaranteed to them still remain on paper. Through the said judgment, the courts had, for the first time, held that transgender persons have the right to self-identify their gender identity as male, female or a transgender person, and also recognised that they had been discriminated historically and excluded from mainstream life. The Supreme Court had then recommended that transgender persons should be provided reservations in public employment and education. It is the year 2024 now, and this direction of the Supreme Court is yet to be implemented at all.

"Has the government and the judiciary failed to respect transgender person's rights and added to their struggles and marginalisation"

1. Lack of Reservation for Transgender community:

On March 27, 2023, the Supreme Court declined to consider a petition that sought clarification regarding the provision of reservations for transgender individuals. The petitioner requested that the Court specify that the reservations designated for transgender persons, as established in the 2014 NALSA ruling, should be interpreted as horizontal reservations rather than vertical reservations.

The bench, presided over by Chief Justice of India DY Chandrachud, expressed concerns regarding the consideration of the application in a case that had already been resolved. Nevertheless, the bench permitted the applicant to explore alternative legal avenues, such as submitting a separate substantive petition, to seek the desired relief. Grace Banu, a prominent advocate for transgender rights, was the one who filed the application. Senior Advocate Jayna Kothari represented the applicant. In the application, it was noted that the Supreme Court, in the NALSA judgment, had instructed both the Union and the States to recognize transgender individuals as a socially and educationally backward class, ensuring they receive special provisions in education and public employment.

The Court, however, did not specify how the reservation should be implemented. As a result, according to the applicant, many states have yet to implement such reservations. According to the applicant, the NALSA decision gives the impression that transgender persons will be treated as OBCs, and thus their reservation will be vertical. If the reservation for transgender persons is treated as a vertical reservation, several issues will arise, which were also pointed out by the applicant in the application and is as follows: Because transgender persons will be granted vertical reservation, they will have to choose between SC/ST and OBC quotas. If such individuals choose SC/ST quota, they will forfeit the benefit of transgender quota and will be forced to compete with others in the SC/ST category, putting them at a disadvantage. However, if such people are already in the OBC category, they will not be eligible for affirmative action as transgender person. The application had also highlighted that the Ministry of Social Justice moved a cabinet note in September 2021 to include transgender persons in OBC category. Even after this, the Supreme Court bench refused to entertain the plea. It is pertinent to highlight here that in the year 2021, **Karnataka became the first state, and till now the only state, where the transgender community have been given horizontal reservation to the extent of 1%.**

Horizontal reservation in the state of Karnataka: In September 2021, the Karnataka State Government became the first state to provide 1% reservation for transgender persons in civil service jobs across caste categories. On August 18, 2021, the Karnataka High Court had also issued orders for the government to consider issuing an advisory to all state public corporations and statutory bodies to make similar reservations. This decision came as a result of an intervention filed by Jeeva, an organisation dedicated to the rights of transgender persons and sexual minorities, in the case of

Sangam v State of Karnataka, This case began with a challenge to a **notification for recruitment to the State Police, which called for men and women to fill positions and did not include a 'transgender' category.** During the course of this litigation, the State Government stated that it was in the process of granting reservations to transgender persons in the Other Backward Classes category. Instead, Jeeva intervened and asked for horizontal reservations across castes. The State Government then issued an amendment allowing for horizontal reservations. According to the new Rule 9(1D) inserted by the Karnataka Civil Services (General Recruitment) (Amendment) Rules, 2021, **transgender persons will be given 1% reservation in civil service posts** filled through direct recruitment. The **reservations** will be **1%** in each of the categories of posts: "**General Merit, Scheduled Castes, and Scheduled Tribes and in each category among Other Backward Classes. This reservation applies to posts from any Group**

Along with male and female gender categories, the 2021 Amendment requires an "Others" category. It also prohibits the Appointing Authority from discriminating against transgender persons in selection. With this amendment, the state of Karnataka became the first state to provide for reservations in public employment. It is worth noting that this amendment provides for horizontal reservations rather than vertical reservations. This means that reservations will be guaranteed across caste categories, and no one group will be able to dominate reservations for transgender persons.

Importance of horizontal reservation: Horizontal reservations would cut across all caste categories. It would allow for separate reservations within each vertical SC/ST/OBC/General category. Transgender persons would be given 1% of ST, SC, OBC, and General Merit seats. Currently, reservation for women and people with disabilities works in this way. This means that they provide separate reservations to transgender communities in addition to the SC/ST/OBC category. The idea of implementing horizontal reservations fosters greater equality and uniformity in society, which is why it is supported by a large segment of the population.

Discriminatory policies barring blood donation:

In March 2023, the Union government defended its guidelines on permanently prohibiting transgender community, female sex workers, and gay men from donating blood, claiming that scientific evidence clearly shows that they are globally recognised as population groups with a higher prevalence of HIV (human immunodeficiency virus) and other transfusion-transmitted infections. (TTIs). The Union Ministry of Health and Family Welfare filed an affidavit to that effect in response to a notice issued by the Supreme Court in March 2021. Santa Khurai, a transgender community member, had filed a petition in this case, claiming that the exclusion of transgender persons, gay men, and female sex workers from being blood donors and permanently prohibiting them from donating blood solely on the basis of their gender identity and sexual orientation was

entirely unjust, irrational and prejudiced, as well as unscientific. The petition, filed through Advocate-on-Record Anindita Pujari, claimed that such a classification was based on negative stereotypes, and should be held to be a violation of Articles 14 and 15 of the Constitution. In its response defending the exclusion, the government argued that the issues raised by the petitioner are within the purview of the executive, who are aided by medical, scientific, and other technical experts, who are guided by evidence as well as their own professional experience. Thus, according to the reply, such issues raised should be judged through the lens of public health, not just individual rights, taking into account the practical realities of unequal a treatment. According to the affidavit, those considered "at risk" for HIV and Hepatitis B or C infection are exempt from the guidelines. In this category of individuals, certain population groups have been specifically included.

3. Lack of protection under criminal laws:

Following the NALSA decision, further steps in the form of decisive legislative action were required to ensure adherence to constitutional principles. To achieve this, a comprehensive statute based on the aforementioned principles and providing equality of status **received the assent of the President of India**, and came into force and became the governing law relating to transgender women in India. The **Transgender Persons (Protection of Rights) Act, 2019 has several long-term impacts** on transgender individuals in India:

- Legal Recognition: The Act provides formal recognition of transgender identities, which can foster a sense of belonging and legitimacy within society, although it still requires certification from authorities, undermining self-identification rights.
- Access to Services: It aims to improve access to healthcare, education, and employment by prohibiting discrimination. However, practical implementation remains inadequate, leading to persistent marginalization and barriers in accessing these services.
- Social Stigma and Violence: Despite legal protections, many transgender individuals continue to face societal stigma, violence, and discrimination. The Act's provisions against harassment are often seen as insufficient compared to protections for cisgender individuals.
- Economic Challenges: The criminalization of begging without providing alternative livelihoods exacerbates economic insecurity for many in the community, who often rely on this form of income.
- Healthcare Access: While the Act includes healthcare provisions, including gender-affirming surgeries, systemic barriers and lack of trained healthcare providers hinder effective access to these services.[4]

[4] Transgender Persons (Protection of Rights) Act, 2019.

Overall, while the Act represents progress in legal recognition, its effectiveness is hampered by inadequate implementation and ongoing societal challenges. However, it fell far short of the expectations that were set for it and added to the already existing issues in India's socio-legal sphere. There had hardly been a conscious effort in the six or so years since the pronouncement to grant the long-overdue fair treatment, and then the 2019 Act also failed to bind together these unresolved problems, and is still failing. It is the year 2023, 9 years after the NALSA decision and 4 years since the adoption of the 2019 Act, and transgender women have yet to achieve the right to equality before the law and equal protection under the law. The punishments and provisions provided by the 2019 Act are unfair and unjust because they do not provide transgender women with the same legal protection as cis-gender women under various penal laws, such as the Indian Penal Code. **Section 18 of the 2019 Act states that anyone who harms, injures, or endangers the life, safety, health, or well-being of a transgender person, whether physically, mentally, or emotionally, will face a minimum of six months in prison, which may extend to two years, and a fine.** Even if the degree of cruelty is identical in both cases, **the punishment provided by the Act is less severe than the punitive sanction provided by section 498A of the IPC**.

As a result, any act of violence or abuse committed against a transgender woman will have less significance and lower weight associated with it in the eyes of the law than any act of crime committed against trans-women. It is clear that within the circles of marginalization, transgender women face two levels of discrimination based on their gender identity, first as a woman and then as a transgender woman. Even with the internalization of such prejudice and institutionalized discrimination, victims from the community face numerous roadblocks to access to justice. Furthermore, section 5 of the Act requires transgender persons to obtain a certificate of identity from the District Magistrate after going through a legally arduous procedure, thereby undermining the right to self-perceived gender identity specified under section 4 of the said Act. Thus, section 5 gives provides for the issuance of certification based on detailed examination. This section also contradicts the spirit and directions of self-determination without medical intervention outlined in the NALSA decision. Thus, attempts to dilute the NALSA judgment has resulted in further oppressing the already ignored, oppressed and marginalised.

Recent Small Victories for the transgender community

In March 2023, in the case of **Jasmine Kaur Chabbra v UOI** the Delhi High Court directed the Delhi government to ensure that public toilets for transgender persons are constructed in the national capital within eight weeks, failing which it will direct personal appearance of top officials. The bench also took note of the response filed by the New Delhi Municipal Council (NDMC) and said that while the affidavit indicates existence of paper work, the ground reality is that nothing has been

done in the matter. This decision was given by the High Court while hearing a public interest litigation filed by Jasmine Kaur Chhabra through Advocate Rupinder Pal Singh. The plea sought directions for necessary action in compliance of Swacch Bharat Mission guidelines dated October 15, 2017, specifying the need to make separate toilets for transgender community.

Directions were also sought by the court for maintaining hygiene of public washrooms so that the rights of transgender community are protected in terms of the NALSA judgment. It was stated in the plea that every human being, irrespective of the gender, has basic human rights including use of separate public toilets, the plea submits that not providing such facilities to transgender or third gender persons violates Article 14 and 21. In January 2023, the National Council of Education Research and Training (NCERT) informed the Madras High Court that it has notified a gender inclusive draft manual, and that suggestions, recommendations and ideas from the relevant stakeholders were welcome. The submission was made before Justice Anand Venkatesh's bench, which has been issuing a series of directives in an effort to remove the stigma associated with the LGBTQ community and to ensure the welfare of its members. NCERT also informed the court that the draft manual titled "Integrating Transgender Concerns in Schooling Processes" aims to make schools more inclusive by creating awareness and safe spaces. It was further stated that this manual included, among other things, gender-inclusive curriculum, gender-neutral uniforms, secure restrooms, washrooms, and steps to prevent gender-based violence." However, this was removed in response, to concerns raised by the National Commission for the Protection of Child Rights. Even here we could see that it was moving In-favour of Transgenders, later it became Un-favourable to them. It is not Static that this will surely be done for Transgenders.[5]

Conclusion

While official and legal recognition for the transgender community as a separate gender category has broken the impregnable wall of ignorance and discrimination that had existed before, India still has a long way to go before the long-oppressed minority gender is finally considered "equal." Even five years after the Transgender Persons (Protection of Rights) Act of 2019, the ground reality has not changed by much. The Transgender community continue to be marginalised and are frequently forced to conceal their gender identity in public. While the community is fighting this oppression and is willing to engage in the long fight, it is critical that the judiciary and government support the community members rather than remaining silent, blind and ignorant. The government and the judiciary must collaborate to turn the wheels of this regressive society into one that is forward-

[5] https://sabrangindia.in/article/9-years-passing-nalsa-judgment-has-cycle-discrimination-and-ostracism-finally-been-broken/
https://en.m.wikipedia.org/wiki/Transgender_Persons_(Protection_of_Rights)_Act,_2019?utm_

thinking and grants acceptance to every individual. Because the dynamism of law is rooted in its ability to reflect socio-cultural changes, there is an urgent need to gradually interpret and amend penal codes in order to ensure true inclusivity for transgender persons.

The union and state government need to do better by the transgender community by providing them the required attention and support. For every basic right, the transgender community have had to start a discourse, flood the courts with petitions, and even then, most of the time, the battles take too long to yield positive results. Today, the structural failure of all three branches of the Indian State (legislature, judiciary, and executive) in treating transgender persons as equal citizens in this plural democracy is reflective in the state of the transgender community. While these recent small developments and victories, though late, provide a beacon of hope to the transgender community and give a forward push to achievement of transgender rights however, without granting them the legal capacity to enjoy their socioeconomic rights, the systematic marginalisation associated with their status will continue indefinitely. It is critical that we move away from being a system that fails to recognise the vulnerable conditions of many transgender persons, who exist in a perpetual state of helplessness and powerlessness, providing them ad-hoc protection and work toward mainstreaming transgender community's rights, welfare, protection and well-being.

HUMAN RIGHTS AND LABOUR RIGHTS

Stency Mariya Mark[1]

I. UNORGANISED LABOURERS HAVE BECOME THE NEW "LIVING DEAD"

"The greatest nations are defined by how they treat their weakest inhabitants." -Jorge Ramos[2]

Indian labour laws can be traced back to the colonial era of British rule. It was adopted predominantly to shield British employers' interests and concerns.[3] The extensive use of labourers lacking contractual agreements and recourse to social security has proven to wreak havoc on India's labour markets.[4] Labourers were British troops' slaves during the colonial era, and ironically, the exploitation equation hasn't changed even after independence. The oppressors are now the megalomaniac industries that practice modern slavery. The bottom feeders in the hierarchical structure of today's globalization, industrialism, and rapid urbanization are the unorganized workers and labourers that struggle every day to fulfill their basic needs.

India should be striving for a "living wage" as a fundamental right, but it is still fixated on minimum wages. The Indian Constitution provides for a "living wage," rather than a minimum wage, because only this will assure the employees and worker's standard of living and welfare. Migrant workers, who are among the most vulnerable and marginalized members of society, have been hit the hardest by the pandemic. Most of them lost their jobs and were stranded in other states without income or food, walking around as if they were "living dead". They have devolved into bodies walking around without basic rights despite a plethora of legislation to protect their interests,

Recently, the government of India has proposed to consolidate forty four labour laws into four codes, namely the Code on Social Security, 2020, the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020 and the Code on Wages, 2019.[5] All the proposed four codes have been "passed" by Parliament with a view to bring uniformity in labour laws and the "welfare" of labourers.

A. The Code on Social Security, 2020

The Social Security Code is primarily to consolidate the legislation on social security and for taking appropriate measures to provide healthcare coverage and sustainable livelihoods for unorganized

[1] **Assistant Professor Law, School of Law, Dayananda Sagar University.**

[2] Colorado General Assembly 2011 U.S. still a nation of immigrants GREELEY TRIBUNE (April 26, 2011, 11:46 p.m) https://www.greeleytribune.com/2011/04/26/colorado-general-assembly-2011u-s-still-a-nation-of-immigrants/.

[3] Mrs. Archana Sawant, Contemporary Issues and Challenges in Labour Law Reforms: An Overview, BHARATI LAW REVIEW 41, 42 (2015).

[4] K.R. SHYAM SUNDAR, GLOBALIZATION, LABOUR MARKET INSTITUTIONS, PROCESSES AND POLICIES IN INDIA 277 (Springer, 2019).

[5] Priyadarshini Maji, New Labour Codes: How will they impact social security and take-home salary, FINANCIAL EXPRESS (March 26, 2021, 2:42 pm), https://www.financialexpress.com/money/new-labour-codes-how-will-they-impact-social-security-take-home-salary/2220976/.

workers, employees, gig workers, etc. The term "social security" has been defined by the code as "the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code".[6] The term "unorganised worker" has been defined as "a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code".[7]

The unorganized sector is a substantial segment of the Indian economy. The informal economy comprises for around 90% of the workers and around 50% of the national output.[8] The code states "[e]very unorganised worker, gig worker or platform worker *shall* [italics] be required to be registered [to avail the benefits under this code]".[9] The process of registration would be carried forward along with documents including aadhaar number. Furthermore, the code explicitly states " [an] unorganised worker or any other person, as the case may be, for— (a) registration as member or beneficiary; or (b) seeking benefit whether in kind, cash or medical sickness benefit or pension, gratuity or maternity benefit or any other benefit or for withdrawal of fund; or (c) availing services of career centre; or (d) receiving any payment or medical attendance as Insured Person himself or for his dependants, under this Code or rules, regulations or schemes made or framed thereunder, *shall establish his identity* [italics] or, as the case may be, the identity of his family members or dependants through Aadhaar number".[10]

Instead of eliminating red tape, the act promotes "red-tapeism" by making the process complex to provide social security. Anyone who doesn't have an aadhaar card deprives themselves of the benefits and schemes, as you can neither register yourself for the services nor avail any services. This is a deep-seated issue in all policies that hinge on "digitization". Digitisation is an implausible notion in many remote parts of India, where power and fresh drinkable water are scarce. Furthermore, these provisions contravene the *Puttaswamy*[11] judgment. Aadhaar was introduced primarily because it would provide a "unique identification number" for Indian citizens.

Secondly, it was held in this case that "the theme of the Act or main purpose and object of the Act [The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act,

[6] The Code on Social Security, 2020, § 2 cl. 78, No. 36, Acts of Parliament, 2020 (India).
[7] The Code on Social Security, 2020, § 2 cl. 86, No. 36, Acts of Parliament, 2020 (India).
[8] Dr. Muna Kalyani, Unorganised Workers: A Core Strength of Indian Labour Force: An Analysis, 2(12) INT. J. MANAG. BUS. 44, 44 (2015).
[9] The Code on Social Security, 2020, § 113, No. 36, Acts of Parliament, 2020 (India).
[10] The Code on Social Security, 2020, § 142, No. 36, Acts of Parliament, 2020 (India).
[11] K. S. Puttaswamy v Union of India, (2019) 1 SCC 1.

2016] is to bring in place efficient, transparent and targeted deliveries of subsidies, benefits and services, which expenditure is out from the *Consolidated Fund of India* [italics]".[12] The act aimed to identify the beneficiaries of services which flow from the consolidated fund of India and not the "employer's pocket".

Another stumbling block in the code is the threshold criteria set by the policymakers. Social security benefits can be availed by employees/workers only in establishments greater than the threshold. The first schedule of the code, for example, deals with the application of gratuities, employee remuneration, and maternity benefits, among other things. In the event of maternity benefits, this threshold should not be applicable. The schedule states the maternity benefit will be provided "(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government; and (b) to every shop or establishment in which *ten or more employees are employed* [italics], or were employed, on any day of the preceding twelve months; and such other shops or establishments notified by the appropriate Government".[13]

All women workers have an officially acknowledged right to maternity benefits in the form of salary remuneration throughout pregnancy and in the postpartum period.[14] The universalization of the maternity benefits are possible only with removal of this threshold on the size of the establishment. They shouldn't be left at the mercy of government discretionary schemes. Maternity benefits are basic and indisputable human rights to which all women are entitled.

B. The Industrial Relations Code, 2020

The Industrial Relations Code extends to the whole of India. It seeks to investigate and resolve industrial disputes arising in an industrial establishment. Furthermore, it amends laws governing employment conditions and trade unions. This supposed labour welfare law has exacerbated the problems and made it anti-labour legislation. The standing orders won't be applicable to establishments with less than 300 workers.

The first schedule lists out the matters provided in standing orders. It comprises of classification of workers, shift working, attendance and late coming etc. The provision explicitly states "[t]he provisions of this Chapter shall apply to every industrial establishment wherein three hundred or more than three hundred workers, are employed, or were employed on any day of the preceding twelve months".[15] The code aims to bring peace and harmony in industrial relations, but instead it is destroying the cordial relationship between employers and workers. The employer gets an

[12] K. S. Puttaswamy v Union of India, (2019) 1 SCC 1, para 361.
[13] The Code on Social Security, 2020, Schedule I, No. 36, Acts of Parliament, 2020 (India).
[14] Dipa Sinha and Sudeshna Sengupta, How Maternity Benefits Can Be Extended to Informal Women Workers, THE WIRE, (Feb. 06, 2019) https://thewire.in/women/how-maternity-benefits-can-be-extended-to-informal-women-workers.
[15] The Industrial Relations Code, 2020, § 28, No. 35, Acts of Parliament, 2020 (India).

opportunity to exploit the workers or hire and fire discriminately and arbitrarily. The potential ramifications of elevating the criterion to 300 workers is that employers employing less than 300 workers are not required to make sure that their workforce's terms and conditions of employment[16] are just and fair. It will be dictated by the employers' whims and fancies.

Furthermore, the code proposes that the prior approval and authorization of the government for the special provisions of lay-off, retrenchment and closure in establishments are made applicable to only establishments that had employed more than 300 workers.[17] The code states "[t]he provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workers, or such higher number of workers as may be notified by the appropriate Government, were employed on an average per working day in the preceding twelve months". Once more, employees and workers find themselves in a vulnerable spot and a precarious position because employers don't require government approval for lay-offs or retrenchment if there are less than 300 workers. The agendas of this legislation are more market-oriented and pro-corporate than being labour-friendly.

C. The Occupational Safety, Health and Working Conditions Code, 2020

A myriad of laws governing the working conditions[18] of an establishment have been incorporated into the Code on occupational safety, healthcare and working conditions. The term "establishment" means "a place where any industry, trade, business, manufacturing or occupation is carried on in which ten or more workers are employed; or motor transport undertaking, newspaper establishment, audio-video production, building and other construction work or plantation, in which ten or more workers are employed; or factory, for the purpose of Chapter II, in which ten or more workers are employed, notwithstanding the threshold of workers provided in clause (w); or a mine or port or vicinity of port where dock work is carried out".[19] The employer must comply, as required by the Central Government with all essential requirements (work and safety) in their "establishment".[20]

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[16] Rampriya Gopalkrishnan, The Industrial Relations Code, 2020: Implications for Workers' Rights, LIVE LAW (October 24, 2020, 2:29 pm) https://www.livelaw.in/columns/the-industrial-relations-code-2020-implications-for-workers-rights-164921.

[17] K. Venkataraman, The Hindu Explains | What does the new Industrial Relations Code say, and how does it affect the right to strike?, THE HINDU (September 27, 2020) https://www.thehindu.com/news/national/the-hindu-explains-what-does-the-new-industrial-relations-code-say-and-how-does-it-affect-the-right-to-strike/article32705599.ece.

[18] Ashima Obhan, and Nishtha Jaisingh, India: The Occupational Safety, Health and Working Conditions Code, 2020, MONDAQ (October 22, 2020) https://www.mondaq.com/india/employee-benefits-compensation/996768/the-occupational-safety-health-and-working-conditions-code-2020.

[19] The Occupational Safety, Health and Working Conditions Code, 2020, § 2 cl. v, No. 37, Acts of Parliament, 2020 (India).

[20] The Occupational Safety, Health and Working Conditions Code, 2020, § 23, No. 37, Acts of Parliament, 2020 (India).

Furthermore, in its "establishment", the employer will be obligated to furnish and maintain such social amenities for the personnel defined by the Central Government, such as arrangements for sitting, appropriate boxes of first aid, etc.[21] The State is obligated to devise policies that ensure to all workers a decent standard of living[22] and humane and just conditions for work.[23] The Code has a constrained realm of applicability and excludes employers and establishments with fewer than five to ten employees. Every worker, be it in organized or non-organized industries, is entitled to fair and favourable circumstances at the place of work (e.g. appropriate secured rest conditions, eight working hours etc.) as it is constitutionally guaranteed and protected. The size of an establishment cannot be a pretext to strip an individual of their basic human rights. The deprivation of these entitlements and basic rights is a sheer injustice, systematic exploitation and results in further marginalization of the existingly deprived section of society.

D. The Code on Wages, 2019

The Code of Wages, 2019 (*hereinafter* referred to as **"wage code"**) attempts to consolidate the four legislations, namely the Payment of Bonus Act, 1965, Payment of Wages Act, 1936, Equal Remuneration Act, 1976 and the Minimum Wages Act, 1948 into one code.[24] The discretion to fix the minimum wage lies with the appropriate government.[25] This provision bestows the government with unfettered authority, arbitrary powers without any guidance and uncontrolled discretion to fix minimum wage rates. Section 66 of the wage code is another bone of debate. It clearly states "[n]othing contained in this Code shall be deemed to affect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 […]".[26]This implies that, notwithstanding anything contained and proposed in the wage code, it won't be applicable to MGNREGA. At least 17 of the 21 major states have MNREGA wage rates that are significantly lower than the state

[21] The Occupational Safety, Health and Working Conditions Code, 2020, § 24, No. 37, Acts of Parliament, 2020 (India).
[22] INDIA CONST. art. 43.
[23] INDIA CONST. art. 42.
[24] K. Chandru, A wage code that is a hasty composition, THE HINDU (September 30, 2020) https://www.thehindu.com/opinion/lead/a-wage-code-that-is-a-hasty-composition/article32726499.ece.
[25] The Code on Wages, 2019, § 6, No. 29, Acts of Parliament, 2019 (India). See also, Ramapriya Gopalkrishnan, A Critique of the Draft Code on Wages, 2019, LIVELAW (August 13, 2020, 9:26 am) https://www.livelaw.in/columns/a-critique-of-the-draft-code-on-wages-central-rules-2020-161344.
[26] The Code on Wages, 2019, § 66, No. 29, Acts of Parliament, 2019 (India).

minimum wage for agriculture.[27] MNREGA wage rates are currently below Rs. 200 in Bihar, Chhattisgarh, and Madhya Pradesh.[28]

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) ensures the "right to work" and aims to "enhance" livelihoods by providing adults who are willing to do unskilled manual labour with at least 100 days of guaranteed wage employment. But does ensuring the "right to work" actually improve one's livelihood and quality of life? The current legislation either exacerbates poverty or maintains the status quo. Is 200 rupees sufficient to sustain life with shelter, food, clothing, education, electricity, fuel, medical care, and so on? It certainly does not help or aid in shattering the vicious cycle of poverty and economic inequality. All the above pieces of legislation are akin to "paper tigers" without claws and teeth.

II. THE PARADOX OF HANNAH ARENDT'S THEORY OF THE RIGHT TO HAVE RIGHTS

Human rights defend and insulate the dignity of all voiceless and vulnerable individuals. It empowers the powerless and gives voice to the voiceless.[29] Hannah Arendt (*hereinafter* referred to as "**Arendt"**), a political philosopher,[30] coined the phrase "the right to have rights" and this phrase is often cited by many scholars. The phrase summed up and hinted at her ambivalence regarding the notion of human rights. Human rights in principle belong, by virtue of being, to every person. However, Arendt emphasized that one should be a "citizen" and not just a human to have human rights.[31]

Over recent years, millions of people have been declared "stateless" and turned down the "right to have rights". They were stripped not only of their citizenship rights, but also of any human rights.[32] Over the years, labour rights and standards have been considered equivalent to human rights.[33]

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[27] Ankita Agarwal and Vipul Kumar Paikra, Why MNREGA wages are so low, THE PRINT (October 12, 2020, 3:26 pm) https://theprint.in/opinion/why-mnrega-wages-are-so-low/520982/. See also, Tina Edwin, MGNREGA wages up about 11%; yet at least 40% lower than minimum wages, THE HINDU BUSINESSLINE (March 29, 2020) https://www.thehindubusinessline.com/economy/mgnrega-wages-up-about-11-yet-at-least-40-lower-than-minimum-wages/article31197140.ece. See also, Shalini Nair, MGNREGA wages fall below minimum wage in 34 states, Union Territories, THE INDIAN EXPRESS (April 2, 2019, 3:57 pm) https://indianexpress.com/article/india/mgnrega-wages-fall-below-minimum-wage-in-34-states-union-territories-5653792/.

[28] Ankita Agarwal and Vipul Kumar Paikra, Supra note 26.

[29] James D. Ingram, What Is a "Right to Have Rights"? Three Images of the Politics of Human Rights, 102(4) AM. POLITICAL SCI. REV. 401, 401 (2008).

[30] Massimo La Torre, Hannah Arendt and the Concept of Law. Against the Tradition, 99(3) ARCHIVES FOR PHILOSOPHY OF LAW AND SOCIAL PHILOSOPHY 400, 400 (2013).

[31] Masha Gessen, "The Right to Have Rights" and the Plight of the Stateless, THE NEW YORKER (May 3, 2018) https://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless.

[32] SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS 50 (Cambridge University Press 2004)

[33] H. GÖTT (eds.), LABOUR STANDARDS IN INTERNATIONAL ECONOMIC LAW 114 (Springer, 2018).

From a positivistic standpoint, labour rights have always been on the agenda of human rights treaties, which assures us that labour rights are human rights.[34]

The very first paradox is that there are domestic and international proclamations of labour rights, but the execution of them is circumstantial and non-guaranteed. The second paradox is that the institutions themselves, who pledged to defend those rights, perpetrate some of the worst transgressions of inviolable labour and human rights. The third paradox is that, in documents, constitutions and legislation, inalienable human rights provide sufficient assurance for the wealthy and the influential, but exclude the impoverished and the disadvantaged sections of society.

The reality is that labour neither has labour rights nor human rights. Arendt's argument that human rights are only guaranteed to citizens is partially incorrect, because neither being a citizen nor being a human assures human rights. Human rights are not unconditional, but the author strongly believes and contends that they should be.

Human rights are unconditional, absolute and a privilege for "affluent and influential individuals". Poverty is a cause of denial and infringement of labour and human rights. For instance, impoverished and poverty-stricken people are compelled to work in hazardous and perilous settings or do not have adequate access to justice, etc.[35] The eternal divide between the wealthy and the underprivileged is what makes the human rights progressive movement a silent observor of neoliberal policies and practices.[36] Sometimes, the very eternal segregation and division become accomplices to human rights infringement.

III. SUSTAINABLE HUMAN DEVELOPMENT

Labour regulations and sustainable development are not strictly separable and mutually exclusive. They go hand in hand and one is complementary to another. Labour legislation and policies should be formulated in a manner that promotes sustainable human development. The Brundtland report outlines sustainable development (*hereinafter* referred to as **"SD"**) as "ability to make development sustainable- to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs".[37] The concept of SD endorses and accentuates intergenerational equity by pro-active citizen participation in the distribution of natural resources.[38]

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[34] Virginia Mantouvalou, Are Labour Rights Human Rights?, 3(2) EUR. LABOUR LAW J. 151, 152-153 (2012).

[35] Hannah Johnson, Are Human Rights only for the Rich?, EACHOTHER (June 28, 2017) https://eachother.org.uk/human-rights-rich/.

[36] Ignacio Saiz, Kate Donald, Are Human Rights Relevant to Economic Inequality? A response through the lens of social protection, SOCIAL PROTECTION & HUMAN RIGHTS (November 7, 2018) https://socialprotection-humanrights.org/expertcom/are-human-rights-relevant-to-economic-inequality-a-response-through-the-lens-of-social-protection/.

[37] Kates W. Robert (et. al.), What is Sustainable Development? Goals, Indicators, Values, and Practice, Environment: Science and Policy for Sustainable Development, 47(3) ENVIRONMENT: SCIENCE AND POLICY FOR SUSTAINABLE DEVELOPMENT 8, 10 (2005).

[38] Id at 11.

It represents a fundamental idea that generations to come should get the equivalent privileges as the current generation.[39]

However, multinational corporations, bureaucrats, and megalomaniac corporations are profit-driven and prioritize economic interests over human development.[40] This opulence-focused paradigm undermines human well-being in general.[41] Human development is inclusive of people's capability to create "real opportunities" for themselves to have a dignified life[42] which accelerates the quality of life. Human development was once delimited to an "economistic perspective", but is today inclusive of many more aspects, such as social rights, individual freedom, civil rights, political rights, and so on.[43] Labour regulations are now comprehended to fall under the pillars of "social" and "economic".[44] The notion of sustainable development is no longer confined to the environment, but has now incorporated the concept of human development, which is referred as sustainable human development.[45] It indicates that in order for development to be sustainable, fundamental human rights such as water, food, and shelter must be provided, i.e. with the realisation of "human rights".[46]

The goal 8 of SD Goals is "[p]romote inclusive and sustainable economic growth, employment and decent work for all".[47] This implies that decent and sustainable livelihoods must be created without endangering the environment. Labour rights must be safeguarded by giving secure environment to work. Contemporary slavery and child labour should be eradicated. All employees, especially migrant workers, notably women migrants or vulnerable labourers, should be promoted in safe and secure working settings.[48] Labour standards and human rights are "core pillars" of SD or one can say sustainable human development.[49] Labour rights should be more than the bare minimum. It should concentrate on increased inclusion, living wages rather than minimum wages, promoting better social security, a good workplace and universalization without threshold criteria.

IV. CONCLUDING REMARKS

[39] Sudhir Anand and Amartya Sen, Human Development and Economic Sustainability, 28(12) WORLD DEV. 2029, 2030 (2000).
[40] Id at 2031.
[41] Ibid.
[42] Id at 2039
[43] HANS GEISER, SUSTAINABLE DEVELOPMENT FROM A HUMAN RIGHTS PERSPECTIVE AND THE CHALLENGES IT REPRESENTS FOR THE CARIBBEAN SIDS (A DISCUSSION PAPER) 6 (United Nations Economic Commission for Latin America and the Caribbean, 2010)
[44] H. GÖTT (eds.), Supra note 32 at 117
[45] HANS GEISER, Supra note 42 at 7
[46] Ibid.
[47] THE GLOBAL GOALS, https://www.globalgoals.org/ (August 30, 2021).
[48] THE GLOBAL GOALS, https://www.globalgoals.org/8-decent-work-and-economic-growth (August 30, 2021).
[49] H. GÖTT (eds.), Supra note 32 at 121.

India, recognized as one of the world's most labour-intensive nations, recently undertook significant labour law reforms by consolidating forty-four existing laws into four distinct codes. This move was aimed at enhancing worker protection, promoting transparency, ensuring uniformity, and simplifying the complexities associated with a multitude of labour regulations. However, while the intention behind this reform may have been to streamline and strengthen labour rights, the implementation has raised serious concerns about its actual impact on workers.

The four new codes include the Code on Social Security, the Industrial Relations Code, the Occupational Safety, Health and Working Conditions Code, and the Code on Wages. Each of these codes was designed with specific thresholds and criteria that determine their applicability. Unfortunately, these predetermined criteria have resulted in many workers being excluded from protections that were previously available to them. Consequently, a substantial number of employees find themselves in increasingly precarious situations, stripped of their basic rights and protections. One of the most significant criticisms of the new labour codes is their focus on employer interests over worker rights. The codes appear to favor a market-oriented approach, prioritizing the needs of capital-driven industries while neglecting the welfare of labourers. This shift towards a more neoliberal framework has led to a general perception that the reforms are more about consolidation than genuine improvement. In many respects, the new regulations perpetuate an environment of limited state intervention, allowing businesses greater autonomy while diminishing the protections afforded to workers.

Moreover, the existing flaws and loopholes within the codes dilute fundamental human rights. For instance, provisions related to working conditions, wages, and safety often lack the necessary enforcement mechanisms, rendering them largely ineffective. Workers in the informal sector, who constitute a significant portion of the Indian labour force, are particularly vulnerable to exploitation due to their exclusion from the benefits of these codes. Without robust legal protections, these workers face harsh realities, including inadequate wages, unsafe working conditions, and a lack of social security.

The consolidation of labour laws into four codes was presented as a means of reducing bureaucratic red tape and making it easier for businesses to comply with regulations. However, the reality is that this simplification has come at the cost of worker protections. The shift towards a more employer-centric framework undermines the very purpose of labour laws, which is to ensure fair treatment and adequate safeguards for workers. This transformation raises critical questions about the government's commitment to upholding labour rights in an era of rapid economic growth and globalization. The codes, rather than providing a safety net, may instead perpetuate cycles of vulnerability and exploitation. In conclusion, while the consolidation of labour laws into four codes

may have been motivated by the desire to simplify and enhance labour protections, the reality is that these reforms have raised significant concerns. The focus on market needs over worker rights, combined with existing flaws in the legislation, suggests that the new codes serve more to empower employers than to protect workers. As India moves forward, it is crucial that the government reassesses its approach to labour rights, ensuring that the well-being of workers is prioritized in any future reforms.

GLOBAL LEGAL RESPONSES TO HONOUR KILLINGS: ADDRESSING CULTURAL CHALLENGES IN A TRANSFORMING SOCIETY

Mr. Rahul[1]

I. INTRODUCTION:

Honour killings are predominant and principal acts of violence against women (sometimes men) and infringements of their essential and fundamental human rights. Honour killings have been prevalent for an extended period and occurring all over the globe for centuries.[2] As per the Human Rights organizations reports, these premeditated murders in the concept of preserving familial honor have proliferated in many regions of the globe.[3] These killings are violent crimes, typically murder, perpetrated by family members against male or female relatives seen to have tarnished the family's reputation or to have brought disgrace onto the family. Despite the fact that males may also be slain in the sake of honour; nevertheless, women are predominantly the primary sufferers of honour killings. The observation that a woman has acted in a manner that "dishonors" her family is enough justification to initiate an assault on her life.[4] To battle against the pandemic of honour killings necessitate an awareness of the factors that render these murders unique. They differ from serial killings, murders motivated by passion, retaliatory killings, domestic violence, and simple and psychopathic homicides. Their motivation is different and predicated on moral and behavioral values that represent certain cultures, frequently fortified by fundamentalist spiritual mandates.[5]

In the year 2000, the United Nations Population Fund calculates approximately that there are roughly 5,000 honour killings each year around the globe.[6] This is certainly a conservative estimate, as reports from many countries are filtered. Recent study has unequivocally demonstrated that honour killing is ubiquitous. No country has evaded this epidemic.[7] The report of the Special Rapporteur at the 58th session of the United Nations General Assembly (2002) concerning cultural practices in the families exhibiting violence against women suggested that honour killings had been documented in Egypt, Jordan, Lebanon, Morocco, Palestine, Syrian Arab Republic, Turkey, Yemen; other Mediterranean and Persian Gulf countries; and Asian countries like India, Pakistan,

[1] **Research Scholar, Panjab University, Chandigarh**

[2]Salim Khan, Honor Killing - Current National and International Legal Framework, 2 IJRES, 244, 244 (2023).

[3]The Times of India, 'Honour' killing: It's a global phenomenon, INDIA TIMES (Jul 11, 2010, 10:56 AM), http://timesofindia.indiatimes.com/india/honour-killing-its-a-global-phenomenon/.

[4] Salim Khan, supra note 1, at 244.

[5] Phyllis Chesler, Worldwide Trends in Honor Killings, 17 MIDDLE EAST QUARTERLY 1 (2010), https://www.meforum.org/middle-east-quarterly/worldwide-trends-in-honor-killings

[6] UNFPA, Ending Violence against Women and Girls, State of the World Population 2000 (Jan. 1, 2000) http://unfpa.org/publications/state-world-population-2000

[7] PUNEET KAUR GREWAL, KILLING FOR HONOUR: A CULTURE OF SILENCE 5 (Bookwell Publications, 2021).

Bangladesh, Sri Lanka, etc.[8] The migrant populations of Western and European nations, including France, Germany, U.K., Canada, USA, have also encountered incidents of Honour Killings.[9]

The genesis of honour killings and the subjugation of women are documented throughout history in the culture and traditions of several areas. During Roman times, the *pater familias* or the senior male member within a household retained the authority to execute an unfaithful wife or unmarried yet sexually active daughter if she was involved in pre-marital or extra-marital interactions.[10]Blackstone asserts that Roman law sanctioned killing when "committed in defence of chastity either of oneself or of relations."[11] During the Ching dynasty in China, fathers and spouses have the authority to murder daughters who were said to have brought dishonor upon them. Among the Indigenous Aztecs and Incas, society imposed the death penalty for adultery. During John Calvin's leadership in Geneva, women convicted of adultery faced punishment by drowning in Rhone River.[12] In several Arab countries, the tradition of honour killing dates back to pre-Islamic times, referred to as Dor-e-Jahiliyah (Ignorance Time before Muhammad Peace Be upon Him), when Arab immigrants inhabited a neighboring territory Sindh, referred to as Baluchistan (in Pakistan).[13] These Arab immigrants practiced patriarchal practices, including the live burial of the newly born daughters to eliminate the potential for them to cause disgrace to family by their actions, when they would be young.[14] In Pakistan, honour killings are perpetrated under the Karo-Kari custom. This is a deliberate honor killing, originating in rural and tribal regions of Sindh, Pakistan. These lethal actions are predominantly perpetrated against women who are said to have caused disgrace to their family by participating in illicit pre-marital or extra-marital relations.[15] In India, honour killing incidences are especially widespread in a several North Indian states, like Uttar Pradesh, Bihar, Rajasthan, Haryana, Jharkhand, and Punjab; it is being increasing throughout South India and the western provinces.[16] This custom was initially observed in its most grotesque manifestation during the division of the nation, when several women were violently murdered to preserve honour. During that period, the impact of religion and social regulation was more significant, resulting in at least two honor murders daily, if not more. The Partition years mark the

[8]Dr. M. Sreedevi Xavier, Honour Killing: A Global Concern, 4 IND. J. OF RES. 6, 7 (2015).
[9]AZAD KUMAR, HONOUR KILLINGS; GLOBAL PERSPECTIVE 17-18 (Saad Publications 2014).
[10] Dr. Amin A. Muhammad, Preliminary Examination of so-called "Honour Killing" in Canada, DEPT. OF JUS., 16(2010).
[11] Sagarika Chandel, Honor Killing: Honourable or a licence to kill?(Dec. 7, 2014)http://lexquest.in.
[12]Somya Singh et. al., Comparative Study of Honor killing, 6 IJTSRD 2074, 2074 (2022).
[13] Syed Haseeb Ahsan, Honour killing case and the gaps in the legislation (Sep. 17, 2021) http://linkedin.com/pulse/honor-killing-case-gaps-legislation-syed-haseeb-ahsan.
[14] Muhammad Zia Ullah, Honour Killing in Pakistan under Theoretical, Legal and Religious Perspectives, Department of Global Political Studies 37 (2010).
[15] Sujay Patel et. al., Karo-kari: a form of honour killing in Pakistan, NIH, 683 (2008).
[16] Ashwini M Sripad, Killing honour in the name of 'honour killings' The New Indian Express (Sep. 4, 2023, 7:17 AM), http://newindianexpress.com.

inception of the tradition of honour killings on a large scale. However, it has also been shown recently that even the metropolitan cities such as Delhi and Tamil Nadu.[17] Consequently, Honour-Based Violence has been recorded throughout several continents where cultural practices may endure despite varying legal structures. These killings are a global human rights concern, denounced by the International Organizations, yet they persist due to a complex interplay between legal enforcement, cultural norms, and societal attitudes.

Cultural and historic traditions are regarded as the asset of every society. All the actions and activities of human are frequently governed by laws, established locally by forefathers. These laws are firmly established so that human cannot presume unconventional thinking. If the activity contravenes the laws or if any inappropriate act is committed, a harsh punishment is mandated for the rule breaker. Few of the ancient laws and rituals are morally and philosophically acceptable, while the others are antiquated and illogical contemporary practices, yet society cannot rationalize it due to ignorance and cultural dominance. Since there are many numerous shifts occurring globally and the level of awareness and understanding increase, it is expected that anticipated that Contemporary values would have supplanted old values; yet, the truth is the exact opposite. In certain societies, traditional practices are still operational, but because to the absence of established cultural and historic norms, they pose a danger to the advancement of humanity.[18] From the sociological perspective, few of the philosophers endorse cultural changes and assert that these transformations are occurring globally owing to economic advancement and modernization; nonetheless, other thinkers assert that culture has an independent influence on the world and people remain static to its practice in all the circumstances. Owing to religious integration, a limited number of the Cultural values are so profoundly entrenched that even modernization cannot alter them.[19] The continued existence of informal justice systems, such as the decisions rendered by jirgas and involvement of panchayats, further complicates legal efforts to prevent this practice. Within some jurisdictions, offenders may obtain decreased penalties if the offense is perceived as driven by honour, as "honour" occasionally regarded as a mitigating factor. This illustrates the challenges of harmonizing legal standards with profoundly ingrained cultural beliefs.

II. HONOUR KILLINGS: CULTURAL AND SOCIAL CONTEXTS:

a) The Cultural Roots of Honour Killings:

The cultural factors contributing to honour killings are intricate. Honour killings involve violence and terror as instruments for sustaining control. In several societies where honor is paramount,

[17] Dr. M. Sreedevi Xavier, supra note 7, at 8.
[18] Dr. Memoona Saeed Lodhiet. al., A Sociological Perspective on the Issue of Killing in the Name of Honor in Pakistan, 19 IOSR-JHSS 58, 58(2014).
[19] Id. at 58.

males constitute sources, or active generators /agents of that honour, while the only effect that women can have on honour is to demolish it. Once the honor is compromised by the lady, urgent retribution is necessary to restore it by family to prevent reputational damage within the community.[20] This mindset is frequently exacerbated by enduring patriarchal frameworks that perceive women as inferior to males, so promoting male dominance and control over the autonomy of women. "You are the man of the house" has been recognized across years have been devoted to this ostensibly harmless narrative promoted to young males to enhance their masculinity at an early stage of life. It was, and remains to this day, a rearing method employed to guide young guys towards adopting masculine roles nurtured by their parents (predominantly the father) to assume responsibility for the household's ladies, who frequently share a comparable age with the boys or much older, to alleviate the parents of the responsibility of their upbringing. Over time, this narrative directed boys into growing the belief that their household's females' "reputations" constituted their burdens, and they must maintain it unblemished at all expenses.[21] In South Asian, North African, and Eastern Mediterranean Regions, killings in the sake of the honour are often normalized through these cultural narratives that uphold the family's authority to exert its will over the individual, chiefly females. Even within certain immigrant populations in western region, traditional expectations endure despite the existence of more progressive legislation. Because of immigrants carry their culture practices with them, including taboo and breaking one's family taboos may lead to crimes.[22]

b) Social Stigma and Honour as a Community Issue:

Honour – based violence is not just a concern for particular families but frequently reflects the overarching ideals and expectations of the community. In close-knit communities where social standing is interlinked with familial reputation, preserving honor is a communal endeavor. This shared accountability signifies that the burden to commit honour-based violence frequently originates from sources external to the immediate family, involving relatives, community leaders, and social contemporaries. In several instances, the decision to perpetrate an honor killing is not taken by a single individual but by the community, emphasizing the notion that individual lives hold lesser significance than communal repute. Where the family members reluctance to do the act of honor killing, they endure persistent and intense peer pressure from their surrounding community (e.g. neighbors, relatives, etc.) and are dissuaded from exhibiting no empathy for their raped or

[20] Dr. M. Sreedevi Xavier, supra note 1, at 6.

[21] Sarah M. Al-Qahtani et. al., Honor Killings in the Eastern Mediterranean Region: A Narrative Review, 11 HEALTHCARE 1, 3 (2023).

[22] Abdelaziz Bouchara, Taboos as a cultural cleavage between Muslim immigrants and Secular Western publics: Bridging the Gaps by viewing Integration as a Two-way process, 6 Isl. St. J. 228, 237(2021).

abused female relatives participants. They are urged to penalize them and regard them as disgraceful and reject them, all in an endeavor to ultimately restore or preserve the family's standing inside the community.[23] As mentioned in the documentary, the killing of the five girls in Kohistan (Pakistan) emerged as a consequence of socioeconomic pressures faced by several families in the area. The investigative panel designated by the Supreme Court to investigate this case, revealed account of honor killing in nearly every household. According to Aurat Foundation, a women's rights organization located in Islamabad, Pakistan, several women have been killed, raped, sold or traded in matrimony or shown unclothed at the behest of local Jirgas.[24]

c) Cultural Resistance to Legal Reform:

Legal initiatives to penalize honour killings encounter substantial obstacles, as cultural resistance within communities frequently subverts these measures. In numerous communities where honour killings occur widespread, legal reform is regarded as an imposition of contemporary norms that contradict firmly held convictions. This resistance is exacerbated by the function of informal justice systems, such as tribal councils (jirgas) in Pakistan or village (khap) panchayats in India, which function concurrently with official legal systems. These informal institutions often reinforce conventional views and frequently implement community-oriented sanctions or endorse honour-based violence to resolve familial conflicts. The power of these structures may dissuade families from pursuing justice within the established legal system, as they apprehend social ostracism or retribution for disregarding conventional norms. A woman in the documentary film indicates that khap councils do not permit the families spare their children or allow them to live according to their preferences. "In the Manoj Babli case,[25] khap assembly imposed a socioeconomic ban on the family of Manoj for protesting against the killing."[26] In certain instances, cultural resistance is supported by legal loopholes that mitigate sanctions for honour killings. For example, in some jurisdictions, if a family member "forgives" the wrongdoer, the law allows for mitigation penalties or potential exoneration. This forgiving provision is especially notable in nations such as Pakistan, where relatives may utilize their power to exonerate the perpetrator, allowing the cycle of violence to continue without legal answerability. For example, in Samia Sarwar case, her brother being the wali exacerbated her murder at the hands of her own parents who went scot-free.[27] Legal measures have

[23] Sarah M. Al-Qahtani et. al., supra note 20, at 4.
[24] Deler Singh et. al., Legacy of Honor and Violence: An Analysis of Factors Responsible for Honor Killings in Afghanistan, Canada, India, and Pakistan as Discussed in Selected Documentaries on Real Cases, 1 SAGE Open 1, 4 (2021).
[25] Manoj v. Babli, Criminal Appeal No. 479-DB of 2010 and Criminal Revision No. 2173 of 2010.
[26] Id. at 5.
[27] Aleena Khan, 'Honour' Killings in Pakistan: Judicial and Legal Treatment of the Crime: A Feminist Perspective, 7 LUMS L. J. 74, 80 (2020).

been implemented to rectify these flaws, but cultural acceptability of honour-based violence makes full enforcement challenging.

III. LEGAL FRAMEWORKS ADDRESSING HONOUR KILLINGS:

Honour killings have obtained worldwide attention due to egregious human rights breaches, inciting global condemnation and legal reform initiatives in many nations. Despite the existence of laws criminalizing honour killings in various regions their effectiveness and enforcement varies significantly owing to cultural and social barriers. In this context the researcher examines the legal frameworks, their efficacy, challenges and their significance in combating honour killings nationally and internationally.

a) International Legal Framework for Honour Killing:

The United Nations is perpetually engaged in its endeavors to safeguard human rights globally by its diverse Legislations, Conventions and Treaties.[28] Honour Killings are denounced as a grave violation of human rights and are addressed by several International Instruments. This monstrous sin is resisted by United Nations General Assembly Resolution 55/66 (adopted in 2000) and succeeding resolutions.[29] In accordance with the United Nations Justifications, several International Declarations, Conventions and Protocols that directly or indirectly pertain to address the matter of Honour Killings and provide worldwide protection from Honour related violence were implemented. These treaties establish a comprehensive framework for combating honour killing and guarding human rights. Some of the key ones are succinctly addressed below:

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979:** The United Nations General Assembly in 1979 adopted the convention on the Elimination of All Forms of Discrimination against Women is a significant milestone in addressing the acknowledged gender bias in human rights law.[30] The CEDAW became effective in 1981. It is the one of the human right instrument that explicitly addresses women's right. The treaty stipulates that "states parties ratifying the Convention declare intent to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women including honour killings. States ratifying the Convention must also establish tribunals and public institutions to guarantee women effective protection against discrimination, and take steps to eliminate all forms of discrimination practiced against

[28] Salim Khan, supra note 1, at 228.
[29] UN General Assembly, Working towards the elimination of crimes against women committed in the name of honour, GA Res 55/66, GAOR, UN Doc A/RES/55/66 (2000).
[30] Dr. Jane Haile, Honour Killings its causes & consequences: suggested strategies for the European parliament, Policy Department External Policies (2007) https://www.europarl.europa.eu/activities/expert/eStudies.do?languageEN.pdf

women by individuals, organizations, and enterprises."[31] And also forbids "discrimination against women in all matters relating to marriage and family relations."[32]

- **International Convention on Economic, Social and Cultural Rights (ICESCR), 1976:** ICESCR is an international human rights treaty was adopted by UN General Assembly in 1966 which came into effect on 3 January, 1976. "This convention aims to ensure the protection of economic, social and cultural rights of the people."[33] The State parties must undertake all necessary measures to guarantee the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[34] Honour killings encompass elements of psychological, physical, and sexual assault. The executive branches of governments are obligated to safeguard these rights and must implement stringent measures against those who contravene these regulations in furtherance of honour crimes.[35]
- **Beijing Platform for Action (1995):** There is other covenant adopted at the Fourth World Conference on Women in Beijing in 1995 while not legally enforceable, possesses persuasive significance in guiding principles for nations to ban bit honour killings. It recognizes that the "human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence." and instructs the executive authorities to "take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism."[36]
- **Istanbul Convention (2011):** The Istanbul Convention is the first legally enforceable international document on violence against women, prohibits honour killings. This treaty is often referred to as the Council of Europe Convention on preventing and combating violence against women and domestic violence establishes broad requirements for the prevention and fight of violence against women. It contains stipulations concerning honour crimes and stipulates that parties should implement all requisite steps to guarantee that, in criminal proceedings commenced subsequent to the perpetration of any of the violent actions included by purview of this convention, custom, tradition, or so-called Honour shall not be

[31] Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 2.
[32] Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 16.
[33] United Nations Human Rights Office of the High Commissioner, http://ohvhr.org/en/treaty-bodies/cescr/background-covenant (last visited on Oct. 26, 2024).
[34] International Convention on Economic, Social and Cultural Rights, 1976, art. 12.
[35] Salim Khan, supra note 1, at 229.
[36] PUNEET KAUR GREWAL, supra note 6, at 14.

seen as a basis for such actions.[37] The drafters of the convention departed from the initial concept of introducing a distinct criminal offence for so-called "honour crimes" and agreed instead to prohibit any efforts to rationalize criminal behavior on the basis of so-called "honour".[38]

b) National Legal Frameworks for Honour Killing:

National Legal Frameworks pertaining to Honour Killings vary significantly based on the cultural background, legal traditions, and human rights commitments. Nations with elevated occurrences of honour killings, have implemented legal provisions to particularly address this issue, with differing degrees of efficacy.

- **Pakistan:** Reporting the honor crime is very rare in Pakistan, if it is done so then instead of exemplary penalty; lesser penalties are imposed on the culprit in the male dominant society that actually affects the judicial system of Pakistan.[39] Research undertaken in Pakistan has found that in relation to legal action toward honour killings, only a limited number of offenders were arrested.[40] "Anti Honor Killing Bill 2016" has been enacted, incorporating essential amendments in 2004 Act to control and mitigate the honor crimes practices. The primary emphasis of the 2016 legislation is on addressing existing loopholes of 2004 criminal Law amendments. The legislation designates crime of honour killing a non-compoundable offence and entails a mandatory sentence of life imprisonment for the perpetrators of honor crimes.[41] The deficiencies of the 2004 Amendments were addressed and rectified in 2016. However, the incidence of honour killings remains among the highest crimes in Pakistan due to the cultural acceptance of honour killings and communal resistance to legal intervention frequently hinders the comprehensive execution of these legislation.[42]
- **Afghanistan**: In Afghanistan, the 2009 Elimination of Violence against Women Law rendered unlawful certain forms of violence against women, excepting honour killing, which remained a common law offence. However, Article 398 of the penal code provides

[37] Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, art. 42.
[38] The Council of Europe, Istanbul Convention- Crimes committed in the name of so-called "Honour", (2019), https://edoc.coe.int.html.
[39] Shagufta Kanwal, Honour Killing: A case study of Pakistan 3 J. Law & Soc. Stu. 39 (2021).
[40] Sarah M. Al-Qahtani et. al., supra note 20, at 6.
[41] Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act, 2016, Proviso to S. 311, No. 43, Acts of Parliament, 2016 (Pakistan).
[42] Hania Riffat, Reforms in the Criminal Justice System in Pakistan, 1 Bl. Law J., (2022).

"a mitigated punishment for criminals who murder a lady for engaging in adultery." Consequently, perpetrators of 'honour killings' frequently get minimal or no punishment.[43]

- **India:** Although India does not have a separate law to deal with honour killings but the concept of honour killing falls directly under Section 300 of the Indian Penal Code. All instances of honour killing can be classified as murder. But it's nevertheless murder. The perpetrator may also use Section 300 of the Indian Penal Code, 1860, as a defence, asserting that he acted in reaction to a grave and sudden provocation that the act of the victim was so soul stirring that he lost the self control and responded solely based on his observations, which constituted an act of bringing shame to the family.[44] Due to recent high-profile cases, governments have implemented local legislation that mandate impose more severe punishments on those who perpetrate honour crimes. At present, only the state of rajasthan has enacted legislation prohibiting Honour Killings.[45] Indian courts have also played a role, frequently rendered judgments that strongly condemn honour killings. "In ***Lata Singh v. State of Uttar Pradesh***[46] the Supreme Court observed that there is no Honour in such killings and to strengthen the social fabric of society 'inter caste and inter religion marriages' should be encouraged." "In ***Smt. Laxmi Kachhwaha v. State of Rajasthan***[47] the high court of Rajasthan ordered state authorities to restrict the functioning of khap panchayats and arrest of its members."[48] Nevertheless, the impact of these informal justice systems continues to permit decisions based on honour.
- **Egypt:** Egypt, Penal Code stipulates that the culprit is "liable to prison sentence instead of capital punishment."[49]
- **Iraq:** In Iraq the perpetrator is only "punished by prison for a period not exceeding three years."[50]
- **United Arab Emirates:** In UAE, "perpetrator shall be punished with a prison sentence."[51]

[43] Andrew Gibbs, Factors associated with 'honour killing' in Afghanistan and the occupied Palestinian Territories: Two cross-sectional studies 14 PLoS One (2019), http://ncbi.nlm.nih.gov.html.
[44] Dr Aarti Mohan Kalnawat, Indian Legal Framework on Honour Killing 1 Symbiosis Law School Nagpur Multidisciplinary Law Review 1, 15 (2021).
[45] Amlan Sarkar, Anti-Caste Activists Propose Bill to end 'Honor Killings' The SWDL (Sep. 15, 2022), http://theswaddle.com/anti-caste-activists-propose-bill-to-end-honour-kiilings.html.
[46] Lata Singh v. State of Uttar Pradesh, AIR 2006 SC 2522.
[47] Smt. Laxmi Kachhwaha v. State of Rajasthan, AIR 1999 Raj 254.
[48] Keerthana R. Shenoi et. al., Honour Killing in India: A Socio Legal Study 120 INT'L. J. P. & App. Maths. 4921,4922 (2018).
[49] Eygpt Penal Code, 1937, art. 237, No. 58, Acts of People's (Assembly), 1937 (Eygpt).
[50] Iraq Penal Code, 1969, art. 409, No. 111 of 1969 (Iraq).
[51] United Arab Emirates Penal Code, 1987, art. 334, No. 3 of 1987 (UAE).

- In **Kuwait,** according to the Penal Code, the perpetrator is punished by "prison for a period not more than 3 years and a fine or by one of these two penalties".[52]
- In **Jordan,** the culprit may receive a mitigating excuse, indicating that the conduct of justifying murder in the cause of safeguarding familial honor is acceptable and punished to a lesser extent.[53] Recent reforms, including amendments to article 98 and 340 of the Penal Code, have been aimed at removing these mitigating factors, with the goal of enhancing answerability. However, in reality, judicial discretion frequently leads to decreased punishments, and social resistance to reporting honour-based violence further makes enforcement difficult.
- Furthermore, the **Iran Penal Code** "justifies a father or paternal grandfather killing his daughter without any retaliation from the judicial system."[54] "It also allows a man to kill his wife if he witnesses adultery."[55]
- **Turkey:** Turkey has implemented reforms within the context of its European Union accession process, attempting to harmonize its legislative standards with EU human rights expectations. Honour killings are tried under Turkey's Penal Code designated as premeditated murder, and amendments have included enhanced life penalties for offenders.[56] In spite of these advancements, challenges endure due to social stigma, and the difficulty of reporting honour killings within traditional communities, which may dissuade victims or their families from pursuing legal recourse.

IV. TERRIFIYING INCIDENTS OF HONOUR KILLINGS:

1. Rukshana Naz Case (2000):

"Rukshana Naz (19), a British citizen, was cruelly assassinated and tortured by her whole family in 1998 because she had disobeyed her family by refusing an abortion. At the time of her death, Rukshana had been seven months pregnant by her English boyfriend. She had been forced to enter an arranged marriage at the age of 15 to a Pakistani man who had remained in Pakistan. She had two children by him, had intended to divorce him in order to marry her English boyfriend. Rukshana was strangled by her brother Shazad Ali for "dishonour" with a piece of plastic of plastic flex. While her mother, Shakeela Naz, held her down and looked on. During the trial, the court discovered additional details regarding the entire family's involvement in Rukshana's killing specifically how

[52] Kuwait Penal Code, 1960, art. 153, No. 16 of 1960. (Kuwait).
[53] Jordanian Penal Code, 1960 art. 340, No. 16 of 1960. (Jordan).
[54] Iranian Penal Code, 2013, art. 301 (Iran).
[55] Iranian Penal Code, 2013, art. 630 (Iran).
[56] Hofstra Law School, https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v35n02_ee1_boon_final.pdf (last visited Oct. 26, 2024)

her brother Iftikhar (18) had attempted to impede his brother and mother's torturing? And How their mother had fended off her son Iftikhar, shouting "Be strong son!." Shakeela Naz, who was convicted with life imprisonment for killing her daughter, rationalized the killing by arguing that "it was in her kismet."[57]

2. Jaswinder Kaur Sidhu Case (2017):

Honour Killing case of Vancouver, Canada is another case "where mother played a pivotal role in getting her own daughter killed. Jaswinder Kaur Sidhu, an Indo-Canadian beautician, was in love with Sukhwander Singh Sidhu and the couple had wed in India without the knowledge of Jaswinder's family. Jaswinder's family belonged to a high socioeconomic status but Sukhwander was a rickshaw driver from an impoverished household. ehemently opposed the marriage, and they attempted to convince her to obtain a divorce through numerous means such as proposing to purchase a vehicle and providing material goods, accompanied by physical abuse and by falsely signing her papers which included criminal charge against Sukhwinder, and when those endeavors proved unsuccessful, organized many individuals to assault and murder the pair. Sukhwinder was brutally assaulted and abandoned to perish, while Jaswinder's was brought to an abandoned farmhouse and killed on the orders of her mother Malkiat Kaur Sidhu and her uncle Surjit Singh Badesha, near the Kaonke Khosa area of Ludhiana."[58]

3. Tirupati honour killing, (February 2023)

"In February, a father in Alamuru village in Tirupati, Andhra Pradesh, after he murdered his daughter and decapitated her disposed of her body parts in a purported honor killing. Twenty-one-year-old Prasanna Reddy had developed romantic feelings for an individual of a different caste from her hometown. Disapproved by her family, Prasanna was wed to a cousin and dispatched to reside in a different hamlet. Nevertheless, on one of her travels to her hometown Prasanna never returned to her in-laws, arousing mistrust among her family members. Additionally, the discussion of her romantic involvement infuriated her father, who thought that she was dishonoring the family. Subsequent to an intense quarrel, Prasanna's father strangled her to death and subsequently decapitated her, and threw her body remains in the adjacent forest. The offense occurred on February 10 was revealed long later when the victim's grandfather filed a missing complaint."[59]

4. Punjab Honour Killing, (May 2023)

"In May 2023, 25-year-old Manpreet Kaur and her rumoured lover 30-year-old Gurdeep Singh were discovered deceased in Thikriwala village of Punjab's Barnala district. A police inquiry uncovered

[57] Rukshana Naz v. Shakeela Naz, (2000) ECWA Ctim 24.
[58] India v. Badesha, (2017) SCC 44.
[59] Outlook Web Desk, https://www.outlookindia.com/national/rising-honour-killings-in-india-a-look-at-5-brutal-murders-in-recent-past-news-296381 (last visited Oct. 26, 2024).

details that Manpreet's father and brother killed Singh when he came to visit Manpreet at her house on a certain night, as reported by Indian Express. The couple was reportedly in a prolonged relationship and upon discovering the same, Bhola Singh and his son Sukhbir Singh assaulted the man with a bladed weapon, resulting in death. They also strangled Manpreet to death. While Singh's body was discovered from a tiny sewage drain outside Bhola Singh's house, Manpreet's body was found on the charpoy inside the home's balcony."[60]

5. Karnataka Honour Killing, (June 2023)

"A farmer from Karnataka's Tumakuru was arrested for purportedly murdering his 17-year-old daughter in a suspected case of honour killing on June 9. The victim, Nethravathy, was the sole daughter of Parashuram among three offspring. Parashuram, a member of Scheduled Tribe (ST) group, was a local leader with significant influence. According to the police investigation, Nethravathy, who went to a public university, was in a relationship with a boy from the scheduled caste. Upon learning about her relationship, the victim's family terminated her studies and betrothed to another man another man. On the other hand, Nethravathy promptly fled from her residence and was found, and brought back on June 8. Furious, for bringing disrespect to the family, they tried to force-feed her pesticide to make it look like a case of suicide. When she opposed and declined to consume the pesticide, Parashuram with his son and brother strangled Nethravathy to death, and subsequently cremated her body in their corpse to hush up the murder."[61]

6. Karachi Honour Killing Case (Oct. 19, 2024):

Horrible slaughters of Four Females in Karachi highlights on Honour Killings once again. The executed females have been identified as Aleena (13), Madeeha (18), Ayesha (19), and Shehnaz (51). All four ladies were discovered in separate areas in the residence. Police authorities have not discovered any weapon from the murder scene and assert that the perpetrators escaped after murdering all victims with a same weapon. Muhammad Farooq, the head of the family, informed the police that he, together with his two the sons were not present at the residence during the occurrence. They have been taken into custody for investigation as police authorities suspect relative's involvement in the murders. The event has caused significant disturbance around the Pakistani metropolis because of its savage and barbaric characteristics. The case is yet to be ascertained but others contend it may pertain to matters of honour killings perpetrated by male family members.[62]

V. SUGGESTIVE MEASURES TO COMBAT HONOUR KILLINGS:

[60] Ibid.
[61] Ibid.
[62] OMMCOM News, https://ommcomnews.com/world-news/pakistan-gruesome-murders-of-four-females-in-karachi-puts-spotlight-on-honour-killings-once-again.html (last visited Oct. 26, 2024).

a) Legislation must address honour killings classified as severe murder with obligatory punishment, guaranteeing that offenders encounter severe repercussions devoid of any chance for clemency.

b) Specialized training for law enforcement personnel, judges, and prosecutors is vital to address honour-based cases with sensitivity and efficacy. Officials must get training in comprehending the mechanisms of honor-based violence and in safeguarding those affected by societal forces.

c) To promote protection and reporting of those at danger, states should establish secure shelters for networks, ensure secure migration alternatives, and furnish legal support to folks fleeing honor-based violence.

d) Authorities and NGOs should collaborate to implement initiatives that involve local leaders, religious figures, and educators to challenge the societal endorsement of violence motivated by honour.

e) Utilize Media Campaigns to alter perceptions.

f) Global entities, including the United Nations and the Council of Europe, should continue to monitor countries with high incidences of honour killings, guaranteeing that these governments adhere to international human rights norms.

g) Authorities, NGOs, and multinational entities ought to allocate resources towards research for data collection, precise statistics, examine underlying causes, and assess the efficacy of legal and social interventions.

h) Honour killings are frequently influenced by patriarchal ideologies, hence it is imperative to engage males in educational initiatives that promote respect for women's rights.

i) Making honour killing as a distinct criminal offense would assist in providing additional resources for law enforcement agencies.

VI. CONCLUSION:

Honour killings exemplify one of the most severe manifestations of gender-based violence and are fundamentally entrenched in a global culture of discrimination against women and where women are identified and treated as things and commodities, rather than human beings entitled to equal rights and respect to those of men. Despite global efforts to combat this practice, honour killings continue to occur in several regions globally, illustrating the intricate convergence of legal, cultural, and elements that constitute them hard to eliminate. Legal frameworks across nations have made

considerable pace in criminalizing honour-based violence. However, the efficacy of these legislations frequently fails owing to cultural resistance, inadequate enforcement, and legal loopholes that permitting offenders to evade complete accountability. This analysis indicates that honour killings are not solitary acts of aggression, but rather expressions of patriarchal values ingrained in the communal framework. Consequently, tackling honour killings requires a comprehensive approach that goes beyond legal provisions to engage with the cultural and social dynamics underpinning them.

A Comparative Study of Global Reproductive Rights Frameworks and Their Integration into Indian Law

Ms. Monika M[1]

Mr.Vinay Kumar[2]

1. Introduction

"Reproductive rights must be understood within the context of a woman's cultural, social, and economic realities", Charlotte Bunch[3]. Charlotte Bunch highlights that reproductive rights are not just legal entitlements but are deeply influenced by a woman's cultural background, social environment, and economic circumstances. Understanding these factors is crucial to fully grasping the complexities surrounding women's reproductive health and choices. The international conference on population and development (ICPD), which took place in 1994 and led to the creation of a world framework where individual autonomy within reproductive health is founded on human rights principles. These principles state that persons have a right to determine their lives when it comes to reproduction and must not be discriminated or coerced. Integration of Global Standard into National Law Challenges and Opportunities in India the legal ambiguities regarding consent as well as the lack of consideration for marital rape under various laws complicate choices faced by women regarding reproduction in India. The statistics prove how 70% of city-women have access to abortion services that are relatively safe, whereas 30% of rural women suffer because of the same and result in significant disparities between regions[4]. This study aims to analyze how global reproductive rights frameworks influence Indian law and practice, with an emphasis on the urgent need for reforms that ensure equitable access and uphold women's autonomy across diverse socio-economic contexts.

2. Research Objectives

i. To analyze the current state of abortion regulations in India, including the Medical Termination of Pregnancy Act and relevant amendments, to understand their intended purpose and actual implementation.

ii. To analyse the impact of these regulations on women's reproductive rights, focusing on access to safe and legal abortion services and the implications for women's health and autonomy.

[1] **Student of IV Year B.B.A LL.B, KLE Law College, Bangalore, monika.21bb1036@klelawcollege.org**

[2] **Student at, KLE Law College, Bangalore, vinay.21bbll002@klelawcollege.org**

[3] Bhawna Sharma et al., Predictors of Unmet Need for Modern Contraception and Reasons for Nonuse Among Married Women in India: A Multi-level Analysis, Nat'l Libr. of Med., https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9930478/ (last visited Oct. 28, 2024).

[4] United Nations Population Fund, A Review of National Policies and Legal Frameworks on Reproductive Health and Rights, https://www.unfpa.org/sites/default/files/jahia-events/webdav/site/global/shared/documents/events/2009/policies_frameworks.pdf (last visited Oct. 28, 2024).

iii. To examine the barriers faced by medical practitioners in providing abortion services, including legal, ethical, and bureaucratic challenges, and how these barriers affect women's access to care.

iv. To assess the role of various stakeholders, including government, healthcare providers, and civil society, in shaping the discourse and policies surrounding abortion access in India.

3. Hypothesis

Hypothesis 1**:** Far from achieving their protective intent, India's abortion laws may be restricting women's reproductive rights and access to safe, timely healthcare options.

Hypothesis 2: The fear of legal repercussions under the PCPNDT Act and MTP Act among healthcare providers discourages them from offering abortion services, contributing to a chilling effect that limits women's access to safe abortion care and violates their reproductive rights.

4. Literature Review

i. **The Reproductive Rights Reader: Law, Medicine, and the Construction of Motherhood" by Nancy Ehrenreich:** The Reproductive Rights Reader by Nancy Ehrenreich traces how legal, social, and cultural definitions of motherhood influence women's rights to choose reproduction. This anthology examines the complex dynamics of reproduction rights and the dominant culture where legal conceptions often become an apparatus of cultural ideology about motherhood. Ehrenreich's work would be of extreme importance worldwide because reproductive rights are structured in a way that is heavily influenced by beliefs and societal values. In the context of Indian law, her analyses make it clear how cultural norms actually structure legal structures and position the importance of reframing reproductive rights to respect not just women's autonomy but also how women should be outside such expectations of motherhood.

ii. **Policing the Womb: Invisible Women and the Criminalization of Motherhood**

By Michele Goodwin: Policing the Womb chronicles how restrictive reproductive laws criminalize women's choices in their health choices as well, often at a cost that penalizes them further than they need be. Goodwin critiques the kind of punitive legal measure aimed at undermining women's choices, discussing the ways of legal surveillance that actually restrict decisions regarding reproductive health. The book argues that good reproductive laws support the ability to exercise rather than impose prohibitions on women's right to abortion, particularly applicable in India, where its related laws are sometimes unobliging. Goodwin work offers a framework in which analysis is provided on how criminalization in reproductive health policy acts as a barrier in the access of care. He also suggests that legal

support is required in reproductive health policies that focus on prioritizing women's health and autonomy.

iii. **"Human Rights and Reproductive Health: A Resource Manual" by Rebecca J. Cook and Mahmoud F. Fathalla:** The manual prepared by Rebecca J. Cook and Mahmoud F. Fathalla highlights reproductive rights to be a fundamental human right. The authors discuss states' obligations toward protecting women's reproductive autonomy and health through the lens of international standards. The resource manual guides national law adaptation to meet international human rights principles with examples from other countries. For India, this book provides a basis on which to analyze where reproductive laws align or fall short of global standards, helping identify necessary reforms. It supports the human rights-based approach of reproductive health, focusing on equity, autonomy, and accessible health care.

iv. **"Reproductive Justice: An Introduction" by Loretta J. Ross and Rickie Solinger** Loretta J. Ross and Rickie Solinger introduce readers to reproductive justice, an approach combining reproductive rights with social justice. They argue that reproductive rights are not confined to just abortion but instead encompass social and economic considerations that have a bearing on reproductive decision-making, like access to health care or social services. This progressive framework calls out for the rights of women from all walks of life to provide safe parenting and self-authoring health care, so that social or economic boundaries do not matter. Looking at India, the same approach by Ross and Solinger suggests the importance of considering disparities which impact different marginalized communities; the notion is that for laws for reproductive rights to be appropriate, they need to break free from legal as well as social barriers toward health.

5. Historical Development of Abortion Laws in India

Abortion in India was initially illegal under The Indian Penal Code, 1860 except when it was necessary to save a woman's life. The Medical Termination of Pregnancy (MTP) Act, 1971 legalized abortion under certain circumstances to safeguard women's health. In 2021, amendments expanded access by extending the gestation period and considering broader social factors, showing a shift in societal views on reproductive rights.

5.1 Evolution of the Medical Termination of Pregnancy (MTP) Act, 1971

The legal framework surrounding abortion in India saw a pivotal change with the passage of the Medical Termination of Pregnancy (MTP) Act in 1971. Prior to this legislation, abortion was predominantly illegal and considered a criminal offense under Section 312 of the Indian Penal Code

(IPC) of 1860, which allowed abortion only to save the mother's life[5]. The move toward reform began with the establishment of the Shantilal Shah Committee in 1964. This committee was tasked with examining the socio-cultural, medical, and legal aspects of abortion, and it ultimately recommended legalizing abortion as a measure to reduce high maternal mortality rates and the frequency of unsafe, illegal abortions.[6]

The MTP Act came into effect on April 1, 1972, marking a shift toward legalizing abortion under specific conditions. The Act permitted abortions when there was a risk to the woman's life or her physical or mental health, in cases of fetal abnormalities, or if the pregnancy resulted from rape or contraceptive failure. Initially, the Act allowed abortions up to 20 weeks of gestation, emphasizing the need to safeguard women's health while addressing the complexities surrounding pregnancy termination.

Over time, amendments have been introduced to broaden women's reproductive rights and improve access to safe abortion services. The most notable amendment came in 2021, which extended the permissible gestational limit for abortions from 20 to 24 weeks for specific categories of women, including unmarried women facing contraceptive failures. This amendment aimed to make abortion laws more inclusive and responsive to the evolving needs of women in India.[7]

Key Provisions of the MTP Act

a. **Legalization**: The MTP Act legalized abortion under defined conditions, primarily to protect women's health and safety.
b. **Gestational Limits**: The initial gestational limit for abortion was set at 20 weeks, which was later amended to 24 weeks for certain categories of women.
c. **Medical Oversight**: The Act mandates that abortions must be conducted by registered medical practitioners to ensure safe and standardized procedures.
d. **Confidentiality**: The Act includes provisions to maintain confidentiality regarding a woman's abortion, upholding her privacy and dignity.

[5] Ministry of Law and Justice, India Code: Digital Repository of All Central and State Acts, https://www.indiacode.nic.in/ (last visited Oct. 28, 2024).
[6] Zahra Bashi et al., Women's Experiences with Abortion in Restrictive Legal Settings: A Systematic Review of Qualitative Studies, Nat'l Libr. of Med., https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10470576/ (last visited Oct. 28, 2024).
[7] Lok Sabha Secretariat, Reproductive Rights and Abortion Policies in India: An Overview, https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/12032020_122410_102120474.pdf (last visited Oct. 28, 2024).

5.2 Comparison with global abortion laws and India's position.

Abortion laws vary significantly across the world, influenced by differing cultural, religious, and political factors. In countries such as Canada and many European nations, abortion is widely accessible, with many allowing it on demand during the early stages of pregnancy. By contrast, some countries place strict restrictions or even outright bans on abortion, reflecting a more conservative approach to reproductive rights.

India's Medical Termination of Pregnancy (MTP) Act positions it as relatively progressive, especially within its regional context. The Act allows abortions up to 24 weeks under specific circumstances, including risks to the woman's health, fetal abnormalities, and pregnancies resulting from rape or contraceptive failure. This policy reflects India's commitment to safeguarding women's reproductive health and ensuring safer abortion practices.

In comparison, the legal status of abortion in the United States varies by state, generally allowing abortions up to around 24 weeks or until the point of fetal viability, though recent rulings have allowed individual states to impose more restrictive laws. In Germany, abortion is legal with mandatory counseling, but the procedure is generally limited to 12 weeks of gestation. Poland has one of the most restrictive abortion laws in Europe, permitting it only in cases of severe fetal abnormalities or health risks to the mother[8]. Canada stands out as having one of the most liberal policies, allowing abortion on demand with no gestational limit, which emphasizes personal choice and autonomy.[9]

India's approach acknowledges women's reproductive rights but also seeks to balance social and ethical considerations surrounding abortion. The MTP Act has played a significant role in reducing maternal mortality rates in India by promoting safer abortion practices and access to regulated medical services, showing the positive impact of legal reforms on public health and women's rights.

6. Access to Safe and Legal Abortion: Rural vs. Urban Divide

The rural-urban divide in access to safe and legal abortion services in India. Behind the divide lies the source of differences in healthcare infrastructure, service availability, and socio-economic factors.

6.1 Differences in access to abortion services between rural and urban areas.

[8] Katherine O'Keefe, Abortion Law: Global Comparisons, Council on Foreign Relations (June 22, 2022), https://www.cfr.org/article/abortion-law-global-comparisons (last visited Nov. 1, 2024).

[9] Amna Nawaz, How the U.S. Compares with the Rest of the World on Abortion Rights, PBS NewsHour (July 15, 2022), https://www.pbs.org/newshour/politics/how-the-u-s-compares-with-the-rest-of-the-world-on-abortion-rights (last visited Nov. 1, 2024).

Healthcare Infrastructure

Normally, urban areas have well-developed health facilities regarding hospitals and clinics that offer safe abortion[10]. The World Health Organization states that usually, urban regions have a large number of trained health-care professionals; thus, access to safe abortion services among people is easier[11]. For instance, large cities like Mumbai and Delhi have more registered medical practitioners as well as specialized clinics specializing in women's reproductive health requirements.

Compared to urban health care, it remains the most significant barriers because health care infrastructure in the countryside is limited. It was noted that majority areas within the rural zones did not have the simplest types of medical facilities. Comprehensive researches indicated that fewer health facilities in the countryside have the capacity to give services about comprehensive reproductive healthcare; 30% could perform a safe abortion. The distances that women in such regions travel to reach places offering legal abortion services exceed 50 kilometers. It is expensive and logistically difficult to travel such long distances.[12]

Accessibility of Services

There is a much integration of the abortion service into the healthcare delivery in urban areas and therefore they are easily accessed along with other reproductive services. Questionnaires also revealed that women who reside in urban setups indicate that 80 percent of them stated that it is possible for them to access safe and sound abortion within their area.

In this case, access for the women who dwell in the rural settings proves to be very challenging due to; lack of access to qualified providers and few facilities in the rural setting offering lawfully accepted abortion. Many rural healthcare providers refuse or are unwilling to offer abortions based on personal views or social stigma, often leaving women with no option but to seek unsafe options. The WHO estimates that nearly half of all the abortions carried out worldwide are unsafe and that most unsafe abortions occur in areas without easy access to safe services.

6.2 Role of Healthcare Infrastructure and Societal Attitudes

Healthcare Infrastructure

The disparity of healthcare infrastructure greatly impacts access to abortion services. Urban facilities enjoy better funding, providers, and quality of care overall. In contrast, rural health systems are normally underfunded and resource poor and thus cannot safely carry out an abortion.

[10] Heinrich Böll Stiftung, Healthcare in India, https://in.boell.org/en/healthcare-india (last visited Nov. 1, 2024).

[11] Heidi Hatch, Healthcare Access in Rural Communities in India, Ballard Brief (Mar. 2021), https://ballardbrief.byu.edu/issue-briefs/healthcare-access-in-rural-communities-in-india (last visited Nov. 1, 2024).

[12] Vivek Shukla, Challenges of Designing Healthcare Facilities in Rural Areas, Express Healthcare (Dec. 22, 2020), https://www.expresshealthcare.in/blogs/guest-blogs-healthcare/challenges-of-designing-healthcare-facilities-in-rural-areas/444688/ (last visited Nov. 1, 2024).

The WHO also underscores the fact that health systems need to be effective[13]. Health care providers must have the appropriate training and access to drugs and other necessary equipment at a reasonable cost. Many health care providers are not trained in providing safe abortion care in rural India. Thus, the difficulties to access this facility would further increase.

Social Attitudes

The attitudes of society toward abortion also differ in urban and rural population. The attitudes are likely to be more liberal toward reproductive rights in urban areas due to exposure to various views, and about 70% of the respondents in urban areas support access to safe abortion[14]. Rural communities, on the other hand, are often conservative in their views, shaped by cultural and religious beliefs that stigmatize abortion. This stigma may discourage women from seeking legal abortion services or discussing their needs with healthcare providers. According to study findings, over 60% of women in rural belts are not comfortable raising any reproduction health issues since society may condemn and shun them.

Considering weak healthcare and traditional socio-medical setups in India, especially the rural sections suffer a huge issue regarding abortion that needs to be allowed by development of suitable medical setups as well as making people of India sensitized toward modern and advanced education that would make the treatment approachable for females in distinct regions of the country.

7. Role of Consent in Abortion: Minor Girls and Marital Rape

7.1 Issues related to obtaining consent for abortion, especially for minors and in cases of marital rape.

The issue of consent for abortion in India is particularly complicated in the event of minor girls and cases of marital rape. Under the Medical Termination of Pregnancy (MTP) Act, there is insistence on the requirement that the pregnant woman must consent to the procedure; however, special provisions exist for minors and the mentally ill. To this end, for the minor, or anyone aged under 18 years, it insists on consent from a guardian-a very significant barrier in achieving safe abortion services.

Consent in Minors

A minor under the MTP Act needs to have her parents' or guardian's consent before an abortion can be conducted on her. This creates a problem because most of the minors may not have guardians who are supportive enough to give consent or even fear to disclose their situations for fear of stigma

[13] World Health Organization, Abortion, https://www.who.int/news-room/fact-sheets/detail/abortion (last visited Nov. 1, 2024).

[14] National Health Law Program, Abortion is Health Care, https://healthlaw.org/abortion-is-health-care/ (last visited Nov. 1, 2024).

or possible repercussions. A study noted that about 70% of the minors who came for abortions said they feared discussing their needs with guardians because they would be judged or punished.[15]

Marital Rape

Here, marital rape raises all the greater issues of consent. The legal ambiguity and social taboo due to the MTP Act, which permits the woman to abort the foetus when it has been raped, may deter her to seek such relief. Thus, legislatively in India, marital rape remains unrecognised and because of this, many a woman is not even accorded the right to have control over her reproductive processes. Reports indicate that only about 25 percent of women who suffer sexual violence at the hand of their spouse visit the clinics for treatment because of social rejection or not having support networks.[16]

8. Elective Abortion as a Right: Significance and Global Trends

The decision to end a pregnancy is one of the most personal choices a person can make. It's a choice that goes beyond health it impacts a person's life, future, and sense of agency. Globally, there is a clear shift towards recognizing abortion as a core right, a vital part of bodily autonomy that supports individuals in shaping their own futures. When people have the freedom to make reproductive choices, they're not just making a medical decision; they're asserting control over their lives, careers, and aspirations.

Restrictive abortion policies are linked to various adverse outcomes, including physical and mental health risks from unsafe procedures, economic disadvantages, and barriers to education for affected individuals. The choice to terminate a pregnancy has significant implications on a person's future, with ripple effects on socioeconomic stability and overall well-being. Abortion access, therefore, is integral to the broader spectrum of reproductive rights, as it safeguards individuals' dignity and the freedom to determine their life course.

International conventions and frameworks affirm abortion as a human right through various provisions that emphasize health, gender equality, and autonomy.

CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) calls for equal access to healthcare, implicitly including abortion within reproductive rights (Article 12)[17].

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[15] Center for Reproductive Rights, India: Adolescents' Access to Abortion under the POCSO Act, https://reproductiverights.org/india-adolescents-abortion-access-posco-act/ (last visited Nov. 1, 2024).

[16] Center for Reproductive Rights, Parliament of India Passes Abortion Reform that Entrenches Barriers to Access, https://reproductiverights.org/parliament-india-passes-abortion-reform-entrenches-barriers-access/ (last visited Nov. 1, 2024).

[17] Office of the United Nations High Commissioner for Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women (last visited Nov. 1, 2024).

This reflects the need to ensure freedom from discrimination in health-related decisions. The ICCPR (International Covenant on Civil and Political Rights)[18] and ICESCR (International Covenant on Economic, Social and Cultural Rights)[19] further reinforce this by upholding rights to privacy, bodily integrity, and the highest standard of health—cornerstones for reproductive autonomy.

The Maputo Protocol specifically addresses abortion in Article 14, endorsing the right to safe abortion in cases such as rape, incest, or risks to a mother's health. It has significantly influenced abortion rights in African nations since 2005. And, the Beijing Declaration and Platform for Action (1995)[20] advances the principle that reproductive decisions, including abortion, should be free from discrimination, coercion, or violence, establishing a broad framework for reproductive autonomy. Together, these conventions underline abortion access as vital to health equity and gender equality.

Around the world, many nations have embraced this view. Countries in Latin America, for instance, have recently led a powerful shift toward liberalizing abortion, a movement widely known as the "Green Wave." Argentina, Mexico, and Colombia have decriminalized abortion, recognizing it as part of fundamental human rights and addressing both health and social justice. Yet, in some places, restrictive laws still force individuals into unsafe conditions, often leading to profound risks and unequal access to healthcare. Countries like the U.S., El Salvador, and Poland have rolled back abortion rights in recent years, a stark contrast to the global trend. The United States, after the 2022 *Dobbs v. Jackson Women's Health Organization* ruling[21], removed federal protections for abortion, leaving the matter to individual states. This regression places the U.S. as a rare case globally, standing out against the otherwise consistent movement towards liberalization. This divide shows how deeply cultural, political, and social factors shape reproductive rights.

9. India's Position on Elective Abortion: Progress and Limitations

In India, the journey toward abortion rights has made recent strides. The 2021 amendments to the Medical Termination of Pregnancy (MTP) Act expanded access to safe abortions, making it possible for more individuals to exercise their rights. Yet, India's laws still require "reasonable grounds" for

[18] Office of the United Nations High Commissioner for Human Rights, International Covenant on Civil and Political Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (last visited Nov. 1, 2024).

[19] Office of the United Nations High Commissioner for Human Rights, International Covenant on Economic, Social and Cultural Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights (last visited Nov. 1, 2024).

[20] United Nations, Beijing Declaration and Platform for Action (1995), https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf (last visited Nov. 1, 2024).

[21] Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016), https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf (last visited Nov. 1, 2024).

abortions, limiting true autonomy in reproductive decision-making. This cautious approach means that elective abortion isn't fully embraced as a matter of choice alone.

Also, regulations under the POCSO and PCPNDT (Pre-Conception and Pre-Natal Diagnostic Techniques Acts) compound barriers by criminalizing aspects of abortion, particularly impacting minors and rural populations due to stigmatization and documentation fears.

When compared to nations with fully liberalized abortion laws, India's approach remains cautious. By imposing gestational limits and conditions, India's MTP Act does not yet embrace the notion of elective abortion as a fundamental right. The need for ongoing reforms is underscored by international human rights perspectives that advocate for broader access to safe and legal abortion services. India's amendments represent progress but highlight the need for a balanced approach, which could reduce unnecessary barriers while respecting both individual rights and public health concerns.This discussion on elective abortion emphasizes its role as a human rights issue, underscoring a global movement toward recognizing bodily autonomy. However, India's position remains a hybrid model, progressive yet cautious indicating that the journey towards full reproductive autonomy is still ongoing.

10. Rights of Women vs. Rights of the Unborn: A Complex Balancing Act

The debate over abortion often pivots on two deeply interconnected yet competing interests: the rights of the woman and the rights of the unborn. The recent reversal of Roe v. Wade[22] has reignited this debate, focusing not only on legal frameworks but also on how nations and societies prioritize these rights. On one side, advocates argue for a woman's autonomy and health, asserting her right to make choices about her body. Internationally, the UN and WHO highlight that women's rights encompass autonomy, privacy, and the highest attainable standard of health. These rights are essential to physical and psychological integrity, reflecting not only equality but a core aspect of personal dignity.

Statistics from the WHO illustrate the grave impact of restrictive abortion laws, as unsafe abortions contribute to significant maternal mortality and morbidity, especially where abortion is illegal or highly restricted. Each year, approximately 73 million induced abortions occur globally. Of these, around 61% stem from unintended pregnancies, while about 29% of all pregnancies end in an induced abortion[23]. such restrictions to safe access to abortions disproportionately affect marginalized groups, including young, unmarried, or economically disadvantaged women, intensifying social inequalities and health risks.

[22] Roe v. Wade, 410 U.S. 113 (1973), https://supreme.justia.com/cases/federal/us/410/113/ (last visited Nov. 1, 2024).
[23] World Health Organization, Abortion, https://www.who.int/news-room/fact-sheets/detail/abortion (last visited Nov. 1, 2024).

Contrastingly, the "rights of the unborn" focus on protecting potential life, often framing the fetus as a rights-bearing entity from conception. Yet, international human rights law remains divided on this point, with most treaties and conventions opting to emphasize personhood post-birth. The UN Human Rights Committee and entities like the CEDAW[24] emphasize that protecting unborn life cannot come at the expense of established rights of women, particularly where these restrictions jeopardize her life, health, or subject her to inhumane conditions. Notably, human rights courts and committees frequently advocate for prioritizing the rights of the woman, emphasizing that while states may protect potential life, they must ensure safe and legal access to abortion where a woman's health, autonomy, and dignity are at risk.

11. Progression or Overregulation in Abortion Laws: Recent Amendments and Legal Hurdles

Legal ambiguities significantly impact women's ability to exercise their reproductive rights, particularly in cases involving minors and marital rape survivors.

Judgment recently saw how courts interpreted the issues of consent and accessibility to abortion in different rulings of cases. For instance, in the landmark case of X vs The Principal Secretary, the Supreme Court held that the right of a woman to choose and decide about reproductive choices was fundamental under Article 21 of the Indian Constitution[25]. However, this very case of minors ends up making judicial discretion to deny them timely access to abortion services. For example, a minor rape survivor who experienced extreme psychological damage was turned away from obtaining an abortion at 29 weeks and 6 days of gestation on the basis that she was simply too advanced in her pregnancy, illustrating that judicial rulings can provide confounding barriers to entry precisely because they are often based on gestational limitations rather than individual circumstances.[26]

Mandatory reporting under the Protection of Children from Sexual Offences (POCSO) Act requires that any instance of sexual offense against a minor be reported to the authorities, creating a significant barrier for young girls who may seek abortions. This obligation, though intended to protect minors, can inadvertently discourage them from seeking medical help due to fear of legal repercussions or potential victimization through the legal process. The fear of being exposed to a formal investigation and the stigma surrounding sexual offenses may drive young victims to avoid

[24] Office of the United Nations High Commissioner for Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women (last visited Nov. 1, 2024).

[25] X v. The Principal Secretary, (2022) 3 SCC 218 (India).

[26] Garima Tiwari, Reassessing India's Abortion Laws: A Call for Change, Jurist (Sept. 27, 2023), https://www.jurist.org/commentary/2023/09/reassessing-indias-abortion-laws-a-call-for-change/ (last visited Nov. 1, 2024).

professional medical assistance altogether, often resulting in unsafe methods or unlicensed practitioners. Consequently, this reporting mandate has a chilling effect, deterring vulnerable minors from accessing safe and lawful medical services, potentially compromising their health and safety.

Additionally, abortion laws are inconsistently applied across jurisdictions, leading to unequal access and outcomes for women. Some courts permit abortions beyond statutory limits in cases of rape, recognizing the trauma of unwanted pregnancies, while others strictly enforce gestational limits without considering the woman's mental health. This inconsistency underscores the urgent need for clearer and more compassionate abortion law reforms. India has made progressive amendments to abortion laws, such as the 2021 revision of the Medical Termination of Pregnancy (MTP) Act and a 2022 Supreme Court judgment recognizing safe abortion as part of fundamental rights like dignity, autonomy, privacy, and health. However, these advancements still face restrictive legal challenges, particularly under the MTP, POCSO, and PCPNDT Acts, raising doubts about the practical effectiveness of these legal rights.

The PCPNDT Act, primarily designed to prevent sex-selective abortions, has inadvertently created scrutiny around second-trimester abortions, leading authorities to link any late-term procedure to sex determination. This has intensified the administrative burden on Registered Medical Practitioners (RMPs) performing second-trimester abortions, who risk severe penalties for even minor procedural lapses, discouraging them from offering such services and thereby reducing access. The MTP Act restricts abortion provision solely to RMPs, positioning them as gatekeepers of abortion services. While this framework theoretically aims to ensure safe practice, it often compromises objectivity and accessibility. Many RMPs make decisions about abortions based on personal biases or concerns about legal repercussions, resulting in unwarranted scrutiny or demands for additional consent, which create further barriers to access.

11.1 Chilling effect

The restrictive provisions in India's abortion laws have led to a chilling effect, especially among Registered Medical Practitioners (RMPs), who fear legal repercussions for even minor procedural errors under laws like the PCPNDT Act. These constraints discourage many qualified practitioners from performing abortions, obtaining licenses, or even registering to provide such services. RMPs who perform abortions face criminal liability under the Indian Penal Code if they deviate from strict MTP Act requirements, while those who choose not to provide abortion services face no legal consequences. The resulting legal uncertainty fosters a risk-averse approach, where RMPs prioritize their own protection from potential legal fallout over providing comprehensive abortion care. As a

result, many RMPs request additional and often unnecessary third-party authorizations, such as spousal or parental consent, to shield themselves from liability, even though the MTP Act requires only the consent of the adult pregnant person.

The chilling effect extends to pharmacies and medical supply chains, particularly due to the PCPNDT Act's documentation requirements and the scrutiny around abortifacient drugs. Pharmacies often avoid stocking medical abortion drugs out of fear of potential legal entanglements, despite RMPs' authorization. This avoidance of liability creates a scarcity of safe medical abortion options, further exacerbating barriers to access. These administrative and legal fears deny pregnant persons access to safe, regulated abortion care and push them toward unsafe methods that could endanger their health, contradicting the MTP Act's original intent to safeguard women's reproductive autonomy and dignity[27].

In broader terms, the chilling effect on healthcare providers is a violation of human rights. Women forced into unsafe abortion methods risk significant health complications, including infection, infertility, or even death, which infringes on their rights to life and health as protected under human rights frameworks. Denial of safe abortion access also undermines women's autonomy, dignity, and equality, fundamental tenets of reproductive rights. Moreover, the impact on pharmacists and medical facilities means that even when RMPs are willing to provide care, pregnant individuals may lack access to essential medicines and facilities, perpetuating a cycle where legal regulations indirectly facilitate unsafe practices. This restrictive landscape thereby contravenes the rights of both women and their unborn children to access safe, evidence-based healthcare, underscoring a need for policy reforms that prioritize health over administrative control.

11.2 Contradicting Judgements

The recent contradictory rulings in India's abortion law have created substantial setbacks for reproductive rights, which had briefly seen progress with amendments and judicial decisions in 2021 and 2022. The Medical Termination of Pregnancy (Amendment) Act of 2021 extended the permissible gestation period for certain cases from 20 to 24 weeks, a move celebrated as progressive. In 2022, the Supreme Court's ruling in X v Principal Secretary[28] reaffirmed a woman's right to bodily autonomy, emphasizing that marital status should not restrict abortion rights. However, in 2023, the ruling in X v Union of India took a starkly different approach, highlighting the ongoing tensions between autonomy and restrictive interpretations of the law.

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[27] Aparna Chandra, Constitutional but Criminal (Jan. 26, 2023), https://intr2dok.vifa-recht.de/servlets/MCRFileNodeServlet/mir_derivate_00014736/Constitutional_but_Criminal.pdf (last visited Nov. 1, 2024).

[28] X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, https://www.scobserver.in/wp-content/uploads/2023/11/X-v-Principal-Secretary-Health-and-Family-Welfare-Department-Govt.-of-NCT-of-Delhi-Anr.pdf (last visited Nov. 1, 2024).

In X v Union of India[29], the Supreme Court denied a 27-year-old mother's request for an abortion despite her postpartum psychosis and suicidal tendencies, focusing instead on fetal viability and her lack of eligibility under Sections 3(2B) and 5 of the MTP Act. The Court's reliance on the provider-centric approach, which prioritizes medical and judicial discretion over the woman's choice, created a framework that limits reproductive autonomy strictly to legal grounds, leaving little room for individual mental health concerns.

This restrictive shift essentially reverses prior progressive strides. In 2022, the Court held that reproductive decisions lie with the woman, rooted in her fundamental rights. However, in 2023, the judgment relied on narrow definitions of "threat to life" and "serious mental health issues," disregarding the woman's autonomy and her lived experiences. Moreover, the involvement of multiple legal authorities, including medical boards and judicial bodies, complicated access to abortion, reflecting a procedural "Ping-Pong" that further marginalized the petitioner's voice. The system's provider-centric nature strips women of agency over their bodies and pits them against a rigid, fragmented legal structure.

The societal bias against abortion rights has also seeped into legal interpretations, with courts increasingly influenced by notions of morality, fetal rights, and a duty to preserve "viable" pregnancies, even at the cost of women's autonomy and mental health. The Court's hesitancy to terminate a viable fetus and the insistence on preserving life even where mental health risks are evident contradicts its earlier stance and reinforces patriarchal assumptions about motherhood as an inherent duty. This judgment reveals how Indian abortion laws, despite superficial advancements, still fall short of recognizing a rights-based approach that prioritizes women's autonomy.

12. Recommendations

a. Legislative Reforms for Greater Autonomy: Amend the MTP Act to grant women more autonomy in decision-making without extensive procedural delays, allowing safe abortions within medically approved timeframes to minimize unsafe alternatives.
b. Bias-Free RMP (Registered Medical Practitioner) Training: Establish training programs for RMPs focused on reducing biases and supporting ethical, patient-centered abortion care to reduce patriarchal influences and ensure non-judgmental medical support.
c. Accessible and Affordable Abortion Services: Implement policies to make safe abortion services affordable and accessible, especially in rural and underserved regions, preventing reliance on unsafe procedures.

[29] X v. Union of India, No. W.P. (C) 1133 of 2023 (Oct. 16, 2023), https://www.scobserver.in/wp-content/uploads/2023/10/x-v-union-of-india-medical-termination-of-pregnancy-Judgement_16-Oct-2023.pdf (last visited Nov. 1, 2024).

d. Enhanced Support Services: Provide mental health counseling and post-abortion support networks to address psychological needs, reduce stigmatization, and promote holistic care for women.
e. Enhance Legal Clarity and Accessibility: Amend the Medical Termination of Pregnancy (MTP) Act to explicitly address the rights of minors seeking abortions, ensuring that their autonomy is recognized and protected. Legal provisions should be clear about the circumstances under which minors can access abortion services without parental consent, particularly in cases of rape or incest.

13. Conclusion

This research highlights the paradox in India's abortion regulations, which aim to protect both maternal and fetal rights but inadvertently undermine women's reproductive autonomy and access to safe abortion services. The restrictive framework, characterized by gestational limits and complex eligibility criteria, forces women to confront bureaucratic challenges that delay essential healthcare. The fear of criminal liability, exacerbated by the PCPNDT Act and stringent documentation requirements, discourages healthcare providers from offering safe abortion procedures. This environment prioritizes fetal rights without adequately considering women's health needs, pushing many toward unsafe clandestine practices that jeopardize their well-being. Ironically, laws intended to safeguard life often lead to significant risks for women, raising serious human rights concerns. The analysis underscores the urgent need for a balanced regulatory approach that honors women's autonomy while ensuring safe, accessible reproductive healthcare, ultimately fostering better health outcomes for both mothers and their children.

Transforming Society: Addressing the Global Challenges of Fugitive Economic Offenders

Anuradha[1]

Introduction

The issue of fugitive economic offenders presents significant challenges to global financial stability and legal systems. These offenders, who abscond after committing large-scale financial crimes, exploit legal loopholes and jurisdictional gaps to evade justice. This paper examines the impact of fugitive economic offenders on economies and societies, evaluates existing legal frameworks in the United States, United Kingdom, and India, and proposes solutions for enhanced international cooperation. Fugitive economic offenders undermine the integrity of financial systems by engaging in activities such as money laundering, fraud, and embezzlement. Their actions not only lead to substantial financial losses but also erode public trust in legal institutions.[2]The complexity of these crimes often involves multiple jurisdictions, making it difficult for any single country to address them effectively. In recent years, countries have begun to recognize the need for stronger legal mechanisms to combat these offenses. For instance, India's Fugitive Economic Offenders Act, 2018, aims to deter offenders by allowing for the confiscation of their assets without conviction in absentia. Similarly, the United States and United Kingdom have implemented various laws to address cross-border financial crimes. Despite these efforts, challenges remain. Legal loopholes and lack of international cooperation hinder effective enforcement.[3]This paper seeks to explore these challenges in detail and propose a framework for international collaboration that could enhance the ability of nations to apprehend and prosecute fugitive economic offenders.[4]

INDIAN EXTRADITION TREATIES

India has Extradition Treaties with 47 nation states of the world and have entered extradition arrangement with 11 nation state.[5] Out of the total 195 member states of the United Nations, India has a total of 58 states with whom it has entered Extradition treaty and arrangements. The United Kingdom and the United States of America have entered extradition treaties with over 100 states, Russia has entered more than 60 Extradition treaties with various states. India lacks behind compared to other states, and therefore provides more opportunity to offenders to flee to various nation states. Efforts are being made to finalize Extradition Treaty/Agreement with Bosnia & Herzegovina, Ethiopia, Nigeria and Algeria.[6] But it is pertinent to note that, the question to be dealt

[1] **Research Scholar, Department of Laws, Panjab University, Chandigarh. Email: advanuradha001@gmail.com**
[2] Impact of Economic Crimes on Financial Systems, Journal of Financial Crime.
[3] Cross-Border Financial Crimes: Legal Frameworks in the US and UK, International Journal of Law.
[4] "India's Fugitive Economic Offenders Act: An Overview," Indian Law Journal
[5] Abu Salem Abdul Qayoom Ansari vs. State of Maharashtra and Ors. 2010 (58) BLJR 1353
[6] Countries with which India has Extradition Treaties/Arrangements. Available at- https://mea.gov.in/leta.html

with here is not the lack of treaties India has with regards to extradition but rather the workings of the current treaties that are in force.

The Republic of India entered a treaty with the Kingdom of Thailand on 29th June 2015 and on 14th September 1999 it entered treaty with the United States of America. While both the treaties are very similar in their general terminologies but there are some striking difference over some aspects.[7] For example, while the treaty with Thailand provides a clause for refusal to extradite on grounds of an individual being a national, in the sub-clause of the same article it puts an obligation on that state to prosecute such individual if indeed they are to refuse such individual's extradition. But in the extradition treaty between USA and India, article 3 clearly states that no requested state shall have the right to refuse extradition on grounds of an individual sought being its own national. While the treaty with Thailand has no grounds for refusal of extradition in a case where an individual is to face capital punishment upon extradition, the treaty with USA clearly states that extradition can be refused if the individual may be subjected to capital punishment upon such extradition.

Thus, on one had India may refuse to extradite its own citizen to Thailand it will not be able to do so in case the requesting state is USA. Furthermore, if an individual were to be subjected to capital punishment upon Extradition between India and Thailand, they may still be extradited while in case of extradition between USA and India, they will not. What this reflects is that it is difficult for Extradition laws and policies to be completely universal as they are highly governed by bilateral relations of two states more than the generality of accepting norms of extradition for cooperation. Since extradition treaty texts from state to state differ widely, the process of extraditing an individual from another state is another predicament. India's success rate for securing fugitive criminals in India has been notably low as opposed to the extradition of individuals to various requesting states. An answer to a parliamentary question in 2016 revealed that India

had made 110 extradition requests to various Foreign nations namely, USA(33), UAE(19) UK (15), Canada (13), Germany (3), Nepal (3), Bangladesh (3), Singapore (3), Italy (3), Australia (2), South Africa (2), Denmark (2), Nigeria (2), France (1), Spain (1), Venezuela (1), Saudi Arabia (1), Thailand (1), Hong Kong (1) and Oman (1).[8]Since 2015, India has sent 132 extradition requests to various foreign governments out of which only 16 have resulted in extradition of fugitives as of 2018. The data depicts a very low rate of realization of extradition requests of India by various

[7] Question no.2380 extradition agreement, lok sabha unstarred question no.2380 To be answered on 26.12.2018. Available at- https://www.mea.gov.in/lok-sabha.htm?dtl/30818/ques Tion_no2380_extradition_agreement (Visited 31st May, 2021)

[8] Question no.964 Extradition request for fugitives hiding abroad, Rajya Sabha Unstarred question no.964 to beanswered on 24.11.2016 Available at- https://www.mea.gov.in/rajya sabha.htm?dtl/27678/QUESTION_NO964_EXTRADITIONREQUESTFORFUGITIVESHIDINGAB

states. Some common reasons for such refusal is often argued as torture and ostracism to political gains. Another reason for such rejection, which can be argued, is the lack of international prowess that states like India have when it comes to creating pressure on another nation state to act according to the treaty signed. Furthermore, it has been observed by many scholars that more than bilateral treaties it is multilateral treaties which create more impact and build for hope for better implementation not eclipsed by lack of political will.

(A) Extradition- India and U.K

1. Legislation governing Extradition

The government of Republic of India and the government of Kingdom of Great Britain and Northern Ireland signed an extradition Treaty on 2 2 nd September 1992 which was ratified on the 1 5 th of November 1993. The purpose behind the treaty was states as to make effective the co-operation between the two countries in the suppression of crime by making further provisions for the reciprocal extradition of offenders.[9]

U.K's act divides the implementation of the act in two parts. Part one deals with the European Union nations. The act has further divided part two in two different categories, namely Category 1 states (which need to provide admissible evidence for a prima facie case) and Category 2 states (which do not need to provide any admissible evidence for prima-facie case.)

India is a Category 1 state under that Act. India's extradition act has, however, made two simple distinction between states a) states with whom it has an extradition treaty/arrangement and b) foreign states with whom it does not have any extradition treaty/arrangement.

2. Implementation

Since the implementation of the treaty in 1993, there has only been one accused that has been surrendered by U.K to India, namely S. Vinubhai Patel, despite several other requests. On the other hand, India has surrendered three fugitives to the United Kingdom.' India falls into category 1 of U.K's extradition act, which makes the extradition process tougher and longer. There are over thirty states which fall under category two of the act and the reasons for the same are mostly summarized as close diplomatic ties, which clearly reflects the vague nature of such categorization and decision. States like U.S.A, which are in Category 2, have received more than seventy extraditions from the U.K. The request to Extradite Vijay Mallaya over default on Kingfisher Airline Loans, along with sixteen other fugitives (all of whom are Indian nationals) was made in 2017 to United Kingdom by India and since then, it has been a cumbersome process to realize these requests.

[9] The Extradition Treaty between the government of Republic of India and the government of Kingdom of Great Britain and Northern Ireland, G.S.R 790(E) Ministry of External Affairs Order, New Delhi (3 0th December, 1993)

It was on 18th April 2017 when Vijay Mallya was arrested in London on a request for extradition moved by India to U.K. Mallya was charged to have defrauded 17 banks in India with a total estimate of 9,000/ crore rupees. On 05th January 2019, he was declared as India's first Fugitive Economic Offender, under the Fugitive Economic Offender's Act, 2018. On 4th
February, 2019 he was approved for Extradition by the U.K Home Secretary. It took three years for the approval for Extradition. As of 2 6 th June 2021 the Extradition has still not been realized by U.K, five years after the request, on grounds of a legal issued between Mr. Mallya and the
U.K government which cannot be disclosed as the reason for the inability of extradition.[10] Given the changing nature of India-U.K relations since the adoption of U.K's Extradition Act in 2003. In 2010, the visit of the U.K Prime Minister David Cameron resulted in the relations getting elevation to "Enhanced Partnership for the Future." U.K supported India's proposal to gain a permanent membership for the UNSC. UK's keen interest in India can be gauged by their request for increasing their diplomatic presence in India. As per 2013 data India's merchandise exports to UK grew by about 20% from USD7.166 billion to USD 8.597 billion and imports from UK rose by over 40% from USD5.397 billion to US$7.593 billion. The 2016 visit of U.K Prime Minister Theresa May which was her first foreign visit outside of European Union and the 2018 visit of India's Prime Minister Narendra Modi where he held multiple bilateral talks with his U.K counterpart, provide a clear vision of both nation state's eagerness in not only continuing relations but also strengthen them.

As of 2019, the British Parliament has a total of fifteen Indian-origin candidates in its seat, besides Indian-origin people comprising of a total of 2.3 per cent of U.K's total population. To set it all to stone, on 4 th May 2021 India-UK released a joint statement during the India-U.K virtual summit which focused on the roadmap for bilateral relations between the two states and for a comprehensive strategic partnership. With specific reference to Extradition this joint statement brings hope and encouragement by the signing of the India-UK comprehensive Migration and Mobility Partnership (MMP.) Both nations have conveyed their mutual confidence in the benefits this MMP will facilitate, especially with the "legal movement of students and professionals, and combating illegal migration and organized immigration crime."[11]

Reflecting on such data, one can suggest that when it comes to international cooperation among states, India's position in the first category country under the U.K act only contradicts all the

[10] Ministry of External Affairs,Government of India, 'List of Fugitives Extradited to Foreign Countries Available at- https://www.mea.gov.in/byindia.htm (Visited on 01st June, 2021)

[11] " Joint Statement on India-UK Virtual Summit (Roadmap 2030 for a Comprehensive Strategic Partnership) 0 4 th May, 2021. (Visited on 01st June, 2021) Available at- https://mea.gov.in/bilateral documents.htm?dtl/33837/Joint_StatementonIndiaUK_Virtual_Summit_Roadmap_2030_for Comprehensive Strategic Partnership

relationship growth that the two states have entered upon over the years. India can, in furtherance of its goal of better implementation of the Economic Fugitive Offender's Act 2018 thereby facilitating Extradition (all of which will be dealt with in detail in chapter four), set in motion the process of obtaining the status of category two country under U.K's act. And for U.K to show promise to this developing relations would perhaps be the quickest delivery of the fugitive economic offender Mr. Vijay Mallya back to India.

III. NEED FOR FUGITIVE ECONOMIC OFFENDER'S ACT 2018

In a list provided by CARE Ratings, India ranked 5 th among countries with the highest Non Performing Asset (NPA) ratio. A Non-performing Asset is a loan or an advance given to a borrower by the bank which has passed its due date. The four countries preceding India namely,

Ireland Portugal Greece and Italy, were all victims of financial crisis in the past few years. India's rise in NPAs could be linked to reasons of leniency in lending norms by the Banking sector resulting in the rise of fraud, cheating and money laundering.

The Insolvency and Bankruptcy Code of 2016 is playing an important role with regard to recovery of assets of those creditors whose case has been filed with the National Company Law

Tribunal. In fact, figures given by the RBI point to a declining phase in the NPA growth rate, which is a positive development." Thus, it is pertinent to note that, India already has laws in place for the crimes that are leading to the rise in NPAs and is undergoing reforms perennially.

The issue therefore cannot be restricted to lack of legal structure but rather an accused's evasion from it.

The laws dealing with Economic Offences are present but to simply put are not enough especially in case of defaulters of high value, having property in various parts of the world. In such cases, the enforcement bodies may be able to confiscate their properties but under the current procedural law they will have to deal with multiplicity of proceedings which will hamper speedy justice. Furthermore, multiplicity of proceedings cause an unnecessary burden upon courts of the state and lead to an unwise usage of their precious time.[12]

The biggest issues faced by the state presents itself is in the form of those will ful defaulters who evade from the jurisdiction of the country's courts and by doing so render all the laws dealing with their offences dormant, if not useless. Vijay Mallya with a default of Rupees 9000 crore, Nirav Modi and Mehul Choksi with default of Rupees 13,600 crore etc., are only a few examples amongst thousands of willful defaulters accused in the likes of fraud, cheating, money laundering etc. who have fled the country to avoid answering for those charges.

[12] Varuna Agarwala and Nidhi Agarwala "A critical review of non-performing assets in the Indian banking industry" Vol. 13, No. 2 RAJ pp 12-23 (2019)

Therefore, the need to bring these accused within the jurisdiction of the state to undergo fair trial becomes the need of the hour. All offenders of law must be subjected to the proper law and punishment. And keeping that principle in mind, the Fugitive Economic Offender's Act 2018 was brought before the parliament and subsequently passed and enacted. The Act takes measures to function as a deterrent against Economic Offenders thereby upholding the sanctity of law in the country. And also in case of Fugitive Offenders who evade the process of law by remaining outside the jurisdiction of the country.[13]

IV. FUGITIVE ECONOMIC OFFENDER'S ACT, 2018.

On 31st July 2018 the parliament of India enacted The Fugitive Economic Offender's Act 2018 and thereby repealed the Fugitive Economic Offender's Ordinance 2018 by virtue section 26 of the act. The preamble to the act clearly presents the purpose of the act which in essence is

Relation between Extradition Act 1962 And Fugitive Economic Offender's Act 2018

(A) Economic Offenders Status Quo

According to a written reply to a Parliament Question in Rajya Sabha by Union Minister of Finance & Corporate Affairs, Smt. Nirmala Sitharamanin as reported by the Press Information Bureau of India1 3 as of 2019 there are 28 individuals who have been accused of criminal cases and are being investigated by the Enforcement Directorate. All twenty eight of the individuals are economic offenders. Twenty five Red Corner Notices have been issued with reference to these individuals and extradition requests have been filed against fourteen of them. Out of the twenty eight individuals, proceedings under the Fugitive Economic Offender's Act have been initiated against 7 of them.

(B) Extradition of Fugitive Economic Offenders

India has been able to secure the extradition of three fugitive criminals on accounts of economic offences. Those three fugitives are Ravinder Kumar Rastogi from UAE in 2003, Charan Jeet Singh "Cheema" also from the UAE in 2005 and Narendra Rastogi from the USA in 2008 as per the data14 provided by the Ministry of External Affairs. From the period of five years between 2016 and 2020, 72 economic offenders i.e. criminals charged with frauds and financial irregularities by various enforcement agencies have fled India.15 Given India's track record, the criminals who have fled the process of law have tremendously outnumbered the criminals who are put under trial.

It is of no question that any form of monetary or fiscal frauds especially of large scale such as that of the recent infamous criminal fugitives such as Nirav Modi, Vijaya Mallaya, and Mehul Chowski etc. have a huge impact on the economy of any nation. Therefore, their impact not only impacts the

[13] [Vol. 4 Iss 4; 67]

upholding of the rule of law but also threatens to damage the economic stability of a state. Threat to economic stability consequently leads to threat to the overall growth, development and security of the nation state. It is because of these reasons, it becomes the utmost priority of any government to first- prevent such offences from being committed and the criminals running away from the state's jurisdiction by way of strengthening law enforcement mechanisms and second- in cases where such offences do indeed end up taking place, have proper diplomatic doors open for the speedy extradition of such fugitives from the state to which they have fled. This is where the Fugitive Economic Offenders Act 2018 and the Extradition Act 1962 come together to form the perfect harmony of the two solutions.

In both the acts, the central government has the power to issue orders with regards to the applicability of the act. While the Extradition Act is applicable to all those fugitives who have fled the jurisdiction of India, the Fugitive Economic Offenders Act on the other hand is only applicable to those fugitives who have committed an economic offence which is worth over 100 crores. The fugitive economic offenders act is a special act, enacted to serve a specific purpose unlike the Extradition Act which is relatively general. The setting of cap on the total minimum sum of 100 crore as a mandate for the applicability of the act indicates the urgency in bringing to justice high stake offenders, as they are the ones who have a large scale impact on the overall well-being of the state.

(C) Implementation and Effect of the Acts

It is very important to state ab initio that as provided under Section 22 of the Fugitive Economic Offender's Act, the application of the act is "in addition to and not in derogation of any other law for the time being in force." 16 The Fugitive Economic Offender's Act is derived from various other pieces of legislation which govern economic offenders of different kinds for example the Prevention of Money Laundering Act 2005 etc. The Extradition Act is another such piece of legislation for the benefit of which this act has been brought into the legislation.

The Extradition Act's provisions are complimented by that of the Fugitive Economic Offenders Act. The central government has the power to issue orders under the Extradition Act directing the application and extent of application of the act to certain foreign states. The central government by order can also direct restrictive application of the act to specific fugitive criminals found or suspected thereof in India. It can make a request for the extradition of a fugitive criminal who has either committed an extradition offence in India or is suspected thereof and is in any foreign state. Every person has a right to resist extradition and in most states, the approval of the Extradition requests from other states requires judicial scrutiny. The individual requested to be extradited has the right to appeal against any order of the courts, if after scrutiny their extradition request is upheld.

One of the salient feature of the Fugitive Economic Offender's Act is the process of compelling the offender, by means the confiscation of their property, to submit themselves to the process of law in the country, and undergo trial.It is not necessary or mandatory that an extradition request has already been placed before an individual has been declared as Fugitive Economic Offender under the act but it is safe to presume that it is the subsequent step or vice versa.

(D) Criticisms and Issues related therewith

There are various issues raised and criticisms thus arrived with regards to the applicability of the Extradition Act with the Fugitive Economic Offender's Act. Under the Fugitive Economic Offender's Act appropriate authorities can take away the right to claim or defend any "civil claims"", cause "attachment of property"" and "search and seizure" of the property of an individual who has been declared a fugitive under the Act. These provisions are placed to primarily "deter" the fugitives from ever evading the process of law by evading from the jurisdiction of India and secondly in case they end up fleeing then create pressure on the fugitive to submit themselves to the jurisdiction of India and the process of law. It can be argued that this form of pressure tactic can lead to the violation of rights of an individual. As per the principles of natural justice of "audi altrem partem" every person has to be given the right to heard and no one should be left unheard. Let us take an illustrative example- A fugitive has taken residence in one state and extradition is sought by the other state from which they have evaded. The fugitive resists the extradition proceedings, and presents their own evidence in court. The government of the requested state simultaneously declares the fugitive a "fugitive economic offender" under the act aforementioned. In this case, the question that arises is whether this action of the government imposes unreasonable, arbitrary and unfair pressure on the individual to render him unable to exercise properly their right to be heard in court. The answer, the researcher would argue, is in the negative for the following reasons. Before an individual is declared a "Fugitive Economic Offender" under the act, the burden of proof to confirm through evidence that an individual is a "Fugitive Economic Offender" under this act lies on the Director or any other officer which the Director has appointed on this behalf (who is not below the rank of Deputy Director) under the act. They then submit such application with evidence to Special Courts under the act and then after judicial scrutiny a decision is made. But not before notice for such proceedings is mandatorily sent to the individual against whom such application is moved and they have been provided a proper time to either present themselves in person or via any legal representative to the court. They are given a fair chance to present their case as to why they should not be declared so.

The process under the act merely provides an alternative to the individual to voluntarily submit themselves to the process of law and if proved, face the consequences of their crimes instead of

being surrendered through the process of extradition. It can be further argued that instead of viewing it as only pressurizing mechanism, it can also be seen as an alternative to extradition by voluntary submission to the individual, if they are proved to be a fugitive economic offender having committed a crime worth rupees 100 crore or more.Furthermore, it is to be noted that the confiscation and attachment of property that takes place under the act is only equivalent to the "proceeds of crime" and not of any other property. Reasonable restriction on an individual on grounds of evasion from law cannot said to be a violation of rights of an individual.[14]

In international law discourse, even the process of Extradition is not saved from an extradited individual's fear of facing unfair prosecution or unfair treatment or being used as scapegoat by governments for political gains. When it comes to determination of treatment of individual once extradited judicial courts of many countries have often stated that the doctrine of separation and abiding by the sovereignty of states limits their inquiry in an extradition hearing to only the determination of prima facie cases. However, this does not change the fact that when it comes to the actual determination of whether or not an individual should be extradited or not, it still remains with the laws of the requested state with a combination of judicial as well as executive discretion.

(E) Relevance and impact of the Fugitive Economic Offender's Act 2018

Since Vijay Mallya is the first person to be ever declared 'Fugitive Economic Offender' under this act and is undergoing Extradition proceedings, his case is the best to understand the relevance and impact of the Act.

Vijay Mallya fled from India in 2016, the request for his extradition was made in 2017, order to extradite him was passed in 2018 and yet as of June 2021 Vijay Mallya has not been surrender to India. It is evident that the process of Extradition is not an easy one. It is not just the result of the strenuous process of judicial scrutiny that leads to such delays but also diplomatic strains, and "confidential" reasons for states for not being able to process such requests expediently.

The order passed by the PMLA Special Courts in 2019, declaring Mr. Mallya a "Fugitive Economic Offender" is of utmost relevance. It gave authorities in India an opportunity to confiscate his properties and attach them, the property being equivalent to the "proceeds of crime" only. Such property can even be sold by appropriate authorities to repay the damage caused by his refusal to repay his loans. This is very important because in cases where the fugitive refuses to return to face the process of law, the people who have incurred losses due to the fraudulent practices of such individual become helpless victims of such proceedings. An issue that is often debated for with reference to the 'pressure tactic' that is employed under the Fugitive Economic Offender's Act 2018

[14] Ministry of External Affairs, Government of India, 'List of Fugitives Extradited to Foreign Countries' Available at- https://www.mea.gov.in/byindia.htm (Visited on 01st June, 2021)

is that it takes away the right of any economic offender to resist their extradition fully. The right to resist extradition cannot deemed to be 'curtailed' just by an act on part of the requesting party to incur losses that are caused by the individual they want to extradite.[15]

The Fugitive Economic Offender Act does not provide for a creation of any new crime but in actuality the core reasoning of this act can be bottled down to one primary drive which is to cause for an accused to submit themselves to the process of law in India.

Vijay Mallya was declared Fugitive Economic Offender in the 5 th of January and it is a curious coincidence that one month later in February 2019 his Extradition was approved by U.K's home secretary.[16] Whether or not Vijay Mallya being declared as a Fugitive Economic Offender had any impact on his extradition process to be quicker remains indeterminate but one thing is for sure that it is due to the proceedings under the act and the Special Court's decision that many banks that he has defrauded have been able to take his properties to be sold to compensate themselves with the losses that he's incurred them.

VI. CONCLUSION

Despite all its lecunas, it is of no doubt that Extradition in today's modern world is an essential tool utilized by governments to deter criminals from fleeing the jurisdiction, in order to escape from the consequences of their crimes. It is pertinent to note that, the more treaties a state enters into with other states, it creates more and more a sense of security among its people that no one can escape from the custody of law by mere geographical and territorial restrictions. It upholds the principle of rule of law and propagates the idea of a just and fair society.

The Fugitive Economic Offenders Act 2018 is a huge stepping stone by the Indian government towards taking a strong stand on its intolerance of rising fugitive economic criminals. India within its 75 years of independence has been able to achieve a myriad of tasks. And its external affairs policies and internal laws have reflected the same.

[15] Section 5, The Fugitive Economic Offender's Act, 2018 (Act 17 of 2018)
[16] Section 14, The Fugitive Economic Offender's Act, 2018 (Act 17 of 2018)

CHAPTER III

Environmental Law and Policy Framework

An Analytical Examination of the National Green Tribunal's (Ngt) Role in Advancing Environmental Protection In India

Dr. Vikas Sharma[1]
Mr. Sachin Subhash Gore[2]

Introduction

Over time the issue of environmentalism in India has emerged as crucial due to the continuous industrialization, urbanization, and rising population rate that has exerted pressure on the exploitation of resources as well as ecosystems. India has failed to address environmental problems including; pollution, deforestation and degradation of water sources. Due to the aforementioned problems, the Indian government formulated various environmental laws and regulations to achieve the environmental objective of minimizing the impacts of human actions on the environment.

The formation of the (NGT) in the year 2010 was another milestone which brought a drastic change in the enforcement of the environmental laws in India. The National Green Tribunal under the Act of 2010 focuses on allowing for a proper judicial redressal of environment-related grievances and issues. The main purpose of this body is to address environmental issues, enforce environmental laws and regulations, and mediate in environmental-related disputes. Thus, the NGT symbolises a new phase in the evolution of India's environmental law regime and is an attempt to upgrade the procedural strength of the system to deliver environmental justice. At now the National Green Tribunal is one of the components of the environmental protection system of the Republic of India. They serve the purpose of a special environmental court to create a proper legal framework for environmental litigations as well as protect the environment and its legislation. The jurisdictional area of the Tribunal helps in timely and efficient identification and addressing of environment-related concerns thereby contributing to the protection of natural resources in India.

Objectives of the study

1. To evaluate the NGT's effectiveness in addressing environmental disputes and enforcing environmental regulations in India.
2. To identify the challenges faced by the NGT and propose recommendations for improving its functioning and impact on environmental protection.

[1] Associate Professor ILSR, Faculty of Law, Mangalayatan University, Aligarh, vikas.sharma@mangalayatan.edu.in
[2]Research Scholar, ILSR, Faculty of Law, Mangalayatan university, Aligarh, ssgore2005@gmail.com

Historical Context: Development and Evolution of Environmental Law in India

The subject of Environmental law in India has evolved to a significant extent in the past few decades mainly due to escalating environmental problems and the imperative need for enhanced mechanism of regulation. The process of progressing in environmental legislation begun in the 1970s as people began to realize the effects of industrialization, and expansion of urban areas. Most of the initial statutes mainly dealt with pollution contours, other important enactments are the Water (P&CP) Act of 1974 and the Air (P&CP) Act of 1981. Setting the scene for later legislation for regulation of environmental management was put in place by this legislation. Perhaps the most significant factor in expanding the rights of citizen in India has been PIL that has helped in environmental justice. Gitanjali Gill (2012) has underscored that judiciary through Public Interest Litigation (PIL), people and other organisations have been allowed by the courts to seek justice in environmental concerns. It has made a positive input in enhancing responsibility in environmental management through the current participatory approach and the expansion of the environmental law front to embrace human rights.

The emergence of the National Green Tribunal (NGT) in 2010 was quite a major development in Indian environmental jurisprudence. The main purpose of establishing the NGT was to afford the appropriate and expeditious redress of environmental disputes. According to Gill (2013), it is imperative to note that the NGT functions as a means of improving the availability of environmental justice based on the proposition that it offers an institution for the enforcement of environmental law, and resolution of disputes relating to the environment.

Another significant trend that has characterized the development of environmental policy is the efforts to integrate the principles of sustainability into the national development of cities. As a related and pertinent literature for the study, Umashankar (2014) analyzes how India adopts the changes of the environmental policy through the global environmental challenges like climate change. In addition, Srivastava and Srivastava (2015) stress that legislative measures have been applied in the fight against climate change in India, proving the constant development of the country's concern for the environmental issues.

Methodology

Analytically, using doctrinal research, this work explores the role of the National Green Tribunal (NGT) in giving environmental protection in India. Legal information's such as the content of the 2010 Act, the environmental laws are analyzed in detail. A review of ten essential cases of NGT to

analyses its strengths and weakness facilitates assessing its appropriateness in enforcing environmental laws and regulation and settling disputes. Evaluations of the environmental policy and governance entails the consideration of legal perspectives and judgement from the Tribunal. The present work also analyses procedural and administrative aspects of NGT through Tribunal decisions as well as reports. Using this doctrinal approach shall assist in explaining some of the contributions made by the NGT in environmental protection, the limitations and the possibilities for further development.

Major Environmental Issues and Cases Handled by the NGT

The NGT has the breadth of dealing with a number of environmental issues in India, in terms of implementing environmental laws, hearing complaints against violations and influencing environment management. Since its creation, the NGT has presided over numerous significant cases related to many sectors such as; air pollution, water pollution, deforestation, and industrial waste disposal among others. Below are some of the major environmental issues and notable cases adjudicated by the NGT.

1. Air Pollution

One of the most pressing environmental challenges in India is air pollution, particularly in urban areas like Delhi, which regularly records hazardous air quality levels. The NGT has been proactive in addressing air pollution, particularly concerning vehicular emissions, industrial pollution, and construction dust.

- **Case: Ban on Diesel Vehicles in Delhi-NCR[3]**

In the year 2015, the NGT passed a directive that no over-ten-year-old diesel vehicle would be allowed to move on Delhi roads in the National Capital Region. The size, nature and scale of health effects due to the emission of particulate from diesel vehicles were particularly highlighted by the Tribunal which directed that the deregistration of such vehicles be effected with a view to reducing their emissions. This ruling was one of the few where the NGT acted assertively, especially in areas to do with vehicular pollution was a major cause of such pollution.

- **Case: Crackdown on Firecrackers (2016)[4]**

[3] (NGT). (2015). "Order in Vardhaman Kaushik vs. Union of India & Ors. [OA No. 21 of 2014]. Retrieved from NGT Orders."

[4] (NGT). (2016). "Order in Arjun Gopal & Ors. vs. Union of India & Ors. [Civil Appeal No. 11 of 2016]. Retrieved from NGT Orders."

In another landmark verdict made by NGT, it put several restrictions on the sale and usage of firecrackers particularly during the festive season especially Diwali to curb air pollution. It was particularly centred on the reduction of emission which is dangerous from firecrackers that highly pollute the atmosphere during festivities.

2. Water Pollution

The contamination of rivers and other water bodies due to industrial waste, untreated sewage, and agricultural runoff is a severe environmental issue in India. The NGT has passed several critical judgments aimed at cleaning and protecting rivers and water bodies.

- **Case: Rejuvenation of the Ganga River (2014-2020)[5]**

  The NGT has been heavily involved in the rejuvenation of the Ganga River, which has suffered from years of industrial and sewage pollution. In a series of orders, the NGT directed authorities to implement stringent measures to prevent the dumping of industrial waste, untreated sewage, and other pollutants into the river. The Tribunal also fined industrial units responsible for illegal discharge and demanded action from state and central government agencies to restore the river's health.

- **Case: Yamuna Pollution Case (2017)[6]**

  In this case, the NGT imposed hefty fines on Delhi and Uttar Pradesh authorities for failing to prevent pollution in the Yamuna River. The Tribunal highlighted the rampant dumping of untreated sewage and industrial effluents, which had rendered large sections of the river ecologically dead. It ordered immediate action for river cleaning and set up monitoring committees to ensure compliance.

3. Deforestation and Forest Conservation

Deforestation and the destruction of wildlife habitats are other critical issues in India, where industrial projects often encroach on ecologically sensitive areas. The NGT has taken a strong stand in protecting forests and wildlife habitats from destructive development activities.

- **Case: Aravalli Mining Ban (2018)[7]**

  The NGT imposed a ban on illegal mining activities in the ecologically fragile Aravalli hills, which span parts of Rajasthan and Haryana. The Tribunal observed that extensive illegal

[5] (NGT). (2017). "Order in M.C. Mehta vs. Union of India & Ors. [OA No. 200 of 2014]. Retrieved from NGT Orders."

[6] (2017). "Order in Manoj Mishra vs. Union of India & Ors. [OA No. 6 of 2012]. Retrieved from NGT Orders."

[7] (NGT). (2018). "Order in Vikrant Kumar Tongad vs. Environment Pollution (Prevention and Control) Authority & Ors. [OA No. 647 of 2017]. Retrieved from NGT Orders."

mining had severely damaged the hills, leading to environmental degradation, loss of biodiversity, and increased vulnerability to soil erosion and desertification. The NGT ordered the restoration of the region and strict enforcement of environmental laws to prevent further exploitation.

- **Case: Western Ghats Conservation (2013)[8]**
  In another significant ruling, the NGT halted construction and mining activities in the Western Ghats, one of the world's biodiversity hotspots. The Tribunal highlighted the irreversible damage caused by deforestation and unsustainable development in this region. It emphasized the need for a balance between development and conservation, ordering the identification of ecologically sensitive areas to protect biodiversity.

4. Hazardous Waste dumping

Illegal dumping of hazardous waste is another hotspot issue in the industrial area or notified development zone for the chemical and hazardous product manufacturing area. India is one of the leading chemical and pharma manufacturing/formulation-providing State as compared to the industrial growth of the entire world. This industrial growth or growing demand for chemicals and pharmaceuticals increases the probability of causing harm to the surrounding area if there is any illegality conducted by the industry in terms of the environmental norms regarding the handling and disposal methods of the generated hazardous waste. The NGT has already taken a strong stand to protect the natural habitat of living and non-living things which are part of the Environment to balance development along with sustainability.

- **Case: Hazardous waste generation, storage and disposal (2021)[9]**
  In one significant ruling, the NGT directed to the various states and state authorities like Chief Secretaries to furnish the data sought by the CPCB and MOEFCC in respect of the Hazardous Waste generation, storage and disposal methods along with the quantity. Also directed the State PCB and the PCC to state the actions against the defaulters of the HOWM Rules 2016. This order is related to the refiners of various states and spent catalysts. This case was decided on the basis of the previously decided order in matter no. OA 804/2017

8 (NGT). (2013). "Order in Goa Foundation vs. Union of India & Ors. [OA No. 26 of 2012]. Retrieved from NGT Orders."
9 (NGT). (2020). "Order in Nathan Chaudhary vs. States of GNCTD & Ors. [OA No. 67 of 2020 (PB)]. Retrieved from NGT Orders."

dated 29/01/2021. The matter of exceedance of Authorised quantity and violation of the HW storage norms which is 90 days discussed in this.

Case: Unauthorized and unscientific handling of Hazardous waste resulted in death of six and sickness of 20 (2023)[10]

In this case based on the violation of the Hazardous Waste Management Rules, 2016 where the Maharashtra-based chemical industry was involved in the illegal sale of hazardous waste of sodium hydrosulfide to Vadodara Gujarat-based purchasers which was neither "authorized user" nor "authorized disposal facility" for Hazardous waste. Transporter discharged the acidic waste into the drain and the realised gas became the cause of the death of six people and the serious sickness of 22. The heirs of the deceased were entitled to compensation at least @ ₹20 lakhs in respect of each death and @ ₹10 lakhs to each of those who felt sick with the restoration of environment. NGT directed to prepare the robust monitorable mechanism to deal with inter-state movement of hazardous chemicals/waste in accordance with Rules.

Conclusion

In this context, the NGT has been able to impact the protection of the environment in India through the decisions it has made. Through its several decisions, it has fostered modifications to the current paradigms regarding pollution, deforestation, illegal dumping of hazardous waste and all sectors of the environment. The Tribunal has also supported the ability of people to access environmental justice with all the government authorities as well as private corporations being held responsible for their actions along with the award of compensation for the affected party and the damage caused to the Environment. Nonetheless, the NGT is not entirely without its problems that were outlined above as enforcement issues and resource limitations but it remains a significant factor in the formation of India's environmental path.

10 (NGT). (2023). "Order in Brackish Water Research Centre vs. Gujarat State Pollution Control Board & Ors. [OA No. 05 of 2022 (WZ)]. Retrieved from NGT Orders."

Navigating ESG in India: Climate Action and Industrial Responsibility

Ms. Nelvita Cleona Noronha[1]

Introduction

Climate change, often considered a threat to the environment, is now being proven to be a disaster for human existence. It is a gradual process for the climate to evolve through natural factors. However, post industrialisation era which brought in technological advances, increased urbanisation, industrial efficient machinery and equipment also resulted in radical changes in global environment and climate. Primary reason for this is excessive use of carbon di-oxide (CO2), methane (CH4), nitrous oxide (N20), and other greenhouse gasses (GHGs).[2]

Industrial activities have played a pivotal role in the economic and social development, bringing in innovation and global involvement. Nevertheless, the negative and adverse impact of these activities cannot be overlooked. It is a natural process of the environment to release and absorb certain gasses, however increase in release of these gasses will affect the standard working capacity. To understand this better, the research undertaken during Covid outbreak in 2019-20, when all the companies and industries were shut during the lockdown, showed that carbon emission reduced by 17% in 2020 as compared to early in 2019.[3] Reports of IEA (International Energy Agency) also confirmed reduction in the emission of CO2 in 2020.

Considering the global responsibility the UN, came up with several policies and conferences, to ensure a safe environment ever since 1972 with a conference on Human Environment. The break through was then achieved through Kyoto Protocol and Paris Agreement, which came up with global strategies. Kyoto, largely influenced the developing nations to cut down the carbon footprint by 5% from 1990 and for country specific goals from 2008-12. IPCC through its reports always kept a check on emerging economies like China, Russia and India. Further the UN also came up with 17 Sustainable Development Goals, which sought global partnership from all its members in achieving the said goals by 2030. Climate Action, was then considered as a shared responsibility. The member nation came forward with policies and framework to ensure an achievable goal. Thus, ESG reporting also found its strong rooting in the disclosure requirements in the economic world.

ESG which stands for Environmental, Social and governance, ensures that a company is transparent in all its activities. In India, this framework is followed through Business Responsibility and Sustainability Reporting, through which companies compile and submit the report to the stock

[1] **Research Scholar, Christ (Deemed to be) University, Bengaluru, Email: nelvitacleona@gmail.com**

[2] Jamil and Qureshi, The Footprint of Industrialization on Climate Change, Journal Of Business & Economics Volume No. 13 (1), Pp. 101–118

[3] Le Quéré, C., Jackson, Jones, Smith, A. J., Abernethy, S., Andrew, R. M., De-Gol, Canadell, J. G., et al. (2020). Temporary reduction in daily global co 2 emissions during the covid-19 forced confinement. Nature Climate Change, 10(7):647–653.

exchanges or SEBI. These reports are also placed in their websites for the stakeholders to easily access the documents. This statutory requirement was made mandatory from 2021-22, with a specific time frame for the top 1000 listed companies of India to be achieved by 2026-27.

This paper focuses on the success factor of this reporting framework based on the Reporting data available. Through this, an analysis will be drawn on how far the Indian companies have adhered to the statutory requirement and how the reporting system promoted transparency when it comes to environmental issues. The major challenge for any policy is its drawbacks, which will be looked into in this paper. Further, this study is limited only to the environmental aspect of ESG reporting to understand Sustainable Development Goals and its influence on the Industrial Actions affecting the Climate Change.

Environmental Regulations and Industrial Action

Policies and frameworks are states' objectives in the form of mandatory guidelines. Every country strives to have a pollution-free and healthy environment for itself. With this aim, several laws are introduced and monitored. In India, environmental issues, its protection and preservation is considered as need of the hour. The country has witnessed number of laws including, Air Act, of 1987, The Environment Protection Act, of 1986, The Forest Conservation Act, 1980, The Water (Prevention and Control of Pollution Act) 1974, and so on. These laws evolved with the changing needs of society. at times they were amended or replaced. When we understand the concept of Law or Policy, it is clear that no one policy is complete. There will be shortcomings that can be considered based on the policy stage.

The main objective of having an environmental policy or framework is that there is reduced harm to the environment from any human activity. The major contributors to environmental degradation are considered to be the companies that deal with large-scale activities that negatively impact the water, soil, air, climate, and the environment. Monitoring the activities of these companies is usually considered a tedious task. As a shared responsibility the Ministry of Environment and Forests (MoEF), introduced a framework of administrative guidelines in 1994, under the term EIA, which stands for Environmental Impact Assessment.

EIA is a procedure that assesses the risk factor involved in the proposed activity, which follows an EC (Environmental Clearance), a permission to proceed with the project. There are a set of conditions that have to be followed to obtain an EC. The requirements include the location in which the industry carries on the project, safeguard measures undertaken, acquisition of land, felling of trees, river valley projects, and major irrigation projects. There are four sources from where the information is sought: i) from the proponent of the project, on whom the burden lies to mitigate any adverse risk arising out the said activity, ii) from the affected community, iii) from the expert

committee or iv) from the information and analysis made by Impact Assessment Agency. Therefore it involves a clear scrutiny of information received through documentation as well as public consultation.

The major drawback that is seen here is the defective public hearing. This is considered to be the major source of information in a grievance redressal system. However, it was seen that in cases that affected the public, they were deprived of attending the hearing.[4] The purpose of public consultation will not be served if the public is kept away from the process through inadequate notice or failure to publish necessary information.[5] The major gap arises when the assessment is meant to appease the committee rather than to serve the public.

Stakeholder perspective

The stakeholder-centric model of the industry focuses more on the stakeholders of the business rather than capital or wealth creation. Thus, if a company should sustain itself in the market it is necessary to gain the confidence of people who directly or indirectly share interest in the business of the industry. As a theory of management and ethics[6] stakeholder theory also aims at generating multiple benefits to the industry. For example, an investor looks into the activities that an industry carries on to see the benefit he can derive from the investment. The idea behind this strategy is that a company that follows sustainable practices is likely to face less litigation or any other anticipated risk. The other way around most anticipated way the top management thinks is to hold the human capital and its investors for a longer term, so that there is fixed and safe capital inflow.

Today the stakeholders demand transparency. Vigilance has increased not only on the part of the regulators of the industry but also from the stakeholder perspective. Therefore, this has paved the way for non-financial disclosures. Every stakeholder, be it a customer, employee, investor, or general public, is keen to understand how is the industry affecting the environment and the society at large. The EC which could be received through impact assessment by EAC, is now placed in an annual disclosure document which is made available to every person who wants to know about the business of the company. These disclosures are made in accordance with Guidelines issued by the Ministry of Corporate Affairs. In India, it is under the Business Responsibility and Sustainability Reporting Framework, which is mandatory for the top 1000 listed companies (based on their capital share in the market).

Managerial Responsibility and willingness

[4] Kanchi Kohli, Manju Menon, Eleven years of Environment Impact Assessment Notification, 1994, How effective it has been (2005)

[5] Leo. F Saldanha, Abhay Naik, Green Tapism: A review of Environmental Impact assessment notification,1994

[6] Schaltegger, Horsich & Freeman, Business cases for sustainability: Stakeholder perspective, Organisation & Environment, (2019)

As ESG reporting is in its infancy stage in India, there are a few researches that have determined a sheer line of link between sustainable reporting, corporate issues and value creation of firms. However, the gap arises between the actual performance of ESG reporting and the board involvement. The corporate strategies undertaken by the top management to find a sustainable solution can integrate ESG risks and ESG management.[7] The majority of studies show a positive approach of how this reporting framework favours the industries. However, failure to incorporate the necessary information will lead to a negative impact on the industry. Critics also find the reporting framework to be more complex and serve only short term goals. Studies have shown positive relationship between sustainability and profitability.[8]

ESG Reporting in India

The application of ESG is the need of the hour in India. It provides a clarity on the company's impact on environmental, social and governance performance. In this context it is necessary to determine the risks and ways to mitigate it through the disclosure.[9] ESG is divided into three major segments of a business model;

i) Environment: Activities of the industry may have direct or indirect impact on the environment. Industries are often considered as major contributor of environment pollution leading to climate change. Complying with the transparency guidelines, through ESG, there is lower chance of a industry violating the regulation[10].

ii) Social Issues: are based on the relationship a company shares with its employees, customers, share holders, stakeholders and all other individuals. If a company face any lawsuits or penal actions against its own people this will have a huge adverse impact on the companies economical interest.

iii) Governance: The term Governance stands for the way a company is managed, by complying all the rules and regulations. However, the shareholder interest is now made stakeholder interest protecting the rights of every person involved in the business.

Business Responsibility and Sustainability Reporting

In line with global developments, the Securities and Exchange Board of India(SEBI), in its efforts to enhance ESG reporting, introduced Business Responsibility and Sustainability Reporting, for the listed companies in 2021-22. The process that began as a voluntary disclosure was then made mandatory requirement by 2022-23. This reporting format is based on nine

[7] Gray, Kouhy, Corporate social and environmental reporting, (1995)
[8] Eccle, R., Ioannou, I., & Serafeim, G. (2014). The impact of corporate sustainability on organizational processes and performance. Management Science, 60(11), 2835–2857. https://doi.org/10.1287/mnsc.2014.1984
[9] Boffo, Sustainability in Finance: Frameworks, Standards, and Scores, (2020)
[10] Gupta, Sustainable development goals and inclusive development (2016)

principles of National Guidelines for Responsible business Conduct (NGRBC) introduced by SEBI.

Understanding the Environmental Criteria of ESG Reporting

Any risk that leads to environmental deterioration can be termed as environmental risk. This can be considered as potential risk by any industry as few of them can be with or without anticipation. Therefore when reporting, this can turn out to be a threat or opportunity for the industry. Increase in number of regulations world wide including, the Sustainable Goals to be achieved by 2030, is making it necessary for the companies to provide data sustainably. The present framework being qualitative, it makes the report more complex to compile.

This reporting can turn out to be a boon or bane to the industry based on its compiling and presenting ability. Prospective risks that can arise out of this reporting Framework can be:

i) Physical Environmental Risks

When an industry undertakes activities that impact the environment it can lead to a number of physical changes in the environment. No doubt climate change is a gradual process, however, industrial activities merely expedite the process. Therefore if there is a delay based on any natural calamity, this will directly affect the company's efficiency to complete a project within a given span. The reason for delay however cannot be shown in the report.

ii) Transition cost Risks

To better understand this, if a company is switching to a mechanism that emits a lower CO2, the transition cost to change the entire process of manufacturing is an additional cost to the industry. This can be because of change in policy, laws, market requirement, or technology. This will impact the company's cash inflow and outflow.

iii) Legal Risks

Compiling and presenting the data in itself is challenge for the companies. If a company face a lawsuit this reduces the goodwill of the company. The laws relating to climate change are fast changing and evolving. Thus what is permitted today may be prohibited tomorrow, therefore this can impact the annual reporting of the company.

iv) Technology inefficiency

Change in laws will require the company to bring in new methodologies and process to undertake and complete a project. Changing the process or procedure isn't a east thing. A transition from high emission model to low emmsion and energy efficient model will include risk of getting the new technology. This can be time consuming an expensive

v) Goodwill Risk

If the data is not upto the mark, and does not meet the statutory requirements or expectations of the stakeholders, the company will lose its credibility in the eyes of it customers. Thus causing a risk of loss of reputation it had built over the years.

vi) Loss of market value

The major loss an industry will face here is in terms of its valued investors. Both individual and institutional investors rely on the financial and non-financial disclosures of the industry to know the financial stability of the industry. When an industry faces lawsuits for non-compliance of legal requirements, the reputation is tarnished causing the investors to withdraw from the companies shares.

Findings and Analysis

Though the number of companies reporting have increased, the number is still limited. Considering this top 100 companies were selected based on market capitalization. Out of which only 84 could be considered for the environment aspect of ESG.

The primary goal was to study the quality of information provided, covering areas like emissions, energy consumption and environmentally and socially responsible products and process.

Out of the 84 companies 96% reported reduced energy consumption. Majority reported on an average 13% reduction in energy consumption in comparison with FY 2021-22.

Out of total sample of 84 companies, 94% reported on an average, 14% reduction in carbon emission per unit of revenue.

The external audit was conducted by almost one third of the companies. It is to be noted that it has not been mandatory for external audit. The remaining have complied with internal audit and assurance.

Drawbacks of the present reporting framework

The findings of this study show that ESG Ratings do not adequately reflect ESG performance. Thus making it difficult for the decision-makers to identify the risks. The divergence hampers the motivation to improve the ESG performance, as there is a conflict between rating agencies and required standards. Lack of standardised reporting and rating framework is huge challenge for the industries. The credit rating agencies also face a challenge in comparing and rating the ESG performance because of this difference. This can lead to a subjective and inconsistent information being circulated.

The classification of industries is necessary. All listed companies cannot be considered under one bracket. For this study out of top 100 listed companies only 84 could be considered as they had direct connection with environmental factor of ESG reporting.

There should be a way to establish greenwashing within the ESG reporting. Through this study it is found out that the companies that showed good performance in their ESG report also faced lawsuits for environmental violation. Therefore environmental aspect should not merely be on papers.

The way forward: Is sustainability merely on paper?

The study suggests that standardization of reporting units will provide a clear picture for comparison and consistency. There are references of many companies that are facing lawsuits yet having a good ESG rating. This poses a doubt on the genuineness of data presented. Thus if the source of data is included in the report, along with facts and figures this will add a better clarity. As the report serves both the regulator and general public, it should be simple, clear and avoid complex data presentation. Thus providing a true picture of the ESG performance.

Companies adhere to ESG rating rather than ESG performance. Despite having regulations, assessments, and reporting, sustainability should not merely be on paper. Regulators should be vigilant of greenwashing, where companies try to deceive the public with information that suits the statutory requirement which in actuality is a sham.

Beyond the Green Veil: Addressing Greenwashing in India's Sustainability Journey

Ms. Arifa Sultana Choudhury[1]

Ms. Sakshi Mehta[2]

Introduction

Over the years, there has been a growing awareness of the need for businesses and consumers to appear sustainable and ecologically friendly. Businesses work to draw customers' attention to the products' environmental advantages in order to increase their environmental sustainability and foster customer loyalty and confidence in their businesses. Businesses view the green agenda as a chance to increase their profits get a competitive edge and raise their market value for various user segments. SEBI in its circular[3] has defined Green Washing as "*making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation.*" Corporate Green Washing in ESG has grown to be a major problem in India as corporations try harder to establish themselves as sustainable and ethical.[4]

Greenwashing is the dissemination of false information regarding their green initiatives rather than truly being environmentally friendly to stakeholders both inside and outside the company. The past several decades has seen a tremendous increase in industrialization and globalization, which has led to pollution, greenhouse gas emissions, ozone depletion, global warming, and other forms of environmental damage.[5] "Development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs" is how Brundtland (1987) has defined sustainable development but the practices that are being followed in the name of green and sustainable initiatives are fraudulent in nature. Customers, investors, and other stakeholders are becoming more environmentally and socially sensitive. When making purchasing and investment decisions, they take social and environmental factors into account. As a result, businesses are constantly under pressure to do well on these metrics and to consider factors other than earnings.[6]

[1] **Assistant Professor, School of Law, Dayananda Sagar University, Bengaluru**
arifasultana-sol@dsu.edu.in
[2] **Assistant Professor, School of Law, Dayananda Sagar University, Bengaluru**
sakshi-sol@dsu.edu.in

[3] SEBI, https://www.sebi.gov.in/legal/circulars/feb-2023/dos-and-don-ts-relating-to-green-debt-securities-to-avoid-occurrences-of-greenwashing_67828.html, (last visited on Oct.24, 2024).

[4] Sushobhan Sensharma, Dr. Manish Sinha and Dr. Dipasha Sharma, Do Indian Firms Engage in Greenwashing? Evidence from Indian Firms, 16 AABFJ 67, (2022), https://ro.uow.edu.au/cgi/viewcontent.cgi?article=2284&context=aabfj.

[5] Arayssi, M., Jizi, M., & Tabaja, H. H., The impact of board composition on the level of ESG disclosures in GCC countries, 11 SAMPJ 137, (2020), https://doi.org/10.1108/SAMPJ-05-2018-0136.

[6] Deepti Jog and Divya Singhal, Greenwashing Understanding Among Indian Consumers and Its Impact on Their Green Consumption, 25 GBR (2020), https://doi.org/10.1177/0972150920962933.

Being accountable to all stakeholders, including customers, investors, the environment, employees, the community, the government, and the general public, is what corporate social responsibility entails. They should make decisions and conduct their business in a way that meets stakeholder expectations (ISO 26000). In an effort to outperform their rivals, businesses are increasingly embracing the "go green" strategy. As a result, sustainability reporting and green marketing have gained importance.[7] "Sustainability reporting is the practice of measuring, disclosing, and being accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development," according to the Global Reporting Initiative (2011).[8]

An organization can employ green marketing, a comprehensive marketing phenomenon, to enhance the environmental-friendly image of both its products and the organization overall. It includes creativity and adaptation in the creation, production, packaging, and promotion of products. Businesses utilize green marketing as a weapon to compete in the global market. The phrase "green is the new black" is frequently used in the era of sustainability. Companies are abusing the green marketing technique to create a phony green brand image in the eyes of investors and customers.[9] Ads that make false claims, ignore details on the veracity of the claims, or a mix of these are the primary means of promoting greenwashing.[10] Greenwashing represents a significant concern, as the entities engaging in this practice lack the capacity to substantiate their environmentally friendly claims[11], potentially undermining consumer trust in authentic sustainable products.[12] Most consumers typically find green product messaging confusing. Thus, the producers capitalize on this misunderstanding and continue to market their goods as environmentally friendly.[13] Greenwashing may lead to a detrimental effect on investors' trust.[14] By leaving other customers perplexed about the veracity of the companies' green claims, it promotes negative propaganda by customers.[15] Because of the mistrust these deceptive greenwashed ads, customers are unable to establish a lasting relationship with the businesses.

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[7] Han H., Hsu L. T. J., Lee J. S., & Sheu C., Are lodging customers ready to go green? An examination of attitudes, demographics, and eco-friendly intentions, 30 IJHM 345, (2011), https://doi.org/10.1016/j.ijhm.2010.07.008.

[8] Sushobhan Sensharma, supra note 2, at 68.

[9] Priyanka Aggarwal and Aarti Kadyan, Green Washing: The Darker Side of CSR, 2 IJIPR 22, (2014) https://www.forum4researchers.com/cw_admin/docs/IJIRP-MAY-14-03.pdf.

[10] Bhatnagar, A. and Verma, S., Celebrity Footprint in Greenwashing, 9 IJREISS 22, (2019), https://indusedu.org/pdfs/IJREISS/IJREISS_2958_15492.pdf.

[11] Chen, Y. S. and Chang, C. H., Greenwash and green trust: The mediation effects of green consumer confusion and green perceived risk, 114 J Business Ethics 489, 2013, https://doi.org/10.1007/s10551-012-1360-0.

[12] Polonsky, M. J., Grau, S. L. and Garma, R., The new greenwash? Potential marketing problems with carbon offset, 18 IJBS 49, 2010, https://vuir.vu.edu.au/id/eprint/7327.

[13] Reddy, D. L., Challenges for Green Marketing in India, 13 National Conference on Marketing and Sustainable Developments 14, (2017).

[14] Delmas, M. A. and Burbano, V. C., The drivers of greenwashing, 54 CMR 64, (2011), https://doi.org/10.1525/cmr.2011.54.1.64.

[15] Ramus, C. A. and Montiel, I., When are corporate environmental policies a form of greenwashing? 44 B & S 377, (2005), https://doi.org/10.1177/0007650305278120.

Scope of Study

By educating customers about sustainable products, greenwashing can be prevented. By taking some personal action, as to enquiring about the products, consumers can avoid getting greenwashed. This means that they should feel free to inquire about the company's green commitment. And if the answers to these questions are correct, businesses ought to be glad to provide them. Customers can even study the tiny print, which provides detailed information about the items' constituents and can help them understand the reality of turning green. Additionally, they can examine the products' packaging; frequently, green products with 100% recyclable claims are packaged in non-biodegradable packets.

Online consumer research is another strategy to prevent being greenwashed. They can even conduct study on those goods and businesses, which will help them comprehend the differences between green and non-green products. The only way to accomplish this is to avoid making snap decisions. Additionally, people should speak out against these companies and boycott them if they see them engaging in these behaviours.

Analysis of Key Theories and Frameworks on Sustainability and Corporate Responsibility

A number of frameworks for comprehending sustainability and corporate responsibility have surfaced, and these serve as a foundation for evaluating greenwashing. Corporate Social Responsibility (CSR), one of the main theories, holds that companies should give social and environmental concerns equal weight with financial gain. According to CSR philosophy, businesses have a moral duty to think about how their operations would affect society as a whole, especially the environment. Although corporate social responsibility (CSR) seeks to encourage moral behaviour, it has occasionally been appropriated by businesses for PR, resulting in flimsy compliance rather than significant change.[16]

The Triple Bottom Line (TBL) is another significant concept that promotes evaluating business success based on social and environmental performance in addition to financial earnings. A comprehensive approach to sustainability, the "people, planet, profit" model seeks to strike a balance between social justice, environmental stewardship, and economic growth. Despite its potential, TBL may be vulnerable to greenwashing, which occurs when businesses highlight positive sustainability indicators while downplaying or ignoring negative effects.[17] Stakeholder theory also emphasizes that companies have obligations to communities, consumers, and the environment, among other groups impacted by their decisions, in addition to shareholders. Since

[16] Bazzillier, R., & Vauday, J., The Greenwashing Machine: Is CSR More Than Communication? Laboratoire d'Economie d'Orleans (LEO), University of Orleans (2013), https://hal.science/hal-00448861v3/document.

[17] Maria Salome Correia, Sustainability: An Overview of the Triple Bottom Line and Sustainability Implementation, 2 IJoSE 29, (2019), https://doi.org/10.4018/IJoSE.2019010103.

greenwashing can hurt a variety of stakeholders by skewing their view of a company's environmental impact, this theory emphasizes the significance of openness.

Case Studies of Greenwashing at the Global Level: Lessons for India

Several well-known instances of greenwashing have revealed the strategies some businesses employ to deceive customers. The Volkswagen emissions scandal, in which the firm put software in its diesel vehicles to evade emissions tests and make them appear to operate more sustainably, is one prominent example. This case demonstrated how, in spite of strict restrictions in the automotive sector, false claims might continue for years without being discovered. It also illustrated how crucial regulatory supervision and independent verification are to preventing greenwashing.[18]

H&M's "Conscious Collection," which promoted eco-friendly apparel, is another example. H&M's fast fashion business model, which depends on rapid rates of production and consumption, was criticized for being fundamentally unsustainable. It was believed that the "Conscious Collection" was an effort to divert attention away from the wider environmental effects of fast fashion. These incidents show how greenwashing may damage the credibility of sustainability promises generally and erode customer trust.[19]

Since its founding as a tiny pharmacy in Haridwar, India, in 2006, Patanjali Ayurveda Limited (PAL) has expanded to become a significant participant in the markets for food, personal care, and herbal medications. Baba Ramdev's advocacy of traditional Indian medicine has helped PAL establish a solid presence in the wellness industry by appealing to consumers' faith in natural ingredients and Ayurveda. In 2023, regulatory issues arose when Kerala-based ophthalmologist Dr. K.V. Babu filed complaints against PAL's subsidiary, Divya Pharmacy, for allegedly making prohibited health claims. The case led to a Supreme Court review and the suspension of certain drug manufacturing by Uttarakhand's Ayurveda and Unani Licensing Authority. Despite these challenges, Patanjali's ambitious expansion continues, highlighting both the benefits and obstacles of promoting Ayurveda within India's regulatory framework.[20]

These global examples and case study teach India important lessons about the necessity of strict and clear policies that stop businesses from making unsubstantiated environmental claims. They also stress how important media scrutiny and consumer knowledge are in spotting and exposing greenwashing tactics.

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[18] Siano A, Vollero A, Conte F, Amabile S, "More than words": Expanding the taxonomy of greenwashing after the Volkswagen scandal, 71 J Bus Res 27, (2017), https://doi.org/10.1016/j.jbusres.2016.11.002.

[19] Stephanie Daniella Lay, The Impact Of Green Marketing Campaign Towards H&M Indonesia Customers' Purchase Decision: A Case Study On H&M Conscious Collection, 5 JISS 623, (2024), https://jiss.publikasiindonesia.id/index.php/jiss/article/view/1054

[20] Atul Choudhary, An Emergence into Green Marketing in India: A Case Study of Patanjali Ayurved Ltd., 4 IJAEM 1186, (2022), https://10.35629/5252-040611861191.

Overview of India's Sustainability Policies, Targets, and the Rise of Greenwashing Concerns

India's dedication to environmental preservation and sustainable development is seen in the swift evolution of its sustainability regulations in recent years. Policies aimed at lowering emissions, protecting biodiversity, and advancing renewable energy have been put into place by the Ministry of Environment, Forests, and Climate Change (MoEFCC).[21] Ambitious goals including increasing the capacity of renewable energy sources and lowering the carbon intensity of its economy are highlighted in India's National Action Plan on Climate Change (NAPCC) and its pledges under the Paris Agreement.

But while these goals have led to a greater emphasis on sustainability, they have also made it easier for greenwashing to flourish. Sometimes without implementing true environmental policies, businesses try to align with government programs to give the impression that they are responsible for their actions. For example, in India, phrases like "carbon-neutral," "eco-friendly," and "biodegradable" are commonly used in marketing yet frequently lack regulatory requirements or verification procedures. Businesses take use of the uncertainty around sustainability claims in industries including fast-moving consumer goods (FMCG), fashion, and even energy to give the impression that they are environmentally conscious while deflecting attention from potentially environmentally damaging actions.

The risk of greenwashing is increased by India's growing customer demand for sustainable products and growing knowledge of environmental challenges. Strengthening regulatory frameworks, promoting open business practices, and educating consumers on how to spot false environmental claims are all urgently needed to guarantee that India's sustainability goals are met in an authentic manner. Addressing greenwashing will be crucial to developing a culture of true environmental stewardship and accountability as India moves forward on its sustainability journey.[22]

Current Environmental and Advertising Regulations

Although none specifically target the practice, India has enacted a number of environmental and advertising rules that address issues related to greenwashing. The foundation for consumer rights, advertising regulations, and environmental protection is laid by these laws. One of the main pieces of environmental legislation, the Environment Protection Act (1986), gives the government extensive authority to regulate and control pollution and environmental damage. This law establishes guidelines for waste management, environmental impact assessments, and air and water quality, giving authorities the legal right to hold companies responsible for damaging operations.

[21] Kavita Singh and Harpreet Kaur, India's Progress On Environmental Sustainable Development Goals: A Review, 43 JAZ, (2022), https://doi.org/10.53555/jaz.v43i1.3227

[22] Priyanka Aggarwal, supra note 7, at 25.

Despite its emphasis on environmental harm, it does not contain any particular measures to stop businesses from making false environmental claims.

Guidelines have been devised by the Advertising Standards Council of India (ASCI) to address deceptive advertising, especially claims about sustainability and the environment. By requiring businesses to support their claims regarding the environmental benefits of their products, ASCI's Guidelines on Environmental Claims were created to prevent greenwashing. According to these principles, businesses must provide clear, verified information and refrain from using ambiguous terminology.[23] However, because ASCI is a self-regulatory organization, its rules are not legally binding, which lessens its influence on businesses that decide not to follow them.

One important piece of law that gives customers who have been duped by deceptive advertising remedy is the Consumer Protection Act (2019). It gives the Central Consumer Protection Authority (CCPA) the authority to control deceptive advertising and unfair business practices. Businesses that make deceptive representations about their products, especially those pertaining to environmental benefits, may face penalties under this legislation.[24] Although the act is a positive move for consumer protection, it does not yet provide guidelines for eco-friendly advertising or offer explicit guidance on green claims.

The recent development in this area has been taken by the Department of Consumer Affair of constituting a "Guidelines for the Prevention and Regulation of Greenwashing, 2024". These guidelines define greenwashing as any deceptive or misleading practice involving false, exaggerated, or vague environmental claims. They set standards to ensure that any environmental claim—such as terms like "eco-friendly" or "carbon-neutral"—is backed by verifiable evidence and accurate disclosures. Key requirements include avoiding unsubstantiated comparisons, providing accessible information, and using qualified language to prevent misleading consumers about a product's or service's environmental impact. These guidelines aim to promote transparency and accountability, ensuring that companies provide honest claims about their products' environmental benefits.[25]

Roles of Regulatory Bodies

A number of important organizations, most notably the Advertising Standards Council of India (ASCI) and the Ministry of Environment, Forests, and Climate Change (MoEFCC), share responsibility for keeping an eye on and enforcing environmental and advertising standards in India.

[23] The Advertising Standards Council of India, https://www.ascionline.in/wp-content/uploads/2024/01/Guidelines-for-Advertisements-Making-Environmental-Green-Claims.pdf (last visited on Oct. 26, 2024)

[24] Ministry of Consumer Affairs, https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidline%20with%20approval.pdf last visited on Oct. 26, 2024)

[25] Id. at 22.

The main government organization in charge of creating and implementing laws pertaining to sustainable development and environmental preservation is the MoEFCC. The MoEFCC sets guidelines for waste management, pollution prevention, and environmental preservation through the Environment Protection Act and associated laws. However, because it lacks explicit duties or resources devoted to confirming environmental claims made by firms, the ministry's ability to directly fight greenwashing is limited. This disparity suggests that more control and specific rules are required to combat greenwashing.

As a self-regulatory body, the ASCI is crucial in policing ads, including those that make environmental claims. Its rules on advertising techniques are designed to stop businesses from making ambiguous or unsubstantiated claims about how environmentally friendly their products are. Together with customer complaints, ASCI investigates public reports and holds businesses responsible by issuing warnings and, in certain situations, making infractions public. However, ASCI's influence is mostly restricted to businesses who value public opinion because it lacks the power to enforce legal sanctions. Companies may be able to ignore ASCI's instructions without suffering serious legal repercussions due to the absence of coercive power.

Furthermore, deceptive advertising may be addressed by the Central Consumer Protection Authority (CCPA), which was created under the Consumer Protection Act. Companies may be subject to fines and orders from the CCPA to stop using deceptive advertising.

Identifying Gaps in the Legal Framework

Despite these frameworks, India's legal response to greenwashing still has a lot of holes in it. The absence of precise legal definitions and guidelines for terminology like "eco-friendly," "green," or "sustainable" is one of the main problems. The lack of agreed-upon criteria gives businesses a great deal of latitude in making unsubstantiated environmental claims. Furthermore, although ASCI offers some standards regarding environmental claims, these are mainly optional and lack legal power. Because businesses face little repercussions for making false claims, this fosters an atmosphere where greenwashing can continue with little accountability.

Enforcing current legislation presents another difficulty. Because they frequently lack funding, regulatory organizations like the CCPA and MoEFCC might not consider greenwashing to be a major concern within the scope of their larger objectives. Greenwashing goes mostly unnoticed because enforcement typically concentrates on more overt environmental infractions, including pollution or waste management. Environmental claims are also not regularly monitored by regulatory bodies; instead, they rely on customer complaints, which are constrained by the general lack of knowledge of greenwashing.

A stronger regulatory framework is necessary in India in order to successfully combat greenwashing. This could entail creating clear definitions for terms linked to sustainability, instituting mandated guidelines for environmentally friendly advertising, and giving regulatory agencies the power to look into and punish false environmental claims. By incorporating these criteria into current consumer protection and environmental legislation, openness and accountability would be improved, resulting in a legal framework that discourages greenwashing and encourages real sustainability initiatives.

Impact of Greenwashing on India's Sustainability Goals

Impeding Genuine Sustainability Efforts

India's progress toward sustainable development is severely hampered by greenwashing, which obscures sincere sustainability initiatives. Resources are frequently taken away from worthwhile projects to fund dishonest marketing strategies rather than real advancements in environmental performance when businesses present themselves as ecologically conscious.[26] In addition to impeding genuine sustainability initiatives, this misallocation produces a false narrative about environmental responsibility. Since businesses prioritize marketing above action, sincere attempts by other groups may be overshadowed, and individuals attempting to make significant changes may find it difficult to obtain the recognition and backing they are due.[27]

Furthermore, by standardizing flimsy environmental initiatives, greenwashing skews public perception. In India, where people's understanding of sustainability is still growing, greenwashing can lead to misunderstandings and deter customers from questioning business claims. For example, when a business advertises a "green" product that has no real environmental advantages, customers who buy it think they are supporting sustainable practices when, in reality, they are encouraging unsustainable ones. By putting short-term consumer appeal ahead of long-term ecological responsibility, this deceit undercuts the fundamental principles of sustainability and regresses India's sustainability objectives.

Erosion of Consumer Trust

Consumer trust may be negatively impacted for some time by repeated exposure to greenwashing, which may cause distrust and reluctance to support truly sustainable products. [28]In India, where people are becoming more environmentally sensitive, trust is essential to the uptake of eco-friendly goods and services. Consumers may start to doubt the veracity of all green claims, though, if they consistently come across deceptive environmental claims. This loss of trust is especially harmful

[26] Deepti Jog, supra note 4.
[27] Chen, Y. S., supra note 9, at 491.
[28] Maria Salome Correia, supra note 30.

because it raises questions about corporations that are truly dedicated to environmental sustainability as well as dishonest ones.

Consumers are less inclined to look for or purchase sustainable items when skepticism is pervasive, which lowers market demand for environmentally friendly products.[29] This hesitancy can be particularly harmful in a nation like India, where the market for sustainable products is still in its infancy and depends on customer support to expand. As a result, among the cacophony of greenwashing, businesses with genuine sustainability initiatives find it difficult to stand out and win over customers. This mistrust creates an atmosphere where consumer engagement with sustainability becomes passive rather than proactive, slowing the momentum required to advance India's sustainability goals.[30]

Economic and Social Implications

Greenwashing has wide-ranging economic and social repercussions in India, impacting not just consumers and companies but also the larger sustainability scene. Businesses that actually invest in sustainable initiatives face unfair competition as a result of greenwashing. Because they are dedicated to sustainable sourcing, waste minimization, and transparent production procedures, eco-friendly companies frequently incur greater costs. The competitive posture of genuinely sustainable businesses is undermined when businesses deceitfully portray themselves as green without having to pay these expenses.[31] Businesses may feel unable to compete with greenwashing competitors that put profit before of environmental integrity, which deters them from making investments in true environmental responsibility.

From a wider angle, greenwashing also signifies a missed chance to successfully lessen environmental damage. Greenwashing takes funds and public support away from ideas that could actually make a difference in India, where environmental issues including waste management, deforestation, and pollution of the air and water demand immediate attention. Greenwashing businesses obstruct the distribution of funds to groups and initiatives that have the potential to yield significant ecological advantages by creating the appearance that they are tackling environmental concerns.[32] The public is duped into endorsing solutions that have no real impact, which undermines the goal of sustainability as a whole.

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[29] Laroche, M., Bergeron, J., and Barbaro-Forleo, G., Targeting consumers who are willing to pay more for environmentally friendly products, 18 The Journal of Consumer Marketing 503, (2001), https://doi.org/10.1108/EUM0000000006155.

[30] Id. at 506.

[31] Lyon, Thomas P. and John, W. Maxwell, Greenwash: Corporate environmental disclosure under threat of audit, Journal of Economics & Management Strategy, 20 JEMS 3, (2011), https://doi.org/10.1111/j.1530-9134.2010.00282.x.

[32] Cherry, M. A., & Sneirson, J. F., Beyond Profit: Rethinking Corporate Social Responsibility and Greenwashing After the BP Oil Disaster, 85 TLR 983, (2011), http://dx.doi.org/10.2139/ssrn.1670149.

Socially, greenwashing damages the sustainability movement's reputation in India, particularly with the younger generation, which is becoming more conscious of environmental issues. Young customers may feel deceived or disillusioned when environmental statements are shown to be false, which can lower their desire to make environmentally beneficial decisions. This disappointment may impede the development of a sustainability-focused attitude in India, postponing the country's social transition to patterns of responsible production and consumption. Additionally, the doubt that greenwashing creates can reduce the impact of NGOs and advocacy groups who try to raise public awareness and push for sustainable policy reforms.

All things considered, greenwashing directly jeopardizes India's sustainability objectives by impeding sincere attempts, undermining consumer confidence, and erecting social and economic obstacles to real environmental advancement. Stricter laws, consumer education, and corporate responsibility are all necessary components of a cooperative strategy to address these problems. India can only guarantee that its sustainability initiatives are significant, open, and effective by putting an end to greenwashing. This will set the stage for a day when environmental stewardship will be truly appreciated and actively sought after.

Proposed Solutions and Recommendations

Strengthening Legal Reforms

Legal changes are necessary to combat greenwashing in India. Formally defining greenwashing in Indian law and establishing precise standards for what qualifies as false environmental claims is an essential first step. This could involve adding precise wording to already-existing legislation, like the Environment Protection Act or the Consumer Protection Act, to make sure businesses follow clear guidelines when making environmentally friendly claims. Common sustainability phrases like "eco-friendly," "biodegradable," and "sustainable" should have legal meanings to stop businesses from abusing ambiguous language and to help customers distinguish between truthful and false promises. Furthermore, accountability can be improved by requiring businesses to disclose their environmental effect in a transparent manner through sustainability reports or other disclosures.

Mechanisms for enforcement and monitoring should be improved in order to support these reforms. Improved oversight would result from the creation of a greenwashing-focused regulatory agency or unit under the Ministry of Environment, Forests, and Climate Change (MoEFCC). Together with the Advertising Standards Council of India (ASCI), this organization might create criteria and make sure businesses back up their environmental promises. Companies would be held responsible, for instance, if third-party verification of green claims were mandated, much like financial audits are for financial reporting. To act as a deterrent, penalties for making false environmental claims should

be uniform, with harsher penalties for repeat offenders, such as fines and public publication of infractions.

Furthermore, enacting laws requiring items to adhere to environmental standards in order to bear labels such as “green” or “eco-friendly” helps provide a regulated and transparent system that customers can trust. By putting these reforms into effect, a legislative framework that discourages greenwashing and promotes ethical business practices will be established.

Promoting Corporate Responsibility

Businesses must put real environmental responsibility ahead of dishonest marketing strategies if India is to make significant strides toward true sustainability. Third-party certifications, which can offer reliable confirmation of their sustainability claims, ought to be promoted for businesses. In addition to fostering openness, certifications from reputable organizations—like LEED for construction projects or FSC for sustainable forestry—also assist customers in identifying goods and businesses that are genuinely dedicated to environmental stewardship. Consumers and regulatory agencies can also track the environmental impact of items from manufacture to distribution by implementing transparent supply chain policies.

Verified eco-labels, which offer a clear indicator of a product’s environmental impact, can also be advantageous to businesses. Only truly sustainable items would be allowed to wear these labels, which are supervised by accredited third-party organizations and would compel businesses to adhere to strict sustainability standards. Businesses can show their dedication to environmental stewardship in a meaningful and verifiable way by adopting these steps. Businesses that place a high priority on true sustainability have a competitive edge as a result of this transparency, which increases consumer trust.

Additionally, sustainability reporting can be used to encourage corporate accountability. Annual reports outlining a company’s resource usage, environmental activities, and progress toward sustainability goals ought to be mandatory. To avoid exaggeration or misrepresentation, these reports should be publicly available and subject to frequent audits. Businesses may show true responsibility and set themselves apart from others who rely on greenwashing by pledging to be transparent and verifiable in their sustainability policies.

Consumer Awareness Campaigns

In the battle against greenwashing, consumer awareness is essential since knowledgeable customers are better able to spot and disbelieve false environmental claims. Public awareness programs run by the government with assistance from non-governmental organizations and the commercial sector can teach people how to identify genuine environmentally friendly items. For instance, the government and consumer advocacy organizations may work together to create educational

resources like manuals for understanding eco-labels or differentiating between environmental claims that have been confirmed and those that have not.

Universities and schools could also be crucial in increasing awareness. A knowledgeable generation of consumers that give the environment top priority when making decisions might be produced by incorporating sustainability education into curricula and holding workshops on consumer rights and greenwashing. Online and social media advertising would be useful in expanding the audience beyond formal schooling, particularly among young, urban consumers who are already practicing sustainable activities.

The creation of an online forum where customers can exchange evaluations, report dubious claims, and obtain details about businesses' sustainability policies is an additional strategy. Additionally, this platform might have tools for confirming the legitimacy of sustainability certificates and eco-labels. These awareness initiatives enable people to hold businesses responsible and lower demand for greenwashed goods by providing consumers with the information and tools they need to make wise decisions.

Stakeholder Collaboration

Collaboration amongst several sectors, including NGOs, academia, the media, and the general public, is necessary to combat greenwashing. In order to uncover and expose instances of greenwashing, NGOs can collaborate with academic institutions to carry out studies on the environmental effects of different businesses. These groups can bring businesses that put profit ahead of true sustainability to the attention of the public and government by disseminating research and case studies on deceptive practices. By creating research frameworks and criteria that evaluate the veracity of environmental claims, academics in particular may contribute significantly and give the discussion surrounding greenwashing a scientific basis.

The media may draw attention to particular cases of greenwashing and increase public knowledge of the problem, making it a potent instrument in the fight against it. Investigative journalism may reveal contradictions in business sustainability claims and provide customers the knowledge they need to make wise choices. Additionally, media outlets can support regulatory agencies by consistently covering businesses that violate environmental regulations or make unsubstantiated claims.

Lastly, public participation is essential to holding businesses responsible. Consumers can share their experiences and warn others against false promises through grassroots initiatives including social media advocacy and community-driven campaigns. Public pressure can foster an atmosphere where businesses are more inclined to value authenticity and transparency by fostering candid discussions and enticing customers to report instances of greenwashing. Additionally, consumers may use social

media to expose greenwashing and hold businesses immediately responsible. When taken as a whole, these actions can help stop greenwashing and open the door to a time when sustainability is a genuine, shared objective for consumers, businesses, and legislators.

Conclusion

All things considered, greenwashing is a serious obstacle to India's sustainability path since it undermines sincere environmental initiatives and erodes consumer confidence. This essay has emphasized the pervasiveness of greenwashing in India and how inadequate regulations permit businesses to make unsupported environmental claims without suffering serious repercussions. Although they lay a foundation, current environmental and advertising laws are insufficient in identifying, preventing, and punishing greenwashing, which makes it difficult to differentiate honestly sustainable business operations from deceptive advertising. India's progress towards its sustainability goals would be hampered by the prevalence of greenwashing, which is expected to increase in the absence of stricter legislative standards, strict oversight, and effective sanctions.

If India wants to successfully achieve its sustainability and environmental goals, greenwashing must be addressed. In addition to skewing customer views, the practice takes funds away from genuine sustainability projects that may significantly address urgent environmental problems. Consumer trust is strengthened when corporations are held responsible for their environmental promises, which increases demand for really sustainable products and motivates companies to make ethical investments. By combating greenwashing, a market where sustainable options are open, verifiable, and advantageous for the economy and environment can be established.

All parties involved must take action if India is to transition to a greener future. Reforms that define greenwashing, set standards, and enable regulatory agencies to successfully enforce them must be given top priority by policymakers. As a sign of their dedication to true environmental responsibility, businesses are urged to embrace open, verifiable sustainability policies and get third-party certifications. Lastly, by remaining informed, holding businesses responsible, and promoting real sustainability, consumers, NGOs, and the media all play crucial roles. India can fight greenwashing and strive for a future that appreciates sustainability and environmental integrity in practice as much as in theory by working together and being transparent.

A Critical Analysis of Climate Change and Its Impact on Food Security in India

Ms. Aldrina Rimpa Gomes[1]

1. Introduction

Climate change is a serious concern that has transformed the globe at an unprecedented rate. Its implications have caused adverse effects to the ecosystem, resulting into loss of habitats, desertification, food production, health aspects etc. Hence, to understand this extreme scenario, the Inter-Governmental Panel on Climate Change in its Fourth Assessment Report, issued that climate change will led to an increase of risk, frequency of disasters and over change in the environment. Thus, climate change only threatens the environment but creates an acute challenge to food security, public health, and resilience capacity of the vulnerable communities.[2]

Due to climate change there is disproportionate impact and exposure on the food security of the developing nations, causing severe threat to its population.[3] Climate change is denoted, as the long-term variations in temperature, alteration of the pattern of precipitation or variability of its properties occurring from decades.[4] Hence, this variation in the climate has not occurred suddenly, rather it is due to the anthropogenic activities, such as industrialization, burning of fossil fuel, emission of greenhouse gases and disrupted the natural balance of Mother Earth.[5] Also the United Nations Framework Convention on Climate Change defined climate change as a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.[6]

In the present era, India has upgraded itself in the field of technology and has collaborated with international communities to reach the standards of global leader. India is stand as the fifth largest economy in the world and is expected to be the third largest economy by 2030.[7] In agricultural output, India ranks second in the world and has contributed 17.7% of Gross Domestic Product (GDP) to national economy.[8] But in the recent times, food production in India has decreased due to

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[1] **Ph.D. Research Scholar, Alliance School of Law, Alliance University, Bangalore, Karnataka.**

[2] R. Varela, Coastal warming under climate change: Global, faster and heterogeneous, Science of The Total Environment, Vol- 886, (2023).

[3] Muhammad Shahbaz Farooq, Uncovering the Research Gaps to Alleviate the Negative Impacts of Climate Change on Food Security: A Review, Front Plant Sci. (2022).

[4] Brian Preston 39 U.N.S.W.L.J. 1480 (November 2016).

[5] Ashutosh Singh et al., Inter-Connectivity Between Climate Resilience, Climate Change, and Adaptability, Research Gate, (2022).

[6] https://unfccc.int/resource/ccsites/zimbab/conven/text/art01.htm. (Last visited Oct. 10, 2024).

[7] https://economictimes.indiatimes.com/news/economy/indicators/india-poised-to-be-third-largest-global-economy-by-2030-rising-population-presents-challenges-says-sp/articleshow/114309920.cms?from=mdr. (Last visited Oct. 10, 2024).

[8] https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/jul/doc2024722351601.pdf. (Last visited Oct. 10, 2024).

the climatic conditions, causing climatic hazards such as cyclone, drought, floods, landslides, fires, rise in the sea level, and these all has a negative impact on the food security of India.[9] India with the population of 1.4 billion is the highest populous country in the world, and this marks to be a serious concern for food and nutrition its mass. Due to the geographical uniqueness, the country face climate hazards, and it has lowered the agricultural productivity with a greater margin.

As estimated by the Food and Agriculture Organization (FAO) that with an increasing trend in income and growth in the level of consumption the agricultural production is expected to expand to meet the growing need.[10] Therefore, to address the issue of food insecurity and promote the welfare of its people, the Government of India, became a signatory to the Millennium Development Goals (MDGs). The United Nations adopted the MDGs in the year of 2000, and it consisted of 8 Goals, amongst which one of its priority goals was to halve the proportion of food insecurity and mitigate the suffering of hunger.[11] In post adoption of the MDGs, India's policies were reformed to meet the contentions of the Goals. But the issue of food insecurity remained as a prolonged challenge for India.[12] Eventually, the MDG was criticized for its shortfalls, as it had taken a narrow approach and did not address the structural factors. Thereafter, in 2015, the United Nations adopted the Sustainable Development Goals, and it succeeded the MDGs. The scope of SDGs was expansive with 17 Goals, 169 targets and 247 indicators, out of which 92 indicators were in relation to environmental factors. Under the SGD, Goal 2, dealt with 'Zero Hunger' and the aim of this goal was to end hunger, achieve food security, enhance nutrition and promote sustainable agriculture by 2030[13].

In the light of India's experience with MDG, it was realized that the approach needed to more inclusive and comprehensive to tackle the socio, economic, political and environmental concerns, became the signatory of SDGs. In adoption of SDGs, several initiatives were implemented to improve the productivity of agriculture, distribution of foods equitably, and address the nutritional needs of its population. But it is unfortunate, that India continues to face food insecurity. India ranks 105th among the 127 nations in the world, as per the Global Hunger Index, 2024, which is a

[9] Francesca Harris et al., Climate-related hazards and Indian food supply: Assessing the risk using recent historical data, Global Food Security, Vol- 33, (2022).

[10] Ahmed Bouteska et al., Impacts of the changing climate on agricultural productivity and food security: Evidence from Ethiopia, Journal of Cleaner Production, Vol- 449, (2024).

[11] https://research.un.org/en/docs/dev/2000-2015.

[12] J. Prachitha et al., India in Pursuit of Millennium Development Goals: Were the Targets Really Feasible? (2019)

[13] Shoba Suri & Nehal Sharma, Climate change poses the biggest risk to food security in India, Prevention Web, (2022).

matter of serious concern of food insecurity.[14] In this regard, the paper focuses on the following objectives:

a. To analyse how climate change has affected the agricultural productivity.
b. To recommend policy measures and adaptive strategies to enhance food security level of the vulnerable communities

2. Literature Review

Global warming has caused an increase of approximate 1°C of Earth's temperature, causing intensified heat waves, flood and prolonged droughts and the pattern of rainfall has affected the agriculture. [15] Food security is a matter of human well-being, but the nations, with limited or least resources can overcome the problem. The developing nations, face vulnerability of climate change due to extreme climate conditions is the consequence of social, political, geographical conditions.[16] India, a developing country is impacted due to climate change and it has begun to deplete the resources and threat the socio-economic.[17] Alteration in the climatic conditions has the contribution of humans, and accountable for rise in greenhouse gases and environmental change.[18] India, has a unique climatic features, from tropical to dry regions, thus climate change is posing a greater risk fir the human security in terms of food, and resources, often leading to conflict.[19] Health and food is impacted in myriad ways, due to climate change, causing death due to extreme weather conditions, undermining the livelihood and hindering the social structure.[20] Rising temperature, altered pattern of precipitation, disruption of the ecology and deterioration of biodiversity.[21] Climate change impacts the vulnerable population adversely, and their positions is exacerbated due to the inequalities. Their livelihood is destroyed due to climate change.[22] Agriculture sector, is one of the severely affected sectors in terms of climate change, as there is an intersection of climate and agricultural production.[23] Large section of people in India fall under acute challenges of

[14] Khushboo Kumari, Knowledge Nugget of the day: Global Hunger Index, The India Express Journalism of Courage. (2024).
[15] Andrew et al., The Impacts of Climate Change. Frontiers for Young Minds, (2022).
[16] Fiona Rochholz et al., Climate Change Impacts, Water security in a new world (2024).
[17] Sharfaa Hussain, Navigating the impact of climate change in India: a perspective on climate action (SDG13) and sustainable cities and communities (SDG11), Front. Sustain. Cities, Vol-5, (2024).
[18] Soumudeep Bhattacharjee et al., A data-centric analysis of climate change in India: A reflection on electricity sector, Technological Forecasting and Social Change, Elsevier, Vol- 190, (2023).
[19] Manash Pratim Borah, A Study on Climate Change and Its Impact on India's Sustainable Growth and Human Security, SSRN (2023).
[20] https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health. (Last visited: Oct. 15, 2024).
[21] Abu Rayhan et al., Global warming: studying impacts, causes, mitigation, and adaptation (2023).
[22] B.S. Ngcamu, Climate change effects on vulnerable populations in the Global South: a systematic review. Nat Hazards, (2023).
[23] Rosa Carbonell-Bojollo et al., The Effect of Conservation Agriculture and Environmental Factors on CO2 Emissions in a Rainfed Crop Rotation, Vol- 11 Issue: 14, (2019).

undernutrition and with the growing population, meeting the need pose a challenge in the interface of climate change.[24]

Staple food, such as rice and wheat production has been affected severely due to climate change and caused decline in the nutrition level, its detrimental impact exacerbates poverty for the vulnerable population in India.[25] Expansion of agricultural area, significantly enhance the food security in the long run, but climate variable plays a crucial role leading to a decrease of the agricultural produce by 1.2% for the short term period and 1.7% for the long term.[26] Several studies have accessed and established the relationship between the climate change and its impact over the agricultural sector. Food security is said to be optimum whereby, people have the ability and resources to support their food consumption India is already facing health crisis and malnutrition amongst the vulnerable population, and with the threat of climate change, the effects are worse in the conditions in terms of effecting the food production. Hence, the studies have been undertaken on food security in India and its correlation with climate change. But there is a dearth in the analysis of food security problem of the vulnerable populations, due to climate change in India, particularly the tribal population. Therefore, the paper attempt to fill the gap by undertaking a study to evaluate the impact of food security on the vulnerable populations.

3. Global efforts in Food Security and Sustainable Agricultures

Over the past two centuries, the concept of food security has evolved, initially the food security was viewed, that the nations with abundance and rich agricultural resources and fulfils the domestic needs. The concerns regard to food distribution and sufficient procurement of nutrition became prominent, post-World War I. The consciousness is evident from the establishment of Food and Agriculture Organization (FAO).[27] This object of the establishment of this organization was to create a platform to address the needs of food security of vulnerable countries and provide support to obtain foods effectively. The food security, emerged as the need of the hours for the nations, amid of food crisis around the globe and it disrupted the balance in food supply and consumption.

In 1974, the term food security was coined and defined at the UN World Food Summit, as "the availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuation in production and prices."[28] The concept food security was expanded further in 1983 by the FAO as "Ensuring that all people, all times, have

[24] Malancha Chakrabarty, Climate change and food security in India, ORF, (2023).
[25] Shoba Suri & Nehal Sharma, Climate change poses the biggest risk to food security in India, Prevention Web (2022).
[26] Biswabhusan Bhuyan, Impact of climate change on food security in India: evidence from autoregressive distributed lag model, Environ Dev Sustain (2023).
[27] Jessica Fanzo, Achieving Food Security Through a Food Systems Lens, Resilience and Food Security in a Food Systems Context, Springer Nature (2023).
[28] FAO, Trade Reforms and Food Security: Conceptualizing the Linkages (Rome: FAO, 2003),

physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life".[29] This definition was provided with the intention to include the access of foods and the benefits of the individuals.

4. Food security and it four dimensions

Food security consists of four dimensions, food security: availability, access, utilization and stability.[30] The food availability deals with the 'supply' and it is determined on analysing the level of production and net value of the food commodities traded and food held by the traders or government authorities.[31] Food access is concerned with the ability of the people to have within the capacity adequate amount of food as per their need and requirement, at a reasonable price and in the absence of any social constraints.[32] As per this pillar, importance is given not only to the ability of the household to acquire the foods, but also examines the practice of social acceptance.[33] Food utilization another pillar of food security, concentrates on the utilization of the food a household. This pillar focuses on the methods of storing, processing and preparation of the food and it also considers the availability of cooking fuel, quality of water, hygienic behaviour as it plays a crucial role in maintain the food safety and nutrition of the infant and person with special care.[34] The fourth pillar is food stability, it complements the other three dimensions: food availability, access and utilization. Stability of food refers to the consistency and reliability of food supplies, as it can ensure the that the households have sufficient foods even at unforeseeable situations, such as economic shocks, natural disasters, or market fluctuations.[35] This pillar emphasizes that all the people regardless of the any external factors, should have consistent access to food and it has the potential to bring stable food price, and government intervention to mitigate food crisis and promote food stability.

5. Intersection of Climate Change and Agricultural Challenges

In India, agriculture plays a vital role for the economic and social well-being, but it is unfortunate, that food security is a major concern for India, as the agricultural productivity has declined over the years due to climate change.[36] As climate change has reduced the crop yield in the recent years and diminished the nutrition level of the production. An extensive climate change impact assessment

[29] FAO, Director-General's Report on World Food Security: A Reappraisal of the Concepts and Approaches (1982).
[30] Claire Fitch Bowdren & Raychel Santo, Sustainable diets for a food-secure future, Environmental Nutrition Science Direct (2019).
[31] Id.
[32] Id.
[33] Id.
[34] Id.
[35] Id.
[36] Ashok Gulati & Ritika Juneja, Transforming Indian Agriculture, Indian Agriculture Towards 2030. India Studies in Business and Economics. Springer (2022).

in agricultural sector was carried out by incorporating the climate change projection of crop yielding between 2050 & 2080.[37] The projection of the assessment revealed a massive reduction of crop yields by 20% in 20250 and 47% in 2080. On the other hand, yielding of rice has been projected to reduce by 3.5% in 2050 and 5% in 2080.[38] As the population of the country is increasing rapidly, the food security of the people in India, becomes a questionable issue. In various studies, it is found that due to global warming, India's temperature will rise in every 100 years by 0.4°C, and with this increase the agriculture will be impacted intensely.

5.1. Temperature and Precipitation pattern

The food security is critically dependent on the temperature and precipitation, and it impacts the agricultural productivity. The global temperature is rising at an alarming rate, leading to extreme temperature and irregular rainfall patterns. In this two extreme event, occurrence of drought and flood is inevitable. The irregular rainfall disrupts the harvesting cycle and decrease the valuation of the crops. In a Report of India- Extreme Temperatures Scorch Indian Wheat Production, it highlights that in 2022, due to an extreme heat and spike of temperature, the wheat production in Uttar Pradesh, Bihar, Punjab and Haryana has declined by 10-15% from February 2022.[39] In a survey conducted by the Forum of Enterprise Development (FEED), the finding discloses that crops have been damaged by 41% due to drought, 32 % by irregular rainfall and 24% of crop destruction due late arrival of monsoons. Likewise, in the report of Climate Transparency Report 2021, underscores rise in the temperature by 1-4°C to cause decline in rice production by 10-30%, maize production by 25-70%, in India.

5.2. Pest Proliferation and Crop Diseases

Climate change is one of the driving factors to expand the spread of pests and diseases, the variation in the climate has a higher risk to affect the population, the survival condition and rate and geographical distribution of the pests. As rightly observed by Tek Sapkota, a climate change scientist, at the International Maize and Wheat Improvement Centre, that "In general, an increase in temperature and precipitation levels favours the growth and distribution of most pest species by providing warm and humid environment and providing necessary moisture for their growth".[40] hence from this statement it is understood, that rising temperature and higher precipitation tends to spread the growth of pest species and it thrives to multiply in number, damaging the agriculture. Climate change impact the pest activities are impacted in two ways, i.e., by increasing the metabolic

[37] Muhammad Habib-ur-Rahman et al., Impact of climate change on agricultural production; Issues, challenges, and opportunities in Asia, Frontiers (2022).
[38] http://indiagri.in/read-on.aspx?id=25304. (Last visited Oct. 18, 2024).
[39] Report Name: India – Extreme Temperature scorch Indian wheat Production- USDA Foreign Agricultural Service.
[40] Alison Doody, Pest and disease and climate change is there a connection, CIMMYT, (2024).

rate of the insects and change in insect population.[41] In 2023, Assam had an outbreak of head cutting caterpillar which affected 28000 hectares of paddy field in 15 district across the state.[42] In a report of FAO, elucidates, that 70 billion of the global economy dependents on agricultural sector has been hampered due to invasive pests. The outbreak of pest imposes a pressure upon the farmers and compels them to make usage of the pesticides which reduces the quality of crops.[43]

5.3. Climate change and livestock & Fisheries

Climate change is not limited to impact the crop production, but is said to have a severe consequence, on the livestock and fisheries. The impact of climate change has affected the livestock of the vulnerable people and reduced production of dairy products, meat, wool production and grassland. As the rural population is dependent on livestock, it affects the livelihood of the rural communities. Climate change affects the marine ecosystem, there decline of fishery due to water temperature, ocean acidity and low level of oxygen in water. The aquaculture is under complication which has endangered the fish productivity and livelihood of communities.

6. Measures and adaptation strategies to combat climate change and its impact on food security

Climate change is affecting the countries globally and has influenced the food security of developed and developing countries. To address the problem of climate change, international actions were undertaken under the Kyoto Protocol and Paris Agreement which is part of the United Nations Framework Convention on Climate Change (UNFCCC).[44] India is a signatory of both the international instruments and has been committed to reduce the emission of greenhouse gases and take reasonable measure to improve the climatic conditions. In 2013, India also enacted the National Food Security Act, to provide subsidized quality of foods to the people of India at affordable price. Despite of the efforts of Indian government to surpass the economic odds and develop the nations with abundance of resources and food availability, Food security continued to a serious concern for India due to high population, poor socio-economic capacity and raid degradation of the natural resources. In addition to these challenges climate change is adding on to the existing challenges by reducing the production capacity and vulnerability of the poor persons. Thus, to mitigate the negative impact of climate change there is a need of reinforcing the adaptation strategies based on the present scenarios.

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[41] Sharmila Vaidyanathan, Rising Temperature alter insect-crop interactions and impact agricultural productivity, MONGABAY, (2024).
[42] Id.
[43] Id.
[44] K.F. Kuh, The Law of Climate Change Mitigation: An Overview, Encyclopaedia of the Anthropocene Volume 2, Elsevier (2018).

Climate change and adaptation plays are intertwined, adaptation refers to the adjustments or modifications undertaken to reduce the impact of human activities on the climate. It involves decision making of the communities, government and the society takes collectively. The IPCC Third Assessment Report defines adaptation as, "adjustment in ecological, social, or economic systems in response to actual or expected climatic stimuli, and their effects or impacts. This term refers to changes in processes, practices or structures to moderate or offset potential damages or to take advantages of opportunities associated with changes in climate"[45]There is a need for adaptation to climate change for the following reasons:

a. There is an increase in the frequency of extreme weather events, such as intense, storms, floods, droughts and heatwaves. This extreme event requires proper adaptation process to be disaster prepared and resilient.
b. Climate change affects the coastal region population, and threatens their housing, infrastructure, livelihood. Hence adaptation become an inevitable measure to prevent the negative impacts of climate change such intrusion of saline water into the agricultural farms of the vulnerable communities and to protect them from displacement.
c. Health problem is anonymous in every region, but when it falls within the scarce economic resource of the vulnerable communities, it bears as a burden over them. Climate change is said to cause health problems and leads to an increase of respiratory issues, malaria and dengue etc. Adaptation plays a crucial role to deal with health-related challenges and equips the respective authorities concerned with health care system to address the challenge with an effective solution.
d. Apart from the aspects as discussed in this section, climate change has its worst impact upon the food security. With the changing pattern in the temperature, the agricultural productivity gets affected, hence adaptation strategies are important to secure the food supplies, particularly the crops that are climate sensitive.

7. Conclusion

In the present day, climate change has become the greatest challenge for mankind. The effect of climate change has not limited only to loss of biodiversity, environmental problems, lass of habitats. The massive emission of greenhouse gases has disturbed the temperature, which is causing melting of glaciers, thus the level of seas is rising over the time. Among these factors, the basic need of a human being which is food for good health and nutrition, has worsen due to loss of agricultural production. The agricultural section either in developed or developing nation are compromised due

[45] Krishna Roka, Climate Action. Encyclopaedia of the UN Sustainable Development Goals. Springer. (2019)

to climate change, and the adverse effects has only amplified over the years, as the paper has discussed. There is a widespread increase of pest and crop disease as the climate alteration is taking place, and it is causing heavy loss for the persons dependant on agricultural practices, and it increases their vulnerability of food security. The economic and social consequences is directly affected due to loss of agricultural productivity; thus, the vulnerable section of the society is mostly affected. The four dimension of food security: access, availability, utilization and stability falls is under threat due to climate change. Hence, after analysing the scenario with the aid of data and literature, it is evident, that human intervention and anthropocentric behaviour has led to a compromise of the climate and the greater extent of damage to the food security in India. Food grains, such as wheat, rice, pulses, are the primary staple foods and Indian population is widely dependant on agriculture not only for the consumption of food but also to support their economic conditions. The irony which this paper highlighted is that the anthropogenic actives are severely responsible for the change if climate and food security issues, in the global scale.

As climate and agricultural sectors correlated, the slightest change to severe will have impact on crop yields and the dimensions of food security will be shaken. Hence, the climate change will pose an alarming risk and pressure of the existing crop yield and its contrasted scenario to feed huge population in India. Vulnerability of the poor and marginalized section will only expand over the period as they already lack economic strength, and it is expected to grow more in further future. Thus, there is dearth into the attempt to overcome food security issues in India and take proper measures to reduce the malnutrition and health issues of the masses. Therefore, by adopting the following suggested policies protection and support can be extended on the part of the policy makers and concerned authorities dealing with the matters of food and nutrition in India. The agriculture system in India, is required to be more resilient and adopt sustainable agricultural practices. to raise the crop productivity and ensure safety measure to meet the needs of the people.

- ***Management of water resources:*** Water is a crucial for the agriculture production, and its efficient usage has become critical due to climate change. With the rapid change in the pattern of rainfall, crops yield is impacted, measures to be adopted such as efficient facilities for water harvest and storage capacity, technological adoptions to access the system of irrigation, improve ethe water retention by increasing the soil carbon.
- ***Adaptation of resilient and diverse crops:*** Adaptation of crop varieties and breeds with high intensity of climate tolerance is required for better resilience. Crops diversification is also an effective mechanism to reduce crop destruction and lower the risk.

- ***Resilient livestock breeding:*** Breeding is an essential component to strengthen the livestock, especially for the rural population. Thus, development of structured breeding programs will enhance the traits of resilience.
- ***Resilient forest ecosystem:*** A healthy forest ecosystem is more capable to withstand the stress and cope with the climate change as compared to the forests which are under strain and the ecological balance is disrupted. Hence, enhancing of ecosystems resilience becomes imperative with the best practices which includes, integrated control of pest and management of disease, control of forest fire, monitor and limit the extraction of non-timber forest-based products.
- ***Resilience of aquaculture:*** To respond and lower the risk of damage, there is a need to evolve the fishing and aquaculture practices. Migration of fish and shift in the habitat can heighten the risk. Hence, the farming system needs to be integrated, there should be examination of water quality, breeding of resilient aquatic species, improvement of the genetics are the adaptive, measure.

Therefore, to enhance food security in India and adapt to climate change, India needs to prioritize sustainable agricultural practices and promote resilient as its cornerstone. The mentioned sustainable practices will bolster the agricultural productivity and benefits the policy makers. Drawing the focus towards sustainable agriculture, will aid to create informed reforms which can support innovation in crop breeding, leading to enhance system of resilience and food production. An attempt on the part of the policy to adopt proactive approach can improve food security, stimulate economic growth and protect the environment from further degradation. Hence, with qualified data and extensive research on the food security further strategies can be crafted to promote long term agricultural viability.

Shifting Paradigms: The Case for Community Forest Management in India

Ms. Gnanavi Bopaiah[1]

I. Introduction

Forest management in India has evolved significantly over the centuries, transitioning from strict colonial state control to decentralized models, yet forest degradation persists as a pressing environmental and socio-economic issue. India's forests, rich in biodiversity and cultural heritage, play a critical role in sustaining both the ecological balance and the livelihoods of millions, particularly indigenous communities. However, despite policies intended to conserve forests, deforestation and forest degradation continue due to various limitations within current frameworks, such as Joint Forest Management (JFM). Recent studies indicate that India has lost around 2.33 million hectares of tree cover from 2001 to 2023,[2] loses around 1.5 million hectares of forest every year, primarily due to agricultural expansion, industrial development, and unsustainable harvesting, significantly impacting local communities and contributing to climate change concerns.[3]

India's forest management system, rooted in colonial policies, centralized state control over forests to maximize resource extraction. Post-independence, various policies such as the National Forest Policy of 1988 and the introduction of JFM sought to involve local communities in forest governance. However, these approaches often overlook the traditional rights, knowledge, and effective participation of local communities, limiting their success. The centralized, state-driven nature of JFM often hinders forest-dwelling communities from assuming full ownership, resulting in lower community engagement and suboptimal conservation outcomes.[4]

In contrast, Community Forest Management (CFM) emphasizes local autonomy and entrusts communities with active roles in forest governance, addressing both environmental and socio-economic challenges. Studies suggest that CFM models can enhance biodiversity conservation,

[1]**Research Scholar, NUJS, Kolkata and Assistant Professor (Senior Scale), Ramaiah College of Law, Bangalore (gnanavi.bopaiah@gmail.com)**

[2] Vizzuality, India Deforestation Rates & Statistics | GFW, https://www.globalforestwatch.org/dashboards/country/IND?category=forest-change (last visited Oct 29, 2024).

[3] Ministry of Environment, Forest and Climate Change, India State of Forest Report 2021, https://fsi.nic.in/forest-report-2021-details (last visited Oct 29, 2024).

[4] Arun Agrawal & Clark C Gibson, Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation, 27 WORLD DEVELOPMENT 629, 629 (1999), https://www.sciencedirect.com/science/article/pii/S0305750X98001612 (last visited Oct 29, 2024).

improve forest health, and provide stable livelihoods, as demonstrated in countries like Nepal[5] and Mexico.[6] This paper will analyze the evolution of forest management in India, from colonial practices to the limitations of JFM, and argue for a shift toward CFM. Case studies from Sixth Schedule states, including Meghalaya, along with international examples from Nepal and Mexico, will demonstrate the effectiveness of CFM and the need for similar models across India.

II. Historical Development of Forest Management in India

A. Colonial Era and State Control

Forest management in India dates back to the colonial period when the British Empire's demand for timber led to the formalization of state control over forests. In 1855, Lord Dalhousie issued the first formal declaration of British control over forests, followed by the **Indian Forest Act of 1865**, which established state proprietorship, allowing the British to regulate forests to meet timber and resource demands for the Empire's economic needs.[7] Under this Act, forest resources were systematically exploited, leading to the establishment of the **Imperial Forest Department in 1864** and the appointment of the first Inspector General of Forests, Dr. Dietrich Brandis, to oversee timber extraction and forest management operations.

During the colonial era, forest conservation goals varied among departments. The Public Works Department (PWD) focused on maintaining a steady supply of timber for infrastructural projects,[8] while the Revenue Department prioritized extraction for taxation purposes.[9] Medical officials and scientists also argued for limited extraction to protect soil and water resources, particularly in areas prone to soil erosion and flooding.[10] These varied interests led to the **Indian Forest Act of 1878**, which formalized the classification of forests into reserved, protected, and village forests. This act significantly restricted local communities' access to forest resources, undermining indigenous practices and severing their relationship with the forests, which had traditionally provided them with sustenance and cultural identity.

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[5] Tara Manandhar & Man Shin, How Community-Based Forest Management Can Improve Rural Livelihoods: A Case of Kabhre District, Nepal, 9 FOREST SCIENCE AND TECHNOLOGY (2013).

[6] James P. Robson, Local Approaches to Biodiversity Conservation: Lessons from Oaxaca, Southern Mexico, 10 IJSD 267 (2007), http://www.inderscience.com/link.php?id=17647 (last visited Oct 30, 2024).

[7] Tsomo Wangchuk, Forest Laws in India, PLANNING TIMES (2023), https://planningtimes.com/act-scheme-mission-plan/forest-laws-in-india/ (last visited Oct 31, 2024).

[8] H Cleghorn et al., To Consider the Probable Effects in an Economical and Physical Point of View of the Destruction of Tropical Forests, REPORT, BRITISH ASSOCIATION, EDINBURGH (1851).

[9] 2 EDWIN THOMAS ATKINSON, THE HIMALAYAN GAZETTEER (1998).

[10] JOHN HALLET BATTEN, OFFICIAL REPORTS ON THE PROVINCE OF KUMAON: WITH A MEDICAL REPORT ON THE MAHAMURREE IN GURHWAL, IN 1849-50 (1851).

The implications of these policies were far-reaching, as they not only deprived local communities of access to resources but also introduced a governance model that prioritized state control over communal resource management. Over the years, indigenous communities were systematically alienated from their traditional forest lands, and their dependence on forests was either overlooked or strictly controlled. Forests were viewed as economic assets rather than ecological or cultural resources, leading to conflicts between local populations and colonial authorities. The **Forest Policy Resolution of 1894** further solidified the government's stance, as it emphasized forest utilization for state revenue and resource extraction, with limited concern for conservation.[11] These policies paved the way for a centralized forest governance framework that continued post-independence.

B. Post-Independence Shifts and the Emergence of Joint Forest Management

Following independence, forest governance in India remained largely centralized, with early forest policies perpetuating colonial-era structures of control. The **Forest Conservation Act of 1980** was a critical moment in Indian forest policy, establishing legal restrictions on the diversion of forest land for non-forestry purposes. This act aimed to preserve forest cover but continued to exclude local communities from decision-making processes, failing to address the socio-economic needs of forest-dependent communities. Despite these limitations, the Act reflected an increasing awareness of the importance of forest conservation.

The **National Forest Policy of 1988** marked a shift towards acknowledging the role of local communities in forest conservation. This policy emphasized sustainable use and conservation over commercial exploitation, formally recognizing that forest-dependent communities are essential stakeholders. It led to the introduction of **Joint Forest Management (JFM)** in 1990, which allowed for a collaborative model where local communities could partner with state forest departments to manage forests.[12]

JFM aimed to rehabilitate degraded forest areas and address resource scarcity through a partnership model. However, JFM retained the state's ultimate authority, often relegating communities to a consultative role rather than granting them true autonomy. Moreover, the "one-size-fits-all" approach of JFM did not consider the unique socio-cultural and ecological contexts of different

[11] Benjamin Weil, Conservation, Exploitation, and Cultural Change in the Indian Forest Service, 1875-1927, 11 ENVIRONMENTAL HISTORY 319 (2006), https://www.jstor.org/stable/3986234 (last visited Oct 31, 2024).

[12] Prodyut Bhattacharya, Lolita Pradhan & Ganesh Yadav, Joint Forest Management in India: Experiences of Two Decades, 54 RESOURCES, CONSERVATION AND RECYCLING 469 (2010), https://www.sciencedirect.com/science/article/pii/S0921344909002274 (last visited Oct 31, 2024).

regions.[13] This has led to several shortcomings, including inadequate community engagement, limited rights over forest resources, and a lack of genuine decision-making power at the local level. These challenges have hindered JFM's ability to achieve sustainable forest conservation and equitable benefit-sharing.[14]

C. Legislative Frameworks Supporting Community Management

In the 1990s, constitutional amendments and legislative reforms began to offer legal frameworks for community management, particularly in scheduled areas where indigenous communities held traditional land rights. The **73rd Constitutional Amendment Act** (1992) empowered local self-governance, leading to the **Panchayat (Extension to Scheduled Areas) Act (PESA)** of 1996, which granted village assemblies the right to manage community resources and exercise authority over local governance in Fifth and Sixth Schedule Areas.[15] This legislative shift signalled a growing recognition of the importance of decentralization, providing the groundwork for community-based management practices, especially in tribal areas.

Further, the **Wildlife Protection Act (WPA) of 1972**, amended in 2002, introduced the concept of "**Community Reserves**" —protected areas managed by local communities to preserve biodiversity and cultural practices. Section 36C of the WPA allows state governments to declare community reserves on private or community land, giving communities legal backing to conserve forest resources based on traditional practices. While progressive, the WPA's community reserve provisions remain underutilized outside of the Sixth Schedule areas, limiting its overall impact on national forest conservation strategies.

III. The Case for Community Forest Management (CFM)

A. Need and Importance of CFM

Community Forest Management (CFM) offers a robust alternative to traditional state-managed forest models, addressing both ecological and socio-economic challenges. CFM recognizes the rights and responsibilities of local communities in forest management, empowering them to conserve, manage, and benefit from forest resources. In contrast to Joint Forest Management (JFM),

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[13] Supriya Rani & Neera Agnimitra, Devbans, Caste, Gender and the State:Political Ecology of a Sacred Grove of Himachal Pradesh, 7 JOURNAL OF SOCIAL INCLUSION STUDIES 51 (2021), https://doi.org/10.1177/23944811211020370 (last visited Jun 24, 2023).

[14] MADHAV GADGIL & RAMACHANDRA GUHA, ECOLOGY AND EQUITY: THE USE AND ABUSE OF NATURE IN CONTEMPORARY INDIA (1995).

[15] C. R. Bijoy, Forest Rights Struggle: The Making of the Law and the Decade After, 13 LAW ENV'T & DEV. J. 73 (2017), https://heinonline.org/HOL/P?h=hein.journals/leadjo13&i=69 (last visited Jun 25, 2023).

which retains significant state oversight, CFM grants more autonomy to communities, encouraging them to protect biodiversity and meet their livelihood needs sustainably.

A significant advantage of CFM is its alignment with indigenous practices and traditional ecological knowledge. Indigenous communities, who have lived in symbiosis with forests for generations, often possess deep knowledge of local ecosystems and sustainable practices. Studies on forest health indicate that forests managed by local communities frequently exhibit higher biodiversity levels and improved ecological resilience compared to state-managed areas.[16] For instance, community-managed forests in the Khasi Hills of Meghalaya demonstrate higher species diversity and lower rates of deforestation due to culturally embedded conservation practices.[17]

In addition to ecological benefits, CFM provides socio-economic incentives for forest-dependent communities, offering stable income through non-timber forest products, medicinal plants, and eco-tourism initiatives. When communities directly benefit from forests, they are more motivated to preserve and sustainably manage them. Economic opportunities derived from CFM, such as sustainable harvesting, reduce dependence on external economic sources and alleviate rural poverty.[18]

B. Benefits of Decentralized, Community-Driven Models

Decentralization in forest governance allows for localized, context-specific management, a key strength of CFM. By devolving control to communities, CFM fosters a sense of ownership and responsibility that centralized models often lack. Community-driven enforcement mechanisms, such as local councils or traditional sanctions, have proven effective in regulating resource use and preventing unsustainable practices. Unlike top-down state policies, which may face enforcement challenges, community-based management benefits from local compliance and stronger social accountability.[19]

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[16] Ghazala Shahabuddin & Madhu Rao, Do Community-Conserved Areas Effectively Conserve Biological Diversity? Global Insights and the Indian Context, 143 BIOLOGICAL CONSERVATION 2926 (2010), https://www.sciencedirect.com/science/article/pii/S0006320710001862 (last visited Oct 31, 2024).

[17] Shonil A. Bhagwat & Claudia Rutte, Sacred Groves: Potential for Biodiversity Management, 4 FRONTIERS IN ECOLOGY AND THE ENVIRONMENT 519 (2006), http://doi.wiley.com/10.1890/1540-9295(2006)4[519:SGPFBM]2.0.CO;2 (last visited Jun 5, 2024).

[18] Priya Shyamsundar & Rucha Ghate, Rights, Rewards, and Resources: Lessons from Community Forestry in South Asia, 8 REVIEW OF ENVIRONMENTAL ECONOMICS AND POLICY 80 (2014), https://www.journals.uchicago.edu/doi/abs/10.1093/reep/ret022 (last visited Oct 31, 2024).

[19] Collective Action, Property Rights, and Decentralization in Resource Use in India and Nepal - ARUN AGRAWAL, ELINOR OSTROM, 2001, https://journals.sagepub.com/doi/abs/10.1177/003232920102900400 2 (last visited Oct 31, 2024).

Moreover, CFM offers resilience against state intervention that can disrupt local customs. The Indian state's attempts to regulate local practices sometimes undermine indigenous conservation strategies. By recognizing community rights, CFM strengthens conservation practices embedded in cultural traditions, enhancing long-term ecological sustainability. Furthermore, evidence from successful CFM models in other countries, such as Nepal, supports the claim that when communities are granted formal rights over forests, they effectively manage resources and mitigate over-exploitation, demonstrating the scalability of CFM in different cultural contexts.[20]

IV. Case Studies: Sixth Schedule States in India

A. Overview of Sixth Schedule Provisions

India's Sixth Schedule, established under Article 244(2) of the Constitution, provides for the creation of autonomous district councils in the northeastern states, particularly Meghalaya, Assam, Mizoram, and Tripura. These councils grant tribal communities the authority to manage land, resources, and certain governance matters independently from state governments, fostering indigenous self-determination and preserving cultural heritage. Within this framework, communities in Sixth Schedule areas are empowered to manage forest resources autonomously, which aligns with CFM principles. These councils hold legislative power over land use, forest management, and cultural preservation, making the Sixth Schedule an ideal governance structure for supporting CFM initiatives.

B. Case Study: Meghalaya's Sacred Groves

One of the most notable examples of CFM in India is the sacred groves of Meghalaya, which are managed by local tribal communities based on cultural and religious beliefs. Sacred groves are small forest patches that serve as biodiversity hotspots and are protected due to their religious significance. The Khasi, Garo, and Jaintia tribes, who inhabit Meghalaya, regard these groves as sacred spaces dedicated to deities and ancestral spirits, and traditional customs strictly prohibit deforestation and resource extraction in these areas. These beliefs have preserved the biodiversity of sacred groves over centuries, with studies showing that sacred groves harbor unique species not found in surrounding forests.[21]

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[20] ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 120 (1990).

[21] Ramesh S. Khiewtam & P. S. Ramakrishnan, Socio-Cultural Studies of the Sacred Groves at Cherrapunji and Adjoining Areas in North-Eastern India, 69 MAN IN INDIA 64 (1989).

These groves illustrate how traditional beliefs and cultural practices can contribute to conservation efforts. Community-led management of sacred groves has yielded ecological benefits, including improved forest cover, increased biodiversity, and greater ecological stability. In the Mawphlang Sacred Grove, for instance, local management practices have preserved rare and endangered species of flora, maintaining the grove's ecological integrity.[22] By empowering local communities to exercise control over forest areas through traditional practices, Meghalaya's sacred groves embody the principles of CFM, highlighting its compatibility with indigenous governance.

C. Comparisons with Other Sixth Schedule States

Other Sixth Schedule states, also exhibit unique community forest management practices that blend traditional governance with legal autonomy. In Assam, the Karbi Anglong and North Cachar Hills district councils have implemented community forestry projects in which local councils manage forest resources and govern land use autonomously.[23] These systems illustrate the diversity of community forest management approaches across Sixth Schedule areas, each adapted to local socio-cultural contexts and ecological conditions.[24]

Despite differences in cultural practices and governance structures, these states share a common principle: local communities exercise primary control over forest management, with minimal state intervention. This localized governance model allows for forest management practices that are more responsive to local needs and conditions, contrasting with the "one-size-fits-all" model often associated with JFM. The success of CFM in Sixth Schedule states demonstrates that empowering local communities through autonomous governance structures leads to effective conservation outcomes. Additionally, the experience of these states provides valuable insights for non-Sixth Schedule regions, where communities seek greater autonomy in managing forest resources.

V. International Case Studies

A. Nepal's Community Forestry Program

Nepal's community forestry model, launched in the 1970s, serves as one of the most successful examples of CFM, empowering local "forest user groups" (FUGs) to manage designated forest

[22] Solomon Jeeva et al., Traditional Knowledge and Biodiversity Conservation in the Sacred Groves of Meghalaya, 5 INDIAN JOURNAL OF TRADITIONAL KNOWLEDGE 563 (2006).

[23] Vincent Darlong & S. K. Barik, Community-Based Approaches to Local Natural Resource Management*, in AGRICULTURE AND A CHANGING ENVIRONMENT IN NORTHEASTERN INDIA (2013).

[24] N.H. Ravindranath, K.S. Murali & P. Sudha, Community Forestry Initiatives in Southeast Asia: A Review of Ecological Impacts, 5 IJESD 1 (2006), http://www.inderscience.com/link.php?id=8678 (last visited Oct 31, 2024).

areas autonomously. The **Forest Act of 1993** formalized the transfer of forest management rights to local communities, granting FUGs authority over forest protection, resource utilization, and revenue sharing. The Act marked a shift from centralized control to community-led management, fostering local participation and accountability.[25]

In Nepal, FUGs contribute to conservation by enforcing sustainable harvesting practices, reducing illegal logging, and implementing forest restoration projects. This model has yielded significant ecological benefits: studies indicate that community-managed forests in Nepal have higher tree density, improved forest cover, and increased biodiversity compared to state-managed areas.[26] The socio-economic impacts have also been notable, as communities benefit from forest products, including firewood, fodder, and non-timber products, generating stable incomes and enhancing rural livelihoods. Nepal's community forestry model has reduced poverty and strengthened social cohesion, providing a valuable model for CFM implementation in diverse contexts.

Nepal's success with CFM suggests that strong legal frameworks and local empowerment are crucial for sustainable forest management. By formally recognizing FUGs and embedding CFM in national policy, Nepal demonstrates how legal backing and decentralized governance can improve forest health while promoting community welfare. India could draw lessons from Nepal's experience, particularly in terms of legally recognizing and supporting community forest groups across regions beyond the Sixth Schedule areas.

B. Mexico's Ejido System

Mexico's ejido system represents a unique model of communal land ownership that incorporates CFM principles. Under this system, ejidos—collectively owned land parcels—were established as part of land reforms following the Mexican Revolution. The **1992 Agrarian Law** granted ejido communities control over resource management, including forests, allowing them to determine land use and forest management strategies.[27]

The ejido system has fostered sustainable forest management in states like Oaxaca, where communal forests are integral to indigenous communities' culture and economy. Studies show that

[25] Forest Act, (1993), https://faolex.fao.org/docs/pdf/nep4527.pdf.
[26] Ambika P. Gautam, Mukunda Karmacharya & Birendra Karna, Community Forestry, Equity and Sustainable Livelihoods in Nepal (2008), https://hdl.handle.net/10535/1309 (last visited Oct 31, 2024).
[27] David Barton Bray, Camille Antinori & Juan Manuel Torres-Rojo, The Mexican Model of Community Forest Management: The Role of Agrarian Policy, Forest Policy and Entrepreneurial Organization, 8 FOREST POLICY AND ECONOMICS 470 (2006), https://www.sciencedirect.com/science/article/pii/S138993410500105X (last visited Oct 31, 2024).

ejido-managed forests often outperform state-managed areas in terms of biodiversity and forest cover, partly due to communal enforcement of sustainable practices and rotational grazing techniques.[28] In addition, ejido communities have benefited from eco-tourism, sustainable timber harvesting, and the production of non-timber products, creating a sustainable income stream while conserving forest resources. The ejido model highlights the importance of community control and traditional knowledge in resource management, and it illustrates the compatibility of CFM with diverse economic activities.

The Mexican ejido system offers valuable insights for India, as it illustrates how CFM can empower communities to manage resources sustainably while generating economic benefits. Adapting ejido principles to Indian contexts, particularly in tribal regions, could enhance the effectiveness of CFM by integrating traditional land rights with formal resource management structures.

C. Tanzania's Participatory Forest Management (PFM)

In Tanzania, **Participatory Forest Management (PFM)** combines Joint Forest Management and Community-Based Forest Management to include communities in forest governance. Tanzania's **Forest Act of 2002** provides legal recognition for community-managed forests, allowing villagers to establish Village Forest Reserves where they hold full ownership and responsibility for forest management.[29]

PFM has led to significant ecological and social benefits. Villagers in community-managed areas report lower deforestation rates and increased biodiversity, with sustainable harvesting providing income through eco-tourism and non-timber products. The economic benefits from PFM have incentivized villagers to protect forest resources, resulting in a reduction of illegal activities such as logging and wildlife poaching.[30] Furthermore, PFM has improved local governance by fostering community participation in decision-making and conflict resolution. Like Nepal, Tanzania's approach to PFM underscores the importance of formal legal frameworks and community empowerment in achieving sustainable forest management.

For India, Tanzania's PFM model offers a compelling case for blending Joint Forest Management with autonomous community control. Implementing a dual model that allows both state and

[28] DAVID BRAY & LETICIA MERINO, The Rise of Community Forestry in Mexico: History, Concepts, and Lessons Learned from Twenty-Five Years of Community Timber Production, 57 (2002), https://www.researchgate.net/publication/268050480_The_Rise_of_Community_Forestry_in_Mexico_History_Concepts_and_Lessons_Learned_from_Twenty-Five_Years_of_Community_Timber_Production.
[29] United Republic of Tanzania, Forest Act, 2002, https://faolex.fao.org/docs/pdf/tan34429.pdf.
[30] TOM BLOMLEY, Participatory Forest Management in Tanzania: 1993 - 2009, (2009).

community collaboration could improve JFM outcomes while progressively granting communities more control over forest resources.

VI. Analysis and Discussion

A. Comparing Domestic and International Models

India's experiences with JFM and CFM align with the global trend toward community-based governance, though there are distinct differences in structure and implementation compared to international models like Nepal's FUGs, Mexico's ejidos, and Tanzania's PFM. While JFM in India grants limited autonomy, CFM models in other countries operate under robust legal frameworks that ensure communities have full control over forest management. For example, Nepal's Forest Act directly empowers FUGs to manage resources without state interference, allowing for self-regulation, while India's JFM retains ultimate decision-making authority with the state.[31]

In terms of ecological impact, studies show that community-managed forests in Nepal, Mexico, and Tanzania exhibit higher levels of biodiversity and reduced deforestation rates compared to state-managed forests. For instance, biodiversity assessments in ejido-managed forests in Mexico show higher species richness due to sustainable management practices rooted in indigenous knowledge.[32] Similarly, Tanzania's PFM has lowered deforestation rates by fostering local stewardship. India's CFM initiatives, particularly in Sixth Schedule states, demonstrate similar outcomes, yet they lack the legal security and policy support observed in these international models.

B. Strengths and Challenges of CFM

CFM presents notable strengths, including increased community engagement, sustainable resource management, and the preservation of traditional knowledge. The ecological benefits of CFM, such as improved forest cover and biodiversity, are well-documented in India's sacred groves and international examples. Furthermore, CFM supports socio-economic development by creating livelihood opportunities for forest-dependent communities. For instance, the Khasi Hills community-managed forests in Meghalaya generate income through sustainable practices,[33] while Tanzania's PFM areas benefit from eco-tourism and non-timber product harvesting.[34]

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[31] Agrawal and Gibson, supra note 4 at 629.
[32] BRAY AND MERINO, supra note 28 at 56.
[33] Christoph Oberlack et al., Institutions for Sustainable Forest Governance: Robustness, Equity, and Cross-Level Interactions in Mawlyngbna, Meghalaya, India, 9 INT J COMMONS 670 (2015), https://www.thecommonsjournal.org/article/10.18352/ijc.538/ (last visited Aug 1, 2022).
[34] BLOMLEY, supra note 30.

However, CFM faces challenges in terms of heterogeneity among communities and potential conflicts over resource use. The diversity within communities can lead to governance issues, as "one-size-fits-all" policies may not suit different socio-cultural and ecological contexts. Additionally, successful CFM requires strong legal backing to prevent state intervention from undermining community autonomy. India's current legal framework provides only limited support for CFM outside the Sixth Schedule areas, presenting a barrier to scaling up CFM initiatives nationally.

C. Recommendations for Implementing CFM in India

Expanding Community Forest Management (CFM) across India requires significant policy reforms and structural changes to establish a robust framework that empowers local communities in sustainable forest management. First, amending the Forest Rights Act to formally recognize CFM in areas outside the Sixth Schedule would grant these communities legal authority over forest resources, reinforcing their stewardship role. Additionally, capacity-building initiatives, supported by NGOs and government agencies, are essential for equipping community leaders with the skills and knowledge necessary for sustainable practices in forest management. Incorporating a blended governance model that integrates aspects of JFM with CFM, as demonstrated in Tanzania's PFM approach, would facilitate a gradual transition towards full community control, balancing state oversight with local autonomy. Finally, implementing transparent monitoring and evaluation mechanisms would be vital to assess the effectiveness of CFM initiatives, ensuring accountability and fair distribution of resources while strengthening community commitment to forest conservation. These recommendations aim to provide communities with the tools, legal backing, and autonomy needed to effectively manage forest resources. By adopting a community-centric model, India can strengthen forest conservation efforts, support rural livelihoods, and preserve the country's rich biodiversity.

VII. Conclusion

The ongoing environmental and socio-economic challenges facing India's forests demand a paradigm shift in forest governance, one that prioritizes the active role of local communities. Historical developments, from colonial-era state control to the introduction of Joint Forest Management (JFM), reveal a consistent pattern of centralized management that often fails to incorporate the knowledge and interests of forest-dependent communities. While JFM represents a step towards collaborative governance, its limitations underscore the need for a more comprehensive model—Community Forest Management (CFM).

This paper argues that CFM, which grants greater autonomy and responsibility to local communities, can address the dual goals of conservation and sustainable livelihoods more effectively than JFM. The case studies from Sixth Schedule states in India, such as Meghalaya's sacred groves, demonstrate that community-managed forests not only enhance biodiversity but also preserve indigenous cultural heritage. International examples from Nepal, Mexico, and Tanzania reinforce the benefits of CFM, showing that legal recognition and community empowerment lead to improved ecological outcomes and socio-economic stability.

For CFM to be successfully implemented across India, especially beyond Sixth Schedule regions, legislative reforms and policy support are crucial. Strengthening the Forest Rights Act to formally recognize CFM, introducing capacity-building programs, and developing collaborative governance models could provide communities with the necessary tools and legal authority to manage forest resources sustainably. These recommendations aim to promote decentralized governance, fostering a system where communities actively participate in preserving India's forests.

In conclusion, CFM represents a viable path forward for India, allowing the nation to harness the strengths of local communities in forest conservation while supporting their cultural and economic needs. By embracing a decentralized approach, India can better balance ecological protection with social equity, contributing to both sustainable development and biodiversity conservation. Further research into CFM's effectiveness across India's diverse ecosystems would provide valuable insights for refining this model and extending its benefits nationwide.

The Unseen Casualties: Wildlife Trafficking, Corruption, and the Crisis of Conservation

Aarti Patel[1]

Introduction:

Wildlife trafficking is a huge, illicit activity that involves the international poaching, smuggling, and exchange of protected animals and plants. This worldwide illegal market endangers biodiversity by disrupting ecosystems and perhaps causing the extinction of many species. Wildlife trafficking is motivated by the need for animal products in a variety of businesses, including traditional medicine, luxury goods, and exotic pets. We presume that most things we use now are comprised of synthetic materials; nevertheless, many still contain animal parts, with firms devising illegal methods to ensure that no part of the animal goes to waste. When animals are unlawfully poached or trafficked, every part is frequently repurposed to maximize profit, including those we may not consider.

For example, sheep fats, oils, and proteins are processed into soap components, whereas fish scales or oils are utilized in beauty products to provide shine or texture. This is the dark world of animal by products, where unscrupulous enterprises use every inedible portion of cows, pigs, and sheep to make appealing consumer goods. The consequences of this illegal trade go beyond environmental destruction; it promotes corruption, strengthens organized criminal networks, and increases public health hazards by spreading zoonotic illnesses.

The following research dives into the serious effects of illicit wildlife trafficking, the systemic corruption that supports it, and the worldwide legal initiatives underway to combat this global crisis. By studying the economic, social, and ecological consequences of wildlife trafficking, this article emphasizes the critical need for increased worldwide collaboration, enforcement of laws, and conservation efforts.

Wildlife Trafficking:

Wildlife trafficking is the unlawful trading, smuggling, poaching, capture, or collection of endangered species, protected wildlife (including animals or plants with harvest quotas and licenses), derivatives, or products thereof. There is no globally agreed definition of the phrase, and various countries and organizations use different terms.

International organizations such as UNODC and INTERPOL define ‘wildlife and forest crime’ as the taking, trading (supplying, selling, or trafficking), importing, exporting, processing, possessing, obtaining, and consumption of wild fauna and flora, including timber and other forest products, in

[1] **BBA-LLB, 4TH YEAR, AURO University, Surat, Gujarat, Email id: aartip1210@gmail.com**

violation of national or international law. Wildlife crime is a huge business. Wildlife and animal parts are smuggled through deadly international networks, just as illegal narcotics and weaponry. By definition, it is nearly hard to collect credible data for the value of the illicit wildlife trade. It is projected to cost billions of dollars.

The illicit wildlife trade promotes the spread of exotic species, climate change, land degradation, and biodiversity loss[2].

Illicit Wildlife Trade (IWT) can also harm communities by introducing and spreading zoonotic diseases, which have become a topic of heavy debate since the beginning of the COVID-19 pandemic. Illicit Wildlife Trade (IWT) can potentially threaten communities by importing and spreading zoonotic illnesses, which have been the subject of much controversy since the start of the COVID-19 epidemic.

How Animals are Hunted, Farmed, and Traded for Profit

The wildlife trade is not a new phenomena; it has existed for thousands of years. Ancient European societies made jewellery and implements out of ivory. The Romans exterminated elephant herds in northern Africa and Asia Minor because of their desire for ivory. In the early 1900s, the British government made its first attempt at control by approving a convention "designed to ensure the conservation of various species of wild animals in Africa"[3]. It took another 75 years for the countries affected by the wildlife trade to convene a conference to adopt the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which governs the export, import, and transit of certain species of wild animals and plants.

As human populations have grown, so has the demand for wildlife. People in many countries are accustomed to a lifestyle which fuels demand for wildlife. They expect access to a variety of seafoods, leather goods, timbers, medicinal ingredients and textiles. At the other end, extreme poverty means some people see wildlife as valuable barter for trade.

The great majority of the billions of animals slaughtered for their skin, wool, feathers, or fur face the horrors of industrial farming. Sensitive living beings are compelled to live in tight, filthy conditions, with all of their freedom and autonomy stripped away. Workers abuse animals by forcefully handling, kicking, and beating them. After a lifetime of torture, they are brutally killed using the cheapest methods available, such as bludgeoning, anal electrocution, and gassing. Some

[2] Quantitative Investigation of Wildlife Trafficking Supply Chains: A Review, 115 Omega 102780 (2023), https://www.sciencedirect.com/science/article/pii/S0305048322001876 (last visited Oct 29, 2024).

[3] Hough, Peter. "Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa, which are Useful to Man or Inoffensive." British Politics and the Environment in the Long Nineteenth Century. Routledge, 2023. 379-389.

are even mutilated and skinned while alive.[4] Trapped animals exploited for fur may suffer from blood loss, shock, dehydration, which frostbite, and gangrene for days or be attacked by predators before being killed by trappers.

Live animals in the trade can be utilized as exotic pets, stock for game farms, zoo animals, or biomedical research subjects. Fur and leather products are frequently intentionally mislabeled. Some companies have been known to slaughter dogs and cats for fur and leather in nations where animal welfare rules are almost non-existent. So, if you wear animal skins, you have no means of identifying which skin you're in. However, regardless of who they were, they did not want to die in order to become clothes or accessories.

According to the WWCR3 analytical dataset, seizures from 2015 to 2021 involved unlawful commerce in about 4,000 animal species, 3,250 of which are classified in the CITES Appendices.[5] Corals, crocodilians, and elephants accounted for the most individual seizures documented during that time period. Endangered animals are highly prized in the wildlife trade due to their scarcity, resulting in overexploitation and black market trading, driving many species closer to extinction.

Global Perspectives on Illegal Wildlife Trade

According to the World Wide Fund for Nature (WWF), wildlife trafficking is the fourth largest type of transnational organized crime (after drug smuggling, human trafficking, and counterfeiting), worth an estimated £15 billion per year.[6]

Wildlife crime is a global issue, and poacher activities such as live trading, body part trafficking, and the sale of processed goods have a significant impact on protected flora and wildlife. Currently, the most serious threat to wildlife in the world is to a few highly vulnerable animal species: elephants (African: Loxodonta africana, Asian: Elephas maximas), rhinos (Indian: Rhioceros unicornis, Javan: Rhinoceros sondaicus), tigers (Panthera tigris), and pangolins.[7] The growing global demand for elephant ivory, rhino horns, tiger goods, and pangolin scales is driving poaching of these creatures, notably in Asia and Africa.

The illicit trade in fake goods is $7-$23 billion annually, making it the fourth largest illicit business next to gun running, narcotics and human trafficking according to UNODC statistics. Out of over 31,500 terrestrial bird, mammal, amphibian, and squamate reptile species, about 24% (N = 7638)

[4] Leather, Wool, and Other Clothing Made From Animals, PETA (2011), https://www.peta.org/issues/animals-used-for-clothing/ (last visited Oct 22, 2024).

[5] World Wildlife Crime Report 2024, https://www.unodc.org/documents/data-and-analysis/wildlife/2024/WLC24_Chapter2_Final.pdf (last visited Oct 29, 2024).

[6] Stopping the Illegal Wildlife Trade | WWF, https://www.wwf.org.uk/what-we-do/stopping-illegal-wildlife-trade (last visited Oct 25, 2024).

[7] Nikkita Gunvant Patel et al., Quantitative Methods of Identifying the Key Nodes in the Illegal Wildlife Trade Network, 112 Proceedings of the National Academy of Sciences of the United States of America 7948 (2015).

are traded internationally, contributing to their extinction[8]. On the other hand, the yearly legal commerce in wildlife is 20-50 times more than the criminal trade through commercial fishing at $180 billion, lumber at $227 billion, and fashion at $2.5 billion.[9]

Rhino horn, elephant ivory and tiger products are today selling well among consumers especially in the Asian market. In Vietnam specifically, the recent myth that the horn of the rhino cures cancer has caused heightened poaching activity in South Africa and has driven the value of rhino horn to sky rocket to levels comparable to that of gold. UNODC agency in collaboration with (International Consortium for Combating Wildlife Crimes) ICCWC has avails seizure database "World WISE" till the year 2020 which has records of 80,000 seizures from 149 different countries.[10] The data is separately gathered and maintained from the sources like ICCWC which has data of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) and Customs Enforcement Network (CEN). The Rhino populations have shrunk greatly in the past 25 years and the current global Rhino population numbers are below 30,000 which include nearly 18,000 white African Rhinos; on the other hand current Rhino population in Indian forests cross 3600[11]. Regarding the elephant population in the world, there has been a sharp decline from ~ 10,000,000 to just ~ 500,000 over a span of ~ 100 years, of which ~ 30,000 are residing in India (~ 50% in the forests of Karnataka, Assam, and Kerala)[12]. India now has more than 3000 tigers 50% of which are in Madhya Pradesh, Karnataka and Uttarakhand while whole world has 1500 or even less tigers. However, the poaching of tigers is a common occurrence; the high poaching rate is recorded within the states of Maharashtra, Karnataka, Tamil Nadu, and Assam; and the north-eastern border and Mumbai.[13] The most popular wild animals and their products which were recovered from DRI's net for smuggling outside India include ivory, turtles and tortoise which includes the Indian star tortoise, and the red sandalwood (red sanders or lalchandan) as per the Smuggling in India report 2020-2.[14] Recently, the trade of rhino horn has reduced in India; yet, it is emerging as the leading source of

[8] Brett R. Scheffers et al., Global Wildlife Trade across the Tree of Life, 366 Science 71 (2019).

[9] Ajay Kumar Rana & Nishant Kumar, Current Wildlife Crime (Indian Scenario): Major Challenges and Prevention Approaches, 32 Biodiversity and Conservation 1473 (2023).

[10] Vereinte Nationen, World Wildlife Crime Report: Trafficking in Protected Species, 2020 (2020).

[11] Kei Nabeshima et al., Draft Genome Sequence Data of Indian Rhinoceros, Rhinoceros Unicornis, 41 Data in Brief 107857 (2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC8814301/ (last visited Oct 28, 2024).

[12] Varun R. Goswami et al., Towards a Reliable Assessment of Asian Elephant Population Parameters: The Application of Photographic Spatial Capture–Recapture Sampling in a Priority Floodplain Ecosystem, 9 Scientific Reports 8578 (2019), https://pmc.ncbi.nlm.nih.gov/articles/PMC6561924/ (last visited Oct 28, 2024).

[13] George Nittu et al., The Tide of Tiger Poaching in India Is Rising! An Investigation of the Intertwined Facts with a Focus on Conservation, 88 GeoJournal 753 (2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9005341/ (last visited Oct 28, 2024).

[14] SMUGGLING IN INDIA REPORT FOR 2020-2021, https://www.dri.nic.in/writereaddata/smugglinginindiareportfor2021/files/basic-html/page94.html (last visited Oct 29, 2024).

pangolin killing and smuggling. The trade in tiger parts also appears to be still going on unchecked. According to the 2020 Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC) Runway to Extinction report[15], although trafficking of Indian star tortoises out of India is decreasing, smuggling of red-eared slider turtles is increasing. The number of exotic animals carried throughout India is increasing, including kangaroos, marmosets, tamarins, and birds like macaws and parrots. The most recent in this series of stories came in March and April 2022, with footage of exhausted and unwell kangaroos rescued in West Bengal.

Traditional Chinese Medicine (TCM) marketplaces in Asia rely on animal body parts to treat a variety of conditions. These items are handled through complex trafficking networks that include poachers, intermediaries, and affluent stakeholders. The TCM market is wealthy, generating more than $60 billion each year. However, the demand for animal parts is driving species extinction, with 2.7 million pangolins poached each year and more than 100,000 African elephants slaughtered for ivory between 2014 and 2017. According to the World Wildlife Crime Report 2020[16], while worldwide markets for rhino horn and ivory have steadily declined since 2011, new market needs for pangolin scales and European glass eels have developed. Because to the extensive hunting of pangolins by local tribes, who consume the meat and sell the scales, this once-abundant species is now rather scarce. Chinese and Vietnamese traditional medicine markets are important buyers of pangolin scales, rhino horns, and the skin and body parts of numerous large cats, birds, Asiatic black bears, musk deer, wolves, and jackals.

The exotic pet trade sometimes involves illicit operations in which wild animals are seized and fraudulently represented to be captive-bred in order to circumvent laws and trade limitations. Unfortunately, unlawful breeding is prevalent. For example, in Brazil, a large number of species are illegally produced, with commercial breeders frequently participating. This problem is not confined to exotic pets; even research animals, such as Barbary macaques, are part of the illegal trade. Genetic approaches are critical in preventing illicit animals from being mislabeled as legal, guaranteeing regulatory compliance, and protecting natural populations.

Impact on Environment & Human Beings

Wildlife trafficking has used the global aviation network to carry out its illegal activities, leading to serious environmental damage and having similar effects to other international crimes, such as encouraging instability, financing organized crime, and negatively impacting communities that rely

[15] Runway to Extinction: Airports and Airlines in Every Region of the World Can Assist with Fighting Wildlife Trafficking - Wildlife Trade Report from TRAFFIC, https://www.traffic.org/publications/reports/runway-to-extinction/ (last visited Oct 26, 2024).

[16] World Wildlife Report, https://www.unodc.org/unodc/en/data-and-analysis/wildlife.html (last visited Oct 26, 2024).

on wildlife tourism. Despite worldwide (and national) legal frameworks such as the Convention on worldwide Trade in Endangered Species of Wild Fauna and Flora (CITES), the illicit wildlife trade is the fourth most profitable global crime, worth up to US$20 billion annually.[17]

Overexploitation of animal resources, such as logging and poaching, has devastating consequences for the well-being of biodiversity, and stability. In tropical places, logging is a major cause of loss of biodiversity, destroying habitats and diminishing the variety required for ecosystems to thrive. The practice of poaching of medium and large animals further disturbs ecosystems by causing species imbalances. The loss of bigger animals decreases rivalry between food sources and enemies, leading small mammal population to increase, hence altering seed distribution patterns. Large mammals, which normally disseminate seeds over long distances, are no longer extant, whilst smaller animals only scatter tiny seeds over shorter distances. This shift changes habitats, limiting the presence of larger-seeded plants and influencing overall ecosystem composition.

In a similar vein the destruction of vital coastal habitats, such as kelp beds, causes a loss of natural shelter from currents and waves. This results in silt buildup, reducing habitats for sessile marine creatures. The illegal wildlife trade (IWT) exacerbates these environmental challenges by aiding in global biodiversity loss. This loss weakens ecosystems, making them less resilient to environmental changes, especially climate change. As ecosystems lose species, their capacity to adapt and recover from shocks deteriorates, endangering both biodiversity and the human societies who rely on these ecosystems.

The COVID-19 epidemic that started in late December 2019 in a wet market in Wuhan, China has affected more than 170 million people and brought significant social and economical loss. Wild live animals and their body parts are supplied in wet markets that is well known markets in Asia and Africa, for traditional almost in every health concerns. The present pandemic has raised doubts about the reliability of these marketplaces because at least 61 % of human endemics are zoonotic diseases that can be contracted from animals.[18] Past epidemics like SARS, Ebola and HIV were previous contacts with animals.

The wildlife markets, which for a long time were dismissed as an animal issue, are seen as a health problem. The epidemic has highlighted the synergism between human and ecological health: humans are not outside the ecology but in it and part of it. Besides, reckless smuggling of wild animals also results in thousands of animal deaths annually, disrupt ecosystems, and diminish their functionality. Each species serves an important function: ,monkey spread seeds, birds cultivate

[17] Combatting Wildlife Trafficking | ACI World, https://aci.aero/airport-advocacy/environment/combatting-wildlife-trafficking/ (last visited Oct 29, 2024).

[18] Izzy Sasada, Pandemics and Pangolins: The Use of Wild Animal Parts in Traditional Medicine, Earth.Org (2021), https://earth.org/animals-body-parts-medicine/ (last visited Oct 29, 2024).

forests, sharks defend coral reefs, etc. The removal of animals from these environments causes environmental damage. Poaching practices also cause extensive habitat loss, which harms non-target animals and exacerbates the environmental issue.

The Role of Corruption in Wildlife Crime

Corruption is a significant facilitator of illicit wildlife trafficking, affecting all levels of society. For example, in Azrou, Morocco, rangers, guides, and woodcutters operate as go-betweens for poachers and purchasers, collecting commission while ensuring that poaching does not interfere with ecotourism earnings. Corruption is not restricted to park rangers, who were found guilty in just 7% of court proceedings. Police officers (32%), administrative government officials (19%), and military personnel (17%) are more likely to facilitate the illicit wildlife trade through bribery and fraud.[19]

This systematic corruption contributes considerably to the global increase in illicit wildlife trade, which peaked during the COVID-19 epidemic. Between 2020 and 2021, illicit wildlife trading increased significantly, with wildlife seizures accounting for 1.4-1.9% of worldwide commerce, up from 0.5-1.1% in prior years. Despite international initiatives like as CITES and the UN's implementation of a new indicator to track SDG target 15.7, the world is still falling short of its goal of ending wildlife trafficking by 2030.[20] Corrupt methods, such as bribes for clearance from customs and fraudulent chapterwork, consider corruption costs as normal business expenses, exacerbating the global biodiversity issue.

Combating the illicit wildlife trade entails confronting corruption across all levels, from regional rangers to high-ranking authorities, as well as boosting enforcement and international collaboration to disrupt criminal networks. Without these measures, illicit commerce would continue to degrade ecosystems, threaten species, and weaken public health and governance.

Criminalization:

Legal processes to wildlife trafficking differ significantly between jurisdictions, with punishments ranging from fines to detention, and, in extreme cases, physical or death punishment. Countries such as Kenya and Tanzania have increased punishments for violations affecting endangered species through laws such as Kenya's Wildlife Conservation and Management Act of 2013, which was revised in 2018, and Tanzania's Wildlife Management Authority Act. Other countries, in contrast, continue to apply more moderate punishments, reflecting diverse legal objectives and

[19] Daan P van Uhm & William D Moreto, Corruption Within the Illegal Wildlife Trade: A Symbiotic and Antithetical Enterprise, 58 The British Journal of Criminology 864 (2018).

[20] World Wildlife Crime Report,https://www.unodc.org/documents/data-and-analysis/wildlife/2024/Wildlife_SpecialPoint_Final.pdf (last visited Oct 29, 2024).

traditions. The enforcement of these fines remains uneven. Sentences may vary greatly, driven by national legislation that define aggravating and mitigating elements.

Some factors that can make wildlife trafficking more serious include: the severity of the consequences, the cruelty of the animals involved, the amount of specimens or items involved, whether any of the animals were pregnant, nursing, incubating, or caring for dependent offspring at the time of the crime, the offender's history of wildlife crimes, the size of any material benefit, or their position in the criminal organization.

Possible mitigating variables include:

In cases where the perpetrator played a minor or supporting role in the crime, did not have a criminal history, expressed regret for their actions, or willingly helped authorities with the investigation and prosecution of other wildlife crimes etc are eligible for a reduced punishment or fine.

In India, wildlife trafficking and animal crimes are tackled under the Wildlife (Protection) Act, 1972 and the newly proposed Bhartiya Nyay Sanhita (BNS), 2023. The Wildlife Protection Act criminalizes the hunting, trading, and exploitation of various species, with penalties ranging from three to seven years in prison for infractions, particularly those involving endangered species. The BNS strengthens animal welfare laws with provisions such as Section 325, which punishes mischief by killing or harming animals with up to five years' imprisonment; Section 118(1), which targets harm caused by weapons or dangerous substances with penalties of up to three years' imprisonment and fines; and Section 291, which punishes negligent animal care with up to six months' imprisonment. Together, these regulations strengthen wildlife and animal protections in India, while effective enforcement is still required for a meaningful impact.

Notable case studies demonstrate the seriousness and complexities of wildlife trafficking. In 2019, the so-called **Ivory Queen Case**[21], a Chinese businesswoman, was sentenced to 15 years in jail in Tanzania for importing hundreds of elephant tusks, showcasing traffickers' complex operations that use local networks. Similarly, in South Africa, **the Ndlovu Trio case**[22] was found guilty of poaching over 50 rhinos between 2013 and 2016, and their arrest resulted in the confiscation of considerable poaching equipment. In India, the **Naveen Raheja case**[23], highlighted the exploitation of caged tigers in zoos, prompting a Supreme Court decision highlighting that cruelty to animals is illegal under the Prevention of Cruelty to Animals Act, 1960. In ***Re: Smuggling and illegal trading of endangered species of birds case***[24], the Indian Court noted: "Such clauses in the Pet Shop Rules,

[21] R. v. Salvius Francis Matembo et al, Economic Crime Case No. 21 of 2014 (DSM).
[22] S v Ndlovu and Others (CC90/2017) [2019] ZAECGHC 25.
[23] Naveen Raheja v. Union of India, 2000(6) SCALE 574.
[24] Re: Smuggling and illegal trading of endangered species of birds, WPA 10138 of 2020 With IA No.: CAN 1 of 2020.

and in particular the different clauses in sub-rule 2 of Rule 7 read with Rule 2 (1)(p) read with Clauses (a) & (c) of Section 2 of the Prevention of Cruelty to Animals Act, 1960 show it beyond doubt that an offspring of a bird that has not attained the age at which it clearly acquires independent survival skills to meet its basic needs like food, warmth and safety and, further, birds without mature flight feathers cannot be captured for the purpose of trading in any form. The Court also ordered the state authorities to protect laws concerning prevention of cruelty to animals and birds, especially birds that are prohibited by the Pet Shop Rules from being capture or utilized. These examples highlight the critical need for international legal frameworks and efficient enforcement of wildlife crime.

Conclusion:

In order to control and reduce cases of wildlife trafficking, there must be collaboration and integration of the frontline rangers, researchers, government agencies, the local community and consumers with all of which serving different functions in breaking the market value chain. Countries that are members of the UDHR and ICESCR have a responsibility to protect and conserve species inside their boundaries. Political leaders and public society need to act quickly to safeguard wildlife while also protecting human rights. As rightly said by the Dalai Lama "Life is as dear to a mute creature as it is to a man" as all living beings wishes for happiness and shrink from suffering. This idea supports the critical need for projects like WWF's, which encourage stakeholders by teaching communities about animal suffering and the environmental consequences of illegal wildlife trading. Wildlife is something that humans cannot create; once it is gone, it is lost forever. By raising awareness, we can reduce consumer demand while promoting sustainable alternatives. Also it's a responsibility of every human being to preserve the wildlife

The WWF aggressively opposes the purchase of some wildlife products, while supporting certified products from organizations such as the Marine Stewardship Council (MSC) and the Forest Stewardship Council. WWF projects, such as Stop Wildlife Crime, encourage the public to fight for greater government efforts to conserve endangered species, such as intensified law enforcement and severe penalties. Consumers can assist by denying activities such as cub stroking, requesting local governments to stop trafficking, supplying wildlife rangers with required instruments, and making informed purchases. Furthermore, urging governments to use new technologies for monitoring wildlife populations which might help to discover unlawful operations in real time. Together, these initiatives may help to establish a world which cherishes all life forms, assuring a sustainable future not only for humans but also for the other creatures who share our planet.

CHAPTER IV

Law and Medicine

A Study on Negligence In Pre-Marital Medical Disclosure

Naveen Kumar S R[1]
Ananda S B[2]

Introduction

Marriage is probably one of the most important undertakings a person makes during his or her lifetime. It stands for a bond of love, trust, and mutual respect. The institution has, however, been seriously affected by the intricacies of modern life, particularly as far as pre-marital medical disclosure is concerned. Pre-marital medical disclosure refers to the duty imposed upon individuals to present relevant health-related information regarding themselves to their potential spouses. These comprise of genetic diseases, chronic medical disorders, psychological problems, and infertility conditions. Not disclosing these facts of important health concerns will be held to grave emotional, mental, and financial loss among the parties involved. As a consequence, there have been several cases where people end up with marriage complications and eventually litigation.[3]

More so, the higher importance of communication and mutual understanding in the relationship call for the more significant implications to be put forward as result of failure to disclose some of this information. Preparation in most cultures regarding traditional issues on matters to do with venue, clothing, and expected guests in the wedding far supersedes preparation regarding matters related to health conditions of the couple in the pre- wedding. This means such a failure could eventually lead to a significantly negative impact in matters dealing with health, well-being, or even family planning because of one partner's undiagnosed health condition. This research questions whether mandatory medical disclosures should be legislated and what the effects of negligence in uncovered conditions are on personal freedoms and public health. As such, it looks into current legal frameworks across regions. The relevance of this paper is underlined by the widespread incidence of chronic illnesses as well as mental conditions experienced in modern society. As people are increasingly being diagnosed with diseases that would change their personal and family lives, it is high time that they discuss freely health-related matters. A growing area of this trend is the related one of genetic testing and increased consciousness about hereditary disorders, and so on, that makes premarital medical disclosure an increasingly important question of discussion. This research paper shall discuss the ethical, legal, and social implications of mandatory medical disclosure in relation to the topic under investigation.

[1] **Author is student at KLE LAW COLLEGE, Bangalore, Email ID:03fl24bll070@klelawcollege.edu.in, LLB-1st Sem**

[2] **Author is student at KLE LAW COLLEGE, Bangalore, Email ID:03fl24bll011@klelawcollege.edu.in , LLB-1st Sem,**

[3] Mazen G. Saeedi et al., The Importance of Pre-Marital Examinations, 7 J. Positive Psychol. & Wellbeing 524 (2023).

Objectives of the Study

1. **To analyse the issue of pre-marital medical disclosure:** This aim would mean defining what is medical disclosure, which conditions should be disclosed, and what ethics are violated if one does not disclose this information in a marriage setting.
2. **Analysing the legal frameworks that relate to the obligatory medical disclosure:** is aimed at finding out what is already given in the laws of different countries on pre-marital medical check-up and disclosure and assessing the effectiveness of the law in preventing marital dispute and managing health risk. This would measure how badly the blow negligence would have affected the marital relationship, as well as individual rights associated with public health concerning the outcome that would result if disclosure of critical health information was not impacted.
3. **Understand the scales of balance between privacy and obligations of disclosure:** Such an effort would be more towards the understanding of how the mandatory disclosures bring within themselves the ethical dilemma by the probable social stigma along with the discrimination likely to be given to individuals when they are suffering from some such medical conditions. The objective of the research is to develop recommendations that will balance safeguarding of individual rights with trust and openness in marriages.
4. **Determine Views on Disclosure:** The way cultures regard pre-marital medical disclosure will give quite an insight into whether the practice works or is acceptable.
5. **To Analyse the Role of Medical Professionals:** Analysis as to how health service professionals can facilitate the discussion regarding disclosure concerning medical information and the moral implications, they accept in doing this.

Research Methods

The research work will be considered mixed-method research to understand the situation much broadly. Mixed method refers to the fact that, both qualitative and quantitative method types are applied in one specific research work.

Methods on which this research has adopted are:

1. **Literature Review:** This will form a comprehensive review of the literature that may exist about the issue of pre-marriage medical disclosure, negligence, and the legal framework surrounding it. This shall be gathered from research articles, case laws, and legal texts that serve as a basis in conducting this study.
2. **Case Studies:** Reflective of situations wherein medical disclosure negligence caused marital issues or health concerns. Case studies draw lessons from different jurisdictions using a more practical approach and implication drawing in case of no disclosure.

3. **Surveys and Interviews:** Conduct surveys and interviews of the victims themselves besides other lawyers and medical doctors who can give first-hand impressions about the consequences and consequences of making HIV status a compulsion for disclosure. Qualitative data would be excellent sources of information on personal lives and professional experience.
4. **Comparative Analysis:** A comparative study of laws and cultural practices in various4.Comparative Analysis: A comparative study of laws and cultural practices in various countries in respect of pre-marital medical examination and disclosure. From this comparative analysis, it can be gauged whether these practices have any effect on stopping marital disputes and protecting the public health, which eventually would provide an idea regarding better practice and scope of improvement.
5. **Ethical Analysis:** The Mandatory disclosure principle will be discussed with reference to autonomy, informed consent, and concern over coercion. Statistical Analysis: Information gathering and analysis regarding the extent of non-disclosure and impact on marital outcome using a survey and some studies conducted long time back.

Case Studies

Case Study 1: Consequences of Genetic Disorders

Recent case in India was such that when a couple suffers extreme marital stress when either one of them has not diagnosed genetic disorders passed along through the genes that may not have been disclosed prior to their marriage. It meant that soon after getting married, the wife was to start family planning. It was only when the couple realized that a serious gene for serious conditions might be carried, which would adversely affect future children, that the wife began to feel she had been cheated and lied to. Emotions ran so high that a breakdown in communication and, eventually, trust led the couple to divorce. From these three views of a relationship, this case study has proven the wide-reaching repercussions of nondisclosure in direct communication between spouses and far out into the family unit combined. The wife became traumatized by the experience of spousal adultery she was subjected to as triggered by societal expectations to be well planned upon of a family thus subjecting her to many emotional travails.[4]

The consequences of nondisclosure regarding genetic disorders extend beyond individual trauma, affecting family dynamics and societal perceptions. The wife's feelings of betrayal not only strained her relationship with her husband but also impacted her interactions with family and friends, as she grappled with societal pressures to conform to traditional family ideals. This situation often leads

[4] Consequences of Genetic Disorders," BMJ, https://www.bmj.com/content/365/bmj.l1851

to stigma surrounding genetic conditions, creating further isolation for affected individuals. Moreover, the fear of potential health issues can hinder couples from making informed decisions about family planning, resulting in additional stress and anxiety. The emotional fallout can reverberate through future relationships, as trust issues may arise, complicating the ability to communicate openly in subsequent partnerships. Ultimately, the case emphasizes the need for greater awareness and education on genetic health to promote informed decision-making in marital relationships.

Case Study 2: Mental Health Illnesses and Strained Marital Relationship [5]

Another American case in point was of a man who, before marriage, had never revealed his previous history of severe depression and anxiety attacks to his wife. At first, the wife had been very supportive. The emotional burden at home then made it very difficult to endure his mental deterioration. His wife also, then felt that he betrayed and deceived her with such deception before the marriage; so this factor created much stress inside their marriage. This case gives the example of how undiagnosed mental health has confused and complicated the administration of health in the partner's life, thus indicating the unstable nature of their relationship. She was very annoyed and unable to do anything about it because it was a shock for her.

The case highlights the profound impact of mental health illnesses on marital relationships, emphasizing the need for honesty and openness. When one partner conceals significant health issues, it can lead to feelings of betrayal and mistrust. The emotional burden of supporting a spouse with untreated mental health conditions can overwhelm the other partner, leading to frustration and resentment. This situation often results in a breakdown of communication, further exacerbating stress and isolation. Couples may benefit from counseling and mental health support, fostering a healthier environment where both partners feel safe discussing their struggles, ultimately strengthening their relationship rather than allowing it to deteriorate.

Case 3: Inability to Conceive and Break-Up casted

A UK case highlighted a lady who, upon marriage, discovered that her husband could not conceive at all since he had never been candid with her concerning his problem of infertility. The couple had talked of having children, and the diagnosis had left them with so much anger and frustration. Such life-altering information was not shared, therefore, straining their relationship to rethink about their future together. The case repeats the process that openness is fundamental for discussion of such medical condition that may change the dynamics of family planning and the interpersonal

[5] R. Klein & M. Parker, Mental Health Disclosure in Relationships: Challenges and Opportunities, 28 J. Mental Health 235-242 (2019)

relationship. It brought feelings of inadequacy and guilt towards themselves as well as the marital condition that has worsened the situation.

In Indian law, similar principles can be observed in cases addressing nondisclosure in marriage. For example, in the case of V. S. V. v. State of Karnataka (2014), the court recognized that withholding significant personal information can constitute fraud, allowing for annulment. Additionally, the Hindu Marriage Act, 1955, provides grounds for divorce under Section 13(1)(a) for cruelty, which can encompass emotional distress stemming from nondisclosure. The case law establishes that concealing critical health issues, such as infertility, can have legal repercussions and underscores the necessity of open dialogue in marital relationships. Couples are encouraged to engage in candid discussions about their health and family planning to foster trust and avoid devastating consequences. This legal framework emphasizes the importance of transparency in ensuring the emotional well-being of both partners.

Case Study 4: Cultural Views on Disclosure

In some parts of the Middle East, law requires couples to undertake a medical checkup before marriage. Such laws ensured that the couple would be given an assessment of their bodies in case they had something wrong with them. In one case, a Saudi Arabian couple was taken to court when they failed to declare a genetic disorder that was diagnosed after marriage. This illustrates the cultural and legal complexities concerning pre-marital medical disclosure as every culture has their approach to dealing with the issue of mandatory disclosure. Trying them in court for violation of the law was not helping the situation for the couple during marriage.[6]

This case underscores the necessity for supportive frameworks that prioritize education and counselling over legal penalties. Encouraging couples to engage in open discussions about health issues can foster understanding and prevent the emotional fallout that may arise from nondisclosure. Such approaches can help strengthen relationships rather than drive them apart.

Case Study 5: Role of Medical Experts

A case from Australia involved a situation whereby a doctor kept essential information from a couple of patients regarding the risks in bringing children with a genetic disorder from which they were suffering and hence did not disclose their details. The couple undergoing tests was not informed on issues that were going on inside them, which is turn results to nondisclosure after several marital conflicts. This case is an example of when health practitioners have to converse with a patient on issues of disclosure together with ethical responsibility undertaken in this regard. The rampant mistrust that ensued in the wake of this episode for the couple is what has occurred due to

[6] J. Davis & M. Sullivan, Cultural Perspectives on Health Disclosure: A Comparative Study, 63 Int'l J. Pub. Health 501 (2018).

failure by this doctor in divulging very critical information.[7]

This case underscores the crucial role medical professional's play in fostering informed decision-making for patients. When doctors withhold critical information about genetic risks, they not only compromise patient autonomy but also contribute to emotional turmoil and marital strife. The ethical responsibility of healthcare providers includes transparent communication, ensuring that patients understand potential consequences for themselves and their families. Failure to disclose vital information can lead to mistrust, damaging the patient-provider relationship and complicating healthcare decisions. This scenario emphasizes the need for robust communication strategies in medical practice, highlighting the importance of trust in ensuring positive health outcomes and supporting the emotional well-being of patients.

Analysis

According to this analysis, balance needs to be struck by either party; individual rights to be guaranteed and, as well, public health consideration.

1. **Non-Disclosure Ethics**

Non-disclosure of medical information before marriage raises highly ethical concerns. At the heart of the issue is the principle of informed consent-the very basis in both medical ethics and personal relationships alike. Informed consent requires that someone should have full revelation of any pertinent information in the making of an intelligent choice. In the marriage institution, in this case, partners should be well informed about the health status of the other person, especially regarding diseases that will influence their future together, such as genetic disorders or chronic illness.[8]

The act will raise some deep ethical concerns. Not disclosing pertinent health information about one party violates the trust required in any relationship. Then it breaks the trust between the partners and creates feelings of betrayal and resentment, which can wear away the very foundation of marriage. For instance, where such a condition is inherited by either of the partners who could have some impact on children by the other, this other one will have an actual experience of betrayal at the truth finally when that truth was disclosed making them undergo emotional distress as they even reach legal battle to areas like custody and other responsibilities on financial issues.

This is another ethical principle: beneficence, or acting in the best interest of others. In marriage, there is a moral obligation to look after one's spouse. Failure to disclose such important health

[7] R. Peters, Legal Frameworks for Pre-Marital Medical Disclosure: An International Perspective, 31 J.L. & Health 67 (2018).

[8] J. Mason & S. Kirk, The Ethical Implications of Non-Disclosure in Pre-Marital Relationships, 14 Ethics & Soc. Welfare 45 (2020).

information can be considered negligence since it would probably harm or disturb the other spouse. It specifically applies in mental condition cases, which have great psychological impact.

2. Legal systems and their effectiveness:

Various countries have different laws regarding medical disclosure before marriage. Countries like Saudi Arabia and many parts of the Middle East require couples to undergo some form of medical examination and disclose significant information before tying their knots. In such ways, the legislations will protect public health and give prospective spouses information for the betterment of informed choices. However, the impact and effectiveness of the laws leave one questioning.[9]

Compulsory medical checkup will expose possible health hazards, but it cannot be ensured that all of them will open up and provide all vital information needed. There might be some cultural taboos concerning certain diseases, especially psychological illnesses, that are made to discourage openness about their health condition. Additionally, privacy and medical secrecy may serve as reasons for not revealing all in full since one may apprehend that the above information will not be kept secret.

Second, such laws might suffer from improper implementation. For example, the legal measures of sanction against failure to reveal health information may not reach every person. This violates the objectives of compulsory disclosure legislation as it may not oblige other people to reveal their health status.

3. Involvement of Doctors and Other Medical Workers

Doctors play a central role in the discussion on pre-marital medical disclosure. By and large, they usually are the first contact a patient has as he looks for medical information or advice. However, in exercising their health care profession, providers are quite often split by their focus toward the importance of disclosure of health information before marriage.Often, health issues are not discussed by medical practitioners in the context of marriage. This is because of various reasons such as lack of time when attending consultations or perhaps lack of training in discussing sensitive matters. In such cases, one may not get the right information to make informed decisions regarding their health and relationships. The problem can be solved if doctors are educated on the need for pre-marital medical disclosure and discussion with the patient. This would include training on ethical responsibility of health care providers on allowing frank discussions about the health status. In addition, healthcare providers may also act proactively by offering guidance and support for the patients undergoing the complexity of pre-marital medical disclosure.

[9] See R. Peters supra 5 at 45.

4. Influence of Cultural Norms

In fact, attitudes regarding pre-marital medical disclosure are very culture bound. There are certain cultures where discussing health conditions is really taboo and people avoid talking about the most important aspect of health to their counterpart. Here, the cultural stigma acts as a bar to clear communication and the overall health of both the counterparts gets affected.[10]

For example, for an individual who may fear sharing his or her history of mental illness with the spouse. The culture in which someone is has stigmatized the condition, and because of this, the need for that individual not to share it with the partner becomes important. This introduces a lack of understanding concerning how the other partner may be handled, leading to instability in the relationship between the partners. The attitude toward what people think pertains to their rights concerning disclosing or not disclosing other people's medical information derives from the cultural context.

Since such a culture of transparency becomes possible by way of enlightenment and knowledge, there has to be a move toward changing the stigma associated with health conditions which can be transferred during antenatal disclosure. Mass awareness programs must be done that may work towards helping overcome many such stigmas related to health ailments and help have open debates between couples themselves. Organisations as well as community leaders contribute toward opening up discussions regarding aspects of health and relationship by the society, and under the right ambiance of supporting other people's experience about what they have had and what they are facing

5. Psychosocial Consequences of Nondisclosure

The psychological impact of nondisclosure may sometimes spill over into marital communication. When a spouse keeps vital health information to themselves, the reaction that ensues is often characterized as betrayal, anger, and resentment. The end result is a poisonous climate for the relationship that leads to failure in communication and increases in conflict.

There are individuals who experience a shock, denial, and even a process of grief upon discovering that an important medical history was kept a secret by the spouse. They react like they had been raped. They feel betrayed - as if their trusts had been violated.[11]

Sometimes intimacy and emotional attachment fall down. The psychological implications might be so severe in other cases that they actually end up collapsing the marriage.

[10] See J. Davis & M. Sullivan Supra 4 at 67

[11] M. Rosenberg, The Psychological Impact of Health Non-Disclosure in Marriages, 35 J. Fam. Psychol. 412 (2021).

This can also be the psychological effect and may not be confined to the scope of the specific relationship but can reach out to the family members, friends, and even children. Effects of withholding health information may even reach them. A genetic disorder, for instance, which a parent may be suffering from and remains unrevealed, brings out feelings of guilt and anxiety among the family members, who might be vulnerable to the same.

Recommendations

From the finding of this study, several recommendations are made both to governments and health institutions. There should be guidelines that balance the rights within marriage with trust and openness.

1. **Promote Informed Consent and Voluntary Disclosure**: Encourage discussions of medical histories between partners. Legal mandates must provide support for voluntary disclosure.
2. **Develop Culturally Sensitive Approach:** The law and cultural pre-marital medical disclosure ought to be developed based on the need and values in a different society.
3. **Education and awareness:** A public awareness and education programs should be executed in a way that equips individuals with knowledge in regards to the importance of medical disclosure and the impacts of failing to disclose one's condition.
4. **Support to Couples:** The couples should be counselled and supported to surmount the emotional and psychological trauma resulting from the outcome of nondisclosure.
5. **Legal Frameworks:** The legal frameworks with a balance between individual rights and the public health concern, policies on mandatory disclosure should be effective, fair, and respectful of autonomy.
6. **Medical Practitioner Education:** The doctors require education in the issue of enabling discussion on the topic of medical disclosure and preparing them for the ethical role they are to take in facilitating the same.

Conclusion

This raises a question concerning pre-marital medical disclosure. This, it turns out to be a multi-dimensional issue with ethical, legal, cultural, and psychological elements that must be well-balanced. Mandatory disclosure laws can serve to enhance informed decision- making, but it does not necessarily mean that all facts must be disclosed. The later part of the discussion will find that it has been formed by the physicians in the medical profession, cultural opinions, and the psychology of non-disclosure.Ultimately, openness and trust must become the hallmark of a healthy relationship. This in turn means laws should ensure provisions of legality in support of voluntary disclosure between couples while promoting discussions about health and wellbeing amongst

partners. It should train doctors to generate such an environment. Such scrutiny about cultural values shall ensure knowledge and education around the topic of premarital medical disclosure.

It would therefore be wise that an all-inclusive approach toward handling the pre-marital medical disclosure is considered to be ethical, legal, cultural, and psychological issues toward healthy relationships, avoidance of marital conflicts, and public health.Moreover, fostering a culture of openness can empower individuals to seek necessary medical advice without fear of stigma or judgment. Education initiatives should target not only couples but also healthcare providers, emphasizing the importance of discussing genetic and mental health issues candidly. By integrating discussions on medical disclosure into premarital counselling and education, potential conflicts can be mitigated. Legal frameworks should also adapt to encourage transparency while respecting individual privacy rights. Ultimately, addressing these multifaceted aspects of pre-marital medical disclosure can lead to healthier relationships, informed family planning, and improved public health outcomes, benefiting society as a whole.

Evolving Jurisprudence: How Courts are shaping the Future of Conscientious Objections in Euthanasia

Ms. Neelam Tholia[1]

Introduction

In recent years, euthanasia has emerged as a contentious issue in both legal and ethical spheres worldwide. As societies navigate the complexities of granting individuals the autonomy to choose death over prolonged suffering, courts have become crucial in delineating the parameters of such decisions. At the heart of these discussions lies the concept of conscientious objection (CO), which allows individuals, particularly healthcare providers, to abstain from participating in procedures that conflict with their moral or religious convictions. This paper explores the evolving jurisprudence surrounding CO in the context of euthanasia, analyzing judicial interpretations and their impact on legal systems and societal attitudes toward end-of-life choices.

Euthanasia, defined as the intentional act of ending a person's life to alleviate suffering, poses profound ethical dilemmas intersecting with legal rights and individual freedoms. While some countries have legalized forms of euthanasia, the global landscape remains fragmented, with significant variations in legislation and practice. This disparity often leads to conflicts between legal obligations and personal convictions, especially among medical practitioners who may ethically oppose euthanasia. Recognizing CO in this context underscores a critical tension: respecting individual beliefs while ensuring access to lawful medical services.

The legal discourse on CO in euthanasia has significantly evolved over recent decades. Initial cases predominantly addressed healthcare practitioners' rights to refuse participation in procedures like abortion or assisted reproductive technologies. However, with the advent and expansion of euthanasia laws, courts now confront new scenarios where CO intersects with patients' rights to access euthanasia. Landmark cases demonstrate how judicial interpretations can either affirm or challenge the legitimacy of CO, influencing the availability of euthanasia for patients.

This jurisprudential evolution reflects broader societal changes regarding death, dying, and the role of medical professionals. Patients increasingly assert their rights to autonomy and self-determination, challenging traditional medical ethics that prioritize the preservation of life. Consequently, courts face the challenge of balancing healthcare providers' rights with patients'

[1] **Research Scholar, School of Law, Bennett University, neelamtholia@gmail.com**

fundamental rights to seek relief from unbearable suffering. Navigating these moral complexities requires the judiciary to strike a delicate balance between competing rights.

Globalization and cross-border exchange of ideas have also influenced how different jurisdictions address CO in euthanasia. Comparative legal analyses reveal stark contrasts in approaches taken by countries like Canada, the Netherlands, and the United States. Some jurisdictions provide robust legal protections for conscientious objectors, while others impose strict requirements to ensure patient access to euthanasia services, emphasizing a patient-centric approach. These differences not only mirror varying cultural attitudes toward death but also highlight the judiciary's pivotal role in interpreting and applying legal principles.

This paper delves into the evolving jurisprudence of CO in euthanasia, examining significant court rulings and their implications for future legal frameworks. Through case studies and legal analysis, we aim to illuminate how courts are shaping the landscape of CO, influencing legal precedents and societal perceptions. Ultimately, this study underscores the necessity for a nuanced understanding of the interplay between legal rights, ethical considerations, and the human experience of dying.

In conclusion, CO in euthanasia presents a multifaceted legal challenge emblematic of broader societal questions about autonomy, ethics, and the law's role in personal decision-making. As jurisdictions continue to grapple with these complex issues, it is imperative for courts to balance healthcare providers' rights with patients' needs and rights, ensuring that the evolving jurisprudence reflects both legal principles and the values of a compassionate society. This research contributes to that discourse by exploring the dynamic relationship between judicial interpretation and the ethical dimensions of CO in the context of euthanasia.

1. Judicial Interpretation of Conscientious Objection in Euthanasia

Conscientious objection refers to the refusal to perform certain actions or fulfil specific duties based on personal moral or religious beliefs. In the realm of euthanasia, judicial interpretation of CO raises intricate legal and ethical questions, particularly as societies strive to balance individual rights like patient autonomy against the professional ethics of medical practitioners. Legal frameworks surrounding euthanasia differ widely across jurisdictions, and how CO is interpreted within this context can significantly influence outcomes in end-of-life decision cases.

Legal Definitions and Standards

In jurisdictions legalizing euthanasia, courts meticulously define and interpret CO. For example, in *Commonwealth v. Hurst*, an Australian case, the court examined how legal definitions of CO intersect with euthanasia practices. The court emphasized that CO must stem from sincerely held beliefs but also recognized the necessity of not undermining a patient's right to receive care or the legal framework permitting euthanasia.[2]

In India, the Supreme Court's ruling in *Common Cause (A Regd. Society) v. Union of India* acknowledged the right to die with dignity under Article 21 of the Constitution, which guarantees the right to life and personal liberty.[3] Although the court did not directly address CO concerning medical practitioners, the implications suggest a need for clear legal standards around CO as medical professionals navigate their roles in assisted dying scenarios.

Courts often highlight that while CO is a valid expression of personal beliefs, it is not absolute. The key legal standard is whether the refusal to participate in euthanasia is based on genuinely held beliefs and whether it compromises others' rights, especially patients seeking assistance.

Balancing Rights

The judicial approach to balancing individual rights against professional ethics is crucial in CO cases. On one hand, a patient's right to make decisions regarding their end-of-life care, including euthanasia, is paramount, rooted in principles of autonomy and dignity. On the other hand, medical practitioners are guided by ethical standards compelling them to provide care without causing harm.

In India, the complexities of this balance were evident during debates on euthanasia legalization. While the Supreme Court recognized the patient's right to choose, it also acknowledged that doctors might have ethical reservations about participating in euthanasia. This duality creates a challenging environment where healthcare providers must reconcile their moral convictions with respecting patient rights.

For instance, if a terminally ill patient requests euthanasia but their physician holds strong beliefs in the sanctity of life, invoking CO, judicial interpretation must consider the implications for the patient's autonomy. Courts increasingly recognize the need for frameworks allowing physicians to

[2] Commonwealth v. Hurst, [2019] NSWSC 1012.
[3] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1.

refuse participation while ensuring patients have access to alternative providers who can honour their wishes.

Establishing guidelines defining the scope of CO is crucial. In Canada, where euthanasia is legal, medical boards have implemented protocols requiring physicians who refuse to participate in assisted dying to refer patients to other practitioners.[4] This approach safeguards patient rights while respecting individual practitioners' beliefs.

2. Impact of Precedent on Future Cases: Euthanasia and Conscientious Objection

The doctrine of *stare decisis*, meaning "to stand by things decided," is fundamental in legal systems, fostering consistency and predictability. In euthanasia, where ethical, moral, and legal dilemmas intersect, *stare decisis* significantly influences both current and future judicial interpretations.

Stare Decisis and Its Implications

Stare decisis dictates that lower courts follow precedents set by higher courts within the same jurisdiction, creating a legal framework adaptable to evolving societal values while maintaining continuity. In euthanasia, landmark cases often serve as foundational precedents shaping subsequent rulings.

For example, the Indian Supreme Court's decision in *Common Cause* established a legal precedent by recognizing the right to die with dignity as part of the right to life under Article 21.[5] This ruling not only validated passive euthanasia but also created a framework for advance directives. Future cases involving end-of-life decisions will likely reference this ruling, influencing how courts assess similar situations.

This precedent challenges medical practitioners and policymakers to reevaluate existing ethical frameworks. Healthcare providers who previously resisted participating in euthanasia must now consider how this precedent affects their responsibilities, leading to a nuanced understanding of CO.

[4] College of Physicians and Surgeons of Ontario, **Policy Statement: Conscientious Objection** (2019), available at cpso.on.ca.

[5] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1.

Emerging Trends in Case Law

Recent judicial decisions indicate trends that may further shape euthanasia and CO's legal landscape. One notable trend is the increasing emphasis on individual autonomy and patient rights. Courts are increasingly prioritizing patients' wishes over traditional medical ethics when evaluating euthanasia-related cases.

In *Nikhil D. Dhamankar v. State of Maharashtra*, the Bombay High Court acknowledged a terminally ill patient's right to refuse treatment, aligning with principles established in *Common Cause*.[6] This trend underscores a shift toward recognizing patients' perspectives in life-and-death decisions as courts address personal agency implications.

Another trend is the judicial willingness to address medical practitioners' moral and ethical dilemmas. Courts in various jurisdictions, including India, are exploring CO's limits, recognizing that while practitioners may have personal objections to euthanasia, they have a professional duty to respect patient autonomy. This creates a complex legal landscape where courts must navigate ethical obligations and legal mandates' interplay.

Moreover, there's growing recognition of the need for comprehensive legislative frameworks to address CO's nuances in medical practice. Debates on medical assistance in dying in Canada and U.S. states reflect legislation that includes provisions for patient rights and physician objections.[7] This trend indicates a potential direction for Indian law as discussions on comprehensive euthanasia and CO regulations continue.

3. Socio-Legal Analysis of Euthanasia and Conscientious Objection

The intersection of law and society is especially pronounced in sensitive areas like euthanasia and CO. Judicial decisions in these domains are significantly influenced by public opinion and advocacy efforts. As societal attitudes evolve, courts are increasingly responsive, reflecting changing moral and ethical landscapes.

Influence of Public Opinion on Judicial Decisions

[6] Nikhil D. Dhamankar v. State of Maharashtra, 2021 SCC OnLine Bom 2914.
[7] Bill C-14: **An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)**, 1st Sess, 42nd Parl, 2016 (Can.).

Public opinion critically shapes judicial outcomes, especially in euthanasia cases. As societal values evolve, courts often consider prevailing attitudes toward complex issues like assisted dying. Increasing acceptance of euthanasia globally has been influenced by public discourse on personal autonomy and the right to die with dignity.

In India, the Supreme Court's ruling in *Common Cause* reflects how public sentiment influences judicial decision-making. The court's recognition of the right to die with dignity responded to growing public discourse advocating for patient autonomy and relief from suffering.[8] Surveys indicated a gradual shift in public opinion supporting euthanasia, driven by increased awareness of patient rights and medical ethics.[9] This societal shift prompted the judiciary to reconsider its stance, reflecting a more empathetic understanding of individual circumstances in end-of-life scenarios.

High-profile cases often catalyse broader societal debates, with media playing a significant role in framing discussions and highlighting emotional and ethical dilemmas faced by patients and families.[10] As public awareness increases, courts may align their rulings with contemporary societal values, as demonstrated by decisions legalizing or considering euthanasia in various jurisdictions.

Role of Advocacy Groups

Advocacy groups are pivotal in shaping judicial interpretations of CO and euthanasia. They mobilize public opinion, lobby lawmakers, and raise awareness about these issues' ethical dimensions. In India, organizations like Common Cause and other patient advocacy networks have been instrumental in bringing euthanasia and patient rights to the forefront.[11]

These groups' lobbying efforts can significantly impact judicial interpretations. Common Cause played a critical role in litigation leading to the Supreme Court's decision on the right to die with dignity, highlighting individuals' personal stories and framing the issue around compassion and autonomy.[12] By galvanizing public support, advocacy groups create a climate where courts are more receptive to legal arguments centered on individual rights and ethical considerations.

Advocacy groups also inform and educate the public and policymakers about CO's nuances, emphasizing the need for a balanced approach that respects both patient autonomy and healthcare

[8] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1.
[9] Aditi K. Ghosh, "Public Opinion and Euthanasia in India: A Study," 12 Indian J. Med. Ethics 87 (2018).
[10] Sudha Ramachandran, "Media Influence on Public Perception of Euthanasia in India," 25 Asian J. Comm. 623 (2015).
[11] Common Cause, "About Us," available at commoncause.in.
[12] Priya Singh, "The Role of Advocacy Groups in Shaping Euthanasia Laws in India," 9 J. Law & Soc'y 113 (2020)

professionals' moral beliefs. Their involvement highlights the importance of dialogue in shaping legal interpretations that resonate with societal values.

4. Ethical and Moral Considerations in Judicial Reasoning

Judicial decisions in contentious areas like euthanasia and CO involve complex ethical and moral considerations. Judges must carefully navigate these dilemmas, weighing individual rights and beliefs against broader societal norms and legal frameworks. The ethical frameworks and moral philosophies guiding their reasoning profoundly influence case outcomes.

Judicial Ethics and Euthanasia

Judges face significant ethical dilemmas when ruling on euthanasia cases. They must balance respect for individual autonomy with the implications of endorsing practices some may view as morally objectionable. In jurisdictions where euthanasia is legal, judges grapple with upholding the law while addressing decisions' moral ramifications.

In India, the Supreme Court's ruling in *Common Cause* highlights these ethical challenges. The court recognized the right to die with dignity, framing it within the constitutional right to life and personal liberty.[13] While this ruling reflects a progressive understanding of autonomy, it requires judges to confront the ethical implications of allowing euthanasia, including potential societal impacts and concerns about undermining the sanctity of life.

Judges rely on principles of judicial ethics emphasizing fairness, impartiality, and the responsibility to apply the law with integrity. [14]They must consider their personal beliefs and biases, striving for objective legal reasoning. This requires robust engagement with euthanasia's ethical dimensions, balancing compassion and suffering alleviation against moral reservations about assisted dying.

Moral Frameworks Used in Judgments

Judicial reasoning in euthanasia cases is influenced by moral philosophies like utilitarianism and deontology.

Utilitarianism, advocating actions promoting the greatest good for the greatest number, often informs judicial decisions involving euthanasia. Judges may consider societal benefits of allowing

[13] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1
[14] M. P. Singh, "Judicial Ethics: A Comparative Analysis," 3 Indian J. L. & Just. 1 (2012)

individuals to choose euthanasia, especially in terminal illness cases with profound suffering. The Supreme Court's acknowledgment of the right to die with dignity reflects a utilitarian approach, recognizing that alleviating one individual's suffering can contribute positively to societal well-being.[15]

Deontological ethics, focusing on the morality of actions themselves rather than consequences, presents a different perspective. This framework emphasizes life's inherent value and the duty to protect it. Judges operating within a deontological framework may resist legalizing euthanasia, arguing it's morally wrong to assist in ending life regardless of circumstances.[16] In India, this perspective aligns with deeply rooted cultural and religious beliefs prioritizing life's sanctity.[17]

The interplay of these moral philosophies is evident in judicial reasoning. In *Common Cause*, the court recognized individual autonomy while emphasizing safeguards to prevent abuses, reflecting a nuanced understanding that acknowledges both utilitarian goals and deontological commitments.[18]

5. Comparative Judicial Approaches to Conscientious Objection in Euthanasia

Judicial approaches to CO in euthanasia vary across jurisdictions, influenced by cultural, ethical, and legal frameworks. Comparing how courts in the Netherlands and the United States handle these issues reveals significant contrasts in legal interpretations and societal attitudes.

International Perspectives

In the Netherlands, euthanasia has been legal since 2002 under strict conditions outlined in the Termination of Life on Request and Assisted Suicide (Review Procedures) Act.[19] Dutch courts generally adopt a permissive stance regarding CO for healthcare providers. While physicians may refuse to perform euthanasia due to personal beliefs, they are required to refer patients to another qualified physician.[20] This requirement reflects a commitment to patient autonomy and access to care, ensuring personal beliefs do not obstruct a patient's right to euthanasia.

[15] Peter Singer, Practical Ethics (3rd ed. 2011)
[16] Immanuel Kant, Groundwork of the Metaphysics of Morals (Mary Gregor trans., 1998)
[17] R. P. Sharma, "Cultural and Ethical Dimensions of Euthanasia in India," 10 J. Indian Phil. 205 (2018)
[18] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1
[19] Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002, Stb. 2001, 61 (Neth.)
[20] Supreme Court of the Netherlands, Euthanasia Case, HR 2019/054, ECLI:NL:HR:2019:1773

In contrast, the United States exhibits a fragmented approach due to federal governance and varying state laws. While euthanasia (often termed "assisted dying") is legal in some states, the legal framework surrounding CO is inconsistent. Some states explicitly protect healthcare providers from being compelled to assist in euthanasia, while others lack clear regulations.[21] Healthcare providers may refuse participation based on personal beliefs but may not be obligated to refer patients to alternative providers, potentially limiting patient access.

Case Studies of Divergent Outcomes

Divergent judicial outcomes illustrate the impact of cultural and legal contexts. In the Netherlands, a 2019 case acquitted a physician who administered euthanasia to a patient with severe suffering, despite consent questions.[22] The Dutch Supreme Court reaffirmed the physician acted within the law, underscoring the balance between CO and patient rights, and prioritizing patient autonomy.

In the U.S., *Conant v. Walters* (though not directly about euthanasia) reflects judicial reluctance to limit physicians based on moral objections.[23] The ruling emphasized physicians' rights to provide information and care without government interference, indicating complex interactions between medical ethics and personal beliefs.

In India, the legal landscape is still developing. The Supreme Court's ruling in *Common Cause* acknowledged the right to die with dignity but left CO questions less clear.[24] Medical professionals may hold personal beliefs against euthanasia but are expected to balance these with their duty of care. Cases involving doctors refusing to participate in euthanasia highlight the need for clearer guidelines to avoid ethical dilemmas and patient care barriers.

In summary, judicial treatment of CO in euthanasia reveals significant international disparities shaped by local values and legal frameworks. Understanding these differences is crucial for developing comprehensive approaches that respect individual rights and healthcare providers' ethical obligations.

[21] National Conference of State Legislatures, "Euthanasia and Assisted Suicide" (2023), available at ncsl.org
[22] Supreme Court of the Netherlands, Euthanasia Case, HR 2019/054
[23] Conant v. Walters, 309 F.3d 629 (9th Cir. 2002)
[24] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1

6. Legislative Responses to Judicial Rulings

Judicial rulings on sensitive issues like euthanasia and CO often catalyze legislative changes. Courts can highlight gaps in existing laws, challenge outdated statutes, and prompt lawmakers to address emerging societal needs and ethical dilemmas. The interplay between judicial decisions and legislative responses significantly shapes the legal landscape of end-of-life issues.

Impact of Court Decisions on Legislation

In jurisdictions where euthanasia is legal, significant court rulings often lead to statutory amendments. In the Netherlands, euthanasia's legalization in 2002 was preceded by court cases highlighting the need for a structured legal framework.[25] As courts ruled on specific cases, they identified the necessity for explicit legal guidelines governing euthanasia practices, leading to comprehensive legislation establishing safeguards for patients and medical professionals.

In India, the Supreme Court's decision in *Common Cause* exemplifies how judicial rulings prompt legislative action.[26] The court recognized the right to die with dignity, underscoring existing laws' inadequacies regarding end-of-life decisions and setting the stage for potential legislative reform. In response, discussions have intensified around the need for clear legislation addressing advance directives and healthcare providers' rights regarding CO.

Future Legislative Trends

Anticipated legislative responses will likely focus on establishing clear guidelines for healthcare providers regarding CO. Lawmakers may aim to balance respecting individual beliefs with ensuring patient rights to access care are protected. This dual focus is crucial for creating a legal framework respecting both autonomy and ethical concerns.

Additionally, future legislation may reflect broader societal values, incorporating guidelines addressing CO complexities in multicultural contexts like India. Specific provisions for medical practitioners refusing to perform euthanasia due to moral or religious beliefs may ensure they can do so without legal repercussions while facilitating patient access.

7. Role of Medical Professional Organizations

[25] Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002, Stb. 2001, 61 (Neth.)
[26] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1

Medical professional organizations significantly influence the ethical landscape surrounding euthanasia and CO, impacting judicial outcomes and healthcare providers' practices. Their guidelines and ethical standards inform medical practitioners' decisions and can influence court rulings.

Influence of Medical Ethics on Judicial Outcomes

Medical associations develop ethical guidelines reflecting healthcare professionals' prevailing norms and values. These guidelines articulate healthcare providers' moral responsibilities, including obligations to patients. Courts often refer to these ethical standards in euthanasia cases to inform decisions.

For instance, the American Medical Association has historically opposed physician-assisted suicide, framing it as incompatible with the healer's role.[27] Such positions can influence court rulings in jurisdictions upholding similar ethical stances. In contrast, Dutch medical associations support euthanasia under strict conditions, influencing judicial outcomes and reinforcing euthanasia as legitimate medical practice when performed ethically.[28]

In India, the Indian Medical Association (IMA) has not adopted a definitive stance on euthanasia, reflecting the complexity within the country.[29] This lack of consensus may contribute to uncertainty in judicial outcomes as courts navigate without clear professional guidance.

Case Analysis of Professional Guidelines

Judicial interpretations of professional guidelines regarding CO illustrate the interplay between medical ethics and law. Courts analyze how specific professional standards apply when healthcare providers refuse participation in euthanasia due to moral or ethical grounds.

In *Nikhil D. Dhamankar v. State of Maharashtra*, the Bombay High Court addressed a physician's rights who objected to life-ending procedures based on personal beliefs.[30] The court considered ethical guidelines from the IMA and other medical bodies, emphasizing balancing the physician's CO with the patient's right to appropriate care.

[27] American Medical Association, Opinion 2.211: Physician-Assisted Suicide, available at ama-assn.org
[28] Royal Dutch Medical Association, Guidelines for Euthanasia, available at knmg.nl
[29] Indian Medical Association, Position Statement on Euthanasia, available at ima-india.org
[30] Nikhil D. Dhamankar v. State of Maharashtra, 2021 SCC OnLine Bom 2914

Courts often examine whether medical professionals have a duty to refer patients to other providers when invoking CO. While some international medical organizations advocate referral in CO cases, the lack of a definitive stance from Indian medical bodies complicates discussions.

8. Implications for Healthcare Practice

Court decisions regarding euthanasia and CO have profound implications for healthcare practice, shaping medical professionals' responsibilities and rights. These rulings influence the ethical landscape and the training and education of practitioners.

Impact on Healthcare Providers

Judicial rulings define healthcare providers' responsibilities and rights concerning euthanasia. In jurisdictions where euthanasia is legal, court decisions clarify legal parameters for healthcare professionals. For example, in the Netherlands, the legal framework supports euthanasia under specific conditions, allowing physicians to act according to legal standards and ethical guidelines.[31] This clarity empowers healthcare providers to make informed decisions without fearing legal repercussions.

In India, the Supreme Court's ruling in *Common Cause* established the right to die with dignity but did not provide comprehensive guidelines for medical practitioners on navigating CO.[32] This lack of clarity may lead to ethical dilemmas for physicians with personal objections to euthanasia, raising questions about obligations to patients versus moral convictions.

Training and Education Requirements

Judicial decisions influence medical professionals' training, particularly in ethical decision-making. As courts address complex euthanasia issues, medical schools and professional organizations incorporate these developments into educational frameworks. Training programs emphasize understanding legal rights, responsibilities, and ethical considerations in end-of-life care. In India, the growing discourse necessitates incorporating topics like palliative care, patient autonomy, and euthanasia's ethical implications into medical education.[33] This ensures future healthcare providers are equipped to handle sensitive situations with empathy and professionalism.

[31] Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002, Stb. 2001, 61 (Neth.)
[32] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1
[33] National Medical Commission, Curriculum for Undergraduate Medical Education (2021), available at nmc.org.in

Continuous medical education is essential for practicing physicians, especially with evolving legal standards and ethical guidelines. Workshops and training on ethical decision-making and recent court rulings help healthcare providers stay informed and prepared to address euthanasia and CO complexities.

9. Future Legal Frameworks

As societal attitudes toward euthanasia and CO evolve, so does the legal landscape. Judicial interpretations often lead to significant changes in legal frameworks, prompting discussions about new legislation aligning with contemporary values and ethical standards.

Proposed Changes to Jurisprudence

Future jurisprudence may involve establishing clearer guidelines for healthcare providers regarding CO. Courts recognizing the complexity of balancing individual rights with professional ethics may prompt formalizing expectations for medical practitioners refusing euthanasia participation. Legal frameworks might stipulate that while providers can refuse, they must refer patients to willing practitioners, balancing respect for beliefs with ensuring patient care access.[34]

Ongoing interpretations could lead to a more robust legal definition of "dignity" in euthanasia. Courts might explore how dignity applies not only to dying but to the entire end-of-life care experience, prompting legislation prioritizing holistic patient care.[35]

Predictions for Future Court Cases

Future court cases may challenge the constitutionality of laws allowing providers to opt-out of euthanasia without referral, arguing such laws infringe on patients' rights to legal medical procedures.[36] In India, implications of the *Common Cause* ruling may lead to cases seeking clarity on the right to die and healthcare providers' roles.

Additionally, cases involving practitioners facing disciplinary action for refusing euthanasia could test professional autonomy limits and patient rights, prompting courts to address practitioners' ethical obligations in a pluralistic society.

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[34] David Orentlicher, "Conscientious Objection in Medicine: A Comprehensive Review," 27 J.L. Med. & Ethics 28 (1999)

[35] Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1

[36] C.A.A.S. van der Heide et al., "Trends in Euthanasia Legislation in Europe: A Review," 42 Eur. J. Pub. Health 1055 (2018)

10. Critical Perspectives

The debate on CO in euthanasia often centers on critiques of current judicial practices and legal frameworks. As courts address these complexities, various perspectives emerge, highlighting strengths and weaknesses of existing approaches.

Critiques of Judicial Approaches

Critiques often focus on inadequacies in the current legal framework, arguing that allowing healthcare providers to refuse euthanasia participation without referral creates barriers to patient access, undermining autonomy.[37] This perspective emphasizes healthcare professionals' ethical obligation to prioritize patient welfare.

Proponents of CO argue the current framework protects healthcare providers' moral and ethical beliefs, contending that forcing participation infringes on their rights and undermines medical ethics principles like "do no harm." This tension highlights inherent conflicts in the existing legal structure.

In India, the lack of a clear legal framework post-*Common Cause* complicates debates. Critics assert that the absence of comprehensive guidelines creates uncertainty, leading to ethical dilemmas potentially harming patients seeking dignified end-of-life options.

Alternative Models of Jurisprudence

Alternative approaches propose more collaborative models involving multiple stakeholders, emphasizing dialogue and mutual understanding. Establishing clear protocols mandating referral while allowing CO aims to balance ethical considerations with legal obligations.

Integrating comprehensive ethical decision-making training into medical education is another proposed model. Equipping healthcare providers to navigate complex issues ensures practitioners handle CO prioritizing patient care.

Conclusion

The issue of conscientious objection in euthanasia sits at the crossroads of legal rights, ethical principles, and deeply personal beliefs. Throughout this paper, we have explored how courts across different jurisdictions are navigating these complex terrains, shaping the future of euthanasia

[37] Mark A. Rothstein, "Legal and Ethical Aspects of Conscientious Objection in Health Care," 40 Health Aff. 1001 (2021)

practices and the rights of both patients and healthcare providers. The evolving jurisprudence reflects a global struggle to balance the sanctity of individual conscience with the imperative to respect patient autonomy and dignity at the end of life.

Judicial interpretations have increasingly recognized the legitimacy of conscientious objection while emphasizing that it should not impede patient access to lawful medical services. Courts are striving to create a framework where healthcare providers can honour their moral convictions without obstructing patients' rights to make autonomous decisions about their own bodies. This delicate balance is essential in fostering a compassionate healthcare system that respects diverse beliefs and upholds the fundamental principles of justice and equality.

The comparative analysis of different jurisdictions highlights that there is no one-size-fits-all solution. Cultural, ethical, and legal contexts significantly influence how conscientious objection is addressed. However, a common thread emerges: the need for clear guidelines and open dialogue among all stakeholders. By acknowledging the complexities and engaging in collaborative problem-solving, societies can move toward legal frameworks that are both ethically sound and practically effective.

In India, the journey is still unfolding. The Supreme Court's recognition of the right to die with dignity marks a significant step forward, yet it also underscores the urgency for comprehensive legislation and clearer guidelines for medical practitioners. As societal attitudes continue to evolve, it is imperative for the legal system, medical community, and society at large to work together in addressing these profound issues.

Suggestions

1. **Develop Comprehensive Legal Frameworks**: Legislatures should enact clear and detailed laws that define the scope and limitations of conscientious objection in euthanasia. This includes stipulating the duties of healthcare providers who object, such as mandatory referral to willing practitioners, to ensure patients' access to care is not hindered.
2. **Establish Ethical Guidelines**: Medical professional organizations like the Indian Medical Association should develop explicit ethical guidelines on euthanasia and conscientious objection. Providing a clear stance will help healthcare providers navigate their responsibilities and ethical dilemmas more effectively.
3. **Enhance Medical Education**: Incorporate comprehensive training on end-of-life care, ethical decision-making, and legal obligations into medical curricula. By preparing future healthcare professionals to handle these sensitive issues, the medical community can better serve patients while respecting individual conscience.

4. **Foster Stakeholder Dialogue**: Create platforms for dialogue among patients, healthcare providers, legal experts, ethicists, and advocacy groups. Such collaboration can lead to more nuanced policies that consider the perspectives and needs of all parties involved.
5. **Learn from International Models**: Examine and, where appropriate, adapt practices from jurisdictions that have effectively balanced conscientious objection with patient rights. Countries like the Netherlands and Canada offer valuable insights into creating systems that respect both parties.
6. **Public Awareness and Education**: Increase efforts to educate the public about their rights and the ethical complexities surrounding euthanasia and conscientious objection. An informed society is better equipped to engage in meaningful discussions and advocate for balanced solutions.
7. **Regular Review and Adaptation**: Legal and ethical guidelines should not be static. Establish mechanisms for regular review to ensure that laws and policies remain relevant and effective in the face of changing societal values and medical advancements.

By implementing these suggestions, India and other nations grappling with these issues can progress toward a legal and ethical environment that honours both individual autonomy and moral integrity. The ultimate goal is to ensure that patients can make empowered decisions about their own lives while healthcare providers can practice without compromising their deeply held beliefs. This balanced approach is essential for a humane and just society that values both life and the dignity with which it is lived and ended.

The Legal and Ethical Intersection between Bodily Autonomy and the Mental Health of India's Surrogates

Ms. Anoka. K [1]
Ms. Ishita[2]

Introduction

In Latin "*Surrogatus*" means a substitute *i.e.* a person appointed to act in the place of another[3]. As per the Black's Law Dictionary surrogacy means the process of carrying and delivering a child for another person[4]. The New Encyclopedia Britannica defines surrogacy as a practice in which a woman bears a child for a couple unable to produce children in the usual way[5]. According to Warnock Report (1984) HF&E, surrogacy is the practice whereby one woman carries a child for another with the intension that the child should be handed over after birth.[6]

India's surrogacy laws offer a complex interplay of historical, legal, and socio-economic factors. The first part of this paper deals with finding the traces of surrogacy in human civilization through ancient texts and how the surrogacy has evolved in India through the years legally. India evolved from a global surrogacy hub due to affordable medical services and a lack of strict regulation. However, in recent decades, increasing concerns around exploitation, particularly of economically disadvantaged women, propelled legislative reform efforts. To address these challenges, the Indian government introduced several regulatory frameworks, culminating in the Surrogacy (Regulation) Act of 2021. The next part of the paper explores India's surrogacy regulations through the lens of the Feminist Legal Theory, addressing how the ideas advocated by this theory does not align with the principles of Indian Law and regulations it has made. The third and final part focuses on how legal safeguards impact surrogate mothers' bodily autonomy and mental well-being examining whether the legislation upholds human rights and social justice values or inadvertently limits access to reproductive freedoms, contributing to the broader discourse on women's rights and dignity in the context of assisted reproduction. The paper concludes by saying that India can create a more just and equitable surrogacy framework that respects the rights and dignity of all individuals involved, ultimately cultivating an environment where reproductive choices are recognized as fundamental human rights.

India's surrogacy laws in light of a brief global history

[1] **Student at School of Law, Dayananda Sagar University.**
[2] **Student at School of Law, Dayananda Sagar University.**

[3] Surrogacy in Latin. [Accessed on October 20, 2024]. Available from: http://www.latindictionary.org/surrogatus, http://en.wiktionary.org/wiki/surrogatus

[4] Oliphant RE. New York: Aspen Publishers; 2007. Surrogacy in Black law dictionary, family law; p. 349

[5] Surrogacy in New Encyclopedia, Britannica. [accessed on October 20, 2024]. Available from: http://www.britannica.com/EBchecked/topic/575390/surrogate-motherhood

[6] Warnock DM. London: Command of Her Majesty; 1984. Report of the committee of inquiry into human fertilisation and embryology; p. 42.

Surrogacy is not a new concept; it dates back to the biblical times. The first known record of description of surrogacy, traces back to the "Book of Genesis", in which Sarah, wife of Abraham was infertile to carry a child, and hence asked her servant to carry Abraham's child and the couple raised the child as their own although the child was not biologically related to Sarah.[7]

Surrogacy was also known to be common in the ancient Egyptian era. Concubines back in the times were asked to produce an offspring by the Pharaohs.

In India, the Hindu mythologies provide a various set of beliefs in the subject of surrogacy. It is believed that, Rohini was the surrogate mother to Balarama. Balarama was the seventh child of Devaki and Vasudeva. However, Devaki's brother Kamsa had sworn to kill all children born from his sister's womb. To protect the child, Vishnu, the lord of creation, transferred Balarama's embryo from Devaki's womb to the womb of Rohini, Devaki's sister.[8]

The surrogacy (regulation) bill: a short synopsis

India has also long been known as one of the world's easiest and most accessible destinations to carry out surrogacy; it is very well-priced and has an over-abundance of surrogate mothers-mostly from the lesser classes. The policies which regulate medical tourism in the country have encouraged surrogacy services, based upon trickle-down economics. For foreign clients, the cost of surrogacy in India is much lower—about one-fourth of the expenses in the United States—making it an attractive destination for those seeking affordable surrogacy options. Commercial surrogacy thus grew into a profitable niche market, with India emerging as a central player in this industry.

Surrogacy was first introduced in 1980, and India's first successful IVF birth occurred in Mumbai in 1986. As the technology of reproduction advanced, so did the surrogacy sector in India and it became deeply interlinked with nationalistic and cultural ideologies. Commercial surrogacy was legalized in India in the year 2002; after that, it had a boom in demand mainly among those couples who could not conceive biologically. This demand came both from within India and internationally, making India the world leader in the surrogacy industry and labelling it as the "surrogacy capital of the world." This growth was further enhanced by a robust legal framework and favourable regulations.

In 2002, ICMR issued guidelines on the procedures of Assisted Reproductive Technology, and in 2005, it received approval from the government. These guidelines, among other things, have aimed to regulate surrogacy arrangements and emphasized that practices should be fair. According to the

[7] Patel, N., Jadeja, Y., Bhadarka, H., Patel, M., Patel, N., & Sodagar, N. (2018). Insight into different aspects of surrogacy practices. Journal of Human Reproductive Sciences, 11(3), 212. https://doi.org/10.4103/jhrs.jhrs_138_17

[8] Jasdeep Kaur, "Surrogacy: A Paradox regarding Motherhood rights with Special Reference to India":, Vol. II No.1, 2012 The Legal Analyst (113 to 121) at 114.

guidelines, surrogate mothers were allowed monetary compensation, with the terms agreed upon between the commissioning couple and the surrogate. Additionally, the guidelines mandated that the surrogate mother could not use her own egg for the procedure and must relinquish all parental rights over the child.[9]

Landmark case Baby Manji Yamada v. Union of India and Others[10] further accelerated the surrogacy industry. In this case, the Supreme Court of India ruled that commercial surrogacy is valid but clearly stated that it needs oversight from regulatory bodies in exigent circumstances. This decision further made India a global hub for commercial surrogacy and attracted clients worldwide. A third factor contributing to the growth of surrogacy in India was the affordability of the treatment compared with other countries. It has been one of the factors that have opened up opportunities for many in this area. The business not only boosted medical tourism but also provided a source of income for economically underprivileged women, who can now secure their financial lives through surrogacy.

In 2009, the Law Commission of India recommended prohibiting commercial surrogacy, allowing altruistic surrogacy and enacting a law to regulate matters related to surrogacy.[11]

It is estimated that, in 2012, a study conducted by the United Nations indicated that India's surrogacy industry had scaled to a large magnitude, valued at around $400 million per year, and maintained through more than 3,000 fertility clinics located across the country. Thus, the nation was touted as the "world capital for surrogacy." Anand city in the state of Gujarat was, in turn, termed as the "Cradle of the World" owing to its large presence.

In response to the growth in ethical concerns and several allegations of exploitation, India completely banned commercial surrogacy in 2015 by prohibiting foreign nationals as well as Non-Resident Indians (NRIs) from entering into such surrogate arrangements. Thereafter, the Union Cabinet decided upon the Surrogacy Regulation Bill in 2016 which restricted surrogacy services to only Indian married, infertile couples. A new version of this, the Surrogacy (Regulation) Bill, 2019 was then presented in Lok Sabha and passed by the Union Cabinet. This law targeted unprivileged women who, due to financial vulnerability, were always exposed to exploitation by the surrogacy-seeking couples.

Commercial surrogacy has given rise to many negative implications, where the economically underprivileged women are victimized. They are often subjected to surrogacy by their families for economic relief. The case study reveals that most women were denied compensation during their

[9] Timms, Olinda (5 March 2018). Ghoshal, Rakhi (ed.). "Ending commercial surrogacy in India: significance of the Surrogacy (Regulation) Bill, 2016

[10] Baby Manji Yamada v Union of India, (2008) 13 SCC 518.

[11] https://prsindia.org/billtrack/prs-products/issues-for-consideration-3864

cases, which may involve such unforeseen problems like the couple divorcing each other or refusing the child at the time of the child's birth. That results in both women as well as children in difficult positions as in the *Jan Balaz v. Union of India*[12]; it showed children born under such a surrogacy left orphaned and on unclear legal status. Beyond financial exploitation, the entire process of surrogacy takes a toll on the surrogate's physical and emotional well-being. This makes commercial surrogacy ethically questionable.

Many Indians view commercial surrogacy as a practice that is ethically wrong, referring to it as "womb renting."[13] The term reflects societal concerns about the reduction of women's bodies to vessels; surrogates are strained physically and emotionally while marginalized in the process. This move of the legislation to limit surrogacy only to altruistic agreements makes the point that this legislation aims at the best interests of women and children but remains ineffective in their practical implementation.

The Surrogacy (Regulation) Act 2021 provides a legal framework with strict regulation of surrogacy in India, with commercial arrangements strictly banned and only altruistic surrogacy permitted. Again, no form of monetary compensation should be received by a woman acting as a surrogate. This once more underlines a non-commercial, voluntary basis for surrogacy. The Act also requires gestational surrogacy to be used exclusively. Here, ARTs such as IVF are used to initiate and sustain the surrogate pregnancy. Eligibility for surrogacy is restricted to specific categories, and strictly defined conditions regarding age and marital status apply. Only single women who are widowed, divorced, or married couples may apply for surrogacy, and they must provide a "certificate of essentiality" to prove medical necessity. Moreover, the Act requires that intending parents use their gametes, thus strengthening a biological connection to the child.

This trend is codified into law to legalize surrogacy as a new, sanctioned mode of reproduction, primarily through ARTs, which is gaining more recognition as a viable family-building option. However, the law strictly defines eligibility criteria and includes some while excluding others. These include single men, same-sex couples, and non-married partners on the grounds of "misuse." The eligibility criteria frame surrogacy according to traditional notions of marriage and motherhood, considering only the reproductive desires of ever-married women who are either widowed or divorced. Earlier versions of the Surrogacy (Regulation) Bill had gone through parliamentary committees before its enactment. The bill's debates had been around bringing the surrogacy law in line with the change in societal norms, including decriminalization of

[12] Jan Balaz v Anand Municipality, (2010) AIR 2010 21

[13] Katherine B. Lieber, 'Selling the Womb: Can the Feminist Critique of Surrogacy be Answered?' (1992) 68 Indiana Law Journal. accessed 20 October 2024

homosexuality (Section 377 of the Indian Penal Code) and transgender rights (The Transgender Persons (Protection of Rights) Bill). While some committees proposed extending eligibility to single women and live-in couples, the final law only partially responded to these recommendations by permitting only ever-married single women access to surrogacy.

The 2024 amendment to the Surrogacy Act allows for the possibility of using one parent's gamete with a donor gamete in cases where this would be appropriate given the medical condition of one or both members of a couple. However, it does not extend such flexibility to the single women allowed to enter into surrogacy arrangements. It thus maintains the emphasis on strict biological relatedness within surrogacy arrangements and could further perpetuate a hierarchy in forms of family-making. Such focus on biological ties might ignore other forms of families and define families narrowly. In the same vein, both surrogacy and adoption require raising a child to whom a parent or the partner never gave birth. [14]

A Feminist Legal Theory Perspective on Surrogacy in India.

The Feminist Legal Theory (FLT), born out of the Feminist Movement in the 1970s, focuses on the undeniable fact that although the law aims for equality before the law and equal protection of the law, sometimes, it tends to fall into the trap of a patriarchal society and its deep-rooted culture, putting women in a disadvantaged position.[15]

If we examine the surrogacy laws in India through the lens of this theory, various loopholes can be visualized.

The Surrogacy Regulation Act, 2021 bans commercial surrogacy limiting only a 'close relative' to be a surrogate to the "intending couple". With various other restrictions, the law also demands that the surrogate has to be a married woman aged between 25 and 35 and already having a child of her own.[16] Although such restrictions are made for safety and altruistic purposes, one of the major principles of feminism is the advocating of bodily autonomy, mainly for women, and such constraints limit a woman's autonomy over her body by regulating who can act as a surrogate, under what circumstances, and without financial compensation. Such limitations may strip women, especially socially and economically disadvantaged ones, of their agency to decide if and how they wish to use their bodies in exchange for financial gain. Before such restrictions, surrogacy provided financial opportunities for women in lower-income groups, and with the ban on commercial surrogacy, this scope of income is no longer available to them, potentially reinforcing economic

[14] Banerjee, S. (2024, February 29). On surrogacy, Indian law goes a step further - but not far enough. The Indian Express. https://indianexpress.com/article/opinion/columns/on-surrogacy-indian-law-goes-a-step-further-but-not-far-enough-9187014/

[15] Fineman, Martha Albertson (2005). "Feminist Legal Theory". Journal of Gender, Social Policy & the Law. **13** (1). SSRN 2132233.

[16] The Surrogacy (Regulation) Act,2021.

inequalities. Applying the FLT, the state should empower women economically rather than restrict options that allow them to do so. [17]

Surrogacy is a strenuous process involving intensive medical procedures paving the way to mental and physical stress, and one that necessitate for a significant commitment that impacts the surrogate's physical and mental health. India's current legal framework does not adequately address these health concerns, leaving women vulnerable without sufficient safeguards.[18] Right now, the focus on banning commercial surrogacy, rather than improving healthcare and support systems for surrogates overlooks the need for holistic development and welfare measures that respect and protect women's rights and health. This again, goes against the idea of FLT which emphasizes the need for the focus on the mental health of women. [19]

As we've seen before, the law also only allows for a married "intending couple" to opt for surrogacy which excludes single women, unmarried couples, and individuals from the LGBTQ+ community, showing how reproductive rights are not just limited to a major part of the women population but also extends to various other communities, disregarding the idea of FLT that promotes for a wider spectrum of family dynamics that can help build families in the society.[20]

Bodily Autonomy and Mental Health Considerations for Surrogates in India.

Article 3 of the UDHR states that *"Everyone has the right to life, liberty, and security of person."* Bodily autonomy is inherent in the right to security of a person, emphasizing an individual's control over their own body.[21]

People often call surrogates ***"real angels who help make dreams come true"*** in books. They show a deep commitment to helping others start families. But the Surrogacy (Regulation) Act 2021, brings in tough rules. It bans paid surrogacy. This happens while courts are starting to see 'liberty' in Article 21 of the Indian Constitution as including the right to choose how to have children. This law doesn't think about how it affects women's control over their bodies and ability to make money in different ways. By allowing unpaid surrogacy, the law expects women to handle the physical, emotional, and social pressures of surrogacy just out of *"kindness,"* without getting paid. This expectation seems old-fashioned. It ignores the fact that some women could earn money from

[17] Bartlett, K.T. & Kennedy, R. (1991). Feminist Legal Theory: Readings in Law and Gender. Westview Press.

[18] Saravanan, Sheela. (2018). A Transnational Feminist View of Surrogacy Biomarkets in India. Springer International Publishing.

[19] Becker, M. (1993). Four feminist theoretical approaches and the double bind of surrogacy. Chicago-Kent Law Review, 69(2), 303. https://scholarship.kentlaw.iit.edu/cklawreview/vol69/iss2/4

[20] Narayan, G., Mishra, H. P., Suvvari, T. K., Mahajan, I., Patnaik, M., Kumar, S., Amanullah, N. A., & Mishra, S. S. (2023). The Surrogacy Regulation Act of 2021: a right step towards an egalitarian and inclusive society? Cureus. https://doi.org/10.7759/cureus.37864

[21] United Nations. (1948, December 10). Universal Declaration of Human Rights. United Nations. https://www.un.org/en/about-us/universal-declaration-of-human-rights

surrogacy. This will likely mean fewer women want to be surrogates making it harder for people who want to use surrogates to have children and indirectly curtailing access for intending parents.

The restrictive eligibility requirements in the Act exclude LGBTQ+ individuals, live-in couples, and single parents from accessing surrogacy services. Even those who qualify must obtain a "certificate of essentiality" confirming that having a child through surrogacy is biologically their only option, dismissing other legitimate health concerns that might make pregnancy risky, if not impossible. For example, even if a disorder does not result in infertility, it nonetheless raises the risk of pregnancy. Additionally, the legislation ignores situations where a woman may want to postpone becoming pregnant because of work obligations, such as when an athlete's prime years align with her childbearing years. In these situations, the law unjustly forces women to decide between becoming mothers and furthering their jobs. Should women be forced to make this decision? A resounding no should be the response.

Recognizing surrogacy as a reproductive ***"right"*** rather than a conditional ***"need"*** is imperative. Imposing moral values that treat surrogacy as a last-resort solution is outdated and out of touch with modern reproductive choices. Dismissing women's right to surrogacy by promoting the notion that *"the joy of bearing one's own child cannot compare to having one through surrogacy"* reflects a deeply ingrained, patriarchal perspective. The law, when viewed within a rights-based framework, must support reproductive autonomy. The State has an obligation to promote reproductive rights and freedoms that ultimately contribute to better reproductive health.

Moreover, the Act ignores the economic sacrifices surrogates make, as they are often unable to continue their usual employment during the later stages of pregnancy. The legislative committee has romanticized altruistic surrogacy, calling it a *"social and noble act of the highest level"* that *"sets an example of being a model woman in society."* This view undervalues the sacrifices of surrogates, who should be allowed to receive financial compensation for lost income, increased living expenses, and specific needs arising from pregnancy, including maternity clothing, supplements, and a nutritious diet. A compensated surrogacy model would fairly recognize these contributions, requiring intending parents to bear all pregnancy-related medical costs, cover postnatal care, and pay surrogates for the financial impact of surrogacy.

Without these essential reforms, surrogacy legislation in India risks failing to protect both the bodily autonomy of surrogates and the reproductive rights of intending parents. Although Indian society is moving towards more progressive and egalitarian values, this restrictive surrogacy law stands in stark contrast to the nation's evolving ethos of equality and reproductive justice. It is essential for

lawmakers to modernize surrogacy regulation, aligning it with the principles of choice, equity, and autonomy that underpin true reproductive freedom.[22]

Research into the immediate psychological outcomes for surrogates reveals a complex and often challenging emotional landscape. Rates of postpartum depression range from 0% to 20%, but other impacts are more prevalent and far-reaching. A significant proportion, around 35%, experience difficulties in relinquishing the child after birth, while 39% report feelings of guilt, doubt, or regret regarding their decision to participate in surrogacy. Approximately 33% are at risk of developing post-traumatic stress disorder, depression, or anxiety disorders, highlighting a substantial mental health burden. Additionally, around 65% of surrogates experience elevated stress levels, especially if in vitro fertilization (IVF) outcomes are unsuccessful[2324]

Recent studies also suggest that surrogates tend to have higher levels of depression compared to expectant mothers, with certain risk factors intensifying this trend. Low social support during pregnancy, concealing the surrogacy arrangement, and facing criticism from others contribute significantly to the likelihood of postpartum depression. In terms of prenatal bonding, surrogates interact less with the foetus but demonstrate notably conscientious behaviour: they are more likely to adopt healthier eating habits and avoid harmful practices, potentially reflecting a heightened sense of responsibility toward the unborn child. Importantly, no clear association has been found between stronger prenatal bonding and increased psychological distress, either during pregnancy or after relinquishment.[2526]

This data underscores the psychological complexities surrogates face, compounded by societal stigma, inadequate support systems, and the unique challenges inherent in carrying and relinquishing a child for others. Addressing these issues through enhanced psychological support, community acceptance, and open communication could mitigate some of the negative psychological impacts, ensuring that surrogates receive the care they need throughout the surrogacy process.

Traditionalists often disregard inequities and individual rights violations when those rights conflict with entrenched cultural values. In a modern context where the concept of “family” is evolving,

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[22] Sonak, E., & Bhatia, S. (2021, April 21). India’s new Surrogacy Regulation Bill falls short of protecting bodily autonomy and guaranteeing reproductive liberty. LSE Human Rights. https://blogs.lse.ac.uk/humanrights/2021/04/21/indias-new-surrogacy-regulation-bill-falls-short-of-protecting-bodily-autonomy-and-guaranteeing-reproductive-liberty/

[23] Söderström-Anttila V, Wennerholm UB, Loft A, Pinborg A, Aittomäki K, Romundstad LB, et al. Surrogacy: Outcomes for surrogate mothers, children and the resulting families-a systematic review.

[24] Ahmari Tehran H, Tashi S, Mehran N, Eskandari N, Dadkhah Tehrani T. Emotional experiences in surrogate mothers: A qualitative study. Iran J Reprod Med. 2014

[25] Lamba N, Jadva V, Kadam K, Golombok S. The psychological well-being and prenatal bonding of gestational surrogates. Human Reproduction.

[26] Wendler D, Rid A. Systematic review: The effect on surrogates of making treatment decisions for others.

India's surrogacy legislation reveals a retrogressive approach that fails to address these changes. Societies and cultures, as dynamic entities, continuously adapt to internal and external stimuli, with new values replacing outdated customs over time. Certain core principles—such as justice, individual dignity, the protection of life and liberty, government legitimacy, and protection from arbitrary rule—are recognized across cultures as universal. These principles form the foundation of human rights, inherently granted to each individual.[27]

While there is no internationally recognized *"right to a child,"* as children are rights-bearing individuals and not entitlements, numerous countries recognize a social need for surrogacy to address familial aspirations, regardless of sexual orientation or marital status[28]. For instance, countries like Greece, New Zealand, Israel, and South Africa allow altruistic surrogacy for same-sex couples and single men, despite different social norms (Permanent Bureau, 2012). [29]Further, the right to "found a family" is recognized internationally (see, for example, the International Covenant on Civil and Political Rights, Art. 23(2)), and the fundamental right to equality enshrined in the Indian Constitution mandates that no discrimination should exist between citizens. Consequently, the Indian state has a duty to use legal mechanisms to foster a more inclusive society, as envisioned by the Constitution (Srinivas Theatre v. State of T.N., 1992 AIR 999). By excluding LGBTQ+ persons, live-in couples, and single individuals from surrogacy rights, current legislation infringes upon reproductive autonomy and contravenes the constitutional right to equality.[30]

India's surrogacy laws are rooted in traditional, patriarchal ideas that predate legal recognition of rights for unmarried mothers, transgender individuals, and live-in relationships. The Indian Supreme Court has progressively upheld the rights of transgender persons, validated live-in partnerships, and allowed single women to adopt children, thereby dismantling outdated notions of family. Excluding LGBTQ+ individuals, single men and women, and non-traditional families from surrogacy further perpetuates discriminatory practices and limits reproductive freedom. By restricting surrogacy access to married heterosexual couples or select categories of single women, the Surrogacy (Regulation) Bill, 2020 risks violating Articles 14, 19, and 21 of the Constitution—

[27] Tharoor, S (1999) Are human rights universal? World Policy Journal **XVI**. Available at http://worldpolicy.org/2009/11/11/tharoor-are-human-rights-universal-world-policy-journal-world-policy-institute/ (accessed 28 October 2024).

[28] UN General Assembly Human Rights Council (2018) Report of The Special Rapporteur on The Sale And Sexual Exploitation of Children, Including Child Prostitution, Child Pornography And Other Child Sexual Abuse Material. UN Doc A/HRC/37/60. New York: United Nations (UN Report).

[29] Permanent Bureau (2012) A Preliminary Report On The Issues Arising From International Surrogacy Arrangements, Hague Conference on Private International Law, General Affairs and Policy, Prel. Doc. No 10.

[30] Gola, S. (2021). One step forward or one step back? Autonomy, agency and surrogates in the Indian Surrogacy (Regulation) Bill 2019. International Journal of Law in Context, 1–17. https://doi.org/10.1017/s174455232100001x

often referred to as the "Golden Triangle[31]" of fundamental rights—which guarantee equality, personal liberty, and dignity.

Article 21, central to the Constitution's guarantees, protects the right to life, which encompasses dignity, privacy, and reproductive autonomy. Commercial surrogacy represents a vital source of livelihood for economically disadvantaged women, yet the surrogacy bill's near-total prohibition of commercial arrangements disregards these socio-economic realities, depriving these women of income opportunities. Limiting surrogacy to married heterosexual couples and widowed or divorced women neglects reproductive rights for unmarried or childless women and other groups. Such restrictions infringe upon individual privacy, autonomy, and the right to make personal reproductive decisions, which are fundamental to a dignified life under Article 21.

Article 14 assures all people equality before the law and equal protection under the law.[32] Any classification must be reasonable and bear a rational connection to the legislation's objective[33]. Yet the Surrogacy (Regulation) Bill bases eligibility on marital status, gender, and age, effectively excluding unmarried people, same-sex couples, and transgender individuals. Such arbitrary exclusions lack a logical link to reducing exploitation, especially as these groups are allowed to adopt children under Indian law. Since decriminalizing consensual same-sex relationships by repealing Section 377 of the IPC[34], the legal landscape in India has evolved, supporting equal rights for all individuals, including the right to surrogacy. Furthermore, the 2014 Supreme Court judgment recognized transgender persons as a third gender, affirming their rights under Article 14. The exclusion of these groups in surrogacy regulations thus contradicts the Bill's stated goals.

Article 19(1)(g) of the Indian Constitution ensures "freedom of trade and profession." [35]However, a blanket prohibition on commercial surrogacy, which disregards the economic interests of surrogates and related industries, appears both excessive and arbitrary, undermining Article 19(1)(g) without adequate justification. This ban not only affects the livelihood of surrogate women but also endangers institutions associated with surrogacy, potentially stifling economic growth in this sector. For restrictions to be legitimate, they must be proportional, neither excessive nor infringing upon individual rights without clear public welfare objectives.

The Surrogacy (Regulation) Bill of 2020 constrains family and reproductive rights by failing to embrace the diversity and leaves out transgender people classified as a third gender[36]. The Bill's restrictive provisions clash with Articles 14, 19, and 21 of the Constitution, denying unmarried

[31] Minerva Mills Ltd. v Union of India,(1980) 3 SCC 625: AIR 1980 SC 1789
[32] The Constitution of India, Art. 14.
[33] State of W.B. v Anwar Ali Sarkar, (1952) 1 SCC 1: AIR 1952 SC 75.
[34] Navtej Singh Johar v Union of India, (2018) 10 SCC 1.
[35] The Constitution of India, Art. 19(1)(g).
[36] National Legal Services Authority v Union of India, (2014) 5 SCC 438: AIR 2014 SC 1863.

individuals, LGBTQ+ persons, and economically disadvantaged women the right to surrogacy, thereby limiting their personal autonomy. As India continues to champion diversity and progressive values, it is imperative that surrogacy laws evolve to uphold individual rights and allow citizens the freedom to make their own reproductive choices. Recognizing surrogacy as a legitimate right for all individuals, irrespective of marital status, gender identity, or socio-economic background, would align India's legal framework with both constitutional guarantees and the fundamental values of a democratic society.[37]

Conclusion

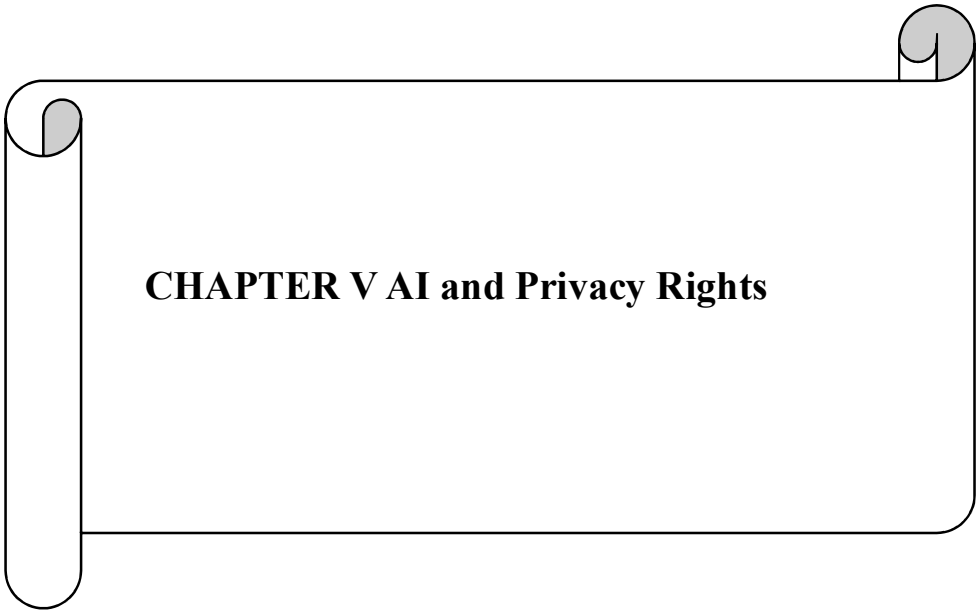
Surrogacy is born out of a combination of social, medical, and legal factors that respond to the needs and desires of individuals or couples who wish to have children but may face challenges in doing so. For decades it has served as a viable option to people facing these challenges. For surrogates, the benefits can be equally significant. Financial compensation is one of the most compelling incentives, as surrogates often receive substantial remuneration for their role, which can help support their families, pay off debts, or fund education. Beyond the financial aspect, many surrogates find personal fulfilment in helping others achieve their dream of parenthood, making the experience emotionally rewarding.

However, what is often ignored in such scenario is the bodily autonomy and mental health of the surrogates. Women should get to regulate their own bodies without having unreasonable restrictions put on them. A ban on the commercial surrogacy entirely undermines on how who gets to be a surrogate and when. When talking about bodily autonomy, many distinct factors come into the picture and one such factor is inclusivity. Thus, such bans need to be altered in a way that is beneficial to women and yet still safeguards all the aspects of the procedure.

A mother in general goes through a significant amount of mental and physical changes during a child birth that's unreversible. There's high chance that these changes may turn to a negative direction. So, talking about surrogate mothers, these changes can be at a higher level than usual. Giving birth to a baby can cause excruciating pain to the mother not only physically but also mentally as they have to give up the baby regardless of the fact that it may not be their own child. Hence, providing immense amount of support via mental healthcare to surrogates become a vital factor in ensuring the well-being of the surrogate mother. Mandatory counselling sessions for both surrogates and intended parents should also be implemented to ensure informed consent. These sessions should cover the emotional, physical, and legal aspects of surrogacy, allowing individuals to make well-informed decisions regarding their involvement.

[37] Aparajita Amar and Arjun Aggarwal, 'The Emerging Laws Relating Surrogacy: A Procreational Right for Single Parent, Transgenders and Foreigners' (The SCC Online Blog) accessed 25 October 2024.

Such measures are recommended to be taken by the State to ensure a healthy society with healthy families in it. India can create a more just and equitable surrogacy framework that respects the rights and dignity of all individuals involved, ultimately cultivating an environment where reproductive choices are recognized as fundamental human rights.



CHAPTER V AI and Privacy Rights

AI and Access to Justice: Closing the Gap in Legal Services

Prof. (Dr.) Mandeep Kumar[1]
Ketan Kumar[2]

1. Introduction

Access to justice is widely recognized as a fudamental human right, yet millions around the world face significant barriers to obtaining legal services. These barriers arise due to high costs, complex legal processes, and geographical challenges, particularly in low-income or remote regions. This "justice gap" is a critical issue, as it disproportionately affects marginalized communities, low-income individuals, and pro se litigants (those representing themselves in court) who lack affordable legal assistance. These individuals may experience negative legal outcomes simply because they lack the guidance, representation, or knowledge necessary to navigate complex legal systems. The justice gap thus perpetuates cycles of poverty, inequality, and vulnerability, as individuals who cannot afford legal representation often forfeit their rights or suffer from unfavorable legal decisions. Artificial Intelligence (AI) has emerged as a transformative technology across many industries, and its potential applications in law are vast. Legal AI technologies are designed to enhance legal processes by automating repetitive tasks, simplifying legal language, and providing immediate assistance to those who cannot afford traditional legal services. AI's capabilities range from legal chatbots, which can provide basic legal information, to predictive analytics, which can assess case outcomes, and document automation tools, which simplify the preparation of legal documents.[3]

By leveraging AI, legal professionals and organizations have the opportunity to make legal services more accessible and affordable. AI tools can fill critical gaps in legal service delivery by providing cost-effective, scalable solutions that don't require substantial human resources. For instance, AI can assist low-income individuals in understanding their legal rights, provide guidance on filing claims, and help with document preparation in a way that was previously only available through costly legal consultations.[4]

[1] **Professor in Law, Sharda School of Law, Sharda University, mandeep22787@gmail.com**
[2] **Research Scholar, Maharishi Law School, Maharishi University of Information Technology, ketan9716@gmail.com**
[3] Bryson, J., & Winfield, A. (2020). Access to Justice for Marginalized Communities: The Role of AI and Technology. Law and Society Journal, 16(2), 87-103.
[4] Stone, M. (2019). Artificial Intelligence in Legal Services: The New Frontier for Legal Aid. Journal of Legal Technology, 13(3), 135-150

2. AI-Driven Solutions for Closing the Justice Gap

AI-driven solutions offer innovative pathways to reduce barriers in accessing justice, particularly for underserved populations who face financial, geographical, and informational obstacles. By leveraging automation, data analysis, and natural language understanding, AI can streamline legal processes, simplify complex legal concepts, and provide affordable assistance.

2.1 Legal Chatbots and Self-Help Tools

Legal chatbots are conversational AI applications that assist users by providing general legal information, answering questions, and guiding users through simple legal processes. These tools make legal information accessible to those who may lack the resources to consult a lawyer.

- **Impact on Accessibility**: By offering immediate assistance at little to no cost, legal chatbots allow individuals who cannot afford a lawyer to receive preliminary legal guidance. This is particularly beneficial for those in rural or low-income areas, where legal services are scarce[2].
- **Limitations**: While useful, chatbots are limited in their ability to provide nuanced advice for complex legal situations, as they often operate on pre-defined information rather than adapting to unique case specifics. Legal chatbots also face challenges related to language and cultural understanding, which can impact the accuracy of information provided.[5]

2.2 Document Automation and Cost Reduction

Document automation is a powerful AI-driven tool that allows users to generate standardized legal documents, such as contracts, wills, and powers of attorney, without requiring professional legal assistance.

- **Functionality and Use Cases**: Document automation systems use AI templates to create legally accurate forms by prompting users to input relevant information. These tools are popular in online legal services platforms like *LawDroid*, which guides users through filling out family law forms, or *Rocket Lawyer*, which assists with business contracts.[6]
- **Impact on Accessibility**: Automated document creation significantly reduces costs for legal aid organizations and clients alike. By removing the need for manual document drafting, these systems enable organizations to serve more clients while lowering service fees for

[5] Veale, M., & Binns, R. (2021). Fairness and Bias in AI for Law: Challenges and Solutions. Ethics of Technology Journal, 12(3), 31-44.

[6] LawDroid. (2023). Document Automation in Legal Services: Bridging the Justice Gap. Retrieved from https://www.lawdroid.com/

end-users. Document automation is especially helpful for pro se litigants, allowing them to prepare essential paperwork independently.[7]

3. **Benefits of AI in Legal Accessibility**

AI's transformative impact on legal services is multifaceted, with significant potential to bridge the gap in access to justice by offering faster, more affordable, and widely available legal assistance. These benefits not only serve individuals who traditionally face barriers to legal access but also empower legal aid organizations, courts, and law firms by streamlining operations and reducing costs.

3.1 Efficiency and Speed in Legal Processes

AI can dramatically increase the speed and efficiency of many legal tasks, reducing the time needed to process cases and handle client inquiries. This improvement is especially relevant in legal aid settings, where resources are limited, and demand often outstrips supply.

- **Automation of Repetitive Tasks**: Many legal tasks, such as document review, data entry, and case sorting, are time-consuming and repetitive. AI-powered tools like document analysis and e-discovery software can quickly process large volumes of information, identifying relevant details in seconds instead of hours or days. For instance, *ROSS Intelligence* utilizes AI to rapidly analyze legal precedents, helping lawyers and litigants find applicable case law more efficiently.[8]
- **Impact on Legal Aid Organizations**: For legal aid clinics and pro bono organizations, AI's efficiency allows staff to focus on complex cases that require human expertise. By automating routine administrative work, AI enables these organizations to serve more clients and respond to queries faster.[9]

3.2 Cost Reduction and Affordability

AI-driven solutions can significantly lower the cost of legal services, making them accessible to individuals who cannot afford traditional legal representation. By providing self-help tools, document automation, and AI-powered legal assistance at a fraction of the cost of human services, AI democratizes access to legal resources.

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[7] American Bar Association. (2021). AI and Document Automation in Law: A Path to Accessible Legal Services. ABA Journal, 13(1), 23-37.

[8] ROSS Intelligence. (2021). Revolutionizing Legal Research with AI: Efficiency and Speed. Retrieved from https://www.rossintelligence.com/

[9] Cohen, L. (2022). AI in Legal Aid: Efficiency and Impact. Legal Aid Journal, 18(1), 45-57.

- **Reduction in Attorney Fees**: With AI handling tasks like research and document drafting, the cost of legal services can decrease substantially. Online platforms like *LegalZoom* and *Rocket Lawyer* leverage AI to offer affordable legal document preparation services, reducing the need for costly attorney involvement in straightforward cases.
- **Economic Accessibility**: AI-powered legal services reduce reliance on billable hours, making services affordable for low-income clients and small businesses. Studies have shown that such platforms can reduce legal service costs by as much as 60%, which directly benefits users who might otherwise forego legal assistance altogether due to financial constraints.

4. Inclusivity and Accessibility for Diverse Populations

AI's ability to cater to diverse populations makes it a transformative tool for inclusivity in legal services. By leveraging Natural Language Processing (NLP), machine learning, and automated customization, AI-powered platforms can address specific challenges faced by groups traditionally underserved by the legal system. These groups often include non-native speakers, individuals with disabilities, people with low literacy, and those with unique legal needs, such as immigrants or members of indigenous communities.

- **Language and Literacy Support** Language barriers and legal literacy are significant obstacles for many individuals seeking justice. AI tools can bridge these gaps by providing multilingual support, translating complex legal documents, and simplifying legal language to make information accessible.

- **Multilingual Support**: NLP allows AI-powered platforms to recognize, translate, and respond in multiple languages, helping non-native speakers understand their rights and legal obligations. For example, chatbots integrated with NLP can interact with users in languages such as Spanish, Mandarin, or Arabic, allowing individuals who are not fluent in English to receive legal guidance in their native language. This feature is particularly valuable in countries with diverse linguistic populations, where language barriers can prevent access to justice.[10]
- **Simplification of Legal Jargon**: Legal language is often complex and inaccessible to those without legal training, posing a significant barrier to understanding one's rights. AI systems, like *LegalSifter* and *LawGeex*, use NLP to identify legal jargon and convert it into plain language, making contracts, court forms, and other legal documents understandable for

[10] National Legal Aid and Defender Association. (2021). Bridging Language Barriers with AI in Legal Services.

everyday users. This benefit is particularly important for self-represented litigants who may struggle to comprehend formal legal language without the help of an attorney.[11]

- **Tools for Low Literacy Users**: For individuals with low literacy levels, AI can provide audio explanations or visual guides to simplify legal instructions. By using text-to-speech functions, AI-driven platforms can read legal documents aloud, helping users understand terms and instructions without needing to interpret complex text. Additionally, icons and visual aids in these applications help to break down legal processes, allowing users with limited literacy to engage with legal resources independently.

5. Support for Marginalized and Vulnerable Groups

Marginalized groups, such as immigrants, refugees, and indigenous populations, often have unique legal needs and face challenges related to cultural and socioeconomic factors. AI solutions tailored to these needs can provide targeted support, guiding individuals through complex legal processes in ways that are culturally sensitive and contextually relevant.

- **Assistance for Immigrants and Refugees**: AI-driven platforms offer customized legal support for immigrants, refugees, and asylum seekers who may face language, cultural, and financial barriers in the legal system. Immigration-focused AI chatbots provide guidance on topics like visa applications, asylum claims, and citizenship processes. For instance, platforms like *ImmigrationHelp.org* use AI to answer questions, help users fill out forms, and provide information on immigration policies, empowering individuals to make informed legal decisions without requiring extensive legal support.[12]
- **Cultural Sensitivity and Contextual Assistance**: AI tools are being developed to recognize and respect the cultural backgrounds of users, particularly for indigenous populations with unique legal issues related to land rights, heritage, and sovereignty. By collaborating with experts in indigenous law and cultural studies, AI developers can create tools that offer culturally sensitive responses, acknowledging specific legal principles relevant to indigenous users. For example, AI-powered systems can provide guidance on treaty rights, land claims, and self-determination in a manner that respects indigenous cultural perspectives and legal traditions.
- **Support for Economically Vulnerable Individuals**: Many economically vulnerable individuals face challenges beyond financial constraints, including limited internet access and knowledge gaps about their rights. AI-based tools designed for low-bandwidth

[11] LegalSifter. (2022). Using NLP to Simplify Legal Jargon for Accessibility
[12] ImmigrationHelp.org. (2023). AI Solutions for Immigration and Refugee Support.

environments can provide critical information on housing, employment, and consumer rights, ensuring that economically disadvantaged individuals have equitable access to legal assistance. Offline-capable AI apps or low-data tools, for instance, could reach users in remote or underserved areas without requiring high-speed internet connections.

6. Challenges and Ethical Considerations of AI in Legal Services

While AI holds significant promise in enhancing access to justice, its implementation in legal services is accompanied by complex challenges and ethical concerns. These issues center around fairness, data privacy, accountability, and the potential for exacerbating existing biases. Recognizing these challenges and proactively addressing them is essential for ensuring AI is used responsibly and equitably in legal contexts.

6.1 Bias in AI Algorithms

AI algorithms are inherently shaped by the data on which they are trained. If the training data contains historical biases, such biases can be reflected in AI outputs, posing a significant risk in a justice-oriented setting.

- **Historical Prejudices and Systemic Inequities**: AI algorithms trained on historical legal data risk perpetuating existing societal biases. For example, predictive policing algorithms that rely on historical crime data have been shown to disproportionately target minority communities due to past patterns of over-policing, thereby reinforcing systemic inequalities.
- **Addressing Bias through Ethical AI Design**: To mitigate this, developers must use diverse, representative datasets and implement algorithms that identify and counteract bias. However, achieving unbiased AI remains a significant challenge in practice, necessitating continuous monitoring and adjustments. Organizations like the Partnership on AI advocate for fairness checks and balanced data sourcing, especially in high-stakes applications like legal technology.

6.2 Data Privacy and Security

Legal matters involve highly sensitive data, which makes data privacy and security critical concerns in AI-driven legal tools. The legal field's adoption of AI raises several issues related to the collection, storage, and use of personal data.

- **Data Protection Regulations**: AI tools operating in legal settings must comply with strict data protection laws like the GDPR in the European Union or CCPA in California, ensuring that users' personal information is not improperly accessed or misused[3]. Compliance

involves not only securing data but also obtaining explicit consent from users and allowing them control over their information.

- **Security Vulnerabilities**: AI systems, especially those integrated with online legal platforms, are vulnerable to cyber-attacks. The legal sector must implement robust cybersecurity measures, including encryption and multi-factor authentication, to safeguard client data and prevent breaches.

6.3 Lack of Transparency and Accountability

One of the primary concerns with AI is the "black box" nature of many algorithms, making it difficult for users to understand how decisions are made. In legal contexts, transparency and accountability are crucial to ensure fairness.

- **Explainable AI:** Explainable AI techniques attempt to make AI's decision-making processes more transparent, allowing users to understand the reasoning behind certain recommendations or predictions. Legal AI tools need to implement XAI to ensure that clients and lawyers can trace the logic behind outputs, reducing the risk of erroneous or unjust outcomes.
- **Accountability in Automated Decision-Making**: Accountability becomes complex when AI makes legal recommendations or decisions. Without clear guidelines, it's challenging to determine who is responsible if an AI system makes an error or produces biased results. Developing accountability frameworks that assign responsibility to AI developers, legal professionals, or governing bodies is essential for the ethical use of AI in legal services.

6.4 Access Disparities and Digital Divide

While AI has the potential to increase accessibility, it also risks excluding individuals without access to digital resources or adequate technological literacy.

- **Digital Divide and Socioeconomic Barriers**: Low-income individuals and rural communities may have limited access to digital devices or internet connectivity, hindering their ability to benefit from AI-driven legal resources. Addressing this gap is essential to avoid deepening existing disparities in access to justice.
- **Improving Accessibility in AI Design**: For AI to genuinely bridge the justice gap, developers should design platforms that are accessible to those with minimal digital literacy. This includes simplifying user interfaces, offering mobile-friendly options, and ensuring that applications work on low-bandwidth internet connections.

7. Future Prospects and Recommendations for AI in Access to Justice

The future of AI in legal services is promising, but it requires thoughtful development to address current limitations and ethical concerns. Building a more inclusive and equitable legal system through AI involves developing standards for transparency, expanding access, and fostering collaboration across legal, governmental, and technical fields. Below are some recommendations for guiding AI's role in access to justice.

7.1 Promoting Ethical AI Development

Establishing ethical standards for AI in legal services is essential to ensuring that AI operates fairly and transparently. This involves setting regulations that hold developers accountable for algorithmic fairness, data privacy, and anti-bias measures.

- **Guidelines for Fairness and Accountability**: Governments, legal organizations, and AI developers should work together to create standards for fair and transparent AI in the legal field. Such guidelines could include requirements for bias audits, clear disclosures of AI capabilities, and accountability frameworks that outline responsibilities in cases of errors or misuse. [13]

7.2 Increasing Accessibility for Underserved Populations

To realize AI's potential to bridge the justice gap, targeted efforts are needed to improve accessibility for underserved populations, including low-income and rural communities.

- **Expanding Digital Access**: Governments and non-profit organizations can support digital literacy initiatives and infrastructure improvements, ensuring that marginalized communities can access AI-driven legal tools. Providing internet subsidies, low-cost devices, or public access centers in rural areas could also bridge the digital divide.
- **Collaborative Platforms for Legal Aid**: AI could serve as a foundation for collaborative platforms that bring together legal aid organizations, pro bono lawyers, and volunteers. These platforms could leverage AI to manage case intake, match clients with appropriate resources, and facilitate virtual consultations.

7.3 Fostering Human-AI Collaboration in Legal Services

While AI can handle routine legal tasks, human expertise remains essential for providing nuanced legal guidance. The future of AI in access to justice lies in hybrid models that combine AI's efficiency with human judgment and empathy.

[13] Buolamwini, J., & Gebru, T. (2018). Gender shades: Intersectional accuracy disparities in commercial gender classification. Proceedings of Machine Learning Research, 81, 1-15.

- **Developing Hybrid AI-Human Legal Models**: Hybrid models could assign routine tasks, such as document review or preliminary case assessments, to AI while reserving complex matters for human professionals. For instance, AI could handle initial case sorting and recommend cases that need human intervention, optimizing legal aid organizations' use of resources.
- **Training Legal Professionals in AI Competency**: As AI becomes integral to the legal field, law schools and continuing legal education programs should include AI literacy to equip professionals with the skills needed to use AI responsibly and effectively. This training would ensure that legal practitioners can make informed decisions about integrating AI into their practices.

7.4 Ongoing Research and Public Engagement

Continuous research on AI's impact on justice and proactive engagement with the public are essential to address emerging challenges and ensure AI aligns with societal values.

- **Encouraging Public Discourse on AI and Justice**: By fostering open dialogue, legal institutions can involve the public in discussions on AI ethics, usage policies, and potential risks, ensuring that AI implementations align with public interests and values.

Conclusion: Building an Inclusive and Responsible Future for AI in Legal Access

AI holds transformative potential in the realm of legal services, promising a more accessible and efficient justice system. With its ability to automate routine processes, provide rapid legal assistance, and break down barriers related to cost, language, and geographic constraints, AI can expand access to justice for historically underserved communities. However, to fully realize this potential and ensure that AI serves as a fair and trustworthy tool for justice, several strategic actions are necessary. This conclusion synthesizes key recommendations that focus on ethical AI development, increased accessibility, balanced AI-human collaboration, and continuous public engagement.

Ethical AI Development for Legal Services

One of the foremost challenges in deploying AI in legal services is managing the ethical considerations related to data privacy, transparency, and bias. Addressing these issues is essential to maintain public trust in AI as a fair and impartial tool in the legal landscape. Implementing guidelines and standards is vital to ensure that AI models remain unbiased, secure, and transparent in their operations.

- **Accountability and Transparency**: AI tools used in legal services must operate under rigorous standards that prioritize explainability and transparency. This includes implementing explainable AI (XAI) methods, where algorithms provide understandable outputs and allow users to track the rationale behind decisions. Transparent AI models can help users trust that recommendations are made fairly, an essential factor for legal credibility. [14]
- **Bias Mitigation**: Preventing algorithmic bias is crucial for AI-driven legal services to function equitably. Developing diverse datasets and conducting regular audits to detect and eliminate biases can help prevent AI from perpetuating systemic prejudices. Legal organizations and AI developers should collaborate to create frameworks that enforce bias detection and correction mechanisms within AI systems.
- **Data Security and Privacy Compliance**: Given the sensitivity of legal data, AI-driven platforms must adhere to stringent data protection standards such as the GDPR and CCPA. This requires secure data storage, transparent data use policies, and user control over personal information. Only by securing client data can AI legal services maintain the trust needed to become a reliable access point to justice.

Expanding Accessibility for Underserved Communities

AI's potential to democratize legal services relies on making it accessible to all, particularly to those who have traditionally lacked access to legal support due to economic, geographic, or language barriers. Targeted efforts to expand accessibility are essential for AI to bridge the justice gap effectively.

- **Overcoming the Digital Divide**: Low-income and rural communities often lack adequate digital infrastructure, making it difficult to access AI-driven legal tools. To counter this, governments and non-profits should invest in digital literacy programs, expand internet access, and provide affordable devices. Additionally, developers should design AI applications that are mobile-friendly, low-data, and functional in low-bandwidth environments to maximize reach.
- **Language and Literacy Accessibility**: Language barriers and low literacy levels are significant obstacles to accessing legal services. AI-driven platforms that support multiple languages and provide simplified, jargon-free information can make legal services accessible to non-native speakers and low-literacy individuals. Text-to-speech, translation,

[14] European Union. (2018). General Data Protection Regulation (GDPR).

and visual-aid options within these tools can further enhance usability for diverse populations.

- **Support for People with Disabilities**: AI-driven legal platforms must integrate accessibility features, such as screen readers, voice commands, and cognitive aids, to ensure that people with disabilities can fully benefit from these technologies. By adapting to the needs of visually, hearing, or cognitively impaired individuals, AI can significantly broaden legal access and inclusivity.

Promoting Collaborative AI-Human Models in Legal Services

While AI offers significant efficiencies, it is not a replacement for human judgment in complex legal matters. The future of legal services should emphasize collaborative AI-human models that combine the strengths of both, ensuring that clients receive nuanced and empathetic assistance where needed.

- **Integrating AI for Routine Legal Tasks**: AI is well-suited for automating routine tasks, such as document review, data extraction, and preliminary case assessments, allowing legal professionals to focus on more complex or emotionally sensitive cases. For instance, AI could assist with initial case intake or document preparation, while attorneys provide detailed analysis and courtroom representation.
- **Training Legal Professionals in AI Competency**: As AI becomes integral to legal processes, law schools and continuing education programs should include AI training. This would enable legal professionals to use AI responsibly, recognize its limitations, and make informed decisions on when to employ AI solutions. Proper training ensures that legal professionals can maintain ethical standards and provide high-quality service to clients.

Engaging in Continuous Research and Public Discourse

The rapid pace of AI development necessitates ongoing research and active public discourse to navigate emerging challenges and align AI usage with societal values. Legal organizations, policymakers, and AI developers should foster a collaborative environment that prioritizes transparency and engages the public on AI's role in justice.

- **Research on AI's Societal Impact**: Continuous research on AI's impact on justice and equity is vital to identify both benefits and risks associated with its use. Public and private sector partnerships can support studies that examine AI's influence on judicial processes, ensuring that new technologies align with societal expectations and legal ethics.

- **Public Engagement and Transparency**: Building public trust in AI requires open communication about how AI is used in legal contexts, including potential risks and limitations. By engaging with the public on AI's ethical considerations and the safeguards in place, legal institutions can foster transparency and enhance public understanding. This trust is essential to ensure that AI tools are accepted and used responsibly within society.

Looking Ahead: Shaping AI for a Fairer Justice System

The integration of AI in legal services presents an unprecedented opportunity to enhance access to justice for a diverse range of individuals. However, achieving this goal requires a commitment to ethical standards, proactive accessibility measures, and collaborative practices. By prioritizing fairness, transparency, and inclusivity, AI can truly become a powerful tool for reducing legal barriers and empowering underserved communities.

In moving forward, it is crucial that stakeholders across the legal, technological, and governmental sectors collaborate to develop and enforce standards that guide AI use in the justice system. Responsible development, continuous education, and public engagement will collectively contribute to a future where AI-driven legal services are trusted, fair, and accessible for all. Through sustained commitment to these principles, AI can play a transformative role in closing the justice gap, building a legal system that is more equitable and accessible to all members of society.

End of Life Care in India: Legal and Ethical Challenges and A Blueprint for the Future

Dr. Arpitha H.C[1]

Introduction

All of us are aware that life is precious and there is nothing else that has been discovered that can substitute life. Talking about death and fading away of a life in today's healthcare sector is considered to be a very complicated subject and End of life care in India is a tangle that requires both patience and perseverance as it involves the physical, ethical, emotional and legal aspects. It gets even more convoluted when medical professionals have to discuss on complex decision-making procedures such as withholding and withdrawing life sustaining treatment and Physician assisted suicide and all these terms were formerly termed Euthanasia. This term is used differently in both medical and legal literature. Here we are dealing with the primary moral philosophies of the fundamental principles of any medical profession i.e., autonomy, non-maleficence, beneficence, and justice and dignity, paternalism, personhood and life. All the above principles end up pulling each other in disagreeing directions. Euthanasia is a subject that encircles Ethics, Law, Philosophy and Medical practice.

Right to life is one amongst the most important fundamental rights under Article 21 of the Indian Constitution[2].These rights clearly inflicted upon the state to take steps to ensure good value to the life and dignity to people. The context in which it is being used has been a matter of intellectual discussion till date. The debate till date exists on whether right to life should include the right to die as well under the constitution. Medical decision making at the end of life of a person is a contentious issue in India. It conflicts between religious philosophies on sanctity of life and the right to autonomy and private decision of a person. Then there are many unaddressed questions of who owns his life and who has the right to decide when it is not worth living. One of the prolific ways to engage with this is to understand what the requirement of suitable end of life care implies for the State.

One of the reports in an Economist cover captured in its report that all persons are inevitably going to die but whether to die a bad death is not inevitable. This was also examined by the survey reports that captured on the quality of death. This was done in 2010 and subsequently updated in 2015[3]. India recorded poorly in both the reports wherein the 2010 report India was last out of the 40 large

[1] **Associate Professor of Law, School of Law, RV University, Bengaluru. Email address: arpithahc@rvu.edu.in, arpithahc@gmail.com**

[2] "No Person shall be deprived of his life or personal liberty except according to procedure established by law."

[3]https://impact.economist.com/perspectives/sites/default/files/2015%20EIU%20Quality%20of%20 Death%20Index%20Oct%2029%20FINAL.pdf (Last visited on September 06,2022).

countries and it was in the 67th position out of 80 large countries in the 2015.[4] It is estimated that about 49 million citizens of our country are impelled into destitution each year. One major reason for this is because of the out of pocket expenditure borne by the patients and their families on health related aspects. This accounts to one-half of the 100 million on the global front[5]. Another factor that is more alarming is the budgetary allocation on health in India. The Survey reports indicates that only 1.4 % of the GDP is catered to health by the respective governments.

Only 1.4 percent of India's GDP is spent by the government on health. By allocating 2.5% of the GDP to health as a portion of government spending by the end of 2025, the health Policy set out its goal in 2017[6]. Considering the above report, though this seems promising, it is too little. However, if you compare these statistics to a British national at the end of her life, it is made easier as the patient would receive comprehensive communication about her condition along with various alternative options by a healthcare service provider.

The Philosophical and Historical Perspective

Ancient traditions in India permitted a man to end their lives. The same could be seen in ancient Greece and Rome.[7] The epics of Ramayana also highlight that Lord Rama and his brothers took JAL samadhi in river Sarayu near Ayodhya[8]. Even Lord Buddha attained death. Mahatma Gandhi also advocated the idea of wilful death as he allowed one of his calf's to be euthanized. Hindus believe in cycle of rebirth and reincarnation, and it is through this cycle that it is possible to attain moksha. One of the acceptable ways to end their life in certain circumstances is through prayopavesa.[9] But they do not believe in non-violence, and it is only when the body has served its purpose and is burdensome. Most of the Hindus would believe that a physician should not accept a patent's request for euthanasia as doing so will cause the body and soul to be separated at an unnatural time.

Essentially the faith of Christianity is unified in the condemnation of euthanasia. Be it Roman Catholic Church or the Orthodox and Protestant churches, a united voice has been raised against euthanasia and suicide. The reason behind this is the strong Christian belief that life is a gift of God and only he hath the right to give or take it away.

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[4]https://impact.economist.com/perspectives/sites/default/files/2015%20EIU%20Quality%20of%20Death%20Index%20Oct%2029%20FINAL.pdf (Last visited on September 06,2022).

[5] A joint report by the world Health organization and the World Bank, 2015.

[6]Ministry of Health and Family Welfare, https://main.mohfw.gov.in/sites/default/files/9147562941489753121.pdf , (Last visited on June 06,2020).

[7] Jay Tareja and Satyam Tareja, Euthanasia: The Last Right, Cri LJ, 154, 153-163 (2009).

[8] BAL KRISHNA, THE RIGHT TO DIE: INDIAN PERSPECTIVE, Published in Kusum (Rd.,) Suicide some reflections, P.24, (Regency Publications, New Delhi 1995).

[9] Achal Gupta, Euthanasia-Indian view,p. 4 pp.1-21 , https://www.scconline.com/blog/post/2020/11/28/euthanasia - indian-view/ (2021) (Last visited on August 05,2021).

Pope Benedict xiv said, Freedom *to kill is not a true freedom but a tyranny that reduces the human being into slavery."* Although it may seem an uncontested view on euthanasia, there are a few anomalies here too. In 1995, Pope John Paul gave a declaration to the bishops and holy men of Christianity. While he sought to condemn the practices of euthanasia and abortion in unequivocal terms the following extract is noteworthy. In *such situations, when death is clearly imminent and inevitable, one can in conscience refuse forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted"*[10]. while the rest of the address clearly condemns euthanasia these words seem to imply the willingness to make an exception. However, it must be stressed that Christianity is conflicting to PAS and voluntary active euthanasia. "It is I who bring both death and life" is the biblical quote coupled with the fact that God created man in his own image that leads the Christian believer against suicide and euthanasia.

The Islamic Code of Medical Ethics, as endorsed by the inaugural international conference on Islamic Medicine, addresses various aspects related to life and death. It emphatically states that practices such as "Mercy Killing," which is akin to suicide, are not supported except in atheistic ideologies that believe our existence on this earth is followed by emptiness. The assertion that killing is justified for those suffering from incurable and agonizing illnesses is also contradicted. This is because there are no human pains that cannot be significantly alleviated through medication or appropriate neurosurgical interventions.

The Islamic European Council for Fatwa and Research has made a ruling regarding the use of medical machines. According to their ruling, these machines are beneficial for patients as they aid in breathing and promote blood circulation. However, if patients are already clinically dead or have suffered severe brain damage resulting in the loss of all senses, it is deemed unnecessary to continue using these machines. This is because it not only incurs significant costs for the hospital but also denies other patients who may urgently require them. Therefore, it can be concluded that Islam does not condemn Voluntary Active Euthanasia[11].

The Jains are unique in their belief of birth and death. In their search for moksha, some Jains spend the last days of their life enduring severe hunger and thirst and exposing their body to severe conditions. This is known as *Sallekhana*[12] or *Samadhi* however this should not be construed to be a pro-suicide approach for, the Jain religion lays down strict guidelines as to the performance of the

[10]Saint Paul II National Shrine, http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documnts/hf_jp-ii_enc_25031995_evangelium-vitae_en.html , (Last visited on April 10,2016)

[11]Mohammad Madadin et al., The Islamic Perspective on Physician Assisted Suicide and Euthanasia, Volume 60, Issue 4, https://journals.sagepub.com/doi/abs/10.1177/0025802420934241 , (Last visited on July 10,2021).

[12] SETTAR S, INVITING DEATH, Indian Institute of Art History, (Karnatak University, Dharwad, 1986).

ritual of Samadhi. It requires the person who so desires, to be completely fulfilled in life and with no responsibilities. It requires the renouncing of the material world and a deep sense of commitment to attain moksha. It is only after these conditions are fulfilled and the Sanga grants permission that the ritual may be undertaken. Many great Indian rulers and saints performed this ritual especially at Shravana Belgola in southern India. Bindusara, Chandragupta Maurya to name a few attained salvation in this fashion on this hill.

The case of *Nikil Soni v. Union of India*[13] and others highlighted the practice of Santhara/Sallekhana within the Shvetambaras group of Jain religion. This voluntary vow meditation, known as Santhara, involves refraining from consuming food, water, and all forms of nourishment as one nears the end of life. It is important to note that Sallekhana is not about ending one's life, but rather accepting death with grace.

A PIL filed by advocate Nikhil Soni in 2006 had challenged the legality of Santhara. The petitioner contended that Santhara, which is fast unto death by giving up food and water, violated the most precious right to life. The Rajasthan High Court held 'Santhara' as illegal making it punishable under section 306 and 309 of IPC,1860 which related to abetment of suicide. But the Supreme Court in its recent decision on the issue of Jain Santhara presided by the bench consisting of Chief Justice of India H.L.Dattu and Justice Amitava Roy granted a stay on the judgement of the Rajasthan High Court[14].

THE HIPPOCRATIC OATH

The doctor's dilemma on mercy killing orbits around the Hippocratic Oath, which is taken as an oath by all the medical graduates during the entry into their profession. A part of the oath states that "I will give no deadly medicine to any one if asked, nor suggest any such counsel; and in like manner I will not give a woman a pessary to produce abortion.[15]" It is said that there is an absolute obligation on the medical practitioner to treat the patient in all circumstances. The medical practitioner has a duty to make all efforts in the direction of prolonging human life. There exists a general feeling that the practice of euthanasia would severely damage the ethical image of the medical profession. However, the supporters of euthanasia argue that the original Hippocratic Oath has lost its significance in the modern society, which has seen drastic socio-economic, political and moral changes.

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[13] D.B. Civil Writ Petition No.7414/2006,JudgementdeliveredbyHigh CourtofRajasthanonAugust10, 2015.

[14]Supreme Court lifts stay on Santhara rituals of Jains, The Hindu, 1st September, 2015, Available at http://www.thehindu.com/news/national/supreme-court-lifts-stay-on-santhara-ritual-of-jains/article7600851.ece (Last visited on July 09,2016).

[15] Boston University, https://www.bu.edu/arion/files/2010/03/Arenas_05Feb2010_Layout-3.pdf (Last visited on April 09,2017).

If the physician tries to prolong the unavoidable (death) and thereby the patient is not allowed for a dignified death, then it can be said that the doctor is not said to have acted in the best interest of the patient. Thus, while an endeavor to prolong life contravenes the promise to relieve pain, relief of pain by killing violates the promise to prolongation and protection of life. In the context of individual autonomy, the doctors face a significant predicament when it comes to making appropriate decisions. It is crucial for a patient to give consent before a doctor can intervene in their personal well-being by offering all available medical treatments. The right to reject treatment, which is another way of expressing the concept of autonomy, has long been established as a fundamental principle in common law[16].

Brassington[17] provides a clearer definition for euthanasia and he also sharply criticizes the way the Indian legal system persists in its loose usage of this term which is considered obsolete by the medical profession. [18]

Legal Framework in India

The current situation in India is a patchwork of judicial rulings, constitutional clauses, The Human Organ Transplant Act of 1994, and professional guidelines because there is no comprehensive legislation in place yet. Additionally, the Consumer Protection Act of 2019 and the Indian Medical Council (Professional Conduct, Etiquette, Ethics) Regulations, 2002, as well as the erstwhile Indian Penal Code of 1860 with the new Bharatiya Nyaya Sanhita Act, 2023, the Mental Healthcare Act of 2017, and the Registration of Births and Deaths Act of 1969, have some bearing.

LEGISLATIVE EFFORTS TOWARDS LEGALISATION OF EUTHANASIA

In 1985, the first move towards euthanasia becoming legal in India was made in response to patient demand. A bill was introduced in the Maharashtra legislature with clauses exempting medical professionals who perform euthanasia by withholding life-sustaining care from legal and criminal liability. Patients have to request that this be done. A provision for advance medical directives was also included in the Bill, although it was ultimately rejected. But until now, the proposed Bill was unable to become actual law. Later, it was revived with modifications through the 241st Law Commission Report in 2012, but that effort was unsuccessful as well.

Over the years, a small number of private member bills have also been introduced in the Lok Sabha. One of the first of these, by Shri C.K. Chandrappa, established guidelines for giving a compassionate, humane, and painless end to life. This was applicable to patients with terminal, painless illnesses that render them totally and permanently immobile or to people who are unable

[16] IAN FRECKELTON, CAUSATION IN LAW AND MEDICINE, P. 265(aldreshot: Ashgate,2002).
[17] Brassington I. "What passive euthanasia is", BMC Med Ethics, 2020 May 14;21(1):41.
[18] Brassington I, " How not to talk about passive euthanasia: A lesson from India. Indian J Med Ethics", 2021, Jan-Mar; VI(1):1-11.

to perform basic daily tasks on their own. Several law commission reports have been submitted for discussion regarding this important matter.

LAW COMMISSION REPORTS

Medical treatment to terminally ill patients (Protection of patients and Medical Practitioners)- 196th Report

The position of withholding or withdrawing medical treatment, which includes artificial nutrition and hydration from terminally ill patients, was extensively discussed and analysed in this report. It addressed some important issues like the patients' competency, what constitutes an informed decision, what is meant by the patient's best interests, whether the patient, their surrogate, or the doctor can ask the court of law to declare that a doctor's act or omission is legal, and whether such a decision will be binding on the parties and doctors in subsequent civil and criminal proceedings. It also recommended having a law to protect patients who are found to be terminally ill.

It was suggested that if a "competent patient" with a fatal illness makes a "informed decision" to forgo medical care, the doctors must abide by that choice. If a patient is under the age of 18, mentally incompetent, or any of the following;
(i) is unable to comprehend the facts needed to make an educated decision on his medical care; (ii) is unable to remember that information; (iii) is unable to apply that information in order to make an informed decision; (iv) is unable to make an informed judgement as a result of brain damage; (v) convey his well-informed choice regarding the medical care,
The Report comes to the conclusion that "Assisted suicide" and "Euthanasia" remain crimes under Indian law. As a result, the Report's focus was limited to examining the various legal concepts and understandings that apply to "withdrawal of life support measures" and to making suggestions about how and under what circumstances the medical profession might decide to withdraw life support.
The primary distinction between the Law Commission's recommendations (in the 196th Report) and the law established by the Supreme Court (pro tempore) is that the Law Commission recommended enacting an enabling provision for requesting declaratory relief before the High Court, whereas the Supreme Court mandated obtaining High Court approval before implementing the decision to withdraw life support from a patient who lacks mental capacity.

It should be mentioned that the Law Commission of India specifically distinguished between euthanasia and end-of-life decisions (EOLD) in their 196th report. When a patient requests euthanasia, a doctor must provide a fatal medication as a gesture of mercy. FLST judgements are

fundamentally different from other choices since they simply involve letting someone die not interfering with a process of death that has already begun. It declared FLST to be acceptable when a competent patient declines treatment. Refusing medical care does not constitute a suicide attempt, and a doctor's recommendation of FLST does not amount to a suicide attempt.
The Law Commission of India found Section 309 of the IPC, 1860 to be cruel in its 210th Report.[19]

- **Passive Euthanasia- A Relook- 241st Report**

This Report[20] recommends that passive euthanasia, which is permitted in many other nations, be recognised legally in our nation as well, subject to a few safeguards, as indicated by the 17th Law Commission of India and as decided by the Supreme Court in the case of Aruna Shanbaug[21]. From a legal and constitutional standpoint, it is not problematic. Providing the doctor is satisfied that the patient has made an "Informed decision," a competent adult patient has the right to insist against receiving any invasive medical treatment that involves artificial life support measures or treatment.

CONSTITUTIONAL FRAMEWORK PERTAINING TO EUTHANASIA

One of the first instances to hold that the right to "life" encompasses more than just physical survival was *Maneka Gandhi v. Union of India*[22], which established that the right to live with dignity is also included in the definition of "life." The Supreme Court reaffirmed this position in *Francis Coralie v. Union Territory of Delhi*, holding that the right to life encompasses more than just bodily survival and extends beyond simple animal existence.

Judiciary in India has to a certain extent tried to clarify the scope of euthanasia in India in series of cases relating to suicide and its aspects. This question for consideration for first time before the court in *State v. Sanjay Kumar*. In this case, a division bench of the High Court of Delhi criticised section 309 of the IPC, 1860 as an anachronism and a paradox. Later the matter again came before the High Court of Bombay in *Maruti Sripathi Dubal v. State of Maharashtra*.[23]

[19] The Law Commission of India, 'Humanization and Decriminalization of Attempt to Suicide', 210threport, http://lawcommissionofindia.nic.in/reports/report210.pdf, (last visited on August 04,2019).
[20] RachitGarg, Iseuthanasialegalin India,April 25,2022,https://blog.ipleaders.in/is-euthanasia-legal-in-india/ pg. 1-38. (last visited on May, 01,2022).
[21] (2011) 4 SCC 454.
[22] AIR 1978 SC 597.
[23] AIR 1987 CrLJ 549.

In *Chhena Jagadesswar v. State of Andhra Pradesh*[24] the Andhra Pradesh High Court determined that section 309 was constitutionally legitimate. It stated that under Article 21 of the Indian Constitution, the right to life does not include the right to death as a fundamental right.

Another Supreme Court division bench ruled in *P. Rathinam v. Union of India*[25], upholding the judgement of the High Court of Bombay in the *Maruti Sripati Dubal case*, that Article 21's right to life also includes the right to die and that Section 309 of the Indian Penal Code is unconstitutional. A Five Judge Constitution Bench of the Supreme Court in Gian Kaur overruled P. Rathinam by laying down that Article 21 guaranteeing the right to life did not include a right to die or right to be killed.

The Court also referred to the case of *Naresh Marotrao Sakhre v. Union of India*[26] wherein Lodha J. Stated that euthanasia or mercy killing is nothing but homicide whatever the circumstances in which it is affected.

Aruna Shanbaug Judgement: The Confusion continues

The case of Aruna Shanbaug[27] is considered to be one of the landmark judgements which reopened the debate on euthanasia in India. The Court broke in a new ground by allowing passive euthanasia or withdrawal of life support systems on patients who are either brain dead or in a PVS. Despite the absence of violation of fundamental right which is generally required for invocation of jurisdiction under Article 32 , Due to the significance of the questions raised, the Supreme Court chose to go further into the case's merits. The House of Lords decision in *Airedale NHS Trust v. Bland*[28], which has been applied in countless cases throughout the United Kingdom, was substantially cited by the Supreme Court of India in pronouncing its ruling in the Shanbaug case. In the UK, the legislation is quite clear when it comes to incompetent patients; doctors may remove artificial life support if it is in the patient's best interest and they are acting in accordance with their professional judgement.

The Hon'ble Supreme Court of India applying the doctrine of Parens Patriae laid down certain norms to be followed on the withdrawal of life support system in India until the Parliament makes a law on this subject.

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[24] 1988 Cri LJ 549 A.P
[25] (1994) 3 SCC 394.
[26] (1995) Crim. L.J 96.
[27] RatnaKapur, The Spectre of ArunaShanbaug, The Wire (May18,2015),<https://thewire.in/law/the-spectre- of-aruna-shanbaug (last visited on August, 2019).
[28] Jim Howe, The Persistent Vegetative State, Treatment, Withdrawal, and The Hillsborough Disaster: Airedale NHS Trust v Bland', (2006) 6(4) Practical Neurology 238, http://dx.doi.org/10.1136/jnnp.2006.097659 (last visited on August 2020).

i. The ability of a person to consent to the passive euthanasia of a terminally ill person on his behalf was carefully considered in this opinion. The patient's parents, spouse, or other close relatives must genuinely decide that ending life support is in the patient's best interests. In the absence of any of them, this choice can be made by an individual or group of individuals acting as the next friend. Additionally, the medical professional making the decision for the patient should act honestly and in the latter's best interests.

ii. The Supreme Court noted, among other things, that it required permission from the relevant High Court to stop life support even when the decision was made by close relatives, medical professionals, or a close friend. The Court considered this while attempting to avoid the danger of family members or others causing trouble in order to inherit the patient's possessions. The Court stressed the importance of protecting the patient's interests in making this statement.

iii. In response to the ruling in Airedale, the Indian Supreme Court ruled that the High Court was the appropriate institution to sanction the removal of a person's life support system. To decide whether to remove life support from an incompetent individual, the concerned high court would use its authority under Article 226 of the Indian Constitution, which grants not only writ jurisdiction but also the authority to issue directions and orders. Both the public and the patient's family will benefit from this.

Iv.The Court also specified the steps the High Court must take when receiving such an application. In the event of a request to withdraw life support, it was suggested that the Chief Justice of the relevant High Court immediately appoint a bench of at least two judges to decide the request after receiving the appropriate expert opinion from a panel of three reputable doctors, preferably one neurologist, one psychiatrist, and one physician. Before delivering its report to the bench created by the High Court, such a committee of doctors is required to carefully examine the patient, check the patient's records, and solicit opinions from hospital staff.
V.The Court further ordered that notification be sent to the state, immediate family, and next friend. The High Court would decide the application after hearing them.

Thus, Aruna Shanbaug judgement stands as a watershed in the history of euthanasia in India. But as mentioned in the judgement, these norms are temporary and operative until the parliament comes out with a law. Also this case illustrates the misconception about the concept of euthanasia in India.

Implications of the Aruna Shanbaug Judgement

The decision is seriously defective on two aspects about the distinction it draws between active and passive euthanasia, in addition to making a conscious effort to denigrate active euthanasia by using words like "force" and "kill." First, there is no differentiation between the various forms of passive euthanasia. The terms withholding and withdrawing are used synonymously throughout the document. However, there is a minute divergence between the two that pertains to the more significant split between active and passive euthanasia. When life support is withheld, it means that a critical medical procedure is not carried out, such as a kidney transplant when it is vital to the patient's existence.

The doctor would have to commit omissions in this situation. On the other hand, turning off life support means stopping the medical treatment that is already being used to keep the patient alive. In Aruna's instance, the legal statement notes that ceasing medical intervention would also stop the food supply, hence this would include commissioning acts. We must keep in mind that the doctor is fully aware that withholding or stopping medical care will almost certainly result in death. Now, if the doctor's agency serves as the criterion for differentiating between passive and active euthanasia, that is, if in passive euthanasia the doctor simply passively conducts acts of omission while in active euthanasia the doctor actively commits actions of commission, then discontinuing medical care would be considered active euthanasia.

What is regarded as the strongest argument against passive euthanasia reflects the second, and most significant, weakness in the legal debate over the various modalities of euthanasia. The patient fades into the background, and it appears that euthanasia's consequences on everyone else are more significant than those on the patient.

Thirdly, the Court did not consider the bigger question of terminal care for incurable patients (whether or not the patient has the right to self-determination and to refuse treatment) in the *Shanbaug case*, just the implications of euthanasia (whether or not the patient has the right to live or die). Evidently, there is a terminology misunderstanding.[29]

Fourthly, according to the majority of medical literature, FLST-related involuntary passive euthanasia is no longer a term that is employed in modern medicine. In actuality, this phrase solely applies to Nazi Germany's holocaust-era policies. In fact, only competent, non-critically sick

[29] R. K Mani, P Amin et al., Guidelines for end-of-life and palliative care in Indian intensive care units: ISCCM consensus Ethical Position Statement, Vol. 16 Issue 3, Indian Journal of Critical Care Medicine, Pg. 166 - 178, (July- September 2012).

persons are eligible for euthanasia in nations where it is legal. Additionally, there is no history of euthanasia used involuntarily in medical practise.

The recent Common cause verdict

In a writ petition, an NGO by the name of Common Cause requested that "Advance Directives and Attorney Authorizations" be made legal so that those who are terminally ill or in a permanent vegetative state can exercise their right to do so[30].

Regarding advance directives and attorney authorizations, the Hon. Supreme Court has established specific processes and protections. According to the rules, only an adult who is of sound mind and is able to communicate, relate, and comprehend the repercussions of signing the agreement may do so willingly after receiving all necessary information. The letter must reflect informed permission and clearly and unmistakably specify when medical care may be discontinued or additional treatment may not be administered in an effort to extend life. It must also provide the name of a guardian who will give approval to refuse or withdraw treatment in accordance with the advance directive and include a mechanism for revocation by the executor. When there are multiple advance directives, the most recent one will take effect; however, the rules do not cover circumstances where the instruction is unclear. The paperwork must be countersigned by a Judicial Magistrate of First Class (JMFC), who is expected to record satisfaction on the voluntariness and informed consent of the executor, and two attesting witnesses who should preferably be independent must be present.

A physical and digital copy of the document must be stored with the JMFC in order to guard against manipulation in the future, and a third physical and digital copy must be stored with the Registry of the Jurisdictional District Court. Additionally, the local authority, such as the municipality or panchayat, must keep a copy for its records. If the family members are not aware, they must be made aware, and the document can only be put into force at the doctor's request, when the patient is terminally ill and after the doctor has confirmed the document's authenticity with the JMFC. The hospital administration must take action if the doctor has a conscientious or religious objection. The doctor is required to inform the hospital administration of the members of the medical board, which will be made up of the head of the treating department and three experts from different fields (such as medicine, cardiology, nephrology, etc.) who have experience in critical care and have been practising for at least 20 years overall.

[30] Aparna Chandra, Mrinal Satish, Misadventures of the Supreme Court in Aruna Shanbaug v. Union of India, Law and Other Things (March 13, 2011), https://lawandotherthings.com/2011/03/misadventures-of-supreme- court-in-aruna/ (Last visited on November 09,2020).

When the chosen guardian is present, the Board will assess the patient and decide whether or not the instructions in the document may be fulfilled. If this preliminary opinion is favourable, it will be forwarded to the jurisdictional Collector, who will then establish a new medical board consisting of three expert doctors from different specialties with at least 20 years of experience, excluding the doctors who were on the prior board, with the Chief District Medical Officer serving as chairman. The JMFC will be informed of the decision if, after seeing the patient, this board concurs with the judgement of the hospital-created board.

One of the professional bodies in medicine, The Indian Society of Critical Care Medicine[31] seeking clarification of the safeguards provided in the Common Cause judgement in 2018 filed a petition before the Hon'ble Supreme Court on the procedure to be followed to get an advance directive and challenged that the very object of laying down the safeguards is defeated with such elaborate procedure. The petition was filed in 2019 immediately after the Common Cause judgement was delivered.[32]

The Court after hearing the arguments has made an attempt to simplify the procedure of getting an Advance directive. It now mandates that the document must be notarised by a gazetted officer in the presence of two witnesses. The obligation is imposed on the witnesses and the notary that the AD is executed without any coercion or inducement of compulsion to the patient making the AD. As opposed to the earlier Judgement in 2018, the Court has deleted the mandate of the role of JMFC attesting the document.

Once the advance directive is handed over to the treating physician and the treating physician agrees to abide by that directive, He must satisfy himself that the AD is to be administered only in cases of terminally ill and is undergoing prolonged treatment or that the patient has been surviving on life support with no hope of recovery.

He then will have to seek confirmation from two Medical Boards comprising of the requisite members. The primary Medical Board shall consist of the treating physician and a minimum of two experts with five years of experience. The earlier judgement mandated for a minimum of twenty years of experience. The secondary board shall comprise of a medical practitioner nominated by the district chief medical officer and two subject experts with a required five years of expertise. It is to be ensured that the secondary board members are independent of the primary medical board

[31] (2018) 5 SCC 1.
[32] Common cause v. Union of India MA No. 1699/ 2019 in WP (C) No. 215/ 2005 on January 24, 2023.

members.

The Court has mandated the Boards to provide its opinion withing 48 Hours to speeden the process and to ensure a dignified death to patients.

The hospital shall convey to the Jurisdictional Judicial Magistrate First Class before giving effect to withdrawing of the treatment. This again becomes an elaborate procedure wherein the patient in spite of having an Advance directives will have to go through a three tier system before accepting the directive. In cases where there are no AD, the treating physician shall inform the hospital which shall constitute the Boards. In case of any conflict between the two boards, the family member or the treating doctor or the nominee of the patient or even the staff of the hospital may file a writ petition before the high court of the respective state under Article 226 of the Constitution.

MEDICAL COUNCIL (PROFESSIONAL CONDUCT, ETIQUETTE AND ETHICS) REGULATION, 2002

Regulation 6.7 defines practising euthanasia as unethical behaviour. Following one of the two techniques enables the removal of life support after brain death. A team of doctors, including the doctor in charge of the patient, the chief medical officer or medical officer in charge of the hospital, and a doctor chosen by the in- charge of the hospital from the hospital staff, must declare the withdrawal of support system as one of the operations. Alternately, the Transplantation of Human Organs and Tissues Act of 1994's provisions may be followed to remove the support system. The Medical Council of India's laws mentioned above, nonetheless, do not constitute India's legal justification for euthanasia.

Various forms of non-judiciary guidance has been made available to public and the clinicians during the last 2 decades with Indian society of critical care and Indian society of palliative care separately and jointly releasing various statements. Private health care organisations releasing their version of EOLC policy (BLUE MAPLE) and finally Indian council of medical research[33] releasing version of the same in collaboration and became backbone of the perseverance for better EOLC in India. When one looks at the efforts and in particular their interaction with the judiciary, we could try understand the strategy to improve EOLC.

Medical treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016- A Critical Analysis[34]

[33] Mathur R, "ICMR Consensus Guidelines on 'Do Not Attempt Resuscitation'", Indian J Med Res. 2020 Apr;151(4):303-310.

[34] Dr David Staunton, Dhvani Mehta et al., Analysis of the Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016, Vidhi Centre for Legal Policy, 2017.

A draft Bill titled Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016, was released by the Ministry of Health and Family Welfare. Though the Bill was a much anticipated one, it did not bring in any change to the practical inherent problems. It only tried to replicate the recommendations made in the 196th and 241st Law Commission Reports.

The Bill now exists but has certain fundamental flaws, despite judicial statements calling for legislation to protect both medical professionals and patients. The draft Bill in its present form suffers from basic lacunaes.[35]To bring the Bill into compliance with the Supreme Court's decision in *Common Cause v. Union of India*, it needs to be completely reevaluated.

The definition clause is incomplete and vague. The term 'euthanasia' has not been defined in the Bill. Since the whole debate is pertaining to euthanasia, there is dire need to define the term. Another flaw in the definition clause is the vague definition of 'terminal illnesses.[36] It defines terminal illness as any illness that leads to a vegetative state without any meaningful existence of life. This does not clearly define as to whether it would apply to those people who are suffering from a disability or who are fragile due to old age. Would this constitute that their life is not meaningful? It is very important that the definition will need to tally with the scientific or medical understanding.

The draft Bill does not define 'death', as the definition of death is different in different context. It simply specifies the procedure a physician must follow in order to withhold or remove life support from "terminally ill patients."

Section 2(j) of the Bill has laid out the definition of 'minor' as per the provisions of the Indian Majority Act, 1875. This contradicts with Section 2d which refers to "... 'Incompetent patient' means a patient who is a person below the age of 16 years..." It is noteworthy that except the recent amendment to the Juvenile Justice Act which allows children between the age of 16 and 18 years to be tried as adults for heinous offences, the age of consent in Indian legal framework is 18 years .These inconsistencies within the draft Bill and with the legal age of consent prescribed by other acts, such as the Indian Majority Act, 1875 or the Indian Contract Act, 1872 require attention.

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[35] David Staunton, Dhvani Mehtaetal., Analysis of the Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016 Vidhi Centre for Legal Policy, 2017.

[36] Sub-clause (m)of Clause 2 of the Bill defines' terminal illness' as:(i) Such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or(ii) Which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient.

Despite the fact that the Bill deals with palliative care, it does not specify any standards that must be upheld in order to adequately safeguard the patient's dignity. The Bill fails to protect the medical professionals from any liability in case the providing of palliative care hastens the death of the patient.

However, the Bill fails to recognize that the duty to provide palliative care is not a blanket duty but, it ought to be superseded by the informed consent of the patient. It is important that the law recognizes that palliative care ought to be provided. Several international forums have recognized the principle of palliative care as a human right. However, as palliative care is a form of medical treatment that is to be carried out on a patient, it is imperative that the informed consent of the patient is obtained before the option for any form of care.

In India, this form of Hospice care is emerging in the Indian health market as a result of the globalization process. India though has welcomed this new area it is not legally capable enough to handle the changes resulting through this new concept in health sector. It provides a sort of relief to the patient (sufferer) and the caretaker (family or friends) by providing alternative healthcare. It lacks proper legal framework to deal with adversities arising out of such incoming system.

The term palliative is derived from the Latin term 'Palliare' means 'to cloak'.[37] It means a medicine which intends to release pain without dealing with the cause of such pain. Palliative care is a specialised medical care for people with serious illness. It is a type of cure which releases a sufferer from the pain which he is undergoing at that particular moment. Palliative medicines in the form of painkillers reduce the intensity of pain suffered by the patient without touching the curing part. According to the World Health Organisation, palliative care is an approach that enhances the quality of life for patients and their families dealing with the issues brought on by life threatening illnesses.[38]

The idea of palliative care was started in the US in the year 1967 by Dame Cicily Saunders by establishing Saint Christopher's Hospice. Later in the year 1986, palliative care concept ventured into the Indian health market in the form of Shanti seva sadan in Mumbai Hospice in the same year.

There are no special laws relating to or dealing with palliative care in India. However they have certain guidelines formulated by the Indian Medical Council and national palliative care policy

[37] Shagufta Anjum, Palliative Care: A balm to Patients at Death'sDoorintheHealthSector24ALJ320,Pg.321 (321-325) (2016-17).

[38] World health organization on the definition of Palliative care http://www.who.int/cancer/palliative/definition/en/ .(last visited on April 09,2020).

declared by the Ministry of Health and Family Welfare constituted by the Government of India. The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) curtailed palliative care activities in India by banning the use of certain drugs acting as pain killers in relieving pain. NDPS Act turned out to be a draconian legislation which punished people who are using morphine or opioids without asserting the reason for their use. Now this restriction is removed by passing off the NDPS (amendment) Act, 2015 which has legalised the use of morphine as pain killer.[39]

Article 12 casts an obligation on their member states to strive for maintaining high standards of healthcare (mental as well as physical) and creates suitable conditions for treatment in the event of sickness. India being a signatory to this in the absence of legislation has laid down certain guidelines dealing with palliative care.

In countries such as the US, Palliative care is governed by Palliative Care Access Act which paved way for the enactment of Palliative Care Information Act in the year 2011. The Act of 2011 confers an obligation on the doctors, nurses, medical practitioners to inform critically ill patients about palliative care services so that the patients can opt for the same.[40] Palliative care also includes the identification and treatment of social problems at both the micro and macro levels, which is another benefit. At the micro level, relationships with family and friends are the main sources of the problems. The problem is serious in India since the majority of families are devastated by the cost of treatment, which is primarily a private expense. This is remedied through counselling on a larger scale. The majority of palliative care facilities try to offer families affected by the disease vocational rehabilitation.

Conclusion and Recommendations

In light of the aforementioned discussion, it is apparent that the 2016 Bill as proposed by the Ministry of Health and Family Welfare is marred with loopholes and fails to appropriately appreciate important aspects of advance directives, palliative care, and provides a flawed understanding of the important aspect of a terminal disease.

According to the broad definition of "best interests" under this Bill, the court is required to make its decision in the patient's best interests. However, it is unclear whether or not the family's financial

[39] ibid
[40] Section 2997-C of the US Palliative Care Information Act, 2011.

situation should be taken into account when deciding whether or not to withdraw or withhold medical treatment.

Such provisions in the draft Bill highlight the need for an alternative method of handling questions of end-of-life care in a country where there is frequently a missed opportunity cost of another life for every patient treated due to a resource shortage and the courts are burdened with a massive backlog and remain inaccessible to certain groups of the population.

Another problem with the current Bill is that the High Court's approval is required in every situation where medical care is withheld or withdrawn for people who are incapable.[41]

The Bill though attempts to define 'Advance Directive' and a 'medical power of Attorney'·The draft Bill's rejection of advance instructions by deeming them invalid under Section 11 is another fundamental flaw.[42] The potential abuse of advance directives is the only justification offered in the law commission findings. This merely demonstrates a pervasive mistrust of both the medical community and humans in general. The Bill though defines what an advance directive and a medical power of Attorney is but fails and does not recognize the concept of advance directives. Given the potential to reduce abuse through the addition of safeguards like the option of registering or revoking directives, the state should reevaluate such a broad dismissal.

It allows for the medical practitioners to consider the document but not be binding in nature thereby making it void under Section 11. One of the most important principles that governs the decision on withholding and withdrawing of futile treatment is the right to a dignified death. Section 11 is a clear violation of this principle as these are accepted judicial norms in both Gian Kaur and the Aruna Shanbaug case.

However, in light of the recent judgement on approval of an advance directive, it needs to be reconsidered and the provision on advance directive needs to be incorporated. Therefore, major portion of the 2016 Bill needs to overhaul to suit the latest developments. A new legislation which recognizes this concept of advance directives will have to be enforced.

The Bill under clause 12 obligates the Medical Council of India to issue guidelines on withholding and withdrawing of treatment from time to time to facilitate medical practitioners to make end of

[41] Clause 9 of the Bill.

[42] Kelly Dhru, Ending a Life in India: The Fault in Our Laws, https://thewire.in/46970/end-of-life-in-india-the- fault-in-our-laws/ (last visited on March 31, 2017).

life care decisions. However, the erstwhile statute i.e the Medical Council of India, 1956 has been repealed and the National Medical Commission Act, 2019 now governs the Medical Profession. The Bill nowhere mentioned about the framework pertaining to palliative care. Hence, it must be made imperative for the National Medical Commission through its autonomous boards to frame effective SOPs and provide appropriate training in palliative care.

A comprehensive legislation on deciding the Right to Die aspect and the whole field of End-of-Life care would be ideal. It is time for the Government to create public awareness, apart from a well-planned legislation, effective implementation and strict adherence. There is also a need for amending the relevant provisions of the erstwhile Indian Penal code and the new Bharatiya Nyaya Sanhita Act, 2023. Advances in Palliative care could be an option to patients whose quality of life is negligible.

Reimagining the Legal Dimensions of Right to Be Forgotten in the Age of Generative AI

Dr. Abhishek Sharma Padmanabhan[1]
Prof (Dr.) Omprakash[2]

1. Introduction

The original meaning of the term Right to be Forgotten (RFR) was to indicate that once-legitimate material could subsequently lose its legitimacy and may no longer remain relevant. It is important to consider the spatial and temporal aspects while analysing the legal ramifications of the RFR. The Right to Erasure and the Right to Forget are the two parts that make up the RFR (including the right to object)[3]. A person has the RFR in order to safeguard their dignity, which implies they should not be held responsible for things that have happened to them in the past. Everyone has the power to erase their own information and data when they have the right to do so. Legal precedents also uphold this control by establishing individuals' rights to privacy, self-determination, and personal data[4].

The RFR is acknowledged in various clauses of International Legal Instruments relating to Human Rights, but it is not directly expressed in the majority of them. RFR is firmly rooted in human rights principles and is recognised in the General Data Protection Regulation (GDPR), most especially in Article 17, which relates to personal autonomy and management of one's personal information and also grants individuals the right to seek the erasure of their personal data under certain conditions[5]. Article 8 of the European Council of Human Rights (ECHR) guarantees the right to respect for private and family life, which is inherently linked to this right as well as the larger human right to privacy[6]. Considering this in this light, the right to erasure as outlined in the GDPR can be viewed as a contemporary manifestation of the basic human right to privacy. This ensures that safeguarding personal data is not merely a legal requirement, but rather a reinforcement of the autonomy and dignity of individuals in this digital era.

Along with other basic Human Rights, the Right to Privacy stands out as an integral part of the RFR . Privacy is one of the most fundamental human rights guaranteed by the EHCR in Article 8[7]. Further Article 12 of the Universal Declaration of Human Rights[8] and Article 17 of The

[1] **Assistant Professor of Law, School of Law, JAIN (Deemed to be University); sharmapabhishek@gmail.com**
[2] **Professor of Law, School of Law, JAIN (Deemed to be University); omprakash@jainuniversity.ac.in**

[3] Eduard Fosch Villaronga, Peter Kieseberg & Tiffany Li, Humans Forget, Machines Remember: Artificial Intelligence and the Right to Be Forgotten, 34 Comput. L. & Sec. Rev. 304 (2018)

[4] Jay Kaganoff, Send the Word Over There: An Offshore Solution to the Right to Be Forgotten, 41 NW. J. OF INT'L L. & BUS.S 245, 249–50 (2021).

[5] Commission Regulation 2016/679, 2016 O.J. (L 119)

[6] European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, Eur. T.S. No. 5, 213 U.N.T.S. 221, Art. 8.

[7] Id

[8] Right to privacy and the freedom from attacks on one's honour and reputation

International Covenant on Civil and Political Rights[9], two international legal documents that acknowledge the Right to Privacy, are in line with the concepts that support the Right to Erasure in the GDPR. The necessity of safeguarding individuals from unjustified intrusion into their privacy is emphasised by these mechanisms, which are all part of the data protection framework that the GDPR establishes as a result these human rights standards from throughout the world are codified into laws that can handle the complexity of handling personal data in the modern digital age[10].

2. Origin and Development of Right to Be Forgotten

The ability of the internet to permanently store information has increased the need for individuals to have control over their social identities; the RFR provides a means to that end. The right to be free from harm to one's reputation is of paramount importance within this context. In a Criminal Justice system, this privilege is critical since out dated or irrelevant evidence might hurt a defendant's chances of a fair Trial. The victims may continue to experience trauma as a result of the specifics of the crime being exposed to them time and again when information about the accused is posted online[11]. Nevertheless, internet sites frequently disregard such content, referencing the Freedom of Speech as an excuse. Due to lack of moderation, discriminatory practises like hiring people based on their arrest records—records that do not always result in convictions and may not represent their current legal status or rehabilitation efforts—are allowed to persist. The fundamental principle of the RFR is that everyone should be given the opportunity to start over. This right should not be applied for every situation where there is a threat to social identity; reputation rights may be more applicable in such cases.

In the cases of *Google v. CNIL*[12] and *Glawischnig-Piesczek v. Facebook Ireland*[13], the European Union (EU) reached different conclusions, highlighting this difference. A ruling by the European Court of Justice in the case *Google case* made it clear that although the RFR is acknowledged within the EU, its scope does not extend internationally, search engines are not obligated to remove links from results outside of the EU. This decision highlights the importance of finding a balance between the Right to Privacy and Data Protection and the Freedom of Information and Speech. This ruling emphasises the difficulties of implementing the RFR on the global web and the regional restrictions on the said right. At the same time, the *Facebook* case argues that reputation rules, rather than the

[9] Everyone has the right to privacy and protection from unlawful interference with their privacy, family, home, or correspondence

[10] Jeffrey Rosen, The Right to Be Forgotten, 64 STAN. L. REV. ONLINE 88, 89 (2012),

[11] Uta Kohl, The Right to Be Forgotten in Data Protection Law and Two Western Cultures of Privacy, 72 INT. COMP. LAW Q. 737 (2023)

[12] Case C-507/17, Google LLC v. Commission nationale del'informatique et des libertés (CNIL), ECLI:EU:C:2019:772 (Sept. 24, 2019) (judgment). (Google Case)

[13] Case C-18/18, Glawischnig-Piesczek v. Facebook Ireland Ltd., ECLI:EU:C:2019:821 (Oct. 3, 2019). (Facebook case)

RFR, should control defamation in order to guarantee full remedies. Having information that is out of current does not compromise privacy or identification; it only informs[14]. Rights to Privacy and theories of identity cannot, therefore, govern the RFR .Alternatively, this right is appropriated by the personal information self-determination paradigm. The Right to Privacy protects sensitive information from prying eyes, while the Right to social identity is concerned with one's standing in society[15]. The purpose of the RFR is to make previously disclosed information private again.

The RFR seeks to correct the fact that privacy and reputation rights do not cover old material, as it protects people' autonomy, data correctness, and integrity as a civil and human right[16]. This right is an integral part of the framework for information control, which is itself shaped by personal information rights. There are clear societal advantages to establishing the RFR on the basis of information self-determination. The dependence on these as bases may limit the right's efficacy due to the blurring boundaries between privacy and reputation in the digital age. Further data subjects should have the autonomy to decide how their personal information is used and Limits should be reasonable, even though it may lead to claims of boundless rights; after all, no claim is absolute[17]. A claim based on reputational rights alone would necessitate a high burden of evidence and might not provide enough protection, but the RFR addresses the more systemic problems of the digital age. In this age of artificial intelligence, it provides a way to balance the needs of privacy and reputation protection online while also enabling people to move past their mistakes and mistakes of the past[18].

3. Legal Evolution of Right to be Forgotten

A person's right to privacy and the public's right to knowledge are dynamically interdependent, as the court's decision in *Olivier G v. Le Soir* demonstrated[19]. The judgement highlighted how much the information landscape had changed in the twenty years following the disaster, which made the archived article less newsworthy. Even after someone has completed rehabilitation, their reputation may be unfairly impacted by past incidents due to the accessibility of accessing information online in this digital age. While unrestricted free speech is essential, the court recognised that it must be

[14] Priyank Jain et al., Big Data Privacy: A Technological Perspective and Review, 3 J. BIG DATA, 25 (Nov. 26, 2016)
[15] Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 HARV. L. REV. 193, 195 (1890)
[16] Danielle Citron & Daniel J. Solove, Privacy Harms, 102 B.U. L. REV. 793, 862 (2022)
[17] Paul Ohm, Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization, 57 UCLA LAW REV. 1701, 1701 (2009)
[18] Sarah Lageson, Criminally Bad Data: Inaccurate Criminal Records, Data Brokers, and Algorithmic Injustice, 110–116, U. ILL. L. J, (2023), https://papers.ssrn.com/abstract=4503845.
[19] Hugh Tomlinson, Case Law, Belgium: Olivier G v Le Soir. "Right to Be Forgotten" Requires Anonymisation of Online Newspaper Archive, INFORRM'S BLOG (2016), https://inform.org/2016/07/19/case-law-belgium-olivier-g-v-lesoir-right-to-be-forgotten-requires-anonymisation-of-online-newspaper-archive-hugh-tomlinson-qc/; Hof van Cassatie [Cass.] [Court of Cassation], 29 April 2016, AR C150052F, http://www.cass.be (Belg.) available at https://inforrm.files.wordpress.com/2016/07/ph-vog.pdf

balanced with the right to privacy. This case exemplifies a modern use of the right to be forgotten in balancing these conflicting interests as the court found that protecting Olivier G's rehabilitated status necessitated anonymizing the digitally archived article. Further this case illustrates how privacy rights and public information interact with one another, highlighting the on-going need to rebalance these two concepts in light of new technology and long-standing privacy concerns[20].

This right, which has been gaining traction since the 2014 landmark decision of *Google Spain v. Gonzalez*[21], tackles the contemporary problem of digital information being both pervasive and irretrievably persistent online. An issue that was less pressing before the advent of the internet, this incident highlighted the vital requirement of people exercising control over their personal data. The GDPR is an example of how the concept of data privacy has progressed from a mere privacy concern to a universally acknowledged human right, and also established a concrete right to erasure for all individuals. This legislation by laying forth a more comprehensive human rights principle that takes into account the complex ramifications of digital living, broadened the reach beyond the conventional boundaries of data protection and privacy. After much debate, the RFR was finally codified into European law in 2012[22]. The right to be forgotten was previously only applicable to children[23], but it was expanded to all natural persons following the GDPR's official adoption in 2018.

In light of the difficulties posed by the digital world, the right to erasure and the right to be forgotten both gained prominence in data protection legislation. Consequently, the notion of the RFR mooted that law should encompass both the right to erase and the right to forget[24]. Hence, it requires that principle, data controllers are required to remove personal information from public access if data subjects request their removal and there is no compelling reason to keep it.

4. Right to Be Forgotten in age of Generative AI – An Exploration

Within the framework of Generative Artificial Intelligence (Gen AI), the RFR merits special recognition. Seeking actual, as opposed to merely symbolic, ownership over one's own data exemplifies the core of true human liberty. However this independence is in jeopardy as AI develops, which might lead to the elimination of human jobs and the unnecessary disclosure of

[20] Danielle Citron & Daniel J. Solove, Privacy Harms, 102 B.U. L. REV. 793, 862 (2022).
[21] Case C-131/12, Google Spain SL v. Agencia Española de Protección de Datos, 2014 E.C.R. 317 [hereinafter Google Spain]
[22] 2012/0011(COD): Personal Data Protection: Processing and Free Movement of data (General Data Protection Regulation), EUR. PARLIAMENT LEGIS. OBSERVATORY
[23] Commission Regulation 2016/679, 2016 O.J. (L 119)
[24] Yaël Ronen, The "Right to be Forgotten" and International Crimes, in THE RIGHT TO PRIVACY AND DATA PROTECTION IN TIMES OF ARMED CONFLICT, 286–287 (Asaf Lubin & Russell Buchan eds., 2022)

private information[25]. We need to make sure technology is serving the public good ethically if we want to lessen the impact of these dangers. It may be noted that establishing a framework for the RFR under Data Law strikes a fair balance between Privacy and Open access and such regulations may be ineffective and subject to unpredictable enforcement if they lack a theoretical foundation. More specifically, decision-makers may interpret regulations differently without explicit guidance if there is no strong theoretical basis, which could lead to inconsistent rule application[26]. Due to this, there may not be consistency in applying this right, leading to quite different conclusions in comparable circumstances due to subjective interpretations of the regulations. Furthermore, regulations may fail to sufficiently foresee future technology improvements in the absence of a theoretical foundation, resulting in protection gaps and enforcement issues.[27] Therefore, in order to avoid inconsistent enforcement and ensure that the RFR adapts to new technologies, it is essential to develop a solid theoretical foundation. Further examining the connections between Privacy and Reputation is essential for understanding the RFR and its origins. It broadens these safeguards, granting authority over previously collected personal information. A trio of legally-based protections—the RFR, the Right to Privacy, and Right to Reputation upholds human dignity and expands individual liberty in the age of Gen AI.

5. Challenges in enforcement of RFR in Gen AI

Although there are certain practical limitations, the RFR is absolute in principle. The uniform regulations may not properly safeguard individual interests, as these boundaries are defined by the characteristics of the data, hence it is critical to find a middle ground between the consequences of data deletion and the public interest. In the realm of Gen AI, this delicate balancing act takes on even more complexity. The most general definition of AI is computers that can mimic human intelligence and things like language translation, decision-making, and speech recognition fall under this category[28]. The subgroup of AI known as Gen AI stands out among the rest and includes Algorithms that can create new text, graphics, or code from scratch using only the data they have been trained. An interest in Gen AI has recently taken off, due to developments in the area and the success of large language models (LLMs) where these models are trained on massive datasets and are useful for a wide range of tasks, from content generation to customer service automation,

[25] Florent Thouvenin, Informational Self-Determination: A Convincing Rationale for Data Protection Law?, 12 J. INTELL. PROP. INFO. TECH. & E-COMM.(2021)

[26] Jeevan Hariharan, Damages for Reputational Harm: Can Privacy Actions Tread on Defamation's Turf?, 13 J. MEDIA L. 186, 188 (2021)

[27] Charlene Goldfield, "The Right to Be Forgotten" and Its Unintended Consequences to Intelligence Gathering, 32 FLA. J. INT'L L. 183, 185 (2022).

[28] What Is Artificial Intelligence? Definition, Uses, and Types, COURSERA (2023), https://www.coursera.org/articles/what-is-artificial-intelligence.

because the language they produce is both intelligent and natural-sounding[29]. Their memorization and recall capabilities, however, give rise to grave worries about the right to be forgotten.

The enforcement of the RFR poses both a legal and technological dilemma in an era where artificial intelligence has the potential to perpetually store and copy personal data. A thorough evaluation of the potential and limitations of data erasure is necessary in light of the ongoing development of AI algorithms and their data processing capabilities, as well as privacy issues[30].

5.1 Infinite Memory of Generative AI

When it comes to internet privacy, the RFR is crucial, since it gives individuals the ability to ask for the deletion of their personal data. The processing of AI-generated data, however, introduces new challenges that make deletion more difficult. The complex functions of AI make complete data deletion extremely unlikely, in contrast to the conventional internet, where human removal is feasible. AI's memory, or the lingering influence of past data on future outputs, adds another layer of complexity to the problem of data erasure[31]. Further, when talking about AI and the RFR, the industry's trajectory implies a rising hesitancy in providing information. This trend toward opaqueness shows no signs of abating, and it threatens to impede efforts to discover and remove personally identifiable information stored in various AI algorithms, which could have serious consequences for the right to be forgotten[32].

The expansion of digital data, which is the basis of AI, makes the enforcement of RFR even more complicated. Manual management is becoming more and more difficult due to the ever-increasing volume of digital data. Consequently, people frequently have little choice but to depend on databases and algorithms for the indirect management of their personal data. The boundaries between legitimate and illegal uses of personal data are becoming more blurry, and the application of deletion rights is becoming more complicated, due to the fact that AI systems have been known to exploit personal data without explicit authorization[33].

In cases where AI systems have used personal data without permission or where accidents have resulted in privacy breaches highlight the need for a right to be forgotten. Even though Gen AI has been dealing with the problem of covert data collecting and its predictive abilities for a while (e.g.,

[29] Alex Friedland, What Are Generative AI, Large Language Models, and Foundation Models?, CENTER FOR SECURITY AND EMERGING TECHNOLOGY (May 12, 2023), https://cset.georgetown.edu/article/what-are-generative-ai-largelanguage-models-and-foundation-models/.

[30] Eric Bogert et al., Humans Rely More on Algorithms than Social Influence as a Task Becomes More Difficult, 11 SCI. REP. 8028 (2021)

[31] Dirk Bergemann et al., Market Design for Personal Data, 40 YALE J. ON REGUL. 1056, 1104–05 (2023)

[32] Anupam Chander & Uyên Lê, Data Nationalism, 64 EMORY L. J. 677 (2015)

[33] John Frank Weaver, Artificial Intelligence and Governing the Life Cycle of Personal Data, 24 RICHMOND J. LAW TECHNOL. 1, 11–12 (2017)

predicting personal qualities from social media activity), it still invades people's privacy and needs safeguards[34].

In this age of ubiquitous connection, private data is easily accessible and shared by everyone. Software development kits and similar technologies aggregate data from various sources to create permanent profiles that persist even when users' accounts are deleted[35]. This problem gets worse when data is no longer restricted and can be used for anything, even after an account is closed.

5.2 Complexity of Training AI Models

If AI possesses a memory notion similar to human thinking, then the right to be forgotten dispute involving AI will be a matter of concern. The scientific community is in agreement that memory is synonymous with data retention[36]. When training broad AI models on varied, huge datasets, this complexity becomes obvious. This matter can be better understood by gaining an understanding of the training process. As part of their training process, AI models consume massive datasets in search of patterns and correlations. This method allows the model to respond or make predictions using the learned data by inserting information into its parameters. Their architecture is meant to exploit all available information for best performance, hence once integrated, these models automatically lack the function to forget or dismiss specific data[37]. The RFR faces substantial obstacles in its application due to the lack of a forgetting mechanism. The concept of selective forgetting is a monumental technological hurdle due to the size and interconnection of the datasets utilised to train these models, which can encompass billions of parameters[38].

Although the GDPR states that forgotten information must not be accessible, this does not necessarily mean that data is actually removed from the AI system; rather, deletion attempts may only change the data's format[39]. Since learning is fundamental to an AI model's memory, even lost data bits can impact results, consequently, the concept of a RFR inside AI systems is more theoretical than feasible at the moment. In order to carry out a full forgetting, substantial technological developments are necessary, in addition to changes in legislation. This might necessitate the massive undertaking of retraining with updated datasets for AI models operating on

[34] B. van der Sloot, Do Privacy and Data Protection Rules Apply to Legal Persons and Should They? A Proposal for a Two-Tiered System, 31 COMPUTER LAW & SECURITY REVIEW 26 (2015)

[35] Dirk Bergemann, Alessandro Bonatti & Tan Gan, The Economics of Social Data, 53 RAND J. ECON. 263 (2022).

[36] Shlomit Yanisky-Ravid & Ben Zion Lahav, Public Interest vs. Private Lives--Affording Public Figures Privacy in the Digital Era: The Three Principle Filtering Model, 19 UNIV. PA. J. CONST. LAW 975 (2017)

[37] Fiona M. Scott Morton & David C. Dinielli, Roadmap for an Antitrust Case Against Facebook, 27 STAN. J.L. BUS. & FIN. 267 (2022).

[38] Paul Heidhues, Monika Schnitzer & Katja Seim, Equitable Interoperability: the "Super Tool" of Digital Platform Governance, 40 YALE J. ON REGUL. 1013 (2023)

[39] Jay Pil Choi, Doh-Shin Jeon & Byung-Cheol Kim, Privacy and Personal Data Collection with Information Externalities, 173 J. PUB. ECON. 113, 115- 116 (2019).

a broad scale, which could be impractical for continuous requests due to the high resource requirements[40].

The fact that AI systems retain all of their training further complicates the enforcement of RFR when applied to this technology, as removing individual data points is more like modifying memories stored in a person's brain since the data becomes interwoven with a complicated network of learned patterns and predictions[41]. The enforcement of RFR in practise calls for a comprehensive strategy that takes into account both financial considerations and the practicality of the matter at hand. Finally, although RFR is an important feature of data protection and privacy regulations, applying it to AI poses new technical hurdles, especially when dealing with generative models[42]. In light of these difficulties, we must reconsider the meaning of forgetting as it pertains to machine learning and the best ways to implement it, if any. If these technological obstacles are not overcome, the right to be forgotten in relation to AI may remain just that—a theoretical construct—and not a legally enforceable right[43].

6. Reconceptualising the RFR and Generative AI – Suggestions for effective enforcement

The development of AI has been driven by improvements in processing power and data collection due to the dominance of AI algorithms. These algorithms are now ubiquitous in many fields, including transportation, education, healthcare, and law, and they operate cognitively similar to humans[44]. Additional uses of AI include autonomous vehicles and robotic surgery, indicating a productive partnership between the two fields.

The recognition of RFR in law will help reduce data dangers associated with AI, like leaks and unlawful collecting. Due to its complexity, AI cannot be easily predicted, unlike simpler internet products. As a result, it requires specific governmental supervision. In order to level the playing field, which has historically favoured data controllers, the right to erasure and the right to be forgotten work together to give people authority over their own data[45].

A more expansive RFR is necessary to tackle the multi-faceted and long-lasting dangers presented by AI, especially considering the existing gaps in regulation. All stages of data lifecycle from collection to storage to processing to deletion should be encompassed by this right. In order to effectively implement the RFR, adjustments must take into consideration the individual

[40] Daniel J. Solove, Privacy and Power: Computer Databases and Metaphors for Information Privacy, 53 STAN. L. REV. 1393, 1394 (2001).

[41] Samantha Barbas, The Sidis Case and the Origins of Modern Privacy Law, 36 COLUM. J.L. & ARTS 21, 26 (2012)

[42] Olympia R. Duhart, When Time Stands Still: An Argument for Restoring Public Figures to Private Status, 27 NOVA L. REV. 365, 365, 382 (2002)

[43] o Ernest D. Giglio, Unwanted Publicity, the News Media, and the Constitution: Where Privacy Rights Compete with the First Amendment, 12 AKRON L. REV. 229, 238 (1978)

[44] Danielle Keats Citron, Technological Due Process, 85 WASH. U. L.REV. 1249, 1256–57 (2008)

[45] yant Walker Smith, Automated Driving and Product Liability, 2017 MICH. ST. L. REV. 1, 45–49

requirements and a setting of each phase, as each phase has its own distinctive characteristics and obstacles[46]. The deficits in regulation exacerbate the complicated and long-lasting hazards posed by AI. If we are serious about finding a solution, we must expand the scope of RFR taking into account the unique traits and difficulties of each phase of data management, this extension should cover the full data lifecycle. The freedom to forget should be more narrowly defined for public authorities and prominent persons. Celebrities and other influential people are considered public personalities; however, the term is vague in the law. The potential for public leaders to abuse their extensive privileges and avoid public responsibility is a real concern. Despite this, people should be shielded against prejudice and excessive data exploitation because of how visible they are, especially with AI[47]. There needs to be a balance between the public's right to hold public officials to account for their actions and the privacy rights that these officials currently possess. There is still debate over offenders' right to be forgotten. Considering the decreasing importance of criminal records over time, a rigorous approach is proposed for general offenders. So that they can re-join society after serving their time, ex-offenders require this privilege. However, categorization is essential according to the type of crime and the offender's occupation.

6.1 Harmonizing Legal and Technological Frontiers in AI Governance

When people talk about AI governance, they usually mean how rules and regulations could slow down technology, especially in the AI field. The preceding sections of the paper shows how law and technology are interdependent; as one changes, the other must also adapt. Hence incorporating legal principles into AI systems is essential to guarantee they serve the public good and adhere to society norms, as these systems reflect the beliefs and goals of their creators. Further striking a balance between fostering technology innovation and safeguarding individual rights, including privacy, is an essential part of this dynamic. There is a need to devise strategy for regulation that promotes innovation while addressing any worries and which are flexible enough to accommodate new technologies as they emerge, performance-based rather than prescriptive, and sector-specific rather than technology-wide[48]. The legal principles must stress the importance of technical knowledge in policymaking, the need for efficient regulations, fair treatment of businesses, and comprehensive cost-benefit evaluations. A strong push towards industry self-regulation, supplemented by government oversight, is essential to strengthen the legal environment

[46] Frank Pasquale, Beyond Innovation and Competition: The Need for Qualified Transparency in Internet Intermediaries, 104 NW. U.L.REV. 1, 166 (2010)

[47] Scott J. Shackelford, Fragile Merchandise: A Comparative Analysis of the Privacy Rights for Public Figures, 49 AM. BUS. L.J. 125, 126 (2012)

[48] Deven R. Desai, Exploration and Exploitation: An Essay on (Machine) Learning, Algorithms, and Information Provision, 47 LOY. U.CHI. L.J. 541, 578 (2015).

surrounding AI[49]. This two-pronged strategy combines the technical know-how and agility of the private sector with the legitimacy and breadth of public regulation.

The fundamental human right to privacy and the capacity to govern one's own personal information could be preserved while technological advancement is enabled by this approach.[50] It is important to closely examine self-regulation to make sure it benefits society as a whole and not just corporations. It may be noted that Gaining public trust and making sure that self-regulatory bodies are not just corporate stooges requires transparency and accountability[51]. So, a well-rounded strategy for AI self-regulation should encourage innovation while prioritising citizen outcomes, protecting transparency, and maintaining ethical norms. The legislative landscape surrounding AI is impacted by geopolitical factors, especially when considering the global technology race[52]. The suggested model, can help us to craft strong and flexible legislation that can keep up with the rapid development of AI. This will make sure that even in the age of generative AI, RFR can be preserved.

6.2 Balancing the Right to be forgotten with the Advancement of AI

It is crucial to strike a balance between privacy and innovation in the ever-changing AI ecosystem. Individuals have the power to manage their data and ask for the removal of harmful or superfluous material, due to recognition of RFR as a form of Human Right, within the framework of Right to Privacy which encompasses four components—privacy by design, data reduction, clear purpose specification, and restricted retention. It may be noted that, consumer trust in AI is much enhanced when it is transparent and easy to understand. How well humans can understand and manipulate an AI system's inner workings is called its explain ability or interpretability[53]. For informed consent to work, algorithms must be easy to understand so that users can understand the decision-making process[54]. Another important factor in reducing algorithmic bias is transparency, which, along with explain ability, makes it easier for people to dispute or correct automated choices. A strong digital ecosystem where innovation flourishes within the boundaries of ethical and legal standards is possible when legal principles and technological innovations work together to highlight the significance of privacy in the digital age[55]. This harmony between the two points to a future where people's equality and dignity are maintained in tandem with the advancement of AI.

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[49] James P. Nehf, Recognizing the Societal Value in Information Privacy, 78 WASH. L. REV. 1, 13–14 (2003)

[50] Robert C. Post, Three Concepts of Privacy, 89 GEO. L.J. 2087, 2092 (2001)

[51] Kenneth A. Bamberger, Technologies of Compliance: Risk and Regulation in a Digital Age, 88 TEX. L. REV. 669 (2010)

[52] Shlomit Yanisky-Ravid, To Read or Not to Read: Privacy Within Social Networks, the Entitlement of Employees to a Virtual "Private Zone," and the Balloon Theory, 64 AM. U. L. REV. 53, 80–86 (2014)

[53] Anjanette H. Raymond & Scott J. Shackelford, Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?, 35 MICH. J. INT'L L. 485 (2014)

[54] Ronald J. Mann & Seth R. Belzley, The Promise of Internet Intermediary Liability, 47 WM. & MARY L. REV. 239 (2005)

[55] Tal Zarsky, Transparent Predictions, 2013 U. ILL. L. REV. 1530, 1533 (2013).

To improve the underlying model, we suggest constructing a forgetting dataset that contains copyrighted material specifically, while keeping the model's general language abilities intact. A promising step towards reconciling the RFR with technological growth, this technique maintains the model's performance on normal datasets while preventing it from generating the forgotten content[56].

7. Conclusion

Law, Technology, and Ethics all come together in the concept of RFR. This article has shown how new aspects brought about by generative AI pose challenges to long-held ideas about data protection, privacy, and the possibility of forgetting. While regulations such as the GDPR offer a starting point, a thorough and sophisticated strategy is required to adequately protect individuals' right to be forgotten in the age of artificial intelligence.

This approach allows us to derive some important conclusions. The RFR should first be recognised as a distinct right based on the self-determination of personal information, separate from rights to privacy and reputation. By doing so, people are given more agency over their data within AI systems. Efforts to combine individual rights with technical limits and public interests must also take into account the fact that AI technology is inherently limited in its ability to forget data. To solve the problem of data traceability, regulators will need to think outside the box. Third, supervisory bodies, industry collaboration, and international cooperation must continuously evolve legislative frameworks. It is necessary to strike a balance between human ideals and technology capabilities, as this essay has argued.

The RFR faces significant obstacles from generative AI, yet these challenges do not require rejecting the concept entirely. It is possible to harness the societal benefits of these technologies while protecting human dignity and individual rights through the development of ethical AI and the adoption of sophisticated legal paradigms. It is imperative to maintain this balance as the digital landscape evolves should be a collective goal of lawmakers, regulators, technologists, and civil society. In this quest for a future of AI that is both ethical and liberating, the RFR serves as a compass.

[56] Edward Lee, Recognizing Rights in Real Time: The Role of Google in the EU Right to Be Forgotten, 49 U.C. DAVIS L. REV. 1017, 1055-73 (2016).

Assessing the Efficacy of India's Privacy Laws in the Context of AI: Identifying Regulatory Gaps and Recommendations

Ms. Saumya Shukla[1]

Introduction

One of the most fascinating and quickly expanding areas of technical innovation is the incorporation of Artificial Intelligence (AI) into numerous elements of society. As AI systems get more advanced, they are finding applications in a variety of industries, including healthcare, banking, transportation, and entertainment. However, as AI technology continues to permeate various aspects of human life, it carries with it a slew of legal consequences and issues that must be carefully considered and addressed. It is critical to investigate the intricate interaction between law and AI, including legal frameworks, ethical problems, and emergent difficulties in this changing context. At its most basic, artificial intelligence (AI) is a subfield of computer science aimed at developing algorithms capable of performing activities that people typically perform. These intelligence tasks encompass visual and auditory perception, learning and adaptation, reasoning, recognizing patterns, and making decisions. The term "AI" encompasses a range of interconnected methods and technologies, including machine learning, predictive analytics, natural language processing, and robotics. AI has already integrated seamlessly into daily life, though many people don't realize it. A hallmark of AI is that once it becomes functional, it's no longer seen as AI and is simply absorbed into standard computing technology. For example, when an automated voice answers your call or a movie suggestion matches your tastes, these are instances of AI in action. Given how commonplace these applications have become, it's easy to forget that technologies like speech recognition, natural language processing, and predictive analytics are driving them.

New technologies typically raise privacy issues, AI presents a distinct and unparalleled set of challenges. Unlike big data, which focuses on processing vast datasets, AI not only analyzes but also learns from this data, creating adaptive models and making actionable predictions—often through complex, untransparent methods. This capability expands traditional definitions of personal information and raises ethical concerns about inferring private details from individuals who haven't willingly disclosed them. Additional issues include questions around data ownership and whether inferred information is subject to privacy obligations, such as informing individuals when data about them is indirectly derived. These concerns highlight the need for careful examination of AI's impact on privacy principles.

Currently, our understanding of information privacy is rooted in individuals' control over what others know about them and how it's used. However, AI's complexity can obscure the processes

[1] **Research Scholar, Maharishi Law School, Maharishi University of Information Technology, Saumyasshukla03@gmail.com**

from those whose data is involved, making informed consent nearly impossible. Deep learning, for example, often makes it difficult to trace how a conclusion was reached—even for the developers, let alone the public. This ambiguity can hinder organizations from effectively communicating AI-driven decisions to the public and obtaining informed consent, particularly if they can't make the processes understandable to users.

In today's big data era, advancements in AI-driven computational power have the potential to significantly reshape information privacy. An interconnected life, fueled by IoT devices and AI-powered smart city technologies, offers numerous benefits such as optimized resource use, enhanced efficiency, and improved quality of life. AI applications extend widely across sectors like healthcare, the legal system, and government operations. However, much like past technological shifts, AI introduces complex societal, technical, and legal challenges, impacting how we understand and protect information privacy.

AI and Legal Framework

AI usage in the legal sector has steadily increased, driven by the demand for greater efficiency, accuracy, and cost savings. Lawyers and legal professionals now leverage AI tools for tasks such as contract analysis, legal research, data processing, and document automation, which streamline processes, enhance decision-making, and improve access to justice. However, incorporating AI into legal practice presents substantial challenges to traditional legal systems. Existing laws often struggle to adapt to rapid AI advancements, raising questions around accountability, responsibility, and ethics. In response, governments globally are developing AI-specific regulations; for example, the European Union's GDPR includes rules on automated decision-making to safeguard individual rights. Similarly, the United States and Canada are crafting frameworks to address AI issues like bias, transparency, and accountability. There is a new famous expression, "Data is the New oil." It means that data is extracted by businesspeople to amass huge wealth. Data is similar to what raw oil is in nature and needs to be refined into something valuable. We are now a part of the biggest digital economy wherein every individual is reduced to data. Data is more powerful than opinion; it is more reliable and steadfast, by which we can also predict results for the future based on the present data, come up with insights to enhance corporate performance, plan better, and so forth. Mishandling data is equally perilous—potent in its nature but in need of legal oversight for effective governance. This responsibility is twofold: data privacy and data protection. Data privacy concerns the timing, manner, and extent to which personal information is shared or transferred to third parties. This includes details such as names, addresses, ethnic background, phone numbers, marital status, and more. With the rapid expansion of the internet, the need for strong data privacy laws has become urgent. Data protection, on the other hand, provides legal safeguards to prevent data loss, damage,

and corruption. As data collection accelerates like never before, the issue of protecting it from unauthorized access has become critical.

The concept of data privacy is not new. It traces back to **Semayne's Case**[2] in 1604, which established the principle that a person's home is their private refuge. Over time, the idea evolved, with a significant contribution from Samuel Warren and Justice Louis Brandeis in their article "The Right to Privacy," where privacy was recognized as a core element of personal freedom in modern society. The **Universal Declaration of Human Rights (UDHR)** [3]in 1948 later cemented privacy as a legal right under Article 12. In 1980, the **Organisation for Economic Cooperation and Development (OECD)** introduced guidelines on privacy protection and the cross-border transfer of personal data. On May 25, 2018, the **General Data Protection Regulation (GDPR)** came into effect, setting a new global standard for data privacy and protection.

In India, the issue of privacy has been extensively deliberated in the judiciary. Some regarded it as an inherent right, while others initially contested its protection under Article 21 of the Constitution. This paradigm shifted with the landmark *K.S. Puttaswamy v. Union of India*[4] decision in 2017, wherein the right to privacy was unequivocally acknowledged as a fundamental right under Article 21. Although statutes such as the Indian Penal Code (1860) and the Information Technology Act (2000) addressed aspects of privacy, significant deficiencies persisted. Following three attempts and a protracted seven-year developmental process, India ultimately instituted a comprehensive data protection and privacy law on August 9, 2023.

Subsequently, on March 1, 2024, the Indian government promulgated a directive mandating that platforms secure authorization from the Ministry of Electronics and Information Technology (MeitY) prior to deploying any "unverified Artificial Intelligence (AI) models, Large Language Models (LLMs), Generative AI, software, or algorithms" within the nation's digital domain. Furthermore, platforms and intermediaries are required to ensure that their systems do not propagate bias, discrimination, or erode democratic values. All AI-generated content, encompassing media and text, must be accompanied by unique identifiers or metadata to facilitate straightforward identification.

Generative AI comprises algorithms capable of creating diverse content—including audio, code, images, text, simulations, and videos—significantly enhancing content creation potential. OpenAI's offerings now face competition from technologies like Google's Gemini, Baidu's Ernie Bot, Meta's

[2] Semayne's Case (January 1, 1604) 5 Coke Rep. 91.

[3] Universal Declaration of Human Rights (UDHR) established privacy as a legal right under Article 12-No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

[4] Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors, AIR 2017 SC 4161[India]

LLaMA models, Anthropic's Claude, xAI's Grok, and Microsoft's Copilot, powered by GPT-4 under a revenue-sharing agreement with OpenAI.

Large Language Models (LLMs) are core AI models trained on extensive datasets to comprehend and generate natural language and other forms of content across various applications. These models have been essential in advancing generative AI and are crucial for businesses integrating AI into their operations. Before 2020, fine-tuning was the primary approach for customizing models to specific tasks, but larger models, such as GPT-3, have since popularized prompt engineering as an effective method for tailored outcomes. These models capture intricate linguistic patterns—syntax, semantics, and structure, along with inherent biases—shaping generative AI's influence across sectors. Noteworthy examples include Open AI's GPT series (GPT-3.5, GPT-4), Google's PaLM and Gemini, Meta's LLaMA, xAI's Grok, and models from Mistral AI.

India's Information Technology Act, introduced in 2000 and revised in 2008, includes *Section 43A,* which holds corporations handling sensitive personal data accountable for damages if they fail to maintain reasonable security, resulting in wrongful loss. Furthermore, the 2011 Information Technology Rules set security standards for sensitive data like medical records, financial details, and sexual orientation. *Section 72A of the IT Act* stipulates that unauthorized disclosure of personal data without consent, in violation of a contractual agreement, may result in a fine up to Rs. 5,00,000 or imprisonment for up to three years.

One recent piece of law about the handling of personal data in India is the DPDP Act[5]. Nearly six years after the Supreme Court acknowledged the basic right to privacy in Article 21, it was ultimately enacted. The DPDP Act addresses privacy and protection requirements about personal data and is presented against the backdrop of privacy laws worldwide, such as the GDPR of the European Union[6]. It is believed that the DPDP Act has broad applicability that extends outside the country and directly takes some of the GDPR's features. There are notable exclusions for governmental entities under the Act, although it sets strict penalties for the improper processing of personal data. The DPDP Act is considered to be a transformative legislature, considering that protection of data and ensuring fundamental privacy rights are sine qua non to our existence. The DPDP Act adheres to the *SARAL* principle, which calls for the use of straightforward language, the inclusion of examples to aid in understanding, the absence of provisos, and little cross-referencing across provisions. The DPDP Act encourages trust in data security with Data Fiduciaries[7] and guarantees careful data processing with the responsibility of authorities. It also shows a change in

[5] Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

[6] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, 2016 O.J. (L 119) 1 (EU).

[7] The Digital Personal Data Protection Act (DPDP Act) ,2023, § 8, (No. 22 of 2023).

individuals' competence and authority to govern, oversee, and protect their data. The DPDP Act places a high value on the Data Principal's opinion since it emphasizes consent as a crucial basis for the lawful processing of personal data. It also gives the Data Principal the ability to update their consent at any time or to revoke it if they provide inaccurate or incomplete information.

Evolution of the Right To Privacy in the Indian context

Although we today consider the right to privacy to be fundamental to our democracy, this was not always the case. Over time, Indian jurisprudence has undergone significant development. The Indian Supreme Court has permitted the right to privacy to develop and spread naturally via a number of significant rulings. *M.P. Sharma v. Satish Chandra (1954)*[8] was among the first to address the Indian right to privacy. The validity of the Code of Criminal Procedure's search and seizure provisions was decided by an eight-judge panel of the nation's top court. The court ruled that the search and seizures did not violate anyone's right to privacy since it does not acknowledge any such right. The right to privacy cannot be infringed upon because it is not covered by any clause in the Indian Constitution. *Kharak Singh v. State of UP 1962*[9], also involved a decision by the Apex Court about the right to privacy. The Court looked at the broad authority of police monitoring and its general privacy-related powers. In this case, the Court was confronted with concerns regarding the right to privacy under Article 21 for the first time. Although the court did not specifically acknowledge any right to privacy, *J. Subba Rao* claimed in his dissent that our Constitution guarantees everyone the right to privacy. The development of the right to privacy was sparked by this well-known dispute.

In *Gobind v. State of MP (1975)*[10] the Supreme Court was confronted with a comparable privacy issue once more. The case's circumstances were such that it involved police surveillance through home visits. The Supreme Court acknowledged the importance of the right to privacy but stated that a greater state interest should take precedence. It claims that the right to privacy is subject to several limitations, including those related to national security, morality, and public order. • Another well-known case is *R. Rajagopal v. State of Tamil Nadu (1994*[11]*)*, in which the Supreme Court acknowledged inmates' right to privacy. It was more well-known than the "Auto Shankar case" and gave the prisoner unrestricted publishing rights for his autobiography. The court underlined the right to privacy and, more specifically, the right to be incarcerated when it made this declaration. This also covers a person's ability to limit the way information about their private life is shared and to stop any unauthorized interference with their rights.

[8]M.P. Sharma v. Satish Chandra 1954 AIR 300 [India]

[9]Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295 (India).

[10]Gobind v. State of Madhya Pradesh, AIR 1975 SC 1378 (India).

[11] R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264 (India).

The Delhi High Court's 2009 ruling in *Naz Foundation v. Government of NCT of Delhi*[12] proved to be a breakthrough in the debate about consenting homosexuality. The validity of Section 377 of the Indian Penal Code, 1860, was decided by the court. A person's right to be himself and to become anyone he wishes is also protected by Article 2, the Court decided. They asserted that everyone needs a haven where they are not bound by social norms. The Court then decided to reverse this case. However, the Apex Court, using a five-judge panel, unanimously invalidated Section 377 of the IPC in *Navtej Singh Johar v. Union of India (2018)*[13], ruling that it criminalized same-sex relationships between two consenting adults. As a result, it was decided that the state could not interfere with a person's choice of partner, intimacy, or romantic relationship. The right to sexual orientation is an inherent component of the fundamental right to privacy. In the historic ruling of *K.S. Puttaswamy v. Union of India (2018)*[14], the nation's highest court upheld the existence of the right to privacy, even though courts in the majority of instances did not expressly recognize it. A nine-judge panel's 2018 ruling interpreted the right to privacy as falling under Article 21's protection of the right to life and liberty. The Court overturned earlier rulings by MP Sharma and Kharak Singh that concluded that privacy was not protected by the Indian constitution by stating that the right to privacy is fundamental to life and individual liberty. The Bench declared 'The right to privacy is recognized as an interpretation of existing constitutional provisions, not as a new or amended freedom. It safeguards personal aspects of life, such as intimacy, marriage, and sexual orientation, granting individuals the right to be left alone. Privacy persists regardless of public presence and must adapt to technological developments through a liberal constitutional interpretation. While fundamental, it's subject to reasonable restrictions like other rights. Privacy has both preventive and protective roles—restricting state interference and obliging the state to uphold it. This right applies universally, even if only a few individuals are affected.'

In a 2022 case, *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.*[15], the Supreme Court affirmed the reproductive rights of an unmarried woman, emphasizing her right to bodily autonomy under Article 21 of the Indian Constitution. In this instance, a 25-year-old woman was permitted to undergo an abortion, with the Court reinforcing that the right to privacy supports an individual's control over their own body, as safeguarded by Article 21. In a related 2018 case, commonly known as the *Hadiya marriage case*[16], the Supreme

[12]Naz Foundation v. Government of NCT of Delhi, 2010 Cri. L.J. 94 (India).
[13] Navtej Singh Johar v. Union of India, AIR 2018 SC 4321 (India).
[14] Ibid
[15]X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr 2022 (SC) 809[India]
[16] Shafin Jahan vs. Asokan K.M. and Ors (2018) 16 SCC 368 [India]

Court ruled that an individual's choice of marriage partner is a fundamental part of personal privacy, thereby limiting the state's involvement in such private matters. Here, the Court recognized that privacy includes the right to make critical personal life decisions without interference. Another significant privacy-related case is *Internet Freedom Foundation v. Union of India* (2019)[17], which examined the constitutionality of internet shutdowns. The Supreme Court ruled that cutting off internet access undermines fundamental rights and should only be implemented if it meets strict principles of necessity and proportionality, further cementing the importance of privacy in the digital realm.

The cases above showcase how the right to privacy has steadily evolved within India's legal landscape, adapting to shifts in societal needs, technological progress, and constitutional principles. Initially, privacy didn't have a clear spot in the Indian Constitution, and there was substantial resistance to formally recognizing it as a fundamental right. However, over time, the judiciary, through various rulings, has highlighted how deeply privacy is woven into the right to life and personal liberty protected by Article 21. Looking ahead, as technology continues to pose new challenges, these decisions will serve as crucial reference points, helping to shape a future where privacy and security are better protected.

Does the DPDP Act sufficiently address the needs of India's digital landscape?

The DPDP Act lays a strong foundation for personal data protection in India, but its effectiveness will depend on how well it's implemented and the robustness of future amendments. Given the pace of digital transformation and emerging privacy concerns, it is likely that the Act will need to evolve over time to address these challenges, such as through stricter enforcement, clearer guidelines on government exemptions, and provisions for rapidly changing technologies like AI. The Digital Personal Data Protection (DPDP) Act, of 2023, is a pivotal development in India's regulatory approach to data protection, aiming to balance individual privacy rights with the growing digital economy's needs. By establishing a framework that emphasizes user consent, accountability, and penalties for non-compliance, the DPDP Act takes significant steps toward bringing India's data protection laws closer to global standards like the GDPR in the European Union. However, while the Act addresses several foundational issues in data privacy, it also exhibits regulatory gaps and limitations, especially given India's unique socio-economic and digital landscape, which is marked by diverse technology adoption levels, vast data generation, and complex socio-political

[17] Internet Freedom Foundation v. Union of India [W.P. (C) No. 44 of 2019][India]

considerations. A critical analysis of the DPDP Act reveals both its strengths and shortcomings, along with key areas where further regulatory provisions or amendments are essential. The DPDP Act has brought much-needed structure to data protection in India, defining personal data protection rights and responsibilities for data fiduciaries (organizations handling data) and data principals (individuals whose data is being processed). One significant aspect of the DPDP Act is its emphasis on individual consent, which requires data fiduciaries to obtain explicit permission before collecting or processing personal data. This focus on consent aligns well with international data protection norms and ensures that individuals retain greater control over their data.

Moreover, the Act provides specific rights to data principals, such as the right to access, correct, and erase their personal data, echoing similar rights in the GDPR. These rights grant individuals greater agency over their digital identities, addressing privacy issues that have been largely unregulated in India until now. Another positive feature is the imposition of significant penalties for data breaches, which holds organizations accountable and encourages them to maintain robust data security practices. The Act also introduces provisions to streamline compliance requirements for small businesses and startups, recognizing the need for flexibility in a rapidly evolving digital economy and minimizing the regulatory burden on smaller entities that may struggle to meet stringent compliance standards.

Despite these advantages, the DPDP Act has raised concerns, especially concerning government access to data and the lack of an independent regulatory authority. The Act permits substantial exemptions for government agencies, allowing them to process personal data without strict adherence to some of the Act's provisions. This aspect of the Act could potentially lead to misuse or even surveillance, infringing on individuals' privacy rights. For example, the government can exempt any of its agencies from the DPDP Act's mandates on grounds of national security, public order, or other broad considerations, which are often vaguely defined and subject to broad interpretation. Such exemptions have raised questions about whether the Act adequately protects individuals from potential privacy invasions by the state, particularly in a country with a history of surveillance concerns.

Another critical regulatory gap is in cross-border data flows. The Act allows personal data transfers only to countries designated as "trusted" by the government, yet there are limited details on the criteria or process for identifying these countries. In an increasingly interconnected world, these restrictions could hinder cross-border trade and complicate India's position in the global digital economy, where data exchange is fundamental. Furthermore, the lack of detailed guidelines on cross-border data transfers may lead to inconsistencies, leaving organizations uncertain about their compliance obligations and potentially affecting India's attractiveness as a data-driven economy.

The Act also lacks a provision for a dedicated and independent Data Protection Authority (DPA), opting instead for a Data Protection Board (DPB), which has raised concerns about the effectiveness and independence of enforcement. In comparison, other major data protection frameworks, such as the GDPR, establish independent authorities with clear powers to enforce compliance, investigate breaches, and oversee data protection policies. The DPB's lack of autonomy might reduce its ability to act impartially, especially in cases involving government agencies or other politically sensitive matters, undermining public confidence in the data protection regime. Moreover, the Act focuses primarily on personal data, leaving non-personal data and related privacy issues unaddressed. With the rise of artificial intelligence (AI) and big data analytics, non-personal data—data that does not directly identify individuals—can be crucial for profiling and influencing individual behavior. The lack of provisions addressing non-personal data could become problematic as technology advances, leading to significant regulatory gaps in addressing potential misuse of such data. India's ambitious plans for a data-driven economy and digital infrastructure could be compromised if non-personal data use and protection are not adequately regulated.

Recommendations for Strengthening the DPDP Act

To address these gaps and enhance the DPDP Act's effectiveness, several recommendations can be considered. First, the government should establish clear and limited criteria for the exemptions granted to its agencies, specifying particular conditions under which such exemptions apply. This could be achieved by defining specific circumstances where national security or public order concerns genuinely require data access without compromising citizens' privacy rights. By setting these parameters, the government can ensure a balanced approach that respects privacy without compromising public safety. Second, to address cross-border data flow concerns, the government could consider developing a more transparent framework for assessing "trusted" countries, involving public consultation and collaboration with international stakeholders. This would not only create a fairer and clearer system but also improve India's competitiveness in the global digital economy. An alternative could be exploring a data adequacy agreement model similar to the EU's, where data transfers are allowed to countries with comparable data protection standards. This could enable smoother data exchanges with key trade partners while ensuring data protection.

Another critical recommendation is to establish an independent Data Protection Authority (DPA) with comprehensive enforcement powers and autonomy from government influence. An independent DPA would be able to more effectively oversee compliance, investigate breaches, and ensure that both private entities and government bodies adhere to the data protection standards set forth by the Act. Such an authority would enhance the public's trust in the data protection system and bring India's approach closer to international best practices. Additionally, the Act should

expand its scope to include non-personal data, addressing the regulatory challenges posed by emerging technologies. By incorporating non-personal data regulations, the DPDP Act could provide a more comprehensive data governance framework that acknowledges the impact of AI and big data on privacy. This expansion could involve creating separate guidelines for handling non-personal data or amending the existing framework to incorporate data that indirectly affects individuals. Lastly, the Act should consider provisions for regular updates to account for technological advancements. Given the rapid pace of digital transformation, the data protection law should be adaptive, incorporating mechanisms for periodic reviews or amendments that allow it to evolve with technology and address new privacy challenges. This approach would ensure that India's data protection framework remains relevant and effective over time, providing flexibility to accommodate future innovations and emerging privacy concerns.

While the DPDP Act is a significant milestone in India's journey toward comprehensive data protection, its current framework leaves room for improvement to fully address the unique challenges of India's digital landscape. The Act's emphasis on consent, data principal rights, and compliance incentives for smaller entities are positive steps that bring India closer to global data protection standards. However, the extensive government exemptions, lack of an independent enforcement authority, and limited provisions for non-personal data reveal regulatory gaps that could hinder the Act's effectiveness. By establishing clearer guidelines for government access, enhancing cross-border data transfer mechanisms, creating an autonomous data protection authority, and expanding the Act's scope to include non-personal data, India can create a more robust and future-ready data protection framework. These improvements would not only strengthen data privacy in India but also position the country as a responsible and competitive player in the global digital economy.

Conclusion

In conclusion, while India's privacy laws have made significant strides in addressing data protection and individual rights, they face considerable challenges in effectively regulating the rapidly evolving landscape of artificial intelligence (AI). Current legislation often lags behind technological advancements, creating regulatory gaps that can compromise user privacy and data integrity. The ambiguous definitions of AI technologies, coupled with the lack of specific guidelines for their ethical use, hinder the enforcement of existing laws and expose individuals to potential biases and discrimination. To enhance the efficacy of India's privacy framework in the context of AI, it is essential to establish clear definitions and regulatory guidelines tailored to emerging technologies. This includes implementing robust mechanisms for accountability, transparency, and compliance

for AI developers and users. Additionally, fostering collaboration between stakeholders—government agencies, tech companies, and civil society—will be crucial in creating a comprehensive approach to privacy protection. By prioritizing these recommendations, India can build a resilient legal framework that not only safeguards individual privacy rights but also fosters innovation in AI, ensuring that technological progress aligns with ethical standards and public trust.

The Right to Be Forgotten in an Age of AI: Ethical Considerations and Legal Frameworks

Ms. Riya Koul[1]

1. Introduction

In an era defined by perpetual connectivity and a relentless flow of digital information, the Right to Be Forgotten (hereinafter referred to as RTBF) emerges as a paradoxical aspiration: the prerogative to elude the permanence of the digital realm and reclaim one's privacy. Originally enshrined within European legal frameworks, RTBF grants individuals the right to seek the erasure of personal data, specifically where its continued presence may no longer be deemed relevant, adequate, or lawful. Yet, as artificial intelligence and machine learning algorithms extend their grasp across the digital landscape, they augment data retention capabilities exponentially, creating a tension between the ephemeral nature of individual rights and the enduring recollection of digital systems.[2]

In the digital age, the significance of RTBF is not merely a reflection of individualistic privacy concerns but a broader societal endeavor to manage the implications of an information ecosystem where reputational impacts endure indefinitely. In this context, the RTBF concept assumes not only a restorative function, allowing individuals to regain control over their personal narratives but also a fundamental ethical dimension. It addresses the power asymmetry between data subjects and data controllers, with RTBF serving as a mechanism to offset the irrevocable harm that could arise from the misuse of data.[3]

Artificial intelligence, with its unparalleled ability to store, analyze, and predict human behaviors, both magnifies and complicates the RTBF. Advanced algorithms can retain data across vast neural networks, raising pivotal questions about whether and how such systems might "forget." As data processing becomes inextricably bound with AI's predictive mechanisms, reconciling RTBF with algorithmic data retention grows increasingly complex. The interplay of these forces invites profound legal and ethical discourse, where rights to privacy and public interest collide, and challenging existing legal frameworks to adapt to this new reality.[4]

This chapter seeks to unravel the multi-layered implications of RTBF in the age of artificial intelligence, examining the ethical imperatives, legal challenges, and societal impacts of embedding RTBF within an AI-driven landscape. In doing so, it ventures into uncharted legal territories where the boundaries of privacy, memory, and autonomy are continuously redefined by the growing omnipresence of AI technologies.

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[1] **Research Scholar, Maharishi Law School, Maharishi University of Information Technology, E-mail: riyakoulrk@gmail.com**

[2] Council Regulation 2016/679, art. 17, General Data Protection Regulation, 2016 O.J. (L 119) 1 (EU).

[3] Jeffrey Rosen, The Right to Be Forgotten, 64 STAN. L. REV. ONLINE 88 (2012).

[4] Viktor Mayer-Schönberger, Delete: The Virtue of Forgetting in the Digital Age, (Princeton Univ. Press 2009).

2. Evolution of the Right to Be Forgotten

The Right to Be Forgotten (RTBF) has origins deeply rooted in European, particularly French, legal philosophy and has evolved through intersecting legal frameworks, technological advances, and shifting societal values. Initially termed le droit à l'oubli or the "right to oblivion," this principle emerged within French jurisprudence as a response to information retention's enduring effects on individual privacy. French courts first addressed RTBF in response to individuals seeking to sever ties with past actions, especially those no longer relevant or that caused reputational harm. The moral foundation of le droit à l'oubli advocated that individuals should not be permanently defined by past transgressions or embarrassing incidents, long before the internet amplified concerns about data permanence.

With the digital revolution and the expansion of data-sharing capabilities, the challenge of managing data permanence became urgent across Europe. Information was now accessible indefinitely, posing risks to individuals' reputations and personal lives. To address this, European policymakers embedded RTBF within legislation to safeguard personal privacy amid evolving technological realities. The European Data Protection Directive, 1995 laid the foundation for data protection across EU states, pioneering a cohesive approach to data handling.[5] Its intent was to balance the emerging information landscape with privacy rights, marking one of the first comprehensive efforts to address data retention.

A major advance for RTBF arrived with the General Data Protection Regulation (GDPR) in 2016, which explicitly codified it as an enforceable right. Article 17 of GDPR empowered individuals to request the deletion of personal data when it was no longer necessary, lawfully processed, or no longer served its original purpose.[6] This legal provision enabled individuals to manage their digital identities, balancing personal privacy with the public's right to information by allowing exceptions for journalism, academic, or expressive purposes, thus enhancing GDPR's adaptability.

A landmark in RTBF's evolution came with the European Court of Justice's ruling in Google Spain SL v. Mario Costeja González[7], which held that search engines act as data controllers, thereby subject to EU data protection laws. Spanish citizen Mario Costeja González sought to remove a dated newschapter article concerning his resolved financial troubles. The court's ruling mandated

[5] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L 281) 31 (EC).

[6] 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 (General Data Protection Regulation), 2016 O.J. (L 119) 1 (EU).

[7] Google Spain SL v. Agencia Española de Protección de Datos (AEPD), Case C-131/12, ECLI:EU:C:2014:317.

Google to de-index the article, prioritizing González's privacy rights over indefinite accessibility, and setting a precedent for RTBF enforcement in the digital age.

Outside Europe, RTBF recognition and application vary, reflecting different legal and cultural perspectives on privacy and free expression. In the United States, RTBF has met resistance, largely due to strong First Amendment protections that prioritize free speech and public information access over privacy. U.S. courts thus typically reject RTBF, opting for defamation or privacy torts in cases of reputational harm, though these offer limited remedies for data retention issues. For example, California's "Online Eraser" law allows minors to request data removal, yet no equivalent federal law protects adults.

In India, RTBF discourse gained momentum after the Supreme Court's landmark ruling in Justice K.S. Puttaswamy v. Union of India[8], which recognized privacy as a constitutional right. Although RTBF is not universally enforced, judicial rulings increasingly align with European standards. Proposed data protection laws under consideration would formalize RTBF, but their final structure remains pending.

The global RTBF evolution reflects varying legal, ethical, and cultural dimensions. In Europe, RTBF provides robust safeguards against data permanence's impact on privacy, while in the United States and India, it remains contentious, balancing privacy with public information access. As AI advances data storage and analysis, RTBF faces new challenges in an era where information is perpetually processed and repurposed, highlighting the need for global cooperation in managing privacy within an interconnected world.

3. Artificial Intelligence and the Data Challenge

Artificial Intelligence (AI) operates on a unique reliance on extensive data collection, creating formidable challenges for the Right to Be Forgotten (RTBF). At the heart of AI, data-driven architectures—especially machine learning and generative models—are dependent on large datasets for refining predictions, personalizing recommendations, and improving decision-making. AI models do not simply use data temporarily; they are fundamentally shaped by it, creating a dependence that complicates any effort to "forget" or erase data as stipulated by RTBF. For instance, language models, recommendation engines, and image generation systems would lack effectiveness without continuously referencing and integrating extensive data patterns.

Once trained, AI systems absorb data into complex weights and parameters, meaning that removing individual data points is technically challenging and often impractical without retraining the model itself. This difficulty becomes pronounced in models that continually learn, such as real-time

[8] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

recommendation engines, where the influence of retained data is always evolving, making it nearly impossible to entirely delete specific data traces. Additionally, retraining large neural networks to omit certain data points can be computationally prohibitive, given the significant time and resource investments involved. Hence, achieving RTBF within AI systems requires more than simple deletion; it calls for an architectural shift in how AI models retain and process data.

One privacy-centric approach to these challenges is federated learning, which decentralizes data processing by training AI models across devices rather than in central repositories. This structure keeps personal data on local devices, allowing only model updates to be shared for aggregating a global model, enhancing privacy by reducing central data storage. However, federated learning does not fully address the retention issue, as local data still influences the global model's parameters, embedding knowledge across the distributed system. While federated learning offers a substantial privacy benefit by mitigating direct data retention risks, it is not inherently equipped to fulfill RTBF's requirements for total data removal.[9]

AI-powered recommendation systems, such as CURE4Rec, further illustrate these data retention challenges. CURE4Rec, a causal recourse framework for recommendations, continuously adapts to users' behaviors and preferences to generate accurate suggestions.[10] Such systems rely on the ongoing retention and analysis of historical data, not only capturing current user preferences but also utilizing past behavior to improve future recommendations. This operational dependency on data permanence presents a dilemma when trying to reconcile RTBF within systems that by design require retained data for optimal functionality. Attempting to erase a user's data can impair the system's effectiveness, as traces of previously used data may continue to influence recommendations indirectly.

Beyond the technical complexities, AI's reliance on extensive data also raises ethical questions regarding privacy. These systems prioritize functionality and predictive accuracy, often at the expense of individual privacy rights. Enforcing RTBF within AI requires not only technical adaptations but also a rethinking of data retention policies that can honor privacy commitments. This tension is further complicated by the "black box" nature of AI, where decision-making processes are often opaque and difficult for users—or even developers—to fully interpret. Consequently, the challenge of enforcing RTBF within AI systems extends beyond practical issues, emphasizing a need for transparency and accountability.

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[9] Brendan McMahan et al., Communication-Efficient Learning of Deep Networks from Decentralized Data, in PROCEEDINGS OF THE 20TH INTERNATIONAL CONFERENCE ON ARTIFICIAL INTELLIGENCE AND STATISTICS 1273 (2017).

[10] Voigt et al., CURE4Rec: A Causal Recourse Framework for Recommender Systems, in PROCEEDINGS OF THE 24TH ACM SIGKDD INTERNATIONAL CONFERENCE ON KNOWLEDGE DISCOVERY & DATA MINING 1 (2018).

Addressing AI's data challenge in light of RTBF thus calls for new approaches in AI architecture and ethical data handling. Innovations like differential privacy, which obscures individual data points by introducing randomness, and data minimization, which limits the volume of retained information, represent potential solutions to balance privacy obligations with AI's data needs. However, reconciling RTBF with AI's inherent data dependence requires more than technological fixes; it demands a reevaluation of privacy values within an increasingly data-driven world, where privacy and efficient functionality must coexist in a sustainable framework.

4. Legal Framework for RTBF in the Context of AI

The Right to Be Forgotten (RTBF) is a cornerstone in global data privacy law, with the European Union (EU) leading in establishing rigorous data protection standards. As Artificial Intelligence (AI) reshapes how data is used and retained, integrating RTBF within AI systems introduces unique challenges. Regulatory frameworks are only beginning to address these complexities, balancing privacy with technological innovation. This section examines RTBF's key legal foundations, starting with the EU's General Data Protection Regulation (GDPR) and extending to India's Digital Personal Data Protection Act of 2023. A comparative analysis across the EU, United States, and India offers insight into the global complexities of RTBF enforcement, underscored by evolving case law that reflects the legal system's response to digital privacy in the age of AI.

4.1GDPR and RTBF: Provisions under Article 17

The General Data Protection Regulation (GDPR) is the EU's comprehensive data privacy framework, with Article 17 empowering individuals to request data deletion from data controllers under conditions such as data no longer serving its original purpose, withdrawn consent, or unlawful processing. Article 17 embodies a significant shift toward individual privacy, setting a legal standard for balancing personal data rights against the vast data-processing capabilities of digital technologies.

The foundational case of Google Spain SL v. Mario Costeja González[11] established RTBF within the GDPR framework, ruling that search engines, like Google, must comply with RTBF requests when conditions justify it. In this case, the Court mandated Google to de-index specific search results, recognizing that outdated or irrelevant personal data could override public access interests. Although the González case set a strong precedent, it also raised questions about the scope of RTBF obligations, particularly in AI-driven environments where selective data removal can disrupt model performance.

[11] Supra, note 6.

The GC v. CNIL[12] case added clarity to RTBF enforcement, as the Court of Justice of the European Union (CJEU) held that search engines are required to remove data only within EU boundaries, establishing jurisdictional limitations. For AI, this ruling raises questions about how geographically restricted RTBF can align with global data models without requiring extensive technical modifications. The Belgian Data Protection Authority v. IAB Europe decision further highlighted GDPR's impact on data-intensive fields, like ad technology, where compliance pressures are increasing. While not strictly RTBF-related, this case signals a growing regulatory focus on AI-driven data handling, particularly in contexts where user data is a fundamental component of model training.

4.2 The Digital Personal Data Protection Act 2023 in India

India's Digital Personal Data Protection Act (DPDPA) of 2023 represents the nation's most comprehensive data protection legislation, reflecting the increasing global importance of data privacy. Inspired by GDPR, the DPDPA establishes RTBF as a legal right and gives individuals (data principals) mechanisms to request the deletion of personal data from entities (data fiduciaries) when that data no longer serves its initial purpose or has become irrelevant. This act signals India's commitment to aligning privacy protections with global standards, while also adapting to India's unique socio-economic context, where data-driven innovation plays a key role in development.

The Justice K.S. Puttaswamy v. Union of India[13] ruling, which recognized privacy as a constitutional right, laid the groundwork for RTBF and data protection laws in India. Since this landmark case, Indian courts have incrementally advanced privacy rights, although no specific RTBF-related AI cases have yet emerged. The DPDPA's passage provides a foundation for RTBF enforcement in the digital domain, requiring data fiduciaries to process deletion requests, ensuring that personal data is safeguarded within India's expanding digital economy.

The recent X v. Google India Private Limited (2023) case, where a Delhi High Court ordered Google to remove objectionable search results related to a private individual, illustrates India's emerging stance on RTBF. This case, while not explicitly focused on AI, establishes precedent for data controllers' obligations to balance RTBF requests with public interest considerations. It also indicates India's trajectory toward enhanced data protection, especially as AI adoption increases, necessitating more stringent data oversight.

4.3 Comparative Analysis of Legal Frameworks across Different Jurisdictions (EU, USA, India)

[12] Google LLC v. CNIL, Case C-507/17, ECLI:EU:C:2019:772.
[13] Supra, note 7.

Globally, RTBF legal frameworks vary significantly, with the EU providing the most robust protections, while the United States takes a more reserved stance due to First Amendment concerns. In the United States, RTBF remains contentious, as the legal culture highly values free expression and public access to information. This emphasis on First Amendment rights has made U.S. courts reluctant to impose RTBF protections similar to those seen in Europe, and RTBF-like requests are typically addressed through privacy torts and defamation claims, which offer more limited relief than the GDPR's comprehensive framework.

In Woodhull Freedom Foundation v. United States[14], the U.S. District Court for the District of Columbia rejected the application of RTBF in the context of digital content moderation, underscoring the difficulty of aligning U.S. legal norms with RTBF as understood in the EU. The court highlighted the importance of free speech and information access in rejecting Woodhull's argument that RTBF could be inferred from existing U.S. privacy law. This case exemplifies the broader resistance to RTBF in U.S. jurisprudence, where concerns about restricting access to information are prioritized over privacy concerns.

India's DPDPA offers a middle-ground approach that reflects its unique socio-economic and legal landscape. While inspired by GDPR, the DPDPA's interpretation of RTBF remains nascent, and future cases will likely explore its application in AI contexts. Given the AI sector's rapid growth in India, courts may soon need to address whether RTBF can accommodate AI's complex data retention mechanisms. Indian jurisprudence could develop to blend RTBF with AI requirements, especially in sectors like healthcare and finance, where privacy and data dependency must be carefully balanced.

These cases highlight that while RTBF has gained traction in Europe and India, its application across jurisdictions remains diverse. Europe's strict privacy framework contrasts with the U.S. focus on free expression, while India navigates a developing legal landscape that balances privacy and innovation. This diversity illustrates the difficulties of harmonizing RTBF enforcement across global AI systems, particularly in scenarios involving transnational data processing.

4.4 AI's Regulatory Challenges: The Role of International Guidelines and National Policies

The rapid growth of AI introduces regulatory challenges that traditional legal frameworks struggle to address effectively. AI complicates RTBF because its dependence on data retention creates technical difficulties for erasure, raising questions about how to balance existing RTBF laws with technological realities. International guidelines and national policies play an essential role in navigating these challenges by providing a framework for RTBF implementation in AI. The

[14] Woodhull Freedom Found. v. United States, 948 F.3d 363 (D.C. Cir. 2020).

Organisation for Economic Co-operation and Development's (OECD) AI Principles advocate for transparency, accountability, and user control over data, offering a basis for RTBF policies globally. Similarly, the EU's proposed AI Act aims to classify AI applications based on their risk levels, imposing stricter regulations on high-risk sectors such as healthcare and biometric surveillance. While not explicitly centered on RTBF, the AI Act provides a framework for addressing AI-related data retention, suggesting that AI systems handling sensitive data may require rigorous oversight to ensure privacy protection.

The Canadian Privacy Commissioner v. Facebook[15] case provides insight into RTBF's challenges within AI, especially concerning multinational data practices. The Canadian Federal Court ruled that Facebook must ensure compliance with Canada's data privacy laws regarding data processing and erasure, reinforcing privacy obligations even for global tech firms operating in multiple jurisdictions. This case underscores the importance of national policies that align with international standards, ensuring that privacy rights are preserved even in complex, AI-powered data ecosystems. National policies tailored to the unique needs of individual jurisdictions remain crucial in addressing RTBF within AI systems. For instance, GDPR provides specific RTBF guidelines, but further amendments may be necessary to address AI's specific data retention and processing characteristics. India's DPDPA, similarly, could benefit from explicit regulations for AI-driven systems, ensuring clear guidance for developers and data processors when handling RTBF requests.

In conclusion, the legal framework for RTBF in the context of AI is evolving, requiring ongoing adaptation to address technological advances. Cases like Google Spain, GC v. CNIL, X v. Google India Private Limited, and Canadian Privacy Commissioner v. Facebook demonstrate the global push to harmonize privacy rights with data-driven innovation. Coordinated international efforts and adaptable national policies are critical in establishing a comprehensive RTBF framework that respects both individual privacy and the operational needs of AI. As AI becomes more integrated into society, refining RTBF laws will be crucial for balancing privacy with AI's potential, promoting a more ethically aligned and legally sound future for digital privacy.

5. AI-Specific Solutions to RTBF Challenges

Integrating the Right to Be Forgotten (RTBF) into AI systems presents complex technical and ethical hurdles, as AI models heavily rely on extensive data retention. Traditional RTBF methods, like data deletion requests, struggle to accommodate AI's architecture, which embeds data deeply into model parameters, making selective data removal computationally demanding and challenging to execute. Nevertheless, recent AI-specific solutions—such as machine unlearning, federated

[15] Canadian Privacy Commissioner v. Facebook Inc., 2020 FC 767 (Can.).

learning with adaptive clipping, and approaches that balance model utility with RTBF obligations—provide promising ways to address these challenges. This section explores these methods and assesses their potential to reconcile RTBF requirements with the operational needs of AI.

5.1 Concepts of Machine Unlearning and Data Deletion in AI Systems

Machine unlearning enables AI models to selectively "forget" specific data in response to RTBF requests, a significant innovation that departs from traditional machine learning methods, where data becomes embedded into model parameters, weights, and architecture. Once trained, traditional models struggle to disentangle specific data entries without retraining from scratch, which is costly and time-intensive. Machine unlearning, however, tackles this issue by allowing models to "unlearn" the impact of specific data points through a targeted retraining approach, minimizing computational demands. By identifying and reversing the influence of particular data, machine unlearning can meet RTBF obligations while preserving model functionality. For instance, if a user requests the deletion of personal data from a recommendation system, machine unlearning selectively removes that data's impact without impairing the model's overall integrity. Techniques like stochastic gradient descent (SGD) reversal can approximate data removal effects without extensive retraining, demonstrating machine unlearning's feasibility for RTBF in fields like finance and healthcare, where large-scale retraining would be impractical. The In Re Facebook Consumer Privacy User Profile Litigation case[16] underscored the need for selective data deletion solutions in AI systems, highlighting how machine unlearning could offer a viable RTBF mechanism without dismantling complex models or sacrificing predictive power.

5.2 Federated Learning and Adaptive Clipping for Better Compliance with RTBF

Federated learning addresses data privacy by decentralizing data processing, retaining data on user devices rather than a central server, and collaboratively training models across these devices. Only aggregated updates, rather than raw data, are shared with a central server, which enhances privacy by minimizing centralized data storage and reducing risks of unauthorized retention. Federated learning aligns with RTBF principles by decentralizing data storage, which makes it less susceptible to RTBF compliance challenges.

To strengthen privacy further, federated learning often incorporates adaptive clipping techniques, which adjust the influence of specific data points in local updates, thereby ensuring no single data entry has an outsized effect on the global model. This approach provides enhanced privacy compliance, as it allows models to remain robust without any single data point overly influencing outcomes, facilitating RTBF compliance. A noteworthy example is the Snap Inc. Privacy Policy

[16] In re Facebook, Inc. Consumer Privacy User Profile Litig., 402 F. Supp. 3d 767 (N.D. Cal. 2019).

Investigation[17] led by the UK Information Commissioner's Office (ICO), where federated learning and adaptive clipping allowed Snap Inc.'s predictive text models to meet stringent privacy standards. This approach is especially relevant in applications that continuously learn from user behavior, as it helps prevent excessive influence from individual data points, enhancing RTBF compatibility.

5.3 Balancing AI Model Utility with RTBF Obligations

Balancing RTBF compliance with model utility poses a significant challenge, particularly in applications like recommendation systems, autonomous vehicles, and medical diagnostics, where data deletion can compromise accuracy. AI developers are exploring various methods to preserve model performance while meeting RTBF requirements. Differential privacy is one such approach, introducing controlled noise to individual data contributions to obscure specific data points while preserving the statistical integrity of the overall dataset. Differential privacy has been particularly successful in fields like healthcare, where model accuracy is paramount, and privacy regulations are stringent.

A case highlighting this approach is Google LLC v. CNIL[18], in which the Court of Justice of the European Union ruled that Google's RTBF obligations apply only within the EU. This decision exemplifies how differential privacy techniques can help AI models comply with regional privacy standards without overly burdening global operations. By obfuscating individual data points yet preserving the overall dataset's utility, differential privacy facilitates RTBF compliance while supporting AI's operational effectiveness.

Another approach to balancing model utility with RTBF is selective forgetting, which reduces a model's "memory" of specific data points over time or in response to RTBF requests. By applying temporal decay functions to gradually limit the impact of outdated or flagged data, selective forgetting preserves model performance while meeting data deletion requirements. This technique is particularly promising for domains like recommendation systems and personalized advertising, where data relevance naturally diminishes over time. Clearview AI Privacy Violations, where the ACLU sued over facial recognition data retention, highlights the relevance of selective forgetting. Although not mandated in this case, selective forgetting could allow compliance with RTBF obligations in AI systems that rely on timely data updates, enabling the model to retain efficacy without compromising privacy.

6. Recommendations and Future Directions

[17] U.K. Information Commissioner's Office, Snap Inc. Investigation, (2022).
[18] Supra, note 10.

As Artificial Intelligence (AI) becomes increasingly embedded in societal infrastructure, ensuring the Right to Be Forgotten (RTBF) within these systems necessitates a multifaceted approach encompassing legal, ethical, and technical dimensions. Current legislative frameworks, while robust in principle, often lag in addressing the complexities of AI-driven data retention and processing. Ethical considerations regarding individual privacy and public interest are also evolving, requiring a careful balance. Innovative technical solutions are essential for making RTBF compliance feasible within machine learning models. This section explores future directions and recommendations across these domains and provides case studies of successful RTBF integration into AI frameworks.

6.1 Legal: Enhancing Legislative Frameworks for Better Compliance

One of the main challenges in enforcing RTBF within AI is the lack of specific legislative guidance tailored to the complexities of AI systems. While the General Data Protection Regulation (GDPR) in the EU has pioneered RTBF provisions in Article 17, the unique data-processing mechanisms of AI require more explicit regulation. Current frameworks could be improved by addressing how to erase data embedded in machine learning models and clarifying data controllers' responsibilities when handling RTBF requests.

The case of Google Spain SL v. Mario Costeja González[19] highlighted the need for AI-specific regulation, as the European Court of Justice ruled that search engines act as data controllers under GDPR. However, it left ambiguous questions regarding the deep integration of data in AI, complicating straightforward deletion. Future legislative efforts should require AI models to incorporate capabilities for selective data deletion or unlearning, embedding RTBF compliance directly into model architectures.

The GC v. CNIL case further underscores the need for jurisdiction-specific regulation. The CJEU clarified that RTBF applies only within the EU, raising challenges for cross-border data control in global AI contexts. Developing harmonized international standards for RTBF could mitigate fragmentation, as AI systems typically operate on a global scale. Additionally, national laws, like India's Digital Personal Data Protection Act of 2023, should reflect the evolving complexities of AI to create a more adaptable regulatory environment.

6.2 Ethical: Balancing Rights in an AI-Driven World

Beyond legal mandates, AI's role in processing personal data raises critical ethical considerations, particularly in balancing individual privacy rights with societal benefits. AI systems often serve

[19] Supra, note 6.

public good, enhancing healthcare diagnostics and transportation while risking infringements on individual autonomy and privacy.

The ethical challenges surrounding RTBF in AI are vividly illustrated by Clearview AI, Inc. v. American Civil Liberties Union[20] (ACLU). Clearview's use of facial recognition data raised significant privacy concerns, underscoring the necessity for ethical oversight. RTBF in AI should not only be seen as a technical or legal issue but as an ethical imperative. Developers must establish clear guidelines to limit unnecessary data retention and respect privacy requests, incorporating privacy-by-design principles to ensure compliance without compromising societal benefits.

A framework for balancing rights could draw from the principle of data minimization, ensuring AI models retain only the minimum data necessary for functionality. Implementing this principle effectively can protect individual rights while maintaining the utility of AI, particularly in high-stakes applications where accurate predictions are essential. Moreover, RTBF should be integrated into an ethical framework that considers the evolving nature of consent, giving individuals the agency to modify or retract consent as AI systems and data usage change.

6.3 Technical: Innovative Solutions for Implementing RTBF

On a technical level, enforcing RTBF in AI systems requires innovative approaches capable of "forgetting" data embedded within machine learning models without significantly sacrificing functionality. Traditional machine learning architectures retain all data contributions, complicating data deletion. Researchers have proposed solutions like machine unlearning, federated learning with adaptive clipping, and differential privacy. These technologies allow AI models to comply with RTBF by selectively forgetting data or obscuring individual contributions, thereby enhancing privacy without diminishing model accuracy.

Machine Unlearning has shown promise in reconciling RTBF with AI functionality. By identifying and reversing specific data contributions, it enables the selective removal of data points without the need to retrain the entire model. The case of X v. Google India Private Limited illustrates the importance of such solutions in RTBF compliance, as the court mandated data removal in response to a user's deletion request.

Federated Learning, particularly with adaptive clipping, is another promising approach. It involves training models on decentralized devices, retaining data locally while only transmitting aggregate updates, thus minimizing data retention risks. The Snap Inc. Privacy Policy Investigation demonstrated federated learning's utility as a privacy-compliant approach, particularly in mobile applications.

[20] Clearview AI, Inc. v. American Civil Liberties Union (Ill. Cir. Ct. 2021).

Differential Privacy introduces controlled noise to individual data contributions, masking specific data while preserving broader dataset insights. This method supports RTBF by limiting individual data impact on the model, ensuring that requests can be accommodated without compromising service quality. The case of Canadian Privacy Commissioner v. Facebook highlights differential privacy's role in large-scale AI systems.

6.4 Case Studies for Successful Implementation of RTBF in AI Systems

Several case studies illustrate the successful implementation of the Right to Be Forgotten (RTBF) in AI applications, highlighting how legal, ethical, and technical strategies can work together effectively.

Apple's Differential Privacy in iOS: - Apple uses differential privacy in its iOS platform to collect user insights while protecting individual privacy. By injecting controlled noise into user data, Apple ensures that personal information remains anonymous, exemplifying strong adherence to RTBF principles.

Google's Federated Learning in Gboard: - Google's Gboard employs federated learning to enhance user privacy.[21] By training models locally on devices, Gboard minimizes centralized data storage, reducing the risk of unauthorized access. This approach allows personalized suggestions while respecting individual privacy, effectively integrating RTBF.

Mayo Clinic's Machine Unlearning: - The Mayo Clinic has pioneered machine unlearning techniques to manage patient data, allowing for selective deletion of information from AI models upon request. This compliance with RTBF requirements does not compromise the accuracy of healthcare predictions.

Snap Inc.'s Privacy Policy: - Snap Inc.'s use of federated learning in predictive text features highlights its commitment to privacy and compliance with regulations. By processing data locally, Snap enhances user privacy and reduces risks associated with centralized data retention[22].

7. Conclusion.

Integrating the Right to Be Forgotten (RTBF) into AI systems presents complex legal, ethical, and technical challenges, balancing privacy with data-driven innovations. Legislative frameworks like the EU's GDPR, particularly Article 17, empower individuals to request data deletion when it's no longer relevant, establishing essential protections. However, current regulations often fall short in addressing AI's intricacies, as these systems embed data within model architectures, complicating selective deletion and potentially impacting performance. Landmark cases like Google Spain SL v.

[21] Google Research, Federated Learning: Collaborative Machine Learning Without Centralized Training Data, GOOGLE AI BLOG (Oct. 25, 2024), https://research.google/blog/federated-learning-collaborative-machine-learning-without-centralized-training-data/.

[22] Snap Inc., Privacy Policy, SNAP INC. VALUES, (Oct. 29, 2024), https://values.snap.com/privacy/privacy-policy.

Mario Costeja González[23] highlighted digital platforms' roles as data controllers with RTBF responsibilities, while GC v. CNIL defined RTBF's jurisdictional limits, applying only within the EU, complicating matters for global AI companies navigating varying privacy standards.

Emerging technical approaches offer promising RTBF-compliant pathways without compromising model effectiveness. Machine unlearning enables the selective removal of specific data influences by identifying and reversing data contributions, avoiding full retraining and preserving computational resources. Federated learning, which trains models across decentralized devices, enhances RTBF compliance by reducing centralized data retention risks. This approach keeps personal data more secure and less accessible to unauthorized entities, with adaptive clipping minimizing any single data point's influence on the model. The Snap Inc. Privacy Policy Investigation underscored the utility of federated learning in predictive text applications, illustrating how decentralization supports both privacy and functionality. Additionally, differential privacy introduces controlled noise to mask individual data points while retaining broader insights, effectively balancing privacy with AI utility. Ethical considerations are crucial for harmonizing RTBF with AI, as unrestricted data use poses significant privacy risks. The case of Clearview AI, Inc. v. American Civil Liberties Union[24] raised critical concerns regarding facial recognition practices, emphasizing the need for stringent privacy controls in AI systems. Privacy-by-design principles, which embed privacy considerations into AI development, can strengthen RTBF compliance and promote public trust, particularly in applications like recommendation systems where data naturally loses relevance over time.

Globally, consistent RTBF standards would clarify compliance for AI companies operating across jurisdictions. Initiatives from organizations like the OECD or partnerships such as EU-U.S. collaborations could help align RTBF interpretations internationally. India's Digital Personal Data Protection Act of 2023, echoing GDPR principles, demonstrates how emerging economies are adapting to AI's data privacy challenges, underscoring the need for diverse, context-sensitive RTBF frameworks. Progress in AI research promises further refinement of RTBF-compliant technologies, such as selective forgetting, which gradually reduces the influence of specific data points. This method is particularly relevant in advertising and personalized recommendations, where data relevance diminishes over time. Case studies from Apple, employing differential privacy in iOS, and Google's federated learning for Gboard illustrate RTBF-compliant AI in action, showcasing that privacy can coexist with robust AI functionality. The Mayo Clinic's use of machine unlearning

[23] Supra, note 6.
[24] Supra, note 19.

for patient data further affirms that RTBF compliance is achievable in sensitive fields without compromising diagnostic quality.

In summary, aligning RTBF with AI necessitates ongoing progress across legal, ethical, and technical domains. Through legislative adjustments, ethical safeguards, and technological innovations, AI systems can respect RTBF while maintaining their utility, fostering a responsible AI ecosystem that balances individual privacy with technological advancement.

Navigating the Digital Frontier: Legal Challenges for Cross-Border Data Transfers in a Globalized Digital Economy

Mr. Kartik Kumar S[1]
Ms. Shivani Dutta[2]

I. Introduction

Data is the new buzzword in contemporary debates of economic growth and innovation. A plethora of studies and expert reports point to the vast potential of data as a trigger for more efficient business operations, highly innovative societal solutions, and ultimately better policy choices.[3] Companies, as well as governments, are encouraged to use this potential and to mobilize their resources aptly, so as to make the data-driven economy real. At the same time, the perils of reliance on data and on Big Data,[4] in particular with regard to the protection of privacy, have been repeatedly highlighted. There too, policymakers are under pressure to act swiftly and with an appropriate toolset to address these dangers. One specific discourse, where both these lines of discussion intersect, is trade law and policy data needs to cross borders for a thriving data economy;[5] at the same time, states do exercise jurisdiction within their territory as a rule of public international law.[6]

The free movement of data across borders 'underpins a growing range of economic activity and international trade'.[7] Data flows have created new opportunities for businesses and spurred new sectors in the economy.[8] The immense potential of data allows for 'more efficient business operations, highly innovative societal solutions, and ultimately better policy choices[9]Cross-border

[1] **Student at School of Law, Dayananda Sagar University.**
[2] **Assistant Professor at School of Law, Dayananda Sagar University.**

[3]THE AGE OF ANALYTICS: COMPETING IN A DATA-DRIVEN WORLD https://www.mckinsey.com/~/media/mckinsey/industries/public%20and%20social%20sector/our%20insights/the%20age%20of%20analytics%20competing%20in%20a%20data%20driven%20world/mgi-the-age-of-analytics-full-report.pdf Visited on 1/7/2024 6:47 PM IST

[4]Critical analysis of Big Data challenges and analytical methods https://core.ac.uk/download/pdf/153514911.pdf Visited on 9/7/2024 1:07 PM IST

[5] The Governance of Data and Data Flows in Trade Agreements: The Pitfalls of Legal Adaptation https://www.queensu.ca/sps/sites/spswww/files/uploaded_files/QITP%20pdfs/2021/9%20-%20Burri%20The%20Governance%20of%20Data%20and%20Data%20Flows%20in%20Trade%20Agreements.pdf 2/7/2024 11:20 PM IST

[6] Id

[7] International Data Flows and Privacy The Conflict and Its Resolution by Aaditya Mattoo & Joshua P. Meltzer https://documents1.worldbank.org/curated/en/751621525705087132/pdf/WPS8431.pdf visited on 1/7/2024 12:50 PM IST

[8] The role of cross-border data flows in the digital economy. https://policyaccelerator.uncdf.org/all/brief-cross-border-data-flows:~:text=A%202020%20OECD%20study%20found,by%20local%20intangibles%20has%20diminished. Visited on 8/7/2024 9:36 AM IST

[9] https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/51-1_Burri.pdf Mira Burri, The Governance of Data and Data Flows in Trade Agreements: The Pitfalls of Legal Adaptation, 51 U.C. DAVIS L. REV. 65, 67 (2017). 7/1/2024 12:56 PM IST

data flows provide multiple benefits for businesses, helping them to "access markets, interact with customers across the globe, find new suppliers, and communicate with their overseas affiliates."[10] Cross border data flows have been touted as the "*hallmarks of 21st century globalization*"[11] and the "*lifeblood of the modern economy*."[12] McKinsey Global Institute estimated that international data flows added USD 2.8 trillion to the world economy, and estimated this figure to grow to USD 11 trillion by 2025[13]. Big tech corporations undoubtedly benefit from the free flow of data as they are able to economically exploit and derive value from individual data generated all over the world, while still storing data in selected jurisdictions such as the United States. This has been used to evade multi-jurisdictional accountability. Given this reality, regulation of data flow has been a significant point of divergence at multilateral forums and trade negotiations.[14]

Businesses face significant challenges in cross-border data transfers due to stringent legal and regulatory requirements. In the EU and UK, data transfers are allowed only if the receiving country ensures equivalent privacy protection, often requiring an adequacy decision from authorities like the European Commission. Organizations have several options to comply, with adequacy decisions being one of them.[15] The choice of mechanism depends on the destination country and the specific frameworks used by the organization.

II. Methodology

This research uses a comparative legal approach, analyzing various data protection regulations and their implications for cross-border data transfers. It includes a detailed examination of India's DPDP Act, the GDPR in the EU, and laws from other regions, such as China and Japan. The sources of data relies on secondary sources such as legal texts, case studies, and expert commentary to assess the regulatory challenges faced by the countries and to propose viable strategies to ensure compliance as well as to secure data transfers. It also explores the possible precautions which need to be adopted to secure data while transferring data via technology.

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[10] https://www.commerce.gov/data-and-reports/reports/2016/09/measuring-value-cross-border-data-flows 8/1/2024 10:00 AM IST

[11] McKinsey Global Institute (March 2016), Digital Globalization: The new era of global data flows https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Digital%20globalization%20The%20new%20era%20of%20global%20flows/MGI-Digital-globalization-Full-report.ashx 9/7/2024 12:37 PM IST

[12] World Economic Forum, Exploring international data flow governance (White Paper, December 2019) https://www3.weforum.org/docs/WEF_Trade_Policy_Data_Flows_Report.pdf 9/7/2024 12:39 pM IST

[13] McKinsey Global Institute (January 2019), "Globalization in Transition: The Future of Trade and Value Chains" https://www.mckinsey.com/featured-insights/innovation-and-growth/globalization-in-transition-the-future-of-trade-and-value-chains 9/7/2024 12:42 pm IST

[14]https://publications.clpr.org.in/the-philosophy-and-law-of-information-regulation-in-india/chapter/indias-engagement-with-global-trade-regimes-on-cross-border-data-flows/ INDIA'S ENGAGEMENT WITH GLOBAL TRADE REGIMES ON CROSS-BORDER DATA FLOWS

[15] Art. 45 GDPR Transfers on the basis of an adequacy decision https://gdpr.eu/article-45-adequacy-decision-personal-data-transfer/ Visited on 7/1/2024 12:34PM IST

III. The Regulation of Cross-Border Data Transfers In India

A. The DPDPA, 2023

The newly enacted legislation of the DPDPA, 2023 empowers the Central Government to restrict the transfer of personal data by a data fiduciary to notified countries or territories outside of India.[16] Hence, transfer of data would be permissible to all countries unless blacklisted by the government. However, if any special law is enacted which provides for a higher degree of protection or restriction on transfer of personal data outside India, then such laws would continue to apply and will prevail over the DPDPA.[17] Since "personal data"[18] is broadly defined, this Section will apply to all types of data, irrespective of whether it is sensitive or not.

The DPDPA has extraterritorial applicability in cases where foreign companies are offering goods or services to Indian data principals. In situations where a country is blacklisted, the transfer as well as collection of data from companies in such a country would not be permissible as mentioned earlier. As a result, foreign companies from such a blacklisted country may be restricted from directly undertaking business in India, especially online models, as basic personal data would be required for providing goods or services.[19]The DPDP Act's Board, responsible for ensuring adequate data protection, is appointed by the Indian government. Unlike the GDPR, the DPDP Act sets fines for violations independently of the organization's turnover, ranging from INR 50 crores to 250 crores (approximately 5 million to 25 million euros).[20] The Act specifies fines for each violation, which can be cumulative, considering factors like breach severity, duration, affected data categories, financial impacts, and any mitigating actions.[21]

B. The Information Technology Act, 2000

The Information Technology Act, 2000 is another legislation which covers the protection of sensitive personal data particularly under Section 43A (Omitted).[22] However, India lacks a

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[16]Section 16(1) DPDP ACT 2023.
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[17]Section16(2)DPDPACT2023.
https://indiankanoon.org/doc/172647580/:~:text=Section%2016%20in%20THE%20DIGITAL%20PERSONAL%20DATA%20PROTECTION%20ACT%2C%202023,-16. Visited on 8/7/2024 10:11 AM IST

[18] Section 2(t) personal data
https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf visited on 16/10/2024 11:45 AM IST

[19] INDIA'S DIGITAL PERSONAL DATA PROTECTION ACT, 2023: HISTORY IN THE MAKING (Applicability)
https://www.nishithdesai.com/NewsDetails/10703 Visited on 10: 13 AM IST 8/7/2024

[20]29/06/2024 10:00 AM IST Digital Personal Data Protection Act, 2023 (Act 22 of 2023), s. 33(1)
https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf.

[21] India – The Digital Personal Data Protection Act, 2023 Penalties
https://conventuslaw.com/report/india-the-digital-personal-data-protection-act-2023-finally-arrives/

[22]Section 44(2)(a),DPDPA.

dedicated regulatory body in charge of safeguarding personal data which involves multiple agencies such as MeitY and TRAI, each playing key roles in their respective sectors. Despite this, India continues to dominate the world in Business Process Outsourcing (BPO) and IT services, with the sector expected to contribute 9% of the nation's GDP in 2023.[23] The Indian regulatory bodies are actively engaged in international data governance discussions, which help align cross-border data transfer regulations and supports bilateral agreements to ensure data protection. However, this decentralized system can lead to enforcement delays and jurisdictional overlaps. The forthcoming Digital Personal Data Protection Act, along with the establishment of a Data Protection Board[24], seeks to address these issues by providing a centralized authority to manage data protection across all sectors.

The Indian courts emphasize data localization to protect privacy, requiring global companies to establish data centers in India for local storage of personal data. Non-compliance to it may result in substantial fines and legal consequences.[25]

C. Data Localization and Legal Exemptions

In India, data fiduciaries can share personal information with the State or its representatives without prior consent if required by law. This legal use does not necessitate informing the data subjects. Additionally, when processing personal data for legal purposes, national security, sovereignty, integrity, or public order, the State and its agents are exempt from obtaining consent and other obligations under the DPDP Act, such as data deletion.[26] This poses challenges for EU exporters conducting Schrems II transfer impact assessments for data transfers to India.[27]

IV. Legal Challenges in Cross-Border Data Transfers

A. No uniform Data Protection Laws & the frequent change of Regulations

Organizations face challenges due to the diversity of global data protection laws, requiring continuous updates and adaptations. Adopting the strictest global standards can reduce productivity, a trade-off often avoided without legal mandates.[28]

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https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf page no 20 Visited on 9:45 AM IST 8/7/2024

[23]Restrictions on Cross-Border Data Transfer India https://community.sap.com/t5/technology-blogs-by-sap/challenges-in-cross-border-data-flows-and-data-localization-amidst-new/ba-p/13532178 Visited on 28/06/2024 11:00 am IST

[24] https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf CHAPTER V DATA PROTECTION BOARD OF INDIA 18. 16/10/2024 11:34 IST

[25] Regulation of Cross Border Data Transfers Under the Digital Personal Data Protection Act, 2023, AMLEGALS, available https://amlegals.com/regulation-of-data-transfers-under-the-digital-personal-data-protection-act-2023/ visited on 2/7/2024 7:56 am IST

[26]SEC 17(1) Of DPDP Act 2023 https://indiankanoon.org/doc/2263704/ 10:25 AM IST 8/7/2024.

[27]The Definitive Guide to Schrems II https://www.dataguidance.com/resource/definitive-guide-schrems-ii visited on 28/06/2024 11:00 am IST

[28] Cross Border Data Transfer: Global Data Compliance Strategies

With the DPDP Act in India, GDPR in the EU, and CCPA in California, data protection laws have tightened. GDPR imposes strict guidelines on EU citizens' data, regardless of processing location. The CCPA empowers California consumers to control their data, request deletion, and mandates businesses to disclose data collection practices. These laws set new standards for data privacy.[29] Ensuring compliance incurs high costs, including legal counsel, advanced technology, and staff training, necessitating significant updates to data management practices.

Non-compliance risks severe penalties, legal action, and reputational damage, while adhering to international standards fosters customer trust and competitive advantage. Uncertainty and changing regulations add difficulties, complicating adaptation. Strict data protection laws enhance customer privacy, giving more control over personal information and increasing consumer confidence in robust data privacy compliance.

B. Data Localization Laws & Data Security

Data localization laws require businesses to store and process data within the country of origin, necessitating significant investments in local data centers and infrastructure, posing financial challenges, especially for smaller businesses. Cross-border data transfers increase security and privacy risks, making data vulnerable to breaches and misuse. Effective technological solutions are essential for establishing trust in the security practices of collaborating parties.[30]

Unauthorized access and data breaches in cross-border transfers pose significant risks, leading to potential financial losses, penalties, and reputational damage. Breaches result in compensation claims, rectification costs, and loss of customer trust, which can be difficult to rebuild. Legal obligations to notify affected individuals and regulators can result in additional penalties and legal repercussions.[31]

C. Lack of Technology Infrastructure

Emerging technologies like AI, IoT, and blockchain introduce complexities in international data flows. AI processes large datasets, raising privacy concerns. IoT devices need secure data transfer methods. Blockchain offers better security but poses legal challenges related to data ownership and smart contracts. Legal frameworks must evolve to address these issues, integrating AI, IoT, and blockchain-specific requirements into legislation and international agreements to ensure compliance with privacy and IP laws. Industry standards and best practices must adapt accordingly.

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https://dualitytech.com/blog/cross-border-data-transfer/ visited on 2/7/2024 9:03 am IST

[29]The interplay of data, consumer and Private International law rules in the area of collective access to justice in the European Union Diego Agulló Agulló Assistant Professor of Private International Law Universidad Pontificia Comillas de Madrid – ICADE
https://e-revistas.uc3m.es/index.php/CDT/article/download/7174/5678/ Visited on 12:52 pm 10/07/2024

[30] Id

[31]Challenges of Cross-Border Data Transfer
https://dualitytech.com/blog/cross-border-data-transfer/ Visited on 2/7/2024 9:32 am IST

Organizations need robust technological infrastructure, including secure networks, advanced encryption, and sophisticated data management systems, to handle secure and compliant cross-border data transfers. Developing and maintaining this infrastructure demands significant resources and technical expertise

D. Intellectual Property Disputes

Intellectual property (IP) concerns are critical in cross-border data transfers, especially in innovation-driven sectors. Protecting IP rights, such as patents, trademarks, copyrights, and trade secrets, is challenging during data transfers due to risks of unauthorized access and breaches. Businesses must implement robust IP protection strategies to safeguard valuable digital assets. Determining data ownership and protecting proprietary information is complex, especially when sharing information with partners or external service providers. This raises questions about ownership and permissible uses of transferred data, crucial for maintaining a competitive edge by protecting confidential formulas, algorithms, and business strategies.[32]

Comparative Analysis of Countries, Data Protection Acts, Key Provisions of Cross border data transfer, and Penalties

COUNTRIES AND THEIR DATA PROTECTION ACTS	SECTIONS	PENALTIES
1. European Union (EU). General Data Protection Regulation (GDPR)	Chapter V – Transfers of personal data to third countries or international organizations: GDPR Articles 44-50 govern cross-border data transfers. Article 45: Transfers are allowed to countries deemed by the European Commission to provide an adequate level of data protection. Article 46: If no adequacy decision is in place, companies may transfer data using	Article 83: Violations of cross-border transfer rules can result in administrative fines of up to €20 million or 4% of the annual global turnover, whichever is higher.

[32] INTELLECTUAL PROPERTY IMPLICATIONS OF CROSS-BORDER DATA TRANSFER https://legalvidhiya.com/intellectual-property-implications-of-cross-border-data-transfer/ Visited on 2/7/2024 9:45 am IST

	mechanisms like Standard Contractual Clauses (SCCs) or Binding Corporate Rules (BCRs). Article 49: Transfers may also occur under specific derogations, such as explicit consent or if necessary for contract performance.	
2. United States (California) California Consumer Privacy Act (CCPA) –	The CCPA doesn't explicitly address cross-border data transfers in a specific section, but it mandates transparency and consent when sharing or selling data, even if the recipient is overseas. Section 1798.140(t)(1): Defines the "sale" of personal information, which includes transfers to foreign entities. Section 1798.150: Provides consumers with the right to take legal action if their data is breached, and companies must ensure reasonable security measures, even for cross-border transfers.	Section 1798.155: Penalties include civil fines of $2,500 per violation and up to $7,500 for intentional violations.
3. Personal Information Protection Law (PIPL) – China	- Chapter III Article 38: Transfers of personal data outside China must comply with strict rules,	Article 66: Fines can go up to ¥50 million (~$7.7 million) or 5% of the company's annual revenue. There can also be

	including obtaining certification from regulators, or undergoing a security assessment by the Cyberspace Administration of China (CAC). Article 40: Critical information infrastructure operators (CIIOs) and large processors must store personal data within China unless special approval for transfer is granted.	suspension of business operations or revocation of business licenses.
4. Brazil General Data Protection Law (LGPD)	Article 33: Personal data may only be transferred to foreign countries that provide adequate data protection standards, as defined by the Brazilian Data Protection Authority (ANPD), or under specific conditions like consent, Standard Contractual Clauses, or binding corporate rules. Article 34: Requires continuous monitoring of international transfers to ensure compliance with Brazilian law.	Article 52: Penalties include fines of up to 2% of a company's revenue in Brazil, capped at R$50 million per violation (~$9.5 million).
5. Australia's Privacy Act 1988	• Section 16C: Organizations are required	

	to take reasonable steps to ensure that overseas recipients of personal data comply with the Australian Privacy Principles (APPs). • APP 8 – Cross-border disclosure of personal information: Organizations must ensure that personal information sent abroad is subject to protections substantially similar to those in Australia, or the individual must give informed consent.	- Section 13G: Serious or repeated interferences with privacy can result in civil penalties, with fines of up to AU$2.5 million for corporations.
6. India's Digital Personal Data Protection Act (DPDPA) – 2023	• Section 17: Allows cross-border data transfers only to countries and regions that India deems as "trusted," as specified by the government.	Section 25: Penalties for non-compliance can reach up to ₹250 crore (~$30 million) for significant violations of the data protection regulations.
7. Canada's Personal Information Protection and Electronic Documents Act (PIPEDA)	• PIPEDA doesn't prohibit cross-border transfers but emphasizes transparency. Organizations must ensure that individuals are informed when their data will be transferred outside Canada and ensure that data recipients provide a	Section 11.1: Financial penalties for breaches range from fines to class-action lawsuits, though the government has proposed amendments to impose fines up to $10 million CAD or 3% of global revenue

	comparable level of protection. • Section 4.1.3: Organizations must use contractual or other means to ensure personal data is protected when handled by third parties, including those abroad.	

V. Possible Solutions to Combat the Legal Challenges

a. Global Cross-Border Data Transfers Framework (Bi-lateral agreements)

The EU-Japan agreement on cross-border data flows, finalized at the EU-Japan High-Level Economic Dialogue (HLED), and provides a comprehensive framework to address the challenges of cross-border data transfers. This landmark deal includes measures such as obtaining informed consent, completing security assessments, receiving professional certification from approved institutions, and entering data transfer agreements in line with established templates. Crucially, it eliminates costly data localization requirements, thereby reducing financial and operational burdens on businesses. By establishing a consistent and predictable legal environment, the agreement fosters trust and streamlines administrative processes for companies.

Furthermore, it aligns with EU privacy rules and the digital trade agenda, ensuring that the regulatory framework remains dynamic and adaptable to evolving digital landscapes. The commitment to a rules-based international trading system promotes global data flow rules that respect shared values and regulatory approaches. This agreement serves as a model for all countries, facilitating the smooth, secure, and legally compliant transfer of data across borders, which is essential for the growth of the digital economy.[33]

Data sovereignty compliance entails adhering to cross-border data protection laws that have been established in various jurisdictions.

[33] European Commission - Press release EU and Japan conclude landmark deal on cross-border data flows at High Level Economic Dialogue https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5378 Visited on 11/7/2024 1:58 PM IST

- The European Union's General Data Protection Regulation (GDPR). [34]

The GDPR sets strict rules for cross-border data transfer within and beyond the EU. Within the EU, transfers are largely unrestricted due to uniform GDPR standards, but agreements between controllers and processors must be in writing as per Art. 28. Transfers outside the EU are generally prohibited unless the recipient country is deemed to provide equivalent privacy protection through an adequacy decision. If no adequacy decision exists, Standard Contractual Clauses (SCCs) or Binding Corporate Rules (BCRs) are required to ensure data protection. Additionally, approved certification schemes and codes of conduct can be used for secure data transfer.

Standard Contractual Clauses (SCCs) and Binding Corporate Rules (BCRs) are key mechanisms that help ensure the secure transfer of personal data across borders. These legal tools, developed by data protection authorities, are essential for multinational companies navigating the complex terrain of international data protection laws.

- SCCs: Ensuring Compliance in Contracts

SCCs are pre-approved contractual clauses used to ensure the protection of personal data during cross-border transfers. However, one of their limitations is that they may become outdated, offering insufficient security as data protection regulations evolve. Moreover, the general nature of SCCs can be difficult to adapt to the specific requirements of individual businesses, often necessitating customization.

- BCRs: Internal Data Transfer Policies

BCRs are internal policies designed for multinational organizations with subsidiaries or branches across different regions. These rules govern the transfer of personal data within a company's global network, offering a consistent standard for data protection. BCRs provide a more tailored approach compared to SCCs, ensuring data privacy across various entities of large corporations while demonstrating a commitment to data protection standards.

- Challenges in Implementation

Despite their importance, implementing SCCs and BCRs can be challenging. SCCs often require detailed negotiation, and BCRs, although more flexible, involve complex legal processes that demand time and resources. Customizing SCCs to meet specific business needs, while ensuring compliance with rapidly changing regulations, adds another layer of complexity.

- The Need for Process Simplification

[34] 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).
https://eur-lex.europa.eu/eli/reg/2016/679/oj Visited on 10/7/2024 11:29 AM IST

To improve the effectiveness of SCCs and BCRs, simplifying their negotiation and implementation is crucial. Streamlining these processes and developing more flexible templates can make it easier for companies to adapt these tools to their unique needs. Regular updates are also needed to ensure these frameworks align with current regulations and standards.

- Collaboration and Harmonization

International cooperation between data protection authorities is key to overcoming these obstacles. Harmonizing the application of SCCs and BCRs across different countries can provide greater legal clarity and reduce complexities for businesses involved in global data transfers. SCCs and BCRs are indispensable for securing cross-border data transfers, but improvements in process efficiency and regular updates to reflect regulatory changes are essential. By simplifying the application and promoting international harmonization, businesses can more effectively protect data and ensure compliance with global data privacy standards.

- The Personal Information Protection Law (PIPL) of China.[35]

The PIPL mandates stringent controls for cross-border data transfers from China, requiring informed consent, a protection impact assessment, and one of the following: CAC security assessment, professional certification, or a CAC-approved data transfer agreement. This applies to CIIOs and network operators transferring significant data. Noncompliance incurs administrative and criminal penalties, so businesses must promptly assess if a security assessment is needed and comply accordingly.

- Digital Personal Data Protection Act (DPDP) of India [36]
- Canada's Personal Information Protection and Electronic Documents Act (PIPEDA).[37]
- The Personal Information Protection Act (APPI) of Japan.[38]

b. Privacy-Enhancing Technologies and Best Practices

Protecting privacy is vital in today's digitally connected world, and privacy-enhancing technologies (PETs) play a pivotal role in achieving this. These technologies focus on preserving the authenticity, confidentiality, and integrity of data while ensuring its efficient use. PETs involve encrypting

[35]Personal Information Protection Law of the People's Republic of China, adopted at the 30th Meeting of the Standing Committee of the 13th National People's Congress on 20 August 2021. https://personalinformationprotectionlaw.com/ Visited on 10/7/2024 11:35 AM IST

[36] Digital Personal Data Protection Act, 2023, No. 22 of 2023, Ministry of Law and Justice, Government of India. https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf

[37] Personal Information Protection and Electronic Documents Act, SC 2000, c 5. https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/ visited on 10/07/2024 11:4 5 AM IST

[38] Act on the Protection of Personal Information, Act No. 57 of 2003 (amended in 2020). https://www.cas.go.jp/jp/seisaku/hourei/data/APPI.pdf 10/07/2024 11:46 AM IST

readable data, making it accessible only with the correct decryption key. End-to-end encryption safeguards the privacy of data during transmission, preventing unauthorized access, even if intercepted. Implementing robust encryption methods, such as AES-256, and ensuring secure key management is essential.[39] To address evolving threats, encryption techniques should be regularly updated. For stored data, encryption is crucial to maintain security. When personally identifiable information (PII) is removed, data becomes anonymized, making it impossible to link the information back to individuals. Techniques like data masking, generalization, and perturbation are commonly used for anonymization, balancing data utility and privacy. Regular evaluations of anonymization techniques are necessary to prevent re-identification risks, and businesses must comply with legal standards. Pseudonymization, unlike anonymization, replaces PII with fictitious identifiers or pseudonyms, allowing data to be re-linked to individuals with separate stored information. Effective pseudonymization practices require separating pseudonymous data from identifying information and enforcing strict access controls over the mapping between them. Continuous monitoring of pseudonymized data for security is also critical.

Artificial intelligence (AI) significantly enhances data privacy by identifying patterns indicative of security risks through machine learning algorithms. AI-powered data categorization can detect sensitive information in large datasets, ensuring targeted protection. Integrating AI-based threat detection systems helps continuously monitor user activity and network data, enabling proactive threat response and real-time surveillance. AI models must be updated regularly to address emerging threats and attack vectors. Blockchain technology, a decentralized and tamper-proof ledger, strengthens data transparency and integrity by ensuring that once data is recorded, it cannot be altered without consensus. This technology is widely used in industries like supply chain management, healthcare, and finance to secure transactional data. Businesses utilizing permissioned and private blockchains must ensure compliance with privacy regulations for both stored data and smart contracts.[40]

c. Homomorphic Encryption

Homomorphic encryption allows data to be analyzed or manipulated without decrypting it, thus maintaining privacy by keeping personal data secure even during processing. Traditional encryption requires data decryption for analysis, exposing it to potential privacy risks. In contrast, homomorphic encryption employs an algebraic system where operations can be performed on encrypted data. Data is encrypted with a public key, and only the holder of the corresponding private

[39] https://www.livelaw.in/articles/cross-border-data-transfer-regulations-global-trade-digital-services-data-protection-229472 visited on 16/10/2024 11:22 AM IST

[40]Pivot to PETs: About Privacy Enhancing Technologies https://www.loeb.com/en/insights/publications/2022/03/pets-what-you-need-to-know-about-privacy-enhancing-technologies Visited on 28/06/2024 12:02 pm IST

key can access the unencrypted results. This approach supports secure data sharing and analysis across industries like adtech, fintech, and healthcare, facilitating initiatives such as clean rooms that combine data while protecting personally identifying information.[41]

d. Multiparty Computation

Multiparty computation (MPC) enables multiple organizations to collaborate without sharing sensitive information. All data remains encrypted during transit, storage, and use, ensuring privacy. MPC allows data to be processed locally, minimizing the need for centralized data storage. This method is beneficial for scenarios such as collaborative ad campaign reporting or machine learning model training, where data from different parties can be combined securely without revealing user-level details.[42]

e. Differential Privacy With Federated Learning

Differential privacy differs from homomorphic encryption and MPC by focusing on anonymizing datasets rather than processing encrypted data. It injects noise into a dataset to prevent individual identification while enabling analysis. This method supports privacy-preserving data analysis without compromising utility, making it suitable for scenarios where understanding overall trends is more critical than identifying specific individuals. Federated learning decentralizes machine learning by training models on data stored locally on user devices. This approach reduces the privacy risks associated with centralized data aggregation, benefiting applications like on-device AI models in products such as voice assistants.[43]

f. Synthetic Data

Synthetic data, generated algorithmically from real data, serves as a privacy-protective substitute for testing and training machine learning models. It mimics original data patterns without containing identifiable information, making it suitable for applications requiring large datasets while adhering to privacy regulations.[44]

g. Strengthening Cyber security Measures

Securing cross-border data transfers requires a robust, regularly updated cyber security strategy tailored to organizational needs. This includes clear policies on employee roles, access

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[41] What is homomorphic encryption?
https://www.ibm.com/topics/homomorphic-encryption Visited on 28/06/2024 12:06 pm IST

[42] What Is Multiparty Computation?
https://digitalprivacy.ieee.org/publications/topics/what-is-multiparty-computation:~:text=At%20its%20heart%2C%20multiparty%20computation,party%20learns%20anything%20about%20others. Visited on 12:20 pm 28/06/2024 IST

[43] Id

[44] Beyond GDPR: how synthetic data helps companies navigate the complexities of data protection and privacy
https://syntheticus.ai/blog/beyond-gdpr-how-synthetic-data-helps-companies-navigate-the-complexities-of-dataprotectionandprivacy:~:text=Synthetic%20data%20presents%20an%20ideal,secure%20and%20privacy%2Dcompliant%20manner. Visited on 11/7/2023 2:03 PM IST

management, incident response, and data encryption. Dynamic policies must evolve with emerging threats. Implementing a data classification system enhances security by applying targeted measures based on data sensitivity.

VI. CONCLSUION

In light of the intricate landscape of global data transfers, it is evident that a holistic, legally sound, and technologically advanced approach is imperative for ensuring secure cross-border data flows. The legal frameworks that govern these transfers, such as India's Digital Personal Data Protection Act (DPDP), the European Union's General Data Protection Regulation (GDPR), and China's Personal Information Protection Law (PIPL), impose a complex set of obligations on organizations. These laws demand not only compliance with local data protection regulations but also the implementation of mechanisms that facilitate safe international data exchanges.

The challenge of navigating diverse legal systems is compounded by data localization requirements and extraterritorial applications, which restrict data flows and complicate operations for multinational enterprises. This underlines the critical role of legal mechanisms like Standard Contractual Clauses (SCCs) and Binding Corporate Rules (BCRs). While SCCs serve as standardized solutions, they often require customization to address the specific needs of different enterprises. BCRs, on the other hand, offer a more bespoke solution for large multinational corporations, facilitating uniform data protection policies across their global networks.

Technological innovations, particularly Privacy-Enhancing Technologies (PETs) such as Homomorphic Encryption, Multiparty Computation (MPC), and Differential Privacy, further bolster the security of cross-border data flows. These technologies enable companies to securely process and share personal data while ensuring compliance with data protection laws. The use of synthetic data provides an additional layer of protection by enabling companies to analyze data without exposing sensitive information, significantly reducing the risk of privacy breaches. The alignment and harmonization of international regulations, as demonstrated by the EU-Japan Agreement on Cross-Border Data Transfers, is key to reducing the regulatory burdens faced by global businesses. Such frameworks not only streamline data transfer processes but also foster greater trust between regulatory bodies and the private sector. Establishing predictable legal environments through international cooperation can help mitigate the operational and financial costs associated with compliance

Additionally, the importance of strong enforcement mechanisms cannot be understated. Regulatory bodies around the world are increasingly imposing significant penalties for non-compliance, as seen in India's DPDP Act, where fines are set independently of company turnover. This reflects the global trend toward stricter enforcement of data privacy laws, making it essential for organizations

to proactively adopt compliance measures, invest in cutting-edge cybersecurity infrastructure, and train their staff to uphold the highest standards of data protection.

Ultimately, the complexity of managing cross-border data transfers highlights the need for an integrated approach that combines legal compliance with technological innovation. By adopting advanced data protection technologies, adhering to international legal frameworks, and encouraging collaboration between regulators, businesses can ensure not only the secure transfer of personal data but also maintain their competitive edge in the evolving global digital economy. The future of international data transfers rests on the ability of organizations to adapt to these evolving challenges, ensuring that both privacy and innovation are preserved.

Regulating Social Media Platforms in India

Dr. Rahul Mishra[1]

Introduction:

Over the years, we have seen that investments made by State & Private players in Communication sector technologies have resulted in unprecedented increase in the internet access across whole South Asian region[2]. So far as India is concerned, it has near about five hundred and thirty million WhatsApp users, four hundred and ten million Facebook users, one hundred and sixty million twitter users, four hundred forty-eight million YouTube users as on Jan 2023.[3] It could be said that India has not been an exception to the silent penetration of social media platforms and their upscaling popularity thereby phenomenally using all such segments in India. As per the scholastic viewpoints, the ever-growing number of social media users in India and South Asia in general is going to play pivotal role making the path of digitised platforms, associated cultures as well as politics in the coming times.

The nature of Social Media platforms as well as their regulatory regimes are under discussed amongst Indian scholars to the extent in spite of having gradual increase in the number of such users using Social Media Platforms. Keeping in view the platforms like, Twitter, Face Book, Twitter, You Tube & Amazone, so much of impact has been made at the global level by them accordingly, the users of such platforms may misuse them to spread hate, speech, miscommunication, and biased political vendetta. Therefore, it has become important to demystify the role, nomenclature, and *modus-operendi* of regulatory framework of such digital intermediaries in countries like India.

Nevertheless, it is firmly believed thereby conceding to the argument so made by the scholars that such platforms being capitalistic and imperialistic in their nature, may seldom permit for such probe into their impactful engagement with all stakeholders like State, Private Players[4] and user endeavours thereby coalescing on these social media platforms. Even though, an attempt has been made to negotiate the regulatory framework[5] and its impact on such platforms in India. This paper is just a humble attempt to understand the regulations of Social Media Platforms In India in the light

[1] **Associate Professor, Manipal Law School, Manipal Academy of Higher Education, Manipal, India. Email: mishra.rahul@manipal.edu, Orchid Id number: 0000-0001-7127-2482**

[2] Siripurapu, Anshu, and William Merrow. Social Media and Online Speech: How Should Countries Regulate Tech Giants? Council on Foreign Relations, 2021. JSTOR, http://www.jstor.org/stable/resrep31160

[3] Social Media in India - 2023 Stats & Platform Trends, https://oosga.com/social-media/ind/

[4] Bhandari, Vrinda. "Privacy Concerns in The Age of Social Media." India International Centre Quarterly, vol. 45, no. 3/4, 2018, pp. 66–81. JSTOR, http://www.jstor.org/stable/45129854

[5] Smith, Frank, et al. "2024: Fragmented World, Fragmented Internet." Australia's Cybersecurity Future(s): It's January 2024. Does Australia Still Have the Internet? Australian Strategic Policy Institute, 2018, pp. 06–09. JSTOR, http://www.jstor.org/stable/resrep23056.6

of IT Intermediary guidelines & Digital Media Ethics Code) Rules 2021 keeping in view IT Amendment Act 2008. The IT rules (2021) have not been found to be a legislation made by the Indian Parliament. Rather, these were brought into picture the Central Government in purview of rulemaking power as provided under section eighty-seven(ZG) of the Information Technology Act 2008[6] which is an enabling provision for Central government for issuing guidelines to be strictly followed by all such mediators to enjoy immunity from being held liable for any ill act. The very important feature of such rule is the imposition of accountabilities on intermediaries[7].

Methodology:

Non doctrinal method of research has been used while developing this article. Judgement of Courts, Juristic opinions, recommendatory notes, JSTOR, scholastic opinions have been evaluated and critiqued herein this piece of writing. The evolution of regulations concerning social media have also been looked into while justifying the tile of the research undertaken.

Social media platforms in India:

The experience of information and disinformation communication in India has been volatile. The potential of it and far-reaching implication has been seen in terms of caste oriented and religion-based divisions. It has also seen the enormous power of social media platforms in case of upholding Free Speech. As per the studies done on social media landscapes in some part of India, it is indicative of the presence of social media in the unknown contours of this nation.[8]Although, the legislation and policy making process pertaining to such platforms has emerged recently, yet it has gotten due recognition at the judicial level on one hand and at the regulatory level on the other.

Both Judiciary and regulatory bodies like Competition Commission of India have been found to have been active in defining, finding out the concerned regulatory principles and the broad implications of such platforms in India.[9] A good number of petitions being filed to challenge the legal status of social media & OTT platforms more so, anti-trust issues are also coming up and have been found to be sub judice before various High Courts and the CCI as well. Therefore, for finding the best in such regulations, merely, going through the adequacy of legislative and policy matters in this regard shall not be realistic, given the scenario that such platforms have been continuously rising and have been very dynamic in nature. Accordingly, the focus ought to be on evaluating the

[6] The Information Technology Act 2008 https://www.meity.gov.in/content/information-technology-act

[7] Guilbeault, Douglas. "Digital Marketing in The Disinformation Age." Journal of International Affairs, vol. 71, no. 1.5, 2018, pp. 33–42. JSTOR, https://www.jstor.org/stable/26508116

[8] Saroj Kumar Aryal & Simant Shankar Bharti , "Changing the media landscape in India under the Modi government: a case study based on the Narrative Policy Framework", Studia z Polityki Publicznej, vol. 9, no. 3, pp. 47-64, 2022, https://www.redalyc.org/journal/6637/663772733004/html/

[9] To regulate WhatsApp and Big Tech, India's competition panel needs more teeth – and fresh thinking, https://scroll.in/article/990939/to-regulate-whatsapp-and-big-tech-indias-competition-panel-needs-more-teeth-and-fresh-thinking

promptness of the judiciary, executive and regulators in taking this task of having enactments and thereby mixing the existing framework in between their jurisdictional limitations[10].

Such anticipated promptness from the side of democratic pillars has been questionable and debatable. The role of executive in social media could be discerned by the mostly forced internet shutdowns without well-established reasons and with the tact of agreement of ISPs in abiding by all sorts of directions of the government. The role of the Indian Govt to control the information flow of social media platforms can be seen by liberal internet shutdowns in 2021.[11] Report by (OII) i.e. *Oxford Internet Institute*, declared India as one of the social media manipulators[12] and given the fact that 70% of the population of India is young and have been accessing electronic gadgets like mobile phones[13], tabs, etc to make social media's role a great extent in society.

All such devices do have access to social media platforms. Moreover, the data availability at a affordable cost has further more given rise in the number of users in India. It is also found that there is no adequate social media literacy amongst users especially in the sub urban regions off India. Accordingly, it could be anticipated that the consequences while misusing such platforms may be far reaching. Even the educated people in India also do have poor understanding of the use of such platforms within holistic considerations. Accordingly, it could be said that the current scenario of Social Media illiteracy[14] coupled with in effective legislative control on such platforms in India has brought home the question as to who is representing India's diverse population through such social media platforms where such data centric public fields are misused by bots, web-oriented robots for writing content?

In the light of political spheres, the rise in political bots has created new sort of issues with respect to social lives thereby getting attention as to the opinion to be shaped accordingly.[15] Having considered the low level of Social Media illiteracy in India[16], the bulk of misinformation could be taken as universal public threat and the same scenario has been discussed in a study while

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[10] Salman, Fatima. Evolving News Media Landscapes in India and Pakistan: Implications for Regional Peace and Stability. Atlantic Council, 2020. JSTOR, http://www.jstor.org/stable/resrep26001

[11] India Remains Internet Shutdown Capital of the World for Fifth Year Running, https://thewire.in/tech/india-remains-internet-shutdown-capital-of-the-world-for-fifth-year-running-report

[12] Industrialized Disinformation: 2020 Global Inventory of Organized Social Media Manipulation, 2021, Oxford Internet Institute, https://www.oii.ox.ac.uk/news-events/news/social-media-manipulation-by-political-actors-now-an-industrial-scale-problem-prevalent-in-over-80-countries-annual-oxford-report/

[13] Tully, Stephen. "People You Might Know: Social Media in the Conflict Between Law and Democracy." Law and Democracy: Contemporary Questions, edited by Glenn Patmore and Kim Rubenstein, ANU Press, 2014, pp. 153–72. JSTOR, http://www.jstor.org/stable/j.ctt13wwvp7.12.

[14] Schroeder, Ralph. "Media Systems, Digital Media and Politics." Social Theory after the Internet: Media, Technology, and Globalization, UCL Press, 2018, pp. 28–59. JSTOR, https://doi.org/10.2307/j.ctt20krxdr.5

[15] Caldarelli, G., De Nicola, R., Del Vigna, F. et al. The role of bot squads in the political propaganda on Twitter. Commun Phys 3, 81 (2020), https://www.nature.com/articles/s42005-020-0340-4

[16] Sumeysh Srivastava, Improving digital literacy in India – a review, https://www.itu.int/hub/2022/12/improving-digital-literacy-in-india-a-review/

addressing misinformation, intermediary policy, liability, platform modification designing and media awareness.[17] In such an atmosphere of predicament, it is quite nature for policy makers and Social Media houses- to reshape the existing framework as per their requirement. Most relevant issues of such misuse of virtual information at the time of *COVID-19*[18] in India were the omissions of tweets of many seasoned people who targeted the State for nor being able to overcome second wave of *COVID-19*. Therefore, such deletions of such accounts or thumping down such expressions under the garb of unilateral decision of social media platforms thereby declaring it as *BAD CONTENT*[19] beneath their community standards and at the behest of the State by not having transparent law has violated the right of enjoying freedom and speech and expression as envisaged in Indian Constitution under article 21.

As for review policies of social media platforms and their working procedures and impartial standards also remain a matter of grave concern. Social platforms have constituted groups to consider appeals and such challenges with regard to content omission or alteration as well as moderation, but such phenomenon remains doubtful across universally and India has not been an exception too.[20]

The legal framework & social media platforms:

As of now there has not been any much-needed legislative effort to take over social media platforms in India[21]. Though there are few Acts which have addressed such issues of social media platforms in India. India has always relied upon its Constitution for legal issues on privacy and free speech, Information Technology Act 2008 and the IT Rules-2021. In addition of regulations, the existing legal framework on social media regulations does talk about duel regulatory model considering both legal framework as well as self-regulatory mechanisms.

In the absence of a composite legislation, social media platforms are being governed by Information Technology Act, 2008 and IM Rules 2021. Such rules have been found to be elaborative which have repealed the Information Technology (IG) Rules 2011, which were not found to be in line with the

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[17] Ben Medeiros, Pawan Singh; Addressing Misinformation on Whatsapp in India Through Intermediary Liability Policy, Platform Design Modification, and Media Literacy. Journal of Information Policy 1 May 2020; 10 276–298. doi: https://doi.org/10.5325/jinfopoli.10.2020.0276

[18] Wawra, Daniela. "Digital Communication and Privacy: Is Social Web Use Gendered?" AAA: Arbeiten Aus Anglistik Und Amerikanistik, vol. 40, no. 1/2, 2015, pp. 219–45. JSTOR, http://www.jstor.org/stable/24722047

[19] Karnik, Kiran S. "140 Characters in Search of a Purpose: Worries and Wonders of Social Media." India International Centre Quarterly, vol. 45, no. 3/4, 2018, pp. 168–80. JSTOR, http://www.jstor.org/stable/45129862

[20] Industry group proposes self-regulatory grievance redressal board for social media firms, https://www.moneycontrol.com/news/business/industry-group-proposes-self-regulatory-grievance-redressal-board-for-social-media-firms-9023991.html

[21] Sajlan, Devanshu. "Hate Speech against Dalits on Social Media: Would a Penny Sparrow Be Prosecuted in India for Online Hate Speech?" CASTE: A Global Journal on Social Exclusion, vol. 2, no. 1, 2021, pp. 77–96. JSTOR, https://www.jstor.org/stable/48643386

internationally acclaimed best notions in so far as problems in regard of safe protection to service providers and international accountability standards were concerned.

Although, a rigid jurisprudential base on the same subject gave rise to many cases which reached Indian Supreme Court and were adjudicated upon later for good.[22] 2011 IT Rules were silent on social media platforms, OTT Platforms, Digital platforms, and no decided cases were there where such rules have been applied to take over social media platforms in India.

Regulating social media & digital media intermediaries:

IM Rules 2021 are not limited in application to internet centric intermediaries rather these rules are meant to provide for guidelines for digitised media too. These contentions are being fought in Apex court of India at present. These rules have been shown as a balanced approach and give rise to two notions:

1. *Providing for the legal nomenclature to the concept of social media thereby classifying Such platforms.*
2. *Regulating such platforms by imposing additional accountabilities in the form of hybrid model of self-governed regulation and governmental control.*

While making such rules,[23] India had taken into account the ever-growing need of Social Media platforms and their relevance in society about the content being shown on such platforms thereby weighing their impotence in the right to freedom of speech[24] and expression as per constitutional mandate.

After the coming into force of these rules in 2021, issues pertaining to speech and expression and privacy were taken up by Indian society. Such rules as brought forward many species as Netflix[25] and Amazons Prime, digital news production under the umbrella of intermediaries which were found to have been out of the purview of IM Rules, 2011.

Flawed assumptions:

So far as the essence of IM Rules 2021 is concerned, it seems to be based on the hypothesis that Social Media Intermediaries will not be acting merely as conduits rather they will be the accomplice

[22] Supreme Court stays proceedings before High Courts challenging IT Rules, 2021, interim orders to continue, https://internetfreedom.in/supreme-court-stays-proceedings-before-high-courts-challenging-it-rules-2021-interim-orders-to-continue/

[23] Lovink, Geert. "What Is the Social in Social Media?" Art in the Global Present, edited by Nikos Papastergiadis and Victoria Lynn, vol. 2, UTS ePRESS, 2014, pp. 97–111. JSTOR, http://www.jstor.org/stable/j.ctv1w36pfr.10. Accessed 8 May 2023.

[24] Kumar, Smarika. "Media Ownership and the Marketplace of Ideas." Economic and Political Weekly, vol. 50, no. 22, 2015, pp. 20–23. JSTOR, http://www.jstor.org/stable/24482485. Accessed 8 May 2023.

[25] Dahlberg, Lincoln. "Facebook's Response to Its Democratic Discontents: Quality Initiatives, Ideology and Education's Role." The Digital Age and Its Discontents: Critical Reflections in Education, edited by Matteo Stocchetti, Helsinki University Press, 2020, pp. 69–94. JSTOR, https://doi.org/10.2307/j.ctv16c9hdw.8. Accessed 8 May 2023.

along with the creator of content. Such assumption could be taken from the introduction given to IM Rules 2021, where it was found that Social Media Platforms do have responsibility against their misuse and abuse too. We could infer that the intermediaries have been shown as being overburdened with additional accountable standards such as-

1. Appointing Indian based compliance officials.
2. Traceability procedures about first originator.
3. Deploying automotive software for filtration of content.
4. Finding out physical address of user of such accounts.
5. Taking down the content swiftly.

Such endeavours were not found to have been welcomed by social media owners in India. As it was deduced that, such control may lead to undermine freedom of speech. The necessity of removal and monitoring stuff about user's content may result in over compliance with take down request for precluding any liability for such attempts.[26] Moreover the use of filtering software (automotive) may also be not as effective as it will be unlikely to find out the unlawful content under distinct cultural backgrounds through such software.

With regard to obligation of the traceability of originator, there have been privacy related repercussions. If such rules are not found to have been observed, intermediaries are destined to lose safe protective shield under section seventy-nine of Information Technology Act 2008 and could face criminal charges which may furthermore make these social media platforms to remove even legal content as a proactive protective measure.

Even such predicaments have been noticed by United Nations special rapporteurs[27] and they have expressed such concerns with the government of India. Serious ramifications have been foretold about due diligence which may lead to infringement of Human Rights[28].

Before the intimation of these rules, intermediaries had a composite protective cover against any liability coming out from third party publication. The sheer purpose for providing exemption from such liability does help the intermediary to operate without any hassles, but according to the new IM Rules 2021, there ought to be stronger norms to be accepted by all such intermediaries for availing of protective shield. These new rules have therefore, given rise to departure from its predecessor IM Rules 2011. So the new rules 2021 have brought in additional and stringent due

[26] Lee, Joseph Tse-Hei. "Review Essay: Nonviolent Activism in a Networked Age." Indian Journal of Asian Affairs, vol. 27/28, no. 1/2, 2014, pp. 97–103. JSTOR, http://www.jstor.org/stable/43857995. Accessed 8 May 2023.

[27] Thompson, Robin. "Radicalization and the Use of Social Media." Journal of Strategic Security, vol. 4, no. 4, 2011, pp. 167–90. JSTOR, http://www.jstor.org/stable/26463917. Accessed 8 May 2023.

[28] Venkatraman, Shriram. "The Social Media Landscape: People, Their Perception and Presence on Social Media." Social Media in South India, UCL Press, 2017, pp. 25–55. JSTOR, https://doi.org/10.2307/j.ctt1qnw88r.8. Accessed 8 May 2023.

diligence obligations to be adhered to by Social Media platforms. By not following due diligence considerations may lead to criminal sanctions which may furthermore be undermining the idea of freedom of speech and expression.

Originator traceability[29]

Though the IM Rules 2021 has been a very good step to protect social media platforms and intermediaries but there have been many doubts on governmental control with regard to regulating *SSMIs* like WhatsApp, Telegram & Signal which are involved in the business of providing messaging services. Such services are now required for enabling identification of first originator of the content on computer source on the basis of judicial order so passed by a Court or an order under section sixty nine of the Information Technology Act 2008 by an authority in accordance with Procedural Guidelines (procedure& safeguards, monitoring& decryption of info) Rules 2009, which will have to be supported by copy of such information in electronic mode.

Such requirement of identifying first originator of such message under MI Rules 2021 is subject to some provisions so attached to such rule and furthermore subject to judicial scrutiny may seem problematic and does seem to be a major threat for the privacy of users of such services.

Therefore, such issues and ineffectiveness of social media platforms for facilitating traceability has already approached Supreme Court of India through PILs pertaining to linking of *Adhaar (National ID card in India)* with social media platforms accounts.[30] Moreover, some of the studies have shown fear that social media platforms are vulnerable and may undermine the credibility of content being exchanged.

An inchoate endeavour:

Accordingly, it could be said that IM Rules 2021 does invite difference of opinion for being unclear as they have only zeroed in on social media platforms hand not done any attempt to develop nomenclature about other variations in the role of intermediaries on the lines of Telecom Service Provider, Providers providing network services, internet[31], hosting web services, using search engines, making payment online methods, auction websites on line, virtual commercial streets, and cafes providing internet services also do form part of the nomenclature of intermediary in accordance with section 2(1)(w) of the Information Technology Act 2008. Having been through the

[29] De Kosnik, Abigail. "Is Twitter a Stage?: Theories of Social Media Platforms as Performance Spaces." #identity: Hashtagging Race, Gender, Sexuality, and Nation, edited by Abigail De Kosnik and Keith P. Feldman, University of Michigan Press, 2019, pp. 20–36. JSTOR, http://www.jstor.org/stable/j.ctvndv9md.5

[30] Supreme Court dismisses plea seeking mandatory linking of Aadhaar to social media accounts, https://www.india.com/news/india/supreme-court-rejects-plea-seeking-mandatory-linking-of-social-media-accounts-with-aadhaar-3805018/

[31] Biały, Beata. "Social Media—From Social Exchange to Battlefield." The Cyber Défense Review, vol. 2, no. 2, 2017, pp. 69–90. JSTOR, http://www.jstor.org/stable/26267344

mostly advanced legal system of the world the presence of above said intermediaries could be well found accordingly, regulations regulating the same are also well established.

Regulating overzealously:

Suffice it to say, regulating news portals[32] on digital mode which are only responsible to create content on current affairs have been altogether different from online content creators on OTT platforms and such attempt has turned out to be an overreach and has been beyond the scope of Information Technology Act 2008.

Moreover, *IM Rules 2021* have also classified digital news platforms as *"DIGITAL MEDIA"* and do seek to regulate them thereby putting governmental control& ethical code. All such platforms have been to courts from time to time thereby challenging the constitutional status of IM Rules 2021 for having overreached the Information Technology Act 2008 which gives nowhere any provision for controlling such intermediaries. Even the order by Delhi High Court was also issued to Central Government to put up a reply to the petition concerned and it directed the central government to provide for reasons as to why there should not be stay on such rules.[33]

Other petitions of this sort have also been filed in Delhi High Court where part three of *IM Rules-2021* has been questioned as it is ultra virus the Information Technology Act 2008 so far as the classification of *"PUBLISHERS OF NEWS & CURRENT AFFAIRS"* content as part of *"DIGITAL MEDIA"* is concerned. It could be said that such classification of news portal on digital platforms has seemed to be overreaching the power as vested with the central government as provided under section eighty-seven of Information Technology Act 2008.

No legislative intent has been found in this move of the central government because in the light of Information Technology Act 2008, provisions, such news portals are not termed as intermediaries[34]. Such exercises do make such guidelines unclear thereby attempting to regulate such portals[35] with the help of delegated legislation by putting inside such portals without the due process being followed.

Conclusion:

[32] Miller, Daniel, et al. "Academic Studies of Social Media." How the World Changed Social Media, 1st ed., vol. 1, UCL Press, 2016, pp. 9–24. JSTOR, https://doi.org/10.2307/j.ctt1g69z35.9

[33] Delhi HC Issues Notice in The Wire's Challenge to New IT Rules https://thewire.in/law/delhi-hc-notice-the-wire-petition-challenge-new-it-rules-mk-venu-dhanya-rajendran

[34] Bowd, Kathryn. "Social Media and News Media: Building New Publics or Fragmenting Audiences?" Making Publics, Making Places, edited by Mary Griffiths and Kim Barbour, University of Adelaide Press, 2016, pp. 129–44. JSTOR, http://www.jstor.org/stable/10.20851/j.ctt1t304qd.13

[35] Sinanan, Jolynna. "The Social Media Landscape: New Media and 'Old' Media." Social Media in Trinidad: Values and Visibility, vol. 11, UCL Press, 2017, pp. 30–56. JSTOR, https://doi.org/10.2307/j.ctt1xhr53j.6

As of now, many petitions have been pending regarding the constitutionality of IT Act 2008 in the framing of such rules. When it comes to WhatsApp[36], it has also approached court thereby challenging such rules advancing the ground of privacy.[37] Based on critical analysis as done in the foregoing paragraphs, it could be said that such rules as made have been bit disappointing and due to the lack of democratic approach of Social Media Platforms governance and legislative attempt[38]. The said rules give us an opportunity for bringing in composite and real regulatory framework thereby providing for level playing field for the intermediaries in case of social media platforms. Moreover, the rules have given rise to the environment of predicament and panic amongst all such *SSMIs*[39]. As of now, there have been found to be 3.725 billion social media active users and they do spend approximately one hundred and forty-two minutes per day on such platforms.

There has also been unprecedented growth of three hundred and twenty-eight million users found in between 2018 and 2021. Therefore, we can say that such platforms[40] have become important aspect of one's lives. There have been movements like *METOO and ROLACOLA* which provided autonomy and empowerment to common people to raise their voices. Accordingly, social media has both pros and cons, on one side they are instrumental in bringing peoples connect on virtual platforms, whereas on the other hand, it also undermines the privacy aspects of such content being shared. Therefore, the regulatory mechanisms must be so designed to protect such platforms from any future dangers thereby providing full proof security to the users in 21st century[41]. Inspiration to have decisive regulation to regulate social media could be drawn from the EU and USA to have democratic and strict laws and regulations to protect Social Media Platforms from unwanted threats and impossibilities[42]. The courts and administration will have to work together to accommodate social interest while regulating such platforms.

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[36] Dubois, David, et al. "Sharing with Friends Versus Strangers: How Interpersonal Closeness Influences Word-of-Mouth Valence." Journal of Marketing Research, vol. 53, no. 5, 2016, pp. 712–27. JSTOR, http://www.jstor.org/stable/44134912

[37] Supreme Court directs WhatsApp to allow users to continue using WhatsApp without accepting its 2021 Privacy Policy https://internetfreedom.in/supreme-court-directs-whatsapp-to-allow-users-to-continue-using-whatsapp-without-accepting-its-2021-privacy-policy/

[38] Kornbluh, Karen, et al. Safeguarding Digital Democracy: Digital Innovation and Democracy Initiative Roadmap. German Marshall Fund of the United States, 2020. JSTOR, http://www.jstor.org/stable/resrep24545

[39] Allcott, Hunt, and Matthew Gentzkow. "Social Media and Fake News in the 2016 Election." The Journal of Economic Perspectives, vol. 31, no. 2, 2017, pp. 211–35. JSTOR, http://www.jstor.org/stable/44235006

[40] Sebastian, Leonard C., et al. "Youth and The New Social Media." Pemuda Rising: Why Indonesia Should Pay Attention to Its Youth, S. Rajaratnam School of International Studies, 2014, pp. 46–54. JSTOR, http://www.jstor.org/stable/resrep05897

[41] Weissmann, Shoshana. "How Not to Regulate Social Media." The New Atlantis, no. 58, 2019, pp. 58–64. JSTOR, https://www.jstor.org/stable/26609117

[42] Bradshaw, Samantha, and Philip N. Howard. "The Global Organization Of Social Media Disinformation Campaigns." Journal of International Affairs, vol. 71, no. 1.5, 2018, pp. 23–32. JSTOR, https://www.jstor.org/stable/26508115

Navigating Data Privacy Challenges in Industry 4.0: The Impact of Artificial Intelligence on Consent, Security, and Regulatory Frameworks

Gayatri Rathi[1]

Introduction

Industry 4.0 can be regarded as the start of a new era of industrial revolution through cyber-physical systems, IoT, and AI, introducing a new level of effectiveness, flexibility, and pro-activeness in manufacturing and services. This fourth industrial revolution transforms the processes in sectors through the development of automation, prompt analytics, and data-driven decisions. Especially in India, the significance of Industry 4.0 is high due to the fast-growing digital economy and the ongoing digitalization processes. But as AI systems work to enhance industrial development, it poses intricate issues on data protection, which India's legal framework, specifically the newly proposed "Digital Personal Data Protection Act, 2023", needs to tackle the conflict between promoting the development of AI and the safety of data. Big data is a common input these AI-driven processes demand, hence the legal systems and measures to ensure proper handling of the data collected.[2]

Data privacy has become more paramount as artificial intelligence technologies, infamous for depending on user data, grow widespread. These systems rely on massive amounts of data to make algorithms work better in terms of forecast and adaptation. On the other hand, the data intensity of business processes has become the significant driver for AI applications in Industry 4.0, but it has also increased privacy risks as personal data are increasingly exchanged, analyzed, and stored. While increasing the understanding of consumers and their behavior, AI boosts the importance of the consequences brought by data leakage and unauthorized data usage. Increasing integration of data with AI technologies means fundamental rights, and the privacy provisions remain more of theoretical value in India, especially in a case like *"Justice K.S. Puttaswamy v. Union of India"*[3], it was not only for the first time that the Indian Constitution's fundamental right to privacy was recognized but the state obligation for data protection also focused on the significance of contemporary AI times.

This research seeks to identify emerging legal issues in data privacy concerning Industry 4.0 with a focus on AI's impact on consent, security, and legal frameworks. The goals are to explore the data privacy implications of AI, define the current weaknesses in legal provisions, and suggest primary

[1] **Research Scholar, Faculty of Law, Swami Vivekanand Subharti University, Meerut (India), Email: gayatrirathi950@gmail.com**

[2]Tushar Jauhari et al., Privacy and Data Protection Challenges in Industry 4.0: An AI-Driven Perspective, 12 World J. Advanced Eng'g Tech. & Sci. 64, 64–89 (2024), https://doi.org/10.30574/wjaets.2024.12.2.0287.

[3]K.S. Puttaswamy (Retd.) v. Union of India, [2017] 10 S.C.C. 1.

strategies for overcoming them. Thus, this research will explore how the laws of India support or reject the utilization of the AI sector based on statutes and case law and also assess how adequately the "Digital Personal Data Protection Act, 2023" responds to the emerging privacies in the course of industry globalization as well as the advanced digital generation.

Understanding Data Privacy in the Age of Industry 4.0

In the post-modern wave of Industry 4.0, where enabled technologies like AI, IoT, machine learning, and big data are bringing a fourth industrial revolution, data privacy concerns have emerged. It points to a trend of highly connected systems within operational functions of industries whereby massive data is collected and analyzed for improvement of various activities in manufacturing, healthcare, and many other industries. However, this sometimes sparks the question of how safe individuals' data is and to whom their data is being sold once data is becoming more central to business value proposition than traditional physical assets. Strikingly absent in the discussions of Industry 4.0 are the worries surrounding privacy with a focus on getting the most amount of data possible out of the user, which is a fatal flaw in a digital economy that can't get enough of big data. Underpinning these changes, the legal measures of India are vital to redressing the newer threats to data privacy being posed by Industry 4.0. After the enactment of the "Digital Personal Data Protection Act, 2023", it has become necessary for the Indian legal framework to comprehend and enforce these laws in the right manner to safeguard the data rights of the citizens in the microcosm of a fast-digitalizing economy.[4]

Defining Industry 4.0 and Key Technologies

Industry 4.0 can be defined as the fourth industrial revolution, which involves the integration of cyberphysical systems in industries and service sectors. Some of its defining technologies are IoT, which involves devices being able to connect and operate independently; AI, which helps machinery learn from data and make its decisions; and big data analytics, which helps process large datasets for obtainable information. All of these technologies help create a complex digital ecosystem in which data becomes a critical value, giving impetus to changes and improvements. For example, in the manufacturing industry, devices such as sensors gather large amounts of data regarding the business operation, which the AI then assesses for the enhancement of efficiency. In healthcare, wearable devices monitor patients' variables in real time while their data is fed back into systems that are AI-equipped to suggest diagnoses. However, it introduces new contingencies,

[4]Tushar Jauhari et al., Privacy and Data Protection Challenges in Industry 4.0: An AI-Driven Perspective, 45 J. Propulsion Tech. (2024), https://doi.org/10.52783/tjjpt.v45.i02.6786.

particularly concerning privacy since Industries 4.0 requires the perpetual exchange and analysis of information by various stakeholders with few ways for individuals to regulate access to their data.

The Role of AI in Data-Driven Operations

AI is the foundation of Industry 4.0, responsible for improving the decision-making process by automating a wide array of data-driven tasks. It compiles and analyses information at incredibly fast rates and provides patterns, predictions, and insights that were inaccessible before. In the context of the digital economy, this capability enables a business organization to tailor services, manage the supply chain proactively, and come up with efficient solutions to managing assets in an anticipatory manner. Something that is rather concerning when using a variety of technologies for data processing is the expanded usage of artificial intelligence. For instance, most of the AI models require large datasets of personalized information to enhance precision. This creates risks whenever sensitive information is disclosed or when data is processed without consent having been given. These matters are subtly solved under India's Digital Data Protection Act (DDPA), where data processing must respect principles including consent and purpose limitation. Subsection 4(a) of the DDPA specifically requires the consent of the user before any data controller processes their personal information. According to the above-mentioned case laws and especially *"Justice K.S. Puttaswamy (Retd.) v. Union of India"*[5], bring back the element of informed consent in new age technology and recognize the right to privacy as part of the fundamental rights in India as a part of Article 21 of the constitution. This right encompasses data protection, which asserts the ability of users to own their information in an AI-consumed economy.[6]

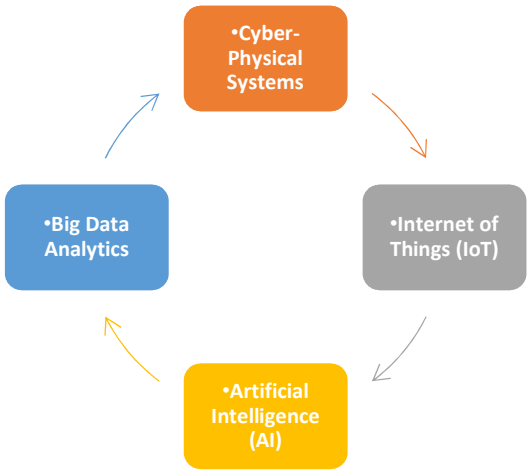

Fig 1. "Core Technologies in Industry 4.0."

[5]K.S. Puttaswamy, supra note 2.

[6]Tushar Jauhari et al., Privacy and Data Protection Challenges in Industry 4.0: An AI-Driven Perspective, 12 World J. Advanced Eng'g Tech. & Sci. 64, 64–89 (2024), https://doi.org/10.30574/wjaets.2024.12.2.0287.

Core Data Privacy Concerns in the Digital Economy

The core issues arising on the question of privacy responsibility in Industry 4.0 are categories of data use arising from confidential personal data collected, stored, and analyzed across borders and in different jurisdictions. Data in an interconnected world is constantly transmitted and can be opened to third parties and sometimes abused. Furthermore, the kind of data ecosystem also makes data subject control a challenge and also makes it hard to comply with privacy laws in different regions. The rules of data minimization and limitations on purpose assume a huge significance in the course of preventing absolute data collection, usage, and sharing, which doesn't serve the purpose that possesses it. India's Digital Personal Data Protection Act endorses these principles, providing explicit provisions about data processing, stringent controls on data processing, and specific security measures "under Section 24 of the DPDA" that have been aimed at protection by design and by default.[7]

The digital economy introduces an additional wave of privacy as it brings notions of data portability and the right to be forgotten as enshrined by GDPR and practiced in Indian laws. AI worsens these problems by typically avoiding direct endorsement of consent procedures, although it secretly categorizes users based on their behavioral data. In the case of *Ram Jethmalani v. Union of India*[8], the Honourable Supreme Court of India made it clear that controlling the growth of government intrusion into personal data, the same revelation is seen while protecting privacy in the digital economy. Even as India moves forward in Industry 4.0, these problems remain paramount in tackling the challenges coming out of the growth of technology and the privacy rights of individuals in cases of automation of data.

Consent Mechanisms and Challenges in AI-Driven Systems

The challenges of consent mechanisms are perhaps more apparent in the context of Industry 4.0 than they have ever been, especially within the systems that are propped up on the use of AI coupled with personal data in this landscape that is increasingly data. Data-intensive. This, as AI becomes further enmeshed in digital systems, prompts the development of questions about the efficacy of traditional consent frameworks, leading regulatory authorities to continually adjust the standards for user consent. Legacy models of consent built for the straightforward exchange of data become ineffective when used in the constantly changing digital environment that AI provides. AL systems function with multilayered algorithms that demand extensive ranges of personal information to execute, learn, and predict. However, data privacy principles and especially the "Digital Personal

[7]Abdullah A. A. H. & Faisal A. Almaqtari, The Impact of Artificial Intelligence and Industry 4.0 on Transforming Accounting and Auditing Practices, 10 J. Open Innovation: Tech., Mkt. & Complexity, art. 100218 (2024), https://doi.org/10.1016/j.joitmc.2024.100218.

[8]Ram Jethmalani v. Union of India, [2011] 8 S.C.C. 1.

Data Protection Act, 2023" (DPDA) require that every data processing must be dependent on the consent of the user—an approach very hard to meet in the case of AI systems that produce and analyze data at a remarkable speed and in their capacity. In the case of *"Justice K.S. Puttaswamy (Retd.) v. Union of India"*[9], the Supreme Court of India maintained that consent must be informed, specific, and voluntary, principles that AI applications fail to meet due to the unyielding processing and analytical models upon which most users cannot fathom the purpose of the data being fed to the application or the potential outcome.[10]

Evolving Standards for User Consent in AI Applications

The original approach to the user consent model is becoming more and more criticized as ineffective in protecting users in an AI environment. Real-time data processing is common in Industry 4.0 and thus raises questions regarding both the procurement of consent and its continuity. For instance, in using machine learning, data may not only improve the user interaction experience but might also enhance the algorithms in unanticipated ways, and explaining to users a full range of data usage is impractical. According to the provision of DPDA Section 4, users are required to notify them of the intended use of their data, how long this use will take, and the precise usage of the data in question. However, there are specific aspects of the AI's operation that are inherently stochastic, and thus the usage of data can veer off into areas unseen when the technology was first implemented, requiring a more procedural system of consent. For example, the European Union's General Data Protection Regulation (GDPR) supports the "granular consent" concept that requires more control over the types of data usage. The same could be applied to provide consumer protection in the use of AI applications by considering that the consent maintains user control under DPDA within India. It becomes even more relevant when the personal data is used by an AI tool to derive further, and sometimes more sensitive, attributes from the data under analysis, which arguably was not their intention when granting their consent.[11]

Automated Decision-Making and Informed Consent

Another major factor that enhances the level of difficulty regarding the informed consent process is the use of automated decision-making which is characteristic of many AI technologies in Industry 4.0. AI decisions, from loan approvals to hiring, affect people's lives, but because many run on an opaque mechanism, users often have no clear idea of how their data gets interpreted. Since informed

[9]K.S. Puttaswamy, supra note 2.

[10]Eur. Parl. Research Serv., The Impact of the General Data Protection Regulation (GDPR) on Artificial Intelligence, Eur. Parl. (2020), https://www.europarl.europa.eu/RegData/etudes/STUD/2020/641530/EPRS_STU(2020)641530_EN.pdf.

[11]Council of Eur., Artificial Intelligence and Data Protection (2021), https://rm.coe.int/prems-192119-gbr-2051-lignes-directrices-sur-l-intelligence-artificiel/1680a4ca4a.

consent involves users' understanding of how their data will be used, it becomes unworkable in automated systems because developers may not understand how the AI makes choices because of the system's black-box nature. The DPDA emphasizes that users' awareness of the impact of ADP on human rights and freedoms is mandatory. However, current consent frameworks do not contain guidance on how to protect the interests of people in situations where artificial intelligence is used to make decisions. The judgment of the *"European Court of Justice in Google Spain SL & Ors v. Agencia Española de Protección de Datos (AEPD)"*[12], decision also underlined the value of the so-called right to be forgotten, according to which a person has a right to request the deletion of their data and forward the control over his/her life online. As far as India is concerned, it places the country in the informed consent narrative for AI-based processing, but if granted enrolment cannot be maintained, it opens the path for the withdrawal rights under the rights-based approach under Article 21 of the Indian constitution.[13]

Challenges in Transparency and User Autonomy

Transparency is a precondition for user control and the informed consent principle, whereas transparency is problematic in AI structures due to opaque processing algorithms. Transparency is about offering the user enough information about it so that they can control it; often enough AI techniques are complex algorithms, which makes it hard to be transparent. For instance, deep learning algorithms in applications such as image identification and natural language processing stem from multiple layered neural networks generating results that are often hard for professionals to decipher. This is a lack of transparency, and it means users cannot make decisions about their data based on clear information, which the DPDA emphasizes accountability. In *"Ram Jethmalani v. Union of India[14]"* echoes the EU's essence of data processing, which states that user autonomy is defeated when there is no transparency. It can be linked with the recent global trend of explainable AI, which gives users at least partial insights into how AI manipulates their data. The introduction of mandatory requirements of transparency in the structure of India's regulation could enhance user control by insisting on acceptable levels of explanation of the data usage by AI systems to individuals, especially where that information is to be used in making sensitive decisions.[15]

[12]Google Spain SL v. Agencia Española de Protección de Datos (AEPD), [2014] 3 C.M.L.R. 50.
[13]Future of Privacy Forum, Automated Decision-Making Under the GDPR: Practical Cases from Courts and Data Protection Authorities (2022), https://fpf.org/wp-content/uploads/2022/05/FPF-ADM-Report-R2-singles.pdf.
[14]Ram Jethmalani, supra note 7.
[15]Ministère de l'Europe et des Affaires Étrangères, Transparency and Accountability: The Challenges of Artificial Intelligence, https://www.diplomatie.gouv.fr/en/french-foreign-policy/digital-diplomacy/transparency-and-accountability-the-challenges-of-artificial-intelligence/ (last visited Oct. 28, 2024).

AI-Induced Security Threats to Data Privacy

For Industry 4.0, AI has brought in a considerable amount of productivity and has revolutionized data-intensive industries; though, it has triggered unprecedented threats to data security, which puts into question the existing paradigms of data protectionism. While AI technologies spread out in every industry, they unknowingly embed one's personal and confidential information into numerous risks. Oh, this change of operational scenes by using AI brings some complex data protection issues that outdated protection measures can hardly solve. Such security concerns include the various challenges associated with machine learning security, constant threats of data breaches, and the question of the confidentiality of data used in a predictive analytics model. In addition, the legal requirements are dynamic, and hence they are adapting themselves to the modern growth of technology, as provided by the Indian DPDA, 2023, which requires standard security measures for data integrity and security. Therefore, for an economy where the use of artificial intelligence in business is arising, ensuring privacy from guarding threats is preconditioned by well-established frameworks that deal with these threats dynamically.[16]

Overview of AI-Driven Data Security Risks

The main challenge of data security with AI is the fact that data forms the basis of an AI system, mainly due to its capabilities to interpret extensive data on individuals to make intelligent decisions. They rebuild the weights learned during the training process based on such reliance on data. Critically, relying on data for both training and inference inherently raises the probability of unauthorized access and manipulation, as data sets of sufficient size are inherently attractive to bad actors. With the implementation of AI in systems, data breaches have become more frequent and severe in comparison to earlier years since AI systems mostly engage in extensive and complex networks where data is easily exposed. As per "Section 24 of the Digital Personal Data Protection Act", which has its roots in the Indian legal system, the data controllers are under obligation to secure the data from breaches so that personal data does not fall prey to any unauthorized person or entity, internal or external. However, the complexity of AI multiplies these security issues as one is not sure how the data is being processed or protected within complex AI structures.

[16]Digital Samba, AI and Data Protection: Balancing Innovation and Security, https://www.digitalsamba.com/blog/data-privacy-and-ai (2024).

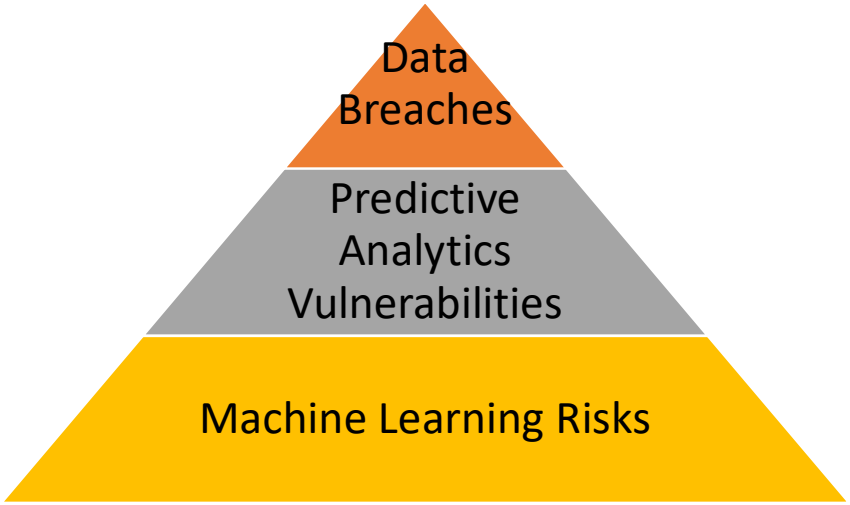

Fig 2.: "Hierarchy of Security Threats in AI Systems."

Threats of Machine Learning Vulnerabilities and Data Breaches

Artificial intelligence has machine learning as part of its key features, and this component presents many susceptibilities that make up a substantial part of security threats. Of all application areas, machine learning models are most vulnerable to adversarial attacks when inputs are specially crafted to fool the learning algorithm and obtain an incorrect result or, in the worst case, gain unauthorized access to private information. Those kinds of weaknesses could be fed in to compromise data privacy or alter artificial intelligence processes, while the consequences would be severe for those sectors that rely on the accuracy of the information, such as financial and medical ones. For instance, adversarial attacks undermine the reliability of predictive models in the healthcare industry and invade patients' privacy. These vulnerabilities are not hypothetical, as social media has proven all along, but in contexts like India, where sectors such as healthcare and finance are slowly integrating AI into their systems, these threats present significant challenges that current data protection laws are barely starting to recognize. That protection for data integrity is required by DPDA; therefore, the act still lacks sufficient protection against risk factors encountered in machine learning.[17]

Impact of Predictive Analytics on Data Confidentiality

Another potent strength of AI is predictive analytics, whose underlying input of personal and often sensitive data makes it very prone to causing severe breaches of data confidentiality. In predictive analysis, AI models extrapolate the existing data into what could happen in the future; in the process, personal data, including behavioral patterns, preferences, and identity numbers/prints, may be

[17]Umar Noor et al., A Machine Learning Framework for Investigating Data Breaches Based on Semantic Analysis of Adversary's Attack Patterns in Threat Intelligence Repositories, 95 Future Generation Comput. Sys. 467 (2019), https://doi.org/10.1016/j.future.2019.01.022.

needed. Often these models may disclose information about an individual against the individual's wishes, resulting in issues of confidentiality. In addition, the creation of customer insight using predictive analytics may mean that conclusions can be drawn about a unique individual even if his/her information is not included in the data set. Under DPDA, principles of data minimization and consent are infringed. For instance, predicting an individual's financial stability or health status is likely to cause a major violation of their privacy if such information finds its way into the wrong hands or is used in the wrong way. The application of 'predictive analytics' featured threats to data privacy in the EU's General Data Protection Regulation (GDPR) and began to slowly place the conditions for similar measures in India. Similar instances, such as *"Google Spain SL, AS, and Google Inc. v. Agencia Española de Protección de Datos (AEPD)"*[18], focused on the right of a person to decide what happens to his/her data by noting that in predictive models this right requires better confidentiality measures to be put in place so that there would be no inferences of personal data without the person's consent.[19]

Emerging Security Measures in AI-Enhanced Systems

The current security threats concerning AI, a set of new security mechanisms for AI-based systems is being created to protect data in AI-aided systems. One of the possible solutions may be "differential privacy"—the m method that adds some noise to a given dataset to obscure individual identities but at the same time preserves the dataset as a whole. DP proves AI systems can work on data and give the output without getting personal privacy information, thus being consistent with DPDA's data minimization and the limitation of purposes. Moreover, federated learning is a relatively recent approach to mitigating the use of AI in privacy concerns. This approach train's machine learning models locally across the various decentralized devices or servers; thus, high-scale data storage is slightly avoided at the center. Since in federated learning, data does not have to travel to another location, the data can be protected from breaches and the privacy of users is improved, which can be especially useful in using AI in India, where embracing privacy legislation is a very important aspect.

Another prospective approach discussed is the use of 'explainable AI' models that would help to reveal details of AI operations and decision-making for continuing users and regulatory authorities. This is consistent with the DPDA's requirement for traceability so that an AI system can be held to account for how it processes personal data.[20]

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[18][2014] 3 C.M.L.R. 50.

[19]Rashid H. Chowdhury et al., The Role of Predictive Analytics in Cybersecurity: Detecting and Preventing Threats, 23 World J. Advanced Research & Reviews (2023), https://doi.org/10.30574/wjarr.2024.23.2.2494.

[20] Honor, Understanding AI Security: Ensuring Safety and Privacy, https://www.honor.com/uk/blog/how-ai-improves-cybersecurity-measures/ (2024).

Regulatory Frameworks: Addressing Data Privacy and AI

A more rapid adoption of Industry 4.0, especially aided by AI, has altered the way industries gather, store, and analyze information. However, this change has given rise to issues of data privacy that are normally hard for the current frameworks of regulations to solve. The laws developed before the growing use of AI did not foresee the problems of data privacy due to the processing of large volumes of personal information by AI. Indeed, this calls for regulatory measures on individual privacy in an unprecedented way that does not hamper new technologies from emergence. In India, there are regulatory standards such as the DPDA of 2023 that outline crucial provisions to do with the protection of data, but certain issues about consent, security, and privacy still pursue AI. To overcome data privacy challenges in designing AI technology in Industry 4.0, more research is needed with a clear focus on a legal framework that augments existing legislation, identifies legislated gaps, and outlines potential reforms. Comparing the current state of the GDPR outside of the EU and the DPDA in India provides an understanding of the effectiveness of the current proposed methods and suggests possible alterations for constructing an efficient privacy framework for AI.[21]

Existing Privacy Regulations Impacting Industry 4.0

The privacy regulations existing across the world and in India have tried to come up with solutions to the problems caused by digitization, but these policies have problems dealing with AI privacy issues. Laws such as the GDPR and the DPDA can be seen as a starting structure for data protection, laying out guidelines on issues like data processing, consent, and transparency. However, the great complexity of AI-driven data applications challenges the applicability of these frameworks as it demonstrates where the existent laws have failed or where they need to be updated to address Industry 4.0 adequately.[22]

General Data Protection Regulation (GDPR) and AI

The General Data Protection Regulation, or GDPR, promulgated in the European Union, is one of the most popular data protection systems in the world and has significant effects on AI applications. The principles of freedom of action and respect for the rights of individuals as expressed by the principles of transparency, accountability, and consent mandate organizations to only process personal data relating to a data subject with the prior consent of the subject. Articles 13 and 14 of the GDPR pertain to the obligation of data controllers to provide individuals with information

[21]Ctr. for Strategic & Int'l Stud., Protecting Data Privacy as a Baseline for Responsible AI, https://www.csis.org/analysis/protecting-data-privacy-baseline-responsible-ai (last visited Oct. 28, 2024).

[22]Vijay Arya, Ensuring Data Privacy and Integrity in the Age of Industry 4.0, Insights2Techinfo, https://insights2techinfo.com/ensuring-data-privacy-and-integrity-in-the-age-of-industry-4-0/ (last visited Oct. 28, 2024).

concerning data processing activities and Article 22 concerning the prohibition of automated decision-making, including profiling, with the right to object. This provision is especially important for AI, where the operations are performed through algorithms fully automatically without clear reasoning behind them. For instance, in the case: of *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*[23], the Court of Justice of the EU approved the right to be forgotten and stated that individuals have control over their details. This decision reaffirms GDPR's focus on personal data control, although AI intricacy tends to complicate GDPR's paradigm of consent/transcription. AI algorithms, especially of the machine learning kind, are often revised, and so how data will be employed cannot be predicted—a factor that undermines GDPR's consent-based structure.[24]

The Digital Personal Data Protection Act, 2023, and Its Applicability

The DPDA, which stands for Digital Personal Data Protection Act that has been enacted by India in the year 2023 is a legal advancement of the rights for digital privacy in the country. The DPDA complies with international best practices in data protection, identifying regulations in data management and use by both private and government organizations. Concisely, "Section 4 of the DPDA" re-reiterates that compliance shall be informed, specific, and unambiguous—this underscores the principle of user control over his/her data processing. The Act requires that data fiduciaries act by principles such as minimizing data retention; this is proclaiming that data shall only be processed to the extent of the agreed purpose. Nonetheless, the DPDA becomes tricky when dealing with AI-driven applications for data uses that might change over time, thereby making it hard to obtain valid consent. For instance, where predictive analytics and continuous data processing are usual in AI contexts, possibly keeping the necessary transparency according to DPDA might be difficult, mainly because of the obscurity of AI decision-making algorithms. Also, Section 24 of the DPDA requires high levels of security for data; therefore, it proactively prevents unlawful access and data loss. However, although DPDA shares good harmonization with GDPR regarding data protection principles, DPDA does not contain specific rules related to automated decisions or the obligations of transparency arising from AI, which could hamper the protection of individual rights in contexts where AI operates.[25]

[23]Google Spain SL, supra note 11.

[24]Bhargava S. P. Kalyan, Impact of General Data Protection Regulation (GDPR) on Artificial Intelligence, iPleaders, https://blog.ipleaders.in/impact-of-general-data-protection-regulation-gdpr-on-artificial-intelligence/ (last visited Oct. 28, 2024).

[25]Mondaq, India's New Law: The Digital Personal Data Protection Act, 2023, https://www.mondaq.com/india/data-protection/1362068/indias-new-law-the-digital-personal-data-protection-act-2023 (Sept. 4, 2023).

Gaps in Current Regulatory Approaches to AI-Driven Privacy Issues

The situation is entirely different when it comes to AI-driven privacy issues since GDPR and DPDA offer a good starting point, but a lot remains unfilled by African regulatory authorities. Thus, one of the key problems is the nature of AI and, ultimately, the black box nature of machine learning, where the mechanisms on which the algorithm works are hard to determine. This lack of disclosable information, also known as the 'black box' issue, poses a recovery problem for fulfilling the remaining regulation that addresses 'user understanding'. Moreover, as it has been mentioned, the AI algorithms learn and change over time, and data may be used in a way that has not been stated to the user during data submission, thus contradicting the purpose limitation as well as the informed consent principles, both of which are part of GDPR as well as DPDA.

One of them is the absence of sufficiently developed provisions concerning the automation of decision-making. Although the GDPR has somewhat dealt with this in Article 22, the DPDA does not yet state how a person can object to or explain the AI-based conclusion made on his or her rights. However, this gap emerges as a crucial issue as AI-automated decisions are extensively used in fields like finance, employment, and healthcare.[26]

Conclusion

Industry 4.0 and AI technology are a fast-growing revolution for industries, but that comes with difficult data privacy questions. As data is fast becoming the new oil, particularly in the use of advanced technology in AI, it requires sturdy measures to regulate basic rights, especially to personal information in these new contexts, like consent, security, and autonomy of users. The Digital Personal Data Protection Act, of 2023 in India is a step that helps address these challenges, even though we can see that at the current stage, its provisions lag far behind actual developments in AI technologies. These include purpose limitation and consent, and laudable data privacy principles set out under the DPDA, but the features of AI technology are buggy and ever-evolving. Concepts such as perusal, coerced consent, hidden structure of AI business models, and prominent predictive analytics indicate that the existing legal framework lacks robust methods to deal with such issues.

AI has shown the capability to design algorithms for retaining and reasoning information that human rights cannot adequately handle due to a lack of enough legal provisions for handling issues such as automated decision-making and explainability. To this end, a brand-new consent model that enables even per application or additional real-time adjustments to data usage and contemporary

[26]Office of the Victorian Info. Comm'r, Artificial Intelligence and Privacy – Issues and Challenges, https://ovic.vic.gov.au/privacy/resources-for-organisations/artificial-intelligence-and-privacy-issues-and-challenges/ (last visited Oct. 28, 2024).

advancements of AI applications could provide users with enhanced autonomy. Besides, the implementation of "explainable AI" would improve the interpretability of how personal data is used by AI algorithms, opening an understanding to users and regulatory bodies.

Further, with the help of emerging technologies like differential privacy and federated learning, the technology area provides promising solutions corresponding to the rhetoric of data minimization and purpose limitation. Implementing these innovations in systems AI can prevent data privacy risks so that industry 4.0 progress can continue while respecting individual rights. There is also the importance of public-private partnerships since the development of scalability privacy solutions and AI ethical benchmarks are crucial for industries responsible for AI applications.

Thus, the found duality of innovation and personal privacy in the context of the digital environment calls for a shift in the existing regulatory and technological frameworks. This can be achieved when the legislative changes in the country support transparency, accountability, and autonomy of the users while establishing a working framework of DGP that will respect individuals' data rights while pursuing technological advancements in AI. As society becomes more integrated with Industry 4.0, the combination of legal, ethical, and technical policies will remain an ideal approach in the current AI advancements in dealing with emerging privacy to avoid compromising data protection.

Suggestion

Since the concept of Industry 4.0 involves the use of AI within various industries, this paper posits that there be a legal, technological, as well as organizational solution to the question of data privacy. In Industry 4.0, privacy measures need to be flexible enough to protect users' rights while keeping up with the technological advancement in social media. The following suggestions focus on enhancing data protection and promoting ethical AI development, ensuring both privacy and innovation can coexist harmoniously:

- Present laws on data protection, such as the Digital Personal Data Protection Act, 2023, should develop generally applicable rules on AI. To prevent misuse, expand the consent as dynamic consent, and give further freedom to users through their data subject rights, regulatory bodies can use areas for inclusion of provisions and specificity in automated decision-making.
- AI use cases need constant data processing; this means that conventional consent models may not always be feasible. Adopting dynamic consent models is useful to implement consent in changes to AI's data usage and to address individual centralized control over data again.
- This utilization balances user control, which is imperative in cases such as automated

decision-making, by making it transparent.

- Explainable AI standards help organizations to enhance the comprehensibility of AI processes for a user so that he or she can make correct decisions concerning own data and reveal responsibility in data processing.
- Promoting the use of differential privacy, federated learning, and secure multi-party computation can help to protect data privacy while keeping data usefulness for AI work effective. These technologies are compliant with data minimization principles, reduce exposure to risks, and address user privacy.
- End-to-end privacy and minimal use of data should be merged into artificial intelligence design. To minimize the exposure of sensitive data, organizations can and should employ strict anonymization measures with a high level of data access control to meet both privacy and operational demands.
- Regulatory sandboxes, the government can set up environments where the firms try out privacy-enhancing AI solutions before applying them at large. This approach promotes innovation whilst at the same time acquitting itself of responsibility for flagging up potential threats to privacy.
- Providing incentives to shade acceptable AI ethical practices and privacy technology makes the adoption of privacy standards mandatory across business organizations. Legal recognition such as compliance certifications and tax incentives for purposed-based AI will make ethical use of data financially viable.

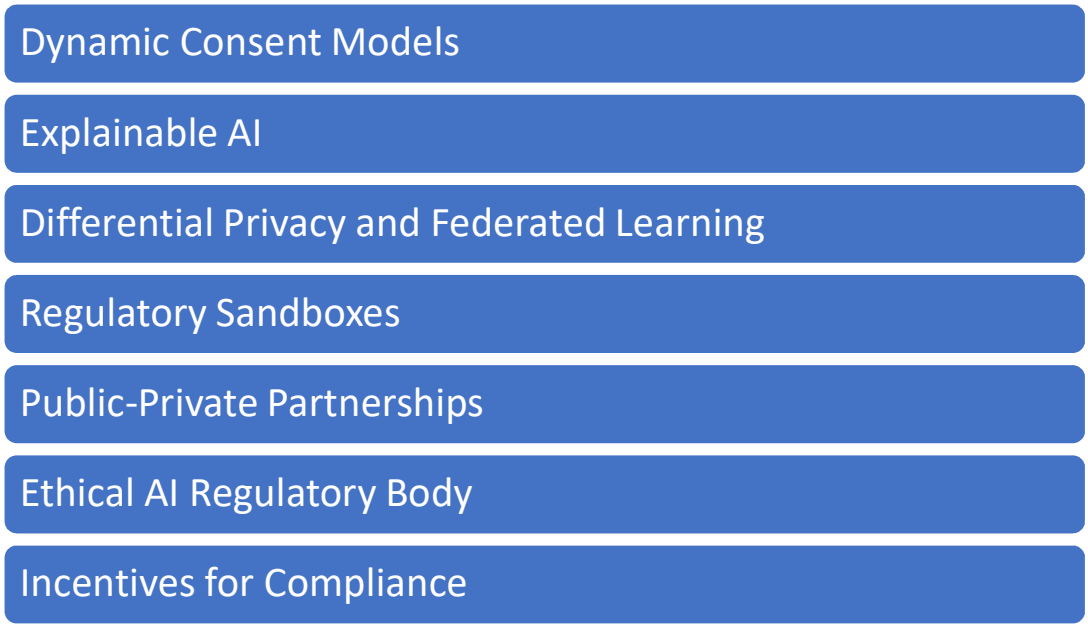

Fig 3. "Strategic Suggestions for Enhancing AI Data Privac

Unified Global Approach on Protection of Data Privacy: With Special Reference to Intellectual Property

Renuka[1]

Prof. Dr. L. Chandrakanthi[2]

Introduction:

The intersection of law and Intellectual Property Rights, hereinafter referred to IPR, plays a pivotal role in regulating, protecting, and promoting the creations of the mind, such as inventions, literary and artistic works, symbols, names, and images used in commerce. The foundation of IPR law lies in the principle that individuals and entities should have the right to control and benefit from their unique creations and inventions. IPR provide creators with the legal authority to protect their works, granting them exclusive rights for a limited time. Intellectual property law provides a framework that empowers creators and businesses to protect their unique innovations and creations, establishing exclusive rights that encourage further innovation and economic growth. The exclusivity of IPR Law not only rewards creativity and innovation but also incentivizes further advancement in fields like technology, art, literature, and science. At the point of intersection of Law and IPR lies various legal disciplines—constitutional, criminal, civil, and international law which converges to shape how IP rights are defined, enforced, and balanced against competing interests.

Why should there be a Unified Global Approach IP?

The rapid advancement of technology and the increasing reliance on data have necessitated a unified global approach to Data Privacy, particularly in the context of IPR. A unified global framework would facilitate consistent standards and practices, enabling businesses to navigate complex regulatory landscapes more effectively. As countries around the world implement their own data protection regulations, in recent years, various jurisdictions have enacted data privacy laws, most notably the **European Union's General Data Protection Regulation** hereinafter referred to as

[1] **II Year LL.M Student, University Law College, Bangalore University(Under the guidance of Prof. Dr. L Chandrakanthi)**

[2] **Professor, University Law College & Department of Studies in Law, Bangalore University.**

GDPR[3]. The **California Consumer Privacy Act** [4] hereinafter referred to as **CCPA** and in India, **Digital Personal Data Protection Act** hereinafter referred to as **DPDPA**[5] .

A.European Union's General Data Protection Regulation

The European Union's GDPR, came into force in May 2018, has become a global benchmark for data protection and privacy standards. Its rigorous requirements on data handling, user rights, and cross-border data transfer have profoundly influenced data privacy legislation and corporate data management practices worldwide. Here is a detailed analysis of GDPR's impact, both within and beyond the EU, focusing on its influence on international regulations, compliance strategies, and the global digital economy.

Key Provisions of the GDPR

1. Data Subject Rights: GDPR empowers individuals with rights to access, rectify, and delete their personal data, as well as rights to data portability and to restrict data processing.
2. Data Processing and Consent: Organizations must obtain explicit consent from users for data processing, with requirements for clear and informed consent.
3. Data Protection by Design and Default: GDPR mandates that data protection must be considered at every stage of data processing. This includes implementing technical measures to ensure data security and privacy.
4. Cross-Border Data Transfers[6]***:*** GDPR restricts data transfers outside the EU to countries that meet its "adequacy" standards or with appropriate safeguards, like Standard Contractual Clauses (SCCs).
5. Fines and Enforcement: Violations of GDPR[7] can lead to penalties of up to €20 million or 4% of annual global turnover, whichever is higher, making it one of the strictest data protection laws globally.

B. Applicability beyond EU Borders

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[3] The General Data Protection Regulation (Regulation (EU) 2016/679) [1] abbreviated GDPR, European Union regulation on information privacy in the European Union (EU) and the European Economic Area (EEA).

[4] The California Consumer Privacy Act (CCPA) is a state statute intended to enhance privacy rights and consumer protection for residents of the state of California in the United States

[5] An Act to provide for the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

[6] Chen, "Cross-Border Data Transfers in Asia," Asian Journal of International Law, 2024. - Cross-Border Data Transfers Policies

[7] European Union, General Data Protection Regulation, Article 3: Territorial Scope, and Article 7.

It can be said that GDPR applies to organizations outside the EU that process the personal data of EU citizens. This extraterritorial reach has compelled non-EU companies to comply if they engage with EU data subjects, setting GDPR as a de facto global standard.

Inspiration for Other Jurisdictions:

1. [8]California Consumer Privacy Act (CCPA,) 2018: Following GDPR, California enacted the CCPA, with similar rights for data access, deletion, and opt-out provisions. CCPA's adoption in the U.S. is considered a direct influence of GDPR, marking a significant shift in U.S. privacy regulation.

2. India's Digital Personal Data Protection Act, 2023: India's DPDP Act incorporates GDPR-like elements, including data subject rights, processing limitations, and government oversight on cross-border data transfers.

3.[9]Brazil's General Data Protection Law (LGPD): Brazil introduced LGPD, which mirrors GDPR's framework in requiring user consent, ensuring data security, and granting individual rights over personal data.

C. Impact on Corporate Data Governance and Compliance Strategies

1. Increased Global Compliance Standards*:* Companies operating across multiple regions have adopted GDPR-compliant practices globally, such as updating privacy policies, strengthening data protection measures, and training employees on privacy obligations. This global adoption helps simplify compliance by creating a consistent data protection approach.

2. Adoption of Privacy-by-Design Practices*:* With GDPR emphasizing privacy by design, organizations now prioritize data protection from the earliest stages of development. This has encouraged a cultural shift where data privacy is seen as integral to business strategy.

3. Use of Data Protection Officers (DPOs): GDPR requires large organizations and data-intensive firms to appoint a DPO, a role that is now widely adopted by multinational corporations. DPOs oversee compliance, manage data protection protocols, and handle data subject inquiries, becoming key figures in modern corporate governance.

Influence on International Data Transfer Policies

Standard Contractual Clauses (SCCs) and Adequacy Decisions: To comply with GDPR's restrictions on data transfers, many companies use SCCs, legally binding documents ensuring that data transfers to non-EU countries comply with GDPR. Countries that have received adequacy

[8] California Civil Code, Section 1798.100

[9] Brazilian Data Protection law (LGPD) As amended by law No.13853/2019

decisions (e.g., Japan, Switzerland) enjoy smoother data transfers, encouraging countries to enhance their data protection laws to secure similar agreements.

Schrems II Ruling[10] and Beyond: The 2020 Schrems II decision invalidated the EU-U.S. Privacy Shield, leading to stricter requirements for data transfers to the U.S. and raising awareness of the need for stronger protections in non-EU data transfer frameworks. This ruling has intensified efforts to create privacy laws worldwide that meet EU standards.

Higher Expectations for Data Privacy: GDPR has raised public awareness of data rights, influencing consumer expectations worldwide. Users now expect transparent, secure, and controlled data handling, prompting companies to implement GDPR-like privacy standards even in regions without such stringent laws.

Empowering Users Globally: Through GDPR, users now have a set of actionable rights that allow them to control their data, such as the right to access, correct, and delete data. These rights have become an anticipated standard, pressuring companies to provide similar options regardless of users' jurisdictions.

D. Data Privacy and Intellectual Property: A Converging Landscape

IPR (IPRs) are predominantly influenced by the digital transformation, where data serves as both a tool and a target. There are a few areas that can be explored for the specific intersections between data privacy and IP protection such as:

1. Impact on Innovation and Trade Secrets**:** Data privacy laws protect personal data, yet in doing so, they must also account for sensitive IP information, such as trade secrets, which may be housed within company data. This overlap requires harmonized regulations that ensure IP-related data is safeguarded without infringing on data privacy rights or compromising security measures.

2. Digital Piracy and Counterfeiting[11]**:** The digital landscape has intensified risks of IP theft, making data privacy and IP rights inseparable. Cybercriminals often exploit personal data to gain unauthorized access to IP, highlighting the need for data privacy frameworks that address these overlaps, protecting users and IP owners alike.

3. Research and Development (R&D) The expanding R&D ecosystem, particularly in biotechnology, pharmaceuticals, and IT, relies heavily on data privacy. For researchers and businesses, protecting personal data within IP holdings is critical to safeguarding innovation. Data privacy regulations need to protect IP rights by limiting unauthorized access to research data and IP assets.

E. DICHOTOMY BETWEEN DATA PRIVACY AND IPR

[10] European Court of Justice, Schrems II Decision, 2020.

[11] Patel, "Counterfeiting and IP Enforcement," Journal of Intellectual Property Rights, 2023

The dichotomy between Data Privacy and IPR, two fields of law that have grown in importance and complexity as digital technology and data-driven business models have evolved. While Data Privacy laws protect individuals' rights over their personal information, IPR laws grant exclusive rights to creators and innovators, promoting economic incentives for creation and innovation. Data Privacy emphasizes individual rights to control personal information, while IPR encourage creativity and innovation by protecting the interests of creators and inventors. Although both aim to safeguard different aspects of information, their goals, methods, and legal frameworks frequently intersect and occasionally conflict.

The Fundamental Objectives and Scope of Data Privacy vs IPR in terms of:

1. Purpose and Scope: Data privacy laws primarily protect individuals' rights to privacy, autonomy, and control over their personal information. The scope of data privacy includes all forms of personal information, from identity details and contact information to behavioral and biometric data. Key legal frameworks like the European Union's GDPR and India's DPDPA of 2023 embody principles such as informed consent, transparency, data minimization, and purpose limitation. These principles are designed to protect individuals from unauthorized data collection, misuse, and potential harm arising from data exploitation. IPR, on the other hand, are designed to incentivize and protect creative and innovative endeavors by granting exclusive rights to creators, inventors, and businesses. Intellectual property laws encompass a wide range of assets, including patents, copyrights, trademarks, and trade secrets. These rights grant creators exclusive control over the use, reproduction, and commercialization of their creations, allowing them to reap financial benefits from their intellectual labor. IPR frameworks balance these rights with the public interest by limiting their duration, ensuring that eventually, creative works enter the public domain and contribute to collective knowledge

2. Ownership and Control: Data privacy laws generally do not assign ownership rights to personal data. Instead, they emphasize custodianship and control, allowing individuals to exercise certain rights over their personal information, such as access, correction, deletion, and portability. Privacy laws treat data subjects (the individuals whose data is collected) as custodians rather than outright owners, focusing on consent and control mechanisms rather than traditional ownership concepts. IPR confer ownership over intangible assets, granting rights holder's exclusive control over their creations or inventions. Ownership under IP laws is a proprietary right, which allows holders to license, sell, or transfer their rights. Unlike data privacy, which emphasizes individual autonomy, IPR ownership focuses on protecting the creator's or innovators economic interests, rewarding them for their investment in creating something novel or unique.

3. Legal Principles and Frameworks: Data privacy laws are often rooted in human rights frameworks, prioritizing individual autonomy and protecting against the misuse of personal information. Principles like consent, purpose limitation, data minimization, and transparency are central to privacy frameworks such as GDPR and India's **DPDPA**. These principles mandate that data collectors obtain clear and informed consent from individuals and limit the use of data to specified purposes. Intellectual property law is grounded in the need to incentivize innovation and creativity for the broader benefit of society. IPR regimes operate on principles like originality, novelty, and exclusivity. Patents require inventors to demonstrate novelty and non-obviousness, while copyrights protect original expressions of ideas. IPR laws strike a balance between granting exclusive rights to incentivize creation and ensuring that, over time, works enter the public domain, contributing to societal knowledge and cultural heritage.

4. Mechanisms of Enforcement and Regulation**:** Data privacy is typically enforced by regulatory bodies that monitor compliance, investigate breaches, and impose penalties. In the EU, data protection authorities oversee GDPR compliance, while in India, the Data Protection Board established under DPDPA enforces compliance and handles grievances. Enforcement mechanisms focus on upholding individuals' rights, providing remedies such as fines, injunctions, and compensation for harm. IPR are enforced through civil litigation, allowing rights holders to pursue damages, injunctions, or other remedies for infringement. IPR disputes are often resolved in specialized IP courts, and enforcement can extend internationally through mechanisms like the World Intellectual Property Organization (WIPO)[12]. Unlike privacy laws, which often focus on regulatory compliance, IP enforcement is proprietary-based and driven by the rights holder's need to protect their economic interests.

Points of Conflict and Intersection between Data Privacy and IPR:

The overlapping interests between data privacy and IPR create areas of tension and potential conflict, particularly in a data-driven economy in terms of:

1. Data Ownership and Artificial Intelligence (AI)*:* AI development relies heavily on large datasets, including personal data. While privacy laws limit the use of personal data without consent, IP rights may encourage data collection for innovation purposes. This intersection raises questions about data ownership, consent, and IP protections for AI algorithms and models trained on personal data.

2. Trade Secrets and Privacy*:* Trade secrets protect confidential business information, which may include personal data, such as customer information or proprietary algorithms. When personal data

[12] WIPO, Strategic Vision for IP Protection in the Digital Age, 2023.

is part of trade secrets, privacy laws mandate that companies ensure transparency, consent, and security, potentially conflicting with IP protections for confidential business information.

3. Digital Content Creation**:** Digital platforms like social media and streaming services leverage user data to personalize content. Privacy laws mandate that individuals consent to the use of their personal information, while IP laws protect the content and platform algorithms that rely on this data. The tension between these laws can complicate data use, especially when personal data enhances or influences proprietary algorithms and content.

4. Harmonizing Data Privacy and IPR: Despite their differences, data privacy and IP rights can coexist through legal reforms, technological innovations, and collaborative frameworks.

5. Privacy-Preserving Technologies**:** Privacy-preserving technologies, such as data anonymization, encryption, and federated learning, allow companies to utilize data for research and development without compromising privacy. Differential privacy, for example, enables data analysis without exposing personal data, offering a solution for AI development that aligns with both IP and privacy requirements.

6. International Harmonization Efforts: Organizations such as WIPO and the Organization for Economic Co-operation and Development[13] (OECD) have pushed for harmonizing global standards, facilitating cross-border data flows while maintaining privacy protections. Harmonization initiatives aim to reduce regulatory fragmentation, allowing data and IP protections to coexist on a global scale.

7. Data Trusts and Stewardship Models: Data trusts and stewardship models allow entities to manage data on behalf of individuals, ensuring data is used responsibly. These models provide a governance structure that enables IP holders to access and utilize data for innovation while respecting individuals' privacy rights.

F. India's Approach with DPDPA 2023

India's DPDPA 2023 embodies principles of data privacy that address local needs while aligning with global standards. The Act permits cross-border data transfers to trusted jurisdictions and establishes a Data Protection Board to monitor compliance. These provisions allow for a balanced approach to data privacy, setting a foundation for India's digital economy to grow while respecting individuals' rights.

Key Elements of India's DPDP Act Relevant to Regional Influence

1. User Rights and Consent-Based Processing: Similar to the EU's GDPR, the DPDP Act establishes rights for individuals, such as the right to access, rectify, and erase their personal data.

[13] OECD, Digital Economy Outlook, 2021.

It also mandates explicit consent from users for data collection and processing, enhancing user empowerment.

2. Data Localization[14]: While not as stringent as previous drafts, the DPDP Act allows the Indian government to regulate cross-border data flows. The Act restricts critical personal data storage to India and introduces localized storage requirements, which could influence neighboring countries looking to protect sensitive data while enabling digital trade.

3. Data Fiduciaries[15]: Similar to data controllers in GDPR, the Act introduces data fiduciaries responsible for processing data in a secure, compliant manner. Organizations meeting specific criteria, such as handling significant amounts of data or serving large numbers of people, are subject to higher compliance standards. This distinction may inspire other nations to create tiers of compliance requirements based on company size or data volume.

India's Influence on Emerging Economies and Regional Data Protection Standards

Model for Developing Nations: India's DPDP Act recognizes the need for both privacy and economic growth, making it an appealing framework for countries in similar stages of economic development. Nations in South Asia, Africa, and Southeast Asia, which are working to develop their own data privacy laws, may look to India's model as a balance of protecting data rights while fostering a digital economy.

1. Alignment with Regional Digital Agendas: India's DPDP Act aligns with regional aspirations, such as the Association of Southeast Asian Nations (ASEAN) Digital Masterplan 2025[16], which emphasizes privacy standards in cross-border trade. By implementing its DPDP Act, India joins other regional players, such as Singapore and Japan, in advancing comprehensive data privacy legislation that could contribute to a harmonized regional data privacy standard.

2. Promoting Digital Sovereignty and Reducing Dependency on Foreign Frameworks: Many non-Western countries find the EU's GDPR and U.S. laws like the CCPA challenging to fully adopt due to differences in economic priorities and data governance capacities. India's DPDP Act provides a flexible yet structured alternative, which can appeal to countries that seek to implement data protection standards without a complete alignment with Western norms.

3. Data Sovereignty[17] and Localization: India's strategic approach to data localization, which restricts critical data storage to domestic boundaries, aligns with the global push for data sovereignty. Countries like Vietnam, Indonesia, and Nigeria are increasingly considering data

[14] Gupta, "Data Localization and Its Implications," Journal of Digital Policy, 2023.
[15] Ardent, "India's DPDP Act: Obligations of Data Fiduciaries"
[16] ASEAN, ASEAN Digital Masterplan 2025
[17] Sharma, "Global Data Sovereignty Trends," Data Protection Today, 2024. - Data Sovereignty and Localization

localization to safeguard national interests, and India's approach could offer a balanced model that allows regulated data transfers for economic engagement while protecting critical data.

4. Regulated Cross-Border Transfers[18]: The DPDP Act grants the Indian government authority to determine "trusted" countries for data transfer, enabling greater control over data flow in and out of the country. This regional control over data transfer aligns with the approach of other nations like Japan, China, and South Korea, which enforce varying levels of cross-border data restrictions. Such a controlled, government-regulated transfer policy could inspire other nations to protect data overeignty while enabling economic exchange.

5. Alignment with Global Standards*:* India's Act is crafted to be interoperable with major data protection laws like GDPR, allowing it to integrate with the EU's standards on data transfer more easily. This compatibility could aid India in establishing data-sharing agreements with the EU, UK, and other jurisdictions, setting an example for countries looking to balance regional autonomy with international compliance.

6. Creating a Regional Data Protection Alliance: As digital commerce and cross-border data flows grow in Asia; the DPDP Act could inspire discussions on a regional data protection framework among South Asian Association for Regional Cooperation (SAARC) or ASEAN nations. This could streamline cross-border data regulation within Asia, reducing compliance burdens for companies operating across borders and creating a collective bargaining power similar to the EU's.

7. Incentivizing Regional Innovation: By balancing robust data protection with flexibility, India's DPDP Act encourages innovation and local data-based services. This could inspire other countries in Asia to adopt a framework that protects user rights without stifling digital growth, ultimately promoting a data-driven economy across the region.

G. Challenges with Fragmented IP Enforcement

Countries have different thresholds for what constitutes IP infringement, leading to inconsistent outcomes in enforcement. For instance, copyright law varies widely between the U.S. (which includes the "fair use" doctrine[19], complicating cross-border litigation.

1. Inadequate Penalties and Remedies: IP penalties and enforcement mechanisms vary widely, which means that IP holders may face lenient penalties for infringement in some jurisdictions. A global

[18] Chen, "Cross-Border Data Transfers in Asia," Asian Journal of International Law, 2024. - Cross-Border Data Transfers Policies

[19] . Section 107 of the Copyright Act, available at https://www.copyright.gov/title17/92chap1.html#107

approach could establish minimum standards for penalties, ensuring that IP violations are consistently and effectively deterred worldwide.

2. Counterfeit Goods and Piracy: Counterfeit goods represent a significant problem for IP holders, especially in industries like luxury goods, pharmaceuticals, and technology. A unified IP framework could create standardized procedures to prevent and penalize counterfeiting, helping to protect IP owners globally.

3. Addressing Emerging IP Challenges in the Digital Age*:* The IP landscape is evolving rapidly, with new challenges arising from AI-generated content, block chain, and the growing importance of personal data in IP-related applications[20]. As these technologies develop, inconsistencies in IP laws could create significant legal ambiguities and hinder global adoption of digital technologies.

Emerging Challenges that a Unified Approach Could Address

1. AI and IP Ownership: Artificial intelligence can create music, artwork, and even inventions. However, current IP laws do not adequately address who owns AI-generated content, and jurisdictions have taken divergent stances on this issue. A unified approach would help establish clear guidelines on ownership, liability, and rights for AI-generated works.

2. Block chain and Decentralized IP Management: Block chain can provide secure, decentralized IP management, but regulatory inconsistencies make global adoption challenging. Countries with strict IP laws may struggle to accommodate block chain applications, while countries with lenient IP laws may become havens for IP violations.

3. Protecting Data-Driven IP: IP derived from personal data, such as algorithms that rely on user data for training, poses unique challenges. Privacy laws like the GDPR impose restrictions on data use that can limit IP development and sharing. A unified approach would balance IP protection with data privacy, enabling secure development of data-driven IP across borders.

A unified IP framework[21] would create a predictable environment for innovators, who would be assured that their IP will be protected globally. This predictability would encourage investment in high-risk industries and technology transfer. Countries with weaker IP protections often struggle to attract foreign direct investment (FDI) in high-tech sectors. A unified IP system would promote technology transfer to developing countries by protecting the interests of multinational firms and investors, fostering economic growth and technological advancement. It also helps in boosting SME Participation in Global Markets. The Small and medium-sized enterprises (SMEs) often lack the

[20] Johnson, "Emerging IP Challenges," Technology and IP Journal, 2023.
[21] Elbaz, "Benefits of a Unified IP Framework," Journal of International Business Law, 2023.

resources to navigate complex IP systems. A harmonized approach would simplify the IP landscape, enabling SMEs to participate in global markets and export their innovations without fear of IP infringement. It also facilitates Cross-Border Enforcement of IP Rights. Currently, enforcing IP rights across borders is a daunting task due to the lack of a global legal framework. IP owners often need to initiate separate legal actions in each jurisdiction where they suspect infringement, a process that is costly, time-consuming, and rarely guarantees effective results.

Benefits of a Unified Global IP Framework

A globally harmonized IP framework would offer numerous benefits, including strengthened IP protection, enhanced international trade, and a more balanced approach to protecting both corporate and individual rights. Below are some of the most significant benefits:

1. Strengthening Global IP Protections**:** A unified framework would create minimum IP standards that all countries adhere to, reducing the opportunity for infringement and misuse. IP holders could protect their assets more confidently, knowing that similar protections exist in every market.

2. Promoting Fair Competition and Reducing IP-Related Trade Barriers: Inconsistent IP standards act as trade barriers, particularly for companies seeking to enter new markets. A unified IP system would level the playing field, creating fairer conditions for competition and helping smaller companies with fewer resources compete globally.

3. Enhancing International Cooperation and Legal Consistency: A unified approach would facilitate greater cooperation between countries in IP enforcement and allow for streamlined cross-border litigation and dispute resolution. With standardized IP laws, countries could collaborate more effectively on cases of international IP theft, piracy, and counterfeiting.

H. Role of International Organizations and Agreements

1. The World Intellectual Property Organization, WIPO, could play a central role in driving IP harmonization through conventions like the Paris Convention, Berne Convention, and the TRIPS Agreement. However, these agreements need updates to address digital age issues and align with privacy laws.

2. New Multilateral Agreements: New treaties may be necessary to address digital IP challenges, particularly around AI, block chain, and data privacy. These treaties should create global standards that balance IP and data privacy and accommodate digital and traditional IP.

3. Flexible Implementation Models or Tiered Compliance Models: Different levels of compliance for countries with varying economic and technological development could promote inclusiveness, similar to models used in environmental treaties.

4. Regional Cooperation as a Stepping Stone: Regional IP frameworks (e.g., the European Union's IP laws, ASEAN's IP network) could serve as models or stepping stones toward a global IP

framework, testing standards and enforcement mechanisms that could later be adopted internationally.

I. NAVIGATING INDIA'S DIGITAL PERSONAL DATA PROTECTION ACT

India ranks as the world's second-largest internet market, boasting over 760 million active internet users. In a landmark 2017 ruling, the Supreme Court of India affirmed the right to privacy, paving the way for significant legislative developments. In August 2023, the Indian Parliament enacted the Digital Personal Data Protection (DPDP) Act, establishing a robust framework for data protection. This document outlines the key features of the DPDP Act, traces the evolution of data privacy legislation in India, and details the rights and responsibilities delineated within this new law.

Overview of the DPDP Act

The DPDP Act, enacted in August 2023, represents India's first comprehensive legislation aimed at balancing individual rights to personal data protection with the necessity of lawful data processing. It establishes obligations for Data Fiduciaries—those who handle personal data—and specifies the rights and duties of Data Principals, or individuals whose data is being processed. Additionally, it introduces financial penalties for violations. The DPDP follows India's Personal Data Protection Bill (PDPB) Bill 2022, India's most recent attempt to create a comprehensive data privacy law. The Bill was part of a group of legislation including the National IT Governance Framework Policy[22] and a new Digital India Act. According to draft legislation, the aim of PDPB 2022[23] was "*to provide for the processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process personal data for lawful purposes, and for matters connected therewith or incidental thereto."* Prior to 2022, India did not have a comprehensive privacy law. In 2017, the Supreme Court of India recognized the right to privacy as a constitutionally protected right in the *Justice K.S. Puttaswamy vs Union of India* case [24], also known as the Right to Privacy verdict. The court also noted India's lack of a comprehensive privacy law and the limitations of the existing *Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules or SPDI Rules*, implemented in 2011. India's Digital Personal Data Protection Act uses the term "***data principals***"[25] rather than "data subjects," referring to individuals "to whom the personal data relates and where such individual is a child includes the parents or lawful guardian of such a child."

[22] Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

[23] THE DIGITAL PERSONAL DATA PROTECTION BILL, 2022, legislative note, No.34/ LN/ Ref. /Dec 2022

[24] Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors, (2017) 10 SCC 1, AIR 2017 SC 4161, available at https://indiankanoon.org/doc/127517806/

[25] Anirudh Burman, https://carnegieendowment.org/research/2023/10/understanding-indias-new-data-protection-law?lang=en

Anticipating Implementation of the Data Protection Law

The Indian Parliament has adopted a cautious approach in crafting the DPDP framework, allowing room for innovation within India's technology sector compared to previous legislative attempts. While many provisions focus on procedural matters, significant rule-making authority resides with the central government. This centralized power raises concerns, particularly regarding exemptions that could depend on bureaucratic competency and independence.

Historically, India's government has transitioned regulatory functions to independent agencies to enhance competence in economic oversight. However, in this instance, such powers remain centralized. Conversely, the absence of prior regulatory expertise in data protection suggests that political involvement may be beneficial during initial regulatory stages. The effectiveness of the DPDP Act will also hinge on decisions made by the Data Protection Board (DPB) as it investigates regulated entities. The board's reasoning and penalties will establish foundational jurisprudence in data privacy regulation and guide businesses in compliance with the new law. The procedures followed by the DPB will significantly influence market behavior and future regulatory frameworks. The critical consideration, therefore, is whether the drafters of the DPDP Act consider the framework under the law as a first step in the development of an independent regulator. Another critical aspect will be the directives issued by the DPB under the law. While procedural rules govern inquiries and penalties, there is no clear guidance for issuing binding directions to regulated entities. This lack of clarity could lead to compliance challenges; thus, it is essential for the board to implement checks and balances when issuing directives. Ultimately, these three dimensions—regulatory decision-making by the DPB, its directives, and overarching government oversight—will shape India's technology landscape and data policy for years to come. The responsibility lies with the central government to incorporate best practices in administrative law through procedural rules enabled by the DPDP Act. A notable aspect of the DPDP Act is Section 37, which authorizes the central government to block access to any information communicated by a data fiduciary. This new provision raises questions regarding its relevance to personal data privacy, sparking significant debate. Beyond the DPDP Act, the evolving legal framework governing social media companies, IT services, and businesses is also expected to shape the future of data protection regulation. For instance, in 2021, the Indian government introduced new guidelines for social media intermediaries, including requirements to trace the origin of content on over-the-top (OTT) messaging platforms[26]. These measures have faced legal challenges, and a final court ruling is awaited. The decision will clarify the extent of investigative agencies' powers within the DPDP Act's exemptions.

[26]Sen, "Data Privacy as a Human Right," International Human Rights Journal, 2023.

Another area of impact is data localization. While the DPDP Act does not impose restrictions on cross-border data transfers, certain sectoral regulators in India, such as the Reserve Bank of India, require data localization. If more regulators adopt similar requirements, the DPDP Act's provisions on data flow could become less impactful. Legal frameworks to regulate social media and major tech companies in India are emerging in response to the country's rapid digital evolution over the past decade, coupled with an outdated regulatory system. The Ministry of Information Technology has announced plans to replace the Information Technology Act of 2000. This new iteration of the IT Act[27], along with other related legislation, is expected to impact the implementation of the Digital Personal Data Protection (DPDP) Act. It is crucial in these developments to ensure that any sovereign control exercised serves a legitimate purpose and does not compromise privacy, commerce, or innovation for the Indian state's interests.

Conclusion:

A unified approach to data privacy is essential for fostering innovation while safeguarding individual rights in an increasingly digital world. By harmonizing regulations across borders, stakeholders can create an environment conducive to economic growth while ensuring that personal information is treated with respect and care. As countries navigate the complexities of the digital age, collaboration will be key to achieving a balanced framework that addresses both data privacy concerns and intellectual property protections effectively. By implementing comprehensive strategies for managing both areas, businesses can ensure they remain compliant while also protecting their valuable assets in an ever-evolving landscape. This unified approach not only benefits organizations but also empowers individuals by ensuring their rights are respected in a world where personal information plays a crucial role in driving innovation and economic development. The digital age demands cohesive and flexible standards that address the unique challenges of IP protection today. Through international cooperation, a unified approach to IP can be achieved, benefiting innovators, businesses, and consumers worldwide. While in India, the DPDP Act is a culmination of more than five years of debate and deliberation, it marks the start of statutory personal data protection regulation. The regulatory developments and the institutional arrangements that take shape over the next few years will decide how well (or not) personal data privacy is protected. The new law provides the necessary scaffolding, but is it sufficient for de facto data privacy to materialize is the next big question that comes into one's mind.

[27] Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

From Dharmic Honor to Digital Memory: Reinterpreting Ancient Indian Thought On Dignity and Reputation through the Right to Be Forgotten

Ms. Shriya Badgaiyan[1]

INTRODUCTION

In the age of digital ubiquity, personal identity overwhelmingly driven by digital technology, the ideas of dignity and reputation and RTBF have become key subtexts to public discussions. In order to meaningfully engage with these ideas, we first need to clarify the meaning for each term. Dignity is inherent value and worth which is part of respect and honor accord to an individual solely by being human. It is about being appreciated and valued, about being recognized and respected in terms of an individual's rights, self-respect and autonomy. This concept is a very real thing, how people are treated in society, how far people's voices are heard and actually used.[2]

On the other hand, reputation is a construct of an aggregation of individual perceptions of others' actions, characters and social relations. The way it reads is really a question of the way we are perceived by other people, heavily dependent on society, cultural values, and all that kind of stuff. In the world of social dynamics, reputation has weight and can shape opportunities in all of the professional and most of the personal. It is a complex thing to build or tear down with behavior, communication and leaving impressions on others.

Contemporary legal principle, RTBF is principle that enables people to ask digital platforms to remove their personal information, when that information is outdated or harmful to their reputation. This right recognizes the growing understanding of personal agency in constructing one's public persona in the age of never-ending information sharing and online scrutiny. In our ever more permanent digital footprints, individuals are rendered powerless in controlling their own narrative & RTBF is an essential element in conversations of privacy and dignity.[3]

As for the non-Biblical ways of thinking where we find the concept of dignity and reputation, the ancients in India figured out the idea way back from with dignity and reputation became a core idea in the societal fabric that also characterized and defined social hierarchies. And in this cultural context, dignity was not just some kind of personal attribute, but a communal ideal, a communal ideal tied to an individual's ethical and indeed moral bearing in society. With dignity being central

[1] **Assistant Professor (Law), Research Scholar, MATS Law School, MATS University, Hidayatullah National Law University, Raipur, Chhattisgarh, shriyabadgiyan@gmail.com, shriya2229@hnlu.ac.in**

[2] An Hermans, The Digital Era? Also, My Era! - Media and Information Literacy: A Key to Ensure Seniors' Rights to Participate in the Digital Era (Council of Eur. 2022), https://edoc.coe.int/en/internet/11069-the-digital-era-also-my-era-media-and-information-literacy-a-key-to-ensure-seniors-rights-to-participate-in-the-digital-era.html.

[3] The Role of the Right to be Forgotten in India's Data Privacy Framework, Juris Centre (Sept. 10, 2024), https://juriscentre.com/2024/09/10/the-role-of-the-right-to-be-forgotten-in-indias-data-privacy-framework/#_ftn10.

to the idea of the practice of dharma or righteous duty, one was worth intrinsically linked to their moral actions and social responsibilities. Within this framework, dignity was used as a central component to maintain one's honor in the community and social cohesion.[4]

On the contrary, reputation in ancient India was also not individual merit, but a communal asset that affected families and central social networks. A person's reputation was critical to their family, as well as the community in which they lived, in a society where familial ties and community relationships were critical. For this reason, it was thought that the only way to ensure favorable social standing, respect and economic opportunities was to maintain a good reputation. Many ancient Indian texts sought to illuminate the complex interrelation of dignity and reputation and consider what role personal behavior might play in constructing the public perception and collective morality.[5]

The Indian legal landscape on dignity and reputation as we transition to the modern time, has changed significantly, showing that Indian society has become more aware of the importance of individual's rights in contemporary times. Article 21 of the Indian Constitution entitles the right to life and personal liberty; the right to dignity is implied, and it has been defined by the Supreme Court as guarantor of this right. The point of this judicial interpretation is to show the function of dignity within the lines of Indian law, which hold that men are entitled to be treated with dignity and are allowed to live with dignity.[6]

In the digital age, there are new complexities of personal information and reputation to discuss, all the while intensified talk about the RTBF. But India has no specific legislation covering this right, whose principles flow through the discussion on privacy rights happening today. Once the Supreme Court delivered its landmark ruling in *Justice K.S. Puttaswamy (Retd.) v. Union of India*,[7] right to privacy as fundamental right, has been recognized in. Inherently, privacy and dignity and reputation are bound up with this recognition, which suggests that people ought to possess such control over their personal information, in a landscape of fast technological advancement and information proliferation.

HISTORICAL CONTEXT

Derived from complicated social hierarchies, and embedded in deep rooted cultural values, these were important features of ancient Indian society in constructing collective and individual identities. Social status and reputation were central to this societal framework and dictated how those on the

[4]Ruth Horn & Angeliki Kerasidou, The Concept of Dignity and Its Use in End-of-Life Debates in England and France, 25 Cambridge Q. Healthcare Ethics 404, 404-13 (2016).

[5]Rahimansab L, Social Life in Ancient India: Exploring Family, Gender, Religion, Trade, and Urbanization (3rd–6th Centuries), 12 Int'l J. Creative Res. Thoughts, no. 1, Jan. 2024.

[6]Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, 19 Eur. J. Int'l L. 655 (2008).

[7]AIR 2017 SC 4161.

inside saw themselves, how they were on the inside seen. Since social status, usually based on caste, occupation, and lineage, has played such an important role in determining a person's position in the community, it is easy to understand the persistence of such social hierarchy of caste. At the top of this social hierarchy there were many privileges and respect was great, those at the bottom of the pile often did not enjoy much respect at all. Everyone was aware of exactly where they pride themselves on this intricate hierarchy, and having a reputation could make a huge difference when it came to social interaction and what opportunities were open.[8]

Religion and philosophy had a very profound influence on concepts of dignity and reputation in ancient India for two reasons: first, they created the ethical frameworks within which people interacted with other members of society, and second, throughout the ancient Indian period, religion and philosophy fought against one another in an environment that seemingly did not view the existence of a person without a sense of celebrity to be complete. A great religious tradition is Hinduism, and it articulated its notions of dignity through the idea of Dharma, or moral duties and responsibilities that need to be followed by the specified person by virtue of his or her social status and age. Vedas and Upanishads reveal the exalted dignity and relation of the Atman (the self) to Brahman (the ultimate reality).[9] The connection here highlights the trust that every individual has as having dignity already, and that the actions one takes ought to apply that dignity too. This understanding thus has far reached consequences for reputation: how one acts makes a difference in how others perceive one. In addition, the Mahabharata is also a text which brings into focus the consequences of actions on personal dignity, by describing characters who make moral choices that very much alter the stature and standing of an individual in society.[10]

As there are multiple threads which interweave to form Buddhism, let us go a little deeper into the virtues of these. For the Buddha, compassion, right action and hoping to become enlightened are the basic pathways to moral adulthood with their teachings. The virtue of this framework is to induce people to behave in a virtuous way, not in a social status or material wealth way. This emphasizes a special view of dignity in which one is more regarded in terms of virtues of inner nature rather than an external grant of honor. Buddhism teaches a life of reflection and for taking responsibility, and further trains its adherents to do good and do good things, for their own personal benefit and for the good of the entire community.[11]

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[8]Sankaran S, Sekerdej M & von Hecker U, The Role of Indian Caste Identity and Caste Inconsistent Norms on Status Representation, 8 Frontiers in Psychology 487 (2017).

[9]C. Srivastava, V. Dhingra, A. Bhardwaj & A. Srivastava, Morality and Moral Development: Traditional Hindu Concepts, 55 Indian J. Psychiatry S283 (2013).

[10]Id.

[11]Jones, Ken. Buddhism and Social Action: An Exploration. Buddhist Publication Society, 1995.

Jainism carries on this discourse in its further richness, insisting that the most basic principles of non-violence (Ahimsa) and truthfulness (Satya), must be followed. Jain philosophy is based on the sanctity of all life and demands that people keep their personal dignity by means of self-discipline and moral integrity.[12] In this context, reputation is not just a societal aberration, but potentially a demonstration of whatever one has learned in this life to be the right way to live and how one should behave morally. The Jains think life is the best lived is simple and humble, external status is transitory and leads to eternal inner virtue as best means of dignity. This is a lens to look through, to question where you find your fulfillment (not in pursuing approval from everyone else), and to understand how you apply the concept of ethical life.[13]

DIGNITY IN ANCIENT INDIAN TEXTS

Examination of Specific Texts

The Vedas and Upanishads are among the largest sources of basic texts of Ancient Indian philosophy and contain deep thoughts on nature of existence and the very basic governing principles in life. In these texts the concepts of Atman & Brahman are emerging central themes that provide our understanding of human dignity. For instance, the Upanishads themselves develop in much greater detail the orthodox view of the inherent dignity of each individual, whereas the Atman is represented as a universal, incorporeal and divine phenomenon inhabiting each person. Such a view gives value to the individual above and beyond the norms of society, or material possessions, or social status, to dignity being a right of existence.[14] Just as, for example, in Chandogya Upanishad, it is stated that the essence of each being is essentially linked with Brahman. This deep connection implies that dignity is not a byproduct of our having 'made it' in life, it is not something we have to earn but are born equal simply because we live. Within this philosophical framework the loss of dignity, whether due to acts of unworthiness of societal exclusion, indicates a departure from one's own nature, with moral and spiritual effects. It is a black and white issue, this raises critical questions about how we treat each other and the importance of acknowledging and nurturing the inherent dignity within all people, every action we take has echoed into the very fabric of existence.[15]

The Mahabharata, one of the longest and greatest of world epics, expresses the theme of dignity through its intricate characters, but especially in the case of Yudhishthira, the eldest of the Pandavas. Yudhishthira is the famed personification of personal dignity, or integrity, attached to moral

[12]Prasenjit Pal, Jaina Ethics: Nonviolence, Compassion, and Ethical Principles in Jain Philosophy, 5 Int'l Research J. of Modernization in Eng'g Tech. & Sci. 1 (2023).
[13]Ibid.
[14]Shailendra Kumar & Sanghamitra Choudhury, Ancient Vedic Literature and Human Rights: Resonances and Dissonances, 7 Cogent Soc. Sci. 1 (2021).
[15]R. Pandey, The Hindu Sacraments (Saṁskāra), in The Cultural Heritage of India 23 (S. Radhakrishnan ed., 2d ed. 2003).

righteousness. He lives by proving that one cannot live without the link between dignity and one's moral compass. One of the most important parts of the story is a story of a pivotal incident involving devastation that comes as a result of the loss of dignity by Yudhishthira in his famous wagering not of his kingdom but of his brothers and even of his wife Draupadi.[16] The ruined dignity that Draupadi has lost in the Kauravas court is starkly in the face of all the humiliation the society has inadvertently subjected Draupadi to. It is her public disgrace that sets in motion a terrible war that causes terrible suffering and loss for both families. I find this to be a powerful cautionary tale humbly reminding us that we all exist to uphold our dignity as much to honor ourselves as to keep our integrity and be part of a community that stands firmly. The Mahabharata tells us how even when personal choices are made with dignity, these can have ramifications that extend to the moral fabric of a larger society, as personal ethical choices bring dishonor to a people.

The dignity the character of Sita in the Ramayana elicits an impressive interrogation of such dignity in their life. When she is abducted by Ravana her dignity is fiercely tested and then the trails she faces later go to fight for her very essence. While faced with the worst possible adversity and society's dictates over every action, Sita is steadfast and both honorable and resilient. After being rescued, when Sita is questioned regarding her fidelity by Lord Rama, according to the society, Sita pulls a way and becomes a deep assertion of her dignity. In an Iconic episode in Indian descent, she chooses to be put through an ordeal by fire, called Agni Pariksha, to demonstrate her purity. This is gesture of her fierce unshakable dedication to her own decency and dignity which is an intertwined relationship of individual decency and social perceptions.[17]

But Sita transcendence of personal aspects is with larger things like honor and need of society. Not only does her dignified response to adversity reveal her personal strength, but it also functions as a more general comment on the type of difficulties a woman from ancient society faced. The Sita archetype emerges as an archetype of resilience and moral status award that all dignity can prevail even in the most gut-wrenching circumstance. Her journey will remind us of dignity that is not for the sake of their life but for the social narration and the distinction of the collective value.[18]

Relationship Between Dignity, Morality, and Duty (Dharma)

Ancient Indian thought takes dignity, morality, and Dharma (righteous duty) as a single, intertwined philosophical tapestry which places emphasis on how ethical conduct determines one's dignity. A philosophical background supports the idea that a sense of dignity comes from observance of moral principles, and from caring for society and family. In this context, the text argues that the pursuit of

[16]Lubin, T. (2022) 'Dignity and Status in Ancient and Medieval India', in J.C.-S. Hsu (ed.) Human Dignity in Asia: Dialogue between Law and Culture. Cambridge: Cambridge University Press, pp. 285–307.
[17]Ibid.
[18]Supra note 15.

Dharma allows for individual dignity, as doing one's duties with integrity creates respect and honor in the community.[19]

This linking of man's moral greatness with righteous action of course is supported by the Bhagavad Gita, a section of the Mahabharata considered a beacon. The philosophical discourse about dignity and ethical conduct is focused on Arjuna's internal conflict created by the conflict between his duty as a warrior and his thoughts about violence. The Gita doesn't simply offer dignity as a personal attribute, but as a social virtue, such that one's actions reverberate beyond oneself. And so, adherence to Dharma turns out to be a means to the end of dignity, implying, in addition to preserving one's own dignity that ethical conduct contributes to that which, for society ranging from the very local to the global, is central: cohesion and harmony.[20]

There are many ancient texts which propose personal conduct as the cornerstone of dignity, and ethical behavior as the precondition of maintaining self-worth. The characters of Yudhishthira and Sita give poignant reminders of what 'personal integrity' is all about, and what great dramatic dignity it is. The texts also speak of some virtues which are attributes of dignity, such as self-discipline, truthfulness and respect for others.[21] The game of dice script provides a jolting demonstration of how an instant lapse of judgement could result in huge loss of dignity and prestige loss, which is not merely personal, but an insult to the entire moral fabric of society.

On the other hand, such principles of character Sita adorns them all, that one's character can endure even in the face of heaping duress. Her actions speak to what acts of dignity are; that, in spite of surroundings, dignity can be retained by persistent moral resolve. What follows are the philosophical implications which reach out to contemporary discussions of dignity as a virtue which has to be constantly cultivated with vigilance and moral fortitude. Indeed, the importance of personal conduct as key to dignity was linguistically reinforced by a continuing influence of teachings from ancient Indian texts, which taught that personal conduct was a determinant of personal identity as well as of the ethical landscape of society. The legacy of these texts offers to the study, not a thing to leave unexamined, how dignity, morality and ethical responsibility are or can be put in relation to one another in the human experience.[22]

REPUTATION IN ANCIENT INDIAN THOUGHT

[19]Ratan Singh Solanki & Bhupal Bhattacharya, Right to Dignity and Human Rights: Tracing the Values from Indian Perspective, 8 Int'l J. Recent Tech. & Eng'g 2S7 (July 2019).

[20] Ibid.

[21]Yudhishthira Character Analysis, LITCHARTS, https://www.litcharts.com/lit/mahabharata/characters/yudhishthira (last visited Oct. 09, 2024).

[22]Meenakshi Krishnan, What Leaders Can Learn from Sita, LinkedIn (June 29, 2016), https://www.linkedin.com/pulse/what-leaders-can-learn-from-sita-meenakshi-krishnan/ (last visited Oct. 09, 2024).

Another ancient Indian treatise on statecraft, politics, and politics, Kautilya's Arthashastra, gives us an idea of how deeply embedded reputation is as a management and political consideration. As Kautilya discusses, reputation is not only a personal quality but a strategic weapon which is indispensable for good governance and diplomacy. For Kautilya, reputation on political leadership was an intangible worth that could be nurtured and utilized to build respect, maintain continuity and power. How they ruled could either help or hurt a ruler's reputation and as a result, help or hurt their own position.[23]

The Arthashastra details different ways of building and sustaining a reputation for the ruler. This is all very much about Dharma, or moral law, that a ruler should base his decisions and actions on, Kautilya said. To have a good reputation it was important to be just, prudent in public matters and generous. Kautilya's advice was that rulers must be perceived as wise, just and benevolent to befit with the social moral expectations. The maintenance of goodwill of the populace as well as foreign powers was made possible with regard to the maintenance of fairness, the promotion of law and order, and welfare of the people. Governance that was also transparent was crucial because rulers must not be seen to be corrupt or favor a particular person or community, else it would have immediately led the ruler to lose his standing.[24]

For Kautilya reputation was a powerful political tool that could be used to influence both domestic and international politics. At home, there was a ruler, one with a sterling reputation for dealing fairly and ruthlessly, who could keep people in line and motivate them to work for the rule. A just and stable ruler would be respected, a bad reputation ruler would be unstable and perhaps even cause dissent. Reputation became an even more strategic asset in diplomacy. A ruler's reputation could either promote or deter the effect of neighboring states. In Kautilya's view, the leader makes reputation the central element in statecraft by seeking to cultivate diplomatic skills or cultivating a military reputation that would win allies and intimidate adversaries.[25]

The ancient Indian Panchatantra also gives a lot of weightages to the issue of reputation, not only because of the background but also for all its potential to change the dynamics socially and even serve as a leadership quality. These were stories which were to teach young princes of ethics and governance, and of human behavior, often telling of moral dilemmas to be decided by animals. In

[23]Shantanu Roy, The Human Dignity Principle, LinkedIn (July 17, 2015), https://www.linkedin.com/pulse/human-dignity-principle-shantanu-roy/ (last visited Oct. 10, 2024).

[24] Balbir S. Sihag, Kautilya and Machiavelli on Justice, Prosperity and National Security, 7 Theoretical Econ. Lett. 3 (2017).

[25]Ibid.

Panchatantra, the importance of reputation is constantly laid forth as vital in a man's personal well-being and in the construction of a good society.[26]

The fate of the characters in many of the Panchatantra fables largely depends on their reputation. For example, people (and animals in the stories) who behave untruthfully too frequently become the victims of social rejection and distrust. However, those in the community who are wise, honest, or even kind to people do well and keep good relationships with the people of their community. The underlying message is clear: Once damaged, reputation has a long way to go and should be kept protected by integrity and foresight in the first place. The stories reinforce the idea of establishing correspondence between what we do and what society believes is right and ethical to do, because reputation has implications for any individual's success as well as one's social position and political standing.[27]

Social and Cultural Dimensions of Reputation

In ancient Indian society, the individual and the collective were most intimately connected. An individual's actions and behavior were reflected on the family, caste and the broader community. The collective implication of reputation meant that an individual's failures or successes carried with them significance for his entire social group. For instance, a Kshatriya's conduct on the battlefield was not just carried out, it marked a way a Brahmin followed for his duty, or whatever a caste's honor might be. Emphasizing the interaction of a person's reputation with that of the lineage or caste group to which that person belongs, any deviance from expected norms could shame a person as much for their portion of the family line as it could have shamed them as an individual.

In addition, personal reputation was very important, and more so for people in positions of power or influence. They also expected kings, leaders, and officials to walk a tightrope, in theory, both to maintain their own honor and to fulfill their duties to the order. In ancient Indian texts this tension between personal and collective reputation recurs. The reputation of leaders, and in particular, leaders were a key factor in their political authority. A leader if respected would get loyalty, and if disgraced would be challenged.[28]

Reputation acted as social capital in a society as hierarchically and structurally organized as ancient India, giving shape to social standing in the border and granting one entry to the social networks, resources and opportunities. A good reputation helped an individual's status, and trust and cooperation in their social group. Members of a strong reputation as leaders were able to forge

[26]Dharmik Chauhan & Piyush Patel, A Study of Value Education in the Panchatantra, 8 Int'l J. Novel Research & Dev. 1 (2023).

[27] Ibid.

[28]Peter Sedlmeier & Kunchapudi Srinivas, How Do Theories of Cognition and Consciousness in Ancient Indian Thought Systems Relate to Current Western Theorizing and Research? 7 Frontiers in Psychology 343 (2016).

alliances, secure resources, and influence their network. On the flip side, someone could lose their reputation, and end up being socially excluded, excluding access to vital social and economic sources.

Intersection of Dignity and Reputation

In ancient Indian texts, there are so many examples of the dignity of the individual (self-respect or ethical standing) having a great impact on one's reputation. The dynamic was played out in the Mahabharata, in the character of Yudhishthira. Yudhishthira's personal dignity adds to his public reputation as a righteous king, one whom men even of his enemy's respect. In the Ramayana, too, Sita's dignity, through her trials and exile, is as much a part of shaping her public image as anything else. Although she was subjected to great hardship, her adherence to moral principles makes it impossible to stain her reputation, because inner dignity is so closely bound up with an external reputation.[29]

The dignity of which was upheld through ethical behavior that in turn sculpted public image. In the ancient Indian thought, the person's reputation was not just a result of his achievements but what he did ethically and morally. The righteous man operated according to Dharma, the cosmic law of righteousness, and his actions were therefore praised, whereas the immoral man's actions were censured, his dignity and reputation being ruined. This explicit connection did a lot to extend the idea that one's public image was tangibly related to one's inner moral compass, with ethical behaviour serving as a necessary foundation for both personal dignity and social respect and everything else that flows from it.[30]

MODERN PARALLELS: RIGHT TO BE FORGOTTEN

RTBF is the right of an individual who is able to have their personal data or information removed (by an online platform) when it is no longer relevant, outdated, or no longer has any relevance with respect to the person. But in the digital age, this right has come to a head as information once published online can live on perennially and imperceptibly, campaigning against individual dignity and reputation.

It is through the EU's GDPR from 2018 that RTBF gained global attention. In terms of what people have the right to ask you to delete, Article 17 of GDPR allows someone to request you to delete their personal data (in some circumstances, for example, where the personal data is no longer necessary, the data subject has withdrawn consent or the processing of data breaches legal obligations). Aware of freedom of expression versus personal dignity, this regulation provides a

[29]Supra note 18.
[30]Supra note 18.

balance to the type of data that turns to a lifelong dip in personal reputation on perpetual access to true personal data.[31]

Now many countries are struggling with RTBF outside the EU. While in India, we do not have an RTBF as inscribed in legislation as GDPR, the Digital Personal Data Protection Act, 2023 seeks to introduce such a framework. The Act would allow individuals to ask if personal data is no longer required for the purpose of the data being collected or processed. But RTBF's legislative journey in India is far from over; courts have led the way in determining which interpretation of RTBF is compatible with constitutional rights, such as the right to privacy.[32]

Comparative Analysis of Ancient Concepts and Modern Legal Rights

Ancient Indian thought regarded the protection of an individual's dignity and public reputation as highly important; this was linked with more general ideas of Dharma (ethical duty) and in harmony. Ancient texts, however, viewed personal dignity as an inherent quality that must be saved while reputation was considered as a part of collective consciousness of the entire society. Treatment of individuals in ancient Indian society was often dictated by public interest in ancient Indian society, according to which the community's welfare was often preferred over personal desires.

By virtue of RTBF, modern legal frameworks seek to satisfy personal integrity and other societal interests, for example, the right to information and expression. For example, while GDPR lets people request the deletion of harmful info, it also includes rules protecting the public's right to access info for instance where the information performs a public function, for example to hold public figures to account. As did ancient Indian thinkers, courts today are called on to strike a balance between honor, personal and social, yet the solutions offered to these problems today are markedly different.[33]

Indian judiciary has begun to traverse these complex intersections. In *K.S. Puttaswamy (Retd.) v. Union of India*, court recognized the privacy as a fundamental right under Article 21 of Indian Constitution laying the groundwork for RTBF within right to privacy. The judgment brought out that it is a matter of protecting individual dignity against unwarranted public gaze, in line with the ancient Indian principle of protecting an honorable name and reputation of a person.

In ancient Indian society the restoration of dignity or reputation was a communal or religious affair; a public confession might be made; ceremonies of purification might be observed; or acts of

[31] Helena U. Vrabec, The Right to Be Forgotten, in Data Subject Rights under the GDPR (Oxford, 2021; online Edn, Oxford Academic, 22 July 2021), https://doi.org/10.1093/oso/9780198868422.003.0006 (last visited Oct. 10, 2024).

[32] India's New Law: The Digital Personal Data Protection Act, 2023, S&R Associates (Aug. 31, 2023), https://www.snrlaw.in/indias-new-law-the-digital-personal-data-protection-act-2023/ (last visited Oct. 10, 2024).

[33] Ibid.

penance undertaken to restore one to a place in the social fabric. Rituals and personal conduct were deeply caught up in the mechanisms for restoring one's honor, for a society that required a high degree of consensus on an individual's virtue.

Modern legal systems, however, provide institutional mechanisms for restoring dignity, whereas contemporary society in the digital age has no mechanisms at all. People have the right to remove from the web harmful and outdated information, and RTBF offers legal assistance in doing so. Courts in India have begun to recognize that these mechanisms are necessary. For example, in *X v. Union of India*,[34] the Delhi High Court concluded that an acquitted person has a right to ask the judicial records to be deleted from online databases to protect her dignity. The modern institutional solution here was to balance the right to privacy and dignity against the public's right to access judicial records, in order to restore an individual's dignity.

In the digital world, today, reputational harm tends to spread widely due to the internet's lasting memory. For instance, in *Google Spain SL v. Agencia Española de Protección de Datos*,[35] the European Court of Justice ruled that search engines could be ordered to remove links to personal information if it became outdated or irrelevant. In this case, the issue was a Spanish national whose old financial records were searchable on Google which were no longer relevant. This judgment paved the way for global recognition of the RTBF, and for those dangers of perpetual digital records to an individual's dignity.

CONCLUSION & THE WAY AHEAD

Exploration of the idea of dignity and reputation in ancient Indian thought yields profound insights into the way people were seen with reference to their moral conduct, social status and public image. Vedas, Mahabharata and Arthashastra are ancient texts that provide subtle understanding of these concepts, that dignity is based on intrinsic moral virtues, but reputation is one's image in society. This dual framework highlights that an individual's self-worth (dignity) and public image (reputation) were one and the same, and that both were crucial to preserving harmony in personal, family and social relationships.

In modern times these ancient principles are reflected in modern legal structures such as the RTBF, which aims to return an individual's dignity by removing an individual from the negative online content that will damage the individual's reputation. Ancient Indian thought did not grapple with the intricacies of digital identity but was deeply attuned to the lasting power of one's publicly visible image to determine one's social worth and inner dignity. The modern world faces a similar challenge, the right of an individual to dignity and privacy is balanced with the public's right to

[34]W.P.(CRL)1505/2021
[35]C-131/12.

access information. In an era of when it is always too late to delete our digital footprints, ancient Indian wisdom holds a mirror, reminding us that there is no digital without dignity, but no dignity without moral responsibility, ethical conduct and the search for truth.

DAYANANDA SAGAR
UNIVERSITY

Main Campus : Devarakaggalahalli, Harohalli, Kanakapura Road,
Ramanagara District, Karnataka - 562 112, Ph: +91-80-24496999

City Campus : Kudlu Gate, Hosur Main Road, Bangalore - 560 114,
Ph:+91-80-49092908 Fax: +91-80-42201997, Web: www.dsu.edu.in

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