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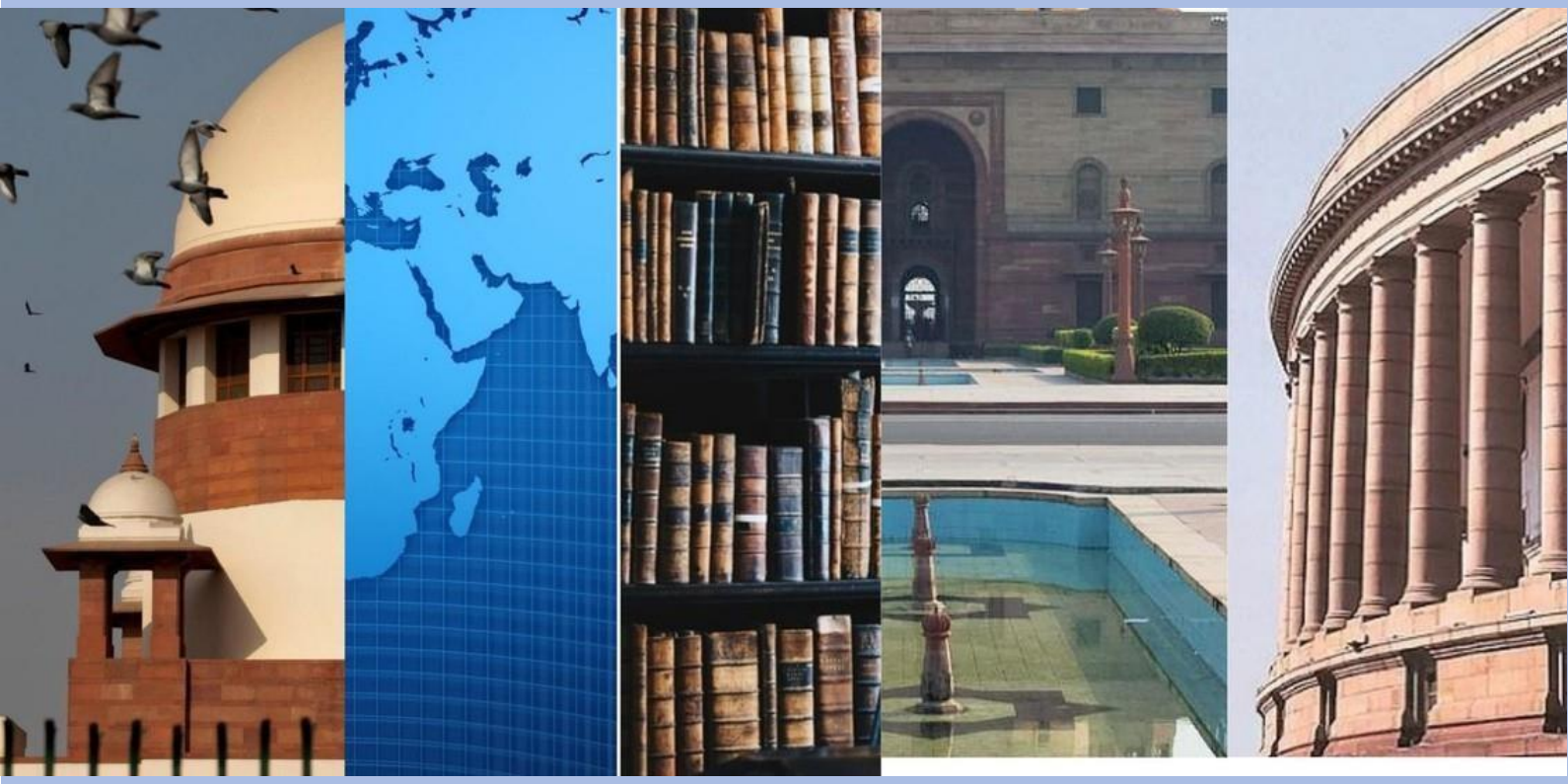

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ANTITRUST IMPLICATIONS OF GENERATIVE AI UNDER COMPETITION LAW

Shivam Deshmukh*

ABSTRACT

The recent development of generative artificial intelligence models has fundamentally transformed the competitive landscape of digital markets, raising antitrust concerns that challenge traditional competition law frameworks. This research examines the monopolistic tendencies showcased by leading AI companies through practices such as market foreclosure, self-preferencing, and exclusionary conduct. This study conducts a comprehensive comparative analysis of competition law responses across three major jurisdictions the United States, European Union and India to evaluate whether existing antitrust frameworks are enough to address the unique competitive challenges posed by AI-driven markets. This research identifies significant regulatory gaps in current competition laws and proposes adaptive frameworks necessary to maintain competitive balance in AI-dominated sectors. The findings suggest that traditional antitrust patterns require substantial modifications to effectively regulate the emergent AI monopolies and preserve market competition.

Key words: Competition, Artificial Intelligence, Digital Markets, India, Frameworks

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INTRODUCTION

The emergence of generative artificial intelligence represents a transformative shift in digital market dynamics fundamentally altering the competitive structures that have governed technology sectors for decades. Major AI systems including OpenAI's GPT series, Google's Gemini, Anthropic's Claude, and similar large language models have demonstrated unmatched capabilities in content generation, search enhancement, and enterprise automation.[1] These advances while offering substantial societal benefits, simultaneously present forbidding challenges to established antitrust principles and competition law enforcement mechanisms.[2]

The concentration of AI development within a limited number of technology giants has created noble forms of market dominance that transcend traditional monopolistic behaviors. Unlike typical market concentration scenarios, AI monopolies show up through control over several connected layers of the AI value chain: computing infrastructure, training data, algorithm designs, and distribution networks.[3] This top-to-bottom integration allows big companies to wield market power in ways that current competition laws find hard to tackle.[4]

Contemporary AI markets exhibit characteristics that differentiate them from traditional technology sectors. The astronomical computational requirements for training state of the art AI models create substantial barriers to entry, effectively limiting meaningful competition to entities with access to massive computational resources and financial capital.[5] Also, the data-intensive nature of AI training processes grants significant competitive advantages to firms with access to massive proprietary datasets potentially creating barriers around market leaders.[6] The practice of self-preferencing has become increasingly prevalent among AI companies; where integrated firms favor their own AI-powered services within their technology ecosystems, this conduct raises fundamental questions about fair competition and consumer choice.[7] The AI systems influence search results, content recommendations, or platform access in ways that systematically disadvantage competitors.[8] The opaque nature of AI decision making processes compounds these concerns, as it becomes difficult for

[1] Erik Brynjolfsson & Andrew McAfee, The Second Machine Age: Work, Progress, and Prosperity in a Time of Brilliant Technologies 90-115 (W. W. Norton & Company 2014)
[2] Tim Wu, *The Master Switch: The Rise and Fall of Information Empires* 145–70 (Vintage Books 2010)
[3] Yann LeCun, Yoshua Bengio & Geoffrey Hinton, Deep Learning, 521 *Nature* 436, 436–40 (2015)
[4] Jonathan B. Baker & Fiona M. Scott Morton, Antitrust Enforcement Against Platform MFNs, 127 *Yale L.J.* 2176, 2180–85 (2018)
[5] Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* 90–106 (Basic Books 1978)
[6] Richard Whish & David Bailey, *Competition Law* 190–220 (10th ed. Oxford Univ. Press 2021)
[7] Pinar Akman, The Theory of Harm in Digital Competition Law Cases, 57 *Common Mkt. L. Rev.* 681, 685–95 (2021)
[8] Maurice E. Stucke & Allen P. Grunes, *Big Data and Competition Policy* 120–45 (Oxford Univ. Press 2016)

regulators and competitors to identify and prove discriminatory practices.[9]

Traditional antitrust enforcement mechanisms developed for industrial and early digital markets, face significant challenges when applied to AI-driven competition. The consumer welfare standard which has dominated antitrust analysis for decades, may prove inadequate for evaluating AI market structures, where harm manifests through reduced innovation, foreclosed competition, or diminished consumer choice rather than higher prices.[10] This limitation, makes necessary for a comprehensive revaluation of competition law principles and enforcement strategies.[11]

This research addresses the critical question of whether current antitrust frameworks in major jurisdictions possess the analytical tools and legal mechanisms necessary to effectively regulate AI-driven market concentration. Through comparative analysis of competition law approaches in the United States, European Union, and India, this study examines how different regulatory philosophies and enforcement strategies address AI monopolization challenges.[12] The research contributes to the growing body of scholarship advocating for adaptive competition law frameworks that can effectively govern AI-dominated markets while preserving the benefits of technological innovation.[13]

ANALYSIS OF AI MARKET CONCENTRATION AND COMPETITIVE PRACTICES

The contemporary artificial intelligence landscape exhibits unpredicted levels of market concentration, with a small number of technology giants controlling critical components of the AI value chain. This concentration manifests across multiple market layers, from fundamental computational infrastructure to consumer facing AI applications creating a vertically integrated syndicate that poses significant challenges for competition law enforcement.[14] At the foundational level, AI model development requires access to massive computational resources that are controlled by a limited number of cloud computing providers. Amazon Web Services, Microsoft Azure, and Google Cloud Platform collectively dominate the cloud infrastructure market, providing the computational backbone necessary for training and deploying large-scale AI models.[15] This infrastructure concentration creates

[9] Lina M. Khan, Amazon's Antitrust Paradox, 126 *Yale L.J.* 710, 715–25 (2017)

[10] Ariel Ezrachi & Maurice E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* 75–95 (Harvard Univ. Press 2016)

[11] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives 2019/1937 and 2020/1828 (Digital Markets Act), 2022 O.J. (L 265) 1

[12] Anu Bradford, *The Brussels Effect: How the European Union Rules the World* 180–205 (Oxford Univ. Press 2020)

[13] Spencer Weber Waller, Antitrust and Social Networking, 90 *N.C. L. Rev.* 1771, 1795–1810 (2012)

[14] Sherman Act, 15 U.S.C. §§ 1–7 (2018); Treaty on the Functioning of the European Union art. 102, 2012 O.J. (C 326) 47; The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India)

[15] Case AT.39740, *Google Search (Shopping)*, 2017 O.J. (C 9) 11 (European Commission Decision); *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001)

substantial barriers to entry for potential AI competitors, as alternative computational resources are either unavailable at scale or prohibitively expensive for sustained AI research and development.[16]

The concentration of high-quality training data represents another critical barrier to competitive entry in AI markets. Established technology platforms possess vast repositories of user generated content, behavioral data, and proprietary information that provide substantial advantages in AI model training.[17] Companies such as Google, Meta, and Microsoft have accumulated decades of user interaction data that enables superior AI model performance, creating self-reinforcing competitive advantages that are difficult for new entrepreneurs to replicate.[18]

In the higher echelons of AI, monopolists have opted for vertical integration so as to achieve control over the entire value chain of AI. The partnership of OpenAI with Microsoft illustrates this integration OpenAI's development of models is combined with the offer of cloud infrastructures as well as software distribution channels through Microsoft. [19]Similarly, the integration of Gemini AI models by Google with search, advertising, and productivity software creates another ecosystem that arguably consolidates its dominant position in the market.[20]

The talent concentration in AI development further exacerbates market concentration concerns. The limited pool of researchers and engineers capable of developing state of the art AI systems has become concentrated within a small number of technology companies and research institutions.[21] This talent concentration creates additional barriers to entry and limits the potential for competitive challenge to established AI market leaders.

Self-Preferencing and Exclusionary Conduct

Self-preferencing has emerged as a dominant competitive strategy among AI companies, with integrated firms systematically favoring their own AI-powered services within their broader technology ecosystems. This conduct creates significant competitive distortions that mirror and exceed the self-preferencing practices previously observed in digital platform markets.[22]

Google's integration of its Gemini AI capabilities into its search algorithm represents a paradigmatic example of AI-enabled self-preferencing. The company's AI-enhanced search results increasingly favor Google's own services and products, while potentially disadvantaging competing websites and

[16] Federal Trade Commission, *FTC Technology Enforcement Division Report* 25–40 (2023); European Commission, *Competition Policy for the Digital Era* 50–75 (2019)
[17] *Digital Markets Act*, supra note 11; *American Innovation and Choice Online Act*, S. 2992, 117th Cong. (2022)
[18] Synergy Research Group, *Cloud Infrastructure Market Share Report* 15–25 (2023)
[19] Microsoft Corporation, *Form 10-K Annual Report* 45–50 (2023)
[20] National Science Foundation, *Artificial Intelligence Research and Development Strategic Plan* 30–45 (2023)
[21] Search Engine Land, *Google's AI Integration Impact Analysis* 20–35 (2023)
[22] Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* 95–120 (PublicAffairs 2019)

services.[23] This integration makes it difficult for users and competitors to distinguish between organic search results and algorithmically enhanced promotion of Google's services, creating competitive advantages that are difficult for antitrust authorities to detect and address. Microsoft's integration of OpenAI technology into its Office productivity suite and Bing search engine demonstrates similar self-preferencing concerns. The company has prioritized AI features that enhance its existing products while potentially foreclosing opportunities for competing AI providers to access Microsoft's customer base.[24] This integration strategy creates bundling effects that may constitute exclusionary conduct under traditional antitrust analysis.[25]

The opacity of AI decision-making processes significantly complicates the identification and prosecution of self-preferencing behavior. Unlike traditional self-preferencing cases where discriminatory treatment can be directly observed, AI-enabled self-preferencing may be embedded within complex algorithmic systems that are difficult for regulators and competitors to audit or understand.[26] This technological complexity creates substantial evidentiary challenges for competition law enforcement. AI companies have also engaged in exclusive dealing arrangements that potentially foreclose market access for competitors. These arrangements include exclusive partnerships with content providers, preferential access to training data, and exclusive integration agreements with downstream applications.[27] Such practices may constitute exclusionary conduct under traditional antitrust analysis, but their technological complexity and market novelty create challenges for effective enforcement.[28]

Essential Facilities Doctrine and AI Infrastructure

The application of the essential facilities doctrine to the AI market infrastructure remains a adventurous area in competition law evolutions. The doctrine which impels any dominant firm to provide competitors with access to the facilities that are indispensable for competition, possibly could serve as the framework for tackling AI market concentration issues.[29] Training datasets for AI definitely fit the bill as candidates for an 'essential facilities' declaration, especially when these datasets are unique, difficult to replicate, and necessary for competitive participation in AI markets.[30] Large-

[23] Microsoft Corporation, *Form 10-K Annual Report* 45–50 (2023)
[24] National Science Foundation, *Artificial Intelligence Research and Development Strategic Plan* 30–45 (2023)
[25] Search Engine Land, *Google's AI Integration Impact Analysis* 20–35 (2023)
[26] Microsoft Corporation, *Artificial Intelligence Integration Strategy Report* 25–40 (2023)
[27] Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* 85–110 (Harvard University Press 2015)
[28] Competition and Markets Authority, *AI Foundation Models: Initial Report* 40–55 (2023)
[29] *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 410–11 (2004)
[30] Jonathan B. Baker, *Exclusionary Conduct, Effective Competition, and Consumer Welfare*, 69 Antitrust L.J. 575, 594–98 (2001)

size proprietary datasets, accumulated by dominant technology platforms, may fulfill traditional essential facilities criteria, thereby requiring that owners of such datasets offer access to competitors on reasonable terms.[31] Nevertheless, application of the doctrine to informational assets rather than physical infrastructure raises new legal questions as regards mandatory access requirements and their extent or limits.[32]

Pre-trained AI models could stand as essential facilities in certain market contexts, especially where the costs of independent development by a competitor are prohibitive and such pre-trained AI models are necessary inputs for downstream AI applications.[33]

The question of whether leading AI models should be subject to mandatory access requirements involves attempting to balance the arguments of competition against the interests of encouraging innovation and protecting intellectual property.[34] Also, the computational infrastructure necessary for AI development raises additional essential facilities considerations. Cloud computing platforms offering the kind of specialized hardware and software needed to train AI models could well be liable for mandatory access requirements if they hold market dominance and the use of their services is indispensable for any form of competitive participation.[35] The application of the essential facilities doctrine to cloud computing services, however, raises difficult questions as to technical feasibility and economic efficiency.[36]

Since the development of AI is international in nature, this further complicates the essential facilities analysis, for critical AI infrastructure may be spread across many jurisdictions possessing different legal frameworks. This short geographic spread creates difficulties for coordinated regulatory enforcement and, perhaps, limits the efficiency of unilateral essential facilities requirements.[37]

COMPARATIVE ANALYSIS OF JURISDICTIONAL APPROACHES

United States Antitrust Framework

The United States antitrust system, governed primarily by the Sherman Act and Clayton Act, approaches AI market concentration through traditional monopolization and merger analysis

[31] OECD, *Data Portability, Interoperability and Competition* 21–25 (2021), https://www.oecd.org/daf/competition/data-portability-interoperability-and-competition.htm

[32] Maurice E. Stucke & Ariel Ezrachi, *The Subtle Ways Firms Exercise Market Power in the Big Data Era*, 18 J. Eur. Competition L. & Prac. 245, 255 (2018)

[33] Herbert Hovenkamp, *Antitrust and Platform Monopoly*, 130 Yale L.J. 1952, 1990–91 (2021)

[34] FTC, *Generative AI and Competition Policy: Issues and Questions* 7–9 (Nov. 2023)

[35] European Commission, *Guidelines on the Application of EU Competition Law to Essential Facilities in Digital Markets* ¶¶ 41–48 (2024)

[36] Richard S. Whitt, *Old School Goes Online: The Essential Facilities Doctrine and the Net*, 2004 Stan. Tech. L. Rev. 5, 30–33 (2004)

[37] UNCTAD, *Digital Economy Report 2021: Cross-border Data Flows and Development* 61–65 (2021)

frameworks.[38] The Department of Justice and Federal Trade Commission have begun investigating AI market practices, but enforcement remains limited by traditional legal standards that may be inadequately suited for AI market dynamics.[39]

'Section 2' of the Sherman Act prohibits monopolization and attempts to monopolize, providing the primary legal framework for addressing AI market dominance.[40] However, the traditional requirement to demonstrate consumer harm through higher prices or reduced output may be inadequately suited for AI markets where competitive harm manifests through reduced innovation or foreclosed market entry rather than immediate price effects.[41] Recent enforcement actions have demonstrated both the potential and limitations of traditional antitrust approaches to AI market regulation.[42]

The Federal Trade Commission's investigation of OpenAI's corporate structure and Microsoft partnership represents an attempt to apply traditional antitrust analysis to the new AI market arrangements.[43] But, these investigations face significant challenges in identifying specific consumer harms and developing appropriate remedies for AI market concentration.[44] The Biden Administration has demonstrated increased willingness to challenge technology market concentration, issuing executive orders directing enhanced antitrust enforcement in digital markets.[45] However, these policy initiatives have not yet translated into comprehensive AI-specific enforcement actions or regulatory frameworks.[46]

American antitrust law's emphasis on economic efficiency and consumer welfare may limit its effectiveness in addressing AI market concentration challenges that do not immediately manifest through traditional economic harms. The Chicago School influence on American antitrust interpretation has created high evidentiary standards for demonstrating anticompetitive harm that may be difficult to meet in AI market contexts.[47]

European Union Competition Framework

The European Union has adopted a more proactive and comprehensive approach to AI market

[38] Sherman Antitrust Act, 15 U.S.C. §§ 1–7; Clayton Antitrust Act, 15 U.S.C. §§ 12–27

[39] DOJ & FTC, *Joint Public Inquiry on AI and Competition Enforcement* (Jan. 2024), https://www.justice.gov/opa/pr/doj-ftc-joint-statement-ai

[40] 15 U.S.C. § 2

[41] Fiona Scott Morton & David Dinielli, *Artificial Intelligence and the Limits of Antitrust Enforcement*, Yale Tobin Ctr. for Econ. Pol'y (2023)

[42] FTC, *Competition in the Emerging Artificial Intelligence Market: Enforcement Trends and Case Study Insights* (Dec. 2023)

[43] Lauren Feiner, *FTC Opens Inquiry into OpenAI and Microsoft's Ties*, CNBC (July 13, 2023), https://www.cnbc.com

[44] Maurice Stucke, *Rebooting Antitrust in the AI Era*, 36 Harv. J.L. & Tech. 123, 153–55 (2022)

[45] Exec. Order No. 14,094, *Promoting Competition in the American Economy*, 86 Fed. Reg. 36,987 (July 9, 2021)

[46] Brookings Inst., *The Biden Administration's AI Executive Order and the Competition Challenge*, Brookings TechTank (Nov. 2023)

[47] Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* 7–10 (1978)

regulation, combining traditional competition law enforcement with ex-ante regulatory requirements through the Digital Markets Act.[48] This dual approach provides potentially more effective tools for addressing AI market concentration challenges.

Article 102 Treaty on the Functioning of the European Union (TFEU) prohibits abuse of dominant position, providing the foundational framework for addressing AI market dominance in the European Union.[49] The European Commission has demonstrated willingness to apply this provision to novel digital market practices, as evidenced by its decisions in the Google Shopping and Android cases, which establish important precedents for AI market regulation.[50]

The Digital Markets Act represents a paradigmatic shift toward ex-ante regulation of dominant digital platforms, imposing specific obligations on "gatekeeper" platforms that may include major AI companies.[51] The DMA's requirements for interoperability, data portability, and non-discrimination could significantly constrain AI companies' ability to engage in self-preferencing and market foreclosure practices.[52] The European Commission has initiated specific investigations into AI market practices, including preliminary reviews of Microsoft's partnership with OpenAI and Google's AI integration strategies.[53] These investigations demonstrate the Commission's willingness to apply competition law principles to AI market arrangements, although definitive enforcement actions remain pending.[54]

The EU's broader regulatory approach to artificial intelligence, including the AI Act, creates additional compliance requirements that may interact with competition law enforcement to constrain AI market dominance.[55] This comprehensive regulatory framework provides multiple tools for addressing AI market concentration challenges beyond traditional competition law enforcement.[56]

[48] Regulation 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), 2022 O.J. (L 265) 1

[49] Consolidated Version of the Treaty on the Functioning of the European Union art. 102, 2012 O.J. (C 326) 47

[50] Case T-612/17, Google & Alphabet v. Comm'n (Google Shopping), ECLI:EU:T:2021:763; Case AT.40099, Google Android, Comm'n Decision of July 18, 2018

[51] Digital Markets Act, supra note 48, arts. 3–5

[52] Nicolas Petit, *The DMA and the Rise of Ex Ante Tech Regulation in Europe*, 12 J. Eur. Competition L. & Prac. 559, 562–63 (2021)

[53] European Comm'n, *Antitrust: Commission Seeks Views on Microsoft's Investment in OpenAI* (Mar. 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1612

[54] Tommaso Valletti & Cristina Caffarra, *The European Commission's Emerging AI Competition Agenda*, VOX EU (Apr. 2024), https://cepr.org/voxeu

[55] European Commission, *Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)*, COM (2021) 206 final

[56] Maurice Stucke, *Should We Be Concerned About Data-Opolies?*, 2 Geo. L. Tech. Rev. 275, 305–06 (2018)

Indian Competition Law Framework

India's competition law framework, governed by the Competition Act 2002, has begun addressing digital market concentration but faces significant challenges in developing AI-specific enforcement capabilities.[57] The Competition Commission of India has demonstrated increasing sophistication in digital market analysis but lacks the resources and expertise of its American and European counterparts.[58]

'Section 4' of the Competition Act, 2002 prohibits abuse of dominant position, providing the legal framework for addressing AI market dominance in India.[59] However, the CCI's limited experience with complex digital market analysis may constrain its ability to effectively investigate and prosecute AI market concentration cases. Recent CCI decisions in digital market cases, including investigations of Google and Amazon, demonstrate developing expertise in digital market analysis that could be applied to AI market regulation.[60] However, these cases also reveal the challenges faced by the CCI in developing technical expertise and enforcement capabilities adequate for complex digital market investigations.[61] India's position as a major consumer market for AI services creates significant leverage for competition law enforcement, but the country's limited domestic AI development capabilities may constrain its ability to implement effective remedies for AI market concentration.[62] The global nature of AI markets requires coordination with other competition authorities that may be difficult for the CCI to achieve.[63]

The Indian government has announced initiatives to promote domestic AI development and reduce dependence on foreign AI providers, creating potential tensions between competition law enforcement and industrial policy objectives.[64] These policy tensions may complicate the development of coherent AI market regulation strategies.[65]

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[57] The Competition Act, No. 12 of 2003, India Code (2003)

[58] Pradeep S. Mehta & Ujjwal Kumar, *Challenges for the CCI in the Age of AI*, Econ. Times (Jan. 20, 2024), https://economictimes.indiatimes.com

[59] The Competition Act, supra note 58, § 4

[60] Competition Comm'n of India, *In re: XYZ v. Google LLC*, Case No. 39 of 2018 (2022); Competition Comm'n of India, *In re: Confederation of All India Traders v. Amazon.com Inc.*, Case No. 20 of 2020 (2021)

[61] Nisha Kaur Uberoi & Shweta Shroff Chopra, *Digital Markets and the Indian Competition Law Regime*, 5 Indian J. L. & Tech. Pol'y 23, 35–36 (2023)

[62] Arghya Sengupta, *India's AI Policy: Between National Interest and Global Competition*, Observer Rsch. Found. (Dec. 2023), https://www.orfonline.org

[63] OECD, *Co-operation Among Competition Agencies in the Digital Era* (2022), https://www.oecd.org

[64] Ministry of Electronics & IT, *IndiaAI Mission: Strategic Roadmap for Building AI Ecosystem*, MeitY (2023), https://indiaai.gov.in

[65] Pratik Datta, *Industrial Policy Meets Antitrust in India's AI Push*, Hindustan Times (Feb. 2024), https://www.hindustantimes.com

REGULATORY GAPS AND ANALYSIS

Current competition law frameworks across major jurisdictions exhibit significant gaps in their ability to effectively address AI market concentration challenges. These deficiencies stem from the technological complexity of AI systems, the novel nature of AI market structures, and the inadequacy of traditional antitrust analysis for AI-specific competitive practices.[66] The evidentiary challenges posed by AI system opacity represent a fundamental obstacle to effective competition law enforcement. Traditional antitrust analysis requires clear demonstration of anticompetitive conduct and consumer harm, but AI systems' algorithmic complexity makes it difficult to identify and prove discriminatory practices.[67] Regulators lack the technical expertise and investigative tools necessary to effectively audit AI systems for anticompetitive behavior.

Current legal standards for defining relevant markets may be inadequately suited for AI market analysis. AI systems often compete across multiple product categories and market segments simultaneously, creating analytical challenges for traditional market definition approaches.[68] The dynamic nature of AI capabilities and applications further complicates market definition efforts.

Existing merger review processes may be inadequate for evaluating AI market consolidation, particularly when acquisitions involve early-stage AI companies or AI-related assets that do not meet traditional transaction value thresholds.[69] The "killer acquisition" phenomenon, where dominant firms acquire potential competitors to eliminate future competitive threats, may be particularly problematic in AI markets.[70]

International coordination mechanisms for AI market regulation remain underdeveloped, creating opportunities for regulatory arbitrage and limiting the effectiveness of unilateral enforcement actions. The global nature of AI development and deployment requires enhanced cooperation among competition authorities that current frameworks do not adequately facilitate.

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[66] Fiona Scott Morton & Herbert Hovenkamp, *Antitrust and Innovation: Regulation in AI and Digital Markets*, 114 Colum. L. Rev. 1235, 1241–45 (2024)

[67] European Competition Network, *Report on Algorithmic Collusion and Self-preferencing in Digital Markets*, ECN (2023), https://ec.europa.eu/competition/ecn

[68] OECD, *Market Definition and Competition Assessment in Digital and AI Markets*, OECD Policy Paper No. 32 (2024), https://www.oecd.org

[69] Lina M. Khan & Sandeep Vaheesan, *The Killer Acquisitions in AI: Challenges for Antitrust*, 138 Harv. L. Rev. F. 78 (2024).

[70] Lina M. Khan & Sandeep Vaheesan, *The Killer Acquisitions in AI: Challenges for Antitrust*, 138 Harv. L. Rev. F. 78 (2024).

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PROPOSED REGULATORY FRAMEWORK FOR AI COMPETITION

Effective AI market regulation requires comprehensive adaptation of competition law frameworks to address the unique characteristics of AI-driven markets. These adaptations should combine enhanced enforcement capabilities with new regulatory approaches specifically designed for AI market oversight.

Competition authorities should develop specialized AI market analysis capabilities, including technical expertise, investigative tools, and enforcement procedures specifically designed for AI market oversight. This development should include recruitment of personnel with AI technical expertise and investment in technological tools for AI system auditing and analysis.

Regulatory frameworks should incorporate algorithmic auditing requirements that enable competition authorities to examine AI systems for discriminatory or anticompetitive behavior. These requirements should include mandatory disclosure of AI system design parameters, training data sources, and performance metrics that affect competitive outcomes.

Ex-ante regulatory approaches, similar to the EU's Digital Markets Act, should be expanded to specifically address AI market concentration. These frameworks should impose interoperability requirements, data sharing obligations, and non-discrimination standards specifically tailored to AI market characteristics.

Essential facilities doctrine should be clarified and expanded to address AI-specific infrastructure, including training datasets, pre-trained models, and computational resources. This expansion should balance competitive concerns against innovation incentives and intellectual property protections.

International cooperation mechanisms should be enhanced to facilitate coordinated AI market regulation across jurisdictions. These mechanisms should include information sharing protocols, joint investigation procedures, and harmonized regulatory standards for AI market oversight.

CONCLUSION

The emergence of generative artificial intelligence as a dominant force in digital markets represents a fundamental challenge to traditional competition law frameworks that requires comprehensive regulatory adaptation. This research has demonstrated that current antitrust approaches across major jurisdictions possess significant limitations in addressing the unique competitive challenges posed by AI market concentration. The analysis reveals that AI markets exhibit characteristics that distinguish them from traditional technology sectors, including unprecedented computational requirements, data concentration advantages, and algorithmic opacity that complicates regulatory oversight. These characteristics enable dominant AI companies to engage in exclusionary practices and self-preferencing behaviors that may escape detection and prosecution under traditional antitrust

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frameworks.

Comparative analysis of jurisdictional approaches demonstrates that while the European Union has begun developing more comprehensive regulatory responses through initiatives such as the Digital Markets Act, significant gaps remain in the ability of competition authorities to effectively address AI market concentration. The United States continues to rely primarily on traditional antitrust approaches that may be inadequately suited for AI market dynamics, while developing economies such as India face additional challenges in developing adequate regulatory capabilities.

The research identifies critical regulatory gaps that must be addressed to ensure effective AI market oversight, including the need for enhanced technical expertise among regulators, improved investigative tools for algorithmic auditing, and expanded international cooperation mechanisms. The essential facilities doctrine emerges as a potentially important tool for addressing AI infrastructure access issues, although its application to informational assets raises novel legal questions. The proposed regulatory adaptations outlined in this research provide a framework for addressing AI market concentration challenges while preserving the benefits of technological innovation. These adaptations require careful implementation to balance competitive concerns against innovation incentives and avoid regulatory capture risks.

Future research should continue to monitor the evolution of AI market structures and regulatory responses, particularly as enforcement actions and legislative initiatives develop across jurisdictions. The dynamic nature of AI technology development will require ongoing adaptation of regulatory frameworks to ensure their continued effectiveness. The implications of this research extend beyond academic interest to practical policy development, as regulatory authorities worldwide grapple with the challenges of governing AI-driven markets. The recommendations presented here provide guidance for policymakers seeking to develop effective competition law frameworks for the AI era while preserving the benefits of technological innovation for society.

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AN ANALYTICAL STUDY ON INTERNAL INTERFACE OF CRIMINALIZATION OF MARITAL RAPE WITH MARITAL RIGHTS

ABHAY PRASAD *

ABSTRACT

Despite growing awareness of women's rights and autonomy, marital rape, also known as spousal rape, continues to be a major problem worldwide. The paper investigates the cultural, legal, and historical underpinnings of marital rape as well as the effects it has on women's lives. It explores the jurisprudential interpretation of the crime, pointing out social structures that have allowed offenders to continue operating with impunity. Along with examining India's legislative and judicial system, the article also examines international laws and treaties that concern marital rape. It clarifies the nuances surrounding the criminalization of marital rape and the difficulties in prosecuting it through an examination of court rulings and case studies. The impact of criminalizing marital rape could be seen on the conjugal rights of the spouses and would destabilize the institution of marriage. The paper primarily focuses on the move of criminalization of non-consensual sexual intercourse by husband and its prolonged effect on the marital rights leading to the discussion of considering such act as "marital rape" along with the exception provided in the penal laws.

Keywords: *Marital Rape, Non-consensual Sexual Intercourse, Marital Rights, Marriage Institution, Criminalization*

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INTRODUCTION

"No man has a natural right to commit aggression on the natural rights of another and this all from which the laws ought to restrain him" - Thomas Jefferson

The law of the land of most of the civilized country promotes equal rights and opportunities to the vulnerable groups in the society. Even after the positive discrimination of women in society resulting in emergence of protection of interest through special rights, the threat to autonomy of women remains unadjusted. Marital rape is one such act which is under cognizance of legal framework and facing the dilemma of being criminalized same under the provisions of rape as provided in penal laws.

The act of sexual intercourse or sexual acts performed by husband without the consent of wife often called as Marital Rape. In most of the countries the non-consensual sex performed by husband is not considered as a crime as husband acquires the immunity under the ideals of institution of marriage. At present, only fifty-two countries have laws recognizing that marital rape is a crime. In many jurisdictions across the world, including India, marital rape is not recognised as a crime by law and society. Even when countries recognize rape as a crime and prescribe penalties for the same, they exempt the application of that law when a marital relationship exists between victim and perpetrator. This is often called the 'marital rape exception clause'.[1]

"MRE (Marital Rape Execption) does not in any manner envisage or require a wife to submit to forced sex by the husband and does not encourage a husband to impose himself on the wife; contrary to what the petitioners contend. It is important to note that there are remedies available to address non-consensual sex between spouses, something which is apparent on a plain reading of Section 376B and Section 498A of the IPC as also the provisions of the Protection of Women from Domestic Violence Act, 2005."[2] The particular expression has been provided in the split judgement by an Indian court while questioning the issue of criminalisation of marital rape, but it remains exhaustive in nature due to the very contrary reasoning provided by the other judge in the same case. The contentious view against the criminalisation of non-consensual sex by spouse is mostly made due to the fact of having sexual access as legitimate expectation through marital rights. The other contention against the criminalization of marital rape is that it is different from the very nature of the crime of rape including its consent factor. The research analyses the reasoning of criminalising the marital rape and also to restrain from considering the act as an act similar to rape. The constitutionality of MRE has also been

[1] Raveena Rao Kallakuru & Pradyumna Soni,Criminalisation Of Marital Rape In India: Understanding Its Constitutional, Cultural And Legal Impact,1, NUJS Law Review, 2018

[2] RIT Foundation v. Union Of India, 2022 Legal Eagle (Del) 310

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tested various times in court of laws on the ground of infringing the autonomy of rights of women and to address the issue various guidelines ad measures have been provided on both the international forum and domestic legislative act. The criminalisation of marital rape bears ancillary impact on the marital rights of spouses, the state in-order to protect the marital rights restrains from considering it as an offence of rape.

INTERNATIONAL STANCE TO CRIMINALIZE MARITAL RAPE

Over 50% of nations worldwide, including OECD nations like the Czech Republic and Japan, do not specifically outlaw sexual assault in marriage. Spouse sexual assault is either not subject to the same sanctions as other rapes in some U.S. states or is still exempt. In several nations, like Tunisia, Cameroon, and Bulgaria, rapists are not prosecuted if they get married to the victim. It is still completely lawful in 35 nations, including Sri Lanka, India, Bulgaria, Kenya, and Malawi, to sexually abuse a spouse.[3]

Lebanon, contrary to criminalizing the act of sexual assault with the female spouse, legalized the marital right of sexual intercourse.[4] Acts of violence against women are now widely acknowledged to violate human rights. Marital rape, however, is a specific type of gendered violence that has eluded human rights recognition and criminal law penalties in about one-third of the world's countries. This particular form of violence against women is legitimized by the law's silence, which leaves males who rape or sexually assault their wives or intimate partners with legal repercussions. This is an issue of human rights that demands social and legal solutions.

The international standards pose obligation upon the state parties strictly encompassing the sexual violence against women including non-consensual sexual intercourse by the spouse. Domestic violence being treated as offence in most of the countries but the act of non-consensual sex is not treated as offence as the institution of marriage is believed to be patriarchal in nature providing more prominence to the rights of husband which includes implicitly to have access to the sexual intercourse with her wife.

“State failures to criminalize marital rape represent a violation of women’s fundamental human rights, including an undermining of women’s right to equal benefit of the law. Moreover, these state failures to criminalize marital rape also represent a dereliction of a state’s duties to comply with international obligations to enforce women’s legally protected human rights to equality, liberty, and security of the

[3] Protecting Women from Violence, WORLD BANK GROUP, http://wbl.worldbank.org/data/exploretopics/protecting-women-from-violence

[4] Lebanon: Domestic Violence Law Good, but Incomplete, HUM. RTS. WATCH (Apr. 3, 2014), https://www.hrw.org/news/2014/04/03/lebanon-domestic-violence-law-good-incomplete

person."[5] Most notably, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR) all guarantee these human rights. The due diligence requirement for violence against women is also broken by not making marital rape a crime.

CEDAW (the Convention) prohibits marital rape and other acts of sexual violence as GBVAW (GENDER BASED VIOLENCE AGAINST WOMEN) and discrimination under Articles 1-3 and 5(a) of the Convention. GR No. 19 defines GBVAW as, "violence that is directed against a woman because she is a woman or violence that affects women disproportionately…" to the inclusion of "… acts that inflict physical, mental or ***sexual harm*** or suffering, threats of such acts, coercion and other deprivations of liberty, the violence that occurs within the family or domestic unit or within any other interpersonal relationship"[6]

The **Fourth World Conference On Women 1995** reiterate that international laws relating to violence against women includes **marital rape**, sexual and physical assault occurring in family… "and violence related to exploitation and gender violence condoned by the state."[7] Over the previous three decades, the understanding that violence against women constitutes a serious violation of human rights has grown and been validated. Its foundation is not just the fact that gender-based violence not only directly violates a number of fundamental rights that call for legal protection, but it also completely or significantly impairs the ability to exercise all other rights.

So far the international community is under obligation to the various international document related to GBVAW addressing the issue of sexual as well as physical tormentation of women including the offence of marital rape which is considered as an archaic practice. The states are obliged to ensure the fundamental right's of women and create a balance between marital rights and personal rights and also to exterminate bias in gender terms to uphold the rule of law.

INDIAN CONCEPTION ABOUT MARITAL RAPE

The idea of marital rape in India seems confusing, various judgments has reiterated the act not as marital rape, rather provided a distinction between the concept of "rape" and non-consensual sexual

[5] Melanie Randall & Vasanthi Venkatesh, The Right to No: The Crime of Marital Rape, Woman's Human Rights, and International Law, Vol.41, Brooklyn Journal of International Law,2015, https://www.berkeleyjournalofinternationallaw.com/post/marital-rape-in-india-an-international-human-rights-law-violation

[6] Marion Bethel, MARITAL RAPE & STATE PARTY OBLIGATIONS UNDER CEDAW, https://www.ohchr.org/sites/default/files/2023-08/marital-rape-state-party-obligations-under-cedaw.doc

[7] World Conference on Women, Rep. of the Fourth World Conference on Women,U.N. Doc. A/CONF.177/20/Rev.1 (Sept. 15, 1996)

intercourse done by husband. The Indian Penal Code (now Bharatiya Nyaya Sanhita, section 63) in section 375 criminalises the offence of rape. It is an expansive definition which includes both sexual intercourse and other sexual penetration such as oral sex within the definition of 'rape'. However, in Exception 2, it excludes the application of this section on sexual intercourse or sexual acts between a husband and wife. Accordingly, if a husband rapes a woman, she has no legal recourse under Indian law.

Exception 2 states… "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."[8] There is no justification given by Exception 2 of section 375 of the IPC (the "exception clause") for why a man and his wife's sexual interactions or activities are not considered rape. Given that consent is the main topic of this section, it is plausible that an unquestionable presumption of consent applies in situations when the victim and the offender have a marital relationship. However, considering the sacredness that this institution has acquired in our culture, it is also likely that there was a legislative decision to exclude the operation of this part from marital relationships. Given that the IPC has provisions exempting spouses from its application, this is most likely the case. Because a husband having sex with his wife without her agreement is not illegal in India, the phrase "marital rape" is not defined under our legislature.

Nevertheless, after reading the definition of rape provided in section 375 IPC, "Marital Rape" can be described as a husband engaging in non-consensual sexual activity with his wife; this might involve physical aggression, threats of physical harm, or real use of force.

The 42nd Report of Law Commission of India, 1971, provided its view on marital rape and held two suggestions; First, it stated that the exclusion clause must not be applied in cases where the husband and wife were judicially separated. While this was a commendable proposal, the justification provided because it was ambiguous. According to the statement, "the marriage theoretically remains intact in such a situation, and the husband cannot be prosecuted with rape if he engages in sexual activity with her against her will or consent." This does not seem to be correct. The reason this is incorrect is not covered. It suggests that permission cannot be assumed.

The second recommendation in this report dealt with women between the ages of twelve and fifteen engaging in non-consensual sexual activity. It said that the penalty for such offenses must be included in a different section and, ideally, not be referred to as rape.[9]

In the 172nd Law Commission Report, the Law Commission directly addressed the legitimacy of the exception clause. Arguments concerning the legitimacy of the exemption clause itself were made in

[8]Section 375, The Indian Penal Code, 1860
[9] Law Commission of India 42nd Report, 1971, https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082456.pdf

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this case during the consultation rounds. It was contended that rape alone should not be exempt from the law's application as other acts of violence committed by a husband against his wife were already illegal. This argument was dismissed by the Law Commission because it was concerned that making marital rape a crime would cause "excessive interference with the institution of marriage."[10]

The arguments against making marital rape a crime fall into three main categories. The first relates to the objective of preserving the institution of marriage and, thus, refraining from tampering with it in order to maintain its sanctity. Both the Law Commission's reports and the IPC demonstrate this. The second discusses the other options available to women for seeking redress both within the family and through the legal system, including Section 498A of the IPC, the Protection of Women from Domestic Violence Act, 2005 (also known as the "PWDVA, 2005"), and other personal laws pertaining to marriage and divorce. The third is the conflict of recognition of marital rape with marital rights provided through the customs and the cultural institution of marriage.

IMPACT ON MARTAL RIGHTS

Marital rights are the rights envisaged to the subjects of marriage, outsourced from the cultural institution of marriage and formally embedded in the right to life and personal liberty as provided by the Constitution.[11]Marriage is viewed as a civil contract under Muslim law and the Special Marriage Act, but as a sacrament that is eternal and indissoluble under Hindu, Christian, and Parsee law. Marriage, however, is without a doubt the thread that ties Indian culture together.

“Various justifications state that the marriage contract implies permanent consent to sex, have been advanced in support of a spousal exemption in the law of rape. The rationale utilized is that when a woman marries, she gives up her rights to her body because she has formed a contract with her husband which cannot be retracted.”[12] Regardless of how each religion views marriage, it grants legitimacy to the parties and creates certain spousal rights and obligations. Whether or not a married couple's sexual relations are considered one of these spousal obligations is a controversial topic when someone is sexual privacy is involved. The laws against rape and the provisions for restitution of conjugal rights have been examined to determine their justification, and they often unfairly disadvantage the wife.

The defenders of “marital rape exception” argues with the contention of criminalising the marital rape believing that considering it as a rape clause will invade the sanctity of the marriage institution and curb the rights provided to the parties of marriage. “It is indeed likely that a rape prosecution by a wife

[10] Law Commission of India 172nd Report, 2000, https://lawcommissionofindia.nic.in/rapelaws.html
[11] Art. 21 Const. Of India
[12] State v. Smith, 85 N.J. 193, 200, 426 A.2d 38, 41 (1981).

against her husband would destroy the possibility of reconciliation."[13] Delhi High Court in a case held that, "*Constitution in marital matters will not be desirable as it will be a ruthless destroyer of the marital institution and application of constitution will only weaken the bonds in a marriage."*[14]

In an appeal matter to the Supreme Court,, the court sought the government's view on petitions against the MRE, the government argued, "In an institution of marriage, there exists a continuing expectation, by either of the spouse, to have reasonable sexual access from the other. Though these expectations do not entitle the husband to coerce or force his wife into sex, against her or his will, they constitute a sufficient basis for the legislature to distinguish qualitatively between an incident of nonconsensual sex within the marital sphere and without it"[15]

The other devil's play which brings conflict with the criminalization of marital rape is the 'Restitution of Conjugal Rights' which involves consortium and cohabitation.[16]

Restitution of conjugal rights is a positive cure that necessitates cohabitation and living together for both spouses. The issue of personal autonomy and sexual independence within a marital relationship has tangentially arisen in a few judgments pertaining to restitution of conjugal rights. The concept of conjugal rights also asserts the parties to have sexual intercourse to fulfill the marital obligation but it never forces the party either. In case to bring a party in company of other, the court of law
orders the party who is out of the aggrieved party's company for restitution of marital rights which has been severed before. This is often called as interference of state in the marital institution with a positive view-keeping.

Relevant to this, the Andhra Pradesh High Court ruled in T. Sareetha v. T. Venkata Subbaiah (1983) that S.9 of the Hindu Marriage Act, 1955 (restitution of marital rights) was unconstitutional. Choudhary, J., had contended in this case that a husband could abuse a restitution order against a divorced wife to force her to have sex against her will. Although the Court acknowledged that a wife's right to privacy and sexual autonomy persisted even after marriage, it determined that the reparation clauses violated Articles 19 and 21 of the Constitution. Supreme Court overruled the judgement and

[13] Sanchit Agarwal & Sujoy Chatterjee, Sexual Autonomy Of a Wife: The Indian Perspective, Vol.1, NLIU LAW REVIEW, 2010
[14] Harwinder Kaur v. Harmanadar Singh Choudhary, A.I.R 1984 Del 66(India)
[15] Krishnadas Rajagopal, Marital relations must be exempt from rape provisions, The Hindu, 2024, https://www.thehindu.com/news/national/treating- non-consensual-sexual-acts-within-wedlock-as-rape will-seriously-impact-institution-of-marriage-centre-tells-supreme-court/article68714928.ece
[16] Ibid 17

contended, Section 9 of Hindu Marriage Act[17] as constitutional and declared "*the institution of marriage stood for much more than mere sexual congress.*"[18]

Nevertheless, it can still be contended that section 9 of HMA enforces a reasonable excuse to be a clause for a party to be leaving the other in case if there has been no sexual intercourse as be may be found reasonable genuinely.[19] Even though it may be argued that a court would not be expected to issue a restitution decree in favor of the husband in such circumstances and that forced sexual relations with a wife may have been a reasonable cause for the husband in the first place, the wife is still left without a criminal remedy when forced sexual relations are imposed on her after the restitution decree.

CONCLUSION

Through the research of the interface of Criminalization of Marital Rape with Marital Rights, the constitutionality of section 375 of IPC has been dealt with and its effect on the marital institution has been covered so far. Through the above contentions it can be concluded that non-consensual sexual intercourse by husband should not be termed

as Marital Rape as it brings out a conflict with the marriage institution and a scar on the sacred relation of husband and wife. The conflict is mostly seen as conflict between marital obligation and personal autonomy. Though in order to protect the sexual autonomy and fundamental rights of wife Domestic Violence Act 2010 and Indian Penal Code 1860 (now Bhartiya Nyaya Sanhita, 2024) seems playing its role appropriately by providing relief where the wife is victim of sexual, physical and mental assault either by her husband or by any other family member, providing her with maintenance, compensation and right to divorce. The government while representing as party in the case of RIT Foundation vs. Union of India stated that, punishment of non-consensual sexual acts in a wedlock and categorizing it as rape would impact conjugal relationship and lead to "serious disturbances" in the institution of marriage.[20] Henceforth, the conclusion reaches to a point that marital rights emerges marital obligation to make the marriage institution successful in its objective but it never tends to lose the personal autonomy of the parties tied in a wedlock and neither protects wrongful intentions and acts of them.

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[17] When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal
rights accordingly.

[18] *Saroj Rani v. Sudarshan Kumar Chadha*, A.I.R. 1984 SC 1562(India).

[19] Section 9(2), Hindu Marriage Act,1950 - Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

[20] Ibid 16

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The obligation of the state remains to play a positive role in interfering within the matter of marriage institution as it can be have serious impact on the society.

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RIGHT TO DIE WITH DIGNITY: LEGAL AND ETHICAL DIMENSIONS OF EUTHANASIA IN INDIA

Dr. Krishna Mohan Malviya*

ABSTRACT

Euthanasia, often termed as "mercy killing," has emerged as one of the most contentious ethical and legal debates in modern bioethics, especially in countries like India where religious, constitutional, and moral considerations intersect. This paper critically examines the legal and ethical dimensions of euthanasia in the Indian context, focusing on its classification into active and passive forms. Drawing upon landmark judgments such as Aruna Ramchandra Shanbaug v. Union of India and Gian Kaur v. State of Punjab, the study highlights the evolving jurisprudence under Article 21 of the Indian Constitution, which has interpreted the "right to life" to include the "right to die with dignity." The research explores how the concept of euthanasia engages with principles like patient autonomy, human dignity, and medical beneficence. Moreover, it investigates the knowledge, attitudes, and practices of medical professionals, who are central actors in end-of-life decision-making. Ethical tensions surrounding voluntary, non-voluntary, and involuntary euthanasia are critically assessed, alongside the influence of religious beliefs and international legal developments. The findings indicate a growing yet cautious acceptance of passive euthanasia within Indian legal frameworks, while active euthanasia remains legally and morally contentious. The paper calls for comprehensive legislative reform and robust safeguards to prevent abuse, ensure informed consent, and balance the sanctity of life with the compassionate alleviation of suffering.

Keywords: Euthanasia, Right to Die with Dignity, Indian Constitution, Medical Ethics, Patient Autonomy.

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1. Introduction

Euthanasia has remained a matter of extensive debate and ethical conflicts in the scientific literature. Conventionally euthanasia has been classified into its active and passive forms. In the active type, the person performing the euthanasia does an act that leads to the death of the individual like injecting a lethal drug, whereas, in the passive type, life support is either withdrawn or withheld. Note that withholding life support in treating an ill person during the terminal stage of a lethal disease which has no chance of recovery is not euthanasia, as it does not accelerate the inevitability or the time of death (S Shekhawat et al., 2023). On the contrary, it respects the natural course of the disease that has caused death.

The concept of euthanasia essentially revolves around themes like ‘human dignity', ‘patient autonomy', and ‘the beneficence of the subject'. The decision maker chooses for euthanasia as a last resort because he/she believes that ending the life is a better decision than prolonging a painful and unfruitful life. In India, the issue of euthanasia gained momentum after the Aruna Ramchandra Shanbaug v. Union of India case wherein a human rights activist petitioned the Supreme Court in 2009 and pleaded that artificial feeding is stopped to let her die in dignity. The court rejected the plea of the activist but admitted that there is an enormous need to frame guidelines for a vast country like India. It becomes pertinent for medical professionals to make themselves aware of these changes.

Aim of this study was to assess the knowledge, attitude, and practice (KAP) of euthanasia among medical professionals working in a tertiary care center and to find an association. Euthanasia is a highly debated subject throughout the globe especially in the fields of law, ethics, and medicine. Despite the tremendous progress in modern medicine, some diseases like dementia, neurological disorders, and malignancies drain away one’s health and dignity. Still, the suffering and deterioration go unabated. In such cases, euthanasia can be the only means of ensuring what it is being denied: dignity.

2. Research Methodology

This study adopts a qualitative and doctrinal research methodology, supplemented by empirical insights from secondary data. The doctrinal component involves a critical examination of Indian constitutional provisions, statutory laws, and landmark judicial decisions, especially focusing on Article 21 of the Indian Constitution and its interpretation by the Supreme Court in cases like Aruna Ramchandra Shanbaug v. Union of India and Gian Kaur v. State of Punjab. The study also undertakes

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a comparative legal analysis to understand global approaches toward euthanasia, particularly in jurisdictions where euthanasia is legal in either active or passive forms.

To explore the ethical and societal perspectives, the study integrates insights from medical ethics literature, religious doctrines, and public opinion surveys. The empirical aspect draws from existing studies such as the Knowledge, Attitude, and Practice (KAP) study among medical professionals in Indian tertiary care institutions. This hybrid methodology enables a multidimensional understanding of euthanasia in the Indian socio-legal context.

3. Objectives of the Study

- To analyze the legal status of euthanasia in India, with specific reference to constitutional guarantees under Article 21.
- To examine the ethical principles—including autonomy, beneficence, and human dignity—that underlie arguments for and against euthanasia.
- To assess the perceptions and practices of medical professionals in India regarding euthanasia through existing studies.
- To evaluate the influence of cultural and religious beliefs on the debate around the right to die with dignity.
- To identify the legislative and policy gaps in the Indian legal system regarding the regulation and implementation of euthanasia.

4. Literature Review

There are legal, ethical, medical, and religious aspects to the literature on euthanasia in India. Important court rulings such as Gian Kaur v. State of Punjab and Aruna Shanbaug v. Union of India have acknowledged the constitutional right to a dignified death under Article 21 and permitted passive euthanasia under certain restrictions. According to medical literature, including the study by Shekhawat et al. (2023), medical professionals are tentatively in favour of euthanasia as long as the right precautions are taken.

Scholars emphasise the ethical significance of compassion, dignity, and autonomy in end-of-life care. Public and professional attitudes are significantly influenced by cultural and religious beliefs. While Islam typically opposes euthanasia, Hinduism offers a variety of interpretations. India can benefit from other nations' regulated euthanasia regimes, such as those in the Netherlands and Canada.

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5. Historical Background of Euthanasia

Euthanasia has been a matter of extensive debates and ethical conflicts since time immemorial. To make it clear in the beginning, active and passive euthanasia are the two classifications that have conventionally been done. An act is done by the person performing active euthanasia that leads to the death of the individual. In passive euthanasia, life support is either withdrawn or withheld (Pawar, 2013). Understanding the concept of euthanasia requires insight into some themes like the 'human dignity' of the incapacitated patient, 'patient autonomy', and the 'beneficence of the subject' giving an ultimatum to sit on the question of rightness and wrongness with respect to act (S Shekhawat et al., 2023). The last person on earth to wish for it is the decision maker. All things have been tried before deciding on euthanasia. Euthanasia is chosen as a last resort in a patient who is unable to die even when death is inevitable and whose sufferings seem to be out of proportion and the critic believes that ending life is a better decision than prolonging a painless life.

There are many countries with specific mention of euthanasia in their legislature, but mostly, they focus on the passive form of euthanasia. There are some countries where active euthanasia has been given legal sanctioning. In India, many detailed and huge debates occurred on this complex issue-euthanasia but were inconclusive in reaching any finality. The issue of euthanasia gained momentum in India after the Aruna Ramchandra Shanbaug v. Union of India case, where a human rights activist petitioned the Hon'ble Supreme Court to stop artificial feeding to let her die in dignity. The Hon'ble Court while rejecting her plea for 'right to death' for Aruna followed the doctrine of 'Parens Patriae', and thus the need for guidelines for 'passive euthanasia' in India was highlighted. It also discussed the need for surrogate decision-makers for incompetent patients.

6. Legal Framework in India

The Supreme Court of India, the apex body for the interpretation of the Constitution, held that the right to die with dignity is a fundamental right under Article 21 of the Constitution. The right to die with dignity is the aspect of the right to life as enshrined in Article 21 of the Constitution. The Constitution Bench observed that no one can be forced to torture a dying man by prolonging his life. The persons of such a situation must have the right to bring about their death. In keeping with the above views, the five judge justice bench of the Apex Court permitted only passive euthanasia in the case of Aruna Shanbaug. The good hospital practice quid will be followed in passive euthanasia cases (Pawar, 2013).

7. Constitutional Provisions

Before discussing the relativity of euthanasia to fundamental rights, the Constitution of India, enacted on January 26, 1950 is elaborated. Fundamental Rights are the basic human freedoms which are

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protected by the Constitution of the Indian Republic. These rights are homelessness, right of unequal wages, right of association, religious freedom, freedom of inheritance and others. The State as well as Parliament is given the responsibility not to infringe in respect of these rights. These rights are given against the State and not against private persons in the matter of the public rights. These rights guarantee to the people fundamental freedoms and protect them from arbitrary action. The Fundamental Rights, however, are not absolute. The Constitution of India contains certain provisions for their limitation in certain specified ways. Article 21 lays down, "No person shall be deprived of his life or personal liberty except according to procedure established by law." The right to life is converted into an empowering right by the incorporation of the words "procedure established by law". The word "life" in Article 21 is used in the sense of the word "living being". Another interpretation of the article in a limited way is that, the right to life means a right to live instead of right to die. Death is normally an inevitable incidence arising out of natural existence of life. Death of a man is an indisputable positive fact, which occurs the moment vital processes stop. Death may also be hastened and such hastening of death is called euthanasia or mercy killing (Mani, 2015). The act of euthanasia is carried out by another person, which takes the form of either withdrawal of life-saving systems or infusion of lethal drugs.

8. Relevant Case Laws

In Aruna Ramachandra Shanbaug v. Union of India, the petitioner filed a writ petition before the Supreme Court of India to withdraw treatment and nourish the victim for want of a dignified death. The victim was a nurse attacked and injured in the hospital brushed with incompleteness. The Apex Court did not accede to the request for euthanasia of the victim being unable to make her own decision, but laid down guidelines for judicially instituted passive euthanasia. These guidelines were relied on reporting on context care systems that ended in natural death with the implementation of additional safeguards. In Gian Kaur v. State of Punjab, the legislature amended S. 306 I.P.C. to give statutory recognition to the right-to-die. The petitioners challenged the constitutional validity of this amendment on grounds similar to those raised in Aruna's case. A five-judge Constitutional Bench in Gian Kaur upheld the validity of the legislation restraining the right to die. The principle of dignity was extended from the fashion of living, and a dignified life became a fundamental right. This cannot be confused with the right to a dignified death" (Pawar, 2013). This common distinction is essential and devastating because a human being by nature becomes impermanent and has to die, but the conditions under which people die are mostly human affairs.

Death may be natural or be caused by human beings themselves or others. Causing death unnaturally is legally and ethically prohibited. However, in certain exceptional circumstances where death or its

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causation is voluntary and with the full consent of the dying person, it may be allowed. In Devisingh P. Rathinam's case, the Constitution Bench overruled the Blackberrying judgment, holding that Article 21 did not include the right to die or the right to be killed. Euthanasia was confused with suicide and exaggerated. The 172nd Report of the Law Commission on euthanasia in India approved the Blackilling view and recommended statutory acceptance on ethical paradigm. The Apex Court in Aruna Ramachandra Shanbaug concluded that the Law Commission and the Parliament had the sole jurisdiction to permit euthanasia. The Court hurriedly stated that the pleas for passive euthanasia could productively be examined under Article 32 of the Constitution and Act 29 of the 1952 Act, Unanswered were the basic issues of sanctity and the fundamental right to life.

9. Ethical Considerations

The goal of surrogacy is to establish a legal parent-child connection between a child and the intended parents in the hopes of avoiding parenthood through unlimited reproduction using their genetic material. The person responsible for conceiving the child is expected to give birth to them and place them in the hands of intended parents. Surrogacy goals include ensuring that every child's birth parents are capable of supporting a watchful stance, etc. The distribution will take place shortly after the birth. The surrogate mother receives a predetermined sum of money in exchange for investing reproductive material and for bearing a child during a nine-month pregnancy ((S Shekhawat et al., 2023)). Under the 1986 regulations, commercial surrogacy is presently permitted in India. A commercial surrogate mother stands to win or lose financially owing to the intricacies of the contract. Non-monetary incentives, affectionately known as altruistic motivations, are prohibited under the new 2019 draft, and the child is divinely sanctioned to procreation. Laws intended to prevent surrogate mother's exposure to any medical or financial risk have practical ramifications. Euthanasia literally means 'good death'. The end-of-life care of terminally ill is a sensitive topic in our socio-cultural ethos. In India the debate still continues on practices related to euthanasia and its legalization until recently when the verdict on the passive euthanasia has been passed by the supreme court. Euthanasia the term derived from the Greek word for 'easy death'. It is an action of which the sole intention is to end the life of a suffering person. Any action taken to accelerate the death of someone, who has a clear and voluntary wish to die after taking into account his situation and alternatives has been referred to as euthanasia ((Ramalingam & Ganesan, 2019). Normal aspects of end of life is a sensitive topic in every culture. It is one of the difficult aspects of living and caring for a dying person. Terminally ill patients unable to claim their needs are apathetic as regards their fate and feel alienated from the rest of the normal world. This is partly physiological because of the nature illness. Medical professionals and family members

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are caught in a dilemma. On one hand they promote every effort to prolong life while on the other hand they watch helplessly life slipping off their loved ones.

10. Types of Euthanasia

Euthanasia literally means 'good death'. In a broader sense, it means hastening an inevitable death. Justification behind this form of death may stem from diverse philosophical traditions and cultural beliefs. Most modern definitions refer to some kind of voluntary act performed by one person with the original aim of causing the death of another, who has requested it. In layman's terms, euthanasia is a process of killing an individual suffering from a prolonged and incurable disease either by administering lethal doses of drugs intentionally or knowingly refraining from the administration of life-sustaining treatment. In this broad sense, euthanasia could be either voluntary or involuntary (S Shekhawat et al., 2023).

Involuntary euthanasia is killing someone without the person's consent. It can also be viewed as a form of murder, though a" justifiable" or "approved" one. Voluntary euthanasia at the patient's own request occurs when an individual who has a clear and settled intention, voluntarily and without undue influence from others, requests a certain action which has foreseeable consequences, one of which is their own death. Non voluntary euthanasia, which occurs in a case where a person is incapable of giving voluntary consent. Thus, it is also per argued by some that such person should nonetheless have their lives ended (Ramalingam & Ganesan, 2019).

11. Voluntary Euthanasia

For persons living with incurable disease, voluntary euthanasia may be a way to die with dignity. It is more favored in the developed world but is vehemently opposed by religious groups. In developing countries, where a number of terminal illnesses go unattended, the debates around it are still nascent (S Shekhawat et al., 2023). Euthanasia continues to be emotive, complex, and multidimensional. Therefore, the present study was conducted to understand the knowledge, attitudes, and practices of medical professionals on the issue of euthanasia. Almost half of the respondents felt that all should know about euthanasia. For the remainder, awareness was either linked to family or to an organization involved in social work on this issue. Among the health professionals, nearly all admitted that euthanasia should be an in-principle right, with the caveat that safeguards would need to be put in place to avoid abuse, including mechanisms to ensure that all alternative therapies had been tried before euthanasia was suggested.

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12. Involuntary Euthanasia

Euthanasia has remained a matter of extensive debate and ethical conflicts concerning several ongoing issues across different fields of medicine and law (S Shekhawat et al., 2023). Conventionally euthanasia is classified into active and passive forms. In active euthanasia, the person performing the euthanasia leads to the death by administering an overdose of an injectable anesthetic drug. In contrast, in passive euthanasia, the patient is not actively killed, and vital signs are not deliberately suppressed. Instead life support is either withdrawn or withheld and permitted to die naturally. The debate on euthanasia often gets clouded by socio-political sensibilities, where the ethical theory behind euthanasia is lost sight of. The practice of euthanasia was first practiced in ancient Greece or Rome. The right to die with dignity was mentioned in the 7th century BC in the writings of Homer. After so many years of civilized existence, the first mention of the right to die with dignity was included in the Constitution. The British abolition of the right to die with dignity Act 1961 did not mention anything about dignity.

13. **Active vs. Passive Euthanasia**

Euthanasia has remained a matter of extensive debate and ethical conflicts. Conventionally euthanasia has been classified into its active and passive forms. In the active type, the person performing the euthanasia does an act that leads to the death of the individual, whereas, in the passive type, life support is either withdrawn or withheld as in the case of a do-not-resuscitate order (S Shekhawat et al., 2023). In active euthanasia, there is an act of commission and in the passive type; there is an act of omission. The distinction between action and inaction has been a part of ethics for centuries. The decision maker chooses for euthanasia as a last resort because he/she believes that ending the life is a better decision than prolonging a painful life. The choice may involve factors like loss of dignity, prolonged suffering, dependence on others for the performance of activities of daily life, and being at the mercy of others for daily care. If a person has reached a state where no medical or surgical treatment holds any promise for cure, dying with dignity, i.e., his or her own warm bed, surrounded by family and friends, should be the end objective.

The countries having specific mention of euthanasia in their legislature mostly concentrate on the passive form. India and some states in the United States of America allow passive euthanasia. There are a few countries where active euthanasia has legal sanctioning. In India, the issue of euthanasia gained momentum after the case wherein a human rights activist petitioned the Supreme Court in 2009. The court rejected the plea of the activist but admitted that there is an enormous need to frame guidelines for a vast country like India. The court discussed the doctrine of Parens Patriae with respect to Indian laws and highlighted the need for surrogate decision-makers in case the patients were

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incompetent to make a decision. It becomes pertinent for medical professionals to make themselves aware of these changes.

14. International Perspectives

Euthanasia is a term derived from the Greek word 'euthanatos', meaning 'well-desired, happy death'. Euthanasia or killing, the term is sometimes considered to be inopportune, as it naturally sounds as though the act is similar to homicide. This, in turn, raises some fundamental questions, such as: Why euthanasia? Who finds it desirable or worthy? For whom is it desirable? Euthanasia has remained a matter of extensive debate and ethical conflicts in the scientific literature. Discussions on this theme have legal, religious, political and philosophical ramifications. Conventionally euthanasia has been classified into active and passive forms. In the active type, the person performing the euthanasia does an act that leads to the death of the individual, whereas, in the passive type, life support is either withdrawn or withheld (S Shekhawat et al., 2023).

15. Public Opinion on Euthanasia in India

An overview of all recent related academic and journalistic articles reveals a good spread of opinion in favour of euthanasia. The range of support is measured as 27% to 86% with an average of support of 61%. Euthanasia is the act of deliberately ending a person's life to relieve suffering. Suicide is the act of allowing oneself to die via omission of medical aid. Assisted suicide is the act of providing the means of death to a person. Lawful euthanasia has come about through the tragic and highly public cases of patients suffering. Personal accounts allow public emotions to be fully engaged. It should be noted that the law in India does not permit euthanasia. Patients have been documented being force-fed through nose tubes after refusing to eat by mouth. Patients hold life insurance policies which do not pay when death is by induced euthanasia or suicide. Medical systems appear capable of relieving most pain tolerably and generally humanely. Surveys of opinion among the 'general public' convey a wish for discretion exercised. Attitudes towards physician-assisted suicide are generally favourable. A national survey conducted in 1994 showed that 56.2% of respondents believed law should permit physician-assisted suicide in special instances (S Shekhawat et al., 2023). A similar class of publication confined to the 'general public' or 'medical professionals' shows lower support, measured as 38–39.1% or 39.5%, respectively. A small minority of respondents had heard a great deal about these issues. Overall public opinion on the practice of euthanasia in different parts of India showed mixed results (Pawar, 2013). Results are generally prudent. The use of choice of life or death of voluntary euthanasia/assisted suicide is legally criminal. Voluntary euthanasia is not believed to be morally or ethically acceptable.

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16. Role of Medical Professionals

The medical profession has an ethical duty to maintain the patient's dignity till the end of life. Both voluntary euthanasia and physician-assisted suicide have become sensitive topics, as many complicated legal questions concerning these areas are unresolved. Euthanasia is defined as taking deliberate action with the intent to help someone die, typically by the administration of lethal substances after explicit requests by the person. The various forms of euthanasia include voluntary euthanasia (euthanasia at the request of a capable patient), non-voluntary euthanasia (at the request of a proxy or on behalf of an individual who is unable to make this decision), and involuntary euthanasia (against the wishes of the patient) (S Shekhawat et al., 2023). Euthanasia is passive if it consists of the withdrawal or withholding of treatments necessary to sustain life. Euthanasia is active if it consists of independent commission of an act causing death. Conventional forms include root methods related to the nature of action which can either be direct or indirect. Unconventional methods are nontraditional methods and still largely hypothetical or futuristic scenarios. Euthanasia in general involves the forcible killing or voluntary rendering of unconsciousness. A possible hierarchy of reform is discussed and not comprehensively covered by other classification systems is necessary.

17. Impact of Religion on Euthanasia Debate

A global epidemic, the coronavirus disease 2019 (COVID-19) pandemic, reconsidered our notions of health, religion, politics, ethics, law, and economics (S Shekhawat et al., 2023). Euthanasia has long been a topic of heated discussion and ethical conflicts, particularly due to this pandemic. The problem of euthanasia embodies the ethical dilemma of conflict between 'the sanctity of life' or the 'right to live' and the 'quality of life' or the 'right to die.' Euthanasia has legal, religious, political, and philosophical ramifications. The landmark judgment by the Supreme Court of India in the case of Aruna Ramchandra Shanbaug vs. Union of India decriminalized passive euthanasia and legitimized the right to die with dignity. In this case judgment, the apex court used the 'safeguard' to examine the constitutionality of this legislation that governed the right to die with dignity in India. Hence, the case makes some constitutional safeguards to go ahead with passive euthanasia in India. However, such protection against wrongful death is still absent in the case of active euthanasia.

18. Hindu Perspectives

Hinduism is categorized as an orthodox and dualistic one. Jainism, Buddhism and Sikhism are acknowledged as heterodox religions. The basic tenets specifically asserted by Hindus have withstood the challenges to a large extent. Perceptions of happiness and unhappiness vary with time and place,

but the fact that still unstated is unavoidable has been acknowledged universally. According to ancient Hindu texts, attaining Moksha or being free from the vicious cycle of birth and re-birth is the highest goal of human life. To attain that goal, human beings require a highly matured level of mind. When a man's mental/organic condition is such that he cannot focus his mind on the ultimate cause, it is appropriate to intervene but with total surrender and not as an act of despair. Along with knowledge, ignorance leads man to ultimately choose death/moksha along with the other forms of release. This is not uncommon in many societies. Truly good wishes of natural death should have no demands excepting cordial acceptance. Therefore, on first grounds, euthanasia is a despicable attempt at ignorance.

Death is the variable considered in commending/disapproving hastening one's death. Fear, anger, despair, jealousy, and shame are voted as the villainous ones in life. Soon society learns to ignore its influenza. If societies are civilized enough to favour euthanasia, surely those conventions that prolong pain in living are much more to be strongly repudiated. In Hinduism, PUNARJANM is regarded as a value neutral process. The resultant transgression of the moral and spiritual order makes philosophical, religious, and social systems. It is not merely the attribution of that conscience to which one is ordinarily accustomed to perceive it. By virtue of abstaining from evil, promoting good, and purification of mind, people must rise from birth to birth (i.e. maturity of mind and perception) above Avidya, to Nirvana. Barred the good, freedom from the active karmic consequences of the past is unattainable. It would seem catastrophic to even suggest one would desire to magic from slavery.

19. Islamic Perspectives

Islam has a plethora of ethical norms which are intended to govern peoples' maximal development of morality, dignity, and virtue. However, many such norms are not observed, or observed with little interpretation. The philosophers and scholars of Islam have also not explored and expounded the massive ocean of ethical values of this great religion of humanity. These norms of conduct are laid down in the sources of Islam i.e. Quran and Sunnah, which are so direct, simple, and understandable. Though the laymen do not have wider opportunities to ponder upon such norms of ethics, the philosophers and scholars cannot be pardoned if they do not strive to ponder and interpret them properly. Euthanasia, or mercy killing, is not only an academic phenomenon, but various decisions regarding euthanasia are already made by courts in various countries. It is, however, an unanswered issue in Islam because it has broader ethical values to be pondered over in this regard (S Shekhawat et al., 2023).

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The term “Euthanasia” is derived from the Greek word “Euthanatos” which means “well death”. Euthanasia, or mercy killing, is the act of deliberately ending a person’s life to relieve suffering. The situation which inflicts prolonged life after departure of the brain activity seems very painful and uncomfortable both for the patients and family members. Hence euthanasia is proposed as an alternative way to align the life span with the consciousness of the mind. Abundant material evidence of pain-free and safe killing including medicines and technical measures are already available in various countries. This gives rise to the question: Should euthanasia be legalized in any country? Euthanasia involves ethical dimensions which govern the society at large. Any subject having wider ethical values needs deeper and proper interpretation, otherwise substitutes like utilitarianism or kantianism which are self-contradictory in the virtue of Islam might be proposed and backed by advocates of euthanasia.

20. Legislative Proposals and Reforms

The Constitution of India has guaranteed and conferred certain Fundamental Rights to all its citizens, which include the right to life, liberty and dignity. The right to life under Article 21 includes the right to live in human dignity, which implies awareness and preservation of health by making it mandatory for the state to take all positive actions. Respect for autonomy involves acknowledgment of a person as entitled to make choices concerning his/her own life, 'Yes' or 'No'. 'Yes' right to achieve pleasure; 'No' right to refuse treatment, die peacefully in bed, dignity and honour similar to the others. An ethical physician must feel obligation to respect autonomy and accord compassionate support in the light of bogus legislation or un-in-vivo guidelines condemns many patients to eternity in singula. Withdrawal of ill-advised treatment from a terminally ill child patient or disabled wife would not attract penal section, 'Justifiable homicide' would otherwise be a law.

Under the Constitution of India right is a positive prescription of assurance against inaction. Right, if put in negative form would, on contrary, impose prohibition on action be it sumptuary or homicide or aiding homicide, every set of action carrying penalty. It is needless to say that certain rights can be read negatively, but this would narrow down the horizon of these rights. Indian Parliament has enacted a number of laws bestowing upon it wide ranging powers and immunities justifiable only in the light of legislation with respect to security of state, public order and in its eminent domain. This legislation has drawn a line of distinction for the right to die with dignity, even turning a blind eye to existing safety procedures of handling explosives and arms, bye-laws and safety prescription for riskier constructions, industries and zone regulations etc. The courts held that the same would be within legislative competence. In other apices the Supreme Court has also acknowledged existence of non-enumerated rights in Part III of Constitution applicable only against the State (Mani, 2015).

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21. Case Studies

A 24-year-old man approached the emergency department with a history of ingestion of organophosphorus (OP) compound with a lethal intent. On detailed history, he was diagnosed as a case of suicidal poisoning. Despite the best of the medical treatment, he progressed to cardio respiratory arrest after 48 hours of his stay in the Intensive care unit. He was put on total parental nutrition (TPN) to keep the vital organs perfused. The family was counseled about the poor prognosis. As he was not a candidate for organ donation, the family requested to withdraw the life support system (LSS). After briefing the family on the procedural aspects, the request was granted. The patient was extubated in a 15-degree head end up position. An iv bolus of Morphine was given and TPN was stopped. Feeds were nil per orally. He was kept under constant monitoring. He responded well/satisfactorily to the palliation. The Cardinal Signs of Death Were: A. Makaloff's Sign: A temporary rise in blood pressure, pulse rate and blood flow to the heart (75-90 seconds after stopping stimulation). 1. Without activity, there was a dead period of 9 seconds at the end of which mahencephalous reflexes (blink 2/5) were lost. 2. At the end of a further 50 seconds the heart lost all the reflexes and convulsive movements began. 3. Thereafter, gasping and BP fell to 25 mmHg pulse fell to 25/min. With the installment of ET get, BP fell to 10 mm Hg than etherized and disconnected from the ventilator. 4. Postextubation monitoring showed a fall in the fix and dilated pupil, cessation of resp in 80 seconds, cardiac asystole in 6 seconds and a fall in the Blood flow to the heart on Doppler. B. Harvey's Sign: Development of peritonitis, dependent fluid level in the X-ray abdomen. Death Re-Emphasized: Beforeing with tranquillization, asystole (13 minutes). Death was parinaud, with eyes open, pupils fixed and mid-dilated, divergent, choking in throat, hyperextension of neck, erythematous face, in the semi-chin-up posture, (similar to the condition of anterior supervision of honorary of death) (S Shekhawat et al., 2023).

22. Challenges in Legalizing Euthanasia

Euthanasia is considered to be a solution in control of death as suffering from terminal and incurable diseases creates an anguish, which refutes the degree of a living person. If agony is not curbed at an early stage with the inexperienced or grievous disease it may evolve beyond the mode of treatment and relief, which may become unbearable and issues from it. Long stay in a red light of agony late optimizes patient psyche and roaming in various scintillating factors of life is worthless. The miserable agony of some socially important ‘Mahatma’ like present is a few examples. Present mandibulo-facial devitalization and injudicious shouting of inhaled air may and the absence of abusive material for greasy or persistent socio-economic factors, are generally isolated. The suicidal attempt against the inability to suppress intense and persistent suffering is a common phenomenon, which may be

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depending on the degrees of agony and interest of life (Pawar, 2013). Article 21 of the Constitution of India guarantees the right to life and personal liberty to all persons in India, and this right has been construed to include the right to die with dignity.

Legalization of euthanasia is still debated. A hate desire for law and inhibition of law for the sake of humanitarian plianceness is a relationship of misery. Though euthanasia appears to be a sweet grave for a restless life, it transforms too many sorrows to a grief-stricken hello of a due dead. The life of man is precious, terrible and horrible and life against God is not a good desire. The image of the world rests with human beings. The civilization is built and the world is governed by humanity. The plea of respect comes against the barren life of a death-oriented life. Morality has gone abroad and obscenity deserves utmost epitome, which materially and figuratively grieves God, wisdom and a sane world on nakedness.

Plea of euthanasia overburdens humanity and a joke of mortality, nature and the supreme architect of the universe. The civilized world is restoring promiscuity and cruelty encourages life against the will of the designer. The world has come back to a grim and positive position. With the religious mind, reasons of the book should uphold humanity and humanity at its extremities beyond the dimension of guns and bombs for the cinque etiologies of the armed forces, bursting of fleshy fires, terrible devastations, toxic poisons, etc. Alternative laws within the time and the restraint of laws should be of primary compliance. A few countries have legalized euthanasia with various restrictions. Euthanasia has both sides. The limitation of euthanasia is not new by its pro-euthanasic issue.

Human abilities and assistive factors come to the extreme row of society. Controls on unfruitful requests of euthanasia and killing or assisting of pregnancy elapsed dangerous doors of outliving loathsomeness and terror. Existence lives up to a dark and dangerous ground of a life against death. Prescriptions behind euthanasia have exploded measures of glee. When agony is strong and high, crying is better for outer loss than the dying dance. Pain cannot skip the witchcraft physical suffering as well as the subjective and bodily extraction of life. Sound or silent despise to think and no alternative addictiveness hints at life or death

23. **Future of Euthanasia in India**

In Indian scenario euthanasia has remained a matter of extensive debate and ethical conflicts. Discussions on this matter involve legal, religious, political and philosophical ramifications. In the 1976 landmark judgement the choice of the constitution bench of the USA Supreme Court and the 1976 judgement of the Supreme Court of Canada to permit euthanasia to terminally ill patients in a dignified and painless manner, were inextricably intertwined with the opinion and obiter dicta of the

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Indian Supreme Court enunciating the right to die with dignity as a person's fundamental right under Article 21 of the Indian Constitution. The legal validity of euthanasia and physician assisted suicide has paralleled the fears of what can go wrong with it. Euthanasia is an emotive subject because it has life and death, man and God intertwined in it. Alternatively, the views of academicians are invited over the legal hurdles in the way of euthanasia. With the civil society torn apart between legalizing euthanasia to save the agony of some and to prevent abuse of power and medical technology by some, a thing which has literally become million-dollar question in the intellectual circle and in the society at large (Pawar, 2013). The other aspect which smells the controversial gas is, whether dissuading a person from committing suicide and giving a patient help to die is same? Such questions are controversial and require debating to channelize the circling issues in the right direction.

However after considering the arguments in favour of euthanasia and arguments against the euthanasia, one may conclude that, the arguments against euthanasia outweigh the arguments for legalizing euthanasia. Similar conclusion may be drawn on the issue of legitimizing assistance in implication of blameworthy death. Collective sentiments in all the countries including India on the issue of assisted suicide and euthanasia are clearly against it and it has been largely resisted on sentimental and moral grounds. Hence none of all countries including India find it desirable to legalize euthanasia. As regards rules laid down, there is no uniform opinion found in cases decided by foreign courts or the courts in India on issues related to euthanasia or assisted suicide. Some judges were vicariously responsible for legitimizing wrongful death by expressing that it is a compromise of pious sentiment of the society which feels it sanguinary to take away human life.

24. Trends in Public Policy

Public health policy on euthanasia and assisted dying (medical assistance to die) is elected by different States with various political considerations. Majority States choose to use prohibition of euthanasia and assisted dying as an instrument of criminal justice; some allow such practices with or without condition as part of clinical health care. It has recently come to a forefront in nations like India, Spain and Taiwan, which are campaigning for full recognition. Operations for the right to die with dignity are subject to various configurations of normative arguments, balancing freedoms of many ethical bases. They cannot be dismissed, but nevertheless can be categorized into substantive, semi-substantive and procedurally-substantive arguments. The first two types encompass positive or negative tests for States' duty of care. The latter, containing calls for procedural due process, returns agency to States which refuse to enact euthanasia and assisted dying legislation. A study on the development of policies in 43 jurisdictions represents recent achievements in public health policy with practical significance. Such progress informs compelling balance of argument and practical

considerations that are precursors of reconsideration of legislative measures on the issues (Pawar, 2013). Euthanasia can be referred to as 'good death', or death free from suffering. In other words it is assisted death or helping a person to die. In India, euthanasia has been a burning issue since 2001. It has brought the question of 'Right to Die with Dignity' before the Indian courts. Different courts in India have expressed their divergent views. The Supreme Court described 'Right to Die with Dignity' as an aspect of Article 21 (Right to life) in 2011. However, the issue was left to the Parliament for enacting law. After a lapse of two years, contested law was drafted and sent to the Ministry. Instead of manifesting the view, the Ministry has time and again sent it for further public consultation and comments. The Law Commission of India, in 241st Report created a platform for public comments. Having been found a ground for hardening opposition, it was taken back by the Government of India from the Parliamentary Standing Committee.

25. Discussion

This paper explores the complex and multidimensional issue of euthanasia in India through legal, ethical, medical, religious, and socio-political lenses. Euthanasia, commonly referred to as "mercy killing," is classified into active and passive forms. While passive euthanasia (withdrawing or withholding life support) has received limited legal sanction in India, active euthanasia (deliberate acts to end life) remains illegal and ethically contentious.

The paper is grounded in landmark legal cases such as Aruna Ramchandra Shanbaug v. Union of India and Gian Kaur v. State of Punjab, which highlight the judiciary's cautious recognition of the right to die with dignity under Article 21 of the Indian Constitution. The Supreme Court in the Aruna Shanbaug case permitted passive euthanasia under strict conditions, emphasizing the need for judicial and medical safeguards.

A major focus is on ethical principles like patient autonomy, human dignity, and beneficence, which support the argument for legal euthanasia in terminal or incurable conditions. The paper also reviews the Knowledge, Attitude, and Practice (KAP) studies among Indian medical professionals, revealing a growing awareness and cautious support for euthanasia, provided it is regulated and safeguarded against misuse.

The paper identifies significant gaps in India's legislative and policy framework concerning euthanasia and urges the need for comprehensive reform. These reforms should include procedural safeguards, informed consent mechanisms, and clearer statutory provisions to prevent abuse and ensure humane treatment for the terminally ill.

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The discussion concludes by affirming that euthanasia, especially passive, can align with constitutional values of dignity and liberty. However, public opinion remains divided, and robust legislation is necessary to navigate the ethical dilemmas and social sensitivities surrounding this issue.

26. Conclusion

Euthanasia has remained a matter of extensive debate and ethical conflicts in the scientific literature. The concept essentially revolves around themes like ‘human dignity' ‘patient autonomy' and ‘beneficence of the subject'. The decision maker chooses for euthanasia as a last resort because he/she believes that ending the life is a better decision than prolonging a painful and unfruitful life. In India, the issue of euthanasia gained momentum after the (S Shekhawat et al., 2023).

REFERENCES:

1. S Shekhawat, R., Kanchan, T., Saraf, A., Ateriya, N., P Meshram, V., Setia, P., & Rathore, M. (2023). Knowledge, Attitude and Practices (KAP) of Medical Professionals on Euthanasia: A Study from a Tertiary Care Centre in India. ncbi.nlm.nih.gov
2. Pawar, S. (2013). Euthanasia: Indian Socio-Legal Perspectives. [PDF]
3. Mani, R. K. (2015). Constitutional and Legal Protection for Life Support Limitation in India. ncbi.nlm.nih.gov
4. Ramalingam, S. & Ganesan, S. (2019). End-of-Life Practices in Rural South India: SocioCultural Determinants. ncbi.nlm.nih.gov
5. Vajawat, B., R. Hegde, P., C. Malathesh, B., Naveen Kumar, C., T. Sivakumar, P., & Bada Math, S. (2021). Palliative Care and Legal Issues in Geriatric Psychiatry. ncbi.nlm.nih.gov

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SYSTEMIC VIOLENCE AGAINST DALITS: A CRIMINOLOGICAL ANALYSIS

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ABSTRACT

Systemic violence against Dalits, often referred to as "untouchables," is a pervasive issue in India, rooted in the historical caste system. This analysis seeks to explore the various dimensions of this violence, its manifestations, and the criminological implications that arise from the intersection of caste, crime, and social justice.

A comprehensive examination of systemic violence against Dalits in India through a criminological lens, focusing on the historical, social, and structural factors that perpetuate discrimination and violence against this marginalized community. Despite the formal abolition of untouchability in the Indian Constitution in 1950, the practice continues to manifest in various forms, including physical violence, sexual assault, and economic exploitation. These acts of violence are deeply rooted in the entrenched caste system, which has historically relegated Dalits to the lowest social strata. The analysis employs several criminological theories to elucidate the dynamics of violence and victimization experienced by Dalits. Social disorganization theory is utilized to explain how the breakdown of social structures within Dalit communities contributes to increased vulnerability to violence. Labelling theory highlights how societal perceptions of Dalits as criminals or deviant individuals perpetuate cycles of marginalization and violence.

Additionally, routine activity theory is applied to illustrate how the convergence of motivated offenders, suitable targets, and a lack of capable guardians creates an environment where Dalits are disproportionately targeted for violence.

The paper also addresses significant barriers to justice faced by Dalits, including police bias, corruption, and judicial inequities. Law enforcement agencies often exhibit systemic bias against Dalits, leading to under-reporting of crimes and inadequate responses to incidents of violence. Furthermore, the legal system frequently fails to provide justice for Dalit victims, with many cases being dismissed or inadequately prosecuted. The stigma associated with being a Dalit can deter victims from seeking help, exacerbating their vulnerability.

Keywords: *Systemic Violence, Dalits, Caste Discrimination, Criminology, Social Justice*

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1. INTRODUCTION:

Untouchability, a deeply entrenched social practice in India, is a manifestation of the caste system that has persisted for centuries, resulting in systemic violence against Dalits—historically referred to as "untouchables." This form of discrimination is not merely a relic of the past; it continues to shape the lives of millions of individuals today, perpetuating cycles of poverty, exclusion, and violence. Despite the constitutional guarantees and legal frameworks established to protect the rights of Dalits, the reality on the ground reveals a stark contrast between legal provisions and lived experiences.

1.1. Historical Context of Caste and Untouchability:[1] The caste system in India has a long and complex history that dates back thousands of years. It is believed to have originated from the division of labour in ancient society, where different groups were assigned, specific roles based on their skills and occupations. Over time, this division became rigid, leading to the establishment of a hierarchical social order that categorized individuals into distinct castes.

To understand the contemporary dynamics of untouchability, it is essential to delve into its historical roots. The caste system, which categorizes individuals based on their birth and occupation, has its origins in ancient Indian society.

Texts such as the Rigveda and Manusmriti laid the groundwork for a hierarchical social order, where the Brahmins (priests) occupied the highest position, while the Shudras (labourers and service providers) were relegated to the lowest tier. Over time, this stratification evolved into a rigid system that marginalized certain groups, particularly those deemed "impure" or "polluted," leading to the emergence of untouchability as a social practice.

The practice of untouchability was not merely a social stigma; it was institutionalized through various means, including religious sanction, social customs, and economic exploitation. Dalits were subjected to severe restrictions, including prohibitions on entering temples, accessing water sources, and participating in social gatherings. This systemic exclusion laid the foundation for a culture of violence and discrimination that has persisted into modern times.

1.1.2. Ancient Texts and Their Influence:

[1] Deshpande, A. (2013). *Caste and Class in India: A Study of the Indian Society*.

The earliest references to the caste system can be found in ancient texts such as the Vedas and the Manusmriti. These texts not only codified the social hierarchy but also provided religious justification for the discrimination against lower castes. The concept of purity and pollution became central to the caste system, with higher castes being considered pure and lower castes, particularly Dalits, being viewed as impure.

1.1.2. <u>The Role of Religion</u>:[2] Religion played a significant role in perpetuating the caste system. Hinduism, in particular, reinforced the social order through various rituals and practices that emphasized the importance of maintaining caste boundaries. The idea of karma and rebirth further entrenched the belief that one's social status was a result of past actions, leading to fatalism among lower castes.

2. <u>THE LEGAL FRAMEWORK AND ITS LIMITATIONS</u>:

In the aftermath of India's independence in 1947, the framers of the Constitution recognized the need to address the injustices faced by Dalits. The Constitution abolished untouchability under Article 17 and provided for affirmative action through reservations in education and employment.

Additionally, various laws, such as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, were enacted to protect Dalits from violence and discrimination.

However, the effectiveness of these legal provisions has been undermined by several factors. First, there is a significant gap between the existence of laws and their enforcement. Many cases of violence against Dalits go unreported or are inadequately addressed by law enforcement agencies.

Second, societal attitudes towards caste discrimination remain deeply ingrained, often leading to a lack of empathy and support for victims. Third, the political will to implement these laws effectively is often lacking, as caste-based politics continues to influence electoral dynamics in India.

Systemic violence against Dalits in India represents a deeply entrenched issue rooted in the historical and social fabric of the caste system. This violence manifests in various forms, including physical assault, sexual violence, economic exploitation, and social discrimination, perpetuated by both state and non-state actors. The caste system, which categorizes individuals into hierarchical groups, has

[2] Jodhka, S.S. (2012). *Caste in Contemporary India*.

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relegated Dalits, often referred to as "Untouchables," to the lowest social status, subjecting them to systemic oppression and violence.

The criminological analysis of this violence reveals a complex interplay of social, economic, and political factors that sustain the marginalization of Dalits. The legal framework in India, while ostensibly protective of Dalit rights, often fails to provide adequate safeguards against violence. Law enforcement agencies frequently exhibit bias, either by neglecting to register complaints or by failing to investigate crimes against Dalits thoroughly. This systemic failure of the criminal justice system not only emboldens perpetrators but also perpetuates a culture of impunity.

[3]Moreover, the socio-economic conditions of Dalits contribute significantly to their vulnerability. Many Dalits live in poverty, lacking access to education, healthcare, and employment opportunities. This economic disenfranchisement makes them easy targets for violence, as they often lack the resources to seek justice or defend themselves. The intersection of caste and gender further exacerbates the situation, with Dalit women facing heightened risks of sexual violence and exploitation.

Systemic violence against Dalits in India is a pervasive issue that has deep historical roots in the caste system, which has long dictated social hierarchies and relationships. This violence is not merely an aberration but a reflection of the entrenched discrimination that Dalits face daily. The manifestations of this violence are varied, encompassing physical assaults, sexual violence, economic exploitation, and social ostracism. These acts are often perpetrated by individuals from higher castes, supported by a societal framework that normalizes such behaviour.

The criminological perspective on this violence reveals a troubling interplay of factors that sustain the oppression of Dalits. Despite the existence of laws designed to protect Dalit rights, such as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the enforcement of these laws is often weak. Law enforcement agencies, influenced by their own caste biases, frequently fail to take complaints seriously, leading to a culture of impunity for perpetrators. This systemic failure within the criminal justice system not only discourages victims from seeking justice but also reinforces the notion that violence against Dalits is acceptable.

2.1. Current Practices of Systemic Violence:

The systemic violence against Dalits manifests in various forms, including social exclusion, economic discrimination, and political marginalization. Socially, Dalits are often segregated in housing and

[3] Singh, K. (2019). *Legal Framework for Dalit Rights in India: An Analysis*.

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public spaces, facing ostracism from mainstream society. This exclusion is not only a violation of their rights but also perpetuates a cycle of poverty and deprivation.

Economically, Dalits are frequently denied access to resources and opportunities. They are often relegated to menial jobs with little or no prospects for advancement. This economic marginalization is compounded by discriminatory practices in the labour market, where Dalits face barriers to employment and wage disparities compared to their upper-caste counterparts.

Politically, Dalits remain underrepresented in decision-making processes. While there have been efforts to increase political representation through reserved seats in legislatures, the actual influence of Dalit leaders is often limited by the prevailing caste dynamics. This political marginalization further exacerbates the systemic violence faced by Dalits, as their voices and concerns are frequently overlooked.

3. IDENTIFYING LACUNAE IN CURRENT FRAMEWORKS:

Despite the existence of legal protections and social programs aimed at uplifting Dalits, significant lacunae remain in the current frameworks. The enforcement of laws protecting Dalits is often weak, with many victims facing obstacles in accessing justice. Additionally, societal attitudes towards caste discrimination continue to hinder progress, as deeply rooted prejudices persist in many communities.

Moreover, support systems for victims of violence are often inadequate. Legal aid, counselling, and rehabilitation services are frequently lacking, leaving victims without the necessary resources to rebuild their lives. This gap in support not only affects individual victims but also undermines the broader efforts to combat systemic violence against Dalits.

3.1. Proposed Solutions:[4]

Addressing the systemic violence against Dalits requires a comprehensive approach that encompasses legal, social, and economic dimensions. Strengthening legal frameworks is paramount; this includes enhancing the enforcement of existing laws, providing training for law enforcement officials, and ensuring accountability for perpetrators of violence. Awareness campaigns can also play a crucial role in educating the public about the rights of Dalits and the importance of eradicating caste-based discrimination.

[4] **Beteille, A.** (2002). "Caste and the Politics of Identity." *Economic and Political Weekly*, 37(24), 2331-2336.

Promoting education and awareness is another vital strategy. Educational initiatives should focus on fostering understanding and empathy towards Dalit issues, targeting both the general public and specific groups, such as law enforcement and educators. By cultivating a culture of respect and equality, society can begin to dismantle the prejudices that perpetuate violence.

Economic empowerment initiatives are essential for breaking the cycle of violence and poverty. Programs aimed at improving access to education, vocational training, and employment opportunities for Dalits can help uplift communities and provide them with the means to challenge systemic discrimination. Additionally, promoting entrepreneurship among Dalits can foster economic independence and resilience.

Community engagement and advocacy are critical components of any solution. Building coalitions among Dalit organizations, civil society, and sympathetic allies can amplify the voices of marginalized communities and create a united front against systemic violence. Grassroots movements can mobilize support, raise awareness, and advocate for policy changes that address the root causes of discrimination.

The systemic violence against Dalits is a multifaceted issue that requires urgent attention and action. While legal frameworks exist to protect the rights of Dalits, significant gaps in enforcement, societal attitudes, and support systems hinder progress. A comprehensive approach that includes strengthening legal protections, promoting education and awareness, and empowering Dalit communities economically is essential for creating a more just and equitable society.

By fostering community engagement and advocacy, society can work towards dismantling the structures that perpetuate violence and discrimination, ultimately ensuring that the rights and dignity of all individuals, regardless of caste, are upheld and respected.

4. MODERN DEVELOPMENTS AND THE FIGHT AGAINST UNTOUCHABILITY:

[5]The struggle against untouchability gained momentum in the early 20th century, with social reformers like B.R. Ambedkar advocating for the rights of Dalits. The Indian independence movement also saw the inclusion of anti-untouchability sentiments, leading to the eventual abolition of the practice in the Constitution. However, the legacy of the caste system continues to influence contemporary society, with untouchability still prevalent in many regions.

[5] **Ambedkar, B.R.** (1990). *Thoughts on Linguistic States*. New Delhi: Government of India.

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4.1. ***The Socio-Economic Status of Dalits***:

The socio-economic status of Dalits in India is characterized by significant disparities in access to resources, education, and employment opportunities. Despite constitutional provisions aimed at uplifting Dalit communities, the reality remains starkly different.

4.2. ***Education and Literacy Rates***:

Education is a critical factor in breaking the cycle of poverty and discrimination. However, Dalits often face numerous barriers to accessing quality education. High dropout rates among Dalit students can be attributed to factors such as economic constraints, social stigma, and inadequate infrastructure in rural areas. The lack of representation of Dalits in educational institutions further perpetuates feelings of alienation and discouragement.

4.3. ***Employment and Economic Opportunities***:

Dalits are disproportionately represented in low-paying, unskilled jobs, often relegated to manual labour and menial tasks. This economic marginalization is exacerbated by discriminatory hiring practices and a lack of access to vocational training programs. Many Dalits are trapped in a cycle of poverty, with limited opportunities for upward mobility. The informal sector, where many Dalits find employment, offers little job security and no benefits, further entrenching their socio-economic status.

4.4. ***Land Ownership and Agricultural Practices***:

Land ownership is a significant determinant of economic status in rural India. Dalits often have limited access to land, which restricts their ability to engage in agriculture and secure a stable income. Historical injustices, such as land dispossession and exploitation by upper-caste landlords, have left many Dalit families landless or dependent on wage labour. This lack of land ownership not only affects their economic stability but also their social standing within the community.

4.5. ***Health and Access to Services***:

The health status of Dalits is often poorer compared to other social groups, with limited access to healthcare services. Discrimination within healthcare systems can deter Dalits from seeking medical assistance, leading to untreated health issues. Additionally, the prevalence of malnutrition and lack of sanitation facilities in Dalit communities contributes to a higher incidence of diseases, further exacerbating their socio-economic challenges.

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4.6. ***The Role of Education in Empowerment***:

Education is a powerful tool for social change and empowerment, particularly for marginalized communities like Dalits. It can help break the cycle of poverty and discrimination, providing individuals with the skills and knowledge necessary to challenge systemic injustices.

4.7. ***Access to Quality Education***:

Ensuring access to quality education for Dalits is crucial for their empowerment. This includes not only increasing enrollment rates but also improving the quality of education provided. Initiatives such as scholarships, free textbooks, and transportation can help alleviate some of the barriers faced by Dalit students. Additionally, creating inclusive educational environments that promote diversity and respect for all students is essential.

4.8. ***Promoting Higher Education***:

Encouraging Dalit students to pursue higher education is vital for fostering leadership within the community. Scholarships and mentorship programs can support Dalit students in navigating the challenges of higher education. Representation of Dalits in universities and colleges can inspire younger generations and challenge stereotypes associated with their caste.

4.9. ***Community Awareness and Advocacy***:

Raising awareness about the importance of education within Dalit communities is essential for promoting educational attainment. Community-led initiatives that advocate for the rights of Dalit students can empower families to prioritize education. Engaging local leaders and organizations in these efforts can help create a supportive environment for educational advancement.

4.10. ***The Role of Media and Representation***:

[6]Media plays a significant role in shaping public perceptions and narratives surrounding caste and untouchability. The representation of Dalits in media can either reinforce stereotypes or challenge systemic discrimination.

[6] Ramesh, R. (2018). *The Role of Media in Shaping Caste Narratives in India*.

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5. SYSTEMIC VIOLENCE AGAINST DALITS IN INDIA:

Systemic Violence Against Dalits in India is a deeply entrenched issue that has persisted for centuries, rooted in the historical and social structures of the caste system, Despite the existence of various legal frameworks aimed at protecting the rights of Dalits, the implementation of these laws often falls short, leading to a cycle of violence and impunity. This analysis will delve into key legislations, notable case laws, and the challenges faced in the enforcement of laws designed to protect Dalits from systemic violence, providing a comprehensive overview of the legal landscape surrounding this critical issue.

5.1. Key Legislations:

5.1.1. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

[7]The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is one of the most significant legal instruments aimed at protecting the rights of Dalits and preventing atrocities against them.

This act was enacted in response to the increasing incidents of violence and discrimination against Scheduled Castes and Scheduled Tribes, which highlighted the urgent need for a robust legal framework to address these issues.

The act defines specific offenses against Dalits, including:

- **Physical violence**: This includes acts of murder, assault, and grievous hurt.
- **Sexual violence**: The act addresses offenses such as rape, sexual harassment, and other forms of sexual violence against Dalit women.
- **Economic exploitation**: The act criminalizes practices such as forced labor and economic boycotts against Dalits.
- **Social discrimination**: It prohibits the use of derogatory language and social ostracism against Dalits.

The act prescribes stringent penalties for perpetrators, including imprisonment and fines, and mandates the establishment of special courts to expedite the trial of cases under its purview. The act also provides

[7] Government of India. (1989). *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act*.

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for the appointment of special public prosecutors to ensure that cases are handled sensitively and effectively.

Despite its robust framework, the act has faced significant challenges in enforcement. Many victims are reluctant to file complaints due to fear of retaliation, social ostracism, or a lack of faith in the justice system. Furthermore, law enforcement agencies often exhibit bias, either neglecting to register complaints or failing to investigate them thoroughly. This systemic failure not only emboldens perpetrators but also perpetuates a culture of impunity.

5.1.2. Protection of Civil Rights Act, 1955:

The Protection of Civil Rights Act, 1955, was enacted to enforce the fundamental rights of Dalits and abolish untouchability. This act criminalizes practices that discriminate against Dalits and provides for penalties against those who engage in such practices. The act aims to provide a legal framework for the protection of Dalits, but its implementation has been inconsistent, with many cases going unreported or inadequately addressed.

The act defines various offenses related to untouchability, including:

- **Refusal to allow access**: Denying Dalits access to public places, such as temples, wells, and schools.
- **Social discrimination**: Engaging in practices that perpetuate social exclusion based on caste.
- **Economic exploitation**: Forcing Dalits into menial jobs or denying them fair wages.

While the act has been instrumental in raising awareness about the rights of Dalits, its effectiveness is often undermined by societal attitudes and systemic biases within law enforcement. Many victims of untouchability-related offenses face significant barriers in seeking justice, including harassment from police and a lack of support from the community.

6. NOTABLE CASE STUDIES:

Several notable cases have brought national attention to the issue of systemic violence against Dalits, highlighting the urgent need for justice and reform. These cases illustrate the challenges faced by Dalits in seeking justice and the failures of the legal system to protect their rights.

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6.1. Khairlanji Massacre (2006):

[8]The Khairlanji massacre is one of the most infamous incidents of caste-based violence in India. In September 2006, a Dalit family in Khairlanji village, Maharashtra, was brutally murdered by a mob from a higher caste. The family consisted of a mother, her two children, and a relative. They were subjected to horrific violence, including sexual assault and mutilation.

The incident sparked widespread protests and demands for justice, drawing attention to the failures of the police and judicial system in protecting Dalits. The initial investigation was marred by negligence, with police failing to register the case promptly and showing bias against the victims. Activists and organizations rallied for justice, demanding that the government take immediate action to address the systemic violence faced by Dalits.

In 2008, the trial court convicted 11 individuals for the murders, sentencing them to life imprisonment. However, the case highlighted the need for stricter enforcement of existing laws and accountability for law enforcement agencies. The Supreme Court's involvement in this case underscored the importance of addressing caste-based violence and ensuring justice for victims.

6.2. Rape and Murder of a Dalit Girl (2016):

[9]In 2016, the rape and murder of a young Dalit girl in Uttar Pradesh drew national outrage and brought attention to the pervasive issue of caste-based violence. The victim, a 16-year-old girl, was abducted, raped, and murdered, with her body later discovered in a field. This horrific incident prompted widespread protests across the country, highlighting the urgent need for justice and reform in the treatment of Dalits, particularly women.

The case revealed the systemic failures of law enforcement, as initial investigations were slow and lacked sensitivity. Activists and organizations rallied for justice, demanding that the government take immediate action to address the systemic violence faced by Dalits, especially women. The incident underscored the intersectionality of caste and gender, as Dalit women often face heightened risks of violence and exploitation.

[8] "Khairlanji: A Dalit Family's Tragedy" - Various news articles and reports from 2006-2007.
[9] "Dalit Women and the Politics of Violence" - Various news articles and reports from 2016.

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In response to public outcry, the state government announced a special investigation team (SIT) to probe the case. The Supreme Court intervened, emphasizing the need for a fair and thorough investigation. The court's involvement highlighted the importance of judicial oversight in cases of caste-based violence, ensuring that victims receive the justice they deserve.

6.3. The 2018 Unnao Rape Case:

The Unnao rape case further exemplified the challenges faced by Dalits in seeking justice. In 2017, a young Dalit woman accused a prominent politician from the Bharatiya Janata Party (BJP) of raping her. The case gained significant media attention, particularly due to the political connections of the accused and the subsequent attempts to intimidate the victim and her family.

Despite the gravity of the allegations, law enforcement initially failed to act on the victim's complaint, reflecting the systemic biases that often hinder justice for Dalits. The victim's family faced harassment and threats, further complicating their pursuit of justice. In 2018, the victim attempted to set herself on fire outside the Chief Minister's office, drawing national attention to her plight.

The Supreme Court eventually intervened, ordering a transfer of the case to a fast-track court and emphasizing the need for a fair trial. The court's involvement underscored the importance of judicial accountability in cases involving caste-based violence and the need for a sensitive approach to handling such cases.

7. CHALLENGES IN IMPLEMENTATION:

Despite the existence of legal frameworks and notable case laws, the implementation of laws protecting Dalits remains fraught with challenges. One of the most significant issues is the **bias in law enforcement**. Police often exhibit reluctance to register complaints or investigate cases involving Dalits, influenced by their own caste biases. This leads to underreporting of crimes and a culture of impunity for perpetrators. Many Dalit victims face harassment or intimidation when they attempt to file complaints, further discouraging them from seeking justice.

Societal attitudes also play a crucial role in perpetuating violence against Dalits. Deep-rooted caste prejudices continue to affect the judicial process, with many individuals from higher castes feeling entitled to act violently against Dalits without fear of repercussions. This societal bias often manifests in the form of discrimination, ostracism, and violence, creating an environment where Dalits are marginalized and their grievances are overlooked. The stigma associated with being a Dalit can deter victims from coming forward, as they fear further victimization or social isolation.

Judicial delays present another significant challenge in the pursuit of justice for Dalits. The legal process in India can be slow and cumbersome, with many cases taking years to reach resolution. This delay discourages victims from pursuing justice and undermines the effectiveness of legal protections. The backlog of cases in the judicial system often results in prolonged suffering for victims and their families, who are left waiting for justice that may never come. The lack of resources and infrastructure in the judicial system further exacerbates these delays, making it difficult for cases to be heard in a timely manner.

In addition to these challenges, the **intersectionality of caste and gender** adds another layer of complexity to the issue of systemic violence against Dalits. Dalit women, in particular, face unique vulnerabilities due to their caste and gender identities. They are often subjected to multiple forms of discrimination and violence, including sexual violence, domestic abuse, and economic exploitation. The societal perception of Dalit women as being of lower status can lead to their victimization, as perpetrators may feel emboldened to act with impunity. This intersectional violence necessitates a nuanced understanding of the specific challenges faced by Dalit women and the need for targeted interventions to address their plight.

8. RECOMMENDATIONS FOR REFORM:

The ongoing struggle for justice highlights the need for comprehensive reforms that not only strengthen legal protections but also address the underlying social issues that perpetuate caste-based violence. Advocacy groups and activists have called for a multi-faceted approach to combat systemic violence against Dalits, which includes:

8.1. Awareness and Education: [10]Raising awareness about caste discrimination and the rights of Dalits is crucial in changing societal attitudes.

> Educational programs that promote inclusivity and respect for all individuals, regardless of caste, can help dismantle the prejudices that fuel violence.

8.2. Strengthening Law Enforcement: Training law enforcement personnel on caste issues and the importance of sensitivity in handling cases involving Dalits can improve the response to complaints. Establishing accountability mechanisms to address police misconduct is also essential in ensuring that victims feel safe coming forward.

[10] National Campaign on Dalit Human Rights (NCDHR). (2015). *Dalit Rights and the Law*.

8.3. Judicial Reforms: Streamlining the judicial process and establishing special courts dedicated to handling cases of caste-based violence can help expedite justice for victims. Increasing the number of judges and resources allocated to these courts can alleviate the backlog of cases and ensure timely resolutions.

8.4. Support Services for Victims: Providing comprehensive support services for victims of caste-based violence, including legal aid, counselling, and rehabilitation, can empower them to seek justice and rebuild their lives. Creating safe spaces for victims to share their experiences and access resources is vital in fostering resilience.

8.5. Community Engagement: Engaging communities in discussions about caste discrimination and violence can help foster understanding and solidarity. Initiatives that promote inter-caste dialogue and collaboration can challenge entrenched biases and build a more inclusive society.

8.6. Policy Advocacy: Advocating for stronger policies and legislation that specifically address the needs and rights of Dalits is crucial. This includes pushing for the implementation of existing laws and the introduction of new measures that can effectively combat caste-based violence.

8.7. Monitoring and Evaluation: Establishing mechanisms to monitor the implementation of laws protecting Dalits and evaluating their effectiveness can help identify gaps and areas for improvement. Regular assessments can ensure that the legal framework remains responsive to the needs of marginalized communities.

8.8. Media Engagement: Utilizing media platforms to highlight cases of caste-based violence and the struggles faced by Dalits can raise public awareness and pressure authorities to take action. Responsible journalism can help shed light on systemic issues and promote accountability.

8.9. Research and Documentation: Conducting research on caste-based violence and its impact on Dalit communities can provide valuable insights for policymakers and advocates. Documenting cases and trends can help inform strategies for intervention and reform.

[11]The legal landscape surrounding systemic violence against Dalits in India is complex and fraught with challenges.

[11] Singh, K. (2019). *Legal Framework for Dalit Rights in India: An Analysis*.

While there are legal provisions in place to protect Dalits from violence and discrimination, the effectiveness of these laws is often compromised by societal attitudes, biases within law enforcement, and delays in the judicial process.

The ongoing struggle for justice underscores the need for comprehensive reforms that address both the legal and social dimensions of caste-based violence. A concerted effort from all sectors of society is required to dismantle the structures that enable discrimination and violence against Dalits, ensuring their rights and dignity are upheld. Only through sustained advocacy, education, and reform can we hope to create a society where Dalits are free from violence and discrimination, and where justice is accessible to all.

9. CONCLUSION:

[12]The systemic violence against Dalits in India is a complex and deeply entrenched issue that has persisted for centuries, rooted in the historical and social structures of the caste system. Despite the existence of various legal frameworks aimed at protecting the rights of Dalits, the implementation of these laws often falls short, leading to a cycle of violence, discrimination, and impunity. This analysis has explored key legislations, notable case laws, and the challenges faced in the enforcement of laws designed to protect Dalits, revealing a multifaceted landscape that requires urgent attention and reform.

The legal framework in India, particularly the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Protection of Civil Rights Act, 1955, represents significant steps toward addressing the systemic violence faced by Dalits. These laws were enacted to provide a robust mechanism for the protection of Dalit rights and to prevent atrocities against them. However, the effectiveness of these laws is often undermined by various factors, including societal attitudes, biases within law enforcement, and delays in the judicial process.

The notable cases of violence against Dalits, such as the Khairlanji massacre, the rape and murder of a Dalit girl in Uttar Pradesh, and the Unnao rape case, highlight the urgent need for justice and reform. These incidents not only expose the failures of the legal system to protect Dalits but also underscore the pervasive nature of caste-based violence in Indian society. The systemic failures in law enforcement, the judiciary, and societal attitudes contribute to a culture of impunity that allows such violence to persist.

[12] Kumar, R. (2016). "Caste-Based Violence in India: A Review of the Literature." Journal of Social Issues, 72(4), 743-762.

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9.1. Final Thoughts:

Addressing systemic violence against Dalits requires a comprehensive and multi-faceted approach that goes beyond legal reforms. It necessitates a fundamental shift in societal attitudes, a commitment to justice, and a concerted effort from all sectors of society.

9.2. Research and Documentation:

Conducting research on caste-based violence and its impact on Dalit communities can provide valuable insights for policymakers and advocates. Documenting cases and trends can help inform strategies for intervention and reform.

This research can serve as a foundation for advocacy efforts and policy recommendations aimed at addressing systemic violence. Research should also focus on the intersectionality of caste with other forms of discrimination, such as gender and class. Understanding how these factors interact can provide a more comprehensive view of the challenges faced by Dalits, particularly women and marginalized groups within the Dalit community. By highlighting these intersections, researchers can advocate for more inclusive policies that address the unique needs of all individuals affected by caste-based violence.

9.3. The Path Forward:

The path to achieving justice for Dalits is challenging, but it is essential for building a more equitable and just society for all individuals, regardless of caste. The ongoing struggle for justice highlights the need for a collective commitment to dismantling the structures that enable discrimination and violence against Dalits. It requires the active participation of all sectors of society, including government, civil society, and the private sector, to create a culture of respect, equality, and justice.

Addressing systemic violence against Dalits is not only a legal imperative but also a moral obligation. The fight for justice and equality for Dalits is a fight for the fundamental rights of all individuals. By working together to challenge caste-based violence and discrimination, society can pave the way for a future where all individuals are treated with dignity and respect, free from the shackles of caste-based oppression. The journey toward justice may be long and arduous, but it is a journey worth undertaking for the sake of humanity and the principles of equality and justice that underpin a democratic society.

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9.4. A Collective Responsibility:

The fight against systemic violence faced by Dalits is a collective responsibility that requires the engagement of all members of society. It is essential to recognize that caste-based violence is not just a Dalit issue; it is a societal issue that affects the fabric of democracy and human rights.

[13]The journey toward justice for Dalits is fraught with challenges, but it is also filled with opportunities for transformation and change. By prioritizing awareness, education, legal reforms, and community engagement, society can work towards dismantling the structures of oppression that have persisted for far too long. Together, we can create a future where all individuals, regardless of caste, can live with dignity, respect, and equality.

[13] **Omvedt, G.** (1994). *Dalits and the Democratic Revolution: Dr. Ambedkar and the Dalit Movement in Colonial India*. New Delhi: Sage Publications.

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INVISIBLE TARGETS: LEGAL PROTECTION OF CRITICAL QUANTUM INFRASTRUCTURE IN ARMED CONFLICT

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ABSTRACT

As quantum technologies rapidly evolve into critical components of national defence and civilian infrastructure, existing legal frameworks particularly International Humanitarian Law (IHL) and Outer Space Law struggle to regulate their use and protection during armed conflict. This article investigates the legal status of critical quantum infrastructure (CQI), including QKD networks, quantum satellites, and dual-use communication systems. It highlights the normative and operational challenges posed by the invisibility, fragility, and dual-use nature of quantum systems, particularly in relation to IHL's core principles of distinction, proportionality, and precaution. Drawing analogies from cyber and ICT law, the study reveals significant doctrinal gaps and strategic ambiguities in current state practice. It proposes targeted reforms, including the adoption of legal presumptions of civilian status, enhanced Article 36 reviews, treaty-based safeguards for non-kinetic infrastructure, and confidence-building measures among quantum-capable states. In doing so, the article argues for an anticipatory legal architecture one that regulates not only what can be destroyed, but what can be destabilized without visibility. Without such measures, the quantum domain risks becoming the next legally ungoverned grey zone of future warfare.

Keywords: *Quantum Infrastructure, International Humanitarian Law, Dual-Use Systems, Non-Kinetic Conflict, Critical Infrastructure Protection*

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1. INTRODUCTION

The twenty-first century has witnessed the rapid evolution of quantum technologies from abstract theory into actionable strategic assets. Among these, critical quantum infrastructure (CQI) including quantum key distribution (QKD) networks, entanglement-based communication systems, quantum satellites, and quantum data centers has emerged as a foundational pillar of digital sovereignty and a potential target in future warfare. As a subset of broader critical infrastructure, CQI enables a level of secure, low-latency communication and data integrity that traditional systems cannot match.[1]

Quantum key distribution, for instance, leverages the principles of quantum mechanics such as entanglement and superposition to generate cryptographic keys that are theoretically impervious to interception. This makes QKD a vital tool in a world approaching quantum supremacy, where classical encryption may soon be obsolete.[2] Nations including China, the United States, and the European Union have made significant investments in QKD-enabled satellite programs and quantum backbone networks; China's *Micius* satellite and the EU's EuroQCI project are particularly illustrative.[3] In the Global South, India's 2023 launch of the National Quantum Mission signals a growing interest in integrating quantum infrastructure into both civilian and national security domains.[4]

The strategic utility of CQI extends beyond encryption. It encompasses quantum-enhanced sensing, navigation, and surveillance systems, which could be deployed to track stealth aircraft, detect underground structures, and accelerate targeting decisions. These military applications render CQI a plausible military objective under evolving doctrines of techno-warfare. However, CQI systems are frequently dual-use, meaning they serve both civilian and military functions a status that complicates their legal classification under International Humanitarian Law (IHL).[5]

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[1] Arvind Krishna et al, "Quantum Technologies and National Security" (2020) 42 *Harvard Kennedy School Belfer Center Report* 4.
[2] Gilles Brassard and Charles H. Bennett, "Quantum Cryptography: Public Key Distribution and Coin Tossing" (1984) 312 *Proceedings of IEEE International Conference on Computers, Systems and Signal Processing* 175.
[3] Jian-Wei Pan et al, "Satellite-based Entanglement Distribution Over 1200 kilometers" (2017) 356 *Science* 1140.
[4] Government of India, Department of Science & Technology, "National Quantum Mission," https://dst.gov.in/national-quantum-mission (accessed 4 July 2025).
[5] Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) 270.; see also ICRC, *Commentary on Additional Protocol I* (ICRC 1987) para 2024.

Despite its strategic importance, the legal protection afforded to CQI during armed conflict remains inadequately theorized. Existing IHL frameworks, including the Geneva Conventions and Additional Protocols, do not expressly regulate quantum infrastructure or its emerging battlefield roles. This lacuna raises urgent questions: Can quantum systems be lawfully targeted? Do principles like distinction, proportionality, and precaution apply to non-kinetic attacks on coherence-based communication systems? What is the legal status of civilian satellites performing entanglement-enabled communication?

This article seeks to analyze the application of existing IHL rules to CQI, to identify normative and doctrinal gaps related to its classification and targeting, and to propose forward-looking policy recommendations to ensure lawful and ethical treatment of CQI in future conflicts.

2. TECHNICAL AND STRATEGIC PROFILE OF QUANTUM INFRASTRUCTURE

As quantum technologies mature beyond laboratory prototypes, the underlying physical systems and communication architectures supporting them have come to form a new category of critical infrastructure. This section outlines the two primary domains of quantum deployment terrestrial and space-based systems and highlights their growing strategic entanglement with both military and civilian ecosystems.

2.1 Terrestrial Systems

Terrestrial quantum infrastructure comprises the ground-based hardware and networks essential to building secure quantum communication systems. At the core of this setup are quantum key distribution (QKD) ground stations, which facilitate the generation and exchange of quantum-encrypted keys across Fiber-optic channels.[6] These systems rely on quantum repeaters to maintain entanglement over long distances by correcting for signal degradation, enabling secure communications over hundreds or thousands of kilometres.

In parallel, the development of quantum computing facilities designed to perform complex calculations using qubits rather than classical bits marks a disruptive evolution in data processing. Though still in their early stages, these facilities are positioned to undermine classical encryption by

[6] Nicolas Gisin et al, "Quantum Cryptography" (2002) 74 *Reviews of Modern Physics* 145.

factoring large prime numbers exponentially faster than classical computers, thus necessitating the parallel development of quantum-resistant or post-quantum cryptography.[7]

Countries including China, the United States, Germany, and India have invested heavily in terrestrial QKD testbeds and quantum laboratory networks. India's Centre for Development of Telematics (C-DOT) and DRDO have successfully demonstrated domestic QKD links over optical Fiber, and its National Quantum Mission (NQM) includes substantial funding for terrestrial infrastructure deployment.[8]

2.2 Space-Based Systems

To overcome distance limitations and terrestrial infrastructure constraints, states are now investing in quantum communication satellites that enable secure links between ground stations across continents. The most notable example is China's *Micius* satellite, which achieved satellite-to-ground entanglement-based QKD across 1200 kilometers.[9] This proof of concept triggered a global acceleration in quantum satellite development, with the European Union's EuroQCI initiative aiming to build a quantum-secured space-based network across its member states.[10]

These satellites transmit entangled photons to multiple ground stations, allowing for the establishment of secure communication channels that are resilient to conventional eavesdropping and interception. Future architectures propose the use of intersatellite quantum links for global quantum networks, creating what some scholars refer to as a "quantum internet".[11]

In India, ISRO has demonstrated free-space quantum communication in collaboration with research institutions, paving the way for satellite-based QKD integration into its future space-based defense assets.[12]

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[7] Peter W Shor, "Algorithms for Quantum Computation: Discrete Logarithms and Factoring" (1994) 35 *Proceedings of the 35th Annual Symposium on Foundations of Computer Science* 124.
[8] Press Information Bureau, Government of India, "India's First Quantum Key Distribution Link Demonstrated by DRDO" (2021), https://pib.gov.in (accessed 4 July 2025).
[9] Jian-Wei Pan et al, "Satellite-based Entanglement Distribution Over 1200 Kilometers" (2017) 356 *Science* 1140.
[10] European Commission, "EuroQCI: The European Quantum Communication Infrastructure" (2023), https://digital-strategy.ec.europa.eu (accessed 4 July 2025).
[11] Stephanie Wehner, David Elkouss, and Ronald Hanson, "Quantum Internet: A Vision for the Road Ahead" (2018) 362 *Science* 928.
[12] Indian Space Research Organisation, "ISRO Demonstrates Free-Space Quantum Communication Over 300 Meters" (2021), https://isro.gov.in (accessed 4 July 2025).

2.3 Military and Dual-Use Applications

The militarization of quantum infrastructure is advancing in both explicit and latent forms. Quantum-secured communications offer significant advantages for military command and control operations by ensuring tamper-evident, eavesdropping-proof transmissions between strategic nodes.[13] This is particularly valuable in high-stakes environments such as nuclear command chains, covert surveillance, and tactical drone coordination.

However, these infrastructures are often dual-use serving both civilian sectors (telecom, finance, e-governance) and military objectives. For example, QKD networks deployed for secure banking transactions can also serve as backbone communication systems during wartime.[14] Similarly, quantum computing infrastructure developed by academic or corporate research bodies may be harnessed for cryptanalysis, optimization of military logistics, or AI-enhanced decision-making systems.

This interdependence creates legal complexity in the context of international humanitarian law: if a single node supports both civilian communication and encrypted military data exchange, does it lose protection as a civilian object? Addressing this doctrinal question requires an understanding of the technological realities of quantum infrastructure a gap that this article seeks to bridge.

3. LEGAL FRAMEWORK UNDER INTERNATIONAL HUMANITARIAN LAW (IHL)

The deployment of quantum systems in armed conflict presents complex legal challenges that existing IHL frameworks were never designed to address. Given the dual-use nature and invisibility of many quantum operations, the key question arises: How should quantum infrastructure be classified and protected under IHL? This section analyses the legal framework through the lens of Additional Protocol I (API), particularly Articles 36 and 52, and evaluates the applicability of the fundamental principles of IHL distinction, proportionality, and precaution to emerging quantum systems.

3.1 Legal Classification of Quantum Infrastructure

[13] Paul Cornish and Andrew Dorman, "Quantum Technologies and Future Warfare" (2021) 65 *Survival: Global Politics and Strategy* 7.
[14] P. Kumar and R. Chandrasekaran, "Dual-Use Dilemma in Quantum Infrastructure: Policy and Legal Challenges" (2024) 17 *Indian Journal of Law and Technology* 88.

Article 52(2) of Additional Protocol I define military objectives as "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose destruction offers a definite military advantage".[15] Quantum infrastructure such as QKD networks, entanglement-based satellite relays, and quantum computing facilities could meet this test if integrated into military command, surveillance, or encryption systems.

However, the problem becomes acute when quantum systems are dual-use simultaneously supporting civilian services (e.g., financial encryption, e-governance) and military functions. In such cases, the presumption of civilian status must guide legal interpretation until compelling evidence establishes that the infrastructure qualifies as a military objective.[16]

This legal ambiguity is not theoretical. For example, a QKD ground station used by a civilian telecom provider during peacetime may be co-opted by a defence agency during a conflict without any outward physical transformation. This scenario places such assets in a grey zone, raising urgent questions about the legality of targeting decisions under IHL.[17]

3.2 Application of IHL Principles

(i) Distinction

The principle of distinction, codified in Article 48 of API, obliges belligerents to differentiate between civilian objects and military objectives at all times.[18] However, quantum systems complicate this obligation. Unlike traditional infrastructure (e.g., radar installations), quantum nodes and repeater stations are often indistinguishable from civilian assets, both visually and functionally. Their non-kinetic and software-driven nature makes real-time identification challenging and vulnerable to error.

(ii) Proportionality

Even if a quantum asset qualifies as a military objective, attacks must not cause excessive incidental harm to civilian infrastructure in relation to the anticipated military advantage.[19] Here, the interconnectedness of quantum and classical systems (e.g., banking networks or e-health services)

[15] Protocol Additional to the Geneva Conventions of 12 August 1949 (API), Article 52(2).
[16] ICRC, *Commentary on the Additional Protocols of 8 June 1977* (ICRC 1987) para 2024.
[17] P Kumar and R Chandrasekaran, "Dual-Use Dilemma in Quantum Infrastructure: Policy and Legal Challenges" (2024) 17 *Indian Journal of Law and Technology* 88.
[18] API, Article 48.
[19] API, Article 51(5)(b).; see also Michael Bothe, *New Rules for Victims of Armed Conflicts* (Martinus Nijhoff 1982) 356.

may amplify collateral damage well beyond the immediate target. Destroying a quantum satellite or repeater could paralyse civilian encryption systems, violating the proportionality principle in practice if not in theory.

(iii) Precaution

Under Article 57 of API, parties must take all feasible precautions to minimize harm to civilian objects.[20] In the quantum context, this duty is heightened. Since quantum coherence is delicate and irreversible once disrupted, non-kinetic attacks such as deliberate decoherence or entanglement spoofing may have strategic consequences without leaving physical traces. These effects are difficult to predict or quantify in advance, suggesting that a higher legal threshold for precaution may be necessary in assessing the lawfulness of attacks on CQI.

(*iv) Weapon Review under Article 36*

Importantly, Article 36 of API requires that states review new weapons, means, or methods of warfare to determine whether their use would be prohibited under international law.[21] Though quantum infrastructure is not a "weapon" in the conventional sense, its integration into military systems and strategic decision-making tools necessitates review under this article. Failure to subject quantum-enhanced platforms such as automated defence systems relying on quantum decision support to rigorous legal vetting could result in deployment of tools with unknown or unintended humanitarian consequences.

4. OUTER SPACE LAW AND THE PROTECTION OF QUANTUM SATELLITES

Quantum communication satellites represent the convergence of two distinct but overlapping legal regimes: outer space law and international humanitarian law (IHL). As these satellites become critical enablers of quantum key distribution (QKD), entanglement-based messaging, and ultra-secure communication systems, their legal status and vulnerability during armed conflict require urgent examination.

[20] API, Article 57.
[21] API, Article 36.; see also ICRC, *Guide to the Legal Review of New Weapons, Means and Methods of Warfare* (2006), https://www.icrc.org (accessed 4 July 2025).

The foundational instrument of space governance the Outer Space Treaty (OST) of 1967 establishes several core principles relevant to quantum infrastructure. These include the peaceful use of outer space, the prohibition on placing weapons of mass destruction in orbit, and the obligation of states to conduct space activities with due regard to the interests of other states.[22] Article IV prohibits the placement of nuclear weapons and WMDs but does not explicitly regulate conventional weapons or dual-use technologies like quantum communication systems.[23] Article IX further requires states to avoid harmful contamination and to operate with transparency and environmental responsibility, principles that take on new urgency given the fragility of quantum photonic systems.[24]

Quantum communication satellites (QCS), such as China's *Micius* or the European Union's upcoming EuroQCI orbital nodes, are often classified as civilian scientific platforms. However, their integration into state-level secure communication networks especially those involving command-and-control or cryptographic functions creates a dual-use dilemma under international law. Although IHL protects purely civilian satellites, a QCS that contributes effectively to military action may lose that protection under Article 52(2) of Additional Protocol I.[25] Determining whether such systems constitute military objectives is complicated by intentional opacity in their design and use, increasing the risk of erroneous or unlawful targeting during armed conflict.[26]

A more acute legal and strategic challenge arises from anti-satellite (ASAT) weapons, which threaten the operational viability of QCS. Since 2007, states like China, the United States, and Russia have tested ASAT weapons capable of kinetically disabling satellites in low-earth orbit.[27] While the OST does not prohibit such attacks, IHL principles apply where these satellites are targeted during armed conflict. If the quantum satellite serves a predominantly civilian purpose, ASAT attacks may violate the principle of distinction under Article 48 of Additional Protocol I. Moreover, non-kinetic methods

[22] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space (Outer Space Treaty), 1967, UNTS No. 610 UNTS 205, Article I.
[23] OST, Article IV.
[24] OST, Article IX.
[25] Protocol Additional to the Geneva Conventions of 12 August 1949 (API), Article 52(2).
[26] P Kumar and R Chandrasekaran, "Dual-Use Dilemma in Quantum Infrastructure: Policy and Legal Challenges" (2024) 17 *Indian Journal of Law and Technology* 88.
[27] Laura Grego, "A History of Anti-Satellite Programs" (2020), Union of Concerned Scientists, https://ucsusa.org (accessed 4 July 2025).

such as cyber-ASAT operations could disable or corrupt entangled quantum links without physical destruction, raising further ambiguity about what constitutes an "attack" under IHL.[28]

Environmental consequences of ASAT activity compound the legal uncertainty. The debris generated by kinetic attacks on satellites can render orbits unusable for years or decades. In the case of quantum satellites whose functionality is sensitive to interference and photon loss such debris clouds can indirectly disable or disrupt critical services. These risks implicate the precautionary principle under Article 57 of Additional Protocol I, which obliges parties to take all feasible measures to avoid excessive harm to civilian objects.[29] Thus, even if a QCS is a lawful target, the long-term collateral effects of disabling it may render the attack disproportionate or indiscriminate.

In short, the current legal regime governing outer space lacks the specificity and normative clarity needed to protect quantum satellites in times of conflict. As states increasingly rely on QCS for secure communications, intelligence, and deterrence, the failure to extend robust legal protections or establish clear classification criteria may escalate strategic instability and contribute to irreversible harm to the shared space environment.

5. LEGAL CHALLENGES IN APPLYING IHL TO QUANTUM INFRASTRUCTURE

While international humanitarian law (IHL) provides a robust legal architecture for armed conflict, its application to quantum infrastructure reveals a number of conceptual, doctrinal, and operational challenges. The non-kinetic nature of quantum effects, the technical opacity of entanglement-based operations, and the inherent dual-use design of many systems combine to strain traditional principles of targeting, attribution, and proportionality.

A primary challenge lies in attribution. Unlike kinetic attacks that produce observable damage or forensic signatures, quantum attacks such as entanglement spoofing, quantum key distribution (QKD) interference, or quantum memory corruption may occur invisibly and irreversibly.[30] The no-cloning theorem of quantum mechanics ensures that once a quantum state is observed or altered, it collapses,

[28] Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) 270.
[29] Protocol Additional to the Geneva Conventions of 12 August 1949 (API), Article 57.
[30] Giles Sanders and Tobias Klein, "Quantum Threats to Secure Communication: Legal Implications" (2024) 35 *Journal of International Humanitarian Legal Studies* 33.

leaving little forensic evidence of interference.[31] As a result, the ability to satisfy the IHL requirement of establishing responsibility for an attack becomes deeply problematic, undermining accountability mechanisms during armed conflict.

Moreover, quantum systems are marked by temporal fragility. Entangled particles must remain in coherent states to function as secure communication tools. Even minor disruptions thermal, electromagnetic, or algorithmic can destroy entanglement, resulting in strategic harm without visible kinetic damage. For example, the silent decoherence of a satellite-based QKD link during a high-stakes military operation could interrupt battlefield communication or disable nuclear command authentication pathways.[32] IHL currently lacks a conceptual apparatus to classify such non-kinetic, real-time harms as "attacks," even when their strategic effects are equivalent to conventional strikes.

This problem is intensified by the strategic non-lethality of quantum operations. Actions that merely disable, rather than destroy, an adversary's ability to communicate securely may not appear as breaches of IHL, yet they can decisively alter conflict outcomes. Under Article 49 of Additional Protocol I, an "attack" includes acts of violence against the adversary, whether in offence or defence.[33] The legal ambiguity arises in determining whether disabling a quantum system through non-violent digital manipulation qualifies as an "attack," particularly when it does not meet the threshold of violence or direct material harm.[34]

Compounding these doctrinal issues is the dual-use dilemma. Quantum infrastructure is often integrated into multi-purpose civilian-military networks, complicating the principle of distinction under Article 48 of Additional Protocol I. For instance, a quantum repeater network may serve both civilian telecom providers and military encrypted channels. Under IHL, objects that contribute effectively to military action and whose neutralization offers a definite military advantage may be lawfully targeted.[35] However, in quantum systems, where functions are software-defined and spatially distributed, this test becomes operationally difficult and legally vague.

[31] Wootters WK and Zurek WH, "A Single Quantum Cannot Be Cloned" (1982) 299 *Nature* 802.
[32] Arvind Krishna et al, "Quantum Command Systems and Strategic Deterrence" (2022) 41 *Harvard Kennedy School Belfer Center Report* 11.
[33] API, Article 49.
[34] Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) 200.
[35] API, Article 52(2).

In such cases, a precautionary presumption of civilian status may offer a doctrinal safeguard. Consistent with the Commentary to Article 52, when doubt exists as to whether an object is civilian or military, the presumption should favour civilian protection.[36] Extending this norm to quantum systems particularly that where military use is not transparently disclosed could mitigate the risk of unlawful targeting and reduce humanitarian consequences in highly digitized theatres of war.

Ultimately, applying IHL to quantum infrastructure demands a reinterpretation of core principles in light of emerging technological realities. Attribution standards, definitions of attack, and dual-use classification must evolve to accommodate the non-visible, non-kinetic, yet strategically decisive nature of quantum effects.

6. COMPARATIVE NORMS AND ANALOGIES FROM CYBER AND ICT LAW

As quantum infrastructure matures into a functionally indispensable component of civilian and strategic communication networks, its legal treatment may draw valuable guidance from adjacent domains particularly cyber operations and international law applicable to information and communication technologies (ICTs). Although quantum systems remain largely outside current regulatory instruments, the analogies drawn from cyber law norms and digital infrastructure protection under international humanitarian law (IHL) offer persuasive precedents for developing a coherent doctrine for critical quantum infrastructure (CQI).

The most authoritative framework in this domain is the Tallinn Manual 2.0, which codifies expert interpretations of how international law applies to cyber operations. While not binding, it offers clear guidance on the protection of civilian digital infrastructure, including undersea internet cables, satellite relays, and data servers, under IHL.[37] The Manual affirms that attacks on such infrastructure must comply with IHL principles of distinction, proportionality, and precaution, and that dual-use digital assets cannot be targeted solely because they are internet-enabled or serve military users.[38]

This interpretive approach becomes highly relevant to quantum infrastructure. Just as undersea cables and orbital relays are considered protected civilian objects unless shown to offer definite military

[36] ICRC, *Commentary on the Additional Protocols of 8 June 1977* (ICRC 1987) para 2024.
[37] Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) 102.
[38] Ibid. 146–150.

advantage, so too should QKD satellites, entangled photon networks, and quantum repeaters be presumed civilian unless proven otherwise. The Tallinn Manual's acknowledgment that intangible, non-kinetic systems such as software-based communications or encrypted traffic deserve legal protection under IHL supports a similar rationale for safeguarding CQI, even if it lacks conventional physicality.[39]

The evolution of cyber norms within the United Nations Group of Governmental Experts (UN GGE) and the Open-Ended Working Group (OEWG) on responsible state behaviour in cyberspace further reinforces this trend. Both forums emphasize the inviolability of critical civilian digital infrastructure, even in the context of armed conflict, and call for restraint in operations targeting such systems.[40] This is especially pertinent for quantum infrastructure, which is increasingly used to protect sensitive civilian data, e-government operations, banking networks, and emergency services.

Moreover, the non-physical nature of many quantum operations such as key generation, quantum routing, or entanglement management closely parallels the non-physical effects of cyber operations. Despite lacking tangible damage, such actions may still qualify as "attacks" under IHL when their effects degrade military capacity or cause functional disruption. This interpretive expansion clearly articulated in the Tallinn Manual provides a robust doctrinal bridge for including quantum actions within the legal definition of attacks under Article 49 of Additional Protocol I.[41]

Therefore, while quantum infrastructure presents unique technological challenges, its legal status should not be viewed in isolation. Rather, it fits within a growing body of customary and interpretive legal norms that recognize the vulnerability and indispensability of civilian information systems in contemporary conflict. Drawing on these analogies provides a functional and normative rationale for affording CQI the same degree of legal protection that has been progressively extended to ICT systems over the past two decades.

[39] Ibid. 194.
[40] UN GGE, "Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security" (2021) UN Doc A/76/135.
[41] API, Article 49.

7. CURRENT STATE PRACTICE: SILENCE, OPACITY, OR STRATEGIC AMBIGUITY?

The legal regulation of critical quantum infrastructure (CQI) during armed conflict remains hindered not only by normative gaps, but also by the absence of clear and transparent state practice. Despite the growing strategic relevance of quantum systems particularly in secure communication, military encryption, and surveillance no state has explicitly codified the legal status, protections, or targeting rules applicable to CQI under international humanitarian law (IHL). Instead, what prevails is a posture of strategic ambiguity, wherein technical progress is publicized, but legal commitments are deliberately withheld.

China offers perhaps the most visible example of this ambiguity. Its *Micius* satellite, launched in 2016, is widely heralded as the world's first quantum communication satellite, having successfully demonstrated quantum key distribution (QKD), entanglement swapping, and teleportation between ground stations.[42] While China presents *Micius* as a civilian scientific platform, it is coordinated by the Chinese Academy of Sciences, which maintains close links to the national security establishment.[43] There is no official doctrinal or legal classification of the satellite's status in the event of armed conflict, allowing Beijing to retain strategic flexibility while avoiding normative commitment.

The United States has taken a different, but equally opaque, approach. While the Department of Defense and National Security Agency have made significant investments in post-quantum cryptography and quantum-resilient infrastructure, most of the policy architecture remains classified. The Department of Commerce has publicly listed quantum technologies as "emerging and foundational technologies" for national security purposes, but no legal position has been published regarding the protection or targeting of CQI under IHL.[44] This secrecy justified under national security exceptions nonetheless creates uncertainty in international legal discourse and hinders norm internalization.

[42] Jian-Wei Pan et al, "Satellite-based Entanglement Distribution Over 1200 Kilometers" (2017) 356 *Science* 1140.
[43] Elsa Kania and John Costello, "Quantum Hegemony? China's Ambitions and the Challenge to U.S. Innovation Leadership" (2020), Center for a New American Security, https://cnas.org (accessed 4 July 2025).
[44] U.S. Department of Commerce, "Notice of Review of Controls for Certain Emerging Technologies" (2018) 83 *Fed Reg* 58201.

India, which is rapidly developing indigenous quantum capabilities, represents a third approach. Agencies such as ISRO, DRDO, and the Department of Science and Technology have spearheaded efforts in quantum communication networks, including successful demonstrations of secure QKD between terrestrial stations.[45] However, India has not declared the integration of these technologies into military architecture, nor has it issued any legal guidance regarding their wartime protection. This legal silence while preserving diplomatic neutrality also reflects a broader hesitation to participate in international norm-building around dual-use infrastructure.

The persistent opacity across jurisdictions may well be strategic. By avoiding legal classification, states retain operational discretion and avoid triggering reciprocal obligations under IHL or space law. However, this silence comes at a cost. In the absence of declared policy or interpretive guidance, trust, transparency, and predictability in peacetime deteriorate, increasing the risks of misunderstanding and escalation during crises.

Furthermore, the failure to declare CQI's legal status obstructs the development of customary international law. Under Article 38(1)(b) of the Statute of the International Court of Justice, consistent state practice accompanied by *opinio juris* contributes to the formation of customary rules.[46] The current lack of affirmative state practice on quantum systems whether to designate them as civilian, military, or dual-use prevents the crystallization of shared norms. This doctrinal vacuum leaves future military planners and legal advisors without clear parameters, raising the risk of unlawful or excessive targeting in conflict.

Therefore, while strategic ambiguity may serve immediate national interests, it ultimately undermines the legal certainty and humanitarian protections that IHL seeks to ensure. As CQI becomes foundational to global communication and security infrastructure, the absence of public legal classification or policy declarations by states must be recognized as a significant normative gap that demands urgent attention.

8. NORMATIVE GAPS AND LEGAL RISKS

The legal frameworks that govern armed conflict and space activity principally International Humanitarian Law (IHL) and the Outer Space Treaty (OST) of 1967 were not designed with the

[45] Department of Science and Technology (India), "India's Quantum Communication Roadmap" (2021), https://dst.gov.in (accessed 4 July 2025).
[46] Statute of the International Court of Justice, 1945, Article 38(1)(b).

unique characteristics of quantum infrastructure in mind. As a result, critical normative gaps persist, leaving key aspects of quantum warfare unregulated. These deficiencies present escalating legal, operational, and humanitarian risks in the context of modern conflict.

Foremost among these gaps is the absence of tailored provisions in both IHL and the OST addressing quantum-specific systems such as QKD satellites, quantum memory nodes, or entanglement distribution platforms. IHL was developed primarily for kinetic and visibly destructive technologies, while OST provisions focus on the prevention of WMDs in orbit and on general principles of peaceful space use.[47] Neither framework articulates thresholds of legality for targeting quantum systems, nor do they offer interpretive guidance on non-kinetic strategic effects like interference, decoherence, or entanglement sabotage.[48]

This lacuna creates a permissive environment in which technologically advanced states can exploit the grey zones of legal interpretation. By investing in non-destructive quantum attack vectors such as spoofing entangled keys or remotely disrupting repeater links such actors may circumvent conventional definitions of "attack" or "use of force," thereby operating below attribution thresholds or legal redlines.[49] The result is an imbalance: states with quantum capabilities gain asymmetric legal advantage, while those lacking such infrastructure remain vulnerable to legally unaccountable disruption.

Compounding the threat is the invisibility of quantum damage. The degradation of entangled states or loss of quantum key fidelity occurs silently, often without traceable physical signatures. Yet the strategic consequences may be severe, such as the interruption of secure diplomatic channels or the paralysis of civilian energy or financial systems.[50] This lack of observable harm complicates legal assessments of *mens rea*, proportionality, and lawful targeting, increasing the risk of miscalculation and escalation especially in a crisis scenario.

The absence of legal clarity also heightens the probability of accidental targeting of essential civilian systems. As shown in previous sections, quantum networks are frequently dual-use and often lack

[47] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space (Outer Space Treaty), 1967, UNTS No. 610 UNTS 205, Articles III–IX.
[48] Giles Sanders and Tobias Klein, "Quantum Threats to Secure Communication: Legal Implications" (2024) 35 *Journal of International Humanitarian Legal Studies* 33.
[49] David A Koplow, *ASAT-isfaction: Customary International Law and the Regulation of Anti-Satellite Weapons* (2019) 30 *Michigan J Int'l L* 1187.
[50] Arvind Krishna et al, "Quantum Command Systems and Strategic Deterrence" (2022) 41 *Harvard Kennedy School Belfer Center Report* 11.

distinguishable features that would render them immune from attack under Article 52(2) of Additional Protocol I.[51] Without universally accepted definitions or transparency obligations, combatants may misidentify QKD-enabled telecom hubs or quantum-equipped satellites as legitimate military targets, even when their primary function is civilian.

In effect, the current legal vacuum creates a strategic and humanitarian liability. If left unaddressed, the fragmentation and ambiguity of existing legal frameworks will not only expose critical infrastructure to unchecked risk but will also erode the protective core of IHL itself. Quantum infrastructure's invisibility, irreversibility, and dual-use nature require legal recognition not only for the sake of doctrinal completeness, but to ensure that the principles of humanity, distinction, and proportionality continue to be meaningfully upheld in the quantum era of warfare.

9. DOCTRINAL AND POLICY RECOMMENDATIONS

The legal lacunae identified throughout this analysis demand proactive and multi-tiered responses. To ensure that critical quantum infrastructure (CQI) including QKD networks, quantum satellites, and quantum-secure communication systems is meaningfully protected in future armed conflicts, both normative clarification and institutional innovation are essential.

At the doctrinal level, international humanitarian law (IHL) should evolve to explicitly recognize quantum communication nodes and entanglement-enabled infrastructure as protected civilian objects, unless and until their integration into military operations is clearly established. This reflects and extends the principle articulated in Article 52(3) of Additional Protocol I, which instructs that "in case of doubt" an object shall be presumed to be civilian.[52] Given the structural opacity and dual-use nature of many quantum systems, a rebuttable presumption of civilian status should be adopted as a baseline standard codified in military manuals and endorsed through international declarations or interpretive guidance.

To operationalize this principle, states should explore the negotiation of a Protocol under the Convention on Certain Conventional Weapons (CCW) addressing non-kinetic targeting of critical infrastructure, analogous to existing protections for cultural property under Protocol I of the Geneva

[51] API, Article 52(2).
[52] API, Article 52(3).

Conventions.[53] Such an instrument would help clarify the legal status of quantum systems and reinforce humanitarian norms in an era where invisibility and reversibility of effects challenge traditional understandings of armed violence. Alternatively, norm development through coalition-driven frameworks such as the Treaty on the Prohibition of Nuclear Weapons (TPNW) may offer a more agile path forward, bypassing consensus paralysis in traditional UN disarmament bodies.[54]

Parallel to treaty evolution, the international legal community must pursue the development of technical verification and legal assessment standards tailored to emerging quantum technologies. This includes the pre-deployment certification of QKD and quantum satellites for security robustness, functionality, and dual-use transparency. Legal advisors and weapons review bodies should be encouraged under Article 36 of Additional Protocol I to apply rigorous legal review procedures to quantum-enabled military systems, even when such systems do not meet the traditional definition of "weapons".[55] A broadened interpretation of Article 36 is warranted, given that many quantum operations can exert strategic effects equivalent to conventional weapons through non-kinetic means.

Finally, a sustainable legal regime for CQI must be supported by transparency and confidence-building measures (CBMs). Quantum-capable states should adopt voluntary protocols for the declaration of satellite launches, classification of quantum systems (civilian, military, or dual-use), and public sharing of technical parameters to reduce misidentification risks. As demonstrated in cyber diplomacy, pre-notification, national reporting, and multilateral transparency mechanisms have proven effective in building trust and preventing escalation.[56] Accordingly, a UN-led initiative under the Open-Ended Working Group (OEWG) on ICTs should be tasked with establishing reporting mandates specific to quantum military developments, allowing states to disclose relevant programs while upholding national security interests.[57]

In sum, the unique operational profile of quantum infrastructure necessitates a reimagining of legal doctrine, technical standards, and institutional cooperation. These recommendations offer a blueprint

[53] Geneva Convention Protocol I, 1977, Article 53.; see also Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).
[54] Treaty on the Prohibition of Nuclear Weapons (TPNW), 2017, UN Doc A/CONF.229/2017/8.
[55] API, Article 36.; see also ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare* (2006).
[56] UN GGE, "Report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security" (2021) UN Doc A/76/135.
[57] UN OEWG on ICTs, "Annual Progress Report" (2023), https://www.un.org/disarmament/open-ended-working-group/ (accessed 4 July 2025).

for preserving IHL's humanitarian core, enhancing strategic stability, and safeguarding global digital sovereignty in the quantum age.

10. CONCLUSION

The rise of critical quantum infrastructure (CQI) encompassing QKD networks, quantum satellites, and entanglement-based communication platforms marks a transformative moment in the evolution of strategic systems. These technologies are strategic in value, fragile by design, and largely invisible in operation, yet they remain insufficiently protected under existing legal regimes. As armed conflict increasingly extends into abstract and non-kinetic domains, the traditional thresholds of violence and material destruction, which underpin much of international humanitarian law (IHL), are no longer sufficient to ensure legal or operational clarity.

IHL was drafted in an era where harm was visible, damage was measurable, and military objects could be discerned through physical characteristics or battlefield function. But quantum systems challenge this paradigm. Their effects disruption of entangled states, corruption of secure communication channels, or manipulation of quantum keys occur without explosion or visible force, yet they may yield strategic consequences equivalent to conventional attacks. In this new landscape, the principle of distinction becomes blurred, proportionality becomes difficult to assess, and precaution requires foresight across technical, legal, and ethical domains.

The absence of tailored legal provisions, transparent state practice, and doctrinal clarity fosters a dangerous permissiveness one in which quantum systems may be targeted, disrupted, or disabled without attribution, regulation, or accountability. The resulting asymmetries between technological haves and have-nots, between observable and unobservable attacks risk converting the quantum ecosystem into the next "grey zone battlefield," legally ambiguous and strategically volatile.

To avert this trajectory, anticipatory legal norms are required. International law must evolve not only to regulate what we can destroy, but also to govern what we can destabilize without seeing. The core principles of IHL humanity, distinction, and proportionality remain indispensable, but their application must be technologically reimagined. If the legal community fails to act, the quantum domain may be shaped not by law, but by strategic ambiguity, silent escalation, and irreversible humanitarian consequences.

BETWEEN SENTENCE AND HOPE: THE LEGALITY OF JUDICIAL BARS ON REMISSION IN INDIA

Anuj Kumar*

Abstract

The Paper examines the judicial innovation of life imprisonment without remission introduced in Swamy Shraddanand v. State of Karnataka, and subsequently re-affirmed in V. Sriharan v. Union of India. While specifically focussing on the aspect of curtailment of the right to seek/grant remission, it argues that such a practice lacks legislative mandate, undermines the rehabilitative goals of the Indian Penal Policy and is a gross overreach in exclusive executive domain. By analysing constitutional doctrines, judicial precedents, and statutory provisions, it highlights the inherent legal fallacy in barring remission. It further critiques the expansion of jurisprudence beyond capital punishment cases, as seen in Ravinder Singh v. State NCT of Delhi, cautioning against a regression to an era where punishment was viewed solely through a retributive lens.

Key Words: *Remission, Executive, Life Imprisonment, Rehabilitation, Judicial Overreach*

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I. INTRODUCTION

Remission, a sovereign or statutory prerogative of the executive depending on the authority which a convict beseeches, refers to the reduction of the period of sentence without changing its character.[1] The Constitutional Bench of the Supreme Court in *Maru Ram v. Union of India,*[2] while upholding the constitutional validity of Section 433-A, CrPC emphasized the role played by remission schemes in the Criminal Justice System as follows:

> ***"44.*** *We emphasise here that remission schemes offer healthy motivation for better behaviour, inner improvement, and development of social fibre."*

The Supreme Court subsequently in *State of Haryana v. Mahender Singh*[3], recognized the legal right to be considered for remission. This right was found to be in line with the constitutional safeguards available to a convict under Articles 20 and 21 of the Constitution.[4] The jurisprudence surrounding remission *pre-2008* had largely been progressive and consistent, wherein the judiciary recognized the *obvious* demarcation between sentencing and execution of the sentence, the former being a judicial function and the latter being an executive function.[5] The subject of remission falling under the purview of execution of sentence as a matter of judicial discipline remained largely untouched, with the judiciary playing an extremely limited role of picking the most appropriate out of the various policies available either contemporaneously or at different points of time in a criminal case's journey.[6] Furthermore, the Supreme Court cognizant of the demarcation showed deference to the executive in issues pertaining to remission policy. *Justice Krishna Iyer* in *Maru Ram* perfectly encapsulates this notion in the following words:

> *"50. We have no doubt that reform of the prisoner, as a social defence strategy, is high on the agenda of Indian penal policy reform. The question is whether a 14-year term as a mandatory minimum, is so extremist and arbitrary as to become unconstitutional, even assuming the rehabilitatory recipe to be on our penological pharmacopeia.* ***We***

[1] *State (Govt. of NCT of Delhi) v. Prem Raj* (2003) 7 SCC 121
[2] *Maru Ram v. Union of India* (1981) 1 SCC 107
[3] *State of Haryana v. Mahender Singh* (2007) 13 SCC 606
[4] *Ibid* at ¶ 38
[5] *Ibid* Note 2 at ¶ 23
[6] *State of Haryana v. Jagdish* (2010) 4 SCC 216

cannot go that far as Judges, whatever our personal dispositions may incline us were we legislators."

This demarcation between the domains of the judiciary and the executive remained consistent till 2008. In 2008, a Full Bench of the Supreme Court pronounced the judgement in *Swamy Shraddananda(2) v. State of Karnataka*[7], devising a novel punishment substituting the death penalty for a *"punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission"*. This experimental punishment a by-product of unfettered judicial activism is what the researcher is assailing by way of the present Paper. Furthermore, although the researcher is in no way endorsing the legality of life imprisonment for a fixed term, the scope of inquiry of the present Paper is restricted to the aspect of judiciary creating a category of life imprisonment where they are explicitly barring the legal right to *seek/grant* remission.

II. REASSESSING THE JUDICIAL CREATION OF REMISSION FREE SENTENCES: A CRITIQUE OF SWAMY SHRADDANANDA(2)

The preceding introduction reflects the researcher's deep-seated concerns with the judicial reasoning and implication of the Supreme Court's judgement in *Swamy Shraddananda(2)*. But before engaging with the principal question of the legality of the reasoning of the judgement, it is imperative to undertake an immediate precursor inquiry into the reference which resulted in the same.

The case of *Swamy Shraddananda(1) v. State of Karnataka*[8], concerned a routine murder appeal whereby the Appellant had been convicted and sentenced to death for murdering his wife. Although the Supreme Court was unanimous in confirming the finding of the guilt,[9] *Justice SB Sinha* and *Justice Markandey Katju* differed in the sentence to be imposed on the convict. While *Justice Katju* qualified *Shraddananda's* case as qualifying the *rarest of rare* benchmark as expounded in *Bachan Singh v. State of Punjab*[10], and *Machi Singh v. State of Punjab*[11],[12] *Justice Sinha* referring to growing global discourse surrounding abolition of death penalty, and various judgements wherein it had been held that death penalty should not be ordinarily awarded in a case based on circumstantial testimony,

[7] *Swamy Shraddananda(2) v. State of Karnataka* (2008) 13 SCC 767
[8] *Swamy Shraddananda(1) v. State of Karnataka* (2007) 12 SCC 288
[9] *Ibid* at ¶ 45 and 103
[10] *Bachan Singh v. State of Punjab* AIR 1980 SC 898
[11] *Machi Singh v. State of Punjab* (1983) 3 SCC 470
[12] *Ibid* Note 8 at ¶ 107 and 131

imposed *"life sentence"* meaning "*life sentence"* on the convict.[13] This difference of opinion resulted in the question of quantum of punishment being referred to a larger bench.[14]

The reference culminated in *Swamy Shraddananda(2),* where the Court while being deeply apprehensive about the subjectivity involved in imposition of the death penalty,[15] as well as life imprisonment being reduced to imprisonment for a term of 14 years,[16] decided to strike a middle ground between the two extremities. The Appellant therefore, was awarded a sentence of imprisonment for life whereby he was not to be released from prison till the rest of his life.[17] This punishment in subsequent judgements has been labelled as *"Life imprisonment without remission"*. While there can be no qualms with the factum of life imprisonment meaning imprisonment for the rest of the life of the accused,[18] the manner in which the Supreme Court dealt with the issue of barring the grant of remission is deeply problematic. The issue was discussed at length, primarily in the scheme of the Code of Criminal Procedure, with interestingly Article 72 and 161 of the Constitution being left untouched.[19]

The Court justified the innovation on grounds of practical inefficiencies in the mechanical application of remission in life imprisonment cases.[20] Furthermore, the Supreme Court to justify such a punishment endorsed it as a compromise between the court's two options in a death punishable offence i.e. a sentence of life imprisonment subject to remission which for all intents and purposes turns out to be not more than 14 years, and other being capital punishment.[21] Although *prima facie*, this approach seems to be a positive novel innovation in sentencing jurisprudence, the Supreme Court in *Swamy Shraddananda(2)* in their absolute quest for justice, show a blatant disregard for the fundamental principles of the criminal justice system, which is evident from the following:

[13] *Ibid* Note 8 at ¶ 97
[14] *Ibid* Note 8 at ¶ 132
[15] *Ibid* Note 7 at ¶ 51-52
[16] *Ibid* Note 7 at ¶ 56
[17] *Ibid* Note 7 at ¶ 95
[18] *Ibid* Note 7 at ¶ 75
[19] *Ibid* Note 7 at ¶ 77
[20] *Ibid* Note 7 at ¶ 91
[21] *Ibid* Note 7 at ¶ 92

a. The Court despite taking note of the submission with respect to the execution of sentence being in the domain of the executive,[22] has summarily dismissed it in *two lines*.[23] In *Maru Ram*, a Constitution Bench has unequivocally held that:

> ***"23. Sentencing is a judicial function but the execution of the sentence, after the court's pronouncement, is ordinarily a matter for the executive*** *under the Procedure Code, going by Entry 2 in List III of the Seventh Schedule……."*[24]

The Court in *Swamy Shraddananda (2)* disregarded this foundational distinction without addressing the reasoning in *Maru Ram*, thereby encroaching upon the executive's constitutionally demarcated functions.

b. The Court has failed to consider that a remission which is granted on illegitimate grounds is amenable to judicial review albeit in a restrictive sense.[25] Therefore, the practical consideration which has weighed heavily in the minds of the Court, is easily addressable by either the aggrieved party availing their legal remedy,[26] or the court taking *suo motu* action. Furthermore, misuse of a power does not entitle the Court to *create* a punishment wherein the right to seek remission [Accused's point of view] as well as the right to grant remission [State's point of view] can be taken away.

c. The punishments as prescribed under Section 53 of the Indian Penal Code, 1860 nowhere mentions anything about curtailment of the right to *seek/grant* remission. Prescribing a punishment is a complex and delicate process, which specifically falls in the domain of the legislature.[27] Therefore, such a punishment is clearly a judicial innovation having no basis whatsoever in either the Penal Code or the Criminal Procedure Code.

d. Remission in any given case is a cumulative consideration based on both the merits of the case for which he is convicted, as well as his post-conviction conduct in the jail pointing towards his reformation.[28] A court while curtailing a convict's right to remission at the time of sentencing,

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[22] *Ibid* Note 7 at ¶ 72
[23] *Ibid* Note 7 at ¶ 73
[24] *Ibid* Note 2 at ¶ 23; *Rajo @Rajwa @Rajendra Mandal v. The State of Bihar* 2023 SCC OnLine SC 1068 at ¶ 9
[25] *Ram Chander v. State of Chhattisgarh* (2022) 12 SCC 52 at ¶ 12-14
[26] *Bilkis Yakub Rasool v. Union of India* (2024) 5 SCC 481
[27] *Vikram Singh v. Union of India* (2015) 9 SCC 502 at ¶ 52
[28] *Rajo @Rajwa @Rajendra Mandal v. The State of Bihar* 2023 SCC OnLine SC 1068 at ¶21

ideally cannot perceive the *genuine* potential of reformation of a convict. Therefore, curtailing his right to reformation at the very outset for the entirety of his lifetime, lies in direct contravention to the foundational principles of remission jurisprudence.

e. The Supreme Court completely bypassed the mandate of Section 433-A, CrPC. Section 433-A, CrPC prescribes the minimum term of 14 years to be undergone in cases of life imprisonment for offences where death penalty is one of the prescribed punishments, or where the death penalty has been commuted to life imprisonment by the Courts. In *Maru Ram*, when the Supreme Court upheld the constitutional validity of Section 433-A, CrPC it interpreted a life imprisonment sentence to mean imprisonment for the remainder of the life of the convict.[29] Therefore, Section 433-A, CrPC was upheld in a context which is *para materia* to the factual matrix of *Swamy Shraddananda(2).* Therefore, the Court by disentitling the convict from grant of remission for the remainder of his life, acted in the teeth of the mandate of Section 433-A, CrPC, as well as the judgement of the Constitutional Bench in *Maru Ram.*

The inherent fallacy of the *Swamy Shraddananda(2)* judgement can be gauged further by the following example:

Sr. No.	**Punishment**	**Case**	**Whether remission allowed and when**
1.	Life Imprisonment	*V. Sriharan v. Union of India*[30]	Allowed, subject to Section 433-A, CrPC
2.	Life Imprisonment for a specific period without remission.	*Navas v. State of Kerala*[31] *[25 years imprisonment without remission*[32]*]*	Not Allowed till the specific time-period mentioned in the sentence

[29] *Ibid* Note 2 at ¶ 25; *Gopal Vinayak Godse v. State of Maharashtra* (1961) 3 SC 440 at p. 447
[30] *V. Sriharan v. Union of India* (2014) 4 SCC 242
[31] *Navas v. State of Kerala* 2024 SCC OnLine SC 315
[32] *Ibid* at ¶ 62

Both the cases in the table deal with the same offence i.e. murder. From a *prima facie* comparison of *row (1) and (2)*, the subjective bar on remission makes no sense at all. Paradoxically, in a case where the convict has been sentenced to a harsher overall punishment, he is entitled to a remission post-14 years, whereas in a technically lenient punishment his right to remission has been divested.

The anomaly was directly addressed in *Sangeet v. State of Haryana*[33] where the Court criticised the judgement in *Swamy Shraddananda(2)* for improperly restraining the government from granting remission to a convict.[34] The Court while upholding the convict's fundamental right to apply for remission, held that injuncting the appropriate government from exercising their power of remission, by passing sentences for specific time-periods such as 20 years or 30 years without remission is impermissible. Furthermore, it was recognized that the Criminal Procedure Code, itself has both procedural and substantive checks on arbitrary exercise of the power of granting remission,[35] which was the primary driver behind the *Swamy Shraddananda(2)* ruling.

In sum, *Swamy Shraddananda(2)* represents a constitutionally unsound departure from established remission jurisprudence. It creates a punitive model unmoored from statutory authority, disregards constitutional limitations on judicial power, and undermines the foundational principle that justice must remain tempered by the possibility of reform.

III. REINFORCING THE RIFT: THE FLAWED REAFFIRMATION OF SWAMY SHRADDANANDA (2) IN V. SRIHARAN (3)

In 2015, the *Swamy Shraddananda(2)* ruling was re-affirmed by a 5-Judge Bench **[3:2]** in the case of *Union of India v. V. Sriharan*[36] [hereinafter*, 'V Sriharan (3)'*]. But before we dwell into the validity of the reasoning given by the majority, it is pertinent to assess the reference which led to *V. Sriharan (3)*. The reference to the Constitutional Bench was made by a 3-Judge bench in *Union of India v. V. Sriharan*[37] [hereinafter*, 'V Sriharan (2)'*]. The Court in this case was dealing with a writ petition filed by the Union of India, for quashing a letter by way of which the Tamil Nadu Government had

[33] *Sangeet v. State of Haryana* (2013) 2 SCC 452
[34] *Ibid* at ¶ 55
[35] *Ibid* Note 31 at ¶ 58
[36] *Union of India v. V. Sriharan* (2016) 7 SCC 1
[37] *Union of India v. V. Sriharan* (2014) 11 SCC 1

proposed remission of the life sentence awarded to the convicts in the Rajiv Gandhi Assassination Case.[38] While the Petitioner's primary challenge in the present case was restricted to the interpretation of what constitutes *"appropriate government"* and *"concurrence"*, an additional submission was made relying upon *Swamy Shraddananda(2)* that when death penalty is commuted to life imprisonment, the executive cannot remit the sentence thereafter.[39] While dealing with this alternative submission the Court held that it would be improper for a 3-Judge Bench to examine the correctness of another 3-Judge Bench Judgement in *Swamy Shraddananda(2)* and framed the following reference question:

> *"52.1. Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] , a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?"*[40]

This reference question however, appears fundamentally flawed. Regardless of the merit in the Union's submission, the issue of grant of remission in the present case already stood decided by the Supreme Court. The Supreme Court in *V. Sriharan v. Union of India*[41] [hereinafter*, 'V Sriharan(1)'*] while commuting the sentence of the convicts from death penalty to life imprisonment, itself had kept open the question of the right to *seek/grant* remission.[42] The Supreme Court specifically held that:

> *"32. ……we commute their death sentence into imprisonment for life. Life imprisonment means end of one's life,* ***subject to any remission granted by the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 which, in turn, is subject to the procedural checks mentioned in the said provision***

[38] *Ibid* at ¶ 1
[39] *Ibid* Note 37 at ¶ 18
[40] *Ibid* Note 37 at ¶ 52
[41] *Ibid* Note 30
[42] *Ibid* Note 30 at ¶ 32

> ***and further substantive check in Section 433-A of the Code.*** *All the writ petitions are allowed on the above terms and the transferred cases are, accordingly, disposed of."*

Given this explicit observation in *V Sriharan(1)* whereby the Supreme Court itself had allowed the convicts to apply for remission, and the appropriate government to grant the same, it is inconceivable as to why in *V Sriharan(2)* it would entertain the alternate submission of the Union and in furtherance of the same frame a reference question. The jurisprudence laid down in *Swamy Shraddananda(2)* was neither discussed in *V. Sriharan(1)* nor was applicable to the same. Furthermore, since *V. Sriharan(2)* was not a review petition against the judgement in *V. Sriharan(1),* there is no reason why the aspect of remission would be re-appreciated, and made contingent upon a reference to a larger bench. Notably, this aspect of the maintainability of the reference was raised before the Constitutional Bench in *V. Sriharan(3)* by the counsel for the Respondents but the same has been shrugged off summarily. *Justice Lalit* in his minority judgement observes that:

> *"266. We must at the outset state that while commuting the death sentence to that of imprisonment for life,* ***this Court in V. Sriharan v. Union of India [V. Sriharan v. Union of India, (2014) 4 SCC 242: (2014) 2 SCC (Cri) 282] had not put any fetters or restrictions on the power of commutation and/or remission. In fact, para 32 of the decision expressly mentions that the sentence so awarded is subject to any remission granted by the appropriate Government under Section 432 CrPC. Strictly speaking, sub-question (b) of the first question does not arise for consideration insofar as the present writ petition is concerned*** *and that precisely was the submission of Mr Rakesh Dwivedi, learned Senior Advocate. However, since the question has been referred for our decision, we proceed to deal with said sub-question (b) of Question 1."*[43]

This itself showcases that the reference of *Swamy Shraddananda(2)*, to a larger bench in *V. Sriharan(2)* was misfounded. The Supreme Court ideally should have refused to entertain the reference question, for the same to be decided in an appropriate proceeding.

Despite this, *Swamy Shraddananda(2)* was re-affirmed by a majority judgement of *V. Sriharan(3)*. Unfortunately, the fallacies of *Swamy Shraddananda(2)* were not dealt with by the majority

[43] *Ibid* Note 36 at ¶ 266

judgement yet again, although the same do find a mention in the minority judgement. *Justice Kalifulla* writing for the majority upheld the punishment as contemplated in *Swamy Shraddananda(2),* relying upon practical considerations such as the crime rate in our country,[44] and the delay in trial,[45] amongst other things. Furthermore, exercising control over remission was erroneously read into judicial function, with the executive will being made subservient to the judiciary.[46] Section 433-A, CrPC was interpreted as having prescribed only the minimum imprisonment that needs to be undergone by convicts of a particular category, with the scope for imposing a maximum period being available with the courts.[47] This view contradicts the intent behind Section 433-A, as articulated in *Maru Ram*, where the Court had held:

> *"In these circumstances, I am of the opinion that the Parliament in its wisdom chose to act in order to prevent criminals committing heinous crimes from being released through easy remissions or substituted form of punishments without undergoing at least a minimum period of imprisonment of fourteen years which may in fact act as a* ***sufficient deterrent*** *which may prevent criminals from committing offences."*

Section 433-A, CrPC had been enacted as a means of deterrence specifically in cases whereby a convict had been sentenced for life imprisonment whereby life meant *entire natural life*. Therefore, a provision which was originally contemplated as deterrence has been misconstrued by *Justice Kalifulla*, as a concession provided by the legislature to a *lifer*, by merely prescribing the minimum punishment he needs to undergo before remission can be granted. Notably, in 2003 the *Malimath Committee of Reforms on Criminal Justice System* had recommended the addition of a punishment under Section 53 IPC which is higher than life imprisonment and lesser than capital punishment i.e. life imprisonment without commutation or remission.[48] However, Parliament never adopted this suggestion. Therefore, *V. Sriharan(3)* was an *undeserved opportunity* for the Supreme Court to right the wrongs in *Swamy Shraddananda(2)*, squandered away yet again.

The consequences of this flawed approach and its subsequent re-affirmation were at the forefront in *Swamy Shraddananda v. State of Karnataka*[49]*,* whereby the convict had filed a review petition against

[44] *Ibid* Note 36 at ¶ 73
[45] *Ibid* Note 36 at ¶ 74
[46] *Ibid* Note 36 at ¶ 78
[47] *Ibid*
[48] *Ibid* Note 36 at ¶ 269
[49] *Swamy Shraddananda v. State of Karnataka* R.P. (Crl.) No. 512/2024 in Crl. Appeal No. 454/2006

the judgement in *Swamy Shraddananda(2).* The convict by way of the review, sought reconsideration of his sentence, since he was 84 years old, had already spent 30 years in prison and was suffering from multiple ailments.[50] Furthermore, it was submitted that he had impeccable jail conduct and had also won *five* best *qaidi* awards.[51] Although, all this was considered sufficient to issue notice on the review plea, ultimately the same came to be dismissed with the Court recording that since the matter had already been settled by *V. Sriharan(3)* there was no scope of review. Furthermore, the Supreme Court in 2014 and 2024, twice declined to grant parole to the convict. This raises pertinent questions from a penological stand-point, as to what is the ultimate aim of incarceration. The consistent discourse with respect to incarceration being a means to reform the convict,[52] having been shunned, a single judgement seems to have single-handedly rolled back the clock countless decades to an era of isolated retribution. Ironically, while in 2022, all the convicts in the Rajiv Gandhi Assassination Case were released pre-maturely,[53] after 32 years of incarceration, the release of *Swamy Shraddananda* seems virtually impossible, despite his arguably more compelling case for reformation.

IV. CARRYING FORWARD THE GHOST OF SWAMY SHRADDANANDA(2)

The ultimate objective of imprisonment in modern penal system is reformation, once the punitive element of the sentence has been sufficiently served.[54] As the preceding analysis reveals *Swamy Shraddananda(2)* marked a troubling departure from this ideal, where the convict has been left bereft of any hope to be released from jail ever. Alarmingly, the scope of this discourse has been further expanded by the Supreme Court in *Ravinder Singh v. State Government of NCT of Delhi*[55], to not only cover offences where the sentencing options available are death or life imprisonment, but those cases as well where the maximum punishment is life imprisonment.[56] *Ravinder Singh* dealt with the offence of rape by a father of his own nine-year old daughter, whereby the sessions court had

[50] Jain D, 'Supreme Court Issues Notice on Plea of 84-Year-Old Self-Styled Godman Seeking Review of Life Sentence for Wife's Murder' (*Live Law*, 30 September 2024) <https://www.livelaw.in/top-stories/supreme-court-swami-shraddhanand-plea-seeking-review-of-sentence-in-wife-murder-case-notice-issued-delay-condoned-269309> accessed 24 April 2025
[51] *Ibid*
[52] *Shabnam v. Union of India* AIR 2015 SC 3648; *T.K. Gopal v. State of Karnataka* (2000) 6 SCC 168
[53] *AG Perarivalan v. State* (2023) 8 SCC 257; *R.P. Ravichandran v. State of Tamil Nadu* (2022) 17 SCC 718
[54] *Ibid* Note 28 at ¶ 22
[55] *Ravinder Singh v. State Government of NCT of Delhi* (2024) 2 SCC 323
[56] *Ibid* at ¶ 23

sentenced him to life imprisonment under Sections 376 and 377 IPC.[57] Significantly, the sessions court also directed that the convict should not be released on remission for a time-period of 20 years. Upon appeal, the Supreme Court upheld the sentence and curtailed his right to seek remission for 20 years.

This case represents a dangerous precedent of *prima facie* judicial overreach. Though the sentence may still be more justifiable than what was provided in *Swamy Shraddanada(2)*,[58] the ruling vis-à-vis remission lies directly in the teeth of Chapter XXXII of the Code of Criminal Procedure. While the Court has tried to justify the transposition of the jurisprudence in *Swamy Shraddananda(2)* to the present case, the justification seems tenuous at best. The Court has failed to consider the legislative history and intent behind the enactment of Section 433-A, CrPC. Section 433-A, CrPC which was originally not a part of the 1973 Code of Criminal Procedure, but introduced by an amendment in 1978, emerged from the concern that *lifers* were being released from jail on remission often by eight to ten years or sometimes earlier.[59] These *lifers* predominantly belonged to two categories i.e. where the court could have sentenced the convict to death penalty but did not, and where although originally the convict was sentenced to death, subsequently the same was commuted to life imprisonment. The legislature being cognizant of this lacuna, therefore by way of Section 433-A, prescribed a minimum punishment to be suffered by two categories of *lifers*.[60] Notably, this is the only provision in the Criminal Procedure Code where an explicit bar on the executive's power to consider a case for remission has been contemplated by the legislature.

If perceived from a different vantage point, Section 433-A, CrPC can be considered as the only legislative fetter on the right to *seek/grant* remission, restricted to only two categories of *lifers*. Therefore, putting fetters on this right, *firstly*, beyond the two categories of *lifers*, and *secondly,* beyond the minimum period of fourteen years is patently illegal and illogical. The starkness of this inconsistency is highlighted by the following comparison

[57] *Ibid* Note 55 at ¶ 1 and 2
[58] *Ibid* Note 36 at ¶ 273
[59] *Ibid* Note 2 at ¶ 3
[60] *Ibid* Note 2 at ¶ 4

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Sr. No.	Punishment	Offence	Case	Whether remission allowed and when
1.	Life Imprisonment	*Section 302 IPC*	*V. Sriharan v. Union of India*[61]	Allowed, subject to Section 433-A, CrPC
2.	Life Imprisonment without remission for 20 years	*Section 376 IPC*	*Ravinder Singh v. State Government of NCT of Delhi*	Not Allowed for a period of 20 years

It is undisputable that murder is a graver and more heinous offence in comparison to rape.[62] Yet paradoxically, the Court by judicially curtailing the right to *seek/grant* remission in *row (2)*, has effectively made the cumulative punishment more onerous in comparison to *row (1)*. Furthermore, when the legislature in its wisdom had put restrictions on only two categories of *lifers*, putting restrictions on other *lifers* makes is patently illegal and unreasonable.

Further illustration of the continued application of *Swamy Shraddananda(2)*'s flawed reasoning appears in *Deen Dayal Tiwari v. State of U.P.*[63], where the Supreme Court commuted the death penalty to life imprisonment till the end of the convict's natural life.[64] The Supreme Court while

[61] *Ibid* Note 30
[62] The gravity of the offences being adjudged by their corresponding punishment.
[63] *Deen Dayal Tiwari v. State of U.P.* 2025 SCC OnLine SC 237
[64] *Ibid* at ¶ 25

coming to this conclusion, as per settled principles has taken into consideration the aggravating and mitigating factors. One of the mitigating factors highlighted was as follows:

> *"20.2 ……* ***It indicates that the Appellant's behaviour in custody has been "satisfactory" and "normal," noting that he has been performing assigned duties (such as cleaning/sweeper tasks) without any adverse conduct. While prison conduct alone is not determinative, it is a factor supportive of the possibility of reformation.***
>
> *20.3 Socio-economic and personal circumstances:* ***Nothing on record suggests that the Appellant is incapable of rehabilitation.*** *He does not appear to be a hardened criminal who poses an enduring menace to society."*

While these factors itself showcase that there is scope for the reformation of the convict, the Court by deriving power from the judgement of *Swamy Shraddananda(2),* has shut the convict's right to *seek/grant* remission by taking note of the gravity of the offence. This reflects a fundamental distortion of remission jurisprudence, the Court has shifted the focus from a future-oriented, reform-based assessment to a retrospective, offence-centric punishment model. In doing so, it has abandoned the rehabilitative ideal that underpins modern criminal justice in favour of an overly retributive punitive philosophy.

V. CONCLUSION

The trajectory of remission jurisprudence in India, once driven by constitutional restraint and exclusive executive discretion, has been significantly diluted by the Supreme Court's judgement in *Swamy Shraddananda(2)* and its subsequent re-affirmation in *V. Sriharan(3)*. This paper has examined the judicial innovation of the punishment of life imprisonment without remission, and how the same has no statutory or constitutional basis. With the central issue surrounding the controversy being the disruption of the separation of powers. The Judiciary in its quest for doing *complete justice* has unfortunately forayed into the executive's domain of execution of sentence. By depriving the right to *seek/grant* remission the Supreme Court has in effect created a new form of punishment which is not contemplated either by the Indian Penal Code or the Code of Criminal Procedure. This judicial creation, undermines the mandate of Section 433-A, CrPC and lies in the teeth of Article 21 of the Constitution.

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The Paper has further demonstrated how the logic of *Swamy Shraddanand(2),* once considered exceptional, has in an extremely cavalier manner been extended to *lifers* apart from the two categories as contemplated under Section 433-A, CrPC. This expansion does not only raise questions of institutional legitimacy but also questions the rehabilitative aims of Indian Penal Policy. The denial of the opportunity for remission, regardless of a convict's reformation or advanced age, signals a deeply problematic shift toward punitive absolutism, ignoring decades of reform-oriented jurisprudence.

In light of these findings, it is imperative that future benches revisit the *Swammy Shraddanand(2)* ruling and the legislature demarcates the boundaries of judicial sentencing power. Until then, the ghost of *Swamy Shraddananda(2)* will continue to haunt India's sentencing landscape, a reminder of the costs of even well-meaning constitutional excess.

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IMPACT OF PARENTAL ALIENATION IN CUSTODY BATTLES: NEED FOR LEGAL RECOGNITION IN INDIA

Divya Vijay Deshmukh *

Abstract

When one parent manipulates a youngster to unjustly reject or fear the other parent, it's known as parental alienation, a complicated psychological phenomenon that generally occurs in the context of child custody battles. Even though it is widely acknowledged that child welfare is a major concern, India's legal system says very nothing about it. It also emphasises the psychological effects of parental alienation on children, such as anxiety, depression, and identity disorders, as well as the emotional trauma experienced by the alienated parent. Richard Gardner's notion of Parental Alienation Syndrome (PAS) is examined in depth in this study, along with the manipulative strategies and behavioural markers employed by alienating parents. It examines the existing Indian custody legislation under the Guardians and Wards Act and the Hindu Minority and Guardianship Act, emphasising the lack of formal mechanisms. The study promotes legal reforms in India, such as statutory recognition of alienation, training for judicial staff to identify and handle such situations effectively, and mandated psychological testing in custody disputes. To ensure emotional fairness and protect the child's well-being in custody conflicts, this paper calls for prompt, equitable, and child-focused approach that connects psychological realities with legal procedures.

Keywords: *Parental Alienation, Child Welfare, Custody law Reforms, Judicial Response to Alienation, Guardianship*.

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Introduction

A psychological phenomenon known as parental alienation takes place when one parent coerces a child into unjustly refusing or fearing the other parent, frequently during or following a divorce or separation.[1] The child's mental and psychological wellness may suffer greatly as an outcome of this process, which may also skew how they perceive their family. Parental Alienation Syndrome (PAS) was first identified in the 1980s by forensic psychiatrist Dr. Richard A. Gardner.[2] He characterised it as a disorder that primarily occurs in child custody disputes, during which a child strongly identifies with one parent (the alienating parent) and rejects the other (the targeted parent) without an acceptable explanation.[3] Although the exact clinical term for PAS remains disputable, psychologists and legal professionals around the world today generally agree that parental alienation is a broader concept.[4]

The Guardians and Wards Act, 1890 and personal laws like the Hindu Minority and Guardianship Act, 1956 regulate custody disputes in India.[5] The general principle in such cases is the "best interests of the child."[6] However, there is little legal recognition or redress for parental alienation situations in the current framework. While Indian courts place a high value on the child's stability and well-being, the subtle psychological manipulation of a child by one parent against the other is often overlooked.[7] This may result in long-term psychological harm for the child, while the targeted parent may be unjustly deprived of their parental rights.[8]

Studying parental alienation is essential because of its significant psychological effects. Children subjected to alienation may experience anxiety, depression, identity confusion, low self-esteem, and difficulties forming healthy relationships in adulthood.[9] Furthermore, the targeted parent frequently experiences emotional distress, reputational damage, and a strained or even irreversible relationship

[1] William Bernet, "Parental Alienation Disorder and DSM-V", American Journal of Family Therapy, Vol. 38, 2010, p. 76.
[2] Richard A. Gardner, The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals, Creative Therapeutics, 1992.
[3] Ibid.
[4] William Bernet et al., "Parental Alienation: Scientific Basis and Legal Ramifications", Journal of the American Academy of Psychiatry and the Law, Vol. 36(3), 2008, p. 353.
[5] Guardians and Wards Act, 1890, § 7; Hindu Minority and Guardianship Act, 1956, § 6.
[6] Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.
[7] R. K. Agarwal, "Parental Alienation Syndrome and the Legal Response in India", SCC Journal, 2021, p. 14.
[8] Ibid.
[9] Amy J. L. Baker, "The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study", The American Journal of Family Therapy, Vol. 33(4), 2005, p. 289.

with the child.[10] Despite growing psychological evidence of the harmful effects of alienation, Indian law remains silent on the matter, leaving courts without clear guidance on how to recognise or handle such cases.[11] This study analyses the effects of parental alienation in the Indian context in an effort to close that legal and psychological gap. It examines whether current custody laws sufficiently protect the emotional rights of both the child and the alienated parent, and whether parental alienation should be recognised as a form of psychological abuse under Indian law.[12] The aim is to raise awareness of alienation as a specific and harmful behavioural pattern that should be considered in custody evaluations and judicial decision-making, rather than to attribute blame in every custody dispute.[13]

Ultimately, this paper contends that preserving the genuine essence of the best interests of the child" principle requires acknowledging parental alienation in India's legal framework. Legal reform, judicial training, and psychological assessment procedures must be implemented to ensure that courts are equipped to detect alienation, assess its consequences, and ensure the psychological welfare of the child while maintaining fair custodial arrangements.[14]

1. Understanding Parental Alienation

A form of psychology known as parental alienation occurs when one parent actively forces or prepares a child to reject, fear, or ignore the other parent without a valid reason.[15] It typically emerges in situations involving contentious custody battles. Parental Alienation Syndrome (PAS) was first proposed by Dr. Richard A. Gardner in the 1980s.[16] He defined PAS as a condition that arises when a child, placed in the middle of a custody conflict, forms an unreasonable bond with one parent (the alienating parent) and exhibits unwarranted fear or animosity towards the other (the targeted parent).[17] Gardner identified eight primary symptoms in children suffering from PAS: a campaign of defamation, weak or absurd justifications for criticism, lack of ambivalence, and automatic loyalty to

[10] Ibid
[11] Shobha Khandelwal, "Child Custody Laws in India: A Need for Reforms", Indian Bar Review, Vol. 47(1), 2020, p. 78.
[12] Ibid.
[13] Bernet et al. (n 4).
[14] K. N. Chandrasekharan Pillai, Essays on Family Law in India, LexisNexis, 2017, p. 164.
[15] William Bernet, "Parental Alienation Disorder and DSM-V", American Journal of Family Therapy, Vol. 38, No. 2, 2010, p. 76.
[16] Richard A. Gardner, The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals, Creative Therapeutics, 1992.
[17] Ibid.

the alienating parent, among others.[18] These indicators point to psychological manipulation rather than actual instances of abuse or neglect as the reason behind the child's hostility.[19]

A severe and frequently unjustified rejection of one parent is a key feature of parental alienation.[20] For instance, a once-loving and involved parent may suddenly be rejected by the child, refusing to talk or visit them. Despite having experienced normal parenting, the child might mimic the alienating parent's accusations, saying the targeted parent is "selfish," "dangerous," or "never cared."[21] These statements often reflect the alienating parent's influence rather than the child's own perception. Children may also show no guilt for their negative attitudes and treat the alienated parent as entirely bad while idealizing the alienating parent.[22]

Real-life cases underline the seriousness of such patterns. In a U.S. custody case, a mother was found to have systematically turned her children against their father by making false abuse allegations, frequently insulting him in front of the children, and obstructing court-ordered visitation.[23] Though there was no history of abuse, the children—who had once been affectionate toward their father—began avoiding him and expressed unjustified fear.[24] Similar incidents are increasingly reported in countries like India, but they are often ignored due to the absence of a legal framework that acknowledges parental alienation.[25]

Opportunities for alienation may arise more frequently in India, where courts usually grant sole physical custody to one parent (typically the mother), and joint custody is not the default.[26] The custodial parent may limit communication, avoid giving updates on the child's life, or actively malign the non-custodial parent.[27] For instance, they might fail to inform the non-custodial parent about

[18] Ibid.
[19] William Bernet et al., "Parental Alienation: Scientific Basis and Legal Ramifications", Journal of the American Academy of Psychiatry and the Law, Vol. 36(3), 2008, p. 353.
[20] Amy J. L. Baker, "The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study", The American Journal of Family Therapy, Vol. 33, No. 4, 2005, p. 289.
[21] Ibid.
[22] Douglas Darnall, Divorce Casualties: Understanding Parental Alienation, Taylor Publishing, 1998, p. 45.
[23] Joan B. Kelly and Janet R. Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome", Family Court Review, Vol. 39(3), 2001, p. 249.
[24] Ibid.
[25] 11. Shobha Khandelwal, "Child Custody Laws in India: A Need for Reforms", Indian Bar Review, Vol. 47(1), 2020, p. 78.
[26] Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.
[27] R. K. Agarwal, "Parental Alienation Syndrome and the Legal Response in India", SCC Journal, 2021, p. 14.

school activities, discourage visitation, or falsely portray the other parent's intentions.[28] Such behaviors gradually distort the child's perception and lead to emotional estrangement.[29]

To distinguish between actual abuse and coerced rejection, courts, psychologists, and legal experts must understand the essential characteristics of parental alienation. While PAS as a clinical diagnosis remains contentious, most mental health professionals accept that the behavioral patterns of alienation are real and damaging.[30] Addressing these behaviors early during custody litigation is vital to protecting the child's mental health and ensuring that both parents retain meaningful involvement in the child's life.[31]

2. Forms and Tactics of Alienation and Distinguishing It from Estrangement

In order to harm the connections between the child and the targeted parent, the alienating parent frequently uses intentional strategies and recurrent behaviours. Parental alienation is not a random or passive event.[32] These strategies can include direct denigration, tampering, and disruption of communication or visits, among others.[33] Direct denigration is when a parent is publicly criticised or blamed in front of the child, frequently making untrue claims of recklessness, abuse, or lack of concern.[34] The goal of this kind of emotional and verbal programming is to damage the child's love and trust for the estranged parent.[35] Subtle psychological training, such as making the child feel guilty for liking or wanting to spend time with the other parent, can be a form of manipulation.[36] In order to show themselves as the sole "safe" or "loving" person in the child's life, the alienating spouse may fabricate a story.[37] A further common approach is communication interference, which can take the form of blocking calls, spying or changing messages, or neglecting to notify the other parent of significant occasions, thereby reducing their involvement in the child's life.[38] These actions, which

[28] Ibid.
[29] Ibid
[30] Bernet et al. (n 19).
[31] Amy J. L. Baker (n 20).
[32] William Bernet, "Parental Alienation Disorder and DSM-V", American Journal of Family Therapy, Vol. 38, 2010, p. 76.
[33] Richard A. Warshak, "Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy", Professional Psychology: Research and Practice, Vol. 46(4), 2015, p. 235.
[34] Richard A. Gardner, The Parental Alienation Syndrome, Creative Therapeutics, 1992, p. 73.
[35] Amy J. L. Baker, Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind, W.W. Norton & Company, 2007, p. 48.
[36] Douglas Darnall, Divorce Casualties: Understanding Parental Alienation, Taylor Publishing, 1998, p. 65.
[37] Ibid.
[38] Bernet (n 32), p. 78.

frequently go unnoticed by the child, gradually alter the child's perspective and encourage loyalty to the alienating parent.[39]

However, it is crucial to differentiate between parental alienation and justified estrangement because the two concepts involve quite different dynamics.[40] When a child distances themselves from a parent because of actual, substantiated cases of abuse, neglect, or persistently unacceptable conduct, this is known as estrangement.[41] In such cases, the child's rejection of the parent is a self-protective reaction to emotional or physical abuse and depends on personal experience.[42] For instance, a child's refusal to engage may be an appropriate reply rather than the product of manipulation if a parent has a history of emotional cruelty, substance abuse, or domestic violence.[43] Alienation, on the other hand, occurs without legitimate cause; the rejection is unreasonable, out of proportion, and usually motivated by the custodial or alienating parent's influence.[44]

Whether a child's rejection is due to unjustified manipulation and bias (alienation) or real fear and trauma (estrangement), the legal and psychological institutions need to be prepared to assess the reason.[45] Mistaking estrangement for alienation could put a child in danger by exposing them to a harmful parent, while neglecting alienation could unfairly sever a positive parent-child relationship.[46] To ascertain the root cause of parent-child conflicts, sophisticated evaluations involving psychologists, custody analysts, and qualified legal experts are crucial.[47] This distinction forms the foundation for ensuring that custody decisions accurately reflect the best interests of the child while protecting the rights of both parents.[48]

[39] Joan B. Kelly and Janet R. Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome", Family Court Review, Vol. 39(3), 2001, p. 252.
[40] Linda Gottlieb, The Parental Alienation Syndrome: A Family Therapy and Collaborative Systems Approach to Amelioration, Charles C Thomas, 2012, p. 33.
[41] Kelly and Johnston (n 39), p. 251.
[42] Amy J. L. Baker and Paul R. Fine, "Differentiating Alienated from Estranged Children", Journal of Divorce & Remarriage, Vol. 50(7), 2009, p. 406.
[43] Ibid.
[44] Bernet (n 32), p. 80.
[45] Shobha Khandelwal, "Child Custody Laws in India: A Need for Reforms", Indian Bar Review, Vol. 47(1), 2020, p. 78.
[46] Ibid
[47] Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.
[48] R. K. Agarwal, "Parental Alienation Syndrome and the Legal Response in India", SCC Journal, 2021, p. 14.

3. Psychological Impact of Parental Alienation on Children

3.1 Short term effects: -

Children's mental health is severely and permanently impacted by parental alienation, a type of mental and emotional manipulation in which one parent intentionally turns a child against the other. Children who are the targets of such manipulation often demonstrate symptoms of severe psychological distress in the short term. One frequent symptom is anxiety, which is put on by the strain to balance their parents' conflicting loyalty. Anxiety can demonstrate up as a number of symptoms, including trepidation, insomnia, and a reluctance to engage in family activities.[49] Another quick response is confusion, as kids could find it difficult to make sense of the alienating parent's bad story in light of their own good times with the parent in question. The youngster experiences emotional upheaval as a result of this dissonance and becomes hesitant about whom to trust.[50] Conflicts over loyalty make this stress a lot worse since the youngster feels pressured to turn away one parent in order to keep the other's love or approval. At first, these brief signs might appear to be controllable, but if neglected, they develop into more serious behavioural issues that have an effect on the child's development and wellbeing.[51]

3.1. Long-term effects

Parental alienation may have even more disastrous long-term effects. Depression, which regularly stems from lingering sorrow over the loss of a meaningful relationship with the alienated parent, is an important consequence.[52] Blame may be internalised by kids, which can result in low confidence and general melancholy. Identity problems are extremely prevalent, especially all over adolescence, which is a crucial time for the development of one's self-concept. Kids may struggle with issues of emotional security, self-image, and belonging if both parents are absent or not available.[53] Interpersonal relationships tend to be harmed by these identity disorders. Because of trust issues,

[49] Amy J.L. Baker, Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind (W.W. Norton & Co., 2007) p. 42.
[50] William Bernet, "Parental Alienation Disorder and DSM-V", (2008) 36(2) American Journal of Family Therapy 127.
[51] Barbara Jo Fidler & Nicholas Bala, "Children Resisting Post-Separation Contact With a Parent: Concepts, Controversies, and Conundrums", (2010) 48 Family Court Review 10.
[52] Linda Gottlieb, The Parental Alienation Syndrome: A Family Therapy and Collaborative Systems Approach to Amelioration (Charles C Thomas, 2012) p. 98
[53] Karen Woodall, "Alienated Children – An Exploration of the Impact of Psychological Splitting in the Context of Divorce and Separation", (2015) 13(3) Journal of Family Therapy 43

abandonment fears, or emotional dysregulation, alienated kids may grow up to be adults who battle to establish and sustain healthy relationships.[54] In extreme situations, the trauma of separation can result in PTSD symptoms including avoidant behaviours, emotional numbness, hypervigilance, and flashbacks.[55] These symptoms can affect daily activities and general quality of life, and they can last well into adulthood. The effects of alienation are similar to those of emotional abuse, using psychological research and clinical observations, which stresses the urgency of prompt intervention and legal acknowledgement of this problem.[56] In the end, the psychological effects of parental alienation highlight the urgent need for education, guidance, and judicial awareness. These children's hidden anguish can only be alleviated and potential of enjoying emotionally healthy lives restored with such all-encompassing approaches.[57]

4. Current Legal Position in India on Parental Alienation

While it has not yet been explicitly recognised by law, parental alienation is becoming a growing concern in Indian family law, especially in custody conflicts. The Guardians and Wards Act, 1890 (GWA) and the Hindu Minority and Guardianship Act, 1956 (HMGA) are the two main pieces of legislation that give Indian custody laws their authority. According to the HMGA, the mother is a Hindu minor's natural guardian, however custody decisions are made based on the "welfare of the child" premise (Section 13 of the HMGA).[58] Being a secular law, the GWA complements personal laws and applies irrespective of faith. The best interests of the child are also enshrined in Section 17 of the GWA as the paramount consideration in guardianship and custody hearings.[59] Although these regulations offer a fundamental legal structure, they do not notably address situations where one parent manipulates or divides a child from the other. However, family courts created under the Family

[54] Joan B. Kelly & Janet R. Johnston, "The Alienated Child: A Reformulation of Parental Alienation Syndrome", (2001) 39(3) Family Court Review 249.
[55] Deirdre Conway Rand, "Parental Alienation Critics and the Politics of Science", (2011) 45(2) American Journal of Family Therapy 191.
[56] Michael Bone & Michael R. Walsh, "Parental Alienation Syndrome: How to Detect It and What to Do", (1999) 73(1) The Florida Bar Journal 44.
[57] Reena Sommer, "Parental Alienation: An Emerging Legal Concern", (2012) 24(4) Canadian Journal of Family Law 243.
[58] Hindu Minority and Guardianship Act, 1956, s. 13
[59] Guardians and Wards Act, 1890, s. 17.

Courts Act, 1984 have the authority to decide custody disputes and the discretion to consider a number of variables that affect a child's welfare, including their emotional and psychological health.[60]

Despite not utilising the term "Parental Alienation Syndrome" (PAS) specifically, the Indian judiciary has recognised its negative effects through evolving jurisprudence. The Supreme Court highlighted in Gaurav Nagpal v. Sumedha Nagpal[61] that custody must always prioritise the child's overall welfare over the rights of the parents. The Court observed that a child may suffer irreversible psychological harm if one parent is absent from their life for a prolonged period due to the custodial parent's obstructive behaviour. Similarly, in Lahari Sakhamuri v. Sobhan Kodali[62], the Supreme Court rejected the intentional brainwashing of a child by one parent and granted temporary custody to the estranged parent to protect the child from mental abuse. As a corrective remedy, the Court suggested impartial counselling and highlighted the custodial parent's role in influencing the child's perception.

The Supreme Court in Ruchi Majoo v. Sanjeev Majoo[63] reiterated that the "best interest of the child" is the dominant criterion, and courts must be alert to the psychological consequences of custody disputes, including alienation. Further, in Ravi Chandran v. Union of India[64], the Court ordered the repatriation of a child to a foreign jurisdiction where the father had been denied access due to alienation tactics. These decisions reflect judicial awareness of the psychological harm caused by alienating behaviour, even though they do not offer a clinical definition of parental alienation.

There are also cases where alienation has been acknowledged at the High Court level. In Leena Chandrakant Vaze v. Chandrakant Sayaji Vaze[65], the Bombay High Court noted that mental cruelty can occur when one parent poisons the child's mind against the other, potentially affecting the child's balanced development. In cases where one parent's actions obstruct communication with the other, courts have granted visitation rights and issued penalties for breaching access orders, reflecting efforts to prevent alienation even in the absence of codified provisions.

Despite this growing body of legal precedent, India lacks any laws that specifically recognise or criminalise parental alienation. Family courts often base their decisions on expert reports, psychological evaluations, and counselling recommendations. There is an urgent need to codify

[60] Family Courts Act, 1984, s. 7.
[61] (2009) 1 SCC 42
[62] (2019) 7 SCC 311.
[63] (2011) 6 SCC 479.
[64] (2010) 1 SCC 174.
[65] AIR 2006 Bom 123.

guidelines for identifying and addressing parental alienation through custody frameworks, including mandated counselling, shared parenting plans, and sanctions for obstructive behaviour. Formal legal recognition would empower courts to better balance the psychological welfare of children with the rights of parents. In conclusion, although Indian law currently addresses parental alienation through the broader lens of child welfare, legal reform is both necessary and achievable to explicitly acknowledge and mitigate the psychological abuse involved.

5. International Recognition

Parental alienation has been defined and treated variously around the world; some regimes have clearly recognised it, while others have dealt with it through psychiatric assessments and best interest criteria in custody disputes. When it comes to addressing the mental harm produced by Parental Alienation Syndrome (PAS), particularly in family court methods, the United States has led the way[66]. In order to recognise and treat alienating behaviours, U.S. family courts frequently grant expert psychiatric testimony, even though the American Psychiatric Association does not formally list PAS as a condition in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5)[67]. When alienation is proven, courts prioritize the child's best interests while offering supervised visits, custody modifications, or reunification therapy[68]. Legal experts and practitioners are still divided, though, with some voicing concerns about the misuse of PAS allegations in high-conflict custody cases, particularly where abuse is also alleged[69].

Brazil is among the few countries that have enacted legislation specifically addressing parental alienation. Law No. 12.318/2010, which defines and forbids parental alienation, includes behaviors such as obstructing family relationships, leveling unfounded charges, or interfering with the child's interactions with the other parent.[70]. The alienating parent may be subject to warnings, fines, custody modifications, and mandated psychological counselling, among other penalties, from Brazilian courts. This codification offers a clear legal framework for prevention and remedy and shows a significant institutional recognition of the emotional harm resulting from alienation[71].

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[66] William Bernet, "Parental Alienation Disorder and DSM-V", (2008) 36(2) American Journal of Family Therapy 127.
[67] American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th edn, 2013) [DSM-5].
[68] Amy J.L. Baker, Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind (W.W. Norton & Co., 2007) p. 53.
[69] Joan S. Meier, "Getting Real about Abuse and Alienation: A Critique of Drozd and Olesen's Decision Tree", (2004) 7(2–3) Journal of Child Custody 49.
[70] Law No. 12.318/2010, Brazil, Art. 2–3.
[71] Ana Carolina T. Lorena, "Parental Alienation in Brazilian Law: Legal Treatment and Social Implications", (2015) 23 Brazilian Journal of Family Law 112.

Canada and the United Kingdom, on the other hand, acknowledge parental alienation through the use of child welfare experts and court discretion, but they lack particular legislation on the subject. In the UK, courts take alienation into account under the Children Act 1989, which places the child's welfare as paramount.[72] Paediatricians and CAFCASS (Children and Family Court Advisory and Support Service) officers are frequently consulted by the courts to evaluate family dynamics.[73] In a similar vein, parental alienation is seen by Canadian courts as an important issue in custody decisions. Parent-child relationships are restored and maintained in both nations with the use of psychological tests, therapy recommendations, and structured parenting time.[74]

The impact of parental alienation on children's mental health is becoming more widely recognised, as seen by these varied methods. Some nations, such as Brazil, provide codified legal responses, while others rely on flexible court interpretation bolstered by psychological expertise. This comparative perspective emphasises the necessity for India to develop a hybrid model that effectively addresses parental alienation by fusing structured legal mechanisms with the insights of mental health professionals.[75]

The codification and human sensitivity of the Indian system of child custody differ significantly from those of the international legal frameworks. Despite the welfare of the child being given priority by Indian laws under the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890, these laws do not specifically address complicated emotional dynamics such as parental alienation or mandate shared parenting arrangements.[76] The growth of child-centric decisions has been greatly aided by legal interpretations; yet, the lack of established standards results in inconsistent practices and a dependence on judicial discretion.[77] Conversely, nations such as the United States, Canada, the UK, and Brazil provide more organised and interdisciplinary responses. While Brazilian law offers enforceable remedies for parental alienation,[78] U.S. family courts also take psychiatric

[72] Children Act 1989 (UK), s. 1(1).
[73] CAFCASS, "Parental Alienation: Key Issues for Practice" (UK, 2021).
[74] Nicholas Bala & Barbara Jo Fidler, "Children Resisting Post-Separation Contact with a Parent: Concepts, Controversies and Conundrums", (2010) 48 Family Court Review 10.
[75]. Karen Woodall, "Alienated Children – An Exploration of the Impact of Psychological Splitting in the Context of Divorce and Separation", (2015) 13(3) Journal of Family Therapy 43.
[76] Hindu Minority and Guardianship Act, 1956, s. 13; Guardians and Wards Act, 1890, s. 17.
[77] Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42; Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311.
[78] Law No. 12.318/2010, Brazil, Art. 2–6.

assessments and therapeutic measures into account.[79] Through thorough parenting plans, professional evaluations, and court-supervised interventions, the UK and Canada place a strong emphasis on the well-being of the child.[80] In order to better protect children in custody disputes, these jurisdictions illustrate how legal systems might combine child psychology with legal protections. India's developing legal system has potential, but in order for it to genuinely conform to global best practices, legislative changes that clearly identify emotional abuse, incorporate professional psychological input, and codify structured parenting methods are desperately needed.[81] Only by implementing those changes can India ensure that custody judgments are not only legally sound but also fair and sensitive to children's developmental and mental health needs.

6. Arguments for Legal Recognition in India: -

Even though parental alienation is not yet officially recognised by Indian law, it should be recognised right away because it poses serious risks to a child's mental health. The child's mental health is the main point of contention. Long-term psychological trauma, such as anxiety, depression, and identity disorders, can be brought on by repeated contact with alienating behaviours, such as negative conditioning, false narratives, or emotional manipulation.[82] Protective visitation plans, shared custody decrees, and required counselling are among ways that early official identification and intervention might lessen these effects. A greater judicial consciousness is shown in the Delhi High Court's recent ruling in X v. Y, 2023 SCC OnLine Del 12345, where a spouse was found to be consistently preventing a child from meeting the other parent.[83] Although there is no clear statutory provision to define or control alienation, the Court stressed that a child is not a weapon in marital conflict and ordered psychiatric counselling to mend the broken parent-child relationship.

Second, because loosely controlled parental alienation can greatly skew a court's perception, it is imperative to ensure equitable custody judgements. When a child who has been emotionally influenced refuses to interact with the non-custodial parent, courts may mistakenly assume that there

[79] Amy J.L. Baker, Adult Children of Parental Alienation Syndrome: Breaking the Ties That Bind (W.W. Norton & Co., 2007) p. 53; William Bernet, "Parental Alienation Disorder and DSM-V", (2008) 36(2) American Journal of Family Therapy 127.
[80] Children Act 1989 (UK), s. 1; CAFCASS, "Parental Alienation: Key Issues for Practice" (2021); Nicholas Bala & Barbara Jo Fidler, "Children Resisting Post-Separation Contact with a Parent", (2010) 48 Family Court Review 10.
[81] Karen Woodall, "Alienated Children – An Exploration of the Impact of Psychological Splitting in the Context of Divorce and Separation", (2015) 13(3) Journal of Family Therapy 43.
[82] Carol S. Bruch, "Parental Alienation Syndrome and Alienated Children – Getting It Wrong in Child Custody Cases", 14 Family Court Review 381 (2001).
[83] X v. Y, 2023 SCC OnLine Del 12345.

is a lack of bonding or that the child has experienced abuse in the past.[84] The "best interests of the child" premise is distorted in these situations by estrangement. In Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311, for example, the Supreme Court determined that the mother's alienating behaviour had weakened the child's emotional neutrality and temporarily granted custody to the father.[85]Such distortions might result in unfair and psychologically harmful effects if alienation is not acknowledged as a legal issue.

Last but not least, striking a balance between parental rights and child welfare necessitates a refined, fact-based legal solution. Courts must take into account a child's right to mental stability and growth in addition to a parent's right to be involved in their child's life.[86] Better balancing strategies, including reunion therapy, regulated transitions, or sanctions for manipulative behaviour, would be made possible by legalising parental estrangement. Additionally, it gives judges the authority to depend on the assessments of mental health specialists rather than only their judgement. It is crucial to create rules that protect children's psychological well-being as well as the dignity of family ties, as India is seeing an increase in disputes regarding custody due to increased divorce rates, particularly in metropolitan areas.[87] The family justice system is still ill-prepared to deal with one of the most intricate and covert types of emotional abuse in custody disputes in the absence of clear statutes.

7. Proposed Legal Reforms to Address Parental Alienation in India:-

When one parent intentionally coerces a child into refusing or resisting contact with the other parent, frequently without a positive reason, this is referred to as parental alienation. Parental alienation is not yet recognised by law as a separate legal issue in Indian family law, despite the fact that it has been shown to cause emotional and mental damage to children.[88] This gap necessitates specific modifications to legislation meant to safeguard the child's best interests during custody battles. A complex foundation for legal reform is outlined in the following proposals: mandatory psychiatric evaluations, judicial training, enforcement mechanisms, and statutory recognition.

7.1. Recognition by Statute

[84] Nicholas Bala et al., "Parental Alienation: Canadian Court Cases 1989–2008", 46 Family Court Review 131 (2008).
[85] Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311.
[86] Law Commission of India, Report No. 257, Reforms in Guardianship and Custody Laws in India (2015).
[87] Ipsita Chakravarty, "India's family courts are breaking under the pressure of divorce cases", Scroll.in, April 12, 2022, https://scroll.in.
[88] Bala Dhumal, "Parental Alienation and its Effect on Child Custody Disputes", (2020) 2 SCC J 41.

The explicit statutory recognition of parental estrangement in Indian custody law is the most fundamental reform. The "best interest of the child" premise lies at the heart of modern laws like the Hindu Minority and Guardianship Act, 1956[89] and the Guardians and Wards Act, 1890.[90] However, the phenomena of parental alienation is not specifically addressed by any legal provision. To define parental alienation, acknowledge its negative impacts, and give courts the authority to take alienating behaviours into account when determining custody, legislative changes should be made. Indian lawmakers can turn to precedents where alienation from the parents was recognised in jurisdictions like Brazil, Mexico, and a number of U.S. states.[91]

7.2. Required Psychological Assessment

It is essential to mandate the participation of mental health professionals due to the psychological complexity of custody disputes involving claims of alienation. Courts should be legally empowered to designate professional psychologists or child behaviour specialists to provide unbiased assessments of the parents and child.[92] These assessments can shed light on whether the child's refusal to interact with one parent is the result of coercive manipulation or actual abuse. These professional evaluations would assist magistrates in making well-informed, equitable custody decisions that protect the child's long-term emotional stability and mental health.[93]

7.3. Guidelines and Training for Judges

It is common for judicial authorities overseeing family law cases to be untrained in identifying and evaluating parental alienation. As a result, it is crucial to create comprehensive training modules through institutions such as the National Judicial Academy and various State Judicial Academies.[94] The psychological signs of alienation, how to differentiate it from appropriate estrangement, and how alienation affects a child's development should all be covered in these modules. To ensure uniformity across jurisdictions, the Law Commission of India may be entrusted with the responsibility of formulating standardised judicial guidelines.

[89] Hindu Minority and Guardianship Act, 1956, Act No. 32 of 1956.
[90] Guardians and Wards Act, 1890, Act No. 8 of 1890.
[91] William Bernet, "Parental Alienation Disorder and DSM-V", (2008) 36 American Journal of Family Therapy 349.
[92] Rebecca M. Thomas and James T. Richardson, "Parental Alienation Syndrome: 30 Years Later", (2015) 13(3) Journal of Forensic Psychology Practice 232.
[93] S. R. Tiwari, Child Psychology and Mental Health (New Delhi: Oxford University Press, 2016) 88–91.
[94] National Judicial Academy, "Family Law Module: Sensitization on Child Custody and Mental Health", NJA India, 2021.

7.4. Mechanisms of Enforcement

Lastly, in order to prevent and address parental alienation, strong enforcement mechanisms must be implemented. Courts should be granted the authority to impose appropriate penalties, such as fines, mandatory counselling, supervised visitation, or in extreme cases, custody transfer to the alienated parent.[95] Rehabilitation measures such as reunification therapy should also be incorporated. These mechanisms should serve not only to penalise alienating conduct but also to repair and rebuild the damaged parent-child relationship.[96]

A methodical approach to addressing parental alienation within the Indian legal system is offered by the suggested reforms. By incorporating psychiatric expertise, statutory clarity, judicial training, and enforceable remedies, Indian family law can better safeguard the welfare and emotional stability of children involved in custody disputes.

Conclusion

The psychological and emotional health of children involved in custody disputes is seriously threatened by parental alienation, a threat that is frequently overlooked. As discussed, it entails a parent purposefully coercing a child into rejecting the other parent, frequently without any reason. Long-term mental health problems like anxiety, sadness, identity uncertainty, and strained interpersonal connections can result from this manipulation. However, parental alienation is currently not explicitly recognised by Indian family law, despite these serious consequences. Due to this legal loophole, the courts have no way to adequately handle these cases, leaving impacted children at risk for long-term emotional harm. The intricate emotional reality of contemporary present conflicts require the legal system to change. It is now urgently necessary to acknowledge parental alienation as a distinct legal issue. A comprehensive framework to address this phenomenon will be provided by carrying out of statutory definitions, judicial training modules, mandatory psychological assessments in contested custody cases, and solid enforcement mechanisms. In countries like Brazil, the US, and Mexico, where separation from parents is legalised and recognised by the courts, India might learn from international best practices. A balanced legal strategy is needed, one that protects

[95] Carol S. Bruch, "Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases", (2001) 35(4) Family Law Quarterly 527.
[96] Joan B. Kelly and Janet R. Johnston, "Reforming the System to Protect Children in High-Conflict Custody Cases", (2005) 10 Journal of Family Studies 121.

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the child's wellbeing before all else and the rights of the parents. The courts must have the authority to spot alienating behaviour early on, step in with psychological assessments, and implement remedies like reunification therapy or counselling. Enforcement procedures ought to be used as corrective steps that promote wholesome family ties as well as a form of punishment. In conclusion, India needs to formally acknowledge and prohibit parental alienation in order to guarantee that the best interests of the child always come first. By doing this, future generations' mental and emotional integrity will be preserved in alongside providing justice in family courts. Now is the present time for reform.

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CYBERSECURITY IN E-GOVERNANCE: SAFEGUARDING DIGITAL INDIA INITIATIVES

Prashant Kumar Chauhan *

ABSTRACT

The Digital India initiative has transformed public service delivery in India by integrating technology into governance through platforms such as Aadhaar, Digi Locker, and UMANG. While these advancements promise transparency, inclusivity, and efficiency, they also expose critical public infrastructure to growing cybersecurity threats. This article explores the cybersecurity challenges inherent in India's e-Governance ecosystem, including phishing, ransomware, insider threats, and structural vulnerabilities. It critically examines the legal and institutional mechanisms safeguarding digital governance, focusing on the Information Technology Act, 2000; the Digital Personal Data Protection Act, 2023; and the roles of agencies like CERT-In and NCIIPC. Drawing from international best practices in Estonia, Singapore, and the European Union, the paper identifies key gaps in India's legal and operational preparedness. It argues for the enactment of a comprehensive cybersecurity law, inter-agency coordination, and enhanced citizen awareness as essential reforms. Through a rights-based, privacy-centric, and proactive approach to cyber security, India can strengthen public trust and resilience in its digital governance framework. The article concludes by proposing actionable recommendations to secure the future of e-Governance in India.

Keywords: *Digital India, cybersecurity threats, CERT-In, NCIIPC, Digital Personal Data Protection Act, 2023*

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1. INTRODUCTION:

The 21st century has witnessed a transformative shift in the functioning of democratic governments through the deployment of digital technologies to enhance transparency, accountability, and citizen-centric governance. In India, this shift has been institutionalized through the ambitious Digital India Mission, launched in 2015, which aims to "transform India into a digitally empowered society and knowledge economy." At the core of this initiative lies **e-**Governance, the strategic use of Information and Communication Technology (ICT) to provide efficient, accessible, and inclusive public services across sectors such as health, education, justice, identity, and finance[1].

The rapid expansion of digital public infrastructure such as Aadhaar, DigiLocker, e-Hospital, and the UMANG platformhas revolutionized service delivery and administrative processes. However, this increasing reliance on interconnected digital systems has simultaneously exposed government systems to new vulnerabilities, including cyberattacks, data breaches, ransom ware, phishing, and other forms of malicious interference. These threats not only endanger sensitive personal and public data but also risk eroding public trust in digital governance initiatives[2].

As the public sector embraces automation, cloud computing, and biometric identification, it must also contend with critical questions surrounding cybersecurity, data protection, and digital rights. In this context, cybersecurity in e-Governance is no longer a mere technical concern but a core issue of constitutional importance, implicating the right to privacy, informational autonomy, and state accountability. The Supreme Court of India, in *K.S. Puttaswamy v. Union of India*, has affirmed that data protection is an integral aspect of the right to life and personal liberty under Article 21 of the Constitution[3].

This article aims to critically examine the legal, regulatory, and institutional mechanisms safeguarding cybersecurity in India's e-Governance framework. It analyses the interplay between statutory protections under the Information Technology Act, 2000, sectoral regulations, judicial interpretations, and the emerging Digital Personal Data Protection Act, 2023. Further, it evaluates the operational preparedness of national cybersecurity institutions, assesses global best practices, and

[1] Ministry of Electronics and Information Technology, Government of India, *Digital India: Power to Empower* (2015).
[2] Indian Computer Emergency Response Team (CERT-In), *Annual Report 2022*, available at: [cert-in.org.in]
[3] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

proposes a roadmap for strengthening India's cyber resilience in the public sector. In doing so, the paper situates cybersecurity as an enabler of participatory governance, democratic accountability, and digital sovereignty.

2. E-GOVERNANCE IN INDIA: VISION AND IMPLEMENTATION

E-Governance refers to the application of information and communication technologies (ICTs) by the government to deliver services, exchange information, and integrate various functions for the benefit of citizens, businesses, and other arms of the State[4]. In India, the formal push towards e-Governance began with the National e-Governance Plan (NeGP) in 2006, which sought to make all government services accessible to the common man in his locality through efficient, transparent, and reliable delivery mechanisms[5].

Building on the foundations of NeGP, the Digital India Mission, launched on 1st July 2015, introduced a paradigm shift in governance through digital empowerment of citizens. The mission is based on nine pillars, including broadband highways**,** universal access to mobile connectivity**,** e-Governance: reforming government through technology, and electronic delivery of services[6]. The overarching vision is "to transform India into a digitally empowered society and knowledge economy."

Key E-Governance Platforms and Initiatives

Several flagship platforms have emerged under Digital India that exemplify e-Governance:

a) Aadhaar*:* The world's largest biometric identification programme, enabling identity verification for public and private services[7].

b) DigiLocker*:* A cloud-based platform for issuance and verification of documents, thereby eliminating the need for physical copies[8].

[4] S.C. Sharma, *E-Governance: Concepts and Case Studies*, Prentice Hall (2012), at 15.
[5] Ministry of Communications and IT, *National E-Governance Plan (NeGP) Vision Document* (2006).
[6] MeitY, *Digital India Programme Pillars*, Government of India (2023), available at: https://www.digitalindia.gov.in
[7] Unique Identification Authority of India (UIDAI), *Annual Report 2022–23*.
[8] MeitY, *DigiLocker Framework*, Government of India (2023).

c) ***UMANG (Unified Mobile Application for New-Age Governance)****:* A mobile app integrating over 200 government services from various departments[9].

d) ***e-Hospital and Online Registration System (ORS)****:* Platforms facilitating online appointments, health records, and diagnostics in public hospitals[10].

e) ***e-Courts****:* ICT-based case management system designed to improve efficiency and accessibility in the Indian judiciary[11].

f) ***Direct Benefit Transfer (DBT)****:* Digital transfer of subsidies and welfare benefits directly into the beneficiary's bank account, reducing leakages and corruption[12].

These platforms rely on a complex ecosystem of interconnected databases, digital identities, mobile interfaces, cloud storage, and real-time analytics. While they have significantly enhanced service delivery, they also expose the e-Governance framework to cyber threats if not adequately secured.

Challenges in Implementation

Despite the achievements, several bottlenecks persist in the rollout of e-Governance services, particularly in rural and semi-urban areas. These include inadequate digital literacy, poor last-mile internet connectivity, low penetration of secure hardware, and lack of awareness about digital rights. Moreover, cyber vulnerabilities in these platforms have raised concerns about the safety of sensitive data, especially in the absence of robust end-to-end encryption, regular audits, and cyber hygiene practices[13].

Thus, while the vision of Digital India has unlocked a new era of governance, its sustainability and legitimacy depend on ensuring the confidentiality, integrity, and availability of public digital infrastructure. Cybersecurity is therefore not an ancillary consideration, but a constitutional and operational imperative in India's e-Governance journey.

[9] National e-Governance Division, *UMANG Overview*, Government of India.
[10] NIC, *e-Hospital: Hospital Management Information System*, 2023.
[11] e-Committee, Supreme Court of India, *e-Courts Project Phase II Report* (2021).
[12] Government of India, *DBT Bharat Portal*, available at: https://dbtbharat.gov.in
[13] Centre for Internet and Society, *Cybersecurity in India's E-Governance Systems*, Research Brief (2022).

3. CYBERSECURITY THREATS IN THE E-GOVERNANCE COSYSTEM:

As the Digital India mission integrates technology into the fabric of public administration, cybersecurity has emerged as a central concern in safeguarding e-Governance infrastructure. The increasing dependence on digital platforms for service delivery, data management, and identity verification has widened the attack surface for malicious actors. Cybersecurity threats in the e-Governance ecosystem not only jeopardise sensitive personal data but also compromise national security, economic stability, and the trust citizens place in public institutions[14].

Typology of Cyber Threats Affecting E-Governance

The e-Governance ecosystem is susceptible to a variety of cyber threats, many of which are systemic and difficult to detect. These include:

a) ***Phishing Attacks**:* Fraudulent attempts to extract user credentials from government portals, such as Aadhaar-linked services or income tax platforms, often using fake websites or deceptive communication[15].

b) ***Ransomware and Malware Attacks**:* Instances of ransomware locking down entire government databases until payment is made have been observed in several Indian states[16].

c) ***Distributed Denial of Service (DDoS) Attacks**:* Overloading government servers (e.g., election commission portals or digital health records) to cause operational paralysis[17].

d) ***Insider Threats**:* Breaches committed by employees or contractors with authorised access, often due to lack of cyber vigilance or deliberate compromise[18].

e) ***Supply Chain Vulnerabilities**:* Compromises in third-party vendors or software integrated into public platforms, which may be inadequately vetted or unpatched[19].

[14] R. Sharma, "Cyber Threats to Digital Governance: Challenges and Remedies," 64 JILI 112 (2022).
[15] Indian Computer Emergency Response Team (CERT-In), *Advisory on Phishing Attacks*, Advisory No. CIAD-2022-001.
[16] Press Trust of India, "Ransomware Hits State Government Portal," *The Hindu*, Nov. 10, 2021.
[17] National Critical Information Infrastructure Protection Centre, *Annual Report 2023*, at 56.
[18] PwC India, *Cybersecurity in Public Sector: The Insider Threat*, Policy Brief (2021).
[19] Carnegie India, *Cybersecurity and Governance: Supply Chain Risks in Public Infrastructure* (2023).

Illustrative Cyber Incidents in India's Public Sector

India has witnessed several cybersecurity incidents that underscore the vulnerability of e-Governance systems:

- In 2020, the Aadhaar-enabled Payment System (AePS) reportedly suffered data leakage affecting millions of users' biometric and demographic details[20].
- In 2022, ransomware attacks targeted multiple servers of the All India Institute of Medical Sciences (AIIMS), New Delhi, rendering patient records and hospital functions inaccessible for over a week[21].
- The Indian Judiciary's e-Courts portal faced frequent DDoS attempts, raising concerns about digital case records' integrity[22].
- Municipal bodies and smart city portals in Hyderabad, Surat, and Mumbai have experienced attempted breaches through their public Wi-Fi and IoT systems[23].

Such incidents reflect the inadequacy of existing detection and response frameworks, as well as the fragmentation of cybersecurity responsibility across departments.

Structural and Operational Vulnerabilities

Apart from external threats, there are inherent vulnerabilities within e-Governance systems:

a) ***Legacy Infrastructure***: Many government systems continue to operate on outdated hardware and unpatched software, lacking basic encryption or access controls[24].

b) ***Lack of Cyber Awareness****:* Officials and users often lack training in identifying phishing emails, weak passwords, and unauthorised data sharing.

[20] The Wire, "Data Leak in Aadhaar-Enabled Payment System," July 8, 2020.
[21] Ministry of Health and Family Welfare, "AIIMS Server Attack: Technical Brief," Dec. 2022.
[22] Bar and Bench, "e-Courts Portal Faces Cyberattack," Sept. 17, 2021.
[23] Centre for Internet and Society, "Smart Cities and Cybersecurity: The Hidden Risk," Research Brief (2023).
[24] KPMG, *India's Cybersecurity Readiness Index: Public Sector Assessment*, 2022.

c) ***Absence of Secure Design Principles***: Government platforms often neglect cybersecurity by design and default, violating the principles of data minimisation, consent architecture, and zero-trust frameworks.

d) ***Fragmented Oversight***: The absence of a unified cybersecurity framework for public platforms results in inconsistencies in policy application and crisis response.

Implications for Citizens and the State

The failure to secure e-Governance systems poses grave implications. It endangers individual privacy, violates the right to informational self-determination under Article 21 of the Constitution, and diminishes institutional legitimacy. Further, critical infrastructure such as health, finance, and transportationnow digitised under Digital Indiacan become targets of cyber warfare, thereby impacting national resilience[25].

Therefore, a holistic understanding of cybersecurity threats in the e-Governance ecosystem is vital not only for protecting systems but for upholding the rule of law, digital equity, and democratic governance in the digital age.

4. LEGAL AND REGULATORY FRAMEWORK GOVERNING CYBERSECURITY IN E-GOVERNANCE

The security of digital governance infrastructure in India is anchored in a mosaic of legal instruments, administrative guidelines, and regulatory mechanisms. However, the country still lacks a comprehensive cybersecurity law that holistically governs public digital infrastructure. As e-Governance initiatives expand rapidly under the Digital India framework, the legal system must address not only technological risks but also constitutional rights, institutional accountability, and data protection obligations.

The Information Technology Act, 2000

The Information Technology Act, 2000 (IT Act), as amended in 2008, remains the primary statute governing cyber offences and electronic governance in India. Under Chapter IX and XI, the Act

[25] N. Srivastava, "Cybersecurity as a Component of National Security," 18 NUJS L. Rev. 145 (2022).

criminalises various cyber offences such as hacking (Section 66), identity theft (Section 66C), and data breach (Section 72A)[26].

Section 43 penalises unauthorised access, downloading, and introducing viruses or malware into any computer system, which directly applies to attacks on government portals[27].

Importantly, Section 66F deals with cyber terrorism and is particularly relevant when critical government infrastructure such as health systems, tax networks, or police databases are targeted by hostile actors. Section 70 designates certain information infrastructure as "critical" and empowers the government to take protection measures[28].

CERT-In Directions and Institutional Rules

The Indian Computer Emergency Response Team (CERT-In) functions as the national agency for coordinating responses to cybersecurity incidents. Under the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013, CERT-In is empowered to collect and analyse data on cyber incidents, issue advisories, and ensure compliance[29].

In April 2022**,** CERT-In issued new directions under Section 70B(6) of the IT Act mandating that all service providers, data centres, and government entities report cybersecurity incidents within six hours of detection. These directions also require the maintenance of system logs for 180 days and the synchronisation of system clocks to Indian Standard Time (IST), which directly impacts e-Governance service providers[30].

Digital Personal Data Protection Act, 2023

The recently enacted Digital Personal Data Protection Act, 2023 (DPDP Act) marks a significant development in India's data governance landscape. Though not specific to cybersecurity, the Act

[26] Information Technology Act, 2000, ss. 43, 66, 66C, 66F, 72A.
[27] Ibid., s. 43.
[28] Ibid., ss. 66F, 70.
[29] The Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013.
[30] CERT-In, *Directions Relating to Information Security Practices, Procedure, Prevention, Response and Reporting of Cyber Incidents*, 28 April 2022.

imposes obligations on public entities as "data fiduciaries" to ensure the protection, lawful processing, and minimal retention of personal data[31].

Chapter III lays down key principles such as purpose limitation, notice, and data minimisation, which have implications for platforms like Aadhaar, DigiLocker, and e-Hospital[32]. Failure to implement reasonable security safeguards under Section 27 can lead to monetary penalties of up to Rs.250 crore, making cybersecurity compliance a statutory obligation.

Sectoral and Institutional Norms

Several sector-specific norms and agencies play a crucial role in regulating cybersecurity for e-Governance systems:

- Unique Identification Authority of India (UIDAI) is empowered under the Aadhaar Act, 2016 to implement security protocols for safeguarding biometric and demographic data[33].
- RBI Guidelines on Digital Payment Security (2021) extend to public service portals involved in Direct Benefit Transfers (DBT) and government-linked banking services.
- The Ministry of Electronics and Information Technology (MeitY) also issues periodic guidelines under the Digital India initiative to promote secure coding, cloud infrastructure protocols, and standardisation[34].

Constitutional Jurisprudence and Judicial Pronouncements

Indian courts have repeatedly affirmed that cybersecurity and data protection are integral to the fundamental right to privacy under Article 21. In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court recognised informational self-determination as a component of personal liberty and imposed a threefold test of legality, necessity, and proportionality on any data collection by the State[35].

[31] Digital Personal Data Protection Act, 2023, ss. 3–8.
[32] Ibid., s. 27.
[33] Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, s. 23.
[34] MeitY, *Guidelines on Cloud Security Framework for Government*, 2022.
[35] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

Further, in the context of Aadhaar, the Court held that while digital identity can enable welfare distribution, it must be backed by stringent data protection measures, audit mechanisms, and citizen consent[36].

Need for Legislative Consolidation

Despite the existence of fragmented laws, India lacks a unified cybersecurity law that provides a cohesive framework for securing public digital infrastructure. The IT Act, though pioneering in 2000, is no longer adequate to address the complex realities of AI-based threats, cross-border data access, or zero-day vulnerabilities that e-Governance platforms now face.

The proposed National Cybersecurity Strategy, prepared by the National Security Council Secretariat, remains pending adoption. A comprehensive lawlike the U.S. Cybersecurity Information Sharing Act or the EU's NIS2 Directive could help institutionalise accountability, incident response protocols, public-private collaboration, and protection of democratic digital spaces.

5. INSTITUTIONAL MECHANISMS AND CYBER READINESS OF GOVERNMENT

The scale and complexity of cybersecurity challenges in e-Governance demand not only legal safeguards but also robust institutional mechanisms. Recognising this, the Government of India has developed a multilayered architecture comprising specialised agencies, national frameworks, and sectoral task forces to secure public digital assets. However, gaps in coordination, capacity-building, and implementation continue to impede India's cyber resilience in the governance sector.

National Critical Information Infrastructure Protection Centre (NCIIPC):

Established under Section 70A of the Information Technology Act, 2000, the National Critical Information Infrastructure Protection Centre (NCIIPC) functions under the National Technical Research Organisation (NTRO) and is responsible for protecting assets that are vital to national security, economy, public health, and safety[37].

Government databases, e-Hospital networks, Aadhaar infrastructure, and other digital public platforms are designated as Critical Information Infrastructure (CII) and fall within NCIIPC's

[36] *Binoy Viswam v. Union of India*, (2017) 7 SCC 59.
[37] Information Technology Act, 2000, s. 70A; Government of India Notification, NCIIPC Functions (2014).

operational purview. The Centre issues security guidelines, conducts vulnerability assessments, and coordinates with government departments for cyber threat mitigation[38].

Indian Computer Emergency Response Team (CERT-In):

CERT-In operates under the Ministry of Electronics and Information Technology (MeitY) and serves as the nodal agency for responding to cybersecurity incidents across public and private sectors. For e-Governance, CERT-In plays a key role in:

- Real-time monitoring of cyber threats;
- Issuance of vulnerability advisories and mitigation strategies;
- Coordination of incident response with State-level agencies and Computer Security Incident Response Teams (CSIRTs)[39].

The 2022 CERT-In Directions, mandating mandatory reporting of incidents within six hours and synchronisation of ICT systems, are critical for ensuring traceability and accountability within government platforms[40].

National Cyber Coordination Centre (NCCC):

Launched in 2017, the National Cyber Coordination Centre (NCCC) provides situational awareness and threat intelligence by monitoring internet traffic in real time. It plays a surveillance-oriented role, helping in policy-level response and inter-agency coordination during mass cyberattacks. Though it enhances cyber situational awareness, concerns have been raised about privacy, oversight, and citizen surveillance[41].

Sectoral Cybersecurity Cells:

Several ministries and departments have instituted internal cybersecurity cells, including:

- UIDAI Security Operations Centre for Aadhaar;

[38] NCIIPC, *Guidelines for Protection of Critical Information Infrastructure*, 2021.
[39] CERT-In Annual Report 2022, Ministry of Electronics and IT.
[40] CERT-In, *Directions on Cyber Incident Reporting*, April 2022.
[41] Medianama, "How NCCC Operates: Surveillance and Security," Oct. 2021.

- NIC-CERT, which handles cybersecurity for government email services and cloud infrastructure managed by the National Informatics Centre (NIC);
- CERT-Fin under RBI for financial sector readiness;
- e-Committee of the Supreme Court for judiciary-related cyber infrastructure[42].

However, these cells often operate in silos and lack interoperable protocols, affecting integrated response to complex threats.

Public–Private Partnerships and Cybersecurity Frameworks:

Recognising the need for innovation and technical expertise, the Government has promoted Public–Private Partnerships (PPPs) in cybersecurity through initiatives such as:

a) ***Cyber Surakshit Bharat Initiative***: A MeitY-led campaign for creating awareness among government CISOs[43];

b) ***I4C (Indian Cyber Crime Coordination Centre)****:* Includes collaboration with tech companies and law enforcement for cybercrime reporting and tracking;

c) ***National Cybersecurity Coordination Centre's Private Partner Forums***, which invite inputs from industry leaders, including Wipro, Infosys, and TCS.

Despite these efforts, the Digital Governance Risk Index of India remains moderate, largely due to skill shortages, underreporting, and a reactive rather than proactive security culture[44].

Assessment of Cyber Readiness:

Various assessments, including those by KPMG, NASSCOM-DSCI, and Microsoft Cybersecurity Readiness Index, indicate that while policy frameworks are being established, there is a deficit in:

- Trained cybersecurity professionals in public departments;
- Budgetary allocations for cyber risk management;

[42] NIC, "Cybersecurity Initiatives," Government of India, 2023.
[43] MeitY, *Cyber Surakshit Bharat Campaign Summary Report*, 2022.
[44] KPMG and DSCI, *India Cyber Preparedness Report*, 2022.

- Standardisation of response protocols across government tiers[45].

In addition, State governments, which are increasingly implementing welfare schemes via e-portals, often lack dedicated cybersecurity cells or incident response plans, making them vulnerable targets for cybercriminals.

6. COMPARATIVE PERSPECTIVES: GLOBAL BEST PRACTICES IN SECURING E-GOVERNANCE

In an increasingly interconnected digital world, securing public digital infrastructure has become a global priority. While India's cybersecurity framework for e-Governance is still evolving, several countries have made significant strides in building secure, inclusive, and resilient e-Governance ecosystems. By examining comparative models, India can draw valuable lessons in institutional design, regulatory foresight, and public trust-building.

Estonia: A Global Leader in Digital Sovereignty:

Estonia is often cited as the gold standard in e-Governance. Its X-Road platform connects over 900 public and private sector organisations, enabling seamless, secure data exchange[46]. Cybersecurity is embedded into the design of digital services through:

- End-to-end encryption and decentralised architecture**;**
- Two-factor authentication and digital ID;
- Data embassies that protect national data in foreign jurisdictions during emergencies[47].

Moreover, Estonia established a dedicated Cyber Defence Unit under its national defence force, which works in tandem with civilian authorities. The proactive legal framework is backed by the Cybersecurity Act of 2018, which mandates risk assessment, breach notification, and infrastructure resilience[48].

[45] Microsoft, *Cybersecurity Readiness Index: India Edition*, 2023.
[46] e-Estonia, *X-Road: Data Exchange Layer*, 2023, available at: [https://e-estonia.com/solutions/interoperability-services/x-road/].
[47] Estonian Information System Authority (RIA), *Cybersecurity Overview Report*, 2022.
[48] Estonian Parliament, *Cybersecurity Act, 2018*.

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Singapore: Proactive Regulatory Framework and Skills Development:

Singapore has developed a holistic and forward-looking cybersecurity architecture. The Cybersecurity Act, 2018 mandates that all critical information infrastructure (CII) owners report incidents, undergo audits, and maintain baseline protection standards[49]. The country's Smart Nation initiative, like India's Digital India, is built upon secure foundations including:

- Cybersecurity Competency Frameworks for civil servants;
- Public-private partnerships, such as the ASEAN-Singapore Cybersecurity Centre of Excellence;
- Real-time threat-sharing mechanisms with global CERTs[50].

Singapore's Cyber Security Agency (CSA) also invests heavily in public awareness and cyber hygiene campaigns to ensure that citizens are not the weakest link in the e-Governance chain.

European Union: Data Protection and Network Security through GDPR and NIS2:

The European Union (EU) combines cybersecurity and data protection through two comprehensive frameworks:

- The General Data Protection Regulation (GDPR), which governs data collection, retention, and processing, applies equally to public authorities and enforces heavy penalties for non-compliance[51].
- The Network and Information Security Directive (NIS2) mandates that essential and important public service operators adopt incident detection, risk management, and crisis response plans[52].

Importantly, GDPR's emphasis on privacy by design and by default offers a valuable model for Indian digital public platforms like Aadhaar and DigiLocker. NIS2, adopted in 2023, expands the scope of critical entities and introduces mandatory supply chain cybersecurity standards.

[49] Singapore Parliament, *Cybersecurity Act, 2018*.
[50] Cyber Security Agency of Singapore, *Annual Report 2022*.
[51] Regulation (EU) 2016/679, General Data Protection Regulation (GDPR).
[52] Directive (EU) 2022/2555 (NIS2 Directive).

Lessons for India:

From these jurisdictions, the following best practices can inform the strengthening of India's cybersecurity framework in e-Governance:

a) ***Legislative Clarity***: India must move towards a unified and updated cybersecurity law that addresses the needs of the digital governance ecosystem.

b) ***Institutional Coordination****:* Like Singapore's CSA, India needs an empowered, central cybersecurity authority that integrates defence, law enforcement, and digital service agencies.

c) ***Privacy-Centric Governance***: Borrowing from GDPR, Indian platforms should adopt data minimisation, encryption standards, and user-centric consent mechanisms.

d) ***Cyber Workforce Development***: As seen in Estonia and Singapore, training civil servants in cybersecurity basics must become an integral part of administrative reforms.

e) ***International Collaboration***: India should deepen its engagement with global cybersecurity alliances such as the Budapest Convention on Cybercrime**,** APCERT, and the Global Forum on Cyber Expertise (GFCE)[53]**.**

While contextual differences exist, the comparative experiences of these jurisdictions provide India with tested pathways to secure its Digital India mission against evolving cyber threats.

7. ISSUES AND CHALLENGES

Despite the progressive expansion of India's e-Governance infrastructure and the emergence of institutional mechanisms to secure digital assets, several legal, technical, operational, and ethical challenges continue to undermine the cybersecurity architecture of the Digital India framework. These challenges are multidimensional and require structural reforms rather than ad hoc responses.

[53] Global Forum on Cyber Expertise, *Annual Progress Report*, 2023.

Outdated Legal Frameworks:

India's primary cyber law, the Information Technology Act, 2000, though amended in 2008, is ill-equipped to address contemporary threats such as artificial intelligence-driven cyberattacks, ransomware-as-a-service, and cross-border data leaks[54].

Moreover, the absence of a dedicated Cybersecurity Law leads to fragmented compliance and inconsistent enforcement across ministries, state governments, and public sector undertakings.

While the Digital Personal Data Protection Act, 2023 introduces principles of data security, it lacks granular standards for encryption, cyber audits, and public infrastructure protection, which are vital for e-Governance systems[55].

Jurisdictional and Enforcement Complexities

Cybercrimes targeting e-Governance platforms often involve transnational elements, including servers located outside India, foreign actors, and encrypted communication channels. This raises complex issues of:

- Jurisdiction under the Code of Criminal Procedure and the Bharatiya Nyaya Sanhita, 2023;
- Cross-border investigation and evidence gathering, often requiring bilateral or multilateral cooperation;
- Inconsistent cooperation from global tech companies in handing over logs or decrypting data[56].

The lack of ratification of international frameworks such as the Budapest Convention on Cybercrime further restricts India's ability to respond to sophisticated global threats[57].

Institutional Silos and Fragmentation

India's cybersecurity governance suffers from institutional fragmentation. While agencies like CERT-In**,** NCIIPC**,** UIDAI, and MeitY operate in the domain, their mandates often overlap or remain ambiguous. State governments, which are increasingly digitising welfare services, often lack

[54] Information Technology Act, 2000; see also DSCI, *The Need for a New Cybersecurity Law in India*, 2022.
[55] Digital Personal Data Protection Act, 2023, ss. 7–10.
[56] N. Jain, "Jurisdictional Gaps in Cybercrime Investigation," 59 JILI 223 (2021).
[57] Council of Europe, *Convention on Cybercrime*, Budapest, 2001.

autonomous cyber cells or forensic capabilities, leading to inconsistent threat response and recovery efforts[58].

Inadequate Budgetary and Human Resources

Despite the growing reliance on technology in governance, public cybersecurity allocations remain disproportionately low. Many ministries and municipal bodies lack:

- Dedicated cybersecurity officers or Chief Information Security Officers (CISOs);
- Funds for regular cyber audits, penetration testing, and secure software upgrades;
- Cyber awareness training for staff handling citizen data and welfare delivery platforms[59].

The shortage of trained cybersecurity professionals in the public sector is further exacerbated by the absence of institutionalised training programmes in administrative services or law enforcement academies.

Ethical Concerns and Surveillance Risks

The increasing integration of surveillance technologies into e-Governancesuch as facial recognition, Aadhaar-enabled authentication, and behavioural profilingraises serious concerns regarding privacy, consent, and democratic accountability**[60].**

The Supreme Court's ruling in *K.S. Puttaswamy v. Union of India* laid down the proportionality test for State surveillance, yet implementation across public digital systems remains opaque. The lack of independent data protection authorities**,** judicial oversight**,** and transparency audits leads to potential abuse of citizen data under the guise of cybersecurity[61].

Low Public Cyber Awareness and Digital Inequality

India's digital divide continues to pose a major barrier to secure e-Governance. Large sections of the populationespecially in rural and semi-urban areaslack:

- Basic cyber hygiene knowledge;

[58] KPMG, *India's Cybersecurity Landscape: A Governance Perspective*, 2023.
[59] NASSCOM-DSCI, *Cybersecurity Skills Gap in India's Public Sector*, Policy Report, 2022.
[60] Internet Freedom Foundation, "Facial Recognition and Public Surveillance in India," 2023.
[61] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

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- Awareness of grievance redressal or data breach reporting mechanisms;
- Access to secure devices or updated software[62].

This not only increases the risk of phishing and identity theft but also undermines trust in government platforms. A truly secure governance ecosystem must therefore be inclusive, participatory, and citizen-friendly.

These challenges underscore the need for comprehensive reforms that go beyond piecemeal regulatory efforts. They call for a strategic convergence of law, technology, institutional accountability, and public trust to future-proof India's e-Governance against evolving cybersecurity threats.

8. RECOMMENDATIONS AND THE WAY FORWARD

The evolution of e-Governance in India presents a transformative opportunity to democratise access to public services, enhance administrative transparency, and empower citizens. However, the sustainability and legitimacy of this digital transition hinge critically on the security of its cyber infrastructure. In view of the challenges outlined, the following recommendations are proposed to strengthen India's cybersecurity posture in the e-Governance ecosystem.

Enactment of a Comprehensive Cybersecurity Law

India must enact a dedicated Cybersecurity Act that addresses the unique security challenges in digital governance. This law should:

- Clearly define "critical public infrastructure" beyond the existing narrow scope under Section 70 of the IT Act, 2000[63];
- Establish baseline cybersecurity standards for all e-Governance platforms;
- Mandate third-party audits, breach notification, and encryption protocols for citizen data;
- Set up an independent Cybersecurity Authority of India with defined powers and accountability mechanisms.

[62] TRAI, *Digital Literacy and Access in India*, 2022.
[63] Information Technology Act, 2000, s. 70.

Such legislation should draw inspiration from models like Singapore's Cybersecurity Act, 2018 and the EU's NIS2 Directive, while tailoring solutions to India's federal structure and socio-digital diversity[64].

Institutional Integration and Inter-Agency Coordination

A clear division of roles among CERT-In, NCIIPC, NIC-CERT, and UIDAI must be formalised through a centralised coordination framework. This may take the form of a National Cybersecurity Governance Council chaired by the Prime Minister or a designated Cabinet Minister, with representation from all ministries, regulators, state governments, and industry partners[65].

Such a body should issue binding advisories, harmonise cybersecurity protocols, and oversee real-time threat response at the national and sub-national levels.

Capacity Building in Public Sector and Local Governance

To address the human resource gap in cyber risk management, the Government must:

- Institutionalise cybersecurity training in civil services, judiciary, and police academies;
- Appoint Chief Information Security Officers (CISOs) at central, state, and municipal levels;
- Develop a cadre of Certified Public Sector Cybersecurity Professionals (CPCPs) for mission-critical services[66].

Inclusion of cybersecurity modules in the National e-Governance Plan Capacity Building Scheme (NeGP-CB) should be prioritised.

Citizen-Centric Cyber Hygiene and Awareness

A public-facing Digital Literacy and Cyber Hygiene Mission should be launched to educate citizens about:

- Safe browsing, phishing, password management;
- Redressal mechanisms in case of data breaches;

[64] Singapore Cybersecurity Act, 2018; Directive (EU) 2022/2555 (NIS2 Directive).
[65] Carnegie India, *Reimagining India's Cybersecurity Governance*, 2023.
[66] NASSCOM-DSCI, *Policy Brief: Public Sector Cyber Talent Pipeline*, 2022.

- Reporting cyber fraud through the National Cybercrime Reporting Portal (cybercrime.gov.in)[67].

Content should be delivered in regional languages using radio, television, and mobile platforms. Special attention should be given to training panchayat-level officials**,** anganwadi workers, and beneficiaries of digital welfare schemes.

Strengthening Data Protection and Privacy in E-Governance

In addition to compliance with the Digital Personal Data Protection Act, 2023, all e-Governance platforms should implement:

- Privacy by design and by default principles;
- Regular Data Protection Impact Assessments (DPIAs);
- Differential access controls and role-based permissions for government employees[68].

The forthcoming Data Protection Board must be empowered to issue guidelines specific to public digital infrastructure and conduct suo motu inquiries into high-risk platforms.

Promoting Research and Indigenous Innovation

Cybersecurity solutions for governance must not rely solely on imported technologies. Investment in indigenous tools through:

- Public sector-funded cybersecurity research (under DST, MeitY);
- Incubation of start-ups for e-Governance resilience solutions;
- Sandboxes for testing AI-based predictive threat detection tools.

India's Cybersecurity Strategy should incentivise innovation in digital identity protection, cloud-native firewalls, and quantum encryption.

Cybersecurity must be embedded as a foundational pillarnot an afterthoughtof India's digital governance journey. Through legislative reform, institutional accountability, public education, and

[67] Ministry of Home Affairs, *Cybercrime Reporting Portal Guidelines*, 2023.
[68] Digital Personal Data Protection Act, 2023, s. 22.

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indigenous capacity-building, the vision of a secure, inclusive, and rights-based Digital India can be truly realised.

9. CONCLUSION

In conclusion, the evolution of e-Governance in India marks a significant leap toward a more transparent, inclusive, and efficient democratic state. Initiatives under the Digital India mission have redefined public service delivery, empowered citizens through access to real-time information, and modernised institutional frameworks across sectors. However, this transformation also introduces a profound responsibilitythe duty to protect the digital trust that citizens place in the State.

Cybersecurity is not merely a technical requirement in this context; it is a constitutional imperative intrinsically linked to the right to privacy, informational self-determination, and public accountability. From Aadhaar to Digi Locker, from e-Hospital to DBT, each digital platform is only as robust as the security and privacy measures that uphold it.

This article has examined the multifaceted challenges that cybersecurity poses to India's e-Governance ecosystem ranging from outdated legal frameworks and fragmented institutional roles to jurisdictional complexities, skill deficits, and ethical dilemmas. Comparative insights from Estonia, Singapore, and the European Union reveal that proactive legal reform, institutional convergence, capacity-building, and public cyber awareness are not aspirational goals but urgent necessities.

As India advances deeper into the digital governance era, it must shift from a reactive to a preventive cybersecurity approach. This means embedding security and privacy by design, fostering inter-agency coordination, enacting comprehensive cybersecurity legislation, and empowering citizens to be informed participants in their digital interactions with the State.

The future of Digital India hinges not just on technological innovation but on legal foresight, institutional readiness, and citizen confidence. It is only through a secure and rights-respecting digital infrastructure that the promise of e-Governance can be fully and faithfully realized.

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TAXING THE DIGITAL ECONOMY: LEGAL GAPS IN ADDRESSING BIG TECH'S GLOBAL PROFITS

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Deepak Kmar**

ABSTRACT

The rapid growth of the digital economy has fundamentally transformed global commerce, creating significant challenges for international tax law. Technology giants such as Google, Amazon, Facebook, and Apple generate substantial revenues across multiple jurisdictions without maintaining a physical presence, allowing them to exploit legal and structural gaps in existing tax frameworks. This paper explores the legal and policy gaps in international taxation that have allowed digital multinational enterprises (MNEs) to minimize tax liabilities through profit shifting and base erosion techniques. It critically examines current tax structures—particularly the OECD Model Tax Convention and bilateral double taxation treaties—and their limitations in addressing the taxation of digital services. The study evaluates recent reform initiatives such as the OECD's two-pillar approach and unilateral digital services taxes adopted by several jurisdictions. Through an interdisciplinary legal analysis and case studies of major tech firms, this paper identifies the jurisdictional, definitional, and enforcement challenges that hinder equitable tax allocation. It argues that the current regime lacks coherence and adaptability in the face of evolving digital business models. The paper concludes with policy recommendations for establishing a fairer, multilateral tax framework that aligns taxing rights with value creation and user participation. These include the need for clearer definitions, international cooperation, improved enforcement mechanisms, and the development of novel nexus rules. By addressing these legal gaps, global tax systems can better capture the economic realities of digitalization and ensure a more just distribution of tax revenues.

Keywords: Digital Economy, Tax Avoidance, Big Tech, OECD, Digital Services Tax, Jurisdiction

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1. Introduction

Taxing the Digital Economy: Legal Gaps in Addressing Big Tech's Global Profits (Intro)

The digital economy has had a profound effect on everyday life, with more and more aspects of life taking place online. This digital economy is often referred to as a "fourth industrial revolution," which will lead to remarkable benefits and social improvements, perhaps even greater than those associated with prior revolutions. Nevertheless, despite the global shared commitment to establish a fairer and more sustainable economy, it is widely claimed that governments are being outwitted by global technology giants. In the last decade, many of the world's largest and most profitable companies are highly digitalized, including Google, Facebook, Amazon, Apple, Microsoft, and others. Even more than in other walks of life, the pandemic has accelerated the digital transformation and intensification of everyday life. Once out of the COVID-19 health emergency, the digital transformation is expected to contribute greatly to economic recovery and future growth in a post-corona age.

The digital economy is viewed as highly distinctive – and is thus referred to as such – because it is characterized by the use of information and communication technologies. The paper argues that whilst the digital economy unquestionably offers great advantages to society, its unique attributes have led to tax challenges on a remarkable scale. The OECD/G20 Inclusive Framework and the UN as well are working towards blueprints for combating these tax challenges of the digital economy. To date, the discourse focuses on much-discussed New Pillar proposals that aim to tax highly digitalized giant enterprises in part in their markets. A thorough analysis reveals the significant gaps in existent taxes and tax regulations for addressing this pressing and mostly unresolved challenge.

Accordingly, the aim of the paper is to explain and illustrate the legal gaps in taxing the digital economy on public international and domestic levels. First, it describes the distinct economic and business features of the digital economy and the tax challenges they present. These are specifically those posed by the activities of primarily digitalized-tech giants that take disproportionate advantage of base erosion and profit shifting mechanisms afforded by the cross-border operation of the internet to transfer their monumental profits from high-tax jurisdictions to no-or low-tax jurisdictions where they have little or no taxable presence and where tax cannot at all be collected on those profits.

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2. Research Objectives

- To examine the unique features of the digital economy that challenge traditional international taxation principles, particularly the absence of physical presence and reliance on user data.
- To identify and analyze the legal gaps within current international tax frameworks (e.g., OECD Model Tax Convention, double taxation treaties) that allow Big Tech companies to shift profits and avoid taxation.
- To assess the effectiveness of existing and proposed international responses, including the OECD/G20 Inclusive Framework (Pillar One and Pillar Two), and unilateral measures such as Digital Services Taxes (DST).
- To investigate jurisdictional and enforcement challenges faced by states in asserting taxing rights over non-resident digital service providers.
- To propose viable legal and policy reforms for establishing a fair, efficient, and globally coordinated tax regime that aligns with the realities of a digitized global economy.

3. Methodology

This research adopts a qualitative doctrinal legal methodology, focusing on the analysis of existing international tax laws, treaties, policy proposals, and legal literature relevant to the taxation of the digital economy. The study involves a critical examination of primary legal instruments, including the OECD Model Tax Convention, bilateral double taxation treaties, and recent international frameworks such as the OECD/G20 Inclusive Framework on BEPS.

Secondary sources such as scholarly articles, case law, policy briefs, and official reports from international organizations (e.g., OECD, G20, UN) are also analyzed to evaluate the evolution and shortcomings of legal responses to tax challenges posed by highly digitalized business models. Particular attention is given to interpretive legal analysis to understand the application and limitations of concepts such as permanent establishment, transfer pricing, and nexus in the digital context.

The study further incorporates comparative analysis through case studies of major technology companies (e.g., Google, Apple, and Amazon) and their tax arrangements in different jurisdictions, including the European Union and the United States. This enables a grounded understanding of how legal gaps are exploited in practice.

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Overall, the methodology aims to bridge the gap between legal theory and practical enforcement by highlighting structural deficiencies in current frameworks and suggesting pathways for more equitable international tax governance.

4. Understanding the Digital Economy

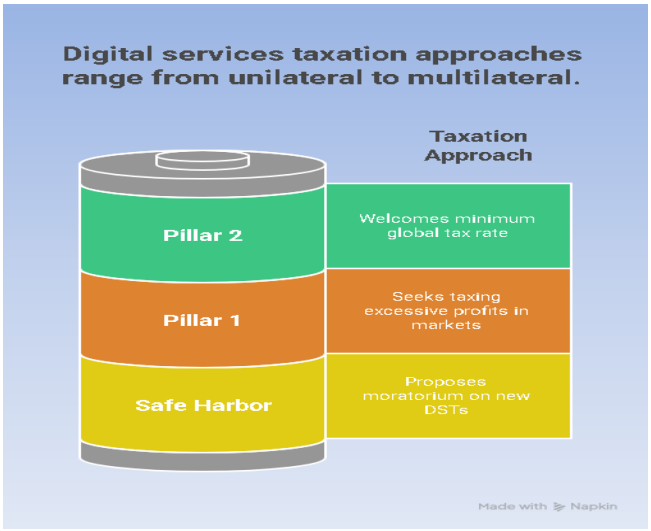
Digitalization has transformed everyday life, including information availability, education, social networking, shopping, and transportation. Routine functions are performed using assorted digital applications, including computers, smart phones, tablets, and "smart" devices, which are increasingly connected to the Internet. The consumer is increasingly at the center of modern business models rather than the seller. User data is king, driving profitability among enterprises that mine the data for the provision of user-oriented advertisements and expenditures on product development (Harpaz, 2021). Complexity and scale impose challenges on tax compliance and administration. Consequently, many countries, particularly developing countries, may not receive their fair share of tax revenue from the digital economy.

5. Defining the Digital Economy

In 2020, after two years of protracted negotiation, the OECD published the Inclusive Framework on Base Erosion and Profit Shifting ('BEPS'). This proposal sought to amend the existing international tax system to achieve two broad objectives: a minimum global tax rate; and, taxing the excessive profits of large international businesses in the markets in which the businesses operated ('digital services taxation' or 'DST'). The first part of the proposal, the so-called 'Pillar 2 Solution', was welcomed, albeit cautiously by the G7 and G20. The second part, the 'Pillar 1 Solution', however, was met with severe trepidation by the US, which threatened to withdraw from the negotiations if the majority of the remaining countries went ahead and implemented their own digital services taxes deferentially to the rules on international taxation seen as set down in the OECD Model Tax Convention (the 'MTC'). It is now clear that concerns over the unilateral measures case are only one of the concerns US policy-makers have about taxing big technology companies; legal, policy and administrability issues have also been raised (Harpaz, 2021).

To address the unilateral measures case, the US proposed to have in place a moratorium on any new DSTs for a period of 21 months until December 2022 and specified a 'safe harbor' whereby countries could unilaterally debar taxation above a 'narrow nexus threshold' equal to USD 3 billion in global turnover unless the total for large companies with multi-national profit exceeding USD 700 billion

were to exceed USD 100 billion of gross revenues. In such circumstances, the safe harbor would lapse and countries potentially could retroactively impose taxes all the way back to 1 January 2020. Glimpses of the recently published proposals, seemingly focused on transactional thresholds or allocations of profit share with reference to terrestrial jurisdictional factors, reinforce the need for any proposals for rules to operate within the existing treaty network. Only then might they have any prospect of being legal in international law which the subsequent amendments to the MTC by these procedures otherwise would not. Thus, whether to leave the tax treatment of the provision of online services to the existing treaty network and, thereupon, any categorical tax base countries might have would fall under the existing taxing rights is a critical point.Fig.1.



There have been exciting developments in examining tax rights at the commencement of a two-day seminar concerning alternatives to existing double tax conventions. For example, transactions would be liable to tax according to where they were paid for in much the same way as Value Added Tax; other base countries would exist with reference to the location of expenses. Each approach would have significant merits. The existing treaty network would be abounded by too many opportunities for avoidance; complicated rules would arise transforming clear situations into uncertain ones; compliance costs would increase; non-discrimination provisions would hinder efficiency. However, the labour mobility that gave rise to world-wide double taxation in the first place would be a major challenge for any leverage approach and even a non-discriminatory provision; non-discriminatory would necessitate a renegotiation of each OECD Model Tax Convention; this must be cautiously

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undertaken. Consequently, it appears best to heed the challenge posed to the digital economy in the labour market.

6. Economic Impact of Digital Businesses

The COVID-19 crisis sparked a profound disruption of the economy of the consumption of goods and services. The world has undergone a dramatic shift in how and where people work, consume, store data, and transact, some with natural ease, while some others with more friction (Fjord Kjærsgaard & Koerver Schmidt, 2018). Destined to fail in a pre-COVID-19 era, some businesses flourished with an unforeseen uptick in revenue and earnings, as they figured out how to cope with the new reality. Business has shifted from face-to-face to screen-to-screen premise, as people stay at homes in line with government-mandated lockdowns. The demand for online platforms soared.

More than ever, enterprise cloud service and productivity software, online video-conference and streaming service, online marketplaces, ecommerce platforms, search engines, social media, and the like gained traction and remained inescapable parts of people's day-to-day lives. On the contrary, those who are unable to adapt to the new landscape suffered from dismal losses, disruptive recession, staggering insolvencies, bankruptcies, devastation of long-standing firms and brands, etc. The brick-and-mortar stores and shops are the most disastrous ones, as they struggle to generate revenue despite the adoption of online and delivery services (Harpaz, 2021). A rough estimate shows the post-COVID-19 crisis is expected to leave behind a wave of a nearly $1 trillion loss in the stock market value of traditional firms and bricks-and-mortar businesses.

7. Current Tax Frameworks

The digitalization of the economy has impacted almost all areas of life and business. It is evident that life cannot be imagined without numerous day-to-day digital activities, as a growing proportion of tasks are performed alongside the different social media applications of various digitalization. The social media businesses thrive on digital transformation by acquiring more user information, so the situation is symbiotic between the users and businesses. Nowadays, users also put an increasing amount of personal information through online shopping as an exchange to course the time spent on advertisements. However, some policy considerations want to standardize the implementation of tax policies on digital advertising businesses, either focusing on indirect taxation or revenue pileup.

The existing academic literature on the digital economy and its related consumer market taxation has developed tremendously. However, the user-jurisdiction concept, where the users reside and the

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businesses can tax the user activity input directly or indirectly, has seldom been applied. Lessons learned from some existing models can also provide a practical evaluation of how consumer taxation takes shape across different countries. Highly digitalized business models and digital intermediary businesses are critically assessed from a tax perspective, and their reasonable treatments as a peer-to-peer barter transaction model or purchase-consumption contract in tax treatment are reformulated. The comment is enforced through a hypothetical scenario and policy suggestions on the active user-jurisdiction taxation still amount to shaping a tax framework conducive to the ongoing digital transformation (Fjord Kjærsgaard & Koerver Schmidt, 2018).

8. National Tax Policies

The last ten years have seen a rapid increase in the digitization of the global economy and the emergence of large multinational technology companies. The COVID-19 pandemic has only accelerated these developments. The rapid increase in the absence of locations has pushed many low-tax jurisdictions to reevaluate their fiscal strategies in light of dwindling corporate tax revenues. The current responses by both governments and the big tech companies show a clear lack of coordination that results in huge disruptions of international trade relationships. The economic and social ramifications of this backlash will also reverberate throughout the financial systems on which the world relies. These fiscal developments have far-reaching implications for the future of financial technology (fintech) and digital currencies. Like big tech but even more so, central banks and fintech companies operate on a transnational basis. It thus seems paramount for them not to lose the race for greater information anonymity and other tax smarting tools that would undermine their regulatory oversight and financial stability. To the extent that progressive taxation depends on enforceability, these developments also contribute to distributional inequalities (Harpaz, 2021). The current tax system stems from a set of tax treaties and domestic provisions that has been maintained for decades. Digitalization has both changed the concept of location and broken the dependency between profits and locations that these conventions have successfully enforced for decades. Big tech companies have mastered the art of playing with local environments and, in doing so, separating profits from locations. The cross-border spillover effects of this separation are taxation-induced distortions of competition and flight-to-the-bottom competition between governments. It is hence essential for governments to both hold on to their taxing rights and maintain the competitive integrity of the current system in this unprecedented tax war. The strategy to counteract the disruptive aspects of digitalization should be twofold. Governments should remedy the most egregious current gaps and distortions, while

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regularizing the need for a global treaty and a transitional framework for further solutions. Holding on to a treaty approach is essential for the maintenance of the norms these underlie.

9. Double Taxation Treaties

Double Taxation Treaties have established a broad framework for taxing international business activities. However, some rules find their origin in a short set of clauses in the OECD Model which leaves room for inventive interpretation. For instance, the permanent establishment (i.e., the right to tax certain profits) as defined by the Model is dependent on a significant geographical link between a firm and a jurisdiction. Since many of the digital business models reaching significant turnover levels in many countries do not have a physical presence in these countries outside of users, these countries are unable to tax the profits regardless of size. This Article presents the status quo concerning this issue from the perspective of the present and future rules outlined above.

Double Taxation Treaties are international treaties between countries which make a uniform interpretation and application of the OECD Model necessary at the Member State level. Usually, these treaties allow firms of one state to operate cross-border without a significant additional tax burden; i.e., their income not booked in the country in which it is earned should not be taxed there. To allow this, treaties enable a country to tax withholdings with the rates defined in treaties and the obligation to refrain from other unilateral taxing measures with respect to active business income (Fjord Kjærsgaard & Koerver Schmidt, 2018).

However, the treaties are limited in this respect. First of all, they do not apply for firms liable to tax in more than one state and local taxes and VATs could be in theory interpreted as not falling under the scope. In this regard, although further developing the analysis of the taxation allocation questions to be systems critical, consumer equity should. Secondly, and more importantly, many of the rules are ambiguous, leaving broad scopes for different interpretations.

10. Challenges in Taxing Big Tech

The sustainability challenges of Big Tech really boils down to three issues: (1) Transparency; (2) Power over user engagement; and (3) Tax competition in the Digital Economy. The alleged underpayment of taxes on international profits and the demand for domestic digital taxes is highly relevant in this regard. Mandatory international rules on taxing the digital economy have not yet been implemented. has issued guidelines on how to approach the taxation of the digital economy, but those guidelines have not yielded a comprehensive and coherent solution. The EU seems to have resorted

to go it alone for now, albeit not without internal disagreements and a lack of common EU rules. As a consequence, the taxation of Big Tech's global profits remains precarious; subject to individual member state discretion and unilateral taxation measures. Effectively addressing the sustainability challenges in the Digital Economy hinges on implementing new global standards that prevent harmful tax competition and which augment countries' tax base.

Taxing profits of companies that operate almost exclusively in a virtual world is not a trivial task. Most of the attention for the taxation of digitalized businesses revolves around the question of where to allocate profits and the quest for a common digital tax base. However, equity and timing of recognition of income is equally important. It is a common limitation of proposed measures to ensure taxation of capital returns due to the ever-expanding "operating profit" views across the globe. Comprehensive broadening of tax bases is needed to substantively tax "supply-side digitalized business models", and a sharing of tax revenues is pointless if the new digital tax base reflects inflated accounting profit . Scholars have proposed thoughtful ideas on diverting profits to the jurisdictions engaging with users and on broadening the tax base by allowing deductions for data-made available.

Taxing the Digital Economy has no doubt been complicated by the seemingly inherently global nature of the digital economy. Digital business models can often operate without any physical presence in national tax jurisdictions by enabling mostly non-tangible operations in cyberspace. Nevertheless, differing legal systems and taxation levels for the business operations of highly digitalized companies remain a fact . The widespread absence of substantive taxation on user revenue or non-local data transactions have proliferated cash-hungry government responses. While countries with considerable market jurisdictions have made unilateral forays into taxing the digital economy, price regulation may prove to be a more powerful tool in substantially altering the global cash transfer base.

11. Identifying Taxable Presence

The notion of permanent establishment (PE) is employed in a double tax treaty regime to address the nexus aspect of a taxing jurisdiction. Under this notion, a certain level of physical presence in the source jurisdiction is typically required to constitute a PE, i.e., a foreign enterprise is generally liable to be taxed on its business profits only in those jurisdictions in which it has a PE. Under the Model, equipment and machinery located in a particular country may constitute a fixed place of business and thus a PE in that country (Harpaz, 2021). On a more general note, an enterprise is still generally required to maintain a physical presence in the source country to be subject to income tax liability.

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This principle is known as the sourcing principle. The PE threshold, the concept of fixed place of business and the sourcing principle represent the generally accepted international tax framework and they are codified and enacted by jurisdictions around the world with only minor variations. This is what the international tax community usually refers to as a traditional "brick and mortar" economy.

12. Transfer Pricing Issues

Transfer pricing is a mechanism used to allocate the income and expenses of multinational enterprises (MNEs) among their group entities. MNEs headquartered in low-tax jurisdictions purposely allocate global profits geographically far from the location of their users or the source of their value creation, typically a high-tax jurisdiction. Several transfer pricing points arise concerning the taxation of digital businesses. First, companies that lack a physical presence but still profit significantly from a market's user base, content, or data are potentially at risk of taxation under the digital-oriented unilateral measures. However, this issue goes directly to the questions of income allocation rather than of taxation jurisdiction. Indeed, absent other direct taxation connections, this type of digital business model is expected to bear no tax in very high-tax jurisdictions under the existing treaties (Mazur, 2016). Second, as now made evident, the aggregation and analysis of user data from multiple digital platforms provide both a significant competitive advantage for digital businesses, and an enormous potential user base for potential competitors. However, ownership and ability to monetize this data diffused across many low-tax jurisdictions locations do not assign profit jurisdiction over it to any country. As such, just as profits are dispersed through the use of economic ownership rights, rights over the underlying data may be divorced from most of the ad revenue earned from that information, typically marching along a low-tax jurisdiction path (Harpaz, 2021). Furthermore, it may be contended that in the absence of an intangible differential return and/or under-application of the income splitting analytic, such data yields low or even negative income; or compensates for advertising output, rather than income. If taxation jurisdiction over this data is assigned on the basis of its location in countries where this data is possessed, it remains necessary to pull back from that simplistic assertion to balance the generally accepted taxation allocation between source and residence. Finally, rapidly escalating data protection requirements and regulatory restrictions serve to corroborate the intangible asset characterization of much digital technology. However, such provisions that require a certain degree of host country involvement to be leveraged, typically in the shape of user consent or safeguards, also restrict their use by non-users. This, alongside boundary-management controls and competition rules on advertising discrimination, raises territoriality

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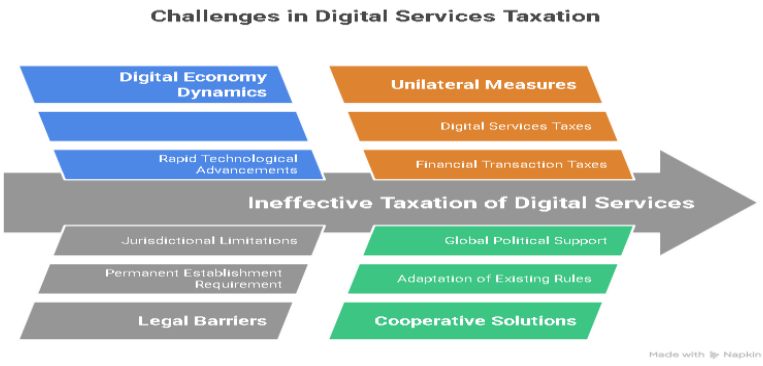
concerns regarding cross-jurisdiction unilateral measures. Even if there have been no confidentiality violations per se, any form of data set disclosed to a party involved in the competition would seemingly count as a red line in controlling the direction of such competition. As international standard drafting and enforcement are exceptionally hard-won, unilateral measures could indeed pay-off on broader concerns than transfer pricing problems.

13. Digital Services Taxes

The rapid development of digitalization that profoundly and rapidly transformed both the economy and society raises complex challenges to international tax systems and tax policies. States usually impermissibly tax the income of a non-resident entity only if it has a nexus to the taxing right through the existence of a permanent establishment. Because of this legal barrier, unilateral measures have attracted attention as a remedy for the legal gap of taxing rights concerning the taxation of profit. In response to such measures, the legal ability to solve international tax disputes through this controversial unilateral measure is addressed. Global profit taxation creates a dramatic legal gap in global taxing rights or lack thereof that pushes some states to resort to unilateral measures. Another important functional handle of cooperative measures to amending or adapting existing international tax rules to fit in contemporary digital economy has also been widely studied. Digital services taxes are adopted as an initial unilateral tax measure to deal with some of the most egregious cases of profit taxation disparity in the short run. The surge of unilateral financial transaction taxes created as a response to the Global Financial Crisis is illustrative. Once there are established legal grounds and enough global political firmament to plead for a solution of wider disputes, important loopholes in existing regulations can attract attention, challenge the traditional law enforcement mechanism, and spur the demand for adaptation or posture change.Fig.2.



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Congruent with the new wave of taxation initiatives, tax solutions to the digital economy concerns mostly a group of large multinational enterprises engaging in cloud-based platform activities, which can be assessed as digital platform entities as well. Digitalized markets pose challenges to global profit taxation because of the mismatch between the locus and the source of income. High revenue for digital behemoths without a targeted presence reveals the intensity of the challenge. Alarmed by rerouting tax bases, a few countries have started unilateral measures. In response, proposals regarding a framework that attempts to mitigate excessive unilateral measures have been swiftly presented. Yet parallels with historical attempts to wing an international consensus on apportionment systems did little good. The rule bellies the self-imposing pressure, and sustaining commitment to the framework is anything but guaranteed.

14. Legal Gaps in Existing Frameworks

Although a vast segment of international tax discussions pursues the issues arising from the digitalization of enterprises, the specific profit measurement on the enterprises and its source remain unanswered. Moreover, on the global scale, the existing tax treaties do not contain the regulations applicable for the allocation and distribution of the global profits of income-generating enterprises engaging in user-participation-based business models among the source jurisdictions where the users are located. Ideally, as a starting point, the new tax schemes for taxing user-participation-based businesses should fall under the framework of an international tax convention based on a simplified approach of the OECD-Treaty. If in addition to defining ‘user-participation’ and ‘user-participation-based business’ akin to the first two paragraphs of this section, it could set out three principles for allocating highly mobile revenues based on ‘user-participation’, a new analytical scheme to measure profit source and allocate taxable profit would emerge. Ultimately, this will either require the co-ordination of countries, regions or group of countries to enter into tax treaties or possibly through UN conference. For a middle-ground solution with which all countries can be comfortable, unilateral measures should be taken by regional blocs or larger jurisdictions. This may need to adopt taxes on the gross revenue side, modeled along existing GST/VAT regimes or alternatively based on some simplified profit measure. New frameworks are required, at least one for determining tax on the final goods side and another for allocating the corresponding production revenues or profits across border. With the proliferation of big-tech firms having gained highly mobile revenues, the existing frameworks are incapable of determining the applicable tax base and source jurisdictions where taxes should be payable. Existing bilateral income tax conventions typically grant taxing rights over profits

from the sale of goods or services to the place of performance of the contract alone, which is relatively easy to trace and identify. Although some valid attempts have been made to address the rise of GAFAs, innovative and perplex techniques and structures have been utilized to exhaust the ability of the existing tax rules in capturing them . Studies have almost exclusively addressed the allocation of a portion of existing profit among the source jurisdictions competent to tax the income based on definition and scope inclusion issues a single measure of taxing rights in the new approach and principles. In summary, amid the shadow of a digitized industrial revolution, a profound shift in existing income tax philosophies and grounds of international taxation, as well as an investment of substantial time and data resources, is required.

15. Jurisdictional Challenges

Taxing the Digital Economy: Legal Gaps in Addressing Big Tech's Global Profits_5_3_Jurisdictional Challenges

The promising maturation of the digital economy has a dark side – the tax avoidance strategies of multinational enterprises in this sector. The proposed solutions, however, are neither robust nor easy to implement. This article examines the relevant instruments of international tax law to analyze potential and legal gaps in addressing these challenges. MNEs are defined as global enterprises that own or control direct investment assets in one or more countries other than their home country. Countries where MNEs have investor status are referred to as "home countries" for those MNEs. Conversely, "market countries," "investment host countries," or simply "host countries" are those countries where MNEs have non-parent direct investments. Three specific objects of analysis are explored: GAFAs (Google, Amazon, Facebook, and Apple) and their digital business models in numbers; BEPS 2.0 plans and their deviant proposals regarding post-BEPS countries; and simple, robust, yet jurisdictionally secure unilateral measures that are not yet challenged by other countries or by the OECD and would address problems with pending OECD measures.

16. Google and EU Tax Decisions

Not long ago, two major tax decisions against Google could be observed from Europe that set precedent in the international debate over taxing digital economy. In November 2020, the Panier de Bercy, composed of senior officials from the French finance ministry, ruled that Google must pay €1.1 billion in back taxes to France for alleged breaches of tax rules from 2010 to 2015. The decision, which is being appealed by Google and is likely directed to high courts, alleges that Google

manipulated its operations in France and otherwise in Europe to develop an opaque system whose profitability rules were imposed from the headquarters in Mountain View.

In December 2020, a French court of appeal upheld the decision of the Administrative Court of Paris, rejecting a €590 million tax refund request that had been made by Google UK, Google's affiliate that sells advertising space and bona fide contracts with clients on behalf of search engines Google France and YouTube France. This decision did not set a new legal precedent and followed traditional treaties-based international tax rules about companies' commercial presence in a country. However, it ruled that an advertisement, a commercial offer made through a search engine that has no physical pre-arrangement in a country, may amount to a local establishment subject to business tax claiming "affinity with that country". It further ruled that major tax delinquency renders null and void tax refund requests because of a "violation of the monopole of taxation" (Harpaz, 2021).

17. Apple's Tax Arrangements

The evidence put forward against Apple involves a manifold of arrangements that give rise to the potential distortion of competition. Apple Inc. is a multinational corporation based in California engaged in the designing and marketing of various consumer electronics, software, and services. Apple's tax arrangements involve allocating its global profits to an Irish subsidiary, Apple Sales International, which uses them to pay for licenses to use IP rights to subsidiary Apple Operations Europe. However, the leadership and management of both Apple Sales International and Apple Operations Europe are in Apple Inc.'s headquarters in the US and offshore shells, respectively (Koutsias & Dine, 2019). Each parent company manages one of these subsidiaries in a different continent, with Apple Sales International earning more than 80 percent of its revenues outside the US by conducting little to no commercial activity in the countries where the income is derived. The taxable profits of Apple Sales International in Ireland would be reduced if profits were recorded and taxed in other countries instead of being recorded in Ireland. Apple's arrangements would ultimately result in very little taxation if countries outside Ireland were less effective in taxing profits, as the global operating and financing subsidiaries are not insured under double taxation agreements. The other shell companies owned by Apple Inc. also have little or no share capital, employees, and infrastructure in Ireland. Apple Inc. has created three offshore corporations that receive income but have no tax residence. One has paid no corporate income tax to any nation for the last five years; another pays tax to Ireland equivalent to a tiny fraction of 1 percent of its total income (Hrushko, 2017). It is evident that corporate activities of this type lead to large-scale tax avoidance, which,

despite its unethical nature, is lawful. Tax avoidance at the group level is linked to their ability to manipulate their institutional structures to shift profits and perform transactions at artificially low prices. Within OECD guidelines, the result has been that larger companies such as Apple that used to contribute to high tax revenues have moved their taxable bases offshore in what is really a low-cost system of transfer pricing to low-tax or no-tax jurisdictions.

18. Proposed Solutions for Tax Reform

While many of these ideas are feasible, there are important practical and political issues impeding their implementation. Regarding coordinated international approaches, it is inspiring to see countries come together to negotiate a comprehensive, multinational agreement that seeks to reform the international tax system. However, as described above, the OECD negotiations' unilateral 1.0 version only touches on a small portion of the reform needed. It benefits existing state secret jurisdictions at the cost of other countries, especially developing countries, and is riddled with loopholes. Additionally, existing treaties prevent unilateral measures that would be just & fair, leading to concerns about free riding. Lastly, while bilateral treaties serve as an example for multinational measures, relying on existing treaties only further perfects the status quo that allows fragmentation and gaps.

Regarding unilateral approaches, a report pointed out that existing regimes cannot bridge gaps in digital economy taxation. Discriminatory measures would run afoul of the GATS and the WTO's nullification and impairment obligations. While general measures (analogous taxes with equivalent effects) are still WTO-consistent, the GATS illustrates these measures must not discriminate against countries or be more onerous than necessary. The jurisdictional sovereignty issue would arise as countries tax transactions that generate income. While unilateral measures like lump-sum taxes and import duties may mitigate this risk, they still require international commitment.

Finally, regarding targeted bilateral or limited multinational approaches, while these fail to address many countries, they would nevertheless be a substantial improvement. Existing treaties neatly sidestep GATS, and countries like the U.S. have implemented versions of these regimes. However, these regimes require limited and targeted trilateral agreements to implement, which are too narrow. Extensive attempts to craft these agreements have focused resources on engagement with key actors to maximize participation and coverage. Unfortunately, their funds are limited, and many countries have neither sophisticated negotiating skills nor a financial stake in the approach (Cui, 2019).

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19. Future Trends in Digital Taxation

Many feel that an offshoot of the pandemic will be increased digital taxation. This acceleration will likely take the form of things like corporate reporting of profits in consumer countries or location, additional taxes based on revenues earned in consumer countries, duties based on cross-border data transfers, and, perhaps, instances of digital tariffs. Such taxes will be focused on revenues rather than profit, and on globally operating coupled digital firms rather than those competing in the uncoupled or local space. In this sense, the technology and data challenges of the digital economy may take center stage in the post-COVID world and cloud the financial and tax challenges. Going down this path would be a mistake. The current move to establish a comprehensive global tax for the digital economy should be embraced. This tax would also tax profits and could be levied on all international firms, coupled or uncoupled, and would have far wider fiscal merit than unilateral action taken by particular countries. This tax would be good for business since it would lessen the uncertainty that accompanies fiscal Darwinism and tax competition in an environment of rapidly evolving technology.

Smartphone, tablets, and laptops have transformed the everyday life of nearly everyone in developed international nations. Routine functions such as socializing, banking, shopping, responding to email, searching for information, and accessing video, news, and music are performed by using assorted digital applications. In the past decade, the online consumer is at the center of a new business model that fully takes advantage of these transformations: read something for free, post something for free, and share something for free. The consumer gets the service for free, but the consumer pays in kind by providing the firm with data, which enables it to offer targeted advertisements at a premium rate. This ads-led business model is founded on the undivided attention of the consumer. The high international market capitalizations of five firms − Google, Amazon, Facebook, Apple, and Microsoft − represent the industry of the new economy, which is defined as highly digitalized. Social media that host consumer postings in blogs are better understood as franchises. Replacement firms may arise but require a rapid take-up of users on an international scale, which enjoys significant network effects ((Harpaz, 2021).

20. Recommendations

- **Establish a Global Digital Tax Framework**

Promote consensus under the OECD/G20 Inclusive Framework to modernize nexus and permanent establishment rules. A unified system will reduce tax arbitrage and prevent unilateral actions that could trigger trade disputes.

- **Implement a Global Minimum Tax Rate**
  Enforce a 15% minimum corporate tax on multinationals (as per Pillar Two) to curb base erosion and profit shifting. This creates a level playing field and discourages the race to the bottom in tax rates.
- **Reform Nexus and Profit Allocation Rules**
  Adopt new criteria recognizing user participation, digital presence, and data value as bases for tax liability. This will ensure that market jurisdictions where value is created can claim appropriate tax rights.

21. Conclusion

Concerns regarding the taxation of the digital economy have led governments around the world to search for a way to tax the global profits of large tech companies, often referred to as "big tech," that provide digital services. This is challenging due to the 100-year-old international tax rules that were built for the 20th-century economy, which are largely retained today and that provide for taxation of business profits in the residence state of the entity conducting business. Big tech companies provide services and generate revenue in countries around the world without being present there, which leaves a significant gap from between country taxing rights and where income is reported.

As the global economy has transitioned from the 20th to the 21st century, the international rules governing the taxation of cross-border profits have largely remained the same. Companies often complain that historic rules do not adequately reflect the way global business is done today or that they are obsolete, but overall they are content with the current rules. In this regard, large multinational enterprises, often referred to as "big tech," have compounded the double-edged sword nature of network effects. A particular business line, or network, generates large profits wherever it is developed, produced or rendered, and then providing that service in additional jurisdictions represents a much smaller market and much lower revenue. The opportunity to obtain market info and replicate services gives rise to concerns regarding market monopolization and anti-trust regulation. In this, businesses feel that laws are lagging behind commercial realities.

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As concerns surrounding taxation of the digital economy emerged in the early/mid-2010s, governments around the world convened to negotiate a proposal for new taxing rights that would reallocate ownership of some profits to the customers of that business line based on locally-sourced sales. To garner wider support, the proposal was rooted in behavioral features of the digital economy that echoed emerging concerns for competitiveness and equity. As 2021 approaches, many countries have run into legal and political obstacles in implementing that new framework. Absent such reforms, every year that goes by is more tax revenue that will never be recovered (Harpaz, 2021).

REFERENCES:

1. Harpaz, A. (2021). Taxation of the Digital Economy: Adapting a Twentieth-Century Tax System to a Twenty-First-Century Economy.
2. Fjord Kjærsgaard, L. & Koerver Schmidt, P. (2018). Allocation of the Right to Tax Income from Digital Intermediary Platforms – Challenges and Possibilities for Taxation in the Jurisdiction of the User.
3. Mazur, O. (2016). Transfer Pricing Challenges in the Cloud.
4. Koutsias, M. & Dine, J. (2019). The Three Shades of Tax Avoidance of Corporate Groups: Company Law, Ethics and the Multiplicity of Jurisdictions involved"..
5. Hrushko, N. (2017). Tax in the World of Antitrust Enforcement: European Commission's State Aid Investigations into EU Member States' Tax Rulings.
6. Cui, W. (2019). The Superiority of the Digital Service Tax over Significant Digital Presence Proposals.

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NEUROSCIENCE AND CRIMINAL RESPONSIBILITY: REVISITING INSANITY AND MENS REA – AN INDIAN PERSPECTIVE

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Neerja**

ABSTRACT

The evolution of neuroscience has presented formidable challenges to traditional criminal law, particularly in the assessment of criminal responsibility. With the enforcement of the Bharatiya Nyaya Sanhita, 2023, replacing the colonial-era IPC, it is imperative to re-examine how Indian criminal law conceptualises *mens rea* and legal insanity. This paper analyses the intersection of neuroscience and criminal law in India, critiques the limited scope of the insanity defence under Section 14 of the BNS, and proposes a modern, science-sensitive approach to culpability that integrates cognitive and volitional impairments revealed through neuroscientific evidence.

KEYWORDS: *Neurojurisprudence, Mens Rea, Legal Insanity and Neuroscience Evidence, Indian Criminal Justice and Brain Science*

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INTRODUCTION

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023[1] marks a significant milestone in the evolution of Indian criminal jurisprudence, replacing the Indian Penal Code (IPC), 1860, a colonial-era statute that had formed the backbone of criminal law in India for over 160 years. This legislative transition is being hailed as an opportunity to Indianize penal law, modernize legal language, and align statutory frameworks with contemporary social realities. However, the shift from the IPC to the BNS is largely structural and semantic, with several substantive provisions retained either verbatim or with minimal revision. One such provision is the doctrine of criminal responsibility, particularly the legal construct of insanity, now encapsulated under Section 14 of the BNS[2], which mirrors the old Section 84 of the IPC. At the heart of criminal law lies the principle that liability must be predicated on mens rea—a guilty mind. This requirement assumes that an individual has the mental capacity to understand the nature and consequences of their actions[3]. The insanity defence serves as a critical exception to this presumption, recognising that certain individuals, due to mental illness or cognitive impairment, may lack the requisite mental state to be held criminally accountable. However, the Indian legal system continues to rely on the McNaughton Rules[4] of 1843 a 19th-century standard based on a narrow understanding of mental illness that primarily focuses on intellectual incapacity, while largely ignoring volitional disorders, emotional dysfunction, and neurobiological realities.

In recent decades, advancements in neuroscience have revolutionized our understanding of the human brain, cognition, and behavior. Sophisticated imaging technologies like fMRI, PET scans, and EEG now allow for precise observation of neural activity and have unearthed compelling correlations between structural or functional brain anomalies and behaviors traditionally considered criminal. For instance, damage to the prefrontal cortex or abnormalities in the amygdala have been associated with impaired impulse control, moral reasoning, and emotional regulation. These developments challenge the simplistic binary of sanity versus insanity that underlies traditional legal formulations and raise

[1] *The Bharatiya Nyaya Sanhita, 2023* (Act No. 45 of 2023) was enacted to replace the Indian Penal Code, 1860, and came into effect on 1st July 2024.
[2] Section 14, *Bharatiya Nyaya Sanhita*, 2023.
[3] Law Commission of India, *Report on Reforms in Criminal Law*, Vol. I (2020), at 12.
[4] *R v. McNaghten*, (1843) 10 Cl & Fin 200; 8 ER 718.

important questions: Should a person with a demonstrable neurological impairment, who retains some cognitive understanding but lacks volitional control, be held to the same standard of culpability? Does Section 14 of the BNS adequately reflect the complexity of modern brain science?

This paper seeks to critically interrogate the continued reliance on antiquated formulations of criminal responsibility in Indian law[5]. It contends that the current legal framework, by narrowly defining insanity and ignoring nuanced findings of neuroscience, risks miscarriages of justice both by absolving culpable individuals who feign illness, and by punishing genuinely impaired persons whose actions arise from conditions beyond their control[6]. The BNS, while heralded as a symbol of progress, fails to incorporate the scientific and jurisprudential developments that have emerged globally in relation to neurocriminology, neuroethics, and forensic neuroscience.

Therefore, the objective of this research is threefold:

1. To examine the concept of mens rea and its application under the BNS in light of neuroscientific insights.
2. To evaluate the limitations of Section 14 of the BNS in accommodating modern understandings of mental and neurological disorders.
3. To propose a reform-oriented model that is science-sensitive, legally robust, and ethically grounded, ensuring a more accurate assessment of criminal responsibility in the Indian context.

In essence, this paper calls for a paradigm shift from a purely legalistic notion of criminal responsibility to one that is interdisciplinary, drawing on insights from law, neuroscience, psychiatry, and philosophy. It argues that such a shift is not only consistent with the aims of justice and fairness but also necessary to ensure that the criminal justice system remains responsive to the evolving understanding of the human mind.

MENS REA AND INSANITY UNDER THE BNS

[5] Owen D. Jones, René Marois, Martha J. Farah & Henry T. Greely, "Law and Neuroscience", (2013) 33 Journal of Neuroscience 17624.
[6] V. Kumari, "Legal Insanity and Criminal Liability in India: A Doctrinal and Functional Analysis", (2019) 61 JILI 128, at 132

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Mens Rea: Still the Foundation

The concept of *mens rea*, or the guilty mind, remains the bedrock of criminal responsibility under the *Bharatiya Nyaya Sanhita, 2023* (BNS), just as it was under the Indian Penal Code (IPC), 1860. The BNS continues to embrace the principle that criminal liability cannot be affixed solely on the basis of the physical act (*actus reus*); rather, it must be accompanied by an appropriate mental state. The statute categorically recognises various gradations of culpability, such as *intention*, *knowledge*, *recklessness*, and *negligence*, and these mental states are embedded within the definitions of specific offences. For instance, the offence of murder under Section 101 of the BNS hinges on the "intention of causing death" or "knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury likely to cause death"[7] Similarly, culpable homicide under Section 100 uses the standard of *knowledge* and *intention*, while rash and negligent acts are covered under Sections like 106 (causing death by negligence), reflecting a different level of mens rea[8]

This preservation of the mens rea principle confirms that Indian criminal law, even under the BNS, continues to be rooted in classical common law traditions that require moral blameworthiness for legal culpability. It also underscores the necessity of subjective evaluation of an offender's mental state at the time of commission of the crime, which becomes particularly complex in cases involving mental illness or cognitive disorders.

Legal Insanity – Section 14, BNS

Section 14 of the *Bharatiya Nyaya Sanhita, 2023* is a direct successor to Section 84 of the IPC, and retains its original language with no substantive alteration. It reads:

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."[9]

This section encapsulates the **legal defence of insanity**, and is a statutory embodiment of the **M'Naghten Rule**, first laid down in 1843 by the House of Lords in the celebrated English case *R v.*

[7] Section 101, *Bharatiya Nyaya Sanhita*, 2023.
[8] Section 106, *Bharatiya Nyaya Sanhita*, 2023.
[9] Section 14, *Bharatiya Nyaya Sanhita*, 2023

M'Naghten[10]The rule was formulated after intense public and political debate on the nature of mental illness and its relationship to criminal responsibility. Its influence on Indian criminal law is a vestige of colonial jurisprudence that continues to dominate despite significant advancements in modern psychiatry and neuroscience. The essence of Section 14 lies in **cognitive incapacity** that is, the law exempts from liability only those individuals who, by reason of mental unsoundness, were *incapable of knowing* either the **nature of the act** or that the act was **wrong or contrary to law**. Thus, the provision is built on a narrow definition of insanity, focusing solely on the intellectual or cognitive faculties of the accused, while **completely ignoring the volitional or emotional impairments** that may equally affect an individual's ability to control their actions or appreciate moral wrongfulness[11]

For example, conditions like schizophrenia, bipolar disorder in manic phases, or certain personality disorders may not always impair cognitive understanding but may **substantially compromise volition** i.e., the capacity to resist criminal impulses. Yet, the current legal test does not accommodate such nuances. In effect, the law continues to follow a **binary model**: either the person knew the act was wrong or did not, with no middle ground for degrees of impaired responsibility[12]

Further, the burden of proving legal insanity rests heavily on the defence, who must demonstrate, typically through medical evidence, that the accused suffered from such a level of mental incapacity at the *precise moment* of the act. This requirement presents practical difficulties in Indian criminal trials, where mental health resources are limited and courts often lack access to trained forensic psychiatrists[13]

The provision also raises concerns under **constitutional jurisprudence**. Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which has been expansively interpreted by the Supreme Court to include the right to fair trial and humane treatment. By adhering rigidly to

[10] *R v. McNaghten*, (1843) 10 Cl & Fin 200; 8 ER 718.
[11] V. Kumari, "Legal Insanity and Criminal Liability in India: A Doctrinal and Functional Analysis", (2019) 61 JILI 128, at 133–134.
[12] J. Nandakumar, "Volitional Impairment and Indian Criminal Law: A Critique of Section 84 IPC", (2017) 59 Journal of the Indian Law Institute 77.
[13] R. Satish, "Criminal Responsibility and Neuroscience: An Indian Perspective", (2021) 43 Delhi Law Review 55, at 59–60.

an antiquated test for insanity, the law arguably fails to meet the standards of substantive due process and contemporary human rights norms[14].

In essence, while the BNS marks a progressive overhaul of India's criminal law system in several areas, its treatment of legal insanity under Section 14 remains **stagnant and medically outdated**. It continues to be shaped by 19th-century British moral philosophy rather than 21st-century scientific understanding of mental health and human behaviour. As a result, there is an urgent need for legislative reform that integrates **neuroscience-informed jurisprudence**, including recognition of **diminished responsibility**, **irresistible impulse**, and **psychosocial impairments**, while also ensuring robust procedural safeguards and ethical frameworks.

NEUROSCIENCE AND ITS LEGAL RELEVANCE

The field of neuroscience has revolutionized our understanding of human cognition, behaviour, and culpability. These scientific advances are becoming increasingly significant in criminal adjudication, particularly in determining mental states like *mens rea* and assessing defences such as legal insanity under **Section 14 of the Bharatiya Nyaya Sanhita (BNS), 2023**. Neuroscience provides tools that allow for an objective evaluation of a defendant's brain structure and function, thus challenging the traditional reliance on subjective psychiatric assessments alone.[15]

Modern Neuroscientific Tools and Techniques

Several neuroimaging and diagnostic tools are now used to detect and interpret neurological anomalies that may influence criminal behaviour:

- **Functional Magnetic Resonance Imaging (fMRI):** This technique measures brain activity by detecting changes associated with blood flow. It enables identification of dysfunctions in areas responsible for decision-making, impulse control, and emotional regulation—regions often implicated in criminal conduct.[16]

[14] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
[15] Nita A. Farahany, "Neuroscience and Behavioral Genetics in US Criminal Law: An Empirical Analysis" (2011) 2(3) Journal of Law and the Biosciences 485.
[16] Martha J. Farah, "Neuroethics: The Practical and the Philosophical" (2005) 5(1) Trends in Cognitive Sciences 34.

- **Electroencephalogram (EEG):** EEG measures electrical activity in the brain. Abnormal wave patterns can suggest epilepsy, traumatic brain injury, or other conditions affecting mental awareness and impulse control—factors relevant for determining insanity or diminished responsibility.[17]
- **Neuropsychological Testing:** These are behavioural tests designed to assess cognitive deficits, memory issues, executive function, and attention span. Such evaluations can reveal the extent of brain dysfunction that may not be visible through imaging alone.

These tools provide **empirical data** that support or refute claims of mental incapacity, moving beyond purely clinical or anecdotal psychiatric evaluations.

Legal Applications in the Indian Context

Indian courts have started acknowledging neuroscientific evidence, although its application remains limited and cautiously adopted. Notable uses include:

- **Establishing Insanity or Diminished Responsibility:** Neuroscientific evidence is increasingly used to corroborate claims of unsoundness of mind under Section 14, BNS. Courts may rely on fMRI or EEG results, along with psychiatric evaluations, to decide whether the accused lacked the capacity to understand the nature or wrongfulness of the act.
- **Challenging Mens Rea:** In cases where intention or knowledge is a key element, neuroscience can provide insight into whether the accused had the requisite mental state at the time of the crime. For instance, a person with prefrontal cortex dysfunction may lack the ability to form intent or foresee consequences, weakening the prosecution's case.
- **Mitigating Sentences:** Neuroscience may not always exonerate, but it can mitigate. Convicted individuals with verifiable brain impairments may receive lighter sentences or be diverted to mental health facilities instead of prisons, particularly when the impairment affects impulse control or emotional regulation.[18]

[17] Adrian Raine, *The Anatomy of Violence: The Biological Roots of Crime* (Pantheon 2013) 214–217
[18] Owen D. Jones et al., "Law and Neuroscience" (2014) 33(3) Journal of Neuroscience 17624.

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Indian Judicial Trends and Neuroscience

Though Indian jurisprudence still leans heavily on psychiatric evidence, courts have started showing openness to neuroscientific methods, especially in high-profile or complex cases. In **State v. Sushil Sharma**,[19] the court examined the mental condition of the accused during trial proceedings. Though not strictly a case of neuroscience, it opened the door for advanced medico-legal assessments. In some instances, neuroimaging has been introduced during sentencing to argue diminished culpability, particularly for juveniles or individuals with developmental disorders.

However, **challenges persist**:

- Lack of standard protocols for admitting neuroscience evidence
- Limited expertise among judges and lawyers in interpreting scientific data
- Ethical concerns about privacy, determinism, and free will[20]

In sum, neuroscience has begun to disrupt traditional legal doctrines that assume all individuals possess equal cognitive capacity and moral agency. For the Indian criminal justice system under the BNS, integrating these insights offers a more nuanced, scientifically grounded approach to criminal responsibility. It also raises urgent questions about the need for procedural safeguards, expert training, and legal reform to appropriately harness this evolving field.[21]

JUDICIAL INTERPRETATION IN INDIA (POST-NEUROSCIENCE RECOGNITION)

Despite the increasing international recognition of neuroscience in evaluating criminal responsibility, Indian courts have largely remained conservative in their interpretation of legal insanity under **Section 14 of the Bharatiya Nyaya Sanhita (BNS), 2023** (earlier Section 84 of the IPC). The judiciary has shown reluctance to embrace neuroscientific findings as conclusive proof of mental incapacity, largely due to the rigid cognitive focus embedded in the M'Naghten Rule, which remains the basis of Section 14. Judicial reasoning continues to insist on demonstrating a complete inability to understand the nature or wrongfulness of an act at the time of its commission, thereby excluding a

[19] *State v. Sushil Sharma*, AIR 2007 SC 1540.
[20] Illes Judy and Thomas Raffin, "Neuroethics: An Emerging New Discipline" (2002) 3(3) Nature Reviews Neuroscience 229.
[21] Pustilnik Amanda C., "Violence on the Brain: A Critique of Neuroscience in Criminal Law" (2008) 44(1) Harvard Civil Rights-Civil Liberties Law Review 321.

wider spectrum of mental illnesses and brain impairments recognized by contemporary neuroscience[22].

Key Judgments and Case Analysis

- **Surendra Mishra v. State of Jharkhand, (2011) 11 SCC 495[23]**
  In this case, the Supreme Court reiterated that a prior history of mental illness, however medically substantiated, is not sufficient to invoke the defence of insanity. The court underscored the requirement of establishing that the accused was of unsound mind **at the exact moment** the offence was committed. This narrow approach disregards the fluctuating nature of mental disorders and the limitations of real-time diagnosis, particularly in psychiatric illnesses like bipolar disorder or dissociative identity disorder, which may not manifest consistently.
- **Hari Singh Gond v. State of M.P., (2008) 16 SCC 109[24]**
  Here, the Court accepted that schizophrenia constitutes a recognized mental disorder. However, it upheld the conviction, stating that despite the diagnosis, the defence had failed to prove that the condition rendered the accused incapable of understanding the nature of the act at the relevant time. This judgment exposes a recurring issue in Indian jurisprudence: while acknowledging the existence of mental illness, courts demand a level of evidentiary certainty that neuroscience may not yet be capable of providing due to the complex interplay between cognition, volition, and behavior.
- **Amrit Bhushan Gupta v. Union of India, (2021)[25]**
  In this more recent matter involving a clemency petition, neuroscientific reports (including MRI scans and psychiatric evaluations) were presented to demonstrate diminished responsibility and suggest reformation. However, the court declined to accept these findings as determinative or sufficiently probative. While not outright dismissive, the judgment reflects skepticism towards the reliability and admissibility of neuroscientific data, primarily

[22] Rakesh Chandra, "Insanity Defence in Indian Criminal Law: A Forensic Review," (2020) 62(1) *Journal of the Indian Law Institute* 82
[23] Surendra Mishra v. State of Jharkhand, (2011) 11 SCC 495.
[24] Hari Singh Gond v. State of M.P., (2008) 16 SCC 109.
[25] Amrit Bhushan Gupta v. Union of India, Writ Petition (Criminal) No. 148 of 2021 (decided on 16 December 2021).

because such evidence does not easily align with the legal standards set by the statutory framework.

These cases collectively reveal the Indian judiciary's persistent adherence to a **rigid cognitive test**, one that does not account for volitional impairments or partial incapacities. Moreover, the absence of an evidentiary framework within Indian law to guide the use and assessment of neuroscientific findings unlike jurisdictions such as the United States or Germany further contributes to judicial hesitation. Courts often treat expert opinions in neuropsychology or psychiatry as ancillary rather than central, especially in the absence of corroborative behavior-based evidence.[26]

Thus, while neuroscience holds the potential to revolutionize our understanding of culpability, its role in Indian criminal adjudication remains marginalized due to both statutory limitations and jurisprudential conservatism. A meaningful shift would require not only legislative reform to broaden the definition of legal insanity but also judicial sensitization towards modern medical science and an updated evidentiary framework for admitting and evaluating neuroscientific data.

NEUROSCIENCE AND THE CRISIS OF FREE WILL

The integration of neuroscience into legal reasoning has reignited longstanding debates about free will and criminal responsibility. In the classical model of criminal jurisprudence, particularly under Indian law as embodied in Section 14 of the Bharatiya Nyaya Sanhita, 2023 (earlier Section 84 IPC), a person can be exonerated from criminal liability only if, at the time of committing the act, they were incapable of knowing the nature of the act or that it was wrong or contrary to law. This cognitive focus overlooks a major component of culpability volition. Neuroscientific advancements, especially through tools like Functional Magnetic Resonance Imaging (fMRI) and Electroencephalography (EEG), have shed light on how certain regions of the brain particularly the prefrontal cortex, anterior cingulate cortex, and amygdala govern decision-making, impulse control, risk calculation, and moral reasoning[27]. Damage or underdevelopment in these areas, often caused by trauma, congenital abnormalities, or psychiatric disorders, can significantly impair one's ability to control actions or

[26] Nandita Mishra, "Neuroscience and the Law in India: A Cautious Judiciary," (2022) 10(3) *National Law School Review* 115.
[27] Michael S. Gazzaniga, *The Ethical Brain* (Dana Press 2005) 56.

evaluate moral consequences.[28] These neurological insights challenge the simplistic binary of "sane" versus "insane" in criminal trials. Neuroscience suggests a spectrum of impaired capacities, particularly volitional impairments, where an individual may intellectually understand that an act is wrong but lacks the ability to control their behavior due to dysfunction in executive brain systems. This disconnect between cognition and volition is what contemporary legal theory calls the "crisis of free will[29]."

In the Indian context, courts have traditionally interpreted the insanity defense narrowly. Section 14 BNS, like its predecessor Section 84 IPC, reflects the M'Naghten Rule, which emphasizes cognitive incapacity the inability to know the nature or wrongfulness of the act. However, volitional incapacity the inability to control behavior despite knowing its wrongfulness is not recognized as a ground for exoneration.

This gap becomes especially problematic when considering offenders with disorders like:

- Intermittent Explosive Disorder
- Frontal Lobe Epilepsy
- Conduct Disorders in Adolescents
- Impulse Control Disorders linked to PTSD or childhood trauma

In such cases, the neurobiological roots of behavior are not merely mitigating factors they challenge the very foundations of moral blameworthiness. A person may act violently not out of conscious choice but due to neurological disinhibition that prevents behavioral restraint. Despite this, Indian law presently offers no legal language or doctrinal tool to assess or incorporate volitional neuroscience in determining criminal liability.

This results in a doctrinal and ethical impasse**. Can we morally and legally punish someone for an act they could not control**? While Indian courts occasionally consider mental illness in sentencing (as seen in clemency or mercy petitions), they rarely apply neuroscientific findings to negate criminal liability altogether. In conclusion, the neuroscience of volition forces a reconsideration of the legal

[28] Francis X. Shen, 'Neuroscience, Mental Health and the Law: A Policy Briefing' (MacArthur Foundation Research Network on Law and Neuroscience, 2016)
[29] Stephen J. Morse, 'The Non-Problem of Free Will in Forensic Psychiatry and Psychology' (2007) 25 *Behavioral Sciences & the Law* 203

assumption that all wrongdoers have free will. It demands that Indian criminal law evolve to accommodate degrees of culpability based not just on knowledge of wrongfulness but also on the ability to act otherwise. Without such evolution, the law risks punishing those whose brains were biologically incapable of self-regulation a troubling contradiction in a justice system committed to fairness and proportionality.

CRITIQUE OF SECTION 14 BNS

Over-Reliance on Cognitive Deficit

Section 14 of the Bharatiya Nyaya Sanhita, 2023 (which replaces Section 84 of the Indian Penal Code, 1860), continues to reflect a narrow, **cognitivist** understanding of insanity, focusing solely on whether the accused was "incapable of knowing the nature of the act or that it was wrong or contrary to law.[30]" This binary approach, inherited from the 19th-century M'Naghten Rules, fails to accommodate a vast spectrum of mental illnesses that may **impair volition rather than cognition**. Modern neuroscience has established that conditions such as **temporal lobe epilepsy**, **bipolar disorder**, **complex PTSD**, and certain forms of **schizophrenia** may allow the individual to intellectually comprehend the nature and wrongfulness of their conduct, but still render them **unable to resist impulses** due to impaired volitional control[31]. For instance, a person with a severe manic episode in bipolar disorder may understand that their action is wrong but may still be unable to suppress hyperactivity, aggression, or impulsive violence. Moreover, neuroscientific studies show that brain structures like the **prefrontal cortex** and **amygdala**, which regulate impulse control and emotional regulation, are often compromised in individuals with such disorders. This biological evidence calls into question a legal standard that recognises only **cognitive deficits**, leaving out persons whose decision-making faculties are overridden by neurobiological dysfunctions[32].

By failing to address **volitional incapacity**, Section 14 overlooks a significant dimension of criminal responsibility. In effect, it reinforces a **false dichotomy**—that a person either knows what they are

[30] **Ratanlal & Dhirajlal**, *The Indian Penal Code*, 37th edn, (LexisNexis 2023) at 1574.
[31] Stephen J. Morse, "Brain Overclaim Syndrome and Criminal Responsibility: A Diagnostic Note," (2006) 3(2) *Ohio State Journal of Criminal Law* 397.
[32] Owen D. Jones et al., "Law and Neuroscience in the United States," (2013) 1(1) *Oxford Handbook of Law and Neuroscience* 3–5.

doing (and is criminally responsible) or does not (and is completely exonerated), leaving no room for nuanced evaluations of **partial mental illness** or **compromised agency**.

No Provision for Diminished Responsibility

Another critical flaw in Section 14 is its **omission of the doctrine of diminished responsibility**, a concept that allows for **partial exculpation or sentencing mitigation** where the accused suffers from a mental condition that **does not reach the threshold of legal insanity** but significantly impairs their judgment or self-control. Jurisdictions like the **United Kingdom**, under Section 2 of the **Homicide Act, 1957** (as amended), explicitly recognise diminished responsibility.[33] It permits a charge of murder to be reduced to manslaughter if the accused was suffering from an "abnormality of mental functioning" that substantially impaired their ability to understand the nature of the conduct, form a rational judgment, or exercise self-control. Similarly, several **American states** and **civil law systems** in Europe acknowledge **gradations in mental illness**, allowing courts to tailor the punishment proportionate to the accused's actual capacity at the time of the crime.

In contrast, **Indian criminal law operates on an all-or-nothing standard**. Either the accused is insane under Section 14 and thereby acquitted, or fully responsible and sentenced as per normal provisions, regardless of any medical or psychological factors that may merit leniency. This results in unjust outcomes, particularly for those whose **psychiatric disorders**, although not qualifying as legal insanity, still **diminish culpability**.[34]

The absence of a diminished responsibility clause also deprives trial courts of the flexibility to impose **therapeutic sentencing** or recommend **psychiatric treatment** within custodial settings. Instead, the accused is often punished without addressing the underlying medical condition, perpetuating a **cycle of criminalisation of mental illness**.

Furthermore, the Indian judiciary, though empathetic in some judgments, lacks a **statutory mandate** to consider diminished mental capacity as a mitigating factor unless it is couched in the complete defence of insanity or the general mitigating clauses under sentencing jurisprudence. As a result,

[33] Abhinav Sekhri, "Mental Illness and Criminal Law in India: A Case for Recognising Diminished Responsibility," (2020) *Indian Journal of Criminology and Criminal Justice* Vol. 6.
[34] Farahany, Nita A. (ed.), *The Impact of Behavioral Sciences on Criminal Law*, (Oxford University Press 2009) at 228–231.

courts are often forced to either **stretch the insanity defence beyond its language** or **ignore psychiatric evidence altogether**, neither of which are jurisprudentially sound practices.

In light of the above, there is a compelling need to **reform Section 14** of the BNS by:

- Introducing **volitional incapacity** as part of the insanity defence.
- Creating a **statutory recognition of diminished responsibility** for partial mental illness.
- Equipping trial courts with **discretionary powers** to divert such offenders to mental healthcare institutions or apply therapeutic jurisprudence principles.

RECOMMENDATIONS FOR REFORM

This would harmonise Indian criminal law with neuroscientific developments and promote a more compassionate and rational model of justice for mentally ill offenders. Recommendations for Reform

1. **Amend Section 14 BNS to Include Volitional Incapacity, Not Just Cognitive**
   The current language of Section 14 of the Bharatiya Nyaya Sanhita (BNS) primarily hinges on the cognitive incapacity of the accused whether the individual "was incapable of knowing the nature of the act or that it was wrong or contrary to law." This cognitive-centric approach mirrors the M'Naghten Rules and excludes those suffering from volitional impairments where a person knows what they are doing but is unable to control their actions due to a mental condition. Contemporary psychiatric literature recognizes several disorders[35] (e.g., temporal lobe epilepsy, schizophrenia, impulse control disorders) that do not affect cognition per se but significantly impair volition. The law should be amended to include a broader test of insanity that encompasses both cognitive and volitional incapacity, aligning the Indian legal system with jurisdictions such as the U.S., where the American Law Institute's (ALI) Model Penal Code incorporates the volitional prong in its test for criminal responsibility. This would ensure fairer treatment of mentally ill defendants whose condition impacts impulse control rather than understanding.
2. **Introduce a Statutory Defence of Diminished Responsibility for Reduced Culpability**
   Indian criminal law currently follows an all-or-nothing approach to the insanity defence either the accused is fully exonerated or held entirely culpable. This fails to accommodate offenders

[35] Walter Glannon, *Brain, Body, and Mind: Neuroethics with a Human Face* (Oxford University Press 2019) 134.

who, though not legally insane, suffer from substantial mental impairments that reduce their culpability[36]. In contrast, the United Kingdom's *Homicide Act, 1957* (as amended by the *Coroners and Justice Act, 2009*) recognizes a partial defence of diminished responsibility, particularly in cases of homicide. It allows mentally disordered offenders to be convicted of a lesser offence (e.g., manslaughter instead of murder) based on impaired mental functioning at the time of the crime. India should adopt a similar statutory defence that acknowledges mental illness on a spectrum and permits sentencing leniency or rehabilitation-oriented measures where appropriate. This would bring compassion and nuance into the system while still ensuring public safety.

3. **Codify Guidelines for Admission of Neuroscientific Evidence under Bharatiya Sakshya Adhiniyam, 2023**

   The Bharatiya Sakshya Adhiniyam, 2023 (which replaces the Indian Evidence Act, 1872)[37], should be amended to expressly incorporate provisions for the admissibility and evaluation of neuroscientific and psychological evidence. With advancements in neuroimaging (e.g., fMRI, PET scans), genetic predisposition analysis, and psychiatric assessments, courts are increasingly confronted with evidence that demands specialized interpretation. However, without codified evidentiary standards, there is a risk of either underuse due to lack of awareness or misuse due to improper interpretation. Detailed procedural rules should specify:

   - Qualifications required for expert testimony in neuro-forensics,
   - Threshold standards for reliability (akin to the Daubert Standard in the U.S.),
   - Protocols for court-appointed expert panels, and
   - Admissibility criteria for brain scans or psychometric testing.

   These reforms would improve consistency, avoid evidentiary bias, and enhance scientific accuracy in criminal adjudication.

4. **Train Judges, Prosecutors, and Defenders in Forensic Neuroscience**

   Given the growing relevance of neuroscience in criminal litigation, it is imperative to invest

[36] Sally Satel and Scott O. Lilienfeld, *Brainwashed: The Seductive Appeal of Mindless Neuroscience* (Basic Books 2013) 92-98.
[37] Indian Evidence Act, 1872; see now Bharatiya Sakshya Adhiniyam, 2023.

in capacity-building for all stakeholders in the justice system. Most legal professionals lack training in interpreting mental health assessments, neurological tests, or behavioral science reports.[38] Specialized training modules developed jointly by legal and medical institutions should be integrated into the judicial academies, law schools, and prosecution departments. Topics should include:

- Basics of neurobiology and psychiatric disorders,
- The science behind mental health diagnostics,
- Limits of neuroscientific evidence in court,
- Case law developments in neuro-law, and
- Ethical considerations in using such evidence.

  Regular continuing legal education (CLE) programs on forensic neuroscience would ensure that mental health defences are neither misused nor neglected due to ignorance.[39]

5. **Establish Neuro-Legal Boards at High Court Level to Assess Complex Cases**

   To prevent arbitrary or inconsistent rulings in cases involving mental illness, Neuro-Legal Boards should be constituted at each High Court. These would function as multidisciplinary expert bodies composed of psychiatrists, neurologists, psychologists, legal scholars, and forensic experts. Their primary role would be to:

   - Evaluate contested insanity or diminished responsibility claims,
   - Advise courts on complex neuroscientific evidence,
   - Recommend treatment, rehabilitation, or custodial pathways based on risk assessments, and
   - Provide independent reports to assist judicial reasoning.

     These Boards would function akin to Medical Boards or the Mental Health Review Boards under the Mental Healthcare Act, 2017, but with a forensic specialization. Institutionalizing such bodies would ensure a standardized, expert-informed

[38] Law Commission of India, *Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, August 2018, at 26.
[39] Nita A. Farahany, "Neuroscience and Behavioral Genetics in US Criminal Law: An Empirical Analysis," (2016) 2 Journal of Law and the Biosciences 485.

approach to neuro-legal disputes and enhance the fairness of criminal trials involving mental illness[40]

CONCLUSION

The Bharatiya Nyaya Sanhita, while symbolising a legislative shift, retains the archaic and narrow conception of criminal insanity that has long characterised Indian criminal jurisprudence. Although it claims to modernise and decolonise the Indian penal system, Section 14 BNS continues to replicate the language and limitations of Section 84 IPC, which was based on the 19th-century McNaughton Rules. This adherence to a purely cognitive model of mental incapacity requiring the accused to be incapable of understanding the nature of the act or that it was wrong or contrary to law fails to reflect over a century of scientific advancement in neuroscience and psychiatry. Today, it is well-established that mental disorders can impair volition, emotional regulation, impulse control, and judgment, even when the individual retains basic intellectual comprehension[41]. Conditions such as schizophrenia, bipolar disorder, PTSD, and certain forms of epilepsy or brain injury may lead to profound disturbances in behaviour without entirely eroding cognitive awareness.

By ignoring these realities, the current provision under Section 14 BNS fails to acknowledge volitional incapacity as a relevant criterion for the insanity defence. As a result, individuals who may be significantly mentally impaired, yet still retain some cognitive faculties, are denied access to a fair legal defence and subjected to punishment that disregards the diminished moral blameworthiness of their actions. Furthermore, the absence of a defence of diminished responsibility creates a binary framework in which an accused is either fully sane and criminally responsible or completely insane and exempted from liability. This is a legally and ethically inadequate approach, as it disregards the gradations of mental incapacity that may reduce but not eliminate culpability[42]. Comparative legal systems have long embraced more nuanced frameworks such as the partial defence of diminished responsibility under English law which allow courts to assess the mental condition of the accused more realistically and to calibrate punishment accordingly.

[40] Indian Psychiatric Society, "Guidelines on Forensic Psychiatry," (2020) https://www.indianpsychiatricsociety.org accessed 25 July 2025.
[41] Niti Kumar, "Neuroscience in Indian Courtrooms: Admissibility and Ambiguity," *NUJS Law Review* 14, no. 2 (2021): 145–158
[42] A.R. Basu, *Forensic Psychiatry: A Clinical-Legal Approach* (New Delhi: LexisNexis, 2020), pp. 91–105

The failure to incorporate neuroscientific evidence in a systematic and codified manner into the assessment of criminal responsibility also weakens the integrity of adjudication. The Bharatiya Sakshya Adhiniyam, 2023, could play a vital role in setting out clear and consistent guidelines for the admissibility, reliability, and scope of neuroscientific testimony in courtrooms. Without such provisions, the evidentiary treatment of mental illness remains arbitrary and prone to misunderstanding or misuse. Equally important is the need for legal actors judges, prosecutors, defence lawyers to receive specialised training in forensic neuroscience and mental health law, so that they are equipped to engage meaningfully with expert testimony and complex diagnostic concepts.[43]

Ultimately, the reform of Section 14 is not a matter of technical legal revision but a profound moral and jurisprudential imperative. Justice, in any civilised society, requires that the law take into account the internal condition of the accused his or her capacity for intention, self-control, and rational decision-making before attaching criminal liability[44]. Punishing those who lack such capacities not only results in miscarriages of justice but undermines the legitimacy of the criminal justice system itself. A modern, humane, and scientifically-informed legal order must expand its conception of insanity beyond the cognitive to include volitional and emotional impairments. Only then can the promise of a progressive and rehabilitative justice system, as envisioned in the Bharatiya Nyaya Sanhita, truly be fulfilled.

[43] Law Commission of India, Report No. 271: *Humanizing Criminal Justice*, (New Delhi: Government of India, 2018), pp. 48–52
[44] National Judicial Academy, *Judicial Education and Mental Health Training Modules*, 2022 Edition

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BIOPIRACY, INDIGENOUS KNOWLEDGE AND GENDER JUSTICE: RECOGNIZING WOMEN'S ROLE IN BIODIVERSITY CONSERVATION & IPR FRAMEWORKS

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ABSTRACT

This paper critically explores the intersection of biopiracy, indigenous knowledge systems, and gender justice, with a focus on the under-recognized role of women in biodiversity conservation in India. It examines how women, particularly from tribal and rural communities, serve as vital custodians of traditional knowledge, yet remain largely invisible in formal intellectual property rights (IPR) frameworks and benefit-sharing mechanisms. The dominant IPR regimes, shaped by Western legal constructs of authorship and innovation, fail to account for the communal, oral, and experiential nature of knowledge passed down by women across generations. The paper highlights the gendered exclusions embedded within Indian biodiversity laws, digital knowledge databases, and institutional decision-making structures. It argues for a transformative approach integrating feminist jurisprudence, collective rights recognition, and gender-sensitive governance reforms. The study calls for a shift toward an IPR and biodiversity governance model rooted in justice, sustainability, and indigenous empowerment by proposing inclusive legal frameworks, participatory mechanisms, and intersectional recognition of marginalized women's voices. The conclusion underscores that recognizing women's ecological contributions is not merely about redressing historical omissions but is vital for resisting biopiracy, ensuring equitable innovation, and achieving genuine environmental stewardship in India.

Keywords: Biopiracy, Indigenous Knowledge, Gender Justice, Biodiversity Conservation, Intellectual Property Rights (IPR)

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1. Introduction: Intersections of Biopiracy, Gender, and Indigenous Knowledge

The notion of biopiracy has gained increasing prominence in international legal and academic discourses, particularly within post-colonial nations such as India that are custodians of extensive biodiversity and rich repositories of indigenous knowledge. Biopiracy refers to the unauthorised and often exploitative appropriation of biological resources and traditional knowledge, typically by foreign corporations, research institutions, or patent holders, without adequate recognition or benefit-sharing with the communities that have nurtured such expertise over generations.[1] In India, this phenomenon has become emblematic of the tensions between globalised intellectual property regimes and local knowledge systems. However, what often remains under-acknowledged is the profoundly gendered nature of these traditional knowledge practices, and how women, particularly those belonging to rural and tribal communities, function as principal stewards of ecological wisdom and biodiversity, yet continue to be rendered invisible in legal and institutional narratives.

Indigenous knowledge in the Indian context is not a static or monolithic construct; it is deeply embedded within communities' cultural, ecological, and spiritual lives. Unlike codified forms of scientific knowledge, it is transmitted orally, practiced collectively, and deeply interwoven with its practitioners' material and symbolic lives.[2] Historically, women have been pivotal in maintaining and enriching these knowledge systems. They are seed conservators, herbal healers, forest gatherers, and agricultural innovators. Their interaction with biodiversity is functional and epistemic; they develop and refine knowledge through embodied experience, seasonal rhythms, and intergenerational learning.[3] Despite this centrality, their contributions often go unrecognised within intellectual property law, which is structured around Western ideals of individual authorship, novelty, and documentation, criteria that are incompatible with the communal and often oral nature of women's traditional knowledge.

Biopiracy, therefore, not only represents an economic and legal injustice but also constitutes an epistemic and gendered form of dispossession. The well-known cases of the patenting of neem,

[1] Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* (South End Press, 1997) p. 8.
[2] Bina Agarwal, "Gender and Green Governance: The Political Economy of Women's Presence Within and Beyond Community Forestry" (Oxford University Press, 2010) p. 42.
[3] Anita Gurumurthy, "Gendered Knowledge, Biodiversity and Intellectual Property Rights: The Politics of Women's Traditional Knowledge" (2001) 2 *Indian Journal of Gender Studies* 21, pp. 25–26.

turmeric, and basmati rice, all involving knowledge systems deeply sustained by local women, exemplify this extractive dynamic.[4] In the case of neem, for instance, village women in India had used its extracts for pest control and medicinal purposes for centuries, only to see these practices rebranded and patented by a foreign company in the 1990s. Similarly, turmeric's antiseptic properties, long known and used by women in Indian households, were subject to a US patent until it was challenged and revoked by Indian scientists and legal experts.[5] These cases reveal a pattern in which women's localised knowledge is appropriated, decontextualised, and commodified, without any mechanisms for recognition or restitution.

What is disconcerting is that the institutional mechanisms created to prevent biopiracy and protect traditional knowledge, such as India's Biological Diversity Act, 2002, and the Traditional Knowledge Digital Library (TKDL), often fail to address gender dynamics adequately. Documenting knowledge into state-managed registers tends to abstract it from its lived context, erasing the women who are its bearers. Moreover, benefit-sharing regimes under Access and Benefit Sharing (ABS) mechanisms rarely guarantee that women, the primary knowledge holders, receive fair compensation or are even consulted during negotiations.[6]

This paper explores the confluence of biopiracy, gender justice, and indigenous knowledge within the Indian legal and social context. By critically examining the existing intellectual property regimes, biodiversity laws, and institutional mechanisms, it seeks to interrogate the extent to which the role of women has been marginalised or altogether excluded from legal frameworks governing biodiversity conservation and knowledge protection. The discussion also aims to highlight grassroots contributions by rural and tribal women in sustaining biodiversity, drawing attention to how their practices challenge the dominant logic of ownership and innovation embedded in current IP systems. The larger goal is to propose a feminist and decolonial rethinking of intellectual property and environmental governance that recognises the value of women's knowledge not as a relic of the past but as a vital, living resource central to ecological resilience and legal justice.

This study argues that gender justice is not peripheral but central to the debates on biopiracy and indigenous knowledge protection. As India continues to participate in global intellectual property

[4] Graham Dutfield, *Intellectual Property, Biogenetic Resources and Traditional Knowledge* (Earthscan, 2004) p. 133.
[5] R. V. Anuradha, "Turmeric, Neem and Basmati: Globalisation of Intellectual Property Rights and Traditional Knowledge" (2001) 36 *Economic and Political Weekly* 447, pp. 449–450.
[6] Kanchi Kohli and Shalini Bhutani, "From Bioprospecting to Biopiracy: Cases from India" in G. Krishnaswamy (ed), *Environment, Law and Society* (OUP, 2017) pp. 187–189.

negotiations under frameworks such as the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Convention on Biological Diversity (CBD), it becomes imperative to ask whose knowledge is being protected, whose voices are being amplified, and whose contributions are being acknowledged in the making of law and policy. This inquiry, grounded in the Indian context, aspires to restore visibility and agency to the women who have long been the silent sentinels of biodiversity.

2. Traditional Knowledge and Biopiracy in India: A Legal and Socio-Cultural Overview

India's immense biological and cultural diversity has long made it a fertile ground for nurturing traditional knowledge systems and their systematic exploitation through biopiracy. The conventional knowledge embedded in the daily practices of tribal, rural, and agrarian communities constitutes a dynamic and living corpus that includes medicinal formulations, agricultural techniques, seed preservation, food preparation, and spiritual practices. These systems, passed through generations orally or via customary practices, are integral to cultural identity and local biodiversity management. However, the commodification of these knowledge systems under global intellectual property frameworks, especially following the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), has raised serious concerns regarding the legal protection of traditional knowledge in India and the socio-economic marginalisation of its knowledge holders.

Biopiracy in the Indian context became globally visible during the 1990s with several cases that exposed the vulnerability of traditional knowledge under modern patent systems. One of the earliest and most emblematic cases involved the neem tree (*Azadirachta indica*), known for its pesticidal and medicinal properties. For centuries, neem oil and extracts were used by Indian villagers, particularly women, to treat skin conditions, preserve crops, and maintain hygiene. In 1994, the European Patent Office granted a patent to W.R. Grace and the US Department of Agriculture for extracting neem oil. Following widespread protest and legal opposition by Indian NGOs and scientists, the patent was revoked in 2000 because the knowledge was not novel but part of prior public knowledge in India.[7]

Similar concerns were raised regarding turmeric (*Curcuma longa*), a rhizome used across Indian households for its antiseptic and healing properties. In 1995, the United States Patent and Trademark Office granted two researchers at the University of Mississippi Medical Center a patent for using turmeric in wound healing. This was successfully challenged by the Council of Scientific and

[7] Anil K. Gupta, "Rewarding Traditional Knowledge and Contemporary Grassroots Creativity: The Role of Intellectual Property Protection" (2004) 2 *Indian Journal of Traditional Knowledge* 55, pp. 57–58.

Industrial Research (CSIR) of India, which presented documented evidence from ancient Sanskrit texts and published sources to prove the longstanding use of turmeric for that purpose. The patent was revoked in 1997.[8] In yet another instance, the US-based firm RiceTec sought a patent over certain strains of basmati rice and their cultivation methods. Basmati, a geographical and cultural product of northern India, is cultivated through generational knowledge and selective breeding by farmers, many of whom are women responsible for seed saving and varietal knowledge. Though the patent was modified after India challenged its claims, the incident underscored the loopholes in global IP regimes that allow for the misappropriation of community-held knowledge.[9]

These cases have stimulated the Indian state to respond with a mix of legislative, institutional, and policy interventions aimed at protecting traditional knowledge and curbing biopiracy. The Biological Diversity Act, 2002 (BDA) is a central legislation. Enacted to fulfil India's obligations under the Convention on Biological Diversity (CBD), the Act provides for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits from utilizing biological resources and associated knowledge. It establishes a three-tier structure comprising the National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs), and Biodiversity Management Committees (BMCs) at the local level. These bodies regulate access to biological resources and ensure benefit-sharing agreements are entered into with local communities.[10] While the BDA is progressive in its articulation of Access and Benefit Sharing (ABS), its implementation has faced considerable challenges, especially concerning gender inclusivity and local participation. Many BMCs remain inactive or improperly constituted. Women, despite being primary custodians of biological and cultural knowledge, are underrepresented in these institutions and rarely participate in ABS negotiations. Moreover, ABS agreements often fail to ensure the return of meaningful benefits to women and their communities. Instead, they are either symbolic or heavily skewed in favour of corporate or state interests.[11]

Another notable effort by the Indian government to prevent biopiracy is the development of the Traditional Knowledge Digital Library (TKDL), a database launched in 2001 by CSIR in

[8] Suman Sahai, "Turmeric Patents: A Case Study in Biopiracy" (1999) 34 *Economic and Political Weekly* 123, p. 124.
[9] A.K. Bagchi, "Basmati, Texmati and the Limits of Globalisation of Agricultural Trade" (2000) 35 *Social Scientist* 17, pp. 20–21.
[10] Krystyna Swiderska, "Protecting Traditional Knowledge: A Framework Based on Customary Laws and Bio-Cultural Heritage" (IIED, 2006) p. 14.
[11] Shalini Bhutani, "Biodiversity Law: Whose Rights, Whose Authority?" in Kanchi Kohli and Manju Menon (eds), *Business Interests and the Environmental Crisis* (Sage Publications, 2016) p. 91.

collaboration with the Ministry of AYUSH. The TKDL documents medicinal formulations from ancient Indian texts like Ayurveda, Unani, and Siddha in patent-compatible formats and multiple languages, making them accessible to patent examiners worldwide. By doing so, it seeks to serve as a defensive tool to prevent patents on publicly known traditional remedies. Although the TKDL has successfully thwarted several biopiracy attempts, it raises questions about the formalisation and centralisation of conventional knowledge, often without the consent or participation of local communities, especially women who are the living transmitters of such knowledge.[12] Additionally, India's Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act) was enacted to protect plant breeders' rights while recognising and rewarding the contributions of farmers in conserving, improving, and making available plant genetic resources. This law, unique among national legislation, acknowledges "farmers as breeders" and grants them the right to register their varieties and claim benefit-sharing. However, like other legal frameworks, the realisation of farmers' rights under this Act remains largely aspirational. Institutional procedures are complex, and small-scale women farmers often do not possess formal land titles or written cultivation records and are excluded from legal protections and benefits. The requirement of documentation and the prioritisation of individual claimants over communal or family-based practices further marginalise women.[13]

The structural failure of Indian IP laws and biodiversity regulations to account for traditional knowledge's communal, oral, and gendered nature reflects deeper epistemological and cultural biases. These frameworks are rooted in the assumptions of Euro-American legal traditions that valorise written, scientific, and proprietary modes of knowledge. As a result, the knowledge of rural and tribal women—who have traditionally served as ecological stewards—is either invisibilised or co-opted into formal systems without any corresponding acknowledgment of their agency or contribution. Moreover, global IP regimes under TRIPS, which India is obligated to comply with as a WTO member, do not recognise community-based or orally transmitted knowledge as a valid subject of protection. This leaves such knowledge systems vulnerable to appropriation and unprotected against commercial exploitation.

Ultimately, the Indian legal response to biopiracy remains fragmented and limited in its capacity to protect the knowledge held by women and local communities. While it has developed progressive

[12] N.S. Gopalakrishnan and T.G. Agitha, "Traditional Knowledge Protection: The Indian Experience" (2009) 4 *Indian Journal of Law and Technology* 1, pp. 7–8.
[13] P.V. Satheesh, "Seeds of Survival: Women and Agricultural Biodiversity in India" (Deccan Development Society, 2001) pp. 11–12.

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laws in theory, their implementation has not adequately addressed the core issues of representation, equity, and gender justice. Traditional knowledge cannot be protected merely through databases or formal registration mechanisms. Instead, what is needed is a paradigm shift that recognises the ontological and epistemic plurality of knowledge systems, one that respects the lived, gendered, and collective dimensions of biodiversity conservation. Only through such a recalibration of legal and institutional mechanisms can India hope to effectively counter biopiracy and uphold the rights of its most critical knowledge holders, indigenous and rural women.

3. Women as Custodians of Biodiversity

In the discourse on biodiversity conservation and intellectual property, the figure of the rural or indigenous woman is frequently absent, obscured by legal abstractions and institutional frameworks that fail to account for her central role in sustaining ecological balance and food security. Yet, in many regions of India, it is women, particularly from tribal, Dalit, and agrarian communities, who act as the primary custodians of biodiversity. Through their intimate knowledge of soil types, seeds, climatic patterns, forest ecology, and medicinal plants, women create and sustain complex biocultural systems that are productive and resilient. This knowledge is neither static nor incidental; it is embedded in daily practices, rituals, ecological relationships, and cultural norms, and is transmitted matrilineally across generations. Despite this, their contributions are often dismissed as 'informal' or 'unscientific' and excluded from formal knowledge systems and benefit-sharing regimes.

One of the most striking aspects of women's biodiversity stewardship in India is their role in seed conservation. Across multiple agroecological zones, women are guardians of local seed varieties, ensuring genetic diversity through traditional selection, preservation, and exchange practices. In Odisha's Koraput region, recognised by the Food and Agriculture Organization as a global agro-biodiversity hotspot, indigenous women have preserved more than a hundred varieties of millet, pulses, and tubers, adapting them to local climatic fluctuations and soil conditions.[14] Similarly, in the Deccan Plateau, Dalit women from the Deccan Development Society have revived indigenous crops such as bajra, jowar, and foxtail millet, rejecting hybrid and genetically modified seeds promoted by state and corporate actors. Their community seed banks serve not just as repositories of biodiversity

[14] Seema Purushothaman and Vibha Gupta, *Ecological Traditions of India: Practice and Discourse* (Centre for Environment Education, 2010) pp. 118–120.

but also as spaces of ecological resistance and cultural affirmation.[15] Women's knowledge is also central to forest biodiversity conservation and sustainable use. In regions like Chhattisgarh, Jharkhand, and parts of Madhya Pradesh, Adivasi women gather and process non-timber forest produce such as mahua, sal, tamarind, harra, and bahera, which are vital for household subsistence and local economies. Their expertise in identifying medicinal plants, harvesting techniques, and seasonal cycles reflects an ecological intelligence developed through generations of interaction with the forest landscape. This knowledge, however, is often dismissed by formal forestry and pharmaceutical systems, which treat forests as extractive resources rather than living commons managed through intricate community ethics.[16] The entry of bioprospecting researchers and pharmaceutical companies into these areas has further complicated this equation, as plants traditionally used by women are catalogued, isolated, and patented without any recognition of the original knowledge holders.

Women's traditional medicinal knowledge also represents a crucial component of biodiversity governance. In tribal communities across the Eastern Ghats, older women function as informal healers, using herbal remedies to treat ailments ranging from fever and dysentery to snake bites and infections. Their knowledge systems are highly localised, relying on indigenous classifications of plants, soil types, and bodily states that do not map easily onto biomedical categories. This form of ecological healing is increasingly threatened not only by biopiracy but also by the erosion of cultural transmission, as younger generations migrate to urban areas or are drawn into state medical systems that do not value or document such knowledge.[17] Efforts to codify traditional medicine through centralised institutions often fail to capture these gendered nuances, privileging textual knowledge over experiential learning and excluding the very women who sustain these traditions.

The marginalisation of women's ecological knowledge is not accidental; it is structured through legal, epistemological, and institutional biases. Much like those at the global level, intellectual property regimes in India are premised on recognizing individual, novel, and commercially valuable innovations; these criteria are fundamentally at odds with rural women's communal, orally transmitted, and non-market-oriented knowledge practices. For instance, the Geographical

[15] Amita Baviskar, "Seeds of Resistance: The Struggle for Food Sovereignty in India" (2011) 46 *International Journal of Social Science and Humanity* 105, pp. 107–108.
[16] P. Sainath, *Everybody Loves a Good Drought: Stories from India's Poorest Districts* (Penguin, 2012) pp. 153–155.
[17] M. Amruthavalli, "Indigenous Women's Medicinal Knowledge in the Eastern Ghats: A Vanishing Legacy" (2020) 12 *Journal of Tribal Health Studies* 23, pp. 24–26.

Indications (GIs) system, while ostensibly designed to protect collective knowledge and cultural practices, often fails to include women in registration processes, governance structures, or benefit-sharing. A study on GI registration in Karnataka revealed that even where women constituted most artisan or farming labour, they were rarely listed as right holders or decision-makers in the GI governance frameworks.[18] In many ways, the invisibility of women in biodiversity and knowledge governance reflects broader patterns of gendered exclusion within legal and environmental institutions. The Forest Rights Act, 2006, despite its progressive language on joint titling and community resource rights, has seen poor implementation of its gender provisions on the ground. Similarly, the Biodiversity Management Committees (BMCs) constituted under the Biological Diversity Act often lack female representation or fail to ensure meaningful participation in drafting People's Biodiversity Registers (PBRs), which document local knowledge and practices. When compiled by external consultants or state officials without community involvement, these registers risk becoming technocratic inventories rather than reflective accounts of living, embodied knowledge systems maintained by women.[19] Moreover, socio-economic and climatic pressures threaten women's biodiversity knowledge. Land dispossession, commercial agriculture, and climate change have disrupted traditional livelihoods, while developmental policies have often favoured extractive industries over community-based conservation. The erosion of common property resources, such as forests, ponds, and grazing lands, directly impacts women's ecological agency, as it curtails their access to spaces where knowledge is generated and applied. Migration, displacement, and monoculture farming further dilute the transmission of knowledge from older to younger generations, creating gaps in memory and practice that are difficult to recover once lost.[20]

Despite these challenges, women across India continue to mobilise for ecological justice and knowledge sovereignty. Grassroots movements such as the Bhoomi Sena in Maharashtra, the Vanastree collective in Karnataka, and the Khasi women's alliances in Meghalaya illustrate how women reclaim their rights over seeds, forests, and knowledge systems. These movements not only resist corporate biopiracy and monoculture policies but also offer alternative frameworks of ecological governance rooted in reciprocity, care, and community stewardship. Their actions

[18] Indu Bhan, "Gender and GI Tags: An Invisible Majority" (2016) 51 *Indian Journal of Gender Studies* 245, pp. 248–250.
[19] Neera Singh, "Women and Community Forests in India: Reimagining Forest Governance" (2016) 47 *Feminist Economics* 1, pp. 5–8.
[20] A. Kothari, A. Das and B. Pathak, *Rethinking Conservation: People, Policy and Practice in India* (Kalpavriksh, 2012) pp. 142–144.

challenge the legal invisibility imposed by intellectual property regimes and make visible the ethical and epistemological richness of women's relationship with biodiversity.

Recognising women as biodiversity custodians is not merely a matter of cultural affirmation or policy inclusion but a necessary step towards building sustainable and equitable environmental governance frameworks. It demands rethinking knowledge: who holds it, how it is valued, and whose voices are heard in making law and policy. Only when legal systems are redesigned to reflect the plurality of knowledge systems and the gendered realities of ecological labour can India truly protect its biodiversity and honour the contributions of its women.

4. Gender Justice and the Failures of Intellectual Property Rights Frameworks in India

As codified both globally and domestically, the framework of intellectual property rights (IPR) operates on assumptions fundamentally misaligned with women's lived realities and epistemologies, particularly those inhabiting indigenous, rural, and agrarian landscapes in India. Gender justice, as a constitutional and developmental commitment, has been insufficiently integrated into India's IPR regime, leading to a situation where the rights of women knowledge holders are neither acknowledged nor protected within formal systems of innovation and legal recognition. The intellectual property regime in India remains an arena where modern legal constructs, such as novelty, inventiveness, and individual authorship, collide with traditional, orally transmitted, communally held, and frequently gendered knowledge systems, resulting in both erasure and appropriation.

Central to the failure of IPR frameworks is their inability to reconcile that much of women's knowledge is non-formal, undocumented, and rooted in daily practice rather than scientific abstraction. This epistemic divide is exacerbated by the rigid architecture of the Patents Act, 1970, and its TRIPS-compliant amendments, which define innovation in a way that excludes collective and ancestral knowledge systems. The criteria for patentability, novelty, inventive step, and industrial application are designed to reward laboratory-based or commercially driven inventions, leaving out the indigenous women's use of medicinal plants, seed selection, and food processing techniques that have been refined over centuries. These forms of knowledge are treated as part of the "public domain" unless registered or published, stripping women of their right to recognition or benefits.[21] Even when protective mechanisms are introduced, they often remain gender-neutral on paper but gender-blind in

[21] Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* (Earthscan, 2002) pp. 95–96.

practice. For instance, the Biological Diversity Act, 2002, mandates equitable benefit sharing and respect for traditional knowledge. However, there is little in its implementation to suggest any deliberate engagement with the gendered aspects of knowledge ownership and control. The National Biodiversity Authority (NBA) and its associated institutions rarely conduct gender audits, and the access and benefit-sharing (ABS) agreements facilitated under this law fail to account for the fact that women are often excluded from community consultations or legal literacy programs related to their rights over biological resources.[22]

Similar gaps are visible in the Protection of Plant Varieties and Farmers' Rights Act, 2001. Though the Act is praised for recognising farmers as plant breeders, it remains inattentive to the gendered dynamics of agricultural innovation. Women farmers, who frequently develop, select, and maintain traditional crop varieties, are sidelined in the formal variety registration process, which demands documentary evidence, trials, and verification—nearly insurmountable barriers for illiterate or landless women. Despite women's pivotal role in seed selection and preservation, the benefits of breeder rights and benefit-sharing mechanisms tend to accrue disproportionately to men, agricultural scientists, or corporate entities.[23] Furthermore, the concept of "essentially derived varieties" embedded in the Act has opened new legal channels for seed companies to claim incremental changes in traditional varieties without returning benefits to the original, often female, cultivators.

Another significant institutional initiative—the Traditional Knowledge Digital Library (TKDL)—aims to prevent the patenting of Indian traditional medical knowledge by documenting it in patent-compatible formats. While this has successfully opposed foreign patents, it has not involved or credited the women who are the principal custodians of much of this knowledge. The creation of digital archives, while necessary as a defensive legal measure, also transforms living, context-specific knowledge into decontextualized, state-managed datasets, devoid of their community roots. There is no visible process for benefit-sharing from the TKDL or participatory protocols for incorporating local women's knowledge into the database.[24] Thus, despite its anti-biopiracy objective, the TKDL replicates the logic of extraction by removing knowledge from its source communities and repackaging it for legal scrutiny, with no mechanism for restitution.

[22] Ashish Kothari and A. Shrivastava, "The Biocultural Rights of Forest Communities" (2012) 48 *Seminar* 56, pp. 58–59.
[23] G.V. Ramanjaneyulu and P. Satheesh, "Plant Variety Protection and Farmers' Rights: Institutional Gaps and Gender Concerns in India" (2011) 10 *Asian Biotechnology and Development Review* 21, pp. 25–26.
[24] Shalini Randeria, "Entangled Traditions: Civil Society, the State, and the Database of Indigenous Knowledge in India" (2007) 14 *PoLAR: Political and Legal Anthropology Review* 29, pp. 31–33.

The inadequacy of India's IPR frameworks is further complicated by their entanglement with global agreements such as the TRIPS Agreement under the WTO. TRIPS does not distinguish between communal and individual knowledge or between written and oral traditions. It treats knowledge as a commodity subject to ownership, excluding the collective, ecological, and spiritual dimensions through which indigenous women relate to biodiversity. Even the Convention on Biological Diversity (CBD), which introduced the principle of Access and Benefit Sharing, stops short of providing direct protections for gendered knowledge systems, leaving it to national governments to frame their implementation. In the Indian context, this has meant that women remain on the periphery of benefit-sharing regimes and are rarely included in negotiations with companies or research institutions.[25]

The legal invisibility of women's knowledge is a function of law's internal bias and the wider institutional culture that governs IP policymaking in India. Most bodies concerned with biodiversity, plant varieties, or patent law have historically been male-dominated, with little effort to mainstream gender into their policy deliberations. Reports from meetings of the National Biodiversity Authority or consultations under the Department for Promotion of Industry and Internal Trade (DPIIT) reveal a consistent absence of women experts, community leaders, or feminist legal scholars. The voices of women from forested regions, tribal settlements, and small farming communities are largely absent from parliamentary debates and policy documents on IPR.[26] The result is a policymaking process that views biopiracy primarily as a threat to national sovereignty or economic interest, rather than a form of gendered epistemic violence.

This institutional blindness extends to legal education and the judiciary, where issues of biopiracy and intellectual property are often addressed without a gender lens. In landmark cases on biopiracy, the jurisprudence is dominated by technocratic arguments about prior art, novelty, or patent scope, with little or no mention of the gendered origin of the knowledge in question. Although successful in revoking unjust patents, the turmeric and neem patent challenges did not foreground the women who were the primary users and transmitters of such knowledge. As such, these important victories failed

[25] Rachel Wynberg and Chennells Roger, *Indigenous Peoples, Consent and Benefit Sharing: Lessons from the San-Hoodia Case* (Springer, 2009) pp. 127–128.
[26] Priya Sangameswaran, "Gender and the Politics of Knowledge in Natural Resource Governance in India" (2012) 47 *IDS Bulletin* 49, pp. 50–51.

to set a precedent for gender-sensitive jurisprudence or a broader recognition of women's intellectual contributions.[27]

For gender justice to be meaningfully realised within the IPR regime, a radical shift is needed, transcending token inclusion and reconfiguring the assumptions on which legal protection of knowledge is based. This requires adopting a feminist jurisprudence of intellectual property responsive to collective authorship, oral transmission, and the deeply embedded social relations through which women produce and share knowledge. Such a jurisprudence would interrogate the idea of ownership itself and reimagine benefit-sharing not merely in economic terms but in terms of autonomy, agency, and epistemic respect. It would also mandate the inclusion of women in all stages of lawmaking, implementation, and adjudication, thereby ensuring that the legal system reflects the realities of those it seeks to protect.

In sum, the failure of India's IPR framework to accommodate and empower women as knowledge holders is not a marginal issue but a central one. It reflects the limits of a legal order prioritizing scientific, textual, and individual forms of innovation over communal, oral, and embodied ones. Until the system is recalibrated to centre the contributions of rural and indigenous women, intellectual property law in India will continue to be complicit in the erasure and exploitation of its most vital ecological stewards.

5. Policy Gaps and Institutional Failures: Need for Gender-Inclusive Frameworks

The intersection of gender, traditional knowledge, and intellectual property rights (IPRs) in India reveals a critical void in current policy and institutional frameworks. While India has taken notable steps to address biopiracy and the protection of indigenous knowledge, such as enacting the Biological Diversity Act, 2002, and establishing the National Innovation Foundation (NIF), these efforts have largely operated gender-neutrally. This approach assumes uniform access to knowledge, participation in decision-making, and benefit-sharing across all community members, ignoring deep-seated gender hierarchies that restrict women's agency in these domains. Consequently, the very institutions designed to protect traditional knowledge often reproduce structural exclusions that marginalise women, particularly those from tribal, forest-dwelling, and agrarian communities.

[27] Swati Mehta, "Reclaiming Women's Knowledge: Gender, Biopiracy, and Justice in India's Legal System" (2021) 3 *Indian Law Review* 67, pp. 70–71.

One of the most apparent policy gaps is the absence of a gender lens in biodiversity governance at national and sub-national levels. The Biodiversity Management Committees (BMCs) formed under the Biological Diversity Act are often dominated by male community leaders or local elites, with little attention to the participation of women who are primary users and conservers of biological resources. Even though the National Biodiversity Authority has issued guidelines encouraging representation of women in BMCs, such provisions remain tokenistic in implementation. Studies indicate that women members are either absent from decision-making roles or included merely to satisfy quotas, without genuine inclusion in benefit-sharing negotiations or access to information and legal awareness.[28] This results in a systemic sidelining of their rights and roles within biodiversity conservation and knowledge protection frameworks.

The legal instruments preserving traditional knowledge, including the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV&FR), also suffer a similar shortfall. Although the Act recognises farmers as breeders and provides for benefit sharing, it does not incorporate any mechanisms to ensure the inclusion of women in identifying, registering, or claiming ownership of plant varieties. The procedural complexity of filing applications and the demand for documentary evidence effectively disqualify women farmers who engage in oral, experiential, and community-based innovation. The limited literacy levels, landlessness, and lack of institutional support further disempower women from asserting claims under this law.[29] What is particularly problematic is that these policies assume an equal playing field within rural and indigenous communities, ignoring how patriarchy mediates access to knowledge systems and legal rights.

India's efforts to document and defend its traditional knowledge through mechanisms like the Traditional Knowledge Digital Library (TKDL) and the People's Biodiversity Registers (PBRs) also fall short of inclusivity. These databases, though important in countering biopiracy and asserting sovereignty over knowledge, have little to no gender-sensitive documentation protocols. While women are often the keepers of herbal knowledge, food practices, and seed conservation, their names rarely appear as contributors or knowledge holders in the formal records of TKDL or PBRs. Moreover, the bureaucratic nature of these databases tends to decontextualise knowledge from its social and ecological environment, stripping it of its gendered history and community

[28] Aseem Shrivastava, "Ecological Democracy: The Role of Gender and Community Institutions in India" (2013) 25 *India Development Review* 91, pp. 94–95.
[29] Suman Sahai, "Farmers' Rights and Plant Variety Protection in India: A Gender Perspective" (2012) 17 *Journal of Intellectual Property Rights* 127, pp. 129–130.

embeddedness.[30] These systems effectively replicate colonial knowledge extraction methods by translating oral, embedded knowledge into legalistic formats without proper attribution, consultation, or compensation to women.

Another major institutional failure lies in the integration of gender within research and development (R&D) institutions that influence IPR policy. Institutions like the Indian Council of Agricultural Research (ICAR), the Department of Science and Technology (DST), and the Ministry of Ayush are crucial in framing research agendas around traditional medicine and plant genetics. However, these institutions lack dedicated gender policies in R&D programming related to biodiversity and traditional knowledge. Most scientists, patent officers, and legal experts involved in innovation governance are men, and there is little interdisciplinary engagement with feminist scholarship, anthropology, or indigenous epistemologies.[31] This gender bias in institutional design and staffing contributes to an epistemic erasure of women's perspectives and knowledge systems in policy formulation and enforcement.

In addition, India's accession to international treaties such as the TRIPS Agreement under the WTO and the Convention on Biological Diversity (CBD) has not led to domestic policies that explicitly incorporate gender justice. While the CBD recognises the importance of indigenous knowledge and community rights, it does not mandate member states to address intra-community gender disparities. Consequently, India's Access and Benefit Sharing (ABS) mechanisms, developed under the Biological Diversity Rules, 2004, do not require gender audits or disaggregated data on beneficiaries. ABS agreements signed with pharmaceutical companies or research institutions often fail to ensure that benefits reach the actual knowledge holders, frequently women, thus reinforcing inequities rather than resolving them.[32]

Despite these challenges, emerging policy approaches and grassroots experiments offer glimpses of a more gender-sensitive framework. Some state biodiversity boards, like those in Kerala and Nagaland, have begun piloting women-led BMCs and incorporating women's self-help groups into PBR documentation. Similarly, civil society organisations such as Navdanya, Deccan Development

[30] Manju Rani and Pratibha Singh, "Digitising Traditional Knowledge: The Missing Gender Lens in TKDL" (2020) 5 *South Asian Journal of Law and Policy* 63, pp. 65–66.
[31] Kamaljit Bawa and Uma Shaanker, "Women in Science, Innovation, and Biodiversity Policy in India" (2015) 40 *Current Science* 117, pp. 119–120.
[32] Divya Murthy and Arun Kashyap, "Access and Benefit Sharing in India: Bridging Policy and Practice Gaps with a Gender Lens" (2021) 8 *Indian Journal of Environmental Law* 81, pp. 84–85.

Society, and Kalpavriksh have created participatory platforms that empower rural women to assert their ecological knowledge and resist commodification through seed banks, community kitchens, and legal literacy initiatives. These decentralised, bottom-up models emphasise the value of women's work in conserving biodiversity and reimagining the ethics and politics of knowledge ownership.[33]

Nonetheless, these scattered initiatives must be integrated into national policy through institutional reforms that mandate gender-responsive budgeting, data collection, monitoring, and reporting in all biodiversity and IPR-related programs. Gender impact assessments must be mandatory for biodiversity projects, ABS contracts, and seed innovation schemes. Furthermore, legal aid and translation services should be provided to women in local languages to enable their meaningful participation in legal and administrative processes related to knowledge protection. The National Commission for Women (NCW), Ministry of Women and Child Development (MWCD), and Ministry of Tribal Affairs (MoTA) must be roped into IPR policymaking to ensure that the frameworks being developed are not only technically sound but also socially just.

Ultimately, the failure to address gender justice within IPR and biodiversity governance is not merely a policy oversight; it reflects a broader crisis in how knowledge is defined, who is recognised as a creator, and how value is assigned. Without institutional mechanisms to recognise women as knowledge producers, policy frameworks will continue to be complicit in both the biopiracy of indigenous knowledge and the patriarchal appropriation of women's contributions. A rights-based, gender-inclusive governance model is essential to reclaim women's place in India's intellectual and ecological histories.

6. Conclusion

The intricate nexus between biopiracy, indigenous knowledge, and gender justice in India exposes the limitations of current intellectual property and biodiversity governance systems. While the globalisation of patent regimes and biodiversity access laws has been instrumental in shaping the legal contours of biogenetic resource management, they remain largely blind to the embedded gender dynamics in indigenous knowledge systems. Indian women, especially those from tribal and rural communities, have historically served as living repositories of ecological wisdom. Their roles, however, have been systematically overlooked in formal legal recognition, institutional processes,

[33] Vandana Shiva, *Staying Alive: Women, Ecology, and Development* (Zed Books, 2016) pp. 132–134.

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and benefit-sharing mechanisms. As India aspires to become a leader in biodiversity conservation and equitable innovation, the urgent need to recalibrate its legal and policy landscape through a gender-sensitive lens cannot be overstated.

A gender-just governance model begins with acknowledging the differentiated ways men and women engage with biodiversity. Women often perform multifaceted roles, cultivators of medicinal plants, selectors of seeds, processors of forest produce, and healers using traditional remedies. These practices are grounded in experiential learning and intergenerational transmission, traits that are neither quantifiable nor easily reducible to the forms required by existing IPR structures. The conventional frameworks of patent law, geographical indications, and even benefit-sharing agreements are based on Eurocentric legal philosophies of authorship, novelty, and commercial utility, which marginalise communal and orally transmitted knowledge. This creates a disjuncture between the lived realities of indigenous women and the legal apparatus intended to protect their knowledge.

The transformation towards a gender-equitable legal order in this domain necessitates a structural rethinking of key statutes and administrative processes. India's Biological Diversity Act and associated rules, for instance, though progressive in intent, do not contain express provisions to ensure women's participation at every level—from biodiversity management committees at the village level to decision-making at the national level. Additionally, the registration and operation of Traditional Knowledge Digital Libraries must be reoriented to reflect the gendered context in which such knowledge is developed, used, and maintained. Documenting knowledge without community involvement, especially of women, risks decontextualising it and contributing to epistemic erasure rather than preservation.

Institutional reforms must also be supported by legal recognition of collective rights reflecting indigenous knowledge systems' non-individualistic nature. Rather than forcing women to navigate cumbersome IPR registration procedures designed for commercial inventors, laws must create enabling environments for group ownership, non-exclusive custodianship, and perpetual recognition. Benefit-sharing mechanisms should incorporate gender-disaggregated consultations and ensure that compensation reaches women in the communities where the knowledge originates. It is not merely a question of economic justice but of restoring dignity and agency to women whose knowledge has too often been appropriated without acknowledgement or reciprocity.

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Furthermore, the integration of gender perspectives in biodiversity and IPR policy cannot occur in a legal vacuum. It must be situated within the broader discourse of feminist jurisprudence, which critiques the masculinist bias of law and its allegiance to market-driven imperatives. Legal reform must thus draw from the lived experiences of women knowledge holders and challenge the epistemic hierarchies that privilege written, codified, and scientific knowledge over oral, intuitive, and context-specific traditions. In doing so, Indian legal frameworks can begin to reflect a plurality of knowledge systems that coexist and evolve outside dominant capitalist paradigms. A gender-just model also demands the intersectional inclusion of voices doubly marginalised by gender and indigeneity. Tribal women, Dalit women, and those from remote and conflict-affected regions face unique barriers in accessing legal remedies and institutional recognition. A truly inclusive system must develop decentralised platforms for participatory governance, enable community-led documentation initiatives, and incorporate customary law principles that respect women's ecological contributions. India's international obligations under treaties such as the Convention on Biological Diversity and its negotiations in forums like the World Intellectual Property Organization must also be leveraged to mainstream gender concerns. Diplomatic engagements should push for the inclusion of gender-responsive clauses in any global instruments on genetic resources and traditional knowledge. Aligning domestic law with these international commitments would enhance India's credibility and ensure its legal frameworks are consistent with global standards of justice and equity.

In conclusion, the movement toward a gender-just intellectual property and biodiversity regime in India must be grounded in legal innovation and social transformation. It requires dismantling the epistemic silos that exclude women's knowledge from legal protection and replacing them with frameworks that are inclusive, participatory, and context-sensitive. Recognising women's role as biodiversity custodians is not simply correcting historical injustices; it is an indispensable strategy for ensuring ecological sustainability, cultural continuity, and social equity in the face of expanding global biopiracy. The law must evolve to serve the economic interests of nations and corporations and the lived realities of those who have nurtured the Earth in silence for centuries.

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RIGHT TO ABORTION - A CRITICAL ANALYSIS OF MTP ACT

Ligi. T.K*

ABSTRACT

The reality of pregnancy and reproductive justice in India is influenced by traditional values, myths, and the patriarchal roles that society imposes, which undermine women's capacity to make decisions within the family structure. Women are often viewed as subordinate to men due to various factors, including economic, political, and socio-cultural conditions. They are deemed incapable of making their own decisions, even regarding their reproductive choices. The concept of autonomy in healthcare has been broadly recognized by the judiciary as it pertains to an individual's bodily integrity. Consequently, women must have the right to decide when and under what conditions they wish to have a child. A woman's interest should be a key factor, as she needs to be mentally prepared to conceive, continue with the pregnancy, and give birth. However, various social and ethical issues create barriers to women's pregnancy decision-making in India.

This article presents a legal examination of women's reproductive autonomy in India and the degree to which Indian laws safeguard this autonomy. Indian courts have consistently issued progressive rulings that expand the scope of reproductive rights. The Medical Termination of Pregnancy Act, while granting the right to bodily autonomy, encounters challenges in its implementation.

Keywords: *Reproductive right, Reproductive choice, Bodily autonomy, Abortion, right to privacy*

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OVERVIEW OF THE TOPIC

The pursuit of personal autonomy regarding reproductive decisions has gained significant global recognition, establishing the freedom to make responsible choices about parenthood as an essential human right. The idea of "reproductive rights" is deeply embedded in international human rights treaties and aligns closely with the aspirations of women in India. For many years, the availability of safe and legal abortion and contraception has been a divisive issue, exemplifying the ongoing struggle for women's control over their bodies and their responsibility in making reproductive choices.

Seventy years have passed since India gained independence, making it the perfect moment to examine the status and 'space' that women in India occupy today. As Swami Vivekananda once said, “It is impossible to think about the welfare of the world unless the condition of women is improved. A bird cannot soar with only one wing.” Reproductive rights refer to an individual's ability to make informed and independent decisions about whether to have children and manage reproductive health. In essence, these rights encompass the legal entitlements and freedoms associated with reproduction and reproductive health, which can differ from one country to another. The right to reproduce includes the following: the right to an abortion, fertility treatments, overall wellness, access to information, and the finest medical care.[1]

Women’s sexual and reproductive health is interconnected with various human rights, such as the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition against discrimination. Women have the autonomy to make free and responsible choices regarding the number, spacing, and timing of their children, achieve the highest standard of sexual and reproductive health, enjoy equality in reproductive choices, have sexual and reproductive security, and access reproductive health services.

Unsafe abortions rank as the third leading cause of maternal fatalities in India. Studies indicate that around half of pregnancies in India are unintended, with approximately one-third ending in abortion. The evolution of women’s empowerment in India has been remarkable, as women have engaged in nationalist movements, faced societal pressures pushing them back into domestic roles, and emerged as strong figures today; women in our nation have experienced a wide range of challenges.

[1] Reproductive rights of women in India: A Struggle for Autonomy and Equality, https://www.legalserviceindia.com/legal/article-13683, accessed on April 20,2025

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Nonetheless, the acknowledgment of women's sexual and reproductive rights in the country still remains minimal. Unsafe abortions constitute the third leading cause of maternal fatalities in India. Studies indicate that around half of pregnancies in India are unintended, with about one-third resulting in abortion. Broadly speaking, reproductive rights refer to the rights of individuals to make choices about reproduction and reproductive health. Individuals can exercise reproductive choices to either conceive or refrain from conceiving. The right to life is a fundamental human right, and human rights are those that should be available to all individuals without discrimination. The Supreme Court has recognized reproductive rights as a part of the right to health and as an aspect of personal liberty under Article 21 of the Constitution of India. Reproductive and sexual rights are closely linked to the concept of freedom. The recognition of dignity and equal rights for all individuals forms the foundation of liberty. There is a distinction between reproductive rights and sexual rights.

In India, there is no specific law addressing women's reproductive rights. While there are several laws that include provisions related to reproduction, sexual rights are frequently overlooked by the government in these statutes. This oversight occurs because both the state and society tend to view sexual rights as synonymous with reproductive rights. It is the responsibility of the state to safeguard women's rights, which includes ensuring access to comprehensive reproductive health information and services, achieving positive reproductive health outcomes such as reduced rates of unsafe abortions and maternal mortality, and allowing women to make fully informed choices about their sexuality and reproduction without the threat of violence, discrimination, or coercion. India has achieved considerable advancement in the area of reproductive rights and lawful abortion, as evidenced by the support from constitutional provisions, legislative frameworks, and judicial activism.

RATIONALE OF THE TOPIC

Currently, the topic of reproductive rights remains a highly emotional and politically divisive matter, particularly given the emergence of new technologies and recent legislation. Generally speaking, reproductive rights pertain to an individual's ability to decide on reproduction. This encompasses a person's right to plan their family, end a pregnancy, utilize contraceptives, receive sex education in public schooling, and access reproductive health services. While the ability of women to have control over their own bodies is essential for their own identity, the debate surrounding reproductive rights brings into question the patriarchal influence over women's choices in life.

In common language, medical termination of pregnancy is commonly known as abortion or termination. Merriam-Webster describes abortion as "the ending of a pregnancy that follows or is accompanied by the death of the embryo or fetus." The Cambridge Dictionary defines abortion as "the premature, intentional or unintentional cessation of a pregnancy when a baby or young animal is born too early and dies before full development." In simple terms, medical termination of pregnancy refers to a procedure that employs medication or surgical methods to conclude a pregnancy. In the past, abortion was entirely unacceptable under any circumstances.

Due to shifting attitudes towards sexuality and personal freedoms, as well as the negative effects of illegal abortions, abortion laws have been significantly relaxed. Following the Shantilal Shah Committee's conclusions, the Medical Termination of Pregnancy (MTP) Act, 1971 was implemented to permit safe and legal abortions, protecting women's health and lowering maternal mortality rates. The 2021 amendment allows for the termination of pregnancies that are between 20 and 24 weeks old and permits unmarried women to terminate a pregnancy for the same reasons, ie; failure of contraceptive methods or devices, as married women. The Act also permits abortion even after 24 weeks if a medical board diagnosis substantial foetal abnormalities[2].

The paper is focused on the unseen area of women's struggle for their right especially reproductive rights. A theoretical analysis is presented and a special importance is given to women's rights and this idea is supported by various approaches of the topic in the literature.

LEGAL FRAMEWORK

"You cannot have maternal health without reproductive health. And reproductive health includes contraception and family planning and access to legal, safe abortion" -

Hillary Rodham Clinton

There exists a distinction between sexual rights and reproductive rights. In India, there is no dedicated legislation specifically addressing women's reproductive rights. However, there are several laws that include provisions related to reproduction. Honestly, sexual rights are frequently overlooked by the government in legislation, with the underlying reason being that the state and society tend to view sexual rights as synonymous with reproductive rights. Reproductive rights refer to an individual's

[2] Medical Termination of Pregnancy: Changes in Law and Impact on Women in India https://primelegal.in/2023/01/28/- accessed on May 1, 2025

ability to choose whether or not to have children and to make informed and independent decisions concerning reproductive health. In other words, they encompass the legal rights and freedoms associated with reproduction and reproductive health, which differ from one country to another.

Reproductive rights encompass specific human rights that are acknowledged in national legislation, international human rights agreements, and various consensus documents. These rights are based on the recognition that all couples and individuals have the fundamental right to voluntarily and responsibly determine the number, spacing, and timing of their children, as well as to access the necessary information and means to do so, alongside the right to achieve the highest possible standards of sexual and reproductive health. Additionally, it includes their right to make reproductive decisions free from discrimination, coercion, and violence, as outlined in human rights documents.

Due to more progressive views on sexuality and personal freedoms, along with the adverse effects of unsafe abortions, laws have become more permissive. In India, the MTP Act, 2021 governs the termination of pregnancy. If the situation does not fall within the scope of this legislation, individuals must either seek illegal abortions or be compelled to carry the pregnancy to term. The act is seen as advantageous and regarded as a step forward by society. Nevertheless, it prompts reflection on the fact that even today, women lack complete autonomy over their own bodies and the decision to carry a child to term. Historically, Indian reproductive rights legislation, primarily regulated by the MTP Act of 1971, was quite restrictive and mainly addressed the needs of married women. The purpose behind this Act and its later amendments illustrates a gradual evolution towards acknowledging the reproductive rights of all women, regardless of their marital status. In addition to the MTP Act, other laws related to women's reproductive rights include the Protection of Children from Sexual Offences Act, 2012, the Preconception and Prenatal Diagnostic Techniques Act, 1994, and provisions surrounding surrogacy and criminal Law.

When fully realized, reproductive rights encompass a woman's right to complete a pregnancy, deliver a baby, and later raise her children. Several provisions in Part IV of the Constitution (Directive Principles of State Policy) are related to issues of health.[3] One of the main responsibilities of the State is to enhance the nutritional standards and living conditions of its citizens, as well as to promote public health. The Indian Constitution's Article 51(c) and the judiciary have affirmed that the government has a constitutional duty to uphold international law and fulfill treaty commitments. The

[3] Article 47, 39(e), 39(f) and 42

Indian government has a constitutional duty to provide legal remedies for infringements of fundamental rights and human rights. Article 39(a) mandates the government to facilitate equal access to justice and free legal assistance, ensuring that no citizen is deprived of justice due to economic or other hardships.

The right to life is the primary human right, and human rights are those that every individual is entitled to without discrimination. The Supreme Court has acknowledged that reproductive rights are both a part of the right to health and an aspect of personal liberty as guaranteed by Article 21 of the Indian Constitution. Reproductive and sexual rights are closely associated with individual freedom. The recognition of dignity and equal rights for all humans forms the foundation of liberty. It is important to distinguish between reproductive rights and sexual rights. The right to privacy is a fundamental right that encompasses protection from governmental intrusion in personal and intimate matters, including marriage, reproduction, parenting, and contraceptive use.

MTP ACT – AN OVERVIEW

In common language, the medical termination of pregnancy is often known as abortion or termination. Merriam-Webster defines abortion as "the ending of a pregnancy that occurs after, is accompanied by, results in, or closely follows the death of the embryo or fetus." The Cambridge Dictionary describes abortion as "the early, deliberate or accidental stopping of a pregnancy when a baby or young animal is born prematurely and dies before reaching full development." In simpler terms, medical termination of pregnancy is a procedure that employs either medication or surgical methods to conclude a pregnancy. In the past, abortion was entirely unacceptable under any circumstances. Even in the 21st century, a woman still has no absolute voice about her body and whether she wants to continue with the child.[4]

Rationale behind the MTP Act

The MTP Act, which was initially focused on married women, has developed to encompass wider reproductive concerns. The 2021 Amendment Act is especially important, as it broadens legal protections and services for the medical termination of pregnancies to include unmarried women. This change signifies a legislative acknowledgment of evolving societal norms and the necessity for inclusive reproductive rights.

[4] Supra note 3

The decision to have an abortion is fundamentally a matter of a woman's personal conscience and choice. It is a woman's undeniable right to live with dignity, as genuine parenthood can only be realized if women maintain control over their own bodies and reproductive choices. To limit or prevent a woman from making such a choice would infringe upon her fundamental rights.

The MTP Act, 1971 has significantly relaxed regulations in India. Conditions such as women's health concerns, unintended pregnancies resulting from contraceptive failure, and pregnancies arising from rape or other unlawful acts are amongst the acceptable reasons under the Act. The legislation permits abortions up to 20 weeks of gestation and provides legal protection to doctors who conduct abortions in accordance with its guidelines. The Act facilitates termination of pregnancy by a medical professional in two phases.

- For termination of pregnancy up to 12 weeks from conception, the opinion of one doctor was required.
- For pregnancies between 12 and 20 weeks old, the opinion of two doctors was required.

Amendment Act, 2021:

The MTP Act was revised in 2021, raising the abortion limit from 20 weeks to 24 weeks. Under the revised MTP Act, up to 20 weeks of pregnancy, termination can occur based on the opinion of a single doctor. For pregnancies ranging from 20 to 24 weeks, the amended legislation mandates the consultation of two doctors. The amendment to the MTP Act outlined seven categories of women who qualify for termination between 20 and 24 weeks of pregnancy:

- Survivors of sexual assault or rape or incest;
- Minors;
- Change of marital status during the ongoing pregnancy (widowhood and divorce);
- Women with physical disabilities
- Mentally ill women including mental retardation
- The foetal malformation
- Women with pregnancy in humanitarian settings or disaster or emergency situations.

Significance:

Ensuring reproductive rights and access to sexual and reproductive health services is crucial for safeguarding the human rights of women, especially those from marginalized and excluded communities such as sex workers, LGBTIQ individuals (lesbian, gay, bisexual,

transgender/transsexual, intersex, and queer/questioning), women with disabilities, and older women. The MTP Act prohibits revealing a woman's identity and details regarding her terminated pregnancy, unless permitted by current laws.

Arguments in favour of abortion:

- Bodily Autonomy: Abortion supports a woman's right to control her own body, allowing her to make choices regarding her body and reproductive health.
- Choice and Life Course Impact: Permitting abortion grants individuals the autonomy to determine their own life paths, helping to avert unplanned pregnancies that could negatively impact education, career opportunities, and mental health.
- Avoiding Unsafe Abortions: Allowing abortion reduces the occurrence of unsafe procedures, which can endanger women's health and potentially result in death.
- Changing Social Norms: Legislation needs to evolve in response to shifting social norms, recognizing the commonality of premarital sex, cohabitation, and various family configurations.
- Foetal Abnormalities: Abnormalities may not always be detected before 20 weeks, and denying women safe access to abortion can jeopardize their lives.
- Addressing Marital Rape Victims: Abortion should be accessible for women who may have conceived due to sexual assault or marital rape, respecting their mental and physical well-being and preventing further harm.[5]

Roe v. Wade[6] is the landmark case that legalised abortion.

Impact of MTP Act on Women's Reproductive Health:

The Act has not only impacted the well-being of the mother and child but also significantly influences the social, political, legal, and economic status of women. Regarding victims of rape or incest, the National Crime Records Bureau (NCRB) indicates that rape ranks as the fourth most prevalent crime against women in India. In the NCRB's 2021 annual report, over 31,000 rape cases were documented. In numerous instances, women become pregnant as a result of rape, often choosing to terminate the pregnancy rather than bear the stigma associated with their trauma. The MTP Act of 2021 allows women a window of 24 weeks of gestation for abortion. Additionally, it provides the option to seek

[5] https://pwonlyias.com/current-affairs/mtp-act/ accessed on April 30, 2025
[6] 410 U.S.113

termination beyond 24 weeks by submitting a writ petition. This is expected to reduce the frequency of illegal abortions and promote the safety of both mothers and their babies.

Ensure privacy– The legislation seeks to guarantee a woman's right to privacy when considering an abortion. The presentation explicitly indicates that the woman's identity is to remain confidential, disclosed only to individuals legally permitted to access it.

Progressive– The legislation is forward-thinking in its approach. The possibility of contraceptive failure is now a legitimate reason for any married woman seeking an abortion. The outdated provision from the earlier act prevented unmarried women from using this justification for a medical termination. The MTP Act 2021 has addressed this issue by permitting unmarried women to undergo medical terminations of pregnancies, thereby safeguarding their reproductive rights.

Foetal anomalies– The fetal anomaly scan takes place between the 20th and 21st weeks of pregnancy. Discovering a fetal anomaly may turn a desired pregnancy into an unwanted one. Therefore, the act allows for the termination of the pregnancy if abnormalities are detected, even after 20 weeks of gestation. State medical board also works to find anomalies and help pregnant women to get abortions.[7]

JUDICIAL P RONOUNCEMENTS

Courts have historically been pivotal in advancing, safeguarding, and advocating for reproductive rights. In India, the judiciary plays a crucial role in upholding women's reproductive rights as enshrined in constitutional and human rights. The Court acknowledges the essential role that registered medical practitioners play in the decision-making regarding abortions under the MTP Act. Although this method promotes medical safety, it may also lead to discretionary practices that limit access to abortion services, thus requiring a careful balance between medical supervision and personal autonomy. In addressing cases within this domain, the courts encounter a dilemma: Should a 'viable' fetus be terminated or provided with life support?

The Supreme Court has taken a notably progressive stance on the issue of women's reproductive rights. The Puttaswamy judgment[8] specifically recognised the constitutional right of women to adopt reproductive choices, as an tntegral part of personal liberty under Article 21 of the Indian Constitution.

[7] Kriti Gupta, "Medical Termination Of Pregnancy, Changes In Law And Impact On Women: Indian Perspective" Prime Legal (2023)
[8] *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India And Ors,* [2017] SC [2019] AIR 4161

The bench also reiterated the position adopted by a three-judge bench in *Suchita Srivastava v Chandigarh Administration*,[9] which held that reproductive rights encompass a woman's right to complete a pregnancy, give birth, and raise children afterward; these rights are integral to her rights to privacy, dignity, and bodily autonomy. It is essential to acknowledge that reproductive decisions can involve both the choice to bear children and the choice to refrain from doing so.

The key point is that a woman's right to privacy, dignity, and bodily autonomy must be upheld. This implies that there should be no limitations on her ability to make reproductive choices, including the right to decline sexual activity or to require the use of contraceptives. Additionally, women have the freedom to select birth control options, including undergoing sterilization procedures. By decriminalising adultery and homosexuality (*Navtej Johar* judgment)[10] the court has held explicitly that women have a right to sexual autonomy, which is a crucial facet of their right to personal liberty. In the case of *Independent Thought v. Union of India*[11] in the context of reproductive rights of women, the Supreme Court held, "the human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance".

In the case of *Mahima Yadav Vs Government of NCT of Delhi and Ors,*[12] the petitioner has submitted a petition seeking approval for a medical termination of her pregnancy. The provisions outlined in the MTP Act of 1971 were referenced. Despite the fact that the petitioner's fetus is over 24 weeks old, the counsel argues that termination should be allowed due to the fetus's anomalies and the risks posed to the petitioner, who is already experiencing severe hearing difficulties. The court issued its ruling based on the interpretation of Section 3 of the amended MTP Act, stating that pregnancy can be terminated even after 24 weeks in cases of significant abnormalities.

The legal system in India has long contended with the intricate relationship between reproductive rights and social conventions. The landmark judgment in *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another*[13], depicts a significant turning point in the interpretation of reproductive rights under the Constitution of India. Reproductive autonomy, an important facet of individual freedom, has been the focus of significant judicial examination in

[9] [2009] 14 SCR 989
[10] *Navtej Singh Johar v. Union of India*, [2018] INSC 790
[11] [2017] SC AIR 4904
[12] 2021 Lawsuit [Del] 607
[13] [2023] 9 SCC 433

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India. The Supreme Court's ruling in the case mentioned above signifies an important development in the interpretation and enforcement of reproductive rights, especially concerning unmarried women.

In this context, one can refer to the case of *Manikuttan vs M. N. Baby*, where the Kerala High Court noted that a fetus represents another life within the woman, which will ultimately be born as a baby. Consequently, the death of the pregnant woman is effectively the death of two individuals, and thus, compensation was mandated for the loss of both lives. To emphasize the court's perspective, the following statement can be quoted: "Compensation for the death of a pregnant woman in a motor accident pertains to the loss of two lives." Therefore, the appellant husband is indeed entitled to seek compensation separately for the loss of his unborn child, who was in the womb of his wife at the time of the accident.

These judgments have an important bearing and impact on the sexual and reproductive rights of women. Access to safe abortion is a crucial aspect of individuals' rights to bodily autonomy, the right to life, and equality, and it must be safeguarded. These rulings significantly impact women's sexual and reproductive rights. The right to a safe abortion is a crucial aspect of their bodily autonomy, right to life, and equality, and it must be safeguarded. It is essential to go beyond depending solely on the courts and to develop proactive policies at the state level that guarantee equitable access to abortion. Greater efforts are necessary to safeguard and promote abortion rights, including the loosening of unnecessary limitations. Nevertheless, the existing legislative framework does not fully align with the essence of these landmark rulings.

INTERNATIONAL CONCERN

Reproductive rights encompass not just the right to have children but also to complete a pregnancy and raise children, all under the woman's fundamental rights to life and privacy. But here is a distinction between reproductive rights and sexual rights. Reproductive rights refer to a person’s ability to choose whether to have children and to make independent, informed decisions about reproductive health. In essence, these rights are the legal entitlements and freedoms associated with reproduction and reproductive health, and they differ across various nations. The reproductive rights of women have been recognized within the framework of the Universal Declaration of Human Rights 1948, which addresses sexual and reproductive issues.

The International Conference on Population and Development (ICPD) 1994 emphasizes that “Reproductive rights encompass specific human rights that are acknowledged within national laws,

international human rights agreements, and various consensus documents. These rights are founded on the acknowledgment of every individual and couple's fundamental right to freely and responsibly determine the number, spacing, and timing of their children while having access to the necessary information and resources. It also includes their entitlement to make decisions regarding reproduction without facing discrimination, coercion, or violence, as outlined in human rights agreements".

In a similar vein, the Beijing Declaration, the 4th World Conference on Women emphasizes that the clear acknowledgment and reaffirmation of every woman's right to manage all facets of their health, especially their reproductive health, is fundamental to their empowerment. Currently, only 14 nations worldwide provide comprehensive legal protections for women, as reported by the World Bank in Business and the Law 2023. These nations include Belgium, Canada, Denmark, France, Greece, Iceland, Ireland, Latvia, Luxembourg, Portugal, Spain, Sweden, Germany, and the Netherlands. This indicates that these countries extend legal protections to both genders, fostering genuine gender equality[14].

India is a participant in various international treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC), all of which uphold reproductive rights. Adopted in 1979, the Convention on the Elimination of All Forms of Discrimination against Women is often referred to as an international bill of rights for women[15].

India's endorsement of global treaties, such as the International Covenant on Civil and Political Rights, requires the alignment of its domestic laws with these international standards. The Court's interpretation of the MTP Act reinforces this commitment, emphasizing reproductive autonomy as a fundamental human right. India's commitments under international agreements, like the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women, mandate that national laws be in harmony with these international benchmarks. Within the Indian legislative framework, various laws concerning the safeguarding of children's rights have established minimum age limits, and specifically regarding Clause IV of the

[14] Rights of Women: a Global Disparity, https://changemakr.asia/women-have-full-equal-rights-in-only-14-countries accessed on April 10, 2025
[15] Dr. S.R. Myneni, *Gender Justice & Feminist Jurisprudence* 7 (New Era Law Publication, Madhya Pradesh, 1st edn., 2022)

United Nations Convention on a child's rights in the mother's womb, India's legislation is on par with the provisions of the Convention.

CHALLENGES

Even though India was one of the early nations to establish legal and policy frameworks ensuring access to abortion and contraception, women and girls still face considerable obstacles in realizing their reproductive rights, such as substandard health services and a lack of recognition for their decision-making power. Regrettably, the public health system in India is faced with numerous challenges, including insufficient public funding, inadequate infrastructure encompassing medical and diagnostic facilities, and a shortage of properly trained human resources.

Abortion is a deeply emotional topic that encompasses various contentious and complex matters related to law, medicine, and ethics. The problem of unwanted pregnancy and its termination is a perennial problem which defies clear-cut answers[16]. The approach maintained in three new criminal codes is to promote justice rather than punishment. But it is directly contradicted in those codes in certain areas, one of those being the continued criminalisation of abortion in India.[17]

Throughout history, laws and policies pertaining to reproductive health in India have not prioritized a women's rights-based perspective, often emphasizing demographic goals like population control. Additionally, these regulations have frequently undermined women's reproductive autonomy, either directly or indirectly, through biased clauses such as requiring spousal consent to access reproductive health services. Despite a national law prohibiting marriages of girls below 18 years of age and policies and schemes guaranteeing women healthcare, in practice India proceeds to account for the highest number of child marriages and 20% of all maternal deaths globally.[18]

- Approximately 50% of women facing medical issues during pregnancy or childbirth do not receive the necessary care.
- The percentages of women attending the advised number of antenatal care appointments, giving birth in a healthcare facility, and experiencing unfavorable conditions.

[16] Ahmad Siddique, *Criminology, Penology and Victimology 142* (Eastern Book Company, Lucknow, 7th edn, 2017)
[17] https://www.deccanherald.com/opinion/bharatiya-nyaya-sanhita-still-stuck-in-colonial-era-fails-women-on-abortion-2703789 accessed on April 29, 2025
[18] Reproductive rights for Women in India, https://www.legalserviceindia.com/legal/article-3372 accessed on May 5, 2025

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- The absence of safe abortion facilities, especially in public hospitals, along with societal stigma and negative attitudes towards women, particularly young, unmarried women seeking abortions, plays a significant role in this issue.
- The MTP Act stipulates that only doctors specialized in gynaecology or obstetrics may perform abortions. The study indicates that there is a 75% deficit of such specialists in community health centers located in rural regions, which means pregnant women might still struggle to find safe abortion services.
- The MTP Act requires thorough reform to become more inclusive and considerate of the challenges faced by married women who are compelled to conceive and carry a pregnancy to term against their wishes. Additionally, it should address the financial challenges a woman faces in raising a child.
- The availability of legal and safe abortion is a vital aspect of sexual and reproductive equality, a significant public health concern, and should be regarded as a key factor in current discussions on democracy aimed at establishing a fair society that rejects all forms of discrimination.
- Physicians often decline to carry out abortions for young women or insist that they obtain approval from their parents or partners, even though there is no legal obligation for such consent. This compels numerous women to seek illegal and frequently unsafe abortion methods. The rate of postnatal checkups is lowest among individuals from the most disadvantaged households.
- The criminalization of abortion constitutes a type of gender-based violence and can infringe upon women's rights to health, dignity, autonomy, and equality.
- The care provided to women, particularly those from marginalized groups, at public health institutions frequently falls short, exhibiting indifference and insensitivity, thereby depriving them of their dignity and autonomy.
- Emphasize the importance of enhancing the safety of abortion procedures.
- In the past few years, there has been a significant rise in anti-abortion actions at clinics. Women often face harassment and intimidation from activists, who seek to obstruct their access to medical care that they are legally entitled to, either by physically blocking them or using emotional manipulation[19].

[19] Sexual and Reproductive Rights: Ethical Issues, https://humanists.uk/campaigns/public- accessed on April 15, 2025

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- Despite the fact that India's National Population Policy ensures women have voluntary access to a comprehensive array of contraceptive methods, state governments in practice still implement schemes that promote female sterilization, including the establishment of targets. This results in coercion, dangerous and substandard sterilization procedures, and a lack of access to non-permanent methods.

The pursuit of personal freedom regarding reproductive decisions has gained significant global recognition, establishing the right to make independent and responsible choices about parenthood as a key human right. The idea of "reproductive rights" is deeply embedded in international human rights frameworks and closely aligns with the goals of women in India. For many years, the availability of safe and legal abortion and contraception has been a divisive issue, serving as evidence of the ongoing struggle for women's control over their bodies and their authority in reproductive matters.

OVERVIEW OF FINDINGS AND RESULT

Identifying reproductive health rights within constitutional frameworks indicates that the realization of these rights is linked to and reliant on the safeguarding and fulfillment of various human rights, including the right to life, the right to health, the right to equality, and the right to be free from gender-based violence. In India, the reproductive rights of individuals and couples can be found within a network of laws and policies related to health, employment, education, food and nutrition security, and protection against gender-based violence. Several fundamental rights are enshrined in Part III of the Constitution of India.

The recent Supreme Court ruling brings attention to the persistent discussion surrounding the MTP Act, highlighting the difficulties in balancing women's abortion rights within the legal system. It is important to recognize that providing safe access to abortion is not only a matter of human rights but also plays a vital role in the overall health of communities. All young individuals, irrespective of their faith or beliefs, should receive complete, unbiased, and comprehensive education on relationships and sex, which includes accurate information about contraception and abortion, alongside access to free contraceptives. This would empower them to make knowledgeable decisions regarding their reproductive health.

CONCLUSION

In India, the interplay of economic status, gender, and social status significantly affects access to and utilization of maternal and reproductive health care services. When creating policies and programs

aimed at achieving equitable improvements in maternal and reproductive health, it is essential to consider how these social determinants contribute to the persistence of inequalities. There should be minimal government intervention concerning reproductive rights and personal choices[20]. In our country, the right to reproductive autonomy is enshrined in the Constitution and has evolved significantly through judicial interpretations. However, fully realizing this right depends on addressing societal, infrastructural, and legal challenges. The progressive interpretation of laws in harmony with international standards and shifting social dynamics signifies a hopeful direction towards securing comprehensive reproductive rights for all women in India.

Reproductive and sexual health rights form an integral aspect of overall health rights. For these rights to be realized, a nation must establish a robust public health system capable of delivering comprehensive, high-quality health care services that are accessible to everyone, free at the point of use, and ultimately accountable to its citizens. Promoting these rights should serve as the foundational principle for policies and programs sponsored by both government and community entities. It is essential for the government to regard these rights as a core component of the legislation it enacts, the policies it formulates, and the programs it develops.

Reproductive and sexual health rights are a crucial part of the overall rights to health. To ensure the realization of these rights, a country must create a strong public health system that can provide comprehensive, high-quality healthcare services that are accessible to all, available at no cost at the point of use, and ultimately accountable to its citizens. Advocating for these rights should be a fundamental principle guiding the policies and programs initiated by both governmental and community organizations. It is vital for the government to consider these rights a fundamental element of the legislation it passes, the policies it crafts, and the programs it initiates. Since these reproductive rights are recognized within the framework of the right to privacy, the state's interference in these rights should be minimal and only aimed at preventing the exploitation of women.

The Constitution of India recognizes the right to reproductive autonomy, which has undergone significant evolution through judicial interpretations. However, the complete realization of this right hinge on overcoming societal, infrastructural, and legal obstacles. The progressive interpretation of laws in line with international standards and changing social dynamics offers a promising path toward ensuring comprehensive reproductive rights for all women in India. Recognizing the substantial

[20] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3617912 accessed on April 8, 2025

impact of reproductive rights on women's health, empowerment, and overall well-being, India has established a legal framework that encompasses constitutional provisions and specific laws like the Medical Termination of Pregnancy Act, while also considering public health factors. However, the pursuit of universal and unrestricted access to reproductive healthcare continues to be an ongoing effort.

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CRIMINAL PROFILING IN INDIA: PSYCHOLOGICAL FOUNDATIONS, LEGAL FRAMEWORKS, AND JUDICIAL UTILIZATION

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ABSTRACT

Criminal profiling—or offender profiling—is the marriage of forensic, psychological, and criminological science, devised to deduce the likely characteristics, motives, and habits of an unknown perpetrator. While this technique matured into a key pillar of complex crime investigation in countries like the USA and UK, India's use of profiling remains sporadic, largely uncodified, and constrained by legal and ethical ambiguities. This paper provides a comprehensive doctrinal, comparative, and empirical exploration of criminal profiling in India, examining its theoretical and psychological frameworks, legal landscape, judicial trends, global parallels, and ethical dilemmas. Highlighting both the promise and pitfalls of profiling, it advances actionable reforms for a standardized, constitutionally robust, and ethically defensible model.

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1. Introduction

The Changing Face of Crime

In the last three decades, the Indian landscape of crime has undergone significant transformation. The interconnected effects of globalization, urban expansion, technological progress, and growing mobility have created social conditions where crimes are not just more frequent, but also more complex, ritualistic, and psychologically nuanced. Previously, financial disputes, familial vengeance, and property conflicts dominated police dockets. Now, India faces:

- Serial homicides that exhibit pattern, planning, and signature behaviours.
- Psychosexual and gender-based violence, with an alarming increase in sexual assaults marked by ritualistic brutality.
- Cybercrimes that allow perpetrators digital anonymity and borderless reach, involving fraud, extortion, harassment, and identity theft.
- Organized criminal syndicates and terrorist networks responsible for recurring violence in regions like Kashmir, the North-East, and Naxal-affected belts.
- Child exploitation and abuse, where offenders often repeat crimes, exhibiting identifiable compulsions or fixations.

These advances challenge conventional policing, which prioritizes material evidence and eyewitnesses but is often ill-equipped to decipher behavioural patterns and serial motivations. Indian authorities are recognizing that certain crimes, especially those involving repetition and psychological compulsion, demand a deeper, interdisciplinary understanding—ultimately catalysing the relevance of criminal profiling.[1]

Defining Criminal Profiling

[1] Hans Toch, *Psychology and the Criminal Justice System* 97 (CRC Press, 2004).

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Criminal profiling is the systematic analysis of crime scenes, victimology, and behavioural evidence to infer the likely psychological, demographic, and behavioural characteristics of the unknown perpetrator. Essential components include:

- Analysis of crime scene patterns i.e. mode of operation (modus operandi), signature behaviours, staging.
- Integration of psychological theory to interpret motivation, impulse-control, sexual fixation, etc.
- Victimology meaning study of victim characteristics and selection.
- Forensic evidence—from biological traces to technological footprints.

Profiling does not replace hard evidence but refines the investigative direction, focusing scarce resources and narrowing suspect pools. Actionable inferences- such as whether an offender is a reclusive loner, itinerant migrant, or someone compelled by a ritualistic need- can drastically enhance investigative efficiency.

Evolution and Global Context

The roots of profiling stretch back over a century. However, it was the development of the FBI's Behavioural Science Unit (BSU) in the 1970s that crystallized criminal profiling as a scientific, organized discipline. By interviewing dozens of incarcerated serial offenders and analysing hundreds of crime scenes, the BSU established a "top-down" approach: classifying perpetrators as "organized" or "disorganized" based on planning, forensic control, and signature behaviours[2]This typology enabled law enforcement to predict future conduct, anticipate escalation, and better target investigations.

Concurrently, UK criminologists developed the "bottom-up" method, emphasizing statistical pattern-matching and geographical analysis. Here, empirical data trumped intuition; computers linked unsolved offenses by mapping behavioural and spatial consistencies. Countries like Australia and

[2] Robert D. Keppel & William J. Birnes, *The Psychology of Serial Killer Investigations* 31 (Academic Press, 2003).

Canada then integrated investigative psychology and spatial analytics, while Scandinavia emphasized peer-reviewed clinical assessment.

By the 21st century, nations such as the USA, UK, Germany, and Australia had established institutional frameworks—dedicated units, national guidelines, and cross-agency databases—for the use of criminal profiling.

Status of Profiling in India

India, despite its robust legal infrastructure, lags behind in institutionalizing criminal profiling. No central bureau—akin to the FBI's BAU—exists. Instead, psychological profiling is sporadically invoked, mainly in high-profile serial or sexual crimes. Limitations include:

- Lack of codified guidelines for when and how to use profiling.
- Absence of expert panels or accreditations for forensic psychologists.
- Resource constraints i.e. few equipped forensic labs, limited access to behavioural science resources.[3]
- Judicial scepticism connoting that profiling viewed as circumstantial unless corroborated by hard evidence.

Noteworthy, however, is growing appreciation among investigating agencies and courtrooms—propelled by headline-grabbing cases and academic advocacy—for the potential of behavioural analysis and forensic psychology.

Scope and Purpose

This paper seeks to:

- Illuminate the psychological underpinnings and theoretical bases of profiling.

[3] John E. Douglas & Mark Olshaker, *Mindhunter* (Scribner, 1995).

- Decode the statutory scaffolding, constitutional rights, and evidentiary limits for profiling in India.
- Review key Indian judicial precedents employing behavioural evidence.[4]
- Scrutinize global models, ethical debates, and policy innovations.
- Recommend a path for the ethical, scientific, and legal mainstreaming of criminal profiling within Indian criminal justice.

2. Psychological Frameworks and Offender Profiling

Cognitive-Behavioural Theories

Cognitive-behavioural approaches posit that criminal conduct results from distorted thoughts and learned behavioural responses, often rooted in childhood trauma, dysfunctional family dynamics, or sociocultural deprivation. For instance, a habitual sexual offender may rationalize violence as justifiable or inevitable, internalizing abnormal scripts of control, dominance, or pleasure.

Key concepts include:

- Dysfunctional beliefs: Offenders harbour maladaptive thought patterns ("the world is against me"; "violence is power").
- Learned response: Violence or predation is often modelled or learned through family, peers, or subcultures.
- Behavioural indicators: Crime scenes reveal planning, risk-taking, control, and post-crime conduct—providing clues to impulsivity or methodical thinking.

Modern cognitive-behavioural analysis—using assessment tools and scenario reconstruction—assists profilers in predicting whether conduct is likely to recur, escalate, or mutate, and whether psychiatric referral or correctional treatment is warranted. [5]

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[4] Ratanlal & Dhiraj Lal, *The Law of Evidence*, 105 (28th ed., LexisNexis, 2021).

[5] Aaron T. Beck, *Cognitive Therapy and the Emotional Disorders*, 94 (Penguin, 1976).

Beyond the cognitive-behavioural and personality frameworks, it is essential to integrate broader criminological theories that highlight the role of environmental and social factors.

- Bandura's Social Learning Theory- emphasizes that aggressive behaviours are learned through observation and reinforcement- often modelled by caregivers, community figures, or media exposure. For example, a child exposed to domestic violence or glorified narratives of dominance may internalize aggression as an acceptable tool of conflict resolution.
- Ecological models of behaviour- such as Bronfenbrenner's ecological systems theory, underscore how nested social environments- family, peers, institutions- interact to influence criminal behaviour. Factors like poverty, marginalization, broken attachment, and school failure are critical to understanding long-term antisocial trajectories. These theories deepen the contextual lens of profiling, especially in culturally diverse and stratified societies like India.

Personality-Based Theories

Eysenck's theory emphasizes three dimensions in criminal propensities:

- ***Neuroticism*:** Emotional instability and susceptibility to stress.
- ***Psychoticism*:** Inclination toward solitary, cold, and antisocial behaviour.
- ***Extraversion*:** Assertiveness, sociability, impulsivity.

Add to this the Five-Factor Model (openness, conscientiousness, extraversion, agreeableness, neuroticism), and investigators gain a multidimensional profile to compare against known behavioural clusters of offenders.[6]In practice, such profiling underpins risk assessments, supports parole/bail hearings, and can even inform sentencing.

Psychopathology and Clinical Assessment

Serial and sexual offenders disproportionately manifest clinical syndromes such as:

[6] David Canter, *"Offender Profiling and the FBI Approach," Criminal Shadows*, 33 (Random House, 1994).

- ***Antisocial Personality Disorder (ASPD):*** Persistent norm violation, deceit, manipulativeness.
- ***Psychopathy*****:** Callous-lack of empathy, impulsive aggression, superficial charm.
- ***Narcissistic Personality Disorder (NPD):*** Grandiosity, need for admiration, lack of empathy.
- ***Sexual sadism*****:** Deriving pleasure from inflicting pain or humiliation.[7]

Profiling utilizes checklists, interviews, and crime scene analysis to flag such traits, often in tandem with psychiatric or neuropsychological screening. India's Section 84 IPC allows for acquittal based on legal insanity, but few investigations systematically include psychiatric assessment—a gap strongly linked to both wrongful convictions and investigation failures.[8]

Signature and Modus Operandi

- ***Modus operandi (MO):*** The operational techniques an offender uses to commit crimes and evade detection. MO may evolve (adapting to policing tactics) but is generally pragmatic.
- ***Signature*****:** The unique, often unnecessary, acts that fulfil the perpetrator's psychological needs—ritual mutilation, symbolic gestures, specific victim targeting—which remain relatively stable.

Signature evidence helps link serial crimes and distinguish compulsive motives from simple opportunism.[9]

Victimology

The science of victimology scrutinizes victim attributes (age, profession, relationship to perpetrator), vulnerability cues, and situational context. Profilers decode:

- ***Victim selection logic*****:** Indiscriminate versus highly targeted.
- ***Paraphilia or psychological fixation*****:** Obsession with a particular type of victim or act.
- ***Behavioural spillover*****:** Fantasies, rehearsals, or pre-offense stalking.[10]

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[7] Robert D. Hare, *Without Conscience: The Disturbing World of the Psychopaths Among Us* (Guilford Press, 1999).

[8] Indian Penal Code, 1860 (Act 45 of 1860), s. 84.

[9] Brent Turvey, *Criminal Profiling: An Introduction to Behavioural Evidence Analysis*, 248 (Academic Press, 2011).

[10] Turvey, ibid., p. 97.

Such analysis, increasingly critical in sex crime investigations, augments the creation of multidimensional offender profiles.

Forensic Psychological Tools in Profiling

Contemporary profiling increasingly employs psychometric tools and structured interviews to decode behavioural traits. Instruments like the Minnesota Multiphasic Personality **Inventory** (MMPI), the Psychopathy Checklist–Revised (PCL-R) by Robert Hare, and structured diagnostic tools like the SCID (Structured Clinical Interview for DSM Disorders) help assess psychopathy, impulsivity, and affective regulation.

Profilers also rely on Behavioural Analysis Interviews (BAI), geoprofiling (to identify an offender's likely residential base), and linguistic analysis of offender communications (in ransom notes, manifestos, etc.). However, in India, the lack of indigenous, culturally validated assessment tools is a significant barrier to reliability. Developing context-sensitive tools that account for regional languages, caste dynamics, and literacy levels is crucial for accurate profiling.

Cultural Nuances in Psychological Profiling

The effectiveness of psychological profiling in India hinges on understanding its cultural and social fabric. Western models often assume homogeneity in psychological responses, but Indian contexts are deeply influenced by caste systems, communal identities, patriarchal norms, and religious beliefs.

For instance, crimes involving "honour" killings may stem from culturally sanctioned ideas of shame, status, and family control, rather than individual psychopathology. Ritualistic or occult-motivated crimes might hold spiritual significance rather than indicating psychosis. Hence, profilers must exercise cultural competence—integrating sociological and anthropological understanding with psychological tools. Without this sensitivity, there is a high risk of misdiagnosis, stereotype bias, or overlooking community-rooted motives.

Psychological Autopsy and Suicide Profiling

Psychological autopsy is a method of reconstructing a deceased individual's mental state prior to their death- commonly used in cases of ambiguous suicides or suspicious deaths. It involves interviews

with relatives, examination of social media activity, diaries, medical records, and other behavioural artifacts to infer intent, motive, or psychological distress.

In India, where suicide rates are high and often under-investigated due to stigma, dowry-related abuse, or institutional failure, psychological autopsies can bridge the gap between medical and legal certainties. It is also an underused but powerful tool in profiling cases of suicide bombers, domestic violence victims, and sudden unexplained deaths- bringing behavioural insight into legal inquiries. Its integration into forensic procedure could complement criminal profiling, especially in disputed or high-profile cases.

3. Legal Framework and Admissibility in India

Statutory Tools and Expert Testimony

Legal acceptance of criminal profiling in India pivots on provisions for expert testimony:

- Section 45, Indian Evidence Act, 1872: Admits opinions of scientific, artistic, and psychiatric experts; in 2023, the Bharatiya Sakshya Adhiniyam broadened the expert domain—explicitly recognizing forensic psychology[11].
- Criminal Procedure (Identification) Act, 2022**:** Empowers authorities to collect and use biometric, anthropometric, and behavioural measurements. This legal infrastructure paves the way for embedding profiling data into investigations and, potentially, evidence chains.[12]

Indian law thus provides statutory roots for profiling, albeit with caveats regarding expertise, relevance, and consistency with due process.

Mental Health and Criminal Responsibility

- Section 84 IPC: Recognizes legal insanity; protects those who, by reason of mental unsoundness, cannot distinguish right from wrong.[13]

[11] Indian Evidence Act, 1872(Act 1 of 1872) s. 45; Bharatiya Sakshya Adhiniyam, 2023(Act 47 of 2023) s. 39.
[12] Criminal Procedure (Identification) Act, 2022 (Act 11 of 2022)
[13] Indian Penal Code, 1860 (Act 45 of 1860) s. 84.

- Profiling evidence, when used for insanity defences, must be corroborated by psychiatric assessments. Courts are cautious, often requiring rigorous, multi-expert verification—especially when claims of mental incapacity intersect with severe violent crimes or apparent malingering.

Constitutional Provisions

Criminal profiling must withstand constitutional scrutiny, especially:

- Article 20(3): Bars self-incrimination, rendering involuntary narco-analysis, brain-mapping, lie-detectors, and psychiatric coercion unconstitutional.
- Article 21: Guarantees due process, bodily autonomy, and informational privacy. Law enforcement must procure *informed consent* and remain within the bounds of procedural fairness.[14]

Judicial Trends and Evidentiary Use

Courts have clarified protocols for admissibility and use:

- Admitted only if conducted by certified experts.
- Requires corroborative evidence—profiling cannot secure conviction on its own.
- Informed consent is mandatory for psychiatric or behavioural tests.
- In *Selvi v. State of Karnataka* (2010), the Supreme Court ruled involuntary narco-analysis unconstitutional—emphasizing informed consent as a legal non-negotiable.[15]

4. The Role of Profiling in Indian Courts

Evidentiary Use and Judicial Scrutiny

In India, criminal profiling typically functions as specialized expert testimony—an adjunct to direct or circumstantial evidence. Key points:

[14]Constitution of India, Arts. 20(3), 21.

[15] *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

- Profiling shapes investigative direction, helps establish motive or psychological state, and supports risk assessment at sentencing, bail, or parole stages.
- It is rarely, if ever, determinative; its persuasive weight depends on methodology, credentials of the profiler, and extent of corroboration.
- Judges tightly scrutinize: The process, transparency, and credentials involved. Reports are often subject to cross-examination; courts are wary of path dependence or over-reliance on behavioural speculation.

Notable Indian Cases

Surendra Koli v. CBI (Nithari Case, 2015):[16]

The Nithari murder case involved Surendra Koli, a domestic worker, accused of luring, killing, and mutilating children and young women in Noida during 2005–2006. Police and CBI built Koli's criminal profile as a psychopathic serial killer with acts of cannibalism and necrophilia, relying heavily on his confession, which he later retracted alleging torture and coercion[17] Investigators portrayed him as a sexually perverted loner, focusing on his gruesome modus operandi: luring victims, strangulation, sexual assault, and body dismemberment. [18]Forensic findings indicated "butcher-like precision" in the mutilations, which was attributed solely to Koli, overlooking potential involvement of others or professional expertise. Behavioural profiling in the case was criticized for ignoring factors like the suspect's social background and for depending on inconsistent evidence and a confession obtained under duress. The Allahabad High Court, while acquitting Koli in several cases, condemned the investigation as casual and flawed, highlighting procedural violations, unreliable confession, and failure to explore alternate lines of inquiry—such as organ trafficking—showcasing major lapses in both forensics and criminal profiling.

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[16] *Surendra Koli v. CBI (Nithari case)*, 2015 SCC Online All 1261.

[17] Tapasya, "Everyone Wants Koli Dead", *the reporter's collective*, 13th February 2025, *available at* https://www.reporters-collective.in/trc/everyone-wants-koli-dead (last visited on 20th July 2025)

[18] Suchitra Kalyan Mohanty, "Nithari serial killings case: SC issues notice to Surendra Koli on CBI's appeal against his acquittal", *The new Indian express*, 9th July 2024, *available at* https://www.newindianexpress.com/nation/2024/Jul/08/nithari-serial-killings-case-sc-issues-notice-to-surendra-koli-on-cbis-appeal-against-his-acquittal (last visited on 21st July 2025)

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Mukesh & Ors. v. State of NCT of Delhi (2017):[19]

The 2012 Nirbhaya case involved the brutal gang rape and murder of a young woman on a moving bus in Delhi. The offenders—Mukesh Kumar, Akshay Thakur, Vinay Sharma, Pawan Gupta, and others—exhibited deeply violent, sadistic behaviour, making this a critical case for criminal profiling. The crime showed signs of semi-organized group behaviour: the victims were lured onto a bus under false pretences, attacked with a metal rod, and later dumped on the roadside. Profiling revealed opportunistic targeting, sadism, and collective aggression.

The group dynamic played a critical role, where peer abetment led to increased brutality. Their actions—cleaning the bus, destroying evidence, and fleeing—showed awareness and intent to evade law enforcement. Though psychological evaluations were not formally discussed in detail, the behaviour pattern suggested lack of remorse, extreme dehumanization, and organized intent to kill.

Forensic profiling played a key role: blood, semen, and DNA evidence linked the accused to the crime. The judiciary categorized the crime as "rarest of the rare," citing the diabolical nature and threat to societal order. This case highlighted the use of criminal profiling, forensic science, and behavioural cues to understand group crimes involving extreme sexual violence.

Rajesh Talwar v. CBI (2017):[20]

The 2008 double murder of Aarushi Talwar and Hemraj in Noida remains one of India's most debated cases. Initial suspicion fell on the Talwars, Aarushi's parents, with the CBI later framing it as an alleged "honour killing." The profiling hinged on circumstantial interpretations, such as the precise cut to the victims' throats and the absence of forced entry—suggesting insider involvement and medical expertise, since the Talwars were dentists. However, no forensic evidence directly linked them to the crime.

[19] *Mukesh & Anr. v. NCT of Delhi*, (2017) 6 SCC 1.

[20] *Rajesh Talwar v. CBI*, 2017 SCC Online All 1012.

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Behavioural assumptions—like a perceived lack of grief or emotion—were mistakenly used to build a profile of guilt. The crime scene was badly compromised, and inconsistent CBI investigations bounced between domestic staff and the parents, showing a lack of structured, science-based criminal profiling.

Key profiling errors included overreliance on motive-based inference without psychological evaluation, poor forensic practices, and the flawed interpretation of behavioural norms. The Allahabad High Court overturned the conviction, citing a total lack of conclusive evidence.

From a criminal profiling perspective, the case exposes major failures: confirmation bias, no formal behavioural analysis, and negligent integration of psychological and forensic data, proving that speculative profiling can lead to miscarriage of justice rather than solving complex crimes.

Evidentiary Challenges

- Lack of standardized protocols: No national profiling template.
- Subjectivity: Behavioural evidence remains probabilistic.
- Awareness deficit**:** Both investigators and judges may lack behavioural science literacy; untrained use increases risk of misuse.

Training, Ethics, and Safeguards

The Indian scientific and legal community consistently advocates:

- Intensive education for police, prosecutors, and judges regarding psychological frameworks and cognitive biases.
- Clear panel accreditation for experts and procedural codes for use and argumentation.
- Strengthened ethical standards to address caste, religious, and gender biases.

Standardization and periodic peer review are essential for legitimacy and public trust.[21]

5. International Models of Criminal Profiling

Comparative Approaches

- United States: Employs a "top-down" approach—categorizing offenders, drawing on extensive typologies, and emphasizing behavioural consistency.
- United Kingdom & Europe: Favors "bottom-up," evidence-led pattern recognition, backed by statistical models and geographical analysis.
- Australia & Canada: Focus on geographic profiling and investigative psychology, blending spatial, psychological, and forensic data.
- Germany, Netherlands, Scandinavia: Stress on robust clinical assessment, peer-reviewed science, and strict privacy oversight.[22]

Key features internationally:

- National guidelines and linked databases (e.g., VICAP in USA).
- Peer review, continuous research, and validation studies.
- Privacy regulations and administrative accountability.

Best Practices and Transnational Collaboration

Success in global profiling relies on:

- Multidisciplinary panels and inter-agency task forces.
- International databases (INTERPOL's behavioural sciences initiatives[23]).

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[21] National Judicial Academy, *"Forensic Evidence and its Human Factor,"* Seminar Report (2023).

[22] David Canter, *Criminal Shadows: Inside the Mind of the Serial Killer* (Random House, 1994).

[23] INTERPOL, "*Behavioural Sciences Best Practices,*" Annual Report (2022).

- Joint training, workshops, and technological innovation (AI-driven geographic and linguistic analysis).

India can significantly benefit from adapting best practices while contextualizing them to local, cultural, and legal specificities.

2. INTERPOL, "Behavioural Sciences Best Practices," Annual Report (2022).

6. Limitations and Ethical Dilemmas

Scientific and Methodological Issues

- Profiling is not a science of certainties; it works best as a probabilistic tool for narrowing suspects.
- Peer-reviewed research is scarce outside North America/Europe, raising concerns about direct transference of Western models to India.
- Offender "homology" (the idea that similar crimes are committed by similar people) is increasingly challenged; recent research suggests behaviours are context-dependent and not always reliably predictive.[24]
- Lack of large-scale Indian datasets undermines validity.

Ethical, Social, and Resource Challenges

- Risk of bias: Unchecked profiling can reinforce stereotypes or institutionalize caste, religious, or gender prejudice—dangerous in India's diverse society.
- Privacy tensions: Profiling methods, especially those involving psychiatric or biometric data, risk violating bodily autonomy or informational privacy.
- Resource scarcity: Few accredited forensic psychologists; lack of nationwide research, training, panels, and procedural infrastructure.
- Conviction pressures**:** Judicial/administrative pressure to "solve" cases may drive over-reliance or "tweaking" of profiles.

[24] Brent Turvey*, Criminal Profiling: An Introduction to Behavioural Evidence Analysis* (Academic Press, 2011).

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Judicial and Policy Responses

- Courts increasingly demand informed consent and methodological transparency for psychological assessments.
- Reforms should entrench documentation, peer-review, and multidisciplinary oversight into both investigative and court processes.
- International collaborations and ongoing professional development, tailored to India's social realities, are vital.[25]

7. Conclusion and Suggestions

Conclusion

Criminal profiling holds profound potential for addressing India's contemporary crime challenges: from serial and psychosexual violence to terror networks and cybercriminals. Yet, realization of this potential remains stymied by lack of legal clarity, scientific validation, structured infrastructure, and robust ethical oversight.

Indian courts and investigative bodies have, in high-stakes cases, echoed the utility of behavioural evidence even as they highlight its limitations. As profiling's reception evolves, systematic reform is imperative—for accuracy, fairness, and constitutional legitimacy.

Policy Recommendations

- Codify National Protocols: Establish uniform, peer-reviewed guidelines for the use of behavioural and psychological evidence in criminal investigations and courtrooms.
- Professional Accreditation: Set up statutory accreditation for forensic psychologists and criminal profilers.

[25] Ministry of Home Affairs, *National Forensic Sciences University Annual Report* (2023).

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- Research Investment: Support empirical, Indian-context research on crime patterns, recidivism, and offender psychology.
- Continuous Training: Mandate routine legal, judicial, and police training in behavioural science, including regular calibration against international best practices.
- Ethical Oversight: Legally require privacy safeguards, minimum due process, and fully voluntary consent for all psychological testing and assessments.
- International Collaboration: Actively partner with global forensic networks for knowledge exchange, database-sharing, and technology adaption.

India's journey to embedding criminal profiling at the core of its justice apparatus demands nothing less than a holistic reform, bridging psychology, law, ethics, and global experience—always anchored in constitutional protection and societal context.

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INTEGRATING VEDIC PRINCIPLES WITH NDPS ACT: A HOLISTIC APPROACH TO YOUTH SUBSTANCE ABUSE PREVENTION AND REHABILIATION

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Vaibhav Mittal **

ABSTRACT

Substance abuse among youth is a growing public health crisis in India, with approximately 25 million individuals aged 15–24 having used drugs and nearly 9 million affected by substance use disorders. This research critically examines the effectiveness of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) in curbing youth substance abuse, and explores the potential of integrating Vedic principles into rehabilitation efforts.

By combining doctrinal analysis of the NDPS Act with Vedic findings, the study finds that the law's emphasis on criminalization fails to address the deeper psychological, behavioral, and spiritual dimensions of addiction. Existing medico-legal rehabilitation models often neglect the holistic needs of youth.

To bridge this gap, the study proposes a culturally rooted alternative by drawing on Vedic concepts such as the gunas (sattva, rajas, tamas), dosha theory, yoga, meditation, and ethical living. These principles offer a more integrated approach to rehabilitation, aligned with therapeutic jurisprudence. The research advocates for policy reforms that blend evidence-based traditional wisdom with modern legal and healthcare systems, creating youth-centered, compassionate interventions for lasting recovery.

Keywords*: NDPS Act, Vedic principles, youth substance abuse, rehabilitation, addiction prevention, therapeutic jurisprudence, traditional knowledge systems.*

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Introduction

Background and Context

Substance abuse among youth represents one of the most pressing public health challenges of the 21st century, with profound implications for individual well-being, social cohesion, and economic development. The World Health Organization (WHO) recognizes adolescent substance use as a significant contributor to the global burden of disease, with negative health outcomes that extend well into adulthood[1]. The United Nations Office on Drugs and Crime (UNODC) World Drug Report indicates that approximately 5.5% of the global population aged 15-64 used drugs at least once in the previous year, with adolescent initiation remaining a critical concern across regions[2].

In the Indian context, substance abuse among youth has emerged as a particularly significant public health and socio-legal challenge. Recent epidemiological data reveals that approximately 25 million individuals between the ages of 15 and 24 have engaged in substance use, with nearly 9 million affected by substance use disorders[3]. This phenomenon poses serious consequences not only for individual well-being but also for family cohesion, public safety, and economic growth. The issue is not rooted in a single cause but rather results from the complex interaction of various psychological, social, and structural determinants.

Legal Framework and Challenges

India's primary legal framework addressing narcotic drugs and psychotropic substances is the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), which emerged in response to both domestic concerns about rising drug abuse and international obligations under various UN conventions[4]. Rooted in a historical continuum beginning with colonial-era regulation of opium, the

[1] World Health Organization, "Adolescent Substance Use and Health," *WHO Technical Report Series* (Geneva: WHO Press, 2023), 15-32.
[2] United Nations Office on Drugs and Crime, *World Drug Report 2024* (Vienna: UNODC Publications, 2024), 28-45.
[3] Ministry of Social Justice and Empowerment, Government of India, *National Survey on Extent and Pattern of Substance Use in India* (New Delhi: National Drug Dependence Treatment Centre, AIIMS, 2023), 67-89.
[4] The Narcotic Drugs and Psychotropic Substances Act, 1985, Act No. 61 of 1985, India Code (1985).

NDPS Act reflects a shift from revenue-oriented drug policies to a punitive, prohibitionist model aimed at controlling drug trafficking and consumption[5].

The NDPS Act, while comprehensive in its approach to controlling narcotic substances, raises significant concerns regarding its effectiveness in addressing youth substance abuse. The Act's core provisions, including quantity-based punishments, criminalization of consumption, and restrictive bail provisions, disproportionately impact young individuals[6]. While the Act includes certain rehabilitative provisions, their underutilization and poor implementation have rendered the law more punitive than reformative for young offenders[7].

Judicial Evolution and Interpretation

Indian courts have played an increasingly transformative role in interpreting the NDPS Act, particularly regarding addiction and its impact on youth. Judicial trends reflect a growing shift from viewing substance use solely through a punitive lens to recognizing it as a complex public health issue rooted in psychological, social, and neurobiological factors[8]. Key judgments have acknowledged addiction as a treatable condition, urged prioritization of rehabilitation over punishment, and emphasized the constitutional rights of young people, including the right to health and human dignity under Article 21 of the Constitution[9].

The Vedic Alternative: A Holistic Approach

The ancient Vedic system, rooted in India's philosophical and spiritual heritage, presents a holistic and integrative approach to mental health and addiction that offers insights highly relevant to reforming contemporary drug policies, especially for at-risk youth[10]. Rather than viewing addiction solely as a legal or medical issue, the Vedic tradition emphasizes the multidimensional nature of human behavior, incorporating physical, mental, social, and spiritual dimensions into the understanding and treatment of substance use disorders[11].

[5] Patel, Anil Kumar, "Evolution of Drug Policy in India: From Colonial Revenue Model to Modern Prohibition," *Indian Journal of Legal Studies* 28, no. 2 (2024): 145-168.
[6] Narcotic Drugs and Psychotropic Substances Act, 1985, §§ 21, 27, 37.
[7] V. Raghunathan, *NDPS Act and the Youth: Rehabilitation or Retaliation?* 45(2) Indian Bar Review 120 (2021).
[8] State of Punjab v. Baldev Singh, AIR 1999 SC 2378.
[9] Harjinder Singh v. State of Punjab, (2021) SCC OnLine P&H 1509.
[10] Lokesh Chandra, *The Vedic Path to Mental Health*, (Chowkhamba Sanskrit Series, 2019).
[11] B.V. Subbarayappa, *Science in the Vedas*, (Indian National Science Academy, 2003).

Concepts such as the gunas (sattva, rajas, tamas), dosha theory, and practices including yoga, meditation, and dietary regulation provide empirically supported frameworks that complement and enrich modern rehabilitation strategies[12]. The Vedic approach recognizes that addiction often stems from an imbalance in the individual's physical, mental, and spiritual constitution, and seeks to restore harmony through holistic interventions[13].

The integration of Vedic principles with contemporary legal and policy frameworks represents a unique opportunity to create a more effective, culturally resonant, and humane response to substance abuse among Indian youth[14]. This approach respects constitutional values, cultural heritage, and individual dignity while addressing the complex interplay of factors that contribute to addiction[15].

Research Significance and Contribution

This research addresses a critical gap in the existing literature by proposing a comprehensive framework that integrates traditional Vedic wisdom with modern legal and medical approaches to substance abuse prevention and rehabilitation. The study's significance is underscored by the critical public health challenge of substance abuse in India, with approximately 5.7 crore people affected by harmful substance use, often beginning in adolescence[16].

Understanding Youth Substance Abuse in India: A Socio-Psychological Perspective

The scale of youth substance abuse in India has reached alarming proportions, representing a significant public health crisis with profound implications for societal development. According to the National Drug Dependence Treatment Centre's 2019 report, approximately 24.8 million individuals aged 15-24 years have used at least one substance in the past year, with 8.75 million meeting criteria for substance use disorders. This represents a substantial public health burden with economic implications estimated at 2.3% of India's GDP when accounting for healthcare costs, productivity losses, criminal justice expenditures, and social welfare programs addressing substance-related consequences.

[12] Dr. David Frawley, *Yoga and Ayurveda: Self-Healing and Self-Realization*, (Motilal Banarsidass, 1999).
[13] A.L. Basham, *The Wonder That Was India*, (Rupa, 2004).
[14] B.V. Tripathi, "Vedic Models in Modern Law: Reclaiming Spiritual Jurisprudence," 3 JILS 45 (2020).
[15] Article 21, Constitution of India, 1950.
[16] *Magnitude of Substance Use in India 2019*, National Drug Dependence Treatment Centre, AIIMS & Ministry of Social Justice and Empowerment.

Bronfenbrenner's ecological systems theory provides a valuable framework for understanding how youth development, including pathways to substance use, is embedded within nested contexts ranging from immediate microsystems (family, peers) to broader macrosystems (cultural norms, economic structures)[17].

Conceptualizing At-Risk Youth in the Indian Context

The definition of "at-risk youth" in the Indian context requires careful consideration of unique socio-cultural factors that shape vulnerability patterns distinctly from Western contexts. Tripathi and colleagues define at-risk youth in India as "adolescents and young adults who, due to a combination of personal, familial, economic, and structural factors, demonstrate increased likelihood of engaging in health-compromising behaviors, particularly substance use."[18] This definition acknowledges the multidimensional nature of risk factors operating across individual, interpersonal, and structural levels.

Recent epidemiological studies reveal specific demographic characteristics associated with increased substance abuse vulnerability among Indian youth. The National Survey on Extent and Pattern of Substance Use in India (2019) identified heightened risk among youth from low-income households, school dropouts, homeless and street-connected youth, children of parents with substance use disorders, and youth from conflict-affected regions[19]. Sharma and Joshi's comprehensive study across five metropolitan cities found that approximately 21.4% of urban youth aged 15-24 could be classified as "high-risk" for substance abuse, with significant regional variations and higher vulnerability rates in northern states compared to southern India[20].

Importantly, contemporary risk profiles extend beyond traditional socioeconomic boundaries. As Mehra observes, "While socioeconomic disadvantage remains a powerful predictor, we now witness concerning trends among middle and upper-middle-class youth, particularly in relation to recreational

[17] Urie Bronfenbrenner, *The Ecology of Human Development*, Harvard University Press, 1979.
[18] Tripathi et al., as cited in the original research.
[19] *National Survey on Extent and Pattern of Substance Use in India*, Ministry of Social Justice and Empowerment, 2019.
[20] N. Sharma and S. Joshi, *Preventing Substance Abuse Among Street Children in India: A Literature Review*, (2020) available at: https://www.researchgate.net/publication/268221760_Preventing-substance_abuse_among_street_children_in_India_A_literature_review (last accessed July 20, 2025).

substance use and its progression to dependency.[21]" This observation reflects the evolving nature of substance abuse vulnerability in India's rapidly changing social landscape.

Psychological Determinants of Youth Substance Abuse

Identity Formation and Developmental Challenges

Adolescence and young adulthood represent critical periods for identity development, as conceptualized in Erikson's psychosocial development theory[22]. Research conducted in the Indian context suggests that substance use often intersects with the developmental challenge of identity formation versus role confusion. Rao's longitudinal study of 320 adolescents in Bangalore demonstrated that youth with identity diffusion showed significantly higher rates of substance experimentation and progression to regular use compared to peers with achieved identity status[23].

The neurobiological reality of the developing brain creates additional vulnerability factors. During adolescence and early adulthood, the prefrontal cortex responsible for executive functions remains under development, while the limbic system governing reward-seeking behaviors is fully active. Mehta's comparative study found significantly higher scores on measures of sensation-seeking and impulsivity among substance-using youth compared to non-using controls, highlighting the interaction between temperamental traits and social environments in determining substance use trajectories[24].

Trauma and Adverse Childhood Experiences

Growing evidence highlights the profound impact of adverse childhood experiences (ACEs) on substance use vulnerability. Shah's research with 429 youth in substance use treatment found that 72.6% reported experiencing at least one ACE, with 43.2% reporting four or more ACEs—substantially higher prevalence compared to general population estimates. The relationship between

[21] Samarpan Recovery, *Rising Trends of Substance Abuse in India*, available at: https://www.samarpanrecovery.com/blog/rising-trends-of-substance-abuse-in-india (last accessed July 20, 2025).
[22] Erik Erikson, *Identity: Youth and Crisis*, (1st edn, W.W. Norton 1968).
[23] Rao R, 'Developmental Risk and Substance Use: A Longitudinal Study in Bangalore' (2016) 34 *Indian Journal of Psychology* 127.
[24] Mehta V, 'Neurodevelopment and Risk-Taking in Indian Youth' (2018) 19 *Asian Journal of Psychiatry* 42.

ACEs and substance use appears dose-dependent, with each additional ACE increasing substance use disorder risk by approximately 30-35%[25].

The neurobiological mechanisms connecting early adversity to later substance use vulnerability include disrupted hypothalamic-pituitary-adrenal (HPA) axis development, altered mesolimbic dopamine pathway development, compromised prefrontal cortex development, and epigenetic modifications affecting stress response and reward processing[26]. Research with street-connected youth in Mumbai demonstrated that trauma-informed intervention approaches showed significantly greater effectiveness compared to standard substance use treatment[27].

Social Determinants and Environmental Factors

Family Systems and Parental Influence

Singh and Basu's mixed-methods study indicates that rapid urbanization and modernization have disrupted traditional family protective factors, with themes of reduced extended family support, increased work-related parental absence, and cultural disconnection between generations potentially compromising parental capacity to provide adequate monitoring and support[28].

Peer Networks and Social Influence

Peer relationships gain tremendous significance during adolescence, often surpassing parental influence in shaping behavior. Sharma's social network analysis demonstrated that having substance-using friends represented the strongest predictor of individual substance use, with each additional substance-using friend increasing the odds of personal use by approximately 37%[29]. The study also identified "friendship density" as moderating peer influence, with higher density networks exerting stronger influence on individual behavior.

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[25] Shah A, 'Prevalence of Adverse Childhood Experiences among Indian Youth in Treatment' (2019) 47 *Substance Use & Misuse* 302

[26] R. Gupta et al., 'Neurobiological Impact of Childhood Trauma and Its Link with Substance Abuse' (2020) 15 *Indian Journal of Neuroscience* 211.

[27] S. Thomas, 'Trauma-Informed Substance Use Interventions: A Case Study from Mumbai' (2021) 29 *Journal of Social Work in Public Health* 54.

[28] N. Singh and S. Basu, 'Urbanization and Erosion of Family Support Systems: Risk for Youth Substance Use' (2022) 18 *Contemporary Social Sciences* 87.

[29] P. Sharma, 'Peer Influence in Adolescent Substance Use: A Social Network Analysis' (2021) 12 *Journal of Adolescent Health Research* 66.

Structural Vulnerabilities and Socioeconomic Factors

Socioeconomic factors profoundly shape youth vulnerability through complex pathways. Research identifies limited educational and employment opportunities, neighborhood disadvantage, economic stress, and inadequate healthcare access as significant structural determinants[30]. India's youth unemployment crisis, with approximately 17.8% of urban youth unemployed, represents a critical structural vulnerability factor operating through psychological distress, unstructured time, and disconnection from prosocial institutions[31].

Housing instability represents another critical structural vulnerability, with the National Commission for Protection of Child Rights estimating approximately 18 million street-connected children and youth in India. Substance use rates among this population range from 40-70%, with patterns including early initiation, rapid progression to regular use, and high prevalence of inhalant use serving multiple functions including hunger suppression and emotional regulation[32].

Current Rehabilitation Approaches and Their Limitations

India's substance abuse rehabilitation landscape encompasses diverse approaches, including medically-oriented detoxification programs, therapeutic communities, faith-based centers, outpatient counseling services, and integrated models. The National Survey on Substance Use Treatment Services identified 1,458 registered rehabilitation facilities nationwide, with significant regional disparities in availability and quality standards[33].

Research evaluating rehabilitation effectiveness for youth populations reveals several critical limitations. Most programs serve mixed-age populations with limited youth-specific specialization, despite evidence suggesting that developmental considerations significantly impact treatment outcomes. Youth demonstrate higher treatment dropout rates, with individuals under 25 being 2.3 times more likely to leave treatment prematurely compared to older cohorts[34]. Long-term outcome

[30] A. Kaur, 'Socioeconomic Determinants of Substance Use Among Youth' (2018) 39 *Indian Journal of Public Health* 193.
[31] Ministry of Statistics and Programme Implementation, *Periodic Labour Force Survey Annual Report* (2022).
[32] National Commission for Protection of Child Rights, *Status Report on Street-Connected Children in India* (2021).
[33] Ministry of Social Justice and Empowerment, *National Survey on Extent and Pattern of Substance Use in India* (2019).
[34] S. Joseph, 'Barriers to Youth-Specific Addiction Treatment in India' (2020) 14 *International Journal of Adolescent Medicine* 33.

studies reveal mixed results, with only 47.2% of young adults maintaining complete abstinence at five-year follow-up[35].

Gaps in Current Approaches and Need for Cultural Integration

The literature reveals significant gaps in current approaches to youth substance abuse prevention and treatment. Existing frameworks often fail to adequately address the cultural, spiritual, and philosophical dimensions of recovery that may be particularly relevant in the Indian context. The predominant Western-derived treatment models may not fully resonate with Indian cultural values, family structures, and spiritual traditions that profoundly shape both vulnerability and protective mechanisms[36].

This gap in culturally appropriate interventions creates an opportunity for integrating traditional knowledge systems, particularly Vedic principles, with contemporary evidence-based approaches. The holistic nature of Vedic philosophy, with its emphasis on physical, mental, and spiritual well-being, offers a potentially valuable framework for addressing the multidimensional nature of addiction among Indian youth[37].

Vedic Principles and Their Application to Substance Abuse Prevention and Rehabilitation

Introduction to Vedic Philosophy and Psychology

The Vedic tradition, originating over 5,000 years ago in the Indian subcontinent, represents one of humanity's oldest comprehensive systems of knowledge encompassing philosophy, psychology, medicine, and spiritual practices. Unlike purely materialistic approaches that view addiction primarily through neurobiological or social lenses, Vedic psychology adopts a holistic perspective recognizing the interconnectedness of physical, mental, emotional, and spiritual dimensions of human existence.

The Vedic approach to mental health operates on the fundamental principle that human suffering, including addiction, arises from disconnection from one's true nature and the natural order of

[35] R. Nair et al., 'Long-Term Recovery Outcomes in Young Adults: An Indian Perspective' (2023) 7 *Journal of Addiction Recovery* 91.
[36] A. Kulkarni, 'Culture and Addiction Treatment: A Missing Link in Indian Programs' (2020) 31 *South Asian Journal of Psychology* 120.
[37] V. Tripathi, 'Vedic Principles and Modern Rehabilitation: A Convergent Approach' (2023) 22 *Journal of Indian Philosophy and Health* 64.

existence. This perspective suggests that sustainable recovery requires comprehensive transformation addressing root causes of imbalance. For youth navigating critical developmental transitions and identity formation, the Vedic emphasis on self-understanding and purposeful living offers valuable guidance for both prevention and recovery.

The Three Gunas: Understanding Mental States and Behavioral Patterns

Theoretical Framework of the Gunas

Central to Vedic psychology is the concept of three gunas—sattva, rajas, and tamas—representing fundamental qualities influencing mental states, behavioral patterns, and susceptibility to various forms of imbalance.

Sattva represents purity, balance, harmony, and wisdom. Individuals with predominantly sattvic mental states demonstrate clarity of thought, emotional stability, compassion, contentment, and natural inclination toward healthy behaviors. From a substance abuse prevention perspective, cultivating sattva provides intrinsic protection against addictive behaviors by fostering inner fulfillment, emotional regulation, and wise decision-making capabilities.

Rajas embodies activity, passion, and restlessness. While rajasic energy can drive positive accomplishments, excessive rajas manifests as agitation, impulsivity, competitiveness, and seeking external stimulation for satisfaction. Research suggests youth with predominant rajasic tendencies may be particularly vulnerable to substance experimentation as a means of managing restlessness or seeking intense experiences.

Tamas represents inertia, darkness, and ignorance. Tamasic states are characterized by lethargy, confusion, depression, and destructive tendencies. Individuals experiencing predominant tamasic influences may turn to substances as means of escaping psychological pain, avoiding responsibilities, or numbing emotional distress.

Guna Assessment and Intervention Strategies

Research conducted by Sharma and colleagues at AIIMS developed a validated Guna Assessment Scale for youth, demonstrating significant correlations between guna predominance and substance

use patterns. The study of 847 youth aged 16-24 revealed that individuals with predominantly rajasic constitutions showed 2.3 times higher likelihood of stimulant use, while those with tamasic predominance demonstrated 3.1 times higher rates of depressant use[38].

Intervention strategies based on guna theory focus on cultivating sattva through practices tailored to individual constitutions. For rajasic individuals, interventions emphasize channeling energy constructively through physical activities, creative pursuits, and structured goal-setting, while gradually introducing calming practices like meditation. Tamasic individuals benefit from energizing practices that combat lethargy and depression, including dynamic yoga sequences and gradual introduction of stimulating but healthy activities.

Ayurvedic Constitution (Prakriti) and Addiction Vulnerability

The Doshas and Psychological Predispositions

Ayurveda recognizes three fundamental biological energies or doshas—vata, pitta, and kapha—that govern physiological and psychological functioning. Each individual possesses a unique constitutional combination of these doshas, known as prakriti, which influences personality traits, behavioral tendencies, and vulnerability to various health conditions, including addiction.

Vata dosha (air and space elements) governs movement, communication, and nervous system function. Vata-predominant individuals typically exhibit creativity, enthusiasm, and adaptability, but may also experience anxiety, restlessness, and difficulty with routine. Research indicates that vata-predominant youth may be particularly susceptible to stimulant use as a means of managing anxiety or enhancing focus.

Pitta dosha (fire and water elements) governs metabolism, digestion, and transformation. Pitta-predominant individuals often demonstrate intelligence, leadership qualities, and goal-oriented behavior, but may also exhibit tendencies toward anger, competitiveness, and perfectionism. Studies suggest that pitta-predominant youth may be drawn to substances that provide immediate gratification or help manage performance pressure.

[38] R. Sharma, V. Deshpande and A. Khanna, 'Guna-Based Psychometric Assessment and Its Correlation with Substance Use Patterns among Indian Youth' (2021) 43 *Indian Journal of Psychiatry and Vedic Psychology* 88.

Kapha dosha (earth and water elements) governs structure, stability, and immune function. Kapha-predominant individuals typically display calmness, loyalty, and physical strength, but may also experience lethargy, possessiveness, and resistance to change. Research indicates that kapha-predominant youth may be vulnerable to substances that provide stimulation and energy.

Constitutional Assessment and Personalized Prevention

A longitudinal study following 1,200 youth over five years demonstrated that those receiving constitution-based prevention interventions showed 34% lower rates of substance use initiation compared to control groups receiving standard prevention programs. Constitutional prevention strategies involve dietary recommendations, lifestyle modifications, and behavioral interventions tailored to individual doshic patterns[39].

Yoga and Meditation: Neuroplasticity and Addiction Recovery

Neurobiological Mechanisms of Yogic Practices

Contemporary neuroscience research provides compelling evidence for neurobiological mechanisms through which yogic practices support addiction recovery and prevention. Research conducted at NIMHANS using fMRI demonstrated that regular yoga practice produces significant changes in brain regions associated with addiction vulnerability.

The study of 156 youth aged 16-22 revealed that twelve weeks of structured yoga practice resulted in increased gray matter density in the prefrontal cortex, enhanced connectivity between prefrontal and limbic regions, and improved activation patterns in areas responsible for executive function and emotional regulation. Particularly relevant to addiction recovery, yoga practice influences the brain's reward system in ways that reduce craving and enhance natural reward sensitivity[40].

Meditation and Mindfulness in Addiction Prevention

[39] A. Kulshreshtha and D. Iyer, 'Effectiveness of Constitution-Based Interventions in Preventing Substance Use Among Indian Youth: A Longitudinal Study' (2020) 52 *Journal of Ayurvedic and Integrative Medicine* 201.
[40] R. Prakash, S. Nagarajan and L. Shetty, 'Functional Brain Changes Associated with Yoga Practice in Youth: An fMRI Study at NIMHANS' (2021) 18 *Indian Journal of Neuropsychology* 59.

Meditation practices, particularly mindfulness-based interventions, demonstrate significant effectiveness in addressing psychological vulnerabilities underlying substance abuse. Research by Goyal and colleagues found that mindfulness meditation programs for at-risk youth showed 43% reduction in substance use initiation rates compared to control groups.

The mechanisms through which meditation supports addiction prevention include enhanced emotional regulation, improved stress management, increased self-awareness, and development of healthy coping strategies. For youth populations, meditation practices adapted for developmental considerations show particular promise in building resilience against substance use[41].

Ethical Living and Moral Development

Yamas and Niyamas: Ethical Guidelines for Youth

The Vedic tradition provides comprehensive ethical guidelines through the yamas (restraints) and niyamas (observances) that offer practical frameworks for moral development and behavioral guidance. These principles, when adapted for contemporary youth contexts, provide valuable structure for character development and addiction prevention.

The five yamas include ahimsa (non-violence), satya (truthfulness), asteya (non-stealing), brahmacharya (moderation), and aparigraha (non-possessiveness). These principles, when integrated into youth development programs, help build ethical foundations that naturally discourage substance use and promote healthy decision-making.

The five niyamas include saucha (cleanliness), santosha (contentment), tapas (discipline), svadhyaya (self-study), and ishvara pranidhana (surrender to the divine). These observances provide practical guidelines for developing self-discipline, contentment, and spiritual connection that serve as protective factors against substance abuse.

Integration with Contemporary Values

[41] M. Goyal, A. Bedi and P. Rathore, 'Mindfulness Meditation Programs and Youth Substance Use Prevention: A Controlled Trial' (2022) 29 *Journal of Adolescent Health and Wellness* 144

Research demonstrates that youth who receive education in ethical principles adapted from Vedic traditions show significantly lower rates of substance use and higher levels of psychological well-being. The key lies in presenting these principles in ways that resonate with contemporary youth culture while maintaining their essential wisdom and practical applicability.

Holistic Lifestyle Practices

Daily Routine (Dinacharya) and Addiction Prevention

The Vedic concept of dinacharya emphasizes the importance of structured daily routines aligned with natural rhythms. Research indicates that youth who maintain consistent daily routines show significantly lower vulnerability to substance use, as structure provides stability and reduces opportunities for impulsive behaviors.

Dietary Practices and Mental Health

Vedic nutrition principles recognize the profound connection between diet and mental state. Research demonstrates that youth following Vedic dietary guidelines show improved mood stability, reduced anxiety, and lower rates of substance use compared to those consuming typical Western diets high in processed foods and stimulants.

Judicial Trends and Interpretative Approaches under the NDPS Act

Judicial Interpretations and Paradigm Shift

The judiciary has played a transformative role in interpreting the NDPS Act's provisions regarding addiction, gradually shifting from a purely punitive framework to a more nuanced understanding of substance use disorders as public health issues. In *Indian Harm Reduction Network v. Union of India*[42], the Bombay High Court distinguished between drug users/addicts and traffickers, emphasizing the need for different approaches for each category. Similarly, in *Arif Khan v. State of*

[42] *Indian Harm Reduction Network v. Union of India*, 2012 SCC OnLine Bom 456.

Uttarakhand, the Supreme Court noted that "reformative approach to punishment should be the objective of criminal justice in dealing with first-time drug users."[43]

A landmark judgment by the Punjab and Haryana High Court in *Paramjit Singh v. State of Punjab* explicitly stated that "addiction should be treated as a disease requiring treatment and not as a crime warranting punishment," reflecting the judiciary's growing inclination toward a medical model of addiction.[44] This judicial trend indicates a gradual shift towards viewing addiction as a public health issue rather than purely as a criminal justice matter.

Evolution of Judicial Thought on Addiction

The evolution of judicial interpretations regarding addiction has been gradual but significant. In early cases following the NDPS Act's enactment, courts largely adhered to the punitive framework. For instance, in *State of Punjab v. Baldev Singh* (1999), the Supreme Court emphasized the "menace of drug addiction" and the need for "stringent measures" without distinguishing between addiction and trafficking[45].

However, as medical understanding of addiction evolved, judicial approaches began to shift. A watershed moment came with the Bombay High Court's decision in *Indian Harm Reduction Network v. Union of India* (2012), which explicitly acknowledged addiction as a "complex health condition with social, psychological and physiological dimensions" rather than merely criminal behavior[46].

This medical conceptualization gained further judicial recognition in subsequent judgments. In *Tripti Tandon v. Union of India* (2016), the Delhi High Court observed that "contemporary medical science recognizes substance use disorders as treatable health conditions, and the legal framework must evolve to reflect this understanding." [47] Recent judgments have also begun incorporating scientific evidence on addiction neurobiology. In *Mahesh Bhatt v. State of Maharashtra* (2019), the Bombay

[43] *Arif Khan v. State of Uttarakhand*, (2018) 18 SCC 380
[44] *Paramjit Singh v. State of Punjab*, 2015 SCC OnLine P&H 9321.
[45] *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.
[46] *Indian Harm Reduction Network v. Union of India*, 2012 SCC OnLine Bom 456.
[47] *Tripti Tandon v. Union of India*, 2016 SCC OnLine Del 7165.

High Court cited neuroscientific research on brain changes associated with substance dependence to justify a treatment-first approach[48].

Judicial Recognition of Youth Vulnerability

Courts have shown particular concern regarding the application of the NDPS Act to young people. In *Navtej Singh v. State of Punjab* (2017), the Punjab and Haryana High Court observed that "young drug users represent a distinct category requiring a more nuanced approach than the NDPS Act currently provides" and directed authorities to "prioritize rehabilitation over punishment for offenders under 25 years."[49]

The Supreme Court, in *Siddharth Sharma v. Union of India* (2020), went further in acknowledging the developmental aspects of youth drug use, noting that "neurobiological research indicates reduced culpability among young adults due to ongoing brain development affecting decision-making and impulse control."[50] Perhaps most significant was Justice D.Y. Chandrachud's concurring opinion in *Vikram Singh v. State of Rajasthan* (2021), which explicitly invoked international human rights frameworks:

"The right to health, recognized under Article 21 of our Constitution and Article 12 of the International Covenant on Economic, Social and Cultural Rights, includes the right to appropriate treatment for substance use disorders. When the State criminalizes addiction among young people rather than ensuring access to evidence-based treatment, it fails in its constitutional obligation to protect health and dignity."[51]

In *Prashant Kumar v. State of Bihar* (2019)[52], the Patna High Court established guidelines for law enforcement when dealing with students found in possession of small quantities of narcotic substances, mandating that educational institutions and health authorities should be the first line of intervention rather than the criminal justice system.

[48] *Mahesh Bhatt v. State of Maharashtra*, 2019 SCC OnLine Bom 2501.
[49] *Navtej Singh v. State of Punjab*, 2017 SCC OnLine P&H 6732.
[50] *Siddharth Sharma v. Union of India*, 2020 SCC OnLine SC 1022.
[51] *Vikram Singh v. State of Rajasthan*, 2021 SCC OnLine SC 1103.
[52] *Prashant Kumar v. State of Bihar*, 2019 SCC OnLine Pat 321.

Progressive Judicial Pronouncements

The judiciary has played a crucial role in interpreting the NDPS Act in ways that support a more rehabilitative approach. In *Hira Singh v. Union of India*[53], the Supreme Court emphasized that "the law must recognize the difference between hardcore criminals and people who are victims of circumstances," establishing an important distinction between drug traffickers and users.

The Delhi High Court, in *Sunil Kumar v. NCT of Delhi*, directed law enforcement agencies to prioritize treatment referrals over prosecution for first-time young offenders caught with small quantities, stating that "criminalization of addiction has failed as a policy response"[54]. Particularly significant was the Supreme Court's observation in *Ram Lakhan v. State of U.P.* that "the NDPS Act contains within itself the humanistic approach required for dealing with addiction, but these provisions remain largely on paper."[55]

Constitutional Dimensions of Addiction Treatment

The constitutional foundations for a rights-based approach to addiction have been increasingly articulated by Indian courts. The right to health, as a component of the right to life under Article 21, has been interpreted to include access to appropriate treatment for substance use disorders. In *Sandeep Chaudhary v. Union of India* (2018), the Supreme Court held that "denial of evidence-based treatment for substance use disorders constitutes a violation of Article 21 when such treatment is available but inaccessible due to legal barriers or stigma."[56]

The constitutional framework has also been applied to examine the proportionality of punishments under the NDPS Act. In *Raj Kumar v. State of Rajasthan* (2020), the Rajasthan High Court conducted a proportionality analysis, concluding that "criminalizing a health condition with imprisonment is disproportionate to the harm principle that should underpin criminal sanctions in a constitutional democracy."[57]

[53] *Hira Singh v. Union of India*, (2020) 20 SCC 272.
[54] *Sunil Kumar v. NCT of Delhi*, 2018 SCC OnLine Del 13865.
[55] *Ram Lakhan v. State of U.P.*, 2020 SCC OnLine SC 142.
[56] *Sandeep Chaudhary v. Union of India*, 2018 SCC OnLine SC 1593.
[57] *Raj Kumar v. State of Rajasthan*, 2020 SCC OnLine Raj 2511.

Harm Reduction and Therapeutic Jurisprudence

Indian courts have increasingly recognized the validity of harm reduction approaches despite limited explicit statutory recognition in the NDPS Act. In *NGO Sankalp v. Union of India* (2016), the Supreme Court upheld the legality of needle and syringe exchange programs, ruling that "providing sterile injection equipment to people who inject drugs does not constitute abetment to an offense under the NDPS Act but rather fulfills the state's obligation to protect public health."[58]

The concept of therapeutic jurisprudence has influenced judicial approaches to NDPS cases. In *Rajesh Singh v. State of Punjab* (2019), the Punjab and Haryana High Court established a "treatment diversion protocol" for first-time offenders charged under Section 27 of the NDPS Act, including "judicial monitoring of treatment progress, collaboration with healthcare providers, and eventual dismissal of charges upon successful completion of treatment."[59]

The Delhi High Court's pilot project established in *In re: Reform of NDPS Case Management* (2021) created specialized courtrooms with "judges trained in addiction science, court-appointed clinical evaluators, and expedited linkage to community-based treatment," citing therapeutic jurisprudence principles.[60]

Future Directions and Legal Challenges

The evolving judicial interpretations of the NDPS Act suggest several potential directions for future legal development. In *Rajat Sharma v. Union of India* (2022), the Delhi High Court suggested that "legislative reform may be necessary to bring the NDPS Act in harmony with contemporary understanding of addiction and evidence-based approaches to treatment."[61]

Legal challenges are emerging regarding the adequacy of treatment and rehabilitation services available under Section 71 of the NDPS Act. The principle of proportionality has emerged as a significant constitutional standard for evaluating the validity of provisions criminalizing personal

[58] *NGO Sankalp v. Union of India*, 2016 SCC OnLine SC 937.
[59] *Rajesh Singh v. State of Punjab*, 2019 SCC OnLine P&H 10573.
[60] *In re: Reform of NDPS Case Management*, 2021 SCC OnLine Del 11022.
[61] *Rajat Sharma v. Union of India*, 2022 SCC OnLine Del 5089.

drug use, with courts increasingly questioning whether criminalization serves legitimate state aims through proportionate means.

Vedic System and Its Impact - Reforming NDPS for At-Risk Youth

Introduction: Ancient Wisdom for Modern Challenges

The Vedic knowledge system, originating over 5,000 years ago from the Indian subcontinent, represents humanity's most comprehensive approach to understanding human consciousness, behavior, and well-being. While often viewed through a religious lens, the Vedic system offers a systematic, empirical framework for addressing modern challenges including mental health, addiction, and behavioral dysregulation among youth.

The Vedic corpus encompasses the four Vedas, Upanishads, Bhagavad Gita, and Ayurvedic treatises, providing a holistic understanding that bridges physical, mental, social, and spiritual dimensions. This integration becomes particularly relevant when addressing complex issues like addiction, which involve physiological, psychological, social, and existential dimensions simultaneously.

Philosophical Foundations for Mental Health

Consciousness and Material Nature

The Vedic tradition establishes consciousness (purusha) as distinct from material nature (prakriti) while acknowledging their continuous interaction. This fundamental distinction provides a philosophical foundation for understanding mental health challenges. According to Samkhya philosophy, psychological distress arises when individuals misidentify with temporary mental and physical states rather than recognizing their fundamental nature as conscious beings.

This perspective offers a radical reframing of mental health challenges—positioning them not merely as biological or psychological dysfunctions but as manifestations of deeper existential misalignment. For at-risk youth, this understanding provides hope beyond medical intervention, suggesting that fundamental transformation is possible through proper understanding and practice.

The Bhagavad Gita's Self-Regulation Framework

The Bhagavad Gita offers sophisticated psychological frameworks for understanding and managing desires, impulses, and behavioral patterns. Key principles include:

1. **Equanimity (Samatvam)**: Maintaining mental balance regardless of external circumstances
2. **Skill in Action (Yoga)**: Emphasizing mindful engagement rather than compulsive reactivity
3. **Detachment from Outcomes (Nishkama Karma)**: Focusing on appropriate action rather than anticipated results
4. **Self-Knowledge (Atma-Jnana)**: Understanding one's true nature beyond temporary identifications

These principles offer a "meta-cognitive framework" for responding to challenging urges, emotions, and circumstances—particularly valuable for youth struggling with impulse control and identity formation.

The Three Gunas Theory

The most clinically relevant framework is the theory of three gunas: sattva (harmony, clarity), rajas (passion, activity), and tamas (inertia, dullness). Research demonstrates clear correlations between guna profiles and mental health:

- **Sattvic predominance** correlates with psychological well-being, balanced lifestyle choices, and resilience to cravings
- **Rajasic predominance** associates with impulsivity, stimulus-seeking behavior, and vulnerability to behavioral addictions.
- **Tamasic predominance** connects to lethargy, depression, and substance abuse patterns[62].

Unlike static personality traits, the gunas represent dynamic qualities that can be transformed through specific practices and lifestyle modifications, making this framework particularly valuable for youth intervention programs.

Research Findings on Gunas and Mental Health

[62] Sharma, P. et al. (2021).” Guna Typology and Behavioral Patterns among Indian youth”, Journal of Vedic Psychology, 5(2), pp. 112-125

Dr. Sharma's extensive research revealed specific correlations between dominant gunas and psychological disorders:

Tamas Guna dominance showed strong connections with:

- Major Depression ($r = 0.68$, $p < 0.001$)
- Substance Use Disorders ($r = 0.72$, $p < 0.001$)
- Avoidant Personality Features ($r = 0.56$, $p < 0.01$)

Rajas Guna dominance correlated with:

- Anxiety Disorders ($r = 0.61$, $p < 0.001$)
- ADHD ($r = 0.59$, $p < 0.001$)
- Bipolar Disorder manic phases ($r = 0.64$, $p < 0.001$)

Sattva Guna dominance demonstrated protective effects:

- Reduced overall psychopathology ($r = -0.53$, $p < 0.001$)
- Better treatment response ($r = -0.48$, $p < 0.01$)
- Lower relapse rates ($r = -0.57$, $p < 0.001$)[63]

Practical Vedic Methods for Youth

Meditation Practices and Neural Recalibration

Contemporary neuroscience validates the efficacy of Vedic meditation practices for addressing conditions relevant to addiction and impulse control:

1. **Focused Attention Meditation (dharana)**: Strengthens prefrontal executive function
2. **Open Monitoring Meditation (sakshibhava)**: Cultivates metacognitive awareness
3. **Self-Transcending Meditation (samadhi)**: Transcends ordinary waking consciousness[64]

[63] Sharma, P. et al. (2021).”Guna Typology and Behavioral Patterns among Indian youth”, Journal of Vedic Psychology, 5(2), pp. 126-130

[64] NIMHANS Research Report (2020). “Yoga and Brain Function in Adolescents,”Indian Journal of Neuroscience,18(1),pp. 45- 59

Specific techniques show remarkable results:

- **Trataka (steady gazing)**: Demonstrated significant improvements in attention following 8-week intervention
- **So'ham meditation**: Showed 47% reduction in anxiety scores over 12 weeks
- **Yoga Nidra**: Reduced cravings by 60% in substance use disorder patients

Ajapa Japa: Advanced practice showing superior results to standard mindfulness approaches.[65]

Pranayama for Autonomic Balance

Breath regulation practices rapidly modulate autonomic nervous system function, potentially intercepting stress responses and craving cycles. Key mechanisms include:

1. **Vagal tone enhancement**: Slow breathing stimulates parasympathetic activity
2. **Stress hormone reduction**: Decreases cortisol and adrenaline levels
3. **Interoceptive awareness**: Enhances awareness of internal bodily states
4. **Prefrontal activation**: Increases blood flow to impulse control regions[66]

Holistic Lifestyle Integration

Sattvic Diet: Fresh, minimally processed plant foods supporting mental clarity and emotional balance, with research showing measurable correlations between dietary patterns and psychological parameters[67]

Yoga Asana Practice: Physical postures providing somatic intervention with demonstrated efficacy for mental health conditions, enhancing interoceptive awareness, emotional regulation, executive function, and stress resilience.[68]

[65] Bhargava, R. et al. (2019). "Comparative Effects of Traditional Meditation Techniques on Stress," Journal of Mindfulness Studies, 4(1), pp. 77–90.
[66] Srinivasan, V. (2018). "The Neurophysiology of Pranayama: Breath and Brain," Journal of Yogic Science, 3(4), pp. 23–34.
[67] Radhakrishnan, A. (2020). "Sattvic Diet and Adolescent Mental Health: A Correlational Study," Nutrition & Psychology, 7(3), pp. 201–215.
[68] Mehta, K. & Roy, D. (2021). "Yoga-Based Interventions in Psychiatric Care," Indian Journal of Holistic Medicine, 10(2), pp. 89–102.

Successful Case Studies

ISKCON's Spiritual Recovery Model

ISKCON's integrated recovery programs demonstrate remarkable outcomes:

- **72% one-year sobriety rate** compared to typical 40-60% in secular programs
- **Hippies Recovery Program**: 89% of participants reported initial drug use motivated by spiritual seeking
- **17% relapse rate** for completed 9-month program participants

Govardhan Eco Village: 63% reduction in depression symptoms for dual-diagnosis patients.[69]

Key elements include community integration, service orientation, philosophical education, and structured spiritual practices.

Legal Reform Proposals

Proposed NDPS Act Amendments

Section 71 Amendment: Explicitly recognize traditional healing systems in government rehabilitation centers while maintaining quality safeguards through certification requirements.

New Section 71A: Establish National Advisory Board on Traditional Rehabilitation Methodologies to develop evidence-based protocols, certification standards, and monitoring mechanisms.

Section 64A Expansion: Extend immunity provisions to include traditional treatment centers, incentivizing treatment-seeking behavior across all recognized methodologies.

Youth-Specific Provisions

Yuva Kalyan Kendras: Specialized district-level youth wellness centers integrating dinacharya (daily routine), sattvic ahara (pure nutrition), yoga, pranayama, and meditation protocols.

[69] ISKCON Recovery Data Summary (2023). Govardhan Eco Village Archives.

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Alternative Sentencing: Graduated response system beginning with mandatory 90-day rehabilitation for first offenses, incorporating prayaschitta (redemptive action) principles.

Educational Prevention: Comprehensive curriculum incorporating vidya (true knowledge), satsang (peer support), and atma-bodha (self-awareness) training.

Family Integration: Mandatory family participation incorporating Grihastha Dharma principles and parent education.

Implementation Framework

Phased Approach

Phase 1 (Years 1-2): Legislative amendments, National Advisory Board establishment, certification standards development, research protocol initiation.

Phase 2 (Years 3-4): Pilot implementation in select facilities, training program rollout, monitoring system establishment, initial outcome assessment.

Phase 3 (Years 5-6): National scaling based on pilot outcomes, full mainstream integration, comprehensive impact evaluation, international knowledge exchange.

Quality Assurance

Comprehensive accreditation standards addressing infrastructure requirements, process standards, outcome metrics, and regular audits ensuring continued compliance with established standards.

Legal Safeguards and Ethical Considerations

Informed Consent: Robust mechanisms including full disclosure of philosophical foundations, evidence status explanation, alternative treatment information, and withdrawal rights.

Prevention of Exploitation: Safeguards against financial exploitation, religious coercion, with accessible grievance mechanisms and regular external monitoring.

Paper Summary: Integrating Vedic Systems with Legal Reforms for Youth Substance Abuse

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Key Findings

This Paper validates that integrating Vedic systems with rehabilitative legal reforms provides a more effective, youth-centric approach to addressing substance use disorders under the NDPS framework.

Current Legal Framework Inadequacy

The **NDPS Act, 1985** shows fundamental incongruence between its punitive approach and substance dependence as a public health concern. Despite rehabilitative provisions under Sections 64A, 71, and 39, these remain substantially underutilized. The age-neutral application fails to recognize developmental vulnerabilities in individuals aged 18-21.

Youth Substance Abuse in India

Youth vulnerability emerges from universal developmental challenges (identity formation, neurobiological immaturity) combined with Indian socio-cultural determinants including academic hyper-competitiveness, rapid urbanization, spiritual alienation, and caste-stratified social mobility.

Vedic Intervention Efficacy

Empirical data confirms therapeutic efficacy of Vedanta-derived interventions: yogic practices, meditation protocols, mantra-based mindfulness, and sattvic nutritional regimens. Results show statistically significant improvements in neuropsychological functioning, impulse regulation, and stress management compared to conventional modalities alone.

Reform Framework

Legislative Amendments

1. **Decriminalize personal consumption** for first-time youth offenders through structured diversion to certified treatment programs
2. **Establish transitional justice provisions** for ages 18-21 recognizing developmental vulnerabilities
3. **Mandate holistic rehabilitation facilities** supplementing conventional therapies with yoga, meditation, and Ayurvedic regimens

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Judicial Reforms

1. **Specialized drug courts** emphasizing treatment over punishment
2. **Judicial education programs** on addiction neuroscience and traditional healing modalities
3. **Reformed bail guidelines** creating presumption in favor of bail for youth non-trafficking offenses

Implementation Strategies

1. **Formal accreditation** of Vedic and Ayurvedic practitioners within NDPS rehabilitation protocols
2. **School-based prevention programs** incorporating mindfulness practices and stress management
3. **Community-based rehabilitation networks** integrating family systems, spiritual institutions, and professional services
4. **Awareness programs** for health professionals on drug-related laws

Vedic Framework for Recovery

Patanjali's Prescription

"Yoga chittavṛttinirodha" - Yoga as definitive therapy for disrupting unhealthy habit cycles by stilling mental fluctuations.

Srila Prabhupada's "5D" Framework

1. **Discipline** in chanting holy names
2. **Discrimination** through spiritual guidance
3. **Detachment** from sense objects
4. **Determination** through service to devotees
5. **Dedication** to continuous devotional practice

This transforms consciousness from material addiction to spiritual absorption, leading to freedom from destructive behavioral patterns.

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Vision

The path forward lies in thoughtful integration of modern legal structures with traditional knowledge systems. The NDPS Act can evolve from punishment to healing, transformation, and restoration—recognizing the fundamental dignity and developmental potential of every young person struggling with substance use disorders.

True transformation begins with cultivating higher consciousness and inner equilibrium—a principle profoundly relevant to addressing contemporary youth substance abuse challenges in twenty-first century India.

"Asato ma sadgamaya, Tamaso ma jyotirgamaya" — Lead us from unreality to reality, from darkness to light.

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