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# CENTRAL UNIVERSITY OF KASHMIR LAW REVIEW

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## Editorial

**Prof. Kahkashan Y. Danyal**, Dean, Faculty of law, Jamia Millia Islamia, and **Insha Quyoom**, Research Scholar, Faculty of law, Jamia Millia Islamia, in their paper titled, *“The Impact of Covid-19 Pandemic on Children’s Education: A Study of Minority Secondary Schools in Delhi”* highlights the repercussions of closure of schools due to lockdowns to enforce social distancing announced by the Government as a part of government policy to contain COVID-19 that impacted health, wellbeing, economy and above all education and research. The policy planners, health experts, economists and academicians were taken off guard, both in the east as well as in the west, by the countless deaths and serious ailments. The only panacea was found in the preventive measures. These preventive measures might have contained the spread of COVID-19 to some extent but could not prevent the ill effects of these preventive measures. Studies have been conducted to understand the impact of COVID-19 on the economy so that pre-emptive measures are taken to stop the economic meltdown. However, similar robust studies based on the empirical evidence to appraise the ill effects of COVID-19 on education have not been comprehensively conducted in India. The present paper attempts to make a case study of *minority secondary schools of Delhi* to analyse the *impact of the Covid-19 Pandemic on Children’s Education*. The data for this study was collected from a representative sample of students, teachers and principals in secondary minority schools in Delhi. The paper brings out international and national laws along with judicial decisions with respect to right to education of children. The paper investigates the effects of the transition from traditional classroom settings to digital modes of education on students attending Muslim minority institutions. The authors roll out the issues and challenges students face while transitioning from an actual classroom setting to a virtual classroom delivery without prior experience or planning. Authors argue that public health issues have created an education deficit, particularly impacting students from lower socio-economic

strata. The paper recommends that India must prioritise policy reform and increase investment in education to prevent students from lagging behind.

**Marisport A**, Assistant Professor of Law, Gujarat National Law University, Gandhinagar, Gujarat, and **Gauransh Gaur**, Student, Gujarat National Law University, Gandhinagar, Gujarat, in their paper captioned, *“Inclusivity in Indian Judiciary: A Study of Contemporary Trends and a Way Forward”* observe that the metaphorical link of justice with blindness\* is in contrast to society’s ableist mindset that blind people are not suitable for discharging judicial rules. The paper explores systemic biases, accessibility issues, and the representation of differently abled persons in the justice delivery system. The paper highlights the judiciary’s role in upholding constitutional values but in contrast identified the areas where inclusivity remains a challenge, such as considering the persons with disability in judicial services. The paper advocates for structural reforms, increased diversity in appointing persons with disability in the judiciary, and measures to ensure equitable access to justice. The paper emphasizes the need for a judiciary that embodies fairness and inclusivity to uphold democratic ideals. The paper recommends accommodating visually impaired individuals on benches with assistive technologies to ensure this precious human resource is not lost in oblivion.

**Prof. G. Shaber Ali**, V M Salgaocar College of Law, Miramar, Panaji, Goa and **Mrs. Reshma Nikhil Pai Angle**, Assistant Professor, S.S. Dempo College of Commerce & Economics, Cuzira, Bambolim, Goa in their paper titled, *“Evaluation and Appraisal of Enforcement of Public Interest Litigation in the State of Goa (India),”* highlights the importance of PILs in general and in the state of Goa in particular. The paper incorporates an empirical study of the efficacy and

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\* This old symbol of justice has been now discarded by the Supreme Court very recently. The statue of Lady Justice has been redesigned to reflect a modernised version of justice in India. In the previous version, ‘Lady Justice’ was portrayed with a blindfold over her eyes. The new statue, however, has open eyes, symbolising that “justice is no longer blind”



functioning of the Goa Bench of Bombay High Court *via-a-vis* PILs. The authors collected data relating to all the PILs filed in the Goa Bench of Bombay High Court, more emphasis is laid on matters concerning the environment. The authors recommend mass awareness and the opportunity for e-filing the PIL.

**Sheikh Inam Ul Mansoor**, Assistant Professor of Law, School of Law, Dayananda Sagar University, Bangalore, in his paper titled, *“Legal Implications of Deepfake Technology: In the Context of Manipulation, Privacy, and Identity Theft”*, observes that Deepfake technology has brought forth numerous challenges to the legal, technological and societal framework in India. The author explores the multifaceted implications of deepfake technology from the perspective of protecting individual and collective rights. The paper examines the existing Indian legal framework. It suggests comprehensive regulatory reforms, including amendments to existing laws and the enactment of new regulations tailored to combat deepfake-related offences and advocates for a more proactive and collaborative approach to safeguard and protect privacy, integrity, and trust in India’s digital ecosystem amidst the evolving challenges posed by the deepfake technology.

**Prof. Ishita Chatterjee**, SRM School of Law, SRM University of Science and Technology, Kattankulathur, in her paper titled, *“Bridging Genetic Resources, Traditional Knowledge and Innovation in the Legal Context”* opines that as biotechnology continues to advance, the intersection of genetic resources, traditional knowledge, and innovation poses complex challenges and opportunities. The author advocates for harmonising innovation, traditional knowledge and genetic resources with the objective of maintaining balance between scientific progress and preservation of cultural heritage to attain sustainable development, biodiversity conservation and social equity. The paper explores the significance of genetic resources in biotechnology and the ethical considerations associated with the utilization of genetic materials. It also delves into the challenges of harmonizing genetic resources and traditional knowledge with innovation. The paper suggests strategies for

creating a collaborative framework that respects the rights of Indigenous communities, encourages technology transfer and fosters responsible innovation. The author also proposes developing international guidelines and policies that harmonise genetic resources, traditional knowledge, and innovation.

**Punam Ahmed**, Research Scholar, Department of Law, Gauhati University, Assam, in her paper titled *“Examining Indian Laws on Domestic Violence in the Context of Gender Equality”*, critically analyses legislative frameworks, including the Protection of Women from Domestic Violence Act, 2005, assessing their effectiveness in addressing societal and systemic challenges. The paper highlights the interplay between legal provisions and societal attitudes, emphasizing the need for robust enforcement, awareness, and gender-sensitive interpretations. The paper underscores women’s empowerment through law but also points out gaps such as underreporting and misuse. The study advocates for comprehensive reforms and education to ensure these laws foster true gender equality and social justice.

**Mohammadi Tarannum**, Vice Principal, Surendranath Law College, Kolkata, in her paper titled *“Cyber Crimes against Women in India: An Analysis”*, argues that India has witnessed a significant rise in cybercrime against women. The paper highlights the causes and impacts of cybercrimes against women. It examines the existing Indian legal framework to combat cybercrime against women and the enforcement issues to ensure a safe digital environment for women. The paper provides a snapshot of the judicial contribution in protecting women from cybercrimes and recommends strengthening legal frameworks, judicial innovations, law enforcement reforms, collaborations with technology platforms, awareness and digital literacy, victim support mechanisms, monitoring, accountability and international cooperation. The author opines that by implementing these measures, India can make significant progress in curbing cybercrimes against women and creating a digital ecosystem that ensures security, equality and dignity for all.

**Lubna Tanweer**, Research Scholar, Jamia Millia Islamia, and **Hassana Quadri**, Assistant Professor, Amity University, Dubai, in their paper bearing title, *“Resolution of Marital Discord under Muslim Law: An Appraisal in Contemporary Context”*, observe that religious traditions and rituals are crucial for the formation of modern laws and the evolution of civilisation. The Authors attempt to look at and trace the origins of ADR practices under Islam, their legal sanctity under Islamic law, and their judicial recognition in India. The Authors undertake an empirical study to examine the present status of ADR practices in the Muslim Community in India. The authors find that despite clear guidance in the Holy Quran and Ahadith regarding the adaptation of reconciliation, parties have failed miserably to make an amicable settlement between them in cases of marital discord. The paper recommends that Islamic Institutions and Seminaries, with the help of the Government, must take concrete steps for mandatory amicable settlement to resolve disputes, particularly marital discord among Muslims.

**Rakesh Raushan**, Assistant Professor of Law, Silver Oak University, Ahmedabad, in his paper captioned *“AI in Banking: Navigating the Legal Challenges and Regulatory Compliances”*, delves into the legal and regulatory challenges confronting banks as they started incorporating artificial intelligence into their operations. The paper explores nuances of operational risks, cyber security and data protection *vis-à-vis* the use of AI in banking operations. The paper evaluates the legal intricacies with respect to the adaptation of AI in India’s banking system. The author argues that responsible AI practices are crucial to ensure alignment with societal values, human rights, fairness, and transparency. Ethical frameworks and regulations should guide AI technologies’ development, use, and impact. The author suggests collaboration between banking institutions, AI experts, regulators, and legal professionals to establish clear guidelines, standards, and legal frameworks which should address legal, ethical, and regulatory aspects to ensure successful integration of AI in the banking sector.

**Partha Protim Bora**, Research Scholar, ICFAI Law School, ICFAI University, Tripura, in his paper titled, *“Geographical Indication (GI) Tags and Intellectual Property Rights: An Exploratory Study”*, offers a thorough analysis of GI tags, their significance for market value enhancement, consumer protection, cultural heritage preservation and sustainable development. The paper highlights the GI success stories in India along with the limitations and obstacles. The paper proposes increasing public knowledge and protecting India’s wealthy, distinct culture and resources to realize the potential advantages of GI protection worldwide.

**Sheikh Inam Ul Mansoor**, Assistant Professor, School of Law, Dayananda Sagar University, Bengaluru, Karnataka, in his paper titled *“Who will Judge the Judges? An Appraisal of Bias in the Delivery of Justice”* explores the complex issues of bias in justice delivery system. The paper delves into numerous categories of biases, the reasons of such biases and their impacts on delivery of justice. The author opines that judicial independence and societal respect for the judiciary often prevents open discussions about bias and accountability of judges, however, an equilibrium must be struck between judicial independence, which remains a cornerstone of democracy, and the imperative of accountability and transparency. The paper suggests for continuous education and training programs to help judges to recognize and address their biases for attaining more impartial and equitable justice delivery system.

**Jayeshkumar Shivrambhai Mali**, Research Scholar, Institute of Law, Nirma University, in his paper titled, *“Bank Frauds: A Study of Economic and Legal Perspectives”*, observes that with the advancement of technology, bank fraud cases are growing exponentially and the COVID-19 Pandemic added fuel to it. The author argues that bank fraud is the biggest threat to the economy and is a matter of great concern for National Economic Security. The paper explores the various aspects of bank fraud and how these affect the economy and national security. The paper examines the existing Indian legal and regulatory framework for preventing bank

fraud in India. The author suggests that governments, regulatory agencies, financial institutions, and the general public must work together for coordinated efforts to mitigate the risks associated with bank fraud, strengthening cybersecurity safeguards, imposing strict regulatory frameworks, and raising public awareness.

**Chief Editor**

### **Acknowledgement**

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## The Impact of Covid-19 Pandemic on Children's Education: A Study of Minority Secondary Schools in Delhi

Insha Quyoom\*  
Kahkashan Y. Danyal†

### Abstract

The global COVID-19 pandemic has severely affected various sectors, including the economy, healthcare systems, and education. As a result of the outbreak, educational institutions worldwide, including schools, early childhood education centres and universities, were compelled to close. This situation has underscored the challenge of balancing two fundamental rights during a global crisis: the right to public health and education, both enshrined in the Constitution of India. Despite constitutional guarantees, the widespread closure of schools has deprived children nationwide of their right to education. This paper examines the repercussions of school closures and community lockdowns on children's learning, well-being, and protection. Data for this study were collected from a representative sample of students, teachers and principals in secondary minority schools in Delhi. We utilised convenience sampling to select four schools and included students from grades 8 to 12 in the data collection process. One hundred students were randomly selected, with five students from each class. In addition to gathering information from students, we conducted interviews with teachers and school authorities to gather their insights regarding the effect of school closures on student learning, the effects on their teaching methodologies, and the measures implemented to address these challenges.

**Keywords:** COVID-19, Education, Children, Health, Minority Schools, Lockdown

### 1. Introduction

The COVID-19 pandemic has caused significant disruptions to educational systems worldwide, disproportionately affecting the

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most vulnerable populations. This disruption has exacerbated existing inequalities and intensified the education crisis, particularly for children in less developed nations. According to UNESCO, over 888 million children globally have continued to experience interruptions in their education due to full and partial school closures. School closures have severe implications for children's learning and overall well-being. Schools serve essential functions beyond education, including socialisation, providing nutritious meals, offering psycho-social support, and acting as a form of social protection for economically disadvantaged families. The most vulnerable children, particularly those lacking access to remote learning, face considerable risks of never returning to their education and may be more likely to encounter situations such as child marriage or exploitation through child labor.<sup>1</sup> In India, approximately 250 million children were adversely affected by school closures resulting from early lockdown measures imposed by the government in response to the pandemic. India has recorded the second-longest school closures related to COVID-19 globally, surpassed only by Uganda. A United Nations report indicates that schools remained closed for an estimated 82 weeks, with only intermittent classes available.<sup>2</sup> In the wake of these closures, numerous children from marginalised backgrounds were compelled to abandon their education, with some resorting to employment to assist families facing pandemic-induced fatalities and financial hardships. The extended closure of schools has had profound

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<sup>1</sup> UNICEF, 10 March 2021, *available at*: <https://www.unicef.org/india/press-releases/covid-19-schools-more-168-million-children-globally-have-been-completely-closed> (last visited on December 17, 2024).

<sup>2</sup> Zubeda Hamid, S. Poorvaja, "India's prolonged school closure ha set Children back by year academically and taken a toll on their well being emotionally", *The Hindu*, 19 February 2023, *available at*: <https://www.thehindu.com/education/indias-prolonged-school-closure-has-set-children-back-by-years-academically-and-taken-a-toll-on-their-wellbeing-emotionally/article65048342.ece> (last visited on December 17, 2024).



consequences, impeding not only academic progress but also children's social development and well-being. Furthermore, it has posed risks to their mental and physical health, as well as their safety. National studies have documented various instances of distress and adverse effects, including significant learning setbacks that have delayed the academic progress of millions of students by months, if not years.

There has been a marked increase in behavioural issues among children, characterised by rising levels of anxiety and depression. This phenomenon can be attributed to the ongoing stress and uncertainty experienced over the past two years. The pandemic has intensified pre-existing conditions, particularly among children who already exhibit behavioural challenges. The isolation mandated by lockdown measures and the potentially stressful circumstances within many households has significantly contributed to this rise. Concerns have also emerged regarding a decline in creativity, an increased dependency on electronic devices, and a corresponding reduction in physical activity, all of which have been exacerbated by the necessity of remaining indoors. The prevalence of smartphone addiction has become a pressing concern, affecting a substantial number of children.

Furthermore, children from less privileged backgrounds have faced limitations in access to digital devices and the internet, which has severely obstructed their ability to engage in educational activities. According to UNICEF, only one in four children has access to a digital device and internet connectivity, further complicating an already challenging situation. Compounding these issues is automatically promoting students to higher grades, which fails to address existing learning gaps adequately. This method only widens disparities as the academic demands of higher grades increase. Consequently, many children are at risk of falling further behind in their academic pursuits and are increasingly likely to discontinue their education.<sup>3</sup>

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<sup>3</sup> Quartz India, *available at*: <https://qz.com/india/2055619/indias-schoolchildren-paid-a-heavy-price-for-lockdowns> (last visited on December 17, 2024).

Education is recognised as a fundamental human right under Article 26 of the Universal Declaration of Human Rights and Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, with an obligation for progressive realisation. Various national and international human rights instruments acknowledge the right to education and delineate its specific dimensions. These international legal frameworks apply to India, provided they do not contradict domestic legislation, and domestic laws are often interpreted in alignment with international obligations. In landmark cases such as *Mohini Jain v. State of Karnataka*<sup>4</sup> and *Unni Krishna v. State of Andhra Pradesh*<sup>5</sup>, the Supreme Court of India has affirmed that the right to education is a fundamental right and an intrinsic component of Article 21 of the Indian Constitution. The Court upheld this ruling in the case of *J.P. Unnikrishna v. State of Andhra Pradesh*<sup>6</sup>, asserting that free and compulsory education for all children between the ages of six and fourteen constitutes a fundamental right explicitly outlined in Article 21A of the Indian Constitution. In the case of *State of Tamil Nadu v. K. Shyam Sunder*<sup>7</sup>, the Supreme Court interpreted Article 21A in conjunction with Articles 14 and 15 of the Indian Constitution. It confirmed that the right to education encompasses the right to quality education, free from discrimination based on social, economic, or cultural backgrounds. Furthermore, the Indian Constitution recognises the rights of linguistic and religious minorities under Article 30(1), allowing these groups to establish and administer their educational institutions. However, due to inadequate funding and regulation by the state, minority educational institutions in India often exhibit significant disparities in quality and resources.

According to the National Commission for Protection of Child Rights (NCPCR), numerous children enrolled in minority educational institutions in India are deprived of the advantages available to their

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<sup>4</sup> AIR 1992 SC 666.

<sup>5</sup> AIR 1993 SC 643.

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

<sup>7</sup> Civil Appeal nos. 6015-6025/2011.

peers. This situation arises primarily from the exemptions that minority institutes receive from state regulations, coupled with insufficient state funding. Such exemptions have produced harmful consequences; for example, certain schools, particularly Christian missionary institutions, have faced allegations of selective admissions practices that favour a specific socio-economic class while excluding underprivileged students. The Commission characterises these environments as ‘cocoons populated by elites.’ Conversely, Muslim minority educational institutions, which are predominantly underfunded, have been described as ‘ghettos of underprivileged students languishing in backwardness’.<sup>8</sup>

The present study seeks to evaluate whether the closure of minority educational institutions due to the COVID-19 pandemic has exacerbated the existing disparities among these entities. Specifically, the research aims to investigate the effects of the transition from traditional classroom settings to digital modes of education on students attending Muslim minority institutes. This examination is framed within the context that these minority institutions primarily serve children from socially and economically disadvantaged backgrounds, operating without considerable government funding or oversight.

## **2. Objectives**

- a) To analyse the impact of school closures and lockdowns on children’s learning, well-being, and safety.
- b) To gather insights from school administrators and educators on how closures affect student learning, teaching methods, and strategies to address these challenges.

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<sup>8</sup> Esha Roy, “Explained: Why NCPCR has recommended minority schools be brought under RTE”, *THE Indian EXPRESS*, 19 February, 2023, available at: <https://indianexpress.com/article/explained/minority-schools-ncpcr-rte-7449456/> last visited at 25<sup>th</sup> April, 2023.

### 3. Research Methodology

The study was conducted utilising primary data sourced from minority secondary schools in Delhi. The city contains a total of 129 minority schools, among which nine are designated as Muslim minority schools. For the study, four schools were selected based on convenience sampling. The study focused on students in grades 8 to 12, with five students chosen from each grade within each school, culminating in a total of 25 students per school and 100 respondents overall. A structured questionnaire comprising<sup>9</sup> both open-ended and closed-ended questions was employed to assess the perceptions of the students. In addition, to obtain insights from educational staff, five teachers and one principal from each school were also interviewed.

### 4. Data Interpretation and Analysis

#### 4.1 Respondents' demographic profile

Out of total respondents, 50% are males and 50% are females. From each school, the no. of students, teachers, and principals questioned were 25, 5, and 1, respectively (Table 1 & 2).

**Table 1: Frequency distribution of Male and Female**

Gender	Frequency	Percentage
Male	50	50
Female	50	50
Total	100	100

**Table 2: No of Students, Teachers, and Principal from each School**

School	No of Students	No of Teachers	No of principals
1	25	5	1
2	25	5	1
3	25	5	1
4	25	5	1
Total	100	20	4

<sup>9</sup> Gordon, M. and Burgess, M. (2020), *The Hidden Impact of COVID-19 on Children's Education and Learning*. London, Save the Children International. The researcher has framed the questionnaire on the basis of this cited survey conducted by UNESCO in 2020.

**4.2 How many times did you attend classes within a week before the closure of schools due to Covid-19?**

The question asked was open-ended, but it was seen that the majority of students, almost 90%, attended six classes a week. The other 10% attended 5 or 4 classes within a week before the closure of schools due to COVID-19.

**4.3 How many times did you attend the classes within a week during the school closure period?**

During the closure period, the students attended online classes. Out of the total respondents, 52% attended classes four times within a week, 24% attended three times, 12% attended five times, 8% attended six times, and 4% never attended any class.

**4.4 What was the duration of class per subject before the closure of schools?**

Out of the total, 100% of the respondents had a 45-minute class before the closure period.

**4.5 What was the duration of class per subject during the school closure period?**

Out of the total respondents, 80% had a class of 30 minutes, and 20% had a class of 20 minutes.

**4.6 What was the mode of teaching during the Covid-19?**

100% of the respondents have a remote mode of teaching during the Covid-19.

**4.7 Frequency of students' access to different educational resources at home for learning.**

Out of the total respondents, 80% had no access to a computer, and 10% had access to a computer, but it either worked well most of the time or did not work. 80% of the respondents had access to mobile phones that worked well all the time, and 20% they worked well most of the time. 100% of the respondents had no access to a tablet. 80% of the respondents had internet connections that worked well most of the time, and 20% had connections that either worked well all the time or did not work well. 80% of the respondents have revealed that they always have a place to study, and 20% of students could sometimes find any place to study. The majority of the respondents revealed that they always had a lack of some other

things needed to complete school work. 40% had a lack of things most of the time or sometimes, and 10% never felt a lack of necessary things needed to complete their homework (Table 3).

**Table 3: Access to resources**

Resources	Yes			No
	Consistently Performed well	Effective for most part	But it was not effective	
Computer	0	5	5	80
Smartphone	80	20	0	0
Tablet	0	0	0	100
Internet Connection	10	80	10	0
	Never	Sometimes	Most of the time	Always
Place to study	0	20	0	80
Lack of things needed to complete school work	10	20	20	50

#### 4.8 Resources provided to students by the school for remote learning.

Respondents were asked if school authorities provided them with internet access, software programmes and a virtual learning environment, to which the majority responded negatively. 80% of the respondents said that they were provided access to the learning material, and 20% did not receive any material from the school during COVID-19 (Table 4).

**Table 4: Resources provided by the school**

Resources	Yes	No
Access to lessons and learning material	80	20
Internet Access	0	100
Software or Programmes	0	100
Virtual Learning Environment	0	100

#### **4.9 The frequency with which students reported the effects of the COVID-19 disruption on various elements of their schoolwork.**

All respondents reported a decline in their motivation to complete schoolwork, their ability to manage academic assignments, their capacity to schedule the completion of educational tasks, the quality of their submitted work, and their confidence in finishing school assignments during the period of school closures.

#### **4.10 Frequency of the Students reporting on Agreeability/Disagreement to the following statements.**

All respondents disagreed with the statement that they learned as much as they did before the COVID-19 disruption or made more progress in some subjects during that time. Every respondent felt it became hard to use their teachers' feedback to improve their work, and they also struggled to understand how well they were improving.

**Table 5: Frequency of students reporting on Agreeability/disagreement**

<b>Statements</b>	<b>Agree</b>	<b>Disagree</b>
I learned as much as I did before the COVID-19 disruption.	0	100
I made more progress in some subjects compared to before the COVID-19 disruption.	0	100
I found it harder to use my teachers' feedback to improve my work	100	0
I struggled to understand how well I was improving.	100	0

#### **4.11 Frequency of the students reporting on communication with the teachers during the Covid-19**

Out of the total respondents, 100% communicated with the teachers through video conferencing and no other method was used for communication.

#### **4.12 Frequency with which students communicated with their teachers during the disruption period?**

Out of the total respondents, 80% of the students communicated with their teachers sometimes, and 20% communicated rarely.

**Table 6: Students frequency of Communication with teachers**

Duration	Frequency	Duration	Frequency
Often	0	Rarely	20
Sometimes	80	Never	0

#### **4.13 Mode of receiving materials or information for the lessons during the COVID-19 disruption period.**

Out of the total respondents, 90% received material or information for the lessons through email or other online methods, e.g., WhatsApp, etc., and 10% received it through a school-based online platform.

**Table 7: Mode of receiving material/information**

Mode of Receiving material/information	Frequency
Delivery (through post, school staff or community member)	0
Collection directly from school	0
Through a school based online platform	10
Email or other online methods (WhatsApp etc.)	90

#### **4.14 The frequency at which students receive materials and information through various modes of communication.**

Out of the total respondents, 90% sometimes received material/information through various forms of communication, and 10% rarely received any information.

**Table 8: Frequency with which students received material/ information**

Duration	Frequency	Duration	Frequency
Often	0	Rarely	10
Sometimes	90	Never	0

#### **4.15 The frequency of students who have received various forms of feedback on their academic work from teachers.**

Of the total respondents, 100% reported not receiving written feedback on their schoolwork from teachers, such as scores or grades. Additionally, 90% indicated they had not received verbal feedback, while only 10% received spoken feedback for some assignments.



**Table 9: Feedback on schoolwork from teachers**

Statements	Never	For some of my schoolwork	For most of my School work	For all or almost all of my schoolwork
Spoken	90	10	0	0
Written	100	0	0	0
Scores/ Grades	100	0	0	0
Recorded	100	0	0	0

#### 4.16 Frequency with which students received help from anyone with the schoolwork at home.

Out of the total respondents, 95% sometimes received any help from anyone with their schoolwork at home, and 5% rarely sometimes received any help from anyone.

**Table 10: Frequency of Home Schoolwork Assistance**

Duration	Frequency	Duration	Frequency
Often	0	Rarely	5
Sometimes	95	Never	0

#### 4.17 Frequency of the students showing their agreeability/disagreeability with the following statements.

Among the total respondents, there is unanimous disagreement with the assertions that their teacher was accessible when assistance was required, that the teacher effectively communicated how to initiate contact, that the feedback provided by the teacher was comprehensible, and that the teachers made a concerted effort to maintain communication with them.

**Table 11: Agreeability/disagreeability to statements**

Statements	Agree	Disagree
My teachers were available when I required their assistance		100
My teachers clearly articulated the optimal methods for contacting them		100
My teachers provided feedback that was easily understandable		100
My teachers made a concerted effort to maintain communication with me		100

#### 4.18 Frequency of the students showing their agreeability/disagreeability with the following statements.

Out of the total respondents, 100% had a positive relationship with their teachers. 90% reported that their teacher exhibited disinterest in their learning, and 10% agreed with the statement that their teacher showed interest in their learning. 70% had a disagreement with the statement that their teachers encouraged them to learn, and only 30% agreed with this statement. 100% of the respondents reported that their teacher did not tailor their schoolwork to meet their specific needs.

**Table 12: Agreeability/disagreeability to statements**

Statements	Agree	Disagree
My teachers manifested interest in my learning	10	90
I had a good rapport with my teachers	100	0
My teachers persuaded me to learn	30	70
My teachers adapted my schoolwork to meet my individual needs	0	100

#### 4.19 The frequency with which students responded to the following statements concerning learning at home during COVID-19 disruption.

Out of the total respondents, 100% reported feeling safer at home than they did at school during the COVID-19 disruption. 90% were unhappy to be at home during the school closure period, and 10% were sometimes happy that they were at home. 50% of the respondents reported that they sometimes take care of their siblings at home, while 50% denied this statement.

**Table 13: learning at home during Covid-19 disruption**

Statements	Never	Sometimes	Frequently	Always
I felt safer at home than I felt at school	0	0	0	100
Were happy to be at home	90	10	0	0
Had to take care of siblings	50	50	0	0

#### 4.20 Frequency of the students reporting on their agreeability/disagreeability with the following statements.

Out of the total respondents, 100% agreed with the statements that they felt lonelier than usual and became upset over issues that typically would not have bothered them during the school closure period. 95% did not exercise more than usual during COVID-19, and only 5% agreed with it. 100% reported that they were unable to do their regular activities outside of school. Half the respondents reported feeling fit during Covid-19, and half of them denied it.

**Table 14: Agreeability/disagreeability to statements**

Statements	Agree	Disagree
I exercised (including walking) more than I normally do	5	95
I managed to engage in more of my regular activities outside of school	0	100
I felt lonelier than usual	100	0
I became upset about things that usually wouldn't have affected me	100	0
Felt fit and healthy.	50	50

#### 4.21 Frequency of the students reporting on their agreeability with the following statements.

Out of the total students, 90% felt angry more often than usual during the disruption period, and 10% disagreed. 100% reported that they used electronic devices a lot more than before Covid-19. 100% were more concerned than usual about their family and friends becoming ill. 60% of the respondents did not want to reach out to their friends, whereas 40% felt like contacting them.

**Table 15: Agreeability/disagreeability to statements**

Statements	Agree	Disagree
I experienced anger more frequently than usual.	90	10
I did not feel like reaching out to my friends	60	40
I used electronic devices much more than I did prior to COVID-19	100	0
I did not sleep as well as I did prior to the COVID-19	10	90
I was more concerned than usual about my friends and family falling ill	100	0

#### 4.22 Frequency of the students reporting on their agreeability/disagreeability to statements with the following statements.

All the respondents agreed that they experienced anxiety regarding the changes in their schooling and were worried about how disruptions impacted their learning, and felt dazzled by what was happening in the world and their local area as a result of the COVID-19 pandemic.

#### 4.23 Frequency of the students reporting on their agreeability with the following statements.

Out of the total respondents, 90% missed the usual contact with their classmates, and 10% had the usual contact with their classmates. 100% felt no support from the school or non-teaching staff. 90% of the respondents had no teachers with whom they felt comfortable asking for help, and 10% had one or more teachers they felt comfortable approaching for help.

**Table 16: Agreeability/disagreeability to statements**

Statements	Agree	Disagree
Missed the regular interactions with my classmates.	90	10
I had one or more teachers I felt comfortable approaching for help	10	90
I felt supported by school	0	100
I was unable to receive regular level of assistance from non-teaching staff	100	0

#### 4.24 Frequency of the students reporting on their agreeability with the following statements

Out of the total respondents, 100% were worried about catching COVID-19 and found it difficult to concentrate in that situation. 90% of the students found their classmates supportive of each other, and 10% disagreed with it.

**Table 17: Agreeability/disagreeability to statements**

Statements	Agree	Disagree
I was concerned about contracting COVID-19	100	0
My classmates supported one another	90	10
I found it tough to concentrate	100	0

#### **4.25 Frequency of the students reporting on their agreeability to the statements about resuming their class work after the COVID-19 disruption.**

Out of the total respondents, 100% agreed with the statements that their motivation to learn has increased; there is better progress at learning and a better attitude towards a modified face-to-face learning environment after resuming their class work after COVID-19 disruption.

#### **4.26 Frequency of the students reporting on their agreeability to statements about resuming their class work after the COVID-19 disruption.**

90% of the total respondents were more committed to learning when school reopened than at any other time, and 10% still felt unmotivated. 100% were eager to catch up with friends after resuming class work. 80% reported that teachers appeared more caring towards them than they did before the COVID-19 disruption, and 20% disagreed. 90% felt safe at school, and 10% felt unsafe.

**Table 18: Agreeability/disagreeability to statements**

<b>Statements</b>	<b>Agree</b>	<b>Disagree</b>
I was more inspired to learn when school reopened than I had at any other time	90	10
I was happy to reconnect with my friends	100	0
My teachers seemed more concerned towards me than they had been previously	80	20
I felt secure at school	90	10

#### **4.27 Frequency of the students reporting on their agreeability to following statements about resuming their class work after the COVID-19 disruption.**

All the respondents found it difficult to handle the COVID-19 routines at school (e.g., wearing a mask, keeping distance from others), 90% found it hard to focus during class, and 10% were able to concentrate. 95% of the respondents reported that they needed to complete a greater no of assessments than usual, and 5% disagreed with the statement. 90% are not worried about catching COVID-19 at school.

**Table 19: Resumption of classwork after COVID-19**

Statements	Agree	Disagree
I concerned about catching COVID-19 at school.	10	90
I found it challenging to adjust to the COVID-19 routines at school (e.g. wearing a mask, keeping distance to others).	100	0
I found difficulty focusing during class time.	90	10
Had to complete more assessments than usual	95	5

#### **4.28 Frequency of the students reporting on their agreeability to following statements about resuming their class work after the COVID-19 disruption**

Out of the total respondents, 100% disagreed with the statement that their teachers reviewed the work they completed during the COVID-19 disruption. 100% reported that they had to rush through a lot of new schoolwork. 90% agreed that their class was more inattentive than before the COVID-19 disruption. 80% of the respondents reported that no additional tutoring was available to compensate for the school work, and 20% agreed that tuition was available.

**Table 20: Agreeability/disagreeability to statements**

Statements	Agree	Disagree
My teachers reviewed the work we completed during the COVID-19 disruption.	0	100
We rushed through a lot of new schoolwork	100	0
My class was less disciplined than it was before the COVID-19 disruption.	90	10
Additional tutoring was available to catch up on schoolwork.	20	80

## **5. Major Findings**

**5.1** The results of the study based on the data collected from students are as follows:

- a) Before schools closed, most respondents attended classes six days a week. Due to COVID-19, they switched to remote learning, attending classes three or four days a week.

- b) Class durations were reduced from 45 minutes to 30 or 20 minutes after the closure.
- c) Most respondents lacked computers and tablets, relying on smartphones, which weren't always reliable. Many had to share phones with siblings and often lacked the necessary resources for completing schoolwork at home.
- d) The school did not provide internet access or required software for online learning, though most received lessons and materials.
- e) Many respondents felt less motivated and struggled to keep up with schoolwork and manage their assignments during the closure.
- f) The learning process was hindered by COVID-19, with little to no subject progress, and respondents found it challenging to use any teacher feedback to improve their work.
- g) Communication with teachers sometimes occurs via video conferencing during disruptions.
- h) Materials were occasionally shared through email or apps like WhatsApp, with no other methods used.
- i) Respondents did not receive any feedback or grades on their work from teachers.
- j) Support with schoolwork at home was available occasionally but inconsistent.
- k) Most respondents felt their teachers showed little interest in their learning during remote teaching.
- l) While they felt safer at home during COVID-19, students were unhappy as their education suffered, and they often had to care for siblings or handle household chores.
- m) Many could not engage in usual activities outside school and felt lonelier and more upset during school closures.
- n) Respondents experienced increased anger and reluctance to contact friends, spending most of their time on electronic devices and worrying about loved ones' health.
- o) Students felt anxious about changes in schooling, overwhelmed by the pandemic's impact, and missed their classmates.

- p) There was little support from teachers or staff, leading to worries about catching COVID-19 and difficulties concentrating.
- q) After returning to face-to-face learning, many felt motivated and reported better attitudes and progress. They also found teachers more caring.
- r) However, managing COVID-19 protocols at school, like mask-wearing and social distancing, hindered concentration.
- s) Teachers rushed through new material without reviewing previous work from remote learning, leading to an excessive number of assessments and no extra support for catching up.

**5.2** The findings of the data collected from teachers and school principals are as follows:

- a) Many teachers reported spending more time adapting and planning lessons compared to before the disruption while managing to cover the curriculum content.
- b) A decline in student learning and engagement was noted during the disruption.
- c) Principals indicated that delivering remote teaching was limited by insufficient student access to digital devices and teachers' lack of technical skills in remote pedagogy.
- d) Teachers increased communication with parents, primarily online or over the phone.
- e) Feedback provided to students decreased in schools where students continued to complete their work during the disruption.
- f) Teachers had to adapt assessments used before the disruption, facing challenges in assessing students with special needs and practical work.
- g) Many schools shifted from summative to formative assessments, focusing on informal feedback and reducing reporting requirements.
- h) The majority of teachers found it difficult to support lower-achieving and vulnerable students.
- i) Most schools offered parents support on various topics related to implementing learning activities.



- j) Many teachers reported concerns about catching COVID-19, experiencing fatigue, disrupted sleep patterns, and feelings of isolation while working from home.
- k) Most teachers felt unable to cope with changes in teaching methods, leading to slower student learning and decreased focus in the classroom.
- l) After returning, teachers and principals assessed student progress during and after the COVID-19 disruption.
- m) Teacher workloads increased in places where teaching continued as educators adapted to new arrangements and methods.
- n) A significant majority felt supported by school leadership and colleagues, finding the offered support mechanisms sufficient.
- o) More than half of teachers focused on essential curriculum components, often teaching modified versions of practical subjects.
- p) Teachers faced challenges in providing differentiated instruction due to time constraints, suggesting a narrowing of the curriculum during remote learning.
- q) Many reported changes in the type and frequency of assessments, with over 70% indicating that assessing students with special needs and practical work became more difficult during the disruption.

### **Summary and Discussion**

The pandemic forced many schools worldwide to close, disrupting traditional face-to-face teaching. In response, schools adapted remote learning, which had not been a part of their daily routine before COVID-19. Teachers faced challenges as they adjusted their teaching methods, often requiring more time for lesson preparation and communication with parents and peers. Surveys showed that students reported a significant decrease in class duration during the school closures. Access to information and communication technology (ICT) resources became crucial, but over half of the students lacked the necessary tools to complete their assignments.

School authorities acknowledged that limited access to digital devices and a lack of technical skills for remote teaching hindered effective instruction. Students shared concerns about their learning outcomes during remote learning. Many felt their motivation to complete homework declined, and they struggled to use teacher feedback to improve their work. Despite the transition to online learning, there were no significant improvements in academic performance, especially in subjects requiring practical learning. Communication became more challenging, with most students engaging with teachers through video conferencing only occasionally. There was a notable correlation between the length of school closures and the frequency of student-teacher communication, often affected by ICT resource availability and the difficulties in maintaining consistent interaction over time.

The COVID-19 pandemic resulted in the closure of many schools, forcing them to create alternative ways to share materials and information with students. Most students reported that they occasionally or rarely received updates via online platforms like WhatsApp and did not use other communication methods. Transitioning to remote learning presented challenges for teachers, particularly in providing feedback on students' work. Many students indicated they received little to no feedback during this time, which impacted their productivity, confidence, and the overall quality of their schoolwork. Without direct supervision from teachers, students often turned to family members for support, but most reported receiving help infrequently due to parents being busy or lacking the necessary education. Although many students maintained positive relationships with their teachers, they felt there was a lack of interest and encouragement from teachers during the disruption. They faced numerous challenges in organising their routines at home, leading to feelings of anxiety and unhappiness with remote learning despite feeling safe at home. Students also reported decreased physical activity and general feelings of loneliness, with many becoming easily upset or angry. A significant portion felt hesitant to reach out to friends due to concerns about

illness, which affected their concentration on studies. Upon returning to school, most students expressed increased motivation to learn and looked forward to reconnecting with friends. They noted that classmates seemed friendlier and teachers appeared more caring. However, adapting to new COVID-19 protocols, such as mask-wearing and social distancing, proved challenging, affecting their concentration in class. Teachers had also not reviewed prior material and rushed through new coursework, leaving students without additional support.

### **Conclusion and Suggestions**

The research paper provides an overview of the effects of COVID-19-related school closures on student learning, health, and well-being in minority schools. It investigates the impact on learning progress, collecting data from school leaders, teachers, and students, all of whom reported that learning was inhibited during the disruption. Many teachers noted that their students' progress did not meet expected levels, with disadvantaged students suffering even more. Nearly 20–30% of students did not return after schools resumed due to familial issues like job loss. The shift to online teaching faced challenges, including a lack of access to digital devices and the internet, as well as teachers' inexperience with remote pedagogy. These factors contributed to a national learning crisis requiring significant public policy reforms. The Government of India has included technology integration in its National Education Policy 2020, emphasising investment in education and teacher training. However, public health priorities have created an education deficit, particularly impacting lower socio-economic children. India must prioritise policy reform and increased investment in education to prevent students from falling behind.



## Inclusivity in Indian Judiciary: A Study of Contemporary Trends and a Way Forward

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### Abstract

The metaphorical association of justice with blindness does not go well in consonance with society's ableist bias that blind individuals are incapable of discharging judicial rules. The Rights of Persons with Disabilities Act, 2016, and the Convention on the Rights of Persons with Disabilities have already laid down the principle of reasonable accommodation for persons with disabilities in India. However, the apex court's decision in *V. Surendra Mohan v. State of Tamil Nadu* restricted the recruitment of visually impaired individuals with disabilities over 50%. This decision was later overruled by the Supreme Court in *Vikas Kumar v. UPSC*, mentioning that visually impaired persons should be accepted as judges with reasonable accommodations supported by assistive technologies and resources. Nonetheless, there have been instances where state public service commissions have excluded blind individuals from the reservation for civil judge posts. This encroaches upon the principle of reasonable accommodation, and the authors aim to examine different states' implementation of the *Vikas Kumar* case, inclusivity on the bench, and constitutional commitments. The paper recommends accommodating visually impaired individuals on the bench with assistive technologies to ensure justice for everyone.

**Keywords:** Justice, Disabilities, Blind Individuals, Indian Judiciary, Inclusivity

### 1. Introduction

The personification of the blindfolded lady embodies the idea of justice. Can the same lady be allowed to be the one who dispenses justice? It is ironic that society, which attaches metaphoric virtue to

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the idea of blindness in justice (i.e., fair treatment), literally considers that blind persons are incapable of performing the functions of judges. History has shown that the ableist mindset of society has always come in the way of allowing blind people to serve on a jury or judiciary.<sup>1</sup> This exclusion seems to remain oblivious of the principle of reasonable accommodation, which runs across the veins of the Rights of Persons with Disabilities Act, 2016, and the Convention on the Rights of Persons with Disabilities. Though Supreme Court has taken on the role of a guardian when it comes to safeguarding the equality of opportunity for people with disabilities<sup>2</sup> by upholding and fostering their dignity, however, through the judgment of the highest court in the case of *V. Surendra Mohan v. State of Tamil Nadu*<sup>3</sup>, the court seems to have reneged on its promise of guaranteeing equal opportunities and ensuring dignified existence. The ruling made recruitment in the bench inaccessible to the visually-impaired or blind and hearing-impaired or deaf persons with more than 50% disability.

This ruling, which embraces the medical model of disability in its reasoning, soon gave in to the tenets of the social model of disability when it was declared to be a bad law in the case of *Vikas Kumar v. UPSC*,<sup>4</sup> (hereinafter referred to as “Vikas Kumar”). The apex court declared that blind persons should be allowed the position of judges by making reasonable accommodations with the help of assistive technologies and resources. Despite this judgment, there have been cases where the state public service commission has kept blind persons outside the scope of reservation for the posts of civil judges. The denial of reservation unintentionally permeates the layers of ableism in state policies and highlights the violation of the principle of reasonable accommodation. Unfortunately, not much literature demonstrates how effectively other states have followed

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<sup>1</sup> Doron Dorfman, “The Blind Justice Paradox: Judges with Visual Impairments and the Disability Metaphor” *Cambridge Journal of International and Comparative Law*, Volume 5 Issue 2 (2016).

<sup>2</sup> *Union of India v. National Federation of the Blind* (2013)2 SCC 772.

<sup>3</sup> (2019) 4 SCC 237.

<sup>4</sup> Civil Appeal No. 273 of 2021 Special Leave Petition (C) No. 1882 of 2021.

the judgment of the Vikas Kumar case in providing reservations to visually impaired persons.

Through this article, the authors will study the state of affairs concerning the implementation of the Vikas Kumar case by different states. It would also peruse how different countries have ensured inclusivity on the bench by including persons with disabilities. Further, it would analyze how constitutional commitments of ensuring equality, objectives of the Rights of Persons with Disabilities Act, 2016, and obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) are violated on screening of the candidates solely on the basis of disability. The paper would then propose how the practice of including visually-impaired or blind and hearing-impaired or deaf persons in the judiciary can be followed in India by reasonably accommodating them with the help of assistive technologies.

## **2. Dissecting the Ableist Approach of the Court**

The case of *V. Surendra Mohan v. Union of India*<sup>5</sup> was the first instance when the apex court faced the issue of whether blind judges should be allowed to serve on the judiciary. In 2014, V. Surendra Mohan took the written test required to become a civil judge in Tamil Nadu. He was not contacted for the subsequent oral test, even though he cleared the examination. When asked why, he was informed that he had a 70% visual impairment. Just those with a 40–50% impairment could become civil judges, according to a Tamil Nadu Public Service Commission (TNPC) notification. He was invited to take the oral test after submitting a writ petition before the Madras High Court. Results were kept under wraps pending High Court orders.

The High Court, though, affirmed the notification in 2015. The Supreme Court agreed after hearing an appeal in 2019, noting that 40–50% was a “reasonable level” to assure that a Civil Judge could carry out their responsibilities. The ruling received harsh criticism for being prejudiced and not upholding the Supreme Court’s stance

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<sup>5</sup> *Supra* 3.

on the right to a life with dignity for those with disabilities. This ruling highlight that disability is socially constructed instead of a medical phenomenon; this social construction of disability stigmatizes individuals with disabilities and discriminates against them. The difference in approach of the court with relation to metaphoric and literal blindness underlines the ableist mindset of the society.

With this ableist approach, disability is used as a rationalization for disparate treatment of people from different backgrounds, in addition to disabled individuals, explanation for discrimination and denial of rights. This rationalization of exclusion is couched in the reasoning that a blind person cannot analyze visual evidence, assess the witness, or consider documents, plans, or other material. Further, a blind person requires the assistance of a reader, which could bring the element of bias due to the presence of an external perspective in the court proceedings. Apart from these justifications, there are structural barriers in the court premises, which could also adversely affect the functioning of persons with visual impairments.

### **3. Concept of Reasonable Accommodation**

The role of society is crucial in the disablement of persons with visual impairments. The social constructs of disability and societal impressions of blind persons consider them an unsuitable group for the tasks of a judge. Thus, disability does not arise from any individual; rather, it is a phenomenon that occurs due to the social constructs of the environments and systems that we live in, where persons with disabilities are challenged with structural barriers, often known as societal disabling factors.<sup>6</sup> The social model provides the foundation for domestic laws against disability discrimination in many countries. The necessity that employers make reasonable accommodations (or adjustments) for skilled employees or potential employees with disabilities and modify the workplace environment to accommodate their requirements

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<sup>6</sup> *Supra 1.*

(instead of expecting the individual to make adjustments to the workplace) is a well-known example of such legislation that stands in the countries like India, US, England.

According to Article 2 of the UNCRPD, the denial of 'reasonable accommodation' constitutes discrimination if persons with disabilities are not provided with necessary modifications and adjustments to exercise their equal enjoyment of human rights.<sup>7</sup> As mentioned earlier, the principle of reasonable accommodation, given under Article 5 (3), is "an intrinsic part of the immediately applicable duty of non-discrimination in the context of disability."<sup>8</sup> The Convention provides reasonable accommodation as a form of an ex-nunc duty which is to be given to a person with a disability on requiring access to a non-accessible environment while exercising his rights.

The principle of reasonable accommodation gets abrogated when the candidature of a disabled person is rejected on the ground of disability that he might not be able to perform the duties and obligations of a judge without even providing him with reasonable accommodation. The court's reasoning for rejecting him, mentioning the sorts of work that a judge is required to form, does not go on with the fact that a disabled candidate may be able to render the duties of a judge properly in providing reasonable accommodation to him.<sup>9</sup> There have been instances where the state has arranged for adjustments to ensure that a blind judge can render his duties properly. When Justice Richard Bernstein was appointed as a judge in Michigan Supreme Court, he was provided

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<sup>7</sup> UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 6 (2018), Article 2: Definitions*, 26 April 2018, CRPD/C/GC/6.

<sup>8</sup> The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Article 5 (3), 3 May 2008, a/res/61/106.

<sup>9</sup> Indian Express, Justice Richard H Bernstein on how people with disabilities make for good judges, March 07, 2020, available at: <https://indianexpress.com/article/express-sunday-eye/justice-richard-h-bernstein-on-how-people-with-disabilities-make-for-good-judges/> (last visited on May 15, 2023).



with a qualified reader, information in accessible print, a computer screen-reading program, and an audio recording of printed information.<sup>10</sup> Further, there have been cases where the visual description of evidence has been provided to the blind judge in the cases of criminal trials.<sup>11</sup> Thus, an ex-nunc duty of reasonable accommodation is breached when it fails to be provided to a disabled candidate.

#### 4. International Obligations of the State

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) forbids the discrimination of persons with disabilities on the ground of disability. Article 5, read in consonance with articles 1, 3, and 4 of the UNCRPD convention, requires the state to take positive actions for facilitating the enjoyment of rights on an equal basis by persons of disabilities. Here, the positive actions ensure accessibility, reasonable accommodation, and individual support.<sup>12</sup> Article 5 (3) of the Convention obliges the state to promote equality by ensuring reasonable accommodation is provided to all persons with disabilities.<sup>13</sup> The term 'equal benefit of the law' mentioned in the article requires the state to eliminate all forms of barriers to gaining equal protection and benefits from the law.

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<sup>10</sup> Kyle Feldscher, How Richard Bernstein, Michigan's 1st blind Supreme Court justice, says he'll approach the job, November 12, 2014, *available at*: [https://www.mlive.com/lansing-news/2014/11/new\\_michigan\\_supreme\\_court\\_jus.html](https://www.mlive.com/lansing-news/2014/11/new_michigan_supreme_court_jus.html) (last visited on May 14, 2023).

<sup>11</sup> IDIA Law, IDAP Interview Series: Interview XII with Judge David Szumowski, *available at*: <https://www.idialaw.org/idap-interview-series/idap-interview-series-interview-xii-with-judge-david-szumowski/> (last visited on January 10, 2023).

<sup>12</sup> UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 6 (2018), Article 5: Equality and Non-Discrimination*, 26 April 2018, CRPD/C/GC/6.

<sup>13</sup> The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Article 5 (3), 3 May 2008, a/res/61/106.

However, denial of the opportunity for the post of a judge falls short of this obligation when the decision is taken without even providing reasonable accommodation so that judicial duties can be rendered efficiently. This approach of state policies through the medical model of disability perceives the notion that an individual becomes unable to perform his duties efficiently on the ground of disability. The Committee for Drafting the general comment on Article 5 also discusses this approach and states that these attitudinal barriers must be removed as it unintentionally fails to portray the persons with disabilities as ‘full subjects of rights and as right holders.’<sup>14</sup> The UNCRPD calls for a central role of persons with disabilities in the progress of legal reforms.

The policy of denying appointment to the disabled person goes against the ‘equalization of opportunities,’ which constitutes the heart of this Convention.<sup>15</sup> The principle called ‘equalization of opportunities’ contemplates a shift from a ‘formal model of equality’ to a ‘substantive model of equality. ‘Formal model of equality prohibits direct discrimination against persons with disabilities by treating them similarly in a similar situation.<sup>16</sup> This model embraces the soul of the medical model as it fails to embrace the differences among individuals and does not acknowledge disability as a layer of an individual personality. On the other hand, the Substantive model of equality forbids structural and indirect discrimination by acknowledging the “differences among human beings in order to achieve equality.”<sup>17</sup> The policy of allowing disabled persons to be employed in a specified job is a manifestation of the former model where other jobs are denied on the argument that their disability renders them unsuitable for the performance of the job.

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<sup>14</sup> UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 6 (2018), Article 5: Equality and Non-Discrimination*, 26 April 2018, CRPD/C/GC/6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

The Convention obliges its signatories to adopt the substantive model of equality in its policies, which ensures a fair redistributive dimension by uplifting socioeconomic disadvantages, a recognition dimension by eliminating all forms of stigma, stereotype, and prejudice against persons with disabilities, a participative dimension to promote the inclusivity in the social structure and nature, an accommodating dimension for acknowledging the differences among the individuals, and reasonably accommodate them on the anvil of human dignity. These obligations of substantive equality for persons with disabilities are incomplete without including them in the judicial functions.

### **5. Judicial Stand in other Countries**

It is important to analyze the judicial position in other countries in the matters of the appointment of a disabled candidate for the post of a judge. In the United States of America, the inclusion of a person with disabilities is allowed within the judiciary by various state laws through the provision of reasonable accommodation. These states are “Oklahoma, California, Virginia, Oregon, Texas, South Carolina, Washington, Massachusetts, Wisconsin, and New York.”<sup>18</sup> The USA has seen many blind and deaf judges serving the judiciary, for example, Judge Richard C Casey (Federal Court for the Southern District of New York), Judge Richard Bernstein (Michigan Highest Court), Judge Louis Corbin (USA Florida Court), Judge Peter J. Donoghue (Civil Court of the City of New York), Christopher Benneth (Allegheny County Court of Common Pleas criminal division), and Sheila Conlon Mentkowski.

Interestingly, it cannot be said that there was always a resistant-free appointment of blind jurors. The appointment of blind jurors in good numbers can be attributed to the fact that blind people were

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<sup>18</sup> Oklahoma Statute Title 38, § 28 (1991); California Civil Procedure Code § 203(a); Code of Virginia § 8.01-337 (1990); Texas Government Code § 62.104 (1989); South California Code § 14-7-810 (1991); Revised Code of Washington § 2.36.070 (1991); General Laws Massachusetts Chapter 234A, § 3; Wisconsin Statute § 756.02 (West 1990); New York Judiciary Law § 510 (McKinney 1992).

able to convince the public that they would be able to discharge their duties. The state machinery was said to bear a notion that disability would be a key barrier to social inclusion and employment for persons with visual impairments. Due to underlying biases and misconceptions about his credentials, according to Bernstein, a committee wouldn't have ever decided to place him on the bench. He owes his selection to the fact the high court justices in the US are selected by the general people. He argues that by launching his campaign with the motto "Blind Justice," he seemed to have the chance to influence the voters and persuade them of his qualifications. The citizens of Michigan were looking for justice to who they felt a connection, who could relate to their challenges and troubles, and who was passionate about their issues, as per Bernstein.<sup>19</sup>

Similarly, the judiciary's attitude towards appointing blind judges was initially not conducive. For instance, a blind juror was not given the post of a juror as he was not in "possession of his natural faculties."<sup>20</sup> Similarly, the Supreme Court ordered a new trial of the defendant when he raised the inability of a blind juror to adjudicate his case owing to his disability.<sup>21</sup> A relatively progressive approach was taken by the court in the case of *People v. Caldwell* case.<sup>22</sup>, where the blanket bar on the appointment of a blind juror was held as discriminatory, and a visually impaired person could be appointed as a juror on a case-to-case basis. Similarly, the District Court for the District of Columbia, while discussing the ability of a blind to become a juror, threw some important light on the reasonable accommodation which can be made to remove the exclusion of blind jurors.

The Court stated,

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<sup>19</sup> Doron Dorfman, *The Blind Justice Paradox: Judges with Visual Impairments and the Disability Metaphor*, *Cambridge Journal of International and Comparative Law* Volume 5 Issue 2 (2016).

<sup>20</sup> *Edwin R Lewinson v Robert J Crews* 28 A.D.2d 111.

<sup>21</sup> *Commonwealth v. Susi* 394 Mass. 784, 786 (1985).

<sup>22</sup> *People v. Cadle* 71 A.D.3d 689.

“...blind individuals, like sighted jurors, weigh the content of the testimony given and examine speech patterns, intonation, and syntax in assessing credibility. Thus, the darting glance, the uneasy shifting or revealing gesture is almost always accompanied by auditory correlates, [including inter alia,] clearing the throat, pausing to swallow, voice quavering or inaudibility due to stress or looking downward; ... and permits a blind juror to make credibility assessments just as the juror’s sighted counterparts.”<sup>23</sup>

The case of *Tennessee v Lane*<sup>24</sup> have also highlighted the obligations of state courts to take reasonable measures and remove all barriers coming in the way of ensuring accessibility to judicial services for all persons with disabilities.

In providing visually impaired persons the position of jurors or judges, an argument is raised that it would affect the defendant’s right to a fair trial. However, the appointment of blind jurors or judges does not deprive the defendants of any fundamental rights or fair trial.<sup>25</sup> Framing “these cases as a balancing act between defendants’ rights to a fair trial and blind Americans’ rights to serve on a jury often creates a false dichotomy.”<sup>26</sup> Reasonable accommodation ensures the fair evaluation of evidence, be it a piece of physical evidence or a video one.<sup>27</sup> A describer can assist a juror or judge by preparing a written report of video evidence, which could act as a substitute for the videotape. This would ensure that the defendant’s right to a fair trial is in harmony with the right of a blind or visually impaired judge to get appointed to the post of a juror or judge.

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<sup>23</sup> *Id.*

<sup>24</sup> *Tennessee v. Lane* 541 U.S. 509, 532 (2004).

<sup>25</sup> *Bewley v. Oklahoma* 695 P.2d 1357, 1359 (Okla. Crim. 1985).

<sup>26</sup> *Id.*

<sup>27</sup> *People v. Hayes* 923 P.2d 221 (1995).

Similarly, Canada has also provided for the inclusion of blind and deaf people to serve on the jury by amending their laws.<sup>28</sup> The Criminal Code of Canada was amended in 1997 to allow persons with disabilities on the jury.<sup>29</sup> Further, the inclusion of persons with disabilities in the jury is explicitly allowed in England through Section 9(b) of the Jury Act, 1974. The accessibility of judicial positions to persons with disabilities is ensured through the provision of reasonable accommodation mentioned in Section 20 of the Equality Act, 2010. Moreover, there are many blind and deaf persons who have served in the judiciary of England. Sir John Wall (blind), who served as the judge at the Highest Civil Court of England in 1990; Sir John Fielding (blind), who served as the Magistrate at Westminster Court London; Mr. Amir A. Majid (blind), Judge John Lafferty (blind), who served as a judge in Snaresbrook Crown Court in 2007, and Matthew Johnston (deaf), served as a juror in the Jury of the Crown Court in England and Wales).

Pakistan has also had a blind judge recently named Justice Yousaf Saleem, who is the first blind judge there.<sup>30</sup> Other countries that have had blind judges in the judiciary include South Africa (Justice Zakeria “Zak” Mohammed Yacoob)<sup>31</sup>, Brazil,<sup>32</sup> France,<sup>33</sup> Peru,<sup>34</sup> Seoul (Judge Choi Young (blind), Associate Judge in the Seoul

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<sup>28</sup> Jury Act (Alberta), RSA 2000, Chapter J-3, § 6(1); Jury Act (British Columbia), RSBC 1996, Chapter 242, § 5; Jury Act (New Brunswick), RSNB 1973, Chapter J-3.1, § 5.1(1).

<sup>29</sup> Criminal Code, R.S., 1985, c. C-46, § 627 (1985).

<sup>30</sup> Sana Jamal, *Young Pakistani to become the first blind judge*, May 13, 2018, available at: <https://gulfnews.com/world/asia/pakistan/young-pakistani-to-become-first-blind-judge-1.2220802> (last visited February 12, 2021).

<sup>31</sup> Constitutional Court of South Africa, Justice Zak Yacoob, available at: <https://www.concourt.org.za/index.php/judges/former-judges/11-former-judges/67-justice-zak-yacoob> (last visited February 12, 2021).

<sup>32</sup> Alex Dunham, *Blind man wins battle to become judge*, May 14, 2014, available at: <https://www.thelocal.es/20140514/blind-man-wins-battle-to-become-a-judge> (last visited February 12, 2021).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

Northern District Court)<sup>35</sup>, and Spain (Justice Gabriel Perez Castellanos)<sup>36</sup>, etc.

**Table 1: List of Famous Blind Judges**

<b>Name</b>	<b>Court (Year)</b>
Sir John Wall	England's High Court of Justice (1990-2002)
Judge Johan Laferty	Snaresbrook Crown Court (2007)
Judge Luis Corbin	Fourth Circuit in Duval County, Florida (1972)
Judge Nicholas T Pomara	Cook County in Illinois, USA (1976)
Judge Tony Cothren	Tenth Circuit in Jefferson County, Alabama (1996)
Judge Peter J.O'Donoghue	New York State Supreme Court (2002)
Judge Richard B. Tietelman	Supreme Court of Missouri (2002)
Judge David Tatel	US Court of Appeals for the District of Columbia Circuit (1994)
Judge Richard C. Casey	Federal Court for the Southern District of New York (1997)
Judge Craig D. Alston	District Judge, Bay County, Michigan
Justice Yousaf Saleem	Civil Judge, Pakistan (2018)
Justice Zakeria Mohammad Yacoob	Constitutional Court of South Africa (1998-2013)

## **6. Analysis of the Judiciary approach regarding the Appointment of Blind Judges in India**

Before the judgment of *Vikas Kumar v. UPSC*, the courts had the ableist approach regarding the appointment of blind judges.<sup>37</sup> Even

<sup>35</sup> No Jin-ho, Sarah Kim, *Blind doesn't need sight to see the truth*, Korea JoongAng Daily, available at: <https://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2952752>. (last visited February 12, 2021).

<sup>36</sup> *Supra* 32.

<sup>37</sup> Sanjay S. Jain and Saranya Mishra, *Non-abyssal and Ableist Indian Supreme Court: The Abyssal Exclusion of Persons with Disabilities*, July 03, 2019, available at: <https://ohrh.law.ox.ac.uk/non-abyssal-and->

though the Courts were under the obligation to provide appointments to persons with disabilities by taking affirmative measures, however, many high courts have their own rules that a civil judge should be mentally and physically fit to render their duties efficiently. These rules are binding while selecting the judges as governor, and the state public service commission is bound to consult High Court before releasing any notification for recruiting civil judges.

These rules have often barred blind and deaf candidates from even coming under the eligibility criteria of judges. And the kernel of reasoning given behind this eligibility criterion is highlighted in the excerpt of Surendra Mohan's judgment, where it is mentioned that

"the appellant (blind candidate) cannot be said to be a person who can perform the duties of the Civil Judge who is required to hear the cases, record the statement of witnesses, read the documents and then decide."<sup>38</sup>

However, some high courts have allowed the appointment of blind and deaf candidates to be eligible for the appointment of judges; for instance, the High Court of Rajasthan and Delhi has previously permitted blind and deaf candidates to be available for the recruitment of judges.<sup>39</sup> With the onset of Vikas Kumar's judgment, a new chapter regarding the progressive approach of accommodating persons with disabilities in the workplace has started, where the courts would be obligated to provide a barrier-free environment for these people so that they can render their duties efficiently.

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ableist-indian-supreme-court-the-abysal-exclusion-of-persons-with-disabilities/ (last visited May 20, 2023).

<sup>38</sup> *V Surendra Mohan v. State of Tamil Nadu*, (2019) 4 SCC 237.

<sup>39</sup> Apoorva Mandhani, This Is How Mr. Brahmananda Sharma Beat All Odds To Become Rajasthan's First Visually Impaired Judge, April 16, 2018, available at: <https://www.livelaw.in/mr-brahmananda-sharma-beat-odds-become-rajasthans-first-visually-impaired-judge/> (last visited May 12, 2023).



## 7. Analyzing the Approach of Judicial Appointment

### 7.1 Pre-Vikas Kumar Era

Even before the assistance of reasonable accommodation was penned down by the apex court in Vikas Kumar's judgment, the ableist mindset of the state was reflected in various notifications put forward by it for the recruitment of civil judges. Perhaps, it was believed that a judge's blindness would not allow him to assess evidence or review other materials properly, or his opinion would be tainted by an external view of the reader. Building on that mindset, the states have come out with their own set of rules where only a limited set of disabled people are categorized as "eligible" candidates for the application of civil judges. For instance, the Judicial Department, Government of West Bengal, through a notification bearing no.386-J dated January 24, 2007, has exempted the persons suffering from blindness from the purview of reservation as per the proviso to section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.<sup>40</sup>

Andhra Pradesh State Judicial (Service and Cadre) Rules, 2007<sup>41</sup> only considers Orthopaedically Handicapped (Lower portion of the body) to be eligible under the category of persons with disabilities for recruitment of civil judges. A similar provision is found in the service and cadre rules of Telangana, which also excludes blind people from the eligible set of persons with disabilities. The non-consideration of blind judges, here, unintentionally highlights the stereotypical mindset of policymakers, where blind people are presumed to be inefficient for the jobs of judges.<sup>42</sup> The approach of the human rights model and reasonable accommodation get lost between the lines of rules or notifications like these.

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<sup>40</sup> Public Service Commission, West Bengal, December 30, 2022, *available at*:

[https://wbpsc.gov.in/Download?param1=Cur\\_20221230104513\\_ADVT.pdf&param2=advertisement](https://wbpsc.gov.in/Download?param1=Cur_20221230104513_ADVT.pdf&param2=advertisement) (last visited May 17, 2023).

<sup>41</sup> Andhra Pradesh State Judicial (Service and Cadre) Rules, 2007, Rule 7.

<sup>42</sup> Telangana State Judicial (Service and Cadre) Rules, 2017, Rule 7.

Apart from putting blanket restrictions on blind people from applying to the posts of civil judges, there is another way of reflecting the ableist mindset by allowing only a specific subset of blind people in the recruitment process. This is usually done by putting a cap on disability, whereby a specific number of people who have a disability beyond a certain threshold (usually 40%) gets eliminated. For instance, Tamil Nadu only allowed candidates with a visual disability of 40%-50%, under the category of 'visually disabled,' to appear for the examination of civil judges in 2019. The underlying premise behind putting out such a rule is that a person needs to have a reasonable limit of the faculties of hearing, sight, and speech to discharge the functions of a judicial officer (hearing cases and delivering judgments) efficiently.

## 7.2 Post-Vikas Kumar Era

Vikas Kumar's judgment, in real terms, is a watershed moment in the history of disability rights in India. Nonetheless, the concern that everything remains on paper instead of implementing it on the ground level is getting reflected in this case as well. The central government, through its notification dated January 04, 2021, has already declared the post of a civil judge to be suitable for persons with blindness and low vision. The concept of reasonable accommodation, which was statutorily granted and judicially recognized in the judgment, does not appear to rescue blind people from the stereotypical mindset of people toward disability. For instance, even after the Vikas Kumar judgment, there have been many notifications, which have recently been issued, that do not allow blind persons to appear for the examination of civil judges.

In a notification issued by the West Bengal Public Service Commission for the recruitment of civil judges in 2022, it was stated that blind persons are excluded from the scope of reservation provided to disabled persons under section 33 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.<sup>43</sup> Despite the enactment of the Rights of

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<sup>43</sup> *Supra* 40.

Persons with Disabilities Act 2016, the state has continued to follow the provisions of the 1995 act for providing reservations. Similarly, Telangana<sup>44</sup>, Gujarat<sup>45</sup> and Andhra Pradesh<sup>46</sup> Have continued to reserve its seat under the category of disability for orthopedically handicapped persons (lower portion of the body). Interestingly, states like Uttar Pradesh, Rajasthan, Delhi, etc., have continued to provide reservations for blind persons without any limitation. Though the court has mandated the protection of the rights of blind persons by the provision of reasonable accommodation, however, a change in perception needs to take place where the ableist thinking of the policymakers is transformed, and the idea of reasonable accommodation is reflected in the spirit of every notification or rule.

**Table 2: Reservation Rules of Some States in the Appointment of Civil Judges**

State	Reservation Rules
West Bengal <sup>47</sup>	Persons suffering from Blindness or Cerebral Palsy have been exempted from the purview of reservation as contemplated under section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
Andhra Pradesh <sup>48</sup> and Telangana <sup>49</sup>	One percent reservation for Physically handicapped, i.e., orthopedically handicapped persons (lower portion of the body)

<sup>44</sup> High Court of Telangana, February 01, 2023, available at: [https://tshc.gov.in/documents/reccell\\_14\\_2023\\_02\\_01\\_14\\_04\\_01.pdf](https://tshc.gov.in/documents/reccell_14_2023_02_01_14_04_01.pdf) (last visited May 17, 2023).

<sup>45</sup> High Court of Gujarat, March 10, 2023, available at: [https://gujarathighcourt.nic.in/hccms/sites/default/files/Recruitment\\_files/999\\_999\\_2023\\_3\\_10\\_79.pdf](https://gujarathighcourt.nic.in/hccms/sites/default/files/Recruitment_files/999_999_2023_3_10_79.pdf) (last visited May 17, 2023).

<sup>46</sup> High Court of Andhra Pradesh, November 11, 2022, available at <https://aphc.gov.in/docs/JCJ-2022%20Notification,%20dated%2010.11.2022.pdf> (last visited May 17, 2023).

<sup>47</sup> *Supra* 40.

<sup>48</sup> *Supra* 41.

<sup>49</sup> *Supra* 42.

State	Reservation Rules
Odisha <sup>50</sup>	To the extent of four per centum of the vacancies in the cadre of District Judges which are required to be filled under sub-rule (4) of Rule 6 shall be reserved for persons with benchmark disabilities having a physical disability as specified in the Schedule to the Rights of Persons with Disabilities Act, 2016 (49 of 2016) excluding cerebral palsy.
Punjab <sup>51</sup>	Reservation for visually impaired persons is allowed
Chhattisgarh <sup>52</sup>	Reservation for orthopedically handicapped persons and reservation for visually impaired persons is not allowed.
Uttar Pradesh <sup>53</sup>	Reservation for visually impaired persons is allowed

### 8. How can the Integration of Blind Persons be made in Judiciary?

First of all, a fundamental shift in the approach of society is required, where persons with disabilities are not seen as a burden or someone who couldn't do the task at hand. Persons with disabilities have to be integrated gregariously into mainstream society without any bit of discrimination. The implementation of the principle of reasonable accommodation in letter and spirit can help in the integration of blind persons in the judiciary. The goal can be achieved by making necessary adjustments, such as providing a qualified reader to the judge and appropriate technology like a screen reader, document reader, etc.

Further, documents or petitions filed online have to be in compliance with WCAG principles. Apart from these adjustments, there are physical barriers in the court premises that affect the

<sup>50</sup> Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007, Rule 9A.

<sup>51</sup> Punjab Public Service Commission, October 03, 2022, *available at*: <https://blogmedia.testbook.com/blog/wp-content/uploads/2022/09/ppsc-punjab-judiciary-2022-9fa13883.pdf> (last visited May 16, 2023).

<sup>52</sup> Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006, Rule 6.

<sup>53</sup> Uttar Pradesh Public Service Commission, December 10, 2022, *available at*: <https://images.news18.com/ibnkhobar/uploads/2022/12/uppsc-civil-judge-recruitment-notification.pdf> (last visited May 19, 2023).

functioning of blind persons adversely. There must be adequate infrastructural changes made in the court premises, especially at the subordinate judiciary level, to make sure that the integration of blind persons in the subordinate level judiciary has been made conveniently.

## **9. Conclusion**

The policymakers seem to have remained oblivious of the fact that a blind person can efficiently discharge the functions of a judicial officer if he is adequately provided with the assistance of stenographers, clerks, and scribes. Further, they haven't taken inspiration from countries like the United States of America, Canada, and South Africa, where blind people are allowed to sit on juries for a very long time. Reasonable accommodations, like document reading software, the electronic format of applications, and evidence availability in accessible formats, can be made to ensure their presence in the judiciary.

The exclusion of blind persons from the judiciary embraces the contours of the medical model of disability, which has been critically rejected by the makers of the Convention on the Rights of Persons with Disabilities. The apex court has succinctly highlighted the duties of the state in providing reasonable accommodation to persons with disabilities so that they can effectively counter the challenges posed by their disability. Despite this, as highlighted above, there have been instances of states putting up a notification where they have excluded blind persons from the scope of eligible candidates for the post of civil judges.

The time has come that implementation of Vikas Kumar's judgment is made in letter and spirit. India has already ratified the CRPD convention, and the exclusion of blind persons goes against its obligations under the Convention. Structural barriers in courts need to get removed to efficiently implement the judgment of Vikas Kumar. The rules or notification that straight away rejects the idea of blind persons as judges should be amended, and provisions for providing reasonable adjustments should be included in the cadre

and service rules of the state public service commission. Without this, the progressive realization of disability rights would not have been made.



## Evaluation and Appraisal of Enforcement of Public Interest Litigation in the State of Goa (India)

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### Abstract

Public Interest Litigation (PIL) plays a momentous role in protecting the community's interest in general. Matters of serious concern and or public importance can be filed by any one on behalf of the entire community. The court will take up the matter and deliver justice in the interest of the public. The judiciary delivered many judgments in India in favour of the public.

The traditional concept of *locus standi* was enforced in the beginning, which means a victim or person whose lawful rights are violated alone can approach the judiciary to get the remedy. Other persons are prohibited from filing the case. Slowly, due to judicial activism, the court evolved a new concept, PIL. Under this idea, cases can be filed by any person on behalf of the public in matters of public concern. During the 1980s Justice Bhagwati enunciated the broad aspects of PIL. He stated that any fellow of the public with *bona fide* intention, having adequate knowledge, can file a case for redressal of any incorrect or civic injury. Besides individuals' nonprofit, non-political, and voluntary organizations consist of public-spirited citizens interested in taking up legitimate public causes by initiating a writ petition before the courts. After the expansion of the notion of PIL, many petitions were filed relating to matters like violation of fundamental rights, under-trial prisoners, arrested persons, and environmental concerns. The judiciary can take cognizance of the matters and accept the petition filed by any person on behalf of the public. Though judiciary has expanded the horizons of justice delivery, it is essential to verify its application in practice hence, this research is noteworthy. In this research article, effort is made to explain the concept of PIL, evolution of

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PIL at International and National levels, merits and demerits, and finally the authors examined the role of High Court in disposal of PILs.

**Keywords:** Public Interest Litigation, Social Action Litigation, *Locus Standi*, Remedies, Jurisdiction, *Amicus Curiae*, *Bona Fide*

## 1. Introduction

The Preamble to the Indian Constitution unambiguously incorporated the term justice, which refers to economic, political, and social justice for all citizens. But, many times, people at the gross root level, economically backward, are not in a position to get justice at the hands of the court. To protect the interest and to provide remedies for such downtrodden public, the court evolved a new concept PIL. PIL plays a significant role in achieving justice for the poor and economically and socially backward public. The idea of *locus standi* has assumed wider dimensions in expanding the scope of socio-economic justice and the welfare state.

The judiciary has sanctioned the concept of PIL, where a question of public interest may be promoted through a writ petition by someone even though he may not be directly injured or affected by it. The petitioner can approach the court to advocate a public cause. PIL is one of the most significant rules of adjudication; this idea cannot be ignored. The awareness about PIL has flourished in India. Many writ petitions are filed before the High Courts and Supreme Court on various matters of public interest or concern.

## 2. Importance of the study

Goa is one of the ecologically sensitive areas with biodiversity hot spots and the most important tourist destination. Due to construction and developmental activities, the green cover is reduced slowly from time to time. NGOs' are coming forward to file PIL to protect nature and natural resources on behalf of the public. To find out how many PILs are filed, petitioners, orders passed, and the status of PILs, data is collected from the Goa Bench of Bombay High Court. The authors collected data relating to all the PILs filed. More emphasis is laid on matters concerning the environment. Till now, no empirical study has been conducted to evaluate and assess



the role of the High Court Goa Bench. Therefore, an attempt is made to verify the importance of the High Court in dealing with PILs in the State of Goa.

### **3. Objectives**

The following were the objectives of the study:

- a) To understand and appreciate the concept and importance of PIL
- b) To determine the development of PIL at International and National level
- c) To appreciate the efforts of the judiciary in bringing the idea of PIL
- d) To verify the functioning of the Goa Bench at Bombay High Court in admitting and disposal of PILs
- e) To provide conclusions and suggestions for better implementation of PIL by the judiciary

### **4. Approaches of Data Collection**

Data for the study were gathered from both primary and secondary sources. Primary sources include statistical data collected from the High Court of Bombay at Goa, Panaji Bench, from 2017 to 2021. Empirical data from various stake holders were collected through questionnaires on awareness of PILs, and other related issues. Collected data is compiled, tabulated and interpreted.

Secondary data sources were collected from text books, Journals, law magazines, encyclopedias, dictionaries, Ph.D. theses, research papers, research articles, relevant statutes, Constitution of India, newspaper clippings, dictionaries and Webliography.

### **5. Limitations of the Study**

The study focused on and was limited to analysing PIL cases resolved by the High Court of Bombay, Goa Bench, Porvorim, Goa (India). PIL is one of the domineering areas where the cases were filed in the general public's interest, who cannot fight for their right. Data for the study was collected from 2017 to 2021. The authors

collected the statistical data through RTI applications. The authors delivered 350 questionnaires. However, due to the Covid-19 restrictions, the response rate was low, as only 156 responses were collected.

## 6. Concept and Evolution of PIL

PIL has been a valuable tool in fulfilling the aims of law and legal systems to provide justice to the disadvantaged sections of society. PIL is the action of the court brought by a public-spirited person to represent the general public's interest. In this situation, the person who filed the case may not have been aggrieved.

'Public Interest Litigation' comprises 'Public Interest' and 'Litigation.' The term 'public interest' refers to an action that benefits the public at large or is required for a public purpose. Its requirements, however, may differ from instance to situation.<sup>1</sup>

As per the Stroud's Judicial Dictionary,<sup>2</sup> 'Public Interest' is identified as

"A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of community have a pecuniary interest, or some interest by which their legal right or liabilities are affected."

As per Black's Law Dictionary,<sup>3</sup> 'Public Interest' is specified as –

"Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in

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<sup>1</sup> Unit 5. Public Interest Litigation. ePathshala, available at: <https://www.bbau.ac.in/dept/HR/TM/LL.M.203%20Unit%205.Public%20Interest%20Litigation.ePathshala.pdf>

<sup>2</sup> Volume IV, (1986, Fourth edition).

<sup>3</sup> 1994, Sixth edition.

question, Interest shared by citizens generally in affairs of Local, State or National government....”

Neither the Constitution of India nor any other statute in India could define the term ‘Public Interest’ clearly. It is the paramount duty of the Courts to interpret the word ‘Public Interest’ and entertain only the genuine claims and reject frivolous petitions.

The term “litigation” refers to a legal action brought in a court of law to enforce one’s rights or seek redress for harm done by another person. As a result, lexically, ‘Public Interest Litigation’ refers to a legal action brought in a court of law to enforce a public or general interest in which the public or a class of the community has a financial or other interest that affects their legal rights and duties. It is filed by a person or group whose main purpose is to safeguard the general public’s interest and has no personal gain or interest in doing so.

Four conditions are essential to initiate Public Interest Litigation:

- a) Action, inaction on the part of the state or State of affairs
- b) In case of violation of the rights of a large number of people or causes a large number of people to suffer a similar wrong.
- c) Enforcement of rights or redressal of wrongs done through a petition to the Court
- d) A public-spirited person or an association or organization can file a case on behalf of civic society.

PIL is a new jurisprudence developed by the Supreme Court through judicial activism, which aims to protect the rights and interests of and ensure social and economic justice to the underprivileged and the weaker sections of the society who are socially, economically or otherwise oppressed and find it difficult to approach the court themselves due to various reasons. PIL promotes public interest which emphasizes that legal or constitutional rights of the poor, downtrodden and disadvantaged section of society should not go unredressed.<sup>4</sup>

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<sup>4</sup> Sarkar SK, *Public Interest Litigation*, (2002 Ed, Orient Publishing Company, Allahabad) p. 20.

PIL is a jurisprudence of compassion which uses the concept of human rights to give justice. It is a cooperative litigation in which the petitioner, the State or public authority and the Court collaborate to secure and protect the constitutional or legal rights of the vulnerable sections of society, unlike an ordinary traditional litigation where the two parties are arranged against each other.<sup>5</sup>

In a Public Interest Litigation, courts have the power to issue any direction, order or writ even if the conditions for the same are not fulfilled. It is a cooperative litigation in which the petitioner, the State or public authority and the Court have to cooperate in providing constitutional protection to those who cannot proceed in court to assert their constitutional or legal rights.

The courts must ensure that the public acts appropriately, not for private gain or political purposes. No litigant should have an unlimited right to free court time and public money to resolve his affairs in any way he chooses. The petitioner cannot withdraw the petition at will unless the court permits withdrawal. Interfering where necessary for justice and refusing to intervene when it is in the public's interest and against the court's interests is how courts should ensure social balance.<sup>6</sup> Some of the matters which can be entertained as PIL are in relation to Bonded Labour, Neglected children, Non-payment of wages to workers, exploitation of workers, Environment, women's rights, food adulteration, etc. after going through the concept of PIL now let us understand the importance and advantages of PIL.

### **6.1 Importance and Advantages of PIL**

PIL received significance during the 1980's. Many environmental cases were filed before the HC and the Apex Court. The courts issued appropriate orders to implement the laws/rules/regulations. The following are the advantages of PIL; the advantages are in the fields of representative, revolutionary, legislative, and remedial in nature.

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<sup>5</sup> Dr. Wadehra BL, *Public Interest Litigation: A Handbook*, (2<sup>nd</sup> Ed, Universal Law Publishing Co, Delhi) p. 54-55.

<sup>6</sup> *Supra* note.3.

**(a) Vehicle for social revolution:** PIL has brought courts closer to the disadvantaged sections of society and is an effective means of bringing social revolution through constitutional means,

**(b) Incorporation of Directive Principles into the Fundamental Rights:** PIL's role in advancing the jurisprudence of fundamental (human) rights in India is also significant. Although Directive Principles are not justiciable, the courts have incorporated some of these ideas into the Fundamental Rights, making some socio-economic rights as significant as civil and political rights. As a result, important rights such as education, health, livelihood, a pollution-free environment, privacy, and a timely trial have been legally recognized.

**(c) Legislative reforms:** Through PIL, the judiciary also triggered legislative reforms and filled in legislative gaps in important areas, as is seen in the Vishaka<sup>7</sup> case, wherein the Court laid down detailed guidelines on sexual harassment in the workplace.<sup>8</sup>

**(d) Remedial in nature:** Public Interest Litigation departs from traditional *locus standi* rules through its remedial nature. It has changed the procedural nature of Indian law by incorporating the principles enshrined in part IV into part III of the Constitution and turning it into a welfare law. *Bandhua Mukti Morcha v. UOI, Unnikrishnan v. State of A.P.*,<sup>9</sup> etc., is an obvious example of this change.

**(e) Representative Standing:** PIL expanded the doctrine of *locus standi* and has become an exception. After the evolution of the idea of PIL, any public-spirited person or interested person on behalf of the public can approach the higher judiciary and obtain an appropriate remedy by filing PIL.

Allowing a third party having sufficient interest to file a petition on behalf of another. In this sense, the concept of PIL in India is much broader than that of the American form of class action.

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<sup>7</sup> (1997) 6 SCC 241).

<sup>8</sup> *Supra* note.3.

<sup>9</sup> 1984 AIR 802, 1984 SCR (2) 67.

**(f) Non-adversarial Litigation:** Public interest litigation is different from ordinary traditional litigation, which is essentially an adversary character involving a dispute between two litigating parties, one seeking relief against the other and the other resisting such relief. It is a collaborative litigation in which effort is made from all sides. The claimant, the court, and the government all work together to check whether basic human rights have become meaningful for the large masses. The Court also acts as a mediator by coming up with possible compromises.

**(g) Relaxation of strict rule of *Locus Standi*:** This strict rule of locus standi has been relaxed by way of a representative standing, and a person having *bona fide* sufficient interest in the petition can approach the court for violation of fundamental rights and statutory provisions, but not for personal gain or private profit.

**(h) Epistolary jurisdiction:** The judicial activism regarding PILs started when Judges of the Supreme Court and High Courts relaxed procedural requirements and began considering letters to newspaper editors, Judges, newspaper headlines, etc. as petitions and took *suo-motu* actions the same as issues concerning public interest. This epistolary jurisdiction provided a platform for the society's disadvantaged class to seek redressal of public interest issues.

**(i) New regime of Human Rights:** PIL has expanded the meaning of fundamental rights and made them accurate and effective. For example, the fundamental right to life and liberty now includes many unenumerated rights, such as the right to a speedy trial, dignity, means and livelihood, education, housing, medical care, clean environment, right against torture, sexual harassment, exploitation, etc.

PIL, a golden result of judicial activism, has changed its shape in the 21st century by widening the scope of fundamental rights through liberalization of locus standi requirement and introduction of epistolary jurisdiction, for protecting the disadvantaged sections of society who could not approach the court for redressal.<sup>10</sup>

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<sup>10</sup> *Supra* note.3.

## 6.2 Evolution of PIL in other countries

PIL is not a new concept; many countries have adopted this idea differently. **Ancient Rome** followed the doctrine *actio popularis* and allowed its citizens to seek redressal on issues of public importance. However, today, the common law and civil law systems exclude it unless the applicant shows personal interest in the matter.

**In the United States of America** during the 19th Century, the famous Gideon case, in which the Supreme Court treated the letter as a petition, created history and formed the basis for the evolution of PIL.

The Courts in **England** during the 19<sup>th</sup> century stressed on *locus standi*, but in recent years, there has been a change in which the concept of *locus standi* was widened. In **Canada**, the requirement of *locus standi* is relaxed in cases where the constitutionality of legislation is disputed.

In **Germany**, the provisions of PIL are included in its Constitution, Civil Procedure Code, etc. However, it is confined only to alleged violations of the Federal Natural Conservation Act by associations officially recognized by environmental authorities. In **China**, as a major breakthrough, the “Civil Procedure Law” amendment in 2012 brought the PIL system within its scope. **Australian** courts have diluted the principle of “aggrieved person”, and PIL has been a method of environment protection. The **South African** legal framework has relaxed pleading requirements to further the commitment of the South African Constitution to achieve human dignity, freedom and equality.<sup>11</sup>

## 6.3 Development of PIL in India

Indian Constitution was adopted on 26<sup>th</sup> November 1949, after obtaining independence from British rule on 15<sup>th</sup> August 1947, with the goal of establishing a “sovereign, socialist, secular, democratic republic.” The Constitution aims to provide all citizens with justice

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<sup>11</sup> Mamata Rao, *Public Interest Litigation: Legal Aid and Lok Adalats*, (2018, 5<sup>th</sup> Ed., Eastern Book Company, Lucknow) pp. 63-77.

(social, economic, and political), liberty (of thought, expression, belief, faith, and worship), and equality (of status and opportunity), among other things. The fundamental rights (FRs) and State Policy Directive Principles were used to achieve these goals (DPs). An impartial judiciary was established to guarantee that FRs were not just hollow declarations. Provisions concerning FRs, DPs, and an independent judiciary combined to offer a solid constitutional framework for the development of PIL in India.

The robust development of PIL in India was aided by a variety of factors. The constitutional framework governing FRs and DPs is the first factor to consider. Second, various constitutional provisions governing the Supreme Court's authority aided the Court in devising novel and unconventional remedies, raising social expectations in the process. Third, the rise of PIL directly relates to the judicial activism shown by the Supreme Court and High Courts in India.<sup>12</sup> Development of PIL in India is discussed under three phases.

**(a) Phases of PIL in India:**

The evolution of PIL in India could be divided into three broad phases: who is the Petitioner in the PIL cases, the subject matter of PIL, against whom the relief was sought, and the judiciary's response to PIL cases.

- 1) The First Phase:** In the first phase, from the late 1970s till the 1980s, generally, PIL cases were filed by public-spirited persons and mostly related to the rights of disadvantaged sections of society such as child labourers, bonded labourers, prisoners, etc., in which the judiciary recognized rights of these people and issued directions to the government redressing the alleged violations. In the first phase, the PIL was indeed an instrument of social transformation.
- 2) The second phase:** In the second phase of PIL, NGOs and public-spirited advocates became more prominent. These organizations and individuals used PIL to bring many public

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<sup>12</sup> Zachary Holladay, "Public Interest Litigation in India as a Paradigm for Developing Nations", available at: <https://www.repository.law.indiana.edu/ijgls/vol19/iss2/9/>



issues before the court. They advocated issues like the environment, the rights of marginalized communities, and social justice. This phase deals with the starting point of misuse of PIL, which began and reached a disturbing level.

- 3) The third phase:** In this phase, which began in the 21<sup>st</sup> century, the range of issues that could be raised as PIL further expanded, e.g. halting a claimed marriage of an actress with trees for astrological reasons and cancelling the Indian cricket team's tour of Australia.<sup>13</sup>

#### **6.4 Role of Judiciary/Judicial Activism and PIL**

The term 'Judicial Activism' refers to a court's desire to provide an adequate solution for those wronged by developing a new rule to resolve contradictory questions in the event of lawlessness or ambiguous laws. The Supreme Court's review power under Article 32 and the High Court's review power under Article 226 of the Constitution, particularly in Public Interest Litigation, are examples of judicial activism in India. Remedies under both Article 32 and Article 226 are available whenever there is a violation or threat of violation of Fundamental Rights.

However, the Supreme Court's review power under Article 32 is restricted to violation or threat of violation of Fundamental Rights. The High Courts' review power under Article 226 of the Constitution covers violation or threat of violation of Fundamental Rights and statutory rights. In this sense, the power of the High Court under Article 226 is wider than that of the Supreme Court under Article 32.<sup>14</sup>

The judiciary evaluates the law approved by the legislature through its review power. In contrast, the legislature, on the other hand, intervenes in the impeachment of President of India, who is member of the Union Executive.<sup>15</sup>

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<sup>13</sup> *Supra* note. 3.

<sup>14</sup> *Supra* note.7 Dr. Wadehra BL.

<sup>15</sup> Pritam Kumar Ghosh, "Judicial Activism and Public Interest Litigation in India",

### 6.5 Relevance of PIL and Judicial Activism: Advent of PIL in India

PIL originated in the liberalization of the requirement of *locus standi*<sup>16</sup> by the Supreme Court. The Apex Court, through its decisions, has considerably relaxed the traditional rule of “*Locus Standi*” that means aggrieved person only has a right to file a petition. Today, any public-spirited citizen can move/approach the court in the public interest by filing a petition:

- a) In the Supreme Court, under Article 32 of the Constitution of India;
- b) In the High Court, under Article 226 of the Indian Constitution
- c) In the Court of Magistrate under Section 133 of the Code of Criminal Procedure

By transforming the customary necessities of *locus standi*, liberalizing the procedure for filing writ petitions, by expanding the idea of FRs, led to overcoming the evidentiary problems, and developing innovative remedies. The apex Court of Indian judges, *Justice Bhagwati* and *Justice Krishna Iyer*, laid the foundation for the confinement of PIL in India in *Mumbai Kamgar Sabha v. Abdul Bhai*,<sup>17</sup> and later in *Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India*.<sup>18</sup>

The reasons for relaxing the *Locus Standi* rule were pronounced by *Krishna Iyer J.* in *Fertilizer Corporation Kamgar Union v. Union of India*<sup>19</sup> and the concept of ‘Public Interest Litigation’ grew popularity in *S.P. Gupta and others v. Union of India*.<sup>20</sup>

Modification of the customary standing criterion was essential for the development of PIL. In India, where the mainstream of people is either unaware of their rights or too disadvantaged to go to court, though the need was much greater.

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available at: <http://www.galgotiasuniversity.edu.in/pdfs/issue6.pdf>

<sup>16</sup> Means legal capacity to challenge an act or decision, Ramachandran, VG, *Law of Writs*, (6<sup>th</sup> Ed, 2006, Vol.1, Eastern Book Co, Lucknow) p.26.

<sup>17</sup> AIR 1976 SC 1455.

<sup>18</sup> AIR 1981 SC 298.

<sup>19</sup> AIR 1981 SC 344.

<sup>20</sup> AIR 1982 SC 149.

The Supreme Court's interpretation that the word "appropriate proceedings" under Art. 32 of the Constitution that mentions to the purpose of the proceeding rather than the form, and that any form will suffice as long as the purpose is to enforce a FR. Judiciary is allowed to improve epistolary jurisdiction, in which even letters or telegrams were accepted as writ petitions.

By inferring existing FRs and increasing new FRs, the judiciary then focused on giving a solid foundation led to solution of a variety of problems under PIL. Article 21—"no one shall be deprived of his life or personal liberty unless in accordance with the method provided by law"—evidenced to be the most productive provision, implying supplementary than just physical existence; it "includes the right to live with human dignity and all that goes with it."

The Court expanded the idea of Art. 21 and added various things under Art.21, like the right to health, livelihood, free and compulsory education up to the age of 14, unpolluted environment, shelter, clean drinking water, privacy, legal aid, prompt trial, including rights of under-trials, convicts, and prisoners. In the majority of the cases, such an extension, the judiciary depended on DPs. Article 21 has been used by the courts to grant relief, directives to the government on issues relating to the general public's lives, nullify state actions, or compensate people if the state breaks the rules.

One of the significant tasks of the judiciary is to determine the evidentiary issues and decide suitable remedies for PIL petitioners. In response, the Supreme Court appointed fact-finding commissions and *amicus curiae*.<sup>21</sup>

## 6.6 Misuse/Limitations of PIL

PIL plays an important role in protecting the interests of the poor and the downtrodden public. Besides the affected party, any interested person can approach and file a petition in the interest of

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<sup>21</sup> Pritam Kumar Ghosh, "Judicial Activism and Public Interest Litigation in India", *available at*: <https://www.galgotiasuniversity.edu.in/pdfs/issue6.pdf>

general public. Nowadays, courts reject many petitions and impose penalties for filing private interest litigations. Individuals are filing private interest litigation in the garb of PIL. The judiciary is very cautious in selecting and admitting PILs. Though PIL is one of the most important tools to promote justice to the poor, PIL is not free from drawbacks. The drawbacks are:

- a) **Increase in the Court workload:** PIL has led to an unexpected escalation in the workload of the superior courts. The lack of judicial infrastructure, especially in matters related to the environment, resulted in delays in the disposal of cases by the judiciary.
- b) **Judicial populism:** There is resistance and conflict with corresponding organs of the government and judicial populism, that started in 1990. Today reached a stage where the purpose for which PIL was introduced is weakened.<sup>22</sup>
- c) **Personal interests:** PIL is misinterpreted by the public for their personal gains/issues in the attire of large public interest and trying to pursue advertising rather than public cause.<sup>23</sup> Courts also set up committee to verify the status of application before admission.
- d) **Gap between the promise and reality:** There is a huge gap between the judgment and implementation of a decision. Many a times, the decisions in PILs are not implemented and this non-implementation of decisions results in courts doing representative justice. The judiciary is not in a position to enforce the guidelines or directions in matters related to PIL cases.<sup>24</sup>
- e) **Lack of motivation:** Another limitation to PIL is lack of motivation. This is due to the fact that petitioner has to bear the cost of filing PIL from his own pocket. Also, lawyers charge huge

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<sup>22</sup> *Supra* note. 3.

<sup>23</sup> Desai and Muralidhar in Kirpal et al., *Supreme but not Infallible*, p.181.

<sup>24</sup> Zachary Holladay, "Public Interest Litigation in India as a Paradigm for Developing Nations", available at: <https://www.repository.law.indiana.edu/ijgls/vol19/iss2/9/>

sums of money as fees. Public spirited people are losing faith and stating that they are not interested in filing or representing PILs.

## 7. Functioning of the High Court in dealing with PILs in the State of Goa

To verify the role of the High Court, data were collected from the High Court and stakeholders. To determine the court's role in enforcing PIL, the authors collected data from the High Court of Bombay at Goa, Panaji Bench, for five years, i.e., from 2017 to 2021.

### 7.1 Analysis of Statistical Data

Statistical data were collected to verify how many PILs were filed, disposed of, or pending, the nature of the PIL, and the time taken for disposal of the PIL. Collected data was compiled, tabulated, analyzed and interpreted.

#### 7.1.1 Status of Cases

Table 1 shows the status of cases filed, disposed and pending. A total of 192 cases have been filed from 2017-2021. One hundred eleven cases were disposed of, and 81 cases were pending.

This shows that most cases are disposed of, but a sizeable number of 48% of cases are still pending at the High Court.

**Table 1: Case Status of PILs (2017-2021)**

Case Status	No. of Cases	Percentage
Pending	81	42
Disposed	111	58
Total	192	100

#### 7.1.2 Duration of Pending Cases

Table 2 indicates the time the court takes to dispose of pending PILs. Of 81 pending cases, 52 (64%) petitions were pending for over two years. This shows that the High Court is taking more time to dispose of PILs. 15 (19%) cases are pending for more than 1.5 yrs, up to 2 yrs. The remaining 14 cases are pending for over 6 months to one year.

**Table 2: Duration of Pending PILs (2017-2021)**

Duration of Pending PILs	No. of Cases	Percentage
Up to 6 months	5	6
6 months to one year	9	11
One year to 1.5 years	0	0
> 1.5 years to two years	15	19
> Two years	52	64
<b>Total</b>	<b>81</b>	<b>100</b>

### 7.1.3 Status of Petitioner

Table 3 below indicates the status of the Petitioner who filed PIL during 2017-2021. The Individuals filed a total of 127 PIL cases out of the total of 192 cases, and NGOs filed 65 cases. The individual files 66% of PILs in large public interest. This indicates that the people of Goa were aware of their rights and were trying to seek redressal for matters of public importance through PILs. High Court has not initiated any case *suo moto* by itself.

**Table 3: Status of Petitioners**

Status of Petitioner	No. of Cases	Percentage
Individual	127	66
NGO	65	34
Suo Motu by Court	0	0
<b>Total Cases</b>	<b>192</b>	<b>100</b>

### 7.1.4 Disposed cases and time taken

No time limit is fixed for the disposal of matters before the courts. Table 4 indicates the time taken for disposal of the PIL cases filed during 2017-2021. 53% of the cases were disposed of within six months, 25% of the cases were disposed of within 6 months to one year, 6% of the cases were disposed of within 1 year to 1.5 years, 10% of the cases were disposed within 1.5 years to 2 years, and 6% of the cases were disposed after 2 years. This shows that in 2021, most cases were disposed of within 6 months.

**Table 4: Disposed cases and time taken**

Duration of Pending PILs	No. of Cases	Percentage
Up to 6 months	59	53
6 months to One year	28	25
One year to 1.5 years	7	6
> 1.5 years to Two years	11	10
> Two years	6	5
<b>Total</b>	<b>111</b>	<b>100</b>

### 7.1.5 Petitioner benefited from the court's decision

As mentioned in Table 5, 66 cases (59%) were decided in favour of the Petitioner, 35 cases (32%) in favour of the Respondent, and the remaining 10 cases (9%) were withdrawn.

**Table 5: Petitioner Benefited by Court Decision**

Party benefited - Decision	No. of Cases	Percentage
In favour of Petitioner	66	59
In favour of Respondent	35	32
Withdrawn	10	9
<b>Total</b>	<b>111</b>	<b>100</b>

### 7.1.6 Nature of Petition

Goa is a small state with more green cover; it is also one of the hot spots areas in India. The different broad categories under which PIL petitions were filed during the study period are mentioned in Table 6. The majority of 37 cases were filed in the area of *Environment*, followed by 27 under *Illegal Constructions*. On the other hand, three cases were under *Appointments*, and four were under *Medical* categories. Although the number of cases in the miscellaneous category appears to be the highest, it includes significantly fewer cases in all areas covered.

The 'Miscellaneous' category includes PILs filed in the following areas, like increase in ferry rates, permission for night market, holding of panchayat elections, to appoint chairperson under RERA, transfer of NGT cases to Pune (India) instead of New Delhi (India), fixing digital meters on cabs, constitute PDA, filling vacancies at

police station, floating of non-existing Government tenders, expeditious disposal of recovery proceedings, recovery of arrears from promoters of music festival, functioning of Goa Meat Complex, deletion of Goa VAT, closure of sponge iron plant, unauthorised private coaching in Chicalim Sports Complex, BIS compliance of taxi meters, maintenance of Sanads records, illegal use of Parking places, etc.

**Table 6: Nature of Petitions**

Types of PIL Petitions	No. of Petitions	Percentage
Environment	37	33
Illegal Construction	27	24
Appointments	1	1
Medical	4	4
Miscellaneous	42	38
<b>Total</b>	<b>111</b>	<b>100</b>

### 7.1.7 Year-wise cases under the Environment Category

As evident from Table 7, a maximum of 13 cases were filed in 2018, followed by 10 cases in 2019. The least number of three cases were filed in 2017. 2020 and 2021 witnessed six and five cases, contrary to many cases in 2018 and 2019. The downfall may be attributed to the nationwide lockdown due to the Covid-19 pandemic.

**Table 6: Year-wise cases under the Environment Category**

Environment	No. of cases	Percentage
2017	3	8
2018	13	35
2019	10	27
2020	6	16
2021	5	14

### 7.1.8 Types of Environmental Petitions

The types of petitions filed in the broad category of Environment were subcategorised into (a) Environment Pollution, (b) Coastal Regulatory Zone (CRZ), (c) Mining, (d) Forest, (e) Shipping, and (f) Animals.



As evident from Table 7, a maximum of 16 cases were filed under the Coastal Regulatory Zone (CRZ) category, followed by 10 cases under the *Environment Pollution*. Thus, it is clear that people are filing cases to protect the CRZ areas and are concerned about the pollution of nature and natural resources.

**Table 7: Types of Environmental Petitions**

Sub-category in Environment	No. of cases	Percentage
Environment pollution	10	27
Coastal Regulatory Zone (CRZ)	16	43
Mining	5	14
Forest	4	11
Shipping	1	3
Animals	1	3
<b>Total</b>	<b>37</b>	<b>100</b>

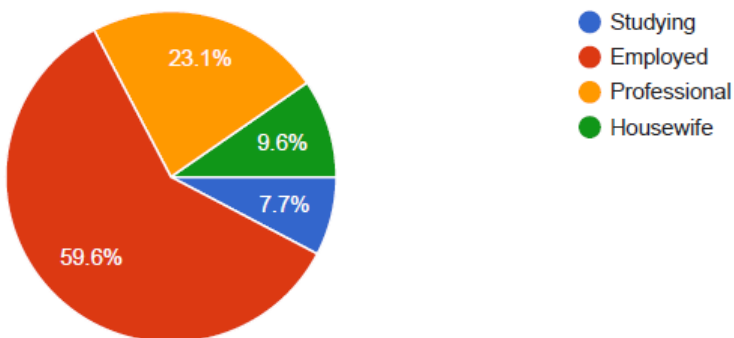
## 8.2 Empirical Data from Stakeholders

Empirical data were collected from stakeholders to cross-verify the statistical data. The questionnaire was circulated among 350 respondents, of which 156 responded.

### 8.2.1 Status of respondents

As depicted in Fig.1, 7.7 % of the respondents were students, 9.6% were housewives, 23.1% were professionals, and 59.6% were employed. Thus, most respondents (82.7%) were employed and professionals (Fig. 1).

**Fig. 1: Status of Respondents**



### 8.2.2 Awareness about Public Interest Litigation (PIL)

Knowledge of Public Interest Litigation is an important aspect of awareness of one's rights as an individual and a part of society. Once they are aware of this, they can file PILs.

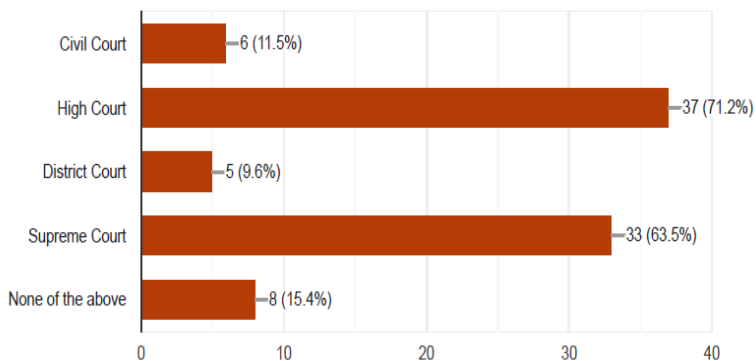
Amongst the participants, 92.3% were aware of the PIL, while the remaining 7.7% were ignorant.

### 8.2.3 Place of filing a PIL Petition

Awareness about the court in which one can file a PIL is important. When participants were asked where they could file the PIL, they were offered multiple choices: Civil Court, High Court, District Court, Supreme Court and none of these.

Out of 156 respondents, 11.5 % of participants chose the Civil Court, 9.6% chose the District Court, 71.2 % chose the High Court, and 63.5% chose the Supreme Court, whereas 15.4 % were not aware of the place of filing PIL (Fig. 2).

**Fig. 2: Place of filing a PIL Petition**



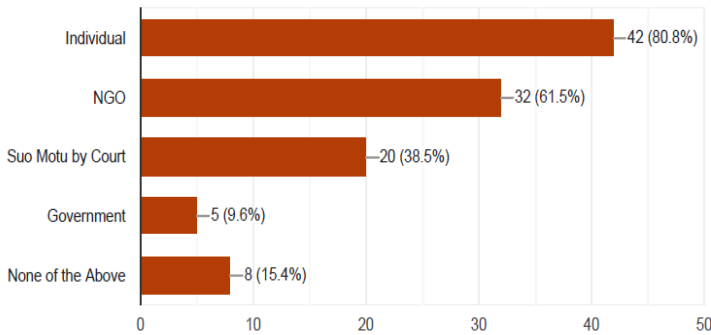
### 8.2.4 Filing of PIL

To find out who can file the PIL before the court, the respondents were offered the options (multiple choice) of Individual, Non-Government Organization (NGO), *Suo Motu* by the Court, Government, and None of the above.

As indicated in Fig. 3, 80.8% chose Individual, 61.5% chose NGO, 38.5 % chose *Suo motu* by Court, 9.6% chose Government, whereas

15.4% reported unawareness. This shows that most participants know who can file a PIL petition.

**Fig. 3: Filing of PIL**



**8.2.5 Areas of filing PIL**

The respondents were asked about their awareness about the pre-defined areas in which PIL can be filled with a choice to select one or more. As evident from Fig. 4, 28.8% chose Environment, 23.1% chose Coastal Region Zones (CRZ), 26.9 % chose Mining, 23.1% chose Academic, 21.2% chose Land Revenue, 23.1% chose Transport, 19.2 % chose Illegal Constructions, 21.2% chose Animal Welfare and 78.8% chose All of the above.

This shows that more than 78% of the participants are fairly aware of areas in which a PIL petition can be filed.

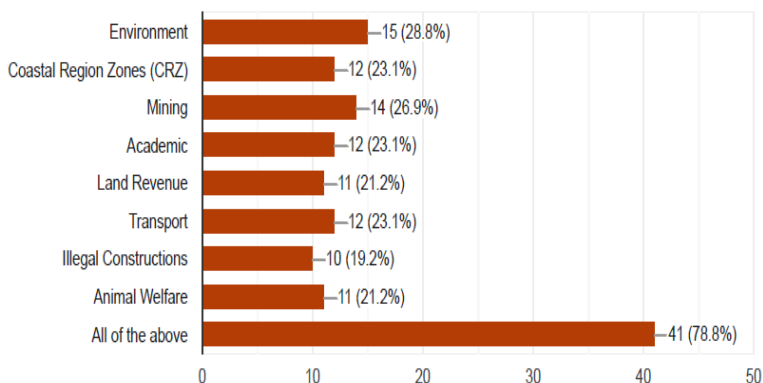
**8.2.6 Time taken for disposal**

The participants were asked whether they knew the time taken by Courts to dispose of a PIL petition, the options being less than 6 months, 6 months to 1 year, 1 year to 1.5 years, 1.5 years to 2 years, 2 years or more.

50% of the response group felt that Courts take less than 6 months to dispose a PIL petition, 25% opted for 6 months to 1 year, 11.5% chose 1 year to 1.5 years, 9.6% chose 1.5 years to 2 years, and 3.9% chose 2 years or more. This shows that though 50% of the

participants feel that PILs in Goa are disposed of within 6 months, 25% feel that it takes longer time in disposal of cases.

**Fig. 4: Areas of Filing PIL**



### 8.2.7 Satisfaction with Court order

Justice delivery is an important aspect of the court system. One of the most significant aspects of justice is the petitioner. Of the 156 respondents, 30 had prior experience filing the PIL (19.23%). Of these 30 experienced respondents, 12 were satisfied with the Court's Order, while 18 reported dissatisfaction.

### 8.2.8 PILs and promotion of private interest

In today's world, PILs are often used to promote private interests. When asked about the misuse of PIL, 69.2% agreed that they are filed for private interest, while the remaining 30.8% disagreed with the statement. Thus, a need arises to educate the public so that they understand the idea of PIL for personal gain.

## 9. Conclusions and Suggestions

Recognizing that legal remedies to enforce individual rights often prove inadequate in dealing with public rights, the Indian Judiciary developed and evolved a new idea, PIL, to protect the rights of the community and the downtrodden and disadvantaged sections of society.

This involved the relaxation of rule of *Locus Standi*, and other procedural requirements, introducing remedies, such as the appointment of amicus curie and epistolary jurisdiction. One negative impact of this was the litigation explosion, following which the Judiciary introduced several guidelines to regulate the use of Public Interest Litigation and prevent its abuse.<sup>25</sup> There is a need to avoid private interest litigation as public interest. Judiciary will verify the petition and feel that it is not PIL it is a private interest. courts are imposing penalties on the party who files such private litigation. Recently, the HC imposed a fine of 20 lakhs upon the Bollywood actress *Juhi Chawla* in the 5G spectrum petition, stating that the issue is of private interest.<sup>26</sup>

### 9. Suggestions for improvement

The following suggestions are offered to improve Public Interest Litigation in the State of Goa and general public at general.

- a) There is a need to create mass awareness about PIL, including its advantages and misuse for private interest. Students, irrespective of age and gender, should be acquainted with the concept.
- b) Need to provide the opportunity to E-filing of PIL, online petition filing option should be available to general public who are staying at taluka or village level.
- c) More promptness is required from the Courts to dispose PIL, followed by a follow up by a Monitoring committee established by the judiciary.
- d) As large number of cases are pending before the higher judiciary, hence, stakeholders suggest for special courts for hearing PIL matters and the same should be disposed of within 6 months

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<sup>25</sup> *Supra* note. 3

<sup>26</sup> *Short news* 25<sup>th</sup> January 2022, The Delhi High Court, proposed to reduce the fine imposed on the actress for wasting judicial time, in a lawsuit regarding implementation of 5G issue in frivolous and casual manner, from Rs.20 lakhs to Rs. 2 lakhs if she accepts to do public service.

- e) Proper scrutiny of PIL petitions by a scrutinizing process should be done to filter out frivolous petitions and effective implementation of orders which will save precious time of the Higher Judiciary.
- f) It is mandatory to inculcate values among the young generation to file PIL only for genuine purposes, in public interest, without any personal motives or personal vengeance or personal benefit or motives.
- g) Secondary committee needs to be established to see if the implementation and enforcement of the orders of the court are followed thoroughly or not. If not, needs to initiate immediate action and penalty for nonfulfillment of court orders.
- h) By adopting the above suggestions, we can evaluate and appraise the role of Higher Judiciary in implementing the idea of PIL evolved through judicial activism and its implementation in letter and spirit in practice.



## Legal Implications of Deepfake Technology: In the Context of Manipulation, Privacy, and Identity Theft

Sheikh Inam Ul Mansoor\*

### Abstract

Deepfake technology, an emerging form of synthetic media created using artificial intelligence, poses profound challenges to India's legal, technological, and societal frameworks. This paper explores the multifaceted implications of deepfakes, focusing on privacy, misinformation, identity theft, and regulatory responses within the Indian context. Deepfakes threaten privacy by exploiting digital identity systems like Aadhaar, raising concerns about data security and personal autonomy. The spread of deepfake-generated misinformation undermines India's democratic institutions and social cohesion, exacerbating political polarization and communal tensions. Identity theft and fraud through deepfakes present additional risks, exploiting vulnerabilities in biometric authentication and undermining trust in digital identities. Addressing these challenges requires comprehensive regulatory reforms, including amendments to existing laws and the enactment of new regulations tailored to combat deepfake-related offenses. The "Personal Data Protection Bill, 2019", and the "Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021", represent initial steps towards enhancing data privacy and regulating digital content platforms. However, effective mitigation strategies must also focus on technological innovations in deepfake detection, public awareness campaigns, and international cooperation to address transnational threats. By fostering a robust regulatory framework, promoting ethical technology development, and enhancing digital literacy, India can navigate the complexities of deepfakes while harnessing the transformative potential of digital technologies. This paper advocates for a proactive and collaborative approach to safeguarding privacy, integrity, and trust in India's digital ecosystem amidst the evolving challenges posed by deepfake technology.

**Keywords:** Deepfake, Privacy, Misinformation, Identity, Regulation, Security

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## 1. Introduction

Deepfake technology, a rapidly evolving frontier in digital manipulation, poses profound challenges to various facets of modern society, particularly within the realms of privacy, identity, and trust.<sup>1</sup> It can broadly be described as fake digital media that employs the use of AI methods to alter either video or audio. Deep fakes have become popular since they can cause manipulation of the real world.<sup>2</sup> Originally emerging from the intersection of AI research and digital media, deepfake applications have expanded beyond entertainment into more concerning areas such as politics, journalism, and personal exploitation.<sup>3</sup>

The term deepfake itself breaks down into two words: deep learning and fake, and it is based on deep neural networks which make it possible to create the most believable content that in fact is fake. These technologies use algorithms complex enough to assess and integrate large amounts of data, to come up with reasonable facsimiles of people's voices and images to make what they did not say or do.<sup>4</sup> This capability raises fundamental questions about the authenticity of digital information and the trustworthiness of media in an era increasingly dominated by digital communication platforms. The proliferation of deepfake technology underscores broader societal anxieties about the erosion of truth and the manipulation of reality.<sup>5</sup> As these technologies become more

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<sup>1</sup> Mika Westerlund, "The Emergence of Deepfake Technology: A Review", *Technology Innovation Management Review* 9, 39-52 (2019), available at: <https://doi.org/10.22215/timreview/1282>.

<sup>2</sup> M. S. Rana, M. N. Nobi, B. Murali and A. H. Sung, "Deepfake Detection: A Systematic Literature Review," in *IEEE Access*, vol. 10, pp. 25494-25513, 2022

<sup>3</sup> Gambín, Á.F., Yazidi, A., Vasilakos, A. *et al.* Deepfakes: current and future trends. *Artif Intell Rev* 57, 64 (2024). <https://doi.org/10.1007/s10462-023-10679-x>

<sup>4</sup> Sonia Sharma, *Deep-Fake Technology: Highlights and Challenges* (2023), 10.1729/*Journal*.36626.

<sup>5</sup> A. Birrer & N. Just, *What We Know and Don't Know About Deepfakes: An Investigation into the State of the Research and Regulatory Landscape*,



accessible and sophisticated, their potential impact on public discourse, individual privacy, and societal stability grows exponentially. From political misinformation campaigns to celebrity scandals and personal defamation, deepfakes present multifaceted challenges that necessitate robust legal and ethical frameworks to mitigate their harmful effects.<sup>6</sup>

This research paper aims to explore the complex legal implications arising from the advent of deepfake technology. It will examine how existing legal frameworks are grappling with the unique challenges posed by deepfakes, and propose avenues for legal reform and technological interventions to safeguard against their misuse. By delving into these issues, this research seeks to contribute to a comprehensive understanding of the legal landscape surrounding deepfake technology and provide insights into how law and policy can adapt to protect individuals and uphold societal trust in the digital age. Moreover, this exploration is timely and pertinent, given the rapid evolution of AI technologies and their increasing integration into everyday life. As policymakers, legal practitioners, and scholars navigate the complexities of deepfake regulation, the need for informed and forward-thinking approaches becomes ever more critical. This research endeavours to explore these complexities and offer a foundation for further discourse and action in addressing the legal challenges posed by deepfake technology. In examining these issues, this paper adopts a multidisciplinary approach, drawing on insights from law, technology, ethics, and sociology. By synthesizing these perspectives, it aims to provide a nuanced analysis of the legal implications of deepfake technology, highlighting both the risks and opportunities for legal innovation in safeguarding against its misuse. Ultimately, this research aims to contribute to the ongoing dialogue on digital ethics and governance, offering actionable recommendations for policymakers and

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New Media & Society (2024), <https://doi.org/10.1177/14614448241253138>.

<sup>6</sup> Dilrukshi Gamage, Jiayu Chen & Kazutoshi Sasahara, *The Emergence of Deepfakes and Its Societal Implications: A Systematic Review* (2021).

stakeholders seeking to mitigate the negative impacts of deepfake technology while promoting responsible innovation in AI and digital media.

Through this exploration, it is hoped that a clearer understanding of the legal challenges posed by deepfakes will emerge, informing future efforts to foster a trustworthy and resilient digital environment. As society continues to grapple with the implications of AI-driven technologies, addressing the legal dimensions of deepfakes stands as a crucial step towards safeguarding fundamental rights and preserving the integrity of public discourse in the digital era.

## **2. Legal Frameworks and Current Laws**

The advent of deepfake technology presents a significant challenge to legal frameworks worldwide, with implications that touch upon various aspects of privacy, security, and personal integrity.<sup>7</sup> In the Indian context, the issue of deepfakes is particularly pressing given the country's vast and diverse digital landscape, characterized by rapid technological adoption and a vibrant social media environment. India's legal system, which is steeped in rich jurisprudence and influenced by both common law traditions and statutory enactments, is now grappling with the complexities introduced by deepfake technology.<sup>8</sup>

At the core of the legal challenges posed by deepfakes in India is the question of how existing laws can be applied to this novel technology. While there are no specific laws that explicitly address deepfakes, various provisions within the Indian legal framework can

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<sup>7</sup> Samer Al-khazraji, Hassan Saleh, Adil Khalid & Israa Mishkhal, *Impact of Deepfake Technology on Social Media: Detection, Misinformation and Societal Implications* (2023).

<sup>8</sup> M. Chawki, *Navigating Legal Challenges of Deepfakes in the American Context: A Call to Action*, *Cogent Engineering* 11(1) (2024), <https://doi.org/10.1080/23311916.2024.2320971>.

be interpreted to deal with the issues arising from their misuse.<sup>9</sup> The “Information Technology Act, 2000” is the primary legislation governing digital activities in India.<sup>10</sup> The IT Act, along with the Section, 77, 78, 111, 294, 303, 318 of Bhartiya Nyaya Sanhita, provides a broad framework that can be leveraged to address some of the concerns related to Cybercrimes.<sup>11</sup> Section 66E of the IT Act addresses privacy violations and lays forth consequences for purposefully taking, printing, or sending pictures of someone else’s intimate region without that person’s permission. This provision, although not specifically designed for deepfakes, can be applied to cases where deepfake technology is used to create and distribute non-consensual pornographic content, a prevalent and particularly harmful application of deepfakes.<sup>12</sup> Furthermore, Section 66E and Section 67 the IT Act forbids the publication or transmission of pornographic content in electronic form, including deepfake pornography.<sup>13</sup>

The Bhartiya Nyaya Sanhita also offers several provisions that can be invoked in cases involving deepfakes.<sup>14</sup> For instance, Section 356 of the BNS, which deals with defamation, can be applied to deepfake videos created with the intent to harm an individual’s

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<sup>9</sup> Trishana Ramluckan, Deepfakes: The Legal Implications, in Proceedings of the International Conference on Cyber Warfare and Security 19, 282-288 (2024), <https://doi.org/10.34190/iccws.19.1.2099>.

<sup>10</sup> Subhajit Basu & Richard Jones, Indian Information and Technology Act 2000: Review of the Regulatory Powers under the Act, *International Review of Law, Computers & Technology* 19, 209-230 (2005), <https://doi.org/10.1080/13600860500133495>.

<sup>11</sup> Dr. Malagi, Statutory Provisions for Prevention of Cyber Crimes under the Indian Penal Code - Existing Law Insufficient, *Paripex - Indian Journal of Research* 10, 28-31 (2022).

<sup>12</sup> Pallavi Kapila, Cyber Crimes and Cyber Laws in India: An Overview (2020).

<sup>13</sup> Nihal Shaikh & Dhaval Chudasama, Research on Cyber Offenses under Information Technology Act, 2000, 8 RTPC 2021, <https://doi.org/10.37591/RTPC>.

<sup>14</sup> Malagi, Dr. (2022). statutory-provisions-for-prevention-of-cyber-crimes-under-the-indian-penal-code--existing-law-insufficient April 2021 2946182178 0806744. *PARIPEX-INDIAN JOURNAL OF RESEARCH*. 10. 28-31.

reputation. Similarly, Section 336 of the BNS, which addresses forgery for the purpose of harming reputation, can be relevant in situations where deepfakes are used to fabricate content that falsely portrays individuals in a damaging manner. Moreover, Section 351 of the BNS, which pertains to criminal intimidation by anonymous communication, could potentially cover instances where deepfake content is used to threaten or blackmail individuals. Despite these provisions, the application of existing laws to deepfake technology is fraught with challenges.<sup>15</sup> One significant issue is the evidentiary burden in proving the creation and dissemination of deepfake content. Given the sophistication of deepfake technology, it can be exceedingly difficult to establish the authenticity and origin of manipulated media, which complicates legal proceedings.<sup>16</sup> Furthermore, the cross-jurisdictional nature of the internet means that deepfake content can easily be created and distributed from outside India, raising questions about the enforceability of Indian laws on foreign entities.<sup>17</sup>

The Indian judiciary has also begun to recognize the threats posed by deepfake technology and has made efforts to adapt existing legal principles to address these challenges. In several cases, the courts have emphasized the importance of protecting individual privacy and reputation in the digital age.<sup>18</sup> For example, the Supreme Court's landmark judgment in "*K.S. Puttaswamy v. Union of India (2017)*"<sup>19</sup> affirmed the right to privacy as a fundamental right under the Indian Constitution. This decision provides a constitutional basis

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<sup>15</sup> de Ruiter, A. The Distinct Wrong of Deepfakes. *Philos. Technol.* **34**, 1311–1332 (2021). <https://doi.org/10.1007/s13347-021-00459-2>

<sup>16</sup> C. Vaccari & A. Chadwick, Deepfakes and Disinformation: Exploring the Impact of Synthetic Political Video on Deception, Uncertainty, and Trust in News, *Social Media + Society* **6**(1) (2020), <https://doi.org/10.1177/2056305120903408>.

<sup>17</sup> Meetal Rawat, Transnational Cybercrime: Issue of Jurisdiction, *4 (2) IJLMH* Page 253 - 266 (2021), DOI: <http://doi.org/10.1732/IJLMH.26049>.

<sup>18</sup> Dilrukshi Gamage, Jiayu Chen & Kazutoshi Sasahara, The Emergence of Deepfakes and Its Societal Implications: A Systematic Review (2021).

<sup>19</sup> AIR 2018 SC (SUPP) 1841, 2019 (1) SCC 1.

for individuals to seek redress against the misuse of deepfake technology that infringes upon their privacy.<sup>20</sup> In addition to judicial pronouncements, there have been legislative efforts aimed at strengthening the legal framework to better address the challenges posed by deepfake technology. The “*Personal Data Protection Bill, 2019*”, which is currently under consideration, aims to provide comprehensive data protection and privacy safeguards.<sup>21</sup> The bill proposes stringent regulations on the processing of personal data, which could potentially cover the creation and dissemination of deepfakes involving personal data without consent. However, the bill’s final provisions and its efficacy in addressing deepfake-related issues remain to be seen.<sup>22</sup>

The issue of deepfakes also intersects with concerns about misinformation and fake news, which have become particularly salient in the Indian context.<sup>23</sup> The spread of deepfake content on social media platforms can exacerbate the problem of misinformation, influencing public opinion and potentially inciting violence or unrest.<sup>24</sup> To address these concerns, the Indian government has initiated several measures aimed at curbing the spread of fake news and ensuring the accountability of digital

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<sup>20</sup> Dwivedi, Prajwal, Puttaswamy V. Union of India (May 10, 2021), Available at: SSRN: <https://ssrn.com/abstract=4069390>

<sup>21</sup> Misra, Rajat and Grover, Rajat, Future of Privacy: Evaluating the Personal Data Protection Bill, 2019 in Light of Contract for the Web (April 8, 2020). available at: SSRN: <https://ssrn.com/abstract=3592363> or <http://dx.doi.org/10.2139/ssrn.3592363>

<sup>22</sup> Dr. Yadav & Gaurav Yadav, Data Protection in India in Reference to Personal Data Protection Bill 2019 and IT Act 2000, *IARJSET* 8, 251-255 (2021), <https://doi.org/10.17148/IARJSET.2021.8845>.

<sup>23</sup> C. Vaccari & A. Chadwick, Deepfakes and Disinformation: Exploring the Impact of Synthetic Political Video on Deception, Uncertainty, and Trust in News, *Social Media + Society* 6, no. 1 (2020), <https://doi.org/10.1177/2056305120903408>.

<sup>24</sup> Gambín, Á.F., Yazidi, A., Vasilakos, A. *et al.* Deepfakes: current and future trends. *Artif Intell Rev* 57, 64 (2024). <https://doi.org/10.1007/s10462-023-10679-x>

platforms.<sup>25</sup> For instance, the “Ministry of Electronics and Information Technology” (MeitY) has issued guidelines requiring social media intermediaries to deploy technology-based measures, such as automated tools, to identify and remove fake news and other harmful content.<sup>26</sup> Moreover, the “Election Commission of India” has expressed concerns about the potential use of deepfake technology to manipulate electoral outcomes. In response, the Commission has emphasized the need for robust mechanisms to monitor and counteract the dissemination of deepfake content during elections.<sup>27</sup> This includes collaboration with social media platforms to ensure prompt removal of such content and the development of public awareness campaigns to educate citizens about the risks and identification of deepfakes. Despite these efforts, there remains a pressing need for more targeted legal and policy measures to effectively address the unique challenges posed by deepfake technology. One potential approach could involve the introduction of specific legislation that directly addresses the creation and dissemination of deepfake content.<sup>28</sup> Such legislation could provide clear definitions and establish stringent penalties for the misuse of deepfake technology, thereby creating a more deterrent legal framework. Additionally, enhancing the technical

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<sup>25</sup> Poonam Malik, Dr. Kavita, & Kusum Singal, AI Initiatives by Indian Government: Journey towards Becoming Global Technology Leader, *Journal of Critical Reviews* 7, 4921-4930 (2020).

<sup>26</sup> Ashwini Siwal, Social Media Platform Regulation in India – A Special Reference to The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, 10.5771/9783748929789-215 (2021).

<sup>27</sup> Markus Appel, Fabian Prietzel, The detection of political deepfakes, *Journal of Computer-Mediated Communication*, Volume 27, Issue 4, July 2022, zmac008, <https://doi.org/10.1093/jcmc/zmac008>

<sup>28</sup> M. Pavis, Rebalancing Our Regulatory Response to Deepfakes with Performers’ Rights, *Convergence* 27, no. 4, 974-998 (2021), <https://doi.org/10.1177/13548565211033418>.

capabilities of law enforcement agencies to detect and investigate deepfakes would be crucial in ensuring effective enforcement.<sup>29</sup> International cooperation and harmonization of legal standards are also essential, given the global nature of the internet and the ease with which deepfake content can cross borders.<sup>30</sup> Collaborative efforts among countries to develop common legal frameworks and share best practices could enhance the global capacity to combat the misuse of deepfake technology. Moreover, fostering partnerships with technology companies and research institutions to develop advanced detection and prevention tools would be a vital component of a comprehensive strategy to address the deepfake menace.

### 3. Privacy Concerns and Data Protection

Privacy concerns and data protection are pivotal issues in the context of deepfake technology, particularly in India, where the rapid digitization of society has been accompanied by a surge in privacy breaches and data misuse.<sup>31</sup> The proliferation of deepfake technology exacerbates these issues, raising significant questions about how personal data is collected, stored, and used to create manipulated content.<sup>32</sup> Given the lack of comprehensive data protection laws in India, the emergence of deepfake technology poses new and complex challenges for privacy and data protection

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<sup>29</sup> Raghav, Manjula & Marwaha, Sanjana. (2023). "Indian Legal Framework on the Right to Privacy in Cyberspace-Issues and Challenges" *Fiat Justisia: Jurnal Ilmu Hukum*. 17. 1-16. 10.25041/fiatjustisia.v17no1.2667.

<sup>30</sup> Bharat Dhiman, Exploding AI-Generated Deepfakes and Misinformation: A Threat to Global Concern in the 21st Century, Qeios (2023), <https://doi.org/10.32388/DPLE2L>.

<sup>31</sup> T.W. Jing & R.K. Murugesan, Protecting Data Privacy and Prevent Fake News and Deepfakes in Social Media via Blockchain Technology, in *Advances in Cyber Security* 590, 590-605 (M. Anbar, N. Abdullah & S. Manickam eds., 2021), [https://doi.org/10.1007/978-981-33-6835-4\\_44](https://doi.org/10.1007/978-981-33-6835-4_44).

<sup>32</sup> Gambín, Á.F., Yazidi, A., Vasilakos, A. *et al.* Deepfakes: current and future trends. *Artif Intell Rev* 57, 64 (2024). <https://doi.org/10.1007/s10462-023-10679-x>

that necessitate urgent legal and policy responses.<sup>33</sup> Deepfake technology leverages vast amounts of data to create realistic synthetic media. This data often includes images, videos, and audio recordings of individuals, which can be harvested from various sources, including social media platforms, public databases, and private collections.<sup>34</sup> The ability to manipulate and fabricate content using personal data without consent raises severe privacy concerns. Individuals may find their likeness used in ways they did not authorize or even foresee, leading to significant emotional and reputational harm.<sup>35</sup> For example, the creation of non-consensual deepfake pornography, which has emerged as a prevalent and distressing misuse of this technology, starkly illustrates the invasion of privacy that deepfakes can entail.<sup>36</sup>

In India, the issue of privacy has gained prominence, particularly following the Supreme Court's landmark judgment in "*K.S. Puttaswamy v. Union of India (2017)*",<sup>37</sup> which recognized the right to privacy as a fundamental right under the Constitution. This judgment underscored the need for robust privacy protections in

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<sup>33</sup> Robert Chesney & Danielle Keats Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 Cal. L. Rev. 1753 (2019), U. of Tex. Law, Pub. Law Research Paper No. 692, U. of Md. Legal Studies Research Paper No. 2018-21, available at: <https://ssrn.com/abstract=3213954> or <http://dx.doi.org/10.2139/ssrn.3213954>.

<sup>34</sup> Mika Westerlund, "The Emergence of Deepfake Technology: A Review", *Technology Innovation Management Review* 9, 39-52 (2019), <https://doi.org/10.22215/timreview/1282>.

<sup>35</sup> Ho, F. N., Ho-Dac, N., & Huang, J. S. (2023). The Effects of Privacy and Data Breaches on Consumers' Online Self-Disclosure, Protection Behavior, and Message Valence. *Sage Open*, 13(3). <https://doi.org/10.1177/21582440231181395>.

<sup>36</sup> A. Birrer & N. Just, *What We Know and Don't Know About Deepfakes: An Investigation into the State of the Research and Regulatory Landscape*, *New Media & Society* 0, no. 0 (2024), <https://doi.org/10.1177/14614448241253138>.

<sup>37</sup> AIR 2018 SC (SUPP) 1841, 2019 (1) SCC 1.



the digital age.<sup>38</sup> However, translating this constitutional guarantee into effective legal frameworks has been a challenging process. The “*Personal Data Protection Bill, 2019*”, represents a significant step towards establishing comprehensive data protection laws in India, but its enactment and implementation have been delayed.<sup>39</sup> Once in force, the bill is expected to address various aspects of data privacy, including the collection, processing, and storage of personal data, and it could provide a framework for addressing some of the privacy concerns associated with deepfake technology.<sup>40</sup>

A critical aspect of privacy in the context of deepfakes is the concept of consent. Deepfake technology often involves the use of an individual’s likeness without their explicit consent, violating their right to control the use of their personal data.<sup>41</sup> A key point of emphasis for the “*Personal Data Protection Bill, 2019*” is getting people’s consent before processing their personal data.<sup>42</sup> However, the dynamic and often clandestine nature of deepfake creation complicates the enforcement of consent requirements. Many individuals may not even be aware that their data has been used to create deepfakes, making it difficult to exercise their rights under

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<sup>38</sup> Ishwar Singh, Justice K.S. Puttasamy v Union of India: A Critique of Its Definition of Privacy and Its Intrusion, in *A Public Discourse on Privacy: An Analysis of Justice K.S. Puttasamy v. Union of India* (R. Venkata Rao et al. eds., 2018), available at <https://ssrn.com/abstract=3706203>.

<sup>39</sup> Rajat Misra & Rajat Grover, *Future of Privacy: Evaluating the Personal Data Protection Bill, 2019 in Light of Contract for the Web*, available at: SSRN: <https://ssrn.com/abstract=3592363> or <http://dx.doi.org/10.2139/ssrn.3592363> (April 8, 2020).

<sup>40</sup> Dr. Jayanta Ghosh & Uday Shankar, *Privacy and Data Protection Laws in India: A Right-Based Analysis* (2016).

<sup>41</sup> C. Vaccari & A. Chadwick, *Deepfakes and Disinformation: Exploring the Impact of Synthetic Political Video on Deception, Uncertainty, and Trust in News, Social Media + Society* 6, no. 1 (2020), <https://doi.org/10.1177/2056305120903408>.

<sup>42</sup> Rajat Misra & Rajat Grover, *Future of Privacy: Evaluating the Personal Data Protection Bill, 2019 in Light of Contract for the Web*, available at: SSRN: <https://ssrn.com/abstract=3592363> or <http://dx.doi.org/10.2139/ssrn.3592363> (April 8, 2020).

data protection laws.<sup>43</sup> The misuse of personal data for creating deepfakes also intersects with broader concerns about data security.<sup>44</sup> In India, data breaches and unauthorized access to personal information are not uncommon, and the lack of stringent data security measures exacerbates the risks associated with deepfake technology. When personal data is compromised, it can be exploited to create highly realistic deepfakes that are difficult to distinguish from genuine content. This not only violates individual privacy but also undermines public trust in digital communications.<sup>45</sup>

To address these challenges, it is essential to enhance data security measures across various sectors.<sup>46</sup> The “Personal Data Protection Bill, 2019”, includes provisions for data security, mandating that data fiduciaries implement appropriate security safeguards to protect personal data from breaches and unauthorized access.<sup>47</sup> Strengthening these measures and ensuring their rigorous enforcement is crucial to mitigating the risks associated with

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<sup>43</sup> S. Trepte et al., Do People Know About Privacy and Data Protection Strategies? Towards the “Online Privacy Literacy Scale” (OPLIS), in *Reforming European Data Protection Law 337*, 337-356 (S. Gutwirth, R. Leenes & P. de Hert eds., Law, Governance and Technology Series, vol. 20, Springer, Dordrecht), [https://doi.org/10.1007/978-94-017-9385-8\\_14](https://doi.org/10.1007/978-94-017-9385-8_14).

<sup>44</sup> Bharat Dhiman, *Exploding AI-Generated Deepfakes and Misinformation: A Threat to Global Concern in the 21st Century*, Qeios (2023), <https://doi.org/10.32388/DPLE2L>.

<sup>45</sup> Hicham Hammouchi et al., Digging Deeper into Data Breaches: An Exploratory Data Analysis of Hacking Breaches Over Time, *Procedia Computer Science* 151, 1004-1009 (2019), <https://doi.org/10.1016/j.procs.2019.04.141>.

<sup>46</sup> Adeola Adenubi, Ayorinde Oduroye, & Adeniyi Akanni, Data Security in Big Data: Challenges, Strategies, and Future Trends, *Int’l J. Res. Educ. Humanities & Commerce* 05 (2024), <https://doi.org/10.37602/IJREHC.2024.5201>.

<sup>47</sup> Saharsh Saxena, Right to Privacy and The Personal Data Protection Bill of 2019: A Critique, *India L.J.* 2020 (ISSN: 0975-0606), available at: SSRN: <https://ssrn.com/abstract=3778938> or <http://dx.doi.org/10.2139/ssrn.3778938> (August 11, 2020).

deepfake technology.<sup>48</sup> Additionally, promoting awareness and best practices for data security among individuals and organizations can help in reducing the vulnerability of personal data to misuse. Another significant privacy concern related to deepfakes is the potential for mass surveillance and profiling.<sup>49</sup> The ability to create realistic synthetic media can be exploited by state and non-state actors for surveillance purposes, undermining individual privacy and autonomy. In India, concerns about surveillance have been heightened by incidents such as the alleged use of the Pegasus spyware to monitor activists, journalists, and politicians.<sup>50</sup> Deepfake technology could potentially be used to enhance surveillance capabilities, creating more sophisticated means of tracking and profiling individuals without their knowledge or consent.<sup>51</sup> This brings up significant issues regarding how to strike a balance between personal privacy and national security as well as the requirement for strict control procedures to stop the improper use of surveillance technology.<sup>52</sup> Furthermore, the spread of deepfakes can lead to the erosion of trust in digital communications and media. When individuals can no longer trust the authenticity of images, videos, and audio recordings, the very foundation of privacy

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<sup>48</sup> Puneet Pathak & Anwesha Ghosh, Right-Based Approach to Data Protection: An Analysis of Personal Data Protection Bill, 2019, XV Journal 184-194 (2022).

<sup>49</sup> Arain MA, Tarraf R, Ahmad A. Assessing staff awareness and effectiveness of educational training on IT security and privacy in a large healthcare organization. J Multidiscip Healthc. 2019 Jan 9;12:73-81. doi: 10.2147/JMDH.S183275. PMID: 30666123; PMCID: PMC6331063.

<sup>50</sup> T.A. Neyazi, A. Kalogeropoulos, & R.K. Nielsen, Misinformation Concerns and Online News Participation among Internet Users in India, Social Media + Society 7, no. 2 (2021), <https://doi.org/10.1177/20563051211009013>.

<sup>51</sup> C. Vaccari & A. Chadwick, Deepfakes and Disinformation: Exploring the Impact of Synthetic Political Video on Deception, Uncertainty, and Trust in News, Social Media + Society 6, no. 1 (2020), <https://doi.org/10.1177/2056305120903408>.

<sup>52</sup> Divyanshu Dembi, Privacy & National Security: A Balancing Act? (2021), available at: SSRN: <https://ssrn.com/abstract=3953357> or <http://dx.doi.org/10.2139/ssrn.3953357>.

and data protection is undermined.<sup>53</sup> This erosion of trust can have far-reaching implications, from personal relationships to the credibility of news and information.<sup>54</sup> In India, where digital media plays a crucial role in shaping public opinion and political discourse, the potential for deepfakes to distort reality and spread misinformation poses a serious threat to democratic processes and social stability.<sup>55</sup>

Addressing these privacy concerns requires a multi-faceted approach that includes legal, technological, and societal interventions. Legal reforms should focus on updating existing laws to explicitly address the challenges posed by deepfake technology. This includes defining what constitutes a deepfake, establishing clear penalties for the creation and dissemination of non-consensual deepfakes, and ensuring that data protection laws are robust enough to cover the unauthorized use of personal data for deepfakes.<sup>56</sup> Technological solutions, such as advanced deepfake detection tools and watermarking technologies, can help in identifying and mitigating the impact of deepfakes. Collaboration between government, technology companies, and civil society is essential to develop and deploy these solutions effectively.<sup>57</sup> In

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<sup>53</sup> T. Weikmann, H. Greber, & A. Nikolaou, After Deception: How Falling for a Deepfake Affects the Way We See, Hear, and Experience Media, *The Int'l J. of Press/Politics* 0, no. 0 (2024), <https://doi.org/10.1177/19401612241233539>.

<sup>54</sup> Samer Al-khazraji et al., Impact of Deepfake Technology on Social Media: Detection, Misinformation and Societal Implications (2023).

<sup>55</sup> N. Sharma & G. Sivakumar, Social Media, Political Discourse and the 2019 Elections in India: Journalists' Perspectives on the Changing Role of the Mainstream Media in Setting the Political Agenda, *Global Media & Communication* 19, no. 2 (2023), 185-205, <https://doi.org/10.1177/17427665231186252>.

<sup>56</sup> D. J. Power, C. Heavin, & Y. O'Connor, Balancing privacy rights and surveillance analytics: a decision process guide, 4 *J. Bus. Analytics* 155, 155-170 (2021), <https://doi.org/10.1080/2573234X.2021.1920856>.

<sup>57</sup> Kaur, A., Noori Hoshyar, A., Saikrishna, V. *et al.* Deepfake video detection: challenges and opportunities. *Artif Intell Rev* 57, 159 (2024). <https://doi.org/10.1007/s10462-024-10810-6>.

addition to legal and technological measures, promoting digital literacy and awareness among the public is crucial. Educating individuals about the risks associated with deepfakes and how to identify manipulated content can empower them to protect their privacy and personal data.<sup>58</sup> Public awareness campaigns, educational programs, and media literacy initiatives can play a significant role in building resilience against the misuse of deepfake technology. In India, where digital literacy levels vary widely, targeted efforts to reach diverse populations, including those in rural and underserved areas, are particularly important. Moreover, fostering a culture of ethical technology development and use is essential to addressing the privacy concerns associated with deepfakes.<sup>59</sup> Encouraging developers and tech companies to adopt ethical guidelines and practices can help in preventing the creation and dissemination of harmful deepfake content. Industry self-regulation, combined with robust legal frameworks, can create a safer digital environment where privacy and data protection are prioritized.

#### 4. Manipulation of Information and Misinformation

The manipulation of information and dissemination of misinformation have long been tools for influencing public opinion and undermining democratic processes.<sup>60</sup> With the advent of deepfake technology, these phenomena have taken on a new dimension, posing significant challenges to societies worldwide. In

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<sup>58</sup> N. Naffi et al., Empowering Youth to Combat Malicious Deepfakes and Disinformation: An Experiential and Reflective Learning Experience Informed by Personal Construct Theory, *Journal of Constructivist Psychology*, 1–22 (2023), <https://doi.org/10.1080/10720537.2023.2294314>.

<sup>59</sup> Nasir Hussain & Asad Abbas, Ethical Considerations in Artificial Intelligence and Machine Learning (2023).

<sup>60</sup> E. Broda & J. Strömbäck, Misinformation, Disinformation, and Fake News: Lessons from an Interdisciplinary, Systematic Literature Review, 48 *Annals Int'l Commc'n Ass'n* 139, 139-166 (2024), <https://doi.org/10.1080/23808985.2024.2323736>.

India, a country with a diverse and vibrant democratic system, the impact of deepfake technology on information manipulation and misinformation is particularly profound. This issue is magnified by the widespread use of social media and digital platforms, where deepfakes can be easily disseminated to large audiences.<sup>61</sup> Deepfake technology uses artificial intelligence algorithms to create films, pictures, and audio recordings that seem remarkably lifelike but are actually fake. With the help of these deepfakes, believable fictional narratives that mislead the public, warp reality, and alter perceptions may be produced.<sup>62</sup> One of the most alarming aspects of deepfake technology is its potential to be used in political campaigns and electoral processes. Political actors can exploit deepfakes to discredit opponents, spread false information, and manipulate voter behavior.<sup>63</sup> In India, where elections are fiercely contested and political polarization is intense, the use of deepfakes in political campaigns can have far-reaching implications. For example, even if the content is completely fictional, a deepfake video showing a political leader making offensive or provocative remarks might be used to influence public opinion against them. In addition to undermining the electoral process's integrity, this also erodes public confidence in democratic institutions. The manipulation of information through deepfakes is not limited to political contexts. It extends to social and cultural domains as well. For example, deepfake technology can be used to create false narratives about communal tensions, exacerbate social divisions, and incite violence. In a diverse country like India, where social

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<sup>61</sup> Mayank Tomar et al., *The Role of AI-Driven Tools in Shaping the Democratic Process: A Study of Indian Elections and Social Media Dynamics*, 52 *Indus. Eng'g J.* 143, 143-153 (2023).

<sup>62</sup> Maras, Marie-Helen & Alexandrou, Alex. (2018). Determining Authenticity of Video Evidence in the Age of Artificial Intelligence and in the Wake of Deepfake Videos. *International Journal of Evidence and Proof*. 23. 10.1177/1365712718807226.

<sup>63</sup> T. Dobber et al., *Do (Microtargeted) Deepfakes Have Real Effects on Political Attitudes?*, 26 *Int'l J. Press/Politics* 69, 69-91 (2021), <https://doi.org/10.1177/1940161220944364>.

cohesion is often fragile, the spread of deepfake content that inflames communal sentiments can have devastating consequences.<sup>64</sup> Incidents of mob violence and communal riots have been triggered by misinformation and fake news in the past, and the introduction of deepfakes adds a new layer of complexity to these challenges.<sup>65</sup> The role of social media platforms in the dissemination of deepfake content is critical. Platforms like Facebook, Twitter, WhatsApp, and YouTube are popular in India and serve as primary sources of information for many people. These platforms, however, also provide fertile ground for the spread of deepfakes and misinformation.<sup>66</sup> The virality of content on social media means that deepfake videos can reach millions of users within a short span of time, amplifying their impact. The challenge for social media companies is to develop and implement effective mechanisms to detect and remove deepfake content while balancing the principles of free speech and expression.<sup>67</sup> The Indian government has recognized the threat posed by misinformation and fake news, and efforts have been made to address these issues.<sup>68</sup> For example, the Ministry of Electronics and Information Technology (MeitY) has issued guidelines requiring social media intermediaries to proactively identify and remove harmful content, including deepfakes. The *“Information Technology*

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<sup>64</sup> Gamage, Dilrukshi & Chen, Jiayu & Sasahara, Kazutoshi. (2021). The Emergence of Deepfakes and its Societal Implications: A Systematic Review.

<sup>65</sup> C. Vaccari & A. Chadwick, Deepfakes and Disinformation: Exploring the Impact of Synthetic Political Video on Deception, Uncertainty, and Trust in News, 6 Soc. Media + Soc’y 1 (2020), <https://doi.org/10.1177/2056305120903408>.

<sup>66</sup> Jeffrey T. Hancock & Jeremy N. Bailenson, The Social Impact of Deepfakes, 24 Cyberpsychology, Behav. & Soc. Networking 149, 149-152 (2021).

<sup>67</sup> Samer Al-khazraji et al., Impact of Deepfake Technology on Social Media: Detection, Misinformation and Societal Implications, (2023).

<sup>68</sup> P. Borgohain et al., A Thematic Analysis of Fake News in India During the Pandemic, 42 Sci. & Tech. Libraries 297, 297-307 (2023), <https://doi.org/10.1080/0194262X.2022.2151060>.

(Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021”, mandate significant social media intermediaries to implement robust grievance redressal mechanisms and employ technology-based measures to identify and curb the spread of false information.<sup>69</sup> However, the implementation and enforcement of these guidelines remain challenging, given the sheer volume of content generated and shared on social media platforms daily.<sup>70</sup> In addition to regulatory measures, public awareness and digital literacy are essential components of combating the spread of deepfake misinformation. Educating the public about the existence and potential impact of deepfakes can empower individuals to critically evaluate the information they encounter online. In India, where digital literacy levels vary widely, targeted efforts to raise awareness about deepfakes are crucial. Initiatives such as media literacy campaigns, workshops, and educational programs can help equip citizens with the skills needed to identify and question manipulated content.<sup>71</sup> The media industry also has a vital role to play in addressing the challenge of deepfake misinformation. Journalists and news organizations must adopt rigorous verification processes to ensure the authenticity of the content they publish.<sup>72</sup> Fact-checking initiatives and collaborations between media outlets and technology companies can help in identifying and debunking deepfake content before it reaches a wide audience. In India, several fact-checking organizations have emerged to tackle the

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<sup>69</sup> Revised-IT-Rules-2021-proposed-amended.pdf (meity.gov.in).

<sup>70</sup> Moksha Sharma & Keerti Pendyal, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 - Protection from Malicious Content or Chilling Free Speech, SSRN (Nov. 1, 2021), <https://ssrn.com/abstract=3967857> or <http://dx.doi.org/10.2139/ssrn.3967857>.

<sup>71</sup> C. Audrin & B. Audrin, Key Factors in Digital Literacy in Learning and Education: A Systematic Literature Review Using Text Mining, 27 Educ. Info. Tech. 7395, 7395-7419 (2022), <https://doi.org/10.1007/s10639-021-10832-5>.

<sup>72</sup> Jesper Strömbäck et al., News Media Trust and Its Impact on Media Use: Toward a Framework for Future Research, 44 Annals Int’l Commc’n Ass’n 139, 139-56 (2020), <https://doi.org/10.1080/23808985.2020.1755338>.



problem of fake news, and their efforts can be instrumental in countering deepfake misinformation as well.<sup>73</sup>

Legal frameworks also need to evolve to address the specific challenges posed by deepfakes. While existing laws such as the “*Information Technology Act, 2000*”, and the BNS provide some recourse against the misuse of deepfake technology, there is a need for more targeted legislation.<sup>74</sup> Laws that specifically address the creation, distribution, and use of deepfake content can provide clearer definitions and establish stricter penalties for offenders. This would not only serve as a deterrent but also provide law enforcement agencies with the necessary tools to effectively tackle the issue.<sup>75</sup> International cooperation is another crucial aspect of addressing deepfake misinformation. Given the global nature of the internet and digital platforms, deepfake content can easily transcend national boundaries. Collaborative efforts between countries to develop common legal frameworks, share best practices, and engage in joint research and development can enhance the global capacity to combat deepfakes. India can play an active role in international forums and alliances focused on addressing the challenges posed by deepfake technology.<sup>76</sup>

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<sup>73</sup> P. Cavaliere, *From Journalistic Ethics to Fact-Checking Practices: Defining the Standards of Content Governance in the Fight Against Disinformation*, 12 *J. Media L.* 133, 133-165 (2020), <https://doi.org/10.1080/17577632.2020.1869486>.

<sup>74</sup> H. Sayyed, *Artificial Intelligence and Criminal Liability in India: Exploring Legal Implications and Challenges*, 10 *Cogent Soc. Scis.* 1 (2024), <https://doi.org/10.1080/23311886.2024.2343195>.

<sup>75</sup> G.P. Sahoo, *Legal Framework of Information Technology in India: With Special Reference to Cyber Obscenity*, in *Contemporary Issues in International Law* (B. Nirmal & R. Singh eds., Springer, Singapore, 2018), [https://doi.org/10.1007/978-981-10-6277-3\\_34](https://doi.org/10.1007/978-981-10-6277-3_34).

<sup>76</sup> R. Montasari, *Responding to Deepfake Challenges in the United Kingdom: Legal and Technical Insights with Recommendations, in Cyberspace, Cyberterrorism and the International Security in the Fourth Industrial Revolution (Advanced Sciences and Technologies for Security Applications*, Springer, Cham, 2024), [https://doi.org/10.1007/978-3-031-50454-9\\_12](https://doi.org/10.1007/978-3-031-50454-9_12).

Technological advancements also offer promising solutions to the problem of deepfake misinformation. Research and development in deepfake detection technologies are ongoing, with several promising approaches emerging. Machine learning and artificial intelligence can be leveraged to develop tools that automatically detect and flag deepfake content. Collaboration between technology companies, academic institutions, and research organizations can accelerate the development and deployment of these tools. In India, investment in research and innovation in this area can be supported through public and private sector initiatives.

### **5. Identity Theft and Fraud**

Identity theft and fraud represent significant challenges in the context of deepfake technology, particularly in India, where digital identity systems are becoming increasingly prevalent.<sup>77</sup> Deepfake technology, with its ability to create highly realistic synthetic media, can be exploited by malicious actors to impersonate individuals and perpetrate various forms of fraud. From financial scams to impersonation for political or social engineering purposes, the misuse of deepfakes for identity theft poses serious risks to individuals and society as a whole.<sup>78</sup>

In India, where digital identity initiatives such as Aadhaar have been widely adopted, the potential for identity theft through deepfakes is a matter of grave concern. Aadhaar, a biometric-based identification system, assigns a unique 12-digit identity number to each resident of India, linking it to their biometric and demographic information. While Aadhaar has been hailed as a landmark initiative

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<sup>77</sup> T. Kalvet, M. Tiits, & P. Ubakivi-Hadachi, Risks and Societal Implications of Identity Theft, in *Electronic Governance and Open Society: Challenges in Eurasia*. EGOSE 2018 (A. Chugunov et al. eds., Communications in Computer and Information Science, vol. 947, Springer, Cham, 2019), [https://doi.org/10.1007/978-3-030-13283-5\\_6](https://doi.org/10.1007/978-3-030-13283-5_6).

<sup>78</sup> C. Vaccari & A. Chadwick, Deepfakes and Disinformation: Exploring the Impact of Synthetic Political Video on Deception, Uncertainty, and Trust in News, 6 *Soc. Media + Soc.* 1 (2020), <https://doi.org/10.1177/2056305120903408>.

for streamlining service delivery and facilitating access to government benefits, concerns have been raised about the security and privacy implications of the system.<sup>79</sup> Deepfake technology introduces new vulnerabilities to India's digital identity ecosystem. By exploiting weaknesses in biometric authentication systems, malicious actors can use deepfakes to impersonate individuals and gain unauthorized access to sensitive data or services.<sup>80</sup> For example, a deepfake video or audio recording of an individual's voice could be used to bypass voice-based authentication systems, allowing fraudsters to impersonate the victim and carry out fraudulent transactions. Moreover, the proliferation of deepfake technology poses challenges for verifying the authenticity of identity documents and credentials. Deepfakes can be used to create fake IDs, passports, or other documents that are indistinguishable from genuine ones, making it difficult for authorities to detect fraudulent activities.<sup>81</sup> This not only undermines the integrity of identity verification processes but also erodes trust in the reliability of digital identity systems. The implications of identity theft through deepfakes extend beyond financial fraud to encompass broader societal risks.<sup>82</sup> For example, deepfakes could be used to impersonate political leaders or other public figures, disseminating false information or inciting social unrest. In a country as diverse and politically charged as India, the potential for deepfake-based manipulation of public opinion is

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<sup>79</sup> S. Chaturvedi & H. Sriram, *India: Unique Identification Authority, in Digital Government* (S. Falk, A. Römmele, & M. Silverman eds., Springer, Cham, 2017), [https://doi.org/10.1007/978-3-319-38795-6\\_8](https://doi.org/10.1007/978-3-319-38795-6_8).

<sup>80</sup> P. Singh, *Aadhaar and Data Privacy: Biometric Identification and Anxieties of Recognition in India*, 24 *Info. Comm. & Soc'y* 978 (2019), <https://doi.org/10.1080/1369118X.2019.1668459>.

<sup>81</sup> A. Kaur, A. Noori Hoshyar, V. Saikrishna et al., *Deepfake Video Detection: Challenges and Opportunities*, 57 *Artif. Intell. Rev.* 159 (2024), <https://doi.org/10.1007/s10462-024-10810-6>.

<sup>82</sup> Á.F. Gambín, A. Yazidi, A. Vasilakos et al., *Deepfakes: Current and Future Trends*, 57 *Artif. Intell. Rev.* 64 (2024), <https://doi.org/10.1007/s10462-023-10679-x>.

particularly concerning.<sup>83</sup> Deepfakes could be used to create fake speeches, interviews, or statements attributed to political leaders, sowing confusion and distrust among the populace.<sup>84</sup> Addressing the challenges posed by deepfake-based identity theft requires a multi-pronged approach that encompasses legal, technological, and societal interventions. From a legal standpoint, there is a need to strengthen laws and regulations governing identity theft and fraud to explicitly address the misuse of deepfake technology. The “Information Technology Act, 2000”, and the Aadhaar Act, 2016, provide some provisions for addressing identity-related crimes, but these laws may need to be updated to keep pace with technological advancements.

In addition to legal reforms, technological solutions are essential for detecting and mitigating the risks of deepfake-based identity theft. Advanced biometric authentication systems that incorporate multi-factor authentication and liveness detection techniques can help in verifying the authenticity of individuals’ identities and preventing impersonation attacks.<sup>85</sup> Furthermore, research and development in deepfake detection technologies are crucial for identifying fraudulent content and distinguishing between genuine and manipulated media.<sup>86</sup> Public awareness and education are also critical components of combating identity theft through deepfakes.

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<sup>83</sup> Pawelec, M. Deepfakes and Democracy (Theory): How Synthetic Audio-Visual Media for Disinformation and Hate Speech Threaten Core Democratic Functions. *DISO* 1, 19 (2022). <https://doi.org/10.1007/s44206-022-00010-6>

<sup>84</sup> E. Pashentsev, The Malicious Use of Deepfakes Against Psychological Security and Political Stability, in *The Palgrave Handbook of Malicious Use of AI and Psychological Security* (E. Pashentsev ed., 2023), [https://doi.org/10.1007/978-3-031-22552-9\\_3](https://doi.org/10.1007/978-3-031-22552-9_3).

<sup>85</sup> Smita Khairnar et al., Face Liveness Detection Using Artificial Intelligence Techniques: A Systematic Literature Review and Future Directions, 7 *Big Data & Cognitive Computing* 37 (2023), <https://doi.org/10.3390/bdcc7010037>.

<sup>86</sup> Kaur, A., Noori Hoshyar, A., Saikrishna, V. *et al.* Deepfake video detection: challenges and opportunities. *Artif Intell Rev* 57, 159 (2024). <https://doi.org/10.1007/s10462-024-10810-6>

Individuals need to be informed about the risks associated with sharing sensitive information online and the importance of safeguarding their digital identities. Educational campaigns and awareness programs can help raise awareness about deepfake technology and its potential implications for identity theft and fraud. Furthermore, programs promoting digital literacy can provide people the ability to identify and report questionable activity associated with identity theft. Working together, government agencies, tech firms, and civil society organizations may create comprehensive plans to combat identity theft based on deepfake identities. Collaborations between the public and commercial sectors may help exchange information, conduct collaborative research, and create best practices for thwarting identity theft. Moreover, as deepfake-based attacks may transcend national boundaries, international collaboration is essential for tackling the global nature of identity theft and fraud.

## 6. Regulatory Responses and Future Directions

Regulatory responses to the challenges posed by deepfake technology are critical in ensuring that legal frameworks keep pace with technological advancements and protect individuals from its harmful effects.<sup>87</sup> In India, as in many other countries, the emergence of deepfakes has prompted policymakers, legal experts, and technology stakeholders to explore new regulatory approaches and frameworks. These efforts aim to address the multifaceted risks associated with deepfakes, including misinformation, privacy violations, identity theft, and fraud.<sup>88</sup> At the heart of regulatory responses to deepfakes lies the need for clear definitions and classifications within existing legal frameworks. The “*Information Technology Act, 2000*”, forms the backbone of India’s regulatory

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<sup>87</sup> M. Pavis, Rebalancing Our Regulatory Response to Deepfakes with Performers’ Rights, 27 *Convergence* 974 (2021), <https://doi.org/10.1177/13548565211033418>.

<sup>88</sup> Mika Westerlund, The Emergence of Deepfake Technology: A Review, 9 *Tech. Innovation Mgmt. Rev.* 39 (2019), <https://doi.org/10.22215/timreview/1282>.

framework for addressing cybercrimes and digital offenses. However, the Act does not explicitly mention deepfakes or provide specific provisions for combating the misuse of synthetic media.<sup>89</sup> As a result, there is a pressing need to update and expand the scope of existing laws to encompass deepfake-related offenses.

In response to this gap, there have been calls for amendments to the Information Technology Act to explicitly define deepfakes and establish legal mechanisms for addressing their creation, dissemination, and impact.<sup>90</sup> Such amendments could include provisions for criminalizing the creation of deepfakes without consent, imposing penalties for the malicious use of synthetic media to deceive or defame individuals, and providing avenues for victims to seek redressal and compensation.<sup>91</sup> Furthermore, the “Personal Data Protection Bill, 2019”, represents a significant legislative effort to regulate the collection, processing, and storage of personal data in India. While primarily focused on data privacy concerns, the Bill also has implications for addressing the misuse of personal data in creating deepfakes.<sup>92</sup> By establishing stringent data protection standards and accountability measures for entities handling personal data, the Bill aims to mitigate the risks associated with deepfake-related privacy violations.

In addition to legislative reforms, regulatory responses to deepfakes in India must also consider the role of digital platforms and social media intermediaries in mitigating the spread of synthetic media. *The “Information Technology (Intermediary Guidelines and Digital*

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<sup>89</sup> Aseem Paliwal & Dr. Ahmad, *Emerging Technologies and Future Challenges in Indian Cyber Law* (2024).

<sup>90</sup> A. Kovacs, *Cybersecurity and Data Protection Regulation in India: An Uneven Patchwork*, in *CyberBRICS* 75 (L. Belli ed., 2021), [https://doi.org/10.1007/978-3-030-56405-6\\_4](https://doi.org/10.1007/978-3-030-56405-6_4).

<sup>91</sup> H. Sayyed, *Artificial Intelligence and Criminal Liability in India: Exploring Legal Implications and Challenges*, 10 *Cogent Soc. Sci.* (2024), <https://doi.org/10.1080/23311886.2024.2343195>.

<sup>92</sup> Saharsh Saxena, *Right to Privacy and The Personal Data Protection Bill of 2019: A Critique* (Aug. 11, 2020), *India L.J.* (2020), <https://ssrn.com/abstract=3778938> or <http://dx.doi.org/10.2139/ssrn.3778938>.

*Media Ethics Code) Rules, 2021*”, mandate significant social media intermediaries to implement measures for proactive identification and removal of harmful content, including deepfakes.<sup>93</sup> These guidelines require platforms to deploy automated tools and technologies to detect and flag deepfake content, collaborate with law enforcement agencies, and establish grievance redressal mechanisms for addressing complaints related to synthetic media.<sup>94</sup> However, the implementation of regulatory measures and guidelines faces several challenges in the Indian context. The sheer volume of content generated and shared on digital platforms, coupled with the rapid evolution of deepfake technology, poses logistical and technological challenges for effective enforcement. There is a need for continuous capacity-building efforts among law enforcement agencies, judiciary, and regulatory bodies to enhance their understanding of deepfake technology and its implications. Moreover, the effectiveness of regulatory responses to deepfakes in India depends on international cooperation and collaboration. Given the transnational nature of deepfake-related offenses, coordinated efforts between countries are essential for developing common legal standards, sharing best practices, and facilitating cross-border cooperation in investigations and enforcement actions. India can leverage its position in international forums to advocate for global initiatives aimed at combating deepfake-related threats and promoting digital trust and security. Looking ahead, future regulatory directions in India should prioritize innovation and technological development in combating deepfakes. This includes investing in research and development of advanced detection technologies, fostering collaborations between

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<sup>93</sup> Moksha Sharma & Keerti Pendyal, *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 - Protection from Malicious Content or Chilling Free Speech* (Nov. 1, 2021), <https://ssrn.com/abstract=3967857> or <http://dx.doi.org/10.2139/ssrn.3967857>.

<sup>94</sup> Nidhi Sandotra & Baneet Arora, *A Comprehensive Evaluation of Feature-Based AI Techniques for Deepfake Detection*, *Neural Comput. & Applic.* 36, 3859–3887 (2024), <https://doi.org/10.1007/s00521-023-09288-0>.

academia, industry, and government agencies, and supporting initiatives that promote digital literacy and awareness among the public. By fostering an ecosystem of responsible innovation and regulatory compliance, India can position itself as a leader in addressing the challenges posed by deepfake technology while safeguarding the rights and interests of its citizens. Furthermore, regulatory responses should also consider the ethical implications of deepfake technology and its impact on societal norms and values. Stakeholder consultations, public debates, and interdisciplinary dialogues are essential for developing regulatory frameworks that strike a balance between promoting innovation and protecting individuals' rights and freedoms. By engaging with diverse stakeholders, including technology developers, civil society organizations, and legal experts, India can ensure that its regulatory responses to deepfakes are comprehensive, inclusive, and forward-looking.

## **7. Conclusion**

In conclusion, the advent of deepfake technology presents a myriad of challenges and opportunities for India's legal, technological, and societal landscape. As a country with a rapidly growing digital economy and a diverse population, India is uniquely positioned to both benefit from and grapple with the implications of deepfakes. Throughout this paper, we have explored the multifaceted impacts of deepfake technology on various aspects of Indian society, including privacy, misinformation, identity theft, and regulatory responses. Deepfakes represent a significant threat to privacy in India, where the proliferation of digital technologies and the widespread adoption of digital identity systems have raised concerns about data protection and security. The misuse of personal data to create deepfakes can lead to severe privacy violations, undermining individuals' autonomy and control over their digital identities. Strengthening data protection laws and implementing robust security measures are essential steps in safeguarding privacy in the face of deepfake-related risks.



Moreover, the spread of misinformation and fake news through deepfake technology poses challenges to India's democratic institutions and social cohesion. With a diverse population and a vibrant media landscape, India is particularly vulnerable to the manipulation of information for political or social engineering purposes. Deepfakes could be used to spread false narratives, incite communal tensions, or undermine public trust in democratic processes. Addressing these challenges requires a concerted effort from policymakers, media organizations, and civil society to promote media literacy, fact-checking, and responsible digital citizenship.

Identity theft and fraud represent additional risks associated with deepfake technology in India. The use of synthetic media to impersonate individuals and perpetrate financial scams or political manipulation poses serious threats to individuals' security and trust in digital systems. Strengthening identity verification mechanisms, enhancing cybersecurity measures, and promoting digital literacy are essential strategies for mitigating the risks of deepfake-related identity theft and fraud.

In response to these challenges, regulatory responses to deepfakes in India must be comprehensive, forward-looking, and adaptive to technological advancements. Legislative reforms, such as amendments to existing laws and the enactment of new regulations, are necessary to address the unique challenges posed by deepfake technology. Moreover, regulatory frameworks should prioritize innovation, collaboration, and international cooperation to effectively combat deepfake-related threats. Looking ahead, future directions for addressing deepfakes in India should focus on fostering an ecosystem of responsible innovation, ethical technology development, and digital empowerment. Investing in research and development of deepfake detection technologies, promoting interdisciplinary collaboration, and engaging with stakeholders from diverse sectors are essential steps in building resilience against the risks of deepfake technology. By adopting a proactive and collaborative approach, India can position itself as a

leader in addressing the challenges posed by deepfakes while harnessing the potential of emerging technologies for societal benefit.



## **Bridging Genetic Resources, Traditional Knowledge and Innovation in the Legal Context**

**Ishita Chatterjee\***

### **Abstract**

As biotechnology continues to advance, the intersection of genetic resources, traditional knowledge, and innovation poses complex challenges and opportunities. This paper explores the need for harmonization in this dynamic landscape, aiming to strike a balance between scientific progress and the preservation of cultural heritage. The coexistence of genetic resources and traditional knowledge with cutting-edge biotechnological innovations is essential for sustainable development, biodiversity conservation, and social equity. The paper begins by elucidating the significance of genetic resources in biotechnology, emphasizing the vast potential they hold for medical, agricultural, and industrial applications. Concurrently, it underscores the ethical considerations associated with the utilization of genetic materials and the importance of fair and equitable access and benefit-sharing mechanisms. Traditional knowledge, often deeply rooted in indigenous communities, is a crucial aspect that enriches biotechnological advancements. The paper emphasizes the need to respect and integrate traditional knowledge into biotechnological research, recognizing the unique insights it provides into sustainable practices, biodiversity conservation, and ecosystem management. The challenges of harmonizing genetic resources and traditional knowledge with innovation are explored, including issues related to intellectual property rights, bio-piracy, and cultural appropriation. The paper proposes strategies for creating a collaborative framework that respects the rights of indigenous communities, encourages technology transfer, and fosters responsible innovation. Furthermore, the paper discusses case studies exemplifying successful collaborations between biotechnologists, researchers, and indigenous communities. These case studies highlight instances where biotechnological innovation has been aligned with traditional knowledge, resulting in mutually beneficial outcomes. Finally, the paper advocates for

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a holistic approach that embraces the diversity of perspectives, values, and knowledge systems within the realm of biotechnology. It emphasizes the importance of developing international guidelines and policies that facilitate the harmonious integration of genetic resources, traditional knowledge, and innovation. Such harmonization is imperative not only for scientific progress but also for fostering a more inclusive, sustainable, and ethically sound biotechnological landscape.

**Keywords:** Stakeholder engagement, Ethical guidelines, Knowledge sharing, Fair and equitable partnerships, Commercialization, Technological advancements

## **1. Introduction**

Biotechnology, a field that seamlessly integrates biology and technology, has witnessed remarkable advancements in recent years. As breakthroughs occur, it becomes increasingly vital to strike a balance between progress, ethical considerations, and the preservation of cultural heritage. The harmonization of biotechnology involves the delicate task of bridging genetic resources, traditional knowledge, and innovation. In the dynamic landscape of biotechnology, the intersection of genetic resources, traditional knowledge, and innovation presents both opportunities and challenges. The harmonization of these elements is crucial for ensuring ethical practices, sustainable development, and the equitable distribution of benefits. This integration requires a delicate balance between scientific advancements, respect for traditional wisdom, and the responsible use of genetic resources. Biotechnology, with its potential to revolutionize fields such as medicine, agriculture, and environmental conservation, stands at the forefront of scientific progress. However, this progress is intricately linked to the utilization of genetic resources, which may include plant and animal genomes, microbial diversity, and human genetic information. As we delve into the intricacies of biotechnological advancements, it becomes imperative to address the ethical considerations surrounding the access, use, and sharing of these genetic resources.

Traditional knowledge, often held by indigenous and local communities, is a wellspring of wisdom accumulated over generations. It encompasses the understanding of biodiversity, sustainable agricultural practices, and traditional medicinal knowledge. The harmonization of biotechnology with traditional knowledge requires acknowledging and respecting the rights of these communities, ensuring that their contributions are duly recognized, and benefits are shared equitably.

The pursuit of innovation in biotechnology must be guided by ethical principles to prevent the exploitation of genetic resources and traditional knowledge. Striking a balance between encouraging scientific progress and safeguarding the rights of communities becomes paramount in fostering a collaborative and mutually beneficial environment.

This paper aims to explore the challenges and opportunities in harmonizing biotechnology with genetic resources and traditional knowledge.<sup>1</sup> By examining case studies, ethical frameworks, and global initiatives, we seek to elucidate pathways towards responsible biotechnological innovation. As we navigate this complex terrain, it is essential to engage in inclusive dialogue, involving scientists, policymakers, indigenous communities, and the broader public, to shape a harmonious and sustainable future for biotechnology.

## **2. Genetic Resources and Biodiversity**

Genetic resources refer to the heritable materials that are of value for present and future generations. These resources can be found in various forms, including genes, species, and ecosystems. Biodiversity, on the other hand, encompasses the variety of life on Earth, including the variety of species, ecosystems, and genetic diversity within species.

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<sup>1</sup> Brush, Stephen B. *Protecting Traditional Agricultural Knowledge: Recognizing and Supporting Indigenous and Local Communities*. Routledge, 2007.

The relationship between genetic resources and biodiversity is crucial for maintaining the health and resilience of ecosystems and for sustaining life on Earth. Here are some key points regarding genetic resources and biodiversity:

### **2.1 Genetic Diversity**

Genetic diversity within species is essential for their adaptability to changing environmental conditions. It provides the raw material for evolution and the development of new traits. Different populations of a species may exhibit genetic variations that make them better suited to specific environments or resistant to particular diseases.

### **2.2 Species Diversity**

The diversity of species in an ecosystem contributes to its overall stability and functionality. Each species plays a unique role in the ecosystem, and their interactions contribute to the health of the entire system.

Loss of species diversity can disrupt ecosystem services and affect human well-being by impacting resources such as food, medicine, and climate regulation.

### **2.3 Ecosystem Diversity**

Ecosystems comprise a variety of habitats and the species that inhabit them. This diversity of ecosystems is essential for supporting different life forms and ecological processes. Destruction or alteration of ecosystems can lead to the loss of genetic resources and biodiversity, with cascading effects on the entire ecosystem.

### **2.4 Conservation of Genetic Resources**

Conservation efforts often focus on preserving genetic diversity within species to ensure the long-term survival of populations and their ability to adapt to environmental changes. Seed banks, gene banks, and conservation areas are established to safeguard genetic resources, particularly for economically important plants and animals.

### **2.5 International Agreements**

The Convention on Biological Diversity (CBD) is a significant international agreement that addresses the conservation and

sustainable use of biological diversity, including genetic resources<sup>2</sup>. Access and benefit-sharing (ABS) mechanisms aim to ensure fair and equitable sharing of benefits derived from the use of genetic resources, especially in the context of bioprospecting and commercial exploitation.

### **2.6 Threats to Genetic Resources and Biodiversity**

Human activities, such as deforestation, over-exploitation of natural resources, pollution, and climate change, pose significant threats to genetic resources and biodiversity<sup>3</sup>. Habitat destruction and fragmentation can lead to the isolation of populations, reducing gene flow and increasing the risk of genetic erosion.

Thus, the conservation of genetic resources and biodiversity is crucial for maintaining the resilience of ecosystems, supporting sustainable development, and ensuring the well-being of present and future generations. International cooperation and sustainable management practices are essential components of effective conservation strategies.

### **2.7 The Foundation of Biotechnology**

Genetic resources, the building blocks of biotechnology, encompass the vast array of genetic material found in living organisms. Biodiversity, the variety of life on Earth, provides the raw materials for biotechnological breakthroughs. Understanding and responsibly accessing genetic resources are crucial steps in ensuring sustainable biotechnological development.

### **2.8 Conservation and Sustainable Use**

Preserving biodiversity is essential for the long-term success of biotechnology. Efforts must be made to conserve genetic resources, both in their natural habitats and in seed banks. The Convention on Biological Diversity (CBD) plays a pivotal role in guiding nations

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<sup>2</sup> Greiber, Thomas, et al. "An Explanatory Guide to the Nagoya Protocol on Access and Benefit-sharing". *Environmental Policy and Law*, vol. 41, no. 2, 2011, pp. 57–73.

<sup>3</sup> Nijar, Gurdial Singh. "The Nagoya Protocol on Access and Benefit Sharing of Genetic Resources: Analysis and Implementation Options for Developing Countries." *South Centre Research Papers*, no. 36, 2011.

towards sustainable practices, emphasizing the equitable sharing of benefits arising from the utilization of genetic resources.

### **3. Traditional Knowledge and Indigenous Perspectives:**

Traditional Knowledge and Indigenous Perspectives encompass a rich and diverse set of insights, practices, and worldviews developed by various indigenous communities over generations<sup>4</sup>. These perspectives are deeply rooted in the symbiotic relationship between these communities and their environments, emphasizing sustainability, interconnectedness, and holistic approaches to life.

#### **3.1 Connection to Nature**

Indigenous perspectives often highlight a profound connection to the natural world. Many indigenous cultures view nature as a living entity with which they share a reciprocal relationship. This connection goes beyond utilitarian purposes and encompasses spiritual, cultural, and ethical dimensions<sup>5</sup>.

#### **3.2 Sustainability and Stewardship**

Indigenous knowledge emphasizes sustainable practices that enable the long-term well-being of communities and ecosystems<sup>6</sup>. Traditional ecological knowledge is often based on a deep understanding of local environments, including sustainable agricultural practices, resource management, and conservation strategies.<sup>7</sup>

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<sup>4</sup> Posey, Darrell Addison. "Indigenous Knowledge, Biodiversity, and International Rights: Ensuring Integrity and Consent." *Plant Genetic Resources Newsletter*, no. 114, 1998, pp. 25–33

<sup>5</sup> Daniel J. Kevles, *Patents, Protections, and Privileges: The Seeds of Controversy Over Biotechnology*, 82 *Isis* 247 (1991)

<sup>6</sup> WIPO Secretariat, *Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore*, 34 *World Intellectual Property Organization Journal* 172 (2009)

<sup>7</sup> Elisa Morgera, *Fair and Equitable Benefit Sharing at the Crossroads of the Human Right to Science and International Biodiversity Law*, 10 *Laws* 39 (2021)



### **3.3 Cultural and Spiritual Significance**

Traditional knowledge is deeply intertwined with cultural and spiritual beliefs. Indigenous communities often pass down wisdom through oral traditions, ceremonies, and rituals, fostering a sense of identity and community cohesion. Landscapes, animals, and plants hold spiritual significance, and their use is often guided by sacred principles<sup>8</sup>.

### **3.4 Community and Collective Decision-Making**

Indigenous perspectives prioritize community well-being and often involve collective decision-making processes<sup>9</sup>. Elders and community leaders play crucial roles in preserving and transmitting traditional knowledge, ensuring its continuity and relevance in a rapidly changing world.

### **3.5 Oral Traditions**

Many indigenous cultures rely on oral traditions to transmit knowledge from one generation to another. Stories, myths, and legends serve not only as repositories of wisdom but also as educational tools, teaching valuable lessons about morality, resilience, and the interconnectedness of all things<sup>10</sup>.

### **3.6 Holistic Health Practices**

Indigenous health systems often adopt a holistic approach, considering the interconnectedness of physical, mental, and spiritual well-being. Medicinal plants, traditional healing practices, and ceremonies are integral components of indigenous healthcare systems<sup>11</sup>.

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<sup>8</sup> Arundel, A., & Kabla, I. (1998) "What percentage of innovations are patented? Empirical Estimates for European firms," *Research Policy*, 27(2), pp127–141.

<sup>9</sup> Blind, K., Cremers, K., & Mueller, E. (2009), "The Influence of Strategic Patenting on Companies' Patent Portfolios," *Research Policy*, 38(2), pp428–436

<sup>10</sup> Deller, Anthony William. (1965) "The Role of Folklore in Our Modern Economy." *Journal of the Patent Office Society* 47, No. 3 pp182–203

<sup>11</sup> Dinwoodie, Graeme B., and Mark D. Janis. (2008) "Biodiversity Law and Theory: A Handbook of Contemporary Research," Cheltenham, UK: Edward Elgar.

### **3.7 Land Rights and Sovereignty**

Indigenous perspectives often involve a strong emphasis on land rights and sovereignty. Many indigenous communities face challenges related to land dispossession, environmental degradation, and the impact of modern development. Advocacy for indigenous rights includes efforts to protect ancestral lands and maintain cultural autonomy.

### **3.8 Adaptation and Resilience**

Indigenous knowledge systems often exhibit a high degree of adaptability and resilience. Communities have historically faced various challenges, including environmental changes and external pressures. Traditional knowledge equips them with the ability to adapt while maintaining cultural integrity.

Therefore, recognizing and respecting traditional knowledge and indigenous perspectives is crucial for fostering cultural diversity, promoting sustainable practices, and addressing contemporary global challenges through a more holistic and inclusive lens.

## **4. Innovation in Biotechnology**

Innovation in biotechnology has been rapidly advancing, revolutionizing various aspects of healthcare, agriculture, environmental management, and more. Several key areas of innovation within biotechnology include:

### **4.1 Gene Editing Technologies**

CRISPR-Cas9: This revolutionary gene-editing tool allows precise modification of genes, enabling researchers to edit DNA sequences with unprecedented accuracy. It has vast implications for treating genetic disorders, developing genetically modified organisms, and understanding the function of specific genes.

### **4.2 Designing Novel Organisms**

Synthetic Biology<sup>12</sup>: Synthetic biology involves the design and construction of artificial biological systems or the redesign of

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<sup>12</sup> Zhou, Haibo, Philipp G. Sandner, Simon Luca Martinelli, and Joern H. Block (2016) "Patents, Trademarks, and Their Complementarity in Venture Capital Funding." *Technovation* No.47 pp14–22.

existing biological systems. This can lead to the creation of organisms with specific functions, such as bacteria that produce biofuels or yeast that synthesize pharmaceuticals.

### **4.3 Genomic Medicine**

Personalized Medicine: Advances in genomics and bioinformatics have facilitated personalized medicine, tailoring treatments to an individual's genetic makeup. This approach allows for more effective and targeted therapies, minimizing adverse effects and optimizing treatment outcomes<sup>13</sup>.

### **4.4 Biopharmaceuticals**

Monoclonal Antibodies: Monoclonal antibodies have become a cornerstone in the treatment of various diseases, including cancer, autoimmune disorders, and infectious diseases. Continuous innovation in biopharmaceuticals involves the development of new antibodies and other protein-based therapeutics.

## **5. Stem Cell Research**

Stem cell research holds immense potential for medical breakthroughs, including regenerative medicine and treatment of various diseases. Harmonizing biotechnology involves standardizing regulations and ethical guidelines across countries to ensure safe and effective advancements in this field. Collaboration among international researchers can accelerate scientific discoveries while maintaining high ethical standards. Streamlined approval processes can foster innovation, allowing therapies to reach patients more quickly. Ensuring equitable access to these therapies remains a critical goal in the global effort to harmonize biotechnology.

### **5.1 Regenerative Medicine**

Stem cells have the potential to differentiate into various cell types, making them crucial for regenerative medicine. Ongoing research explores their applications in tissue repair, organ transplantation, and treating degenerative diseases.

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<sup>13</sup> Naveen Aggarwal (2023) on "Royalty Conundrum," available at: <https://kpmg.com/in/en/blogs/home/posts/2023/03/the-royalties-conundrum.html>, (last visited on May 29, 2024).

## **6. Microbiome Research**

Microbiome research focuses on understanding the complex communities of microorganisms living in various environments, including the human body. This field holds potential for advances in health, agriculture, and environmental sustainability. Harmonizing biotechnology in microbiome research involves standardizing methods, ensuring data interoperability, and promoting ethical guidelines for manipulation and use. Collaborative international efforts aim to integrate diverse microbiome data, fostering innovation and addressing global challenges. Ultimately, harmonization seeks to enhance reproducibility, safety, and the equitable application of microbiome-based technologies.

### **6.1 Gut Microbiome**

Understanding the complex communities of microorganisms within the human body has led to insights into their impact on health and disease. Manipulating the microbiome holds promise for treating conditions such as gastrointestinal disorders and metabolic diseases.

## **7. Nano Biotechnology**

Microbiome research focuses on understanding the complex communities of microorganisms living in various environments, including the human body. This field holds potential for advances in health, agriculture, and environmental sustainability. Harmonizing biotechnology in microbiome research involves standardizing methods, ensuring data interoperability, and promoting ethical guidelines for manipulation and use. Collaborative international efforts aim to integrate diverse microbiome data, fostering innovation and addressing global challenges. Ultimately, harmonization seeks to enhance reproducibility, safety, and the equitable application of microbiome-based technologies.

### **7.1 Nano-scale Applications**

Nanotechnology is increasingly being applied to biotechnology, enabling the development of nano-sized drug delivery systems,

diagnostic tools, and imaging agents. These innovations improve the precision and efficiency of medical interventions.

### **7.2 Vaccine Development**

The rapid development of vaccines, as seen with the response to the COVID-19 pandemic, showcases the ability of biotechnology to address global health challenges. Advances in vaccine platforms, such as messenger RNA (mRNA) technology, have accelerated vaccine development timelines.

### **7.3 Agricultural Biotechnology**

Genetically Modified Organisms (GMOs): Biotechnology has played a significant role in agriculture, with the development of genetically modified crops that offer improved resistance to pests, diseases, and environmental conditions. This can enhance crop yields and reduce the need for chemical inputs.

### **7.4 Bioremediation**

Biotechnological approaches are being explored for environmental clean-up, including the use of microorganisms to degrade pollutants and contaminants. This has potential applications in wastewater treatment, soil remediation, and pollution control.

Innovation in biotechnology continues to shape the future of various industries, offering solutions to complex challenges and improving our understanding of living organisms. As technology advances, ethical considerations, regulatory frameworks, and public engagement will be crucial in navigating the responsible development and application of biotechnological innovations.

### **7.5 Cutting-Edge Technologies**

Biotechnology has witnessed a surge in innovative technologies, from CRISPR gene editing to synthetic biology. These breakthroughs hold immense promise for addressing global challenges, from healthcare to agriculture. However, with great potential comes great responsibility, necessitating ethical frameworks and regulatory oversight.

### **7.6 Regulatory Frameworks and Responsible Innovation**

Governments and international bodies play a pivotal role in shaping the landscape of biotechnological innovation. Developing robust

regulatory frameworks ensures the responsible use of genetic resources, protects traditional knowledge, and fosters innovation without compromising ethical standards. Striking the right balance requires a collaborative effort between scientists, policymakers, and the public.

## **8. Challenges in Harmonizing Biotechnology**

Harmonizing biotechnology poses several challenges, as the field is rapidly advancing and involves complex interdisciplinary aspects. Here are some key challenges:

### **8.1 Regulatory Divergence**

Different countries have varied regulatory frameworks for biotechnology products. Harmonizing these regulations is challenging due to differences in risk assessment methodologies, safety standards, and approval processes. Achieving a global consensus on regulatory standards is essential to facilitate international trade and collaboration.

### **8.2 Ethical and Cultural Differences**

Biotechnological applications often raise ethical concerns that may vary across different cultures and societies. Harmonizing ethical standards for practices like gene editing or cloning becomes challenging, as cultural values and beliefs significantly influence perspectives on acceptable ethical boundaries.

### **8.3 Intellectual Property Rights (IPR)**

Biotechnology involves significant investment in research and development. Harmonizing intellectual property rights globally is difficult due to variations in patent laws and enforcement mechanisms. This can lead to disputes over ownership and hinder the sharing of knowledge and technologies.

### **8.4 Scientific Complexity**

Biotechnology encompasses a wide range of techniques and applications, from genetic engineering to synthetic biology. Harmonizing methodologies and terminology across different scientific communities is challenging due to the evolving nature of the field and the rapid emergence of new technologies.

### **8.5 Data Sharing and Privacy Concerns**

Biotechnological research often relies on large datasets, and sharing this data across borders can be hindered by privacy laws and concerns. Harmonizing data protection regulations while ensuring the responsible and ethical use of data is a key challenge in the collaborative nature of biotechnology research<sup>14</sup>.

### **8.6 Technology Transfer and Capacity Building**

Disparities in technological capabilities and infrastructure between developed and developing countries pose challenges in harmonizing biotechnology. Bridging the technology gap requires international cooperation, capacity-building initiatives, and mechanisms for fair and equitable technology transfer.

### **8.7 Public Perception and Acceptance**

Public perception of biotechnology varies globally, and harmonizing public understanding and acceptance is challenging. Different cultures may have distinct attitudes toward genetically modified organisms (GMOs) or other biotechnological applications, affecting the success of harmonization efforts.

### **8.8 Environmental and Ecological Considerations**

Biotechnological applications can have environmental impacts, and ecosystems may respond differently to the introduction of genetically modified organisms. Harmonizing environmental risk assessments and monitoring protocols is crucial to ensure sustainable and responsible biotechnological practices.

Addressing these challenges requires a collaborative effort involving governments, regulatory bodies, scientists, ethicists, and the public to create a framework that promotes responsible and ethical biotechnological advancements on a global scale.

## **9. Opportunities for Collaboration and Solutions**

Collaboration and finding solutions often lead to innovation and progress. Here are some broad areas where collaboration can bring opportunities and solutions:

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<sup>14</sup> Mathur, A. (2020) "A reflection upon technology transfer laws in India," *Journal of Intellectual Property Rights*, 25(1–2), pp 5–14.

**9.1 Cross-Industry Collaboration**

Encourage collaboration between industries that may have complementary expertise or technologies. For example, bringing together healthcare and technology for advancements in medical devices or data analytics.

**9.2 Research and Development Partnerships**

Foster collaborations between research institutions, universities, and private companies to drive innovation. Joint ventures can accelerate the development of new technologies and solutions.

**9.3 Global Partnerships**

Seek international collaborations to leverage diverse perspectives, expertise, and resources. Global partnerships can address challenges that span borders, such as climate change, public health, and cybersecurity.

**9.4 Public-Private Partnerships**

Governments, private organizations, and NGOs can collaborate to address social and environmental challenges. These partnerships can lead to more sustainable and scalable solutions.

**9.5 Technology and Healthcare Integration**

Explore collaborations between the technology and healthcare sectors to enhance medical services, improve patient care, and streamline healthcare operations.

**9.6 Education and Industry Collaboration**

Foster partnerships between educational institutions and industries to ensure that academic curricula align with industry needs. This can help prepare students for the workforce and promote continuous learning.

**9.7 Open Innovation Platforms**

Create platforms that facilitate open innovation, where individuals and organizations can collaborate on solving specific challenges. Crowdsourcing ideas and solutions can lead to unexpected breakthroughs.

**9.8 Environmental and Corporate Collaboration**

Encourage collaboration between corporations to implement sustainable practices and reduce environmental impact. This could



involve sharing best practices, technologies, or jointly investing in green initiatives.

### **9.9 Supply Chain Collaboration**

Strengthen collaboration across supply chains to enhance efficiency, reduce waste, and address challenges related to logistics and distribution.

### **9.10 Cybersecurity Collaboration**

With the increasing threat of cyber-attacks, collaboration between governments, businesses, and cybersecurity experts is crucial to developing robust defense mechanisms and ensuring the security of digital infrastructure.

### **9.11 Community Engagement and Social Impact**

Collaboration between businesses and local communities can lead to socially responsible initiatives that address community needs, promote economic development, and improve overall well-being. We have to remember, that successful collaboration often requires effective communication, a shared vision, and a commitment to mutual benefit. By leveraging diverse perspectives and combining resources, organizations can find innovative solutions to complex challenges.

Harmonizing biotechnology necessitates global cooperation. Collaborative initiatives, such as the Global Multilateral Benefit-Sharing Mechanism, facilitate the equitable sharing of benefits arising from the utilization of genetic resources. By fostering partnerships between nations, we can collectively address challenges and harness the full potential of biotechnology. Empowering the public with knowledge about biotechnology is crucial for building trust and fostering responsible innovation. Educational programs, public forums, and inclusive dialogues ensure that diverse perspectives contribute to the development of ethical and socially responsible biotechnological practices.

## **10. Conclusion**

The harmonization of biotechnology, through the bridging of genetic resources, traditional knowledge, and innovation, is a

multifaceted challenge. Striking a balance requires navigating complex ethical, legal, and social landscapes. By fostering international collaboration, respecting indigenous knowledge, and implementing robust regulatory frameworks, we can ensure that biotechnological advancements benefit humanity while safeguarding the rich tapestry of biodiversity and cultural heritage. In this way, biotechnology becomes a tool for sustainable development, capable of addressing global challenges while preserving the intricate balance of our planet's ecosystems.



## Examining Indian Laws on Domestic Violence in the Context of Gender Equality

Punam Ahmed<sup>1</sup>

### Abstract

Domestic violence is an ongoing and pervasive challenge present in society. The patriarchal system can be identified as the principal cause of such gender inequality in Indian society. Domestic violence emerges from a combination of various triggering elements, often accompanied by some form of provocation. Moreover, its impact on our contemporary society is even more pronounced due to the influences of modernization and technological advancements. Violation of women's rights through acts of violence represents a grave breach of human rights and remains a concerning societal concern.

Hence this article employs a multifaceted framework to understand domestic violence comprehensively. It takes a multidimensional approach to grasp the nuances of this complex issue. The analysis extends to various manifestations of domestic violence drawing from various case laws, thereby highlighting the present status of women. The article tries to explore the prevailing understanding of domestic violence and its ramifications on women's lives. It proceeds to study Indian legal provisions designed to address domestic violence, including the Protection of Women from Domestic Violence Act, of 2005. In India, legislative measures have been enacted to combat this problem and safeguard the rights of women. This article critically examines the laws, considering their effectiveness, challenges, and impact on advancing gender equality and women's empowerment. However, the article contextualizes these legal measures within the border landscape of gender equality and women empowerment. It explores how such legislation aligns with international frameworks and commitments promoting gender equality.

**Keywords:** Domestic Violence, Women Rights, Gender Equality, Women Empowerment

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## 1. Introduction

Domestic violence is deeply rooted in our society spreading like an epidemic. Some people seem to believe that ignoring domestic violence is essential for their survival, essentially relying on it. This distressing behavior has become part of life, where it is common for men to harass their spouses without any cause. This paramount problem of domestic violence has been escalating in current times and can be found in newspapers, highlighting the alarming frequency of women losing their lives. These women, who are often left speechless endure every form of humiliation to protect their families.<sup>2</sup>

The issue of crimes targeting women is not a new phenomenon in India too. These crimes cause a breach of woman's dignity, safety, and human rights. Women have been subjected to offenses, such as rape, kidnapping, abduction, molestation, teasing, sexual harassment, mistreatment by spouses and family members, dowry-related violence, and more. Several forms of domestic violence have witnessed a significant surge over the past twenty years, and this concern has gained recognition both at national as well as international levels as a grave issue.

Ironically, the very place where a woman can feel safe is her home, which has transformed into a harrowing battleground. The suffering that women endure within the four walls of homes is no longer remains a secret as every family member consists of both male and female members are aware of it. The nature of men seems to appear constant regardless of geographical location, be it India or elsewhere. Domestic violence is often denoted by various terms, such as domestic abuse, spousal abuse, and more. Regardless of the terminology used, the gravity of the issue persists. To deal with this serious issue the Government of India has brought a special Act called the Protection of Women from Domestic Violence Act, of 2005, which came into force on October 26, 2006, spanning across

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<sup>2</sup> Sanjeev Kumar and Kalpna Devi, "Domestic Violence Against Women Indian Perspective" 5 *South Asian Law Review Journal* Volume 119 (2019).

India. This legislation primarily aims to offer civil remedies for individuals who are subject to domestic violence.

## 2. Understanding of Domestic Violence

Domestic violence, often concealed within private confines, represents an intricately convoluted manifestation of abuse. Regrettably, the prevailing unequal power dynamics and socio-economic circumstances within Indian society frequently lead to disregard of women's atrocities. Although articulating a precise definition of domestic violence proves challenging, numerous efforts have been made to formulate one.

According to statistics released by the World Health Organization (WHO), approximately 30% of women worldwide have experienced physical and/or sexual violence either from an intimate partner or a non-partner during their lifetime. The majority of this violence is attributed to intimate partner violence, with nearly 27% of women aged 15-49, who have been in a relationship, disclosing instances of physical and/or sexual violence perpetrated by their intimate partners on a global scale.<sup>3</sup>

The World Health Organization (WHO) employs the expression "intimate partner violence" instead of "domestic abuse or violence". It is characterised as an action carried out by an intimate partner resulting in physical, sexual, or psychological harm. This encompasses behaviours like physical aggression, sexual coercion, psychological abuse, and the imposition of controlling behaviours.<sup>4</sup> It is crucial to recognize that domestic abuse should be comprehended not merely as a sequence of violent or abusive

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<sup>3</sup> Violence against women, *available at*: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (last visited on 12/09/2023).

<sup>4</sup> Responding to intimate partner violence and sexual violence against women, *available at*: <https://www.who.int/publications/i/item/9789241548595>(last visited on 12/09/2023).

incidents but rather as a systematic pattern characterized by “coercive control,” “patriarchal terrorism,” or “intimate terrorism”<sup>5</sup>. The United Nations defines domestic violence (DV) as a “pattern of behavior in any relationship that is used to gain or maintain power and control over any intimate partner.” This encompasses a range of behaviors aimed at instilling fear, intimidation, terror, manipulation, harm, humiliation, blame, injury, or emotional distress upon someone within an intimate relationship. The definition highlights the pervasive nature of abusive behaviors that extend beyond physical violence and encompass various forms of control and coercion.<sup>6</sup>

Domestic violence can be described as the misuse of power by one adult within a relationship to manipulate and dominate another. It encompasses establishing control and inducing fear through various forms of abuse. This abusive behavior involves physical attack, psychological manipulation, social isolation, financial exploitation and sexual atrocities. The occurrence of such violence can differ, embracing from sporadic events to frequent or continuous patterns.<sup>7</sup>

Domestic violence is more than just a quarrel; it involves a consistent pattern of manipulative influence that one individual wields over another. Those who perpetrated abuse utilized physical and sexual aggression, threats, verbal, and emotional abuse, as well as financial restrictions to establish dominance over their victim and achieve their desires.<sup>8</sup>

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<sup>5</sup> *Coercive control: How men entrap women in personal life*, available at: <https://psycnet.apa.org/record/2007-05264-000> (last visited on 12/09/2023).

<sup>6</sup> The United Nations (n.d.) What is domestic abuse? available at: <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (last visited on 12/09/2023).

<sup>7</sup> Ranveer Kour and Sunila Garg “Addressing Domestic Violence Against Women: An Unfinished Agenda” 33(2) *Indian Journal and Community Medicine* 5 (2008).

<sup>8</sup> Available at: <https://www.sarahsinntv.org/post/40-stories-susan-schechter> (last visited on 12/09/2023).

The Protection of Women from Domestic Violence Act, of 2005, provides a clear and methodological definition of domestic violence. According to this law, any action, failure to act, behavior, or conduct by the respondent constitutes domestic violence, if it:<sup>9</sup>

- a) Causes harm, injury, or poses a threat to the physical or mental well-being, safety, life, or limb of the affected person. This includes various sorts of abuse like physical, sexual, verbal, emotional, and economic abuse.
- b) Harasses, harms, or endangers the aggrieved person with the intent to pressure her or her relatives into complying with unlawful demands for dowry or other property or assets.
- c) Creates a sense of threat to the aggrieved individual or her related persons through action mentioned in either (a) or (b), otherwise inflicts harm or injury, whether physical or mental, upon the aggrieved individual. In essence, the act categorizes a range of actions and behaviour as domestic violence, covering physical, emotional, economic, and coercive tactics used by the respondent to exert control or harm the affected person or their relatives.

### **3. A Brief Historical Background of Domestic Violence**

The growing awareness emphasises that the impact of culture on domestic violence has not received sufficient acknowledgment in Western nations.<sup>10</sup> In India, a myriad of cultural histories significantly influence norms and practices related to Domestic violence, many of which are subject to current challenges due to varying levels of modernization. India is far from being a homogeneous society, contrary to popular media portrayals. The subcontinent is marked by diverse cultural norms that influence aspects, such as caste discrimination, gender roles, and attitudes

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<sup>9</sup> The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

<sup>10</sup> M.A. Straus, "New Theory and Old Canards about Family Violence Research" 38(2) *Social Problems* 180-197 (1991).

towards domestic violence. The overarching regional pattern tends to be more patriarchal and traditional in states like Uttar Pradesh and Punjab in the North, while Southern states like Kerala and Tamil Nadu tend to be more egalitarian and educated.<sup>11</sup> Moreover, within each state, there is a noticeable disparity between the experiences of those residing in rural areas and those in major urban centers, where industrialization and modernization are transforming the societal landscape of India.

The journey of the Indian woman spans various historical phases, reflecting changes in her societal status over the time. In earlier ages, she held a respectable position, but over time, she experienced a decline and oppression. Several factors contribute to these shifts, including the marriage system, education, religion, and the practice of purdah.<sup>12</sup>

An Indian woman, from birth, is often instilled with qualities of patience, docility, and a capacity for enduring suffering, imparted by previous generations, particularly grandmothers. This cultivation is not perceived as a gradual learning process but rather as inherent qualities assumed to be present from birth, akin to flesh and blood. This cultural perspective underscores the expectations and conditioning placed upon Indian women from an early age.

Throughout history, domestic violence has been evident. Early Roman law allowed a man to physically harm, divorce, or even kill his wife for actions that tarnish his honor or pose a threat to his property rights.<sup>13</sup>

In the 15th century, the Catholic Church supported “The Rules of Marriage,” which instructed husbands to assume the role of judge over their wives. According to these rules, a husband was permitted

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<sup>11</sup> P. Mayer, Steen, Bradley, C. & Zianian, *Urbanisation and Suicide in India, Suicide in India*, (New Delhi, Chronicle Books in press, 2008).

<sup>12</sup> R. Radha, “Historical perspective of violence against women in India through various ages” 9 *International Journal of Basic and Applied Research* 1 (2019).

<sup>13</sup> Available at: [https://www.cji.edu/wp-content/uploads/2019/04/domestic\\_abuse\\_report.pdf](https://www.cji.edu/wp-content/uploads/2019/04/domestic_abuse_report.pdf) (last visited on 28/09/2023).



to physically punish his wife with a stick in response to her committing an offense<sup>14</sup>.

In England, common law historically granted a man the authority to physically discipline his wife under the guise of maintaining family discipline. The term “rule of thumb” originated from English common law, signifying the allowance for a husband to beat his wife, provided he used a stick no larger than his thumb.<sup>15</sup>

Before the mid-19th century, American law either implicitly accepted or overlooked violence by husbands against their wives. The first state to pass a law prohibiting a husband from beating his wife was in 1850, with other states gradually adopting similar legislation. While police involvement increased in the early to mid-20th century, actual arrests and convictions were infrequent. Significant legal changes occurred during the Women’s Movement in the 1970s, prompting legislative bodies to update their definitions. The term “domestic violence” was first used in 1973.<sup>16</sup>

Gender inequality is a global issue, resulting in unequal treatment of men and women and denying justice. It affects various aspects of life, such as health, education, economics, and politics. The International efforts towards gender equality have their roots in the UN Charter of 1945 and were reaffirmed in the Universal Declaration of Human Rights, 1948, emphasizing non-discrimination and equal rights for all. The International Covenant of Economic, Social, and Cultural Rights further safeguards women’s rights.<sup>17</sup>

Key milestones included in the 1967 Declaration of Elimination Discrimination against Women, aiming to grant equal rights in civil law. The 1993 Vienna Conference highlighted the equal participation of women, while the 1995 Beijing Conference

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<sup>14</sup> *Id.*

<sup>15</sup> Available at: <https://criminal-justice.iresearchnet.com/types-of-crime/domestic-violence/worldwide-history-of-domestic-violence/> (last visited on 28/09/2023).

<sup>16</sup> Available at: <https://www.rudnicklaw.com/blog/history-domestic-violence/> (last visited on 28/10/2023).

<sup>17</sup> Available at: <https://shodhganga.inflibnet.ac.in/handle/10603/373386> (last visited on 28/10/2023).

reiterated gender equality's importance for social justice. Convention on the Elimination of All Forms of Discrimination against Women, ratified by India in 1993, recognized new areas of abuse and promoted equality. Many countries including India, enacted separate laws on domestic violence, addressing issues such as dowry. However, gender discrimination continues due to a patriarchal society.<sup>18</sup> India's Constitution guarantees equality, and the Protection of Women from Domestic Violence Act, of 2005 was a significant step. The Act offers shelter, compensation, medical support, and interim custody of children of victims. It establishes protection officers and service providers for effective implementation. Though this act provides accessible justice, protection, shelter, compensation, medical aid, and child custody for victims. However, many challenges also exist in its enforcement.

#### **4. Status of Women and the Indian Constitution**

Historically women were subjected to mistreatment and were denied respect within society, which led to their ongoing struggle for status and standing in a patriarchal society. During that era, Indian women required new laws to safeguard them against harassment, both mental and physical abuse, and to enable them to lead secure lives while elevating societal stature.<sup>19</sup> The preamble of the Indian Constitution succinctly encapsulates and solemnly declares various principles including "justice, social, economic and political, and equality of status and opportunity". These principles inherently aimed to establish parity among women.

Article 14 ensures "equality before Law" while Article 15 "prohibits discrimination. Article 15(3) presents the only specific provision, granting the state the authority to create "special provisions for women and children", even though these provisions contradict the fundamental principle of non-discrimination based on sex. Article

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<sup>18</sup>Available at: <https://blog.ipleaders.in/offences-against-women-international-laws/>( last visited on 28/10/2023).

<sup>19</sup> Available at: <https://libertatem.in/articles/constitutional-status-of-women-in-india/>(last accessed on 25/10/2023).

16 (2) prohibits discrimination “in terms of employment or appointment of any state office. Additionally, article 16(2) prohibits discrimination “in terms of employment or office under state “based solely on race, caste, religion, sex, place of birth, residence or any of them.

Article 21 of the Constitution, addressing the right to life and personal liberty, safeguards that no individual should be deprived of their liberty unless following the legally established procedure. This provision also encompasses the right to life, which includes elements like privacy, access to legal aid, and more, as interpreted by a significant ruling from the Supreme Court of India.

In the context of gender equality, domestic violence, and women empowerment, Article 21 becomes a cornerstone. It ensures that the personal liberties of all, especially women, are protected, fostering an environment where gender-based discrimination and violence are not tolerated. This provision aids in empowering women by assuring their rights, promoting their safety, and guaranteeing access to legal remedies in cases of Domestic Violence and other violence.

Some other provisions are enumerated in the Directive principle of State policy bearing in mind the special status of women.

Article 39 (a) “Right to an adequate means of livelihood for men and women equally”.

Article 39(d) “Equal pay for equal work for both men and women”.

Article 39(e) “Protection of the health and strength of workers-men, women and children from abuse and entry into vocations unsuited to their age and strength”.

Article 42 “Just and human conditions of work and maternity relief”.

Indian Constitution emphasised that women in India should contribute to the nation, both as citizens as well as individuals. Their involvement in nation-building goes beyond just their role as mothers, indicating that they have diverse roles and responsibilities within society. The Constitution recognizes that women’s contribution spans various social positions, roles, and activities,

highlighting their significance as active partners in the development of the nation.<sup>20</sup>

### 5. The Domestic Violence Act, 2005: A Brief Analysis

The primary objectives of the Protection of Women from Domestic Violence Act, of 2005 are as follows:

- a) **Criminalization of Domestic Violence:** The Act strives to declare all forms of Domestic violence as illegal and subject to legal penalties.
- b) **Safeguarding Victims:** It seeks to protect individuals who experience domestic violence, ensuring their safety when such incidents occur.
- c) **Accessible Justice:** The Act aims to provide timely, cost-effective, and convenient justice to the aggrieved parties ensuring that legal processes are efficient.
- d) **Preventing Domestic violence:** The Act aims to prevent the occurrence of domestic violence through proactive measures and swift actions in case of violence.
- e) **Supporting Programs:** It mandates the implementation of comprehensive programs and initiatives to aid and rehabilitate victims of domestic violence, ensuring their recovery.
- f) **Raising Awareness:** It seeks to raise awareness within society about the issue of domestic violence, promoting understanding and prevention.
- g) **Accountability and Punishment:** It intends to hold perpetrators accountable for their actions by enforcing stringent punishments for committing domestic violence.
- h) **International Standard:** The act strives to align with international standards for preventing domestic violence, ensuring that legal provisions meet established norms.

The Protection of Women from Domestic Violence Act, of 2005 has multifaceted objectives, ranging from legal consequences for offenders to providing support for victims and raising awareness

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<sup>20</sup> R. Dyal, *Bharat me Mahila Adhikar* 37 (Prabhat Prakashan. 1<sup>st</sup> edn., New Delhi, 2017).

within society. It aims to create a safer environment against the occurrence of domestic violence while ensuring justice for those affected. The following are the key features of the Protection of Women from Domestic Violence Act, 2005:

- **Rights to secure housing**<sup>21</sup>: Victims of Domestic Violence have the right to reside in their shared household. This includes protection from interference or disruption by other occupants.
- **Right to assistance from protection officers and service provider**<sup>22</sup>: Victim can seek guidance and information about their rights and available relief from protection officer and service providers. They can also receive assistance in registering complaints and applying for relief<sup>23</sup>.
- **Right to file complaints**: The Act allows victims to file complaints under section 498 of the Indian Penal Code, which addresses cruelty by husbands or relatives.
- **Right to protection**: Victims and their children have the right to protection against the act of domestic violence. They are also entitled to regain possession of their belongings, including stridhan, jewellery, and household items.<sup>24</sup>
- **Right to special measures and orders**: The Act includes provisions to safeguard victims against specific dangers or threats they might face.
- **Right to medical assistance, shelter, counselling, and legal aid**: The Act ensures victims access to medical care, shelter, counselling and legal assistance.<sup>25</sup>

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<sup>21</sup> The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 3.

<sup>22</sup> *Ibid.* s. 4.

<sup>23</sup> *Ibid.* s. 5.

<sup>24</sup> *Id.* s. 18.

<sup>25</sup> *Id.* ss.6, 7, 9, 14.

- **Right to compensation:** Victims have the right to seek compensation for physical or mental injuries as well as monetary losses resulting from domestic violence.<sup>26</sup>
- **Right to access information:** Victims are entitled to receive copies of their filed complaints, applications, medical reports, and any statements recorded by the authorities regarding domestic violence.<sup>27</sup>
- **Simultaneous rights under IPC section 498A:** Victims have the right to simultaneously file complaints under section 498 A of the Indian Penal Code, which deals with cruelty by a husband or his relatives.

These rights collectively form the framework of protection provided by the Act to empower and support victims of domestic violence. The Act provides the following safeguard measures for the victim of domestic violence:

**Protection order:**

When a Magistrate receives an application indicating domestic violence has occurred or is likely to occur, they can issue a protection order after considering both parties' input and domestic incident report. This order, based on initial satisfaction with domestic violence, can prevent the respondent from various actions, including:

- a) engaging in domestic violence acts.
- b) assisting or encouraging domestic violence.
- c) entering the victim's workplace, school, and frequented places.
- d) attempting any form of communication, whether oral, written, electronic, or telephonic.
- e) disposing of shared assets or bank account without permission of the Magistrate.
- f) engaging in any other actions specified in the protection order.

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<sup>26</sup> *Id.* s. 22.

<sup>27</sup> *Ibid.* s. 23.

The duty of the courts in deciding applications under the DV Act was clarified by the Supreme Court in the Krishna Bhattacharjee case.<sup>28</sup>

The court's responsibilities include:

- a) Thoroughly examining the facts from various perspectives to determine if the respondent's plea to dismiss the aggrieved person's complaint is legally valid.
- b) The principle "justice to the cause is equivalent to the salt of the ocean" should be acknowledged. The court is obligated to uphold the truth, and justice shines through when it is served.
- c) Prior to rejecting an application outright, the court must ensure that the aggrieved person is not denied adjudication. This is particularly important given that the Domestic Violence Act is beneficial and assertively affirmative legislation designed to protect women's constitutional rights and prevent them from falling victim to any form of domestic violence.

## 6. Domestic Violence in India: An Analysis

The significance of family honor (Izzat) and societal expectations regarding the role of a good daughter-in-law can act as deterrents for women in sharing instances of domestic abuse beyond the confines of their homes. These cultural and societal norms create additional barriers that discourage women from seeking help or disclosing their experiences of abuse. The fear of damaging family reputation and the pressure to conform to established norms often contribute to the reluctance of women to open up about domestic violence. Consequently, these factors can further diminish the likelihood of seeking assistance or intervention in cases of abuse.<sup>29</sup> Domestic violence (DV) has a profound and devastating impact on the physical and mental health of women. The experiences of DV

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<sup>28</sup> Krishna Bhattacharjee v. Sarathi Choudhury & Anr (2016) 2 SCC 705.

<sup>29</sup> Mahapatra N & Rai A, "Every cloud has a silver lining but... "pathways to seeking formal help and South-Asian immigrant women survivors of intimate partner violence" *Health Care for Women International*, 40(11), 1170–1196(2019).

are closely linked to prolonged trauma,<sup>30</sup> diminished self-worth, emotional distress, and severe consequences, including homicides and suicides.<sup>31</sup> In India, a significant number of DV-related deaths have been reported, with the most frequently identified motives being dowry demands. Additionally, a history of domestic violence or harassment, along with family conflicts, are commonly cited factors contributing to these tragic outcomes. The toll of domestic violence extends beyond immediate physical harm, often leaving lasting emotional scars and contributing to a range of severe consequences, including loss of life.<sup>32</sup>

In the past, domestic violence posed a significant danger to women's lives in India, primarily associated with the prevalent dowry system. Consequently, the initial legal measures taken in the country to address the violence resulting to "dowry death" were introduced as amendments to the Dowry Prohibition Act (1961). Later, through the inclusion of 304 B in the Indian Penal Code, any kind of violence related to a Dowry request made by the husband or in-laws was made a criminal offence.<sup>33</sup>

Over the years, domestic violence has persisted as one of the most serious dangers faced by women even though it was recognized as a criminal offense under section 498 A of the (I.P.C) Indian Penal Code (Criminal Law Amendment Act,1983). To address this matter, a distinct civil law called "The Protection of Women from Domestic Violence Act, 2005 later emerged. This law was specially designed

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<sup>30</sup> Campbell JC, Webster D, Koziol-McLain J, Block C, Campbell D, Curry MA, ... & Sharps P, "Risk factors for femicide in abusive relationships: Results from a multisite case-control study" 93 (7) *American Journal of Public Health*1089–1097 (2003).

<sup>31</sup> Sabri B, Nnawulezi N, Njie-Carr V, Messing J, Ward-Lasher A, Alvarez C, & Campbell JC, "Multilevel risk and protective factors for intimate partner violence among African, Asian, and Latina immigrant and refugee women: Perceptions of effective safety planning interventions" 10 (4) *Race and Social Problems* 348–365 (2018).

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

<sup>33</sup> Dowry Prohibition Act 1961, Ministry of Women & Child Development, available at: <https://wcd.nic.in/act/dowry-prohibition-act-1961>(last visited on 23/08/2023)



to provide prompt assistance to women in a household who may experience mistreatment from their husbands and in-laws.<sup>34</sup> Today, instances of domestic violence remain prevalent throughout India.<sup>35</sup> In ancient India, women held important positions not just within the household but also within the broad societal context. However, in contemporary times, the issue of violence against women and girls has escalated to a worldwide outbreak. This type of violence encompasses various forms, all of which cause harm to individuals by individuals with biological family connections. The Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against women state that women should possess equal rights as men do, and they must be shielded from any form of discrimination.

According to the National Record Bureau (NCRB) report<sup>36</sup>, there has been a 15.3 % increase in the rate of crime against women in 2021. The number of cases registered against women rose from 56.5 per lakh women population in 2020 to 64.5 in 2021. The data reveals a simultaneous rise in both the rate of registered cases against women and the number of crimes against women.

On the release of the NCRB data, specialists have emphasised the necessity for robust enforcement of laws in practical situations. Alongside individual authorities in the field, the Delhi Commission for Women (DCW) has also stressed the significance of governments addressing this issue seriously. Swati Maliwal, the Head of the DCW,

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<sup>34</sup> Available at: [https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india-insights-from-nfhs-4/#\\_edn33](https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india-insights-from-nfhs-4/#_edn33) (last visited on 22/10/2023).

<sup>35</sup> Violence against women prevalence estimates 2018", *World Health Organization*, Geneva (2021), Violence against women prevalence estimates 2018, available at: <https://apps.who.int/iris/bitstream/handle/10665/341338/9789240026681-eng.pdf> (last visited on 22/10/2023).

<sup>36</sup> Available at: <https://www.clearias.com/ncrb-report-2021/#:~:text=Recent%20statistics%20show%20that%20crime,incident%20per%201%20lakh%20population> (last visited on 22/10/2023).

pointed out the time has come to transform these commitments into a tangible outcome.<sup>37</sup>

A special observation that the significant majority of female suicide victims are housewives emphasizes the presence of an oppressive patriarchal structure within society. According to the NCRB, out of the 45026 women who died by suicide, 23178 were housewives, accounting for more than half of the total. The report additionally indicated that a larger proportion of female suicide cases were linked to marital problems, particularly those related to dowry, as well as issues of impotence and infertility.<sup>38</sup> During the fiscal year 2020-21, the National Commission for Women (NCW) recorded 26,513 complaints related to domestic violence from women, making a rise of 25.09 % in comparison to the 20,309 complaints lodged in the preceding year 2019- 20.<sup>39</sup>

In India, the National Family Health Survey (NFHS-5) conducted from 2019 to 2021, findings revealed that 32% of ever-married women in India reported encountering physical, sexual, or emotional violence from their current or former husbands.<sup>40</sup> Notably, the prevalence of such violence varied significantly across different states and union territories, with the southern state of Karnataka registering the highest prevalence at 48%.<sup>41</sup> This data

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<sup>37</sup> Available at: <https://www.outlookindia.com/national/crimes-against-women-rose-by-15-per-cent-in-2021-experts-say-laws-need-to-be-implemented-strongly-on-ground-news-219995>( last visited on 22/10/2023).

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

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

<sup>40</sup> Available at: <https://www.womensweb.in/2022/05/nfhs-5-domestic-violence-latest-figures-show-not-much-has-changed-may22wk4sr/#:~:text=The%20Reported%20Number!-,Latest%20NFHS%2D5%20Data%20Shows%2030%25%20of%20Indian%20Women%20Face,stick%20in%20this%20feel%20fear.> (last visited on 22/11/2023).

<sup>41</sup> International Institute for Population Sciences (IIPS) and ICF. 2022. *National Family Health Survey (NFHS-5), 2019-21: India: IIPS.* Available at: <https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf>( last visited on 22/11/2023).

underscores the regional variations in the experiences of domestic violence among women in India.

### **7. Recent Judgments by the Apex Court Related to Domestic Violence: Legal Issues and Challenges**

There is a significant ruling held in the case of **Ajay Kumar v. Lata Sharuti**<sup>42</sup> where the Supreme Court consisting of Justice Dr. Dhananjay Y Chandrachud and Hemant Gupta, delivered a verdict. The court clarified, based on the proviso in section 2(q) of the Act, an aggrieved wife or woman in a relationship similar to marriage can file a complaint against a relative of the husband or male partner. This interpretation expands the scope for complaints beyond just the husband or male partner. This case was reported on April 08 (2019) 15 SCC 352.

Recently, Supreme Court addressed a significant query concerning the interpretation and application of the Protection of Women from Domestic Violence Act, 2005. The 3 Judge Bench, comprising Justice Ashok Bhushan, R Subhash Reddy, and M.R Shah, rendered a verdict in the case titled, **Satish Chandra Ahuja v. Sneha Ahuja**.<sup>43</sup> The judgment was issued on October 15, 2020. In this case, the court examined the matter of the right of residence in a shared household under the DV Act. In the case of Smt. **Haimanti Mal v. State of West Bengal** 2019,<sup>44</sup> the petitioner approached the court seeking relief under sections 18, 19, 20, and 22 of the Domestic Violence Act, 2005. The Learned Magistrate Declined the wife's appeal for financial assistance but partially accepted her plea in the contested matter. The court directed the opposite party to provide a monthly monetary relief of Rs.400/- to each of the two minor children.

In the case of **Almesh Devi v. Jaipal** 2019,<sup>45</sup> the learned Judicial Magistrate 1<sup>st</sup> class in Narnaul examined the provisions of the

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<sup>42</sup> 2019 SCC online SC 726.

<sup>43</sup> AIR ONLINE 2020 SC 784.

<sup>44</sup> <https://www.legalserviceindia.com/legal/article-3954-domestic-violence.html> (last visited on 25/11/2023).

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

relevant Act. Based on the information presented, the Magistrate concluded that there was insufficient evidence from the witnesses on record to establish the claim that the respondents and the petitioner lived together in the same household, or that there were no allegations of any violence occurring within the context of the shared household.

### **7.1 Gaps in Legislation and Legal Issues**

While the Protection of Women from Domestic Violence Act, 2005 aims to secure justice and safeguard the rights of women who have experienced domestic abuse, over time, it becomes evident that the Act's effectiveness is unsatisfactory. Domestic violence cases persist due to a lack of awareness in the country.

In the case of **S.R. Batra v. Taruna Batra**,<sup>46</sup> a significant dilution of domestic violence law occurred when the Supreme Court ruled that a deserted wife could not claim residence in the matrimonial home if it was not owned or rented by the husband. This contradicted the Act's definition of "shared household". Despite this trial courts sought innovative arguments to distinguish their cases from Batra Judgement.<sup>47</sup>

Similarly, the Supreme Court made a significant error in the case of **D Veluswamy v. D Patchaimal**<sup>48</sup> by stating that only legally married individuals could avail themselves of the Domestic Violence law, excluding live-in partners from its scope. This decision overlooked the well-established law outlined in section 2(f), which includes relationships "in the nature of marriage" within the definition of a domestic relationship.

In the case of **Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade**,<sup>49</sup> the court addressed the question of whether females are encompassed as relatives of the husband under section 2(q) of the Act. The court affirmed that females are indeed considered relatives of the husband, clarifying that the term "relative" in

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<sup>46</sup> S.R. Batra v. Taruna Batra, 2007 3 SCC 169.

<sup>47</sup> (Badrinath, 2011).

<sup>48</sup> Veluswamy v. D Patchaimal, (2010)10 SCC 469.

<sup>49</sup> 2011.

section 2(q) does not impose any restriction on the inclusion of females, despite the absence of the term “female” in the proviso of the section.

In a ground-breaking decision, the Supreme Court, in the case of **Hiral Harsora v. Kusum Harsora**, expanded the reach of the Domestic Violence Act by eliminating the term “adult male” from it. This ruling opens the avenue for legal action against women and even minors for perpetrating violence and harassment against female relatives. The apex court directed the removal of these two words from section 2(q) of the Domestic Violence Act of 2005.<sup>50</sup>

### **7.2 Lack of Adequate Safeguards for Men against False Complaint**

In addition to serving as instruments for providing relief to abused women, the Domestic Violence Act of 2005 and section 498-A of the Indian Penal Code (IPC) have been extensively abused by women to harass their husbands. Although the Supreme Court has emphasized that the mere misuse of the law does not inherently invalidate the provision, yet, it has acknowledged the substantial instances where false complaints were lodged with the sole intention of settling personal vendettas.<sup>51</sup>

In the case of **Sumana Bhasin v. Neeraj Bhasin**, the Metropolitan Magistrate at Saket Court, New Delhi imposed a penalty of INR 1,00,000 on the complainant woman. This action was taken due to her falsification of allegations and deliberate suppression of facts to harass her husband and in-laws.<sup>52</sup>

In another landmark case,<sup>53</sup> the court unequivocally stated that there was rampant misuse and exploitation of legal provisions, reaching a point where it posed a threat to the very foundation of marriage and proved detrimental to the overall health of society. The court emphasized the need for authorities and lawmakers to review the situation and legal provisions to prevent such misuse from occurring. The misuse of the section and related Acts persists

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<sup>50</sup> Hiralal Harsora v. Kusum Harsora, AIR 2016 SC 4774.

<sup>51</sup> Sushil Kumar v. Union of India (2005) 6 SCC 281.

<sup>52</sup> Sumana Bhasin v. Neeraj Bhasin, MANU/SC/0178/2010.

<sup>53</sup> Savitri Devi v. Ramesh Chandra & Ors ,2003.

and is escalating rapidly. In numerous instances, women have been observed making false accusations against their husbands under section 498-A of the Indian Penal Code, 1860, driven by motives of revenge or personal animosity or to distance themselves from their in-laws. Educated women resorting to such tactics are aware that offences under this section are both cognizable and non-bailable.<sup>54</sup> The Protection of Women from Domestic Violence Act, 2005, seems incomplete and exhibits several loopholes that primarily cater to baseless allegations by women, potentially resulting in the unjust punishment of innocent men. It contradicts the fundamental principle that an accused is presumed innocent until proven guilty. In such cases, the process to defend and establish innocence is severely restricted.<sup>55</sup>

### **7.3 Other Loopholes and Challenges**

The authorities are excessively empowered due to the wide powers granted to protection officers. These officers act as intermediaries between victims and the court. They receive applications, make incident reports (DIR), and support Magistrates in their responsibilities. This setup can lead to gender bias and overwhelming workloads for protection officers. Additionally, Service Providers can also make incident reports (DIR) if requested by victims, further creating complications in their roles. In reality, their responsibilities are not clear and they lack adequate training to handle the delicate matter of domestic violence. Even judges are often unfamiliar with their roles, power, and duties. Judges, particularly in matrimonial cases, should receive proper training. The police also display apathy towards distressed women, necessitating a change in their perspective and training. All legal entities involved in domestic violence cases should undergo education and sensitization to effectively manage the caseload. Domestic Violence Act raises numerous unanswered questions within its provisions. For instance, Government hospitals, burdened

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<sup>54</sup> <https://legalupanishad.com/domestic-violence-in-india/>(last visited on 28/10/2023).

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

by economic pressure and heavy workloads, often fail to aid victims promptly. This prompts the query: should victims seek medical assistance from public or private institutions, and who should cover the cost? According to section 27, the Magistrate can issue protective orders within their jurisdiction, but the execution of this order remains unspecified. The Act introduces the concept of camera proceedings in section 16, which could potentially be exploited for personal gain. Section 31 deems breach of protection orders offenses punishable by imprisonment or a fine, and section 31 (3) permits charges under related laws. Section 32 designates breach of protection orders as cognizable and non-cognizable. This causes a conflict when a one-year imprisonment penalty, as in the case of section 498 A of the Indian Penal Code, typically results in a different trial procedure. This creates confusion in interpretation.

In many cases, it has been observed that women perceived the police's behaviour and action as uncaring. Instances were noted where police officials declined to file cases and refrained from involvement in the victims' family matters. Instead, they pressured female victims to prioritize upholding their marriage. Sometimes, complaints are encountered by uncooperative police at the station due to a lack of clarity about the necessary steps, arising from the absence of well-defined procedures in the Act which causes delays in resolving such cases.

It has also been observed that there is inadequate enforcement of court rulings, particularly regarding maintenance orders in cases of domestic violence. Female victims often need to return to the court when maintenance orders issued by the respected court are violated.

In some cases, it has been found that even when evidence and situation demand, yet judges exhibited reluctance in granting *ex-parte* orders. Therefore, it is anticipated that courts and judges will assume a more pragmatic role.

It is also evident that the law enforcement apparatus still prioritizes family welfare over women's rights, often attempting to preserve the sanctity of marriage through arbitration and counseling.

Marriage, being a valued social institution, is treated with reverence. Due to prevailing gender role stereotypes in society, women victims can be burdened with the responsibility of keeping the family intact. Legal entities often urge the victim to accept their situation, regardless of the extent of violence they have suffered.

## **8. Conclusion**

India, as the second most populous nation globally, faces a multitude of challenges, such as dowry death and domestic violence, demanding immediate attention. To address these issues, the Indian government introduced the “The Protection of Women from Domestic Violence Act, 2005” aiming to promote equality, and justice and safeguard women from Domestic harassment. Unfortunately, the lack of efficient enforcement mechanisms has undermined the intended purpose of the act. Criticisms have arisen due to shortcomings in the Act, including a lack of a neutral gender perspective.

The current law is significantly limited by its complete neglect of safeguarding men’s rights in domestic relationships. There are neither established mechanisms to protect men from the potential misuse of domestic violence laws nor any substantial legal framework to shield men from domestic violence, an unspoken reality of our time.

Therefore, there is an urgent need to establish a balance in domestic violence laws to ensure gender justice prevails in our country and it is also imperative to establish reformative measures to ensure the successful implementation and achievement of the realization of the Act’s aims.

## **9. Suggestions**

The hallmark of any civilized society is Gender Equality. While it is entirely justified to take measures for women’s protection, such actions should not compromise the principle of equality. Although the government is making efforts to address domestic violence, there are apparent shortcomings in its approach. The existing



domestic violence laws exhibit various flaws that appear to infringe upon the principles of natural justice and provisions of other significant laws. There are some suggestions given here by the author for adequate implementation of the DV Act, 2005:

- A fundamental change in the way men and women perceive each other is essential to combat the prevalence of violence against women. India's deeply rooted social structure is traditionally patriarchal, resulting in a society heavily dominated by males. This power imbalance is the primary catalyst for the acts of violence.
- Domestic violence remains categorized as a private family matter in our nation, discouraging intervention from relatives, outsiders, and even the state. The successful enforcement of any legislation requires solid public consensus and approval through democratic processes.
- The existing legal framework is insufficient in addressing the issue of domestic violence. The law should ensure equal protection for both men and women to prevent potential misuse by women.
- The government and NGOs need to generate extensive awareness about the Domestic Violence Act to ensure that rural communities are informed about its provisions. This effort aims to encourage women from all segments of society to step forward and avail themselves of the remedies provided by this Act.
- To ensure the Act's rigorous enforcement, a stringent obligation is imposed on officials and relevant stakeholders. Their responsibility lies in ensuring effective implementation. Eradicating gender bias, challenging traditional patriarchal norms, and reducing male authority are crucial components.
- Mandatory gender perspective training is vital, involving police, service providers, medical professionals, protection officers, and especially the Magistrates. This training will alter the patriarchal mindset.

- Before litigation, expert counselling should be offered to the aggrieved parties. This support aims to restore their self-worth, provide emotional aid, and help them decide whether to initiate legal proceedings.



## Cyber Crimes against Women in India: An Analysis Mohammadi Tarannum\*

### Abstract

Cybercrime against women is a growing threat in India, exacerbated by the rapid expansion of the digital landscape. Women are subjected to various forms of online harassment, cyberstalking, identity theft and non-consensual distribution of explicit content, which have serious psychological, emotional and social consequences. Despite existing legal frameworks such as the Information Technology Act 2000, women are often inadequately protected due to enforcement problems and gaps in legislation. Addressing this issue requires a multi-pronged approach that includes improving digital literacy, strengthening legal protections and promoting collaboration between government agencies, law enforcement and civil society. By addressing the root causes and implementing comprehensive solutions, we can create a safer and more inclusive digital environment for women in India.

**Keywords:** Cybercrime, Women's Safety, Cyberstalking, Revenge Pornography, Digital Literacy, Legal Protection

### 1. Introduction

In recent years, India has witnessed a significant rise in cybercrime, with women being disproportionately targeted. The advent of technology and the widespread use of the internet have opened up new avenues for criminals to exploit vulnerable individuals, particularly women.<sup>1</sup> Cybercrime against women encompasses various forms of harassment, stalking, bullying, identity theft, non-

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<sup>1</sup> Kumar, Sanjeev, and Anupam Manhas. "Cyber crimes in India: Trends and prevention." *Galaxy International Interdisciplinary Research Journal* 9, no. 05 (2021): 363-370.

consensual dissemination of explicit content, and online grooming.<sup>2</sup> As the digital landscape expands, so too does the risk of cyber threats, making it imperative to address these issues with urgency and precision.

This article sheds light on the prevailing issue of cybercrime against women in India, highlighting its causes, impact, and potential solutions. It also examines the legal framework in place to combat these crimes, the challenges faced in enforcement, and the necessary steps to ensure a safer digital environment for women.

## 2. Cybercrime: Definition and Scope

Cybercrime, a term with no universally accepted definition, broadly refers to criminal activities involving computers and the internet.<sup>3</sup> According to the Merriam-Webster Dictionary, cybercrime includes

“criminal activity (such as fraud, theft, or distribution of child pornography) committed using a computer, especially to illegally access, transmit, or manipulate data.”

Cybercrime against women in India manifests in several forms, each posing unique challenges to law enforcement and the victims involved.<sup>4</sup> These crimes often exploit the anonymity provided by the internet, allowing perpetrators to harass, intimidate, and manipulate women without immediate fear of retribution.<sup>5</sup>

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<sup>2</sup> Halder, Debarati, and Karuppannan Jaishankar, eds. *Cyber crime and the victimization of women: Laws, rights and regulations: Laws, rights and regulations*. Igi Global, 2011.

<sup>3</sup> Phillips, Kirsty, Julia C. Davidson, Ruby R. Farr, Christine Burkhardt, Stefano Caneppele, and Mary P. Aiken. “Conceptualizing cybercrime: Definitions, typologies and taxonomies.” *Forensic sciences* 2, no. 2 (2022): 379-398.

<sup>4</sup> Uma, S. “Outlawing cyber crimes against women in India.” *Bharati Law Review* 5, no. 4 (2017): 103-116.

<sup>5</sup> Chudasama, Dhaval, and Neha Dhrupalkumar Gajjar. “Cyber Crime Against Women.” *National Journal of Cyber Security Law* 6, no. 2 (2023): 50-59p.

### 3. Types of Cybercrime against Women

#### (a) Online Harassment and Cyberbullying

- **Sharing Explicit Content Without Consent:** One of the most common forms of online harassment is the non-consensual sharing of explicit images or videos.<sup>6</sup> This form of exploitation not only violates privacy but also leads to severe emotional and psychological trauma.
- **Online Stalking and Persistent Harassment:** Cyberstalkers frequently use social media platforms to track, harass, and intimidate their victims.<sup>7</sup> This can include sending unwanted messages, making threatening comments, or continuously monitoring the victim's online activities.
- **Threats, Abusive Messages, and Hate Speech:** Women often face threats of physical harm, abusive language, and hate speech online, which can escalate to real-world violence.<sup>8</sup>

#### (b) Revenge Pornography

- **Non-Consensual Sharing of Intimate Images/Videos:** Revenge pornography involves the distribution of sexually explicit images or videos of individuals without their consent.<sup>9</sup> Often, these images are shared by ex-partners as a form of retribution.
- **Blackmailing and Extortion Using Explicit Content:** Perpetrators may use explicit content to blackmail women,

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<sup>6</sup> Walker, Kate, and Emma Sleath. "A systematic review of the current knowledge regarding revenge pornography and non-consensual sharing of sexually explicit media." *Aggression and violent behavior* 36 (2017): 9-24.

<sup>7</sup> Pietkiewicz, Michał, and Malwina Treder. "Cyberstalking in social media—Polish view." *Journal of Modern Science* 3 (38) (2018): 29-40.

<sup>8</sup> Sobieraj, Sarah. *Credible threat: Attacks against women online and the future of democracy*. Oxford University Press, 2020.

<sup>9</sup> Powell, Anastasia, Nicola Henry, Anastasia Powell, and Nicola Henry. "Beyond 'revenge pornography'." *Sexual violence in a digital age* (2017): 117-152.

demanding money or further explicit material under the threat of public exposure.<sup>10</sup>

### (c) Online Financial Fraud

- **Phishing Scams Targeting Women's Financial Information:** Women are often targeted in phishing scams where criminals attempt to steal sensitive information, such as banking details, through deceptive emails or messages.<sup>11</sup>
- **Identity Theft and Credit Card Fraud:** Cybercriminals may also steal a woman's identity to commit financial fraud, including unauthorized credit card transactions or applying for loans in her name.<sup>12</sup>

### (d) Cyberstalking

- **Persistent Online Surveillance, Tracking, and Intimidation:** Cyberstalkers engage in continuous monitoring of a woman's online presence, often leading to fear and anxiety.<sup>13</sup> This can involve tracking social media activity, hacking into accounts, or sending relentless messages.
- **Manipulative Behavior and Psychological Distress:** Cyberstalkers often use manipulation to exert control over their victims, causing significant psychological harm.<sup>14</sup>

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<sup>10</sup> Hussein, Omar Abdulsalam. "Cyber Blackmail Crime against Women-A Case Study." *Journal of Positive School Psychology* 6, no. 3 (2022): 6882-6893.

<sup>11</sup> Button, Mark, and Cassandra Cross. *Cyber frauds, scams and their victims*. Routledge, 2017.

<sup>12</sup> Smith, Russell G. "Identity theft and fraud." In *Handbook of internet crime*, pp. 273-301. Willan, 2013.

<sup>13</sup> Rapisarda, Sabrina S., and Kimberly R. Kras. "Cyberstalking." *Handbook on Crime and Technology* (2023): 303-333.

<sup>14</sup> Attrill-Smith, Alison, and Caroline Wesson. "The psychology of cybercrime." *The Palgrave handbook of international cybercrime and cyberdeviance* (2020): 653-678.

**(e) Online Trafficking and Exploitation**

- **Recruitment of Victims Through Social Media Platforms:** Traffickers use social media to recruit women and girls for exploitation, often luring them with false promises of employment or relationships.<sup>15</sup>
- **Online Grooming for Sexual Exploitation:** Predators groom women and young girls online, gaining their trust before coercing them into sexual exploitation.<sup>16</sup>

**4. Statutory Laws Regulating Cybercrimes against Women in India**

India has implemented several laws to address cybercrime, with specific provisions designed to protect women from online harassment, abuse, and exploitation. However, the effectiveness of these laws is often hampered by issues related to enforcement and the rapidly evolving nature of cyber threats.

**(a) Information Technology Act, 2000 (IT Act)**

The IT Act is India's primary legislation governing cybercrime. It includes several provisions that address offenses related to cybercrime against women:

- **Section 66E:** Punishes the non-consensual capturing, publishing, or transmitting of intimate images of a person.
- **Section 66A:** Initially dealt with sending offensive messages online, including those with sexual content, but was struck down by the Supreme Court in 2015 for being unconstitutional.
- **Sections 67, 67A, 67B:** Criminalize the publishing or transmission of sexually explicit content, including child pornography, online.
- **Section 67C:** Requires intermediaries to preserve and retain information to aid in investigations related to cybercrime, including offenses against women.

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<sup>15</sup> Geldenhuys, Kotie. "The role of social media in facilitating human trafficking." *Servamus Community-based Safety and Security Magazine* 112, no. 7 (2019): 18-20.

<sup>16</sup> Ali, Sana, Hiba Abou Haykal, and Enaam Youssef Mohammed Youssef. "Child sexual abuse and the internet—a systematic review." *Human Arenas* 6, no. 2 (2023): 404-421.

**(b) Protection of Women from Domestic Violence Act, 2005**

While not specifically focused on cybercrime, this act acknowledges the importance of addressing technology-related abuse. It provides protection against online harassment and allows for the issuance of protection orders to prevent electronic communication that causes mental or emotional distress.

**(c) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

This law addresses sexual harassment in the workplace, including online harassment. It mandates employers to establish mechanisms to prevent and address such cases and provides a framework for complaints and redressal.

**5. Prevalent Forms of Cybercrime Against Women****(a) Online Harassment and Abuse**

The internet, particularly social media platforms, has become a breeding ground for harassment and abuse. Women are frequently subjected to offensive comments, threats, hate speech, and character assassination.<sup>17</sup> The anonymity provided by online platforms emboldens perpetrators, making it easier for them to engage in such behavior without immediate consequences.

**(b) Cyberstalking**

Stalking, traditionally a physical crime, has evolved into a digital menace. Cyberstalkers use various means to track, monitor, and intimidate their victims, causing severe distress and anxiety.<sup>18</sup> This includes incessant messages, unsolicited emails, and tracking the victim's online activities. The psychological impact of cyberstalking can be profound, often leading to mental health issues such as anxiety, depression, and post-traumatic stress disorder (PTSD).

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<sup>17</sup> Jane, Emma A. "Online abuse and harassment." *The international encyclopedia of gender, media, and communication* 116 (2020).

<sup>18</sup> Miftha, Ameema. "The social, legal, and technical perspectives of cyberstalking in India." (2024).



**(c) Revenge Porn**

Revenge porn, or the non-consensual sharing of intimate images or videos, is a particularly distressing form of cybercrime that disproportionately affects women.<sup>19</sup> This violation of privacy inflicts emotional trauma and can have severe social and professional consequences. Victims often face public shaming, social ostracization, and even job loss due to the exposure of such content.

**(d) Online Grooming**

Online grooming involves predators exploiting the anonymity of the internet to manipulate women and young girls for sexual exploitation.<sup>20</sup> Predators often establish fake profiles, pretending to be someone else to gain trust, and gradually coerce victims into engaging in explicit conversations or sharing compromising material. The impact on victims is devastating, often leading to long-term psychological damage.

**6. Contributing Factors to Cybercrime against Women****(a) Gender Inequality**

India's deep-rooted gender disparities contribute significantly to cybercrime against women. Misogynistic attitudes and patriarchal norms perpetuate a culture that allows such crimes to flourish.<sup>21</sup> Women, often seen as easy targets, are subjected to online harassment, abuse, and exploitation with alarming frequency.

**(b) Digital Divide**

The digital divide in India, characterized by unequal access to technology and limited digital literacy, exacerbates the problem.

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<sup>19</sup> Salter, Michael, and Thomas Crofts. "Responding to revenge porn: Challenges to online legal impunity." *New views on pornography: Sexuality, politics, and the law* (2015): 233-256.

<sup>20</sup> Breslow, Alyssa. "The Dangers of the Internet and the Sexual Exploitation of Children." Master's thesis, Utica College, 2018.

<sup>21</sup> Ramirez, Antonio, ed. *An Anthology by Modern Legal Authors*. Highbrow Phantom Publishing House, 2021.

Women, particularly in rural areas, often lack the necessary skills to navigate the online world safely.<sup>22</sup> This lack of awareness leaves them vulnerable to cyber threats, as they may not be aware of the necessary safeguards to protect themselves online.

### (c) Inadequate Legal Framework

While India has legislation such as the Information Technology Act, 2000 which cover certain aspects of cybercrime, there is a need for more comprehensive laws specifically addressing cybercrime against women.<sup>23</sup> Current laws often fall short in effectively dealing with the ever-evolving nature of cyber threats, leaving women inadequately protected.

## 7. Impact of Cybercrime on Women

### (a) Psychological and Emotional Distress

- **Anxiety, Depression, and PTSD:** Cybercrime, especially harassment and stalking, can lead to severe mental health issues, including anxiety, depression, and post-traumatic stress disorder (PTSD).<sup>24</sup> The constant fear of being watched or harassed can take a significant toll on a woman's mental well-being.
- **Loss of Self-Esteem and Social Isolation:** Victims of cybercrime often experience a loss of self-esteem and may withdraw from social interactions due to the fear of judgment or further

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<sup>22</sup> Lavanya, Reganti, and Rajesh Mamilla. "Closing the Digital Divide in India: Ensuring Equal Access to Technology for Women in Business." In *Effective Technology for Gender Equity in Business and Organizations*, pp. 167-194. IGI Global, 2024.

<sup>23</sup> Jaiswal, Kajal. "Effectiveness of cybercrime laws and regulations in India: A critical study." (2022).

<sup>24</sup> Rothman, Emily F., Jackie Sheridan-Johnson, Poulami Maitra, Toby Shulruff, Chad K. Sniffen, and Elizabeth A. Mumford. "Stress, suicidality, post-traumatic stress disorder, emotional distress, and social isolation among US adults experiencing online abuse or harassment." *Violence and gender* 10, no. 3 (2023): 144-152.

harassment.<sup>25</sup> This social isolation can exacerbate feelings of loneliness and depression.

### **(b) Threats to Personal Safety**

- **Fear for Physical Safety Due to Stalking or Online Threats:** The fear that online threats could escalate into real-world violence is a constant concern for victims of cyberstalking and harassment.<sup>26</sup> This fear often leads to changes in behavior, such as avoiding certain places or people, and can significantly impact a woman's quality of life.
- **Invasion of Privacy and Loss of Personal Control:** Cybercrime often involves a significant invasion of privacy, such as the unauthorized sharing of intimate images or the hacking of personal accounts.<sup>27</sup> This loss of control over one's personal information can be deeply unsettling and lead to a sense of helplessness.

### **(c). Professional and Social Consequences**

- **Damage to Reputation and Career Prospects:** Cybercrime can have devastating effects on a woman's professional life.<sup>28</sup> For instance, the non-consensual sharing of explicit content or defamatory comments can damage a woman's reputation, leading to job loss or difficulties in finding employment.
- **Social Stigma and Victim-Blaming:** In many cases, victims of cybercrime face social stigma and victim-blaming. Instead of

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<sup>25</sup> Woods, Naomi. "Users' psychopathologies: Impact on cybercrime vulnerabilities and cybersecurity behavior." In *Cyber Security: Critical Infrastructure Protection*, pp. 93-134. Cham: Springer International Publishing, 2022.

<sup>26</sup> Curtis, Laura F. "Virtual vs. reality: An examination of the nature of stalking and cyberstalking." PhD diss., San Diego State University, 2012.

<sup>27</sup> Ahmad, Mohd Riyaz. "Safeguarding personal privacy in digital era: a study on the right to privacy." (2022).

<sup>28</sup> Agarwal, Dr Pukhraj. "Cyber Crime: Women Combating with the Negative Effect of Technology in the Era of Globalisation." *International Journal of Management and Humanities* 4, no. 7 (2020): 21-25.

holding the perpetrators accountable, society often blames the victims for the abuse they suffer, further compounding their trauma.<sup>29</sup>

## 8. Addressing the Issue

### (a) Awareness and Education

Creating awareness about cyber threats, safe internet practices, and digital literacy is essential to empower women and equip them with the knowledge to protect themselves online. Educational programs aimed at women, particularly in rural areas, can help bridge the digital divide and reduce vulnerability to cybercrime.<sup>30</sup>

### (b) Strengthening Legal Frameworks

The government must proactively revise and enhance existing legislation to address the nuances of cybercrime against women. Stricter penalties, faster legal processes, and the establishment of dedicated cybercrime cells are crucial for tackling this issue effectively. There is also a need for more comprehensive laws that specifically address the various forms of cybercrime against women.<sup>31</sup>

### (c) Collaboration and Support

Combating cybercrime requires collaboration between government agencies, law enforcement, civil society organizations, and tech companies.<sup>32</sup> Together, they can develop robust reporting mechanisms, provide support to victims, and facilitate the removal of offensive content from online platforms. Public-private

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<sup>29</sup> Rackley, Erika, Clare McGlynn, Kelly Johnson, Nicola Henry, Nicola Gavey, Asher Flynn, and Anastasia Powell. "Seeking justice and redress for victim-survivors of image-based sexual abuse." *Feminist Legal Studies* 29, no. 3 (2021): 293-322.

<sup>30</sup> Venter, Isabella M., Rénette J. Blignaut, Karen Renaud, and M. Anja Venter. "Cyber security education is as essential as "the three R's"." *Heliyon* 5, no. 12 (2019).

<sup>31</sup> Saroj, Vinod Kumar, and Nisikant Nayak. "Investigating Cyber Violence and Harassment Against Women: Challenges and Solutions in the Digital Age." *Available at SSRN 4900092* (2024).

<sup>32</sup> Tropina, Tatiana. "Cyber-policing: the role of the police in fighting cybercrime." *Special Issue 2 Eur. Police Sci. & Res. Bull.* (2017): 287.

partnerships can play a vital role in enhancing cybersecurity and protecting women from online threats.

## 9. Landmark Judgments on Cybercrime against Women in India

The judiciary in India has been instrumental in addressing cybercrime against women, evolving jurisprudence to adapt to the rapidly changing digital landscape. Through landmark judgments, the courts have highlighted the importance of safeguarding women's rights in cyberspace, interpreting existing laws to ensure justice, and filling legislative gaps through judicial innovation.

### (a) Recognition of Women's Privacy in Cyberspace

**Judgments:** Cases like *K.S. Puttaswamy v. Union of India*,<sup>33</sup> and *Nipun Saxena v. Union of India*,<sup>34</sup> have emphasized the constitutional right to privacy, particularly in cases where women's images or data are shared online without consent. The judiciary has recognized that non-consensual dissemination of explicit content infringes on a woman's right to dignity and privacy, mandating stricter enforcement of laws like Sections 67 and 67A of the Information Technology Act, 2000.

**Impact:** These judgments have led to a broader understanding of digital privacy and the necessity of proactive measures to protect women from cyber exploitation.

### (b) Clarifying the Scope of Cybercrime Laws

**Judgment:** In *Shreya Singhal v. Union of India* (2015),<sup>35</sup> the Supreme Court struck down Section 66A of the IT Act for being vague and overbroad but emphasized the need for clearer and more precise legal provisions to address online harassment effectively.

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<sup>33</sup> (2017) 10 SCC 1.

<sup>34</sup> 2019 (2) SCC 703.

<sup>35</sup> AIR 2015 SC 1523.

**Impact:** This judgment set a precedent for balancing free speech and protection from abuse, urging lawmakers to design specific legislation to combat online gender-based violence.

### **(c) Setting Precedents for Consent in Digital Spaces**

**Judgment:** The *Indira Jaising v. Supreme Court of India*,<sup>36</sup> ruling underscored the importance of consent in sharing intimate images, holding that such acts without consent constitute a grave violation of dignity and privacy.

**Impact:** The judiciary reinforced that sharing explicit content without permission should be prosecuted under IPC sections such as 354C (voyeurism) and 509 (insulting modesty), alongside IT Act provisions.

### **(d) Protecting Women from Morphing and Cyberstalking**

**Judgment:** In *Nipun Saxena v. Union of India*,<sup>37</sup> the Court tackled the issue of morphing and unauthorized dissemination of women's images, treating these acts as severe violations of women's rights to dignity and privacy.

**Impact:** The judgment emphasized the necessity of stringent penalties and immediate action against offenders, pushing for the establishment of dedicated cybercrime units.

### **(e) Judicial Directions to Strengthen Law Enforcement**

Courts have repeatedly directed law enforcement agencies to adopt a victim-sensitive approach while handling cases of cybercrime against women. Directions include establishment of special cybercrime cells; providing special training to the police and judiciary in dealing with cybercrime-related offences; and accelerate the disposal of cases involving digital evidence.

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<sup>36</sup> (2017) 9 SCC 766.

<sup>37</sup> 2019 (2) SCC 703.

**(f) Judiciary as a Catalyst for Policy Changes**

The judiciary has often acted as a catalyst, urging legislative and executive branches to address gaps in the legal framework. Recommendations from cases like *Subramanian Swamy v. Union of India*,<sup>38</sup> have influenced policy discourse on comprehensive cybersecurity laws tailored to protect women.

**10. Conclusion and Suggestions**

Cybercrime against women in India is a multifaceted challenge that requires urgent attention and comprehensive solutions. While the rapid expansion of digital platforms offers women opportunities, it also exposes them to new threats in the form of harassment, cyberstalking, identity theft and the non-consensual distribution of intimate content. Despite legal frameworks such as the Information Technology Act 2000 and pioneering judicial interventions, enforcement challenges and loopholes remain, leaving women with inadequate protection.

The judiciary has played a critical role in advancing digital rights, particularly for women, by recognizing privacy as a fundamental right, setting precedents for consent in cyberspace, and pushing for stronger enforcement mechanisms. However, these measures alone are not enough. Effective collaboration between government, judiciary, law enforcement, technology companies and civil society is critical to combating this threat. By focusing on education, legal reform and technological innovation, we can work towards a safer and more inclusive digital environment for women. The following suggestions are recommended:

**(a) Strengthening Legal Frameworks**

It is necessary to amend the Information Technology Act of 2000 to address emerging threats, such as deepfakes, AI-driven harassment, and cyber grooming. There is a need to enact special laws that focus exclusively on cybercrimes against women and impose strict punishments for crimes such as revenge pornography, cyberstalking, and online trafficking.

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<sup>38</sup> AIR 2016 SC 2728.

**(b) Judicial Innovations**

Need to establish fast-track courts for cybercrime cases involving women to ensure timely justice. Further, Development of policies for handling digital evidence, including mandatory training for judges and prosecutors on cyber laws and digital forensics.

**(c) Law Enforcement Reforms**

It is necessary to establish specialized cybercrime units focused on combating crimes against women and ensuring the presence of trained female officers, and also to conduct regular training programs for police officers on victim-sensitive handling of cybercrime cases.

**(d) Collaboration with Technology Platforms**

Mechanisms should be in place to require technology companies and social media platforms to proactively monitor and remove abusive content aimed at women. There is a need to develop automated reporting systems to help victims flag harmful content and access support services.

**(e) Awareness and Digital Literacy**

High time to launch nationwide digital literacy campaigns targeting women, particularly in rural areas, to educate them about online safety, privacy controls and reporting mechanisms. It is necessary to integrate digital security and cybercrime awareness modules into school and college curricula.

**(f) Victim Support Mechanisms**

It is important to establish support hotlines and counseling services for cybercrime victims staffed by trained professionals, also to create a centralized online cybercrime reporting portal with multilingual support and streamlined processes.

**(g) Public-Private Partnerships**

Necessary to collaborate with private organizations and NGOs to conduct workshops on digital security and cybersecurity, and to



promote innovation in cybersecurity tools that can detect and prevent cybercrimes against women.

**(h) Monitoring and Accountability**

The Central Government should establish a national cybercrime regulator to regularly review the effectiveness of laws and policies, and conduct regular audits of law enforcement agencies to ensure accountability in the handling of cybercrime cases involving women.

**(i) International Cooperation**

The Government should collaborate with global cybersecurity authorities to combat cross-border cybercrime and share best practices, and advocate for international treaties to combat gender-based cybercrime.

By implementing these measures, India can make significant progress in curbing cybercrimes against women and creating a digital ecosystem that ensures security, equality and dignity for all.



## Resolution of Marital Discord under Muslim Law: An Appraisal in Contemporary Context

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### Abstract

The paper explores the concept of “Sulh,” an Islamic approach to Alternative Dispute Resolution (ADR), focusing on its application in resolving marital discord. Rooted in the primary sources of Muslim law—namely the Quran, Sunnah, and Hadith—“Sulh” emphasizes amicable settlements while upholding the moral and spiritual values of Islamic law. This study examines the historical origin of “Sulh,” its religious and legal sanctity, and its practical application in marital disputes.

While the concept of “Sulh” has been institutionalized in various ways, its implementation in India remains uncertain. Using a doctrinal and empirical approach, the researchers analyze the importance of “Sulh” and its judicial recognition in India. Landmark judgments, such as *Shamim Ara v. State of U.P.*, have underscored the necessity of pre-divorce reconciliation in alignment with Quranic mandates.

The paper further highlights the limited awareness and adherence to the practice within the Muslim community in India. It emphasizes the lack of legislative and institutional frameworks to support the adoption of “Sulh.” Through this analysis, the authors explore whether adopting “Sulh” in its true spirit can mitigate marital disputes, reduce divorce rates, and alleviate the burden on courts.

Additionally, the paper discusses how relevant institutions must prioritize the practical implementation of amicable settlements over pushing marital discord towards dissolution. This approach ensures that the underlying principles of “Sulh” are effectively realized, fostering harmony within the Muslim community.

**Keywords:** Alternative Dispute Resolution, Muslim Law, Marital Disputes, Sulh

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## 1. Introduction

As a result of the extensive dissemination of information and knowledge across borders, nations, faiths, and civilisations, it is now vital to research cross-cultural and multi-cultural practices. Any study of religion must begin with carefully analysing its traditions and customs. Religious traditions and rituals have been crucial to forming modern laws and the evolution of civilisation. Customary methods of dispute resolution have proved to be very efficient and effective. In a few religions, they are so sacred that they have been included in the “*formal legal system*”.

Islam’s main method of resolving disputes is founded on religious principles, customs, rituals, and the idea of peaceful coexistence. Although alternative dispute resolution (ADR) practices are generally credited to the West, it is important to note that ADR procedures like mediation, arbitration, Med-Arb, conciliation, and negotiation are referenced in the Holy Quran and are granted legal sanctity under Islamic law. As a result, these ADR techniques are not only stated in the Quran but have also been used since the Prophet (Peace Be Upon Him), who was a strong advocate for the concept of peaceful conflict resolution.

An attempt has been made to look at and trace the origins of ADR practices under Islam, their legal sanctity under Islamic law, and their judicial recognition in India. An empirical method was also used to look at the present status of ADR practices in the Muslim community in India.

A simple look at ADR practices under Islamic law would reveal its features that provide individuality as well as legal sanctity under the Islamic legal system to these practices:

- a) The ADR processes under Islamic law have religious sanctity owing to its origin under the Quran as well as the approval by the Prophet. The sense of submission instilled in Muslims by the Quran and the *Hadith* (the Prophet’s sayings, actions, and tacit approvals) elevates ADR to a higher level of spirituality.
- b) It is now morally required of both the “parties” and the “arbitrator” to settle a disagreement amicably after it has already been referred to arbitration.

- c) Amicable composition is acceptable, enabling an arbiter to render a decision in accordance with his moral principles of justice, equity, fair play, and conscience.
- d) Under Islamic law, parties to an arbitration procedure may withdraw from it at any moment prior to the arbiter's award being made.
- e) Islamic law prohibits arbitration agreements for future matters. Therefore, the "wait and see" strategy is maintained because a dispute might not arise.
- f) The fatwa of muftis is a sort of expert determination. Because fatwas are non-binding, the judgement of a high-ranking religious jurist on a contentious issue carries the stamp of wisdom and religious piety, eliciting more eager cooperation than the verdict of a "mere" expert.

## **2. Literature Review**

### **Tahir Mehmood, "Muslim Law in India and Abroad", Universal Lexis Nexis, Second Edition, 2016**

In his book, the author talks explicitly about the provision of reconciliation, which is the settlement of marital discord between the spouses. He claims that the Quran prescribes an arbitration procedure according to which representatives of the respective spouses jointly need to endeavour to resolve their disputes to bring both parties at dispute together. The author states that the Quran directs the arbitrators, with the promise of God's help, to genuinely try to effect reconciliation. However, if there is a failure, the spouses can think of dissolving the marriage under the principles of the Quran.

### **"Aseel Al Ramahi, *Sulh: A crucial part of Islamic Arbitration*, LSE Law, Society and Economy Working Papers 12/2008"**

The idea of Sulh as an efficient Islamic dispute resolution procedure is covered in great length in this work. The author highlights that Arab and Islamic civilisations, which have their roots in "*pre-Islamic Arabia*", have a long tradition of arbitration and peaceful resolutions (Sulh). Sulh was the ideal result and approach for any

kind of dispute resolution. Furthermore, arbitration is preferred above judgement under Islamic law. The author talks about how everyone in the group, including outsiders like judges (qadi), arbitrators (hakam), and conciliators, have an obligation to preserve and bring peace back. The foundation of any conflict resolution process under Islam is Sulh (amicable settlements), which uphold the ties of family, brotherhood, and society.

This paper focuses on the obligations of reconciliation or a “duty to reconcile” is imposed upon all Muslims. *Sulh* is a compromise-based agreement reached through direct or indirect negotiation between the disputing parties. In Islam, it is the moral and most revered course for those involved in a dispute. This paper explores the legitimacy of arbitration under Islamic law and explains its conciliatory nature.

**“Nora Abdul Hak and Hanna Ambaras Khan, *The Application of Sulh in resolving Community Disputes*, January 2013”**

The author provides a thorough explanation of the idea of Sulh and explains how the Quran provides a third party for Islamic dispute resolution. This essay discusses the practice of Sulh during the time of the prophet (PBUH) and his companions, as well as the method of peaceful resolution they employed to settle all disagreements, even those within the family. The author also mentioned the need to formalize or institutionalize dispute settlement in order to resurrect the old Sulh technique. The study’s author suggested using Sulh to help the husband and wife work out their differences. This will contribute to the development of a society that comprehends and practices Sulh, as the family is the smallest social unit. There won’t be any family disagreements in civil court if this method becomes more widespread in society, unless the matter is extremely severe and complex and cannot be settled within the family.

**“Sulaiman Dorloh, *Sulh and Implementation of Mediation Process in Islamic Family Law cases at Muslim Religious Committee Councils in Thailand*, December 2015”**

The author of this study has emphasised the value of mediation and arbitration as very successful dispute resolution processes. The study is to evaluate the roles of the arbitration process, conflict mediators, and conflict conciliators at the councils with reference to a few Islamic family law cases. It also gives a detail about the procedure of appointing arbiters in the holy Quran in the cases where the marriage is on the verge of breakdown. The Author has quoted many verses from chapter II .... and Chapter IV.... of the Holy Quran regarding Sulh in order to strengthen his research point.

**“Sayed Sikander Shah, *Mediation in Marital Discord in Islamic Law: Legislative Foundation and Contemporary Applications*” Arab Law Quarterly, Vol. 23, No. 3 (2009)**

In the paper, the author discusses how mediation has become one of the most practical institutionalised methods of resolving marital disputes in Western countries in recent years. Nonetheless, centuries ago, Islamic law recognised the potential of the reconciliation process to uphold the purity of marriage. According to the author, mediation was the fundamental *ratio legis* for the arbitral institution. The author continues by highlighting the ways in which mediation was culturally practiced using both official and informal approaches. The author examines the laws of Malaysia, where Shari’ah solicitors, judges, and religious department officials regularly mediate family disputes. He proposes a different approach, like establishing a body like a “Conciliatory Committee” that mimics the mediation mode used in the West.

**“Sayed Sikandar Shah Haneef and Mohd Abbas Bin Abdul Razak, *Stabilizing Muslim Marriages: Some Reflections on Ethical Management of Family Law*” Mazahib, 16(1).**

In this article, the author discusses how marriage dissolution and unstable families, along with the crippling consequences they have on women and children, are the hallmarks of today’s highly automated global society. According to the authors’ study on Malaysian law, early marriage, women’s “*financial independence*”, and easy access to multimedia are some of the variables that contribute to the increased divorce rate among Muslims, even in

the early years of marriage. This article's discussion of marriage counselling, legislation change, and pre-marriage education—topics that are primarily prioritised by both mainstream legal experts and “women's rights activists”, is crucial to the current research proposal. The writers also express their views on formalistic methods and how they could lead to more divorces rather than strengthening families if they are not combined with the focus on the moral aspects of Islamic law. The author also makes the case for a more focused and moral strategy, such as conciliation and mediation, to avoid marriage failure.

### **3. Objectives of the Study**

- a) To analyze the history and importance of Sulh (amicable settlement of dispute) in Islam.
- b) To trace out the concept of “Sulh” in Marital discord among Muslims
- c) To emphasize the Sulh procedure, which is used in divorce cases in India.
- d) To study Muslim understanding of the concept of Sulh.
- e) To conduct an “empirical study” on the awareness and implications of the concept of Sulh.

### **4. Research Questions**

- a) What is the importance and procedure of “Sulh” mentioned in the Holy Quran regarding marital dispute?
- b) What are Islamic scholars' thoughts on the concept of Sulh as a prerequisite for divorce?
- c) Whether the holy Quran's procedure for conciliation before divorce is actually followed in divorce cases in India?

### **5. Hypothesis**

The research proceeds primarily on the following hypothesis:

The number of cases of divorces can be amicably resolved and the burden of court will be reduced by strict adherence to the principles of Sulh (amicable settlement).

## 6. Research Methodology

The methodology which the Authors seek to adopt for this study is “doctrinal” as well as “empirical”. The doctrinal part would include the study of the available literature on the topic i.e. the holy Quran, Hadith and the juristic works in different languages. Journals, books, reports and articles published have been used for assessing the present legislative and judicial trends in India and Muslim countries. For doctrinal part, the data has been collected by undertaking a review of literature, of both primary and secondary sources. For the empirical study, the Authors created a Google form with questions about the topic, and the opinions of law students, law professors, practicing lawyers, judges and general public were sought for the purpose of the study.

## 7. Historical Background of ADR in Islam

Sulh is the term for “*alternative conflict resolution*” in the “*Islamic legal system*”. As is well known, the Qur’an serves as the foundation for the “*Islamic legal system*”, which is further strengthened by hadith, or the Prophet’s traditions, and Ijma, or the consensus of Muslim jurists.

Arbitration and peaceful resolution, or *sulh*, have a long history in Arab and Islamic civilisations that stretches back to “*pre-Islamic Arabia*”. Before Islam, the “*Arabs*” and a number of other ancient communities were used to and familiar with arbitration as a means of resolving disputes. When the Islamic Ummah was founded in Medina on the basis of Islamic Sharia, it recognised and authorised a number of “*pre-Islamic techniques*” for resolving conflicts amongst individuals, though with certain adjustments.<sup>1</sup>

Arabic people have historically had a cultural predisposition to settle disputes out of court by private means including conciliation, mediation, and bargaining. This practice has historical roots that extend beyond the framework of the society to the pre-Islamic period, known in Arabic as Ayyam-e-Jahiliyya.

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<sup>1</sup>Fauz Law Firm, *Sharia Quarterly Law Report - Volume 1 Part 1* 13 (Kaduna, Nigeria, 2013).



In the pre-Islamic era, there are numerous examples of alternative dispute settlement. The most well-known example is a dispute that developed during the reconstruction of the Kaaba, which was resolved through arbitration, and the arbitrator was none other than the Prophet Muhammad (PBUH). To trace the above example, local tribes fought over who would reinstall the Black Stone in the Kaaba once it was renovated. No clan chief wants to give up such a prestigious position to another. A potential conflict between the “*Quraysh*” tribes was avoided by the Prophet Muhammad by successfully settling that disagreement. After the Kaaba’s walls were rebuilt, the Black Stone (Alhajar-al-Aswad) was placed on the southeast corner of the edifice. One point of controversy was the honour of placing the Black Stone in its proper location. Abu Umayyah, the oldest man in Mecca, proposed that a fight would probably break out over the mosque’s gate, thus the first man to reach it the next morning should make the decision. Muhammad was the man in question. The people declared, “This is Muhammad, and we have accepted him as arbitrator,” They approached Muhammad and asked him to make a decision. He concurred. According to the manner that Prophet Muhammad described, the elders of each side decided to place the “Black Stone” on a cloak, grasp onto one end of the cloak, and carry the stone to its correct place. The stone was subsequently placed against the wall of the Kaaba by the Prophet.

The episode mentioned above demonstrates the key characteristics of arbitration at the time, which are:

- a) “Arbitration agreements” were straightforward and impromptu;
- b) They weren’t documented in writing;
- c) Since the goal of the entire procedure was to come to an understanding and resolve the conflict through whatever amicable means rather than issuing a legally enforceable ruling, arbitration was comparable to conciliation.

Prior to Islam, both the arbitration procedure and the implementation of the ruling were discretionary. The parties to the

case had to be present during the proceedings for the arbitral award to be valid. Other than a few conventions, arbitrators were not subject to any rules on procedural norms. For example, they were required to evaluate the parties' evidence in accordance with tribal customs and to hear disputing parties equally.

### **7.1 Etymology and Religious Sanctity Attached with the ADR (Sulh) in Islamic Law**

Sulh literally translates to "disagreement termination." Terminologically, Sulh refers to a contract that a disputing party enters into in order to resolve their disagreement once and for all. Sulh is an offer-and-acceptance agreement that only occurs when a dispute is brought about by an impartial third party and is consented to by both disputants.<sup>2</sup>

The idea of Sulh has deep roots and is present in both scriptural (Quranic) and extra-scriptural (the "corpus of Ḥadith") texts. There are numerous guidelines to demonstrate that making amends is a noble endeavour that is valued as a religious act. Sulh is governed by the scripture and extra-scriptural sources that Muslims consider to be the Shariah, just like many other areas of the law. Second, because Sulh is flexible, contractual, quick, and one of the best ways to settle many kinds of conflicts—whether business or family—it is also the recommended alternative dispute resolution option.

Throughout the sacred Quran, the idea of resolving disagreements amicably appears in multiple instances. According to the Holy Quran:

"And if two parties among the believers fall into the quarrel, make peace between them both, but if one of them rebels against the other, then fight you (all) against the one which rebels till it complies with the commands of Allah, then if it complies, make reconciliation between them justly, and be

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<sup>2</sup>Bassam Sulaiman Abughosh and Wafaa Zaki Shaqra, "A Glossary of Islamic Terminology", 1992.

equitable, Verily Allah loves those who are just and equitable”<sup>3</sup>

“If two parties among the believers fall into a quarrel, make ye peace between them...with justice and fair, for Allah loves those who are just and fair”<sup>4</sup>

The significance and function of conciliation and reconciliation in settling conflicts are explained in the sentences above. Islamic law states that the goal of Sulh is to put an end to animosity and conflict among Muslims so that they can live in harmony and peace with one another.

According to reports, the prophet who affirmed the verse above said:

“He who makes Sulh (peace) between people by inventing good information or saying good things (in his attempt to please the disputants) is not a liar”<sup>5</sup>

Additionally, the Prophet prioritised dispute resolution over fasting, sadaqah & zakah (almsgiving & charity), and prayer (salat).

“Shall I inform you of a deed more rewarding than fasting, prayer and charity? It is the act of settlement between people, for bad relationships and disputes are like a razor (which can eliminate a community).”<sup>6</sup>

The famous letter that Umar bin Khattab, the second caliph of Islam, wrote to “*Abu Musa Al-Ash’ri*” after appointing him as a *Qazi* (judge) and containing guidelines to help him decide cases, is another example of the historical significance Islam places on resolving conflicts and disputes.

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<sup>3</sup> The Holy Quran 49:10.

<sup>4</sup> The Holy Quran 49:9.

<sup>5</sup> Muhammad Muhsin Khan, “*Sahih al - Bukhari = Sahih - I Buhari : Arabic - English 3.Cilt 553*” (Islamic University, Medina, 1989), at p. 553.

<sup>6</sup> ‘abd Al-Raḥmān Ibn Nāṣir Sa’dī, S ‘abd Al-Ḥamīd and Sajid H Chaudhary, *Tafsīr As-Sa’dī 202* (Islamic Literary Foundation, Floral Park, Ny, 2012), at p. 202.

“All types of compromise and conciliation among Muslims are permissible except those which make haram (unlawful) anything which is halal (lawful), and a halal as haram”<sup>7</sup>

This idea is derived straight from the Prophet’s statement:

“if somebody innovates something which is not in harmony with the principles of our religion, that thing is rejected”

The function of the qazi (judge) and the Islamic judicial institution of the qadi (court) are given far more weight in the analysis of many reflections on Islamic culture. Nonetheless, there are distinct contemporary viewpoints on the customs of amicable settlement through the conciliation or mediation procedure (known as *sulh* in Islam) and the arbitration process (called *tahkim*), and their significance to Islamic justice is becoming more widely recognised.<sup>8</sup>

## 7.2 Concept of Sulh in “Matrimonial Disputes”

The Quran’s usage of the idea of Sulh in connection with settling marital conflicts is the second instance. The Islamic term for marital disagreement is *shikaq*, which translates to “difference and conflict” in Arabic. When a spouse’s relationship has been broken by friction or conflict, the Qur’an has commanded Sulh as a way to mediate the situation.

It is provided in the Holy Quran (4:35):

“If you fear that husband and wife may break up, then appoint one arbitrator from his family and one

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<sup>7</sup> The letter is still preserved. For its authenticity, which is established with carbon dating process, see, D. D. Margolich, “Omar’s Instructions to the Qazi”, *Journal of Royal Asiatic Society*, (1910), p. 307 at 311312; Asif A. A. Fyze, “A Modern Approach to Islam”, (Lahore, 1978 ed. Of the original Indian Edition), pp. 41-46; Mahmood A. Ghazi, *Adab al-Qadi*, (Urdu) 2<sup>nd</sup> ed. (Islamabad, Islamic Research Institute, 1993), p. 164

<sup>8</sup> E. Ann Black, Hossein Esmaeilli, Nadirsyah Hosen, “*Modern Perspectives on Islamic Law*”, 154 (UK and Northampton, MA: Edward Elgar, 2013)

from her, if the couple wishes to reconcile, then Allah will indeed bring about their reconciliation”<sup>9</sup>

According to this verse, if a disagreement occurs between a husband and wife, it is advised that they resolve it amicably through a process called tahkim, or arbitration, in Islam. Sulh might take the form of tahkim.

Another verse in the “Holy Quran” states that-

“If a wife fears cruelty or desertion on her husband’s part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though human inner-selves are swayed by greed. But if ye do good and practice self-restraint, Allah is well-acquainted with all that ye do”<sup>10</sup>

According to the passage, the wife can speak with her husband face-to-face through Sulh if she believes he is not fulfilling his duties as a husband or is attempting to leave her and she is not prepared for a divorce.<sup>11</sup>

There are “*different opinions*” on this verse. Some scholars believe the Government has the authority to designate arbiters from the families of husband and wife, while others believe it refers to the spouses themselves. The roles of the two arbiters are likewise debatable. Muslim jurists argue over the role of the appointed arbiters and whether their ruling should be recommended or binding. Imam Shafi’i believes that the arbiters’ decision will be binding, whilst Imam Abu Hanifa believes that the judgement will just be a recommendation. Irrespective, from the above arguments among the Muslim scholars, it can be said that both recognise the foremost responsibility of the two arbiters which is to find ways of bring about reconciliation among the spouses.

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<sup>9</sup>*The Holy Quran*, Chapter 4, Surah Al Nisa, Verse 35.

<sup>10</sup>*The Holy Quran*, Chapter 4, Surah Al Nisa, Verse 128.

<sup>11</sup>Abd al-Karim Zaydan, “*Al-Mufasssal Fi-Ahkam Al-Mar’ah Wa Al-Bayt Al-Muslim: Fi Al-Shari’ah Al-Islamiyyah*” (Mu’assasah al-Risalah, 1997), at p. 411.

The most frequent cause of divorce is reportedly marital strife, and although divorce is legal in Islam, it is strongly frowned upon. According to the explanation above, there are numerous Qur'anic injunctions that support peaceful conflict resolution, or Sulh.

In family disputes, Sulh can also be used to settle matters concerning: "non-property rights (like consummation of the marriage), property rights (like maintenance), and rights that emerge during or after the marriage (like matrimonial property, mut'ah, hadhanah, and maintenance during 'iddah)." This point of view holds that the judge or arbitrator has an obligation to maintain objectivity.

The Prophet Muhammad (PBUH) makes this obligation very clear:

"Whoever judges between two disputing parties (by way of tahkim) and both of them agree with (the arbitrator) whereas he does not do justice between them, Allah will curse him"<sup>12</sup>

As was already established, surah al-Nisa has two verses, 35 and 128: they specifically call for the use of "sulh" and the "appointment of arbitrators" to settle Muslim marital disputes. When it comes to family conflicts, sulh is comparable to sulh in other contexts, such property and non-property issues. Furthermore, sulh can be utilised to resolve conflicts that arise during a marriage or following a divorce. Sulh can be performed at any moment, according to Shafi'i jurists, either before or after the disagreement is brought in court for settlement.<sup>13</sup>

### 7.3 Recognition of Concept of Sulh by Indian Courts

The concept of Sulh, or pre-conciliation before divorce, was often highlighted by Indian jurists and courts. There are several rulings that discuss the specified condition of Sulh preceding divorce.

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<sup>12</sup>Mansur ibn Yunis ibn Idris al-Bahuti, *Kashshaf Al-Qina' "an Matn Al-Iqna"*. 107–8 (maktabat al-nasr al-Haditha, 1999), at pp. 107–8.

<sup>13</sup>Shams Al Din Muhammad Ibn Hamzah Ramli, *"Nihayat Al-Muhtaj Ila Sharh Al-Minhaj"* (Turath For Solutions, 2013), at p. 178.

In the case of "*Rukia Khatun v. Abdul Khaliq Laskar*"<sup>14</sup> and "*Jiahuddin Ahmed v. Anwara begum*"<sup>15</sup>, Justice Baharul Islam, in both judgments have, after referring to various religious texts under Quran, has observed that reasonability as an essential for Talaq. Prior to the start of Talaq, efforts at reconciliation by the family's elders or well-wishers are crucial, and "it may be effected" if the aforementioned outcomes are unsuccessful. A necessary precondition for talaq is an effort at reconciliation by both parties in their relationships. According to the ruling, talaq should only be administered following unsuccessful attempts by the husband and wife to resolve their differences and after each of them designated an arbitrator. Divorce is seen to be in violation of the Holy Quran's teachings if reconciliation is not achieved.

In the leading case of "*Shamim Ara v. State of U.P.*"<sup>16</sup>, the Hon'ble Supreme court observed the judicial opinion recorded by Baharul Islam J. of Guwahati High Court (as he then was):

"The correct law of talaq as ordained by the Holy Quran is that Talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters, one from the wife's family and the other from the husband. If the attempts fail, talaq may be effected."

The Court has further observed that:

"We are in respectful agreement with the above said observations made by the learned judges of the High Court. We must note that observations were made 20-30 years before and our country has in recent times marched steps ahead in all walks of life including progressive interpretation of laws which cannot be lost sight of except by compromising with regressive trends"

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<sup>14</sup> (1981) 1 GLR 358.

<sup>15</sup> (1981) 1 GLR 375.

<sup>16</sup>(2002) 2 SCC 518.

Later, this observation was relied upon by Justice Badar Durrez Ahmad of the Delhi High Court (as he then was) in the case of *"Masroor Ahmad v. State (N.C.T of Delhi) & Another"*<sup>17</sup>, and he held: "Reconciliation before the procedure of the divorce is of utmost importance and is in concurrence with the Holy Quran. It is of utmost necessity to follow the procedure of divorce as written in Quran and proper reasoning to be given before the commencement of the Divorce"

Further, in the case of *"Gaurav Nagpal v. Sumedha Nagpal"*,<sup>18</sup> the Supreme Court observed:

"It is a very disturbing phenomenon that large numbers of cases are flooding the courts relating to divorce or judicial separation. Efforts should be to bring about conciliation to bridge the communication gap which lead to such undesirable proceedings. People rushing to courts for breaking up of marriages should come as a last resort, and unless it has an inevitable result, courts should try to bring about conciliation. The emphasis should be on saving of marriage and not breaking it."

In the case of *"A.S Parveen Akhtar v. Union of India"*, Justice Siddiq in his judgment held:

"There must be an attempt at reconciliation before divorce between the husband and wife, a Muslim husband cannot divorce his wife at his whim or caprice i.e. divorce must be for a reasonable cause and it must be preceded by a pre-divorce conference to arrive at a settlement. Even if there is any reasonable cause for divorce, yet there must be an evidence to show that there was an attempt for a settlement prior to the divorce and when there was no such attempt prior to divorce to arrive

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<sup>17</sup>(2008) (103) DRJ 137.

<sup>18</sup> (2009) 1 SCC 42.



at a settlement by mediators, then there cannot be a valid divorce under Muslim law”<sup>19</sup>

Additionally, the Bombay High Court ruled in the case of *“Dilshad Begum Ahmed Khan Pathan v. Ahmad Khan Hanif Khan Pathan & Anr”*<sup>20</sup> that the husband’s merely stating his intention or actions to have pronounced Talaq is insufficient and does not comply with legal requirements. The husband must meet the arbitration requirements for reconciliation and the justifications for talaq in order to exercise his entitlement to talaq.<sup>21</sup>

After examining prior precedents and the authorities of Muslim law, the division bench of the Kerala High Court concluded in the case of *Kunhi Mohammed v. Ayisha Kutty*<sup>22</sup> that:

“Following the decision of the Supreme Court Shamim Ara (supra), it is evident that compliance with the mandate of Ayat 35 of Sura IV that two arbiters must be appointed and an attempt for reconciliation by them must precede the divorce is an essential, non-negotiable and unavoidable pre-requisite.”<sup>23</sup>

However, despite of the clear guidance of the Holy Quran and a number of observations of Supreme Court in many cases, the pre-requisite of *Sulh* is not being followed in most of the divorce cases among Muslims in India.

## 8. Data Analysis

The authors conducted a study by way of a google form and for the purpose of the study; the google form was circulated to law students, professors, lawyers and general public. Authors sought opinions on nine questions. There were in total 73 respondents.

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<sup>19</sup>2002 SCC Online Mad 836.

<sup>20</sup> 2007(109) BOM.L.R. 197.

<sup>21</sup> 2007(109) BOM.L.R. 197.

<sup>22</sup> AIR 2010 (NOC) 992 (KER).

<sup>23</sup> 2010 (2) KHC 64.

### 8.1 Demographics of Respondents

Out of 73 respondents, 38 were male, and 35 were female, reflecting nearly equal representation of both genders.

**Table 1: Demographics of Respondents**

Options	No. of Responses	Percentage
Male	38	52.05
Female	35	47.95

### 8.2 Do you believe the Muslims are aware of the concept of Sulh (Amicable settlement) mention in the Holy Quran?

The majority of respondents (30, 41.1%) feel that Muslims are aware of the concept of Sulh (Amicable settlement) mentioned in the Holy Quran. However, 31.5% of the respondents (23) were not sure about the awareness of the concept of Sulh (Table 1).

**Table 1: Awareness of Sulh in the Quran among Muslims**

Options	No. of Responses	Percentage
Yes	30	41.1
No	20	27.4
May be	23	31.5

**8.3 Chapter 4:35 of the Holy Quran states, “If you fear that husband and wife may break up, then appoint one arbitrator from his family and one from her family, if the couple wishes to reconcile, then Allah will indeed bring about their reconciliation; For Allah has All-knowing and All-aware”. Do you think the practice of Sulh is followed by Muslims in the light of abovementioned verse in marital discords?**

With respect to the question that whether the procedure of Chapter 4, Verse 35 is being followed in cases of marital discord, 49.3% of the respondents (36) replied in the negative (Table 2).

**Table 2: Adherence to Chapter 4, Verse 35 in Marital Discord Cases**

Options	No. of Responses	Percentage
Yes	22	30.1
No	36	49.3
May be	15	20.5

**8.4 If No, then do you think that Muslims are not aware of the aforementioned concept in the Holy Quran due to lack of knowledge?**

60.3% of respondents (44) feel that there is a lack of knowledge among Muslim masses regarding the concept of Sulh as provided in the Holy Quran.

**Table 3: Lack of Awareness of Quranic Concept Due to Knowledge Gaps**

Options	No. of Responses	Percentage
Yes	44	60.3
No	12	16.4
May be	17	23.3

**8.5: Do you agree that there is no sufficient and efficient legislation regarding the problem of divorce among Muslim which imbibes the concept of Sulh (Amicable settlement) in it?**

The respondents were divided on whether there is adequate legislation that incorporates the concept of Sulh as a condition precedent in the matter of divorce. However, more than 50 percent of all respondents agree that such legislation does not exist.

**Table 4: Agreement on Insufficient Legislation Addressing Divorce and Sulh (Amicable Settlement)**

Options	No. of Responses	Percentage
Strongly Disagree	10	13.7
Agree	38	52.1
Neutral	9	12.3
Disagree	9	12.3
Strongly Disagree	7	9.6

**8.6 There are numerous legislations relating to divorce among Muslims like Dissolution of Muslim Marriage Act 1939, Muslim Women (Protection of Rights on Divorce) Act 1986, Shariat Act 1937 and Muslim Women (Protection of Rights on Marriage) Act 2019. Do you agree that these legislations are in accordance with the process of divorce provided in Holy Quran?**

The respondents agree that the existing legislations in India governing divorce in Muslim law are not in accordance with the

divorce procedure provided in the Holy Quran. However, a large number of people were skeptical about the fact.

**Table 5: Opinion on Muslim divorce laws and their alignment with Quranic principles**

Options	No. of Responses	Percentage
Yes	12	16.4
No	31	42.5
May be	30	41.1

**8.7 Shamim Ara v. State of U.P is one of the most leading and celebrated judgement in Indian Judicial history where the Apex court has emphasized the process of Sulh at the time of divorce among Muslims and has held “Divorce shall be preceded by the attempts of Reconciliation”. Do you agree that after this judgement Muslims have started adopting the procedure of Sulh in the cases of divorce?**

The question of whether the Sulh procedure is being followed despite the Supreme Court’s recommendations in Shamim Ara v. State of U.P, 2002 AIR SCW 4162, the majority of participants believe that despite the Supreme Court’s recommendation, it is not being implemented in India.

**Table 6: Opinion on Sulh procedure followed despite the Supreme Court’s recommendations in Shamim Ara v. State of U.P**

Options	No. of Responses	Percentage
Yes	25	34.2
No	48	65.8

**8.8 Do you think that existing institutions like Darul Qaza, Imaarat-e-Sharia and others are successfully implementing and promoting the concept of Sulh in cases of divorce among Muslims?**

The respondents were almost equally divided in the opinion that whether or not institutions like Darul Qaza and Imaarat-e-Sharia are implementing and promoting the concept of Sulh in cases of divorce among Muslims.

**Table 7: Are Institutions Like Darul Qaza and Imaarat-e-Sharia Effectively Promoting Sulh in Muslim Divorces?**

Options	No. of Responses	Percentage
Yes	13	17.8
No	29	39.7
May be	31	42.5

**8.9 Do you agree that there has to be registered government institution in every Indian state and its Sub-division to tackle with the problem of divorce among Muslims by implementing the concept of Sulh the according to the procedure led down in the Holy Quran?**

80.8% of respondents feel that there should be a registered government institution to tackle with the problem of divorce according to the procedure laid down in the Holy Quran.

**Table 8: Should registered government institutions be established in every Indian State and sub-division to address Muslim divorce issues by implementing Quranic Sulh procedures?**

Options	No. of Responses	Percentage
Yes	59	80.8
No	14	19.2

**8.10 Do you agree that the implementation of Sulh (Arbitration, Conciliation, Mediation) if adopted in its true spirit as provided in the Holy Quran would lead to reduction in divorce cases among Muslims**

89% of the respondents opine that that the implementation of Sulh, if adopted in its true spirit, would definitely lead to a reduction in divorce cases among Muslims.

**Table 9: Impact of Implementing Sulh (Arbitration, Conciliation, Mediation) on Reducing Divorce Rates among Muslims**

Options	No. of Responses	Percentage
Yes	65	89
No	8	11
May be	0	0

## **9. Conclusion**

Divorce is a legal but frowned upon affair under Islam. Shariah gives spouses the right to choose whether or not to live together. It is a very disturbing phenomenon that a large number of divorce cases involving Muslim couples are occurring, and some of these cases even go to court. However, an even more disturbing aspect is that most divorces do not begin with an attempt to reach an agreement, i.e. 'Sulh' between the parties, which is one of the essentials stipulated under the Holy Quran. Divorce is, by far, the most misunderstood and misrepresented concept and procedure among Muslims, as well as the general public, in India, owing to the sheer ignorance of its adherents. Another important aspect of marital discord that must be resolved amicably between the parties-is the issues that arise as a result of the divorce, such as child custody and the Mahr issue.

There is no denying that despite clear guidance in the Holy Quran and Ahadith regarding the adaptation of reconciliation, the parties have failed miserably to make an amicable settlement between them in cases of marital discord. It is the need of the hour that Islamic Institutions and Seminaries, with the help of the Government, take concrete steps to make the process of amicable settlement a mandatory aspect to resolve disputes, particularly marital discord among Muslims.



## AI in Banking: Navigating the Legal Challenges and Regulatory Compliances

Rakesh Raushan\*

### Abstract

This paper provides an analysis of the legal and regulatory challenges confronting banks as they incorporate artificial intelligence into their operations. It begins by exploring the nuanced landscape of operational risks, cyber laws, and the imperative of robust data protection measures. Further, it delves into the intricate web of compliance requirements, including those outlined in the Prevention of Money Laundering Act and the Negotiable Instruments Act. Additionally, the paper scrutinizes the impact of key legislative frameworks such as the IT Act, 2000, and its Amendment Act, 2008, shedding light on issues ranging from intermediary obligations to encryption standards and liability for cyber-related offenses. This paper also emphasizes the urgent need for clear and coherent statutory guidelines to facilitate compliance and ensure the seamless integration of AI technologies within banking practices.

**Keywords:** Artificial Intelligence, Banking Sector, Legal Challenges, Regulatory Compliance, Data Protection

### 1. Introduction

The Basel Committee on Banking Supervision, in its “Consultative Document on Operational Risk,” defines “operational risk” as the potential for direct or indirect financial loss stemming from inadequate or failed internal processes, individuals, and systems or external events. This comprehensive definition encompasses legal risk as well.<sup>1</sup>

To address issues related to information technology, the IT Act-2000 was passed. Later, the IT Amendment Act-2008 introduced additional changes to address new problems, particularly

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<sup>1</sup>Basel Committee on Banking Supervision, *available at*: <http://www.bis.org/publ/bcbsca07.pdf> (last visited on May 10, 2023).

cybercrimes. To effectively reduce any associated risks, banks must consider the impact of cyber laws. Moreover, examining other matters about the necessity of data protection and privacy laws in India is essential. It is worth exploring whether India has an equivalent to the “Electronic Fund Transfer Act” in the United States, which delineates the rights and responsibilities of banks and consumers concerning various e-banking systems.

## 2. Legal Risk of Bank

Legal and operational risks are often the same, and documentation significantly mitigates these risks. However, it is recognized that there may be loopholes in existing documentation.

**Documentation:** customers entering into agreements for Internet banking transactions currently define their rights and liabilities. The Indian Banks’ Association should adopt a standard format or minimum consent requirement to standardize documentation and establish best practices.<sup>2</sup> Addressing legal risks also entails managing non-compliance with statutory requirements, which can lead to reputational risks. Ambiguities in evolving statutes can also give rise to legal risks.

## 3. Prevention of Money Laundering Act, 2002 (PMLA) & PMLR<sup>3</sup>

According to Section 12 of the Prevention of Money Laundering Act (PMLA), financial institutions and intermediaries, such as banks and other financial services providers, are required to keep transaction records as per the rules and give the Director the necessary information within the specified time.

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<sup>2</sup>Report on Internet Banking, available at: <http://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/21595.pdf> (last visited on May 12, 2023).

<sup>3</sup>Prevention of Money Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 (PMLA Rules).



Rule 3 of the PMLA states that records must be maintained for cash transactions exceeding ten lakhs or its equivalent in foreign currency, cash transactions that are connected and take place within a month, cash transactions involving fake or counterfeit notes, and suspicious transactions as defined.

Rule 6 of the PMLA states that record should be maintained for a period of at least 10 years from the date of the transaction.

Rule 8 of the PMLA outlines the reporting deadlines to the Director. For transactions equal to or exceeding 10 lakhs and interconnected transactions, the information must be submitted by the 15th day of the following month. Regarding cash transactions with counterfeit or forged notes, the information should be provided within seven days of the occurrence. In the case of suspicious transactions, the principal officer of the relevant entity must submit written, faxed, or emailed information to the Director within seven working days upon being satisfied that the transaction is suspicious.

Rule 9 of the PMLA specifies the requirement for entities to maintain records related to the identity of their clients. The rule details the documents to be obtained for different types of clients, such as individuals, companies, partnerships, trusts, and other unincorporated associations. These entities must establish and implement a client identification program that adheres to the requirements of this rule. They may also include additional requirements deemed to be necessary to verify client identities. A copy of the identification program must be provided to the Director. While the afore-mentioned requirements may seem procedural, they play a vital role in tracking transactions related to money laundering and identifying the individuals involved. Section 13 of the PMLA empowers the Director to impose fines ranging from 10 thousand to 1 lakh for each instance of non-compliance, in addition to any other actions permissible under the PMLA. Consequently, entities may also face penalties under Section 63. According to Section 70, if the contravention is committed by such entities, the officers responsible for conducting their business at the relevant time can also be held liable and punished.

Therefore, it is crucial for these entities to establish robust systems for tracking transactions as outlined in the PMLA and report them within the prescribed deadlines. Failing to do so not only expose them to potential fines but also carries reputational risks.

#### **4. Negotiable Instruments Act, 1881 (NI Act)**

The Negotiable Instruments Act (NI Act) includes electronic images of truncated cheques and cheques in electronic form within the definition of a “cheque.”<sup>4</sup> The process of truncating cheques in clearing has been implemented, and appropriate guidelines issued by the Reserve Bank of India (RBI) provide safeguards in this regard.<sup>5</sup> A digital representation of a paper cheque is what is referred to as an electronic cheque. As it implies that the electronic form should resemble a paper cheque in a mirror, the term “mirror image” may not accurately convey the intended meaning. Alternatively, phrases like “electronic graphic that resembles” or comparable expressions can communicate the intention.

Currently, asymmetric cryptosystems and digital signatures, with or without biometric signatures, are included in the definition of a cheque in electronic form. Since the definition was first introduced in 2002, it is limited to asymmetric cryptosystems and digital signatures, which are covered in Section 3 of the Information Technology Act of 2000. An appropriate amendment to the NI Act may be required to permit the use of electronic signatures on cheques in electronic form, especially in light of the 2008 amendment to the IT Act that included provisions for electronic signature.

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<sup>4</sup> The Negotiable Instrument Act, 1881, s. 6 (a) (b).

<sup>5</sup> DIT.CO. No. 1/09.63.36/2004-05 dated July1, 2004 on Cheque Truncation - Pilot Implementation; *available at:* <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=1756&Mode=0> ; and New Delhi Bankers’ Clearing House, Procedural Guidelines for Cheque Truncation System (CTS) (Version 2.0); Para 4.10 Use of PKI, *available at:* <http://rbidocs.rbi.org.in/rdocs/content/pdfs/PRGUVE020910>.

## **5. Impact of Various Provisions of IT Act, 2000 and IT Amendment Act, 2008 on Banks and Customers**

Before the 2008 Amendment Act, the IT Act of 2000 contained only two sections<sup>6</sup> that addressed computer-related offenses in general. The Amendment Act introduced more robust data protection measures and enhanced the overall framework against cybercrimes. However, there are inherent issues or gaps associated with crimes involving information technology, which are not specific to banks and customers but have broader implications. These include concerns about anonymity in cyberspace, jurisdictional challenges, evidentiary issues, and the underreporting of cybercrimes due to potential negative publicity for online businesses. Additionally, there are specific areas of concern for the banking sector and its customers.

### **5.1. Intermediary**

The definition of the term “intermediary” was amended in 2008.<sup>7</sup> Before the amendment, the definition was broader and covered any person who received, stored, transmitted, or provided services concerning a message. Although banks were not explicitly mentioned, the broad scope of the definition could classify banks as intermediaries due to their normal activities of receiving and transmitting electronic messages related to customer payments. As per the amended definition, an intermediary for electronic records includes a number of organizations, including telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online marketplaces, online auction sites, and cybercafes. The changes brought about by the amendment remain the same position concerning banks. It is possible to argue that the specific entities listed in the amended definition do not cover banks. However, some uncertainty remains, and the interpretation needs to be more precise. The IT Act 2000 places obligations on intermediaries that might not be applicable or relevant to banks. Applying all laws

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<sup>6</sup> The Information Technology Act, 2000, s. 43 and 66.

<sup>7</sup> The Information Technology Act, 2000, s. 2(1)(w).

governing intermediaries to banks could have unintended effects and result in legal repercussions under the IT Act 2000.

To avoid ambiguity and uncertainty, it is crucial to bring clarity through statutory amendments specifically addressing the meaning of the term “intermediary” concerning banks and financial institutions.

## 5.2. Encryption

Encryption is vital in safeguarding data transferred online from interception and misuse. Encrypting data before transmitting it over the internet significantly reduces the risk of unauthorized access. Even if intercepted, encrypted data remains unreadable without decryption. Data encryption across all internet service providers would protect customer privacy and secure sensitive information.

“There needs to be more uniformity in the data encryption standards imposed on different categories of online service providers. Internet Service Provider (ISP) licenses restrict the level of encryption to a maximum key length of 40 bits for individuals, groups, or organizations using symmetric key algorithms.”<sup>8</sup> The Reserve Bank of India (RBI) has stipulated<sup>9</sup> a minimum SSL/128-bit encryption for security. At the same time, the Securities and Exchange Board of India (SEBI) has specified 64/128-bit encryption for internet-based trading and services.<sup>10</sup> These encryption standards may not align with international norms.

“Internationally proven encryption techniques” must be used, according to the Information Technology (Certifying Authorities) Rules, 2000, when storing passwords. An encryption committee established by the Central Government under Section 84A of the IT Act, 2000 is developing encryption regulations in order to address

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<sup>8</sup>Department of Communications, Government of India, *available at*: [www.dot.gov.in/isp/landing\\_station.doc](http://www.dot.gov.in/isp/landing_station.doc) (last visited on May 13, 2023).

<sup>9</sup> Reserve Bank of India, *available at*: <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=414&Mode> (last visited on May 13, 2023).

<sup>10</sup> Circular SMDRP/POLICY/CIR-06 /2000 dated January 31, 2000, *available at*: <http://www.sebi.gov.in/Index.jsp?contentDisp=Search> (last visited on May 13, 2023).

these inconsistencies. Setting a minimum and reasonable level of encryption specifically for the banking industry would be advantageous, taking into account global standards and best practises.

### **5.3. Data Protection**

Section 43A of the IT Act addresses compensation for failing to protect data. In addition to protecting personal data (referred to as “sensitive personal data” under Section 43A), the IT Act, 2000 also specifies civil and criminal liabilities (under Sections 43 and 66, respectively) for unauthorized activities such as downloading, copying, damaging computer databases, and more. Sections 72 and 72A of the amended IT Act, 2000 are also relevant, with Section 72 addressing the punishment for unauthorized disclosure of electronic records obtained through IT Act powers and Section 72A extending to the disclosure of personal information without consent under lawful contracts, regardless of the powers granted under the IT Act, 2000.

To strike a balance between consumer protection and protecting banks from liability for actions beyond their control, it is essential to establish clear guidelines, prescribe standards for data protection, and define the scope of penalties under the IT Act 2000.

### **5.4. Computer-Related Offences and Penalty/Punishment**

The IT Act 2000, as amended, imposes both civil<sup>11</sup> and criminal liability<sup>12</sup> on banks. Civil liability includes the potential payment of damages up to 5 crores through the Adjudicating Officer under the amended Information Technology Act and higher amounts in a court of competent jurisdiction. Criminal liability can lead to imprisonment ranging from three years to life and fines, particularly under Chapter XI of the amended IT Act.<sup>13</sup> The legislation outlines various computer-related offenses.

In the banking industry, instances of phishing have become a significant threat to customers using Internet banking services.

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<sup>11</sup>The Information Technology Act, 2000, ss. 43-45.

<sup>12</sup> The Information Technology Act, 2000, ss. 65-74.

<sup>13</sup> The Information Technology Act, 2000, s.85.

While Section 66D of the amended IT Act broadly covers phishing offenses, attempting to commit phishing is not specifically punishable. To deter individuals from attempting phishing, provisions should be made to punish attempted phishing as well. Suppose banks believe that existing provisions do not adequately cover certain types of offenses related to advancements in technology and information systems. In that case, they can communicate their concerns to the government for separate treatment and consideration.

## **6. Experience from various Judicial Pronouncements**

### **6.1. Under IT Act, 2000**

#### **Umashankar Sivasubramanian v. ICICI Bank (Before the Adjudicating Authority under Information Technology Act, 2000 at Chennai)**

In *Umashankar Sivasubramanian v. ICICI Bank*, the complainant contended that the bank's negligence caused an unauthorized transaction from his account. The case was brought before the Adjudicating Authority under the Information Technology Act, 2000, in Chennai. According to ICICI Bank, the customer should submit a First Information Report (FIR) because the case involved phishing. Additionally, they made a preliminary objection, arguing that the matter was outside the scope of the IT Act. ICICI Bank was found guilty of violating Section 85 and other relevant clauses of Section 43 of the Information Technology Act, 2000. ICICI Bank was asked to pay a total sum of INR 12,85,000, including INR 6,00,000 towards expenses. However, ICICI Bank obtained a stay on the judgment by depositing INR 50,000. The matter later went in to appeal to the Cyber Appellate Authority.

#### **National Association of Software and Services Companies v. Ajay Sood<sup>14</sup>**

This case involved a settlement agreement between the plaintiff and the defendants in a lawsuit related to phishing activities. The

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<sup>14</sup> 119(2005)DLT596, 2005(30)PTC437(Del).

defendants were accused of masquerading as NASSCOM, a premier selection and recruitment firm, and sending fraudulent emails to obtain personal data. The plaintiff sought a permanent injunction against the defendants from circulating such emails or using the trademark 'NASSCOM' or any confusingly similar mark. The court approved the settlement agreement and noted the absence of specific legislation in India regarding phishing. The judge observed that phishing, which involves misrepresentation leading to confusion about the source of an email and causing harm to consumers and individuals whose information is misused, could be considered an act of passing off and tarnishing the plaintiff's image. The court left the development of law in this area for future cases to address, referring to a proposed US law that criminalizes phishing activities irrespective of actual damages suffered.

## **6.2. Under Consumer Laws**

### **ICICI Bank v. Ashish Agrawal – Before the State Consumer Disputes Redressal Commission, Raipur- (Appeal No. 435/2009)**

This appeal was filed in response to a decision by the District Consumer Disputes Redressal Forum in Raigarh ordering the appellant bank to reimburse the respondent for a sum of INR 49,912.36 that was allegedly withdrawn from his account, as well as INR 5,000 for mental anguish and INR 3,000 for litigation expenses. The bank's claim of a service deficiency regarding the upkeep of the respondent's bank account served as the basis for the complaint. It was alleged that money was withdrawn from the account without the respondent's knowledge by using Internet banking. The State Commission, however, allowed the bank's appeal, stating that the respondent was negligent in providing information about the password to a third person. The Commission found that the bank had taken necessary precautions. It provided instructions to the customer, including the option to change the password as desired, and therefore, the deficiency of service could not be attributed to the bank.

**Rishi Gupta v. ICICI Bank Ltd. - Before the Consumer disputes Redressal Forum, Bangalore (CC No. 514 of 2010)**

In this case, the complainant asked the opposite party bank to issue a refund of INR 2,30,000 along with interest at a rate of 24% per year, which the complainant claimed to have lost due to the bank's alleged negligence. The complainant also requested an order directing the bank to pay INR 10,00,000 in damages for its negligence in providing service. According to the complainant, 15 transactions of INR 20,000 each were fraudulently transferred from his account. However, the District Forum dismissed the complaint in an order dated 21 June 2010. The member of Forum stated that the complainant had breached his duty of care by sharing his ID and password, as well as other private information related to his online banking, to a third party in response to an email that was purportedly sent by the bank without first verifying it with the bank. It was impossible to blame the bank for this.

**M/s Pachisia Plastics v. ICICI Bank Ltd.- Before the Consumer Disputes Redressal Forum, Bangalore- (CC No. 1059/2008)**

The complaint, in this case, alleged a deficiency of service by the opposite party bank, claiming that INR 1,18,000 was debited from the complainant's account without authorization through net banking. However, in its order dated 11 July 2009, the Forum dismissed the complaint, by stating that there was no deficiency of service on the part of the bank. The order further observed that the burden of proof lies on the complainant to establish that they had kept the code number (password for net banking) secret, and it appeared that there was carelessness and negligence on the part of the complainant.

**K Thagyarajan v. ICICI Bank-Before the Consumer Disputes Redressal Forum, Bangalore- (CC No. 2969 of 2009)**

In this case, the complainant alleged a breach in security in Internet banking caused an unauthorized transfer of INR 77,000 to another account by an unidentified person from their bank account. The complainant alleged a deficiency in the opposite party bank's service and demanded a refund of the money with interest and compensation of INR 3,000,000. Despite this, the complaint was



dismissed by an order dated 20 May 2010, as no deficiency was found in the opposite party bank's services. The dismissal was justified as the complainant himself disclosed the credentials to others.

**Smt. Vimala Varkey & Others v. HDFC Bank Ltd & Another- Before the Consumer Disputes Redressal Forum, Bangalore- (CC No. 197 of 2008)**

In this case, the complainant expressed concerns regarding unauthorized money transfers from their account with the opposite party's first bank to the opposite party's second bank (ICICI Bank). The complainant demanded interest-bearing repayment after alleging a deficiency in service from the opposite party, No. 1 Bank. In response to a phishing email, the complainant voluntarily provided their customer ID and IPIN to a third party, potentially enabling the third party to complete the unauthorized transfer. According to the terms and conditions of opposite party No. 1 bank, the bank could not be held liable for any losses suffered by the complainant during such transactions.

**7. Challenges to the Implementation of AI in the Banking Sector**

Although AI implementation has enormous potential in the banking industry, several outside factors could impede its progress. The General Data Protection Regulation (GDPR), which the European Union implemented in 2018, is one such element. The GDPR contains provisions that limit automated decision-making, impacting various sectors, including the banking sector. Under Article 22 of GDPR, individuals have the right not to be subject to decisions solely from automated processing, including profiling. This poses a considerable challenge for AI, whose decision-making procedures are largely automated.

To address the limitations imposed by Article 22, one potential solution is to involve human intervention at some stage of the AI decision-making process. By allowing humans to have the final say in decisions, the concerns raised by the GDPR can be mitigated. Furthermore, the GDPR's Article 13 requires disclosure

requirements. The client has the right to know the reasoning behind a decision if, for instance, an AI tool rejects their request for a bank account or a loan. Although the disclosure need not reveal the complete source code of the AI algorithm, it is necessary to disclose some details regarding the input parameters of the AI tool. As a result, full adherence to data privacy laws may be required, which could prevent AI from achieving its anticipated efficiency.

By adapting to GDPR regulations, incorporating human oversight, and providing transparent explanations of AI decisions within the boundaries of privacy regulations, the banking sector can navigate the challenges posed by data protection rules. Balancing the benefits of AI implementation with the need to maintain customer trust and comply with regulatory requirements is essential for successful AI integration in banking.

“The potential for malicious manipulation of big data represents another significant obstacle to the widespread adoption of AI in the banking sector. Hackers may attempt to manipulate systems by flooding them with fictitious data, such as fake social media accounts, websites, or news articles, with the intention of influencing AI decision-making. This manipulation can lead to biased decisions and discrimination against certain individuals, or even enable hackers to take control of AI systems. Moreover, as AI systems are interconnected, the impact of malevolent actions can be amplified.”<sup>15</sup>

While AI itself possesses a considerable degree of accuracy in detecting cyber-attacks and malware, addressing cybersecurity concerns may require ongoing surveillance and monitoring by programmers. It becomes necessary to establish mechanisms that continuously assess and enhance the safety and security of AI systems. One approach could involve regulatory sandboxes, which provide controlled environments to test the safety and effectiveness of new AI tools in real-world scenarios. By subjecting

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<sup>15</sup> Bathaee, Yavar, “The Artificial Intelligence Black Box and the Failure of Intent and Causatio” 31 (2) *Harvard Journal of Law & Technology* 889-938 (2018).

AI systems to rigorous testing within these sandboxes, potential vulnerabilities can be identified and remediated before deployment in live banking environments.

Mitigating the risks associated with malicious data manipulation in AI requires a multi-faceted approach. This includes implementing robust cybersecurity measures, continuously monitoring AI systems for potential threats, and fostering collaboration between banks, regulators, and cybersecurity experts. By proactively addressing these challenges and promoting a culture of cybersecurity vigilance, the banking sector can harness the power of AI while ensuring the integrity, fairness, and security of their operations.<sup>16</sup>

Certain observers express concerns about the opaqueness and “black box” nature of AI, particularly neural networks. These concerns stem from the complexity of AI algorithms, which can be difficult for humans to visualize and comprehend due to intricate patterns and connections. AI algorithms constantly update and become more interconnected, compounding the complexity problem. It is important to note that decisions and predictions made by AI can frequently match those made by humans. However, unlike humans, AI lacks the ability to communicate the reasoning behind its decisions. This poses challenges in the use of AI, particularly in banking processes that require full traceability and transparency, even when decisions are reasonable and justified. In the event of a problem with a decision, it is crucial to identify the specific step where the error occurred. The entire decision-making process must comply with regulatory and supervisory rules while maintaining full transparency.

To address the opaqueness of certain AI algorithms, involving human programmers and overseers can serve as a potential solution. Their involvement can help reduce issues related to understanding the inner workings of AI systems. Although this approach may partially negate some efficiency gains, it can

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<sup>16</sup> FSB (2017). *Artificial intelligence and machine learning in financial services: Market developments and financial stability implications*.

contribute to ensuring transparency, accountability, and compliance with regulatory requirements.

Despite the potential impediments, banks remain committed to exploring the possibilities of AI, recognizing the significant profitability implications it holds. By actively addressing the challenges associated with AI opaqueness, banks can leverage the transformative power of AI while maintaining regulatory compliance and transparency in their decision-making processes.

## 8. Legal Practices for AI in Banking Globally

Country/Region	Legal Framework	AI Practices in Banking	Challenges	Recent Policy Changes
<b>India</b>	IT Act, 2000; RBI guidelines on digital banking and fintech	Fraud detection, loan approval automation, and personalized customer services	Lack of data privacy law, limited AI infrastructure, digital illiteracy, and regulatory ambiguity	Introduction of the Digital Personal Data Protection Act, 2023; push for UPI-linked AI-based innovations
<b>European Union (EU)</b>	GDPR, AI Act (proposed regulation for AI systems)	Credit scoring, risk assessment, and customer analytics	Compliance with GDPR, ethical concerns, and high penalties for violations	EU AI Act focuses on risk-based categorization and accountability of AI systems
<b>United States</b>	Consumer Protection Laws, Dodd-Frank Act, and sector-specific AI regulations	Predictive analytics, fraud detection, and robo-advisors	Regulatory fragmentation, concerns over bias in AI models, and consumer protection	Proposed Algorithmic Accountability Act mandates AI system audits for fairness and transparency

Country/Region	Legal Framework	AI Practices in Banking	Challenges	Recent Policy Changes
China	Cybersecurity Law, Draft AI regulations, and specific fintech guidelines	AI-powered lending, customer service bots, and blockchain for anti-money laundering	Concerns over state surveillance, lack of global standardization, and data protection	Guidelines for developing AI applications in finance and focus on blockchain-backed credit systems
Sweden	GDPR, Swedish Financial Supervisory Authority regulations	Algorithmic trading, fraud prevention, and customer insights	Balancing innovation with GDPR compliance and addressing systemic bias	Government-backed initiatives for AI adoption in financial services

## 9. Suggestions

### 9.1. Guidance for Bank: Defining Roles, Responsibilities, and Organizational Structure

**Board:** At the board level, the risk management committee should implement procedures for identifying and addressing legal issues arising from cyber laws. Additionally, it is essential to guarantee enough staffing and training of human resources in the relevant areas.

**Operational Risk Group:** This group should incorporate legal issues into the operational risk framework and take action to reduce these risks.

**Legal Department:** The legal function within the bank should advise business groups on legal issues related to the use of Information Technology.

### 9.2. Collaboration and Knowledge Sharing

Banks in India have much to gain from fostering collaboration and knowledge sharing in the adoption of AI. By establishing forums or industry associations, banks can create platforms for exchanging insights, experiences, and strategies related to AI implementation in banking. These collaborative efforts can facilitate the

identification and resolution of common challenges, sharing of best practices, and exploration of innovative solutions. Through collaboration, banks can collectively benefit from the combined expertise and experiences of their peers, enabling faster and more effective AI adoption.

### **9.3. Regulatory Framework**

The governments and regulatory bodies in India play a crucial role in facilitating responsible AI adoption in banking. To ensure the ethical and transparent use of AI, comprehensive and adaptive regulatory frameworks should be developed. These frameworks should address critical areas such as data privacy, algorithmic transparency, and ethical considerations. By establishing clear guidelines and standards, regulators can provide banks with a framework to navigate the complexities of AI adoption while also promoting innovation. The regulatory frameworks should be flexible enough to accommodate emerging technologies and evolving industry practices, allowing for continuous improvement and alignment with international standards.

### **9.4. Talent Development**

Building a strong pool of AI talent is essential for banks to effectively leverage AI technologies and drive innovation. Banks should invest in training programs to upskill their existing workforce in AI-related disciplines. These programs can range from basic awareness sessions to advanced training courses. Additionally, partnerships with academic institutions can help banks tap into the latest research and academic expertise in AI. Collaborations with AI startups and technology firms can provide access to specialized AI talent and foster an environment of innovation within the banking sector. By nurturing AI talent, banks can create a workforce equipped with the skills necessary to develop, deploy, and maintain AI systems.

### **9.5. Customer Education**

Educating and familiarizing customers with AI-powered banking services is crucial for building trust and increasing customer adoption. Banks should prioritize customer education programs

that explain the benefits, functionalities, and security measures associated with AI-driven services. This can be done through various channels, such as online resources, interactive demos, and dedicated customer support teams. By addressing customer concerns, dispelling misconceptions, and highlighting the personalized experiences and enhanced convenience offered by AI, banks can encourage customers to embrace these technologies. Regular communication and feedback loops can help banks understand customer preferences and continuously improve their AI-powered services.

### **9.6. Continuous Evaluation and Improvement**

Banks should establish robust mechanisms for continuous evaluation, monitoring, and improvement of AI technologies implemented in their operations. Regular assessments can help identify any biases, errors, or inefficiencies in AI algorithms. Banks should invest in dedicated teams responsible for testing and refining AI models to ensure their fairness, accuracy, and compliance with regulatory standards. To increase trust and responsibility, banks should work to create explainable AI models since transparency in AI decision-making processes is essential. Feedback loops involving customers and internal stakeholders can provide valuable insights for refining AI systems and addressing any identified shortcomings. By continuously evaluating and improving AI technologies, banks can deliver better outcomes for their customers, mitigate risks, and enhance the overall effectiveness of their operations.

## **10. Conclusion**

The banking industry has witnessed a significant transformation due to the evolution of technology, particularly in India. The competitive landscape has expanded with the entry of new players, while the Reserve Bank of India (RBI) has established a robust regulatory framework to ensure stability and protect depositors' interests. Acts such as the Banking Regulation Act, 1949, and the Foreign Exchange Management Act, 1999, have strengthened the regulatory framework.

Digital banking, mobile banking, and payment banks have revolutionized banking practices in India. These advancements have been facilitated by artificial intelligence (AI), which has the potential to reshape various sectors, including finance. However, the development and deployment of AI also raise ethical considerations and challenges that need to be addressed.

Responsible AI practices are crucial to ensure alignment with societal values, human rights, fairness, and transparency. Ethical frameworks and regulations should guide AI technologies' development, use, and impact. Data privacy and security are paramount, and robust mechanisms must be in place to protect personal information and individuals' privacy rights. Collaborative efforts at the international level are necessary to address global challenges associated with AI and share best practices.

Education and reskilling programs are vital to equip the workforce with the necessary skills to adapt to the evolving job market shaped by AI. An inclusive, multidisciplinary approach, balancing innovation, ethics, and societal considerations, is crucial for responsible AI development and deployment.

The integration of AI in the banking sector offers transformative opportunities. AI technologies can enhance operational efficiency, improve customer experiences, enable better risk management, and detect fraud. However, challenges such as data privacy, transparency, regulatory compliance, and fair lending practices must be carefully navigated.

Collaboration between banking institutions, AI experts, regulators, and legal professionals is essential to establish clear guidelines, standards, and frameworks. These guidelines should address legal, ethical, and regulatory aspects to ensure the successful integration of AI in the banking sector.

Banks can use the power of AI to drive sustainable growth and meet customers' evolving demands in the digital era by prioritizing customer trust, data security, and adherence to legal and regulatory requirements.



The adoption of AI in the banking sector varies across countries like India and more mature economy like Scandinavian country. While there are commonalities in terms of using AI for customer service, fraud detection, and process automation, differences exist in regulatory environments, market maturity, use cases, and data privacy.

India has established guidelines and regulations for responsible AI use, and Scandinavian countries have a dedicated national strategy for ethical AI practices. Market maturity differs, with India experiencing significant adoption due to its large population and growing digital ecosystem, while Scandinavian countries are known for their advanced technology landscape.

The analysis highlights the diverse approaches to AI adoption in banking, influenced by regulatory frameworks, market maturity, specific use cases, and data privacy regulations. Nonetheless, India recognizes the transformative potential of AI and is leveraging it to enhance customer experiences, streamline operations, and drive innovation. The continued advancement of AI in banking holds the promise of revolutionizing the industry further, providing personalized services, improving risk management, and delivering enhanced value to customers.



## Geographical Indication (GI) Tags and Intellectual Property Rights: An Exploratory Study

Partha Protim Bora\*

### Abstract

An extensive analysis of Intellectual Property Rights (IPRs) is presented in this article, with particular attention on Geographical Indication (GI) tags. It explores the importance of GI tags for marketing and preserving distinctive goods, emphasizing how they preserve traditional knowledge and promote economic growth. Numerous GI tag topics are examined *via* an extensive examination, including their legal foundation, application procedure, advantages, difficulties, and worldwide influence. Additionally, case examples from other countries are included in the essay to highlight the usefulness of GI tags in various social and cultural situations. The study emphasizes the extent to which these GI-tagged items are tarnished by the drawbacks associated with a deficiency in scientific rigor and quality management. Despite being recognized as GIs, the Banarasi and Venkatagiri sarees, as well as Pashmina Silk, encounter difficulties. The topic of genericide is also covered, with a focus on how its application should have been more limited than it is in India. There is, nonetheless, a bright side to everything. There are also some success tales that, albeit being fewer in number, offer insightful explanations on how to enhance the current situation. Tight legal oversight is necessary to prevent the dangers that these native goods and their makers confront.

**Keywords:** Intellectual Property Rights, Geographical Indication, GI Tags, Traditional Knowledge, Economic Development, Legal Framework

### 1. Introduction

Intellectual property rights, IPRs, are essential for preserving creativity, inventions, and traditional knowledge. Geographical Indication (GI) tags are one of the most important IPR tools available for safeguarding goods connected to certain geographic areas. This paper offers a thorough analysis of GI tags, explaining their significance for market value enhancement, cultural heritage preservation, and sustainable development. According to

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Geographic Indication, “Indications which identify a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation, or other characteristics of the good are essentially attributable to its geographical origin,” is what the World Trade Organization defines as a geographic indication.<sup>1</sup>

In the marketplace, customers typically have little knowledge of the important features of the product and frequently struggle to evaluate the quality of products without assistance from searches or experience. Nevertheless, the manufacturers are fully aware of the characteristics of the product and superiority over other products on the market. The “natural chaos” of uneven information is the outcome. Because customers frequently lack comprehensive knowledge, certain producers may be motivated to degrade the quality of items offered. This kind of information asymmetry can have a detrimental influence on the market and consumers’ purchasing decisions. In a situation like this, GIs can assist in reestablishing information symmetry by providing customers with more details about the items’ reputation and quality, protecting them from being unfairly held against manufacturers. According to Shapiro’s reputation model, reputation functions as a signaling device that informs customers about a certain quality, cutting down on their search expenses.<sup>2</sup>

A geographical indication is a mark applied to goods that are associated with a particular geographic area and have characteristics or a reputation unique to that area. A sign designating a product as coming from a certain location is necessary for it to serve as a GI. Additionally, the product’s attributes, traits, or reputation ought to be primarily attributable to its country of origin. There is an obvious connection between the product and its

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<sup>1</sup> World Trade Organisation, *available at*: [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_04b\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm) (last visited on March 4, 2024).

<sup>2</sup> Geographical Indications at the Crossroads of Trade, Development and Culture: Focus on Asia-Pacific (Irene Calboli & Ng-Loy Wee Loon eds., 2017).

original location of production since the attributes are dependent on the geographic location of production.<sup>3</sup>

The European Union actively promoted the concept of Geographical Indications (GIs) through the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights). Intellectual property rights have been introduced in a methodical manner thanks to the recognition of IPRs as essential to human growth.<sup>4</sup>

## 2. Global Perspective on GI tags

The World Trade Organization (WTO) oversees nearly all aspects of international trade regulations. At the time of the presentation, its 150 members accounted for almost 95% of all commerce in products and services. The WTO's three primary roles are to:

- (1) Provide a set of rules for international trade,
- (2) Serve as a venue for talks, and
- (3) Oversee the application of trade laws and mediate disputes among Members.

The World Trade Organization is a member-driven body that makes decisions by consensus.<sup>5</sup> The main areas of intellectual property are covered by the TRIPS Agreement (Annex 1C of the WTO Agreement): industrial property rights, which include patents, trademarks, geographical indications, industrial designs, and other rights; and copyright and related rights, which include the rights of performers, phonogram producers, and broadcasters. The TRIPS Agreement stipulates a minimal degree of security. At the national and international levels, GIs are a complicated and contentious

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<sup>3</sup> World Intellectual Property Organization, *available at*: <https://www.wipo.int/portal/en/index.html> (last visited on March 4, 2024).

<sup>4</sup> J Adithya Reddy & Siladitya Chatterjee, "A Critique of the Indian Law and Approach towards Protection of Geographical Indications with Specific Reference to Genericide" *JIPR* Vol. 12 (6) 553,573 (2007).

<sup>5</sup> World Trade Organisation, *available at*: <https://www.wto.org/> (last visited on March 4, 2024).

topic. They feature significant socio-historical and cultural elements in addition to significant commercial and economic stakes.<sup>6</sup>

### 3. Position of Geographical Indication (GI) Labels in India

Geographical Indications (GIs) are names or signs used to distinguish products based on specific qualities, traditional production methods, or their geographic origin. In India, GI labels are applied to products that possess these distinctive attributes, highlighting their uniqueness and connection to particular regions. Geographically indicated indications (GI) were initially used as label d'origine contrôlée (AOC) in France in the middle of the 20th century. However, through the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was closed on November 11, 1994<sup>7</sup>, GI was extended to various countries, including India. Geographically Indicated (GI) labels in India are issued in accordance with the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999, which became operative on September 15, 2003, and is overseen by the Geographical Indication Registry, a division of the Ministry of Commerce and Industry's Department of Industry Promotion and Internal Trade. Any individual, group of individuals, association, or authority defined by or under the legislation may apply for a GI tag. The application filed in such a case should be sent to the relevant organization together with a prescribed fee to the appropriate authority.<sup>8</sup>

A GI tag is significant for a period of only ten years, even though it may perhaps be recharged for an additional ten years with each subsequent restoration. Darjeeling Tea became the first product

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<sup>6</sup> Geographical Indications ( PDF), available at: [https://www.academia.edu/4172158/Geographical\\_Indications](https://www.academia.edu/4172158/Geographical_Indications) ( last visited on March 4, 2024).

<sup>7</sup> Dr. Ruppel W Sharma & Ms. Shraddha Kulhari, Marketing of GI Products: Unlocking their Commercial Potential, Centre for WTO Studies IIFT 10, 52 (2015).

<sup>8</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999, s.11(i).

with a GI label which was granted quite some time, from 2004 to 2005, and since then, the number of applications and enlistments has rapidly increased.<sup>9</sup>

According to the Indian Government, Section 2(f) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 has resulted in the application of GI labels to around 370 distinct items.

Chapter VIII of the Act, is headed “Offenses, Penalties and Procedure.” The components required to constitute the offenses of fabricating and fraudulently applying GIs are listed in Section 38 of that document. If someone creates a falsely similar GI (of a user) without the approved user’s consent, authentic GI) or alters, adds, or erases a legitimate GI, that person is considered to have fabricated a GI. A person would be considered to have fraudulently applied a GI if he/she apply a GI or a misleadingly similar GI to goods or utilize any such package with the intention of packing, stuffing, or wrapping it with goods other than the real products. It is the accuser’s responsibility to demonstrate the proprietor’s consent. The possession of any die, block, machine, paint, or other instrument for the purpose of such falsification, in addition to the aforementioned two actions, carries a penalty under Section 39 of the Act. The convicted party faces a minimum sentence of not less than six months and which may go up to 3 years and fine.<sup>10</sup>

Painting from the Majuli manuscript, which was also awarded a GI tag. Majuli manuscript painting is a form of painting — also originating in the 16th century — done on sanchi pat, or manuscripts made of the bark of the sanchi or agar tree, using homemade ink. The earliest example of an illustrated manuscript is said to be a rendering of the AdyaDasama of the Bhagwat Purana in

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<sup>9</sup> Kaushik Basu, Darjeeling Tea -A Geographical Indication (GI World Intellectual Property Organization), *available at*: [https://www.wipo.int/edocs/mdocs/geoind/en/wipo\\_geo\\_lim\\_11/wipo\\_geo\\_lim\\_11\\_11.pdf](https://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_11.pdf) (last visited on March 6, 2024).

<sup>10</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999.

Assamese by Srimanta Sankardev. This art was patronised by the Ahom kings. It continues to be practised in every sattrā in Majuli.<sup>11</sup> The Indian government on Monday (March 4, 2024) awarded the traditional Majuli masks in Assam a Geographical Indication (GI) designation, further enhancing their increasing prominence on a national and international level. In the neo-Vaishnavite tradition, the handcrafted masks are commonly used to portray characters in bhaonas, or theatrical plays with spiritual meanings. The Majuli text picture was also awarded a GI designation. Products that come from a certain geographic area are given a GI tag, which denotes special attributes and traits. It functions essentially like a trademark on the global market.<sup>12</sup>

#### 4. Application Process and Requirements

A thorough application procedure must be completed in order to obtain a GI tag, and part of that process is proving the product's distinctive attributes and its relationship to the specific geographic area. This section covers the documents and supporting proof needed to support the application, as well as the stages involved in applying for GI recognition. Any individuals, producers, associations, organizations, or authorities representing the interests of the producers of the relevant commodities submit an application for the registration of Geographical Indications to the Registrar of Geographical Indications. Each application must be submitted using the official form GI-1A to ID, signed in triplicate by the applicant, and include three copies of the Statement of Case and the required payment. The interest of the manufacturers of the items in question that need to be registered should be specified by the applicant. An expert panel will review the application in its initial review to look

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<sup>11</sup> Indian Express, *available at*: <https://indianexpress.com/article/explained/explained-culture/gi-tag-for-majuli-masks-history-cultural-sig/> (last visited on March 6, 2024).

<sup>12</sup> Indian Express, *available at*: <https://indianexpress.com/article/explained/explained-culture/gi-tag-for-majuli-masks-history-cultural-significance-9197633/> (last visited on March 6, 2024).

for any flaws or objections. Should an objection be raised, an appeal may be made, and the applicant will then have two months to respond to a public hearing. Within three months of submission, the application that is approved will appear in the Geographical Indication Journal. The opponent must then file a notice opposing the application of the product when it is published in a journal within the allotted time frame if there is any resistance. Within two months after receiving notification from the opponent, the applicant must refute the same with the required counterargument. Both the opponent and the defender will provide evidence during the hearing through affidavits and supporting documentation if the counter-statement has been submitted. Both the opponent and the defender will provide evidence at the hearing in the form of an affidavit and any supporting documentation if the counter-statement has been submitted. In the event that a counterstatement is not found, the applicant's application will be evaluated by the Registrar for GI acceptance as of the filing date, and a certificate bearing the Geographical Indication Registry seal will be provided.<sup>13</sup> A GI's registration is good for ten years. It is possible for the applicant to renew for an additional ten years each if they so want. It will probably be taken off the GI registry if it isn't.

## 5. Advantages of GI Tags

Producers, consumers, and the geographical areas themselves all profit from GI tags in different ways. Manufacturers receive recognition for their distinctive goods, which boosts consumer demand and drives up pricing. The guarantees of quality, authenticity, and conventional production techniques attached to GI-tagged goods are advantageous to consumers. In addition, cultural legacy is essential for social inclusion and community development. It promotes social cohesiveness and resilience by

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<sup>13</sup> Geographical Indication Registry, *available at*: <https://www.google.com/search?q=Geographical+Indication+Registry.+Retrieved+from.+http%3A%2F%2Fwww.ipindia.nic.in%2Fregisteredgls.htm+acce> (last visited on March 7, 2024).



fortifying the sense of identity, pride, and belonging among community members.<sup>14</sup> Moreover, by creating jobs, fostering tourism, and conserving traditional knowledge, GI tags support the socio-economic growth of the local communities.

Cultural heritage promotion and preservation, however, encounter a number of obstacles. The deterioration of customs and knowledge is frequently caused by fast urbanization, globalization, and changing lifestyles<sup>15</sup>. Threats to cultural heritage can also come from unsustainable development methods, lack of understanding, poor infrastructure, and neglect. Effective legislative frameworks, community participation, and education are all necessary components of a holistic strategy to ensure the sustainable protection and transfer of cultural heritage.

## 6. Limitations and obstacles

GI tags have a number of restrictions and obstacles in spite of their advantages. These include disputes over ownership and management of geographical indications, administrative challenges in the application process, enforcement, and counterfeiting. This section investigates these issues and instead their potential solutions.

*Sustainable Development*: By encouraging eco-friendly behavior, protecting biodiversity, and bolstering rural economies, GIs have the ability to help sustainable development. However, addressing issues like resource management, market volatility, and climate change is necessary to ensure the sustainable growth of GIs. The long-term viability of GI efforts may be improved and these

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<sup>14</sup> Hutter, M., & Richards, G., "The Impact of Cultural Events on City Image: Rotterdam, Cultural Capital of Europe 2001" *European Urban and Regional Studies*, 25(1), 20-35 (2018).

<sup>15</sup> United Nations. (2017). Cultural Heritage and uploads Sustainable Development, *available at*: <https://www.google.com/search?q=from+https%3A%2F%2Fwww.un.org%2Fsustainabledevelop> ( last visited on March 8, 2024).

difficulties can be addressed by incorporating sustainability concepts into GI manufacturing and marketing procedures.<sup>16</sup>

*Globalization and Commercialization:* Although globalization offers chances for GI goods to enter new markets and receive more attention, it also presents obstacles. The privatization of cultural heritage, the diluting of traditional customs, and the loss of authenticity are possible outcomes of the commercialization of GIs. Maintaining the distinct character and value of GI goods requires striking a balance between commercial needs and cultural integrity.<sup>17</sup>

*International Protection and Market Access:* Because of different nations have different legal systems and regulations, it can be difficult to provide GIs international protection and to get access to international markets. Global collaboration and accords, like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), enable the safeguarding and acknowledgement of Geographic Indications (GIs) on a global scale. The worldwide accessibility and economic success of GI products can be increased by investigating market access prospects through bilateral and multilateral trade agreements.<sup>18</sup>

## 7. Worldwide Effects and Case Studies

A type of intellectual property protection known as the Geographical Indication (GI) marking identifies a product as coming from a certain place and endowing it with characteristics or a

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<sup>16</sup> De Medeiros, D. G., & De Carvalho, F. M. "Geographic Indications: A Tool for Sustainable Rural Development" *Journal of Rural Studies*, 57, 136-144 (2018).

<sup>17</sup> Janssens, E., & Huysmans, M. "Territoriality and Globalization in European Geographical Indications for Food and Agricultural Products" *International Journal of Sociology of Agriculture and Food*, 22(3), 347-363 (2015).

<sup>18</sup> World Trade Organization (WTO). (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), *available at*: [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_04\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_04_e.htm) (last visited on March 8, 2024).

reputation unique to that area. Here are several case studies with worldwide effects:

- a) *Champagne, France*: Known for its sparkling wine, Champagne is a region in France and arguably one of the most well-known examples. The GI tag assures that only sparkling wine made in this region is permitted to be named Champagne and safeguards the word “Champagne”.<sup>19</sup>
- b) *India’s Darjeeling Tea*: Darjeeling tea is well-known around the world for its distinct flavor and fragrance. The GI tag protects the quality and authenticity of Darjeeling tea by ensuring that it can only be branded as such if it is grown in specific locations of Darjeeling, India.<sup>20</sup>
- c) *Parmigiano-Reggiano, Italy*: A GI tag protects this cheese, sometimes referred to as Parmesan cheese. Parmigiano-Reggiano is the name given to cheese that is only made using specified traditional methods and in select locations of Italy.<sup>21</sup>
- d) *Goa Feni*: The GOA government’s Department of Science, Technology, and Environment and the GOA Cashew FENI Distillers and Bottlers Association (TGCFDBA) worked to get GI tag for FENI, which is registered under class 33. The substance is colorless, and as it ages in oak barrels, it takes on a golden brown hue. The rights of farmers, regional producers, and the bottler of this distinctive product will be safeguarded by this GI

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<sup>19</sup> : World Intellectual Property Organization (WIPO) - “Geographical Indications: A Tool for Local Economic Development” available at: [https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip\\_p\\_anorama\\_1\\_learning\\_points.pdf](https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_p_anorama_1_learning_points.pdf) (last visited on March 8, 2024).

<sup>20</sup> The Economic Times - “Darjeeling tea becomes the first GI tagged product to be auctioned on the global online platform” available at: <https://timesofindia.indiatimes.com/india/darjeeling-tea-gets-eus-protected-tag/articleshow/> (last visited on March 9, 2024).

<sup>21</sup> European Commission - “Protected Geographical Indications” available on ([https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/protected-designations-origin/protected-geographical-indications\\_en](https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/protected-designations-origin/protected-geographical-indications_en)) (last visited on March 10, 2024).

designation. About 40,000 people are thought to be among the group that this registration is expected to help.<sup>22</sup>

These case studies show how the preservation of traditional knowledge, assurance of product quality, and support of local economies may result in GI tags being advantageous to producers as well as consumers. Despite its flaws, it would be blatantly false to claim that the legislation has benefited any product or commodity. Using two significant case studies from India as an example, which have brought about wealth for despite its flaws, it would be blatantly false to claim that the legislation has benefited any product or commodity. Using two significant case studies from India as an example, which have brought about wealth for analyze some key elements that contributed to both the exporters and the indigenous workers becoming the success stories they are today, therefore making a place for themselves in the market.

### **8. Geographical indications as a factor of rural development**

Numerous studies show that geographical cues can support growth in rural regions when given the right circumstances. Regional producers often have the right to utilize a geographical indicator, and as a result, all of these producers benefit from the extra value that the geographical indication creates. Products with a regional indication typically command a premium brand price and provide jobs locally, which in turn may slow the outflow of people from rural areas. Furthermore, items with a geographical indication can have significant knock-on impacts, such as in the travel and culinary industries. Geographical indicators may benefit an area by marketing it as a whole in addition to creating employment and increasing wealth. Geographical indicators may, thus, aid in the development of a “regional brand.” But a word of caution is in order. Creating a geographical indicator for a product does not ensure that the area will succeed or flourish automatically. A

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<sup>22</sup> Protection of Geographical Indications in India, *available at*: <https://www.lawyersclubindia.com/articles/protection-of-geographical-indication-in-india-3> (last visited on March 10, 2024).

number of prerequisites must be met by the area and the design of the particular geographical indicator system for geographical indications to support growth.

## **9. Conclusion**

It should be noted that Geographical Indication (GI) tags are essential for safeguarding traditional knowledge, encouraging economic growth, and maintaining cultural assets. Notwithstanding their difficulties, GI tags are an important instrument in the field of intellectual property rights since they provide significant advantages to producers, consumers, and geographic areas. To fully realize the potential advantages of GI protection on a worldwide scale, ongoing efforts to fortify it and increase public knowledge of its significance are imperative. From a commercial standpoint, entrepreneurs must profit more and more from selling the products that customers want. Customers want high-quality, one-of-a-kind stuff, while dealers deceitfully market counterfeit goods in order to make money. Every country has a unique selection of goods that reflect a unique combination of its varied climate, rich cultural heritage, and distinct states. Since India is a distinct nation in each sense, each state has a wealthy, distinct culture, so it is important to keep in mind that any items that deal with the central area should be fully insured against any kind of encroachment.



## Who will Judge the Judges? An Appraisal of Bias in the Delivery of Justice

Sheikh Inam Ul Mansoor\*

### Abstract

The complex issue of judicial bias is explored in detail, prompting a thorough re-evaluation of legal principles. It examines how bias within the legal system goes beyond the law, touching on culture, politics, ideology, and personal beliefs. The paper highlights the importance of addressing both conscious and unconscious biases in the judiciary while balancing judicial independence with accountability. It discusses the challenges of changing a legal system deeply rooted in tradition and the difficulty of maintaining impartiality while ensuring transparency. The paper also addresses the societal respect for the judiciary that often prevents open discussions about bias and accountability. It looks into the selection and appointment processes of judges, stressing the need for diversity within the judiciary to better represent society's diverse makeup. Recognizing cultural and racial differences is essential in this effort.

Additionally, the paper points out the bureaucratic obstacles to institutional change and advocates for reforms to reduce case backlogs and promote a more diverse bench. It further emphasizes the need for education and training programs to help judges recognize and address their biases. However, the challenge of assessing the effectiveness of these programs is also acknowledged. In conclusion, this paper envisions a judicial system where bias is actively confronted and justice is delivered with impartiality and fairness.

**Keywords:** Judicial Bias, Impartiality, Jurisprudence, Judicial Independence, Accountability, Transparency

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## 1. Introduction

Judicial bias, often an insidious and surreptitious force within the realm of jurisprudence, embodies the subtle partiality that can sway judicial decisions. It transcends the traditional paradigms of justice, engendering profound ramifications for the very essence of a fair and equitable legal system. As renowned legal scholar John Rawls posited, “Justice is the first virtue of social institutions,” underlining the inherent importance of impartiality in the judiciary.<sup>1</sup> However, the persistent spectre of bias casts a disconcerting shadow upon the ideals of justice. It is imperative that we delve into the multi-faceted facets of judicial bias, elucidating its nuances, sources, and the profound impact it exerts on legal outcomes.

The complex nature of judicial bias is revealed through its various forms, ranging from overt biases rooted in conscious prejudices to the more subtle and unconscious implicit biases.<sup>2</sup> Furthermore, it dissects systemic bias, wherein the very structures of the legal system perpetuate unequal treatment.<sup>3</sup> A plethora of factors that influence and sustain its existence are intricately woven into the fabric of judicial bias. The personal beliefs and values of judges, deeply etched by their life experiences, wield considerable influence in shaping their decisions.<sup>4</sup> Socio-economic backgrounds, cultural and racial influences, as well as the omnipresent spectre of prejudice and stereotypes, further amplify the labyrinth of biases that permeate the judicial sphere. This intricate interplay of influences merits a meticulous examination. The consequences of judicial bias extend beyond the confines of courtrooms and legal chambers. It reverberates in the very bedrock of a just society. Cases

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<sup>1</sup> Rawls, J. (1971). *A Theory of Justice: Original Edition*. Harvard University Press. available at: <https://doi.org/10.2307/j.ctvjf9z6v>

<sup>2</sup> Greenwald, A. G., & Krieger, L. H. (2006). Implicit Bias: Scientific Foundations. *California Law Review*, 94(4), available at: 945–967. <https://doi.org/10.2307/20439056>.

<sup>3</sup> Alexander, Michelle. (2012). The New Jim Crow: Mass Incarceration in an Age of Color Blindness.

<sup>4</sup> Sunstein, C. R. (2005). Moral heuristics. *Behavioral and Brain Sciences*, 28(4), 531–573. <https://doi.org/10.1017/S0140525X05000099>.

tainted by bias invariably lead to grave miscarriages of justice, eroding the trust of citizens in the legal system.<sup>5</sup> Efforts are made to uncover the consequences of bias and analyze the inherent disparities in sentencing and legal outcomes caused by its detrimental effects.

The urgency of addressing and examining the methods available to mitigate and counteract judicial bias, which range from judicial education and training<sup>6</sup> to advocating for diverse bench compositions<sup>7</sup> and implementing objective standards and procedures. While addressing judicial bias is paramount, it is not without its share of challenges. The legal system's resistance to change and the delicate balance between judicial independence and accountability present formidable obstacles.<sup>8</sup> This paper will scrutinize these challenges and offer insights into potential solutions.

## 2. Types of Judicial Bias

Judicial bias, a pernicious facet of the legal system, can undermine the very foundations of justice. In the context of India, a nation that prides itself on its democratic ideals and rule of law, the presence of bias within the judiciary warrants vigilant scrutiny. This discourse

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<sup>5</sup> Sommers, S. R., & Norton, M. I. (2006). Lay Theories About White Racists: What Constitutes Racism (and What Doesn't). *Group Processes & Intergroup Relations*, 9(1), 117-138. <https://doi.org/10.1177/1368430206059881>.

<sup>6</sup> Greenwald, A. G., Dasgupta, N., Dovidio, J. F., Kang, J., Moss-Racusin, C. A., & Teachman, B. A. (2022). Implicit-Bias Remedies: Treating Discriminatory Bias as a Public-Health Problem. *Psychological science in the public interest : a journal of the American Psychological Society*, 23(1), 7-40. <https://doi.org/10.1177/15291006211070781>.

<sup>7</sup> Bonica, A., & Sen, M. (2017). The Politics of Selecting the Bench from the Bar: The Legal Profession and Partisan Incentives to Introduce Ideology into Judicial Selection. *The Journal of Law & Economics*, 60(4), 559-595. <https://www.jstor.org/stable/26501413>

<sup>8</sup> Fleck, Z. (2021). Changes of the Political and Legal Systems: Judicial Autonomy. *German Law Journal*, 22(7), 1298-1315. doi:10.1017/glj.2021.64.



endeavours to dissect three primary forms of judicial bias that pervade the Indian legal landscape: Explicit Bias, Implicit Bias, and Systemic Bias. It is imperative to navigate these treacherous waters to unearth the shortcomings within the Indian judicial system, ultimately striving for a more equitable dispensation of justice.

## 2.1 Explicit Bias

Explicit bias, the most overt form of judicial partiality, occurs when a judge, swayed by personal prejudices or extraneous considerations, blatantly exhibits favouritism or discrimination in their decisions. This bias is akin to a blemish on the facade of justice, tarnishing its very essence. Instances abound in India where explicit bias has marred the pursuit of justice. One egregious example can be found in the infamous judgment of the Bhanwari Devi case in Rajasthan, where a lower court judge dismissed the charges of rape, citing the victim's lower caste as a factor diminishing the gravity of the offence. Such a glaring display of bias not only contravenes the principles of justice but also perpetuates the cycle of discrimination and inequality.<sup>9</sup> The landmark case of Justice Karnan serves as an apt illustration. Justice C.S. Karnan, a former judge of the Calcutta High Court, was embroiled in a highly controversial episode when he accused several judges of corruption, leading to his own arrest for contempt of court. His behaviour and allegations were clearly tainted by explicit bias, as they were devoid of substantial evidence and appeared to be driven by personal grievances and preconceived notions.<sup>10</sup>

## 2.2 Implicit Bias

Implicit bias, though more insidious, is no less pernicious. It manifests in the subconscious minds of judges, shaping their perceptions and decisions without conscious awareness. These

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<sup>9</sup> Murthy, L. (2013). From Mathura to Bhanwari. *Economic and Political Weekly*, 48(23), 16–18. <http://www.jstor.org/stable/23527202>.

<sup>10</sup> Available at: <https://frontline.thehindu.com/cover-story/justice-without-fairness/article9710412.ece>.

biases, often stemming from deeply ingrained societal norms, can lead to inadvertent but nonetheless harmful judgments. In the Indian context, implicit bias can be discerned in cases involving gender-based violence. Research indicates that judges may unwittingly perpetuate stereotypes, leading to lenient sentences for perpetrators and unjust scrutiny of survivors.<sup>11</sup> Such biases, hidden beneath the veneer of impartiality, perpetuate systemic injustices. One prominent example of implicit bias in India is the way the criminal justice system often deals with cases involving marginalized communities, such as Dalits and Adivasis. Studies have shown that implicit biases against these communities can lead to harsher sentencing and a higher likelihood of conviction, even in the absence of conclusive evidence.<sup>12</sup> Implicit biases perpetuate systemic inequalities and hinder the realization of justice for all.

### 2.3 Systemic Bias

Systemic bias, perhaps the most entrenched form, emanates from the very structures and procedures of the legal system. In India, a myriad of factors contribute to this bias, from delayed justice to unequal access to legal representation. The staggering backlog of cases in Indian courts is emblematic of systemic bias. Overworked judges, overburdened dockets, and inadequate resources conspire to create an environment where justice is often delayed, if not denied.<sup>13</sup> This protracted legal process disproportionately affects

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<sup>11</sup> Wistrich, Andrew J. and Rachlinski, Jeffrey John, *Implicit Bias in Judicial Decision Making How It Affects Judgment and What Judges Can Do About It* (March 16, 2017). Chapter 5: American Bar Association, *Enhancing Justice* (2017), Cornell Legal Studies Research Paper No. 17-16, available at SSRN: <https://ssrn.com/abstract=2934295> or <http://dx.doi.org/10.2139/ssrn.2934295>.

<sup>12</sup> Osborne, D., Davies, P. G., & Hutchinson, S. (2017). Stereo typicality biases and the criminal justice system. In C. G. Sibley & F. K. Barlow (Eds.), *The Cambridge handbook of the psychology of prejudice* (pp. 542–558). Cambridge University Press. <https://doi.org/10.1017/9781316161579.024>.

<sup>13</sup> Sagar, Akshay and Sagar, Akshay, *The Role of Judiciary in India and Pendency of Cases: An Overall View* (February 12, 2021) available at:

marginalized communities, exacerbating their vulnerability. Moreover, the economic disparities in India lead to a gaping chasm in access to legal representation. The inability of the underprivileged to secure adequate legal counsel amplifies the existing power imbalances within the legal system.<sup>14</sup> This systemic bias, rooted in socio-economic disparities, perpetuates a cycle of injustice.

The issue of delayed justice is a glaring example of systemic bias. The Indian judiciary is notorious for its backlog of cases, leading to interminable delays in resolving legal disputes. This delay disproportionately affects marginalized communities who lack the resources and access to expedited legal processes. The Justice Verma Committee emphasized the need for structural reforms to expedite the judicial process and reduce systemic bias.<sup>15</sup> However, these reforms have been slow to materialize, perpetuating systemic injustice.

### 3. Factors Influencing Judicial Bias

The impartiality and objectivity of the judiciary are sacrosanct principles that form the bedrock of the legal system. However, the reality of judicial bias, an intricate and multi-faceted phenomenon, challenges these ideals. In the labyrinth of the judicial process, several factors, both overt and subtle, wield an influential sway over the decisions of judges.

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SSRN: <https://ssrn.com/abstract=3798261> or  
<http://dx.doi.org/10.2139/ssrn.3798261>.

<sup>14</sup> Singh, Sukhsimranjit, In the Shadow of the Pandemic: Unearthing Unequal Access to Justice Vis-à-Vis Dispute Resolution (2022). Washington University Journal of Law and Policy, 2022, Pepperdine University Legal Studies Research Paper No. 2022/3, *available at*: SSRN: <https://ssrn.com/abstract=4020569>.

<sup>15</sup> *available at*: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nja.gov.in/Concluded\\_Programmes/2016-17/P-987\\_PPTs/2.Gender%20and%20Human%20right%20violations.pdf](https://chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nja.gov.in/Concluded_Programmes/2016-17/P-987_PPTs/2.Gender%20and%20Human%20right%20violations.pdf)

At the heart of judicial decision-making lie the personal beliefs and values of the judges themselves. In the realm of complex legal dilemmas, judges often find themselves guided by their own moral compass and deeply ingrained convictions. As renowned legal philosopher Ronald Dworkin noted, “Judges do and must legislate, that is, make new law”.<sup>16</sup> However, the inherent subjectivity of personal beliefs can result in varying interpretations of the law, making them a potent source of judicial bias. Justice Ruth Bader Ginsburg’s famous assertion, “I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks,” exemplifies the profound impact of personal values on judicial perspectives.<sup>17</sup> These values, shaped by personal experiences, can either bolster the pursuit of justice or introduce bias into the legal process.

Socio-economic background, another compelling factor, exerts a significant influence on judicial bias. The socio-economic disparities within society mirror themselves within the judicial chambers, where judges from diverse backgrounds navigate the complex matrix of legal cases. Judges hailing from privileged backgrounds may harbour biases against marginalized communities, often unconsciously. As philosopher John Stuart Mill pointed out, “The worth of a state, in the long run, is the worth of the individuals composing it”.<sup>18</sup> In this context, the socio-economic privilege of individuals can inadvertently colour their perspective. In the Indian context, where caste and class inequalities persist, the influence of socio-economic background on judicial bias is particularly pronounced. Studies reveal that judges from higher socio-economic strata may have a limited understanding of the struggles and

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<sup>16</sup> Norman E. Bowie, *Taking Rights Seriously*. By Ronald Dworkin. Massachusetts: Harvard University Press. 1977. pp. 563., 26 *Cath. U. L. Rev.* 908 (1977) available at: <https://scholarship.law.edu/lawreview/vol26/iss4/10>

<sup>17</sup> *Frontiero v. Richardson*, 411 U.S. 677 (1973).

<sup>18</sup> Mill, J. S. (1859). “On Liberty.” John W. Parker and Son. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.utilitarianism.com/guidebook-liberty.pdf>.

challenges faced by those from disadvantaged backgrounds, thereby impacting their decision-making.<sup>19</sup>

Cultural and racial influences represent a critical facet of judicial bias. Judges, like all individuals, are products of their cultural and racial backgrounds. These influences can shape their worldviews and perspectives on various legal issues. As philosopher Charles Taylor postulates, "Identity is partly shaped by recognition or its absence".<sup>20</sup> In the realm of judicial bias, recognition and acknowledgement of cultural and racial differences play a pivotal role. In India, a diverse and multi-ethnic society, the role of cultural and racial influences cannot be understated. The deep-seated prejudices and stereotypes associated with caste, religion, and ethnicity often find their way into judicial proceedings, unconsciously affecting the outcomes. To address this bias, the judiciary must embrace a multicultural and inclusive approach, recognizing the inherent complexity of cultural and racial influences on judicial decisions.

Prejudice and stereotypes, deeply ingrained in societal norms, are subconscious filters that influence the decision-making of judges. These biases, as Harvard psychologist Mahzarin Banaji posits, reside within the "blind spot" of an individual's consciousness.<sup>21</sup> Judges, no exception to these cognitive processes, may unintentionally make decisions influenced by preconceived notions. In India, for instance, the pervasive stereotypes surrounding women's roles and capabilities have been observed to influence judgments in cases involving gender-based discrimination.<sup>22</sup> Overcoming these

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<sup>19</sup> Michele Benedetto Neitz, *Socioeconomic Bias in the Judiciary*, 61 *Clev. St. L. Rev.* 137 (2013) available at: <https://engagedscholarship.csuohio.edu/clevstlrev/vol61/iss1/6>.

<sup>20</sup> Taylor, C. (1992). *The Politics of Recognition*. In A. Gutmann (Ed.), *Multiculturalism and the Politics of Recognition* (pp. 25-74). Princeton: Princeton University Press.

<sup>21</sup> Banaji, M. R., & Greenwald, A. G. (2013). *Blindspot: Hidden biases of good people*. Delacorte Press.

<sup>22</sup> Pande, Amba. (2018). *Women in Indian Diaspora: Redefining Self Between Dislocation and Relocation*. 10.1007/978-981-10-5951-3\_1.

cognitive biases requires self-awareness, education, and a commitment to unbiased decision-making.

The media, often referred to as the fourth estate, is a powerful force that shapes public perception and, consequently, influences judicial decisions. The sensationalism and coverage of certain cases can pressure judges to act in a manner that aligns with public opinion rather than the principles of justice. The media, in its role as a watchdog, can inadvertently create an environment that fosters judicial bias. As Justice Oliver Wendell Holmes Jr. once stated, “The life of the law has not been logic; it has been experience”.<sup>23</sup> Media coverage contributes to the collective experience that influences judges’ decisions, sometimes at the expense of the logical application of the law.

Political bias refers to the influence of a judge’s political affiliations and leanings on their judicial decisions. It is a contentious issue as it brings into question the separation of powers and the principle that the judiciary should be impartial and independent from the political sphere. Judges, like any individuals, may hold political beliefs, but these beliefs should ideally be set aside when rendering legal judgments. However, political bias can subtly infiltrate the judicial process. In the United States, for instance, judicial appointments have often been mired in political partisanship. Presidents tend to nominate judges whose political ideologies align with their own, and the Senate confirmation process can become polarized. This can lead to a perception that judges may be more inclined to rule in ways that favour their appointing political party, potentially undermining the impartiality of the judiciary.<sup>24</sup>

#### **4. Impacts of Judicial Bias**

Judicial bias, a phenomenon encapsulating the predisposition of a judge towards a particular viewpoint or demographic group, begets

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<sup>23</sup> Holmes, O. W. (1881). “The Common Law.” Little, Brown, and Company. [https://www.academia.edu/6105700/The\\_Common\\_Law](https://www.academia.edu/6105700/The_Common_Law).

<sup>24</sup> Baum, L. (2006). *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton: Princeton University Press. <https://doi.org/10.1515/9781400827541>.

a range of intricate repercussions within the legal framework. These ramifications are profound, affecting not only the integrity of the judicial system but also the societal perception of justice.

One conspicuous consequence of judicial bias is the erosion of public trust and confidence in the judiciary. The research underscores the critical importance of public trust in the functioning of the legal system.<sup>25</sup> When individuals perceive the judiciary as harbouring partiality, it undermines the fundamental pillar upon which the legal system stands - the belief in fairness and impartiality. This erosion of trust can lead to a diminished willingness of citizens to engage with and respect the legal system. Moreover, judicial bias contributes to discernible disparities in legal outcomes, a phenomenon extensively studied by scholars.<sup>26</sup> Such discrepancies may manifest in sentencing disparities, where individuals from marginalized communities may receive harsher penalties compared to their counterparts facing similar circumstances but belonging to a different demographic group. These disparities not only erode the perception of justice but also perpetuate cycles of inequality within society.

The presence of judicial bias fundamentally undermines the cornerstone principle of fairness and impartiality that forms the bedrock of any just legal system. Dhami's work on psychological models of professional decision-making elucidates how cognitive biases can influence judges' decision-making processes.<sup>27</sup> This erosion strikes at the very heart of justice, as it implies that the decisions rendered by the judiciary are not solely based on legal merit but are influenced by extraneous factors, thereby

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<sup>25</sup> Kapardis, A. (2010). Jury decision making. In G. J. Towl & D. A. Crighton (Eds.), *Forensic psychology* (pp. 228–243). Wiley Blackwell.

<sup>26</sup> Liu, Zhuang and Li, Xueyao, Legal Techniques for Rationalizing Biased Judicial Decisions: Evidence from Experiments with Real Judges (July 23, 2019). *Journal of Empirical Legal Studies*, Forthcoming, available at: SSRN: <https://ssrn.com/abstract=3424633>.

<sup>27</sup> Dhami M. K. (2003). Psychological models of professional decision making. *Psychological science*, 14(2), 175–180. <https://doi.org/10.1111/1467-9280.01438>.

compromising the perceived legitimacy of judgments. The erosion of this principle has far-reaching implications for the rule of law and the perceived legitimacy of legal institutions. Marginalized and vulnerable groups often bear the brunt of judicial bias, exacerbating existing disparities within the legal system. Gottfredson and Hindelang's seminal work on norms in criminal justice highlights how biases can disproportionately impact certain demographic groups.<sup>28</sup> Racial and ethnic minorities, along with other historically marginalized communities, frequently find themselves subject to unequal treatment within the judicial process. This perpetuates cycles of inequality and erodes trust in the legal system among these groups. The consequences are not confined to the courtroom; they extend to broader societal dynamics, shaping perceptions of justice and equality.

### **5. Challenges in Combating Judicial Bias**

Challenges in combating judicial bias present a formidable array of complex and interconnected issues within the realm of jurisprudence. Addressing this multi-faceted problem demands a deep understanding of the intricate dynamics that influence and perpetuate bias within the legal system. These challenges, rooted in historical, structural, and institutional factors, not only hinder the realization of an impartial judiciary but also call for a holistic approach to rectify and redress the deficiencies inherent in the system. One of the most significant challenges in combating judicial bias is the resistance to change within the legal system itself. The legal profession, marked by tradition and precedent, often exhibits a degree of inertia when it comes to embracing reforms aimed at reducing bias. Legal scholars, such as John Rawls, have highlighted that the principles of justice are entrenched in tradition and have a

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<sup>28</sup> Gottfredson, M. R., & Hindelang, M. J. (1979). A study of the behavior of law. In *Norms in criminal justice: Contemporary issues American Sociological Review* Volume: 44 Issue: 1 Dated: (FEBRUARY 1979) Pages: 3-17 <https://www.ojp.gov/ncjrs/virtual-library/abstracts/study-behavior-law>.



“natural duty” to persist.<sup>29</sup> This commitment to tradition can result in a reluctance to acknowledge the presence of bias within the system.

Additionally, the preservation of judicial independence is a fundamental tenet of any democratic society. Judges are expected to make decisions based on their interpretation of the law and legal precedents, free from external influence. Balancing the need for an independent judiciary with the imperative to address bias is a complex challenge. The delicate equilibrium between independence and accountability, as articulated by legal scholar Leslie Green, underscores the inherent tension.<sup>30</sup> In the context of India, where the judiciary has often been considered a bulwark of democracy, addressing judicial bias is further complicated by the reverence and respect associated with judges. Judges are often held in high esteem, and there is a reluctance to scrutinize their decisions or question their impartiality.<sup>31</sup> This cultural and societal reverence for the judiciary can deter public discourse on judicial bias, making it difficult to effectuate meaningful change.

The judiciary’s resistance to introspection is compounded by the inherent challenge of self-regulation. The legal profession largely regulates itself, with professional codes of conduct and disciplinary bodies in place to address misconduct. However, self-regulation has its limitations, as it can be viewed as a classic case of “the fox guarding the henhouse”.<sup>32</sup> Ensuring that self-regulation is robust enough to address judicial bias effectively is a persistent challenge.

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<sup>29</sup> Rawls, J. (1999). “A Theory of Justice.” Harvard University Press.

<sup>30</sup> Abel, R. (2018). Judging the Judges. In *Law’s Trials: The Performance of Legal Institutions in the US ‘War on Terror’* (Cambridge Studies in Law and Society, pp. 1-23). Cambridge: Cambridge University Press. doi:10.1017/9781108555227.001.

<sup>31</sup> W. B. Wendel, Impartiality in Judicial Ethics: A Jurisprudential Analysis, 22Notre Dame J.L. Ethics & Pub. Pol’y 305 (2008). Available at:<http://scholarship.law.nd.edu/ndjlepp/vol22/iss2/3>.

<sup>32</sup> Bivins, T. H. (1993). Public Relations, Professionalism, and the Public Interest. *Journal of Business Ethics*, 12(2), 117–126. <http://www.jstor.org/stable/25072380>.

One of the most pressing issues in combating judicial bias is the need for transparency and accountability in the judicial selection process. In many countries, including India and the United States, the process of appointing and confirming judges can be politically charged, with partisan interests influencing the selection of judges.<sup>33</sup> The opacity and lack of accountability in these processes can create an environment where judicial appointments are based on political or ideological leanings rather than merit, exacerbating the problem of bias. The challenge of achieving a more diverse bench composition is another facet of combating bias. Diverse representation within the judiciary is essential to ensure that the legal system is more attuned to the needs and experiences of a diverse citizenry. However, achieving diversity can be complex, especially in societies marked by historical inequities. As philosopher Charles Taylor has noted, recognition and acknowledgement of cultural and racial differences play a pivotal role in addressing bias.<sup>34</sup> In India, where caste, religion, and ethnicity often intersect with legal disputes, achieving diversity within the judiciary is a pressing concern.<sup>35</sup> Furthermore, the slow pace of institutional change is a recurring challenge in combating judicial bias. Implementing reforms and structural changes within the legal system often encounters resistance and bureaucratic hurdles. The legal system's traditionalism, as described by legal scholar Lon L. Fuller,

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<sup>33</sup> Torbisco-Casals, N. (2021), The legitimacy of international courts: The challenge of diversity. *J Soc Philos*, 52: 491-515. <https://doi.org/10.1111/josp.12452>.

<sup>34</sup> Taylor, C. (1995). *The Politics of Recognition*. In A. Gutmann (Ed.), *Multiculturalism: Expanded Paperback Edition* (pp. 25-74). Princeton: Princeton University Press. <https://doi.org/10.1515/9781400821402-004>.

<sup>35</sup> Disproportionate representation at the Supreme Court: A perspective based on Caste and Religion of judges, *available at*: <https://www.barandbench.com/columns/disproportionate-representation-supreme-court-caste-and-religion-of-judges>.

underscores the difficulty in effecting substantial change.<sup>36</sup> Proposals for reforms, ranging from reducing case backlogs to diversifying the bench, are frequently met with delays and obstacles. Education and training programs designed to raise awareness about implicit bias and offer strategies for mitigating its effects are essential in addressing judicial bias. However, implementing such programs can be met with resistance. Judges may be reticent to engage in such training, viewing it as an affront to their competence and independence.<sup>37</sup> Moreover, it is challenging to measure the effectiveness of these programs and ensure their widespread adoption. The global legal landscape remains diverse, and the challenges in combating judicial bias are deeply embedded within the unique socio-cultural, political, and historical contexts of each country. Nevertheless, addressing judicial bias is a shared concern and requires a concerted effort at the local, national, and international levels.

## 6. Conclusion

Within the intricate structure of the legal system, tackling judicial bias remains a significant and ongoing challenge. This issue necessitates a thorough and holistic reassessment of traditional jurisprudential frameworks to address its pervasive impact effectively. The complex web of factors shaping bias within the judiciary has been uncovered, including personal beliefs and values, socio-economic background, cultural influences, and prejudices. The ramifications of political and ideological bias, whether overt or implicit, have been scrutinized, shedding light on the intricacies of decision-making that transcend the mere application of the law.

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<sup>36</sup> FULLER, L. L. (1969). *The Morality of Law: Revised Edition*. Yale University Press. <http://www.jstor.org/stable/j.ctt1cc2mds>.

<sup>37</sup> Wistrich, Andrew J. and Rachlinski, Jeffrey John, *Implicit Bias in Judicial Decision Making How It Affects Judgment and What Judges Can Do About It* (March 16, 2017). Chapter 5: American Bar Association, *Enhancing Justice* (2017), Cornell Legal Studies Research Paper No. 17-16, available at: SSRN: <https://ssrn.com/abstract=2934295> or <http://dx.doi.org/10.2139/ssrn.2934295>.

These multi-faceted challenges, grounded in history, tradition, and institutional structures, have underlined the necessity for a nuanced approach to address judicial bias. The unyielding resistance to change within the legal system, ensconced in the profundity of tradition and a legacy of legal precedents, must be met with the gentle force of evolution. An equilibrium must be struck between judicial independence, which remains a cornerstone of democracy, and the imperative of accountability and transparency. The scales must tip towards the sanctity of justice. Yet, challenges abound. The intrinsic reverence accorded to the judiciary within society, coupled with the mantle of judicial self-regulation, presents a formidable fortress that stands in the path of scrutiny and reform. The preservation of independence must not be misconstrued as an impenetrable shield behind which biases persist unchecked. Accountability and introspection can coexist with judicial independence and, in fact, serve to fortify the pillars of justice.

The imperative for transparency and accountability in the judicial selection process cannot be overstated. The opacity and politicking that often shroud these processes can inadvertently undermine the principles of meritocracy and impartiality. The challenge of ensuring that appointments are rooted in competence rather than political expediency requires continuous vigilance. Diversity, a driving force for societal progress, is an indispensable facet of addressing judicial bias. The judiciary, reflecting the mosaic of the society it serves, is better equipped to understand the multifarious concerns and experiences of its citizenry. However, the challenges in achieving diversity are deeply rooted in historical injustices, especially within a complex socio-cultural milieu such as India. Recognition of cultural and racial differences, as posited by philosopher Charles Taylor, assumes utmost significance. It is an acknowledgement that, despite its complexities, remains essential for the pursuit of an impartial judiciary. The tortuous journey towards institutional change, marked by bureaucratic hurdles and resistance to reform, remains a recurrent theme in the realm of justice. The legal system's embrace of traditionalism, as articulated by Lon L. Fuller, imposes a

formidable challenge that must be surmounted. Proposals for reform, be they directed at alleviating case backlogs or diversifying the bench, demand steadfast commitment to their realization. The path may be arduous, but the destination is one of paramount importance - a legal system that truly represents the ideals of justice and impartiality.

Education and training programs, designed to sensitize judges to implicit bias and equip them with strategies for its mitigation, are essential tools in the combat against bias. However, the challenge is not merely in the implementation but also in the measurement of their effectiveness. These programs must be embraced willingly, fostering an environment where judges view them as opportunities for self-improvement rather than as critiques of their competence. The impact of such programs is contingent not only on their content but also on the receptiveness of the judiciary. The combat against judicial bias is a profound journey that intersects with the deeply entrenched principles of judicial independence, tradition, and accountability. Achieving a more impartial and equitable judiciary demands not only a recalibration of the scales but also a collective commitment from within the legal profession and society at large. As the late Justice Ruth Bader Ginsburg observed, "Real change, enduring change, happens one step at a time." It is through this incremental, unceasing march towards justice that the complex challenges of combating judicial bias may eventually be surmounted, ushering in a new era of justice and impartiality in the legal realm.



## Bank Frauds: A Study of Economic and Legal Perspectives

Jayeshkumar Shivrambhai Mali\*

### Abstract

In the 21st Century, India faces a big challenge in the development of advancement of technology. India's economy is major dependent on the Banking sector. India has many private and public banks. We often hear about bank frauds in the news and from customers. After the COVID-19 Pandemic, banks and customers suffer from many issues and problems. Due to the use of the internet and online payment system, many have been victims of financial loss. It is not limited to that but many professionals and businessmen are included in bank frauds. It is a need of the hour to control and prevent such bank frauds. This is a big threat to the economy of India. It is a matter of National Economic Security (NES). Therefore, India should take strict action against such fraudsters. This article explores the various aspects of bank fraud, and how these affect national security, economy, and what has to be done to lessen this increasingly dangerous threat.

**Keywords:** Bank Frauds, National Security, Economic Threats, NES and Laws

### 1. Introduction

As serious economic risk<sup>1</sup>, Bank Fraud has far-reaching effects on people, companies, and the financial system as a whole. Bank Fraudsters are developing more advanced strategies to take advantage of weaknesses as financial institutions adopt technology and continue to change. The various facets of bank fraud as an economic danger are examined in this article, along with how it affects financial stability and economic growth, and the steps that must be taken to reduce the risks involved.<sup>2</sup> The term "Bank Fraud"

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<sup>1</sup>Smith, John A., "A Bank Frauds in Emerging Economies" 45J. *Econ. Crime* 123 (2018).

<sup>2</sup>Patel, Ramesh B., "Economic Implications of Bank Frauds in India" 58 *Int'l J. Fin. Stud.* 789 (2019).

describes the illicit actions carried out by people or organizations to mislead banks or their clients in order to get financial advantage. This can take many different forms, including identity theft, cybercrime, embezzlement, forgery, insider fraud, and other fraudulent acts directed at financial institutions and their customers. Like any other nation, India faces a serious economic danger from bank fraud. In fact, bank frauds pose serious hazards to India's economy, undermining investors' trust, financial stability, and overall economic growth. Bank Frauds may take many different shapes, from straightforward embezzlement instances to intricate cybercrimes directed against financial institutions.<sup>3</sup>

## **2. Objectives**

- a) To study the facets of bank frauds in India.
- b) To assess the economic impacts of bank frauds.
- c) To evaluate the effectiveness of existing regulatory measures and law enforcement mechanisms with respect to bank frauds.
- d) To analyze the effect of bank frauds and mitigating steps for reducing such frauds.

## **3. Research Methodology**

The research has adopted purely doctrinal research and secondary data study. The study utilizes a combination of quantitative data analysis and qualitative examination of legal frameworks, regulatory measures, and enforcement mechanisms to control the threat to national security and the economy of India.

## **4. National Security Issues and Solutions**

An interconnected global economy requires a robust and safe financial system for each nation. Bank Fraud is a major danger to national security, since it is pervasive and ever-evolving. As financial institutions embrace increasingly advanced technologies and digital

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<sup>3</sup>Gupta, Neha R., "Regulatory Challenges in Combating Bank Frauds" 33 *Banking L.Rev.*456 (2020).

platforms,<sup>4</sup> talented fraudsters are finding new and creative methods to take advantage of vulnerabilities. The following are the some of the issues and solution for preventions of bank frauds:

#### **4.1 Implications for the Safety of the Nation (National Security)**

- a) Economic Stability:<sup>5</sup> Bank fraud has a danger of creating instability in the financial system, which can lead to recessions. A broken financial system impedes capital flow, undermines public trust, and discourages investment, all of which are factors that contribute to economic uncertainty.
- b) Vulnerability in the Critical Infrastructure: Modern banking system heavily relies on technology and networked systems. The transportation, communication, and energy infrastructure can all suffer from a successful cyber-attack on financial systems.
- c) Terrorist Financing: Banks inadvertently act as conduits for the financing of terrorist activities. The financial system is vulnerable to the flow of illegal funds, which puts national security at risk by funding terrorist activities.
- d) International Reputation: A nation's reputation overseas may suffer. It is believed that if financial institutions are vulnerable to fraud, that may have an effect on business arrangements, diplomatic relations, and the perceptions of the country's economic stability overseas.
- e) Loss of Sensitive Data: Bank Fraud instances often include the loss of sensitive financial and personal data. In addition to endangering public financial stability, this kind of data theft also jeopardizes national security by providing adversaries with the access to vital intelligence.

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<sup>4</sup>Sharma, Anuj K., "Impact of Technology on the rise of Bank Frauds" 72 *Tech & Econ.J.*567 (2017).

<sup>5</sup>Richa Rajpal, "Frauds in Banking Sector in India: analysis and preventive measures" Volume II Issue II ISSN: 2583-0538, *Indian Journal of Integrated Research in Law*.



#### 4.2 Reducing Bank Frauds for National Security

- a) Technology Innovation and Cybersecurity:<sup>6</sup> Investing in cutting-edge cybersecurity solutions is essential to safeguard the financial sector. Consistent monitoring, provisions for threat intelligence, and regular system updates can help to detect and thwart cyber-attacks. Sophisticated authentication methods such as multi-factors authentication and biometrics add an extra layer of protection.
- b) International/Global Co-operation: Given that bank fraud is a transitional crime, international cooperation is essential. Nations need to share best practices, knowledge, and information in order to fight fraudsters as one cohesive unit. Collaborations may also lead to the identification and prosecution of individuals or groups guilty of transnational financial crimes.
- c) Regulatory Framework and Compliance: To prevent and deter bank fraud, robust regulatory frameworks and effective enforcement are essential. Tight reporting requirements and compliance requirements should apply to financial organizations. Regular audits and evaluations may be beneficial in identifying areas of vulnerability and ensuring that institutions are implementing adequate security measures.
- d) Public education and awareness: Raising public understanding of the risks associated with bank fraud is a proactive preventive measure. Programs for raising awareness can help users spot phishing efforts, protect their data, and report suspicious activity. Financial literacy initiatives have the power to empower individuals to make informed decisions and enhance their general cybersecurity.
- e) Data protection: Data protection procedures need to be reinforced in order to lessen the risk of identity theft and

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<sup>6</sup>Bank frauds in the digital banking system today and its impact on Indian economy: a case study and, *available at*: <https://blog.ipleaders.in/bank-frauds-in-the-digital-banking-system-today-and-its-impact-on-indian-economy-a-case-study-and/> (last visited on December 22, 2022).

unauthorized access. Security measures like encryption, secure storage practices, and regular data audits may help prevent sensitive information from falling into the wrong hands. Financial organizations must also have robust incident response protocols in place to decrease the impact of a data breach.

- f) Procedures for Anti-Money Laundering:<sup>7</sup> Implementing and enforcing stringent AML procedures is necessary to prevent money laundering through the financial system. This entails keeping an eye on transactions, thoroughly investigating consumers, and reporting and dubious conduct to the relevant authorities. Countries must cooperate together to uncover and dismantle global money laundering networks.
- g) Insider Threat Mitigation: Financial Institutions must have policies in place to identify and reduce insider risks. These include training employees, monitoring internal processes, and implementing access restrictions. Whistle blower protection programs may encourage employees to report suspicious activities without fear of reprisal.

Bank Fraud affects both finances and national security. To combat the threat presented by the increasing intricacy of fraudulent operations and the interdependence of the global financial system, a comprehensive and collaborative approach is required. Governments, financial institutions, and people must work together to improve cybersecurity, reinforce regulatory frameworks, and increase awareness.

## 5. Bank Frauds

Bank Fraud encompasses a wide range of illicit activities meant to deceive financial institutions for personal gain.<sup>8</sup> A wide range of criminal activities targeted at deceiving financial institutions in order to acquire illicit financial benefit are collectively referred to as

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<sup>7</sup>Mishra, Priyas., "Money Laundering and Bank Frauds: A legal Perspective" 50 *Crim.L.J.* 345 (2019).

<sup>8</sup>Choudhary, Arjun D., "Financial Stability and the menace of Bank Frauds" 22 *Int'l J. Banking L.* 123 (2018).

“Bank Fraud.”<sup>9</sup> These activities can take on a variety of shapes and sizes, ranging from more sophisticated tactics like money laundering and cybercrime to more traditional ones like credit card and check fraud. There are many different reasons why bank fraud occurs, including organized crime, state-sponsored economic espionage, or just personal financial gain. Identities theft, in which thieves use personal information to assume the identities of actual individuals and access financial accounts without authorization, is one of the major ways that bank fraud appears. From more commonplace crimes like credit card and check fraud to more sophisticated ones like identity theft, cyber-attacks, and money laundering, these crimes can take various forms.

### 5.1 Bank Frauds: Types

- a) Identity Theft: Criminals assume phony identities and gain unauthorized access to bank accounts by using stolen personal data.<sup>10</sup> Phishing efforts and data breaches are common approaches to get personal information.
- b) Cyberattacks: By exploiting security holes, hackers gain illegal access to financial systems. Malware, ransomware, and distributed denial of services (DDOS) attacks have the potential to corrupt sensitive data and interfere with banking processes.<sup>11</sup>
- c) Money laundering: Illicit payments are disguising themselves as legitimate transactions in order to get into the financial system. Criminal gangs often use complex networks of transactions to hide the origins of their illicit money.
- d) Credit Card Fraud: Using credit card information that has been stolen, fraudsters execute unauthorized purchases. Skimming

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<sup>9</sup>Economic Times, “Rising Trends in Bank Frauds: A Concern for Indian Economy”, *available at*: <https://economictimes.indiatimes.com/finance/bank-frauds> (last visited on December 15, 2022).

<sup>10</sup>Das, Divya K, “The Economic Impact of Large-scale Bank Frauds: A case study of India”.

<sup>11</sup>Joshi, Meena S., “Cybersecurity Threats in the Context of Bank Frauds” 38 *J. Info. Security* 456 (2019).

devices, carding forums, and data breaches all play a part in the increase in credit card frauds.

- e) Insider Fraud: Financial institution employees abuse their access and insider knowledge to commit fraud. Insider trading, embezzlement, and illegal transactions are a few instances of insider fraud.

## **6. Economic Threats**

### **6.1 Impact on the Economy's Stability**

- a) Erosion of Public Trust: Bank Fraud undermines the public's faith in financial institutions. When individuals and businesses lose confidence in the security of their financial transactions, they may decide to withhold their investments, which would lower overall economic activity.<sup>12</sup>
- b) Disruption of Financial Services: Successful cyberattacks or other forms of Bank frauds may cause problems for individuals as well as businesses. These snags can make it harder for transactions to go through without incident, which lowers economic efficiency.
- c) Decreased Investment Confidence: A financial system polluted by fraud is likely to deter both local and foreign investors. A nation's ability to sustain a strong financial system is called into questions by bank fraud instances, and investors are drawn to environments that are safe and stable.
- d) Higher Borrowing Costs: As fraud concerns grow, financial institutions may decide to boost credit and loan interest rates. Therefore, the cascading consequences on consumers and businesses may hinder economic growth.
- e) Job Losses and Economic Downturn: Job losses may arise from economic instability brought on by bank fraud, when businesses find it difficult to sustain financial losses. A widespread slowdown in the economy that affects several industries and has an adverse effect on employment in general.

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<sup>12</sup>*Supra* 6.

- f) **Market Volatility:**<sup>13</sup> News of significant bank fraud incidents may make the market more volatile. Investors may sell off their assets in response to uncertainty, which can lead to market volatility and have an impact on the economy as a whole.

## **6.2 Reducing the Financial Risks Related to Bank Fraud**

- a) **Investment in Cybersecurity:** To defend themselves against cyber-attacks, financial institutions must continuously invest in robust cybersecurity measures. This includes state-of-the-art tools for encryption, threat detection, and regular security audits to identify and address vulnerabilities.
- b) **Regulatory Oversight and Compliance:** In order to lower the financial risks connected to bank fraud, the role of governments and regulatory bodies are crucial.
- c) **International Collaboration:** Given that the banking sector is a global one now a day, international collaboration is crucial. Nations must work together to trade information, intelligence and best practices in order to present a united front against global fraudsters.
- d) **Public Education and awareness:** Educating the public about the risks associated with bank fraud is a preventive measure. By teaching individuals about common fraud strategies, the need of safe online conduct, and how to report suspicious activity, we can create a more vigilant and resilient society.
- e) **Data Protection Measures:** Reducing the financial risk associated with bank fraud requires improving data protection. Financial organizations should utilize encryption, secure storage practices, and regular data audits to avoid in appropriate access to sensitive data.
- f) **Anti-Money Laundering (AML) Procedures:** Putting in place efficient AML protocols is necessary to stop illicit funds from entering the financial system. Monitoring transactions, flagging

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<sup>13</sup>Kumar, Rajesh P., "Corporate Governance and Bank Frauds: A case study of India" 88 *Corp.L.Bull.*901 (2016).

suspicious behavior, and conducting extensive due diligence on customers are all crucial components of an AML procedure.

- g) Technological Innovation: Institutions must develop new financial technologies that may be utilized to enhance security and counteract evolving risks in order to stay one step ahead of fraudsters.
- h) Cooperation with law Enforcement: Financial institutions should collaborate extensively with law enforcement to investigate and prosecute bank fraudsters. Prompt reporting of incidents and information sharing with relevant authorities may lead to the capture of criminals.

## 7. Laws Related to Bank Frauds in India

### 7.1 Bharatiya Nyaya Sanhita, 2023

Section 2(36), defines “wrongful gain and wrongful loss,”<sup>14</sup> it says that if any income is obtained by illegal means from assets, and the gaining party is not the lawful owner of the same. Secondly, the term wrongful loss refers to the “unlawful loss of any property of such person, who loses it has a right and legal claim on that.” When someone maintains or gains something improperly, it is stated that they have gained it improperly. When someone is unfairly denied access to or taken possession of something, they are said to have lost that possession inadvertently.<sup>15</sup>

According to section 2(7), “dishonestly<sup>16</sup> means someone is considered to act dishonestly, if they perform an act to defraud one person or cause harm to another.” Section 2(9)<sup>17</sup> defines fraudulently – it refers to behaviour that is done to deceive, but not in any other way. Section 2(4)<sup>18</sup> defines counterfeit, one who intentionally makes one item resemble another while intending to practice deceit *via* that likeness is said to be “counterfeiting.

<sup>14</sup> Bharatiya Nyaya Sanhita, 2023, sub-s. 2(36).

<sup>15</sup> Thakur, Vikas N., Regulatory Frameworks for Preventing Bank Frauds: Lessons from Developed Economies, *75 Banking Pol’y Rev.* 789 (2017).

<sup>16</sup> Bharatiya Nyaya Sanhita, 2023, sub-s. 2 (7).

<sup>17</sup> Bharatiya Nyaya Sanhita, 2023, sub-s. 2(9).

<sup>18</sup> Bharatiya Nyaya Sanhita, 2023, s. 2(4).

Section 318(1) of BNS, defines cheating<sup>19</sup>, as

“whoever, by deceiving any person, it includes fraudulently or dishonestly inducing the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally inducing the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or likely to cause damage or harm to that person in body, mind, reputation or property is said to cheat”.

According to Section 336(2),

“One who commits forgery shall be punished with imprisonment of either description for a term, which may extend to 2 years or fine or both. While any person makes forgery of court records, public that is a violation of section 337 of Bharatiya Nyaya Sanhita, which provides “Anyone who fabricates a document or electronic record, purporting to be record or proceedings of or in a court of justice or a register of birth, baptism, marriage, or burial or a register kept by a public official in that capacity, or certificate or document claiming to have been made by a public official in his official capacity, or an authority to bring or defend a lawsuit to participate in any proceedings therein, to admit guilt, or to execute a power.”<sup>20</sup>

## **7.2 The Prevention of Money Laundering Act, 2002**

Indian law has defined<sup>21</sup> money laundering in The Prevention of Money Laundering Act, 2002 as;

“whoever directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or is

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<sup>19</sup> Bharatiya Nyaya Sanhita, 2023, s. 318(1).

<sup>20</sup> Bharatiya Nyaya Sanhita ,2023, s. 337.

<sup>21</sup> *Ibid.*

actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of money laundering.”<sup>22</sup>

In December 2003, The Indian parliament passed the Prevention of Money Laundering Act, of 2002. This statute is applicable across India.

### **7.3 The Information Technology Act, 2000**

Due to technological development in all sectors, there is a need for control over the data and technological-related activities. The communication and payment systems are also developed with technology in a paperless format. so, there are pros and cons of the technology and its development in all sectors. The IT Act was introduced to control, prevent any misconduct in online by using technology. It has provided legal recognition for transactions and electronic data interchange. The IT Act is helpful in filing of online documents with government agencies and the storage of information as well. The IT Act makes provision for electronic forgeries, digital signatures, cheating, phishing, and fabricated data. They are all used in committing bank fraud.

### **7.4 The Bharatiya Nagarik Suraksha Sanhita, 2023:**

The Bharatiya Nagarik Suraksha Sanhita primarily focuses on the procedural aspects of any criminal offenses/cases. It also includes fraud-related cases. The law provides provisions for the investigation, trial, and proceedings related to criminal cases, including those involving fraud. From the registration of FIR,<sup>23</sup> the investigation includes gathering evidence and collecting documents related to fraud cases,<sup>24</sup> search, and seizures during the course of an investigation into a criminal offense,<sup>25</sup> arrest<sup>26</sup>, bail<sup>27</sup>,

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<sup>22</sup> PMLA

<sup>23</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, s. 173.

<sup>24</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 175-176.

<sup>25</sup> Bharatiya Nagarik Suraksha Sanhita 2023, ss. 185-186.

<sup>26</sup> Bharatiya Nagarik Suraksha Sanhita 2023, ss. 35-43.

<sup>27</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s. 480.



summoning and warrant<sup>28</sup>, trial, judgment, and sentencing<sup>29</sup>. The Bharatiya Nagarik Suraksha Sanhita provides procedural guidelines for handling fraud cases, the substantial law relating to fraud is primarily governed by the Bharatiya Nyaya Sanhita.

### **7.5 The Reserve Bank of India Act, 1934**

The Reserve Bank of India Act, 1934 is the primary legislation that governs the functions and powers of the Reserve Bank of India, India's central banking institution. While the act primarily focuses on the establishment, structure, and functioning of the Reserve Bank of India,<sup>30</sup> it also includes provisions related to fraud and penalties for fraudulent activities. However, specific provisions related to fraud may not be explicitly outlined in the Act. Instead, fraud-related matters are usually governed by various circulars, guidelines and regulations issued by the Reserve Bank of India from time to time. It has issued guidelines and circulars that outline the procedures and penalties for fraudulent activities in the banking and financial sector. These guidelines cover areas like fraud detection, reporting, investigation, and prevention. The Reserve Bank of India also works in coordination with law enforcement agencies and other regulatory bodies to address fraud in the banking and financial sector.

### **7.6 Banking Ombudsman Scheme**

The Banking Ombudsman<sup>31</sup> provisions are primarily established to provide a mechanism for resolving customer complaints and grievances related to banking services. While they may not be directly aimed at controlling bank fraud, they play an essential role in ensuring transparency, accountability, and fair practice within the banking sector, which indirectly contributes to fraud prevention and detection. Under the Integrated Banking Ombudsman Scheme,

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<sup>28</sup> Bharatiya Nagarik Suraksha Sanhita 2023, ss. 63-93.

<sup>29</sup> Bharatiya Nagarik Suraksha Sanhita 2023, ss. 392-406.

<sup>30</sup> R.N.Chaudhary, Banking laws, fourth edition 2020, published by Central law Publication, p-427.

<sup>31</sup> Ibid.

2021,<sup>32</sup> the Reserve Bank of India has appointed a banking ombudsman. Its purpose is to give public relief from complaints about deficiencies in Banking services, loans, and credits. However, it excludes Regional Rural Banks. At best, the ombudsman is a limited jurisdiction authority or tribunal established under the scheme. The banking ombudsman offices are mainly responsible for addressing and resolving customer complaints against banks. The objective is to help in reducing unauthorized transactions, fraudulent activities, or any other issue that customers face. Banking Ombudsman has the authority to investigate complaints and take appropriate action against banks if they find any wrongdoing. By educating customers about safe banking practices, secure online transactions, and how to identify potential frauds, they contribute to reducing the incidence of fraud. If they identify any irregularities or practices that could lead to fraud, they can report them to the relevant regulatory authorities for further action. While looking into banking ombudsman provisions, it seems they are not designed specifically for controlling bank frauds, they serve as an integral part of the regulatory framework that promotes transparency, fairness, and accountability in the banking sector.

### **7.8 The Banking Regulation Act, 1949:**

The Banking Regulation Act, of 1949 is an important piece of legislation that governs the functioning and operations of banks. While it primarily focused on aspects of regulation and supervision of banks, it also contains provisions to address and control bank frauds. Some of the provisions dealing with controlling bank fraud are as follows:

- a) The Reserve Bank of India has the power to grant licenses<sup>33</sup> for the establishment and operation of banks. It is depending upon discretion to grant or deny licenses to banks based on various factors, including the reputation and integrity of the applicant.

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<sup>32</sup> Integrated Ombudsman Scheme, 2021, *available at*: <https://www.rbi.org.in> (last visited on July 15, 2023).

<sup>33</sup> The Banking Regulations Act, 1949, s. 6.

- b) The Reserve Bank of India has the authority to inspect and inquire into the affairs of any banking company. Such inspections and inquiries<sup>34</sup> can uncover fraudulent activities. The Reserve Bank of India can take appropriate actions to control and prevent further fraud.
- c) In cases, where a banking company faces financial difficulties due to fraud or mismanagement, the Reserve Bank of India can use section 36 to direct the amalgamation or reconstruction of the bank with another institution. This can help to protect the interest of depositors and prevent the continuation of fraudulent practices.

### **7.9 The Insolvency and Bankruptcy Code, 2016**

The Insolvency and Bankruptcy Code (IBC) primarily deals with the resolution of corporate insolvency and bankruptcy matters in India. While it does not specifically address preventive measures for banking frauds. However, it does have provisions related to avoidance of fraudulent or preferential transactions, which can be considered in the context of preventing or addressing banking frauds indirectly. Here are some of the key provisions related to fraudulent and preferential transactions under the IBC:

- a) In preferential transactions,<sup>35</sup> the Act allows the resolution professional or liquidator to avoid certain transactions that occurred during a specified period (up to 2 years before insolvency commencement), if they were executed with the intent to prefer one creditor over others. The avoided transactions can include payments of outstanding debts or transfers of assets at undervalue. The recovered amount is added to the insolvency estate for equitable distribution among all creditors.
- b) The resolution professional or liquidator to avoid transactions that involve the transfer of company assets for inadequate consideration, provided that such transactions occurred within

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<sup>34</sup> The Banking Regulations Act, 1949, s. 35.

<sup>35</sup> The Insolvency and Bankruptcy Act, 2016, s.43.

two years prior to the insolvency commencement date. This will avoid undervalued transactions.<sup>36</sup>

- c) Section 66 of the IBC deals with fraudulent transactions. It empowers the resolution professional or liquidator to call back any property or asset transferred with the intent to defraud creditors. This can include fraudulent conveyances, gifts, or other transactions that were made with the intent to delay or defraud creditors. The recovery goes to the insolvency estate.

### **7.10 THE SARFAESI Act, 2002**

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 is an important legislation in India aims to empowering banks and financial institutions to recover their Non-Performing Assets (NPA) efficiently. While its primary purpose is not specifically to control and prevent bank frauds, it indirectly contributes to reducing fraud by providing a legal framework for the timely resolution of bad loans and stressed assets. Some provisions of the act help in controlling and preventing bank frauds, such as the act mandates banks and financial institutions to classify their assets as performing and non-performing, as timely identification of NPAs helps in addressing bad loans before they escalate into larger frauds.

## **8. Conclusion**

It is demonstrated that bank fraud poses a significant economic risk to India, mirroring the challenges faced by other nations in safeguarding their financial institutions. Financial crimes pose a complex danger to the stability of the country's economy, including identity theft, hacking, money laundering, and insider fraud.<sup>37</sup> The ramifications extend far beyond individual financial hardships; they undermine public trust, disrupt financial services, and obstruct economic growth overall. India is particularly susceptible to the ever-changing tactics employed by fraudsters because of its status

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<sup>36</sup> The Insolvency and Bankruptcy Act, 2016, s.45.

<sup>37</sup> Saxena, Ananaya M., *Forensic Accounting in Uncovering Bank Frauds*, 44 J. Forensic Acc. 789 (2017)

as the first emerging nation and its expanding internet infrastructure. As the nation embraces digital banking and technological innovation, the risk of bank fraud rises, calling for a comprehensive and proactive approach to minimize potential losses.

A principal effect of bank fraud is reduction in public trust in financial establishments. In a country, where trust is vital to the economy, any breach of that trust might make businesses and customers very anxious. Such a lack of confidence can lead to less investment, greater borrowing costs, and reluctance to interact with the formal financial system. Financial services disruption brought on by successful fraud attempts may have a cascading effect on economic efficiency. When transactions go wrong and the soundness of the financial system is questioned, business have to deal with operational problems. This might lead to a broader economic catastrophe and employment losses. Significant fraud incidents can also lead to market instability, which erodes investor confidence. The Indian Government, regulatory agencies, financial institutions, and the general public must work together in order to coordinate efforts to mitigate the financial risks associated with bank fraud, strengthen cybersecurity safeguards, imposing strict regulatory compliances, and raise of public awareness. Modern cybersecurity solutions must be purchased in order to defend the country's financial infrastructure against cyberattacks. Regular assessments, examinations, and updates to security protocols can help identify and resolve vulnerabilities before scammers exploit them. Additionally, it is critical to advance international co-operations given the global nature of modern financial crimes. By sharing knowledge and best practices with other nations, India can fortify its defenses and create a global front against bank fraud. Public awareness campaigns are crucial to building a more vigilant and resilient society. People may able to actively participate in the fight against fraud by being encouraged to report suspicious activity, being educated about common fraud strategies, and being reminded of the need of safe online behavior.

The complexity and dynamism of financial crimes require changes in the regulatory framework. Tighter regulations can discourage fraud and ensure that financial institutions adhere to strict security protocols, particularly in the areas of data protection and anti-money laundering. The fight against bank fraud is becoming more and more dependent on technological innovation as India gets closer to being a digital economy. Using cutting edge technologies, including biometrics, forensic science, AI and machine learning, may enhance security procedures and proactively block emerging threats.

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The Central University of Kashmir Law Review (CUKLR) is an annual, blind, peer-reviewed and refereed journal. It aims to publish quality research on contemporary legal issues, having a multi-disciplinary approach, resonating with the spirit of National Education Policy – 2020 (India).

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