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Editorial

Justice Sanjeev Kumar, the Hon'ble Judge, High Court of Jammu and Kashmir and Ladakh (India) in his paper titled "*Revering the legacy of Dr Babasaheb: Justice, Liberty, and Equality for all*" scholarly discusses the foundational principles of Indian Constitution and the legacy of Dr BR Ambedkar. The paper examines the constitutional vision of the Constituent assembly and remarkably stresses on the constitutional morality and civic responsibility required to understand the democratic ethos of the country. The author carefully presents his seasoned knowledge of constitution to understand what went into the drafting of the constitution and how relevant it is today. This work brings a complete analysis of the preamble and integrates it with the rest of the Articles that makes our constitution a complete code for ensuring and enforcing the lofty ideals of Justice, Liberty and Equality with Fraternity and calls upon all the stakeholders to imbibe, preserve, promote and uphold these values in order to protect the unity and integrity of our nation.

Syedah Fatima Zahara Jafri, Assistant Professor, School of Law, Lovely Professional University, Phagwara Punjab, **Syed Irfan Haider Jafri**, Assistant Legal Aid Defense Counsel, District Legal Services Authority, Poonch, Jammu and Kashmir, and **Mirza Juned Beg**, Assistant Professor, Faculty of Law, Integral University, Lucknow, Uttar Pradesh, in their paper titled "*Illegal Sand Mining in River Jhelum in Jammu and Kashmir: Environmental Law and Governance Challenges*", highlights the environmental and legal issues of illegal sand mining in the Jhelum River, Jammu & Kashmir. The paper brings about the illegal mining consequences in the region such as the damaging ecological integrity of the river, endangering public infrastructure and rural livelihoods. causing habitat destruction, bank erosion, groundwater depletion, and flood vulnerability. The paper examines the existing legal framework for environment protection and mining. The authors argue that notwithstanding the legal protections, field reports and court rulings have consistently shown extensive extraction in protected riparian areas, indicating lax enforcement and regulatory oversight. The study recommends strengthening of regulatory oversight, robust environmental clearance processes, community-based monitoring, reforming legal sanctions, etc.

Prof. Ishita Chatterjee, Professor and Dean, Faculty of Law, Marwadi University, Gujarat, and **Prof. Jai Shankar Singh**, Vice-Chancellor, RGNUL, Patiala, Punjab in their paper captioned, “*Review of the Consumer Protection Act, 2019 in light of the Lessons from the Transnational Jurisdictions*”, applaud the remarkable achievements of the Consumer Protection Act, 2019, especially incorporation of provisions pertaining to product liability, Central Consumer Protection Authority and regulation of e-commerce. The authors observe that despite having its roots in Indian law, the Consumer Protection Act, 2019 is inspired by worldwide best practices and offers insightful information from other countries that have influenced its provisions. The Consumer Protection Act of 2019 has a strong focus on responsibility, openness, and consumer empowerment. The work brings a comparative analysis to identify the similarities and differences between the Consumer Protection Act, 2019 and the regulations like the General Data Protection Regulation (GDPR) of the European Union and the Federal Trade Commission Act of the United States. The authors argue that the Consumer Protection Act, 2019 needs improvements, especially in the application of consumer protection in cutting-edge fields like artificial intelligence and international e-commerce and highlight that through progressive rules, nations like the European Union and Japan have started to address these issues. Therefore, the authors recommend that India can improve its legal frameworks and foresee future consumer difficulties by continuing to learn from similar places like the USA, Japan and the EU.

Gulafroz Jan, Assistant Professor, School of Legal Studies, Central University of Kashmir, in her paper titled, “*ICANN’s Uniform Domain Name Dispute Resolution Policy: A Critical Analysis*”, highlights the issues of cybersquatting and conflicts between trademark holders and domain registrants. The study provides a historical context to the domain name system and the formation of the Internet Corporation for Assigned Names and Numbers (ICANN). The author provides a comprehensive critical analysis of the Uniform Domain Name Dispute Resolution Policy (UDRP) and argues that, though the Policy offers a swift, cost-effective, and uniform process that deters cybersquatting, yet it provides limited procedural safeguards. There is absence of appeals, and an inherent bias towards trademark owners. The paper

proposes necessary and feasible suggestions to be incorporated in the Uniform Dispute Resolution Policy.

Prof. Mohd Ashraf, Professor, Department of Law, Aligarh Muslim University, Aligarh, and **Shagufta Kahkeshan**, Research Scholar, Department of Law, Aligarh Muslim University, Aligarh, in their paper bearing title, “*Emergence of Robot-Assisted Surgery and the Evolving Legal Landscape in India*”, highlights the present status of robot-assisted surgery in India. The paper brings an analysis of legal issues, such as obtaining informed consent from patients, determining liability in cases of medical malpractice, and protecting intellectual property rights, and ethical public policy issues, like the accessibility and affordability of robot-assisted surgery, training and certification of surgeons, the impact on traditional surgical practices, and balancing patient safety with medical innovation. The paper examines the Indian legal architecture governing medical devices and robotic surgical systems. The authors opine that the existing legal framework provide a foundation for the regulation of robotic surgical systems, but the legal framework needs to be updated and expanded to accommodate the unique challenges posed by this technology.

Naveen Kumar, Associate Professor, Department of Law, North-Eastern Hill University Shillong, Meghalaya, and **Raajdwip Vardhan**, Research Scholar, North-Eastern Hill University, Shillong, Meghalaya, in their paper titled, “*Digital Footprints and the Right to Be Forgotten: An Analysis in the Indian Context*”, undertake an analysis of the “right to be forgotten” in India, specifically examining its dual genesis in judicial pronouncements (as a derivative of privacy right under Article 21 of the Constitution) and the statutory recognition of the “right to erasure” under the Digital Personal Data Protection Act, 2023. The authors identify the core tension between the right to be forgotten and the right to free speech within Article 19(1)(a) of the Constitution. The paper sets out to analyze the coherence between these twin fundamental rights, the necessary balance with free speech, and the operational challenges posed by the jurisdictional issues, AI, and the ‘Streisand Effect’. The authors argue that data protection and a robust “right to be forgotten” can be considered the *sine qua non* of the present society, therefore, in the absence of a concrete legal framework, either represented by legislation or promulgated by the Supreme Court, the right will remain a ‘paper tiger’, subject to whims of the judicial bench before which the matter is placed.

Umeshwari Dkhar, Assistant Professor, National Law University Meghalaya, and **Rushika**, Research Fellow National Law University, Meghalaya, in their paper captioned, “*Navigating Legal Pluralism: The Dual Justice Systems and Conflicts Between the Traditional and Modern Courts in Meghalaya’s Khasi Hills*”, provide a comprehensive overview of the legal landscape in the State of Meghalaya. The paper highlights the concept of legal pluralism in the Khasi Hills, Meghalaya, explaining how traditional and modern legal systems co-exist. The paper traces the origins of legal pluralism back to British colonial rule and its continued evolution post-independence with the adoption of the Sixth Schedule of the Constitution. The paper offers an analysis of the Khasi traditional justice structures, highlighting their emphasis on community participation and restorative justice and the preservation of social harmony. The paper links the traditional systems to the Indian Constitution, particularly the Sixth Schedule and the role of the Khasi Hills Autonomous District Council, demonstrating the constitutional recognition of these traditional practices. The paper presents a balanced view, acknowledging the benefits of traditional systems (community harmony) but at the same time pointing out their limitations when juxtaposed with the modern legal principles. The authors argue that despite the legal recognition, tribal communities remain vulnerable, facing numerous challenges that demand enhanced legal protection. The paper includes a comparative analysis with the pluralism legal system exists in Bolivia and recommends that the challenges of legal pluralism in the Khasi Hills can be better resolved by making a comparative study of pluralistic legal systems in Bolivia and learning from their experiences and limitations.

Iftikhar Hussain Bhat, Assistant Professor, School of Law, University of Kashmir and **Gazala Gul**, Research Scholar, School of Law, University of Kashmir, in their paper titled, “*Access to Speedy Justice in India: A Mirage or Reality*”, highlights the idea of speedy justice as an important element of social fairness and its importance for the community as a whole to make sure that offenders receive just punishment and innocent people to get protection from drawn out and onerous legal processes. The work investigates the various obstacles that prevent Indians from accessing prompt justice. The authors opine that, in India, an enormous backlog of cases, complex procedural issues, and structural inefficiencies are the contributing factors for the delayed justice. The authors argue that delayed Justice has wider

ramifications for public trust, social order, and the legitimacy of the legal system as a whole. The authors recommend a few constructive suggestions to ensure speedy justices, such as, use of technology, virtual hearing, e-filing, more use of ADR mechanisms, etc.

Koushik Bagchi, Assistant Professor, National University of Study & Research in Law, Ranchi, and **Sonu Choudhary**, PhD Research Scholar, in their paper bearing title, “*Empirical Analysis of Competition Law Enforcement in India: A Case Study of the District Varanasi (UP)*”, highlights the objectives, enforcement and functioning of the Competition Law in India. The study provides an empirical analysis of the awareness and understanding of antitrust laws among consumers, students, and small business owners in Varanasi, Uttar Pradesh. The authors argue that although the Competition Act, 2002 aims to promote fair competition and protect consumers, the lack of public awareness of its provisions and enforcement mechanisms limits its effectiveness. The study recommends, *inter alia*, enhanced competition advocacy by the Competition Commission of India, simplification of complaint mechanisms and publication of market awareness reports.

Shriya Badgaiyan, Assistant Professor, Shri Rawatpura Sarkar University, Raipur, Chhattisgarh, in her paper titled, “*Tradition Meets Trade: An Analysis of Symbiotic Relationship of Geographical Indications (GIs) and Cultural Conservation in India*”, highlights the ethical issues related to Geographical Indications (GIs) such as commercialisation, cultural imperialism, and social injustice and the Indian legal structure with respect to GIs. The author opines that, on the one hand, GIs bring about a revolutionary change in the concerned producing regions especially in the rural and tribal belts of India, the benefits that flow from a GI are in many cases reflected in a higher market value of these products, as consumers are willing to pay a premium for the so-called “original”, “genuine”, or “high-quality” goods, but on the other hand, economical utilization of these products tends to eradicate them or compromise them and their social and cultural significance. The author recommends that there is a need for the rightful ownership and ethical management of the GI products which include the exercise of control by various communities over their use as well as gain fairly from the commercialization of the products.

Ashish Kumar Singhal, Associate professor, ICFAI University, Dehradun, **Eakramuddin**, Associate Professor, Jamia Millia Islamia University, New Delhi, and **Seema Sharma**, Research Scholar, ICFAI Law School, ICFAI University, Dehradun, in their paper titled, “*Legal Analysis of the Prevention of Cyber Abuse Among Children and the Role of Digital Communication Tools*”, provide a clear analysis of how modern digital platforms influence harmful online behaviour among children. The paper highlights how social media, messaging apps, and gaming platforms can both support communication as well as expose children to risks like bullying, harassment, and misuse of personal information. The paper brings out analytical study which explains the psychological and social factors behind such abuse. It also stresses the need for digital literacy, parental guidance, and strong legal policies. The authors argue that cybercriminals demonstrate a strong inclination towards targeting young adults in modern society. Several factors can heighten the probability of an individual becoming a target of cybercrime, such as gender, educational attainment, financial circumstances, etc. The paper gives insights to the issues and challenges and offers practical suggestions for creating safer online spaces for children.

Prof. Savita Nayyar, Professor, Department of Law, University of Jammu, and **Madhvi Sudan**, Research Scholar, Department of Law, University of Jammu, in their paper titled, “*Role of Religious and Cultural beliefs in Shaping Animal Welfare Laws in India: A Critical Appraisal*”, explore the intersection of religious principles, cultural practices, and legal obligations in shaping animal welfare laws in India. The paper provides a systematic analysis of historical, religious, cultural contexts and legal evolution with respect to animal welfare in India. The paper raises contemporary issues which are inbuilt in cultural practices and also proposes future prospects of animal laws in India. The authors opine that the challenge lies in balancing cultural practices with the need for reform in animal welfare laws. The authors recommend that the influence of grassroots cultural movements, religious leaders, and local communities can play a critical role in shaping the evolution of animal welfare laws in India.

Prof. S.C. Roy (Chairman) and **Dr. P.V.V.S Murthy** (Secretary General) of the Consumer Advocacy Group (CAG), following the recommendation of the Think Tank Group of the CAG, via a letter addressed to **Hon’ble Minister, Ministry of Consumer Affairs**,

Government of India have presented some suggestions for framing new rules under the Consumer Protection Act, 2019 for the appointments in the Consumer Commissions. The letter highlights Hon'ble Supreme Court's recent judgment on the structure and functioning of Consumer Commissions. In the light of the Judgement, the letter recommended many changes in the existing structure and nature of appointments in the Consumer Commissions.

Chief Editor

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This Issue of the Journal is financially supported by the Indian Council of Social Science Research (ICSSR). The Chief Editor and Head and Dean, School of Legal Studies, Central University of Kashmir is grateful to the Indian Council of Social Science Research (ICSSR) for generous grant of financial assistance for publishing this Journal.



Revering the legacy of Dr Babasaheb: Justice, Liberty, and Equality for all[‡]

Justice Sanjeev Kumar*

Abstract

Samvidhan Divas, The Constitution Day, celebrated every year on 26th November is not only an attempt to honour the contributions of Dr BR Ambedkar, known as the architect of the Indian Constitution but also a day to commemorate the adoption of the Constitution of India by the Constituent Assembly of India in 1949. A day of introspection to appraise and understand how constitutional values have been intertwined in the constitutional letters and how the core ideals of Justice, Liberty, Equality and Fraternity – an embodiment of constitutional morality runs through the spine and spirit of the constitutional structure in India.

It is in this backdrop that this paper traces the history of constitutional drafting so as to put ideals of the constitution in right perspective and how best the purpose for which these ideals were made as a core part of our constitutional scheme could be achieved.

The paper initiates a thorough discussion on the preamble of the constitution, the basic structure of the constitution and covers all the major articles of Part 3-the heart and soul of the Indian Constitution, and argues that the constitutional interpretation will not serve any purpose if the provisions of the constitution are read in isolation.

The main focus of the paper is the re-assessment of the foundational commitments of our republic. It reiterates that by affirming the ideals of Justice, liberty and fraternity, the Constitution continues to serve as a living document for attaining social transformation and also protecting the integrity of the Republic of India.

Keywords: *Constituent Assembly, Constitution, Constitutional Obligations, Justice, Liberty, Equality, Fraternity*

[‡] This paper is based on the speech delivered by the Honourable Justice Sanjeev Kumar in the Department of Law, School of Legal Studies, Central University of Kashmir on the commemoration of constitution Day, on 26th November 2025.

* Justice Sanjeev Kumar, Hon'ble Judge, High Court of Jammu and Kashmir and Ladakh, Jammu and Kashmir, India. email: Sanjeevupal.hc@gmail.com

1. Introduction

On 26th November 1949, the Constituent Assembly of India adopted a document which is revered by every citizen of the Country like a holy scripture - **The Constitution of India.**

India got freedom on 15th of August 1947, when Indian Independence Act of 1947 passed by the British Parliament came in operation. On one hand, this British Act freed India from British yoke, on the other hand divided British India into two independent dominions-India and Pakistan. This historic day marked the end of British Rule and emergence of a new nation Bharat- India. This was also an end of British Suzerainty over princely States giving them freedom to accede to either India or Pakistan or remain independent. The mammoth task of framing Constitution of both the dominions was entrusted to the Constituent Assemblies thereof and the dominions were put under the control of Governor Generals. Both the dominions were to be governed by the Govt. of India Act 1935 which again was an Act of British Parliament. Constituent Assembly was formed in 1946 under Cabinet Mission Plan. It consisted of initially 389 members representing British India and Princely States. It held its first meeting on December 9, 1946, and accomplished its task well within three years. Sir B. N. Rau was the Constitutional Advisor to the Constituent Assembly and prepared its first draft. The Constitution Draft Committee headed by Dr. B. R. Ambedkar, after long debates and discussion, prepared a final draft which was adopted by the Constituent Assembly on 26th of November 1949, which day we commemorate each year as "Constitution Day".

Constitution of India as was adopted on 26th November 1949 had 395 Articles, Eight Schedules and twenty two parts. The framers of our Constitution had before them the constitution of United States, Irish Constitution, Constitution of Commonwealth of Australia and Constitution of Japan and many more.

2. The Preamble of the Indian Constitution and the Constitutional Values

The Preamble of our Constitution was drafted at the end and therefore, sums up the essence of Constitution that we the people gave to ourselves.

From here we straightway go to the Preamble which begins with “We the People of India” which would mean that the Constitution of India is nothing but a resolve of us Indians to Constitute India into a

Sovereign, Socialist, Secular Democratic Republic.

Sovereign we are,	because we are now free of British Yoke.
Democratic we are,	because now we shall govern ourselves.
Republic we are,	because now we shall have elected head of State and not a Ruler or Monarch.

It symbolises the sovereignty of people.

The Preamble as it stood at the time of adoption of Constitution did not contain the words “*Socialist and Secular*”. These came to be added by Constitution (42nd) Amendment Act 1976.

But does that mean the framers of our Constitution (the Constituent Assembly) had constituted India into a non-socialist and non-secular Republic, the answer is an emphatic ‘no’. As a matter of fact, during Constituent Assembly Debates, one member Sh. K. T. Shah had insisted for inclusion of these expressions in the Preamble but the suggestion was turned down on the ground that Fundamental Rights, Directive Principles and more particularly, later part of Preamble did ensure the Socialist and Secular character of our Republic.

We proceed little further in the Preamble and it says: To secure to its citizens:

- Justice** - Social, economic and political.
- Liberty** - of thought, expression, belief, faith and worship.
- Equality** - of status and of opportunity and to promote among them all.
- Fraternity** - assuring the dignity of the individual and unity and integrity of the nation.
- Social Justice** - Article 39 of Directive Principles of State Policy:
 - = Men and Women to have equal right to means of livelihood.
 - = The ownership and control of material resources of the community to be so legal aid, distributed to best sub-serve the common good.

= Equal pay for equal work.

Article 39A: - Equal access to justice and
Economic Justice – Article 39(c) The operation of economic system does not result in the concentration of wealth and means of production to the common detriment.

Free Legal Aid to those who cannot afford the expenses of litigation is another facet of economic justice.

Now coming to the three most important values our Constitution cherishes and zealously guards.

Liberty, Equality and Fraternity.

These were the war cries of French Revolution: “*Liberte, egalite and Fraternite*”.

Liberty:

Article 21 is a single most significant Article guaranteeing to the citizens of this Country, Right to Life and Personal Liberty. The smallest Article in Part-III of Constitution is perhaps the Fundamental Right of widest amplitude. It has given birth to several facets of liberty – right to live with dignity, right to safe environment and right to privacy, which was recently declared by nine-Judge Bench of Supreme Court as Fundamental Right implicit in Right to Life and Personal Liberty.

Article ‘19’ is another important provision guaranteeing to its citizens as many as six freedoms Freedom of Speech and Expression implicit in it freedom of Press and Right to Information.

Right to Assemble peacefully and without arms.

To form Association, or Unions-so crucial to any democracy.

To move freely throughout territories of India

To reside and settle in any part of territory of India

To practice any profession or occupation, trade or business.

These Freedoms are of course not absolute and are hedged by reasonable restrictions, like public order, decency or morality, Sovereignty, Integrity and Security of State etc.

- Equality:** Article 14, Article 15, Article 16- ensure equality before law and equal protection of laws. The equality prevents discrimination fostering inclusivity and fairness. It is trite, any state action which is arbitrary offends Article 14 and Right to be treated equally.
- Fraternity:** Fraternity means brotherhood which is essential to assure dignity of each individual and strengthening nation's unity and integrity. In a nation, such as ours, which is replete with diversity, diversity of languages, diversity of religions, the secularism is most potent tool to forge brotherhood, strengthen unity and integrity of our nation.
- Secularism:** It does not mean absence of religion but refers to a system or position where citizens respect each other's religion but State does not have any religion. Secularism is not a new thing for our nation. It goes back to the era of two great Emperors Ashoka, the Great and Akbar, the Great. History speaks volumes that these both emperors genuinely believed that to have concord between the citizens, people should learn to give respect to others' faith, belief and religion. 12th Rock Edict of Emperor Ashoka emphasised tolerance and respect for all religions. It advocated for restraint on speech to avoid extolling one's own faith or religion, as extolling or praising your own faith, you are indirectly denigrating/belittling other's faith or religion. Deene-Illahi by Mughal Emperor Akbar was also a step towards promoting unity among various faiths. To respect other's religious belief, one must have knowledge of other's religion. So, it is necessary that we study and know each other's religion. It is only then we will be able to respect other's faith, belief or religion.

3. Constitution of India

Our Constitution makers were well aware of diversity of faith and religions. They knew that without laying strong foundation for

secularism in the Constitution itself, it is difficult to promote fraternity. It is complete misnomer to say that our Republic became Secular only after Constitution (42nd Amendment) Act 1976, when the words “Socialist and Secular” were inserted into the Preamble, Secularism is writ large and Fundamental rights Chapter III contains various positions on secularism. For example, **Articles 15 and 16**

Article 15(1) – Prohibits discrimination by State and provides that State shall not discriminate against any citizen on the grounds only of religion, race, caste or place of birth etc. This is a general provision interdicting State from discriminating its citizens on the ground of religion.

Article 15(2): Casts Constitutional obligation on citizens not to discriminate against each other on the ground of religion, race etc. when it comes to accessing public places, shops, hotels and restaurants etc. or use of wells, tanks, bathing ghats, roads or places of public resort etc. etc.

Articles 25, 26, 27 and 28: are the other Fundamental Rights Guarding religious freedom.

Article 26: Guarantees right to every religious denomination to establish and maintain institutions for religious and charitable purposes, manage its own affairs in the matter of religion and to own and acquire movable and immovable property and administrator such property in accordance with law.

However, such freedom is subject to three things

- a) Public Order
- b) Morality
- c) Health

Article 27: Freedom not to pay any taxes, the proceeds of which are specifically appropriated in payment of expense of any particular religion or religious denomination. Citizens cannot be compelled to pay taxes for such purposes.

Article 28: It essentially provides that State shall have no religion and shall maintain neutrality in religious matters upholding rights of all communities equally.

No state run and funded educational institution can impart religious instructions except when such institution is established under an endowment or trust and is administered by state.

Lastly, Article 25 which is the single most significant fundamental right assuring freedom of religion.

Article 25: It guarantees to all persons equally the freedom of conscience and right to freely profess, practice and propagate religion. This freedom and right is again subject to three things

(a) Public Order (b) Morality (c) Health.

Absolute freedom to an individual is fraught with risk of endangering fellow citizen's freedom. One cannot in the name of religion or religious practice come on roads, create chaos and endanger public order. No religious practice which is opposed to public policy and leads to immorality can be permitted. For example, if someone's faith permits walking naked in the street, the state is well within its powers to stop such practice and the person practicing such faith cannot claim the continuation of such activity in the exercise of his fundamental right to practice his religion or faith. Health is another ground: the state is well within its power to ban use of loud speakers by various religious denomination, ringing of loud bells, holding of jagratas. No individual practicing any faith, be it Hinduism, Islam or Sikhism or Christianity, can claim as a right to use loudspeakers for any religious purpose for loud noise emanating from such activities endanger the health of citizens and, therefore, a reasonable restriction of the right guaranteed by Article 25.

Right to profess: to wear a badge of religion- Hindus may profess by applying Tilak on forehead, Muslims by wearing Skullcap or Taqiya and Sikhs by carrying Kirpans.

Right to Propagate is a bit of a trouble area. There has been some debate as to whether right to propagate one's religion or faith would include right to convert by appealing to others' conscience or is only restricted to teaching the tenets of one's religion to the willing person or persons. A Constitution Bench of Supreme Court has in the case of *Rev. Stainislaus v. State of M.P*¹ has set the controversy at rest by holding that right to propagate one's religion or faith does not include right to convert someone to his faith. Such attempt is nothing short of interfering with other's freedom of conscience granted by Article 25 itself.

There is another important facet of this Article i.e., the State is empowered to make law providing for social welfare and reform or the throwing open of Hindu Religious institutions of public character to all classes and sections of Hindus. So, the state is not prevented from

¹ AIR 1977 SCC (1) 677.

bringing in a legislation aimed at providing for social welfare and reform. Such legislations shall not be viewed as interference by State in the right of a citizen to practice, profess and propagate his/her religion or religious faith.

4. Conclusion

From the narration the paper gives hereinbefore, there should be no doubt in the mind of any citizen that our Constitution very specifically and emphatically guards freedom of religion and constitutes India into a secular democratic Republic. The values which were there since centuries have found place in our Constitution and what is required of us is to understand the Constitutional morality and promote fraternity by respecting and not denigrating or belittling each other's religion. The moment you start extolling your faith or religion, you are simultaneously belittling others.

While we commemorate 26th November every year, let us take a pledge that we will respect each others' faith and religion and this we will do by acquiring and understanding others' faith and extolling it for all its goodness. This way, we would be raising the respect and dignity of our own religion. The moment we learn to do so, we shall be promoting fraternity and that would assure the dignity of each individual and protect the unity and integrity of our Nation. In the present day world order, the existence and survival of a Nation is not possible unless its citizens imbibe the spirit and sense of brotherhood, solidarity and mutual respect which is so essential and crucial to the protecting of unity and integrity of Nation.

The paper concludes by recalling the famous quote of Justice Chinnappa Reddy in Bijoy Emmanuel case:

“Our tradition teaches tolerance.
Our philosophy preaches tolerance.
Our Constitution practices tolerance.”²

² AIR 1987 SC 748



Illegal Sand Mining in River Jhelum in Jammu and Kashmir: Environmental Law and Governance Challenges

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Abstract

In Jammu & Kashmir, illegal sand mining in the Jhelum River has emerged as one of the most pressing environmental and legal governance issues. With estimated extraction volumes increasing from 0.47 million tonnes in 2021 to an alarming 1.14 million tonnes in 2023, riverbed mining- once a regulated and small-scale activity- has devolved into an unregulated, large-scale enterprise. The ecological integrity of the river has been seriously damaged by this surge, endangering public infrastructure and rural livelihoods while also causing habitat destruction, bank erosion, groundwater depletion, and increased flood vulnerability. Illegal extraction persists in spite of strong legal frameworks like the Environment (Protection) Act of 1986, the Mines and Minerals (Development and Regulation) Act of 1957, and the Jammu & Kashmir Minor Mineral Concession, Storage, and Transportation of Minerals Rules of 2016. Lax enforcement, institutional fragmentation, and the cooperation of strong sand mafias that function outside the purview of administrative oversight all contribute to the issue. The definition of “minor minerals,” statutory requirements, and enforcement shortcomings are all examined in this research paper’s critical analysis of the laws and regulations controlling sand mining in Jammu & Kashmir. It also discusses the socio-economic effects of unregulated mining, such as displacement and decreased agricultural productivity. The chapter concludes by discussing potential reform avenues, such as community-based supervision, technological monitoring, judicial interventions, and more stringent environmental clearance processes. The study promotes a rights-based and environmentally conscious approach to natural resource governance in

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Kashmir by bridging the legal framework with sustainable development goals and ecological justice principles.

Keywords: *Illegal Sand Mining, Jhelum River, Environmental Governance, Ecological Justice, Sustainable Resource Management*

1. Introduction

The Jhelum River, often considered the lifeline of Kashmir's agrarian and ecological systems, faces a growing crisis from illegal sand and gravel mining. Sand mining, which was previously restricted to small-scale, local operations, has recently become more commercialised and industrialised, with widespread extraction from embankments and riverbeds. The estimated amount of riverbed material extracted increased from 0.47 million tonnes per year to more than 1.14 million tonnes per year between 2021 and 2023.¹ Even in environmentally sensitive areas, the widespread use of mechanised operations- often conducted at night with JCBs and tippers has become ingrained, in defiance of legal protections. The impact on the environment has been profound. Particularly in the districts of Pulwama, Budgam, and Kulgam, the unrestrained use of heavy machinery has caused riverbank instability and severe erosion.² The Kashmir Water Resources Department's hydrological surveys indicate that groundwater tables in nearby areas have dropped by 15-20%.³ In rural Kashmir, this not only jeopardises farming operations but also lowers the amount of water available for drinking and sanitation. Flood risks have increased and natural aquifer recharge cycles have been hampered by the change in river morphology. Even though laws like the Mines and Minerals (Development and Regulation) Act of 1957 and the Environment Protection Act of 1986 give authorities the authority to control mineral extraction, enforcement is still irregular. Over 7,000 vehicles and 35 excavators were seized for illicit mining activities in 2021–2022, and ₹14 crore in fines were imposed.⁴ These

¹ J&K Department of Geology and Mining, *Annual Sand Extraction Report 2022–2023*, Govt. of Jammu & Kashmir (2023).

² "Sand Mafia Ravages Jhelum Riverbanks in Pulwama," *Rising Kashmir*, 19 January 2023.

³ Kashmir Water Resources Dept., *Hydrological Survey Report*, Dec. 2023, cited in *Greater Kashmir*, Jan. 2024.

⁴ "7000 Vehicles Seized Over Illegal Mining in J&K," *Greater Kashmir*, March 2023.

measures, however, were mainly short-lived, and violators were free to carry on with impunity. The enforcement regime is ineffective in the absence of deterrent penalties, institutional coordination, and real-time monitoring.

The J&K Government was fined ₹35 crore by the National Green Tribunal in 2021 for unregulated mining along the Doodh Ganga, in response to environmental complaints and public interest litigation.⁵ Additionally, the Tribunal prohibited mining without a valid clearance and mandated routine environmental assessments. Local agencies have been sluggish to put corrective measures into place in spite of these directives, and violations persist unpunished, especially in rural riverbank areas with minimal administrative presence. This inaction has had extremely concerning humanitarian and environmental repercussions. Damage to embankments from illicit sand extraction was directly linked to flash floods in the Budgam district's Korel area in November 2023.⁶ Local media outlets and civil society organisations reported on the damage to over 40 homes and the collapse of two schools. Many residents lost access to croplands and safe water, and more than 500 residents were forced to relocate. These incidents show how ecological violations frequently result in violations of fundamental rights, which disproportionately impact marginalised groups. The Minor Mineral Concession Rules, 2016 in Jammu and Kashmir place severe restrictions on mining at night and forbid the use of large equipment within 25 meters of riverbanks.⁷ However, these guidelines are rarely adhered to in reality. Furthermore, the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and other constitutional principles of community involvement and decentralised governance are frequently disregarded when mining block licensing and monitoring are conducted. This violates local self-governance and the right to livelihood in addition to environmental law.

There is an urgent need for a rights-based, cogent approach to natural resource governance. Participatory environmental audits, real-time

⁵ *Vishwa Jit Sharma v. Union of India & Ors.*, OA No. 45/2019, Order dated 13 Dec. 2021, National Green Tribunal, Principal Bench, New Delhi.

⁶ "Flash Floods Sweep Budgam After Illegal Mining," *Kashmir Observer*, 25 November 2023.

⁷ Govt. of J&K, *Jammu and Kashmir Minor Mineral Concession, Storage, and Transportation of Minerals Rules, 2016*, SRO 302 dated 26 July 2016.

satellite surveillance, harsher penalties, and judicial oversight must all become commonplace. Local panchayats and Gram Sabhas must be given the authority by the government to take the initiative in consent and grievance redressal procedures. Protecting the Jhelum River is vital to maintaining the environmental rule of law and guaranteeing intergenerational equity because it is an integral part of Kashmir's hydrological and cultural identity.

2. History & Scope of Sand Mining in Kashmir

Communities in the Kashmir Valley have coexisted peacefully with the Jhelum River for centuries, using hand-operated techniques to extract small amounts of sand and gravel for local purposes like road upkeep, brickmaking, and small-scale building.⁸ Village elders and panchayats enforced customary water laws and community oversight to regulate these practices instead of central statutes. This ensured that extraction remained minimal and sustainable, protecting aquatic ecosystems and bank integrity. In Kashmir, resource governance was based on communal customs prior to the emergence of formal legal frameworks. When, where, and from which sections of the river sand could be collected were determined by village assemblies, or panchayats, which were frequently influenced by social and religious conventions.⁹ Because excessive removal led to prompt communal response (either fines or social exclusion), this model maintained hydrological balance by guaranteeing that traditional irrigation patterns and groundwater recharge zones remained intact. However, the balance was upset in the early 2000s when India's mineral governance was liberalised and policy priorities changed after Article 370 was repealed. In a sharp break from community-based extraction, the J&K government put more than 100 new minor-mineral blocks up for open bidding by 2019–2020, with many of them going to outside contractors.¹⁰ This change in policy sped up the transition from manual to commercial-scale extraction, which is usually aided by 24-hour extraction cycles and large earthmoving machinery.

⁸ Ghulam Nabi, *Artisanal Sand Extraction in Kashmir: Customary Practices* 127 (University of Kashmir Press 2018).

⁹ F. Ahmad, *Water Commons and Panchayat Governance in J&K* 98–104 (2020).

¹⁰ J&K Dep't of Geology & Mining, *Auction Status Report for Minor Mineral Blocks 2020–2021* (Government of Jammu & Kashmir 2022).

This change had negative ecological effects and seriously compromised local stewardship. According to a 2023 report by Kashmir University's Environmental Policy Group, deep, mechanised sand excavation was responsible for a 15–18% drop in groundwater tables and widespread embankment destabilisation in Pulwama and Budgam.¹¹ The loss of fish spawning grounds, the shrinkage of wetlands, and the disruption of riparian soil stratification are all detrimental effects that were hardly taken into account when allocating blocks. Enforcement has been ineffectual despite the legal framework established by the J&K Minor Mineral Concession Rules 2016, which forbid the use of heavy machinery within 25 meters of embankments and require environmental clearance and Gram Sabha consent.¹² Many villagers have complained that their traditional control over riverine resources has been erased by lease auctions that were held without local notice or Gramme Sabha input.¹³ It is imperative that customary governance systems be reintegrated into statutory processes going forward. Restoring ecological balance and restoring public trust may be possible through co-management models in which state agencies, local panchayats, and Gramme Sabhas share supervision. Furthermore, regulatory actions like environmental audits, GPS-based excavation activity monitoring, and meaningful community consultations could support Kashmir's long-standing stewardship of its river systems and help align development with sustainable principles.

The introduction of liberalised regional development policies and the expansion of public and private infrastructure projects in the 1990s caused major changes in the governance of natural resources in Jammu and Kashmir. The Srinagar–Jammu National Highway (NH-44), a strategically important route that links Kashmir with the rest of India,

¹¹ Environmental Policy Group, University of Kashmir, *Survey on Sand Mining & Groundwater Decline in Kashmir* 15–17 (2023).

¹² Govt. of Jammu & Kashmir, *Minor Mineral Concession Rules, 2016* (SRO 302, July 26, 2016).

¹³ “Kashmir Villagers Protest Against Sand Mining Contracts Given to Non-locals,” *The Wire* (Mar. 15, 2022), available at: <https://thewire.in/environment/kashmir-sand-mining-non-local-contractors>. (last visited on June 25, 2025).

was one of the most noteworthy.¹⁴ Massive amounts of sand, gravel, and crushed stones were needed for the highway's widening as well as for the building of bridges and tunnels; these resources were far more in demand than could be obtained through conventional, small-scale, community-regulated extraction. The Valley's sand mining operations became more mechanised in response to this spike in material demand. By the early 2000s, riverbed dredgers, tippers, and JCBs (earthmovers) were frequently seen along the Jhelum and its tributaries, frequently without the necessary permits or environmental clearance.¹⁵ This was a major change from previous methods where extraction was mostly seasonal, labour-intensive, and volume-limited. Large-scale, unregulated mining operations were made possible by both formal and informal actors due to liberalised mineral policies, lax enforcement, and corruption at the local level. The ecological effects of this shift started to become more apparent between 2005 and 2010. Significant riverbank erosion occurred along several sections of the Jhelum; major incidents involving the collapse of river embankments and agricultural land into the waterway were reported close to Awantipora and Pampore.¹⁶ Due to excessive riverbed deepening, groundwater tables in South Kashmir declined by an average of 10-15% during this decade, upsetting the region's hydrological balance.¹⁷ Due to destabilised banks and changed sedimentation patterns, the river lost its natural floodplain buffering, which further increased flood vulnerability, especially in low-lying areas. During this time, government reports and environmental experts also noted the increasing risk of flash floods. Uncontrolled riverbed mining has been associated with more flash floods downstream of mining hotspots, according to a 2009 report by J&K's Department of Environment and Remote Sensing.¹⁸ However, these

¹⁴ Ministry of Road Transport & Highways, *Status Report on NH-44 Expansion* (2021).

¹⁵ "Illegal Riverbed Mining Surges Along Jhelum," *Greater Kashmir*, March 2009.

¹⁶ Dept. of Irrigation and Flood Control, J&K, *Erosion Mapping Report: Jhelum Basin* (2010).

¹⁷ University of Kashmir, *Hydrological Trends in South Kashmir: 1995–2010*, Faculty of Earth Sciences (2012).

¹⁸ Department of Environment & Remote Sensing, *Report on Anthropogenic Drivers of Flooding in J&K* (2009).

warnings did not result in long-term policy changes because there was no comprehensive plan for managing the river basin. Rather, a reactive strategy was used, with temporary prohibitions frequently put in place after significant mishaps and then discreetly removed in response to contractors' pressure. At the same time, local consent and public involvement, which were once essential to traditional resource governance, were gradually weakened. Decision-making became more centralised with the implementation of the Mineral Concession Rules in 2004 and later in 2016, and contracts were awarded to the highest bidders, frequently leaving out local stakeholders.¹⁹ Communities that had traditionally served as guardians of riverine ecosystems were offended by this, which sparked demonstrations and legal challenges in districts like Anantnag and Budgam. Overall, mechanised and commercially driven extraction replaced subsistence-level, community-managed sand mining due to infrastructure demands and liberalised economic policies, which led to regulatory failure, long-term environmental degradation, and the marginalisation of local voices. It also laid the groundwork for the current sand governance crisis, which is the focus of this paper.

The demand for construction-grade sand and gravel in Kashmir increased starting in the 1990s as a result of liberalised regional policies and the growth of major infrastructure projects, most notably the widening of the Srinagar–Jammu National Highway (NH-44).²⁰ Traditional, community-led manual extraction was unable to meet the demands of this development, which led to a move towards mechanised sand mining. By the early 2000s, it was common practice to use heavy equipment like JCBs, tippers and dredgers without proper permits or lease compliance. The effects on the environment became apparent between 2005 and 2010. Significant riverbank erosion in Pulwama, Budgam, and Anantnag was reported by the Department of Environment and Remote Sensing, which connected it to illicit deep excavation.²¹ Sand removal in the Kashmir Valley was

¹⁹ Govt. of J&K, *Jammu and Kashmir Minor Mineral Concession Rules, 2004 and 2016* (SRO 302).

²⁰ Ministry of Road Transport & Highways, *NH-44 Infrastructure Expansion Status Report* (Govt. of India, 2022).

²¹ Department of Environment & Remote Sensing, *River Morphology Study of Jhelum Basin*, Govt. of J&K (2009).

blamed for riparian vegetation destruction and sediment balance disruption, which led to hydrological changes like declining groundwater tables and heightened flood vulnerability.²²

According to official data, the amount of extraction increased from roughly 0.47 million tonnes in 2021 to 1.14 million tonnes in 2023, spread across 72 blocks that were put up for auction.²³ According to media investigations, contractors commonly violate the J&K Minor Mineral Concession Rules, 2016 by conducting most of this mining activity at night to evade monitoring.²⁴ Regulatory enforcement is still uneven in spite of these interventions. The J&K government was fined ₹35 crore by the National Green Tribunal (NGT) in 2021 for neglecting to control mining along the Doodh Ganga river.²⁵ The ruling highlighted the lack of coordination between the departments of mining, irrigation, and pollution control, as well as the absence of Environmental Impact Assessments (EIA). However, because of a lacklustre monitoring system and ongoing mafia influence, violations continue.

Biodiversity loss is another effect of ecological disruption. For example, the loss of fish spawning grounds has been connected to deep pitting in the Rambiara and Veshaw rivers.²⁶ The drying of traditional springs like Arbal Nag in Budgam and declining water quality serve as additional evidence of the damaging effects of excessive extraction on the environment.²⁷ Concurrently, local farmers have voiced their opposition to the arrival of foreign contractors, claiming that it compromises customary access and

²² University of Kashmir, *Hydrological Impact of Sand Mining in South Kashmir* (Faculty of Earth Sciences, 2012).

²³ Department of Geology & Mining, *Annual Mineral Extraction Report 2022–23*, Govt. of J&K (2023).

²⁴ Govt. of Jammu & Kashmir, *J&K Minor Mineral Concession Rules, 2016*, SRO 302 (26 July 2016).

²⁵ *Vishwa Jit Sharma v. Union of India*, OA No. 45/2019, Order dated 13 Dec. 2021, National Green Tribunal, Principal Bench, New Delhi.

²⁶ “Sand Mafia Depletes Trout Habitats in South Kashmir,” *Kashmir Observer*, 12 Nov. 2023.

²⁷ Environmental Policy Group, *Status of Traditional Water Sources in Budgam*, Kashmir University (2023).

care.²⁸ Transparent lease issuance, environmental auditing, and participatory regulation involving Panchayati Raj institutions are urgently needed to address this crisis. The sustainability of Kashmir's riverine ecosystems is still in jeopardy in the absence of such structural changes.

3. Legal and Regulatory Framework

According to Section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), sand and gravel are classified as "minor minerals."²⁹ Because of this classification, the State Government, which has the authority to establish particular regulations for concession, extraction, and transportation under Section 15 of the Act, is primarily responsible for their regulation. These authorities are used in Jammu and Kashmir under the 2016 Jammu and Kashmir Minor Mineral Concession, Storage, and Transportation of Minerals Rules.³⁰ According to these regulations, it is illegal to extract, store, or transport minor minerals without a current mining lease or short-term permit. Furthermore, using large equipment like JCBs, excavators, and dredgers without first obtaining environmental approval is extremely dangerous, especially in riverbeds, floodplains, and embankment zones. These activities also violate the Environment (Protection) Act of 1986, particularly when mining occurs in ecologically sensitive areas or within 200-500 meters of riverbanks without a valid Environmental Impact Assessment (EIA).³¹ Additionally, mining close to bridges and embankments jeopardises the structural soundness of public infrastructure and is prohibited by guidelines issued by the National Green Tribunal (NGT) and the Ministry of Environment, Forests, and Climate Change

²⁸ "Kashmir Villagers Protest Mining by Non-Local Contractors," *The Wire*, 15 March 2022, available at: <https://thewire.in/environment/kashmir-sand-mining-non-local-contractors>. (last visited on May 20, 2025).

²⁹ The Mines and Minerals (Development and Regulation) Act, 1957, § 3(e), No. 67, Acts of Parliament, 1957 (India).

³⁰ Govt. of J&K, *Jammu and Kashmir Minor Mineral Concession, Storage, and Transportation of Minerals Rules*, SRO 302 (2016).

³¹ Environment (Protection) Act, 1986, §§ 3 and 5, read with MoEFCC Notification S.O. 1533(E) (14 September 2006).

(MoEFCC).³² Notwithstanding these legal protections, field reports and court rulings have consistently shown extensive extraction in protected riparian areas, indicating lax enforcement and regulatory oversight.

In India, illegal riverbed mining is a major violation of mining and environmental regulations. Unauthorised mining operations are punishable by both jail time and fines under the Environment (Protection) Act, 1986 (EPA), especially if they are conducted in ecologically sensitive areas or without the necessary environmental clearances.³³ In particular, Section 15 of the EPA stipulates that a person who violates the law for five years may be imprisoned, fined up to ₹1 lakh, and subject to an additional ₹5,000 fine for each day that the violation persists.³⁴ Riverbed mining is a clear violation of EPA regulations when it occurs in protected areas, like floodplains, within the allowed buffer distances from embankments or bridges, or without an Environmental Impact Assessment (EIA). Concurrently, mining operations carried out without a valid lease, licence, or permit are subject to criminal liability under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act).³⁵ Illegal mining is a crime under Section 21 of the Act, which gives authorised officers the authority to confiscate the vehicles, tools, and mineral stock used in the crime. The state may seize assets used in illegal mining, such as excavators and dumpers, and punish repeat offenders with increased jail time and fines.³⁶ State-specific regulations such as the J&K Minor Mineral Concession, Storage, and Transportation of Minerals Rules, 2016 have operationalised these powers by allowing the imposition of compounded penalties and the termination of contracts for noncompliance.

Ground-level enforcement is still weak in spite of this strong legal framework, frequently due to a lack of coordination between local government, environmental regulators, and mining authorities. Large-

³² *National Green Tribunal Guidelines on Sustainable Sand Mining Management*, Ministry of Environment, Forest and Climate Change, 2016.

³³ Environment (Protection) Act, 1986, No. 29 of 1986, Sections 3, 5, and 15.

³⁴ *Ibid.* Sections 15(1), (2).

³⁵ Mines and Minerals (Development and Regulation) Act, 1957, No. 67 of 1957, Section 21.

³⁶ *Ibid.* Section 21(4); see also Ministry of Mines, *Model Guidelines for Prevention of Illegal Mining and Monitoring of Mineral Production* (2020).

scale riverbed mining operations in Kashmir, especially along the Jhelum and its tributaries, thus continue to operate with impunity, threatening the rule of law and environmental justice. A thorough regulatory framework for the extraction and transportation of minor minerals, including sand and gravel, was established by the Jammu and Kashmir Minor Mineral Concession, Storage, Transportation of Minerals, and Prevention of Illegal Mining Rules, 2016 (henceforth referred to as the “JK Minor Mineral Rules, 2016”). These regulations place a strong emphasis on decentralised oversight, procedural transparency, and environmental safety. In order to protect riparian ecosystems and flood protection infrastructure, Rule 17 expressly forbids the use of large equipment, such as excavators or JCBs, within 25 meters of riverbanks, embankments, or any hydraulic structures.³⁷ Furthermore, mining is specifically prohibited at night because of the higher risk of regulatory violations and the higher environmental hazards brought on by the absence of supervision during those hours.³⁸ Additionally, as required by the EIA Notification 2006 issued under the Environment (Protection) Act, 1986, the Rules stipulate that any mining lease or permit may only be granted following the acquisition of Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA).³⁹ In addition, Rule 26 requires lessees to provide recurring environmental audit reports that demonstrate their adherence to safety regulations, extraction restrictions, and restoration duties. The Rules now promote GPS-based tracking of vehicles and equipment used in mining and mineral transportation to improve accountability and stop illicit extraction outside of permitted areas.⁴⁰ In many districts in Kashmir Division of J&K, implementation of these safeguards is still lacking. Widespread violations of these provisions have been caused by a combination of political patronage of contractors, institutional inertia, and a shortage of skilled enforcement personnel. Regular violations of the night-time ban, mining too near embankments, and a lack of GPS tracking have been reported by media outlets and field investigations by civil

³⁷ Jammu and Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016, Rule 17.

³⁸ *Ibid.* Rule 20.

³⁹ Environment (Protection) Act, 1986, read with MoEFCC Notification S.O. 1533(E), dated 14 September 2006 (EIA Notification, 2006).

⁴⁰ JK Minor Mineral Rules, 2016, Rule 26(4).

society.⁴¹ Consequently, destabilisation of ecologically sensitive riverbeds persists, endangering biodiversity and human settlements. In India, including in Jammu and Kashmir, judicial intervention has been crucial in controlling illicit and unsustainable sand mining. By requiring prior environmental clearance for mining and restricting industrial activity in forested and riparian areas, the Supreme Court of India established the framework for environmental governance in ecologically sensitive zones in the seminal case of *T.N. Godavarman Thirumulpad v. Union of India* (1996).⁴² A number of guidelines focussing on the “precautionary principle” and “intergenerational equity” in the use of natural resources were initiated by this case. Building on this precedent, the National Green Tribunal (NGT) stressed the ban on extraction without a proper Environmental Impact Assessment (EIA) and public consultation in a number of orders, including those issued in 2010, 2013, and 2021.⁴³ In a landmark decision on November 15, 2021, the NGT fined the Union Territory of Jammu and Kashmir ₹35 crore for neglecting to regulate illicit sand and gravel mining along the Doodh Ganga river, close to Srinagar.⁴⁴ The tribunal concluded that extraction was proceeding in violation of buffer zone regulations and river ecology guidelines issued by the Ministry of Environment, Forests, and Climate Change (MoEFCC), and that mining leases had been granted without the required environmental clearance. The NGT ruled that the “polluter pays” principle was fully applicable and instructed the authorities to use the fine money for ecological rehabilitation and restoration in the

⁴¹ “Kashmir Sand Mining Violates Safety, Distance Norms, Reports Reveal”, *The Wire*, 15 March 2022, available at: <https://thewire.in/environment/kashmir-sand-mining-non-local-contractors>. (last visited on May 20, 2025).

⁴² *T.N. Godavarman Thirumulpad v. Union of India*, AIR 1997 SC 1228.

⁴³ National Green Tribunal, *In re Compliance of Environmental Norms by Mining Operators in India*, O.A. No. 186/2013 and related matters (2010–2021).

⁴⁴ *Vishwa Jit Sharma v. Union Territory of J&K & Others*, OA No. 45/2019, Order dated 15 November 2021, National Green Tribunal, Principal Bench, New Delhi.

impacted areas.⁴⁵ These decisions demonstrate the judiciary's dedication to environmental preservation and are in line with a pressing demand that the government of Jammu and Kashmir uphold legal protections, limit mechanical dredging in areas of the river that are sensitive, and put ecological sustainability ahead of immediate financial gain.

4. Governance Failures: Enforcement and Institutional Gaps

Even with a formal regulatory framework in place, Jammu and Kashmir's mining and environmental regulations are still woefully ineffectively enforced. The failure of authorities to confirm adherence to Environmental Clearance (EC) requirements, which are essential for all mining operations in accordance with the Environment (Protection) Act of 1986 and the EIA Notification of 2006, is a significant weakness.⁴⁶ Even though ECs usually impose conditions like limited extraction depths, specified working hours, and mine site restoration, these are rarely followed in reality. To guarantee that leaseholders operate within assigned mining blocks, there is no operational real-time monitoring infrastructure in place, such as GPS-enabled vehicle tracking systems, automated sensor-based alerts, or drone surveillance.⁴⁷ Because of this, infractions like deep pitting, mining outside of boundaries, and extraction close to embankments are not reported. The lack of interdepartmental coordination among important regulatory agencies exacerbates this enforcement gap. Without shared databases or synchronised field inspections, the Department of Geology and Mining, the Forest Department, the Public Works Department (PWD), and the Irrigation and Flood Control Department frequently function independently. Conflicting jurisdiction, a slow response to infractions, and general administrative inertia are the results of this fragmentation. For

⁴⁵ Ministry of Environment, Forest and Climate Change, *Sustainable Sand Mining Guidelines* (2016), and *Enforcement and Monitoring Guidelines for Sand Mining* (2020).

⁴⁶ Environment (Protection) Act, 1986, read with EIA Notification S.O. 1533(E), Ministry of Environment, Forest and Climate Change, 14 September 2006.

⁴⁷ Ministry of Mines, *Star Rating of Mines and Monitoring Framework Guidelines*, Government of India (2020); see also "Sand Mining in Kashmir: No GPS Checks, No Compliance Audits," *Greater Kashmir*, 18 March 2023.

instance, the Forest Department may have concurrent restrictions that are not consistently enforced or communicated, even though the Mining Department may issue a lease.⁴⁸ Contractors frequently take advantage of the gaps created by this systemic chaos, some of which carry on operating even after a lease has expired or been suspended. Systemic corruption and collusion between contractors and public officials are important but frequently disregarded aspects of illegal sand mining in Jammu and Kashmir. Bribery, coercion, and the unofficial subletting of mining leases allow organised “sand mafia” networks to operate with almost complete impunity, according to a number of investigative reports and anecdotal accounts.⁴⁹ It is common for licensed contractors to illegally sublease their blocks to unregistered operators, who then extract the blocks using heavy machinery against the terms of the lease and environmental clearance requirements. Because enforcement agencies frequently ignore or actively conspire in exchange for illegal financial gains, this practice not only violates the J&K Minor Mineral Concession Rules, 2016, which forbid the transfer or subletting of mining leases without prior approval, but it also avoids accountability. The “institutional inertia” of regulatory agencies in dealing with such malpractices has been frequently criticised by judicial authorities. The National Green Tribunal (NGT) noted a “deliberate pattern of non-enforcement” of court orders and a failure to follow up on compliance reports in its 2021 order against the J&K administration, especially in cases involving Doodh Ganga and Jhelum riverbed violations.⁵⁰ The NGT also cautioned that persistent inaction against illicit mining was an insult to environmental justice and the rule of law in addition to being a violation of statutory obligations. Despite these cautions, institutional indifference endures, as remedial action is undermined by frequent administrative reorganisations, a lack of political will, and inadequate interdepartmental coordination.

⁴⁸ Comptroller and Auditor General of India, *Performance Audit of Mining Activities in J&K*, Report No. 3 of 2022, Chapter 4.

⁴⁹ “How Sand Mining in Kashmir is Run Like a Syndicate,” *The Wire*, 15 March 2022, available at: <https://thewire.in/environment/kashmir-sand-mining-non-local-contractors>. (last visited on May 21, 2025).

⁵⁰ *Vishwa Jit Sharma v. Union Territory of J&K & Others*, OA No. 45/2019, Order dated 15 November 2021, National Green Tribunal, Principal Bench, New Delhi.

Village-level organisations in districts like Pulwama and Budgam have started to play a significant grassroots role in monitoring and reporting cases of illegal sand mining, despite systemic shortcomings in state enforcement. Numerous Panchayats and Village Development Councils (VDCs) have set up local surveillance teams, reported excavations that occur at night, and even sent memoranda to district authorities asking for tighter oversight or the cancellation of leases.⁵¹ Growing environmental consciousness and a call for democratic accountability in the management of natural resources are reflected in these citizen-led initiatives. Though admirable, these initiatives frequently lack legal force because they are not formally recognised by the state's mining regulatory framework. Village representatives' complaints are frequently ignored by mining officials, and in certain cases, complainants have experienced intimidation or reprisals from influential mining contractors. The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), which gives Gramme Sabhas the legal right to be consulted prior to the distribution of mining rights in Scheduled Areas, is consistently disregarded, as this discrepancy demonstrates.⁵² According to Section 4(k) of the Act, land acquisition or mineral leasing requires the Gramme Sabha's prior informed consent, especially in areas with a tribal majority or ecological sensitivity. The majority of mining leases in Jammu and Kashmir are granted through centralised tenders without community consultation, indicating that PESA implementation is still patchy and inadequate in the region.⁵³ Despite suffering the most from the environmental damage and loss of livelihoods brought on by illegal mining, the outcome is a legal and participatory vacuum where village voices are ignored.

5. Environmental and Socio-Economic Impacts

The negative environmental effects of illicit sand and gravel mining in the Jhelum and its tributaries have been more extensively documented by scientific research and hydrological surveys carried

⁵¹ "Budgam Panchayat Alleges Mafia Involvement in Night-Time Mining," *Kashmir Reader*, 17 May 2023.

⁵² The Panchayats (Extension to the Scheduled Areas) Act, 1996, Section 4(k), No. 40 of 1996.

⁵³ "Ignored Gram Sabhas: Sand Mining in Kashmir Leaves Villages Powerless," *Scroll.in*, 10 August 2022.

out throughout Kashmir. A noticeable increase in river turbidity is one of the most obvious consequences, and it directly affects irrigation systems, drinking water quality, and aquatic biodiversity.⁵⁴ Constant dredging of riverbeds changes the dynamics of sediment transport, causing channel incision, in which the river cuts deeper into its bed, which causes riverbank failure and exposes nearby infrastructure and farmlands to flooding and collapse.⁵⁵ Furthermore, the baseflow regime, which is the portion of river flow supported by groundwater and is crucial for sustaining perennial flow during lean seasons, is upset when surface and subsurface sediment layers are removed.⁵⁶ As a consequence, discharge levels in critical stretches of the Jhelum have reduced, affecting both downstream ecosystems and hydroelectric projects. The sharp decline in groundwater tables in regions close to active mining zones is among the most concerning trends seen. According to field data from Budgam and Pulwama, high levels of uncontrolled extraction were linked to an average drop in water table of more than 1.5 meters between 2020 and 2023.⁵⁷ Traditional well systems and agricultural livelihoods are directly threatened by this groundwater depletion, especially in areas where irrigation relies on groundwater for rice production. Villagers in Anantnag and Baramulla have also reported that artisan wells and springs are drying up, which further supports the connection between declining hydrological resilience and unscientific riverbed mining.⁵⁸ In addition to impairing ecosystem services, these changes increase socio-economic vulnerabilities, particularly for communities that depend on farming and fishing. The Jhelum River basin's natural hydrological regime has been seriously upset by the cumulative effect of uncontrolled sand mining, which has weakened embankments and made them more vulnerable

⁵⁴ University of Kashmir, *Hydrological Impact Assessment of Riverbed Mining in South Kashmir*, Department of Earth Sciences (2022).

⁵⁵ Central Water Commission (CWC), *Sediment Transport and Channel Degradation Studies in Himalayan Rivers*, Report No. CWC/2021/42.

⁵⁶ National Institute of Hydrology, *Assessment of Baseflow Reduction Due to Riverbed Mining*, Roorkee (2020).

⁵⁷ Groundwater Division, Public Health Engineering Department, J&K, *Well Depth Monitoring Report: Pulwama & Budgam*, 2023.

⁵⁸ Environmental Policy Group, *Status of Traditional Water Sources in Baramulla and Anantnag*, University of Kashmir (2023).

to flooding. Particularly in the low-lying regions of Pulwama, Anantnag, and Kulgam channel deepening and bank destabilisation have resulted from the removal of sediment from riverbeds at unsustainable depths.⁵⁹ Riverbanks were more likely to collapse in high-flow situations as they lost the natural sediment support they once had. The Jhelum and its tributaries, particularly the Veshaw and Rambhara rivers, broke through weak embankments due to sudden cloudbursts and heavy rainfall in August 2023, causing flash floods that destroyed 1,200 hectares of agricultural land and more than 500 homes.⁶⁰ The Department of Disaster Management, Relief, and Rehabilitation confirmed that areas previously subjected to illegal extraction suffered the most structural damage, further underscoring the link between uncontrolled mining and disaster risk amplification. These floods also demonstrated the shortcomings of the current embankment maintenance procedures, many of which had not been strengthened or restored since the floods in Kashmir in 2014.⁶¹ Despite legal prohibitions, villagers in the impacted districts reported that sand mining went on all the way up to the embankment base, weakening the compacted earth structures designed to withstand water pressure. In addition to uprooting hundreds of families, the 2023 flash floods ruined irrigation systems, tainted groundwater, and caused long-term disruptions to agrarian livelihoods.⁶² With embankment stability as a non-negotiable environmental safeguard, these results highlight the pressing need to combine disaster risk reduction with riverbed mining regulation.

Rural communities in the Jhelum River basin that depend on the river for livelihoods and sustenance have been disproportionately impacted by the socio-economic effects of illegal sand mining. Over the last five years, about 93,000 people who work in horticulture, fishing, weaving, and river-based crafts have reported suffering large income losses, which are directly related to the decline in riverbank

⁵⁹ Department of Irrigation and Flood Control, J&K, *Riverbank Stability Assessment: Jhelum Basin South Sector*, 2022.

⁶⁰ "Kulgam, Pulwama Worst Hit as Jhelum Breaches Banks," *Greater Kashmir*, 23 August 2023.

⁶¹ J&K Disaster Management Authority, *Post-Flood Infrastructure Audit Report*, 2023.

⁶² Environmental Policy Group, *Mining-Induced Flood Vulnerability in Kashmir Valley*, University of Kashmir, 2024.

ecology and water quality.⁶³ Due to increased turbidity and sediment disturbance, fish stocks in Wular and downstream wetlands have decreased, which has affected traditional fishermen's incomes, especially in Sopore, Bandipora, and Baramulla.⁶⁴ Similarly, saffron fields and apple orchards that rely on regulated groundwater and river-fed systems have been impacted by siltation and irrigation channel disruption, exacerbating agrarian distress in districts such as Pulwama and Anantnag.⁶⁵ Women-headed households and rural women entrepreneurs who rely on small-scale water-intensive jobs like vegetable farming, basket weaving (using river reeds), and dairy farming are among the hardest hit. Women in Budgam, Ganderbal, and Kupwara now have to walk farther to fetch water for domestic and livestock needs as a result of nearby riverbed mining, which has caused groundwater tables to drop and spring sources to dry up. This has increased the burden of unpaid caregiving.⁶⁶ Furthermore, women who previously made extra money by selling fish or weaving are now facing almost total income erosion, according to a 2023 participatory study conducted by the University of Kashmir's Centre for Women's Studies.⁶⁷ State environmental audits and compensation plans for mining-affected areas have not embraced an intersectional lens in spite of this gendered impact, indicating a crucial gap in disaster response and resource justice planning.

6. Human Rights and Constitutionality

The Indian Supreme Court has consistently interpreted Article 21- the right to life and personal liberty- as encompassing the right to a clean, pollution-free, and ecologically balanced environment, despite the fact that the Indian Constitution does not specifically list a stand-

⁶³ Department of Fisheries, J&K, *Annual Report on Inland Fishing Communities in North Kashmir*, 2023.

⁶⁴ Wildlife Trust of India, *Biodiversity Disruption in Riverine Wetlands of Kashmir*, Policy Paper No. 17, 2023.

⁶⁵ Department of Agriculture, J&K, *Irrigation Deficit and Crop Yield Patterns: A Five-Year Review (2018–2023)*.

⁶⁶ Centre for Water and Sanitation, CEPT University, *Water Insecurity and Gender in Himalayan Regions*, 2022.

⁶⁷ University of Kashmir, *Women and Environmental Change in the Kashmir Valley: A Participatory Study*, Centre for Women's Studies, 2023.

alone “right to a healthy environment.”⁶⁸ Starting with the seminal decision in *Subhash Kumar v. State of Bihar*, the Court ruled that “the right to life includes the right to enjoyment of pollution free water and air,” expanding the protection of the constitution to include environmental issues.⁶⁹ Since then, cases like *T.N. Godavarman Thirumulpad v. Union of India* and *M.C. Mehta v. Union of India* (Taj Trapezium and Ganga Pollution cases) have upheld this broad interpretation, finding that unchecked resource exploitation, including illicit mining, violates fundamental rights. The judiciary has increasingly viewed unmitigated extraction in the particular context of sand and gravel mining as a violation of Article 21, particularly when it jeopardises ecosystems, displaces communities, or poses a health risk.⁷⁰ Furthermore, the state and citizens are expected to preserve and enhance the natural environment in accordance with Article 48A (Directive Principles) and Article 51A(g) (Fundamental Duties).⁷¹ Despite being non-justiciable, these clauses support the binding nature of Article 21’s environmental duties by acting as interpretive tools. Under the public trust doctrine, illegal sand mining in Kashmir is therefore a constitutional wrong that calls for both judicial scrutiny and proactive state intervention due to its cascading effects on water access, livelihood security, and disaster vulnerability. The widespread exclusion of tribal and local communities from decision-making processes in Kashmir’s sand mining regime is blatantly against two important legal frameworks: The Forest Rights Act of 2006 (FRA) and the Panchayats (Extension to the Scheduled Areas) Act of 1996 (PESA). By requiring Gramme Sabhas’ prior informed consent before beginning operations like mining, land acquisition, or leasing, both laws were passed with the goal of democratising the governance of natural resources in Scheduled and forested areas.⁷² The Gramme Sabha has the authority to protect community resources under PESA Section 4(k), and it must be consulted before mining leases are granted. In a similar vein, the FRA’s Section 3(1)(i) acknowledges the

⁶⁸ Constitution of India, Art. 21.

⁶⁹ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

⁷⁰ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086; *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267.

⁷¹ Constitution of India, Arts. 48A and 51A(g).

⁷² The Panchayats (Extension to the Scheduled Areas) Act, 1996, Section 4(k); Forest Rights Act, 2006, Section 3(1)(i).

rights of communities that live near forests to preserve and safeguard the natural resources that they have historically used.⁷³ However, despite numerous mining leases being issued across districts like Pulwama, Anantnag, and Baramulla- many of which include forest fringes and riverbank settlements- there is little to no record of community consultation or Gram Sabha consent.

Articles 14, 21, and 243 of the Constitution's tenets of environmental justice, participatory democracy, and tribal welfare are all compromised by this systematic marginalisation of local voices, in addition to breaking legal requirements.⁷⁴ In rulings like *Samatha v. State of Andhra Pradesh* and *Orissa Mining Corporation v. Ministry of Environment*, the Supreme Court has emphasised the need for fair benefit-sharing and community consent in extractive operations in tribal areas.⁷⁵ Therefore, the dominant top-down mining strategy in Jammu and Kashmir represents a socially regressive and legally unsustainable model of resource governance, where statutory protections for marginalised communities are frequently disregarded, resulting in rights erosion, ecological degradation, and alienation.

7. Comparative Perspectives

Through financial disincentives and technological surveillance, the state of Uttarakhand has become a prominent illustration of how proactive governance can reduce illicit sand and gravel mining. The state government implemented round-the-clock electronic monitoring systems, such as drone surveillance, RFID-based entry systems at mining sites, and GPS-enabled vehicle tracking, in response to the widespread use of mechanised extraction along the Ganga and its tributaries.⁷⁶ The state changed the Minor Minerals Concession Rules in 2021 to require licensees to submit data in real-time and to install CCTV at mining locations. The Department of Geology and Mining is now able to identify infractions like over-extraction, boundary violations, and unauthorised transportation thanks to the digital audit trail that these actions have produced.

⁷³ *Ibid.*

⁷⁴ Constitution of India, Arts. 14, 21, and 243.

⁷⁵ *Orissa Mining Corporation v. Ministry of Environment & Forests*, (2013) 6 SCC 476; *Samatha v. State of Andhra Pradesh*, AIR 1997 SC 3297.

⁷⁶ Department of Geology and Mining, Government of Uttarakhand, *e-Mining Monitoring Dashboard Report*, 2023.

Concurrently, Uttarakhand imposed a tax on earthmovers and JCBs, two types of mechanised mining equipment, to deter their use in environmentally sensitive areas.⁷⁷ This action raised money for afforestation and riverbank restoration projects while simultaneously creating a cost-based deterrent for illicit operators. Official reports from 2020 to 2023 showed a 38% decrease in unlicensed mining cases and a 27% rise in state mining revenues, highlighting the value of a technologically advanced and economically sophisticated regulatory strategy.⁷⁸ These reforms provide valuable insights for Jammu and Kashmir, where illicit mining persists due to a lack of robust enforcement infrastructure and digital monitoring.

Additionally, Kerala offers a strong example of interagency cooperation and community-centered governance in combating illicit sand mining, especially in its vulnerable riverine and coastal areas. Under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, Kerala has given local self-government institutions (LSGIs) and District Environment Committees the authority to oversee and control sand extraction, in contrast to states that only use top-down enforcement.⁷⁹ This participatory legal framework permits community organisations to send environmental impact assessments and real-time violation reports straight to the State Environment Impact Assessment Authority (SEIAA), and it requires that Panchayats and local stakeholders be consulted prior to issuing Environmental Clearances (ECs).⁸⁰ The strategy is in line with Article 243 of the Indian Constitution, which encourages grassroots participation in natural resource management. In addition to decentralisation, Kerala has used the Prevention of Money Laundering Act, 2002 (PMLA) to impose stricter enforcement measures, including financial scrutiny on illicit sand syndicates.⁸¹ The Enforcement Directorate (ED) and Revenue

⁷⁷ Uttarakhand Minor Minerals (Concession) Rules, 2001 (Amended 2021), Rule 26-A.

⁷⁸ "Uttarakhand Cuts Illegal Mining Through Surveillance Tech," *Hindustan Times*, 18 April 2023.

⁷⁹ The Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, Act 18 of 2001.

⁸⁰ Kerala State Environment Impact Assessment Authority (SEIAA), *Decentralised EIA Guidelines for Minor Minerals*, 2022.

⁸¹ Ministry of Finance, *Prevention of Money Laundering Act, 2002*; Directorate of Enforcement Circular, 2021.

Intelligence units were able to freeze assets and use proceeds of crime statutes to prosecute illegal operators in a number of cases filed under the PMLA and Benami Transactions (Prohibition) Act. Notably, in 2022, the Alappuzha District Administration seized property valued at over ₹14 crore that was connected to illicit sand traders through proceedings connected to the PMLA.⁸² Kerala is now a leader in rights-based environmental regulation after a 44% decrease in illegal mining activity between 2020 and 2023 was achieved through the integration of financial intelligence, local governance, and precautionary EC protocols.

Important insights that can guide sustainable sand mining governance in environmentally delicate areas like Jammu and Kashmir are revealed by the examination of regulatory models in various Indian states. Primarily, technology-assisted monitoring, such as the use of GPS-enabled vehicle tracking, drone surveillance, satellite imagery, and Geographic Information Systems (GIS), has been crucial in identifying infractions, preventing over-extraction, and guaranteeing spatial transparency. By implementing digital compliance dashboards and real-time e-surveillance infrastructure, states like Madhya Pradesh and Uttarakhand have drastically decreased instances of illegal mining.⁸³ Enforcement agencies in Jammu and Kashmir are unaware of nocturnal operations, boundary violations, and lease violations due to the absence of such systems. Second, a legitimate and sustainable mining regime requires transparency and accountability from the community. In addition to empowering local communities, Kerala's legal system places a strong emphasis on prior informed consent, Gramme Sabha involvement, and participatory environmental impact assessments. These measures also serve as a deterrent against contractors' overreach in extractive industries.⁸⁴ On the other hand, J&K's lack of community consultation and inadequate grievance redressal procedures have alienated impacted villagers, fuelled public mistrust, and allowed ecological damage to continue unchecked. Lastly, it is impossible to

⁸² "Kerala Seizes ₹14 Crore in Illegal Mining Crackdown," *The Hindu*, 6 July 2022.

⁸³ Department of Geology and Mining, Uttarakhand, *Mining Surveillance Dashboard Report*, 2023.

⁸⁴ Kerala State Environment Impact Assessment Authority, *Local Governance and River Sand Regulation Guidelines*, 2022.

exaggerate the significance of interagency coordination. Coherent cooperation between the departments of mining, environment, forestry, irrigation, and disaster management is essential for effective enforcement. Task forces have been established in states like Tamil Nadu and Kerala that have had successful interventions to promote timely prosecution, coordinated inspections, and data sharing.⁸⁵ The disjointed institutional response in Jammu and Kashmir has resulted in role duplication and subpar application of current legislation. Going forward, balancing economic demands with ecological and constitutional imperatives will require an integrated regulatory framework supported by law, technology, and community legitimacy.

8. Policy Recommendations

(a) Strengthen Regulatory Oversight

Institutional accountability and contemporary surveillance technologies must be integrated for riverbed mining governance to be effective. The Department of Geology and Mining should oversee all sand-extracting equipment and require it to use GPS-connected digital logbooks. This reduces underreporting and enables real-time tracking of operations. To guarantee a comprehensive assessment of the impact, field inspections must be multidisciplinary and include officers from the geology, fisheries, forest and irrigation departments. Crucially, in accordance with the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA), Gramme Sabhas must be granted the statutory authority to approve or veto mining leases within their jurisdictions. The lack of trust between local communities and the state would be lessened with such democratic decentralisation.

(b) Enhance Environmental Clearance (EC) Processes

According to EIA Notification 2006, the current Environmental Clearance procedure is frequently superficial and lacks scientific depth. It needs to be updated to include climate-informed flood and erosion risk mapping, as well as hydrological, biodiversity, and fisheries impact assessments. Accredited independent agencies should conduct these evaluations, and operations that endanger river integrity or contravene catchment management plans must be

⁸⁵ Ministry of Mines, Government of India, *Inter-Departmental Task Force Model on Minor Minerals*, 2021.

refused clearance. In order to ensure transparency and penalise non-compliance, periodic post-clearance audits must be made public.

(c) Promote Community-Based Monitoring

With the help of NGOs and educational institutions, village-level environmental vigilance committees can be established to provide focused, reasonably priced oversight. These communities can serve as the state's eyes and ears in remote riverine belts if they are given the necessary training and digital resources (such as GPS-tagged reporting apps). Success stories from Odisha and Kerala show how community involvement lowers long-term enforcement costs, increases ownership, and improves compliance.

(d) Reform Legal Sanctions

India's MMDR Act of 1957 and the Environmental Protection Act of 1986 both have harsh enough penalties to discourage repeat offenders. In addition to volumetric penalties, there is an urgent need to raise monetary fines based on the ecological cost of damage. Provisions must permit the prompt seizure of illicit machinery, the termination of leases for recurring infractions, and the criminal prosecution of public servants who conspire or neglect their regulatory responsibilities. Justice in mining-related cases can be accelerated through district-level green benches or fast-track environmental courts.

(e) Build Sustainable Alternatives

The government must encourage fly ash bricks, manufactured sand (M-sand), and recycled building materials through certification, standardisation, and subsidies in order to lessen reliance on river sand. At the same time, rehabilitation packages that include employment under rural development programs, skill training, and credit connections should be created for artisanal and informal sand miners. Such options are essential for a fair transition that strikes a balance between socio-economic equity and environmental preservation.

9. Conclusion

In addition to being an environmental emergency, the illegal sand mining crisis in the Jhelum River is a complex failure of justice, governance, and the law. The Jhelum was once Kashmir's cultural and ecological lifeline, but over the past ten years, excessive and uncontrolled riverbed mining has turned it into a corridor of

hydrological imbalance, social upheaval, and institutional impunity. Even with strong legal frameworks like the Mines and Minerals (Development and Regulation) Act of 1957, the Environmental Protection Act of 1986, and the Jammu and Kashmir Minor Mineral Concession Rules of 2016, enforcement is still merely ceremonial. Public trust in environmental governance has been undermined by sand mafias operating with political support and near-legal immunity due to a lack of technological monitoring, opaque lease allocations, and little prosecution of violators. According to the Supreme Court's numerous seminal rulings upholding the idea that a dignified life is inextricably linked to the environment, this situation violates the right to life under Article 21 of the Constitution. There are serious violations of environmental and livelihood rights, especially for women, children, and Scheduled Tribes, when riverbanks deteriorate, water sources are contaminated, and artisanal and agrarian communities are uprooted. Gramme Sabhas' exclusion from lease decisions also violates the Forest Rights Act of 2006 and the Panchayats (Extension to Scheduled Areas) Act of 1996, undermining federal principles and democratic resource stewardship. Ecologically speaking, the unscientific mining has harmed aquatic biodiversity, groundwater recharge, and sediment balance. In addition to reducing agricultural productivity, the decline in water table in impacted areas such as Pulwama, Anantnag, and Budgam has increased climate vulnerability, making these regions more vulnerable to drought cycles and flash floods. A fragmented institutional approach that is inappropriate for the complexity of Himalayan ecosystems is demonstrated by the failure to integrate hydrology, disaster management, and mining policy.

This study makes the case that urgent legal reform is required and that merely adhering to antiquated licensing processes or obtaining flimsy environmental clearances is not enough and the following are all essential components of a valid reform agenda:

- a) mandatory digital surveillance and real-time extraction logs;
- b) environmental clearance reforms that incorporate hydro-ecological assessments;
- c) criminal accountability for public officials' collusion and duty neglect; and
- d) community-based monitoring frameworks backed by NGOs, academic institutions, and legal aid organisations.

Most importantly, for a fair ecological transition, economic rehabilitation packages must be made available to displaced workers and informal sand miners through skill-building programs, microcredit, and rural employment programs. A rights-based, participatory, and restorative approach to natural resource governance is supported by international jurisprudence, ranging from the UN Guiding Principles on Business and Human Rights to rulings from South Asian Green Tribunals. How successfully Kashmir balances its aspirations for development with environmental sustainability and constitutional integrity will determine its future. It is not just a matter of law enforcement; protecting the Jhelum River is a generational, ecological, and moral necessity. The Jhelum must be governed by custodianship rather than extraction because it is a site of ecological vitality, economic sustenance, and civilisational memory.



Review of the Consumer Protection Act, 2019 in light of the Lessons from the Transnational Jurisdictions

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Abstract

The Consumer Protection Act, 2019 marks a significant shift in the Indian legal system by bolstering consumer rights and addressing emerging problems in the digital era. Product liability, e-commerce regulation, and the establishment of a Central Consumer Protection Authority (CCPA) to oversee consumer rights are all covered by the law, which supersedes the Consumer Protection Act of 1986. In order to compare India's consumer protection system to international best practices, this paper examines the Act's salient aspects and takes inspiration from other jurisdictions. This research identifies areas of agreement and difference between the Act and regulations like the General Data Protection Regulation (GDPR) of the European Union and the Federal Trade Commission Act of the United States. Notably, India's e-commerce regulations are similar to those in countries like the European Union, placing a strong emphasis on consumer permission, openness, and grievance procedures. Global trends in combating deceptive advertising, unfair commercial practices, and data privacy are also reflected in the Act. Nonetheless, there are still issues with consumer knowledge and compliance, as seen in a number of global scenarios. Strong enforcement measures are emphasised in nations like Australia and Canada, which India might adopt to improve compliance.

Keywords: Consumer Protection Reforms, Regulatory Evolution, Digital Consumer Protection, 2021 Consumer Protection Policies, Past Consumer Protection Framework, Data Privacy

1. Introduction

In India, protecting consumer rights has advanced significantly with the passage of the Consumer Protection Act, 2019. This law, which replaced the outmoded Consumer Protection Act of 1986, tackles the issues brought on by the digital economy's rapid evolution, the

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emergence of e-commerce platforms, and the complexity of consumer marketplaces.¹

Despite having its roots in Indian law, the Act is inspired by worldwide best practices and offers insightful information from other countries that have influenced its provisions. The Consumer Protection Act of 2019 has a strong focus on responsibility, openness, and consumer empowerment. The frameworks of consumer protection laws in nations like the US, the European Union, and Australia align with these aims.² For example, the Indian Act's creation of the Central Consumer Protection Authority (CCPA) is modelled after regulatory agencies that effectively monitor market practices and deal with unfair trade practices, such as the Federal Trade Commission (FTC) in the United States and the Consumer Affairs Agencies in Australia. The interests of corporations and consumers are balanced thanks to this regulatory scrutiny. E-commerce regulation is one important area where insights from other jurisdictions are apparent. Strict regulations, such as the General Data Protection Regulation (GDPR), have been in place for a long time in nations like the European Union to safeguard internet buyers. In a similar vein, the Consumer Protection Act of 2019 includes regulations to guarantee fair trade practices and handle complaints in the online marketplace.³ These regulations include clauses pertaining to unambiguous product disclosures, refund guidelines, and protections against deceptive advertising. India's dedication to promoting a consumer-friendly digital economy is demonstrated by this conformity to international standards.

Additionally, the inclusion of alternative dispute resolution mechanisms, such as mediation, is another progressive feature of the Act influenced by global practices. In jurisdictions like Singapore and the UK, mediation has been instrumental in reducing litigation costs and expediting dispute resolution. By incorporating mediation centers into the Indian consumer grievance redressal framework, the Act

¹ Hariom Gupta & Amit Singh, *The Consumer Protection Act, 2019: A Comparative Analysis of Legislative Frameworks in India and Other Jurisdictions*, (2024) 4(2) *International Journal of Criminal, Common and Statutory Law* 155–162.

² Khune B. Shakuntala & Kuldeep Singh, *Benchmarking the Indian Consumer Protection Act, 2019 Against International Standards* (2023) (unpublished manuscript, IJIEMR).

³ OECD, *Consumer Policy Guidance* (OECD Publishing, 2025).

makes dispute resolution more accessible and efficient for consumers and businesses alike.⁴

Additionally, the Act fortifies regulations pertaining to product responsibility, making producers, retailers, and service providers liable for subpar goods and services. This is consistent with the tenets of US consumer laws, which uphold stringent guidelines for product liability in order to safeguard the interests of consumers. These clauses guarantee that businesses uphold strict safety regulations and give quality control top priority.

Notwithstanding its progress, the Act also identifies areas that require improvement, especially in the application of consumer protection in cutting-edge fields like artificial intelligence and international e-commerce.⁵ Through progressive rules, nations like the European Union and Japan have started to address these issues. India can improve its legal frameworks and foresee future consumer difficulties by continuing to learn from similar places.

The objective of the research is to analyze the provisions of the India's Consumer Protection Act, 2019 in light of global best practices, identifying strengths and areas for improvement. This study seeks to explore how lessons from international jurisdictions can inform and enhance consumer rights protection, dispute resolution mechanisms, and regulatory frameworks within India.⁶

By comparing the Indian Act with consumer protection laws from leading jurisdictions such as the United States, European Union, and Australia, the research aims to evaluate the Act's alignment with global trends, particularly in areas such as e-commerce, product liability, and consumer empowerment. This comparative approach intends to highlight innovative practices adopted abroad, such as alternative dispute resolution systems, robust penalties for unfair

⁴ Directive 2005/29/EC of the European Parliament and of the Council concerning Unfair Business-to-Consumer Commercial Practices, (2005) OJ L 149/22.

⁵ Sidharth Joshi, Effectiveness of the Consumer Protection Act, 2019, (2022) 3 International Journal of Legal Science and Innovation 493–506.

⁶ Ramesh Sakunaveeti, Guardians of the Consumer: A Comparative Analysis of Consumer Protection Laws Across Countries, (2023) 3 Journal of Legal Subjects 28–32.

trade practices, and measures for addressing cross-border e-commerce issues.⁷

Additionally, the study aims to provide actionable recommendations for policymakers to refine the implementation of the Act, ensuring it remains adaptive to evolving consumer needs. By drawing on global experiences, the research strives to contribute to the development of a more effective consumer protection framework that upholds consumer rights and fosters trust in the marketplace.

2. Evolution and Historical Context of Consumer Welfare Laws: Lessons from International Jurisdictions

Consumer welfare laws have evolved as a response to the dynamic interplay between market forces, societal expectations, and government intervention. Their development reflects the need to balance the interests of consumers and producers while fostering fair competition and innovation. This narrative explores the historical trajectory of consumer welfare laws and the lessons drawn from international jurisdictions, underscoring the global trends and local adaptations that shape contemporary regulatory frameworks.

(a) Early Roots of Consumer Protection

Laws pertaining to consumer welfare have their roots in traditional customs and commercial practices that were intended to promote equity in business. Basic laws against deception, adulteration, and market exploitation were established by ancient societies such as Mesopotamia, Egypt, and Rome. The *Edictum de Pretis Rerum Venalium*, for example, was created by the Roman legal system to regulate prices and guarantee the continued availability of necessities.⁸ The need to preserve economic justice and social stability motivated these early actions.

Consumer protection underwent a sea change throughout the Industrial Revolution in the 18th and 19th centuries. Urbanisation and the quick growth of industrial production created additional problems, such as monopolistic practices, subpar products, and

⁷ Hariom Gupta & Amit Singh, *The Consumer Protection Act, 2019: A Comparative Analysis of Legislative Frameworks in India and Other Jurisdictions*, (2024) 4 International Journal of Criminal, Common and Statutory Law 155–162.

⁸ A. T. Markose, *Consumer Protection and the Role of Law*, 12 J. Indian L. Inst. 345, 347–50 (1970).

misleading advertising. Legislative responses and organised consumer movements emerged at this time. For example, the foundation for contemporary consumer law was laid by England's Sale of Goods Act 1893, which codified the rights of both customers and sellers.⁹

(b) Modern Consumer Welfare: The Post-War Era

The growth of global trade and the rise of consumerism in the middle of the 20th century signalled the beginning of a new era in consumer welfare legislation. Increased mass production and consumption brought about by the post-World War II economic boom made stricter laws necessary to safeguard consumers. The Federal Trade Commission (FTC) was established in 1914, indicating a commitment to preventing unfair trade practices in the United States. Nonetheless, there were notable developments in the 1960s and 1970s, such as President John F. Kennedy's Consumer Bill of Rights, which placed a strong emphasis on choice, safety, knowledge, and the ability to be heard.

Similarly, European Union countries adopted comprehensive consumer protection measures during this era. The European Union Economic Community (EEC), the precursor to the European Union, incorporated consumer welfare as a fundamental principle. The *Directive on Consumer Protection in the Indication of Prices* (1978) and subsequent directives laid the foundation for harmonized consumer protection across member states¹⁰.

(c) International Jurisdictions: Pioneering Approaches

International jurisdictions have contributed significantly to the evolution of consumer welfare laws, often setting benchmarks for others to emulate.

- i. **United States:** The U.S. model emphasizes a combination of federal and state-level regulations to address consumer issues. The FTC Act and the Magnuson-Moss Warranty Act are notable examples. Additionally, the U.S. courts have played a pivotal role in shaping consumer law through landmark judgments,

⁹ UN Conference on Trade and Development, *United Nations Guidelines for Consumer Protection*, UN Doc TD/RBP/CONF.9/9 (2015).

¹⁰ Ralph Nader, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile*, 3–10 (Grossman Publishers, New York, 1965).

- particularly in antitrust cases that reinforce the importance of competitive markets for consumer welfare.
- ii. **European Union:** The European Union has been a trailblazer in adopting a unified approach to consumer protection. The European Union Consumer Rights Directive and the General Data Protection Regulation (GDPR) exemplify its commitment to safeguarding consumer interests, particularly in the digital age. The GDPR, in particular, has set global standards for data privacy and consumer rights in the context of digital services.
 - iii. **Japan:** Japan's consumer protection framework emphasizes collaboration between government agencies and consumer organizations. The Consumer Contract Act (2000) and the establishment of the Consumer Affairs Agency reflect a proactive approach to addressing emerging challenges, such as fraudulent schemes and online scams.¹¹
 - iv. **India:** India offers a unique perspective as a developing economy balancing rapid economic growth with consumer rights. The Consumer Protection Act of 1986, later replaced by the Consumer Protection Act of 2019, underscores India's commitment to modernizing its legal framework. The 2019 Act introduced provisions for e-commerce and alternative dispute resolution mechanisms, aligning with global trends.

3. Lessons from International Jurisdictions

The evolution of consumer welfare laws in various jurisdictions provides valuable lessons for policymakers and stakeholders:

- a) **Adaptability to Emerging Challenges:** The rapid pace of technological innovation demands adaptable legal frameworks. For instance, the European Union's GDPR addresses privacy concerns in the digital age, while India's 2019 Act incorporates provisions for e-commerce. Policymakers must remain vigilant to emerging threats, such as AI-driven scams and algorithmic biases.
- b) **Harmonization vs. Localization:** The European Union's harmonized approach contrasts with the U.S.'s decentralized model, highlighting the importance of tailoring regulatory

¹¹ Norbert Reich, *Understanding EU Consumer Law*, 5–9 (Inters entia, Cambridge, 2009)

strategies to local contexts. While harmonization fosters consistency, localized laws can address specific cultural and economic nuances.

- c) **Public Awareness and Engagement:** Effective consumer protection requires an informed and empowered public. Japan's emphasis on consumer education and collaboration between stakeholders serves as a model for fostering awareness and participation.
- d) **Integration of Technology:** As markets increasingly operate online, integrating technology into regulatory frameworks is essential. Digital platforms should be held accountable for ensuring fair practices, transparency, and consumer rights.

The evolution of consumer welfare laws reflects the enduring quest for equitable and efficient markets. By examining the historical context and international approaches, it becomes evident that robust consumer protection is integral to sustainable economic growth and societal well-being. As globalization and technology continue to reshape markets, the lessons from diverse jurisdictions offer valuable insights into crafting resilient and forward-looking regulatory frameworks. Policymakers must strike a balance between fostering innovation and safeguarding consumer interests, ensuring that the laws of today meet the challenges of tomorrow.

4. The Consumer Protection Act, 2019

In order to protect consumers' interests and strengthen their rights in a dynamic economy, India passed the historic Consumer Protection Act, 2019. This new law, which replaces the previous Consumer Protection Act of 1986, tackles contemporary consumer issues, especially those brought on by digital transactions, e-commerce, and deceptive advertising. It places a strong emphasis on safeguards against unfair trade practices, consumer rights, and efficient grievance redressal procedures. The creation of the Central Consumer Protection Authority (CCPA), which has the authority to look into, control, and punish consumer rights infractions, is one of the Act's main features. In order to ensure speedier grievance resolution, the Act also establishes Consumer Dispute Redressal Commissions (CDRCs) at the district, state, and federal levels to streamline the dispute resolution process. In order to promote cooperative settlements, it also adds mediation clauses. The law

guarantees responsibility for product quality, delivery schedules, and reasonable prices, and it specifically addresses e-commerce platforms. Additionally, it brings strict measures against deceptive advertising, holding manufacturers and endorsers accountable for any inaccurate claims. The Act ensures increased consumer awareness and empowerment by acknowledging the significance of transparency and clearly defining unfair contracts and unfair trade practices. The Consumer Protection Act of 2019 is a major step in building a strong framework that is focused on the needs of consumers by tackling the issues brought about by digital innovations and changing market practices. Along with bolstering consumer rights, it also promotes fair trade and ethical corporate practices by building consumer-business trust. The Act is well-positioned to improve consumer welfare and guarantee fairness in the marketplace thanks to its extensive provisions.¹²

4.1 Key Provision of the Consumer Protection Act, 2019: An Analysis (a) Establishment of CCPA

A comprehensive law created to protect Indian customers' rights is the Consumer Protection Act, 2019. It seeks to guarantee that companies fulfil their legal duties to their clients and to give consumers greater protection and recourse against unfair trade practices. In order to address the difficulties that consumers confront in the contemporary marketplace—particularly with the growth of e-commerce and digital transactions—the Act superseded the Consumer Protection Act of 1986 and made several important improvements:

The Central Consumer Protection Authority (CCPA), which acts as a regulatory authority to safeguard and advance consumer rights, is one of the Act's main elements. When unfair trade practices, deceptive advertising, or violations of consumer rights occur, the CCPA has the authority to act on its own initiative. The authority has the power to order producers, retailers, or service providers to resolve complaints from customers, launch enquiries, and enforce sanctions for non-compliance.

The CCPA is tasked with monitoring and regulating advertisements to prevent misleading claims and unfair practices. For example, it has

¹² *Tracing the Evolution of Consumer Rights: From Ancient Manuscripts to Modern Laws*, Law Notes (The Law Institute).

the power to ban false or deceptive advertisements, particularly those that exploit consumers' vulnerabilities. It also has the authority to recall unsafe or hazardous goods or services that may pose a risk to public health and safety. The establishment of the CCPA is a significant step toward empowering consumers by providing a mechanism to directly address their grievances and protect their interests.¹³

The expanded rights of customers are another significant aspect of the 2019 Consumer Protection Act. A number of consumer rights are defined and acknowledged by the Act, such as the right to information, the ability to make one's own decisions, the right to safety, the right to be heard, and the right to pursue remedy. It emphasises consumer protection in the digital age by holding online retailers and e-commerce platforms responsible for the products and services they offer. Additionally, the Act creates national, state, and district consumer complaints redressal commissions. These commissions are intended to offer a quick and effective way to address customer complaints. Consumers can now seek justice more quickly thanks to the simplification of the complaint and judgement delivery processes. The creation of the National Consumer Helpline (NCH), which acts as a one-stop shop for consumers to voice complaints, get advice, and get support, is another crucial clause. Additionally, the Act makes it possible for customers to electronically file complaints, which makes grievance redressal faster and easier.

In addition to acknowledging the growing importance of e-commerce, the Consumer Protection Act of 2019 adds requirements to regulate online companies. It requires e-commerce platforms to make all information about the products and services they provide, such as the total cost, terms of service, and details about manufacturers and sellers, readily available. Customers are able to make well-informed purchasing decisions thanks to this transparency.¹⁴

Thus, the Consumer Protection Act, 2019 improves the rights and protection of Indian consumers by creating the CCPA. The goal of the law is to establish a just economy where customers are empowered, their complaints are promptly resolved, and companies are held

¹³ *ibid*

¹⁴ United Nations Guidelines for Consumer Protection, GA Res 39/248 (1985).

responsible for their actions. The Act is an essential instrument for advancing consumer welfare and market trust because it established consumer protection organisations like the CCPA and consumer redressal commissions.

(b) Consumer Grievance Redressal Mechanism in the Consumer Protection Act, 2019

Through a multi-tiered system of redress, the customer Protection Act of 2019 offers a strong framework for handling customer complaints. The purpose of this Act was to protect consumer rights and guarantee ethical business operations. It contains clauses for effectively and equitably settling conflicts between customers and service providers or companies.

District Consumer Disputes Redressal Commissions (DCDRCs) are the first step in the grievance redressal procedure. These are established in each district and are in charge of handling complaints involving claims under ₹1 crore. Customers have the right to protest about unfair business tactics, subpar products or services, or contract violations. Consumers can seek resolution at the local level through the DCDRC's easily accessible platform, which guarantees that the procedure won't be difficult or expensive.¹⁵

If the dispute is not resolved at the district level or if the claim exceeds ₹1 crore, consumers can escalate their complaint to the State Consumer Disputes Redressal Commissions (SCDRCs). These commissions have jurisdiction over complaints that involve claims between ₹1 crore and ₹10 crore. The SCDRC plays a critical role in ensuring that consumer rights are protected across larger areas within a state.

For more significant disputes, the National Consumer Disputes Redressal Commission (NCDRC) acts as the apex body. It handles complaints involving claims above ₹10 crore and also appeals from the State level. The NCDRC's decisions are binding and aim to provide finality in cases involving larger or complex consumer grievances.¹⁶

Thus, the Consumer Protection Act, 2019, establishes a comprehensive and accessible system for consumers to address

¹⁵ Consumer Protection Act, 2019, No. 35 of 2019, § 34, Gazette of India, Extraordinary, Pt. II, sec. 1 (Aug. 9, 2019).

¹⁶ N. Madhava Menon, *Consumer Protection Law in India* 215–230 (LexisNexis, 2nd edn., 2021).

grievances, ensuring justice is delivered at the district, state, and national levels.

(c) Product Liabilities and Penalties under the Consumer Protection Act, 2019

A more effective mechanism for consumer protection is the main goal of the Consumer Protection Act, 2019 (CPA 2019), which was passed in order to address a number of issues, including product liability and to ensure that manufacturers and service providers are held responsible for defective goods and services.

According to the Act, product liability is the duty of a seller, service provider, or manufacturer to make up for any damages brought on by a subpar good or service. This obligation is expanded to include flaws in a product's packaging, production, or design as well as inadequate warnings regarding possible hazards. Any injury to the customer, including property damage, physical harm, or even death, must be made up for by the maker or seller. This clause is essential for protecting the interests of customers and making sure companies respect strict guidelines for the quality and safety of their products.¹⁷

There are severe penalties in the event of breach of the provisions under the CPA 2019. Sellers, manufacturers, and service providers that violate the Act's requirements risk severe fines and penalties. A fine of up to ₹10 lakh for the first offence and up to ₹50 lakh for consecutive offences are among the possible penalties. The court may also order the offending party to issue recalls in circumstances where a product or service is deemed to cause serious harm. Punitive damages may also be imposed in certain situations to discourage careless behaviour. The Act also gives the consumer forums the authority to decide claims and compensate impacted customers.¹⁸

By setting clear guidelines for manufacturers and service providers to adhere to and guaranteeing consumers justice in the event of product failures or dangerous defects, the measures included under the Consumer Protection Act, 2019 offer a strong framework for protecting consumer rights.

¹⁷ Consumer Protection Act, 2019, § 37 (power to review orders by Consumer Commissions).

¹⁸ *Lucknow Development Authority v. M.K. Gupta*, (1994) 1 SCC 243 (recognizing the remedial and welfare-oriented nature of consumer fora).

(d) E-Commerce and Online Consumer Protection under the Consumer Protection Act, 2019

Protecting consumers' interests in a variety of industries, including e-commerce, is the goal of the Consumer Protection Act of 2019. The Act offers a thorough legal framework to safeguard consumers' rights and solves the particular difficulties they have in digital transactions, given the explosive rise of online purchasing. It guarantees that e-commerce sites adhere to fair trade standards and take responsibility for any dishonest business practices or misleading advertising.

The establishment of the Central Consumer Protection Authority (CCPA), which has the authority to control and oversee unfair trade practices in e-commerce, is a key component of the Act. This entails making certain that internet vendors provide truthful information about their goods, stopping deceptive advertising, and guaranteeing the quality and security of the products. Unfair and dishonest online business practices, such as those pertaining to data privacy, misleading claims, and unauthorised charges, may also be subject to CCPA enforcement.¹⁹

Furthermore, the Consumer Protection (E-commerce) Rules, 2020, a part of the Act, specifically focuses on online businesses. These rules require e-commerce entities to provide clear details about the sellers, their products, and the return/refund policies. Online platforms must also set up mechanisms for resolving consumer complaints in a timely manner. Importantly, e-commerce platforms are obligated to verify the authenticity of the goods and services sold and ensure that the consumer's personal data is securely handled.

The Act also empowers consumers with the right to file complaints against faulty or defective products purchased online. Online platforms are required to resolve disputes efficiently, either through customer service or by referring matters to consumer forums. If necessary, the Act allows for the filing of complaints in consumer courts, enhancing access to justice for online shoppers.

In essence, the Consumer Protection Act, 2019, ensures that consumers engaging in e-commerce transactions are protected from

¹⁹ Ministry of Law & Justice, *The Consumer Protection Act, 2019*, No. 35 of 2019, §§ 2(16), 2(42), 94 (India).

fraud, exploitation, and unfair practices, thereby fostering a safer online shopping environment.²⁰

(e) Provisions with respect to Unfair Trade Practices and Deceptive Advertising

By combating deceptive advertising and unfair trade practices, the Consumer Protection Act of 2019 seeks to protect the interests of consumers. It provides a legal framework for customers to pursue compensation for any abuse or damage brought about by companies using dishonest tactics. Unfair Trade Practices under the Act are actions that cause harm to the consumer or mislead them. These practices include false claims about the quality, quantity, or grade of goods and services, deceptive representations, and the selling of goods or services that do not conform to the advertised description. For example, if a product is marketed as “organic” but contains harmful chemicals, it would be considered an unfair trade practice. The Act empowers consumers to file complaints against businesses engaged in such practices through Consumer Protection Councils or the Consumer Disputes Redressal Commission.²¹

Misleading Advertisements are another major area of concern under the Act. Any advertisement that falsely claims the attributes of a product or service or exaggerates its benefits is prohibited. Such advertisements often lure consumers into purchasing goods or services that do not meet the promises made in the advertisements. A well-known example is misleading weight-loss products claiming dramatic results without scientific evidence. Under the Act, companies found guilty of misleading advertisements may face penalties, and the government can issue orders for the advertisement to be withdrawn. The Act also holds celebrities endorsing misleading ads accountable, ensuring they do not mislead the public.

Both unfair trade practices and misleading advertisements undermine consumer confidence and can lead to financial and physical harm. The Consumer Protection Act, 2019, strengthens

²⁰ Avtar Singh & Anand Singh, *Consumer Protection Law* 215–230 (Eastern Book Co., 3rd edn., 2022).

²¹ Raghavan, R., Regulation of E-Commerce Platforms under the Consumer Protection Act, 2019, 64 *J. Indian L. Inst.* 123, 130–145 (2022).

mechanisms to monitor and penalize these practices, promoting fairness and transparency in business transactions.²²

(f) Penalties for Manufacturers and Service Providers under the Consumer Protection Act, 2019

The 2019 Consumer Protection Act lays out sanctions for service providers and manufacturers in order to safeguard customers' rights and deter unfair business practices. These fines are intended to make companies responsible for their failure to adhere to the legal requirements for quality, safety, and transparency.

For manufacturers, the Act imposes penalties for defective goods that may cause harm or do not meet the specifications promised. If the manufacturer fails to rectify the defect or provide a replacement or compensation within the prescribed time, they are liable to pay penalties. The Act also includes provisions for the imposition of a fine or imprisonment for misleading advertisements that mislead consumers about a product's qualities or uses. Manufacturers who violate these provisions can face penalties ranging from fines to imprisonment, with specific amounts or durations determined based on the severity of the violation.²³

Service providers also face penalties under the Act for providing services that are deficient, delayed, or fail to meet the standards of quality promised. If a service provider is found guilty of negligence, fraudulent practices, or unfair trade practices, the consumer is entitled to compensation, and the provider may face a fine or imprisonment. Additionally, the Act enables the National Consumer Disputes Redressal Commission (NCDRC) to impose financial penalties on service providers found to be at fault, including the requirement to pay compensation for mental anguish, inconvenience, or financial losses caused to the consumer.

The penalties under the Consumer Protection Act, 2019 aim to ensure that manufacturers and service providers prioritize consumer interests, enhance the accountability of businesses, and foster an environment where fair practices are the norm. The penalties also act

²² Pradeep S. Mehta, *Consumer Protection in the Digital Economy* 67–89 (CUTS International, 2021).

²³ Central Consumer Protection Authority (CCPA), *Guidelines for Prevention of Misleading Advertisements and Endorsements*, 2022.

as a deterrent against future violations and contribute to creating a safer and more consumer-friendly marketplace.²⁴

5. Emerging Trends in Consumer Welfare

Technological developments, shifting consumer expectations, and changing regulatory frameworks have all contributed to the major changes in the consumer welfare landscape in recent years. Consumer welfare has become increasingly complicated and multidimensional as the global economy adjusts to digital disruption, ecological issues, and increased awareness of privacy and data protection. This article examines some of the most significant new developments in consumer welfare, including privacy rights, sustainability, and technology.²⁵

(a) Technology and the Rise of Digital Consumerism

One of the most defining shifts in consumer welfare is the rise of digital consumerism. With the widespread adoption of smartphones, internet access, and e-commerce platforms, consumers now have unprecedented access to goods and services. This has empowered them to make more informed choices, compare prices more effectively, and access a wider range of products and services from global markets. Online reviews, social media recommendations, and personalized advertisements have all become essential components of the modern consumer experience.²⁶

Businesses are using cutting-edge technology like artificial intelligence (AI) and machine learning (ML) to gain real-time insight into the tastes and behaviours of their customers as digital platforms continue to rule the market. Businesses may develop customised shopping experiences, dynamic pricing structures, and focused marketing efforts thanks to these technologies. This promotes a competitive market by providing customers with more convenience and frequently lower prices.²⁷

²⁴ Shubham Jain, Liability of Online Marketplaces under the Consumer Protection Act, 2019, 5 *Indian J. Consumer L.* 45, 50–62 (2021).

²⁵ All India Online Vendors Association v. Union of India, W.P. (C) No. 3003 of 2020 (Delhi High Court).

²⁶ Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd., (2020) 10 SCC 553.

²⁷ OECD, *Consumer Policy and Fraud: E-Commerce Challenges* 21–38 (OECD Publishing, 2020).

However, while digital advancements provide significant benefits, they also introduce challenges related to market fairness. The dominance of tech giants like Amazon, Google, and Facebook raises concerns about monopolistic practices and the concentration of market power. Smaller businesses may struggle to compete on digital platforms due to the high cost of customer acquisition and the overwhelming presence of larger competitors. Thus, one of the emerging issues in consumer welfare is ensuring that digital markets remain competitive and that consumers are not unduly influenced by the market power of a few dominant players.²⁸

(b) Ecological and Moral Consumption

The increasing focus on sustainability and ethical consumption is another significant trend in consumer welfare. Today's consumers are becoming more conscious of how the goods they buy affect society and the environment. Many people are trying to find methods to match their principles with the things they buy, from the food they eat to the clothes they wear. As a result, the "conscious consumer," a group that places a high value on corporate social responsibility, ethical labour practices, and environmental sustainability, has emerged.²⁹

In response, companies are implementing more sustainable practices, such as cutting carbon emissions, utilising eco-friendly products, and making sure that fair labour standards are followed across their supply chains. Businesses that prioritise sustainability in their brand identities, such as Tesla, Ben & Jerry's, and Patagonia, appeal to customers who are prepared to spend more for goods that are ecologically friendly and sourced ethically. At the same time, third-party certification programs and standards like Fair Trade, B Corp, and LEED have grown in popularity due to growing concerns about sustainability. By assisting customers in making knowledgeable decisions on the sustainability of the goods they buy, these certificates promote more market transparency.³⁰

However, the shift toward ethical consumerism also brings challenges in ensuring that claims of sustainability and ethical

²⁸ Vineet Kumar, *Digital Marketplaces and Consumer Rights in India*, 12 *NALSAR L. Rev.* 89, 95–108 (2020).

²⁹ United Nations Environment Programme, *Global Environment Outlook–6: Healthy Planet, Healthy People* (Cambridge Univ. Press 2019).

³⁰ OECD, *Promoting Sustainable Consumption: Good Practices in OECD Countries* 15–34 (OECD Publishing 2008).

practices are genuinely reflected in business operations. There is an increasing demand for robust oversight and accountability to prevent “greenwashing,” a term used to describe companies that make misleading or false claims about their environmental or social impact. This trend highlights the need for stricter regulations and enforcement to protect consumers from deceptive marketing and to ensure that companies are held accountable for their claims.³¹

(c) Privacy and Data Protection

Consumers’ top worries now are privacy and data protection as digital commerce keeps growing. Companies are gathering, storing, and analysing customer personal data in previously unthinkable ways in an increasingly linked world. Every element of a customer’s digital footprint is being recorded, frequently without their express knowledge or agreement, from social media interactions to online transactions.³² Data breaches, cyberattacks, and unauthorised data sharing have all raised concerns about the safety of consumer information; for instance, high-profile data breaches involving companies like Facebook and Equifax have exposed the weaknesses in data security practices, putting consumers at risk of identity theft and fraud. The expansion of the use of personal data has created new challenges for consumer welfare, especially in the areas of privacy, security, and informed consent.

Governments everywhere are enforcing stricter privacy laws in response to these worries. One of the most prominent instances of a comprehensive data protection law that aims to offer customers more control over their personal information is the General Data Protection Regulation (GDPR) of the European Union. The GDPR specifies that consumers have the right to view, update, and remove their personal data and that companies must have express consent before collecting it.³³

Similar to this, there is rising support in the US for more robust state and federal privacy protections. To safeguard consumers’ rights with regard to their personal data, states like California have enacted their

³¹ Tim Jackson, *Prosperity without Growth: Economics for a Finite Planet* 45–68 (Earthscan 2009).

³² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

³³ Srikrishna B.N., *Report of the Committee of Experts on a Data Protection Framework for India* (Ministry of Electronics & Information Technology, Govt. of India, 2018).

own data privacy laws, such as the California Consumer Privacy Act (CCPA). The United States still lacks a unified federal framework, though, and as a result, privacy laws are dispersed around the nation.

(d) Health and Wellness Consumerism

In addition to digital and ethical considerations, health and wellness have become central to the modern consumer's decision-making process. Consumers today are more health-conscious than ever before, seeking products that promote physical and mental well-being. This trend is reflected in the growing popularity of organic foods, plant-based diets, fitness trackers, mental health apps, and wellness-oriented services.³⁴

The COVID-19 pandemic accelerated this shift, with more people becoming aware of the importance of maintaining a healthy lifestyle. Consumers are now more focused on products that contribute to their overall health, such as nutritious foods, supplements, and fitness equipment. Mental health has also gained attention, with consumers increasingly seeking products and services that support their psychological well-being, from meditation apps to therapy platforms. As a result, companies in the health and wellness sector are capitalizing on this trend by offering products and services that cater to a more holistic view of health. This includes not only traditional health products but also lifestyle and self-care offerings designed to enhance both physical and mental well-being.³⁵ However, the growth of the health and wellness industry has also led to concerns about misinformation and the marketing of unverified or ineffective products. There are calls for greater regulation in this sector to protect consumers from false claims and ensure that products marketed as health-enhancing are supported by scientific evidence.

New developments in consumer welfare are influencing how companies function and how customers make decisions. Changes in the marketplace are being driven by a number of factors, including the expansion of digital consumerism, sustainability, privacy concerns, and an increased emphasis on health and wellbeing. Even though these trends have many positive effects, such as easier access to

³⁴ United Nations General Assembly, *Guidelines for Consumer Protection*, UN Doc A/RES/70/186 (2015).

³⁵ John C. Drummond & Lester E. Taylor, *Health Economics and Consumer Behavior*, 42 J. Consumer Pol'y 215, 218–30 (2019).

information, commodities, and services, they also present significant problems, especially in the areas of accountability, transparency, and justice. Governments, corporations, and consumers must collaborate as the world changes to safeguard and improve consumer welfare in a global economy that is becoming more intricate and interwoven.³⁶

6. Challenges in Enforcement of Consumer Welfare Laws

Enforcement of consumer welfare laws is a critical component of ensuring fair practices in markets, protecting consumers from exploitation, and fostering trust in the marketplace. However, achieving effective enforcement is fraught with numerous challenges that undermine the goals of consumer protection. These challenges arise from various factors, including legal, economic, political, and social elements, and often hinder the smooth implementation of consumer welfare policies. Below, we examine the key challenges that affect the enforcement of consumer welfare laws.

(a) Complexity of Consumer Protection Laws

One of the primary challenges in the enforcement of consumer welfare laws is the complexity and breadth of these regulations. Consumer protection laws often span multiple areas, including product safety, fraud prevention, deceptive advertising, data protection, and fair business practices. This broad scope requires regulatory bodies to have extensive resources and expertise to monitor compliance and address violations. Additionally, the laws themselves may be highly technical or ambiguous, which complicates enforcement efforts. In many cases, the language used in consumer protection laws is difficult for ordinary consumers to understand, making it hard for them to identify violations or seek redress. This complexity often results in inconsistent enforcement and varying interpretations of the law across different jurisdictions.³⁷

(b) Lack of Consumer Awareness

Another significant barrier to effective enforcement is the lack of awareness among consumers regarding their rights and available

³⁶ George J. Annas, *The Right to Health and the Consumerization of Healthcare*, 25 *Health Matrix* 1, 6–12 (2015).

³⁷ Raghubir Singh & Vinod Kumar, *Enforcement Challenges under the Consumer Protection Act, 2019*, 64 *J. Indian L. Inst.* 245, 248–55 (2022).

protections. Many consumers are unaware of the specific laws that protect them or how to effectively assert these rights. Without this knowledge, consumers may not recognize when they have been wronged, or they may feel powerless to take legal action. Furthermore, the lack of consumer education about the processes for filing complaints or reporting violations resulted in many instances of exploitation go unreported. This is especially problematic in developing regions where access to information and legal resources is often limited. Without consumer awareness, enforcement agencies struggle to track violations and enforce the laws properly.³⁸

(c) Insufficient Resources and Funding

Regulatory agencies tasked with enforcing consumer welfare laws often face severe budgetary constraints. These agencies may be understaffed, with limited resources to investigate and prosecute violations effectively. The lack of sufficient funding and personnel can delay investigations, reduce the scope of enforcement actions, and prevent timely responses to consumer complaints. Moreover, resource constraints may force enforcement bodies to prioritize certain cases over others, leaving many consumers without recourse for less obvious or widespread violations. In some cases, agencies may be forced to rely on voluntary compliance from businesses, which can be insufficient to deter wrongdoing.³⁹

(d) Fragmentation of Enforcement Mechanisms

In many countries, consumer protection is divided among several government agencies, each with its own mandate and jurisdiction. This fragmentation of enforcement mechanisms can lead to inefficiencies and confusion. For example, one agency may handle product safety, while another may be responsible for advertising practices or financial transactions. This division can create jurisdictional overlaps or gaps, where no single agency is responsible for overseeing a particular issue. Coordination between agencies can also be challenging, and different interpretations of the law may lead to inconsistent enforcement actions. In some cases, regulatory

³⁸ Nidhi Gupta, Structural Bottlenecks in Consumer Dispute Redressal Commissions in India, 15 *Indian J. Consumer L.* 41, 44–50 (2021).

³⁹ S.P. Sathe, *Judicial Activism in India* 176–79 (Oxford Univ. Press, 3rd ed. 2020).

bodies may even work at cross-purposes, hindering the effectiveness of consumer welfare law enforcement.

(e) Influence of Powerful Corporate Interests

Large corporations and industries with significant economic influence often have the resources to challenge enforcement actions or to lobby for favorable regulations. These powerful players may undermine the enforcement of consumer welfare laws by using their political connections, funding advocacy groups, or applying pressure on regulatory agencies. This influence can result in weaker regulations, delayed enforcement, or the complete abandonment of certain consumer protection measures.⁴⁰

The presence of corporate lobbying can create a regulatory environment where the interests of consumers are sidelined in favor of those who can afford to shape the legal framework. Additionally, businesses may engage in legal loopholes or exploit technicalities to avoid the consequences of violations, making it harder for enforcement agencies to hold them accountable.

(f) Globalization and Cross-Border Issues

In the era of globalization, many businesses operate across multiple countries and jurisdictions. This creates significant challenges for the enforcement of consumer welfare laws, as different countries may have varying standards of protection, enforcement mechanisms, and legal frameworks. Cross-border issues, such as international e-commerce or multinational corporations, complicate enforcement efforts, particularly when a violation occurs in one country but the company involved is based elsewhere. In such cases, consumer protection laws may not be easily enforceable due to the lack of international cooperation or the difficulty in identifying the responsible parties. The global nature of modern commerce means that even when violations are detected, bringing perpetrators to justice can be a lengthy and complex process.

(g) Digital Economy and Data Privacy

Enforcing consumer welfare rules has become more difficult as a result of the growth of the digital economy, especially when it comes to online transactions and data privacy. Concerns about online fraud, data breaches, and unfavourable terms of service have increased in

⁴⁰ Ashok R. Patil, Delay and Pendency in Consumer Fora: An Empirical Study, 7 *NLS J. Consumer L.* 93, 101–08 (2020).

frequency as more customers engage with businesses through digital channels. As consumer protection regulations cannot keep up with the rapid speed of technology progress, customers are left vulnerable to new forms of exploitation. The global nature of internet transactions can make enforcement difficult, and many digital enterprises operate in a quickly evolving environment with little regulatory control. Additionally, the complexity of data privacy laws, particularly in cross-border contexts, makes it difficult to protect consumers effectively. The increasing use of algorithms and artificial intelligence in marketing and sales can also lead to consumer manipulation, further complicating enforcement.

(h) Judicial and Legal System Challenges

Even when consumer welfare laws are violated, the legal system may be slow to respond or ill-equipped to handle the influx of cases. The judiciary may face a backlog of cases, resulting in delayed trials and justice. Moreover, the legal costs associated with pursuing consumer rights, especially in class-action lawsuits, can be prohibitively high, preventing many consumers from seeking redress. Legal battles can also be prolonged, with businesses using their financial resources to drag out litigation, making it difficult for consumers to attain timely compensation. The complexity of legal procedures and the burden of proof can also discourage consumers from taking action, leading to fewer cases being brought to court.

(i) Political and Ideological Challenges

Political ideologies and shifting government priorities can also play a role in the enforcement of consumer welfare laws. In some cases, governments may prioritize economic growth or business interests over consumer protection, leading to a weakening of enforcement mechanisms. Political pressures can also result in inconsistent application of the law, with some administrations being more lenient towards businesses or industries that have significant political influence. The political climate can influence the allocation of resources to consumer protection agencies and the overall commitment to consumer welfare, with changing administrations potentially leading to a reversal of policies or enforcement practices. The challenges in enforcing consumer welfare laws are multifaceted and stem from a range of factors, including legal complexity, resource constraints, lack of consumer awareness, and political influences.

Addressing these challenges requires coordinated efforts from governments, regulatory agencies, businesses, and consumers themselves. It necessitates the development of clearer, more accessible laws, increased public awareness of consumer rights, better resource allocation to enforcement agencies, and stronger international cooperation in dealing with cross-border issues. Overcoming these hurdles is crucial to ensuring that consumer welfare laws fulfill their purpose of protecting consumers from exploitation and fostering a fairer, more transparent marketplace.⁴¹

7. Comparative Analysis of Consumer Welfare Laws: India v. Global Practices

In order to protect the rights and interests of consumers, consumer welfare laws are an essential component of legal systems around the world. These rules include anything from fair trade practices and consumer privacy protection to product safety. However, there are notable regional differences in the development and application of consumer welfare legislation. Comparing Indian and international consumer welfare laws, this article looks at important topics such as consumer rights, dispute settlement, protection measures, and the function of regulatory organisations.⁴²

(a) Consumer Rights: India v. Global

The Consumer Protection Act, 2019, which replaced the previous Consumer Protection Act, 1986, is the main law protecting consumer rights in India. The Act establishes a thorough framework for consumer protection, emphasising the development of consumer rights and efficient dispute resolution procedures. It encompasses the rights to knowledge, safety, choice, and hearing. Given the increase in online transactions and the necessity of safeguarding consumers in the digital realm, one of the main features of the new Act is the addition of digital consumer protection.⁴³ Consumer rights are similarly protected in a variety of ways around the world. In the

⁴¹ *State of Karnataka v. Vishwabharathi House Building Coop. Society*, (2003) 2 SCC 412.

⁴² Hariom Gupta & Amit Singh, *The Consumer Protection Act, 2019: A Comparative Analysis with International Consumer Protection Regimes*, 14 *Indian J. L. & Justice* 87, 90–98 (2023).

⁴³ Norbert Reich, *Understanding European Consumer Law* 41–60 (Intersentia, 2nd edn., 2019).

United States, consumer credit information is protected and product safety is guaranteed under the Fair Credit Reporting Act of 1970 and the Consumer Product Safety Act of 1972. The European Union Consumer Protection Cooperation (CPC) Network, which collaborates among member states to standardise consumer regulations, represents a more integrated approach from the European Union. Consumers' rights to clear information, protection from unfair contract conditions, and rights with regard to distance marketing are further highlighted in the EUROPEAN UNION Consumer Rights Directive (2011).⁴⁴

While the US and the European Union have long had laws addressing concerns like e-commerce, data privacy, and cross-border consumer protection, India has just lately expanded its implementation of digital consumer protection, even though both countries acknowledge fundamental consumer rights.

(b) Regulatory Bodies and Enforcement Mechanisms

The Central Consumer Protection Authority (CCPA), which oversees the enforcement of consumer welfare laws in India, has the authority to take legal action against deceptive advertising, unfair trade practices, and abuses of consumer rights. A three-tiered system of consumer redress is provided by the District Consumer Forums and the National Consumer complaints Redressal Commission (NCDRC), which act as quasi-judicial entities to decide complaints. In order to improve consumer participation and assist in resolving grievances, the government has also set up a number of online portals.

Although they differ, regulatory agencies and enforcement systems around the world are usually strong. One important organisation in the US is the Federal Trade Commission (FTC), which has the authority to enforce consumer protection laws, including those that prohibit unfair or misleading business practices. Another important organisation that regulates financial institutions and safeguards customers in the financial industry is the Consumer Financial Protection Bureau (CFPB). National consumer protection authorities and the European Union Consumer Organisation work together to implement and enforce regulations in the EUROPEAN UNION. Additionally, with an emphasis on guaranteeing equitable treatment

⁴⁴ Norbert Reich, *Understanding European Consumer Law* 41–60 (Intersentia, 2nd edn., 2019).

in both physical and digital marketplaces, the Organisation for Economic Co-operation and Development (OECD) has created best practices and recommendations for consumer protection among its member states.⁴⁵

A significant difference between India and global practices is the relatively nascent state of enforcement mechanisms in India. Although the CCPA and NCDRC have made strides in consumer protection, the legal system remains somewhat slow, and the processes can be cumbersome, leading to delays in resolution. In contrast, agencies in the US and European Union, while facing their own challenges, benefit from a longer history of consumer protection enforcement and generally have more resources and greater efficacy in dealing with violations.

(c) Defence Against Injustice in Trade

Consumer protection laws focus on unfair trade practices, which include selling dangerous products, deceptive advertising, and other unfair business activities. Provisions against unfair trading practices are found in India's Consumer Protection Act, 2019, which forbids fraud, subpar goods, and fraudulent advertising. Additionally, the Act gives consumers the ability to protest about deceptive advertising, and those who violate it may face fines and other sanctions.⁴⁶ In comparison, the US and the European Union have extensive laws designed to protect against unfair trade practices. In the US, the Lanham Act governs false advertising, while the Truth in Advertising Act enforces the prohibition of deceptive marketing. Additionally, the Consumer Financial Protection Bureau (CFPB) ensures fairness in the financial industry, particularly protecting consumers from predatory lending practices. The European Union also employs strict rules under the Unfair Commercial Practices Directive (2005), which prohibits misleading actions, aggressive sales techniques, and false advertising across member states. The focus in both regions is not only on the seller but also on the role of digital platforms in perpetuating such practices.

⁴⁵ OECD, *Consumer Dispute Resolution and Redress in a Globalized Economy* 20–42 (OECD Publishing, 2019).

⁴⁶ Surya Deva, *Harmonising Consumer Protection Standards: An International Law Perspective*, 12 *Indian J. Int'l Econ. L.* 67, 72–85 (2020).

India's laws are evolving to address new consumer challenges like digital fraud and e-commerce-related issues. However, the regulatory infrastructure in India is still catching up with global standards, particularly in terms of monitoring and controlling digital marketing and online consumer protection.

(d) Consumer Dispute Resolution: India v. Global Models

One of the fundamental components of consumer protection is an effective and accessible dispute resolution mechanism. In India, consumers can approach the Consumer Forums at district, state, and national levels. The Online Consumer Mediation Center launched in 2020 is a step towards modernizing the dispute resolution process, making it more accessible to consumers across the country.

Alternative dispute resolution (ADR) procedures are more developed worldwide, especially in the US and the European Union. In the US, the Federal Arbitration Act encourages arbitration for consumer disputes since it is frequently quicker and less expensive than going to court. Consumers in the European Union can get guidance and support in cross-border issues from European Consumer Centres (ECCs). Additionally, the European Union has made investments in Consumer ADR, which allows customers to use out-of-court procedures to settle disputes with merchants. The effectiveness and accessibility of these mechanisms, which guarantee that even customers in isolated or underprivileged areas can seek redress, are what make them successful.⁴⁷

India has made efforts to enhance consumer dispute resolution but faces challenges related to the burden of cases, the complexity of legal processes, and a lack of widespread awareness about the available mechanisms. This has led to a backlog of cases and dissatisfaction among consumers who face delays.

(e) Digital Consumer Protection: India v. Global Standards

The growth of digital services and e-commerce has presented new difficulties for consumer welfare regulations. With provisions in the Personal Data Protection Bill, 2019 and the Consumer Protection (E-Commerce) Rules, 2020, India has taken important steps to protect consumers online. These rules cover topics including internet fraud,

⁴⁷ S. Chakraborty, Globalisation and Consumer Protection: Challenges for Developing Economies, 55 *J. Indian L. Inst.* 312, 320–335 (2013).

data privacy, and product legitimacy. However, compliance remains problematic due to the rapid proliferation of digital platforms and inadequate resources for monitoring.⁴⁸

With the General Data Protection Regulation (GDPR) as the cornerstone of its strategy, the European Union has been leading the way globally in protecting digital consumers. In addition to offering strong privacy protection, the GDPR gives customers rights including data portability and the right to be forgotten. By regulating major online platforms and guaranteeing fairness and transparency, the European Union also protects consumers in digital markets through the Digital Markets Act (DMA) and Digital Services Act (DSA). The FTC oversees consumer protection in the digital sphere in the United States, addressing concerns such as data security breaches, online fraud, and privacy violations⁴⁹.

India's laws are progressing, but they are still in the process of addressing all aspects of digital consumer protection, particularly in the context of data breaches and online transactions. Global jurisdictions, particularly the European Union, have developed more comprehensive frameworks for digital consumer protection.

Consumer welfare laws in India are progressing toward international standards, but significant gaps remain in terms of enforcement, digital protection, and awareness. While India has made strides in modernizing consumer laws, particularly with the Consumer Protection Act, 2019, and digital safeguards, it still lags behind regions like the European Union and the US, where consumer protection frameworks are more robust and comprehensive. As India continues to adapt to new challenges in the digital and globalized marketplace, there is a need for more investment in regulatory agencies, faster dispute resolution, and stronger enforcement mechanisms to ensure that consumer rights are adequately protected. Globally, the focus is increasingly shifting toward comprehensive digital consumer protection, an area where India has room for significant growth.

⁴⁸ Pradeep S. Mehta, Consumer Protection in the Digital Economy: Indian Perspectives, 18 *Consumer L. Rev.* 91, 95–110 (2022).

⁴⁹ European Union, *Directive (EU) 2019/2161 on Better Enforcement and Modernisation of Consumer Protection Rules* (Omnibus Directive).

8. Conclusion and Recommendations

The Consumer Protection Act, 2019, marks a significant step toward strengthening consumer rights in India by incorporating provisions that align with international best practices. The law has introduced enhanced consumer rights, product liability, and stricter penalties for unfair trade practices, drawing inspiration from frameworks in countries such as the United States, the United Kingdom, and the European Union. These jurisdictions emphasize strong enforcement mechanisms, alternative dispute resolution, and digital consumer protection—elements that India has adopted to varying degrees. However, implementation challenges remain, particularly in ensuring speedy redressal and widespread consumer awareness.

A key lesson from global experiences is the importance of robust enforcement agencies with adequate resources. Countries like the UK have empowered regulatory bodies that proactively address violations, while the US has stringent penalties and class action suits to deter unfair practices. India must ensure that consumer forums and regulatory authorities are well-equipped, both in terms of infrastructure and legal expertise, to handle increasing consumer disputes efficiently.

Moreover, the emergence of e-commerce and digital transactions necessitates a dynamic regulatory approach. The European Union's consumer protection framework emphasizes digital rights, data protection, and online dispute resolution. India should strengthen its digital consumer protection measures by adopting a more comprehensive data privacy law and ensuring that online platforms adhere to strict consumer safety norms.

To enhance the effectiveness of the Consumer Protection Act, 2019, the following recommendations are proposed:

- The Central Consumer Protection Authority (CCPA) should be given greater autonomy and resources to ensure proactive enforcement of consumer rights.
- The Consumer Protection Act, 2019 (CPA) of India modernizes consumer rights and provides mechanisms for redressal in line with international best practices. Lessons from global jurisdictions highlight key areas where its implementation can be strengthened.
- Alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration, have been successfully integrated into

consumer protection laws in countries like the United States and the European Union. India's inclusion of mediation as a dispute resolution mechanism in the CPA 2019 is a step in the right direction, but ensuring its efficiency requires clear guidelines and trained professionals.

- Strict product liability and e-commerce regulations, inspired by laws in the United Kingdom and Australia, are critical in protecting consumers from misleading advertisements and defective products. India's CPA 2019 introduces liability for online platforms, but its enforcement remains a challenge, requiring greater regulatory oversight.
- Finally, stronger enforcement mechanisms are evident in jurisdictions like Canada and Germany, where consumer rights agencies actively monitor and penalize violators. India must ensure that its Central Consumer Protection Authority (CCPA) has adequate resources and authority for effective enforcement.

By learning from these global practices, India can further enhance consumer rights and ensure robust protection under the CPA 2019.



ICANN's Uniform Domain Name Dispute Resolution Policy: A Critical Analysis

Gulafroz Jan*

Abstract

The rapid expansion of the internet has transformed domain names into valuable business identifiers, intensifying conflicts between trademark holders and domain registrants. To address cybersquatting and abusive registrations, the Internet Corporation for Assigned Names and Numbers (ICANN) introduced the Uniform Domain Name Dispute Resolution Policy (UDRP) in 1999 as a global, contract-based mechanism for dispute settlement. This paper critically analyses the UDRP through the dual lens of trademark protection and digital freedom. While the policy offers a swift, cost-effective, and uniform process that deters cybersquatting, it has been criticized for its limited procedural safeguards, absence of appeals, and inherent bias towards trademark owners. The ambiguities surrounding “bad faith,” “legitimate interest,” and “confusing similarity” have led to inconsistent panel decisions, raising concerns over predictability and fairness. Moreover, the policy’s weak recognition of free expression and fair use undermines the digital rights of registrants, enabling instances of reverse domain name hijacking. The study argues that while the UDRP is effective in combating cybersquatting, its legitimacy as a global dispute resolution system depends on reconciling the competing interests of trademark protection and digital freedom.

Keywords: Uniform Domain Name Dispute Resolution Policy (UDRP), Cybersquatting, Trademark–Domain Name Conflicts, ICANN and DNS Governance, Bad Faith Domain Registration, Online Dispute Resolution Mechanisms

1. Introduction

The numerous disputes that arise between trademark owners and domain name registrants are often influenced by the complexity of trading policies, the requirement to promote businesses online, the preference for words that are easy to remember when creating domain names, and the importance of having a business presence

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online. There has been conflict between the two systems as a result of numerous exploitative and opportunistic strategies for profit motives. This conflict is mainly because of the disconnect between the genuine purpose of the domain name system and the reason why intellectual property protection exists.¹ These tactics involve registering domain names for well-known and other trademarks with the sole purpose of selling the domain names to the owners or taking unfair advantage of the reputation associated with those owners. Furthermore, current processes for resolving disputes between trademark owners and domain name holders are ineffective. In reality, they are frequently regarded as expensive, inconvenient, and ineffective. Moreover, the internet is a worldwide system, there is no established norm as to where jurisdiction belongs, rendering traditional judicial proceedings ineffective in dispute settlement. The Uniform Domain Name Dispute Resolution Policy provides the dispute resolution mechanism for resolving disputes arising between domain name holders and trademark owners. It is designed to provide a speedy, cheap and efficient mechanism alternative to the litigation by submitting a dispute to the approved dispute resolution service provider

2. Domain Name System

Developed in the early 1980s, DNS simplified host identification by names instead of numbers.²As the host database expanded, it was no longer feasible to store all of these hosts on a single machine so DNS

¹Farooq Ahmad, *Domain Name Disputes and Trademark Law, Cyber Law in India* (Law on Internet) 1st Ed. 2001 Pioneer Books, p-174.

²David W. Quinto, *Law of Internet Disputes*, 2nd Edition 2002 Supp., *Aspen Law and Business* p-1.

was distributed across servers in 1984.³ In 1992, NSF⁴ and NSI⁵ signed an agreement for DNS management, with NSI registering domain names. By 1995, NSI outlined a conflict resolution policy amid the lack of centralized internet oversight⁶. John Postel⁷ commissioned the creation of the Internet Assigned Numbers Authority (IANA), with a mandate to allocate and coordinate unambiguous (IP) addresses and domain names throughout the internet.

a) Privatizing DNS

Amid criticism of the U.S. control over DNS, President Clinton proposed privatization on July 1, 1997, promoting competition and international participation. Following public comments, NTIA's 1998 Green and White Papers recommended a U.S.-based, private, non-profit DNS coordinating body. The U.S. pledged to transition DNS management to the private sector, with governments retaining control

³Ravandale C. J and Abhijeet Singh; *Domain Name Disputes: Problems and Prospects; Cyberspace and Law Issues and Challenges, Sovenir on National Conference on Cyber Laws and Legal Education*, a publication of NALSAR University Hyderabad 2004 p- 35.

⁴ NSF initiated the development of NSF-net which today provides major backbone communication services for internet. In 1991 – 92 NSF assumed responsibility for coordinating and funding the management of non-military application of the internet. It solicited competitive proposals for the proposals for the provision of infrastructure services.

⁵NSI a private company with which lies the administration of registration procedure of domain names in U.S under 1993 agreements. *Trademarks; Intellectual Property Protection on the Information Super Highway EIPR* 1995 pp. 98-487 also see Mohammad Hussain, *Trademarks and Domain name: Conflict and Conciliation, KULR* 2001, p-101.

⁶In US today, the vast majority of domain names are assigned by single registry Network Solution Inc. under contract from NSF. See Anknit Majumdar and Nandan Kamath, *Name Calling in Cyber Space: Domain Names and the Law; Law Relating to Computers, Internet and E-Commerce, 2002 Universal Publication*, P- 215.

⁷ Dr. John Postel, was a graduate student of University of California at Los-Angles who played a quintessential role in development of APRA- net in 1970. He looked the task of maintaining the list of names and addresses of host computers on the system and a list of documents called requested for comment. For a short obituary on Dr. John Postel see “*The Death of an Icon*” “*The Economist*”, Oct. 24–03-1998. Also see <http://wipo2.wirjo.int/process /enp/ nrosesshome.html>. (last visited on April 20, 2025).

over cc-TLDs⁸. The National Telecommunications and Information Administration (NTIA) released a White Paper after the comment period ended.⁹ The request in the green paper for the formation of a new private, non-profit business to coordinate certain DNS functions for the benefit of the Internet as a whole was confirmed in the white paper.

“The US government is dedicated to a transition that will allow the private sector to take control of DNS maintenance, while international organisations may provide specific expertise or serve as advisors to the new corporation, the United States, should not be involved in the management of internet names and addresses. Of course, national governments currently have and will continue to have jurisdiction over their own cc-TLDs in terms of management and policy.”¹⁰

b) Formation of ICANN

The Internet Corporation for Assigned Names and Numbers (ICANN) was established as a result of a series of events that took place after the original paper was released. The procedure and discussion that surrounding it resulted in the selection of a Chairman, President CEO, and Board of Directors, and the bylaws of ICANN were framed. California serves as the headquarters of the Internet Corporation for Assigned Names and Numbers (ICANN). It is a non-profit organisation, and bases its choices on the opinion of the online community. ICANN has no statutory or other governmental jurisdiction; its authority is solely based on voluntary contracts and global internet community conformity with its policies. It has no power to compel anyone or anybody to do anything; its authority is merely a reflection of willingness.

The White Paper advised the US government to ask the World Intellectual Property Organization (WIPO) to conduct a consultation study on domain name and trademark problems in addition to creating ICANN. After performing the investigation, WIPO sent its final report to ICANN on April 30, 1999. The paper states that all regional

⁸V. K. Unni, *Trademark and Emerging Concept of Cyber Property Rights* 2002, Eastern Law House, p.-28.

⁹ Full text of White Papers is available at http://www.nita.doc.gov/nitahome/domainname/6-5-98_dns.htm (last visited on July 20, 2024).

¹⁰ Ibid.

registrars in the .com, .net, and.org TLDs should design and implement a domain name dispute resolution policy. The Uniform Dispute Resolution Policy (UDRP) was developed when ICANN put WIPO's recommendations into practice.

An ICANN consensus policy, known as the Uniform Domain Name Dispute Resolution Policy (the "Policy"), became operative on October 24, 1999. While ICANN staff did not identify any explicit statement of policy goals, but based on a review of UDRP-related documents, community feedback and discussions, the following overarching goals of the UDRP were framed:

- a) An efficient, less expensive, and fair alternative to traditional litigation for cybersquatting cases;
- b) A uniform administrative dispute-resolution procedure for domain name disputes in all gTLDs; and
- c) Effectiveness in addressing specific types of cybersquatting thereby ensures more secure internet.

The registrant's registration agreement, which defines guidelines for domain name registration and usage and disputes between the registrant and third parties, is referred to as the Uniform Dispute Resolution Policy (UDRP).¹¹A complainant may challenge any domain name that is confusingly similar to their mark under the UDRP.¹²The regulation provides trademark holders a speedy administrative procedure for contesting "abusive domain name registration," which could result in the registrar suspending or transferring a domain name. Registrants who have been unsuccessful in a UDRP action may seek a "second bite at the apple" by filing a lawsuit in a civil court to get the appropriate remedy.

3. Approved Dispute Resolution Service Providers under UDRP

Under UDRP, complainants select from ICANN-approved dispute resolution providers. Currently, six qualified providers handle administrative proceedings:

¹¹ Full Text of White Paper Available at <http://www.ntia.doc.gov/ntahome/domainname/6-5-98dns.htm> (last visited on April 20, 2025).

¹² David. W. Quinto, *Law of Internet Disputes*, 2nd Ed. 2002 supp., *Aspen Law and Business* p. 4 (7).

- a) **WIPO Arbitration and Mediation Centre (Geneva, Switzerland):** Approved by ICANN on November 29, 1999, WIPO handled the first UDRP case on December 9, 1999.
- b) **National Arbitration Forum (NAF):** Accredited on December 23, 1999, NAF accepted its first case in January 2000.
- c) **Asian Domain Name Dispute Resolution Centre (ADNDRC):** Approved in December 2001, ADNDRC operates with HKIAC and CIETAC.
- d) **Czech Arbitration Court (CAC):** ICANN accredited CAC in January 2008 for UDRP cases.
- e) **Arab Centre for Dispute Resolution (ACDR):** Specializing in the MEAC region, ACDR was established by ASIP and AIPMAS.
- f) **Canada International Internet Dispute Resolution Centre (CIIDRC):** Approved by ICANN in May 2019, CIIDRC launched its complaint system in November 2019.

4. The Uniform Domain-Name Dispute Resolution Policy

UDRP has been adopted by ICANN-accredited registrars in all gTLDs (.aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel). According to the Internet Assigned Numbers Authority (IANA) database, there are currently **1,591** registered domain root types (such as .com, .uk, etc.). In total there is about 351.5 million domain name registration available up to second quarter of 2022.¹³

The number of lawsuits filed by each Provider per year that contains one or more domain names based on the Uniform Domain Name Dispute Resolution Policy (UDRP) Status Report prepared by ICANN.org on 3rd March 2022¹⁴, revealed through the data gathered from the websites of the six UDRP Providers. It indicates that more than 38,000 UDRP cases or over 4,800 cases annually on average—have been processed between January 2013 and December 2020. Each of the providers receives about 900 complaints annually on

¹³ Available at: https://www.verisign.com/en_US/domain-names/dnib/index.xhtml?loc=en_US§ion=executive-summary (last visited on Sep 20, 2022).

¹⁴ Uniform Domain Name Dispute Resolution Policy (UDRP) Status Report Prepared by ICANN.org 3rd March 2022 <https://itp.cdn.icann.org/en/files/consensus-policy/udrp-policy-status-report-03-03-2022-03-03-2022-en.pdf> (last visited on March 20, 2025).

average, with WIPO, the largest UDRP Provider, handling more than half of them, followed by Forum. Additionally, since 2014, the number of UDRP complaints filed annually has continuously risen, with the number of domain name disputes filed in 2020 establishing a record. The Table 1 along with Fig. 1 indicates the number of disputes these Providers have received from 2013 to 2020. The continued increase in UDRP submissions globally shows that the UDRP is still a popular and useful instrument and that it is effective enough to be a viable choice for trademark owners to use to combat cybersquatting.

After eight years of record-setting growth, domain name disputes were on the rise again in 2022, with the number of cases across most of the Uniform Domain Name Dispute Resolution Policy (UDRP) providers up 20 percent in the first quarter of the year, as compared with the same quarter in 2021.¹⁵The number has increased by more than 18 percent in the third quarter of 2023. In 2024, domain name disputes exhibited notable trend, after a decade of consistent growth, the number of decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) experienced a decline in the third quarter of 2024. Specifically, there was a 6.86% decrease in decisions and a 27.31% reduction in the number of domain names involved compared to the same quarter in the previous year. While there was a temporary decline in UDRP decisions during the third quarter of 2024, the broader trend indicates sustained activity in domain name disputes, reflecting the ongoing challenges trademark owners face in combating cybersquatting.

Since 2013, Reverse Domain Name Hijacking (RDNH) cases have been on the rise, with 2018 being a record-setting year for abusive filings related to Reverse Domain Name Hijacking RDNH involving a total of 917 (Chart 2) Complainants for the 2013 - 2020. In relation to achievement of goal of fairness, the report¹⁶ clearly state that Complainants succeeded in obtaining the disputed domain name in about 78 percent of cases, on average, across all dispute resolution providers during the observation period (2013 - 2020). Over 32,000 UDRP rulings have been made by panels between January 2013 and December 2020 in regard to resolving the misuse. According to UDRP

¹⁵ Giga Law's Domain Dispute Digest, first quarter, 2022, (last visited Mar 2023).

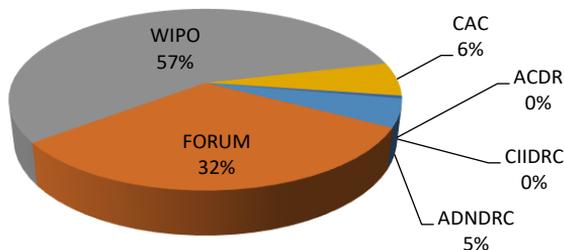
¹⁶*ibid.*

findings for the 2013 to 2020, there were 300 more complaints filed year on average across all UDRP providers, and there were 7 percent more outcomes in favour of complainants.

Table 1: disputes received from 2013 to 2020

Year	ADNDRC	FORUM	WIPO ¹⁷	CAC	ACDR ¹⁸	CIIDRC	Total	Average
2013	183	1597	2585	105	0	N/A	4157	831
2014	226	1433	2634	110	0	N/A	4072	814
2015	245	1410	2754	150	0	N/A	4198	840
2016	249	1320	3036	151	1	N/A	4374	875
2017	221	1465	3074	331	4	N/A	4624	925
2018	217	1636	3447	346	0	0	5169	1034
2019	187	1646	3693	428	4	3	5484	914
2020	189	1926	3561	564	0	31	6271	1045
2021	206	1969	5128	500	128	30	7961	1326
2022	272	2312	4408	572	119	38	7676	1279
2023	59	624	1087	212	0	7	1989	331
2024 ¹⁹	35	555	1175	201	35	16	2017	336
Total	2289	17893	36609	3770	291	125	56971	9495

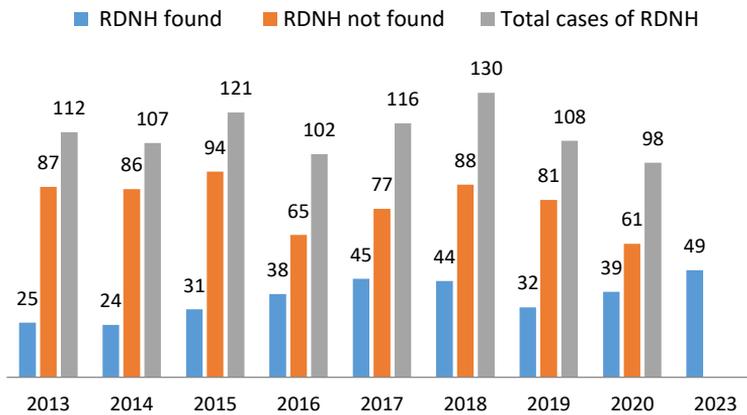
Fig. 1: Complaints with the Service Providers 2013-2024



¹⁷www.wipo.int/amc/en/domains/statistics/cases.jsp (last visited on September 11, 2022).

¹⁸ <http://acdr.aipmas.org/Default.aspx> (last visited on Oct 20, 2023).

¹⁹Giga Law's Digest Quarter 1,2,3,4, 2022
<https://static1.squarespace.com/static/58febfdfcbf629aa913a85974/t/635b4c1aa6daf021404a8ab9/1666927642492/2022-q3-domain-dispute-digest.pdf> (last visited on November 10, 2024).

Fig. 2: Cases of Reverse Domain Name Hijacking (RDNH) (2013-2020)

With the filing of its 50,000th “cybersquatting” case in Nov 20,2020, the WIPO Arbitration and Mediation Centre has reached a significant milestone that marks the culmination of two decades of pro-consumer work to ensure that Internet users can readily find legitimate sites for the companies they love and trust. The COVID-19 pandemic has increased the number of cybersquatting complaints submitted to the WIPO Arbitration and Mediation Centre, contributing to this year’s record WIPO filing. The WIPO Centre handled 3,405 cases from January to October 2020, an increase of 11% from the same period in 2019. Erik Wilbers, Director of the WIPO Arbitration and Mediation Centre, commented on the rise in WIPO case filings, said: “With more individuals spending more time online during the epidemic, cybersquatters are finding an increasingly target-rich environment. Meanwhile, as rights holders increasingly rely on online marketing and commerce, they are ramping up their brand enforcement online”.²⁰ In 2023, the Uniform Domain Name Dispute Resolution Policy (UDRP) experienced a record number of filings, accompanied by an unprecedented rise in cases identified as reverse domain name hijacking (RDNH).²¹

²⁰ Available at: www.wipo.int/pressroom/en/articles/2020/article_0026.html (last visited March 06, 2022).

²¹ Attorney John Berryhill's analysis of data from the World Intellectual Property Organization (WIPO) and the Forum, available at;

5. UDRP and its Objectives

The UDRP was adopted by ICANN to establish a globally accepted dispute resolution system, ensuring legitimacy, consistency, and standardized rules for conflicts involving trademark owners and domain name registrants. It was designed to handle only “abusive registrations” and reduce legal expenses for trademark holders. Incorporated into registrant agreements, the UDRP governs disputes between registrants and third parties. Accredited providers began receiving complaints in December 1999, and full implementation started on January 3, 2000. Its limited scope ensures that only abusive registrations, not competing legitimate claims, are addressed.

5.1 UDRP Proceedings

The proceedings of UDRP are mandatory. To settle domain name disputes, the Uniform Domain Name Dispute Resolution Policy (UDRP) provides an expedited administrative procedure.²² It starts with the filing of complaint by trademark owner against the domain name registrant for abusive registration of domain name or against cybersquatter. Since it is evident that those responsible for such actions would never submit to procedure voluntarily, it is made mandatory.²³

These processes take place in front of a certified dispute resolution service provider.²⁴ Currently, accredited providers available are

<https://domainnamewire.com/2024/01/26/reverse-domain-name-hijacking-cases-hit-record-high-in-2023> (last visited on January 11, 2025).

²² An administrative proceeding may be defined as a process in which two parties present their respective views of a conflict to a neutral and impartial third party, the panel see <http://www.resolution.ca/services/dnd/arb.html>. (last visited on January 11, 2025).

²³ V. K. Unni, *Trademark and Emerging Concepts of Cyber Property Rights*, 1st Ed. 2002, Eastern Law House p- 69.

²⁴ The list of providers is available at <http://www.cann.org/urdp/approved/providers.html>. (last visited on February 10, 2025).

WIPO²⁵, National Arbitration Forum (NAF)²⁶, dispute.org/e-resolution consortium²⁷, CPR Institute for Dispute Resolution²⁸, ADNDRC²⁹. UDRP must be followed by all registrars in the .com, .net, and .org top level domains. Since the adoption of the UDRP, the most well-known provider of dispute resolution has so far been WIPO.

5.2 UDRP Application Requirements

The UDRP applies to specific cases involving “abusive registrations.” Complainants initiate the process by filing a complaint with an ICANN-approved dispute resolution provider. Registrants must participate in the mandatory proceeding.

5.3 Criteria for Abusive Registration

A domain name is deemed abusive when the complainant proves:

- **Similarity:** The domain name is identical or confusingly similar to the complainant’s trademark.

²⁵ World Intellectual Property Organization effective from 1st Dec. 1999. WIPO Arbitration and Mediation Centre became the first authorized administrative proceeding provider, to offer online dispute resolution system in names registered in the .com, net. and org TLD’s. WIPO has developed voluntary guidelines intended to assist administrators of 24 cc-TLD’S to curb abusive and bad faith registration, David. W. Quinto, *Law of Internet Disputes*, 2nd Ed. 2002 *supp. Aspen Law and Business* p- 4 & 20.

²⁶ Effective from 23rd Dec. 1999, second administrative proceeding provider to implement UDRP. The cases it tries are “where one party abuses another party’s right by holding a domain name that is confusingly similar to the other party’s trademark or service mark”. It provides decision within 45 days. The decisions are available at <http://arbforum.com/domains/domain-decision/html>. *ibid* p-21. (last visited on February 10, 2025).

²⁷ Effective from 1st Jan 2002 www.e-resolution.com/services/and/dcision/.html/ it provides that decision will be rendered within 60 days *ibid*. p- 23. (last visited on February 10, 2025).

²⁸ Effective from 22 May 2000. <http://cpradr.org/cnn.cases.html>. *ibid* p. 23. (last visited on February 10, 2025).

²⁹ Effective from Nov. 30, 2001, ICANN has approved the new administrative proceeding provider the Asian Domain Name Dispute Resolution Centre (ADNDRC). ICANN explained that ADNDRC will specialize in resolution of Asian Language Domain Name Disputes. ADNDRC began accepting cases from 28 Feb 2002. *ibid*. P- 24.

- **No Legitimate Interest:** The registrant lacks rights or legitimate interest in the domain name.
- **Bad Faith:** The domain name was registered and used in bad faith.

All three elements must be established. Bad faith is assessed by considering actions such as:

- a) Registering the domain mainly to sell or transfer it for profit beyond documented costs.
- b) Preventing a trademark owner from using a similar domain due to repeated conduct.
- c) Disrupting a competitor's business.
- d) Using the domain to mislead users for commercial gain.

These factors guide arbitration panels in determining abuse

The above elements are only indicative; the arbitration panel may consider other considerations in determining bad faith.

*World Wrestling Federation Entertainment Inc. v. Micheal Bosman*³⁰ was the first case brought before the WIPO addressing domain name registration and use.

The complaint, the World Wrestling Federation, was a corporation that had registered the trademark/service mark "World Wrestling Federation" between 1985 and 1989. The respondent began registering the domain name worldwrestlingfederation.com on October 7th, 1999, for a two-year period. Three days after registering the domain name, on October 10, the respondent informed the complainant of the registration *via* email. He stated that his main motivation for doing so was to sell, rent, or otherwise transfer the domain name to the complainant for a valuable consideration in excess of out-of-pocket costs (\$1,000,00).

In his e-mail, respondent stated that cybersquatting cases "typically accomplish very little and end up costing the companies thousands of dollars in legal fees, wasted time and energy".³¹

The most crucial criterion to evaluate was whether respondent had created a website utilizing the domain name in question or used it in any other way in good faith. Whether the name in question was a

³⁰ Case no. D 99 0001 full information *available at* <http://arbitrator.wipo.int/domains/decisions/html/1999/d/199-000/html>. (last visited on February 10, 2025).

³¹ *Ibid.*

nickname of the respondent or a member of his family, or was associated with or related to a legitimate interest of the respondent in any other way.

The complainant asserted that the respondent had registered and was making use of a domain name that was identical to its service mark and trademark, that the respondent lacked any legal or legitimate interest in the domain name in question, and that the respondent had registered and was making use of the domain name in question.

The panel in *World Wrestling Federation* determined that the respondent's domain name was identical to the complainant's registered trademark and that the respondent had no legitimate claim to it. Registered in bad faith, the domain name was offered for sale at an inflated price shortly after registration. Similarly, in *InfoSpace.com, Inc. v. Hari Prakash*³², the panel ruled that adding "India" to a domain name similar to "Infospace" created confusion, leading users to think it was related to the complainant's Indian operations. This domain was also registered in bad faith, and the complainant received control of it. Under URDP Para 4(a), WIPO considers confusing similarity, legitimate interest, and bad faith in such cases.

To further comprehend the complexities inherent in dispute settlement under the policy, the case of *Red Bull GmbH v. Unasi Management Inc*³³ Red Bull alleged that Unasi's domain, www.redbull.com, deceptively imitated Red Bull's brand to mislead users. Unasi's site, displaying links to competing energy drinks, caused confusion due to its similarity to Red Bull's trademark, especially with only the "www" prefix as a distinction. Red Bull argued that Unasi was exploiting its brand reputation for profit. The WIPO panel concluded that the domain name had "deceptive similarity," that Unasi held no legitimate interest, and that the registration was in "bad faith." The panel ruled in favor of Red Bull, ordering domain transfer.

5.4 Complaint Procedure

Any person or organisation may start an administrative proceeding by submitting a complaint to any ICANN-approved Provider in

³² Case No. D2000-0076, available at <http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0076.html> (last visited on February 10, 2025).

³³ *Bull GmbH v. Unasi Management Inc.* 2005 (31) PTC 90 (WIPO).

accordance with the policy and guidelines. However, the ability of providers to take complaints may be temporarily limited owing to capacity restrictions or other factors. In that case, the Provider will reject the complaint and forward it to another Provider.³⁴

Except for annexes, the complaint must be presented in physical copy and electronically, and it must include the following, amongst other things:

- a) Request that the complaint be submitted for decision in accordance with the UDRP and its Rules;
- b) Provide the complainant's or his authorised representative's complete address. The complaint of the complainant won't be declared invalid for failing to provide the Respondent's (Registered Name Holder) name and all additional pertinent contact details needed by Section 3 of the UDRP Rules if the Respondent's contact details are not available in registration data or not otherwise known to the complainant or is publicly accessible in RDDS. In this situation, the complainant may submit a Doe complaint. Upon receipt of a "Doe" complaint, the Provider shall give the pertinent contact information of the Registered Name Holder;³⁵
- c) Indicate preferred method of communication;
- d) Provide whether the complainant wants to resolve the dispute by a single- or three-member panel and in case three-member panel

³⁴ See Rule 3(a) of Rules for UDRP.

³⁵ In May 2018, the European Union's General Data Protection Regulation (GDPR) went into effect. This resulted in temporary changes to the UDRP, as a registrant's registration data are no longer available in registration data directory services for a significant number of registrations affected by the regulation. On 17 May 2018, the ICANN Board approved the Temporary Specification for gTLD Registration Data ("Temp Spec"), which became effective 25 May 2018. "Appendix E: Uniform Domain Name Dispute Resolution Policy" in the Temp Spec contains supplemental requirements for the Rules for UDRP. For Complainants filing a complaint on or after 25 May 2018,

<https://itp.cdn.icann.org/en/files/consensus-policy/udrp-policy-status-report-03-03-2022-03-03-2022-en.pdf> (last visited on February 10, 2025).

is chosen then provide the name and addresses of three persons among the ICANN'S approved list who will act as panellists.;³⁶

- e) Provide with the Respondent's complete address;³⁷
- f) Identify the registrar of domain name and specify the domain name subject complaint;
- g) List the trademark(s) or service mark(s) that are the subject of the complaint and describe the goods or services, if any, that each mark is currently associated with or that the complainant anticipates using in the future.³⁸

The complainant must provide details in his complaint regarding the following:

- (a) How the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (b) Why the Respondent (holder of the domain name) should be considered to have no rights or legitimate interests in respect of the domain name(s) that are the subject of the complaint;
- (c) Why the domain names should be considered to have been registered and used; and
- (d) The complainant must state the remedies he is seeking in his complaint, as well as any other legal processes that have been started or ended in connection with or connected to any of the domain name(s) that are the subject of the complaint. The complaint may apply to more than one domain name, as long as the domain names are all registered by the same person.

After verifying that the complaint complies with the UDRP and its regulations, the Provider must submit it to the Respondent within three calendar days of receiving the fees that the complainant must pay. If he finds any administrative errors in the complaint, he must immediately inform both the complainant and the respondent. If the complainant does not resolve these deficiencies within 5 calendar days, the complaint will be deemed withdrawn, without affecting the complainant's ability to file a subsequent complaint.³⁹

³⁶Panellist means an individual appointed by provider to be a member of a panel Rule I of Rules for UDRP.

³⁷ Respondent means the holder of a domain name registration against which a complaint is initiated. Rule 1 of Rules for UDRP.

³⁸ See Rule 3 of Rules of UDRP.

³⁹ Rule 4 also see Graham J. H. Smith, *Internet Law and Regulations*, 2nd Ed. 1999, p. 47.

The Provider is in charge of notifying the Respondent of the complaint and using reasonably accessible channels designed to provide the Respondent genuine notice. However, if the Provider receives true notification or takes the necessary steps to do so, he is released from this responsibility⁴⁰.

The administrative proceeding will begin on the day the Provider completes his obligation to deliver the complaint to the Respondent. The Provider must give early notice of the administrative proceeding's start date to the complaint, respondent, affected registrar(s), and ICANN.⁴¹

The Respondent shall deliver a response to the Provider in hard copy (save for annexes), in electronic form, within twenty (20) days of the date of the commencement of the action.⁴² The response must directly respond to the allegations and statements made in the complaint, as well as provide Respondent's grounds for claiming ownership of the disputed domain name.⁴³ The response should also provide the Respondent's complete address, as well as the address of any Domain Name Disputes and Trademark Law representative authorised to represent the Respondent in the administrative procedure⁴⁴, as well as the Respondent's preferred form of communication.⁴⁵

If the complainant has chosen a single-member panel to hear the complaint, but the Respondent prefers his case to be heard by a three-member panel, he must inform the Provider of his decision.⁴⁶ Anyone electing a three-member Panel, whether a complainant or a respondent, should offer the names and contact information for three applicants to serve as Panelists.⁴⁷

The respondent is required to pay one-half of the relevant fees for a three-member panel as specified in the Providers Supplementary Rules where the complainant seeks a single-member panel to decide the dispute while the respondent requests a panel of three. If this

⁴⁰Rule 2 of Rules of UDRP.

⁴¹ Rule 4(C) of Rules of UDRP.

⁴² Rule 5(a) of Rules of UDRP.

⁴³ Rule 5(a) of Rules of UDRP.

⁴⁴ Rule 5(a) (ii) of Rules of UDRP.

⁴⁵ Rule 5(a) (iii) of Rules of UDRP.

⁴⁶ Rule 5(a) (iv) of Rules of UDRP.

⁴⁷ Rule 5(a) (v) of Rules of UDRP.

payment is not made in conjunction with the filing of the answer to the Providers, a single-member Panel will adjudicate the dispute.⁴⁸

The Respondent may ask the Provider to extend the time for filing the response under unusual circumstances. The Provider must authorise the provision before the parties can agree to an extension in writing. If the Respondent does not submit his answer, the Panel will settle the subject on the basis of the complaint.⁴⁹

(i) Rights of a Domain Name Holder

If it is determined that the evidence provided by the domain name holder in response to the complainant's allegations is relevant to the dispute, it will be considered acceptable. However, if the Panel determines that the domain name holder has rights and legitimate interests in any of the following circumstances, in particular but not exclusively, and on the basis of all available evidence:

- a) That the registrant utilised or made clear plans to use the domain name or a name that is similar to the domain name in conjunction with a legitimate offer to sell goods or services prior to obtaining notice of the dispute;
- b) Despite not having any rights to a trademark or service mark, the registrant (whether an individual, corporation, or other organisation) is well-known for his affiliation with the disputed domain name; or
- c) That the registrant is making a legitimate non-commercial or fair use of the domain name, without intent to deceive consumers or tarnish the trademark or service mark at issue.⁵⁰

(ii) Composition and Powers of UDRP Panel

UDRP cases are decided by panels comprising experts in intellectual property and internet law. This ensures that the decision-makers possess the requisite knowledge to handle complex trademark and domain name issues. The Provider must maintain and publicly share a list of Panelists' qualifications. The parties will select Panelists from this list. If neither the complainant nor the respondent requests a three-member panel, the Provider must appoint a single Panelist within five calendar days of receiving the respondent's response, with the complainant covering the full cost of the one-member panel.

⁴⁸ Rule 5(c) of Rules of UDRP.

⁴⁹ Rule 5(e) of Rules of UDRP.

⁵⁰ See UDRP Para 4(c).

If the respondent opts for a three-member Panel, the complainant must submit three Panelist candidates to the Provider within five calendar days after receiving the response. The Provider will attempt to select one Panelist from each party's list. If the selected Panelists cannot be contacted within five days, the Provider will appoint a Panelist from its list. The complainant pays for the full cost of a three-member Panel unless the respondent also selects one. In rare cases (e.g., in-person hearings), the Provider may charge additional fees. The Provider will not proceed with the complaint until the complainant's initial fee is received within 10 calendar days. If not, the complaint will be withdrawn. The Provider will notify the parties of the chosen Panelists and the decision deadline, unless exceptional circumstances arise.

Any concerns regarding a Panelist's objectivity or independence must be reported before their appointment. The Provider must remain impartial and independent. If new concerns arise during the process, the Provider may replace the Panelist.

Unilateral communication with the Panel is prohibited; all communication must go through the Provider's case administrator. In exceptional cases, the Panel may extend deadlines or combine related domain name disputes. There will be no in-person hearings unless the Panel determines one is necessary in extraordinary circumstances.

If a party fails to comply with any deadlines, the Panel may proceed with the case and draw appropriate inferences from non-compliance. The administrative proceeding will be conducted in the language of the Registration Agreement unless otherwise agreed or specified. The Panel may also require translations of documents into the proceeding's language.

(iii) Remedies

All domain name disputes, regardless of their nature, are not covered by the UDRP, and the available remedies are likewise constrained. The complainant has two options for redress:

- (1) Domain name in issue deletion; and
- (2) Transfer of the disputed domain name to the complainant.⁵¹

The Panelists do not have powers to grant compensation or award or costs.

⁵¹Paragraph 21 of UDRP.

(iv) Panel Decision Enforcement Process

The complaint will be resolved by the Panel using the testimony and required documents in line with the policy, its laws, and any other applicable rules and legal precepts.⁵² Except in rare situations, the Panel must send its decision on the complaint to the Provider within fourteen days after its appointment.⁵³ The decision must be in writing, and it must include the reasons for the decision, as well as the date it was made and the names of the Panelists.⁵⁴ When a three-member Panel is formed, the Panel's decision is made by a majority of the members.⁵⁵

If the Panel determines that the complaint does not fall within the scope of the policy, it will so express in its ruling. The Panel shall state in its ruling that the complaint was lodged in bad faith and constitutes an abuse of the administrative proceeding,⁵⁶ if it determines after reviewing the submissions that it was made in an effort to harass the domain name holder or to engage in reverse domain name hijacking.⁵⁷ Within three calendar days of obtaining the Panel's decision, the Provider must send the whole decision to all parties, including the relevant Registrar(s) and ICANN. Each party, the Provider, and ICANN shall receive early notification of the date on which the decision will be implemented in compliance with the policy from the impacted Registrar(s).⁵⁸

Unless the Panel decides to omit portions of its decision in an extraordinary scenario, the Provider must publish the whole decision along with the date of implementation on an easily accessible website.⁵⁹ Any decision that determines whether a complaint was brought in bad faith must, in any case, make that section public.⁶⁰

⁵² Rule 15(a) of Rules of UDRP.

⁵³ Rule 15(b) of Rules of UDRP.

⁵⁴ Rule 15(d) of Rules of UDRP.

⁵⁵ Rule 14(a) of Rules of UDRP.

⁵⁶ Rule 15(e) of Rules of UDRP.

⁵⁷ Reverse Domain Name Hijacking means using the policy in bad faith to attempt to deprive a registered domain-name holder of a domain name see Rule 1 of Rules of UDRP.

⁵⁸ Rule 16(a) of Rules of UDRP.

⁵⁹ Paragraph 2(J) of UDRP.

⁶⁰ Rule 16(b) of Rules of UDRP.

The Panel will stop the administrative process if the parties come to an agreement before the Panel renders its decision, unless a party has good cause to protest within the Panel's allotted time.⁶¹ Unless a party provides legitimate grounds for objection within a window of time set by the Panel, the Panel will end the administrative process if it becomes superfluous or impossible to continue for any reason prior to the Panel's determination.⁶²

(v) Court Proceedings (second bite of apple)

The complainant or respondent may take the dispute before or after the UDRP's required administrative procedure to a court with appropriate jurisdiction for independent adjudication.⁶³

If any such judicial procedures have been filed, the Panel will have the authority to decide whether the administrative proceeding should be suspended or terminated, or if it should be continued for a ruling.⁶⁴

During the pendency of an administrative case, the party bringing legal action must quickly notify the Panel and the provider of its decision.⁶⁵

If the Panel finds that the domain name in question should be cancelled or transferred, the Registrar⁶⁶ must wait ten business days after being notified of the Panel's decision by the appropriate Provider before acting on it. Unless Respondent submits official documentation (such as a copy of a complaint, file stamped by the (clerk of the court) indicating that the law suit has been filed against the complainant in a court of mutual jurisdiction⁶⁷ during that ten-business day period, the Registrar will implement that decision.⁶⁸

⁶¹ Rule 17(a) of Rules of UDRP.

⁶² Rule 17(b) of Rules of UDRP.

⁶³ Paragraph 4(k) of UDRP.

⁶⁴ Rule 18(a) of Rules of UDRP.

⁶⁵ Rule 18(b) of Rules of UDRP.

⁶⁶ Registrar means the entity with which the Respondent has registered a domain name that is the subject of the complaint. See Rule 1.

⁶⁷ Mutual Jurisdiction means a court Jurisdiction at the location of either (a) the principal Office of the Registrar (provided the domain name holder has submitted in its Registration Agreement to that Jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name) or (b) the domain name holder's address as shown for the registration of the domain name in Registrar's who is database at the time the complaint is submitted to the provider, See Rule 1.

⁶⁸ Paragraph 4(k) of UDRP.

The Panel's decision will not be implemented after receiving such official documentation, and no further action will be taken until either (a) the Registrar has received satisfactory evidence that the matter has been resolved by the parties, (b) satisfactory evidence has been received indicating that the lawsuit has been dismissed or withdrawn, (c) a copy of an order from such court discussing the lawsuit or stating that the registrant has no right to file has been produced.⁶⁹

(vi) Ban on Transfers during a Dispute

Unless the party to whom the domain name registration is being transferred agrees in writing to be bound by the court's or arbitrator's decision, the registrant may not transfer his domain name registration to another holder (a) while a pending administrative proceeding under the UDRP is ongoing, or for a period of fifteen business days after such proceeding is finished; or (b) while a pending court proceeding or arbitration regarding the disputed domain name has been commenced. The Registrar may terminate any domain name registration transfer "to another holder" that is conducted in contravention of the UDRP.⁷⁰

Similarly, during a UDRP administrative procedure or for fifteen working days after the completion of one, the registrant may not transfer domain name registration to another Registrar. The registrant may transfer control of his domain name registration to another Registrar while a court case or arbitration is underway, provided that the disputed domain name is still subject to the measures taken against the registrant in accordance with the terms of the policy.⁷¹

(vi) Policy Modifications

The Registrars maintain the right to modify the policy at any time with ICANN's approval. Prior to going into effect, the revised policy will be accessible at URL for at least thirty days. The policy in effect at the time a complaint is made to the Provider governs the situation. No matter when the disagreement arose—before, during, or after the policy change's effective date—any policy change will be binding on the registrant. The sole course of action for a registrant who objects to

⁶⁹ Paragraph 4(k) of UDRP.

⁷⁰ Paragraph 8(a) of UDRP.

⁷¹ Paragraph 8(b) of UDRP.

the policy change is to terminate the registration of his domain name and give up any claims to the registration fee he paid.⁷²

It is not only worldwide in character, but also national, so there is no danger of nations retaliating against unjust or oppressive national law produced in another country. ICANN's policy assesses and balances the rights and interests of all parties.⁷³

6. UDRP Limitations

The UDRP undoubtedly contributes significantly to the out-of-court process that may be utilised globally to settle domain name disputes. The answer to the issue of whether the method is as strict and effective as it should be is difficult to give. The UDRP currently contains the following problems, which may be distinguished:

(i) Discrimination against trademark owners

The UDRP has gained tremendous popularity among trademark owners. However, several experts and registrants have had issues with the policy. This is due to the fact that, even though the Policy has generally been executed correctly, all three of its essential components have occasionally been misunderstood, misread, or ignored. Some judgements have been made based on arguments that are blatantly contrary to the text requirements. In majority of cases, the policy was applied incorrectly, favoring the complainant. The gripe sites are the clearest illustration of the first element of the policy being eroded.

*Wal-Mart Stores Inc. Walsucks*⁷⁴ a case regarding the domain name www.walmartcanadasucks.com, defined the basic approach to grip sites. Despite the fact that “users, including potential customers of complainant, are unlikely to conclude that complainant is the sponsor of the identified websites,” the court found that “users, including potential customers of complainant, are unlikely to conclude that complainant is the sponsor of the identified websites.” The panel found the first element of a UDRP claim, confusing similarity, on the surprising assumption that “such users are likely to opt to access the sites, if only to satiate their curiosity.” This rationale is erroneous,

⁷² Policy Paragraph 9.

⁷³ M. Scott Donahey and Ryan Shiibert *World Wrestling Federation Entertainment Inc v. Michael Bosman: A Legal-Body Slam for Cybersquatters on the web, Computer and High Tech*. LJ 16(2000) at 427.

⁷⁴(2000) WIPO Case No.D2000-0477.

because it also extends trademark holders' rights to uses that are not confusingly similar.

Some critics even contend that by giving complainants the option of provider and covering Panelists' fees⁷⁵ Panelists will have a strong incentive to develop a reputation for rendering decisions that are favourable to complainants. It's important to note that providers offer statistics on win/loss records, which act as an indirect form of advertising to trademark owners looking to choose the most complainant-friendly dispute resolution firm.

(ii) Vague Definition

The UDRP was created to offer a standardised process for resolving domain name disputes. Given the multiplicity of current trademark rules and conceptions, it can be difficult to establish uniform standards when the essential phrases are ambiguous and unfamiliar, possibly on purpose. These lines have been read in a number of recorded rulings by different panels in ways that are sharply at conflict with one another. Due to this, even after thousands of judgments, domain name registrants are still uncertain as to whether usage scenarios fall within the categories of "rights or reasonable interests" and "bad faith." Both sides have cited the regulations' ambiguity to support their respective claims.

How extensively the term "usage" can be understood in the context of "bad faith" is one unresolved issue. Despite in absence of any additional overt activity, the tribunal in *Telstra Corporation Limited v. Nuclear marshmallows*,⁷⁶ concluded that in some circumstances, registration may be sufficient to convey bad faith. But in *Loblaws Inc.*

⁷⁵ In single-panellist cases, respondents may elect to have a three-person panel, but as they then have to split the (increased) costs with the complainant, few do so and less than 10 of the decisions are made by three-person panel. M. Geist, Fair Com? 2002 <http://aixl.uottawalca/~geist/geistudrp.pdf>. (last visited on February 10, 2025).

⁷⁶(telstra.org) WIPO Case No.D2000-0003 (commenced Jan. 12, 2000), <http://arbiter.wipo.int/domains/decisions/html/d2000-0003.html>. (The complainant was telstra Corporation Limited, the largest company listed on the Australian stock exchange, and the respondent was Nuclear Marshmallows, an unregistered business name of an unidentifiable business entity with an Australian address).

v. Yogen International,⁷⁷ the respondent was permitted to preserve the name after the panel determined that inactive use did not constitute sufficient proof of “bad faith.” Although it agreed that the domain name may have been registered in bad intent, it decided that the appearance of a standard “under construction” page did not satisfy the necessary proof of bad faith usage.⁷⁸

(iii) Appeal to Courts

The ten-day deadline effectively suggests that those registrants who had legal representation at the initial proceedings will have the opportunity to do so, and it is debatable whether they will have any cause of action. A panel’s decision may only be appealed to a court in certain circumstances (although the ACPA specifically allows for such an action in the United States). The right to ask for judicial review has occasionally, but regularly, been used by domain name registrants. Domain name registrants have occasionally, but frequently, exercised their right to request judicial review. The empirical data shows that just 73 of the over 7,324 UDRP judgements have been appealed in a municipal court.⁷⁹

(iv) Generic Names

Due to their extensive use and the intention to keep the word relevant in a variety of contexts, generic phrases are typically not protected by trademark law. The generic term is often viewed as being in the public domain, despite the fact that it can be coupled with another word or phrase to create a trademark. Generic terms are typically allowed when registering domain names, and in the event of a disagreement, the person who registered the word first is given preference over the

⁷⁷presidentschoicesocks.com, eResolution Case No.AF-0164 (commenced Apr. 3, 2000), <http://www.eresolution.ca/services/dand/decisions/0164.html>. (last visited on February 10, 2025).

⁷⁸The panel distinguished its opinion from *Telstra* in that the complainant did not deliberately conceal contact information or register the complainant’s actual mark (“President’s Choice” as opposed to “President’s Choice Socks”)

⁷⁹ Jones P, *The UDRP-Court Challenge Database (2002) UDRPlaw.net*, available at <http://www.udrplaw.net/udrpappeals.html> (last visited on February 13, 2025).

rest. In *CRS Technology Corp v CondenetInc*⁸⁰ (concierge.com), the panel reiterated this logic, holding that in situations where the domain name is a generic word, the first individual or company to register the domain name should triumph.

(v) Procedure

Despite being lauded as one of its benefits, the UDRP's condensed structure might not be appropriate for cases that are more intricate and include several claims and factual allegations. In-person hearings, including teleconferences, videoconferences, and online conferences, are frequently prohibited by administrative panels. In the arbitration procedure, there is no witness, cross-examination, briefing, or discussion, and the only power of discovery available is the opportunity to ask for further documents. Rebuttals are subject to the Panelists' discretion, which is constrained. Facts like trademark rights may be only asserted under the UDRP because it does not have a process for evidence assessment. Although the document does not need to be certified, photocopies of trademark certificates, advertisement copies, and letterheads are frequently provided as evidence to a complaint. When the plaintiff has a common-law mark but no registration to present, the situation becomes substantially more challenging. Despite the fact that many Panelists lack any special experience in trademark law, the panel is frequently asked to decide whether or not contested trademark rights exist.

The panel in *Document Technologies Inc v International Electronic Communications Inc*⁸¹ (htmllease.com) stated that UDRP hearings had a limited capacity. The panel responded to the complainant's contention that cross-examination of the respondent's evidence would establish bad faith registration and use, saying that such a case should be resolved in court such as a United States Court, that allows for a more thorough and ruthless search for the truth. Given the paucity of discovery and, in the regular course, the lack of live testimony, this hearing is not conducive to such credibility

⁸⁰ *CRS Technology Corp v. CondenetInc (concierge.com)*, Arb. Fourm Case No. FA0093547 (commenced Feb. 3, 2000).

⁸¹ *Document Technologies Inc v. International Electronic Communications Inc (htmllease.com)* WIPOCase No. D2000-270 (commenced April 17, 2000).

determinations.” The system is difficult to evaluate due to the UDRP’s weak evidence requirements.

(vi) Choice of the Law

The UDRP offers little guidance as to which jurisdiction’s laws should take precedence when parties involved are from different countries with contradictory laws. According to section 15(a):

“A panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the policy, rules, and any rules and principles of law that it deems applicable”.

Since various criteria are imposed by national trademark laws for purposes like parody and criticism, Panelists may be forced to weigh the interests and laws of two distinct nations. Numerous instances highlight the ambiguity of the choice of law issue.

Panelists dismissed both parties’ jurisdictional laws in *Tourism and Corporate Automation Ltd v TSI Ltd*.⁸² (tourplan.com). A New Zealand complainant with offices in London disputed an Australian citizen’s registration in Australia.

It was stated by a US panel member that “the UDRP does not specify any mandatory body of law to follow in making a decision therefore I determine that it is not feasible for an arbitrator or panel to be familiar with all bodies of trademark and unfair trade law in all countries reached by the Internet, and that it is therefore sufficient for this proceeding that I am reasonably familiar with US trademark law, and that I would therefore apply US law”.

(vii) Solutions to the Problem

If panels were given less discretion, many of the UDRP’s current problems might be resolved, which could be done if the policy was made clearer. The UDRP should be revised to make clear its position on bad faith, grievance sites, geographical indicators and personal names (which are beyond the policy’s purview), as well as the fact that criticism is a legitimate interest (that it is a separate element that the complainant must prove). Future issues, notably inconsistent judgements, may be avoided if an appeal level was added to the system. Inconsistencies in interpretation may be promptly remedied if an appeal panel’s decisions were to be considered binding

⁸²Tourism and Corporate Automation Ltd v. TSI Ltd (tourplan.com) AF-0096.

precedent by subsequent panels. The idea of an appeal level was initially rejected as unnecessary due to the availability of appeal to Courts, and too complicated for the streamlined procedure.⁸³ However, the appeal to national Courts option has proven ineffective, and an appeal level would not greatly complicate the process if it were kept to a similar timescale as the initial procedure,⁸⁴ and if appeals were limited to resolving inconsistencies and questions of interpretation.⁸⁵ Even with an internal appeals system, the external constraints of appeals to national courts need to be made more practical. The decision of the panel could still take effect within 10 days, unless the registrant notifies the provider of his intention to bring a Court action. The registrant could then have perhaps 30 days to file in Court. The power of providers to control the allocation of cases to particular Panelists should be eliminated. Instead, each provider should be made to operate a 'cab-rank' rule, where Panelists are allocated cases in a certain order, subject to availability and conflicts of interest.⁸⁶ This would require a certain amount of policing by ICANN, but would not be time-consuming, requiring a simple check of published decisions to ensure that all Panelists were here in an approximately the same number of cases.

7. Conclusion

UDRP performs an important function to resolve the disputes pertaining to Domain names in an out of court Proceedings that can be implemented on international basis. But there are certain flaws in the present form of the policy raising the questions about the fairness

⁸³ WIPO, *The Management of Internet Names and Address: Intellectual Property Issues*, Final Report of WIPO Internet Domain Names Process (1999). Available at <http://wipo2.wipoint/process1/report/finalreport.html> (last visited on February 10, 2025).

⁸⁴ Gey P, *Bad Faith Under ICANN's UDRP*, *European Intellectual Property Review*, 23, 2001, 507. (The author suggests that an appeal would at 2 months at most).

⁸⁵ See Bernstein D, *Domain Name Dispute Resolution: A Model for the Future?* 2000 <http://arbiter.weipo.int/events/conferences/2000/presentations/vernstein/doc.html> (last visited on February 10, 2025).

⁸⁶ See Nominet.uk. *The Dispute Resolution Service*, (2002).

and effectiveness of its procedure as it is biased in favor of trademark holders. It creates an enormous potential reverse Domain name hijacking by threatening the domain name registrants to surrender the domain name thereby threatening registrants to surrender domain names. It provides little guidance as to which law should prevail when parties belong to different jurisdictions. It provides minimum evidentiary requirement for the proceedings, thereby rendering the proceedings difficult to evaluate. It fails to protect fundamental free speech interests including parody and criticism of corporations and its key terms are both vague and unfamiliar.

There have been efforts by the domain name registrants to evolve their own dispute resolution mechanism which has come as a significant development. However, they being formulated on similar lines of UDRP are also not free from loopholes. Moreover, the multiplication of dispute resolution forms and growing number of mechanisms is also a concern for future ahead. Although the UDRP has short comings, nevertheless it has done a commendable job.

8. Suggestions

The UDRP is working effectively on a whole but with the introduction of new Top-Level Domains, the litigation has increased and the chances of potential explosion of disputes are expected if personal domain names (.me extension) get introduced. So, it is suggested that dispute resolution system need to be robust to meet these challenges and it is the need of the hour to incorporate following changes in Uniform Dispute Resolution Policy:

- a) UDRP provides minimum evidentiary requirement for proceedings and gives more discretion to Panelists thereby rendering system difficult to evaluate. It is, therefore, suggested that UDRP shall provide certain guidelines for evidentiary documentation especially for common law mark owners.
- b) UDRP provides little guidance as to which law should prevail when two parties are from different jurisdictions. It is suggested that choice of law provision be made in UDRP to guide disputes among complaints and respondents of diverse jurisdictions.
- c) UDRP's key terms are both vague and unfamiliar. It is therefore suggested that more precise definitions and more examples for the terms like bad faith and legitimate interests be provided.

- d) The UDRP does not provide the reasons for the refusal of cases by providers, so proper guidelines be provided for refusal of cases by these dispute resolution providers.
- e) The remedies under UDRP are limited to cancellation and transfer of disputed domain name. It is suggested that Panelists be given power to grant compensation or award costs so that there will be a fear in the minds of cyber squatters and other infringers of losing both domain name and money, if they indulge in abusive registrations.
- f) Alternate Dispute Resolution mechanism to be incorporated

Another area of concern is the growing casual approach towards the traditional means of dispute settlement by ADR. Since UDRP and other domain name dispute resolution forums take maximum cases with bad faith registration, most of the other problems are not addressed by them. The researcher suggests that possible solutions can be arrived by submitting the disputes to non-adversarial means of ADR like negotiation, mediation and conciliation. Having said that, the researcher does not in any case advocate for substitution of current system by ADR. It is recommended that if bad faith registrations are dealt by UDRP, good faith and honest disputes may be referred to ADR and mechanisms like negotiation, mediation and conciliation needs to be popularized.



Emergence of Robot-Assisted Surgery and the Evolving Legal Landscape in India

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Abstract

The emergence of robot-assisted surgery has brought about significant advancements in surgical techniques and improved patient outcomes. This technology, however, also raises several legal, ethical, and public policy concerns that must be addressed in order to ensure its responsible and equitable development and use in India. This article provides an overview of the current state of robot-assisted surgery in India, the legal framework governing medical devices, and the various legal and ethical issues surrounding the technology, including informed consent, liability, intellectual property rights, and accessibility. The legal framework governing medical devices in India primarily consists of the Medical Device Rules, 2017, and the Drugs and Cosmetics Act, 1940. These regulations, although providing a foundation for the regulation of robotic surgical systems, must be updated and expanded to accommodate the unique challenges posed by this technology. Key legal issues include obtaining informed consent from patients, determining liability in cases of medical malpractice, and protecting intellectual property rights. Ethical considerations and public policy concerns include the accessibility and affordability of robot-assisted surgery, training and certification of surgeons, the impact on traditional surgical practices, and balancing patient safety with medical innovation. To address these concerns, this article proposes a series of legal reforms and recommendations. By examining international perspectives and best practices from the United States and the European Union, India can draw valuable insights to inform the development of its legal framework for robot-assisted surgery.

Keywords: Robot-assisted surgery, Technology, Ethics, Liability, Medical Devices

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1. Introduction

In recent years, the rapid advancements in technology have revolutionized various sectors, including the medical field. One such notable development is the emergence of robot-assisted surgery, which has brought a paradigm shift in the way surgical procedures are performed. Robot-assisted surgery involves the use of computer-controlled robots to assist surgeons in performing intricate surgical procedures with high precision, dexterity, and control. Robotic surgery assists doctors in performing complex operations and procedures with accuracy and precision. Robotic surgery also increases the flexibility and control of the procedures, which is difficult to achieve in traditional surgical procedures. Sometimes, this robotic surgery is coupled with conventional surgical procedures as per the convenience and requirements of the case. The Da Vinci Surgical System, introduced by Intuitive Surgical in 2000, is one of the most well-known robotic surgical systems that has gained widespread acceptance worldwide.¹

Despite its increasing prominence in today's globe, artificial intelligence in India's healthcare industry is still in its infancy. The major force behind the development of new surgical technology at the moment is robotic surgical instruments. New disorders are continually being discovered in healthcare, and the therapeutic approach is gradually developing. However, it comes with dangers and terrible consequences that might perhaps cost more lives than they save. According to Article 21 of the Indian Constitution, the Supreme Court of India determined that protecting life is a basic right. Additionally, the government authorised the use of robotic equipment that are prone to malfunction and the use of these gadgets that were obtained illegally in surgical procedures. By failing to enact required rules to control robotic device accidents, the government has subtly infringed the patient's right to protection. In the modern world, people are so reliant on technology that it has permeated every aspect of their decision-making. Similar to how few surgeons rely on robotic tools that encourage major errors threatening patient lives.

¹ Available at: <https://www.uchealth.com/services/robotic-surgery/patient-information/davinci-surgical-system/> (last visited on March 10,2023).

2. Development and Advancements in Robot-Assisted Surgery

The concept of robotic surgery dates back to the late 20th century, with the first robot-assisted surgical procedure performed in 1985 using the PUMA 560 robotic system. The field of robot-assisted surgery has since witnessed several advancements, including the development of the AESOP robotic system in 1994, the ZEUS Surgical System in 1998,² and the Da Vinci Surgical System in 2000. Surgeons can use robotic surgery to improve precision, reduce blood loss, and alleviate patient suffering.³ Robotic surgery reduces the risk of tissue damage by allowing the surgeon to do the procedure from a distance and using reduced gripping forces made possible by tactile feedback.⁴ Robots with AI capabilities can assist in minimizing surgeon variances that can impair patient recovery.

There are various robotic surgical systems available in the market, including:

- *Da Vinci Surgical System*: A multi-armed, teleoperated surgical system used for a wide range of surgical procedures, including urologic, gynecologic, and general surgeries.
- *Senhance Surgical System*: A laparoscopic surgical system that employs eye-tracking technology to control the movement of instruments.⁵
- *Mako Robotic-Arm Assisted Surgery*: A platform specifically designed for orthopedic procedures, such as joint replacement surgeries.⁶

Robot-assisted surgery offers numerous advantages over traditional surgical methods, such as:

² Available at: <https://thesurgicalclinics.com/history-of-robot-assisted-surgery/> (last visited on March 10,2023).

³ K. Kakar , *AI trends that are disrupting healthcare industry*, available at: <https://insights.daffodilsw.com/blog/4-ai-trends-that-are-disrupting-healthcare-industry> (last visited on March 10,2023).

⁴ CR Wottawa, B Genovese, BN Nowroozi, SD Hart, JW Bisley, WS Grundfest, EP Dutson, “*Evaluating tactile feedback in robotic surgery for potential clinical application using an animal model*” 30(8) *Surgical Endoscopy* 3198-3209 (2016).

⁵ Available at: <https://bowa-medical.co.uk/senhance-surgical-system/> (last visited on March 10,2023).

⁶ Available at: <https://www.docwirenews.com/future-of-medicine/top-5-robotic-surgery-systems/> (last visited on March 10,2023).

- a) Enhanced precision and control: Robotic surgical systems provide surgeons with greater control and accuracy, reducing the risk of human error.
- b) Minimally invasive procedures: Robot-assisted surgery allows for smaller incisions, resulting in less blood loss, reduced postoperative pain, and faster recovery times.
- c) Improved visualization: The advanced imaging capabilities of robotic systems enable better visualization of the surgical site, leading to more precise decision-making and improved surgical outcomes.

The use of robotic surgery is quickly replacing traditional methods. These innovations, like many others in medicine and surgery, have seldom been used as a consequence of randomized prospective research.⁷ There are now three major categories of surgical robotic systems. Master-slave, semi-active, and active systems. Active systems function independently (while still being controlled by the operational surgeon) and carry out predetermined objectives. Examples include the PROBOT and ROBODOC systems. With semi-active systems, surgeon input can supplement the robots' predetermined actions. The da Vinci and ZEUS platforms are precursors to formal master-slave systems, and these systems have no pre-programmed or autonomous components. They rely completely on surgical intervention. By transmitting the surgeon's hand movements to laparoscopic surgical instruments, these tools accurately recreate the surgeon's hand activity within the body.

The Indian medical landscape has evolved significantly over the past few decades, with an increasing number of hospitals and medical institutions adopting advanced surgical technologies to improve patient outcomes. Robot-assisted surgery is a relatively new phenomenon in India, with the first robotic surgical procedure performed in 2002. Since then, there has been a growing interest in and adoption of robotic surgical systems across the country.⁸ The

⁷ Tim Lane, "A short history of robotic surgery" 100(6 sup) *Ann R Coll Surg Engl.* 5-7(2018), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5956578/> (last visited on March 12,2023).

⁸ Available at: <https://www.healthcareradius.in/people/interviews/revolutionizing-robotic-surgery-in-india> (last visited on March 12,2023).

surgical community's acceptance of robotic surgery has been unprecedented. This trend has been propelled in part by the quick pace of technological advancement and in part by the relative simplicity with which laparoscopic procedures and methods may be adapted to meet new needs. "Robot-assisted surgery" has seen increased adoption in India over the past two decades. The country now has over 70 robotic surgical systems across various hospitals, with the majority being the Da Vinci Surgical System. The increasing demand for minimally invasive surgical techniques, coupled with the availability of skilled surgeons, has led to a steady growth in the popularity of robot-assisted surgery in India.

3. Legal Framework Governing Medical Devices in India

The legal framework governing medical devices in India primarily consists of the "Medical Device Rules, 2017, and the Drugs and Cosmetics Act, 1940", along with various other rules and regulations.

(a) Medical Device Rules, 2017

The Medical Device Rules, 2017, provide the regulatory framework for medical devices in India. They were notified by the Central Government under the Drugs and Cosmetics Act, 1940, and came into effect on January 1, 2018.

Classification of medical devices: Under the Medical Device Rules, medical devices are classified into four categories based on their risk levels: Class A (low risk), Class B (low-moderate risk), Class C (moderate-high risk), and Class D (high risk).⁹ Robotic surgical systems fall under Class C or Class D, depending on their intended use and associated risks.

Registration and licensing requirements: Manufacturers and importers of medical devices are required to obtain a license from the Central Licensing Authority (CLA) before they can market their products in India. The licensing process involves the submission of a comprehensive application, including details about the device, its intended use, and relevant clinical data.

⁹ N. Radhadevi, V. Balamuralidhara, T. P. Kumar, V. Ravi, "Regulatory guidelines for medical devices in India: An overview" 6(1) *Asian Journal of Pharmaceutics* 10(2012).

(b) Drugs and Cosmetics Act, 1940

The Drugs and Cosmetics Act, 1940, is the primary legislation governing the manufacture, sale, and distribution of drugs and medical devices in India. The Act has been amended several times to incorporate provisions related to medical devices.

Amendments related to medical devices: The Drugs and Cosmetics (Amendment) Act, 2005, introduced the definition of “medical device” within the scope of the legislation. Subsequent amendments have brought about changes in the regulatory framework, leading to the formulation of the Medical Device Rules, 2017.

Responsibilities of Central Licensing Authority and State Licensing Authority: The CLA is responsible for granting licenses for the manufacture and import of medical devices in India, while the State Licensing Authority (SLA) oversees the sale and distribution of such devices within the state. Both authorities play a crucial role in ensuring the quality and safety of medical devices available in the Indian market.

(c) Clinical trials and regulations

Before a medical device can be marketed in India, it must undergo clinical trials to establish its safety and efficacy. The Indian Council of Medical Research (ICMR) and the Central Drugs Standard Control Organization (CDSCO) regulate clinical trials and their approval in India. Manufacturers of robotic surgical systems must adhere to these regulations and obtain necessary approvals before they can introduce their products to the Indian market.

4. Ethical Considerations, Legal Issues and Public Policy Concerns in Robot-Assisted Surgery

The introduction of robot-assisted surgery in India raises several legal issues, including informed consent, liability in case of malpractice, and intellectual property rights. As robot-assisted surgery continues to gain popularity in India, it raises several ethical and public policy concerns that must be addressed to ensure the responsible and equitable development and use of this technology.

(a) Informed consent

Informed consent is a fundamental principle in medical ethics and jurisprudence, ensuring that patients have the autonomy to make decisions about their medical treatment after being provided with all relevant information. Surgeons using robotic surgical systems must

disclose pertinent information to their patients, including the nature and purpose of the procedure, potential risks and benefits, and available alternatives. Patients must be given the opportunity to ask questions, understand the risks and benefits associated with robot-assisted surgery, and make informed decisions about their treatment.¹⁰

(b) Liability in case of malpractice

In the event of a mishap during a robot-assisted surgical procedure, determining liability can be a complex issue, given the involvement of multiple parties, including the surgeon, the hospital, and the manufacturer of the robotic surgical system. Hospitals can be held vicariously liable for the negligence of their employees, including surgeons. In the context of robot-assisted surgery, hospitals must ensure that the surgical team is adequately trained and skilled in using the robotic system and that all necessary safety precautions are in place. Surgeons may be held liable for medical negligence if they fail to exercise the required standard of care during a robot-assisted surgical procedure. Manufacturers of robotic surgical systems may also be held liable under product liability laws if defects in the design or functioning of the device lead to harm to the patient.

(c) Intellectual property rights

The development of robotic surgical systems involves significant investment in research and development, resulting in a range of intellectual property rights, including patents and trade secrets. Manufacturers of robotic surgical systems rely on patents and trade secrets to protect their innovations and maintain a competitive edge in the market. Hospitals and surgeons using these systems must be aware of the applicable intellectual property rights and ensure compliance with licensing agreements.

(d) Data privacy and protection

Robotic surgical systems often generate and store large amounts of data, including sensitive patient information. Ensuring the privacy and security of this data is crucial to maintaining patient trust and complying with data protection regulations, such as the Information

¹⁰ Sean C. Wightman, Elizabeth A. David, Scott M. Atay, Anthony W. Kim, Peter Angelos, *"The ethics of robotic surgical systems is a conversation of informed consent"* 5 *Video-Assisted Thoracic Surgery* 24(2020). Available at: <https://vats.amegroups.com/article/view/5469/html> (last visited on March 12, 2023).

Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, and the Personal Data Protection Act, 2023.

(e) Accessibility and affordability of robot-assisted surgery

One of the primary concerns surrounding robot-assisted surgery in India is the issue of accessibility and affordability. The high cost of robotic surgical systems and the associated expenses, such as maintenance and consumables, may result in increased treatment costs, potentially limiting access to the technology for economically disadvantaged patients.

(f) Training and certification of surgeons

The successful adoption of robot-assisted surgery in India depends on the availability of skilled and trained surgeons. There is a need for standardized training programs and certification mechanisms to ensure that surgeons have the necessary expertise to perform robotic surgical procedures safely and effectively.

(g) Impact on traditional surgical practices

The introduction of robot-assisted surgery may have implications for traditional surgical practices, with concerns that the technology could potentially replace human surgeons in the long run. It is essential to strike a balance between embracing technological advancements and preserving the skills and expertise of human surgeons.

(h) Balancing patient safety and medical innovation

While robot-assisted surgery offers numerous benefits in terms of improved surgical outcomes and patient safety, it also raises concerns about potential complications and unforeseen risks associated with the technology. Policymakers must balance the need to promote medical innovation with the responsibility to protect patient safety and well-being.

Possible future advances in surgical technique brought about by robotic surgery. The delivery of standard careful care and innovative therapy in robotic surgery, however, requires specialized training and skills in addition to high quality assessment. Litigation involving robotic surgery may be difficult to resolve, despite the fact that the legal basis for professional obligation is unchanged. The producer of the robotic technology, as well as the treating physician and healthcare facility, might be sued in the case of an unfavorable outcome. When it comes to ethical considerations in robotic surgery, patient safety, technological reliability, information availability, and

privacy are of the highest importance. Additionally, the expense of robotic surgery and the absence of such equipment in the majority of public institutions may prevent the majority from taking use of the advantages that the new technology offers. Surgical robots will significantly change surgical practice, but it also offers issues in the areas of law and ethics as well as in the fields of medicine and healthcare.¹¹

5. Malfunction of the Robotic Device while Performing a Surgery

1391 injuries, 144 deaths, and 8061 instances of equipment failure were recorded by the US Food and Drug Administration. Additionally, the mechanical surgeon either spontaneously powered down mid-operation or made a mistake, according to reports from Rush University Medical Centre and the University of Illinois, resulting in two fatalities and fifty-two injuries. Overall, 10.5 percent of instances included faults such as electrical sparks that burnt patients, resulting in 193 injuries.¹²

As a developing nation, India has just lately begun to integrate technological innovation in healthcare. A failing artificial gadget finally cost an eleven-year-old victim his life in the case of *Kumar Mohammed Rafique V. Municipal Corporation*¹³ of Greater Bombay, demonstrating how poorly controlled these advancements are. When transferred to the hospital, the man, identified as Mohamed Rafiq Haji Umar, was semi-conscious after falling off a bus. The victim was reportedly suffering from a disease known as a hematoma, and at the Bombay Hospital, a Ventriculoarterial Shunt was implanted to allow the movement of cerebrospinal fluid from the cerebral ventricular

¹¹A. Mavroforou, E. Michalodimitrakis, C. Hatzitheo-Filou, & A. Giannoukas, "Legal and ethical issues in robotic surgery" 29(1) *International angiology: a journal of the International Union of Angiology* 75–79 (2010).

¹²Iain Thomson, Robot surgeons kill 144 patients, hurt 1,391, malfunction 8,061 times, available at: https://www.theregister.co.uk/2015/07/21/robot_surgery_kills_american_s/ (last visited on March 12, 2023).

¹³Available at: <https://indiankanon.org/doc/1154351/> (last visited on March 18, 2023).

system to the atrium of the heart.¹⁴ The hospital reportedly had this shunt device fixed twice before, yet they still using it. Failure of this shunt led to hydrocephalus, which increased intracranial pressure and led to fatalities. By failing to stop a device that posed a probable danger of malfunctioning, the government indirectly violated Article 21, which guaranteed the protection of life. The lives of many innocent people might be lost if these medical robotic technologies used in surgery are not thoroughly evaluated. To evaluate the performance of artificial robotic devices, the government must enact stringent legislation. By enacting such legislation, hospitals will be able to frequently monitor robotic equipment.

Illegality in the Procurement of Artificial Intelligence- Medical devices are critical because their failure can result in patient harm. Improper regulation in the acquisition of medical equipment is the unavoidable cause of such robotic device failure. However, in India, the manufacturing, marketing, and distribution of these medical devices are protected and controlled by the Drug and Cosmetic Act of 1940 & Rules 1945.¹⁵ Only fifteen devices are controlled by the government, while others might be imported from a corporation or an industry. The applicant brought the lawsuit, *Sanjay Shyamsundar Sharma vs State of Gujarat*¹⁶, to challenge the illegalities and irregularities in the acquisition of the “Robotic Assistant Surgery Instrument” at Civil Hospital, Ahmedabad. Sanjay further asked the court to go through the process of changing the equipment in issue so that the general public might benefit from the modernized instrument for knee and hip replacement surgery. Mr. Majmudar alluded to several documents relevant to the matter and demonstrated that public funds totaling eleven crore rupees were spent on bidding for the instrument. Despite the procurement of such a pricey device, just three procedures were conducted during a six to seven-year span. As a result, the instrument was brought before the Additional Director of

¹⁴Todd C Hankinson, *Ventriculoarterial Shunt Placement*, available at: <https://emedicine.medscape.com/article/1895753-overview?form=fpf>. (last visited on March 12, 2023).

¹⁵ Available at: <https://cdsa.thsti.in/medical-devices-regulations-faq/> (last visited on March 12,2023).

¹⁶ Available at: <https://www.casemine.com/judgement/in/5a9548f84a93260d852ce7c1> (last visited on March 14, 2023).

Medical Education and Research for examination. The instrument was discontinued since it did not correspond to any single brand of equipment. Many individuals may ignore these facts when they lose loved ones, assuming it was due to the severity of the patient's condition. This is one situation when such an incidence was brought to light. To promote greater safety, the government should require hospitals to notify patients not only about the technique of the operation but also about the legitimacy of the instruments used in the surgery.

Extreme Dependency on Robotic Surgery: In today's environment, people trust artificial intelligence more than they trust their own intelligence. While artificial intelligence has undoubtedly improved the efficiency and accuracy of diagnosis, it should not be used to replace the surgeon's discretion when doing surgery. Some scientists believe that artificial intelligence will augment physicians' roles.¹⁷ Here is a case of severe reliance on robotic surgery that resulted in a loss of life. In the case *Prem Kishore vs. Union of India And Ors*¹⁸, Urmila Devi underwent "Robotic Ureterolysis," a procedure done at Shri Ganga Ram Hospital to remove the ureter's fibroid. The patient's petitioner stated that during the patient's operation, the doctor accidentally damaged the external iliac artery. Rather than treating this promptly, the worried doctors allegedly applied hemoclips and sutures before continuing with the robotic surgery for a further three hours. It is alleged that the petitioner's wife experienced severe blood loss as a result of the afore-mentioned action of the involved doctors, which led to acute renal failure. Despite going into cardiac arrest twice, the patient survived. After a third cardiac arrest occurred after 30 minutes, she was subsequently pronounced dead. Due to the surgeon's excessive reliance on robotic surgery, he made a mistake by switching to open surgery later in the procedure, which resulted in severe blood loss and, ultimately, cardiac arrest. This example of medical carelessness may have been avoided by enacting rigorous rules that require physicians to undergo training and get licences

¹⁷ Abhimanyu S Ahuja, *The impact of artificial intelligence in medicine on the future role of the physician*, PeerJ. Oct 4, 2019, available at: <https://peerj.com/articles/7702/> (last visited on March 14,2023).

¹⁸ Available at: <https://indiankanon.org/doc/82071084/> (last visited on March 14,2023).

before performing procedures, especially those involving robotic technology.¹⁹

6. International Perspectives and Best Practices

In order to develop a comprehensive legal framework for robot-assisted surgery in India, it is useful to examine international perspectives and best practices from other countries where this technology is more established.

(a) United States

The United States has been at the forefront of the development and adoption of robot-assisted surgery, with the Food and Drug Administration (FDA) playing a crucial role in regulating medical devices, including robotic surgical systems.

FDA regulatory framework: The FDA classifies medical devices into three classes based on their risk levels and imposes different regulatory requirements for each class. Robotic surgical systems generally fall under Class II or Class III, which require pre-market approval or clearance before they can be marketed in the United States.

Liability and malpractice: In the United States, medical malpractice claims involving robot-assisted surgery are primarily governed by state laws. These claims often involve allegations of negligence by the surgeon, the hospital, or the manufacturer of the robotic surgical system.²⁰ Successful claims may result in compensation for the patient, including damages for pain and suffering, medical expenses, and lost wages.

(b) European Union

The European Union (EU) has a well-established regulatory framework for medical devices, including robotic surgical systems. The Medical Devices Regulation (MDR), which came into force in May 2021, governs the safety and performance of medical devices in the EU.

Medical Devices Regulation: The MDR classifies medical devices into four risk-based classes, similar to the Indian Medical Device Rules. Robotic surgical systems usually fall under Class IIb or Class III, which

¹⁹ Available at: <https://lawbhoomi.com/legal-system-and-implementation-of-artificial-intelligence-into-healthcare/> (last visited on March 14,2023).

²⁰ B. Sonny Bal, "An introduction to medical malpractice in the United States" 467(2) *Clinical Orthopaedics and Related Research* 339-347 (2009).

require a conformity assessment by a notified body before they can be placed on the EU market.²¹

Liability and malpractice: In the EU, medical malpractice claims involving robot-assisted surgery are subject to national laws of the member states. The EU's Product Liability Directive provides a framework for determining liability in cases of defective products, which can be applied to robotic surgical systems in the event of a malfunction or design defect.

By examining international perspectives and best practices, India can draw valuable insights and lessons to inform the development of its legal framework for robot-assisted surgery. Some key takeaways include:

- **Risk-based classification of medical devices:** Adopting a risk-based classification system for medical devices, as seen in the United States and the European Union, can help ensure that robotic surgical systems are subject to appropriate regulatory scrutiny and oversight.
- **Clear liability rules and dispute resolution mechanisms:** Establishing clear liability rules and specialized dispute resolution mechanisms for medical malpractice claims involving robot-assisted surgery can provide legal certainty for patients, surgeons, hospitals, and manufacturers.
- **Harmonization with international standards:** Aligning India's regulatory framework for robotic surgical systems with international standards can facilitate the global exchange of knowledge and technology, as well as promote the adoption of best practices in the field of robot-assisted surgery.

7. Conclusion and Recommendations

The emergence of robot-assisted surgery in India has brought about significant advancements in surgical techniques and improved patient outcomes. However, this technology also raises several legal and ethical issues, including informed consent, liability, intellectual property rights, and public policy concerns. Addressing these issues requires a dynamic legal framework that keeps pace with

²¹ Ksenija Vasiljeva, Bernard H van Duren, Hemant Pandit, "Changing Device Regulations in the European Union: Impact on Research, Innovation and Clinical Practice" 54(2) *Indian Journal of Orthopaedics* 123-129(2020).

technological advancements and ensures the responsible and equitable development and use of robot-assisted surgery in India. The future of robot-assisted surgery in India appears promising, with increasing adoption of the technology and growing interest in its potential applications. As the country continues to invest in the development and implementation of robotic surgical systems, it is crucial to establish a robust legal framework that balances the need for medical innovation with patient safety, ethical considerations, and public policy concerns. A dynamic legal framework is essential for fostering innovation and ensuring the responsible and equitable development and use of robot-assisted surgery in India. By addressing the various legal and ethical issues surrounding this technology and adapting to the rapidly evolving medical landscape, India can continue to make strides in improving patient outcomes and advancing the field of surgery. The following measures are required to address concerns relating to robot assisted surgery:

(a) Development of a comprehensive legal framework for robot-assisted surgery

There is a need for a comprehensive legal framework that specifically addresses the unique aspects of robot-assisted surgery. This framework should cover various aspects such as licensing, training and certification of surgeons, patient rights, data privacy, and liability issues. The existing regulations under the Medical Device Rules, 2017, and the Drugs and Cosmetics Act, 1940, can serve as a foundation for this new framework, but they must be updated and expanded to accommodate the unique challenges posed by robotic surgical systems.

(b) Strengthening patient rights and informed consent

Patient rights, particularly in the context of informed consent, must be strengthened to ensure that patients have access to all relevant information about robot-assisted surgery and can make informed decisions about their treatment. This may include the development of standardized informed consent forms for robot-assisted surgical procedures, as well as increased emphasis on patient education and awareness about the risks and benefits of the technology.

(c) Establishing clear liability rules

Liability rules in the context of robot-assisted surgery must be clarified to provide legal certainty for patients, surgeons, hospitals, and manufacturers. This may involve the development of guidelines or

regulations that clearly define the respective roles and responsibilities of each party, as well as the establishment of a specialized dispute resolution mechanism to handle cases of medical negligence involving robotic surgical systems.

(d) Addressing ethical and public policy concerns

Policymakers must actively engage with ethical and public policy concerns surrounding robot-assisted surgery, including issues of accessibility, affordability, training, and the impact on traditional surgical practices. This may involve the development of policies and initiatives that promote the equitable distribution of robotic surgical systems, as well as increased investment in training and certification programs for surgeons.



Digital Footprints and the Right to Be Forgotten: An Analysis in the Indian Context

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Abstract

The advent of the internet has brought forth a novel problem – information about individuals, including data that can be detrimental to personal interests, persists within the internet for perpetuity, and can be retrieved fairly easily, thus allowing this information to cause ‘harm’ even when the repercussions involving the same have been dealt with. To address this previously unappreciated issue, the “right to be forgotten,” a derivative of the right to privacy, has been developed and has found footholds within European and Argentine jurisprudence. Under Indian law, the right has had an interesting development. While some High Courts recognised the right by tracing its scope from the right to privacy, the enactment of the “Digital Personal Data Protection Act, 2023” lent it legislative credibility under Section 15 within the phraseology of “the right to erasure”. However, the twin sources of the right, coupled with the overarching framework of the right to free speech within Article 19(1)(a), which stands in dichotomous opposition to the right to be forgotten, complicate Indian applicability. In addition, constraints such as jurisdictional concerns due to the extra-territorial nature of data published on the internet, the development of Artificial Intelligence (AI), and the psychological phenomenon known as the ‘Streisand Effect’ pose further challenges to the development of this right within Indian jurisprudence. This necessitates a thorough analysis of the right and its scope and applicability within Indian law.

Keywords: *le droit à l’oubli, Right to be Forgotten, Right to Erasure, Data Protection, Right to Privacy*

1. Introduction

The ‘right to be forgotten’ (hereafter RTBF) is a right that has been formulated to address how digital footprints are treated in the era of the internet. Unlike previous eras, where the dissemination of

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information was limited by human memory or the extent to which printed data could traverse geographically, and was therefore subjected to the limitations posed by geographical constraints such as distance, the internet has revolutionised access to information by allowing digital footprints to persist perpetually and be accessible from any corner of the world. This implies that digitised versions of personal information continue to exist on the internet, unless removed, thereby leading to detrimental repercussions and implications to the personal interests of individuals. The RTBF seeks to address this ‘apparent’ infringement of individual privacy by hinging the existence of digital information on the ‘consent’ of the owner of that data, and balancing it with societal interests. It is a right that allows information to be ‘forgotten’, if the ‘*data principal*’ does not consent to its presence on the internet, with the caveat that it serves no societal purpose.

Globally, this right has two bastions – Europe and Argentina, with each jurisdiction taking a different approach to the right’s scope and ambit, and these have collectively and individually furthered the scope of this right across other jurisdictions. In India, the RTBF traces itself from two sources – traditionally, it was sourced by various High Courts within the country from different fountains, ranging from privacy and its facets to safeguarding a woman’s modesty, however, since the enactment of the Digital Personal Data Protection Act, 2023, the recognition of the right to ‘erasure’ within Section 15, it also has a legislative basis. However, three questions persist within Indian jurisprudence *vis-à-vis* the applicability of the RTBF – first, are the legislative and judicial recognitions bestowed upon this right consonant or divergent with each other in their scope; second, how does the RTBF reconcile with the right to free speech encapsulated within Article 19(1)(a) which also contains within itself a right to know; and third, how does the RTBF’s scope in Indian law deal with challenges stemming from queries related to jurisdictional challenges and the development of novel technologies such as Artificial Intelligence (hereafter AI). These three pressing questions need some analysis, and the scope of this paper shall be to examine them and draw relevant conclusions.

Against this backdrop, this paper shall be divided into six sections. The first section is a brief introduction to the theme and scope of the paper. The second section shall delve into the jurisprudential

developments of the RTBF in the two foremost bastions of Europe and Argentina. The third section will analyse the twin sources of the RTBF in the Indian context, as well as their scope and ambit, to explain their nature. The fourth section will examine the dichotomous position between the ‘right to know’ under Article 19(1)(a) and the RTBF, and attempt to understand whether a synergous legal position is possible under Indian law. The fifth section will address the challenges that the current legal framework has and offer relevant juristic solutions from global jurisprudence. Finally, the sixth section will summarise the arguments presented and conclude the paper.

2. Development of the Right to Be Forgotten in the Global Context: Reflections from Europe, Argentina and the USA

(a) Europe

The jurisprudential roots of the RTBF are traceable to the French concept of “*le droit à l’oubli*”, which can be translated to “right to oblivion”, and was utilized to protect the interests of both convicted criminals who had served their penal obligations and the accused who had been acquitted, from facing the loss of dignity due to materials surrounding their accusation, conviction or incarceration, thereby protecting their interests.¹ Therefore, the first bastion of this right is European jurisprudence. Associated with the right to privacy, which has been guaranteed to every individual under customary international law,² it is an important facet of extending protection to one’s data and preventing it from being accessed and misused without consent.

Within European law, the RTBF is a part and parcel of the broader “right to data protection” and without it, the former cannot be implemented. This interconnection necessitates a discussion on the development of the RTBF from data protection norms. In Europe, data protection rights trace their roots to “Resolution 509(68) of the Council of Europe in 1968”, which obligated the Council of Ministers to look at the “European Convention of Human Rights” (hereafter ECHR) and examine whether adequate protection was given to data in light of the emerging technological developments. This examination

¹ Jeffrey Rosen, “The Right to be Forgotten” 64 *Stanford Law Review Online* 90 (2012).

² Universal Declaration of Human Rights, 1946, Art. 12.

was further delegated by the Council of Ministers to the “Committee of Experts on Human Rights”, which in turn recommended the establishment of a specialist “Committee of Experts on the Protection of Privacy”, and through “Resolution 22 (1973) and 29 (1974)”, the “ground rules” for data protection about the private and public sectors respectively were covered.³ The next development took place in 1981 when the “Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data”, adopted in 1981 (hereafter 1981 Convention) was organised, with 43 out of a total of 47 members ratifying the Convention, with the Convention itself coming into force in October 1985.⁴ This aligned with the ECHR declaration that - “the right of every individual to have his private and family life as well as his home and correspondence respected.”⁵ Within a decade of the 1981 Convention, the sacrosanctity of data protection was also recognised by the United Nations, and a set of norms known as the “Guidelines for the Regulation of Computerized Personal Data Files” were adopted by the UN Human Rights Commission in 1990.⁶ Subsequently, the ideas of self-determination propounded by Niklas Luhmann,⁷ which were also instrumental in implementing the “German Information Self-Determination Law”, which created a space that shielded private individuals from interference on personal matters,⁸ later paved the way for the “European Union’s Data Protection Directive, 1995” (hereafter EUDPD, 1995).

The next major development came in the European Court of Justice’s decision in the landmark “*Google Spain v. AEPD Mario Costeja González*”,⁹ a judgment that can be deemed the *grundnorm* for the development of jurisprudence on the RTBF, and that ultimately paved

³ Chris Reed, *Computer Law* 579 (OUP, 2012).

⁴ *Id.*, at 581.

⁵ European Convention on Human Rights, 1950, Art. 08.

⁶ Adopted by the UN Commission on Human Rights, Resolution 1990/42; subsequently by the UN Economic and Social Council, Resolution 1990/38; and UN General Assembly Resolution 45/95.

⁷ Niklas Luhmann, *Social Systems* 09 (Stanford University Press, 1995).

⁸ G Hornung & C. Schnabel, “Data Protection in Germany I: The Population Census Decisions and the Right to Informational Self-Determination” 25 *Computer Law & Security Review* 85 (2009).

⁹ ECLI:EU:C:2014:317.

the way for the creation of the “General Data Protection Regulation, 2016” (hereafter GDPR, 2016). The case involved a request by the respondent to a newspaper *La Vanguardia*, to remove information that was detrimental to his interests, and following their nonchalance, he filed a complaint with the “Agencia Española de Protección de Datos”, (the primary data protection regulatory authority of Spain, hereafter referred to as AEPD) which in a 2010 decision rejected the liability of the newspaper but placed search engines under intermediary liability.¹⁰ Following this imposition of intermediary liability, an appeal was filed by Google Spain in the ECJ. The ECJ relied on Article 12 and Article 6 of the EUDPR, 1995. Article 6 places a responsibility on a ‘data controller’ to ensure that the data about an individual is accurate and up-to-date. The notion of a ‘data controller’ having obligations about the data being processed by it if said controller has any discretion over the processing of data has been accepted since the British decision of “*Data Protection Registrar v. Griffin*”.¹¹ The ECJ ultimately gave its judgment in favour of the plaintiff and directed the search engines to remove and delist data about a data subject that was irrelevant or had no significance upon a request for such delisting by the data subject. The ECJ also, however, cautioned that each request’s significance was to be determined on a case-by-case basis by the *data controller*, and directed that information may not be removed if an overriding public interest is present for the existence of such information.¹²

This was a notable development since this judgment spurned a legacy of requests for deletion or removal of information considered prejudicial within domestic jurisdictions of the EU member countries, and Google has tackled them on a case-by-case basis; for example, in Belgium, a person whose conviction was overturned on appeal had his name delinked from an article about the incident for which he was tried after requesting about the same;¹³ a request by a French priest who was convicted for possession of underage sexual imagery had his request for deletion of information about the incident denied, since the presence of such information on the internet was in the larger

¹⁰ *Ibid*, para. 17.

¹¹ Ian J. Lloyd, *Information Technology Law* 58 (OUP, 2014).

¹² *Supra* Note 09, para. 94.

¹³ Andrew Neville, “Is it a Human Right to be Forgotten? Conceptualizing the World View” 15 *Santa Clara Journal of International Law* 163 (2017).

interest of society;¹⁴ and in the United Kingdom, upon the request by a doctor to remove almost 50 URL links about a botched procedure, Google acquiesced and removed three URL links which had personal information about the doctor unconnected to the procedure, but kept up the other links.¹⁵

These developments, *inter alia*, led to the creation of the GDPR, 2018, and this Regulation is based on the belief that privacy is an inalienable tenet of modern life, which extends to the protection of personal data within the internet as well.¹⁶ Article 17 is most significant in the present discussion since it explicitly delineates the right and empowers the “*data subject*” to seek the erasure of any personal data that relates to them, and also provides for the abstention of further dissemination or circulation of such data, on the successful application of the following four criteria –

- a) The data does not have any significance about the purpose for which it was collected;
- b) The data subject, which under the GDPR regime refers to a natural person, consent on which processing of the information is based, or the spatial scope of such consent has expired;
- c) If the data subject raises objections under Article 19 of the GDPR, 2018;
- d) The mechanism for processing data is in contrariety to the provisions of the GDPR.¹⁷

Furthermore, Article 17(2) elucidates that the *data controller*¹⁸ must, if the personal data of individuals has been made public, and a direction has been given to erase the information, inform third parties which are responsible for the processing of such data that a request for removal of such data has been made by the *data subject* for the delisting or erasure of such personal data and its replication.¹⁹ This position is however rooted in controversy to some extent for it implies that the *data controller* must take all reasonable steps to identify and

¹⁴ *Ibid*, at 164.

¹⁵ *Id*.

¹⁶ Thea Kunz, *Celebrating Privacy Day: The Right to be Forgotten and Individual Privacy in the Digital Age* (2018) (Unpublished Master's Dissertation, Uppsala Universitet).

¹⁷ General Data Protection Regulation, 2016, Art. 17(1).

¹⁸ *Ibid*, Art. 4(7).

¹⁹ *Ibid*, Art. 17(2).

ensure that all third parties who possess replicated copies of such data comply with the desires of the *data subject*, and this becomes extremely difficult in a digital medium such as the internet. It must be noted that the regime and framework constituted by Article 17 of the GDPR, 2018 is an exponential development when compared to the erstwhile EUDPA, and this development is reminiscent of the definition of privacy propounded by Alan Westin, wherein he defined privacy as “*the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others*”.²⁰ It must also be noted that providing and ensuring a formal recognition to the RTBF also democratises personal data on the internet, and provides control to individuals over their data, while at the same time, protecting them from exploitation and enforcing a general regime of data privacy on the internet.²¹

(b) Argentina

After Europe, Argentina is perhaps the nation that has attempted to formulate the most robust framework on the RTBF because it has historically given recognition to the right to privacy.²² During the 1990s, Argentina incorporated an explicit provision into the Constitution empowering private individuals concerning the personal information of individuals that in case of the data being false or discriminatory, the individuals retained the right to request the “*suppression, rectification, confidentiality or updating of said data*”,²³ although an exception for news reporting by journalists has also been recognized therein.²⁴ Data privacy, including the RTBF, is today guided by the comprehensive treatise titled “Personal Data Protection Act, 2000”, and like other Argentine efforts within this domain, it also

²⁰ Alan Westin, *Privacy and Freedom* 7 (Atheneum, 1967).

²¹ Eduard Fosch Villaronga et.al., “Humans Forget, Machines Remember: Artificial Intelligence and the Right to Be Forgotten” 34 *Computer Law and Security Review* 05 (2017).

²² Edward L. Carter, “Argentina’s Right to be Forgotten” 27 *Emory International Law Review* 35 (2013).

²³ The Constitution of Argentina, 1853, Art. 43.

²⁴ *Supra* Note 21, at 37.

mirrors the European legislative treatise, which in this case is the EUDPD, 1995.²⁵

Subsequently, the “*Virginia Da Cunha v. Yahoo de Argentina S.R.L. and Google*”²⁶ judgement influenced the development of the RTBF, and this case is undoubtedly the strongest indicator of the willingness of the Argentine judiciary to invoke this right in the interests of data privacy, on the one hand, and personal dignity on the other. The brief facts constituted an Argentine entertainer’s assertion that search engines - Google and Yahoo, remove and delist specific results against her name, which were linked to sexual content and pornography. Herein, the *ratio decidendi* held that the search engines were liable for their failure to remove sensitive information from the search being made. This notion stemmed from the understanding that the algorithms employed are capable of preventing certain results from appearing by relying on sensitive keywords, thereby preventing injury, however, considering that although Google Inc. and Yahoo! were notified of the plaintiff’s desire to have information about her delisted through the initiation of proceedings in this case in the year 2006, the data in question continued to persist until the decision by the appellate court in 2010. Because of the continued existence of this data, brought forth by the inaction of concerned search engines, it became possible that the plaintiff may suffer some injury.²⁷ The lackluster behaviour exhibited by the search engines *vis-à-vis* privacy rights and data protection rights was deemed intolerable.

This case furthered the norm because in *Google Spain*, the law on the RTBF was only concerned with removing information rooted in criminal antecedents that may be detrimental to the interests of an individual, within the tenets of “*le droit à l’oubli*”, however, in *De-Cunha*, the yardstick of the right was increased to include any undesirably defamatory information, thus taking a significant step forward.

²⁵ John W. Dowdell, “An American Right to Be Forgotten” 52 *Tulsa Law Review* 324 (2017).

²⁶ AR/JUR/40066/2010.

²⁷ Julieta Andrea Grinffiel. “Don’t Shoot the Messenger: Civil Liability for ISPs after Virginia da Cunha v. Yahoo - Argentina & Google Inc” 17 *Law and Business Review of the Americas* 118 (2011).

(c) United States of America

Within the United States of America, although certain state constitutions, such as the states of Alaska, Arizona, California, Florida, Hawaii, Illinois, and Washington, among others, have provisions about informational privacy, the American Constitution lacks any explicit provision regarding the same.²⁸ In the American context, Samuel Warren and Louis Brandeis (who later went on to become a Justice in the US Supreme Court) in their seminal thesis on privacy expressed it as the “*right to be left alone*” and asserted that it should stand on a different pedestal, independent from other rights.²⁹ The primary argument that these two scholars made was that there should be legal recognition of “*the right to an inviolate personality*”,³⁰ and the idea for this came from the British common law case of “*Prince Albert v. Strange*”.³¹ The American Constitution, in the First Amendment, explicitly provides that “*the Congress shall make no law abridging the freedom of speech or of the press.*”³² Thus, the greatest obstacle to a framework centered around the RTBF comes forth in the form of the First Amendment which essentially makes any law that is in contrariety to the tenets of free speech unconstitutional.³³ Brandeis, after becoming Justice in the Supreme Court would go on to provide a dissenting opinion in favour of privacy over the constitutional First Amendment rights in “*Olmstead v. United States*”³⁴ wherein he famously quoted Chief Justice Marshall’s opinion from “*McCulloch v. Maryland*”³⁵ that “*we must never forget that it is a Constitution that we are expounding,*” thus referring to the

²⁸ Meg Leta Ambrose & Jef Ausloos, “The Right to be Forgotten Across the Pond” 3 *Journal of Information Policy* 08 (2013).

²⁹ SD Warren, LD Brandeis, “The Right to Privacy” 4 *Harvard Law Review* 196 (1890).

³⁰ Dr. J.J. Mozika, “Integrating the Right to be Forgotten in the Indian Legal Framework in Light of Experiences from the European Union” 12(1) *Indian Journal of Law and Justice* 41 (2021).

³¹ (1849) 47 ER 1302.

³² Constitution of the United States of America, 1789, 1st Amendment.

³³ Chelsea E. Carbone, “To Be or Not to Be Forgotten: Balancing the Right to Know with the Right to Privacy in the Digital” 22 *Virginia Journal of Social Policy & the Law* 555 (2015).

³⁴ 277 U.S. 438 (1928).

³⁵ 17 U.S. 316, (1819).

fact that the Constitution must be interpreted in light of developments which were unfathomable at the time of its inception to ensure a balance between the constitutional provisions and present necessities.³⁶ Nonetheless, the forces of free press and freedom of expression have almost always triumphed against privacy rights, with the most evident example perhaps being the “*Florida Star v. BIF*”³⁷ case.

One roundabout to the limitations of the First Amendment can be derived from the observations made in “*Cohen v. Cowles Media*”, wherein the American Apex Court held that contracts that promise to not reveal information of a certain kind are not violative of the First Amendment which guarantees the freedom of speech and expression in America.³⁸ If informational privacy is only bestowed a contractual nature though, and if the RTBF is traced from this position, then for securing protection under the right, the data subject must have uploaded the information himself or consented to the publication of the information,³⁹ since barring these two situations, no contractual obligation can be considered to exist.

3. Right to be Forgotten in the Indian Context

India has seen exponential growth in its digital infrastructure ever since the final decades of the 20th century, and today, it boasts the second-largest population of people who use the internet in the world.⁴⁰ Recently, the right to access the internet has been deemed a fundamental right within the context of Article 19(1)(a) of the Constitution, only subject to reasonable limitations supported by Article 19(2), according to the judgment of the Apex Court in

³⁶ *Supra* Note 26, at 328.

³⁷ 491 U.S. 524, (1989).

³⁸ 501 U.S. 663 (1991).

³⁹ Robert Kirk Walker, “Note - The Right to Be Forgotten” 64 *Hastings Law Journal* 272 (2012).

⁴⁰ Noyonika Baptista, “Koo's Multi-lingual Feature Empowers Indians to Express Themselves in Several Languages” *Republic World*, 06 October, 2021, available at: <https://www.republicworld.com/initiatives/specials/koos-multi-lingual-feature-empowers-indians-to-express-themselves-in-several-languages.html> (last visited on May 20, 2025).

“*Anuradha Bhasin v. UOI*”,⁴¹ albeit it only expounds the right in the context of Article 19(1)(a) and not as a standalone right.

However, the legal framework of cyber laws, particularly data protection and data privacy laws, has been insipid at best. The action of enacting laws for governing the internet falls within the exclusive dominion of the Union government⁴² and the “Information Technology Act, 2000” (hereafter IT Act. 2000), supplemented by a comparatively recent body of rules, the “Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011” were the only the primary legislations dealing with this domain till the year 2023 when the “Digital Personal Data Protection Act, 2023” (hereafter the DPDP Act, 2023) was passed. The primary component dealing with data protection within the IT Act, 2000, was a later amendment, under Section 43A, which stated that “*a body corporate possessing, dealing or handling any personal information in a computer resource which it owns, operates or controls*”, is liable, if on account of its negligence in maintaining reasonable security practices, any wrongful gain or loss is caused to some person. However, this was an extremely rudimentary and primitive safeguard, and also vague in its applicability due to the utilisation of unspecified terms such as ‘*wrongful gain or loss*’ being components for triggering its application. Furthermore, although the IT Rules, 2011 place some responsibility on body corporates, such as consent and security while taking and storing information respectively, neither is adequate to address the privacy concerns of the modern world.

In this backdrop, this chapter will attempt to analyse the applicability of the RTBF in the Indian context by tracing it from the right to privacy in the first part, and in the second part, it will try to assess the scope of the right in the DPDP Act, 2023.

(a) Tracing the right from the Right to Privacy under Article 21

The right to privacy within the Indian legal system has been a contentious issue. Neither the Constitution nor any legislation expressly recognises the right; nonetheless, after decades of

⁴¹ 2020 3 SCC 637.

⁴² Farzad Damania, “The Internet Equalizer of Freedom of Speech? A Discussion on Freedom of Speech on the Internet in the United States and India” 12 *Indiana International & Comparative Law Review* 248 (2002).

development, it was finally accepted as implicit in Article 21 in the landmark case of “*Retd. Justice K.S. Puttaswamy v. UOI*”⁴³ by revisiting the jurisprudence evolved in previous cases such as “*M.P. Sharma v. Satish Chandra*”,⁴⁴ “*Kharak Singh v. State of Uttar Pradesh*”⁴⁵, “*Govind v. State of Madhya Pradesh*”⁴⁶ and “*R. Rajagopal v. Tamil Nadu*”,⁴⁷ with the last case also being relevant as the first judgement, where the Hon’ble Apex Court finally recognised an individual’s right to be left alone. These developments, also, interestingly, laid the groundwork for the recognition that unwarranted surveillance was not acceptable since it was an infringement against privacy in “*PUCL v. UOI*”.⁴⁸ Expanding this, it has also been recognised by the Apex Court that the right to privacy prevents biometric information collected by the Unique Identification Authority of India (UIDAI) from being shared with other entities, including investigating agencies, without consent from the individual whose data is being shared.⁴⁹

The formal recognition of the RTBF opened up a Pandora’s Box of claims *vis-à-vis* digital data protection and privacy. Interestingly, in the *Puttaswamy case*, Justice S.K. Kaul explicitly considered the applicability of the RTBF in the Indian context and argued that it is a part and parcel of the wider ambit of ‘informational privacy’.⁵⁰ In this regard, he said that the “*right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the Internet.*”⁵¹ This is an appreciable observation because envisaging privacy without considering the significance of digital privacy and giving control over one’s data, especially in an open domain such as the internet, would lead to conflicting positions.

In light of these developments, various High Courts have been active in recognising the RTBF. This is undoubtedly a welcome development because it presents the opportunity for individuals to exercise

⁴³ (2017) 10 SCC 1.

⁴⁴ AIR 1954 SC 300.

⁴⁵ AIR 1963 SC 1295.

⁴⁶ 1975 AIR 1375.

⁴⁷ (1994) 6 SCC 632.

⁴⁸ AIR 1997 SC 568.

⁴⁹ UIDAI V. CBI, (2014) SLP (Crl.) 2524.

⁵⁰ *Supra Note 30*, at 50.

⁵¹ *Supra Note 43*.

meaningful control over their digital avatars and decide on the presence of information related to them on the internet. However, there persists great uncertainty over the extent of the right, primarily due to conflicting judgments by various High Courts within India, with some recognising and others refusing to grant recognition to the RTBF within the ambit of the constitutional right to privacy. Moreover, even in those cases wherein the Courts have granted recognition to the right and directed a remedy under the scope of the right, the roots of the right and the reasoning behind its application are contradictory.

In "*Dharmaraj Bhanushankar Dave v. Gujarat*"⁵² the Gujarat High Court was approached by the petitioner, who wanted to remove a prior judgement given against him from online legal repositories. In the previous judgement, he had been acquitted by both the trial court as well as the appellate courts for culpable homicide amounting to murder. Nonetheless, the Court herein refused to entertain the request and dismissed the petition on two grounds, first, it said that the petitioner was unable to establish any threat to his life or liberty on account of the existence of that record; second, it argued that the publication of an online repository does not amount to 'reporting the judgement and that interpretation is only restricted to when the judgement has been recorded in law reports. Here, it can be considered that the interpretation adopted by the court depicts a narrow approach while expounding the right, since even in the absence of any harm caused at present, there is always the presence of some societal stigma and the potential of repercussions on the individual may become an instance of implicit double jeopardy.

In contrast, though, the Delhi High Court has upheld and recognised the applicability of the RTBF in similar situations where petitioners approached the Court for the removal of existing information about their prior legal records. In "*Jorawar Singh Mundy v. UOI*"⁵³, the petitioner had charges levied against him under the "Narcotics and Psychotropic Substances Act, 1985", albeit these charges were subsequently dropped; nonetheless, due to the existence of these charges as a record, the petitioner was having difficulty in finding employment. This prompted the petitioner to file a writ, following which, the Court decided in favour of the right to privacy (by citing the

⁵² 2015 SCC Online Guj 2019.

⁵³ 2021 SCC Online Del. 2306.

RTBF) when weighed against the right to information (that is a public right) and ordered the removal of the objectionable information from the search engines that were hampering the interests of the petitioner since the information itself had lost its relevance. Finally, in “S.K v. UOI”⁵⁴ the Court passed an interim order directing online repository *Indian Kanoon* and to remove the name of the petitioner in this case, who had been acquitted of rape charges in 2018. Additionally, it also sought an affidavit from the portal wherein the portal was to highlight its policy *vis-à-vis* the right to be forgotten, and the steps that it would take to recognise this right by masking the names of similar individuals in cases and judgements of both High Courts as well as trial courts. The second part of the judgement is relevant because it takes initiative to concretise the RTBF by taking future challenges into consideration as well.

Interestingly, in another case where legal information pertaining to an individual was sought to be removed, the Madras High Court in 2024, in “*Karthick Theodore v. Registrar General, Madras High Court*”⁵⁵, also refused to entertain a petition seeking the removal of an original record, thus refusing to allow the redaction of content regarding the petitioner’s published court records. This again created a conflicting legal position since the position of various High Courts concerning the applicability of the RTBF in requests regarding the removal of published legal information is in conflict. Notably, this judgement has been stayed after being appealed by the Hon’ble Apex Court, and it has decided to examine whether the RTBF is wide enough to allow the ‘redaction of legal information’ or if the right to redaction is a separate right when compared with the RTBF in the context of previously published legal information.⁵⁶ The issue is presently *sub-judice*.

The Karnataka High Court has also presented some interesting jurisprudence in “*Sri Vasunathan v. The Registrar General, High Court of Karnataka and Ors*”,⁵⁷ wherein the father of a woman, who had

⁵⁴ 2023 LiveLaw (Del) 488.

⁵⁵ 2021 SCC OnLine Mad. 2755.

⁵⁶ “SC to Examine Right to Be Forgotten of Accused After Acquittal in Criminal Case” *Deccan Herald*, 24 July 2024 <available at <https://www.deccanherald.com/india/sc-to-examine-right-to-be-forgotten-of-accused-after-acquittal-in-criminal-case-3119628>> (last visited on 02 June, 2025).

⁵⁷ 2017 SCC Online Kar 424.

previously approached the Court to have her marriage certificate annulled, petitioned the High Court to have information about her legal endeavors relating to the annulment of the marriage certificate removed from online legal repositories which reflected her name, the High Court approved and accepted that the woman had a right to have the information removed. Interestingly, herein. The Court's decision, instead of tracing itself from the right to privacy, was centered on the understanding that the RTBF had to be used herein to safeguard the modesty and reputation of the woman in question.⁵⁸ This meant that the right was encapsulated with protecting information that was sensitive to the modesty of the women, and this change also contributed another significant jurisprudential layer to the right. The Orissa High Court has also relied upon this right to protect and safeguard the modesty of women in "*Subhrasnshu Rout v. State of Odisha*"⁵⁹. When the Court was approached by the petitioner for the removal of private pictures and videos that had been published online, the Court cited the international position of the right and recognised its significance as an instrument for protecting the sanctity of women whose modesty and reputation had been hampered. By relying on the same, it directed the erasure of private pictures that had been published online. These two judgements, although they came prior to the enactment of the DPDP Act, 2023 where there was a lack of clarity on the source of the RTBF, it can be noted that these two pronouncements imply that the RTBF can be applied even for safeguarding something like the modesty of a woman without directly tracing it to the right to privacy or data protection.

Similarly, the Delhi High Court has also been at the forefront of applying the RTBF in the Indian context. Firstly, in "*Zulfiqar Ahman Khan v. Quintillion Business*"⁶⁰ on an injunction order sought by the petitioner against the publication of information which was deemed to be damaging to his reputation, the Delhi High Court recognized the RTBF as a subset of the right to privacy and passed an order directing the defendant to take down the concerned information from its digital repository. This judgement, unlike the others, traced the right from the

⁵⁸ Ajay Pal Singh & Rahil Setia, "Right to Be Forgotten – Recognition, Legislation and Acceptance in International and Domestic Domain" 6 *Nirma University Law Journal* 49 (2018).

⁵⁹ BLAPL No.4592 of 2020,

⁶⁰ AIR 2019 Del. 132.

right to privacy. While the decisions of the Karnataka and Orissa High Courts were centered on the rights' international status, coupled with the paramount necessity to safeguard the sanctity and modesty of women, herein, the effects and implications of *Puttaswamy* were visible.

Finally, the Kerala High Court's observations in "*Google Inc v. XXXX & Ors*"⁶¹ needs to be discussed. Herein, the petitioner had filed a request to review the Court's earlier judgment in judgment in "*Vysakh K.G v. UOI*",⁶² and *inter alia*, the Court observed that notwithstanding the absence of legislation that formally recognizes the RTBF, a Court's order to remove information by the RTBF would inadvertently draw itself from Rule 3(d) of the IT Rules, 2011. This was significant because a legislative source is traced in this judgment by the judiciary to give validation to the judiciary's activist utilization of the right, and thus, this can be considered to be a precursor of the DPDP Act, 2023's right to erasure within a judicial context.

These developments present some interesting facets to the argument surrounding the applicability of the RTBF in India. The right itself is sacrosanct and this is exemplified by the recognition afforded to it even in the absence of a clear legislative source. The significance of data privacy cannot be underestimated and the activism that the judiciary has shown is commendable. Nevertheless, the varied sources and reasons for which the right has been given acceptance in the Indian legal system cause a degree of confusion, and the legal incoherence needs rectification. One way of addressing the same can be through a decision given by the Apex Court of the nation wherein it finalizes the source, extent, and ambit of the right, and declares it to be law by the constitutional powers embedded within it under Article 141. The European and Argentine jurisdictions have relied mainly upon the judiciary's activism to give concrete shape to the right. On the other hand, a second, and more commonly accepted means would be through legislative intervention, wherein the Parliament, *via* legislation, recognizes the right and elucidates its extent and ambit. The enactment of the DPDP Act, 2023 fulfilled this legislative requisite and the next part of this discussion will analyse the scope and ambit of the RTBF within the context of the DPDP Act, 2023.

⁶¹ 2023 LiveLaw (Ker) 182.

⁶² 2022 SCC Online Ker. 7337.

(b) Tracing the right from the Digital Personal Data Protection Act, 2023

The momentous *Puttaswamy judgement* changed the outlook on privacy rights in India and after the judgement, a committee under the chairmanship of Retd. Justice B.N Srikrishna was constituted to look into the nuances of the right to privacy within the digital sphere. This was followed by the Personal Data Protection Bills of 2019 and 2022. The latter received assent from the Parliament of India in 2023 and it led to the Digital Personal Data Protection Act, 2023 (hereafter DPDP Act, 2023). This legislation contains a reference to the “Right to Erasure”, which is a right synonymous with the RTBF.

In the DPDP Act, 2023, the ‘*data principal*’ that is the person to whom the data or information in question refers to, or in case of the person being a child, the child’s lawful guardians or parents, shall have the right to seek the “correction or erasure” of the data through a request to the ‘*data fiduciary*’.⁶³ The *fiduciary* is the entity responsible for ascertaining the means and purpose of the personal data, and upon receiving such a request, is bound to erase the personal data of the *principal* on the fulfillment of two grounds - “the retention of the personal data is no longer necessary”; and, “the purpose for which it was processed is not necessary anymore.”⁶⁴ Contrarily, the ‘*data principal*’ is also obligated to furnish only that information that is true and verifiable *via* authentication when exercising erasure rights afforded by the Act.⁶⁵ The government has been mandated to formulate the procedure to be followed by the ‘*data principal*’ for making a request to the ‘*data fiduciary*’⁶⁶ and only this procedure can help the individual in exercising his right to erasure.

Furthermore, even in the absence of a request by the *principal*, the *fiduciary* is under the obligation to remove the personal data of *principals* on the fulfillment of two grounds – its retention firstly is no longer necessary since the purpose of retention is no longer being served; and secondly, the retention is not necessary anymore for either legal or business-related purposes.⁶⁷ Although this provision places an interesting obligation on *data fiduciaries*, the utilization and

⁶³ Digital Personal Data Protection Act, 2023, s. 2(j).

⁶⁴ *Ibid*, s. 12.

⁶⁵ *Ibid*, s. 15(e).

⁶⁶ *Ibid*, s. 40(2)(n).

⁶⁷ *Ibid*, s. 8(7).

reliance on ambiguous terms like “legal purpose” and “business purpose” are terms having a very wide interpretive ambit inadvertently defeats the purpose of the provision itself since the data in question can be construed to have a function within the ambit of these two terms, thus leading to arbitrary misuse of data under their shield.

Finally, for this discussion to be holistic, the DPDP Rules, 2025, which have been recently notified by the central government in pursuance of the powers given under Section 40(1) of the DPDP Act, 2023, in November, 2025 also need to be examined. Under Rule 8, an obligation has been placed on *data fiduciaries* falling under the Third Schedule of the Rules, which includes e-commerce entities with two crore registered users in India; social media intermediaries with two crore users registered in India; and, online gaming platforms with fifty lakh registered users in India, to erase personal data of users, after a period of three years from the date of last transaction between the *data principal* and the entity in question, unless there is a legal obligation to keep a record of the data. Additionally, the *data principal* must also be informed about the erasure of data 48 hours before the processing is completed to give the person an opportunity to keep his data intact. Beyond these, however, an additional caveat has also been placed, and it states that the data of individuals, including “*personal data, associated traffic data and other logs of the processing*” must be retained for a minimum period of one year after it has been processed if it is being used by any instrumentalities of the State in the “*interest of sovereignty and integrity of India or the security of the State*” or for the performance of any action under any law in force at that point of time.

One welcome development, when compared to the erstwhile Bill of 2019, is the removal of the provision necessitating the payment of fees by the *principal* to the *fiduciary* for effectuating a request for the removal of information, which would have given a commercial aspect to the exercise of the right. The imposition of a fee was questionable on two grounds firstly, an ambiguous term “reasonable fee” has been used and there is no mechanism to understand what would determine the reasonableness of a fee charged under this provision; secondly, by bestowing a financial aspect into the exercise of the right, the provision severely limits its exercise since a person who is unable to afford the fee imposed by the data fiduciary may be unable to exercise the RTBF and therefore be forced to live with the stigma which the

information in question in that particular incident was causing him, thereby leading to a violation of his right to live with dignity as well. Therefore, the removal of this provision is a much-needed change. Secondly, while the earlier bill merely placed restrictions on the publication of information by placing restrictions on disclosing data,⁶⁸ the present legislation also includes data processing within its ambit, thereby increasing the scope of protection afforded.

It is also necessary that the shortcomings of the DPDP Act, 2023, be highlighted. Two major issues arise regarding the RTBF. Firstly, the legislation grants blanket immunity to the State and its agencies as far as coming under the ambit of the RTBF is concerned. The State (central government) or any of its instrumentalities can retain the personal data of individuals and not adhere to the requirements of the RTBF if certain grounds permit it.⁶⁹ This includes ambiguous terms such as “sovereignty and integrity of India”, “security of the State” and “maintenance of public order” without defining the extent of these terms in the context of the DPDP Act, 2023. The impunity granted to the State is pernicious because it allows the State to collect and store the personal data of any ‘*data principal*’ even when the individual is objecting against the same. It is an accepted position that the RTBF cannot be an absolute one, and certain exceptions are needed in the larger interests of society. Nevertheless, the immunity granted to the State presents a distressing scenario because it can easily allow the State to exploit the personal data of individuals.

The second shortcoming comes from its failure to address the challenges that are being faced in the digital domain by the advent of Artificial Intelligence (hereinafter AI) technology. AI has caused a paradigm shift, and it is being integrated and implemented in more and more areas with each passing day. AI liability is something that is often neglected within law because either it is considered a foreign concept for most jurisdictions or it is deemed to be harmless due to the nascent stage of the technology. Nonetheless, the challenges are real, and so are the implications stemming from it. One classic example is the aforementioned *Google case*, wherein the company

⁶⁸ Ashwinee Kumar, “The Right to Be Forgotten in the Digital Age: A Comparative Study of the Indian Personal Data Protection Bill, 2018 & the GDPR” 2 *HPNLU Shimla Law Review* 87 (2019).

⁶⁹ *Supra* Note 63, s. 17(2).

had argued that it had no liability because the search engines were based on algorithms and it is the algorithm that brings forth certain results.⁷⁰ This is a very rudimentary example for furthering the arguments being made, however, they are by no means unimportant. This issue is further exacerbated by the fact that an AI does not “forget” in a way that a human does, and the deletion of information for removing it from the “mind” of an AI is especially difficult in the present data-driven regime.⁷¹ Conversely, in the interest of AI development, machine learning primarily relies on data sets and the removal of ‘data’ from the data set without conditioning the algorithm to take care of the now “forgotten” information while making its calculations can have a detrimental effect on the conclusions formulated and the results presented. These issues could have been better addressed with a specific provision for dealing with the intersectionality of AI and the RTBF.

4. Freedom of Expression and Right to Be Forgotten – Search for a Balance

There exists a dichotomous relationship between RTBF and the right to free speech and expression. This is because the former seeks to limit the exercise of the latter, in the interests of privacy rights. Of course, no right is entirely absolute and an equilibrium must be formulated between these competing rights, in light of the tenets of “*le droit à l’oubli*”⁷²

(a) Reasonable Restrictions

Within the European context, privacy rights have been given primacy within some domestic jurisdictions of the member states over the right to freedom of speech and expression. In a Belgian case, “*Olivier G v Le Soir*”,⁷³ the Court of Cassation concluded that Article 8 of the ECHR, from which the RTBF draws itself, overruled the rights to free speech under Article 10, thereby implying that the RTBF would stand

⁷⁰ Lipsa Dash & Dr. Gyandendra Kumar Sahu, “Artificial Intelligence in Healthcare Sector: Ethics, Uses and Legalities” 13(2) *CPJ Law Journal* 384 (2023).

⁷¹ *Supra* Note 21, at 06.

⁷² Katarzyna Ciuckowska-Leszczewicz, “The Right to Be Forgotten, European Approach to Protection of Personal Data” 4 *University of Warmia and Marzury Law Review* 30 (2012).

⁷³ N° C.15.0052.F (29 April 2016).

on a higher pedestal than free speech.⁷⁴ Conversely, as the American scenario has shown, Courts have usually relied on the Constitutional First Amendment rights to tilt the balance in favour of the rights concerning freedom of expression, as against the RTBF, or any other right for that matter. This was explicitly recognised by the US Supreme Court in “*Schenck v. United States*”⁷⁵ when it postulated – “*freedom of speech as enshrined in the First Amendment, as the paramount right that prevails over all others in case of conflict.*” Similarly, in “*Bartnicki v. Vopper*”⁷⁶, when weighing the applicability of privacy rights at the expense of free speech, the judiciary opined – “*privacy concerns give way when balanced against the interest in publishing matters of public importance.*”

In the Indian context, the right to freedom of speech and expression has explicit protection under Article 19(1)(a) of the Indian Constitution, and its scope has also been increased to include within itself the dissemination of information in “*Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal*”⁷⁷, and freedom of the press with the Apex Court explicitly recognising in “*Printers (Mysore) Limited v. Assistant Tax Officer*”⁷⁸, that the freedom of the press, although not overtly represented as a fundamental right, is implicit under Article 19(1). This right to freedom of speech and expression has also been stated to be the most indispensable condition for guaranteeing almost every other freedom.⁷⁹ Furthermore, within the domain of the Internet, it has been recognized by the Apex Court in “*Shreya Singhal v. Union of India*”⁸⁰ that merely enhancing the degree of circulation, or the increase in impact which the dissemination of any information through such an enhanced mode of circulation can have, shall not be considered a ground for imposing any restriction on the right or justifying its denial.

⁷⁴ Marko Milosavljević et.al., “In the Name of the Right to Be Forgotten: New Legal and Policy Issues and Practices regarding Unpublishing Requests in Slovenian Online News Media” 8 *Digital Journalism* 05 (2020).

⁷⁵ 63 L.Ed. 470 (1918).

⁷⁶ 532 U.S. 514, 533 (2001).

⁷⁷ AIR 1995 SC 1236.

⁷⁸ (1994) 2 SCC 434.

⁷⁹ D.D Basu, *Introduction to the Constitution of India* 111 (Lexis Nexis, 2015).

⁸⁰ (2015) 5 SCC 1.

However, the scope of this right isn't unlimited, and it is subject to the reasonable limitations envisaged within Article 19(2). Concerning the notion of 'reasonable restrictions', it has been observed in "*Papasanam Labour Union v. Madurai Coats*"⁸¹ that the restrictions should not be arbitrary or excessive, and there must exist a direct and proximate relationship between the restriction imposed and the objective sought to be achieved. Considering that the RTBF falls within the principles contained within the right to individual privacy, any law enacted to enforce it shall be considered to be valid if it fulfils the test of reasonableness. Moreover, the "*DC Saxena v. UOI*" case is also relevant for this discussion wherein the Court opined - "*If maintenance of democracy is the foundation of free speech, the society is equally entitled to regulate freedom of speech or expression by democratic action. Nobody has a right to denigrate others right of person and reputation.*"⁸² Care must be taken however to ensure that a domestic jurisprudence that balances free speech that is in the interests of the public in favour of the RTBF since any other position would invariably be detrimental to the democratic setup of the nation. The concept of '*legitimate interests*' must be respected. Interestingly, the "Justice Srikrishna Committee" was also desirous of finding a balance between the two conflicting rights.⁸³

(b) The Proportionality Test

The landmark "*Puttaswamy (II) v UOI*" judgment (Aadhar judgment)⁸⁴ provides an interesting outlook on how competing fundamental rights can be balanced. The test of *proportionality* was held to be one of the primary tenets, the '*lingua franca*' for judicial systems across the world, for discerning whether a limitation on one right was justified when weighed against another right. The court opined, by citing the Canadian case of "*R. v. Oakes*"⁸⁵ that competitive values must be weighed to understand whether the limitation of a particular right is "*reasonable and necessary in a democratic society*"; and that it "*should be rooted in a legitimate aim which ensures that the goal is of sufficient importance to warrant overriding a constitutionally*

⁸¹ AIR 1995 SC 2200.

⁸² AIR 1996 SC 2481.

⁸³ *Supra* Note 68, at 85.

⁸⁴ (2019) 1 SCC 1.

⁸⁵ (1986) 1 SCR 103.

*protected right or freedom.*⁸⁶ The Court also cited the four requisites of proportionality as promulgated in “*Modern Dental College v. Madhya Pradesh*” – (a) there must be a legitimate goal for restricting a right; (b) the restriction must be a suitable means for furthering the legitimate goal; (c) there must not be any equally effective alternative that is also less restrictive; (d) there must be a balance and the restrictions should not have a disproportionate impact on the rights of the right holder.⁸⁷ The four axioms of the proportionality test, therefore, are – legitimate goal, suitable means, the presence of less restrictive alternatives, and, disproportionate impact. Comparing with the right to free speech, each of these tenets can be weighed against the RTBF, to examine when the latter can be a reasonable justification of the former.

First, the *legitimate goal* axiom necessitates that any RTBF claim which is silencing the right to free speech be rooted in a constitutionally cognizable interest, such as the protection of privacy, dignity, or from disproportionate reputational harm, thus allowing the RTBF to be invoked only when absolutely necessary, and preventing the suppression of public scrutiny or rewriting history through censorship.

Second, the *suitable means* axiom asks whether delisting or erasure actually furthers the goal to be achieved in the first part. This depends on the nature of the information being ‘*forgotten*’ and the objective being sought to be fulfilled through its erasure. If the information is outdated, misleading, or no longer socially relevant, then its removal may meaningfully protect the individual, however, if the data is related to public functions where questions of accountability or public safety are raised, the RTBF may be compelled to bow against free speech and the dissemination of information.

Third, the *less restrictive means* axiom examines whether it is possible to achieve the same objective in the first axiom. Here, if it is possible to fulfill the objective envisaged through a comparative less restrictive means, such as contextualization, record updation, reduction in search visibility etc., instead of complete removal of information, then that may be the approach undertaken. However, if it is necessary that

⁸⁶ Aparna Chandra, “Proportionality in India: A Bridge to Nowhere?” 3 *University of Oxford Human Rights Hub Journal* 75 (2020).

⁸⁷ (2016) 7 SCC 353.

the entire information be removed and erased, in the interests of the RTBF, while also resulting in complete censorship of the information, then the right to free speech will have to be restricted.

Fourth, the *disproportionate impact* axiom looks at whether the restriction of a right shall have a disproportionate impact on society by weighing the societal value of the information against the individual's rights. If social relevance is higher, for example the information about someone's criminal past where the individual had engaged in a particularly heinous offence, or if serious allegations are present against a public figure, it might be necessary to ensure the presence of such information, thus restricting the RTBF. On the other hand, if the individual right is more affected than the social consequences of erasure, then the RTBF shall take precedence.

Thus, if proportionality is deemed the litmus test, the RTBF could be determined on a case-by-case basis, with the jurisprudence of the case evolving like what has been adopted by the ECJ. The social relevance of the data should be balanced against the individual right to reputation of an individual. If it is found that the existence of the data yields more value on a democratic and social level, the right to erasure should be curbed in favour of a right to the data's existence. Furthermore, there may be scenarios where even though considerable harm is caused to the reputation of an individual due to the published existence of some data on the internet, the nature of the data or the status or position of that person in society (for example, data about criminal antecedents of a politician) warrants its presence, with the right to information and the free speech rights gaining precedence over the RTBF, and in such scenarios, the proportionality test may give leeway to the former by silencing the latter.

Perhaps the most poignant argument towards a balance can be discerned from the British case of "*AMP v. Persons Unknown*"⁸⁸ whose judgment can be surmised to be a precursor to RTBF. The brief facts involve sexually explicit images of a girl retrieved from her stolen phone, which was uploaded as a torrent file on The Pirate Bay, and these were used to blackmail the victim. The victim filed an injunction to prevent the dissemination of this explicit information and also requested that Google remove the links to the torrent file in question

⁸⁸ [2011] EWHC 3454 (TCC).

from its search engines. The Court, relying on Article 8 of the ECHR, as well as the British Harassment Act,⁸⁹ accepted the plaintiff's request. The *ratio* relied upon by the Court was “*that application of privacy rights do not impact the freedom of expression*” in cases where the probable and possible damage caused to the enjoyment of the private life of an individual vastly outweighs all other considerations.

5. The Right to Be Forgotten: Challenges

The RTBF is in its nascent stages, and therefore, the following legal challenges exist in formulating a strong iteration of the right.

- Firstly, the spatial scope of judgements enacted by domestic courts must be ascertained. The internet does not have spatial limitations and data on the internet is not confined to borders. There is complete decentralisation of the internet and this implies that there cannot be any meaningful regulation of the internet or its contents by any singular legal jurisdiction.⁹⁰ Information protected by the right in one legal jurisdiction may be accessible in another legal jurisdiction,⁹¹ and this is even more problematic in countries like America where laws differ from state to state. Virtual Private Networks (VPN) of country-specific URL extensions can also be used to access information rendered inaccessible domestically but available elsewhere. This issue occurred when two German convicts imprisoned for murder in 1990 and released on parole had their information removed from the German-language Wikipedia but the information persisted in the English version.⁹² The conundrum of non-transboundary application was also accepted by the ECJ in “*Google v. CNIL*”.⁹³ Thus, a proper regime of the right needs not just domestic applicability but transboundary application for it to be properly enforceable. To address this issue, an attempt can be made to ensure the harmonization of standards across the board, through international or regional treaties that are bilateral or multilateral.

⁸⁹ Protection from Harassment Act, 1997, s. 3.

⁹⁰ *Supra* Note 30, at 43.

⁹¹ *Supra* Note 13, at 166.

⁹² John Schwartz, “Two German Killers Demanding Anonymity Sue Wikipedia's Parent”, *NY Times*, 12 Nov, 2009, available at: [nytimes.com/2009/11/13/us/13wiki.html](https://www.nytimes.com/2009/11/13/us/13wiki.html) (last visited on May 16, 2025).

⁹³ *Case C-507/17 (2019)*.

These can be based on the protectionary regime envisaged by global leaders such as the GDPR, 2016, and can be used to extend the application of domestic RTBF standards to transboundary locations through a common legal framework.

- Secondly, the development of artificial intelligence (hereafter AI) poses a threat. Humans naturally forget information after some time due to natural limitations, and therefore, information delisted by using the RTBF may cease from human memory⁹⁴ but AI programs and entities do not have such limitations. One solution is putting automatic expiration dates on sensitive information, following which it is deleted entirely⁹⁵ but even that may not be a completely feasible solution since in a regime governed by laws such as the GDPR, the data subject decides when the information is to be purged by invoking the right. Perhaps the best way forward is to inculcate the right's nuances into technology during the developmental stage itself, albeit the nuanced extent to which the right would be applicable needs further analysis from a neutral standpoint.⁹⁶
- Thirdly, the *Streisand Effect* can be a hindrance. The *Streisand Effect* is used to denote a phenomenon when censorship makes the intended information extremely popular, a popularity that would not have manifested without censorship.⁹⁷ This implies that censorship through the right could have an inevitable domino effect whereby the censored information increases in popularity. Since information on the internet behaves differently than traditional iterations of information and data,⁹⁸ it becomes very difficult to predict how the *Streisand Effect* will impact digital information censored by the right.

⁹⁴ *Supra Note 21*, at 03.

⁹⁵ Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* 45 (Princeton University Press, 2011).

⁹⁶ Urs Gassern, "Recoding Privacy Law: Reflections on the Future Relationship Among Law, Technology, and Privacy" 130 *Harvard Law Review Forum* (2016).

⁹⁷ Sue Curry Jansen & Brian Martin, "The Streisand Effect and Censorship Backfire" 9 *International Journal of Communication* 658 (2015).

⁹⁸ Angelo Maietta, "The Right to Be Forgotten" 12 *Revista de Estudos Constitucionais Hermenêutica e Teoria do Direito* 221 (2020).

- Fourthly, if the RTBF is confined to the solution envisaged in *Mario Costeja González*, where the information was merely delisted from the internet's search engine database, publishers could exploit technological loopholes to re-publish the data.⁹⁹ This makes it important to revisit the drawing board and see whether merely delisting information is enough for the realisation of erasure under the RTBF. Since information uploaded on the internet is difficult to control, as it doesn't behave in the manner traditional information does,¹⁰⁰ estimating the implications of the *Streisand Effect* in this realm becomes very difficult.

6. Conclusion

The modern world is governed by data. American legal scholar Daniel J. Solove has contemplated that humanity is heading towards a world where information will forever persist within the internet, thus forcing humans to live with a detailed record of their lives, which is an impediment to their freedom.¹⁰¹ *Forbes* echoed this sentiment when it stated, "*Data is the New Oil – And That's A Good Thing*".¹⁰² Data and the internet are also being extensively used to shape people's personal, social, and political consciousnesses, as the *Cambridge Analytica* incident has highlighted.¹⁰³

In light of these observations, data protection and a robust RTBF can be considered the *sine qua non* of the present society. In the Indian context, some of the High Courts have taken appreciable steps in recognizing the right, however, in the absence of a concrete framework, either represented by legislation or promulgated by the Supreme Court, the right will remain a 'paper tiger', subject to whims of the judicial bench before which the matter is placed. The DPDP Act, 2023 shows promise, nonetheless, to be more effective, it needs to envisage the right's ambit by analyzing its development within the

⁹⁹ *Supra* Note 25, at 333.

¹⁰⁰ *Supra* Note 98, at 221.

¹⁰¹ Daniel J. Solove, *The Future of Reputation: Gossip, Rumour and Privacy on the Internet* 17 (Yale University Press, 2007).

¹⁰² Christoph Stach, "Data is the New Oil - Sort of: A View on Why This Comparison is Misleading and Its Implications for Modern Data Administration" 15 *Future Internet* 71 (2023)

¹⁰³ Michael Fuller, "Big Data and the Facebook Scandal: Issues and Responses" 122 *Theology* 14 (2019).

aforementioned European and Argentinian legal systems, and applying it in a manner that is consonant with the Indian constitutional framework, with the foremost challenge in this regard being the balancing of free speech vis-à-vis the RTBF. The Argentinian model, where the right is not merely confined to cases where criminal antecedents are involved but also where the mere existence of the concerned information is a threat against the individual's well-being, including but not confined to an infringement of his reputation or dignity, should be given more primacy since it is broader in its ambit and scope. In a way, this wider understanding has already been utilized by the Karnataka, Orissa and Delhi High Courts in their judgements.

Finally, a comprehensive framework on the right should also have a clear lexicon, coupled with the appropriate taxonomical demarcation between conceptually similar, yet consequentially different terms, including but not limited to collection of data (surveillance, interrogation), processing of information (aggregation, identification) and information dissemination (disclosure, exposure, appropriation intrusion).¹⁰⁴ While a complete taxonomy would exceed the scope of this paper, it is argued that the scope and ambit of the terms used should be defined and elaborated without any ambiguity. For example, while data collection can refer to a passive approach through surveillance practices, and an active approach through interrogative practices, the scope of the term must clearly delineate how and what it sets out to accomplish. A system where this clarity is pursued across the entirety of the law shall have far-reaching consequences in ensuring that the legal provisions are not misused by any authority or entity. It will also allow the adoption of a user-centric approach where individuals retain primary control over data concerning their private lives, where the flexible connotations of the term 'property' also contain within themselves informational property,¹⁰⁵ will both augment and magnify the "*le droit à l'oubli*" being envisaged by the RTBF.

¹⁰⁴ Daniel J. Solove, "A Taxonomy of Privacy" 154 *University of Pennsylvania Law Review* 483 (2006).

¹⁰⁵ Paul M. Schwartz, "Property, Privacy and Personal Data" 117 *Harvard Law Review* 2067 (2004).



Navigating Legal Pluralism: The Dual Justice Systems and Conflicts Between the Traditional and Modern Courts in Meghalaya's Khasi Hills

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Abstract

*In the mist-laden hills of Meghalaya, the Khasi Hills embody a complex legal landscape where traditional justice systems coexist with modern legal frameworks. Each village hosts its own court, deeply rooted in the customs and traditions of the Khasi people, serving as a primary mechanism for conflict resolution and social governance. These traditional courts emphasize community participation, restorative justice, and the preservation of social harmony. Recognized under the Indian Constitution and empowered by the Khasi Hills Autonomous District Council (KHADC), they operate within the framework of the Sixth Schedule, allowing adjudication based on customary principles while highlighting the necessity of protecting tribal rights. Despite this legal recognition, tribal communities continue to face numerous challenges that necessitate enhanced legal protection. Historical precedents, such as *Kulendra Kumar Dey v. Union Territory of Arunachal Pradesh*¹ and *Rami Reddy v. State of A.P.*², emphasize the need for safeguarding tribals from social injustices and economic exploitation, reflected in constitutional provisions like Articles 15(4) and 46. The Khasi Hills illustrate the dichotomy between traditional justice, characterized by its community-oriented approach, and modern legal systems focused on codified laws and procedural justice. This paper examines the interplay between these distinct legal paradigms, with a focus on the disparities in their application between rural and urban contexts, thereby raising critical issues of access to justice, cultural integrity, and legal uniformity. Ultimately, the study seeks to address the conflicts and confusions arising from this coexistence, aiming to foster a more coherent and effective justice system within the Khasi Hills.*

Keywords: Sixth Schedule, Tribal, KHADC, Custom

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¹ 1983 (1) GLR 23.

² 1988 Supp SCC 626.

1. Introduction

In the mist-laden emerald hills of Meghalaya, where tradition and modernity dance in a delicate balance, the Khasi legal framework presents a unique conundrum. Here, each village boasts its own court, deeply rooted in centuries-old customs and traditions of the Khasi people. These traditional courts serve as the primary mechanism for conflict resolution and social governance,³ emphasizing community participation, restorative justice, and the preservation of social harmony.⁴ Recognized under the Indian Constitution and empowered by the Khasi Hills Autonomous District Council (KHADC), these courts operate under the umbrella of the Sixth Schedule, which allows them to adjudicate disputes according to customary principles, ostensibly guided by the Administration of Justice Rules, 1953.

However, despite this legal framework, tribals remain a vulnerable section of society, facing numerous challenges. This necessitates the legislation of special laws to safeguard their interests and rights. The backwardness of tribal areas was a principal reason for establishing special machinery to administer these areas, as held in *Kulendra Kumar Dey v. Union Territory of Arunachal Pradesh*.⁵ In *Rami Reddy v. State of A.P* ⁶, it was further emphasized that tribals must not only be protected in their economic and educational interests but also be shielded from social injustice and exploitation. The framers of the Indian Constitution, with their foresight, recognised the importance of safeguarding tribal rights, as reflected in provisions like Article 15(4)⁷

³ Animesh Roy, “Discord in Matrilineality: Insight into Khasi Society in Meghalaya” 4(2) Contemporary Voice of Dalit (2018), available at: <https://doi.org/10.1177/2393861718767238>.

⁴ Kavita Navlani Soreide, “Tribal Representation and Local Land Governance in India: A Case Study from the Khasi Hills of Meghalaya” (*Working Paper*), available at: <https://www.researchgate.net/publication/320584583> (last visited on June 5, 2025).

⁵ (1983) 1 Gau. LR 23.

⁶ 1988 Supp SCC 626.

⁷ The Constitution of India, art. 15(4). [Article 15(4) of the Indian Constitution provides that nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

and Article 46⁸, which protect the interests of tribals, especially concerning land. Despite the richness of their customs and traditions, which form the foundation of their governance, the necessity for a separate political and administrative structure for tribal areas was acknowledged by incorporating the Sixth Schedule into the Constitution, thus securing a balance between their traditional laws and the broader constitutional framework.⁹

Currently, the Khasi Hills region in Meghalaya offers a distinctive blend of traditional justice systems and modern legal frameworks, each operating within distinct socio-cultural and legal frameworks.¹⁰ Traditional justice systems, deeply rooted in the customs and traditions of the Khasi people, have long served as the primary mechanism for resolving conflicts and maintaining social governance.¹¹ These systems emphasize community participation, restorative justice, and the preservation of social harmony. On the other hand, the modern legal framework, established through formal legislative processes, aims to deliver justice through codified laws, standardized procedures, and state institutions, emphasizing uniformity, individual rights, and procedural justice.¹² Despite the coexistence of these systems, a significant gap remains in understanding how they integrate and interact, particularly in rural versus urban contexts within the Khasi Hills. Rural areas tend to rely more heavily on traditional justice mechanisms, while urban areas are more likely to engage with the formal legal system. This dichotomy raises several critical issues, including access to Justice, cultural integrity, and Legal Uniformity. Hence, this paper examines the

⁸ The Constitution of India, art. 46. [Article 46 of the Indian Constitution provides for the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections. According to this article, the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.]

⁹ Vijay Hasaria, *Sixth Schedule to the Constitution 11* (Universal Publishing Co., New Delhi, 2nd edn., 2010).

¹⁰ E. Jyrwa, *Administration of Justice in the Khasi Hills 20–22* (Akansha Publication House, New Delhi, 1st edn., 2006).

¹¹ *Supra* note 3.

¹² *Supra* note 4.

intricate interplay of legal systems in the Khasi Hills, exploring the conflicts and confusions that arise from the co-existence of traditional village courts and modern legal institutions, and seeks to understand how these challenges can be addressed to foster a more coherent and effective justice system.

2. The Advent of Modernity and Foundations of Legal Pluralism in the Khasi Hills of Meghalaya

The traditional political structure in Meghalaya consists of a three-tier system. At the base are the Shnong (Villages), followed by the Raid (Elaka) at the regional or provincial level, and at the top are the Syiem (Chief). Each of these tiers operates through a Dorbar (Council) composed of the individuals traditionally selected based on their maturity and their roles in performing sacerdotal and religious functions.¹³

Essentially, at the local level, the Khasi traditional political structure was organized around the Kur (clan),¹⁴ which is the first social institution of the Khasi people, the entity around which all other institutions revolve.¹⁵ Family disputes are initially taken to the Dorbar Kur for resolution. This Dorbar consists of elders from the family (ka iing), a branch of the clan (ka Kpoh), or the entire clan (ka Kur), depending on whether the disagreement is between family members or members of different branches. These assemblies are referred to as Dorbar ling, Dorbar Kpoh, and Dorbar Kur, respectively. The effectiveness of these Dorbars lies in the fear that any party refusing to accept an amicable settlement may face isolation from the family. Taking a family dispute directly to the village Dorbar is considered a “sang” (Sin) against the party, although dissatisfied members still

¹³ Rajesh Dev, A.K. Baruah and Manorama Sharma, “Liberal Democracy, Traditional Institutions and Politics of Representation: Analysing the Nongkynrih Shnong Dorbar” (*North Eastern Institute of Development Studies (NEIDS), Shillong*), available at

https://assets.publishing.service.gov.uk/media/57a08c7f40f0b652dd001384/dev_baruah_sharma.pdf (last visited on June 5, 2025).

¹⁴ Helen Giri, *The Khasis Under British Rule (1824–1947)* 10–14 (Akashi Book Depot, Shillong, 1990).

¹⁵ Helen Giri, “Social Institution among the Khasi with Special Reference to Kingship, Marriage, Family and Divorce”, in S.K. Chattopadhyaya (ed.), *Tribal Institution of Meghalaya* (Spectrum Publication, Guwahati, 1985).

have the option to escalate the matter to the Village Dorbar.¹⁶ Thus, charged with the responsibility of upholding peace among clan members, the Dorbar Kur (Clan Council) played a pivotal role in Khasi governance.

However, over the centuries, these clan-based councils evolved into the state council (Ka Dorbar Hima), with authority vested in the offices of Syiem, Lyngdoh, Sirdar, and Wahadadar. These traditional office bearers carried out legislative, executive, judicial, and religious functions, all in accordance with local traditions, customary practices, and usage.¹⁷

The traditional institutions adjudicating justice in the Khasi Hills never had a written code of laws. Instead, the people themselves created the rules and procedures. According to these rules, the local Chief is not allowed to impose his own views and opinions. As the Presiding Officer of the Court, the Chief is only empowered to question and interrogate the cases brought before him, relying entirely on the people's opinions and comments for decision-making. For instance, during a case, the Chief might ask the people's opinion by saying, "Don't you think so?" or "Would it be proper?" Thus, the Chief's role as a Presiding Officer or Judge is to guide the discussion and encourage the council to reach a consensus.¹⁸

However, the arrival of the Britishers in India witnessed interference in the traditional governance of the Himas. What began as an agreement to allow British troops passage to the plains of Assam from Sylhet, ultimately resulted in the subjugation of the Khasi States/Himas.¹⁹

The British dominion over the Khasi Principalities was established around 1834, with the British making new political arrangements for the administration of the Khasi Hills. The region came under the

¹⁶ N.K. Dev, *Tradition and Modernity in Khasi Society* 53 (Spectrum Publications, 2004).

¹⁷ L.S.Gassah, "Introduction: Revisiting Traditional and Constitutional Institutions in the Khasi-Jaintia Hills: Interface of Continuity and Change", in Charles Reuben Lyngdoh (ed.), *Revisiting Traditional Institutions in the Khasi-Jaintia Hills* (Cambridge Scholars Publishing, Newcastle upon Tyne, 2016).

¹⁸ Kymphan Singh, "Syiem and Durbars in the Khasi Polity", in S.K. Chattopadhyaya (ed.), *Tribal Institution of Meghalaya* 18 (Spectrum Publications, Guwahati & Delhi, 2017).

¹⁹ *Ibid*

political supervision of the Agent to the Governor General, leading to the creation a distinct political agency headquartered at Cherrapunjee. This led to the consolidation of indirect rule in the Khasi Hills, solidified by a subsequent alliance between the two, and subsequently maintained through official documents, such as sanads and parwanas.²⁰

The British adopted the European colonising strategy of indirect rule. Brian Z. Tamanaha, in *Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences*, demonstrates how the colonizers used the same basic templates across their colonies. They consolidated their power, established courts of law, upheld local laws on personal matters as customary laws, and used local intermediaries to maintain their dominion and indirectly rule over the colonized population.²¹

The British curtailed the power of the Khasi Chiefs in adjudication of Justice and restricted their authority to only petty criminal offences and civil cases, reserving the trial of serious offences like homicide, accidental death, and others for the Deputy Commissioner. The Chiefs were now also prohibited from trying any offence involving non-tribals.²²

The colonial policy of indirect rule promoted the gradual penetration of state laws into the non-state customary laws of the Khasi, thereby laying the foundation of legal pluralism. The segregation of crimes into heinous and non-heinous offences led to the creation of two parallel legal systems: state laws to try heinous crimes and non-state laws, or customary laws, to try non-heinous offences.²³

²⁰ Charles Reuben Lyngdoh, "The Khasi States and the British: Political Development on the Eve of Independence", in Charles Reuben Lyngdoh (ed.), *Revisiting Traditional Institutions in the Khasi-Jaintia Hills 7* (Cambridge Scholars Publishing, Newcastle upon Tyne, 2016).

²¹ B.Z. Tamanaha, "Legal Pluralism Across the Global South: Colonial Origins and Contemporary Consequences" (*Working Paper*), available at: <https://ssrn.com/abstract=3866691> (last visited on June 5, 2025).

²² *Ibid.*

²³ N.K. Das, "Customary Law, State Law and Non-State Organisation: The Predicaments of Legal Pluralism and Growing Conflict in Nagaland", in Melvil Pereira, Bitopi Dutta and Binita Kakati (eds.), *Legal Pluralism and Indian Democracy: Tribal Conflict Resolution Systems in Northeast India* (Routledge, 2018).

We postulate that the arrival of the British and their dominion over the Khasis was the advent of modernity in the Khasi Hills. The Khasis are an oral culture, with their folklore, stories, myths, customary practices, and traditions passed over to the younger generations orally from their elders. The adjudication of disputes in the Khasi Hills was based on the Khasi Principles of justice,²⁴ which were never codified. Through the introduction of colonial laws and adjudication systems, modernity was introduced in the Khasi Hills region. Modern, as the alien concepts of the rule of law, codified legal system, procedural justice, and individual rights were introduced to this region during British rule. This advent of modernity planted the seeds of legal pluralism in these emerald hills, which were rooted strongly when the Indian state, on gaining independence, adopted the Sixth Schedule to the Constitution.

3. The Tribal Question, Sixth Schedule and Modernisation of the Khasi Legal System

At the dawn of India's independence, the drafters of the Indian Constitution were left with the herculean task of unifying a vastly diverse and distinct population as one nation.²⁵ They aspired to unite clusters of communities, including the tribals, into one nation-state that, despite its diversities, shared an all-pervasive sense of cultural unity and symbols. The hill tribes were part of the Indian civilisation and, therefore, not alien.

The task of nation-building, however, was made arduous by the issue of tribalism. The Indian Tribes, then comprising 7.5% of the Indian Population, consisted of numerous tribal divisions, practised distinct religions, and spoke hundreds of languages.²⁶ The tribes of Assam had historically been excluded from the rest of India and were exempt from the jurisdiction of laws applicable to the rest of India under the Scheduled Districts Act, 1874.²⁷ Now the drafters of the Indian

²⁴ E. Jyrwa, *Administration of Justice in the Khasi Hills* 20–22 (Akansha Publication House, New Delhi, 1st edn., 2006).

²⁵ David Stuligross, "Autonomous Councils in Northeast India: Theory and Practice" 24(4) *Alternatives: Global, Local, Political* 497–525 (1999), available at: <http://www.jstor.org/stable/40644976> (last visited on June 5, 2025).

²⁶ *Supra* note 25.

²⁷ The Scheduled Districts Act, 1874.

Constitution were called upon to decide on the political set-up and administration of the formerly excluded areas and their relationship with the rest of the nation.

The tribal question, ongoing since the pre-independence era, was a tussle between the two vastly opposing political strategies—integration and assimilation of tribal areas with the rest of India, and the demand for the isolation of the tribes in continuity with the British exclusionist policy.²⁸

On one side of the debate were the anthropologists, who postulated the tribal question as mainly as an administrative issue and opined that the introduction of electoral democracy in the tribal areas would harm them and thereby, supported the continuation of the isolationist policy and the creation of the excluded and partially excluded area under the 1874 Act, that kept the tribal areas out of the purview of the elected assemblies and councils.²⁹ Such a policy was vehemently rejected by the nationalists, who considered such segregation of Indian territory to be another facet of the British divide-and-rule policy. They favoured a legislative solution and believed that the arbitrary designation of the tribal areas as excluded and partially excluded was the reason for the backwardness of these regions. They believed that the optimal way to uplift these communities was to grant them adequate representation in India's legislative bodies.³⁰

These opposing views are reflected in the debates of the Constituent Assembly. They echo these conflicting desires – policy of forceful assimilation, support for gradual integration of tribals with the Indian mainland, in contrast to the demand for greater autonomy for the Hill Tribes through creation of autonomous district councils.

During Constituent Assembly Debates, Mr. Rohini Kumar Choudhury criticized the creation of the Sixth Schedule and Autonomous Districts, arguing that the drafters lacked a deep understanding of tribal affairs and warned that such separation might align tribal areas

²⁸ Roluah Puia, “The ‘Tribal Question’ in India: Problem of Inclusion”, in *Nationalism in the Vernacular: State, Tribes, and Politics of Peace in Northeast India* 30–47 (Cambridge University Press, Cambridge, 2023).

²⁹ Saagar Tewari, “Framing the Fifth Schedule: Tribal Agency and the Making of the Indian Constitution (1937–1950)” 56 *Modern Asian Studies* 1556–1594 (2022), Available at <https://doi.org/10.1017/S0026749X21000779>.

³⁰ *Ibid.*

more with Burma or Tibet rather than India.³¹ Similarly, Mr. Kuladhar Chaliha and R.K. Chowdhury claimed the draft for the creation of the Sixth Schedule to the Indian Constitution reflected “British Mind” and “British Method,” perpetuating separatist tendencies.³² Mr. Lakshminarayan Sahu expressed concerns that autonomous councils could lead to tribal isolation, missing the chance for integration with the broader Indian community.³³

The others privileged the need to respect the unique cultural identity of the tribal people. They supported integration that preserved cultural distinctiveness. Such integration was envisioned through the Sixth Schedule, which allowed the hill tribes of Assam self-governance while keeping them connected with the state and central governments. Rev. J.J. M. Nichols Roy, considered a pioneer behind the Sixth Schedule, advocated for recognizing and respecting tribal culture, asserting that the Schedule allowed self-governance under the Governor of Assam’s supervision, promoting unity without forced assimilation. Gopinath Bordoloi, Chairman of the Advisory Sub-Committee, supported this by highlighting the historical exclusion of tribal areas under British rule and the necessity of self-governance as promised to tribal people during the war. It received the support of Mr. Jaipal Singh, who contended that the new setup provided an opportunity for a fresh start, accommodating tribal wishes and fostering unity. Ultimately, despite the opposition, the Constituent Assembly accepted the recommendations of the Bordoloi Committee, leading to the adoption of the Sixth Schedule.³⁴

Vijay Hasaria opines that, the drafters of the Indian Constitution were sensitive to the need for protection of tribal rights and their interest in their lands. They recognised the rich customs, traditions and traditional governance systems. They foresaw the need for a distinct political and administrative setup for the hill tribal areas of Assam.³⁵

N.K. Das, however, argues that the Indian state endorsed the colonial legacy of indirect rule by continuing the decentralised governance of

³¹ Constituent Assembly Debates on [date if mentioned in text], available at: <http://parliamentofindia.nic.in/ls/debates/vol9pm.htm> (last visited on April 10, 2024).

³² *Id*

³³ *Id.*

³⁴ *Id.*

³⁵ *Supra* note 9.

these tribal areas through specific Constitutional provisions.³⁶ This indirect rule was envisioned through the establishment of Autonomous District Councils (ADCs).

With the incorporation of the Sixth Schedule to the Indian Constitution and its adoption on 26th January 1950, modernity was institutionalised and entrenched. While the ADCs were constitutionally empowered to govern their jurisdiction in accordance with the traditions and customary practices, their establishment wrought shifts in the traditional legal system of the Khasi people.

Prof. Gassah posits that such a change in the Khasi society had not occurred even during the colonial era. The Constitution of India empowered the ADCs to supervise and control the traditional chiefs and institutions, thereby shaving down the role and responsibility of the traditional chiefs and their institutions³⁷. The passage of the Constitutionality of the United Khasi- Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 further diminished the powers of the traditional chiefs.³⁸ As the Act authorises the ADC to not only appoint the traditional chiefs and the headmen, but also empowers them to remove any incumbent who, in their opinion, has violated the terms and conditions of his office. This has caused a tense relationship between the two institutions.³⁹

Modernity in Khasi Hills has resulted in the establishment of a dual legal system, one state law system and other of non-state laws, that parallelly exist, at times in conflict with each other and other times as a confluence of traditional and modern. This legal pluralism has resulted in a new era for the Khasi polity, marked by jurisdictional overlaps, inconsistent legal principles and outcomes, and inequitable access to adjudication systems.

³⁶ *Supra* note 23.

³⁷ *Supra* note 17.

³⁸ *Id.*

³⁹ Dhiraj Borkotoky, "The Constitutional-Traditional Interface: The Autonomous District Council and Traditional Institutions in the Khasi Hills", in *Revisiting Traditional Institutions in the Khasi-Jaintia Hills*, available at: <https://www.cambridgescholars.com/resources/pdfs/978-1-4438-9969-7-sample.pdf> (last visited on June 5, 2025).

4. Legal Pluralism in Khasi Hills

Legal Pluralism is the existence of more than one legal system in a single social field.⁴⁰ It is a situation where all the laws obeyed and enforced in a social field are not state laws and have not been legislated by a singular set of state institutions⁴¹ and yet they enjoy state recognition. Citizens in these pluralistic societies have the option to take recourse to any of the many existing legal systems.⁴²

Ralf Michaels characterises three elements to suppose the existence of legal pluralism in a particular society. Firstly, that not all laws existing in that society ought to be state laws, and that some non-state laws should enjoy the same normative position as state laws. Secondly, there needs to be a plurality of laws, and lastly, these parallel legal systems should interact with each other, and the antecedent jurisdictional overlaps and conflicts are of a nature that cannot be resolved by taking refuge in hierarchical orderings or delimitation stratagems.⁴³

In the Khasi Hills of Meghalaya, there exists such plurality of laws, with non-state laws enjoying high social legitimacy and recognition as customary laws. Here, each village has its own customs and practices, recognised as customary law through the Sixth Schedule and the Administration of Justice Act. These Village Courts, hailed as the cornerstone of Khasi grassroots democracy, adjudicate disputes based on their own rules and regulations, which are deeply embedded in local customs, traditions, and practices. This unique system of justice operates under the umbrella of the Khasi Hills Autonomous

⁴⁰ Merry Sally Engle, “Legal Pluralism” 22(5) *Law & Society Review* 869–896 (1988), available at: <https://doi.org/10.2307/3053638>.

⁴¹ J. Griffith, “What is Legal Pluralism?” 18 *The Journal of Legal Pluralism and Unofficial Law* (1986).

⁴² Melvil Pereira, Bitopi Dutta and Binita Kakati, “Introduction”, in Melvil Pereira, Bitopi Dutta and Binita Kakati (eds.), *Legal Pluralism and Indian Democracy: Tribal Conflict Resolution Systems in Northeast India* (Routledge, 2018).

⁴³ R. Michaels, “Law and Recognition – Towards a Relational Concept of Law”, in N. Roughan and A. Halpin (eds.), *In Pursuit of Pluralist Jurisprudence* 90–115 (Cambridge University Press, 2017).

District Council, where multiple customary laws and adjudication systems co-exist.⁴⁴

Proponents of Legal Pluralism posit that the state doesn't enjoy a monopoly in law-making⁴⁵ and the existence of non-state law is an invariable truth. This claim has held true in the Khasi Hills, where the non-state laws, recognized as customary norms, and the KHADC legislated Administration of Justice Rules, 1953 (hereafter, 1953 rules) are not always harmonious. Each village court follows its own set of rules and customs, often diverging from the prescribed 1953 Rules. This divergence leads to significant legal conflicts and raises critical questions on access to justice, uniformity in the application of legal principles, and cultural integrity. As Ralf Michaels points out, these conflicts due to parallel legal systems cannot be easily resolved by taking refuge in hierarchical orderings or delimitation stratagems. The resolution of conflicts becomes even more difficult as the underlying principles of these parallel systems are at odds. The modern legal framework, established through formal legislative processes, aims to deliver justice through codified laws, standardized procedures, and state institutions, emphasizing uniformity, individual rights, and procedural justice. In contrast, the customary norms followed in these traditional village courts privilege community participation, preservation of social harmony, and restorative justice.⁴⁶

When a dispute is brought to the traditional bodies for adjudication, the Village Courts apply the Khasi Principles of Justice and decide the matter in accordance with customary norms.⁴⁷ While these practices are constitutionally recognised under the Sixth Schedule of the Indian Constitution, they often conflict with the constitutional guarantees of equality, liberty, and due process under Part III.⁴⁸ For instance, in the case of *Khasi Hills Autonomous District Council vs State of*

⁴⁴ S. Bareh, *The Constitution and Customary Institutions in Meghalaya* 112 (Oxford University Press, New Delhi, 2010).

⁴⁵ B.Z. Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism" 20(2) *Journal of Law and Society* (1993).

⁴⁶ *Supra* note 4.

⁴⁷ Jangsan Sangma, *Law of Administration of Justice in Meghalaya* (1st edn., 1973).

⁴⁸ The Constitution of India, Sixth Schedule, paras. 3 and 4.

*Meghalaya*⁴⁹, the High Court of Meghalaya struck down the orders of eviction issued by the Village Dorbar and headmen against villagers who had married a non-tribals. The court in this case held that such actions lacked statutory backing and violated the fundamental rights of the citizen under Articles 14 and 21 of the Indian Constitution. This case succinctly demonstrates how the co-existence of traditional and modern is not always harmonious, and while the Sixth Schedule endeavours preserve, protect, and promote customary law, these customary laws sometimes collide or are even direct contradiction with the constitutional guarantees of equality, liberty, and due process.

Another area of contention is land laws. Land holds a central place in Khasi identity, with customs preventing its alienation to non-tribals. The United Khasi-Jaintia Hills District (Transfer of Land) Act, 1953, enacted by the District Council, prohibited the transfer of tribal land to non-tribals without prior sanction. This law sought to protect tribal communities from exploitation by outsiders. After Meghalaya attained statehood in 1972, the new state Government enacted several statutes regulating land transactions, the most significant being the Meghalaya Transfer of Land (Regulation) Act, 1971. Unlike the 1953 Act, which was enacted by the District Council under the Sixth Schedule, the 1971 Act represented a direct exercise of state legislative power. It effectively amended the framework of landholding by transferring regulatory authority from customary institutions and District Councils to the state government. Nevertheless, the underlying objective of both Acts remained the same—safeguarding tribal land and preserving the cultural, social, and economic integrity of indigenous communities.⁵⁰ The distinction between the 1953 and 1971 frameworks became clearer in judicial treatment. In *District Council of United Khasi & Jaintia Hills v. Sitimon Sawian*,⁵¹ the Gauhati High Court (Shillong Bench) examined the competence of the District Council under the Sixth Schedule and held that the Council lacked legislative power over land transfers. The Supreme Court affirmed this view in 1971, striking down Section 3 of the 1953 Act as void, on the

⁴⁹ WP(C) No. 163 of 2016.

⁵⁰ The Meghalaya Transfer of Land (Regulation) Act, 1971 (Act No. 12 of 1972) (Meghalaya).

⁵¹ AIR 1971 SC 2184.

ground that land transfer fell outside the legislative competence of District Councils under the Sixth Schedule.⁵² This case illustrates how attempts by District Councils to codify and enforce customary principles through legislation frequently face constitutional scrutiny, resulting in jurisdictional clashes between traditional authority and the Indian constitutional framework.

Similarly, the case of *Shri. Smek Marboh & Ors. v. The Khasi Hills Autonomous District Council & Ors.*⁵³ further illustrates the recurring tension between traditional institutions of governance under Khasi customary law and the formal legal system introduced through colonial and post-colonial legislation. The dispute centred on the status of certain villages under the Khyrim Syiemship, specifically Lumkseh, Mawduk, Mawkynring, Kyrdeng, Lumdiengngan, and Wahmyntait. The appellants, all headmen of these villages, claimed that their villages were “full-fledged” entities independent of the Sordar of Raid Tynring and that they enjoyed ownership rights over their lands in accordance with the Ri-Raid system of land tenure. The respondent, however, asserted continuing authority over these villages, including entitlement to compensation for lands acquired for the Shillong Bye-Pass project.

This case highlights the interplay between the dual legal systems of Meghalaya. On the one hand, customary institutions such as the Syiem and Sordar exercise traditional authority over land and administration, deriving legitimacy from long-standing practices and community recognition. On the other hand, the modern legal system, represented here by the Land Acquisition Act, 1894, and the jurisdiction of the High Court, imposes statutory processes for determining questions of title, compensation, and jurisdiction. The High Court dismissed the writ petition, reasoning that determining village status and customary land rights involved complex factual questions that could not be adjudicated summarily under Article 226 of the Constitution. Instead, such matters were better suited for a Reference Court under Section 30 of the Land Acquisition Act, which could assess documentary and oral evidence to decide competing claims to compensation. This case underscores the inherent contradiction in the values that guide the traditional and modern legal

⁵² AIR 1971 SC 1580.

⁵³ LQ/MegHC/2014/81 (Meghalaya High Court).

systems of the Khasi Hills. Customary law in the Khasi Hills emphasizes community control and the authority of traditional leaders, whereas the modern legal system prioritises documentary proof, procedural regularity, and statutory remedies. The High Court's inability to recognise customary practices directly, instead deferring to statutory processes, highlights the larger structural tension between the Sixth Schedule's recognition of tribal autonomy and the overarching supremacy of the formal Indian legal system.

Thus, the *Sitimon Sawian* and *Smek Marboh* cases highlight the practical limitations of the Sixth Schedule and the tension between traditional and modern legal systems, as well as the inherent contradictions in their core values and principles. These cases highlight that although customary law enjoys social legitimacy and constitutional acknowledgement, its enforcement ultimately depends upon the willingness of modern courts to accommodate oral traditions, community practices, and indigenous understandings of ownership, but only when they fit within the neat parochial boundaries of the Western-based legislative frameworks.

5. Challenges of Harmonizing Legal Pluralism

While it is possible to recognise the existence of multiple legal systems in Meghalaya, each with its own source of authority, determining whether legal pluralism has positive or negative effects is a distinct and separate matter.⁵⁴ The co-existence of traditional and modern courts in Meghalaya is a clear example of Legal pluralism in practice. While both systems have their advantages, conflicts between them are inevitable, particularly when customary practices clash with constitutional values. The Meghalaya High Court has acknowledged that the lack of clear codification or standardization of customary laws often leads to contradictions and arbitrary decisions by the traditional authorities in the state.⁵⁵

Courts have consistently upheld the need for traditional institutions to adapt to modern legal norms, particularly in matters relating to

⁵⁴ S. Larcom, "Problematic Legal Pluralism: Causes and Some Potential 'Cures'" (2014), available at: <https://core.ac.uk/download/pdf/42338201.pdf> (last visited on June 5, 2025).

⁵⁵ Khasi Hills Autonomous District Council v. State of Meghalaya, WA No. 2 of 2015 (Judgment dated 13 Jan 2016).

fundamental rights.⁵⁶ One of the key challenges in harmonizing legal pluralism is resolving jurisdiction overlaps between traditional and modern courts. The sixth schedule empowers tribal communities to handle disputes according to their customary practices. However, when such disputes involve matters governed by constitutional law, conflict arises regarding which legal system has the authority. For instance, in the case of *T. Cajee vs U Jormanik Siem*⁵⁷, the Supreme Court clarified that the powers of the traditional authorities under the Sixth Schedule are not absolute. While the Constitution grants tribal councils the autonomy to govern their internal affairs, the actions of these traditional bodies are still subject to constitutional review.

Another challenge of harmonizing legal pluralism is ensuring procedural fairness and accountability in traditional courts. Customary courts often guided by Dorbar rules, focus on reconciliation and community harmony rather than strict adherence to modern legal norms.⁵⁸ While this approach is effective in local contexts, it can raise issues concerning due process and transparency. Ensuring that these courts uphold fairness and accountability while maintaining their culture relevance is a significant concern.

The Meghalaya High Court in the case of *State of Meghalaya vs Dorbar Kur Nongkhlaw (2019)* emphasized the need for greater transparency and fairness in the functioning of traditional courts. The court ruled that while the traditional institutions have the right to resolve disputes according to local customs and traditions, their decisions must align with principles of natural justice and constitutional rights. The case highlights the need to strike a balance between preserving local customs and traditions and upholding Constitutional protections for tribal citizens of India.⁵⁹

The news reports in local dailies highlight a growing division within the Khasi community over the conflict between traditional authorities and constitutional institutions. The suspension of two Syiems has sparked a debate, particularly in the case of the Syiem of Myllem. The District Council acted by suspending the Syiem and appointing an acting

⁵⁶ *Stanislaus v. State of Madhya Pradesh*, AIR 1977 SC 908.

⁵⁷ AIR 1961 SC 276.

⁵⁸ Interview with the Local Dorbar, April 26, 2025.

⁵⁹ *State of Meghalaya v. Raja Dorbar Kur Nongkhlaw*, CRP No. 12 of 2023 (Shillong, judgment dated 24 Oct. 2025).

Syiem in his place. However, when the acting Syiem attempted to assume his role, he was blocked by some myntries (ministers) and supporters of the deposed Syiem. They argued that, according to tradition, the Syiem must be elected by his Dorbar (traditional council), and therefore, the acting Syiem appointed by the District Council lacked legitimacy. This incident reflects the underlying tensions between traditional Khasi governance structures and modern constitutional authority.⁶⁰

The Meghalaya High Court in the case of *Khasi Hills Autonomous District Council v. the State of Meghalaya*⁶¹ has directed the state government to introduce a suitable and comprehensive law to resolve a dispute regarding the powers of Rangbah Shnong (village headman) due to inconsistencies in customary laws, practices, and legal provisions enacted by autonomous district councils across the state.⁶² In this case, the petitioners who married a non-tribal were evicted from their homes by the Village Dorbar of Pamrakmai and were denied residential certificates, and the dorbar justified its actions on the grounds of customary law. The court held that the Rangbah Shnong and the Village councils could not act in a manner that violated the fundamental and legal rights of the residents. It emphasized that customary practices cannot override constitutional rights.⁶³

The above case highlights the conflict between customary law and constitutional rights in Meghalaya. While the Sixth Schedule of the Indian Constitution grants autonomy to tribal areas, this judgment underscored the necessity for traditional systems to operate within the broader framework of constitutional guarantees. This ruling paved the way for legislative reform to settle the ambiguity surrounding the role of headmen and their authority over the community. Further, this ruling also reaffirmed that while customary law and practices are

⁶⁰ “Supreme Court Upholds Syiem of Myllem’s Suspension,” *The Shillong Times*, 11 Aug. 2002; “Hima Myllem fails to take decision on Supreme Court order,” *The Shillong Times*, 17 Aug. 2002.

⁶¹ (2016) 01 MEG CK 0003.

⁶² “No Respite for Headmen, Justice Sen’s Order Remains in Force,” *The Shillong Times*, available at: <https://theshillongtimes.com/2016/01/14/no-respite-for-headmen-justice-sens-order-remains-in-force/> (last visited on June 5, 2025).

⁶³ *Supra* note 55.

important, they cannot supersede constitutional protections, particularly fundamental rights such as equality and personal liberty.⁶⁴

6. Conclusion

The legal landscape of the Khasi Hills in Meghalaya offers a compelling case study in navigating the delicate balance between preserving cultural identity and adhering to constitutional governance. The co-existence of traditional and modern legal systems, enabled by the Sixth Schedule of the Indian Constitution, underscores the vision of a pluralistic framework that seeks to honour the unique heritage of tribal communities while integrating them into the broader national framework. However, the practical realities of this coexistence reveal significant challenges, necessitating an urgent re-evaluation of how these systems can operate harmoniously.

The traditional justice systems, deeply rooted in Khasi customs and practices, emphasize community-centric principles such as restorative justice and social harmony. These systems thrive on the cultural and social legitimacy conferred by the people and provide a sense of ownership and relevance to local populations. At the same time, the modern legal framework, with its codified laws, procedural justice, and emphasis on individual rights, offers standardized mechanisms to address disputes, ensuring alignment with constitutional values and fundamental rights. While these systems can complement one another, their intersection often leads to conflicts and contradictions, particularly when jurisdictional overlaps occur, or when customary practices clash with constitutional guarantees of equality and personal liberty.

One of the most significant challenges is addressing the inherent jurisdictional ambiguities between traditional and modern institutions. In *T. Cajee vs Jormanik Syiem*⁶⁵, it was highlighted that while the Sixth Schedule empowers tribal communities to govern themselves, their decisions remain subject to constitutional review. This dual oversight has often resulted in tensions, with traditional authorities feeling undermined and constitutional institutions perceiving customary practices as inconsistent with the principles of

⁶⁴ Ibid.

⁶⁵ *Supra* note 57.

natural justice. These tensions manifest in real-world disputes, such as suspending traditional leaders like the Syiem, revealing a deeper struggle for legitimacy and authority between the traditional councils and modern governance structures. Another critical issue is ensuring procedural fairness and transparency in traditional courts. While these courts often prioritize reconciliation and social harmony, their informal procedure can sometimes overlook principles of natural justice, resulting in arbitrary or inconsistent outcomes. The Meghalaya High Court, in multiple judgments, has emphasized the need for traditional institutions to operate within the bounds of fairness, accountability, and constitutional rights, signalling the importance of aligning customary practices with broader legal norms and constitutional principles.

The plurality of laws in the Khasi Hills of Meghalaya, while necessary for the protection of tribal identity and cultural preservation, often creates conflicts around jurisdiction, legal principles, and social legitimacy. From the above examples, it is evident that legal pluralism ought to be carefully harmonised to eliminate any contradictions between the two parallel adjudication systems. This requires carefully designed legislative reforms that ensure the preservation of the customary laws of tribals and that they do not contravene their Constitutional rights as Indian citizens. This can be achieved through constructive dialogues among all relevant stakeholders, including civil society, traditional chiefs, civil servants, Autonomous District Councils, and the state government. These reforms need to be in line with the international norms and protections guaranteed to the indigenous peoples, like the United Nations Declaration on the Rights of Indigenous Peoples (2007)⁶⁶, International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples,⁶⁷ and Article 27 of the International Covenant on Civil and Political Rights⁶⁸. Moreover, this challenge is not unique to Meghalaya. For instance, the Nagaland Bar Association has opposed the Rules for the

⁶⁶ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (13 Sept. 2007).

⁶⁷ International Labour Organization, *Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries*, 27 June 1989, 1650 U.N.T.S. 383.

⁶⁸ International Covenant on Civil and Political Rights, art. 27, 16 Dec. 1966, 999 U.N.T.S. 171.

Administration of Justice and Police in Nagaland (Fifth Amendment), Rules 2025. The rules propose the formation of a formal three-tiered structure for “Customary Courts,” consisting of Village Courts, Subordinate District Customary Courts, and District Customary Courts. The Bar Association argues that the proposed structures outlined in the Amendment are not indigenous to Naga culture and have no basis in the customary adjudicatory processes and systems used by the State’s various tribes.⁶⁹ Beyond India, such legal pluralism can be found in Bolivia. The Bolivian Constitution is applauded for being inclusive and plurinational and for having strong protections for indigenous cultural rights. The 2009 Bolivian Constitution formally recognises the indigenous adjudication mechanism as part of its pluralistic legal order and grants indigenous peoples the authority to resolve their disputes according to their customs.⁷⁰ In addition, the 2010 Law of Jurisdictional Demarcation⁷¹ establishes clear boundaries on what can be adjudicated by state legal systems and indigenous legal systems, and reserves serious offences like homicide or corruption to be tried by the state courts, and permits the customary courts to adjudicate disputes involving community issues. The challenges of legal pluralism in the Khasi Hills can be better resolved by making a comparative study of these pluralistic legal systems and learning from their experiences and limitations. Thus, we conclude that despite these current challenges, the dual legal systems in the Khasi Hills offer an opportunity for a unique synthesis of tradition and modernity. The richness of Khasi customs and the flexibility of their oral traditions provide a foundation for

⁶⁹ “Nagaland Bar Association Opposes Customary Courts Amendment,” *EASTMOJO*, available at: <https://eastmojo.com/nagaland/2025/06/10/nagaland-bar-opposes-customary-courts-amendment> (last visited on 10 June 2025).

⁷⁰ María-Paula Barrantes-Reynolds, *Legal Pluralism in the Constitution of Bolivia of 2009: Between Multiculturalism and Plurinationalism* (2016) (Ph.D. thesis, University of Leicester), available at: <https://hdl.handle.net/2381/37599>. (last visited on February 10, 2025).

⁷¹ Ley de Deslinde Jurisdiccional [Law of Jurisdictional Demarcation], Ley No. 073, 29 Dec. 2010, *Gaceta Oficial del Estado Plurinacional de Bolivia* No. 0209 (30 Dec. 2010) (Bol.), available at: <https://www.lexivox.org/norms/BO-L-N73.html>. (last visited on February 10, 2025).

evolving these practices to meet contemporary legal standards. Legislative reforms can play a pivotal role in clarifying jurisdictional boundaries, codifying essential aspects of customary laws, and establishing mechanisms to ensure that. Traditional courts operate transparently and equitably. Such measures would reduce conflicts and strengthen the legitimacy of traditional institutions in the eyes of their communities and the broader legal framework.

Ultimately, the path forward requires a collaborative approach that respects the cultural distinctiveness of the Khasi people while upholding constitutional values. Traditional and modern institutions must engage in dialogue to create a cohesive legal framework prioritizing justice, equity, and accountability. By fostering such integration, the Khasi Hills can serve as a model for managing legal pluralism in other tribal and culturally diverse regions, demonstrating how tradition and modernity can coexist to enrich the justice system and empower communities. This synthesis of legal systems will preserve the Khasi people's unique identity and contribute to a more inclusive and effective governance structure that respects diversity while ensuring fairness and the rule of law for all.



Access to Speedy Justice in India: A Mirage or Reality

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Abstract

The famous adage “Justice Delayed is Justice Denied” aptly emphasizes the significance of the right to speedy justice, which is recognized as one of the fundamental rights. Unfortunately, this right has become more of a cliché in the present context. The significance of delivering justice lies in its timely dispensation, for delayed justice renders it nearly meaningless and inadequate. Speedy justice forms an essential component of social justice, as it encompasses the collective interest of the community in ensuring that criminals are appropriately and conclusively punished within a reasonable time frame, while innocent individuals are spared from prolonged and burdensome criminal proceedings. Each passing day brings greater recognition and significance to the concept of the right to prompt justice. The idea of the Right to Speedy justice has evolved over time, but its ultimate objectives remain uncertain. The underlying principle is on expediting case resolutions to enhance the efficiency and credibility of the judiciary. However, the harsh reality is that there are alarmingly long delays in the process of dispensing justice. It is disheartening that a judicial system, which upholds the principle of “innocent until proven guilty,” incarcerates a significant portion of the prison population without establishing their guilt. Those accused are confined behind bars, waiting for justice for decades. Over time, they lose faith in the judicial system.

The Study explores the idea of prompt justice as a crucial element of social fairness. It emphasizes how important it is for the community as a whole to make sure that offenders receive just punishment and that it happens quickly enough to save innocent people from drawn out and onerous legal processes. While acknowledging the right to swift justice’s developing character, the study also highlights the lack of clarity surrounding the right’s ultimate goals. It offers an insightful summary of the problems and inequalities with the existing status of the right to prompt justice, stimulating additional research

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into the workings of the legal system and the necessity of change to preserve the values of justice, effectiveness, and credibility.

Keywords: Speedy Justice, Judiciary, Delays, Injustice, Fundamental Rights

1. Introduction

Justice forms the foundation and purpose of any civilized society or nation. For generations, humanity has held onto the aspiration of achieving justice. It is an obligation that guides the functioning of both legal and social institutions. Justice primarily refers to embodying the quality of fairness, such as fulfilling rightful expectations. It encompasses principles like fairness, righteousness, and integrity.¹ However, justice holds little significance, if it is not delivered within a reasonable time frame. It asserts that justice can never be fully viewed as having been served when it is delayed and lacks direction. The timely and efficient conclusion of criminal trials is considered important for the preservation of social order and the defense of individual liberties in a democratic system. Trials must be expedited in order to achieve the more general objectives of successfully prosecuting offenders and discouraging future wrongdoers. The efficiency of the legal system in enforcing law and order and administering justice is seen to depend critically on the timely resolution of cases. A system may not be able to accomplish these broad goals if cases are not handled promptly. The adverse impacts of protracted trials are emphasized, implying that the drawn out proceedings not only reduce the level of personal satisfaction for individuals engaged but also weaken public confidence in the legal system. People who are waiting for justice could become frustrated and disillusioned because of the never ending judicial processes. The public faith in the credibility of the justice system to provide just and efficient results may consequently erode as a result of this. It also emphasizes how extensive trials are counterproductive to the fundamental goals of criminal law. By making offenders answerable for their deeds, criminal law seeks to establish justice. A delay in justice undermines the fundamental element of accountability and may even spare certain people from the repercussions of their acts. The concept of “speedy justice” essentially promotes a court system that prioritizes deliberate and swift justice, realizing its critical role in

¹ Manuel Velasquez, Claire Andre, Thomas Shanks, S.J. & Michael J. Meyer, *Justice and Fairness (Markkula Ctr. for Applied Ethics, 2018)*.

preserving the larger ideals of justice, deterrence, and social order within a democratic framework, in addition to its importance in individual instances.²

2. Statement of the Problem

The adage “Justice Delayed is Justice Denied” emphasizes how crucial the idea of prompt justice is to maintain the values of equity and fairness in the judicial system. Even though everyone agrees that everyone has the fundamental human right to prompt justice, the reality is very different, particularly when considering the Indian justice system. The right to a timely trial has become an unattainable dream due to the protracted delays in the administration of justice. In the Indian context, the court system struggles with an enormous backlog of cases, complex procedural issues, and structural inefficiencies, all of which alarmingly prevent many people from receiving timely justice. A major chunk of the population spends prolonged periods in pretrial confinements, impeding the fundamental principle to be believed innocent unless proven guilty. This undermines public confidence in the justice system in addition to violating fundamental rights.

The problem affects more than just the people who await timely justice. Delayed Justice has wider ramifications for public trust, social order, and the legitimacy of the legal system as a whole. The issue is made worse by the lack of a specific legislative structure to handle and hasten trials, which feeds the vicious circle of postponed justice. This study aims to investigate the various obstacles that prevent Indians from accessing prompt justice. It seeks to objectively examine the various causes of delayed trials, such as the overburdened legal system, missing laws, and structural inefficiencies. In order to offer a thorough grasp of the nuances surrounding this crucial subject, the research looks at both the constitutional and international perspectives on the right to prompt justice.

Finding workable answers and suggesting changes that can close the gap between the theoretical notion of the right to prompt justice and its actual application is the ultimate objective of this study. The

² Elena Maculan & Alicia Gil Gil, *The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts*, 40 *Oxford J. Legal Stud.* 132 (2020).

research aims to contribute to the ongoing conversation on legal reform and inspire practical strategies to turn the abstract goal of everyone having access to quick justice into a concrete and attainable reality by thoroughly examining case studies, legal precedents, and international best practices.

3. Research Objectives

- Examine and evaluate the underlying factors that contribute to delays in the Indian legal system, such as complicated procedures, shoddy infrastructure, and structural inefficiencies.
- Examine the effects of delayed justice on people's social, economic, and psychological well-being, taking into account things like extended pretrial detention, the violation of fundamental rights, and the overall effect on public confidence in the legal system.

4. Research Methodology

The research is being conducted using a multifaceted research methodology. The doctrinal analysis, which explores legal concepts, statutes, and theoretical frameworks to create a strong theoretical foundation, is an essential part. An extensive literature evaluation that includes both domestic and foreign sources, including books, newspapers, research papers, and journals, is included to supplement this. These studies offer a thorough grasp of the current discussion regarding the difficulties and possible solutions surrounding expedited justice.

In order to provide useful insights into the application of legal principles, the process also includes a thorough review of case laws. Comparisons of the Global Legal Systems provide a more comprehensive view by highlighting best practices and lessons that may guide future reforms. The reliability and validity of the research findings are ensured by the triangulation of these several sources. To acknowledge the researcher's positionality and potential biases, methodological reflexivity is upheld throughout the process. This helps to foster a critical assessment of the sources and the development of well-informed findings. This methodology essentially aims to provide a comprehensive and detailed examination of the intricacies related to the timely and efficient access to justice.

5. Access to Speedy Justice: A Basic Human Right

The right to speedy justice is not only as a fundamental human right but also adds significance and substance to other internationally recognized human rights. A just trial entails the elimination of any bias or favoritism towards the accused, witnesses, or the subject matter under scrutiny. A fair trial explicitly implies a proceeding conducted before an unbiased judge, a rational prosecutor, and within a legally serene atmosphere.³

The right to a speedy trial is firmly grounded in the principles of fairness, justice and respect for human dignity.⁴ It acknowledges that unwarranted delays in criminal proceedings can have significant adverse effects on individuals, subjecting them to prolonged periods of uncertainty, emotional distress, and potential damage to their reputation and livelihood. The access to speedy justice serves as a protective measure against arbitrary or unjustifiable pretrial detention. Its purpose is to guarantee that individuals are not subjected to prolonged periods of custody without a fair and timely assessment of their guilt or innocence. By upholding this right, the justice system ensures that the fundamental rights of the individuals are respected, preventing undue deprivation of liberty without due process of law.

The right to a speedy trial finds explicit recognition in almost all the important and pertinent international conventions and charters. For instance, Article 9(3) of the Universal Declaration of Human Rights affirms⁵ that “Every individual accused of a criminal offense possesses the right to be presumed innocent until proven guilty in accordance with the law”. They are entitled to all the protections required for their defense during a public trial, as part of this right. This provision implies that individuals should undergo trial proceedings without undue delays, safeguarding their presumption of innocence and enabling them to exercise their right to a robust defense

³ Sri Mohd. Abdul Javeed Pasha, *General Principles of Fair Trial*.

⁴ Sanya Chandrakar, *Right to a Fair and Speedy Trial*.

⁵ “The Universal Declaration of Human Rights (UDHR) 10 Dec, 1948” is a comprehensive framework that protects the rights of people everywhere while embracing the ideals of equality and freedom. This foundational agreement establishes a framework to guarantee that every person is provided the full range of human rights and safeguards, irrespective of their location.

effectively. In essence, the right to a speedy trial ensures that justice is timely delivered and that individuals are afforded a fair and equitable legal process.

The International Covenant on Civil and Political Rights (ICCPR)⁶ further strengthens the right to speedy justice through Article 14(3)(c)⁷, explicitly affirms that every individual facing a criminal charge shall be entitled to a trial without unnecessary delay in its determination. This critical provision emphasizes the significance of timely dispensation of justice, shielding individuals from extended periods of pretrial detention, prolonged ambiguity, and the risk of rights violations. By highlighting the need for expeditious legal proceedings, this provision ensures that individuals can exercise their rights efficiently and effectively within the criminal justice system.

Recognizing speedy justice as a fundamental human right seeks to safeguard individuals from unjustifiable pretrial detention, uphold the presumption of innocence, prevent the abuse of power, ensure the reliability of evidence, and foster public trust in the justice system.⁸ It strikes a delicate balance between the necessity for expeditious proceedings and the imperative of conducting a fair and comprehensive examination of each case. By prioritizing timely resolution, this right not only protects the rights of individuals but also reinforces the principles of equity and due process, ultimately strengthening the overall integrity and effectiveness of the legal system.

6. Access to Speedy Justice & the Rule of Fair Trial

The Constitution of India explicitly guarantees the right to a fair trial. In a democratic country like India, the right to life and personal liberty cannot be denied, even to an accused individual. Article 21 of the

⁶ One important “international human rights treaty” is the International Covenant on Civil and Political Rights (ICCPR), which was ratified by the UN General Assembly in 1966. This extensive text outlines a wide range of civil and political rights that are widely acknowledged as essential to preserving peoples' dignity and well-being.

⁷ Every person is entitled to the following fundamental safeguards, guaranteeing perfect equality, when facing any criminal charge: (c) The right to a speedy trial devoid of undue delay.

⁸ Article 21 of the Indian Constitution entitles every person to “a fair and just trial” before any court of the country.

Indian Constitution recognizes the fair trial as an essential component of life and personal liberty.

In the case of *Rattiram & Ors vs State of M.P.*⁹, The Court stressed that “a fair trial is the foundation of criminal statutes, and any denial of it constitutes a violation of basic fundamental rights”. This is an inalienable right, accessible to all. It serves as a vital safeguard assuring the dispensation of justice impartially and upholding the principles of justice, equality, and fair treatment. Access to speedy justice entails a reasonable and expeditious legal process that adheres to all the essentials of a fair trial. It involves the prosecution initiating proceedings promptly and conducting them without undue delay. Right to speedy trial has been acknowledged an intrinsic element of a just and fair trial¹⁰.

The importance of speedy justice is not limited to the victim; it also extends to the accused. It guarantees that the accused is exempted from unwarranted mistreatment and unwarranted delays in legal procedures. Furthermore, the State is constitutionally obliged to put in place a procedural framework that guarantees a swift trial for the accused. Access to Speedy justice is an intrinsic aspect that underpins a just trial. Delays in the legal process can erode the fairness of proceedings and undermine the core principles of justice.¹¹ Timely resolution of cases plays a vital role in preserving the presumption of innocence, preventing unwarranted pretrial detention, and shielding individuals from prolonged periods of uncertainty. Speedy justice and fair trial are interconnected principles that synergistically uphold individual rights, safeguard the integrity of the judicial system, and foster a just and equitable society. These intertwined principles underscore the significance of efficiency, fairness, and adherence to “the rule of law” in the justice delivery system. Together, they form the bedrock of a robust and equitable judicial framework that serves the interests of individuals and society as a whole.

⁹ 2007 CriLJ 3955.

¹⁰ *Husain Ara Khatoun & Ors v. Home Secretary Bihar* (1979), AIR 1369.

¹¹ Krishnan, Jayanth K. and Kumar, C. Raj, “*Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*” (2011).

7. International Perspective

In jurisdictions that uphold the rule of law, the principle of a “Speedy Justice” places an obligation on prosecutors to diligently construct cases within a reasonable time frame, taking into account the complexity and gravity of the alleged crimes.¹² This requirement is rooted in the belief that prolonged detention should generally be limited to situations where a suspect is found guilty of a crime by a judge or jury.

Access to speedy justice finds expression in foundational legal documents across various jurisdictions and may be further elaborated through statutory laws. The objective is to prevent individuals from enduring indefinite or unwarranted pretrial detention, safeguarding their rights to liberty and due process.¹³ By imposing time constraints on the prosecution, the right to a speedy trial serves several important objectives. It encourages efficiency in the legal process, preventing undue delays that could compromise the fairness and effectiveness of proceedings. It also provides a safeguard against potential abuses of power, ensuring that individuals are not unnecessarily held in custody without sufficient evidence or a timely determination of guilt. The precise parameters of the access to speedy justice may vary across jurisdictions, reflecting local legal frameworks and traditions. However, its underlying principle remains consistent in promoting a balance between the pursuit of justice and the protection of individual rights.

(a) Canada

“The Charter of Rights and Freedoms” recognizes the rights to a speedy trial under Section Eleven.¹⁴ The key boundaries of the right to a timely trial under the Charter of Rights and Freedoms were established by the Supreme Court of Canada in the landmark case of *R v. Jordan*.¹⁵ The court maintained that if a trial is not held within 18 months of the charges being brought, or within 30 months if a

¹² Amendments to the Indian Constitution based on the Justice J.S. Verma Committee Recommendations.

¹³ Sheikh Ahmed, *Speedy Justice System in India Under the Constitutional Perspective of Article 21*.

¹⁴ Every individual accused of a crime possesses the entitlement to: (b) undergo a trial within a reasonable period, Charter of Rights and Freedoms.

¹⁵ 2016 SCC 27.

preliminary inquiry is involved, then the Charter rights are violated. A deadline for judicial processes to guarantee the prompt conclusion of criminal cases was set by this historic ruling. The benchmarks of 18 months and 30 months established by the Supreme Court have a substantial impact on Canada's judicial system. The prosecution must end pertinent charges by requesting a stay of proceedings if these deadlines are exceeded. This highlights the need for swift legal proceedings and protects the accused by guaranteeing that their right to a speedy trial is upheld.

Nonetheless, the Supreme Court's ruling acknowledges the possibility of extraordinary circumstances, which means the prosecution may refute the presumption of unreasonableness. If this were the case, the prosecution may present proof that the delays were not within their power. The framework achieves a critical balance between the necessity of swift legal proceedings and the understanding that specific situations can call for an extension of the time restrictions.

Preventing unwarranted delays in court cases is the main goal of the *R v. Jordan* framework, which also encourages the prompt conclusion of criminal matters. The Apex Court makes sure that people who are accused don't have to wait around for extended periods of time, and that the judicial system operates in a way that respects people's rights and fairness. This is accomplished by setting clear guidelines. The ruling demonstrates how the Canadian legal system is dedicated to protecting fundamental rights while ensuring efficiency and impartiality in criminal trials.

(b) United States of America

The Speedy Trial Clause of the Sixth Amendment to the United States Constitution protects the right to a prompt trial in the United States. This constitutional clause emphasizes how crucial it is to give those who are accused of crimes a prompt and effective justice system. According to the Sixth Amendment, "the accused shall enjoy the right to a speedy and public trial in all criminal prosecutions". Ensuring the integrity of the criminal justice system and shielding persons from protracted legal proceedings are contingent upon this promise.¹⁶ The

¹⁶ The standards to guarantee prompt criminal proceedings are outlined in the 1974 Speedy Trial Act, which contributes to the definition of the right

Speedy Trial Act of 1974¹⁷ adds to the constitutional safeguards for federal offenses by laying forth particular guidelines for accelerating trial processes. The trial must start under this act within 70 days of the later of the two occurrences: the defendant's presence before a court officer, or the filing of the information or indictment. In order to guarantee a prompt resolution to criminal cases, the Act seeks to establish a precise and unambiguous time range within which the trial proceedings must commence.

States in the United States supplement federal provisions pertaining to the right to a prompt trial. The Virginia Declaration of Rights¹⁸ "speedy trial" clause, which was adopted in June 1776 and predates the US Constitution, is where this commitment's historical roots may be found. This early acknowledgment reflects a long-standing admiration in the American legal tradition for swift court cases. States' commitment to upholding the fundamental right to a prompt and fair trial is demonstrated by their adoption of such measures, which are echoed by deeply embedded constitutional and historical values in the United States.

There may be serious repercussions if the right to a prompt trial is violated. In cases where this entitlement is violated, the case may be dismissed, which means that the allegations against them are dropped forever. Courts are not permitted to use their discretion in coming up with kinder remedies if a breach of the Speedy Trial Clause

under the Sixth Amendment. The Statute states that, beginning in 1980, the length of any delay in federal and district courts cannot exceed 100 days, with some exceptions made for particular situations. The legislation creates rules to encourage promptness and efficiency in the federal and district court systems' case adjudication processes.

¹⁷ With few exceptions, the U.S. Speedy Trial Act of 1974 establishes a 70-day deadline for the start of a defendant's trial. Dismissal with or without prejudice may follow delays. Defendants may choose to voluntarily give up this right, and delays may be acceptable under certain conditions. In an effort to strike a balance between efficiency and defendants' rights to a speedy trial, the statute expedites appeals and penalizes the government for causing delays.

¹⁸ People have the right to know the basis and specifics of the charges made against them in criminal prosecutions. Along with being able to provide proof in their favor, they also have the opportunity to face their accusers and the witnesses. They also have the right to a prompt, public trial that is overseen by an unbiased jury drawn from their neighborhood.

has been proven. By taking a hard stance, the American Courts prevent needless delays and uphold the constitutional guarantee of an equitable and efficient criminal justice system. Since the legal system is dedicated to maintaining the values of justice and equity, the emphasis placed on dismissal with prejudice highlights how seriously violations of the right to a prompt trial are viewed.¹⁹

(c) Europe

The right to a speedy trial is enshrined in the European Union (EU) through the Charter of Fundamental Rights.²⁰ Article 47 of the Charter explicitly acknowledges the right to an effective remedy and a fair trial. While the Charter is applicable to EU institutions and Member States in the implementation of EU law, individual EU Member States also have their own national laws and legal systems that uphold the right to a speedy trial. These combined protections emphasize the importance of timely justice, ensuring that individuals are not subjected to unnecessary delays in legal proceedings.

Furthermore, the right to speedy justice is also protected by the European Convention on Human Rights (ECHR)²¹ an independent legal framework separate from the EU. Within the European Convention on Human Rights (ECHR), Article 6(1) explicitly ensures “the right to a fair trial”, which includes the entitlement to have legal proceedings brought to a close within a reasonable period. This provision reinforces the importance of timely justice, ensuring that individuals are not subjected to prolonged delays in their legal cases. The ECHR’s commitment to the access to speedy justice complements the European Union’s dedication in upholding human rights and promoting a fair and efficient judicial system.²²

¹⁹ The court's ruling maintains that the goals of the expedited trial protection are not entirely met by remedies other than dismissal with prejudice, such as a sentencing reduction equal to the length of the unlawful delay. These goals include protecting against the anguish and disruption brought on by persistent charges and maintaining the prospect of rehabilitation.

²⁰ 7 December, 2000.

²¹ 3 September, 1953.

²² Laurence R. Helfer, “Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime,” *European Journal of International Law*, Volume 19, Issue 1 (February 2008), Pages 125–159.

The interpretation and application of the right to a prompt trial may differ among EU Member States, considering the unique aspects of their national legal systems and practices.²³ Nonetheless, the core principle of guaranteeing timely justice remains a fundamental element in the European Union's dedication to upholding inherent rights and the rule of law. While there may be variations in approaches, ensuring that individuals have access to prompt and efficient legal proceedings is a shared commitment within the EU, promoting fairness, due process, and respect for fundamental rights across its Member States.

These legal instruments underscore the significance of timely justice, aiming to prevent individuals from enduring prolonged delays in legal proceedings. Access to speedy justice plays a vital role in preserving the credibility of the legal system, protecting the rights of the accused, and instilling public confidence in the judiciary. By ensuring prompt resolution, this right prevents unnecessary hardship for individuals, preserves the presumption of innocence, and upholds the principles of fairness and efficiency in the justice delivery system. In essence, the availability of speedy justice stands as a crucial foundation in upholding the legitimacy and efficiency of the legal system.²⁴

European legal systems have been at the forefront of the advancement of progressive reforms meant to increase the efficiency of the legal system. Based on the objective of creating a more uniform and efficient legal environment, these reforms have major results facilitating cross-border litigation and speeding up case resolution.

8. Technology Integration in Court Proceedings

Technology has been actively embraced by European legal systems to improve court procedures. Electronic file systems, virtual courtrooms, and digital case management tools are all part of this technological integration. The use of such innovations in technology expedites legal proceedings and simplifies administrative procedures.

²³ "Part III - Scope of Application, Interpretation and Effects of the Charter," The EU Charter of Fundamental Rights.

²⁴ *Strengthening Judicial Independence and Impartiality as a Pre-Condition for the Rule of Law in Council of Europe Member States: Opening and Concluding Remarks, Key Speeches and General Rapporteur's Report.*

Legal papers can now be digitally stored and accessed more easily through electronic file systems, which also make case related data easier to manage. Video conferencing technology is used in virtual courtroom proceedings to minimize the requirement for in person presence in courtrooms. Along with quickening the legal process, this also adds a degree of flexibility that helps resolve cases more quickly. Digital case management solutions reduce bureaucratic inefficiencies by helping to further organize and track judicial proceedings. The speeding of court cases and the simplification of administrative work are the two main effects of technology on European judicial systems. Interestingly, one major driver of faster and more flexible court case settlement has been the removal of the requirement for physical attendance during virtual hearings. In light of the evolving European legal system, this modernization demonstrates a dedication to utilizing technology to effectively administer justice.

(a) Specialized Courts for Certain Cases:

In order to handle specific types of cases more effectively, European states have purposefully set up specialized courts. Remarkably, these specialist courts are essential for resolving complicated cases quickly, especially when they concern businesses or intellectual property.²⁵ Making use of the specific expertise and experience that judges in these specialized courts possess is one of the main benefits. The idea behind specialized courts is that judges who have a deeper comprehension of intricate legal matters are better equipped to handle cases and reach decisions.²⁶ Judges in specialist intellectual property courts, for example, might have experience in copyright or patent law, but judges in business courts might be knowledgeable about corporation law. Because of this focused expertise, the adjudication process can be completed more quickly and the learning curve related to complex legal topics is reduced. By precisely addressing particular legal issues, the creation of these specialist courts demonstrates a dedication in improving the efficiency of the legal system. These courts help to speed up legal proceedings and provide more accurate rulings by assigning judges with specialized knowledge, which promotes a legal climate that is adaptable to the

²⁵ *Specialised IP rights jurisdictions in the Member States*, EUIPO, July 2018.

²⁶ Carlo Guarneri, *The Judicial System*, April 2002.

intricacies of changing business and intellectual property environments.

Two prominent instances are the Netherlands Commercial Courts,²⁷ which concentrate on trials involving international commerce, and Germany's Patent Litigation Courts,²⁸ which manage intellectual property disputes. These specialist courts guarantee that judges have the specific knowledge needed for the cases they preside over, which promotes prompt and accurate decision-making. The establishment of specialist judiciaries is indicative of a dedication in tackling the distinct obstacles presented by particular legal fields, leading to the eventual promotion of a more effective and customized approach to justice in Europe.

(b) Initiatives to Standardize Procedural Laws:

When it comes to criminal cases, European legal systems have realized how important it is to standardize procedural laws. A proper foundation for the standardization of procedural legislation has been established in recognition of the need for consistency and predictability in court matters.²⁹ Establishing a coherent and unified approach is the main objective of standardizing procedural legislation, making sure that criminal processes follow comparable norms and procedures in various jurisdictions. Legal procedures will run more smoothly as a result of this standardization of the litigation processes. A standardized set of procedural norms provides a uniform and unambiguous framework for all parties concerned, which extends the benefits to increased legal certainty.

²⁷ The NCC District Court and NCC Court of Appeal, together known as the Netherlands Commercial Court, are in a good position to handle issues involving foreign businesses quickly and efficiently. authored in January of 2019.

²⁸ The patent litigation system in Germany has two branches. While the Federal Patent Court (Bundespatentgericht) renders decisions on validity, civil courts (Landgericht/Oberlandesgericht) handle cases involving patent infringement.

²⁹ "Weyembergh, A., and Sellier, E., *"Criminal procedural laws across the European Union- A comparative analysis of selected main differences and the impact they have over the development of EU legislation"*, Policy Department for citizen's rights and constitutional affairs, European Parliament, August 2018".

This standardization program lessens the procedural barriers that impede criminal proceedings, hence reducing their complexity. It makes the litigation process more straightforward overall by ensuring that legal proceedings are not impeded by differences in procedural norms. Parties in a Criminal case stand to gain from a settlement process that is not only quick but also simpler, regardless of their role as prosecutors or defendants.

A prime example of such an endeavor is the European Arrest Warrant (EAW)³⁰ that the European Union issues, which expedites the extradition procedure for major crimes across its member states. Furthermore, by offering a forum for coordination and information sharing amongst national agencies engaged in criminal processes, the Euro just³¹ agency promotes judicial collaboration. The goal of European efforts to harmonize procedural legislation is to establish a Speedy, cohesive and effective legal system, especially with regard to criminal cases³². Legal systems aim to provide parties to criminal cases with a quick and easy settlement process by putting in place the right frameworks. This helps to promote efficiency and fairness in criminal litigation among European jurisdictions.

9. Access to Speedy Justice: Indian Context

Justice, encompassing social, economic, and political dimensions, stands as a foundational principle in the preamble of the Constitution.³³ The essence of the legal system lies in its assurance of equal treatment and protection under the law for all individuals.³⁴ The Supreme Court has consistently recognized and reiterated that timely

³⁰ The EAW was established in January 2004 and is predicated on the mutual recognition concept, trust, and direct communication between the Member State legal authorities. The instrument, which replaced earlier extradition tools that necessitated political involvement, allows for quicker and easier surrender procedures by imposing strict deadlines on suspects and convicted individuals, offering a single standard form to practitioners, and limiting the execution State's ability to refuse.

³¹ Likka Salami, *Euro Just's Contribution to Fight Against Terrorism*.

³² Andre Klip, Herman Ven der Wilt, *Harmonisation and Harmonising Measures in Criminal Law*, 2002.

³³ Atish Charoborty, *The Indian Constitution & its Vision of Justice*, 2018.

³⁴ Massimo Tomassali, *Rule of Law and Democracy: Addressing the Gap between Policies and Practices*.

justice and speedy trials are inseparable elements of the right to life guaranteed by the Constitution. This recognition underlines the significance of efficient and prompt legal processes, ensuring that individuals' rights are protected and their wellbeing is upheld within the framework of the Constitution.

Within the Constitution, the provision for equal access to justice is not only enshrined as a fundamental right under Part III³⁵ but also emphasized as a directive for good governance under Part IV.³⁶ The access to speedy justice is an innate facet of “the right to life and personal liberty”.³⁷As a welfare state, it is one of the most vital responsibilities to establish both judicial and non-judicial mechanisms for the resolution of legal disputes and enforcement of fundamental and legal rights. These mechanisms should be accessible to all citizens without discrimination, ensuring equal opportunities for individuals to seek redress and protect their rights. By providing inclusive avenues for dispute resolution, the state upholds its commitment to ensure fairness, justice, and the effective functioning of the legal system in the service of its citizens.

In practice, the right to speedy justice is frequently disregarded,³⁸ despite being a significant and noteworthy aspect of the Legal System. The significance of expeditious justice has been acknowledged across different societies and throughout various stages of their progress and evolution. Delayed justice has consistently been viewed as a significant challenge within civilized frameworks, highlighting its detrimental impact on human civilization. The issue of legal delays is not a recent phenomenon but has existed as long as the legal system

³⁵ In India, Part III is the cornerstone of individual liberty, highlighting the Preamble of the Constitution's commitment to justice, liberty, equality, and brotherhood.

³⁶ The nation's social and economic structure is envisioned in Part IV, which places a strong emphasis on ideas like environmental preservation, economic equity, and social justice. It gives the government instructions to advance the well-being of the populace, maintain a fair and compassionate social structure, and seek to lessen inequality.

³⁷ Gautam Bhatia, *Indian Constitutional Law & Philosophy*, 2023.

³⁸ Harsha Agrawal, “Speedy Trial: A Privilege Overlooked”, 1 *Int'l J. of Legal Sci. and Inno.* 2 (2019).

itself, and has been recognized as a critical problem to be addressed.³⁹

Domestically, the importance of access to speedy justice is yet to be fully embraced. The clear rationale is the sluggish approach to one of the most crucial concepts in the criminal justice system. However, several decisions by the Supreme Court have shed light on the plight of thousands of accused individuals who are either standing trial or awaiting trial. The repeated and frequent delays in the criminal justice process continue to exploit individuals, particularly the victims, by preventing them from achieving emotional, physical, and financial closure from the harm they have suffered due to the crimes committed against them.⁴⁰

Prolonged and protracted trials in India are a major concern, as evidenced by the time taken by the state and the courts to process cases. Lower courts, which serve as the first level of the judicial hierarchy, process cases for an average of 2,184 days. This huge timeline shows that it takes a staggering six years to resolve basic issues, highlighting the challenges and inefficiencies at lower levels of the judiciary. As one goes up the judicial hierarchy, the High Courts, which are essential to the Indian legal system, see an average case resolution time of 1,128 days. This period of time, which is equivalent to around three years, shows that the justice delivery process is far from speedy, even at a higher judicial level. The nation's legal proceedings are largely shaped by the High Courts, which serve as vital venues for appeals and reviews of rulings rendered by lower courts. Long legal time frames also affect the Supreme Court, the Nation's highest court. At this stage, cases take about "1,095" days to be settled, indicating that the Indian judicial system as a whole may take longer than 12 years to complete. This lengthy process puts the parties' patience to the test and calls into question the effectiveness and efficiency of the legal system in handling the prompt administration of justice, which is essential to any well-functioning legal system.⁴¹ These numbers highlight how much India needs

³⁹ Jayanath K Krishnan, *"Delay in Process, Denial of Justice: The Jurisprudence of Empirics of Speedy Trials in Comparative Perspective"*.

⁴⁰ Handbook on Justice for Victims, UNODCCP, 1999.

⁴¹ Daksh, State of the Indian Judiciary Report (DAKSH 2016). Available at: <https://www.dakshindia.org/wp-content/uploads/2023/02/State-of-the-Judiciary.pdf>. (last visited on May 11, 2025).

systemic and judicial reforms. Protracted judicial proceedings not only compromise the idea of prompt justice, but they also add to the backlog of cases, which reduces the legal system's overall efficacy. A comprehensive strategy is needed to address these problems, one that includes enhancing case management, expanding the judicial branch, and implementing technology to expedite court procedures. The Indian judiciary can only hope to deliver the prompt and efficient justice that citizens legitimately deserve by working together to speed up court procedures. Seventy-seven percent of the pending cases are in subordinate courts, which hold the lion's share of this backlog. Because these lower courts are the first in line for judicial authority, they take on the majority of cases, which adds a great deal to the total amount of time it takes to resolve cases. Systemic problems including under staffing, inadequate resources, and complex procedural concerns that obstruct the prompt resolution of cases are brought to light by the backlog in subordinate courts.

Although State High Courts are burdened with a relatively lower percentage of pending cases (12.3 percent), their share is still significant. This shows that the backlog is not limited to the lower ranks of judges, but that there are still problems at higher levels as well. The finding that approximately 180,000 cases have remained unresolved in the court system for more than thirty years is perhaps the most concerning. This prolonged postponement not only highlights the size of the backlog but also indicates structural problems that impede the prompt administration of justice. As a result of the accumulation of these protracted cases, concerns have been raised regarding the efficiency of the legal system and the effects on those who must wait a long time for justice.⁴² India's enormous backlog of over 47 million pending cases is a clear indicator of how badly the country's legal system is deteriorated. The importance of taking prompt, decisive action to speed up the settlement of these outstanding legal disputes is starkly illustrated by these numbers. Not only does the enormous backlog highlight the burden on the court system, but it also highlights how urgent institutional changes are in order to guarantee the prompt administration of justice. The backlog

⁴² Department of Justice, Min. of Law & Justice, Court News or Annual Report (Government of India [2023], available at: <https://doj.gov.in>. (last visited on May 11, 2025).

seriously impedes people's ability to exercise their fundamental right to a timely resolution of their claims. The length of time it takes to reduce the backlog directly affects access to justice, which is essential to any robust legal system. The piled-up cases undermine the accessibility and effectiveness of the judicial system, which erodes public confidence in the courts. For those involved in the legal process, congestion means increased waiting times, lengthy court proceedings and delayed decisions, all of which can have profound personal and social effects. The right to a fair and speedy trial enshrined in legal principles is weakened when cases get bogged down and create frustration and disappointment among the parties involved. Reducing the backlog in numbers is not the only important aspect of preserving the fundamental principles of justice, it necessitates a multi-pronged strategy that includes case management changes, technological advancements to speed court procedures, and improvements to the judicial infrastructure. By doing this, the judicial system will be able to regain its effectiveness and provide citizens the confidence that their access to justice will be maintained and that their cases will be handled promptly.

The clogged judicial system in India can be attributed to several factors, including a shortage of personnel (with only twenty-one judges per one million population)⁴³, an inadequate number of courts⁴⁴, and a highly litigious society⁴⁵. These factors contribute to a daunting scenario where it would take more than 300 years to resolve the existing backlog of cases.⁴⁶ This backlog places a heavy burden on India and its citizens, resulting in an annual cost of over ₹80,000 crore. Moreover, the economic toll of delayed justice corresponds to 0.77 percent of the Gross Domestic Product (GDP).⁴⁷ Beyond the economic implications, the prolonged wait for outcomes inflicts considerable

⁴³ Department of Justice, Ministry of Law & Justice, 2, February 2023, available at: <https://doj.gov.in>. (last visited on May 11, 2025).

⁴⁴ The Hindu, 10 May 2022.

⁴⁵ Manisha Singh, Swati Mittal, *Litigation & Dispute Resolution laws and Regulations*, 2023.

⁴⁶ Samir Yasir, *A Lifelong Nightmares, Seeking Justice in India's Overwhelmed Courts*, *The New York Times*, 2024.

⁴⁷ Daksh, State of the Indian Judiciary Report (DAKSH 2016). <https://www.dakshindia.org/wp-content/uploads/2023/02/State-of-the-Judiciary.pdf>. (last visited on May 1, 2025).

pain and agony on those who must endure years of uncertainty. Addressing these systemic challenges and implementing reforms are essential to alleviate the burden, expedite the legal process, and provide timely justice to all individuals in India.⁴⁸

Approximately 77% of the incarcerated population comprises individuals awaiting trial⁴⁹. For extensive periods, ranging from years to even decades, most of the under trial prisoners languish in jails, without their cases being heard. Their predicament is frequently rooted in nothing more than poverty and illiteracy. However, a more significant challenge lies in the sluggish, uninformed, and an apathetic judicial system that disregards the plight of those situated at the lowest stratum of society. It is imperative to establish an institutionalized framework for expeditious trials through legislative measures. Otherwise, the repeated emphasis by the highest court on speedy justice as a fundamental right will amount to mere rhetoric, and the attainment of justice will remain an elusive aspiration and a distant dream.

In certain serious cases, Indian justice system suffers from a debilitating condition known as “slow movement syndrome, “a substantial challenge to the principle of a “fair trial” and hampers the achievement of a conclusive verdict.⁵⁰ Prompt justice is an integral aspect of social justice because society as a whole is invested in ensuring that criminals are appropriately and timely punished, while the innocent is spared from the undue burden of prolonged criminal proceedings.⁵¹ It is crucial to recognize that in order for any trial to be meaningful, enforceable, and effective, there must be an external limit beyond which the duration of the proceedings would violate the principles outlined in Article 21.

The issue of legitimacy faced by the Indian judiciary is of grave concern, surpassing its apparent magnitude.⁵² Surprisingly, India lacks specific legislation to address the persistent problem of judicial delays. The urgent necessity lies in the enactment of a Speedy Trial

⁴⁸ *Ibid.*

⁴⁹ India Justice Report (IJR) 2022.

⁵⁰ Times of India, Feb, 2023.

⁵¹ *Babu Singh v. The State of U.P.*, 31 January, 1978.

⁵² Mamta Kachwaha, *The Judiciary in India, Determinants of its Independence and Impartiality.*

Act⁵³—a comprehensive law that not only outlines provisions for stricter, time bound schedules but also integrates and standardizes limitation provisions across various statutes. Moreover, this Act should establish accountability measures for the authorities responsible for delays and violations, delineate precise numerical limits for each stage of the judicial process, create independent regulatory bodies to oversee its implementation, and facilitate the establishment of an essential infrastructure to address the challenges of justice delivery. The need of the hour is an Act that effectively addresses the concerns of all stakeholders involved.

There are numerous factors contributing to delayed trial in India. The current combination of the population size and the number of pending cases is worrisome and distressing. The severe shortage of judges in the Country has significantly impeded the legal proceedings and the delivery of justice.⁵⁴ In many instances, delays occur when the accused seeks adjournments, if they perceive the case to be unfavorable. The significant hurdle to speedy trials arises from the court's need to address requests, whether initiated by the accused or not, for appeals, modifications, or other necessary actions or procedures. Prolonged court vacations or breaks are fervently debated, especially in a country like India with a substantial backlog of cases. Unlike in countries such as the United States and France, there is no provision that allows courts to go on extended vacations.⁵⁵ Additionally, hastily drafted and poorly formulated legislation on various complex subjects in India has also contributed, to some extent, to cause delays.

⁵³ Generally, a Speedy Trial Act has provisions designed to ensure that criminal cases are resolved on time and to speed up the judicial procedure. Although particulars could differ, a thorough Speedy Trial Act must to have essential components to tackle postponements and preserve the entitlement to a prompt trial.

⁵⁴ Krishnan, Jayanth K. and Kumar, C. Raj, *Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective* (2011). *Articles by Maurer Faculty. Paper 155*".

⁵⁵ Gauri Kashyaf, *Lon SC Vaccations: Wastefu or Crucial for Quality of Justice?* Jan 2023.

10. Role of Technology in Expediting Legal Processes

The incorporation of technology has become a crucial factor in transforming and optimizing conventional legal processes, with the main goal being the timely administration of justice.⁵⁶ Technology's introduction into the legal field has a profound impact, changing the nature of legal practice and raising the efficiency of the legal system as a whole. The substantial gains in speed and efficiency in the administration of justice are among the main effects of technology on the legal sector. Paperwork has decreased and delays have been minimized because to the replacement of laborious manual operations with automated case management systems, electronic filing procedures, and digital record keeping. A more flexible and adaptable judicial system as a result of this shift has allowed courts to handle cases more quickly.

Technology has also made it easier for lawyers, litigants, and the judges to communicate and work together better. With the development of virtual courtrooms and video conferencing, judicial proceedings can now be carried out without interruption, particularly during emergencies or other dire situations.⁵⁷ This helps save time and guarantees that people can still access the legal system even in difficult situations.

Furthermore, technology has made the legal system more transparent.⁵⁸ Digital communication channels, online case tracking portals, and real-time updates have all contributed to improved public access to information. People feel more in control and comprehend the legal system and their problems better as a result of this transparency, which also contributes to the development of public confidence in the legal system. The legal industry has experienced a revolution in the establishment and accessibility of case related data with the introduction of electronic case management systems. These

⁵⁶ James E. Cabral, Abhijeet Chavan, Thomas M. Clarke, John Greacen, Bonnie Rose Hough, Linda Rexer, Jane Ribadeneyra & Richard Zorza, Using Technology to Enhance Access To Justice, *Harvard Journal Of Law & Technology* Volume 26, Number 1 Fall 2012.

⁵⁷ Taylor Benninger, Courtney Colwell, Debbie Mukamal, and Leah Plachinski, *Virtual justice? A national study analyzing the transition to remote criminal court.*

⁵⁸ Dr. Mayura Sabne & Ms. Gouri Konpure, *Evolving Technology and the Access to Justice in India, 2023.*

technologies are essential for handling case materials in an effective and well-organized manner, which is how legal procedures are managed. Judges, attorneys, and court staff are only a few of the legal system's stakeholders who can profit from electronic case management. The organization and archiving of case related data is made easier by electronic case management systems. Digitized documents, evidence, and other pertinent data can be kept in a centralized repository, creating a database that is well organized and simple to search. As a result, paper documents are no longer necessary, and data can be organized more effectively. The fact that electronic case management significantly reduces the amount of time spent on administrative tasks is one of its main benefits. Through the digital platform, judges, attorneys, and court staff can quickly obtain the required case materials. This reduces the time needed for manual document retrieval, filing, and searching, thereby speeding up the workflow as a whole. Legal professionals can now focus more on substantive legal activities rather than being bogged down by administrative chores due to the streamlined access to information. One obvious benefit of using an electronic case management system is that cases are processed more quickly. A faster case settlement process is facilitated by enhanced communication between legal practitioners, improved document management, and quicker information retrieval. Litigants gain from a more responsive and speedy legal procedure, and the court system benefits from a decrease in backlog.

(a) E-Filing Systems

With the introduction of electronic filing, or “e-filing,” legal record keeping has undergone a radical change from conventional paper-based methods to a more functional and effective digital approach.⁵⁹ Paper records are no longer necessary due to e-filing, which allows legal documents to be submitted electronically. With this switch, the filing procedure is completed much more quickly and the delays caused by handling documents by hand are much reduced. The prompt submission of legal papers is one of the main benefits of e-filing. Legal practitioners have the option to electronically submit their materials to the court using safe online platforms, as an alternative to

⁵⁹ Waseem, Anupam Sharma, Dr Akhil, *Transforming Access To Justice In The Digital Age: The Role of e-Courts*, *Nujs Journal Of Regulatory Studies* ,2023.

the conventional approach of physically delivering or mailing paper documents. This digital submission procedure speeds up the start of legal proceedings and helps to resolve cases more quickly by reducing the amount of time it takes for papers to get to the court. With the implementation of e-filing, the reliance on physical storage is greatly diminished. The large volume of case records stored in traditional paper-based systems require a lot of physical storage space. However, instead of requiring big file cabinets and roomy storage spaces, electronic filing systems allow papers to be stored in digital formats. E-filing platforms improve case file tracking as well.⁶⁰ Legal practitioners and court officials can readily track the progress of filed documents *via* digital platforms. With the help of this real time tracking feature, stakeholders may monitor the status of their cases and the process is made more transparent. The simplicity of monitoring enhances case administration, assisting courts in remaining responsive and organized.

(b) Virtual Hearings and Remote Access:

The use of video conferencing technology in court procedures has proven to be a revolutionary development since it makes it possible to have remote virtual hearings.⁶¹ This technological adaption is essential to guaranteeing access to justice, particularly when physical presence is problematic. Beyond convenience, virtual hearings provide a quicker and more effective legal process by reducing scheduling disputes, lowering litigation expenses, and enabling hearings to be held from almost anywhere in the world. Video conferencing technology allows for virtual hearings that address accessibility, a major problem in the legal system. The ability to participate in court proceedings remotely becomes invaluable in instances where parties, either individually or through legal representation, are limited by geography, health issues, or other factors. By doing this, it is made possible for all parties to participate in the judicial process without being physically present, supporting the idea of equal access to justice. Reduced scheduling conflicts are a major benefit of virtual hearings. Coordination of the availability of

⁶⁰ Digital Courts, Vision & Roadmap, Phase III of the eCourts Project, Expert Sub-Committee to draw up a Vision Document for Phase III, E-Committee Supreme Court of India., Live Law, 2021.

⁶¹ The Rise of Telecommunications Video Conferencing in Judicial Proceedings, Utilities one, Aug 2023.

judges, attorneys, witnesses, and other stakeholders causes traditional courtroom hearings to frequently be delayed. By allowing participants to join sessions from different places, video conferencing facilitates more flexible scheduling arrangements. This adaptability lessens the administrative difficulties involved in setting up in person appearances while simultaneously accelerating the judicial procedure. Another important advantage of virtual hearings is lower litigation costs. The ability of legal professionals and parties to participate in hearings remotely significantly reduces the need for travel, lodging, and other related expenses. Through the efficient use of resources, this cost-effectiveness not only helps individual litigants but also enhances the general effectiveness of the judicial system. Moreover, hearings can be held from any location in the world, which expands the worldwide reach of legal proceedings. This is especially important when dealing with situations involving foreign courts, experts, or attorneys who are located in separate states.⁶² By facilitating cross border judicial processes and dismantling conventional obstacles, virtual hearings help create a more linked and easily accessible global legal scene.

(c) Alternative Dispute Resolution (ADR) Mechanisms:

Using Alternative Dispute Resolution (ADR) procedures, such as arbitration and mediation, is an essential strategy for achieving speedy justice. Alternative Dispute Resolution, provides parties involved with a way out of the formal, drawn-out legal process.⁶³ Legal reforms are crucial because they can encourage the use of ADR by offering rewards or, in certain situations, by establishing requirements for specific provisions in specific cases. Mediation⁶⁴ and Arbitration⁶⁵

⁶² *Advancing Rule of Law, Justice for All through Technology Must Include Equal Internet Access, Human Rights Compliance, Sixth Committee Speakers Stress*, Seventy-Eighth Session, 15th & 16th Meetings (AM & PM), 2023.

⁶³ Mahboob Ali, *Alternative Dispute Resolution Mechanism in Modern Indian Society*, Director, Judicial Training and Research Institute, U.P, 7th January, 2016 “.

⁶⁴ Through the mediation process, the parties meet with a neutral third party who has been chosen at their mutual discretion to help them work through their issues.

⁶⁵ Arbitration is a process wherein a disagreement is agreed upon by the parties and then submitted to one or more arbitrators who render a legally

are two fundamental ADR processes that give the resolution process flexibility and voluntariness. Unlike the adversarial character of courtroom litigation, these methods are voluntary on the part of the parties, fostering a cooperative environment.

ADR methods that prioritize efficiency aim to reduce court processes' bureaucratic red tape and accelerate decisions. They aid in lessening court congestion by rerouting matters from the already overworked legal system. This diversion not only streamlines the court system but also allows more complex matters to be given precedence. Legal reforms can actively assist alternative dispute resolution (ADR) by creating incentives or requirements for parties to explore ADR options prior to pursuing traditional litigation. Alternative dispute resolution (ADR), which not only expedites the resolution process but also aids in altering societal perceptions and acceptance of these speedier, more effective forms of conflict resolution, is encouraged by legal regimes or even mandates it. Access to justice is improved by ADR's more accessible and equitable conflict resolution process, which is not dependent on a party's financial status. The incorporation of ADR procedures through legal amendments, which provide litigants with practical alternatives that are consistent with more general accessibility and fairness principles, fundamentally represents a strategic approach to expediting the delivery of justice.⁶⁶

11. Conclusion

The legal proverb "justice delayed is justice denied" asserts that in cases when a party seeking justice has access to legal remedies, and those remedies are not provided in a timely manner, it is effectively as though the claimant had no remedies at all. The right to a speedy trial and related rights that aim to shorten the legal process are based on this principle. When there are insufficient opportunities for a prompt resolution, the injured party faces an unfair burden as a result of their injury. Justice is the ultimate goal of the creation of law and the vital principle that characterizes the legal system in its most basic form. It is a fundamental principle that provides direction for the legal system.

enforceable ruling. By selecting arbitration, the parties forego going to court and instead choose a private dispute settlement process.

⁶⁶*Alternative Dispute Resolution: Mediation and Conciliation*, Law Reform Commission, First Published November 2010.

The terms “Justice” and “Law” are so closely related that they are frequently used interchangeably. Nevertheless, there are so many intricate challenges to this core idea that finding prompt solutions is challenging. It is depressing that the basis upon which the judicial system is still being built is still unfinished. The aforementioned issues highlight the complex and deeply rooted causes that hinder the timely administration of justice in India. Sometimes the motivations behind these things are more specific and personal than they are wide and general. Deficits in the parties involved, the tactics used by the attorneys, and the constant filing of appeals all have a significant impact on the delays. The restrictions that come with the implemented measures to address the system also affect how effective they are. Sometimes the influence of popular politics is involved, while other times the executive branch’s inefficiencies are to blame. It is especially evident that the lower echelons of the legal system include problems. A multitude of causative elements, deeply embedded in the environment, demand a shared dedication to introspection and a resolve to pinpoint and eliminate them. Everyone with an interest in this matter, including the bench, the legal community, the government, legislators, members of the public, and society at large, must take on this responsibility.



Empirical Analysis of Competition Law Enforcement in India: A Case Study of the District Varanasi (UP)

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Abstract

India ranked 40th in the 2023 Global Competitiveness Index (GCI). This is a drop from 37th in the previous year. Although India is recognised as a major global economy, it faces challenges in creating a strong competition framework. These issues raise concerns for antitrust policy and enforcement. Antitrust laws in India are still in a relatively early stage. Limited understanding of their scope and application leads to ambiguous business practices. As a result, enterprises often operate at the boundary intersection of legitimate competitive and anti-competitive behaviour. This makes regulatory intervention complex. India has seen many cartel cases in sectors such as cement, telecommunications, and aviation. The number of such cases continues to rise. In the era of Artificial Intelligence (AI), algorithm-driven business models make it harder to detect anti-competitive conduct. This study explores awareness and understanding of antitrust laws among consumers, students, and small business owners in Varanasi, Uttar Pradesh. Although the Competition Act, 2002 aims to promote fair competition and protect consumers. However, the lack of public awareness of its provisions and enforcement mechanisms limits its effectiveness. Using a structured questionnaire administered to 113 respondents, the study measures and assesses awareness of the Competition Act, knowledge of the Competition Commission of India (CCI), and the ability to identify anti-competitive practices. Statistical tools such as chi-square analysis were used to assess competition law awareness at the grassroots level. The study concludes by highlighting key findings and offering recommendations based on the empirical analysis.

Keywords: Antitrust law, Competition Commission of India (CCI), Consumer Awareness, Anti-Competitive Practices

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1. Introduction

Antitrust laws, commonly referred to as competition laws, are designed to regulate market conduct by preventing excessive concentration of economic power and safeguarding consumer interests. These laws aim to ensure that market structures operate fairly by discouraging monopolistic practices and promoting competitive behaviour. In India, competition law is often perceived as a relatively recent development. However, the historical evolution of antitrust regulation demonstrates a much longer global trajectory. Canada was the first country to enact antitrust legislation in 1889, followed by the United States in 1890,¹ setting a precedent later adopted by several jurisdictions worldwide. The European Union (EU) and the United States continue to serve as influential models for competition law enforcement.

India's contemporary competition framework was established through the enactment of the Competition Act, 2002, which came into force in 2009 following significant policy reforms. Before this, the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)² governed market regulation, primarily focusing on monopolistic practices. However, the MRTP framework proved inadequate in addressing modern market realities, particularly issues relating to abuse of dominance and anti-competitive agreements. Consequently, the Competition Act, 2002 marked a paradigm shift by aligning Indian competition policy with global standards and focusing on promoting market efficiency and consumer welfare.

The interrelationship between Antitrust laws and development always creates enthusiasm or excitement, as the sophisticated mapping of competition law with developmental factors is a contentious issue.³ Therefore, India joined the hundred developing countries that have adopted new competition laws with the enactment of the Indian Competition Act, 2002. The foremost means of ensuring competition in the market is to provide or facilitate access to a widespread range

¹ Sawyer, L P, 'US Antitrust Law and Policy in Historical Perspective' (2019) *Harvard Business School Working Paper* No 19-110.

² Ministry of Corporate Affairs, *53rd Report on Anti-Competitive Practices by Big Tech Companies* (Government of India 2022).

³ Mazhuvanchery, S., 'The Indian Competition Act: A Historical and Developmental Perspective' (2010) 3(2) *Law and Development Review* 241–270.

of goods and services to the Aam Aadmi or the so-called common man. Consequently, to maintain fair competition in the market, it would be essential that consumers have access to a wider range of choices of goods at an affordable cost or at reduced costs. Resultant of this, competition would be increased in the market along with producers or manufacturers having huge motivation to innovate their services, including specialisation in each industry. The primary objective of this setup is to foster and maintain fair competition in the market, ensuring a “level playing field” for manufacturers and producers. This creates an environment where businesses can compete fairly, while also prioritising the welfare of consumers. A competitive market drives innovation, improves product quality, and offers consumers better choices and prices, benefiting both producers and consumers.

However, as the market evolved, enterprises may engage in conduct that undermines competition, including cartels, abuse of dominance, and restrictive trade practices. India has witnessed several high-profile cartel cases across sectors such as cement, telecommunications, and aviation, reflecting persistent enforcement challenges. According to the Global Competitiveness Index (GCI)⁴ 2023⁵, India ranked 40th, slipping from its 37th position in the previous year. Despite being recognised as a major global economy, India continues to face structural challenges in competition enforcement, particularly due to limited public awareness and understanding of antitrust laws.

The effectiveness of competition law enforcement depends not only on statutory provisions and regulatory institutions but also on the awareness and participation of consumers and market actors. When individuals are unable to identify anti-competitive practices or lack knowledge of reporting mechanisms, enforcement remains

⁴ The Global Competitiveness Index (GCI) is a highly comprehensive index that captures the microeconomic and macroeconomic foundations of national competitiveness. Competitiveness is the set of institutions, policies, and factors that determine a country's level of productivity. World Bank, ‘Global Competitiveness Index (GCI): Metadata Glossary,’ World Bank *available at*: <https://data.worldbank.org>. (last visited on March 2, 2025).

⁵ International Institute for Management Development, *IMD World Competitiveness Booklet 2023* (IMD 2023).

constrained. This challenge is further intensified in the era of Artificial Intelligence (AI), where algorithm-driven business models complicate the detection of collusion and exclusionary conduct.

Against this backdrop, the present study examines the level of awareness and understanding of antitrust laws among consumers, students, and small business owners in Varanasi, Uttar Pradesh. By analysing public awareness of the Competition Act, 2002 and the role of the Competition Commission of India (CCI), the study seeks to assess how grassroots-level understanding influences the effectiveness of competition law enforcement in India.

2. Research Questions

The following research questions guide the present study:

- a) What is the level of awareness regarding the Competition Act, 2002 and the Competition Commission of India (CCI) among the residents of Varanasi, UP?
- b) Do demographic and educational characteristics influence the level of awareness and understanding of antitrust laws?
- c) Does limited awareness of competition law affect its enforcement at the local and grassroots levels?

3. Hypotheses

Based on the objectives of the study, the following hypotheses were formulated:

- a) Respondents with legal or commerce backgrounds exhibit higher awareness of the Competition Act, 2002;
- b) Awareness of the CCI is positively associated with the ability to recognise anti-competitive practices;
- c) Low levels of awareness reduce the likelihood of reporting anti-competitive conduct to the appropriate authorities.

4. Research Methodology

The methodology encompasses both doctrinal and empirical methods. In the doctrinal method, the researcher used both primary and secondary sources. Primary sources include statutes, case law, and international instruments, while secondary sources primarily consist of textbooks, articles by prominent authors, and online resources. A key feature of this work is analysis of notable and significant case laws. The empirical method uses a structured

questionnaire to assess awareness. Throughout the paper, the researcher maintains objectivity, ensuring a balance between narration and analysis.

A convenience sampling method is used, primarily due to time and resource constraints. While this method does not yield a statistically representative sample of the entire population of Varanasi, it is widely accepted in exploratory studies aimed at identifying preliminary trends, patterns, and awareness gaps. Convenience sampling enabled easy access to participants and ensured practical feasibility. The final sample consisted of 113 respondents, distributed across two key groups:

- **Academic respondents (Law and Commerce faculties, Banaras Hindu University):** These respondents were included to assess whether formal education, especially legal and commercial education, contributes to higher awareness of antitrust principles. Here, Banaras Hindu University (BHU) was selected because it is one of India's leading academic institutions. It was important to measure whether even educated people possess adequate competition law knowledge.
- **Market respondents (Karaundi Market, Varanasi):** This group included shopkeepers, small business owners, service providers, and vendors. Their inclusion was essential since they are directly affected by anti-competitive practices such as price-fixing, predatory pricing, and exclusive dealing. Karaundi Market is a bustling commercial area representing small-scale and informal market structures. These markets often experience anti-competitive behaviour first-hand, making them valuable sources of practical insight.

5. Limitations of the study

The study is subject to certain limitations. Due to constraints of time and resources, data collection was confined to selected departments of Banaras Hindu University and market participants in Varanasi. The relatively small sample size limits the generalisability of the findings. Additionally, the use of convenience sampling introduces the possibility of urban bias. Respondent accuracy may also vary depending on individual interest levels and familiarity with legal concepts related to competition law.

6. Interpretation of India's Antitrust Laws

Competition plays a vital role in enhancing industrial productivity, generating employment, and reducing prices for consumers. Effective competition presupposes a market economy that functions efficiently and in accordance with established legal and regulatory norms. Antitrust policies are therefore essential to ensure that markets remain competitive, transparent, and responsive to consumer interests.⁶

In a modern, technology-driven economy, competition does not emerge organically. Rather, it is shaped by the interaction of multiple stakeholders, including consumers, producers, manufacturers, and regulatory authorities. These authorities formulate and enforce competition policies to safeguard market integrity and consumer welfare. The collective adherence to such regulatory norms contributes to the development of what is often described as a “competition culture,” which reflects the acceptance of fair market practices as a foundational economic value.⁷

(a) Objective of the Act

The Indian Competition Act, 2002⁸, observes the tenet of modern competition laws.⁹ The ultimate goal encompassing the enactment of the Competition Act is to prohibit anti-competitive agreements as mentioned under Section 3¹⁰, abuse of dominant positions by

⁶ Chauhan, B S, ‘Indian Competition Law: Global Context’ (2012) 54(3) *Journal of the Indian Law Institute* 315.

⁷ Motta, M., *Competition Policy: Theory and Practice* (Cambridge University Press, 2004). Also see, Singh, V K, ‘Competition Law and Policy in India: The Journey in a Decade’ (2011) 4 *NUJS Law Review* 523.

⁸ *The Competition Act, 2002* (Act 12 of 2003).

⁹ Bhattacharjea, A, ‘India’s Competition Policy: An Assessment’ (2003) 38(34) *Economic and Political Weekly* 3561.

¹⁰ Anti-competitive agreements are of such nature which adversely affects the market as these are of two types i.e. vertical agreement and horizontal agreement. As the name itself suggests the nature of these agreements is in the case of horizontal, entities at the same stage coming into an agreement which impacts the market adversely such as cartelization whereas vertical agreement entities are at different stages such as supplier or manufacturer and the nature of this agreement are like the tie in arrangements.

enterprises as mentioned under Section 4¹¹ and to regulate combinations (*i.e.*, mergers, amalgamations, or acquisitions) mentioned under Section 5¹² by the establishment of the Competition Commission of India¹³ under the Competition Act 2002.¹⁴

The Competition Commission of India (CCI) is comprised of a chairperson and other Members appointed by the Central Government. The Commission's primary responsibility is to eliminate practices that negatively impact competition, promote and sustain fair competition, protect consumer interests, and ensure the freedom of trade in India's markets.¹⁵ Additionally, the CCI provides opinions on various antitrust matters referred by statutory authorities established under any law,¹⁶ engages in competition advocacy,¹⁷ raises public awareness, and offers training on competition-related issues.¹⁸

7. Enforcement of the Act: Case Interpretation

There is a plethora of cases where CCI interpreted various policies of the competition law by upholding the objective of the enactment. In matters of dominance, holding a dominant position is not inherently wrong; however, abusing that dominant position is considered illegal under Section 4 of the enactment. This notion of dominance is explained by the CCI in the case of *Lifestyle Equities V. Amazon Seller*

¹¹ Abuse of dominant position where enterprises use their dominant position to impose unfair or discriminatory prices which affect the market as well as the consumers.

¹² Regulate combinations such as mergers, amalgamations, or joint ventures where the Commission will look into the objective of combination *i.e.* whether the objective is to expand business or to be dominating in the market which adversely impacts the competition.

¹³ CCI was established by the central government under sec 7 of the enactment and it regulates the market through various rules and regulations and also hears the cases related to the same.

¹⁴ Choudhary, S., 'Abuse of Dominant Position Conundrum: A Critical Analysis of Judicial Pronouncements since 2010' (LLM dissertation, National University of Study & Research in Law, Ranchi 2021).

¹⁵ Preamble, The Competition Act, 2002 (Act 12 of 2003).

¹⁶ The Competition Act, 2002 (Act 12 of 2003), s.21.

¹⁷ The Competition Act, 2002 (Act 12 of 2003), s.49.

¹⁸ The Competition Act, 2002 (Act 12 of 2003), s.8.

*Services Pvt Ltd.*¹⁹ The issue brought before the CCI concerns the dominant position held by Amazon, which allegedly affects the online market of the informant, Lifestyle Equities, LLC. The informant argued that Amazon, by leveraging its dominant position, offered unlicensed goods at significantly lower prices. This practice reportedly harmed other competitors in the online marketplace, leading to the closure of the informant's online platform.

The CCI observes:

*“Presently, Flipkart and Amazon are close competitors with comparable market positions and resources. In addition, there are other players like Paytm Mall, Snapdeal, Shop Clues, etc., providing intermediation services in the relevant market. Thus, looking at the present market construct, it does not appear that any one platform is occupying a dominant position in the relevant market, as envisaged under Section 4 of the Act”.*²⁰

In determining Amazon's dominant position, its market share, along with other relevant factors was considered. Similarly, cartelisation²¹ has been a recurring challenge in Indian competition enforcement. In *Builders Association of India vs. Cement Manufacturers Association*,²² the Builders Association filed a complaint against the Cement Manufacturers Association for allegedly violating the provisions of the Competition Act. The cement industry was involved in anti-competition agreements. These cement industries engaged in cartelization by restricting and limiting the production and supply of cement, and were engaged in collusive practices.²³ The CCI held the cement association liable under Section 3 of the enactment, as it operated in a cartel that harmed competition. The CCI highlighted the

¹⁹ Competition Commission of India, *Case No. 09 of 2020*.

²⁰ Competition Commission of India, *Case No. 09 of 2020*, para 25.

²¹ “To control or regulate (an industry, the price or supply of a commodity, etc.) by forming a cartel”. Webster's New World College Dictionary (4th edn, Houghton Mifflin Harcourt) ‘cartelise’.

²² *Builders Association of India v Cement Manufacturers Association & Ors*, Case No 29 of 2010, Competition Commission of India.

²³ It means Price parallelism i.e. following up on the price strategy set by one player by another player in the market.

concept of agreement defined under section 2(b).²⁴ In cartelisation, enterprises are involved in agreements where they avoid direct or explicit shreds of evidence and include activities restricting the market supply and prices. Such cartels can be inferred through circumstantial evidence such as parallel pricing, production restrictions, meeting records, and communication trails.

The issue of tie-in arrangements,²⁵ an anti-competitive strategy,²⁶ was addressed in *Mr Ramakant Kini V. Dr L.H. Hiranandani Hospital, Powai, Mumbai*.²⁷ In this case, the informant filed a case against the opposite party for the violation of sections 3²⁸ and 4²⁹ of the enactment. This case involved an arrangement between the hospital and the stem cell storage company for the purpose of collecting and preserving stem cells. As per the emerging technology, parents nowadays hire specialised agencies to collect stem cells. These stem cells are preserved for 21 years and collected through the umbilical cord of the new-born child within 10 minutes of birth, as stem cells have the potential to cure various diseases.³⁰ Therefore, the informant approached a hospital for the collection of stem cells from their new-born, as they were seeking maternity services from the opposite

²⁴ “agreement” includes any arrangement or understanding or action in concert, -(i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

²⁵ Seller conditions the sale of a desirable product (tying) upon the sale of a not-so-desirable one (tied), thereby abusing the need of a consumer for the desirable product to facilitate sales of the not-so-desirable one.

²⁶ Brinson, J D, ‘Proof of Economic Power in a Sherman Act Tying Arrangement Case: Should Economic Power Be Presumed When the Tying Product Is Patented or Copyrighted?’ (1987) 48 *Louisiana Law Review* 29. Also see *Northern Pacific Railway Co v United States* 356 US 1 (1958).

²⁷ Competition Commission of India, Case No. 39 of 2012.

²⁸ Deals with anti-competitive agreement which means No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

²⁹ Abuse of dominant position.

³⁰ *Mr Ramakant Kini v Dr L H Hiranandani Hospital, Powai, Mumbai*, Case No 39 of 2012, para 2, Competition Commission of India.

party.³¹ However, the hospital had entered into an exclusive agreement with Cryobanks International India (“Cryobank”) for stem cell preservation services. As a result of this agreement, the hospital received Rs. 20,000 for each patient registering for Cryobank’s services. The informant requested permission for *Life Cell* to enter the hospital premises for stem cell collection within 10 minutes of birth. The hospital rejected the request, insisting that if the informant wished to use their maternity services, they must also avail themselves of Cryobank’s stem cell preservation services. The hospital argued that, due to the exclusive contract, it could not allow *Life Cell* to enter its premises. The informant, unable to use *Life Cell*’s services at the hospital during a critical period,³² ultimately chose to seek stem cell preservation services from another hospital. This led the informant to file a complaint against the hospital, accusing it of abusing its dominant position in the relevant market and engaging in an anti-competitive agreement. Specifically, a tie-in arrangement, which restricted consumer choice and harmed competition under section 3 of the act. The hospital also abuses its dominant position, as it is the only hospital within a certain range, which makes it a dominant entity and liable under section 4 of the act. The CCI took a different approach, as it did not consider it a tie-in arrangement. There is a plethora of cases where such arrangements have been observed, and customers, being in a sensitive position, have to bear all the conditions of the enterprises.

The irony is that, there are most sections of society who are not aware that such acts are illegal as per the enactment. This hampers consumers and impacts the local vendors, Indian markets, and market competitiveness. Competitiveness is a positive objective of the Indian Competition Act. This Act aims to develop and create competition in the market, which will pave the way for higher access and quality products to a larger part of society.

³¹ Competition Commission of India, *Case No. 39 of 2012*, para 17.

³² Competition Commission of India, *Case No. 39 of 2012*, para 25.

8. Enforcement of Antitrust Laws: International Perspective

The United Nations Conference on Trade and Development (UNCTAD)³³ has published a Model Competition Law³⁴ to guide the development of competition legislation worldwide. This model aims to assist countries in creating or refining their competition laws, drawing on international trends and best practices in the field, as these laws are considered the anchor for regulating market economies.

Competition laws in several countries, as discussed above, have a huge history of more than a hundred years of regulating the competitive index of the market. The United States of America (USA) and European Union (EU) legislation are considered the precedent legislation in the matter of antitrust laws. The EU marked history as the first region to enforce the Digital Competition Market Act³⁵ to deal with the issue of AI, Big data, digital market, and even automation software business practices.

(a) European Union (EU) Antitrust Laws & Regulations

The cardinal objective of EU competition rules and regulations is to ensure the smooth functioning of the EU's internal market. The Treaty on the Functioning of the European Union (TFEU) aims to prevent practices that distort market competition. These include anti-competitive agreements, the abuse of dominant market positions, and problematic mergers and acquisitions.³⁶ A brief overview of the provisions is mentioned below:

³³ The United Nations Conference on Trade and Development (UNCTAD) is the United Nations' focal point for trade and development, and for interrelated issues in the areas of finance, technology, investment, and sustainable development. Its objective is to assist developing countries, especially the least developed countries, and countries with economies in transition, to integrate beneficially into the global economy. It also seeks to help the international community promote a global partnership for development, increase coherence in global economic policy making, and assure development gains for all from trade.

³⁴ UNCTAD, *Model Law on Competition* (UNCTAD 2020).

³⁵ European Union, Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), OJ L 265, 1–66 (2022).

³⁶ European Union, Treaty establishing the European Community (consolidated text), OJ C 325, 33–184 (2002).

(1) Article 101³⁷ of TEFU deals with anti-competitive agreements under which agreements between undertakings in the nature of collusive practices, forming cartels and harming business practices are considered to disturb the level playing field. However, exemptions are granted under the clause of improving the production or access to goods or stimulating economic or technical progress. This leads to a fair share of benefits for consumers. Under this, the EU Commission adopted and revised various specific regulations to maintain the

³⁷ 1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction, or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
- any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices,
- which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

sanctity of the market, such as the Vertical Block Exemption Regulation³⁸ and Horizontal Block Exemption Regulations.³⁹

(2) Article 102⁴⁰ of the treaty states “abuse of dominance”. It highlights all acts considered abusive that impact a substantial part of the internal market if backed by one or more undertakings. It also influences the trade relationship among the European Community states by:

- a) Imposing discriminatory prices or trading conditions, either directly or indirectly.
- b) Limiting market growth, which comprises consumers’ interest, as firms are involved in practices of limiting supply or technical improvements.
- c) Unequal treatment in the case of similar transactions jeopardises the competitive market.
- d) Imposing a secondary obligation for the enforcement of the contract, which has no real connection with the main contract.

To analyse the jurisdiction of abuse of dominance within the European Community, it is essential to consider the following key terms:

ii) Undertaking

³⁸ European Commission, Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 134, 4–28 (2022).

³⁹ European Commission, Public Consultation—Review of the Two Horizontal Block Exemption Regulations (2019-HBERs) (2019), available at: https://competition-policy.ec.europa.eu/public-consultations/2019-hbers_en. (last visited on February 2, 2025).

⁴⁰ “Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts”. Art. 102, Treaty on the Functioning of the European Union (TFEU), OJ C 326, 47 (2012).

- iii) A substantial part of the Internal Market
- iii) Abuse of Dominance by which the market is affected

(3) The EU releases merger control rules⁴¹ for effective competition under which companies have to follow certain threshold limits to maintain the internal market. The same rules apply to foreign companies if their resultant merger affects the internal market. The commission reviewed the merger control regulation, as earlier it was a very lengthy and tedious process, resulting in a simplified procedure, which was made applicable in September 2023.⁴²

In addition to all these regulations, the EU enacted the Digital Market Act of 2022,⁴³ the first country to implement AI regulations. Under this enactment, certain specific obligations are imposed on the gatekeeper's online platforms, under which these entities are bound by certain rules and regulations. A hefty fine would be imposed for indulging in activities of the nature of tying software products, self-favouring or preinstalling the applications. These regulations are supplementary to the general regulations.

(b) US Antitrust Rules and their Enforcement

The United States of America's competition policy is based on three major enactments:

- The Sherman Act, 1890,
- The Clayton Act of 1914 and
- The Federal Trade Commission Act, 1914

The regulations of these enactments and antitrust policies are governed by the following bodies:

- The Federal Trade Commission (FTC) and
- The US Department of Justice (DOJ)

⁴¹ European Union, Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EC Merger Regulation), OJ L 24, 1–22 (2004).

⁴² European Commission, Commission Implementing Regulation (EU) No. 1269/2013 of 5 December 2013, OJ L 339, 1–5 (2013).

⁴³ European Union, Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 1–66 (2022).

US competition policy focuses on promoting consumer interests and ensuring the free flow of goods within a competitive economy.⁴⁴ Cartelisation, Price fixing and related acts are considered to be anti-competitive practices. Under American competition policy, these acts are considered to be illegal *per-se*. This means that the market entity would be liable if involved in these acts without sufficient justification, such as the rule of market power or some business justification. These acts are considered to be of exceptional severity.⁴⁵ In the United States, the term “abuse of dominance” is not used; instead, the focus is on the concept of monopoly and the attempt to monopolise the market. This is addressed in section 2⁴⁶ of the Sherman Antitrust Act of 1890,⁴⁷ which makes it illegal for any individual or entity to monopolise or attempt to monopolise a market. The term “monopoly” is not explicitly defined in the Sherman Act, but it has been interpreted through various court cases. One key case, *United States v. E.I. du Pont de Nemours and Company*,⁴⁸ established that monopoly power refers to “the power to control market prices or exclude competition”.⁴⁹ Section 2 of the Sherman Act has not defined the term monopoly but reflects three terms, i.e. “monopoly, attempt to monopoly and the monopolisation of the market, which highlight the intention of the framers of the statute under the enactment”.⁵⁰

⁴⁴ Eleanor M. Fox, *U.S. and EU Competition Law: A Comparison* (Institute of International Economics, 1999), available at: https://www.piie.com/publications/chapters_preview/56/10ie1664.pdf (last visited on May 29, 2025).

⁴⁵ *Broadcast Music Inc. v. Columbia Broadcasting System Inc.*, 441 U.S. 1 (1979).

⁴⁶ “Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any *other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court*”. 15 U.S.C. § 2 (Sherman Antitrust Act, 1890), United States Code, 2017 ed.

⁴⁷ United States, Sherman Antitrust Act, 15 U.S.C. §§ 1–7 (1890).

⁴⁸ *United States v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956).

⁴⁹ *Ibid.*

⁵⁰ American Bar Association, *Antitrust Law Developments* (6th edn., 2007) 225, 317.

Section 2 of the Sherman Antitrust Act provides that, in U.S. law, a firm's ability to control the market or exercise monopoly power is sufficient to be considered illegal, without the need to prove that the monopoly is being misused. The law targets both monopolisation and the attempt to monopolise a market. It recognises that even an attempt to gain monopoly power can harm competition and consumers. This approach was reinforced in various court cases, including *Fineman v. Armstrong World Indus.*⁵¹

*"Whether monopoly power requires proof of both power to control prices and power to exclude competition or whether proof of either element is sufficient for a finding of monopoly power"*⁵²

This issue was settled with the court's interpretation in *United States v. Griffith.*⁵³ It was established that a firm's ability to exercise monopoly power, for instance, the ability to increase prices and limit competition, is sufficient to prove a violation of antitrust laws. The court emphasised that it is not necessary to show that the firm has actually misused its market power, but rather that it has the power to distort competition.

To monopolise power or monopolisation in the market, parties must establish two key factors:

*"(1) The entity possesses monopoly power in the relevant market and
(2) The willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident"*⁵⁴

Merger guidelines: Under the American guidelines, the merger would create an undue influence on the market power as the big entities merge and control the whole economic power of the market. Therefore, there are strict guidelines that consider three types of mergers as illegal. Firstly, Direct Horizontal Mergers between competitors, under which the market shares of the parties would be 20 % in particular which create serious scrutiny. Secondly, mergers

⁵¹ *Fineman v. Armstrong World Indus., Inc.*, 980 F.2d 171 (3d Cir. 1992).

⁵² *Id.*

⁵³ *United States v. Griffith*, 334 U.S. 100 (1948).

⁵⁴ *United States v. Grinnell Corp.*, 384 U.S. 563 (1966).

between customers and suppliers, where each of the parties' accounts for 20 or more % of the market, create issues of scrutiny. Last but not least, in Conglomerate mergers, scrutiny begins when it leads to coordinated anticompetitive acts.⁵⁵

With the growth of the online market, both the regulating agencies of antitrust laws come up with practical guidelines for protecting the interests of consumers and maintaining the trust value of the market. Generative AI disrupts the check and transparency process so far that these agencies are also hiring different experts in the field to come up with certain guidelines for the same.

9. Empirical Investigation of the Application of Antitrust Laws: Varanasi, Uttar Pradesh

9.1 Current status

To determine whether, and to what extent, the general people, including consumers or local enterprises, are aware of the competition law, its regulating agencies and what type of acts are considered illegal or against the legal norms of the antitrust laws, the author created a questionnaire in the format of Google Forms or a survey. The survey was conducted in the law faculty and the commerce faculty of Banaras Hindu University. It was also conducted in the Karaundi market of Varanasi, as that market is considered to be the hub of small businesses. The author received 113 responses from Varanasi.

The questionnaire included 19 questions, which were further divided into three parts. The first set implies the general understanding of the laws related to the competition market, such as whether people are aware of any law that deals with or regulates competition in the market or whether some agencies regulate or govern such markets. The second set of questions implies the understanding of the Competition Commission of India (CCI) and what acts could be considered as the objective of the competition law in India. The last set focused on what types of acts are considered to be anti-competitive. It also focused on whether those could complain to the CCI and whether anyone complained to the CCI about such illegal market strategies happening in the market. These activities deviate from the whole object of enacting the competition law in India. The

⁵⁵ Competition Commission of India, Case No. 39 of 2012, para 25 (CCI).

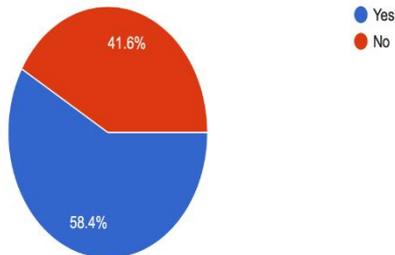
conceptual understanding behind this study is to illustrate the relationship between awareness and enforcement. The correlation established here is that public awareness leads to recognition of anti-competitive behaviour that leads to a high probability of willingness to report anti-competitive practices in the market, which ultimately achieves the goal of effective enforcement of the act.

9.2 Quantitative Analysis

(a) The first set of questions is general in nature as to whether consumers or local enterprises, or small business holders are aware of the competition law and its agencies.

Have you heard about Competition law?

113 responses

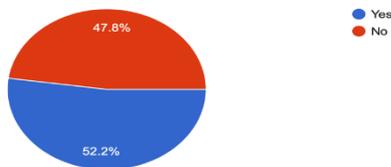


As can be seen, almost half of the population is not aware of the Competition Law, and this population includes law graduates, commerce graduates and market holders.

The further set of questions includes whether they are aware of any such law that deals with Indian markets, their objectives and their consumers' welfare? As per the data, the responses are that 52 % sample are aware of the Indian Competition law, and the rest are still unaware, as the data below:

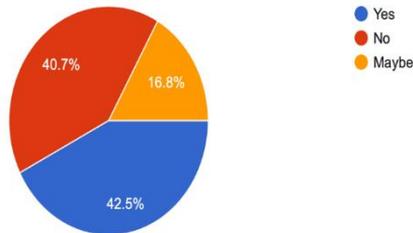
Do you know about the Indian Competition Law 2002?

113 responses



The last questions of the first set focused on the agencies that govern or regulate the markets in India. The data are shown below.

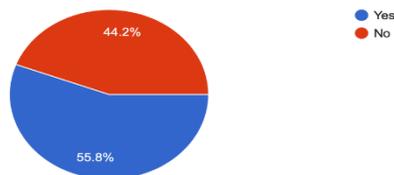
Do you have any idea about competition in the market being regulated by some agency?
113 responses



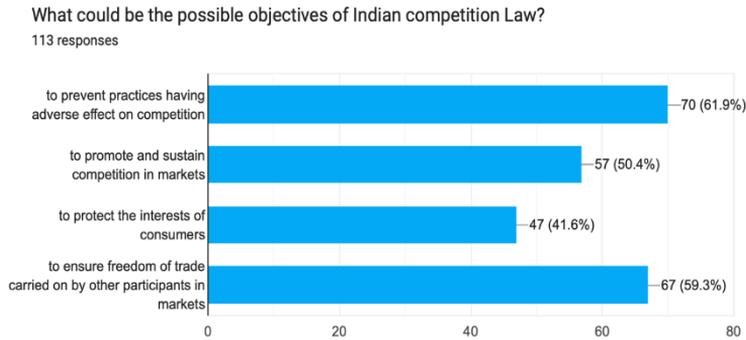
The first set of responses gives the broader understanding that half of the samples are not aware of such enactments that regulate the markets. In addition to it, even they are not aware of the regulating agency that deals with the Competition markets in India.

(b) The second set of questions focused on the regulating agency that deals with Indian markets, i.e. Competition Commission of India. Possible objective of enacting the competition law in India. The data shows astonishing results as

Do you have any idea about the Competition Commission of India (CCI)?
113 responses



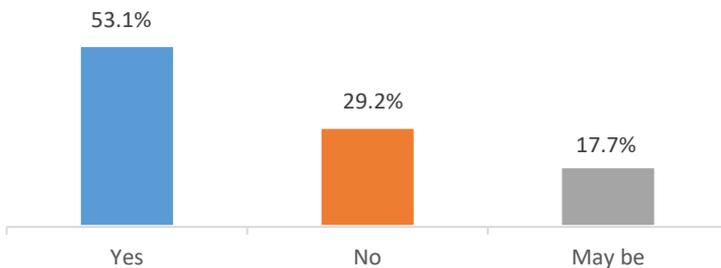
Here, the data shows ambiguity, as in the first set of questions, where only 42% of people have an idea about some regulating agency that deals with the Indian markets. Now, in the present set, 55 % of people are aware of the CCI as they have heard about the CCI. This fact might be indicative that most people are not aware of the agency or its working nature and its power. Thus, consumers or the market dealers have no specific knowledge about the CCI. The authors turned to the fact that the objective of Competition laws in India. The data represents a limited understanding of the same, as responses are as below.



As the author predicted, the objective of the competition law is not known to the people, even though they are part of the market as the enterprise or the consumers. A notable number of people are not aware of the fact that competition laws or provisions also protect the interests of consumers, as here they are confused because of the Consumer Protection Act and the Competition Law.

(c) The next set of questions focused on illegal market strategies, wherein included anti-competitive agreements such as tie-in arrangements and abuse of dominance. The authors highlight the understanding of people about the same. Further, whether they could complain to CCI about the same and its execution process, as no one has ever complained about illegal market acts to CCI. The data are shown below:

Do you know that the dominant entity regulates the price of the product in the market? For example, one owner or the business group possess different businesses such as sweet shops, restaurants, and cafes, and thereby fixes the prices of the related products as per their whims & fancies.

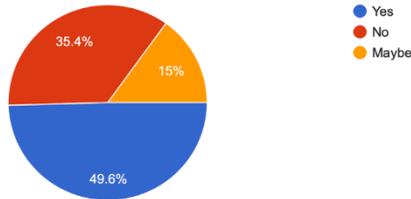


The responses show that 53 % of people are aware that such acts are considered to be illegal. The rest are confused about whether it is illegal or not, as 17 % of people are in the mind-set of “maybe”, which reflects a limited understanding of the rules and regulations or even illegal market acts.

The same situation is observed in the case of anti-competitive agreements.

Have you noticed in the market that to purchase one product, you have to purchase another product as it is compulsory (enterprise rule) as both products are tied together?

113 responses

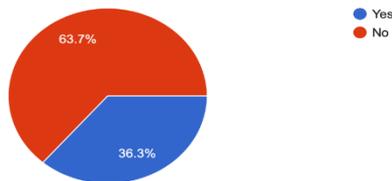


This type of act is seen in every other shop or market in India where the enterprise puts conditions to buy both products to increase the sale of the least purchased product. This is against the very objective of the enactment, and 50% of people are still confused that this strategy is illegal as per the law.

Further, the authors focused on its execution or practicality. Raises questions whether such illegal market acts could be complained to the CCI. Whether anyone has ever complained to CCI about such illegal market strategies that boost the profit of the enterprise and hamper the interest of the consumers. The responses are as below.

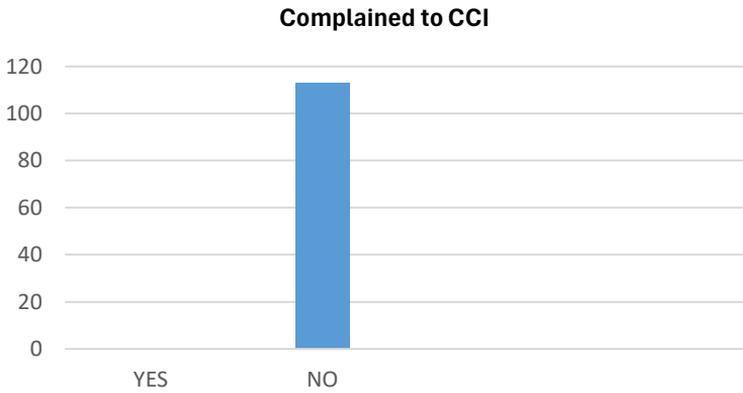
Do you know such an act could be complained to CCI?

113 responses



This reflects the limited understanding of the general people that such illegal market strategies could be reported to the authorities. The most

astounding fact is that no one ever complained to CCI about such an illegal act.



As can be seen, the understanding of competition laws is very limited, as inferences are drawn from the limited sample, and still, the competition laws are more theoretical in nature than their execution or implementation process.

9.3 Statistical Analysis

A combination of descriptive and inferential statistical techniques was used to analyse the data. Descriptive statistics, such as frequencies and percentages, were applied to understand general awareness levels across the sample as discussed above. To examine whether awareness levels differed significantly from an equal distribution, an inferential test, i.e. the Chi-Square Goodness-of-Fit Test, was employed.

The Chi-Square Goodness-of-Fit Test is appropriate when:

- a) The data are categorical (e.g., Aware vs. Unaware), and
- b) The researcher wants to compare observed frequencies with expected frequencies based on a hypothesised distribution.

In this study, awareness of the Competition Act was measured as a binary variable, where the primary aim was to see whether awareness levels deviate significantly from an equal 50–50 distribution.

The Chi-Square test evaluates:

The formula is:

$$\chi^2 = \sum [(Observed - Expected)^2 / Expected]$$

where:

Observed = actual counts from the survey

Expected = theoretically predicted counts (under equal distribution)

If the calculated χ^2 value is small, it means the observed and expected counts are close, suggesting no significant difference. If it is large, it indicates a significant difference.

Total respondents = **113**

The test assumes equal awareness and unawareness (50%–50%). Therefore:

Expected aware = $113/2 = 56.5$

Expected unaware = $113/2 = 56.5$

Observed Frequencies (from survey)

Aware = 59

Unaware = 54

Using the formula:

$$\chi^2 = \sum [(O - E)^2 / E]$$

Aware: $(O - E) = 59 - 56.5 = 2.5$ $(O - E)^2 = 6.25$ $(O - E)^2 / E = 6.25 / 56.5 = \mathbf{0.1106}$

Unaware: $(O - E) = 54 - 56.5 = -2.5$ $(O - E)^2 = 6.25$ $(O - E)^2 / E = 6.25 / 56.5 = \mathbf{0.1106}$

$\chi^2 = 0.1106 + 0.1106 = \mathbf{0.221}$

Using 1 degree of freedom (since categories - 1 = 1), the p-value associated with $\chi^2 = 0.221$ is: **0.638**

The statistical result confirms that:

- Awareness of competition law in Varanasi is **consistently low**, not skewed by an unusually aware or unaware subgroup.
- Both categories show similar proportions, indicating a **general lack of strong awareness trends**.

This supports the broader conclusion that low awareness is widespread and not concentrated within specific segments of the sample. Descriptive statistics and chi-square tests were used.

Observed: Aware = 59; Unaware = 54

Expected: 56.5; 56.5

Chi-Square = 0.221

p-value = 0.638

Interpretation: There is no significant deviation from equal distribution, indicating uniformly low awareness.

10. The dilemma regarding the Competition Law

As it is evident from the above quantitative results and statistical analysis from the selected sample, the effectiveness of the competition laws is very low. Here, the era of the global e-market, where different countries are coming up with various digital market Acts. As the European Union (EU) recently enforced the Digital Market Act to maintain the sanctity of the online competitive market, and India is also working on the Digital Competition Bill⁵⁶ to govern the acts, including online collusive practices, restricting third-party applications⁵⁷ and anti-steering⁵⁸ and many more. The objective behind enacting these digital Acts is to regulate the online competitive market, and the government plans to implement ex-ante regulations. These are the big goals to achieve, with proper implementation of the antitrust laws under Indian jurisdiction.

However, the general or basic effectiveness of the enactment (Indian Competition Law 2002) under Indian jurisdiction, as per the sample, paints a different picture. The simple understanding of the Act is unclear among people, including those with legal backgrounds. This loophole arises because, in many law schools, competition law is considered an optional subject or even in many universities (that too central universities), it is not included in the curriculum.

This is not limited to law school, as per the data collected from people of varied backgrounds, who have no or little understanding of the enactment. It is also noticed that there is a lot more confusion between consumer laws and competition laws. Under consumer laws, individual consumers could complain about any personal loss caused to the appropriate authority. However, under Competition law, complaints could be made for illegal market strategies, not the particular loss to consumer interest. The insubstantial understanding

⁵⁶ Ministry of Corporate Affairs, Government of India, 53rd Report: Anti-competitive Practices by Big Tech Companies (Dec. 2022), *available at*: https://sansad.in/getFile/lssccommittee/Finance/17_Finance_60.pdf?source=loksabhadocs (last visited on May 11, 2025).

⁵⁷ Preventing the installation or operation of third-party applications, limiting user choice and competition.

⁵⁸ Using provisions to prevent business users from using alternatives, stifling choice, and leading to anti-competitive practices. For example, application stores mandate the use of their payment systems for application purchases.

of the enactment and its regulating agencies created or paved the way for the dominant enterprises to rule the market as per their conditions. It would be imprecise to make a general statement on such a limited sample compared to the whole context at the National level. Nevertheless, a reference study could be made out that Indian competition law is still at its nascent stage, where people are unaware of the enactment and its corresponding agencies. It is tilting the way for the enterprises to engage in anti-competitive agreements such as tie-in arrangements or collusive practices, or bid rigging. This is not limited to consumers but also hampers the interest of local vendors or small business owners. Here, dominant entities are involved in predatory pricing to wipe out these partners from the market and hamper the sanctity of the competition market. These dominant entities are winding up competition, which is against the objective of antitrust law. As competition in the market explores the possibility of overall development and supports the economics of the country, it keeps the interests of consumers and the business holders in balance.

11. Conclusion

The study demonstrates that awareness and understanding of competition law among consumers, students, and small business owners in Varanasi are insufficient to support effective enforcement. It would be inappropriate to conclude from such a small sample when comparing it to the population. However, as discussed in Chapter IV, an inference can be made that competition laws are still in their early stages due to their limited scope. The analysis indicates that competition laws were not designed to address personal losses of consumers, but rather to regulate illegal market strategies that cause confusion at the grassroots level.

The findings support the hypothesis that individuals from legal or commerce backgrounds have greater awareness of the Competition Act, 2002, even though competition law aims to serve the entire market. Furthermore, with respect to the second hypothesis, which offers a contrasting perspective, there exists a general lack of awareness regarding the regulating authority. Even when individuals are aware of its existence, they often fail to understand its role and responsibilities. Therefore, it is reasonable to conclude that low levels of awareness significantly reduce the likelihood of reporting anti-

competitive conduct, a finding that is clearly reflected in the data analysis.

In this era of online marketing, from ordering food to booking movie tickets, everything is done through AI-based applications and software. Many automation companies have entered the market, introducing strategies that not only make life easier but also open avenues for online market fraud. Here, consumers and retailers often fail to recognise competition law and its regulating agencies, which are basic legal frameworks. This raises a critical question: are existing legal frameworks adequately equipped to address challenges in this AI-driven digital era? There are many online scams, yet consumers and market partners are often unaware, creating opportunities for online giants and large enterprises to dominate the market and engage in anti-competitive agreements. Consequently, current competition laws, along with analytical and regulatory tools, are unable to effectively address antitrust issues, which supports the hypothesis presented in this study.

12. Suggestions

In light of the findings, the following measures are suggested to enhance the effectiveness of competition law enforcement in India:

- a) **Strengthening Grassroots Accessibility:** The Competition Act, 2002, should be made more consumer-centric by addressing competition issues at the local and informal market levels. Simplified explanatory materials and regional outreach initiatives should be developed to improve accessibility and understanding.
- b) **Enhanced Competition Advocacy by the CCI:** While Section 49 of the Act mandates competition advocacy, these efforts should be significantly expanded beyond law schools. Targeted awareness programmes should be conducted for commerce students, small vendors, market associations, and local entrepreneurs.
- c) **Clear Distinction Between Consumer and Competition Law:** Public awareness campaigns, similar to initiatives such as “*Jago Grahak Jago*”, should be introduced to clarify the distinction between consumer protection and competition law, highlighting their respective objectives and remedies.

- d) **Simplification of Complaint Mechanisms:** The procedure for filing complaints before the CCI should be simplified, particularly for small businesses and consumers. Introducing digital assistance tools, helplines, and local facilitation centres would encourage reporting of anti-competitive practices.
- e) **Publication of Market Awareness Reports:** Periodic public reports explaining prohibited conduct, penalties, and recent enforcement actions should be disseminated widely. This would serve both as an educational tool and as a deterrent against anti-competitive behaviour.



Tradition Meets Trade: An Analysis of the Symbiotic Relationship of Geographical Indications (GIs) and Cultural Conservation in India

Shriya Badgaiyan*

Abstract

The study analysis elaborates on the ethical issues related to Geographical Indications (GIs) in India, more specifically, the tension of economic usage and cultural appropriation. It looks into the two-fold function of GIs as instruments of trade and revenue and as shields of identity and tradition including commodities such as Darjeeling Tea, Basmati Rice, etc. The paper covers the legal structures with regards to GIs in India with focus on ethical issues such as commercialisation, cultural imperialism, and social justice. Thus, the study also aims to cater policy implications to improve the ethical handling of GIs and state that concentration of benefits along with safeguarding of the cultural assets is critical. In conclusion, the author calls for the need to adopt a balanced perspective in analysing the factors that underlie the conflict of economic and cultural values and in doing so, the paper posited to advance knowledge in the area of Intellectual Property Law as a field of study as well as in the field of policy. Sources of the study include legal documents and articles. In that light, the author notes that even though GIs are economically rewarding, their use must be regulated in order not to adversely affect the cultural values that define a particular product.

Keywords: Geographical Indications, Ethical Considerations, Cultural Preservation, Commercial Exploitation, IPR

1. Introduction

GIs are a special form of IPRs that protect that product with reference to a place where the quality, reputation or characteristic of the product is associated or related to the place of origin. While trademarks are related with a certain economic factor, GIs are connected with cultural and geographical identity of a region. This link with territory makes GIs not only geographical signs of origin but also of cultural and ancestral asset of the producers. The use of GIs is thus twofold. In the first instance they are used to safeguard the interests

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of producers in a certain region from other producers who may wish to use the name but may not meet the set quality standards. This guarantees that only those who follow the laid down methods of production, and location restrictions can be associated with the GI label. In addition, GIs create market value and a brand image that can be associated with premium pricing, thus helping to create economic viability for rural and indigenous peoples' producers.¹

The regulation of GIs at the international level is based under Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement under the World Trade Organisation (WTO). According to the TRIPS Agreement, member countries are required to offer protection to GIs, so that they cannot be exploited or duplicated in international markets. Article 22 of the TRIPS Agreement sets out the minimum standard of protection that must be afforded to GIs and Article 23 contains further protection for GIs used in relation to wines and spirits.²

GIs India have strong historical and cultural connection in the country's cultural and historical context. These GIs are more than just products as they represent the traditional agriculture and rural innovation practices, traditional skill and knowledge, cultural heritage, that has developed and evolved within communities over generations. These products are living memorials of the regions that they originate from and they help in the retention of the cultural heritage of these regions. Every product that carries a GI mark is a symbol of the environmental factors, skills and tradition of the particular geographical region of its origin and therefore a cultural product in addition to being a commercial commodity.³

Due to the growing problems of imitation and dilution, the legal protection of GIs is essential in preserving the integrity of this cultural asset. Traditional products and practices are endangered in a world where globalization is seen to be causing cultural standardization. GIs

¹ Tushar Arora & Akshatra Sharma, Emergence of Geographical Indication in India, 4 *Indian Journal of Law & Legal Research*. 1 (2022-2023).

² Lucas S. Michels, A Blueprint for International TRIPS plus Geographical Indication Protections? An Analysis of Geographical Indication Protection Proposals in the European Union - India Bilateral Trade and Investment Agreement, 15 *Gonzaga Journal of International Law*. 112 (2012).

³ Abhishek Kumar & Ajeet Kumar, Geographical Indication (GI): An Overview, 3 *Nyaayshastra Law Review*. 1 (2022).

also serve as a safeguard that guarantees that such special cultural commodities retain their purity and are sustained. In as much as GIs recognize and protect the individual characteristics and history of these products, their use assist in the passing on of these products' cultural characteristics to subsequent generations. This retention of cultural differences is important given the fact that the world economy has become a place where similarity seems to rule the roost.

On the economic front, GIs bring about a revolutionary change in the concerned producing regions especially in the rural and tribal belts of India. The benefits that flow from a GI are in many cases reflected in a higher market value of these products, as consumers are willing to pay a premium for the so-called "original", "genuine", or "high-quality" goods. Such economic upliftment is particularly important in the rural areas as the traditional ways of making a living are becoming more and more endangered by modern industrialization and economic exclusion.⁴ But this has not been without some ethical dilemmas in the commercialization of GIs. One important issue of debate is whether economical utilization of these products is a way of eradicating them or merely a way of compromising them and their social and cultural significance. Ethical concerns are inevitably generated when the corporate imperative to feed the global market at the doorsteps of people who have long been crafting products for export.

The ethical issues are further magnified when we discuss them in the context of India that is diverse and economically differentiated society. There is also the need for the rightful owners of the GI products which include the various communities to exercise control over their use as well as gain fairly from the commercialization of the products. Ethical management of GIs cannot allow the erosion of cultural values and heritage while at the same time denying those who stand to benefit from the protection of such products fair share of the returns.⁵

Scholars have increasingly viewed Geographical Indications (GIs) not only as legal and economic tools but also as cultural signifiers that embody the living traditions of communities. Literature emphasizes

⁴ Sania Gupta, Geographical Indication: An Indian Outlook, 3 *Indian Journal of Law and Legal Research*. 1 (2021).

⁵ *Id* at 4.

that GIs function as “cultural capital”, preserving intangible heritage such as artisanal practices, agricultural wisdom, and regional identity. By tying products to their place of origin, GIs serve as instruments for transmitting collective memory and sustaining community pride. They are often described as a meeting ground between intellectual property and cultural rights, ensuring that culture is not reduced to folklore but remains a dynamic, market-recognized asset. This perspective strengthens the theoretical foundation of GIs as more than protective legal labels, they become carriers of identity, authenticity, and cultural survival.

2. Conceptual and Legal Framework of GIs

India has the Geographical Indications of Goods (Registration and Protection) Act, 1999 which is the main legislation relating to GIs. Being implemented to implement India’s obligations under the WTO’s TRIPS Agreement, the Act is one of the most important tools to protect and promote distinctive features of products that are arguably associated with the identity of specific territories. The Act also gives a framework through which GIs are registered and protected to safeguard the economic rights of the real owners and curb unfair use of such unique products.⁶

The procedure of obtaining protection for a GIs under this Act is elaborate and involves several steps to bar men of any tricks in claiming protection for a particular product. Firstly, an application has to be filed by an association of persons, producer, organization or authority for the producers interested. This application must therefore include a description of the product together with specific features that entitle the product to the GI status. Besides, it must state the geographical location where it produces the product, and this must be closely associated with the characteristics of this location. Once the application is submitted the same is examined and if it complies with the requirements, the GI is published in the Geographical Indications Journal. At this stage, the public is allowed to lodge an objection within a set period of time as was seen in the case study. If there are no objections or if the objections are withdrawn or deemed withdrawn, then the GI is registered. This registration provides the rightful owners the supreme authority to use the GI concerning the product and the

⁶ Abhishek Kumar & Ajeet Kumar, *supra* note 3.

ability to limit the usage of the GI to only those who meet the laid down requisites.⁷

Darjeeling Tea known as the 'Champagne of Teas' is the first product to be Geographical Indication in India. Grown in the hilly terrains of Darjeeling in the West Bengal of India, this tea has a characteristic flavour which is due to the soil, climate and the method of cultivation of this tea. GI status of Darjeeling Tea not only has strengthened the position of Darjeeling Tea in the international market but also has a great contribution to maintain the indigenous process of the regional people.

Kanchipuram Silk is another Indian GI product which is famous for its fine craftsmanship, bright colours and the quality. They are complimented with pure silk fabrics known as 'Kanjeevaram' which is hand-woven by skilled weavers living in the town of Kanchipuram in the state of Tamil Nadu. The motifs and the craftsmanship required to weave a Kanchipuram Silk saree are unique, and has become synonymous with the tradition of the area. The GI tag for Kanchipuram Silk helps in bringing these ancient techniques of weaving to a halt for imitation or weakening by low-cost imitations.⁸

Basmati Rice grown in the nutrient rich area of the Indo-Gangetic plains, it has long and slender grains with an aromatic flavour and taste. GI status of Basmati Rice is very important in preserving the quality and origin of rice that can be sold in the market as Basmati Rice and to ensure that rice with a different quality or origin cannot be labelled as Basmati Rice and therefore posing a threat to the high premium price commanded by Basmati Rice. Thus, by gaining the GI tag, India also saves the qualities of this rice and spirituality and history, strengthening the image of Basmati rice as a part of the country's agricultural legacy. This protection also has economic impact on the farmers cultivating Basmati they get premium price for their produce and their conventional farming techniques are appreciated and valued in the international market.⁹

⁷ Sheheen Marakkar, Maglin M. Raja & B. J. Abjith, Registering a Geographical Indication in India: Procedures and Requirements, 3 *Indian Journal of Integrated Research in Law*. 1 (2023).

⁸ Nandika Mehta, A Tool of Differentiation: Geographical Indication, 4 *International Journal of Law Management & Humanities*. 4869 (2021).

⁹ Harsh V. Chandola, Basmati Rice: Geographical Indication or Mis-Indication, 9 *Journal of Worlds Intellectual Property* 166 (2006).

3. Ethical Implications, Commercial Interests, and Cultural Preservation of GIs

(a) Ethical Theories

In deontological ethics, which derive from the work of Immanuel Kant, the focus is made to duty, rules, and obligations. If applied to GIs, this theory would state that there is a prima facie moral obligation towards the safeguarding of cultural assets, regardless of the outcome. The ethical imperative here is to provide for the liberty of communities to protect their indigenous information and cultural works. From deontological perspective, the registration of GIs has the moral appeal of preventing people's culture and associated products from being exploited in wrong ways. This approach emphasises the legal requirements for protection of cultural heritage by seeing GIs as ways of fulfilling these obligations.¹⁰

On the other hand, there are theories such as utilitarianisms as advanced by Bentham & Mill, which emphasize on the principle that emphasizes on the greatest good for the largest number. In GIs, then, utilitarianism would assess the act of using GIs on the effects they create, especially on effectiveness and the common good. From a rational egoist viewpoint, it might be possible to justify GIs on the grounds that they are ethical when they result in improved economic performance of the target community and the welfare of the society. However, this approach also brings into question the identification of whose welfare is of paramount importance, if benefits accrued to the community are a share for all the members of community or they reaped by the few.

(b) Cultural Preservation

GIs are central to safeguarding and promoting as they are instruments that have been developed by WIPO to protect traditional knowledge and cultural heritage. In this way, GIs act as a tool that connects products with the regions, thus ensuring protection of cultural values, identity and purity of the residents of these areas. They work so that a cup of Darjeeling tea, silk sarees of Kanchipuram or Basmati rice are not just identified for their quality but also for the tradition they bear.¹¹

¹⁰Tripathi, S.M., Vedula, S. (2022). *Managing Geographical Indications: Challenges and Opportunities*. In: Bhattacharya, N.S. (eds) *Geographical Indication Protection in India*. Springer, Singapore. available at: https://doi.org/10.1007/978-981-19-4296-9_8.

¹¹ Harsh V. Chandola, *supra* note 9.

That GIs are an ethical way to protect cultural identity is grounded in the understanding that culture is not an individual property. It is owned by the community as a whole in reflecting a part of the society's history, culture and heritage. Safeguarding these assets under GIs guarantees that they are not watered down or assimilated by other outside parties but are passed on in their original state for future generations' use. This ethical obligation is in consonance with the principles of cultural rights which state that every group of people has a right to their cultural identity.

However, the process of commercializing GIs poses some serious problems to the integrity of these products and their cultural value. In some cases, the process of commercialization of a GI product may involve changes that are required by the market, which may include altering a traditional practice of manufacture or the use of symbols that are culturally sensitive. This brings in to question the ethical stand of the two objectives; does the drive for economic gains trump the cultural value of the commodity? For example, demand for a GI product may rise across the globe and this will compel producers to produce more and more of it, thus eradicating the 'special' aspect of the product and hence the GI. The ethical issue here is how to preserve cultural resources while at the same time maintain commercial relevance.¹²

(c) Commercial Exploitation

GI brings about mainly economic returns to the local people in that they afford the people an opportunity to monetize on the distinctiveness of their geographical area products. The commercialization of GI products ensures that the producers make more income, people are employed and in the long run the economy of the region is boosted. For instance, the GI status of Darjeeling tea has helped in the branding of the product and the consequent increase in prices and better life of the tea growers. The economic value of GIs therefore makes them very useful in the development of rural areas and eradicating poverty.¹³

But the protection and commercialization of cultural products through GIs also have its ethical implications. Another problem is the

¹² Sania Gupta, *supra* note 4.

¹³ J. Devi, Critical Analysis of Natco versus Bayer: An Eye Opener in India, 5 *International Journal of Law Management & Humanities*. 2502 (2022).

risk of the reification of culture and cultural identity, which is the transformation of culture into mere market goods. This commodification can lead to a rather reductive use of cultures where the cultural meanings of objects are ignored in favour of their commercial values. For instance, the process of commercialization of a GI product may lead to the dilution of the cultural attributes linked to a product since the business advantages of a particular product are valued more than its cultural value. This raises some ethical issues, where by the economic benefits of GIs are viewed as being very important while cultural losses might be viewed as not being very important.

Commercial Interests and Cultural Preservation

The communities face the dilemma of being true to themselves or being true to their adaptive selves. It is not easy to sustain the originality of an item during the process of adaptation to the market. For example, methods of production could be costly and time consuming compared to the current methods. However, going against these methods dilutes the character and the cultural significance of the product and thus questions the real essence of the cultural representation.¹⁴

Another considerable ethical issue can be associated with the fair distribution of economic gains. Although GIs can bring significant revenues, the problem of how those revenues would be equitably allocated among the members of the community is quite challenging. Sometimes, the economic benefits derived are not balanced which creates internal contradictions and social injustices in the society. The ethical dilemma here is to develop structures that would guarantee that all the actors especially the vulnerable or the weaker members of society benefit from the gains that come with GIs. Most communities are organized with many groups and each group has its own interest and view in any given task. Selecting who has the mandate to speak for the community and make decisions on how cultural commodities are commercialized is always a contentious issue. This is an ethical principle that is very hard to accomplish: every voice must be valued, and the decision reached must reflect the genuine desire of the community.

¹⁴ *Id.*

4. Conclusion and the Way Forward

The ethical issues connected with GIs mainly arise from the conflict of interest between the maintenance of cultural identity and the opportunities that come with the commercialisation of such identification. GIs are aimed at preserving the distinctiveness of products and cultural heritage of indigenous people; however, the marketing of such indications may have negative implications and undermine the essence of cultural beliefs. The growth of market demand for products with a GI often leads to an emphasis on the production of goods with a GI-tag, which may lead to the loss of the distinctive features that are the basis for obtaining such a status. Furthermore, the distribution of economic values from GIs is an issue of equity since it appears that some disadvantaged groups may be excluded from the benefits or they get little share from the revenues thus deepening social inequalities.

The tension between maintaining the cultural integrity of a place and the need to make money out of it should therefore be handled with careful consideration of both values. On the one hand, GIs can be effective instruments for the economic growth and can provide communities with opportunities to profit on their cultural resources. On the other hand, there is an ethical approach to the commercialization process which should not distort the idea of cultural heritage. Such balance can be attained through an effective legal system, communities, and policies that respects sharing of benefits. More studies are required to understand how these factors work across the regions and products in India especially concerning the GIs effects on cultural conservation and equitable economic development. Such research could also analyse the part that international trade relations play in the fashioning of ethical GIs and provide probably the best understanding of how global and local stakeholder interests may be aligned.

Hence, the story of GIs is where tradition meets trade. They symbolize the convergence of inherited practices with modern markets, carrying the dual promise of economic vitality and cultural preservation. For GIs to realize their full potential, policies must ensure that the “trade” component does not eclipse the “tradition” that gives these products their meaning. By aligning ethical commercialization with cultural integrity, GIs can stand as a model of how heritage can thrive within global trade without being commodified beyond recognition.



Legal Analysis of the Prevention of Cyber Abuse Among Children and the Role of Digital Communication Tools

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Eakramuddin†
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Abstract

The greatest resource of country is young generation. Our main goal of eliminating inequality and establishing social justice should be served by providing equitable developmental opportunities to all children during the growth period. However, crimes are increasing along with technology, and regrettably, our children are not safe. Although there are many advantages to technology, but side effects cannot be denied. Digital media has become a heaven for criminal activity. Due to the intrinsic anonymity and absence of in-person communication, a veil of secrecy is created, which decrease responsibility. Because of this, it is simpler for people to act in a negative way without worrying about the consequences right away. The prevalence of cyberbullying has increased along with other offences like grooming, sexting, identity theft, and harassment. The study describes and discusses the rights of children in cyber world. In addition to this, this paper also discusses the role of social networking sites along with existing laws in India to regulate these sites and provide safe access to internet.

Keywords: Digitalization, Cybercrimes, Internet, Cyberbullying, Social Media, Human Rights

1. Introduction

Human rights are inherent freedoms that are essential to people's dignity and general well-being. People have these rights regardless of their caste, creed, colour, sex, religion, age, or place of residence. The same human rights apply to children as they do to adults. When the internet was first discussed in 1990, nobody could have predicted that it would become a ubiquitous presence in people's lives. Information and Communication Technology is now ingrained in many aspects of

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people's everyday lives around the world, including education, information and communication, e-government, the health sector, and many more. Children have been involved in this phenomenon as an integral component. The way humans live has changed fundamentally. Nowadays, it is hard to imagine a world without information technology because most human endeavours rely on it. One of the main issues with information technology is its misuse by anti-social elements. Computers, computer systems, and computer networks enable the commission of traditional crimes by providing new sophisticated tools.

2. Types of Cyber Crimes

The word 'cybercrime' refers to any unlawful activity in which a computer or computer network is utilised as a tool, a target, or an accomplice. It covers any illegal behaviour that occurs within the purported boundaries of internet.¹

(a) Cyberbullying: This is one of the grievous offences in which Digital communication tools, including social media, instant messaging, and online platforms, are purposely used to harass, threaten, or hurt individuals. Section 66E of India's Information Technology Act, 2000, outlines the consequences, for instance, violation of the right to privacy by taking, publishing, or sending a picture of anyone's private area of the body without that person's permission. This section is used when cyberbullies post private or explicit photos without permission.² Several countries have taken initiative to enact legislations to tackle such offence. For instance, US has many federal and state laws to combat cyberbullying. It includes anti-harassment legislation, child protection legislation and electronic communication legislation. In this regard *Megan Meier case*³ is a leading case. In this case Megan Meier who was a teen committed suicide after being bullied on Myspace by an adult posing as a teen boy. This case sparked debate on need for legislation to combat such behaviour, as well as the serious consequences of engaging in cyberbullying.

¹ U. Siber, *The International Emergence of Criminal Information Law* (Köln, 1992) 49–55.

² F. Gontard, *Buddhist Understanding of Childhood Spirituality: The Buddha's Children* (London, Jessica Kingsley Publishers, 2017) 55–56.

³ *United States v. Drew* 259 F.R.D. 449 (C.D. Cal. 2009).

Another significant case⁴ is of Canada in which one woman was accused of criminal harassment and imprisoned. The court emphasised the importance of legal intervention in the fight against cyberbullying.

In the significant case of *Ravi Kumar v. State of Tamil Nadu*,⁵ a college student impersonating a female classmate created a fake Facebook profile and posted slanderous content. The defendant was found guilty for the violation of section 66D (penalty for impersonating someone using a computer resource) and section 67 of the Information Technology Act, 2000. One more important case heard by the supreme court was *Shreya Singhal's case*⁶ in which section 66A of the Information Technology Act, was in question which deals with the offence of sending obscene electronic messages. The apex court declared Section 66A unconstitutional. This judgement acknowledged the significance of the right to free expression.

The issue of cyberbullying caused by improper use of social media platforms was brought before the Indian Supreme Court in the 2018 case titled *Swapnil Tripathi v. Supreme Court of India*.⁷ The judge emphasised that it is the responsibility of social media platforms to prevent cyberbullying by responding quickly to complaints and acting against those who bully others online.⁸ In another case, *Rajesh Kumar v. State of Uttar Pradesh (2019)*,⁹ the defendant was punished for the offence under sections 354D of Indian Penal Code as well as section 66E of IT Act for sending vulgar and offensive WhatsApp messages to a woman.

Cyberbullying perpetrator and victim can be of any age but mostly children who use social media or online websites are more vulnerable and considered easy target for such offences. However, adults can also be a victim of cyberbullying.¹⁰ Such offences affect the mental as well as general health of victim and resulted in anxiety, despair, and

⁴ *R v. Elliott* (2002) EWCA Crim 931.

⁵ *Ravi Kumar v. State of Tamil Nadu* (2004) 10 SCC 776.

⁶ *Shreya Singhal v. Union of India* (2015) AIR SCW 1989.

⁷ *Swapnil Tripathi v. Supreme Court of India* (2018) 10 SCC 639.

⁸ Kaelber, O. *Tapta-Marga: Asceticism and Initiation in Vedic India* (State University of New York Press, n.d.) 33.

⁹ *Rajesh Kumar v. State of Uttar Pradesh* (2021) AIR ONLINE 2021 ALL 2534.

¹⁰ Sarl, N., Biiyiikiinal, & S. N. C. 'A Study of the History of Child Abuse' (1991) 6(6) *Paediatric Surgery International* 401.

even suicidal acts. Cyberbullying can also cause long term psychological harm. Hence, it is crucial that awareness should be raised and digital literacy should be ensured along with effective mechanism to prevent such heinous offences. This includes programs that instruct parents, educators, and society on how to handle cyber offences. To effectively combat cyberbullying and create safer online environments, multiple stakeholders, including schools, government agencies, and technology companies must work together.¹¹

(b) Revenge Porn: This refers to the practise of publishing or disseminating private or explicit photos or films of someone else without that person's consent. The intention behind this offence is mostly to embarrass or otherwise coerce the targeted person that violate person's privacy as well as autonomy and cause detrimental effects on their mental as well as emotional health. Section 67 of the IT Act, 2000 contains the provisions pertaining to the sharing of explicit content without the agreement of the parties. It acknowledges the potential harm of these actions and attempts to protect persons from the unlawful sharing of private photos or videos.¹² In the *Air Force Bal Bharti School Case*¹³, a 16-year-old student who had been bullied for having a pockmarked face decided to exact revenge by creating a pornographic website. He posted the modified and scanned images of his teachers and classmates to that porn website. The boy was charged under sections 292, 293, and 294 of the IPC, the Indecent Representation or Women Act, and section 67 of the IT Act, 2000.

(c) Doxing: It involves illegal disclosure and publication of private information in a public place without the consent of concerned person. For instance, home address, phone number, email address and social media profile disclosure. It can be done by online or offline modes intended to harass, threaten, or harm the victim.¹⁴ It can happen when someone with illegal intention gathers private information about another person by several methods like social media platforms, online directories, or hacking and subsequently

¹¹ *Ibid.*

¹² Sen, R. K., & Dasgupta, A. *Problems of Child Labour in India* (Deep & Deep Publications Pvt Ltd, 2003) 270.

¹³ *The Air Force Bal Bharti, Delhi Cyber Pornography Case* (2001).

¹⁴ Tripathy, S. N., & Pradhan, S. P. *Girl Child in India* (Discovery Publishing House, 2003) 93.

make this information public. Section 66 C of the IT Act contains the provision relating to identity theft. Doxing is also a part of identity theft. Identity theft means unauthorised use of another person's identity information, like personal information, electronic signature, biometric data. Furthermore, section 72A of the IT Act provides punishment for the disclosure of personal information by the person who deals with the information while performing the legal contract with someone and use that information without the consent of that person.

Even though there may not be specific cases focusing solely on doxing, there are relevant rulings that recognise the harm caused by the unauthorised disclosure of personal information. The Madras High Court acknowledged the gravity of actions comparable to doxing in the 2014, in the case, *Malathi v. State*¹⁵, ruling that the publication of private and personal information without the individual's consent violates the individual's right to privacy. In the opinion of the court, the victim may face harassment, intimidation because of the action of the offender. Although this case does not deal with the offence of doxing directly but established a precedent for recognising the harm that can result from the inappropriate disclosure of information. These case laws basically create precedent along with other legal provisions of the IT Act for the prosecution of doxing offences.¹⁶

(d) Website Defacement: This is typically accomplished by using a system cracker to replace a website's homepage. The cracker compromises a web server and modifies the hosted website to create a new one.

(e) Morphing Pictures: One approach to take advantage of people who post pictures on social networking sites is to morph someone's face onto another person's body and broadcast it to blackmail or otherwise threaten the person.

(f) Online Gaming: Children who are susceptible to clinical depression, low self-esteem, and loneliness may be drawn to risky online games that could further damage them and become addictive. Some even result in the victim taking his own life, such as the well-

¹⁵ *Malathi v. State W.P. Nos. 19728 of 2020 & 484 of 2021.*

¹⁶ Basu, A. "Trafficking of Minor Girls for Commercial Sexual Exploitation in India: A Synthesis of Available Evidence" (Population Council, August 2014).

known “*blue whale challenge*.” This presents a social and personal challenge to those in the vicinity.

(g) Dating Websites: On dating platforms untrustworthy individuals can use any intimate images or texts of their potential dating partners to blackmail them.

3. Role of Social Media

Now a days social networking sites have become heaven for the perpetrators to abuse each section of society specially children. Social networking services like Facebook, Twitter, and YouTube mandate that users should be of at least 13 years old in accordance with their privacy policies. Nevertheless, over half of teenagers who use these social networking sites do so by misrepresenting their age. The age verification threshold on social networking sites is meaningless because it is not the website owner’s duty to verify that users are of legal age. As a result, all conventional age verification systems have been proven to be ineffective and defective. Kids are becoming more and more interested in social networking sites (SNSs), especially Facebook, because every time they check in, they discover something new.

According to Children’s Online Privacy Protection Act (COPPA) (US) regulations, Instagram’s age requirement is 13. However, this requirement is easily bypassed by the children by manipulating the data. Instagram faced significant criticism due to its role in facilitating cyberbullying.

4. UNCRC and Rights of Children

Following World War I, children’s rights were recognised for the first time. For the first time in history, the **League of Nations** enacted the **Geneva Declaration** in 1924, which guaranteed parents a certain duty to their children and confirmed and acknowledged children’s rights.¹⁷ However, the **International Convention on the Rights of the Child**,¹⁸

¹⁷ UNICEF “Geneva Declaration Drafted by Eglantyne Jebb, Founder of the Save the Children Fund” (n.d.) *available at*:<https://www.unicef.org/child-rights-convention/history-child-rights> (last accessed 5 January 2025).

¹⁸ UNICEF “The Convention on the Rights of the Child is Adopted by the United Nations General Assembly” (n.d.) *available at*:<https://www.unicef.org/child-rights-convention/history-child-rights> (last accessed 5 January 2025).

was the first legally binding international agreement to acknowledge children's rights. The treaty acknowledges that children under the age of eighteen have fundamental rights. Regrettably, compared to adult rights, some children's rights—such as the right to privacy or the ability to speak—are severely restricted. Even in certain nations, children are not permitted to make their own decisions.

5. India's Cyber Security Infrastructure

To control the rising number of crimes, Indian law has put in place several regulations. The Information Technology Act enacted in 2000 is the most prominent illustration of it. A few relevant provisions from the 2000 Information Technology Act are as follows:

The IT Act's section 43 covers those who commit cybercrimes, such as causing computer damage to a victim without that victim's knowledge or consent. This section entails a fine of one lakh rupees and a maximum penalty of three years in prison. Section 66D provides the use of computer resources to impersonate someone else to cheat. A conviction entails a maximum fine of one lakh rupees and a maximum sentence of three years.

Voyeurism is defined in section 77 of the *Bhartiya Nyaya Sahita 2023* as the capture or sharing of images of a woman engaging in private or intimate activities without her consent. Sections 292 of the *Bhartiya Nyaya Sahita 2023* and Section 66E of the IT Act are sufficiently broad to include similar offences in the absence of the criteria specified by this section. For first-time offenders, carries a maximum term of three years in jail, with seven years for repeat offenders.

Under section 78, *Bhartiya Nyaya Sahita 2023*, both offline and online stalking are prohibited. cyberstalking is the practise of reaching out to or trailing a lady using technology, like email or the Internet, even though she does not seem interested. For a first offence, this offence has a maximum punishment of three years in jail and a fine. For a second offence, five years in prison and a fine

(a) The POCSO Act, 2012

This Act contains provisions pertaining to sexual offences, such as child pornography, sexual assault, abuse, and sexual harassment. Under the POCSO Act, 2012, Section 11 defines sexual harassment. Anyone who regularly approaches a child *via* any form of electronic communication makes or threatening to use the child's body or involve the youngster in sexual activity, whether such threats are true

or made up is engaging in sexual harassment. Section 13 of this Act prohibits the use of children for pornography. Sections 14 provides penalties for employing children in a pornographic purpose.

(b) The Digital Personal Data Protection Act, 2023 (DPDP Act)

This Act is enacted with the objective of safeguarding the digital privacy and personal information of persons. This is the first time when the term “child” is defined under the DPDP Act “as an individual who has not completed the age of eighteen years.”

DPDP Act and Data compliance for children

- **Verifiable Parental approval:** According to Section 9 of the DPDP Act, before processing the children’s personal data verifiable parental consent is required. Such consent should be free, unambiguous, and accompanied by a clear affirmative action.
- **Limitation of Purpose:** Such information should be used only for the purpose for which consent has been granted.
- **Ensure Well-Being:** The data fiduciary cannot use the personal data of child in such manner that could have negative impact on the well-being of child.
- **Absence of tracking or advertising:** Section 9(3) expressly prohibit the behavioural monitoring and tracking or targeting advertisements.
- **Right to Erasure:** Under this clause, kids or their parents can ask for their personal information to be deleted.
- **Marketing Restrictions:** Businesses may not be allowed to advertise to youngsters online, especially when it comes to focussing on vulnerable people for profit. Businesses are restricted from gathering information for children’s targeted advertising.

(c) The Digital Personal Data Protection Rules, 2025¹⁹

The Digital Personal Data Protection Rules, 2025 as recently released for the public opinion, contains provision for verifiable consent and provides that data fiduciary is required to take specific verifiable consent from the parents before processing the personal data of

¹⁹ Digital Personal Data Protection Act, 2023, No. 22 of 2023, Gazette of India, Ministry of Law and Justice.

children and specific steps should also be taken to guarantee that the individual giving consent is the child's parent or legal guardian and such parent can be identified. The data fiduciary should use such methods of verification of consent which ensure that the consent is given by the parents only. This verification procedure is crucial to guarantee that consent is given by the adult person. It can be done by several methods like by using digital locker service to submit identification details when parent is a registered user of digital locker. Though the DPDP Act provides robust protections but there may be obstacles to its successful implementation because of the following reasons:

- **Global Reach of Digital Platforms:** Application of local data protection laws on global nature of data looks challenging. For example, one organisation which has many branches worldwide must follow different laws applicable on data which is confusing and difficult at the same time.
- **Technological Advancements:** Due to the non-stoppable advancement in technology, like (blockchain, artificial intelligence) it might be challenging to update the laws.
- **Parental Involvement and Awareness:** Due to the unawareness, parents cannot predict the risks that children may face while utilising technology. Hence, it can be said that DPDP Act will be helpful for those parents who are educated and aware of all the aspects of the technology.²⁰

(d) India's first hotline to report Child Pornography: The first-ever hotline in the country to stop child sexual abuse online and to remove child pornographic content is set to launch. Users will be able to anonymously and securely submit images and videos of child sexual abuse *via* the hotline.²¹ An industry watchdog and the world's most successful hotline for eradicating child pornography, the UK-based Internet Watch Foundation (IWF) has teamed up with the Aarambh Initiative, a network of organisations and people dedicated to child

²⁰ Digital Personal Data Protection Act, 2023, No. 22 of 2023, Gazette of India, Ministry of Law and Justice.

²¹ Ministry of Electronics and Information Technology, Government of India, *Directions to Internet Service Providers for Blocking Child Sexual Abuse Material* (July 2017).

protection in the country.²² Using the hotline in India, which will be hosted on aarambhindia.org, anyone will be able to anonymously and securely send images and videos of child sexual assault. The hotline will eventually be offered in up to 22 regional languages, with Hindi and English being the initial languages. The hotline's three primary objectives are to identify and report the perpetrator to the appropriate law enforcement agency in his country, block and eventually remove offending content, and, if required, contact the underage victim, and offer rehabilitation.²³ In order to prevent the dissemination and transmission of such content into India, the Union Ministry of Electronics and Information Technology directed all ISPs to adopt and implement Watch Foundation Resources by July 2017 at the latest.²⁴

6. Initiatives taken by the Government to control Cyber Crimes

Under the Nirbhaya Fund, the government opened platform named "Cyber Crime Prevention against Women and Children" (CCPWC).²⁵ To make reporting all cybercrimes easy, The National Cybercrime Reporting Portal (NCRP), located at www.cybercrime.gov.in, was created under CCPWC, with a focus to protect women and children. In all states and union territories, a toll-free Helpline number 1930 is available. The NCRP has seen over 16.18 crore complaints as of April 2024 and 1.94, million Child Pornography/Rape or Gang Rape (CP/RGR) complaints had been submitted.²⁶ A Memorandum of Understanding (MoU) was signed in April 2019 between the National Crime Records Bureau (NCRB) in India and the National Centre for Missing and Exploited Children (NCMEC) in the United States about the receiving of the Tip-line report on online child pornography from

²² Internet Watch Foundation, *Annual Impact Report* (2023).

²³ United Nations Children's Fund (UNICEF), *Child Online Protection Guidelines* (2021).

²⁴ Aarambh India Initiative, *India's First Hotline to Combat Online Child Sexual Abuse*, available at: <https://aarambhindia.org/> (last visited on September 20, 2025).

²⁵ Ministry of Home Affairs, Government of India, *Cyber Crime Prevention against Women and Children (CCPWC) Scheme*, Nirbhaya Fund.

²⁶ National Crime Records Bureau, *Crime in India 2023* (Ministry of Home Affairs, Govt. of India, 2024).

NCMEC.²⁷ Several technology-driven programs and plans are part of the Nirbhaya Fund. One of these programs is the Emergency Response Support System (ERSS)-112, which has been operationalised in 36 States and Union Territories. By April 30, 2024, it had handled more than 36.29 crore calls and had downloaded more than 14.36 lakh copies of the “112 India” app. Safe City Projects are all-encompassing, integrated initiatives created by the city’s police and municipal corporations to address any gaps in the current infrastructure and meet the expectations of their female residents.²⁸ In Phase I of the project, technology will be installed in eight cities to support smart police and safety management, and State Forensic Science Laboratories (SFSLs) established in 30 States and UTs will be strengthened or established.

Cyber Crimes against Children (2017 to 2021)²⁹

Year	Total cases of cyber crimes	Total cases of cyber-crimes against children	Percentage distribution of cybercrimes against children to that of total cases
2017	21796	88	0.40%
2018	27248	232	0.85%
2019	44546	305	0.68%
2020	50035	1102	0.20%
2021	52974	1376	2.59%

The Integration of Women Helpline (WHL)-181 with ERSS is operational in 35 States and UTs, as of May 31, 2024 and have helped over 76.02 lakh women. 11 States and UTs, including Bihar, Puducherry, Himachal Pradesh, Chandigarh, Andaman & Nicobar Islands, and Odisha, West Bengal, Sikkim, Uttarakhand, Mizoram, Chhattisgarh have commissioned Monitoring Centres for the implementation of the Vehicle Tracking Platform (VTP). The Central

²⁷ National Cyber Crime Reporting Portal, Government of India, *Cyber Crime Statistics*, available at <https://www.cybercrime.gov.in>. (last visited on May 25, 2025).

²⁸ Ministry of Home Affairs, Government of India, *Safe City Projects under Nirbhaya Fund – Phase*

²⁹ National Crime Records Bureau, *Crime in India 2021* (Ministry of Home Affairs, Govt. of India, 2022).

Forensic Sciences Laboratory in Chandigarh inaugurated a DNA analysis facility on December 23, 2019. Furthermore, four separate units have been established, completely furnished with contemporary DNA methodologies and profiling.³⁰

**People Arrested and Cyber Crimes/Cases Filed
under the IT Act (2014 to 2024)³¹**

Year	Cases registered	Person arrested
2014	9,622	5,752
2015	11,592	8,121
2016	12,317	8,613
2017	21,796	9,622
2018	27,248	18,930
2019	44,546	21,796
2020	50,035	24,064
2021	52,974	25,789
2022	65,893	27,612
2023	75,656	34,597
2024* Till August	77,858	36,235

7. After Effects of Cyber Abuse on Child Victims

Multiple studies have shown that policies and plans designed to educate individuals, especially young people, about internet safety precautions can be improved to be more effective. Individuals under the age of 18 should exercise caution when interacting with unfamiliar individuals online and should refrain from sharing any personal information with third parties.³² Further investigation into the means through which teenagers access social media platforms and engage in fraudulent behaviours will enhance public awareness of the activities and behaviours they engage in while using the internet. By embracing this viewpoint, it is possible to develop improved strategies and precautionary measures to protect adolescents while they use the internet. The recognition of cybercrime as a significant problem

³⁰ Press Information Bureau, Government of India, *Inauguration of DNA Analysis Facility at CFSL Chandigarh* (Dec. 23, 2019).

³¹ National Crime Records Bureau, *Crime in India 2023* (Ministry of Home Affairs, Govt. of India, 2024).

³² David S. Wall, *Cybercrime: The Transformation of Crime in the Information Age* (Polity Press 2007).

has occurred during the past twenty years. Cybercriminals demonstrate a strong inclination towards targeting young adults in modern society. Several factors can heighten the probability of an individual becoming a target of cybercrime, such as gender, educational attainment, financial circumstances, and even coercion.³³

The after-effects of cyber abuse cannot be ignored because it targets that section of society which because of the lack of the emotional maturity and blindly coping mechanisms to effectively navigate such traumatic experiences. Children are increasingly involved in online environments, where they may encounter various forms of cyber abuse, including cyberbullying, online harassment, and grooming.³⁴ To create robust mechanism and support system specially to protect children from cybercrimes understanding of the seriousness of the effects of cyber abuse on children is essential. Following are some side effects of technology on children:

(a) Psychological Impact: One of the most significant after-effects of cyber abuse on child victims is the psychological trauma. For example, when victims endure constant harassment and humiliation online, cyberbullying can result in emotions of worry, sadness, and low self-esteem.³⁵ Sleep issues may be developed in children because of cybercrimes, especially those who are exposed to disturbing content or face cyberbullying, which may be resulted in chronic fatigue and difficulties in daily functioning.³⁶ In some cases, children who experience cybercrimes may engage in riskier behaviours, such as attempting to “get revenge” on perpetrators, more frequent use of the internet in unprotected ways.³⁷

(b) Physical health impact: The physical health effects of cybercrimes cannot be ignored as these effects are significant, especially when considering the overall progress of children because of the stress, anxiety, and other emotions associated with wellbeing

³³ Organisation for Economic Co-operation and Development, *Protecting Children from Digital Risks* (OECD Publishing, 2020).

³⁴ K. Jaishankar, *Cyber Criminology* (CRC Press 2019).

³⁵ World Health Organization, *Mental Health Impacts of Cyber Abuse among Children and Adolescents* (2022).

³⁶ Mark Yar, *Cybercrime and Society* (2d ed., Sage 2013).

³⁷ Sonia Livingstone & Amanda Third, *Children and Young People’s Rights in the Digital Age* (New Media & Society 2017).

of a victim. While cybercrimes are primarily psychological in nature, the physical repercussions can also be caused due to the emotional distress. For instance, Sleep Disturbances, Headaches and Migraines, Digestive Issues, Fatigue and Low Energy, Physical Symptoms of Anxiety, Weakened Immune System, and Isolation.³⁸

8. Suggestions to prevent Cyber Crimes

A multi-stakeholder strategy is needed to effectively address child cyber abuse. The following are thorough recommendations meant to curb and stop child internet abuse in India:

(a) Enhancing regulatory and legal structures: Revise current legislation to specifically handle new types of cyber abuse. Create proper trained and specialised cyber units to deal with crimes involving children. Reporting procedure should be made simpler and ensure privacy.

(b) Solution based on Technology: AI tools can be used to track and identify negative online activities. Social media companies should impose more stringent age verification mechanism. Encourage the use of safe browsing resources and parental control software. Forensics should be prepared not only to stop cyber incidents but also to collect evidence to bring criminal charges against those responsible. Since the introduction of multi-user systems, password security has been essential. People should ensure that their Passwords to sensitive data always be kept secure.³⁹

(c) Parental and Community Involvement: Encourage conversation about online safety between parents and kids. Local governments, NGOs, and schools should establish support system.

(d) Cooperation amongst interested parties: With the collaboration of tech firms that are kid-friendly the aim of safe virtual world can be achieved. To answer cross-border challenges, collaboration between international organisations, NGOs, and law enforcement authorities should be promoted.

(e) Counselling and Rehabilitation Services: Helplines and counselling facilities can be ensured for people who have been the victim of online harassment. Offer psychological support to aid in the

³⁸ World Health Organization, *Mental Health Impacts of Cyber Abuse among Children and Adolescents* (2022).

³⁹ Jonathan Clough, *Principles of Cybercrime* (Cambridge Univ. Press 2015).

trauma recovery of the sufferers. Counsellors should receive training on how to tackle unique problems associated to online abuse.⁴⁰

(f) International collaboration: International collaboration is essential since cybercrimes have no boundaries. India needs to collaborate with international agencies like UNICEF and INTERPOL. MOU should be signed to make it easier to share information and prosecute transnational criminals. Engagement in global forums to implement best practices for protecting children in cyber world is essential. Cybercrime Convention a true international treaty to police cybercrime through international cooperation is desperately needed.⁴¹

(g) Education and Awareness: National awareness initiatives aimed at educators, parents, and kids need to be launched. In the curriculum, digital ethics and cybersecurity should be Incorporated. Training sessions on identifying and reporting online abuse required to be planned. In the fight against cybercrime, numerous countermeasures can be employed. These defences include education, one of the most effective ways to combat cybercrime and raise awareness and spread knowledge. People must understand the risks associated with social media and how to protect themselves from cyberattacks. This entails teaching people how to recognise phishing emails and protect their personal information. To deal with thwart cyberattacks many tools like Firewalls, antivirus programmes, and intrusion detection systems are examples of cyber security technology that can be used. These tools prevent fraudsters from gaining access to private information by identifying and stopping unlawful communication. Strong passwords should be used for safeguarding personal data. Security mechanisms, such as encryption, to prevent unauthorised access to user information should incorporated by online platforms.

⁴⁰ Stephen Furnell, *Cybercrime: Vandalizing the Information Society* (Pearson 2018).

⁴¹ Eoghan Casey, *Digital Evidence and Computer Crime* (3d ed., Academic Press 2011).

9. Conclusion

Platforms like E-mail, Facebook, Google, Hotmail, and Instagram are being used by children round the clock in the world to learn “ABCs”. Apple, Bluetooth, chat, followed by download, leave persistent digital fingerprints on social media according to Justice S.S. Kaul’s observations in the Puttaswamy case. Extra care must be taken to protect children’s privacy in both the real and virtual world.

Although internet provides a wealth of knowledge and socialisation but create serious risks as well. An inclusive strategy that includes education, technology, community involvement is needed to address this issue. Legal frameworks must be updated to combat new types of cyber abuse with the use of strong enforcement tools and specialised training for law enforcement.

Technology may be a problem as well as a solution. Social media, artificial intelligence, and other technological developments can be used to track, identify, and stop abusive behaviour. To tackle cross-border cybercrimes and build a secure online ecosystem, governments, IT businesses, non-governmental organisations, and international organisations must work together. Lastly, counselling services, support systems, and rehabilitation initiatives must be ensured to heal and flourish well-being of children. The battle against child cyber abuse cannot be handled alone by any organisation. It requires collective efforts from all parties involved to pursue the goal of protecting children’s rights and welfare in the digital world. India should make endeavour to create the internet a safest place for its children by putting these tactics into practice and motivating a culture of alertness and empathy. By this way technology can fulfil the aim of providing safe and child friendly cyber space.



Role of Religious and Cultural beliefs in Shaping Animal Welfare Laws in India: A Critical Appraisal

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Abstract

India, with its diverse cultural and religious landscape, has a long history of intertwining human-animal relationships with religious beliefs, rituals, and traditions. The role of these beliefs in shaping the animal welfare laws of the country cannot be overstated. This paper explores how various religious and cultural ideologies, such as Hinduism, Islam, Buddhism, and Jainism, have influenced legislative measures governing animal protection in India. The study delves into how these beliefs have been incorporated into policies related to animal rights, cruelty prevention, and ethical treatment of animals. Additionally, the paper examines the contradictions that arise between religious practices, local traditions, and contemporary animal welfare concerns. Finally, it discusses how India's animal welfare laws, such as the Prevention of Cruelty to Animals Act (1960), have evolved in response to changing attitudes toward animals, focusing on the intersection of law, religion, and cultural norms. This paper concludes by suggesting that the future of animal welfare in India will require a balanced approach that respects religious practices while promoting humane treatment of animals.

Keywords: *Animal welfare, Religious beliefs, Cultural practice, Ethical treatment of animals*

1. Introduction

India is home to a rich diversity of religious and cultural traditions that strongly influence societal norms and laws. This includes attitudes toward animals, which are often shaped by religious beliefs and

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cultural practices. In India, animals are not just seen as creatures of nature, but as beings embedded in spiritual, social, and ritualistic contexts. As such, animal welfare laws in India are uniquely shaped by these traditions, leading to both advancements and challenges in the protection of animal rights. The legal framework for animal welfare in India, notably the Prevention of Cruelty to Animals Act of 1960, has been influenced by these traditions, but also faces tensions between religious practices and the global shift toward humane treatment of animals.¹ This paper aims to explore the role that cultural and religious beliefs play in shaping animal welfare laws in India and how these beliefs intersect with modern legal frameworks.²

India, a land of diverse religious and cultural traditions, has a long history of co-existing with a wide variety of animal species.³ The ethical treatment of animals has been interwoven into the fabric of its social, religious, and legal frameworks.⁴ This paper explores the intersection of religious doctrines, cultural practices, and legal mandates in shaping animal welfare laws in India.⁵ By understanding these influences, we can appreciate the complexities of creating and enforcing such laws in a multicultural society.⁶

2. Historical Context of Animal Welfare in India

India's reverence for animals can be traced back to its ancient texts and traditions. The Rigveda and Atharvaveda contain hymns celebrating animals as sacred beings. The concept of ahimsa, central to Hinduism, Jainism, and Buddhism, underscores the moral duty to protect animals from harm.⁷ Ancient rulers, such as Emperor Ashoka

¹ M.V.K. Murthy, *Jainism and Environmental Ethics: A Religious Response to the Ecological Crisis*.

² Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

³ P.V. Kane, *History of Dharmaśāstra (Ancient and Mediaeval Religious and Civil Law in India)* Vol. I, Bhandarkar Oriental Research Institute (1941).

⁴ David L. Huberman, *Hinduism and Animal Welfare: The Influence of Hinduism on the Indian Animal Rights Movement*.

⁵ The Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960).

⁶ Andrew Linzey, *Religion and Animal Ethics* (Oxford University Press, 2011).

⁷ M.V.K. Murthy, *Jainism and Environmental Ethics: A Religious Response to the Ecological Crisis*.

(268–232 BCE), institutionalized animal welfare by banning animal sacrifices and establishing veterinary clinics.⁸

The British colonial era marked a shift in India's animal welfare landscape. While colonial laws primarily focused on regulating animal cruelty for practical purposes, such as preventing harm to livestock used in trade, they laid the groundwork for post-independence animal welfare legislation. The Prevention of Cruelty to Animals Act, 1960, and subsequent laws drew from both India's cultural ethos and Western legal frameworks.⁹

3. Religious and Cultural Beliefs: A Historical Perspective

(a) Islam's Contribution to Animal Welfare

Islam emphasizes the importance of treating animals with kindness and respect, a theme that is reflected in the Hadiths (sayings of Prophet Muhammad). Islamic law permits animal slaughter, but only under strict guidelines that ensure the animals are treated humanely.¹⁰ In India, Muslim communities have historically participated in animal sacrifices, but these practices have been subject to increasing scrutiny and regulation to ensure the welfare of animals involved.¹¹

(b) Hinduism and its Influence on Animal Welfare Laws

Hinduism has historically played a dominant role in shaping India's attitudes toward animals. Reverence for animals in Hinduism stems from various deities and scriptures. The cow, for instance, is considered sacred and its slaughter is forbidden in many states across India. The concept of Ahimsa (non-violence), which is central to Hindu philosophy, has influenced laws that protect animals from harm and exploitation.¹²

The principles of Ahimsa and the belief in the sanctity of life extend beyond the realm of humans and into the natural world. These beliefs have contributed to the creation of laws banning certain practices, such as animal sacrifice, and promoting the humane treatment of

⁸ P.V. Kane, *History of Dharmaśāstra (Ancient and Mediaeval Religious and Civil Law in India)* Vol. I, Bhandarkar Oriental Research Institute (1941).

⁹ The Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960).

¹⁰ A. Zaman, "Islam and Animal Welfare: Legal Perspectives" 25(4) *Islamic Law Journal* 188-200 (2017).

¹¹ *Ibid.*

¹² The Constitution of India, Articles 48, 48A, 51A(g).

animals.¹³ Cultural traditions in India often reflect the values of its dominant religions. Festivals such as Pongal in Tamil Nadu celebrate the role of animals in agriculture, while others like Raksha Bandhan involve rituals that include animals as symbols of familial bonds. However, some cultural practices, such as bull-taming sports like Jallikattu, have sparked legal debates due to concerns over animal cruelty.¹⁴

(c) Jainism and its Emphasis on Non-Violence

Jainism, which advocates strict non-violence (Ahimsa) and compassion toward all living beings, has deeply influenced India's animal welfare policies.¹⁵ Jain teachings have encouraged vegetarianism and the protection of animals from harm. The profound respect for all living creatures inherent in Jainism has led to the advocacy for stricter laws against animal cruelty and the protection of wildlife.

(d) Buddhism's Compassionate Approach

Buddhism, with its teachings of compassion and mindfulness, also contributes to the ethical treatment of animals. Buddhist principles of Ahimsa have informed legal and societal attitudes toward animals, encouraging practices that prioritize the well-being of all living beings, which can be seen in various animal protection initiatives and in the protection of wildlife sanctuaries.¹⁶

4. Legal Framework for Animal Welfare in India

(a) Constitutional Provisions

The Indian Constitution provides a strong foundation for animal welfare:

- **Article 48:** Directs the state to prohibit the slaughter of cows and calves and improve animal husbandry.¹⁷
- **Article 48A:** Encourages the state to protect and improve the environment and safeguard forests and wildlife.¹⁸

¹³ The Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960).

¹⁴ Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

¹⁵ M.V.K. Murthy, *Jainism and Environmental Ethics: A Religious Response to the Ecological Crisis* (2000, by northern book centre in New Delhi).

¹⁶ David L. McMahan, *Buddhism and Animals* (2008, 2012).

¹⁷ The Constitution of India, Art. 48.

¹⁸ The Constitution of India, Art. 48A.

- **Article 51A(g):** Enjoins citizens to have compassion for living creatures.¹⁹

(b) The Prevention of Cruelty to Animals Act, 1960

The Prevention of Cruelty to Animals Act (PCA), 1960, serves as the cornerstone of animal welfare legislation in India. This law prohibits cruelty against animals, with specific provisions for the treatment of animals in various sectors such as transportation, experimentation, and entertainment. While the PCA reflects the influence of religious and cultural views on animal protection, it has often been challenged by practices such as religious animal sacrifice, temple rituals, and traditional festivals. This landmark legislation lays the foundation for animal welfare in India. It prohibits cruelty to animals and establishes the Animal Welfare Board of India (AWBI) to oversee its implementation. The Act reflects the influence of religious and cultural values, particularly the principle of ahimsa.²⁰

(c) Wildlife Protection Act, 1972

This Act focuses on the conservation of wildlife and their habitats, recognizing the intrinsic value of biodiversity. It complements religious teachings that regard animals as integral to the natural order.²¹

(d) Judicial Interpretations

Indian courts have played a pivotal role in advancing animal welfare. Landmark judgments, such as the ban on Jallikattu in 2014 (later overturned under specific conditions), underscore the tension between cultural practices and animal rights. The judiciary often invokes constitutional provisions, such as Article 51A(g), which enjoins citizens to show compassion for living creatures.²²

5. The Role of Religious and Cultural Practices in Legal Interpretation

There has been ongoing debate over how religious and cultural practices should be balanced with animal welfare laws. For example, laws restricting the slaughter of cows, prevalent in many Indian states, have sparked debates about the intersection of religious freedom,

¹⁹ The Constitution of India, Art. 51A(g).

²⁰ The Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960).

²¹ Wildlife Protection Act, 1972 (Act 53 of 1972).

²² Animal Welfare Board of India v. A. Nagaraj, (2014) 7 SCC 547.

cultural traditions, and animal rights. While Hinduism views the cow as sacred, Muslims and Christians may face restrictions based on their dietary and religious practices.

(a) Judicial Interventions and Legal Reforms

Indian courts have played a pivotal role in interpreting and enforcing animal welfare laws. Cases involving religious practices, such as the slaughter of animals during festivals or animal sacrifices in temples, have prompted judicial scrutiny. The courts have increasingly emphasized the need for animal welfare while considering cultural and religious freedoms.²³

(b) Cultural Practices and Animal Welfare

India's rich cultural traditions, such as festivals, religious ceremonies, and local customs, have a significant impact on the treatment of animals. The practice of bullock cart races, cockfights, and Jallikattu (a bull-taming sport in Tamil Nadu) are examples where animal welfare concerns have clashed with cultural practices. Although such events are seen as important aspects of local identity, they have raised concerns regarding cruelty to animals and their ethical treatment.

The challenge lies in balancing these cultural practices with the need for reform in animal welfare laws. The influence of grassroots cultural movements, religious leaders, and local communities plays a critical role in shaping the evolution of such laws.

6. Contemporary Issues and Future Prospects

(a) The Role of NGOs and Advocacy

Non-governmental organizations (NGOs) and animal rights activists have played a crucial role in advocating for stronger animal welfare laws in India. These organizations often navigate the complexities of religious and cultural beliefs while pushing for legal reforms that prioritize animal welfare over traditional practices.²⁴

(b) Modernizing Animal Welfare Laws

As global awareness about animal rights continues to grow, there is an increasing push to modernize India's animal welfare laws. This includes the implementation of stricter regulations for factory farming, animal testing, and the entertainment industry. The

²³ *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547.

²⁴ The Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960)

challenge lies in creating a legal framework that is sensitive to cultural and religious beliefs while ensuring that animals are treated humanely.²⁵

(c) The Way Forward

To reconcile these conflicts, India must strike a balance between tradition and modernity. Public awareness campaigns, stricter enforcement of existing laws, and the promotion of alternatives to animal use in industries can help align contemporary practices with ethical principles. Religious and cultural leaders can play a crucial role in advocating for humane treatment, leveraging their influence to foster a culture of compassion.

7. Conclusion

The role of religious and cultural beliefs in shaping animal welfare laws in India is undeniably significant. These beliefs inform societal norms and have influenced the formulation of laws that aim to protect animals. However, as India continues to modernize, there is an ongoing need to reconcile traditional practices with contemporary ethical standards regarding animal welfare. A balanced approach that respects cultural diversity while promoting humane treatment of animals will be essential for the future of animal welfare in India. India's animal welfare framework is a testament to its rich cultural and religious heritage.²⁶ While traditional beliefs have laid a strong foundation for compassion toward animals, modern challenges necessitate adaptive and inclusive strategies. By harmonizing ancient values with contemporary welfare standards, India can continue to be a global leader in animal protection. The interplay of religious and cultural beliefs has profoundly shaped animal welfare laws in India.²⁷ While these traditions provide a strong ethical foundation, the challenges of modernity demand innovative approaches to ensure the protection and well-being of animals.²⁸ By embracing its spiritual heritage and addressing contemporary issues, India can set a global example for compassionate and sustainable animal welfare policies.²⁹

²⁵ Andrew Linzey, *Religion and Animal Ethics* (Oxford University Press, 2011).

²⁶ The Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960).

²⁷ *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547.

²⁸ Andrew Linzey, *Religion and Animal Ethics* (Oxford University Press, 2011).

²⁹ The Wildlife Protection Act, 1972 (Act 53 of 1972).



CONSUMER ADVOCACY GROUP

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Secretary General

The Hon'ble Minister
Ministry of Consumer Affairs, Government of India
New Delhi

25 June 2025

Subject: Suggestions for Framing New Rules under Consumer Protection Act, 2019

Respected Sir/Madam,

The *Think Tank Group* of the Consumer Advocacy Group expresses its deep appreciation for the Hon'ble Supreme Court's recent judgment on the structure and functioning of Consumer Commissions. We are especially grateful that the Court has categorically affirmed that consumer protection is a constitutional obligation. This significant observation settles the long-standing debate regarding the constitutional legitimacy of the Consumer Protection Act.

The Consumer Protection Act, in both its 1986 and 2019 versions, was envisioned as a unique, accessible, and citizen-friendly legal mechanism. Over the last 38 years, consumer forums across the country have played a pivotal role in redressing consumer grievances. Their quasi-judicial nature, combined with participation from both judicial and non-judicial members, has ensured a balanced approach to dispute resolution. The Supreme Court judgment now presents an opportunity to strengthen this framework further through revised rules under the 2019 Act.

We submit that term-based appointments should be retained. The Hon'ble Court in its judgment (para 102) has directed the Union of India to explore the feasibility of setting up permanent adjudicatory forums. However, in para 30 of the same judgment, it has also expressed reservations about doing away with term-based

appointments. We believe that the existing system, which allows qualified individuals from different professional and social backgrounds to participate as members for a defined period, enhances inclusivity and should not be diluted by making these forums permanent and fully judicial.

The judgment also recommends a five-year tenure for members, which we fully support. A fixed five-year term is both logical and necessary to maintain institutional continuity while also allowing regular infusion of new ideas and perspectives. We urge that this tenure be formally incorporated into the revised rules.

With regard to the written examination proposed for non-judicial members, we note that the current design of the syllabus focusing on constitutional law, consumer laws, and general legal knowledge may unintentionally favour law graduates. This stands in contrast to the 1993 amendment to the 1986 Act, which clearly permitted any graduate to be considered for membership. We recommend that the syllabus be reconsidered or broadened to ensure that graduates from all disciplines can compete fairly and contribute meaningfully to the adjudicatory process.

We also highlight the financial implications of the increased remuneration for Commission members. Several States and Union Territories have expressed concern about the strain on their budgets. We request that the Union Government explore options for reimbursing these expenses, either fully or partially, to ensure uniform application of the rules across all States and UTs without disparity.

Further, we believe that members eligible for reappointment should not be required to undergo the selection process again. If a member has completed a successful term and meets all eligibility criteria, reappointment should be seamless and without a break. This would ensure institutional continuity and encourage experienced members to continue contributing.

Regarding the composition of the selection committee, we respectfully suggest a more balanced structure. While judicial involvement is important, we caution against judicial dominance. The selection committee should ideally include a subject expert in consumer affairs, the president of the State Commission, a nominee of the Chief Justice of the High Court, and a representative of the State Government. This will preserve the quasi-judicial nature of the forums and allow a broader range of insights to inform appointments.

We further submit that the unique strength of Consumer Commissions lies in the involvement of lay members who often bring user-friendly, real-world perspectives to their decision-making. Excessive judicialization of these bodies may make them less accessible and more formalistic, thereby distancing them from the very consumers they are intended to serve.

Another important concern is the delay caused when amended rules are challenged in court. These legal hurdles often bring the entire appointment process to a halt. We urge the Government to consider mechanisms such as legislative clarity, transitional provisions, or validation clauses to ensure smoother implementation even if litigation arises.

Lastly, we recommend that the process of appointing members be initiated at least one year in advance of any anticipated vacancy. This will allow for structured induction and prevent gaps in adjudication. Selected members should also undergo mandatory training of at least three months at judicial academies or consumer affairs training centres before assuming office. Such training will enhance their readiness and improve the quality of adjudication.

In conclusion, we sincerely request the Ministry to take these recommendations into account while drafting the new rules under the Consumer Protection Act, 2019. We also appeal to the Ministry to convene a stakeholder consultation before finalising the rules, so that inputs from all relevant sectors government, judiciary, civil society, and the consumer movement can be considered in a collaborative spirit.

We remain available for any clarifications that may be required and reaffirm our commitment to strengthening India's consumer protection framework.

Thanking you,

Yours sincerely,

For Consumer Advocacy Group

Sd/-

Secretary General

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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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