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FROM THE DESK OF CHANCELLOR



Shri Ajay Prakash Shrivastava

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It gives me immense joy to extend my heartfelt greetings to all readers, contributors, and well-wishers of the Maharishi Journal of Law and Society. This esteemed journal reflects the spirit of inquiry, the pursuit of truth, and the commitment to social harmony that are at the heart of our academic mission.

Our beloved founder, Maharishi Mahesh Yogi Ji, envisioned education to unfold the full potential of human consciousness, to nourish both inner and outer values of life. In his words, "Knowledge is structured in consciousness," and it is only through an integrated approach where wisdom, compassion, and scientific reasoning unite that we can truly build a just and enlightened society.

The Maharishi Journal of Law and Society embodies this vision by fostering scholarly dialogue that bridges traditional values and contemporary legal challenges. It provides a platform for fresh perspectives, rigorous research, and innovative ideas that can serve as guiding lights for policy, justice, and societal well-being.

I express my deep appreciation to the editorial board, faculty, scholars, and students whose dedication has made this publication possible. May your contributions continue to inspire, uplift, and bring transformative change to individuals and communities alike.

Let this journal stand as a beacon of intellectual integrity, moral responsibility, and the harmonious balance between the laws of nature and the laws of society.

With best wishes for continued success and fulfilment in your scholarly endeavours.

Jai Guru Dev

FROM THE DESK OF VICE CHANCELLOR



Prof. (Dr.) Bhanu Pratap Singh

Vice-Chancellor

Maharishi University of Information Technology

"Do not fight the darkness; bring in the light, and the darkness will automatically disappear."
These timeless words of our revered Guru, Maharishi Mahesh Yogi Ji, inspire us to walk the path of knowledge, research, and societal transformation.

The *Maharishi Journal of Law and Society* is not merely a publication; it is a platform for innovative ideas and scholarly research in the field of law, serving as a medium for truth, justice, and the enrichment of global consciousness. Through this journal, our distinguished scholars, researchers, and readers embark on a shared intellectual journey where the exchange of knowledge, fresh perspectives, and constructive dialogue come together.

I extend my special appreciation to the Editor, and his team for their dedicated efforts in elevating this journal to the highest standards of academic and legal discourse.

My heartfelt wishes go out to all readers and researchers, hoping that this journal will continue to inspire them to contribute meaningfully to society and the field of law.

Jai Guru Dev

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National Awardee for Excellence in Education and Training, Rajarishi, Manav Ratna, Kavi Shiromani, Adhyatma Martand, Sarswati Samman, Best Higher Education Professional Edu Tech Award, Distinguished Member of International Council of JURISTS, Distinguished Guest Speaker Malviya Mission

It gives me immense pleasure to present Maharishi Journal of Law & Society, Volume V, Issue 2, a scholarly platform dedicated to advancing critical thought, legal innovation, and interdisciplinary engagement. The Journal continues to uphold its commitment to exploring contemporary legal challenges and societal transformations through rigorous academic inquiry.

This issue is particularly significant as it brings together research contributions on themes that are shaping the present and future of law. The papers included examine pressing issues such as Artificial Intelligence and its regulatory challenges, cybercrime and its far-reaching impact on individuals and nations, the emerging copyright dilemmas in the age of AI-generated works, and the global threats posed by transboundary environmental crimes. Together, these contributions reflect the Journal's vision of addressing the intersection of law, technology, and society.

I extend my heartfelt appreciation to the contributors for their thought-provoking scholarship, to the editorial team for their diligent efforts, and to the readers for their continued engagement with the Journal. It is my firm belief that the insights presented in this issue will not only enrich academic discourse but also inspire meaningful policy debates and legal reforms.

I wish Maharishi Journal of Law & Society continued success in its mission to foster knowledge, critical reflection, and societal impact.

Wishing exciting and enjoyable reading Dear All!

FROM THE DESK OF DEAN ACADEMICS



Dr. Trpty Agarwal

Dean Academics

Maharishi University of Information Technology, Noida

It gives me immense pleasure to present this edition of the *Maharishi Journal of Law and Society*, a platform dedicated to the pursuit of academic excellence, scholarly research, and thought-provoking discourse. In keeping with the guiding philosophy of His Holiness Maharishi Mahesh Yogi Ji, we aim to nurture minds that seek truth, wisdom, and harmony in society through the medium of law.

This journal stands as a testament to our collective commitment to advancing legal scholarship and promoting an environment where knowledge is shared, perspectives are enriched, and innovative solutions are explored for contemporary social and legal challenges.

I extend my heartfelt appreciation to the editorial board, contributors, and reviewers whose relentless efforts have brought this issue to life. May this journal inspire students, researchers, and academicians to engage in meaningful dialogue, expand the horizons of legal thought, and contribute positively to the progress of society.

Dr. Trpty Agarwal

Dean Academics, Noida Campus

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FROM THE DESK OF DEAN/EDITOR



Prof. (Dr.) K. B. Asthana

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Dear Readers,

It is with immense pleasure and deep academic commitment that I present to you the latest edition of the *Maharishi Journal of Law and Society*. This journal is more than a compilation of scholarly articles it is a platform that fosters critical thought, nurtures intellectual dialogue, and bridges the gap between theoretical understanding and societal realities.

In keeping with the vision of Maharishi Mahesh Yogi Ji, our endeavour has been to integrate the eternal principles of knowledge with contemporary legal challenges, thereby contributing to a more harmonious, just, and progressive society. Each contribution in this issue reflects rigorous research, analytical depth, and a sincere dedication to advancing both legal scholarship and social understanding.

I extend my heartfelt gratitude to our distinguished contributors, diligent reviewers, and the committed editorial team whose efforts have made this publication possible. I also thank our readers, whose curiosity and engagement inspire us to strive for excellence with every edition.

May this journal continue to serve as a beacon of knowledge and a catalyst for constructive discourse in the realms of law and society.

With warm regards,

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CLIMATE CHANGE, LIVELIHOOD RIGHTS, AND CONSTITUTIONAL RESPONSIBILITY: AN ANALYTICAL STUDY OF APPLE GROWERS IN SHIMLA DISTRICT, HIMACHAL PRADESH

Dr. Neelma Devi

Assistant Professor Amity University Noida.

Abstract:

This paper explores how climate change is affecting apple farming in the Shimla district and how these impacts relate to India's constitutional and legal framework. Apple growers are facing serious difficulties due to reduced chill hours, untimely rainfall, hailstorms, and weather conditions that disrupt transportation. These climate-related challenges directly threaten their livelihoods. The paper argues that such conditions trigger the State's responsibility to protect the right to life and livelihood under Article 21 of the Constitution. It also highlights the State's environmental duties under Article 48A and the citizen's duty under Article 51A (g), along with obligations under disaster-management and environmental laws. By examining climate-impact studies, government actions, and judicial decisions, the paper shows that the existing legal response is inadequate. It therefore suggests practical legal and policy solutions such as targeted financial relief, climate-adaptation programs, market support mechanisms, and stronger institutional accountability. Finally, the paper outlines a realistic litigation and policy strategy to ensure that the livelihood rights of apple growers are effectively protected.

Key Points- Climate Change, Livelihood right, Right to life, Apple farming Disaster Management Act, Environment (Protection) Act, public interest litigation, adaptation policy

Introduction

Himalayan agriculture is very sensitive to climate change because the region has

a fragile environment, different altitudes, and depends heavily on temperature and rainfall. In Himachal Pradesh, these changes are no longer a future concern. They are already affecting the daily lives and livelihoods of farmers. Apple cultivation, particularly in Shimla district, is the backbone of rural income and a major contributors to the state's economy¹. When the climate changes, its impact is felt immediately in farmer's earnings, food security, and rural employment. Today, orchardists in Shimla are experiencing clear and measurable climate shocks, such as rising temperatures, reduced snowfall and erratic rainfall. These changes disturb the natural growth cycle of apple trees, reduce yield, and place the livelihoods of farming families in Himachal Pradesh under Serious strain².

Temperatures in places like Theog have risen by about 1.8°C–4.1°C, causing a big shortfall in the 700–1,200 chill units apples need for proper bud break and flowering. Rainfall in Shimla has fallen by roughly 17% since 1996, and snowfall is now often delayed or comes as sleet, so soils and water tables aren't being recharged for spring. These environmental shifts have hit farmers' incomes hard³. Apple yields in Himachal Pradesh fell from 10.8 t/ha in 1981 to about 4.18 t/ha by 2023, while fruit quality problems (sunburn, cracking, poor colour) push prices down. Production costs have risen sharply: pesticide sprays increased from about 4 times a year in the 1970s to 12 times today, roughly doubling input costs just as returns shrink. Over 54% of growers are smallholders who are especially exposed; many now face debt because harvests no longer cover loans⁴. The traditional "apple belt" is moving upslope – viable orchards are increasingly above 2,400 meters – leaving lower-altitude farmers economically stranded⁵.

Climate Vulnerability and Constitutional Protection of Livelihoods in Himalayan Agriculture- Agriculture in Himachal Pradesh is a way of life for the rural community. It is the basis of the state economy and the primary livelihood

¹ Singh Dhanbir," Climate Change and Its Impact On Agriculture, Horticulture and Forestry in Himachal Pradesh Vol 12(2) International Journal of Creative Research Thoughts Pg. 128-135 2024.

² Available at <https://www.newsclick.in/climate-change-upsets-apple-cart-orchardists-himachal-pradesh#:~:text=According%20to%20the%20state%20government,compared%20to%20the%20previous%20year> accessed on 24th May, 2024.

³ Rana, R.S, Bhagat R.M and Kalia Viabha , Impact of Climate change on Apple Crop in Himachal Pradesh, 13(2) Journal of Agro meteorology. 97-103 2011.

⁴ Ibid.

⁵ Ibid.

of the people in the state. Himachal Pradesh's economy is primarily agro-pastoral and predominantly rural, with more than 92 percent of the population living in villages directly or indirectly dependent on agriculture and related activities. Agriculture is the primary occupation of the people of Himachal Pradesh and it is the only state in the world with 89.96 percent of its population in rural areas⁶. Dependence on agriculture/horticulture is also prevalent as it offers direct availability and health, etc. Climate change in the Himalayan region is no longer a distant environmental concern; it has become a lived legal reality for farming communities. In Shimla district of Himachal Pradesh, apple growers are facing climate-related disruptions that directly threaten their means of survival. Apple cultivation, which depends on cold winters, adequate snowfall, and stable weather patterns, has been deeply affected by rising temperatures, declining chilling hours, erratic rainfall, frequent hailstorms, and increasing pest attacks. For thousands of orchardists, these changes translate into crop failure, falling incomes, mounting debt, and growing uncertainty about the future. From a legal perspective, these hardships raise serious constitutional questions. The Supreme Court of India has consistently held that the right to life under Article 21 of the Constitution includes the right to livelihood and the right to live with dignity⁷. For apple growers in Shimla, farming is not merely an occupation but the sole source of income that sustains their families. When climate change repeatedly destroys crops or makes apple cultivation economically unviable, it directly interferes with their right to earn a dignified livelihood. Such deprivation cannot be viewed as a private misfortune alone; it engages the responsibility of the State under constitutional law. The Constitution also places clear duties on the State to address environmental harm that affects human life. Article 48A obligates the State to protect and improve the environment, while Article 51A(g) emphasizes the collective duty to safeguard natural resources⁸. These provisions, when read together with Article 21, create a constitutional framework in which environmental protection and livelihood security are inseparable. Failure to anticipate climate risks, to support adaptation in agriculture, or to provide timely relief to affected farmers amounts to a neglect of these constitutional obligations. Statutory laws further reinforce this responsibility. The Disaster Management Act,

⁶ Available at <https://nhm.hp.gov.in/demographic-profile> Accessed on 7th July 2024.

⁷ The Constitution of India, 1949 art.21.

⁸ Ibid art. 51A(g).

2005 requires governments to prepare for, mitigate, and respond to disasters that cause widespread loss of livelihood, including climate-related events such as hailstorms, floods, and droughts⁹. Environmental laws empower authorities to take preventive and protective measures to reduce ecological harm that undermines agriculture. When these legal mechanisms are weakly implemented or remain on paper, the burden falls unfairly on vulnerable farmers who lack the resources to absorb repeated losses.

Judicial Protection of Livelihoods Affected by Climate Change

Indian courts have developed strong legal principles that can be used to protect livelihoods threatened by climate change, even though climate litigation itself is still evolving. First, the right to livelihood under Article 21 has been clearly recognised by the Supreme Court since *Olga Tellis v. Bombay Municipal Corporation*¹⁰ (1985). The Court held that any State action – or even inaction – that deprives people of their means of livelihood can amount to a violation of the right to life. This reasoning can be applied to climate change impacts on apple growers in Shimla. Where climate risks such as reduced chilling hours, crop failure, and extreme weather are well known, the State's failure to adopt reasonable adaptation measures can lead to predictable loss of livelihood. Such neglect may therefore attract scrutiny under Article 21. Second, the precautionary principle, affirmed in *Vellore Citizens' Welfare Forum v. Union of India*¹¹ (1996), strengthens the case for early and preventive action. The Court held that environmental harm should be avoided even when scientific certainty is not absolute. In the context of climate risks to apple cultivation, this principle supports proactive steps such as early-warning systems for hail and frost, climate-responsive crop insurance, and protection of fragile ecosystems, rather than waiting for repeated crop losses to occur. Third, Indian environmental jurisprudence shows that courts are willing to demand systemic governance responses when environmental degradation affects vulnerable groups. The long line of cases in *M.C. Mehta* and forest-related matters such as *T.N. Godavarman* demonstrate judicial readiness to issue continuing directions, monitor administrative action, and impose accountability on public authorities. These cases suggest that when climate-related environmental harm

⁹ The Disaster Management Act, 2005 (Act 25 of 2005).

¹⁰ 1985 SCC (3) 545.

¹¹ AIR 1996 SC 2715.

threatens the livelihoods of farming communities, courts can require coordinated and long-term policy responses rather than isolated or ad hoc relief.

Understanding Apple Growers' Rights in the Face of Climate Change

The Constitution places a clear responsibility on the State to protect livelihoods under Article 21, which includes the right to live with dignity. The constitutional duty is reinforced by Directive Principles of State Policy, particularly Article 38¹², which obliges the State to promote social and economic justice, and Article 39(b)¹³ and (c)¹⁴, which require the State to ensure equitable distribution of resources and prevent economic concentration that harms vulnerable groups. Additionally, Article 48A mandates the State to protect and improve the environment, while Article 51A(g)¹⁵ casts a duty on both citizens and public authorities to safeguard natural resources. Climate-induced degradation of agricultural ecosystems therefore directly implicates these constitutional provisions. Statutory frameworks further strengthen the State's responsibilities. The Disaster Management Act, 2005, especially Sections 6, 18, 22, 30, and 34, requires national, state, and district authorities to prepare disaster management plans, undertake mitigation measures, and provide timely relief¹⁶. For hill agriculture, this translates into horticulture-specific contingency planning, early-warning mechanisms for extreme weather, accessible relief through SDRF and NDRF, and post-disaster measures such as debt relief, procurement support, and market intervention. Climate-related crop failure, when recurrent and foreseeable, falls squarely within the scope of disaster-risk reduction obligations under the Act¹⁷.

Similarly, the Environment (Protection) Act, 1986, particularly Sections **3 and 5**, empowers the Central Government to take preventive, precautionary, and regulatory measures to protect environmental conditions necessary for agriculture. This includes watershed protection, afforestation, soil and slope stabilization, and regulation of activities that increase ecological vulnerability in fragile hill regions. Failure to exercise these powers in the face of known climate

¹² The Constitution of India art, 38.

¹³ Ibid art.39(b).

¹⁴ Ibid art.39(c).

¹⁵ Ibid art.51A(g).

¹⁶The Disaster Management Act, 2005 (Act 25 of 2005).

¹⁷ Ibid.

risks may amount to neglect of statutory duty. When these constitutional and statutory obligations are not adequately fulfilled, multiple remedies are available. Administratively, courts can direct governments to allocate targeted adaptation budgets, roll out climate-responsive crop insurance schemes (such as those under **PMFBY**), strengthen agricultural extension services, and improve infrastructure for storage, transport, and market access. In appropriate cases, courts may also issue structural directions under public law, including the constitution of expert committees, time-bound implementation schedules, and periodic compliance reporting. Together, these legal provisions provide a strong framework for protecting apple growers' livelihoods against the growing risks posed by climate change.

Himachal Pradesh Government Policies and Plans Addressing Climate Risks in Apple Cultivation- Recognising the growing impact of climate change on hill agriculture, the Government of Himachal Pradesh has introduced several policies and schemes to protect horticulture, especially apple cultivation, which is central to rural livelihoods in the State. These measures show an effort to respond to climate risks, but their effectiveness remains uneven when viewed from the perspective of livelihood rights.

The State Action Plan on Climate Change (SAPCC), adopted in line with the National Action Plan on Climate Change, identifies agriculture and horticulture as highly vulnerable sectors¹⁸. It acknowledges rising temperatures, declining snowfall, water stress, and increasing pest attacks as major threats to apple-growing areas such as Shimla. The plan promotes climate-resilient farming practices, water conservation, sustainable land use, and early-warning systems for extreme weather¹⁹. From a legal standpoint, SAPCC reflects the State's duty under **Article 48A** to protect the environment. However, since the plan is largely advisory and lacks enforceable timelines or accountability mechanisms, weak implementation raises concerns when farmers' livelihoods continue to be affected. The Himachal Pradesh Horticulture Development Project (HPHDP) seeks to improve productivity and climate resilience through low-chill apple varieties,

¹⁸ Available at <https://dest.hp.gov.in/sites/default/files/PDF/SAPCC%20Web.pdf> Accessed on 24th Nov, 2024.

¹⁹ Ibid.

high-density plantations, modern irrigation, and better post-harvest facilities²⁰. While the project supports climate adaptation, access is often easier for medium and large orchardists. From a rights-based perspective, this uneven reach raises questions under **Article 21**, as small and marginal farmers—who are most vulnerable—do not always receive equal protection. Under the Disaster Management Act, 2005, compensation is provided for crop losses due to floods, hailstorms, cloudbursts, and landslides. District authorities are responsible for assessing damage and distributing relief. While this framework is legally binding, many climate-related agricultural losses—such as reduced chilling hours or gradual yield decline—do not fit within traditional disaster categories. This leaves apple growers without effective remedies and raises constitutional concerns about the State’s duty to protect livelihoods against foreseeable climate risks. The State has also adopted crop insurance schemes such as the Pradhan Mantri Fasal Bima Yojana (PMFBY) and provides subsidies for anti-hail nets, drip irrigation, sprinklers, and protective cultivation. Although these measures aim to reduce risk, insurance coverage remains limited and claim settlement is often slow. In legal terms, ineffective insurance mechanisms weaken the State’s obligation to provide meaningful and timely livelihood protection. To cope with declining productivity in lower-altitude areas, the State promotes crop diversification and natural farming. These approaches may reduce long-term climate vulnerability, but they often lack legal safeguards to ensure income security during transition periods. Without structured support, diversification can shift risk rather than reduce it, leaving farmers economically insecure. From a constitutional perspective, these policies cannot be viewed merely as welfare measures. They must be assessed as instruments to fulfil the **right to livelihood under Article 21**, read together with **Articles 48A and 51A(g)**. The continued distress of apple growers indicates a gap between policy intent and constitutional obligation. Effective climate governance in Himalayan agriculture therefore requires stronger legal accountability, inclusive implementation, and a rights-based approach that ensures real protection for farming families facing predictable climate risks.

²⁰ Available at <https://documents1.worldbank.org/curated/en/215321468252650728/pdf/Environmental-and-social-management-framework.pdf> Accessed on 24th July, 2024.

Potential Challenges, Limitations, and Structural Problems

Despite the existence of multiple policies, schemes, and legal frameworks aimed at addressing climate risks in Himalayan agriculture, apple growers in Shimla district continue to face serious and persistent challenges. These limitations are not merely administrative shortcomings but raise deeper concerns about governance, equity, and constitutional accountability.

1. Policy-Implementation Gap - One of the biggest problems is the gap between government policies and what actually happens on the ground. Although plans like the State Action Plan on Climate Change and various horticulture development schemes acknowledge the risks faced by farmers, their implementation has been slow and uneven. Many orchardists—especially small and marginal farmers—are either not aware of these schemes or struggle with complicated procedures to receive benefits. From a legal point of view, this gap weakens the State's responsibility to turn its constitutional duties under **Articles 21 and 48A** into real and effective protection for communities affected by climate change

2. Inadequate Recognition of Slow-Onset Climate Risks- Most existing legal and administrative frameworks are designed to respond to sudden disasters such as floods or landslides. However, climate change in apple-growing regions often manifests as slow-onset processes—reduced chilling hours, declining snowfall, water stress, and pest proliferation. These gradual yet irreversible changes are poorly addressed under disaster-relief mechanisms, leaving growers without compensation or legal remedy despite sustained livelihood loss. This limitation exposes a serious gap in disaster and environmental law when applied to climate-related agricultural distress.

3. Limited Protection for Small and Marginal Orchardists

More than half of apple growers in Shimla are small landholders who lack financial resilience. Many climate-adaptation schemes, such as high-density plantations or modern irrigation systems, require substantial upfront investment. Consequently, benefits often accrue to larger orchardists, while small farmers remain excluded. This uneven access raises concerns of inequality and violates the principle of distributive justice implicit in the right to livelihood under Article 21.

4. Ineffectiveness of Crop Insurance and Compensation Mechanisms

Crop insurance schemes and compensation frameworks have not adequately responded to climate-induced losses. Delays in claim settlement, narrow definitions of insured risks, and poor damage assessment mechanisms have eroded farmers' trust in insurance systems. Legally, a relief mechanism that exists only on paper but fails in practice cannot be considered an effective safeguard of livelihood rights, particularly when climate risks are foreseeable and recurring.

5. Market Vulnerability and Price Instability

Climate change not only affects production but also disrupts market access and price stability. Poor-quality produce resulting from heat stress or hail damage fetches lower prices, while market-intervention schemes often fail to provide timely or adequate price support. The absence of legally guaranteed minimum income protection exposes growers to market volatility, further compounding climate distress.

6. Weak Institutional Coordination and Accountability

Climate governance in agriculture involves multiple departments – horticulture, environment, disaster management, irrigation, and rural development. Lack of coordination among these institutions leads to fragmented responses and policy overlap. From a legal standpoint, the absence of clear accountability mechanisms makes it difficult for affected farmers to seek redress or hold authorities responsible for failures in climate adaptation and relief delivery.

7. Absence of a Rights-Based Climate Adaptation Framework

Current policies largely treat climate adaptation as a welfare or development issue rather than a rights-based obligation. There is no explicit legal framework recognizing climate-affected farmers as rights holders entitled to protection and support. This limits the scope for judicial intervention and weakens constitutional remedies available to apple growers whose livelihoods are steadily eroding.

8. Social and Psychological Impact on Farming Communities

Beyond economic loss, climate uncertainty has caused significant social and psychological stress among orchardists. Repeated crop failures, debt accumulation, and loss of traditional farming identity have affected the dignity

and mental well-being of rural families. Although rarely addressed in legal discourse, such impacts are closely linked to the constitutional right to live with dignity under Article 21.

Climate change has become one of the most serious challenges for Himalayan agriculture, and the situation of apple growers in Shimla district clearly shows how changes in weather directly affect people's lives. Rising temperatures, fewer chilling hours, irregular snowfall, frequent hailstorms, and increasing pest attacks have steadily reduced apple yields and farm incomes. For families who depend almost entirely on apple cultivation, these changes are not short-term problems. They threaten economic security, social stability, and the ability to live with dignity. From a legal point of view, this situation cannot be treated simply as bad luck or a failure of agricultural policy. The Indian Constitution, especially Article 21, has been interpreted by the Supreme Court to include the right to livelihood as part of the right to life and human dignity. When climate change repeatedly damages crops, raises farming costs, and pushes growers into debt, it directly affects this fundamental right. Articles 48A and 51A(g) further place responsibility on the State to protect the environment and natural resources that support people's livelihoods. Together, these constitutional provisions make it clear that the State has a duty to respond to climate risks affecting agriculture.

This study also shows that although the Government of Himachal Pradesh has introduced several policies and schemes—such as climate action plans, horticulture projects, market support schemes, disaster relief, and crop insurance—their benefits often do not reach those who need them most. Weak implementation, poor coordination, and the absence of a clear rights-based approach mean that many apple growers remain unprotected. Long-term climate problems like reduced chilling hours or gradual yield decline are not adequately covered under existing disaster frameworks. Small and marginal farmers, who are the most vulnerable, are often left out, raising serious concerns about fairness and equality.

Indian courts have developed strong principles to protect livelihoods and the environment. Judicial decisions have repeatedly held that environmental damage which destroys livelihoods violates Article 21. Courts have also emphasized the

need for preventive and timely action when harm is foreseeable. In the context of apple farming in Shimla, these principles support the need for the State to move beyond temporary relief and adopt long-term, coordinated, and legally accountable climate adaptation measures.

In simple terms, climate risk in Himalayan agriculture is a matter of rights and justice. Supporting apple growers through effective climate adaptation, timely disaster relief, fair insurance, and reliable market support is not charity. It is a constitutional responsibility. A rights-based approach to climate governance is essential to ensure that farming families are not left alone to face the impacts of climate change, and that their right to life, livelihood, and dignity is protected in a changing climate.

ADVANCING FEMINISTIC JUSTICE THROUGH LABOUR LAW REFORM: AN EVALUATION OF INDIA'S NEW LABOUR CODES

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Abstract:

The major focus of this research paper is to critically examine the new labour codes and to know that fact that whether these codes are contributing to advancing feministic justice. The main objective is to understand the new codified labour framework and analysis that whether these are strengthening gender equality, workplace protection and socio-economic empowerment of women workers. The study finds that although new progressive elements such as gender neutrality, broader coverage and formalization of employment standards are incorporated in the labour law but still persistent structural and implementation gaps continue of hinder feministic justice.

Introduction –

Gender discrimination to equal remuneration for all the Indian Labour laws have long journey. New labour law reform in India has historically developed within a socio-economic structure where gender based discrimination and patriarchy is still the reality of the society. Not even at home as house maker but also at work place women workers undervalued in the national workforce. Although both are indispensable part of the Indian society and Economy. The female continue to navigate structural inequalities that restrict their access to dignified work, fair wage, social security and safe working conditions. Although the Constitution of

India guarantees right to equality¹, prohibit gender-based discrimination². The Directive principle of the States (Part IV) of the Indian Constitution “directs the State to ensure humane working conditions and maternity relief”³. But women faces disparities between constitutional mandate and workplace realities. These inequalities are reflected not only in the formal labour economy but are amplified in the unorganised and informal sectors, where nearly 90 percent of India’s women workers are concentrated and remain largely outside the reach of protective legislation. The empowerment of labour forms the cornerstone of an empowered, prosperous, and Aatmanirbhar India. “Reflecting this vision, employment in India has shown remarkable growth- rising from 47.5 crore in 2017–18 to 64.33 crore in 2023–24, a net addition of 16.83 crore jobs in just six years”⁴. During the same period, the unemployment rate declined sharply from 6.0% to 3.2%, and 1.56 crore women entered the formal workforce, underscoring the Government’s emphasis on inclusive and sustained labour empowerment⁵. The positive outlook of the labour market has also led to a broader socio-economic transformation, mirrored by declining proportion of people below the international poverty line. Additionally, India’s social protection system has expanded rapidly to become one of the largest globally. Labour is a key driver of economic growth and development. In order to simplify and strengthen the framework governing workers’ rights, the Government consolidated 29 labour laws into four comprehensive Labour Codes- **namely, the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020**⁶. India’s commitment to a just and future-ready labour ecosystem is strengthened by this historic change, which guarantees workers easier access to security, dignity, health, and welfare measures. Simplifying compliance, encouraging formalization, and broadening the scope of labour protection are the codes’

¹ The Constitution of India, 1949, Art.14.

² Ibid art.15.

³ Ibid art.42.

⁴ Available at

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192524®=3&lang=2#:~:text=The%20second%20National%20Commission%20on,notified%20on%2029th%20September%2C%202020>
Accessed on 27th July, 2024.

⁵ Ibid.

⁶ Available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192524®=3&lang=2>
accessed on 24th Nov, 2024.

primary goals. However, from a feminist perspective, the critical question is whether these reforms genuinely advance **feministic justice**, a concept that goes beyond formal equality to embrace substantive equality, intersectional fairness, bodily autonomy, recognition of care work, and the dismantling of structural patriarchal barriers embedded in labour markets and institutions⁷. Feministic justice requires labour laws to respond to the distinct realities of women's labour, including unpaid domestic work, occupational segregation, safety vulnerabilities, wage disparity, and the gendered distribution of caregiving responsibilities. Therefore, evaluating the New Labour Codes through a feminist jurisprudential lens becomes essential to understanding whether these reforms merely repackage existing legal structures or meaningfully transform workplace norms to support women's economic empowerment. This study situates the New Labour Codes within India's historical evolution of labour legislation, feminist legal scholarship, constitutional principles, and international labour standards. It critically examines how far the Codes address the chronic challenges faced by women – such as wage inequality, lack of maternity benefits, unsafe workplaces, restricted mobility, absence of childcare infrastructure, weak enforcement mechanisms, and the invisibility of informal-sector labour. The analysis also considers whether the Codes promote gender-responsive social security, facilitate women's participation in diverse occupations including night shifts, and strengthen grievance-redressal and collective bargaining spaces.

Feminist Jurisprudential Framework - Feminist jurisprudence provides the theoretical foundation for analysing how India's New Labour Codes engage with the pursuit of gender justice. "As a legal philosophy, it challenges the assumption that law is neutral, arguing instead that legal systems, structures, and institutions historically reflect male experiences and patriarchal values"⁸. "Mandal emphasises that the development of Indian laws, including labour legislation, took place within a male-centric societal framework, making women's lived realities largely invisible in the formation of legal norms"⁹. This framework

⁷ Naseema P.K, Kumari Meena, "A Quest for 'Substantive Equality': A Narrative Beyond Shayara Bano Judgment" *ILI law Review* 2021 page. 264-284.

⁸ Bansal Dipti, Pathania Babita, "Feminist legal Theory with special reference to Indian Perspective", *Panjab University Law Review* Vol63 (1) page. 195-208.

⁹ Goswami Diti, "Labour law Reforms and female employment: the case of Rajasthan, *International Journal of Manpower* 48(8), Page. 1587-1598 2025.

therefore calls for a deeper examination of whether labour law reforms genuinely respond to the gendered nature of work or simply reproduce formal equality without addressing underlying structural inequalities. Feminist legal theory encompasses multiple strands that collectively illuminate the gendered dimensions of labour regulation. Liberal feminism focuses on eliminating discriminatory laws and ensuring that women receive the same rights and opportunities as men. In the labour law context, this approach supports equal pay for equal work, non-discriminatory recruitment, and maternity protections. However, its emphasis on sameness often fails to address the fact that women enter the workplace carrying disproportionate burdens of unpaid care work and social expectations¹⁰. Radical feminism goes further by exposing how patriarchy shapes the organisation of workplaces, wage systems, safety norms, and the very definition of what constitutes “work.” From this perspective, simply extending equal rights within existing frameworks is insufficient because the structures themselves were built around male life patterns¹¹. “Cultural feminism contributes another important dimension by recognising that women’s experiences, especially caregiving and emotional labour, have historically been undervalued. Labour markets often ignore these gendered realities, leaving tasks essential for social reproduction outside the scope of legal protection”¹². The unpaid household labour, despite being central to economic productivity, remains uncounted and unprotected in India, creating an invisible barrier that prevents women from fully participating in paid labour. Feminist jurisprudence, therefore, demands that labour laws recognise and account for these differences instead of assuming that workers start from a level playing field. Intersectional feminism further deepens this analysis by showing how gender interacts with caste, class, religion, rural-urban divides, disability, and migration status¹³. Women from Dalit, Adivasi, or migrant communities face multiple layers of discrimination, making legal protection even more challenging to access. This intersectional

¹⁰ Arora Poornima Pundhir, Tiwari Deepti, “ Various Theories & Methodologies on Feminism: A Study”, *Educational Administration Theory And Practice* 30(11) 1069-1089 2024.

¹¹ *Ibid.*

¹² Available at <https://www.perlego.com/knowledge/study-guides/what-is-cultural-feminism> Accessed on 23 July. 2024.

¹³ Available at <https://compass.onlinelibrary.wiley.com/doi/10.1111/soc4.13211> Accessed on 27th July, 2024. Intersectionality and feminist movements from a global perspective Giada Bonu Rosenkranz.

understanding is essential in India, where most women in the labour market belong to socially and economically marginalised groups. Applying this framework to labour law reveals significant gaps in traditional legislation. Earlier labour laws often focused on formal employment relationships, thereby excluding domestic workers, home-based workers, seasonal labourers, and other categories where women are disproportionately represented. The most women fall outside statutory definitions of “employee,” resulting in the denial of maternity benefits, social security, and workplace protections in the informal sector¹⁴. Feminist jurisprudence insists that these exclusions are not mere oversights but stem from deeper patriarchal assumptions that undervalue women’s labour, especially when it occurs within homes or informal settings.

Evaluating the New Labour Codes through this feminist lens involves asking whether they move beyond cosmetic reforms and genuinely address structural gender inequalities. Feministic justice requires more than eliminating overt discrimination; it requires transforming labour markets so that women’s unique experiences, risks, and vulnerabilities are recognised. This includes acknowledging unpaid care work, ensuring safety during night shifts, designing inclusive social security schemes, strengthening grievance mechanisms, and protecting women’s rights to organise collectively. While the Codes adopt gender-neutral language and expand certain protections, feminist analysis warns that gender neutrality may become gender blindness if it fails to account for women’s different starting points. Mandal’s argument that the law must evolve from women’s perspectives is therefore crucial to evaluating whether the Codes fulfil the promise of

Analysis of New labour code from feministic Justice perspective- India’s decision to merge its labour laws into four major codes named as the Code on Wages (2019), The industrial Relations code (2020), the Occupational Safety, Health and Working Conditions Code (2020) and the Code on Social Security (2020) was presented as a major reform aimed at simplifying compliance and

¹⁴ Available at <https://www.unwomen.org/en/news/in-focus/csw61/women-in-informal-economy#:~:text=From%20street%20vendors%20and%20domestic,and%20they%20face%20distinct%20challenges>. Accessed on 26th July, 2024.

improving worker welfare. While this consolidation looks progressive on paper, it raises serious concerns when viewed through a feminist justice lane.

The Code of Wages, 2019

The Code of Wages, 2019 introduces uniform wage regulation and reiterates the principle of equal remuneration for similar work, but from a feministic justice perspective its reforms remain largely formal rather than substantive¹⁵. Although it expands the coverage of minimum wages and prohibits gender-based wage discrimination¹⁶, it does not sufficiently address the structural realities that disadvantage women in the labour market, such as occupational segregation, undervaluation of feminized work, and the persistent gap between women's participation in informal sectors and their access to enforcement mechanisms. By relying on gender-neutral language without embedding gender-responsive safeguards—such as pay-gap audits, gender-sensitive inspections, or protection for vulnerable groups like domestic and migrant women—the Code does little to address the deeply ingrained patriarchal biases that shape wage practices in India. Furthermore, the Code's silence on unpaid care work, wage theft vulnerabilities, digital exclusion, and intersectional discrimination limits its ability to deliver material justice to women workers. Feministic analysis shows that effective gender equality requires proactive measures that recognize women's historical disadvantages rather than merely guaranteeing equality in text. Without mechanisms to ensure meaningful enforcement, representation, and protection tailored to women's lived experiences, the Code risks reinforcing existing inequalities. Thus, while the Code marks a step toward modernization of labour law, it falls short of achieving true feministic justice, offering gender-neutral provisions in a deeply gender-unequal economic landscape.

Code on Social Security (2020): The Code on Social Security, 2020 aims to consolidate and universalize social protection for workers¹⁷. From a feminist justice perspective, the Labour code still falls short in addressing the everyday realities of women's work in India. Although extending social security to gig

¹⁵ Available at <https://www.ungender.in/impact-on-code-of-wages-2019-on-gender-pay-gap-india/#:~:text=Conclusion,gender%20laws%20and%20international%20law>. Accessed on 23th July, 2024.

¹⁶ The Code of Wages, 2019, sec.3 (Act 29 of 2019).

¹⁷ Code on Social Security (2020) (Act 36 of 2020).

workers, platform workers, and those in the unorganised sector is a welcome step, it does not fully respond to the deeper, structured disadvantages women face. Many women remain outside stable employment due to low workforce participation, their heavy presence in informal or unpaid work, and repeated career breaks caused by caregiving responsibilities. The code is also lacking in recognising the problems of unpaid domestic labour, ensuring affordable childcare, addressing occupational health risks for women and ensuring social security for domestic workers, home based workers and migrants workers these is a crucial feminist concerns. The move toward online registration and digital delivery of benefits assumes that everyone has equal access to technology and documents, which is often not true for many women. For those without smartphones, internet access, or proper paperwork, this system can become another hurdle rather than a source of support. At the same time, the enforcement framework is weak from a gender perspective, as it does not provide for women inspectors or safe and accessible ways for women to raise complaints. In this way, even though the Code on Social Security claims to be inclusive and universal, it mostly offers equality in form, not in reality. It fails to recognise the layered and unequal conditions under which women work and live. As a result, the Code does not deliver meaningful feminist justice and does little to change the deeply gendered nature of India's social security system

Occupational Safety, Health and Working Conditions Code (2020): From a feministic justice perspective, the OSHWC Code, 2020 reflects a progressive intention to safeguard workers' health and safety but falls short of meaningfully addressing the gender-specific vulnerabilities that women face in workplaces¹⁸. Although the Code includes provisions on adequate working conditions for women and removes earlier restrictions on their night-time employment¹⁹, it does not sufficiently ensure *safe* environments, robust anti-harassment protections, or mandatory infrastructure such as secure transport and gender-sensitive sanitation facilities. The Code's gender-neutral drafting overlooks the reality that women often work in environments with high risks of exploitation, inadequate hygiene,

¹⁸ Occupational Safety, Health and Working Conditions Code (2020) (Act of 37 of 2020).

¹⁹ Available at <https://thelogicalindian.com/historic-shift-women-allowed-night-shift-work-nationwide-under-new-labour-codes-key-updates-you-need-to-know/#:~:text=Supported%20by,and%20dedicated%20grievance%20redressal%20mechanisms.> Accessed on 22th June. 2024.

and unsafe mobility, particularly in sectors like agriculture, domestic work, manufacturing, and hospitality. Without enforceable safety audits or gender-responsive workplace assessments, the Code risks offering symbolic inclusion rather than substantive protection. The code also overlooks how different forms of inequality combine to shape women's work experience. Dalit, tribal, migrant, and informal –sector often face multiple layers of discrimination, unsafe working conditions, and weak or inaccessible grievance mechanisms, yet these realities are not directly addressed. The absence of clear recognition of sexual harassment as a workplace safety issue highlights a gap between legal reform and feminist thinking, which understands safety as a broad right lined to dignity, not just physical protection. Although the code allows women to work in all types of establishments and appears to promote equality, it does so only in theory. It does not place strong duties on employers to ensure safe travel, childcare support, or gender-sensitization at the workplace. As a result this code moves women into more spaces of work without changing the patriarchal structures that make many workplaces unsafe and unequal.

Industrial Relations Code (2020): From a feministic justice perspective, the Industrial Relations Code, 2020 provides a framework for labour-management relations²⁰ but does not meaningfully address the gendered power imbalances that shape women's participation in industrial and organizational decision-making. Although the Code standardizes rules on trade unions, dispute resolution, and layoffs, it remains gender-neutral to a fault: it neither mandates women's representation in unions nor addresses the barriers women face in collective bargaining spaces historically dominated by men. Women workers – especially those in informal, contractual, or part-time roles – rarely hold leadership positions in unions, leading to their concerns about workplace discrimination, harassment, maternity, and caregiving burdens being underrepresented. By not creating institutional pathways for women's participation or gender-responsive grievance mechanisms, the Code reinforces the invisibility of women within industrial relations structures. Moreover, the Code's facilitation of flexible hiring, fixed-term employment, and simplified retrenchment norms may disproportionately harm women workers who already

²⁰ Industrial Relations Code (2020) (Act 35 of 2020).

occupy precarious and low-bargaining-power positions. The absence of gender-sensitive safeguards exposes women to arbitrary dismissals during pregnancy, after maternity leave, or when they seek accommodations for caregiving responsibilities. While the Code aims to streamline labour relations, its silence on gender inequality within dispute resolution, workplace democracy, and job security means that women's vulnerabilities remain unaddressed. Thus, instead of advancing substantive gender equality, the Industrial Relations Code risks deepening existing patriarchal labour hierarchies, offering procedural uniformity without confronting the gendered realities of industrial workplaces.

The four new Labour Codes collectively represent a major legislative restructuring of India's labour regime, but from a feministic justice perspective they remain limited in transforming the deeply gendered foundations of the labour market. While the Codes adopt gender-neutral language and expand formal protections such as minimum wages, social security, safety norms, and equal pay, they fail to address the structural disadvantages that shape women's participation in work—particularly occupational segregation, unpaid care burdens, informal labour vulnerabilities, digital exclusion, and the lack of gender-responsive enforcement. As a result, the Codes achieve formal equality in text but fall short of ensuring substantive equality in practice. Women's lived realities—ranging from wage discrimination and workplace insecurity to exclusion from social protection—remain insufficiently recognized within the current legal framework. To truly move toward feminist justice, the labour law framework needs deeper and more practical reforms. Laws should actively check and correct wage inequality by requiring gender-sensitive wage audits, transparent reporting on pay gaps, and strict enforcement of equal pay. Social security must go beyond formal workers and create clear, accessible scheme for domestic workers, home-based workers, single mothers, and women working in informal and gig jobs. Workplace safety laws should focus on women's real concern like safe transport, strong protection against sexual harassment, clean and adequate sanitation facilities. Most importantly the grievance systems where the women can speak without fear. The industrial Relations Code should also ensure that women are properly represented in trade unions, workplace committees and dispute – resolution bodies so their voice are not side-line.

Above all, labour policy must recognise unpaid care work as real work. Expanding affordable childcare and support services is essential if women are to participate fully in the economy. Only when gender-responsive responsibilities are built into both law and implementation can the new labour codes move beyond symbolic equality and deliver genuine feminist justice.

POSTHUMOUS DATA PROTECTION IN INDIA: TRAVERSING PRIVACY, SUCCESSION AND NOMINATION UNDER THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

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Abstract:

In the current digital age, the existence of individuals has increasingly become that of a constant “digital self” that is made up of personal data created, stored, and processed on online platforms. Unlike the physical existence of individuals, the digital self does not end with the death of an individual because personal data continues to exist and be monetized in digital systems. This paper examines the legal vacuum that exists in India regarding the protection of personal data after an individual’s death. Analysis argues that the current succession regimes in Indian law, namely the Indian Succession Act, 1925, and other personal laws, are inherently inadequate to govern personal digital data, as they are rooted in proprietary concepts of tangible and transferable economic assets. Personal data, being inextricably intertwined with dignity, identity, and autonomy, cannot be brought within the ambit of inheritable property. The Digital Personal Data Protection Act, 2023 is the first comprehensive legislation in India to regulate the processing of personal data in conformity with the constitutional norms of privacy, as laid down in the landmark decision of Justice K. S. Puttaswamy (Retd.) v. Union of India. However, the Act only provides protection to natural persons and touches upon the posthumous aspect of personal data

only indirectly through a nomination provision, without specifying the nominee's fiduciary obligations. Using the tools of doctrinal analysis, comparative analysis, and platform practices, this paper highlights the dangers of reputational damage, identity commodification, familial emotional distress, and digital resurrection by AI in the absence of post-mortem data protection. It argues a case for the recognition of post-mortem privacy as a constitutional right under Article 21 and presents a human-centered approach that balances data protection, succession rights, and platform obligations. The implication of this paper is that post-mortem data protection is critical not only to individual dignity but also to the integrity of the Indian digital environment.

Keywords: Posthumous data protection, succession laws, nomination, consent-based approach, DPDP Act.

Introduction

In the contemporary era, the individuals do not merely and exclusively exist within the physical realm. The digital infrastructures continuously record, structure, and monetise human behaviour through emails, social media platforms, biometric identifiers, cloud-based systems browsing histories, algorithmic profiles. Taken together, this creates a virtual identity commonly known as *digital self*¹ which is an informational extension of personhood that accompanies the individual throughout life and increasingly defines their social presence.²

The most peculiar characteristics of the digital self is that; it does not terminate with biological death. Unlike the human body, personal data does not decay or naturally disappear. It remains stored on servers, replicated across platforms, processed by automated systems and in many cases, continuously leads to data monetisation.³ Digital platforms routinely preserve profiles of deceased users,

¹ Mark Campbell and Miadan Jovanovic, "Digital Self: The Next Evolution of the Digital Human", *Computer*, Vol. 55, April 2022, pp. 82-86, <https://doi.ieeecomputersociety.org/10.1109/MC.2022.3148642> (accessed on October 22, 2024).

² Paul M. Schwartz & Daniel J. Solove, "The PII Problem: Privacy and a New Concept of Personally Identifiable Information", *NYUL Rev.* 86, 2011, 1814-1894, https://www.law.berkeley.edu/files/bclt_Schwartz-Solove_NYU_Final_Print.pdf (accessed on November 15, 2024).

³ Edina Harbinja, "Post-Mortem privacy 2.0: Theory, Law, and technology", *International Review of Law, Computers & Technology* 31(1), 2017, 26-42, <https://doi.org/10.1080/13600869.2017.1275116> (accessed on October 30, 2024).

resurface historical content through automated reminders, and continue algorithmic processing of stored data. Death, therefore, no longer signifies the erasure of personal presence but instead marks a transition into a form of digitally mediated persistence.

Under the Indian law, the property of the propositus/deceased is devolved under intestate succession or testamentary succession. The succession laws particularly, the Indian Succession Act, 1925 and the Hindu Succession Act, 1956 were designed to govern the devolution of tangible property with a limited category of intangible assets. These regimes presuppose assets that are exhaustible, alienable, and capable of clear ownership. Personal data does not seem to fit within this paradigm. The definitions delineated in the Digital Personal Data Protection Act, 2023 (DPDP Act) of *data*, *personal data*, *data fiduciary* and *digital personal data* shows that though personal data can be related to an individual capable of being possessed, processed and shared, the provision for posthumous ownership and devolution of such data is limited.

This conceptual mismatch is further revealed by judicial interpretation of nomination and succession. Indian courts have repeatedly ruled that substantive rights pass to legal heirs and that nomination only serves administrative convenience rather than bestowing beneficial ownership.⁴ This approach may function well for financial instruments, but its application to personal data may run the risk of disclosing sensitive private information to individuals who may neither respect the deceased's autonomy or reflect their preferences.

The formulation of the Digital Personal data Protection Act, 2023 introduces first legislative measure in India for regulation of personal data processing as guided by constitutional privacy norms articulated in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.⁵ The Supreme Court also emphasised that privacy encompasses one's identity, reputation and the powers of control over personal information.⁶ The DPDP Act adopted consent based approach for processing personal data,

⁴ Sarbati Devi v. Usha Devi, (1984) 1 S.C.C. 424; Shipra Sengupta v. Mridul Sengupta, (2009) 10 S.C.C. 680.

⁵ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1.

⁶ *Ibid.*

imposes fiduciary duties on data handlers and recognises rights of data principals over personal data. However, the scope of protection under DPDP Act is limited only to living individuals. The act addresses the matter of posthumous data management in a limited sense by giving the data principal a right to nominate another individual to exercise the rights of data principal in case of death.⁷

Reputational distortion, commodification of identity without consent and emotional harm to the families are notable risks associated with the existence of posthumous data and coupled with platform driven processing. In light of this backdrop, this paper explores the nexus of privacy, data governance under the DPDP Act and succession jurisprudence establishing an argument for human-centric legal approach to posthumous data protection.

The Need of Posthumous Data Protection

In the economic backdrop where digital data and its protection play a crucial role as an economic resource backing growth, innovation and increasing productivity, creating jobs and enhancing almost every sphere of economic activities, the protection of digital data seems a paramount predisposition. This inclination becomes even more captivating when the data belongs to a deceased person as the task requires balancing the personal autonomy, privacy of the deceased and emotional vulnerability of the family members and the obligations of the digital platforms. Many incidents and cases reflect the struggle of family members and the digital platform over digital assets of the deceased.⁸ In *Rachael Thompson v. Apple*⁹, a widow intended to save her husband's and daughter's memories and wanted to access pictures and videos kept in her husband's apple account. The tech giant opposed the access in court owing to apple's stringent adherence to privacy policies. Eventually, Mrs. Thompson gained access through court order but it

⁷ The Digital Personal Data Protection Act, 2023 (No. 22 of 2023), s.14.

⁸ Dr. Prashant Mali and Prakash G. Aswathy, "Death in the Era of Perpetual Digital Afterlife: Digital Assets, Posthumous Legacy, Ownership and its Legal Implications," *National Law School Journal*: Vol. 15(1), 2019, 124-141, <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1365&context=nlsj> (accessed on October 14, 2024).

⁹ Clarion, <https://www.clarionsolicitors.com/articles/social-media-what-happens-to-our-online-data-after-we-die>.

highlighted the insufficiency of procedure and legal framework for posthumous data management and digital assets.

The urgency of posthumous data protection is not based on abstract theory of privacy but upon the nature of active afterlife of digital data within algorithmic and organizational systems. It is evident that personal data do not remain dormant after the death of the data principal but continue to be used by the digital platforms and hence, monetized. The information of the deceased is often maintained to train artificial intelligence systems and in behavioral analytics and platform archives. This makes death irrelevant to data governance frameworks as this phenomenon disrupts the traditional norms that death leads to finality in relation to rights and obligations. A survey conducted in 2024 revealed that a number of cyberspace users have concerns over the integrity of the digital identity of deceased left in cyberspace making it vulnerable to identity theft and other frauds.¹⁰

One of most emerging challenge is the proliferation of AI-enabled digital resurrection technology like voice cloning, memorial chatbots, deepfake video and image generation. It may be possible that the characteristic features of the deceased like voice, face or behavioural patterns can be created without the consent and mostly for commercial or promotional uses.

The lack of statutory frameworks governing data even after death not only increases the risk of cybersecurity attacks against inactive accounts that may be exploited by hackers but also creates a challenge when it comes to the moral management of digital legacy. The issue should not only be addressed in relation to human dignity but also in relation to security in a digitized world.

Application of Succession laws on Posthumous Data

In India, succession is mainly governed under personal laws such as Hindu Succession Act, Muslim Personal law and Indian Succession act. The laws of inheritance in India were curated in the times when inheritance was equated with

¹⁰ *Digital afterlife: 61% worry about online legacy of the deceased*, Kaspersky (Aug. 21 2024), <https://www.kaspersky.com/about/press-releases/digital-afterlife-61-worry-about-online-legacy-of-the-deceased>. (accessed on September 17, 2024).

the devolution of tangible and economically valuable property or assets, thereby, rendering them ill-suited to address the issue of posthumous digital data management, possession, ownership and protection. The Indian Succession Act, 1925 governs intestate and testamentary succession.¹¹ The act of 1925 allows an individual to dispose of the property by will, yet the statute seldom contemplate intangible informational asset which may lack proprietary character.¹² Even the judicial interpretation suggests the inheritable property is confined to movable and immovable assets and in few circumstances actionable claims.¹³ However, the Indian succession laws does not provide any definition of property. Property has been defined differently in different statutes as per the purpose and objective of the act. As per the Prohibition of *Benami* Property Transactions Act, 1988, “property means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property.”¹⁴ The Sale of Goods Act, 1930 defines property as “Property means the general property in goods, not merely a special property.”¹⁵

On the other hand, data has been defined as “a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means.”¹⁶ Digital Personal data means “personal data in digital form”¹⁷ personal data “means any data about an individual who is identifiable by or in relation to such data”¹⁸. Data Principal “means the individual to whom the personal data relates and where such individual is (i) a child, includes the parents or lawful guardian of such a child; (ii) a person with disability, includes her lawful guardian, acting on her behalf”.¹⁹

¹¹ The Indian Succession Act, 1925, (No. 39 of 1925), Part V and VI.

¹² The Indian Succession Act, 1925 (No. 39 of 1925), s.2(h).

¹³ Rameshwar Prasad v. Shambehari Lal Jagannath, *AIR 1963 SC 1901*.

¹⁴ The Prohibition of *Benami* Property Transactions Act, 1988 (No.45 of 1988), s.2(26).

¹⁵ The Sale of Goods Act, 1930, (No.3 of 1930), s.2(11).

¹⁶ The Digital Personal Data Protection Act, 2023 (No. 22 of 2023), s.2(h).

¹⁷ The Digital Personal Data Protection Act, 2023 (No. 22 of 2023), s.2(n).

¹⁸ The Digital Personal Data Protection Act, 2023 (No. 22 of 2023), s.2(t).

¹⁹ The Digital Personal Data Protection Act, 2023 (No. 22 of 2023), s.2(j).

Personal digital data such as social media communications, cloud stored photographs, emails, biometric identifiers do not fall under the category of heritable property. Personal digital data is neither inherently transferable nor capable of exclusive ownership as it is often governed under contractual atmosphere by digital platform.²⁰ Consequently, even when a testator seeks to bequeath control of digital accounts or personal data to the legatee, such disposition may not be executed due doctrinal obstacles like the non-overriding nature of succession laws on private platform agreements which could convert the access rights into proprietary entitlements. The problem is expanded in cases of intestate of succession, where heirs acquire a right only over the property recognized as such by law.²¹ This results in a practical vacuum in which the physical devices may pass to the legal heirs while the control over data stored or synched online remains legally inaccessible.

The situation is similar in personal laws governing inheritance as it further reinforces this exacerbated trend. Under the Hindu Succession Act, 1956, inheritance is based on principle of devolution of ownership and possessory rights. The concept of property has been expanded by Indian judiciary to include intangible property like intellectual property, goodwill and other incorporeal assets with economic value²², still the personal data remains outside the purview of inheritance due to its connection more with personality rather marketability.

Even under Muslim personal law, the digital data would not survive an individual's death as inheritable property. The distinction between proprietary rights, which pass on to heirs and purely personal rights which expire upon death affirms this conclusion.²³ While succession law is still working on legal imagination of proprietary paradigm that excludes information assets, rights related to dignity such as reputation have been acknowledged as surviving

²⁰ Julie E. Cohen, "What Privacy Is For", *Harvard Law Review*, 126, 2013, 1904-1933, https://harvardlawreview.org/wp-content/uploads/2013/05/vol126_cohen.pdf (accessed on October 29, 2024).

²¹ See The Indian Succession Act, 1925, (No. 39 of 1925), s.5.

²² *Star India Pvt. Ltd. v. Leo Burnett (India) Pvt. Ltd.*, 2003 (27) PTC 81 (Bom); *Comm'r of Income Tax v. B.C. Srinivasa Setty*, (1981) 2 SCC 460.

²³ Syed Ameer Ali, *Mohomedan Law*, 5th Edition, Himalayan Books, New Delhi, 1985, 92-95.

beyond death.²⁴ This unresolved conflict reveals a legal gap in which the digital traces of the deceased exist, even indefinitely without clear legal protection. The perfunctory application of succession laws to personal data runs the risk of undermining posthumous privacy and autonomy, while its total exclusion will leave the legal heirs without access to any legal recourse.

The succession laws in its current form underscores the need for re-evaluation of legal principles so as to accommodate posthumous digital data into the estate of deceased while upholding the principles of privacy and autonomy.

Nomination based Posthumous data protection in India

The intersection of posthumous data management and constitutional rights in India represents a new and crucial area. Traditionally, the extinguishment of personal rights after death was regulated by the maxim *mors omnia solvit*. However, the Supreme Court of India's declaration of privacy as a constitutional right in the *Justice K.S. Puttaswamy case* has completely upended this tradition. While the decision asserts that informational privacy allows persons to have control over their personal data, it largely punted on the question of whether such rights survive the death of the data subject. In later cases, the judiciary has often cited the maxim *actio personalis moritur cum persona*, suggesting that personal actions and personality rights lapse with the person.²⁵ At the same time, the Court has reaffirmed that the right to dignity under Article 21 applies to the deceased, requiring that they be treated with respect and dignity.²⁶ This raises a paradox; if the deceased are entitled to a dignified burial, are they not also entitled to the constitutional protection of their personal correspondence and private information from unauthorized access or reputational damage?

The Digital Personal Data Protection (DPDP) Act, 2023 attempts to bridge this gap through the statutory mechanism of nomination. A per DPDP Act, a data principal may nominate an individual to exercise their rights in the event of death or incapacity.

²⁴ Subramanian Swamy v. Union of India, (2016) 7 SCC 221.

²⁵ Melepurath Sankunni Ezhuthassan v. Thekittil Gopalankutty Nair, (1986) 1 SCC 118.

²⁶ Ashray Adhikar Abhiyan v. Union of India, (2002) 2 S.C.C. 27.

Sec 14 of the act says:

- “(1) A Data Principal shall have the right to nominate, in such manner as may be prescribed, any other individual, who shall, in the event of death or incapacity of the Data Principal, exercise the rights of the Data Principal in accordance with the provisions of this Act and the rules made thereunder.
- (2) For the purposes of this section, the expression “incapacity” means inability to exercise the rights of the Data Principal under the provisions of this Act or the rules made thereunder due to unsoundness of mind or infirmity of body”

As per this provision the nominee can exercise rights of data principal such as:

1. Requesting access to personal data,
2. Deletion or removal of data,
3. Withdrawal of consent already given by data principal,
4. Grievances or complaint filing, etc.

Even though the provision does provide for a formal framework for posthumous data management, yet it does not clarify on the role of the nominee and the limitations on the powers of nominee. The Act does not clarify whether the nominee is a trustee, bound by the pre-existing instructions of the deceased, or a beneficiary with absolute discretion. This creates a potential conflict with the Indian Succession Act, 1925, which regulates the succession of property. If certain types of data, such as monetized accounts or virtual assets, are considered property, they must pass to the legal heirs. The problem arises when the nominee is a different person. The Legal Heir may have a proprietary interest in the value of the account, while the nominee has the legal right to erase the data completely. Historically, the Indian judiciary has been of the view that a nominee is merely a “receiver” for convenience and does not override the rights of a legal heir.²⁷ To bring this at par with the DPDP Act, a nuanced classification of data is needed. Data that is “correspondence” (such as private communications) would, one hopes, fall within the remit of a surviving right to privacy, while data that is “asset” (such as cryptocurrency or intellectual property) would fall within the law

²⁷ Shakti Yezdani & Anr v. Jayanand Jayant Salgaonkar & Ors. 2023 SCC OnLine SC 1679.

of succession. Without legislative harmonization or judicial guidance, the digital afterlife is a patchwork quilt of conflicting demands, in which the deceased's personal data is caught between the living's right to inheritance and the individual's pre-existing right to be forgotten.

Initiatives by Digital Platforms for Posthumous data protection

Globally, well known social media intermediaries and service providers like Google, Facebook, and X (formerly twitter) offer some mechanisms to help in the administration of deceased users' accounts. But the nominee/ legal heir does not gain complete control of the inherited account(s). For example, Facebook allows users to assign a legacy contact to manage the account after demise. But the legacy contact is limited to changing the profile and cover photos and posting a "pinned announcement" (such as notification of death or funeral plans). The legacy contact cannot add or remove friends, view messages, or sign in to the account.²⁸

Google also provides a facility called the "inactive account manager," which allows users to assign a trusted contact who can access account information after a certain period of inactivity.²⁹ Google notifies the trusted contact if the account is inactive for the specified period, and based on the user's preferences, may share which data can be shared with the trusted contact.³⁰ Instagram allows friends or family members to report the death of a user and ask for the account to be "memorialized."³¹ But X allows the deactivation of the account of a deceased user only after a request from the legal heir.³²

Taking into consideration the realities of the digital afterlife, the most popular online services have created their own policies for managing accounts after death.

²⁸ Legacy Contacts, About legacy contacts on Facebook, <https://www.facebook.com/help/1568013990080948/> (accessed on November 01, 2024).

²⁹ Google help centre, About Inactive Account Manager, <https://support.google.com/accounts/answer/3036546?hl=en> (accessed on November 01, 2024).

³⁰ Ibid.

³¹ About memorialized Instagram profiles , <https://help.instagram.com/231764660354188> (accessed on November 11, 2024).

³² How to contact X about a deceased family member's account,/help.x.com/en/rules-and-policies/contact-x-about-a-deceased-family-members.account#:~:text=Deceased%20User&text=Request%20the%20removal%20of%20a,of%20the%20deceased's%20death%20certificate. (accessed on November 08, 2024).

Google, for instance, notifies a trusted contact after a period of inactivity and, if the user has given consent, allows limited access to certain categories of data. Instagram takes a commemorative approach by allowing family members or friends to report a death and request that the account be memorialized. X follows a restrictive policy by allowing deactivation only at the request of the lawful successor.

Towards a coherent framework for posthumous data protection in India

From the discussions in the previous sections, it is evident that India lacks comprehensive legal framework to address the issue of posthumous data protection. Following measures are worth noting and implementing to smoothen the integration of posthumous data protection in legal framework.

1. Recognition of Posthumous Privacy as an Extension of Constitutional Dignity

As discussed above, in *Justice K.S. Puttaswamy case*, the Supreme Court characterised privacy as intrinsic to autonomy, identity, and dignity rather than as a purely negative liberty.³³ This dignitarian understanding of privacy necessarily resists strict temporal limitation.

The Court's earlier decision in *R. Rajagopal v. State of Tamil Nadu*³⁴ is particularly instructive. While acknowledging that privacy is a personal right, the Court held that unauthorized publication of life details of a deceased person could still violate the privacy interests of their family members.² This formulation implicitly recognises that informational dignity does not evaporate upon death but instead acquires a relational dimension.

Similarly, *Gobind v. State of Madhya Pradesh*³⁵ conceptualised privacy as emanating from the "right to be let alone," grounded in human dignity rather than physical existence.³ If dignity is the normative foundation of privacy, and dignity survives death through reputation, memory, and social identity, then posthumous data protection becomes constitutionally defensible.

³³ *Supra* note 5.

³⁴ (1994) 6 S.C.C. 632.

³⁵ (1975) 2 S.C.C. 148.

The view that has been supported by comparative scholarship is that post-mortem privacy is best seen as a continuity of personality interests rather than as property rights. This view is more consistent with Indian constitutional values than a property-based view of data ownership.

2. Inclusion of Personal data as heritable property

Personal data is fundamentally different from digital and financial assets. While the financial assets form the subject matter of intestate or testamentary succession; personal data preoccupies the privacy, reputation and personal autonomy. Applying the existing succession rules to personal data may pose risk of violating the deceased information autonomy. It is suggested that while recording few restrictions, the personal data can be included in heritable property through required amendments. It is noteworthy to mention here that in Germany, the federal court of justice have ruled that parents could inherit their deceased daughter's Facebook account which is a personal data.³⁶ Such inclusions can be made in Indian inheritance laws to allow the legal heirs to inherit digital accounts and data of the deceased. However, it is pertinent to respect the wishes of the deceased regarding the access of their data and its use posthumous.

Nomination for posthumous data, therefore, needs to be understood not as a means of ownership transfer but as a manifestation of informational intent. The nominee in this case would be a data fiduciary, required to act in accordance with the privacy preferences of the deceased, not for personal benefit but as a fiduciary. It is pertinent to note that the DPDP Act, 2023 introduces the concept of consent managers but does not extend this logic beyond the death of the data principal.³⁷ A legislative change that introduces the concept of a "data executor" would fill this gap while remaining consistent with the Indian succession law tradition.

³⁶ Bundesgerichtshof (BGH), III ZR 183/17, 12 July 2018, <https://www.loc.gov/item/global-legal-monitor/2018-09-07/germany-federal-court-of-justice-rules-digital-social-media-accounts-inheritable/> (accessed on November 02, 2024).

³⁷ The Digital Personal Data Protection Act, 2023 (No. 22 of 2023), s.6(7) to 6(9).

3. Platform Obligations and Fiduciary Duties after Death

Digital platforms must adopt inclusive approach for post humous data management.³⁸ The digital platforms are regarded as de facto custodians of posthumous data; however, the responsibility of platforms ceases on demise of data principal. As discussed earlier, this regulatory vacuum allows for misuse of data post-mortem. Globally, a shift has been felt wherein the posthumous data obligations are imposed on platforms.

The European Union permits the member states to set their own rules.³⁹ France has explicitly established the right of an individual to define general or specific guidelines/ directives regarding personal data after death. This would include directions regarding storage, deletion and communication of personal data.⁴⁰ The Indian judiciary has shown awareness of the long-term informational harm. In the case of *Jorawar Singh Mundy v. Union of India*⁴¹, the Delhi High Court was aware of the fact that the availability of personal information on the internet can cause a disproportionate amount of harm. The Karnataka High Court in the case of *X v. Registrar General*⁴² also showed awareness of the need for anonymization to protect dignity.

Similarly, the Indian law should impose necessary obligation on the data fiduciaries for posthumous data protection and must include:

- Prohibition of use of sensitive data for algorithmic amplification
- Allowing the nominees or legal heirs to lawful erasure of data
- Restrictions on processing of data post death
- Taking measures to eradicate the risk of identity theft
- Handing over data to the nominee or legal heirs

³⁸ Leila Bahri, Barbara Carminati and Elena Ferrari, "What happens to my Online Social Estate When I am Gone? An Integrated Approach to Posthumous Online Data Management, In Proceedings of the 2015 IEEE International Conference on Information Reuse and Integration, IEEE Computer Society, USA, 31 – 38, <https://dl.acm.org/doi/10.1109/IRI.2015.16> (accessed on October 16, 2024).

³⁹ Recital 27 of the General Data Protection Regulation, 2016.

⁴⁰ The French Data Protection Act (Loi Informatique et Libertés), specifically as amended by Article 63 of the "Digital Republic Act" (Loi pour une République numérique No. 2016-1321) of October 7, 2016.

⁴¹ 2021 SCC OnLine Del 2306.

⁴² 2017 SCC OnLine Kar 424.

4. Prospective Legislative measures for protection of posthumous data

There should be statutory recognition of posthumous data rights. The nomination procedure in the DPDP Act is a welcoming initiative by the legislative body to ensure handling of posthumous data. However, the DPDP Act does not explicitly deals with posthumous data consent in the sense that the consent given during the lifetime of the data principal continues automatically post mortem. The act should lay down a mandate upon the data fiduciary to abide by the consent of data principal even post death. There should be a legislative measure to recognise posthumous privacy as a protected interest.

There should be introduction of legally binding mechanism mandating data principal to specifically lay down instructions as to the deletion, access and monetisation of digital data.

The succession laws should be amended to make them coherent with the changing definition and classification of assets and property. Though, the struggle will continue on the ground that how the data should be perceived; as a property or as a personality.

Right to be forgotten should be recognised and made applicable to the posthumous erasure of data.⁴³ This will ensure personal autonomy and privacy of the deceased.

Conclusion

In today's increasingly digitised society, the protection of posthumous data has become a pressing legal and ethical requirement rather than a mere theoretical or futuristic concern. The users of cyberspace continue to express, transact, live and commemorate themselves through digital platforms which allows for perpetual digital afterlife capable of being accessed, duplicated, monetised and exploited. These digital remnants exist in a regulatory vacuum without explicit legal

⁴³ Burkhard Schafer and et.al, "What the Dickens: Post-Mortem Privacy and Intergenerational trust, *Computer Law & Security Review*, vo. 49, 2023, 105800, <https://doi.org/10.1016/j.clsr.2023.105800> (accessed on October 15, 2024).

recognition, making them vulnerable to exploitation and arbitrary control by unauthorised actors or digital platforms.

Protection of posthumous digital data and rights serves a number of related objectives. Fundamentally, it upholds the constitutional commitment to the right of life and individual liberty under Article 21 of the Constitution of India by respecting autonomy, consent and privacy beyond biological life. The protection of heirs and successors who frequently deal with fragmented platform policies and ambiguous legal requirements when attempting to access or close a deceased person's digital accounts is equally relevant. In addition to traditional forms of inheritance, a coherent legal framework can prevent fraud, lessen emotional distress and guarantee orderly management of personal digital data.

Furthermore, posthumous data protection plays a pivotal role in preventing abuse. Unregulated posthumous data puts families and the societies confidence in digital ecosystem at risk for identity theft, financial frauds, reputational damage and algorithmic manipulation. By addressing these issues and risks through enforceable rights, nomination procedures and clear legislative guidelines, the data fiduciaries and intermediaries/ platforms would be held accountable.

Lastly, the acknowledgment of posthumous data rights will align India with the changing international norms for digital governance, as demonstrated by comparative systems in the EU and other jurisdictions. The law must evolve to guarantee that autonomy, privacy and dignity do not end with the life of a person as digital existence increasingly resembles and, in some ways, it does surpass physical life.

THE INTEGRATION IMPLEMENT OF ARTIFICIAL INTELLIGENCE WITHIN INDIA'S JUDICIAL SYSTEM

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Abstract:

The India's judicial system marks a transformative yet cautious shift in how justice is administered, managed, and accessed across the country, driven by the imperative to modernize a system burdened with an enormous backlog of over 50 million pending cases that, at the present pace, would take centuries to clear without structural innovation, and responded to by government and judicial reforms that employ Artificial Intelligence primarily as an assistive and efficiency-enhancing tool rather than a decision-making substitute; current applications under initiatives like the e-Courts Mission Mode Project Phase III include automated case management, smart scheduling, docket prioritization, predictive analytics to reduce delays, and machine-assisted legal research and documentation that help extract relevant precedents and summarize legal content to expedite routine tasks, alongside natural language processing and optical character recognition for faster filing and reduced clerical errors, while practical tools such as SUPACE for research support, SUVAS for multilingual translation, and platforms like Nyaay Artificial Intelligence & Adalat Artificial Intelligence facilitate real-time transcription, translation, and administrative workflow automation in thousands of courts, significantly easing human workloads and improving accessibility for litigants and lawyers alike; however, the Supreme Court of India and High Courts have made clear that Artificial Intelligence will not shape judicial decisions or replace judicial reasoning, underscoring that human discretion, fairness, and constitutional safeguards remain central to justice delivery, and that Artificial Intelligence's role is circumscribed to assistance with administrative, procedural, and analytical tasks that do not impinge on

core adjudicatory functions a stance reflected in explicit judicial statements affirming caution and restraint in adopting generative and predictive Artificial Intelligence technologies in judicial reasoning to safeguard the integrity of the process. At the same time, ethical, legal, and policy challenges persist, including data privacy, algorithmic bias, and the need for secure infrastructure, prompting emerging guidelines at state levels (such as the Kerala High Court's policy restricting Artificial Intelligence use to non-decision tasks under human oversight) and debates over regulatory frameworks for Artificial Intelligence within the justice system; in late 2025 the Supreme Court even declined to entertain a public interest litigation seeking to regulate 'irregular' Artificial Intelligence use within the judiciary, indicating judicial sensitivity to the normative and governance domain of technological adoption. Moreover, the system is responding to misuse risks exemplified by recent instances of Artificial Intelligence generated fabricated judgments brought to light in high-profile corporate litigation that underline the importance of robust verification, ethical standards, and judicial training. While significant investment including substantial budgetary allocation specifically earmarked for Artificial Intelligence integration and digital infrastructure reflects the government's commitment to leveraging technology to enhance efficiency, transparency, and access to justice, the overarching narrative remains one of measured innovation, where Artificial Intelligence's benefits in reducing backlogs, improving case workflows, and expanding accessibility are harnessed alongside vigilant safeguards to preserve fairness, accountability, and trust in India's judicial processes. ¹

“The integration of artificial intelligence into the judicial system promises to enhance efficiency, accuracy, and consistency in legal processes, from case analysis to predictive judgments. By automating routine tasks, artificial intelligence can reduce human error and expedite decision-making, while advanced algorithms offer data-driven insights that support fairer outcomes. However, ethical challenges such as bias, transparency, and accountability remain critical, demanding careful regulation and oversight. As artificial

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1. *Artificial Intelligence for Legal System: Jurisprudence in the Digital*, Edited by Smita Gupta,, B. Balamurugan & Sneha Dhillon (2026).
 2. *Artificial Intelligence: Law and Policy Implications*, Edited by Purvi Pokhariyal, Amit K. Kashyap & Arun B. Prasad (2024 Indian legal publication).
 3. *Artificial Intelligence in Legal Systems: Bridging Law and Technology Through AI*, Edited by Narasimha Rao Vajjhala & Behrouz Aslani (2025).
 4. *Artificial Intelligence and the Law* by T. Marwala .
 5. *Artificial Intelligence: A Modern Approach* by Russell & Norvig.
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intelligence reshapes law practice, court administration, and legal research, its transformative potential must be balanced with safeguards to ensure justice and uphold public trust"

Key: - *Artificial Intelligence, Judicial System, Technology, Efficiency, Accuracy.*

Introduction:

The Indian judiciary, currently grappling with a severe case backlog and pervasive delays, is entering a transformative new era with the strategic and carefully calibrated integration of Artificial Intelligence, a development that promises not the replacement of human wisdom or judicial discretion but the augmentation and strengthening of existing systems and capacities through intelligent technological support; this evolution builds naturally upon the foundational efforts of the e-Courts Project Phase III, which laid essential groundwork for digital connectivity, standardized data formats, and streamlined workflows across the nation's diverse judicial landscape, and now sets the stage for deeper innovation aimed at resolving long-standing structural inefficiencies. At the heart of this shift is the constitutional mandate to ensure timely, transparent, and equitable justice for every citizen, a promise that has often been undermined by the staggering volume of pending cases, shortage of judges, procedural complexities, and the overwhelming reliance on manual, paper-based processes that slow down every stage of litigation from filing to final judgment. The integration of advanced technologies particularly Machine Learning (ML), Natural Language Processing (NLP), and Optical Character Recognition (OCR) forms the technological bedrock of this transformation, enabling the justice delivery system to evolve from a fragmented, document-heavy, and time-consuming model into one that is data-driven, interconnected, and capable of unprecedented efficiency. ML algorithms can analyse patterns in case types, predict workload distributions, flag anomalies in filings, assist in scheduling, and even support decision-making by surfacing relevant precedents or statutory provisions, all while operating under robust human oversight to ensure accountability and fairness. NLP empowers computers to process and understand the complexities of legal language, enabling automated drafting assistance, intelligent search of judicial records, real-time transcription, and summarization

of lengthy documents, thereby reducing the burden on judges, lawyers, and court staff who currently spend countless hours navigating dense legal texts. OCR, on the other hand, plays an equally critical role by converting millions of handwritten or scanned documents orders, pleadings, affidavits, historical records into machine-readable formats, making them instantly searchable and analysable, and transforming mountains of legacy paperwork into structured digital assets that can fuel Artificial Intelligence- driven insights. Together, these technologies create a powerful ecosystem where information flows seamlessly across courts, litigants receive clearer and faster updates, and administrative tasks that once consumed significant time become largely automated. The impact of this transformation extends far beyond operational efficiency: it holds the potential to reshape access to justice itself by reducing costs, simplifying procedures, and minimizing human errors or inconsistencies that often impede the fair resolution of disputes. Artificial Intelligence-enabled translation tools can break language barriers in a multilingual country like India, allowing litigants to access documents and court proceedings in their own languages; virtual court platforms can reduce the need for physical presence, benefiting citizens in remote regions who previously faced long travel times; and smart case management systems can prioritize urgent matters, detect unnecessary adjournments, and ensure that the judicial process moves at a pace befitting a modern democracy. Importantly, this technological leap is being designed with a deep awareness of ethical and constitutional boundaries: Artificial Intelligence tools are meant not to override or dictate judicial decisions but to augment human reasoning, enhance consistency, and reduce cognitive load, while all critical judgments remain firmly within the domain of experienced judges who must weigh facts, context, and societal impact in ways no machine can replicate. The transformation also requires robust safeguards, including data privacy protections, audit mechanisms for algorithms, transparent usage policies, and continuous training for judicial officers and court staff to ensure that technology is deployed responsibly and inclusively. As the judiciary embraces digital workflows, cross-platform interoperability, cloud-based architecture, and standardized data formats, it becomes possible to create a unified national judicial data grid that offers real-time analytics, comprehensive dashboards, and predictive insights capable of informing policy decisions, resource allocation, and long-term planning. Moreover, the evolving ecosystem encourages collaboration between technologists, legal scholars, judges, and public

institutions to create solutions tailored specifically to India's unique legal culture and socio-economic realities. In this sense, the integration of Artificial intelligence is not merely a technological upgrade but a structural re-engineering of the judicial system that aims to restore public trust, uphold constitutional values, and build an equitable future where justice is accessible, timely, and effective for all. Through strategic deployment, ethical governance, and continuous refinement, Artificial Intelligence has the potential to catalyse one of the most significant institutional transformations in India's modern history one that respects human judgment while leveraging the power of intelligent machines to deliver justice with greater speed, accuracy, transparency, and fairness than ever before. ²

AI in Judicial Administration and Case Management:

In this future scenario, the integration of Artificial Intelligence into judicial administration and case management represents a transformational leap in how courts function, substantially strengthening the administrative backbone of the justice system while preserving the judiciary's core values of fairness, transparency, and due process. Artificial Intelligence-driven automated case management systems, leveraging predictive analytics and machine-learning algorithms, operate as intelligent orchestration platforms that streamline every stage of case workflow, from filing to final disposition. These systems optimize scheduling through dynamic assessment of case complexity, judge availability, statutory deadlines, and historical disposal rates, allowing calendars to adjust in real time for maximum efficiency and minimum waste of judicial hours. Case prioritization becomes more data-driven and objective, relying on algorithmic analysis of urgency indicators, procedural readiness, public interest considerations, and patterns of delay, ensuring that matters requiring immediate attention are brought before the court without the bottlenecks that traditionally plague judicial functioning. In this evolved environment, pioneering tools such as

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- ² 1. *Artificial Intelligence for Legal System: Jurisprudence in the Digital Age* (Ed. Gupta, Malik, Soares, Balamurugan & Dhillon).
 2. *Artificial Intelligence in Legal Systems: Bridging Law and Technology Through AI* (Ed. Çela, Vajjhala & Aslani).
 3. *Law and Artificial Intelligence: Regulating AI and Applying AI in Legal Practice* (Springer).
 4. *Artificial Intelligence and the Rule of Law: The Age of Legal Tech and Digital Governance in a Fractured Digital World*.
 5. *Artificial Intelligence and Legal Analytics* (Cambridge University Press).
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the Supreme Court's experimental SUPACE (Supreme Court Portal for Assistance in Court Efficiency) have matured into fully operational intelligent assistants capable of rapidly synthesizing vast volumes of case material, generating structured briefs, identifying precedential relevance, and flagging inconsistencies in pleadings or procedural defects that might otherwise consume valuable registry time. Similarly, NIC's Leg-RAA (Legal Research Analysis Assistant) has become an indispensable component of court registries and judicial chambers, automating tasks such as metadata extraction, document classification, sentiment analysis of pleadings, and contextual retrieval of case law, thereby replacing hours of manual clerical labour with instantaneous, error-free digital processing. Together, these Artificial Intelligence solutions fundamentally reduce the administrative burdens traditionally shouldered by overextended court staff, transforming a system often debilitated by backlogs into one characterized by proactive backlog prevention, real-time performance monitoring, and predictive workload distribution. Metadata extracted by these tools feeds into centralized dashboards that offer judges and administrators unprecedented insights into case progress, registry compliance, filing trends, and disposal patterns across districts and courts, enabling evidence-based policymaking and refined allocation of human and infrastructural resources. As routine, repetitive, and time-intensive clerical tasks become increasingly automated whether identifying defective filings, generating notices, updating cause lists, or managing digital records court personnel are empowered to focus on qualitative, human-centric responsibilities such as litigant support services, coordination with legal aid mechanisms, and ensuring accessibility for vulnerable populations. The cumulative impact of this Artificial Intelligence-driven ecosystem is a judiciary that operates with heightened consistency and procedural uniformity, as standardized digital workflows minimize discretionary variation and reduce the likelihood of administrative errors that often result in costly delays. At the same time, these systems are designed with built-in compliance safeguards, audit trails, and transparency protocols to ensure that algorithmic decisions remain accountable, explainable, and subject to judicial oversight, thereby maintaining the integrity and legitimacy of the justice process. Far from replacing human judgment, Artificial Intelligence serves as a force multiplier an intelligent support layer that frees judges from administrative clutter and allows them to devote more attention to nuanced legal reasoning, empathetic engagement with parties, and the

principled application of constitutional values. In this technologically empowered judiciary, efficiency is no longer at odds with fairness; rather, both are strengthened by intelligent automation that anticipates administrative challenges, removes procedural friction, and creates a seamless, citizen-centric judicial experience. By fostering greater speed, accuracy, and accessibility, the full deployment of Artificial Intelligence in judicial administration marks a decisive step toward a justice delivery system that is not only faster and more efficient but also more equitable, transparent, and responsive to the evolving needs of society.

3

Enhancing Judicial Decision Support and Research:

Artificial intelligence is rapidly transforming the judicial ecosystem by functioning as an indispensable, always-available assistant to judges, lawyers, court administrators, and legal researchers, thereby substantially elevating both the efficiency and quality of justice delivery. Within this evolving landscape, advanced Natural Language Processing (NLP) systems empower legal professionals to access, analyse, and interpret massive repositories of case law, statutes, rules, and legal precedents with remarkable speed and precision, tasks that historically demanded extensive manual effort and considerable time. By instantly scanning vast legal databases and generating concise, context-aware summaries, Artificial intelligence-driven research tools drastically reduce the cognitive burden on judges, enabling them to focus more deeply on nuanced legal reasoning rather than the mechanical aspects of document review. These tools do not merely retrieve information; they also highlight semantic connections between decisions, detect subtle doctrinal shifts, and provide comparative insights across jurisdictions, permitting judges to perceive the broader legal landscape while still grounding their analysis in precise, relevant authority. A particularly impactful capability of such systems is their use of pattern recognition and statistical modelling to identify trends in past judgments, especially in

³ 1. *Artificial Intelligence and Legal Analytics* - Kevin D. Ashley (Cambridge University Press).

2. *The Reform of the Indian Judicial System* - Arun Mohan.

3. *Artificial Intelligence: Law and Policy* - W. Nicholson Price II, I. Glenn Cohen & Others.

4. *Digital Justice: Technology and the Internet of Disputes* - Ethan Katsh & Orna Rabinovich-Einy.

5. *Artificial Intelligence and Human Rights* - Edited by Wolfgang Benedek, Matthias C. Kettemann.

6. Ashley - AI and Legal Analytics.

7. Arun Mohan - Reform of Indian Judicial System.

sentencing or bail decisions, thereby supporting consistency and transparency across the judiciary. It is crucial to emphasize that these Artificial intelligence-based Decision Support Systems do not and should not dictate outcomes; instead, they serve as augmentation mechanisms offering analytical perspectives, flagging overlooked precedents, and presenting structured summaries while ensuring the human judge remains the final and ultimate arbiter. The technological transformation of courts in India has been further propelled by the Digital Courts initiative, which seamlessly integrates speech technologies and multilingual translation tools into the daily workflow of judicial officers. Voice-to-text engines such as ASR-SHRUTI enable judges to dictate orders, case notes, and entire judgments orally, with the system converting spoken language into highly accurate, legally coherent text almost instantaneously, thereby eliminating delays associated with manual typing or stenographic transcription. This voice-based workflow is especially valuable in high-volume courts where judges may dictate dozens of orders each day and where even minor gains in workflow efficiency can collectively result in significant systemic improvement. Complementing these dictation capabilities are sophisticated translation tools like PANINI, which automatically translate legal documents, judgments, affidavits, and filings into all major Indian languages with careful attention to legal terminology and contextual equivalence. This multilingual empowerment is transformative in a country as linguistically diverse as India, where litigants often struggle to understand legal documents written in languages not spoken locally. By breaking long-standing language barriers, Artificial intelligence-powered translation ensures that access to justice becomes more inclusive, transparent, and citizen-centred. Together, ASR-SHRUTI and PANINI contribute to a more accessible courtroom environment, enabling litigants, lawyers, and judges from varied linguistic backgrounds to communicate and comprehend legal material effortlessly, thereby harmonizing procedural efficiency with constitutional ideals of fairness and equality. Beyond these immediate advantages, Artificial intelligence systems also support administrative digitization through automated scheduling, case categorization, and document indexing, which helps courts manage burgeoning caseloads and reduces delays that have plagued the justice system for decades. The integration of Artificial intelligence into the judicial workflow also holds pedagogical value: judges in training and young legal practitioners can use intelligent research assistants to explore case patterns, understand doctrinal

evolution, and develop stronger analytical skills. Moreover, by reducing repetitive tasks, Artificial intelligence allows judicial officers to allocate more time to substantive legal deliberation, courtroom interaction, and the drafting of higher-quality, well-reasoned judgments. At the systemic level, the growing use of AI fosters a culture of data-driven governance within the judiciary, enabling administrators to pinpoint backlogs, assess resource allocation needs, and design policy interventions grounded in empirical evidence. Transparency increases when litigants, lawyers, and the public can view patterns in case management and judgment timelines. Ultimately, Artificial intelligence in judicial decision support represents not a shift of authority from humans to machines but the creation of a collaborative framework where technology strengthens human judgment, ensures consistency without rigidity, promotes accessibility without compromising accuracy, and accelerates processes without undermining fairness.

4

Addressing Accessibility and Public Engagement:

The future judiciary is increasingly defined by a transformation toward accessibility, transparency, and user-centric service delivery, driven by the integration of artificial intelligence and digital court infrastructure, and this shift is fundamentally reshaping how litigants, lawyers, and the broader public interact with the justice system. As Artificial intelligence-enabled chat-bots, virtual assistants, and automated support tools become embedded in court portals, they provide real-time, round-the-clock assistance that demystifies the legal process for individuals who may have previously found it intimidating or opaque. These tools offer clear guidance on procedural requirements, filing deadlines, case status updates, and documentation standards, significantly reducing the informational barriers that have historically impeded effective participation in judicial

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1. Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age – Kevin D. Ashley.
 2. The Indian Legal System: An Enquiry – J. N. Pandey / or E-Courts Project Reports (Government of India).
 3. SUPACE & SUVAS Official Documentation (Supreme Court of India).
 4. The Future of the Professions: How Technology Will Transform the Work of Human Experts – Richard & Daniel Susskind.
 5. Artificial Intelligence in the Judiciary: Comparative Perspectives and Case Studies – Edited or compiled works by legal scholars (e.g., Springer/Elsevier publications).
 6. NITI Aayog – National Strategy for Artificial Intelligence (2018 & updates).
 7. Reports by Vidhi Centre for Legal Policy (New Delhi).

proceedings, especially for self-represented litigants and people unfamiliar with formal legal frameworks. The full deployment of e-Filing systems and virtual court platforms further furthers this democratization of justice by making court services location-agnostic people can file petitions, upload documents, pay fees, and attend hearings without needing to travel to physical court complexes, a shift that is particularly impactful in countries with vast geographic disparities and underserved rural or remote regions. Artificial intelligence-powered enhancements such as secure video conferencing, real-time transcription, automated translation, and evidence-management tools help ensure that virtual hearings maintain the same procedural robustness as in-person hearings while increasing efficiency and reducing delays. This digital evolution is transformative for routine or high-volume matters such as traffic violations, minor disputes, and administrative appeals, where virtual courts allow cases to be resolved efficiently without physical appearances, freeing traditional courtrooms to focus on more complex matters and drastically reducing the time, cost, and logistical burdens faced by litigants. For individuals who previously lost wages, incurred travel expenses, or faced mobility challenges when attending court, these innovations offer newfound convenience and fairness, strengthening the judiciary's role as an accessible public service rather than a distant institution. As digital literacy grows and courts continue investing in intuitive platforms, multilingual interfaces, and inclusive design, people from diverse socio-economic backgrounds gain the ability to participate meaningfully in proceedings, request legal information, and understand their rights. Furthermore, the transparency enabled by online hearings, digital cause lists, searchable judgments, and Artificial intelligence-supported case-tracking systems enhances public trust by ensuring that judicial processes are visible, predictable, and easier to understand. Importantly, these technological advancements also support legal professionals by streamlining administrative work, reducing paperwork, and improving case management accuracy, thereby allowing judges and lawyers to focus more on substantive legal reasoning rather than clerical tasks. The cumulative impact of these innovations is a justice system that operates more efficiently, serves citizens more equitably, and aligns more closely with the constitutional vision of "access to justice" as a fundamental right. By ensuring that geographic location, economic constraints, or lack of legal knowledge no longer serve as barriers to seeking redress, the digital judiciary reinforces democratic values, empowers marginalized communities,

and sets a precedent for a more inclusive and responsive legal ecosystem. In essence, the future of the judiciary lies in a harmonized blend of human judgment and technological capability, where Artificial intelligence and digital tools act as facilitators rather than replacements, enhancing the reach, effectiveness, and fairness of judicial services. Through on-going innovation, ethical regulation, and user-centric design, this transformative shift promises a justice system that is not only faster and more efficient but also genuinely accessible to every citizen, thereby fulfilling the constitutional mandate of equal and meaningful access to justice for all.⁵

Critical Challenges and the Ethical Imperative:

The rise of artificial intelligence within judicial and legal ecosystems offers immense possibilities, yet it also brings forth a series of critical challenges that collectively underscore an urgent ethical imperative to rethink how technology is designed, deployed, monitored, and governed in contexts where justice, fairness, and human dignity are at stake, and these challenges must be continuously interrogated rather than treated as static obstacles. At the forefront lies the deep-rooted problem of algorithmic bias, a phenomenon emerging from the fact that Artificial intelligence models learn from vast amounts of historical data-data that, in societies marked by enduring socio-economic inequalities, caste-based discrimination, and entrenched gender hierarchies, naturally carries the imprint of prejudiced decision-making. When such datasets become the foundation for risk assessment tools, sentencing recommendations, or predictive systems used to forecast case outcomes or manage court workloads, the resulting Artificial intelligence judgments may unintentionally reinforce discriminatory patterns, penalizing already marginalized communities or amplifying disparities rather than mitigating them, thereby threatening the foundational principle of equality

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- ⁵ 1. Richard Susskind – *Online Courts and the Future of Justice* (2019), Author: Richard Susskind, Year: 2019.
 2. Richard Susskind – *Tomorrow's Lawyers: An Introduction to Your Future* (2nd ed., 2017), Author: Richard Susskind, Year: 2017.
 3. OECD – *Innovating Justice: People-Centred Justice and Legal Needs* (2020), Author: Organisation for Economic Co-operation and Development (OECD), Year: 2020.
 4. Benjamin Alarie, Anthony Niblett & Albert Yoon – *The Law of AI* (2024), Authors: Benjamin Alarie, Anthony Niblett, Albert Yoon, Year: 2024.
 5. UNDP – *Digital Strategy 2022–2025: People for 2030* (2022), Author: United Nations Development Programme (UNDP), Year: 2022.

before the law. Closely tied to concerns about fairness is the equally critical issue of transparency and explain ability; judicial decision-making commands the highest degree of accountability, and if an Artificial intelligence tool proposes a recommendation such as identifying a case as high-risk or suggesting an optimized hearing schedule the rationale behind that recommendation must remain comprehensible, traceable, and open to scrutiny by human judges, lawyers, and litigants. Without mechanisms that allow human overseers to audit how an algorithm processed data, which variables it weighted most heavily, and why it reached a given conclusion, trust in Artificial intelligence-mediated justice will erode, and the technology may appear as a “black box” whose inner workings are inaccessible to those responsible for upholding human rights and constitutional values. Additionally, as courts increasingly digitize filings, evidence records, and communication systems, safeguarding this sensitive judicial data from cyber threats becomes paramount, because any breach, manipulation, or unauthorized access could compromise not only individual privacy but also the integrity of legal proceedings; thus, a robust regulatory framework both technical and institutional is essential to ensure strong encryption standards, secure data storage, regular audits, institutional accountability, and strict oversight of third-party vendors who may be involved in managing court information systems. Equally urgent is the need to address the widening digital divide, a structural challenge that risks excluding large segments of the population from participating fully in an Artificial intelligence-enabled justice system. For litigants and lawyers in rural or economically disadvantaged areas, limited digital literacy, inadequate access to devices, and unreliable internet connectivity can transform technologically “advanced” reforms into unintended barriers, preventing them from filing cases electronically, attending virtual hearings, or accessing Artificial intelligence-driven legal assistance tools. In such a scenario, rather than democratizing justice, technology would deepen inequalities and privilege those who already possess resources and technological comfort. Therefore, any meaningful integration of Artificial intelligence into the judicial landscape requires a parallel investment in capacity-building, digital infrastructure, user-friendly interfaces, localized language support, and sustained community outreach to ensure that innovations truly serve the entire population rather than a technologically advantaged minority. Ultimately, the convergence of these ethical and structural challenges algorithmic bias, lack of transparency,

threats to data security, and the digital divide reinforces a vital truth: the adoption of Artificial intelligence in justice systems must be guided not merely by efficiency or modernization, but by a principled commitment to fairness, inclusivity, accountability, and the preservation of human oversight, ensuring that technology strengthens, rather than supplants, the moral foundations of judicial decision-making. ⁶

Conclusion:

The successful integration of artificial intelligence into India's judicial system is far more than a question of acquiring advanced technologies it is a transformative governance challenge that requires careful institutional planning, ethical foresight, and persistent political commitment to ensure that technology strengthens, rather than distorts, the administration of justice. As India stands at the cusp of a historic digital shift, the judiciary's forward-looking policies must place equal emphasis on technological innovation and systemic safeguards, ensuring that Artificial intelligence tools are deployed responsibly, transparently, and in full alignment with constitutional values. A central pillar of this future framework must be the establishment of mandatory, periodic, and independently supervised audits of all artificial intelligence systems used in courts. These audits should not merely examine technical accuracy, but must rigorously test for historical bias, discriminatory patterns, disparate impacts on marginalized communities, and unintended consequences in decision-support outputs. Such audits would ensure that the logic, training datasets, and outcomes of Artificial intelligence systems are continually updated to reflect not only legal requirements but also evolving societal expectations of fairness and equity. Equally critical is the creation of clear accountability mechanisms for algorithmic errors, ensuring that responsibility is traceable, remedies are accessible, and human oversight remains the ultimate safeguard against technological overreach. No Artificial

⁶ 1. Cathy O'Neil – *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (2016).

2. Frank Pasquale – *The Black Box Society: The Secret Algorithms That Control Money and Information* (2015).

3. Virginia Eubanks – *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (2018).

4. Mireille Hildebrandt – *Smart Technologies and the End(s) of Law* (2015).

5. UNESCO - *Recommendation on the Ethics of Artificial Intelligence* (2021).

intelligence system, regardless of sophistication, should ever be considered the final authority; instead, human judges must retain interpretive primacy, using Artificial intelligence insights as supportive tools rather than deterministic mandates. This demands legal provisions specifying the circumstances under which Artificial intelligence recommendations may be used, challenged, or disregarded, along with transparent documentation of the human-Artificial intelligence interaction in judicial reasoning. In addition, India must commit to a large-scale, long-term investment in capacity building, recognizing that the successful adoption of Artificial intelligence hinges on the digital confidence and technical literacy of judges, court staff, and lawyers. This includes structured training programs, continuous professional development modules, interdisciplinary workshops, and practical exposure to emerging technologies. Such programs should not merely teach technical operation but also address ethical implications, data governance, and the philosophical limits of automation in legal interpretation. As Artificial intelligence becomes embedded in tasks such as case categorization, predictive analytics for case prioritization, legal research, and drafting of routine documents, it will free human judges to concentrate on the deeply humanistic aspects of law moral reasoning, empathy, proportionality, and the interpretation of rights. This division of labour between human and machine envisions a judiciary where efficiency does not come at the cost of compassion, and where technological precision complements judicial wisdom. Looking ahead, India has the unique opportunity to design an Artificial intelligence-enabled judiciary that becomes a global benchmark, demonstrating how a developing nation with vast caseloads and resource constraints can harness technology without compromising due process or constitutional morality. Policymakers should therefore adopt a holistic regulatory framework that integrates data protection norms, open-source transparency standards, grievance redressed systems for Artificial intelligence-related complaints, and collaborations with academic institutions to create indigenous, context-sensitive Artificial intelligence models. Furthermore, public engagement and stakeholder consultation must be embedded into the reform process, ensuring that technological adoption in courts remains participatory and socially legitimate. Ethical review boards, judicial technology councils, and interdisciplinary oversight committees should be empowered to guide, monitor, and refine Artificial intelligence usage across all levels of the judiciary. Ultimately, the future of India's judicial system depends on

the creation of an intelligent, neutral, and reliable Artificial intelligence ecosystem that enhances access to justice, reduces delays, and strengthens legal certainty. When supported by strong governance, transparent design, and continuous human oversight, Artificial intelligence will not merely accelerate case disposal it will elevate the very quality of justice delivered. The vision of a successfully Artificial intelligence-integrated Indian judiciary is thus one where technology and humanity coexist in a carefully calibrated balance, ensuring that the timeless principles of fairness, equity, accountability, and human judgment remain at the heart of legal decision-making, even as the system embraces the most advanced tools of the digital age.⁷

⁷ **Susskind, Richard (2019).** *Online Courts and the Future of Justice*. Oxford University Press.

Surden, Harry (2014). *Machine Learning and Law*. Washington Law Review, Vol. 89.

Chandrachud, D. Y. (2020). *The Court and the Constitution of India: Summits and Shallows*. Oxford University Press.

SAME-SEX MARRIAGE AND HINDU PHILOSOPHY: A STUDY OF VIVAH AS SACRAMENT AND SOCIAL ORDER

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Abstract

In the Hindu tradition, marriage (vivah) is not a civil contract but a sanskar – a sacred rite that consecrates the stage of household life (grihasth asram) and sustains both the social order and the spiritual journey of individuals. Its central aim lies in the practice of dharm and the movement of the soul toward mokṣhya, rather than reproduction or sensual gratification. Philosophically, this union is grounded in the complementarity of puruṣ (male principle) and prakṛiti (female principle), symbolized in the figure of Ardhanariswar and reflected in the great epics and Puranic narratives.

Modern Hindu law reflects this continuity. The Act 25 of 1955 while introducing reforms such as monogamy and divorce, retained the sacramental essence of marriage by prescribing solemnization through customary rites and recognizing the parties as “bride” and “bridegroom.”

Against this background, contemporary claims for the recognition of same-sex marriage raise profound tensions. Constitutional guarantees of equality and dignity have expanded the scope of individual liberty, yet the extension of marriage to same-sex couples challenges the foundations of Hindu philosophy, statutory law, and social morality. This paper contends that marriage must remain a sacred union between man and woman – an institution that secures cultural continuity, preserves social stability, and directs human life toward liberation (mokṣhya).

Keywords: *Same-sex marriage, vivah, sanskar, dharm, mokṣhya, Hindu Marriage Act, constitutional morality*

Introduction

Marriage in Hindu jurisprudence has never been reduced to a private contract of mutual benefit. It is conceived as *vivah*—a *sanskar*, or sacred rite, that consecrates the stage of household life (*grihasth asram*) and upholds the moral and spiritual structure of society.¹ This institution sustains the three debts owed by every individual—to the gods, to the ancestors, and to teacher—through sacrifice, procreation, and service.² Without marriage, the cycle of duty (*dharm*) remains incomplete, and the individual's path toward liberation (*mokṣhya*) is disrupted.

Classical Hindu texts emphasize that marriage is primarily a partnership in *dharm*. The wife is described as *saha-dharmacariṇi*—the companion in duty—who shares in ritual obligations and religious merit.³ The *saptapadi* (seven steps taken during the wedding ritual) symbolizes fidelity, companionship, and joint commitment to spiritual and social responsibilities. Even where children are absent, the marriage retains its sacramental force because its essence lies in consecration, not reproduction.

The philosophical foundations of this conception are reflected in the natural order. Hindu metaphysics presents the universe as harmonized through the complementarity of *puruṣ* (male principle) and *prakṛti* (female principle).⁴ The iconic figure of Ardhanariswar—half male, half female—embodies the cosmic truth that creation and balance arise from union across difference, not sameness. This metaphysical principle mirrors biological reality: continuity of life depends on male-female complementarity.

Scriptural narratives consistently affirm this principle. The *Ramayāṇ* portrays Ram and Sita as the epitome of conjugal fidelity and duty. The *Siva Purāṇ* recounts the marriage of Shiv and Parvati as the balancing of divine energies. The *Bhagavat Purāṇ* venerates the divine love of Radha and Kṛṣṇa as the highest symbol of

¹ P.V. Kane, *History of Dharmashastra*, Vol. II, Part I (Bhandarkar Oriental Research Institute, 1974), at 556.

² *Manusmṛiti* VI.35–37 (trans. G. Bühler, *Sacred Books of the East*, Vol. 25, 1886).

³ *Manusmṛiti* IX.45–96.

⁴ S. Radhakrishnan, *Indian Philosophy*, Vol. I (Oxford University Press, 1923), at 259.

devotion.⁵ Even extraordinary episodes, such as Draupadi's marriage to the five Paṇḍavas, or Arjuna's temporary life as Bṛhannala, do not sanctify same-sex marriage as *vivah*. Tradition has consistently viewed marriage as a man-woman sacrament.

Modern legislation reflects this continuity. The Act 25 of 1955 modernized Hindu law by abolishing polygamy, introducing divorce, and ensuring gender equality, yet it preserved the sacrality of marriage. Section 7 of the Act requires solemnization through customary rites and ceremonies, including the *saptapadi*.⁶ The statute refers to the parties as "bride" and "bridegroom," reaffirming that the legal framework recognizes only heterosexual marriage.

The Constitution of India, however, has broadened the scope of personal liberty and dignity. In a case the Court recognized the rights of transgender persons, holding that Article 21 protects the freedom of self-identification.⁷ In *Navtej Singh case*, consensual same-sex intimacy was decriminalized by reading down Section 377 of the Penal Code, with the Court emphasizing that constitutional morality must prevail over social morality.⁸ More recently the Court acknowledged the dignity of same-sex couples but declined to recognize same-sex marriage, leaving the matter to Parliament.⁹

These rulings highlight the tension between expanding constitutional liberties and preserving cultural traditions. Hindu philosophy maintains that liberty (*svatantrata*) must be guided by *dharm*. Freedom without discipline degenerates into *adharm*, leading to disorder and social decline.¹⁰ The *Bhagavad Gita* warns that those who act contrary to scriptural injunctions lose direction and bring about decay.¹¹

⁵ *Vālmīki Rāmāyaṇa*, Ayodhyākāṇḍa; *Śiva Purāṇa*, Rudra Saṁhitā; *Bhāgavata Purāṇa*, Book X.

⁶ Hindu Marriage Act, 1955, § 7.

⁷ *NALSA v. Union of India*, (2014) 5 SCC 438.

⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁹ *Supriyo v. Union of India*, 2023 SCC OnLine SC 1387.

¹⁰ Arvind Sharma, *Hinduism and Its Sense of History* (Oxford University Press, 2003), at 117.

¹¹ *Bhagavad Gītā*, Ch. 16, Verses 23–24 (trans. Swami Gambhirananda, Advaita Ashrama, 1995).

This article addresses the question of same-sex marriage by examining it through the lens of Hindu philosophy, statutory law, and constitutional morality. It argues that while individual liberty deserves protection, equating same-sex relationships with *vivah* would dilute the sacramental meaning of marriage, undermine social morality, and disturb the balance between law, culture, and nature. The paper concludes that marriage, in Hindu philosophy and law, must remain a sacred partnership between man and woman—anchoring society, preserving cultural continuity, and directing life toward liberation.

Hindu Philosophical Foundations of Marriage

Hindu philosophy situates marriage within the broader framework of *sanskaras*, the rites of passage that sanctify human life. Among the sixteen *sanskaras*, *vivah* occupies a pivotal position because it initiates the householder's stage (*grihasth asram*), which in turn sustains the other stages of life.¹² Through this institution, the individual becomes capable of fulfilling obligations not only to family and society but also to the divine and the ancestral realm.¹³

The fundamental purpose of *vivah* is the pursuit of *dharm*. Unlike contractual arrangements in other legal traditions, Hindu law treats marriage as a sacred partnership, binding husband and wife in spiritual and moral duty.¹⁴ The wife is described in classical texts as *saha-dharmacariṇi*—the co-participant in duty—emphasizing that her role is not secondary but indispensable.¹⁵ Rituals such as the *saptapadi* (seven steps) and the recitation of Vedic hymns consecrate this union, marking it as a journey of two souls bound in mutual responsibility.

The Vedas and Dharmasastras affirm that marriage is essential for completing the cycle of debts. The debt to ancestors (*pitṛa hṛiṇa*) is discharged through children; the debt to the gods (*deva hṛiṇa*) through sacrifices; and the debt to society (*rṣi*

¹² P.V. Kane, *History of Dharmashastra*, Vol. II, Part I (Bhandarkar Oriental Research Institute, 1974), at 556.

¹³ *Manusmṛiti* VI.35–37 (trans. G. Bühler, *Sacred Books of the East*, Vol. 25, 1886).

¹⁴ J.D.M. Derrett, *Religion, Law and State in India* (Oxford University Press, 1968), at 210.

¹⁵ *Manusmṛiti* IX.45–96.

hṛiṇa) through service and learning.¹⁶ The *gṛihasth* stage thus becomes the foundation for sustaining cosmic and social balance. Without marriage, the performance of ritual duties remains incomplete, and the individual's progress toward liberation (*mokṣhya*) is hindered.

Philosophically, marriage represents the harmony of male and female energies. The universe itself is structured upon the complementarity of *puruṣ* (spirit, male principle) and *prakṛti* (matter, female principle).¹⁷ This metaphysical vision is personified in the image of Ardhanariswar, where Shiv is depicted as half male and half female, illustrating that completeness arises only through union across difference.¹⁸ In this way, Hindu thought connects human marriage with cosmic balance, making *vivah* more than a social arrangement: it becomes a reflection of the natural and divine order.

The epics and Puraṇas reinforce this conception through narrative. The *Ramayana* presents Ram and Sita as embodiments of fidelity and dharm. The *Shiv Puraṇ* recounts the marriage of Shiv and Parvati as a union that restores cosmic equilibrium. The *Bhagavat Puraṇ* exalts the divine love of Radha and Kṛiṣṇa, symbolizing the interplay of devotion and grace.¹⁹ Even exceptional episodes, such as Draupadi's marriage to the five Paṇḍavas or Arjuna's life as Bṛhannala, remain situated within a male-female framework. At no point do these texts present same-sex unions as *vivah*.

Thus, the Hindu conception of marriage is rooted in philosophy, ritual, and cosmology. It is not merely a private arrangement but a sacred institution designed to uphold social morality, cosmic order, and spiritual progress. To redefine this institution outside its male-female complementarity would not only disrupt its philosophical foundation but also weaken its role as a pillar of both social and spiritual life.

¹⁶ Patrick Olivelle, *The Āśrama System: The History and Hermeneutics of a Religious Institution* (Oxford University Press, 1993), at 98.

¹⁷ S. Radhakrishnan, *Indian Philosophy*, Vol. I (Oxford University Press, 1923), at 259.

¹⁸ Stella Kramrisch, *The Presence of Śiva* (Princeton University Press, 1981), at 148.

¹⁹ *Vālmiki Rāmāyaṇa*, Ayodhyākāṇḍa; *Śiva Purāṇa*, Rudra Saṁhitā; *Bhāgavata Purāṇa*, Book X.

Hindu Marriage in Statutory Law

The codification of Hindu personal law in the mid-twentieth century marked a significant shift in legal history. The Act 25 of 1955, enacted as part of the larger program of Hindu Code Bills, introduced wide-ranging reforms to harmonize ancient traditions with the requirements of a modern constitutional democracy.²⁰ Yet, despite innovations such as monogamy, divorce, and gender equality, the Act retained the essential character of marriage as a sacrament rather than a contract.

Section 5 of the Act prescribes the conditions for a valid marriage. These include monogamy, soundness of mind, and minimum age requirements for the bride and groom.²¹ Crucially, the language of the statute refers consistently to “bride” and “bridegroom,” reaffirming that marriage is understood in heterosexual terms. This drafting choice is not incidental; it reflects the continuity of Hindu jurisprudence, which always conceived marriage as a union between man and woman.

Section 7 further emphasizes the religious and ritual dimension of marriage. It provides that a Hindu marriage is solemnized only when performed in accordance with the customary rites and ceremonies of either party.²² Among these ceremonies, the *saptapadi*—the seven steps taken together by the couple around the sacred fire—is recognized as particularly significant. Once the seventh step is taken, the marriage becomes legally binding.²³ By enshrining ritual solemnization into statutory law, Parliament reinforced the understanding of marriage as a sacred act rooted in tradition.

The Act also made room for reform without abandoning sacramentality. Section 13 introduced divorce on specified grounds such as cruelty, desertion, and adultery, marking a departure from the earlier conception of indissoluble union.²⁴ However, this reform does not transform marriage into a purely contractual

²⁰ Derrett, J.D.M., *Religion, Law and State in India* (Oxford University Press, 1968), at 213.

²¹ Hindu Marriage Act, 1955, § 5.

²² Hindu Marriage Act, 1955, § 7.

²³ *Saptapadi* provision recognized in Hindu Marriage Act, 1955, § 7(2).

²⁴ Hindu Marriage Act, 1955, § 13.

arrangement. The law still conceives of marriage as a union sanctified by ritual, whose dissolution is permitted only under exceptional circumstances.

Judicial interpretation has confirmed this perspective. In a famous case, the Supreme Court held that a valid Hindu marriage can exist only between a man and a woman, as reflected in the statutory framework.²⁵ Similarly, in another case, the Court reiterated that marriage under Hindu law remains rooted in customary rites and religious practices.²⁶ These rulings illustrate that the judiciary views marriage not simply as a civil institution but as one intimately tied to religious tradition.

Thus, the Act 25 of 1955 represents both continuity and reform. It modernized Hindu family law while preserving the sacramental essence of marriage. The consistent reference to “bride” and “bridegroom,” the statutory recognition of customary rituals, and the judiciary’s interpretation all affirm that, in law as in philosophy, Hindu marriage is fundamentally a sacred union between man and woman. To redefine it beyond this framework would not only contradict statutory provisions but also destabilize the delicate balance between law, culture, and social morality.

Constitutional Morality and Judicial Developments

The Constitution of India guarantees equality, liberty, and dignity through its fundamental rights framework, particularly Articles 14, 15, 19, and 21.²⁷ These provisions have become the foundation of progressive jurisprudence, enabling the courts to expand individual freedoms in line with evolving social realities. Central to this interpretive tradition is the doctrine of constitutional morality, a concept first emphasized by Dr. B.R. Ambedkar during the Constituent Assembly debates.²⁸ Ambedkar argued that while social morality is shaped by prevailing customs and beliefs, constitutional morality requires adherence to the values enshrined in the Constitution, even if they conflict with majority opinion. Without this, he cautioned, the Constitution itself would remain a mere parchment.

²⁵ *Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530.

²⁶ *A. Subash Babu v. State of Andhra Pradesh*, (2011) 7 SCC 616.

²⁷ Constitution of India.

²⁸ Constituent Assembly Debates, Vol. VII (4 November 1948), speech of Dr. B.R. Ambedkar.

The Supreme Court has invoked this principle in several landmark cases. The Court recognized the rights of transgender persons to self-identify their gender and directed the State to provide equal protection and welfare measures.²⁹ By reading dignity and autonomy into Article 21, the Court expanded the scope of equality under Article 14.

In another case, the Court decriminalized consensual homosexual relations by reading down Section 377 of the Indian Penal Code.³⁰ The judgment highlighted that sexual orientation is intrinsic to identity and that criminalization of private same-sex conduct violated dignity, privacy, and equality. The Court declared that constitutional morality, not public opinion, must guide judicial interpretation in matters of individual rights.

Most recently the Court confronted the demand for recognition of same-sex marriage.³¹ While affirming the dignity of same-sex couples and their freedom to cohabit, the Court declined to extend marriage rights, holding that this question required legislative deliberation. The judgment reflects judicial restraint, recognizing that marriage in India is not merely a private contract but a cultural and religious institution deeply embedded in social morality.

This jurisprudence highlights an important tension. Constitutional morality seeks to safeguard individual rights, but Hindu philosophy emphasizes that liberty (*svatantrata*) must remain guided by *dharm*. Freedom without discipline risks collapsing into *adharm*, destabilizing both individual and society.³² The *Bhagavad Gita* cautions that those who disregard scriptural injunctions lose spiritual direction and invite social decay.³³

Thus, while constitutional morality rightly protects individuals from discrimination, it does not mandate the redefinition of marriage. The dignity of same-sex couples can be secured through anti-discrimination measures without

²⁹ *NALSA v. Union of India*, (2014) 5 SCC 438.

³⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

³¹ *Supriyo v. Union of India*, 2023 SCC OnLine SC 1387.

³² Arvind Sharma, *Hinduism and Its Sense of History* (Oxford University Press, 2003), at 117.

³³ *Bhagavad Gītā*, Ch. 16, Verses 23–24 (trans. Swami Gambhirananda, Advaita Ashrama, 1995).

altering the sacramental essence of *vivah*. In this respect, the Supreme Court's decision in *Supriyo* strikes a careful balance: it affirms liberty while leaving the transformation of marriage law to Parliament, the forum best equipped to consider cultural, religious, and social dimensions.

Same-Sex Marriage in India: Challenges and Possibilities

The debate on same-sex marriage in India presents one of the most contested intersections between constitutional rights and cultural philosophy. While individual liberty and dignity are protected by law, the extension of these principles to redefine marriage raises profound challenges. Hindu philosophy, natural order, scriptural tradition, and social morality all converge to present obstacles to the recognition of same-sex marriage as *vivah*.

A. Philosophical Challenge

Hindu thought regards marriage not as a contract but as a *sanskar*, a rite of passage that consecrates the *grihasth asram*.³⁴ Its essential purpose lies in the performance of *dharm* and the pursuit of *mokṣhya*. Marriage is conceived as a partnership in religious duty, with the wife described as *saha-dharmacarini*, or companion in spiritual responsibility.³⁵ Same-sex unions, by lacking male-female complementarity, cannot fulfill this sacramental purpose. They cannot embody the metaphysical principle that husband and wife are two halves of one whole, bound together in both ritual and cosmic duty.

B. Natural Challenge

Nature itself demonstrates that the continuation of life depends on male-female union.³⁶ While variations exist among certain species, these anomalies do not disprove the fundamental law of complementarity. Hindu metaphysics reflects this natural order through the interplay of *puruṣ* (male principle) and *prakṛiti* (female principle), symbolized in Ardhanariswar.³⁷ To extend marriage to same-

³⁴ P.V. Kane, *History of Dharmashastra*, Vol. II, Part I (Bhandarkar Oriental Research Institute, 1974), at 556.

³⁵ *Manusmṛti* IX.45-96 (trans. G. Bühler, *Sacred Books of the East*, Vol. 25, 1886).

³⁶ Edward O. Wilson, *Sociobiology: The New Synthesis* (Harvard University Press, 1975), at 145.

³⁷ Stella Kramrisch, *The Presence of Śiva* (Princeton University Press, 1981), at 148.

sex unions would invert this balance, disrupting both natural harmony and social stability.

C. Scriptural Challenge

Scriptures and mythology consistently portray marriage as a man–woman sacrament. The *Rigved* contains marriage hymns blessing the union of bride and groom.³⁸ The *Ramayan* celebrates Ram and Sita as ideals of fidelity and *dharm*. The *Shiv Puraṇ* depicts the union of Shiv and Parvati as the reconciliation of cosmic energies, while the *Bhagavat Puraṇ* venerates the divine love of Radha and Kṛiṣṇa.³⁹ Even exceptional cases, such as Draupadi’s marriage to the Paṇḍavas, occur within a male–female framework. None of these sources recognize same-sex marriage as a sacrament capable of leading toward purity or liberation.

D. Social Challenge

Marriage forms the foundation of family, which is the first unit of social order. By sanctifying the male–female union, it provides a framework for continuity, discipline, and moral instruction. Recognition of same-sex marriage would weaken this foundation by detaching marriage from its natural and spiritual roots. It would also complicate legal questions relating to parenthood, succession, guardianship, and adoption.⁴⁰ Hindu philosophy warns that when *dharm* declines and *adharma* rises, disorder follows.⁴¹ To redefine marriage would risk moral uncertainty, undermining the welfare of society.

E. Constitutional Challenge

Supporters of same-sex marriage rely on constitutional principles of equality and dignity. Articles 14, 15, 19, and 21 are invoked to argue that excluding same-sex couples from marriage is discriminatory.⁴² However, constitutional morality cannot be read in isolation from cultural traditions. The Supreme Court affirmed the dignity of same-sex couples but refused to create a right to same-sex marriage, holding that Parliament is the appropriate body to deliberate on such a

³⁸ *Rgveda* X.85.

³⁹ *Vālmiki Rāmāyaṇa*, Ayodhyākāṇḍa; *Śiva Purāṇa*, Rudra Saṁhitā; *Bhāgavata Purāṇa*, Book X.

⁴⁰ J.D.M. Derrett, *Religion, Law and State in India* (Oxford University Press, 1968), at 214.

⁴¹ *Bhagavad Gītā*, Ch. 4, Verses 7–8 (trans. Swami Gambhirananda, Advaita Ashrama, 1995).

⁴² Constitution of India,

transformation.⁴³ This recognition of institutional limits highlights that marriage, unlike other rights, is deeply entwined with culture and religion.

F. Limited Possibility

Hindu tradition has long tolerated diversity of practice, and same-sex relationships may exist privately within the domain of personal liberty. Protection from discrimination or violence is consistent with constitutional guarantees and Hindu pluralism. Yet, equating such relationships with *vivah* would distort its sacramental meaning. At most, legislative recognition of civil unions could provide limited rights without redefining marriage itself. This approach would safeguard liberty while preserving the spiritual and cultural essence of marriage.

Conclusion

Hindu philosophy locates marriage (*vivah*) within the larger framework of *sanskaras*, consecrating it as a sacred duty that sustains social order and guides the individual toward liberation (*mokṣhya*).⁴⁴ Unlike contractual unions, it is a spiritual partnership in which man and woman share responsibility for *dharm*, symbolized in rituals such as the *saptapadi* and expressed in the idea of the wife as *sahadharmaçariṇi*.⁴⁵ This vision, deeply rooted in metaphysics and scripture, affirms male-female complementarity as essential to both natural balance and spiritual fulfillment.

The statutory framework reflects this continuity. The Act 25 of 1955 while reforming Hindu personal law, retained marriage as a sacrament by requiring customary solemnization and defining spouses as “bride” and “bridegroom.”⁴⁶ Judicial interpretation has likewise emphasized that a valid Hindu marriage presupposes a man-woman union.

Constitutional jurisprudence has expanded liberty through judgments.⁴⁷ Yet even as dignity and equality are advanced, the courts have recognized that redefining

⁴³ *Supriyo v. Union of India*, 2023 SCC OnLine SC 1387.

⁴⁴ P.V. Kane, *History of Dharmashastra*, Vol. II, Part I (BORI, 1974), at 556.

⁴⁵ *Manusmṛti* IX.45-96.

⁴⁶ Hindu Marriage Act, 1955, §§ 5-7.

⁴⁷ *NALSA v. Union of India*, (2014) 5 SCC 438; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; *Supriyo v. Union of India*, 2023 SCC OnLine SC 1387.

marriage lies beyond judicial power. Liberty cannot be detached from *dharm*. Freedom without discipline risks *adharm* and social disorder. The *Bhagavad Gita* itself cautions against acting contrary to scriptural injunctions.⁴⁸

Same-sex relationships may deserve tolerance and protection from discrimination, but elevating them to the status of *vivah* would distort its sacramental meaning and weaken its social foundation. A distinction must therefore be maintained between protecting private liberty and redefining sacred institutions.

India stands at a crossroads where constitutional principles and cultural traditions must be harmonized. The path forward lies in affirming the dignity of individuals while preserving marriage as a sacred union of man and woman—a union that secures cultural continuity, nurtures social stability, and directs human life toward its ultimate goal of liberation (*mokṣhya*).⁴⁹

⁴⁸ *Bhagavad Gītā*, Ch. 16, Verses 23–24.

⁴⁹ J.D.M. Derrett, *Religion, Law and State in India* (OUP, 1968), at 214.

WHY DELHI WANTS TO SHIFT TIHAR JAIL: HUMAN RIGHTS CONCERNS

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Abstract

This paper is devoted to explore the life of jail inmates in the light of their empowerment. The paper will also highlight the constitutional provisions regarding jail reform in India. The paper will discuss about the structure of Indian prison system and the policies that has been started for the reformation of the prisoners, so that they may become part of the society. The role of prisons has radically changed over the years and now they are no longer regarded as mere custodial institutions. Prisons are now the place, where the inmates are lodged not as a forgotten or forsaking members of the society but as human beings who have to go out into their surroundings and well behaving. The paper will discuss the conditions of women in the prison. Indian prisons have a long history of brutal and inhumane treatment of women jail inmates. Most women in prison are from underrepresented communities like the Dalits, Adivasis and other minority group putting them susceptible to abuse and exploitation. Now there are many reforms are done in the light of societal change. In rapidly changing socio-economic conditions of a country like India, how prisoners are treated has been a topic of discussion throughout the entire world. The Paper seeks to prove that notwithstanding many changes has been done in our laws but the problem is not solved yet. The Paper will highlight the loopholes in laws and the most importantly the paper will describe the impact on society also. In a just social order, every societal member has some basic rights, opportunities and the paper will discuss their role also. The paper will highlight on the future directions for prison reform. It will help to know how international support and partnership can share best practices and learn from other jurisdictions. The paper will discuss about the case laws regarding jail inmates in Tihar Jail in Delhi. The Indian courts have allegedly stated that it is necessary to acknowledge the rights of convicts and enhance their living conditions.

1. Introduction

Behind the walls of Tihar Jail in West Delhi, India's largest prison complex lies a world of contradiction. It is a place where hope and despair co-exist, where the boundaries between freedom and captivity blur.

Jail life is a complexity marked by cramped accommodation, security concern and poor living conditions. It is against this background that Delhi Chief Minister Rekha Gupta in her budget speech on 25th March 2025, proposed relocating the central jail to a new place, preferably, the city's outskirts. She even allocated Rs, 10 crores for the survey and consultancy service related to such a shift.

Delhi's iconic Tihar jail, one of the Asia's largest prison complexes, is under serious reconsideration by city planners and policymakers. This proposal comes from a mix of urgent challenges and forward-looking ambitions regarding prison reform, urban development and public safety.

2. Criminal Justice System

Every country has its own criminal justice system. Before the coming of British system, all criminal justice system was governed by the Muslim Law. During the early period of east India company, no changes were done in this system.

During the period of warren Hastings, the Britishers made many changes in Mohammedan law until the year 1862, when the criminal code was officially codified. Indian Penal code, 1860 was more extensive. Many offenders have escaped because of the loopholes in criminal system, victim' circumstances were never taken into consideration. The faith of the people in system was severely damaged.

3. Human Rights and Prison Reforms

Human rights are inherent entitlements that individuals enjoy only by virtue of their humanity. Natural rights refer to inherent rights that individuals hold by virtue of their existence, rather than as a result of legal provisions although it is considered that these rights are safeguarded by legal means. The rights in question are not bestowed upon individuals by any governing body, hence rendering them immune to revocation by any governing body, irrespective of

legislative measures enacted or the extent of force employed to uphold that legislation. Nevertheless, it is within the purview of governments to enact legislation aimed at safeguarding human rights. These rights encompass, as articulated by Thomas Jefferson, the entitlements to life, liberty, and the pursuit of happiness, as perceived through the lens of individual preferences.

4. The Indian Constitution and Prison Reforms

The Fundamental rights are outlined in Part III of the Indian Constitution. These are the fundamental human rights that are guaranteed to all citizens of India, regardless of their caste, gender, religious faith, or other identifying characteristics. Every person needs a certain set of fundamental rights and freedoms in order to live their life with dignity; these fundamental rights are collectively referred to as the Human Rights. The preamble of the Indian Constitution guarantees that all individuals inside the nation would be treated with dignity through upholding justice, freedom of thinking, freedom of faith and belief, and brotherhood¹. The Universal Declaration of Human Rights has India's signature as a signatory.

Articles 14 and 21 of the Constitution of India both guarantee citizens the right to receive free legal representation. Article 19 of the Constitution of India ensures that Indian citizens have a wide range of liberties. These freedoms are guaranteed to Indian citizens under the Constitution of India. As a result of their incarceration, a person loses the "freedom of movement, throughout the territory of India," "freedom to reside and to settle," as well as the "freedom to practice any profession", "occupation, trade or business." Among these freedoms, a prisoner is also deprived of the "freedom to practice any profession, occupation, trade or business." "However, even if they are incarcerated, inmates still have the right to "freedom of speech and expression," "freedom to become a member of an association," and the right to acquire, possess, and dispose of property, within the confines of the jail. An individual is shielded from ex post facto laws or retroactive criminal legislation by Article 20(1) of the Constitution of India. This provision ensures that a person is not punished for a crime that occurred in the past, even if they were found guilty of committing the crime and given a sentence for it after a

¹ Mahaworker. M.B., "Prison Management: Problems and Solutions", Kalpaz Publications, New Delhi, 2006.

trial. In other words, if a person committed a crime, but the court did not impose any conditions of harsh labour on them at the time of the crime, then those conditions cannot be the provision in Article 20(2) that no person shall be put into trouble twice, for the same offence, (rights against double jeopardy), also known as the principle of "*nemo debet vis vexari*", states that no one shall be forced into trouble twice, for the same offence.

Article 20(3) of the Constitution of India provides for the protection against "testimonial compulsion", which means that the protection against being forced to testify is only afforded to people who have been accused of committing a crime. Under this provision, one has the right not to incriminate. The specific protections for the preservation of prisoners' rights are outlined in Article 22. According to Article 22(1) of the Constitution of India, a detainee has the right to be inform about the reasons for arrest, in the event that he is being held in jail. According to this provision, the detainee also has the right to confer with and be represented in court by an attorney.

The Indian Constitution protects a variety of additional civil and political rights for its citizens, many of which are analogous to the rights outlined in the Universal Declaration of Human Rights. It was pointed out in the case of the Supreme Court that the UDHR may not be binding, but it demonstrates how India recognized the nature of human rights when the Constitution was being drafted.

5. Reasons for jail reformation

5.1 One jail to nine Prisons

Crime is the result of diseased mind and jail must create an environment of hospital for treated of this mind disease. One should always think that "Prisoner is a ward and not the slave of the state".²

Before 1958, a small jail was located in the Delhi Gate area. That year, the facility relocated to Tihar village in west Delhi and initially comprised a single prison capable of holding 1273 convicts. Until 1966, Punjab government oversaw Delhi's jails, after which control shifted to the Delhi Administration with the Punjab Jail

² Dr. W.C Wreckless in the Tamil Nadu Prison Reform Commission, Vol. II, Chapter XL, P 83.

Manual governing the capital's jails until April, 1988, when the Delhi Jail Manual was implemented.

As the prison population expanded, new facilities emerged and correctional staff grew. The jail complex underwent significant expansion between 1984 and 2017 and today has nine prisons. Central Jail Nos 8 and 9 were built in 2005 to house 600 inmates. To augment capacity, two other jails were also set up at Rohini in 2004 to lodge 1,050 prisoners and at Mandoli in 2008 for 3500 inmates.

Despite this addition, overcrowding in Tihar has been a longstanding problem, the jail having outgrown its original capacity. The rapid expansion of the city and the rise in crime and terrorism has put immense pressure on the facility and its inmates. Tihar jail was originally designed to accommodate around 5000 inmates. However, as of recent years, it regularly houses over 13000 prisoners which is more than twice its official capacity. Overpopulated prisons violate human right norms and make any attempt at prisoner reform ineffective.

5.2 Criminals in close Proximity

With so many livings cheek by jowl, a prison break is not the only risk faced by jail administration. Jail breaks took place in 1976, 1986 and 2015 but a more current apprehension is gang violence. Rival groups have frequently clashed at Tihar. Exploiting the security deficiencies, kingpin such as Chhota Rajan, Neeraj Bawana and many more, besides terrorists like Yasin Bhatkal and Tehsin Akhter have created a volatile atmosphere in the jail.

In 2023 and early 2024, gangsters Sunil Tajpuria and Prince Tewatia were murdered in jail, indicating major security lapses. Tajpuria had orchestrated the murder of his arch nemesis Jitender Gogi from within the jail walls. Individuals lodged in the super high-risk cells called the X ward, have similarly proved a huge challenge for the prison administration.

Corruption is also an attendant bane. From low-level graft which enables inmates to access unpermitted items, ranging from drugs to mobile phones to big bribes involving high profile inmates such as Sukesh Chandrasekhar, the jailers have not been immune to inducements.

5.3 Bigger Space, Safer Environment

While overcrowding is the primary reason, there are other factors too for looking at relocating the central jail. A significant concern, often turned out is the security risk posed by the jail's proximity to Indira Gandhi International Airport and other sensitive areas. The airport's proximity to the jail not only raises the possibility of escapes or prisoners being broken out by accomplices, it also presents dangers such as unauthorized access or smuggling of contraband. There is also the possibility of the jail's location being exploited by terrorists to hold hostages with the airport affording a quick getaway.

Outside the jail, the network jammers that have been deployed to prevent mobile phone use by inmates have plagued communications for the civilian residents of Janakpuri. Tihar could also pose sanitation and health hazards for residential areas and waterbodies in its vicinity. Numerous incidents of gang violence, smuggling of mobile phones and even murders inside the jail premises have highlighted the failure of existing security mechanisms.

5.4 Urbanization

Police officers and residents also point out that the area surrounding the jail is undergoing rapid urbanization. As it is, the jail, once on the periphery of urban Delhi, is now in the middle of it, with plans afoot for new residential and commercial development. Shifting the prison would address these concerns and ensure the safety of both inmates and neighboring communities.

Tihar Jail occupies over 200 acres of prime land in the national capital. Delhi's population and urban developers find this area as a potential space for expansion of public infrastructure and real estate development. Better planning of urban service can be done at this property.

To ease crowding in the existing facilities, new jails in Narela on the northern outskirts of the city and Baprola in southwest Delhi had been proposed earlier. The prison department has requested Delhi Development Authority to allocate 40 acres in Baprola village and is awaiting government notification for land acquisition. The Public work department recently started preliminary work on a jail in Narela at an estimated cost of Rs 99 crore. This prison designed like

Andaman's cellular jail will be spread over 40 acres and features a waterbody alongside one wing.

5.5 Vision for the reform-oriented prisons

Beyond solving current problems, the move to shift Tihar is a part of the broader vision to develop modern and reform-oriented prisons. New jail could incorporate advanced surveillance, vocational training centers, medical facilities and different barracks for different categories of inmates.

Such reform would align with the principles of the Bharatiya Suraksha Sanhita (BNSS) and Bhartiya Sakshya Adhinyam (BSA), which emphasis human dignity, reformative method and use of scientific technology in the criminal justice system.

In Charles Chopra's case the Supreme Court pointed out "prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement".³

5.6 Easy and Feasible

Finding a suitable site and building a new jail may take several years and throw up numerous challenges. For instance, the new jail may require an area of up to 500 acres, significantly more than the current 200 acres occupied by Tihar, nor will only the current jail population have to be accommodated, the facility must be future ready too.

Across the world, many prisoners are, in fact, located on urban outskirts. A number of prisons in the US have come up in rural or semi-rural areas, a trend that become more pronounced since the 1980s. Florence ADX, a US federal supermax prison in Colorado, is spread across 600 acres in the Rocky Mountains with nothing much around. The male only prison is reserved for the "worst of the worse".

5.7 Reform in the condition of women Prisoners

The women prisoners should be treated nicely and allowed to meet their children very frequent manner. This will help them to be medically fit and will impact

³ Charles Chopra v. The state of Bihar, W.P No. 4305 of 1978.

positively on them in their reformation. Particularly, the women who is victim of sex offences should be treated very generously and their children should be given equal rights in the society.

Although the population of women in prison is less than male but they actually face much societal rejection when they are in prison. Many women serve longer punishment because of lack of education and poor legal awareness. Women are not able to defend themselves and could not obtain benefits of legal aid also.

They have unaware of rules of remission and premature release and live at the mercy of jail officials. Women in prison have experience victimization, unstable family life, lack of education, physical and mental health abuse. Some women are pregnant when they come into prison that is a very challenging time for them physically as well as psychologically. The system responds them differently, therefore there is a need for gender sensitive treatment and services.

5.8 Inadequate Prison Programs

The government has applied some innovative initiatives in some prisons. For example, the Art of Living has been carrying out a SMART program in Tihar Jail. Two courses are annually conducted for prison staff. A Srijan project is also aimed at providing social rehabilitation. However, such programme is few and far now. Many prisons have vocational training activities, but these are often outdated. Hardly any prison has well planned activity. Imprisonment can be considered as the final stage of criminal justice system which start from commission of offence, investigation, bail provisions, trial.

6. Problems for implementing prison reforms

The Supreme Court has identified nine major problems for implementing prison reforms⁴. The Court observed that there are many problems in Indian prison system like

- a) Ill treatment with offenders
- b) Overcrowding
- c) Insufficient of food and clothing
- d) Negligence in hygiene

⁴ Ramamurthy v. State of Karnataka (1997) 2 SCC 642.

- e) Lack of health facility
- f) Deficiency in communication system
- g) Pendency of trial
- h) No frequent jail visit

7. Function of National Human Rights Commission on the condition of Prisons

Immediately after the commission was established, it issued directives to all of the state governments to make sure that any incidents of death in custody, rape, or inhumane, cruel, or degraded punishment by the law enforcement agency, judicial, or any other detaining authorities authorized to arrest and interrogate must be reported to the commission within 24 hours by the district magistrate or superintendent of police. If this is not done, the commission will presume that there was an attempt to suppress the incidents. Following these instructions, a number of reports of deaths that took place while individuals were in the custody of law enforcement or the legal system have been received from a variety of states. The commission read these reports and evaluated them, and as a result, they advised taking action against policemen who appeared to be guilty at prima facie. One very significant change that has occurred in this context is that authorities within the government have become more aware of the need to initiate disciplinary action against officials and to disclose occurrences of deaths that occurred in custodial settings to the commission.

8. Judicial Responses related to Tihar Jail

Sunil Batra v. Delhi Administration⁵, Sunil Batra, a prisoner in Tihar Jail, filed a writ petition by writing a letter to the Supreme Court alleging that prisoners were being brutally tortured by jail authorities. The Supreme Court held that prisoners have basic fundamental rights under article 21 even if they are behind the bar.

This case is a landmark case for recognizing prisoner's rights and initiating judicial monitoring of Tihar jail.

In Re- Inhuman conditions in 1382 Prisons⁶ the case was based on the pathetic

⁵ (1978) 4 SCC 494.

⁶ (2016) 3 SCC 700.

conditions in the Indian prisons, including Tihar Jail. The Supreme Court took suo motu cognizance and directed the Union and State governments to improve prison conditions, legal aid and medical care in jail premises.

Sheela Barse v. Union of India⁷ The case involved the condition of women prisoners in Tihar Jail. The Supreme Court held that women prisoners should be kept separately from male prisoners. They should be provided basic facility and legal aid.

Ramamurthy v. State of Karnataka⁸ the Supreme Court gave broad guidelines for prison reforms and strongly put emphasis on development of modern jail like Tihar.

Asif Iqbal Tanha v. State of NCT of Delhi⁹ in this case allegation of harassment and illegal surveillance of political activists was surfaced. They were imprisoned during anti-CAA protests.

Satyendra Jain v. Enforcement Directorate¹⁰ the case was related to the question of VIP treatment and corruption inside Tihar. Satyendra Jain, a Delhi Minister, was lodged in Tihar jail. CCTV footage showed preferential treatment to him.

9. New Tihar

Though there is no design yet, serving and retired officers conceptualize a greenfield prison as a facility for the times. It will likely feature modern, multi-level design with separate living units or pods to house smaller group of inmates. Each pod may have its own exercise yard, dayroom and support services, such as counselling officers and medical rooms. The use of modular, prefabricated cells might enhance security and reduce construction costs.

Living units would be designed with safety and supervision in mind with transparent walls, observation decks and secure doors. For example, the

⁷ (1986) 3 SCC 632.

⁸ (1997) 2 SCC 642.

⁹ (2021).

¹⁰ (2022).

Auckland South corrections facility in New Zealand features cutting edge elements like automated locking systems, motion sensors and energy efficient system.

Research Methodology

The study is doctrinal research based on primary and secondary sources with the comparative method and Analytical method.

10. Conclusion

The proposal to shift Tihar jail is not merely about relocation. It represents a shift in India's criminal justice priorities. From reactive punishment to proactive reform, the transformation of prison infrastructure is challenging. By enhancing security measures, enabling urban growth, Delhi may set a model for other states to follow.

As India moves forward with its new criminal law reforms, the fate of Tihar jail may very well symbolize the broader change the country seeks in its approach to justice and rehabilitation.

Life is not like an animal existence. The person behind the bar can not be denied the basic right which is essential for human existence. Article 21 of the Constitution of India guaranteed the right to life which is fundamental for human existence. A prisoner, if convicted, does not cease to be a human being. They also have same rights like another individual but some restrictions are there.

This precious right guaranteed by Article 21 of the constitution of India can not be denied to convict, under trial or other prisoners in custody, except according to the procedure established by law.¹¹

For a prisoner, the imprisonment itself is a punishment and thus, prisons are expected to be places of rehabilitation, not places where extra punishment is added which results into the violation of their human rights.

¹¹ Nilabati Behera v. State of Orissa (1993) 2 SCC 746 = AIR 1993 SC 1960.

THE DARK SIDE OF THE WEB: EXAMINING THE RISE OF CYBERBULLYING AND ONLINE HARASSMENT

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Abstract:

The rapid expansion of the growth of the internet has changed the modern lifestyle of the people, but with these good qualities, the internet came with many difficulties. Most notably online harassment and cyberbullying. This paper critically examines these issues, focusing on the impact of vulnerable groups like women, children, and marginalized groups. Online harassment is many types like cyberstalking, revenge porn, hateful speech, and trolling etc., while cyberbullying includes flaming, exclusion, harassment and spreading rumors. Victims suffer from severe mental anguish, emotional distress, and in extreme cases, may attempt to suicide. In India, cyberstalking and online harassment is rising. This paper review India's legal framework, including The Information Technology Act, The Bharatiya Nyaya Sanhita, The Protection of Children from Sexual Harassment, and The Sexual Harassment of Women at Workplace Act and these laws addresses offences like Stalking, Defamation, Criminal Intimidation, Identity Theft, Breach of privacy etc. This paper also introduces the need for a strict legal framework and the need for digital literacy and awareness among people. Collaborative efforts of government agencies, legal institutions, and digital platforms are essential for creating a safer environment for increasing internet threats nowadays. This paper concludes that, to effectively combat the expanding menace of cyberbullying and online harassment, and to provide protection to everyone, particularly vulnerable groups, a complete and perfect solution is needed for free from Internet threats in today's digital footprints era.

Keywords: Cyberbullying, Online Harassment, Cyberstalking, Digital Literacy, Information Technology Act, Bharatiya Nyaya Sanhita.

1. Introduction:

In the 21st century, the internet is our basic need. Without the internet we can't imagine our life. In every step of our life the internet helps us, like if we want to go anywhere we use Google maps to find the correct way to our destination. We required the internet among many other things for research, education, communication, e-commerce, online shopping, File transfer, cashless transactions, entertainment, e-news etc. The good qualities in the internet come with some hurdles for us like "Online Harassment" and "Cyberbullying". Online harassment is a broader term than Cyberbullying. Cyber bullying describes a wider variety of online harassment such as revenge porn and doxing, cyber stalking, false profile, and harassment and reputation attacks¹. Cyberbullying belongs to the deliberate and persistent mistreatment, frequently committed against minors and young adults, with the purpose of startling, dehumanizing and causing damage to the targets. Its involves tactics like Name-calling, Spreading untrue rumors, imitation and isolation are common strategies used with intention of causing mental anguish. Online harassment, on the other hand, is more a generic word that mentioned a variety of hostile and abusive online behaviors that impact peoples of any ages, including adults, prominent persons, celebrities, elderly people and marginalized groups.

2. Definitions of Online Harassment and Cyberbullying:

2.1 Online Harassment:

The freedom of individuals to exercise their rights online is severely curtailed by harassment, threats, and online violence, especially for marginalized and vulnerable groups like children, women and many more sexual minorities².

Online harassment occurs in many digital environments, but social media platforms are especially conducive to it. Victims of online harassment may have

¹ The CyberSmile Foundation, What is Cyberbullying?, available at- <https://www.cybersmile.org/advice-help/category/what-is-cyberbullying> (last visited on September 7, 2024).

² Media Defense, Online Harassment, Advanced Modules on Digital Rights and Freedom of Expression Online: Module 4- Privacy and Security Online, available at: <https://www.mediadefence.org/ereader/publications/advanced-modules-on-digital-rights-and-freedom-of-expression-online/module-4-privacy-and-security-online/online-harassment/> (last visited on September 8, 2024).

several repercussions in the real world, such as anxiety, negative publicity, mental or emotional distress, and many more. In addition, it can cause people to significantly self-censor to prevent experiencing this kind of harassment, where they are directly or indirectly impacted by it³.

While the internet provides a platform for people to express themselves and seek information about their identities and sexual orientation, many people also face a variety of attacks while doing so, such as attacks on their sexuality, the disclosure of private information, and the manipulation of images that are subsequently used as a form of blackmail or to undermine their credibility⁴. In addition, a prevalent practice among kids who use the internet is cyberbullying. According to the research, political opinions, physical appearance, gender bias, and ethnicity are among the most frequently targeted personal and physical attributes in online harassment.

Online harassment involving the public sharing photos of teenage girls and women is a very serious problem to our society. Attackers mainly wanted to target the most vulnerable group as women and girls. This type of harassment includes the unauthorized sharing of private images, morphing, doxxing leading to several psychological and social consequences for the victims.

2.2 Cyberbullying:

Cyberbullying occurs when someone purposely harms someone through digital footprints. According to Willard (2004), “cyberbullying can take different forms, ranging and flaming to harassment to cyberstalking.”⁵ This crime is committed through various social media sites for example: Facebook, Instagram and X etc⁶.

³ Ibid.

⁴ Ibid.

⁵ Willard, N. (2004), *Educator’s Guide to Cyberbullying: Addressing the Harm Caused by Online Social Cruelty*, (Online). available at:

https://www.researchgate.net/publication/265740573_Educator's_Guide_to_Cyberbullying_-_1_-

[_Educator's_Guide_to_Cyberbullying_Addressing_the_Harm_Caused_by_Online_Social_Cruelty/citation/download](https://www.researchgate.net/publication/265740573_Educator's_Guide_to_Cyberbullying_-_1_-) (last visited on September 9,2024).

⁶ Shivangi Gautam and Dr. Sapna Sharma, “Cyberbullying: Repercussions and Strategies for its Prohibition” Vol. 1, Issue 2, July-December 2023 (2024), available at- <https://research-communications.cmpcollege.ac.in/wp-content/uploads/2024/02/21-Shivangi-and-Dr.-Sapna-Sharma-Final.pdf>.

Cyberbullying is an extensive issue that can affect anybody from any age group, regardless of their age, gender or social status. Victims find themselves helpless, harassed and frightened. They can be harassed from unanimous accounts. They don't know who is harassing them because the harrier is unknown to everyone. They can hide themselves in a veil and that is called a digital veil. Online platforms provide bullies with the anonymity they need to commit hurtful acts, and gullible bystanders may participate in the abuse without thinking about the repercussions. As a result, a poisonous environment is created where victims feel helpless and exposed.

Types of Online Harassment and Cyberbullying:

3.1 Types of Online Harassment:

Online harassment can be any form. Online harassment is the umbrella term of all harassment. It includes cyberbullying, cyber stalking, doxxing, denial of service, hateful speech, trolling, revenge porn, etc⁷.

a) Cyberbullying: A general word (such as “online harassment”) intended to cover a variety of internet harassment. Similar to physical bullying, cyberbullying is typically directed against youth and can take the form of digital threats, humiliation, or embarrassment⁸.

b) Cyberstalking: Cyberstalking is a legal term used to describe the repeated and intentional use of online harassment to cause harm such as hurting, harassing, intimidating, or surveillance someone. It caused fear, anxiety, humiliation, and an extremely stressful situation for the victim. According to Information Technology Act Sections 66A and 66B and Bharatiya Nyay Sanhita, 2023 Section 78 defines stalking and punishment of cyberstalking⁹.

c) Doxxing: It is the malicious act of publicly sharing someone’s private information online without their consent. They can spread someone’s personal photos, security numbers, phone numbers, address and sensitive information

⁷ “Online Harassment.” PEN America, available at-
<https://onlineharassmentfieldmanual.pen.org/defining-online-harassment-a-glossary-of-terms/> (last visited on September 8, 2024).

⁸ Ibid.

⁹ Ibid.

about their loved one's. The goal is often to harm, intimidate, or exploit the target¹⁰.

d) Denial of Service (DOS): It is a cyber-attack that overwhelms a computer system with excessive traffic, rendering it inaccessible. This can disrupt internet services, prevent access to websites, online accounts, or emails can cause significant inconvenience. In DOS an attacker manipulates multiple compromised computers (known as bots) to simultaneously target a single victim. This coordinated assault floods the target system with overwhelming amounts of data, effectively shutting it down¹¹.

e) Hateful Speech: Threats, whether explicit or implied, and hate speech are common forms of online harassment. In hate speech perpetrator often targets individuals based on their gender, race, ethnicity, religion, sexual orientation, etc. Perpetrators attack ad hominem, which personally attacks the character of the target rather than addressing the issue at hand, a common form of hate speech online. Threats, whether online or offline and physical or sexual can be sufficient to frightened and intimidating the victim¹².

f) Trolling: It is a harmful online behavior characterized by the intentional posting of offensive or divisive content to provoke reactions, cause harm, or stir up controversy. There are various forms of trolling, including worry trolling, where individuals pretend to be supporters while delivering harmful criticism, and dogpilling, where groups of trolls work together to overwhelm targets with abuse. Additionally, hate trolling involves targeting individuals based on their identity¹³.

g) Revenge Porn: In revenge porn involves the non-consensual dissemination of intimate photos or videos of an individual. This malicious act can have severe emotional and psychological effects on the victim. When coupled with threats and demand, it can also be classified as sextortion. In sextortion is just like a form of

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

blackmail where individuals are coerced into fulfilling demands, often involving the payment of money or the performance of sexual acts, under the threat that they will spread it online. This will lead the victim under shame, fear and humiliation. In this reason someone may be take a grave step as “suicide”. Revenge porn and sextortion both are illegal in many jurisdictions and can result in serious legal consequences for those involved. You should be aware properly about this harassment and protect yourself from victimization from it¹⁴.

3.2 Types of Cyberbullying:

Cyberbullying is a grievous offense and it takes its shapes from Online harassment. It is the use of technology to threaten, intimidate, or harass individuals. The different types of cyberbullying can be listed by the nature of the abuse, like Harassment, Impersonation, Exclusion, Outing and Doxxing, Flaming, Cyberstalking, Trolling, Spreading Rumors, Sexting, Masking etc¹⁵.

a) Harassment: They have been relentlessly sending hateful messages causing serious distress to their targets¹⁶.

b) Exclusion: In exclusion someone is trying to isolate the individual from the society, community and their peers. An intentional and targeted exclusion from an online group, social media network and digital conversation. From this individual can feel emotional distress and a sense of rejection¹⁷.

c) Outing and Doxxing: Disclosing or bringing to light-sensitive, embarrassing, or private information about someone else. This includes spreading personal information (home address, phone number), private photos and sensitive messages without permission. Their goal is one that they want to embarrass and upset the victim¹⁸.

¹⁴ Ibid.

¹⁵ Shivangi Gautam and Dr. Sapna Sharma, “Cyberbullying: Repercussions and Strategies for its Prohibition” Vol. 1, Issue 2, July-December 2023 (2024), available at- <https://research-communications.cmpcollege.ac.in/wp-content/uploads/2024/02/21-Shivangi-and-Dr.-Sapna-Sharma-Final.pdf>.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

d) Flaming: Directly messaging someone or sending unpleasant, vulgar, obscene and violent messages in the group environment. This behavior constantly insults the individual and can create mental anguish and anxiety in the mind of the victim¹⁹.

e) Cyberstalking: Extremely frightening harassment that involves threats and violence. It entails victim experiencing constant, unwelcome attention or interaction that makes them feel afraid or anxious, both real world and in the digital world²⁰.

f) Trolling: In trolling attackers intentionally post unpleasant and improper material online to harass the victim. Despite the fact that here usually the attackers are unknown. Here, both are unknown to each other. Bully wants to cause the victim psychological pain and suffering²¹.

g) Spreading Rumors: Dissenting untrue or deceptive information about something with the aim to harm their reputation or incite discord among their peers is known as “spreading rumors”. This type of harassment can cause socially isolated and mental harm to the victim²².

h) Sexting: The act of sending, receiving or sharing explicit messages, photos, or videos via social media, messaging apps, or cell phones is known as sexting when someone harasses, abuses, or blackmails someone with sex messages without their consent²³.

i) Masking: Sending or posting content defames or puts someone in danger while pretending to be someone else. This act of assuming another person’s identity aims to damage their reputation, deceive others, or cause harm to the individual being impersonated²⁴.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

4. Online Harassment and Cyberbullying in India:

4.1 Online Harassment:

In India, online harassment remains a growing concern nowadays. Recent reports indicate that around 30% of internet users in the country have experienced some form of online harassment, including stalking, threats, and abusive messages. The rise in such incidents is reflected in an increase in complaints registered with law enforcement and digital platforms. Women, children, and vulnerable, with studies showing that they face a disproportionate higher rate of online abuse compared to men.

4.2 Cyberbullying:

In India cyberbullying is a serious problem to the young, teenage children and other vulnerable groups. Different research shows different statistics of crime rates. According to the survey 14.5% of cyberbullying was experienced by teenagers. 13.8% reported both victims and perpetrators. Over three years periods the victimization increased by 1.9% to 5.6% for males and from 3.8% to 6.4% for females. After medical examination it revealed the report that 14.14 % had been victim of mild, 17.93% of moderate, and 20.52% of severe cyberbullying²⁵

Children are more vulnerable among all. More than 85% of children reported cyber bullying incidents. Indian children are facing more cyberbullying than other countries. 48% of children reported that they are cyber bullied by some strangers. In this situation Maharashtra has the highest ratio of cyberbullying than other states. Extreme form of cyberbullying percentage is 36% for racism, personal attack 29%, sexual harassment 30%, personal harm 28%, doxxing 23% and all of these at about twice the average worldwide. 45% said that they were cyberbullied by strangers and 48% know the offender. Young girls in India are facing more cyberbullying than other countries. In the age group of 10 to 14 at 32% and 15 to 16 at 34% cyberbullied by someone²⁶.

²⁵ Sandhu, Damanjit & Kaur, Kirandeep. (2022). Cyberbullying and Online Negative Experiences of School and College Students in India. 10.1007/978-981-19-2693-8 , available at- https://www.researchgate.net/publication/362843377_Cyberbullying_and_Online_Negative_Experiences_of_School_and_College_Students_in_India/citation/download

²⁶ Shivangi Gautam and Dr. Sapna Sharma, "Cyberbullying: Repercussions and Strategies for its Prohibition" Vol. 1, Issue 2, July-December 2023 (2024), available at- <https://research->

According the study of McAfee on Cyberbullying Research



27

85% Indian Children Cyberbullied, Highest Globally. Reported by McAfee²⁸

5. Indian Laws on Online Harassment and Cyberbullying:

5.1 Online Harassment:

The laws pertaining to internet harassment in India are intended to address various cybercrimes, including but not limited to cyberstalking, defamation, abuse and harassment. Legal foundation of these offenses is derived from sections of the Information Technology Act, 2000, The Sexual Harassment of Women at

communications.cmpcollege.ac.in/wp-content/uploads/2024/02/21-Shivangi-and-Dr.-Sapna-Sharma-Final.pdf.

²⁷ Priyanka Sangani, "85% of Indian children have cyberbullied, highest globally: McAfee", *The Economic Times*, August 09, 2022, available at: <https://economictimes.indiatimes.com/tech/technology/85-of-indian-children-have-been-cyberbullied-highest-globally-mcafee/articleshow/93438743.cms?from=mdr> (last visited on september 09, 2024).

²⁸ Ibid.

Workplace (Prevention, Prohibition and Redressal) Act, 2013, The Protection of Children from Sexual Offences Act, 2012 and Bharatiya Nyaya Sanhita, 2023. The main legislations summarized as follows:

1. Information Technology Act, 2000 (IT Act)²⁹

- **Section 66-A:** Punishment for sending false and offensive messages for purposely annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, and for this persistently use of computer resources or a communication device³⁰. But, this section was struck down by the Supreme Court in the year of 2015 in the case of “Shreya Singhal vs Union of India, due to the concern over that this section is violative of Article 19(1) (a) of the Constitution of India³¹.
- **Section 66-E:** If someone intentionally or knowingly captures, transmits, or publishes private images of an individual without that person’s consent. In that case, it will be a punishable act under the Information Technology Act, and the punishment will be extended to three years and fine not exceeding two lakh rupees³².
- **Section 67:** Punishment for publishing or transmitting obscene material in electronic form³³. Here, court can punish the culprit from imprisonment extend to three years and fine extend to five lakh rupees for the first conviction and for the second and subsequent conviction imprisonment extend to five years and fine extend to ten lakh rupees³⁴.

²⁹ Karan Singh, “What is the punishment for spreading religious hatred on social media?”, available at: <https://blog.ipleaders.in/punishment-spreading-religious-hatred-social-media/> (last visited on September 21, 2024).

³⁰ Karan Singh, “What is the punishment for spreading religious hatred on social media?”, available at: <https://blog.ipleaders.in/punishment-spreading-religious-hatred-social-media/> (last visited on September 21, 2024).

³¹ The Information Technology Act 2000, India, s.66-A, (India Code 2000), available at: https://www.indiacode.nic.in/show-data?actid=AC_CEN_45_76_00001_200021_1517807324077&orderno=77#:~:text=Section%2066A%20has%20been%20struck,1523 (last visited on September 10, 2024).

³² The Information Technology Act, 2000 (Act 21 of 2000), s. 66-E.

³³ Dr. Ranjith Somasundaran Chakkambath, Dr. Shamsi Sukumaran, “An Insight into Cyber Security of Women in India”, Volume 6 Issue 6, ISSN : 2581-7175 International Journal of Scientific Research and Engineering Development (2023), available at: <https://www.ijrsred.com/volume6/issue6/IJSRED-V6I6P113.pdf>.

³⁴ The Information Technology Act 2000, India, s. 67.

- **Section 67-A:** It is illegal for someone to publish or distribute sexually explicit content via electronic means. In this scenario punishment will be extended to ten years and fine³⁵.

2. Bharatiya Nyaya Sanhita, 2023:

- **Section 78:** This section of Bharatiya Nyaya Sanhita legislation includes all types of stalking as well as cyberstalking as a criminal offense³⁶.
- **Section 79:** Punishes any act or behavior intended to diminish the modesty of a woman, including online harassment also and the punishment may extend to three years and a fine³⁷.
- **Section 351:** Threatens an individual by any means, with any injury to his person and property by physically or virtually called criminal intimidation. For this offense, punishment will be extended to two years with fine³⁸.
- **Section 356:** This section of BNS deals with defamatory statements made physically or virtually, with imprisonment for up to two years or a fine³⁹.

3. Redressal Mechanisms :

- a. National Cyber Crime Portal (NCRB) (<https://cybercrime.gov.in/>)
- b. Local Police Station (Cybercrime Cells)
- c. Women helpline numbers (181)
- d. Legal Aid and Advocacy Groups
- e. National Commission for Women (NCW) (ncw.nic.in)

6. Conclusion:

The rise of the digital age brought high benefits to us but with benefits, it introduced some challenges to us. Like Cyberbullying and Online harassment. Vulnerable groups, like women, children, and marginalized societies suffer a lot from this rising issue and the consequences of it impact the lives of these groups. They face emotional distress, mental anguish and it goes beyond extreme when they try to commit suicide.

³⁵ Ibid. s. 67-A.

³⁶ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 78.

³⁷ Ibid. s. 79.

³⁸ Ibid. s. 351.

³⁹ Ibid. s. 356.

India tries to fight these issues by making strict legislation; to reduce these types of crime. They created The Information Technology Act, Bharatiya Nyaya Sanhita, Sexual Harassment of Women against Workplace and Protection of Children from Sexual Offences Act, etc. But these laws will be affected if they are properly introduced to the public timely, along with raising awareness and educating the public on how to deal with these issues and take proper steps when they face these types of issues.

As the internet continuously expands and evolves, it is important for the individual, government, and organization to work in a safer environment and try to reduce these types of crimes like cyberbullying and online harassment. Parliament should introduce more strict legislation, improving digital literacy and should take a strict step against cyberbullying and online harassment. Only through collective efforts we can ensure a safer digital world.

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MOTHERHOOD, ALL AFFECTION STARTS AND ENDS THERE: THE LEGISLATIONS AND DEBATES OF COMMERCIAL AND NON-COMMERCIAL SURROGACY IN INDIA

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Abstract

The topic of commercial surrogacy elicits strong debates in feminist literature, particularly when it involves underdeveloped nations and local women serving as surrogates for wealthier transnational individuals. Surrogacy is no more a social stigma, and no more a taboo, as attached to it earlier. It could be the outcome of awareness or the growing financial transactions involved in it, resulting in a sharp increase in its adoption as a viable means of earning, and for some, a social recognition as parents. At the intersection of morality and immorality, individuals frequently find themselves grappling with a multitude of inquiries. There is no doubt that the experience of "Motherhood" is invaluable and indescribable in words. According to Robert Browning, the right to reproduction is the fundamental right of an individual. In contemporary society, advancements in technology have facilitated a simplified process for childless couples, eliminating their reliance on chance or external circumstances. There exist a variety of contemporary approaches that facilitate the experience of procreation. In vitro fertilisation (IVF), intrauterine insemination (IUI), in vitro maturation (IVM), and vitrification are reproductive techniques often employed in assisted reproductive technology. The utilisation of in-vitro fertilisation as a method for surrogacy has emerged as the most

preferred option among couples seeking to conceive, demonstrating a notable level of success. The occurrence over a period of time led to the emergence of illicit behaviours, prompting the GOI to impose a prohibition on “commercial surrogacy” in 2015. Therefore, the objective of this study is to gain a comprehensive overview of the two primary types of surrogacy, namely natural and commercial, while examining the ongoing discourse surrounding commercial and non-commercial surrogacy in India. The paper also focus on the latest development in surrogacy legislation in India.

Keywords: *Surrogacy, Commercialisation, Legislation, Motherhood, Altruistic, Article21*

Context

In developing nations, particularly in India commercial surrogacy is an exceptionally disputable subject, especially when it is carried out by indigenous women for affluent foreigners. It might add to the delineation of multiplication by empowering well-to-do individuals’ proliferation while “denying or disallowing mother work for other people”.¹ Surrogacy has been the subject of heated debates in feminist and social scientific literature, particularly when it comes to commercial and global surrogacy and the commercialization of women’s bodies and motherhood.² It is seen by a few women’s activist specialists as a monetary non-decision for poor women and seems to be destitution-based impulse, especially by revolutionary and realist women’s activists. Conversely, different women’s activists view it as a potential “regenerative decision” in a setting of neediness when ladies have not many elective choices for a superior life.³ Additionally, a few women activists censure the adaptation of women’ regenerative bodies, contrasting it with prostitution and subjugation and transforming ladies into dispensable articles, living instruments, or child

¹ Raywat Deonandan, Mirhad Loncar, Prinon Rahman, Sabrina Omar, “Measuring reproductive tourism through an analysis of Indian ART clinic”, 5, *International Journal of General Medicine*, 763. (2012).

² Virginie Rozée, Sayeed Unisa & Elise de La Rochebrochard, “The social paradoxes of commercial surrogacy in developing countries: India before the new law of 2018”, 20(1), *BMC women’s health*, 1-14, (2020).

³ *Ibid.*

machines (Kirby J. 2014).⁴ Others see business and global surrogacy similarly they do different livelihoods that help racial and financial abuse, including rethinking care.⁵

According to a proponent of essentialist feminist ideology, the practise of commercial surrogacy, whether it occurs domestically or internationally, undermines the inherent bond between the mother and the newborn child, thereby diminishing the maternal affection that develops during pregnancy. This ultimately devalues women and the act of motherhood. This unique closeness and affection are seen to be incompatible with market interactions.⁶ On the other hand, different investigations, then again, underline that proxy, similar to any pregnant lady, can genuinely and sincerely disconnect themselves from the pregnancy and the embryo.⁷ Accordingly, two restricting perspectives arise: one that unequivocally goes against surrogacy and needs public or even worldwide boycott, and one more that guarantees that lawful guideline of surrogacy as work will better safeguard ladies from double-dealing.⁸

India is a definitive example of this contradiction. This country banned international and commercial surrogacy in December 2018. More than 12,000 kids were delivered through international surrogacy in India. The Indian Lok Sabha, made plans to change surrogacy into an unselfish, home, and social practice after debates in India and other Asian countries. Later on, just a nearby Indian cousin of a wedded Indian couple might act as a substitute without financial

⁴ J. Kirby, "Transnational gestational surrogacy: does it have to be exploitative?" *The American Journal of Bioethics*, 14(5), 24-32, (2014).

⁵ Virginie Rozée, Sayeed Unisa & Elise de La Rochebrochard, "The social paradoxes of commercial surrogacy in developing countries: India before the new law of 2018", 20(1), *BMC women's health*, 1-14, (2020).

⁶ G. K. D. Crozier, "Too blunt a tool: a case for subsuming analyses of exploitation in transnational gestational surrogacy under a justice or human rights framework", *The American Journal of Bioethics*, 14(5), 38-40, (2014).

⁷ S. Lewis, "Surrogacy as feminism: The philanthrocapitalist framing of contract pregnancy", *Frontiers: A Journal of Women Studies*, 40(1), 1-38, (2019).

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compensation. The public contention was that this new rule was expected to shield ladies from overall abuse and to safeguard the nation's picture according to the embarrassing point of view of ladies' double-dealing through surrogacy. In any event, the benefits of the law are not universally agreed upon. Experts like 'Rudrappa' and groups like 'Sama' point out the paradoxical result of the government's desire to protect women, pointing out that doing so could boost the bootleg market and lead to subtle pressure on women from their loved ones.⁹ Moreover, different regulations shielding ladies from brutality and double-dealing have been passed in India without essentially affecting the constant assaults, aggressive behavior at home, femicides, and corrosive attacks.¹⁰

Apart from this, the new global surrogacy objections, especially in underdeveloped nations, are arising as India pulls out from commercial and transnational surrogacy. Surrogacy has become progressively famous lately, powering political, philosophical, and moral discussions about the reasonableness of ladies as substitutes because of their apparent weakness, as well as the potential for moral judgment, the proxy's job in the pregnancy, and the substitutes' encounters in the emergency clinic. To stay away from "hypotheses" and "expectations", it is important to stand up to these many questions with real proof, prominently with the accounts and encounters of the actual heroes, to go past these political, philosophical, and moral points of view.¹¹ The goal of this piece is to challenge popular beliefs and debates via the narratives, experiences and other concerns of Indian surrogates.

Surrogacy & India

The act of surrogacy was common since days of yore. For instance, the 'Babylonians' permitted the act of surrogacy to stay away from barren couples to separate. The act of surrogacy was common since days of yore. For instance, the

⁹ S. Rudrappa, "Reproducing dystopia: the politics of transnational surrogacy in India 2002-2015", *Crit Sociol*, 24 (7-8):1-15, (2017).

¹⁰ S. Nadimpally, S. Banerjee, D. Venkatachalam, "Commercial surrogacy: a contested terrain in the realm of rights and justice", Kuala Lumpur: Sama-Resource Group for women and Health - Asian-Pacific Resource and Research Centre for Women (ARROW); (2016).

¹¹ Virginie Rozée, Sayeed Unisa & Elise de La Rochebrochard, "The social paradoxes of commercial surrogacy in developing countries: India before the new law of 2018", 20(1), *BMC women's health*, 1-14, (2020).

'Babylonians' permitted the act of surrogacy to stay away from barren couples to separate. The earliest notice of surrogacy is in the 'Book of Genesis', in which the worker 'Haggar' is referenced siring childless 'Sarah' through her significant other 'Abraham'.¹² Further it was in the year 1980 that a Michigan legal counselor named 'Noel Keane' drafted the main agreement of surrogacy. From that point forward, the act of surrogacy has changed a wide margin. Surrogacy is a plan, by which a woman consents to work for someone else or individuals, who will turn into the kid's parent after birth. The practise of surrogacy in India has historical origins and is supported by evidence of being an ancient procedure. The birth of 'Kanupriya', often known as 'Durga', in Kolkata, India, in 1978 marked a significant milestone in the field of assisted reproductive technology, namely in vitro fertilisation (IVF). This event signified the commencement of a prosperous surrogacy sector in India. Eventually, in 2002, commercial surrogacy was made legal in India. In order to enhance India's growing medical tourism industry, this policy also provided parents with extended opportunities to conceive offspring who possess the mitochondrial DNA of their ancestors.¹³ There are wide ranges of ways of characterizing surrogacy, yet taking into account the common practices in India there are two significant kinds of surrogacies essentially rehearsed¹⁴:

- (i) **Traditional/natural/partial surrogacy:** Traditional surrogacy, usually referred to as "complete surrogacy", entails the use of the surrogate mother's own eggs in the process of conceiving a child. Due to the surrogate's biological connection to the kid, she is frequently regarded and treated as the maternal figure. Artificial insemination refers to the method through which the pregnancy is induced.
- (ii) **Gestational surrogacy:** In the given situation, the spouse exhibits a notable degree of fecundity, yet has a biological limitation in terms of their ability to sustain the gestation of an evolving embryo. In order to tackle this issue, the pair chooses to utilise a reproductive procedure commonly

¹² HISTORY OF SURROGACY, [HTTPS://WWW.CREATIVEFAMILYCONNECTIONS.COM/BLOG/HISTORY-OF-SURROGACY/](https://www.creativefamilyconnections.com/blog/history-of-surrogacy/).

¹³ R. Deonandan, M. Loncar, P. Rahman, & S. Omar, "Measuring reproductive tourism through an analysis of Indian ART clinic", 5, International Journal of General Medicine, 763. (2012).

¹⁴ D. Chhabda, & V. Gattani, "Surrogacy: Laws and Rights in India", 4, Int'l JL Mgmt. & Human., 603, (2012).

referred to as “in vitro fertilisation” (IVF), whereby the eggs of the wife and the sperm of her husband are merged in an external setting. Subsequently, the resultant embryo is placed into the uterine cavity of a surrogate mother.

Aside from this, various plans through which surrogacy is being rehearsed:

- (i) **Altruistic surrogacy:** Altruistic surrogacy pertains to a scenario wherein the surrogate mother does not receive any monetary remuneration for her gestation or the transfer of the child to the intended parents, with the exception of essential medical costs. The act of unselfish surrogacy can be referred to as a manifestation of “women supporting women”, in which the surrogate willingly offers to aid the couple in the birth of a child without expecting any personal gain or consideration.
- (ii) **Commercial surrogacy:** The term “commercial surrogacy” denotes a circumstance wherein a surrogate mother is remunerated sufficiently for the considerable medical expenses related to the gestation and delivery, in addition to earning supplementary cash remuneration for her involvement in the procedure. This compensation is typically outlined in a legally binding agreement that is agreed upon prior to the commencement of the surrogacy arrangement.

Regulations on Surrogacy

Commercial Surrogacy 2002: In India, a surge in surrogacy in India after the country legalised commercial surrogacy in 2002 resulted in a slew of businesses professing expertise in surrogacy law and supporting international tourists in their quest to have an Indian mother rent her womb to them.¹⁵ To put it another way, they are exploitative in nature since they encourage the sale of babies and lower the worth of children by tampering with their reproductive capacity. Different foreign organizations set up for business in India, helping individuals from everywhere the world find a substitute Indian mother, helping outsiders with the desk work

¹⁵ G. Narayan, HP. Mishra, TK Suvvari, I. Mahajan, M. Patnaik, S. Kumar, NA. Amanullah, SS. Mishra, “The Surrogacy Regulation Act of 2021: A Right Step towards an Egalitarian and Inclusive Society?” *Cureus*. Apr 20;15(4), (2023).

related with surrogacy, and helping the youngster in getting an identification and a visa to leave the country. This was totally made conceivable along these lines.¹⁶

According to the 228th report of the Law Commission,¹⁷ it is recommended that legislators in India contemplate the formulation of legislation that permits ethical altruistic surrogacy while simultaneously prohibiting commercial surrogacy. The practise of surrogate motherhood has witnessed a significant rise in India, primarily driven by the socio-economic circumstances faced by disadvantaged Indian women, who are compelled to engage in this activity in order to secure financial resources or essential goods. In 2005, the regulations for surrogacy agreements were published by the ICMR.¹⁸ The couple and the surrogate mother would negotiate the terms of the surrogate mother's financial compensation in accordance with standard industry practises. The surrogate mother is barred from using her own eggs in the surrogacy process and must sign away all parental rights as part of the agreement.

The Surrogacy (Regulation) Bill, 2016: It was introduced in Lok Sabha on November 21, 2016, and referred to the standing committee on January 12, 2017. The Lok Sabha received the advisory committee's report on August 10, 2017. Subsequently, the Lok Sabha passed the bill on December 19th, 2018, in accordance with the recommendations outlined in the aforementioned report. The proposed regulation includes provisions for the registration of surrogacy centres and the establishment of a National and State surrogacy board and Appropriate Authority.¹⁹

- (i) The bill permitted unselfish surrogacy to specific Indian couples;
- (ii) prohibited business surrogacy;

¹⁶ R. S. Sharma, "Social, ethical, medical & legal aspects of surrogacy: an Indian scenario", *The Indian Journal of Medical Research*, 140 (Suppl 1), S13, (2014).

¹⁷ Report of the Select Committee on the Surrogacy (Regulation) Bill, 2019, (Presented to the Rajya Sabha on 5th February, 2020. PRS India.

¹⁸ Neha Behl, "Law and Policy on Surrogacy: A Socio-Legal Study in India", SHODHGANGA, available at <http://hdl.handle.net/10603/93605>.

¹⁹ Chinmoy Pradip Sharma, "Surrogacy Laws in India - Past Experiences and Emerging Facets", *Bar & Bench*, <https://www.barandbench.com/columns/surrogacy-laws-in-india-past-experiences-and-emerging-facets>.

- (iii) specifies the qualification conditions to be satisfied by proxy moms and couples meaning to start a surrogacy method; and
- (iv) Protects the privileges of kids brought into the world through surrogacy.

The Surrogacy (Regulation) Act 2021

The Surrogacy (Regulation) Act and the Assisted Reproductive Technology (Regulation) Act were promulgated by the Indian Parliament in early December 2021 and are poised to assume significant legal importance in the next years. Upon the Rajya Sabha's decision to abstain from voting on the Surrogacy (Regulation) law, a law that had already received approval from the Lok Sabha, it was then submitted to a standing committee for additional scrutiny. On December 25, 2021, the Surrogacy (Regulation) Act was signed into law, officially acknowledging the President's commitment to addressing the planning and pattern of surrogacy. The following are some of the most important provisions of the Surrogacy (Regulation) Act of 2021:²⁰

- Commercial surrogacy is completely restricted and just charitable surrogacy can be rehearsed. No surrogacy facilities, except if enlisted under this Act, will be associated with any surrogacy exercises or methods; or utilize any individual who doesn't have capabilities endorsed in the Act.
- Each top surrogacy facility shall apply for enlisting of their facilities within sixty days of the date of arrangement of the appropriate power. Like clockwork, enlistment will be reinstated.
- In whatever structure, no surrogacy centre, gynaecologist, embryologist, or other clinical specialist shall direct or encourage commercial surrogacy. Just benevolent surrogacy is permitted under the 2021 Act.
- Both parties must be legally married Indian citizens; the male must be between 26 and 55 years old, and the female must be between 25 and 50; neither party may have any children from a prior relationship (biological, adoptive, or otherwise).

²⁰ Priyanka Mangaraj, Surrogacy Regulations in India: Surrogacy (Regulation) Act, 2021 (legalbots.in), (2022).

- The proxy mother will be a 35-45-year-old Indian woman seeking surrogacy benefits. At least twice in her life, a proxy mother cannot substitute.
- Some patients need surrogacy and receive a 'Confirmation of Essentiality/Infertility' from the National/State Assisted Reproductive Technology and Surrogacy Board.
- The surrogate mother will be thoroughly informed of all potential outcomes and side effects of the procedure. In addition, written informed consent will be sought from the surrogate mother before the start of the trial, in a language she understands.
- The establishment of the National Assisted Reproductive Technology and Surrogacy Registry was intended to facilitate the registration of surrogacy clinics in accordance with the provisions outlined in this legislation. In addition to the federal government, each state and union territory will form a surrogacy board.

Landmark Cases revolving around Surrogacy in India

- The case of *Baby Manji Yamada v. Union of India*²¹ involved the adjudication by the Supreme Court of India about the custody rights of a young girl. The father had experienced estrangement from his partner throughout the period of surrogacy, so jeopardising the child's prospects for the future. The Surrogacy Agreement was affirmed by the Supreme Court, which subsequently granted parental rights to the child's biological father. Manji Yamada, accompanied by her grandmother, repatriated to Japan subsequent to a directive from the Supreme Court mandating the government to issue her a visa for entry into the nation.
- *Jan Balaz v. Municipality of Anand*,²² the Surrogacy Citizenship Status was determined by the Hon'ble High Court of Gujarat. A German couple secretly adopted twins after entering into a surrogacy deal with an Indian woman. Germany refused to grant citizenship to the new-borns because

²¹ *Baby Manji Yamada vs. Union of India and another* (2008) 13 SCC 518 and *In the Matter of Baby M*, 217 N.J. Super 313, (1987).

²² *Jan Balaz v. Anand Municipality and 6 ors*, AIR 2010 Guj 21, Gujarat High Court, 11 November 2009, at [9].

surrogacy was not recognised as a legal path to parenthood under German law. Jan Balaz, the biological father of the children, made an application for Indian travel credentials on their behalf. Nevertheless, his appeal was rejected because the children lacked Indian residency, so preventing them from meeting the requirements stipulated in the Indian Passport Act. According to the court's decision, the children, who were born in India via a surrogate mother who held Indian citizenship, were considered Indian residents as per Section 3(1)(c)(ii) of the Citizenship Act. Upon being granted their foreign Indian international identification documents, the German courts granted permission to the couple to initiate the process of applying for the adoption of the children.

- In the case of *P. Geetha v. The Kerala Livestock Development Board*,²³ the High Court of Kerala examined the issue of whether or not a woman who has given birth through surrogacy is entitled to paid maternity leave was mediated by the Kerala Livestock Development Board, the High Court of Kerala. The lawyer, who is both the intended and biological mother, requested and received leave from her employment as chairperson of the Kerala Livestock Development Board during her pregnancy. Since the representative's pregnancy and delivery were abnormal, the Board did not approve maternity leave per the Limited Staff Rules and Regulations. The unequal and discriminatory treatment of children was brought to light when the Kerala High Court granted the petitioner custody of the kid. The court recognised the new and low-key method of becoming a parent and approved of it.

Trends of Commercial Surrogacy

The ethical implications surrounding commercial surrogacy have been a topic of considerable scholarly discourse. The training programme has faced criticism from certain individuals who argue that it promotes the commodification of human life, exploits women in vulnerable situations, and engages in unethical practises related to reproductive arrangements. Nonetheless, advocates of surrogacy contend that it is inequitable for a woman to undergo the physical and

²³ W.P.(C). NO. 20680 OF 2014 (H). CASE: P. GEETHA VS THE KERALA LIVESTOCK DEVELOPMENT BOARD LTD.. HIGH COURT OF KERALA (INDIA).

emotional demands of carrying a child for someone else without receiving any form of remuneration.²⁴ Commercial surrogacy has many advocates, and many of them think the best way to protect everyone's rights and ease the education process is to fully legalise the technique. Many infertile couples, single parents, and members of the LGBT community have benefited from commercial surrogacy, despite the fact that the practise is still controversial. Read on to find out about the legal framework for commercial surrogacy as well as its benefits and drawbacks. In 2015, the government in India put restrictions on commercial surrogacy and permitted the importation of embryos and foetuses for scientific study only.

Commercial surrogacy involves surrogate mothers who enter into an agreement to gestate a child until birth, in return for monetary remuneration and the subsequent relinquishment of the child to the intended parents. Hence, it is normal to engage in a surrogacy agreement that delineates the duties, responsibilities, and objectives of each partner involved. Broadly speaking, the phrase encompasses many forms of surrogacy arrangements wherein the surrogate mother receives monetary compensation in addition to the costs associated with the pregnancy.²⁵ As an alternative to commercial surrogacy, "beneficial surrogacy" occurs when a woman decides to bear a child for intended parents without receiving any monetary remuneration of any kind.²⁶ After the Indian government legalised commercial surrogacy in 2002, ethical questions were raised about the practise. Critics of the curriculum claim that it preys on vulnerable women, abuses the generational order, and reduces people to interchangeable parts.²⁷ But many who support surrogacy argue that it's not right for a woman to have to have a child for someone else and receive no compensation

²⁴ R. Mukherjee, & T.V. Sekher, "Wombs for Money: Commercial Surrogacy Through Kolkata's Window", *Population Dynamics in Eastern India and Bangladesh* (pp. 117-132). Springer, Singapore (2020).

²⁵ S. Sagar, & U. Kumar, "The Suffering Womb: Analyzing Commercial Surrogacy in India", *Issue 6 Int'l JL Mgmt. & Human.*, 3, 54. (2020).

²⁶ S. Ansari, "Surrogacy in India: An Analysis of Socio-Economic & Legal Aspects of Surrogacy", *GIBS LAW JOURNAL* Volume: 3, Issue: 1 (2020).

²⁷ Smita Sharma, *A Controversial Ban on Commercial Surrogacy Could Leave Women in India with Even Fewer Choices*, (2022). TIME <https://time.com/6075971/commercial-surrogacy-ban-india/>.

for her efforts. In order to control the practise and ensure that everyone's rights are safeguarded, proponents of commercial surrogacy believe that it should be made legal (Smita Sharma, 2022).²⁸ Many infertile couples, single parents, and members of the LGBT community have been able to start or grow their families with the help of surrogates. Keep reading to find more about the regulations surrounding commercial surrogacy arrangements as well as the pros and cons of commercial versus altruistic surrogacy. While allowing the import of embryos and other young creatures for scientific study, the Indian government restricted commercial surrogacy in 2015.²⁹ There are various arguments that can be presented both in support of and in opposition to the practise of commercial surrogacy. Several variables, including the geographical positioning of the surrogacy agreement, the dynamics of the connection between the intended parents and the surrogate, and supplementary circumstances, may impact the benefits and drawbacks connected with surrogacy. The pros and cons of commercial surrogacy are briefly outlined here:

Highs & Lows of Commercial Surrogacy

The issue around commercial surrogacy encompasses valid arguments from various perspectives. The advantages and disadvantages of this type of surrogacy exhibit variability contingent upon several circumstances, such as the geographical setting of the surrogacy arrangement, the quality of the relationship between the surrogate and the intended parents, and more considerations.³⁰ Commercial surrogacy may not be the best option for every intended parent, so it's important for them to carefully weigh the advantages and cons before making a final decision. In 1997, a woman paid to carry a baby through gestational surrogacy used the money to pay for her husband's medical care, marking the beginning of the modern practise of commercial surrogacy.³¹ Since then, commercial surrogacies have skyrocketed in the last decade, with current

²⁸ Ibid.

²⁹ A. Pande, "Revisiting surrogacy in India: domino effects of the ban", *Journal of Gender Studies*, 30(4), 395-405, (2021).

³⁰ Y. Hibino, "The advantages and disadvantages of altruistic and commercial surrogacy in India", *Philos Ethics Humanit Med.*, Jul 7;18(1):8 (2023).

³¹ Virginie Rozée, Sayeed Unisa & Elise de La Rochebrochard, "The social paradoxes of commercial surrogacy in developing countries: India before the new law of 2018", 20(1), *BMC women's health*, 1-14, (2020).

estimates placing the annual number of infants produced through the practise at over 2,000.

Highs

- Women who choose to become commercial surrogates are able to get enough compensation for the physical and emotional toll of carrying a child for a year on behalf of their intended parents.
- In jurisdictions and nations with well-defined legislation, commercial surrogacy is regulated to safeguard the surrogate's and intended parents' legal rights.
- If a couple cannot or does not want to ask a close friend or relative to undergo the emotional and physical hardships associated with altruistic surrogacy, commercial surrogacy may be a viable alternative.
- In commercial surrogacy, surrogate remuneration is agreed in advance in a contract, which can help avoid reimbursement disagreements during and after the pregnancy.
- Most commercial surrogates in the United States are not doing it for the money. Being a surrogate mother needs empathy and selflessness on the part of everyone involved.

Lows

- Commercial surrogacy incurs higher costs compared to altruistic surrogacy due to the additional financial obligations placed on intended parents, which include compensating the surrogate as well as covering medical and legal expenses.
- Some individuals who are against the practise of commercial surrogacy claim that it takes advantage of weaker women.
- Due to the fact that commercial surrogacy is prohibited in certain nations, some would-be parents are forced to look into overseas surrogacy, which can bring up a number of legal and ethical challenges.
- The majority of women decide to become surrogates because they wish to contribute to the formation of other families.

Trends in Altruistic Surrogacy

In contrast, traditional (Natural) Surrogacy involves the surrogate mother carrying a child who shares a genetic connection with her, achieved through various means such as sexual engagement, self-insemination, or medically supervised artificial insemination. In specific instances, the process of fertilisation involves the utilisation of the sperm from a commissioned male, donor sperm, or the sperm derived from the woman's spouse. A common name for this practise is "partial" or "conventional" surrogacy.³² Traditional surrogacy involves a woman carrying her own child, who will then be given up for adoption and raised by someone other than the surrogate mother. This child will be genetically related to the surrogate mother because the surrogate was pregnant with the child when she intended to give her up for adoption.³³ Sexual activity, artificial insemination at home with either fresh or stored sperm, or invitro fertilisation (IVF) in a fertility clinic are all viable options for conceiving a child. One option is to use the male partner's sperm from the "commissioning pair", although a sperm donor is also an option. If the intended parents are both women, or if the kid is being commissioned by a single woman, donor sperm will be utilised.³⁴

Altruistic Surrogacy, according to the new surrogacy (guideline) Bill, endorsed by the Lok Sabha incorporates getting a nearby connection as a substitute by a hetero wedded couple who have been kids for quite some time of their marriage. This line in substance, isolates philanthropy from the business hint that surrogacy conveys with it. The bill intends to permit moral philanthropic surrogacy for fruitless Indian wedded moral charitable surrogacy for barren Indian wedded couples with the age gathering of 23-50 and 26-55 years for females and guys, individually.³⁵ The public authority has asserted that it will likewise forestall double-dealing of proxy moms and kids brought into the world through surrogacy Commercial Surrogacy

³² Y. Hibino, "The advantages and disadvantages of altruistic and commercial surrogacy in India", *Philos Ethics Humanit Med.*, Jul 7;18(1):8 (2023).

³³ P. Brandão, N. Garrido, "Commercial Surrogacy: An Overview", *Rev Bras Ginecol Obstet*, Dec;44(12):1141-1158, (2022).

³⁴ *Ibid*

³⁵ S. Aggarwal, "ARTs, Surrogacy and Right to Reproduce in India", *Jus Corpus LJ*, 2, 346. (2021).

Altruistic surrogacy refers to a situation where the surrogate mother does not receive any kind of payment other than the reimbursement of medical expenses associated to the pregnancy. Surrogacies often include mutual agreement and may involve close relatives or acquaintances. Corporate surrogacy provides financial compensation to the surrogate for her time, effort, and any emotional or physical challenges she may experience. Commercial and philanthropic surrogacy have similarities. Many highly expected charitable surrogacy guardians utilise well-established alternatives. Due to the significant amount of love involved, several women selflessly provide their gestational services to their family, children, or friends. Because the prospective parents and surrogate met and agreed to work together, this is called “identified surrogacy”. Unlike traditional surrogacy, identified surrogacy does not require an agency to introduce intended parents and surrogates. The intended parents and surrogate should cooperate with a surrogacy professional to meet legal and medical standards and help the surrogate throughout the operation.³⁶

Highs and Lows of Altruistic Surrogacy

Altruistic surrogacy has the potential to provide a positive experience and offer various benefits to intended parents, provided that suitable surrogate and intended parents are involved. But before engaging into this kind of surrogacy partnership, there are a few difficulties with altruistic surrogacy to consider.³⁷

Highs

- Since intended parents do not pay their surrogate, altruistic surrogacy typically costs less than commercial surrogacy.
- Altruistic surrogacy is an alternative that intended parents have wider access to since it is permitted in several U.S. states and other nations where commercial surrogacy is prohibited.
- Due to the fact that the pregnancy is being carried by a close relative or friend, intended parents who choose to employ an acknowledged altruistic

³⁶ DM Frankford, LK Bennington, JG Ryan, “Womb Outsourcing: Commercial Surrogacy in India”, *MCN Am J Matern Child Nurs.* 2015 Sep-Oct;40(5):284-90; (2015).

³⁷ Y. Hibino, “The advantages and disadvantages of altruistic and commercial surrogacy in India”, *Philos Ethics Humanit Med.*, Jul 7;18(1):8 (2023).

surrogacy may experience more confidence and peace of mind during the whole pregnancy.

Lows

- Most selfless surrogates are known to the parents-to-be, either as friends or relatives. There is little chance that a pair of intended parents seeking anonymous surrogacy will be matched with a selfless surrogate through an agency's matching services.
- Loved ones might feel constrained into a surrogacy understanding in which they don't get pay, while unselfish proxies might feel underestimated or even took advantage of on occasion. The planned guardians' association with the proxy might endure because of these conditions.
- Planned guardians might feel less in charge of the surrogacy when the substitute isn't redressed; for instance, a few expected guardians might feel reluctant to make explicit solicitations of the proxy since they are not paying her in return.

Perception Syndrome

Arguments in favour of Commercial Surrogacy

The main argument for surrogacy is that it gives couples who could never have children a second chance. Defenders acknowledge that many replacement moms enter surrogacy schemes for the selfless aspect, however the money aspect is also important. Though financially motivated, substitute moms who enter surrogacy game plans do so for the philanthropic aspect. Surrogacy supporters agree that it is not child selling. First, a surrogacy contract is to bear a child, not sell one. Surrogacy is an administration, and the money given to a surrogate mother should be regarded fees for her services, like legal counsellors and specialists. Some analysts argue that nullifying a corporate surrogacy contract violates a replacement mother's sacred right to contract.³⁸

³⁸ Salonee Patil, Legal arguments in favour & against surrogacy, ipleaders, 2017. <https://blog.ipleaders.in/surrogacy-against-favour/> .

Altruistic surrogacy allows barren guardians to move towards helpful family members or friends without paying the proxy mother, but it's not as amazing as it seems. A proxy mother unknown to the meaning couple is always best. If the proxy mother is a family member or friend of the guardians, it might cause problems for the replacement child. Since benign surrogacy is unpaid, the proxy mother known to the proposed guardians may face uncomfortable situations. The replacement mother may not ask the guardians for large expenditures, but in corporate surrogacy, the proxy mother might.³⁹

From its 2002 permission to its planned boycott with the Surrogacy (Regulation) Bill, 2019, and now the 2020 bill, commercial surrogacy in India has made incredible growth. Everyone is uncertain about whether the public authority's boycott of commercial surrogacy was right or unhelpful. The Indian government's prohibition on business surrogacy may lead to the creation of numerous unregistered centres and centre men who would breach the law to aid expectant couples since surrogacy pays more than other enterprises. The council has put meaning couples in a difficult situation by not offering clear instructions with its Surrogacy (Regulation) Bill, 2020. Former surrogacy office users may now contemplate having a kid in a commercial surrogacy nation.

Politicians overlook the reality that some women will labour as surrogates for free by banning commercial surrogacy, depriving them of support. Commercial surrogacy improves India's economy, hence controlling it is more important than banning it since letting it go unlawful would hurt everyone.⁴⁰

Government, not private, should regulate surrogacy. The government should develop surrogacy facilities and register all surrogates, not commercial companies that abuse them. Check a surrogate's past to confirm she joined her own agency without family pressure. Pay for surrogates should reflect their services and be decided by the government. As with adoption, prospective parents need a

³⁹ Y. Hibino, "The advantages and disadvantages of altruistic and commercial surrogacy in India", *Philos Ethics Humanit Med.*, Jul 7;18(1):8 (2023).

⁴⁰ V. Piersanti, F. Consalvo, F. Signore, A. Del Rio, S. Zaami, "Surrogacy and 'Procreative Tourism'. What Does the Future Hold from the Ethical and Legal Perspectives?", *Medicina (Kaunas)*, Jan 8;57(1):47, (2021).

background check. A law is needed to regulate surrogacy in India. Commercial surrogacy might make millions of childless families happy if utilised properly.

Infringement of Fundamental Rights

Article 21 of the India Constitution guarantees reproductive freedom. Reproductive decisions like giving birth are a woman's personal autonomy. The Act promotes longstanding patriarchal standards in our culture that give women's labour little economic value, harming their freedom to reproduce under Article 21 of the constitution. The altruistic surrogacy approach requires women to give birth out of compassion, which is unrealistic. Unrealistic expectations support society's patriarchal mindset and constrain reproductive autonomy. Banning commercial surrogacy denies surrogates a source of cash, reducing the number of willing surrogates. This step implicitly denies parents children.⁴¹

The restriction on commercial surrogacy violates women's fundamental rights. "Right to make reproductive choices" is a constitutional right. The same was noted in *Devika Biswas v. Union of India*.⁴² Reproductive decisions like giving birth are a woman's personal autonomy.

The Act has a negative impact on women's fundamental rights to procreation as guaranteed by Article 21 of the Constitution. It reinforces long-standing patriarchal customs prevalent in our culture that undervalue women's labour. The altruistic surrogacy concept assumes that women would undergo childbirth's physical, psychological, and emotional travail exclusively out of compassion, which is far from the truth. Such irrational assumptions support society's patriarchal outlook and restrict the autonomy of those who have reproductive organs. Furthermore, by denying the LGBT population, singles, and older couples the opportunity to become biological parents through the use of a surrogate, this obviously breaches Articles 21 and 14 of the Constitution.

⁴¹ A. Ghosh, N. Khaitan, "A Womb of One's Own: Privacy and Reproductive Rights", *Economic and Political Weekly (Engage)*, Vol. 52, Issue No. 42-43, 28 Oct, (2017). <https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights>.

⁴² *Devika Biswas v. Union of India* (2016) 10 SCC 726 – SLIC.

The case of *B.K. Parthasarathi v. Government of A.P.*⁴³ established that the determination of reproductive choices is fundamentally a matter of human preference, necessitating cautious consideration of state intervention in this decision-making process. Therefore, the imposition of fertility certificates as a prerequisite for engaging in surrogacy represents a blatant violation of individuals' right to privacy. The Indian Supreme Court held in *Consumer Education and Research Centre and Ors. v. Union of India*⁴⁴ that the restriction on commercial surrogacy is unconstitutional because it infringes the right to livelihood guaranteed by Article 21 of the constitution.

Commercial surrogacy is illegal, thus surrogate moms lose a source of money, further reducing the number of willing surrogates. In general, this approach indirectly restricts couples' parenting. Additionally, altruistic surrogacy has restrictions. Marriage or family member as a surrogate mother might complicate matters for both the prospective parents and the surrogate child. Maintaining the bond throughout surrogacy and beyond is risky. The intending couple's option of a replacement mother is also limited by the number of family members willing to undergo philanthropic surrogacy. The Bill then defines surrogacy qualification requirements for couples. The controlling specialists should provide a 'testament of qualification' and 'declaration of vitality' to the qualified pair.

Article 14 reads, "The state must not deny any person equality before the law and equal protection of laws within India". These are the few times rich and poor are treated equally. All discrimination including sex discrimination is forbidden under Articles 15 and 16. Justice and individual rights are guaranteed. By providing the President and Governor advantages, exemptions and reservations impede equality. Class law unfairly discriminates against a group of individuals who share a common benefit by granting special privileges to a select group arbitrarily picked from a much wider pool of people who do not get the same privilege. Since surrogacy is reserved for Indians, non-Indians cannot use it. Article 14 of the constitution prohibits age, gender, marital status, and duration of marriage discrimination and group exclusion.

⁴³ *B.K. Parthasarathi v. Govt. of Andhra Pradesh & Ors. AIR 2000 AP 156.*

⁴⁴ *Consumer Education and Research Centre and Ors. v. Union of India (1995) 3 SCC 42.*

Altruistic surrogacy has other drawbacks. Due to the considerable relational risk associated in surrogacy and afterward, using a close personal connection as a surrogate mother can be emotionally draining on all parties, including the intended parents and the surrogate kid. Altruistic surrogacy limits intending parents' surrogate mother selection owing to the small number of family members willing to participate. The Bill outlines the requirements for couples to participate in surrogacy. The eligible couple needs a “certificate of eligibility” and “certificate of essentiality” from the competent authorities. Surrogacy applicants must additionally fulfil these requirements:

- A heterosexual couple consisting of a male partner aged between 26 and 55 years, and a female partner aged between 25 and 50 years, representing individuals with differing sexual orientations.
- The couple must have been legally wedded for a minimum duration of five years prior to submitting their application.
- Must not be a biological, adoptive, or surrogate parent. Parents of a kid with (a) physical or mental handicap or (b) a life-threatening ailment are exempt from this provision under the Act.
- Moreover, the legislation imposes a requirement for a five-year waiting period subsequent to the date of marriage prior to granting a certificate of infertility to the pair. This rule significantly restricts the couple’s capacity to initiate parenthood at a young age.
- The Act’s differentiation between sex-based age limitations for men and women reflects a patriarchal belief that males should be older than women. It also doesn’t specify what should be done if just one of two parents meets the criteria in the clause, while the other doesn’t.
- The Act is perceived as a significant affront to both the LGBTQ+ community and single fathers seeking to establish a family unit. Surrogacy is sought out by a comparable proportion of single parents (20%) and individuals identifying as LGBTQ+ (15%).
- This legislation is a reaction to the previous pro-LGBTQ+ laws, such as the repeal of Section 377 and the establishment of the Right to Privacy.

- The Act may violate the right to parenting for LGBTQ+ persons and single dads, as established by the Supreme Court of India under Article 21. This is because the Act only applies to cisgender heterosexual couples and widows or divorcees.

Violation of Rights of LGBTQ+ Social Class and Single

This Act is a fair slap in the face of the LGBTQ+ social class and to single guardians who are desperate for a young person to complete their families. Only around 15% of the straight population is structured in the same way as the LGBTQ+ population, and 20% of all surrogacy applicants are single guards.⁴⁵ This rule is a response to other laws that have been established that specifically target the LGBTQ+ community, such as those that nullify Section 377 and the Right to Privacy. Moreover, the Act infringes against the parental rights of LGBTQ+ individuals and single guardians, as recognised by the Supreme Court of India under Article 21. This violation arises due to the Act's restriction to only cisgender heterosexual couples and certain categories of single guardians (such as widows and individuals with certain limitations).⁴⁶

Remuneration versus non-pay:

Sometimes called “repaid surrogacy,” commercial surrogacy pays (forges) the proxy mother to carry the child. Surrogacy is handled by foreigner propagation experts. The substitute mother receives pregnancy compensation, clinical refunds, travel, clothing, and other pregnancy-related expenditures. Women's rights organisations term Indian surrogacy facilities “baby factories” for the affluent. Clinic agents reportedly tricked poor, illiterate women into signing contracts they didn't comprehend. Premila Vaghela, 30, died having a child for an American couple in Gujarat, India. Police report unexpected fatalities. A Delhi and Mumbai study of 100 surrogate moms identified payment regulations and post-delivery

⁴⁵ Chinmoy Pradip Sharma, “Surrogacy Laws in India - Past Experiences and Emerging Facets”, Bar & Bench, <https://www.barandbench.com/columns/surrogacy-laws-in-india-past-experiences-and-emerging-facets>.

⁴⁶ Karan Babbar & M. Sivakami, “The Surrogacy Regulation Act 2021: Another Attempt to Reproduce A Heteronormative Patriarchal Society?” *Feminism in India*, 2 February 2022. <https://feminisminindia.com/2022/02/02/the-surrogacy-regulation-act-2021-another-attempt-to-reproduce-a-heteronormative-patriarchal-society/>.

healthcare insurance gaps. In order to enhance the likelihood of successful outcomes, a number of surrogates were subjected to the implantation of several embryos.⁴⁷

In selfless surrogacy, the proxy gets no money related pay for her pregnancy. She might get repayment for her clinical charges, yet this relies upon the nation's regulations and the details of the arrangement. Basically, a selfless substitute consents to convey a child for the Intended Parents exclusively out of her own generosity. Most frequently, charitable surrogacy arrangements are between individuals who definitely know each other, like relatives or dear companions.

Commercial surrogacy experts say it's just racism and white honour. The education of proxy moms is another effect of corporate surrogacy. As proxy moms are mostly poor, they have little chance of learning about their rights and the effects of surrogacy, which leads to double-dealing by fertility clinics.⁴⁸ Surrogacy experts argue that a training is against public policy since proxy moms, who are mostly poor, are paid less than two opinions. First, that their services are worth more than their pay and that Indian replacement parents earn less than foreign proxy moms.

Contentions for Commercial Surrogacy

Surrogacy supporters argue that it is moral because it allows infertile couples a second opportunity at motherhood. Although financial incentives are clear, most women become surrogate mothers for the altruistic reasons. Surrogacy advocates agree that the practice is not like selling children. The main purpose of a surrogacy arrangement is to have a kid, not to profit from selling one. Like paying a lawyer or doctor, surrogate mothers should be paid for their services. Some legal academics claim that rejecting a commercial surrogacy contract breaches intended parents' sacred right to contract with a gestational carrier.

⁴⁷ Nita Bhalla, "India seeks to regulate its booming 'rent-a-womb' industry", Thomas Reuters Foundation, <https://www.reuters.com/article/us-india-surrogates/india-seeks-to-regulate-its-booming-rent-a-womb-industry-idUSBRE98T07F20130930>.

⁴⁸ Smita Sharma, "A Controversial Ban on Commercial Surrogacy Could Leave Women in India with Even Fewer Choices", (2022). TIME <https://time.com/6075971/commercial-surrogacy-ban-india/>.

Because of this boycott of commercial surrogacy, considerably more abuse should be visible as the prerequisites of charitable surrogacy are unmistakable and they end up being extremely prejudicial for couples who don't have a 'direct relation' to be a proxy. Commercial surrogacy is a cutting-edge practice instead of conventional surrogacy. Barrenness of both of the accomplices and the craving for a youngster has driven them into searching for substitute methods of kid bearing. The improvement of helped regenerative innovation has made it workable for a youngster to be brought into the world through a proxy mother to whom it isn't hereditarily related.

Unregulated surrogacy prompted worries about unethical methods, proxy moms' double-dealing, and surrogate children's abandonment. Business offices have also benefited from organ exchange, underdeveloped organism import, and other rackets. Surrogacy began in India. Kanupriya, commonly known as Durga, is the second IVF-conceived child globally. She was born October 3, 1978, in Kolkata.⁴⁹ Since then, art has evolved significantly. The law on surrogacy is being developed. Meetings are now regulated by ART Guidelines. The implementation of the classified rule has not yet occurred. India has emerged as a highly desirable surrogacy destination due to its increasing popularity among intended parents. With same-sex relationships/associations and the opportunity to have a family and children, surrogacy has become difficult.⁵⁰

However, commercial surrogacy is strongly disapproved of internationally owing to its connotations of commodifying the human reproductive system and changing parenting. Due to its many moral and ethical difficulties, surrogacy has drawn attention from governments, medical-legal educational institutions, and the public. A surrogate mother's kid born by intercourse, self-insemination, or medically supervised deliberate impregnation may be genetically related to her biological mother. In such instances, a woman's egg might be treated with

⁴⁹ V. Doshi, "We pray that this clinic stays open': India's surrogates fear hardship from embryo ban", *The Guardian*, (2016). Retrieved from <https://www.theguardian.com/world/2016/jan/03/india-surrogate-embryo-ban-hardship-gujarat-fertility-clinic> & Tiyachoudhury, *Surrogacy: A Short Lived Intimacy*, Legal service India, <https://www.legalserviceindia.com/legal/article-3414-surrogacy-a-short-lived-intimacy.html>.

⁵⁰ A. Selot, "Commercial Surrogacy: An Analysis", *Issue 4 Int'l J.L. Mgmt. & Human.*, 4, 2621, (2021).

commission male, donor, or partner sperm. The main argument for surrogacy is that it gives couples who could never have children a second chance. Although money is involved, substitute moms are drawn to surrogacy for its selflessness. Surrogacy supporters agree that it is not child selling. First, a surrogacy contract is to bear a child, not sell one. Surrogacy is an administration, and the money given to a proxy mother should be regarded fees for her services, like legal counsellors and specialists. Some scholars argue that nullifying a commercial surrogacy contract denies replacement mothers their sacred right to contract.

Controversies behind the New Act

Single women, gays, or homosexual couples can't have surrogacy.⁵¹ Brokers work with less boldness and more quietly, often alongside hospital authorities, to deceive authorities and law enforcement.

- *The Surrogate and the Child Are Exploited:* The state has a responsibility to put an end to the abuse of vulnerable women through surrogacy and to safeguard the right of every child to be born. This Act, however, does not strike a proper balance between the two concerns.
- *Reinforces Patriarchal Norms:* The policy in question contradicts the fundamental reproductive rights of women as guaranteed by Article 21 of the constitution, hence perpetuating patriarchal norms prevalent in our society that undervalue women's labour in the economic sphere.
- *Denies legitimate income to Surrogates:* Reducing the number of women who are willing to be surrogates, a ban on commercial surrogacy eliminates a viable source of revenue for surrogates.
- *Emotional Complications:* Emotional complexities arise in altruistic surrogacy arrangements involving friends or family members as surrogate mothers and intended parents, impacting the surrogate child's emotional well-being during and after the surrogacy journey.

⁵¹ Diksha Tekriwal, "Lacunae in the Surrogacy (Regulation) Act, 2021, Lacunae in the Surrogacy (Regulation) Act, 2021", The Leaflet, 2022.

- *No Third-Party Involvement:* A key feature of altruistic surrogacy is the absence of any intermediaries. The presence of a third party guarantees that the intended parents will pay all of the surrogacy procedure' medical and other related costs.

Engaging in commercial surrogacy as a pair entails potential legal consequences. Upon the initial violation, the individuals involved face a potential prison sentence of up to five years, accompanied by a fine of 50,000 rupees. Subsequent violations carry a more severe punishment, with a maximum prison term of ten years and a fine of 100,000 rupees.

Conclusion

The recent enactment of the Assisted Reproductive Technology (Regulation) Bill and the Surrogacy (Regulation) Bill in India is expected to exert a substantial impact on the reproductive rights and health of women in the country. Both of these bills have just been enacted by the Indian government. According to activists, the twin legislation exhibit several deficiencies, despite the inclusion of numerous measures aimed at regulating India's previously unregulated surrogacy industry by subjecting numerous ART and surrogacy facilities to legal oversight. Because the legislation is quiet on certain features that are considered discriminatory, there are still a few major subgroups of people and communities that have been neglected. These include those who aren't married and LGBTQ people. As a consequence of this, the specialist is concerned that these limitations may potentially lead to the growth of an underground, unregulated industry for egg donation and surrogacy services. Inevitably, a flourishing grey market for the precise services that the law intends to control will be created whenever it overreaches its bounds and disregards the rights of the parties involved. This is a natural consequence of the law's tendency to overreach. It is possible that the newly enacted legislation would contribute to rather than alleviate the difficulties that the government had sought to resolve. Therefore, the prohibition of commercial surrogacy might not be the best choice; instead, legislation should be enacted to address this issue. If legislation is not enacted, the practise will go underground and become more risky, illegal, and unregulated after being outlawed, as is the case with liquor stores and prostitution. In a similar vein, surrogacy is in high demand all across the world. It is not possible for us to simply

outlaw commercial surrogacy. It is possible to come up with really stringent restrictions in order to put a stop to the exploitation of young and illiterate women.

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REVENGE PORN: A COMPARATIVE ANALYSIS OF NATIONAL PRIVACY LAWS AND THEIR ALIGNMENT WITH INTERNATIONAL LEGAL STANDARDS

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Abstract:

Non-consensual sharing of images and videos is on the rise globally and has been stimulated. It has been fueled by the growth of social media and the cloak of anonymity it offers. A subtype of privacy violation and cyber harassment – non-consensual nude photos, videos, and any uploading of similar kinds of data by someone – is known as “Revenge Pornography.” Non-consensual pornography is a form of sexual and psychological abuse, and it is one of the gravest offences. Illegal pornography has become very easy to put into practice with women and children, as they are physically weak and emotionally vulnerable to being pushed into dark sexual abuse and the trauma associated with it. According to the recent data, 90% of the victims of Non-Consensual Intimate Imagery are women, indicating that it can be considered as gender-based violence. These sharing of non-consensual images and videos infringes the data and privacy of individuals. The paper deals with the impact of revenge porn on the lives of victims and how it infringes their privacy. It also brings out the lack of appropriate legal response to this issue. This paper has also brought out a need for a separate statute to deal with this issue and has suggested ways to frame a stringent legal framework.

KEYWORDS: *Non-Consensual, Revenge Pornography, Privacy Violation, Sexual Abuse, Psychological Abuse.*

INTRODUCTION:

Laws governing the privacy of individuals' personal information have been existing for quite some time now, with the right to privacy sometimes viewed as a human right. In India, the right to privacy is inherently guaranteed under Article 21 of the Constitution of India, which talks about the Right to Life and Personal Liberty. This right was first granted by the Supreme Court in the case of *K S Puttaswamy v Union of India*¹, where the Hon'ble Court held privacy as a Fundamental Right. As time progressed there was the erosion of privacy laws and the issue of digital privacy and technology abuse became grave especially with the development of revenge porn. The advancement of technology, in addition to the emergence of the internet, has placed a new element of sexual predation that exists in the cybercrimes arena. These women in the 21st century are being poised for looming danger from the partner who chases with the failure of a relationship through revenge pornography.

The research paper titled '*Revenge Porn: A Comparative Analysis of National Privacy Laws and Their Conformity with the International Norms*' examines the legal aspects of revenge pornography and whether the privacy laws of the countries are adequate to prevent this violence. Revenge porn, which is recently termed '*image-based sexual abuse*' or '*nonconsensual pornography*' or '*virtual sexual violence*', has emerged in the early 2000s² and denotes the dissemination of private photos or videos of a woman, whether taken with or without consent, with all her details including phone number, links of social media⁴ without her consent by her ex-boyfriend, former intimate partner, peers, co-workers, family members or by any strangers⁵ in various social networking sites, any porn sites, slut-shaming sites and in any revenge porn specific porn sites⁶ to cause harm to her personality. In most cases, victims may have agreed to the recording of the private act but not to its further distribution. While certain jurisdictions have introduced clear statutes prohibiting revenge pornography, in other contexts, India being included, revenge pornography has primarily been combated using legal instruments addressing privacy, cybercrime, and other protruded aspects that are hardly compliant to international documents like the Budapest Convention on

¹ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

² Danielle Keats Citron & Mary Anne Franks, "Criminalizing Revenge Porn," 49 *Wake Forest Law Review* 301 (2014).

Cybercrime and the Council of Europe's Istanbul Convention.³ Feminists argue that the offense arises from men's hegemony or jealousy due to the reason that a woman is a desirable object for a man. When a woman in a relationship breaks it off, her male partner tries to dominate her by humiliating and slut-shaming her. Though this crime is gender-neutral, where males are also the victims of revenge porn, it has been seen that in most cases, women are the victims overwhelmingly.⁴

Several cases of revenge pornography have been documented in India and women being the victim suffer from bullying, sexual harassment, as well as rape threats. According to the report on cybercrime in 2018 by the *National Crime Records Bureau*, 4173 cases were filed for transmitting sexually explicit images⁵. In India there is no specific law to deal with the issue of revenge pornography. India's principal legislation that addresses privacy issues is the Information technology act, 2000 (IT ACT). It has also gone through a number of amendments in respect of the increasing menace of cybercrimes. The *IT (Amendment) Act, 2008* has provided for specific punishments for identity theft and other forms of cyberstalking, and it has been used on occasions to justify revenge porn.⁶ There are no provisions regarding the non-consensual sharing of intimate images which causes various harms to the subjects, leaving many victims unprotected.

The capability of cyber laws in addressing this concern is debatable because it is impossible to erase everything that occurs on the internet. The question of the distribution of images relates to the fact that images on any website can be accessed from any corner of the world.⁷ In case we are able to convince one website to delete the images or videos, there is a great possibility in order to enable them to upload this content first, considering that the said content is already uploaded by other websites. The study proposes to test how as an example of privacy, revenge porn practices are back to countries like India, analyzing the

³ Holly Jacobs, "Revenge Porn and the Importance of Losing," 45 Connecticut Law Review 1073 (2013).

⁴ Amanda S. Dobson & Jessica Ringrose, "Sexting, Selfies, and Self-Harm: Young People's Digital Cultures of Gender and Sexuality," 25 Journal of Gender Studies 1-4 (2016).

⁵ National Crime Records Bureau, Crime in India 2018 - Statistics, Ministry of Home Affairs, Government of India (2018).

⁶ Information Technology (Amendment) Act, 2008, No. 10, Acts of Parliament, 2008 (India).

⁷ Clare McGlynn, Erika Rackley & Ruth Houghton, "Beyond 'Revenge Porn': The Continuum of Image-Based Sexual Abuse," 25 Feminist Legal Studies 25-46 (2017).

vengeance aspects such as obligations, privacy, consent, cyber abuse, and respect of citizens in the digital arena. In India's case, where such moral turpitudes associated with sexuality are heightened, the level of risk actors post victims of revenge porn endure is increased but legal remedies available remain poorly developed. The paper analyzes the Indian legal system in a manner and also the lack of appropriate legal response towards this issue that other jurisdictions such as the USA, UK, and Australia⁸-which has passed particular guidelines regarding revenge porn have gone to seek in their domestic legal order and recommends reforms to ensure equity with international standards.

STATEMENT OF PROBLEM

The main issue discussed in this project report the pervasive sexual content of the internet, particularly revenge porn, has emerged as a most disputed issue⁹. It has not only made its way into personal lives and violated their privacy, dignity, and mental health but also destroyed the moral fabric of society¹⁰. Thus, lack of clarity in the national laws about privacy and an inability to find alignment with international legal standards make things worse. This, therefore, poses an enormous contradiction to the prevention, prosecution, and protection of revenge porn victims. As such, it is an important need to study some existing legal frameworks and their measures against this very critical issue.¹¹

RESEARCH QUESTION

- This paper raises a question whether the existing laws under the different legislatures governing the offence of revenge porn effectively?
- Also, the paper raises a question whether India needs all over a new statute to deal with such offences similar to other countries like Spain and UK?
- The current paper examines whether the precedent decided by the judiciary is effective enough and goes with the existing legal provisions?

⁸ Mary Anne Franks, "Drafting an Effective 'Revenge Porn' Law: A Guide for Legislators," 51 Wake Forest Law Review 345-370 (2016).

⁹ Danielle Keats Citron & Mary Anne Franks, "Criminalizing Revenge Porn," 49 Wake Forest Law Review 345, 347 (2014).

¹⁰ Aparajita Lath, "Legal Remedies for Non-consensual Pornography in India," Indian Journal of Law and Technology, Vol. 13, 66-68 (2017).

¹¹ Aparajita Lath, "Legal Remedies for Non-consensual Pornography in India," Indian Journal of Law and Technology, Vol. 13, 66-68 (2017).

HYPOTHESIS

- The idea about the topic is pornography should be controlled by the cyber laws as it is below the morals of any particular country and ethical standards of society.
- There are significant differences at the national level with how revenge porn laws relate to privacy.

RESEARCH OBJECTIVE

- In order to explain the popularity of pornographic websites with people.
- In this paper, it examines the relation of morals and ethics with jurisprudence.
- To trace all kinds of laws controlling such websites worldwide.

METHODOLOGY

This study will employ an analytical research design, focusing on the legal principles, concepts, theories, and jurisprudence covering revenge porn law. The methodology adopted throughout the study is doctrinal because the primary sources, such as academic books and articles, legal commentaries and journals, and reports from reputable organizations, will also be consulted. Data that we used to complete our research project are all secondary sources of data including books, articles, journal, case laws, judgement reports and other online sources.

HISTORY OF REVENGE PORN

Before the 1980s, individuals, couples, and subcultures associated with prostitution started producing and disseminating amateur, obscene images and audio. Retaliation pornography was available in the form of real photos or videos before social media and the internet were widely used. The need to prove and need legitimate systems made cases routinely isolated and difficult to assign blame. The undisputed history of vindictive pornography began with incidents such as Marilyn Monroe's unapproved publication in the first Playboy magazine.¹² Limited events occurred in the late 20th century, but they emerged again in the early 2000s, at the time that internet stages became more popular.¹³

¹² A Short History of Revenge Porn, Huffington Post (Feb. 5, 2014).

¹³ Mary Anne Franks, "Drafting an Effective 'Revenge Porn' Law: A Guide for Legislators," 52 Wake Forest Law Review 345, 347 (2017).

One of the first credible recorded incidents of vindicate porn was a clear residential video made by the then-married 'Blacksploitation' on-screen characters Jayne Kennedy and Leon Isaac Kennedy where the attractive tape was since it was published after Jayne left Leon. It has been confirmed that Leon distributed the movie as an outline of proper revenge for her leaving him.¹⁴ In India, this has seen an alarming surge in the last few years-fueled by factors such as the distant reaching onto social media, a need for awareness of consent and protection, and missing legal ingredients.¹⁵ It became easy to carry intimate material cases of actual revenge porn emerged, but laws and guidelines struggled to keep up. In 2012, the significantly publicized case of Holly Jacobs (as well known as "Holli Thometz") inside the United States brought thought to the issue. Jacobs' ex-partner dispersed indicate photos of her online. In reaction, California passed the essential revenge porn law in 2013, making it a misdemeanor to convey imply pictures without assent.¹⁶

According to a report from 2022, given by the UK's Revenge Porn Helpline, there had been a huge increase in reported cases. The organization noted that it had documented 990 sextortion cases in 2021-a fivefold increase from 2020. The helpline reported that it had received 4,406 reports in 2021, an alarming rise of over 40% from 2020, with 75% of women who reported cases, "with evidence that sextortion disproportionately affects women".¹⁷ Non-consensual sharing has been multiplied through social media, which worsens the problem that revenge porn is facing. It was stated that around 27% of internet users were affected by revenge porn in India. The study was conducted by an NGO named Cyber and Law Foundation.¹⁸

Similarly, the recent 2023 Center for Innovative Public Health Research survey conducted in the United States depicts the full extent of this concern. In this

¹⁴ Clara McNulty-Finn, "Revenge Porn History: How One Victim's Story Inspired a Movement," Marie Claire (Mar. 1, 2019).

¹⁵ Aparajita Lath, "Legal Remedies for Non-consensual Pornography in India," Indian Journal of Law and Technology, Vol. 13, 66-68 (2017).

¹⁶ Aimee Rath, "California Passes Revenge Porn Bill," CBS News (Oct. 1, 2013).

¹⁷ Revenge Porn Helpline, Annual Report 2021-2022, 5-7.

¹⁸ Cyber and Law Foundation, Revenge Porn in India: A Study (2022).

regard, about 10.4 million Americans or about 4% experience threats or actual instances of having explicit images of them posted without their consent. Mainly, the victims are women. There exists an estimate that women are nearly five times more likely to be targeted than men, pointing out the vulnerability of young adults with a median age of 23 to this form of abuse.¹⁹ The main characteristic of often being an ex-romantic partner with a perpetrator underlines the intimate and personal nature of such attacks.

In India, although there is no provision specifically directing the prosecution against the accused of revenge porn, 'voyeurism' has been addressed as an offense punishable u/s 77 of Bharatiya Nyaya Sanghita, 2023 (earlier it was u/s 354C of the Indian Penal Code, 1860)²⁰

COMPARATIVE STUDY OF THE LEGAL DEVELOPMENT

USA

Revenge porn or Non-consensual pornography (NCP) is a serious issue in the USA particularly. In the United States, such activities are on the rise because of social media and the internet. It is a cruel act to take and share only those images or videos that the other person does not wish to expose, especially when it is done as an act of vengeance abuse or to humiliate. The aftermath for the sufferers can be too terrible with emotional pain, charging the people with damage to the reputation and even extreme cases of blackmail or being stalked.²¹ It is, however, a worrying development that revenge pornography has been on the increase; the legal system may be kicking into action, albeit too slowly.

To combat such offenses, most states have adopted certain measures to address revenge porn. In 2013 California took the first step by introducing section 647(j)(4) under the US Penal Code, which made the act of circulating explicit and intimate

¹⁹ Centre for Innovative Public Health Research, *Nonconsensual Image Sharing: Data and Policy Implications* (2023).

²⁰ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India) (as amended by the Bharatiya Nyaya Sanghita, 2023), § 77 (addressing voyeurism as an offense).

²¹ Mary Anne Franks, "Revenge Pornography: A Guide for Victims," 23 *Harvard Journal of Law & Gender* 1, 5 (2000).

images without the consent of that person with the intention of causing harm, a crime.²² After that many other states such as Alaska and Texas soon came up with their own laws, with Texas under the statute “**Unlawful Disclosure or Promotion of Intimate Visual Material**” imposes strict penalties while Alaska kept it under the category of felony offence which depicts how seriously the offence is treated.²³

Also at the federal level, significant action was taken when in 2019 the SHIELD ACT was proposed with the aim to criminalize the non-consensual sharing of intimate images and videos nationwide, but as of now, it has not been passed yet.²⁴ However, Section 230 of the Communications Decency Act safeguards online platforms from liability for user-generated content. Therefore, it will be difficult to hold websites responsible for hosting revenge porn, though there are ongoing debates to reform this law.²⁵

Significant legal cases have also shaped how the courts understand and rule on revenge porn. A website operator was convicted under California’s revenge porn laws in 2014 for facilitating the distribution of non-consensual explicit images in *People v. Bollaert (2014)*, highlighting the intermediaries’ role in perpetuating this abuse.²⁶ The powerful legal discourse case, *United States v. Nosal (2016)* although not about revenge porn but related to the misuse of personal data online, which signals heightened concerns relating to digital privacy more generally²⁷.

AUSTRALIA

In Australia, the non-consensual sharing of intimate images, commonly known as “revenge porn,” is generally defined as any image or video taken when the subject had a reasonable expectation of privacy and would not have agreed to the image being shared publicly.²⁸

²² California Penal Code, § 647(j)(4) (2013).

²³ Texas Penal Code, § 21.16 (2015); Alaska Statutes, § 11.61.123 (2016).

²⁴ H.R. 1906, 116th Congress (2019).

²⁵ 47 U.S.C. § 230 (1996).

²⁶ *People v. Bollaert*, No. BA414412 (Cal. Super. Ct. Jan. 27, 2014).

²⁷ *United States v. Nosal*, 844 F.3d 1024 (9th Cir. 2016).

²⁸ Criminal Code Act 1995 (Cth) (Australia), § 474.17A.

New South Wales was the first state to implement laws that specifically punish the act of distributing personal images, altering photographs, and threatening to share such content without consent, all of which fall under its criminal definitions of revenge porn.²⁹

Australia has passed both state and federal legislation to address the issue of revenge pornography. In 2018, the Australian government updated the federal law on revenge pornography. **The Enhancing Online Safety (Non-consensual Sharing of Intimate Photos) Act 2018 (EOSA) amended the previous Act of 2015 and the Criminal Code Act of 1995** to make it illegal to share “intimate images” without consent. Now, any person who operates online platforms and social media sites and fails to remove offensive photos and videos could face up to seven years imprisonment under this law. It is critical to understand that “intimate photos” include all nude and seminude images, including those captured during “up skirting,” regardless of whether the subject is fully exposed or partially covered, allowing offenders to be prosecuted.³⁰

In addition, the majority of Australian states and territories have enacted laws criminalizing the distribution of intimate images without consent.³¹ Like Victoria enacted Crimes Amendment (Sexual Offences) Act 2014 and Queensland enacted Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019, which includes offenses for non-consensual distributing intimate images. Whereas Northern Territory amended the Criminal Code Amendment (Image-Based Abuse) Act 2019 which includes offenses related to distributing, threatening to distribute, or obtaining intimate images without consent and penalizes the accused for the same.³²

SPAIN

Spain has also observed the issues of revenge porn, or non-consensual sharing of

²⁹ Crimes Act 1900 (NSW) (Australia), § 91P.

³⁰ Enhancing Online Safety (Non-consensual Sharing of Intimate Photos) Act 2018 (Australia).

³¹ Criminal Code Act 1995 (Cth) (Australia), § 474.17A.

³² Crimes Amendment (Sexual Offences) Act 2014 (Vic) (Austl.); Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Act 2019 (Qld) (Austl.); Criminal Code Amendment (Image-Based Abuse) Act 2019 (NT) (Austl.).

intimate images and videos. The issue got nationwide attention when various cases of the same arose in the country. To tackle such a situation, the Spanish authorities made some significant changes in their legal framework.

One of the first significant legislative responses to revenge porn in Spain came with the 2015 reform of the **Spanish Criminal Code**. In which the introduction of Article 197.7 to the code has strictly made it illegal to distribute private images or videos without the consent of the person involved. Any person who violates this provision may be imprisoned for three months to one year and may also face fines, depending on the nature and gravity of the offense committed.³³

With the implementation of **Organic Law 1/2004**, Spain improved its response to gender-based violence. Although this law primarily addresses physical and psychological violence against women, it has also been applied to broader issues of gender violence, such as digital abuse. This law recognizes revenge pornography, as it targets women and highlights the existing power imbalances and societal discrimination. However, it eventually leads to stricter legal enforcement measures and a greater understanding of digital harassment as a kind of gender-based violence.

Also, in the year 2022 all over new legislation was enacted **Comprehensive Sexual Freedom Law**, often called as “**Only Yes is Yes**” which is considered as the landmark step taken by the country to govern such offences. This law has significantly changed the treatment of sexual violence, including digital forms of abuse. It requires affirmative consent for any sexual act, which also covers the sharing of intimate images. Victims are no longer required to demonstrate resistance or that the act was forced; the absence of consent alone is sufficient for prosecution.³⁴ Furthermore, the “Only Yes is Yes” law includes specific measures for digital sexual violence, with increased penalties for those who share intimate content without consent.

Spain has addressed the challenge of revenge porn with its **Data Protection Law**,

³³ Código Penal [Penal Code] art. 197.7 (Spain).

³⁴ Ley Orgánica 1/2004, de 28 de diciembre, de medidas de protección integral contra la violencia de género (Spain).

which works similar to the **General Data Protection Regulation (GDPR)**. The unauthorized sharing of intimate images is regarded as a violation of a person's right to privacy and personal data. Under which Victims can approach both criminal courts and can file data protection complaints, and ensure that they have additional safeguards against digital harassment.

ENGLAND AND WALES

There are new provisions in the Sexual Offences Act 2003 that are coming into force on the 31st of January 2024 in England and Wales. Any offense committed between April 2015 and the 31st of January will not be subject to retrospective and will thus be held under the Criminal Justice and Courts Act 2015. Threats to share intimate images are also a prosecutable offense, and this came into effect on 29 June 2021. This falls within the Domestic Abuse Act 2021. It is therefore unlawful to threaten someone with disclosing a private sexual photograph or film that contains that other person, with the intent of causing said other person distress. Whether the photographs even exist is irrelevant.³⁵ Revenge pornography was criminalized in England and Wales in April 2015, under sections 33-35 of Criminal Justice Act (2015), as a measure to criminalize the distribution of "private sexual materials". Of course, it is of utmost significance that the Act has covered an extensive interpretation of the term material.³⁶ Not even a year passed after the implementation of Criminal Justice Act 2015 when 206 convictions under the offense were made (Oriola, 2018).³⁷ Revenge porn appears to be gaining traction in the UK. According to statistics obtained from 19 of the 43 police forces of England and Wales, the number of cases that officers were investigating for alleged revenge porn had increased dramatically over the last four years, from 852 cases in 2015-16 to 1,853 cases in the period between 2018-19.³⁸ Between April and December 2015, the BBC scrutinized requests for information from 31 forces in England and Wales and found that 30% of offenses involved young people aged under 19 years old, while three of the 1,160 victims were 11 years old. Sharing intimate images without consent could also carry a prosecution under other

³⁵ Domestic Abuse Act 2021, c. 17 (U.K.); Sexual Offences Act 2003 (U.K.).

³⁶ Domestic Abuse Act 2021, c. 17 (U.K.); Sexual Offences Act 2003 (U.K.).

³⁷ Criminal Justice Act 2015, c. 2 (U.K.).

³⁸ Oriola, A. (2018). "Revenge Pornography: An Analysis of the Criminal Justice Act 2015." *Criminal Law Review*.

legislation. For example, to cause harassment, alarm or distress, or anxiety, a communication is an offense under the Malicious Communications Act 1988. This would include the distribution of private images.³⁹ Prosecution is also available under the Protection of Freedoms Act 2012, which defines someone being held off harassment and stalking.⁴⁰ If images are taken from a computer without the owner's consent, then it is an offense under the Computer Misuse Act 1990.⁴¹ An infringement of the Theft Act of 1968⁴² is blackmail, which incorporates undermining private photographs. While the United Kingdom enacted true revenge pornography laws, the European countries following the continental criminal law system criminalize revenge pornography mainly as an adjunct to, or under the auspices of, traditional privacy and personal data offenses

ITALY

Revenge porn, also known as image-based sexual abuse, has been considered a serious issue in Italy and globally. Until 2019, Italy had no particular legislation or penal law articles specifying revenge pornography. Only, however, through the Data Protection Code of 2003 and the libel and slander offenses as contained in the Penal Code of 2015, was some little protection afforded. Nonetheless, these laws proved to be too lenient and did not provide adequate protection for victims, as the case of Tiziana Cantone in 2016⁴³ tragically proved. Italy responded immediately by passing the Cyberbullying Act in 2016, criminalizing harassment by way of insult or defamatory messages, blackmail, or identity theft into online environments when directed at a minor⁴⁴ younger than 18 years of age. In late 2019, taking after a few emotional cases, Italy moreover criminalized what came to be called "revenge porn," that is, the uploading of intimate pictures by an ex-partner. One of these is the regulation of the Italian Criminal Code - Article 612-ter, which was sanctioned in 2019. It specifically addresses an offense related to what is called "revenge porn. This new article punishes whoever, after having taken or even snatched sexually explicit images or videos that were intended to

³⁹ Malicious Communications Act 1988, c. 27 (U.K.).

⁴⁰ Protection of Freedoms Act 2012, c. 9 (U.K.).

⁴¹ Computer Misuse Act 1990, c. 18 (U.K.).

⁴² Theft Act 1968, c. 60 (U.K.).

⁴³ Data Protection Code of 2003 (Italy).

⁴⁴ Cyberbullying Act 2016 (Italy).

remain private, sends, delivers, transfers, publishes, or disseminates them without the express consent of the persons concerned shall be punishable by imprisonment from 1 to 6 years and a fine ranging from €5,000 to €15,000⁴⁵ euros. The same punishment applies to all those who contribute to the spreading of literature that causes harm, while if the crime is committed by a spouse, with whom they may also have been separated or divorced, or any other relative, the punishment is more severe. According to a survey in 2018, it was found that 78 percent of women and 65.5 percent of Italians considered such laws as a social achievement.⁴⁶ In July 2019, the Italian parliament approved the revenge porn law. Also, as per a survey conducted in 2019-2020, around 13 percent of population are a victim of revenge porn.

FRANCE

Non-consensual laws in France, which the name says a lot, refer to lawful provisions that govern any actions without the explicit consent of the party involved. These usually concern criminal offenses in the form of sexual assault, rape, and all forms of violence or exploitation in which the victim's consent is either absent or vitiated. Article 222 of the French Criminal Code includes sexual harassment, rape, psychological violence, as well as Article 226-2 of the French Penal Code introduced by the 2016 "*Loi pour une République numérique*" (Digital Republic Law), which criminalizes "sharing with the public or a third party of any recording or document relating to words or images of a sexual nature obtained by transmission, recording or fixation with and imposes a penalty of 2 years of imprisonment and up to 60.000⁴⁷ euros fine". France, being the second summit of the continental criminal law and in contrast with Germany, has included revenge pornography as a criminal offense under the Digital Republic Law (2016). Compared to the definition of the offense in France, more has been emphasized on revenge pornography. Sex as one of the rudiments of the images or photographs actually means that this must be sexual in nature, otherwise it will not be illegal. However, this isn't required to have intent to retaliate. The crime is merely committed by circulating sexual images of a man or woman without either's consent-even though such images were created or circulated with their

⁴⁵ Codice Penale [Criminal Code] art. 612-ter (It.).

⁴⁶ Survey on Revenge Porn Legislation in Italy" (2018).

⁴⁷ Code Pénal [Criminal Code] art. 226-2 (Fr.).

agreement.⁴⁸ Article 226-2 of the French Penal Code 2018 falls under crimes against privacy. This article bluntly states that such a crime would be dealt with as more of a serious affront towards personal privacy and also entails substantial sentences in case of conviction.⁴⁹

REVENGE PORN AND INDIA

Revenge porn, or non-consensual pornography as it is legally termed, has in some form been an issue in India since the past two decades.⁵⁰ As per a survey done by the cybercrime in 2010 which found that 18.3% of the women are unaware of the fact that revenge porn is happening to them.⁵¹ A case here is revenge porn, in era of internet world where stuffs reach to a million within seconds have consequences over the life and lifestyle of an individual also steps up degradation in mental health because most of the contents are viewed not by 1 or 2 but millions, despite not doing anything against law victimized.⁵²

As per cyber and law foundation and an NGO which conducted a survey, in India of 13–45 age group internet users about 27% are victims of revenge porn. In India, the first preference of a victim in any country is either suicide or to never register a complaint. The person is not made because of the fear of being a victim, shamed by others. This, in turn, triggers a downward spiral of points and accusation questioning – why did the victim share whatever with the accused? This not only shatters the mindset of the victim, but also makes him speechless for doing further actions.

The first recorded example of revenge porn by a juvenile was in India, where in 2001, a 16-year-old created sexually explicit images of his female classmates and teachers that he then posted to a website along with their names and home addresses; the teenager is believed to have been motivated by teasing that spiraled

⁴⁸ Loi pour une République numérique [Digital Republic Law] (2016) (Fr.).

⁴⁹ Idid.

⁵⁰ Cybercrime, National Crime Records Bureau, Ministry of Home Affairs, Government of India (2010).

⁵¹ The Cyber and Law Foundation, *Revenge Porn in India: A Study 5* (2020).

⁵² *State v. Unknown*, (2001).

out via on-line forums.⁵³ Currently, there is an ongoing demand to develop a proper legal framework to deal with the offence of revenge pornography.

On 2018, NGO Prajwala adduced two videos of rape being shared on internet and in a suo motu case taken up by Supreme court based on a letter where it has been directed the government to frame guidelines for removal of child pornography and gang rape videos from web. Yet without any of these things in place, the issue of revenge porn still exists. Our legal system can also be improved by implementation in the way other countries handle revenge pornography.

LEGISLATION GOVERNING THE OFFENCE OF REVENGE PORN IN INDIA ARE:

To deal with the said offence, there are two main statutory law governing the offence of revenge porn in India, first is the Information Technology (Amendment Act) of 2008 and the Bhartiya Nyaya Sanhita of 2023 (which has replaced the Indian Penal Code of 1860), some provision of both the act made the act of revenge porn as an offence. Also, the Indecent Representation of Women (Prohibition) Act of 1986 which prohibits the production, sale, distribution, circulation, or letting to hire of any material that contains indecent representation of women. Revenge porn cases are on a surge every day in India. Unlike other countries, India does not have a particular provision that deals exclusively and in detail with the cases related to 'revenge porn'. However, different provisions under several Acts help to prosecute the culprit and give justice to the victims.

1. INFORMATION TECHNOLOGY (AMENDMENT ACT), 2008

Before the year 2008, the only section that dealt with prohibition of obscene materials, including pornography and obscenity in publications is section 67 of the Information Technology Act of 2000.⁵⁴ However, the 2008 amendment brought to the said Act with it the addition of section 66E, which lays down a penalty for violation of privacy.⁵⁵ This deals with wilful, or without purposeful, publication, transmission, or dissemination of private images of a person under conditions that infringe the privacy of that person. Definitions of the terms 'transmit,' 'capture',

⁵³ Prajwala v. Union of India, W.P. (CrI.) No. 173/2018 (2018).

⁵⁴ Information Technology Act, No. 21 of 2000, § 67.

⁵⁵ Information Technology (Amendment) Act, No. 10 of 2008, § 66E.

'private region, 'publish' and 'under conditions infringing privacy', have been provided in the explanation of the section. In relation to the perpetrator and the victim of the crime, this offence is stated in gender-neutral terms because it concerns both the parties. Any person who perpetrates such crime as stated in the Act shall be imprisoned for a term of not exceeding three years or shall pay a fine not exceeding 2 lakh rupees, or both such fines and imprisonment.

Also, the provisions under Section 67 and 67A of the Act punishes the persons for creating and sharing and circulating of illicit sexual content through any electronic medium. Moreover, Section 67B, which includes and penalizes the person if found transmitting any content of victims who are under the age of 18. And under Section 72 of the Act, any person who is liable for the Breach of Confidentiality and privacy shall be penalized for the same.

2. BHARATIYA NYAYA SANHITA

The BNS follows the trend of the Indian Penal Code and addresses image-based sexual assaults under **Sec77**,⁵⁶ (*The provisions applied in revenge porn cases detail the crime of voyeurism*), the crime of voyeurism is built in a gender-specific way. This is an offense that can be committed only by a man against a woman, who watches or captures the image of a woman engaged in a private act at a time when she would normally have an expectation of not being observed either by the perpetrator or any other person at the behest of the perpetrator or disseminates that image. The clause shows gradation of the penalty based on the number of times a person has been convicted. The right to privacy is given importance in the definition of 'private act' supplied under Explanation 1. Explanation 2, though does not implicitly deal with the issue of revenge pornography when the sufferer gives her consent to collect photos, and not with intent to distribute to third parties, such distribution is responsible.

Section 74 (assault or criminal force on a woman with the intent to outrage her modesty), **section 75** (Unwelcome physical contact, explicit sexual overtures and favors and passing on sexually colored remarks), **section 316** (an act intended to commit criminal breach of trust.) **section 356** (An act done with the intention or

⁵⁶ Bhartiya Nyaya Sanhita, No. 22 of 2023.

reason to defame or harm the reputation or character of an individual), **section 351** (An act intended to commit criminal intimidation), **sec 79** (An act intended to insult the modesty of a woman).

3. The BHARATIYA NAGARIK SURAKSHA SANHITA

It makes minor alterations to the process of filing a complaint regarding IBSA⁵⁷, such as how the victim need not appear in person at the police station for registering person to register a complaint and initiate the process of filing an FIR.

4. REPRESENTATION OF WOMEN PROHIBITION ACT, 1986

Along with the aforementioned statutes, the Indecent Representation of Women (Prohibition) Act, 1986 also aids in Section 4 of the Indecent Representation of Women (Prohibition Act), 1986, is another provision use to tackle the said offense.⁵⁸

5. PROTECTION OF CHILDREN AGAINST SEXUAL OFFENSE ACT, 2012

POCSO is a law that has been formulated solely to protect children from sexual offenses of all kinds. There has been a rise of almost 400% in cyber-crime cases committed against children in the year 2020 itself, cites a report from NCRB (National Crime Records Bureau). This act has been formulated keeping the interest of safeguarding the children from all forms of sexual abuse, whether in the offline or online world.

Section 43 of POCSO Act, 2012 strictly criminalizes the use of children for the creation of pornographic content in any form of means or media, 44 including the portrayal of a child in an indecent objectionable manner (showing off their private organs) or in the stimulation of sexual organs or engaging in actual sexual intercourse,⁵⁹ the offender under this section will be awarded with a jail term of at least five years and with a fine depending upon the degree of commitment to the crime. The subsequent conviction will lead to an imprisonment of seven years and a fine.

⁵⁷ The Bharatiya Nagarik Suraksha Sanhita, No. 41 of 2023, § 132, Acts of Parliament, 2023 (India).

⁵⁸ The Indecent Representation of Women (Prohibition) Act, No. 60 of 1986, § 4, Acts of Parliament, 1986 (India).

⁵⁹ Protection of Children from Sexual Offences Act, No. 32 of 2012, § 43 (India).

Section 46 of the POCSO Act, 2012 makes the storage and possession of child pornography illegal. Under this section, the circulation, promotion, and display of any such material in any manner is also strictly prohibited and is termed illegal.⁶⁰ The only exception under this section is only if the possession of such material is for reporting it to the authorities or presenting it as evidence in the court of law. This section also prescribes the punishment of three to five years to anyone who stores child pornographic material for commercial use.

LOOPHOLES

Here are several statutes and provisions dealing with cases related to revenge porn. However, with the technological advancements and digitalization at its peak, there are no adequate laws to combat the increase in crimes with respect to '*non-consensual or revenge pornography*'. Further, there are also severe drawbacks in the existing laws in India.

INFORMATION TECHNOLOGY (AMENDMENT ACT), 2008

- Offence under Section 67 and 67A of the Act is bailable and non-bailable offence respectively⁶¹. Thus, it clearly highlights that the legislature does not treat both the offenses with the same amount of seriousness. Moreover, the IT Act does not provide any yardstick on the basis of which an image can be tested for being "obscene" or "sexually explicit." This particular aspect of law requires reconsideration.
- Curiously, as per the language of Sections 67 and 67-A of the IT Act, if two consenting adults in a relationship with each other share among themselves their intimate images, which might for a reasonable man might be considered as obscene or sexually explicit, then such distribution of images even if done privately between the couple themselves is treated as a punishable offence.
- While complaining for the such offence, victim have to mention various legal provisions under different statutes like Sections 78, 77, 35, of the Bhartiya Nyaya Sanhita of 2023,⁶² and Sections 67A, 67, and 66E of the

⁶⁰ Protection of Children from Sexual Offences Act, No. 32 of 2012, § 46 (India).

⁶¹ Information Technology (Amendment) Act, 2008, No. 10, § 67, Acts of Parliament, 2009 (India); id. § 67A.

⁶² Bhartiya Nyaya Sanhita, No. 18, §§ 35, 77, 78, Acts of Parliament, 2023 (India).

Information and Technology Act, 2008 which eventually leads to confusion, ambiguity, or uncertainty in law.

THE BHARATIYA NYAYA SANHITA

- This only covers a part of the broad range of Image Based Sexual Offense incidents, and Section 77 only identifies women as potential victims. Therefore, this provision fails to provide any sort of protection to men and transgender persons under BNS. Hence, India lacks a uniform statute that addresses the problem of revenge porn.

REPRESENTATION OF WOMEN PROHIBITION ACT 1986

- The scope of this Act does not cater to the needs of the current digital world with the advancement in technologies⁶³. As it does not include electronic and digital forms of abuse (which include image-based sexual abuse) therefore, it is not updated to tackle said offense.
- The entirety of this Act, must be reconsidered according to the current facts and circumstances.

JUDICIAL APPROACH

STATE OF WEST BENGAL V. ANIMESH BOXI

For India, this case holds a historic significance in its history for the offense of revenge porn because it represents India's first conviction for 'revenge porn'. This case took place in Tamluk, East Midnapore, between a first-year college student and her male neighbor Animesh, who was a B. Tech student. The victim had been in a relationship with Animesh (the accused) for three years, during which time she developed trust and affection for him, prompting her to share personal photos at his request. He also frequently asked her out and gained access to her phone after obtaining her password from her diary. When she refused to send him any more pictures, he threatened to upload her existing ones online. The importance of providing compensation. Realizing his true nature, she cut off contact with him. In retaliation, Animesh uploaded her private photographs on the Internet out of anger for her refusal. The accused, Animesh Boxi, was found guilty of offenses under sections 354A, 354C, 354D, and 509 of the Indian Penal Code (which is now

⁶³ Representation of Women (Prohibition) Act, 1986, No. 60, Acts of Parliament, 1986 (India).

replaced by the provisions of the BNS), as well as sections 66E, 66C, 67, and 67A of the Information Technology Act, 2000 (Amendment 2008).⁶⁴ He was convicted under section 248 (2) of the CrPC and imposed a penalty of Rs 9,000 and 5 years of imprisonment. The court also stated that the girl is entitled to get the state compensation. Therefore, the court emphasizes the need for the State government to treat victims as survivors and the importance of providing compensation.

In this case, the judgment was issued within six months, making it the first case of a state conviction for cybercrime against women. This is a positive development, indicating that the Indian judiciary is beginning to handle these cases more efficiently and is also emphasizing their quick resolution. In India, revenge porn is a criminal offense, with penalties ranging from 3 to 7 years in prison and fines of up to 10 lakhs under the Indian Penal Code, 1860 and the Information Technology Act, 2000.

SUBHRANSHU ROUT V. STATE OF ODISHA

In this landmark case, the court addressed the social media user's 'right to be forgotten' for the first time. The court also observed that the law was silent on the remedy for victims of revenge porn.⁶⁵ The brief facts of the case indicate that the accused and the victim were in a relationship for one year. The accused went to the victim's house, took advantage of her being alone, and committed rape. He recorded this incident on his mobile phone. Additionally, he threatened to kill the victim and to share the recorded video and photos. When the victim told her parents about the incident, the accused uploaded all the videos and photos to a fake Facebook account created in her name.

Justice K.S. Panigrahi pointed out that the current Criminal Justice System in India imposes severe penalties for such serious offenses. But the crucial aspect that is the rights of the victim, which should be primarily concerned. Particularly the right to privacy, which is a fundamental aspect of Article 21 (right to life) recognized and accepted in the landmark case of K.S. Puttaswamy v. Union of India, is still not properly answered. The 'right to be forgotten' concept is recognized in the General Data Protection Regulation (GDPR), Europe's digital

⁶⁴ State of W.B. v. Animesh Boxi, Sessions Case No. 243, Criminal Court (Tamluk, E. Midnapore, 2018).

⁶⁵ Subhranshu Rout v. State of Odisha, 2021 SCC OnLine Ori 478.

privacy law that basically defines how personal data should be collected, processed, and deleted. This concept of a 'right to be forgotten' has yet to be properly acknowledged by India.

SKAND BAJPAI V. UNION OF INDIA

In this case, the honorable court clearly addressed the lack in the existing legal provisions governing the offense of revenge porn.⁶⁶ Here, two students from Pune's Bharati Vidyapeeth New Law College have filed a Public Interest Litigation to establish laws governing minors' access to social media and to develop an effective profile verification system. A three-judge bench comprised of SA Bobde, CJ, AS Bopanna, and V. Ramasubramanian has issued a notice, directing the government to create laws to address the sale and distribution of obscene and pornographic content. Including Child Sexual Abuse Material (CSAM), as well as issues such as rape and revenge porn on social media platforms.

CRITICISM

- Like an elephant, the Internet never forgets. Information that is stored in the cloud potentially lives forever.⁶⁷ Once the data is stored on the Internet, it would be impossible to delete it from the Internet, even with the consent of the person who uploaded it. It is because the zeros and ones may exist in a cache owned by search engines such as Google, Yahoo, and Mozilla Fox. So, it means once the photo is posted online, it is challenging or let's say next to impossible to completely remove it from the internet, which shall be interpreted as the harmful consequences are continuous and long-lasting.
- The offence of revenge porn mostly occurs in a relationship, committed by the male partner after the breakup or end of such a relationship.⁶⁸ Before, they trusted each other and took some private pictures and videos of each other voluntarily or involuntarily but did not disseminate these contents. Though pictures or videos may be taken with consent, the dissemination

⁶⁶ Skand Bajpai v. Union of India, Writ Petition (Civil) No. 494 of 2020 (India).

⁶⁷ The Internet Never Forgets: The Challenge of Erasing Revenge Porn, 18 Indian J.L. & Tech. 205, 207 (2021).

⁶⁸ Meghna Rao, Revenge Porn: The Legal & Psychological Implications in Relationships, 7 J. Gender Stud. 56, 59 (2022).

takes place without the consent and intentionally to cause her harm. Thus, the current legal framework fails to address this trust-based betrayal suffered by the victim.

SUGGESTION AND POLICY RECOMMENDATION

Today it seems that the mindset or the way people think is changing, people are opening themselves more to what to do and what not. Presently, many states in the USA like California, New Jersey, etc. and also some countries like the UK, Spain, Australia, Italy have already framed laws regarding 'revenge porn'. India is behind this and fails to fulfill the present demand of time. The changed problems are not directly covered by the existing legal framework. In the UK, revenge porn specifically is a new offense under section 33 of the Criminal Justice and Courts Act, 2015.⁶⁹ UK legislation has an array of offenses for the definition that includes revenge porn, which refers to the explicit sharing of photographs or videos without a person's consent that are of persons performing or depicting sexual activity, images or videos that expose private parts of the person or depict the person in sexual activity. India must adopt the perspective of UK law and introduce a definite and strong legal framework with strict penal action. In India, there are available legislations for the victims to file charges against the perpetrator committed for offenses associated with revenge porn such as voyeurism, stalking, transmission of sexually explicit images, etc. However, the latest Introduction of the Bharatiya Nyay Sanhita of 2023 that replaced the Indian Penal Code of 1860 does not contain any specific section dealing with this crime either.⁷⁰ The aforementioned problem could be solved either by amending Section 354C of the IPC, now Section 77 of the Bharatiya Nyay Sanhita of 2023,⁷¹ or making revenge porn an independent offense. Under Section 357 of the Criminal Procedure Code, 1973, (now Section 395 of the Bhartiya Nagrik Suraksha Sanhita of 2023) compensation is granted to the victims, but the same is subject to the discretion of the court.⁷² Hence, the law can be framed to compensate precisely those victims of revenge porn like the rape victim as directed in the Animesh Boxi case.

⁶⁹ Criminal Justice and Courts Act 2015, c. 2, § 33 (UK).

⁷⁰ Bhartiya Nyaya Sanhita, No. 18, § 77, Acts of Parliament, 2023 (India).

⁷¹ Bhartiya Nagrik Suraksha Sanhita, No. 19, § 395, Acts of Parliament, 2023 (India).

⁷² Criminal Procedure Code, 1973, No. 2, § 357, Acts of Parliament, 1973 (India).

The question of the victim's compensation must be addressed by law. Victims of revenge pornography suffer inexorably and are mocked by society. The victim's right to privacy, which is recognized as a fundamental right and integral part of right to life and liberty (Article 21), in K.S. The Puttaswamy case is adversely affected.⁷³ Therefore, legal provision has to be made for adequate compensation to be provided to the victims.

It is therefore very important to do forensic analysis on electronic evidence and devices to ensure its authenticity.⁷⁴ The uncertainty about the authenticity of these electronics. The court finds it hard to depend on such evidence because those evidences and devices have made this fact almost impossible. It would therefore be necessary for the establishment of a specialized unit to investigate and analyze the electronic evidence. Recently, the High Court of Calcutta stated that there is an urgent need to train the police force in the areas of storage, collection, reception and analysis and production of electronic evidence.

Original dramatic, literary, musical, and artistic works, cinematograph films and sound recording are protected under the Copyright Act.⁷⁵ This can be utilized in favor of victims even under copyright law, mainly when the content is a selfie. Indian copyright law does not offer any such protection to its victims of revenge pornography at this point, but many such victims in the United States have been utilizing their copyright to erase similar photographs. India must also reform its copyright laws to allow victims to have offending photographs and videos taken down from all websites.

CONCLUSION

In conclusion, the result of ethical warrants is censorship. The evidence provided from the warrants is used differently in the pursuit of pornography, thus depending on the stance, might create the opposite effect of what was initially intended. Revenge porn is a very serious issue that warrants a separate statute for

⁷³ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁷⁴ Praveen Singh, The Role of Forensic Evidence in Cybercrimes, 23 Indian L. Rev. 89, 92 (2022).

⁷⁵ Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

itself.⁷⁶ Presently, various provisions from the IT Act and the BNS have been invoked in India to proceed against the perpetrators to convict them, but such an exercise of scanning different provisions under various laws would not be a feasible course of action. None of the existing laws specifically and substantially deal with the problem of revenge porn. Hence, accumulation of laws leads to perplexity and vagueness related to the operation and consequently, conviction in such circumstances becomes quite impossible. Most of the pornographic material happens to exhibit women as sexual objects for men and that is not a healthy situation for a society constantly struggling and fighting to establish gender equality and is working hard in an effort to lessen the unprecedented amount of violence being perpetrated against half the humanity, which is women. The country already has existing laws trying to curb this rise of illegal pornography, and though not entirely sufficient, it does pave the way to justice for any victim of it. Illegal pornography is now as common as a pickpocket in crowded places and therefore it should definitely get conversant with the legal remedies discussed here in this article and be aware of the threats and dangers that might befall them in this highly technological world that can be referred to as the internet age. As little has been done to correct the problem-solution mismatch India often faces while dealing with issues deeply rooted in socio-legality, this paper charts a course for adjusting India, as it is channeled into a more tolerant era. The law enforcement agencies face a major challenge in front of them because of the lack or absence of legislation, which enables them to formally pursue complaints and allegations of revenge porn or in some other cases lack of evidence makes Investigations weak. The global nature of the Internet, where there is no territorial control, raises jurisdictional challenges and a country's overseas law enforcement agencies may not take an interest if issues are referred for investigation.

⁷⁶ Supriya Malhotra, A Legal Vacuum: The Need for a Separate Revenge Porn Law in India, 29 Nat'l L. Sch. India Rev. 303, 305 (2021).

ADVANCING FEMINISTIC JUSTICE THROUGH LABOUR LAW REFORM: AN EVALUATION OF INDIA'S NEW LABOUR CODES

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Abstract

Transboundary environmental crime is a pressing global issue that involves activities such as illegal logging, wildlife trafficking, hazardous waste dumping, and illicit fishing, which transcend national borders and have severe ecological, social, and economic consequences. These crimes not only threaten biodiversity and environmental health but also undermine peace, security, and sustainable development. Addressing transboundary environmental crime requires robust international legal frameworks, such as the Basel Convention and CITES, which regulate hazardous waste and wildlife trade, respectively. These agreements foster collaboration between nations by providing guidelines for sustainable practices, enforcing penalties, and promoting information sharing. However, gaps in enforcement, governance, and legal ratifications persist, necessitating coordinated global efforts.

Key strategies include strengthening laws, improving enforcement mechanisms, and fostering partnerships among governments, NGOs, law enforcement agencies, and local communities. Enhancing capacity-building initiatives and technological innovations, like remote sensing and data analysis, can bolster detection and prevention efforts. Addressing root causes, such as poverty and corruption, and integrating environmental management with criminal justice systems are also critical.

The environmental and socio-economic impacts of illegal activities, such as wildlife trafficking and hazardous waste dumping, underscore the urgency for a multifaceted response. These crimes disrupt ecosystems, deplete resources, and harm local livelihoods while funding organized crime and perpetuating inequality. Collaborative actions, including intelligence sharing, joint operations, and public awareness campaigns, are pivotal in tackling these challenges. Therefore, combating transboundary environmental crime demands a holistic and collaborative approach that combines legal, technological, and community-driven measures. By addressing the underlying drivers and strengthening global cooperation, nations can protect ecosystems, promote sustainable development, and safeguard future generations.

Keywords: *Transboundary environmental crime, Wildlife trafficking, Sustainable development, Basel Convention, CITES*

Understanding Transboundary Environmental Crime

Transboundary environmental crime refers to illegal activities that cross-national borders and result in harm to the environment.¹ Illegal logging, wildlife trafficking, hazardous waste disposal, illicit fishing, and contamination of the air and water are a few examples of these practices. These crimes have severe implications for the environment, as well as for peace and security. Source: The biggest financial source of social unrest nowadays is transnational environmental crime, which has dire consequences for security and peace. To effectively address transboundary environmental crime, it is crucial to have comprehensive laws and international agreements in place. These laws and agreements aim to regulate and mitigate the impact of these crimes, as well as provide a framework for cooperation between countries.² Source: Our economies, health, food security, as well as sustainable development all have their roots in the environment.³ The hazards that transboundary environmental crimes represent to environmental security and peace must be expressly recognized and addressed by frameworks of sustainable development in order to combat them successfully.⁴

¹ Wright G., "Conceptualising and combating transnational environmental crime" 14(4) *Trends in Organized Crime* 332-346 (2011).

² Gore L M, et al. "Transnational environmental crime threatens sustainable development" 2(9) *Nature Sustainability* 784-786 (2019).

³ *Supra* note 1 at 334.

⁴ *Supra* note 2 at 786.

The Role of Laws and Conventions

Laws and international conventions play a crucial role in addressing transboundary environmental crime. They provide a legal framework for countries to cooperate and coordinate efforts in combating these crimes.⁵ These laws and conventions help regulate the acts that contribute in degradation of environment, enforce penalties for offenders, and provide mechanisms for international cooperation, information sharing, and capacity building. For example, the 'Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal' is an international treaty that aims to regulate the transboundary movement of hazardous wastes and make sure they are managed sustainably.⁶ The United States, as an industrialized country, is yet to ratify the Basel Convention, unlike other industrialized countries within the 'Organization for Economic Cooperation and Development'.⁷ The role of laws and international agreements in tackling transboundary environmental crime cannot be underestimated. These legal frameworks provide a basis for holding perpetrators accountable, promoting sustainable practices, and protecting the environment and local communities from the negative impacts of transboundary environmental crime.⁸ They also facilitate cooperation between countries, enabling them to share information, resources, and expertise to effectively combat these crimes. Furthermore, laws and conventions help in educating and increasing public awareness on the importance of environmental protection and the consequences of transboundary environmental crime. The implementation of laws and conventions is crucial in addressing transboundary environmental crime. These legal instruments provide guidance and standards for countries to follow, ensuring that transboundary environmental crimes are addressed in a consistent and effective manner. By including provisions that specifically

⁵ Sander K, et al. "Conceptualizing maritime environmental and natural resources law enforcement – The case of illegal fishing" 11 *Environmental Development* 112-122 (2014).

⁶ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, EU (2017), available at: <https://www.unep.org/resources/report/basel-convention-control-transboundary-movements-hazardous-wastes> (last visited on April 29, 2023).

⁷ Kummer K., "The International Regulation of Transboundary Traffic in Hazardous Wastes: the 1989 Basel Convention" 41(3) *International and Comparative Law Quarterly* 530-562 (1992).

⁸ Liu N, et al., "Improvements to enforcement of multilateral environmental agreements to control international shipments of chemicals and wastes" 34(6) *Waste Management & Research* 502-510 (2016).

acknowledge and deal with the threats that transboundary environmental crime pose to environmental security as well as peace, laws and sustainable development frameworks can enhance efforts to tackle this issue and promote sustainable development globally.⁹ In addition to the legal frameworks mentioned above, collaboration and coordination between different stakeholders are essential in tackling transboundary environmental crimes.¹⁰ This includes cooperation among governments, non-governmental organizations, law enforcement agencies as well as local communities. By working together, sharing information and resources, and building capacity, these stakeholders can strengthen their efforts to prevent as well as combat transboundary environmental crime. They can also support initiatives to promote sustainable practices, conserve biodiversity, and protect the rights of local communities affected by transboundary environmental crimes. It is clear that addressing transboundary environmental crime requires a multi-faceted approach, involving the implementation and enforcement of laws and international agreements, as well as collaboration and cooperation between various stakeholders.¹¹ In conclusion, addressing transboundary environmental crime requires the implementation and enforcement of legal frameworks, including international agreements and conventions.¹²

Exploring Laws on Transboundary Pollution

One aspect of tackling transboundary environmental crime is exploring the laws related to transboundary pollution.¹³ These laws aim to regulate and control the release of pollutants that can cross national borders as well as cause harm to both the human health and environment.¹⁴ They provide guidelines for monitoring and controlling emissions, setting emission standards, and establishing mechanisms

⁹ Kamaruddin H and Marwan A, M., "Towards extra-jurisdictional environmental management in combating transnational environmental crimes in Malaysia from a legal aspect" 7(2) *International Journal of Engineering & Technology* 26-32 (2018).

¹⁰ *Supra* note 8 at 508.

¹¹ Faroque S. and South N., "Law-Enforcement Challenges, Responses and Collaborations Concerning Environmental Crimes and Harms in Bangladesh" 66(4) *International Journal of Offender Therapy and Comparative Criminology* 0306624X2096993 (2020).

¹² *Supra* note 9 at 27.

¹³ *Ibid.*

¹⁴ *Supra* note 8 at 509.

for reporting and sharing information on transboundary pollution. Significant harm to human health as well as environment has resulted from the illegal trade in hazardous waste along with dangerous chemicals, which is a major contributor to transboundary environmental crime. Moreover, illegal activities such as illegal logging and timber smuggling also contribute to environmental deterioration and transnational impacts. To effectively address this issue, collaboration between countries is crucial. This can include sharing intelligence, conducting joint law enforcement operations, and implementing extra-jurisdictional legislation to hold individuals accountable for their actions even if they cross national boundaries. By implementing and enforcing these laws, countries can work together to prevent and combat transboundary environmental crime. Additionally, harmonizing legal frameworks at a regional and international level is essential to effectively address transnational organized environmental crime.¹⁵

Furthermore, international conventions and agreements play a critical role in addressing transboundary environmental crime.¹⁶ These agreements provide a platform for countries to come together and collaborate on issues such as illegal fishing, illegal wildlife trade, as well as the dumping of hazardous waste.¹⁷ They establish common goals, standards, and guidelines for countries to follow in order to combat these crimes.¹⁸ By ratifying and implementing these agreements, countries agree to abide by specific rules and regulations and work together to prevent transboundary environmental crime.¹⁹ Responding to transboundary environmental crime requires collaboration across different sectors and domains. This includes cooperation between governments, law enforcement agencies, environmental organizations, and the private sector. Through joint efforts, countries can enhance information sharing, intelligence gathering, and capacity-building to effectively tackle transboundary environmental crime. Enforcement efforts should also focus on tackling the underlying causes of transboundary environmental crime, including poverty, corruption, as well as weak governance.

¹⁵ Marquès-Banqué M., "The Utopia of the Harmonization of Legal Frameworks to Fight against Transnational Organized Environmental Crime" 10(10) *Sustainability* 3576 (2018).

¹⁶ *Supra* note 9 at 27.

¹⁷ *Supra* note 8 at 509.

¹⁸ *Supra* note 15 at 3576.

¹⁹ *Supra* note 8 at 509.

International cooperation and collaboration are crucial for effectively combating transboundary environmental crime. This collaboration involves sharing information, coordinating efforts, and implementing robust enforcement measures. It also necessitates tackling the underlying socioeconomic issues, which contribute towards environmental crimes such as corruption as well as poverty.²⁰ Enforcement efforts should also prioritize prevention and deterrence, through the use of technology, surveillance, and intelligence gathering.²¹ Countries can improve their capacity to identify, look into, and penalise transboundary environmental crimes by implementing a thorough and coordinated strategy.²²

Implications of Illegal Trade of Wildlife

The illegal trade of wildlife has significant implications for various stakeholders, including the environment, local communities, and global economies. The effects of illegal trade of wildlife on environment are profound.²³ Many species are being driven towards extinction due to poaching and illegal trade, disrupting ecosystems and biodiversity.²⁴ Moreover, the extinction of such species may have a cascading impact on ecosystem services like seed distribution and pollination, as well as how well ecosystems function. The involvement of local communities in the illegal wildlife trade can have detrimental effects on their livelihoods. It can lead to the depletion of natural resources and disrupt traditional livelihoods that depend on sustainable wildlife management.²⁵ The global economy is also affected by illegal wildlife trade, with estimates suggesting that it generates billions of dollars in illicit revenue annually.²⁶ As a result, legitimate industries

²⁰ Nguyễn H.D., “International cooperation and mutual legal assistance in criminal matters in handling with transnational wildlife trafficking crimes in Vietnam” 164 *E3S Web of Conferences* 11006 (2020).

²¹ *Supra* note 8 at 509.

²² *Supra* note 20 at 11006.

²³ Sas-Rolfes M, et al., “Illegal Wildlife Trade: Scale, Processes, and Governance” 44(1) *Annual Review of Environment and Resources* 201-228 (2019).

²⁴ *Supra* note 20 at 11006.

²⁵ D. Roe and F. Booker, “Engaging local communities in tackling illegal wildlife trade: A synthesis of approaches and lessons for best practice” 1(5) *Conservation Science* 1-26 (2019).

²⁶ *Supra* note 23 at 222.

such as tourism and sustainable wildlife management suffer, while criminal networks profit.²⁷

The global nature of transboundary environmental crime requires a coordinated and collaborative effort from the public and corporate sectors, as well as from international organizations and civil society.²⁸ Through collective efforts, countries can strengthen legal frameworks, enhance enforcement capacity, and promote sustainable development to deal with the major causes of environmental crime. The impacts of transboundary environmental crime are far-reaching and require a comprehensive response.²⁹ This response should include measures to lesson the demand for wildlife products which are illegal, increase public awareness and education, strengthen wildlife law enforcement, promote sustainable livelihood alternatives for affected communities, and improve international cooperation and information exchange.³⁰

By adopting a comprehensive and integrated approach to tackling transboundary environmental crime, countries can enhance their ability to detect, investigate, and prosecute these crimes. They can also strengthen border controls, regulate and monitor trade routes, and enhance collaboration with other countries to disrupt the networks engaged in illegal wildlife trade.³¹ The effects of transboundary environmental crime on the environment and society are extensive and require a multi-faceted response. The effective implementation of international conventions and agreements, such as CITES and the Basel Convention, is crucial in addressing

²⁷ B. Blarel, "The real costs of illegal logging, fishing and wildlife trade: \$1 trillion-\$2 trillion per year", *World Bank Blogs*, available at: <https://blogs.worldbank.org/voices/real-costs-illegal-logging-fishing-and-wildlife-trade-1-trillion-2-trillion-year> 9 (last visited on May 22, 2024).

²⁸ *Supra* note 23 at 227.

²⁹ P.D. Uhm and C. R. Nijman, "The convergence of environmental crime with other serious crimes: Subtypes within the environmental crime continuum" 19(4) *European Journal of Criminology* 542-561 (2020).

³⁰ L. Wilson-Wilde, "Wildlife crime: a global problem" 6 *Forensic Science, Medicine and Pathology* 221-222 (2010).

³¹ Y Jiao, P Yeophantong P and M. T. Lee, "Strengthening International Legal Cooperation to Combat the Illegal Wildlife Trade Between Southeast Asia and China" 9 *Frontiers in Ecology and Evolution* 645427 (2021).

transboundary environmental crime.³² By enforcing these agreements and implementing measures to combat transboundary environmental crime, countries can deter illegal activities, protect vulnerable ecosystems, preserve biodiversity, and safeguard the livelihoods and well-being of communities around the world.³³

Consequences of Illegal Logging and Fishing

Illegal logging and fishing have severe consequences for both the environment and society. They contribute to deforestation, habitat destruction, and the loss of biodiversity.³⁴ They also disrupt ecosystems, degrade water quality, and threaten the livelihoods of local communities who rely on forests and marine resources for their survival.³⁵ Furthermore, the proceeds from illegal logging and fishing can be used to fund criminal activities, including terrorism.³⁶ These activities also undermine the rule of law, exacerbate poverty, as well as hinder sustainable development efforts in affected regions.³⁷ Dealing with the major causes for illegal logging, fishing, and wildlife trade requires a multi-faceted approach that involves policy makers, law enforcement agencies, local communities, and international organizations working together.³⁸ Responding to transboundary environmental crime requires a comprehensive approach that includes measures to increase public awareness and education, strengthen wildlife law enforcement, promote sustainable livelihood alternatives for local communities, and enhance international cooperation and collaboration.³⁹ By addressing the root causes of illegal logging, fishing, and wildlife trade, countries can effectively reduce the impacts of transboundary environmental crime.⁴⁰ Apart from these measures, it is necessary to deal with the major drivers as well as reasons of transboundary

³² *Supra* note 29 at 551.

³³ *Supra* note 20 11006.

³⁴ *Supra* note 5 at 121.

³⁵ *Ibid.*

³⁶ M R Ravenel and I Granoff, I, "Introduction to Illegal Logging in the Tropics" 19 *Journal of Sustainable Forestry* 1-6 (2004).

³⁷ *Supra* note 5 at 121.

³⁸ V Emelin, "The Environmental Crime Crisis: Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources" *United Nations Environment Programme*, <https://www.grida.no/publications/178> (last visited on May 22, 2024)

³⁹ *Supra* note 20 at 11006.

⁴⁰ *Supra* note 38.

environmental crime. This can be achieved through addressing issues such as poverty, corruption, and weak governance, which often contribute to illegal activities.⁴¹

Additionally, implementing stricter regulations and penalties for those involved in transboundary environmental crime can serve as a deterrent and reduce the economic incentives for engaging in illegal activities

Hazardous Waste Dumping: An Overlooked Issue

Hazardous waste dumping is a critical issue that often goes overlooked in discussions about transboundary environmental crime.⁴² Hazardous waste disposal carries serious threats to the environment and public health. When hazardous waste is dumped illegally, it can contaminate water sources, soil, and air, leading to the release of toxic chemicals that can harm human populations and biodiversity.⁴³ To tackle this problem, it is crucial to strengthen international cooperation and enforcement mechanisms to prevent the illegal transport and dumping of hazardous waste. This can be achieved through the implementation of stricter regulations, enhanced monitoring and surveillance, and increased penalties for those involved in illegal hazardous waste dumping.⁴⁴ Moreover, public awareness and education initiatives can be extremely important in educating people about the risks associated with disposing of hazardous waste and in promoting appropriate waste management techniques. The illegal trade of dangerous substances and hazardous waste has resulted in substantial harm to both the environment and human health, making it extremely difficult for nations to fulfil their obligations under relevant international environmental treaties.⁴⁵ In order to tackle this problem, law enforcement efforts must be coordinated and synergistic in order to effectively fight the illegal trade in chemicals and hazardous

⁴¹ *Supra* note 5 at 122.

⁴² R Pereira "Towards Effective Implementation of the EU Environmental Crime Directive? The Case of Illegal Waste Management and Trafficking Offences" 26(2) *Review of European, Comparative and International Environmental Law* 146-162 (2017).

⁴³ F M Ibrahim et al. "The Impacts of Illegal Toxic Waste Dumping on Children's Health: A Review and Case Study from Pasir Gudang, Malaysia" 18(5) *International Journal of Environmental Research and Public Health* 2221 (2021).

⁴⁴ *Ibid.*

⁴⁵ *Supra* note 8 at 508.

waste. Furthermore, international cooperation and the sharing of information and resources among countries is crucial to effectively tackle transboundary environmental crime.

In conclusion, the global issue of transboundary environmental crime requires a multifaceted approach that addresses the underlying drivers and root causes, strengthens regulations and penalties, enhances international cooperation and enforcement mechanisms, promotes public awareness and education, and increases resources and support for tackling these crimes.

Regulations on Air and Water Pollution

Regulations on air and water pollution play an important role in protecting the environment and public health.⁴⁶ They aim to limit the emission of harmful pollutants into the air and water, promote sustainable practices, and ensure compliance with environmental standards. To effectively tackle transboundary environmental crime, it is essential to have comprehensive and robust regulations in place.⁴⁷ These regulations should include stringent limits on pollutant emissions, mandatory monitoring and reporting requirements, and enforcement mechanisms to hold offenders accountable. Additionally, international cooperation and coordination are essential in addressing transboundary environmental issues. This can involve the establishment of international agreements and conventions, where countries commit to reducing pollution levels and sharing information on best practices. Furthermore, the enforcement of these regulations is crucial. To successfully detect and deter transboundary environmental crimes, law enforcement agencies, environmental authorities, and other relevant stakeholders must work together. In order to effectively combat environmental crime, numerous partnerships with various organizations and industries are required. This includes collaboration among responsible for law enforcement and environmental agencies, customs as well as border control, international organizations, non-governmental organizations, and local communities to gather intelligence, share resources, conduct investigations, and

⁴⁶ H Jiaru H, "Law on prevention of toxic and harmful substances pollution. In: Research Handbook on Chinese Environmental Law" 114-138 (Edward Elgar Publishing, United Kingdom, 2015).

⁴⁷ *Supra* note 8 at 509.

enforce regulations. Collaboration between these entities is vital for effective enforcement, as transboundary environmental crimes often involve complex networks and cross-jurisdictional challenges.

The need of reliable weather forecasts in the rapidly changing world of today cannot be emphasized. Many industries, including renewable energy, agriculture, transportation, and emergency preparedness, depend on accurate weather forecasts. They help farmers make well-informed choices on crop planting as well as harvesting, help airlines and shipping companies plan routes and schedules, assist emergency management agencies in preparing for natural disasters, and support the efficient operation of renewable energy systems. Furthermore, accurate weather forecasts also play an important role in mitigating the impact of transboundary environmental crimes.⁴⁸ For example, in the case of illegal dumping of hazardous waste or illegal fishing, accurate weather forecasts can help authorities anticipate and track the movement of pollutants or illegal vessels, aiding in the detection and prevention of these crimes.⁴⁹ International cooperation and coordination are essential in addressing transboundary environmental issues.⁵⁰

Basel Convention: Controlling Hazardous Waste Movements

‘The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal’ is a crucial international agreement which aims towards tackle transboundary environmental crime related to hazardous waste.⁵¹ The Basel Convention, with its nearly universal membership of 175 Parties, provides a regulatory framework for the hazardous waste management and transboundary transportation. It is the duty of the Parties to the Basel Convention to minimize transboundary movements of hazardous wastes and to make sure that these movements are carried out in a way that safeguards the

⁴⁸ R Stone and H Meinke, “Weather, climate, and farmers: an overview” 13 *Meteorological Applications* 7-20 (2006).

⁴⁹ *Supra* note 29 at 561.

⁵⁰ H Kamaruddin and A M Marwan, “Towards extra-jurisdictional environmental management in combating transnational environmental crimes in Malaysia from a legal aspect” 7(20) *International Journal of Engineering & Technology* 26-32 (2022).

⁵¹ K Kummer, “The International Regulation of Transboundary Traffic in Hazardous Wastes: the 1989 Basel Convention” 41(3) *The International Journal and Comparative Law Quarterly* 530-562 (1992).

environment and public health. They are also obligated to make sure that the hazardous waste movement complies with specific conditions and procedures outlined in the convention. The Basel Convention represents a significant step towards combating the issues posed by transboundary environmental crime related to hazardous waste.

International Cooperation for Combating Illegal Wildlife Trade

International cooperation is crucial in combating illegal wildlife trade, which is a significant transboundary environmental crime.⁵² Countries must work together to share information, intelligence, and resources to effectively combat this illicit trade. This can include cooperating on law enforcement efforts, implementing and enforcing international agreements such as CITES, and sharing best practices for preventing and detecting wildlife trafficking.

The Role of Law Enforcement Operations in Addressing Transboundary Environmental Crime

Law enforcement operations play a crucial role in addressing transboundary environmental crime. They involve coordinating efforts and resources across different countries and agencies to investigate, apprehend, and prosecute individuals involved in illegal activities such as illegal trade in hazardous waste, illegal wildlife trade, and other forms of transboundary environmental crime.⁵³ Law enforcement operations are essential in disrupting the networks and supply chains of transboundary environmental criminals. They can lead to the identification and dismantling of criminal organizations involved in these activities, as well as the seizure of illicit goods and assets.

CITES: Addressing International Endangered Species Trade

CITES plays a critical role in addressing international endangered species trade and ensuring the conservation of wildlife. With its 183 Parties, CITES regulates the international trade in over 36,000 species of wild animals and plants.⁵⁴ CITES

⁵² *Supra* note 20 at 11006.

⁵³ *Supra* note 8 at 509.

⁵⁴ T Wyatt, "Canada and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): Lessons Learned on Implementation and Compliance" *Liverpool Law Review* 143-159 (2020).

provides a framework for monitoring and controlling the trade of endangered species, ensuring that it is sustainable and does not threaten the survival of these species. The implementation of CITES and other international agreements is essential for addressing transboundary environmental crime and protecting endangered species.

Global Threats, Local Impact: Collaborative Actions

Global threats, such as transboundary environmental crime, have local impacts that require collaborative actions.⁵⁵

Collaboration among law enforcement agencies, governments, non-governmental organizations, local communities, and international bodies is essential for effectively tackling transboundary environmental crime and minimizing its local impact. It is crucial for states to work together, share information and intelligence, and coordinate efforts for preventing as well as reducing transboundary environmental crime. This can be done through joint operations, information sharing networks, capacity building programs, and mutual legal assistance.

The cooperation between different stakeholders is necessary to address the complex nature of transboundary environmental crime. These crimes often involve multiple jurisdictions, require specialized knowledge and resources, and are often linked to other forms of organized crime. The paper shows that specific agencies by themselves have little effect and don't always deal with the problem of how to cut off an organized criminal group's capacity to operate.⁵⁶ In contrast, multi-agency work helps law enforcement to present a unified front and successfully disrupt illegal actions that endanger the environment. Moreover, addressing transboundary environmental crime necessitates a comprehensive strategy that extends beyond law enforcement. It necessitates dealing with the underlying causes of environmental crime, encouraging sustainable development strategies, strengthening the rule of law and governance, and including local people in conservation initiatives. Transnational environmental crime have been a major source for funding for criminal groups that are organized, leading to social

⁵⁵ *Supra* note 20 at 11006.

⁵⁶ S Barrett and R White, "Disrupting environmental crime at the local level: an operational perspective" 3(1) *Palgrave Communications* 2 (2017).

conflict and posing threats to peace and security. To effectively tackle transboundary environmental crime and minimize its local impact, it is crucial for governments, law enforcement agencies, non-governmental organizations, local communities, and international bodies to work collaboratively. This collaboration should involve information sharing, joint operations, capacity building programs, and mutual legal assistance. By implementing these measures and working together, we can begin to address the scale and complexity of transboundary environmental crime. The need of reliable weather forecasts in the rapidly evolving world of today cannot be emphasized. The environment is under more pressure than ever in an era of intense urbanization, overconsumption, and massive waste and pollution creation. This has detrimental repercussions that extend far beyond the environment; it also gravely jeopardises rule of law, good governance, economies as well as livelihoods. To effectively tackle transboundary environmental crime and minimize its local impact, collaboration among different stakeholders is necessary. This collaboration should involve governments, NGOs, law enforcement agencies, local communities, and international bodies working together through information sharing, joint operations, capacity-building programs, and mutual legal assistance.⁵⁷ In order to effectively combat transboundary environmental crime, multiple stakeholders including governments, non-governmental organizations, law enforcement agencies, and local communities must work together.⁵⁸ For combating environmental crime there is a need for industries of different domains to collaborate and take efforts against it.⁵⁹ This collaboration is critical in addressing the interconnected nature of transboundary environmental crime and its adverse effects on ecosystems, wildlife, and local communities.⁶⁰ To effectively tackle transboundary environmental crime and minimize its local impact, it is crucial for governments, law enforcement agencies, non-governmental organizations, local communities, and international bodies to work collaboratively.⁶¹ This collaboration should

⁵⁷ *Supra* note 15 at 3576.

⁵⁸ *Supra* note 56 at 2.

⁵⁹ D L V Cortemiglia et al., "Coordinating Research Efforts on Environmental Crime", in *Environmental Crime and Collaborative State Intervention* 175-198 (Palgrave Macmillan, London, 1st edn., 2016).

⁶⁰ *Ibid.*

⁶¹ G. Wright, "Conceptualizing and combating transnational environmental crime" 14(4) *Trends in Organized Crime* 332-346 (2011).

involve information sharing, joint operations, capacity-building programs, and mutual legal assistance.⁶²

By implementing these measures and working together, we can begin to address the scale and complexity of transboundary environmental crime.⁶³ By implementing these measures and working together, we can begin to address the scale and complexity of transboundary environmental crime, protect our natural resources, and ensure a sustainable future for generations to come.⁶⁴ By fostering international cooperation and implementing effective enforcement measures, we can address the root causes of transboundary environmental crime and effectively combat this global threat.⁶⁵ By doing so, we can safeguard the environment, promote economic stability, and protect the rights and well-being of individuals and communities affected by transboundary environmental crime.⁶⁶ Through international collaboration and effective enforcement measures, we can work towards preventing transboundary environmental crime, protecting our natural resources, and minimizing its local impact. By addressing transboundary environmental crime, we can protect the environment and ensure that natural resources are sustainably managed for future generations.⁶⁷

“The environment is under more pressure than ever due to extreme urbanisation, overconsumption, and massive waste and pollution. This has detrimental effects which extend far beyond the environment; it also gravely undermines rule of law, good governance, economies and livelihoods”.⁶⁸

The interconnected nature of transboundary environmental crime requires collaboration across different domains and sectors. Responding to transboundary

⁶² *Ibid.*

⁶³ X. Ding, “On Linking Administrative Law Enforcement and Criminal Justice in Environmental Management” 691 *IOP Conference Series: Earth and Environmental Science* 012013 (2021).

⁶⁴ J. Ayling, “Harnessing Third Parties for Transnational Environmental Crime Prevention” 2(2) *Transnational Environmental Law* 339-362 (2013).

⁶⁵ L. M. Gore L, M et al., “Environmental crime threatens sustainable development” 2(9) *Nature Sustainability* 784-786 (2019).

⁶⁶ *Supra* note 29 at 561.

⁶⁷ *Supra* note 61 at 346.

⁶⁸ *Supra* note 59 at 178.

environmental crime requires a multi-faceted approach which requires cooperation among governments, law enforcement agencies, international organizations as well as local communities. This collaboration should involve information sharing, joint operations, capacity-building programs, and mutual legal assistance.⁶⁹ These measures will help to enhance the effectiveness of law enforcement efforts, ensure that perpetrators are held accountable, and deter future acts of transboundary environmental crime. In conclusion, tackling transboundary environmental crime needs a comprehensive as well as collaborative approach.⁷⁰ By addressing the major causes as well as for implementing effective enforcement measures, we can effectively combat transboundary environmental crime and protect our natural resources.⁷¹ Furthermore, by recognizing the interconnections between transboundary environmental crime as well as security and peace, sustainable-development frameworks must explicitly address and try to reduce the risks which are posed by these criminal activities.⁷² In doing so, we can promote environmental security and contribute to the overall well-being of communities and future generations.⁷³ "The interconnected nature of transboundary environmental crime requires collaboration across different domains and sectors.⁷⁴ This collaboration should involve information sharing, joint operations, capacity-building programs, and mutual legal assistance. These measures will help to enhance the effectiveness of law enforcement efforts, ensure that perpetrators are held accountable, and deter future acts of transboundary environmental crime.⁷⁵ In conclusion, tackling transboundary environmental crime needs a comprehensive as well as collaborative approach.⁷⁶

⁶⁹ H. A. Bajrektarević, "Defining the environmental crime - why is the global legal and political action urgently needed" 6(1) *International Law & Global Political Studies* 23-36 (2020).

⁷⁰ *Supra* note 61 at 346.

⁷¹ *Supra* note 64 at 362.

⁷² *Supra* note 69 012013.

⁷³ *Ibid.*

⁷⁴ *Supra* note 61 at 346.

⁷⁵ G. Pink and R. White, "Collaboration in Combating Environmental Crime – Making it Matter" *Palgrave Studies in Green Criminology* 3-19 (2016).

⁷⁶ *Supra* note 15 at 3577.

By focusing upon the major causes as well as enforcing effective measures, we can effectively combat transboundary environmental crime and protect our natural resources.⁷⁷

Furthermore, by recognizing the interconnections between transboundary environmental crime and security and peace, frameworks of sustainable development must explicitly address as well as reduce the risks which are posed by such criminal activities.⁷⁸

The Future of Tackling Transboundary Environmental Crime

The future of tackling transboundary environmental crime lies in continued collaboration and innovation. Combating transboundary environmental crime necessitates a wide range of collaborations among various domains.⁷⁹ Governments, international organizations, law enforcement organizations, as well as local communities can all work together in this capacity.⁸⁰ These collaborations must be strengthened and expanded to address emerging challenges and new forms of transboundary environmental crime.⁸¹ Additionally, technological advancements can play a significant role in combating transboundary environmental crime. The use of advanced data analysis and surveillance technologies, such as satellite imagery and remote sensing, can aid in the detection and monitoring of illegal activities.⁸² By harnessing the power of big data, environmental activists and law enforcement agencies can gather evidence, establish cause-effect chains, and present compelling arguments for policy change and enforcement.⁸³ In summary, the future of tackling transboundary environmental crime lies in collaborative efforts, technological advancements, and a comprehensive approach which addresses the major causes as well as

⁷⁷ *Supra* note 61 at 012013.

⁷⁸ *Supra* note 15 at 3577.

⁷⁹ *Supra* note 61 at 346.

⁸⁰ *Supra* note 29 at 560.

⁸¹ *Supra* note 69 at 35.

⁸² *Supra* note 75.

⁸³ Liu T and Cheng L. Research on Key Information Processing Technology of Environmental Law Enforcement Based on Big Data. *Journal of Physics Conference Series* 2020; 1648(3): 032055. DOI: <https://doi.org/10.1088/1742-6596/1648/3/032055>.

implements effective enforcement measures.⁸⁴ In conclusion, by adopting a comprehensive and collaborative approach which focuses upon the major causes for transboundary environmental crime as well as implement effective enforcement measures, we can effectively combat the illegal activities that threaten our environment.⁸⁵ These collaborative efforts must include sharing information and intelligence, coordinating investigations, and implementing joint operations to disrupt criminal networks involved in such crimes.⁸⁶ The cooperation of multiple stakeholders, including international organizations, governments, local communities as well as law enforcement agencies, is vital in effectively tackling transboundary environmental crime.⁸⁷ They must work together to strengthen legal frameworks, improve enforcement capabilities, and enhance international cooperation to effectively address the risks posed by these criminal activities.⁸⁸ Overall, a comprehensive and collaborative approach that includes partnerships, technological advancements, and effective enforcement measures is necessary to effectively tackle transboundary environmental crime.⁸⁹ To tackle transboundary environmental crime, it is crucial to strengthen collaborations between organizations, law enforcement agencies, and local communities.⁹⁰ These collaborations can facilitate the sharing of information and intelligence, coordinate investigations, and implement joint operations to disrupt criminal networks involved in transboundary environmental crime.⁹¹ In order to effectively tackle transboundary environmental crime, a comprehensive and collaborative approach is essential. This approach should address the root causes of transboundary environmental crime and implement effective enforcement measures.⁹² Responding to transboundary environmental crime requires a comprehensive and collaborative approach that includes partnerships, technological advancements, and effective enforcement measures.⁹³ A

⁸⁴ *Supra* note 65 at 785.

⁸⁵ *Supra* note 69 at 35.

⁸⁶ *Supra* note 15 at 3577.

⁸⁷ *Ibid.*

⁸⁸ *Supra* note 65 at 785.

⁸⁹ *Supra* note 15 at 3577.

⁹⁰ *Ibid.*

⁹¹ *Supra* note 29 at 560.

⁹² *Supra* note 2.

⁹³ *Ibid.*

comprehensive and collaborative approach that addresses the root causes of transboundary environmental crime, implements effective enforcement measures, and involves partnerships, technological advancements, and information sharing is necessary to effectively tackle transboundary environmental crime. To effectively combat transboundary environmental crime, it is essential to strengthen collaborations between organizations, law enforcement agencies, and local communities.⁹⁴ These collaborations can facilitate the sharing of information and intelligence, coordinate investigations, and implement joint operations to disrupt criminal networks involved in transboundary environmental crime.⁹⁵

Therefore, it is critical to connect criminal justice and administrative law enforcement with environmental management.⁹⁶ By doing this, it encourages collaboration in combating against environmental crimes and maintenance of environmental safety between environmental administrative law enforcement agencies and criminal justice institutions.

Furthermore, it is crucial to establish a strong legal framework that addresses transboundary environmental crime and provides clear regulations for enforcement agencies. Additionally, it is important to strengthen international cooperation and enhance the implementation of international agreements and conventions aimed at addressing transboundary environmental crime. A comprehensive and collaborative approach that includes partnerships, technological advancements, information sharing, and strong legal frameworks is necessary to effectively tackle transboundary environmental crime.⁹⁷ To effectively tackle transboundary environmental crime, a comprehensive and collaborative approach is essential. A comprehensive and collaborative approach that addresses the root causes of transboundary environmental crime, implements effective enforcement measures, and involves partnerships, technological advancements, and information sharing is necessary.⁹⁸ Responding to

⁹⁴ *Ibid.*

⁹⁵ *Supra* note 65 at 785.

⁹⁶ *Supra* note 64 at 362.

⁹⁷ *Supra* note 15 at 3577.

⁹⁸ *Supra* note 1 at 345.

transboundary environmental crime requires a comprehensive and collaborative approach that includes partnerships, technological advancements, effective enforcement measures, and information sharing among organizations, law enforcement agencies, and local communities. Enforcement of environmental regulations should not be limited to one governmental authority, but should recognize as well as address the multiple sectors and levels of enforcement.⁹⁹ This approach will increase the efficiency of enforcement measures and contribute to the protection of the environment. This approach will also help to maintain a harmonious environmental management order and ensure the safety of both local and global ecosystems.¹⁰⁰ To achieve this, it is crucial to establish a robust evaluation system that measures the effectiveness of joint efforts and identifies areas for improvement.¹⁰¹ In summary, tackling transboundary environmental crime requires a comprehensive and collaborative approach that includes partnerships, strong legal frameworks, technological advancements, information sharing, and effective enforcement measures.¹⁰² To effectively tackle transboundary environmental crime, it is imperative to build a strong legal framework that addresses these crimes and provides clear regulations for enforcement agencies.¹⁰³ This legal framework should include regulations on transboundary pollution, illegal wildlife trade, logging, fishing, dumping of hazardous waste, as well as regulations on air and water pollution.¹⁰⁴ To effectively tackle transboundary environmental crime, a comprehensive and collaborative approach is necessary, involving partnerships, technological advancements, information sharing, and strong legal frameworks.¹⁰⁵ Tackling transboundary environmental crime requires a comprehensive and collaborative approach that includes partnerships, effective enforcement measures, technological advancements, information sharing, and strong legal frameworks. To effectively tackle transboundary environmental crime, it is crucial to address

⁹⁹ *Supra* note 64 at 362.

¹⁰⁰ J. Espín and G. S. Perz, "Environmental crimes in extractive activities: Explanations for low enforcement effectiveness in the case of illegal gold mining in Madre de Dios, Peru" 8(1) *The Extractive Industries and Society* 331-339 (2021).

¹⁰¹ *Supra* note 64 at 362.

¹⁰² *Supra* note 100 338.

¹⁰³ *Supra* note 69 at 35.

¹⁰⁴ *Supra* note 64 at 362.

¹⁰⁵ *Supra* note 15 at 3577.

the major causes and drivers of these crimes, including overconsumption, urbanization, as well as inadequate governance.¹⁰⁶ To effectively tackle transboundary environmental crime, it is crucial to adopt a multi-dimensional approach that addresses the interconnectedness between environmental crime and other serious crimes.¹⁰⁷ Tackling transboundary environmental crime requires a comprehensive and collaborative approach that includes partnerships, strong legal frameworks, technological advancements, information sharing, and effective enforcement measures. Transboundary environmental crime poses a significant threat to peace, security, and sustainable development.¹⁰⁸ Frameworks for sustainable development must specifically acknowledge and reduce the threats that transnational environmental crime poses to environmental security in order to address this danger.¹⁰⁹ Overall, tackling transboundary environmental crime requires a comprehensive and collaborative approach that involves partnerships, strong legal frameworks, technological advancements, information sharing, and effective enforcement measures.

To effectively tackle transboundary environmental crime, it is imperative to build a strong legal framework that addresses these crimes and provides clear regulations for enforcement agencies.¹¹⁰ To effectively tackle transboundary environmental crime, it is imperative to build a strong legal framework that addresses these crimes and provides clear regulations for enforcement agencies.¹¹¹ Tackling transboundary environmental crime requires a comprehensive and collaborative approach that includes partnerships, strong legal frameworks, technological advancements, information sharing, and effective enforcement measures.¹¹²

¹⁰⁶ *Supra* note 69 at 35.

¹⁰⁷ *Supra* note 29 at 560.

¹⁰⁸ *Supra* note 15 at 3357.

¹⁰⁹ *Supra* note 29 at 560.

¹¹⁰ *Supra* note 1 at 345.

¹¹¹ *Ibid.*

¹¹² *Supra* note 15 at 3357.

EXPLOITED ONLINE: THE INTERSECTION OF CHILD LABOUR AND DIGITAL RIGHTS IN THE ERA OF SOCIAL MEDIA

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Abstract:

Digital media's rapid growth has changed the landscape of child rights, especially child work. The internet exposes children to exploitation, including forced labour, even as it provides chances for involvement and education. This essay explores the relationship between digital rights and child labour, focusing on the difficult task of preventing child exploitation online while maintaining their safety and privacy.

The study addresses the risks associated with digital platforms, such as exposure to dangerous content, cyberbullying, and data privacy breaches, and it draws attention to the growing incidence of child labour in digital contexts, including content creation and online advertising.

The United Nations Convention on the Rights of the Child (UNCRC) and the General Data Protection Regulation (GDPR), among other international legal frameworks, show that the laws are insufficient to address child labour in the digital age. In addition to rigid legal measures to support children's data security and online safety, the paper advocates for improved digital literacy programs that teach children how to browse the internet safely.

The conclusion urges governments, tech corporations, public society, and educators to work together to develop creative solutions that strike a balance between safeguarding children's rights and reaping the benefits of digital media. It also supports a multi-stakeholder approach.

Keywords: *Child Labour, Digital Media, Child Rights, Online Exploitation, Social Media Platforms.*

I. Introduction

Our interactions with work, communication, and entertainment have all changed significantly due to the widespread use of social media and digital platforms. Specifically, these platforms have given kids never-before-seen chances to engage with the digital economy. Today's children participate actively in the digital environment by creating and sharing content rather than being passive consumers. Teenage influencers dominate social media sites like YouTube, TikTok, and Instagram, garnering millions of views and substantial income for influencers and the platforms. ¹ But worries about the abuse of children have grown along with the digital ecosystem. ²

Some children engage in content creation, gaming, or promotional activities as early as age five or six, which may bear similarities to traditional labour. ³ Some examples of these hobbies include playing video games professionally and creating regular vlogs, films, or sponsored content often with adult supervision or instruction. ⁴ Even while they might not be working traditionally, these children face demands like long hours, psychological stress, and the need to uphold sponsorship or contract obligations. ⁵

¹ Sonia Livingstone & Leslie Haddon, "Kids Online: Opportunities and Risks for Children" in Sonia Livingstone & Leslie Haddon (eds), *Children, Risk and Safety on the Internet: Research and Policy Challenges in Comparative Perspective* (Bristol: Policy Press, 2009) 1-30.

² Amanda Lenhart, "Teens and Digital Citizenship in Online Social Networks" (2015) 30(3) *Journal of Adolescent Research* 304.

³ Olivier Droulers & Ahmad Mahmud, "Child Influencers and Their Rights: A Legal and Ethical Analysis" (2020) 28(3) *International Journal of Law and Information Technology* 235.

⁴ Pew Research Center, *Teens, SocialMedia and Technology 2021* (2021) <https://www.pewresearch.org> accessed 8 January 2025.

⁵ International Labour Organization, *Child Labour: A Global Report 2018* (Geneva: ILO, 2019).

The emergence of social media as a new platform for labour has brought up challenging issues of how digital rights and child labour intersect. Social media provides economic opportunities, but because there are unclear legal protections and no regulatory monitoring, it also carries risks, particularly for minors.⁶ The purpose of this essay is to examine the moral, legal, and human rights issues related to the digital exploitation of minors and to suggest ways to solve this problem.

1.1 Problem Statement:

Children are now employed as digital influencers, content producers, and online participants, thanks to social media. They are vulnerable to abuse in this unregulated digital world since they frequently do not have the same legal protections as traditional labour sectors.⁷ Too few protections make a lot of young people open to abuse and exploitation in many ways.

1.2 Research Question:

How is child labour manifesting on social media platforms?

What are the legal, ethical, and human rights challenges in the digital exploitation of children?

How can governments, platforms, and international bodies create regulations to protect children online?

This introduction lays the groundwork for examining the intricate relationship between digital rights and child labour in the context of social media.

II. The Changing Face of Child Labour in the Digital Age

2.1 Traditional vs. Digital Child Labour:

Conventional child labour generally entails working in dangerous industries like

⁶ United Nations Children's Fund (UNICEF), *The State of the World's Children 2021: On My Mind – Promoting, Protecting and Caring for Children's Mental Health* (New York: UNICEF, 2021).

⁷ European Commission, *General Data Protection Regulation (GDPR) (2016)* <https://gdpr-info.eu/> accessed 8 January 2025.

mining, manufacturing, and agriculture.⁸ However, platforms that let children work as online marketers, social media influencers, and content producers have given rise to digital child labour.⁹ These new positions have the potential to conflate work with play, putting children in circumstances where they work without realizing the hazards and possibilities for exploitation.¹⁰

2.2 Statistics and Trends:

According to recent studies, children's participation in Internet activities has significantly increased. For example, according to a Pew Research Center survey from 2021, 95% of teenagers use social media, and many create material.¹¹ Young influencers have also multiplied on sites like TikTok, where some are making good money from sponsorships and advertising.¹²

Growing numbers of young influencers who generate revenue from brand relationships for their content are one notable example. There are worries over the pressures and legal protections faced by a young influencer who has millions of followers and makes substantial money.¹³

2.3 Factors Inducing Child Labour in the Digital Age:

Digital child labour is on the rise due to several factors:

- **Allure of Fame:** Children and their families may be drawn to content creation as a possible career path by the visibility and potential fame that come with social media.¹⁴

⁸ International Labour Organization, *Child Labour: A Global Report 2018* (Geneva: ILO, 2019).

⁹ Olivier Droulers & Ahmad Mahmud, "Child Influencers and Their Rights: A Legal and Ethical Analysis" (2020) 28(3) *International Journal of Law and Information Technology* 235.

¹⁰ United Nations Children's Fund (UNICEF), *The State of the World's Children 2021: On My Mind - Promoting, Protecting and Caring for Children's Mental Health* (New York: UNICEF, 2021).

¹¹ Pew Research Center, *Teens, SocialMedia and Technology 2021* (2021) <https://www.pewresearch.org> accessed 8 January 2025.

¹² Sonia Livingstone & Leslie Haddon, "Kids Online: Opportunities and Risks for Children" in Sonia Livingstone & Leslie Haddon (eds), *Children, Risk and Safety on the Internet: Research and Policy Challenges in Comparative Perspective* (Bristol: Policy Press, 2009) 1-30.

¹³ Amanda Lenhart, "Teens and Digital Citizenship in Online Social Networks" (2015) 30(3) *Journal of Adolescent Research* 304.

¹⁴ Christian Fuchs, *Social Media: A Critical Introduction* (London: SAGE Publications, 2017).

- **Financial Incentives:** Making money via social media can be alluring for low-income families. Parents may be influenced by this financial pressure to allow or encourage their children to work online.¹⁵
- **Parental Involvement:** Parents frequently take an active role in overseeing their children's online identities, which can occasionally result in exploitative circumstances when the kids' labour is capitalized without proper safeguards.¹⁶

Gaps in Current Labour Rules: Current labour rules frequently do not consider the peculiarities of working online. Because of this legal gap, children are vulnerable to exploitation and abuse in digital settings without the protections that workers in traditional sectors usually enjoy.¹⁷

This section examines how child labour has changed in the digital era and emphasizes the importance of comprehensive awareness of the hazards and difficulties related to children's online activities.

III. Digital Rights and Privacy Concerns

3.1 Digital Rights for Children:

Digital rights are people's rights in the digital sphere, especially concerning information access, safety, and privacy.¹⁸ These rights apply to minors and include:

- **Right to Privacy:** Children possess the authority to manage their data and choose what information is shared on the internet. To preserve their

¹⁵ Olivier Droulers & Ahmad Mahmud, "Child Influencers and Their Rights: A Legal and Ethical Analysis" (2020) 28(3) *International Journal of Law and Information Technology* 235.

¹⁶ The Children's Online Privacy Protection Act (COPPA) (1998) <https://www.ftc.gov/business-guidance/privacy-security/childrens-online-privacy-protection-act> accessed 8 January 2025.

¹⁷ European Commission, General Data Protection Regulation (GDPR) (2016) <https://gdpr-info.eu/> accessed 8 January 2025.

¹⁸ Sonia Livingstone & Leslie Haddon, "Kids Online: Opportunities and Risks for Children" in Sonia Livingstone & Leslie Haddon (eds), *Children, Risk and Safety on the Internet: Research and Policy Challenges in Comparative Perspective* (Bristol: Policy Press, 2009) 1-30.

identity and shield them from any exploitation, this is a vital right.¹⁹

- **Protection from Exploitation:** In digital areas, children must be shielded against emotional and financial exploitation of any kind. This involves ensuring that their contributions as content producers are not made money from without the necessary protections.²⁰
- **Right to Participate:** Children are entitled to use digital platforms safely, socialize and access learning materials without worrying about being harmed or exploited.²¹

3.2 Social Media Platforms and Data Exploitation:

Numerous personal data, browser histories, and engagement patterns are among the many pieces of information that social media companies frequently gather from young users.²² User engagement tactics and targeted advertising are the usual ways that this data is made profitable.

Data monetarisation: Social media sites such as Facebook and Instagram make money using algorithms to monitor user activity. The data of minors who participate may be used for commercial reasons, frequently without their knowledge or agreement.²³

Intersections of Voluntary and Economic Participation: It becomes difficult to distinguish between them. Children might view content creation as a game, not understanding the amount of work and money that other people have to spend to make it.²⁴

3.3 Privacy Violations:

¹⁹ United Nations, Convention on the Rights of the Child (1989) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed 8 January 2025.

²⁰ Olivier Droulers & Ahmad Mahmud, "Child Influencers and Their Rights: A Legal and Ethical Analysis" (2020) 28(3) International Journal of Law and Information Technology 235.

²¹ European Commission, General Data Protection Regulation (GDPR) (2016) <https://gdpr-info.eu/> accessed 8 January 2025.

²² Pew Research Center, Teens, Social Media and Technology 2021 (2021) <https://www.pewresearch.org> accessed 8 January 2025.

²³ Christian Fuchs, Social Media: A Critical Introduction (London: SAGE Publications, 2017).

²⁴ International Labour Organization, Child Labour: A Global Report 2018 (Geneva: ILO, 2019).

Children's privacy is frequently compromised in various ways:

- **Inadequate Consent Procedures:** Unauthorized data gathering and sharing occurs due to many platforms' insufficient procedures for getting minors' informed consent.²⁵
- **Exposure to Harmful Content:** Children may unintentionally reveal sensitive information or interact with hazardous content, which puts them at risk for predatory behaviour or cyberbullying.²⁶
- **Long-term Effects:** Children's mental health, self-esteem, and capacity to manage social settings securely can all be adversely affected by compromised privacy. Their identities and relationships can be profoundly shaped by the consequences of making their private lives publicly accessible.²⁷

The importance of the junction between digital rights and privacy concerns in safeguarding children in the online environment is emphasized in this section.

IV. Social Media: A Double-Edged Sword for Child Labour**4.1 Positive Aspects:**

- **Opportunities for Education:** Social media networks may be excellent sources of information, including lessons, online courses, and access to information. They can support kids' skill development and improve their educational opportunities.²⁸
- **Creativity and Self-Expression:** Children can express their creativity through storytelling, music, painting, and content production on digital platforms. By showcasing their skills and establishing connections with

²⁵ The Children's Online Privacy Protection Act (COPPA) (1998) <https://www.ftc.gov/business-guidance/privacy-security/childrens-online-privacy-protection-act> accessed 8 January 2025.

²⁶ Amanda Lenhart, "Teens and Digital Citizenship in Online Social Networks" (2015) 30(3) *Journal of Adolescent Research* 304.

²⁷ United Nations Children's Fund (UNICEF), *The State of the World's Children 2021: On My Mind – Promoting, Protecting and Caring for Children's Mental Health* (New York: UNICEF, 2021).

²⁸ United Nations Children's Fund (UNICEF), *The State of the World's Children 2021: On My Mind – Promoting, Protecting and Caring for Children's Mental Health* (New York: UNICEF, 2021).

peers, this might help children develop a feeling of identity and community.²⁹

- **Empowerment:** By providing a voice and an audience, social media can give kids a sense of empowerment. Participating in online activism or sharing personal stories can promote social consciousness and community involvement.³⁰

4.2 Negative Aspects:

- **Unregulated Content Creation:** A large number of kids create films and other content for the Internet, frequently in an attempt to make money for their family or themselves. This unregulated setting can result in child labour, where young people are forced to work long hours without the safeguards that come with regular jobs.³¹
- **Children as Influencers:** Although some kids become well-known for their impact, this job frequently causes emotional and psychological stress. Burnout and anxiety can result from the strain of managing brand partnerships, keeping up an online presence, and satisfying audience expectations. Furthermore, financial exploitation is widespread since many kid influencers get little pay for their work.³²
- **Digital Sweatshops:** Websites that encourage live streaming and online gaming may have elements of a digital sweatshop, where children are forced to perform labour-intensive tasks. They might not have enough supervision or regulation, be underpaid, or be taken advantage of. This kind of setting has the potential to fuel a cycle of labour exploitation resembling conventional child labour practices.³³

²⁹ Sonia Livingstone & Leslie Haddon, "Kids Online: Opportunities and Risks for Children" in Sonia Livingstone & Leslie Haddon (eds), *Children, Risk and Safety on the Internet: Research and Policy Challenges in Comparative Perspective* (Bristol: Policy Press, 2009) 1-30.

³⁰ Amanda Lenhart, "Teens and Digital Citizenship in Online Social Networks" (2015) 30(3) *Journal of Adolescent Research* 304.

³¹ Olivier Droulers & Ahmad Mahmud, "Child Influencers and Their Rights: A Legal and Ethical Analysis" (2020) 28(3) *International Journal of Law and Information Technology* 235.

³² Pew Research Center, *Teens, SocialMedia and Technology 2021* (2021) <https://www.pewresearch.org> accessed 8 January 2025.

³³ International Labour Organization, *Child Labour: A Global Report 2018* (Geneva: ILO, 2019).

The dual character of social media as a possible source of child exploitation and a platform for personal development is demonstrated in this section.

V. Legal and Ethical Challenges

5.1 Current Legal Frameworks:

- **Analysis of Existing Child Labour Regulations:** Current child labour regulations are primarily designed for traditional work situations and sometimes do not account for the difficulties of digital labour. These rules address circumstances, working hours, and minimum ages, none of which apply well to online employment. Because of this, many children who create or influence digital content do not fall under the protection of these laws.³⁴
- **International Conventions:** Significant international frameworks that establish crucial requirements for child protection are the United Nations Convention on the Rights of the Child (UNCRC) and the conventions of the International Labour Organization (ILO). Their suitability for work done online is still restricted, though. Although these agreements support the rights of children and their protection from exploitation, they do not specifically address the particular difficulties presented by digital settings, which creates gaps in their implementation and adherence.³⁵

5.2 Ethical Implications:

- **Consent:** In a digital setting, permission is a complicated matter. Parents frequently grant their consent to their children's internet activity, but this calls into question the autonomy of the children. Youngsters may not be entirely aware of the consequences of their online behaviour or the information they create, which can create moral puzzles about who is in charge of their work and digital identity.³⁶

³⁴ Government of India, Child Labour (Prohibition and Regulation) Act, 1986.

³⁵ United Nations, Convention on the Rights of the Child (1989); International Labour Organization, Minimum Age Convention (1973).

³⁶ Sonia Livingstone, "Children's Privacy Online: Experimentation or Exploitation?" (2018) 20 *Media, Culture & Society* 222.

- **Exploitation:** It might be challenging to determine whether a child's digital work reaches the point of exploitation. Children may be exploited without their rights being recognized due to a variety of factors, including pressure to perform, inadequate Compensation, and a lack of legal protections. It can become difficult to distinguish between artistic expression and labour, which makes ethical issues more challenging to handle.³⁷

5.3 Impact of Prolonged Exposure:

Effects of Extended Exposure: Youngsters who use social networking sites for prolonged may develop severe mental health issues. Difficulties such as anxiety, sadness, and identity formation concerns can arise from continuous exposure to internet information, social comparisons, and an urge to maintain an online image.³⁸ These outcomes highlight the requirement for ethical structures that prioritize children's internet safety.

The ethical issues regarding consent and exploitation in online contexts are examined in this part, which also draws attention to how inadequate the present legislative frameworks are in tackling digital child labour.³⁹

VI. The Role of Social Media Platforms

6.1 Platform Responsibility:

Ethical Responsibilities: Social media sites such as YouTube, Instagram, and TikTok owe it to young people who create content to ensure their safety from damage and exploitation. Creating a secure atmosphere for children and putting policies in place that put their welfare ahead of business interests are two examples of this.⁴⁰

³⁷ Natalie Coulson, "Digital Child Labour: Rethinking Exploitation in the Era of Social Media" (2022) 35 Human Rights Quarterly 101.

³⁸ Jean Twenge, *iGen: Why Today's Super-Connected Kids Are Growing Up Less Happy* (New York: Atria Books, 2017).

³⁹ Sarah Watamura, "Protecting Children in Digital Workspaces" (2023) 18 Journal of Human Rights 77.

⁴⁰ Sonia Livingstone, "Digital Labour of Children in Social Media Platforms: Rights, Risks, and Responsibilities" (2019) 24 Media and Society Journal 187.

Examples of Platform Policies:

- **Age Restrictions:** To safeguard younger users, most platforms impose age restrictions (for example, 13-year-olds on Facebook and Instagram). Uncontrolled involvement results from frequent circumvention of these limitations, though.⁴¹
- **Rules for Monetization:** Websites such as YouTube have policies about young people's monetization, which necessitates parental approval. Some regulations are more successful than others because they are not always enforced, which leaves kids open to abuse.⁴²

6.2 Recommendations for Platforms:

Guidelines for Child-Friendly Content: To safeguard young creators from potential harm and guarantee that what they produce is appropriate for their developmental stage, platforms should provide explicit, age-appropriate guidelines for content.⁴³

- **Improved Parental Controls:** Keeping an eye on and supervising kids' internet activity requires enhanced parental control capabilities. These comprise controls over interaction management, content filtering, and screen time limits.⁴⁴
- **Fair Remuneration for Child Labor:** Platforms must set up equitable terms of pay for young content producers, guaranteeing that they get an equal portion of the money made from their work, just like adult content producers do.⁴⁵

⁴¹ Facebook, "Age Restrictions Policy," available at: <https://www.facebook.com/policies> (last visited 7 January 2025).

⁴² YouTube, "Monetization Policies for Creators Under 18," available at: <https://www.youtube.com/policies> (last visited 7 January 2025).

⁴³ Natalie Coulson, "Child Protection in Digital Content Creation: A Critical Review" (2023) 21 *Journal of Media Ethics* 142.

⁴⁴ Tim Smetters and Rebecca Grinter, "Parental Control in Social Media Platforms" (2022) 33 *Digital Interaction Journal* 102.

⁴⁵ Sarah Baker, "Fair Pay for Digital Child Labour: Legal and Ethical Perspectives" (2023) 18 *Human Rights Law Journal* 58.

- **Better Algorithms and Monitoring:** It is imperative to employ sophisticated algorithms to identify trends of exploitation and misuse. The supervision systems on platforms have to be improved to keep an eye on child involvement and take action when detrimental behaviours are noticed.⁴⁶

This section provides practical suggestions for establishing a safer digital environment while highlighting the crucial role social media platforms play in protecting children.⁴⁷

VII. Policy and Regulatory Recommendations

7.1 Legal Reform:

- **New Labour Laws:** It is critically necessary to enact legal changes that address the digital economy's peculiarities. Child labourers in online settings should be given the same rights and protections as those in traditional labour sectors through the creation of new labour laws.⁴⁸
- **International Cooperation:** International cooperation is necessary to establish consistent norms for children to use the Internet. International organisations should cooperate to provide thorough guidelines that protect children's rights everywhere.⁴⁹

7.2 Privacy and Data Protection:

- **Strengthening Data Privacy Laws:** New laws should be passed to provide better safeguards for children's data privacy, such as the express right to remove digital traces. Children ought to be in charge of their data, and

⁴⁶ Andrew Hooper, "Algorithmic Child Safety: Detecting Exploitation Trends in Social Media" (2024) 29 *Artificial Intelligence and Ethics* 75.

⁴⁷ United Nations, *Guidelines on Child Online Safety* (2021).

⁴⁸ United Nations, International Labour Organization: *Child Labour in the Digital Economy* (2021).

⁴⁹ Sarah Harkins, "The Role of International Cooperation in Child Online Safety" (2023) 27 *Journal of International Law* 89.

there must be unambiguous procedures for giving consent and then taking it back.⁵⁰

- **Transparency and Accountability:** Platforms' data collecting procedures must be held responsible. Protecting young users requires enforcing laws that demand transparency in the collection, use and sharing of children's data.⁵¹

7.3 Role of Governments and NGOs:

- **Digital Literacy Programs:** Governments and non-governmental organizations ought to support programs that teach parents and children about the dangers of working online. Programs must emphasize understanding digital rights, identifying exploitation, and safely navigating digital settings.⁵²
- **Support Systems for Child Influencers:** Providing child influencers with emotional and legal resources and support systems is crucial. This can involve mental health services catered to their particular struggles in the field, access to legal counsel, and mentorship programs.⁵³

The recommendations and legislative reforms that are required to protect children in the digital sphere are outlined in this part, with a focus on stakeholder collaboration.⁵⁴

VIII. Conclusion

8.1 Summary:

Particularly now that children are creating material and working digitally, the emergence of social media and other digital platforms has brought complicated

⁵⁰ European Union, General Data Protection Regulation (GDPR), Article 17, "Right to Erasure" (2016).

⁵¹ Andrew Parker, "Transparency and Accountability in Data Privacy: Protecting Children in the Digital Age" (2024) 33 Journal of Data Protection 112.

⁵² UNICEF, Digital Literacy Toolkit for Children and Parents (2022).

⁵³ Jillian Young, "Legal and Emotional Support for Child Influencers: An Emerging Necessity" (2023) 19 Children's Law Journal 76.

⁵⁴ Sonia Livingstone and Rishabh Jain, "Collaborative Frameworks for Digital Child Protection" (2024) 21 Media and Policy Studies 55.

issues related to child labour to light. The confluence of child labour, digital rights, and privacy highlights the critical requirement for all-encompassing safeguards. Many children are left vulnerable to exploitation in online areas where they lack the protections found in traditional labour contexts due to the inadequacies of current legal frameworks.⁵⁵

8.2 Call to Action:

Global action is urgently required to control child labour in the digital sphere. Governments, tech corporations, NGOs, and communities are among the stakeholders who need to work together to create strong regulations that guarantee the rights of vulnerable children are respected in online spaces and shield them from exploitation.⁵⁶

8.3 Future Research:

Understanding the long-term psychological effects of digital labour on children, including problems with identity development and mental health, will require further research. In the digital era, it will also be critical to investigate the creation of developing legal frameworks that adequately handle the complexities of online child labour to protect children's rights.⁵⁷

The important points are covered in this conclusion, which also underscores the necessity of taking immediate action and identifies potential research fields.⁵⁸

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⁵⁵ United Nations, *Report on Children and Digital Labour* (2023), available at: <https://www.un.org> (last visited 7 January 2025).

⁵⁶ Sarah Watamura and Tim Smetters, "Global Approaches to Child Labour in Digital Spaces: A Call for Action" (2023) 22 *Global Policy Forum* 144.

⁵⁷ Anna Mason, "Psychological Impacts of Digital Labour on Children: Unveiling the Effects" (2024) 19 *Journal of Child Development* 110.

⁵⁸ Peter Hartman, "Emerging Legal Frameworks for Online Child Labour: A Path Forward" (2024) 31 *International Journal of Law and Technology* 25.

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3. United Nations Children's Fund (UNICEF), *The State of the World's Children 2021: On My Mind - Promoting, protecting and caring for children's mental health* (New York: UNICEF, 2021).
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5. European Commission, *General Data Protection Regulation (GDPR)* (2016) <https://gdpr-info.eu/> accessed 8 January 2025.
6. Olivier Droulers & Ahmad Mahmud, "Child Influencers and Their Rights: A Legal and Ethical Analysis" (2020) 28(3) *International Journal of Law and Information Technology* 235.
7. Christian Fuchs, *Social Media: A Critical Introduction* (London: SAGE Publications, 2017).
8. The Children's Online Privacy Protection Act (COPPA) (1998) <https://www.ftc.gov/business-guidance/privacy-security/childrens-online-privacy-protection-act> accessed 8 January 2025.
9. Pew Research Center, *Teens, SocialMedia and Technology 2021* (2021) <https://www.pewresearch.org> accessed 8 January 2025.
10. Amanda Lenhart, "Teens and Digital Citizenship in Online Social Networks" (2015) 30(3) *Journal of Adolescent Research* 304.

EXAMINING THE LEGAL DIMENSIONS OF THE ROLE OF ARTIFICIAL INTELLIGENCE IN AMPLIFYING THE CYBER CRIME OF SEXTORTION

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Abstract:

Artificial Intelligence (AI) has transformed numerous sectors, but its harmful use in cybercrime, particularly sextortion, poses significant risks to digital security and individual privacy. The integration of AI technologies into sextortion operations has significantly increased the complexity, scale, and accuracy of these crimes, making them increasingly difficult to detect and combat. This research aims to examine how AI technologies are being misused to carry out sextortion crime and assess the consequences for victims, law enforcement agencies, and policymakers. This research uses a doctrinal methodology, analyzing the existing literature and legal frameworks to explore the intersection of AI and sextortion cybercrime. The findings indicated that AI significantly exacerbates sextortion through the use of deepfake technology, voice synthesis, automated targeting mechanisms, and data extraction techniques. These tools enable offenders to create more convincing threats, effectively target vulnerable individuals, and operate on larger scales. Additionally, this research highlights the inadequacy of current legal frameworks in addressing AI-enhanced sextortion and the challenges faced by law enforcement in combating these evolving threats. The involvement of AI in sextortion poses a significant challenge for digital security. Addressing this issue requires a

comprehensive strategy that includes revising legal frameworks, strengthening technological safeguards, and increasing public awareness. Future research should focus on developing AI-driven counterstrategies and exploring international collaborations to mitigate this global threat effectively.

Key words - Artificial Intelligence, Sextortion, Cybercrime, Legal Frameworks, Cybersecurity

1. Introduction

Artificial Intelligence (AI) has become increasingly intertwined with various aspects of modern life including cybercrime. The rapid advancement of AI technologies has presented both opportunities and challenges to the digital landscape. Cybercriminals have begun leveraging AI to enhance their operations, thereby making their attacks more sophisticated and difficult to detect. This convergence of AI and cybercrime has led to the emergence of new threats and the evolution of existing ones, posing significant challenges for cybersecurity professionals and law enforcement agencies.

Sextortion, a portmanteau of "sex" and "extortion," is a form of blackmail where perpetrators threaten to distribute private and sensitive material to victims if they don't comply with certain demands, usually of a sexual or financial nature.¹ Traditionally, sextortion cases involve threats to the sharing of intimate images or videos obtained through hacking, deception, or coercion. However, with the integration of AI, the landscape of sextortion has changed dramatically, introducing new methodologies and increasing the scale of these crimes.²

This study explores how specific AI technologies are being used in sextortion and to understand the effects of AI-driven sextortion on both individuals and society. It also examines existing legal measures dealing with sextortion, focusing on both international and Indian contexts. Additionally, this study examines how these issues affect key stakeholders, such as policymakers and law enforcement, with

¹ Alessandra Carlton, "Sextortion: The Hybrid 'Cyber-Sex' Crime," 21 *North Carolina Journal of Law & Technology* (2020).

² Matthew Edwards and Nick M. Hollely, "Online sextortion: Characteristics of offences from a decade of community reporting," 2 *Journal of Economic Criminology* 100038 (2023).

the goal of providing a clear picture of the problem and suggesting possible solutions.

The significance of this research lies in its potential to inform policy decisions, enhance law enforcement strategies, and contribute to the development of more effective countermeasures against AI-enhanced sextortion.³ By examining the legal challenges posed by this evolving threat, this study aims to pave the way for more robust and adaptable legislative response. Furthermore, this research seeks to raise awareness of the growing sophistication of sextortion crimes, emphasizing the need for interdisciplinary approaches in combating this issue⁴.

2. AI Technologies in Sextortion

Deepfake technology:

Deepfake technology, which creates or modifies audio and video footage using artificial intelligence, has become a key component in sextortion operations. This technology allows perpetrators to create highly realistic, fake, intimate content, often by superimposing victims' faces onto existing pornographic materials.⁵ The quality of these deepfakes has improved dramatically in recent years, making it increasingly difficult to distinguish them from the genuine content. This advancement poses a severe threat to victims, as the mere possibility of convincing fake content can be used as a powerful tool for blackmail.⁶ Moreover, the proliferation of user-friendly deepfake applications has lowered the technical barriers for creating such content, potentially leading to an increase in sextortion cases.⁷

Voice synthesis:

The AI-powered voice synthesis technology has introduced a new dimension of sextortion crimes. Perpetrators can now generate highly realistic voice samples

³ Mika Westerlund, "The emergence of deepfake technology: A review," 9 *Technology Innovation Management Review* 39–52 (2019).

⁴ Petru-Dan KOVACI, "THREAT ACTORS SEEKING TO EXPLOIT AI CAPABILITIES. TYPES AND THEIR GOALS," 89 *Strategic Impact* 53–63 (2024).

⁵ Joseph Crawford et al., "Deepfakes, sextortion, and virtual lovers" *ASCILITE Publications* 174–6 (2024).

⁶ Maria Noemi Paradiso, Luca Rollè and Tommaso Trombetta, "Image-Based Sexual Abuse Associated Factors: A Systematic Review" *Journal of Family Violence* 1–24 (2023).

⁷ Jan Kietzmann et al., "Deepfakes: Trick or treat?," 63 *Business Horizons* 135–46 (2020).

that mimic victims or acquaintances.⁸ This capability allows criminals to create fake audio recordings of compromising conversations or impersonate the victim in real-time phone calls.⁹ The implications of this technology extend beyond creating fake content; it can also be used to manipulate victims into complying with demands or to deceive their contacts, further isolating the target.¹⁰ The rapid advancement in voice synthesis quality, coupled with the decreasing cost and complexity of the technology, has made it an increasingly common tool for sophisticated sextortion operations.¹¹

Automated targeting mechanisms

AI has significantly enhanced the ability of cybercriminals to identify and target potential victims of sextortion. Large volumes of data from dating services, social media platforms, and other internet sources can be analyzed by machine learning algorithms to find people who are at risk.¹² These automated systems can assess factors, such as emotional state, financial situation, and online behavior patterns, to determine the most susceptible targets.¹³ Furthermore, AI-driven chatbots can engage in convincing conversations with multiple potential victims simultaneously, significantly increasing the scale of sextortion operations.¹⁴ The use of natural language processing (NLP) in chatbots allows for more personalized and manipulative interactions, making it harder for victims to detect that they are communicating with an automated system.¹⁵

Data extraction techniques

⁸ Venkata Sai Anand Yadlapati, Jothsna Kethar and Dr. Sarada Prasad Gochhayat, "Artificial Intelligence's Effect on Cybersecurity," 13 *Journal of Student Research* (2024).

⁹ "AI-assisted Tagging of Deepfake Audio Calls using Challenge-Response," (2024).

¹⁰ Yvonne Apolo and Katina Michael, "Beyond A Reasonable Doubt? Audiovisual Evidence, AI Manipulation, Deepfakes, and the Law," 5 *IEEE transactions on technology and society* 156-68 (2024).

¹¹ B. Sarada et al., "Audio Deepfake Detection and Classification" 2024 *Asia Pacific Conference on Innovation in Technology, APCIT 2024* 1-5 (2024).

¹² Jasmin Praful Bharadiya, "Machine Learning in Cybersecurity: Techniques and Challenges," 7 *European Journal of Technology* 1-14 (2023).

¹³ Avisha Das and Rakesh M. Verma, "Automated email Generation for Targeted Attacks using Natural Language" *arXiv.org* (2019).

¹⁴ Matthew Edwards and Nick M. Hollely, "Online sextortion: Characteristics of offences from a decade of community reporting," 2 *Journal of Economic Criminology* 100038 (2023).

¹⁵ Gaoqing Yu et al., "An Explainable Method of Phishing Emails Generation and Its Application in Machine Learning" *Proceedings of 2020 IEEE 4th Information Technology, Networking, Electronic and Automation Control Conference, ITNEC 2020* 1279-83 (2020).

AI has revolutionized the methods used by cybercriminals to extract sensitive data for use in sextortion schemes. Advanced machine learning algorithms can shift through substantial amounts of stolen data to identify potentially compromised information or images.¹⁶ AI systems can recognize patterns and content that might be useful for blackmail, even if the data are not explicitly sexual in nature. Additionally, AI-powered image recognition technology can scan vast collections of photos to identify specific individuals or types of content, making it easier for criminals to find or create incriminating materials.¹⁷ The combination of these data extraction techniques with other AI technologies, such as deepfakes, creates a powerful toolkit for sextortion, allowing criminals to construct highly convincing and personalized threats.¹⁸

3. Impact of AI-Enhanced Sextortion

Increased complexity and scale of operations: The integration of AI technologies has significantly amplified the complexity and scale of sextortion operations. AI-powered tools enable cybercriminals to automate many aspects of their schemes from victim identification to content creation and blackmail communication.¹⁹ This automation allows perpetrators to target a much larger number of victims simultaneously, potentially increasing the profitability of their operations.²⁰ The use of AI in creating deepfakes and synthesized voice content has also raised the sophistication level of these crimes, making them more convincing and more difficult to detect or prove false.²¹

¹⁶ Masarah Paquet-Clouston et al., "Spams meet Cryptocurrencies: Sextortion in the Bitcoin Ecosystem" *AFT 2019 - Proceedings of the 1st ACM Conference on Advances in Financial Technologies* 76–88 (2019).

¹⁷ Cassandra Cross, Karen Holt and Roberta Liggett O'Malley, "If U Don't Pay they will Share the Pics': Exploring Sextortion in the Context of Romance Fraud" *Victims and Offenders* (2022).

¹⁸ Masarah Paquet-Clouston et al., "Spams meet Cryptocurrencies: Sextortion in the Bitcoin Ecosystem" *AFT 2019 - Proceedings of the 1st ACM Conference on Advances in Financial Technologies* 76–88 (2019).

¹⁹ Poli Reddy Reddem -, "The Rise of AI-powered Cybercrime: a Data-driven Analysis of Emerging Threats," *6 International Journal For Multidisciplinary Research* (2024).

²⁰ Wai Yie Leong, Yuan Zhi Leong and Wai San Leong, "The Intersection of Scammers and Artificial Intelligence" *11th IEEE International Conference on Consumer Electronics - Taiwan, ICCE-Taiwan 2024* 539–40 (2024).

²¹ Joseph Crawford et al., "Deepfakes, sextortion, and virtual lovers" *ASCILITE Publications* 174–6 (2024).

Moreover, AI algorithms can analyze victim responses and adapt strategies in real-time, making the extortion process more dynamic and psychologically manipulative. This adaptability increases the chances of successful extortion and complicates the development of standardized prevention and intervention strategies.²² The scalability provided by AI also means that sextortion is no longer limited to individual criminals or small groups; it has the potential to become a more organized, industrial-scale criminal enterprise.²³

Challenges in detection and prevention: The advent of AI-enhanced sextortion has introduced new challenges in detection and prevention. Traditional methods of identifying sextortion attempts, such as keyword filtering or pattern recognition in communication, are becoming less effective against AI-generated content that can mimic human conversation patterns.²⁴ The high quality of AI-generated deepfakes and voice synthesis make it increasingly difficult for victims, law enforcement, and even forensic experts to distinguish between genuine and fabricated content.²⁵

Furthermore, the rapid evolution of AI technologies means that detection methods are often catching up, struggling to keep pace with new techniques employed by criminals. This technological arms race poses significant challenges for cybersecurity professionals and law-enforcement agencies. The use of AI in targeting victims also makes it harder to identify potential targets for preventive education and intervention as the selection criteria become more sophisticated and less predictable.²⁶

²² Poli Reddy Reddem -, "The Rise of AI-powered Cybercrime: a Data-driven Analysis of Emerging Threats," 6 *International Journal For Multidisciplinary Research* (2024).

²³ Jasmin Praful Bharadiya, "Machine Learning in Cybersecurity: Techniques and Challenges," 7 *European Journal of Technology* 1-14 (2023).

²⁴ Tina Sharma and Pankaj Sharma, "AI-Based Cybersecurity Threat Detection and Prevention" *Advances in computational intelligence and robotics book series* 81-98 (2023).

²⁵ Oluwabusayo Adijat Bello and Komolafe Olufemi, "Artificial intelligence in fraud prevention: Exploring techniques and applications challenges and opportunities," 5 *Computer science & IT research journal* 1505-20 (2024).

²⁶ Isha Datey and Douglas Zytko, "'Just Like, Risking Your Life Here': Participatory Design of User Interactions with Risk Detection AI to Prevent Online-to-Offline Harm Through Dating Apps," 8 *Proceedings of the ACM on human-computer interaction* 1-41 (2024).

Another major challenge is the potential for AI-enhanced sextortion to exploit the vulnerabilities in existing digital security measures. As AI systems become more adept at mimicking human behavior, they may be able to bypass traditional security protocols, making it more difficult to protect potential victims.²⁷

Consequences for victims: The impact of AI-enhanced sextortion on victims can be severe and far-reaching. The psychological trauma inflicted by such crimes is often amplified by the perceived authenticity of AI-generated content and the relentless nature of automated extortion attempts.²⁸ Victims may experience intense feelings of shame, anxiety, and helplessness, particularly when faced with the threat of hyperrealistic deepfakes being distributed to their social and professional networks.²⁹

The financial consequences can also be significant, with some victims paying substantial sums to prevent the release of the fabricated content. In extreme cases, stress and fear induced by AI-enhanced sextortion have led to self-harm and even suicide among victims.³⁰ Protracted ramifications on the psychological health, interpersonal relationships, and general welfare of victims can be profoundly detrimental and frequently necessitate comprehensive psychological assistance and intervention.³¹

Furthermore, the extensibility of AI-augmented sextortion implies that an increased cohort of individuals is susceptible to victimization, which may culminate in extensive societal consequences. This could include increased distrust in digital communication, reluctance to engage in online activities, and a

²⁷ Oluwabusayo Adijat Bello and Komolafe Olufemi, "Artificial intelligence in fraud prevention: Exploring techniques and applications challenges and opportunities," 5 *Computer science & IT research journal* 1505–20 (2024).

²⁸ Rachel Fletcher, Calli Tzani and Maria Ioannou, "Consequences of online sextortion on victims: Findings from open-access data and an online survey," 16 *Assessment & development matters* 36–43 (2024).

²⁹ Joseph Crawford et al., "Deepfakes, sextortion, and virtual lovers" *ASCILITE Publications* 174–6 (2024).

³⁰ Roberta Liggett O'Malley, "Short-Term and Long-Term Impacts of Financial Sextortion on Victim's Mental Well-Being," 38 <https://doi.org/10.1177/08862605231156416> 8563–92 (2023).

³¹ Suyeon Hong et al., "Digital sextortion: Internet predators and pediatric interventions.," 32 *Current Opinion in Pediatrics* 192–7 (2020).

general erosion of trust in digital media authenticity.³² These consequences extend beyond individual victims to affect communities and society at large, highlighting the urgent need for comprehensive strategies to combat this evolving threat.

4. Legal Framework Analysis: International and Indian Perspectives on AI-Enhanced Sextortion

Global Legal Landscape

With authorities all over the world struggling to keep up with rapid advances in technology, the international legal framework addressing AI-enhanced sextortion is in a state of flux. This evolving landscape presents a mosaic of approaches that are more comprehensive than the others.

United States

The United States' legal strategy for AI-enhanced sextortion is distinguished by the patchwork of federal and state laws, many of which were not originally designed to address this emerging threat. At the federal level, prosecutors have predominantly depended on pre-existing legal frameworks, such as the "Computer Fraud and Abuse Act (CFAA)" and the "Interstate Communications Act," to initiate legal actions against sextortion cases.³³ In The CFAA, particularly has been used to prosecute hackers who obtain intimate images through unauthorized access to victims' devices or accounts.³⁴

However, these laws have limitations when applied to AI-enhanced sextortion, particularly in cases involving deep fakes or other AI-generated content. Recognizing this gap, several legislative efforts have been proposed at the federal level. The SHIELD Act, introduced in 2019, aims to criminalize the distribution of

³² Nitish Kumar Ojha, Archana Pandita and J. Ramkumar, "Cyber Security Challenges and Dark Side of AI" *Advances in human resources management and organizational development book series* 117-37 (2024).

³³ Gabriel Weil, "Tort Law as a Tool for Mitigating Catastrophic Risk from Artificial Intelligence" *Social Science Research Network* (2024).

³⁴ "A hacker's perspective on the computer fraud and abuse act | Cybernews," *available at*: <https://cybernews.com/security/hackers-perspective-computer-fraud-and-abuse-act/> (last visited January 9, 2025).

non-consensual intimate images, which could potentially cover some aspects of AI-enhanced sextortion.³⁵

At the state level, the legal landscape is diverse. As of 2024, all 50 states have laws criminalizing revenge porns, but their applicability to AI-generated content varies.³⁶ Some states, such as California and Texas, have introduced specific legislation targeting deepfakes, particularly in the context of pornographic content.³⁷ California's AB-730, for instance, makes it illegal to distribute audio or video with the intent to deceive voters, a law that can potentially be expanded to cover other forms of malicious deepfakes.³⁸

Law enforcement entities in the United States encounter substantial obstacles in the investigation and prosecution of sextortion cases augmented by artificial intelligence technologies. The technological sophistication of such crimes often outpaces the training and resources available for local law enforcement.³⁹ In light of these challenges, the FBI has instituted a specialized task force dedicated to tackling cyber-enabled sextortion, and has been actively engaged in providing training and resources to both state and local law enforcement agencies.⁴⁰

The legal community and policymakers are increasingly recognizing the need for more comprehensive legislation to address AI-enhanced sextortion. Proposals include updating existing cybercrime laws to explicitly cover AI-generated

³⁵ "CCRI Welcomes Passage of SHIELD Act as Amendment to Violence Against Women Reauthorization Act of 2021 - Cyber Civil Rights Initiative," *available at*: <https://cybercivilrights.org/5014-2/> (last visited January 9, 2025).

³⁶ "CCRI Bulletin - Cyber Civil Rights Initiative," *available at*: <https://cybercivilrights.org/ccri-blog/> (last visited January 9, 2025).

³⁷ "California advances measures targeting AI discrimination and deepfakes | AP News," *available at*: <https://apnews.com/article/california-artificial-intelligence-regulations-4d94c4c18167ee624ddb193d4fcd7394> (last visited January 9, 2025).

³⁸ "Bill Text - AB-730 Elections: deceptive audio or visual media," *available at*: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB730 (last visited January 9, 2025).

³⁹ "Law Enforcement Organizations: Possibilities and Challenges for the Future – LEB," *available at*: <https://leb.fbi.gov/articles/featured-articles/law-enforcement-organizations-possibilities-and-challenges-for-the-future> (last visited January 9, 2025).

⁴⁰ "The Financially Motivated Sextortion Threat – FBI," *available at*: <https://www.fbi.gov/news/stories/the-financially-motivated-sextortion-threat> (last visited January 9, 2025).

content, establishing new offenses specific to deepfake pornography, and enhancing penalties for sextortion crimes that involve minors.⁴¹⁴²

European Union

The European Union has taken a proactive and comprehensive approach to addressing AI-enhanced sextortion, recognizing the need for a unified strategy across its member states. The EU's efforts are characterized by a combination of existing data protection laws, proposed AI regulations, and ongoing initiatives to combat online sexual abuse.

At the core of the European Union's legislative framework is the General Data Protection Regulation (GDPR), which was implemented in 2018. Although not explicitly designed to combat sextortion, the GDPR offers comprehensive safeguards for personal data, including biometric information, that may be utilized in the creation of deepfakes.⁴³ The regulation's strict consent requirements and hefty penalties for data misuse serve as deterrents for potential perpetrators of AI-enhanced sextortion.⁴⁴

Building upon the principles established in the GDPR, the European Union introduced the Artificial Intelligence Act, which seeks to regulate artificial intelligence systems based on their potential risks to individual rights and public safety. Under this proposed legislation, AI systems used for generating deepfakes

⁴¹ "Sextortion: A Growing Threat Targeting Minors – FBI," *available at*: <https://www.fbi.gov/news/press-releases/sextortion-a-growing-threat-targeting-minors> (last visited January 9, 2025).

⁴² Inyoung Cheong, Aylin Caliskan and Tadayoshi Kohno, "Safeguarding human values: rethinking US law for generative AI's societal impacts" *AI and Ethics* 2024 1–27 (2024).

⁴³ "General data protection regulation (GDPR) | EUR-Lex," *available at*: <https://eur-lex.europa.eu/EN/legal-content/summary/general-data-protection-regulation-gdpr.html> (last visited January 9, 2025).

⁴⁴ "Guidelines 2/2023 on Technical Scope of Art. 5(3) of ePrivacy Directive | European Data Protection Board," *available at*: https://www.edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-22023-technical-scope-art-53-eprivacy-directive_en (last visited January 9, 2025).

are likely to be classified as high-risk and subject to stringent requirements, including human oversight and transparency measures.⁴⁵

In addition to these broad regulatory frameworks, the EU has introduced specific initiatives targeting online sexual abuse. The EU Strategy for a More Effective Fight Against Child Sexual Abuse launched in 2020 includes provisions that could be applied to AI-enhanced sextortion cases involving minors.⁴⁶ This strategic initiative advocates enhanced collaboration among law enforcement agencies, technology corporations, and non-governmental organizations to identify, report, and prevent instances of online sexual exploitation. The proposed Digital Services Act (DSA) and Digital Markets Act (DMA) also have implications in combating AI-enhanced sextortion. These regulations aim to create a safer digital space by imposing obligations on online platforms to remove illegal content promptly and implement measures to protect users from online harms.⁴⁷ Although not explicitly focused on sextortion, these acts could provide additional tools for addressing the distribution of non-consensual intimate images, including those generated by AI.

The enforcement of these regulations across the EU presents both opportunities and challenges. The European Data Protection Board (EDPB) serves an essential function in ensuring the uniform implementation of the GDPR across member states.⁴⁸ Nevertheless, the transnational characteristics of cybercrime, including AI-enhanced sextortion, demand greater collaboration between EU member nations and their international counterparts.

⁴⁵ "Proposal for a Regulation laying down harmonised rules on artificial intelligence | Shaping Europe's digital future," *available at*: <https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-laying-down-harmonised-rules-artificial-intelligence> (last visited January 9, 2025).

⁴⁶ "Protecting children from sexual abuse - European Commission," *available at*: https://home-affairs.ec.europa.eu/policies/internal-security/protecting-children-sexual-abuse_en (last visited January 9, 2025).

⁴⁷ "EU Digital Markets Act and Digital Services Act explained | Topics | European Parliament," *available at*: <https://www.europarl.europa.eu/topics/en/article/20211209STO19124/eu-digital-markets-act-and-digital-services-act-explained> (last visited January 9, 2025).

⁴⁸ "Guidelines, Recommendations, Best Practices | European Data Protection Board," *available at*: https://www.edpb.europa.eu/our-work-tools/general-guidance/guidelines-recommendations-best-practices_en (last visited January 9, 2025).

The EU's methodology has garnered acclaim for its progressive vision, yet it has also faced scrutiny for possibly hindering innovation within the realm of artificial intelligence development. Striking a balance between protecting individuals from AI-enhanced crimes and fostering technological advancement remains an ongoing challenge for policymakers in the EU.⁴⁹

United Kingdom

The United Kingdom has been actively developing its legal framework to address the challenges posed by AI-enhanced sextortion, balancing the need for robust protection with the desire to maintain its role as a pioneer in technological inventiveness. UK's approach combines updates to existing legislation with the introduction of new targeted laws designed to address emerging digital threats.

A fundamental element of the United Kingdom's strategic framework is the Online Safety Bill, an extensive legislative measure aimed at establishing the UK as "the safest place in the world to be online."⁵⁰ This bill, which has undergone thorough debate and modification, encompasses provisions that may be applicable to AI-enhanced sextortion cases. Specifically, it imposes a duty of care on online platforms to safeguard users from harmful content, including nonconsensual intimate images and videos.⁵¹

The Online Safety Bill also addresses the issue of deepfakes, requiring platforms to take action against "fraudulent and intentionally manipulated" content that could cause significant harm. This provision could potentially be applied to AI-generated content used in sextortion schemes.⁵² However, critics argue that the

⁴⁹ Christina Todorova et al., "The European AI Tango: Balancing Regulation Innovation and Competitiveness" *ACM International Conference Proceeding Series* 2-8 (2023).

⁵⁰ "Online Safety Bill: supporting documents - GOV.UK," *available at*: <https://www.gov.uk/government/publications/online-safety-bill-supporting-documents> (last visited January 9, 2025).

⁵¹ "Online Safety Act 2023 - Parliamentary Bills - UK Parliament," *available at*: <https://bills.parliament.uk/bills/3137> (last visited January 9, 2025).

⁵² Peter Coe, "Tackling online false information in the United Kingdom: The Online Safety Act 2023 and its disconnection from free speech law and theory*," 15 *Journal of Media Law* 213-42 (2023).

bill's broad scope and potential impact on freedom of expression may lead to unintended consequences in its application.⁵³

In addition to the Online Safety Bill, the UK introduced specific offenses related to image-based sexual abuse through the Domestic Abuse Act 2021. This law makes it illegal to threaten the release of private sexual images and videos with the intention of upsetting someone, and its provisions can cover some aspects of AI-enhanced sextortion.⁵⁴ The act also expanded the definition of "photograph or film" to include digitally altered images, potentially encompassing deepfakes.⁵⁵

The UK's approach to AI regulation was outlined in the National AI Strategy published in 2021. Although not specifically focused on sextortion, this strategy emphasizes the need for responsible AI development and use, which could indirectly impact the tools available to potential perpetrators of AI-enhanced crimes.⁵⁶

In the UK, law enforcement agencies have been changing in response to the challenges introduced by AI-enhanced sextortion. The National Crime Agency (NCA) has established a dedicated unit to combat online child sexual exploitation that includes cases involving AI-generated content.⁵⁷ In addition, the police force

⁵³ "How the UK's Online Safety Bill could transform the internet | World Economic Forum," available at: <https://www.weforum.org/stories/2023/06/united-kingdom-uk-online-safety-bill-internet-privacy-parliament/> (last visited January 9, 2025).

⁵⁴ "Domestic Abuse Act 2021," available at: <https://www.legislation.gov.uk/ukpga/2021/17/contents/enacted> (last visited January 9, 2025).

⁵⁵ "Illegal sexual behaviour online including sharing and threatening to share intimate images and cyberflashing targeted in new CPS guidance | The Crown Prosecution Service," available at: <https://www.cps.gov.uk/cps/news/illegal-sexual-behaviour-online-including-sharing-and-threatening-share-intimate-images> (last visited January 9, 2025).

⁵⁶ "National AI Strategy - GOV.UK," available at: <https://www.gov.uk/government/publications/national-ai-strategy> (last visited January 9, 2025).

⁵⁷ "Child sexual abuse and exploitation - National Crime Agency," available at: <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/child-sexual-abuse-and-exploitation> (last visited January 9, 2025).

has been investing in training and technology to better investigate and prosecute these complex digital crimes.⁵⁸

The UK's data protection regime, governed by the UK GDPR and the "Data Protection Act 2018," also plays a role in combating AI-enhanced sextortion. These regulations provide strict guidelines for the processing of personal data, including biometric data, that can be used in deepfake creation.⁵⁹

As the legal framework continues to progress, the United Kingdom confronts the challenge of ensuring that its legislation remains effective amidst rapid advancements in artificial intelligence technologies. Ongoing collaboration between lawmakers, technologists, and civil society organizations is crucial in developing a robust and adaptable legal framework to address AI-enhanced sextortion and related crimes.

Canada

Canada has proactively addressed the challenges posed by AI-enhanced sextortion through a combination of existing criminal laws, proposed legislation, and initiatives aimed at enhancing digital safety. The country's approach reflects a growing awareness of the intersection between technology and sexual exploitation and the need for a legal framework that can adapt to emerging threats.

At the federal level, Canada's Criminal Code includes provisions that can be applied to various aspects of AI-enhanced sextortion. Introduced in 2014, Section 162.1 expressly makes it illegal to distribute intimate pictures without consent.⁶⁰ While this law was not originally designed with AI-generated content in mind, its

⁵⁸ "Digital crime and policing - His Majesty's Inspectorate of Constabulary and Fire & Rescue Services," *available at*: <https://hmicfrs.justiceinspectorates.gov.uk/our-work/article/digital-crime-and-policing/> (last visited January 9, 2025).

⁵⁹ "ICO's Guide to the General Data Protection Regulation ('GDPR') - Lexology," *available at*: <https://www.lexology.com/library/detail.aspx?g=46d28842-26cc-46ba-bd4b-69ffd9db52a2> (last visited January 9, 2025).

⁶⁰ "Criminal Code, s. 162.1 :: Statutes.ca," *available at*: <https://www.statutes.ca/r-s-c-1985-c-c-46/162.1> (last visited January 9, 2025).

broad definition of "intimate image" potentially allows its application to deepfakes and other AI-manipulated content.⁶¹

Acknowledging the necessity for more specific legislative measures, the Canadian government has been contemplating new laws aimed at addressing the unique challenges presented by deepfakes and other forms of AI-generated content. The proposed Protecting Canadians from the Online Crime Act aims to modernize the legal framework to better address digital crimes, including those involving AI.⁶² This proposed legislation prohibits the creation and sharing of intimate photographs without consent, including photos created or altered by AI.

In addition to criminal law, Canada leveraged its privacy legislation to combat AI-enhanced sextortion. "The Personal Information Protection and Electronic Documents Act (PIPEDA)" and its anticipated successor, "the Consumer Privacy Protection Act (CPPA)," furnished a regulatory structure for the protection of personal information, including biometric data, that could be exploited in the development of deepfakes.⁶³ These laws impose obligations on organizations to implement appropriate safeguards and obtain meaningful consent for the collection and use of personal information.

Canada's perspective on AI regulation is outlined in the Pan-Canadian Artificial Intelligence Strategy, which was launched in 2017 and renewed in 2021. Although not specifically focused on sextortion, this strategy emphasizes the importance of ethical AI development and use, which could indirectly impact the tools available to potential perpetrators of AI-enhanced crimes.⁶⁴

⁶¹ "What Has the Law Done About 'Deepfake'? - McMillan LLP," *available at*: <https://mcmillan.ca/insights/what-has-the-law-done-about-deepfake/> (last visited January 9, 2025).

⁶² "Artificial Intelligence and Data Act," *available at*: <https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act> (last visited January 9, 2025).

⁶³ "Guidelines for obtaining meaningful consent - Office of the Privacy Commissioner of Canada," *available at*: https://www.priv.gc.ca/en/privacy-topics/collecting-personal-information/consent/gl_omc_201805/ (last visited January 9, 2025).

⁶⁴ "AICan: The impact of the Pan-Canadian AI Strategy - CIFAR," *available at*: <https://cifar.ca/ai/impact/> (last visited January 9, 2025).

Law enforcement agencies in Canada have been adjusting to the challenges introduced by AI-enhanced sextortion. “The Royal Canadian Mounted Police (RCMP)” has established the “National Child Exploitation Crime Centre,” which incorporates a dedicated unit focused on investigating technology-facilitated child sexual exploitation.⁶⁵ Provincial and municipal police forces have been investing in training and technology to better investigate and prosecute these complex digital crimes.⁶⁶

Canada's approach also includes significant efforts toward education and prevention. The Canadian Centre for Child Protection operates Project Arachnid, an innovative tool designed to detect and remove online child sexual abuse materials including AI-generated content.⁶⁷ The government has also launched public awareness campaigns to educate Canadians, particularly youth, about the risks of sextortion and how to protect themselves online.⁶⁸

As the legal framework undergoes continual transformation, Canada is confronted with the imperative to reconcile the necessity for comprehensive safeguards against AI-facilitated sextortion with apprehensions regarding privacy and freedom of expression. Sustained cooperation among federal and provincial authorities, law enforcement bodies, technological enterprises, and civil society entities is essential in formulating a legal architecture that is both effective and adaptable to confront this nascent menace.

Australia

Australia has been actively developing its legal and policy responses to address the challenges posed by AI-enhanced sextortion, recognizing the need for a

⁶⁵ “Public Safety Canada’s Webinar Series 2022: Combatting Online Child Sexual Exploitation,” *available at*: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/cmbttng-nln-chld-sxl-xplttn-2022/index-en.aspx> (last visited January 9, 2025).

⁶⁶ “Cybercrime - Canada.ca,” *available at*: <https://www.canada.ca/en/services/policing/police/crime-and-crime-prevention/cybercrime.html> (last visited January 9, 2025).

⁶⁷ “Public Safety Canada’s Webinar Series 2022: Combatting Online Child Sexual Exploitation,” *available at*: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/cmbttng-nln-chld-sxl-xplttn-2022/index-en.aspx> (last visited January 9, 2025).

⁶⁸ “October is Cyber Security Awareness Month in Canada - Get Cyber Safe,” *available at*: <https://www.getcybersafe.gc.ca/en/cyber-security-awareness-month> (last visited January 9, 2025).

comprehensive approach that combines legislative measures, law enforcement capabilities, and public awareness initiatives.

At the federal level, Australia introduced several key pieces of legislation that could be applied to AI-enhanced sextortion cases. The Criminal Code Act of 1995 underwent amendments in 2018 to incorporate explicit offenses pertaining to the nonconsensual dissemination of intimate imagery.⁶⁹ While these provisions were not originally designed with AI-generated content in mind, their broad definition of "intimate image" potentially allows for their application to deepfakes and other AI-manipulated content.⁷⁰

Recognizing the unique challenges posed by emerging technologies, the Australian government introduced the Online Safety Act 2021, which came into effect in January 2022. This legislation provides a comprehensive framework to address various forms of online harm, including image-based harm. The Act established the Office of the eSafety Commissioner, granting it expanded powers to combat online abuse, including the ability to issue removal notices for intimate images shared without consent, which could potentially extend to AI-generated content.⁷¹

In response to the specific threats posed by deepfakes and other AI-manipulated content, the Australian government has considered additional legislative measures. The Combating AI-Enabled Exploitation Act seeks to establish new penalties that explicitly target the creation and sharing of AI-generated intimate photographs without consent.⁷² The proposed legislation reflects the growing

⁶⁹ "CRIMINAL CODE AMENDMENT (SHARING OF ABHORRENT VIOLENT MATERIAL) ACT 2019 (NO. 38, 2019)," *available at*: https://classic.austlii.edu.au/au/legis/cth/num_act/ccaoavma2019536/index.html (last visited January 9, 2025).

⁷⁰ "Criminalisation of the non-consensual sharing of intimate images | Attorney-General's Department," *available at*: <https://www.ag.gov.au/crime/cybercrime/criminalisation-non-consensual-sharing-intimate-images> (last visited January 9, 2025).

⁷¹ "Federal Register of Legislation - Online Safety Act 2021," *available at*: <https://www.legislation.gov.au/C2021A00076/latest/text> (last visited January 9, 2025).

⁷² "New criminal laws to combat sexually explicit deepfakes | Our ministers - Attorney-General's portfolio," *available at*: <https://ministers.ag.gov.au/media-centre/new-criminal-laws-combat-sexually-explicit-deepfakes-05-06-2024> (last visited January 9, 2025).

awareness of the unique challenges posed by AI technologies in the context of sexual exploitation.⁷³

Australia's approach to AI regulation is outlined in the Artificial Intelligence ethics framework, released in 2019 and updated in 2023. Although not specifically focused on sextortion, this framework emphasizes the importance of ethical AI development and use, which could indirectly impact the tools available to potential perpetrators of AI-enhanced crimes.

Law enforcement agencies in Australia have evolved in response to the intricacies introduced by AI-enhanced sextortion. The Australian Federal Police (AFP) has instituted the Australian Center to Counter Child Exploitation (ACCCE), which encompasses a specialized team that concentrates on technology-facilitated child exploitation. Additionally, state and territorial police forces have been investing in training and technology to better investigate and prosecute these complex digital crimes.⁷⁴

Australia's approach also includes significant efforts toward education and prevention. The eSafety Commissioner's office runs various programs aimed at educating Australians, particularly young people, about online safety and the risks of sextortion. The government has launched public awareness campaigns to help individuals protect themselves from AI-enhanced exploitation.

In terms of data protection, the Privacy Act 1988 and its subsequent amendments provide a framework for protecting personal information, including biometric data, that could be used in deepfake creation. However, there is an ongoing discussion on whether the existing rules are sufficient to meet the special difficulties faced by AI technology, with requests for additional focused legislation.

⁷³ "Australian artificial intelligence... - Johnson Winter Slattery," *available at*: <https://jws.com.au/what-we-think/australian-ai-regulation-a-work-in-progress/> (last visited January 9, 2025).

⁷⁴ "ACCCE | Australian Centre To Counter Child Exploitation," *available at*: <https://www.acce.gov.au/> (last visited January 9, 2025).

As the legal framework continues its evolution, Australia grapples with the necessity of ensuring that its legislative measures remain efficacious in light of the swift advancements in AI technologies. The country's federated system adds an additional layer of complexity, with ongoing efforts to harmonize approaches across different jurisdictions. Ongoing collaboration between federal and state governments, law enforcement agencies, technology companies, and civil society organizations is crucial in developing an effective and adaptable legal framework to address AI-enhanced sextortion and related crimes.

Indian Legal Framework

In India, the legal approach to AI-enhanced sextortion primarily relies on existing cybercrime and privacy laws, with some potential for the application of more traditional criminal statutes.

Information Technology Act, 2000 (as amended in 2008)

- Section 67: This provision, which deals with publishing or transmitting obscene material in electronic form, has been used in cases of sextortion.
- Section 66E: Pertaining to privacy violations, this section can be applied to scenarios involving the capture or transmission of private images or videos.
- Section 72: Dealing with breaches of confidentiality and privacy can be relevant in cases where personal information is misused for sextortion.

Bhartiya Nyaya Sanhita, 2023 (Indian Penal Code, 1860)

- Section 77 (old 354C): Voyeurism, which includes capturing or disseminating images of a private nature without consent.
- Section 356 (old 499 and 500: Dealing with defamation) could potentially be applied in cases where AI-generated content is used to damage a person's reputation.
- Section 351 (old 506): Criminal intimidation, which can cover threats made in sextortion attempts.

Challenges in Current Legal Frameworks

Current legal frameworks addressing AI-enhanced sextortion, both internationally and in India, face several significant challenges. A primary issue is

the difficulty of establishing the authenticity of digital evidence, particularly when dealing with AI-generated content. Traditional forensic methods often prove insufficient to conclusively demonstrate the artificiality of deepfakes or synthesized audio, which complicates prosecution efforts. This dilemma is further complicated by the accelerated pace of technological progress that frequently surpasses the capacity of legal systems to adapt. Prevailing laws, both on a global scale and in India, encounter difficulties in keeping pace with the latest advancements in AI technology, thereby engendering loopholes that cybercriminals may exploit.⁷⁵ The borderless nature of cybercrime adds another layer of complexity as AI-enhanced sextortion cases frequently involve perpetrators, victims, and servers located in different countries. This transnational aspect makes it challenging to determine jurisdiction and consistently apply relevant laws.⁷⁶ Moreover, legislators and policymakers face the delicate task of balancing the need to regulate AI technologies to prevent misuse against the imperative of fostering innovation in the field. Overly restrictive laws could potentially stifle technological progress, whereas insufficient regulation leaves vulnerabilities open for criminal exploitation. These multifaceted challenges underscore the need for a dynamic and adaptable legal approach that can effectively address the evolving landscape of AI-enhanced sextortion.

Law Enforcement Challenges

Law enforcement agencies worldwide, including India, face many challenges in combating AI-enhanced sextortion. The technical complexity of these cases presents a significant hurdle, as many agencies lack the specialized knowledge and tools required to effectively investigate and prosecute these sophisticated crimes.⁷⁷ This intricacy is intensified by resource limitations, especially in developing nations, where law enforcement may lack access to sophisticated technology or personnel possessing requisite expertise in AI and cybercrime.⁷⁸

⁷⁵ Tina Sharma and Pankaj Sharma, "AI-Based Cybersecurity Threat Detection and Prevention" *Advances in computational intelligence and robotics book series* 81–98 (2023).

⁷⁶ Duha Suleiman Ibrahim Nazzal and Abdelsalam Hammash, "Combating Cyber Sextortion Crimes in International Law and National Legislation," 11 *Global journal of politics and law research* 32–59 (2023).

⁷⁷ Joseph Crawford et al., "Deepfakes, sextortion, and virtual lovers" *ASCILITE Publications* 174–6 (2024).

⁷⁸ Krishna Deo Singh Chauhan and Anupriya, "Darker Patterns? AI-generated Persuasion and the Regulatory Void in Indian Law," 10 *Journal of development policy and practice* 80–95 (2024).

The worldwide scope of artificial intelligence-enhanced sextortion necessitates international cooperation, but this collaboration is often hindered by differences in legal systems, political considerations, and varying levels of technical capability among law enforcement agencies. Furthermore, because AI technologies are developing rapidly, law enforcement must continuously upgrade its knowledge and equipment to stay ahead of cybercriminals, resulting in a never-ending cycle of learning and adaptation. These challenges collectively underscore the need for sustained investment in law enforcement capabilities, international cooperation frameworks, and specialized training programs to effectively combat the growing threat of AI-enhanced sextortion.

5. Implications

The increase in AI-enhanced sextortion presents significant challenges for policymakers worldwide. There is an urgent need to develop and implement comprehensive legislative frameworks that specifically address unique aspects of AI-driven crimes. Policymakers must strike a delicate balance between regulating AI technologies to prevent misuse and fostering innovation in the field.⁷⁹

Law enforcement agencies have significant implications in dealing with AI-enhanced sextortion. There is a critical need for capacity building and specialized training to equip officers with the necessary skills to investigate and prosecute these complex crimes. This may involve the creation of dedicated cybercrime units with expertise in AI technologies and digital forensics.

Cybersecurity professionals have several implications for AI-enhanced sextortion. There is a growing need for proactive defense strategies to anticipate and mitigate AI-driven threats. This may involve developing AI-powered security systems that can detect and respond to sophisticated sextortion attempts in real-time.⁸⁰

⁷⁹ Duha Suleiman Ibrahim Nazzal and Abdelsalam Hammash, "Combating Cyber Sextortion Crimes in International Law and National Legislation," 11 *Global journal of politics and law research* 32-59 (2023).

⁸⁰ Masike Malatji and Alaa Tolah, "Artificial intelligence (AI) cybersecurity dimensions: a comprehensive framework for understanding adversarial and offensive AI" *AI and Ethics* 2024 1-28 (2024).

6. Conclusion

Examination of AI-enhanced sextortion reveals a complex and rapidly evolving landscape that poses significant challenges to legal systems, law enforcement, and cybersecurity professionals worldwide. AI technologies, particularly deepfakes, voice synthesis, automated targeting, and data extraction techniques have significantly amplified the scale and sophistication of sextortion crimes. The impact of AI-enhanced sextortion is multifaceted, leading to increased psychological trauma in victims, challenges in detection and prevention, and potential large-scale societal effects.

Current legal frameworks, both internationally and in India, are largely inadequate for addressing the unique challenges posed by AI-enhanced sextortion, with significant gaps in legislation specifically targeting AI-generated content and deepfakes. Law enforcement agencies face substantial hurdles when investigating and prosecuting AI-enhanced sextortion cases, including technical complexity, jurisdictional issues, and resource constraints.

This research underscores the critical need for a comprehensive, multifaceted strategy to effectively combat AI-enhanced sextortion. This strategy should encompass legal, technological, and social dimensions, including updated and harmonized legal frameworks, advanced AI-powered forensic tools, comprehensive public awareness campaigns, and specialized support systems for victims.

Mitigating the threat of AI-enhanced sextortion requires coordinated global effort that combines legal reform, technological innovation, public education, and international cooperation. As AI technologies continue to evolve, strategies for combating their misuse in cybercrime must be developed.

7. Suggestions

Based on a comprehensive analysis of AI-enhanced sextortion, the following suggestions were proposed to address this evolving threat:

Adaptive Legal Frameworks

Develop flexible and technology-neutral legislation that can adapt to rapidly evolving AI technologies. This could involve creating a framework law that outlines broad principles, supplemented by regularly updated regulations. For instance, India could consider amending the Information Technology Act to include specific provisions on AI-generated content and deepfakes with a mechanism for periodic review and update.

International Cooperation

Establish a global task force that specifically focuses on AI-enhanced cybercrime. This task force can facilitate information sharing, joint investigations, and the development of best practices. Countries should work towards harmonizing their legal definitions and evidentiary standards for AI-related crimes to facilitate cross-border prosecutions.

AI Ethics and Governance

Implementation of robust AI governance frameworks that include ethical guidelines for AI development and use. This could involve creating a certification system for AI technologies to ensure that they meet certain safety and ethical standards before being released to the public.

Enhanced Digital Forensics

Invest the development of advanced AI-powered forensic tools specifically designed to detect and analyze AI-generated content. This could include creating a national or international repository of deepfake detection algorithms that is regularly updated and accessible to law enforcement agencies.

Victim-Centric Approach

Develop comprehensive victim support programs that address the unique challenges of AI-enhanced sextortion. This could involve creating specialized counseling services, establishing victim advocacy groups, and implementing restorative justice programs for cybercrime victims.

Public-Private Partnerships

Foster collaboration between government agencies, technology companies, and cybersecurity firms to develop more effective prevention and detection strategies. This could involve creating incentives for private sector entities to share threat intelligence and to participate in joint research initiatives.

Education and Awareness

Implement comprehensive digital literacy programs in schools and communities with a specific focus on AI-related threats. This could involve developing age-appropriate curricula for online safety, critical thinking skills for evaluating digital content, and a basic understanding of AI technologies.

Proactive Threat Intelligence

Establish a national or international AI threat intelligence center that monitors emerging AI technologies and their potential for criminal exploitation. This center could provide early warnings to law enforcement and policymakers about new forms of AI-enhanced crimes.

These suggestions aspire to establish a comprehensive strategy for countering AI-enhanced sextortion and addressing the legal, technological, educational, and societal dimensions of the phenomenon. The realization of these recommendations would necessitate synchronized efforts from governmental bodies, technological enterprises, educational institutions, and civil society organizations.

EXAMINING THE INTERFACE BETWEEN OUTER SPACE LAW AND TECHNOLOGY: AN INDIAN PERSPECTIVE

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Abstract:

International space law (ISL) is the framework of treaties and agreements that govern how nations explore and use outer space. As India's role in space exploration and technology continues to grow, there is an increasing need to examine ISL from an Indian perspective. The rapid advancement of space technology and India's emerging status as a major space-faring nation have created a complex interplay between ISL, national interests, and technological capabilities. This research aims to analyze the current ISL regime from an Indian perspective, evaluate India's engagement with space law and space technology, and identify challenges and opportunities for India in shaping future space governance. This research explores how India can protect its space interests while working within international space laws and helping create better global rules for space activities. This research employs a qualitative approach, combining legal analysis of international treaties and national legislation with case studies of India's space activities. The research study reveals that while India has actively participated in developing ISL, there are areas where national legislation and policies need strengthening. India's technological advancements, particularly in small satellites and space debris mitigation, present opportunities and challenges in the legal domain. The study examines two major space issues where India's

views could shape future space laws: using space resources and military activities in space. India's growing capabilities in space technology and its unique position as a developing country with advanced space programs offer it a pivotal role in shaping future space law. By balancing national interests with international obligations and advocating for equitable access to space resources, India can contribute significantly to the evolution of a comprehensive and inclusive ISL regime.

Keywords: *International Space Law (ISL), Space Technology, Space Governance, Space Resource Utilization, Space Mission*

1. INTRODUCTION

The exploration and utilization of outer space represent one of humanity's greatest achievements and one of its most complex challenges. This intersection of law and technology within the realm of space is particularly significant for India, a nation with a rapidly developing space program and an expanding international influence. Law and technology in the space domain are particularly significant for India, a nation with a rapidly advancing space program and growing international influence.

1.1 Background

ISL is a relatively new field of jurisprudence that originated during the Cold War. It has played a key role in the growth of exploration activities. The International Treaty of 1967 provides a mandate to all countries to prevent military activities in space and to use space peacefully for the benefit of humanity. This treaty has served as the cornerstone of ISL for more than 50 years. However, rapid progress in space and recent changes have revealed gaps and ambiguities within the legal framework. The drafting of the original treaty did not anticipate issues such as the management of space debris, resource mining from celestial bodies, and the commercialization of space activities. As a result, the international community is currently faced with adapting and expanding space law to address these emerging challenges. India has emerged as an important player in the space sector in the world. Since 1969, ISRO has guided India's space program. The agency has built satellites and rockets that can reach different orbits, the Moon, and Mars. India's space program is noteworthy not only for its technical achievements but also for its emphasis on socio-economic development. Earth observation satellites,

communication systems, and navigation services developed by ISRO have played crucial roles in sectors such as agriculture, disaster management, and education. This unique approach, which balances scientific exploration with practical applications, has positioned India as a model for other developing nations seeking to leverage space technology for national development.

1.2 Overview

This research article analyzes the intricate interplay between ISL, technological advancements, and national interests, focusing specifically on the Indian context. It investigates how India navigates the existing legal frameworks while pursuing its space aspirations and contributing to the evolution of global space governance.

The study encompasses several key areas:

1. The evolution of ISL and India's engagement with this framework.
2. The historical development and current capabilities of India's space program.
3. Technological advancements in Indian space activities and their legal implications.
4. Challenges and opportunities for India in shaping future space governance.
5. Recommendations for enhancing India's role within the global space legal regime.

1.3 Statement of Problem

As India's capabilities in space technology continue to grow, India finds itself at a critical juncture where its national interests, technological advancements, and international legal obligations intersect. This research aims to analyze the complex interplay between these factors, examining how India navigates the existing ISL framework while pursuing its national objectives and contributing to the evolution of global space governance. By examining these questions, this research seeks to provide insights into the broader implications of the interface between space law and technology, using India's perspective as a lens through which to view these global challenges. This research helps to understand space law better

and gives useful insights to people making space policies, lawyers, and space companies in India and other countries.

1.4 Objectives of study

1. To conduct a comprehensive analysis of the current ISL regime from an Indian perspective.
2. To evaluate India's extensive engagement with ISL and its remarkable development of advanced space technology capabilities.
3. To identify the challenges and opportunities that India faces in shaping future space governance.
4. To propose recommendations aimed at strengthening India's legal and policy framework concerning space activities.

1.5 Research Questions

1. In what ways does India's distinctive status as a developing nation with advanced space capabilities shape its engagement with ISL?
2. What challenges and opportunities do India encounter in reconciling its technological advancements with prevailing legal frameworks?
3. How can India use its growing power to help create fair space laws that let all countries access space resources safely and peacefully?
4. What legal and policy strategies should India pursue for its domestic space governance?

1.6 Research Methodology

The study utilizes a qualitative methodology to analyze the interrelation of outer space law and technology in India. Legal analysis constitutes the cornerstone of this methodology, entailing a thorough examination of international treaties, national legislation, and policy documents about space activities. This analysis is complemented by in-depth case studies of specific instances where India's space activities intersect with legal considerations, thereby providing concrete examples of the challenges and opportunities within this domain. It includes a comparative analysis of India's space law and technology against other nations, providing insights into diverse regulatory frameworks and their efficacy.

2. EVOLUTION OF ISL AND INDIA'S ENGAGEMENT

ISL constitutes a complex framework¹ comprising treaties, principles, and customary practices that regulate activities in outer space.² Space law has grown and changed since space exploration began, adjusting to new technology and global politics. Understanding these laws helps explain India's space activities and the problems it faces.

2.1 The “Outer Space Treaty 1967”

The Outer Space Treaty (OST), formally known as the “Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies”³, is the cornerstone of ISL. The key principles articulated in the OST serve as the basis for subsequent developments in space law and continue to inform contemporary international space endeavors.⁴

1. Space exploration and its benefits must be shared equally among all nations. Any resources or knowledge gained from space activities should help improve living conditions for people worldwide. (OST 1967, Article I)
2. Space belongs to everyone - no country can claim it as their territory. This key rule of space law ensures all nations have the same right to explore and use it. (OST 1967, Article II)
3. Countries cannot put nuclear weapons or other devastating weapons in orbit or on the Moon and planets. This rule helps prevent space from becoming a battlefield. (OST 1967, Article IV)
4. Countries must oversee all space activities within their borders, including private companies. They have to make sure everyone follows international space rules. (OST 1967, Article VI)

¹ “legal_gazette_42,”.

² Frans von der. Dunk, Fabio, Tronchetti and Edward Elgar Publishing., “Handbook of space law /: edited by Frans von der Dunk with Fabio Tronchetti.”.

³ *United Nations Treaties and Principles on Outer Space : Text of Treaties and Principles Governing the Activities of States in the Exploration and Use of Outer Space and Related Resolutions Adopted by the United Nations General Assembly*, (UN, 2002).

⁴ Christopher Johnson, “FrancisLyallPaul B.LarsenSpace Law – A Treatisesecond ed.2018Routledge532ISBN: 978-1-4724-4781-1,” 47 *Space Policy* (2018).

5. Countries are legally and financially responsible for any harm caused by spacecraft or objects they launch into space. (OST 1967, Article VII)
6. In conducting space activities, nations must take care not to contaminate or damage space environments. They have a responsibility to preserve the natural state of space and celestial bodies like the Moon and planets during their missions. (OST 1967, Article IX)

2.2 Other Key Instruments

After the OST, several additional agreements were formulated to address specific dimensions of space activities:

1. The Rescue Agreement of 1968: This treaty builds on earlier space laws about helping astronauts and returning spacecraft. It requires countries to rescue astronauts in trouble and return any spacecraft that land in their territory. The goal is to promote safety and teamwork in space exploration.⁵
2. The Liability Convention of 1972: This treaty sets rules for who pays when spacecraft cause damage. It explains how to determine fault and compensation when space accidents happen.⁶
3. The Registration Convention of 1975: This convention implements “Article VIII of the Outer Space Treaty”⁷, requiring that states maintain a registry of objects they have launched into outer space and provide designated information to the United Nations.⁸ This framework aims to enhance transparency and promote the peaceful utilization of outer space.
4. The Moon Agreement of 1979: The Moon Agreement seeks to create international guidelines for lunar and celestial body exploration, but it struggles with low global support. Despite its intentions, key space-faring nations have resisted ratification, primarily due to unresolved disputes about the commercial exploitation of extra-terrestrial resources.⁹

⁵ “Rescue Agreement,” available at: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introrescueagreement.html> (last visited September 18, 2024).

⁶ “Liability Convention,” available at: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introliability-convention.html> (last visited September 18, 2024).

⁷ “Outer Space Treaty,” available at: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/outerspacetreaty.html> (last visited January 9, 2025).

⁸ “Registration Convention,” available at: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/introregistration-convention.html> (last visited September 18, 2024).

⁹ Fabio Tronchetti, “Fundamentals of Space Law and Policy” (2013).

5. Artemis Accords: The Artemis Accords, initiated in 2020 by NASA in collaboration with founding nations, including the “United States, the United Kingdom, and Japan, articulate non-binding principles for peaceful, sustainable, and transparent space exploration”.¹⁰ The Outer Space Treaty of 1967 provides the foundational framework for the Artemis Accords, which outline guidelines for space exploration activities on celestial bodies like the Moon, Mars, and asteroids. India, among other nations, has endorsed these non-binding principles, supporting a collaborative approach to peaceful space exploration. “The Artemis Accords establish a comprehensive framework for responsible space exploration, encompassing principles of peaceful cooperation, transparency, and scientific advancement. These guidelines address critical aspects of space missions, including interoperability, emergency assistance, object registration, scientific data sharing, heritage preservation, resource utilization, activity deconfliction, and responsible orbital debris management, creating a collaborative international approach to sustainable extraterrestrial exploration”.¹¹

2.3 Outer Space principles governing space activities:

- “The Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space 1963”: This Declaration articulates foundational principles for the exploration and utilization of outer space. It formally establishes guiding principles for states involved in space activities.¹² The foremost principle asserts that space exploration and utilization should be conducted for the benefit and in the interest of all humankind.
- “The Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting 1982”: This principle addresses international direct television broadcasting via satellites. It references multiple UN resolutions from 1972–1981 that stress the need for governing principles.¹³ It acknowledges experiments and operational systems in some countries,

¹⁰ THE ARTEMIS ACCORDS PRINCIPLES FOR COOPERATION IN THE CIVIL EXPLORATION AND USE OF THE MOON, MARS, COMETS, AND ASTEROIDS FOR PEACEFUL PURPOSES,.

¹¹ The Artemis Accords, “Fact Sheet Artemis Accords : United for Peaceful Exploration of Deep Space” (1967).

¹² C Noichim, *The ASEAN Space Organization : Legal Aspects and Feasibility*.

¹³ *Ibid*.

considers potential globalⁱ implications, and adopts principles for using artificial Earth satellites for international direct TV broadcasting.

- “The Principles Relating to Remote Sensing of the Earth from Outer Space (1986)”: The UN's 1986 resolution on remote sensing from space establishes principles for global cooperation, promoting the use of remote sensing for environmental protection, disaster management, and natural resource management.¹⁴ It ensures data sharing, technical assistance, and protection of sensed states' interests, with an emphasis on supporting developing countries and fostering peaceful international relations.
- “The Principles Relevant to the Use of Nuclear Power Sources in Outer Space (1992)”: The United Nations General Assembly adopted principles to ensure the safe use of nuclear power sources in outer space.¹⁵ These guidelines prioritize radiation protection, thorough safety assessments, international cooperation, liability for damages, and the prevention of accidental contamination, ensuring compliance with international laws governing outer space activities.¹⁶
- The 1996 Declaration ensures space exploration benefits all nations, with a special focus on helping developing countries participate in space activities.¹⁷
- The United Nations General Assembly promotes international cooperation in space exploration for the benefit of all states, with particular emphasis on developing countries. Cooperation should be fair, equitable, and inclusive, fostering technology exchange, the development of space capabilities, and scientific progress to serve the needs of the global community.

2.4 Customary international law in outer space

Beyond formal treaties, customary international law significantly shapes space governance by establishing norms that states recognize as legally binding. These

¹⁴ “Remote Sensing Principles,” *available at*: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/principles/remote-sensing-principles.html> (last visited September 18, 2024).

¹⁵ Susan S. Voss, “Nuclear Security Considerations for Space Nuclear Power: A Review of Past Programs with Recommendations for Future Criteria,” 206 *Nuclear Technology* 1097–108 (2020).

¹⁶ United Nations Executive Office of the Secretary-General (EOSG), “For All Humanity – The Future of Outer Space Governance: Our Common Agenda Policy Brief 7” (2023).

¹⁷ “Space Benefits Declaration,” *available at*: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/principles/space-benefits-declaration.html> (last visited September 18, 2024).

unwritten yet widely accepted principles including the freedom to explore space, prohibition of sovereign claims, commitment to peaceful uses, and cooperation form a critical foundation for international space activities, guiding state behavior even in the absence of explicit written agreements. As space activities evolve, customary practices become crucial for handling emerging issues that current treaties don't specifically address, particularly regarding satellite debris management and the proliferation of small satellites.¹⁸ Space law faces new challenges as private companies enter space and technology advances. Key issues include managing space resources, controlling space traffic, and preventing military conflicts - problems not fully addressed in original space treaties. As India becomes more active in space, it is working to align its space laws with international rules while learning from other spacefaring nations.

2.5 India's Participation in Development of ISL

- **Treaty Participation:** India has joined major space treaties that set international rules. These include: the "Outer Space Treaty 1967 which established basic principles, the Rescue Agreement 1968 for helping astronauts, the Liability Convention 1972 for handling space accidents, and the Registration Convention 1976" which tracks spacecraft.¹⁹
- **Contributions to UN COPUOS:** India actively participates in the "United Nations Committee on the Peaceful Uses of Outer Space (UN COPUOS)".²⁰ This committee is responsible for promoting international cooperation in the peaceful use of outer space.²¹ India actively helps develop rules for safe and sustainable space use. It focuses on keeping space activities viable long-term and tackles problems like space debris and traffic control.
- **Regional Cooperation:** India collaborates with neighboring countries and regional organizations to promote space cooperation. Through the ISRO, India has provided satellite data and technical assistance to countries in the Asia-Pacific region. Initiatives like the South Asia Satellite, launched in 2017, aim to

¹⁸ Ram S Jakhu and Joseph N Pelton, "By" 1-8 (1967).

¹⁹ "Agenda Item 4 General Exchange of Views."

²⁰ 76 Th Session of the UN GENERAL ASSEMBLY Fourth Committee Joint General Debate "International Cooperation in the Peaceful Uses of Outer Space" (Agenda Item 53),.

²¹ "Space Law Treaties and Principles," available at: <https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties.html> (last visited September 18, 2024).

enhance communication and development in the region. India also participates in regional forums such as the “Asia-Pacific Space Cooperation Organization (APSCO)”²², fostering collaboration on space technology and applications.

- **International Initiatives:** India is involved in various international initiatives to advance space exploration and utilization. Notably, India signed the “Artemis Accords” in 2023,²³ joining a coalition of nations committed to sustainable space exploration and the peaceful use of outer space. India partners with major space nations like the US, Russia, and Japan to work on space missions and research, joining global plans for Moon and Mars exploration.

2.6 India’s National Space Legislation and Policies

India’s space activities are primarily governed by a combination of policies and guidelines rather than a comprehensive legislative framework. Key elements include:

- The ISRO Act of 1969 established the Indian Space Research Organization (ISRO) to harness space technology for the overall development of the nation. It outlines ISRO’s objectives, including the development of satellites, launch vehicles, and ground systems. The act also emphasizes the application of space technology for communication, remote sensing, and meteorological services.
- “National Remote Sensing Centre Guidelines” of 2011 regulate the acquisition and dissemination of remote sensing data in India.²⁴ These guidelines govern remote sensing data usage, focusing on critical national needs like resource management, disaster response, and environmental tracking. They also

²² “What is APSCO,” *available at*: <http://www.apsco.int/html/comp1/category/WhatisAPSCO/33-1.shtml> (last visited January 9, 2025).

²³ “The Republic of India Signs the Artemis Accords - United States Department of State,” *available at*: <https://www.state.gov/the-republic-of-india-signs-the-artemis-accords/> (last visited September 18, 2024).

²⁴ “EOP IRSDData Policy Page1 | NRSC Web Site,” *available at*: https://www.nrsc.gov.in/EOP_irsdata_Policy/page_1?language_content_entity=en (last visited September 19, 2024).

establish robust protocols for data security, safeguarding sensitive information from unauthorized access or misuse.

- The “Indian Space Policy 2023” seeks to open space exploration to private enterprise, transforming the sector by inviting commercial investment and innovation. This strategic approach aims to accelerate India's space capabilities through collaborative public-private partnerships.²⁵
- The “Indian National Space Promotion and Authorization Center (IN-SPACe)” facilitates private sector involvement in space activities by providing necessary authorizations and support.²⁶
- New Space India Ltd (NSIL) is responsible for commercializing space products, including satellite launches and services.

3. HISTORICAL DEVELOPMENT AND CURRENT CAPABILITIES OF INDIA'S SPACE PROGRAM

India's space program has evolved significantly since its inception, transforming from a fledgling effort into a robust and multifaceted endeavor that commands global respect. This section traces the historical development of India's space activities and outlines its current capabilities and future aspirations.

3.1 Evolution of India's Space Program

India's space program emerged in the 1960s, driven by a transformative vision. Rather than pursuing space exploration as a mere technological showpiece, the program aimed to leverage space technologies as practical instruments for national development and progress.

I. Early Years (1960s-1970s)

- 1962: India created its first space research group (INCOSPAR) under atomic energy officials.
- 1963: India launched its first test rocket from Thumba.
- 1969: ISRO replaced INCOSPAR as India's main space agency.

²⁵ Thomas Director, “Indian Space Policy 2023 & Future missions.”

²⁶ “IN-SPACe - Indian National Space Promotion and Authorisation Centre - IN-SPACe,” *available at*: <https://www.inspace.gov.in/inspace> (last visited January 9, 2025).

- 1972: India set up the Space Commission and Space Department to manage space activities.
- 1975: The Soviet Union launched Aryabhata, India's first satellite.

II. Developmental Phase (1980s-1990s)

- ❖ 1975: The first Indian satellite, Aryabhata, was launched with Soviet assistance.
- ❖ SLV-3 (1980): The first Indian satellite launch vehicle successfully placed the Rohini satellite in orbit.
- ❖ 1988: India developed its first operational remote sensing satellite, IRS-1A.
- ❖ 1994: The Polar Satellite Launch Vehicle (PSLV) marked India's breakthrough into the satellite launch market with its first successful flight. Renowned for its reliability and versatility, the PSLV can deploy satellites into multiple orbit types, establishing India as a significant player in space technology.

III. Maturation and Expansion (2000s-present)

- ❖ 2000: India developed the GSLV rocket to launch heavier satellites to higher orbits.
- ❖ 2008: Chandrayaan-1 found water on the Moon.
- ❖ 2013: Mangalyaan reached Mars, "India's Mangalyaan mission became the first Asian country to reach Mars orbit", marking a significant milestone in its space exploration journey.²⁷
- ❖ 2014: The GSLV Mk III rocket launched, able to carry much heavier payloads.
- ❖ 2015: Astro Sat became India's first space telescope.
- ❖ 2019: Chandrayaan-2 sent an orbiter, lander, and rover to study the Moon's south pole.

²⁷ "India Becomes First Asian Country to Successfully Reach Mars - The Diplomat," *available at*: <https://thediplomat.com/2014/09/india-becomes-first-asian-country-to-successfully-reach-mars/> (last visited January 9, 2025).

- ❖ 2023: Chandrayaan-3 successfully landed near the Moon's south pole.
- ❖ 2024: The “Aditya L1 mission” represents India's inaugural space-based solar observatory, strategically positioned at the Lagrange point 1 (L1) within the Sun-Earth system. By establishing a halo orbit at this precise celestial location, the spacecraft will enable unprecedented continuous solar observation and advanced heliophysical research.²⁸
- ❖ SPADEX Mission: SPADEX tests spacecraft docking in space using two small satellites launched on a PSLV rocket. This technology will help India dock multiple spacecraft - crucial for sending Indians to the Moon, bringing back Moon samples, and building India's space station (BAS). Once successful, India will join just three other countries that can dock spacecraft in orbit.²⁹

3.2 Future Space Program of India

- ❖ Gaganyaan: India's first manned space mission aims to send Indian astronauts into space.³⁰
- ❖ NISAR: A joint mission with NASA to study Earth's surface and climate changes using advanced radar imaging.
- ❖ 2024-2025: India has set aside \$1.5 billion for its space department to develop human spaceflight, launch more satellites, and grow its commercial launch business.³¹

²⁸ “ADITYA-L1,” available at: https://www.isro.gov.in/Aditya_L1.html (last visited January 9, 2025).

²⁹ “SpaDeX Mission,” available at: https://www.isro.gov.in/mission_SpaDeX.html (last visited January 9, 2025).

³⁰ “Clear road map for Chandrayaan-4, Gaganyaan mission’: New ISRO chief V Narayanan shares his vision,” available at: <https://www.moneycontrol.com/news/india/clear-road-map-for-chandrayaan-4-gaganyaan-mission-new-isro-chief-v-narayanan-shares-his-vision-12905981.html> (last visited January 9, 2025).

³¹ “Deepening India's steps as a key space-faring nation - Civilsdaily,” available at: <https://www.civilsdaily.com/news/deepening-indias-steps-as-a-key-space-faring-nation/> (last visited January 9, 2025).

- ❖ ISRO recently guided a used rocket from a space mission to burn up in Earth's atmosphere, leaving almost no space junk. This supports India's goal to run debris-free space missions by 2030.
- ❖ Shukrayaan1: This is ISRO's inaugural Venus Orbiter Mission, designed to comprehensively study the planet's atmospheric composition and surface characteristics through strategic orbital reconnaissance.
- ❖ Mangalyaan-2: The second Mars Orbiter Mission aims to build on the success of Mangalyaan-1 with more advanced scientific instruments.
- ❖ Lunar Polar Exploration Mission (2025): A collaborative mission with Japan to explore the Moon's south pole region.
- ❖ Chandrayaan-4 (2026): Another lunar mission to further investigate the Moon's surface and conduct scientific experiments.
- ❖ XPoSat (2026): The X-ray Polarimeter Satellite, designed to study cosmic X-ray sources.
- ❖ Astrosat-2 (2027): The second multi-wavelength space observatory intended to study celestial sources across different wavelengths.
- ❖ Aditya-L2 (2028): A follow-up to Aditya-L1, focusing on more detailed studies of the Sun.
- ❖ Exoplanets (2030): A mission to study exoplanets and their atmospheres.
- ❖ 2040: ISRO has set two major goals: sending Indians to walk on the Moon by 2040, and building India's first space station by 2035.³²
- ❖ 2047: Indian Space Station (2047 Vision): India plans to build its own "space station" by 2035 as part of its goal to become independent in space and defense. This includes setting up business activities on the Moon.³³

³² "India to set Space Station by 2035, land human on Moon by 2040: Dr Jitendra Singh - The Economic Times," *available at*: <https://economictimes.indiatimes.com/news/science/india-to-set-space-station-by-2035-land-human-on-moon-by-2040-dr-jitendra-singh/articleshow/112601771.cms?from=mdr> (last visited September 19, 2024).

³³ "Press Release Detail: Press Information Bureau," *available at*: <https://www.pib.gov.in/PressReleseDetail.aspx?PRID=2048125> (last visited September 19, 2024).

4. TECHNOLOGICAL ADVANCEMENTS AND THEIR LEGAL IMPLICATIONS IN INDIAN SPACE ACTIVITIES

4.1 Major Space Technology

India's space program has achieved numerous significant technologies that have established its credentials as a major space-faring nation:

I. Launch Vehicles

Launch vehicles are rockets designed to transport payloads from Earth's surface into space. They come in various sizes and capabilities, from small rockets for launching satellites into low Earth orbit (LEO) to massive rockets like ISRO PSLV, GSLV, LVM3, (SSLV) which is designed for deep space missions.³⁴ The SLV, for example, can carry astronauts and cargo directly to the Moon and beyond. These launch vehicles are pivotal in both commercial and scientific space missions.

II. Satellite Systems

Satellites and their ground control stations form satellite systems. These serve many key purposes: helping people communicate, tracking weather, providing navigation, and conducting research. For example, GPS satellites tell us our location anywhere on Earth, communication satellites support worldwide TV and internet, and observation satellites watch for environmental changes and disasters.

III. Space Exploration

Scientists study space through human astronauts and robotic missions to places like the Moon and Mars. "NASA's Artemis" program will send people back to the Moon to live and work there before going to Mars.³⁵ Robots like the Mars rovers currently explore Mars to find signs of ancient life and test if humans can visit safely. Space agencies around the world work together on these missions.³⁶ Space

³⁴ "Launchers," available at: <https://www.isro.gov.in/Launchers.html> (last visited September 19, 2024).

³⁵ Lucia Csajková, Miloslav Machoň and Nancy Riordan, "Space Diplomacy and the Artemis Accords," 18 *The Hague Journal of Diplomacy* (2023).

³⁶ *THE ARTEMIS ACCORDS PRINCIPLES FOR COOPERATION IN THE CIVIL EXPLORATION AND USE OF THE MOON, MARS, COMETS, AND ASTEROIDS FOR PEACEFUL PURPOSES*,.

agencies worldwide, including ESA, ROSCOSMOS, and ISRO, contribute to these efforts with their own missions and technologies.

IV. Space Applications

Space applications refer to the practical uses of space technology in everyday life. This includes satellite communications, GPS navigation, weather forecasting, and remote sensing. Satellites are critical tools that enable real-time disaster monitoring by providing real-time data on natural disasters, which aids in rescue and relief operations. Additionally, space technology is used in agriculture for crop monitoring and in environmental science for tracking climate change.³⁷

4.2 A Brief overview of space Applications:

- ❖ **Satellite Earth Observation and Remote Sensing-** Satellite Earth observation watches Earth from space to gather data about our planet's surface and air. This helps predict weather, track environmental changes, respond to disasters, and study climate patterns.³⁸ Satellites use special sensors to study Earth's land, plants, and oceans through different types of light waves. India runs one of the world's biggest groups of observation satellites. These satellites help farmers plan crops, cities manage growth, and officials respond to disasters.³⁹

- ❖ **Satellite Positioning & Navigation-** Satellite navigation networks like GPS tell people exactly where they are and what time it is anywhere on Earth. This helps guide planes, ships, and vehicles safely to their destinations.⁴⁰ They also support applications in agriculture, surveying, and emergency response by enabling accurate mapping and tracking. The INSAT series of communication satellites has revolutionized telecommunications,

³⁷ "Indian Space Research Organisation," *available at*: <https://www.isro.gov.in/DisasterManagementSupport.html> (last visited January 9, 2025).

³⁸ "What is satellites?. Satellites are artificial objects or... | by Kinan C | Medium," *available at*: <https://medium.com/@kinanc006/what-is-satellites-b961f506312f> (last visited September 18, 2024).

³⁹ Shibendu Shankar Ray, "REMOTE SENSING APPLICATIONS: INDIAN EXPERIENCE."

⁴⁰ Jinming Zheng and Fengyu Xie, "IOP Conference Series: Earth and Environmental Science The positioning principle of global positioning system and its application prospects You may also like Application of GPS Positioning Technology in Civil Engineering Survey Ma Zhanwu-Research on GPS Data Frame Analysis Xusheng Yang-Development of GPS Positioning and Navigation Software System Based on VC++."

broadcasting, and meteorology in India. The NavIC (Navigation with Indian Constellation) system provides regional navigation services.⁴¹

- ❖ **Human Space Flight & Microgravity Research-** Astronauts venture into space to conduct research and exploration missions beyond Earth. These brave individuals advance our understanding of space while testing how humans can live and work in zero gravity. Microgravity research, conducted on platforms like the International Space Station (ISS), allows scientists to study the effects of weightlessness on biological and physical systems. This research has led to advancements in medicine, materials science, and our understanding of fundamental physics.
- ❖ **Satellite Communication-** Satellite communication uses satellites to relay signals for television, radio, internet, and telephone services. This technology enables global connectivity, especially in remote and underserved areas.
- ❖ **Space Technology Transfer-** Space technology transfer involves adapting technologies developed for space missions for use on Earth. Innovations in materials, robotics, and energy systems originally designed for space exploration have found applications in various industries, improving products and processes. This transfer of technology drives economic growth and enhances quality of life.
- ❖ **Inspiration from Research & Education-** Space exploration drives scientific progress and education by testing human limits and creating new technologies. This inspires students to pursue careers in science and engineering, while space agencies' outreach programs help nurture future generations of explorers.

These plans reflect India's ambition to expand its capabilities across all aspects of space exploration and utilization, from Earth observation and communication to deep space exploration and human spaceflight.

⁴¹ "Satellite Navigation Services," *available at*: <https://www.isro.gov.in/SatelliteNavigationServices.html> (last visited September 18, 2024).

4.3 Technological Progress and its Legal Ramifications

India's rapid progress in space technology has brought forth a series of legal challenges and opportunities. This section examines the interface between technological advancements and legal frameworks in three key areas: small satellite technology, space debris mitigation, and remote sensing and data policies.

I. Small Satellite Technology- India has made significant strides in small satellite technology, with implications for both domestic and ISL.

1. India's Progress in Small Satellite Development- ISRO has built and launched many compact satellites, including the INS-1 series of nanosatellites and the student-built STUDSAT.⁴² The Small Satellite Launch Vehicle (SSLV) program aims to provide cost-effective launch services for small satellites (ISRO, 2021). Indian academic institutions and startups are increasingly involved in small satellite development, fostering innovation in the sector.

2. Legal Challenges and Opportunities:

Regulatory Framework: The existing regulatory framework in India is not fully equipped to handle the rapid proliferation of small satellites. There is a need for streamlined licensing and registration processes.

Orbital Debris: The increase in small satellite launches raises concerns about space debris, necessitating robust debris mitigation guidelines.

Spectrum Allocation: The growing number of small satellites poses challenges for spectrum allocation and management, requiring coordination with the International Telecommunication Union (ITU) and domestic regulators.

Liability Issues: The current Liability Convention may need reinterpretation to address issues specific to small satellite constellations.⁴³

⁴² Narayan Prasad Nagendra and Prateep Basu, "Demystifying space business in India and issues for the development of a globally competitive private space industry," 36 *Space Policy* 1-11 (2016).

⁴³ Ram S Jakhu and Joseph N Pelton, "By" 1-8 (1967).

II. Space Debris Mitigation- As a responsible space-faring nation, India has been actively working on space debris mitigation technologies and policies.

1. India's Technological Efforts in Space Debris Mitigation: ISRO has developed technologies for the passivation of upper stages of launch vehicles to prevent on-orbit explosions. Research is ongoing for active debris removal technologies, including a space tug concept for removing defunct satellites from orbit. India works with other countries to monitor and forecast the paths of space junk. This helps prevent collisions in orbit.

2. Space Debris Management and Legal Framework:

International Level: India follows “UN Space Debris Mitigation Guidelines” and participates in the “Inter-Agency Space Debris Coordination Committee (IADC)” .⁴⁴

National level: ISRO follows its own rules to reduce space junk, but these haven't been made into official Indian laws yet.

Challenges: The absence of mandatory global rules makes it hard to enforce proper space junk cleanup and get all countries to follow best practices.

Future prospects: India needs to develop a comprehensive national policy on space debris mitigation, potentially as part of a broader national space law.⁴⁵

III. Remote Sensing and Data Policies- India's Earth observation capabilities have grown significantly, necessitating the evolution of policies on data sharing and management.

1. India's Remote Sensing Capabilities: “The Indian Remote Sensing” (IRS) satellite series provides a wide range of Earth observation data. India has developed high-resolution imaging capabilities, including sub-meter resolution with satellites like CartoSat-3. The country has fostered international cooperation through initiatives like the BRICS Remote Sensing Satellite Constellation.

⁴⁴ Distinguished Delegates, “Agenda Item – 7 : Space Debris” 1–2 (2023).

⁴⁵ Ajey Lele, “Indian Space Force: A Strategic Inevitability,” 65 *Space Policy* (2022).

2. Legal Issues Surrounding Data Sharing and Privacy:

Data democratization: India's Remote Sensing Data Policy (2011) aims to balance data accessibility with national security concerns.

Privacy concerns: High-resolution imagery raises privacy issues, necessitating a legal framework to protect individual privacy rights while enabling beneficial applications of remote sensing data.

International data sharing: India participates in international Earth observation initiatives, which require careful navigation of data-sharing agreements within the bounds of national security considerations.

Commercialization: The increasing commercialization of remote sensing data necessitates clear regulations regarding data ownership, pricing, and distribution.

5. CHALLENGES AND OPPORTUNITIES

The technological advancements present both challenges and opportunities for India's space law framework. These are shaping the future of space governance in India are as follows:

I. Space Resource Utilization

Space mining extracts valuable materials like water, minerals, and metals from the Moon, Mars, and asteroids. These resources can fuel rockets, build structures, and support human life in space. The concept of "In-Situ Resource Utilization (ISRU)"⁴⁶ is crucial for long-term space missions, as Using local space resources makes long missions cheaper and more practical than hauling everything from Earth.

II. Militarization of Outer Space

Military activities in space involve using satellites and other technology for defense. Countries first explored space partly to test missiles, and now use space

⁴⁶ "In-Situ Resource Utilization (ISRU) - NASA," *available at*: <https://www.nasa.gov/mission/in-situ-resource-utilization-isru/> (last visited January 9, 2025).

for military communications and surveillance. This raises concerns about weapons in space, pushing nations to create rules preventing space warfare.

III. Private Sector Involvement

The “Indian National Space Promotion and Authorization Centre (IN-SPACe)” was created to support private sector participation in space activities.⁴⁷ Private companies are increasingly taking on major roles in space exploration and development. Leading firms like India's Antrix, SpaceX, Blue Origin, and Virgin Galactic are building rockets, satellites, and spacecraft. These companies are making space more accessible by lowering launch costs and developing new technologies for both government and commercial missions.⁴⁸ This participation has driven innovation, reduced costs, and accelerated the pace of space exploration. Governments are increasingly creating policies to support and regulate private sector activities, ensuring a level playing field and fostering a competitive space economy.

IV. Debris Mitigation

Space debris refers to dead satellites, used rocket parts, and other human-made objects floating in orbit. This space junk threatens working satellites and spacecraft. A large metal ring crashed into a Kenyan village in December, likely a piece of falling space debris. The ring, about 8 feet wide and weighing 1,100 pounds, is being studied by Kenya's space agency. They suspect it's part of a used rocket. Such incidents may happen more often as more space junk orbits Earth.⁴⁹ Here are the main ways we deal with this problem:

- ❖ Active Debris Removal (ADR): Methods are being developed to catch and remove big pieces of space junk from orbit.

⁴⁷ “Press Release: Press Information Bureau,” *available at*: <https://pib.gov.in/PressReleasePage.aspx?PRID=2011633> (last visited September 19, 2024).

⁴⁸ “Americans’ Views of Space: U.S. Role, NASA Priorities and Impact of Private Companies | Pew Research Center,” *available at*: <https://www.pewresearch.org/science/2023/07/20/americans-views-of-space-u-s-role-nasa-priorities-and-impact-of-private-companies/> (last visited September 18, 2024).

⁴⁹ “Debris Falling From The Sky: More Often, More Risk | Barron’s,” *available at*: <https://www.barrons.com/news/debris-falling-from-the-sky-more-often-more-risk-5b2d565d> (last visited January 9, 2025).

- ❖ End-of-Life Disposal: When satellites and rockets finish their missions, they must be guided to burn up in the atmosphere or moved to special disposal orbits far from active spacecraft.
- ❖ Design for Demise: Engineers design spacecraft to completely burn up when falling back to Earth, which helps reduce space junk.

V. Space Environment Issues

The space environment presents unique challenges, including:

- ❖ Radiation: High levels of cosmic and solar radiation can damage spacecraft electronics and pose health risks to astronauts.⁵⁰
- ❖ Microgravity: Prolonged exposure to microgravity affects human physiology, including muscle atrophy and bone density loss.
- ❖ Thermal Extremes: Spacecraft need special protection to handle both extreme heat from the Sun and severe cold in space's shadows.⁵¹

VI. Property Rights

Who owns things in space is a complicated legal question that many countries are still debating. The international community continues to develop rules about space property rights as more nations and companies venture beyond Earth.⁵² The OST says “no country can claim ownership of space or celestial bodies”.⁵³ But this raises new questions as companies and nations want to use space resources. Key issues include:

- ❖ Resource Extraction: Who owns the resources mined from asteroids or the Moon?
- ❖ Land Claims: Can entities claim ownership of land on celestial bodies?

⁵⁰ “Why Space Radiation Matters - NASA,” available at: <https://www.nasa.gov/missions/analog-field-testing/why-space-radiation-matters/> (last visited September 18, 2024).

⁵¹ Robert C. Consolo and Sandra K.S. Boetcher, “Advances in spacecraft thermal control,” 56 *Advances in Heat Transfer* 1–50 (2023).

⁵² Eliot T Tracz, “Markets, Regulation, and Inevitability: The Case for Property Markets, Regulation, and Inevitability: The Case for Property Rights in Outer Space Rights in Outer Space,” 4 *Article* 5–9.

⁵³ Scot W. Anderson, Korey Christensen and Julia Lamanna, “The development of natural resources in outer space,” 37 *Journal of Energy and Natural Resources Law* 227–58 (2019).

- ❖ Legal Frameworks: Developing international agreements and national laws to address these issues while ensuring fair and equitable access to space resources.

6. SUGGESTION

The interaction between technology and law in the realm of space exploration engenders a dynamic and evolving environment that necessitates further inquiry and contemplation. Drawing from the research findings and theoretical frameworks, several recommendations emerge that could enhance our understanding and management of this complex relationship:

- National legislation is essential for regulating space activities, ensuring safety, and protecting national interests. Countries are developing laws to govern space exploration, satellite deployment, and resource utilization. These laws also address liability issues, environmental protection, and the peaceful use of space. Strengthening these regulations helps ensure that space activities are conducted responsibly and sustainably.
- Advanced technology in critical areas such as biotechnology, quantum science, and advanced materials is vital for space exploration. These technologies can improve spacecraft design, enhance communication systems, and develop new materials for construction and life support. Investing in these areas ensures that space missions are more efficient, safer, and better equipped to achieve their objectives.
- Working together in space helps all countries use it peacefully and sustainably. Projects like the International Space Station and Artemis Accords show what nations can achieve together. This cooperation creates rules that prevent conflicts, ensure fair resource use, and keep space open for everyone.
- Countries must conduct space missions responsibly by avoiding debris, following treaties, and making activities sustainable. Space agencies are creating rules to reduce risks like spacecraft collisions and the growing problem of space junk that threatens future missions.

- Balancing space business growth with security needs careful policies. Countries must support private companies while protecting national interests and following international rules - this helps keep space safe for everyone.
- Emerging ethical and legal challenges in space exploration encompass the rights to space resources, the environmental impact of space activities, and the ethical considerations surrounding human settlement on extraterrestrial bodies. Addressing these challenges necessitates international dialogue and the establishment of comprehensive legal frameworks that take into account the long-term implications of space exploration.

7. CONCLUSION

The examination of the intersection between outer space law and technology from an Indian perspective reveals a complex and evolving landscape shaped by rapid technological advancements, shifting legal frameworks, and the unique challenges faced by an emerging space power. This research has traced India's trajectory in space exploration, its engagement with ISL, and the legal ramifications of its technological advancements. India built its space program to help national development, using space technology to solve practical problems. Through successful satellite launches and missions to other planets, India has become a major space power. Nevertheless, this technological progress has introduced a series of legal and policy challenges that necessitate careful consideration. The research underscores the imperative for India to establish a comprehensive national space law that addresses these challenges while fostering a supportive environment for the growth of its space sector. Such legislation would not only enhance India's compliance with international obligations but also provide clarity and assurance to both domestic and international stakeholders. Moreover, the study highlights the significance of international cooperation in addressing global challenges in space governance. India's experience as a developing nation with advanced space capabilities uniquely positions it to bridge the divide between established space powers and emerging space-faring countries. India can shape fair space rules for everyone by taking an active role in international discussions. As space activities grow more complex, we'll need to keep updating laws to match new technologies. India's journey in navigating this complex landscape offers valuable insights for other nations and enriches the

broader discourse on space governance. In summary, this research underscores the dynamic interplay between space law and technology from an Indian perspective, revealing both challenges and opportunities. As India enhances its space capabilities, its engagement with ISL and contributions to shaping future space governance will be vital. India can lead in space by balancing new technology with responsible practices. This approach will help make sure space exploration helps everyone on Earth.

EMERGING COPYRIGHT ISSUES DUE TO GENERATIVE ARTIFICIAL INTELLIGENCE

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Abstract:

This paper examines how Copyright Act, 1957 currently governs the works produced by AI? The paper is strictly restricted to literary, artistic, musical works, rest all other subject-matters of Copyright Act, 1957 have been excluded.

With the intersection of Artificial Intelligence and Copyright Law emerge various questions: Whether outcome of Artificial intelligence can be protected under Copyright Law? Whether data being used to train Artificial Intelligence infringes Copyright of existing right holders? Who could be said the rightful owner of content produced by Artificial Intelligence? All four possible solutions are discussed in this paper such as granting copyright to User or Programmer of AI software or Artificial Intelligence's Company, or direct release of the AI's work into public domain. All solutions have been analysed by the support of arguments in favour and against them by using various Jurisprudential theories (under-pinning the Copyright Law), Laws (like provisions of Copyright Act,1957 and European Union's Artificial Intelligence Act) and Policy (like India's National Strategy for Artificial Intelligence of June 2018).

In the latter part of the paper, conclusion has been drawn, with certain suggestions as a solution to problems raised in this paper and have also pointed out shortcomings of

European Union's Artificial Intelligence Act, India's National Strategy for Artificial Intelligence of June 2018 in relation to Copyright protection specifically.

KEYWORDS: Artificial Intelligence, Copyright owner, European Union's Artificial Intelligence Act.

I) INTRODUCTION

This is the beginning of an era of Artificial Intelligence, Vladimir Putin in 2017 said "Artificial Intelligence is the future... of all mankind" he also stated that "Whoever becomes the leader in this sphere will become the ruler of the world."¹ Today, it is hard to think of a sector without the use of Artificial intelligence, from Defence to Commerce, people in almost every sector are using it for making their work easier and speedier. But in this paper, we are only concerned with the Creative fields which are the subject-matter of Copyright Law like artistic and literary works etc.

There are many different types of Artificial Intelligence, among them one is Generative Artificial Intelligence. Our focus, in this paper, will be on the emerging Copyright issues due to Generative Artificial Intelligence (hereinafter used as 'Generative AI'). Generative Artificial Intelligence, for instance ChatGPT, Midjourney, Stable diffusion, Copilot and many more, are used to produce content like text, video, music, image etc. Generative AI uses various techniques such as deep learning, neural networks, natural language understanding. In September 2022, a man named Jason M. Allen won an art competition, he submitted a painting made with the help of generative AI called Midjourney².

This incident gave rise to various questions, as to, Whether the outcome produced by Generative AI is Copyrightable? If yes, then who should be the copyright holder of these outcomes of generative AI? Whether inputs entered into an AI

¹ Radina Gigova, "Who Vladimir Putin Thinks Will Rule the World" *CNN*, Sept. 2, 2017, available at <https://edition.cnn.com/2017/09/01/world/putin-artificial-intelligence-will-rule-world/index.html> (last visited on Sept.1, 2024).

² Kevin Roose, "An A.I.-Generated Picture Won an Art Prize. Artists Aren't Happy" *The New York Times*, Sept. 2, 2022) available at <https://www.nytimes.com/2022/09/02/technology/ai-artificial-intelligence-artists.html> (last visited on Sept. 1, 2024).

system (in the form of datasets), in order to train it, infringes upon the rights of the existing Copyright Owners, whose works have been entered as input into an AI system? And various other questions come-up, when AI and Copyright law intersect because the outcome of these Generative AI comes within the purview of Copyright Law and to understand the significance of these questions, we need to discuss them in detail.

And check whether the current copyright law is efficient enough to deal with the issues that have emerged with coming of AI or the current law needs amendment.

II) WHETHER THE OUTCOME PRODUCED BY GENERATIVE AI IS COPYRIGHTABLE?

After the arrival of Generative AI that time-period is gone when creativity used to be associated with biological mind only. Now, generative AI like Midjourney (can be used to create images), ChatGPT or Copilot (for producing texts). The question is whether such images or texts produced as an output by an Artificial Intelligence can be granted copyright protection? In India, copyright is given to works³, on being considered original as mentioned under S.13(1) of Copyright Act, 1957. The analyses in this paper will be restricted to works given in above mentioned S.13(1)(a) excluding dramatic works.

There are few conditions that must be satisfied to get copyright in India. The first and foremost condition to get copyright under the Copyright law is 'originality with modicum of creativity',⁴ in case of generative AI, 'creativity' can be easily seen in work created by it but the question of 'originality' is little problematic. Some argue that AI spit-out the content, extracted from the data ingested by AI at the time of training. Hence, there is no originality and shouldn't be granted copyright on the work created by it. Whereas, the opposers of this argument contest that the use of datasets by AI (for training purposes) should be seen, in the same manner, as human sees, hears and listens things, to learn and educate himself. Therefore, qualifies for copyright protection.

³ The Copyright Act, 1957 (Act 14 of 1957), s. 13(1) (a) original literary, dramatic, musical and artistic works; (b) cinematograph film; and (c) sound recording.

⁴ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

Some also argue that Artificial Intelligence is just used as a 'tool' to create a work and to support their argument an analogy of a renowned photograph case is drawn. In *Burrow-Giles Lithographic Co. v. Sarony*⁵, it was recognized, for the time, that photographs can be given copyright protection. Camera is used just as a 'tool' or machine to create an art in the form of photo, human is still the main component of the process, he controls the outcome by adjusting camera compositions, colour contrast, brightness etc. but, the above argument with an analogy fails because in case Generative Artificial Intelligence, the outcome/output cannot be control by the User because it produces image in an unforeseeable way. The process of generating 'creative' content out of AI is very much alike 'Samundar Manthan'⁶ (in which it was only partially foreseeable, what will come out once the churning starts). Similarly, in AI too what will come out of it as a result of User action, can't be very clearly guessed? Though, it can be guided in a very restricted form by entering prompts.

Generative AI can be compared to an 'artist' who has been hired for work and general instructions have been given regarding the work which needs to be done. After the work is done the credit for the work created can't be taken by one who ordered the work or in our case, credit of the creation produces by AI. For example, instructions given to a painter to paint a wall in specific style (like Mughal painting style or Japanese painting style).

In this regard, we must also keep in mind the concept of idea-expression in copyright Law. The idea-expression dichotomy ensures unrestricted flow of idea and information to the public. It can be argued that prompt given to the Artificial Intelligence is just an 'idea' and not a full-fledged detailed direction. For instance, giving a prompt to Midjourney "to create an image of horse running in rain across the jungle and monkeys are following him behind the back." This prompt gives us the 'idea' how User wants the image should look like? Henceforth, it is the task of AI to use algorithms patterns, techniques everything on which it has been once trained, to create the desired image. Consequently, this work would not be

⁵ (1884) 111 U.S. 53, 58.

⁶ As mentioned in Vishnu Puran.

deemed copyrightable as it goes out of the purview of the Copyright Law which do not protect ideas (like the prompt), but only expressions (like the Painting).⁷

III) WHO SHOULD BE THE COPYRIGHT HOLDER OF THE CREATIVE WORK CREATED BY GENERATIVE AI?

When all over the world a debate is going on that whether output produced by the generative Artificial Intelligence is copyrightable or not. Then, it is equally important to discuss that who should be the rightful owner of the copyright, if it is ever decided to be given under the copyright law. So now, we shall analyse arguments both, for and against, in relation to all four potential candidates who can claim copyright.

These three potential candidates are:

First, Artificial Intelligence;

Second, User of AI or Company which owns AI or Programmer of AI;

Third, direct release of the AI's work into public domain.

a) Copyright to Artificial Intelligence

The Jurisprudence underpinning the copyright law talks about several theories, 'Personality theory of Kant and Hegel' is one of them. As per, Personality theory 'a bond exists between creator and work'. The personality of the creator is reflected in his work, and it is undetachable. Indian Copyright Act accepts this theory and it is evident by the presence of S.38B about Moral rights (like right to attribution and right to distortion and mutilation) in the Copyright Act, 1957. Now, in case of Generative AI, AI has no personality of its own which it could reflect in the work produced and therefore, its moral rights are also out of question. Hence, atleast personality theory does not justify the protection of copyright to Generative AI.

Copyright in above discussed works can be given only to an author⁸. S.2(d)(vi)⁹ of Copyright Act talks about 'person', but 'person' is not defined anywhere in the Act. In November 2020, where RAGHAV app was registered by the Indian

⁷ *The Chancellor Masters & Scholars v Narendera Publishing House*, (2008) 38 PTC 385 (Del).

⁸ The Copyright Act, 1957 (Act 14 of 1957), s.2(d) "author" means, - (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

⁹ *Ibid.*

Copyright Office and copyright was given to Artificial Intelligence, that is, RAGHAV app alongwith human named Ankit Sahni for painting 'Suryast' under artistic work, but it was withdrawn later. Withdrawal proves that AI as an author is not acceptable in the Indian Copyright Office.¹⁰

Still there are certain supporters of the argument that AI should be a copyright holder because according to them AI is doing almost all the creative part. If this is the case to be then Copyright Act, 1957 needs to be suitably amended.

Another hurdle, in process of making AI a Copyright holder is the term of copyright (time-period). The term of copyright was fixed by keeping in mind that human would be the beneficiary of it. Legislators at that time might not had envisioned AI. Now, the challenge is that human is mortal, so life plus 60 years as a term of copyright as mentioned under S.22 of Copyright Act, 1957 fits well, but AI is, potentially, immortal and the 'copyright term' leads to AI having a monopoly over the work, forever.

Even if aforementioned problems are resolved and eventually, AI becomes the copyright holder, other questions come in, how will AI enforce copyrights? In case of, infringement what remedies must be giving to AI?¹¹ As, financial incentives would be of absolutely no use to AI. How do we make AI obey his duties corresponding to other copyright right? How to execute the liabilities committed by AI in case of infringement? As, in India, Copyright Act provides both civil and criminal liabilities from S.54 to S. 70 in case of infringement.

Thus, unless we have answers to all these questions the whole process of making AI a copyright holder would be redundant.

¹⁰Vedika Chawla, "Ankit Sahni's AI "Co-authored" Artwork Denied Registration by US, continues to be Registered in India" Spicy IP, Dec. 15, 2023, available at <<https://spicyip.com/2023/12/ankit-sahnis-ai-co-authored-artwork-denied-registration-by-us-continues-to-be-registered-in-india.html>> (last visited on June 22, 2024).

¹¹ Kalin Hristov, "Artificial Intelligence and the Copyright Dilemma" 57 *IDEA: The IP Law Review* 431(2017) available at: <https://ssrn.com/abstract=2976428> (last visited on June 24, 2024).

b) Granting Copyright to User of AI or Company which Owns AI or Programmer of AI

In support of, Company which owns AI and Programmer of AI, it can be said that they should be rewarded for the fruits of their labour¹². 'Labour theory' of John Locke justifies Copyright Law, it says that an individual should be rewarded with personal rights for their labour. Some argue that if they won't be incentivized then they might withhold the free flow of information (of creative works of AI) which would result in inequality. Creators of AI will not release creative works generating AI tools in the market. Subsequently, some people would be having undue advantages of technology over the other.

On the other hand, Opposers, say this approach would over-reward user, programmer and Companies, "by owing everything the program was capable of generating be merely allowing the computer to run indefinitely"¹³ because even if, User is not granted protection for Artificial Intelligence's produce, anyhow he is getting incentivized by freely using or building other works on the work created by the generative AI. Programmer is getting incentivized by boosting his status in the desired market and getting paid for his work etc. Company is getting incentivized by releasing paid versions of their AI tools, by giving licenses, generating revenues from advertisements and by getting all the data of Users and using it for various other earnings.

c) Direct Release of AI's Work into Public Domain

One of the solutions of the aforementioned problems, can be that work produced by generative AI should directly be released into the public domain and no one owns the copyright over it, let everyone have free access to it.

Some might say, that it would be injustice to programmers, Companies and Users by not incentivizing them and they might lose interest in the development of AI. On the Contrary, as we have discussed earlier, they would be over-rewarded if gets the copyright over the 'work' in issue. Moreover, software industry runs on the basis of competition. Company with the superior technology, always remains in high demand. That itself works as motivator, as it has worked till now in

¹² *Satsang v Kiron Chandra Mukhopadhyay*, AIR 1972 Cal 533.

¹³ *Supra* note 7.

development of AI. Moreover, as the history of AI development shows that many of its crucial developments happened in universities¹⁴ which were not much interested in commercial application of AI or in other things like in Defence application, trying to solve problem which were out of the capabilities of existing technology or humans etc. there will not ever require any copyright protection to continue the development of AI.

Another argument is that Creative fields have no urgent humanitarian goal to achieve like inventing a cancer medicine, finding feasible solution to climate change problem, etc. There is no such urgent need that requires a drastic encouragement to the application of Generative AI in creative fields, by giving them Copyright protection. Even without such protection, there are sufficient encouragement for flourishing of AI in creative fields due to above mentioned incentives to all the parties involved in AI related creative fields. Furthermore, not giving copyright protection would further adequately incentives AI in creative fields as there would be no fear of copyright infringement and time, money and other resource consuming court proceedings, etc.

IV) WHETHER INPUTS ENTERED INTO AN AI SYSTEMS (IN THE FORM DATASETS), IN ORDER TO TRAIN IT, INFRINGES UPON THE RIGHTS OF THE EXISTING COPYRIGHT OWNERS, WHOSE WORKS HAVE BEEN ENTERED AS INPUT INTO AN AI SYSTEM?

AI systems are trained on large number of datasets to produce more precise, accurate and desired results. The training process includes making of the digital replica of all this data which contains both copyrighted and non-copyrighted works. Creating replica (copy) of copyrighted work without permission may infringe exclusive right of the existing copyright holder to right to reproduce as mentioned under S. 14(a)(i) (in the case of a literary, dramatic or musical work, right to reproduce the work in any material form including the storing of it in any medium by electronic means) and s.14(c)(i) (in the case of an artistic work, right to reproduce the work in any material form including the storing of it in any medium by electronic means or other means, or depicting 3D into 2D or 2D into

¹⁴ Margaret A. Boden, *Artificial Intelligence- A Very Short Introduction* (Oxford University Press, Oxford, 1st edn., 2016).

3D) of the Copyright Act,1957. Recently, a law suit has been seen between Getty images and Stable Diffusion AI in regard to Copyright infringement.¹⁵

Artificial Intelligence Companies argue that during training of AI, the doctrine of fair dealing (or fair use) has been kept in mind. As per, TRIPS Art. 13¹⁶ which is alike to Berne convention Art. 9(2)¹⁷, member countries are required to have limitations and exceptions to their copyright law. Hence, in compliance, Indian law enacted, Doctrine of fair dealing as an exception to copyright infringement under S.52 of the Copyright Act,1957. Doctrine was also clarified in *Kerala High Court in Civic Chandran v. Ammini Amma*¹⁸ that "it may be reasonable to hold that the re-production of the whole or a substantial portion of it as such will not normally be permitted and only extracts or quotations from the work will alone be permitted even as fair dealing". Court also placed certain factors to be thought-out in case of infringement, they are as follows:

1. *"The quantum and value of the matter taken in relation to the comments or criticism;*
2. *The purpose for which it is taken;*
3. *And the likelihood of competition between the two works."*

In order to defend the statement 'datasets which are used to train AI comes under fair dealing or fair use', AI companies argue that the 'purpose' of training the Generative AI is to produce a 'transformative' work (meaning thereby it transforms the original work and allot it novel meaning, novel expression and a different vibe altogether).

Whenever the 'amount of copyrighted work used for training of AI' comes into

¹⁵ *Getty Images (US), Inc. v. Stability AI, Inc.*, (2023) 1:23-cv-00135, (D.Del.), alleges that "Stability AI has copied atleast 12 million (1 crore 20 lakhs) copyrighted images from Getty Images' websites...in order to train its Stable Diffusion model".

¹⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995, Part II, s.1: art. 13: "...confine limitations or exceptions to exclusive rights to certain special cases...do not unreasonably prejudice the legitimate interests of the right holder."

¹⁷ Berne Convention for the Protection of Literary and Artistic works, 1886, art. 9(2): "...permits the reproduction of such works in certain special cases...does not unreasonably prejudice the legitimate interests of the author."

¹⁸ (1996) 16 PTC 670.

the picture, Companies who own AI system tries to defend themselves by citing Google books case.¹⁹ Companies also claim that their use of data (copyrighted works) is within the application of Fair Use doctrine. Additionally, they argue that data secrecy is maintained, as only a small portion of copyrighted work is provided to Users in the output given by the AI.

Further, in regard to the argument, “likelihood of competition between two works”- the third factor of the aforementioned *Ammini Amma* case.²⁰ There have been incidents when generative AI has created a work very much identical to the original copyrighted work, the work through which it was trained. This new AI work results in competing with the original work, therefore, harming business and reputation of the copyright holder. For instance, On June 24, 2024, lawsuits have been filed against two AI companies namely, ‘Suno’²¹ and ‘Udio’²² (AI tools used to make music), by Sony Music, Universal Music and others, they alleged that their copyrighted music has been used to train AI without their prior approval. As per complainants, “works created by AI is far from transformative, in fact, it ingests copyrighted work to spit out new, competing music files.”²³ Though, the statement given by ‘Udio’ portrays a different picture²⁴.

After the analysis of aforesaid arguments, cases, provisions, it is clear that possibility of copyright infringement may exist. For settlement of the issues, there is a need to closely observe the decisions of the pending lawsuits filed across the world pertaining to Open AI and copyright laws.

European Union’s Artificial Intelligence Act

European Union’s Artificial Intelligence Act (hereinafter EU’s AI Act) passed by

¹⁹ *The Authors Guild, Inc. v. Google, Inc.*, No. 13-4829-cv (2d Cir. 2015) US, in which the U.S. Court of Appeals for the Second Circuit held that Google’s copying of entire books to create a searchable database that displayed excerpts of those books constituted fair use.

²⁰ *Civic Chandran v. Ammini Amma*, (1996) 16 PTC 670.

²¹ *UMG Recordings, Inc. v. Suno, Inc.*, (2024) 1:24-cv-11611, (D. Mass.).

²² *UMG Recordings, Inc. v. Uncharted Labs, Inc.*, (2024) 1:24-cv-04777, (S.D.N.Y.).

²³ Natalie Sherman, “World’s biggest music labels sue over AI copyright” *BBC News*, June 26, 2024, available at < <https://www.bbc.com/news/articles/ckrrr8yelzvo> > (last visited on Sept. 1, 2024).

²⁴ Udio said its system was “explicitly designed to create music reflecting new musical ideas”. It added that it had “Implemented and continue to refine state-of-the-art filters to ensure our model does not reproduce copyrighted works or artists’ voices”.

the European Parliament in March 2024. It does not specifically deal with the above discussed copyright issues, but mentions copyright from recital 105 to 109 repeatedly.

Under Recital 105 of the AI Act²⁵, the paramountcy of taking permission from rightsholder of copyrighted content before using it to train the AI models has been highlighted. Unless, the content falls into copyright limitations and exceptions. It has also mentioned directive (EU) 2019/790 which presented certain exceptions and limitations, as to reproduction and extractions of works with the goal of text and data mining (hereinafter 'TDM') under certain situations. Notwithstanding of the above, rightsholder can expressly choose the right to 'opt-out' (except it is a case of scientific research). The recognition of the Art. 4 of the CDSM (hereinafter 'Copyright in the Digital Single Market') Directive by Recital 105 of the AI Act, makes it clear that TDM exceptions applies to the AI training model. Therefore, answers long awaited question.

Art. 53.1(c) and Recital 106²⁶ of the AI Act, makes it mandatory for the general-purpose AI models (hereinafter 'GPAI') to obey the relevant regulations while entering into the EU market. Special adherence to copyright and related laws needs to be paid. The compliance has to be followed irrespective of the fact that in which jurisdiction the training of AI model has been done.

By putting such compliance, legislators want to guarantee that AI companies do not take undue advantage by implementing low copyright standards than EU. Eventually, tried to promote healthy and fair competition while maintaining a balance between law and technology.

Under Art. 53.1(d)²⁷ and Recital 107²⁸ made it mandatory for AI companies to provide a comprehensively detailed summary of the data used to train the GPAI.

²⁵ European Union's Artificial Intelligence Act, available at: <https://ai-act-law.eu/recital/105/> (last visited on Sept. 1, 2024).

²⁶ European Union's Artificial Intelligence Act, available at: <https://ai-act-law.eu/recital/106/> (last visited on Sept. 1, 2024).

²⁷ European Union's Artificial Intelligence Act, available at: <https://ai-act-law.eu/article/53/> (last visited on Sept. 1, 2024).

²⁸ European Union's Artificial Intelligence Act, available at: <https://ai-act-law.eu/recital/107/> (last visited on Sept. 1, 2024).

Here, data comprises of copyrighted and non-copyrighted, and public or private data. Summary provided shouldn't be too technical and the heed must be paid to guard the trade secrets and confidential business information.

It would be nice to have a uniform standards of copyright pertaining to AI models and clearly EU has tried to accomplish that through the initiative of AI Act. Though, some crucial questions pertaining to AI and copyright laws still remained unanswered.

India's National Strategy for Artificial Intelligence of June 2018

With the slogan - "AI for All", NITI Aayog specified 5 sectors that can be benefited the most by Artificial Intelligence but disappointingly, Intellectual Property laws (hereinafter 'IP Laws') were not a part of it. Though, the document has not completely abandoned the IP laws. It has acknowledged the challenges faced by the patent laws due to their narrow focus and stringency connected to AI systems. As a solution, IP facilitation centre and training, to concerned authorities have been suggested.²⁹

In relation to Copyright, it recognised the importance of algorithms and data in case of AI, but has not suggested any concrete solution to the problems raised above in this paper. In the end, it has recommended to set-up a task force including concerned ministry and other officials to investigate the issues and challenges faced by IP laws pertaining to AI and make necessary changes.

V) CONCLUSION

This paper has highlighted the issues emerged in copyright regime due to Generative Artificial Intelligence. After weighing all the arguments in the light of case laws and various provisions, it can be concluded that outcome of the generative AI can't be protected under copyright regime as the prime criteria of 'originality with modicum of creativity' to get copyright is not met-out clearly. Moreover, AI produces desired results in completely unforeseeable way, no one has any control over it. Still some beneficiaries are very much persistent of the fact

²⁹ NITI Aayog, "National Strategy for Artificial Intelligence" (June, 2018) *available at*: <https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf> (last visited on Aug. 25, 2024).

that work produced by AI should be granted copyright protection and if it is ever decided to be given then out of all the 4 potential choices, direct entry into the public domain is the feasible and appropriate choice for the time being. As, granting copyright to User or to Company which own AI or Programmer of AI will result into over-rewarded and granting copyright to Artificial Intelligence itself will lead into series of complex questions which are not answerable by current legal system.

As to the question, whether data being used to train Artificial Intelligence infringes upon Copyright of existing right holders? Lawsuits can be seen worldwide in this regard. Uncertainty and vagueness in copyright law can be witnessed in almost every jurisdiction of the world. Although, European Union's Artificial Intelligence Act has tried to touch upon this particular issue, through the enactment of Art. 53, Recital 105, 106 and 107 it accepts the fact that data used to train the AI system may infringe copyright and has brought some amount of relief in the concerned matter, but the issues of ownership of output produced by the Generative AI remain unsettled.

A CRITICAL STUDY OF COLONIAL RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION IN BRITISH INDIA

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Abstract:

In colonial India, the British authorities exercised stringent control over the freedom of speech and expression, viewing it as a potential threat to imperial stability. To maintain their political dominance, the colonial government enacted a series of restrictive laws that targeted the press, public speech, and political communication. These measures were specifically designed to regulate the circulation of information, censor nationalist writings, and suppress voices advocating self-rule. Acts such as the Vernacular Press Act, the Sedition Law under Section 124A, and the Press Act of 1910 were strategically implemented to silence dissent, criminalize criticism of the government, and intimidate journalists. This paper undertakes a critical historical examination of these repressive legal frameworks and explores how they eroded fundamental civil liberties, weakened journalistic autonomy, curtailed political mobilization, and reshaped the nature of public discourse in India. Ultimately, these laws played a significant role in limiting democratic expression during the colonial period.

Keywords: *British India, Freedom of Speech, Press Restrictions, Colonial Laws, Censorship, Sedition, Political Expression, Journalism, Public Discourse.*

1. Introduction

British rule in India, in its effort to consolidate and perpetuate colonial authority, not only established a coercive political and economic structure but also

enforced a rigid legal regime to restrain freedom of thought, writing, and expression. The very principle of free speech—regarded as a fundamental pillar of democratic societies—was systematically weakened under colonial governance. As political consciousness grew across the country, particularly during the Swadeshi movement, revolutionary mobilizations, and the rapid expansion of the Indian-language press in the 19th and 20th centuries, the British administration grew increasingly apprehensive. This rising wave of nationalism and public engagement compelled the colonial state to introduce a series of restrictive laws aimed at curbing the formation of public opinion, criminalizing political dissent, and obstructing the spread of nationalist ideology. These legal interventions were crafted specifically to silence criticism, restrain the press, and prevent the emergence of a politically aware populace.

2. Historical Background

The development of the Indian press began in the late 18th century, during a time when the British East India Company was consolidating its political and administrative control over large parts of India. The first significant milestone came in 1780, when James Augustus Hicky launched Hicky's Bengal Gazette, also known as the Calcutta General Advertiser. It is widely recognized as India's first printed newspaper. Hicky used his newspaper as a platform to criticize the policies and actions of Governor-General Warren Hastings and other Company officials. His bold journalism led to frequent conflicts with colonial authorities, resulting in heavy fines, seizure of his printing press, and finally imprisonment. These events are often cited as the first documented example of press repression in India.

Following Hicky's initiative, several other newspapers emerged—both European-owned (such as Calcutta Gazette, Madras Courier, Bombay Herald) and later Indian-owned (such as Samachar Darpan in 1818 and Bombay Samachar in 1822). These newspapers began shaping public opinion by disseminating information, voicing grievances, and raising awareness about political, economic, and social issues. Over time, the British colonial administration realized that the press had the power to mobilize people around ideas of rights, justice, and resistance against arbitrary authority. As the influence of the press grew, so did British attempts to control it.

3. The Colonial Nature of Freedom of Speech and Expression

In British India, freedom of expression was never considered a fundamental right. Rather, it was a limited freedom, restricted according to the needs of the administration and political circumstances.

Three things posed the greatest threat to the colonial administration:

- Criticism of British rule
- Nationalist sentiment or the demand for self-rule
- The spread of revolutionary movements

Laws were enacted to suppress these very points.

4. Major Colonial Laws: A Critical Review

4.1 The Censorship of Press Act, 1799 (Wellesley's Regulations)

Governor-General Richard Wellesley imposed strict pre-censorship on newspapers, especially during the Napoleonic Wars. Editors were required to submit all material for approval prior to publication. This act is one of the earliest examples of direct state control over the Indian press.

Criticism:

Severe Curtailment of Early Press Freedom in India:

The Act imposed mandatory pre-censorship, requiring all newspapers to submit their content to the government before publication. This effectively eliminated editorial independence and prevented the press from functioning as a watchdog of colonial power.

Suppression of Political Awareness and Public Debate:

By restricting the publication of any material that could "excite suspicion" against the government, the regulation directly hindered the growth of political consciousness among Indians. This censorship weakened the role of the press in shaping informed public opinion during a crucial stage of India's socio-political development.

Reinforcement of Colonial Control and Mistrust:

The measure reflected the British administration's deep fear of political criticism, especially during the Napoleonic Wars. Critics argued that instead of promoting

transparency, the Act expanded arbitrary state control and treated the emerging Indian press as a threat rather than a partner in public communication.

4.2 Licensing Regulations, 1823

Enacted under Governor-General John Adam, these regulations required printers and publishers to obtain a government license. Violation could lead to fines and seizure of equipment. Ram Mohan Roy strongly opposed this law, calling it an attack on “the free expression of public opinion.”

Criticism:

Direct Suppression of Freedom of Expression:

The Act made it mandatory for every printer and publisher to obtain a government license before printing any material. Critics argued that this regulation was designed to curb the free flow of ideas and restrict public opinion. Raja Ram Mohan Roy condemned it as an assault on “the free expression of public sentiment.”

Targeted Control Over the Indian-language Press:

Although the law appeared universal, its primary impact was on Indian-run newspapers, especially those published in vernacular languages. These newspapers had begun questioning colonial policies and promoting social and political awareness. The Act effectively slowed down the growth of the indigenous press.

Expansion of Arbitrary Government Power:

The regulations empowered officials to impose heavy fines, seize printing presses, and revoke licenses on vague grounds. This discretionary authority created an atmosphere of fear, leading to self-censorship and weakening the press’s ability to function independently.

4.3 Press Act of 1835 (Macaulay's Liberal Press Act)

The Press Act of 1835, introduced by Thomas Babington Macaulay, marked a key shift in colonial press policy. It abolished the strict licensing system, allowing newspapers to publish without prior government permission and giving Indian-owned newspapers limited freedom for the first time. However,

the Act did not ensure full press liberty. The government retained the power to punish publications under laws of sedition, defamation, and incitement. Thus, the Act offered partial liberalization but continued to keep the press under post-publication repression. Despite these limits, the Act encouraged the growth of early Indian newspapers like *Jame Jahanuma* and *Samachar Chandrika*, though editors remained cautious when criticizing British rule.

Criticism:

Abolition of Licensing Was Superficial:

Although the Act removed the licensing requirement, it introduced no real protections for the press. Editors could still be punished after publication, meaning the fear of prosecution remained. Thus, the act did not grant true freedom of expression.

Selective Liberalism Favoured European-Owned Papers:

Indian-language newspapers continued to face more scrutiny and punitive threats compared to British-owned publications. The Act maintained racial bias in enforcement, limiting the actual benefits for Indian editors.

Retained Wide Punitive Powers for the Government:

Even without licensing, the colonial state could impose heavy fines, confiscate presses, and prosecute writers under sedition or criminal law. This allowed the government to suppress political dissent and nationalist journalism when required.

4.4 The Licensing Act of 1857:

The Licensing Act of 1857, commonly called the Gagging Act, was introduced by Governor-General Lord Canning immediately after the Revolt of 1857. The British believed that the Indian press had played a role in spreading discontent among the masses, so they sought to tighten their control over all printed material. Under this Act, no printing press could operate without obtaining a government license, and the authorities were empowered to stop the publication or circulation of any newspaper, pamphlet, or book that they considered provocative or harmful to colonial interests. Although the Act did not explicitly impose pre-censorship, the constant threat of license cancellation forced editors

and printers to severely restrict their writings, making it a powerful tool of indirect censorship. As a result, many Indian-owned presses were compelled to either shut down or limit their coverage of political issues, which resulted in a major setback to the growth of nationalist journalism.

Criticism:

Suppression of Free Expression:

The Act is criticized for virtually eliminating freedom of speech by making press operations dependent on government permission.

Political Motivation:

It was enacted primarily to control nationalist sentiments after the 1857 revolt rather than to regulate the press fairly.

Biased Enforcement:

Although framed as a universal law, it was disproportionately used against Indian-language presses, revealing its discriminatory intent.

4.5 The Press and Registration of Books (PRB) Act, 1867

The PRB Act of 1867 was enacted by the British government to regulate the printing and publication of newspapers and books in India. It required all printing presses to register with the government and maintain records of publications. The Act also empowered authorities to demand information about editors, publishers, and proprietors, giving the colonial administration greater control over the press. While it was presented as a regulatory measure, its real aim was to monitor and curb the spread of nationalist and critical content in Indian newspapers.

Criticism:

Invasion of Privacy:

The Act forced publishers to disclose personal details, giving the government undue control over journalists and editors.

Suppression of Dissent:

By monitoring publications, the Act enabled the colonial authorities to identify and target newspapers critical of British rule.

Hindrance to Free Expression:

The registration requirement and surveillance created a climate of fear, leading to self-censorship and restricted press freedom.

4.6 The Indian Penal Code (IPC) – Sedition Law

Enacted in 1870 by the British colonial government, Section 124A of the Indian Penal Code made it a criminal offense to “bring or attempt to bring into hatred or contempt, or excite disaffection towards the Government established by law in British India.” Essentially, it targeted speech, writings, or publications that criticized British authority or promoted nationalist ideas. The law became a key instrument for suppressing political dissent and controlling public opinion. Many prominent freedom fighters and journalists, including **Bal Gangadhar Tilak, Lala Lajpat Rai, and Bipin Chandra Pal**, were prosecuted under this provision for expressing their opposition to colonial rule.

Criticism:**Criminalization of Legitimate Political Dissent:**

Section 124A was frequently used to punish nationalists, journalists, and social reformers merely for criticizing colonial policies. Leaders like Bal Gangadhar Tilak and Mahatma Gandhi were imprisoned under this law, demonstrating how it criminalized peaceful political expression rather than actual threats to public order.

Vague and Overbroad Definition of Sedition:

The law defined sedition in extremely broad terms—any speech or writing that brought “hatred” or “disaffection” against the government could be punished. This ambiguity allowed British authorities to interpret criticism as sedition, enabling systematic misuse to suppress freedom of speech.

Violation of Fundamental Democratic Principles:

By equating criticism of the government with disloyalty to the nation, the law undermined essential democratic values such as open debate, accountability, and public participation. It functioned as a tool of political repression rather than a legitimate measure to maintain public order.

4.7 Vernacular Press Act-1878

It specifically targeted Indian-language newspapers that were increasingly critical of British policies. Under this act, district magistrates could demand security deposits, confiscate printed materials, and even shut down publications without trial. Newspapers like Amrita Bazar Patrika and Som Prakash protested vigorously against it. This law was specifically designed to control newspapers in Indian languages.

Criticism

Deliberate Discrimination Against Indian-Language Press:

The Act targeted only vernacular (Indian-language) newspapers while exempting English-language publications, reflecting a racially biased colonial policy. This selective control exposed the British fear of rising nationalist sentiment among Indian readers and highlighted unequal treatment under law.

Suppression of Political Expression and Nationalist Thought:

By empowering magistrates to demand security deposits, seize presses, and close newspapers without judicial review, the Act silenced criticism of colonial policies. It hindered the growth of nationalist discourse and obstructed the press from becoming a medium of political awakening among Indians.

Undermining of Civil Liberties and Rule of Law:

The Act granted excessive discretionary powers to executive authorities without requiring legal justification or a fair trial. Indian leaders criticized it as an attack on civil rights, arguing that it violated principles of justice, due process, and freedom of opinion essential for a democratic society.

4.8 Indian Press Act of 1908

The Indian Press Act of 1908 was enacted by the British government in response to the rising nationalist movements and revolutionary activities in India. The Act empowered the colonial authorities to **impose heavy security deposits on newspapers**, restrict publications deemed “seditious,” and take action against editors and proprietors. It was primarily aimed at **suppressing nationalist sentiment** and controlling the growing influence of the Indian press.

Criticism:**Targeted Nationalist Press:**

The Act was used to specifically intimidate newspapers supporting the freedom movement, such as *Kesari* and *The Hindu*.

Financial Burden:

Heavy security deposits and penalties created economic pressure, discouraging independent journalism.

Suppression of Free Expression:

It restricted the press's ability to criticize British policies, fostering self-censorship and limiting public discourse.

4.9 Indian Press Act of 1910

This act imposed heavy security deposits and allowed the government to seize presses suspected of publishing "seditious" material. It was widely used against nationalist newspapers such as *Kesari*, *The Hindu*, and *Bandemataram*. This law increased the burden of security deposits and repressive penalties on the press.

Criticism:**Financial Suppression through Heavy Security Deposits:**

The act imposed extremely high security deposits on newspapers, which placed an unfair economic burden on Indian-owned presses. Many small and nationalist publications were forced to shut down simply because they could not afford these deposits, making the law a direct attack on indigenous journalism.

Arbitrary Seizure of Presses and Publications:

The government could confiscate printing equipment or ban publications merely on suspicion of "seditious" intent. This lack of judicial oversight gave colonial officials unchecked powers, resulting in widespread harassment of nationalist newspapers like *Kesari* and *Bandemataram*.

Systematic Suppression of Nationalist Thought:

The act was intentionally designed to curb the growing influence of Indian nationalist writing. By restricting newspapers critical of British rule, it stifled political dialogue, obstructed the spread of nationalist consciousness, and weakened public participation in the freedom movement.

4.10 Emergency Powers and the Defence of India Act (1915)

The Defence of India Act of 1915 was enacted during the First World War to strengthen British control over India in the face of growing revolutionary activities and nationalist movements. The law **granted sweeping powers to the colonial government**, including the authority to **arrest individuals without trial, suppress publications, and censor the press**. It was primarily aimed at curbing sedition, revolutionary propaganda, and dissent that could threaten British rule during wartime.

Criticism:

Complete Suspension of Civil Liberties:

The Act allowed arrest, detention, and punishment without trial, effectively suspending the fundamental rights of Indian citizens. This created an atmosphere of fear where political activists, journalists, and ordinary citizens could be imprisoned without any legal protection or judicial review.

Severe Restrictions on the Press and Public Expression:

The law granted sweeping powers to suppress newspapers, censor writings, and shut down publications on mere suspicion of “threatening public safety.” This crippled nationalist journalism and silenced all forms of political dissent during the freedom movement.

Misuse under the Pretext of War:

Although introduced during World War I, the Act was widely misused to target Indian revolutionaries and nationalist groups rather than genuine wartime threats. It became a tool for colonial repression, allowing the British government to curb political mobilization and undermine the rising national movement.

4.11 Defence of India Act 1915

Restrictions on Civil Liberties - Freedom of expression, association, and the press were curtailed in the name of wartime security.

Disregard for Judicial Process - Arrests and detentions without trial undermined the rule of law.

Tool of Nationalist Repression - It was used more to suppress national movements than for security purposes.

4.12 Public Safety Act, 1907

Action Based on Suspicion - The provision for arrests without concrete evidence promoted arbitrary rule.

Suppression of Political Activities - Nationalist ideas and organizations were suppressed by labeling them as a 'threat'.

Violation of Democratic Rights - Individual liberty and the principles of justice were compromised.

4.13 Seditious Meetings Act, 1911

Controls over Public Assemblies - Political meetings were banned by declaring them seditious.

Suppression of Peaceful Protest - The democratic rights of dissent and public discourse were limited.

Impact on Political Consciousness - Active public participation and awareness were weakened.

4.14 Rowlatt Act, 1919

Repression in Peacetime - Harsh wartime provisions were extended to peacetime.

Suspension of Judicial Rights - It allowed for arrests without warrant and detention without trial.

Cause of Public Outrage - This law fueled widespread protests and intensified the national movement.

5. Impact of these laws on the nationalist movement

5.1 Persecution of freedom fighters

Gandhi, Tilak, Subhas Bose, Lala Lajpat Rai, Shaheed Bhagat Singh – all were punished under laws related to the press and speech.

5.2 Rise of the underground press

Secret newspapers like Ghadar Party, Ganesh Shankar Vidyarthi, Bawandar, Jasus, Kranti – were a reaction to British censorship.

5.3 Suppression of public awareness

These laws attempted to prevent nationalist literature from reaching the public, but at every stage, the political consciousness of the people intensified.

6. Ideological Critique of the Legal Framework

6.1 The Conflict Between Colonial Security and Civil Liberties

The British government considered freedom to be "indiscipline" and "rebellion," while the Indian people considered it their right.

6.2 Control over the Press to Affirm Colonial Dominance

The laws were not intended to uphold truth – but rather to protect power and restrict ideas.

6.3 The Racist Character of the Laws

- Greater freedom for the British
- Harsher punishments for Indians

This reflects the double standards of colonial justice.

7. The Legacy of These Laws on Present-Day India

7.1 The Persistence of the Sedition Law

Section 124A of the Indian Penal Code is a legacy of British rule and remains a subject of debate even today.

7.2 Residual Impact on Press Freedom

British repression led to the development of a state-centric approach and a tendency towards self-censorship in journalism, which is still visible to some extent today.

8. Overall Critical Perspective

The British regime never viewed freedom of speech and expression as a democratic value.

- Their objective was the continuity of their rule, not public welfare.
- Every form of expression—books, speeches, folk songs, pamphlets, plays—was viewed with suspicion.
- This freedom was granted as a “government concession” rather than a natural right, and could be revoked at any time.

9. Conclusion

The laws governing freedom of speech and expression in British India were not only instruments of political repression but also symbols of the colonial mindset, racist prejudices, and a power-centric system of governance. These laws made every possible attempt to stifle the Indian press, literature, intellectual debate, and political consciousness.

Yet, these repressive laws further strengthened the spirit of independent thought, resistance, national unity, and revolutionary consciousness among Indians. Publications like *Gadar*, *Kesari*, *Maratha*, *Young India*, and *Harijan* proved that ideas cannot be bound by any law.

After gaining independence, India made the historic decision to discard these colonial laws and declare freedom of expression a fundamental right. However, the legacy of these laws remains a subject of debate in our judicial and political structure today.

Therefore, it can be said that the repressive press and anti-expression laws of British India serve as an important lesson for Indian democracy – that freedom is not merely attained, but must be continuously protected and preserved.

These laws show how, throughout the 19th and early 20th centuries, the British aimed to suppress voices that questioned colonial authority. Yet, repression often had the opposite effect: it encouraged editors, writers, and readers to become more determined in their struggle for civil liberties and freedom of expression. As a result, the press played a crucial role in strengthening nationalist consciousness and supporting India's freedom movement.

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