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(Placed in UGC-CARE Reference List of Quality Journals, Social Sciences)

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Editor
R.K. Verma

Supplement on **Governance, Law and Social Justice**

Indian Institute of Public Administration

Bihar Regional Branch, Patna

Indian Institute of Public Administration
Bihar Regional Branch, Patna

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On the recommendation of Paul H. Appleby, the then Prime Minister Pt Jawahar Lal Nehru established the Indian Institute of Public Administration (IIPA) on March 29, 1954 with its HQ at IP Estate, Ring Road, New Delhi- 110 002 under the supervision of DoPT, Government of India. Its main aim is to equip the public servants with knowledge, skills and behaviour required for managing the tasks of governance. Bihar Regional Branch, commenced in the year 1960, is one of the 26 regional branches in India as part of the apex body of IIPA with an objective to undertake activities in furtherance of discipline of Public Administration and good governance. The Branch has five pronged activities like - research/evaluation studies, seminar / conferences / workshops etc., training / orientation / awareness programmes, collaboration with governmental & non-governmental agencies and publication of Journal, books, Monographs etc. It has earned the Award of 'Best Performing Branch' for the year 2021-22

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Notes: Students are required to furnish the certificate of studentship or recommendation of the head/ authorized faculty member of the institution.

From the Desk of Chief Editor

I have immense pleasure to present before the readers the Vol. XXI No. 2 (S), July-December, 2024 Issue of Bihar Journal of Public Administration. The readers may appreciate that the Journal is being punctually published amidst tough conditions caused by lack of proper finances, over stress of large numbers of paper submissions and strains of management. However, I express my thanks to the learned contributors, the entire Editorial Team and the anonymous referees for carrying the venture of publication of Bihar Journal of Public Administration in regular frequency and that too by maintaining quality. I, in personal capacity as Vice Chancellor of Magadh University, Bodh-Gaya, commit myself to facilitate the regular publication of the Journal by involving institutions of higher education, falling in this part of the state.

In the last two decades, the Journal has travelled across rudimentary hurdles to reach the stage of recognition of UGC-CARE. I hope the sensible academicians will realize it. The editorial board intends to accommodate the new ideas and issues of our focus area of research. We prefer to provide space for new ideas and practices related to Public Administration and allied disciplines, especially covering Bihar. Finally, I express my thankfulness to the readers who have shown interest in the Journal and institutions of higher education that have rendered helping hands to our venture.

Prof. S.P. Shahi
Vice Chancellor
Magadh University, Bodh Gaya

Editorial

It is matter of immense pleasure that BJPA has entered into 21st year of its regular publication. The year 2024 so far has been significant and eventful for the students of Public Administration and Indian politics as there has been innovations in field of governance. We have received a substantial number of well researched papers in the areas intersecting governance, laws and equity. Therefore, it was decided to publish them as special supplement on Governance, Law and Social Justice of Vol. XXI No. 2.

The present Issue covers the examination of interplay of law and policy, the examination of the protection of women's intellectual property rights in the light of implementation of related laws, monetary compensation under law of torts, prospects and challenges of e-Courts, all in the context of ensuring social justice. Some of the contributors of the present Issue have examined the implementation of laws for ensuring gender equity, even beyond binary classification of sex like recognition of legally solemnized same-sex marriages in foreign countries in the light of marriage laws in India, gender justice to people beyond binary classification of sex by examining the implementation of laws made in protection of rights of LGBT category of people. Papers on the subjects like ensuring social justice in the light of implementation of constitutional provisions and adverse impact of policy of scrapping old vehicles on labour class, small business and marginalized people with suggestion of appropriate legislation have been included in present number of BJPA. It has also provided place for checking cybercrimes, frauds in banking system vis-à-vis existing laws and corporate governance addressing Indian laws and shareholder activism. A comparative analysis on India and Brazil in settlement of investor-state disputes may attract attention of our readers.

The IIPA Bihar Regional Branch and the Editorial team express thankfulness to external support from expert reviewers and the contributors. At last, though utmost care has been taken to maintain the quality, yet we shall feel obliged, if suggestions are rendered from readership for improvements in the Journal.

- Prof. R.K. Verma

- Editor

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WOMEN AND INTELLECTUAL PROPERTY RIGHTS: AN EXAMINATION OF IMPLEMENTATION OF LAWS, SCHEMES AND BUSINESS IN INDIA

Varsha Dogra*

Abstract

Women are excelling in almost every walk of life and in some cases, they perform better than their male counterparts. They are also doing well in the area of research and innovations. But their share in owning intellectual property rights, though meagerly increased, amounts to only 17 percent. There have been efforts to ensure their share in intellectual property both at international and national levels through international bodies, national laws and programmes. But the irony is that their research and innovations are being inadequately awarded, particularly in commercial world. Under the influence of this assumption, the present paper examines the implementation of laws, schemes and programmes aimed at ensure Intellectual property rights in favour of women in India, attitude of IPR granting institutions and weaknesses on the part of women inventors. The paper is primarily based on secondary sources of data collection, however, the concerned offices were visited by the author for empirical information. It can be concluded that lack of awareness among women, lackluster attitude of granting bodies, especially towards women and moderate inspiration by the government bodies and business world.

Keywords: IPR, TRIPS, Women, WOS, India

INTRODUCTION

The term "intellectual property rights" (IPR) refers to the rights granted to people or organizations for a set amount of time regarding particular innovations or inventions in goods or processes. They can be found in the form of copyrights, patents, trademarks,

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and geographic indicators (GIs). In order to achieve social and economic welfare, IPR aims to promote the creativity and innovation as well as ease access to knowledge. The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, which was signed by WTO members in 1994, set international standards for IPRs. Nonetheless, India's track record in identifying and upholding intellectual property rights has been far from ideal. According to the 2015 International IP Index published by the Global Intellectual Property Chamber of the US Chamber of Commerce, India was placed 29th out of 30 nations. Recognizing the role of women innovators is crucial because women make up half of the population and if they are excluded, the intellectual property (IP) sector stands to miss out on a huge potential pool of female creators. It also matters because IP has the power to transform economies and businesses, and if women are not sufficiently represented in this field, their talent is being untapped.

Women are often better leaders and are able to successfully balance their personal and professional lives. They can combine empathy and professional ethics to bring innovation and creativity to the table. For example, according to a report from the United States Patent and Trademark Office (USPTO), the percentage of female inventors has risen from 16.6% to 17.3%, and they continue to actively register more patents. They were the primary inventor on the second patent within five years of the first one.[1]

In recent times, there has been a growing trend of inquiries from academics, intellectual property offices, and governmental bodies concerning the participation and portrayal of women in the creative industry. The World Intellectual Property Organization decided to center its annual World IP Day celebration around the theme of "Powering Change: Women in Innovation and Creativity" in 2023, putting this issue front and center. In addition, diversity in the intellectual property (IP) sector is crucial because it fosters the development of novel solutions for a range of issues which impact specific communities. There are more skill and ideas when there are more female innovators. Researchers are closely examining the role of the National Intellectual Property Right Policy of 2016 and the Intellectual Property and Gender Action Plan (IPGAP) of WIPO with respect to women in the intellectual property field on both a national and international level.

An Overview of Women in IP (Intellectual Property)

In India and around the world, women are making significant contributions to the expansion of the intellectual property industry. Beyond inventions, patents, and copyrights, women serve an important role in the intellectual property (IP) industry. They also become facilitators, patent agents, and IP attorneys. Historical

contributions by women to the arts, sciences, entertainment, etc., have also been tremendous. Here are some examples. Archana Shanker[2] , Senior Partner and Head of Department - Patents and Designs. Deepa K. Tiku, K&S Partners, Legal Services[3] Ada Lovelace, the first computer programmer, Grace Hopper, the first woman to be honored with a patent for computing methods, Katherine Johnson, who helped with human space exploration, Stephanie Shirley, Margaret Hamilton, who is credited with coining the term "software engineering," Flora Nwapa, the first Nigerian woman author, and many others are among the notable women innovators. In addition to these, a few other businesswomen who have made a significant impact on the intellectual property sector are Nina Archie, Susanne Hollinger, Marlene Valderrama, Alison Erickson, etc.

Though only 20.8% of these companies are owned by women, the Institute for Women's Policy and Research reports that women-owned businesses have grown at a rate four times faster than that of male-owned businesses. Consequently, bridging the gender gap in the intellectual property (IP) sector can boost the global economy and could increase GDP by nearly $12 trillion USD by 2025.By granting owners and content creators exclusive control over their works, intellectual property rights protection reinstates this financial incentive to innovate and create. This is extremely significant for women. Research indicates that nations with more robust intellectual property rights typically have higher levels of gender equality. Women are a strong force for innovation and leadership in the economy. When used properly, intellectual property rights can promote entrepreneurship by giving women who create novel ideas and goods the ability to signal their innovation and obtain funding.[4]

IP and Empowerment of Women

Accelerating Innovation and Creativity, which is the theme, highlights the ways in which women can contribute to the field of innovation as well as the ways in which IP may enable them to do so. In addition to helping the IP sector flourish, women also benefit from the IP sector during this period of technological revolution. By granting them a monopoly over their works, intellectual property protection can assist female performers and artists in building enormous reputations and fortunes. Effective IP laws have also been shown in several surveys to contribute to gender equality. It encourages women's entrepreneurship and motivates them to come up with creative ideas. Industrial designs and trademarks can also be beneficial to women working in the apparel industry.[5]

International Efforts for Women in IP

The document on ***WIPO's Intellectual Property and Gender Action Plan***

(IPGAP) lays out the World Intellectual Property Organization's (WIPO) first strategic action plan for its recently established IP and gender programme. It supports WIPO's Gender Policy and emanates from and is consistent with the organization's Medium-Term Strategic Plan (MTSP), which was issued on June 7, 2021. According to the MTSP, WIPO's goal is to assist in establishing a global intellectual property (IP)-supported innovation and creative ecosystem that benefits all.[6] The vision of the plan is that a world where innovation and creativity by women anywhere is supported by IP, for the good of everyone. WIPO leads the development of an IP ecosystem that promotes and encourages women's engagement in IP and innovation. It has undertaken three initiatives – a) strategic advice for member states, b) data collection and analysis and c) creating opportunities. There are more female inventors in certain industries, like biotechnology, food chemistry, and pharmaceuticals, than in other fields, like mechanical engineering. Academic institutions tend to produce more female inventors than the private sector. The proportion of mixed teams filing for patents has increased, which accounts for the majority of the observed increase in the percentage of women patenting. Teams of female inventors are extremely uncommon. Women inventors typically work alone or in teams with a majority of men[7]

European Patent Office, in its report entitled "Women's participation in inventive activity," aims to promote participation by highlighting the accomplishments of women in IP, significant obstacles faced, and participation statistics. According to a recent study conducted by the European Patent Office (EPO), women make up 13.2% of inventors in Europe. The percentage of female inventors listed in all patent applications submitted to the EPO between 1978 and 2019 is the basis for this study, which is the first of its kind to be released by the EPO. It draws attention to the fact that there is still a significant disparity between the sexes even though the percentage of female inventors in Europe has increased recently—from just 2% in the late 1970s to 13.2% in 2019. The proportion of female inventors is notably lower than that of female scientists and engineers, both as researchers and graduates.The goal of the EPO study is to give information on gender and patenting in Europe to decision-makers and the general public. It offers information on female inventors in many nations, eras, technological domains, and patent applicant profiles.[8]

National Efforts in India

The Controller General of Patents, Designs & Trade Marks (CGPDTM) has its regional offices at Mumbai, Chennai, and New Delhi with its head office situated

in Kolkata. It looks after the award of patents in the country. It has been found that the orgaisation performs satisfactorily and made changes to the process of reviewing and awarding patents, designs, copyrights, and trademarks. The concerned Minister said that the "ease of doing business" would significantly contribute to India's rise to prominence in the innovation sector.[9]

Women Scientists Scheme (WOS)

A number of highly qualified female scientists have currently been excluded from S&T endeavors for various reasons. Numerous issues are present, but the most common one is that the "break-in-career" is caused by being a mother and other obligations related to family. The current system offers limited opportunities for the resuscitation of their profession because of age and qualification/experience requirements that are restrictive. In this context, the Department of Science and Technology (DST) has developed the "Women Scientists Scheme (WOS)" for research in the basic and applied sciences to give women scientists and technologists between the ages of 27 and 60 who want to return to mainstream science and work as bench-level scientists opportunities.[10]

The Women Scientists Scheme (WOS) provides with training in STEM fields to over 800. As a result, 10% of active patent agents are now female. By providing various grants, internships, fellowships, and on-the-job training, it also seeks to mitigate the effects of a career break by assisting the recipients in becoming IP facilitators and women individuals.[11]

National Intellectual Property Rights Policy 2016

On May 12, 2016, the Union Cabinet adopted the Policy. In order to protect intellectual property rights, it acknowledges India's well-established legislative framework that complies with TRIPS and uses the international regime's flexibilities to balance the country's developmental concerns. The Policy places a special emphasis on raising public awareness of intellectual property rights (IPRs) and emphasizing their value as an economic tool and marketable financial asset.[12] The Policy links intellectual property generation to innovation. The policy aims to facilitate the commercialization of intellectual property by raising awareness and reducing administrative obstacles by streamlining procedures. In order to make copyrights consistent with other intellectual property, they are being pushed to be under the Department of Industrial Policy and Promotion (DIPP), currently overseen by the Ministry of Human Resources.

The Policy does also promote and facilitate the development of capacity

among women who are creators, innovators, entrepreneurs, practitioners, teachers, and trainers. The policy stresses creating a supportive environment for female innovators and entrepreneurs, even though it doesn't explicitly list provisions that are only for women. The policy recognizes that IP education, training, and awareness initiatives must take a gender-sensitive approach. It also seeks to make it easier for female creators, inventors, and business owners to obtain IP protection and assistance with commercialization. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, took a significant step in amending Rule 24(C) of the Patent Rules, 2003, which provided means for expedited examination of the patent application for female applicants or any application having at least one female inventor. As a result, the WIPO World IP Indicators of 2018 have revealed that 28.3% of patent filings for international applications have a huge number of Indian Female inventors listings.[13]

The need to raise awareness of the value of intellectual property rights (IPRs) as a marketable financial asset and economic tool is the foundation for the National IPR Policy. Publicize (to raise awareness), Produce (to create intellectual property), Protect (legal framework & adjudication), Plan (to modernize administration & management), Profit-oriented (commercialization), Progress (enforcement), and Promote (human capital) are the seven Ps that make up policy.[14]

The policy discusses elaborately these 7 objectives with "*Creative India; Innovative India*" as a front-runner marching ahead the steps to be undertaken by the identified Ministries/ department: IPR Awareness: Outreach and Promotion, Generation of IPR's, Legal and Legislative Framework, Administration and Management, Commercialization of IPR, Enforcement and Adjudication, and Human Capital Development

Initiating campaigns to promote India's intellectual property strengths, the current policy is also in line with the slogans "Creative India; Innovative India," "Make in India," "Digital India," "Skill India," "Start Up India," and "Smart Cities." The focus has been on enabling young people's creativity and research and development to be used for commercial purposes.

Factors Inhibiting Women

According to reports, social barriers prevent female innovators from marketing themselves and commercializing their inventions. Compared to their male counterparts, they are less likely to be invited to expert panels where they

can meet innovation partners, and very few of the proposals made by female entrepreneurs are accepted. A study on women entrepreneurs by the Organization for Economic Cooperation and Development finds that women might not have the same access to resources as men. They also have difficulty obtaining funding and assistance. According to another study, unconscious bias means that men-owned businesses have a two-fold higher chance than their female counterparts of receiving $1 million in startup funding. Even though women engage in more research and development activities, they are less likely to own intellectual property. Higher income nations have better gender parity in intellectual property because they are better protected to create, market, and profit from their creations, according to data from the International Property Rights Index. Therefore, disparities may also result from a weak IPR regime.[15] The IP sector has historically been dominated by men, despite the fact that both genders possess comparable levels of innovation and creativity. Women received only ten patents annually, compared to nearly 3760 patents in the names of their male counterparts, according to the Women's History blog (1555–1865).[16] Painting, art, literature, and other creative pursuits were traditionally off-limits to women and dominated by men. If any inventions were made by women, they were kept under wraps and viewed as forbidden. Because women were not allowed to own property at the time, even patents had to be obtained in the names of men. For example, the patent registration for processing Indian corn, Sybilla Masters[17] created the technique, but her husband was listed as the patent holder.

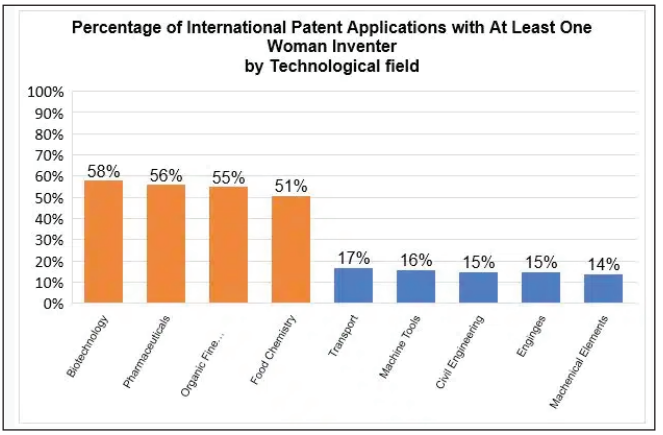
Reality Check on Women in IP

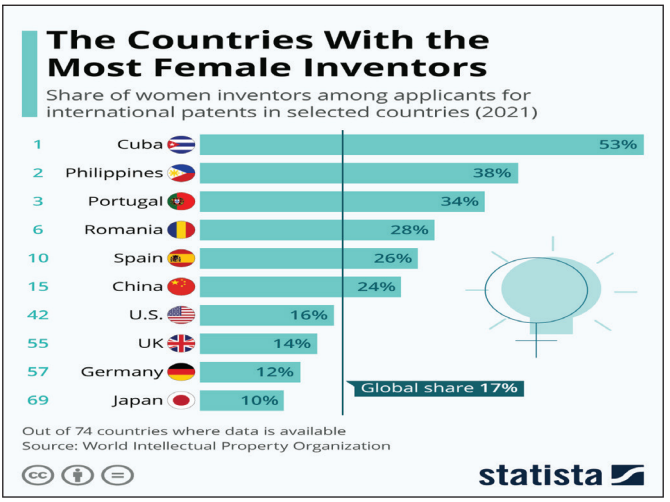
Global Scenario: Multiple national IP offices around the globe are rolling out initiatives aimed at supporting women in their IP journey.[18]

WIPO is committed to giving women the tools and resources they need to use the intellectual property system to safeguard and increase the value of their creative output. But women are still underrepresented in IP, despite the value and labour they bring to the field of innovation. Only 16% of inventors listed on international patent applications filed through the Patent Cooperation Treaty (PCT applications) were women in 2020, according to a report from the World Intellectual Property Organization (WIPO) reveals that only 30% of applications listed at least one woman inventor (WIPO, 2023). The presence of cultural differences in STEM and business fields within the industry is a more plausible explanation for this disparity. In the venture capital industry, bias against women is evident as only a small portion of venture capital funding goes

to female-led startups annually. For instance, according to the State of Australian Startup Funding Report from 2022, just 10% of all funds invested in startups went to teams that included at least one woman.

There is lack of proper and consistent data regarding the gender based distribution of applicants for other types of IP (trade marks or designs). However, IP application statistics tell only part of the story; support for IP professionals is also necessary. The year 2023, on International Women's Day, WIPO announced an initiative to empower women from developing, least-developed, and transitional countries to enter the IP field. The initiative offers 50 scholarships to professional fields for the WIPO Academy distance learning courses, with the goal of encouraging women to participate in the IP system. The following graphics will tell the story.





Though they contribute over half of the world's population, women only hold three out of ten positions in STEM fields and only make up 16% of international patent applications.[19]

For example, Lisa Seacat DeLuca is the owner of over 400 patents. However, she is unquestionably an anomaly in the US IP industry. In 2010, more than 81% of patents included no women (As per the study by Institute for Women's Policy Research). Although the percentage of women who hold patents has increased, calculations indicate that women won't receive an equal share for times to come.
.

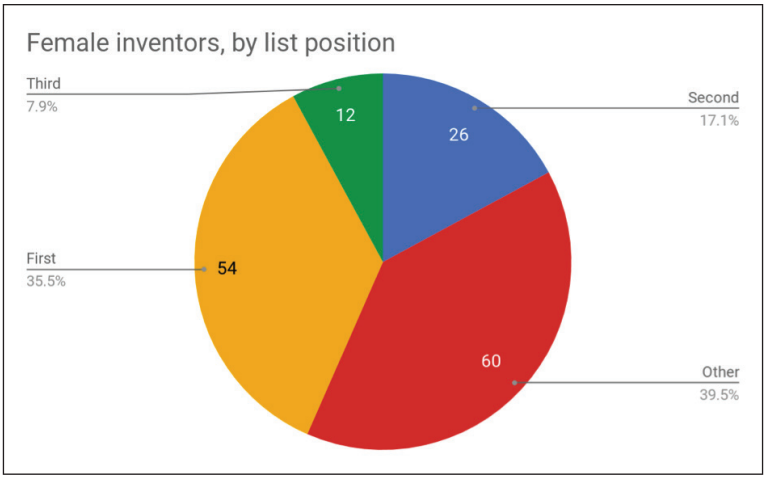
According to data from the UK Intellectual Property Office, women only account for 7% of patent holders in the country. An IP attorney from the UK attributes the low representation of women to their lack of participation in STEM fields, which are the main sources of patents in the database. Based on this research, patent applications with female applicants typically experience longer processing times, higher rejection rates, and narrower claims than those with male applicants.[20]

Indian Scenario

As per a study, among the top 250 Women in IP in India[21] are a few better off like Archana Shankar, Namrata Chadha, Niti Diwan and Monica Dutta. An official of Department for Promotion of Industry & Internal Trade (DPIIT), Ministry of Commerce & Industry opined that the number of patents filed by women has increased fourfold in a FICCI Conference held on May 4, 2023. It was also mentioned that the department's decision to lower fees in an effort to aid and encourage the nation's new businesses and female entrepreneurs. The filing fee for women entrepreneurs, and startups has been lowered by 80%. Individuals no longer need to travel to patent offices as all applications are now processed entirely online, including hearings, which take place over the phone.[22] It was also informed that extra attention is being paid to quickly reviewing patent applications, particularly those submitted by startups, female entrepreneurs, etc. In the previous five to six years, patent and copyright grants have also increased significantly in India. While trade mark registrations increased dramatically from 65,045 in 2015–16 to 2,55,993 in 2020–21, the number of granted patents increased from 6,326 in 2015–16 to 28,391 in 2020–21. In a similar vein, 16,402 copyrights were granted in the most recent fiscal year, compared to 4,505 in 2015–16. The improvements in these developments have improved India's position in the Global Innovation Index.[23] Over the last year, 7,698 patent

applications were filed by women at the India Patent Office. The government took initiatives to recognize women's contributions to innovation through the National Intellectual Property Awards and to expedite the processing of patent applications submitted by women through the 2019 amendment rules. Unnat Pandit, Controller General of Patents, Designs & Trademarks, Intellectual Property Office, Government of India, presented some striking data to highlight the expansion of intellectual property in India, such as a 400% increase in the number of patents issued since 2016. 8% of startups are run by women or have a woman on board.

We attempted to ascertain the proportion of female patent applicants in India out of curiosity. According to the data provided to the author by the Indian Patent Office, reveals that names of 2956 inventor-applicants from Parts 1 and 2 were found. Out of the said data it could identify only 937 as the original inventors. A total of 152 female names—or roughly 5.14% of the list—were found to be present. Of these, about one-third were identified as first inventors.



After conducting a more thorough search to determine the proportion of the 152 female names that seemed to be of Indian descent, we came up with 67, or 44.07% of the total.[24]

Conclusion

The statistical data indicates that there is a higher number of patent filings in which a woman is one of the co-inventors. This would undoubtedly contribute to the field of technology and research & development over time. There are numerous real-world examples, such as female scientists at ISRO, NASA,

BARC, and other organizations, who have consistently demonstrated their excellence. With perhaps, these initiatives to support equality of opportunity and inclusivity will contribute to a more diverse IP world. We can hopefully ensure that everyone, regardless of gender, has the opportunity to contribute to innovation and benefit from the protection of their intellectual property rights by addressing the gender gap that still exists in this field.

Although the Indian policy doesn't specifically identify provisions that are exclusive to women, it places a strong emphasis on fostering an environment that is encouraging to female innovators and entrepreneurs. The policy acknowledges the need for gender-sensitive approaches in IP education, training, and awareness programs. Additionally, it aims to facilitate things for female creators.

Suggestions

In view of the above discussion, the following steps are suggestible for providing gender justice to women in the field of IPR.

- There is urgent need of spreading awareness of STEM fields linked to innovation and intellectual property creation, support initiatives that promote gender diversity in these fields. This could involve outreach initiatives, mentorship programs, and scholarships to encourage and assist women who want to work in these fields.

- Providing specialised training courses and workshops designed especially for female creators, innovators, and business owners to improve their knowledge of intellectual property rights, IP protection tactics, and commercialization strategies. This might entail collaborations with academic institutions, business associations, and intellectual property offices.

- Financial support to Women-Owned Businesses and Startups should be extended in the areas intellectual property protection, technology transfer, and business expansion. This could entail setting up special funds, grants, or venture capital programs that prioritize businesses led by women.

- There is urgent need of determining and removing structural impediments, such as restricted educational opportunities, a dearth of networking opportunities, and cultural prejudices, that prevent women

from participating in innovation ecosystems. Make laws and programs that support women's equality of opportunity and inclusivity at all stages of the innovation process.

- Encourage Networking and Collaboration should be facilitated through conferences, online forums, and networking events, encourage collaboration among female researchers, entrepreneurs, and intellectual property specialists. For this creation of official networks or associations that offer a helpful setting for exchanging information, resources, and best practices regarding intellectual property management and commercialization.

- It is urgent need of monitoring and assessing the success of laws and initiatives meant to encourage women to pursue careers in intellectual property.

ENDNOTES

1 Garg Muskan . (2023 October 14). WOMEN & INTELLECTUAL PROPERTY RIGHTS**:** Assessing the role of women in the growth of IP sector: Opportunities & Challenges, Reflections. https://reflections.live/articles/13709/women-and-intellectua l-property-rights-an-article-by-muskan-garg-12193-lnppyog5.html

2 First woman president of Federation of IP Attorneys- India Section. IAM's first ever Women in Patents event's advisory board.

3 K&S Partners' *Deepa* K *Tiku* has been named one of the world's *top female IP* lawyers by Managing *IP* in their "*Top* 250 *Women in IP*" 2023 global ranking.

4 Montanari Lorenzo . (2018 April 26). How IP Rights Empoewer Women. Forbes. https://www.forbes.com/sites/lorenzomontanari/2018/04/26/how-ip-rights-empower-women/?sh=5f577fe96e73

5 Buck IP Micheal. (2023 April 26). World IP day 2023- Women and IP: Accelerating Innovation and creativity. Lexology. https://www.lexology.com/library/detail.aspx?g=b0d4c9fd-b9a8-45f2-916f-c4b2fa201696.

6 WIPO's Intellectual Property and Gender Action Plan. WIPO. https://www.wipo.int/publications/en/details.jsp?id=4670

7 Ibid.

8 European Patent Office. https://register.epo.org/regviewer

9 https://www.ipindia.gov.in/

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11 Guidelines for Implementing Research Projects.Women Scientist Scheme-A. https://online-wosa.gov.in/wosa/resources/wspublic/formats/WOS-Guide.pdf

12 National IPR Policy.Government of India ministry of commerce and Industry. https://www.iitk.ac.in/siic/d/sites/default/files/National_IPR_Policy_12.05.2016.pdf

13 National IPR Policy.Government of India ministry of commerce and Industry. https://www.clearias.com/national-ipr-policy/

14 Ibid.

15 Same as in reference no 12

16 Sybilla Righton Masters.Wikipedia 11 April. https://en.wikipedia.org/wiki/Sybilla_Righton_Masters

17 Sybilla Righton Masters (c. 1676 – 23 August 1720) was an American inventor. Masters was the first person residing in the American colonies to be given an English patent, and possibly the first known female machinery inventor in America of European ancestry. Masters was given a patent for a corn mill in 1715 in her husband's name, as women were not allowed to have their own patents. She also patented a process for making hats

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SAME-SEX MARRIAGES ACROSS BORDERS AND ITS RECOGNITION IN INDIA: A STUDY OF LEGAL CHALLENGES

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Abstract

Although the basic rights of LGBT categories of sex have been protected in India by Transgender Persons (Protection of Rights) Act, 2019, yet the formation of family and adoption of children by same sex couple have neither been approved legally nor socially. The countries of Indian peninsula have almost similar trend, however, some Asian countries, on the line of Western countries, have recently granted recognition to same sex marriages. Here arise questions - how the conjugal rights of same sex be assured in India? How the same-sex couple, whose marriages have been legally solemnized in other countries, can be protected in India? The formal acknowledgment of same-sex marriages remains contentious. As such the present paper explores the legal implications surrounding the recognition of foreign same-sex marriages in India, emphasizing the conflict between established cultural norms and evolving legal frameworks. On the basis of analysis, it can be highly advocated for a judicial approach that may balance individual dignity with societal expectations.

Keywords: Same-sex Marriage, Solemnized Abroad, Recognition, Legal-Framework, India

1. INTRODUCTION

Although the same-sex relation has been decriminalized by superior judiciary in India, yet their fundamental right to form a family remains in peril. On September 6, 2018, the Indian Supreme Court striked down portions of Section 377 of the Indian Penal Code (IPC) in the landmark

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case *Navtej Singh Johar vs. Union of India* (AIR 2018 SC 4321). This judgment overturned the Court's previous decision of 2013[1], which had reinstated Section 377 after the Delhi High Court's 2009 ruling that had decriminalized homosexuality.[2] This significant ruling in 2018 affirmed the constitutional right to equality, dignity, and privacy for LGBTQ+ individuals in India. The fight for marriage equality in India remains ongoing, with advocates pushing for legal recognition of same-sex marriages. Let us have quick idea of recognition of same-sex marriages in foreign countries.

United States has, in case *Obergefell v. Hodges* in 2015 (135 S.Ct. 2584 (2015) legalized same-sex marriage nationwide. Perhaps, this decision in USA was inspired by liberalization efforts seen in European countries like the United Kingdom, which enacted the Marriage (Same-Sex Couples) Act in 2013. The Netherlands and Belgium were the first countries in the world to legalize same-sex marriage, marking a moment in the global push for marriage equality. South Africa became the first African nation to enshrine the rights of lesbian and gay individuals within its Constitution, granting constitutional protection to sexual minorities. In Latin America, religious influence, particularly from the Catholic Church, has played a significant role in the opposition to same-sex marriage, resulting in prohibitions in several countries.

In Asia, same-sex marriage is not widely recognized, with notable exceptions like Nepal and Taiwan. Taiwan, in particular, became the first Asian country to legalize same-sex marriage in 2019. Israel, though not permitting same-sex marriages domestically, recognizes those performed abroad, offering a unique model of partial legal acknowledgment. However, marriage is often seen as a cornerstone of society, and thus, its regulation is deeply intertwined with the cultural, religious, and moral values of a given society. Religious doctrines, particularly in countries with strong religious influence, often disapprove of or completely reject the notion of same-sex unions.

So far India is concerned, the legal activists (advocates) have been placing arguments in favour of recognition of same-sex marriage. It is argued that a) marriage equality is a necessary next step following the decriminalization of homosexuality, as full legal rights fundamental to ensuring equality, b) while religious norms may continue to oppose same-sex marriages, an increasing number of jurisdictions have created a legal framework that separates religious beliefs from state-sanctioned civil marriage, c) decriminalize same-

sex relationships, even if disapproved by society, are often driven by judicial rulings or international human rights standards rather than societal consensus, and d) the recognition ranges from limited legal protections, such as domestic partnerships and civil unions, to the full legalization of same-sex marriage.

In view of the above situation, the present paper has examined the issue three-pronged - an overview of the domestic legal framework governing marriages in India and assessing the legal prospects of recognition of same-sex marriage under existing Indian laws. The second part addresses the legal challenges associated with recognizing same-sex marriages solemnized outside India. And in third part, examines the liberal approach to marriage, suggesting that India could extend recognition to foreign same-sex marriages based on the principle of closest connection,

Legal Framework Governing Marriages in India

In India, marriage laws are governed by the personal laws of different religious communities, each having its own legal framework for marriage and divorce. The key laws include the Hindu Marriage Act, 1955, the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954, and the Foreign Marriage Act, 1969.

The Hindu Marriage Act governs marriages among Hindus and sets conditions for valid marriages under Section 5 of the Act. These include: no living spouse for either party, both parties consent with sound mind, fulfills the legal provisions of minimum age and prohibition of marriages within certain degrees of relationship, unless permitted by custom or usage. The Act implies a heterosexual union (bride and bridegroom). For example, Section 13(2) provides special grounds for divorce exclusively for wives, and Section 13(2)(iv) allows a wife to repudiate a marriage that was solemnized before she turned 15, provided she does so before the age of 18. The language of the provisions concerning permanent alimony and maintenance also consistently refers to the husband as 'he' and the wife as 'she'. Arguments against same-sex marriages in India often focus on the issue of procreation, viewing it as an essential component of marriage. This implies that the inability to physically procreate is a grounds for nullifying a marriage under this Act.

In one notable case, a man named Tarulata underwent gender reassignment surgery and became Tarunkumar, subsequently marrying a woman named Lila in 1989. Lila's father challenged the marriage on the grounds of procreation incapacity, prompting the Gujarat High Court to issue notices to the registrar

of marriages and the doctor who performed the surgery (Sheikh: 2013). Thus, heterosexuality is a precondition. For instance, in the case of *X v. Hospital Z*, the Court interpreted marriage under Article 21 of the Indian Constitution (right to privacy) as a "sacred union of two healthy bodies of opposite sexes." This judgment reflects the conventional view of marriage as a heterosexual institution.[3] Additionally, one of the grounds for annulment under the Hindu Marriage Act is the failure to consummate the marriage due to the impotence of one party, with consummation defined specifically as heterosexual penetration (section 12 of Hindu Marriage Act).

The Indian Christian Marriage Act 1872 does also emphasize heterosexuality. The Act regulates marriages between Christians and shares essential requirements with the Hindu Marriage Act. Muslim law also endorses it. The Parsi Marriage and Divorce Act, 1936, governs Parsi marriages, outlining conditions such as the minimum age for the bride and groom. The Special Marriage Act, 1954, which is secular in nature, allows marriages between people of different religions, but its requirements also reflect a heterosexual framework. Finally, the Foreign Marriage Act, 1969 governs marriages involving Indian citizens abroad, but like other laws, it does not consider the possibility of same-sex marriage.

In the landmark judgement in *Naz Foundation v. Government of NCT of Delhi (*2009 (160) DLT 277.), the Delhi High Court ruled that the prohibition of consensual sexual acts between adults in private, as outlined in Section 377, violated the Fundamental Rights guaranteed by the Indian Constitution. The Court held that Article 15, which prohibits discrimination on the grounds of sex, also extends to sexual orientation, and thus, criminalizing consensual homosexual acts was unconstitutional. However, this decision was overturned by the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation (*(2014) 1 SCC 1.)). The Court reinstated Section 377, emphasizing that 'unnatural sex' was a 'perversity of mind' and upholding the Section on grounds of public morality. The Court stated that since Section 377 was a pre-constitutional law, its continued presence indicated that Parliament had no intention to repeal it. This ruling did not address the issue of same-sex marriage. In response to public outrage and calls for reform, the Supreme Court revisited the matter in *Navtej Singh Johar v. Union of India (*(AIR 2018 SC 4321)). In this historic judgment, the Court decriminalized consensual same-sex relations, declaring that Section 377 violated the Fundamental Rights to equality, privacy, and dignity. The Court's judgment marked a significant step towards LGBTQ+ rights in India, but it did not address the issue of same-sex marriage directly.

Recent developments suggest that there is growing advocacy for the inclusion of same-sex marriage within the Indian legal framework. Several petitions have been filed in Indian Courts seeking legal recognition of same-sex marriages, particularly under the Special Marriage Act, but the Courts have not yet ruled definitively on the issue. If future amendments to the Special Marriage Act or personal laws occur, India may eventually provide legal recognition to same-sex marriages, both domestic and foreign.

Nevertheless, there have been media reports of same-sex marriages being solemnized in India through religious rituals, these unions lack legal recognition without explicit legislative reforms (Ravichandran: 2014). In 2015, a private member's bill was introduced in Parliament to legalize same-sex marriages, but it failed to gain sufficient support to move forward. Thus, any progress in this area will likely depend on legislative will and broader societal acceptance of same-sex unions.

Legal Challenges in Recognizing Same–Sex Marriages Performed Abroad in India

Globally, the principle of recognizing marriages based on the place of occurrence is gaining traction. Countries like Canada, South Africa, and several European nations legally recognize same-sex marriages performed abroad. In contrast, India's legal framework does not align with this international trend. The question of recognition of same-sex marriages held in foreign, Indian laws and statutory provisions currently do not recognize same-sex marriages, even if they are legally valid in foreign jurisdictions.

The question of recognizing foreign same-sex marriages, the validity has been assessed by distinguishing between the *formal and material* aspects of marriage, particularly in Common Law (Clarkson & Hill: 2011). Formal requirements include the necessary procedures and rituals for a valid marriage, generally governed by the *law of the place of celebration* (lex loci)[4]. Material requirements, such as capacity, consanguinity, and other factors, are often governed by either the *dual domicile theory* or the *intended matrimonial home theory.*

In cases involving foreign heterosexual marriages, Indian Courts have generally followed principles drawn from English Common Law. For instance, in *Noor Jahan Begum v. Eugene Tiscenko* (AIR 1941 Cal. 582.), the Court upheld the validity of a marriage celebrated in Poland based on the lex loci principle (the law of the place of celebration). The decision underscored

that formal aspects of marriage are governed by the law of the place where the marriage is performed, while the rights and obligations arising from the marriage are governed by the *law of domicile.* In another case, *Lakshmi Sanyal v. S.K. Dhar* (AIR 1972 Goa 2667), the Supreme Court followed the law of domicile to determine the material validity of a marriage, holding that personal laws govern the capacity to marry and any impediments to marriage. This prohibition extends even if the couple seeks to marry in a foreign jurisdiction that recognizes such unions, and Indian Courts have yet to address the specific question of recognizing same-sex marriages performed abroad.

Indian domiciliaries who attempt to evade the domestic ban by marrying abroad may face difficulties upon their return. For instance, the Hindu Marriage Act, 1955 has been held to have extra-territorial application, meaning that even if a marriage is performed outside India, it must comply with Indian law if the parties are domiciled in India at the time of marriage. A relevant international case highlights this issue. In a 2016 ruling, a UK court refused to grant residency rights to an Indian lesbian couple, noting that their same-sex marriage was not recognized under Indian law, where they were domiciled. This judgment illustrates the cross-border legal challenges faced by same-sex couples when attempting to gain recognition for their marriages performed abroad.[5]

The *Foreign Marriage Act, 1969* in India governs marriages performed abroad where at least one party is an Indian citizen. Under Section 23 of the Act, the Central Government has the discretion to declare foreign marriages valid in Indian Courts. However, this discretion is conditional: the foreign marriage must align with the principles outlined in the Act for solemnization. This provision uses the term 'may,' indicating that the recognition of foreign marriages is not automatic but discretionary. The Act's procedural rules, particularly Section 17, provide for the registration of foreign marriages, but these marriages must meet the conditions prescribed under Section 4 which specifies the age of the bride and bridegroom, thereby implicitly supporting only heterosexual unions. In the case of *Mrs. Gracy v. P.A. Maithri*[6], the Kerala High Court clarified the scope of the Foreign Marriage Act, explaining that it applies only to situations where one of the parties is an Indian citizen. The Act does not govern the recognition or validity of marriages between two foreign nationals. This judgment highlights that, in the absence of specific legislative provisions, the recognition of foreign same-sex marriages will largely depend on conflict-of-laws principles and public policy considerations.

Under the doctrine of public policy, Indian Courts can refuse to recognize foreign marriages if they conflict with the fundamental standards of Indian society (Cox: 1996). Public policy, in this context, is subjective and shaped by social, moral, and religious values unique to each nation. This doctrine plays a pivotal role in the recognition of marriages and divorces, as seen in the case of *Pires v. Pires* (AIR 1967 Goa 113.), where a foreign divorce was refused recognition on public policy grounds due to the sanctity of Catholic marriage in India, which at the time did notprovide for divorce.

Indian Courts have similarly invoked public policy in *Satya v. Teja* (1975 AIR 105, para 42.), where the Supreme Court refused to recognize a foreign divorce obtained under U.S. law, stating that Indian notions of genuine divorce and substantial justice must guide private international law. Additionally, in *Y. Narasimha Rao v. Y. Venkata Lakshmi* (1991 SCC (3) 451, para 9.), the Supreme Court held that foreign divorces would only be recognized if the grounds for divorce were compatible with Indian law.

Indian Courts are expected to rely on the public policy doctrine to refuse recognition of same-sex marriages, as domestic law does not currently permit such unions. The Foreign Marriage Act's existing framework and case law concerning foreign divorces indicate that same-sex marriages will be evaluated under these restrictive principles. Without legislative amendments, the public policy doctrine will likely serve as the primary basis for rejecting the recognition of foreign same-sex marriages in India. There has been no definitive judicial pronouncement in India regarding the recognition of foreign same-sex marriages. The key legal question is whether Indian Courts will apply the *dual domicile rule*—which assesses the validity of a marriage based on the domicile of both parties—or invoke *public policy* to refuse recognition, as Indian marriage laws currently do not permit same-sex unions. Based on decisions concerning foreign divorces, it seems likely that same-sex marriages will be subject to scrutiny under public policy.

Farshad Ghodoosi (2015) categorizes the application of public policy into three areas: *public interest, public morality,* and *public security*. Public interest aims to balance private and public arrangements, while public morality seeks to safeguard societal norms and values. In cases of public morality, Ghodoosi suggests that Courts should actively protect these norms rather than merely balancing competing interests. This perspective aligns with the Indian judiciary's historic approach to morality in legal rulings, particularly in matters related to

sexuality.

John Stuart Mill, the noted liberal philosopher, argued that same-sex relationships fall under the realm of *private morality* and should not be subject to state interference. However, in India, the notion of public morality has historically played a crucial role in legal rulings. For example, the Supreme Court's 2013 decision in *Naz Foundation* upheld Section 377 of the Indian Penal Code, which criminalized homosexual acts, on the grounds of public morality. Although Section 377 was later struck down in *Navtej Singh Johar v. Union of India* (2018), the earlier decision reflects the judiciary's active role in defining the limits of public morality in Indian law.

One of the main arguments against the recognition of same-sex marriages in India is the claim that it would violate public policy, a stance partly based on Section 377's former existence. However, the societal and legal views on sexual relations have evolved significantly since Section 377 was first introduced in 1860 as a colonial-era law. A key turning point was the *National Legal Services Authority (NALSA) v. Union of India* (2014) 5 SCC 438.) judgment in 2014, where the Supreme Court recognized the rights of transgender individuals and affirmed their entitlement to constitutional protections. This judgment, while groundbreaking, specifically excluded gays, lesbians, and bisexuals from its purview, limiting its scope to the recognition of transgender persons. Public policy considerations have historically played a decisive role in the Indian Courts' approach to recognizing foreign laws and actions, particularly in family law matters. For example, the refusal to recognize foreign divorces has often been based on public policy grounds. In cases like *Satya v. Teja* and *Y. Narasimha Rao v. Y. Venkata Lakshmi*, the Courts invoked public policy to reject foreign divorces that were inconsistent with Indian law. Similarly, the recognition of foreign same-sex marriages would likely hinge on whether such marriages are deemed compatible with Indian public policy.

Moreover, denying recognition of same-sex marriages has far-reaching consequences, particularly for foreign same-sex couples. For example, India's immigration laws do not extend spousal or dependent visas to same-sex partners, making it impossible for such couples to legally live together in the country. The same-sex partner of an individual residing in India can, at most, obtain a tourist visa, typically limited to a maximum duration of 180 days. Additionally, India voted against a United Nations General Assembly initiative aimed at recognizing same-sex marriages for its officials and diplomats. This restriction also affects

marital economic aspects, as same-sex couples are not eligible for compensation under schemes like the *Employment Provident Fund Scheme, 1952,* and the *Workmen's Compensation Act, 1923,* which provide benefits only to individuals related by blood or marriage.[7]

The judicial precedent regarding polygamous marriages offers a possible analogy. Initially, many jurisdictions refused to recognize polygamous marriages based on public policy, but over time, states realized that immigrants brought their own cultural and religious practices, leading to the recognition of such unions (Chambers: 2011 & Levin: 2011)). In the case of *Re Dalip Singh Bir's Estate*[8], an Indian national who was married polygamously to two wives in India passed away without a will in California. The Court ruled that, for the purposes of inheritance, an exception could be made to recognize the polygamous marriage, even though such marriages were not generally recognized under California law. This decision underscored the Court's willingness to apply foreign cultural and legal practices in specific circumstances involving inheritance. A similar evolution in the recognition of same-sex marriages could occur if the Indian Courts or Legislature adopt a more inclusive approach based on changing societal norms.

The *Second Restatement of Conflict of Laws*[91] offers another perspective by suggesting that public policy exceptions should be applied sparingly, particularly when the marriage was solemnized in a jurisdiction with the most significant connection to the parties involved. This approach emphasizes protecting the expectations of the parties and promoting legal certainty, a principle that could guide Indian Courts in recognizing foreign same-sex marriages. Scholars like Yuval Merin argue that conflicts in marriage policies should favor the validity of marriage, especially when it reflects the parties' reasonable expectations (Merin: 2011). Such an approach aligns with the *doctrine of legitimate expectation* and *reasonable classification,* which have been extensively debated in Indian Courts under *Article 14 of the Constitution*. Article 14 guarantees equality before the law and the 'equal protection of laws,' prohibiting arbitrary classification. However, reasonable classification between groups of people is permitted, provided it is based on an intelligible distinction and has a rational nexus to the law's objective. The distinction between Indian citizens and foreigners, and between heterosexual and homosexual relationships, could be justified under this doctrine of reasonable classification. For instance, in the *Suresh Kumar Koushal* case, the Supreme Court recognized a legitimate differentiation between heterosexual and homosexual relations, a rationale often invoked in public policy discussions.

However, Courts typically refrain from applying foreign law if it contradicts the public policy of the forum, often due to concerns over societal unrest. Nonetheless, the failure to apply foreign law undermines the purpose of conflict-of-law principles, which seek to harmonize differences across jurisdictions. *Article 10 of the Hague Convention* allows contracting states to refuse recognition of divorces or separations that violate public policy. The challenge, though, lies in defining public policy and determining what constitutes a 'manifest violation.' In today's globalized world, where societies are increasingly interconnected, traditional boundaries are being blurred. India, through the *Special Marriage Act*, has already embraced the civil concept of marriage. Recognizing foreign same-sex marriages would not disrupt Indian society and could be an important step toward greater inclusivity and alignment with international norms.

Progressive Frameworks for Recognizing Same–Sex Marriages

Historically, marriage has been influenced by religious customs and social structures. Marriage was initially a personal matter, often driven by family interests, with minimal state regulation. Over time, marriage became a legal institution, with states taking an active role in defining and regulating matrimonial relations. In India, customs and personal laws have historically governed marriages, but successive governments have also intervened to curb regressive practices like polygamy and child marriage. Simultaneously, Indian policies have demonstrated a preference for granting autonomy in intimate relationships, as evidenced by the recognition of no-fault divorce and live-in relationships. In *Svetlana Kazankina v. Union of India* (W.P.(C) No.635/2013.), the Delhi High Court directed the government to provide visa protection for foreign couples in live-in relationships, recognizing these partnerships as equivalent to marriage for Indian citizens. However, the state's reluctance to interfere in private relationships is evident in its silence on marital rape, which remains legal in India, underscoring the state's limited intervention in certain matrimonial matters.

In India, the state has both interfered with and respected personal laws, depending on societal pressures and reforms. The prohibition of polygamy under the Hindu Marriage Act, 1955, despite opposition from religious groups, demonstrates that the state can and does implement reformative legislation when necessary. As debates on same-sex marriage continue, both internal advocacy and

external human rights pressures are pushing India toward recognizing marriage equality. However, legal amendments are required for same-sex marriages to be recognized, and the future of marriage equality in India will depend on how these pressures evolve and influence legislative reform. The state has legitimate interests in regulating marriage, often framed as protecting societal values. However, this regulation must not infringe on individual rights, particularly in a diverse and democratic society like India. The argument that same-sex marriages undermine traditional values does not hold when balanced against the rights of individuals who have legally solemnized their unions abroad.

Conclusion

A significant barrier to the recognition of same-sex unions in India has been Section 377 of the Indian Penal Code, which criminalized certain sexual acts deemed 'against the order of nature.' Though the law was rarely enforced, its mere existence served as a deterrent and obstacle for same-sex couples. When it comes to recognizing foreign same-sex marriages, involving foreign nationals or Indian citizens married abroad, the legal situation remains complex. Typically, the validity of heterosexual marriages is determined by the principles of *dual domicile* (where both parties are domiciled) and *lex loci* (the law of the place where the marriage was celebrated). Indian courts have largely followed these principles in cases involving foreign heterosexual marriages.

However, same-sex marriages pose a different challenge. Many countries refuse to recognize same-sex marriages performed abroad if their domestic laws do not permit such unions, often citing *public policy*. In the absence of statutory guidance defining public policy in relation to marriage, Indian Courts have generally interpreted it on a case-by-case basis, particularly in cases of foreign divorce where public policy has been used to refuse recognition. Until legal reforms explicitly addressing same-sex marriages are enacted in India, the *doctrines of legitimate expectation and reasonable classification*—which allow for some flexibility in recognizing foreign legal frameworks—could potentially be invoked in support of recognizing foreign same-sex marriages. However, this remains challenging given the overarching influence of public policy considerations in India.

Despite this, there is a growing argument for applying the principle of *universality* in recognizing valid marriages from other jurisdictions, which would balance the state's legitimate interest in regulating marriage with the need to respect the legal status of marriages contracted abroad. States must navigate

between preserving their laws and encouraging comity (mutual legal recognition between nations). This balance is critical as the pressure for recognizing same-sex marriages increases both globally and within India.

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GENDER JUSTICE BEYOND BINARIES: A CRITICAL ANALYSIS OF THE PROTECTIVE LAWS IN INDIA

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Abstract

The protection of the basic rights of those falling beyond male-female categories (LGBT) have been recognised as constitutional rights by the governments and society at large. Their rights have been protected by a major law namely Transgender Persons (Protection of Rights) Act, 2019, in India in order to bring them into mainstream society. But their miseries still prevail due to lack of social acceptability and inconsistent implementation of the Law. This exclusion not only perpetuates discrimination but also denies these citizens' access to fundamental rights and opportunities. The legal framework of the Act has been under criticism on various issues like inadequate definition of gender identity, attitude of the administration and police, ensuring the public service delivery to them and violence meted out to them by the rest of the society. In view of this situation, the present paper intends to examine the effectiveness of the Act in the light of legal provisions, opinion of the superior judiciary and attitude of the administration. It has been found that the Law ignores the issues like formation of family, certification problems and ensured eligibility of public services. Besides, it is the need of the hour to provide supportive laws to make it more effective.

Keywords: Gender Justice, Rights, Transgender, LGBT, Exclusion, Law, India

1. INTRODUCTION

The confines of society that we live in are so catastrophic to the ones who may feel to remain closeted due to the existing stereotypical classification of people into two genders, namely male and female, beyond which anything which exists seems

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to be atypical. The very fact that till date despite multiple legal advancements and recognition accorded to the transgender people or the LGBTQI+ people still remain behind the curtains suggests that we as a society have failed to be inclusive for all people. From being able to dress up as per personal preference to having relationships beyond such confines or have public spaces like toilets accorded or even employment opportunities, the taboo remains.

In India, individuals who do not fit into the binary categories of 'male' and 'female' have historically been recognized by various names, including hijras, kothis, aravanis, jogappas, thiru nambis, nupi maanbas, and nupi maanbis (Nanda: 2005). These terms reflect a long-standing cultural recognition of gender diversity that predates the contemporary concept of 'transgender' as understood in English (Reddy: 2008). The social structures within transgender communities in India are unique and culturally specific, differing significantly from Western models (Sukthankar: 2008).

Indian mythology and ancient texts have numerous references to gender variance. For example, the Hindu epic "Mahabharata" includes stories of characters who undergo gender changes. Shikhandi, a key character in the epic, is born as a female but later transforms into a male warrior. Such mythological references indicate an ancient acknowledgment and acceptance of gender fluidity.

The presence of gender beyond male-female has been a universal phenomenon and different civilisations and societies have been providing space to them in social settings. In ancient Mesopotamia, transgender priests and priestesses, like kurgala and galatur, were believed to be divine mediators blessed by goddess Inanna. Not only in India but the cohabitation and homogenous relationships were existent among ancient Greece's elite military unit com prising of 150 male couples, called The Sacred Band of Thebes, remained undefeated for 30 long years! The Sacred band was formed by the Theban commander Gorgidas around 378 BCE and defeated Spartans in the Battle of Leuctra in 371 BCE (Plutarch: 1917). Commemorating the love of Jamali-Kamali, a monument in Delhi was built, just like Taj Mahal, 500 years ago where Jamali, a famous poet, and his partner Kamali were buried together speculatively like a married couple (Afsar: 2010). Even otherwise, the problems of transgender, being a biological, social and psychological, must be existing since the times human beings are known to exist. It is also true that having a typical gender is neither in control of born children nor parents. As such they are the natural human beings. The criteria to decipher the same should be that no rights of another person should

be transgressed due to the gender identity or sexual preference of another. As long as this is satisfied and no crime is committed, one should be able to express themselves freely conforming to the general moral code of conduct. It's time we, as a society, become accommodating of all individuals in order to ensure recognition of basic Human Rights of all individuals.

Genesis of the Act, 2019

In 2009, a progressive judgment made a mark by the Delhi High Court decriminalised consensual sexual acts between adults in private under Section 377 of The Indian Penal Code.[1] The Court held that Section 377, insofar as it criminalized consensual sexual acts between adults, violated Articles 14 (Right to Equality), 15 (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty) of the Indian Constitution. The judgment was challenged, leading to the *Suresh Kumar Koushal* v. *Naz Foundation*[2] case, where the Supreme Court overturned the Delhi High Court's decision in 2013, reinstating the criminalization of consensual homosexual acts. The H'nable Court held that the LGBTQI community constituted a minuscule fraction of the population, and that Section 377 did not suffer from the vice of unconstitutionality which as a premise is nothing but a fallacy as data at any given time is not representative of the entire community due to closeted people who remain in shadows due to fear of criticism, judgement and ostracization from the society. As apprehended by the author at the time, this decision faced a severe backlash from the community, experts and researches.

In 2014, the Supreme Court of India issued a landmark ruling in response to a petition filed by the National Legal Services Authority (NALSA). Known as the NALSA judgment,[3] this decision received strong support from notable transgender activists, including Lakshmi Narayan Tripathi (Jain & Kartik: 2020). The judgment mandated legal recognition for individuals with non-binary gender identities and introduced social welfare measures, such as reservations in state educational institutions and the public employment sector. This case was a major milestone for the transgender community as it was the very first time that transgender people were recognized as "third gender". The case emphasized the need for social and economic measures to address discrimination and improve the status of transgender individuals. There are till date numerous critical views on the same segregation as the very purpose of removing and addressing discrimination is defeated by this classification and adds on to a necessary stamp which the society may further stigmatise. This in itself seems the antithesis on inclusivity.

In *Shafin Jahan* v. *Asokan K.M. & Ors*,[4] although the issue didn't particularly revolve around LGBTQI+, but the court reinforced the right of adults to choose their partners and the right to privacy. This highlighted the importance of personal autonomy and consent in marital and relationship choices of an individual.

In 2018, a landmark judgement was passed by the Supreme Court of India overturning the Souresh Kumar Koushal case and thus reinstating the decision of Delhi High Court held in *Naz Foundation* case thereby Decriminalized consensual homosexual acts by reading down Section 377 of the Indian Penal Code (IPC). the court recognized the right to privacy and autonomy of LGBTQI individuals. The court affirmed that discrimination on the basis of sexual orientation is unconstitutional and violates the fundamental rights to equality and dignity.

This judgement since the recognition of "third gender" was a reformist and liberal approach taken by the court and a much needed step to allow two consenting adults to express their love or passion towards each other without stamping it as an offence or something opposed to natural behaviour. Considering the view of the court here, its amply clear that a relationship between two consenting adults is a matter of privacy and very much a Fundamental Right or more of Human Right.

The court in Navtej Singh Johar reiterated and cited the decisions taken by the court heavily relied on concepts and meanings taken from "Yogyakarta Principles" on the *Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.*

India being a signatory to Yogyakarta Principles through Miloon Kothari (India), UN Special Rapporteur on the right to adequate housing has relied upon the same on numerous occasions. The Yogyakarta Principles are a set of international principles relating to sexual orientation and gender identity. They were formulated to address human rights violations faced by LGBTQI individuals worldwide and to provide guidance on the application of international human rights law in relation to sexual orientation and gender identity. They were formulated in the year 2006 in Yogyakarta, Indonesia by a group of Human Rights experts as a set of 29 principles. The sole purpose being the application of existing international human rights standards to issues of sexual orientation and gender identity.

Another relevant milestone highlighting the Right to Privacy as a

Fundamental Right within the ambit of Article of 21 of the Constitution of India in the case of *Justice K.S. Puttaswamy (Retd.) and Anr*. v. *Union of India and Ors*.[5] Though not directly an LGBTQI case, it laid the groundwork for later judgments by affirming that privacy includes the protection of personal choices and the right to dignity, which are crucial for LGBTQI rights. Who a person has a romantic or sexual relation with and who a person choses to love is a private affair as long as no right of another is violated. Thus, like any other heterogeneous couple, a couple from the LGBTQI+ community also has a right to form intimate relationships in their private bedroom space as consenting adults. To go a step ahead, the decriminalisation of adultery in *Joseph Shine* case also supports the hypothesis that even though morally incorrect, even married people involved in relations outside marriage is not an offence thus extending the same to homogenous couples, married or not, a consenting adult relationship is a matter of privacy and personal preference. One may think of it as deviancy, but deviant is anyone diverging from the ordinary and in matters of love, romance and sexual attraction its quite difficult to define as to what shall be construed as deviant behaviour.

The Transgender Persons (Protection of Rights) Act, 2019

The most interesting development in the area is the enactment of The Transgender Persons Act, 2019 which although a huge step is nothing but a half-baked legislation only recognising basic civil rights without due consideration to the requisites of the community to form a family or union. The sole relationship identified by the law till date for such persons is blood relations, which unfortunately many such persons have to contact with, due to the stigma so attached once out of closet, usually at the time birth for many or as and when they come out closet (of course not true for all cases). Though very lately but rightly, the legislature in its bid had to engraft and put on statute book, the said Act on 6.12.2019 (when it received the assent of the President) and when it was put to force on 10.01.2020. The long title of the Act says that the purpose of the Act is twofold, firstly, to provide protection on one hand and; secondly, their welfare on the other hand. Amongst various other provisions some are as follows:

1. Prohibition against discrimination, stated in Section 3 of the said Act, in the matters of occupation, employment, education, medical services, movement, residence, tenancy, public place etc.

2. Recognition of gender identity which is self-perceived as per Section

4 of the Act.

3. Issuance of gender certificate as per Section 5 and Section 6 of the Act.

4. Issuance of fresh certificate for change of gender as mentioned in Section 7 of the Act.

5. Govt. to form various schemes for welfare to work against stigma, to make people sensitive, to make environment conclusive as per Section 8 of the Act.

6. Establishment of a mechanism for redressal of grievances as per Section 10 and 11 of the Act.

7. Establishment of National Council under Section 16 and 17 of the Act.

8. Right to residence under Section 12 of the Act.

9. Vocational training and self-employment under Section 14 of the Act.

10. Healthcare facilities under Section15 of the Act.

11. Offences and penalties mentioned under Section 18 of the Act mentioned herein under:

a. It will be punishable offence to make them forced or bonded labour.

b. Denial of passage in public place will be punishable.

c. Forcing to leave the place of residence would also amount to an offence under the Act.

d. To otherwise harm or injure or to abuse physically, sexually, verbally, emotionally and above all economically (maintenance)

The punishment would range for above mentioned offences from a minimum of six months to two years.

There are a total of 23 sections split amongst IX Chapters namely Chapter I – Preliminary, Chapter II- Prohibition Against Discrimination, Chapter III – Recognition of Identity of Transgender Persons, Chapter IV—Welfare Measures

by Government, Chapter V – Obligation of Establishments and Other Persons, Chapter VI – Education, Social Security and Health of Transgender Persons, Chapter VII – National Council for Transgender Persons, Chapter VIII – Offences and Penalties and Chapter IX – Miscellaneous.

Section 2(k) of the The Transgender Persons (Protection of Rights) Act, 2019 defines "transgender person" as:

> *"means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta."*

Section 2 (f) of the The Transgender Persons (Protection of Rights) Act, 2019 defines "persons with intersex variations" as:

> *"means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body"*

The above definitions make it amply clear that the legislation, though a forward attempt, inadequately only recognises people who have either undergone some sort of transition like sex reassignment surgery or hormone therapy etc. or kinnars or hijras etc. or those who have any kind of intersex variations thus outrightly excluding all other sub-categories or concept of gender identity wherein people are unable to go under some type of treatment lets say out of fear or no money etc. Thus the Act is very narrow in its scope to begin with, and doesn't include other categories of LGBTQI+ strata. If a person identifies themselves different from the sex assignment at birth, there is no remedy or recognition under the Act whatsoever. In the author's considered opinion this legislation is way behind its time considering recognition of third gender was done long back in year 2014 and nowhere in consonance with any recent developments globally.

There is a need for a more inclusive legislation which caters to the need of these people who are not negligible but surely under represented in the legislature.

The requirement of certification by District Magistrate is yet another

appalling state of affairs as it again creates a barrier and an unnecessary need to get further strayed from other individuals. Those who were not able to have a sex reassignment surgery or treatment are outrightly denied any rights under the Act as highlighted above under Section 6 of the Act.[6]

In the opinion of the present researcher, a legislative mandate to secure basic protection from cruelty, discrimination, sexual abuse etc. should not be limited to only those who can procure a certification as discrimination exists beyond the definition and scope of the Act with no redressal.

One of the most concerning lacunas in this legislation is that when it comes to defining offenses and punishment, the Act has only one section which puts at par all that is wrong against the transgenders. Section 18 in Chapter VIII deals with Offenses and Penalties and states:

Whoever-

a. compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

b. denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

c. forces or causes a transgender person to leave household, village or other place of residence; and

d. harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

From a bare reading of the above section, we see that the legislatures makes no difference be it compelling a transgender to indulge in forced labour, obstructing passage to public place, causing transgender to leave a village or residence on one hand and harms or injures or endangers life on the other as all of these have the same punishment, six moths to two years and fine. The sheer audacity of the legislature to equate these all in one place is indicative of how utterly unseen the plight of transgenders is. The very definition of "transgender

person" in the Act further restricts the already mini scope.

Firstly, the failure to be descriptive and creative separate offenses is bothersome and secondly, the narrow scope of the Act and its definition of transgender raises a question that is discrimination not happening to other people of the LQBTQI+ community. We're far from implementing the "Yogyakarta Principles" which clearly strengthens the argument and conception with regard to International Law being a weak law!

We are currently in the midst of a transformative period with the implementation of new criminal laws, specifically the Bhartiya Nyaya Sanhita (BNS) 2024, the Bharatiya Nagarik Suraksha Sanhita Act, 2024 (BNSS), and the Bhartiya Sakshya Act, 2024 (BSA). These laws are intended to modernize and improve the Indian criminal justice system. However, a particularly contentious issue is the decision not to include Section 377 of the IPC in the Bhartiya Nyaya Sanhita Act. The Supreme Court, in its landmark Navtej Singh Johar case, decriminalized consensual sexual acts between adults of the same sex, ruling that such acts were not against the order of nature. Despite this, the court left intact the part of Section 377 that criminalized non-consensual acts, thus still offering some protection to men against sexual violence.

With the new Bhartiya Nyaya Sanhita Act in force, there is now a significant gap in legal protection. There is no provision for male or transgender victims of forced intercourse, a protection that was, to some extent, provided by the previous Section 377. The only legal recourse for transgender individuals now lies in the Transgender Persons (Protection of Rights) Act, which specifically addresses offenses against them. However, as of July 23, 2024, there is no law in place that provides protection or legal remedies for adult males who are victims of sexual offenses.

This exclusion underscores a deeply concerning issue: the ongoing disparity and discriminatory treatment faced by the LGBTQI+ community in India. The lack of legal protection for homosexual individuals compared to their heterosexual counterparts illustrates a significant inequality in the legal system. This situation highlights the urgent need for comprehensive legal reforms that ensure equal protection and rights for all individuals, regardless of their sexual orientation or gender identity.

There is yet another unaddressed issue when it come to the LGBTQI+ community which is recognition of their monogamous relationships (homogenous couples' relations). Relationships in India, as far the law

recognises, are restricted to only man and woman that is only binary relations. After the decriminalisation of Section 377 and recognition of right to privacy the next foreseeable and much needed step in the right direction would be to give some recognition to LGBTQI+ couples who are monogamous long term relations committed to one another, absence of which in my opinion is nothing but discrimination and violative of basic Human Rights and Article 14, 21 and 19 of the Constitution of India which forms the "golden triangle".

Judicial Opinions

One would think that a specialised legislation such as the Transgender Persons Act will deal with same but, this is yet another dreary and catastrophic lapse in the Act. The petitioners in the case of *Supriyo and Ors*. v. *Union of Indi (*MANU/SC/1155/2023*)* argue that they face formal and visible discrimination. They contend that the current legal framework, by not allowing the queer community to marry, implicitly excludes them from this civic institution. Relying on the equality provisions of the Constitution, the petitioners seek legal recognition of their relationships through marriage, emphasizing parity with heterosexual couples rather than seeking exclusive benefits. The author does not question the right to marry as challenged in the case but underscores the importance of recognizing relationships between consenting adults, unencumbered by previous marriages, akin to the principles highlighted in the *Indra Sharma* v. *VKV Sarma* case ((AIR 2014 SC 309). This approach is seen as a step forward following the decriminalization of Section 377 of the Indian Penal Code. Excluding same-sex couples from any recognized institution like marriage sends a public message about their societal value as morally unequal members. This exclusion can be compared to caste-based restrictions on temple entry and the refusal to accommodate disabilities in public examinations (MANU/SC/1155/2023). The significant aspect is that same-sex unions were recognised in antiquity, not simply as unions that facilitate sexual activity, but as relationships that foster love, emotional support, and mutual care (Patnaik: 2022).

Since the Act only deals with transgender persons, it is blind to all other people of the community and secondly even the transgender are not accorded sufficient rights at par with any other individual. The Supreme Court in *Supriyo case* ruled that same sex marriage will not be governed by the Special Marriage Act and even though in every possible way court accepted the need to recognise not only relationships of this community but also need to legislate upon the

marriage between such individuals, it gave no relief to such persons!

Conclusion

The Transgender Persons (Protection of Rights) Act, 2019, while a significant step towards recognizing and protecting the rights of transgender individuals in India, falls short in several critical areas. One of the most glaring omissions is the lack of recognition for relationships and the right to form a family, including adoption rights. This exclusion perpetuates the marginalization of transgender individuals, denying them the fundamental human experience of familial bonds and the ability to raise children.

The Act's definition of a transgender person is another area of concern. It narrowly confines its scope to transgender individuals, excluding other members of the LGBTQI+ community. This limitation underscores the need for a more inclusive approach that recognizes the diverse identities within the community and addresses their unique challenges.

Moreover, the requirement for certification by a district magistrate imposes an unnecessary bureaucratic hurdle that can be both humiliating and inaccessible for many transgender persons. This process not only undermines their autonomy but also subjects them to potential discrimination and stigmatization.

The consolidation of various offenses under Section 18, with a uniform punishment of a minimum of six months and a maximum of two years along with a fine, fails to recognize the severity and specificity of different crimes against transgender individuals. This generic approach dilutes the gravity of more severe offenses and provides inadequate deterrence and justice.

In conclusion, while the Transgender Persons (Protection of Rights) Act, 2019 marks a crucial legislative milestone, it is imperative to develop more comprehensive laws that address the broader spectrum of issues faced by the LGBTQI+ community. India's legal framework must evolve to be more gender-inclusive, recognizing and protecting the rights of all individuals irrespective of their gender identity or sexual orientation. Ensuring legal recognition of relationships, the right to form families, and more stringent, differentiated penalties for offenses against transgender individuals are essential steps towards achieving true equality and justice for the community.

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Notes

1 *Naz Foundation* v. *Government of NCT of Delhi and Others* 160 Delhi Law Times 277 (2009).

2 (2014) 1 SCC 1

3 *National Legal Services Authority* v. *Union of India*, (2014) 5 SCC 438

4 (2018) 16 SCC 368.

5 (2017) 10 SCC 1.

6 Section 6. Issue of certificate of identity.—

(1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

(2) The gender of transgender person shall be recorded in all official documents in accordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

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ARTIFICIAL INTELLIGENCE AND CYBER CRIMES IN INDIA: AN EXAMINATION OF LEGAL FRAMEWORK AND CYBERSECURITY MEASURES

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Abstract

India, having one of the world's largest digital users, despite advantages, has been experiencing ever growing cybercrimes, threatening individuals, businesses, and even governmental systems. Artificial Intelligence added to the situation in both the ways. AI-powered systems are increasingly utilized by cybercriminals for sophisticated attacks such as phishing, malware distribution, and identity theft. In India, the lack of widespread cybersecurity literacy and gaps in regulatory frameworks further exacerbate the vulnerability of the nation to such attacks. On the other hand, AI is becoming a critical component of India's defense against cybercrime, in the shape of detection, analysis, and respond to cyber threats in real-time. These AI-driven solutions offer the potential to outpace traditional cybersecurity methods, providing proactive defense mechanisms that can adapt to evolving threats. Government initiatives like the National Cyber Security Policy and collaborations with private tech sectors are crucial steps toward strengthening India's cyber resilience. As such, the present paper examines the intersection of cybercrime and AI in the Indian context, focusing on how AI tools are being exploited by cybercriminals and, conversely, how AI is being leveraged to enhance cybersecurity measures. It aims to This paper aims at emphasizing the importance of an integrated approach that balances the benefits of AI with the necessity for robust cybersecurity infrastructure. As cyber threats evolve in complexity, it is suggestible that India must adopt AI by fostering innovation, enhancing legal frameworks and raising public awareness to safeguard its digital future.

Keywords: Cybercrime, Artificial Intelligence, Cybersecurity, AI-driven Attacks, Digital Transformation

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1. INTRODUCTION

Cybercrime represents a substantial hazard in the contemporary digital environment, involving many unlawful operations executed via digital channels. It encompasses several manifestations of criminal conduct, including, but not restricted to, "financial fraud, identity theft, cyberbullying, data breaches, malware assaults and social engineering strategies" (Gordon & Ford, 2006). The advancement of technology and the pervasive use of digital devices and networks have broadened the range and intricacy of cyber dangers, presenting substantial difficulties to individuals, enterprises, and governments globally. The origins of cybercrime trace back to the nascent stages of the internet, when nefarious individuals capitalised on weaknesses in computer networks for personal profit or malevolent purposes. Cybercrime has progressively evolved in sophistication, propelled by technological breakthroughs and the interconnectivity of digital infrastructure. Currently, cybercriminals function on a worldwide level, capitalizing on vulnerabilities in software, hardware, and human conduct to execute their illicit activities (Li & Lui, 2021).

The impact of cybercrime extends beyond financial losses, with far-reaching consequences for individuals, businesses, and society as a whole. Victims may suffer reputational damage, privacy violations, and psychological trauma, while organizations face the risk of financial ruin and legal liabilities (Agrafiotis et al., 2024). Moreover, cyber threats pose significant risks to national security and critical infrastructure, prompting governments to invest heavily in cybersecurity measures and international cooperation efforts.

AI and Cybercrime

AI has become a formidable instrument for cybercriminals, facilitating the automation and augmentation of several facets of their unlawful endeavours. AI technologies, including "machine learning" and "deep learning", have transformed the execution of cyber-attacks, enabling attackers to swiftly adjust to evolving security protocols and avoid detection (Chauhan, 2024). Cybercriminals leverage AI in a myriad of ways, including automated hacking tools that can scan networks for vulnerabilities, exploit software weaknesses, and launch targeted attacks with unprecedented speed and efficiency. AI-powered phishing attacks use sophisticated algorithms to generate highly convincing emails and messages designed to deceive individuals into divulging sensitive information or downloading malware. Additionally, AI techniques like deep learning enable the creation of realistic audio and video deepfakes, which can be used to spread disinformation, blackmail individuals, or impersonate high-

profile figures. Moreover, AI systems can analyze extensive datasets to discern trends and forecast impending cyber threats, enabling attackers to anticipate and exploit vulnerabilities in security measures (Islam, 2024). The proliferation of AI-driven cybercrimes poses significant challenges for cybersecurity professionals and law enforcement agencies. Traditional security measures are often ill-equipped to detect and mitigate AI-enhanced threats, as cybercriminals continuously evolve their tactics to bypass detection. Moreover, the widespread availability of AI tools and techniques on the dark web makes it easier for novice hackers to carry out sophisticated cyber-attacks, amplifying the scale and impact of cybercrime.

The major objectives of the present paper are to examine the present state of cybercrime in India, including common forms of cyber threats, their effects on persons and organizations, and the existing cybersecurity solutions in place. The study aims to investigate the role of artificial intelligence in enabling and enhancing cybercriminal operations, concentrating on AI-driven attack methodologies and their ramifications for cybersecurity. Furthermore, it will evaluate the efficacy of current legal and regulatory structures in combatting cybercrime and addressing the misuse of AI technology in India. It attempts to suggest solutions to enhance cybersecurity resilience, mitigate AI-driven cyber risks and promote collaboration among stakeholders in both the public and commercial sectors.

Nature of Cybercrime in India

The landscape of cybercrime in India is evolving rapidly, driven by the country's increasing digitalization and connectivity. According to recent reports, India has witnessed a significant rise in cybercrime incidents in recent years, with criminals exploiting vulnerabilities in digital systems to perpetrate various illicit activities. These cybercrimes encompass a wide range of offenses, including "financial fraud, identity theft, cyberbullying, data breaches, malware attacks and social engineering tactics" (Li & Lui, 2021). The increase in internet usage, mobile devices, and online services has broadened the attack surface for 'cybercriminals', rendering people, organizations and government institutions susceptible to exploitation. Cybercriminals frequently abuse unwary individuals via "phishing emails", "harmful websites" and "social media platforms", using human behavior and technology vulnerabilities to obtain unauthorized access to personal data or financial assets.

Cybercrimes in India encompass a range of illicit activities perpetrated through digital means. Among these, financial fraud stands out as a pervasive

threat, involving various scams like online banking fraud, credit card fraud, investment schemes, and Ponzi schemes. Cybercriminals employ tactics like phishing, spoofing, and malware to dupe individuals and organizations into revealing financial information or transferring funds to deceptive accounts (PTI, 2023). 'Identity theft' is a prevalent form of cybercrime in which unauthorised persons exploit personal information to perpetrate fraud or other illegal acts. Cybercriminals can acquire sensitive information via phishing emails, data breach or social engineering strategies, using stolen identities to establish false accounts, solicit loans, or execute unauthorised transactions, so posing substantial threats to victim's financial stability and reputation. Cyberbullying and harassment have become significant issues in India, especially among teenagers and young adults. Cyberbullies exploit digital platforms, including social media, messaging applications and online forums, to "harass, intimidate or distribute harmful content" aimed at individuals or groups, underscoring the necessity for effective strategies to address online abuse and safeguard users' mental health (Peebles, 2014).

'Data breaches' constitute a significant cyber hazard, including illegal access to sensitive information such as personal data, financial records, or intellectual property. In India, data breaches jeopardize individual privacy and entail financial losses, reputational harm, and legal liability for impacted enterprises, highlighting the necessity for stringent cybersecurity protocols and proactive risk management techniques. 'Malware attacks' provide substantial threats to digital infrastructure, encompassing the dissemination of harmful software such as "viruses", "worms", "Trojans" and "ransomware". Cybercriminals utilize malware to infiltrate digital devices and networks, with the intent to "expropriate data", "disrupt operations" or "extort funds" from victims via ransom demands, hence mandating improved cybersecurity measures and incident response skills to successfully neutralize these threats.

Social engineering represents a sophisticated tactic employed by cybercriminals to "exploit human psychology and trust, manipulating individuals into divulging confidential information or performing actions beneficial to the attacker". Techniques like pretexting, phishing, baiting, and tailgating rely on deception and manipulation to exploit human vulnerabilities, highlighting the need for user awareness training and robust cybersecurity protocols to thwart social engineering attacks.

Legal Framework and Cybersecurity Measures

India's legislative journey in cybersecurity and AI regulation reflects a dynamic

response to the evolving digital landscape. Despite strides forward, challenges persist, notably outdated or ambiguous statutes that hamper effective prosecution of cybercrimes. This has led to fragmented approaches in data privacy and cybersecurity, making it challenging for organizations to derive clear guidelines from existing laws. At the forefront of India's cybersecurity legal framework is the "Information Technology Act of 2000", a landmark legislation that established foundational principles for cybersecurity, data protection, and electronic transactions. However, subsequent amendments, such as the "Information Technology Amendment Act of 2008", and rules like the "Information Technology Rules of 2011", have been essential in refining definitions, expanding cybercrime categories, and specifying penalties.

The 'National Cyber Security Policy of 2013' marked a significant step forward, aiming to create a robust cybersecurity ecosystem and develop a skilled workforce to address emerging threats. Subsequent strategies and initiatives have further bolstered India's cybersecurity posture, emphasizing the importance of resilience, threat mitigation, and collaboration between public and private sectors. Recent regulatory developments include the Information Technology Rules of 2021, which introduced enhanced guidelines for intermediaries and digital media ethics. These rules underscore intermediary accountability and user rights, reflecting a growing awareness of the need to balance innovation with user protection in the digital sphere.

In parallel, India has taken steps to address data privacy concerns with the enactment of the "Digital Personal Data Protection Act of 2023" (Jha, 2022). Inspired by the *EU's General Data Protection Regulation* (GDPR), this legislation aims to safeguard personal data and establish clear guidelines for data fiduciaries, with provisions for data breach notifications and oversight by a Data Protection Board. Enforcement of cybersecurity regulations is facilitated by key regulatory bodies such as CERT-In, NCIIPC and CRAT, which play vital roles in incident response, threat analysis, and cybersecurity awareness. Sector-specific regulators like SEBI, IRDAI, TRAI, and DoT ensure compliance within their respective industries, contributing to a comprehensive regulatory framework (Chin, 2024).

Despite these advancements, ongoing updates, rigorous enforcement, and collaboration across sectors remain essential to address evolving cyber threats effectively. India's journey in cybersecurity legislation and AI regulation reflects a commitment to adapt to the digital age while safeguarding the rights and security of its citizens.

Challenges and Intersection of AI and Cybercrime

AI has revolutionized cybercrime by providing cybercriminals with sophisticated tools and techniques to automate and enhance their illicit activities. One common application of AI in cybercrime is through automated hacking tools, which enable cybercriminals to scan networks, identify vulnerabilities, and exploit them to gain unauthorized access. These AI-powered tools can process large volumes of data and launch targeted attacks with minimal human intervention, allowing attackers to operate at scale and evade detection.

'Phishing assaults' are one area where artificial intelligence is frequently used in cybercrimes. AI algorithms are being used more often to create extremely realistic phishing emails and messages that imitate authentic correspondence from reliable sources. These artificial intelligence (AI)-generated phishing assaults take use of social engineering techniques and psychological weaknesses to "trick targets" into deceiving into sharing private information, such as "login passwords" or "bank account information". Because AI-generated phishing attempts are so sophisticated, it is challenging to identify them using conventional security tools, which puts both individuals and companies at serious danger (Islam, 2024).

Furthermore, AI enables cybercriminals to manipulate digital content, such as images, videos, and audio recordings, to create realistic deepfakes. These AI-generated deepfakes can be used to spread disinformation, blackmail individuals, or impersonate public figures, undermining trust in digital media and manipulating public perception. Additionally, AI algorithms can analyze vast amounts of data to identify patterns and predict future cyber threats, allowing cybercriminals to anticipate and exploit weaknesses in security defenses. Predictive cyberattacks leverage AI-driven analytics to target vulnerable systems and networks proactively, maximizing the effectiveness of cybercriminal activities while minimizing the risk of detection.

Despite the potential benefits of AI in cybersecurity, its proliferation in cybercrime presents significant challenges for detecting and mitigating AI-enhanced threats. The rapid evolution of AI-driven cyber threats poses challenges for traditional security measures, which may struggle to keep pace with the constantly evolving tactics and techniques employed by cybercriminals. Additionally, traditional cybersecurity solutions may lack the capability to detect AI-driven cyber threats due to their complex and dynamic nature. AI-enhanced attacks can evade traditional detection mechanisms by

masquerading as legitimate traffic or by employing sophisticated evasion techniques, making it challenging for security professionals to identify and respond to emerging threats effectively (Abdullahi et al., 2022).

Moreover, the use of AI in cybercrime raises legal and ethical concerns regarding privacy, data protection, and human rights. AI-driven cyber attacks may infringe upon individuals' privacy rights, compromise sensitive information, and undermine trust in digital technologies. The use of AI for malicious purposes also raises questions about accountability, liability and the regulation of AI technologies in cyberspace. Addressing these challenges requires collaborative efforts between governments, law enforcement agencies, industry stakeholders, and cybersecurity experts to develop innovative solutions and regulatory frameworks that mitigate the risks associated with AI-driven cybercrimes.

Strategies for Combating Cybercrime and AI Misuse: Suggestions

The following strategies can be adopted to prevent and protect the netizens from cybercrimes in AI powered digital era:

Strengthening Cybersecurity Infrastructure: To prevent cybercrime and reduce the misuse of AI technology, cybersecurity infrastructure must be strengthened. This entails making significant investments in security measures to guard against cyberattacks on networks, systems, and digital assets. To proactively identify and neutralize cyber threats, organizations should give priority to implementing sophisticated threat detection and prevention technologies, such as "network firewalls", "intrusion detection systems" and "endpoint security solutions". Regular penetration tests, vulnerability scans and security assessments may also assist find and fix possible vulnerabilities in cybersecurity defenses, strengthening defenses against cyberattacks.

Enhanced Collaboration between Government and Private Sector: This is essential for effectively combating cybercrime and addressing the misuse of AI technologies. Governments should establish partnerships with "industry stakeholders, cybersecurity experts and law enforcement agencies to share threat intelligence, best practices, and resources" for combating cyber threats collaboratively. "Public-private partnerships" (PPP model) can facilitate "information sharing", "incident response coordination" and joint efforts to develop and implement cybersecurity policies, regulations and standards that

promote a secure and resilient digital ecosystem.

Raising Awareness of Cyber Hygiene Among People: Educating the public about cyber hygiene is critical for raising awareness about cyber threats and promoting responsible digital behavior. Individuals should be educated about the risks of cybercrime, including phishing attacks, identity theft, and malware infections, and provided with practical guidance on how to protect themselves online. This includes using "strong, unique passwords, enabling multi-factor authentication, keeping software and devices up to date, and exercising caution when sharing personal information online." Additionally, cybersecurity awareness campaigns, workshops and training programs can empower individuals to recognize and respond to cyber threats effectively, reducing their susceptibility to cyber attacks.

Leveraging AI for Cyber security: The capabilities of threat detection, incident response, and risk mitigation may all be improved by utilizing AI technology in cyber security. A significant amount of data can be accessed and analysed in real time by AI-powered solutions, such as "machine learning algorithms and behavioral analytics", to spot unusual trends and possible security risks. These artificial intelligence (AI)-powered solutions may increase the precision and effectiveness of cyber security operations by automating repetitive security processes and streamlining incident detection and response procedures. Organizations may fortify their defenses against changing cyber threats and proactively respond to new security issues by utilizing AI for cyber security.

Policy Recommendations and Legal Reforms: Policy recommendations and legal reforms are necessary to address the misuse of AI technologies in cybercrime and promote responsible AI governance. Governments should enact legislation and regulations that govern the development, deployment, and use of AI technologies in cyberspace, ensuring transparency, accountability, and ethical use. This includes establishing clear guidelines for AI developers and users, enforcing data privacy and security standards, and imposing penalties for AI-driven cybercrimes. Moreover, "international cooperation & collaboration" are vital for aligning regulatory frameworks, exchanging best practices, and successfully tackling cross-border cyber threats. Governments may cultivate trust and confidence in AI technology and reduce the dangers of their exploitation in cybercrime by enacting policy suggestions and legislative changes.

Conclusion

No doubt India is facing the escalating threat posed by cybercrime, fuelled by

India's rapid digitalization and connectivity on one hand and AI technologies have been instrumental in revolutionizing cybercrime, empowering cybercriminals to automate and augment their illicit activities on the other. The situation poses formidable challenges to traditional security measures and law enforcement efforts. As such, it is high time to go for bolstering cybersecurity infrastructure in India through investments, strategies, collaborative partnerships, and robust regulatory frameworks. Policymakers must prioritize the development and enforcement of stringent cybersecurity regulations to mitigate the evolving cyber threats effectively. Further, the responsible use of AI in governance with clear guidelines, ethical standards, and proactive measures to safeguard against their misuse in cybercrime should be ensured. Collaborative endeavours between the government, private sector, and civil society are imperative to foster a resilient cybersecurity ecosystem that protects individuals, businesses, and critical infrastructure from cyber threats.

It will be not out of place to mention that there is a need for continued research and development of advanced AI-driven cybersecurity solutions capable of detecting and thwarting emerging cyber threats effectively. The social, economic, and ethical implications of AI-driven cybercrimes merit requires further investigation in the areas of policymaking and regulatory interventions. Finally, attempts should be made to explore the ways and means of cybersecurity education and awareness among the people.

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CORPORATE GOVERNANCE IN INDIA AND REGULATORY LAWS: A STUDY IN THE CONTEXT OF SHAREHOLDER ACTIVISM

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Abstract

Imagine a corporate landscape where shareholders, armed with both information and influence, reshape governance structures to prioritize transparency, accountability, and sustainability. This research delves into shareholder activism in India, focusing on its evolution, driving forces, and practical impact. Beginning with a historical overview, the paper explores regulatory milestones and the foundational role of the Companies Act, 2013, and SEBI's guidelines. We examine engagement mechanisms, from proxy advisory firms and voting rights to the influence of class action suits, using cases like the Jindal Poly Films suit to highlight the real-world implications. Emerging trends such as ESG-focused demands, institutional investor engagement, and the role of digital platforms underscore the shift towards a more transparent and inclusive corporate culture. Challenges such as regulatory constraints, corporate resistance, and cultural barriers are discussed alongside future opportunities. Ultimately, the paper underscores the transformative potential of shareholder activism in driving corporate accountability and advocates for a stronger framework to support shareholder influence in India's evolving governance landscape. The present research suggests actionable reforms to empower shareholders and shape responsible corporate practices.

Keywords: Corporate Governance, Shareholder Activism, Companies Act, 2013, SEBI Regulations, India.

SHAREHOLDER ACTIVISM IN INDIA

In recent years, shareholder activism has emerged as a transformative force in

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India's corporate governance landscape. Defined as the active use of shareholder rights to influence a company's governance, strategy, or operations, shareholder activism is becoming more prevalent as investors increasingly demand accountability, transparency, and ethical practices from corporations. This trend is propelled by a combination of regulatory changes, growing institutional investor influence, and heightened awareness of environmental, social, and governance (ESG) concerns.

In the global context, shareholder activism is often more assertive, especially in countries like the United States, where activist investors have historically played a major role in pushing for corporate restructuring, board changes, and operational reforms. In contrast, India's shareholder activism has traditionally been limited, with minority shareholders often reluctant to challenge majority stakeholders due to weaker regulatory protections and cultural factors. However, as Indian regulatory bodies, particularly the Securities and Exchange Board of India (SEBI), introduce reforms aimed at strengthening shareholder rights and transparency, India is witnessing a shift towards a more robust shareholder voice in corporate governance.

The objective of this research is to explore this evolving phenomenon of shareholder activism in India, highlighting the drivers, regulatory framework, and implications on corporate governance. This analysis also seeks to compare India's growing activism culture with global trends, offering insights into how India's regulatory environment is shaping the role and power of shareholders in the corporate landscape.

Genesis of Shareholder Activism in India

The roots of shareholder activism in India can be traced back to initial efforts by regulators to protect minority interests and prevent abuses by majority shareholders. Early activism was largely confined to instances of significant corporate misgovernance or conflicts of interest involving minority and majority stakeholders. However, until recent decades, shareholder engagement was minimal, primarily due to limited legal frameworks, cultural deference to corporate management, and an emphasis on family-owned businesses, where shareholder influence was restricted.

A pivotal moment in the evolution of shareholder activism in India was the enactment of the **Companies Act, 2013**, which marked a significant shift in corporate governance practices. The Act introduced stringent norms on transparency, board independence, and shareholder rights, providing a formal

structure for shareholders to voice concerns over corporate decisions. Provisions like mandatory voting on related-party transactions and the introduction of online voting platforms enabled greater shareholder participation.Following the 2013 Act, SEBI has continued to champion shareholder rights through amendments to the **Listing Obligations and Disclosure Requirements (LODR)**, which have set higher standards for board accountability, disclosures, and stakeholder protection. These regulatory advancements have encouraged institutional investors and minority shareholders to engage more actively in corporate decision-making processes. By 2020, SEBI also implemented guidelines for proxy advisory firms, giving shareholders access to third-party expertise on voting issues and enabling a more informed voting process[1].

Regulatory Framework Supporting Shareholder Activism

India's regulatory environment for shareholder activism has been shaped by a series of reforms aimed at enhancing transparency, protecting minority rights, and encouraging active participation in corporate governance. The Securities and Exchange Board of India (SEBI) has played a critical role in crafting a framework that empowers shareholders and holds corporations accountable[2].

- **SEBI's Role in Strengthening Shareholder Rights**: SEBI has introduced several measures to ensure that shareholders, particularly minority stakeholders, can actively participate in key corporate decisions. For example, SEBI's LODR mandates stringent disclosure requirements and enhances shareholder voting rights on issues such as related-party transactions and major acquisitions. These requirements have enabled shareholders to challenge board decisions and executive pay structures more effectively.

- **2023-2024 Regulatory Updates**: Recent SEBI initiatives and amendments continue to expand shareholder rights. In 2023, SEBI introduced new guidelines to enhance ESG disclosures, requiring corporations to report their impact on various sustainability metrics. This transparency empowers shareholders to hold companies accountable for their environmental and social impacts, aligning with the rising trend of ESG activism. Moreover, updated policies have strengthened the role of independent directors, further safeguarding shareholder interests and encouraging corporate accountability.

- **Dual Voting Rights (DVR) Framework**: The DVR framework, introduced by SEBI, allows companies to issue shares with different voting rights,

helping founders retain control while securing capital. This framework has sparked debates on its potential impact on shareholder activism. While DVRs can enable innovation by allowing founders to retain control without diluting voting power, they may also pose challenges for minority shareholders, who may see their influence diminished. Activist shareholders argue that DVRs could undermine shareholder democracy, prompting calls for regulatory reviews and safeguards to balance these interests.

India's regulatory framework for shareholder activism has grown more sophisticated, reflecting a commitment to protecting shareholder interests while promoting ethical corporate practices. The ongoing regulatory changes signal an intent to balance corporate autonomy with investor rights, setting the stage for a more engaged shareholder base.

Mechanisms for Shareholder Engagement and Influence

Shareholders in India now have access to a variety of mechanisms to influence corporate governance, from advisory services to legal actions. Here's an in-depth look at these tools:

Proxy Advisory Firms

Proxy advisory firms play a crucial role in guiding shareholders, particularly institutional investors, on voting decisions. In India, these firms are regulated by SEBI under the **Research Analysts Regulations, 2014**. Proxy advisories analyze corporate proposals, providing recommendations on board appointments, executive compensation, and mergers, among others. Their insights empower shareholders to make informed voting choices, particularly on complex issues where smaller shareholders may lack the resources for deep analysis[3].

For instance, in recent voting decisions within major Indian corporations, proxy advisories have recommended voting against high executive salaries in cases where company performance was seen as subpar. Such recommendations have influenced outcomes, compelling companies to revise or justify their compensation strategies more transparently. SEBI's oversight of these advisory firms ensures that their recommendations are balanced and transparent. Recently, SEBI has taken steps to increase the accountability of proxy advisory firms, requiring them to disclose the rationale behind their recommendations and ensuring they maintain independence from the corporations they analyze. With these regulatory protections, shareholders can trust that proxy advisories

are aligned with their interests, making these firms powerful allies in promoting shareholder interests in India's corporate landscape.

Shareholder Resolutions and Voting Rights

Shareholder resolutions are formal proposals that shareholders submit to a company's annual general meeting (AGM). In India, minority shareholders use resolutions as a way to raise issues that may not align with the board's preferences, covering a range of topics such as environmental policies, corporate social responsibility, and executive compensation. Shareholder voting rights, meanwhile, provide a direct means of influencing company policies by enabling shareholders to approve or reject proposals during AGMs.

For instance, in 2023, several AGMs of large Indian firms saw resolutions that demanded stronger environmental commitments. These resolutions, largely driven by the increasing prominence of **Environmental, Social, and Governance (ESG) activism**, forced corporate boards to confront sustainability challenges publicly. While some of these resolutions did not pass, the significant shareholder support they garnered signalled growing pressure for companies to address ESG-related concerns more directly. Additionally, SEBI has recently implemented measures to ensure transparency in voting processes, including mandating electronic voting for all listed companies. This step has simplified participation for minority shareholders, further democratizing corporate decision-making.

Class Action Suits

Class action suits offer a potent legal tool for protecting minority shareholders in cases of misgovernance. By allowing shareholders to band together, class action suits increase their bargaining power and help secure redress in disputes against management or majority stakeholders. A notable example is the **Jindal Poly Films class action suit** in 2023, where minority shareholders alleged unfair practices in a related-party transaction. This lawsuit highlighted the limitations faced by minority shareholders in influencing board decisions that benefit majority stakeholders disproportionately[4].

The Jindal Poly Films case underscores SEBI's ongoing challenge in balancing corporate autonomy with shareholder protection. Following this case, SEBI has intensified its scrutiny of related-party transactions, revising guidelines to prevent majority shareholders from prioritizing their interests over those of minority stakeholders. This combination of mechanisms – proxy advisories,

shareholder resolutions, and class action suits – empowers shareholders with both strategic and legal means to hold corporations accountable. Together, these tools provide a multifaceted approach for shareholders to actively participate in governance and advocate for changes that align with their interests.

Emerging Trends in Shareholder Activism in India

Shareholder activism in India is adapting to new challenges and priorities, particularly in the realms of sustainability, institutional influence, and digital engagement. Below is a closer look at these emerging trends:

Environmental, Social, and Governance (ESG) Activism

ESG concerns have become a cornerstone of shareholder activism globally, and India is no exception. With SEBI's mandate on **Business Responsibility and Sustainability Reporting (BRSR)**, all listed companies are now required to disclose their impact on a range of sustainability metrics. This requirement has empowered shareholders to scrutinize companies' environmental policies, social responsibilities, and governance practices more rigorously[5].

In 2023, several shareholder groups submitted ESG-related resolutions at AGMs of companies in high-impact sectors like mining and energy. These resolutions called for reductions in carbon emissions, increased transparency in environmental impact reporting, and better waste management practices[6]. While some companies initially resisted these demands, shareholder pressure led to commitments from certain corporations to adopt more sustainable practices, reflecting a shift toward corporate accountability in response to environmental activism.

Influence of Institutional Investors

Institutional investors, including mutual funds, insurance companies, and foreign portfolio investors, are now playing a more active role in corporate governance. Their substantial ownership stakes grant them considerable influence in shareholder meetings, where their voting power can sway decisions significantly. For example, in 2023, several major institutional investors opposed high executive compensation packages in companies with below-average financial performance, demonstrating a clear demand for accountability. SEBI has also encouraged the active participation of institutional investors by introducing stewardship codes that require them to publicly disclose their voting policies and rationale for key decisions. This transparency enhances

institutional influence by allowing smaller shareholders to align their votes with those of large investors, thereby strengthening collective bargaining power.

Use of Digital Platforms for Engagement

Digital platforms and social media have revolutionized shareholder activism, making it easier for shareholders to mobilize and engage with companies. Through platforms like Twitter and LinkedIn, shareholders are not only sharing information but also mounting public pressure on companies to address governance issues.

For instance, during a high-profile board election in 2023, activists leveraged social media to bring attention to concerns around board diversity and independence. This digital push led to broader awareness among shareholders, ultimately influencing voting outcomes. Digital platforms, thus, provide shareholders with a readily accessible forum for discussing grievances, organizing campaigns, and engaging with company leadership in a public, transparent manner. These emerging trends highlight the evolving landscape of shareholder activism in India, characterized by a greater focus on ESG criteria, the rising influence of institutional investors, and the strategic use of digital platforms to drive engagement.

Notable Cases and Examples of Shareholder Activism (2023–2024)

Case studies illustrate the tangible impact of shareholder activism on Indian companies, showing how activists are shaping corporate policies and governance practices:

Case Study 1: Jindal Poly Films Class Action Suit

The Jindal Poly Films class action lawsuit serves as a landmark example of minority shareholder protection. In this case, minority shareholders alleged that the company engaged in a related-party transaction that unfairly benefited majority stakeholders at the expense of minority investors. This suit emphasized the importance of regulatory oversight and the role of class action as a protective mechanism for minority shareholders. It also pushed SEBI to review its guidelines on related-party transactions, underscoring the need for stricter disclosure norms to prevent similar conflicts[7].

Case Study 2: Impact of Proxy Advisories in Voting Decisions

Proxy advisory firms demonstrated their influence during the 2023 AGM season,

particularly in cases where executive compensation packages were under scrutiny. For example, proxy advisors recommended voting against executive pay hikes in several underperforming companies. This advice, backed by institutional investors, led to substantial opposition in AGMs, resulting in either rejection or revisions of proposed pay packages. Such instances showcase the role of proxy advisories in aligning corporate decisions with shareholder interests[8].

Case Study 3: DVR and Superior Voting Rights in Tech Companies

Dual Voting Rights (DVRs) and superior voting rights are becoming more common in Indian tech startups seeking to retain founder control while raising capital[9]. However, these voting structures have sparked controversy, particularly among minority shareholders who fear reduced influence. In 2024, a prominent Indian tech company adopted DVR shares, sparking debate over the potential dilution of shareholder democracy. Activist shareholders voiced concerns that such structures could limit their ability to challenge management decisions, leading SEBI to consider additional regulatory guidance on DVRs to balance founder control with shareholder rights.

These case studies illustrate how shareholder activism, bolstered by a supportive regulatory framework, is shaping India's corporate governance landscape, encouraging companies to adopt more transparent and responsible practices. Through class actions, proxy advisories, and scrutiny of innovative share structures, shareholders are asserting their influence and advocating for changes that promote accountability and fairness in corporate India.

Challenges and Barriers to Shareholder Activism in India

Despite recent advancements, shareholder activism in India continues to face significant challenges. These barriers hinder shareholders' ability to engage fully and influence corporate governance.

Regulatory and Legal Constraints

India's regulatory and legal framework, while progressive, has certain limitations that can restrict shareholder actions. Although SEBI has implemented reforms to empower shareholders, such as mandating increased transparency and enforcing shareholder voting rights, specific regulations remain complex, sometimes contradictory, and can discourage proactive shareholder participation. For example, while shareholders can file class action suits, the process remains

lengthy and costly. Additionally, requirements under the **Companies Act, 2013** are often cumbersome and require substantial documentation, which can deter smaller shareholders from pursuing legal recourse.

Moreover, SEBI's regulations[10] on **related-party transactions** still leave gaps that may allow for potential abuses by majority shareholders. Recent cases have highlighted that minority shareholders sometimes find it challenging to prove misgovernance or secure redress. For instance, SEBI's strict disclosure norms only cover certain types of transactions, allowing some unfair practices to go unchallenged. This regulatory shortcoming became evident in the 2023 **Jindal Poly Films class action suit**, where minority shareholders alleged misconduct but faced hurdles in quickly obtaining a legal remedy due to procedural delays.

Corporate Resistance and Management Entrenchment

Another challenge in shareholder activism is the resistance from entrenched management practices. In India, many large corporations, particularly family-owned businesses, maintain close-knit management teams resistant to outside influence. This "management entrenchment" hinders the ability of minority shareholders to challenge company policies effectively. Family-owned firms often structure their governance in a way that minimizes the influence of external shareholders, with complex shareholding arrangements that favor founding members.

This resistance is further strengthened by the **Dual Voting Rights (DVR)** structure[11], which provides founders with greater control despite holding a minority stake. Introduced with the intent to empower tech startups, DVRs have raised concerns about shareholder democracy and accountability, as they allow founders to maintain control over corporate decisions even when significant opposition exists among minority shareholders. Such resistance to influence becomes a significant barrier for minority investors who seek accountability but are limited by structural constraints.

Cultural and Awareness Barriers

Culturally, India has a long-standing tradition of passive investment, with shareholders generally focusing on dividends rather than actively engaging in corporate governance. This passivity is partly due to a lack of awareness about shareholder rights and activism tools. Smaller retail investors, in particular, often lack information on how they can influence corporate decisions or protect their rights. Awareness about mechanisms like class action suits, proxy voting, and

shareholder resolutions remains low among retail shareholders, further limiting their ability to hold companies accountable.

Educational initiatives by SEBI and industry groups aim to bridge this gap by promoting awareness about shareholder rights, but these efforts have yet to reach the majority of retail investors. The cultural norm of passive investment also intersects with limited institutional support, as many Indian investors tend to view shares as financial assets rather than instruments of influence over corporate governance. This mindset shift is critical for fostering a stronger culture of shareholder activism in India. Together, these regulatory, corporate, and cultural barriers demonstrate the significant challenges that shareholders face in influencing Indian companies. Without continued regulatory reforms and a cultural shift toward more active engagement, shareholder activism in India may struggle to reach its full potential.

Future of Shareholder Activism and Engagement in India

The future of shareholder activism in India is promising, with anticipated reforms, technological advancements, and a growing focus on sustainability[12]. Here's a closer look at the likely developments:

Potential Reforms and Regulatory Trends

India's regulatory environment for shareholder activism is expected to evolve further, particularly in response to recent cases of misgovernance. SEBI is likely to introduce enhanced protections for minority shareholders, especially in areas such as related-party transactions and the **DVR framework**. In recent discussions, SEBI has highlighted the need for tighter controls on DVR shares to protect shareholder democracy, recognizing the concerns about founder overreach. Potential reforms may include capping the voting power of DVR shareholders[13] or implementing more stringent checks on how these shares are distributed. SEBI may also strengthen regulations around **proxy advisory firms** to ensure their independence and accountability. By requiring advisory firms to disclose conflicts of interest and ensuring their recommendations align with shareholders' best interests, SEBI aims to foster a transparent voting environment where minority shareholders can make informed decisions. Furthermore, discussions are underway about creating more efficient mechanisms for filing class action suits, reducing the time and cost required to pursue legal action, and thus making the process more accessible to retail investors.

Evolving Role of Technology and Data Analytics

Technology and data analytics have already started transforming shareholder

activism by facilitating easier engagement and transparency. The digitization of AGMs, electronic voting, and real-time access to company reports are empowering shareholders with better information and tools for engagement. Platforms like SEBI's **SCORES (SEBI Complaints Redress System)** provide investors a digital space to register grievances, making corporate governance issues more visible and enabling swift redressal. Moreover, advancements in data analytics are enabling shareholders to assess companies' financial performance, ESG credentials, and governance practices with unprecedented detail. Retail investors can now access tools that provide insights into companies' environmental and social records, financial health, and adherence to governance standards. Social media and dedicated shareholder platforms are also helping activists to organize and amplify their concerns publicly, increasing pressure on corporations to respond.

Increased Focus on ESG and Sustainable Development Goals (SDGs)

As global concerns around climate change, social equity, and sustainable development grow, shareholder activism in India is increasingly focused on ESG and SDG-related issues. SEBI's **Business Responsibility and Sustainability Reporting (BRSR)** mandate requires companies to disclose their ESG performance, creating a foundation for shareholders to evaluate corporate social responsibility more comprehensively. The BRSR mandate encourages companies to outline their efforts on issues such as carbon emissions, community engagement, and diversity in leadership.

In 2023, several high-profile shareholder proposals focused on ESG issues gained traction in AGMs[14] of Indian companies, including calls for better environmental practices and diversity commitments. Such initiatives are likely to grow as global investors increasingly factor ESG criteria into their investment decisions, and domestic shareholders follow suit. Additionally, institutional investors in India are expected to increasingly advocate for corporate alignment with the **United Nations Sustainable Development Goals (SDGs)**, particularly around climate action and equality. In the next few years, India may also witness an increase in shareholder activism focused on **sustainable finance** and the transition to a green economy. With India's commitment to achieving **Net Zero emissions by 2070**, shareholders are likely to demand that companies in high-impact sectors like energy and manufacturing develop clear sustainability strategies. Shareholder activism will be critical in pushing companies to align their operations with global sustainability goals and publicly disclose their

impact, not only for compliance but also for competitive advantage.

Conclusion

Shareholder activism has emerged as a powerful force in India's corporate landscape, especially in the past decade, with accelerated momentum from 2023 to 2024. This shift towards increased shareholder engagement highlights a broader transformation in India's corporate governance model, where shareholders are now more empowered to hold corporations accountable and promote transparency. Activism has played a crucial role in enforcing accountability, encouraging responsible corporate behavior, and enhancing overall governance standards. Key developments, such as the **Companies Act, 2013**, and **SEBI's recent regulations**, have provided the framework necessary for shareholders to exercise their rights more effectively. These legislative milestones have solidified protections for minority shareholders, introduced stringent guidelines for corporate disclosures, and opened channels for shareholders to voice their concerns. For instance, the **Business Responsibility and Sustainability Reporting** (**BRSR**) mandate by SEBI is a recent example of how regulations are pushing for increased transparency around environmental, social, and governance (ESG) factors, reflecting the evolving priorities of both shareholders and regulators.2023–2024 witnessed several high-profile shareholder actions, with cases such as the **Jindal Poly Films class action suit** standing out[15]. These instances underscore the changing dynamics within corporate governance, where minority shareholders are willing to challenge companies over issues related to transparency, environmental impact, and managerial accountability. The rise of **proxy advisory firms** and **digital platforms** has further strengthened shareholders' capacity to engage, allowing them to make more informed decisions and push for reforms effectively.

The rise of shareholder activism in India significantly impacts various stakeholders, including companies, investors, and policymakers. Companies are increasingly pressured to adopt transparent practices and engage proactively with shareholders, leading to improved reputations and financial performance. This shift encourages firms to address environmental, social, and governance (ESG) concerns seriously, particularly in sectors like manufacturing and energy. For investors, shareholder activism offers a means to protect their interests and influence corporate decisions, especially for minority shareholders[16]. Institutional investors are aligning their strategies with sustainability standards, reflecting global investment trends that prioritize ESG performance. Retail investors are gradually gaining awareness and access to mechanisms like proxy

voting, allowing them to have a voice in strategic decisions. Policymakers are essential in shaping the regulatory environment that supports this activism. Regulatory bodies like SEBI have enhanced shareholder rights and transparency, but ongoing reforms are necessary to address emerging challenges. Future regulations may focus on streamlining processes for class actions and enhancing oversight of proxy advisory firms, ultimately contributing to a more robust corporate governance framework in India.

To foster a more robust framework for shareholder activism in India, several actionable steps can be considered. One significant barrier to shareholder activism is the lack of awareness among retail investors regarding their rights and the available mechanisms for engagement. To address this, educational initiatives led by the Securities and Exchange Board of India (SEBI), industry associations, and corporate entities could bridge this knowledge gap. Regular workshops, webinars, and online resources can empower retail shareholders with the necessary information on how to influence corporate decisions effectively. By educating investors about tools such as proxy voting, shareholder resolutions, and class actions, the overall participation and impact of shareholder activism in India could see substantial growth.

Proxy advisory firms play a critical role in guiding shareholders' voting decisions, especially for institutional investors. These firms assist shareholders in analyzing complex issues, assessing management proposals, and making informed choices. Strengthening regulatory oversight to ensure the independence and accountability of proxy advisory firms can enhance their effectiveness in promoting shareholder activism. SEBI could introduce guidelines that mandate these firms to disclose potential conflicts of interest, ensuring their recommendations prioritize shareholder interests. Class action suits represent a powerful tool for minority shareholders seeking redress for corporate misconduct; however, procedural complexities often deter their use. Simplifying the process for filing and prosecuting class actions would make it easier for shareholders to hold companies accountable. The establishment of specialized tribunals or fast-tracking class actions in corporate matters could help reduce delays, thereby enhancing shareholders' ability to challenge malpractices. The recent Jindal Poly Films case underscores the potential of class actions as a tool for activism but also highlights the need for a more efficient legal framework to support these efforts.

Technology has transformed shareholder engagement globally, and India could benefit from further leveraging digital platforms for activism. Such

platforms can facilitate information sharing, enable electronic voting, and foster dialogue between shareholders and corporate boards. SEBI's SCORES platform is a positive step in this direction, but additional tools could be introduced, such as mobile applications for voting, real-time disclosure notifications, and online forums for shareholder discussions. Digital engagement particularly empowers retail investors who may lack the resources to attend annual general meetings, offering them a viable channel to voice their opinions. With the growing prominence of Environmental, Social, and Governance (ESG) issues, regulatory support for ESG-focused shareholder resolutions could empower investors to drive companies towards sustainable practices. SEBI could encourage companies to provide detailed ESG disclosures and facilitate shareholder resolutions focused on climate action, social equity, and ethical governance. Institutional investors, especially those with significant ESG mandates[17], can lead this initiative, fostering a governance culture that prioritizes sustainability and accountability.

The current Dual Voting Rights (DVR) framework in India can create imbalances in corporate governance by allowing founders or select shareholders to maintain control over the company despite holding a minority stake. To address this, SEBI could consider reforms aimed at making DVRs more equitable. Proposed changes could include capping voting rights for DVR shareholders or ensuring that DVR structures are accompanied by additional disclosure requirements. Such reforms would enhance the democratic nature of shareholder voting, reducing potential conflicts between minority and majority shareholders. Encouraging stakeholder feedback in policy formulation is another crucial aspect of enhancing shareholder activism. Incorporating insights from stakeholders, including institutional investors, proxy advisors, and corporate governance experts, in the creation of policies related to shareholder activism can improve regulatory efficacy. Regular consultations with these stakeholders allow regulators to remain updated on emerging issues, assess the impact of existing policies, and develop regulations that are both protective and flexible. This inclusive approach to policymaking will cultivate an environment where shareholder activism can thrive in a balanced manner.

In conclusion, the growth of shareholder activism in India signifies a transformative shift towards more responsible and responsive corporate governance. As shareholders increasingly demand transparency, accountability, and sustainable practices, Indian companies must adapt to these expectations or risk losing investor confidence. While challenges remain, the foundation for a more inclusive and robust framework is already being laid, bolstered by SEBI's proactive approach and the evolving regulatory environment. For India

to fully realize the potential of shareholder activism, ongoing commitment from policymakers, corporate leaders, and investors is essential. Through reforms, enhanced awareness, and digital innovations, shareholder activism can become a transformative force in shaping the future of corporate governance in India. As the country's corporate landscape becomes more transparent and inclusive, shareholder activism will play an indispensable role in ensuring that businesses operate with integrity, accountability, and a commitment to long-term sustainable growth.

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REFORMING V-VMP: AN EVALUATION OF SUSTAINABLE VEHICLE SCRAPPING POLICY

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Abstract

Arresting pollution in urban localities has been prime focus of urban administration. It will be evident from the example of the rising AQI in Delhi in certain periods. Several measures are being adopted to reduce air pollution in the cities, especially check on emission of poisonous gases by the huge number of plying vehicles, such as odd-even plight, GRAP, BRT, ITMS, banning vehicles to enter into a city, scrapping of old vehicles etc. India's voluntary vehicle fleet Modernization program (V-VMP) or vehicle scrapping policy (VSP) is one of the most talked about scheme. No doubt such schemes can reduce carbon emission into the air by vehicles, yet its adverse impact on life of people, especially mechanics earning bread from repair of vehicles, small businessmen, lower income groups etc. cannot be ignored. Besides, it poses the problem of disposal of scrapped vehicles. With this view in mind, the present paper attempts to assess the adverse impact of the scheme on the life of a large chunk of people and suggest measures to overcome the maladies arising out of the scheme. Among the suggestions focusing on first-time vehicle buyers, incentivizing electric vehicle adoption, and implementing macro-economic reforms to create more jobs.

Keywords: Vehicle Scrapping Policy, Environmental Impact, Scrapping Family Car, Sustainable Auto Industry, VVMP Reforms.

INTRODUCTION

First of all let us have an idea of India's vehicle scrapping policy, introduced in 2021, which aims to phase out older, polluting vehicles and stimulate the automotive market (GoI: 2024). While the initiative is framed as a necessary

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step towards reducing urban pollution and enhancing road safety, it has sparked significant debate regarding its effectiveness and implications. Critics argue that the policy's focus on age-based criteria for scrapping fails to consider the actual condition and environmental impact of many older vehicles, which may still be functioning efficiently.

Moreover, the mandatory fitness tests and the associated costs pose challenges for vehicle owners, particularly those from lower-income backgrounds. The policy has been perceived as favouring large automotive manufacturers at the expense of individual consumers, raising concerns about equity and accessibility. As the government seeks to promote new vehicle sales, the question arises: is this approach genuinely beneficial for the environment and the economy, or does it disproportionately burden those who cannot afford to replace their vehicles?

This critique will explore the underlying assumptions of the vehicle scrapping policy, examining its potential shortcomings and the broader implications for wealth distribution and environmental sustainability in India. By analysing the policy's impact on various stakeholders, we aim to provide a comprehensive understanding of its efficacy and the need for a more inclusive approach to vehicle ownership and environmental responsibility. Moreover, few solutions to the economic crisis led by lower growth of automobile sector has also been discussed.

V-VMP in India mandates the scrapping of operational vehicles before they reach their designed lifespan, which raises significant concerns regarding its environmental impact (Ajith et al: 2023). The policy aims to reduce pollution by removing older vehicles from the roads; however, this approach may yield counterproductive outcomes. The environmental costs associated with manufacturing new vehicles can potentially exceed the emissions benefits gained from scrapping well-maintained older vehicles. Research indicates that vehicles that are regularly serviced and maintained can continue to operate efficiently, thereby challenging the rationale behind the policy's age-based criteria for scrapping.

Age–Based Criteria vs. Vehicle Condition

Moreover, the V-VMP fails to take into account the substantial road taxes already paid by vehicle owners, which in some cases, surpass the stipulated lifespan for mandatory scrapping. This oversight raises questions about fairness and equity for consumers who have invested in their vehicles over the years (Dastidar: 2024). Many owners feel that the policy does not adequately consider the

actual condition and usage of their vehicles, leading to calls for a more nuanced approach that includes factors such as kilometres driven rather than solely vehicle age (Bhattacharya: 2022). As the policy unfolds, it is crucial to reassess its implications to ensure that it achieves its intended environmental goals without imposing undue burdens on vehicle owners (Bhardwaj: 2022).

Economic Implications for Lower–Income Households

Furthermore, the V-VMP in India disproportionately impacts lower-income demographics, failing to consider the economic realities faced by many citizens. By mandating the replacement of older vehicles, regardless of their condition or the financial constraints of their owners, the policy overlooks the needs of those who rely on affordable, functional transportation. For many in the lower-income bracket, older vehicles serve as a practical and cost-effective means of mobility, allowing them to commute to work, transport goods, and access essential services. The V-VMP, however, disregards these economic realities and imposes an additional financial burden on those who can least afford it.

Notably, the policy's implementation may primarily benefit large corporations, such as car manufacturers and scrap yards, while neglecting the well-being of ordinary car owners. These corporations stand to gain from increased sales and the processing of scrap vehicles, while individual car owners are left to shoulder the costs of premature replacement. This raises concerns about the equitable distribution of the policy's impacts and the potential for unintended consequences that disproportionately affect the most vulnerable segments of society. As the V-VMP moves forward, it is crucial to consider its socioeconomic implications and ensure that it does not exacerbate existing inequalities or prioritize corporate interests over the needs of the people

Constitutional Concerns

Right to Property under Article 300A

Therefore, the V-VMP raises significant constitutional concerns, particularly regarding the right to property enshrined in Article 300A of the Indian Constitution. This Article protects individuals from being deprived of their property without due process. Under the V-VMP, individuals who have invested in well-maintained vehicles face the risk of losing their property without adequate compensation or consideration of their investment. Such a mandate could be seen as an infringement on their rights, as it forces owners to scrap vehicles that are still functional and economically viable (Kumar: 2021).

Wealth Distribution and Article 39

Additionally, for the same reasons, the policy may contradict the principles outlined in Article 39 of constitution of India, which promotes equitable distribution of wealth and resources. By primarily benefiting large corporations, such as automobile manufacturers and scrap yards, the V-VMP risks exacerbating wealth concentration rather than promoting equitable economic growth. This could lead to a scenario where the financial burden of vehicle replacement disproportionately affects lower-income individuals, who may struggle to afford new vehicles, while large corporations reap the benefits of increased sales and reduced competition from older vehicles. In essence, the V-VMP's implementation could not only violate individual rights but also undermine the broader goal of equitable wealth distribution, raising questions about its alignment with constitutional values

Bureaucratic Challenges & Role of Regional Transport Offices (RTOs)

Further, the V-VMP introduces additional bureaucratic hurdles by granting Regional Transport Offices (RTOs) the authority to determine vehicle life extensions. This delegation of power can lead to corruption and inconsistent decision-making, as RTO officials may have varying interpretations of vehicle conditions and longevity. Such a lack of standardization could result in arbitrary decisions that undermine the policy's objectives and erode public trust in the system. Additionally, the government has imposed exorbitant reregistration fees on older vehicles, creating a financial burden on ordinary citizens and discouraging the retention of lawfully owned vehicles (Goswami: 2021).

Ignoring existing structures for quality and lifecycle testing

Moreover, the V-VMP overlooks the expertise of established car service stations, which possess the knowledge and experience necessary to accurately assess vehicle longevity. These service centers, often run by small businesses, could provide valuable insights into whether a vehicle is still roadworthy. By side-lining these experts, the policy risks making uninformed decisions that could further complicate the scrapping process. Additionally, the V-VMP may negatively impact the livelihoods of numerous small businesses engaged in repairing older vehicles. As the policy encourages the scrapping of these vehicles, repair shops may see a decline in business, leading to job losses and economic strain within local communities. The focus on scrapping rather than maintenance and repair not only threatens the sustainability of small enterprises but also neglects the

potential for a more environmentally friendly approach that emphasizes reusing and extending the life of existing vehicles.

Manufacturing Emissions v. Scrapping Benefits: Unviability of Scrapping ecosystem

Conversely, studies employing system dynamics modelling have shown that the economic viability of vehicle scrapping in India's current context is questionable without substantial government support. The complexity of the recycling process combined with the low scrap value of many vehicles renders the business model unprofitable without additional incentives. These findings underscore the significant economic challenges hindering the successful implementation of the scrapping policy (Mohan & Amit: 2020).

Economic Context

The justification for the V-VMP as a means to revive the struggling automobile industry appears misguided.[1] While the policy aims to boost car sales by offering incentives for scrapping older vehicles (Sinha: 2021), it fails to address the underlying economic factors contributing to the industry's stagnation. Research suggests that the decline in car sales is more closely linked to broader economic issues, such as the lack of well-paying jobs and the inability of consumers to afford new vehicles, rather than the presence of older vehicles on the roads. By focusing solely on the automobile sector, the V-VMP overlooks the need for comprehensive economic reforms that create more employment opportunities and increase disposable incomes.

Broader Economic Issues Affecting Car Sales

The decline in car sales is indeed more closely linked to broader economic issues rather than merely the presence of older vehicles on the roads. Various studies and analyses highlight that factors such as economic recession, lack of well-paying jobs, and consumer affordability significantly impact vehicle purchases (Lszlo : 2020). For instance, a study examining the auto sales collapse during the 2008 recession indicated that economic concerns, including rising unemployment and reduced consumer confidence, were primary drivers of the decline in auto sales (Dupor: 2019). Surveys conducted during this period revealed that a significant percentage of consumers cited economic conditions as reasons for considering it a bad time to buy a car, rather than credit issues alone. Additionally, the impact of the COVID-19 pandemic further illustrated this point, where many consumers faced financial constraints, leading to a shift

towards used cars due to the higher costs associated with new vehicles. The pandemic created a scenario where consumers were less willing to purchase new cars, as many people lost their jobs or faced reduced incomes, making it difficult to afford new vehicles. These findings suggest that addressing the underlying economic issues, such as job creation and income stability, is crucial for reviving the automobile industry and improving car sales (Sa madder & Daniel: 2022).

Environmental Costs & Gains

Moreover, the policy's emphasis on replacing older vehicles with new ones may have unintended consequences, such as increased environmental costs associated with manufacturing new cars and the potential for wealth concentration among large corporations. A more holistic approach is needed to address the automobile industry's challenges while ensuring equitable economic growth and environmental sustainability. Manufacturing vehicles is resource-intensive, consuming significant amounts of energy and raw materials, which can result in substantial environmental degradation. For instance, producing a single vehicle generates considerable CO2 emissions and requires extensive water usage, highlighting the environmental footprint of the automotive manufacturing process (Mildenberger: 2000). As the demand for new vehicles rises, the environmental impact of production may outweigh the benefits of removing older, potentially less efficient cars from the road. Moreover, the transition to electric vehicles, while beneficial in reducing emissions during operation, introduces its own environmental challenges. The production of electric vehicle batteries involves mining for materials like lithium, which can lead to ecological damage and social issues, particularly in regions where mining occurs. Additionally, policies that primarily benefit large corporations, such as automakers and scrap yards, risk exacerbating wealth concentration (Holm-Detlev: 2012). This dynamic can divert resources away from small businesses and individual consumers, necessitating a more holistic approach that balances economic growth with environmental sustainability and equitable wealth distribution. Addressing the broader challenges facing the automobile industry requires considering these multifaceted impacts rather than focusing solely on vehicle replacement.

Proposed Alternatives and Solutions

Empowering First-Time Car Buyers

Therefore, there is a need for a paradigm shift in policy to stimulate sustainable growth within the automobile industry. At the heart of the issue lies the

correlation between low car sales and the scarcity of well-paying jobs. To address this, it may be proposed that policymakers prioritize strategies that empower lower-income families to become first-time car owners. By implementing policies that increase disposable income, such as wage hikes, tax benefits, or affordable credit options, the government can enhance the purchasing power of these households. Additionally, reducing the overall cost of car ownership through measures like lower road taxes, subsidies on fuel, or incentives for public transportation integration can significantly boost car sales. Focusing on selling cars to first-time buyers rather than forcing individuals to scrap their well-functioning vehicles presents a more sustainable and consumer-friendly approach to enhancing the automotive market. Many potential car owners are deterred by high prices and limited access to financing, making it essential to create an environment conducive to their entry into the market. To enable these first-time buyers, it is crucial to ensure that wages and pay scales are competitive, allowing them to afford new vehicles without financial strain.

Retrofitting for Hybrids

Furthermore, it is suggested that a robust incentive structure be established to encourage car manufacturers to retrofit existing vehicles with hybrid or electric technology. This approach offers a dual benefit: it promotes environmental sustainability by reducing emissions and creates new employment opportunities in the manufacturing and installation sectors. By providing financial incentives, tax breaks, or government subsidies for retrofitting, the government can stimulate demand for this technology. Moreover, investing in research and development to improve the efficiency and affordability of retrofitting components can accelerate the adoption of hybrid and electric vehicles.

This dual-pronged approach, focusing on both demand-side measures to increase car ownership and supply-side incentives to promote technological advancements, can revitalize the automobile industry while contributing to a cleaner and more sustainable future. By addressing the underlying economic challenges and fostering innovation, the government can create a win-win situation for the industry, the environment, and the population at large.

Dual–Model Approach for Urban and Rural Areas

Additionally, India could benefit from a dual-model approach to vehicle scrapping. In densely populated urban centres grappling with severe pollution, older vehicles could be subjected to an additional levy for road use. This financial disincentive would encourage owners to consider newer, less polluting options.

However, these older vehicles could still find utility in rural areas where vehicular pollution is less of a concern and transportation needs are often unmet. By facilitating the migration of older vehicles from urban to rural regions, a second-hand automotive economy could emerge, offering owners a more substantial return on their vehicles compared to the current scrap value. This dual model could be particularly beneficial for a diverse country like India, where economic conditions vary significantly between urban and rural populations.

By implementing such a policy, the government can address multiple challenges simultaneously. It can improve air quality in cities, stimulate the rural economy, and provide a more equitable solution for vehicle owners. Moreover, it can encourage the formalization of the second-hand vehicle market, which is currently largely unregulated and inefficient.

Reducing Wealth gap

Further, the author emphasizes the crucial need for a comprehensive overhaul of economic policies to foster a robust job market characterized by higher wages (Chakravorti: 2024). This necessitates a deep dive into macroeconomic reforms aimed at stimulating economic growth and job creation.[2] A meticulous examination of wealth distribution within the contract-based economy is imperative to identify potential disparities and devise strategies to ensure equitable distribution. Moreover, a critical evaluation of the efficacy of fractional reserve banking in generating employment opportunities is warranted.

Over the past two decades, wealth distribution in India has witnessed significant changes, particularly in the context of economic growth. The concentration of wealth has sharply increased, with the top 1% holding 40.1% of the nation's wealth as of 2023, the highest level since 1961. This trend has been accompanied by a corresponding rise in income inequality, where the top 1% captured 22.6% of national income, marking the highest proportion in a century.[3]

The surge in wealth among a small elite, often referred to as the 'Billionaire Raj,' has raised concerns about the equitable distribution of resources. Infrastructure contracts and profits have predominantly flowed to a select group of industrialists, exacerbating the divide between the wealthy and the average citizen. Critics argue that the current economic policies favour large corporations and billionaires, side-lining the needs of the broader population, particularly the rural poor (Rajvanshi: 2024).

To address these disparities, a shift in focus is necessary. Instead of incentivizing the scrapping of functioning vehicles, efforts should be directed towards empowering first-time buyers through higher wages and job creation. This can be achieved by overhauling the market to prioritize bottom-up economics, fostering innovation, and ensuring that economic growth translates into improved living standards for all segments of society. By increasing disposable incomes and stimulating demand, policymakers can create a more inclusive economy that benefits the entire population.

Revisiting Fractional Reserve Banking System

Furthermore, a critical evaluation of the efficacy of fractional reserve banking in generating employment opportunities is warranted, especially in the context of its impact on economic growth and wealth distribution. Fractional reserve banking allows banks to lend out a significant portion of deposits, theoretically stimulating economic activity by providing capital for businesses and consumers. However, the benefits of this system have not been evenly distributed.[4]

While it can facilitate job creation and entrepreneurial ventures, the reality is that a disproportionate amount of lending often favours established businesses and wealthy individuals, leaving small businesses and lower-income individuals with limited access to credit. This dynamic can exacerbate income inequality, as those without sufficient collateral or credit history struggle to secure loans.

Moreover, the removal of reserve requirements, as seen in recent years, raises concerns about financial stability and the potential for economic bubbles. The focus on maximizing profits for banks can lead to riskier lending practices, which may not translate into sustainable job creation.

To truly harness the potential of fractional reserve banking for employment generation, a more inclusive approach is needed. This includes reforms that prioritize lending to underserved communities and support small businesses, ensuring that the benefits of economic growth are shared more broadly across society.

Specialized Financial Institutions for Start–Ups

To further catalyse economic growth and entrepreneurship, the establishment of specialized banks catering to the unique needs of start-ups is essential. These financial institutions can provide the necessary support and resources for nascent businesses to thrive, especially in a rapidly developing economy like India.

Traditional banks often base their lending decisions on the creditworthiness of individuals, requiring collateral or security for loans. However, young entrepreneurs typically lack substantial assets, relying instead on their skills, innovative ideas, and hard work. This gap in the financial ecosystem highlights the need for banks that specifically address the requirements of start-ups.

Specialized banks can offer tailored financial products and services that align with the unique challenges faced by new businesses. For instance, they can provide flexible loan structures, mentorship programs, and access to networks that can help start-ups grow. In developed countries, similar models have proven successful. For example, banks in the United States and Europe have established dedicated divisions to support start-ups, offering services like venture debt, equity financing, and tailored advisory services that help entrepreneurs navigate the complexities of starting and scaling a business.

In India, initiatives like the India Start-up Club by RBL Bank[5] and the startup cells launched by Indian Bank[6] are steps in the right direction. These institutions are designed to cater to the specific needs of start-ups, providing services such as payment gateways, credit facilities, and personalized relationship management. By fostering an environment where start-ups can access the financial resources they need without the traditional barriers, specialized banks can significantly contribute to the growth of the entrepreneurial ecosystem in India. This approach not only empowers entrepreneurs but also stimulates job creation and innovation, driving overall economic development.

Fostering a bottom–up economic model for wage growth and demand in automobile sector.

Achieving higher wages requires a comprehensive overhaul of our current market, with reforms aimed at job creation and innovation. By fostering a bottom-up economic model, we can stimulate local economies and empower consumers. Initiatives that support small businesses, vocational training, and skill development will not only create jobs but also enhance disposable incomes, leading to increased consumer spending.

Additionally, nurturing a bottom-up economic model centred on consumer demand can create a virtuous cycle of growth and job creation. By focusing on increasing disposable incomes and stimulating consumption, policymakers can drive economic activity and expand the tax base. This approach emphasizes the importance of local economies and grassroots economic activity, which are often overlooked in top-down economic models.

Rather than incentivizing the scrapping of older vehicles, policymakers should prioritize programs that make car ownership accessible for first-time buyers. This could include subsidized financing options, tax rebates, and educational programs about vehicle maintenance and ownership. By shifting the focus to empowering new buyers and creating a robust job market, we can build a more inclusive automotive industry that benefits all stakeholders.

Conclusion

Therefore, by concurrently addressing the challenges of low car sales and environmental sustainability, India can carve a path towards a thriving automobile industry that contributes meaningfully to the nation's economic prosperity. By prioritizing policies that empower first-time car buyers, promote sustainable vehicle use, and foster a robust economic environment, India can achieve a harmonious balance between industrial growth, environmental stewardship, and social equity. It is imperative to recognize that a comprehensive approach is essential for realizing the full potential of the automotive sector. By synergizing efforts to enhance economic conditions, promote sustainable practices, and expand access to car ownership, India can position itself as a global leader in the automotive industry while simultaneously improving the quality of life for its citizens.

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ARTIFICIAL INTELLIGENCE IN PRISON ADMINISTRATION: A STUDY WITH REFERENCE TO SURVEILLANCE, RISK ASSESSMENT AND REHABILITATION

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Abstract

Artificial intelligence (hereinafter AI) has transformed human society. It has been applied by humans across multiple facets of their day-to-day lives. One aspect where this inclusion has become evident in recent times is the domain of criminal justice. This is also true for prison administration, which is one of the foremost facets of the criminal justice system of any country. The inclusion of AI in prison administration can lead to a paradigm shift in surveillance activities and management because of the inherent efficiency and impartiality that AI systems possess. AI systems also have the ability to predict recidivism among prisoners, causing a better assessment of parole-related decisions. Contrarily, the use of AI for management purposes may have debilitating effects on the psychological health of the prisoners due to the absence of human interaction. Furthermore, AI can also reflect the bias within humans, and that reflection may be detrimental in the interests of justice and fairness vis-à-vis decisions made for parole. This is important because it represents repercussions regarding the basic rights of prisoners such as the rights of liberty and freedom that would be granted with parole. In this backdrop, the present paper will try to understand and analyse the use of AI in prison administration systems, by examining its positive and negative implications.

Keywords: Artificial Intelligence, Prison Administration, Parole, Recidivism, AI-Surveillance

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INTRODUCTION

The criminal justice system is on the verge of a technological revolution heralded by unfathomable developments in artificial intelligence (hereinafter AI) technology. The position of prison system administration, which forms an integral part of the criminal justice system, is no different and there have been attempts to integrate AI into prison systems for increasing the efficiency of prisons. Carolyn Mckay, one of the foremost theoreticians working on the crossroads of AI with prison systems has coined the term "carceral automation" to refer to fully automated prison systems – *"an efficient, high-tech apparatus of imprisonment.*" (Mckay, 2022)

The revolutionary changes brought forth by AI have already been integrated and assimilated into the prison systems of certain countries such as China, Hong Kong, and Singapore. The efficiency and *prima facie* impartiality of AI systems in handling administrative work, such as surveillance and patrolling, make it a viable alternative for humans in these environments. AI technology also possesses predictive capabilities that can become integral for ascertaining recidivism and risk assessment among prisoners and can contribute greatly to determining parole eligibility. Furthermore, the predictive abilities of modern AI technology can also be used for ancillary purposes such as predicting recidivism and predicting parole eligibility for inmates based on data collected. Apart from these, AI can also be used for directly and indirectly rehabilitating prisoners during their period of incarceration to enable them to integrate back into society in a better manner. These examples show the immense potential that AI possesses in the domain of prison administration.

However, not unlike other facets of technology, the use of AI in prison administration systems is not just a bed of roses for it also has its negative effects. Over-reliance on AI systems can cause the elimination of the human element from prison systems which may detrimentally affect the psychological and emotional state of inmates due to the overly mechanistic functioning of the prisons. Furthermore, AI can also reflect the bias of the programmer or the data and this becomes extremely problematic because ascertaining bias within AI systems is very difficult. Finally, there are also ethical considerations in allowing an AI to take decisions such as parole which affect the interests of liberty and freedom of individuals.

It is against this backdrop that the present paper attempts to analyse the feasibility of using AI in prison system administration and shall also attempt to understand the inherent challenges which are present herein. The first part has

given a brief introduction to the scope of the article. The second part will focus on the use of AI for surveillance purposes in prison systems across the world and highlight whether these models are feasible for adoption in the Indian context. In the third part, the article will analyse how AI can be used for predicting recidivism through risk assessment. The fourth part will attempt to underline the shortcomings and challenges of using AI in the aforementioned two contexts and how the same can be tackled and rectified. The fifth part will attempt to understand how AI can be used for rehabilitative purposes in prison systems. Finally, the sixth part will provide concluding comments to the article.

AI & PRISON SURVEILLANCE

There is a two-factor necessity for adequate surveillance in prisons where the incarceration of individuals takes place. Firstly, there is a curtailment of certain rights and liberties of the incarcerated individuals in these places, and a particular set of rules need to be followed by the inmates who inhabit these spaces. Surveillance helps to monitor whether the inmates are following the requisite rules and regulations and provides information if they are engaging in actions that are prohibited and barred. This aspect functions in the interest of the administration of these correctional spaces. Secondly, prison systems can be notorious for being blackholes of human rights where even the most basic rights which are afforded to prisoners are curtailed, especially since individuals lodged in prisons do not have the requisite degree of public sympathy and are away from the day-to-day public eye. Human rights protections become especially important in such environments, and a proper surveillance system helps to ensure that the rights of incarcerated individuals are protected. (Rogan, 2021) AI technology can be a boon for surveillance purposes from both ends of the aforementioned spectrum due to the inherent efficiency that AI systems have, and in some nations, AI-based surveillance has already been integrated and introduced in different capacities.

PRACTICES IN SOME OTHER COUNTRIES

In Singapore, a model smart person, with AI tech at its centre is being developed by the Singapore Prison Service (hereinafter SPS) to drastically reduce human intervention in the administration of prison affairs especially when prisoners are engaging in violent behaviour. (Mckay, 2022) For surveillance purposes, the following two technologies are being implemented - a) AVATAR (Advanced Video Analytics to Detect Aggression) –AVATAR, also known as the Human Behaviour Detection System, can detect when aggressive actions are taking place

through an algorithm that relies on capturing high-intensity erratic motions and interaction points between two people. (Ganesan, 2018) and b) Facial recognition cameras in the prisoner's cells can do automated muster checks on the prisoners. Cameras are present inside the cells of the prisoners and they identify if the prisoner is present through routine facial recognition algorithm, and in case of discrepancies, alert an officer to do a manual check on the presence of the prisoner. (Lee, 2018). In Malaysia, there have been attempts to rely on AI for analysing CCTV surveillance footage to have a pre-emptive prediction of the fight-or-flight behaviour of the inmates. (Stiernstedt, 2020). In South Korea, a different approach has been undertaken. Herein, there was an attempt to reduce *"correctional staff"* in prison systems by introducing AI-powered robotic staff for performing surveillance and patrolling duties. 'Robot wardens' have been fitted with three-dimensional cameras, and equipped with sensors and algorithms that can identify behaviour that is irregular were employed. These 'wardens' are collectively supervised by a human prison officer, and they autonomously patrol the premises of the prisons on behalf of their human counterparts. (Mckay, 2022)

There has also been the use of AI in Altcourse prison in Liverpool, United Kingdom, to monitor CCTV footage for detecting smuggled contraband, including both drugs and weapons, from getting into the prison. (McGoogan, 2016) Similarly, in Australia, there have also been experimentations with AI-based solutions where traditional CCTV models are combined with AI technology and smart sensors in cases of probation and home detention. (Stiernstedt, 2020) Furthermore, the data collected from such spaces can be used to refine the system and improve the 'learning' abilities of the AI.

There was also an attempt introduce AI in prison administration in USA in the year 2021 at the federal level. It was argued that the prisons in the country could become more advanced technologically, if AI was used for surveillance, and following this, a House of Representatives Panel also pressed for a report studying the viability of AI in American prison systems. (Asher-Schapiro, 2021) At the provincial level though, there have already been some developments in the use of AI for surveillance purposes in the state jurisdictions of Alabama and New York. Here, the prison administration has been relying upon AI-powered speech recognition and semantic analysis through machine learning models for mass-monitoring of the phone calls that inmates take. This information is then analysed to detect incidents about the world outside the prison such as threats being issued, plans being made for the commission of offences, to incidents affecting the prison itself, such as plans being made for smuggling drugs or other

illegal substances into the prisons. (Steene, 2021) From a legal standpoint, the monitoring done by the prison administration of the correspondence that the prisoners engage in is not inherently illegal since the American judiciary has allowed it.

AI IN INDIAN PRISON ADMINISTRATION

India is also experimenting with using AI for surveillance purposes, albeit these developments are at a very rudimentary pilot project stage. In the national capital of Delhi, there are three major prison complexes - Tihar, Rohini complex, and the Mandoli complex, that collectively house around 13,000 inmates. AI-empowered surveillance is being implemented in each of these three prisons to cover blind spots and bolster the existing security measures. Although this is a pilot project (Tewari, 2023), the results of this transition can have far-reaching consequences for prison administration as a whole. Furthermore, another interesting application has been the use of AI-powered mobile jammers for dealing with illegally smuggled mobile phones into the campuses of these jails. Earlier attempts to use traditional jammers were met with opposition from nearby residential areas whose networks also got affected, however, with the use of AI-powered jammers, the effects will only apply within the prison compounds, thereby making it a feasible solution for the prison administration. (Swaminathan, 2023) These advancements are appreciable; however, India is still lagging in the implementation of the latest technology, specifically AI technology, in prisons. The experience from foreign nations shows some of the capabilities of AI vis-à-vis surveillance and monitoring of prisoners and that information and experience can be adopted in the Indian legal system as well. However, India is still lagging behind in AI for this purpose. Furthermore, the legal regulations of data privacy and personal privacy, along with other legal considerations in the Indian legal system, also need to be adhered to, before the requisite incorporation of AI can be done.

AI AS A PREDICTOR OF RISK ASSESSMENT AND RECIDIVISM

The term recidivism is a derivation of the Latin term *"recidivus"* which means *"falling back"* and it refers to the propensity of a criminal to commit offenses after having previously been adjudged guilty for the commission of an offense. It highlights the reoffending characteristics of an individual who engages in repeated criminal behavior and such a person is often colloquially known as a habitual offender or career offender. (Marelie Shoeman, 2010) The concept can also be defined broadly as *"reengaging in criminal behaviour after receiving*

a sanction or intervention" (Wong, 2022) and although the concept prima facie appears to be overwhelmingly simple, it has nevertheless been described as "*vexingly complicated.*" (Weisberg, 2014) Criminogenic needs have often been associated with recidivism and the presence or absence of certain criminogenic traits, such as criminal rationalization, criminal entitlement, and psychopathy are important criteria in predicting whether the criminal offender will exhibit recidivism at subsequent points of his life. (Teotia, 2023) Against this backdrop, criminogenic risk assessment can be a viable solution. Criminogenic risk assessment can be defined as the "*use of statistical methods to predict an individual's legal system outcomes and categorize them accordingly, purportedly to manage carceral populations through efficient and effective allocation of supervision resources and, ideally, to reduce individuals' risk through appropriate rehabilitative and social services*" (Reich, 2021) In this context, it becomes important to go for a multi-faceted analysis by referring to relevant data before ascertaining whether a person eligible for parole should be bestowed parole or not.

The power to make decisions regarding this generally befalls a human who relies upon both instinct and data to make a risk assessment analysis about the offender and based on that decision circumstances such as whether the inmate would be granted parole or furlough or whether there would be a reduction in the inmate's sentencing are decided. The advent of smart prisons is inherently connected to datafication where data is used by intelligent entities for making decisions on behalf of their human counterparts, and this also includes predicting recidivism through risk assessment. (Mckay, 2022) According to one author (Hannah-Moffat, 2012) re-offending is calculable today, and therefore, if calculable, it is very much within the capacity of AI to fulfil. Risk assessment studies are routine aspects of the criminal justice system and are an important parameter in multiple stages of the criminal justice process, such as whether to grant bail or not; is the inmate eligible for parole etc. The evaluation of risk assessment among inmates and even accused is today supplemented and complemented by a host of "*actuarial, algorithmic, machine learning and AI tools that purport to provide accurate predictive capabilities and objective and consistent assessments of risk.*" Risk assessment can also be a fundamentally important concept within the prison system because it can help in the classification of inmates by identifying their criminogenic needs during offender management. (McKay, 2019)

Algorithmic risk assessment today has become an integral part of the criminal justice system. Regarding recidivism, the primary strength that AI possesses over its human counterparts is its ability to go through and calculate

large swathes of existing data. For example, some researchers at the Research Triangle Institute are attempting to formulate an algorithm capable of predicting recidivism. The AI algorithm would go through over 3,40,000 warrant records and this will be used to create patterns called decision trees, following which an analysis will be done to determine the duration of calculable time till the next event of interest, which in this scenario is reoffending. (Rigano, 2018) In another example, the Correctional Offender Management Profiling for Alternative Sanctions (hereinafter COMPAS), which is one of the foremost AI tools being used by the American criminal justice system, was used to predict recidivism in a study. In this study, 42.1%, 25.3% & 11.3% of the offenders that it predicted as having a high risk, medium risk, and low risk to recidivism, respectively, recidivated within the first six months of release. When analyzed over one year, these numbers increased to 61.0%, 38.4%, and 18.1% respectively. (Validation of the COMPAS Risk Assessment Classification, 2010)

The aforementioned examples are indicative of the ability of AI to successfully do risk assessment and predict recidivism. Nonetheless, the decisions taken by AI are often plagued with opacity and this also makes such information inscrutable and incontestable. (Hildebrandt, 2018) This can create a problem when weighed against the tenets of fairness and natural justice. This is a major challenge of relying upon AI for making decisions affecting the liberty and freedom of humans.

Finally, in the Indian system, AI has not been adopted for risk assessment purposes in any capacity. This is since India has some of the highest statistics of pending cases anywhere in the world. Data from the National Judicial Data Grid shows that at present 17.4 lakh criminal cases are pending in the High Courts across the country, (National Judicial Data Grid High Courts of India, 2023) while more than 17 thousand criminal cases are pending in the Supreme Court of India. (National Judicial Data Grid Supreme Court of India , 2023) According to another study, India's prison statistics from the year 2019 show that 4,78,600 prisoners are accommodated in 350 prisons across the country, displaying an average occupancy rate of 11.85% which is more than the mandated capacity of the prisons. Furthermore, in some states, the situation is even more dire. For example, in Delhi, Uttar Pradesh, and Uttarakhand, during the same period, the average occupancy was a whopping 174.9%, 167.9% and 159% respectively. (Sahni, 2021) These pending backlogs as well as the abysmal condition of overcrowding available in prisons can undoubtedly be reduced if one relies on AI tools for risk assessment purposes. Finally, recidivism isn't a big issue in India, since the rates have seen a constant reduction, from 8.1% in 2015 to 4.7% in

2020. (Jayanti, 2023) Therefore, although the AI tools for risk assessment and recidivism analysis may not have much use in the Indian context, they can nonetheless become instrumental in other facets.

CHALLENGES OF USING AI IN PRISON ENVIRONMENTS

It would not be wrong to argue that the present degree of reliance upon AI merely scratches the surface of what is possible in the domain of prison system surveillance. This is primarily because of the nascent stage at which the technology is and also on account of the unwillingness of the State to rely greatly upon it due to considerations of fairness and justice that they may feel AI may not be able to adhere to a degree that the humans today can. This means that the examples highlighted previously only highlight the most basic capacities of AI systems. A perfect scenario for the use of AI would be a system wherein there is a complete elimination of human intervention from the day-to-day management of prison administration. However, a fully automated prison system, which is devoid of any need for the prison administrator to have any direct contact with the prison inmates due to the advanced nature of the AI governing the administrative and surveillance apparatus of the prison, is not without its demerits.

These two concerns represent the primary issues vis-à-vis the use of AI for surveillance and administrative purposes in prisons. Regarding the first issue of AI being discriminatory in its applicability on account of the inherent bias of the data set that it used to learn, the foremost solution would be to find a way to ascertain whether the actions of the AI are biased in any way. This can be determined through greater transparency that explains the functioning of the AI and how it reaches particular conclusions. These conclusions can range issues ranging from something as mundane as flagging someone for violating the rules and regulations of the prison through information obtained via CCTV cameras to something as profound as accepting or rejecting parole applications, an action which has far-reaching consequences vis-à-vis the liberty and freedom of the incarcerated individual. One solution in this regard would be to compel the creators of the AI systems to divulge and disclose the parameters that they have used for programming the AI and the indices that the AI will rely upon in formulating certain conclusive decisions. The American judiciary took a decision four decades ago in the case of the *Motor Vehicle Manufacturers Association* that the manufacturing companies must provide basic details on how automated systems within their cars generally operate and what their purpose is. (Motor Vehicle Manufacturers Association v. State Farm Insurance Co, 1983) Although the decision was given concerning comparatively rudimentary automated

systems in vehicles, the principles of transparency remain the same. Therefore, it would not be far-fetched to assume that a similar law may be applied concerning the creators of AI systems as well to ensure that they can demonstrate the functioning of the AI and provide an insight into how the program functions. Ultimately, if there is any bias detected within the AI's actions, which would inevitably be the result of some error or discrimination in human input, it would nonetheless be something that can be rectified through further programming changes, thereby correcting the problems and streamlining the system to be more just. (Iverson, 2022)

Regarding the second issue, two problems may arise -Firstly, the removal of a human element would inevitably lead to an erosion of humanistic equity from prison operations. Artificial intelligence entities are governed by a mechanistic framework of logical reasoning rooted in data. This data and the algorithms that govern their analysis are the parameters that govern the functioning of the AI. This however implies that the AI is unable to perceive subtle differences in scenarios that the human conscience would have been able to successfully interpret. This is also true in cases where the AI is tasked with ascertaining recidivism through criminogenic data. There have been studies where scholars have shown that the present AI systems can't interpret information such as the temperament of an individual or the body language being exhibited by the individual. It would also be unable to assess remorsefulness in an offender. This information is easily evaluated and assessed by human elements. (Watney, 2018) Nevertheless, this also allows for more consistent decision-making, and subjective elements are discarded in favour of more objective parameters, notwithstanding the value that the subjective parameters may or may not have on the final result. Another issue is that although AI systems can provide exponentially more efficiency and accuracy than their human counterparts, they are generally unable to *"develop an expertise on intuition and informal exchanges of intelligence*" (Gavin J.D. Smith, 2017) and since the incarcerated prisoners are highlight skilled at manipulation, they may use a systemic apparatus based on objectivity to their advantage. (Iverson, 2022)

Secondly, the removal of humans from the equation would also have severe psychological and psychosocial effects. The implication of isolationist practices in supermax prisons on the psychological and mental well-being of prisoners has been studied in academia and also has been addressed by the judiciary. Supermax prisons are an important marker because, unlike traditional isolationist practices where the isolation from solitary confinement is for brief periods, supermax prisons can isolate individuals from regular human contact for years on end.

(Haney, 2003) Effective solitary confinement can have a debilitating effect on the psychological well-being of the inmate, and if made the norm by fully automated '*Carceral Automation*' prisons, the repercussions will be very severe. Thankfully, a future where the entire prison system is run wholly by AI without any intervention by human elements seems to be a reality of a distant future.

Finally, the use of AI for monitoring and surveillance can lead to datafication of the prisoner's information wherein the AI systems can collect the day-to-day data of the individuals being monitored. The harvesting of data from prisoners, including "*biometrics, emotional and behavioural patterns, mental health, vocal prints, real-time activities, and movements; basically, surveillance of every micro aspect of a prisoner's quotidian existence*" (Mckay, 2022) can lead to serious infringement of rights. One author has argued that the "*ruthless efficiency*" of AI which produces "*objectively good outcomes for individuals and society*" by collecting data can make it hard for people to argue for a restriction of these systems (Iverson, 2022) however this is little consolation if one takes a legalistic perspective where rights are concrete notwithstanding whether they belong to someone inside or outside the prison. Therefore, a proper legislative framework which highlights the extent of information which can be collected by AI systems during surveillance and which information belongs in the realm of personal privacy of the incarcerated individual needs to be properly outlined.

AI FOR REHABILITATION IN PRISON SYSTEMS

Rehabilitation during incarceration is important for the reintegration of the prisoner into society after release. In the absence of a proper rehabilitative environment, the prisoners become prone to committing offences repeatedly, leading to increased rates of recidivism. Correctional rehabilitation is also comparatively more humane, moral and ethical than punitive correction which is merely aimed at inflicting pain on the offender (Cullen, 2017) According to one study conducted in the USA, around 66% of ex-convicts get rearrested within the first three years of their release and 75% within five years. Even among the percentage that gets rearrested within five years, 36.8% are again arrested within the first six months. (Loukas Balafoutas Aurora García-Gallego, 2020) This makes rehabilitation an important aspect of the prison system because, in the absence of proper rehabilitation of the incarcerated inmate, there are risks that recidivism may take place, which will ultimately bring the individual back into the prison system instead of becoming a contributing members of society. AI can be used for some rehabilitative process

One way in which the rehabilitative process can be bolstered is through the

selection of prisoner cells. The presence or absence of certain traits influences the decision-making process of the prison administration in the allocation of cells for the prisoners. Considerations such as whether the prisoners are from the same or similar backgrounds from a sociological perspective or whether they have committed the same crime or similar crimes become paramount in ascertaining the allocation of cells to prisoners. In effect, a proper allocation ensures that there is an opportunity for reform among the prisoners. Nevertheless, to date, the allocation of prison cells has been based solely on human feeling, and without any truly scientific algorithm which can be verified through tests of reliability and validity to produce corroborative results. In this vein, researchers have argued that the applicability of certain algorithmic theories, and through reliance upon artificial intelligence, there can be a proper allocation of prison cells for the inmates through a scientific categorization. (ShuFang Wu, 2012) People who exhibit certain traits can be grouped wherein a shared camaraderie can develop (Iverson, 2022) which can help ultimately in the rehabilitative process.

AI systems can also function as companions for inmates who are condemned to confinement where their interactions with humans are limited or non-existent. There have been discussions on the viability of using AI systems to act as "*confinement companions*" for the prisoners, where they interact with the prisoners in a manner akin to how smart companions such as Alexa and Siri indulge in communication since such companionship may be used for alleviating the psychological stress of confinement. However, conversely, there also exists the risk that the legitimization of such companions can lead to a legitimization of solitary confinement systems, especially in a pattern similar to the aforementioned supermax prisons, and in the long run these could have debilitating negative effects on the psychological well-being of the inmates. (Završnik, 2020) Therefore, although the use of AI assistants in this manner can be a "*surface level*" solution to the problem, it may open a Pandora's Box of possibilities vis-à-vis the legitimacy of solitary confinement which may cause more harm than good. Therefore, it is necessary that before undertaking such a policy initiative, appropriate studies be undertaken.

CONCLUSION

AI technology is developing at a rapid rate and its integration into the prison administration system is nothing more than an inevitable reality. The degree of integration will depend on the technological capabilities of the legal system concerned and also on the degree and direction of evolution that the respective

States desire for their prisons to undergo. In the present scenario, AI is being introduced and integrated into the prison systems of different countries at varying capacities, however, humans are still the driving elements of these AI systems and the final decision-makers. Furthermore, AI is today confined to surveillance and risk assessment only, with some attempts also being made to rely upon AI to assist in the rehabilitative process of prisoners. These developments are remarkable and appreciable since AI brings along with it a certain air of objectivity and efficiency that their human counterparts cannot replicate.

However, today's AI is not free from issues. The use of corrupted data that reflects discriminatory biases, the inherent discrimination of the programmers and the opacity present in AI systems can make it difficult to completely rely on AI in matters which are related to the liberty and freedom of individuals. There also exist ethical and moral concerns in allowing an AI to dictate whether a human's rights of liberty and freedom are to be curtailed. All these issues imply that a cooperative model, where humans remain the final decision makers, but where their actions are tasks are supplemented by AI, at least during the menial tasks of administration, can be the most effective model today. Undoubtedly, over time, and with ample development, AI can take a more normative role in prison system administration, nonetheless, in the present context, the primary role played by AI will be a supplementary one.

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MONETARY COMPENSATION IN TORT LAW: ISSUES OF ADEQUACY AND JUSTICE

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Abstract

Tort law is fundamentally aimed at compensating victims for losses they suffer due to the wrongful actions of others. Historically, monetary compensation has served as the primary mechanism for compensating harm, be it personal injury, property damage, or economic loss. However, the adequacy of monetary compensation in achieving justice is increasingly being questioned. This also sermon reconnoitres the issues surrounding the adequacy of monetary awards in tort law and examines whether they serve justice beyond mere economic restitution. By snooping into principles of fairness, human suffering, and socio-economic inequalities, this article posits that the current framework for monetary compensation in tort cases is insufficient and calls for a rethinking of how justice can be achieved for victims.

Keywords: Adequacy, Restorative Justice, Fairness and Equity, Corrective Justice, Monetary Compensation, Tort Law.

INTRODUCTION

Tort law stands as a cornerstone of civil justice, designed to address harm caused by wrongful acts, whether through negligence, intentional wrongdoing, or strict liability. At its core, tort law seeks to provide compensation to those who have suffered losses, with the primary remedy being monetary damages. These damages are intended to restore victims to their pre-harm condition, a principle rooted in the idea of "restitutio in integrum" to make whole again. In practice, this means compensating victims for a wide range of losses, from medical

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expenses and property damage to intangible harms such as emotional distress and pain and suffering. Yet, despite the centrality of monetary compensation, the adequacy of this remedy in achieving true justice has come under increasing scrutiny. Can money alone truly make someone whole after the loss of a loved one, the trauma of a life-altering injury, or the enduring emotional impact of an assault? More broadly, does the current system of compensating harm adequately address the underlying inequities that often shape how and to whom justice is delivered? These questions strike at the heart of a growing critique of the traditional approach to tort compensation.

For all its simplicity and apparent fairness, the reliance on financial remedies to rectify harm raises profound concerns about the extent to which the law can-and should-seek to monetise human suffering. Besides, the uniform application of monetary compensation often masks significant disparities, particularly when considering the socio-economic context in which harm occurs. A wealthier plaintiff may more easily secure higher damages, while those from marginalised communities may receive compensation that inadequately reflects the full scope of their loss. As tort law continues to evolve in response to the complexities of modern society, it is essential to reassess whether the current reliance on monetary compensation serves the broader goal of justice. By engaging with the limitations of financial remedies and exploring more holistic forms of redress, this article seeks to contribute to a broader rethinking of how tort law can better serve victims, rectify harm, and uphold principles of fairness and equity.

THE THEORETICAL FOUNDATIONS OF COMPENSATION IN TORT LAW

Compensation in tort law is rooted in centuries-old legal and philosophical principles, aimed at addressing the consequences of harm caused by wrongful actions. The core idea is that victims should be compensated for losses they suffer due to another's wrongful conduct, thereby restoring a sense of balance and fairness. However, the theoretical underpinnings of compensation are more complex than they appear at first glance, encompassing different schools of thought that attempt to explain how and why compensation should be awarded. Two primary theories-corrective justice and distributive justice-have long guided the development of tort law, each offering distinct perspectives on the goals of compensation and the role of the legal system in delivering justice.

Corrective Justice: Restoring the Balance

The theory of corrective justice, rooted in the works of Aristotle and later expanded by legal scholars such as Ernest Weinrib, emphasises the individual

relationship between the wrongdoer and the victim. Under this view, tort law functions as a mechanism to correct an imbalance caused by the wrongful act. When someone suffers harm, corrective justice requires the wrongdoer to restore the victim to their pre-harm position. This typically takes the form of monetary compensation, which is viewed as a way to neutralise the injustice and re-establish equality between the parties. Corrective justice is inherently backward-looking, focused on rectifying the specific harm that has occurred. It treats compensation as a moral obligation owed by the tortfeasor to the victim, based on the wrongfulness of the act itself. This theory resonates with intuitive notions of fairness: if one person wrongfully causes harm to another, they should make amends by compensating for that harm. However, as noted earlier, this approach has limitations, particularly when it comes to non-economic losses like emotional suffering, where monetary compensation cannot fully repair the damage. Despite its limitations, corrective justice provides a clear and morally grounded framework for understanding compensation in tort law. It reinforces the notion that the wrongdoer is responsible for addressing the consequences of their actions, and it provides a justification for the legal system's role in imposing liability.

Distributive Justice: Broader Inequalities

While corrective justice focuses on individual wrongs, distributive justice shifts the focus to broader societal considerations. Distributive justice, influenced by thinkers like John Rawls, is concerned with the fair allocation of resources and benefits across society. In the context of tort law, it raises important questions about whether the legal system should aim not only to correct individual wrongs but also to address systemic inequalities that may affect how compensation is distributed. Distributive justice challenges the assumption that monetary compensation alone can deliver justice in a meaningful way, particularly in cases where socio-economic disparities come into play. For instance, a wealthy individual may suffer the same physical injury as someone from a marginalised community, but their ability to recover and move on from the harm may differ dramatically due to their pre-existing social and economic advantages. Distributive justice asks whether tort law should account for these disparities when awarding compensation, recognising that different people may experience harm in different ways. This theory introduces a forward-looking dimension to compensation in tort law, focusing on the future well-being of both the victim and society as a whole. It suggests that tort law should not only compensate victims but also contribute to a more equitable distribution of resources and opportunities. By doing so, distributive justice offers a broader vision of fairness,

one that extends beyond the immediate parties involved in the dispute.

The Tension Between Corrective and Distributive Justice

The tension between corrective and distributive justice reflects a deeper philosophical debate about the purpose of tort law. Corrective justice seeks to restore balance between the parties, treating each case in isolation from broader societal concerns. In contrast, distributive justice invites the legal system to consider how tort law affects the overall distribution of wealth, power, and opportunity in society. This raises complex questions about whether tort law should remain focused on individual redress or whether it should play a role in addressing social inequalities. In practice, tort law often navigates this tension by borrowing elements from both theories. For instance, courts may use corrective justice principles to determine liability and compensatory damages, while considering distributive justice concerns when awarding punitive damages or implementing caps on non-economic damages. This blending of theories reflects the evolving nature of tort law and its ongoing effort to balance the need for individual justice with the desire for a fairer, more equitable society.

Evolving Approaches to Compensation

The theoretical foundations of compensation in tort law provide valuable insights into the legal system's approach to redressing harm. Corrective justice emphasises the moral obligation to restore balance between the victim and the wrongdoer, while distributive justice challenges the legal system to consider broader societal inequalities when awarding compensation. Both theories offer important perspectives on the role of tort law in achieving justice, but they also highlight the limitations of relying solely on monetary compensation to address the full spectrum of human harm. As tort law continues to evolve, there is growing recognition that a more holistic approach to compensation may be necessary-one that incorporates not only financial remedies but also non-monetary forms of redress, such as apologies and restorative justice. By embracing a more comprehensive vision of compensation, tort law can better align with its foundational principles of fairness, equity, and justice, ensuring that victims receive remedies that reflect the full scope of their losses and experiences.

MONETARY COMPENSATION IN TORT LAW: CURRENT ISSUES AND CHALLENGES

Monetary compensation serves as the primary remedy for victims in tort law,

aiming to address the harm inflicted by wrongful acts. While the intention behind this mechanism is to restore victims to their pre-injury condition, the complexities of human suffering and the realities of socio-economic disparities raise significant questions about the adequacy and fairness of such compensation. This section explores the current issues and challenges associated with monetary compensation in tort law, highlighting the limitations of financial remedies and the implications for achieving true justice for victims.

Inadequacy of Monetary Compensation for Non–Economic Losses

One of the most significant challenges with monetary compensation is its inability to adequately address non-economic losses, such as pain and suffering, emotional distress, and loss of enjoyment of life. These forms of harm, which often have profound impacts on victims' quality of life, are inherently difficult to quantify in monetary terms. While courts and legal systems have developed various methods for calculating damages-such as using multipliers or per diem approaches-these formulas often fail to capture the nuanced and deeply personal nature of non-economic injuries. For instance, a victim of a severe car accident may experience chronic pain and psychological trauma that cannot be fully reflected in a dollar amount. The financial compensation awarded may help cover medical expenses or lost wages, but it cannot restore the victim's lost sense of well-being or the emotional toll of their suffering. Consequently, many victims report feelings of dissatisfaction with their compensation, as it falls short of addressing the full scope of their experience.

Disparities in Compensation Based on Socio–Economic Factors

Monetary compensation in tort law also raises concerns regarding the disparities in awards based on socio-economic factors. The legal system's reliance on financial compensation can inadvertently perpetuate existing inequalities, as individuals from different socio-economic backgrounds may experience varying levels of access to legal representation, resources, and support. For example, a wealthy plaintiff may secure higher compensation due to their ability to present compelling evidence of loss, while a lower-income plaintiff may struggle to demonstrate the same level of impact despite experiencing similar harm. Likewise, the perception of worth assigned to victims can influence the outcomes of cases. This disparity not only undermines the principles of fairness

and equity but also raises ethical questions about the distribution of justice.

Challenges in Determining Causation and Liability

Establishing causation and liability is a fundamental aspect of tort law, yet it presents significant challenges that can impact the adequacy of monetary compensation. In many cases, the relationship between the tortious act and the resulting harm is complex and multifaceted, involving various factors that may complicate the determination of liability. For instance, in medical malpractice cases, it can be challenging to prove that a healthcare provider's negligence directly caused a patient's injury, particularly when multiple factors contribute to the patient's condition. These challenges can result in protracted litigation, with victims facing delays in obtaining compensation while navigating a convoluted legal process. The difficulty in proving causation not only affects the outcomes of individual cases but also contributes to a broader sense of injustice among victims who may feel that the system fails to recognise their suffering.

The Impact of Legislative Reforms and Tort Reforms

In recent years, various jurisdictions have implemented legislative reforms aimed at addressing perceived issues within the tort system, including caps on non-economic damages and modifications to liability standards. While these reforms may be intended to promote fairness and reduce litigation costs, they can also have unintended consequences for victims seeking adequate compensation. Caps on damages, for example, can significantly limit the recovery available for victims of severe injuries or those experiencing profound non-economic losses. Such restrictions may disproportionately affect those who rely on tort compensation as a primary means of support, ultimately undermining the fundamental goals of tort law to achieve justice and rectify harm. Similarly, changes to liability standards can create barriers to recovery, further complicating the process of obtaining fair compensation.

The Need for Alternative Forms of Redress

Given the limitations of monetary compensation, there is a growing recognition of the need for alternative forms of redress that can better address the complexities of human suffering. Approaches such as restorative justice and non-monetary remedies offer potential pathways to achieving justice that go beyond financial restitution. Restorative justice, for instance, emphasises healing and reconciliation between the victim and the wrongdoer, allowing for meaningful dialogue and acknowledgment of harm. This approach can provide victims with

a sense of closure and empowerment that monetary compensation may fail to deliver. As well, integrating non-monetary remedies, such as public apologies or community service by the wrongdoer, can enhance the restorative process and contribute to a more holistic approach to justice.

THE ADEQUACY OF MONETARY COMPENSATION IN ACHIEVING JUSTICE

Monetary compensation has long been regarded as the primary mechanism for addressing harm in tort law, operating under the assumption that financial awards can effectively restore victims to their pre-injury conditions. However, this being contends that the adequacy of monetary compensation in achieving true justice remains highly contested. Various dimensions of human suffering and the complexities of individual circumstances raise significant questions about whether financial remuneration can genuinely fulfil the aims of justice.

Conceptualising Justice in Tort Law

To evaluate the adequacy of monetary compensation, it is essential first to conceptualise what justice means in the context of tort law. Justice can be understood through multiple lenses, including corrective justice, distributive justice, and restorative justice. Corrective justice focuses on rectifying the imbalance created by a wrongful act, wherein the wrongdoer is obliged to compensate the victim. Distributive justice, on the other hand, emphasises the equitable allocation of resources and benefits in society, while restorative justice seeks to heal the relationships between the victim and the wrongdoer through acknowledgment, dialogue, and reconciliation. These frameworks provide different perspectives on how justice can be achieved within the tort system. While monetary compensation aligns with the principles of corrective justice by providing a remedy for harm, it often falls short in addressing the broader aims of distributive and restorative justice, particularly in cases involving emotional distress, societal disparities, or complex interpersonal dynamics.

The Limitations of Financial Remedies

One of the primary criticisms of monetary compensation is its inherent limitation in addressing non-economic losses. Victims often experience psychological pain, emotional trauma, and a diminished quality of life as a result of tortious conduct. However, quantifying these non-economic harms in monetary terms is fraught with challenges. Courts may employ various methodologies to calculate damages, yet the resulting financial awards frequently fail to encapsulate the depth

of human suffering. For instance, in personal injury cases, while a monetary award may cover medical expenses and lost wages, it cannot adequately reflect the enduring impact of chronic pain or emotional distress. Victims may find themselves disillusioned when confronted with the stark reality that financial compensation cannot fully restore their sense of normalcy or emotional well-being. This inadequacy raises critical questions about the extent to which the legal system can truly deliver justice through monetary means.

Socio–Economic Disparities and Their Impact on Justice

The adequacy of monetary compensation is further complicated by socio-economic disparities that affect both the perception of justice and the actual outcomes for victims. Financial compensation can inadvertently reinforce existing inequalities, particularly when the capacity to secure higher awards is influenced by a victim's socio-economic status. Wealthier individuals may have better access to legal resources, expert witnesses, and support systems, enabling them to present more compelling cases. Conversely, marginalised communities may struggle to navigate the legal system effectively, resulting in lower compensation amounts that do not adequately reflect their experiences of harm. This disparity not only raises ethical concerns regarding the fairness of the legal system but also challenges the notion that monetary compensation serves as an equalising force in society. When victims from different backgrounds receive disproportionate compensation for similar harms, it undermines the integrity of the tort system and perpetuates a cycle of injustice.

The Role of Insurance in Shaping Compensation Outcomes

Insurance plays a pivotal role in the landscape of tort compensation, significantly influencing the adequacy of monetary remedies. The presence of insurance companies can alter the dynamics of liability and settlement negotiations, often prioritising economic efficiency over equitable justice for victims. Insurers may seek to minimise payouts by pressuring victims to accept settlements that fall short of covering the full extent of their losses. This can lead to situations where victims, particularly those lacking resources, feel compelled to accept inadequate compensation rather than pursue protracted legal battles. Likewise, the tendency for cases to settle before trial can result in a lack of transparency in the tort system, obscuring the true nature of compensation outcomes. Victims may be left with a sense of dissatisfaction, questioning whether their compensation adequately reflects the harm they endured. This perception of injustice can further erode trust in the legal system and its ability to deliver meaningful remedies.

Alternative Approaches to Achieving Justice

Given the limitations of monetary compensation, there is growing recognition of the need for alternative approaches to achieve justice in tort law. Restorative justice accentuates healing and reconciliation, allowing victims to engage with wrongdoers in meaningful dialogue that fosters mutual understanding. This approach prioritises emotional and relational aspects of harm, aiming to restore victims' dignity and agency beyond mere financial restitution. Non-monetary remedies, such as public apologies or community service, offer forms of acknowledgment that financial compensation cannot provide. While financial remedies address economic losses, they often fail to capture the full scope of human suffering, particularly in cases of non-economic harm and socio-economic disparities. As the legal landscape evolves, a more significant understanding of justice is required-one that includes alternative forms of redress focusing on healing, dignity, and equity. Rethinking compensation can create a more just and humane legal system that better serves the needs of victims and acknowledges the complications of their experiences.

INADEQUACY OF MONETARY COMPENSATION IN COMPLEX CASES

Monetary compensation has long been the cornerstone of tort law, functioning as the primary remedy for various forms of harm. However, the inadequacy of financial awards becomes particularly pronounced in complex cases, where the nature of the harm-whether environmental, reputational, or tied to the loss of life-defies simple monetary assessment. This composition explores three distinct contexts-environmental torts, defamation claims, and wrongful death cases-highlighting the limitations of monetary compensation and the potential for alternative remedies.

Environmental Torts and Public Nuisance Claims

Environmental torts, particularly public nuisance claims, highlight the inadequacies of monetary compensation in addressing harm. Environmental degradation often impacts entire communities and future generations, making it difficult for financial awards to reflect the true value of ecological harm. Courts have recognised this limitation and increasingly use non-monetary remedies, such as injunctions, to halt harmful activities and mandate remediation, which are more effective than mere compensation. As well, proving causation in environmental torts often requires extensive scientific evidence, creating challenges for victims. As a result, financial compensation alone is insufficient

to fully remedy environmental damage. A more holistic approach that includes restorative practices, community involvement, and ecological restoration better addresses the complexities of environmental harm. By focusing on restoration, the legal system can better serve affected communities and promote sustainable environmental health.

Defamation and Reputational Harm

Defamation cases reveal the limitations of monetary compensation in fully addressing the harm suffered by victims. Damage to reputation often extends beyond financial loss, impacting personal relationships, career prospects, and quality of life. Financial awards cannot fully restore an individual's standing, as seen in high-profile cases like New York Times Co. v. Sullivan, which highlighted the difficulty of obtaining meaningful compensation, especially for public figures. Monetary damages often serve as a superficial remedy, leaving the deeper impact on reputation unresolved. Restorative justice, offering dialogue and acknowledgment of harm, can provide a more meaningful resolution. Through reparative actions like public apologies or retractions, victims can reclaim dignity and rebuild their reputations. This approach, focused on accountability and healing, addresses the root causes of reputational harm more effectively than financial compensation alone.

Loss of Life and Wrongful Death Claims

The inadequacy of monetary compensation is most evident in wrongful death claims, where no financial award can truly compensate for the emotional and psychological impact of losing a loved one. While wrongful death statutes provide for economic losses like lost wages and funeral costs, they fail to address the profound grief and suffering of surviving family members. Assigning a monetary value to human life raises ethical concerns, as it risks reducing personal relationships and individuality to financial terms. The emotional toll of loss is often worsened by the legal process, which prioritizes financial compensation over emotional healing. Recognising these limitations, there is a growing call for a more compassionate approach. Non-monetary remedies, such as grief counselling, community support, and memorial initiatives, can offer survivors the emotional support and acknowledgment they need. By focusing on healing rather than financial restitution, the legal system can better honour the memory of the deceased and support grieving families.

CONCLUSION

The challenges of monetary compensation in tort law highlight the urgent need to reevaluate how justice is delivered to victims. While financial remedies have been the primary means of achieving justice, they often inadequately address non-economic losses, socio-economic disparities, and the complexities of individual suffering. Victims frequently experience a sense of ongoing loss or dissatisfaction despite receiving compensation, underscoring the limitations of relying solely on financial awards. A more comprehensive approach to compensation must recognise the multifaceted nature of harm by integrating non-monetary forms of redress, such as restorative justice practices. These approaches foster meaningful dialogue between victims and wrongdoers, promoting acknowledgment of harm and healing, while also providing victims with greater agency. Discoursing socio-economic disparities is essential for ensuring equitable compensation. Legal reforms that enhance access to justice for marginalised communities and ensure that compensation reflects the severity of harm are crucial for levelling the playing field. A focus on distributive justice principles can inform policies that promote fair resource allocation within the legal system. Ultimately, achieving true justice in tort law requires a fundamental rethinking of compensation. By combining monetary remedies with non-monetary options, the legal system can better address the complexities of human suffering and provide victims with the support they need. As tort law evolves, it must remain responsive to the diverse needs of victims, ensuring that justice reflects humanity, dignity, and equity. This shift can foster a more compassionate legal system that serves all individuals affected by wrongful acts.

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THE INTERNET PAYMENT SYSTEM(S): FACILITATING E-COMMERCE TRANSACTIONS IN INDIA

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Abstract

In a world of advanced technology, we find ourselves adrift in a vast digital ocean, where every wave of information carries us closer to the shores of connection and understanding. India is nowhere far behind on the map. It has swiped into the future, and digital payments have become the lifeblood of the digital economy. Bytes have replaced bills, but they are not free from challenges. It's undoubtedly a gateway to convenience, but with shadows of vulnerability. This article is an attempt to highlight the challenges involved in internet payment system regarding the reliability issues, lack of availability, complexity and regional acceptance. An attempt has also been made to focus on the study of robust legal framework that comes in handy when it comes to addressing involving security and management.

Keywords: Internet Payment; Conventional Payment; E-Commerce; Security; Internet Banking; Regulatory Agencies

INTRODUCTION

In recent years, India has witnessed a significant change as to how people interact, work, communicate, access information, and conduct business. The winds of change are blowing in a new direction- to the one of digital revolution. This phenomenal boost in the digital ecosystem has led to changes in many aspects of today's modern society and the global economy. It is driven by many factors, including the government's push towards digitization, increasing internet usage

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and smart-phone penetration, and the growth of e-commerce. (Baijal, Arpita: 2020).

E-commerce can be understood as the buying and selling of goods over an electronic network, primarily the internet, including the transfer of money and data required for completing the particular transaction. When goods and services are purchased online, i.e., through the Internet, payment for the same also follows the same route, i.e., over the Internet therefore; they are called Internet payments (Danial: 2002). Electronic, digital, or online payments are often used interchangeably with the term Internet payments. An online or Internet payment can be defined as a transfer of funds over the Internet, which is usually between a merchant and a consumer (Baijal, Arpita: 2020).

Internet payments have become crucial due to technological advancements and increasing Internet use. Such payments differ from conventional payments in many ways, especially in the manner in which these transactions are initiated, processed and completed (Dennis: 2001).

During the pandemic, when social distancing was the rule, the necessity of internet payments increased. Brick-and-mortar businesses suffered while e-commerce companies boomed because the internet or electronic payments enabled us to pay anyone, anywhere and anytime, as per convenience (Singh, Jaspal: 2019). The significant developments in electronic payments also created endless prospects for various business entities to grow faster and wiser. Ever since, electronic payments have constantly been on the road of improvement and technological advancements, thus making it a fast convenient way of making payments. Just as every coin has two sides, internet payments, too, have certain advantages and disadvantages (Singh, Jaspal: 2019).

Some of these advantages of Internet payments include that they are much faster, easier, more efficient, and more convenient. One can make payments from anywhere without visiting a bank, reduce one's carbon footprint, and manage and administer transactions more efficiently (Yilmaz, Yigit: 2023). However, electronic payments have some potential disadvantages that include security risks such as cyber-attacks, hacking, and fraud, technical issues that can disrupt transactions, reliance on internet connectivity, potential fees from service providers, and the challenge of managing personal data privacy and settling disputes arising out of such online transactions (Yilmaz, Yigit: 2023). Below is a brief explanation of these points:

- **Security risks**– Although most of the electronic payment systems

have security mechanisms applied like encryption, but still there exists various security risk such as phishing in which the innocent Internet users are tricked (with the use of deceptive email messages or websites) into revealing their private information (such as personal or confidential or financial information). As Electronic payments carry high security risks, which is why many people are afraid to use this payment method. Although some of these electronic payment systems are completely secure using the new technology, still there is no guarantee that they will not be hacked.

- **Disputes arising in Transactions**– If the dispute arises in an electronic payment, it can be refunded, but without sufficient information to prove this, it will be a very challenging situation to deal with.
- **Increased business costs** – As electronic payments become more popular and common, many businesses having their own electronic payments incur additional costs in order to ensure that user's sensitive information is safe and secure while making the electronic payments.

INTERNET PAYMENT SYSTEMS

With the technological advancement, the internet payments' ecosystem in India has seen an excellent growth and continues to gain popularity due to its speed, convenience, and global accessibility. Every little thing nowadays is possible digitally, from simply ordering groceries online to attending important classes (Singh, Jaspal: 2019). Online or digital transactions conducted over the internet without a physical money exchange are referred to as internet payments. It is implied that electronic means are used for money exchange by both the payer and the payee. This method of making payment over the internet through the use of digital methods for payment, without cash or payment by cheque is called an Internet Payment System (Singh, Jaspal: 2022).

The Internet Payment System known as the Online Payment System, is a payment mechanism that allows people, companies, governments, and organizations to pay for goods and services using credit cards or mobile phones without using cash.

TYPES OF INTERNET PAYMENT SYSTEM

The Government of India is on a transformative journey, championing digital payments through its ambitious "Digital India" campaign. With an aim to forge a

"digitally empowered economy," the initiative promotes a future that is 'Faceless, Paperless, and Cashless.' (Murthy: 2002) This revolutionary shift isn't just about adopting new technology—it's about redefining how we conduct transactions, making them more accessible and efficient for everyone.

Imagine a world where cash is no longer king, and every payment can be made with just a few clicks here and there on your device. From mobile wallets to online banking, the landscape of internet payments is rich and diverse. Each method offers unique advantages, ushering in a new era of convenience and security. The list below outlines the myriad ways in which digital payments are transforming daily life and giving citizens nationwide more power (Tanner, Larsson: 2016).

1. Banking Cards

Banking cards are the most commonly accepted and widely utilized digital payment method in the country, promising its users more convenience, flexibility, security and control than any other payment system. These banking cards includes credit, debit and prepaid cards, which provides secure PIN and OTP (i.e., two factor authentication) for making safe and secure payments. For instances, card payment systems like RuPay, Master Card and, Visa. These cards can be used for a range of digital transactions, including online and PoS terminal purchases, as well as payment methods on a number of websites and mobile applications that offer online services for anything from groceries to medical appointments to hiring a taxi, booking flights, and more.

- **Credit Card** - Using a credit card is among the most commonly utilised electronic or online payment methods. "A credit card is a small plastic card that has a unique number linked to an account for the user." Using card readers, the integrated magnetic strip on it can be used to read credit cards (Kurnia: 2006). A consumer at the time of using the credit card to initiate a purchase, the bank that issues the credit card, attempts and makes the payment on the user's behalf. The customer has a window of time in which to pay the credit card bill (Tanner, Larsson: 2016).

- **Debit Card** - It is similar to a credit card. When payment is made using a debit card, the amount of payment is immediately debited from the associated bank account. It is important to have sufficient funds in the account to complete the transaction whereas, no such precondition holds true in case of credit card transaction. The customers need not carry cash and their cheque books around anymore.

- **Bank Prepaid Cards** - These cards are often intended only for one-time use and have a fixed balance. These can be recharged by a user as and when required. Where the regular debit cards are linked to a person's bank account, these however, prepaid cards and can work even without linking them to any bank account as such. Examples of Bank Prepaid cards are Gift cards or corporate cards. The account holder can request these cards from their bank.

2. E–Wallet/ Mobile Wallet

Another prevalent payment method that provides an additional digital cash carrying choice is mobile wallets- a pocket-sized portal to convenience, security and seamless transactions. This can be done by connecting the mobile wallet app on the smartphone to the credit or debit card information of the user (Schwartz: 2001). Online money transfers can also be used to add funds to an e-wallet. In this way, the user can conduct digital transactions or make purchases utilising the money transferred to their mobile wallet instead of utilising traditional credit cards (Tanner, Larsson: 2016). E-wallets are available from most banks as well as certain private businesses. Axis Bank Lime, ICICI Pockets, Google Pay, Amazon Pay, Apple Pay, Paytm, Mobikwik, Airtel Money, itz Cash, etc. are few examples.

3. UPI – Unified Payment Interface

The "Unified Payments Interface (UPI)"- developed by the "National Payments Corporation of India (NPCI)". It has transformed the businesses financial transactions. Launched in 2016, UPI facilitates users to connect multiple bank accounts to a single mobile application, facilitating instant transfers of money in the form of bill payments and merchant transactions with just a few taps (Samet, Ohad: 2017). In comparison to NEFT, RTGS, and IMPS, UPI is much better defined and standardized across banks. Designed with easy and sound security features, UPI promotes a seamless digital payment experience, contributing significantly to the country's shift towards a cashless economy (Tanner, Larsson: 2016). Infact, it has become one of the most popular digital payment methods. As UPI continues to evolve and expand, it enhances financial payments/receipts and encouraging the adoption of digital payments among diverse populations.

4. Internet Banking

Nowadays, everything can be said to be just a click away. Through a bank's website, consumers can perform various financial operations and execute transactions using internet banking, sometimes referred to as Net Banking,

online banking, or e-banking (Samet, Ohad: 2017). It enables the customers to not only access the financial services but the non-financial transactions as well, such as viewing account statements, checking account balances, requesting new cheque books, etc. The facility of internet banking is provided by most of the banks in India. With the use of systems like NEFT, RTGS, or IMPS, it has grown to be one of the most widely used ways to perform financial transactions online (Tanner, Larsson: 2016).

5. Mobile Banking

Banks and other financial institutions these days offer services like 'Mobile banking.' It focusses on the use of a mobile device e.g., smart phone, etc. to perform financial transactions and manage bank accounts. It allows users to access a range of banking services, including:

- Checking account balances
- Reviewing transaction history
- Sending money to another account(s)
- Bill Payment(s)
- Locating ATMs and branch offices
- Managing investments and loans

Mobile banking services are typically provided through a mobile application or a mobile-optimized website offered by financial institutions, making banking more accessible and convenient for users on the go (Laudon: 2002). The mobile apps for these banks are available for a number of operating systems, including iOS, Android, and Windows. The use of mobile banking has grown dramatically since UPI and mobile wallets were introduced (Lindsay: 2024).

6. PoS Terminals

A PoS (i.e. Point of Sale) terminal where the actual sale occurs. For a considerable amount of time, these terminals have been thought of as the checkout counters in malls and stores where payments are processed. The most widely recognized type of point-of-sale (PoS) terminal is the one where users swipe their credit or debit card and enter their PIN to complete the purchase(Samet, Ohad: 2017). As a result of digitization and the rising acceptance of alternative online payment options, new point-of-sale techniques have also surfaced. One of the Point-

of-sale (PoS) technologies is the contactless reader of a PoS machine, which, through automatic authentication, can debit up to the amount determined by the card owner without requiring the PIN. There are all sorts of PoS- Physical PoS, Virtual PoS and, Mobile PoS. The Mobile PoS and Virtual PoS remove the requirement to maintain a physical device. Virtual PoS systems handle payments using web applications, while mobile PoS terminals operate through portable devices like tablets and smartphones (Chishti, Susanne. & Craddock, Tony: 2019).

7. Micro ATMs

It is a tool for Business Correspondents (BCs) to provide customers access to basic financial services. These Business Correspondents could be local business owners or shopkeepers who serve as "micro ATMs" for instant transactions. To customers, these business correspondents are just like banks. Customers must use their UID (Aadhaar) to authenticate themselves. Some of the main services, such as, deposits, withdrawals, cash transfers, and balance enquiries, are supported by these micro ATMs. To make use of these services, it's crucial that one's bank account and Aadhaar are linked (Chishti, Susanne. & Craddock, Tony: 2019).

7. QR Payments

Payments made via QR (which stands for Quick Response) code are very popular now a days. QR code is basically a code containing a pixel pattern or squares arranged in a square grid, every part of which contains information related to the merchant, transaction, etc. The QR code needs to be scanned using a mobile device in order to make a payment (Samet, Ohad: 2017).

REGULATORY FRAMEWORK FOR INTERNET/ DIGITAL PAYMENT SYSTEMS IN INDIA

The "Reserve Bank of India (RBI)", the "Securities & Exchange Board of India (SEBI)", the "National Payments Corporation of India (NPCI)", and the "Ministry of Electronics and Information Technology (MeitY)" are among the regulatory bodies that regulate the legal framework for online payment systems in India. These regulatory agencies provide a number of rules and regulations that digital payment companies must conform with (Singh, Jaspal: 2022).

Reserve Bank of India (RBI)

In India, the Reserve Bank of India is the apex governing body for digital or

internet payments which governs India's internet payment and settlement systems, as well as the digital payments businesses. It controls and monitors "digital payment systems" in India which include "electronic cash transfers", "prepaid payment instruments" and "card payments". It establishes guidelines as well as standards pertaining to the safety of the digital payment system, risk mitigation, consumer protection, and other aspects.

National Payments Corporation of India (NPCI)

The Bharat Bill Payment System ("BBPS"), Immediate Payment Service ("IMPS"), and UPI are examples of some of the payment systems that NPCI operates and manages. These systems must be configured and run by NPCI, which is also in charge of guaranteeing their efficacy, security, and efficiency as well as handling any problems pertaining to payments (Chan, H: 2016).

The Securities & Exchange Board of India (SEBI)

In India, SEBI is essential to the regulation of the internet and online payment sector. Together with mobile wallet regulation, SEBI also governs other payment-related industries like Payment System Operators (PSOs) and Payment Banks. The guidelines are outlined for PSOs and Payment Banks with the intention of boosting competition, encouraging financial inclusion, and guaranteeing the security and effectiveness of payment systems.

The Ministry of Electronics and Information Technology

The Ministry of Electronics & Information Technology (MeitY) is a regulatory body responsible for the growth of the digital-infrastructure including e-governance, "digital literacy" and the rise of digital transactions in India. It coordinates with multiple stakeholders and other regulatory authorities to promote the adoption of digital payment systems across the country. Additionally, several other initiatives have also been launched by MeitY that aim to create the environment for growth and regulation of the digital payments market in India. Some of these initiatives include:

- Digital India Programme–the programme is launched with the aim to transform India into an electronically empowered society and knowledge economy. It promotes the use of digital infrastructure to provide various services to citizens.
- Digital Payments Mission - it aims to increase the use of digital payments in India. The aim is to improve the access, convenience and security of

digital payment systems.

Information Technology (IT) Act, 2000

The Indian Parliament enacted the IT Act, 2000 in order to provide the legal framework for electronic transactions in India. The Act legally recognized transactions carried out using electronic means. As a result, this legal recognition of electronic records, documents, and signatures, several additional laws, including the "Reserve Bank of India Act of 1934", the "Bharatiya Sakshya Adhiniyam, 2023", the "Bankers Evidence Act of 1891", and the "Bharatiya Nyaya Sanhita (BNS), 2024". The Act further prescribes guidelines for the protection of critical information infrastructure, adjudication and data privacy. It also recognizes the usage of any person's identity dishonestly by another person as cyber offence and provides punishment for the same. The Digital payment businesses in India must work in compliance with the provisions of this Act (Peha & Khamitov: 2004).

Payment and Settlements Systems (PSS) Act, 2007

The main piece of law controlling electronic payment systems in India is the PSS Act. It was enacted with the sole purpose controlling and to oversee India's payment systems (Kalakota: 1996). Reserve Bank of India (Reserve Bank), the apex institution serves as a watchdog for the purpose of the Act. Additionally, it promotes and advances the safety and security of payment systems and facilitates the proper development of the digital payment infrastructure. The aforementioned Act governs all digital payment methods in India, including those that are used with prepaid cards, mobile wallets, and internet platforms (Chakrabarti: 2002). The Act outlines the basic framework for monitoring and controlling "digital payment service providers", as well as prescribes standards and norms for "customer protection" and "dispute resolution". Further, the payment system operators are authorized to issue regulations to ensure security and efficient digital payments.

The Digital Personal Data Protection (DPDP) Act, 2023

After much anticipation, the Central Government finally passed the Digital Personal Data Protection Act (DPDP), 2023 on August 11, 2023. The said Act enlists the broad definition of personal data taken from the "EU's General Data Protection Regulation (GDPR)". It endeavors to protect data principals and restrict the activities of data fiduciaries. The Act governs the companies involved in digital payments that collect, stores, and uses individual's the personal data

(Baddeley: 2004).

Goods and Services Tax (GST) Act, 2017

The act imposes the obligation to pay GST on digital transactions. Digital payment companies in India must comply with GST regulations and file regular tax returns with the tax authorities.

Prevention of Money Laundering Act (PMLA), 2002

The preamble of PMLA states the purpose of its enactment, i.e., to prevent and restrict money laundering, seize any assets acquired through it or involved in money laundering, and deal with related matters. It aligns with the "Political Declaration and Global Programme of Action" adopted by the "United Nations General Assembly in 1990" and 1998, respectively (Herzberg: 2003). Companies dealing with digital payments must abide by the provisions of this law that impose obligations on the part of their customers to exercise due diligence and report suspicious transactions to the authorities (Chan, H: 2016).

RBI Guidelines related to "Digital Payments"

RBI has also issued several guidelines and regulations related to digital payment systems, including:

- **Payment System Vision 2021** - the vision document describes the RBI's objectives and strategies for the growth and regulation of "payment and settlement systems" in India (Sumanjeet, Singh: 2009).
- **Guidelines For Electronic Payment Transactions** - these guidelines describe the basic principles for conducting the electronic payment transactions across the country. It also contains provisions on security, risk management and customer protection (Chishti: 2019).
- **Guidelines For Interoperability Among Prepaid Payment Instruments** - these guidelines ensures for the interoperability of prepaid payment instruments (PPIs) issued by different issuers. The aim is to increase the use of PPIs and promote financial inclusion (Sumanjeet, Singh: 2009).
- **Guidelines For Payment Gateways And Payment Aggregators** - these guidelines governs the regulation and monitoring of Payment Gateways and Payment Aggregators. These guidelines require them to get their registration done with the RBI and adopt certain risk management practices (Chan, H: 2016).

The RBI has also issued several circulars related to the digital payment businesses, which includes guidelines for prepaid payment instruments, electronic wallets, transactions based on cards and mobile banking (Chaffey: 2013). The regulatory framework for digital payment businesses operating in India is outlined in these circulars.

CONCLUSION

A solid regulatory structure for India's digital payments system seeks to protect the efficiency and security of payment systems and also encouraging the sector's development. Digital payment companies need to adhere to the regulations and guidelines set forth by various regulatory organizations to follow specific standards and processes for security, risk management, and customer protection. India's regulatory framework may change as the country's use of digital payments grows. The Payment and Settlement Systems Act, 2007 here is a good example of the same. It provides a solid foundation for ensuring security and privacy and guarantees that digital payment providers strictly adhere to the norms and regulations. The cornerstones of the regulatory system - licensing, security, risk management, data confidentiality, and customer protection, ensure that the digital payment business operates in a safe, secure and user-friendly environment. Digital payments in the nation will continue to flourish with the advent of new technologies like e-RUPI (e-Rupee) and UPI, the growing popularity of smartphones, and more internet access. Millions of Indians are anticipated to benefit from increased convenience, comfort, and financial inclusion as the shift to a cashless economy picks up speed in the upcoming years.

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RISK OF FRAUDS IN THE BANKING SECTOR- NEED FOR PRECISE LEGISLATION IN INDIA

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Abstract

Bank Frauds were few and far between, but this changed dramatically with the development of Banking Services post the financial reforms introduced in 1990. Today one hears of frauds and scams in the Banking Sector on a regular basis, posing a major challenge for both the Regulators and Legislators. The transformation of Banking Services has also transformed the fraud landscape, catapulting fraudulent activities. The current Paper focuses on prevalent Bank Frauds and the Regulatory and Legislative response to curb the same.

Keywords: Banking fraud, Financial Crimes, Cyber Fraud, artificial intelligence, blockchain.

INTRODUCTION

The Indian banking sector has experienced unprecedented growth, driven by financial reforms in the 1990s that opened the industry to private and global investments. Over the past two decades, banking has transitioned from manual operations to a fully digital environment. Innovations such as Automated Teller Machines (ATM), internet and mobile banking, and more recently, payment gateways and aggregators, have redefined banking for consumers. However, these technological advancements have also expanded the fraud landscape, both in India and globally. Traditional methods of fraud have given way to more sophisticated techniques, especially with the rise of online banking.

In addition, the rapid growth of mobile banking services, digital wallets, and payment aggregators such as PayTM, Google Pay, and payment gateways like

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Citrus Pay and CC Avenue, while enhancing convenience, have increased the vulnerabilities to fraud. These platforms provide new opportunities for both external and internal fraud, challenging the existing regulatory frameworks. As banking and financial institutions become the backbone of any country's financial sector, they bear heightened responsibility for fraud prevention. The significant investments banks make in corporations and businesses come with inherent risks, including the potential for both internal and external fraud. This evolving role of banks in economic growth necessitates an updated approach to regulation, fraud prevention, and risk management in light of the emerging challenges posed by technological advancements.

Development of Banking Business in India

Banking Business has been at the core of economic development of any Nation and plays an indispensable role in trade and commerce. Prior to the emergence of organized Banking Sector, banking activities were being provided by money lenders or merchants, which was mostly unregulated and fraught with problems of fraud and corruption. Modern Banking in India may be traced back to the early 18th Century with the establishment of Bank of Bombay in 1720 and Bank of Hindustan in 1770. Since then, Banking Business has undergone tremendous changes, from their functions being only those of depositories and money lenders to being active participants in the development of the economy.

Modern day banking system provides a well-structured system for the circulation of finances amongst the businesses and the investors. Banking and other Financial Institutions offer a plethora of services like asset management, investment and lending services, currency exchange, etc. to not only individuals, small or big businesses but also to the Government. A brief history of the transformation of banking in India is evidenced from the establishment of the Reserve Bank of India (RBI), in 1934, 'to regulate the monetary system, secure monetary stability and to operate the credit system of the country.' RBI was nationalized in 1949, with other banks operational at that time being nationalized in 1969 and 1980, which brought a paradigm shift in the functions of banks, from merely commercial purposes to furthering the goals of the Welfare State and becoming a part of economic development.

The liberalization policies introduced in the late 20th century triggered a major transformation in the Indian banking sector. Banks were compelled to embrace rapidly advancing technologies and align with global banking practices. Manual banking transitioned to electronic banking (E-banking),

offering customers a variety of digital channels for conducting transactions. Initially, private banks provided limited digital services, such as account balance viewing. Today, both private and public sector banks are fully digitized, offering comprehensive services through platforms like internet and phone banking.

Banking, under Section 5(b) of the Banking Regulation Act, 1949, has been defined as 'the receiving of deposits of money, from the general public, for the purpose of lending or investing the same and which is repayable to the depositors on demand or otherwise'. Section 6 of the Act further specifies the other types of business which banking companies may carry on, besides the business of banking.

The Banking Sector has evolved significantly beyond traditional functions like depositing and lending money. Liberalization and globalization in the late 20th century required Indian banks to adapt to global practices, leading to the rapid adoption of technology. Today, technology plays a crucial role in banking operations, with innovations like Financial Technology (FinTech) influencing areas such as asset management, payments, and lending. Payment Aggregators and Gateways exemplify how technology has accelerated payment systems. While India's transition to digital banking has been commendable, it has introduced risks, including cyber frauds and challenges in system integration, frequent upgrades, and regulatory compliance.

Fraud Risk in the Banking Sector

Fraud, especially financial frauds, are not a new concept and have been in existence since the introduction of currency or money as a means of acquiring any property, moveable, or immovable, or for paying one's dues. The treatise, 'Arthashastra' by Chanakya on statesmanship, economic policy, and military strategy, written around 300 BC, vividly lists the various ways in which financial manipulations or embezzlement may be carried out and states:

> "*There are about forty ways of embezzlement: what is realised earlier is entered later on; what is realised later is entered earlier; what ought to be realised is not realised; what is hard to realise is shown as realised; what is collected is shown as not collected; what has not been collected is shown as collected; what is collected in part is entered as collected in full; what is collected in full is entered as collected in part; what is collected is of one sort, while what is entered is of another sort; what is realised from one source is shown as realised from another; what is payable is not paid; what is not payable is paid; not paid in time; paid untimely; small*

gifts made large gifts; large gifts made small gifts; what is gifted is of one sort while what is entered is of another; the real donee is one while the person entered (in the register) as donee is another; what has been taken into (the treasury) is removed while what has not been credited to it is shown as credited; raw materials that are not paid for are entered, while those that are paid for are not entered; an aggregate is scattered in pieces; scattered items are converted into an aggregate; commodities of greater value are bartered for those of small value; what is of smaller value is bartered for one of greater value; price of commodities enhanced; price of commodities lowered; number of nights increased; number of nights decreased; the year not in harmony with its months; the month not in harmony with its days; inconsistency in the transactions[carried on with personal supervision (samāgamaviāuma); misrepresentation of the source of income; inconsistency in giving charities; incongruity in representing the work turned out; inconsistency in dealing with fixed items; misrepresentation of test marks or the standard of fineness (of gold and silver); misrepresentation of prices of commodities; making use of false weights and measures; deception in counting articles; and making use of false cubic measures such as bhāana-these are the several ways of embezzlement."

Fraud, a common form of white-collar crime, is generally defined as misrepresentation or deception used for unlawful gain. While it lacks a universally recognized definition, it typically involves intentionally deceiving others with false promises of goods, services, or financial benefits. Banking frauds, in particular, have been a growing global concern, increasing significantly with the rise of E-banking. Though traditionally considered a known business risk, the expansion of banking operations and digital platforms has amplified both the frequency and severity of fraud, prompting stricter government and regulatory interventions.

India has witnessed many frauds, both internal as well as external, involving banks post liberalization. The RBI Annual Report for the year 2019-20 reported 8,707 cases of fraud with losses as high as Rs 1,85,644 crores whereas in the year 2020-2021, 7,359 fraud cases were reported with losses worth Rs 1.38 lakh crore and 9,103 cases reported for the year 2021-22 with losses amounting to Rs 60,414 crore, on account of frauds. The number of reported cases has been rising despite enhanced regulation and vigilance measures.

Although RBI, the regulatory body for Banking and Financial Institutions

in India, has not defined the term 'Fraud' in specific terms, yet it has, for quite some time now, been monitoring the characteristics, degree and scale of frauds in entities regulated by it, like banks and other financial institutions that come within its jurisdiction. The Report of the Working Group on Electronic Banking, in its Chapter on Cyber Frauds, defined 'Fraud' (as per the recommendations of the Report of the Study Group on Large Value Bank Fraud set up by the RBI in 1997, para 9.1) as, *"a deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer system in banks, resulting into wrongful gain to any person for a temporary period or otherwise, with or without any monetary loss to the bank".* However, this definition remained as part of the recommendations and was not incorporated in the Master Directions on Fraud Classification and Reporting, issued by RBI. Instead, the RBI has classified Banking Frauds, based mainly on the provisions of the Indian Penal Code,1860(IPC) to include Criminal Breach of Trust, Misappropriation, Forgery and Cheating, Fraudulent encashment using falsified instruments or through falsification of Books of Accounts or fictitious accounts and transfer of property, Negligence, Unapproved credit services offered for reward or illicit gratification, Anomalies in Foreign Exchange transactions and any other type of fraud not coming under the specific heads as above."

Banking Frauds may further be classified as External Frauds or frauds committed by customers, or other persons not related to the bank; and Internal Frauds as frauds committed by bank's own management or employees. Another classification of frauds maybe based on the categories under which the banks report these, namely:

- Technology related.
- Know Your Customer (KYC) related; and
- Advances related.

From the above it may be surmised that the term Banking Fraud is broadly used to refer to all types of frauds committed within the Banking Sector irrespective of whether they are related to negotiable instruments, loan accounts, securities; are committed by insiders or outsiders; using traditional or modern technologies by way of embezzlement, forgery, falsification of accounts, skimming form accounts, cheating etc.

There has been a discernable growth in frauds being perpetrated using

technology as there has been a paradigm shift in the service delivery model. The Sector has seen an amalgamation of traditional Banking Services with technology. Internet and online transactions are relied upon by all entities in the financial sector for carrying out their routine business, like cash transfers, payments and settlements, data regarding various accounts maintained by these entities and any other type of financial services. Banks are increasingly asking their customers to accept innovative technologies like Mobile Banking, Payment Gateways and even social media, as these provide enhanced efficiency and lower costs with greater outreach. However, with the increase in popularity of technology-based banking and its usage by customers, fraudsters have also found a new avenue to perpetrate frauds using the same technological advances and the inherent weaknesses of technology-based banking systems.

E- Banking by its very nature requires the use of IT systems and access control to these is a key ingredient in maintaining security standards. One of the most vulnerable aspects in E- Banking is the safety of the consumers' data and the regulations being followed by the banks with regards to data privacy. Banks store personal sensitive data of its customers and any illicit access and use of such data is a serious concern, especially as the data is available to a large number of employees of the banks, providing them with an opportunity to manipulate or misuse the personal data of customers for their own gains. Some studies conducted by Deloitte, KPMG, Netguardians etc. show that banks are more likely to experience frauds from within the organization, specifically where there is higher degree of access control over sensitive personal data.

Technological advancements have created complex systems for banking services, increasing vulnerability to fraud and data theft. The easy access to banking services raises risks, not only of unauthorized transactions but also of sensitive data theft. This data theft, whether by external hackers or internal leaks, can damage a bank's reputation even if it doesn't cause direct financial loss. Numerous cases of stolen customer information, such as credit card details and online banking passwords, have exposed weaknesses in IT systems, prompting data privacy legislation globally. A notable case is the 2008 data theft by Herve Falciani from HSBC, which sparked controversy over banking secrecy laws. Herve was sentenced to five years in prison on these grounds. The present case though did not result in financial losses, brought forth the internal risks with regard to data privacy and secrecy and also resulted in enhanced regulatory controls to safeguard customer personal sensitive data in the European Region.

Accenture, in its Paper, 'Protecting the Customer: Fighting Bank Fraud

in a New Environment,' found that "changing customer demographics, the expansion of banks into new markets, and the adoption of new technologies and channels, present new challenges in fraud protection. Rapid technological and social changes alter the relationship between banks and their customers in a way that creates new opportunities for fraudsters." Fraud by insiders, according to many surveys and reports, in the Banking Sector, has been or known to account for more than 50% of the total reported frauds. The incidences of frauds have been found at all levels of the organization with the maximum losses occurring at the higher level, even though the number of frauds by middle and higher management were found to be lesser than those committed by junior level employees. For example, according to NetGuardians' Report, much of the external fraud perpetuated by outsiders on the banks also depends on the collusion and help of employees or persons with access to banks database and IT systems.

Similarly, PWC's Global Economic Crime and Fraud Survey 2020 Report found that, internal fraud amounted to nearly 37% of the total frauds reported and another 20% of the reported frauds were perpetrated by external sources in collusion with internal help. The survey though encompassed frauds in nearly all major sectors, it concluded that '*43% of reported incidences resulting in losses of US$100 million or more were committed by insiders.*'

According to RBI's Report on Trend and Progress of Banking in India 2021-22, even though the quantum of losses suffered by Banks owing to frauds has declined substantially, the number of frauds committed has increased over time. Further, the Report stated that, "in terms of number of frauds, the modus operandi shifted to card or internet-based transactions," adding that cash frauds are also on the rise. RBI also stated that with the exponential growth of digital payments and expanding digitalization of the financial ecosystem, cyber security risks for financial institutions are also increasing.

Regulation of Fraud in Banking Sector

In his inaugural address, Dr. K. C. Chakrabarty, Deputy Governor, RBI, on July 26,2013 during the National Conference on Financial Fraud, organized by Associated Chambers of Commerce and Industry of India (ASSOCHAM), at New Delhi, observed that, "*the reporting of fraud cases by banks was prescribed by RBI way back in July 1970. In 2005-06, the prescription of reporting of fraud cases was extended to urban cooperative banks and deposit taking Non-Banking Financial Institutions (NBFCs) registered with RBI. In March 2012, NBFC-ND-SIs*

(systemically important, non-deposit taking NBFCs) having asset base of Rs. 100 crores and above were also brought under the reporting requirements. He further pointed out that in 2014, RBI introduced online fraud reporting mechanism for all commercial banks to expedite and streamline the process."

When assessing the effectiveness of laws addressing banking frauds, it's essential to determine whether they specifically target these frauds or classify them as general unfair practices that escape prosecution. In India, banking frauds are primarily governed by the Indian Contract Act, 1872, the Companies Act, 2013, and the IPC, 1860, which deal with contractual frauds and criminal acts like embezzlement, forgery, and cheating. However, not all financial frauds can be addressed under these laws, especially complex cases where the public, not just the bank or borrower, suffers losses. Recognizing this, the Council of Europe in 1981 urged governments to review existing legislation and strengthen laws to address economic crimes arising from technological developments. Governments globally have, since then, recognized financial crimes that are detrimental to public investments, deposits or funds, which can cause instability in the financial markets and the economy, as Serious Frauds, irrespective of whether these were committed by suggestio falsi, suppressio veri or culpable negligence.

Banking fraud is not a distinct offense under any specific legislation in India. The RBI's Master Directions on Fraud Classification and Reporting rely on the Indian Penal Code (IPC), 1860, which does not define bank fraud as a separate crime but applies various provisions based on individual cases. Several other laws, including the Negotiable Instruments Act, 1881, the Banking Regulation Act, 1949, the Prevention of Corruption Act, 1988, the Information Technology Act, 2000, and others, address aspects of banking fraud. The Banking Regulation Act empowers the RBI to regulate banking businesses, protect depositors, and ensure the stability of the banking system by requiring banks to obtain and periodically renew license. All Banking Companies are required to submit Monthly, Quarterly and Annual Reports in respect of its Assets, Demands and Liabilities, Unclaimed Assets, Profit and Loss Accounts and Balance Sheet, to ensure that the Banking Business is being conducted as per the directions and on the terms and conditions imposed by RBI. Section 35A of the Act further empowers RBI to give Directions and or to modify any previous Directions as it deems fit for the proper conduct of Banking Business. Further, The Act, under Section 30 requires the Audit of Profit and Loss Accounts and Balance Sheet of all Banking Companies by qualified Auditors and empowers RBI to order a special Audit if it thinks it is necessary in the interest of depositors or the

Banking Company or in public interest.

The RBI introduced the Banking Ombudsman Scheme, 2006, under Section 35A of the Banking Regulation Act to offer customers a platform for resolving grievances related to banking services, including fraudulent transactions. While the scheme helps address customer complaints, it doesn't focus on detecting or preventing bank frauds. Regulatory oversight by the RBI is enhanced by other laws, such as the Information Technology Act, 2000, and the Payment and Settlement Systems Act, 2007, which regulate digital and payment systems in India in response to technological advancements in banking. Financial Inclusion and digitalization of Banking Services saw the introduction of various payment systems like RTGS, NEFT, IMPS and other Payment Gateways and Aggregators, which required that a legal basis be provided for their 'Settlement'. The PSSA, 2007 defines terms like Payment Obligation, Settlement, Gross Settlement Systems, Netting, and Payment System and empowers RBI, under Section 5 thereof, to authorize any entity desirous of starting or running a Payment System if it satisfies the requirements laid down by RBI for the said purpose.

With most banking transactions being conducted digitally, the PSSA, 2007 provides for not just the regulation and supervision of the various payment solutions available today, it also provides RBI with a greater oversight over the functioning of entities other than Banks and Financial Institutions providing these services. While this is of great importance in terms of operational stability, the PSSA, 2007 provides for liability of the system participant in case of any 'Systemic Risk' but does not address the issue of Frauds being committed using these Payment Systems or Gateways.

While several legislations regulate the banking sector, none specifically address bank fraud. Banking and financial institutions remain highly vulnerable to fraud, and legislative responses have typically been reactive rather than proactive, often introduced or amended following significant fraud incidents. Despite these laws and the RBI's efforts over the years, the amount lost to fraud and the frequency of such incidents have not decreased. According to a Research Paper, published in 2016, frauds have been found to be one of the reasons for risky Non-Performing Assets (NPAs) besides global and economic slowdown. Some studies suggest that of all the people who commit Fraud, only 10% actively look for chances to do so, 80% people would commit Fraud under the right circumstances and 10% would never commit Fraud. Therefore, Law and Policy Makers need to formulate them in a manner that the benefit of committing Fraud weighed against the consequences would deter the 80%, who are likely to

commit Fraud in the right circumstances.

CONCLUSION

In the past two decades, technology has transformed banking, benefiting both banks and customers through modernization and automation. While banks have expanded their reach and reduced costs, customers enjoy 24/7 access to services. However, this advancement has also increased sophisticated fraud risks, with both banks and fraudsters leveraging new technologies. Laws and regulations have struggled to keep pace with these changes. The complex Indian banking structure is particularly susceptible to fraud, especially in core banking services. The rise of e-banking, accelerated by demonetization and the COVID-19 pandemic, has led to a significant increase in reported fraud cases. Internal fraud remains a concern, often involving mid- and senior-level employees, which raises questions about corporate governance. The complexity of e-banking systems enhances opportunities for insider fraud while complicating detection efforts. Effective fraud prevention relies on compliance with laws, yet current regulations focus primarily on operational soundness rather than addressing fraud risks. Consequently, despite numerous regulations, bank fraud has risen. As bank fraud is seen as part of economic crime, it is not distinctly addressed by legislators. Stricter legislative measures and internal controls are essential to mitigate fraudulent activities, though complete prevention remains unattainable.

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- Section 22(3) of Banking Regulation Act, 1949.
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- Section 2(1)(h) "payment obligation" means an indebtedness that is owned by one system participant to another system participant as a result of clearing or settlement of one or more payment instructions relating to funds, securities or foreign exchange or derivatives or other transactions.
- Section 2(1)(n) "settlement" means settlement of payment instructions and includes the settlement of securities, foreign exchange or derivatives or other transactions which involve payment obligation.
- Section 2(1) (d) "gross" settlement system means a payment system in which each settlement of funds or securities occurs on the basis of separate or individual instructions.
- Section 2(1) (e) "netting" means the determination by the system provider of the amount of money or securities, due or payable or deliverable, as a result of setting off or adjusting, the payment obligations or delivery obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or dissolution or winding up of any system participant or such other circumstances as the system provider may specify in its rules or regulations or byelaws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

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THE INDIAN CONSTITUTION AND SOCIAL JUSTICE: PROMISES, CHALLENGES, AND THE PATH FORWARD

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Abstract

This research paper examines the complex relationship between the Indian Constitution and social justice, exploring both the transformative potential of constitutional provisions and the persistent challenges in their implementation. It analyzes how constitutional rights and principles have been interpreted by the courts, implemented through legislation and policy, and contested by social movements. The paper investigates key areas including caste discrimination, gender equality, religious freedom, and economic justice to assess the successes, limitations, and ongoing struggles in the pursuit of social justice in India. While acknowledging significant advances enabled by constitutional mechanisms, the research highlights the gap between constitutional ideals and social realities, emphasizing the need for a multi-faceted approach that combines legal measures with efforts to change social attitudes and empower marginalized communities. The paper concludes that realizing the Constitution's vision of social justice requires renewed commitment, innovative approaches, and sustained engagement from all sectors of society.

Keywords: Gender equality, Marginalized communities, Minority rights, Social justice

INTRODUCTION

The Indian Constitution, enacted in 1950, is a significant accomplishment in the country's pursuit of democracy, equality, and social justice. As the longest

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written constitution globally, it delineates an ambitious agenda for reforming Indian society and elevating its most marginalised constituents. The Constitution fundamentally expresses a dedication to social justice through multiple clauses designed to dismantle hierarchies of caste, gender, religion, and economic status that have historically characterised Indian social relations. Despite its ratification over seventy years ago, enquiries remain over the degree to which the Constitution's noble principles have resulted in concrete advancements in social fairness. This study analyses the intricate relationship between the Indian Constitution and social justice, investigating both the transformational potential of constitutional provisions and the persistent barriers that have hindered their complete realisation. It examines the interpretation and application of constitutional rights and principles by the courts, their implementation via legislation and policy, and their challenge by social movements. This research evaluates the triumphs, limitations, and persistent obstacles in the quest for social justice in India by examining significant advances in constitutional law, politics, and grassroots activity.[1] The subject of social justice in India resists straightforward characterisation or definitive conclusions. The vast diversity and intricacy of Indian culture, characterised by its array of languages, religions, castes, and cultural traditions, results in many manifestations of marginalisation and fights for equality across distinct situations. Furthermore, the conceptions of social justice have progressed over time, broadening from limited definitions of formal equality to include substantive equality, acknowledgement of group-specific rights, and intersectional methods that address various, overlapping kinds of disadvantage.[2]

In light of this diversity and conceptual growth, any analysis of social justice in India must contend with significant ambiguity, contingency, and context-specificity. Comprehensive narratives of linear advancement or total failure are likely to conceal as much as they disclose.[3] A more nuanced understanding is necessary—one that can simultaneously acknowledge the significant progress achieved and the ongoing existence of profoundly rooted inequalities and injustices. This study employs a nuanced approach, avoiding simplified evaluations in favour of a comprehensive examination of the Indian Constitution's relationship with social justice. It analyses how constitutional provisions have enabled marginalised groups to assert their rights and contest oppression, while simultaneously scrutinising the limitations of solely legal and constitutional methods in confronting entrenched social hierarchies. By examining specific concerns like as caste discrimination, gender equality, and religious freedom, it aims to elucidate both the transformative potential and

practical limitations of constitutional remedies for social injustice.[4]

2. The Constitutional Vision of Social Justice

The preamble of the Indian Constitution articulates the concepts of "justice, social, economic, and political" as fundamental tenets of the new nation. This dedication to social justice is embedded throughout the constitutional structure, manifesting in fundamental rights guarantees, directive principles of state policy, and specific measures for marginalised groups. Articles 14-18 guarantee the right to equality, forbidding discrimination based on religion, race, caste, sex, or place of birth, and authorising the state to implement special measures for the advancement of "socially and educationally backward classes." Article 17 eliminates untouchability and renders its conduct in any form a criminal offence. Articles 25-28 safeguard the right to freedom of religion for minorities and permit official involvement to eradicate discriminatory religious practices. The directive principles in Part IV of the Constitution articulate a revolutionary vision of social and economic justice, extending beyond fundamental rights. These non-justiciable principles compel the state to establish a social order founded on fairness and equality, reduce disparities in income and position, and enhance the welfare of marginalised segments of society. They advocate for equitable remuneration for equivalent labour, mandatory and complimentary education, and the safeguarding of the environment and wildlife. The Constitution contains specific provisions designed to elevate historically marginalised communities. Articles 330 and 332 allocate reserved seats for Scheduled Castes and Scheduled Tribes in national and state legislatures. Articles 15(4) and 16(4) authorise the state to implement specific measures for the advancement of "socially and educationally backward classes." These rules established the foundation for India's reservation system in education and public jobs.

This constitutional conception of social justice was notably innovative and extensive for its era. It aimed to remove established hierarchies and inequities through a combination of anti-discrimination laws, affirmative action initiatives, and transformative socio-economic policies. The architects of the Constitution acknowledged that mere nominal equality would be inadequate to address centuries of entrenched discrimination and marginalisation. They authorised the state to implement proactive initiatives to elevate marginalised groups and establish a more equitable social structure. The realisation of this idea has been a complicated and contentious endeavour. The conflict between nominal and substantive equality, individual rights and group-specific entitlements, and instant execution vs gradual social change has fuelled extensive constitutional

discourse and law over the years. Furthermore, established social inequalities, bureaucratic lethargy, and political opposition have frequently obstructed the attainment of constitutional aspirations.[5]

3. The Judiciary and Social Justice

The court, especially the Supreme Court, has been instrumental in interpreting and broadening the reach of constitutional provisions concerning social justice. The Court, with its judicial review authority and broad interpretation of fundamental rights, has frequently served as a catalyst for social change and an advocate for marginalised communities. The enlargement of the right to life under Article 21 to include various socio-economic rights represents a key judicial innovation. In significant rulings such as Olga Tellis v. Bombay Municipal Corporation (1985) and Mohini Jain v. State of Karnataka (1992), the Court determined that the right to life encompasses the right to livelihood and the right to education, respectively. This judicial activism has been essential in enforcing the directive principles and compelling the state to meet its constitutional responsibilities. The Court has significantly contributed to the enhancement of anti-discrimination safeguards and affirmative action initiatives. The case of Indra Sawhney v. Union of India (1992) affirmed the constitutional legitimacy of reservations for Other Backward Classes (OBCs) and established significant principles for their execution. The judiciary has persistently upheld the implementation of reservations as a mechanism for attaining substantive equality, although contending with complex issues regarding their extent and duration.[6] The Supreme Court has issued numerous major rulings on gender equity that have broadened women's rights. In Vishaka v. State of Rajasthan (1997), norms were established to combat sexual harassment in the workplace. In Indian Young Lawyers Association v. State of Kerala (2018), the court annulled the prohibition on the entry of menstruation women into the Sabarimala temple, affirming the concept of gender equality in religious rituals. Nonetheless, the judiciary's performance towards social justice has not been consistently progressive. Critics have highlighted instances in which the Court has employed a restrictive, textualist reading of constitutional provisions, so constraining their transformative power. Furthermore, the emphasis on litigation as a principal tactic for social change has been scrutinised, with some contending that it diverts attention and resources from grassroots mobilisation and political lobbying.

The accessibility of the court system continues to pose a significant obstacle for marginalised groups attempting to assert their constitutional rights. Notwithstanding advancements such as Public Interest Litigation (PIL), which

have broadened access to the judiciary, the legal system continues to be daunting, costly, and protracted for numerous individuals. Language obstacles, insufficient legal awareness, and the accumulation of pending cases exacerbate these challenges. Nonetheless, the general trend of judicial interventions regarding social justice matters has been predominantly favourable. The Court's readiness to embrace a broad interpretation of fundamental rights, its acknowledgement of the necessity for substantive equality, and its function in ensuring governmental accountability have been essential in promoting the constitutional ideal of social justice.

4. Caste and Social Justice

The enduring nature of caste-based discrimination and inequality constitutes one of the most formidable obstacles to attaining social justice in India. Notwithstanding constitutional bans and several legislative initiatives, the caste system persists in influencing social interactions, economic prospects, and political power dynamics throughout much of the nation. The Constitution addresses caste inequality with robust anti-discrimination laws and specific measures for the advancement of historically marginalised castes. Article 17 eliminates untouchability, but Articles 15 and 16 forbid discrimination based on caste. The Constitution concurrently authorises the state to implement specific measures for the advancement of Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). This constitutional framework has facilitated substantial legislative measures to address caste discrimination and advance social fairness. The Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, render numerous manifestations of caste-based violence and discrimination as criminal offences. The policy of reservations in education and public employment, as stipulated by constitutional provisions, has been a crucial instrument for enhancing social mobility among marginalised castes. These methods have unequivocally yielded a beneficial effect. The literacy rates and educational achievements of Scheduled Castes (SCs) and Scheduled Tribes (STs) have markedly increased. Their representation in public sector employment and political institutions has risen. The emergence of a burgeoning Dalit middle class and the ascendance of influential Dalit political parties indicate the increasing dissolution of certain caste barriers. The ongoing prevalence of caste-based crimes, economic inequalities, and social segregation underscores the inadequacies of solely legal and policy-oriented strategies in tackling entrenched social hierarchies. Notwithstanding rigorous legislation, violence against Dalits persists alarmingly. Economic liberalisation has generated new opportunities but simultaneously intensifying disparities, as

marginalised castes frequently lack the social and cultural capital necessary to participate in the contemporary economy. Furthermore, the system of caste-based reservations, essential for fostering social mobility, has evolved into a divisive political matter. Calls for the expansion of reservations to other groups and inside the private sector have ignited intense discussions over the equilibrium between meritocracy and social equity. Critics contend that reservations have established a "creamy layer" of beneficiaries, while neglecting to tackle the fundamental roots of caste inequality. [7]The experience of confronting caste prejudice underscores the strengths and weaknesses of constitutional and legal methods in achieving social justice. Although offering essential safeguards and opportunities for progress, they have proven inadequate in eradicating the entrenched cultural and social practices that sustain caste inequalities. This highlights the necessity for a multifaceted strategy that integrates legislative interventions with ongoing initiatives to transform social perceptions and empower marginalised groups.

5. Gender Equality and Women's Rights

The quest for gender equality has been a vital aspect of the fight for social justice in India. The Constitution ensures legal equality and forbids discrimination based on sex. It also enables the state to implement specific measures for women and children, acknowledging the necessity for affirmative action to address historical inequities. Substantial progress has been achieved in promoting women's rights via legislative and policy initiatives. Legislation concerning domestic abuse, sexual harassment, and gender discrimination in inheritance has enhanced legal safeguards for women. Measures such as reservations for women in local government bodies (Panchayati Raj institutions) have augmented women's political engagement at the grassroots level.

The judiciary has been essential in the advancement and enforcement of women's rights. The Supreme Court has, in major rulings, acknowledged sexual harassment as a breach of fundamental rights, invalidated discriminatory personal legislation, and affirmed women's freedom to access places of worship. The Court's broad view of equality has been crucial in advancing substantive gender justice beyond mere legal equality. Nonetheless, ingrained patriarchal practices, economic disparities, and gaps in implementation persistently obstruct the complete fulfilment of constitutional assurances of gender equality. Women persistently encounter prejudice in school, employment, and property rights.[8] Violence against women, encompassing domestic violence and sexual assault, persists as a widespread issue. The low workforce participation rate of women and their under-representation in leadership roles across sectors indicate

enduring obstacles to gender equality.

The convergence of gender with additional social identities like as caste, religion, and class further complicates the quest for gender justice. Dalit women encounter various and intersecting types of prejudice and violence. Muslim women have been central to heated discussions regarding the equilibrium between gender equality and religion personal regulations. The persistent challenges of marital rape, women's labour force participation, and national political representation underscore the incomplete goal of gender justice in India. They also disclose the constraints of exclusively legal methods in confronting entrenched social and cultural norms. Although constitutional and legal frameworks are essential for promoting women's rights, enduring social and cultural transformation is crucial for attaining authentic gender equality.

6. Religious Freedom and Minority Rights

India's constitutional dedication to secularism and religious liberty is fundamental to its strategy for social justice in a multi-faith society. The Constitution ensures the right to religious freedom while permitting the state to regulate religious practices for the purpose of social improvement.[9] This nuanced equilibrium demonstrates the framers' acknowledgement of the necessity to safeguard religious minority while simultaneously confronting discriminatory religious practices. [10]The constitutional framework has facilitated substantial measures to safeguard religious minorities and foster interfaith cooperation. Legislation against religious discrimination, specific provisions for minority educational institutions, and constitutional entities such as the National Commission for Minorities are essential measures for the protection of minority rights.[11]

Nevertheless, the execution of these basic principles has encountered numerous obstacles. Communal violence, discrimination against religious minorities in housing and jobs, and the ascendance of religious nationalism have undermined India's secular integrity. The discourse surrounding the unified civil code and religious personal laws underscores the persistent conflicts between religious liberty and gender equality.[12] The courts has contended with these intricate difficulties in multiple major instances. In instances such as SR Bommai v. Union of India (1994), the Supreme Court affirmed secularism as an integral component of the Constitution's basic framework. Controversial rulings, such as the Ayodhya verdict, have prompted enquiries over the Court's function in addressing delicate religious conflicts. The experience with religious freedom and minority rights highlights the difficulties of enforcing constitutional norms

in a varied and occasionally polarised society. It underscores the necessity for perpetual vigilance and a renewed dedication to the principles of secularism and religious pluralism contained in the Constitution.

7. Economic Justice and Labor Rights

The quest for economic justice is an essential although frequently neglected component of the constitutional framework of social justice. The directive principles advocate for equitable distribution of material resources and the prohibition of wealth concentration. They underscore the necessity of safeguarding the right to employment, equitable and decent working conditions, and a livable wage for labourers. Substantial advancements have been achieved in certain domains of economic rights. The National Rural Employment Guarantee Act (NREGA) offers a legal assurance of 100 days of wage employment to rural households, representing a significant advancement in the realisation of the right to work. The Right to Food campaign and ensuing legislation have promoted food security and nutrition. The enduring nature of poverty, escalating income disparity, and unstable working circumstances for millions in the informal sector underscore the inadequacies of existing strategies for economic justice.[13] The conflict between market-driven economic policies and the constitutional framework of a socialist societal model has been a persistent topic in discussions on India's growth strategy. The judiciary's performance with economic justice has been inconsistent. The Court has acknowledged specific socio-economic rights as integral to the right to life, however it has faced criticism for its pro-business orientation in issues related to labour rights and environmental restrictions. The current discussions on the equilibrium between economic advancement and social equity highlight the persistent conflicts within India's development framework.

9. Conclusion

The connection between the Indian Constitution and social justice is intricate and diverse. The Constitution establishes a comprehensive foundation for advancing social justice via its fundamental rights guarantees, directive principles, and specific protections for marginalised groups. It has facilitated substantial legislative and regulatory measures designed to eradicate hierarchies based on caste, gender, religion, and economic status. Nonetheless, the disparity between constitutional principles and social realities persists significantly. Entrenched societal hierarchies, implementation obstacles, and nascent forms of inequality persist in obstructing the complete attainment of social justice.

The encounters with tackling caste prejudice, gender inequality, religious freedom, and economic fairness illustrate the possibilities and constraints of constitutional and legal methods for social change. The advancement of social justice in India necessitates a multifaceted strategy that transcends solely legal and constitutional frameworks. Enhancing legal protections and their enforcement is essential; nevertheless, it is also important to persist in efforts to transform social attitudes, empower marginalised populations, and tackle the fundamental causes of inequality and prejudice. The Constitution's conception of social justice is as pertinent and pressing today as it was at the time of its enactment. Actualising this vision necessitates renewed dedication, innovative methodologies, and continuous involvement from all societal sectors. As India confronts the challenges of the 21st century, the concepts of justice, equality, and fraternity contained in the Constitution must persist in guiding its pursuit of a more just and equitable society.

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REFORMING INVESTOR-STATE DISPUTE SETTLEMENT: A COMPARATIVE STUDY OF INDIA AND BRAZIL

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Abstract

Imagine a world where international investment disputes are resolved through a framework that balances investor rights with host state sovereignty. This research paper explores the evolving landscape of Investor-State Dispute Settlement (ISDS) reforms, focusing on India's revised Bilateral Investment Treaty (BIT) approach and Brazil's unique Cooperation and Facilitation Investment Agreement (CFIA) model. Through detailed analysis, it examines how both countries seek to reduce ISDS claims and protect policy space without deterring foreign investment. The paper delves into key criticisms of traditional ISDS, such as biases toward corporations, high costs, and limitations on state policy-making, underscoring the need for reform. It further analyzes recent ISDS initiatives by organizations like UNCITRAL and ICSID, providing a comparative view of India's and Brazil's reform strategies in light of global trends. Drawing from case studies and current data, the study highlights the challenges, successes, and broader implications of these reforms on international investment law. This research ultimately underscores a growing shift towards more equitable, transparent, and sovereign-friendly dispute mechanisms that could shape the future of international investment treaties.

Keywords: Sovereignty, Investment, Organizations, Mechanisms

1. INTRODUCTION TO ISDS MECHANISMS

Investor-State Dispute Settlement (ISDS) mechanisms are legal frameworks included within international investment treaties, designed to protect foreign investors' rights and resolve disputes between them and host states. ISDS

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mechanisms are found in most Bilateral Investment Treaties (BITs) and certain multilateral agreements, such as the North American Free Trade Agreement (NAFTA) and the Energy Charter Treaty. The primary purpose of ISDS is to provide foreign investors with a neutral arbitration mechanism outside the host state's judicial system, ideally reducing political risk and encouraging international investment by offering an impartial venue for legal recourse. The ISDS framework has its roots in early BITs in the 1950s and 60s, aimed at protecting European investments in developing nations. ISDS gained significant traction in the 1990s with the expansion of BITs; by 2023, there are over 3,000 BITs and Free Trade Agreements (FTAs) globally that include ISDS provisions. Notably, these mechanisms emerged as a solution to concerns over national courts' biases, expropriation risks, and political instability, especially in host countries lacking mature legal systems. However, over the years, criticisms and reform calls have emerged, primarily from host states, about the fairness and transparency of ISDS processes and the overarching influence they wield on state sovereignty.

ISDS has come under substantial criticism for several reasons that question its fairness and impact on host states' sovereignty and public interest. One major criticism is the perceived bias towards multinational corporations, as ISDS mechanisms often empower these entities to challenge national regulations that protect public health, environmental, or social welfare. This imbalance allows corporations to prioritize profit over the host nation's public interest, leading to concerns that ISDS undermines state sovereignty.

Another major issue with ISDS is its **lack of transparency**. Many cases are resolved through private, confidential proceedings, which reduces accountability and public oversight. This secrecy has led to skepticism about the impartiality of ISDS tribunals and created suspicions about whose interests these tribunals ultimately serve. Transparency remains a key demand among reform advocates, who call for more public access to information on ISDS proceedings and outcomes.**High costs and complexity** are additional barriers that weigh heavily on host states, particularly developing countries. Legal fees and arbitration costs in ISDS cases can reach millions, making it financially burdensome and discouraging for many states to engage in or defend against claims. This high financial burden has prompted a call for cost-effective dispute resolution mechanisms that do not disproportionately impact financially constrained states.Finally, ISDS is criticized for **restricting state policy-making** freedom. When governments implement new policies, particularly in public health or environmental protection, they may face ISDS claims if these policies

are perceived to impact foreign investors' expected profits. Such constraints can discourage states from enacting policies that serve public welfare, fearing costly ISDS claims. These criticisms underscore the need for reforms to balance investor protections with state regulatory sovereignty and accountability[1].

2. THE NEED FOR REFORM IN ISDS MECHANISMS

Rise in ISDS Cases and its Impact on Sovereignty

Since the 1990s, ISDS cases have surged, raising sovereignty concerns as states face legal challenges over domestic policies aimed at protecting the public interest. The United Nations Conference on Trade and Development (UNCTAD) reported[2] that in 2023, ISDS claims are at an all-time high, with a marked rise in cases challenging regulations in energy, public health, and the environment. These cases have pressured countries to rethink their regulatory autonomy, as governments increasingly face financial and political costs associated with defending these disputes.

Imbalance in Investor and State Rights

ISDS mechanisms have created an imbalanced playing field in which foreign investors' rights can override state interests. Investor protections such as "fair and equitable treatment" (FET) and "full protection and security" often surpass state obligations under other areas of law, such as human rights and environmental law. This imbalance became a significant concern in cases like *Philip Morris v. Uruguay*, where the company challenged Uruguay's anti-tobacco legislation as an infringement on its investment rights, despite the law being in the public health interest.

Recent Global Calls for ISDS Reform

The rising number of investor-state disputes and the associated concerns around transparency, fairness, and state sovereignty have spurred global calls for reform of the ISDS system. Several international organizations are leading initiatives to address these challenges, aiming to create a more balanced and equitable dispute settlement framework.One of the foremost players in ISDS reform is **UNCITRAL (United Nations Commission on International Trade Law)**, specifically through its **Working Group III**[3]. This group has been actively engaged in examining ISDS reforms, with a focus on exploring alternative mechanisms that offer flexibility and procedural improvements. UNCITRAL's efforts aim to strike a balance between protecting foreign investors' rights and upholding state sovereignty. Key proposals under consideration include the

establishment of a permanent multilateral investment court, which would replace ad hoc arbitration with a more consistent and transparent system, and the introduction of appellate mechanisms to enhance legal predictability.

Another significant initiative comes from **UNCTAD (United Nations Conference on Trade and Development)**, which has developed the **Investment Policy Framework for Sustainable Development (IPFSD)**. This framework encourages states to adopt investment policies that align investor protections with broader sustainable development objectives. The IPFSD advocates for a shift from traditional ISDS mechanisms toward approaches that incorporate environmental, social, and governance (ESG) principles[4]. By promoting sustainability-focused investment practices, UNCTAD's framework aims to balance the need for investment protection with the public interest and long-term development goals.The **International Centre for Settlement of Investment Disputes (ICSID)** has also taken substantial steps toward reform, introducing updated arbitration rules in 2022[5]. These new rules were designed to enhance transparency and efficiency, addressing some of the longstanding criticisms of traditional ISDS procedures. The updated ICSID framework provides for greater involvement of states in the dispute process, with mechanisms that encourage early resolution and streamlined procedures to reduce costs and delays. By allowing greater state participation, ICSID's reforms contribute to a more balanced approach that considers both investor interests and the host state's regulatory autonomy.Collectively, these reform efforts reflect a growing consensus among international organizations on the need for a more equitable ISDS system. By prioritizing transparency, sustainability, and state engagement, UNCITRAL, UNCTAD, and ICSID are leading the way in reshaping the global investment dispute landscape. These initiatives signal a move towards an investment climate that respects both investor protections and state sovereignty, paving the way for a reformed and more inclusive ISDS framework.

3. INDIA'S APPROACH TO ISDS AND INVESTMENT TREATY REFORMS

India's experience with ISDS has shaped its approach to investment treaties. The *White Industries v. India* case (2011) was a landmark ISDS case that highlighted India's vulnerabilities in its investment treaties[6]. White Industries, an Australian company, brought a claim against India over prolonged delays in the Indian judiciary, ultimately winning due to the BIT between India and Australia. This case prompted India to reconsider the protections it offered to investors in BITs.In response to its ISDS experiences, India adopted a proactive stance,

terminating several of its outdated BITs post-2015 and drafting a Model BIT in 2016[7]. India's revised BIT model excludes some investor protections found in traditional BITs and emphasizes state sovereignty. In 2023, India continued this strategy, negotiating investment agreements aligned with its Model BIT, which incorporates clauses specifically designed to prevent ISDS overreach[8].

Key Features of India's Model BIT (2016)

- **Exclusion of MFN Clause**: The Model BIT excludes the "most favored nation" (MFN) clause to prevent investors from bypassing local laws by invoking more favorable clauses in treaties with other countries.
- **Requirement for Exhaustion of Local Remedies**: Investors must exhaust all domestic legal remedies before initiating ISDS, ensuring that national courts have the first opportunity to address disputes.
- **Limited Scope of Investor Protections**: The Model BIT narrows investor protections, removing ambiguous terms like FET, which has been widely interpreted in favor of investors.

India has remained steadfast in its BIT strategy, renegotiating treaties on its terms while securing investor confidence through new economic policies and initiatives. The Indian government is also exploring regional agreements with tailored dispute mechanisms that respect state policy space while ensuring investor protection, as seen in its negotiations with countries in Southeast Asia.

4. BRAZIL'S UNIQUE APPROACH: THE COOPERATION AND FACILITATION INVESTMENT AGREEMENT (CFIA)

Unlike India, Brazil has taken an innovative approach by avoiding traditional ISDS frameworks altogether. Brazil's Cooperation and Facilitation Investment Agreement (CFIA), launched in 2015, prioritizes cooperation over arbitration[9]. CFIA focuses on dispute prevention rather than resolution, aiming to address disputes through dialogue and joint efforts between the host country and the investor's home country.

Key Features of CFIA

- **Focus on Dialogue and Mediation**: CFIA encourages resolving disputes through diplomatic means, creating a conducive environment for cooperation.

- **Institutional Frameworks**: CFIA includes mechanisms such as Joint Committees and Focal Points, which provide channels for consultation and cooperation, aiming to resolve issues at an early stage.

- **No Investor-State Arbitration**: CFIA omits traditional arbitration clauses, thus excluding foreign investors' direct access to international arbitration, making Brazil one of the few countries not facing ISDS claims.

CFIA has been positively received by several Latin American, African, and European countries interested in protecting investor rights while respecting host states' sovereignty. Brazil's CFIA agreements with countries like Angola and Mozambique illustrate the framework's effectiveness, as it fosters stable investment environments while minimizing investor-state conflicts.In recent years, Brazil has reported stable investment inflows, suggesting that CFIA has not deterred foreign investment. In 2023, Brazil signed new CFIA agreements with Chile and India, expanding its network of cooperation-focused investment agreements. Data from the Brazilian Ministry of Foreign Affairs indicates that CFIA's emphasis on consultation and prevention has reduced investment disputes, making it an attractive model for emerging economies[10].

5. COMPARATIVE ANALYSIS OF INDIA AND BRAZIL'S ISDS APPROACHES

Similarities and Differences

India and Brazil, both emerging economies with growing global investments, have reformed their approaches to ISDS (Investor-State Dispute Settlement) to safeguard their regulatory autonomy while encouraging foreign investment. Despite their shared goals, the methods adopted by each country reflect distinctive strategies[11].

- **India's Reformed BITs**: India revised its Bilateral Investment Treaty (BIT) framework after its experience with ISDS claims, notably the 2011 White Industries case. The updated BITs, first introduced in 2016, omit clauses like the "most favored nation" (MFN) provision, reduce the scope of protections available to investors, and introduce an "exhaustion of local remedies" requirement. This means foreign investors must pursue all legal avenues within India's domestic courts before approaching an international arbitration forum.

- **Brazil's CFIA Model**: Brazil's approach is unique as it bypasses traditional ISDS mechanisms entirely. The Cooperation and Facilitation Investment Agreement (CFIA) model emphasizes cooperation, dialogue, and mediation. CFIA does not provide for investor-state arbitration. Instead, it creates Joint Committees and Focal Points to facilitate communication and resolve conflicts preemptively, making disputes less adversarial and more collaborative.

Comparison:

- **Dispute Mechanism**: While India's reformed BITs retain an arbitration mechanism (with conditions), Brazil's CFIA excludes it entirely, relying instead on state-to-state dialogues.
- **Focus on Domestic Legal Processes**: India's BIT model requires exhausting domestic legal remedies, reinforcing the primacy of national legal frameworks. Brazil, by contrast, seeks to resolve issues through diplomatic channels rather than legal confrontations.
- **Policy Flexibility**: Both models prioritize regulatory sovereignty, but India's model is more legalistic, whereas Brazil's CFIA emphasizes diplomatic conflict resolution to avoid legal escalation.

Effectiveness in Reducing ISDS Claims

Both countries' approaches have effectively reduced ISDS claims, although to varying degrees.

- **India**: After reforming its BIT framework, India unilaterally terminated or renegotiated numerous BITs, significantly reducing its exposure to ISDS claims. For instance, the high-profile Vodafone and Cairn Energy cases were initiated under previous BITs, which India's new framework sought to avoid in future cases. Since these reforms, there has been a noticeable decline in the initiation of ISDS cases against India, although this may also reflect investors' growing awareness of the limitations embedded in India's revised treaties.
- **Brazil**: Brazil's CFIA model has kept the country entirely free from ISDS claims. By focusing on dialogue and cooperation rather than arbitration, Brazil has avoided legal confrontations with foreign investors, demonstrating that CFIA can create a stable investment climate without formal arbitration mechanisms.

Balancing Investor Protection and National Sovereignty

- **India**: India's BIT reforms seek to balance investor protection with national sovereignty by prioritizing state autonomy and narrowing the interpretation of investor protections. This structure has given India more control over regulatory decisions without entirely forfeiting investor confidence, as evidenced by continued foreign investment inflows.

- **Brazil**: The CFIA model has been particularly effective in protecting national policy space. The focus on preemptive dialogue allows Brazil to manage investor concerns without formal arbitration, granting it complete control over regulatory matters.

Stakeholder Reception and Investor Confidence

- **India**: Investors have raised concerns over India's reformed BITs, particularly the requirement to exhaust local remedies, which may delay resolution and increase costs. Despite these concerns, India has maintained strong FDI inflows, partly due to its large domestic market and pro-business reforms. However, some international stakeholders have urged India to reconsider its restrictive BITs to enhance investor confidence further.

- **Brazil**: The CFIA has been well-received in Latin America and parts of Africa, with Mozambique and Angola being early adopters. Many investors appreciate the stability CFIA offers, though some remain cautious about the lack of arbitration. Brazil's sustained FDI inflows indicate CFIA's success in fostering a stable investment climate, even without ISDS provisions.

6. CASE STUDIES AND EXAMPLES (2023–2024)

India Case Studies

Vodafone Arbitration: India's dispute with Vodafone over retrospective tax amendments is one of its most high-profile ISDS cases. Initiated in 2012, Vodafone contested a tax demand based on retrospective amendments, and the Permanent Court of Arbitration ruled in Vodafone's favor in 2020. India initially challenged the ruling but later offered a settlement. The case highlights India's struggle with ISDS and showcases why it revised its BITs to prevent future disputes[12].

Cairn Energy Dispute: Similar to Vodafone, Cairn Energy's ISDS claim stemmed from retrospective tax amendments. The 2021 ruling favored Cairn, but India negotiated a settlement, leading to an agreement where Cairn would withdraw its arbitration claims in exchange for a refund. These cases underscore the critical role ISDS played in India's decision to overhaul its BIT framework[13].

Recent BITs and their Impact on India's Policy Space: India's recent BITs reflect a shift toward regulatory autonomy. Provisions now exclude "indirect expropriation" claims, and investor protections are limited to "national treatment." This change reflects India's commitment to safeguarding policy space, especially in areas like public health, environmental protection, and national security[14].

Brazil Case Studies

CFIA in Action – Agreements with Mozambique and Angola: Brazil's CFIA agreement with Mozambique, signed in 2015, focuses on cooperative dispute resolution through regular consultations and joint committees. This agreement has successfully averted disputes by resolving investor issues early, setting a precedent for Brazil's other agreements, including its 2021 agreement with Angola. These cases demonstrate CFIA's potential to foster stable investment climates in emerging markets[15].

Impact on Brazilian Multinationals: CFIA has had a positive impact on Brazilian companies investing abroad. The absence of arbitration in CFIA agreements has reduced legal costs, encouraging Brazilian multinationals to expand into African and Latin American markets. Case studies of Brazilian companies like Vale SA and Odebrecht illustrate CFIA's potential to provide a framework that balances investor protection with national interests.

2023-2024 CFIA Updates: Brazil has continued to expand its CFIA network in 2023-2024, with agreements signed with countries such as Colombia and Ecuador. The performance data from these agreements indicates improved investor relations, contributing to increased investment flows without arbitration dependencies.

7. GLOBAL TRENDS AND INFLUENCES ON ISDS REFORMS

The global movement toward ISDS (Investor-State Dispute Settlement) reform has profoundly influenced how countries approach investment treaties, particularly emerging economies like India and Brazil. Both countries have

integrated international best practices to develop frameworks that strike a balance between protecting investor rights and preserving national policy autonomy. The influence of international organizations has been significant in this process. For instance, UNCITRAL's (United Nations Commission on International Trade Law) Working Group III has provided extensive research and recommendations on alternative dispute mechanisms, including permanent investment courts and appellate bodies, which has informed India's revised BITs (Bilateral Investment Treaties) and Brazil's Cooperation and Facilitation Investment Agreement (CFIA) model. By adopting such approaches, India and Brazil seek to establish fairer, more efficient dispute resolution mechanisms that address both investor needs and national sovereignty concerns.

Regional trade agreements (RTAs) and multilateral treaties have further shaped ISDS reform efforts, promoting models that move away from traditional, rigid ISDS provisions. Notably, the Regional Comprehensive Economic Partnership (RCEP)[16]—a trade agreement that India chose not to join—excludes ISDS provisions entirely. This reflects a regional trend toward frameworks that minimize the legal risks associated with ISDS. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) offers flexibility by allowing countries to opt out of certain ISDS clauses, highlighting a shift toward customizable ISDS provisions that accommodate diverse national interests[17]. These treaty provisions collectively signal a shift towards ISDS frameworks that prioritize state policy space and regulatory flexibility while maintaining investor confidence.Other emerging economies, such as South Africa and Indonesia, offer valuable examples for India and Brazil as they continue to refine their ISDS approaches. South Africa, for example, took a bold step in 2015 by replacing its BITs with the Protection of Investment Act, which promotes domestic dispute resolution over international arbitration. Indonesia has similarly revisited its BITs, removing clauses that extend excessive protections to investors, reflecting its commitment to uphold its regulatory sovereignty. Both nations illustrate how countries can effectively balance investor protections with policy flexibility, offering potential pathways for India and Brazil to explore in future ISDS reforms.

Overall, the ISDS reform landscape is increasingly centered on maintaining a balance between state sovereignty and a stable investment climate. India's approach through revised BITs focuses on reducing investor protections to ensure that domestic policies remain insulated from external pressures, while Brazil's CFIA model represents a cooperative alternative that encourages dialogue over legal confrontation. These evolving frameworks underline the flexibility and

innovation that countries are employing to reform ISDS, setting a precedent for how emerging economies can create more equitable and sustainable investment environments.

8. CHALLENGES AND CRITICISMS OF ISDS REFORM IN INDIA AND BRAZIL

Investor Concerns

One of the major challenges facing India and Brazil in their ISDS reforms is addressing foreign investors' concerns regarding the shift away from traditional ISDS mechanisms. Investors often seek a stable and predictable environment with clear pathways for dispute resolution, which the traditional ISDS system has historically provided. The exclusion of certain arbitration mechanisms in India's revised Model BIT and Brazil's CFIA model has led to apprehensions among foreign investors about the reliability of these frameworks. For instance, investors may worry that relying on local courts in India or on a diplomatic framework like Brazil's CFIA could lead to delays, reduced neutrality, or lack of consistency in judgments. These factors can lead to hesitation in investing, especially in high-stakes, capital-intensive industries where dispute risks are significant[18].

India's Model BIT requires the exhaustion of domestic remedies, which means that investors must navigate India's court system before initiating international arbitration. This requirement has raised concerns about the time and costs involved in dispute resolution. Brazil's CFIA model, which lacks ISDS arbitration altogether, is built on diplomacy and mutual agreement, which some investors fear could leave them without a clear resolution mechanism if diplomacy fails. Balancing investor expectations with national priorities remains a challenging aspect for both countries as they advance their ISDS reforms.

Balancing Act Between Protection and Sovereignty

India and Brazil face difficulties in striking a balance between protecting foreign investments and preserving policy space to safeguard domestic interests. This balancing act becomes particularly complex in sensitive and volatile sectors like technology, infrastructure, and energy, where government regulations are crucial for national security and socio-economic stability. For example, India's Model BIT excludes the "most favored nation" (MFN) clause, preventing foreign investors from seeking more favorable treatment than what is stipulated in their specific treaty. This clause safeguards India's policy-making autonomy but also

limits investor protections, raising concerns about the adequacy of their legal rights.

Similarly, Brazil's CFIA framework seeks to preserve national sovereignty by excluding arbitration mechanisms. This preserves Brazil's control over regulations in key industries but could dissuade investors who require arbitration as a form of security. Striking a balance that satisfies investor interests without compromising national priorities remains a challenging area for both India and Brazil, as they strive to maintain regulatory autonomy while attracting foreign capital.

Implementation and Compliance Issues

Implementing ISDS reforms and ensuring compliance with international standards pose significant hurdles for India and Brazil. Both countries have faced challenges aligning their reforms with global investment protection norms while addressing domestic policy goals. In India, challenges arise in coordinating ISDS reforms across various sectors and legal systems, with issues related to compliance with judicial standards, efficient enforcement, and judicial capacity to handle complex investment disputes.

In Brazil, where the CFIA model emphasizes cooperation over legal confrontation, compliance relies on robust institutional frameworks for conflict resolution. The absence of binding arbitration complicates enforcement, as there is no universal legal mechanism compelling parties to comply with CFIA's resolutions. Moreover, Brazil's reliance on dialogue-based resolutions requires strong diplomatic and administrative resources, which can strain national infrastructure. Compliance issues, therefore, represent a practical challenge that both countries must address to make their ISDS reforms more effective and reliable for investors and policymakers[19].

9. FUTURE DIRECTIONS AND RECOMMENDATIONS

Recommendations for India

For India, refining its Model BIT to align with evolving global investment standards is essential. One recommendation is to incorporate specific clauses on environmental protection, labor standards, and human rights. By including these provisions, India could enhance its appeal to socially responsible investors who prioritize ethical investments and contribute to sustainable development. Additionally, India could explore provisions that allow for investor accountability regarding environmental impacts, especially given India's climate and resource challenges.To

improve transparency and efficiency in its ISDS mechanisms, India might consider establishing dedicated investment courts or special tribunals to handle disputes. Streamlined, specialized adjudication would enhance investor confidence in the legal system while alleviating the burden on general courts. Increasing transparency through accessible records of BIT negotiations and dispute outcomes could also improve stakeholder trust. Lastly, reducing the requirement to exhaust all local remedies could make India's BITs more attractive to investors by offering a quicker path to resolution without compromising national sovereignty.

Recommendations for Brazil

Brazil's CFIA model has been effective in reducing investor-state disputes, but incorporating arbitration as a fallback option could provide an additional layer of security. This hybrid model would allow Brazil to preserve the cooperative, non-adversarial nature of CFIA while offering an alternative mechanism if diplomatic efforts reach an impasse. This could enhance CFIA's appeal to investors who prefer having a legal fallback option for dispute resolution. Brazil could also explore collaboration with other Latin American countries to establish a regional dispute settlement framework. A regional body for handling disputes could create a standardized approach across the continent, reducing investor concerns about the unpredictability of bilateral agreements. Regional cooperation could also boost Brazil's influence in shaping ISDS reform at the multilateral level and create a platform for Latin American countries to advocate for their unique needs on the global stage.

Global Perspective on ISDS Reform

India and Brazil, as prominent emerging economies, are well-positioned to influence global discussions on ISDS reform. By leading reform initiatives within forums such as the BRICS group and the G20, both countries can advocate for ISDS models that prioritize sustainable development, respect for national sovereignty, and equitable treatment of investors. Additionally, they could play a key role in building alliances with other emerging economies to push for a multilateral investment court that offers a consistent, transparent, and fair dispute resolution system applicable across different legal and economic contexts. This advocacy would reinforce their commitment to a fairer global ISDS regime that accommodates diverse legal systems and economic priorities.

Role of Multilateral Institutions

Multilateral organizations, including UNCTAD (United Nations Conference

on Trade and Development) and UNCITRAL, are instrumental in supporting ISDS reform efforts globally, particularly in emerging economies like India and Brazil. UNCTAD's[20] Investment Policy Framework for Sustainable Development (IPFSD) could guide India and Brazil in refining their approaches to ISDS by providing standards for integrating social and environmental objectives into investment treaties. UNCITRAL's Working Group III, focused on ISDS reform, could offer further insights into procedural improvements, promoting consistency and fairness in dispute resolution.By engaging more closely with multilateral institutions, India and Brazil can leverage international expertise and frameworks to refine their ISDS systems, improving their attractiveness to investors while safeguarding national policy autonomy. These collaborations would help harmonize their approaches with international standards, contributing to a more balanced and responsive ISDS landscape[21].

10. CONCLUSION

The experiences of India and Brazil with ISDS reforms provide valuable insights into the evolving landscape of international investment law and the search for balanced dispute resolution mechanisms. Both countries have diverged from traditional ISDS frameworks, seeking to safeguard their policy autonomy while still attracting foreign investment. India's approach centers on revising its Model BIT to restrict broad investor protections and eliminate clauses that could challenge the state's policy space, such as the "most favored nation" (MFN) clause. By mandating the exhaustion of local remedies before arbitration, India prioritizes its domestic legal system and reduces dependency on international tribunals. Meanwhile, Brazil has taken a distinct path, avoiding ISDS arbitration altogether through its Cooperation and Facilitation Investment Agreement (CFIA) model. This model emphasizes dialogue and mediation, establishing institutional frameworks that allow disputes to be resolved through cooperation rather than legal confrontation. Both approaches signal a shift in how emerging economies can protect their interests in an increasingly complex global investment environment[22].

On a broader scale, the reforms by India and Brazil could potentially redefine **international investment law** and the role of ISDS. If their approaches succeed in reducing the number of ISDS claims while still maintaining robust foreign investment inflows, it may encourage other countries to consider alternative frameworks. India's focus on regulatory autonomy and Brazil's diplomatic-oriented CFIA offer viable models that prioritize national sovereignty without disregarding the importance of protecting foreign investments. This shift aligns

with a growing global consensus calling for more equitable investment treaties that consider the public interests of host states alongside investor protections. The increasing involvement of international organizations like UNCITRAL and UNCTAD in ISDS reform efforts also reflects the international community's readiness to address these pressing concerns. These organizations have made notable strides in promoting transparency, reducing procedural complexities, and developing alternative mechanisms, paving the way for a fairer system that could better accommodate diverse economic and regulatory environments worldwide.

Looking forward, the path of ISDS reform will likely continue to prioritize the **balance between investor rights and state sovereignty**. As more countries recognize the constraints imposed by traditional ISDS, there is an emerging interest in frameworks that grant states greater control over their regulatory space while still offering fair protection to investors. India's and Brazil's examples illustrate that protecting state sovereignty does not have to come at the expense of foreign investment; rather, well-designed investment frameworks can encourage sustainable, transparent, and mutually beneficial investments. This new direction in ISDS reform can redefine the relationship between states and foreign investors, creating a cooperative environment where both parties are accountable and empowered[23].

In conclusion, the ISDS reforms by India and Brazil represent a significant departure from conventional investment dispute mechanisms, indicating a broader transformation within the field of international investment law. These changes emphasize that investment protection and national sovereignty are not mutually exclusive but can coexist within an innovative and well-structured legal framework. As these models gain traction, they may inspire further reforms worldwide, moving international dispute resolution toward an era where the rights of investors and the sovereignty of states are both respected and upheld. The global shift towards more balanced ISDS frameworks demonstrates a collective commitment to fostering a fairer, more adaptable investment climate, ensuring that the principles of justice, transparency, and mutual respect guide the future of international investment law.

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THE INTERPLAY OF LAW AND PUBLIC POLICY IN ADVANCING SOCIAL JUSTICE: A QUEST FOR INCLUSIVE AND EQUITABLE GOVERNANCE IN INDIA

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Abstract

The pursuit of social justice in India is deeply intertwined with the legal and public policy frameworks that shape governance. The dynamic relationship between law and public policy in advancing social justice, emphasising the need for a coordinated approach that integrates legal principles with policy interventions. By snooping constitutional mandates, judicial pronouncements, and key public policies, also highlights the opportunities and challenges in promoting inclusivity and equity for marginalised communities. It contends that while India's constitutional framework provides a robust foundation for social justice, the real challenge lies in effective policy implementation and governance. Through a critical analysis of landmark legislation and policy initiatives, the study underscores the necessity of a holistic governance model that prioritises the voices of the marginalised and ensures their meaningful participation in decision-making processes, accomplishes by recommending strategies for strengthening the synergy between law and public policy to create an inclusive and equitable social order in India.

Keywords: Social Justice, Law and Public Policy, Inclusive Governance, Policy Implementation, Constitutional Mandates.

INTRODUCTION

Social justice represents the effort to create a society where individuals are

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treated with fairness and dignity, regardless of socio-economic status, caste, or gender. In India, this is a constitutional mandate reflected in the Preamble and Directive Principles of State Policy, aiming to secure "justice-social, economic, and political"[1] for all. Achieving social justice in a stratified society like India requires more than intangible commitments; it demands the interplay of law and public policy to dismantle inequalities.[2] Laws establish rights, while public policies translate these into programs addressing disparities. However, implementation is often hindered by bureaucratic inefficiencies and political interference. This explore how law and policy can be harmonised to promote social justice, exploring the roles of the judiciary, civil society, and government in advancing the well-being of marginalized communities, ultimately advocating for a governance model that upholds constitutional rights for all.

THE CONCEPTUAL FRAMEWORK OF SOCIAL JUSTICE IN INDIA

The concept of social justice in India is inseparably tied to the nation's historical struggle against inequality and its constitutional vision of an egalitarian society. Social justice is not merely a theoretical construct but a dynamic principle aimed at rectifying the deep-seated injustices rooted in India's social, economic, and political structures.[4] It is a doctrine that seeks to harmonise individual rights with the collective welfare of society, ensuring the dignity and equal opportunities for all, particularly those who have been historically marginalised.

Constitutional Foundations of Social Justice

The Indian Constitution enshrines social justice as a core state objective. The Preamble commits to securing "Justice-social, economic, and political" for all citizens, reinforced by the Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV). Fundamental Rights provide enforceable protections against discrimination,[5] ensuring equality before the law (Article 14) and prohibiting discrimination (Article 15) and untouchability (Article 17). Article 21, interpreted broadly by courts, guarantees rights to life, livelihood, education, and health. Complementing these are the Directive Principles, which urge the state to reduce inequalities and uplift marginalized groups, reflecting a vision of social justice aimed at dismantling entrenched inequities and fostering inclusion.[6]

Social Justice as a Multidimensional Concept

Social justice in India is understood as a multidimensional concept, encompassing not only legal equality but also substantive equality that addresses both formal

and informal structures of disadvantage.[7] It seeks to rectify disparities caused by historical injustices and current socio-economic inequalities through affirmative action, redistributive policies, and legal reforms.

- **Economic Justice:** The notion of economic justice in India aims to address the vast disparities in wealth and access to resources that exist across different strata of society. The state has implemented numerous policies, from land reforms to poverty alleviation programs, to address the economic marginalisation of historically disadvantaged groups. Economic justice, therefore, involves the redistribution of resources and opportunities to ensure that all citizens, irrespective of their social background, can lead dignified lives.[8]

- **Social Justice and Caste:** A core component of social justice in India involves addressing caste-based discrimination, which has traditionally structured Indian society into a rigid hierarchy, perpetuating social exclusion and economic deprivation for Dalits (formerly known as "Untouchables"), Adivasis (tribal communities), and other backward classes.[9] The Constitution mandates affirmative action in the form of reservations in education, public employment, and political representation for these communities. The logic of these policies lies in the recognition that formal equality alone cannot address the deep historical disadvantages faced by these groups. Affirmative action, therefore, seeks to provide a level playing field to those who have been systematically marginalised.[10]

- **Gender Justice:** Social justice in India also entails gender justice, aiming to dismantle patriarchal norms and structures that have historically subordinated women. Constitutional provisions such as Article 15(3) empower the state to make special provisions for women and children, recognising their vulnerability and the need for protection and empowerment.[11] Legislative measures such as the Dowry Prohibition Act, the Protection of Women from Domestic Violence Act, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act exemplify the state's commitment to gender justice, addressing both the private and public dimensions of inequality faced by women.[12]

Legal Instruments and Judicial Interpretation

In India, the judiciary has played a pivotal role in advancing social justice through

its progressive interpretation of constitutional provisions. The courts have not only enforced the Fundamental Rights but have also expanded the scope of social justice by recognising new rights and emphasising the substantive aspects of equality.[13] One of the most significant judicial contributions to social justice is the concept of "transformative constitutionalism," which acknowledges the Constitution as a living document capable of evolving with changing social needs. In landmark cases such as "Maneka Gandhi v. Union of India (1978)", the Supreme Court broadened the scope of Article 21, transforming the right to life and liberty into a robust guarantee of dignity, livelihood, and equality. Similarly, in I.R. Coelho v. State of Tamil Nadu (2007), the Court emphasised that socio-economic rights embedded in the Directive Principles must inform the interpretation of Fundamental Rights, thereby harmonising the two sections of the Constitution.[14] Public Interest Litigation (PIL) has further allowed the judiciary to address systemic inequalities by opening up the courts to the underprivileged. Through PILs, the courts have intervened in matters of environmental degradation, bonded labour, child labour, and custodial violence, among others, ensuring that social justice is not merely an abstract ideal but a reality that can be pursued through legal action.[15]

Challenges and Future Strategies

Despite the constitutional commitment and judicial activism in advancing social justice, significant challenges persist in India. A key issue is the gap between law and implementation, where policies aimed at promoting social justice are undermined by bureaucratic inefficiencies, corruption, and weak enforcement.[16] For instance, though the Constitution abolishes untouchability, discrimination persists, reflecting the limits of legal reforms in changing entrenched social norms. As well, debates around affirmative action policies highlight concerns of reverse discrimination and the capture of benefits by more affluent members of marginalised communities.[17] To address these challenges, a holistic approach is needed-one that goes beyond legal reforms to tackle structural inequalities, strengthen governance, and foster social movements and public awareness. This would ensure that constitutional principles of justice are translated into real-world outcomes for all citizens.[18]

THE ROLE OF LAW IN PROMOTING SOCIAL JUSTICE

Law plays a foundational role in the pursuit of social justice, serving both as a mechanism for addressing historical injustices and as an instrument for advancing equality and dignity in society. In a democracy like India, where

deep-seated socio-economic and cultural disparities exist,[19] the law assumes a critical function in mediating between entrenched power structures and marginalised communities. The legal system provides not only the framework for the protection of individual rights but also the means for systemic reforms aimed at correcting inequities rooted in caste, gender, class, and other markers of discrimination.[20]

Legal Frameworks and Constitutional Provisions

The Indian Constitution stands as the cornerstone of the country's legal commitment to social justice. Through its Preamble, the Constitution declares the intention to secure "justice-social, economic, and political" for all citizens. This overarching commitment is reinforced by several constitutional provisions designed to eliminate discrimination and promote equal opportunity. Articles 14 to 18 enshrine the principle of equality, with Article 14 guaranteeing the right to equality before the law and equal protection under the law.[21] Article 15 prohibits discrimination on grounds such as religion, race, caste, sex, or place of birth, while Article 17 abolishes untouchability, marking a significant legal intervention against one of India's most oppressive social practices. In accumulation to the Fundamental Rights, the Directive Principles of State Policy (Part IV of the Constitution) serve as guidelines for the state to promote social and economic welfare. Though not enforceable by law, the Directive Principles reflect the aspirational vision of a just and equitable society. They mandate the state to secure adequate means of livelihood for all, ensure equal pay for equal work, and promote the welfare of weaker sections, particularly Scheduled Castes (SCs), Scheduled Tribes (STs), and other backward classes. These constitutional mandates form the bedrock of India's legal pursuit of social justice.

Affirmative Action and Protective Legislation

To address systemic inequalities, India has adopted a range of affirmative action measures, particularly in education and employment. The policy of reservation for SCs, STs, and Other Backward Classes (OBCs) in public sector jobs, educational institutions, and legislative bodies is a key legal strategy aimed at ensuring representation and empowerment of historically disadvantaged communities. These provisions, outlined in Articles 15(4), 15(5), and 16(4), represent the state's recognition that formal equality alone cannot dismantle deep-rooted structures of discrimination. Affirmative action seeks to level the playing field by providing marginalised groups access to opportunities from which they have been historically excluded. In accretion to affirmative action, specific protective

legislations have been enacted to safeguard the rights of vulnerable populations. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, stands as a significant legal tool aimed at preventing violence and discrimination against SCs and STs. This law, which criminalises atrocities committed against these communities, reflects the state's commitment to protecting marginalised groups from caste-based violence and social exclusion. Similarly, the Protection of Women from Domestic Violence Act, 2005, and the Rights of Persons with Disabilities Act, 2016, address the specific needs of women and persons with disabilities, recognising their vulnerability to exploitation and discrimination.

Judicial Activism and the Expansive Interpretation of Rights

The judiciary in India has played a crucial role in advancing social justice through expansive interpretations of constitutional rights and judicial activism. The Supreme Court, in particular, has adopted a broad view of rights, responding to society's evolving needs. A key example is the interpretation of Article 21, which guarantees the right to life and personal liberty. Over time, the Court has extended this right to include socio-economic rights such as education (Mohini Jain v. State of Karnataka, 1992), clean air and water (Subhash Kumar v. State of Bihar, 1991), and livelihood (Olga Tellis v. Bombay Municipal Corporation, 1985). These cases reflect the judiciary's commitment to promoting substantive justice, tackling poverty, inequality, and environmental concerns. As well, in Vishaka v. State of Rajasthan (1997), the Court introduced guidelines to prevent workplace sexual harassment, illustrating how judicial intervention has protected vulnerable groups, particularly in the absence of comprehensive legislative action.

Law as a Tool for Structural Change

Beyond individual rights and protections, the law functions as a tool for broader structural change. Legal reforms aimed at land redistribution, labour rights, and education access have sought to address systemic inequalities that perpetuate socio-economic hierarchies. For instance, land reform laws passed in the decades following independence aimed to dismantle feudal landholding patterns and redistribute land to landless peasants, many of whom belonged to marginalised castes and tribes. While these reforms have had mixed success in implementation, they reflect the legal system's potential to initiate structural shifts in economic power dynamics. As well, laws like the Right to Information Act, 2005, have empowered citizens to hold the government accountable, fostering transparency and participation in governance. Access to information serves as a critical tool

for marginalised communities to claim their rights and challenge arbitrary exercises of power. Similarly, the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005, provides legal entitlements to rural workers, reinforcing the principle that law can be used not only to protect but also to empower the disadvantaged.

Limitations and Challenges

While the role of law in promoting social justice is undeniable, it is not without limitations. Legal frameworks often struggle to effect change when unaccompanied by robust policy implementation and societal buy-in. Laws aimed at protecting vulnerable groups are frequently undermined by bureaucratic inefficiencies, corruption, and lack of awareness among beneficiaries. For example, while the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act provides strong legal protection, instances of caste-based violence persist, partly due to weak enforcement mechanisms and societal resistance to change. As well, the legal system itself is not immune to the influence of power and privilege. Access to justice remains a challenge for many marginalised communities, who often face financial, geographical, and social barriers in navigating the legal process. The slow pace of judicial proceedings and the backlog of cases in Indian courts further hinder timely access to justice, diluting the effectiveness of legal remedies.

The Path Forward

For law to serve as a meaningful tool in advancing social justice, it must be part of a larger ecosystem that includes public policy, institutional accountability, and active civil society engagement. The law alone cannot address the deep-rooted social hierarchies that perpetuate injustice; it must be complemented by policies that ensure access to education, healthcare, employment, and housing for marginalised communities. Strengthening legal aid services, simplifying legal procedures, and fostering legal literacy among disadvantaged groups are essential steps toward making the legal system more accessible and responsive. Law remains a powerful instrument for promoting social justice in India. Through constitutional provisions, affirmative action, judicial activism, and legal reforms, the Indian legal system has made significant strides in advancing equality and protecting marginalised communities. However, the full potential of law as a tool for social transformation can only be realised through effective implementation, societal awareness, and continuous engagement with evolving social realities. By addressing these challenges, India can move closer to achieving the vision of a just and equitable society, as envisioned in its Constitution.

THE INTERPLAY BETWEEN LAW AND PUBLIC POLICY

The relationship between law and public policy forms the backbone of governance, particularly in a complex democracy like India, where the pursuit of social justice necessitates a coordinated and multifaceted approach. Law provides the formal structure within which rights and obligations are articulated, while public policy operationalises these legal frameworks to address real-world social, economic, and political issues. Together, they form a synergistic mechanism through which the state seeks to address structural inequalities, promote equitable development, and ensure the welfare of its citizens. However, this interplay is not always seamless; gaps between legal mandates and policy implementation, coupled with socio-political challenges, can impede the realisation of social justice.

The Legal Foundation for Public Policy

The Indian Constitution lies at the heart of the interaction between law and public policy, providing both legal rights and guiding the state's policy formulation. The Directive Principles of State Policy (Part IV) offer a moral and policy-oriented framework for promoting social welfare and justice. Though not enforceable in courts, these principles strongly influence public policy. For instance, the right to education, initially a Directive Principle (Article 45), became enforceable through the Right to Education Act, 2009. This evolution illustrates how policy aspirations can transform into enforceable laws, highlighting the dynamic relationship between law and public policy in shaping citizens' lives.

Deciphering Legal Mandates into Policy Actions

The success of any law aimed at promoting social justice depends heavily on how it is implemented through public policy. Laws, in isolation, may articulate rights and protections, but they require comprehensive and targeted policy measures to ensure their realisation. Public policy serves as the instrument through which the objectives of legal frameworks are realised, addressing the socio-economic and administrative dimensions of these legal provisions. Take, for instance, the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005, which guarantees the right to 100 days of wage employment for rural households.[38] While the law itself establishes the right, its effectiveness is contingent upon the policy frameworks that govern its implementation-such as budget allocations, administrative capacity, and monitoring mechanisms. The Act's success, to a significant extent, depends on the robustness of these policies in translating legal entitlements into tangible benefits for rural populations. In this way, public policy acts as the bridge between legal mandates and the lived

realities of citizens, turning abstract rights into concrete actions.

Policy Failures and Legal Shortcomings

Despite the close relationship between law and public policy, their interaction often faces significant challenges. A key issue is the gap between legal mandates and their implementation, which weakens the effectiveness of even progressive laws. Administrative inefficiencies, corruption, and political interference can lead to policy failures, preventing laws from benefiting their intended recipients. For example, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, aims to prevent caste-based violence, but weak enforcement due to inadequate training and support systems has resulted in low conviction rates. This highlights the need for better coordination between law and policy, along with stronger institutional mechanisms. Similarly, while affirmative action in education and employment is legally upheld, the absence of supportive policies in housing and healthcare limits broader social mobility for marginalised communities. Legal entitlements must be paired with comprehensive policies to address intersecting disadvantages, ensuring social justice across all areas of life.

Judicial Intervention in Policy Formulation

In India, the judiciary has often played an active role in shaping public policy, particularly when legislative or executive actions fail to address key social justice issues. This judicial activism involves courts stepping beyond their traditional role to influence policy. While praised for protecting fundamental rights, concerns arise over judicial encroachment into policy-making, a role typically reserved for the legislature and executive. A key example is Vishaka v. State of Rajasthan (1997), where the Supreme Court issued guidelines on workplace sexual harassment in the absence of legislation, filling a policy gap until the 2013 Sexual Harassment Act. This highlights both the judiciary's role in protecting rights and the need for proactive legislative action.

Towards a Harmonised Approach

To effectively advance social justice, law and public policy must be harmonised, integrating legal provisions with well-structured policy frameworks that address implementation challenges. Laws promoting equity and inclusion need policies that are both administratively sound and responsive to marginalized communities. This requires a multidimensional governance approach, ensuring legal rights are supported by policies that provide access to justice, welfare, and economic opportunities. Civil society plays a crucial role in this

process, raising awareness, advocating for reforms, and holding governments accountable, helping bridge the gap between legal mandates and effective policy implementation.

RECOMMENDATIONS FOR ADVANCING SOCIAL JUSTICE

The quest for social justice in India requires more than the mere existence of legal frameworks and policy interventions. It demands a sustained and coordinated effort by the state, civil society, and the judiciary to address systemic inequalities and ensure that marginalised communities are not only protected but empowered to participate fully in society. To achieve this goal, it is imperative to focus on strategies that bridge the gap between law and public policy, enhance accountability, and foster an inclusive governance model. The following recommendations offer a roadmap for advancing social justice in India through a more comprehensive and integrated approach.

Strengthening the Implementation of Legal Frameworks

Laws aimed at promoting social justice, such as those protecting vulnerable groups, must be implemented with greater rigor and accountability. Although India has a robust legal framework addressing caste-based discrimination, gender inequality, and economic injustice, the challenge lies in the effective enforcement of these laws. Strengthening the institutions responsible for implementation is critical to ensure that legal mandates are translated into actual benefits for marginalised communities:

- **Capacity Building of Enforcement Agencies-** Police officers, public officials, and judicial officers must receive adequate training on the laws protecting vulnerable groups, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Protection of Women from Domestic Violence Act, 2005. Specialised training programs can ensure that these actors are not only aware of the legal provisions but also equipped to handle cases sensitively and efficiently.

- **Enhancing Monitoring Mechanisms-** Effective monitoring and evaluation systems must be established to track the implementation of social justice laws. Independent oversight bodies, such as human rights commissions, need to be strengthened to monitor compliance and hold enforcement agencies accountable for failures in implementation.

- **Promoting Legal Awareness and Access to Justice-** Marginalised communities often lack awareness of their legal rights and the means to

access justice. Legal literacy campaigns must be expanded, particularly in rural areas, to empower individuals to claim their rights. In addition, the provision of free and accessible legal aid services must be prioritised to ensure that vulnerable groups can navigate the legal system effectively.

Fostering Collaboration Between State and Civil Society

Civil society organisations (CSOs) play a critical role in advancing social justice by advocating for marginalised communities, raising awareness, and holding the state accountable. A more collaborative approach between the state and civil society can ensure that policies and programs are more responsive to the needs of the people and that implementation challenges are addressed in real time:

- **Strengthening Civil Society Participation-** The state must actively foster partnerships with CSOs, particularly those working with marginalised groups. By involving CSOs in both the design and implementation of policies, the state can draw on their expertise and on-the-ground knowledge to create more effective and inclusive programs.

- **Building Capacity for Local Governance-** Strengthening local governance structures, such as Panchayati Raj Institutions (PRIs), can enhance the role of civil society in shaping public policy. Local bodies should be empowered to make decisions on issues directly affecting their communities, with a focus on ensuring representation of marginalised groups within these institutions. This decentralisation can make governance more participatory and responsive to the needs of disadvantaged populations.

Ensuring Economic Justice Through Inclusive Development

Economic justice is a cornerstone of social justice, and advancing it requires policies that promote equitable access to resources, opportunities, and services. Inclusive economic development policies must ensure that marginalised groups benefit from India's economic growth and are not left behind in the process:

- **Promoting Equitable Access to Education and Employment-** Education and employment are key drivers of social mobility. Policies that promote equal access to quality education and employment opportunities for marginalised communities must be prioritised. This includes addressing systemic barriers, such as the digital divide, inadequate infrastructure in rural areas, and discriminatory practices in hiring.

- **Land and Livelihood Security-** Land is a critical resource for economic empowerment, particularly for rural and tribal communities. Policies aimed at securing land rights for marginalised groups, particularly women and indigenous communities, must be strengthened. In addition, government schemes aimed at providing livelihoods, such as MGNREGA, should be expanded and made more inclusive to ensure that marginalised communities have access to sustainable sources of income.

- **Social Entrepreneurship and Skill Development-** Encouraging social entrepreneurship and providing skill development opportunities for marginalised groups can help foster economic independence and self-reliance. Policies that support microfinance, cooperatives, and self-help groups (SHGs) can empower disadvantaged communities to create their own economic opportunities.

Strengthening the Role of International Norms and Human Rights Frameworks

India's commitment to international human rights norms and conventions can play an important role in advancing social justice domestically. By aligning national laws and policies with global human rights standards, India can strengthen its efforts to promote equity and inclusion:

- **Incorporating International Human Rights Standards into National Law-** India has ratified numerous international human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD). However, there is a need to more systematically integrate these international obligations into national laws and policies to ensure that India meets its global commitments to social justice.

- Engaging with International Human Rights Bodies- India should actively engage with international human rights bodies and mechanisms, such as the Universal Periodic Review (UPR), to assess its progress in addressing social justice issues. Regular reporting and engagement with these bodies can provide valuable insights and recommendations for improving national policies and practices.

CONCLUSION

The pursuit of social justice in India is a constitutional mandate necessitating the synergistic interaction of law, public policy, and inclusive governance. While legal frameworks establish the foundation for rights and equality, their effectiveness relies on policies that address socio-economic disparities and ensure their enforcement. Institutional inefficiencies and systemic barriers pose significant challenges, particularly for marginalised communities. Therefore, a coordinated approach encompassing stringent law enforcement, participatory policy-making, judicial accountability, and active civil society engagement is essential. To harmonise these efforts, India must strive towards a governance model that is inclusive, participatory, and accountable. The existing legal frameworks need strengthening through enhanced implementation mechanisms, while public policies must be tailored to address the unique needs of marginalised communities. The judiciary, civil society, and the state must collaborate to fulfil the constitutional mandate of social justice. By adopting these recommendations, India can progressively realise a more inclusive and equitable social order where every citizen, irrespective of their background, fully enjoys their constitutional rights and freedoms.

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E-COURTS & ENSURING SOCIAL JUSTICE: CHALLENGES AND PROSPECTS

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Abstract

Introduction of IT (e-Courts) in justice delivery has been considered as a weapon of fast justice delivery and thereby reducing the burden of judiciary. Besides, it is helpful in promoting social justice. The complex procedures, costly litigations and geographic barriers etc. hinder the marginalised communities to access the legal recourse. E-Courts introduced under the National Policy and Action Plan for ICT in the Indian Judiciary, aim to address these challenges by digitizing court processes. features like e-filing, virtual hearings, and digital case management, e-courts streamline judicial procedures, reduce case backlogs, and make justice more accessible to disadvantaged populations. This initiative aligns with constitutional mandates. But the question is – what are challenges faced by the justice seekers, the judicial process and legal aid? e-Courts face obstacles such as the digital divide, data privacy concerns, and resistance from the judiciary. Thus, the present paper attempts to underline the challenges and suggest measures to meet the challenges. It may be concluded that e-courts may bridge the gap between people and judiciary, but there is urgent need of expansion of internet to rural and weaker sections and enhancing digital literacy.

Keywords: E-Courts, Social Justice, Digital Divide, Access to Justice, Procedures, India

INTRODUCTION

The judicial system in any democratic society serves as a pillar for the maintenance of law and order and the protection of individual rights. In India, the judiciary holds a particularly significant position, given the diversity of its population and the vast socioeconomic disparities that exist across the country.

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However, the traditional court system has long been criticized for its lingering procedures and less inaccessibility. With millions of cases pending, the Indian judiciary is excessively overburdened, and this has resulted in extensive delays in justice delivery. For many, especially the marginalized, the high costs of litigation, geographic distance from courts, and other systemic barriers make it extremely difficult to pursue their legal rights. This often leads to a denial of justice, reinforcing inequality in a system designed to protect it.

The challenges of the traditional court system are multifaceted. One of the most pressing issues is the overwhelming backlog of cases. As of 2023, more than 44 million cases are pending across different courts in India, with many cases languishing in the system for decades before reaching a resolution (Business Standard)[1]. This backlog often leads to unnecessary delays, forcing individuals to wait years or even decades for a verdict. Further, costly affair inhibit the economically disadvantaged, making it difficult for them to access competent legal representation. Moreover, for people living in remote or rural areas, physical access to courts becomes a significant challenge.

In response to these challenges, the Indian judiciary has sought to modernize and adopt technology as a means to streamline and improve the justice delivery system. The e-courts initiative, introduced in phases since 2007, represents a significant step toward addressing these inefficiencies.[2] E-courts are designed to digitize judicial processes, allowing for online filing of cases (e-filing), virtual hearings, automated case management systems, and real-time access to case information for all stakeholders. The use of e-courts not only enhances judicial efficiency but also has the potential to democratize access to justice by removing barriers related to cost, distance, and time.

The importance of social justice within the legal framework cannot be overstated. Social justice, as envisioned by the Indian Constitution, is about ensuring that every individual, regardless of their socioeconomic status, gender, or geographic location, has access to justice. The Constitution guarantees the right to equality before the law under Article 14, ensuring that no one is discriminated against based on arbitrary factors. Article 21 extends the right to life and personal liberty, which has been interpreted by the courts to include access to justice as a fundamental right. Additionally, Article 39A emphasizes the state's duty to provide free legal aid to those in need and promote equal access to justice.[3] Together, these constitutional provisions form the bedrock of India's commitment to social justice.

The integration of technology through e-courts serves as a vital tool in

realizing the constitutional promise of social justice, as it helps address the very barriers that prevent many citizens from accessing the legal system. By making courts more efficient, transparent, and accessible, e-courts hold the potential to bridge the gap between the judiciary and the people, ensuring that justice is not only available but also equitable.

Social Justice and Constitutional Provisions

Social justice refers to the fair and equitable distribution of opportunities, rights, and resources within society. In the legal framework, it emphasizes that all individuals, regardless of their social, economic, or cultural backgrounds, should have equal access to legal remedies and protection under the law. Social justice in the Indian context is deeply rooted in constitutional principles aimed at ensuring fairness, equality, and access to justice for all citizens, especially the marginalized (Shukla: 2014).[4] The Indian Constitution incorporates these ideals through various provisions that guarantee legal equality and access to justice, forming the backbone of the nation's commitment to social justice.

Article 14 of the Indian Constitution enshrines the principle of "equality before the law" and "equal protection of the laws." In the context of social justice, Article 14 is a cornerstone because it guarantees that marginalized groups, such as Scheduled Castes, Scheduled Tribes, and economically weaker sections, have the same rights to seek justice as more privileged groups. This principle extends to access to courts, legal representation, and participation in legal proceedings. In a society marked by significant inequalities, Article 14 ensures that the justice system remains open and fair to all individuals, not just those with economic or social power.

Article 21 provides for the protection of life and personal liberty. Over time, the Indian judiciary has expanded the interpretation of Article 21 to include a wide range of rights essential for a dignified life, including the right to access justice. The Supreme Court of India has repeatedly ruled that the right to life and personal liberty is incomplete without access to a fair and timely judicial process. Access to justice under Article 21 includes the right to a fair trial, the right to legal representation, and the right to timely hearings. Without these guarantees, vulnerable populations would be unable to enforce or protect their fundamental rights. Therefore, Article 21 plays a critical role in advancing social justice by making justice accessible and equitable. The recognition that access to justice is a fundamental right is central to the idea that justice delayed is justice denied.

Article 39A, part of the Directive Principles of State Policy, directs the state to provide free legal aid to those who cannot afford it, thereby promoting equal access to justice. Although the Directive Principles are not enforceable by courts, they guide the state's policy-making processes, emphasizing the importance of social justice in governance. Article 39A specifically calls for removing financial barriers to justice, ensuring that individuals are not denied legal recourse due to their inability to pay for legal services. The provision is especially important for disadvantaged groups, including the poor, women, and other marginalized communities, who may not have the financial means to engage in lengthy or expensive litigation. Through government-sponsored legal aid schemes and pro bono legal services, Article 39A seeks to level the playing field and ensure that justice is not a privilege reserved for the wealthy but a right accessible to all.

The Key Features of e–Courts

The introduction of e-Courts can be looked into three phases[5]. **Phase I (2011-2015)** marked the beginning of the e-Courts Initiative, focusing primarily on the computerization of District and Subordinate Courts across India. The objective of this phase was to provide essential case-related services by installing the necessary hardware, software, and networking infrastructure in courts. By the end of this phase in 2015, approximately 14,249 courts had been successfully computerized, laying the groundwork for further advancements in the judicial system. **Phase II (from 2015 onwards)** followed the initial phase, initiated to enhance ICT enablement even further. Under this phase, over 18,735 District and Subordinate Courts have been computerized, with an emphasis on improving service delivery for litigants and legal professionals. This phase has seen the introduction of various technological advancements, enabling better access to justice and facilitating smoother interactions within the judicial system. Looking ahead, **Phase III** of the e-Courts Initiative is currently being prepared, with ambitious plans to introduce features that will significantly enhance the court experience for all stakeholders. This phase aims to facilitate digital and paperless court processes, allowing for online hearings and the integration of emerging technologies such as Artificial Intelligence (AI). These advancements are expected to streamline court operations further and make legal proceedings more efficient and accessible.

E-courts, represent a significant technological advancement in the judicial system, offering a platform for virtual hearings, electronic case filing (e-filing), and digital case management.[6] These courts leverage technology to streamline the legal process, making it more efficient, accessible, and transparent. Key

features of e-courts include the ability to file cases electronically, conduct virtual hearings via video conferencing, manage cases digitally, and automate the scheduling of hearings and other court-related activities. By digitizing many aspects of the judicial process, e-courts aim to address the longstanding issues of delays, backlogs, and geographic barriers that have plagued regular courts.

1. **E-Filing**: Litigants and lawyers can file their cases electronically, eliminating the need for physical paperwork and enabling faster processing. This feature significantly reduces administrative burdens and ensures easy access to case files from anywhere.

2. **Virtual Hearings**: E-courts allow hearings to be conducted via video conferencing, which is especially useful for cases where physical presence is difficult, such as during the COVID-19 pandemic. Virtual hearings make it easier for individuals in remote areas to attend proceedings without the need for long-distance travel.

3. **Digital Case Management**: With the digitization of case records, courts can now manage cases more effectively, tracking the progress of each case in real-time. Automated systems ensure that cases move through the judicial pipeline efficiently, minimizing unnecessary delays.

4. **Automated Scheduling**: E-courts use software to automate the scheduling of hearings and other proceedings. This feature helps reduce human error, prevents scheduling conflicts, and ensures that cases are heard promptly.

Advantages of E–Courts

E-courts provide numerous benefits, particularly in terms of improving judicial efficiency and transparency. By reducing the time spent on administrative tasks like manual filing and scheduling, e-courts allow judges and lawyers to focus on case deliberation. Virtual hearings also make it possible to conduct legal proceedings without physical constraints, reducing court backlogs and ensuring faster case resolution. Additionally, e-courts promote transparency by allowing public access to case details and proceedings online, ensuring that justice is both seen and done.

E–Courts and Constitutional Goals

E-courts align closely with the constitutional mandate of providing equal access to justice. By breaking down geographic and financial barriers, they make the

judicial process more inclusive, especially for marginalized groups. Articles 14, 21, and 39A of the Indian Constitution emphasize equality, the right to life and liberty, and access to justice for all. E-courts facilitate these goals by ensuring that individuals, regardless of location or economic status, can participate in legal proceedings without undue hardship.

Challenges and Limitations of E–Courts

Despite these constitutional guarantees, marginalized communities in India continue to face significant barriers in accessing justice due to above maladies in regular courts. Economic constraints remain a major issue, with high litigation costs and lawyer fees making legal services unaffordable for many. Additionally, geographic barriers—such as the concentration of courts in urban centers—make it difficult for rural populations to attend hearings and engage with the justice system. Lack of legal awareness further hampers access to justice, particularly among the illiterate and undereducated, who may not fully understand their legal rights. Discrimination based on caste, gender, or ethnicity also manifests in the legal system, making it even harder for marginalized communities to receive fair treatment.

While e-courts offer significant benefits in terms of efficiency and access to justice, they also face several challenges and limitations. These obstacles hinder the smooth implementation of e-courts, particularly in a diverse and populous country like India. Key issues include the digital divide, data privacy and security concerns, and resistance from some members of the judiciary and legal practitioners.

Digital Divide

Rural-urban divide and rich-poor divide in having access to electricity and internet facilities become the biggest challenge of wide spread practice of e-Courts. It will be evident from the government statistics which reflects that Internet-penetration in rural India is 41 per cent against 71 per cent in its urban areas. So far electric supply is concerned, government claims that rural areas are supplied electricity to rural areas has been raised from 12.5 hours a day in 2015 to 21 odd hours a day in 2024.[7] (https://pib.gov.in/ PressReleaseIframePage.aspx? PRID=2037000). Here is a question that these internet and electric supply figures are not evenly distributed in all areas. Many people living in rural or economically disadvantaged regions lack the digital literacy required to navigate e-filing systems or attend virtual hearings. This creates a new barrier to justice, as individuals who cannot access or understand the necessary technology

are effectively excluded from participating in the legal process. If e-courts are to fulfill their promise of equal access to justice, it is essential to address this technological inequality. Without ensuring universal internet access and adequate digital training, the benefits of e-courts will remain out of reach for many, exacerbating existing inequalities.

Data Privacy and Security

Another critical issue surrounding e-courts is the protection of sensitive legal information. E-courts rely heavily on digital platforms to store, manage, and transfer case files, which raises concerns about data privacy and cybersecurity[8]. Legal documents often contain confidential information, and unauthorized access to such data could lead to breaches of privacy and compromise the integrity of the judicial process.

Moreover, virtual hearings conducted over video conferencing platforms pose additional security risks. Ensuring that these platforms are secure from hacking or unauthorized surveillance is vital to maintaining trust in the e-court system. While the government has taken steps to implement encryption and other security measures, the risk of data breaches or cyberattacks remains a serious concern that must be continuously addressed.

Judicial Resistance

Adapting to the technological advancements brought by e-courts requires a shift in mindset, and this transition has faced resistance from some members of the judiciary and legal practitioners. Many judges and lawyers, particularly those who have spent decades working within traditional court systems, may be hesitant to adopt new technologies. The shift from paper-based processes to digital ones can be overwhelming for individuals who are not accustomed to using technology in their daily work.

This reluctance can slow down the implementation of e-courts, as the effectiveness of the system relies on the willingness of judges, lawyers, and court staff to embrace digital tools. Resistance to change can result in delays and inefficiencies, undermining the potential benefits of e-courts.

Addressing the Challenges

To overcome these challenges, the Indian government has initiated various programs aimed at bridging the digital divide, such as expanding internet connectivity in rural areas and offering digital literacy training programs.

Initiatives like the National Optical Fibre Network (NOFN) and Digital India are aimed at improving rural internet infrastructure. Additionally, e-courts Phase II and III initiatives include provisions for training judges, lawyers, and court staff on the use of digital tools, helping to mitigate resistance and promote widespread adoption.

In terms of data privacy, stricter regulations and better security protocols need to be implemented to protect sensitive legal information. Government efforts to collaborate with cybersecurity experts and ensure secure, encrypted virtual platforms are essential in addressing this concern.

The e–Courts Initiative in India: Transforming Justice through Technology

The e-Courts Initiative in India represents a significant stride toward modernizing the country's judicial system through the integration of information and communication technology (ICT). This initiative was conceptualized based on the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary," which was established in 2005. The project officially commenced its implementation in 2007 as part of the e-Courts Integrated Mission Mode Project, aiming to address the long-standing challenges within the judicial framework.

Achievements

One of the landmark achievements of the e-Courts Initiative is the launch of the **e-Courts National Portal** on August 7, 2013. This portal provides online access to case statuses, daily cause lists, and judgments, making crucial information readily available to the public. As of now, data for over **7** crore pending and disposed cases is accessible through this portal, marking a significant milestone in improving transparency and accountability within the judicial system.[9]

The e-Courts Initiative has transformed the Indian judiciary by leveraging technology to enhance access to justice. By reducing the time and effort required to access case-related information and facilitating easier communication between courts and litigants, the initiative addresses several systemic issues that have historically hindered the efficiency of the judicial process.

Conclusion

The implementation of the e-Courts Initiative in India signifies a transformative

step toward fostering social justice within the legal framework. By utilizing technology to streamline processes and improve access to justice, e-courts align closely with key constitutional mandates aimed at ensuring equality and fairness for all citizens. The e-Courts Initiative directly addresses these principles by reducing barriers to accessing legal resources, thereby promoting a more equitable judicial system.

E-courts enhance social justice by making legal information and services available to a broader audience, including marginalized communities who traditionally face difficulties in accessing justice due to geographic, economic, or social constraints. The introduction of online hearings, digital filing systems, and real-time case tracking not only expedites the judicial process but also empowers citizens to engage with the legal system more actively. This level of accessibility is crucial for ensuring that all individuals can seek redress and exercise their rights, thereby contributing to a more just society.

However, the journey towards inclusive justice delivery is far from complete. There remains a pressing need for further investment in technology and infrastructure to address existing disparities in access to e-court services. Initiatives must focus on bridging the digital divide, particularly in rural areas where internet connectivity and digital literacy remain limited. Expanding training programs for legal practitioners and judicial officers is also essential to facilitate the seamless integration of technology into daily operations, thereby enhancing overall efficiency and effectiveness.

In conclusion, e-courts hold the promise of strengthening social justice in India by making the legal system more accessible and efficient. However, sustained efforts and investments are crucial to ensure that the benefits of this technological advancement reach all segments of society. By continuing to adapt and refine the e-Courts Initiative, India can pave the way for a more equitable judicial landscape, fulfilling the constitutional mandate of justice for all.

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A Research Note on BIHAR RESERVATION POLICY: A REVIEW OF LEGAL OPINIONS OF SUPERIOR JUDICIARY

Animesh Kumar

The Indian constitution guarantees social justice and authorises the state to enact specific measures in support of the disadvantaged. It stands as a testament to the dreams and hopes of countless communities long burdened by the weight of caste oppression, yearning for a brighter tomorrow in the realm of an independent India. Governments of various political affiliations, including the political parties in power, have attempted to increase reservation policies mostly driven by electoral pressures rather than constitutional concerns. Upon deeper examination of the legal response to these reservation measures, it becomes evident that our judiciary, employing the rigorous scrutiny theory, has often promptly invalidated such policies. The judiciary has prioritised quality and efficiency in administration. In a very recent case of *Sukanya Shantha* v. *Union of India (*(2024 INSC 753)), the Supreme Court held that the "caste" column and any references to caste in undertrial and, or convicts 'prisoners' registers inside the prisons shall be deleted. The Apex Court, in *Indian Young Lawyers Association* v. *State of Kerala (*(2019 - 11 SCC 1)), elucidated the profound anti-caste aspirations embedded within the Constitution.

In the case of *Gaurav Kumar* v. *State of Bihar* (2024 SCC OnLine Pat 2308), a collection of writ petitions emerged, contesting the elevation of the reservation to 65% within the confines of Bihar in defiance of the 50% threshold that had been established in *Indra Sawhney* v. *Union of India* (hereinafter 'Indra Sawhney case') (AIR 1993 SC 477). The Division Bench of K. Vinod Chandran, Chief Justice, and Justice Harish Kumar, in its 87-page judgement, struck

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down 65% reservation granted in The Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) (Amendment) Act, 2023 and The Bihar Reservation (In Admission to Educational Institutions) Reservation (Amendment) Act, 2023. This extension to the reservation was predicated on a well-debated caste survey conducted by the state government in 2023 across the state. The ruling aligns with the legal principles established by the apex court. This is a blow for the party in opposition at the centre, as they had pledged to conduct a caste survey in all states, eliminating the 50% cap on reservations and assured for ensuring that the other backward castes receive a fair share. The High Court stated that the Bihar government merely took into account the fact that the majority of the state population belongs to the marginalised and deprived communities of Backward & Extremely Backward Classes, Scheduled Castes and Scheduled Tribes, and their representation is not proportional in the unreserved category. The Court observed that the data amassed in the caste survey remained unexamined, and no expert was designated to undertake such an analysis.

The ruling has unequivocally dismissed the idea of providing proportional representation to the backward class and stated that "proportionate" does not apply to Articles 15 and 16. The term "proportionate representation" has been employed under Article 330(2), 243D, and 243T to allocate seats for scheduled castes and scheduled tribes in the Lok Sabha, Panchayats, and Municipalities, respectively. Article 16 employs the phrase "inadequacy of representation." The High Court appropriately referenced the *Indra Sawhney Case* (AIR 1993 SC 477), in which the Supreme Court stated that sufficient representation should not be interpreted as being proportionate. However, the issue of inadequacy is indeed connected to the insufficient proportion of representations of any socially disadvantaged group. The quota system for scheduled castes, scheduled tribes, and other backward castes in Bihar is not truly proportional, despite the fact that these groups make up 84.46% of the state's population. In the *Indra Sawhney Case* (AIR 1993 SC 477), the Supreme Court recognised that the proportion of the backward classes' population in relation to the total population is indeed significant. Was there no survey undertaken to assess the underrepresentation of the EWS category before the extension of EWS reservation before the 2019 general elections? Indeed, the programme was implemented via a constitutional change that limited its examination by the judiciary solely to its fundamental framework. However, *Janhit Abhiyan* v. *Union of India* (2023) 5 SCC 1) (EWS Reservation) is a distinctive declaration in which a steadfast judicial strategy of rigorous examination was weakened.

Another significant reason for invalidating the Bihar reservation amendment is the violation of the 50% maximum reservation limit. In *M. R. Balaji* v. *State of Mysore* (1962 SCR Supl. (1)439), the Supreme Court introduced a judicial innovation by establishing a 50% limit, which it deemed a direct violation of the right to equality. It has been continuously adhered to in several decisions, including *Devadasan* v. *Union of India* (1964) 4 SCR 680), *State of Kerala* v. *N. M. Thomas* (1976) 2 SCC 310), and *Indira Sawhney Case*. However, Indira Sawhney stated that this restriction does not necessarily have to be strictly followed in distant or isolated regions or areas not part of the dominant national culture.

The Hon'ble Patna High Court rejected the notion that Bihar is not part of the national mainstream. Bihar has undeniably been the focal point of national politics. Nevertheless, the government failed to disclose to the court that Bihar has the lowest per capita income in the country, amounting to around 50 thousand (GoI: 2023 PIB & GoI: 2023 Economic Survey), which is just 30% of the average income earned by an Indian citizen. Additionally, Bihar has the highest fertility rate (GoI: 2023 NFHS-5). The urban population of Bihar constitutes merely 11.29% of the total population (Census of India: 2011 Bihar), which is significantly lower than the national average of 35%. The state has the lowest college density in the US, and one out of every three individuals lives below the poverty line. These considerations are persuasive. Surprisingly, the apex court's ruling in the EWS Case 2023 applied the sacred 50% upper limit for reservation only to SCs, STs, and OBCs, excluding the EWS group.

The High Court has correctly noted that the endorsement of the National Backward Classes Commission or the State Backward Classes Commission was not required. However, the court's insistence on analysing the caste survey and consulting with experts may impose further limitations on the government's affirmative action policies in the future. Indira Sawhney case (AIR 1993 SC 477) mentioned the involvement of a group of experts led by sociologist M. N. Srinivas, who, together with two other experts, Yogendra Singh and D. K. Burman (AIR 1993 SC 477, Para 667), publicly rejected the findings. Nevertheless, as Mandal's 11 criteria for measuring underdevelopment had been validated by the Supreme Court, there was no requirement for specialised input following the huge effort of serving a population of 1.1 billion. The government had full authority to take action based on the findings, and thereafter, the assembly unanimously approved the change to strengthen reservation. Despite opposing the caste survey initially, the BJP eventually backed the reservation modification.

The 50% rule is justified based on the principles of efficiency and merit. The

Patna High Court has stated that it is not acceptable to disregard merit fully. There is no scientific or empirical evidence to support the claim that personnel from Scheduled Castes, Scheduled Tribes, or Other Backward Classes are less efficient in performing their tasks compared to employees hired under the general category. In *K. C. Vasanth Kumar* v. *State of Karnataka* (1985 Supp SCC 714), Justice Chinnappa Reddy effectively refuted the efficiency argument by asserting that the notion of efficiency is often invoked insincerely by those in positions of privilege whenever the topic of quota is brought up (Ibid, paras 35, 51, 77, 79-80). Exceeding a 50% reservation rate will negatively impact efficiency. Adopting the carry-forward rule will also harm efficiency. Furthermore, extending the rule of reservation to promotional postings will have a detrimental effect on efficiency. He stated that the belief that individuals from higher castes and classes, who are appointed to non-reserved positions based on their perceived merit, naturally outperform those appointed to reserved positions is a flawed assumption. He argued that this assumption, which reflects the elitist mindset of the privileged classes, would taint the efficient functioning of the system if it were to be embraced.

In the case of *B. K. Pavitra* v. *Union of India* ((2019) 16 SCC 129)), Justice Chandrachud made an observation that it is necessary to alter our understanding of merit in order to accommodate a society that is more inclusive and diverse. Exclusion cannot be caused by merit. He correctly believed that the revolutionary concept of the Constitution cannot be overshadowed by the misconception of merit. Merit should be evaluated based on its contribution to the betterment of society. The Court drew upon the precedents set forth in the *Indra Sawhney Case* and *K. Krishna Murthy* v. *Union of India* ((2010) 7 SCC 202.), articulating the view that the exception concerning the 50% threshold pertains specifically to regions that are distant and isolated. The denizens of these realms, existing beyond the currents of national existence and embodying the unique and defining circumstances of their surroundings, may warrant a distinct approach, perhaps even rationalising a deviation from the established norm of the 50% rule. The Court articulated its position, asserting that it discerned no analogous circumstance within the State of Bihar. This conclusion, particularly in light of the survey, suggests that the situation lacks the extenuating qualities necessary to warrant consideration, given its remoteness from the mainstream of national life.

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बिहार के महामहिम राज्यपाल सह कुलाधिपति **श्री राजेन्द्र विश्वनाथ आर्लेकर** के मार्गदर्शन में मगध विश्वविद्यालय प्रगति, उत्कृष्टता और परिवर्तनकारी उपलब्धियों की असाधारण यात्रा पर द्रुतगति से अग्रसर है। अटूट प्रतिबद्धता के साथ माननीय कुलपति प्रो. एस. पी. शाही के दूरदर्शी नेतृत्व में विश्वविद्यालय नई उचाइयों पर पहुंचने तथा शिक्षा और शोध में अभूतपूर्व मानक स्थापित करने की ओर अग्रसर है। माननीय कुलपति ने विश्वविद्यालय के छात्रों, शिक्षकों और अन्य सभी हितधारको को अकादमिक क्षेत्र में उत्कृष्टता प्राप्त करने के लिए नई जिम्मेदारियां सौपी है तथा उनके अबतक के कार्यकाल के दौरान निम्नांकित उल्लेखनीय कार्य पूर्ण हुए है।

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