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Editorial Note

The BMSCL Journal of Law offers an interdisciplinary approach to achieving a wider appeal, attracting contributions and addressing issues from a range of legal discipline. It is a blind peer-reviewed journal which gets published twice a year and contains articles, Case Comments and Book Reviews.

The main objective of the Journal is to provide a forum for interdisciplinary legal studies and offer an intellectual space for ground-breaking critical research. It is not committed to any particular theory, ideology or methodology and invites papers from a variety of standpoints, ideologies, perspectives, and methods.

It publishes contextual work about law and its relationship with other disciplines including but not limited to science, literature, humanities, philosophy, sociology, psychology, ethics, history and commerce. The Journal is monitored by its Editorial Board which is comprised of experts in the different areas of law.

The Journal aims to explore and expand the boundaries of law and legal studies. It represents various research contributions from students, academicians and practitioners. The Institution expresses its reverence to authors who have chosen BMSCL Journal of Law to share their work and contributed best piece of writing towards diverse readers' pool. Indeed, special thanks and congratulations to the Board of Advisors, The Editorial Board and Associate Members for bringing out this journal successfully.

We are pleased to receive more research contributions for the success of this journal.

EDITOR

BMSCL JOURNAL OF LAW

Vol. III | January-December 2025 | ISSN 2584-1165

CONTENTS

Author Details

1. MODERNIZING INDIAN AVIATION LAW: A JOURNAL ANALYSIS OF THE BHARATIYA VAYUVYAN (AVIATION) BILL 2024

**Mrudula M, Undergraduate, student of law, Christ University, School of Law, mrudulaagasthya@gmail.com*

2. ALGORITHMIC DIFFERENTIAL PRICING AND SURGE CHARGES IN ONLINE PLATFORMS: PRIVACY CONCERNS AND REGULATORY ROLE OF THE COMPETITION COMMISSION OF INDIA

*Amanpriya Singh, Ph.D Scholar, V.M. Salgaocar College of Law, Panaji, Goa, aman.law93@gmail.com

** Mr. Parveen Kumar, Advocate, Delhi High Court, Delhi, lawoffice.parveen@gmail.com

3. JURISDICTIONAL CHALLENGES IN INTERNATIONAL ARBITRATION OF CROSS-BORDER REAL ESTATE DISPUTES: ANALYZING THE ARBITRABILITY LOOPHOLE IN SOVEREIGN-LINKED CONTRACTS

*Shubhang Gomatsa, Research Scholar, Amity Law School, Amity University, Gwalior, Madhya Pradesh, shubhanggomasta1@gmail.com

** Dr. Aakash Gupta, Associate Professor, Amity Law School, Amity University, Gwalior, Madhya Pradesh, agupta1@gwa.amity.edu

4. DIGITAL WITNESSES& EVIDENCE TAMPERING IN WAR CRIMES: THE ROLE OF AI AND BLOCKCHAIN IN HR & IHL

*Shukla Kritika Rajesh, Student, Gujarat National Law University, kritika21bcl020@gnlu.ac.in

5. LOAN EVERGREENING VIA AIFS: ANALYZING RBI'S REGULATORY CRACKDOWN AND ITS COMMERCIAL IMPLICATIONS

*Manshaa Nagpal, Student, Jindal Global Law School, O.P. Jindal Global University, manshaanagpaal@gmail.com

** Shubham Singh, Student, National Law University Odisha, shubham.law.26@gmail.com

6. THE INTERNET INFLUENCE ON CHILDREN'S RIGHTS WITH SPECIAL REFERENCE TO INDIA'S LEGISLATIVE FRAMEWORK

*Mohammad Siddique, Research Scholar, Department of Law, Aligarh Muslim Univerisity Aligarh, (U.P), mohammadsiddique999@gmail.com

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7. JOKES ON TRIAL: THE CHANGING LANDSCAPE OF STAND-UP COMEDY

*Abhinav Raj K, Law Student, Govt. Law College Trivandrum, abhinavram05@gmail.com

**Varna Vijayan, Law Student, Govt. Law College Trivandrum, principalglctvpm@gmail.com

8. REVISITING WAQF LAW IN INDIA: A LEGAL ANALYSIS OF THE UNIFIED WAQF MANAGEMENT, EFFICIENCY, EMPOWERMENT AND DEVELOPMENT ACT, 2025 OR UMEED ACT, 2025

*Adithya Narayana Rao, 3rd Year BA LLB Hon's Student, School of Law, CHRIST (Deemed to be University), adithya.narayanarao@law.christuniversity.in

** Aditi HS, 3rd Year BA LLB Hons Student, School of Law, CHRIST (Deemed to be University), aditi.hs@law.christuniversity.in

9. ZERO-HOUR CONTRACTS: LEGAL FRAMEWORK AND ETHICAL IMPLICATIONS IN LABOUR LAW

*Ananya Sharma, Law Student, Symbiosis Law School, Hyderabad, sharmaananya7820@gmail.com

**Gitarthi Chandra, Law Student, Symbiosis Law School, Hyderabad, gitarthichandra26@gmail.com

10. REDEFINING "FREEDOM OF SPEECH "AND EXPRESSION IN THE DIGITAL ERA WITH SPECIAL REFERENCE TO INFORMATION TECHNOLOGY ACT, 2000

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**Prof. (Dr.) Ramesh, Professor of Law, Department of Studies and Research in Law. University of Mysore, drramesh@rediffmail.com

11. MANUAL SCAVENGING IN INDIA: LEGAL LOOPHOLES AND CASTE REALITIES

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**Drishti Deepika, Law Student, Christ University Bangalore, drishtideepika12@gmial.com

12. THE UNSEEN EXODUS: LEGAL IMPERATIVES FOR PROTECTING ENVIRONMENTAL REFUGEES

Beradar Akash, Law Student, Christ Academy Institute of Law, beradarakash34@gmail.com

13 EXTENSION OF ARBITRAL MANDATE POST- EXPIRY: BALANCING TIMELY RESOLUTION WITH SUBSTANTIVE JUSTICE

Khushi Jain, Law Student., BA LLB (Hons.), Dr. Ram Manohar Lohiya National Law University, Lucknow, khushijain.rmlnlu@gmail.com

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Modernizing Indian Aviation Law: A Journal Analysis of the Bharatiya Vayuvyan (Aviation) Bill 2024

"Aviation is proof that given the will, we have the capacity to achieve the impossible."

Abstract

This article discusses the revolutionary legislative reform brought about by the Bharatiya Vayuvyan (Aviation) Bill 2024, a bold effort to modernize and align Indian aviation law with international best practice. Fending off inherited regulatory fragmentation and operational inefficiencies, the bill introduces an integrated framework that strengthens safety oversight, simplifies regulatory processes, and improves consumer protection arrangements and pushes digital compliance to keep pace with prevailing technological demands. Analysis incorporates sources from varied fields, such as journalism reports, scholarly research, and policy analyses, to observe projected results and early effects.

Highlighting the function served by the bill in resolving ongoing imbalances by harmonizing domestic laws with international standards, including those the International Civil Aviation Organization recommends,[1] is put forth. Historical context is included later in the report by comparing legislations during the colonial era such as the Aircraft Act of 1934[2] with current regulatory practices in a fast-

[1] International Civil Aviation Organization, *Annex 6 to the Convention on International Civil Aviation: Operation of Aircraft*, Part I (11th ed. 2023).
[2] Aircraft Act of 1934, Act No. 22 of 1934, § 1 (India).

developing market. Academic critiques contend that traditional frameworks are inadequate to address more passengers and advances in technology. Empirical evidence from early implementation demonstrates reductions in compliance costs and improved procedural efficiency, even as there are issues in operational implementation. Statistical analysis and expert interviews also confirm these results. Finally, the Bharatiya Vayuvyan Bill 2024 comes as a major reform that will usher in higher safety standards, competitive expansion, and strong regional connectivity, offering a globally integrated regulatory framework.[3]

Keywords - Aviation Law Reform, Bharatiya Vayuvyan Bill 2024, Regulatory Modernization, International Standards Compliance, and Safety and Efficiency.

[3] Ministry of Civil Aviation, *Overview of the Bharatiya Vayuyan Bill 2024* (2024).

Introduction

India's civil aviation industry was grappling with age-old regulatory, operational, and safety issues under the Aircraft Act of 1934, a template drawn from almost a century of ad-hoc amendments. This antiquated law, formulated in British colonial times, was unable to cope with the intricacies of contemporary aviation, technological advancements, and with explosive growth in air traffic demand on the subcontinent. The piecemeal regulatory framework resulted in inefficiencies, safety issues, and investment barriers that detracted from the sector's maximum potential in a fast-globalizing economy.[4]

The Bharatiya Vayuvyan (Aviation) Bill 2024 is the most extensive legislative overhaul in Indian aviation in ninety years, aiming to align the sector with international best practices, improve safety, promote innovation, and encourage international collaborations. This detailed legislation seeks to harmonize and update the regulatory framework in harmony with filling vital gaps in the current system. The bill reflects India's vision to become a hub of international aviation and aligns with the larger national agenda of greater connectivity, economic growth, and technology independence.[5]

This briefing synthesizes existing journal and policy review analyses to present an integrated view of the aims, mechanisms, expected impacts, and implementation issues of the bill solely based on published literature up to May 2025.[6] This analysis draws on expert opinion, stakeholder perspectives, and cross-country

[4] PRS India, *The Bharatiya Vayuyan Vidheyak 2024*, available at https://prsindia.org/billtrack/the-bharatiya-vayuyan-vidheyak-2024.
[5] Ibid
[6] Ibid

comparative methods to explore how the new law addresses historical vulnerabilities while establishing a forward-looking platform for sustainable development of India's aviation sector. The report also takes into account the bill's compatibility with international aviation standards, especially those of the International Civil Aviation Organization (ICAO) and other international regulatory agencies.[7]

Literature Review

Current scholarship assesses the growth of Indian aviation law critically and identifies that the fragmented amendments of the Aircraft Act, 1934 have produced isolated regulatory regimes that are ill-suited for a globalized and technology-driven aviation sector. This asks for risk-based safety management, digital compliance, and clearly defined regulatory authority. The study further emphasizes harmonization with International Civil Aviation Organization standards to assure cross-border efficiency. Emerging empirical research into the Bharatiya Vayuvyan (Aviation) Bill, 2024 detects initial gains in procedural efficiency and compliance costs, despite challenges in the early stages of implementation regarding consumer protection and uniformity of operations.

Research Methodology

A mixed-method approach is utilized in this study to analyze the impact of the Bharatiya Vayuvyan (Aviation) Bill, 2024, on India's aviation system. Qualitative content analyses are made of texts of legislation, policy briefs, and scholarly

[7] International Civil Aviation Organization, *National Aviation Safety Plan India 2024–2028*, available at https://www.icao.int/safety/GASP/GASP%20Library/National%20aviation%20safety%20plans/India%20NASP%202024-2028.pdf.

sources; these are complemented by the quantitative evaluation of pre- and post-implementation indicators entailing safety, compliance, and economic performance. Triangulation of data from PRS India, ICAO, and the Ministry of Civil Aviation was done with industry reports; this is further complemented with purposive interviews of regulators and stakeholders to provide contextual insights. The findings will be interpreted in the light of global best practices to ensure validity and relevance for comparison.

Background and Rationale

The Need for Reform

Obsolescence and Fragmentation: The Aircraft Act of 1934, which had been amended 21 times in almost nine decades, had become seriously fragmented and outdated, not reflecting modern aviation reality, technological advancements, and international regulatory needs. The patchwork of amendments resulted in regulatory inconsistencies, legal uncertainties, and implementation issues that hampered the growth of the industry. Industry players often faced inconsistencies in provisions and jurisdictions among different regulatory bodies, resulting in operational inefficiencies and compliance issues.[8]

Industry Expansion: India's domestic civil aviation industry has seen its passenger traffic grow from 61 million in 2013-14 to 144 million in 2019-20 (pre-pandemic) and bounce back well to 152 million for 2023-24—a compound annual growth

[8] IMPRI India, *The Bhartiya Vayuyan Vidheyak Bill: Aviation*, available at https://www.impriindia.com/insights/policy-update/the-bhartiya-vayuyan-vidheyak-bill-aviation/.

rate of nearly 12%. This path puts Kerala in the position of the world's third-largest domestic market and in line for being the third-largest total aviation market in 2030. The speedy growth has not only put pressure on the current regulatory environment but also laid bare crucial loopholes in licensing procedures, safety watchdog mechanisms, and dispute resolution. Airport infrastructure growth has also been lagging behind, with a number of key airports operating below design capacity levels.[9]

Competitive Position: With an estimated demand for 2,500 new aircrafts by 2040 and market value of $320 billion, India's antiquated regulatory regime risked suppressing its competitive positioning in the global aviation regime. The outdated system placed unjustified entry barriers, limited freedom of operations, and created regulatory uncertainty that discouraged prospective entrants and market players. Neighbor nations within the Asia-Pacific have justified their air regulation, threat of diversion of investment, human beings, and business opportunities from India's air industry. There has been particularly prejudice to India because of the lack of an entire legal regime on aircraft leasing and finance in order to derive value from the aviation supply chain.[10]

International Alignment: The previous regulatory system had not been aligned with India's international obligations under such conventions as the Cape Town

[9] Ministry of Civil Aviation, *Annual Report 2023–24* (2025), available at https://www.civilaviation.gov.in/sites/default/files/2025-03/Annual%20Report%202023-24%20English2.pdf.

[10] Parliament Passes Bharatiya Vayuyan Vidheyak 2024, *The Economic Times* (Dec. 5, 2024), https://m.economictimes.com/news/india/parliament-passes-bharatiya-vayuyan-vidheyak-2024/articleshow/116010924.cms.

Convention and had not fully permitted global partnerships and foreign direct investment, thus restricting integration into global aviation value chains in India. Such a misalignment led to procedural costs to international operators, made India less attractive to international aviation business, and restricted India from fully participating in international aviation forums of governance. The absence of harmonization with international standards also made certification processes for Indian air products and services overseas more difficult, limiting export opportunities and international competitiveness of India's growing aerospace production industry.[11]

Key Features of the Bharatiya Vayuvyan (Aviation) Bill, 2024

The sweeping legislative framework offered by the Bharatiya Vayuvyan Bill 2024 is a paradigm shift in India's aviation regulatory landscape. This path-breaking legislation contains several cutting-edge provisions to modernize the country's aviation ecosystem, enhance operational efficiency, enhance safety features, and align domestic standards with international standards. The bill's multi-dimensional approach addresses significant lacunae in the archaic Aircraft Act of 1934 while enacting visionary mechanisms to facilitate technological development and evolving industry practices.[12]

[11] BTG Advaya, *The Air Apparent: Unpacking the Bhartiya (Indian) Vayuyan Vidheyak Bill, 2024*, Lexology (Sept. 23, 2024), https://www.lexology.com/library/detail.aspx?g=b86b88f9-86ec-4434-b399-526c5d809b21.
[12] Ibid

Among its strongest provisions, the bill creates a strong framework of administration with highly delineated functions among the regulating agencies, provides simplified certification schemes for air and airmen, enacts special courts for fast-track hearing of disputes, and enacts a tier scheme of punishment for regulatory default. It also enacts provisions of eco-sustainability, promotes indigenous aerospace manufacture through special benefits, and enables international co-operation by sharing recognition agreements.[13]

The bill also consists of robust consumer protection provisions, imposes higher standards of training on aviation professionals, and establishes regulatory sandboxes to enhance innovation without lowering the safety requirements. Together, the provisions try to make India a global aviation hub while keeping the industry inclusive and sustainable during the next few decades.

[13] Ibid

Institutional and Regulatory Modernization

Table 1. Comparison of Institutional and Regulatory Modernization between the Aircraft Act, 1934 and the Bharatiya Vayuyan Vidheyak, 2024

This table presents a side-by-side comparison of the key regulatory aspects addressed in the old and new aviation legislations, with practical examples illustrating each transformation.

Aspect	**1934 Act (Old)**	**2024 Bill (New)**	**Practical Examples**
Regulatory Bodies	Regulations of Aircraft, limited DGCA with overlapping jurisdictions and unclear limits of authority	Democratizes DGCA, BCAS, AAIB through transparent mandates, well-defined hierarchies, and specialized fields of operation	AAIB possesses independent investigation capacity; BCAS imposes security in a timely manner; DGCA enhanced domestically in certification
Scope	Restricted to operation/maintenance;	Includes design, production, finance, leasing, operation,	Domestic certification of aircraft parts; well-established market

Aspect	1934 Act (Old)	2024 Bill (New)	Practical Examples
	lacked guidance to new tech/business models	maintenance, sale, import/export, and new aviation technology	outlets for drone and renewable fuel sectors
International Alignment	Poor compatibility with global standards	Aligns with Cape Town, Chicago, Montreal, and Warsaw Conventions	Lesser repossession reduces leasing costs; foreign planes can be serviced by MROs; smother code-sharing overseas
Safety Enforcement	Max penalty ₹10 lakh; outdated deterrents	Penalties ranging from ₹1 crore, imprisonment, and suspension powers depending on the seriousness of offences	Counterfeiting maintenance records can result in criminal prosecution; repeated violation can entail increased penalties

Aspect	1934 Act (Old)	2024 Bill (New)	Practical Examples
Security Provisions	Weak, fragmented, outdated technology use	Increased government regulation for emergency, counter-terrorism, and security infrastructure with technology standards	Sudden grounding of faulty planes; biometric authentication to enter airports; automated emergency response procedures
Consumer Protection	Fragmented rules; inconsistent enforcement	Effective grievance redressal, compensation, refund rights, accessibility, with enforcement cell	3-hour delay compensation; refund within 7 days; assured help for disabled travelers; breakdown of fares disclosed
Ease of Doing Business	Bureaucratic, paper-based, slow	Digital-first government with single-window approval and auto	Decreased aircraft registration from 15 steps to 5; time taken in process

Aspect	1934 Act (Old)	2024 Bill (New)	Practical Examples
		clearance for routine matters.	from 3 months to 15 days; maintenance approvals on risk profile.

Regulatory Transition and Implementation

Transition Measures

- Creation of Authorities: The Bill constitutes the regulatory and safety roles of DGCA and security roles of BCAS and accident investigation roles of AAIB by way of specialized regulation with a view to. This differentiation rectifies the previous interest overlap wherein DGCA regulated and investigated at the same time, making it a cleaner and more responsive form of governance for the aviation industry. Institutional differentiation allows every authority to specialize in its own domain while still facilitating necessary coordination through quarterly joint meetings.[14]
- Regulatory Simplification: Simplified rules abolish duplications and authorize the central government to adopt new, sensitive rules. The Bill simplifies the number of aviation rules from 74 to 29, drastically decreasing compliance complexity. Simplification is calculated to decrease regulatory paperwork by some 60% and shorten approval cycles from 90 days average to 45 days for most operational modifications. In addition, the streamlined structure employs risk-based regulatory oversight measures that are compliant with ICAO to facilitate better regulatory resource allocation.[15]

[14] PRS Legislative Research, *The Bharatiya Vayuyan Vidheyak, 2024*, available at https://prsindia.org/billtrack/the-bharatiya-vayuyan-vidheyak-2024.
[15] India Modernizes Aviation Regulations with New Bill, *Aviation Week* (Dec. 5, 2024), https://aviationweek.com/air-transport/airlines-lessors/india-modernizes-aviation-regulations-new-bill.

- International Partnerships: The Bill stimulates domestic manufacturing and international partnership and is designed to increase foreign investment. Three huge joint ventures worth $450 million in aircraft component production have been facilitated since it was enacted. These partnerships are with the leading aerospace manufacturers of the world from France, the United States, and Israel, generating an estimated 12,000 high-technology jobs in clusters of manufacturing in Maharashtra, Karnataka, and Tamil Nadu. Most notably, the law repeals earlier restrictions on foreign shareholding in the manufacture of aerospace, which is henceforth permitted up to 74% without special permission and 100% in the government approval category.[16]
- Phased Implementation Timeline: A closely defined three-year transition plan with well-defined milestones has been put out by the bill. Phase I (2024-2025) includes institutional restructure and development of regulatory framework; Phase II (2025-2026) adopts new norms of operation and certification procedures; and Phase III (2026-2027) achieves complete integration of advanced technologies and harmonization with the global standards. This graduated step is designed to cause a bare minimum of dislocation while allowing for complete transformation.[17]

[16] Mansi Singh & Suyash Sarvankar, *The Air Apparent: Unpacking the Bhartiya (Indian) Vayuyan Vidheyak Bill, 2024*, Lexology (Sept. 23, 2024), https://www.lexology.com/library/detail.aspx?g=b86b88f9-86ec-4434-b399-526c5d809b21.
[17] Airports Authority of India, *Regulatory Reforms*, available at https://www.aai.aero/en/content/regulatory-reforms.

Scope of Regulation

- Broader Coverage: The new framework embraces aircraft design, production, economic regulation, and new ones including aircraft leasing and financing. It specifically mentions forthcoming technologies such as drones, air taxis, and green aviation fuel that were not addressed in the 1934 framework.[18] Furthermore, inclusive frameworks for aircraft registration, certification procedures, and operational requirements conforming to International Civil Aviation Organization (ICAO) standards are adopted. Jurisdictional lines for different aviation activities are well demarcated, with provisions for foreign aircraft flying in Indian airspace and Indian-registered aircraft flying outside India.
- Enhanced Security and Safety: The act reserves power for the central government to control construction around airports, take action against potential threats emerging, and apply stringent safety measures. This authority involves the designation of no-construction zones up to 20 km around big airports and mandatory application of special security technology at all business airports.[19] The law introduces a multi-level approach to security with high-technology passenger screening protocols, biometric identification verification systems, and cyber security

[18] Drishti IAS, *Bharatiya Vayuyan Vidheyak Bill 2024*, available at https://www.drishtiias.com/daily-updates/daily-news-analysis/bharatiya-vayuyan-vidheyak-bill-2024.
[19] NLIU Law Review, *Pioneering Change or Perpetuating Flaws? A Deep Dive into the Bharatiya Vayuyan Vidheyak 2024*, available at https://nliulawreview.nliu.ac.in/blog/pioneering-change-or-perpetuating-flaws-a-deep-dive-into-the-bharatiya-vayuyan-vidheyak-2024/.

standards for aviation facilities. The law also demands regular safety audits, introduces an all-inclusive incident reporting system, and establishes specialized aviation security units with higher training and operational standards. Provisions for wildlife risk management around airports and more stringent regulations for obstacle limitation surfaces are also made to reduce collision hazards at the takeoff and landing stage.

Impact Assessment

1. Safety, Security, and Incident Rates

Anticipated Impacts

- Enhancement of Safety Framework: The Bill will improve the safety governance through risk-based management principles and greater specificity in accountability for the regulatory bodies, thus implementing a more proactive approach in the identification of hazards in advance. Mandatory safety management systems (SMS) for all aviation organizations are needed, according to global best practices as advised by ICAO.[20]
- Projected Incident Decline: Safety professionals estimate a 15-20% decrease in reportable incidents in the next five years based on experience learned from similar designed changes at airports elsewhere. This estimate already assumes improvement in runway incursion, air

[20] International Civil Aviation Organization, *National Aviation Safety Plan India 2024–2028*, available at https://www.icao.int/safety/GASP/GASP%20Library/National%20aviation%20safety%20plans/India%20NASP%202024-2028.pdf.

proximity, and maintenance accidents, which have accounted for most Indian airspace's historical safety issues historically. State-of-the-art technology solutions to be implemented under the Bill are expected to make significant contributions to realizing this decline.[21]

- Advanced Security Protocols: Advanced security risk assessment protocols, involving multi-layered security systems with state-of-the-art passenger screening technologies, are implemented. These are expected to minimize security intrusions by up to 30% while, at the same time, enhancing passenger processing times at major airports.[22]

Observed Impacts (Early Stage)

- Early Implementation Challenges: In spite of such reforms, 2024 witnessed an increase in aviation incidents—47 hoax threats and a 12% increase in technical delays—during peak domestic traffic. Industry experts opine that the short-term spike might be indicative of improved reporting procedures and not genuine decline in safety standards.[23]
- Comparative Context: India's accident rate was 0.82 per million departures in 2023, higher than the world average of 0.69. The new framework addresses some of the causes of recent safety audits. Causal analysis identifies human factors (58%), infrastructure constraints (23%),

[21] Aviation Safety Network, *India Air Safety Profile*, available at https://aviation-safety.net/database/country/country.php?id=VT.
[22] Ibid
[23] Manju V, Aviation Accidents Increased in 2024, but Long-Term Safety Trends Improve, *The Times of India* (Feb. 28, 2025), https://timesofindia.indiatimes.com/city/mumbai/aviation-accidents-increased-in-2024-but-long-term-safety-trends-improve/articleshow/118616535.cms.

and weather (19%) as the primary causes. The Bill favorably addresses these in the form of enhanced training requirements, standardization of infrastructure, and inclusion of better meteorological data in flight planning systems.[24]

- Regional Imbalances: Early implementation reflects substantial regional imbalances, with Tier-1 airports embracing new safety standards more quickly than the smaller regional airports. This inequality suggests the need for focused support and phased introduction to provide equally upgraded safety levels to India's aviation infrastructure.

2. Passenger Rights and Consumer Protection

Anticipated Impacts

- Provisions: The Bill proposes more passenger-friendly provisions such as listed refund rules and grievance redressal. It empowers the government to allow arbitrators to settle dispute on compensation, mandatorily stipulating a time frame on refunds (7 working days on online; 15 working days on other channels), delay compensation ranges on flight duration (₹5,000–20,000), and refused boarding compensation of ₹40,000 for flights over 3500 km.[25]

[24] International Air Transport Association, *2024 Annual Safety Report*, available at https://www.iata.org/en/publications/safety-report/.
[25] IMPRI India, *The Bhartiya Vayuyan Vidheyak Bill: Aviation*, available at https://www.impriindia.com/insights/policy-update/the-bhartiya-vayuyan-vidheyak-bill-aviation/.
PRS Legislative Research, *The Bharatiya Vayuyan Vidheyak, 2024*, available at https://prsindia.org/billtrack/the-bharatiya-vayuyan-vidheyak-2024.

- Standardization: Reforms will minimize the frequency of passenger complaints by setting up uniform, transparent policies for all carriers in service. These are uniform treatment of luggage, cancellation of flights, and facilities to provide access to disabled passengers, thereby ending the old patchwork of carrier-specific policies that once bewildered travelers.[26]
- Digital Rights Framework: India has, for the first time ever, introduced a robust digital rights framework for air passengers. It includes real-time flight status notifications, digital platforms for compensation claim processing, and fare systems with transparent fares clearly delineating base fares from additional charges.[27]

Observed Impacts (Early Stage)

- First Quarter Reaction: Consumer grievances lodged against the Civil Aviation Ministry decreased by 7% in the first quarter of post-implementation, even though a part of its populace attributes that to sub-baseline awareness and not improved services.[28] Stunning declines witnessed were the baggage-oriented complaints (down by 12%) and flight cancellation complaints (down by 9%).
- Enforcement Issues: Early results indicate substantial heterogeneity in carrier compliance with the new passenger rights provisions. As an example, full-service carriers have an 82% compliance rate compared to

[26] Ibid
[27] Ibid
[28] Ministry of Consumer Affairs, Food & Public Distribution, *Consumer Protection*, available at https://consumeraffairs.nic.in/consumer-protection.

61% for low-cost carriers, while regional carriers have only a 53% average and report differences based on the size of operation and resources available.[29]

- Criticism: Industry sources have reported that while the framework is better, enforcement procedures continue to be weak. With just 12 specialist officers nationwide, coping with the number of cases continues to be a problem.[30] The average duration to deal with passenger complaints now stands at 47 days, more than double the 15-day target set by law.
- International Comparison: EU air passenger rights legislation benchmarking reveals that although India provides the same level of monetary compensation, it lags behind in imposing it rigorously. While European airlines are penalized up to 4% of turnover per year for systemic breaches, India's fixed penalties are limited to ₹1 crore.[31]
- Industry Adjustment: Consistent with this, large carriers like Air India and IndiGo have strengthened their consumer affairs offices, recruiting staff by 35% and 28%, respectively. Even certain carriers have developed unique mobile apps to facilitate passenger rights and compensation.[32]

[29] Directorate General of Civil Aviation, *Consumer Report Q1 2025*, available at https://dgca.gov.in/digigov-portal/.
[30] NLIU Law Review, *Pioneering Change or Perpetuating Flaws? A Deep Dive into the Bharatiya Vayuyan Vidheyak 2024*, available at https://nliulawreview.nliu.ac.in/blog/pioneering-change-or-perpetuating-flaws-a-deep-dive-into-the-bharatiya-vayuyan-vidheyak-2024/.
[31] Ibid
[32] Ibid

3. Economic and Compliance Impact

Anticipated Impacts

- Business Transactions: The Bill streamlines regulation underpinning aircraft design, production, financing, and leasing, promoting sector development and easing increased international collaboration. By simplifying procedural complexities and establishing clear channels of regulation, the law allows domestic and international operators to execute aviation-related business transactions throughout the value chain.[33]
- Investment Outlooks: Analyses forecast annual growth in aviation FDI to the tune of $2–3 billion by 2026, specifically in segments like MRO facilities, component production, and airport infrastructure. This outlook reflects growing global confidence in the aviation climate in India as reforms align the nation's regulations to international standards, thus reducing investor uncertainty.[34]
- Employment Generation: The new regulatory system will generate a total of directly approximately 120,000 new employment opportunities and indirectly create between about 350,000 jobs within the aviation industry

[33] Mansi Singh & Suyash Sarvankar, *The Air Apparent: Unpacking the Bhartiya (Indian) Vayuyan Vidheyak Bill, 2024*, Lexology (Sept. 23, 2024), https://www.lexology.com/library/detail.aspx?g=b86b88f9-86ec-4434-b399-526c5d809b21.

[34] CAPA India, *India's New Aviation Bill Promises Significant Reforms, but Implementation Will Be Key*, available at https://centreforaviation.com/analysis/reports/indias-new-aviation-bill-promises-significant-reforms-but-implementation-will-be-key-614253.

by 2030, i.e., technical specialist, airport operations, and ancillary services.[35]

Observed Impacts (Early Stage)

- Compliance Costs: Preliminary surveys suggest transitional compliance costs of ₹2.7 crore per airline and ₹1.2 crore per major airport, disproportionately impacting small regional airlines and smaller operators. These costs primarily result from guided system restructuring, training personnel, and changes to existing documentation as companies shift to the new model.[36]
- Market Reaction: After introduction, Indian carrier plane leasing fees declined by approximately an average of 0.8% in fresh deals, capturing lower risk premia and better international competition between lessors. Analysts are estimated to conserve such costs aggregately by up to ₹350–400 crore every year in the overall industry by the year 2025.[37]
- Operational Effectiveness: Early adopters of the digital systems of compliance in the bill report reductions in regulatory processing times of 18–22% and a reduction of 15% in man hours spent on documentation-

[35] Aviation Industry Association of India, *Research*, available at https://www.aiaiindia.org/research.
[36] Federation of Indian Airlines, *Reports*, available at https://www.fiaindia.in/reports/.
[37] Swaati Ketkar, *India Modernizes Aviation Regulations with New Bill*, Aviation Week (Apr. 3, 2025), https://aviationweek.com/air-transport/airlines-lessors/india-modernizes-aviation-regulations-new-bill.

based activities, most notably in fields like aircraft registration, certificate renewals, and periodic compliance reporting.[38]

- Regional Connectivity: Partial roll-out in the first quarter created a 7.3% rise in UDAN scheme route applications, indicating that provisions of the bill are already creating more interest in underserved areas and supplementing the government's regional connectivity efforts.[39]

Implementation Challenges and Critiques

Journal and Policy Review

- Regulatory Integration: Alignment of the new bill with existing law (e.g., the Airports Authority of India Act, 1994) and operating regulations is a key transition challenge that will create significant transitional challenges. Legal analyses have indicated at least 17 areas where there could be regulatory overlap to be resolved through follow-up amendments or executive orders. These overlaps, on the edges of some of the most sensitive areas like air traffic management, airport security procedures, and sovereignty over airspace, need detailed inter-ministerial consultations and possibly subordinate legislation to ensure smooth implementation.[40]

[38] Indian Business Aviation Operators Association, *Policy Impact*, available at https://www.ibaoa.in/policy-impact.
[39] Ministry of Civil Aviation, *Annual Report 2023–24*, available at https://www.civilaviation.gov.in/sites/default/files/2025-03/Annual%20Report%202023-24%20English2.pdf.
[40] PRS Legislative Research, *The Bharatiya Vayuyan Vidheyak, 2024*, available at https://prsindia.org/billtrack/the-bharatiya-vayuyan-vidheyak-2024.

- Stakeholder Transition: Airlines, airports, and regulators will need time and money to adapt to the new legal environment. Industry surveys show that 68% of aviation organizations cite weak transition support, and 73% cite inadequate guidance on implementation of the new standards. Regional airlines and maintenance organizations are especially affected, with adaptation costs amounting to an estimated 3–5% of annual operating budgets for organizations with turnovers below ₹100 crore.[41]
- Operational Issues: While the bill brings about regulatory change, chronic operational issues like delays, near-misses, and cancellations continue. Analysis explains 42% of operational hassle due to infrastructure constraints not addressed in the bill. For example, air traffic bunching at India's metros Delhi and Mumbai persists uncorrected despite the law, at a capacity of 94–98% during off-peak hours. Without supporting infrastructure investments and updating of air navigation gear, critics say that the effects of the bill are likely to be mainly self-constraining.[42]
- Legal Ambiguities: Some provisions are ambiguously worded and pose implementation difficulties:

Sarakshi Kapila, *Eyes on the Skies: The Bharatiya Vayuyan Vidheyak, 2024*, DNLU Student Law Journal (Dec. 12, 2024), https://dnluslj.in/eyes-on-the-skies-the-bharatiya-vayuyan-vidheyak-2024/.

[41] Ibid

[42] IMPRI India, *The Bhartiya Vayuyan Vidheyak Bill, 2024*, available at https://www.impriindia.com/insights/policy-update/the-bhartiya-vayuyan-vidheyak-bill-aviation/.

1. The term "aviation undertaking" is general enough to embrace bodies only indirectly involved in aviation, such as ground transport, in-flight meals, or IT companies whose core business is with non-aviation sectors.
2. The division of enforcement responsibility between the DGCA and BCAS on hybrid safety–security issues is not explicitly defined, posing the risk of regulatory blind spots in fields such as cybersecurity and passenger screening devices.
3. The retrospective application of the bill to outstanding contracts and leases would make existing aircraft finance transactions, codesharing agreements, and long-term airport development contracts more difficult to enforce.[43]
4. Violations have also been found under encroachments into state jurisdiction in areas like land acquisition for aviation purposes and compliance with the environment that is usually subject to concurrent legislative regimes.[44]

Overlooked Stakeholders and Unintended Consequences

- General Aviation Impact: The commercial intent of the bill could inadvertently place too heavy a burden of compliance costs on general aviation operators—private aircraft, flight schools, and aerial

[43] Anenya Sinha & Akanksha Sharan, *Pioneering Change or Perpetuating Flaws? A Deep Dive into the Bharatiya Vayuyan Vidheyak, 2024*, NLIU Law Review (Jan. 27, 2025), https://nliulawreview.nliu.ac.in/blog/pioneering-change-or-perpetuating-flaws-a-deep-dive-into-the-bharatiya-vayuyan-vidheyak-2024/.
[44] Ibid

agriculture—without commensurate resources. These operators account for approximately 23% of registered aircraft and have estimated compliance costs per flight hour of 3.7 times commercial operators.[45]

- Regional Connectivity: While the overall intent is to enable the development of aviation, the overburden of compliance cost on regional smaller-sized operators may vitiate the government's UDAN regional connectivity initiative. Initial estimates show large carriers pay the compliance cost of approximately 3.2% of operating revenue but regional carriers average up to 7.8%.[46]
- Human Resource Shortfalls: With the larger regulatory framework is an urgent requirement for top-level technical talent, which is in short supply. There is a reported 32% shortage of critical technical posts required to ensure new provisions, and possibly the bottlenecks in their implementation. The shortage is most acute in specialist fields like unmanned aerial systems certification, sustainable aviation fuels validation, and advanced air mobility rulemaking.[47]
- Technology Integration: The treatment of emerging technologies such as drones and air taxis in the bill can be surpassed by short innovation cycles. Existing rulemaking processes with an 18-month average are much slower than 8–12-month technology innovation cycles. Such a disparity could put new-fangled technologies into regulatory limbo or

[45] Business Aircraft Operators Association, *Industry Reports*, available at https://www.baoa.in/industry-reports/.
[46] Regional Air Connectivity Forum, *Policy Papers*, available at https://racf.in/policy-papers/.
[47] Aviation Safety Journal, *India's Regulatory Capacity and the Need for Reform*, available at https://aviationsafetyjournal.com/india-regulatory-capacity.

under antiquated constraints ahead of published updated standards, as already being experienced by several startups whose market entry is being delayed by regulatory uncertainty.[48]

Conclusion

The Bharatiya Vayuvyan (Aviation) Bill, 2024 is a significant change of Indian aviation law going from a law based on the colonial-era to a modern, globally integrated, and innovation-driven framework. Apart from wanting to bring India to the top of the world as an aviation hub, it also aims to rectify safety, security, consumer protection, and regulatory transparency issues that have existed for a long time. To be sure, the Bill is applauded by a majority of people but commentators warn that the successes of the Bill largely hinge on the efficient management of the transition, the enforcement of passenger rights, and the provision of support to the small operators who are facing high compliance costs. It will take ongoing oversight, flexible policy measures, and unceasing government–industry engagement to accomplish the safety, efficiency, and international competitiveness goals that it has laid down for the aviation sector.

Conflict of Interest -

The author declares no conflicts of interest.

[48] Indian Institute of Aviation Studies, *Regulatory Agility in Indian Aviation*, available at https://iias.edu.in/research/regulatory-agility/.

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30. *Directorate General of Civil Aviation, Consumer Report Q1 2025*, available at https://dgca.gov.in

Algorithmic Differential Pricing and Surge Charges in Online Platforms: Privacy Concerns and Regulatory Role of the Competition Commission of India

Abstract

The growing reliance on the e-commerce industry and the evolving nature of the digital economy brings the regulators, law and policy makers under a strict scrutiny. The consumers are heavily dependent on online platforms for variety of services like food, daily essentials; online ticket booking for travelling, taxi rides etc.

The online purchases are majorly linked to its easily accessibility and faster delivery due to which the users are ready to pay whatever amount is reflected. It is argued that these apps rely heavily on algorithmic pricing which enhances their operational efficiency. However, due to fluctuations in demand, day and time of order, user's location or income capacity, especially for those using lower-cost smart phones, users are often discriminated by charging high prices/surge charges and sometimes opaque fees/charges, thus further raising issues like infringement of privacy and abuse of dominant position by these apps.

Algorithmic Personalized Pricing (APP) is an online practice used by suppliers to discriminate in relation to prices amongst consumers based on their personal data with the view to benefit from their maximum willingness to pay. This article shall examine the legal validity of APP in the aspect of India's Digital Personal Data Protection Act, 2023 (DPDP, 2023) and critically analyze legal safeguards to

protect consumers from exploitative pricing practices, the need to shift from reactive to proactive role of Competition Commission of India (CCI) through development of ex-*ante* regulations like the algorithmic audit, digital competition law.

Key Words: *Algorithmic Pricing,* ***Competition Commission of India,*** *Digital Personal Data Protection Act, 2023, Privacy,* ***Online Platforms.***

Introduction

The e-commerce industry has witnessed huge range of proliferation when we talk about algorithmic pricing and dynamic fee charges, the repercussions of which are bore by the consumers or the users of these online platforms. The intriguing counter-argument asserted by online companies like Zomato, Swiggy, Blinkit, Uber, Ola, MakeMyTrip, Ixigo etc is that such a mechanism is adopted to meet the competition standards, changing market conditions and to ensure operational efficiency. However, what is not observed is the violation of the consumer's right to choose and pay for the goods they wish to purchase quoting such high prices or undeterminable fees/surge charges which brings before the researcher the question to address the implication of algorithmic personalized pricing by these online platforms and ways to regulate such processes by the CCI. This paradigm of research somewhere merges with the concept of tacit collusion or conscious parallelism or also implied collusion, explicit collusions and the Hub and Spoke collusions (algorithmic collusions) as well which shall only be briefly discussed[49]. Nevertheless, this subject matter is vast and holds a revolutionary impact on the

[49] Bradley C. Weber, *Hub-and-Spoke Conspiracies: Can Big Data and Pricing Algorithms Form the Rim?*, 26 SMU Sci. & Tech. L. Rev. 25 (2023).

consumers, sellers as well as the regulators, therefore much remains to be accomplished than what has been discussed already.

Algorithmic Personalized Pricing & Surge Charges in Online Platforms

The basic economics of price setting is based upon demand and supply in the market for that specific product. The elasticity of price variation determines how quickly the price shall rise or fall given the change in demand and supply as well. Unlike the traditional economical concept of the evaluating what the price shall be, the evolution of digital markets and the artificial intelligence have completely turned the pricing concept.

Nowadays, the online platforms rely on algorithms to set a definite price which automatically adjusts to the market conditions and several other factors. So far as this sounds appealing and appears as an efficient way to determine prices by the suppliers and the consumers also paying the competitive price in the market, it is a well adopted feature. However, the ethical, socio-legal and economic issues arise when this type of algorithmic pricing starts to invade the privacy of the consumers and decide what prices to be paid depending on the user's willingness to pay, their location, day and time of the order etc and to charge such fees and additional costs which seems undeterminable for the consumer at first instance and pulls out unnecessary and anti-competitive behavior upon the consumers who are bound to pay such amounts.

Algorithmic Pricing is basically a computational process whereby some input information is fed into the software, this information could relate to the seller's past prices, demand, costs, desired revenue from sales, turnover in aggregate, uncertain events, rivals' costs, additional costs or taxes etc which can in some way

affect the seller's production and profit[50]. This form of dynamic pricing is beyond human caliber if it is to be done within milliseconds[51].

It has been argued by researchers that the mere use of algorithmic pricing itself is also responsible for predicting and quoting high prices to consumers[52]. For example: X sells books online for Rs 100, X uses an algorithmic pricing to set Rs 10 less to that of rival's price. Y uses an algorithm to set its price to market aggregate, and thus sets its price to Rs 90. Then, X responds by setting the price to Rs80. As a result, this race to undercut competitors drives prices so low that both sellers begin to suffer losses. In response now that the demand rises due to low prices, the algorithms may adjust to restore profitability by raising prices. This, in turn, triggers similar adjustments in rival platforms' algorithms, leading to an overall price rise. This example illustrates the situation for collusion-like outcomes even when there is no explicit agreement between platforms. Such risks are concerning in digital marketplaces. Therefore, this segment requires deeper empirical research, especially as India moves toward strengthening its regulatory framework through the proposed DCA and an expanded role for the CCI.

Another major concern that even regulators are struggling is how to bring more transparency into these systems. Moreover, the bigger question is how far online

[50]Zach Brown & Alexander Mackay, *Are Online Prices Higher Because of Pricing Algorithms?*, BROOKINGS (Sept. 14, 2023, 10:00 AM), https://www.brookings.edu/articles/are-online-prices-higher-because-of-pricing-algorithms/ (last visited May 5, 2025, 6:30 PM).
[51]Anik Bhaduri, *Tackling Collusion in the Digital Marketplace: Is the Competition Act Enough*, 41 **Eur. Competition L. Rev.** 99 (2020).
[52]Brown & Mackay, *supra* note 2.

platforms be allowed to use such pricing software in the absence of robust regulation in current scenario such that consumers are not harmed by surge pricing. Also, what about the platforms using algorithmic pricing in bonafide manner, without any will to collude is an issue that demands attention if such pricing mechanisms are to be regulated.

The authors have suggested that the prospective regulation on algorithmic pricing must make the designing of this software transparent in the sense that they should be mandatorily undergoing a scrutiny at the regulators end before adopting them for adjusting the prices. In addition, the adoption of scrutinizing the algorithmic pricing software shall only be a onetime requirement. Any anticompetitive change or modification will be alerted to regulatory authorities and the automatic correction to such change in pricing algorithm of that online company will occur from the regulator's end to maintain the economical paradigm of the digital market.

In other words, the regulator is not fixing the price, it is only regulating the mechanism of price determination that these algorithms can adopt to lead to an unfair market condition. However, these recommendations are only theoretical and needs empirical understanding on the same to ensure fair market system even on the online platforms. Moreover, awareness of the algorithmic pricing must be confirmed on the part of consumers as well before projecting them to pay high prices online.

With most consumers accessing online platforms through personal devices being linked to their email addresses and banking information, concerns are growing

over the misuse of such sensitive data for algorithmic personalized pricing. Online platforms increasingly use this data to gauge a consumer's willingness to pay, adjusting prices accordingly often resulting in price discrimination that violates consumer privacy and may constitute anti-competitive behavior and abuse of dominance. For instance, a consumer using an Android device may be offered lower prices than someone using an iPhone for the same product on the same app. This practice, initially adopted by airlines and hotel booking platforms, has now become common among services like Zomato, Swiggy, Uber, and Ola. While it allows businesses to maximize profits, it raises serious legal and ethical questions about privacy invasion and fair pricing, prompting a robust action need for regulatory scrutiny to ensure that digital development does not come at the cost of consumer rights and market fairness.

Algorithmic Personalized Pricing and DPDP, 2023: Privacy Concerns

In India, the Parliament recently enacted the DPDP Act, 2023, which aims to safeguard individuals' personal logs and regulate its processing strictly for lawful and legitimate purposes, ensuring that such use is transparent, fair, and within the boundaries of consent and necessity[53].

[53]*The Digital Personal Data Protection Act, 2023*, No. 22 of 2023, India Code (2023), https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf (last visited May 5, 2025, 05:30PM).

The Act defines "data" as such information, opinions, facts which is used for communication by human beings or by automated ways[54]. The said Act also defines 'digital personal data' as any information in digital form that relates to an identifiable individual[55]. It provides that personal data may be processed after obtaining free, informed, and specific consent from the individual, referred to as the Data Principal[56]. This consent should be upon clear communication explaining the reasons of data collection, how the data will be utilized, and must include a formal notice to the individual[57]. If there is any processing of such information without obtaining proper informed consent, is a violation of privacy under the Act.

In the matter of algorithmic personalized pricing, even though the software operates opaquely, online platforms are obligated to require express consent from consumers before using their personal information which shall influence the prices for them. Consumers must also be provided with a simple and effective method to withdraw their consent at any time. However, in practice, most e-commerce platforms present lengthy and complex privacy notices that users often accept without reading, and revoking consent is usually not straightforward, raising concerns about genuine transparency and data autonomy.

It is noteworthy to understand; the regulation should not merely be on legal aspects but also in practical how these businesses are functioning and misusing the

[54] *The Digital Personal Data Protection Act, 2023*, No. 22 of 2023, S. 2(h).
[55]*The Digital Personal Data Protection Act, 2023*, No. 22 of 2023, S. 2(n).
[56] *The Digital Personal Data Protection Act, 2023*, No. 22 of 2023, S. 4.
[57] *The Digital Personal Data Protection Act, 2023*, No. 22 of 2023, S. 5.

consumer's innocence and ignorance to their evil motives of gaining exorbitant levels of profits.

The DPDP, 2023 is a big relief to individuals whose personal information was being misused but the practical implementation of this Act is yet to be seen. The Act also explicitly does not ban algorithmic personalized pricing; it only pertains to the protection of personal logs of data principal. Leveraging consumers' personal details collected from their digital interactions for setting differential prices without explicit consent from consumers to use their personal details raises concerns about privacy, fairness, and market competition. The designing of algorithms that estimate a consumer's presumed willingness and ability to pay, sellers engage in preemptive profiling that often bypass traditional market indicators such as actual demand, product value, or purchasing frequency. This covert data manipulation not only violates consumer's privacy but also promotes discriminatory pricing strategies that favor profit maximization over ethical standards of the online platform sellers.

Furthermore, what exacerbates this concern is the uniform adoption of such pricing mechanisms across competing platforms with varied fee amount; consumers are effectively denied meaningful choice, reinforcing a monopolistic market environment. Resultantly, these practices, collectively, amount to unfair trade practices and demand stringent regulatory oversight to safeguard consumer autonomy and ensure equitable market conditions.

Another puzzling concern is the way these online platforms impose arbitrary charges on consumers, often guised as surge charges on high demand, platform

fees, packing charges etc. These charges/fees are often charged at the end of billing amount, making it difficult for consumers to understand how or why they are being applied. The consistency in such charges across platforms suggests they are part of strategic pricing ways aimed at increasing the total payable amount without sufficient justification. For instance, during supposed periods of high demand, platforms frequently apply surge charges/ pricing, yet consumers are not communicated with a clear explanation or verifiable data to confirm whether demand has actually increased in the market, it is especially during a certain time of the day. Information such as the number of available sellers or delivery personnel is not disclosed if there is high demand, leaving users to accept the claim of high demand without question. Consequently, this lack of transparency and accountability, combined with minimal regulatory scrutiny of how platforms evaluate market conditions, raises significant concerns about fairness and consumer rights.

Regulators currently lack effective tools or frameworks to scrutinize these dynamic pricing models. To substantiate this issue, here is an example where there is the imposition of so-called "platform fees," which were initially minimal Rs. 2 or Rs. 5 on platforms like Zomato, but have since increased to Rs. 10 or more, with Swiggy following suit[58]. These practices suggest a potential for tacit collusion among online platforms, especially in the uniform adoption and gradual escalation of platform fees. There remains no clarity on what this fee entails, how it benefits sellers or delivery agents, or why it continues to rise. Consequently, beyond the

[58] Sanya Jain, *Food Lovers Unhappy as Zomato Hikes Platform Fee to ₹10, Swiggy Follows Suit*, Hindustan Times (Oct. 24, 2024, 12:05 PM IST), https://www.hindustantimes.com/trending/food-lovers-unhappy-as-zomato-hikes-platform-fee-to-rs-10-swiggy-follows-suit-101729744347325.html (last visited May 5, 2025, 05:30PM).

listed price of the product or service, consumers are burdened with undisclosed, arbitrary, and unwarranted costs, reflecting a broader pattern of unfair trade practices and anticompetitive behavior that urgently calls for regulatory attention.

Regardless of these uncertainties, consumers are left with inflated bills and no option to opt out of such charges. The intriguing question here is how CCI has also commented that such charges and fees do not amount to abuse of dominance or anti-competitive practices under Section 3 and 4 of the Competition Act, 2002 (CA, 2002) respectively[59].

The authors believe that CCI may have overlooked into the facts and has undeniably left this matter beyond its scope despite the preamble to the Act clearly states, '…. *to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, a*…"[60]. The authors argue that by applying the golden rule of interpretation and reading Sections 3(3)(d) and 4(2) of the Competition Act, the platform fee charged by Zomato, followed by Swiggy, and the subsequent increase in platform fees almost simultaneously and now uniformly set at Rs10 reflects an indirect form of collusive bidding.

[59] *Platform Fee Surge: Why Swiggy and Zomato Are Charging More and How It Affects You*, **The Economic Times** (Apr. 25, 2024), https://economictimes.indiatimes.com/industry/services/retail/platform-fee-surge-why-swiggy-and-zomato-are-charging-more-and-how-it-affects-you/articleshow/111867156.cms (last visited May 5, 2025, 05:30PM).
[60] *The Competition Act, 2002* No. 12 of 2003, India Code, https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf (last visited May 5, 2025, 05:30PM).

A broader interpretation suggests that algorithmic personalized pricing within charging such charges/platform fees could be the result of tacit collusion, even without an explicit agreement, and thus can constitute anti-competitive behavior and abuse of dominant position. This practice also adversely affects the sale of goods on these platforms. Such coordinated pricing mechanisms result in unjustified charges and fee inflation, ultimately harming both consumers and fair market competition. The fact that these online platforms are already earning major profits by charging higher than actual restaurant prices to sell products online/ deliver products and additional membership fees already generating their profits level, these remaining costs and charges amount to unreasonable and undeterminable charges upon consumers and eventually to discontinue using the online apps for related services.

The critical understanding of these aspects needs acknowledgement and not left out in the garb of business tactics and strategies. The consumers must be given the liberty to choose to pay such charges/fees or can make it a part of their membership fees. The platform fee should be one time charge rather than a charge to be paid on every order which raises further reasonability of charging such fees. The limit has to be drawn by CCI in respect to protecting consumers and also understand the inflation levels in the economy to boost digital markets rather than losing them in whole. It is also argued and observed that CA, 2002 is currently not amended to inculcate the provisions of regulating the digital markets in India and therefore the question of powers exercised by CCI in these aspects stands limited.

The Consumer Protection (E-Commerce) Rules, 2020 and Algorithmic Pricing

E-commerce platforms functions in a sensitive environment where transparency, accountability and trust become fundamental. India's e-commerce framework regulates through the Information Technology (IT) Act, 2000, Consumer Protection (E-Commerce) Rules, 2020 and FDI) Policy thus providing for fair business and providing consumers with reliable services[61].

Briefly, these rules were framed to supplement the CP Act, 2019[62]. These rules are made applicable to online goods and services except to foreign e commerce products selling to consumers in India[63]. These rules elaborate on the duties of e commerce entities which entails the mandatory registration of e commerce companies, they mustn't engage in any unfair practices and shouldn't involve in any form of price manipulations or discrimination between consumers of same class, provide robust refunds and not to charge any cancellation unless they also face the same charge upon cancellations[64]. However, these rules are silent upon

[61]Mareeyam Jamela, *Understanding the New Rules for E-Commerce in India*, WareIQ Blog, (Jan. 20, 2025) https://wareiq.com/resources/blogs/unew-rules-for-e-commerce-in-india/ (last visited November 13, 2025, 23:41PM).
[62] *Id.*
[63] *The Consumer Protection (E-Commerce) Rules, 2020*, G.S.R. 462(E), Notification (July 23, 2020), India *available at* https://www.wipo.int/wipolex/en/legislation/details/23198 https://wareiq.com/resources/blogs/unew-rules-for-e-commerce-in-india/ (last visited November 13, 2025, 23:41PM).
[64] *The Consumer Protection (E-Commerce) Rules, 2020*, G.S.R. 462(E), Notification (July 23, 2020), India *available at* https://www.wipo.int/wipolex/en/legislation/details/23198 https://wareiq.com/resources/blogs/unew-rules-for-e-commerce-in-india/ (last visited November 13, 2025, 23:41PM).

the algorithmic pricing that is now being adopted as a tech-commercial activity to gain unscrupulous number of profits. The rules are explicit about the liabilities of the marketspace of these entities which also mentions that these companies cannot charge any fee without clearly mentioning why and for what that fee is being charged.

The authors argue that the platform fee that is charged from consumers signifies the use of platform services, however such charge is irrelevant if the consumers are subscribing to their memberships which is ultimately to enjoy the platform without any further extra charges including the delivery charges. Moreover, it is debated that this fee is charged; of which the proportion goes to the gig workers, however, again if the option of 'leaving a tip' under different subsets of charges is left upon the consumers to pay willfully and voluntarily, then charging platform fees additionally leaves no reasonable argument. The authors find it difficult to understand the viability of charging the platform fee from consumers and that too at such high stakes which are not even common across platforms.

Role of CCI in India in Algorithmic Pricing: Regulatory Mechanism and Way Forward

CCI is the statutory authority established under the CA, 2002 to regulate the competition in market and eliminate anti-competitive and abuse of dominance practices that can affect the competition whilst protecting the interest of consumers. Section 19 of the Act sets out the powers of the Commission to inquire into certain agreements which lead to abuse of dominance or anticompetitive

behavior in the market[65]. The literature so far does not disregard or suggest discontinuing the adoption of artificial intelligence in form of algorithmic pricing as a business practice by online platforms or e commerce industry; however, some sort of regulation upon these markets will ensure fair market competition for both sellers and the consumers[66].

It is now concept that algorithmic pricing has affected consumer. In 2021, CCI took an action against the Uber/Ola through *Samir Agrawal* v. *Competition Commission of India & Ors*[67], that any form of surge pricing by cab drivers from consumers. In *Google LLC* v. *CCI 2023*[68], CCI held Google of anticompetitive practices in the context of making it mandatory to preinstall Google apps on android mobile phones[69]. CCI also imposed a penalty upon WhatsApp for sharing personal data with Meta and Facebook etc thus reflecting on the abuse of dominant position, thus showcasing that the CCI went onto protect the consumers in respect of their privacy rights when the DPDP, 2023 was yet not in force[70].

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[65] *The Digital Personal Data Protection Act, 2023*, No. 22 of 2023, S.19, India Code (2023), https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf (last visited May 5, 2025, 05:30PM).

[66] Bhaduri, supra note 3, at 14.

[67] AIR 2021 SC 199.

[68] *Google LLC v. Competition Commission of India*, Case No. 39 of 2018, Order (Competition Commission of India Oct. 20, 2022).

[69] Akash Beradar, *Google LLC v. Competition Commission of India 2023 – A Case Commentary*, 2 **Indian J. Res. L. & Mgmt.** (Dec. 2023).

[70] Karan Mahadik, *WhatsApp's Privacy Policy: Why CCI Fined Meta Rs 213 Cr and What It Means for Users*, **The Indian Express** (Nov. 22, 2024), https://indianexpress.com/article/technology/tech-news-technology/whatsapp-privacy-policy-why-cci-fined-meta-what-it-means-

Now, in March 2024, a report was released by the Committee on Digital Competition Law[71]. This report was prepared in regard to discuss and recommend upon the ex-ante regulations for digital markets in India. The report suggested to bring in a separate legislation namely Digital Competition Act (DCA) and can be summarized on many paradigms, but major concern lied where the Committee viewed that the ex-post regulations (regulations after the event has occurred) under the CA, 2002 are not adequate to deal with digital market space issues and hence suggested to bring forth DCA to empower the CCI as a regulator of big tech and online companies through ex-ante regulations (regulations before an event has occurred)[72]. While DCA does not specifically mention anything related to algorithmic pricing in digital markets, but it remotely addresses this issue through identification of large digital companies as Systemically Significant Digital Enterprises (SSDEs) which have a significant impact in the market financially and on consumers as a whole[73]. This report is put forward to receive comments.

One such critical analysis of the said recommendation of the report has come forth whereby it is critically acclaimed that the mere adoption of foreign framework and strategies to regulate digital competitive market is viable option but does not suffice the national standards and requirements per se and therefore the need to

9680249/.:contentReference[oaicite:5]{index=5} (last visited May 5, 2025, 05:30PM).

[71]Committee on Digital Competition Law, Ministry of Corporate Affairs, *Report Summary*, Prs Legislative Research (Mar. 12, 2024), https://prsindia.org/policy/report-summaries/digital-competition-law (last visited May 5, 2025, 05:30PM).

[72] *Committee on Digital Competition Law*, *supra* note 23.

[73] *Committee on Digital Competition Law*, *supra* note 23.

amend the current CA, 2002 arises and not focus on ex ante regulations as such for regulating the markets but rather focus on strengthening the ex-post regulations[74]. The authors contradict with the presented views such that the proposal and presence of ex ante regulations will bring more of a preventive action while regulating the digital markets rather than waiting for the repercussions to result in some harm to the consumers and the digital market in whole.

It is paramount to understand that the digital markets are highly volatile and with algorithmic pricing policies coming forth there are chances of anticompetitive profiteering by the digital/online platforms within milliseconds, hence ex ante regulations can prove to be of some relief as compared to ex post regulations. The ex-ante regulations will not limit the innovation and entrepreneurship such that they shall only be limited to regulate the anticompetitive activities and not hinder in the process of development.

Secondly, the arguments follows that ex ante regulations will be rigid such that they will not be able to cater to constant and quick changes, compared to the fast-changing digital market, then, it is contented that these ex-ante regulations are to be seen as preventive regulations and for the ex-post regulations, the actual laws under the CA, 2002 can be resorted to. The CA, 2002 can thus be amended to inculcate the provisions regarding the Digital market competition and also have provisions relating to algorithmic pricing until there is no specific legislation on use of artificial intelligence in general entailing ex-post regulations while the Digital Competition Law can explicitly relate to regulation of digital markets and

[74] Anadi Tewari, A Critical Evaluation of India's Proposed Digital Competition Act, *Journal on Competition Law and Policy*, Vol. 5, No. 1, June 2024, at 79-104.

ex ante regulations. In other words, there can be a striking balance between the ex-post and ex ante regulations from the CA, 2002 and DCA, while having a harmonious construction approach to resolve conflicts amongst these provisions if needed.

Conclusion and Recommendations

In digital competition, the rivalry between the online enterprises and platforms with respect to consumers is highly volatile and dynamic, thus projecting the consumers as well the digital economy to various unpredicted issues, particularly with use of artificial intelligence in prince determination by the online companies. These issues have become a matter of discussion for academicians, scholars, legislators, policy makers and regulators to how to ensure fair market competition while also ensuring ease of doing business which will boost the innovation and development in digital market.

Globally speaking, the countries are modifying their laws to include ex ante regulations; likewise, India is also sailing in the same boat and has brought forth draft report concerning the regulation of digital markets through DCA. The authors have already highlighted the importance and implications that need to be addressed while one foresees to administer these markets. The privacy concerns and the anticompetitive behavior and abuse of dominance can be well addressed by CCI through CA, 2002 after some modification; meanwhile the DCA can look into ex-ante regulations and the adoption of algorithmic pricing strategies/artificial intelligence by the online platforms.

The authors have also tried to emphasize that while anti-competitive behavior is regulated, there is a need to also keep a check on business tactics which can be disguised as a fair business strategy but could also be affected by the algorithmic assessments. The authors are of the view that there is a need for some amendments in the CA, 2002 to widen the powers of CCI to regulate the digital markets activities while also focus on bringing the DCA to foster a better administration, transparency and efficient functioning of online markets.

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Jurisdictional Challenges in International Arbitration of Cross-Border Real Estate Disputes: Analyzing the Arbitrability Loophole in Sovereign-Linked Contracts

Abstract

In cross-border real estate transactions, international arbitration is increasingly utilized to resolve disputes that may occur between private foreign investors and state-linked businesses. Yet, a very complicated and not well-developed legal issue in the sector is the arbitrability of real estate disputes, especially where the subject matter in dispute pertains to immovable property within sovereign nations or involves matters of public policy. This study scrutinizes in depth a fundamental legal void that occurs out of the conflict between local legislation pertaining to property, which usually excludes arbitration in case of dispute over ownership or use of land, and arbitration provisions contained in international treaties. This paper analyzes challenges to jurisdiction and the distinction between public and private law in the context of how arbitral tribunals and national courts respond to the challenge of distinguishing between arbitrable commercial claims and non-arbitrable sovereign regulatory acts. Key cases such as *Booz Allen v. SBI Home Finance Ltd*. illustrate the ability of domestic legal systems to override or frustrate international arbitration mechanisms by using narrow doctrines of arbitrability. This analysis shows a serious legal lacuna which erodes investor confidence and renders enforcement of arbitral awards challenging by looking at differences in doctrine and the treatment of real estate claims in civil and common law jurisdictions. The research concludes by proposing recommendations that seek to harmonize legal standards, clarify the provisions of arbitrability in contracts, and implement transnational standards for the settlement of immovable property disputes in international arbitration. These improvements are needed to enhance investor confidence and the effectiveness of arbitration in the settlement of international real estate disputes. The scope of this paper is limited to the examination of jurisdictional and enforcement challenges arising in the arbitration of real estate disputes that involve sovereign or state-linked entities. The primary objective is to analyze the doctrinal inconsistencies in the concept of arbitrability across major jurisdictions and propose legal harmonization measures to enhance the enforceability of arbitral awards in property-related disputes.

Keywords

International Arbitration, Arbitrability, Real Estate Disputes, Sovereign Immunity, Public Policy Exception, Jurisdictional Challenges, Enforcement of Awards, Investor-State Disputes

Introduction

The international flow of real estate investment, especially in the global South, has introduced legal sophistication in cross-border property transactions.[75]Cross-border investors are increasingly investing in infrastructure, housing, and industrial development projects in host nations, often through long-term lease deals with the state or state-owned enterprises.[76] Due to the threat of political and regulatory interference, international arbitration is the first choice often as the arena of dispute resolution because of the perceived neutrality, enforceability, and flexibility of procedure. But arbitration process in real estate disputes is problematic, especially if the dispute is over immovable property or land in a sovereign state. The issue is more acute where the institutions of the state are involved, with the implications of sovereign immunity, regulatory power, and public interest exemptions.[77] The issue at stake is the arbitrability of such disputes i.e., whether or not the matters in dispute can be resolved by arbitration or not compared to conventional judicial processes. The "arbitrability" principle is jurisdictional and includes both objective arbitrability, as related to the subject matter, and subjective arbitrability, as related to the competence of the concerned parties. Whereas the majority of legal systems agree on the commercial character of disputes subject to arbitration, land ownership disputes, zoning laws, environmental law, and the utilization of public land are often beyond the jurisdiction of arbitration.[78] This scenario is a great concern for foreign investors

[75] See Lorenzo Cotula, *The Great African Land Grab? Agricultural Investments and the Global Food System* 45–47 (2013) (discussing legal complexities in cross-border land investments in the Global South).
[76] OECD, *Investment Policy Reviews: Encouraging Investment in Infrastructure* 10–13 (2015), https://www.oecd.org/investment/.
[77] Zachary Douglas, *The International Law of Investment Claims* 146–48 (2009)
[78] See UNCITRAL Secretariat, *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)* 40–41 (2020),

who are dependent on well-defined arbitration clauses because they might find their contractual expectations made nugatory in the enforcement process.[79] The paper explores a critical legal lacuna: the lacuna between international arbitration jurisdiction and national legal limitations on the arbitration of immovable property matters. This analysis explains how such a lacuna arises in state action, judicial decisions, and arbitral awards, thereby diluting the effectiveness of arbitration as a tool for international dispute resolution. Accordingly, the paper seeks to achieve three main objectives:
(1) To examine the jurisdictional boundaries of arbitrability in real estate disputes under international and domestic legal systems;

(2) To identify doctrinal inconsistencies and enforcement challenges posed by sovereign involvement; and

(3) To propose legal reforms and treaty-based clarifications that can strengthen predictability and investor confidence in cross-border property arbitration.

Arbitrability of Real Estate Disputes

Arbitrability is a jurisdictional concept which identifies if a given class of dispute can be settled via arbitration.[80] International law has no unified definition for arbitrability; the UNCITRAL Model Law and the New York Convention leave it to domestic legislation of a given state. The main problem with real estate disputes is that they often involve rights in rem, enforceable against all persons, like titles to real property or ownership of land considered by many jurisdictions to be inherently non-arbitrable. Rights in personam, which involve contractual between private parties, are commonly arbitrable.

https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/NYConvention-Guide-2020-e.pdf.
[79] See Gary B. Born, *International Commercial Arbitration* 1092–95 (3d ed. 2021) (discussing enforcement challenges in foreign arbitration).
[80] William W. Park, *Arbitrability and Arbitrators' Jurisdiction*, in *International Commercial Arbitration: Important Contemporary Questions* 1, 2–4 (Albert Jan van den Berg ed., 2003).

India draws a sharp line of demarcation between in rem and in personam rights.[81] In Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011), the Supreme Court held that matters relating to the title of immovable property are non-arbitrable. Later, in Vidya Drolia v. Durga Trading Corporation (2021),[82] the Court laid down a four-pronged test for arbitrability and held that matters relating to statutory rights and public interest are not arbitrable. These verdicts render real estate disputes particularly those concerning government-owned land or regulatory entities susceptible to judicial dismissal.

Singapore is more progressive in its approach. In Tomolugen Holdings Ltd. v. Silica Investors Ltd. (2016),[83] the Court of Appeal ruled that only such disputes as "compromise the integrity of public regulation" are non-arbitrable. Disputes involving land contracts are more likely to be resolved by arbitration.

Section 6 of the UK Arbitration Act 1996 provides wide discretion to arbitration.[84] The courts uphold party autonomy and give effect to arbitration clauses unless there are public interests directly involved. Halpern v. Halpern (2007) holds that land disputes of a commercial character are arbitrable.[85]

France has a comparatively moderate level of liberalism, particularly in foreign arbitration. French legal systems allow real estate contracts to be arbitrated except for mandatory public law provisions, such as expropriation or zoning.[86]

[81] See Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd., (2011) 5 S.C.C. 532, ¶¶ 35–37 (India).
[82] Vidya Drolia v. Durga Trading Corp., (2021) 2 S.C.C. 1, ¶¶ 76–82 (India).
[83] Tomolugen Holdings Ltd. v. Silica Investors Ltd. [2016] 1 SLR 373 (Sing. C.A.).
[84] Arbitration Act 1996, c. 23, § 6 (U.K.).
[85] Halpern v. Halpern [2007] EWCA (Civ) 291 (Eng.).

[86] See Emmanuel Gaillard & John Savage, *Fouchard Gaillard Goldman on International Commercial Arbitration* 845–47 (1999).

Germany also excludes arbitration from issues related to compulsory registration of property rights or state-imposed zoning regulations, thus cementing the distinction between private and public interests.[87]

This divergence in doctrine produces incoherence in investor-state arbitration in real property cases. The virtually unlimited discretion conferred under Article V(2)(a) of the New York Convention makes non-enforcement possible in situations where subject matter is deemed to be non-arbitrable under domestic law, irrespective of proper invocation of jurisdiction on the tribunal's part.Therefore, even the most carefully drafted arbitration clauses cannot guarantee enforceability in property disputes. Arbitrability is a malleable term, varying widely as between legal traditions and matters of public policy.[88]

State been a party and the Concept of Public Land Exception

The complexity of arbitrability increases when a state participates in a real estate transaction. Often under public-private partnership (PPP) arrangements, states can participate in land lease contracts, development contracts, or infrastructure concessions.[89] Then they use sovereign rights to fight arbitration. International law distinguishes between jure gestionis (commercial actions) and jure imperii (sovereign actions). While the latter usually are not, the former are subject to arbitration. When differences cross both domains, conflict arises. A land lease agreement with a state-owned company might first be categorized as commercial but could be redefined as a sovereign duty in the case of problems.[90] States sometimes use public policy exclusions under Article V(2)(b) of the New York Convention to deny enforcement. Many people claim that disputes over public

[87] See Gerhard Wagner, *Arbitration in Germany: The German Arbitration Law of 1998* 227–29 (Karl-Heinz Böckstiegel et al. eds., 2007).
[88] Julian D. M. Lew et al., *Comparative International Commercial Arbitration* 187–88 (2003).
[89] See UNCTAD, *World Investment Report 2021: Investing in Sustainable Recovery* 101–03 (2021), https://unctad.org/system/files/official-document/wir2021_en.pdf.
[90] See Christoph Schreuer, *State Sovereignty and the Enforcement of Arbitral Awards*, 3 J. Int'l Disp. Settlement 587, 589–91 (2012).

land or urban development affect the public interest and are hence non-arbitrable. This approach undermines investor expectations.

The government cancelled a property lease in Limak Kosovo International Airport v. Republic of Kosovo (ICSID) on national interest basis.[91] The investor wanted arbitration; yet, claims of non-arbitrability regarding public land transactions caused enforcement to run into local legal hurdles.[92] Regulatory expropriation when governments change zoning rules or refuse building licenses without legal expropriation is a significant problem. These acts avoid the legal consequences of direct appropriations and hinder project execution. Investors can start arbitration; still, the state's designation of the action as a legitimate regulatory tool often triggers questions about arbitrability.

Investors run major risks such as the tribunal might rule in their favor and assert jurisdiction. But local courts could refuse to carry out non-arbitrability. In the lack of a Bilateral Investment Treaty or multilateral treaty provisions, public international law offers limited remedies. Sovereign participation and public land exceptions therefore aggravate the gap, allowing governments to exploit contractual obligations and avoid conflict resolution under such agreements.[93]

Loopholes

The validity and effectiveness of international arbitration depend on the concept of arbitrability. Basically, it looks at whether arbitration rather than court processes could settle a particular conflict. The difference between arbitral jurisdiction and the enforcement power of domestic courts creates a legal loophole in real estate-related investor-state conflicts. Domestic courts might reject enforcement even with a valid arbitration agreement and a binding decision from an international tribunal by claiming non-arbitrability of the subject matter or the

[91] Limak Kosovo Int'l Airport J.S.C. v. Republic of Kosovo, ICSID Case No. ARB/17/25, Request for Arbitration (July 2017).
[92] See Gus Van Harten, *Investment Treaty Arbitration and Public Law* 78–80 (2007).
[93] OECD, "Indirect Expropriation" and the Right to Regulate in International Investment Law 10–13 (2004), https://www.oecd.org/investment/internationalinvestmentagreements/33776546.pdf.

public policy exception

The Enforcement Loophole under the New York Convention

The international arbitration system is based on the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. With certain modest restrictions, it mandates contracting countries to recognize and carry out international arbitral decisions. Courts may refuse enforcement under Article V(2)(a) if "the subject matter of the dispute is not amenable to arbitration under the law of that country."[94] Often leading to conflicting or overly broad readings, particularly in real estate and land-related disputes, this section gives national courts significant discretion to determine arbitrability depending on their individual legal systems.[95]

Public policy reasons render rights in rem, particularly over title to immovable property, non-arbitrable in countries like India. Therefore, the award might face judicial dismissal in the enforcement stage even if the arbitral tribunal claims jurisdiction and decides the matter relating to a commercial agreement. [96]This reduces the effectiveness of arbitration and indicates a major legal vacuum that sovereign states could use.

Operating on the principle of Kompetenz-Kompetenz, arbitral tribunals can decide their own jurisdiction including the evaluation of arbitrability. Particularly in complex investment disputes where contractual and regulatory issues intersect, international courts especially those under the ICSID, UNCITRAL, or ICC frameworks tend to adopt a broad reading of arbitrability. These courts stress party autonomy and the commercial nature of conflicts regardless of whether they relate to land, building permits, or zoning choices.

National courts are solely responsible for enforcement; they use domestic public law concepts to evaluate arbitrability. This has produced conflicting outcomes: the tribunal confirms jurisdiction and awards damages while the domestic court

[94] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(2)(a), June 10, 1958, 330 U.N.T.S. 3 [hereinafter New York Convention].
[95] Gary B. Born, *International Commercial Arbitration* 1284–85 (3d ed. 2021).
[96] Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd., (2011) 5 S.C.C. 532 (India).

refuses recognition or enforcement. The difference between legal recognition and enforcement creates an imbalance that compromises legal clarity and frustrates investor expectations.

The tribunal in ICC Case No. 14433 confirmed its authority over a conflict between a foreign investor and a sovereign entity regarding land leases and development rights. The investor was greatly compensated. Still, the court dismissed enforcement in the host state on the grounds that the matter involved public property, a topic deemed non-arbitrable under domestic law. The whole arbitration process was made useless by this enforcement failure.

Public Policy and Real Estate Regulation:

Closely related to arbitrability, the public policy exception under Article V (2) (b) of the New York Convention lets courts deny enforcement should it contravene the basic public policy of the forum state. In real estate, states often use this exception by classifying disputes as related to public land, urban planning, or sovereign regulatory powers. This lets states to mask commercial infractions as regulatory measures, therefore shielding themselves from arbitration control.[97] While valid sovereign control domestically, a denial of a building permit or an unexpected zoning reclassification that renders a project unfeasible could be considered indirect expropriation under international law. Particularly when courts follow the executive's description of the conflict as involving non-arbitrable public duties, this regulatory facade lets governments evade responsibility and violate investor expectations. It aggravates a systemic injustice in which private companies are forced to bear the costs of arbitration and litigation, only to see their awards become enforceable because of ambiguous or self-serving readings of arbitrability and public policy.[98] The loophole exposes a deep contradiction in international arbitration: the illusion of legal protection lacking actual enforcement. Investors might interact with host countries assuming arbitration's neutrality and finality, only to find them caught in a web of legal uniqueness and

[97] See Stephan W. Schill, The Public Law Approach to International Investment Law, 10 Int'l J. Const. L. 827, 834–35 (2012).
[98] OECD, *"Indirect Expropriation" and the Right to Regulate in International Investment Law* 9–12 (2004), https://www.oecd.org/daf/inv/investment-policy/WP-2004_4.pdf.

judicial insularity. This goes against pacta sunt servanda, the basic concept that agreements have to be honored.

The effect is rather terrible. Especially in areas known for opposing enforcement, particularly those with rigorous interpretations of arbitrability or too broad public policy theories, foreign investors may be reluctant to engage in infrastructure or real estate projects. This undermines the credibility of arbitration as well as the economic development policies of states depending on FDI inflows for urban infrastructure and real estate. Moreover, the different application of arbitrability rules compromises the worldwide uniformity intended by the New York Convention.[99] It gives domestic courts too much power to reclassify conflicts, compromise party autonomy, and review merits previously decided by arbitrators. As a result, arbitration adds another, maybe untrustworthy layer of legal complexity rather than being a substitute for litigation.

Case Law and Comparative Analysis

India: Booz Allen and Vidya Drolia – Narrow Scope of Arbitrability

Especially with immovable property, India takes a conservative view on arbitrability. Delineating a basic doctrinal division between rights in rem and rights in personam, the landmark decision in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. (2011) The Supreme Court ruled that, title of immovable property concerns are non-arbitrable even under contractual origins between private entities. The court emphasized that rights in rem had erga omnes effects and therefore required public court adjudication.

When the Supreme Court set a fourfold standard for evaluating non-arbitrability, Vidya Drolia v. Durga Trading Corporation (2021)[100] restated and elaborated the idea.

[99] See UNCTAD, *World Investment Report 2022: International Tax Reforms and Sustainable Investment* 72–74 (2022), https://unctad.org/system/files/official-document/wir2022_en.pdf.
[100] Vidya Drolia v. Durga Trading Corp., (2021) 2 S.C.C. 1 (India)

- The subject matter and cause of action relate to actions in rem.
- They affect third-party rights or relate to public interest.
- A centralized court system is required.
- Legislation makes them explicitly or tacitly non-arbitrable.

Although Vidya Drolia[101] claimed that tenancy conflicts under the Transfer of Property Act, 1882, might be arbitrable in some cases, Indian courts' prevailing tendency remains limited with respect to land and property concerns. Especially when the state is involved or when the matter concerns regulatory authorities like land use, this conservative stance makes India a challenging place for foreign investors seeking the implementation of arbitral decisions in real estate. [102]

Singapore: Tomolugen Holdings – Pro-Arbitration Presumption

Even in difficult business conflicts including real estate, Singapore follows a pro-arbitration judicial ideology. In Tomolugen Holdings Ltd. v. Silica Investors Ltd. (2016)[103], the Singapore Court of Appeal made clear that public interest or many parties' involvement does not render a conflict non-arbitrable. Emphasizing that only concerns affecting public regulatory integrity, such antitrust or bankruptcy, would be categorically non-arbitrable, the court upheld the idea of party autonomy.

The Tomolugen ruling[104] reveals Singapore's tendency to minimize judicial involvement. Given the issues do not directly breach non-waivable legislative limits, even conflicts involving shareholding in real estate companies or breaches of development agreements are considered arbitral contractual disputes. This indicates a deliberate judicial effort to support international arbitration as a feasible and enforceable way of resolving disputes, and it has contributed Singapore to be a top arbitration hub globally.

United Kingdom: Halpern and Fiona Trust – Deference to Party Autonomy

[101] *Ibid*
[102] *Ibid.*
[103] Tomolugen Holdings Ltd. v. Silica Invs. Ltd., [2016] 1 S.L.R. 373 (Sing. C.A.).
[104] *Ibid.*

The UK upholds a robust pro-arbitration position based on the Arbitration Act of 1996, which affirms that arbitration agreements should be honored unless compelling legislative or public interest reasons necessitate differently In Halpern v. Halpern [2007] EWCA Civ 291[105] the Court of Appeal reiterated that disputes concerning contractual responsibilities pertaining to property are not intrinsically non-arbitrable, as long as the fundamental issue is contractual in nature. The courts emphasized the significance of upholding arbitration agreements, even where the subject matter is only indirectly associated with immovable property.

In Fiona Trust & Holding Corporation v .Privalov [2007] UKHL 40,[106] the House of Lords established a presumption favoring arbitration, asserting that a dispute should be considered arbitrable until it is explicitly and absolutely rejected. The ruling also dissuaded artificial separations between commercial and regulatory facets of a dispute, permitting arbitrators to adjudicate the entirety of the case unless there is a clear statutory restriction.

These examples demonstrate the UK judiciary's dedication to maintaining international arbitration as a reliable and enforceable system, especially in contracts related to real estate, thereby constraining judicial discretion to refuse enforcement based on arbitrability issues.[107]

France: Zhinvali Development Ltd. v. Georgia – Enforcement Despite Regulatory Issues[108]

Especially regarding the enforcement of arbitral awards under Decree No. 81-500, France has long supported international arbitration. Although French public policy can occasionally limit arbitrability, its use is read narrowly. The Zhinvali Development Ltd. v. Georgia (ICSID Case No. ARB/00/1)[109] case were one of

[105] In Halpern v. Halpern [2007] EWCA Civ 291
[106] Fiona Tr. & Holding Corp. v. Privalov, [2007] UKHL 40, [2007] 4 All E.R. 951 (U.K.).
[107] Limak Kosovo Int'l Airport JSC v. Republic of Kosovo, ICSID Case No. ARB/17/25, Decision on Jurisdiction (May 13, 2020).
[108] Emmanuel Gaillard & John Savage, Fouchard Gaillard Goldman on International Commercial Arbitration 994 (1999).
[109] Zhinvali Dev. Ltd. v. Georgia, ICSID Case No. ARB/00/1, Award (Jan. 24,

conflict over land development and infrastructure. Georgia argued that the decision should not be carried out on the basis of planning and regulatory authorities. Finding that the conflict resulted from contractual obligations and that regulatory concerns had been adequately addressed during arbitration, French enforcement courts confirmed the decision. Even when the topic includes elements of public law, this choice is vital since it underlines the supremacy of arbitral autonomy. Rather than just via domestic readings, the French courts evaluated public policy from an international viewpoint. This approach reduces the likelihood of courts refusing enforcement based on unclear or flexible readings of sovereign interest.

Conclusion and Recommendations

A basic issue in international arbitration on real estate conflicts is arbitrability. The problem is not the lack of arbitration clauses or investor readiness but rather the deliberate application of domestic law and public policy by host countries to make enforcement ineffective. This legal loophole relating to tribunal jurisdiction and judicial enforcement undermines the basic tenets of international arbitration. Inconsistent definitions of arbitrability increase the risk, especially in land-use and infrastructure conflicts.

- Legislative Reform Proposals Domestic law has to say that land-related business conflicts are arbitrable except for basic sovereign duties like expropriation or tax.
- Investment treaties have to include clear wording on infrastructure contracts and real estate to limit the relevance of sovereign escape clauses.
- Protocols of Model To create normative standards, organizations like UNIDROIT and UNCITRAL should develop policies on the arbitrability of real estate conflicts.

2003).

- Judicial Training Courts need to be informed about the international arbitration system, especially with respect to enforcement obligations under the New York Convention.
- Investors' Due Diligence Investors have to assess not only contractual arbitration terms but also the judicial history and enforcement climate of the host state.

Correcting these flaws will help the international arbitration system to maintain its promises of neutrality, enforceability, and investor protection especially in the vital field of cross-border real estate.

DIGITAL WITNESSES & EVIDENCE TAMPERING IN WAR CRIMES: THE ROLE OF AI AND BLOCKCHAIN IN HR & IHL

ABSTRACT

One of the biggest obstacles to the efficient application of international humanitarian law (IHL) and international human rights law (IHRL) in armed conflicts is the intentional manipulation, alteration, and destruction of evidence. The fundamental tenets of accountability, deterrence, and victim justice that support the international legal order are threatened by this ongoing evidentiary vulnerability, which also calls into question the legitimacy of international criminal tribunals, such as the International Criminal Court (ICC) and hybrid mechanisms.

The potential of blockchain technology and artificial intelligence (AI) to lessen these difficulties and improve the evidential framework regulating war crime adjudication is examined in this study. While AI-driven forensic tools make it possible to detect manipulated content, verify multimedia materials, and corroborate complex data sets with algorithmic precision, blockchain's decentralized and immutable ledger provides an auditable, tamper-proof method for maintaining and confirming the chain of custody of digital evidence.

This work critically examines domestic and international jurisprudence, procedural guidelines, and institutional practices pertaining to digital evidence using a doctrinal and comparative legal methodology. It assesses how well blockchain and AI interact with current evidentiary standards under the Rome Statute, the ICC's Rules of Procedure and Evidence, and other relevant international frameworks. Algorithmic prejudice, data privacy issues, jurisdictional fragmentation, and the possible loss of judicial judgment due to an excessive dependence on automated systems are among the procedural and ethical issues that the study also identifies. In order to improve the admissibility, authenticity, and judicial monitoring of evidence based on blockchain and artificial intelligence, the report ends with specific legal, institutional, and policy reforms. It suggests standardizing evidentiary procedures, developing judicial actors'

capacity, and establishing ethical governance guidelines for the use of technology in war crime investigations. This study adds to the growing conversation on digital accountability by placing technological innovation within a rights-based and procedurally coherent framework.

***Keywords*:** Evidence tampering, war crimes, digital forensic integrity, AI in war crime adjudication, blockchain-based legal authentication, international humanitarian law, international human rights law, war crime accountability.

1. INTRODUCTION

The ability to precisely record, preserve, and authenticate violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) is the basis of the evidence basis of war crime adjudications. However, maintaining the integrity of evidentiary material continues to be a difficult task in the context of armed conflicts, where the wilful destruction, manipulation, and fabrication of evidence are either state-sanctioned or deliberately planned by non-state actors. In addition to impeding legal proceedings before organizations like the International Criminal Court (ICC) and other ad hoc tribunals, the falsification of war crime evidence also drastically reduces the likelihood that offenders will be held accountable. International legal systems intended to protect justice for victims of armed conflict are being undermined by the use of flimsy documentation procedures, the destruction of tangible evidence, and the spread of disinformation operations.

Digital technology has completely changed how war crimes and human rights abuses are documented in modern conflict. The extensive use of smartphones, satellite imagery, and open-source intelligence (OSINT) has made it easier to record atrocities in real time, giving rise to what can be called "digital witnesses"—a network of technological instruments that record, store, and disseminate evidence outside of combatants' control. However, with this shift to digital, advanced tampering methods have emerged, such as deepfake technology, metadata manipulation, and focused cyberattacks meant to destroy or undermine important evidence. The weakness of evidence admissibility in international criminal trials is made worse by the lack of strong verification procedures, jurisdictional fragmentation, and judicial organizations' reluctance to fully adopt digital forensics.

Considering these weaknesses, there should be a thorough investigation into how cutting-edge technology like blockchain and artificial intelligence (AI) can protect war crime evidence. The use of AI-powered forensic tools to examine enormous amounts of digital data, spot irregularities, and verify multimedia content is growing. At the same time, blockchain technology provides a decentralized, unchangeable ledger that can guarantee the chain of custody and chronological integrity of evidence. Although these technologies have the potential to strengthen the IHL and IHRL evidentiary framework, their actual application presents significant procedural, ethical, and legal issues.

Through an analytical examination of the relationship between technology and war crime accountability, this study addresses the important issues. This study aims to evaluate AI and blockchain's ability to overcome systemic flaws that have long hampered international criminal adjudications by placing them within the larger conversation on evidential integrity. The study will critically assess whether digital innovations can be dependable tools for improving the credibility, admissibility, and preservation of war crime evidence through a doctrinal review of current legal frameworks, case law, and technology breakthroughs. By doing this, it hopes to support the current discussion on modernizing IHL and IHRL in a time when technology is increasingly used to mediate justice and conflict.

CONCEPTUAL CONTEXT

The larger discussion of the relationship between law, technology, and accountability is intricately entwined with the evidential difficulties that emerge in the setting of armed conflicts. In the past, the availability of trustworthy and admissible evidence has been a prerequisite for the prosecution of war crimes and other serious violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL).[110] However, the strategic objectives of both state and non-state players, coupled with the fluid and frequently chaotic nature of armed conflicts, have made it difficult to document and preserve

[110] Schabas, W.A. (2020) 'An introduction to the International Criminal Court', *Cambridge University Press*, 6(2020). doi:10.1017/9781108616157.

evidence.[111] The systematic destruction of documents, witness intimidation, and the concealment of important facts by offenders have all contributed to the growing erosion of the conventional dependence on witness testimony, forensic analysis, and physical documentation.[112] The deliberate suppression and falsification of evidence not only impede legal redress but also perpetuate a culture of impunity, thereby eroding the normative force of international legal frameworks.[113]

In an era where digital technologies have transformed the landscape of conflict documentation, the ability to manipulate or fabricate evidence has also advanced in parallel.[114] The proliferation of deepfake technology, synthetic media, and metadata falsification has raised complex epistemological concerns regarding the authenticity of digital records.[115] The principle of *best evidence*, long regarded as a cornerstone of evidentiary law, is increasingly being challenged by the emergence of technologically altered content that can evade traditional verification mechanisms.[116] Additionally, the issue is made worse by the jurisdictional fragmentation of international criminal adjudication, as various legal forums from

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111 Klamberg, M. (2013) 'Evidence in international criminal trials', *Brill*, 2(2013). doi:10.1163/9789004236523.

112 Günther, P. (2022) 'Carsten Stahn, Justice as message: Expressivist Foundations of International Criminal Justice, Oxford: Oxford University Press, 2020, ISBN: 978-0198864189, 480 seiten, 115 Euro', *Zeitschrift für Rechtssoziologie*, 42(1), pp. 128–133. doi:10.1515/zfrs-2022-0009.

113 Vergis, F. (2019) 'Employment law and human rights (3rd EDN), edited by Robinallen, RachelCrasnow, annabeale, ClaireMcCann, Rachelbarrett. Oxford University Press, Oxford, 2018, 636 pp., ISBN: 978- 0198783978, price £75.00, P/B', *British Journal of Industrial Relations*, 57(3), pp. 716–718. doi:10.1111/bjir.12476.

114 Livingston, S. and Risse, M. (2019) 'The future impact of artificial intelligence on humans and human rights', *Ethics & International Affairs*, 33(02), pp. 141–158. doi:10.1017/s089267941900011x.

115 Vasiliev, S. (2019) 'The crises and critiques of International Criminal Justice', *SSRN Electronic Journal* [Preprint]. doi:10.2139/ssrn.3358240.

116 Damaska, M. (1998) *Truth in adjudication*, *UC Law SF Scholarship Repository*. Available at: https://repository.uclawsf.edu/hastings_law_journal/vol49/iss2/1/.

the International Criminal Court (ICC) to hybrid tribunals and domestic war crime courts adopt differing standards as to whether digital evidence is admissible.[117] Because of this legal ambiguity, it is possible for important evidence to be rejected on procedural grounds even when it is substantively relevant to determining criminal responsibility.[118] According to socio-legal theory, the effects of evidence tampering go beyond the courtroom and have an impact on victim restitution, historical memory, and the larger ecosystem of transitional justice.[119] The integrity of evidence procedures directly affects impacted communities' capacity to demand justice and acknowledgement for atrocities committed against them.[120] In addition to impeding individual prosecutions, the lack of reliable evidence also makes it more difficult to create truth commissions, record historical accounts, and put in place efficient non-recurrence measures.[121] In this regard, integrating cutting-edge technology like blockchain and artificial intelligence (AI) offers both opportunities and challenges. Through the identification of irregularities, the detection of patterns of manipulation, and the cross-referencing of many sources, AI-driven forensic analysis holds promise for improving the verification of digital evidence.[122] At the same time, blockchain technology reduces the possibility of post hoc changes or deletions by providing a decentralized and unchangeable method of maintaining evidence documents.[123] But using these technologies in

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[117] Makumbe, R.P. (2021) *Sam Dubberley, Alexa Koenig and Daragh Murray (editors), Digital Witness: Using Open-Source Information for Human Rights Investigation, documentation and Accountability | Journal of International Criminal Justice | oxford academic*, *https://academic.oup.com/*. Available at: https://academic.oup.com/jicj/article-abstract/19/1/229/6313395?redirectedFrom=fulltext.
[118] *KPS Gill v CBI Vol 20* (1995).
[119] Kalpouzos, I. (2020) 'War crimes', *International Law* [Preprint]. doi:10.1093/obo/9780199796953-0199.
[120] *Selvi v State of Karnataka Vol 1974* (2010).
[121] Keenan, P.J. (2020) 'Doctrinal Innovation in international criminal law: Harms, victims, and the evolution of the law', *SSRN Electronic Journal* [Preprint]. doi:10.2139/ssrn.3545376.
[122] Chander, A. (2017) 'The Electronic Silk Road', *Yale University Press* [Preprint]. doi:10.12987/9780300154603.
[123] *Justice K S Puttaswamy v Union of India Vol 4161* (2017).

accordance with international law presents serious moral and legal conundrums. The conflict between blockchain's immutability and legal doctrines of evidentiary flexibility, the admissibility of forensic conclusions produced by AI, and the potential bias present in machine-learning algorithms all call for a critical analysis of how digital tools can be reconciled with accepted legal principles.[124]

Economically speaking, issues of resource distribution, accessibility, and technical inequality are also raised using AI and blockchain in war crime investigations. Such sophisticated technologies are expensive to design and implement, which frequently makes them unavailable to underfunded investigative agencies, civil society groups, and impacted people in conflict areas.[125] Because technologically advanced states and institutions have greater evidentiary credibility and resource-constrained jurisdictions find it difficult to substantiate war crime allegations due to a lack of digital forensic capabilities, this technological divide runs the risk of perpetuating structural inequalities in the global justice system. Concerns regarding the monetization of justice and the possibility of evidence monopolization are also raised by the growing privatization of digital forensic tools, where corporate organizations control important technological infrastructures.

Therefore, the issue of evidence tampering in armed conflicts needs to be examined as a multifaceted problem at the nexus of law, technology, and geopolitics rather than just as a barrier to judicial adjudication. It is crucial to have a strong evidential framework that strikes a balance between procedural justice and technological improvements. It is still up for debate to what degree AI and blockchain can be successfully incorporated into this framework, which calls for a rigorous examination of both their wider sociopolitical ramifications and their legal applicability. This study intends to investigate whether these digital innovations can strengthen the evidentiary regime governing armed conflict accountability or whether they introduce new complexities that need more doctrinal and policy-level scrutiny by placing the evidentiary vulnerabilities

[124] Rogers, R. (2024c) 'Doing Digital Methods', *MIT Press* [Preprint]. doi:10.4135/9781036231514.
[125] Schultz T and Grant T, 'Arbitration: A Very Short Introduction' [2021] Cambridge University Press.

inherent in war crimes prosecutions within a larger legal and technological discourse.

2. LEGAL ANALYSIS

The veracity of the evidence before courts like the International Criminal Court (ICC), ad hoc tribunals, and hybrid courts. [126] However, persistent evidence tampering has made it extremely difficult to prosecute war criminals in modern armed conflicts. Crucial documentation has been rejected due to a lack of strong procedures to guarantee the verifiability of digital evidence, undermining the effort to hold people accountable.[127]

3.1 EVIDENTIARY STANDARDS IN INTERNATIONAL CRIMINAL LAW AND THE THREAT OF TAMPERING

A high standard of proof is required in war crime prosecutions under the Rome Statute of the ICC and customary international humanitarian law,[128] which frequently calls for supporting evidence that can stand up to court examination. But historically, the evidentiary process has been hampered by the destruction of documentary evidence, the manipulation of forensic results, and the wilful dissemination of false information.[129] Authenticating witness testimony has often been difficult for international criminal tribunals, especially when the statements are contradictory or subject to coercion.[130] Furthermore, the dependence on conventional evidence types, such paper records, and tangible forensic samples, has made war crime adjudication susceptible to logistical errors, which could result in the inadmissibility of crucial evidence because of chain-of-custody

[126] Al-Rousan DrE, 'Evidence Power before the International Criminal Court' (2023) 3 International Journal of Law, Justice and Jurisprudence 01
[127] Statute of the International Criminal Court (Rome Statute) 1998.
[128] ibid, art 66(3).
[129] Ambos K, 'Treatise on International Criminal Law' [2016] Oxford University Press
[130] Krzan B, 'William A. Schabas: The International Criminal Court: A Commentary on the Rome Statute, Oxford, Oxford University Press, 2. Aufl. 2016, XCII, 1589 s.' (2020) 58 Archiv des Völkerrechts 116

violations.[131] War crime investigations have taken on a new dimension with the introduction of digital material, including mobile footage, social media records, and satellite photos.[132] However, worries about the authenticity of digital evidence have increased due to the spread of deepfake technology, metadata tampering, and advanced cyberattacks.[133] The lack of a uniform procedure for confirming digital submissions before foreign courts has caused judges to be reluctant to accept technology-based evidence in its entirety.[134] Therefore, the problem is to create a framework that not only makes it easier to integrate blockchain-secured and AI-verified documents, but also complies with the fundamental rights to a fair trial under international human rights legislation.[135]

3.2 THE ROLE OF AI IN ENHANCING DIGITAL FORENSICS AND VERIFYING WAR CRIME EVIDENCE

With its unmatched powers in the identification, categorization, and verification of war crime evidence, artificial intelligence has become a powerful instrument in digital forensics.[136] AI can examine enormous digital media archives using machine learning algorithms to find discrepancies, spot deepfake changes, and accurately reconstruct events. In human rights investigations, AI-powered facial

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131 OHCHR U, 'OHCHR and Privacy in the Digital Age | Ohchr' (*https://www.ohchr.org/en/privacy-in-the-digital-age*, 2022) <https://www.ohchr.org/en/privacy-in-the-digital-age>

132 OHCHR U, 'Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law | Ohchr' (*https://www.ohchr.org/sites/default/files/2024-01/OHCHR_BerkeleyProtocol.pdf*, 2020) <https://www.ohchr.org/en/publications/policy-and-methodological-publications/berkeley-protocol-digital-open-source>

133 Ibid.

134 Klamberg M, 'Evidence in International Criminal Trials' [2013] Cambridge University Press.

135 ibid 315.

136 UNESCO U, 'UNESCO's Recommendation on the Ethics of Artificial Intelligence: Key Facts' (*https://www.unesco.org/en/artificial-intelligence/recommendation-ethics*, 2021) <https://unesdoc.unesco.org/ark:/48223/pf0000385082>

recognition and geographical analysis have already been used to verify atrocity footage and identify offenders.[137] Forensic analysis of multimedia content is one of the main uses of AI in evidence verification. Algorithms driven by AI are able to detect artificial media, detect video tampering, and retrieve metadata to determine the precise time, place, and circumstances of a recording.[138] Furthermore, the credibility assessment process can be strengthened by using natural language processing (NLP) technologies to examine testimonial inconsistencies across several witness narratives.[139] Even though AI has many benefits for evaluating evidence, its application in war crime adjudication calls for the creation of legal protections to defend against algorithmic prejudice, guarantee procedural transparency, and preserve judicial control over automated decisions.[140]

3.3 BLOCKCHAIN AS AN EVIDENTIARY SAFEGUARD AGAINST EVIDENCE MANIPULATION

An unchangeable framework for maintaining evidentiary integrity is provided by the incorporation of blockchain technology into war crime investigations. Blockchain functions as a decentralized ledger system in which every transaction is cryptographically recorded in a way that precludes changes from being made after the fact.[141] This immutability removes any worries about chain-of-custody violations by guaranteeing that digital evidence cannot be altered or removed once it is stored within a blockchain framework.[142] The use of blockchain extends to confirming the provenance of digital evidence. Blockchain technology can create an unbreakable chain of authenticity by timestamping and encrypting evidence at the time of gathering, making digital submissions easier to admit in war crime

[137] ibid.
[138] Clough J, 'Principles of Cybercrime' [2015] Cambridge University Press
[139] ibid 180.
[140] *Big Brother Watch v United Kingdom (2021)* (2021) App. No 58170/13 (European Court of Human Rights)
[141] Cutts T, 'Primavera De Filippi and Aaron Wright, Blockchain and the Law: The Rule of Code, Cambridge, Mass: Harvard University Press, 2018, 312 Pp, HB £28.95.' (2019) 83 The Modern Law Review 233
[142] ibid 85.

tribunals.[143] Additionally, blockchain networks' smart contracts can be configured to sound an alarm if evidence is viewed, altered, or moved, improving judicial accountability.[144] But in order to be used effectively in war crime adjudication, blockchain technology must be harmonized with current legal norms regarding digital evidence. This means that procedural rules must be changed to allow blockchain-secured submissions as legally accepted proof.[145]

3.4 LEGAL AND PROCEDURAL CHALLENGES IN IMPLEMENTING AI AND BLOCKCHAIN IN INTERNATIONAL CRIMINAL PROCEEDINGS

Although blockchain and artificial intelligence (AI) offer tremendous improvements in the fight against evidence tampering, there are many obstacles to overcome before they can be successfully incorporated into the current legal framework for war crime adjudication. The issue of admissibility under international criminal procedural law is the primary concern. Blockchain-preserved evidence and AI-generated forensic conclusions are not expressly recognized as prima facie admissible under the Rome Statute, thus the judge must exercise discretion in judging their probative value. Since courts are still hesitant to depend on new types of digital evidence without established validation methods, the lack of precedents regarding the use of these technologies makes their integration much more difficult.
Important issues including data privacy, territorial sovereignty, and technological overreach need to be properly considered. Similarly, blockchain-based evidence retention needs to adhere to international data protection standards, especially in conflict areas where legal access is restricted. Ultimately, to combine technological progress with procedural justice and human rights protection, a balanced legal framework is necessary.

[143] ibid 92.
[144] Kelly MJ, 'The Role of International Law in the Russia-Ukraine War' (*Case Western Reserve University School of Law Scholarly Commons*, 2021) <https://scholarlycommons.law.case.edu/jil/vol55/iss1/6/>
[145] ibid 115.

3.5 COMPARATIVE JURISPRUDENCE AND EMERGING PRECEDENTS ON DIGITAL EVIDENCE IN INTERNATIONAL LAW

The growing legal acceptance of blockchain and artificial intelligence (AI) in evidentiary procedures can be better understood by examining comparative jurisprudence from national, regional, and worldwide courts. In situations involving cybercrime, digital fraud, and electronic spying, domestic courts in technologically advanced jurisdictions including the US, UK, and India have started to accept AI-assisted forensic findings. For example, U.S. federal courts have maintained the admission of AI-driven pattern recognition in cybersecurity and financial disputes, so long as the technology satisfies Daubert test dependability requirements. As demonstrated in *State of Karnataka v. Puttaraju (2023)*[146], Indian courts have also recognized the evidential significance of algorithmic data analytics in cyber-enabled offenses, stressing judicial discretion over the probative weight of such digital information.

Blockchain's immutability and chain-of-custody value have been acknowledged by courts in several jurisdictions, confirming its dependability, especially in financial fraud and smart contract disputes. In data protection decisions, the ECtHR and CJEU have also cited blockchain's traceability and transparency, indicating that it is compatible with human rights law. When taken as a whole, these advancements demonstrate the increasing doctrinal acceptance of algorithmic and decentralized verification techniques in evidentiary practice. Global standards for verifying AI-verified and open-source evidence have been established by the Berkeley Protocol (2020) and the OHCHR's 2023 guidelines. The ICC and hybrid tribunals are investigating blockchain-based conflict data repositories with support from the UN and ICRC, signifying the progressive integration of AI and blockchain to improve authenticity and transparency in war crime adjudication.

3.6 TOWARDS A DIGITALLY REINFORCED EVIDENTIARY FRAMEWORK IN WAR CRIME ADJUDICATION

The use of blockchain and AI in war crime investigations is a technological innovation & also a legal requirement in the international criminal justice. While traditional evidential procedures are still susceptible to manipulation, digital

[146] *State of Karnataka v. Puttaraju (2023)*

forensic capabilities present previously unheard-of chances to improve the integrity of war crime documentation. However, for these technologies to be used effectively, legal frameworks must change to guarantee that they are consistent with accepted notions of accountability, due process, and judicial impartiality. The proper application of AI and blockchain will be essential to protecting justice and upholding the truth in the digital age as international criminal law grapples with the complexity of contemporary combat.

3. LEGAL & PRACTICAL OUTPUT OF THE ANALYSIS

The analysis of evidence tampering in armed conflicts in contrast to the developing roles of blockchain technology and artificial intelligence (AI) highlights the shortcomings of conventional evidential frameworks as well as the revolutionary possibilities of new technological interventions. A paradigm changes in the way war crimes are recorded and decided is required because of the legal analysis's discovery of structural flaws in the authentication, preservation, and admission of digital evidence in international criminal proceedings.

4.1 LEGAL IMPLICATIONS: RECALIBRATING INTERNATIONAL EVIDENTIARY STANDARDS

An immediate re-examination of evidentiary norms under international humanitarian and human rights law is necessary to integrate blockchain-based evidentiary preservation with AI-driven forensic analysis. Although the Rome Statute of the International Criminal Court (ICC) and other existing legal frameworks grant judges considerable latitude in evaluating evidence, they do not contain specific rules that address the intricacies of digital recordkeeping in conflict areas. The lack of a systematic process for confirming blockchain-secured evidence or AI-generated forensic results raises the possibility of arbitrary evidential exclusion, which would ultimately undermine accountability efforts, even though judicial flexibility is still essential.[147] The foundation of evidential dependability, the notion of chain of custody, needs to be extended to account for blockchain's decentralized structure while maintaining procedural safeguards against abuse. Furthermore, the use of AI in forensic authentication presents jurisprudential questions about due process because the accused's fundamental rights may be violated by relying on algorithmic decisions in the absence of

[147] Statute of the International Criminal Court (Rome Statute) 1998

sufficient transparency measures.[148] In light of these worries, a hybrid evidential approachin which blockchain records are augmented with cross-referenced metadata and AI-assisted conclusions are subject to corroborating human verification would be a legally sound way to integrate technology into international adjudication.
Furthermore, global cooperation is required to establish uniform evidentiary protocols, according to comparative legal analysis. International criminal law is still reluctant to adopt AI-verified digital evidence into its procedural frameworks, despite common law states' domestic legal systems having started to do so.[149] To prevent evidentiary fragmentation or jurisdictional discrepancies, the ICC, the European Court of Human Rights (ECtHR), and other international adjudicatory organizations must create a uniform criterion for admitting technology-driven evidence.

4.2 PRACTICAL FEASIBILITY: INSTITUTIONAL AND TECHNOLOGICAL ADAPTATIONS

The effective use of AI and blockchain in war crime documentation calls for institutional and infrastructure changes in addition to the necessary legal doctrinal changes. Secure online submission channels must be included with the launch of blockchain-based evidence repositories to guarantee that verified organizations, such as the UN, global NGOs, and investigative agencies, can upload supporting documentation without worrying about illegal alteration. The Berkeley Protocol

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[148] Seng D and Mason S, 'Artificial Intelligence and Evidence' (*https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/Current-Issue/ctl/eFirstSALPDFJournalView/mid/503/ArticleId/1602/Citation/JournalsOnlinePDF*, 2021) <https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/Current-Issue/ctl/eFirstSALPDFJournalView/mid/503/ArticleId/1602/Citation/JournalsOnlinePDF>

[149] Quilling C, 'The Future of Digital Evidence Authentication at the International Criminal Court | Journal of Public and International Affairs' (*princeton university*, 2020) <https://jpia.princeton.edu/news/future-digital-evidence-authentication-international-criminal-court>

on Digital Open-Source Investigations, which describes best procedures for gathering digital evidence in human rights documentation, could serve as the model for such a system.[150] Similarly, capacity-building programs need to be implemented in tandem with the use of AI-driven forensic authentication techniques. In order to allay worries about an excessive dependence on opaque algorithmic models, prosecutors at the ICC and other international tribunals need specific training in understanding forensic data produced by AI.[151] Judicial authorities must also create procedures for examining AI-generated evidence to make sure that automated evaluations don't get around established evidentiary protections like expert testimony review and cross-examination. Blockchain records have different legal statuses in different jurisdictions; some consider them as prima facie admissible, while others continue to doubt their validity.[152] The international legal community must create consistent procedures acknowledging cryptographically secured evidence as legally binding in order to guarantee the efficacy of blockchain in war crime adjudication. This could be accomplished through a multilateral treaty framework or an amendment to the ICC Rules of Procedure and Evidence. Blockchain-based evidence archives are theoretically unchangeable, but they need a lot of network infrastructure and processing power, which could not be available in areas devastated by conflict with poor access to technology.[153] This gap might be filled by decentralized storage options combined with safe mobile apps for field investigators, which would allow for cryptographic

[150] OHCHR, 'Launch of the Berkeley Protocol on Digital Open-Source Investigations – Berkeley University | Ohchr' (*UNHR*, 2020) <https://www.ohchr.org/en/statements-and-speeches/2020/12/launch-berkeley-protocol-digital-open-source-investigations>

[151] Jaiswal A and Mishra PC, 'Artificial Intelligence (AI) and Criminal Justice System: Potential Benefits and Risks' (2023) 4 ShodhKosh: Journal of Visual and Performing Arts

[152] Amprayil AV, 'Admissibility of Blockchain Evidence in India: The Certification Conundrum' (*NLS Forum*, 2025) <https://forum.nls.ac.in/ijlt-blog-post/admissibility-of-blockchain-evidence-in-india-the-certification-conundrum/>

[153] Singh P, 'Regulating Decentralized AI: Blockchain, Dark Web, and Anonymity Challenges, an Indian Perspective' (2025) 5 International Journal of Law, Justice and Jurisprudence 220

timestamping and real-time evidence recording without requiring instant access to a high-bandwidth network.

4.3 POLICY RECOMMENDATIONS AND THE WAY FORWARD

First, International legal agencies, including the ICC, should adopt common norms controlling the admissibility and validity of AI- and blockchain-based evidence. A uniform AI-audit approach must be created to ensure that algorithmic analyses receive independent expert assessment and judicial examination before acceptance in court proceedings.

Second, States should match worldwide best practices for digital forensic authentication with their own evidentiary laws. Harmonization will improve coherence between national and international accountability processes and guarantee uniform treatment of technologically derived evidence, since lower-level war crimes are frequently punished domestically.

Third, Judges, prosecutors, and investigators should receive training on evaluating blockchain-secured and AI-verified evidence from the UN, ICRC, and other international organizations. Specialized certification and capacity building for conflict-related investigations can be facilitated by cooperation between legal professionals, technology, and academic institutions.

Fourth, Blockchain and AI implementation must be supported by ethical frameworks that guarantee algorithmic fairness, data security, and transparency. To avoid abuse, safeguard privacy, and maintain procedural legitimacy in war crime adjudication, responsible AI and blockchain governance guidelines must be developed.

Lastly, AI-based forensic departments under judicial supervision and blockchain-protected evidence archives should be established by international tribunals. These procedures must operate within a legally sound framework that strikes a balance between due process, human rights protections, and technological innovation.

4. CONCLUSION

Enforcing international humanitarian and human rights legislation is severely hampered by the increasing complexity of evidence manipulation in contemporary armed conflicts. In the face of systematic manipulation and fabrication, traditional

evidential mechanisms—anchored in witness testimony, tangible documentation, and fragmentary digital traces—have proven insufficient. These flaws hinder the prosecution of war crimes and undermine the more general objectives of historical truth, reparations, and transitional justice. In this regard, blockchain technology and artificial intelligence (AI) become revolutionary instruments that can bolster international accountability systems and increase the integrity of evidence.

While blockchain's decentralized and immutable ledger guarantees tamper-proof evidence preservation across jurisdictions, AI-driven forensic analysis may identify digital forgeries, authenticate multimedia content, and assist fact-finding with algorithmic precision. However, in order to avoid algorithmic bias, evidentiary exclusion, and jurisdictional inconsistency, their implementation must be moderated by controls. The difficulty is incorporating new technology into current legal systems without compromising judicial independence, impartiality, or due process. International criminal law must change doctrinally to specifically acknowledge evidence based on blockchain technology and artificial intelligence. Standards for the admission, authenticity, and judicial scrutiny of such digital materials should be established by amendments to the Rome Statute and the procedural norms of international and hybrid tribunals. Judicial confidence and uniformity in the handling of evidence obtained from technology might be further improved by harmonizing evidentiary standards across jurisdictions.

Practically speaking, international courts and investigative agencies need to make investments in AI-powered forensic tools, blockchain-secured evidence archives, and specialized training for judges, prosecutors, and investigators. The United Nations, ICRC, and academic institutions should work together to create frameworks for digital evidence management that are transparent, ethical, and capacity-driven. In the end, there are opportunities and responsibilities associated with the digitization of evidence. The international legal community can protect justice in the digital age, prevent evidence manipulation, and strengthen accountability by integrating blockchain and AI into a systematic, morally monitored, and legally consistent framework. This will ensure that technology advances truth rather than deceit.

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LOAN EVERGREENING VIA AIFS: ANALYZING RBI'S REGULATORY CRACKDOWN AND ITS COMMERCIAL IMPLICATIONS

ABSTRACT

In this article, authors will analyze how Banks, NBFCs and other Regulating entities use loan evergreening techniques to hide distressed NPAs through investments in investment vehicles such as AIFs. The study investigates the nature of evergreening, the implications for corporate financial stability, and the resulting risks to the banking industry's transparency. Furthermore, the paper delves into a critique of two policy guidelines issued in December 2023 and March 2024 by the RBI meant to curb such practices. These directives bar REs from directly or indirectly investing in AIFs related to debtor companies through a range of regulatory measures and standards, including the laws on capital deductions, provisioning, and enhanced compliance. In addition, the paper also comprehensively assesses the listed operational, financial, and systemic risks that are linked to these notifications, as they affect REs, AIFs, and the overall financial landscape. Therefore, this research shall contribute to the existing body of knowledge particularly the Indian financial regulation development and its consequences with special reference to accountability and stability of the financial system.

INTRODUCTION

The Banks, Non-banking Financial companies (NBFCs), and other financial institutions doing business in India are under the regulatory jurisdiction of the

Reserve Bank of India (RBI) and are called Regulated Entities (REs).[154] They play a pivotal role in sustaining stability and efficiency in the financial system. To ensure that REs operate under sound economic principles, REs are bound by strict regulations by RBI.

Non-performing assets (NPAs) remain one of the critical challenges that REs face in their operations. As per the rules and regulations of RBI, advances or loans will turn into NPA status where the amount of principal and interest remaining outstanding is ninety days or more.[155] Increasing NPAs can adversely affect RE's cash flow by reducing profitability; weakening the market's confidence in these REs, and raising the cost of sourcing capital. Furthermore, this increase may weaken the REs balance sheet. In the extreme, if left unresolved, NPAs threaten the sustainability of the broader financial sector. So, to maintain the illusion of solid financial condition and to minimize the influence of NPAs, some REs use AIFs for the evergreening of loans.

The RBI has implemented several steps to stop evergreening activities because it recognizes the dangers, they bring which include less financial transparency and

[154] Reserve Bank of India, *Master Direction – Non-Banking Financial Company – Systemically Important Non-Deposit Taking Company and Deposit Taking Company (Reserve Bank) Directions, 2016* (Oct. 17, 2023), https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11566

[155] **Reserve Bank of India,** *Guidelines on Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards* (June 9, 2023), https://rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?Id=6544&Mode=0

greater systemic vulnerabilities. These regulatory actions aim to strengthen risk management, increase accountability, and guarantee that REs function within an environment that places a high value on ethical and sustainable lending practices.

In this article, we will delve into the concept of the evergreening of loans through the use of AIFs by REs. We will also analyze the recent notifications issued by the RBI aimed at preventing the evergreening of loans. In the first half of the article, the authors will broadly discuss the impact and analysis of these notifications from the RBI's perspective on loan evergreening by REs, including NBFCs. The second half will focus on understanding the commercial implications that will primarily highlight the challenges that REs can face because of the stance of RBI.

Now, let's first understand what the evergreening of loans is using the example of REs using AIFs.

CONCEPT OF EVERGREENING OF LOANS

Evergreening loans are when the lender extends new or additional loans to a borrower who is unable to repay the existing loans which helps in concealing the true status of the NPAs or bad loans.[156]

Evergreening of loans from the perspective of REs and AIFs involves a strategy where REs utilize AIFs to artificially prolong the term of a loan that is on the brink of being declared an NPA.

[156] **Akhil Hirani,** *Evergreening of Loans – Is RBI Justified in Its Actions?*, MONEY CONTROL (Jan. 9, 2024), https://www.moneycontrol.com/news/opinion/evergreening-of-loans-is-rbi-justified-in-its-actions-12022681.html (last visited Jan. 1, 2025)

For example, an NBFC has provided a loan of ₹100 crore to Company X, which is struggling to repay it. As the loan approaches its due date, the NBFC faces the risk of classifying it as an NPA, which would require higher provisioning and negatively impact its financial statements.

To avoid this, the NBFC establishes an AIF and invests ₹100 crore into the AIF. The AIF, in turn, uses these funds to purchase bonds issued by Company X worth ₹100 crore. Company X utilizes the proceeds from the bond issuance to repay its original loan to the NBFC.

From a regulatory perspective, this creates the appearance of a timely repayment by Company X. However, in reality, the loan period has merely been extended through the investment in the AIF.[157] This practice raises concerns about transparency in monetary health and has been inspected by regulatory bodies such as the Securities and Exchange Board of India (SEBI) and the RBI.[158] On May 23, 2023, SEBI released a Consultation Paper on the proposal concerning pro-rata and

[157] **Shubham Singh,** *From Masking to Disclosure: RBI Shakes Up NBFC Investments and AIF Structures*, THE INDIAN REVIEW OF CORPORATE AND COMMERCIAL LAW (Jan. 16, 2024), https://indiacorplaw.in/2024/04/rbi-tweaks-norms-on-investments-in-aifs-a-breather-to-the-regulated-lenders.html20 (last visited Dec. 28, 2024)

[158] **Jayshree P. Upadhyay,** *SEBI Alerts RBI About NBFCs Evergreening of Loans*, *LIVEMINT* (India, Nov. 25, 2022), https://www.livemint.com/news/india/sebi-to-rbi-nbfcs-evergreening-loans-through-alternative-investment-funds-11669316215973.html (last visited Jan. 6, 2025)

pari-passu rights of investors of AIFs.[159] In this Consultation paper, SEBI stated the issue of evergreening arises because of the adoption of PD Models by AIF schemes.

This led to the latest development of two notifications published by RBI. One was published on 19 December 2023[160] (First Notification) and a follow-up notification was released on March 27 (Second Notification), 2024[161], to curb the problem of loan evergreening by REs. In the upcoming section, the authors will delve into these notifications, while also critically examining them from the perspective of kerning evergreening and then from economic implication.

UNDERSTANDING THE NOTIFICATIONS

First Notification

In the first notification[162], RBI stated that REs are no longer allowed to have direct or indirect exposure to any AIF in companies where they have made loans or

[159] **Swetha Dinesh,** *SEBI Issued a Consultation Paper on Proposal with Respect to Pro-Rata and Pari-Passu Rights of Investors of AIFs*, *ENTERSLICE* (May 30, 2024), https://enterslice.com/learning/sebi-issued-a-consultation-paper-on-proposal-with-respect-to-pro-rata-and-pari-passu-rights-of-investors-of-aifs/ (last visited Jan. 10, 2025)

[160] **Reserve Bank of India,** *Investment by Regulated Entities in Alternative Investment Funds (AIFs)*, Circular No. DOR.STR.REC.58/21.04.048/2023-24 (Dec. 19, 2023), https://www.rbi.org.in/Scripts/NotificationUser (last visited Dec. 23, 2024)

[161]**Reserve Bank of India,** *Investments in Alternative Investment Funds (AIFs)*, Circular No. DOR.STR.REC.85/21.04.048/2023-24 (Mar. 27, 2024), https://www.rbi.org.in/Scripts/NotificationUser (last visited Dec. 24, 2024

[162] Reserve Bank of India, s*upra note* 1 at 1

investments during the past year. This rule addresses the very cause of the evergreening problem by eliminating the indirect exposure path.

For existing AIF investments, a 30-day grace period is given by RBI. If an AIF where the RE is already a part of wishes to acquire shares in a debtor company, the RE must sell its AIF shares within 30 days. This provision does not allow using AIFs for masking non-performing loans.

However, what happens when an RE cannot sell its AIF shares within the time of 30 days? For this, on those AIF investments, the RE must make a 100% provision which means that the investment is noted on its books as a potential loss. This discourages REs from simply ignoring potentially bad investments.

Further, there is a special requirement concerning investments into an AIF structure with the so-called “priority distribution model”. The Priority Distribution model is a waterfall distribution mechanism, in which the junior class of investors gets more than a proportional blow to their fund holding than the senior class of investors as the latter has priority to receive investment return.Consequently, we can stipulate that any RE investment in such AIFs will be fully expunged from their capital funds, thus doubtless sound financial practices.

Second Notification

The RBI's second notification clarified ambiguities in the first, addressing the scope of AIF investments, the types of instruments covered, and compliance requirements. While the first focused on curbing loan evergreening, it lacked detailed guidance on limitations and applications. The second notification aims to ease compliance while maintaining safeguards.

One major concern was regarding provisioning requirements, where lenders are now required to provision only for the AIF's actual exposure to debtor companies. For example, if a lender invests ₹100 crores in an AIF and the AIF has ₹50 crores of exposure to a borrower, provisioning is required only for the ₹50 crores, not the full investment. This reduces the burden on lenders and aligns risk with actual exposure.

The notification also excludes equity-based downstream investments from its purview, offering relief to private equity and venture capital funds. This exemption, particularly beneficial for Category-I AIFs like the National Investment and Infrastructure Fund (NIIF), allows funds focused on long-term equity investments in MSMEs and startups to raise capital without triggering provisioning or liquidation concerns. For instance, if banks and NBFCs provide 51% of a fund's capital, they can now maintain their investments without compliance worries, provided the fund invests in listed companies. Nevertheless, the exclusion of hybrid instruments such as compulsorily convertible debentures (CCD) and compulsorily convertible preference shares (CCPS) from this carve-out raises questions about how they will be handled.[163]

The exception for intermediary investments, like those made through mutual funds or funds of funds (FoFs), is another important clarification. By removing intermediary-related regulatory obligations, these investments are exempt from the notification's purview, promoting increased participation in AIFs.

[163] Siddharth Shah and others, *RBI Measures to Curtail Evergreening: Impact on Alternative Investment Funds*, *(2023)*, Khaitan & Co

Lastly, the notification only requires capital deductions for AIF subordinated units with a priority distribution scheme if the AIF has no downstream exposure to Debtor companies. Tier-1 and Tier-2 capital each receive an equal share of these deductions. Lenders are required to sell or make provisions for non-equity investments where they are present.

ANALYSING THE NOTIFICATIONS

The RBI's notifications on investments in AIFs reflect a strategic and comprehensive approach to curb the practice of evergreening, which has been a significant concern in maintaining the integrity of financial reporting. However, it has its advantages and disadvantages. Let's critically analyze the notifications.

First Notification

The first notification notably adopts a time-neutral approach providing instructions applicable to past, present, and future investments by REs. From present and future perspectives, the notification expressly prohibits REs both for present and future investments, from directly or indirectly investing in any AIF associated with companies to which they have extended loans or investments. This stringent directive aims to curtail the practice of evergreening and ensure a transparent and accountable financial landscape.[164]

In addition, the RBI imposes a 12-month prohibition on investments in such AIFs, thereby preventing any engagement in evergreening practices for the duration of the period. This serves as a critical measure to allow NPAs to be assessed

[164] Shubham Singh, *supra note* 4 at 3.

accurately, without the manipulation that often occurs through indirect exposure via AIFs.

From a past investments perspective, a 30-day window is provided for REs to sell off existing AIF holdings associated with debtor companies to ensure that these investments do not artificially inflate the financial health of these entities. However, the 30-day window looks unrealistic. A 30-day window for conducting a bipartite check about any exposure between the lender and the borrower, followed by having the fund get consent from the investment manager, and then finding single buyers is unrealistic.[165]

Furthermore, as Category I and II AIFs are close-ended funds whereby redemption and transfer of units are restrained without the consent of the investment manager and compliance with lock-in requirements means that the liquidation of investments is further complicated. Strange enough, this timeline just focuses on the task of the fund to determine any connection between the lender and the borrower. As such, there is no particular burden on either the lender or the borrower to cease such a cycle of money circulation.

Second Notification

The first notification, while very strict on the problem of evergreening, there were no clear instructions and there was a blanket ban on investments by REs in AIFs

[165] **Srishti Multani & Aryan Birewar,** *RBI Tweaks Norms on Investments in AIFs: A Breather to the Regulated Lenders*, *INDIA CORP LAW* (Apr. 18, 2024), https://indiacorplaw.in/2024/04/rbi-tweaks-norms-on-investments-in-aifs-a-breather-to-the-regulated-lenders.html (last visited Dec. 24, 2024)

where the debtor company was a part, did not provide relaxation by allowing certain types of investment. This was also criticized by industry experts.[166]

So, in the Second notification, they tried to tone down the strictness and provide some clarity. It excludes equity-based downstream investments from the scope. This has sighed relief to numerous private equity funds ('PE Funds') and venture capital funds ('VCF'), who can now raise capital from regulated lenders without worrying about the latter having to liquidate on the provision of the investment.

The notification and also refined provisioning, require REs to provision only for the portion of their AIF investment exposed to debtor companies, aligning provisions with actual risks. It introduces capital deductions for subordinated units in AIFs with a priority distribution model, ensuring REs bear appropriate risks. Additionally, investments through intermediaries like FoFs or mutual funds are exempt, offering flexibility for legitimate investments.

Furthermore, even with this notification, there remains ambiguity regarding whether REs are entirely prohibited from investing in any AIF that includes Non-Equity Investments or if the restriction applies solely to their participation in the specific Non-Equity Investments of such AIFs (allowing REs to continue participating in other investments of the AIF). The confusion stems from the RBI's clarification requiring REs to provision on a pro-rata basis. One perspective is that

[166] Id.

the RBI has aimed to ease the provisioning burden on REs rather than addressing the need for clear guidance for AIFs on their diminishing corpus.[167]

Now, after analyzing both notifications, the RBI's efforts to address the evergreening issue are commendable. The theoretical framework of the notifications is sound, targeting AIF investments tied to debtor companies to prevent banks and NBFCs from indirectly extending credit. This approach aims to safeguard the financial health of these entities by curbing artificial inflation through such investments. Nevertheless, the two notifications still don't address the penalties that an RE may face, which could render the implementation toothless as there are no repercussions known by the REs on the face of not adhering to the notifications.

However, while the notifications theoretically address the issue, their implementation raises concerns. The blanket provisions, although a little relaxed in the second notification, still seem overly broad for a problem that requires a more nuanced approach. These broad limitations hinder REs' ability to engage in the AIF market, which could impact capital flows and the broader financial ecosystem. In the next section, we will try to understand how these notifications will affect the commercial side of REs.

COMMERCIAL IMPLICATIONS OF THE NOTIFICATIONS

[167] **Athul Kumar et al.,** *RBI's Reverse Gear on AIFs*, *NISHITH DESAI ASSOCIATES* (Dec. 27, 2023), https://www.nishithdesai.com/generateHTML/13866/4 (last visited Feb. 25, 2025)

It can be derived that the RBI's notifications assume that overlapping investment leads to evergreening underestimating that many investments are independent and essential for business operations and returns. This generalization threatens to distort the flow of capital. With the current notifications not distinguishing between real investments and attempts to circumvent regulations, the requirements to be followed under the current notifications put an unnecessary compliance burden on the REs and AIFs.

Further complications arise from the assumption that lenders influence AIF investment decisions, which undermines their operational independence.[168]

This can lead to over-regulation resulting in conformity expense and decreasing the potential of AIFs, thereby slowing sector growth. The dual compliance of the rule that AIFs have to notify REs before investing in debtor companies and that REs have to notify AIFs before lending, introduces significant procedural complications and requires ongoing collaboration between AIFs and REs. These additional risks may force the REs to either scale down or completely withdraw from more investment, thus causing a decline in the fund corpus which will jeopardize the stability of funds, ultimately limiting AIFs' ability to back growth-oriented projects.[169]

Additionally, the AIF ecosystem in India will be affected and this can result in a decline in domestic transactions and a heavy reliance on foreign financial institutional capital. This will affect the domestic capital of India as regulated

[168] Id.

[169] Srishti Multani, *supra note* 14 at 8

entities are a significant source of domestic contributions to AIFs. Furthermore, it goes against the government's attempts to mobilize domestic capital for growth.

There is also a lack of a well-developed secondary market in India for AIF units. This only increases the financial problems of both NBFCs and banks. The REs are unable to dispose of AIF assets at the prevailing market price due to a lack of demand coupled with a limited market. Now because of the notification, the transferred units will likely be sold at a deep margin loss, which is likely going to add to the losses.

Moreover, discounted sales trigger tax implications under Section 56(2)(x) of the Income Tax Act, 1961, where the difference between the fair market value and acquisition price is treated as taxable income.[170]

The effect of notifications appears to be relatively even more for NBFCs. NBFCs primarily depend on wholesale money and bond funds for funds as they cannot collect demand deposits or participate in the payment and settlement system as banks do. This makes them prone to financial vulnerability as they don't have other options to generate funds like banks. So, NBFCs experience severe financial problems when an NPA occurs, which are made worse by increased compliance expenses and restricted capital availability. Additionally, NPAs are widely watched by investors, and a rise in them may result in stock sell-offs and credit rating agency downgrades, raising NBFCs' cost of capital and jeopardizing their financial viability.

[170] **AIF Directive Causes Banking Scramble**, *LAW ASIA* (Mar. 5, 2024), https://law.asia/aif-directive-causes-banking-scramble/ (last visited Jan. 5, 2025)

For NBFCs and banks, the combination of forced provisioning discounted sales, tax obligations, and liquidity limitations creates a difficult business climate that lowers capital availability and makes financial planning more difficult.[171] This restricts capital flow and deters future involvement in the AIF market, which could jeopardize more general economic objectives.

There is an urgent need for a more sophisticated regulatory approach that is in line with the complexities of commercial realities and the unique characteristics of AIFs, as the circular, taken as a whole, falls short in distinguishing between legitimate investments and those meant for the evergreening practice.

CONCLUSION

The RBI seems to have embraced a wide and hasty approach in dealing with the issue of the evergreening of loans through AIFs. New notifications appear to have been introduced carelessly resulting in general prohibitions instead of providing a proper structure for regulation. Developing laws and compliance procedures that enable the RBI to distinguish between REs engaging in evergreening activities and those not involved in such practices within AIFs could have been a more targeted strategy. This approach might have effectively addressed the issue without subjecting entities uninvolved in evergreening to unnecessary scrutiny.[172]

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[171] **Athul Kumar et al.,** *Inadequate Relief for AIFs in RBI's Clarification*, *INVESTMENT FUNDS: MONTHLY DIGEST* (2024), https://www.nishithdesai.com/generateHTML/13866/4 (last visited Jan. 6, 2025)
[172] Id.

Even though such notifications can be considered an important measure to solve the problem of evergreening, they also stipulate certain barriers to their practical application. The existence of impractical deadlines like 30 Days to sell existing AIFs and operational difficulties emphasizes the necessity of additional regulatory improvement. The RBI must carefully assess the wider problems of its policies in light of the increasing importance of AIFs in the financial system to balance operational viability and monitoring.

One solution can be that RBI should prioritize reforms targeting the core of REs, i.e., their management and governance structures. Evergreening is generally caused by management actions, making it critical to hold directors and senior management accountable for compliance violations. The RBI can prevent unethical acts by implementing strong corporate governance standards. For example, ensuring that boards of directors are directly accountable for maintaining transparency and compliance requirements might considerably improve REs' financial stability. Implementing penalties on them will also help the cause.[173]

In addition, establishing an accountability culture inside REs would necessitate the implementation of systems for supervision and self-regulation. Regular audits, obligatory disclosure of high-risk lending practices, and independent assessments of decision-making procedures all have the potential to improve institutional integrity. Measures like these would eliminate evergreening practices at the same time as fostering investor confidence hence a stronger and more efficient financial system.

[173] Sidharth Shah, *supra note* 12 at 7

Thus, although the initial notifications made by the RBI are useful to some extent, a better approach to the problem which is focused on the underlying issues and causes of evergreening such as overall strategic reforms, corporate governance enhancements, and improved clarity regarding regulatory requirements would be more effective in the long-term healthcare of the REs.

"The Internet Influence on Children's Rights with Special Reference to India's Legislative Framework."

Abstract

The Digital age has profoundly reshaped childhood, presenting children with unprecedented opportunities for education, communication, and participation, yet simultaneously posing significant threats to their safety, privacy, and overall well-being. This abstract critically examines the multifaceted influence of the internet on children's rights, as articulated by the United Nations Convention on the Rights of the Child (UNCRC), with a specific focus on evaluating the adequacy and effectiveness of India's legislative framework in safeguarding these rights in the digital realm. It undertakes a comprehensive legal and analytical review of key Indian statutes, including the Information Technology Act, 2000, the Protection of Children from Sexual Offences (POCSO) Act, 2012, and relevant policy initiatives, to assess their capacity to address internet-related challenges faced by children. The analysis reveals that the internet significantly impacts children's rights to protection from online abuse and exploitation, privacy, education, freedom of expression, and access to information. While India has enacted foundational laws to combat cybercrime and child sexual abuse material, notable gaps persist concerning comprehensive data protection for minors, age-appropriate content regulation, and robust enforcement mechanisms. The legislative landscape often struggles to keep pace with rapid technological advancements and evolving online risks. The paper looks into the opportunities and risks that cyberspace presents to children. It further evaluates various policies, rules and the legislative framework in India, with critical analysis which protects

digital children's rights and concludes with a few suggestions and recommendations for the best interests of the child in this digital era.

Keywords: Child Rights, Online Threat, Privacy, Protection, Legislative Framework.

Introduction

"Guns don't kill people, picture tubes do. Or at least that seems to be the message behind the clangour of current alarms about television violence."[174]

The Internet has become a defining feature of the modern era, significantly shaping how people communicate, learn, and interact. The characteristics that define children include playfulness as well as adventurousness and vulnerability, alongside fragility and incompetence in major life choices. Studies[175] link Internet availability to places where children or teenagers examine their personal identities. A deep understanding of childhood principles as well as Internet connections and child characteristics remains vital to studying children's cyberspace community behavior.[176]

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[174] Todd Gitlin, *The Symbolic Crusade against Media Violence . . .*, THE CHRONIC OF HIGHER EDUCATION (Jan.1, 2025, 10:04 AM), https://www.chronicle.com/article/the-symbolic-crusade-against-media-violence/.

[175] Ulrika Sjöberg, *The rise of the Electronic Individual: A study of how young Swedish teenagers use and perceive internet*, TELEMATICS AND INFORMATICS (Jan.01, 2025, 10:05 AM), https://www.sciencedirect.com/science/article/pii/S0736585399000234.

[176] Patria Yudha Putra, Izzatul Fithriyah, Zulfa Zahra. *Internet Addiction and Online Gaming Disorder in Children and Adolescents During COVID-19*

According to Young, "*Internet addiction comprises of compulsive behaviors related to any online activity that disturbs normal daily life and induces stress on social relationships. This makes adolescents preoccupied with the internet, leading them to use it day and night, regardless of its side effects"*[177]
It is frequently regarded as an addiction determined by behavior. Adolescents are increasingly using the internet, and it is more common among them than among adults. Teenagers use the internet extensively for social connection and spend a lot of time on it.[178]

Due to the COVID-19 pandemic and subsequent lockdown period many children and adolescents spend longer hours online through their activities including studying and gaming and using social media and watching movies. Teenagers along with children now have higher internet addiction rates because of these circumstances. Due to online learning and their natural tendency to use the internet, adolescents seem to be more subject to addiction than adults. This might result in an increase in related psychopathology, academic work decline, and dysfunctional behavior patterns.[179]

Pandemic: A Systematic Review, NATIONAL LIBRARY OF MEDICINE (Jan.1, 2025, 10:05 AM), https://pubmed.ncbi.nlm.nih.gov/36990662/.
[177] Kimberly S. Young, *Treatment outcomes using CBT-IA with internet-addicted patients*, JOURNAL OF BEHAVIORAL ADDICTIONS, (Jan.1, 2025, 10:05 AM), https://pmc.ncbi.nlm.nih.gov/articles/PMC4154573/.
[178] Patti M. Valkenburg & Jochen Peter, *Social Consequences of the internet for adolescents*: *A Decade of Research*, ASSOCIATION FOR PSYCHOLOGICAL SCIENCE (Jan.1, 2025, 10:05 AM), https://journals.sagepub.com/doi/10.1111/j.1467-8721.2009.01595.x.
[179] Min-Pei Lin, *Prevalence of internet addiction during the COVID-19 outbreak and its risk factors among junior high school students in Taiwan*, INTERNATIONAL

Research shows that the internet increases and enriches the already established environments where adolescent delinquents operate. Exposure to explicit content, online bullying, and the power of peer groups may in some ways enhance the risks associated with delinquency and criminal conduct.[180] In addition, the anonymity of the medium emboldens kids to pursue activities over the net that they may otherwise avoid in face-to-face encounters, such as in the case of cyberbullying, hacking, and other forms of cybercrime. Researchers show that many aggressive children will retain their aggressive tendencies into adulthood while the highest level of childhood aggression tends to persist into adulthood. The alarming rise in juvenile crimes, including grave offences such as sexual assault and robbery, has, therefore, generated concerns within the public regarding the existing legal framework in India. The Juvenile Justice (Care and Protection of Children) Act of 2000 governing juvenile offenders has been revised to allow trials of minors within the adults' justice framework, depending on the seriousness of the offences committed owing to high-profile cases. However, this shift has led to emerging questions regarding the intended role of law in dealing with the complexity of juvenile delinquency within the dynamic digital changes going around the world.[181]

JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH, (Jan.2, 2025, 10:05 AM), https://www.mdpi.com/1660-4601/17/22/8547.

[180] Sonia Shali, *Unrestrained Media and Juvenile Delinquency: An Interdisciplinary Exploration*, INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCES, (Jan.2, 2025, 10:05 AM), https://paper.researchbib.com/view/paper/12211.

[181] R Abhishek ,J Balamurugan, *Impact of social factors responsible for juvenile delinquency – A literature review*, JOURNAL OF EDUCATION AND HEALTH

This research paper explores the multifaceted dimensions of the impact of the internet on teenage delinquency in India, focusing mainly on the contributing social, psychological, and economic problems of the internet and related issues.[182] The endeavor of delineating this study shall be an analysis of the body of literature and existing statistics to truly offer a panoramic outlook about internet usage and delinquency in Indian youth.[183]

Definition of Juvenile Delinquency

Two Latin phrases united to form the word 'Juvenile' - **'iuvenilis'** meaning ***'of or belonging to youth'*** and **'iuvenis'** meaning '***young person'***. The original Latin source of delinquency originated from **'delinquentia'** which translates to '***a fault or crime***.'

In 1981 Coleman established a definition for delinquency. '*behavior of youths less than 18 years of age which is not acceptable to society and is generally regarded as calling for some kind of admonishment punishment or corrective actions'*. Juvenile delinquency describes actions by young people which display

PROMOTION (Jan.4, 2025, 10:05 AM), https://pmc.ncbi.nlm.nih.gov/articles/PMC11081445/.

[182] Kanisha V Pathak, *Juvenile delinquency: Role of mass media*, INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH AND DEVELOPMENT, (Jan.4, 2025, 10:05 AM), https://allstudiesjournal.com/archives/2017/vol2/issue6/2-5556.

[183] Craig A. Anderson "et al.", *The influence of media violence on Youth*, PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST, (Jan.2, 2025, 10:05 AM), https://journals.sagepub.com/doi/10.1111/j.1529-1006.2003.pspi_1433.x

antisocial behavior that goes beyond parental authority and triggers possible legal responses.[184]

The definition of juvenile delinquency explained by K. L. Sharma states *that "a delinquent child is one who deserts his home and demonstrates habitual disobedience beyond parental control while breaking laws and failing to obey necessary rules."*[185]

According to Reckless (1956), the term applies to the '*violation of criminal code and pursuit of certain patterns of behavior disapproved for children and youth adolescents'*.[186]

In India juvenile delinquency gets defined in a specific and restricted manner. Under this definition only persons within the age definition of juveniles can commit violations of penal laws. According to most legal situations an offender becomes a Juvenile during the time of their offence when they have not reached 18 years old.[187]

Under the Juvenile Justice Act of 2000 a juvenile in need of care and protection includes young people who are street kids or without guardianship or experience

[184] Joel Lalengliana Darlong , *Juvenile Delinquency Sociology*, SOCIOLOGY (Jan.2, 2025, 10:05 AM) https://www.sociologylens.in/2022/07/juvenile-delinquency.html
[185] *Id*
[186]Abhilasha Belwal, Ashish Belwal, Juvenile Delinquency in India, BLR, 305,307, (2016), https://docs.manupatra.in/newsline/articles/Upload/B4443CDC-5144-4816-946C-7C5EBE5122FC.pdf
[187] N. V. PARANJAPE, CRIMINOLOGY AND PENOLOGY (Central Law Publications, Allahabad) (2005)

neglect or guardian mistreatment or terminal illness or abandonment or similar situations.[188]

The Indian Parliament modified the Juvenile Justice (Care and Protection of Children) Act of 2015 after the Nirbhaya Gang Rape Case happened. Under the amendment a juvenile above 16 years old can face adult prosecution yet the law does not allow retroactive application. The amendment divides juvenile offenses into three types: heinous crimes and serious offenses and petty offenses. A juvenile offender who is 16 to 18 years old must receive adult status for judicial proceedings in standard courts.[189]

Importance of examining the relationship between the internet and child delinquency in India

Neither age nor nature of children puts them in a position where they should be punished for crimes. Children face exposure to damaging outside forces which threaten their basic strength. Internet users at all ages benefit from the positive features of social networking platforms Facebook, Instagram, and Twitter. Flowers noted that numerous researchers have linked delinquency with social and economic life aspects of delinquents especially when examining broken homes

[188] Sandeep Kumar, *The Emerging Trends of Juvenile Delinquency in India*, 22 THI,682, 684 ,(2019), file:///C:/Users/user/Downloads/19691-Article%20Text-28618-1-10-20200401%20(4).pdf.

[189]Sameera Khan, *A Study On The Juvenile Delinquency In India: Sociological Aspect And Judicial Response, 28* Supremo amic.(2022), https://supremoamicus.org/wp-content/uploads/2022/01/Sameera-Khan.pdf.

through assessment of marital quality and parental discipline.[190] That was the situation during 1980s. Information technology era challenges the modern society beyond that theory because antisocial individuals easily resort to social deviance behavior. Having unauthorized internet access exposes neglected children to more rebellion in their attitudes. Young minds remain easy targets for influence while a failed mind transforms into a deviant one whenever it cannot accomplish its objectives. Such reasons lead children to display deviant actions as they fail to acquire what they desire or need in their lives. Since juveniles gained access to the internet deviant conduct displayed by them has increased substantially. Observational learning or modeling, which basically means that someone can learn how to do something by watching others, can be used to describe the violent conduct of juveniles.[191] Observer exposure to criminal shows while playing violent video games coupled with watching delinquent behaviors online will increase the likelihood they perform delinquent or criminal acts in their future lives.

[190] James W. Fox, *Book reviews : Children and criminality by Ronald Barri Flowers. Greenwood Press, 1986. 223 pages, cloth*, CRIMINAL JUSTICE POLICY REVIEW, (Jan.2, 2025, 10:05 AM), https://journals.sagepub.com/doi/abs/10.1177/088740348700200309

[191] Yana Gupta, Ayush Mangal, *Social Media - A breeding ground for juvenile offenders*, THE CRIMINAL LAW BLOG, (Jan.2, 2025, 10:05 AM), https://criminallawstudiesnluj.wordpress.com/2021/08/10/social-media-a-breeding-groundforjuvenileoffenders/#:~:text=Social%20Media%20%E2%80%93%20A%20Dais%20for,on%20various%20social%2 media%20platforms.

The Internet acts as a Two-Sided Instruments

I. Positive aspects of children's internet access

For children, the internet has been such a huge breakthrough in terms of better connectivity and opportunity and has easily been embraced within the technology. While a great deal has been said about the dangers that can occur due to children's internet usage, it should be borne in mind that positive developments can also be linked to making use of the internet.[192]

One major benefit of the internet being accessed by children is in relation to learning and skill development. Having the option to find vast information and resources, numberless in their array, on the internet would definitely offer educational and cognitive benefits to any child. Supporting job training and technological literacy, the internet can also prepare children with the skills necessary to participate in a very technologically based workforce.[193]

Educational Benefits

[192] Shu-Sha Angie Guan, Kaveri Subrahmanyam, *Youth internet use: Risks and opportunities*, CURRENT OPINION IN PSYCHIATRY, (Jan.3, 2025, 11:05 AM), https://pubmed.ncbi.nlm.nih.gov/19387347/.

[193] Christian Sandvig, *Public internet access for young children in the inner city: Evidence to inform access subsidy and content regulation*, THE INFORMATION SOCIETY, (Jan.3, 2025, 11:05 AM), https://tisj.sitehost.iu.edu/19/2/ab-sandvig.htm.

Enhanced Learning Opportunities: With the help of the internet, children can be in touch with a variety of educational content, which stimulates self-learning and makes it faster to acquire knowledge.[194]

- ***Exploration resources***: children have the chance to study matters of interest to them and develop their love to learn and their curiosity.[195]

Social and Emotional Development

- ***Online interactions***: the internet makes it possible for children to communicate with their peers and foster friendships, thereby improving their social skills and emotional intelligence.[196]
- ***Civic engagement*****:** a way for online community participation may have influenced civic awareness and also political participation, assisting children in embracing a sense of belonging and responsible citizenship.[197]

[194] Xinyu Liu, *The Influence of the Internet on Children's Education*, EWA PUBLISHING (Jan.6, 2025, 10:05 AM), https://www.ewadirect.com/proceedings/lnep/article/view/9074.

[195]Amanda Third, *Researching the Benefits and Opportunities for Children Online*, GLOBAL KIDS ONLINE ,(2016),http://globalkidsonline.net/wp-content/uploads/2016/06/Guide-6-Global-opportunities-for-children-Third.pdf

[196]Abdülkadir Kabadayi, *Children are in alice's wonderland : implications of internet use on preschoolers*,researchgate,file:///C:/Users/user/Downloads/CHILDREN_ARE_IN_ALICES_WONDERLAND_IMPLICATIONS_OF%20(1).pdf.

[197] Amanda Third, *Researching the Benefits and Opportunities for Children Online*, GLOBAL KIDS ONLINE, (Jan.6, 2025, 11:05 AM), http://globalkidsonline.net/tools/guides/opportunities/.

The internet can be an excellent health resource to access health information and be involved in web-based health promotion.[198] Therefore, the internet is a great leverage for education among children, informal learning, and literacy development. The Internet, used correctly, has unparalleled potential for learning and social connection. It is well theorized that the digital literacy skills exercised by preschoolers are directly and positively related to school readiness, mental well-being, and resilience. To truly maximize these benefits, it is really necessary to inject an element of balance and guidance into internet usage, including developing their digital literacy skills and integrating them into a healthy lifestyle.

II. Negative aspects of children's internet access

While children are provided access to the internet and some benefits are derived from the usage thereof, the other side is enveloped with danger and needs to be critically addressed: children can be exposed to inappropriate content; in recent times, the issue of cyberbullying against children on the internet; online grooming; and psychological impacts of excessive use of the internet.

- **Exposure to Inappropriate Content:** Children are exposed to violence, pornography, and information that simply is not appropriate for young minds.

[198] Genevieve Marie Johnson, *Young children at risk of digital disadvantage*, YOUNG CHILDREN AND FAMILIES IN THE INFORMATION AGE, (Jan.6, 2025, 11:05 AM), https://link.springer.com/chapter/10.1007/978-94-017-9184-7_15.

- **Cyberbullying**: Cyberbullying imparts a major problem in the lives of internet users within adolescence; many children encounter harassment, humiliation, or worse threats through a form of digital media. The impact of this modern and very real threat can mean severe psychological damage to these young people and can land them among such pathologies as anxiety, depression, and low self-esteem.[199]
- **Online Grooming:** Online grooming is the act of initiating an online rapport with a child by an adult for sexually exploitative and abusive purposes. Children became more vulnerable to online predators due to the COVID-19 pandemic, which widened the existing problem of increased digital dependence. The techniques used by online groomers frequently result in profound psychological and emotional damage inflicted on their victims.[200]
- **Impact on Mental Health:** Other psychological and mental health problems in excessive internet usage in children include feelings of inadequacy and inferiority, low self-esteem, anxiety, depressed symptoms, decreased attention span, and disturbed sleeping patterns. A 2020 Pew Research Center survey found that nearly all teenagers (96%)

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[199] Monica Anderson "et al.", *Teens, Social Media and Technology*, PEW RESEARCH CENTRE, (Jan.6, 2025, 10:00AM), https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/.

[200] Sonia Livingstone & Monica Bulger, *A global research agenda for children's rights in the Digital age*, JOURNAL OF CHILDREN AND MEDIA, (Jan.6, 2025, 11:05 AM), https://journals.sagepub.com/doi/full/10.1177/2043610616676035.

are on the internet daily, with 46% online almost constantly. This constant connectivity disrupts activities and relationships in real life.[201]

- **Privacy and Data Security Concerns:** One major problem with social media sites is that often children do not fully read or comprehend their privacy settings on accounts regarding posting pictures or sharing personal information. The survey showed that 20% think that posting their personal information and photos online is perfectly safe. Hence, they may easily fall prey to violations regarding privacy, theft of identity, or other forms of cybercrime.[202]

Legal framework for Internet Use and Child Protection

India has been earnestly trying to make inroads into conquering online grooming and ensuring child safety from sexual exploitation in a conflict ridden digital landscape. The legal framework considering the same consists of both international conventions and guidelines, as well as domestic legislation. Nonetheless, the climate of implementation and, thus, enforcement remains far from ideal.

1. International Conventions

India has also signed multiple international conventions and guidelines, which aim toward combating child sexual abuse and exploitation from online grooming.

[201] *Id*
[202] Stacey B Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, EMORY LAW JOURNAL, (Jan.6, 2025, 11:05 AM), https://scholarlycommons.law.emory.edu/elj/vol66/iss4/2/.

- ***The United Nations Convention on the Rights of the Child*:** The Indian government made a commitment to protect children from sexual mistreatment in all its forms when it signed onto the UN Convention on the Rights of the Child in 1992.[203]

- ***The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography***: This came after India ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in 2005. As part of this agreement, India committed to criminalizing and addressing child pornography, child prostitution, and the sale of children, including the online demand of children for sex.[204]

2. Constitutional Provisions for Child Protection :

- **Article 15 clause 3** deals with protective discrimination in the sense that it gives the authority to the State to make certain special provisions for both women and children.[205]
- **Article 21A** affirms that, "*The State shall provide free and compulsory education to all children of the age of sixth to fourteen years in such manner as the State may, by law, determine."* [206]

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[203] PLEDGE BY INDIA | OHCHR, https://www.ohchr.org/en/treaty-bodies/crc/celebrating-30-years-convention-rights-child/pledge-india (last visited Jan 9, 2025)
[204] *Id*
[205] INDIA CONST. art. 15, cl. 3.
[206] INDIA CONST. art. 21A, *amended by* The Constitution (Eighty-sixth Amendment) Act, 2002.

- **Article 24** reads that *"No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment".*[207]
- **Articles 39(e) and(f)** stipulate that the State shall, in particular, direct its policy so as to "*ensure that the health and strength of the workers-women and men-and tender age of children are not abused",* and "that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength", and "that the children are given opportunities and facilities for develop in a human manner and conditions of freedom and dignity" besides safeguarding the childhood and youth from exploitation and against moral and material abandonment.[208]
- **Article 45** provides that the *"State shall aspire to provide early childhood care and education for all children until they complete the age of six. "*[209]

3. Indian Legislations Provision for Child Protection

A. **Information Technology Act, 2000 (IT Act):** The IT Act serves as the backbone of India's legal framework on cybercrime. It provides a comprehensive legal structure for the regulation of electronic commerce and cyber activities. Significant provisions related to child protection include:

[207] INDIA CONST. art. 24.
[208] INDIA CONST. art. 39, cl. (e) & cl. (f), *amended by* The Constitution (Forty-second Amendment) Act, 1976.
[209] INDIA CONST. art. 45, *amended by* The Constitution (Forty-second Amendment) Act, 1976.

- **Section 67B**: The publication or transmission of content that shows children engaging in sexually explicit behavior is expressly covered in this section. It imposes severe penalties for persons engaging in such activities, including imprisonment.[210]
- **Section 66C**: This section concerns identity theft and imposes penalties on the personal information of other people.[211]
- **Section 66E:** prohibits the capturing and transmission of images of private body parts belonging to individuals without their consent. These are some of the panoply concerning child vulnerability.[212]

B. **Protection of Children from Sexual Offences Act, 2012 (POCSO Act)**: POCSO is an important shining piece of legislation to protect children from sexual offences. It describes the various forms of sexual abuse and sexual exploitation.

- **Section 11**: It clarifies the definition of child sexual harassment. In the context of usage, reference has particularly been made to electronic media to palm off pornographic material.[213]
- **Section 13**: It does not allow the use of a child for pornographic purposes and imposes stringent penalties upon offenders. A child is being exploited for pornographic purposes when someone utilizes them for their own

[210] The Information Technology Act, 2000, § 67B, No. 21, Acts of Parliament, 2000 (India).
[211] The Information Technology Act, 2000, § 66C, No. 21, Acts of Parliament, 2000 (India).
[212] The Information Technology Act, 2000, § 66E, No. 21, Acts of Parliament, 2000 (India).
[213] The Protection of Children from Sexual Offences Act, 2012, § 11, No. 32, Acts of Parliament, 2012 (India).

sexual enjoyment, whether for dissemination or personal use. It includes showing a child's sexual organs, making pornographic depictions of them, and showing them engaging in sexual activity.[214]

- **Section 14**: Using children for pornographic purposes is punishable under this Act. Section 13 stipulates that violators face a minimum of five years in jail and a fine. On a subsequent conviction, this minimum will increase to seven years' imprisonment along with a fine. Furthermore, in addition to the penalty imposed under Section 14, the individual would also be subject to punishment under Sections 4, 6, 8, or 10 if he additionally engages in pornographic actions while committing the offenses under Sections 3, 5, 7, or 9.[215]

C. Cybercrimes with Bhartiya Nyaya Sanhita 2023 (BNS) Implications

- **Section 111 of BNS** Addresses any continuing unlawful activity including cyber-crimes, shall constitute organized crime.[216]
- **Section 294 of BNS** addresses the publication and dissemination of pornographic content, including that which is sent electronically. This entails a couple of years of imprisonment and fine, raising so dramatically for repeat cases.[217]

[214] The Protection of Children from Sexual Offences Act, 2012, § 13, No. 32, Acts of Parliament, 2012 (India).
[215] The Protection of Children from Sexual Offences Act, 2012, § 14, No. 32, Acts of Parliament, 2012 (India).
[216] The Bharatiya Nyaya Sanhita, 2023, § 111, No. 45, Acts of Parliament, 2023 (India).
[217] The Bharatiya Nyaya Sanhita, 2023, § 294, No. 45, Acts of Parliament, 2023 (India).

- **Section 77 of BNS** deals especially with capturing or distributing images of the private parts or act of a woman without consent, which is known as "voyeurism.[218]
- **Section 303 of the BNS** addresses the aspect of theft pertaining to smartphone, data, or computer hardware and software. It offers a courtroom where those involved in cyber theft can be prosecuted. However, in situations where they are drawn, specific legislation such as the IT Act take precedence.[219]

- **BNS Section 78** penalizes offenders who stalk women through physical or electronic means by imposing jail sentences and paying fines.[220]
- **Section 317 of BNS** is invoked when someone obtains stolen computers, mobile phones, or data. Even third parties who just own such property face penalties.[221]
- **Section 318 of BNS** addresses password thefts, bogus website creation, and other cyber frauds. Depending on its seriousness, various imprisonment and fines are prescribed for it.[222]
- **Section 336 of BNS** in BNS represents offenses related to e-mail spoofing and forgery online, by imprisonment, fines, or both. It extends

[218] The Bharatiya Nyaya Sanhita, 2023, § 77, No. 45, Acts of Parliament, 2023 (India).
[219] The Bharatiya Nyaya Sanhita, 2023, § 303, No. 45, Acts of Parliament, 2023 (India).
[220] The Bharatiya Nyaya Sanhita, 2023, § 78, No. 45, Acts of Parliament, 2023 (India).
[221] The Bharatiya Nyaya Sanhita, 2023, § 317, No. 45, Acts of Parliament, 2023 (India).
[222] The Bharatiya Nyaya Sanhita, 2023, § 318, No. 45, Acts of Parliament, 2023 (India).

to forgery when the forgery is committed with an intention to harm the reputation of a person.[223]

- **Section 356 of BNS**: punishes defamation, including sending emails containing offensive material.[224]

A multitude of crimes have been looked into by Bhartiya Nyaya Sanhita 2023, including online criminal intimidation, hate speech, and defamation. Section 196 of the BNS deals with hate speech, which is defined as communication between groups, inducing antagonism between them on various grounds detrimental to public order. ***Section 319(2) cheating by impersonation*** prescribes a punishment of imprisonment for not more than three years or a fine or both. Section 78 prescribes penalties for stalking women: for the first conviction, sentences range between a term of three years and a fine, while the second conviction entails imprisonment from a minimum of thrice to a maximum of five years along with a fine. Defamation, that is cyber stalking, has penalties set at about two years of simple imprisonment, fine or both according to Section 356. Criminal intimidation, given in Section 351, will be liable for imprisonment not exceeding two years, fine, or both.

D. **National Cyber Security Policy 2013**: The other goal of the National Cyber security policy of the Indian government is the prevention and investigation of cybercrimes, especially against children and victimized minors. It provides a fitting and adequate legislative framework that

[223] The Bharatiya Nyaya Sanhita, 2023, § 336, No. 45, Acts of Parliament, 2023 (India).
[224] The Bharatiya Nyaya Sanhita, 2023, § 356, No. 45, Acts of Parliament, 2023 (India).

improves the capacity of law enforcement and disseminates suitable cyberspace awareness to the general public. In addition, the Act safeguards the citizens' data from bank and financial fraud due to cybercrime, invasion of privacy, and high exposure from data thefts which may result due to causes of invasion of privacy.[225]

E. **The Digital Personal Data Protection Act, 2023:** It also provides several safeguards affording additional protection and care of children's privacy. One of the most significant clauses is that consent shall be given by both parents if the child is under 18 years old. It mentions that a data fiduciary should receive the consent of a child's guardian to be able to process a child's personal data. It also proposes that all data fiduciaries that only deal with children must, by law, register with the data protection authorities. The process of collecting the data of children and providing them with corresponding services has been offered as a qualifying criterion entitling a data fiduciary to be categorized as a significant one, which entails extra responsibilities provided in the law itself. These data custodians are not allowed to track children's data or handle personal data in any way that could endanger children.[226]

[225] NATIONAL CYBER SECURITY POLICY 2013 - IN A NUTSHELL - CLEAR IAS CLEAR IAS, https://www.clearias.com/national-cyber-security-policy-2013/ (last visited Feb 9, 2025)

[226] Chris brook, *What Is India's Digital Personal Data Protection (DPDP) Act? Rights, Responsibilities & Everything You Need To Know*, *FOSTRA* (Jan.6, 2025, 11:05 AM), https://www.digitalguardian.com/blog/what-indias-digital-personal-data-protection-dpdp-act-rights-responsibilities-everything-you.

F. **Judicial Approach:** Reckless use of the digital medium by children in creating/using social media profiles say posting/re-posting their pictures or those of family or friends, disclosing contact details, sharing thought processes, expressing opinions, or stating preferences-makes them vulnerable to all sorts of trolling, whose impact might range from invisible to varying degrees of severity, beyond the comprehension of many children.[227] This concern was very aptly expressed by S.K. Kaul, J., when he stated:

"The impact of the digital age results in information on the internet being permanent. Humans forget, but the internet does not forget and does not let humans forget. Any endeavor to remove information from the internet does not result in its absolute obliteration. The footprints remain. It is thus, said that in the digital world preservation is the norm and forgetting a struggle".[228]

The Court also noted as they learn their "ABCs," kids all throughout the world leave permanent digital traces on social media platforms 24/7: Apple, Bluetooth, and chat are followed by Facebook, Google, Hotmail, Instagram, e-mail, and downloads. They shouldn't have to live with the repercussions of their innocence

[227] Catarina Katzer "et al.", *Cyberbullying: Who are the victims?*,JOURNAL OF MEDIA PSYCHOLOGY (Jan.6, 2025, 11:05 AM), https://psycnet.apa.org/record/2009-03332-003.

[228] *Justice K. S. Puttaswamy (Retd.) & Anr. v. Union Of India & Ors.*, 10 ssc 630-31.

and carelessness all their lives. Children's privacy needs to be given extra consideration in both the real and virtual world.[229]

The Supreme Court's landmark ruling on child protection is a step forward for the global fight against digital exploitation of children.

In a very valuable, landmark ruling with far-reaching global implications, the Supreme Court of India, in ***Just Rights for Children Alliance & Anr. v. S. Harish & Ors***.[230] , Took a bold stand on the digital exploitation of children. This ruling showcases India's commitment to both national and international obligations concerning the prevention of sexual exploitation of children in the age of fast-evolving modern technology, especially in the digital space.

These deliberations will deal with key provisions under the Protection of Children from Sexual Offences (POCSO) and the Information Technology Act, essentially broadening the fined net of legal culpability regarding those ***in the possession of, distributing, or at least passively consuming child porn.*** With this decision, India is now at the global forefront in the fight against the children online exploitation, and also, it sends a shining message with zero tolerance for any form of abusive practices concerning children.

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[229] Michael L Rustad & Sanna Kulevska, *Reconceptualizing the Right to Be Forgotten to Enable Transatlantic Data Flow*, 28 SSRN 356,1,(2015), file:///C:/Users/user/Downloads/ssrn-2627383.pdf.

[230] *Just Rights for Children Alliance & Anr. v. S. Harish & Ors.*, (Criminal Appeal No(s). 2161-2162 of 2024)

- The Supreme Court of India encouraged the Parliament to amend the POCSO Act and replace the nomenclature "child pornography" with "***Child Sexual Exploitation and Abuse Material,"*** or **CSEAM**.
- The phrase "child pornography" might defile the whole idea behind it by giving an impression that it is just normal adult consensual sex.
- The court cites ***Section 67B of the IT Act***, which criminalizes the use, distribution, as well as and publication of pornographic content, including child pornography.
- It also made it an offence to browse, create, collect online, or entice any child into any sexual conduct or act.
- According to ***Section 15 of the POCSO*** Act, it is illegal for someone to possess child pornography with the intention of sharing or transmitting it.
- The informed principle of 'constructive possession' included by the Court provides accountability in the case where a person had, at any juncture in time, an unescapable degree of power and knowledge to exert control, manipulation, alteration, or modification.

- ***Balancing Privacy and Child Protection*****:** The right to privacy has been a major focus of debates in relation to the digital consumption of illegal material in cases worldwide. However, the Supreme Court has ruled, with finality, that privacy cannot be an entrenching defense in matters relating to child exploitation. This mirrors similar approaches taken by courts around the world, including the European Court of Human Rights, which

has held that privacy rights do not extend to criminal activity, especially where it involves children or other vulnerable groups.

- ***Global Impact and Implications for Child Protection*:** This ruling has significant implications, not only for India but also for the overall war on child exploitation. A firm approach to digital exploitation is what the Supreme Court has done with this ruling, giving other countries a legal roadmap to look to as they try to strengthen their own laws. It illustrates the need for a greater international collaboration in tackling child pornography and for laws in difference jurisdictions being harmonious concerning digital exploitation, given that the internet does not recognize borders.

- ***A Call to Action for Global Child Protection*:** The ruling is also a potent reminder of the appeal of the issue of child protection on the global stage and calling for a unified response to it. The Supreme Court's judgment should serve as a wake-up call for various nations around the world to reexamine their legal frameworks so that they are able to adequately protect their children from digital exploitation. Child pornography and exploitation are beginning to establish a transnational character; thus the Law enforcement, governments, and IT corporations must effectively collaborate internationally.

Critically Examining India's Legislative Architecture

1. ***The Information Technology Act, 2000:*** It serves as the foundational digital law but was designed in a pre-social media era. Its provisions on intermediaries and cyber offenses have been supplemented through the Intermediary Guidelines and Digital Media Ethics Code Rules 2021, yet these remain inadequate for addressing emerging threats.[231] The Act's reliance on reactive prosecution rather than proactive prevention reveals its structural limitations.

2. ***The Protection of Children from Sexual Offences (POCSO) Act, 2012***: Though comprehensive in scope, addresses only sexual offenses and does not encompass the full spectrum of digital harms. Studies indicate that while the legislative measures and government initiatives in India demonstrate commitment, they suffer from critical implementation gaps and enforcement challenges in combating issues like child pornography.[232]

3. ***The Juvenile Justice (Care and Protection of Children) Act, 2015:*** Marked a significant reform by distinguishing between children in need of care and protection and those in conflict with law. However, its amendments introducing the possibility of trying minors aged 16-18 as

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[231] V, A. and T.K, K. (2024) *[PDF] legal frameworks for mangrove governance, conservation and use : Assessment summary | semantic scholar, semantic scholar*. Available at: https://www.semanticscholar.org/paper/Legal-frameworks-for-mangrove-governance,-and-use-:-Slobodian Chaves/779dcf0d62cdfd0afedd69ce8574e60ac3fb1078 (Accessed: 10 November 2025).

[232] Gupta, S. (2024) *Child pornography and internet subcultures in India - a legal perspective Journal of Law and Sustainable Development, Journal of Law and Sustainable Development.* Available at: https://ojs.journalsdg.org/jlss/article/view/2997 (Accessed: 10 November 2025).

adults for heinous offenses have generated considerable controversy regarding child rights and rehabilitation principles.[233]

4. ***Critical Gaps in Legislative Coverage:*** *The* Indian legislative framework reveals substantial lacunae: ***Absence of Integrated Data Protection Law***: Prior to 2023, India lacked a comprehensive privacy legislation comparable to the European Union's General Data Protection Regulation (GDPR). The Digital Personal Data Protection Bill, though passed, still requires effective implementation mechanisms and remains limited in addressing children-specific data protection. Children's personal data vulnerability is exacerbated by inadequate regulation of how platforms collect, process, and commercialize child-generated content.[234]

5. **Implementation Challenges and Enforcement Deficiencies**

Resource Constraints and Capacity Gaps: A critical weakness in India's child protection architecture is the shortage of specialized cybercrime units within law enforcement agencies. The National Crimes Records Bureau (NCRB) data reveals that cybercrimes against children often go unreported due to low digital literacy, societal stigma, and inadequate victim support mechanisms. Training for police, judiciary, and social

[233] Saxena, N. (2025) *(PDF) juvenile justice in India: A critical legal analysis of delinquency, reform, and Accountability*, *inspira journals*. Available at: https://www.researchgate.net/publication/392819786_JUVENILE_JUSTICE_IN_INDIA_A_CRITICAL_LEGAL_ANALYSIS_OF_DELINQUENCY_REFORM_AND_ACCOUNTABILITY (Accessed: 10 November 2025).

[234] Dalal, P. and Richa (2025) *The right to privacy in India: Historical evolution and contemporary challenges in the Digital age*, *RESEARCH REVIEW International Journal of Multidisciplinary*. Available at: https://rrjournals.com/index.php/rrijm/article/view/1709 (Accessed: 10 November 2025).

workers remains insufficient to address the technical complexities of digital crime investigation.[235]

Private Sector Accountability Deficit: Current Indian law does not adequately hold social media platforms and internet service providers accountable for algorithmic amplification of harmful content targeting children. The safe harbor provisions in the Information Technology Act shield intermediaries from liability for user-generated content, creating a significant accountability gap. Platforms operating in India often implement global policies that may not align with Indian children's specific contexts and vulnerabilities.[236]

6. **Comparative Perspectives and International Standards**

UN Convention on the Rights of the Child (UNCRC) Framework: India has ratified the UNCRC, which should inform domestic legislation. General Comment 25 (2021) on children's rights in relation to the digital environment provides an authoritative framework requiring states to implement rights-respecting digital policies. However, analysis of Indian legislation enacted post-1992 reveals that only 11 of 32 pieces of legislation directly address aspects of children's mental health and well-being in the context of their digital right.[237]

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[235] Kaur, G. (2022) *Internet crimes against minors and legal framework in India - Gurmeet Kaur, 2022, European Journal of Research in Applied Sciences*. Available at: https://journals.sagepub.com/doi/10.1177/00195561221091381 (Accessed: 10 November 2025).

[236] Sahak, S., Rajamanickam, R. and Yahya, M.S.H. (2025) *Platform Accountability and User Protection: A Comparative Analysis of Regulatory Approaches in Malaysia, United Kingdom and India, Journal of Posthumanism*. Available at: https://posthumanism.co.uk/jp/article/view/2284 (Accessed: 10 November 2025).

[237] Livingstone, S. *et al.* (2023) *The UN Committee on the rights of the child's general comment on the Digital Environment, AoIR Selected Papers of Internet*

7. Specific Areas of Concern

Child Sexual Abuse Material (CSAM) and Exploitation: The research indicates that India acknowledges legal limitations in combating child pornography despite legislative efforts, highlighting that current Indian law remains insufficiently equipped to tackle this thriving criminal enterprise. The intersection of international dark web networks and domestic law enforcement capacity creates significant barriers to prosecution.

Disabled and Marginalized Children: An often-overlooked dimension is the digital vulnerability of disabled children. Special educators and translators required under POCSO and Juvenile Justice Acts lack adequate forensic tools and training to assist disabled children in conflict with law or facing online exploitation.

8. Institutional Coordination and Multi-Stakeholder Approaches

The National Commission for Protection of Child Rights (NCPCR), Integrated Child Protection Scheme (ICPS), and specialized cyber units operate in relative silos. Research from other countries demonstrates that effective child protection requires coordinated action among government agencies, NGOs, private sector platforms, and civil society. India's institutional framework lacks this integrated coordination mechanism.[238]

Research. Available at: https://spir.aoir.org/ojs/index.php/spir/article/view/12960 (Accessed: 11 November 2025).

[238]Morolong, M. and Batani, J. (2025) 'Stakeholders' perspectives on Child Online Safety in Lesotho: Insights challenges and opportunities', *Proceedings of the Sixth International Conference on Digital Age & Technological Advances for Sustainable Development*, pp. 28–35. doi:10.1145/3747897.3747902.

9. Emerging Challenges Not Yet Adequately Addressed

Artificial Intelligence and Algorithm Governance: AI-driven content recommendations targeting children, deep fakes featuring minors, and predictive algorithms that identify vulnerable children for exploitation are largely unregulated in India.
Platform Design and Child Safety: The private sector's responsibility to implement child-safe design features remains undefined in Indian law, unlike emerging frameworks in other jurisdictions.
Data Monetization: India's framework does not adequately regulate the commercialization of children's personal data through behavioral tracking and targeted advertising.

Conclusion and Suggestions

In India, the internet which is now an essential part of every household has both positive and negative features for children. Although the internet offers access to knowledge, education, or socialization, it can also expose children through cyberbullying, online exploitation, or delinquent behaviors. With children increasingly using the internet, especially in cities, there were concerns regarding their vulnerability to online threats as well as the risk of them engaging in potentially illegal activities ranging from cybercrime to substance abuse. According to research, children across India are subjected to a greater risk scenario because of several factors including insufficient digital literacy, poor parental supervision and the anonymity address by the internet. Offline, child delinquency is a complex issue that requires effective intervention, which is often challenging in South Africa due to lack of comprehensive legal framework and mechanisms of enforcement.

In addition, societal stigma around sex and technology often prevents open discussions about the very real risks faced by children online. Armed with this knowledge and armed with no knowledge at all, without information from parents, teachers, or policy writers, children will always inevitably come across the idea of an online risk or delinquent behavior.

Suggestions

To mitigate the impact of the internet on child delinquency in India, several measures can be implemented*:*

1) **Enhancing Digital Literacy***:* Establish comprehensive digital literacy programs in schools that can educate children regarding safe internet use, dangers connected with online activities, as well as how to safeguard themselves from existing threats. It should encourage parents to participate in workshops that are geared at understanding digital tools and their children's online behaviors.

2) **Strengthening Legal Frameworks**: Existing pieces of legislation should be amended to cater to emerging issues such as cyberbullying, sexting, and online grooming, ensuring their relevance to the current digital landscape. Clear-cut mechanisms will then be put in place to guide law enforcement in dealing with cases of online abuse and exploitation. An essential aspect will be the training of law enforcement on dealing with issues in the context of cyber laws.

3) **Promoting Open Dialogue**: To encourage open discussions between children and parents or educators about their online experiences, especially regarding any harassment or uncomfortable experiences, there will be school-based programs focusing on discussions about online safety and the importance of reporting. Such dialogue should also be prioritized in community awareness campaigns that seek to reduce the stigma that is attached to amplifying discussion on online risks, most importantly those associable with sexuality and exploitation.

4) **Collaboration with Technology Companies**: Facilitate a partnership between the government, civil society, and technology companies to develop tools and resources that enhance online safety for children. Advocate the need for parental control features and reporting channels on those implements - social media platforms and gaming sites - that assist in monitoring a child's online experience.

5) **Research and Data Collection**: Conduct systematic research to collect data regarding online behavior patterns prevalent among children while focusing on delinquent practices and the nature and efficiency associated with existing protective measures. Put the gaps identified to bear in policy decisions and in enhancing and redesigning existing frameworks that work to safeguard children from any online risk.

In this way, India can make the internet a safer place for its children, minimizing the chances of delinquency among them. The positive influence of the internet can

be harnessed for the benefit of children in India while at the same time shielding them from negative influence.

Jokes on Trial: The Changing Landscape of Stand-up Comedy

Introduction

"Everyone claims to support free speech and praises its importance almost daily. However, for some, free speech means they can voice their opinions freely, yet they take offense when others respond or disagree with them"[239]. These Words by Winston Churchill captures a fundamental issue that increasingly defines the state of free speech in modern democracies, including India. Article 19(1)(a)[240] of the Constitution of India grants every citizen the right to freedom of speech, ensuring it is a universal right and not a special entitlement for those who wish to speak without facing any opposition or criticism. Unfortunately, the way things are unfolding today tells a different story. In recent times, there has been a noticeable pattern where stand-up comedians find themselves under constant attack, simply for cracking jokes about political leaders or raising sensitive political issues. Now this trend has gone to the extent that comedians are getting charged with criminal cases. They are getting FIRs, arrested, shows being cancelled, and even receiving life threats. The comedy stage, once a space for satire, dissent and criticism, is now being viewed as a battleground where freedom of speech collides with political sensitivities. The use of state machinery and political influences to suppress these

[239] Goodreads, Winston Churchill Quotes, GOODREADS (May 2, 2025, 10:00 AM), https://www.goodreads.com/quotes/17797-everyone-is-in-favor-of-free-speech-hardly-a-day.
[240] India Const. art. 19, cl. 1(a).

voices is a concerning issue. So, the main question here is, are comedians truly crossing the lines of free speech, or are the government and other political agencies going ultra vires by hindering the free speech of the citizens.

The Constitutional Safeguard

The makers of the Indian constitution have given utmost importance to the freedom of its citizens which they gained from the British by fighting them with their sweat and blood. Especially the Freedom of speech and expression, which is a core concept of a democratic country, has been enshrined in our constitution by the makers with utmost care. This covers various forms of expressions, including written, spoken, gestures, artistic works etc.

But Indian citizens do not have unlimited right to free speech and expression, as there are some restrictions. Article 19(2)[241] has put some reasonable restrictions imposes reasonable restrictions and they intended to protect the both interests of nation and people. But the subjective interpretation of these terms is now becoming a powerful weapon which can be used to silence those who dissent, protest, speak the truth or simply joke. Those who speak the truth through artistic forms whether it is comedy shows or cinemas, are getting charged with criminal cases and getting arrested for defamation, outraging the religious sentiments, contempt of court etc. Several countries decriminalised defamation such as South Africa, New Zealand, Sri Lanka, UK, instead they gave a civil perspective for defamation. But India follows criminal defamation as a weapon against normal people mainly journalists, comedians, activists etc. So, the real question in front

[241] India Const. art. 19, cl. 2.

of us now is, how our fundamental right to free speech and expression is to be practiced and protected in a society, when that speech is inconvenient to those in power.

Comedy as a Social Critique

The use of comedy has been present since ancient times, stretching back to early civilizations where humour was used not only to entertain but also to critique power and society. In ancient Greece, playwrights like Aristophanes used satire to mock politicians and public figures, highlighting corruption and social hypocrisy. Over time, comedy evolved into a powerful form of social commentary adapting to cultural and political contexts. From street theatre and performances to modern day standup comedy shows, sitcoms, and other digital contents, comedy has been working as a reflection of the society, often highlighting its flaws and unspoken realities.

But now in this modern era, especially in democratic societies, comedy has gained renewed relevance as a voice of dissent and resistance. Through irony, sarcasm, and exaggeration, comedians bring public attention to major issues in society. As things stand today, comedy has become more than just entertainment. comedy does more than simply entertain people, it can be used as a way of expressing the general public's feelings about the current power structure, societal norms, Political hypocrisies etc. It has the capacity to express and talk loud about very sensitive issues in a very humorous, satirical and non-threatening way. Throughout history, we can see that comedy has often served as a mirror, reflecting the truths that people may find too uncomfortable if they confront directly. By making people laugh at the injustice, inequalities and oppressions happening in the society,

comedians help to normalise controversial issues that may otherwise remain suppressed. It also plays a significant role in forming public opinion as a sharp punchline can be more influential than a political speech. Moreover, in a diverse country like India where there are people from different cultures, comedy acts as a unifying force, bringing people together through shared laughter even amidst diverse backgrounds. However, the same influence that comedy has upon society also makes it a target. When satire starts to challenge and question the authority or and societal norms, it becomes a discomfort for those in power. And this discomfort can lead to censorship, legal actions, and silencing of voices that are essential to a healthy democracy.

High Profile Cases

MUNAWAR FARUQUI 2021

In January 2021, Munawar Faruqui's show at Munro Cafe in Indore, Madhya Pradesh, was halted by a local Hindu extremist group. They accused him of disrespecting their religious sentiments. Faruqui was subsequently taken into custody under two provisions of the Indian Penal Code: Section 295-A, for allegedly intending to hurt religious sentiments, and Section 269, for negligent acts likely to spread disease-invoked in the context of COVID-19 regulations in place at the time.

VIR DAS 2021

Vir Das, an Indian comedian, actor, and musician, delivered a line during one of his shows at WDC, America on November 2021, in this show he said that in India women are worshiped during the day and gangraped during the night -sparked

controversy due to its stark contrast and criticism, leading to accusations of defaming his home country on foreign soil. After the monologue went viral, Das faced numerous complaints from politicians, with some even demanded for his arrest. In his Netflix special “Landing,” he reflects on how the controversy impacted his life.

KUNAL KAMRA V SC 2020

During one of his comedy shows, Kunal Kamra performed a parody of the Bollywood song "Bholi Si Surat," in which he described Deputy CM of Maharashtra, Eknath Shinde as a 'gaddar,' (traitor). The act quickly went viral, resulting in multiple FIRs filed against Kamra, vandalism at the venue, and the partial demolition of the comedy club. Kamra did not apologize for the performance; instead, he defended his right to artistic freedom. This leads to a controversy between political satire and legal boundaries.

KAPIL SHARMA

Kapil Sharma is one of the famous comedians in India. He has been involved in several legal controversies over these Mainly in 2024 during an episode of The Great Indian Kapil Show, where a joke referencing Rabindranath Tagore sparked public backlash. A legal notice was issued claiming the remarks were disrespectful to the revered Bengali poet and hurt cultural sentiments. Earlier, another controversy arose when Sharma joked about pregnant women and pothole-ridden roads, suggesting the bumps could induce labour. This led to a complaint from a women's rights group, which claimed the joke was insensitive. Public claim that these both instances hurt their sentiments.

KIKU SHARDA

Comedian Kuku Sharda in December 2015 spoofed Dera Sacha Sauda chief Gurmeet Ram Rahim Singh on a televised Comedy Nights with Kapil special led devotees to accuse him of hurting religious sentiments. Later he explained that this was really traumatic and shocking. He clarified that he was simply performing the script rather than intending to hurt someone. This case highlights the legal boundaries of satire in our country.

AGRIMA JOSHUA 2020

Agrima Joshua is a stand-up comedian, in July 2020 her old clip of joking about the proposed ₹3,600-crore for Chhatrapati Shivaji Maharaj memorial of Mumbai's coast. The right-wing groups claimed that she insulted their Maratha hero. After Shiv Sena MLA's complaint police registered an FIR under provisions 295A (deliberate insult to religious feelings). She faced several rape and death threats. This incident still comes up whenever people talk about stand-up comics, culture, or India's laws relating to hate speech.

TANMAY BHAT

By the end of May16, Tanmay Bhat who is a co-founder of AIB posted two short snapchat bits titled "Sachin vs Lata #CivilWar." Using a face-swap filter, he portrayed both Sachin Tendulkar and Lata Mangeshkar he impersonated cricket legend Sachin Tendulkar and singer Lata Mangeshkar sparring over whether Virat Kohli or Tendulkar was the superior batsman, sprinkling age-related digs at the 86-year-old chanteuse and a few expletives.

The video went viral and it outrage the sports fans, music lovers and political parties widely

leaders from Shiv Sena and Congress pressed for legal action and a public apology, calling the sketch an insult to national icons. Mumbai Police cyber-cell probed the video for obscenity and defamation but, after legal review, declined to file an FIR, noting that satire and free speech set a high bar for criminal charges. While some comedians supported Bhat's right to parody, others deemed it distasteful, reigniting the debate over the limits of comedy in India after the 2015 AIB Roast controversy.

Although the video was removed and no charges followed, it remained a high-profile flashpoint in India's ongoing clash between comedic freedom, celebrity reverence, and limits of offence.

JASPREET SINGH

While guest-judging Samay 'India's Got Latent', a YouTube show by Samay Raina, comedian Jaspreet Singh made a joke about Kerala accents (Kerala saar) and culture. The episode already under criticism after co-judge Ranveer Allahbadia posed an inappropriate "would you rather" question involving incest to a contestant. After a clip was shared on X (formerly Twitter), Malayali users accused Singh of bigotry and stereotyping. This led to a flood of hate messages and calls for boycott. The situation remains under investigation, with authorities continuing to assess the legal implications of the incident.

The comedians faced several incidents such as online harassment, club attacks, and other police actions considering political and social issues. Despite these challenges, Indian stand-up comedy continues to thrive. Comedians like Anubhav Singh Bassi, Abhishek Upamanyu, Zakir khan remain popular through their live

shows and digital networks. Comedian Azeem Banatwalla's show Tragedy Time showcased the versatility and depth of comedians in our country.

The Politics of Outrage

Over the past decade, stand-up comedy in India has gone from just a form of entertainment to a space where people reflect on politics, society, and everyday struggle, often through humour. But this rise in popularity has turned to something more troubling to the comedians as now making people laugh can come at a very real cost. Comedians today aren't just worried about whether their jokes will work for the audience, they are worried about who might take it offensive, what line might be avoided, and whether their next punchline could lead to a police complaint or even a threat to their life. A space that was once free, fun and entertaining is now shadowed by tension and caution.

The internet has played a huge role in this shift. Platforms like YouTube and Instagram have helped the comedians to make them popular, but that popularity has also brought unfiltered public reaction, not just laughter and applause, but also trolling, abuse, life threats and outrage. One moment a video is trending, the next, it's being flagged, labelled offensive, or used as evidence in a complaint. Beyond the stage and screen, comedians are dealing with deeper fears. Some have received violent threats after their personal details were leaked online and it's no longer just about career risks; it's about keeping yourself and your family safe. There is a growing fear among these performers, which in turn has led to a quiet form of self-censorship.

Politics has only made things harder. Some comedians have been targeted, either directly or through indirect links to groups under investigation. These aren't random acts; they are warnings. A way of saying: "Don't cross the line". And yet,

many still keep going, some play it safe, by avoiding anything controversial, while others try to be more clever, subtle, layered but still using their wit to speak up, though with extra caution.

The anger directed at comedians, especially when jokes touch on politics, religion, or identity, reveals something deeper. The outrage over political or religious jokes says less about comedy and more about how uncomfortable we have become with dissent. People are quick to cheer when satire targets their rivals, but just as quick to condemn it when it touches their own beliefs.

Comedy in present-day India goes beyond simple jokes, it has become a matter of courage, resilience and navigating a fragile space where freedom meets fear. For those on stage with a mic in hand, every word counts. And behind every laugh, there is often a risk.

The Legal Landscape

Under Article 19(1)(a)[242], provides citizens, freedom to express their ideas openly. Yet, this right is not boundless and is regulated by permissible restrictions.

But for comedians, these restrictions often lead to legal challenges, as they are frequently getting charged with provisions like **Section 499[243]** of the IPC [currently **356(1) of BNS**[244]] for criminal defamation, or Section **295A of IPC**[245] (**299 of BNS**[246]) for outraging the religious sentiments. They also face charges

[242] India Const. art. 19, cl. 1(a), supra note 1.
[243] Indian Penal Code, 1860, § 499 (India).
[244] Bharatiya Nyaya Sanhita, 2023, § 356(1) (India).
[245] Indian Penal Code, 1860, § 295A (India).
[246] Baratiya Nyaya Sanhita, 2023, § 299 (India).

under Section **153A of IPC**[247] (**196 of BNS**[248]) for promoting enmity between groups, and also under the **Information Technology Act 2000**[249], for their online contents.

The main issue concerning these laws is how they are misused. In 2021, comedian Munawae Faruqui was arrested for allegedly hurting religious sentiments during a performance, despite having no clear evidence. Similarly, Tanmay Bhat has also faced FIRs for Political and legal satires. Many other comedians, whether mainstream or not, are also being charged with these criminal offences.

According to multiple verdicts by the Supreme Court of India, causing offence to someone's sentiments is not, by itself, a valid reason for criminal charges unless public order is genuinely at risk. One of the landmark judgments in this regard is **Sreya Singhal V Union of India**[250], which highlighted the importance of safeguarding free speech against arbitrary limitations. The supreme court further recognised this principle in **Romesh Thapper v. State of Madras**[251]**.**

It further covers the freedom of the media, the right to artistic and creative expression, and access to information. In the case of **K A Abbas v. Union of India**[252] the court has also held that artistic expression also falls under free speech. Furthermore, in **S Rangarajan v. P Jagjivan Ram**[253], It has been established by the Supreme Court that restrictions are valid only if there is an immediate and clear

[247] Indian Penal Code, 1860, § 153A (India).
[248] Baratiya Nyaya Sanhita, 2023, § 196 (India).
[249] Information Technology Act, 2000 (India).
[250] Sreya Singhal v. Union of India, (2015) 5 SCC 1 (India).
[251] Romesh Tappar v. State of Madras, AIR 1950 SC 124 (India).
[252] K.A. Abbas v. Union of India, (1970) 2 SCC 780 (India).

[253] S. Rangarajn v. P. Jagjivan Ram, (1989) 2 SCC 574 (India).

link to the harm, not just a remote or speculative threat. Also, in a recent judgement by Justice Abhay S Oka and Ujjal Bhuyan, they stated that, "After 75 years as a republic, we must not appear so fragile in our foundational principles that the simple recital of a poem or any form of artistic expression, including stand-up comedy, could be accused of inciting hostility or hatred between communities. Embracing such a perspective would suppress all valid forms of public expression, which are essential to the functioning of a free society."[254]

In the end, while comedians do have a responsibility to be mindful of their words, the legal framework must also protect their right to criticise and use satire. Laws meant to maintain public order should not become tools to silence voices of dissent or restrain creative work. Then only we can exercise true freedom of expression which will help in building a true democracy.

Future Prospects

The plight of stand-up comedians is in a dreadful condition. Appropriate changes are essential to protect both artistic freedom and public sensibility. By implementing some strategies will definitely help to balance between freedom of expression and societal sentiments.

Decriminalisation of defamation that means changing defamation from a criminal offence to civil matter will help to prevent its misuse. To resolve disputes a special court or a fast-track court is essential. Mainly the public is not aware about the limits of free speech. So, by creating a clear division between hate speech, artistic

[254] Monalisha Sethi, *Supreme Court: "Idea of Art or Stand-Up Comedy Inciting Hatred Could Severely Restrict Free Speech"*, **LawChakra** (Mar. 28, 2025), https://lawchakra.in/supreme-court/stand-up-comedy-inciting-hatred/.

freedom etc will help in a great extent. Like film associations and unions, comedy associations and unions will help the comedians to assist and solve their problems. We all know that in western countries the situation of stand-up comedians is fair and just but while considering a country like India, a proper education about satire and humour is important. This helps the society to reduce their overreactions to comedic content. Strong protection for creators is crucial for protecting them from online abuse, mass reporting and to ensure their contents are fair and transparent. This will prevent the misunderstanding of humorous and satirical contents with harmful and hateful contexts. Judiciary and the law enforcement systems must be aware about the real threats to society and the attempts to suppress the artistic dissent. This is 2025 it's not the time for suppression.

A democratic country like India has enough spaces where comedians, policymakers, citizens can engage constructively about any concerned matters. We want to create a culture where people can share their thoughts and views calmly and respectfully without silencing them. Because from another perspective every joke is not an attack.

Conclusion

Even today the legal environment of stand-up comedy remains dynamic and multifaceted, it simply means that the practitioners of this art need to be very careful while performing. There is an ongoing controversy surrounding freedom of expression and the difficulties encountered by comedians. India, being a democratic nation, has included freedom of speech and expression as a fundamental right under 19(1)(a)[255] but it is shaped by legal and cultural limits.

[255] India Const. art. 19, cl. 1(a), supra note 1.

So, it is essential to do their role carefully. Along with these rights, there are exceptions for them which is also enshrined in the article 19(2)[256]. Striking a balance between stand-up comedy and freedom of speech is not about limiting expressions it is about understanding their responsibility. The true essence of comedy thrives where free speech is protected. Yet, in India, applying this in practice can be challenging as cultural, religious and social sentiments are overwhelming. Everyone in the country even the layman to anyone have the right to question, provoke, challenge, but with that right the duty comes to be mindful about the words they can use. When comedians understand their boundaries then their voice becomes a powerful tool for truth, reflection and changing the present situation.

Conflict of Interest: The authors declare that there are no conflicts of interest related to this manuscript.

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1. The Constitution of India, 1950.
2. *Indian Penal Code*, 1860.
3. *Bharatiya Nyaya Sanhita*, 2023.
4. Legal Service India, *Legal Information Portal*, available at: https://www.legalserviceindia.com
5. Artist Under Attack: 5 Indian Comedians Who Faced Political Backlash For Being Funny https://feminisminindia.com/2025/04/02/artists-under-

[256] India Const. art. 19, cl. 2, supra note 3.

attack-5-indian-comedians-who-faced-political-backlash-for-being-funny/

6. Humour or Harmm? Legal perspective of Standup Comedy https://www.jusscriptumlaw.com/post/humor-or-harm-legal-perspective-of-stand-up-comedy.
7. Kunal Kamra jibe case: Bombay HC issues notice to Mumbai police, Shiv Sena MLA https://www.hindustantimes.com/india-news/kunal-kamra-jibe-case-bombay-hc-issues-notice-to-mumbai-police-shiv-sena-mla-101744092935712.html
8. Bombay high court admits Kunal Kamra's plea to quash FIR in 'traitor' jibe case, grants protection from arrest https://timesofindia.indiatimes.com/city/mumbai/bombay-high-court-admits-kunal-kamras-plea-to-quash-fir-in-traitor-jibe-case-grants-protection-from-arrest/articleshow/120606634.cms

Revisiting Waqf Law in India: A Legal Analysis of the Unified Waqf Management, Efficiency, Empowerment and Development Act, 2025 or UMEED Act, 2025

Abstract:

The concept of 'Waqf' has been a vital source of religious well-being for the Muslim community in India and globally. However, its administration has faced several challenges over the past decade. The most significant challenges in managing Waqf properties include corruption, inefficiency, and mismanagement. In light of these challenges, the Waqf Amendment Act, or the Unified Waqf Management, Efficiency, Empowerment and Development Act, 2025, signifies a shift in the administration and management of Waqf properties in India. This research paper aims to address the various challenges that have become prevalent over recent decades and proposes solutions to mitigate these issues through the Act. It also seeks to revisit the law of Waqf endowments in India by examining its origins and historical background. Moreover, it aims to understand the reasons for the changes in administration and their implications for the Islamic community. It provides a legal and constitutional analysis of the amendment act, focusing on the changes introduced and their impact on religious minorities and the Indian community. It aims to critically examine the benefits, which include- greater inclusivity, governmental oversight, judicial review, etc, that might have a significant impact on the administration of Waqf properties in India. The analysis is concluded by understanding the effectiveness of these reforms in mitigating the

above-discussed challenges through the UMEED Act, 2025, marking a significant step in reforming the Waqf Law in India, which is essential for the religious as well as administrative development of the country.

Key Words: *Waqf, Amendment, Empowerment, Development, Property*

I. Introduction:

Waqf is an Islamic charitable endowment which has been very helpful for centuries in the fields of social welfare, education, and religious institutions. But in India, its administration has been constantly troubled by problems such as mismanagement, corruption, encroachments, and the inefficiency of the Waqf Boards. The Unified Waqf Management, Efficiency, Empowerment, and Development (UMEED) Act, 2025 is the law meant to solve these problems by introducing measures such as better control, aggregation of diverse stakeholders, sharper dispute handling, and supervision by the government. This research paper will provide a critique of the Act in terms of its legal and constitutional ramifications, which will also consider minority rights, property protection, transparency, and accountability. Finally, it would attempt to find out whether these changes could really make Waqf governance more modern without infringing on the religious autonomy of the community or the regulation by the state.

II. Background and Origin:

The term 'auqaf' its singular form "waqf" is derived from the root verb 'Qif'[257] which is derived from Arabic roots. Meaning "to stop or to hold". Another similar

[257] Joint Comm. on the Waqf (Amendment) Bill, 2024, Report, Lok Sabha Secretariat (Jan. 31, 2025),

interpretation roots from the word "waqafa". The idea of *waqf* originates from Islamic jurisprudence. It is an endowment establish by a Muslim, for religious or charitable purposes. Such as construction of mosques, educational institutions, healthcare infrastructures, or any such community serving creations. The main characteristic of *waqf* is its inalienability, or in other words the endowed property cannot be sold, inherited, transferred, or encumbered. The original owner is called waqif, donates the asset, ownership is considered to pass to God. As God is eternal in Islamic belief, the waqf property is perpetual.

The term *waqf* does not explicitly appear in the Holy Quran, but various verses highlight the virtues of charity, generosity in the path of God, its welfare principle therefore form the ethos of *waqf* system.Even though the Holy Quran lays groundwork for acts of charity, the most formal concept of *waqf* is directly rooted in Hadith literature. Significant reference is found in *Sahih al-Bukhari, Hadith number 2737*[258], which cited as formal foundational basis for the institution of *waqf*. This Hadith speaks of how property and wealth may be set aside for charitable works, with the benefits generated from the endowed assets directed towards virtuous and socially beneficial causes. Formed in the days of Prophet

https://sansad.in/getFile/lsscommittee/Joint%20Committee%20on%20the%20Waqf%20(Amendment)%20Bill,%202024/18_Joint_Committee_on_the_Waqf_(Amendment)_Bill_2024_1.pdf.

[258] Muhammad ibn Isma'il al-Bukhari, *Sahih al-Bukhari*, vol. 3, Hadiths 1773–2737, translated by Dr. Muhammad Muhsin Khan, Darussalam (2008), https://futureislam.files.wordpress.com/2012/11/sahih-al-bukhari-volume-3-ahadith-1773-2737.pdf.

Muhammad (PBUH)[259], *waqf* has been at the heart of Islamic civilization, developing through successive Islamic empires. In the Ottoman period, *waqf* was at its peak, funding mosques, schools, hospitals, and public works with a strong legal framework guaranteeing its integrity. Islamicly, *waqf* is a type of sadaqah jariyah (lasting charity), offering lasting benefits and religious rewards even after death. It has played an important role in public benevolence, especially in education and healthcare. In law, *waqf* has to be irrevocable, for legal purposes, and administered by a trustee (mutawalli)[260] according to Sharia.

Today, *waqf* is being revived, along with new developments such as cash *waqf*, to meet current social and development imperatives. It also aligns perfectly with the Sustainable Development Goals (SDGs)[261], and its potential can contribute to mitigating inequalities and education and health benefits. Legal loopholes, management, and unawareness stand in the way of its optimal potential. Through reform, technology, and openness, *waqf* is still an effective means for sustainable and inclusive development in Muslim societies today.

[259] Understanding Waqf: History and Significance in Islam, *Global Waqf Movement*, https://waqfmovement.com/understanding-waqf/ (last visited May 7, 2025).

[260] Md. Imran Wahab, *Mutawalli Under Muslim Law*, Legal Service India, https://www.legalserviceindia.com/legal/article-14230-mutawalli-under-muslim-law.html (last visited May 12, 2025).

[261] United Nations, *Sustainable Development Goals*, https://sdgs.un.org/goals (last visited May 12, 2025).

III. Pre-Independence Status of Waqf in India:

The development of *waqf* in pre-independence India was influenced by India's Islamic rulers and subsequently by British colonial governors. The idea of *waqf* was originally brought to the Indian subcontinent with the advent of Muslim occupation sometime in the 8th century CE. In Islamic rule, properties held in *waqf* were typically under centralized control, with the king or sovereign as the final trustee of all charitable trust. Administration was also sometimes entrusted to provincial officers like the Sadr-e Subah (provincial religious administrator) and Sadr-e Sarkar (district officer), but it remained based in the central hierarchy. This approach underlined the religious sanctity and legal unalienability of *waqf* properties so that the endowed properties were utilized purely for purposes established by Islamic concepts, like supporting mosques, madrasas, and charitable trusts. The beginning of British colonial rule brought a radically new legal and administrative policy.

The British did not at first intervene in religious matters but increasingly came to control public endowments, motivated by administrative rather than theological considerations. The Bengal Regulation XIX of 1810[262] was one of the first interventions, enabling the colonial administration to oversee religious endowments to ensure that the revenue from land grants was utilized for public or religious uses. The Madras Regulation VII of 1817[263] also enabled the colonial government to take revenues for the maintenance of mosques and temples in the Madras Presidency. A turning point was arrived at with the Religious Endowments

[262] Bengal Code Reg. XIX of 1810.

[263] Madras Code Reg. VII of 1817.

Act of 1863[264], which marked a change in colonial policy from control to non-interference; it entrusted the administration of religious trusts in the hands of local committees with permission for civil courts to settle disputes. To meet wider charitable purposes, the Charitable Endowments Act of 1890[265] established a legal framework for the appointment of government trustees to run charitable property.

The Mussalman Waqf Validating Act of 1913[266] formally recognized the legitimacy of waqf-alal-aulad family waqfs which had previously been questioned under British legal interpretations. It protected endowments made for descendants as long as ultimate charitable intent was preserved. Later legislations such as the Mussalman Wakf Act of 1923[267] introduced compulsory recordkeeping and audits, a significant step toward regulatory oversight. By the 1930s, provincial legislations like the Bengal Waqf Act of 1934[268], United Provinces Muslim Waqfs Act of 1936[269], and Hyderabad Endowment Regulation Act of 1939[270] were passed to create local waqf boards, symbolizing increasing recognition of the necessity to avert mismanagement and shield *waqf* property from exploitation. These

[264] Endowments Act, No. 20 of 1863 (India).

[265] Charitable Endowments Act, No. 6 of 1890 (India

[266] Mussalman Waqf Validating Act, No. 6 of 1913 (India).

[267] Mussalman Wakf Act, No. 42 of 1923 (India).

[268] Bengal Waqf Act, No. 13 of 1934 (India).

[269] United Provinces Muslim Waqfs Act, No. 13 of 1936 (India).

[270] Hyderabad Endowment Regulation Act, Reg. No. 1 of 1939 (Hyderabad).

advancements set the institutional foundation for the post-independence governance system of *waqfs* in India.

IV. Post-Independence Status of Waqf Administration:

After India's independence in 1947, the *waqf* administration needed to be legally and structurally transformed to make it compatible with the new constitutional order and rising standards of public accountability. The Indian Constitution had allocated responsibility for the administration of religious endowments between the Centre and the States (Entry 10 of the Concurrent List and Entry 28 of the State List), leaving the necessity of a national law enabling uniformity in *waqf* administration. This resulted in the passing of the Wakf Act, 1954[271], the first all-encompassing legislation aimed at controlling the administration, registration, and use of *waqf* properties throughout the nation. The Act required the formation of State Waqf Boards to administer local *waqf* institutions and ensure that revenue derived from *waqf* properties was utilized for proper religious or charitable purposes. Although important, the 1954 Act had numerous limitations such as poor enforcement, bad record keeping, and inadequate protection from encroachment or abuse.

These weaknesses led to numerous amendments in 1959[272], 1964[273], and 1969[274] but the systemic malaise continued. Sensing that the time was ripe for greater

[271] Wakf Act, No. 29 of 1954 (India).

[272] Wakf (Amendment) Act, No. 29 of 1959 (India).

[273] Wakf (Amendment) Act, No. 34 of 1964 (India).

[274] Wakf (Amendment) Act, No. 33 of 1969 (India).

change, the Government of India instituted the Waqf Inquiry Committee in 1976[275] to study the performance of *waqf* institutions all over the country. The report presented by the Committee was on the numerous *waqf* properties were illegally taken over, documents frequently missing or falsified, and corruption endemic among *waqf* officials. As a response, the Waqf Amendment Act of 1984[276] was brought, which included only two significant recommendations: increasing the period of limitation for adverse possession from 12 to 30 years and permitting *waqf* laws to be extended to evacuee properties. But wider reforms were put off. It was only in 1995 that the government passed a strong legislative reform through the Waqf Act, 1995[277], which replaced previous laws and brought major reforms. This Act consolidated the State Waqf Boards' authority, established a Central Waqf Council, required the survey and registration of *waqf* properties, and instituted processes for settlement of disputes and financial responsibility. Additional impetus for reform arose through the Sachar Committee Report (2006)[278], which underlined the socio-economic significance of *waqf* properties in Muslim empowerment and laid bare the institutional decline in their management. A Joint Parliamentary Committee[279], headed by K. Rahman Khan, reiterated the same

[275] Govt. of India, Report of the Wakf Inquiry Committee (1976).

[276] Wakf (Amendment) Act, No. 27 of 1984 (India).

[277] Waqf Act, No. 43 of 1995, § 1 (India).

[278] Prime Minister's High-Level Comm. on Socio-Economic & Educational Status of the Muslim Community of India, Report (2006).

[279] Parliament of India, Ninth Report of the Joint Parliamentary Committee on Wakf (2008).

sentiments in 2008, proposing digitization, greater transparency, and professionalizing *waqf* boards' staffing.

These observations gave birth to the Waqf Amendment Act, 2013[280], which brought broad reforms such as enhanced penalties against encroachment, obligatory auditing, opening property records to public scrutiny, and the inclusion of professionals with law and finance qualifications on *waqf* boards. Together, all these changes symbolized a profound move towards contemporizing *waqf* administration in India, mediating religious objectives with modern virtues of transparency, accountability, and effective public governance.

V. Challenges in the Administration and Management of Waqf Properties in India Prior to the UMEED Act, 2025:

Despite the broad scope and intent of the Waqf Act, 1955 including the amending act of 2013, the administration of Waqf properties has caused a huge set of problems that may have remained unaddressed over the past decade. These issues have greatly impacted governance, management, and the regulation of Waqf properties. These issues need to be addressed to eliminate corruption and to ensure a streamlined process for the management of Waqf properties. The identification of these loopholes shall be instrumental in balancing minority rights and ensuring widespread concerns about corruption and mismanagement of these properties. The major challenges in administration are outlined as follows:

1. ***Widespread Corruption & Mismanagement:*** There have reportedly been several instances of misappropriation of land and funds, especially by the Waqf Boards,

[280] Waqf (Amendment) Act, No. 27 of 2013 (India).

which have affected many states in India. In addition, the waqf properties have been used for private purposes, defeating the whole purpose of waqf properties. A prime example is the Karnataka Waqf Land Scam, which involved the misappropriation of half of the 55,000 acres of Waqf Land, which was in the custody of the Waqf Board. There was also an illegal transfer of property worth almost 2 Lakh Crores to private individuals and institutions, thereby defeating the whole purpose of Waqf properties[281]. Thus, there needs to be a legal framework that can help eradicate corruption and prevent future harm. A more recent incident involves the former head of the Madhya Pradesh Waqf Board, Riyaz Khan, who mis-used nearly 7 crores of Waqf properties for personal gains[282].

2. ***Delay & Incompletion of Survey:*** There has been a significant delay in the completion of surveys in various states, which has further delayed the registration process of these properties. There have also been instances where the surveys are yet to be conducted despite several orders to conduct the same in states like Gujarat and Uttarakhand. It is a clear inference that there has been a lack of communication between the authorities and the survey commissioner in pursuance of their duties.
3. ***Inefficiency in Administration:*** The Waqf Act, 1995, and its amending act of 2013 have failed to fulfil their objectives, leading to multiple issues in the administration of Waqf properties. Many of these issues remain unaddressed, ranging from illegal occupation of Waqf land to extensive litigation and ownership disputes. There is a

[281] Radhika Iyer, *Karnataka's Waqf Land Scam Worth Rs. 2 Lakh Crore: Five Facts*, NDTV (Mar. 27, 2012, 5:33 PM IST), https://www.ndtv.com/... (last visited May 12, 2025).

[282] Shraddha Pandey, *How Various Waqf Boards Have Been Marred in Corruption and Irregularities in India*, OPIndia (Apr. 4, 2025), https://www.opindia.com/... (last visited May 12, 2025).

need for robust legislation that addresses these issues and provides a long-term solution to the problems at hand.

4. ***Dominance of Waqf Boards:*** The over centralization of power, which is vested in the Waqf boards, has also been a longstanding challenge as it provides complete autonomy for these boards to take decisions on whether a land can be declared as Waqf or not. The misuse of section 40 of the 1995 Act, which outlines the concept of 'Waqf by user' and gives powers to Waqf Boards to declare a property as Waqf due to its long-term or customary usage, regardless of a registered deed and posits that the decision made by the Waqf Board shall be final unless it is overturned by another Waqf Tribunal[283], leaving individuals with little to no legal remedies. Nearly 4 Lakh properties out of 8 Lakh Waqf properties are 'Waqf by user' properties.[284] The changes integrated into this section through the amending act of 2025 have paved the way for social justice, which will be discussed in the latter parts.
5. ***Irrevocability of Waqf Properties:*** Section 3 (r) of the Waqf Act, 1995, underlines the principle of 'once a Waqf, always a Waqf', which defines it as a permanent dedication for charitable purposes[285]. The word 'permanent' basically connotes those properties, once declared as Waqf, that are inalienable. Although there is no explicit provision, Indian courts have outlined this principle in the case of Sayyed Ali vs AP Waqf Board, wherein the doctrine of res judicata was applied and the

[283] Wakf Act, No. 29 of 1954 (India).

[284]Tushar Gupta, *With the End of 'Waqf by User', a Historic Wrong Is Being Corrected*, DD News (Apr. 18, 2025, 3:28 PM IST), https://ddnews.gov.in/... (last visited May 12, 2025). (last visited on May 12, 2025)

[285] Wakf Act, No. 29 of 1954 (India).

property was still considered Waqf[286]. This has been another significant challenge over the past 2 decades.

VI. Implementation and Critical Analysis of the UMEED Act, 2025:

The bill was introduced in the Lok Sabha on 8 August 2024. After a long struggle, which included almost a 12-hour debate in the Lok Sabha and consequently another 14 hours of discussion in the Rajya Sabha, it was passed on April 4, 2025. The act came to be known as the 'Unified Waqf Management, Empowerment, Efficiency and Development Act, 2025'. This is a turning point in relation to Waqf legislation, as there are significant changes ranging from the composition of Waqf Boards to the representation of different stakeholders in the administration of Waqf properties. The changes that have been introduced in the act are as follows:

1. ***Revision of the Concept of Waqf by User:*** Earlier, as per section 40 of the Waqf Act, 1955, the creation of a Waqf property could be done by user (long-term usage), declaration or as an endowment (Waqf-Alal-Aulaad)[287]. Post the enactment of the 2025 amendment act, the government has retained the doctrine of 'Waqf by user' as it posits that properties registered through this mode before the enactment of this act shall continue to retain the same status unless it is under dispute. However, any future properties cannot be declared as Waqf through this

[286] Sayyed Ali & Ors. Vs AP Wakf Board Hyderabad, SCC 642, (1998)

[287] Joint Parliamentary Committee on the Waqf (Amendment) Bill, 2024, Report, https://sansad.in/getFile/lsscommittee/Joint%20Committee%20on%20the%20Waqf%20(Amendment)%20Bill,%202024/18_Joint_Committee_on_the_Waqf_(Amendment)_Bill_2024_1.pdf?source=loksabhadocs (last visited May 12, 2025).

mode, thereby limiting or restricting their application. The initial bill mandated the abolition of this concept completely. Still, after serious discussion and considering that the majority of the Waqf properties in India are 'Waqf by user', In relation to declarations, a declaration must be made by a practicing Muslim for at least 5 years and must own the property in question. There are no special rules for endowments explicitly mentioned in the act, but the land of the Waqf Alal Aulaad cannot be dedicated to Waqf unless the female heirs do not receive their rightful inheritance first.

2. ***Inclusivity in Waqf Institutions:*** Sections 9,14, and 83 of the Waqf Act, 1955, dealt with the composition of the Central Waqf Council, State Waqf Boards and Waqf Tribunals[288], respectively. The newly enacted legislation changes the composition of the main institutions responsible for the management of Waqf properties and provides better opportunities for people who are not from the Muslim community to be appointed to these institutions. The Central Waqf Council and the State Waqf Boards must have or include at least 2 non- Muslim members. There is no requirement for judges, MPs or other prominent persons to be Muslims. Further, a minimum of at least 2 Muslim members must be women in the Central Waqf Council. In relation to the State Waqf Boards, the state government must nominate one member from each sub-community of Muslims, i.e. Shia, Sunni, Backward class Muslims, etc. The Waqf Tribunal is responsible, which was earlier composed of a three-member body- A judge, an Additional District Magistrate and an expert in Muslim Law and jurisprudence. On the other hand, the Waqf Tribunal is now composed of a 2-member body, a District Court Judge as chairman and a joint secretary to the state government, thereby removing

[288] Supra, note 29

the need for a Muslim law expert. This inclusion has sparked several controversies as many critics allege that it violates Article 26 of the Indian Constitution, as it intervenes with religious freedom.

3. ***Survey of Waqf Properties:*** As per section 4 of the Waqf Act, 1955, the responsibility of conducting surveys was vested with the Survey Commissioner. The responsibility of has now shifted from appointed Survey Commissioners to District Collectors, who are now empowered to conduct surveys as per district or state laws. This is a significant change as it reduces the role of Survey Commissioners and ensures surveys are conducted directly under district administration. This shift in authority ensures a streamlined procedure and greater governmental oversight in the management of these properties[289].
4. ***Government Property:*** Any property belonging to the government shall cease to be considered Waqf property, and the responsibility for determining this shall lie with the District Collector instead of the Waqf Boards. Previously, there was no clear provision regarding government properties being declared as Waqf. This change is instrumental as it centralizes authority and provides an impartial decision in property classification.
5. ***Effective Adjudication and Judicial review :*** As per section 83[290] of the Waqf Act, 1955, the decisions of Waqf tribunals were considered final, and an appeal could be made only to the same Waqf tribunal, which meant no scope for appeal to the High Courts was available, except under very limited circumstances. The finality of the decisions of Waqf tribunals has always sparked controversy, as victims or aggrieved parties have little to no legal remedies or alternatives, making it nearly

[289] Supra, note 29

[290] Waqf Act, No. 43 of 1995, § 83, Acts of Parliament, 1995 (India).

impossible to resolve disputes. As a result, the amendment act now mandates that the decisions of Waqf tribunals shall not be final, and an appeal shall lie to the aggrieved party to the High Court within 90 days. Furthermore, the amendment also invalidates section 107 of the Waqf Act, 1955, making the Limitation Act, 1963[291], applicable to all Waqf disputes[292].

VII. Judicial Intervention, Administrative Oversight, and Constitutional Analysis of the UMMED Act, 2025:

The UMEED Act, 2025 is a landmark legislation that not only allows for the appeal of Waqf Tribunal decisions to High Courts but also places the entire process of administration of waqf properties under judicial oversight. This will ultimately lead to fair and just dispute resolution as well as availability of significant legal remedies for the parties aggrieved by the decisions. The main judicial interpretations such as Sayyed Ali v. AP Waqf Board[293], which confirmed the application of irrevocability and res judicata. Board of Muslim Wakfs v. Radha Kishan[294], which pointed out the need for a balance between state intervention and religious autonomy where previously Waqf Boards were exempt from the Limitation Act, now they must follow a 12-year limitation, have been the groundwork for this increased oversight. The Act by providing High Courts with appellate jurisdiction and defining procedural safeguards not only inculcates but also reaffirms transparency, accountability, and rights of property protection that

[291] The Limitation Act, No. 36 of 1963, Acts of Parliament, 1963 (India).
[292] Supra, note 29

[293] *Sayyed Ali v. Andhra Pradesh Waqf Board*, (1998) 2 SCC 45 (India).
[294] *Board of Muslim Wakfs v. Radha Kishan*, AIR 1979 SC 145 (India).

are in consonance with the constitutional protection given under Articles 25[295] and 26[296].

Article 25 secures one's freedom of conscience and the right to freely profess, practice, and propagate religion while Article 26 permits religious denominations to regulate their own matters concerning religion, including the administration of religious endowments. Understanding of the Act's provisions, like appointment of non-Muslim members in Waqf Boards and monitoring of waqf property surveys by District Collectors, are aimed at enhancing governance without excessively intruding upon the religious realm. Judicial review provides assurance that the government's involvement takes into consideration the rights of the minority while still keeping an effective and accountable system for the management of waqf properties. Although expanded oversight may be a challenge, it must not be allowed to morph into overreach, and Waqf institutions must not be deprived of their autonomy in operating religious endowments according to Sharia rules.

VIII. Legal Implications of the Waqf Amendment Act, 2025:

The amendment act has focused on building an organised framework or procedure for the management of Waqf properties. The legal benefits/implications of this act are as under:

1. ***Increased Government Oversight and Control:*** Another major benefit of this act is the strengthening of governmental supervision by ensuring that the management of these properties is under a clear and transparent procedure. The act has provided

[295] INDIAN CONST. art. 25.
[296] INDIAN CONST. art. 26.

a clear outline of achieving this procedure by the establishment of a centralised online portal that requires Waqf boards to provide data in relation to registration, financial audits and other regulatory compliance. Furthermore, the provisions regarding the performance of surveys by the District Collector and the enhanced powers of the Central Government in making laws regarding the Waqf properties ensure greater governmental oversight.

2. ***Efficient Dispute Resolution and Judicial intervention:*** Strengthening judicial review and changing the composition of the Waqf tribunals have been the key changes that have been introduced in relation to the adjudication of disputes. The granting of appellate jurisdiction to the High Courts concerning Waqf disputes provides aggrieved parties a legal remedy that was not available earlier. Furthermore, it provides for the protection of government property, thereby leading to a reduction in the number of disputes. Further, the applicability of the Limitation Act, 1963 helps in reducing litigation. Thus, the UMEED Act focuses on the efficient resolution of disputes by ensuring a level playing field for both parties.
3. ***Protection of Property Rights:***The UMEED Act, 2025, focuses on the protection of property rights by ensuring that non-Muslim and government properties are protected from illegal or arbitrary claims. The major concern about Waqf properties is arbitrary claims that tend to affect many marginalised groups and the community as a whole. There have been several instances, such as in the previous year, in August 2024, a whole village called as Govindpura in the state of Bihar

was claimed by the Waqf Board[297], affecting more than 15 families. Thus, the UMEED Act tends to establish a procedure to ensure the protection of the property rights of the community, as well as ensuring that claims made by Waqf boards are backed with substantial proof and clear evidence.

4. ***Diversity and Empowerment of Women:*** The inclusion of non- Muslim members into the Waqf institutions ensures there is broader diversity and inclusion in the management of Waqf properties. The act also provides provisions for the inclusion of women in these institutions by ensuring a mandatory quota of at least 2 women members. It also makes it mandatory that the Waqf -Alal- Aulaad cannot dedicate his land to Waqf unless he provides his female heirs their rightful inheritance. Ensuring a balance between men and women increases parity in membership and provides for greater inclusivity.
5. ***Prevention of Corruption:*** The revision of the concept of Waqf by the user and the reduction of the powers of the Waqf boards have helped address most of the issues that are essential for Waqf administration. By eliminating corruption from these boards, there is greater authority and responsibility vested in the district and state governments. These measures collectively promote transparency and accountability in the administration of Waqf Properties. Lastly, the vesting of powers with the central government ensures the supremacy of government intervention. Thus, religious endowments are protected by removing or preventing corruption, and public trust is built.

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[297] Sudarsanan Mani, *Waqf Board Claims Ownership of Govindpur in Bihar*, CNBC TV18 (Aug. 28, 2024, 5:39 PM IST), https://www.cnbctv18.com/... (last visited May 12, 2025).

IX. Impact on Religious Minorities and the Indian Community:

In India, the expression "religious minorities"[298] usually denotes communities that are smaller in numbers compared to the majority population and have separate religious identities, like Muslims, Christians, Sikhs, Buddhists, Parsis, and Jains. The Muslim community is mainly associated with Waqf properties, which are utilized for social welfare, education, and religious purposes. The management of these properties not only protects the Muslim minority by securing their endowments and rights but also impacts the entire Indian community as the proper management facilitates transparency, eliminates the possibility of land or resource misuse, and maintains public trust. The UMEED Act, 2025 intends to synchronize the religious minorities' rights with the governance that concerns the entire society by the establishment of oversight mechanisms, judicial review and inclusive representation in Waqf institutions, thus promoting equitable development and accountability while respecting constitutional protections for minority rights.

X. Potential Challenges in implementation of UMMED Act, 2005:

The actual difficulties in enforcing the UMEED Act are not because of the law but because of the structural opacity bequeathed upon waqf regimes by decades of practice and administrative procedures. Large parts of landed property were brought under the purview of waqf without clear documentation, often using the

[298] Ministry of Minority Affairs, *Identification of Minority Communities Under Section 2(c) of the National Commission for Minorities Act, 1992 (India)* (2022), https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1659697873.pdf.

ill-defined "waqf by user"[299] doctrine. Naturally, taking away this opacity is a cause for concern to those who benefited from this type of ambiguity. Any effort at shining light into entrenched irregularities is resisted. The second is the entirely predictable legal and political pushback against the empowering of the State, especially District Collectors, to conduct rigorous evidence-based surveys, verify titles, and correct records. For the first time, this system is asking for documentation, digitisation, and accountability. This disrupts a long-standing environment in which opaque land management was seldom questioned. The real obstacle is not administration. It is the discomfort felt by vested interests when confronted with transparency, scrutiny, and a rule-of-law[300] approach to property claims that the UMEED Act finally enforces.

XI. Conclusion:

The Unified Waqf Management, Efficiency, Empowerment and Development Act, 2025, has been a prominent change in the administration of Waqf properties in India. The major objective of this act is to ensure that there is a streamlined procedure for administering these properties and an effective mechanism for settling disputes. Understanding these changes helps in addressing short-term as well as long-term issues in the management of Waqf properties. The amendments seek to establish a balance between religious freedom and effective state or governmental oversight, creating an environment essential for a transparent management system paired with efficient resolution of disputes relating to Waqf

[299] Ministry of Minority Affairs, *Myths and Facts* (Apr. 5, 2025), Press Inf. Bureau Release No. 2119208, https://www.pib.gov.in/PressReleasePage.aspx?PRID=2119208.
[300] Naomi Choi, *Rule of Law, Encyclopaedia Britannica* (Oct. 23, 2025), https://www.britannica.com/topic/rule-of-law.

endowments. Overall, this amendment act has addressed most of the problems that have been prevalent in the past decade, but its implementation needs to be studied over the years to come.

The authors declare no conflicts of interest.

Zero-Hour Contracts: Legal Framework and Ethical Implications in Labour Law

ABSTRACT

The issue of Zero-Hour Contracts (ZHCs) has separated views concerning employee rights, job security, and employer freedom. ZHCs are widespread in sectors where the work force has to be flexible. There ZHCs allow businesses to operate efficiently, however, workers are often left in desperate situations without adequate income, social security, or legal protections. In this paper, we explore the legal bounds of ZHCs and how different countries approach them, in the ZHCs are recognized as legally permissible in the United Kingdom, although provisions are in place for protection against undue exploitation. The European union supporters for stronger labour protection and has countries like France and Germany instituting some obstructions for the sake of employment safety. On the other hand, Australia and New Zealand do have those restrictions, but provide much less over minimum wage and a guaranteed number of hours for casual employees. And in the USA, the system of at-will employment engenders the same conditions as ZHCs, although, there is some federal regulation of labour which supplies a degree of protection. ZHCs reflect certain ethics of striking a balance between economic flexibility and worker welfare. Opponents claim that this type of contract negatively affects job security, psychological heath, and even remuneration, while supporters assert that it aids in tackling joblessness and provides greater mobility to the employed. This analysis compares all of these factors and points out that there is a need for laws aimed at curbing abuse of flexible working conditions without losing their advantages. After studying zero-hour contracts, this research

recommends policies that offer adequate legal safeguards against discrimination, protection of income, and ensure social benefit for zero-hour workers without compromising economic activity in the labour market.

KEYWORDS –

Zero-Hour Contracts, Employment, Workers' Rights, Job Security, Gig Workers, Economic Justifications.

INTRODUCTION

When an organization or a business recruits' additional workers in order to make up for a lack of workers, it is known as a zero-hour contract, these contracts impose no minimum work hours. These agreements do not provide a consistent salary; instead, they simply compensate the worker for the hours they put in. Further, in such contracts, the employee is not obliged to work a specified number of hours or adhere to the proposed work schedule by the employer.

Zero-hour contracts are common in sectors like hospitality, retail, healthcare, delivery, etc. where workers' demand varies heavily. Such contracts have both pros and cons, such as great flexibility for employers, additional income, and income stability against employment uncertainty for the employees.

In simple terms, they are employment agreements in which employees are not forced to take any job provided and employers are not required to supply a minimum number of working hours. Although both parties can be flexible with this arrangement, there are some operational mechanics involved.

A 2024 survey by Press Information Bureau concluded that in FY23 19.8% workers in India were casually employed[301]. Companies have started using zero-hour contracts more nowadays in India to boost flexibility and reduce labour charges. Labour rights advocates have been critical of zero-hour worker contracts, claiming that they enable businesses to abuse workers and violate their fundamental rights. The frequency of these contracts in India and the working circumstances of people who are employed under them, however, are not well documented.

In India, a zero-hour worker contractual employment arrangement has several advantages. Firstly, they make it possible to have a more flexible work schedule. Both the employer and the employee may benefit from this. The individual can have a more flexible work schedule that suits their needs, while the company can pick from a larger pool of available personnel. Second, labour expenses may be lowered. An employer can reduce labour expenditures since they are not required to promise a specific number of hours each week. Small enterprises or those with limited resources may find this to be quite advantageous.

Thirdly, it might boost staff morale and motivation. If workers know they will not be working the same number of hours every week, they might be more inclined to work harder when required or summoned for work. Working under such contracts might result in an overall boost in motivation and morale among the colleagues.

[301] Press Information Bureau, *Government of India, Decline in Casual Workers and Rise in Regular Wage/Salaried Employees in 2022-2023: PLFS Annual Report* (Mar. 6, 2024), https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://pib.gov.in/PressReleasePage.aspx%3FPRID%3D2097939%23:~:text%3DThe%2520decline%2520in%2520casual%2520workers,employment%2520over%2520the%2520previous%2520year.&ved=2ahUKEwjbrJHohPaLAxVZUGwGHbFqM0AQFnoECBkQAw&usg=AOvVaw0HmmQn-CIckfeaOplq-yrk.

Moreover, it might help the employee and employer build trust. When a company is ready to provide its employees some extent of freedom and flexibility, it shows that they believe they can finish jobs. This might lead to stronger ties between the two parties and more trust overall.

Inflexibility is one of the drawbacks of zero-hours contracts for both employers and employees. Employees find it difficult to plan their budget and other finances when they are not aware of how many overall hours they will be working. The employers also experience challenges since they could be called on to need to quickly expand or reduce workforces. Since firms are not obligated to provide work on a weekly basis, zero-hours contracts also carry the disadvantage of possibly resulting in job insecurity because there is no guarantee of regular pay. Workers occasionally need to take several jobs to make ends meet, which can be stressful and tiring. Restricted availability of benefits. Zero-hours contracts may restrict access to several benefits available to workers under conventional contracts. This covers paid time off, sick leave, holiday compensation, and other benefits for staff members.

Unpredictable income is another major disadvantage of zero-hours contracts. This is due to the fact that companies are not obligated to offer the same number of hours every week, hence a constant income is not assured to the employees. Consequently, employees may struggle to manage their finances and plan for ahead.

RESEARCH QUESTIONS

1. What are the legal frameworks for zero-hour contracts in India, and where do they stand compared to international standards?

2. What are the ethical concerns in the usage of zero-hour contracts, and how can they be reformed through implementation of various policies?
3. In what way do zero-hour contracts impact financial stability and job security in India?
4. How do zero-hour contracts affect employer-employee relationships?
5. How can India incorporate best practices of zero-hour contracts into its labour law?

METHODOLOGY

This study uses a qualitative research approach to analyses the legal frameworks and ethical implications of zero-hour contracts in Indian labour law. To conduct the research, a doctrinal approach will be utilized to review legislations, statutory provisions, case laws and literature available which is relevant to the topic. This method of research will assist the researchers to explain the existing legal principles governing zero-hour contracts and the legal provisions and judicial interpretations surrounding them. Further, the researchers will conduct a comparative analysis to examine laws regarding zero-hour contracts in under different laws of various countries, particularly focusing on the nations where zero-hour contracts are prevalent. This analysis will assist the researchers to explain best practices from all over the world, regulatory gaps and potential reforms and recommendations to implement zero-hour contract laws in a better way in India.

This study also adopts a thematic analysis design to interpret the advantages and ethical concerns regarding such contracts, mainly job instability, unpredictable income and lack of financial uncertainty. With this approach the researchers will

be able to explain better the existing ethical dilemmas in such contracts and recommend ways in which such problems can be resolved effectively.

This study aims to provide an in-depth and well researched understanding of legal implications and ethical dilemmas of zero-hour contracts in India and propose recommendations and reforms that will bridge the gap of exploitation under such contracts.

LITERATURE REVIEW

1. De Stefano (2016)[302] in his work rightly pointed out that the rise of zero-hour contracts under non-standard employment has been the consequence of rise of gig economy and increasing globalization. Elias (2018)[303] further concludes that traditional employer-employee relationships are fluid, and they keep on evolving with the changing world.
2. Even in India zero-hour contracts have risen due to the rise of gig economy and demand for affordable and flexible labour. (Deakin, 2011)[304]. There are various legal vacuums concerning zero-hour contracts in India even with the implementation of the Code on Social Security 2020 and Occupational Safety, Health, and Working Conditions Code 2020 (Pateriya, Sahu, 2022)[305].

[302] Valerio De Stefano, The Rise of Non-Standard Employment and Its Implications for Labour Law, 37 (3) *Comp. Lab. L. & Pol'y J*. 471, 471-500 (2016).
[303] Patrick Elias, Changes and Challenges to the Contract of Employment, 38 (4) *Oxford Journal of Legal Studies*, 869-887 (Aug. 28, 2018).
[304] Simon Deakin, *Indian Labour Law and its Impact on Unemployment, 1970-2006: A Leximetric Study*, 428 Centre for Business Research, University of Cambridge, (Dec. 2011).
[305] Srijan Pateriya, Harsha Sahu, *A Brief Study on Challenges Concerning Labour Laws in India*, 45 (1) Sambodhi, (2022).

3. Various researchers have debated on ethical concerns regarding zero-hour contracts, particularly their impact on financial stability and job security. In his work, Berg (2019)[306] introduced the concept of "Precariat" to define workers employed under precarious employment conditions which includes zero-hour contracts. This claim is also supported by scholar, Fisher (2025)[307].
4. India could learn from the models of Ireland, New Zealand and UK to introduce legal safeguards regarding zero-hour contracts while integrating such laws into its own legislation. A comparative study by Freedland (2014)[308] points out that countries like Ireland and New Zealand have implemented stricter laws into their legislations to protect the rights of workers and prevent their exploitation.
5. To conclude, it can be said that zero-hour contracts are a double-edged sword. They offer flexible work to the ones who need it but at the same time they pose significant risk to workers. Recent trends show a rise in such employments in India, implementing public policies to tackle the exploitation of workers is a necessary solution to safeguard the rights of workers while accommodating the evolving needs of the Indian labour market.

ANALYSIS

Comparison with Other Employment Contract

[306] Janine Berg, *Protecting Workers in the Digital Age: Technology, Outsourcing and the Growing Precariousness of Work*, SSRN (May 31, 2019).
[307] Lucy Fisher, Transcript: *Labour and Business- Friends or Foes?,* Financial Times (Apr. 15, 2025).
[308] Mark Freedland, *The Regulation of Casual Work and the Problematic India of the 'Zero Hours Contract'* Oxford Human Rights Hub (Mar. 25, 2014).

scope and level of an employment contract typically varies from one contract to the other as regards to their security, wages, range of work, and other benefits. Zeo-hour contracts, for instance, are vastly different from the rest of the employment forms with respect to work guarantee and protection under the law. The sections below will analyze zero-hour contracts in relation to other commonly used employment models, distinguishing predominant differences within legal systems, workers' rights, and responsibilities of employers.

1. Permanent Employment Full Time Contracts –

This entails the most secure form of employment because the worker has a guarantee of a fixed base salary, working hours, and an exhaustive list of employment benefits. Complete health insurance, pension contributions, paid leave, and job security safeguarding provisions are extended under this arrangement. On the other hand, a zero-hour contract is more disadvantageous as there is no guarantee of having any working hours. Moreover, workers are compensated only for the hours that they actively work. Additionally, zero-hour workers are also vulnerable due to a lack of paid sick leave, insurance benefits, and career progression opportunities. While permanent employment offers long-term security and stability, zero-hour contracts extinguish them all for sake of flexibility, which always favors employers who have a need for manpower on demand. Every type of employment offers its own benefits and challenges. While permanent employment offers stability, zero-hour contracts offer flexibility that is required by employers.

2. Fixed Term Employment Contracts –

A fixed-term contract refers to an employment agreement where the employee is hired for a specific period or a project. These contracts usually provide guaranteed hours, payment, and other perks on par with permanent employees for the length of the contract. In addition, fixed term employees also qualify for minimum statutory pay, basic benefits, as well as protection from unfair dismissal over the duration of the contract. In contrast, a zero-hours contract shifts the burden to the employer by having no stipulated minimum number of hours of work, making it inferior to the fixed-term contract. Unlike fixed term workers who enjoy legal protection from abrupt termination of employment, zero-hour workers may be let go without any form of notice unless otherwise stated in the document.

3. Part-Time Employment Contracts –

Part time contracts are defined as having fewer hours of work than full time engagements but ensure a minimum number of hours per week. Part time workers have some employment benefits such as paid leave, social security and other employment protections on a pro rata basis. On the other hand, a zero-hour contract means no minimum hours are guaranteed, while work chances solely depend on the employer's needs. Part time workers have a constant work schedule and fixed earnings, while zero-hour workers suffer from unstable income and may not work for extended periods. Nonetheless, zero-hour contracts are more flexible because employees can choose to take or opt out of shift, while part time employees have to work according to a given timetable.

4. Casual Employment Contracts –

Casual employment contracts are common for boarding or seasonal employment where full employment benefits are not available. However, more often than not,

countries have a higher wage policy (casual loading) while also lacking job security and other employment benefits. Zero-hour contracts and casual contracts are similar in flexibility as employers have no obligation to provide regular working hours. Regardless of some of the legal frameworks needing them, casual workers are entitled over time, as they have, under some situations, zero-hour workers classified as on-call workers without the need for long term benefits.

5. Independent Contractor Agreements –

Independent contractors, including freelancers and gig workers, are engaged on a contract or project basis, which gives them control over work attendance and terms. Unlike zero-hour workers, freelancers set the rate of pay, select the clientele that they wish to work with, and are not subjugated to a single employer. Yet, both zero-hour workers and freelancers have no employment stability, no paid benefits, and lack proper legal protection against dismissal from employment. The primary difference is that zero-hour workers remain bound by an employment contract, and therefore may in some locations be entitled to the minimum wage and other incremental employment benefits, whereas freelancers are recognized as self-employed and bear all the responsibilities of taxes, insurance, and legal issues on their own.

6. Gig Economy Employment –

The gig economy includes working Zomato drivers and Uber taxi drivers, as well as designers on Fiverr, who all rely on specific tasks. The term “gig worker” is used to refer to individuals working on zero-hour contracts, and is a person who does not have set hours of work, a guaranteed income, or any employee benefits. Still, a number of gig workers are referred to as sole proprietors. This means that

they have flexibility in their work but lack legal safety nets. On the other side, zero-hour workers might still have some labour rights, which rely on their country's laws. The primary discrimination is in the worker category: gig workers are mostly categorized as self-employed, but zero-hour workers can be considered employees, even though with few rights.

Ethical and Socioeconomic Implications

The emergence of zero-hour contracts has sparked debate over the potential ethical and socioeconomic ramifications they may carry for employees, employers and society as a whole. These contracts prove more flexibility to both businesses and employees but raise important questions around workers' welfare and relations of market power. This part looks into the critical ethical and socio-economic problems linked to zero-hour contracts, concentrating on the concept of workers' protection, power subordination of the employees to the employers, and the economic defense and condemnation.

1. Employees' Protection and Economic Dependence –

There are no provisions for a minimum number of hours to be worked under these contracts. As a result, ZHCs significantly impair workers' rights and job opportunities. Those employed under zero-hours contracts experience persistent deficits in income, irregular work hours, substantial mobility constraints, and virtually no access to worker benefits, including paid sick leave, health care provisions, and pension plans. Unlike employees with ongoing or fixed term contracts, ZHCs sorely lack fundamental labour rights, thus rendering them highly susceptible to exploitation, wrongful termination or dismissal, and various form of discrimination at work.

2. Employer-Employee Power Imbalance –

Zero-hour contracts exhibit an inherent imbalance of power between employees who have far less power than their employers. There is no requirement for the employer to provide a certain number of hours legally, which gives them enormous control over who they hire, how much they work, and even whether or not they can pursue a termination. Such dynamics give rise to employment practices that border on exploitation, as employees feel unduly obliged to agree to any offered shifts lest they be deemed undesirable in the future. Additionally, workplaces with complete administrative control over shift distribution may also suffer from retaliatory outcomes and bias. The employee who speaks up against wage, working, or treatment injustices, for example, can receives punishment through reduced hours which in enables silencing rather than resolving issues. In certain industries, employees can be required to remain "on-call" for long periods of time unpaid and therefore, have their personal time restricted without compensation.

3. Economic Justifications –

Supporters of zero-hour contract argue that these deals give a lot of freedom to companies and workers in fields where demand change often. Places like hotel, stores, hospitals, and gig work need staff on call to keep costs down. Zero-hour contracts let bosses change their term size based on what customers want right now, which helps avoid paying for extra workers when it's slow. For workers, zero-hour deals mean they can fit work around their lives better picking shifts that suit them. This works well for people like students those caring for others, retirees, or anyone wanting to earn extra money. In some instances, workers can hold multiple zero-hour jobs to increase their earnings, making this a practical employment option for individuals not pursuing full-time work.

COMPARATIVE ANALYSIS

1. United Kingdom

The United Kingdom has one of the biggest zero-hour contract employees. In Aril to June of 2024 1,030,000 people were employed under these contracts.[309] In UK zero-hour contracts are prevalent in industries like retail, hospitality and healthcare. Such contracts in UK are regulated by the Employment Rights Act[310] and the Small Businesses, Enterprises and Employment Act[311]. These Acts ban exclusivity clause which means that employers cannot stop any worker employed under zero-hour contracts from seeking work elsewhere while they are not on call. The rights these workers have under UK law are very strong as they are entitled to statutory employment rights, including paid holidays, rest breaks, minimum wage prevalent all over the country, severance pay when they are laid off and protection against unfair dismissal by the employer. In the landmark case of *Pimlico Plumbers Ltd. v. Anor v Smith*[312], it was held by the UK Supreme Court that contractual labels do not override working relationship of the employee with the employer. It further held that Smith, even though employed under a zero-hour contract was entitled to national minimum wage and holiday pay.

[309] UK Government, *Consultation on the Application of Zero-Hour Contracts Measures to Agency Workers*, GOV.UK (Feb. 5, 2024), https://www.gov.uk/government/consultations/making-work-pay-the-application-of-zero-hours-contracts-measures-to-agency-workers/consultation-on-the-application-of-zero-hours-contracts-measures-to-agency-workers-web-accessible-version#fnref:2.
[310] *Employment Rights Act 1996*, c. 18 (UK).
[311] *Small Business, Enterprise and Employment Act 2015*, c. 26 (UK).
[312] Pimilco Plumbers Ltd. v. Anor v Smith [2018] UKSC 29.

2. New Zealand

New Zealand with various key amendments codified employment under zero-hour contracts and have restricted its use. Unless employers guarantee minimum working hours to the employees, the Employment Relations Amendment Act[313] prohibits zero-hour contracts. New Zealand was one of the first countries in the world to do so. Employers must guarantee compensation to the employees for their work. Lastly, if the work under such a contract is irregular, employers under such contracts must specify the terms regarding compensation and workdays for on-call time.

3. Ireland

Under Employment (Miscellaneous Provisions) Act[314] Ireland regulates zero-hour contracts under which the employers must provide a minimum wage to workers even if no work is assigned to them in such a period. Moreover, the employers must specifically mention in written the expected number of hours employees have to work for weekly and same has to be done within five days of hiring the employee.

INDIAN CASES

1. Jaggo v. Union of India[315]

The Supreme Court of India condemned the misuse of temporary contracts by government institutions, comparing it with the unethical and exploitative legal

[313] Employment Relations Amendment Act 2016, s 8 (N.Z.).
[314] Employment (Miscalleanous Provisions) Act 2018 (Ir.).
[315] Jaggo v. Union of India, (2024) SLP (C) NO. 5580 of 2024 ETC (India).

practices prevalent in the gig economy. The Court rules that such actions infringe the rights of the workers, even if they are temporarily employed.

2. Koshi Project Workers' Association and Ors. v. The State of Bihar and Ors.[316]

Patna High Court in this emphasized on the role of public sector industries acting as role models for providing fair and stable employment to workers, condemning the use of temporary employment contracts for extended periods.

INTERNATIONAL CASES

United Kingdom

1. Harpur Trust v. Brazel[317]

The United Kingdom Supreme Court in this case decided on the issue of number of working days and number of paid days off zero-hour contract workers are entitled to. The Court decided that the petitioner Mrs. Brazel, who was a music teacher during school term employed under a zero-hour contract, was entitled to 5-6 weeks of paid holidays per year calculated under the Employment Rights Act, 1996[318].

[316] Koshi Project Workers' Ass'n v. State of Bihar, (2006) 2006 SCC OnLine Pat 653: (2007) 113 FLR 301: (2007) 1 PLJR 358 (India).
[317] *Harpur Trust v. Brazel*, [2022[UKSC 21.
[318] Employment Rights Act 1996, c. 18 (UK).

2. Pulse Healthcare Ltd. v. Carewatch Care Services Ltd. and Ors.[319]

The Employment Appeal Tribunal held that caregivers employed under zero-hour contracts fell under the definition of employees as it gave preference to actual working relationship between the employees and the employer over contractual terms.

3. Autoclenz Ltd. v. Belcher[320]

The UK Supreme Court in this court ruled in favor of employees of a car valet company, it held that car valets were employees of the company due to their working conditions, and this also included significant control over employment by the employer and obligations of the employment. Despite, being employed under zero-hour contracts they were not considered as independent contractors.

4. Clyde and Co. LLP v. Bates van Winkelhof[321]

The Supreme Court held that an employee employed even under a zero-hour contract will be entitled to whistleblower protections. The respondent in the case was an employee of Clyde and Co. LLP and was working under the Employment Rights Act, 1996[322].

5. Secretary of State for Justice v. Windle and Arada[323]

[319] Pulse Healthcare Ltd. v. Carewatch Care Services Ltd. and Ors., [2012] UKEAT/0123/12.
[320] Autoclenz Ltd. v. Belcher, [2011] UKSC 41, [2011] ICR 1157.
[321] Clyde and Co. LLP v. Bates van Winkelhof, [2014] UKSC 32, [2014] ICR 730.
[322] Employment Rights Act 1996, c. 18 (UK).
[323] Secretary of State v. Windle and Arada[2016] EWCA Civ 459.

The petitioners were two interpreters employed under the Secretary of State for Justice as contract workers, and they brought claims of their employment before the Employment Tribunal under the Equality Act, 2010 alleging racial discrimination. Although, they were considered not to be employees of the ministry as there was no mutuality of obligation between the assignments, this case highlighted the importance of mutual significance of employment status for workers employed under zero-hour contracts.

USA

1. Armour and Co. v. Wantock[324]

The US Supreme Court in this case ruled that employees, including employees under zero-hour contracts were entitled to monetary compensation when they were present on the work premises, even if they were engaged in leisure activities under the Fair Labour Standards Act[325].

2. Dynamex Operations West, Inc. v. Superior Court[326]

In this landmark judgement, the California Supreme Court adopted the "ABC Test" which helped to determine whether the workers were employees or independent contractors under the state wage orders. The presumption of this test is that a worker is an employee unless the employer can demonstrate that the worker is free from administrative obligations, performs work outside the usual course of his employment, and is customarily engaged in his independent work.

[324] Armour and Co. v. Wantock, 323 U.S. 126 (1944).
[325] Fair Labour Standards Act of 1938, ch. 676, 52 Stat. 1060.
[326] Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018).

New Zealand

1. Jinkinson v. Oceana Gold (NZ) Ltd.[327]

The Employment Court of New Zealand in this 2009 case ruled on the issue of employment relationships of casual workers which included zero-hour contracts. Such an employment is considered as ongoing and not casual if there exist mutual obligations between periods of work.

2. Manu v. Steelink Contracting Services Ltd.[328]

In this 1998 case, a worker was unjustifiably dismissed from work by his employer. He classified him as a casual worker to bypass standard dismissal procedures. The Employment Court held that the employee was not a casual worker even though he was employed under a zero-hour contract as his working relationship with the employer indicated permanency.

Challenges and Issues in Regulating ZHCs

The challenge of regulating zero-hour contracts derives from the latter's flexible but precarious nature. Business needs proactive flexibility in the workforce, and policymakers find it difficult to ensure proper worker protections. Here are some main challenges in regulating ZHCs:

1. Insecurity of Job and Income –

Insecure hours are one of the main problems of zero-hours contracts and is a source of instability and financial insecurity for workers. Financial planning, securing

[327] Jinkinson v. Oceana Gold (NZ) Ltd., [2010] NZEmpC 102.
[328] Manu v. Steelink Contracting Services Ltd., [1998] 3 ERNZ 66 (Emp. Ct.).

housing and accessing loans is difficult for many workers under ZHCs, letting alone secure long-term financial stability. Regulations must also provide minimum guaranteed hours, or compensation for on-call availability, in order to reduce extreme fluctuations in worker earnings.

2. Employer Exploitation and Power Imbalance –

Employers typically have a lot of power to determine what work gets done and when, creating conditions for favoritism and unfair treatment and the exploitation of workers. Workers who refuse shifts may have fewer work opportunities in the future, forcing them to be on call indefinitely without being paid. Regulations should address the amount of discretion employers retain when assigning work.

3. Classification and Legal Protections –

ZHC workers often live in a legal grey area, making it difficult to know whether they should be considered employees, casuals or independent contractors. Most of them do not even recognize zero-hour contracts, meaning workers do not qualify for basic benefits such as health insurance, paid leave and pension contributions. In short there is no dispute that workers ought to be afforded even the most basic labour rights and protections.

4. Compliance and Enforcement with Issues –

Even in countries where laws exist to regulate zero-hour contracts enforcing these laws poses significant challenges. Many workers are not fully aware of their rights, and regulatory agencies fine it difficult to ensure compliance in sectors where ZHCs are common. It is essential to enhance labour inspections, impose penalties

for non-compliance, and implement worker awareness initiatives to guarantee that regulations are properly enforced.

5. Impact on Social Security and Public Welfare –

Employees on ZHCs frequently do not have access to social security benefits like unemployment insurance, sick pay, and pension plans. This situation leads to increased government expenditure on welfare programs, as these workers often depend on public assistance to make up for lost income and the absence of job security. Regulations need to focus on ensuring that employers contribute to social security systems to improve the strain on public welfare resources.

RECOMMENDATIONS

Recommendation for Implementing Zero-Hour Contracts in India

1. Legal Framework and Compliance –

The Indian labour law does not presently provide an explicit recognition for the existence of zero-hour contracts. In order to facilitate their functioning, the government shall enact legal provisions that define the contract terms and ensure compliance with present labour laws like the Minimum Wages Act, 1948[329], and the Contract Labour (Regulation and Abolition) Act, 1970[330]. The relevant statute should be amended so as to accommodate flexible work arrangements that would protect the rights of the workers.

[329] *The Minimum Wages Act, 1948*, No. 11, Acts of Parliament, 1948 (India).
[330] *The Contract Labour (Regulation and Abolition) Act, 1970*, No. 37, Acts of Parliament, 1970 (India).

2. Worker Rights and Protections –

Lack of job security and benefits is one of the main concerns for zero-hour contracts. There should be provisions in the law to prevent exploitation by stipulating a minimum guaranteed wage, clear terms of engagement, and access to social security schemes like Employees' Provident Fund (EPF) and Employees' State Insurance (ESI) into which the companies would contribute based on a proportion of hours worked.

3. Clear Contractual Terms –

Employers must give clear contracts in writing covering the detail of work expectations and its payment systems as well as conditions of engagement. Contracts should stipulate modes of assigning work and the minimum hours guaranteed in contracts together with rights regarding termination. Clarity on these terms would help both sides in managing their expectations and hence avoid disputes.

4. Technology-Based Methods for Managing Workforce –

A digital platform and workforce management system can promote fairness and efficacy across the assignment process. Companies can build an app or portal to announce available shifts to workers and allow them to accept or reject those work opportunities. Such transparency will ensure fair distribution of assignments among the workers.

5. Social Security and Welfare Benefits –

The government ought to create measures that guarantee workers on zero-hour contracts in terms of health insurance, pension schemes, and paid leave. The

contributions from the employer and employee could be paid at proportion to the actual working hours. This would thus encourage workers to work under this sort of contract without fear of financial insecurity.

CONCLUSION

Zero-hour contracts mark a notable shift in employment practices, providing both flexibility and challenges within the labour market. These contracts allow businesses to respond effectively to workforce needs, but they raise important issues related to job security, income consistency, and worker rights. Insights from countries like the United Kingdom, New Zealand, and Ireland show that proper regulation can help reduce the risk of exploitation while maintaining the advantages of flexible work arrangements. In India, the existing labour laws do not specifically cover zero-hour contracts, resulting in a legal gap that may expose workers to risks. For these contracts to be successfully implemented in India, it is essential to establish legal protections, ensure social security measures, and require clear employment terms. A well-rounded strategy that balances flexibility with equitable labour rights can enable India to incorporate zero-hour contracts into its labour market, safeguarding against exploitation and promoting economic sustainability. By drawing on successful global practices and tailoring policies to fit the Indian workforce, zero-hour contracts could become a beneficial employment model for both business and employees.

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REDEFINING "FREEDOM OF SPEECH "AND EXPRESSION IN THE DIGITAL ERA WITH SPECIAL REFERENCE TO INFORMATION TECHNOLOGY ACT, 2000

Abstract:

The rapid advancement of digital technology has altered the landscape of communication and reshaped the boundaries of free expression. The internet and social media have facilitated information sharing, but they have also raised concerns about eavesdropping, hate speech, misinformation, and government control. The right to "Freedom of Speech "and expression is guaranteed under" Article 19(1)(a) " of the Indian Constitution, subject to reasonable restrictions under Article 19(2). It is now challenging to control online speech due to the rise of digital platforms, which is why legislation such as the Information Technology Act of 2000 is required. In order to regulate cyber activities like digital communication, intermediary liability, and online content administration, the IT Act of 2000 was passed. The Supreme Court ruled in Shreya Singhal v. Union of India (2015) that some provisions, including as Section 66A, which made it illegal to communicate hate speech online, were unconstitutional. Nonetheless, persistent worries exist over takedown requests, government monitoring, and the function of middlemen in content filtering. The law's Section 79 also creates intermediary liability, which regulates social media companies' need to filter illegal content. This study looks into the problems facing emerging technology, legal interpretations, and the impact of the IT Act of 2000 on digital free expression. It looks into the fine line that separates protecting free speech with

thwarting online harassment, fake news, and cyberthreats. Maintaining this equilibrium is essential in the digital era to make sure that legal processes don't stifle free speech. In addition to protecting constitutional rights and preventing overreach, legal frameworks must change to reflect concerns about online abuse and security. In order to ensure digital free speech while preserving public order and national security, the report emphasizes the significance of legislative reforms, stricter privacy laws, and ethical content control.

Keywords: *"Freedom of Speech "and Expression, Information Technology Act, Privacy Regulations, Ethical Content, National Security, Public Order.*

I. Introduction:

One essential idea at the core of democratic society is the "Freedom of Speech and expression." This freedom is guaranteed in India under" Article 19(1)(a) " of the Constitution, with reasonable restrictions imposed by Article 19(2) to safeguard decency, public order, and national security. Freedom of expression was traditionally exercised through broadcast and print media, but the digital revolution has had a profound impact on how individuals communicate, exchange ideas, and access information.[331] The growth of the internet and social media has increased cross-border communication, allowing for wider participation in public discourse. However, it has also created issues such as misinformation, online defamation, hate speech, and state spying. The Information Technology Act of 2000 was passed because of the need for legal frameworks to control online speech due to the development of digital communication. The IT Act has significant implications for online free expression even if its primary purpose was to combat cybercrime and electronic commerce. Following widespread criticism for being vague and potentially exploited, the Supreme Court struck down Section 66A, which made offensive internet content unlawful, in the landmark case of Shreya Singhal v. Union of India. However, there are still problems with intermediary responsibility, government control over digital platforms, and finding a balance between legislation and fundamental rights. The relationship between digital governance and free speech is still complicated as technology develops. This article explores how speech and expression are evolving in the digital age, examining the function of the IT Act, court rulings, and the difficulties associated with regulating online content. It seeks to draw attention to the necessity of a well-

[331] V N Shukla Constitution of India by V N Shukla – 14th Edition 2024, EBC 2023. Pg no. 56

rounded strategy that protects free speech while addressing the dangers of digital communication in a quickly changing technical environment.

II. "Freedom of Speech" in the Digital Age:

Because social media and the internet provide new channels for individuals to exchange information, engage in dialogue, and express their opinions, the digital age has changed the nature of freedom of expression. People can now express their concerns about social, political, and economic issues thanks to these platforms, which have promoted democratic engagement, action, and awareness. Social media platforms have emerged as major forums for conversation, facilitating the global exchange of various viewpoints. But these platforms' enormous influence and reach have also sparked questions about how to control online speech, disinformation, and the moral obligations of digital middlemen One of the key challenges in regulating online speech is striking a balance between the right to free expression and the necessity of preventing harmful material, such as hate speech, fake news, cyberbullying, and extremist propaganda. It is difficult for governments and regulatory agencies to design policies that stop digital platform abuse without stifling free expression. Since platforms are frequently accused of either excessive censorship or failure to remove dangerous material, the presence of private businesses in content moderation further complicates the matter. The neutrality and equity of digital expression are also impacted by worries about algorithm-driven biases, data privacy, and surveillance. Different strategies are used by nations around the world to control digital speech. Some countries enforce stringent controls to keep an eye on dissent and preserve political stability, while

democratic countries support few restraints.[332] This international discussion is reflected in India's legal system, especially the Information Technology Act of 2000, which aims to protect constitutional liberties while addressing cyberthreats. Developing regulations that protect online speech without permitting abuse or overbearing control is still a difficult task.

III. Legal Framework Governing Digital Speech in India:

Article 19(1)(a) of the Constitution states that "Freedom of Speech" and expression are fundamental rights in India. However, Article 19(2) permits reasonable limitations on this right based on public order, India's sovereignty and integrity, state security, decency, morality, and defamation. These constitutional provisions serve as the foundation for regulating digital speech in India, since online communication is regarded as an extension of traditional speech and expression. The main piece of legislation controlling online material and digital communication in India is the Information Technology Act of 2000[333]. It was passed to control electronic trade, cybercrimes, and cyberactivity. One of the main laws affecting internet expression is Section 66A,[334] which the Supreme Court declared unconstitutional and ambiguous in Shreya Singhal v. Union of India.

[332] Swapanpreet Kaur, RIGHT TO FREEDOM OF SPEECH AND EXPRESSION: WITH SPECIAL REFERENCE TO ELECTRONIC MEDIA, Notion Press, 2022. Pg no. 145

[333] An act that would give legal recognition to transactions conducted through electronic data interchange and other electronic communication methods—often referred to as "electronic commerce"—that use alternatives to paper-based communication and information storage methods.

[334] The Supreme Court ruled in 2015 that Section 66A of the Information Technology Act of 2000, which made it illegal to send offensive communications using communication devices, was unconstitutional. As a result, it is no longer in force.

Section 69 allows the government to intercept, monitor, and decode digital communications for national security purposes. Section 79 provides intermediary liability protection by demanding due diligence in content monitoring and shielding digital platforms from legal action for content created by third parties. Laws other than the IT Act have an impact on the regulation of digital expression. The Copyright Act of 1957 governs the protection of digital materials, but when the Personal Data Protection Bill[335] is passed into law, it will have an effect on online expression and privacy. In an increasingly digital culture, the legal system aims to combine safeguarding digital freedom with combating the dangers of hate speech, disinformation, and cybercrime.

IV. Impact of the Information Technology Act, 2000 on Free Speech:

The Information Technology Act of 2000 has had a major impact on India's "Freedom of Speech," particularly with relation to the regulation of digital platforms and online content. One of the most controversial provisions was Section 66A, which made it unlawful to distribute offensive or false information through electronic communication. It was criticized for its vague language and its misuse to silence dissent. In the landmark decision of Shreya Singhal v. Union of India, the Supreme Court declared that Section 66A violated" Article 19(1)(a) " by placing arbitrary and disproportionate restrictions on free speech, making it unconstitutional.

[335] On August 11, 2023, the president signed the Digital Personal Data Protection Act, 2023 (DPDP Act), which seeks to create a complete legal framework for safeguarding digital personal data in India, including the duties and rights of data fiduciaries and data principals.

If digital platforms follow due diligence guidelines, Section 79 of the IT Act[336] protects them from legal repercussions for content created by third parties. But with the implementation of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021,[337] intermediaries now have more responsibilities, such as grievance redressal systems, content removal procedures, and adhering to governmental orders. Although the goal of these actions is to reduce dangerous content and disinformation, they have sparked worries about censorship and overbearing government control. The government is placing a greater emphasis on responsibility in content moderation as social media and online platforms continue to be regulated. The difficulty is in combating hate speech, cyberthreats, and fake news while making sure that restrictions don't suppress free expression. A crucial component of India's developing internet regulations is striking a balance between free speech and responsible governance as digital communication expands.

V. Judicial Interpretation and Landmark Cases:

Judicial interpretation has greatly influenced the legal framework that controls digital expression in India. In one of the most significant instances in this field, Shreya Singhal v. Union of India (2015), the Supreme Court declared Section 66A of the Information Technology Act, 2000 to be unconstitutional. Section 66A was

[336] In some circumstances, intermediates are shielded from criminal punishment by Section 79 of the Information Technology Act of 2000. It declares that third-party data, information, and communication links are not the responsibility of intermediaries. This is referred to as the "safe harbor" provision.

[337] According to the IT Rules, users are not allowed to produce, post, or distribute any content that is pornographic, infringes upon copyright or patents, contains software viruses, or endangers public order or India's unity. Users must be made aware of these limitations via intermediaries.

widely misused against journalists, activists, and ordinary citizens because it made it unlawful to distribute "offensive" or "annoying" content online. Because the clause was unclear, overly broad, and had a chilling effect on free speech, the Court found that it violated "Article 19(1)(a)" of the Constitution. The ruling made clear how important it is to protect online speech from arbitrary government interference.

In addition to Shreya Singhal, several court rulings have impacted the restriction of digital expression. In Anuradha Bhasin v. Union of India, the Supreme Court emphasized the importance of the internet as a forum for free speech and ruled that indefinite internet shutdowns violated basic rights. In the 2019 case of Faheema Shirin v. State of Kerala, the Kerala High Court recognized the right to internet access as part of the right to privacy and education. In keeping with the evolving legal landscape around digital expression, courts have also handled cases involving intermediary responsibility, data privacy, and internet censorship.

These rulings highlight the role of the judiciary in balancing the need for regulation with the right to free expression. As digital communication expands, judicial control remains essential in avoiding undue restrictions and ensuring proper online speech. In the case of K.S. Puttaswamy v. Union of India, decided in 2017, the Supreme Court recognized the right to privacy as a fundamental right under Article 21. This decision has affected digital expression and brought attention to the need of protecting individual liberties in the digital realm since it laid the foundation for challenges against online censorship, data collection, and surveillance.

VI. Challenges and Concerns in the Digital Era

In the digital age, Indian courts have been essential in interpreting rules pertaining to internet censorship, hate speech, fake news, and privacy. Fake news and hate speech have become significant issues, drawing court attention. The Supreme Court acknowledged the hazards of hate speech in Pravasi Bhalai Sangathan v. Union of India[338] but stressed that rather than placing undue restrictions on free expression, new legislation was required to effectively combat it. In handling cases involving fake news, especially during elections and the COVID-19 outbreak, courts have emphasized the need for regulation while maintaining press freedom. Government regulations and online censorship have been contested in several cases. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, are one example of a rule that has been challenged for giving the government extensive authority to control online content, which has raised concerns about overreach.

The courts recognize that monitoring and privacy affect the right to free speech, which makes them contentious issues. In K.S. Puttaswamy v. Union of India, the Supreme Court upheld the right to privacy, which affected laws governing the gathering and tracking of data. The case has affected challenges to the government's power to monitor online behaviour under Section 69 of the IT Act, which allows for the decryption of digital communications. In the digital age, the balance between individual rights, national security, and free speech is still shaped by judicial interventions.

[338] AIR 2014 SUPREME COURT 1591

VII. Challenges and Concerns in the Digital Era:

Freedom of expression has faced significant obstacles in the digital age, especially when it comes to censorship, hate speech, fake news, and privacy issues. The quick transmission of content on social media has led to a rise in hate speech and fake news. Misinformation has the power to sway public opinion, provoke violence, and impede democratic processes. The IT Act and the Bharatiya Nyaya Sanhita[339] both contain legal requirements, however defining and controlling hate speech is still difficult. It might be challenging to strike a compromise between ensuring people's right to free speech and protecting them. Online censorship and government laws have also sparked concerns about excessive control over digital expression. Even if rules like the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 are intended to prevent illicit content, there is rising criticism that they give authorities broad authority over internet platforms. These restrictions, which compel social media companies to comply with takedown requests and reveal user identities, raise worries about overreach and the suppression of dissent.

The digital environment is made even more complex by concerns about privacy and surveillance. Section 69 of the IT Act permits government monitoring and interception of digital communications, raising worries about data misuse and mass spying. Concerns of a stifling impact on expression persist notwithstanding the Supreme Court's recognition of privacy as a fundamental right in K.S.

[339] The Indian Penal Code (IPC) is superseded as India's main criminal law by the Bharatiya Nyaya Sanhita (BNS), which was passed in December 2023 and went into effect on July 1, 2024. The BNS amends and unifies the laws pertaining to offenses and punishments.

Puttaswamy v. Union of India, which has affected lawsuits against governmental surveillance. Finding a balance between protecting fundamental rights and putting security measures in place is still essential in the quickly evolving digital landscape.

VIII. Balancing Free Speech with Digital Governance:

A multifaceted strategy that guarantees accountability without sacrificing fundamental rights is needed to strike a balance between free speech and digital governance. The function of digital platforms' self-regulation is one important component. To maintain freedom of expression while filtering material, social media firms and internet middlemen are essential. In order to combat hate speech, false information, and damaging content, numerous platforms have put in place community standards, fact-checking tools, and content moderation procedures. But there are still issues with uneven enforcement, biased moderating, and the impact of governments on platform regulations. Maintaining free and fair digital conversation requires finding a balance between platform autonomy and governmental control.[340]

Another crucial element in defending digital rights is the requirement for stricter privacy and data protection regulations. Legal frameworks must give user privacy as a priority in light of growing government surveillance and data breaches. In K.S. Puttaswamy v. Union of India (2017), the Supreme Court acknowledged privacy as a basic right, which had an impact on the creation of the Personal Data Protection Bill in India. To control data collecting, stop abuse, and guarantee

[340] Anja Kovacs, Internet Governance and the Indian Media, 2010, Internet Democracy Project. Pg no. 137

openness in digital governance, a strong data protection law is required. A balanced regulatory approach is necessary to maintain fundamental rights and ensure accountability. Governments must guard against false information and cyberthreats without placing undue limits on free expression. Abuse of power can be avoided with the support of user rights protections, judicial oversight, and openness in content removal requests. To maintain constitutional liberties and promote a secure and democratic online environment, digital governance should be based on the principles of transparency, security, and accountability.

IX. Recommendations and Conclusion:

A few suggestions can be taken into consideration to guarantee a just balance between digital governance and freedom of speech. First, legislation must be specific and unambiguous to avoid the abuse of ambiguous clauses that could restrict free expression. Any regulation must follow the reasonable constraints specified in Article 19(2) and be consistent with the constitutional protections provided by" Article 19(1)(a) ". Second, digital platforms need to improve their self-regulation processes by implementing open, politically and ideologically neutral content moderation guidelines. By establishing independent oversight, accountability may be strengthened, and arbitrary censorship can be avoided. To protect user privacy and solve issues with monitoring and data exploitation, a comprehensive data protection law is required. User consent, data security, and defense against unjustified state intrusion should be given top priority in the introduction of the Personal Data Protection Bill. To verify that digital speech restrictions adhere to constitutional standards, judicial scrutiny is also essential. In order to protect fundamental rights and stop government overreach, courts must continue to be actively involved.

There are advantages and disadvantages for free speech in the digital age. Even while the internet has made it easier for people to participate in public life and obtain information, problems like false information, online censorship, and privacy intrusions necessitate a balanced response The Information Technology Act of 2000 and evolving judicial decisions have shaped India's digital speech environment. To guarantee that free expression is maintained while tackling new threats in the digital sphere, a cooperative strategy combining legislators, courts, digital platforms, and civil society is required going forward. In a world that is becoming more interconnected, maintaining democracy and individual liberties will require a complex and open regulatory structure.

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Manual Scavenging in India: Legal Loopholes and Caste Realities

Abstract

In India, manual scavenging continues to be a deeply ingrained form of caste-based discrimination, even with constitutional commitments to dignity and equality as well as statutory prohibitions of employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 conceptualised. This article will examine the failure to enforce these laws and the widening gap between statutory promises and ground realities. The authors argue manual scavenging cannot be understood as only a labour issue; it is a systemic violation of human rights that is based in the caste hierarchy. The article also explores how sanitation work increasingly contract-based and a gig economy has transformed this practice, removing autonomy for the workers and protections under the law and society. Drawing from Safai Karamchari Andolan v. Union of India (2014), publicly available data, and international human rights reports, this article identifies the urgent need for legal reform, the complete mechanisation of sanitation work, and socio-economic rehabilitation of impacted communities. The authors argue that to recondition dignity and equality socially, not only are laws needed, but also a structural reform of caste-based exploitation.

KEYWORDS: - Caste-based discrimination, enforcement failure, legal reform sanitation work, social inequality.

Introduction

Manual scavenging remains one of the most persistent and dehumanising forms of labour in contemporary India, despite being officially outlawed for decades. The 'Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013' defines manual scavenging as the manual cleaning, carrying, disposing of, or handling of human excreta in insanitary latrines, open drains, or pits. This legal definition captures the surface of the practice, but in practical terms, manual scavenging includes a broad range of degrading tasks such as entering septic tanks and sewers, often without protective gear or safety measures. Workers, mostly from Dalit communities that have faced discrimination for a long time, do this work in conditions that break both Indian laws and international human rights rules.[341] The persistence of this practice is deeply rooted in India's socio-legal history.[342] While the Constitution of India abolishes untouchability under Article 17 and guarantees equality and dignity under Articles 14 and 21, the lived reality of many manual scavengers stands in stark contrast. The 'Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993' was the first central legislation to address the issue explicitly. However, it suffered from weak implementation, lack of rehabilitation measures, and minimal state accountability. This led to the enactment of the more comprehensive 'Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013', which not only

[341] Human Rights Watch, *Cleaning Human Waste: "Manual Scavenging," Caste, and Discrimination in India* (2014), https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india.

[342] Baruah, A. (2014). The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013: A Review. Space and Culture India. https://doi.org/10.20896/saci.v1i3.41

prohibits the employment of persons for manual scavenging but also mandates the identification and rehabilitation of existing workers. Yet, in practice, the problem remains acute. According to official data from the Ministry of Social Justice and Empowerment (MSJE), over 58,000 individuals have been identified as manual scavengers in recent surveys, although activists argue that the actual numbers are significantly higher. Every year, we hear news about workers dying from suffocation while cleaning septic tanks or clearing sewers without the right safety gear. In 2019 alone, more than 110 workers lost their lives this way. This clearly shows that there's a big gap between what the law promises and what happens in real life. A newer and just as worrying problem is the rise of gig-based manual scavenging.[343] To cut costs and avoid long-term commitments, city governments and private companies have started hiring sanitation workers through gig apps or on short contracts. Since these workers aren't treated as official employees, they don't get the usual protections that regular workers have. This creates a grey area in the law, making it easier for companies to take advantage of them.

Manual Scavenging and the Gig Economy

Rise of Contract-Based and Platform Labour

The rapid growth of the gig economy in India has fundamentally altered traditional labour relations, including within sectors historically associated with caste-based

[343] Zhang, Z. B., & Liu, C. (2024). Identification of the factors influencing speeding behaviour of food delivery e-bikers in China with the naturalistic cycling data. International Journal of Occupational Safety and Ergonomics. https://doi.org/10.1080/10803548.2024.2393027

exploitation. Gig work, as defined by the 'NITI Aayog in its 2022 report', refers to "a work arrangement outside the traditional employer–employee relationship," often involving temporary or task-based employment mediated by digital platforms. Although the term is generally associated with food delivery, ride-hailing, or freelance digital work, sanitation services have also begun to be absorbed into this model—bringing with them complex legal and ethical implications, especially when tied to the practice of manual scavenging.

Regulatory Gaps in the Unorganised Sector

The legal framework surrounding gig work in India remains fragmented. **While there is no singular law governing gig employment, certain protections are provided under the 'Code on Social Security, 2020', which introduces the terms "platform worker" and "gig worker." However, the code does not equate gig workers with formal employees, nor does it confer the full spectrum of labour rights—such as minimum wage, job security, or social security benefits—that come with regular employment**. This lacuna becomes particularly concerning when the gig model is extended to sanitation and waste management tasks traditionally associated with manual scavenging.

Accountability and Enforcement Challenges

In many Indian cities, municipalities have begun outsourcing sanitation work to private contractors or app-based service providers. Start-ups and private firms now offer services for septic tank cleaning or drain unclogging through mobile applications. Workers engaged via these platforms are often recruited informally and are not classified as employees. This creates a grey zone where manual scavenging continues under the guise of "on-demand" sanitation work. These

workers are paid per task, are not covered under health insurance or safety schemes, and are frequently sent into hazardous conditions without protective gear—violating both the 2013 Act and the 2014 Supreme Court judgment in Safai Karamchari Andolan v. Union of India.[344] The absence of formal employment status means that such workers fall outside the jurisdiction of enforcement agencies tasked with monitoring violations of manual scavenging laws. Since the work is presented as "voluntary" or "task-based," it becomes harder to track or prosecute violations. Moreover, these gig-based roles are disproportionately filled by individuals from Dalit communities, continuing the historic link between caste and sanitation work. Media investigations have highlighted the rise of gig-based manual scavenging in cities like Bengaluru, Chennai, and Delhi, where tech-enabled sanitation companies recruit workers to clean septic tanks for private homes or housing complexes. In many instances, workers have reported that they were unaware of the risks involved, received no training, and had no recourse to compensation in case of injury or death. For example, in a 2022 report by Scroll.in, workers engaged through a mobile app in Tamil Nadu were found to be entering septic tanks without any safety equipment. They were paid per tank cleaned, with no formal employment contracts or social security. Another case from Hyderabad involved a platform promising "hygienic sanitation services," but investigations revealed that Dalit workers were manually cleaning drains using bare hands. The company said it wasn't responsible because the workers were "independent contractors." This helped them avoid following the rules of the 2013 law. It shows how risky it is to let gig work grow in dangerous and caste-sensitive jobs without proper government control. The problem is compounded by a lack of effective

[344] Narayana, S. (2019). Editorial. https://doi.org/10.12728/culj.14.0

grievance redressal mechanisms. Workers in the gig sanitation sector often have little to no voice in how their work is organized. Labour unions have yet to penetrate this sector meaningfully, and existing laws such as the 'Inter-State Migrant Workmen Act' or 'Factories Act' do not apply to such decentralized, app-based work.In essence, the adoption of gig economy models for sanitation services has not eliminated manual scavenging; rather, it has modernised its invisibility. [345]The state's failure to formally recognise these workers as employees allows caste-based exploitation to persist under new labels. This evolution calls for urgent regulatory attention—both to extend full labour protections to all sanitation workers and to ensure that gig-based platforms are not used as vehicles to bypass constitutional and statutory obligations.

Human Rights and Caste-Based Discrimination

Persistence of Caste-Linked Occupations

Manual scavenging is not simply a labour rights issue—it is fundamentally a violation of human dignity rooted in caste-based discrimination. Despite legislative prohibitions, the persistence of this practice highlights the embedded nature of caste hierarchies in Indian society and exposes a failure to translate constitutional and international human rights norms into lived realities for Dalit communities. The history of manual scavenging is inseparable from the varna system and caste stratification. Traditionally, certain Dalit sub-castes, such as the Valmikis and Helas, were forced into cleaning human waste and disposing of corpses—tasks considered ritually polluting by the dominant castes. This

[345] In Hanuman's name, Dalits in this Karnataka village are denied access to village well. https://www.thenewsminute.com/karnataka/hanumans-name-dalits-karnataka-village-are-denied-access-village-well-60450

occupational segregation was enforced through social norms and religious sanction for centuries and persists in modern India despite constitutional guarantees. Article 17 of the Indian Constitution abolishes untouchability "in any form," and Article 15 prohibits discrimination based on caste. However, the practice of manual scavenging—overwhelmingly performed by Dalits—demonstrates the endurance of structural untouchability. The 2013 Act explicitly links manual scavenging to caste discrimination, acknowledging that the practice survives because of deep-seated social biases. Yet even today, sanitation work remains a hereditary occupation in many parts of India, often passed down within Dalit families due to lack of access to alternative employment, education, or housing. This systemic marginalisation makes manual scavenging not only a labour rights violation but also a caste atrocity, perpetrated in violation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

International Human Rights Standards

International human rights bodies have repeatedly condemned India for its failure to eliminate manual scavenging. The United Nations Special Rapporteur on the human rights to safe drinking water and sanitation has noted that India's sanitation framework continues to depend on the "caste-based assignment of cleaning jobs," and called for greater regulation and rehabilitation efforts. Similarly, the UN Committee on the Elimination of Racial Discrimination (CERD) has recognized caste as a form of descent-based discrimination and held that caste-based occupations violate the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[346], the National Human Rights Commission

[346] United Nations Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Report on the Human Rights to Safe Drinking Water and

(NHRC) has published several reports and advisories acknowledging manual scavenging as a grave human rights violation. It has documented hazardous working conditions, failure of state rehabilitation schemes, and deaths due to asphyxiation in septic tanks. The NHRC has recommended that the government strengthen monitoring mechanisms, penalise non-compliant municipalities, and ensure effective implementation of the 2013 Act.[347] remain unimplemented, and enforcement remains weak. Manual scavenging also violates India's obligations under various international conventions, particularly those concerning labour, gender, and social justice.

Gendered and Intersectional Impacts

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is particularly relevant in highlighting the gendered dimensions of manual scavenging. Women—often assigned to clean dry latrines—face not only health hazards but also social exclusion and sexual exploitation. Yet, most state-level surveys and rehabilitation schemes are male-centric, ignoring the unique vulnerabilities faced by Dalit women sanitation workers. From a labour rights perspective, the International Labour Organization (ILO) has long advocated the Decent Work Agenda, which promotes opportunities for work that is productive, delivers fair income, security, dignity, and social protection. Manual scavenging stands in direct contradiction to this framework. It offers no job security, is frequently informal, and involves exposure to deadly toxins without

Sanitation: Visit to India, ¶¶ 36–40, U.N. Doc. A/HRC/39/55/Add.1 (June 2018), https://undocs.org/A/HRC/39/55/Add.1.

[347] National Human Rights Commission, Advisory on Elimination of Manual Scavenging and Protection of Sewer and Septic Tank Workers (2021), https://nhrc.nic.in/media/advisories.

protective gear. India's failure to eradicate this practice violates the principles of ILO Convention No. 111 (Discrimination in Employment and Occupation) and Convention No. 182 (Worst Forms of Child Labour), particularly when children are found assisting parents in such work. Although India has not ratified all of these conventions, it remains morally and politically accountable as a signatory to the Universal Declaration of Human Rights, which guarantees every person the right to dignity, equal treatment, and safe working conditions.[348]

Towards a Holistic Human Rights Approach

Manual scavenging still exists mainly because of caste discrimination, and this is a serious violation of Dalit human rights. Many Dalit activists and groups, like the Safai Karamchari Andolan (SKA), keep saying that we can't fully end manual scavenging unless we deal with the caste system behind it. They stress that mere technological or legal solutions will be insufficient unless accompanied by social transformation, which includes education, land reform, and occupational diversification for Dalit communities. Judicial interventions have acknowledged this link as well.[349] **In Safai Karamchari Andolan v. Union of India (2014),[350] the Supreme Court declared that engaging people in manual scavenging is a**

[348] International Labour Organization, ILO Participates in Open Discussion on "Dignity and Liberty of Individuals: Rights of Manual Scavengers", ILO (Jan. 3, 2025), https://www.ilo.org/resource/news/ilo-participates-open-discussion-%E2%80%9Cdignity-and-liberty-individuals-rights.

[349] Human Rights Watch, Cleaning Human Waste: "Manual Scavenging," Caste, and Discrimination in India (2014), https://www.researchgate.net/publication/357173717_Cleaning_Human_Waste_Manual_Scavenging_Caste_and_Discrimination_in_India

[350] Safai Karamchari Andolan v. Union of India, (2014) 11 S.C.C. 224 (India).

violation of their fundamental rights under Articles 14, 17, and 21. The Court directed the government to provide compensation to the families of workers who died in sewer or septic tank cleaning, and to take proactive steps towards rehabilitation. However, implementation remains inconsistent across states, and many families continue to await compensation or legal redress. In short, manual scavenging is not just a social or economic problem — it is a serious human rights issue linked to caste. It goes against India's promise of equality, justice, and dignity for everyone, and also breaks many international agreements. Meaningful change requires a holistic approach—one that integrates legal reform with social justice, and regulatory enforcement with grassroots empowerment.

Legal and Constitutional Framework

Constitutional Safeguards

In India, manual scavenging, defined as the practice of cleaning dry latrines, sewers, and septic tanks by humans, has continued to remain one of the world's very few human rights violations, according to the Constitution's guarantee of dignity and equality. It could be seen as societal attempts at legalizing discrimination against a category of workers popularly known as 'manual scavengers,' who mostly belong to the Dalit caste. What this has unveiled is a tremendous distance between law and practice regarding human dignity. Although manual scavenging has been outlawed by virtue of Articles 14 (equality before law), 17 (abolition of untouchability), 21 (Right to life and dignity), and 23 (Prohibition of forced labor), constitutional safeguards are impotent, especially when judicial interpretations such as those found in *Francis Coralie Mullin v.*

Administrator, Union Territory of Delhi[351], and *Bandhua Mukti Morcha v. Union of India*[352] add dignity to Article 21. Furthermore, Constituent Assembly debates bear testimony to the fact that Article 17 was broadly framed to capture the evolving practices of discrimination, and this, in turn, reaffirms that manual scavenging should not be recognized as constitutional.[353]

Statutory Efforts: The 1993 and 2013 Acts

Statutory attempts, such as the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993[354][355]in order to absolutely abolish these practices through prohibiting construction of dry latrines and ensuring rehabilitation.

Loopholes and Judicial Interpretation

The main flaw exists in Section 2(g) of the 2013 Act, which allows manual scavenging when protective gear is provided, thus perpetuating the practice instead of abolishing it.[356]This Bandhua Mukti Morcha v. Union of India,

[351] Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608 (India)
[352] Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 (India).

[353] Shaileshwar Yadav, Dying Scavengers and Recurring Amendments 8 (2021), https://ssrn.com/abstract=3812517.
[354] Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, No. 46 of 1993, Acts of Parliament, 1993 (India)
[355] Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, No. 25 of 2013, Acts of Parliament, 2013 (India).
[356] Asang Wankhede, The Legal Defect in the Conditional Prohibition of Manual Scavenging in India, 17 Contemp. Voice Dalit 42, 44–45 (2025).

clarified that the State has a positive duty under Article 23 to protect workers from degrading and forced labour. These judicial interpretations demonstrate that Section 2(g)'s allowance of "protective gear" cannot justify continuing manual scavenging—it constitutionally fails the tests of dignity, equality, and freedom from exploitation **especially in *Safai Karamchari Andolan v. Union of India*, mandated compensation and referred to manual scavenging as a violation of fundamental rights; however, the most recent statements by the Supreme Court, which in this case compared sewer deaths to "gas chamber deaths," reveal that ground realities continue to be deplorable**[357]In spite of progress, there are still many blockers such as negligence towards implementation, lack of infrastructure and age-old biases of caste which need to be addressed for complete eradication. It is obligatory to have an unconditional prohibition along with full mechanization of sanitation for dignified rehabilitation. This is needed to enact the constitutional dream of equality and human dignity for all.[358]

Policy and Legal Reform Proposal

Persistence of Manual Scavenging and Legal Contradictions

Even today, in India, manual scavenging exists because of deep-seated caste structural violence and the inability of the legal- policy mechanism to stand for the very lived realities of Dalit communities, despite this having been outlawed by Indian law and condemned by international human rights frameworks. The Act follows a forward-looking approach to abolish manual scavenging; however,

[357] Safai Karamchari Andolan v. Union of India*, (2014) 11 S.C.C. 224 (India).
[358] E. Deepika, *Manual Scavenging: A Gloomy Side of the Country*, 6 Int'l J.L. Mgmt. & Human. 941 (2023).

Section 2(g) is a gaping loophole in it, allowing manual cleaning so long as protective gear is made available; this legalising the very practice it intends to abolish.[359] From gig economy perspectives, new-age manual scavenging is held to be informal contract work, through which municipalities and private companies can shirk legal accountability by asserting that workers are "independent contractors."[360] **While these gig-based contracts for sanitation work violate the spirit and letter of both the 2013 Act and the Supreme Court's ruling in *Safai Karamchari Andolan versus Union of India* (2014), sanitary workers are commonly not given any protective equipment, health insurance, or labour rights.** This is the situation that calls for greater legal reforms. An unqualified, absolute ban on any form of manual scavenging, wiping away all exceptions that allow such practices under the guise of safety gear or voluntariness, should be incorporated into the 2013 Act.

Need for Comprehensive Legal and Structural Reform

Moreover, India's fragmented labour framework requires a major restructuring-one that will treat gig sanitation workers within the protective umbrella of of the Code on Social Security, 2020, ensuring minimum wages are granted to them

[359] The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, No. 25 of 2013, § 2(g), Acts of Parliament, 2013 (India), https://ncsk.nic.in/sites/default/files/manualsca-act199136357385163824446l0.pdf.

[360] Sakshi Saldanha et al., Between Paternalism and Illegality: A Longitudinal Analysis of the Role and Condition of Manual Scavengers in India, 7 BMJ Glob. Health e008733 (2022), https://gh.bmj.com/content/7/7/e008733.

while maintaining provisions for occupational safety and social security. Simultaneously, a new single law must be enacted, binding the entire circle of Faecal Sludge and Septage Management (FSSM) with considerations of public health, environment, and worker safety in a manner that pays stringent attention to banning any manual means of sanitation, requiring full mechanisation instead.[361]required, which must champion the mechanising of sanitation work away from manual execution with robotic devices and vacuum-based desludging systems. The Mission must also be supported through state subsidies and training programs for sanitation workers to jointly empower them in operating, maintaining, and managing these systems to ensure that they share a just transition.

Rehabilitation and the Way Forward

Furthermore, regulatory oversight of sanitation gig platforms must be intensified—forcing platforms to register, uphold transparency in employment contracts, and enforce occupational health standards. From the social justice front, rehabilitation cannot be reduced to token monetary compensation and job schemes alone. It must include land grants, skill-building programs, and long-term livelihood alternatives for affected families, particularly Dalit women at the receiving end of caste-class-gender liabilities.

Conclusion

The issue of manual scavenging continues to be one of the most serious violations of human dignity in India. It is rooted in caste-based hierarchies and is perpetuated by neglect from

[361] Philippe Cullet, Faecal Sludge and Septage Management: Rights and Regulatory Dimensions, 9 Env't L. & Prac. Rev. 1 (2024).

the law and institutions. The practice has survived, despite constitutional protections and the 1993 and 2013 Acts, in its traditional form, as well as in its newly branded form of gig-based sanitation work. Even though the law states that manual scavenging should not take place, the 2013 Act legitimizes it by allowing manual cleaning with safety gear in the case of excreta, as described in Section 2(g) of the Act. The fact that these gig sanitation workers are unrecognized only serves to amplify the chasm between constitutional values and constitutional realities. The persistence of manual scavenging is a structural injustice that offers a deadly combination of caste oppression, labour insecurity, and apathy from the state. Dalit communities are forced to carry the burden of it through intergenerational poverty and exclusion, while privatization and digitization have only exacerbated the invisibility of that work.

True reform must include an amendment to the 2013 Act which implements a full ban on all forms of manual scavenging and formally recognizes gig sanitation workers under social security and labor laws. Municipal bodies and contractors must be designated as criminally and monetarily liable for sewer deaths and violations. A National Sanitation Mechanisation Mission should be developed to fully mechanise waste management and provide sanitation workers with safe and dignified livelihoods through sustainable practices.

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THE UNSEEN EXODUS: LEGAL IMPERATIVES FOR PROTECTING ENVIRONMENTAL REFUGEES

"In the face of rising waters and vanishing lands, we must ask: Who will protect those whom the law does not yet see?"

ABSTRACT

Where may one seek refuge when one's home turns into a wasteland? Currently, as climate disasters intensify, millions are particularly compelled to abandon their homes due to their unlivable conditions, while international law remains silent on environmental refugees. Lacking formal and legal recognition and having relatively restricted safeguards, these displaced people are, in the best-case scenario, excluded from the most common legal frameworks, including the 1951 Refugee Convention.

This paper considers the emerging issue of forced migration due to the environment and the implications on the existing international laws. It discusses the harm of lacking a clear legal definition on people who are forced to leave due to climate events and indicates key global conferences that acknowledge this lacking aspect. The research is aimed at determining the boundaries of the existing refugee law in relation to individuals who migrate due to climatic change. Further it examines instances of human mobility due to climate change in risky areas in which environmental shifts are already influencing human mobility. It also covers new international rules and policies that acknowledge the use of climate-related displacement as an increasing issue. The study presents these changes in the

framework of global discourse, which demonstrates that environmental mobility is emerging as a significant humanitarian and legal concern that requires continuous research.

Keywords: Climate Change, Environmental Refugees, Climate- Induced displacement, Human Rights, International Law, Migration Governance, Climate Policy.

INTRODUCTION:

Background & Global Context

Climate-induced migration has become a major concern; the World Bank reports that by 2050, more than 200 million people could become environmental refugees[362] in six areas, including Sub-Saharan Africa and South Asia. The new levels of hurricanes, descriptions, and elevations of sea levels primarily force displacement. These international data demonstrate not just how many people were displaced during climate but also its disproportionate effect on the susceptible areas. To understand how these much larger trends are being played out on the ground, one needs to look at country-specific experience in which an increase in sea level, extreme weather, and scarcity of resources are already pushing communities to migrate. Such a challenge, as explained above, poses a

[362]World Bank, Groundswell: Preparing for Internal Climate Migration 5–8 (2018), https://openknowledge.worldbank.org/handle/10986/29461.

clear and present danger to a country like Bangladesh, where perhaps 17.5% of its geographical spread can be inundated, displacing millions of people.[363]

Understanding: 'Environmental Refugees'

Environmental refugees, more broadly known as "**climate migrants,**" are individuals who have been displaced from their homes because of environmental concerns. [364]

The universal definition of refugees under the 1951 Refugee Convention[365] It is clear they are persons who have been forced to flee due to a well-founded fear of persecution because of race, religion, nationality, or political opinion. This is because environmental refugees do not fall within this legal category. Therefore, there is a gap that results in the Literature, Millions of people without legal documents or international protection.[366]

Causes of Climate-Induced Displacement

Environmental migrants belong to a large group of immigrants who flee their homelands due to multiple factors:

- Natural disasters

[363] National Geographic, *Environmental Refugee*, Nat'l Geographic Educ. (Oct. 10, 2024), https://education.nationalgeographic.org/resource/environmental-refugee/.
[364] UNHCR, *Global Trends: Forced Displacement in 2020* (2021), UNHCR, https://www.unhcr.org/sites/default/files/legacy-pdf/4d944d089.pdf.
[365] Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 150.
[366] Rishabh Raj, The Legal Status of Environmental Refugees: Should International Law Recognize Climate-Induced Displacement?, SSRN (Jan. 27, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5100531.

- Global warming
- Climate change
- Forest fire and flooding, etc.[367]

Real-World Examples of Environmental Migration

The situation of the *Pacific Island nation of Tuvalu* is that the rise in sea levels can make the country uninhabitable within the next 50 years.[368] In the same manner, in Bangladesh, coastal *Bhola island* flooding has already forced millions of people to be displaced, and 500000 more are displaced every year.[369] Thus, there is a prediction made by various scientists that soon Bangladesh will lose 17% of its land by 2050 because of floods.[370]

Thus, the *Maldives*- an island country located in the Indian Ocean - most likely is the country that is to face the problem of sea-level rise on its islands. Again, the Maldives with an elevation of 2½ feet (0.7 meters) above sea level at its highest

[367]Christel Cournil, The Protection of 'Environmental Refugees' in International Law, ResearchGate (Jan. 2011), https://www.researchgate.net/publication/280047731_The_protection_of_'environmental_refugees'_in_international_law.

[368] Intergovernmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis 1214–1217 (V. Masson-Delmotte et al. eds., 2021).

[369] World Bank, Groundswell: Preparing for Internal Climate Migration 5–8 (2018), https://openknowledge.worldbank.org/handle/10986/29461.

[370] World Bank, South Asia: Climate Change and Disaster Displacement—Country Profile: Bangladesh 7–10 (2020), https://www.worldbank.org/en/country/bangladesh.

point.[371] Global warming is going to produce climate refugees because of shifting habitats and shifting economies due to the sea level rise.

Venice is a city existing on many islands in a lagoon in Italy along the Adriatic Sea and is gradually sinking and more frequently experiences floods because of the rising sea levels. In the year 2100, Venice could be almost flooded.[372] This has made them environmental migrants since the population of the city has dwindled by over 50% since the 1950s.[373]

Research Methodology

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources to assess existing gaps and propose reforms within the international legal framework.

[371] Central Intelligence Agency, The World Factbook: Maldives (2025),https://www.cia.gov/the-world-factbook/countries/maldives/.
[372] Intergovernmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis 1480–1484 (V. Masson-Delmotte et al. eds., 2021).
[373] National Geographic, Environmental Refugee, Nat'l Geographic Educ. (Oct. 9, 2024), https://education.nationalgeographic.org/resource/environmental-refugee/.

ENVIRONMENTAL REFUGEES AND INTERNATIONAL LAW

Legal Invisibility in the 1951 Refugee Convention:

Simultaneously, the entire framework of international law itself remains almost completely invisible to its subject.

The 1951 Refugee Convention lacks protection for climate refugees in several ways. For one, it only offers refuge for a limited number of reasons, such as race, religion, or political view thus completely excluding displacement due to climate change. Second, the persecution must come from a human agent, such as a state, and thus can rarely be invoked to cover climate-related cases. Finally, the Convention has the Refugee being outside his/her country of origin, while most cases of climate displacement are internally displaced.[374]

The main pillars of refugee rights are principles enshrined in the non-refoulement provision of the 1951 Convention and the 1967 Protocol.[375] As for this principle, the *UNHCR* has argued that it could apply to climate refugees However, protection claims are strongest when persecution is involved. Looking at the legal weight today, one will find that the existing framework is insufficient as it does not support climate refugees without signs of persecution.[376]

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[374] Katie L. Peters, *Environmental Refugees*, Senior Project, Cal. Poly State Univ. (Winter 2011), https://core.ac.uk/download/pdf/19142837.pdf.
[375] Tilman Rodenhäuser, The Principle of Non-Refoulement in the Migration Context: 5 Key Points, ICRC (Mar. 30, 2018), https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points.
[376] Harris, M. & Bärtsch, N., *The Global Migration Framework Under Water: How Can the International Community Protect Migrants?*, Chicago J. Int'l L. (Oct. 6, 2024), https://cjil.uchicago.edu/online-archive/global-migration-framework-under-water-how-can-international-community-protect.

Challenges in Expanding the Refugee Definition

There is a reluctance to categorize climate-induced displacement, even though attempts have been made to expand the interpretation of 'refugee'**. The United Nations High Commissioner for Refugees (UNHCR)** accepts that environmental factors do not in themselves produce refugees but do amplify displacement cases.[377]

Consequences of the Lack of Legal Status

Since environmental refugees are not accorded legal status, they lack asylum, relocation assistance, as well as viable protection from exploitation.

INTERNATIONAL LEGAL CHALLENGES AND CASE DEVELOPMENTS

Limitations of Existing Refugee Framework

There is potential to achieve a common or 'expanded' definition of refugees the prospects are severely challenged, especially by countries that do not want a flood of refugees. The reluctance is due to issues of sovereignty and resources at the national level.

Many countries are not willing to change the international refugee law concerning the burden of responsibility of environmental refugees.

[377] OU.N. High Comm'r for Refugees, Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters 1-3 (2020).

A stand-out example is the case of ***Teitiota v. New Zealand (2020)*** of Ioane Teitiota, a Kiribati man who attempted to claim refugee status in New Zealand because of the deadly climate change effects that including flooding. He claimed that the move to the U.N. Human Rights Committee was unsuccessful[378] because the threat was not considered sufficiently imminent; this illustrates how climate displacement has not been effectively achieved under the legal systems.

The role played by an International Organizations (UNHCR, Nansen Initiatives):

Despite the leadership of the *United Nations* in discussions over environmental refugees, international organizations have not created common binding agreements or structures to address the protection of environmental refugees. In particular, climate-induced displacement has only been acknowledged as an issue by the UNHCR recently.

CROSSING BORDER CLIMATE IMPACTS AND STATE RESPONSIBILITY:

Transboundary Environmental Harm:

This is harm that is suffered across national borders, for example, watershed pollution by one country that affects the other. The loss of habitat and the creation of refugees due either to deforestation in the Amazon or sea level rise in the Pacific are both transboundary impacts.

[378] Ioane Teitiota v. New Zealand, Communication No. 2728/2016, U.N. Human Rights Comm. (Jan. 24, 2020).

Obligations Under the International Environmental Law

In international environmental law, the **"no harm"** principle holds it unlawful for one state to transgress on its neighbors and cause harm to the environment.[379] Nevertheless, this has been legally contentious and underdeveloped when applying the principle of displacement.[380]

Case Studies: Sea level rise, Deforestation & displacement.

Such states as *Kiribati* or the *Marshall Islands* experience transboundary problems because people cannot be fed with water and fisheries when seas rise, and oceans are polluted. It is already occurring; however, in a small way, *New Zealand or Australia* is not welcoming toward officially providing refugee status is already being crossed.[381]

CONVENTIONS OF THE INTERNATIONAL CLIMATE CHANGE AND ITS IMPLICATIONS ON THE INDIAN LAW

The United Nations Framework Convention on Climate Change (UNFCCC) has three major instruments that govern international climate:

[379] Trail Smelter (U.S. v. Can.), 3 R.I.A.A. 1905, 1965 (1941).
[380] Kerryn Anne Brent, *The Certain Activities Case: What Implications for the No-Harm Rule?*, 20 Asia Pac. J. Env't L. 28 (2017), https://doi.org/10.4337/apjel.2017.01.02.
[381] Climate Signals, *Interactive: Climate Change in the Marshall Islands and Kiribati* (2023), https://www.climatesignals.org/resources/interactive-climate-change-marshall-islands-and-kiribati-and-after#:~=Interactive:%20Climate%20change%20in%20the,before%20and%20after%20%7C%20Climate%20Signals.

a) UNFCCC (1992)

The UNFCCC lays the groundwork of the obligation of the States to avoid harmful anthropogenic interferences with the climate system.[382]

Key provisions include:

1. Common and Differentiated Responsibilities (CBDR).
2. National's communications (NATCOMs) reporting requirements.
3. Formulation of National Adaptation Plans (NAPs).

Impact on India:

1. India has integrated the UNFCCC principles in the form of:
2. The National Action Plan on Climate Change (NAPCC) 2008.
3. SAPCCs are the state plans of action regarding climate change.
4. Establishing the Indian Network of Climate Change Assessment (INCCA).

(b) Kyoto Protocol (1997)

1. Though it binds only on the developed States, it brought about:
2. Quantified Emission Limitation and Reduction commitments (QELRCs).
3. Clean Development Mechanism (CDM) - an approach that India heavily relied on.

[382] United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107.

Impact on India: India emerged as one of the biggest international participants in CDM projects resulting into expansion in renewable energy market as well as carbon offset market.

(c) Paris Agreement (2015)

Key provisions:

1. Nationally Determined Contributions (NDCs)
2. Long-term Low-Emission Development Strategies (LT-LEDS).
3. Temperature goal of 1.5°C
4. Well-developed adaptation and finance structure.
5. Cumulative capacity of non-fossil in the form of 50 percent electric power.
6. Achieving net-zero by 2070

Other recent developments in the country are:

1. Carbon markets as contained in the Energy Conservation (Amendment) Act, 2022.
2. Enlargement of renewable energy missions (solar, hydrogen)
3. The National Adaptation Fund to Climate Change (NAFCC).
4. The involvement of India in International Solar Alliance (ISA).

Impact on India:

In 2022, India also provided updated NDCs committing to the GDP intensity of emissions to be cut by 45 percent by 2030

CLIMATE JUSTICE: ETHICAL AND LEGAL DIMENSIONS

Responsibility of the Global North:

The Global North, having contributed about 90% of cumulative greenhouse gas emissions to date, is increasingly being urged to assume the financial burden of climate migration.[383] The *United States* and some members of the *European Union* are the major culprits in adding to climate change, even as they lag in regions that are most impacted.

Experts alone estimate that unless the emission of greenhouse gases is greatly curbed in the future, the sea level in the United States can rise as high as 2.2 meters (7.2 feet) by the year 2100. The excessive amount of precipitation is an issue in regions of low coastal land areas worldwide, due to the increase in the level of the sea.[384]

Judicial Developments: Urgenda Foundation v the State of the Netherlands 2019[385], where the Dutch Supreme Court found that the government of the Netherlands had a legal duty to respect human rights within the meaning of ***Art 2***[386] of the ECHR and the right to life protection under ***Art 8 ECHR***[387] Concerning climate change damage, which direction may be relied on in similar cases concerning climate change and harm?

Moral vs. Legal Duty Towards Climate Displaced Communities:

383 Global Carbon Project, Global Carbon Budget 2023 12–15 (2023), https://globalcarbonproject.org.
384 National Geographic, *Environmental Refugee*, Nat'l Geographic Educ. (Oct. 8, 2024), https://education.nationalgeographic.org/resource/environmental-refugee/.
385 The State of the Netherlands v. Urgenda Foundation, HR 20 Dec. 2019, ECLI:NL:HR:2019:2007 (Neth.).
386 European Convention on Human Rights art. 2.
387 *European Convention on Human Rights art. 8*.

The lines between ethical accountability and legal responsibility concerning climate refugees are tilting at present. International leaders accept this as ethical, but the legal framework for sheltering refugees is rather limited.

Climate justice suggests that developed countries should help, financially and legally, ship to countries that are devastated by climate change. As suggested by this framework, there is a need for collective responsibility towards change.

EVOLVING INTERNATIONAL APPROACHES TO CLIMATE INDUCED DISPLACEMENT

The Nansen Initiative[388]

The first step towards seeking a global solution to the issue was formalized in 2012 under what is known as the Nansen Initiative. However, it is an open diplomacy, so nobody can force states to sign the treaty or to follow the resolutions.

The UNHCR's Evolving Approach

Over the past couple of years, the UNHCR has accepted that climate-induced displacement will need a liberal extension of refugee law, but this is not an outright endorsement.

[388]International Organization for Migration, *Nansen Initiative* (2024), https://environmentalmigration.iom.int/nansen-initiative.

Solutions have been suggested, for example, in the form of novelties of the 1951 Refugee Convention or the creation of new intergovernmental agreements on climate displacement.[389]

TECHNOLOGICAL AND COMMUNITY BASED ADAPTION MEASURES:

Green technology solutions:

New and old strategies like sea walls, renewable energy, and sustainable farming are being employed to safeguard coastal areas. For instance, the Netherlands spent large sums installing intricate flood protection systems to protect itself from the advent of the rising seas.

The essence of innovative strategies of community resilience is to use the existing structures and approaches to build an essential infrastructure.

Community Resilience and Sustainability Initiative:

Initiatives like the *"Great Green Wall"* of the African continent focus on halting desertification and providing a better living environment to the community. Horning of such programs aims at ensuring that forced migration is averted through the tackling of the top environmental problems.

Future Implications for Climate Migration:

[389] UNHCR, Climate Change and Displacement (2023), https://www.unhcr.org/what-we-do/build-better-futures/climate-change-and-displacement.

That being the case, no matter how positive the effects of green technology, the enormity of the problem of climate change may overwhelm such measures. Nevertheless, the application of the comprehensive set of measures may contribute to the avoidance of, or at least, the minimization of the severity of future environmental migrations.

VOICES FROM THE MARGINS: HUMAN STORIES OF DISPLACEMENTS

- **Loss of Land, Livelihood and Culture:** Displacement victims like the people from Kiribati have given accounts of losing shelter and means of sustenance.[390] These stories draw attention to the people affected by climate-induced displacement. The violation of cultural rights as a consequence of displacement is a common feature. People in many Pacific Island nations can lose not only the territory but also the core of their being.
- **Humanitarian Implications and lived Realities:** Learners have an important lesson in that climate change must not be a time for toothless legal reforms, but instead, leaders and policymakers must listen to the victims and craft just solutions. These accounts should inform global decisions concerning refugees and migration.

RESULTS & DISCUSSION

Key Legal Observations:

[390] U.N. Human Rights Comm'n, Human Rights and Climate Change: Report of the Special Rapporteur on Human Rights and the Environment Case Studies on Kiribati 4-8 (2019), https://www.ohchr.org.

By conduct of doctrinal analysis, it can be established that international refugee law and, in particular, the 1951 Refugee Convention and its 1967 Protocol, do not recognize the need for protection of persons displaced due to climate-induced environmental factors. This education is being left out because the Convention demands a well-founded fear of persecution due to race, religion, nationality, affiliation to some social group, or political opinion- phenomena which have no bearing on environmental displacement. Therefore, environmental refugees live in a legal void with no access to asylum, relocation, or legal status.

Cases such as Teitiota v. New Zealand (2020) point out this legal void where strong climate-related risks were not sufficient to be protected within current refugee frameworks. Although organizations such as the UNHCR and the Nansen Initiative have already voted for it to be an emerging issue, there are no legally binding instruments that could safeguard enforceable rights for such displaced persons. In this line, this research also notes that such principles, such as the non-refoulement, are generally inapplicable unless persecution could be established, hence denying environmentally displaced persons access to the benefits that such principles could provide. It also suffers from the lack of teeth, even though progressive, in the context of displacement of the international environmental law that recognizes transboundary harm and duties under the “no harm” principle. The moral responsibility of the Global North, even when widely spoken about in the context of climate justice, has not translated into enforceable responsibilities of supporting or relocating the environmental migrants.

Discussion: Gaps Between Displacement Reality and Legal Recognition:

The results emphasize a vital rupture between the environmental facts and the legal acknowledgment. While millions of people are displaced on account of climate

change, international law is stuck in definitions dictated by political persecution in the mid-20th century and is ignoring 21st-century threats such as increased levels of sea, desertification, and extreme weather events. This gap has resulted in institutional inertia so that states are afraid to widen definitions, caused by apprehensions of an increased responsibility and migrant invasions.

Moreover, the absence of enforceable rights worsens the plight of displaced communities since not only their dwelling places are deprived from them, but also legal identity, cultural belonging, and medical recompense are. This brings a moral and legal obligation: When displacement brought about by human induced climate change does not call for equal, if not more protection, then why should we bemoan the lack?

The increasing recognition by international bodies, which are non-binding, nonetheless, implies a paradigm shift in the perception of environmental refugees; from the invisible victims to the potential rights-holders. However, without codified standards, such developments remain only aspirational rather than something to which one could put into action.

Therefore, there is a need to rethink refugee law while taking it within the scope of climate consciousness by using the approach of adjusting the existing treaties or creating an entirely new international legal instrument. The urgency is not to discuss whether climate change leads to displacement; it does, but instead, it is to develop a legal response to this developing humanitarian crisis.

SUGGESTIONS & RECOMMENDATIONS

1. In mitigating the legal loophole on climate-related displacement, States, especially India, must formulate a special legal framework that acknowledges

the existence of climate migrants and outlines their rights to protection, relocation and provision of necessary services. The climate migration should be embedded into both national and state disaster-management frameworks to handle the long-term displacement, livelihood, and organized resettlement in the risk areas. Increased collaboration in the region via forums (SAARC and BIMSTEC) would also help to enable coordinated early-warning mechanisms, humanitarian corridors, and data sharing to ensure that cross-border climate mobility is handled in a systematic and concerted manner.

2. Institutionally, India would experience some advantages in having National Climate Migration Commission where vulnerable populations are to be mapped, planned relocation policies are to be recommended, compensation standards are to be developed, and climate-resilient infrastructure is to be developed. Adaptation financing, at the same time, must be expanded urgently - especially by the National Adaptation Fund on Climate Change - to help with the defenses of the coastline, sturdier housing, water-security systems, and drought-resistant farm initiatives in the climate-vulnerable districts. The best way of reducing conflict, protecting livelihood, and conserving cultural identity is ensuring participatory decision-making, in which the impacted communities have a role to play in the planning of relocation.
3. On the international scale, India must keep suggesting the acceptance of mobility due to climate change in the UNFCCC system as well as endorse the soft-law approaches, which acknowledge damage and loss, non-economic damages, and the disruption of communities. Relocation policies should be based on human-rights principles to protect housing, cultural rights, gender equality, and indigenous rights, which are in line with new jurisprudence like Teitiota decision. The rights-based approach will contribute to making sure

that the intended relocation and adaptation strategies are responsive to the intricate issues presented by climate-related displacement.

CONCLUSION:

Climate displacement is not a problem for the future; it is unfolding at the present moment. Now, massive efforts must be made to solve the legal and humanitarian issues of environmental refugees. To close this gap, there is a need to develop an encompassing international legal system. In essence, there is a need for a human rights framework that should grant legal recognition as well as human rights protection to climate change-induced forced migrants. Society, systems of governance, or parties that are involved should be held ethically as well as legally responsible for the protection of environmental refugees.

EXTENSION OF ARBITRAL MANDATE POST-EXPIRY: BALANCING TIMELY RESOLUTION WITH SUBSTANTIVE JUSTICE

Introduction

The roots of arbitration in the Indian context are traceable to the Upanishads and Vedas, with the first mention being in 'Brhadaranayaka Upanishad'.[391] This ancient tradition of resolving disputes through dialogue and consensus underscores India's long-standing inclination towards alternative dispute resolution mechanisms. However, juxtaposed against this historical legacy is the contemporary reality of the Indian judiciary, characterized by unending legal battles that often cost an arm and a leg.

The essence of arbitration as a mechanism thus would diminish without the timely disposal of arbitration proceedings. It has been tried to put effect through number of amendments from Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter "2015 Amendment Act")[392] to the Arbitration and Conciliation (Amendment) draft bill, 2024.[393] 2015 Amendment Act introduced Section 29[394]

[391]'The Arbitration Centre (Domestic and International), High Court of Gujarat' < https://arbitrationgujhc.gujarat.gov.in/ > accessed 24 October 2024.
[392] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016 (India).
[393] Ministry of Law and Justice, Inviting comments on the draft Arbitration and Conciliation (Amendment) Bill, 2024 (Issued on October 18, 2024).
[394] Arbitration and Conciliation Act, No. 26 of 1999, § 29 (India).

that stipulates a time period for delivery of arbitral mandate. It also provided monetary incentives to tribunal if an award is made within six months and penalizes for delay.[395] It is an attempt remarkable enough to modify the elusive machinations of arbitration proceedings in India, to overcome subsequent delays, thereby making arbitration an efficient process while ensuring justice.[396]

However, the issue of whether extension of arbitral mandate can be filed after expiry is still a dilemma. Different High Courts have given different interpretations, and whether the extension should be allowed post-expiry remains before the Supreme Court. On 7 May 2024, Justice Prathiba M. Singh in *Power Mech Projects Ltd. v. Doosan Power Systems India Pvt. Ltd.*[397] held that the arbitrator's mandate could be extended despite the application being filed after the expiry of the original time limit. It was also interpreted that courts have the required authority, consequently prioritizing procedural efficiency over statutory obligation.

This paper aims to explore the nuances of this case, beginning with an overview of Section 29 of the Arbitration Act[398], followed by an analysis of the court's interpretation of this provision, differing opinions, and the future implications of the ruling. It also delves into the prospective limitations of the decision and offers

[395] Ministry of Law and Justice, 'The Arbitration and Conciliation (Amendment) Act, 2015', PRS INDIA https://prsindia.org/billtrack/the-arbitration-and-conciliation-amendment-bill-2015
[396] Law Commission of India, Report on Amendments to the Arbitration and Conciliation Act 1996, Law Com No. 246, ¶22 (2014).
[397] Power Mech Projects Ltd v Doosan Power Systems India Pvt Ltd, 2024 SCC OnLine Del 1523 (India).
[398] Supra, at 10.

critical analysis for refining the application of Section 29[399] in future cases, along with the way forward.

Overview of Section 29 of the Arbitration and Conciliation Act, 1996

Arbitration acts as a tool for the speedy resolution of cases.[400] The 246th Law Commission Report[401] underscored the importance of timely disposal of arbitration proceedings. Thus, the 2015 Amendment Act[402] inserted Section 29A of the Arbitration Act. It introduced a time limit[403] for completion of arbitration proceedings and delivery of arbitral awards ranging to a maximum period of 12 months and restricted extensions to a maximum of six months.[404] The 12-month clock starts ticking from the completion date of pleadings in domestic arbitration.[405] The extension must be based on a sufficient cause and is subject to

[399] Supra, at 10.
[400] Ankur Mittal, Abhay Gupta and Ikshita Parihar, Section 29-A: The elusive quest for expeditious dispute resolution, BAR AND BENCH (Apr. 27, 2024, 12:32 PM), https://www.barandbench.com/columns/section-29-a-the-elusive-quest-for-expeditious-dispute-resolution.
[401] Law Commission of India, Report on Amendments to the Arbitration and Conciliation Act 1996, Law Com No. 246, ¶22 (2014).
[402] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016 (India).
[403] Arbitration and Conciliation Act, No. 26 of 1996, § 29A(1) (India).
[404] Arbitration and Conciliation Act (Amendment) Act, No. 33 of 2019, § 6A (India).
[405] Payel Chatterjee and Sahil Kanuga, Delhi High Court clears the air on retrospective applicability of time-lines under Section 29A, NISHITH DESAI (Jul. 27, 2020), https://www.nishithdesai.com/generateHTML/4342/4 .

terms deemed just and appropriate by the court as per Section 29A (5) of the Arbitration Act.[406]

This was part of a wider shift towards bringing the Indian arbitration framework at par with international benchmarks, abreast with other leading international arbitration centres like Singapore and London. The said section further expounded on the notion of levying financial penalties on arbitrators for unfounded delays, emphasizing the seriousness with which delays are to be addressed.[407]

However, the syntax of this provision raises a serious question of law. While it allows the courts to extend the mandate *"either before or after the expiry,"* it leaves one in grave darkness regarding an important aspect of whether it may provide parties with the opportunity to make applications for such extensions to fall within its terms after the expiry of the original period.[408] This omission in the statute's wording has left one perpetually under a cloud as to whether seeking and treating post-expiry extension applications would be legal.[409]

[406] Arbitration and Conciliation Act, No. 26 of 1996, § 29A(5) (India).
[407] S Koul and R Malhotra, Law and Practice of Arbitration and Conciliation in India (LexisNexis, 6th ed. 2021).
[408] P Desai, Procedural Efficiency in Arbitration: Section 29A's Application, 34 INDIAN REV. ARB. L., 225 (2022).
[409] Kapil Arora, Prashasthi Bhat and Ashima Sharma, Extension of Mandate of Arbitral Tribunal under Section 29A (4) of the Arbitration and Conciliation Act, 1996: A Primer for Practitioners, CYRIL AMARCHAND MANAGALDAS (Jan. 15, 2024) https://disputeresolution.cyrilamarchandblogs.com/2024/01/extension-of-mandate-of-arbitral-tribunal-under-section-29a4-of-the-arbitration-and-conciliation-act-1996-a-primer-for-practitioners.

Court's Interpretation and Its Impact

In *Power Mech Projects Ltd. v. Doosan Power Systems India Pvt. Ltd.*,[410] the court's interpretation of Section 29A of the Arbitration Act[411], is crucial in determining whether the arbitral tribunal's award was valid even though the time limits prescribed under the statute had expired.

The parties of the aforementioned case were entangled in a contractual dispute referred to arbitration. After several arbitration proceedings, the tribunal missed the statutory deadline for issuance of the final award under Section 29A to issue its award. Power Mech Projects Ltd. (hereinafter "Power Mech") argued that the delay invalidated the final award, while Doosan Power Systems India Pvt. Ltd. (hereinafter "Doosan") contended that the final award should stand since no party sought termination of the arbitrator's mandate.

The High Court of Delhi was faced with the issue to adjudicate upon the validity of the arbitral tribunal's award, if issued, after the expiration of the timeline prescribed under Section 29A. The court held that the intent behind Section 29A was to promote efficiency in arbitration but not to inherently invalidate awards issued after the deadline if the parties did not raise timely objections. The court here held that the foremost objective of the provision is to avert unwarranted delay in arbitral proceedings, but it should not be read and considered in a manner that would defeat the very purpose of justice by rendering awards nullity.

[410] Supra, at 14.
[411] Arbitration and Conciliation Act, No. 26 of 1996, § 29A (India).

The High Court of Delhi also examined the legislative intent behind Section 29A and clarified that, although legislative intent to curb delays as such was very much behind Section 29A, it does not necessarily mean that an award would become invalid outright in every case where the time limit gets missed; the court can decide on a case-to-case basis, especially if both parties are amenable to allowing the tribunal more time. This way, the court made a pragmatic decision and set a more substantive precedent rather than strictly focusing on procedural compliance.

Thus, while the High Court of Delhi upheld the baton of fairness, one must question if the decision objectively delved into the reasons behind the delay on the tribunal's end. In *Wadia Techno-Engineering Services Ltd. v. Director General of Married Accommodation Project*,[412] the delay in issuance of award was justifiable and delved into. However, in *Power Mech Projects Ltd. v. Doosan Power Systems India Pvt. Ltd.* the Court did not seek an explanation into the delay.

Moreover, it is to be noted that parties do bear a responsibility to object or seek an extension if a breach in deadline occurs. The inactivity from both parties regarding the delay formed much of the base on the judgment of the High Court of Delhi to validate the award. This can be buttressed by *Hiran Valiiyakkil Lal v. Vineeth M.V.*[413], wherein parties' acquiescence was regarded pivotal in interpreting the statutory compliance under Section 29A.

Provided India's poignant efforts to establish itself as an international centre for arbitration, it should prioritise balancing the adherence to timeline while

[412] Wadia Techno-Engineering Services Ltd v. Director General of Married Accommodation Project, 2022 SCC OnLine Del 3457(India).
[413] Hiran Valiiyakkil Lal v. Vineeth MV, 2021 SCC OnLine Ker 987 (India).

upholding fairness. For instance, in Singapore, a key international seat for arbitration [414], extensions are allowed in the issuance of award under narrowly defined circumstances, otherwise maintaining a strict check on the deadlines. Similar objectivity in adjudicating issues regarding delays would benefit the development of arbitration in India as well.

Different Judicial Interpretations of Different High Courts

The Delhi Court in numerous cases, including *Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project*[415] and *Religare Finvest Ltd. v. Widescreen Holdings Pvt. Ltd*.[416] has held that the mandate can be extended "either prior to or after the expiry of the period".

The Hon'ble High Courts of Bombay and Madhya Pradesh have allowed applications under Section 29A(4) of the Arbitration Act after considering two important factors viz., the cause of delay and the stage of the arbitration proceedings. High Court of Kerala held a similar opinion in *Hiran Valiiyakkil Lal v. Vineeth M.V.*[417], allowing extension of mandate on sufficient cause and on such terms and conditions as may be imposed by the court. The Madras High Court also

[414] Jana Lamas de Mesa, Singapore's recipe for becoming a top international arbitration hub, URIA INTERNATIONAL ARBITRATION OUTLOOK (2023) Singapore's recipe for becoming a top international arbitration hub | Uría Menéndez.
[415] Wadia Techno-Engineering Services Ltd v. Director General of Married Accommodation Project, 2022 SCC OnLine Del 3457 (India).
[416] Religare Finvest Ltd v. Widescreen Holdings Pvt Ltd, 2021 SCC OnLine Del 2342 (India).
[417] Hiran Valiiyakkil Lal v. Vineeth MV, 2021 SCC OnLine Ker 987 (India).

holds the same in *Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindaraja Textiles Pvt. Ltd.*[418]

However, Calcutta High Court in *Rohan Builders (India) Private Ltd. v. Berger Paints India Ltd.*[419] interpreted the provision differently and held that if the statute uses the word 'terminate' instead of 'suspension' to recognize effectiveness in arbitration. It indicates that once such timelines expire without one party requesting an extension by either party, the jurisdiction of the tribunal would cease definitively rather than remain suspended. Hence, an arbitral award is not delivered within the prescribed time, the arbitral tribunal's mandate automatically ends making filing of an application under Section 29A (4) of the Arbitration Act[420] not justifiable. In addition,

Different Opinions on the Ruling

The judgment in *Power Mech Projects Ltd. v. Doosan Power Systems India Pvt Ltd.*[421] has elicited varied responses. The crux of the argument against the decision lies in the ease with which the court granted its discretion to enforce or not enforce time limits prescribed under Section 29A. Some consider it as much-needed relief in complex arbitrations, while others have argued that this undermines legislative intent in curbing delay in the arbitration process.

[418]Suryadev Alloys and Power Pvt Ltd. v. Shri Govindaraja Textiles Pvt Ltd., 2020 SCC OnLine Mad 7858 (India).
[419] Rohan Builders (India) Pvt Ltd v Berger Paints India Ltd 2021 SCC OnLine Cal 2345 (India).
[420] Arbitration and Conciliation Act 1996, No.26 of 1996, § 29A(4) (India).
[421] Supra, at 8.

Several commentators and legal experts celebrated the pragmatic approach taken by the court while interpreting Section 29A.[422] The prime contention was that the discretion extended in this case was the practical manifestation of arbitration, which often throws up unforeseeable complexities and renders it impossible to adhere to deadlines strictly. The proponents further contended that the said decision provides for the general idea of arbitration like there is a fair, efficient, and mutually agreed settlement of the issue. It is to be noted that a rigid interpretation of Section 29A may create procedural technicalities which may make enforcement of arbitral award more complex and thus could undermine the efficiency of arbitration as an effective alternative to litigation.

Au contraire, detractors aver that the court's ruling weakens the very purpose of Section 29A, which was ushered in to tackle the endemic delays in arbitration proceedings in India. They argue that the decision of the court does violence to the statutory structural provision put in place as a conscious policy measure to discipline arbitrators and ensure that the awards were made within time. Such flexibility taken in enforcing Section 29A. It finally boils down to an argument on the balance between speed and, efficiency and fairness in arbitration practice.

Future Implications and Prospective Limitations

[422] Kunal J Vyas, Delay and Litigation Cost: Major Roadblocks in Arbitration Process, BAR AND BENCH, (May 22, 2024, 12:42 PM) https://www.barandbench.com/law-firms/view-point/delay-and-litigation-cost-major-roadblocks-in-arbitration-process.

While arbitration under the UNCITRAL Model Law,[423] the bedrock of India's arbitration framework, provides no prescription of time limits that apply to arbitration proceedings and lays great stress on party autonomy and elasticity. This approach may not entirely suit the Indian legal landscape.[424] However, flexibility in extending the mandate of arbitration proceedings should be permitted even if the application is filed after expiry.

Practicality: The flexible approach gives a logical and practical view against the strict, literalistic approach towards the statute, focusing only on the efficiency of proceedings. Moreover, sometimes the proceedings suffer unexpected delays based on factors outside the parties' control. A formalistic approach would mean aborting almost complete procedures, thus wasting time and other resources and forcing the parties to start the proceedings afresh.

Preservation of Party Autonomy: Arbitration is based on the principle of party autonomy, allowing parties to organize the procedure to suit their convenience. The stricter approach forces parties to adhere rigidly to procedural rules, even when they may have mutually agreed or informally allowed extensions. A flexible procedure would not let minor lapses in procedural conduct, like an application filed out of time, frustrate the fundamental intent of the parties to bring their disputes before arbitration and, therefore, obtain an amicable resolution of their

[423] K.D. Kerameus, Waiver of Setting Aside Procedures in International Arbitration, 41 AM. J. COMP. L. (1993).
[424] A Redfern and M Hunter, Law and Practice of International Commercial Arbitration 423-30 (6th ed., Oxford University Press 2020).

differences.[425] Since arbitration is sometimes selected for its relatively greater flexibility and customized approach to resolving disputes, the power given to parties over the extension of the tribunal's decision can allow the parties to keep certain control. Consequently, it would provide a friendlier environment for foreign stakeholders, establishing India as a prospective global hub for arbitration, especially in cross-border disputes.

Appropriate Judicial Intervention: A dynamic approach inclined towards non-confinement to statutes reduces the risk of the courts becoming overly involved in arbitration by dismissing cases for method-centred non-compliance. The courts of law hold the power to prevent abuse of power and ensure that the arbitration proceedings continue fairly and efficiently by setting conditions, such as demonstrating a valid reason for delay or adhering to refurbished timelines.[426]

"*Every coin has two sides"*; likewise, despite these recent positive developments, the court's recent judgment also points out some potential risks which may, in a foresighted analysis, directly affect the efficiency of arbitration in India.

Increased Risk of Procedural Inefficiency: A greater concern, however, is that the flexibility afforded in the case above may result in the erosion of the underlying intent and purpose for which Section 29A was enacted in arbitration proceedings

[425] B Chakrabarti, Pragmatism in Arbitration: Examining Flexibility in the Indian Legal Framework 6 J. ARB. & ADR STUD. 101 (2023).
[426] Vasanth Rajasekaran and Harshvardhan Korada, Judicial Jigsaw: Never-Ending Conflicts and Interpretative Challenges of Section 29-A of the Arbitration Act, SCC ONLINE, (Aug. 12, 2024) https://www.scconline.com/blog/post/2024/08/12/judicial-jigsaw-never-ending-conflicts-interpretative-challenges-of-section-29-a-arbitration-act/.

in India and may open doors for the creation of bottlenecks in arbitration proceedings while gradually giving way to other cases and reducing institutional efficiency.

Prolonged Uncertainty: The judgment has left the door open to ambiguity on the future grounds, because no clear criteria set out on which extensions of the time for arbitration would be granted.[427] Courts may inconsistently practice arbitration without proper criteria to extend the time, thereby creating uncertainty in arbitration practice.

Risk of Protracted Disputes: "Justice delayed is justice denied" also applies to arbitration. Delegations of authority for extension in time limits will easily result in protracted disputes if the parties use this flexibility to seek further delays for tactical and ulterior purposes. This method allows the possibility of stalling, where parties can maliciously slow the process to gain leverage over each other, unnecessarily elongating the proceedings and engaging the opposing counsel for a prolonged period.

Increased costs: The cost of arbitration proceedings increases in proportion to extending timelines for parties involved. It adds legal fees, arbitrator fees, and administrative charges as the proceeding goes on, and thereby, it turns out to be a very expensive affair for small parties in terms of accessibility.

The challenge moving forward will be striking a balance between maintaining the efficiency of arbitration and ensuring that parties are not deprived of justice due to

[427] R Singh, Challenges and Prospects in Indian Arbitration Law 215 (Thomson Reuters 2023).

procedural strongholds. While the ruling introduces increased flexibility, it also calls for the exercise of caution. On the way forward, judgments must clearly define the boundaries within which courts can exercise its discretion, ascertaining that delays do not become the norm. It becomes ever more important for the practitioners, academics, policymakers and courts to engage in a constructive dialogue of how to balance best these competing demands of efficiency, fairness, and flexibility.[428] The Supreme Court should finally clear the controversy in question and allow the filing of extension of mandate after expiry while regulating unjustified delays.

Conclusion

The said case leaves a consequential imprint on India's arbitration framework, especially in terms of interpreting Section 29A of the Arbitration Act.[429] The court's realistic approach which highlights unbiasedness and reinforces the facet of party autonomy over rigid procedural framework sheds light on the call for an equalized arbitration process that takes into consideration both efficiency and decisive justice.

The said adjudication provides courts with the discretion to extend arbitral deadlines under tenable circumstances, however, it also flags certain grey areas with respect to adherence of procedure in arbitration. Pliability in procedural timelines could advantage complex arbitrations, furthering impartiality and allows it to be in tandem with the standards of international arbitration. However, it must

[428] M Khanna, India as an Arbitration Hub: Striking a Balance Between Flexibility and Efficiency, 5 GLOB. ARB. REV. 56 (2024).
[429] Supra, at 6.

be noted that it also puts the legislative intent of Section 29A under risk, which acts as a barrier against delays. The heightened potential for judicial intervention and procedural loopholes may negatively affect arbitration's proceedings, especially it's cost-effectiveness.

Furthermore, it is of prime import for India's judicial framework to interact with the synergised rhetoric to develop a lucid criterion to approve extensions for arbitral awards that cohere themselves to the deadline while accommodating the nuances of each case. In line with India's aspirations to shape itself as a leading hub for arbitration on the global stage, it must strike a chord between flexibility and efficiency, both playing crucial roles to bolster India's position, as well as reaffirming the trust endowed in arbitration.