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CENTRE FOR POST GRADUATE STUDIES & RESEARCH IN LAW

(NAAC Re-Accredited with B++ Grade, CGPA 2.94)

(Affiliated to Karnataka State Law University, Hubballi & Recognized by BCI, Delhi)

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Shri Dharmasthala Manjunatheshwara Law College, Centre for Post Graduate Studies and Research in Law, Mangalore, is a professional college, established in 1974 and is functioning under the aegis of the SDM Educational Society® Ujire. The college aims at imparting holistic knowledge of law and mould students to be competent legal professionals, committed to the cause of community development through sustained economic activities and research thereby, promoting empowerment through legal education for building ethical society.

Presently, the college has been affiliated to Karnataka State Law University, Hubballi and is recognized by the Bar Council of India. The college offers Five Years integrated BA LLB, BBA LLB, Three Years LLB Course and Two Years LLM Programme. The college is the only Research Centre recognized by Karnataka State Law University, Hubballi.

*The National Assessment and Accreditation Council (NAAC) in the year 2025 has re-accredited the college with "B++" grade and CGPA of '2.94'. In the year 2025, the survey conducted for Top Eminent Law schools in India by CSR (Competition Success Review), SDMLC obtained **I** Rank in India. Our college has participated in GHRDC Law Schools Survey, 2025 and obtained **I** Rank in the category of Eminent, **V** Rank in the State of Karnataka and **VI** Rank in the Southern Region. The college has an outstanding alumni in the judicial, administrative & host of other careers. The distinctiveness of the college is reflected in unique mooting events, law lab and functional Arbitration Centre. The year 2024 is observed as the golden jubilee year of the establishment of the college.*

EDITORIAL

I am delighted to introduce this edition of our Student Law Review. This publication is a testament to the intellectual curiosity, critical thinking and passion for law that the students embody. The Student Law Review is more than just a publication - it's a platform for the students to engage with the legal community, share their perspectives and contribute to the ongoing conversation about the role of law in society.

In this edition, the students have tackled complex legal issues, demonstrating their ability to analyze, critique and propose innovative solutions. Their work showcases the depth of knowledge and understanding they have gained through their rigorous academic programs.

I am proud of the dedication, creativity and expertise that the students have brought to this publication. Together, let us empower the next generation of legal minds to shape the future of justice.

I place on record my sincere gratitude to Poojya Dr. D. Veerendra Heggadeji and all distinguished members of the management for their active support in all our academic endeavours. I commend the Lex Plus Student Law Review team led by Dr Santhosh Prabhu and Dr Annapoorna Shet and the Student Editorial team comprising of -Mr. Shivshankar, Ms. Hithakshi,Ms. Apeksha Poojary K. K., Mr. Pranav and Ms. Shlagya - who have worked tirelessly to bring this edition of the Student Law Review to fruition.

Congratulations for the whole Editorial team for the successful compilation of the Lex Plus Student Law Review of the academic year 2024-2025.

Dr. Tharanatha
Editor
Principal/Chairman

PREFACE

Lex Plus, Student Law Review, plays a crucial role in addressing contemporary legal issues by providing a platform for in-depth, scholarly analysis from a student perspective. This publication is instrumental in exploring a broad spectrum of modern legal challenges, from emerging technologies and evolving constitutional interpretations to shifting regulatory landscapes and societal impacts on law.

Contributors to Lex Plus typically law students, bring innovative viewpoints and rigorous research that often highlight underexplored areas or new dimensions of current legal debates. Their articles frequently address how contemporary issues like digital privacy, environmental law, or human rights are being shaped by recent legal developments and societal changes. The papers undergo through blind review by the panel consisting of student & faculty.

By offering a forum for these analyses, Lex Plus not only enriches the legal discourse but also helps to bridge the gap between theoretical legal education, practical and real-world issues. It reflects the evolving concerns of the legal community and provides valuable insights into how the law is adapting to the complexities of the modern world. It's with great pleasure SDM Law College Mangalore presents Lex Plus Student Law Review 2025, Volume 5.

Editorial Team

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ADDRESSING CORPORATE LAW WITH INDIA'S DEVELOPING EV LAWS

Vanshika Shukla*

Abstract

It has thus come down to having automobiles in India shift to electric-powered vehicles, both as the dynamics of the market change and due to the compliance requirements in companies. This paper looks at the role of corporate law in India and how it affects the corporation's decision regarding the EV policies in development. The critical legislation analysed in the study pertains to the FAME scheme, environmental legislation, and corporate governance regulations for EV manufacturers and investors. It employs doctrinal research to analyze statutes, case laws, and policy papers in determining the extent of corporate liability regarding the mentioned issues and EV adoption incentives. The study shows that for the implementation of increased usage of green energy, CSR is very important; future growth of the industry can be supported by considering tax incentives, and there is also a requirement for a stringent code of conduct with regard to compliance.

The outcome of the study shows that while there has been a development of legal structure for EVs in India, the corporate entities of India are engulfed by certain legal ambiguities that need a better legal framework. Enhancing corporate governance by improving policies that govern the implementation of the EV strategy, the new approval mechanisms, and sustainable financing will play an essential role in the development of a robust EV ecosystem. This paper makes prescriptions that will contribute towards directing corporate legal requirements to facilitate the achievement of the sustainability of India, which in turn will mean long-term regulatory stability and the expansion of the industrial sector in India.

Keywords: ***Corporate Compliance, Electric Vehicle Regulations, Sustainability Governance, EVs, Policy Framework, Incentives, and Liabilities.***

I. Introduction

The shift to electric vehicles is important as it is a move towards a better and sustainable transportation system that respects the environment in India. Having set aggressive goals under the FAME scheme, the country is heading towards popularizing EVs across the nation. Nevertheless, in terms of a legal and regulatory perspective toward EVs, the environment is still in transition. With India continuously taking a jump

* **Research Scholar (Ph.D.) Faculty of Law, Banasthali Vidyapith, Jaipur, Rajasthan**

toward electrification, corporate law in power needs to redefine the challenges and opportunities in the auto industry.

Corporate law has an important role to play in the further development of the EV industry for investment, confidential rights, manufacturing rules, and legal responsibilities. Foreign car manufacturers' joint ventures with Indian companies and government incentives for start-ups in the battery market often dictate business rules in this emerging field. These are taxation systems, legal issues, patents and licenses for new generation EV technologies, and regulatory permission for production and marketing of EVs. In addition, legal factors affecting this sector include environmental and sustainability measures, changing battery disposal rules, among others.

This article explores how far corporate law as an aspect of Indian law has adapted to the development of EV policies. It examines the aspects of reforms that have to do with regulation, government policies, incentives, and corporate governance that will ensure the growth of the industry. It also looks at legal barriers that may interrupt market drive, for instance, policies and regulatory risks in investment and cross-border collaboration. Having regard to all of them, it is possible to suggest that India has all the prerequisites for creating favourable legal conditions for the deve-lopment of an EV ecosystem through the attraction of foreign investments and the provision of legal certainty to various actors in the EV market. Proper legal structure of the corporate house not only aims at its business success, but it also aims for the achievement of the contextual wisdom of India to minimize carbon imitations and harness the green energy sources.

II. Background and Discussion

The shift to EVs is one of the important aspects of the overall sustainable development and managing climate change challenges in India. The Indian government has encouraged the adoption of EVs through various policies and measures, fiscal incentives, and other supportive regulations. The FAME scheme has been in existence since 2015, and the FAME II further aimed at boosting domestic manufacturing as well as consumer demand for EVs. Also, the extension of the PLI scheme for the manufacture of ACC battery storage for electric vehicles is expected to further boost the electronics manufacturing industry in the country.[1]

The Indian corporations, especially in the automobile and energy industries, are increasingly experiencing regulations in a bid to cooperate on sustainability. The same has been supported by the enhancement of corporate environmental responsibility as well as the environmental, social, and governance standards that have encouraged organizational adaptations in sustainable management systems. This also looks at the enhancement of the Corporate Social Responsibility (CSR) provisions

[1] Mishra A, 'Electric Vehicles in India: Challenges and Opportunities' (2023) 15 Journal of Sustainable Mobility 45.

of the Companies Act of 2013, under which business entities have been prompted to support the development of clean energy projects, such as the adoption of EV technology.

As a developing country, the legal structure of Corporate law in India is quite extensive, which extends the legal framework of the EV sector, involving intellectual property rights, competition law, environment law, tax laws, investment laws, etc.[2] The identified legal factors can be regarded as the benefits and risks that may influence business development in the context of the EV ecosystem investment. Current affiliations suggest that India is gradually easing its corporate laws towards not only spurring investment in EVs, but also legalizing new sustainable development.

Over the last few years, a major change has been observed in India's corporate legal environment regarding electric vehicles. The government has set the ball rolling for increasing EV usage, and some policies have been implemented, such as a lower GST of 5% on EVs as against the 28% on ICE vehicles.[3] Also, there is another section 80EEB of the Income Tax Act, which allows the buyer of an EV to avail of tax deduction for the interest paid on the loan amount of up to Rs 1.5 lakh. These fiscal policies are paramount in guiding the consumption demands required in a particular course in the marketplace.

From the corporate point of view, there has been a liberalisation of FDI norms in the EV sector to bring investment from global players to invest in manufacturing facilities in India.[4] 847 The current FDI policy also permits 100 per cent FDI in the Automobile Industry under the auto fairs approval system, which has compelled global electric car makers such as Tesla Motors to commence the search for opportunities to invest in India. Thus, at this point, there is an issue regarding the FDI in the infrastructure associated with electric vehicles, especially battery swapping and charging stations, because of the unstable policies and regulations that involve the acquisition of land for this purpose.[5]

As befitting corporations operating in compliance with corporate governance, the firms manufacturing EVs have to follow environmental and safety standards. The Battery Waste Management Rules, 2022, lay down strict norms for recycling/ remanufacturing and disposal of batteries, thus affecting vehicle manufacturers and suppliers spun off as electric vehicle manufacturers. This legislation put in place the concept of EPR, which means that manufacturers and distributors are to be held responsible for EV batteries once they are no longer useful. In addition, the protection

2 Sharma R, 'Corporate Governance and Environmental Responsibility in India's EV Sector' (2022) 8 Indian Journal of Corporate Law 112.

3 Patel S, 'Foreign Direct Investment in India's Electric Vehicle Industry: Legal Perspectives' (2024) 10 International Journal of Law and Management 67.

4 Kumar V, 'Intellectual Property Rights and Innovation in India's EV Market' (2023) 12 Journal of Intellectual Property Rights 89.

5 Gupta P, 'Competition Law Challenges in the Indian Electric Vehicle Industry' (2023) 9 Competition Law Journal 134.

of IPR continues to gain importance as more players get involved in battery technology, powertrain design, and inverter integration of smart mobility.[6]

The adoption of green finance and sustainability-linked bonds also became the new trend in corporate law in the EV industry. Following the directions and guidelines set by SEBI, the Indian corporations are mandated to disclose ESG and their sustainability investments, including clean mobility. Disclosure of the effects on the environment and resource usage and utilization of a policy that achieves stated objectives in terms of reduction in carbon footprint is part of the BRSR framework set by SEBI, which is important in the EV industry.[7]

Therefore, competitiveness law is significantly involved in the course of preventing anti-market practices in the distribution chain of EVs.[8] The Competition Commission of India has always been alert and ready to look into cases that may have monopolistic influences, including the battery for EVs or the supply chain dominance. As more firms enter different markets and competition increases to offer battery technology and charging networks, legislative and legal structures for corporations need to adapt for beneficial competition and to reduce the chances of cartelization.

Lastly, policies in individual states are supplementing national EV laws, hence the disjointed but active structure of the legal framework. Different states have offered policies related to industries based on EVs, reduction or exemption of road tax, and reduced registration fees, which have implications on the business strategies of the firms. However, there are variations from one state to another, which presents a main compliance issue to companies that are present in different states.[9]

Furthermore, as India moves to accommodate the EV change, there are still significant challenges in the implementation, harmonisation, and certainty as to investment safeguards. Coordination of the tax, environmental, IP, and anti-trust authorities in promoting and regulating the market can go a long way toward strengthening the legal framework of such a market. It is expected that future amendments in corporate laws will further explain and establish understanding to sustain public-private partnership, green financing, and other measures for development that may increase India's competitiveness in the international EV market.[10]

III. Legal Framework for EVS in India

The existing import and local manufacture of electric vehicles in India is highly

6 Rao S, 'Tax Incentives and Policies for Electric Vehicles in India: A Legal Analysis' (2022) 14 Indian Taxation Journal 56.

7 Nair R, 'Legal Implications of Battery Waste Management Rules on India's EV Industry' (2023) 13 Journal of Environmental Policy and Law 147.

8 Singh A, 'Environmental Regulations and the Growth of Electric Vehicles in India' (2023) 11 Environmental Law Review 102.

9 Desai M, 'State vs. Central Policies: Navigating the Legal Landscape for EV Manufacturers in India' (2024) 7 Journal of Federalism Studies 78.

10 Chatterjee D, 'Corporate Social Responsibility and Sustainable Development in India's EV Sector' (2022) 5 Indian Journal of CSR 29.

regulated and supported by policies that are aimed at promoting their use and production. Some of the factors encouraging the market growth of EVs include favourable government policies and taxation incentives, lifting of corporate regulations as part of India's commitment to shift to a low-emitting transport sector.[11]

There are many policies that aim at the promotion of the use of EVs in India, including the Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME) policy. Proposed in 2012, FAME was later expanded into FAME II, which has set a target of $2 billion in investments for direct incentives in the consumer as well as manufacturing segments for electric vehicles. It provides incentives for electric two-wheelers, three-wheelers, and four-wheelers, excluding the luxury segment, and also for charging infrastructure setup. This plan has a significant responsibility of depolarizing the region, the utilization of resulting EVs, and lastly, the exploitation of fossil fuels and pollution of the environment.[12]

Supporting the FAME scheme is the NEMMP, a long-term mission plan also executed in 2013 aimed at enhancing the R&D, infrastructure development, and manufacturing competence of the EV industry. NEMMP is the larger strategic plan to kick-start an electronic move in India and the development of production and technology right in India to make this country the manufacturing base for electric vehicles.[13] As part of the goal, many collaborations between government, businesses, and organizations to push advancements and funding in battery technology have been established, including electric vehicles and charging systems.[14]

Safety and technical standards pertinent to the automobile industry are provided by the Automobile Industry Standards (AIS), which set contingents related to batteries, charging-discharging, and safety factors of EVs. The Automotive Research Association of India (ARAI) and the Bureau of Indian Standards (BIS) are responsible for the safety of these new shifters, as EV vehicles are designed under safety norms. AIS can be applicable in minimizing risks of fires and battery failure in EVs, all in a consolidated approach, as it promotes similarity in all manufactured vehicles.[15]

From the corporate governance perspective, the Companies Act 2013 serves as the legal framework for the undertakings in the EV sector in India. Concerning compliance, governance, and reporting, automakers and their affiliated service providers must follow corporate principles, rules, and commit to sustainability and

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11 Siddiqui F, 'Analyzing the Impact of India's New Electric Vehicle Policies on Corporate Law' (2024) 15 Journal of Corporate Law Studies 123.

12 Kumar R and Sharma P, 'Electric Vehicles in the Indian Legal Domain' (2023) 10 International Journal of Public Law and Policy 98.

13 Gupta A and Singh R, 'Legal Aspects of Electric Vehicle Safety Standards: A Comparative Study' (2023) 29 Indian Review of Business and Law 92.

14 Mehta A, 'Electric Vehicle Industry in India: A Regulatory Overview' (2023) 8 Indian Journal of Energy Law 45.

15 Narain U and Krupnick A, 'The Impact of Fuel Taxes on the Competitiveness of the Indian Auto Industry' (2019) 48 Energy Policy 77.

environmental impact regulations. As the demand for sustainable initiatives is rising, cooperation in the EV industry is also required to abide by the CSR guidelines for the expenditure on green projects, innovations, and advertising and promotion of electric mobility.[16]

Subsidies, another stimulus applicable to the case of EVs, have played a central role in making the automobiles financially more appealing. The Goods and Services Tax (GST) charged on electric automobiles has tremendously decreased to 5%, while conventional internal combustion engine automobiles have 28% GST charged to them. Also, the central government of India has provided income tax exemptions under Section 80EEB of the Income Tax Act that states that an individual can avail a tax deduction of up to ₹ 1.5 lakh of the interest paid for an EV, which has been availed through a loan. The purpose of these fiscal interventions is to spur higher demand for the use of EVs since they are cheaper to operate and acquire.[17]

Another important legal regulation in the organization of the EV industry is the protection of the rights to intellectual property. Indeed, the system of IPR laws is also quite important in this regard to award patents, trademarks, and designs for EVs, as well as associated technologies like batteries, smart charging infrastructure, AI, and autonomous driving solutions.[18] The innovation has been protected under the Patents Act, the Trademark Act, and the Designs Act, which helps to prevent the replication of electric vehicles by those who have invested in it, in an attempt to achieve fairness in competition.

Altogether, it can be said that the legal structure with respect to the EVs in the context of India seems to be four-dimensional, involving policies for incentives, safety concerns, corporate governance, and tax relief, alongside the issue of IP.[19] Delhi also envisaged the future progression of the legal regime as enhancing emission norms, extending producer responsibility to battery recycling, extending consumer protection measures, etc. Government initiatives, along with legal support in the EV segment for the creation of demand, will go a long way in achieving India's vision of a cleaner and sustainable transportation ecosystem.[20]

IV. Corporate Law Challenges in theEV Sector

However, corporate laws of the nation play a vital role in regulating mechanisms of compliance, investment, protection of Intellectual property rights, environmental

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16 Bhardwaj A and others, 'Electric Vehicles and India's Low-Carbon Future: A Legal and Policy Perspective' (2021) 12 Journal of Energy and Environmental Law 34.

17 Mukherjee A, 'Regulatory Framework for Electric Vehicles in India: Challenges and the Road Ahead' (2020) 58 Indian Journal of Law and Technology 95.

18 Patel H and Sharma P, 'Intellectual Property Rights and EV Innovation: The Role of Patent Protection in India' (2022) 45 Journal of Intellectual Property Rights 210.

19 Chakraborty P and others, 'Impact of GST on Electric Vehicles: A Critical Analysis of Indian Tax Policies' (2023) 30 National Law School Journal 112.

20 Sinha R and Verma S, 'FAME-II and the Future of India's EV Industry: An Evaluation of Policy Effectiveness' (2021) 19 Indian Journal of Environmental Law 65.

sustainability, and supply chain management that constitute India's emerging Electric Vehicle industry. However, much as more and more emphasis is placed on green mobility, various corporate law issues continue to emerge as challenges within this domain, relevant to sustainable growth and coherent regulation.

It is important to note that compliance and governance have continued to be an area of concern in the EV manufacturing and its related industries.[21] The Companies Act 2013 and the guidelines of the Securities Exchange Board of India make it mandatory to follow corporate governance rules that provide transparency in the business. However, the main challenges experienced stem from the fact that practices are inconsistent due to the variation in the state governments' policies; every state imposes different policies or incentives to support EVs. Such inconsistency brings about legal risks, which may cause various problems in the formulation of operational plans for organizations with operations in different countries. In addition, the rules applied to specific sectors, for example, the battery disposal and recycling legislation, which increases the greener profiles of organizations while making compliance a burdensome process given the overlapping regulations and the need to find an efficient method of reconciling with existing sector legislation.[22]

Incentives in the form of investment are necessary for the development of the electric vehicle. Foreign direct investment and taxes are among the most essential factors in attracting private investment based on a regulatory environment. Although the Indian government permits full, automatic approval to invest in the automobile sector, there has been some uncertainty about the changing policies regarding EVs and the sustainability of those policies. Also, India requires improvements in tax policies and practices with regard to the differing GST rates applicable to EV components. The government of India has recently announced measures like the Faster Adoption and Manufacturing of Electric Vehicles (FAME) to induce private investment, but corporate laws should provide certain certainty to the tax framework and the incentives, thereby reducing concern towards investors so as to attract long-term funds.[23]

IP/Technology licensing also assumes importance as India's EV industry relies much on imports of technology. It is therefore important that there must be positive changes to the current patent system to provide a conducive environment to nurture indigenous innovators while protecting the interests of those who have developed proprietary technologies. The Indian firms use joint ventures for technology purchase and sale with international firms, and thus, require protective IP measures against unauthorized usage or replication.[24] In addition, the corporate laws need to provide for a proper

[21] Rohit Shakya, 'A Study on Development of Electric Vehicles in India' (2021) 9(6) International Journal for Research in Applied Science and Engineering Technology 1175.

[22] Rujuta O Kambli, 'Electric Vehicles in India: Future and Challenges' (2022) 10(2) International Journal for Research in Applied Science and Engineering Technology 398.

[23] James Prasadh V, 'People Thinking General Facts About Electric Vehicles in India 2022' (2022) 10(5) International Journal for Research in Applied Science and Engineering Technology 3937.

[24] Gaurav Vikas Mohanty, 'Growth of Electric Vehicles in India' (2022) 10(7) International Journal for Research in Applied Science and Engineering Technology 3461.

balance on the question of compulsory licensing and technology transfer agreements under which domestic companies can access global competence without compromising on the principles of fairness. Clearing the existing patents and simplifying the process of licensing could help make India encouraging for home-grown EV technology.[25]

Corporate and Social Responsibility (CSR) reporting is a significant concern in today's organizational context, and going by the new ruling in India, where SEBI has enshrined the Business Responsibility and Sustainability Report (BRSR). However, issues arise regarding the identification of ESG metrics specific to the EV industry,this is due to the fact that the structure encourages disclosure of information. For the EV manufacturers, some additional information which are not required by traditional automotive manufacturers includes battery disposal policy and recycling, carbon emissions from the manufacturing processes, and supplier sustainability report.[26] It means that there is no unification of ESG reporting standards for the EV industry, which leads to the various levels of disclosure that are not representative of the actual influence of the sector on the environment. To fill such a void, the existing and even the new ESG compliance frameworks focused on specific sectors will uplift the transparency and ultimately the investors' confidence in the EV market.

However, the operation and development of local manufacturing are significant strategies under India's aim of mainstream EV production. The PLI scheme intends to enhance the manufacturing of Electric Vehicles and related components, through which the producing companies shall be given certain monetary incentives.[27] Nevertheless, a number of issues touching upon supply chain disruptions, contractual responsibilities, and procurement legislation should be considered within the framework of corporate law. The use of raw materials such as lithium for batteries is often imported, and this makes the firms vulnerable to fluctuations in the global market as well as international restrictions on trade. Corporate laws should provide legal requirements more favourable for long-horizon supply contracts, managing stock-out risks in the supply chain, and for investments in new technology in the storage of power generated from alternative energy sources.[28] Furthermore, the enhancement of measures to increase the efficiency of the resolution of contractual disputes can directly help in reducing the effectiveness of contracts and legal risks related to purchasing from suppliers.

In addition, changes in the laws governing corporations in India remain relevant to the specific laws needed for the regulation of the EV sector. Non-compliance issues,

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[25] Shreya, Aditya S, Dhananjay Hole, and Animesh Matia, 'Why is Electric Vehicle Not Booming In India?' (2022) 10(12) International Journal for Research in Applied Science and Engineering Technology 2386.

[26] Priya Dhote and others, 'A Review Paper on Lithium-Ion Battery Pack Design For EVs' (2022) 10(3) International Journal for Research in Applied Science and Engineering Technology 1486.

[27] Sumedh Bhavsar and others, 'Adoption of Electrical Vehicles in India' (2022) 10(4) International Journal for Research in Applied Science and Engineering Technology 2025.

[28] Rashika R Singh, 'Scope of Electric Vehicles and the Automobile Industry in Indian Perspective' (2023) 14(3) The Scientific Temper 563.

the stability of the investment policies, protection of Intellectual Property rights, enhancement of ESG Reporting framework, and positioning the Supply chain for stability will remain key in the development of a strong EV ecosystem. As the Nation grapples with the need to have sustainable means of transport, corporate laws and regulations must direct the corporate law towards technology and the market in order to deregulate, but at the same time redesign the law to meet the intended purpose while reasonably being sensitive to the environment.

V. Recommendations for Strengthening Corporate Law in India's EV Sector

There is a huge development in the electric vehicle (EV) industry across the globe, and, especially in India, there is a need for standard corporate legal procedures that clarify the standards to be followed and uphold legal investment for their development. This paper leads to the understanding that to build corporate law more robust in India's emerging EV sector, it will be necessary to form a combination of harmonised policies, axing of red-tapism, better IP laws and rights, sustainability reporting, and clear contractual and liability laws.[29] Considering these aspects will guarantee a stable and effective regulation for a fast implementation of EVs in the market, as well as covering the companies' needs.

The first suggestion is the coordination of EV policies with a national structure that incorporates the provisions of the corporate law. Lack of synchronization of EV policies within different states hampers the smooth functioning of companies having establishments in more than one state and has resulted in what is known today as the' policy maze'. There is no reason that a national EV policy should not clearly state the registration, tax, and other legal requisites of corporate entities. This averred would simplify processes and, at the same time, enforce compliance with a single regime of laws, thereby minimizing anti-business regulation and making laws easier for business entities to anticipate.[30]

To increase investment and capital for the EV sector, both local and foreign resources are needed; hence, friendly reforms have to be implemented. There is a need for clear policies for FDI pertaining to EV manufacturing, battery production, and charging structures to be put in place by the government. Measures that are easy to understand with regard to investment include single-window clearances and sector-specific incentives to encourage participation from global players. Further, policies such as lowered GST for components for EVs and the extension of the PLI scheme for the makers of the vehicles can increase the sector's profitability. The mentioned legal changes will enhance the financial aspect and foster the development of the corporation in the EV industry.[31]

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[29] Anand S and others, 'Electric Vehicles in India: Challenges and Opportunities' (2023) 15(2) Journal of Sustainable Mobility 101.

[30] Bansal R and Kumar P, 'Legal Framework for Electric Vehicle Charging Infrastructure in India' (2022) 8(3) Indian Journal of Energy Law 45.

[31] Chaturvedi A, 'Intellectual Property Rights in India's Electric Vehicle Industry' (2024) 12(1) Journal of Intellectual Property Rights 67.

The other necessary component for achieving further development of electrical vehicles is the enhancement of the IP protection. The present scenario of the patent approval in India is lengthy and complicated, and results in negative impacts on R&D investments. Revocation of patents and adaptation of a less cumbersome licensing regime covering EV-related technologies encourages technological advancement and technology funding. Relating to the context, the laws of corporations should be in compliance with the global standards and safeguard the indigenous advancement in the field of batteries, powertrains, and self-driving technologies. As such, it would guarantee that Indian companies sustain the competition within the global market for EVs while developing a protective shield for the exclusive innovations.[32]

Depending on the peculiarities of the EV industry and the markets in which they operate, there is a need for the adoption and application of sustainability reporting standards to improve the quality of information disclosed and accountability. General ESG norms for the EV sector would make sure that the sustainability policies, their carbon emission strategy, and the responsible sourcing plans are disclosed. The government and/or stock exchange should require all EV manufacturers and suppliers to provide annual ESG reports to ensure the establishment of ethical standards for business and create investor trust.[33] This measure will put the EV industry in order to ensure consumer confidence and observe the global standards of sustainability.

Another important factor is the need to have proper contractual and liability provisions for the developmental growth of the EV sector. From the analysis of the Current supply chain, the following supply chain activities of EVs involve many stakeholders, especially in the battery production and the charging station, so the contractual relationships must be clearly defined. There is a need to develop a policy standard for battery supply, charging stations, and manufacturing joint pursuant to corporate law to prevent conflicts and enforceable legal actions. Other regions must also contain rules that cover matters of scope of remedies, warranty, battery disposal, and consumer protection. The legal structure of undertaking and distributing responsibilities of all the parties involved indicates how corporate law can protect business entities and customers from certain operational and financial risks.[34]

Moreover, the corporate law in the Indian EV sector can be enhanced through enhancing the domestic regulation mechanisms, inviting investment through reforms, targeting IP protection, critical sustainability, and qualified contracts. Thus, the adoption of these proposals will build a legally proper environment for experiments, investments, and non-reproachable business. A well-regulated EV industry will not

[32] Desai M and Sharma V, 'Foreign Direct Investment Policies in India's EV Sector: A Legal Analysis' (2023) 9(4) Indian Journal of Corporate Law 89.

[33] Ghosh S and others, 'Sustainability Reporting in the Indian Electric Vehicle Industry' (2022) 14(2) Journal of Environmental Law and Policy 123.

[34] Iyer S and Nair R, 'Contractual and Liability Issues in India's EV Supply Chain' (2023) 11(3) Indian Business Law Journal 56.

only help India in its economic growth but also will make a significant contribution to improving the long-term prospects of the country's transportation sector and turn the nation into an EV hub of the world.[35]

VI. Conclusion

India's development law of electric vehicles (EVs) represents an important intersection between business law and environmental stability. As a Nation, Cleaner infection against mobility solutions, corporate institutions will have to navigate to develop the legal framework that controls production, taxation, investment in cents, and adherence to environmental regulations. This essay has discovered how business legislation affects the development of the EV sector, especially through the government's policy, foreign direct investment (FDI) regulations, and corporate social responsibility (CSR) mandate. The analysis has shown that although India has made significant advances in creating a favourable regulatory environment, policy implementation, infrastructure development, and economic viability for companies are still challenges.

The discussion has emphasized that a strong legal structure is important to ensure permanent EV adoption, balancing business interests with environmental obligations. The essay has discussed how the Company Act provides the facility for commercial development in the EV region, and ensures India's ambitious carbon reduction goals. It has also highlighted the role of encouragement and legal security measures to encourage innovation and participation in the private sector. Ultimately, EV laws for developing India must be in accordance with corporate strategies to promote the ecosystem favourably for economic growth and stability. An integrated legal approach to protecting business and public interests will be important to intensify India's infection in an electrical future.

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FOOD ADULTERATION AND DRINKS: AN ANALYTICAL STUDY

Aranya Nath *
Anuhya Venkat Padma Nidadavolu **

Abstract

Food adulteration is a major public health concern that undermines food security, endangers people's health, and impairs regulatory control systems. A thorough analysis aims to evaluate food and drink adulteration phenomena, and their underlying causes and consequences, given the present legislative frameworks and enforcement capacities in India. To arrive at decisions, the researcher incorporates theoretical legal studies, judicial reviews, and information from regulatory agencies. This study draws on three primary information sources: the Food Safety and Standards Authority of India (FSSAI), judicial records and legal documents, and secondary materials from scholarly research articles and worldwide best practice guidelines. The study divides food adulteration into three categories: intentional adulteration, unintentional adulteration, and metallic contamination.

The investigation uncovers regulatory flaws, insufficient inspection methods, and a lack of public comprehension of the problem, all of which contribute to the situation deteriorating. Indian food safety processes can benefit from foreign legal precedent, which indicates how to strengthen their system. The study reveals the critical need to strengthen food safety regulations through improved monitoring systems and consumer education activities. The author advocates for stronger penalty mechanisms, improved food testing technologies, and uniform standards to effectively handle food adulteration. The current study combines legal, scientific, and policy coverage to increase understanding of food safety legislation. The paper makes recommendations for regulatory enforcement and consumer protection methods.

Keywords: ***Food adulteration, food safety, public health, regulatory frameworks, consumer protection, legal enforcement.***

I. Introduction

Food is the basic necessity of life. Food adulteration is a social evil and a major issue in every society. Food is being affected by different adulterants. In the current scenario, to increase their volume or weight on the scale, food substances are subject to adulteration. One of the man-made risks is food adulteration when we deal with the

* **Ph.D Scholar, Damodaram Sanjivayya National Law University, Visakhapatnam**

** **LLM (Corporate & Commercial Law) School of Law GITAM University, Visakhapatnam**

overgrowing population, environmental hazards, and depleting natural resources. In simple terms, adulteration is adding a substance to the food, which reduces the vital importance of that product.

Adulteration is a common practice in many countries, despite various measures taken by the government to spread awareness about the hazards of food adulteration. Adulteration is not only a significant economic problem, but it can also lead to serious health problems for consumers. As the techniques of adulterating foods have become more advanced, very effective and reliable methods are required to prevent fraudulent manipulations. Food adulteration has progressed from being a simple means of fraud to a highly advanced and profitable industry.

We all know that "Health is wealth". The most important thing for people's health is pure, fresh, and healthy food. Having the right food at the right time is the secret to a good life. But food is being affected by different adulterants these days. To increase the quantity and make more profit, food is adulterated. The nutrients are drained from the food, and the place where the food is grown is often contaminated. Example: Chicory is used as an adulterant for coffee, Vanaspati is used as an adulterant for ghee, Dried papaya seeds are used as an adulterant for pepper, etc. Adulteration of foodstuffs is an item mentioned under the concurrent list in the Constitution of India. The Indian Government has enacted a Consumer Law called "The Prevention of Food Adulteration Act, 1954" to prevent adulteration of food. [1]

Criteria for the selection of food

To ensure that such foods do not cause any health risk, the choice of wholesome and non-adulterated foods is essential for daily life. Visual examination of the food before purchase, however, ensures that insects, visible fungus, foreign matter, etc., are absent. Therefore, due care taken by the consumer after thorough examination at the time of purchasing food can be of great assistance. The label of the product plays an important role. It provides the following information: ingredients, nutritional value, freshness of the product, and the period of best before use. Purchasing food from a reputable shop is always better.

Objectives

The main objectives of the research are:-

1. To look into various laws governing food adulteration and drinks.
2. To look into various types and methods of adulteration in detail.
3. To analyze decided cases to understand the applicability of the prevailing laws.
4. To look into the various roles of government agencies.
5. To look into various provisions of the IPC explicitly.

[1] '2792_et_m31.Pdf' <https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/food_technology/food_safety_standards_&_regulations/31.export_import_policy_/et/2792_et_m31.pdf> accessed 2 March 2025.

Significance & Scope of Study

Food is one of the necessities in our daily lives. We all know that adulteration has become a serious issue over the past few years. Due to the increase in adulterated products, many people are facing health issues. It is therefore necessary to be careful about the products that we consume in our daily lives. This study mainly focuses on the laws governing adulterated products and measures to prevent adulteration.

Hypothesis

- Over time, the legislation on food adulteration has become more stringent.

II. Understanding Food Adulteration

People have been using dishonest methods to enhance their business profits in food production since ancient times. People in ancient Rome practiced extensive food contamination, mostly with wine, olive oil, and bread. The Roman government tried to stop food fraud but failed because there was no way to test what was happening in the market. During medieval Europe, bakers sold low-quality bread by adding chalk and alum to flour, and adding bitter chemicals to milk and alcoholic drinks. The Industrial Revolution created a worse food safety situation as rising food production methods and cities led to a decline in quality assurance. Manufacturers who ignored safety standards put lead, arsenic, and copper sulphate into food products to make them look better and last longer. During the 19th century, England experienced severe food poisoning because manufacturers introduced powdered lead into cheese and candies. The increasing number of health risks forced Britain to create the Food Adulteration Act of 1860, which became the country's initial food safety law. The habit of food adulteration started in ancient India during the early Vedic period, when merchants mixed their food items with cheaper and lower-quality grains and higher-quality ones. British colonial rule accelerated food contamination because it brought mass food production together with commercial operations to the nation. The Indian government established *"the Prevention of Food Adulteration Act, 1954"* as a response to severe food adulteration problems. Food adulteration continues as a major problem in contemporary India because of rising population numbers and supply chain issues, together with weak regulatory inspection. Food adulteration became more complicated when India joined the global food trade market because counterfeit, contaminated food products started entering the market. The recent advancements in food science and technology allow researchers to develop stronger food safety laws, together with enhanced detection systems for food contamination. Public health safety and continuous consumer awareness remain essential for fighting food adulteration, even though regulatory practices continue to develop.

III. Classification of Adulterants and Their Impact on Food Safety

The practice of contaminating food products remains a serious health concern, which results in harmful outcomes for public health and heavy financial damage. Food

adulterants exist within three fundamental groups, which include intentional adulterants, incidental adulterants, and metallic contaminants. The various categories of food adulteration create different risks because some adulterants trigger emergency health problems, but others trigger chronic diseases over the years. Food classifications enable authorities to create safety regulations and protective measures for enhancing food security standards.[2]

Intentional Adulterants

Intentional adulterants represent food additives that manufacturers introduce to enhance food quality attributes, including taste and texture, and shelf stability, mostly for financial benefits. The list of intentional adulterating substances includes artificial colorants, such as metanil yellow and Sudan dye, and synthetic sweeteners, such as saccharin and cyclamate, starch, chalk powder, urea, and detergent. Different dairy products are often preserved using formalin, detergent, and starch to expand their volume, even though those chemicals are toxic to health. Artificial fruit ripening through carbide or ethephon treatments combined with formaldehyde-based soft drink preservatives is used to improve beverage freshness and flavor. Food adulterated with purposeful chemicals brings about serious health problems from food contamination that progresses toward kidney damage and neurological conditions, and potentially leads to cancer development during extended periods.

Incidental Adulterants

Food becomes adulterated incidentally when various materials enter unintentionally through cultivation stages and all steps leading to distribution and final storage. The contamination from pesticide residues combines with antibiotics, insect larvae, dirt, hair, and hazardous microorganisms. Chemical substances enter food products when unhygienic food handling practices combine with contamination from various packaging materials. The use of harmful chemicals in Indian agriculture leads to concerns about pesticide residues on vegetables and fruits because the accumulation of DDT, malathion, and aldrin remains trapped inside human bodies. Specific chemical substances that people encounter build up inside the body, leading to hormonal imbalances with corresponding reproductive disorders, followed by damage to the nervous system and weakening of immune function.[3]

IV. Common Adulterants in Food and Beverages

Adulteration of food occurs when manufacturers add substandard materials that are dangerous or non-food-based to food products to degrade their value and safety quality. Multiple types of food products become vulnerable to improper modifications,

[2] 'Food Adulteration: Causes, Risks, and Detection Techniques—Review - PMC' <https://pmc.ncbi.nlm.nih.gov/articles/PMC11080768/#main-content> accessed 2 March 2025.

[3] '(PDF) Dreadful Practices of Adulteration in Food Items and Their Worrisome Consequences for Public Health: A Review' [2024] ResearchGate <https://www.researchgate.net/publication/368395637_Dreadful_practices_of_adulteration_in_food_items_and_their_worrisome_consequences_for_public_health_a_review> accessed 2 March 2025.

which decreases public health safety and erodes consumer faith in the food industry.

Heavy dairy products accept the addition of detergent, starch, and urea together with synthetic milk to produce greater volume while extending shelf stability. The consumption of adulterated products causes digestive problems that affect kidney health and create endocrine system difficulties.

- Cereals and Pulses receive stone chips combined with artificial polishing materials and lead salts as cosmetic treatments that result in critical health problems.
- Vegetables combined with fruits receive chemical treatment through artificial ripening with calcium carbide, which damages mangoes and bananas, and green vegetables receive adulteration from malachite green that harms livers and kidneys.
- Edible Oils contain mustard and coconut blends with cheaper replacement additives such as mineral oil to form argemone oil, which leads to heart diseases and paralysis.
- The addition of lead chromate and artificial dyes to turmeric and chili powder causes gastrointestinal and neurological problems through their act of colour-enhancing adulteration.
- Beverages added with synthetic sweeteners and preservatives in carbonated drinks and fruit juices increase metabolic disorder risks while heightening cancer risks.

V. Health Hazards and Long-Term Implications

Adulterated food and beverages create critical medical hazards because their consumption leads to both moderate stomach problems and fatal diseases. Adulterants lead to quick health effects, which include food poisoning, allergies, and abdominal pain and nausea. The negative impacts of continuous exposure to adulterated substances increase in intensity.

- Contaminated food containing lead and mercury can harm the nervous system, produce cognitive impairments, memory loss, and developmental problems in children.
- Long-term use of synthetic chemicals and preservatives damages the kidneys and liver because these organs fail to extract harmful toxins effectively.
- Adulterated products containing artificial colour or synthetic ripening agents include carcinogens, which create risks for cancer development and genetic alterations.
- When people eat meat and dairy products with growth hormones and antibiotics present, the endocrine system becomes imbalanced, which generates reproductive and metabolic disorders.
- People who encounter food contaminants over long periods will experience weakened immunity and become more vulnerable to infections until they develop serious chronic diseases.

- Public health faces ongoing threats from adulterated foods, so authorities need to intensify enforcement, educate customers, and develop superior food analysis methods for surveillance purposes.

VI. Legal and Regulatory Framework on Food Adulteration

Public health safety requires strict legal regulations to combat the serious threat of food adulteration for maintaining proper food quality standards. A complete framework operates within the territory of India for dealing with food adulteration through national laws, regulatory institutions, and enforcement tools. The *"Food Safety and Standards Act, 2006 (FSSA) functions as the main food safety statute in India because it substituted all outdated legislation along with the Prevention of Food Adulteration Act, 1954 (PFA)."*The Indian Penal Code *"(IPC) and Consumer Protection Act and state laws together with the Prevention of Food Adulteration Act of 1954 create the legislative structure for food safety in India."* The Indian food safety standards follow international regulations such as Codex Alimentarius standards and U.S. Food and Drug Administration (FDA) requirements to build more safety protocols.

Food Safety and Standards Act, 2006 (FSSA) and Its Implementation

As the dominant piece of food safety legislation in India, the Food Safety and Standards Act 2006 (FSSA) controls all matters of food protection. The Act seeks to merge different food laws with modern standards while securing food security across the entire supply chain. The main elements within the Act contain the following components:

Key Features of FSSA, 2006:

FSSA combined different existing food regulations into one by eliminating the *"Prevention of Food Adulteration Act (PFA), alongside the Fruit Products Order, 1955, and the Meat Food Products Order, 1973."*

The Act describes adulteration as adding any damaging substance to food or using low-grade components when this combination endangers food protection.

Food Business Operators (FBOs) must obtain and maintain FSSAI certification because it represents their primary regulatory obligation in the food sector.

Food advertising must refrain from using any deceptive claims that affect product truthfulness.

The Act creates protections for consumers that allow them to obtain sanitary food while enabling complaints about non-compliant businesses.

The Act requires food testing to occur by scientific methods through accredited laboratories for identifying food adulterants.

The legal system is severe regarding violations because they can trigger monetary penalties that start at ₹ 1 lakh, then proceed to ₹ 10 lakh, while life imprisonment can apply in the most serious situations.

Implementation of FSSA, 2006

The Food Safety Standards Act of India is successfully executed through:

- Food business establishments must obtain licensing and mandatory registration according to their operational size through the FSSA.
- Food safety officers conduct ambiguous inspections to verify that all businesses follow regulatory requirements.
- Stringent Penalties: Heavy fines and legal actions against violators.
- Consumer Awareness Campaigns: Promoting public awareness through educational programs.

Role of the Food Safety and Standards Authority of India (FSSAI)

The apex regulatory body of the FSSA, 2006, which is the *"Food Safety and Standards Authority of India (FSSAI), performs the responsibilities to regulate and monitor food safety standards. Its primary functions include:The Authority requires all stakeholders to follow established scientific food safety standards for avoiding adulterated food products."*

The organization grants Licenses to enforce food safety standards through all business operations and requires proper hygiene practices.

- The enforcement of random food sample testing occurs through accredited testing laboratories.
- Food inspectors conduct surveys to detect adulteration cases while strictly enforcing food laws.
- The consumer awareness campaigns known as "Jaago Grahak Jaago" and food safety labels are being promoted.
- Indian food standards must follow international norms through partnership with global organizations to enable international trade and food safety protection.

VII. Other Relevant Laws on Food Adulteration in India

The Indian legislation regarding food adulteration and consumer protection includes the FSSA, 2006,along with multiple additional laws.

Indian Penal Code (IPC), 1860

The manufacture or sale of adulterated food carries penalties in Section 272 & 273 of the law through fines and jail sentences reaching up to six months or higher periods based on the severity of cases.

Food producers commit cheating per Section 420 of the Indian Penal Code when they purposefully mislead their customers.

Consumer Protection Act, 2019

The provisions of Consumer Rights ensure protection for Indian consumers against

unfair and deceptive dealings, besides ensuring clean and unaltered food products.

- Product Liability: Holds food manufacturers accountable for defective or hazardous food products.
- The Prevention of Food Adulteration Act (PFA) (1954) functioned from 1954 until 2006 but was ultimately succeeded by FSSA.
- The PFA Act stood as the initial dedicated legal instrument for food adulteration, which delineated safety measures and imposed penalties in India.
- The replacement of FSSA left multiple provisions from the original act to continue guiding current food safety laws.

Article 21- Right to life

In *"Maneka Gandhi v. Union of India*[4]*"*The scope of Article 21 has been expanded, and it has therefore been decided, in many cases, to include the right to health, freedom from hazards, and pollution of the environment. Secondly, "Centre for Public Interest Litigation v. Union of India & Ors[5]"It was held that it is a well-established principle that the right to livelihood must involve the right to live with the dignity of having a healthy and secure life, which is only possible if nutritious and balanced food is available for human consumption. It cannot be neglected that the issue of food protection and the right to nutritious food is a matter of national and international importance. *"To achieve the desired outcome, the Regulation on Food Protection should be interpreted and enforced in the context of constitutional principles. The accomplishments and enjoyment of life, and the right to life and human dignity, include access to quality food, without insecticides or traces of pesticides, etc., within their spectrum."*

Article 47 of the Constitution of India

The values of the Directive Principles of State Policy are public health maintenance, enhancing the quality of care, and nutrition. *"Article 47 of the Constitution of India states that 'a state shall consider, as one of its primary tasks, the increase in the level of nutrition and the standard of living of its people and the improvement of public health; a State shall endeavour to prohibit the production of contaminated foods, intoxicating drinks and medicines harmful to human health.* [6]*"*

Case Laws

1. M/s Nestle India Ltd. v. The Food Safety and Standards

In this case, the FSSAI tested Maggi, a Nestle product, and faced legal consequences for unauthorized amounts of monosodium glutamate (MSG) and lead in the noodles. For the following reasons, FSSAI has held Maggi accountable:

[4] 'Maneka Gandhi vs Union Of India on 25 January, 1978' <https://indiankanoon.org/doc/1766147/> accessed 16 July 2024.

[5] 'Centre For Public Interest Litigation ... vs Union Of India Thru Secretary on 23 January, 2020' <https://indiankanoon.org/doc/144460111/> accessed 2 March 2025.

[6] 'Article 47 in The Constitution Of India 1949' <https://indiankanoon.org/doc/1551554/> accessed 21 October 2022.

- Excessive content of lead.
- Misled consumers by labelling 'No MSG added' products.
- Maggi was marketed without FSSAI product approval.

In *"M/s Nestle India v. FSSAI"*[7] The High Court of Mumbai delivered the following judgment as a further appeal to Nestle after analyzing all the proposals:

- It would be possible to check the variants of the Maggi Noodles available to the petitioner.
- *"Five samples will be submitted to three Food Labs approved and accepted by NABL, Vimla Lab, from each batch in their custody. (Hyderabad), Incubator of Biotechnology Punjab, Laboratory of Agri & Food Testing (Mohali), and CEG Test House and Research Center Pvt. Ltd., (Jaipur, Jaipur), if the results show a lead of 0.25 percent in the permissible quantity, then only the company will be allowed to start the production process."*
- Magi products will have to go through the FSSA approval process, and the company was also directed to remove 'No MSG added' from the product label.[8]

VIII. Enforcement Mechanisms and Challenges in Combating Food Adulteration

Public health faces critical dangers from food adulteration, so central and state regulators must enforce robust standards through quality checks that lead to appropriate punishment of lawbreakers. The "Food Safety and Standards Act of 2006 (FSSA)" and the "Food Safety and Standards Authority of India (FSSAI)" operate under continuing obstacles in their surveillance operations while enforcing penalties. Numerous well-reported food adulteration incidents in India reveal systemic gaps that require advanced regulatory oversight and stronger legal groundwork.

As the leading food safety authority in India, the FSSAI maintains complete responsibility for protecting food standards through its regulatory role and performs inspections to issue licenses, while monitoring compliance with specific food regulations. The organization partners with different food safety departments in states to execute on-site monitoring while carrying out inspections and taking enforcement measures. The FSSAI and its mandate to implement food safety standards operate in conjunction with two certification systems from BIS and Agmark, which ensure proper benchmarks for food quality. The authorities that state governments select as Food Safety Officers (FSOs) execute inspections while retrieving samples during raids and begin legal steps against offenders. The state-level food safety departments face challenges due to poor coordination systems, while having insufficient human resources and funding issues that prevent prompt enforcement procedures.

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[7] 'M/S Nestle India Limited vs The Food Safety And Standards Authority ... on 13 August, 2015' <https://indiankanoon.org/doc/66718388/> accessed 2 March 2025.

[8] Ibid.

Food testing laboratories perform adulteration detection of food products under the accreditation of the "National Accreditation Board for Testing and Calibration Laboratories (NABL). The Central Food Laboratory (CFL), located in Kolkata, and multiple State Food Laboratories execute tests through chemistry and microbiology to discover adulterated food substrates." The Food Safety on Wheels (FSW) program, launched by FSSAI, operates mobile testing laboratories that help with immediate food quality inspections in distant locations. Food safety measures become less effective because of delays in testing and aging equipment, but also because of an excessive case backlog. Private labs operating in food quality control face reduced effectiveness because of mystery audits and poor visibility in their operations.

Food adulteration deterrence suffers because of issues that affect law enforcement and surveillance capabilities, and penalty enforcement capabilities across India. Food safety laws receive substantial support through Supreme Court decisions, which include the *"Centre for Public Interest Litigation v. Union of India (2015)*[9]*, M.C. Mehta v. Union of India (1987)*[10] *And State of Maharashtra v. Sayyed Hassan (2019).*[11] *Future enhancements require advanced surveillance systems coupled with real-time testing capabilities and policy reforms,secure, safe, unadulterated food access for every consumer."*

IX. Consumer Awareness and Role of Stakeholders

The practice of food adulteration poses an increasing problem throughout India, which creates both health risks for consumers and safety concerns. Food safety control requires the main framework of legal rules and regulatory bodies alongside proactive consumer involvement and active stakeholder responsibility to battle food adulteration practices. Each sector, including consumers, the media, NGO groups, advocate organizations for consumers, and supplier companies and retailers, must work together to protect food safety through their contributions. The work upholding superior food quality standards is more effective due to ethical business conduct and corporate accountability. The present chapter conducts a thorough exploration of public understanding with emphasis on media effects & stakeholder commitments, and principles for ethical food quality preservation.

X. Public Perception and Awareness Regarding Food Adulteration

Food adulteration is a serious public health problem in India that impacts both the safety and health of consumers. Notwithstanding the presence of strict laws and regulatory agencies such as the Food Safety and Standards Authority of India (FSSAI), the level of public awareness regarding food adulteration remains very low in various areas and segments of the population. Public perception and awareness are critical

[9] 'Centre For Public Interest Litigation vs Union Of India Thru Secretary on 23 January, 2020' (n 7).

[10] 'M.C. Mehta And Anr vs Union Of India & Ors on 20 December, 1986' <https://indiankanoon.org/doc/1486949/> accessed 3 November 2024.

[11] 'The State Of Maharashtra vs Sayyed Hassan Sayyed Subhan on 20 September, 2018' <https://indiankanoon.org/doc/162989021/> accessed 3 March 2025.

for detecting, preventing, and reporting food adulteration cases. This section presents the levels of consumer awareness, factors that affect the perception of the public, challenges in public education, and measures to enhance awareness.

Understanding Consumer Awareness

Consumer awareness represents the level of individual understanding about food adulteration, together with their views on food labelling and their reactions to safety regulations. Awareness[12] It is crucial in:

- People can detect adulterated food items by performing household tests, which show that lead chromate in turmeric will become red after mixing with hydrochloric acid.
- An important part of selecting food consists of assessing packaging labels to verify FSSAI certification while checking expiration dates and reviewing all included ingredients.
- People need to detect deceitful marketing methods that companies implement through their promotions.[13]

Factors Influencing Public Awareness

- Higher levels of education create a better understanding of food safety matters in society.
- The access to information between urban consumers differs remarkably from that of rural consumers.
- The 'Jaago Grahak Jaago' program, alongside other government campaigns, teaches people their rights alongside food safety procedures.
- Social media allows speedy information sharing about news from consumers and food safety alerts that circulate on Twitter, Instagram, and YouTube.[14]

Challenges in Consumer Awareness

Many consumers cannot access dependable information about food adulteration detection because it remains unavailable to them.

- Food consumers face difficulties in receiving protection because the administrative system commonly fails to address their food complaints effectively.

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[12] '(PDF) Consumer Awareness Regarding Food Adulteration and its Incidence in the Market' <https://www.researchgate.net/publication/328629867_Consumer_Awareness_Regarding_Food_Adulteration_And_Its_Incidence_In_The_Market> accessed 2 March 2025.

[13] 'Study on Awareness about Food Adulteration and Consumer Rights among Consumers in Dhaka, Bangladesh - Journal of Health Science Research' <https://jhsronline.com/study-on-awareness-about-food-adulteration-and-consumer-rights-among-consumers-in-dhaka-bangladesh/> accessed 2 March 2025.

[14] Michael Alurame Eruaga, 'Assessing the Role of Public Education in Enhancing Food Safety Practices among Consumers' (2024) 4 International Journal of Scholarly Research in Science and Technology 022.

- Among citizens, there exist doubts concerning food regulations because the government displays weak enforcement, together with corrupt practices leading to trust breakdowns.

XI. Role of Media, NGOs, and Consumer Advocacy Groups

Role of Media in Raising Awareness

The media functions as a conduit to join customers and food safety administrators while shaping public attitudes toward authorities who make policies.

The Centre for Science and Environment (CSE) of India performed investigative journalism that revealed pesticide contamination in soft drink products.

Newspapers and television channels repeatedly broadcast news about food adulteration incidents while informing consumers about their protection rights.

Through digital and social media platforms, including YouTube, along with Instagram, Twitter, and Facebook, users can find information regarding consumer grievances as well as fake product alerts and reports of food fraud.

The media shows 'Satyamev Jayate' and 'Consumer Court' have significantly contributed to raising public knowledge about food safety violations through their television programming.[15]

Function of NGOs to Counteract Adulteration of Food

Non-Governmental Organizations (NGOs) offer food safety awareness through the promotion of policies, educational campaigns, and legal action.

Several prominent non-governmental organizations operating within this field include:

- Consumer Voice: Undertakes independent testing for food quality and makes findings available to regulatory agencies.
- CUTS International (Consumer Unity & Trust Society): Works on consumer rights and food safety policy in India.
- CSE (Centre for Science and Environment): Researches food contamination and lobbies for better controls.
- The People's Vigilance Committee on Human Rights (PVCHR) actively operates against unethical practices with food, especially among marginalized communities.[16]

Consumer Advocacy Groups and Their Functions

- Legal Aid: Assist consumers in filing cases of food adulteration in consumer courts.

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[15] 'Role of Media: Shaping Public Opinion and Influencing Society' (*VEDANTU*) <https://www.vedantu.com/civics/what-is-media> accessed 2 March 2025.

[16] '2022 - WHO Global Strategy for Food Safety 2022-2030 Tow.Pdf' <https://iris.who.int/bitstream/handle/10665/363475/9789240057685-eng.pdf> accessed 2 March 2025.

- Product Inspection: Unbiased testing of branded and unbranded foods for quality.
- Policy Advocacy: Demand for more stringent laws and stricter enforcement actions.

Manufacturer, Supplier, and Retailer Responsibilities

Money, negligence, and insufficient quality control measures often impel food adulteration. Food safety depends on proactive interventions of producers, distributors, and retailers at some stage in the supply chain.

Role of Manufacturers

Strict Compliance with Food Safety Rules: They are required to follow FSSAI regulations, sanitary measures, and international safety practices.

- Quality Control Measures: Regular food testing, improved storage, and maintenance of ingredient traceability.
- Ethical production practices involve the exclusion of prohibited artificial chemicals, dyes, and preservatives.
- Label transparency comprises the correct indication of contents, ingredients, allergens, and expiration dates on the packaging of the goods.

The Suppliers' Role

- Ensuring supply chain integrity: Avoiding contamination during storage and transportation phases.
- Guaranteeing Traceability: Accurate documentation of food source, processing, and delivery.
- Cold Chain Standards Compliance: For products such as dairy products, seafood, and meat.

The Retailers' and Food Sellers' Role

- Prevention of the Sale of Tainted Products: Commercialization of unauthorized, fake, or low-quality products leads to legal consequences.
- Compliance with hygiene standards: Confirming appropriate storage, packaging, and handling of food products.
- Display of FSSAI Licenses in Stores: For building consumer trust and responsibility.

XII. Importance of Ethical Business Practices and Corporate Responsibility

Ethical business and corporate responsibility play a crucial role in ensuring food safety, consumer confidence, and sustainable business development. Food adulteration is not only a legal but also an ethical and moral issue since it has direct implications on public health and well-being. Food and beverage companies need to put integrity, transparency, and corporate social responsibility (CSR) at the top of their agenda to

avoid adulteration and protect consumers' rights. This section emphasizes the importance of ethical business, corporate responsibility, implementation challenges, and compliance measures.

What is Corporate Social Responsibility (CSR) in Food Safety?

Corporate Social Responsibility (CSR) refers to business operations that are aimed at maintaining ethical business practices and consumer protection. Food businesses must incorporate sustainability, food safety, and public health into organizational structures.

Ethical Business Practices for Food Safety

- Investment in Safe and Sustainable Food Production: Employing organic farming, green packaging, and non-harmful preservatives.
- Fair Trade and Sustainable Procurement: Working with responsible suppliers to reduce the risk of contamination.
- Third-Party Audits: Independent assurance of the food safety and quality requirements.
- Strict Internal Compliance: Adopting strict zero-tolerance policies on adulteration throughout the organization.

Corporate Responsibility in Food Safety Crises

Some multinational firms have incurred food safety infractions, which have provoked public uproar:

- Nestlé (Maggi Noodles Controversy, 2015): Maggi noodles contained high levels of lead, resulting in a ban across the country and a lawsuit.
- Coca-Cola & Pepsi (Pesticide Residue Issue, 2003): An NGO survey found excessive pesticide residues, causing tighter controls to be imposed.
- Cadbury India (Worm Infestation Scandal, 2003): Inadequate packaging resulted in consumer mistrust and compulsory packaging upgrades.

XIII. Conclusion and Recommendations

Summary of Key Findings

Food and beverage adulteration is a public health concern that affects the health, trust, and economic sustainability of consumers. The current study reports the prevalence of intentional and unintentional contaminants and metallic contaminants in commonly consumed food items and beverages, which may lead to serious health hazards, such as food poisoning, organ damage, and chronic diseases like cancer. Despite the availability of strong legislative regulations, such as the Food Safety and Standards Act of 2006 (FSSA) and Prevention of Food Adulteration Act (PFA), and international regulations like Codex Alimentarius, there are issues related to enforcement, compliance, and consumer awareness. The study emphasizes that ethical

business practices, corporate responsibility, and consumer awareness are required to counter the adulteration risks. It also elaborates on the roles of media, non-governmental organizations (NGOs), and regulatory agencies in creating awareness and ensuring accountability. The results re-emphasize the requirement of stringent monitoring systems, strong legislation, and technological interventions to combat the problem of food adulteration.

Policy and Legal Recommendations for Food Safety Enforcement

To address the age-old problems of food adulteration, policy and legal frameworks must be tightened. First, the government must increase regulatory enforcement by increasing the frequency of food safety checks and surprise audits at urban and rural markets. Making stronger fines and criminal punishments for individuals involved in food adulteration, like increased fines and possible criminal charges, will serve as a powerful deterrent. Second, harmonization of domestic legislation with international food safety norms will ensure India's alignment with international best practices, thus improving food quality and trade reliability. Imposing stringent licensing and certification requirements on food producers, suppliers, and retailers to ensure continued adherence to hygiene and safety norms is essential. Third, enhanced traceability methods like blockchain technology and artificial intelligence-based monitoring systems can greatly improve transparency in food supply chains. Finally, governments must make the labelling of food composition and potential contaminants on the packaging, thus allowing consumers to make informed choices.

Role of Consumer Involvement and Stringent Regulations

Although legal frameworks and government intervention are necessary, consumer involvement is also necessary in the prevention of food adulteration. An educated consumer base can put pressure on businesses and prevent malpractices. It would be necessary to promote public awareness campaigns through mobile internet, social media, and education programs to educate people to recognize adulterated products and report the problem to the concerned authorities. Promoting grassroots-level food safety vigilance programs can further enhance local vigilance. Additionally, making food safety training programs compulsory for manufacturers, suppliers, and restaurant owners can go a long way in minimizing the scope for contamination and malpractices. Policymakers must include consumer feedback systems in food regulatory bodies so that complaints of food adulteration are redressed in time. Strengthening consumer protection laws and promoting the establishment of independent consumer advocacy organizations will further enhance public participation in food safety regulation.

Future Research Directions in Food Adulteration and Safety

While significant strides have been made in the regulation of food safety, the demand for novel adulterants and processing methods requires continued research and technological advancements. Future research can examine the long-term health impacts of emerging food contaminants, particularly for processed and genetically

modified foods. Assessment of the role of artificial intelligence and big data analytics in predicting and responding to food adulteration trends can yield new regulatory solutions. Research must also delve into sustainable and eco-friendly methods of food preservation that do not involve chemical additives and artificial preservatives. The potential for biodegradable food packaging with embedded indicators of contamination must be explored to enhance food safety. Lastly, comparative analysis of global food safety regimes, such as those used in the European Union and the United States, can yield valuable lessons for India in its quest to enact more effective and responsive food safety policies.

Concluding Remarks

Food and beverage contamination is a multifaceted problem that requires the participation of all stakeholders, such as government agencies, industry, consumers, and global organizations. While existing laws provide an overall concept of food safety, the enforcement of stricter policies, advancement in technology, and active participation of consumers are essential to achieve long-term success. The inculcation of ethical business culture, imposition of higher penalties on offenders, and mass awareness campaigns will make the food industry safer, healthier, and more transparent. In addition, additional research on adulterant detection, digital supply chain management, and sustainable food systems will shape the future of food safety in India and the world. These problems being addressed through an integrated approach with policy changes, laws, and technology will enable the creation of a healthier and more responsible food system.

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LGBTQIA+ RIGHTS: A COMPARATIVE ANALYSIS

Stuthi S Chowta *
Wilma Nathaliya Fernandes **

Abstract

With an emphasis on India, Mexico, and Australia, this article offers a comprehensive comparative analysis of LGBTQ+ rights across diverse legal and social frameworks. The study looks at how attitudes toward sexual minorities have changed over time, starting with pre-colonial times and continuing through colonial laws and current legal reforms. While pointing out ongoing protection gaps in comparison to countries like Mexico, which has permitted same-sex marriage since 2015, and Australia, which legalized same-sex marriage in 2017, this study also emphasizes India's notable legal advancements, including the Supreme Court's 2018 decision to decriminalize homosexuality.

Additionally, it examines judicial decisions, constitutional clauses, and the impact of international human rights frameworks, such as the Yogyakarta Principles, on national laws. This study finds that despite legal advances, there are continuing challenges, including discrimination, violence, and a lack of comprehensive protections in areas such as marriage equality, adoption rights, workplace safeguards, and inheritance laws. This article concludes with the note that while significant progress has been made globally, substantial gaps remain between legal recognition and societal acceptance, and that there is a need for comprehensive legal reforms alongside continued social advocacy to achieve full equality for LGBTQIA+ individuals.

Keywords: *LGBTQIA+, Human Rights, Social Equality*

I. Introduction

The LGBTQ+ community, an umbrella term for individuals who identify as Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and others whose sexual orientation or gender identity differs from the societal norm, has long been a symbol of both diversity and resilience. The "+" in LGBTQ+ signifies inclusivity of various other identities such as intersex, asexual, pansexual, and more, recognizing that human identity and love exist on a spectrum. While progress has been made in many parts

* I LLM, Shri Dharmasthala Manjunatheshwara Law College, Mangalore, Karnataka.

** I LLM, Shri Dharmasthala Manjunatheshwara Law College, Mangalore, Karnataka.

of the world towards acceptance and equal rights, LGBTQ+ individuals continue to face challenges ranging from discrimination and social stigma to legal inequality and violence.

Globally, the status of LGBTQ+ rights varies drastically from one country to another. The legalization of same-sex marriage and anti-discrimination laws offers protection in the fields of healthcare, education, and employment in progressive countries. Conversely, only a small number of nations still make same-sex relationships illegal. These legal inequalities affect the mental health, safety, and freedom of LGBTQ+ people daily and are a reflection of larger societal attitudes.

Recognition of LGBTQ+ rights is not just a legal matter-it is a fundamental human rights issue. Every individual, regardless of their sexual orientation or gender identity, deserves to live with dignity, freedom, and equality. Acknowledging and protecting LGBTQ+ rights helps foster a more inclusive and just society, where diversity is not just tolerated but celebrated. It also plays a crucial role in improving the mental and emotional well-being of LGBTQ+ individuals, many of whom suffer from high rates of depression, anxiety, and suicidal ideation due to societal rejection and isolation. When LGBTQ+ rights are recognized and protected, it creates a ripple effect-encouraging cultural, social, and economic participation. Inclusion leads to better representation in media, politics, and leadership roles, helping break stereotypes and normalize diverse identities. In workplaces, inclusive policies lead to higher productivity and a healthier work environment, benefitting society as a whole.

II. Who Are Sexual Minorities?

Sexual minorities, often referred to as the LGBTQIA+ community, encompass individuals whose sexual orientation, gender identity, or sex characteristics differ from societal norms. "+" symbol indicates the inclusion of other gender and sexual identities beyond those explicitly listed in the acronym. This diverse group includes lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual individuals, among others. Collectively, they are sometimes called the "Rainbow Community," symbolizing diversity and inclusion.

a. Lesbian: Women who experience romantic or sexual attraction to other women.
b. Gay: Typically refers to men attracted to other men, but can also describe homosexual individuals regardless of gender.
c. Bisexual: Individuals attracted to more than one gender.
d. Transgender: People whose gender identity differs from the sex assigned at birth.
e. Transsexual: An older term for individuals who have undergone medical procedures to align their physical characteristics with their gender identity.
f. Intersex: Individuals born with sex characteristics that don't fit typical definitions of male or female.

g. Queer: An umbrella term reclaimed by some to describe non-heteronormative identities.[1]

III. Historical Background

i. LGBTQIA+ Rights Before the 20th Century

Historically, same-sex relations were stigmatized, particularly by religious institutions, though early European laws were often silent on the matter. This changed in the 16th century when England's Buggery Act (1530s) criminalized male same-sex acts, punishable by death—a stance maintained until 1861. In 1885, "gross indecency" laws further broadened the criminalization of male homosexual activity, while lesbianism was largely ignored. Similarly, Germany's Paragraph 175 (1870s) penalized male same-sex relations. In predominantly Muslim countries, Islamic law imposed severe punishments for same-sex acts.[2].

ii. The Beginning of the LGBTQIA+ Rights Movement

Gay rights organizing began in the late 19th century with the 1897 founding of the Scientific-Humanitarian Committee in Berlin, led by Magnus Hirschfeld. The group sought to repeal anti-homosexual laws and conducted public advocacy. Hirschfeld also founded the Institute for Sexual Science in 1919 and supported international reform efforts. In Germany, especially during the liberal Weimar era, LGBTQIA+ communities found relative freedom, which ended with the Nazi crackdown in 1933. Outside Germany, groups like Britain's Society for the Study of Sex Psychology (1914) and America's Society for Human Rights (1924) began to form, although visibility remained low and police harassment persisted.[3]

iii. The LGBTQIA+ Rights Movement Since the Mid-20th Century

Post-WWII, LGBTQIA+ activism grew. Key groups included the Mattachine Society (1950), Daughters of Bilitis (1955), and COC in the Netherlands (1946). Legal reforms followed, such as the UK's Wolfenden Report and the 1967 decriminalization of homosexuality. The 1969 Stonewall riots marked a turning point, sparking pride celebrations and a wave of activism. Political representation grew, with openly gay officials elected globally. Legal victories included the repeal of U.S. sodomy laws (2003), military inclusion (2010), same-sex marriage (2015), and workplace protections (2020). The movement also fought HIV/AIDS, hate crimes, and discrimination, adapting its goals across cultural and legal contexts worldwide. [4]

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1 *What does 'LGBTQ' mean? Default*. Available at: https://www.wkhs.com/health-resources/wk-health-library/medical-procedures-tests-care-and-management/neurological/spine/what-does-lgbtq-mean#:~:text=LGBTQ%20is%20an%20acronym%20that,those%20in%20the%20LGBTQ%20community. (Accessed: 20 April 2025).

2 *Gay Rights Movement;Encyclopædia Britannica*. Available at: https://www.britannica.com/topic/gay-rights-movement (Accessed: 20 April 2025).

3 Arora, R. (2023) *The evolution of LGBTQ+ rights in India: A journey towards equality*, *A.K. Legal & Associates*. Available at: https://aklegal.in/the-evolution-of-lgbtq-rights-in-india-a-journey-towards-equality/ (Accessed: 20 April 2025).

4 *Naz Foundation vs the government of NCT of Delhi and others on 2 July, 2009*. Available at: https://indiankanoon.org/doc/100472805/ (Accessed: 20 April 2025).

IV. Constitutional Protections in India

India's Constitution, a living document, enshrines the rights of all citizens, including sexual minorities. Articles 14 to 18 guarantee the right to equality, ensuring that no individual faces discrimination based on religion, race, caste, sex, or place of birth. Additionally, Articles 37, 38, and 39 mandate the state to promote the welfare of all citizens, aiming to minimize inequalities and protect the rights of marginalized communities.

Progress and Challenges

India has made significant strides in recognizing the rights of sexual minorities. In 2018, the Supreme Court decriminalized consensual same-sex relations, a landmark decision affirming the rights of LGBTQIA+ individuals. However, challenges persist, including societal stigma, lack of comprehensive anti-discrimination laws, and limited access to healthcare and education tailored to the needs of sexual minorities.

V. LGBTQIA+ Rights in India

Homosexuality in India has deep historical roots, reflected in Hindu mythology and ancient texts like the Kamasutra.

Rigveda, a sacred Hindu text, even mentions the phrase 'Vikriti Evam Prakriti', implying that what may appear unnatural is natural. Temple art at Khajuraho, Konark, Puri, and Tanjore depicts same-sex love and diverse gender identities. During Muslim rule, such relationships existed despite legal bans. British colonizers later imposed Victorian morals, criminalizing homosexuality under Section 377 in 1861. This law remained until 2009, when the Delhi High Court in *Naz Foundation v Government of NCT of Delhi*, decriminalized consensual same-sex relations, citing violations of constitutional rights.[5]

Love is a Right, not a Privilege: The Ongoing Fight for LGBTQIA+ Equality in India and Mexico

"It takes no compromise to give people their rights... It takes no money to respect the individual… It takes no survey to remove repression." These words ring as true today as ever. At the core of human existence lies a simple truth-everyone deserves dignity, love, and freedom, regardless of their identity.

Yet, not everyone gets treated equally.

Human rights are universal. They're not rewards or privileges handed out to a select few-they belong to everyone. When we withhold dignity from someone because of who they are or who they love, we open the door to discrimination. Among the many who have had to fight for their basic rights, the LGBTQIA+ community has long

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[5] *LGBTQ rights: A comparative analysis of the rights and challenges faced by the Constitutional Framework of India and Australia* (2022) *ijalr*. Available at: https://ijalr.in/volume-1/issue-3-2/lgbtq-rights-a-comparative-analysis-of-the-rights-and-challenges-faced-by-the-constitutional-framework-of-india-and-australia/ (Accessed: 21 April 2025).

stood at the frontlines braving hatred, ignorance, and systemic injustice just to live as their authentic selves.[6]

VI. India: A Landmark Judgment, but a Long Road Ahead

For years, open discussion about sexuality was almost non-existent in India. But things began to shift in 2018 when the Indian Supreme Court decriminalized same-sex relationships by striking down Section 377 of the Indian Penal Code a colonial-era law that criminalized "unnatural" sex.

It was a moment of celebration. The community finally saw a victory after decades of struggle. But legal reform doesn't immediately translate into societal change.

In India, LGBTQIA+ people still face discrimination, stigma, bullying, violence, and rejection sometimes even from their own families. Many are forced to leave home or live double lives due to fear and shame. Despite pride parades in major cities and support from NGOs, key legal gaps remain. For example:

- Same-sex marriage isn't recognized
- Adoption and surrogacy rights remain unavailable to same-sex couples
- Workplace protections and anti-harassment laws don't explicitly include LGBTQIA+ individuals
- Inheritance laws are not inclusive of non-traditional families
- Transgender people often lack safe access to gender-neutral public spaces like restrooms

The Transgender Persons (Protection of Rights) Act, 2019, was intended to offer protections. However, critics argue it lacks depth and understanding, and may even expose trans people to further institutional discrimination.

There is also a gap between progressive court rulings and sluggish legislative action. Landmark cases like *Navtej Singh Johar v. Union of India* and *National Legal Services Authority v. Union of India* laid down strong foundations, but these have yet to be fully implemented or reflected in everyday life.[7]

VII. Mexico: A Case of Progress and Persistence

In contrast, Mexico has made notable progress. LGBTQIA+ rights are protected under the law, and in many ways, the country has set an example in Latin America.Same-sex relations were decriminalized back in 1871, and in 2015, the Supreme Court ruled that same-sex marriage must be recognized across all Mexican

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6 *LGBTQ rights: A comparative analysis of the rights and challenges faced by the Constitutional Framework of India and Australia* (2022) *ijalr*. Available at: https://ijalr.in/volume-1/issue-3-2/lgbtq-rights-a-comparative-analysis-of-the-rights-and-challenges-faced-by-the-constitutional-framework-of-india-and-australia/ (Accessed: 21 April 2025).

7 *LGBTQ rights: A comparative analysis of the rights and challenges faced by the Constitutional Framework of India and Australia* (2022) *ijalr*. Available at: https://ijalr.in/volume-1/issue-3-2/lgbtq-rights-a-comparative-analysis-of-the-rights-and-challenges-faced-by-the-constitutional-framework-of-india-and-australia/ (Accessed: 21 April 2025).

states. By 2016, same-sex adoption was legalized. Anti-discrimination laws are robust, and Mexico's constitution explicitly protects sexual orientation as a class.

Hate crimes, especially against transgender women, continue to be a serious problem. Between 2014 and 2016, over 200 LGBTQIA+ individuals were reportedly killed due to violence. In more rural and conservative regions, acceptance is far from universal. However, public opinion is shifting-particularly among younger generations. About 70% of people aged 18–29 now believe homosexuality should be accepted.

Mexico has also made legal gender changes more accessible without requiring surgery. While court processes can be slow, the legal framework continues to evolve in favour of LGBTQIA+ equality.

What India Can Learn from Mexico

India's 2018 judgment was groundbreaking, but it's just the first step. While countries like Mexico have laws protecting marriage, adoption, inheritance, and anti-discrimination, India still lacks a comprehensive legal structure that safeguards LGBTQIA+ rights in everyday life.India must:

- Legalize same-sex marriage, allowing couples to marry, adopt children, and share property
- Enact anti-discrimination laws that protect LGBTQ+ individuals in employment, education, housing, and public services
- Update family and inheritance laws to include non-traditional relationships
- Create gender-neutral public facilities to ensure safety and dignity for transgender individuals

Without these changes, the 2018 ruling remains symbolic rather than transformative[8].

VIII. Role of international organizations and treaties

1. **International Covenant on Civil and Political Rights (ICCPR):** Adopted by the United Nations General Assembly in 1966, the ICCPR obliges states to uphold civil and political rights, such as the right to life, freedom of religion, freedom of expression, and freedom from torture. Although the covenant does not directly refer to sexual orientation or gender identity, its provisions have been interpreted to extend protection to LGBT individuals against discrimination.

2. **Yogyakarta Principles**: Written in 2006 by a collection of human rights specialists, the Yogyakarta Principles assert binding international, lawful standards to which all states have to adhere related to sexual orientation and gender identity. The principles deal with subjects like discrimination, violence, and the right to health, education, and employment for LGBT individuals.

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[8] *LGBTQ+ rights in India and the USA: A comparative jurisprudential analysis - Mr. Faiz Osmani* (2025) *ijalr*. Available at: https://ijalr.in/volume-5-issue-3/lgbtq-rights-in-india-and-the-usa-a-comparative-jurisprudential-analysis-mr-faiz-osmani/ (Accessed: 21 April 2025).

3. **Montreal Declaration**: Adopted in 2006, the Montreal Declaration urges the acknowledgment of LGBT rights in asylum and immigration, family rights, education, healthcare, media, and employment. It calls on governments to take positive steps to advance LGBT rights and to end discrimination in these fields.

4. **Universal Declaration of Human Rights (UDHR)**: Although UDHR is not a treaty, the UDHR, which was adopted by the United Nations in 1948, is a foundational document proclaiming the inherent dignity and equal and inalienable rights of all members of the human family. Its principles have been key to promoting the rights of LGBT people around the world.

Despite the presence of these global standards, most nations still criminalize homosexuality and discriminate against LGBT persons. The absence of clear recognition of sexual orientation and gender identity in some legal frameworks is responsible for the marginalization of LGBT individuals. States must adopt these international standards into domestic law and undertake proactive steps to safeguard the rights of LGBT persons.[9]

IX. Legal Framework: India vs. Australia

India and Australia have very different legal systems and histories, yet both countries have experienced important shifts in their treatment of LGBT individuals.

India : India's Constitution, adopted in 1950, promises equality, dignity, and freedom under Articles 14, 15, 19, and 21. However, Section 377 of the Indian Penal Code, a British colonial law, criminalized "unnatural sex," effectively targeting homosexual relationships.

Activism and legal battles led to a landmark victory in 2018 when the Supreme Court of India ruled in *Navtej Singh Johar v. Union of India* that consensual same-sex relationships were no longer criminal. The Court recognized the right to privacy, dignity, and equality for all, irrespective of sexual orientation.

Yet, same-sex marriage remains unrecognized in Indian law, and discrimination persists in many parts of society. Though decriminalized, full equality-particularly in marriage, adoption, and inheritance rights-is still a work in progress.

Australia : Australia's legal journey has been different, owing to its federal structure and early adoption of human rights frameworks. The decriminalization of homosexuality began in the 1970s at the state level. By 1997, it was legal throughout the country.

The real turning point came in 2017, when Australia legalized same-sex marriage following a national postal survey in which 61.6% of Australians voted in favour. This led to the swift passing of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*.

[9] *International-conventions-for-the-recognition-and-protection-of-LGBT-rights.* Available at: https://ijirl.com/wp-content/uploads/2025/03/INTERNATIONAL-CONVENTIONS-FOR-THE-RECOGNITION-AND-PROTECTION-OF-LGBT-RIGHTS.pdf (Accessed: 21 April 2025).

Australia's anti-discrimination laws are more robust, with protections based on sexual orientation and gender identity covered under both federal and state laws. The Human Rights Commission also plays an active role in promoting equality for LGBT Australians.

X. Judicial Approaches: A Tale of Two Democracies

India and Australia both rely heavily on constitutional law, but their courts have responded differently to LGBT issues.

In India, courts have taken a more progressive, rights-based approach in recent years. In *NALSA v. Union of India* (2014), the Supreme Court recognized transgender individuals as a "third gender" and emphasized their constitutional rights. The *Navtej* judgment went further, calling for social inclusion and an end to state discrimination.

However, Indian courts often stop short of pushing for legislative reforms, leaving many rights in limbo until Parliament acts.

Australia's judiciary, by contrast, tends to defer to the legislative process. Social change has mostly come through public engagement and parliamentary action, such as the postal vote on marriage equality. Courts have upheld anti-discrimination laws and supported the right to live free from harassment, but have not had to play as active a role in affirming LGBT rights due to the proactive nature of their legislatures.[10]

XI. The Role of International Human Rights

Both countries are signatories to major international human rights treaties. India and Australia are influenced by global human rights norms, though they incorporate them differently.

The Yogyakarta Principles-a set of international guidelines on how human rights standards apply to LGBT individuals-have been referenced in legal debates worldwide. They call on states to eliminate laws that criminalize homosexuality, ensure equality, and protect against violence and discrimination.

In India, these principles were referred to in the *NALSA* and *Navtej* judgments, reinforcing the idea that LGBT rights are human rights. In Australia, they complement existing protections and policy-making, although they aren't legally binding.

Case laws

NALSA v. Union of India (2014)[11]

The case of National Legal Services Authority (NALSA) v. Union of India, decided by the Supreme Court of India on April 15, 2014, is a landmark judgment recognizing the rights of transgender persons under the Indian Constitution. NALSA filed a Public Interest Litigation (PIL) seeking legal recognition and protection for transgender individuals as a third gender. It challenged the denial of basic rights such as education,

[10] *An analysis of the legal framework in India*. Available at: https://www.jetir.org/papers/JETIR2310385.pdf (Accessed: 21 April 2025).

[11] NALSA v. Union of India, (2014) 5 SCC 438 (SC).

employment, and healthcare due to the lack of recognition of their gender identity. The Supreme Court held that transgender persons have the right to self-identify as male, female, or third gender. The Court ruled that gender identity is integral to personal autonomy and dignity, and discrimination based on gender identity violates Articles 14 (equality before law), 15 (prohibition of discrimination), 16 (equality of opportunity), 19 (freedom of expression), and 21 (right to life and personal liberty) of the Constitution.

Anjali Guru Sanjana Jaan v. State of Maharashtra[12]

The Bombay High Court (Aurangabad Bench) ruled that transgender individuals have the constitutional right to self-identify their gender. The petitioner, a transgender woman, had her nomination for a village panchayat election rejected because the seat was reserved for women. The Court directed the Returning Officer to accept her nomination, affirming that gender identity is protected under Articles 15, 16, 19, and 21 of the Constitution.

Supriyo v. Union of India case (2023)[13]

The Supreme Court of India unanimously declined to legalize same-sex marriage, stating that the matter falls within the legislative domain. The Court also ruled against recognizing civil unions or granting adoption rights to same-sex couples. However, it directed the government to establish a high-level committee to examine the rights and welfare of LGBTQ+ individuals, including potential legal benefits for same-sex couples.

*Navtej Singh Johar v. Union of India (*2018)[14]

The Supreme Court declared Section 377 of the Indian Penal Code unconstitutional as it criminalized consensual same-sex relations among adults. The verdict affirmed that such laws violated fundamental rights under Articles 14, 15, and 21, recognizing the rights to dignity, privacy, and equality for the LGBTQ+ community.

XII. Challenges and the Way Forward

Despite progress, challenges remain. In India, social stigma, lack of family support, and weak legal implementation are major hurdles. Discrimination in workplaces, educational institutions, and healthcare continues. Many LGBT individuals still face threats, blackmail, and abuse.

Australia, though more advanced in its legal framework, still sees incidents of bullying, mental health struggles, and inadequate support for LGBT youth and Indigenous queer communities. Transgender Australians also report discrimination in healthcare and documentation services.

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[12] *Anjali Guru Sanjana Jaan vs. the state of Maharashtra.* Available at: https://clpr.org.in/wp-content/uploads/2024/11/4_Anjali_Guru_Sanjana_Jaan_v_State_of_Maharashtra.pdf (Accessed: 21 April 2025).

[13] *Supriyo @ Supriya Chakraborty vs Union of India on 17 October, 2023*. Available at: https://indiankanoon.org/doc/129202312/ (Accessed: 21 April 2025).

[14] Navtej Singh Johar & Ors. v. Union of India. (2018) 10 SCC 1 (SC)

The journey toward full recognition and inclusion of the LGBTQ+ community is far from over, but every step forward matters. Whether through legal reforms, awareness campaigns, or everyday acts of allyship, society must work collectively to ensure that every individual-regardless of who they love or how they identify-has the right to live authentically and freely.

The intricate conflict involving the law and social attitudes of the LGBTQ+ community worldwide shows how much more society has to change. Gaps still exist between the legal advances achieved from the recognition and acceptance that society offers. Countries like Mexico and Australia have made developments in legalizing same sex relations, marriages, and adoptions with the influence of strong legal systems, as well as change movements and activists. In comparison to other countries, civil law countries tend to show more willingness to exercise the institutionalized inclusiveness of LGBTQ+ rights than many common law countries. Despite slower advancements, progress is visible in India both socially and legally.

The act of decriminalizing homosexuality in 2018 was an important milestone, but not permitting marriage and adoptions illustrates the lack of institutional progress. The inclusion of LGBTQIA+ individuals in sections of laws like the Special Marriage Act demonstrates the necessity of reform policies to enfranchise all citizens. Change is so far stalled by conservative societal attitudes, but there are signs, largely through public discourse and civic campaigns, that there is a better understanding and acceptance of change. Global treaties and other organizations are crucial when it comes to impacting the laws of a nation, but despite this, prejudice still exists, particularly in countries where homosexuality remains criminalized or socially stigmatized.[15]

In conclusion, 'social acceptance' continues to remain a social battle while legal recognition offers a foundation for equality. Activism, public advocacy, and education are needed to shift perceptions and attitudes. The struggle for LGBTQ+ rights is still ongoing, although initiatives undertaken by various individuals, organizations, and governments continue to work to advance these causes.

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[15] *A Socio-Legal Study of Law Relating to LGBTQ in India: Needs and Challenges*. Available at: https://shodhgangotri.inflibnet.ac.in/bitstream/20.500.14146/13654/1/synopsis%20-%20anusha%20khandelwal.pdf (Accessed: 21 April 2025).

TRADITIONAL KNOWLEDGE AND ACCESS BENEFIT SHARING: EXAMINING NAVOGYA PROTOCOL IN THE INDIAN CONTEXT

Khushboo Mishra *

Abstract

When ancient wisdom meets modern profit, justice often gets lost in translation." Traditional Knowledge (TK), deeply embedded in the lives of indigenous and local communities, represents centuries of cultural, ecological, and medicinal insight. Yet, as global interest in biodiversity surges, so does the risk of misappropriation and bio-piracy. This paper explores the complex challenges of integrating TK into Access and Benefit-Sharing (ABS) frameworks, focusing on India's lived experiences under international instruments like the Nagoya Protocol and domestic mechanisms such as the Biological Diversity (BD) Act, 2002.

While India has made commendable legal progress, including the establishment of documentation systems and benefit-sharing models, real-world implementation remains riddled with gaps. Bureaucratic inefficiencies, limited community participation, and weak enforcement mechanisms often alienate the very individuals who are the custodians of this knowledge. Through doctrinal analysis and case studies—such as the Kani Tribe's journey with the Arogya Pacha plant—this research examines both the successes and the systemic shortfalls in existing ABS efforts.

The objectives of this study are to assess the effectiveness of legal frameworks, identify policy and enforcement gaps, and recommend practical reforms to ensure justice for TK holders. It raises critical questions about inclusivity, transparency, and the role of communities in safeguarding their knowledge. Ultimately, this paper argues that while the Nagoya Protocol offers an ideal structure, its impact is limited unless grounded in grassroots empowerment and ethical governance. A more human-centered, participatory approach is essential to preserve TK and ensure fair, equitable benefit-sharing in the face of growing global demand.

* **LLM Student, Maharashtra National Law University, Nagpur**

I. The Jurisprudence of Traditional Knowledge

i. Introduction

TK is fundamentally rooted in cultural contexts and acts in crucial contexts in shaping the cultural identity of the fraternity that upholds and transmits it. The term encompasses a broad spectrum of tradition-based expressions, including literary, artistic, and performance playing; inventions; scientific discoveries; scientific works; designs; symbols; esoteric information; and various other innovations and creations that arise from intellectual endeavors. WIPO defines "*TK as knowledge, know-how, skills, and practices that are developed, sustained, and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity."*[1].

Although an internationally accepted definition of *TK* has not yet been established, it can be prudently asserted after analysis of the meaning by different states that:

- *TK*, in a broad sense, embraces knowledge itself and cultural expressions of traditions, including distinctive signs and symbols associated with *TK*.
- *TK* in the specific sense pertains to the idea of knowledge in its pure form, particularly that which emerges from intellectual endeavors within a conventional framework. This encompasses practical expertise, methodologies, competencies, and innovative developments.

ii. India & its TK Perspective

India has consistently exhibited a low tolerance for the inequities and injustices arising from the unregulated access to GRs and TK *without equitable benefit-sharing. Following the signing of the CBD, India faced significant challenges, notably the well-known neem and turmeric cases, which highlighted the misappropriation of* TK *related to the biochemical properties of these plants through patenting in foreign jurisdictions. Key characteristics of* TK *can be identified as follows:*

i. It is handed down through generations.

ii. Often, it is shared orally from one person or generation to the next.

iii. Communities often regard it as a divine gift rather than personal property.

iv. This knowledge typically sets one community apart from others.

v. Identifying the source of the knowledge is generally impossible.

vi. It is acquired through consistent observation, hands-on experience, and practice.

vii. It forms an integral and inseparable part of the cultural and collective lives of its custodians. viii. It is frequently connected with biological heritage.[2]

Traditional knowledge (TK) continues to hold significant relevance in contemporary

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1 https://www.wipo.int/tk/en/tk/

2 *TK* and Intellectual Property: A TRIPS Compatible Approach by Daniel Gervais

society, particularly in areas such as healthcare, agriculture, environmental conservation, HR, cultural policy, trade, and economic status.

TK *is not typically documented or conveyed in written form; rather, it is passed down orally through practices and rituals. However, these characteristics do not diminish its reliability or value.* TK *thus exists organically, representing a system of continuous enhancement that adapts and refines prior knowledge distinctly.* TK *does not necessarily imply antiquity; newly developed knowledge rooted in pre-existing understanding can also qualify as traditional. What defines the traditional nature of* TK *is not its age, but rather how it is acquired and applied.*

The preservation of TK *is vital, as exploitation for industrial or mercantile purposes can lead to defalcation, harming the interests of its rightful custodians. To mitigate these risks, strategies must be developed to protect and promote TK in ways that align with the aspirations of its holders, supporting sustainable development.*[3] *This is particularly important for developing nations, which hold a wealth of* TK *and biodiversity that contribute to healthcare, food security, cultural practices, and environmental sustainability.*

II. India's Vision on ABS before Nagoya Protocol

i. Introduction

In India, there is no special law that deals with the protection of TK. However, the other intellectual property laws have an eye relevance to TK. *Similarly, Sec 25 of the Act deals with the 'opposition to grant of patent', which allows for opposition to be filed on the ground that "the complete specification" does not disclose or wrongly mentions the source of geographical origin of biological material used for the invention. The law, which appears to be more relevant for the protection of TK, is the Geographical Indications of Goods (Registration and Protection) Act, 1999, which aims at registration and better protection of geographical indications (GIs) relating to goods.*

ii. CBD

The principle of ABS originates from the CBD, which aims, among other goals, to guarantee the "fair and equitable sharing" of advantages derived from GRs. The Convention was opened for signature at the United Nations Conference on Environment and Development in Rio de Janeiro

in June 1992[3]*India officially ratified the CBD on February 18, 1994. This treaty was initially signed by 152, and it entered into force on December 29, 1993.*

The objective was to promote conservation alongside sustainable use of GRs, recognizing the sovereign rights of states over their resources, which are biological resources. ABS framework, established during the Earth Summit in 1992, was

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[3] https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html

[3] *Atapattu, S.* (2016). Climate Change, Human Rights, and COP 21

incorporated into the Convention on Biological Diversity, which aimed to formalize Farmers' Rights and to recognize TK *and local customary rights concerning genetic resources. This framework operates alongside the prevailing international IP system, which includes the WTO.[4], TRIPS, and the WIPO[5]. India, as a signatory to international conventions, has incorporated these agreements into its domestic laws by enacting the BDA of 2002 and the Protection of Plant Variety and PPVFR Act.[6]. These legislative measures aim to fulfill the obligations set forth by these global instruments by acknowledging and providing for the right to ABS.*

CBD integrates TK *as a crucial element by having a significant provision in this regard, "*Article 8(j)*[7]"*which mandates that contracting parties respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to biodiversity. This article further requires that the wider application of such knowledge be promoted with the approval and involvement of the communities holding it and that there be equitable sharing of benefits arising from its utilization." *This provision lays the foundation for recognizing the importance of* TK *as an integral part of biodiversity conservation efforts.Article 10(c)[8]further strengthens the emphasis on traditional practices by encouraging their factions to protect and persuade customary uses of biological resources following traditional cultural operations that align with conservation or sustainable use. This reinforces the notion that traditional knowledge and cultural practices are not only valuable but necessary for the sustainable use and management of biological diversity.*

iii. The BD Act – Implementation of ABS

The implementation of the ABS mechanism in India is a well-organized process, comprising three distinct phases, each integral to fulfilling the objectives of the BD Act and ensuring equitable sharing of resources. The ABS framework in India is operationalized through a robust, three-tier institutional system that brings together national, state, and local efforts in a cohesive manner. This institutional hierarchy includes the NBA at the national level, the SBBs at the state level, and the BMCs at the local level. Each of these statutory bodies functions independently, with well-defined roles and responsibilities related to the phases of the ABS mechanism. This structure provides a comprehensive approach to managing the rich biodiversity of India while facilitating regulated access to GRs.

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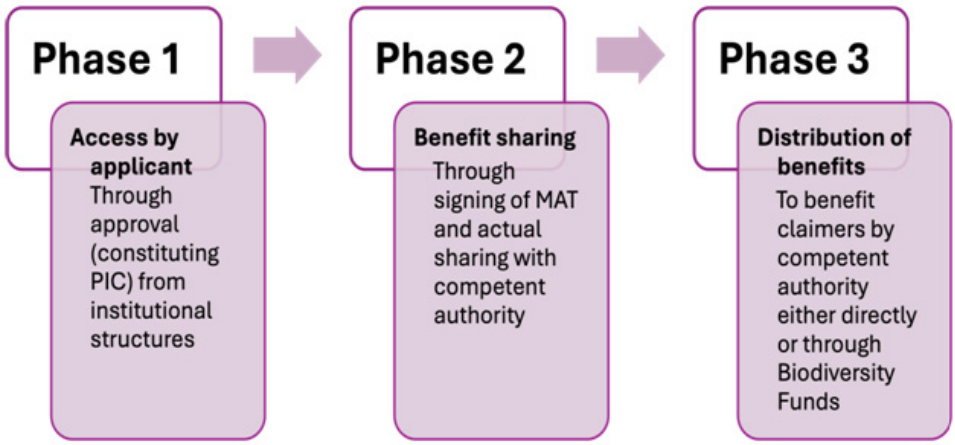
4 General Agreement on Tariffs and Trade - Multilateral Trade Negotiations (the Uruguay Round): Agreement Establishing the Multilateral Trade Organization [WTO].

5 Stanford, V. (2013). WIPO panel dismisses objection to Amazon's application for '.tunes' TLD. Journal of Intellectual Property Law & Practice, 8(11), 826-827.

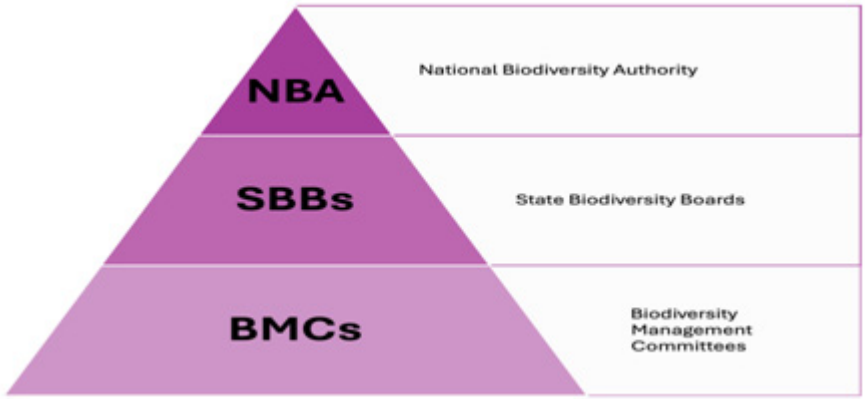
6 The objective of the protection of biodiversity in. CBD reflects the application of this principle in the sense that it includes "fair and equitable" sharing of the benefits arising out of the use of genetic resources. See, for further details, Supra note 1.

7 Section 8(j) of CBD see at: https://www.cbd.int/

8 Article 10(c) see at https://www.cbd.int/



Phase I - Access in India, the ABS mechanism is structured through a three-tier institutional framework. This framework includes the NBA at the national level, the SBBs at the state level, and the BMCs at the local level. Each of these entities operates as an independent statutory body, fulfilling distinct roles and responsibilities under the Biodiversity Act concerning all three phases of ABS in India: ABS and benefit distribution.



a) NBA[9]

The NBA, established under the MoEFCC and based in Chennai, consists of a Chairperson, ten ex officio members from various ministries, and five non-official members with expertise in biodiversity. The ex officio members represent ministries related to Environment, Tribal Affairs, Agriculture, and more. Non-official members include scientists, industry representatives, and knowledge holders of biological resources. The NBA operates with support from expert committees focused on specific areas like Agro biodiversity and Medicinal Plants, addressing ABS issues.

[9] Section 8 of the BD ACT

Functions and Authority of the NBA[10]

The NBA has regulatory and advisory roles as defined by the Biodiversity Act, overseeing a range of activities related to biodiversity management.

- Advising the Central Government on matters related to achieving the three objectives of the Act
- Advising the State Governments in the selection of biodiversity heritage sites and measures for their management

b) SBBs[11]

The BD Act requires the State Governments to establish SBB in each State. Currently, 29 SBBs have been constituted in India. The SBB consists of a Chairperson, not more than five ex officio members, and not more than five nonofficial members specialized in matters related to the three objectives of the BD Act. The role of an SBB in respect of a Union Territory is discharged by the NBA or any office authorized by the NBA on its behalf, and for this purpose, the NBA has constituted Biodiversity Councils in all the 9 Union Territories vide a set of Office Memorandums dated 31st December 2019.

Functions of SBBs: *The functions of SBB are to*

- Advise the State Government on matters related to the three objectives of the BD Act;
- Regulate (a) commercial utilization and (b) bio-survey and bio-utilization for commercial utilization of biological resources within the respective territorial limits of the concerned State;
- Other functions necessary to carry out the provisions of the Act.

c) Biodiversity Management Committees (BMCs)[12]

BMCs are formed within local self-governments in both rural and urban settings. Each BMC is composed of a Chairperson and a maximum of six members appointed by the relevant local authority. It is mandated that one-third of these appointed

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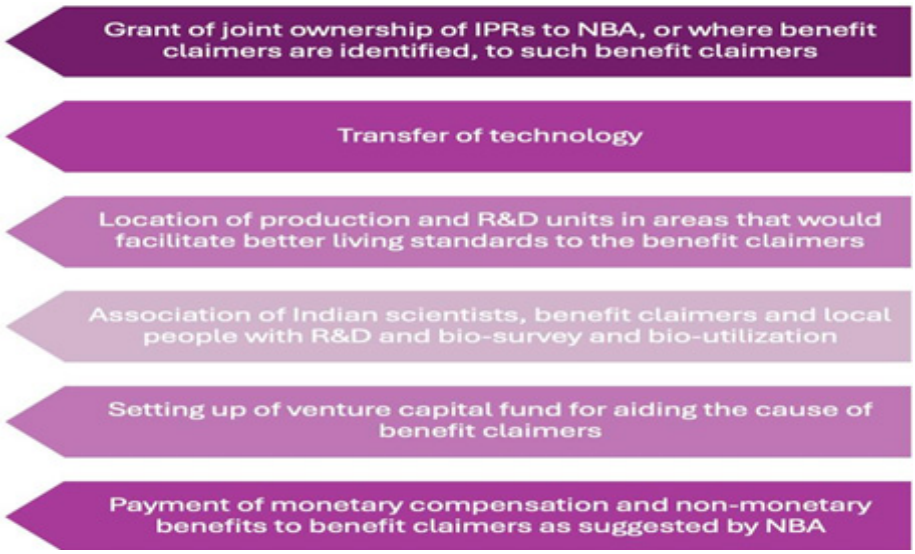
[10] Section 18 of the BD ACT
[11] Section 22 of the BD ACT
[12] Section 41 of the BD ACT

members be women, and at least 18% of the BMC members must represent Scheduled Castes or Scheduled Tribes.

- **Phase II & III – Benefit Sharing and Distribution of Benefits**

In the second phase of the ABS process, benefit sharing refers to the actual distribution of benefits by the applicant, as mutually agreed upon with the NBA or SBBs. The benefits must be shared in relation to the regulated activities. The specific amount of benefits to be shared should be determined through mutual agreement before access, involving the applicant, the benefit claimants, and the relevant local authorities. It is the responsibility of the NBA to ensure that the agreed-upon terms and conditions facilitate fair and equitable benefit sharing. Additionally, in cases where benefit claimants are not identified, the NBA may negotiate terms with the applicant that are mutually acceptable. The BD Act defines fair and equitable benefit sharing as the distribution of benefits as determined by the NBA in one or more of the following ways.[13]:



iv. BD Rules, 2004

As per the BD Rules, 2004, the primary factors in determining fair and equitable benefit sharing for a regulated activity are[14]

[13] Section 2(g) r/w section 21 BD Act
[14] Rule 20 (5), BD Rules

The Biodiversity Rules of 2004 were formulated as part of India's commitment to the Biological Diversity Act of 2002, providing a structured framework for the ABS mechanism. These rules outline procedures for accessing biological resources and associated knowledge, specifying requirements for obtaining prior approval from the NBA for activities related to research, bio-utilization, and commercialization of biological resources.

III. Nagoya Protocol

i. Introduction

The N. Protocol represents a significant advancement in the global governance of biological diversity, particularly in the context of ABS from GR's and associated *TK*. The journey towards the establishment of this protocol began with extensive negotiations among the Parties to the CBD between 2004 and 2010. These discussions were facilitated through the '*Ad-hoc Open-ended Working Group'* (ABSWG), which aimed to create a comprehensive international framework to address the complex issues surrounding the use of genetic resources.

The Protocol mandates that signatory nations implement specific measures to ensure that genetic resources and associated traditional knowledge are accessed and utilized only through legal means. This requirement is crucial for promoting ethical practices in the use of biological resources and respecting the rights of indigenous and local communities who have traditionally managed these resources.

The Nagoya Protocol officially came into effect on October 12, 2014, marking a significant milestone in international efforts to promote biodiversity conservation and sustainable use. Its implementation coincided with the partial enactment of "*EU Regulation No. 511/2014"*, which outlines compliance measures for users within the European Union. This regulation is designed to ensure that users of genetic resources adhere to the principles established by the Nagoya Protocol, thereby reinforcing the commitment of EU member states to uphold the rights of resource providers and promote fair benefit-sharing practices.

ii. Principles of Nagoya Protocol

The Nagoya Protocol is built upon three core principles that guide its implementation:

1. Access: This principle aims to create more predictable and transparent conditions for accessing genetic resources. By establishing clear guidelines and procedures, the Protocol seeks to facilitate the process for researchers, companies, and other users to obtain genetic resources legally and responsibly. This predictability is essential for fostering collaboration between resource providers and users, ultimately leading to more sustainable practices.
2. Benefit-sharing: The second principle emphasizes the importance of guaranteeing equitable sharing of benefits derived from the use of genetic resources. This includes not only monetary benefits but also non-monetary benefits such as

technology transfer, capacity building, and the recognition of traditional knowledge. The Protocol encourages the establishment of mutually agreed terms between users and providers, ensuring that both parties receive fair compensation and recognition for their contributions.

3. Compliance: The third principle focuses on ensuring that only genetic resources acquired through legal channels are utilized. This compliance mechanism is vital for preventing bio-piracy and promoting respect for the rights of indigenous peoples and local communities. The Protocol requires countries to establish national measures to monitor and enforce compliance, thereby creating a system of accountability for users of genetic resources.

iii. Relation & Alignment of Nagoya Protocol With CBD

The Nagoya Protocol focuses on some critical gaps and uncertainties in the CBD regulations on benefit sharing, and also sets in motion formal discussions on other unresolved topics and ideas[15]

The Nagoya Protocol explicitly aims to ensure the fair and equitable sharing of benefits derived from the utilization of GRs, focusing on appropriate access, transfer of relevant technologies, and sufficient funding[16]. The protocol's scope is confined to genetic resources covered under Article animal, or plant health, as well as to PGRFA[17]. In situations where obtaining PIC is challenging or where resources and associated TK are transboundary, CPs must consider establishing a multilateral benefit-sharing mechanism to address these issues of BS[18].

Trans boundary cooperation is called for when the same GRs are found in in-situ multiple territories or when TK associated with GRs is shared by indigenous and local communities across several parties. In such cases, the concerned communities must be involved[42]. Each country providing GRs must designate a national focal point on ABS, responsible for providing information on procedures for obtaining PIC and establishing MAT, including benefit-sharing, as well as information about relevant national authorities, indigenous and local communities, and stakeholders[19]. The national focal point should also liaise with the Secretariat of the CBD, and competent national authorities must be established to grant access, issue evidence of compliance with access requirements, and advise on procedures for obtaining PIC and MAT[20].

The Nagoya Protocol establishes an ABS Clearing House to facilitate the exchange of information related to ABS, ensuring the implementation of obligations under the

[15] Olivia MJ. Sharing the benefits of biodiversity: a New international protocol and its implications for research and development. Planta Medica. *2011;77:1221–1227. doi: 10.1055/s-0031 1279978.*

[16] *Article 3, Nagoya Protocol*

[17] *Id. Article 5.2 N. Protocol*

[18] *Id. Article 5.5 N. Protocol*

[19] *Id. Article 6.1 N. Protocol*

[20] *Id* Article 14.1

protocol[21]. The modalities for the operation of the ABS Clearing House will be decided at the first meeting by the Parties to the protocol[22]. Information gathered should be communicated to the relevant national authorities, the party granting PIC, and the ABS Clearing House, without compromising the confidentiality of sensitive information[23]. Checkpoints must be effective and equipped with functions relevant to the use of GRs or the collection of related data during any phase of research, development, innovation, pre-commercialization, or commercialization[24]

An access permit or an equivalent document issued at the point of access, evidencing PIC and the establishment of MAT, should be shared with the ABS Clearing House as an internationally recognized certificate of compliance to be presented at checkpoints[25]. This certificate should include essential details such as the issuing authority, date of issuance, provider information, a unique identifier, the recipient of PIC, the subject matter or the GR covered, confirmation of MAT, proof of obtained PIC, and clarification of commercial or non-commercial use[26].

The Nagoya Protocol has effectively established a framework of conditional and subordinate obligations linked to traditional IPRs, thereby placing indigenous and local communities in a position of legal dependency[27].

iv. Gaps in the Nagoya Protocol in relation to the Protection of TK

If we see in the context of the Indian scenario, the Nagoya Protocol's gaps and loopholes have specific implications for the protection of TK. India, being one of the richest repositories of biodiversity and indigenous knowledge, faces unique challenges and opportunities in implementing the Protocol.

India's regulatory framework on ABS involves multiple authorities, including the NBA, SBBs, and BMCs. This can lead to procedural complexities and delays, discouraging stakeholders from engaging fully with the system.

While the Protocol provides a framework for benefit-sharing agreements, ensuring compliance by users, especially multinational corporations, is challenging. There is limited capacity to monitor and enforce these agreements, leading to potential exploitation and inadequate benefit sharing for traditional communities. While India has enacted the BD Act, 2002, to regulate accessto biological resources and ensure benefit-sharing, enforcement remains a challenge. Unauthorized exploitation and bio-piracy incidents often go unchecked due to weak monitoring and enforcement mechanisms, making it difficult to protect TK effectively.

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21 *Id.* Article 14.2

22 *Id.* Article 15.1

23 *Id. "Article 17.1 (a) (iv)) N. Protocol"*

24 *Id. Article 17.2 & 3) N. Protocol"*

25 Id. Article 17.4

26 *Id.* Article 18.1

27 Helfer, L. R. (2003). Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking. SSRN Electronic Journal. doi:10.2139/ssrn.459740

India is grappling with the challenge of regulating the use of DSI derived from genetic resources, which is not adequately covered under the Nagoya Protocol. This loophole poses a significant risk to TK protection as it allows for the exploitation of genetic data without triggering benefit-sharing obligations.

There are no such monitoring mechanisms or authorities for implementation across countries, which means that companies can potentially exploit weaker national laws or loopholes to gain access to TK and genetic resources without providing fair compensation.

There is a tension between the Nagoya Protocol and existing international intellectual property systems, such as the WIPO and the TRIPS Agreement. This tension arises from differing approaches to the protection and commercialization of genetic resources and TK, potentially allowing exploitation through the patenting of products or knowledge derived from TK without proper recognition or compensation.

IV. Case Studies

i. Before Nagoya Protocol

- **Arogyapacha and the Kani Model**

A state-run institution, the Tropical Botanical Gardens and Research Institute, sought to implement the Access and Benefit-Sharing (ABS) framework to compensate the Kani tribes for their traditional knowledge, innovations, and practices concerning the Arogya Pacha plant. Leveraging this knowledge, the Institute developed a tonic and sold the manufacturing license rights to a commercial entity.

However, the Department did permit cultivation of the plant. Despite these measures, a thriving illegal trade continues to pose a significant threat to its survival.

- **Indian Institute of Oilseeds Research (IIOR) and Telangana State Biodiversity Board**

The situation involves the distribution of benefits from access to a bio-resource and agreements for sharing profits from research commercialization. The Indian Institute of Oilseeds Research (IIOR) in Hyderabad, under the Indian Council of Agricultural Research (ICAR), initiated a project in 1999 to enhance castor (Ricinus communis) yields, collaborating with the Netherlands Biotechnology Programme. After six years of research using local microbes, a biopesticide was developed.

IIOR licensed the findings to public and private entities, receiving a licensing fee, part of which was allocated to the Biodiversity Management Committees (BMCs) of the source villages for awareness and conservation programs. Agreements for large-scale production included a benefit-sharing framework of 0.1% to 0.5% of annual gross sales, with funds directed to State Biodiversity Boards (SBBs), which must transfer 95% to the BMCs. The BMCs plan to use these funds for biodiversity conservation and restoration projects.

- **Gram Moongligai Company Limited (GMCL)**

This case involves individuals cultivating medicinal plants and herbs who have developed a system to ensure better compensation for their resources. Operating in Tamil Nadu, Madhya Pradesh, Odisha, and Chhattisgarh, GMCL was established in 2002 as a public limited company, primarily owned by collectors and cultivators. Its main goal is to ensure fair prices from user companies for medicinal plants and herbs.

GMCL collaborates with companies like Dabur, Himalaya, and Nature Remedies, providing high-quality raw materials. The organization offers training programs that blend traditional knowledge with modern practices, teaching effective cultivation and sustainable harvesting techniques.

Additionally, it promotes conservation and environmental sustainability through its focus on sustainable harvesting practices.

- **Kailash Sacred Landscape Conservation & Development Initiative**

The KSLCDI represents a collaborative trans boundary management effort involving China, India, and Nepal. Coordinated by the ICIMOD, a regional intergovernmental organization headquartered in Nepal, the initiative benefits from the participation of member countries, including India, China, Nepal, Myanmar, Pakistan, Afghanistan, Bhutan, and Bangladesh.

ICIMOD acts as the PMU for this initiative.

The overarching objective of the project is to enhance transboundary biological and cultural conservation, foster ecosystem management, promote sustainable development, and facilitate climate change adaptation. This initiative includes country-specific actions and inter-country collaborations. Among the various efforts, inter-country capacity-building learning exchange visits have been organized. During one such visit by Nepal, India shared its experiences in developing and implementing Access and Benefit Sharing (ABS) measures.

- ***TK* of Turiya Leaves by the Sikkimese Community Background**

The Sikkimese community has traditionally used the leaves of the Turiya plant for their medicinal properties. The local practices include using these leaves for treatments related to gastrointestinal issues. A local startup, in collaboration with the Sikkim Biodiversity Board, initiated a project to develop health products using Turiya. The project was designed to ensure that local communities receive fair compensation and a share of the profits derived from the commercialization of these products. The initiative led to the development of herbal teas and supplements, with a structured benefit-sharing agreement in place that supports community development projects.

- **Biopiracy Allegations Against the University of Mississippi**

In 2016, allegations arose against researchers at the University of Mississippi for

patenting a process to extract curcumin from turmeric without obtaining proper permissions from traditional knowledge holders in India. Activists called for stricter enforcement of the Biological Diversity Act, 2002, and demanded that the university share benefits derived from the commercialization of curcumin with the communities that have used turmeric for centuries. The case raised awareness about the importance of adhering to ABS guidelines, and discussions were initiated between Indian authorities and the university to explore potential collaborations and benefit-sharing agreements. This situation illustrates the ongoing challenges of biopiracy and the need for vigilance in protecting traditional knowledge at the international level.

- **Vasaka (Adhatodavasica) Case**

Background: The medicinal herb Vasaka has been used in traditional medicine for its therapeutic properties. In 2020, a collaborative project was launched between local communities in the Western Ghats and research institutions to create a product line based on Vasaka. The project established a framework for benefit-sharing, which included community training on sustainable harvesting practices and equitable distribution of profits from the sales of products developed from Vasaka. The project not only led to the commercialization of herbal products but also enhanced the livelihoods of local farmers, providing them with a stake in the medicinal plant market. This case highlights the successful integration of traditional knowledge into modern health products and the potential for community-led conservation efforts.

- **The Rashtriya Aayush Mission: Ayurveda and ABS**

Background: The Indian government launched the RashtiryaAayush Mission to promote the use of traditional Ayurvedic medicine. The mission included provisions for involving local communities in the research and commercialization of Ayurvedic products. Various local herbal farming cooperatives were formed to cultivate medicinal plants under the guidance of Ayurvedic practitioners and researchers. Benefit-sharing agreements were structured to ensure that communities receive fair compensation for the knowledge and resources they provide.

V. Conclusion and Suggestion

i. Conclusion

This paper explores the complex relationship between Traditional Knowledge (TK) and international Access and Benefit-Sharing (ABS) frameworks, focusing on India's approach through instruments like the CBD, WTO, and Nagoya Protocol, and the Biological Diversity Act, 2002. While India has taken proactive legal steps, challenges such as weak enforcement, limited community participation, and bio-piracy persist. The study highlights the need for inclusive, transparent, and community-driven ABS mechanisms. It advocates for collaboration between TK holders, researchers, and industry to ensure fair benefit-sharing, protect cultural heritage, and integrate traditional wisdom with modern innovation for sustainable development.

ii. Suggestion

To strengthen the protection and equitable sharing of Traditional Knowledge (TK) within the Access and Benefit-Sharing (ABS) framework, a holistic, community-centric approach is essential. This includes simplifying bureaucratic processes, empowering communities through capacity-building, and fostering collaboration with research and industry for sustainable use and conservation of biological resources. Expanding the Traditional Knowledge Digital Library (TKDL) and establishing robust verification systems can prevent misappropriation and ensure fair recognition.

Dedicated checkpoints, dispute resolution mechanisms, and community protocols must be implemented to monitor compliance and define clear benefit-sharing structures. Incentivizing TK preservation through grants and reinvesting commercialization benefits into community welfare can uplift indigenous populations. Legal reforms should address emerging issues like Digital Sequence Information (DSI) and align domestic laws with global intellectual property standards. Such integrated measures will protect TK, ensure fair compensation, and promote biodiversity conservation.

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ANIMAL SEXUAL ABUSE AND THE QUESTION OF LEGAL PERSONHOOD: A JURISPRUDENTIAL AND LEGISLATIVE PERSPECTIVE

Ayushi Trivedi *

Abstract

Legal personhood has traditionally been associated with human beings, yet jurisprudence has evolved to recognise certain non-human entities as legal persons. This paper explores the historical and contemporary perspectives on animal personhood, drawing from philosophical, legal, and comparative analyses. While Hinduism and other ethical traditions emphasize moral duties towards animals, modern legal frameworks treat them as property rather than right-bearing entities. Through the perspectives of legal philosophers like Salmond, Keeton, and Pound, this paper examines the evolving discourse on whether animals can be recognised as legal persons. It highlights key legal protection in India, including the Prevention of Cruelty to Animals Act 1960 and Judicial interpretation in cases such as Animal Welfare Board of India v. A. Nagaraja 2014.

Comparative legal development in Ecuador, Argentina, and the United States demonstrates a growing international shift toward recognizing animal rights. Despite challenges rooted in positivist jurisprudence, emerging ethical and legal arguments suggest that animals merit expanded legal recognition as sentient beings with interests and capacities. This paper examines whether traditional legal notions of personhood remain adequate in addressing contemporary concerns about animal dignity and welfare.

Keywords : ***Legal Personhood, Animal Rights, jurisprudence, Salmond, Animal Welfare, Legal Recognition, Wildlife Protection, Human-Animal Relationship, Animal Cruelty, Legal Reform.***

I. Introduction

"Person" is derived from the Latin word "Persona". In Roman Law, this term was used to refer to Caput (a Person's status or condition). In ancient times, enslaved people had an imperfect persona. In contemporary legal discourse, a person is an entity capable of holding rights and duties. A Person is not necessarily a human being. There may be human beings who are not persons.[1]. In Hinduism, sin is broadly

* **2nd Year, BA.LLB.,Christ (Deemed to be University), Bangalore, Karnataka**

1 V D Mahajan, Jurisprudence and Legal Theory (Eastern Book Company 2003) 331.

categorised into actions that harm others, including speech and physical misconduct. Hurting animals is considered a form of sin.[2]. Legal personhood extends beyond human beings to entities such as corporations, rivers, animals, trees, and even idols; however, the classification of animals as legal persons remains a subject of ongoing debate. Mahatma Gandhi aptly emphasised the ethical dimension of this discourse, stating, "*The greatness of a nation and its moral progress can be judged by the way its animals are treated*."[3].

India has laws that protect animals, including the Prevention of Cruelty to Animals Act of 1960, the Wildlife Protection Act of 1972, and the Indian Penal Code of 1860. The Animal Welfare Board of India was established in 1962 to promote animal welfare in India. Even multiple Non-Governmental Organizations like People for the Ethical Treatment of Animals (PETA), 2000, Pawzz Foundation, etc. In 2021, the Federation of Indian Animal Protection Organisations released a report revealing that in the decade prior, nearly 500,000 animals, including cows and dogs, had been victims of crimes and that many had been subjected to sexual violence.[4]. Recently, in December 2024, a Man was caught raping a stray dog in Karnataka.[5]Similarly, in Ghaziabad, a 30-year-old man was arrested for raping a female dog.[6]. These gruesome incidents of animal raping raise the question that just because animals are not able to handle rights and duties, their dignity is being infringed upon. The question is whether the ancient thought of not giving animals a personality will suit modern times.

II. The perspective of legal philosophers on the Legal Person

According to "Salmond", "A Person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he is a man. Persons are the substances of which rights and duties are the attributes. In this respect, persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition."[7]. Salmond stated that the community has a rightful interest in the well-being of even the dumb animals that belong to it. However, where the interests of animals conflict with those of human beings, the

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2 Pandit Sri Rama Ramanuja Achari, 'Hindu Concepts of Sin' https://srimatham.com/uploads/5/5/4/9/5549439/hindu_concept_of_sin.pdf accessed [023/02/2025].

3 Mohammad Abdulkader Akbarsha and Shiranee Pereira, 'Mahatma Gandhi-Doerenkamp Center for Alternatives to Use of Animals in Life Science Education' (Bharathidasan University, People for Animals, Chennai) <www.jpharmacol.com> accessed [23/02/2025].

4 PETA India https://secure.petaindia.com/page/141234/action/1?locale=en-GB accessed [23/02/2025].

5 'Man Caught Raping Stray Dog in Karnataka, Arrested' NDTV (India, [24/02/2025]) https://www.ndtv.com/india-news/man-caught-raping-stray-dog-in-karnataka-arrested-7249159 accessed [24/02/2025].

6 'Ghaziabad: 30 Year Old Man Arrested for Raping Female Dog' Hindustan Times (India, [24/02/2025]) https://www.hindustantimes.com/cities/noida-news/ghaziabad-30-year-old-man-arrested-for-raping-female-dog-101724647728450.html accessed [24/02/2025].

7 Supra note 1, 332.

latter are preferred[8]. According to Salmond's definition, animals are not conventionally seen as entities that can bear rights and duties. The German Writers said, "Will is the essence of a personality[9]. Traditionally, this excludes animals, as they lack rational autonomy. However, modern studies show that animals exhibit intentionality, emotions, and decision-making, suggesting a form of will. Animals could fit into an expanded legal personhood concept if the will is interpreted as the capacity to experience suffering and make choices. Keeton writes: "In Greek Law, we hear of animals and trees being tried for offences to human beings, and, therefore, they are considered capable of having duties, even if they possessed no rights.[10].

III. Legal Framework on Animal Protection in India

Human beings create Animal Laws that need to be enforced by human beings. The only help that animals need is no interference from humans. The Constitution of 1960 makes it the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for all living creatures. The Constitutional duty of animal protection is supplemented by the Directive Principle of State policy under Article 48A.[11]. Article 51A(g) and (h) are the *Magna Carta* of animal rights[12]. Article 51A(g) says that every citizen of India shall have compassion for living reform and promote and improve the natural environment, including forests, lakes, rivers, and wildlife. Article 51A(h) says that citizens must develop a scientific temper, humanism, and the spirit of inquiry and reform[13]. In the case of *Animal Welfare Board of India v. A Nagaraja (2014),* the court said that all living creatures have inherent dignity and a right to live peacefully and the right to protect their well-being, which encompasses protection from beating, kicking, overdriving, and overloading, torture, pain, and suffering.

Human life, we often say, is not like animal existence, a view with anthropocentric bias, forgetting that animals also have intrinsic worth and value.[14]. The Wildlife Protection Act 1972 protects wildlife, habitats, and ecologically important areas. The Preventive Cruelty to Animals Act of 1960 criminalises abuse, neglect, and exploitation of animals (Section 11) but lacks vigorous enforcement. Weak penalties fail to deter severe crimes like animal rape. Sections 12-13 permit euthanasia for suffering animals, balancing humane treatment with practicality. However, outdated laws and the absence of explicit provisions on sexual violence highlighted the need

8 Supra note 1, 333.

9 Supra note. 1.

10 Supra Note. 6.

11 Taruni Kavuri, 'Overview of Animal Laws in India', Animal Legal & Historical Center https://www.animallaw.info/article/overview-animal-laws-india#:~:text=IV.,The%20 Prevention %20of%20Cruelty%20to%20Animals%20Act%2C%201960,prevention%20of%20 cruelty%20to%20animals accessed [25/02/2025].

12 D D Basu, Constitution of India (16th edn, 2021) 825.

13 Constitution of India 1960, art 51A(g) and (h).

14 Animal Welfare Board of India v A Nagaraja (2014) 7 SCC 547 [66], [68], [42].

for stronger legal protections. The Indian Penal Code 1860, section 377 of the IPC, criminalises any "unnatural offences" which have been interpreted to include sexual acts with animals. However, the Supreme Court's decision in Navtej Singh Johar v. Union of India (2018) decriminalised unnatural offences under Section 377, inadvertently impacting animal rights by removing provisions related to sexual abuses against animals. While the intent was to protect LGBTQ+ rights, it highlights the interconnectedness of various legal provision and their implications for animal welfare.[15]. The issue that comes to our attention is that Section 377 of the IPC is not past the newly made criminal code, which, Bhartiyaya Sanhita, 2023.

IV. Data Related to Animal Cruelty in India

According to the data released by the Animal Welfare Board of India, from tfrom3 to 2024, 1137 complaints were filed against animal cruelty. In 2022-23, 1135 complaints were filed against animal cruelty.[16]. In 2021, the Federation of Indian Animal Protection Organisations released a report revealing that in the decade prior, nearly 500,000 animals, including cows and dogs, had been victims of crime and also sexually abused.[17]. During 2010-2020, we documented 720 crime cases against street animals, 741 cases against working animals, 588 cases against companion animals, and 258 cases against wild animals and birds. Approximately 1,000 cases were of brutal assault, including 82 cases of sexual abuse, 266 cases of cold-blooded murder, and over 400 cases were of violent attacks, including beating, kicking, torturing, and throwing acid or boiling water, maiming a part of the body, attacking with a knife, or a blunt object.[18].

V. Comparative Analysis of Animal Personhood

On October 20, 2021, the U.S. District Court for the Southern District recognised animals as legal persons for the first time in the U.S. The ruling supports a Colombian lawsuit seeking to prevent the slaughter of Pablo Escobar's hippos by allowing them to obtain expert testimony under 28 U.S.C. § 1782. Since Colombian Law grants animals legal standing, the hippos were deemed "interested persons" in the case. The decision marks a historic step for animal rights advocacy.[19]. In 2016, while

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15 'Animal Laws in India: Landmark Judgments and Legal Protections Every Indian Should Know' The Legal Shots https://thelegalshots.com/blog/animal-laws-in-india-landmark-judgments-and-legal-protections-every-indian-should-know/ accessed [25/02/2025].

16 Animal Welfare Board of India https://awbi.gov.in/Cruelty accessed [25/02/2025].

17 Supra note 3.

18 Alok Hisarwala, 'Despite a History of Violence Against Animals, India Does Not Have a Formal Record of This Cruelty' Scroll. in https://scroll.in/article/987579/despite-a-history-of-violence-against-animals-india-does-not-have-a-formal-record-of-this-cruelty accessed [25/02/2025].

19 'Animals Recognized as Legal Persons for the First Time in U.S. Court' Animal Legal Defense Fund (1979) https://aldf.org/article/animals-recognized-as-legal-persons-for-the-first-time-in-u-s-court/#:~:text=Animals%20Recognized%20as%20Legal%20Persons%20for%20the%20First%20Time%20in%20U.S.%20Court accessed [25/02/2025].

deciding the case where a chimpanzee was treated inhumanely for a long time, the Argentinian Court treated the animal as a legal person with rights and ordered the chimp to be released into a wild sanctuary.[20]. Australian law still considers animals as property, a legacy of the shared law system. It has not progressed to adapt to the newer understanding of animals.[21]. In the same vein, though, France has given animals the status of living and sentient beings and no longer property.[22].

On the other hand, in 2022, Ecuador will become the first country in the world to recognise animal legal rights in a landmark constitutional court ruling, which will see the creation of new legislation to protect the rights of animals.[23]. In many cases, the court does not consider a legal person, but they have recognised the legal rights that animal owners have. In 2008, a bear in Macedonia was found guilty of stealing honey. Since the bear had no owner, the court ruled in favour of the beekeeper and ordered the state to compensate them with $3 500[24]. The Court applied the doctrine of strict liability, which typically holds the animal's owner responsible.[25]. Countries like Germany, Austria, and Switzerland have revised their civil codes to change the legal status of animals, ensuring they are no longer treated purely as objects or property under the law.[26].

VI. Jurisprudential Analysis of Animal Personhood

A legal person is any subject other than a human being to which the law attributes personality.[27]. This raises the question: if rivers can be considered legal persons because they are backed by legal authority, can animals also be granted personhood when supported by humans? John Austin's positivist view holds that legal personhood is strictly a human construction tied to duties and responsibilities. According to Austin, the law is a command issued by a sovereign and backed by sanctions.[28]. Since animals cannot bear responsibilities or obligations, they do not fit within the framework. However, Roscoe Pound's sociological Jurisprudence supports that legal personhood

20 Presented by A.F.A.D. About The Chimpanzee "Cecilia" - Non-Human Individual, Expte. Nro. P-72.254/15, TercerJuzgado De Garantias, Judicial Power Mendoza (2016).

21 Geeta Shyam, 'The Legal Status of Animals: The World Rethinks Its Position' (2015) 40(4) ALT L.J. 266.

22 Jean-Marc Neumann, 'The Legal Status of Animals in the French Civil Code' (2015) 1 Global J Animal L 1, 12.

23 Olivia Lal, 'Ecuador Becomes First Country to Recognise Animal Legal Rights' Earth.Org https://earth.org/ecuador-becomes-first-country-to-recognise-animal-legal-rights/ accessed [26/02/2025].

24 'Macedonian Court Convicts Bear of Stealing Honey' Thomson Reuters https://www.reuters.com/article/idUSL13835831 accessed [26/02/2025].

25 'Bear Convicted' Lowering the Bar https://loweringthebar.net/2008/03/bearconvicted.html accessed [26/02/2025].

26 German Civil Code, § 90a; Austrian Civil Code, art 285; Swiss Civil Code, art 64 1a.

27 P J Fitzgerald, Salmond on Jurisprudence (12th edn, Universal Law Publishing).

28 John Austin, Selections from The Province of Jurisprudence Determined (1832) https://ocw.mit.edu/courses/24-235j-philosophy-of-law-spring-2012/ca96ec9dab693c2df2bcd6d9ea15f09b_MIT24_235JS12_Session2.pdf accessed [27/02/2025].

should evolve based on societal needs and moral considerations.[29]. If society increasingly values animal welfare, legal animal personhood could be a natural progression. Peter Singer advocates for a form of utilitarianism known as "preference utilitarianism", which prioritises the satisfaction of preferences and the avoidance of suffering for all beings capable of experiencing these states.[30]. The viewpoint is that animals should be considered in ethical and legal frameworks because they have preferences and can suffer.

One notable case is that of the industrialist and philanthropist Mr Ratan Tata, who had made provisions in his will to ensure "unlimited" care for his German Shepard Tito; while leaving wealth for pets is common in waste, it remains rare in India.[31]. This example highlights the growing recognition of animals as entities deserving legal protection. However, not every animal is backed by a human or authority; wild animals exist independently of human guardianship. If legal personhood requires backing by human authority, does that not mean only domesticated or protected animals qualify?

According to Salmond's definition, a legal person is any being that holds rights and duties. While animals cannot fulfil duties like humans do, they possess interests, emotions, and a form of will, as German legal scholars argue. If will and interest are the criteria for legal personality, then animals could qualify as legal persons. This perspective suggests that animals should be legally protected and recognised as entities with legal standing. Despite this, there are significant jurisprudential challenges in granting animals legal personhood. Salmond's view emphasises that a legal person must be capable of holding legal obligations. This is a fundamental reason why they cannot be considered legal persons.

Historically, societies have acknowledged animals in the legal framework. In medieval times, animals were subjected to trials in human courts for committing theft or physical harm. If animals were once held accountable under the legal system, does this not imply that they were seen as responsible beings deserving both legal rights and recognition? If animals can be punished for offences, they should be legally protected, much like humans. However, the concept of punishment further complicates the issue. The purpose of punishment is to deter future offences and to hold the wrongdoer accountable. However, punishment is only meaningful when directed to beings who understand their actions' moral or legal implications.

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29 Amr Ibn Munir, 'Roscoe Pound's Theories of Interests and Sociological Jurisprudence: A Critical Appraisal' SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4433213 accessed [27/02/2025].

30 Laura Coughlin, 'Fitting Animal Liberation into Conceptions of American Freedom: A Critique of Peter Singer's Argument for Preference Utilitarianism' Boston University https://www.bu.edu/writingprogram/journal/past-issues/issue-6/coughlin/ accessed [28/02/2025].

31 Reeba Zachariah, 'Unlimited Care for Pet Dog Tito, Share for Butler in Ratan Tata Will' Times of India (India, [date]) https://timesofindia.indiatimes.com/city/mumbai/unlimited-care-for-pet-dog-tito-share-for-butler-in-ratan-tata-will/articleshow/114569074.cms accessed [28/02/2025].

Animals lack this understanding, which renders the concept of punishment ineffective when applied to them. While historical animal trials did take place, they were more symbolic than legally coherent. From ancient times onward, animals were used as weapons to kill enemies and as a punishment method. The case of *State of Kerala v. Sooraj Kumar 2021*[32], which involved a man using a cobra to murder his wife, raises a legal question about the animal as a legal person. While Indian courts have recognised animal rights in cases like *Animal Welfare Board of India v. A Nagaraja (2014)*, animals are not considered legal persons in criminal liability. The Cobra was treated as a mere weapon, not an independent legal entity. This reinforces that animals, despite having rights, do not hold legal personhood like humans or corporations.

In 2023, in the case of *Animal Welfare Board of India v. Union of India*, the Hon'ble Supreme Court reviewed whether Jallikattu should be constitutionally protected as a collective cultural right under Article 29(1) and if the 2017 Tamil Nadu laws on Jallikattu ensure animal welfare or perpetuate cruelty. This follows the Court's 2014 ruling that quashed a previous law allowing Jallikattu, citing extreme cruelty to bulls. The bench also assessed whether these laws align with Article 48, which mandates scientific agricultural and animal husbandry practices. The Tamil Nadu government argues that Jallikattu is a centuries-old cultural and religious practice transcending caste and creed. It views the event as a means to conserve indigenous cattle breeds. The state contends that regulation, not a ban, is the right approach. The event's cultural significance is even taught in schools to preserve it for future generations.

On the other hand, animal liberty is constitutionally recognised, and the 2017 law was passed to bypass the Jallikattu ban. They highlight reports of human and animal deaths and injuries. They claim the event involves extreme cruelty, with bulls being attacked by multiple tamers. They compare Jallikattu to outlawed practices like sati and dowry, arguing that cultural traditions should not justify harm.[33]. The Hon'ble Supreme Court upheld the validity of the Prevention of Cruelty to Animals Act, 2017, effectively allowing the traditional bull-taming sport of jallikattu to continue in Tamil Nadu. The court recognisedJallikattu as part of the state's cultural heritage, overturning its 2024 decision to ban the practice due to concerns about animal cruelty.[34].

Moreover, granting legal personhood to animals could create legal complications. If an animal were considered a legal person, would it bear legal responsibility for its

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[32] State of Kerala v Sooraj Kumar BA No 2518 of 2021.

[33] T Ramakrishnan, 'Explained | Jallikattu: Cultural Practice or Cruelty?' The Hindu (India, [date]) https://www.thehindu.com/news/national/tamil-nadu/explained-jallikattu-cultural-practice-or-cruelty/article6633952 6.ece accessed [03/03/2025].

[34] 'Jallikattu Supreme Court Verdict: All You Need to Know About the Decade-Long Dispute, Tradition, and More' Business Today https://www.businesstoday.in/latest/trends/story/jallikattu-supreme-court-verdict-all-you-need-to-know-about-the-decade-long-dispute-tradition-and-more-386074-2023-06-01 accessed [03/03/2025].

actions? Would it require legal representation? Applying such legal frameworks to animals would be impractical and inconsistent with the modern legal system. While animals exhibit emotions, interests, and a form of will criteria that some legal scholars argue are sufficient for legal personhood, the inability to fulfil duties and understand legal obligations remains a strong counterargument. While animals deserve legal protection, equating them with legal persons introduces jurisprudential challenges that remain difficult to resolve. Even the question comes whether animals have rights because of their worth or only due to their benefit to humans. Utilitarians argue that animals should be protected due to the balance of suffering and pleasure. On the other hand, deontologists argue that moral duty should guide legal protections, regardless of consequences.

In the case of Naruto vs. David Slater, the Monkey Selfie was clicked by the Monkey. Then, it was sold by David Slate, raising key issues in copyright law: authorship and legal personhood of animals. The dispute began when a macaque monkey used British Photographer David Slater's camera to take a viral selfie. Wikipedia classified the image as public domain, arguing that non-humans cannot hold copyright. People for the Ethical Treatment of Animals (PETA) later sued on behalf of Monkey, claiming it was the rightful copyright owner. The U.S. Court dismissed the case, ruling that animals lack legal standing to sue, reinforcing the principle that copyright law only recognises human authorship.[35]. This case indirectly addresses the question of legal personhood for animals. By rejecting the idea that a monkey can own copyright, the ruling affirmed that animals do not have legal rights equivalent to humans or corporations, which can own intellectual property. The decision aligns with the existing legal framework that limits personhood to humans and legal entities, reinforcing the traditional scope of rights and responsibilities under Intellectual Property Law.

Some ancient Hindu temples like Khajuraho, Ajanta, and Ellora depict scenes that could be interpreted as bestiality.[36]. The aspect of animal Sexual abuse is going to affect society as a whole. It is the right of the person who will be affected, not the animal.

The case of *Nonhuman Rights Project, Inc. v. Lavery 2018* addressed whether chimpanzees could be granted habeas corpus relief. The Court denied leave to appeal, maintaining that legal personhood requires the ability to bear duties and responsibilities, which chimpanzees lack. However, in a concurring opinion, Judge Fahey questioned this reasoning, arguing that species should not limit personhood

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[35] Andres Guadamuz, 'Can the Monkey Selfie Case Teach Us Anything About Copyright Law?' WIPO Magazine https://www.wipo.int/web/wipo-magazine/articles/can-the-monkey-selfie-case-teach-us-anything-about-copyright-law-40287#:~:text=Then%2C%20in%20September%202015%2C%20the,had%20identified%20the%20right%20monkey accessed [28/02/2025].

[36] 'Bestiality in Hinduism' Hindu Script https://hinduscript.com/bestiality-in-hinduism/ accessed [29/02/2025].

and that the issue of animal rights and legal protections must be addressed in the future. He emphasised that intelligent and autonomous chimpanzees should not be reduced to mere property.[37].

While animals deserve legal protection, equating them with legal persons introduces jurisprudential challenges that remain difficult to resolve. A balanced approach that recognises animal interests while maintaining legal coherence is necessary for future legal developments.

VII. Enforcement Challenges and Gaps in Existing Laws

Despite growing recognition of animal rights, significant enforcement challenges and legal gaps persist in ensuring their protection. Many legal systems, including India's, do not explicitly criminalise sexual abuse against animals (Like Section 377 of IPC is not a part of BNS), leaving such acts inadequately addressed under general cruelty. Investigating and prosecuting in gathering forensic evidence, lack of eyewitnesses, and legal ambiguities in defining harm to non-human victims. Organisations like PETA and the Animal Welfare Board of India are crucial in advocating for stronger laws, rescuing abused animals, and pushing for policy reforms. However, legal and bureaucratic hurdles often limit their effectiveness. Reform and policy measures are necessary to bridge the existing legal gaps and ensure stronger animal protection. The law should clearly define and criminalise sexual abuse of animals, closing loopholes that allow perpetrators to evade punishment. Specific provisions would strengthen legal recognition of animal welfare.

VIII. Conclusion

The question of granting legal personhood to animals is a complex and loving discourse that bridges legal philosophy. The main reason animals are not given legal personality is that not all animals can be protected or given legal rights and duties. Historically, animals have been seen as property. Still, modern perspectives rooted in sociological jurisprudence and moral philosophy challenge this notion, arguing that animals possess intrinsic worth, emotions, and the capacity to suffer. The legal recognition of animals as persons in certain jurisdictions, such as Ecuador and Argentina, signals a shift towards a more inclusive legal framework that considers non-human entities as rights-bearing subjects. In India, while constitutional provisions and statutory laws protect animal welfare, enforcement remains weak, and there is a lack of explicit recognition of animals as legal persons. The Prevention of Cruelty to Animals Act of 1960 and the Wildlife Protection Act of 1972 provide safeguards, yet crimes against animals, including sexual violence, continue to be rampant. The Supreme Court in *Animal Welfare Board of India v. A. Nagaraja 2014* acknowledged the dignity and rights of animals. Still, the legal system has not fully embraced the notion of legal personhood for animals.

[37] Matter of Nonhuman Rights Project, Inc. v Lavery [2018] NY Court of Appeals https://law.justia.com/cases/new-york/court-of-appeals/2018/2018-268.html accessed [29/02/2025].

The repeal of Section 377 IPC in *Navtej Singh Johar v. Union of India 2018* inadvertently removed legal provisions against bestiality, highlighting the need for a more comprehensive legal framework. From a jurisprudential standpoint, positivist theorists like John Austin argue that legal personhood is contingent on duties and responsibilities that animals cannot fulfil. In contrast, as Roscoe Pound and Peter Singer advocated, sociological and utilitarian perspectives emphasise evolving societal values and moral obligations toward non-human beings. If corporations and rivers can be granted legal personhood, the question arises: why not animals who possess sentience and the ability to suffer?

The debate over animal personhood is no longer a mere theoretical inquiry but a pressing legal and ethical issue. Recognising animals as legal persons would reinforce their protection and reflect society's moral progress. While jurisprudential challenges remain, the evolving global and domestic legal landscape suggests India must reconsider its approach to animal rights. Strengthening existing law, incorporating specific provisions for crimes like animal sexual abuse, and engaging in broader legal reforms could serve as the first steps toward acknowledging animals as more than just property but as entities deserving of legal recognition and protection.

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AN OVERVIEW OF LAWS AND REGULATIONS BASED ON DATA PRIVACY AND CYBER SECURITY

Gayathri *
Pratheeksha **

Abstract

In the present scenario, there are a number of new areas emerging in the field of law, such as Environmental Laws, Laws based on Taxation, Intellectual Property Laws, Laws on Data Privacy and Cyber Security, etc.

The laws based on Data Privacy and Cyber Security play a wide and important role at present due to the enhancement and development of new technologies. These laws mainly focus on the protection of personal information and the privacy of individuals.

Data Privacy, also known as information privacy, is the protection of personal data and the right to control how it's used. It's also the key part of data governance. It is the practice of handling data responsibly, including collection, storage, and sharing. It's also essential to protect individuals from identity theft, fraud, and other harms. It covers personal information, which includes names, addresses, financial data, health records, and more. It's governed under laws and regulations, such as the General Data Protection Regulation(GDPR). It's closely related to data security, which focuses on protecting data from malicious attacks.

Cybersecurity is the practice of protecting computer systems, networks, and data from unauthorized access, use, disclosure, disruption, modification, or destruction. It involves implementing various measures and technologies to safeguard digital assets from cyber threats and attacks. It's important in protecting sensitive information, preventing cyber attacks, ensuring business continuity, and complying with regulations. It's important because the world is increasingly reliant on technology, and cyber attacks are becoming more sophisticated.

This article involves the information about the concepts of data privacy and cybersecurity, along with their importance, interdependence, and laws relating to them.

Keywords : ***Cyber Security, Data Privacy,***

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* **I LLM, Shri Dharmasthala Manjunatheshwara Law College, Mangalore, Karnataka.**

** **I LLM, Shri Dharmasthala Manjunatheshwara Law College, Mangalore, Karnataka.**

I. Introduction

The concept of data privacy revolves around protecting individuals' sensitive information from unauthorized access, manipulation, or exposure. It ensures that personal data is handled only for legitimate and permitted purposes. Individuals are granted rights to oversee how their data is used, stored, and shared. This involves verifying that data remains accurate, updated, and securely maintained.

Cybersecurity plays a supportive role within the broader framework of data privacy. It refers to the technological and procedural methods used to defend information systems against threats such as malware, hacking, and other forms of cyber attacks. Practices like encryption, frequent software updates, password policies, and firewalls are employed to uphold data security. Effective cybersecurity also includes threat monitoring and rapid response to breaches to minimize any adverse consequences.

Nature of Research

This paper is purely based on the doctrinal method of research without any kind of field work. All the work in this paper has been done by taking into consideration the data available through online sources. The online sources include the websites, blogs, and e-journals available in the world. The online sources strictly adhered to the policies and rules mentioned on the web page, and the sources that are authorized for the users to access. They are websites that are legitimized with valid footnotes and a primary source of information.

Research Objective

The objectives of the research done and thus evaluated in this paper are mainly to understand the importance of 'Data Privacy and Cyber Security'. The objectives of this paper can be categorized into various essential points, such as:

- Firstly, to study the concept of Data Privacy and Cyber Security.
- Secondly, the importance of Data Privacy and Cyber Security.
- Thirdly, the intersection of Data Privacy and Cyber Security.
- Lastly, an overview of laws and regulations based on Data Privacy and Cyber Security.

Therefore, the objective of this research could be summed up as one of the important points to understand the concept of data privacy and cybersecurity.

II. Data Privacy

ISO 27001 works alongside the General Data Protection Regulation (GDPR) and the UK's Data Protection Act (DPA) 2018 to ensure proper management of personal data within the digital landscape of the UK and EU. For example, when handling medical records, a Data Protection Impact Assessment (DPIA) must be conducted to evaluate risk, guided by 8 fundamental principles, including ethical data acquisition, storage safety, usage fairness, and location-specific data handling.

Although these legal frameworks aim to protect personal data, tools like browser

cookies may still collect information using AI (Artificial Intelligence) and ML (Machine Learning) without user awareness or consent. These tools, often embedded for analytics and marketing, can expose networks to anti-forensic methods, hardware vulnerabilities, and legal issues like jurisdiction breaches or violations of SLA (Service Level Agreements). Over time, these complications intensify, adding more layers to the legal, technical, and ethical challenges associated with operating IoT (Internet of Things) devices.

In healthcare, using SCs (Smart Contracts) secured by cryptographic techniques enhances transparency and assigns clear responsibilities to public agencies, legal professionals, and private institutions. Retrospective use of SCs strengthens accountability and protects sensitive data – such as NHS (National Health Service) patient records – by maintaining vigilance and security in the digital environment.[1]

III. Cyber Security

Implementing cybersecurity components is essential for managing IoT hardware and software systems, physical connections, and internal policies. Standards such as ISO 27001 support network communication protocols, access control measures, and data encryption methods (like password protection). These features help ensure secure communication while providing training for cybersecurity personnel and reducing vulnerability to network attacks from unauthorized parties.

To fully benefit from the vast, complex data ecosystems, technologies like big data, AI, and ML are employed using specific algorithms and analytical techniques. These methods handle significant volumes of public and private data, but also increase the risk of dara breaches, malware, and cyber intrusions. Thus, while these tools can streamline data processing in both the public and private sectors, they also present new security challenges that may increase users' exposure to cyber threats.[2]

IV. Importance Of Data Privacy and Cyber Security

In the digital age, vast amounts of sensitive data – ranging from health and financial details to identity credentials are sorted electronically. These data are accessible across various platforms, including mobile devices, cloud storage, and servers, making them vulnerable to breaches. As a result, implementing robust data privacy and cybersecurity frameworks is essential to protect such information.

Ensuring data protection upholds three fundamental policies:

1. Confidentiality,
2. Integrity, and
3. Availability.

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[1] Vinden Wylde, Nisha Rawindran, John Lawrence, Rushil Balasubramanian, Edmond Prakash, Ambikesh Jayal, Imtiaz Khan Chaminda Hewage, Jon Platts; Cyber Security, Data Privacy And Blockchain: A Review; Published on 12th January 2022; https://link.springer.com/article/10.1007/s42979-022-01020-4

[2] Id.

This can be achieved by developing encryption, enforcing strong access controls, and continually adapting security measures to counter evolving cyber threats.[3]

Intersection of Data Privacy and Cyber Security

Data privacy and cybersecurity are deeply interconnected, both aiming to safeguard sensitive information. While cybersecurity is focused on protecting data from external threats, data privacy is centered around adhering to regulations governing how personal data is collected, stored, and shared. In today's digital landscape, robust cybersecurity is essential for meeting data privacy compliance requirements.[4]

Using Cyber Security to Safeguard Data Privacy

Achieving data privacy relies heavily on a combination of security-focused technologies, policies, and procedures designed to guard personal data against unauthorized access, leaks, alterations, or destruction. It includes the strategies such as:

1. Cyber security Planning
2. Access Management
3. Ongoing Security Reviews
4. Securing Network Boundaries
5. Data Security Measures
6. Device and Endpoint Protection
7. Incident Response Planning
8. Managing Vendor Risks
9. Staff Education and Training
10. Red and Blue Team Simulations
11. Routine Security Audits
12. Real-Time Monitoring

1. Cyber Security Planning: Carry out joint risk evaluations addressing both privacy and cyber security threats. Develop clear security guidelines covering access control, data protection, and incident handling. Follow internationally recognized standards like ISO 27001, ISO 27701, and NIST frameworks.

2. Access Management: Use multi-factor authentication for sensitive systems. Implement role-based access to limit data exposure. Monitor and manage privileged accounts to prevent misuse.

3. Ongoing Security Reviews: Perform regular vulnerability scans to detect and resolve weak points. Conduct penetration tests to uncover and fix system flaws. Ensure timely patching and updating of all software and systems.

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[3] Kamshad Moshin; Data Privacy And Cyber Security; Published on 22nd December 2022; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4299439

[4] RSM; The Interplay Between Data Privacy And Cyber Security; Published on 10thJanuary 2025; https://www.rsm.global/india/insights/consulting-insights/interplay-between-data-privacy-and-cyber-security

4. Securing Network Boundaries: Set up firewalls to prevent unauthorized access. Monitor traffic with intrusion detection and prevention systems (IDPS). Use VPNs and encryption for secure remote access.

5. Data Security Measures: Encrypt stored and transmitted data. Apply Data Loss Prevention (DLP) tools to block unauthorized data sharing. Backup vital data and test disaster recovery procedures regularly.

6. Device And Endpoint Protection: Keep antivirus and anti-malware tools updated across all devices. Ensure employee mobile devices are secure and compliant with policies.

7. Incident Response Planning: Form an expert team to respond to breaches. Create a step-by-step incident response plan. Analyze the incident afterward to improve future response.

8. Managing Vendor Risks: Verify that vendor meet your security standards. Include security and data protection clauses in contracts.

9. Staff Education and Training: Train staff to recognize phishing, social engineering, and other threats. Promote a culture of reporting suspicious activities. Educate employees on handling personal data responsibly.

10. Red and Blue Team Simulations: Use red teams to mimic attacker behavior and uncover weakness. Strengthen defense by improving detection and response through blue teams.

11. Routine Security Audits: Regularly audit compliance with cyber security and privacy regulations. Use logging tools to detect and address threats in real time.

12. Real-Time Monitoring: Employ tools to monitor incidents as they happen. Use threat intelligence to stay ahead of evolving risks and attack methods.[5]

V. An Overview of Laws and Regulations based on Data Privacy and Cyber Security

1. Data Privacy Laws

Various data privacy laws across the globe aim to regulate how personal data is collected, processed, and safeguarded. Though regional differences exist, many laws emphasize common principles such as informed consent, user control over personal information, and organizational accountability.

For instance, several regulations mandate that users must be informed about data collection practices and grant consent before data is gathered. These laws also require businesses to provide mechanisms for individuals to access, correct, or request deletion of their data, and to disclose their data–handling practices temporarily.

General Data Protection Regulation (GDPR):Implemented by the European Union(EU) in 2018, the GDPR sets comprehensive guidelines for processing personal data of EU residents. It includes aspects such as the necessity of obtaining explicit

[5] Id.

consent, rights for individuals to manage their data, and obligations for organizations to adopt robust security protocols. Companies must also report data breaches promptly and face substantial penalties for non-compliance.

California Consumer Privacy Act (CCPA): Introduced in California in 2018, the CCPA applies to businesses that handle the personal information of state residents and meet specified thresholds, such as revenue or data volume. The law requires companies to disclose data usage practices, honor consumer requests to delete information, and allow individuals to opt out of data sales. It also imposes security standards and penalties for violations.

The Digital Personal Data Protection Act, 2023 (DPDP Act): This Act is a landmark piece of legislation in India designed to regulate the processing of digital personal data. It empowers individuals with control over their data, defines obligations for data fiduciaries (entities processing data), and establishes a framework for enforcement and penalties. The main objectives of the Act are to protect the personal data of Indian citizens, empower data principles, establish clear obligations for data fiduciaries, create a data protection board, and provide for grievance redressal. This Act marks a significant step towards establishing a robust data protection framework in India. It aims to create a safer digital environment for citizens and foster trust in the handling of personal data. It will have a significant impact on businesses and other entities that process personal data, requiring them to implement compliance measures and ensure responsible data handling practices.

2. Cyber Security Laws:

Cybersecurity regulations often work in tandem with privacy laws to ensure comprehensive data protection. Examples include GDPR, CCPA, and DPDP, which incorporate cybersecurity requirements and outline technical safeguards for personal information.

These frameworks commonly mandate the use of secure data processing methods, routine risk assessments, and incident response plans. Organizations are held accountable for implementing technical and organizational strategies to mitigate unauthorized data access or exposure.[6]

VI. Conclusion

To maintain data privacy, organizations must integrate strong cybersecurity measures. This includes acquiring user consent, ensuring transparency in data use, empowering users to manage their data, and enforcing technical controls like encryption and secure access protocols. Additionally, constant vigilance through monitoring and incident response, combined with employee training, plays a crucial role in sustaining data protection. A holistic approach that combines legal compliance, technological safeguards, and organizational awareness is essential to navigate the complexities of data privacy in a digital world.

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[6] Kamshad Moshin; Data Privacy And Cyber Security; Published on 22nd December 2022; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4299439

IN-DEPTH CASE ANALYSIS OF VODAFONE IDEA LIMITED VERSUS SAREGAMA INDIA LIMITED & ANOTHER [2024 SCC ONLINE CAL 5131] UNDER THE COPYRIGHT ACT, 1957

Prachi Bohra *

Abstract

3 sets of different cases – Multiplicity of case proceedings – Calcutta High Court – Value Added Services of Caller Ring Back Tone – Literary and musical works in sound recordings – Independence of sound recordings from literary and musical works – Reproduction right, right to create derivatives, right to publicly perform the recording, and right to sell/distribute or publicly display the recording – Principle of where equities are equal, the first in time shall prevail – Commercial exploitation of works without obtaining a valid legal license – Commercial exploitation of works without paying any royalty – First owner of copyright under Section 17(c) – Mode of copyright assignment under Section 19(8) – Owner rights administration by the copyright society under Section 34(1) – Rights of royalty payments – Indian Performing Right Society impleaded as a necessary party – Vodafone Idea Ltd. to pay amount of Rs. 3.5 crores against outstanding royalties

Name of the case*: Vodafone Idea Limited versus Saregama India Limited & Another*

3 sets of different cases were filed by the Parties with the same cause of action. It is to be noted that Indian Performing Right Society Ltd. is also a necessary party to the said case.

I. Brief introduction of the case

The case of Vodafone Idea Limited versus Saregama India Limited & Another [2024 SCC OnLine Cal 5131] is based onthree major parties having the same cause of action:Vodafone Idea Limited, Saregama India Limited, and Indian Performing Right Society Ltd.The case revolves around the royalty payments of the authors whose works were used without obtaining a valid legal license.

The crux of the case or its ground area is that sound recording is also considered to be a valuable work wherein any commercial exploitation of such work must be duly acknowledged and paid for in terms of royalty. Moreover,an assignment of copyright (Section 30) is the first step before using an author's work.

* **LL.M., Gujarat National Law University, Gandhinagar, Gujarat**

The subject matter of the case deals with the first owner of copyright (Section 17(c)), mode of copyright assignment (Section 19(8)), application of Section 19 and Section 30A, as well as the administration of owner rights by a copyright society (Section 34(1)).

The case explains how the right of an author of the literary and musical works in a sound recording has an overriding effect over the claim of the first owner of copyright. The usage of authorizing public performance without obtaining a valid license is also illegal, meaning that having the authority to use or commercially exploit the works of the authors is important.

II. Primary details of the case

1. Case nos. and case types:- *It must be noted that there are 3 separate cases with the same cause of action; therefore, the Court dealt with a singular judgment for all three 3 cases.*

a. Civil Suit No. 23 of 2018, along with Civil Suit (Commercial) No. 93 of 2024, along with Civil Suit No. 58 of 2024, along with Interlocutory Application Nos. GA/1/2018 and GA/3/2019

All the aforementioned cases are of Vodafone Idea Limited versus Saregama India Limited & Anr.

[Civil Suit meansthe basic remedy underSection 9 of the Code of Civil Procedure, 1908, wherein any aggrieved person can seek a remedy for damages, compensation, or injunction.]

[Civil Suit (Commercial) is a type of specific civil suit which is only applicable for commercial entities such as businesses and companies.]

[Interlocutory Applications are applications filed in the main applications before the final judgment/order.]

[GA or Government Appeal is an appeal made by the government when it deems that a mistake in the order has been made by the lower court.]

b. Civil Suit No. 155 of 2018, along with Civil Suit (Commercial) No. 131 of 2024, along with Interlocutory Application Nos. GA/1/2018, GA/2/2018, GA/3/2018, and GA/5/2018

All the aforementioned cases are of Saregama India Limited & Anr. Versus Vodafone Idea Limited.

c. Civil Suit No. 210 of 2018, along with Civil Suit (Commercial) No. 140 of 2024, along with Interlocutory Application Nos. GA/1/2018, GA/2/2019, and GA/4/2021

All the aforementioned cases are of the Indian Performing Right Society Ltd. versus Vodafone Idea Limited.

2. Name of the Parties: - There are 3 sets of different cases with the same cause of action, therefore, in the entire judgment, the Court has NOT specified the words,

"appellants" or "respondents", rather the Court has directly used the name of the Parties in the judgment itself to avoid any mechanical confusion; for example- the Court has used "Vodafone" for Vodafone Idea Ltd.; the Court has used "Saregama" for Saregama India Ltd.; and so on.

3. Name of the advocates appearing on record on behalf of the said Parties-

a) For Vodafone Idea Ltd.- Senior Advocate S.N. Mookherjee, Advocate Arunabha Deb, Advocate Soumabho Ghose, Advocate Deepan Kumar Sarkar, Advocate Ashika Daga, Advocate Samriddha Sen, Advocate Ashish Bhan, Advocate Kirti Balasubramanian, Advocate Aayush Mitruka, Advocate Ms. Lisa Mishra

b) For Saregama India Ltd.- Advocate Debnath Ghosh and Advocate Avijit Dey

c) For the Indian Performing Right Society Ltd.-Senior Advocate Anindya Kumar Mitra, Senior Advocate Abhrajit Mitra, Advocate Soumya Ray Chowdhury, Advocate Himangshu Bagai, Advocate Sarosij Dasgupta, Advocate R. K. Ganguly, Advocate Susrea Mitra, Advocate S Biswas

4. Name of the Court where the case was decided- Hon'ble Calcutta High Court

5. Decision/judgment date-17.05.2024

6. Bench type-Single bench

7. Name of the judge- Justice Ravi Krishan Kapur

8. Any priority given-No priority given; however, the cases were heard together due to the same cause of action.

9. Nature of litigation-Court litigation without settlement. Civil litigation in appellate jurisdiction. Multiplicity of proceedings of 3 sets of different cases with the same cause of action that were decided altogether before the Calcutta High Court.

10. Previous case history-All the related cases, as aforementioned, were decided altogether in the present judgment.

III. Brief facts of the caseand the cause of action

Vodafone Idea Ltd. (also referred to as "Vodafone") is a business providing telecommunication services, including certain Value Added Services or "VAS" to its customers. These VAS have a certain type of facility of providing caller-tunes to their customerswhenever someone calls on the phone, and these caller-tunes can be any pre-recorded songs that the customer wants. This particular service is called Caller Ring Back Tone or "CRBT".

Saregama India Ltd. (also referred to as "Saregama") is a registered company that is engaged in the manufacture, sale, and publication of sound recordings of both film and non-film songs, including digital downloads for such songs.

Indian Performing Right Society (also referred to as "IPRS") is a registered company and a copyright society (under Section 33 of the Copyright Act, 1957) that issues licenses for literary and musical works of the authors for their copyrighted works.

The cause of action arose when Vodafone, without obtaining a valid legal license from the Indian Performing Right Society or paying any royalty to the same, started using the literary and musical works of the sound recordings of the authors of the Indian Performing Right Society.

The agreement existed only between Vodafone and Saregama; however, Saregama did not grant any right to Vodafone to exploit any underlying rights of literary or musical works incorporated in the sound recording.

Thereafter, three different civil suits were filed by three different parties with the same cause of action, and due to the multiplicity of the case proceedings, the Court decided to pass a singular judgment in the present case itself.

IV. Applicable provisions in the case

The Copyright Act, 1957

1. Section 17(c)[1]- First owner of copyright

   In the case that there exists a contract of service to which Section 17(a) or Section 17(b) does not apply, then the owner of the copyright shall be the employer.

2. Section 19(8)[2]- Mode of copyright assignment

   Section 19(8) of the Act explicitly provides for any contravention of the assignment of copyright in any work. It states that if such an assignment of copyright in the agreement is against the terms and conditions of the rights that have already been assigned to the author of the copyright society, then such agreement is void.

3. Section 30[3]- Licenses by copyright owners

   As per Section 30, the assignment of copyright must be in written form, whether it be for an existing work or a future work.

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1 Section 17(c) of the Copyright Act, 1957:"First owner of copyright.— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that—…(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein…"

2 Section 19(8) of the Copyright Act, 1957:"…(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void…"

3 Section 30 of the Copyright Act, 1957:"Licences by owners of copyright.— The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in [writing by him] or by his duly authorised agent: Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence. Explanation. Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence."

4. Section 30A[4]- Application of Section 19

   Application of Section 19 shall be as per the relation in the assignment of the copyright in a work.

5. Section 34(1)[5]- The administration of owner rights by the copyright society

   Section 34(1) specifies that the copyright society can authorize the rights of the owner of the work by issuing a license for such work.

V. Issue involved in the case

Issue No. 1: Whether or not Vodafone needs to acquire a separate license from theIndian Performing Right Society Ltd. for commercially exploiting the musical and literary works of its members as part of the sound recording?

Vodafone Idea Ltd. did not have any license from or any agreement between the Indian Performing Right Society Ltd. for the commercial exploitation of the musical and literary works in sound recordings.

VI. Arguments of the Parties

1. Arguments of Vodafone Idea Ltd. and Saregama India Ltd.

In consideration to Issue No. 1 regarding Vodafone needing to acquire a separate license from theIndian Performing Right Society Ltd. ("IPRS") for commercially exploiting the musical and literary works of its members as part of the sound recording, Vodafone and Saregama contendedthat Saregama is the first owner of the literary and musical works incorporated in the sound recordings. Therefore, the copyright in the sound recordings is independent of and different from the musical and literary works in the sound recordings. Therefore, the question of paying royalties to IPRS does not exist.

In consideration of Issue No. 1, Vodafone further contended that since IPRS is not the first author as per Section 17 of the copyrighted work, the question of royalties does not exist.

2. Arguments of the Indian Performing Rights Society

In consideration to Issue No. 1 regarding Vodafone needing to acquire a separate license from theIndian Performing Right Society Ltd. ("IPRS") for commercially exploiting the musical and literary works of its members as part of the sound recording, IPRS contended that without obtaining a valid legal license, Vodafone cannot

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[4] Section 30A of the Copyright Act, 1957:"30A. Application of [section 19].— The provisions of [sections 19] shall, with any necessary adaptations and modifications, apply concerning a licence under section 30 as they apply about assignment of copyright in a work."

[5] Section 34(1) of the Copyright Act, 1957:"Administration of rights of owner by copyright society.— (1) Subject to such conditions as may be prescribed,— (a) a copyright society may accept from an [author and other owners of right] exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and (b) an [author and other owners of right] shall have the right to withdraw such authorization without prejudice to the rights of the copyright society under any contract.."

commercially exploit the music and literary works in the sound recording of members of the IPRS.The IPRS further contended that the Memorandum of Settlement dated 07.07.2022 was between Vodafone and Saregama, and such an agreement did not give any explicit permission from IPRS to Vodafone to use the works of IPRS without the grant of a valid license.

With regards to Issue No. 1, IPRS relied on Clause No. 3 and Clause No. 5 of the Memorandum of Settlement dated 07.07.2022, stating that as per the said clauses, any license for commercially exploiting the literary and musical works in the sound recordings, Vodafone will have to pay the amount of royalties to IPRS. Further, the said Memorandum of Settlement is a contract between Vodafone and Saregama, and IPRS is not a party to it; therefore, as per IPRS, there is no direct relationship between Vodafone and IPRS in the contract. Further contention by IPRS held that no agreement is valid if it is in contravention of Sections 19, 30, and 30A of the Act.

VII. Judgment of the Court

The Court gave its judgment on the major issue, and the said issue was decided in favor of the Indian Performing Right Society Ltd.

Issue no. 1 regarding Vodafone needing to acquire a separate license from theIndian Performing Right Society Ltd. ("IPRS") for commercially exploiting the musical and literary works of its members as part of the sound recording.

The Court held that Vodafone Idea Ltd. did not produce any legal license from the Indian Performing Right Society for commercially exploiting the music and literary works in the sound recordings of IPRS. The Court held that authors of original literary and musical works are entitled to claim mandatory royalty sharing on each occasion when a sound recording is communicated to the public.

The Court held that the right of an author of the literary and musical works in a sound recording has an overriding effect over the claim of the first owner of copyright. Even if the first owner grants a license to exploit the rights of sound recordings, it does not mean that the rights of the authors can be skipped or bypassed. Therefore, Vodafone is obliged to make the royalty payment to IPRS to the actual authors of the literary and artistic works. Saregama did not have any right to grant to Vodafone for such literary and artistic works in sound recordings.

The Court also held that IPRS is a necessary party to the case and therefore, the Government Appeal No. 3 of 2018 and Government Appeal No. 5 of 2022 in Civil Suit No. 155 of 2018 seeking impleadment of IPRS were allowed.

VIII. Order of the Court

With respect to the judgment of the Court as aforementioned, the Court passed the following order.

1. Government Appeal No. 1 of 2018 in Civil Suit No. 23 of 2018, as well as Government Appeal No. 1 of 2018 in Civil Suit No. 155 of 2018, are dismissed. The order dated 01.10.2018 in the said case is vacated.

2. Government Appeal No. 2 of 2019 in Civil Suit No. 210 of 2018 is dismissed as Tips and Sony are not necessary parties to the case.
3. Government Appeal No. 4 of 2018 in Civil Suit No. 210 of 2018 is dismissed as infructuous.
4. The amount of Rs. 3.5 crores deposited by Vodafone before the Registrar, Calcutta High Court, in accordance with the order dated 01.10.2018, shall now be paid to Indian Performing Right Society with interest against the outstanding royalties as per the published tariff of IPRS
5. Government Appeal No. 3 of 2019 in Civil Suit No. 23 of 2018 filed by the Indian Performing Right Society is allowed to the extent of repayment of Rs. 3.5 crores to IPRS
6. Government Appeal No. 3 of 2018 and Government Appeal No. 5 of 2022 in Civil Suit No. 155 of 2018, seeking impleadment of IPRS, are allowed.
7. Government Appeal No. 1 of 2018 in Civil Suit No. 210 of 2018 is allowed to the extent that Vodafone must disclose the data and the logs of the actual usage of the works as utilized by the customers of Vodafone on or before 24.06.2024.
8. An injunction is granted restraining Vodafone from using the authorized public performance without obtaining a valid license and making payment of royalty to IPRS.

IX. Original Analysis of the Cases

Rights of authors in sound recordings

When a sound recording is copyrighted, the graphical symbol "!" is used. There are various rights when a copyright is granted to a sound recording: The reproduction right- this encompasses the right to reproduce the sound recording in any form and medium such as digital downloads or phonorecords; the right to create derivatives- this entails making derivative works on Copyrighted materials such as alterations and remixes or the right to license the work to third parties; the right to publicly perform the recording via a Digital Audio Transmission; the right to sell/distribute or publicly display the recording.

Perspectives on the rights of royalty payments

The present case had different perspectives when ensuring the rights of royalty payments. The first perspective was when the author of the work could receive royalty payments only for the works that he created pursuant to the Copyright Amendment Act, 2012. As per this, authors who created works prior to the 2012 amendment are not eligible for royalty payments.

Another perspective is that authors can receive royalty payments only when literary and musical works are commercially exploited, and not when sound recordings are commercially exploited. The third perspective is when authors can receive royalty payments only when literary and musical works are legally assigned or licensed, and not when they are commissioned.

The multiplicity of case proceedings

It is understood that 3 sets of different cases were filed by the Parties with the same cause of action. In order to understand the case in-depth, the following is the proper sequence and the details of all such cases that were filed by the Parties.

X. Civil Suit No. 23 of 2018

Civil Suit No. 23 of 2018 was filed by Vodafone seeking a declaration that IPRS is not entitled to the claim of acquiring license fees from Vodafone.

Government Appeal No. 1 of 2018 in CS/23/2018 was decided vide an ad interim order dated 01.10.2018, which held that bothIPRS and Saregama were restrained from any claim of royalty from Vodafone for using VAS after Vodafone deposited Rs. 3.5 crores with the Registrar of the Calcutta High Court.

Government Appeal No. 3 of 2019 in CS/23/2018 was filed by IPRS seeking to vacate the order dated 01.10.2018

Civil Suit No. 155 of 2018

Civil Suit No. 155 of 2018 was filed by Saregama seeking an injunction against Vodafone from exploiting the copyright in the sound recordings.

Government Appeal No. 1 of 2018 in CS/155/2018 was filed seeking interim relief.

Government Appeal No. 2 of 2018 in CS/155/2018 was filed by Vodafone for the stay of the suit.

Government Appeal No. 3 of 2018 in CS/155/2018 was filed by Vodafone for seeking the impleadment of IPRS in this suit (meaning to include IPRS as a party in the main suit).

Government Appeal No. 5 of 2022 in CS/155/2018 was filed by IPRS for impleadment in the suit as a necessary Party and for restraint of orders for the withdrawal amount of Rs. 3.5 crores were deposited by Vodafone.

Civil Suit No. 210 of 2018

Civil Suit No. 210 of 2018 was filed by IPRS seeking restraint orders on Vodafone from authorizing the public performance or communicating to the public.

Government Appeal No. 1 of 2018 in CS/210/2018 was filed by IPRS seeking an injunction against Vodafone from exploiting any recorded musical or literary works without payment of royalty to IPRS. As per the ad-interim order dated 12.10.2018 in GA/1/2018, Vodafone deposited the amount of Rs. 2.5 crores, and then it was allowed to continue its Value Added Services to its customers.

Government Appeal No. 2 of 2019 in CS/210/2018 was filed by Vodafone for impleading two other music companies, i.e., Sony and Tips, as necessary Parties in the suit.

Government Appeal No. 4 of 2021 in CS/210/2018 was filed by IPRS seeking that Vodafone make a payment of Rs. 18 crores for the period until 31.03.2019, as Vodafone exploited the rights of IPRS.

Memorandum of Settlement dated 07.07.2022

The Memorandum of Settlement dated 07.07.2022 was signed between Vodafone and Saregama. However, such agreement did not give any right to Vodafone to use the artistic and musical works of the sound recordings of IPRS. Vodafone never had the authority to use or commercially exploit the works of the IPRS, and for the same reason, Vodafone could not show any agreement that it had with IPRS for the license to use the works of the IPRS.

Moreover, as per another assignment deed dated 22.05.2017 between Saregama and IPRS, Saregama assigned all the musical and literary rights for public performances to IPRS. The Master Agreement dated 14.03.2014, relied on by Vodafone, is of relevance as the same expired on 13.03.2019.

Tests for copyright as applied in the case

In the present case, certain principles were noticed for determining the copyright of the literary and musical work in a sound recording, which are as follows:

1. **Paternity right, identification right, or attribution right** holds that the author of his work must be acknowledged and recognized, and that others must be prevented from using the author's works without obtaining his permission.
2. **Divulgation/dissemination right** explains that a person must obtain legal authority from the owner of the copyright before disseminating or distributing the author's work to the public.

XI. Precedents referred to in the case

The present case has relied on the precedents as follows.

The Court relied on the precedent of *IPRS versus Eastern Indian Motion Pictures (1977) 2 SCC 820*, stating that while copyright law protects the film as a whole, *Section 13(4)* of the Act also maintains that the copyright of each component work continues to exist separately.

The Court also referred to the precedents of *Rhondda Urban District Council versus Taff Vale Railway. Co., (1909) AC 253; Kerala versus P. Krishna Warriar, AIR 1965 SC 59; Motiram Ghelabhai versus Jagannagar, (1985) 2 SCC 279; Dattatraya Govind Mahajan versus State of Maharashtra, (1977) 2 SCC 548; and Ishwarlal Thakarlal Almania versus Motabhai Nagjibhai, (1966) 1SCR 367* holding that although a proviso normally creates exceptions to a rule, sometimes it can create new substantive rights or rules rather than just limiting what came before it. Therefore, it cannot always be assumed that a proviso must be limited to the scope of the main provision- it can sometimes establish independent rights for parties.Vodafone referred to the precedent of *Union of India & Ors. Versus Dileep Kumar Singh (2015) 4 SCC 421 and Mackinnon Mackenzie & Co. Ltd. versus Audrey D'Costa, (1987) 2 SCC 469* holding the same aforementioned contention.

Vodafone also referred to the precedent of *IPRS versus Aditya Pandey, 2012 SCC*

Online Del 2645; however, the Court held that the said case is not relevant to the present scenario.

IPRS referred to the precedent *of IPRS versus Rajasthan Patrika Pvt. Ltd. 2023 SCC OnLine Bom 944*, stating that authors of underlying literary and musical works are entitled to royalties each time their work is communicated to the public.

XII. Implications of the judgment

The judgment in the present case has proved how royalties are mandatory to acknowledge and to pay to the actual authors for their contributions. Judgment seeks to ban the exploitation of creators, most importantly those who have less negotiating power, through strict licensing regimes. Commercial bodies are required to acquire appropriate licenses and remunerate royalties upon the use of copyrighted material within their services.

The judgment asserts the authority and the right of the authors for entitlement to royalties when their work is used for commercial exploitation without their permission. Section 33A of the Act provides for a Tariff Scheme by copyright societies.

Commentary on the case (a bird's-eye viewpoint)

The**Amendment Act 27 of 2012** dealt with digital technology and Internet-related issues, conforming to the international standards established by two *WIPO Internet Treaties: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).* The purpose of the amendment act was to eliminate operational challenges. India has not signed these treaties yet, but the amendments seek to provide copyright protection to digital works, such as the internet and computer networks, for different creative works. The overall aim is to promote creativity, innovation, and enterprise in the contemporary knowledge society so that creative individuals can unleash their potential and cope with the needs of a fast-changing modern society.

As per the Report of the Standing Committee of Parliament, one of the key objectives of the new law is to provide authors, particularly songwriters whose compositions are utilized in films or recordings, with royalty payments when their compositions are utilized commercially.

XIII. Concluding remarks

The revisions to the Copyright Act offer adequate safeguards for writers, guaranteeing them equitable payments. By requiring licensing and payment of royalties, the court has established an important precedent for the commercial exploitation of copyrighted works in India.

In the end, the Court held that Vodafone Idea Ltd. is obliged to make the royalty payment to the Indian Performing Right Society Ltd. to the actual authors of the literary and artistic worksby making a payment of Rs. 3.5 crores against the outstanding royalties as per the published tariff of the Indian Performing Right Society Ltd.

BALANCING DEVELOPMENT AND CONSERVATION: A LEGAL ANALYSIS OF KARNATAKA'S LAND ENCROACHMENT LAWS IN PROTECTED FORESTS

Jashwanth G. *
Ananya Shetty **

Abstract

This research paper explores the ongoing struggle between the need for development and the importance of conserving protected forests in Karnataka. It focuses on the legal rules surrounding land encroachment and examines how the state, home to about 5.11% of India's forest cover and five tiger reserves, grapples with the challenge of preserving its rich biodiversity while also dealing with the demands of growth and expansion.

This paper looks at how forest governance in Karnataka has evolved—from age-old traditional systems to the modern legal framework in place today. It highlights the worrying decline in forest cover in the Western Ghats. The study also assesses how well current laws are working to stop encroachment. Even though Karnataka has strong legal tools like the Karnataka Forest Act of 1963 and the Wildlife Protection Act of 1972, real-world challenges such as limited resources, political influence, and slow procedures have made it difficult to effectively protect the forests.The paper also looks into how large-scale development projects—especially in the Western Ghats have sped up, thus breaking apart natural habitats and leading to a decline in biodiversity. It reviews how the courts have responded to land encroachment cases over time, shifting from strict conservation measures to more balanced approaches.

This in-depth study highlights key shortcomings in how forest regulations are put into practice and suggests real-world solutions for better forest management. These include precisely defining protected areas, improving transparency in forest governance, and including local communities in conservation. Policymakers, environmentalists, attorneys, and academics who work at the nexus of environmental law and sustainable development may find these ideas very helpful.

Keywords: ***Karnataka's Forests, Legal Provisions, Encroachment, Balanced Approach, Forest Governance, Western Ghats***

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* **LLB Student, St Joseph's College of Law, Bengaluru.**

** **LLB Student, St Joseph's College of Law, Bengaluru.**

I. Introduction

Karnataka has always been known for its Rich Culture, Western Ghats, and Biodiversity, but maintaining the Western Ghats has never been easy. The state faces acute challenges in protecting its reserved forests from systematic encroachment and illegal intrusions. Even though there are numerous legal protections under central and state forest laws, encroachment on forest land in Karnataka has worsened, threatening ecological integrity and biodiversity. Karnataka Forest Act 1963[1] and the Forest Conservation Act 1980[2] There are some of the provisions adopted by the state to deal with the above-mentioned issues and empower the state to reclaim encroached forest lands, but the enforcement of these provisions has posed many administrative, political, and social issues. It has also been noted that between 1997 and 2001 alone, over 66,000 hectares of forest land were reported encroached in Karnataka.[3].

Karnataka's development projects-such as road expansion, hydroelectric plants, and mining in the Western Ghats-have severely impacted the ecosystem, threatening endemic species and affecting rainfall. Despite being legally mandated, Environmental Impact Assessments (EIAs) face criticism for procedural lapses and lenient clearances. The Forest Rights Act 2006 has further complicated land use dynamics.

Judicial actions in Karnataka have evolved from strict conservation to a more balanced approach that considers both environmental protection and indigenous rights. With modern technologies and dedicated benches, the courts now address forest encroachments more effectively and thoughtfully.

II. Literature Review

- **The Rich Landscape of Karnataka's Forest:**

Karnataka is ecologically diverse with rich biodiversity from the Western Ghats and the Eastern Plains. According to the latest forest statistics, out of 1,91,791 sq. km.[4] of Karnataka's total land area, the State contributes up to 17% of Forest Cover, which can be further divided into Dense Forests, which account for 13% of the total, and Open Forests, which make up the remaining 4%. Thus, up to 5.11% of India's total forest area comes from the State of Karnataka[5], making the state the sixth-largest forest cover in India[6].

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1 The Karnataka Forest Act 1963, Act No 5 of 1964 (Karnataka).

2 Government of India, Handbook of Forest (Conservation) Act 1980 and Forest (Conservation) Rules 2003 (Ministry of Environment and Forests 2004).

3 P Thippaiah, 'Encroachment of Community Property Resources in Karnataka' (2005) IASSI Quarterly 23(4) 148

4 'Area of Karnataka' (Karnataka.com) <https://www.karnataka.com/profile/area/#google_vignette> accessed 8 April 2025

5 Jagannatha Rao, Prabhakar Bhat, Murali Kallur, Indu K Murthy, and N Ravindranath, 'Joint Forest Planning and Management in Uttara Kannada: A Review' (2001) 37 Myforest.

6 Times News Network, '10 Indian States with the Largest Forest Cover' (The Times of India, 15 February 2024).

Karnataka is home to Five Tiger Reserves, namely – Bhadra Tiger Reserve, Dandeli-Anshi Tiger Reserve, Nagarhole Tiger Reserve, Bandipur Tiger Reserve, and Biligiri Ranganathaswamy Temple Tiger Reserve. The State is also home to 30 Wildlife Sanctuaries, 15 Conservation Reserves, and one Community Reserve. The State's Geographical Variance is as follows[7]:–

- Kodagu (81.45%),
- Uttara Kannada (80.5%),
- Dakshina Kannada (61%),
- Shimoga (38%)

- **Challenges in Balancing Development and Conservation:**

There exist numerous challenges in balancing development and conservation. This paper sheds light on practical and structural challenges. These issues are exacerbated by factors like urban expansion, mining, encroachment, and unsustainable agricultural practices.

Since livestock grazing restrictions were imposed upon the livestock grazers without any alternatives for fodder, which increased the pressure on other adjacent forests, creating havoc[8].

- **Land encroachment in a protected forest:**

In recent times, encroachment in Protected Forests by Government-backed industries, individuals, and businessmen is an Open Secret. Protected Forests in Karnataka's Western Ghats, especially Kudremukh National Park, Rajiv Gandhi Tiger Reserve, and Bandipur Tiger Reserve, have faced tremendous encroachment activities due to their rich landscape[9].

Kudremukh, a well-known national park of the state, has witnessed a steep decline in its evergreen forests from 33.46% to 27.22%. Additionally, forests in Bandipur have also dropped from 61.69% to 47.3% mainly due to horticultural expansion, settlements, and plantations.

- **Research Gaps**

Insufficient legal evaluation regarding the upcoming Metro line in the ESZ of Bannerghatta –

The planned Namma Metro expansion through Bannerghatta's Eco-Sensitive Zone (ESZ) exposes significant procedural and legal shortcomings. Major procedural issues involve the lack of a public hearing, an incomplete Environmental Impact Assessment

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7 Karnataka Forest Department, 'Tiger Reserves in Karnataka' (Aranya – Govt. of Karnataka).

8 Jagannatha Rao, Prabhakar Bhat, Murali Kallur, Indu K Murthy, and N Ravindranath, 'Joint Forest Planning and Management in Uttara Kannada: A Review' (2001) 37 Myforest.

9 Press Trust of India, 'Forest Cover Declined by 22.62 sq km in 52 Tiger Reserves in 10 Yrs: Study' Business Standard (New Delhi, 13 January 2022).

(EIA), and the suspicious timing of the ESZ boundary reduction, which led to the potential loss of over 2,000 trees and is not backed by a solid replantation strategy.[10].

These shortcomings point to deeper systemic problems in aligning urban development with conservation, threatening the unique wildlife corridors of Bannerghatta and weakening environmental governance.

Inadequate legal documentation of conflict resolution procedures concerning STRR :
The Bengaluru Satellite Town Ring Road (STRR) is a 288 km expressway encircling Bengaluru, connecting 12 satellite towns[11]. The STRR project surrounding Bengaluru has come under scrutiny for its lack of transparent legal frameworks to handle environmental disputes. The road passes through sensitive ecological zones like Bannerghatta's ESZ and key agricultural lands, and there are no Redressal Systems for the same. Public consultations required under the EIA 2006 guidelines were

either sparse or poorly recorded, sparking legal challenges and community protests. Reports indicate that more than 6,000 hectares of land have been acquired, often without clear terms of compensation or resettlement, particularly affecting tribal and farming populations[12].

This absence of a solid legal mechanism for addressing environmental and livelihood-related conflicts reflects a troubling gap in governance.

Insufficient knowledge of how land laws, forest rights, and urban planning regulations interact :
In Karnataka, land laws, forest rights, and urban planning regulations often clash, creating a tangled web of challenges. Different rules pull in different directions - the Karnataka Land Revenue Act deals with who owns what land and how taxes are collected, while the Forest Rights Act (2006) gives tribal communities legal claim to their traditional forest homes.[13]. At the same time, the Karnataka Town and Country Planning Act drives urban growth, which frequently runs into conflict with efforts to protect forests. These overlapping rules and goals have led to confusion, delays, and gaps in enforcement-especially around cities where forests meet expanding urban zones. With no clear system to coordinate it all, loopholes are exploited, and forest lands are increasingly at risk of encroachment.[14].

Lack of active legal frameworks for sustainable development :
Karnataka does not yet have a strong legal system in place that brings together forest

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10 Jhatkaa, 'Bangalore Needs Its Trees: Save 2,174 from the Axe' Jhatkaa (10 April 2025).

11 Rejeet Mathews and others, 'Reimagining the Peripheral Ring Road of Bengaluru as an Area Development Project' (2017) 2 Journal of Sustainable Urban Planning and Policy

12 Bangalore Mirror Bureau, 'STRR Project: Environment Clearance Challenge' Bangalore Mirror (Bengaluru, 10 August 2023)

13 B Sinha, 'Forest Rights Act: Integrating Environmental Protection and Livelihood Rights' (2020) 46 EPW 22

14 A Kumar, 'Conflict Resolution in Protected Areas' (2022) 9 Indian Journal of Environmental Law 76

conservation and sustainable development in a meaningful way. While laws like the National Green Tribunal Act offer a platform to address environmental challenges, and the Environmental Protection Act outlines certain regulatory steps, there's still no full-fledged law that truly balances development with the need to protect forests.[15]. Existing laws like the Karnataka Preservation of Trees Act and the Forest Conservation Act mainly focus on preserving forests rather than using them responsibly and sustainably. Major infrastructure projects such as the Bangalore Metro and STRR often move forward without clear legal direction on how to explore more sustainable options.[16]. This gap forces the courts to step in on a case-by-case basis, instead of having a consistent, law-driven approach. Without clear guidelines on how to work together sustainably, this overlap leads to confusion, delays, and challenges.

III. Research Findings

Effectiveness of the legal provisions of Karnataka in controlling and reclaiming land encroachment within sanctioned reserved forest areas -

In India, forests were open and accessible to people, providing them with resources without restrictions or formal oversight. Early laws enabled the state to declare forest areas as reserves, limiting community access. Post-independence, India's 1952 policy aimed to cover one-third of the land with forests[17]. In recent times of legal battle with regard toKarnataka's forests, there are many instances where the state has acted against the well-being of the forest. Karnataka uses a combination of state and central laws to deal with forest encroachments, but how effectively these laws are put into action often varies, so their impact can be inconsistent. The Karnataka Forest Act 1963 plays a major role in providing the mechanism for forest protection under *Sections 64* and *65*[18], giving forest officers the utmost powers to evict encroachers and demolish unauthorized structures/buildings/infrastructures.

The punishment is stated in Section 127, which permits imprisonment up to five years and fines up to ₹ 50,000 for guilty-proven encroachers. This is further supported by the Wildlife Protection Act of 1972, which forbids unlawful access to and use of national parks and sanctuaries. Violators risk fines and imprisonment under Section 27.[19] The question that has never been answered to date: Do these laws only come into action when the guilty party is a common man? Where are these laws when the well-known businessmen, industrialists, and high-net-worth individuals encroach on the protected forests of the State? Despite these strong legal provisions, they are found to be inconsistent, for example, Forest Survey of India data (2021) indicates

[15] N Sharma, 'Sustainable Infrastructure Development: Legal Challenges' (2023) 38 Environmental Law Review 211

[16] V Upadhyay, 'Green Tribunals and Sustainability Frameworks' (2021) 15 Journal of Environmental Policy 149

[17] T Sekar, 'Efficacy of Forest Acts and Forest Policies in India' in A Srivastav (ed), Forest Policies, Laws, and Governance in India (Springer 2024).

[18] Karnataka Forest Act 1963, ss 64, 65, 127.

[19] Wildlife Protection Act 1972, s 27.

Karnataka lost approximately 1,025 sq. km of forest cover to encroachments between 2001 and 2021[20]. Additionally, the Karnataka Forest Department reported evictions from 17,422 acres (2018-2022), but 73% of identified encroachments remain unresolved[21].

Though there exist many provisions to tackle encroachment issues, there also exist several shortcomings in the Forest Department of the State. These implementation challenges include - Resource constraints, Political Interference, and Procedural Delays. "The Karnataka Forest Department reports staffing at 60% of sanctioned strength[22]." Very recently, a legislative committee found evidence of interference in eviction proceedings in 78% of high-value encroachment cases[23]. And to top it all, the average time for resolution of encroachment cases exceeds 7 years or more, despite statutory timelines[24], as seen in the case of *T.N. GodavarmanThirumulpad v. Union of India*[25].

IV. Regulatory Outcomes of Development in Karnataka's Sensitive Forest Areas -

The Western Ghats, recognized as a UNESCO World Heritage Site, are more than just a beautiful mountain range along India's western coast. They play a vital role in shaping our climate and bringing the monsoon rains that so many depend on. But today, this natural treasure is under pressure. Rapid urban growth, new infrastructure, and widespreaddeforestation are threatening the delicate balance of this ecosystem. It's a clear reminder that as we build for the future, we also need to protect the natural world that sustains us.[26].

Rapid and unplanned development, along with intensified farming and horticultural practices, has played a major role in driving deforestation. The change in the forest is due to human activities, including the conversion of forest lands into agricultural fields, horticulture zones, monoculture plantations, and land allocated for infrastructure projects. Over time, many evergreen and semi-evergreen forests have transitioned into moist deciduous forests or have been turned into forest plantations, such as those featuring Teak and Acacia species. The expansion of farming is evident in the rise of agricultural land use, which doubled from 7.00% in 1973 to 14.13% in 2013. Similarly, urban growth has surged, with built-up areas increasing from 0.38%

[20] Forest Survey of India, 'State of Forest Report' (Ministry of Environment, Forest and Climate Change 2021) 142.

[21] Special Committee on Forest Encroachments, 'Status Report' (Government of Karnataka 2023) 34.

[22] Directorate of Forest Department, 'Staffing and Resources Report' (Govt. of Karnataka 2022)

[23] Legislative Assembly Committee on Forest Encroachments, 'Final Report' (Karnataka Legislature 2021) 87.

[24] A Menon and V Siddharth, 'Evaluating Legal Frameworks for Forest Protection in Karnataka' (2022) 57 Economic and Political Weekly 112.

[25] N GodavarmanThirumulpad v Union of India WP 202/1995 (Supreme Court).

[26] Ministry of Environment and Forests, Western Ghats Ecology Expert Panel Report (Government of India 2011)

to 3.07% over the same period. Additionally, the introduction of non-native tree species like Acacia auriculiformis, Casuarina equisetifolia, various Eucalyptus species, and Tectona grandis has not only reduced forest cover but also contributed to the extinction of native species. Today, dry deciduous forests are extremely limited-covering only 0.96% of the area-and are primarily located in the northeastern parts of the district, specifically in Mundgod and partially in Haliyal taluks.[27].

In Uttara Kannada district, there has been a persistent trend of unauthorized land conversions driven by the region's fertile forest soil and access to water-ideal for agriculture, settlement, construction, cattle grazing, and other human activities. These changes are largely fueled by market-driven economic pressures. Around 7071.69 hectares of forest land have been illegally diverted for various uses, with encroached areas ranging from as little as 1 hectare to over 10 hectares. In some regions, local landowners are actively clearing and burning adjacent forest patches. This pattern of illegal forest exploitation is consistently observed across all divisions and all sectors of the districts in the state.[28].

Apart from the various Central Legislations, there exist many regional frameworks that act as a regulatory regime in governing development in Karnataka's forests. The two main Committees under the Regional Frameworks are the "Gadgil Committee" (Western Ghats Ecology Expert Panel Report 2011), which recommended classifying the entire Western Ghats as ecologically sensitive, with three zones of varying protection[29] And the "Kasturirangan Committee" (High-Level Working Group Report 2013) that modified the approach, designating 37% (59,940 sq km) of the Western Ghats as an Ecologically Sensitive Area (ESA) with development restrictions.[30]. The recent legislative development in the State includes the Karnataka Forest Industries Development Act of 2020, which laid down guidelines to ensure forests are used sustainably. One key part, Section 17, makes it clear that any approved project must not lead to an overall loss of forest cover.[31].

Additionally, development projects in the region, such as the NH-4A Expansion through Anshi-Dandeli Tiger Reserve[32] and the Yettinahole Water Diversion Project[33]

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27 MD Subash Chandran, TV Ramachandra, Bharath Setturu and KS Rajan, 'Landscape dynamics in Uttara Kannada, Central Western Ghats: Insights through spatial metrics' (2015) 148 Forest Ecology and Management 90.

28 TV Ramachandra, Bharath Setturu, KS Rajan, and MD Subash Chandran, 'Stimulus of developmental projects to landscape dynamics in Uttara Kannada, Central Western Ghats' (2016) Journal of Environmental Management 1.

29 Western Ghats Ecology Expert Panel, 'Report of the Western Ghats Ecology Expert Panel' (Ministry of Environment and Forests 2011).

30 High-Level Working Group, 'Report of the High-Level Working Group on Western Ghats' (Ministry of Environment and Forests 2013).

31 Karnataka Forest Industries Development Act 2020, s 17.

32 Karnataka State Pollution Control Board, 'Post-Project Environmental Monitoring Report: NH-4A Expansion' (Government of Karnataka 2021) 47-62.

33 Environmental Management & Policy Research Institute, 'Ecological Impact Assessment of Yettinahole Project' (Government of Karnataka 2020) 103.

Not only requires the diversion of the forest land, but also thousands of trees of different species are felled, thus disrupting the habitat of many of the species in the region.

V. Karnataka's Evolving Jurisprudence on Protected Forests -

Environmental disputes have historically been heard by the judiciary under Tort Law. This was a system of personal accountability and claims. The numerous laws that addressed particular environmental challenges, as well as the more intricate problems in environmental law, subsequently improved this system. This allowed for a broader range of environmental litigation that could deal with problems that affected big populations, but as greater claims began to be handled, the concept of personal accountability was abandoned in favor of a system of public litigation and non-responsibility[34].

In the early 2000s, the initial focus of Karnataka's legal response to forest encroachment was rigorous eviction, with little regard for socioeconomic considerations. The Karnataka High Court prioritized forest protection over conflicting claims by ordering the prompt eviction of encroachers from Nagarhole National Park and surrounding areas. Along with this, when the Supreme Court enlarged the concept of "forest land" to include all encroachment problems, regardless of ownership, the landmark *T.N. GodavarmanThirumulpad v. Union of India (1997)* case drastically changed court reactions across the country.[35].

In the late 2000s, the implementation of the Forest Rights Act in 2006 marked a significant shift in the framework of the Protected Forests Rules and Regulations, with Section 4(5) acknowledging the rights of communities that live in forests while also forbidding additional encroachments.[36]. In the 2009 case of*SoligaAbhivrudhi Sangha v. State of Karnataka*, the Karnataka High Court recognized the rights of indigenous peoples while making a distinction between traditional forest residents and newcomers, requiring the former to be protected and the latter to be evicted.[37].

Data from the Karnataka Forest Department showed a quantifiable shift:

- In 2007, encroachment occurred on 1,87,634 acres of forest land.
- Through judicial actions, 39,471 acres had been recovered by 2015.
- Also, new encroachments added 26,312 acres during the same period[38].

To discuss the most recent advancements, the judiciary has shifted towards a more

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[34] Pushpavathi TP, Western Ghats Ecology: A Study on the Constitutional and Legal Perspectives (LLM dissertation, National Law School of India University 2016).

[35] TN GodavarmanThirumulpad v Union of India WP 202/1995 (Supreme Court).

[36] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, s 4(5).

[37] The Logical Indian, 'Forest Rights Battle: Adivasis and Forest Dwellers Continue to Struggle for Recognition and Justice' (The Logical Indian, 2023).

[38] Karnataka Forest Department, 'Status Report on Forest Encroachments' (Government of Karnataka 2016) 37-42.

organized and evidence-based approach. A notable example is the creation of a dedicated Forest Bench in the Karnataka High Court in 2018, which significantly sped up proceedings. By 2022, this special bench had successfully resolved 7,623 cases related to forest encroachments[39]. Additionally, the Southern Bench of the National Green Tribunal made a strong impact on environmental enforcement in the 2020 case of Environmental Support Group v. State of Karnataka. The tribunal directed that all encroachments be thoroughly mapped and set clear deadlines for their removal[40]In Karnataka, the judiciary has shifted from a hardline conservation stance to a more balanced approach that takes into account both protecting the environment and respecting indigenous rights. Thanks to advances in technology and the establishment of dedicated judicial benches, courts are now handling forest encroachment cases with greater efficiency and sensitivity.

VI. Recommendations

1) Implementation of fuelwood conservation and providing an alternative for fuelwood, making it easily accessible for the localities so that they do not return to the forests for the very same. Also, alternative fodder facilities should be made feasible for the livestock grazers by the state to reduce conflicts.
2) The registration of the VFCs (Village Forest Committee) should be looked upon to maintain transparency in the meetings, and these VFCs should promote sustainable development in them.
3) Areas that are designated for JFPM (Joint Forest Planning and Management) should be demarcated correctly to reduce unregulated tourism, illegal settlement, conversion of the protected areas to monoculture plantations, and expansion of agriculture or built-up land in such areas.

VII. Conclusion

The natural wealth of Karnataka is undergoing pressure mainly due to the balance between development and conservation, as it becomes increasingly fragile. These shifts paint a stark picture of what's at stake when forests give way to fields and concrete, the loss of not just trees, but entire ecosystems and the wildlife that depend on them.

Although Karnataka has strong laws and rules on paper, like the Karnataka Forest Act of 1963 and the Wildlife Protection Act of 1972, the reality on the ground tells a different story. The state's Forest Department is stretched thin, functioning with just 60% of the staff it's supposed to have. This shortage makes it even harder to protect forests effectively. To make matters worse, political interference casts a long shadow, affecting nearly 78% of cases involving high-value land encroachments. And when it comes to justice, delays are the norm despite clear legal deadlines, and resolving

[39] High Court of Karnataka, 'Annual Report 2022' (High Court of Karnataka 2022) 73

[40] Environmental Support Group v State of Karnataka Application No 29/2020 (National Green Tribunal, Southern Bench).

these cases often drags on for over seven years. The result? A system that struggles to keep up while forests quietly disappear.

Karnataka's courts have changed over time from taking a rigid, one-size-fits-all approach to adopting a more deliberate and equitable one that acknowledges the rights of indigenous communities while still tackling the issue of forest encroachments. A major step forward came in 2018 with the creation of a dedicated Forest Bench. By 2022, this bench had handled an impressive 7,623 cases.[41], showing that focused, sensitive judicial action can make a real difference[42].

This study suggests a few key steps: making cleaner, more accessible alternatives to fuelwood available so that people don't have to rely on forests for daily needs, bringing greater transparency and accountability to Village Forest Committees, and marking areas under Joint Forest Planning and Management to avoid illegal settlements and unchecked tourism. These aren't just bureaucratic fixes.[43]They're meaningful actions that can help Karnataka grow responsibly, protecting its incredible biodiversity while still meeting the needs of its people. It all comes down to striking that fine balance between development and conservation, which we all too frequently take for granted.

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41 Supra Note 39

42 Karnataka Forest Department, 'Status Report on Forest Encroachments' (Government of Karnataka 2016) 37-42.

43 The Logical Indian, 'Forest Rights Battle: Adivasis and Forest Dwellers Continue to Struggle for Recognition and Justice' (The Logical Indian, 2023).

GREEN BENCHES, GREEN FUTURES: THE INDIAN JUDICIARY'S PIVOTAL ROLE IN SUSTAINABLE DEVELOPMENT

Samarth Vajrakant Salimath *

Abstract

This research paper will be addressing the concept of sustainable development and the role of Indian judiciary in promoting it. Development and Change are the two inevitableaspects of the society; however, it should not be at the cost of the rights of the future generation. Article 21 of the Constitution of India guarantees Right to Environment, which mandates sustainable development. Therefore, I deem it my rightful duty and responsibility to write this paper and address various concepts of sustainable development and the role of Indian Judiciary in promoting it. This paper will begin with the concept of sustainable development further addressing the need of judiciary to intervene in this concept, it will also highlight the role of judiciary and its landmark judgments on sustainable development goals and challenges apprehended while making such judgements. Further this paper will also speak about the role of an individual in fostering sustainable development and finally,this article will conclude with further possibilities of research and also innovation which can create a balance between the concept of sustainability and development which can be created through the channels of judiciary .

Keywords : ***Sustainable development Goals, Supreme Court, Judiciary, Article 21, Sustainable development, Judgements.***

I. Introduction

" प्रकृतिपरमोदेवी "

"Nature is the supreme goddess"

The foundation of this research paper is based on the above quote,which conveys that nature is the supreme goddess and respecting her is the prima facie duty of the humankind. Therefore, this quote will serve as a central theme throughout the entirety of the paper.

With the wake of the industrialization in the 17th century the utilization of resources has been a lot, thereforea need arose for a development in which fulfills the desires of the present generation without causing harm to the future generation. Hence this

* **B.A. LL.B. from Karnataka Law Society's Raja Lakhamgouda Law College, Belagavi, Karnataka.**

concept of Sustainable development came into light, sustainable development means "fulfilling our desires without harming the rights of our future generations"[1]. As the population grows there is an implied duty on the state to undertake precautions and projects to uplift their economy to achieve minimum development in the limited resources. But currently the natural resources are extracted at a rate far than being regenerated. The Indian Judiciary has been a beacon of hope for the Sustainable development in India, playing a crucial role in balancing the intricate relationship between environmental conservation, social justice, and economic growth. The Hon'ble Supreme Court of India has passed various judgements which have uplifted the concept of Sustainable development. While there are various laws being enacted by the Parliament for the environment and also sustainable future, but it is only when the Courts give the rightful interpretation for such laws, citizens become aware about their common future.As the country struggles with the challenges like rapid industrialization, urbanization, pollution, overuse of natural resources and climate change, it is the Judiciary's proactive approach which has been instrumental in shaping the nation's sustainable development.

The role of Indian Judiciary in sustainable development is multifaceted, it has given various landmark judgements, directions, guidelinesand also various principles on which the rock of sustainable development resides. This paper will address various concepts like Meaning of Sustainable development, need for judicial activism, role of the supreme court, role of an individual, and most importantly the various judgements which reflect the sustainable development goals and we will be concluding this paper by understanding the various challenges faced by the Supreme Court and also the further possibilities of research and innovation.

The purpose of writing this article is that belonging to the GenZ we are the people who have been lucky to even grow with the fullest of resources and now also facing the issues of lack of resources for our everyday life.Therefore this article will cover various concepts of sustainable development and the role of Indian judiciary like the meaning of Sustainable Development , Need of the judicial activism, Role of supreme court in empowering Sustainable Development in India, Sustainable developments goals and the Supreme Court, Role of an Individual in Sustainable Development in India, Challenges faced by the Supreme Court in implementing Sustainable Development and will conclude this article with the further possibilities of Research and Innovation.

II. Research Objective

The primary objective of this research to understand the Court's role in implementing the Sustainable Development Goals through its judgements and directives.

- Also, to analyze the concept of sustainable development and its integration in the Indian environmental jurisprudence

[1] P Leelakrishna, Lexis Nexis Environmental Law Case Book (2nd edition, Lexis Nexis 2013).

- Investigate the approach of the Indian Judiciary as to how the Courts are balancing the economic development with the environmental protection
- To also Study the significant landmark judgements pronounced by the Supreme Court
- Understand the effectiveness of the of judicial interference in promoting the sustainable development.

Method of Research

This paper is a work based on the Doctrinal Method of Research and there is no primary data being collected from anywhere. The contents of this paper are derived from various secondary sources of data such as textbooks, articles, reports, reviews, blogsand also various websites. This paper also contains my interpretations over various aspects too.

III. Meaning of Sustainable Development

Sustainable development is an integrated approach to development, encompassing the environment, society and economy. The term Sustainable development is means to bring about a balance between economic growth and conservation and protection of environment.

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[2]

As per Nitin Desia, an Indian Economist "Development policy, in the broadest sense and environmental policy be integrated in a common framework. The concept of "sustainable development" can provide the basis for such integration"[3]

Thus, we can come to a conclusion that any good development which balances the interest of the present generation and also the forthcoming generation keeping into account the environment is known as Sustainable Development.

IV. Need For Judicial Activism to Attain Sustainable Development

The Judiciary having a great impact for the interpretation of the laws and also deciding the cases, it is considered to be of a high and of the final order therefore there is a need for judicial activism toattain Sustainable Development.It indeed plays a crucial role in Sustainable Development by:

1. To Enforce Environmental Laws : The Courts are the bodies which ensure compliance with the environmental regulations and laws and which also held the polluters do compensate the loss done by them. In a judgement by the Supreme Court for the environmental law enforcement it held industries responsible for pollution and later asked them to shift to less polluting technologies and locations in order to protect environment and public health[4].

[2] International Institute for Sustainable Development, 'Mission and Goals: Sustainable Development' https://www.iisd.org/mission-and-goals/sustainable-development accessed [11th April 2025].

[3] Indian Bar Review Vol 48 (3 and 4) (2021) Special Issue on Environment, Ecology and Sustainable Development, Bar Council of India Trust.

[4] M.C. Mehta v Union of India (1986) 2 SCC 176.

2. To Fill legislative gaps : The art of interpreting the laws and addressing the inherent meanings of the law makes the society easier to function. For example, the Article 21 of the constitution of India, today it is given the widest interpretation and it also includes the right to a clean environment[5].

3. To Promote Sustainable Practices : This aspect covers the fundamental core of this research paper, the courts encourage sustainable development by interpreting laws in a way that balances economic growth with environmental protection.

4. To Hold Governments accountable : Courts can hold the governments accountable and direct them certain tasks to comply with, they can issue directions and ask them to prioritize sustainable development and environmental protection. The Supreme Court ordered the Delhi government to implement Stage-IV measures under the Graded Response Action Plan (GRAP) due to the AQI crossing 450 in a very recent case.[6]

V. Sustainable Development Goals and the Supreme Court

In the year 2015 the members of the United Nations Organization created 17 world "Sustainable development Goals" under the 2030 agenda for Sustainable Development. The primary aim of these global goals is "peace and prosperity for people and the planet"[7]. In this part of the article we will be analyzing the various judgements of the supreme courts in relation with the sustainable development goals, where the courts have highlighted the sustainable development goal in the form of various judgements and also directions.

Figure 1: Sustainable Development Goals (SDGs)
(This figure represents the 17 Sustainable Development Goals which are established by the United Nations Organization to guide global development efforts.)

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5 Charan Lal Sahu v Union of India (1988) SCR (1) 441.

6 M.C. Mehta v Union of India (2020) 2 SCALE 63.

7 Debi Prasad Dhal, Indian Bar Review volume 48 (2021) special issue on Environment, Ecology and Sustainable Development (Bar Council of India Trust - Pearl Foundation, New Delhi 2021).

1. No Poverty : The purpose of this goal is to End poverty in all its forms everywhere. In the landmark judgement of *People's Union for Civil Liberties v. Union of India*[8], under this case the right to food was held to be an integral part of the right to life under Article 21 of the Constitution. The Court has also emphasized the need for the state to ensure food security for all citizens.

2. Zero Hunger : This goal focuses on ending hunger, achieve food security, improved nutrition, and promote sustainable agriculture. In the case of *IEP v. Union of India*[9], the Court recognized the right to food and the importance of implementing effective measures to eliminate hunger among marginalized groups.

3. Good Health and Well-Being : This goal ensures healthy lives and promote well-being for all at all ages. In the case of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*[10] it was decided that it was the rightful duty of the state to provide adequate medical facilities to ensure the right to health as part of the right to life under Article 21.

4. Quality Education : This goal calls for inclusive and equitable quality education and promote lifelong learning opportunities for all the human beings. In the landmark judgment of Unni *Krishnan J.P. v. State of Andhra Pradesh*[11], the right to education was included as a fundamental right and was directed to be provided free and compulsory for children until the age of 14, as mandated by Article 21A of the Constitution.

5. Gender Equality : This goal promotes gender equality and also the empowerment of all women and girls.In the landmark judgement of *Vishaka v. State of Rajasthan*[12], The Court laid down guidelines to prevent sexual harassment of women at the workplace, emphasizing the fundamental rights to equality and dignity amog the woman, this case also serves as a momentous precedent for the safety of woman in India.

6. Clean Water and Sanitation : This goal gave a call for availability and sustainable management of water and sanitation for all the people and promoted for the clean drinking water also. In the said case of *Laxmi Narayan Modi v. Union of India*[13], the Supreme Court held that access to clean drinking water is an inherent part of the right to life under Article 21, directing the state to ensure the provision of this essential resource.

7. Affordable and Clean Energy : The primary purpose of this goal is access to affordable, reliable, sustainable, and modern energy for all the people. In the judgement of *Indian Council for Enviro-Legal Action v. Union of India*[14] the court held that there has to be a balance between development and environmental protection

8 People's Union for Civil Liberties v Union of India (2001) 6 SCC 580.
9 IEP v Union of India (2009) 9 SCC 170.
10 Paschim Banga Khet Mazdoor Samity v State of West Bengal (1996) 4 SCC 37.
11 Unni Krishnan J.P. v State of Andhra Pradesh (1993) 1 SCC 645.
12 Vishaka v State of Rajasthan (1997) 6 SCC 241.
13 Laxmi Narayan Modi v Union of India (2018) 6 SCC 446.
14 Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.

as it is crucial when considering energy projects; the right to a clean and healthy environment is fundamental.

8. Decent Work and Economic Growth : This goal Promotes sustained, inclusive, and sustainable economic growth. It also emphasizes on full and productive employment, and decent work for all. The court in the case of *Shri T.M.A. Pai Foundation v. State of Karnataka*[15], held that there is a right to establish and administer educational institutions, promoting decent work and economic growth in the education sector.

9. Industry, Innovation, and Infrastructure : This goal focuses on building resilient infrastructure, promote inclusive and sustainable industrialization, and also foster innovation. In the judgment of *K. C. Mehta v. Union of India*[16] the Court analyzed and focused on the need for balanced industrial growth while taking into consideration environmental laws, ensuring sustainable industrial development.

10. Reduced Inequalities : The prima facie aim of this goal is to reduce inequality within and among countries. In the ever-remembered judgment of *S. P. Gupta v. Union of India*[17], the court emphasized the importance of legal aid and equal opportunity in accessing justice, addressing inequalities in society.

11. Sustainable Cities and Communities : This goal aims for development with future prospectsand make, cities and human settlements inclusive, safe, resilient, and sustainable.In the landmark case of *Municipal Corporation of Greater Mumbai v. Indian Oil Corporation Ltd*[18].The court emphasized the need for sustainable urban planning and management to ensure safe and resilient urban environments in the context of municipal authority.

12. Responsible Consumption and Production : This goal ensures sustainable consumption and production patterns. This goal is the one which has its concerns for the future generations.In the landmark judgement of *State of Himachal Pradesh v. Ganesh Wood Products*[19] the Hon'ble Supreme Court addressed the need for responsible consumption practices, particularly in deforestation and regulating the timber industry.

13. Climate Action : Climate action is the need of the hour and it is really a necessity to take urgent action to combat climate change and its impacts.In the judgment of *M.C. Mehta v. Union of India*[20],the Court focused on the urgent need for climate action to tackle environmental degradation and safeguard future generations.

14. Life Below Water : This goal analyses about the life form which is under the water and also about the conservation and use of the oceans, seas, and marine resources

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15 Shri T.M.A. Pai Foundation v State of Karnataka (2002) 8 SCC 481.
16 K. C. Mehta v Union of India (2018) 3 SCC 384.
17 S. P. Gupta v Union of India (1981) 3 SCC 87.
18 Municipal Corporation of Greater Mumbai v Indian Oil Corporation Ltd (2006) 6 SCC 240.
19 State of Himachal Pradesh v Ganesh Wood Products (1996) 1 SCC 637.
20 M.C. Mehta v Union of India (2018) 1 SCC 573.

for sustainable development.In the following judgment *Narmada Bachao Andolan v. Union of India*[21] the court focused on the need for environmental impact assessments to protect aquatic ecosystems affected by large infrastructure projects.

15. Life on Land : This goal is a call for action to protect, restore, and promote sustainable use of terrestrial ecosystems, manage forests sustainably, and combat desertification and halt and reverse land degradation and halt biodiversity loss.In the case of *Indian Council for Enviro-Legal Action v. Union of India*[22] the Court highlighted the importance of protecting biodiversity and ecosystems on land, particularly in aspects of industrial operations.

16. Peace, Justice, and Strong Institutions : This goal is a call for the promotion of peaceful and inclusive societies for sustainable development. It also speaks about providing access to justice for all, and build effective, accountable, and inclusive institutions at all levels.In the landmark judgement of *Keshavananda Bharati v. State of Kerala*[23] the court established the basic structure doctrine, reinforcing the importance of constitutional supremacy and justice enshrined in the Constitution of India.

17. Partnerships for the Goals : This goal is based on strengthening the means of implementation and revitalize the global partnership for sustainable development and this goal was highlighted in the case of *Shree Chamundeshwari Sugar Mills Ltd. v. State of Karnataka*[24],where the court affirmed the role of cooperation between different governmentties in achieving sustainable economic goals.

VI. Role of the National Green Tribunal in Sustainable Development in India

The National Green Tribunal (NGT) established in 2010 also plays a very important role in promoting sustainable development in India by ensuring effective and also speedy disposal of environmental case. It has also made an impact on the Sustainable Development like the protection of Natural Resources, upholding the rights of the pastoralists and also has made the government accountable by making them implement various environmental laws and regulations.

It has also passed various judgements wherein it has highlighted the Sustainable Development Goals like in the case of *Samir Mehta v. Union of India and Ors*[25] SDG 14: Life below water has been uplifted by applying the "Polluter Pays" principle which accounted for marine pollution, supported conservation and also sustainable use of oceans and marine resources, SDG 11: Sustainable Cities and Communities had been uplifted in the case of *Almitra H. Patel & Ors. V. Union of India*[26]here the

[21] Narmada Bachao Andolan v Union of India (2000) 10 SCC 664.
[22] Indian Council for Enviro-Legal Action v Union of India (1996) 3 SCC 212.
[23] Keshavananda Bharati v State of Kerala (1973) 4 SCC 225.
[24] Shree Chamundeshwari Sugar Mills Ltd v State of Karnataka (2001) 3 SCC 646.
[25] Samir Mehta v Union of India and Ors MANU/GT/0104/2016.
[26] Almitra H Patel & Ors v Union of India and Ors (1998) 2 SCC 416

NGT had given directives in the solid waste management in India which supported the development of sustainable cities and communities by promoting proper waste segregation and disposal. In this manner various precedents have been given by the National Green Tribunal also which are in the support of the Sustainable Development[27].

VII. Challenges faced by the Supreme Court in implementing Sustainable Development

When there's a need for development and also sustainability to be taken into consideration there will be a problem to balance both these things.

Therefore, even though the Supreme Court plays an imperative role in promoting sustainable development, it faces several challenges that limit the effectiveness of it powers and also the implementation of the sustainable development.

1. Restricted Expertise : When it comes to the question of environment it involves complex technical and scientific matters that may be beyond the expertise of judges and the for this reason the court may need to seek the intervention of the expert opinions or appoint commissions to advise on complex environmental matters, which add to the cost and the time, which indeed leads to delay of decision making.

2. Challenges relating to Enforcement : Court faces challenges in implementation due to existing laws and policies which are prevalent and also the Governments may have lack of resources and may have limited capacity to implement court orders which indeed limit the effectiveness of the judicial activism.

3. Limited Access to Justice : Not all individuals or community at large have the access to the court which indeed limit the effectiveness of the supreme court in promoting sustainable development. Many people feel the economic burden to approach the court which will lead to failure of disputes being brought before the Courts.

4. Risk of crossing its limits : The country's governance stands on the pillar of separation of powers, therefore the Courts cannot encroach upon the duty of the executive of implementing the laws and policies and also the duty of the legislature in making the laws, if there is unnecessary or overreach than that may lead to undermining the democratic process.[28]

VIII. Further possibilities of Research and Suggestions

The role of the Indian judiciary in promoting sustainable development offers various fields for further research and her I also would like to put forward few suggestions for the same.

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[27] SC Shastri, Environmental Law (6th edition, Central Law Publications 2020).

[28] 'Role of Judiciary in Sustainable Development: A Critical Analysis' https://www.iilsindia.com/blogs/role-of-judiciary-in-sustainable-development-a-critical-analysis/accessed on 15th April, 2025.

The further research can be done on "Impact Assessment" by conducting empirical studies to assess the impact of judicial decisions on sustainable development, "Examination of the environmental jurisprudence" the development of the environmental jurisprudence in India can be observed, "Comparative Analysis" can be done by comparing the approaches used by the different countries for the sustainable development.

The various suggestions which can be put forward are Capacity building by providing training programs for judges, lawyers and also the court staff on sustainable development, encourage the public interest litigation, have more technological interventions, have more researches conducted and update the figures and keep them documented, etc.

IX. Conclusion

The Indian Judiciary has played a pivotal role in promoting sustainable development and environmental protection through its various landmark judgements and also through various directions given by it. It has always interpreted the laws in such a way that balances economic growth with environmental stability and has always ensured for a development which is both sustainable and equitable.

The judiciary's proactive approach has been always to protect the natural resources, promote sustainable practices and also held the polluters accountable. This paper started with the meaning of the sustainable development moving further with the need of the judiciary to intervene in the concept of sustainable development, later we saw how the supreme court has interpreted the Sustainable Development Goals with its various judgements, Role of National Green Tribunal in recognizing Sustainable Development Goals and in the last we saw the challenges faced by the judiciary and also the way forward which the research guides for.

Therefore, we can conclude that the Indian Judiciary's role in promoting sustainable development is really imperative as it upholds the environmental principles and also protects not only the rights of the present generations but also of the future generations, thus by addressing the challenges and also by building a strong judiciary, India can move towards a more sustainable future.

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WAQF (AMENDMENT) BILL, 2025 : EPICENTRE OF CONTROVERSY

Jasleen Kaur Chawla *
Rashmitha K.**

Abstract

The term 'WAQF' which is rooted down in the Customs and Traditions of Islamic law, which aims at maintaining and regulating the endowments and institutions run by the Muslims through their charities or donations. 'WAQF' (Amendment) Bill, 2025 aims at modernizing and unifying the principlesof traditional way of approaching to the same by making, enforcing and altering few changes made in the pervious Bill in this regard.

This Paper is an attempt at understanding the need for this new Bill and the turmoil going on in and around it. The Bill embraces the fact that with growing changes in the Society, the ancient practices and approaches towards betterment must change or evolve. This paper also aims at finding answer(s) and solving the puzzles behind the new Bill introduced acknowledging the Islamic Law, The Traditional Concept of Law, the new changes to be introduced, whether there is an actual need to replace the old provisions or not, as the laws already in voguethrow challenges in today's scenario and thereby also addressing the administrative issues about it.

This Paper tries to bring out the outcomes through a comparison with the previous Bills introduced and repealed. Whereby it will enable to clearly help us look at the concept through a bird's eye view. Ultimately through this paper a conclusion has been attempted to be reached at as to the need of Bill in today's changing scenario by finding its way across various loopholes and hurdles.

Keywords: ***WAQF Bill, new amendment Bill,interpretation, Reformed WAQF Bill, evolvement, LPG development.***

I. Introduction

'WAQF' which aims at administering the religious endowments through various contributions made by the individuals of Islamic Law needs to be safeguarded and governed at the Centre. 'WAQF'(Amendment) Bill,2025 which has a clear objective

* I LLM, SDM Law College, Mangaluru

** I LLM, SDM Law College, Mangaluru

of unifying and codifying the age-old practices flexible enough to be related with it in the present.

The administration of Bill is made simple and relatable as well to the common folks belonging to Islamic Law, so that they could help govern, get benefitted with its working and discharge of activities[1]. The WAQF (Amendment) Bill aims at putting at rest various un-addressing issues such as[2]:

- Lack of clarity and visibility into the actions of running and managing the WAQF properties.
- Administrative and governance issues in the WAQF management.
- Incomplete records with improper accounting and auditing of WAQF properties.
- Lack of uniformity in the treatment given to the trust properties.
- Lack of the mechanisms available to deal with the disputes emerging around the possession as well as ownership of the trust properties.
- Insufficient provisions relating to the inheritance rights as to women.
- Lack of records and surveys maintained to keep a check on the number of WAQF land properties.
- Inadequate representation of stakeholders at the centre as well as state dealing with the WAQF land properties[3].

As along with the above issues on which the Bill throws a light, it is also important to know about the fact that, there has been a long timelost in heaps and heaps of litigations helping solve the loopholes, which ultimately also lead to digging a whole of encroachments on the 'WAQF lands'[4].The matter worsening up to an extent that there are about 40,951 pending cases of which 9,942 cases were filed by members of Muslim community against the stakeholders at the institution managing WAQF related properties.

The objective of WAQF (Amendment) Bill,2025 can be summed up to 3 main premises to fix all the above issues mentioned:

- Firstly, Overcoming the shortcomings of previous Bills and enhancing the working of 'WAQF Boards'.
- Secondly, Updating the inner core of concept 'WAQF'.
- Thirdly, Improving the efficiency of 'WAQF Boards' to keep them updated to changing times of Countrys' economy.

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1 'The WAQF (Amendment) Bill, 2025' (April 08, 2025) <www.minority affairs.gov.in> accessed April 10, 2025.

2 'The WAQF (Amendment) Bill,2025: Benefits of the Bill' (April 03,2025) < pib.gov.in> accessed April 04,2025.

3 Implementation of WAQF ACT as an amendment (April 17,2025)< centralwaqfcouncil.gov.in>accessed April 17,2025.

4 AMAN RAJ,"Properties declared as waqf by user or court will not be denotified" The Hindu (INDIA,April 17,2025)

Example: Faster Registration(s) and Litigation(s) procedure(s).

Present Musalman WAQF (Repeal) Bill,2025 seeks to remove the outdated version of MusalmanWAQF Act,1923 which is no longer effective in present scenario(s).

'Modern India 'aims at bringing out the scientific, social, political and bureaucratic roles amalgamated into the heart of WAQF (Amendment) Bill, 2025. To ensure the balance, a clean image needs to be put forward forth in the public which might be subjected to criticisms or rough traction. But the inconveniences need to be accepted by the folks to have a mirthful and more contemporary view towards the aspects put forward in changing dimensions of law.

However, the Bill introduced has resulted in loads of controversies around it, which needs to be addressed with an open mind to look at the Dynamism of Law and Humanity. Since the time immemorial, law has also been transforming itself according to the needs and requirement of the society. In the present scenario law aims to keep checks and balances aligned. Thus, the acceptance towards the changing laws and rules amended must be wholesome and bring about joy, happiness in hearts of mankind. The WAQF(Amendment) Bill,2025 is expected to not only bring bought a change in traditional concepts but also transform the society to come up as full bloom of nature[5].

The controversies around the Bill must be analysed and addressed with attendance towards the sensitive corners of the Society. The disagreements replaced with agreements would really result in an outcome which would be trust-full and honest.

II. Nature of Research

The paper is purely based on the doctrinal method of research, rather than on the basis of field work being carried out. The paper is outcome of hard and painstaking efforts (including understanding / interpreting) by taking into consideration the data available through online as well as offline sources.

The online source includes the websites, blogs, e-journals and e-books available out there in the web world would, and offline sources include the newspapers, journal and magazine as well as all related books available at the library of our institution.

The Doctrinal research carried outon this concept has attempted to identify the basic gaps in the society and how those gaps could be bridged. It is an attempt at knowing and working of Billand also its applicability to the realities upon its actual implementation.

It is an attempt towards concepts of the Governance, Administration, Execution and Interpretation which could be sought out by reading upon the details and information that go into knowing the actual reality of concepts which could be further gathered by going through this paper.

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[5] Implementation of WAQF Act as an Amendment (April 17,2025) <centralwaqfcouncil.gov.in>accessed April 17,2025

III. Objectives of the Research:

The objective of the research carried out and thus elaborated in the paper is to mainly understand the scope of WAQF (Amendment) Bill,2025 and the controversies surrounding it.

The whole amount of objective can be categorized into below important points, namely:

- To analyze the defects in previously introduced Bills.
- To highlight the changing trends and it's possible benefits in the new Bill introduced by the state.
- To replace the old defective piece of subject matter with newly subscribed provisions of law.
- To picturize various scenarios that could be changed by pitching in new remedies /alterations to the old patchwork of law.

Thus,through this research, an attempt has been made about the calculation of disturbances / benefitsby summingup / simulation / visualisation.

IV. Evolvement from previously constituted 'WAQF' to 'Present WAQF Amendment Bill' and its relevance:

The main intent to take up the topic as an important point is to understand the loopholes or defects in the previously constituted 'WAQF' referred to as 'Ancient WAQF' alongside knowing its significance.

Initially 'Ancient WAQF' was merely restricted to the fact that property dedicated wholly for the purpose of charity, due to religious sentiments, was managed by Authority there by. But over time, with impact of British colonialisation and Delhi sultanates made the concept restricted to mere superiority.This led to evolutory disturbances though out the period. In order to address the same MusalmanWAQF Act, 1913[6] and MusalmanWAQF Act, 1923 were enacted to validate the invalid law.

Likewise, there were also various other amendments made in the Act, but meanwhile the star focus lies on WAQF (Amendment) Bill,2025 and The MusalmanWAQF (Repeal) Bill, 2024, where the latter was repealed due to certain complexities.

If we put an observation test, on all the above Acts enacted and removed / amended, we come to the below outcomes[7]:

- Firstly, lack of transparency and uniformity in the functioning of all the above Acts.
- Secondly, lack of improvisation in its execution, due to lack of understanding of subject matter, actually is.

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[6] The WAQF (Amendment) Bill, 2025: Benefits of The Bill (April 03, 2025) < pib.gov.in> accessed April 10, 2025.

[7] Lok Sabha Secretiat, 'Report on Joint Committee on WAQF (Amendment) Bill,2024 [2025] January,2025 / MAGHA,1946 (SAKA)

- Thirdly, focus mainly on management and administration of WAQF lands no sincere attention on miscellaneous aspects like WAQF Boards, it's registration process, interpretation of donations received.
- Fourthly, no much importance to women and their rights.

Knowing and understanding / identifying these loopholes / drawbacks, it would be easier to highlight the importance of WAQF (Amendment) Bill, 2025[8].

V. Interpretation–Ancient WAQF Vis-A-Vis WAQF (Amendement) Bill, 2025:

The uniqueness and originality of the Bill lies in the concept of WAQF but the Billis also subject matter of various controversies, the broad keywords or say nicknames in this regard are as below:

- Firstly, the Bill also termed out as an'historic move' and at the same time as 'politically motivated'[9] too.
- Secondly, the Bill termed as 'misdeed to loot the WAQF lands'[10].
- Thirdly, it termed as 'dimensional attack'[11]to defame the minorities.
- Fourthly, at time even termed to be a'non-democratic Bill'[12].

Lets' try to look at the Bill, its validity with 'Constitution of India', 'International importance' and 'WAQF Bill introduced' as well.

1) Constitution of India:

- The 'WAQF' being found in the Entry 5 of concurrent list, which relates to subjects relating to personal laws though it being not specifically located.
- While the Entry 28 of Constitution does specify the charities and charitable institutions, charitable religious endowments and religious institutions[13].
- Entry 11 of the state list gives states exclusive powers in respect of burial and cremation grounds which could be assumed to be WAQF properties.
- State within the meaning of Article 12 has reflected in all it's institutions including WAQF Boards which are also statutory authorities[14].

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8 KHALID RASHID, 'THE WAQF Administration in India:A Socio -Legal study'(first published 10 October,2014)588-604.

9 Vice Chancellor, National Law University, Patna, 'Never Intended to throw bottle at Waqf panel chair', Times of India (India, April 05, 2025).

10 Id.

11 Id.

12 Id.

13 Sanjay Khajuria, 'More Dists. raise red flag', ('fear on WAQF acquisition'), Times of India(India, April 09, 2025).

14 Id.

- Sections 9 and 14 of WAQF Bill with an inclusion of women, Non-Muslims and OBC Muslims who are also welcomed.
- Article 26 of Constitution which has given religious denominations with a right to own and manage the religious properties.

2) International Importance:

- It could be seen through the looking glass which transports itself to a wider interpretation of words. Like the Shakespeare who said 'what is there in a name', accordingly the Bill interpreting various words associated with term 'WAQF' instead of a mere four-letter word.

3) WAQF Bill, 2025:

- The concept as a whole mentioned that a person who is a Muslim can make WAQF only after 5 years from his conversion, governed by the rules of Islamic law and the moment he enters the fold of Islam proving that no law prohibits a voluntary conversion. The primary concern of state to introduce the Bill is to improve the efficiency of WAQF Boards which are ignored at large. Yes, this has weakened the efficiency of WAQF Boards and adjudicatory tribunals as all its members are appointed by government, but why is the aspect so bothersome to them?
- The WAQF concept as a whole package is not exclusive to Muslim laws but was held to be a part of legal system as mentioned in the 'Babri Judgement' and also very much a part of Hindu religious and charitable property laws in Tamil Nadu, Andhra Pradesh and Telangana. The most problematic provisions is denying Non-Muslims the right to make WAQF. Law clearly mentions 'an owner of property to do whatever he wants with his property'. How can anyone take away his rights to do so?

Example: Judgements like Piratho Peda Venkatsubbbaranydu[15], Arur Singh[16], Motishah[17] where the high courts of Madras, Lahore and Nagpur respectively upheld such a right of Non-Muslims.

- Currently, the biggest problem fishing around the Bill is why most members are government nominees? As to why the sudden change? Remembering the primary score of Bill to focus on management of WAQF Boards and their discharge of faster WAQF Board activities is persisted, which could only be done if the powers of their regulatory bodies are in hands of sate dominated platforms.
- Another major criticism with regard to Bill is that regulatory authority has been weakened but how is it done? The Bill mainly replaces the survey commissioners who are specialists public servants by a generalist and already over-burdened district magistrate[18].

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15 Piratho Peda Venkatsubbaranydu v. Unkown [1930] Mad HC

16 Arur Singh v. Crown [1940] AIR 1940 PC 108 (Privy Council)

17 Motishah v. Abdul Gaffar Khan [1956] AIR 38 (Nag)

18 Vice Chancellor,National Law University, Patna, 'Is it the right Waqf Reform', Times of India (India, April 09, 2025).

- Another important aspect that supplements WAQF is the dangers of encroachment of land. What does one has to face with above regard? The Bill reduces the punishment for the same and makes it a non bailable offence. It also reduces the annual contribution from WAQF to Boards that is 7% to 5%.
- On the brighter side all the amendments made has restored Muslim law as a whole by sticking its foot in the rightful direction. It also ultimately modernizes the WAQF management, curbs corruption and ensures proper utilization of WAQF assets for community development.
- We can also say as a whole that Bill has more intellectual and contemporary effort to bring in Uniform Civil Code of conduct into our country and is a missed opportunity for the same[19]. It also thus seriously over emphasizes itself on the concept of 'One Nation One Law'.
- But again it comes and stops to a point where there are loads of controversies pin pointing the amendment Bill. Our country has gone through various changes and developments, in past 75 years of independence. The dynamism of country has got so strong in the core of its implementation. The why are there so many objections to an already advanced mode of conduct? The answer simply lies in the words of Jawaharlal Nehru, "the society and its progressive characteristics are static and traditionally orthodox in its distribution which is one- fold stuck to the base not advancing in any of the directions. But the moment individuals decide to change their ancient way of approaching towards the things there would be liberalization and advancements like nothing seen before"[20].
- Thus interpretation and balance of rules reflected in the Bill nationally and internationally has helped a lot to replace old defective provisions with brand new ones which are already in existence. Law itself provides for certain rules and regulations which the society tends to eliminate in their decisions[21]. It also provides a magnetic force as to throw away the superseding actions and attract those which creates uniformity and equality among each other.

VI. Is it the Right WAQF Reform?

The WAQF Bill, 2025 clearly called as an 'Epicentre of Controversies' or 'Heated Arguments Forum' has the right to know that even though it faces a lot criticisms,Is it the right panel / Bill to be elected? and that our country needs it right now or not?

The answers to the questions lies in the Country's perspective of the things. This could be better understood through a classification module as below:

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18 Id.

19 Id.

20 Asaduddin Owaisi vs Union of India W.P.(C) No. 269/2025 (SC, pending).

21 Mohd. Hanif Quareshi vs State of Bihar AIR [1958] SC 731

Country Perspective	Arguments in Favour of the Approval	Arguments Against the Approval
Transparency	Faster registration and records management procedure improves accountability.	Control of activities in hands of government leading to centralized control.
Legal clarity	Equal and fair representation of waqf and whole Islamic law.	Minimum amount of documentation for faster procedure could result in invisibility of WAQF claims.
Inclusivity of women rights	Sticks to the constitutional orientation of factors and improved efficiency of inheritance rights.	May lead to clash with traditionalor orthodox interpretationof Islamic law.
Administration	Administers and manages numerous records, donations and charities associated with waqf funds, accounts and properties.	May lead to autonomy of powers centered merely by the directions of superiorities or dominant sections of the society.
Religious autonomy	Uniform and non- bias representation of all members thus increasing the efficiency in working of Boards and property.	Fear of Non-Muslims taking over the records and properties with Islamic law resemblance.

Thus, the WAQF Bill whether being the 'Right WAQF Bill' depends on the legal perspective of approaching various aspects. Thus, with this positive aim, the arguments in Favour of the Approval far exceed those Against theApproval.

VII. Multifaceted Controversies of Amended Bill and Their Drawn Implications:

- **Legal Implications of Including Non-Muslims in WAQF Management:**
  So as per the ancient significance of Islamic Shariat laws and WAQF Act ,1935 the inclusion of Non-Muslims was considered an un-sacredact per se as they had considered WAQF as a religious institute with greater fiduciary obligations regarding its management. This relation of trustworthiness could only be sought with those who are belonging to religion of Islam or those who have highly qualified universal knowledge regarding its implications like Mutawalli[22]. The sudden shift of change in the Bill has drawn severe controversy but would be helpful in achieving 'Modern India' goal.

[22] All India Inam Organization vs Union of India [1993] 3 SCC 584.

- **Abolition of 'WAQF by User' and its Social Implications:**
  Under the ancient WAQF law, WAQF is irrevocable once it is properly declared and possession is transferred but if such a concept vanishes then there could be religious backlashes, loss of critical societal services, corruption grabs of illegal lands, community distrusts, future charity abuses and so on but at the same time this controversy could empower the founder being used as a flexible tool.
- **Federalism Concerns and Alarming Discrepancies:**[23]
  The basic concept of federalism which speaks about the distribution of powers or decentralization of powers becomes difficult through the amended Bill but the uniformity, equality, secularistic, free and independence of powers come bearing as gifts from the controversy.
- **Centralisation and Autonomy of Powers in the Hands of Government Officials in Adjudication of 'WAQF Lands':**
  As discussed above the decentralization of powers becomes utmost rigid when it comes to matter of Bill but the centralization of powers or concentration of powers in the hands of government officials could help in the faster, cheaper and more efficient process in adjudication of WAQF process as a whole. This is because in ancient WAQF law the tiresome procedures of tribunals for the management of property was gruesome and not looked after, but the strict adherence to rules and regulations by government could flip the coin in favor of our country's progress.
- **'Non-Gender Bias'and Equal Opportunities in WAQF Execution Process:**
  The inclusion of non-Muslims in the WAQF Board management and administration of WAQF property has led to a revolution not seen before, the constitutional orientation, secularistic and federalistic components would penetrate to inner core of framework holding the country together.
- **Spirit of Constitutionalism in Unified Mode of Conduct**[24]**:**
  The new Bill is a progressive and advanced way to approach to concept of 'Uniform Code of Conduct' in a slightly more intellectual path. The basic ground on which our country stands strong is our Indian Constitution which must be the first priority when any new amendment is bought where by its spirits brighten our country.
- **Non-Maintenance of Physical Records and Modernisation on Digital Platform**[25]**:**
  The WAQF Bill, 2025 with its duly given amendments to Islamic law has forgotten to keep the documents in physical material sense and gone for digital or online records instead which could be a sort of blessing for 'Modern India' mission with loads of scientific and technological perks.

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23 M.C Mehta vs Union of India [1987] 1 SCC 395

24 Bhatt Aditya, 'WAQF (Amendment) Bill 2025: Key Challenges and Legal Implications Explained (2025) Bhatt and Joshi Associates Legal Blog.

25 Sengupta, Riyan, 'A critical analysis of the WAQF Bill 2025' LinkedIn (2025).

- **Risks of Adverse Possession Claims on 'Encroached WAQF Lands':**

  One of the major controversies affecting the Bill is fear of encroachment of WAQF lands where in those who live on that particular land could be kicked out anytime. They feel that it's a 'ticking time bomb' by the revolter that could burst anytime without them realizing the amount of damage it has done.

- **Political and Bureaucratic Dynamism, A Rather Sensitive and Critical Analysis:**

  The engagement of law with politics is a story that is 'infamously famous' in nature, the scholars who belonged to American Realism school also known as 'crits' emphasized themselves on accepting the truth that law and politics are inseperable by nature. But does this mean that we as people cannot sought any remedy in this regard? The answer lies in perception or how one looks at things. If he really wants a country to progress he would sought out his priorities straight and only keep his eyes on the goal, the Bill merely ensures that there is no deviation in this regard.

VIII. WAQF (Amendment) Bill, 2025 And Its LPG [25] Development:

1) Liberalisation:

The new Bill has a comparatively wider scope on liberalization than political or economic or social progress. Following are the major impacts on liberalized economy:

- Firstly, the Bill helps in formulation of records increasing the legal certainty and inviting investments thus reducing disputes.
- Secondly, Bill could lead to more public private partnerships with highly transparent regulations and legal norms.
- Thirdly, unlocking the non-utilized lands[27] could boost real estate, its infrastructure and common welfare projects.

Thus, despite the controversies of neo liberalism or religious fraternization or communism the brighter side of progressive, liberalized, economized and localized devices should be focused on ignoring the former incompetencies. Potential transparency and accountability of institutions with over sight ideals could be considered as a cornerstone of judiciary and democratic organizations which could be achieved by this Bill.

2) Privatisation:

Another new characteristic or reform that could be seen through this Bill is prioritized use of land dedicated towards waqf contribution. As the lands available in this sect are mostly under utilized the Bill comes to a rescue and ensures:

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[26] LPG refer to Liberalisation, Privatisation and Globalisation.

[27] Supra 18

- Communal leasing of such lands.
- Re purposing on development of such lands.
- Flexible public private partnerships of such lands.

The religious autonomy and community welfare associated with such lands could modernize various ancient WAQF properties and ancient waqf practices as well as boost asset management and private investments. The privatized lands could also directly benefit the needy groups by providing them categorized opportunities and could also open doors for protective legal and ethical safeguards which would trigger quiet disposition of community heritage[28].

3) Globalisation:

Globalisation is defined as overall development of integrated nature policies which could be achieved through an introduction of new Bill used in a right manner, the possible changes which could be bought out are:

- Firstly, good governance of country as a whole.
- Secondly, curb various loopholes with regard to corruption and communal attacks.
- Thirdly, could enhance international credibility and attract global philanthropy of charitable ventures[29].

Thus, the long propounded debate could finally achieve an end if above possibilities could be solved to fuel in faith and beliefs in individuals on new and positive driven changes which would in turn fuel in changes in country's developmental status updated towards sustainability, credibility and transparency.

IX. Conclusion:

The WAQF (Amendment) Bill, 2025 also titled as 'Advanced Uniform Code of Conduct' merely aims at modernizing the governance of WAQF properties, WAQF Boards and all of it that WAQF as a whole concept stands for. Though being called as an 'epicentre of controversy' with various heated arguments fishing around the Bill its priorities are straightened and sought by focusing only on WAQF and its scope.

The basic country orientation stands strong on the basis of constitutional ideologies which reflects federalism, constitutionalism and judicial independence through social, political and economic devices.

Our country India being 'multi- cultural and linguistic' must respect all the religions and languages falling under its purview showcasing communal harmony and inter dependence among each other. The alarming concern that our country needs to focus more on is the fight for individual wills. The people of this country needs to understand one important thing that the place where we live in is a Democratic and De-

[28] 'The WAQF (Amendment) Bill,2025' (April 08,2025) <www.minority affairs.gov.in> accessed April 08,2025.

[29] Id.

Centralized abode which believes on distribution of powers between Centre and State. Also we need to understand that we cannot fight for individual needs in this country, everything here could function only on basis of General Will and Collectivism.

Great intellectuals as well as scholars stressed on the concept of 'togetherness', 'faith', 'belief' and 'totality'. If we need to sail our ship across the high tide waves and live on the adventures that could be remembered for a lifetime, collective energies of all are required to row the ship safely and profoundly. The WAQF Bill, 2025 is the same ship that we are speaking about, the people which are crew of the ship irrespective of their post allocated there to, have to cumulatively sail the ship cautiously to the destination that is nothing but progress of country. The disheartened approach of all individuals could be understood here, we need to analyze from where they are coming from because the religious and communistic matter is a rather sensitive topic to be touched on. Indians who are slightly more attached towards their religion, traditions and customs need to be consoled and informed that over sensitivity could be bad for them as well as for the progress of country. Even though we admire and respect our culture a new change or modification would not hurt anyone but would help in the makeover and complete transformation of our country.

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MARITAL RAPE IN THE CONTEXT OF INDIAN JURISPRUDENCE

Rangoli Singh *

Abstract

The study aims to explore marital rape in the broad framework of Indian jurisprudence, concerning the interface between gender equality, individual autonomy, and conjugal rights. Doctrinal research methodology has been employed using the study of statutory provisions, case laws, and comparative frameworks to analyze the current scenario and repercussions of criminalizing marital rape in India. It assumes that criminalization of such acts would go along with constitutional principles to challenge the existing patriarchal norms and enhance human dignity, bearing in mind the potential social and judicial complexities. It concludes by stating that reform of marital rape laws is important for providing equal and just legislation and a social structure ensuring equality and respect towards all participants of a marital relationship.

Keywords: ***Marital Rape, Indian Jurisprudence, Gender Equality, Individual Autonomy, Constitutional Principles***

I. Introduction

Rape is an egregious form of non-consensual sexual intercourse that is committed against an individual's will. It is encompassed in the broader family of sexual assault; rape includes various types of non-consensual sexual activity. Marital rape refers to the act of one's spouse, traditionally seen in most societies as part of the marital right.

Section 375 of the Indian Penal Code defines rape as an offense under which a man commits rape against a woman only when such carnal access is without the woman's consent.[1] One exception, however, stands out: sexual acts by a husband upon his wife do not constitute rape, allegedly because of an assumed permanent consent inherent in marriage. Such marital exemption makes individual rights subordinated to marital obligation. Section 63 of the Bhartiya Nyaya Sanhita 2023 reinstates and redefines the definitions of sexual assault, where reformative debates persist.[2] Bhartiya Nyaya Sanhita 2023, § 63.

This gap between social progressiveness and judicial conservatism is what has given marital rape a special status in India, which is still contemplated from the standpoint of the past.

* **2nd Year BBA. LL.B., Himachal Pradesh National Law University, Shimla, Himachal Pradesh**

1 Indian Penal Code 1860, § 375.

2 Bhartiya Nyaya Sanhita 2023, § 63.

The concept of marital rape has evolved differently in different cultures around the globe. In most countries, marital rape is recognized as a form of domestic violence and sexual abuse. International human rights organizations demand the criminalization of marital rape to enhance individual autonomy and dignity within marriage. The trend calls for a look at India's position, which remains one of the few countries that excludes marital rape from its rape legislation.

Indian socio-legal discourse, therefore, provides a very pertinent area of study concerning marital rape to bring a change in the ground realities of deep-seated gender inequalities and respect human rights within marriages. Indian law, despite all the legal reforms in areas related to gender equality, today still provides room for marital exemption, which practically eliminates the possibility of justice for victims of spousal rape. This legal exception represents olden thinking that marriage brings a kind of silent acceptance, which hampers the individual's right over his or her body in the institution of marriage. Changing values in society need to be incorporated into law so that people are treated equally in and out of marriage.

Lastly, this study focuses on the need to understand the broader implications of criminalizing marital rape. There are, thus, crucial questions in the context of recognition of marital rape as a crime: it might alter gender dynamics, personal autonomy, and conjugal rights. Criminalizing marital rape would, therefore, change the traditional views on marital roles, responsibilities, and individual freedoms in a country where marriage remains integrally intertwined with social identity and stability. The paper would attempt to bridge the gap between traditional legal doctrines and modern societal values, which should bring about a better sense of how such causes can be furthered regarding legal and social development.

II. Problem Profile

This paper shall analyze the concept of marital rape by looking at several legal opinions, key case laws, judgments of different judges, and the implications the problem creates in society. It looks at the evolution of the law and societal dynamics regarding marital rape over time. It also deals with the issues of fundamental concerns developed by different legal luminaries and judicial pronouncements relating to the principles of consent, personal autonomy, and gender equality in the institution of marriage. Socio-legal implications of criminalizing marital rape in India and balancing conjugal rights, individual freedoms, and societal norms are also analyzed.

Research Questions

The questions taken up by the researcher are:

- What is the legal status of marital rape under Indian law and recent developments in it?
- Why marital rape should be criminalized in India?
- How might gender equality, personal autonomy, and the conjugal rights within

marriage be impacted if there is criminalization of marital rape in India?

- What is the view of Feminist Jurisprudence in the context of Marital Rape?

Objectives

- To analyze the current legal status of marital rape in India and evaluate recent developments and judicial trends that impact marital rape laws in India.
- To examine the social, legal, and ethical consequences of criminalizing marital rape in India, focusing on gender equality, personal autonomy, and conjugal rights of an individual.
- To examine the view of feminist jurisprudence in the context of marital rape?

Research Methodology

The study relies on secondary data, including statistics, case studies, observations, and literature analysis, including research papersand books. The research is doctrinal.

III. Legal Status of Marital Rape in India

Current Legal Framework

The wording of Section 63 of the BNS on account of Bhartiya Nyaya Sanhita, 2023 is:[3]

"63. A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra, or anus of a woman, or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman to cause penetration into the vagina, urethra, anus, or any part of the body of such woman, or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, or urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions: —

(i) against her will;

(ii) without her consent

(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally

[3] Bhartiya Nyaya Sanhita 2023, § 63.

or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;

(vi) with or without her consent, when she is under eighteen years of age;

(vii) when she is unable to communicate consent.

Explanation 1—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2—Consent means an unequivocal voluntary agreement when the woman, by words, gestures, or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not, by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1—A medical procedure or intervention shall not constitute rape.

Exception 2—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."

However, Section 63 provides Exception 2, which exempts a husband from the liability and persecution of raping his wife, thus not criminalizing the offense of marital rape. Previously, Section 375 of the Indian Penal Code exempted marital rape as Exception2.

IV. Judicial Pronouncements and Key Judgments

In the judgment of Harvinder Kaur vs. Harmander Singh[4] The Delhi High Court observed that constitutional provisions of Article 14 and Article 21 of the Constitution did not extend to matters within the sanctity of marriage, thereby reducing the scope for intervention in matters of marital rape.

In contrast, in the case of State of Maharashtra &Anr. v. Madhukar Narayan Mardikar[5] The Supreme Court defended the right to privacy and self-rule of a woman, thus setting a precedent that challenges the exception of marital rape.

In the case Independent Thought v. Union of India (2017)[6]The Supreme Court held that sexual intercourse with a wife below the age of 18 amounts to statutory rape and thus narrows the scope of Exception 2 to Section 375 of the IPC.

Public Interest Litigations and Advocacy Efforts

The RIT Foundation filed a PIL in the Delhi High Court in 2015 challenging the validity of Exception 2 on the grounds that it violates Articles 14 (equality), 15 (non-discrimination), 19 (freedom), and 21 (right to life and dignity).

In *Nimeshbhai Bharat Bhai Desai vs. State of Gujarat*[7] In 2018, the Gujarat High Court opined that the concept of implied consent within marriage needs to be eliminated for married women's bodily autonomy.

[4] Harminder Kaur v Harmander Singh AIR 1984 Del 66, ILR 1984 Del 546, 1984 RLR 187.

[5] State of Maharashtra &Anr v Madhukar Narayan Mardikar AIR 1991 SC 207, (1991) 1 SCC 57.

[6] Independent Thought v Union of India (2017) 10 SCC 800, AIR 2017 SC 4904.

[7] NimeshbhaiBharatbhai Desai v State of Gujarat (2018) Guj 732.

Legislative Inaction and Resistance to Reform

The government has always argued that the proposed reforms of criminalizing marital rape by the Justice Verma Committee (2013) are simply not possible at present in society.[8] Poverty and illiteracy were cited as the reasons for unfeasibility by then Minister for Women and Child Development, Maneka Gandhi, in 2016, thus citing this as the reason that marital rape in India could not be criminalized.[9]

In the case of Anuja Kapur vs. Union of India Through Secretary (2019), the Supreme Court pushed the responsibility of making marital rape laws upon the legislature and cited the limitations of the judiciary in initiating reforms.

Recently, on October 23, the Supreme Court decided to defer hearing pleas seeking criminalization of marital rape because the matter may not be decided before the retirement of Chief Justice of India D.Y. Chandrachud, who is presiding over the bench that started hearing this case.[10] Thus, the matter of marital rape and the debate surrounding it continues to be unsettled.

Statistics Highlighting the Prevalence of Marital Rape

India is among the thirty-six countries that have not criminalized marital rape.[11]Reports from the National Family Health Survey for 2015-16 reported distressing statistics:[12]

83% of ever-married women aged 15–49 reported that husbands were responsible for sexual violence.

It is established that 4% were raped, 2.1% compelled to sexual acts, and 3% threatened when they refused.

A 2017 survey by the International Centre for Research on Women found that, while 17% of wives reported experiencing sexual violence, 31% of husbands reported committing it.[13]

V. Arguments for Criminalizing Marital Rape in India

The Human Rights Perspective

Marital rape is a grave violation of fundamental human rights provided under the Indian Constitution, particularly Articles 14 and 21. Article 14 ensures equality before

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8 Keerthi Krishna and KratiPurwar, *Marital Rape in India* (Investigative Project Print, Asian College of Journalism, n.d.).

9 Id.

10 LiveLaw, 'Supreme Court Defers Marital Rape Case Hearing Citing Improbability of Decision Before CJI Chandrachud's Retirement' (LiveLaw, 23 October 2024) https://www.livelaw.in/top-stories/supreme-court-defers-marital-rape-case-hearing-citing-improbability-of-decision-before-cji-chandrachuds-retirement-273330 accessed 18 November 2024.

11 India Today, 'Marital Rape in India: 36 Countries Where Marital Rape Is Not a Crime' (India Today, 12 March 2016).

12 National Family Health Survey (NFHS-4), *2015–16: India* (NFHS, 2016) https://ruralindiaonline.org/en/library/resource/national-family-health-survey-nfhs-4-2015-16-india/ accessed 18 November 2024.

13 Keerthi Krishna and KratiPurwar, *Marital Rape in India* (Investigative Project Print, Asian College of Journalism, n.d.).

the law and the equal protection of the laws, while Exception 2 to Section 375 of the Indian Penal Code and currently Exception 2 of Section 63 of BNS stand in opposition to married women by taking legal protections for sexual violence away from unmarried women. It signifies the continuation of ideas passed down through the ages regarding marriage, where the wife is treated not as an independent legal entity but as the husband's property. Though the Constitution guaranteed the right of every citizen to equality, this legal exemption undermines women's rights to control their bodies, dignity, and freedom from violence.

Cases like *Budhan Choudhary v. State of Bihar*[14] and *State of West Bengal v. Anwar Ali Sarkar*[15] It has been established that the classifications under Article 14 must also satisfy the test of reasonableness and must be reasonably connected with the objectives of the law. Exception 2, however, fails this test as it creates an unreasonable classification based on marital status, allowing exploitation of married women and criminalizing similar acts against unmarried women. In addition, marital rape infringes directly on Article 21[16], which is the right to life and personal liberty. Even in *State of Karnataka v. Krishnappa*[17], the Supreme Court had held that sexual violence violates a woman's right to privacy, dignity, and bodily integrity, essential parts of Article 21. The Supreme Court again reinforced such principles in Suchita Srivastava v. Chandigarh Administration[18] as well as in *Justice K.S. Puttaswamy (Retd.) v. Union of India*[19], agreeing with the fact that the right to intimate choices is fundamental and applies equally to all women, be they married or not. Exception 2, therefore, violates the constitutional rights of married women by denying them privacy, dignity, and freedom from coerced sexual acts, which compromise the very foundations of their constitutional right to live a life with dignity.

Gender Equality and Social Justice

It has been found that the exclusion of marital rape from criminal liability is a case of systemic failure to adhere to the espoused provisions of gender equality within the Constitution. The law thus allows forced sexual acts within marriage, perpetuating patriarchal norms against women as subordinate to their husbands, in contravention of Article 15 on the prohibition of sex-discriminatory practice and ignores the evolving recognition of married women as independent legal entities. The Protection of Women from Domestic Violence Act of 2005 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 reflect India's

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[14] Budhan v State of Bihar AIR 1955 SC 191.

[15] State of West Bengal v Anwar Ali Sarkar AIR 1952 SC 75.

[16] Juris Centre, 'Marital Rape: Understanding the Complexities and Addressing the Silent Epidemic' (Juris Centre, 24 August 2023) https://juriscentre.com/2023/08/24/marital-rape-understanding-the-complexities-and-addressing-the-silent-epidemic/ accessed 18 November 2024.

[17] The State of Karnataka v Krishnappa (2000) 4 SCC 75.

[18] Suchita Srivastava v Chandigarh Administration AIR 2008 SC 14, SCR 989.

[19] K S Puttaswamy J (Retd) v Union of India AIR 2017 SC 4161.

legislative commitment to women's rights. But still, Exception 2 has set back all the strides made toward protection from sexual abuse through marriage.[20]

Criminalizing marital rape would bridge the gap and ensure that domestic law is in line with international laws and conventions like the Beijing Declaration that aims to eliminate all forms of violence against women.[21]

Marital rape, for instance, often leaves deep psychological, financial, and liberty-based damage to the victim. Unmarried women, on the other hand, are not strictly bound by societal, familial, and financial obligations. It is not easy for them to get out of such situations, in contrast to their married counterparts. Exception 2 doesn't even protect them, but instead provokes higher vulnerability due to its themes of circles of abuse and inequality.Thus, lawmakers need to acknowledge that upholding the sanctity of the Constitution necessitates the protection of married women's dignity.[22]

VI. Comparative Analysis with Other Jurisdictions

There is criminalization of marital rape in most countries; they have learned that the well-being of sex victims needs equal treatment. For example, the United Kingdom ended the marital rape exemption through the landmark case of *R v. R (1991)*[23] insisting that forced intercourse between married people does not differ from a case of rape outside of marriage.

Other countries, including the United States, South Africa, and Canada, have also enacted comprehensive legislative provisions criminalizing marital rape, holding no marriage to be a haven for sexual assault.

As did the Supreme Court of Canada in *R v. Seaboyer*[24] By focusing on women's autonomy and dignity in intimate relationships, the Domestic Violence Act of South Africa criminalizes marital rape within the wider context of addressing gender-based violence. The following examples thus reflect that criminalizing marital rape protects women's rights and is actually in line with broader human rights standards.

Moreover, India can learn from these jurisdictions through an all-round approach that would incorporate legal reform, public awareness campaigns, and survivor support systems. These measures would not only criminalize marital rape but would also shift societal attitudes to make women equal partners in marriage. The case for the criminalization of marital rape is strengthened within the framework of constitutional principles, principles of gender equality, and comparative legal developments. The

[20] Dr Satish Kumar Mishra et al, 'Exploring Concerns Associated with Marital Rape in India: An In-Depth Legal Analysis' (2023) 12(Special Issue 10) *European Chemical Bulletin* 4705–4712.

[21] United Nations, *Beijing Declaration and Platform for Action* (1995) https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf accessed 19 November 2024.

[22] 'Rape Within Marriage: A Comparative Analysis Towards Indian Law Reform' (2024) 44(3) *Library Progress International* 23510–23523.

[23] R v R [1991] UKHL 12.

[24] R v Seaboyer [1991] 2 SCR 577.

exception 2 of Section 63 BNS violates Articles 14 and 21, because marital status perpetuates the patriarchal order and systemic injustice by denying equal protection from sexual assaults to married women as is given to others.

Criminalizing marital rape would testify that India is committed to ensuring the rights of women, human dignity, and meeting constitutional and international obligations in ending gender-based violence. Combating this issue can ensure a just society for all women.

VII. Social, Legal, and Ethical Implications of Criminalizing Marital Rape Impact on the Stability and System of the Family

Major arguments against the criminalization of marital rape are about the destabilization of marriage and family structure.[25] Marriage, if interpreted in the orthodox way, means a union of mutual trust and commitment. Others argue that developing the crime of marital rape would destroy the sanctity of marriage, as husbands start to fear legal consequences for actions in their marital relationships. It might give rise to marital conflict because there is a likelihood of law abuse in other cases, including using charges of marital rape to try to influence divorce or custody cases. This argument is based on the fear that criminalization may lead to an increased rate of cases and divorce rates, which may eventually translate into social polarization.

Fear of False Accusations and Misuse of the Law

A legitimate concern is the possibility of false accusations, which may be used for personal revenge or to gain an advantage in divorce.

It is further argued that criminalizing marital rape would involve exposing husbands to the risk of false accusations since, in some cases, the nature of their relationship is too hard to prove, most especially where each has perceived consent differently.[26] This is particularly so in societies where it may be difficult to prove the assault through physical evidence, thereby likely being misapplied and skewing the distribution of such sanctions mostly towards men. The perception is that the law will be misused against the husband in a marital dispute by complicating processes and bringing unnecessary strain on an already strained relationship.

Difficulties in Proving the Offense

Challenges of proving the Crime of Marital rape are one of the most difficult types of sexual assaults to prosecute because of the inherent nature of the relationship and the lack of witnesses or physical evidence.Critics mention that, owing to the lack of medical or physical signs of trauma, establishing guilt beyond a reasonable doubt might be difficult in marital rape. That is quite problematic in the prosecution of

[25] Hindustan Times, 'Striking Down Marital Rape Exception Could Destabilise Marriages, Centre Tells Supreme Court' (Hindustan Times, 16 October 2023) https://www.hindustantimes.com/india-news/striking-down-marital-rape-exception-could-destabilise-marriages-centre-tells-supreme-court-101727962493242.html accessed 19 November 2024.

[26] Ajita Sharma, *Marital Rape as Domestic Violence: A Case for Criminalizing Marital Rape* (Oxford University Press, 2019) https://doi.org/10.1093/oso/9780199489954.003.0006 accessed 19 November 2024.

marital rape cases because the burden of proof will fall unequally on the victim, which will increase frustration and further victimization. Moreover, in complex dynamics, the determination of what would constitute "rape" inside a marriage might be very difficult and therefore create ambiguities in the law.

Erosion of Conjugal Rights and Personal Autonomy Within Marriage

Others claim that marital rape is best treated as criminal because criminalization might intrude upon the concept of conjugal rights and result in too much state interference in personal marital matters.[27]Sexual relations between spouses are, in many cultures, an automatically included component of marriage, often through social, religious, and legal precedents.[28]

The proponents of criminalization argue that sharing intimacy is by definition included in marriage; thus, criminalizing marital rape would be against the principle of rights and responsibilities accruing to mutual parties. This action would therefore be undermining the age-old, simple understanding of marriage and instead impose a more adversarial framework than that applied within the traditionally private and intimate relationship. Critics say that introducing legal intervention into this space can undermine the autonomy of a married couple to resolve personal issues privately and mutually.

Societal and Cultural Challenges

Within many traditional societies, including parts of India, marriage is viewed as a sacred institution binding couples together through societal and religious expectations.[29] Marital rape may also be an embarrassing topic for large sections of the population, where deeply ingrained cultural beliefs lead people to believe that marriage is a partnership in which the wife has a duty to fulfill the needs of her husband, including sexual ones. Such cultural norms may make laws difficult to enforce socially.

There may be resistance to the recognition of the autonomy of a wife and her right to reject sexual relations in marriage. Critics say that criminalization may isolate significant parts of the population, especially in rural or conservative communities where radical deviations from long-held beliefs about the nature of marriage and sexual relations are likely to generate hostility and create resistance, which might further drive a wedge between law and social practice.[30]

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[27] iPleaders, 'Conjugal Rights' (iPleaders, n.d.) https://blog.ipleaders.in/conjugal-rights/ accessed 20 November 2024.

[28] Ayush Kumar, 'Constitutional Imperatives: Addressing Marital Rape Within Legal Frameworks' (n.d.) https://www.tscld.com/marital-rape-india-criminal-justice-reform accessed 20 November 2024.

[29] Raveena Rao Kallakuru and Pradyumna Soni, 'Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural, and Legal Impact' (2018) 11(1) *NUJS Law Review*https://nujslawreview.org/wp-content/uploads/2018/01/11-1-Raveena-Rao-Kallakuru-Pradyumna-Soni.pdf accessed 20 November 2024.

[30] Shweta Dhankhar, 'Preserving Human Rights in Marital Relations: A Critical Examination of the Criminalization of Marital Rape in India from a Human Rights Perspective' (Master's Program in Human Rights and Democracy, n.d.).

Impact on the Administration of Justice

The last is that the institution of marital rape as a criminal offense might burden the already congested courts. With more and more people clamoring to criminalize what might be perceived as minor or personal disputes, there is concern that such cases will distract the legal system from matters of serious crimes. The time and resources that must be spent investigating and prosecuting marital rape may inefficiently use judicial resources, which critics argue should be applied directly to areas of violence or crime that are closer at hand and threatening the public safety and welfare.

More importantly, such under-enforcement may also be caused by the relatively immature development of the legal infrastructure that would handle cases with "fairness and efficiency," preventing and negating the possibility of a lack of accountability toward the accused.

The concerns raised against criminalizing marital rape must be considered because they reflect the delicate balance between protecting individual rights and conserving values based on tradition in a marriage.Advocates of these views believe that other methods may be found to solve the problem of marital rape by not outlawing this, since marital counseling should be strengthened, sexual education may be promoted, and better protection under law should be offered regarding domestic violence.

VIII. Perspective of Feminist Jurisprudence on Marital Rape

Feminist Jurisprudence: An Introduction

Feminist jurisprudence, one of the crucial streams of legal philosophy, holds that the law participates in and often perpetuates the structural inequality of women.[31] Feminist jurisprudence disputes the androcentric form in which legal norms are built: that is, the male supremacy as it has been developed by history, philosophy, political science, and economics, and thus constructed legal frameworks to deny or undervalue the experiences of women in daily life and to develop hierarchical gender relations.

Marital Rape as Gender-Based Violence

The jurisprudence of feminist theory views marital rape as deeply ingrained gender-based violence that is not easily noticed because of cultural mores and legal systems that assert male supremacy in marriage. Not criminalizing marital rape in most places, including India, means strengthening patriarchal conceptions of women as chattels or sexual objects for their husbands. This normalization of coercion within marriage denies women their fundamental rights to bodily autonomy and dignity, perpetuating a cycle of violence that feminist scholars seek to disrupt.

Critique of Patriarchal Legal Norms

Legal norms influenced by patriarchy have historically undermined women's rights, particularly concerning sexual violence within marriage. Exception 2 to Section 375

[31] Cornell Law School Legal Information Institute, 'Feminist Jurisprudence' (n.d.) https://www.law.cornell.edu/ wex/feminist_jurisprudence accessed 21 November 2024.

of the Indian Penal Code (IPC), which is now Section 63, Exception 2 of BNS, in India, excludes marital rape from being considered as a criminal offense. The law is based on an archaic view that considers marriage as consent that cannot be withdrawn and thereby legitimates sexual coercion. These laws have been criticized under feminist jurisprudence because they infringe on equality guarantees of Article 14 and the rights to life and dignity of women, as envisaged by Article 21. These laws thus tend to promote a culture of impunity that goes against the principles of efforts toward gender equality.

Feminist Consciousness as a Tool for Change

A central concept in feminist jurisprudence is the development of feminist consciousness, which provides women with an awareness of the systemic nature of oppression. Consciousness empowers women to recognize and, through such recognition, resist patriarchal constructs that normalize violence and subjugation. It develops gradually over personal experiences and collective dialogue and, therefore, develops among women who can demand equal treatment and challenge toxic masculinity. Feminist consciousness also fosters solidarity, encouraging societal shifts toward equality in roles, relationships, and legal norms. However, its limited prevalence often leaves many women caught in cycles of toxic relationships, where they face normalized expressions of male dominance, including marital rape.

Judicial Perspectives: Contrasting Approaches

The judiciary's role in addressing marital rape has been marked by contrasting views. This was well exemplified in *Khushboo Saifi v. Union of India*.[32] (2022) when a split verdict was handed out by the Delhi High Court. Justice Ravi Shakdher declared Exception 2 of Section 375 unconstitutional since it rationalizes coercion and violates the Constitution's principles of equality and dignity. Justice C. Hari Shankar deferred the matter to the legislature with an emphasis on the necessity for a wider social and cultural consensus before amending the law. Legislative inactivity in criminalizing marital rape is well seen; nonetheless, feminist jurisprudence argues that the judiciary will have to act by holding up constitutional values and duties, especially where legislative inertia takes precedence.

Patriarchy and the Legal Regulation of Sexual Violence

Feminist legal theorists argue that the legal norms of patriarchal sexual assault have greatly affected sexual violence inside marriage. This way, by presenting marriage as a place of un-questioned male dominance, the patriarchal regimes justify their denial of women's authority and consent. Legal thinkers like Bartky Lee argue that patriarchal concepts degrade women into sexual objects and deny them identity as independent personalities. Such dehumanization not only creates violence but also dissuades women from claiming a right to resist such treatment.

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[32] Khushboo Saifi v Union of India &Anr, WP(C) No 284/2021.

Gender-Neutral Legal Frameworks

Strong jurisprudence of feminism advocates that there should be legal reform in the structure of the patriarchal setup to ensure gender equality in the entire framework. Criminalizing marital rape is not just punishment; it is a basic shift for the equality of women's rights concerning men in marital relationships. Reforms are aligned with the principles of the constitution- equality, justice, and dignity of human beings. Societal norms are challenged while the institution of marriage honors the autonomy, agency, and well-being of all.

IX. Conclusion

Summary of Key Findings

This paper discussed the controversial issue of marital rape criminalization in India under three different dimensions: legal, social, and ethical considerations. At the same time, it pointed out the inconsistency of the exemption clause on marital rape under Section 63 BNS with constitutional guarantees like equality under Article 14 and personal liberty under Article 21. From a social perspective, criminalizing marital rape challenges traditional patriarchal norms and seeks to empower women by deeming them to be entitled to bodily autonomy. However, the matter of moral and ethical complexity remains since some of these concerns over the balance between conjugal rights and the consent of the individual, along with misuse of provisions of law, continued to thwart conciliation. Comparative international frameworks have provided further insights into systemic changes in this case that can ensure appropriate redress within the Indian legal and cultural contexts.

Concluding Remarks

Marital rape criminalization is a crucial step towards gender justice, humanity, and the elimination of patriarchal perspectives in law. But at the same time, there must be a balance created by lawmakers in exercising conjugal rights as well as the bodily autonomy of a woman. One at the cost of another can distort either the social fabric or the autonomy and rights of a woman.

It demands subtle yet firm tactics to balance individual autonomy and marital harmony. Societal apprehensions and abhorrence of the misuse must be addressed by policymakers and procedural safeguards that don't prevent the right access to survivors' legal proceedings against frivolous cases. Public awareness campaigns, educational reforms, and civil society engagement will bolster their acceptance in both urban and rural areas.

Recommendations for Future Application

Strengthening the judicial and law enforcement systems to deal sensitively with cases of marital rape is crucial for reform. It will eventually help in curtailing the potential fallouts by making law-enforcement personnel learn the norms, making legal aid for victims more accessible and numerous, and combining counseling for distressed

couples. Thus, a fine-barred framework is to be developed, respecting the feelings of the different cultures but advancing the cause of gender equality, ultimately seeing that the reforms are based on the socio-legal fabric of India.

Future Research Areas

Public perception of marital rape across various demographics must be the focus of future research so that the societal barriers to acceptance can be understood.

Comparative studies of the jurisdictions that have been able to criminalize marital rape would thus come in handy in the practical implementation of policies.

In addition, interdisciplinary studies of the psychological, sociological, and economic impacts of criminalizing marital rape can provide a view from other disciplines, adding flavor to the debates. Finally, longitudinal studies on the effects of these reforms can evaluate their effectiveness in providing gender justice and equality in society over time.

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THE CHANGING PERSPECTIVE OF TIME AS ESSENCE IN THE CONTRACTS OF IMMOVABLE PROPERTY

Sambhav Chhabra *

Abstract

The Indian Real estate market in 2025 is around 650billion USD and is expected to reach a mark of 1 trillion USD by 2030[1]. Such a high pace of growth justifies the relevance of a sound legal discussion on contractual jurisprudence revolving around the contract of sale of immovable properties. A contract or an instrument ends up in a court once the contract is breached by a party; the other party, herein, seeks relief from the court in the form of specific relief in accordance with the Specific Relief Act, 1963, compensation, or any other relief that the court deems fit. To conclude as to the degree and nature of the relief by the court, a determining factor is whether the time is the essence of the contract being perused or not. There are a lot of aspects that are directly influenced by the question asked here. If yes, then the person breaching such a time limit may be denied specific relief.The article sets out to analyse the change in traditional perspective that 'in case of immovable property, time is intrinsically not of the essence until such has been expressed in the contract'.

Keywords : ***Contracts of immovable property, Time as essence, Section 55 of the Indian Contract Act.***

I. Legal Framework Behind the Issue

Suits pertaining to contracts of immovable property often invoke section 55 of the Indian Contract Act, 1872[2]. It lays that when a party to the contract fails to carry out his contractual obligations within the stipulated time and if the contract intends that time is the essence of the contract, the contract is rendered voidable at the option of the promisor. However, if the aggrieved party fails to provethat time was indeed the essence of the contract, the only available remedy is compensation. Further, there has been a consistent series of judgements and statutory backing that if time is not of the essence and there is a subsequent default by a party, such defaulting party

* **3rd Year, BBA.LLB., Himachal Pradesh National Law University, Shimla, Himachal Pradesh**

1 "Ghlindia." *GHL India: India's Leading Alternative Investment Platform*, www.ghlindia.com/realestate#:~:text=Market%20size%20of%20real%20estate%20in%20India%20(US%24%20billion)&text=The%20market%20is%20forecast%20to,improving%20income%20level%20and%20urbanisation. Accessed 14 Feb. 2025.

2 Indian Contract Act, 1872, Sec. 55

may not avail the relief of specific performance since the contract on such default is voidable at the option of the aggrieved party.

The matter becomes relevant in pertinence to contracts relating to immovable propertysince the contract aims at achievingsuccessful exchange of consideration by not merely payment of money but also the execution of the sale deed and involves large amounts.

II. The Traditional Presumption

Section 55 of the Indian Contract Act, 1872 is silent upon any presumption or special case for immovable property, however, the Indian Supreme Court in a bid to facilitate specific performance and execution of a contract of immovable property evolved the rule that in contracts of immovable property, unless could be proved by the words and the situation surrounding the contract, time would not be the essence of the contract.

The Presumption

The legal position is clear from the judgment of *Chand Rani v. Kamal Rani*[3]and subsequent cases[4] wherein the court rightly, for that time, concluded that time may never be regarded as the essence of the contract of sale of an immovable property. In contrast, there exists a presumption against time being the essence of the contract. It has been unequivocally settled in *Himmatlal v. Rajratan (2008)*[5]In testing whether the time is of the essence, three major players come to the fore:

a. Express the terms of the contract

b. Nature of the property involved

c. Circumstances surrounding the contract

The conduct of the parties is another relevant factor, as iterated in *Satya Pal Sharma v. Jagdeep Rai Verma (2012)*and other cases, wherein if the conduct of parties displays flexibility regarding timelines of payment or execution of the sale deed, it may attract the notion that the time was not intended to be the essence of the contract. In the absence of these factors, the judiciary's mind time in the contract of sale of immovable property is inherently not the essence.

This may lead to injustice, the defaulting party may not perform its part of the contractual obligation for a long time, and may later sue for specific performance when the price of the property is soaring. To counter this, the judiciary evolved the principle of *payment in* a *reasonable time* in

Why do we need a shift?

After the consistent series of judgements upholding the findings of *Chand Rani*from 1993, 1997 saw the *K.S.Vidyanadam v Vairavan judgement.*[6].

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[3] MANU/SC/0285/1993

[4] MANU/SC/0265/2009; MANU/SC/0067/1966; MANU/SC/0010/1977; MANU/SC/0404/1997

[5] MANU/MP/0387/2018

[6] MANU/SC/0404/1997

The housing price index is a statistical measure that tracks prices and quantities of residential homes in ten major cities in India. The RBI in August 2024, for the first quarter of the fiscal year 2024-25, has published their All-India Housing Price Index.[7], which boils down to a y-o-y (year-on-year of 3.3%. Furthermore, the Housing Price Index[8](Index 2010=100) In the third quarter of 2024, it is 336.8, while it was merely 78.5 in 2009 and 226 in 2016. A mere look at the numbers presented speaks of the steep rise in the market prices of real estate, primarily in urban areas. An analysis of the market[9] Also suggests that in Noida alone, the average price/ sq ft for quarter two of 2024 is Rs 9,945, which, if compared to Q2 of 2023, is a 26.28% y-o-y growth, while for Gurugram the rate is 23.41%. All of this economic jargon, coupled with an expected growth of 6.5% in home prices in the year 2025[10]. In layman's words, prices of real estate, especially home prices and that too in an urban area, have been growing at an unprecedented rate, a rate which this traditional presumption neither covers nor is fit for.

If the traditional perspective is to be followed, the contract of sale of an immovable property, let's say of worth Rs 10,00,000, may be executed a decade later when its prices have reached a crore. This inevitable rise in market prices cannot be ignored anymore, nor can the cruel joke on the vendor be given fuel anymore. The situation calls for a shift from the presumption evolved in an era wherein the market prices were relatively stable and inflation was not known. The *Chand Rani*judgement[11] was authored in1993, a time when. The situation has changed from the time *Chand Rani*was authored and the time this article is being written, and consequently, it is necessary for the law to change as well.

A similar idea was echoed in a 2012judgment.[12], wherein the changes were taken into account by the Supreme Court, and it was laid that law is merely a tool intended to provide solutions for humanity. Moreover, law is not a static concept; rather, it changes with time in accordance with the societal changes and needs, and this is the very purpose and aim of judicial activism. The same is applicable in the current case, relevance and the need for the principle have changed from the time it was evolved.

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7 Prasad, Ajit. "All-India House Price Index (HPI) for Q1:2024-25." Reserve Bank of India - Press Releases, Reserve Bank of India, 30 Aug. 2024, rbi.org.in/scripts/BS_PressRelease Display.aspx?prid=58605.

8 Bank for International Settlements, Residential Property Prices for India [QINN628BIS], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/QINN628BIS, February 7, 2025.

9 Nussupbekova, Tamila. "India's Residential Property Market Analysis 2024." Global Property Guide, 7 Oct. 2024, www.globalpropertyguide.com/asia/india/price-history.

10 Standard, Business. "Home Prices in India to Rise 6.5% in 2025 Due to Demand from Wealthy: Poll." Business Standard, 2 Dec. 2024, www.business-standard.com/economy/news/home-prices-in-india-to-rise-6-5-in-2025-due-to-demand-from-wealthy-poll-124120200064_1.html.

11 Supra Note 4

12 Modern Dental College and Research Centre and Ors. V. State of Madhya Pradesh and Ors. MANU/SC/0256/2012

In the context of the perused principle, a recent judgement of 2024 in *Alagammal & Ors. v. Ganesan*[13] Said that the rigor of the rule evolved in the time when prices and values of immovable property were stable and inflation was not known. The Supreme Court laid that the rule requires relaxation, if not modification, especially when urban properties are involved. Therefore, relying on the above, it is high time to shift the perspective to the tune of the needs of the current society.

III. The Perspective Change

The abovementioned presumption has been at times challenged for its obsolescence; the major questions were answered by Hon'ble Justice R.V. Raveendran in the*Saradamani Kandappan v. S. Rajalaskhmi.*[14] With the Supreme Court for the first time ruling in contrast to what had been earlier held. This challenged the settled law of presuming that time is not of the essence in contracts of immovable property. The fascinating aspect of the transaction is that the challenged rule was also developed by the judiciary. Such a paradigm shift is justified by the approach, as has been observed in *Motor General Traders v. State of A.P.*[15]:

"A provision which was perfectly valid at the commencement of the act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation may, over time, become discriminatory and liable to challenge on the grounds of it being violative of Article 24."

The rationale set above, coupled with the rigour of the rule, evolved in *Rattan Arya v. State of Tamil Nadu.*[16]It can be safely concluded that if a rule has been evolved in a judgement or by way of a statute and is perfectly valid on its commencement, it does not mean it cannot be invalidated in the future. The changes in future circumstances may lead to circumstances invalidating a law, for it is obsolete. As held in *Rattan Arya*[17]The passage of time can make the substance of a law unreasonable and irrelevant. Furthermore, it is for the judiciary to take note of such a shift and take necessary actions. Therefore, a prudent learning from the above is that a rule, herein presumption of time not the essence, once ruled can be pronounced invalid later due to obsolescence and the rule not coping with the requirements of current times.

Sardamani Kandappan v. S. Rajalakshmi[18]

In the current case, the Supreme Court was again greeted by a contract of sale of an immovable property wherein the second and third installments were defaulted for want of proof of title. The contract expressly laid down the date of payment of such installments, and also laid that time is of the essence to the contract and therefore failure to pay within the stipulated time may attract voidability.

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13 MANU/SC/0028/2024

14 MANU/SC/0717/2011

15 MANU/SC/0293/1983

16 MANU/SC/0550/1986

17 Id.

18 Supra Note 13

The Division-Bench had the option to resort to the traditional perspective but took the bull by the horns, evolving the contrasting principle. Out of many observations, Justice Raveendran averred that the said rule was formulated at a time when the market value of immovable property was rather stable, devoid of any marked change over a few years. To Justice Raveendran, the rule was sound until the first half of the twentieth century; the last quarter of the century witnessed a galloping inflation. The properties that were bought for a lakh or so in 1975 to 1980 were now being sold at prices reaching a crore. The bench emphasised the continuous ignorance of the phenomenon in the urban real estate market and decided to deviate from the same, evolving a fresh rule. If a purchaser bought a property for a sum of a few lakhs and failed to conclude the contract within a stipulated time, they cannot hide behind the principle that time is not of the essence and still manage to get specific performance after the price of the property has reached a crore.

The bench concluded that the rigour of the rule from an era when inflation was unknown may not apply because the circumstances from when the rule was evolved had changed, and it called for a more liberal approach. The bench, citing the following example, in para 25,not only justified its varied approach to the rule but presented a sound argument to undo the effects of the obsolete rule for the future:

"...to hold that a vendor who took an earnest money of say about 10 % of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be. The essence will be a cruel joke on him and will result in an injustice. Add to whose is the delay in the disposal of cases relating to specific performance....As a result, an owner agreeing to sell a property for Rs. One lakh and receiving Rs. Ten thousand as an advance may be required to execute a sale deed, a quarter century later, by receiving the remaining Rs. Ninety thousand, when the property value is a crore of rupees[19]*"*

This example suffices to explain the indispensability of a varied and fresh approach.

IV. Analysing the fresh approach

On a bare perusal of the juxtaposition of the two contrary rules, one evolved back in theearly twentieth century, and the latter, in the fourth quarter, portrays the economic backdrop of modern laws. The legal ecosystem in India is highly influenced by varying subjects, including economics, theology, psychology, etc. The above information is evidence of this.This is what laws are meant to be: rigid enough to maintain sense and flexible enough to cope with the changing needs of time. The judiciary has at times taken a varied approach, altered rules, and overturned opinions to be in harmony with the demands of the current era.

The rule evolved in *Sardamani Kadappa v.S. Rajalakshmi.*[20] Back in 2011, it still holds good in 2025. The legal opinions and judgments succeeding the *Sardamani case* held in consonance with the rule, a latest example is*Katta Sujatha Reddy v.*

[19] Id.

[20] Id.

Siddamsetty Infra Projects Pvt Ltd[21] *(2022)***.**Wherein the two-judge bench, citing the *Sardamani* judgement, reiterated the rule, and held that it is not always necessary to presume that time is not of the essence.

It is evident from the reasons above that a change in times is not inevitable, and to ensure that the law maintains its soundness, the change is not only necessary but inevitable.

V. Conclusion

The principle of time not of essence set up back in 1993, primarily by the *Chand Rani* judgement, has stood the test of time, but does not fit the needs of the current societal conditions. This was aptly voiced via *K.S. Vidyanam,* judgment in the following words:

"*In the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades, particularly after 1973. We cannot be oblivious to the reality, and the reality is a constant and continuous rise in the values of urban properties fuelled by a large-scale migration of people from rural areas to urban centers and by inflation. Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties evolved in times when prices and values were stable and inflation was unknown requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time we do so.*[22]*"*

The words of the judgement shed light on the changing needs of society, which was further bolstered by statistical data as well as upcoming judgements discussed earlier. The question of essence is still highly dependent upon the conduct of the parties, the nature of the property, the recitals of the contract, etc.However, the presumption against time being the essence is no longer good law and cannot be maintained anymore.

India, being a nation following a common law system, is directly dependent upon judges to apply their minds prudently to tweak flexible laws so as to cause justice to prevail. This flexibility, as has been religiously dived into in this article, is the distinguishing feature of a common law system.[23]. With time, the law has to be inevitably altered so as to be in consonance with prevailing trends. History has witnessed several instances of technological changes and the formulation of new laws for upcoming dilemmas.

The article talked expansively about the perspective change surrounding the contract of sale of immovable property. The change in perspective was heavily catapulted by the *Sardamani* judgement and, till now, has been consistently followed. For reasons discussed above**,** the change was not only inevitable but was in need to evade injustice; the judiciary took notice of it andtook the necessary steps.

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21 MANU/SC/1046/2022

22 Supra Note 6

23 Lutz-Christian Wolff, Law and Flexibility - Rule of Law Limits of a Rhetorical Silver Bullet, 11 J. JURIS 549 (2011).

LEGAL RIGHTS OF POLITICAL PARTIES TOWARDS THEIR PARTY'S SYMBOL

Shrilaxmi G Kulkarni *

Abstract

Political party symbols play a significant role in electoral politics. These symbols serve as important means of identification for voters, enabling them to easily identify their authorised party during elections. In many democratic countries, there are some laws to protect the symbols from unauthorised use or counterfeiting. They help to preserve the unique identity and values of each party that is represented. Essentially, a party's symbol is not just a logo; it represents the principles and beliefs that inspire its supporters.

This paper looks into the evolution of political party symbols to legal rights of political parties regarding their symbols, highlighting the regulatory framework established by the Election Commission, judicial precedents, and statutory provisions under the Representation of the People Act 1951.

It examines how party symbols are allocated and the conditions under which they can be suspended. The study also highlights the important case laws that show how symbols are protected and their role in free and fair elections. In conclusion, understanding the legal rights of political parties with respect to their symbols is necessary for maintaining the integrity of democratic processes.

Keywords: ***Political Party, Legal Rights, Elections, Democracy***

I. Introduction

India, that is Bharat, is home to a spectacular population of a total of 1.428 billion people. This thriving country is divided into 28 states and 8 union territories, with a complex political landscape featuring 543 electoral constituencies. According to Article 326 of the Indian Constitution, all citizens of India who have turned 18 years have the 'Right to vote'. One of the most important ways a political party defines itself is through its symbol, which identifies the party at a glance among voters, especially for those who are illiterate.

Party symbols symbolize the values, beliefs, and ideology of the party, and they help in campaigning strategies. They assist in linking a party to its leadership and election

* 2nd LL.B, K.LE. Society's B.V. Bellad Law College, Belagavi, Karnataka

promises. Party symbols have progressed over time to become a political communication tool by promoting a party's heritage and message.

This introduction lays the ground for discussing the evolution and significance of party symbols in Indian politics, how they influence voters, and how they contribute to the democratic culture of the country. And will also study the different scenarios among the different countries relating to the party's symbol.

Research Objective

The objective of this research is to analyse the legal rights of political parties concerning their party symbols, with particular focus on statutory provisions, institutional roles, and judicial decisions. The study aims to:

- To study the Evolution of the Political Parties.
- Examine the legal framework governing the allotment, reservation, and regulation of party symbols under Indian electoral laws.
- Understand the role and authority of the Election Commission of India in resolving symbol-related disputes.
- Comparative analysis with the different countries.

Method of Research

This research adopts a doctrinal method of research. Primary sources include the Representation of the People Act 1951, the Election Symbols (Reservation and Allotment) order of 1968, and important constitutional articles such as Articles 324,326. In this analysis, key judicial decisions from both the Supreme Court and various high courts provide the foundational legal framework. Secondary sources, books, e-journals, websites, and articles, etc.

II. Evolution of Political Parties in India

Indian political history extends over thousands of years, and is composed of a variety of political forms, ranging from empires to petty kingdoms. And including monarchies, oligarchies, chieftainships, and republics.[1]Since the end of the Second World War, political parties have played a pivotal role in the functioning of democracies.[2] The Government of India Act 1919 marked a drastic change from dictatorship to cooperative federalism. It was motivated by the 1917 pledge from the British Government, which introduced the Council of State and Legislative Assembly similar to the UK's Lords and Commons. These reforms gave India a proper legislature for the first time, moving beyond the limited advisory role of earlier councils.

Later, in 1921, the Legislative Assembly was established by the marking of the first elections held under the Government of India Act 1919, and many inexperienced Indian members began their Parliamentary careers. Whereas, in 1923, the Swaraj

[1] Rajni Kothari, Politics in India(vol.10.1970).

[2] Russell J. Dalton ET AL., *political parties and democratic linkage: How parties organize democracy, at 5-6(2011).*

Party was established by Chittaranjan Das (C.R. Das) and Motilal Nehru to make an entry into the legislature. Basically, the origins of this party emerged from the moderate wing of the Non-Cooperation Movement. Hence, the General Elections of 1923 embraced the entry of Swaraj Party members into the Indian legislatures. After the death of C.R. Das in 1925, the leadership of the Swaraj Party passed to Motilal Nehru.

The Royal Commission of 1929(Simon Commission) led to the Government of India Act, 1935, elaborating on local autonomy and participation in elections. Political parties began to localize, and new alignments emerged to contest elections in provinces. The Indian National Congress, since 1885, was already active and emerged into a multi-faceted party for gaining full independence. Muslim League under Mohammed Ali Jinnah, confessed its demand for the separation of the nation, exploring how early loose coalitions became ideologically charged groups.

Later, Congress ruled much of India after independence, but many regional, caste-based, and socialist parties began to emerge, like DMK in Tamil Nadu, Akali Dal in Punjab, etc. Many other parties emerged in different regions and started to rule. But the political strategy, especially after the National Emergency in 1975-1977, moved from elite negotiation to mass mobilization.

Congress Party's power diminished, facing challenges from regional and caste-based parties. The Mandal Commission implementation in 1990 sparked a national debate on caste-based reservations, leading to the emergence of caste-based parties for the OBC category, such as the Samajwadi Party and Rashtriya Janata Dal Party. Later, the 2014 elections won a decisive majority on the plank of development, growth, nationalism, anti-corruption, and many more things.[3].

III. Legal Framework Governing Party Symbols

Election symbols are simple pictures that are easily identifiable and visible to the general population of voters. Each symbol represents a particular political party and helps the voter to identify the party of her choice while casting her vote. This becomes important when voters are illiterate or semi-illiterate and depend only on the symbols to identify the party and which they desire to vote for.

a) Statutory Nature of Symbol Rights

Concerning intellectual or private property Rights, not legal property. Political parties are entitled to use a specific symbol as a matter of Right based on ECI recognition status. Recognized parties, alternatively, at the state or national level, have the Right to an exclusive symbol reserved for their use. The Right is not absolute, however, but is subject to the condition that the party continues to be so recognised based on electoral performance as stipulated under the Election Symbols Order.

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[3] Frederick Whyte, *Political Evolution in India* (1926) 4 Foreign Aff 223.

b) Legal Recognition of Symbols

The regulation of party symbols in India is based on constitutional and statutory provisions, mainly the Representation of the People Act,1951, and Election Symbols (Reservation and Allotment) Order,1968.

IV. Constitutional Framework:

Fundamental Rights and Symbols

The Right to use a party symbol is not a Fundamental Right; however, it is indirectly linked to the Fundamental Rights enshrined in Article 19 of the Constitution:

- **Freedom of Speech and Expression (Article 19 (1)(a)):** political parties use symbols as a form of expression to communicate their ideologies and appeal to voters.
- **Freedom to Form Associations (Article 19 (1)(c)):** political parties are associations of individuals with a common political purpose, and the allocation of symbols is crucial for their functioning.

The Supreme Court has consistently held that while Fundamental Rights are not absolute, reasonable restrictions can be imposed in the interest of free and fair elections. In the 1960s, the Government of India proposed that the regulation, reservation, and allotment of electoral symbols should be done through a law of parliament, i.e., the Symbols Order. In response to this proposal, the Election Commission of India was set up as a permanent body under Article 324 (1). It is an all-India body having jurisdiction over elections to parliament, state legislatures, offices of the president and vice-president. It supervises and conducts elections and allocates the symbols for the political parties.[4]. According to Art 325, there is no provision for separate or special representation. There shall be one electoral roll for every territorial constituency.

Statutory Framework: Representation of the People Act, 1951

The Representation of the People Act, 1951(RPA) is the primary legislation governing elections in India. It provides the legal foundation for the Election Commission to regulate political parties and electoral processes.

The Election Symbols (Reservation and Allotment) Order, 1968

The Election Symbols (Reservation and Allotment) Order, 1968, is a landmark legal instrument that regulates the allocation and reservation of election symbols. It provides a detailed mechanism for the recognition of political parties and the allotment of symbols.

Here are some of the provisions of the symbols order,

- Paragraph 4 states that in every contested election, a symbol shall be allotted to a contesting candidate in accordance with the provisions of this order; different symbols shall be allotted to different contesting candidates.

[4] M.P. Jain, Indian Constitutional Law,854(8th edition LexisNexis).

- Paragraph 6 states that recognized political parties (national or state) are entitled to exclusive use of their reserved symbols.
- Paragraph 8 states that unrecognized parties and independent candidates are allotted free symbols, which are not reserved for any party.
- Paragraph 13A states that the Election Commission has the power to resolve disputes related to party symbols, including disputes arising from a split within a political party.
- Paragraph 10A states that symbols are not used in a manner that misleads voters.[5]

V. Disputes relating to Election Symbols

India is a parliamentary federal democracy in which both national and state legislatures are chosen by plurality from single-member districts. On the electronic voting machine, each candidate has a symbol printed next to their name and button. Candidates from state and national parties that have won elections are entitled to use their symbols. These symbols, such as the Indian National Congress's hand and the Bharatiya Janata Party's lotus, are widely recognized and strongly identified with the concerned parties.

When parties divide, the group acquires the party symbol, which is considered to have a significant advantage. Members of "unrecognized" parties, which cannot achieve the minimum electoral performance to be recognized, have to select their symbols from a list of 198 free symbols designed by the national Election Commission, although once they have done so, they receive the symbol wherever they contest. Most of these symbols are sketches of common objects. Election symbol dispute occurs when there is a conflict within a political party that results in the division of the party. Then, both factions contest for the party's reserved symbol.

Communist Party of India filed the first case of party symbol dispute. This faction went to EC and requested that it accept it as CPI(M). It submitted its list of MPs and MLAs. EC then decided to accept this faction as CPI(M) because it was convinced that its MPs and MLAs got more than 4% of votes in three states, Andhra Pradesh, Kerala, and West Bengal.

Following the 1968 order, the initial split was within the Indian National Congress, between Congress(R), which was headed by Indira Gandhi, and Congress(O), headed by Nijalingappa, and the reserved symbol became the point of contention. The EC rudely discarded the claim of Congress (O), basing a majority on the total number of members elected on Congress tickets to the House of Parliament, as well as the total members of all Legislatures on Congress tickets.

The Supreme Court further held that the EC's decision was final and binding in terms of Para 15 of the order.

And this paragraph is not ultra vires of the Constitutional provision under Article 324. It was also not acceptable to slice up the symbol and distribute one cow to one

[5] The Election Symbols (Reservation and Allotment) Order 1968, para 10A

group and another cow to another group, since a symbol is not a property. Finally, it was decided that the party symbol of two bullocks under a yoke was to be assigned to Congress(O), and a new symbol of a cow with a sucking calf was assigned to Congress(R).

Figure 1: indicates the symbol of the Congress Party

In the case of *Samyukta Socialist Party v. Election Commission of India*[6] There was an issue of conflict over the grant of election symbols after two political parties had undergone a merger and then split.

The Samyukta Socialist Party (SSP), established in 1964 with the merger of the Socialist Party and the Praja Socialist Party (PSP), was initially assigned the 'Hut' symbol, which was used by PSP before. When the merger collapsed in 1965, the PSP reformed itself and asserted its previous symbol. The Election Commission, after evaluating the facts and relative strengths of both parties prior to and subsequent to the split, held that the parties had indeed returned to their original position.

Consequently, the Commission transferred the 'Hut' symbol to the PSP and allotted the 'Tree' symbol (previously occupied by the Socialist Party) to the SSP. The SSP objected to this order on the grounds that it was not legally justified and violated constitutional rights. The matter went to the Supreme Court after the Punjab High Court had thrown out the original petition. The Supreme Court established the power of the Election Commission, holding that it was entitled to relocate symbols based on political circumstances and party realignments, as long as such decisions were factually justified and were reasonably exercised.

In yet another case of *Smt. Lata Devi (Mall) v. Haru Rajwar*[7] Haru Rajwar objected to the election of Lata Devi to the Bihar Legislative Assembly on the grounds that his election symbol ('bow and arrow') was unjustifiably altered to 'ladder' by the Returning Officer just before the election. He asserted that this resulted in confusion amongst his voters and materially influenced the result of the election. He also complained of violations of Section 30(d) of the Representation of the People Act, 1951, and Rule 10(5) of the Conduct of Election Rules, 1961, on the ground that such a modification needed the approval of the Election Commission.

The court ruled that there was no contravention of Section 30(d) as the statutory

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[6] Samyukta Socialist Party vs. Election Commission of India and others (1967) AIR 898, 1967 SCR (1) 643.

[7] Smt. Lata Devi (Mall) v. Haru Rajwar (1989) 1990 AIR 19; (1989) SCR 921

requirement of a gap of at least 20 days between withdrawal of nominations and polling was fulfilled. Although appreciating the significance of election symbols, particularly in remote regions, the court highlighted that the petitioner had to establish that the election outcome was materially influenced by the symbol alteration, which he did not. The challenge was therefore dismissed. The court reiterated that the Election Commission's decision on symbol allocation is final, as indicated by Article 324 of the Constitution and rules applicable under the Act.

In *Uddhav Thackeray vs The Election Commission of India & Anr*[8]The dispute is about a division in the Shiv Sena, a registered political party in Maharashtra. Two groups emerged: One headed by Uddhav Thackeray (Petitioner), the other headed by Eknath Shinde (Respondent). Both groups asserted themselves to be the true Shiv Sena and claimed the official symbol of the party, the 'Bow and Arrow', and the party name.

In Election Commission Proceedings, Eknath Shinde had filed a Dispute Petition under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, stating he was the majority. The ECI, in an urgency because of forthcoming bye-elections, passed an interim order (8 October 2022), froze the symbol and party name, and permitted both groups to use free symbols for the meantime.[9]

The High Court affirmed the jurisdiction of the ECI to resolve the symbol controversy. Ordered the ECI to settle the issue expeditiously. Rejected the writ petition by Uddhav Thackeray.

In *Samajwadi Forward Bloc Party Vs. Election Commission of India*[10]The petitioner party challenged the Election Commission's decision to remove the 'truck' symbol without notice, citing the violations of Constitutional Rights and election laws. The Election Commission argued that the 'truck' symbol was a free symbol, not reserved; symbols are given on the basis of a first-come, serve rule. The symbol was removed in a certain state to prevent voter confusion with the 'car' symbol of a recognised party. As per the Election Symbols Order, 1968, unrecognised parties may get a symbol temporarily but can't claim permanent Rights to it.

VI. Comparative Analysis with Different Nations

1) United Kingdom

In the UK, the political parties are regulated by the Electoral Commission under the Political Parties, Elections and Referendums Act 2000. Under these parties must register names, descriptions, and emblems to appear on ballot papers. Up to three emblems can be registered per party. According to this Act, there are some restrictions that emblems must be black and white, legible at small sizes, and not misleading.

[8] Uddhav Thackeray v The Election Commission of India & Anr (2022).

[9] Uddhav Thackeray vs The Election Commission of India & Anr. on 15 November, 2022 https://share.google/YI84E8FHWnFDXovmC accessed on 17 April 2025.

[10] Samajwadi Forward Bloc Party v. Election Commission of India AIR (2019) Telangana 46, (2019)3 ANDHLD 368.

The Electoral Commission can deregister emblems or reject emblems that resemble one another or violate the guidelines.[11]

In *Norwood v. United Kingdom*[12]In this case, a British National Party member displayed a poster attacking Islam using provocative speech and symbols. Due to being convicted under the Public Order Act 1986, for inciting religious hatred, he appealed to the European Court of Human Rights, claiming a breach of freedom of speech (Art. 10 of the European Convention on Human Rights). The Court rejected his claim, ruling that hate speech is not protected, especially when it diminishes or undermines the Rights of others.

2) United States

In the U.S, there is no centralized symbol or regulation, hence parties are private entities. But they are protected under the trademark law, parties have full control over their logos and branding, but no electoral commission regulates symbol usage. Symbols like the Donkey (Democrats) and Elephant (Republicans) are unofficial but widely recognized. [13]

In *Texas v. Johnson*[14], Gregory Lee Johnson burned an American flag during a protest at the 1984 Republican National Convention in Dallas. He was convicted under a Texas law for prohibiting flag desecration. The Court ruled that flag burning is protected symbolic speech under the First Amendment. The Court emphasized that the government cannot prohibit expression simply because it is disagreeable or offensive.

3) Australia

Here, the parties are regulated by the Australian Electoral Commission (AEC) under the Commonwealth Electoral Act 1918. Parties must register their logos before using the ballots. The symbols or logos must not resemble one another to government symbols and must not mislead voters. Hence, the logos are protected under the trademark law, and AEC can reject the registration of the parties if the logos are too similar to the existing ones or if they are offensive in nature. On that basis, they can be refused for undergoing the registration.[15]

In *Australian Capital Television Pty Ltd v. Commonwealth*[16] The High Court struck down a law banning paid political advertising on broadcast media during elections,

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11 Party emblems on ballot papers, https://www.electoralcommission.org.uk/how-register-your-political-party/identity-marks-ballot-papers/party-emblems-ballot-papers accessed on 18th April 2025.

12 Norwood v. United Kingdom ECtHR (2004).

13 American political party logos: The meaning of US political party symbols https://fabrikbrands.com/branding-matters/logo-design/american-political-party-logos-us-political-party-symbols/ accessed on 18th April 2025.

14 Texas v. Johnson, 491 US 397(1989).

15 Political party registration-Australian Electoral Commission https://www.aec.gov.au/Parties_and_Representatives/Party_Registration/, accessed on 18th April 2025.

16 Australian Capital Television Pty Ltd v. Commonwealth (1992) 177 CLR 106.

holding that it violated the implied freedom of political communication. This case was the foundation for establishing constitutional protection for symbolic political expression in Australia.

VII. Critical Analysis and Challenges

The legal system for the allotment and resolution of election symbol disputes in India is a combination of administrative discretion and statutory regulation. Though the Election Commission of India (ECI) has been authorized under the Election Symbols (Reservation and Allotment) Order, 1968, its moves in high-profile political controversies have been questioned.

One of the biggest challenges is that there are no fixed timelines under Paragraph 15 of the Symbols Order. For internal party conflicts, inordinate delays in adjudication by the ECI can cause long periods of political uncertainty, especially where elections are at hand. These delays not only disrupt the working of political parties but also confuse voters, especially where factions have the same name and symbol. Another critical issue is the perception of political bias.

While the ECI is a constitutional body expected to function independently, its decisions in disputes involving major political parties often spark controversy and raise concerns about its impartiality. The lack of a statutory appeal mechanism further compounds this issue, as aggrieved parties must approach the High Courts or Supreme Court through writ jurisdiction, which can be time-consuming and inconsistent.

Furthermore, symbol conflicts are not only constitutional but intensely political, with ramifications for party identity, election results, and popular opinion. These circumstances render the cases extremely politicized and susceptible to media influence and public pressure, which in turn can indirectly pressure constitutional actors.

There is also a larger concern regarding the requirement of transparency and procedural transparency in the decision-making of the ECI. Though the Commission tests the "test of majority" (organizational or legislative support), it fails to explain how the test is weighted or measured, causing confusion and speculation.

In summary, while the existing legal provisions have maintained the powers of the ECI and established a mechanism to regulate disputes, various systemic changes are required. These include the imposition of statutory timeframes, the establishment of an independent appellate body, and improving transparency in procedures so as to maintain democratic integrity and public confidence in the electoral process.

VIII. Conclusion

The Election Commission of India has an important role to play in the regulation of party symbols and in resolving disputes. To enhance the process, the Commission must focus on transparency in decision-making so that stakeholders can access clear information regarding symbol distribution and dispute resolution.

The Commission must also be answerable to the public and parties, ensuring fair and unbiased decisions based on clearly established criteria. Well-defined guidelines for party registration, recognition, and symbol assignment would eliminate confusion and conflicts, ensuring a level playing field for all parties.

Through these steps, the Commission can enhance fairness, transparency, and accountability in party symbol regulation. This will make India's democratic process more robust, voter confidence and trust in the electoral process stronger, and the overall health of India's democracy better.

Proper regulation of party symbols is critical in ensuring free and fair elections that express the will of the people. The Commission's action plays a critical role in upholding the sanctity of the electoral process, and its efforts to ensure transparency and accountability would be beneficial.

* * * *

CASE ANALYSIS OF INDRA BAI V. ORIENTAL INSURANCE COMPANY LTD. & ANOTHER

Anika Bhoot *

Decided on 17th July 2023
Coram: J. J.B. Pardiwala, ***J. Manoj Misra***
Citation: Civil Appeal No. 4492 of 2023
Before the Hon'ble Supreme Court
Appellants: Indra Bai
Respondents: Oriental Insurance Company Ltd. & Another
Keywords: ***Total Disability, Functional Disability, Employees' Compensation Act, 1923***

I. Introduction

The present case pertains to the nexus between the phrase "total disablement" specified in Section 2 (1)(l) of The Employees Compensation Act, 1923 (hereinafter, referred to as the said Act), along with the concepts of functional and physical disability. The Learned Bench elucidated upon the determining factors of total permanent disability and clarified upon the extent of disability in the Appellant's situation which was a bone of contention.

The Learned Bench also highlighted the conciliatory relationship between the total disablement envisaged in Section 2(1)(l) and permanent total disablement as under Section 4 (1)(b) of the said Act.

The Employees Compensation Act, 1923 governs the provisions for compensation of employees in an establishment with less than 20 employees, whereas theEmployees' State Insurance Act, 1948 covers the workplaces with more than 20 employees.

The said Act has its purpose rooted in providing for reparations to the worker who encountered injuries or death owing to occupational accidents or during the course of employment. It seeks to guard the rights of the employees during such misfortunes, bestowing upon them in the workplace, which leads to loss of earning capacities and other connected expenses.[1].

The Act has now been integrated into the Social Security Code, 2020, however, its enforcement is pending. The present case analysis seeks to dissect key aspects of the judgment and critically evaluate the legal reasoning employed and the repercussions thereof.

* **III year student (B.A. LL.B. Hons.) Hidayatullah National Law University, Raipur**

[1] Srivastava, 'Judicial Legislation for Compensatory Relief to Workmen Exposed to Occupational Disabilities' (1992) 34(2) Journal of The Indian Law Institute 305-313

II. Permanent Total Disablement

Before delving into the facts of the case, it is pertinent to shed light on the key concept of permanent total disablement, which forms the fulcrum of the subject matter of the arguments.

The said Act puts forth Section 2(1)(l)[2] which is as follows-

"S.2(1)(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;"

The said Act elucidates upon compensation for various kinds of injuries from graver ones, such as death, permanent total disablement, to milder ones like permanent partial disablement and temporary disablement.

Partial Disablement refers to loss of earning capacity and injuries suffered that do not completely incapacitate the worker from conducting the work-related functions, whereas in Total Disablement, complete incapacitation is experienced by the injured worker. When the worker is incapacitated for a specific period of time due to the injury, it is Temporary Disablement, and when such incapacity is perpetual, it falls under the ambit of Permanent Disablement.

Section 2(h)[3] The Personal Injuries (Compensation Insurance) Act, 1963defines total disablement thus-

"*Total disablement means such disablement, whether of a temporary or permanent nature, as it incapacitates a workman for all work which he was capable of performing at the time the injury was sustained.*"

The compensation granted for such injuries depends on a few determinants, viz. the age of the injured worker, the severity/nature of the injury, the worker's earning capacity at the time of the accident, and the percentage of disability as examined by the medical board. Usually, younger workers who underwent a severe injury with a high disability percentage and loss of earning capacity are recompensed with higher amounts to ensure justice.[4]

Section 4 (1)(b) of the said Act[5] is given below-

"S. 4. Amount of compensation-

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2 Employees Compensation Act 1923, s 2(1)(l)

3 Personal Injuries (Compensation Insurance) Act 1963

4 *supra,* at note 1

5 Employees Compensation Act 1923, s 4(1)(b)

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—

(b) where permanent total disablement results from the injury: an amount equal to sixty per cent. Of the monthly wages of the injured employee multiplied by the relevant factor, one lakh and twenty thousand rupees, whichever is more;"

Thus, in cases of permanent total disability, the amount to be paid as reparations is 60% of the monthly wage multiplied by the relevant factors enumerated above with a minimum sum of Rs. 1,20,000/-.

III. Procedural History

The present appeal with the apex court challenged the Madhya Pradesh High Court at Jabalpur's order wherein the High Court had allowed partially the appeal by the Respondent (Oriental Insurance Company Ltd.) against the Workmen's Compensation Commissioner/Labour Court, Jabalpur's order. The High Court, in effect, lowered the compensation granted to the Appellant down to Rs 1,49,745.60/- from the initial award of Rs 3,74,364/- and treated the permanent disablement as 40%, as opposed to 100%. The Appellant, aggrieved by the decision, approached the Supreme Court under a Special Leave Petition as per Article 136 of the Constitution.

IV. Factual Matrix of the Case

The Appellant was a labourer of Simplex Concrete Company (Respondent 2) and the Employer Company was insured with the Respondent 1, Oriental Insurance Company Ltd. One day while loading poles and pillars on a truck, the connecting chain broke down and the poles landed on the Appellant's left arm resulting in nervous damage and a severe fracture. The Appellant alleged total disablement owing to the lack of grip in her arm subsequent to the accident and sought compensation from the Employer Company, which directed the Insurer Respondent Company to do the needful. However, in the absence of any such remedy furnished by the Respondent, the Appellant approached the Workmen's Compensation Commissioner.

Nerve damage had blotted out any sensation in the Appellant's fingers. The District Medical Board had produced the finding that the arm had lost movement and was unfit for labour and identified the disability to be at least 50%.

The Commissioner assessed the case and classified the disability percentage to be cent percent total permanent disablement and awarded suitable compensation to the Appellant to the tune of Rs. 3,74,364/- by taking into consideration the Appellant's age of 30 years and her monthly wage of Rs. 3000/- in accordance with Section 4 (1)(b) of the said Act.

The Respondents appealed to the High Court, which assessed the disability to be at 40% and reduced the award to the Appellant. The High Court relied on the fact that the Appellant's right arm and other parts of the body were intact and the Medical Board had ascertained the percentage of incapacity to be 50%.

V. Key Issues

- *Whether the appeal to the High Court was maintainable or not, and hence whether its decision is liable to be set aside.*
- *Whether the Appellant's disability percentage is eligible for being classified as permanent total disablement as under Section 2(1)(l) of the said Act.*
- *Whether the Appellant is entitled to the higher compensation envisaged under Section 4(1)(b) of the said Act.*

Appellant's Contentions

Maintainability of the Appeal : It was posited by the Appellant that under Section 30 of the said Act, which governs appeals to the High Court against the orders of the Commissioner are to be concerned with a substantial question of law. However, in the present appeal, the question was of fact, namely the extent of the disability percentage, and it was argued that the High Court erred in entertaining the appeal in the first place.

Extent of Disability : The Appellant submitted that the extent of disability was 100% since for the loading and unloading labour, both arms are required, and post-injury, she is unable to perform her work completely.

VI. Respondent's Contentions

The Respondents' contentions were backed up by the High Court's findings that the percentage of disability determined by the Commissioner was arbitrary and illegal and not based on the specific circumstances of the case.

They further contended that for an injury not enumerated under Part I of Schedule I (as provided under) as per Section 4(1)(b) of the said Act, as was the case of the Appellant, loss of earning capacity can not be taken as a substitute for the physical disability percentage and is merely a factor to be taken into account.

SCHEDULE I :

[See sections 2(1) and (4)

PART I :

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT TOTAL DISABLEMENT

Serial No.	Description of Injury	Percentage of loss of earning capacity
1.	Loss of both hands or amputation at higher sites.	100
2.	Loss of a hand and a foot .	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

Fig. 1[6]

[6] Employees Compensation Act 1923, sch 1, pt I

VII. The Verdict

After considering the submissions and the relevant provisions, the apex court held that if the injury occurs during the course of employment and leads to total incapacitation of the worker to continue her work, it will be deemed as total disablement regardless of the inclusion of the said injury under Schedule I (Part I).

It held that the proviso under Section 2(1)(l) specifying the Schedule I to be referred to for the kinds of injuries that will fall under total disablement is not exhaustive and merely additive in nature. Section 2 has substantive weightage that cannot be watered down by the said proviso.

It was further held that there was no material record to demonstrate that the Appellant could continue her labour with merely one arm, such as provisions for machines that require one hand only. Hence, she was unfit to work *in toto*.

Additionally, the court also observed that the appeal entertained by the High Court was misguided since there was no question of law involved, let alone of a substantial matter.

It set aside and overturned the High Court's order and held the disablement to be 100% and reinstated the Commissioner's finding and award.

VIII. RATIONALE & CRITICAL ANALYSIS

Dissecting the Precedents relied upon

The Respondents had relied on the case of *Oriental Insurance Co. Ltd. v. Mohd. Nasir*[7] to put forth the argument that the disability percentage is to be determined based on the specific facts of the case and not arbitrarily as alleged to be done by the Commissioner. However, the worker had suffered a partial disability in the fractured leg and not a permanent loss. The Appellant's entire left arm had been compromised, and hence, the case was not found to be applicable.

Another judgment cited by the Respondents to drive home the non-substitutability of physical disability with loss of earning capacity in the absence of such an injury in Schedule I of the said Act was *National Insurance Co. Ltd. v. Mubasir Ahmed*[8]. In this, the subject matter was of permanent partial disability and not total disablement as of the Appellant, and thus, the High Court had erred in applying the case in the present scenario.

The case of *Golla Rajanna v. Divisional Manager*[9] held that the Commissioner is the last final authority on the question of facts and an appeal under Section 30 of the said Act is justified only on grounds of a substantial question of law. The setting aside of the Commissioner's order by the High Court on the basis of the extent of disability percentage being at 5% as opposed to 35% claimed was held to be ill-

7 (2009) 6 SCC 280

8 (2007) 2 SCC 349.

9 (2017) 1 SCC 45

founded and *ultra vires*. Hence, in the present case as well, the appeal was not maintainable as it was rooted in a question of fact.

In the case of *Chanappa Nagappa Muchalagoda v. New India Insurance Co. Ltd.*[10] A truck driver suffered a leg injury, following which he could no longer stand for long and was dependent on a walking stick. Despite the medical record labelling his disability at 37%, the apex court held that since he is fully incapacitated to pursue his vocation of a driver and is not capable of manual work without assistance either, his functional disablement is 100%.

Pratap Narain Singh Deo v. Srinivas Sabata[11] held that a carpenter who had lost half of his arm was rendered ineffective for carpentry, and hence his functional disability was of total disablement. It was further clarified that the point of dispute in such cases is not whether the nature of the injury could cause a permanent disability rather whether or not the injury incapacitated the worker from all the work performed by him at the time of the accident.

Thus, despite the medical disability of the Appellant being at 50%, her vocation as a loader/unloader was impossible to pursue following the accident, and hence, her functional disability was 100% in the absence of any alternative viable vocation for her available skillset.

IX. Functional Disability vis-à-vis Physical Disability

The case discerned a distinction between mere physical disability for computation of the percentage of disablement and perusing the essence of the provision for total disablement and functional disability.

What is decisive is not whether the medical report finds a total physical disability but rather whether the extent of physical incapacity renders the worker completely unfit for the labour he used to perform.[12].

The Appellant was in the labour of loading and unloading, which needs strength in both arms, and hence, even though only one arm was rendered unusable, she was unfit for her work and suffered total disablement. She did not possess any alternative skills either, as was shown by the material records.

Thus, the functional capacity of the worker carries more importance than physical capacity. Despite the injury not being mentioned in the Schedule I provided for, her loss of earning capacity was coupled with the permanent physical disability of 50% as per the Medical Board to determine her eligibility for total permanent disability.

X. Question of Fact vis-à-vis Question of Law

The appeal was found to be invalid since it challenged the extent of the percentage of disability and not a question of law as mandated by Section 30 of the said Act[13].

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10 (2020) 1 SCC 796

11 (1976) 1 SCC 289

12 Girijesh Kumar, 'A Critical Study of Protection of the Rights of the Disabled under Labor Laws' (2024) 21 MIGRATION LETTERS 1443-1450

What is meant by a question of law is one that does not require a fresh investigation of the evidence. This involves jurisdictional questions and findings established are devoid of any evidential backing. This was held in the case of Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali in the context of Section 30 of the said Act.[14]

The test to determine the presence of a substantial question of law is whether it directly and significantly affects the rights of the parties and is of general public importance. Such a question must be open and not previously decided by the judiciary. This principle was delineated in Chunilal Mehta and Sons Ltd. v. Century Spg. Co. Ltd.[15]

XI. Conclusion and Significance

The present case has secured the inalienable right of the injured worker of due compensation for the *bona fide* labour provided to the employer and getting personally affected by ways of a permanent severe injury while performing the work duties. Such safeguards are crucial to alleviate the employee's hardships due to no fault of their own and to send a message that the employee is not just a cog in the machine for the employer rather a dignified, respected part of the business who deserves adequate social security.

The case decisively clarified the dichotomy between functional and physical disability in the context of permanent total disability and the stance on appeals on orders of the Commissioner with respect to a substantial question of law. Corrective justice was served by way of this case, which remedied the error of the High Court and concretised the status of the Commissioner as the final authority on factual matters pertaining to the case.

Personally, I found the reasoning of the Supreme Court watertight and sound since a wider interpretation of the statutory provisions was merited by the Appellant's case, else a legal absurdity would have arisen. The court liberally interpreted the extent of the injury and focused on the possibility of pursuing the vocational post-accident and the damage to the earning capacity and functioning of the worker instead of going verbatim by the proviso. Had the court depended solely on the Schedule I injuries, the verdict would have been perverse, and hence, it relied on the purpose and intent of the provision and not the literal interpretation. The decision did not let any issue go unresolved, and the bench provided ample reasoning for every finding.

The decision upheld the rights of the aggrieved worker and did not let the employer company and the insurer company take advantage of technical nitty-gritty of medical physical percentages to deny full compensation. The case stood on the side of the unfortunate worker and not the employer seeking to maximise profits and minimise costs. In a welfare state such as India, it is vital to have security mechanisms in place for individual worker rights in the face of influential corporations and conglomerates.[16].

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13 Employees Compensation Act 1923, s 30

14 (2007) 11 SCC 668

15 AIR 1962 SC 1314

16 Cohen, 'Social security in India' (1953) 16 Social Security Bulletin 11

DOCTRINE OF PART PERFORMANCE: RECENT JUDICIAL INTERPRETATIONS AND COMMERCIAL IMPLICATIONS

Arav Tiwari *
Adithya Talreja **

Abstract

This study endeavours to conduct a comprehensive examination of the evolution, jurisprudential underpinnings, and practical application of Section 53-A of the Transfer of Property Act, 1882, both within India and in comparative foreign jurisdictions. Section 53-A, in its essence, incorporates the equitable doctrine of part performance into Indian property law, thereby safeguarding the rights of a transferee who has acted in furtherance of a contract, even in the absence of a formally executed and registered conveyance. This legislative provision is intended to prevent undue hardship by precluding a transferor from asserting ownership rights against a transferee who has taken possession and fulfilled essential contractual obligations.

However, despite its apparent objective of ensuring equity in contractual transactions involving immovable property, the judicial interpretation of Section 53-A has been mired in inconsistency. The Indian judiciary, in its attempt to balance statutory mandates with equitable considerations, has rendered conflicting decisions that have significantly impacted commercial certainty. Some judicial pronouncements have expansively construed the doctrine of part performance to protect transferees who have substantially complied with contractual stipulations, while others have adopted a more restrictive approach, emphasizing the necessity of strict statutory compliance, particularly regarding registration and written agreements.

This divergence in judicial reasoning has profound ramifications for commercial transactions, particularly in the realm of real estate and property transfers. The resultant uncertainty has the potential to impede economic activity, deter investment, and foster protracted litigation. Given these concerns, this research undertakes a doctrinal and comparative analysis to ascertain the extent to which Section 53-A aligns with its intended objectives and whether reforms are warranted to ensure a more consistent and commercially viable application of the doctrine of part performance in Indian law.

* **B.B.A. LL.B. (Hons.), National Law University, Jodhpur**

** **B.B.A. LL.B. (Hons.), National Law University, Jodhpur**

I. Introduction

"Section 53A was inserted in the Act for the first time by the Transfer of Property (Amendment) Act, 1929 (20 of 1929).[1]

When the Transfer of Property Act was enacted, section 53A did not find place in it. In the absence of section 53A, there arose difference of opinion between various Courts in India as regards the application of English doctrine of part performance of contract as it was then prevailing in England. Since there was a difference of opinion on question of the application of English equitable doctrine of part performance in various Courts of India, the Government of India set up a Special Committee for making recommendations amongst others-whether the British equitable doctrine of part performance be extended in India also. The Special Committee was of the view that an illiterate or ignorant buyer who had partly performed his part of contract required statutory protection. The Committee was of the further view that where a transferee in good faith that lawful instrument i.e. a written contract would be executed by the transferor takes possession over the property, the equity demanded that the transferee should not be treated as trespasser by the transferor and subsequently evict him through process of law in the absence of lawful transfer instrument. The Special Committee also considered the question whether protection under the proposed section 53A to a transferee would also be available even if the period of limitation for bringing an action for specific performance of an agreement to sell has expired. On the said question, the Committee was of the view that even after expiry of period of limitation, the relationship between the transferor and transferee remains the same as it was within the period of limitation and, therefore, the possession over the property taken in part performance of an agreement is required to be protected even if the period of limitation for bringing an action for specific performance has expired. The recommendations of the Special Committee were accepted by the Government of India as the same is well reflected in the aims and objects of Amending Act, 1929 whereby section 53A was inserted in the Act.[2]

II. Theoretical and Legal Framework

Historical evolution of the doctrine of part performance

This enactment is an attempt to lay down a standard with regard to the application, of what has been known to English Law as "the doctrine of part performance adopted and followed by the Courts in India." In doing so, however, it seems that the Indian Legislature has by one sweeping stroke tried to override several other positive enactments. This is bound to result in an unsatisfactory working of the present section. The English doctrine of part performance arose out of the Statute of Frauds which required contracts relating to lands, in writing. When not reduced to writing, Courts of Equity in England did not permit the statute to be made an instrument of fraud. So

[1] § 53A, Transfer of Property Act, 1882 (India)

[2] Darashaw J. Vakil, *Commentaries on the Transfer of Property Act* (6th ed.).

that in spite of the absence of writing, it regarded the contract as executed and gave relief. Section 54 which was added in 1929 and imports into India a modified form of the equity of part performance as developed in England in *Elizabeth Maddison v John Alderson*.[3] In India section 54 of the Transfer of Property Act required a transfer of immovable property to be not only in writing but also to be registered.[4] The present section enacts that an instrument in writing relating to immovable property could be admitted in evidence though not registered. In England the law of registration does not apply. The English doctrine may be said to be an encroachment on the Statute of Frauds and the Indian doctrine an encroachment on the law of registration. The first supplies the omission of the written contract, the second cures the defect of registration. The English doctrine is wider as letting in parol evidence, where writing is required. In India section 92 of the Indian Evidence Act, 1872, was a bar to such parol evidence being admitted.[5] In England the doctrine of part performance is applied to any act of part performance, which is shown to have been performed by the defendant, whereas under the present section, the taking of possession or the continuing in possession, if already in possession, by the transferee must be in part performance of the contract. Further, the section not only attempts to get over the want of registration of a deed but also any act necessary for its completion, as where a document was required to be attested, non-attestation would not render the document void. In enacting that want of registration shall not enable the transferor to enforce against the transferee any other right than that expressly provided by the terms of the contract, the framers of the Act seem to have overlooked the provisions of sections 23 and 25 of the Registration Act, 1908.[6] For in case of an instrument of transfer, the deed must be registered within the time prescribed by those sections. Again, in India no contract of immovable property requires registration, so that this subject of the law of transfer of immovable property is distinctly at an advantage by the enactment of this section. If a contract is not in writing but the transferee has taken possession, and done acts in furtherance of the contract, the doctrine of part performance is not to be applied. On this subject it seems that the law as existing prior to the enactment of section 53A, would apply. In England the doctrine of part performance was applied because the Statute of Charles II required writing in case of transfer of interest in land and Courts of Equity applied the doctrine, when there was no writing, and to refuse relief would be to enable the parties to be charged to commit a fraud. In India writing is insisting upon by the section, so that the English doctrine of part performance is now the reverse of section 53A. The Indian Legislature in effect, enacts the Statute of Frauds which so far as it relates to interest in land has been repealed and re-enacted by the Law of Property Act of 1925, but the later Act has taken care to exclude part performance by section 40, sub-section (2).[7]

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3 *Elizabeth Maddison v. John Alderson*, (1883) 8 App. Cas. 467 (UK).

4 § 54, Transfer of Property Act, 1882 (India).

5 § 92, Indian Evidence Act, 1872 (India).

6 §§ 23, 25, Indian Registration Act, 1908 (India).

7 *Supra,* Note 2.

Key provisions under Section 53A of the TPA.

There appears to have been no controversy as regard essentials for the application of this doctrine as enacted in section 53A.

Broadly speaking they are :

(i) There must be a contract to transfer an immovable property.[8]

(ii) The contract must be evidenced by writing which must be signed by the transferor himself or by someone on his behalf.[9]

(iii) The terms necessary to constitute transfer must be ascertained with reasonable certainty.

(iv) The contract must be legal and for consideration.[10]

(v) The contract must have been partly performed. The section leaves no room for conjecturing, as to what would amount performance within the meaning of this section. It provides that the transferee must have taken possession of the property concerned in whole or in part because of the contact-where the transferee is already in possession, continues possession in part performance of the contract and does some act in furtherance of the contract, such as making alter a permanent nature, additional constructions, paying rent at a higher rate, etc.[11]

(vi) "The transferee has performed or is willing to perform the contract."

III. Interplay of S. 17 and 49 of the Registration Act and S. 53A of the TPA

S.17 of the Registration Act mandates the compulsory registration of certain documents, including instruments that create, declare, assign, limit or extinguish rights in immovable property.[12] Registration provides public notice of the transaction and ensures the authenticity of the document in question. S. 49 states that if a document is unregistered, it is inadmissible as evidence of any transaction affecting immovable property,[13] an exception to this rule is that unregistered documents can be used to invoke S.53A to protect a transferees possession. This is only a defensive remedy and cannot be used to assert ownership.

While it may be true that unregistered agreements to sell can be used to prove part performance along with possession and consideration, primacy is given to registered documents. In Probodh Kumar Das vs The Dantmara Tea Co. Ltd.[14] the court held that *"the amendment of the law effected by the enactment of Section 53A conferred no right of action on a transferee in possession under an unregistered contract of*

8 Transfers of all kinds such as sale, mortgage, lease, exchange (gift excluded) come within the scope of s. 53 A.

9 *Allam Gangadhara Rao v. Gollapalli Gangarao*, A.I.R. 1968 A.P. 291 (India).

10 *Akram Mea v. Secunderabad Municipal Corp.*, A.I.R. 1957 A.P. 859 (India).

11 *Achayya v. Venkata Subba Rao*, A.I.R. 1957 A.P. 854 (India).

12 Registration Act, 1908, § 17.

13 Registration Act, 1908, § 49.

14 (1940)42BOMLR199

sale". While judgments since have held that reliance on an unregistered agreement to sell is possible, it is important to highlight the level of primacy given to a registered deed."

Doctrine of Part performance in other jurisdictions

I. United Kingdom

Statutory Basis

The doctrine of part performance in the UK was a creation of the Equity Courts in the UK as a response to the S. 4 of the Statute of Frauds 1677[15]. The Statute of Frauds was enacted for the purpose of preventing frauds and perjuries. S.4 of the Act required contracts of sale of land to be in writing to be enforceable.[16] Equity courts intervened to prevent injustice in cases where one party placed reliance on an oral agreement and performed acts in furtherance of the contract. The landmark case of Maddison vs. Alderson[17] established the doctrine of part performance in the UK where the court held that the actions in furtherance of the contract must be "unequivocally referred" to the agreement.

The doctrine of part performance was codified in S.40 of the Law of Property Act 1925[18], however there was still an air of uncertainty around the doctrine[19] until the case of Steadman vs. Steadman[20] where the doctrine was further clarified and refined. The court relaxed the "unequivocally referred" requirement established in Maddison vs. Alderson[21] and held that part performance can be established when acts alleged to be part performance were consistent with the alleged oral agreement.

The doctrine of part performance was later abolished by the Law of Property (Miscellaneous Provisions) Act 1989[22] which repealed S.40 of the Law of Property Act 1925[23]. This reform was based on the recommendations of the Law Commission working paper titled "Transfer of Land – Formalities for Contracts for Sale etc of Land"[24] that argued that the doctrine of part performance was outdated and created uncertainty in property transactions. Post the 1989 law, the entire contract must be in writing and all the terms of the contract must be clearly laid down.[25]

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15 29 Car. 2 c. 3.

16 *Id*.

17 Maddison v Alderson (1883) 8 App Cas 467.

18 Law of Property Act 1925.

19 Furmston, M.P., Cheshire, Fifoot and Furmston's Law of Contract (17th edn, Oxford University Press 2017) p.285.

20 Steadman vs. Steadman (1976) AC 536.

21 *Supra* note 17.

22 Law of Property (Miscellaneous Provisions) Act 1989.

23 *Supra* note 18.

24 Law Commission, Transfer of Land: Formalities for Contracts for Sale etc. of Land (Law Com No 164, 1987).

25 Law of Property (Miscellaneous Provisions) Act 1989, s 2.

IV. Comparative analysis

The doctrine of part performance in India is codified under the S. 53 of the Transfer of Property Act, 1882[26]. The requirements under this provision are that i) there must be a written contract for transfer of immovable property, ii) the transferee must have taken possession of the property or iii) performed some act in furtherance of the contract, iv) the transferee must be willing to perform their part of the contract[27]. The objective of S.53A is to protect the rights of transferees who have relied on the contract even if the transferor fails to complete the transfer, it does not confer a right on the basis of which transferees can claim rights against the transferor.[28] Post 1989, both India and UK require written contracts for sale of immovable property. The UK has abolished the doctrine of part performance; however, it is still codified in India under S.53A[29]

S.53A provides clear statutory protection to transferees whereas UK has moved away from the part performance doctrine in favour of clarity and certainty in contracts. The doctrine in India is a statutory right and only available as a defence in India as compared to an equitable principle in UK[30]. The question of whether the doctrine of part performance is outdated and if that warrants India moving away from the doctrine much like the UK post 1989 will be dealt with in later sections.

United States of America

Statutory Basis

The doctrine of part performance was adopted by the United States from UK to serve as an equitable exception to the statute of frauds.[31] The doctrine is codified in some states while in some states it functions as an equitable principle.

The requirements of the application of the doctrine in the USA are that i) there must be a valid oral agreement for the sale of land[32], ii) the transferee must demonstrate acts that are unequivocally referable to the alleged agreement[33] and iii) the plaintiff must have relied on the alleged agreement to their detriment.[34]

In New York, the doctrine is codified in the New York General Obligations Law[35] and in California in the California Code of Civil Procedure[36] to name a few. In states like Alabama the doctrine of part performance is applied through equitable principles and judicial decisions like the landmark case of Smith vs. Smith[37].

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26 Transfer of Property Act, 1882, s 53A.
27 Nathulal vs Phoolchand 1970 AIR 546.
28 Delhi Motor Company And Ors vs U.A. BasrurkarAnd Ors 1968 AIR 794.
29 *Supra* note 26.
30 Mulla, D.F., The Transfer of Property Act (13th ed., LexisNexis 2018).
31 Roy Moreland, Statute of Frauds and Part Performance, 78 U. Pa. L. Rev. 51 (1929).
32 *Supra* note 17.
33 Burns v. McCormick (233 N.Y. 230, 232).
34 *Id.*
35 N.Y. Gen. Oblig. Law § 5-703.
36 Cal. Civ. Proc. Code § 1972.
37 Smith v. Smith, 466 So. 2d 922.

The main difference between the application of part performance in USA and in India is the requirement of a written contract under S.53A[38] In India, while in USA oral agreements can be enforced if the principle of "unequivocal referability" is present. USA also relies more on judicial discretion as some states do not have the doctrine codified.

V. Recent Judicial Interpretations

Giriyappa and Anr. v. Kamalamma and Ors (2024): Case summary and analysis.

The Supreme Court recently observed that the transferee cannot claim protection under Section 53-A of the Transfer of Property Act, 1882 ("TPA") if he fails to prove the execution of a sale agreement based on which possession was claimed.

The Court also explained the conditions to invoke Section 53A.

The bench comprising Justice J.B. Pardiwala and Justice R. Mahadevan was hearing the plea filed against the Karnataka High Court's decision that approved the First Appellate Court and Trial Court's decision decreeing the suit for the declaration of title and recovery of possession in the plaintiff's-Respondent favor.

The Petitioners-Defendants claimed possession of the immovable property based on a sale agreement for 2 Guntas of land allegedly executed in their favor by the Respondent-Plaintiff. When the Respondent-Plaintiff filed a suit seeking a declaration of title and recovery of possession, the Petitioners-Defendants invoked protection under Section 53A of the Transfer of Property Act (TPA), asserting their rights as prospective transferees in part-performance of the contract.

The Petitioners contended that the Respondent had executed a Sale Agreement dated 25.11.1968, granting them possession and enjoyment of the property. As such, they argued that Section 53A of the TPA barred the Respondent from enforcing the contract against them.

The Trial Court ruled in favor of the Respondent-Plaintiff, decreeing the suit. This decision was upheld by both the First Appellate Court and the High Court. The High Court noted that "when the defendant has failed to prove that plaintiff has executed the Sale Agreement dated 25.11.1968 agreeing to sell 2 gunta out of survey No.24/9 and he came in possession and occupation of suit schedule property by virtue of the same, question of providing protection under Section 53A of the T.P. Act does not arise."

Section 53A of TPA acts as a shield for the prospective transferee who is holding possession of the immovable property under a contract of sale, that is not formally executed (not registered). The provision puts an obligation on the transferor to not enforce the contract against the transferee when the transferee has acted in accordance with the written agreement. "Section 53-A of the Transfer of Property Act was inserted partly to set at rest the conflict of views in this country, but principally for the protection

[38] *Supra* note 26.

of ignorant transferees who take possession or spend money in improvements relying on documents which are ineffective as transfers or on contracts which cannot be proved for want of registration. The effect of this section, is to relax the strict provisions of the Transfer of Property Act and the Registration Act in favour of transferees in order to allow the defence of part performance to be established.", the court observed.

According to the petitioners, the respondents (original plaintiffs) may be the lawful owners of the suit scheduled property but they executed a sale agreement dated 25-11-1968 in their favour agreeing to sell 2 guntas of land out of survey No.24/9 for total consideration of Rs.850/- and since then the petitioners – herein came to be in possession and enjoyment of the same.

The question that fell for the Court's consideration was whether the petitioner-defendant could claim part-performance of the contract under Section 53A of TPA.

Affirming the High Court's decision, the court observed that the failure of the petitioner to show that the respondent had executed a sale agreement in its favor would not entitle him to claim part performance of the contract.

According to the Court, the protection of a prospective purchaser/transferee of his possession of the property involved under Section 53A TPA is available subject to the following prerequisites: "

(a) There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(b) The transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part-performance of the contract;

(c) The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract."

The Court declined to extend the benefit of Section 53A of the TPA to the petitioners as they failed to meet its prerequisites. The alleged sale agreement could not be proven, and the petitioners' possession lacked legal validity under the purported agreement.

Hence, the petition was dismissed.[39]

Ghanshyam Vs. Yogendra Rathi (2023)[40]

In this case, the appellant – owner of the property entered into an agreement to sell with the respondent. The appellant received the full consideration amount from the respondent; however a sale deed was not executed. The respondent permitted the appellant to occupy the property as a licensee for 3 months, however the appellant

[39] Yash Mittal,*Conditions to Invoke S. 53A, Transfer of Property Act: Supreme Court Explains,* LiveLaw, https://www.livelaw.in/supreme-court/conditions-to-invoke-s-53a-transfer-of-property-act-supreme-court-explains-279281

[40] Ghanshyam vs. Yogendra Rathi (2023) SCC OnLine SC 725.

refused to vacate the property after the 3 month period. The Trial Court held that the respondent is entitled to a decree of eviction and the same was held during the first appeal and the second appeal before the High Court.

On appeal to the Supreme Court, the Court held that

"Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him."

This means that entering into an agreement to sell, transferring consideration and being put in possession by the transferor is sufficient part performance. The existence of a sale deed is not necessary. The court, by emphasising the need for a written agreement to sell and payment of consideration has ensured transparency and accountability in transactions. The judgment ensures certainty in commercial real estate transactions and prevents situations where an agreement to sell is present, but the seller attempts to lease or sell the property to third parties since these third parties cannot claim a superior title over the prospective purchaser.

A. Lewis v. M.T. Ramamurthy[41]

In this case, the respondent claimed ownership of a property through a registered sale deed and filed a suit to declare that he was the absolute owner. The appellants claimed ownership through an agreement to sell dated 2 months before the registered sale deed. The appellants claimed to have paid 10,000 out of the agreed upon 14,000 rupees and claimed to have taken possession. The trial court and High Court ruled in favour of the respondent.

The Supreme Court raised the issue of whether the appellants can claim protection under S. 53A, ie. Part performance of the contract. The Court answering the question in the negative, elaborated on the requirements to invoke S.53A. The Court found that there was no intimation taken by the Defendants to perform their part of the contract and that there was no material to show that the plaintiff had notice of agreement of sale. Even though the defendants claimed to have an earlier agreement of sale, had taken possession and even partially paid the consideration, the Court held that they do not have the protection of S.53A.

The Court here raises a new standard for invoking the protection of S.53A. The Court held that the transferee must not merely remain quiet and passive, they must take effective steps to assert their rights. The term "perform or be willing to perform" in S.53A was found to include a willingness to pay the remaining portion of consideration. This case is important in the context of real estate transactions as it emphasises the primacy of registered documents and the importance of taking

[41] A. Lewis v. M.T. Ramamurthy, (2007) 14 SCC 87.

affirmative steps to protect interests when reliance is placed on unregistered documents. The judgment also creates a new standard to adjudicate what "willing to perform" means.

Revanasiddayya Vs. Gangamma[42]

In this case the appellant and the original owner entered into an agreement to sell a piece of land for 1,75,000 rupees. The appellant paid 1,000,000 rupees and was put in possession of the land and the sale deed was to be executed in 3 months, however the owner died before the sale could be completed. The respondents, ie. The legal heirs inherited the land and filed a suit for declaration of ownership and possession of the land claiming that the agreement had expired. The appellant then filed a suit for specific performance of the original agreement but this suit was dismissed. The trial court granted ownership to the respondents but possession to the appellant, but the High Court reversed this decision and granted possession to the respondents.

The Supreme Court, on appeal, held that the respondents had possession of the land as, while the appellant could prove that the first two requirements of S.53A were fulfilled, ie. A written agreement and possession, he was unable to prove the other requirements. The appellant's willingness to perform his part of the contract was shown by the filing of the suit of specific performance, but the dismissal of the suit meant that he could no longer enforce the agreement or claim protection under S.53A.

The Court in this case answers the question of whether a person can invoke S.53A after the dismissal of a suit of specific performance or not. The Court answers this question in the negative affirming that while it may show willingness to perform the contract, the dismissal of the suit means that the possession itself is unauthorised.

VI. Challenges and Criticisms

Legal limitations of Section 53A.

The doctrine of part performance, enshrined in Section 53A of the Transfer of Property Act, 1882, was meant to serve as a shield against injustice, preventing a transferor from dispossessing a transferee who has acted in reliance on an incomplete contract. However, a closer examination of its statutory formulation and judicial interpretation reveals that this shield is riddled with cracks—its utility, though undeniable, is both conceptually and practically constrained. The doctrine neither transfers ownership nor secures the transferee's position against third parties, making it an imperfect instrument in safeguarding property rights.

1. The Illusion of Security: Absence of Ownership Transfer

Section 53A has often been misconstrued as a grant of property rights when, in fact, it does nothing more than prevent the transferor from asserting title against the transferee. The Supreme Court in K.K. Vermamade it unequivocally clear that part

[42] Revanasiddayya v. Gangamma, (2018) 1 SCC 610

performance does not create an interest in land but merely acts as a statutory estoppel.[43] The transferee is left in a precarious position while they may lawfully resist eviction by the transferor, they remain without the full enjoyment of ownership rights, including the ability to alienate or mortgage the property.

One might question whether this limitation serves any rational purpose in modern commercial transactions. In a real estate market where large-scale investments demand security of tenure and marketable title, Section 53A's inability to confer ownership is more of a liability than a safeguard. The Court's observation in Bai Dosabai, that "Section 53A does not vest title in the transferee" has been repeated ad nauseam, yet remains a doctrinal absurdity in the commercial real estate sector, where parties rely on enforceable interests rather than tenuous possessory claims.[44]

2. The Achilles' Heel: No Protection Against Third Parties

It is a fundamental principle of property law that a person in possession should be able to assert their rights against the world at large. However, under Section 53A, the transferee's shield is limited while they may resist the transferor's claim, they remain vulnerable to claims by bona fide purchasers and third parties with a superior legal title. In Shrimant Shamrao Suryavanshi, the Supreme Court held that a subsequent bona fide purchaser, armed with a legally registered deed, could oust a transferee relying on part performance.[45]

The result is a doctrinal paradox. The law protects the transferee against the very person who made the defective promise, but leaves them at the mercy of an unsuspecting third party who had no knowledge of the initial transaction. If the doctrine of part performance is truly rooted in equity, one must ask: why does equity not operate against all who threaten the transferee's possession? The legislature, in its wisdom (or lack thereof), has left this question unanswered, forcing transferees into litigation purgatory whenever a superior titleholder emerges.

3. The Tyranny of Formalism: The Written Agreement Requirement

A doctrine premised on equity should not demand strict adherence to formalities. Yet, judicial interpretation has placed an almost fetishistic emphasis on the necessity of a written agreement, thereby negating the very principles of fairness that the doctrine was designed to uphold. In Sardar Govindrao Mahadik, the Supreme Court rejected a claim under Section 53A solely because the agreement was not reduced to writing, even though the transferee had acted in good faith and taken possession.[46]

This rigid formalism is not merely a judicial quirk but a systemic flaw. In semi-urban and rural India, property dealings are often conducted through informal arrangements, with parties relying on mutual trust rather than meticulous documentation. The

[43] *K.K. Verma v. Union of India*, (1954) SCR 1 (India).

[44] *Bai Dosabai v. Mathurdas Govinddas*, (1980) 3 SCC 545 (India).

[45] *Shrimant Shamrao Suryavanshi v. PralhadBhairoba Suryavanshi*, (2002) 3 SCC 676 (India).

[46] *Sardar Govindrao Mahadik v. Devi Sahai*, (1982) 1 SCC 237 (India).

insistence on a written instrument, while justified from a registrational standpoint, fails to account for the realities of land transactions. If equity is truly meant to temper the harshness of legal formalities, then Section 53A, in its current form, is equity's antithesis rather than its embodiment.

4. The Chimera of Willingness: An Impossible Burden of Proof

Perhaps the most pernicious limitation of Section 53A is the requirement that the transferee must demonstrate continuous "willingness to perform" their part of the contract. This requirement, reaffirmed in J.P. Buildersforces the transferee into an evidentiary nightmare any lapse, delay, or perceived shortcoming in their obligations can be used to disqualify them from protection under the doctrine.[47]

In a country where litigation drags on for decades, the irony is bitter. The transferee, having already acted in good faith and taken possession, must now endure the additional burden of proving an unwavering willingness to perform, often against an adversary (the transferor) who exploits every possible procedural delay. This requirement, far from serving any substantive purpose, only strengthens the hand of the unscrupulous transferor who wishes to wriggle out of their obligations.

Ambiguities in judicial application.

1. The Schizophrenia of Registration Requirements

The courts, much like an undecided deity, have oscillated between requiring strict compliance with registration laws and allowing exceptions in the name of equity. In Hamzabi, the Supreme Court took a liberal view, holding that non-registration did not per se defeat a claim under Section 53A.[48] However, in K.B. Shah, the Court pivoted in the opposite direction, ruling that an unregistered document was fatal to a claim of part performance.[49]

This inconsistency creates an untenable situation for litigants. Transferees who rely on precedents favorable to their case find themselves blindsided when an unfriendly bench decides otherwise. The legal community is thus left with an absurd predicament: whether Section 53A can be invoked depends not on statutory clarity but on judicial mood swings.

2. The Elastic Definition of "Part Performance"

There exists no fixed judicial standard on what constitutes "part performance." In Ramakrishna Pillai, the Court deemed partial payments and possession sufficient to invoke the doctrine.[50] However, in Vidyadhar, the Supreme Court imposed a stricter standard, requiring "substantial" compliance with all contractual terms.[51] This divergence is not merely academic; it directly impacts thousands of litigants who enter into property transactions in good faith, only to be left in legal limbo.

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47 *J.P. Builders v. A. Ramadas Rao*, (2011) 1 SCC 429 (India).

48 *Hamzabi v. Syed Karimuddin*, (2001) 8 SCC 607 (India).

49 *K.B. Shah v. Vishwanath*, (2007) 5 SCC 309 (India).

50 *Ramakrishna Pillai v. Kandasami Thevar*, (2012) 10 SCC 495 (India).

51 *Vidyadhar v. Manikrao*, (1999) 3 SCC 573 (India).

3. The Judicial Equities Dilemma

Finally, there is the unsettling reality that courts, in attempting to do justice, often engage in ad hoc decision-making. In *Shyam Sundar v. Kishore Chand*, [(2009) 3 SCC 50], the Supreme Court denied protection under Section 53A to a transferee who was found to have engaged in fraudulent conduct.[52] While the intent behind such rulings is understandable, it introduces an element of judicial subjectivity that only increases uncertainty in the doctrine's application.

VII. Commercial Implications of Section 53A

Role of the doctrine in safeguarding investments.

The doctrine of part performance, enshrined in Section 53A of the Transfer of Property Act, 1882, was conceived as a protective mechanism to prevent unscrupulous transferors from exploiting their superior legal title to dispossess a transferee who had acted in reliance on an incomplete contract. In a market driven by large-scale real estate investments, commercial leasing arrangements, and property development projects, the doctrine's significance ought to have expanded proportionally. However, its limitations chiefly its inability to confer ownership and its vulnerability against third-party claims have rendered it a weak foundation for commercial reliance.

The foundational premise of Section 53A is that a transferee who has taken possession in part performance of a contract should not be evicted by the transferor. At first glance, this protection appears sufficient for businesses engaged in real estate transactions. After all, possession is a critical commercial asset-it enables developers to initiate construction, allows businesses to operate from the premises, and gives financial institutions the confidence to lend against secured tenancy rights.

However, this protection is rendered ineffective when tested against commercial realities. The doctrine does not create a proprietary interest in the transferee, meaning that the latter cannot mortgage or otherwise encumber the property to raise capital. The Supreme Court in Bai Dosabai, categorically stated that Section 53A does not vest title in the transferee, a position reaffirmed in K.K. Verma.[53] This limitation alone is sufficient to deter serious commercial actors from relying on part performance as a mechanism for securing long-term investment.

Further, the doctrine only bars the transferor from reclaiming possession; it offers no protection against external claimants, such as financial creditors or government authorities. In the event of a dispute over legal title, a transferee relying on Section 53A may find themselves stranded-protected against the original owner but vulnerable to all others.

A stark example of this limitation was seen in Shrimant Shamrao Suryavanshi, where the Supreme Court ruled that a subsequent bona fide purchaser who had registered title could assert superior rights over a transferee in possession under part

[52] *Shyam Sundar v. Kishore Chand*, (2009) 3 SCC 50 (India).

[53] *Supra*, Notes 10, 11.

performance.[54] This precedent has troubling implications for commercial investments if a transferor can defeat the transferee's rights simply by transferring title to a third party, the doctrine ceases to be a meaningful safeguard in the business world.

Case studies on commercial disputes and challenges in large-scale projects.

1. The Case of Unregistered Agreements in Commercial Leasing

A major concern in the real estate sector is the reliance on unregistered agreements for long-term commercial leases. Businesses often enter into lease agreements without registration due to bureaucratic delays, stamp duty concerns, or informal understandings between parties. Section 53A, in theory, should protect a lessee who has taken possession and fulfilled contractual obligations, even if the agreement remains unregistered.

However, judicial trends have been inconsistent. In K.B. Shah, the Supreme Court ruled that an unregistered lease agreement did not permit the lessee to invoke Section 53A.[55] This created significant uncertainty for businesses operating under unregistered leases if a landlord later decides to repudiate the agreement, the lessee's possession may be indefensible, especially against a third-party purchaser.

The effect of this ruling is evident in commercial hubs such as Mumbai and Bengaluru, where businesses frequently lease high-value properties under arrangements that are technically incomplete in the eyes of the law. The judicial insistence on registration, while theoretically sound, ignores the market reality that unregistered agreements remain prevalent due to practical constraints.

2. The Dilemma of Commercial Developers and Large-Scale Real Estate Projects

Real estate developers often acquire land through contractual arrangements that do not immediately transfer ownership but grant possession in exchange for consideration. These arrangements may be structured as joint development agreements (JDAs) or agreements to sell, with developers assuming de facto control over the property while awaiting completion of the formal transfer process.

Section 53A should, in theory, protect developers from being ousted by the original landowners before the final execution of the sale deed. However, the courts have demonstrated reluctance in extending the doctrine's protection when commercial developers invoke it. In Ramakrishna Pillai, the Supreme Court ruled that part performance must be "substantial" to qualify for protection, thereby setting a higher evidentiary standard that developers often struggle to meet in complex, multi-party transactions.[56]

This hesitation to extend equitable protection to developers has far-reaching consequences. Given the scale of investment in commercial real estate, any legal

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[54] *Supra,* Note 12.

[55] *Supra,* Note 16.

[56] *Supra,* Note 17.

uncertainty regarding possession rights discourages financing, increases litigation risks, and disrupts project timelines.

3. Financial Institutions and the Doctrine's Impact on Lending

Banks and financial institutions prefer lending against property with a clear title. A transferee relying on Section 53A cannot provide a legally enforceable mortgage since they lack ownership rights. This limitation creates liquidity issues, particularly in high-value commercial property transactions.

The Supreme Court's ruling in J.P. Builders, compounded this problem by holding that a transferee invoking Section 53A must prove continuous willingness to perform their contractual obligations.[57] This effectively places the transferee in a vulnerable position-any minor contractual dispute or procedural lapse can jeopardize their legal standing.

For businesses that rely on property-backed lending, Section 53A offers little practical security. Lenders are unwilling to finance properties held under part performance, and transferees lack the legal authority to pledge such properties as collateral.

VIII. Conclusion

Summary of Findings

The doctrine of part performance, once heralded as an equitable innovation in Indian property law, now finds itself entangled in a web of statutory limitations and judicial inconsistencies. A closer examination of Section 53A of the Transfer of Property Act, 1882, reveals several fundamental shortcomings that compromise its effectiveness, particularly in commercial property transactions.

First, the doctrine's failure to confer ownership rights reduces its utility to a mere defensive mechanism, leaving transferees in possession but without full legal title. This limitation, as reinforced by the Supreme Court creates a precarious position for investors and businesses that require certainty in real estate transactions.

Second, the doctrine's narrow protective ambit-shielding the transferee only against the transferor-renders it ineffective against third-party claims. Rulings have demonstrated that a bona fide purchaser with a registered title can override the transferee's possessory rights under Section 53A, highlighting the doctrine's failure to provide robust security in real-world property disputes.

Third, judicial interpretations of Section 53A have been marked by inconsistency. The courts have oscillated between strict and lenient approaches to the requirement of a written and registered contract, as seen in contradictory rulings. This unpredictability undermines legal certainty and increases litigation risks for parties relying on part performance.

Fourth, the doctrine's insistence on proving an unwavering "willingness to perform" places an undue burden on transferees, making it susceptible to abuse by unscrupulous

[57] *Supra,* Note 14.

transferors who can exploit procedural delays. The Supreme Court has underscored the difficulty transferees face in navigating this evidentiary requirement.

Finally, Section 53A's relevance has diminished in the face of modern property law developments, including the enactment of the Real Estate (Regulation and Development) Act, which mandates stricter compliance measures that often bypass the doctrine's protections.[58]

Final Thoughts

If Section 53A was once a necessary innovation to prevent fraud and protect transferees, it now functions as an inadequate remedy trapped in legal obsolescence. The doctrine operates in a paradox it extends protection, but only partially; it recognizes equity, but only selectively; it aims to prevent injustice, yet frequently succumbs to it due to formalistic judicial interpretations.

In an era where land transactions are increasingly governed by statutory regulations, the question arises: does Section 53A still serve a meaningful purpose, or has it become a relic of a bygone legal framework? The answer lies in reform. Legislative intervention must address the doctrine's deficiencies, particularly by ensuring that transferees under part performance receive greater legal security, possibly through limited ownership recognition or an expanded scope of protection against third parties.

Moreover, courts must adopt a more uniform approach to interpreting the requirements of Section 53A. A doctrine that depends on judicial mood swings for its application is no doctrine at all it is an uncertainty disguised as law. Until these reforms are undertaken, Section 53A will remain what it has increasingly become: a legal fiction offering more illusion than protection.

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[58] Real Estate (Regulation and Development) Act, 2016 (India).

FROM ORAL TRADITION TO LEGAL PRECEDENTS: NATURE, LAW AND INDEGENEOUS VOICE

Wilma Nathaliya Fernandes *
Deona Lita Dsouza **

Abstract

This paper primarily deals with information regarding traditional to legal precedents, including the nature of law and indigenous voices. Here, indigenous people and the law of the environment are interrelated. When it comes to indigenous people, it mainly highlights who they are. The culture of indigenous people is mentioned briefly, including how their traditional concepts are practiced, such as art, craft, and dance. The importance of the language of indigenous people is also highlighted.

Worldwide, the paper briefly discusses how indigenous people are positively recognized and mentions international safeguards for them. The main focus of this paper is balancing the rights of indigenous people and environmental protection. It primarily focuses on the Indian perspective and constitutional provisions. The paper also mentions modern challenges and legal reforms.

This paper also focuses on the role of indigenous people in protecting the environment along with the principle of sustainable development. It concludes by emphasizing the importance of indigenous people, their rights, and environmental protection.

Keywords: ***Indigenous People, Traditional Knowledge, Sustainable Development.***

I. Introduction

Environmental law and Indigenous peoples share a deep-rooted connection shaped by history. Indigenous communities have long had sustainable relationships with nature, guided by traditional knowledge and spiritual beliefs. However, in ancient India, colonization and industrial expansion disrupted these practices, often excluding Indigenous voices from environmental governance. Over time, legal frameworks began recognizing Indigenous rights to land, resources, and environmental stewardship. Today, environmental law increasingly recognizes the importance of Indigenous participation in decision-making, respecting their ancestral knowledge and legal traditions. This evolution reflects a growing commitment to justice, sustainability, and the protection of both cultural richness and ecological heritage.

* 1st LLM, Shri Dharmasthala Manjunatheshwara Law College, Mangaluru, Karnataka
** 1st LLM, Shri Dharmasthala Manjunatheshwara Law College, Mangaluru, Karnataka

II. Concept of Traditional knowledge

Traditional knowledge or indigenous knowledge is advanced through local indigenous communities that are well-evolved and whose longstanding customs and practices are observed within these groups from generation to generation. Research into the origins, behaviour, and improvement of humanism in each prehistoric and modern society caused the recognition of traditional expertise. The adoption of traditional information by means of international organizations, just like the UN, has led to its significant appreciation and popularity.[1]

Meaning and Approaches of Expression of Conventional Understanding Knowledge

Traditional understanding (TK) refers back to the understanding of knowledge, talents, and practices advanced, maintained, and passed down from one generation to another. These practices are often integral to the network's cultural or religious identity.

Traditional understanding of knowledge can be observed in an extensive variety of fields, which include agriculture, technological know-how, generation, ecology, medicine, drug, and biodiversity-related subjects.[2]

TK includes both the expertise itself and traditional cultural expressions, including signs, symptoms, and symbols. It comes from intellectual pastime inside a traditional context.

It consists of the traditional use and control of lands and resources with the aid of indigenous agricultural techniques.Additionally, it is traditional medicines (herbs and spices) and medical practices. As an example, traditional scientific practices like Ayurveda, Yoga, Unani, Siddha, and Naturopathy are regarded in India.Ways of Expression: Traditional[2] Knowledge is frequently passed down orally from generation to generation and is developed from experience gained over many years and tailored to the local lifestyleand surroundings.[3]

It belongs to all and sundry as a collection and is preserved through tales, songs, folklore, proverbs, cultural values, ideals, rituals, etc.

i. Culture

The indigenous way of life is essential to indigenous groups because it links them to their particular history and identity. The subculture is likewise vital for other humans to understand that they will recognize and honour the histories of different human beings' corporations.

Indigenous way of life refers back to the precise traits of a society of indigenous

1 Veena (Editor), traditional and indigenous knowledge: IP Perspective, First Edition 2007, The Icfai University Press, Hyderabad, India

2 *Cultural Survival: Maintaining Culture despite Outside Influence - Lesson | Study.Com*, study.com/academy/lesson/cultural-survival-maintaining-culture-despite-outside-influence.html. Accessed 15 Apr. 2025.

3 Id.

humans. These cultures had been developed and cultivated for generations and have deep historical roots

ii. Traditional Art and Craft

Indian indigenous communities are known for their unique art forms that reflect their rich cultural heritage. These include:

Pottery: Often decorated with intricate designs that tell stories of their ancestors.

Weaving: Each community has its patterns and colors, representing its identity.

Jewellery Making: Handcrafted pieces using local materials, often with spiritual significance.

iii. Music and Dance Forms[3]

Music and dance are vital parts of indigenous culture. They serve as a means of expression and community bonding. Some notable aspects include:

Folk Songs: Passed down through generations, these songs often narrate historical events or daily life.

Traditional Dances: Each community has its own dance forms, performed during festivals and rituals, showcasing their connection to nature.

Instruments: Unique instruments like the dhol and flute are commonly used in performances.

iv. Festivals and Rituals

are vibrant celebrations that reflect their beliefs and traditions. Key features include:

Harvest Festivals: Celebrated to thank nature for its bounty, often involving communal feasting.

Rituals: Many communities perform rituals to honor their ancestors and nature spirits, emphasizing their spiritual beliefs.

Cultural Exchange: Festivals often serve as a platform for different tribes to share their traditions, fostering unity.

The cultural practices of indigenous communities are not just traditions; they are a way of life that connects them to their history and environment.[4]

III. The Heart in Every Word: Why Indigenous Languages Matter

Language is not just a way to speak it's a way to live, to feel, to remember. For Indigenous peoples, language carries stories, songs, names of ancestors, and the wisdom of generations. It holds the rhythm of rivers, the memory of mountains, and the spirit of communities.

But many Indigenous languages are vanishing. Some have only a few speakers left. Others have been silenced by centuries of colonization, where children were punished

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[4] Id.

for speaking their mother tongue and entire communities were made to feel ashamed of their voice.

This loss is more than a cultural tragedy-it's a human one. When a language dies, a part of the world's soul fades. A way of thinking, seeing, and being disappears.[5]

That's why protecting Indigenous languages is not just about history-it's about justice. Language is a human right. Everyone deserves to speak the language of their heart, to pass it on to their children, and to hear it in schools, public spaces, and even courtrooms.

Reviving Indigenous languages means more than translation-it means respect. It means governments supporting language education, recognizing Indigenous tongues in law, and listening when people speak in their voice.

-When we protect Indigenous languages, we honour identity. We recognize that every language is a living connection to land, love, and life. Because no language is ever "small" when it carries the world of a people.[6]

IV. Indigenous Peoples and Their Land: More Than Just Ownership

For Indigenous peoples across the globe, land is not just soil and trees it's life. It's the heart of their identity, culture, spirituality, and economy. Their lands, territories, and resources are sacred, passed down through generations and managed communally. This deep-rooted connection to the Earth is vastly different from today's dominant systems, which are often driven by private ownership, profit, and large-scale development.

Unlike systems that focus on individual titles or property rights, Indigenous communities traditionally operate under collective stewardship. Their lands are shared and protected by the group, with decisions often made at the village or regional level. These values prioritize harmony with nature and sustainability, not exploitation.[7]

Guardians of Earth's Richest Biodiversity

Indigenous peoples manage around 20% of the Earth's land, and these territories house 80% of the planet's remaining biodiversity. That's not a coincidence. It's proof that Indigenous communities are among the most effective protectors of the natural world. Their traditional knowledge and sustainable practices help maintain the balance of ecosystems, forests, rivers, and wildlife.

This stewardship is critical not only for their well-being but for everyone. Respecting Indigenous land rights is essential in fighting climate change and halting biodiversity loss-two of the most urgent crises we face today.[8]

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5 *Protection to Indigenous Knowledge: A Study of Flawed ...*, www.manupatra.com/roundup/363/Articles/Protection%20to%20Ind.pdf. Accessed 19 Apr. 2025.

6 Id.

7 Id.

8 *Indigenous Peoples' Collective Rights to Lands, Territories ...*, www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Peoples-Collective-Rights-to-Lands-Territories-Resources.pdf. Accessed 19 Apr. 2025.

V. Positive Changes Around the World

Some countries have taken steps to recognize and protect Indigenous peoples' rights to land and resources:

Australia: Over 20% of the land is legally under Indigenous ownership through native title and statutory rights.

Canada: The formation of Nunavut in 1999 gave the Inuit people a self-governed homeland through the country's largest Indigenous land agreement.

Congo: Passed a law in 2011 protecting Indigenous land rights, even without formal titles.

India: The Forest Rights Act (2006) grants tribal communities ownership over forest land and requires their consent before relocation.

Indonesia: A 2013 court ruling returned legal rights of forest lands to Indigenous communities, removing them from State control.

New Zealand: The Treaty of Waitangi preserves Mâori rights to lands and resources, enforced by a permanent tribunal.

Norway: The Finnmark Act (2005) created systems to assess land claims by the Indigenous Sami people.

Panama: Indigenous territories known as *comarcas* are recognized in the constitution, and additional laws have expanded collective land titling.

Russia: Indigenous lands are acknowledged through designated "Territories of Traditional Nature Use.

United States and Colombia: Both have reserved areas for Indigenous groups to govern and live in accordance with their traditions.[9]

Ongoing Struggles

Despite this progress, in many countries, Indigenous communities still face serious obstacles. Their rights are often ignored or poorly enforced. Mapping and legally recognizing their lands can be slow or never completed. Worse, governments and corporations often move forward with major projects like mining, logging, dams, and plantations-without consulting or getting consent from the Indigenous people who live there.

Even when Indigenous communities have formal ownership, these rights are sometimes undermined by contradictory laws or a lack of enforcement. And those who stand up to defend their lands activists and leaders often face intimidation, violence, or worse.[10]

Forced evictions, land grabs, and destruction of sacred lands are still happening. These violations rob communities not only of their homes and livelihoods but also of their dignity, identity, and future.

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[9] Id.

[10] Id.

VI. The Bigger Picture: Sustainable Development

The world has promised to "leave no one behind" through the 2030 Agenda for Sustainable Development, but this goal will not be met unless Indigenous land rights are respected and protected. Land rights are a foundation for improving Indigenous peoples' access to education, healthcare, food, and justice. Without land, many of these basic human rights become nearly impossible to achieve.[11]

International Legal Safeguards: Global Recognition and Responsibility

Over the years, international institutions have increasingly acknowledged the plight and rights of indigenous peoples. Two major instruments underscore this commitment:

1. ILO Convention No. 107 (1957)

This was the first international treaty focused on indigenous and tribal populations. It emphasized protection and integration but was later criticized for promoting assimilation into mainstream society, rather than preserving indigenous identity.

2. ILO Convention No. 169 (1989)

A significant improvement over its predecessor, this convention emphasizes respect for indigenous cultures, participation in decision-making, and control over their lands and resources. It reaffirms that indigenous peoples must not be forcibly removed from their lands and must be consulted on matters affecting their lives.

3. UN Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007

Adopted by the United Nations General Assembly, this landmark declaration asserts the rights of indigenous communities to self-determination, cultural preservation, education, health, and land. It reinforces that indigenous peoples should have free, prior, and informed consent regarding development projects on their lands.

These international norms serve as moral and legal compasses, nudging nations toward more inclusive policies. However, their true effectiveness lies in domestic implementation.[12]

VII. India's Commitment: Constitutional and Legal Protections

India, with one of the largest indigenous populations in the world, has enshrined multiple safeguards in its Constitution and laws to protect tribal communities. Here's how:

1. Constitutional Provisions

Article 46 directs the state to promote the educational and economic interests of Scheduled Tribes and protect them from social injustice and exploitation.

The Fifth Schedule outlines special governance structures for tribal areas in central India, giving the President the power to declare Scheduled Areas and the Governor the authority to direct state laws in those areas.

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[11] Id.

[12] Id.

The Sixth Schedule provides for autonomous councils in northeastern states, empowering tribal communities to govern themselves in matters like land, culture, and local governance.

Reservation in Education and Jobs: STs enjoy reservation benefits in public education and government employment to address historical disadvantages.

2. Statutory and Policy Support

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, also known as the Forest Rights Act, restores the rights of forest-dwelling tribes over land and resources they have used for generations.

Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) ensures that Gram Sabhas (village assemblies) in tribal areas have significant powers over land, minor minerals, and local governance, upholding traditional decision-making systems.

These legal frameworks collectively create a protective umbrella for indigenous communities in India. Yet, challenges remain in implementation, especially when economic development clashes with tribal land rights.[13]

VIII. Struggles in Practice in Between Law and Reality

Despite robust legal protections, indigenous communities continue to face numerous hardships:

Displacement due to mining, dams, and infrastructure projects: Often, development is pursued at the cost of tribal habitats, without adequate consultation or compensation.

Violence and suppression: Protests against land acquisition or exploitation are sometimes met with state force.

Lack of access to justice: Language barriers, lack of awareness, and systemic bias often make it hard for tribal people to assert their rights legally.

Underrepresentation in policymaking: While legal mechanisms exist, indigenous voices are still marginal in decisions affecting their futures.[14]

The Intersection of Indigenous Rights and Environmental Justice: A Reflection on the 18th Session of the 36th LAWASIA Conference

At the 18th session of the 36th LAWASIA Conference 2023 in Bengaluru, a crucial conversation unfolded around the theme "Constitutionalism and the Rights of Indigenous Peoples." The session brought together legal minds, advocates, and academics to dive into the challenges that Indigenous communities face, particularly regarding the protection of their lands, cultures, and resources. The panel explored the delicate balance between environmental conservation and Indigenous rights, shedding light on ongoing struggles, judicial perspectives, and the need for systemic change.

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[13] Id.

[14] Id.

IX. The Heart of the Discussion: Tensions Between Rights and Environmental Protection

One of the central themes of the panel was the tension between environmental protection and the rights of Indigenous peoples. Indigenous communities often live in close relationship with their land, seeing themselves not as owners, but as guardians. Their very existence and culture are intertwined with their environment. However, environmental laws, designed to protect the planet, can sometimes infringe upon the way Indigenous people live, making it difficult for them to continue their traditional practices.

Jonathan Liljeblad, an Associate Professor at the Australian National University, pointed out how certain environmental legislation, though well-intended, ends up preventing Indigenous peoples from living the way they always have. He emphasized that the substantive rights of Indigenous communities such as the right to land, health, culture, religion, and access to natural resources are deeply connected to the environment. These rights aren't just legal technicalities they are essential to their survival. According to Liljeblad, in the context of Indigenous people, environmental protection cannot be separated from the protection of human rights.[15]

The Indian Perspective: A Constitutional Paradox

Moving to the Indian context, the conversation took a turn towards the constitutional recognition of Indigenous rights. Senior Advocate Harin P. Raval gave a compelling overview of how India's Constitution is meant to protect Indigenous communities, pointing out the creation of the 1994 Declaration on Indigenous Rights and the adoption of the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) in 2007. These legal frameworks advocate for the survival, dignity, and well-being of Indigenous peoples, which Raval highlighted as a significant step forward.

However, Senior Advocate Aditya Sondhi brought a sobering reality to the table, expressing a disconnect between India's constitutional ideals and the lived experiences of Indigenous peoples. He described how, despite constitutional protections, the Indigenous community in India is often marginalized and appropriated. Sondhi delved into judicial decisions that have perpetuated stereotypes about Indigenous people, such as the Chebrolu v State of Andhra Pradesh case, where certain communities were referred to as "primitive" in the court's language.[16]

Modern Challenges: The Forest Dwellers Act and "Othering"

The conversation moved to modern legislative challenges faced by Indigenous peoples. Sondhi pointed out how the Forest Dwellers Act-designed to protect forest

[15] "The 36th LAWASIA Conference 2023: The Fine Line between Indigenous Rights and Environmental Protection." *Supreme Court Observer*, 28 Nov. 2023, www.scobserver.in/journal/lawasia-conference-2023-the-fine-line-between-indigenous-rights-and-environmental-protection/.

[16] Id.

lands-undermines the historical rights of Indigenous peoples who have lived harmoniously with nature for centuries. Instead of acknowledging the deep connection between Indigenous peoples and the land, the Act often treats them as intruders in their homeland, prioritizing environmental concerns over their rights.

The panel also touched on how Indigenous communities are often treated as "others" within mainstream society. This "othering" isn't just a social phenomenon-it's embedded in legal language. In courtrooms, Indigenous people are frequently portrayed through the lens of prejudice, with language that distances them from modern, civilized society. This reflects a larger societal narrative that often fails to recognize the dignity and rights of Indigenous peoples, reducing them to stereotypes or even caricatures.

X. Reimagining Constitutionalism: A Call for Change

Sondhi raised a thought-provoking question: What would the Indian Constitution look like from an Adivasi perspective? His critique of the current system was sharp-India's constitution may theoretically protect the rights of Indigenous peoples, but in practice, the reality often falls short. One glaring issue he highlighted was the lack of representation for Indigenous communities in the judiciary, pointing out that there has never been a Scheduled Tribe judge on India's Supreme Court.[17]

Sondhi also expressed frustration with the way issues related to Indigenous communities are often reduced to entertainment rather than serious legal discussions. Whether in the media or legal circles, Indigenous struggles are frequently trivialized, keeping them at the fringes of justice and equity.

Moving Forward: Legal Reforms and Greater Awareness

The session concluded with a unified call for legal reforms and a paradigm shift in how Indigenous rights are viewed. The speakers emphasized that greater awareness is needed-not only within legal systems but across society-about the deep interconnections between human rights and environmental justice. Protecting Indigenous rights is not just about respecting their culture; it's about honoring their contributions to a sustainable future for all of humanity.

As the conversation ended, it became clear that recognition-legal, social, and cultural is the key to a just future. By acknowledging the unique relationship Indigenous communities have with their land, and actively safeguarding their rights, we can work toward a world where both human rights and environmental sustainability go hand in hand.[18]

The Vital Role of Indigenous Communities in Environmental Conservation: A Call for Collaboration

Indigenous communities, numbering over 476 million across more than 90 countries,

[17] Id.

[18] Id.

represent a significant part of the world's population. Despite occupying a considerable portion of the earth and speaking thousands of languages, these communities continue to face challenges in securing their land rights and proper recognition. Although many organizations work tirelessly to protect these communities, the heart of the issue remains the conflict over land. This conflict is often sparked when natural habitats are designated as World Heritage Sites under the jurisdiction of UNESCO. While these designations aim to preserve the environment, they inadvertently disrupt the daily lives of Indigenous people, often without their consent.

Indigenous communities are not only vital because they are the original stewards of their lands, but also due to their invaluable knowledge about how to care for and conserve their environment. Traditional Ecological Knowledge (TEK), passed down through generations, has enabled these communities to live sustainably with nature for centuries. But as deforestation and land degradation accelerate worldwide, we must look to these communities for insights into how we can repair the damage and move forward.[19]

The Disruption of Natural Harmony

The root cause of many conflicts between Indigenous communities and external authorities is the shift in land management practices. When Indigenous lands are designated as protected areas or World Heritage Sites, the legal framework often falls under UNESCO's jurisdiction. This change brings in external personnel, equipment, and policies, all of which can disrupt the Indigenous way of life.

Indigenous people, however, have been living in harmony with nature for millennia. Their knowledge of biodiversity, passed down through generations, is not only practical but sustainable. A report by the ICCA Consortium revealed that 21% of the world's land is preserved thanks to Indigenous conservation practices. Despite some land losses since 2000, areas managed by Indigenous communities have shown lower rates of deforestation compared to non-Indigenous-controlled regions.[20]

The Battle Over Land: A Global Struggle

The most heartbreaking aspect of this struggle is the violence faced by Indigenous communities when their land is threatened. From 2009 to 2019, numerous Indigenous people in the Amazon rainforest lost their lives due to conflicts over land use. The tension between development, conservation, and Indigenous rights often leads to devastating consequences. Despite this, their efforts to safeguard the land continue to be critical.[21]

The Unique Contribution of Traditional Ecological Knowledge

One of the most crucial contributions of Indigenous communities to environmental

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[19] Id.

[20] Id.

[21] Id.

conservation is their Traditional Ecological Knowledge (TEK). This knowledge encompasses a deep understanding of natural processes, from animal behavior to seasonal patterns. It also includes knowledge about medicinal plants, water sources, and indicators of environmental change.

At the heart of this wisdom lies a fundamental belief: humans are a part of nature, not separate from it. This worldview stands in stark contrast to the dominant capitalistic mindset, which often exploits natural resources without considering the long-term consequences. In the face of a rapidly changing climate, the lessons of sustainability offered by Indigenous communities are invaluable.[22]

TEK is passed down orally, through storytelling, ceremonies, and hands-on experiences. This knowledge provides crucial tools for monitoring biodiversity and recognizing ecological imbalances or threats. When applied, TEK can be used to identify the early warning signs of environmental degradation, offering insights that can help shape better policies for biodiversity conservation.

Sustainable Practices: The Key to Conservation

In addition to their knowledge, Indigenous people have developed sustainable land management practices that help conserve biodiversity while also meeting their community's needs. These practices are tailored to the specific ecosystems they inhabit and are based on principles of adaptability, long-term stewardship, and strength.

For example, agroforestry-which combines agricultural and forestry techniques-helps maximize land use without harming the environment. Rotational agriculture, traditional seed-saving, and community-managed forests are other practices that sustain biodiversity while promoting soil fertility, water retention, and habitat diversity.[23]

One technique that stands out is controlled burning, also known as cultural burning or firestick farming. Indigenous cultures have long used fire as a tool to regenerate forests, stimulate plant growth, and prevent the occurrence of uncontrolled wildfires. Wildfires can have devastating effects on biodiversity, but when done strategically, controlled burning helps maintain the delicate balance of the forest ecosystem.

Adapting to Climate Change

As the world faces more frequent and intense climate events, Indigenous knowledge systems offer resilient solutions for adapting to these changes. Indigenous communities have developed strategies for coping with environmental shifts, such as diversified livelihoods, flexible land use practices, and the use of traditional ecological calendars.

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[22] Id.

[23] "Indigenous Practices for Environmental Preservation - Aura: Monthly E Magazine." *Aura*, 28 May 2024, auramag.in/indigenous-practices-for-environmental-preservation/.

For example, one study applied Indigenous knowledge to monitor seasonal rainfall patterns. By tracking changes in vegetation, animal behaviour, and other ecological indicators, Indigenous communities can predict climate change long before modern technology can. This adaptive knowledge can help both Indigenous and non-Indigenous communities prepare for climate-related challenges.[24]

Collaborative Conservation: A Global Effort

Indigenous communities are not only fighting to protect their lands; they are also partnering with others to ensure long-term conservation. One such example is the Melipona bee conservation initiative in the Amazon. These stingless bees, prized for their medicinal honey, are facing serious threats due to deforestation, pesticide use, and climate change. However, Indigenous women in the Amazon are working with Conservation International to protect the Melipona bee population through traditional beekeeping practices. This collaboration provides training, funding, and networking opportunities to strengthen conservation efforts in the region.[25]

XI. Case Study

Dhanpat Seth Ors v Nil Kamal Plastic Ltd. AIR 2008 HP 23

The plaintiff filed a suit against the defendants for a permanentinjunction as the defendants were infringing his patent rights. The patent device used for manually hauling agricultural products was an improvementover a local productcalled Kilta. Kilta is the product that is used for carrying produce, including agricultural produce. As per the plaintiffs, they visualized the invention in 1999, progressively worked on it, and formally sought a patent in May 2000. Although the patent was officiallyawarded in their Favor in July 2005, its effective date traces back to the initial application date, namely in May 2002.

The fundamental design of the traditional Kilta and the 'devices' created by both the plaintiffs and the defendant are practically identical**.** A visual examination of the three items **i**mmediately reveals that the products manufactured by the plaintiffs and the defendant closely resemble the traditional Kilta. The only distinction lies in the materials used; the Kilta is crafted from bamboo, while the version produced by the plaintiffs is constructed from polypropylene copolymer. [26]

Decision of the High Court:

The court held that the mere grant of a patent in favour of the plaintiffs by itself does not mean that the plaintiffs were entitled to any injunction. The device developed by the plaintiff was, in fact, the result of traditional knowledge and aggregation/ duplication of known products, such as polymers, and therefore cannot be said to be an invention. The plaintiffs were therefore not entitled to any injunction. [27]

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[24] Id.

[25] Id.

[26] Kush Kalra's landmark judgement on intellectual property rights, First Edition 2014, Central Law Publications, Allahabad

[27] Id.

In conclusion, environmental law plays a critical function in shielding the rights of Indigenous peoples, as their lives, cultures, and traditions are deeply linked to nature. Recognizing and respecting Indigenous knowledge and land rights is important for sustainable improvement and environmental justice. Moving forward, it's far crucial that laws not only defend the environment but also empower Indigenous groups as key partners in conservation efforts.

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I, Dr. Tharanatha do hereby declare that the above contents are true to the best of my knowledge.

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Editor

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