

ONLINE ISSN 2582-6476

# ASGAR KHAN ADVOCATE LAW JOURNAL



**VOLUME 4 ISSUE 1**

# TABLE OF CONTENTS

## ***EMPOWERMENT OF MALE RIGHTS: A NEED IN THE CURRENT SCENARIO***

Himanshi Kathait

## ***ARTICLE 15 OF THE INDIAN CONSTITUTION***

P Monika

## ***LGBTQ+ FAMILY RIGHTS: CHALLENGES AND PROGRESS***

Parul Sharma

## ***LEGALITY OF LOUDSPEAKERS IN INDIA***

Yagyawalkya Sharma

## ***UTTARAKHAND'S UNIFORM CIVIL CODE***

Aman Sahu

## ***GENDER-NEUTRAL JUSTICE AGAINST SEXUAL VIOLENCE IN INDIA***

Harshika Arya

# TABLE OF CONTENTS

***DOMESTIC VIOLENCE AGAINST WOMEN'S  
IN INDIA: A PUBLIC NUISANCE***

Dhruv Vijay

***LEGAL PROTECTION OR LICENSE FOR ABUSE?  
A CRITICAL ANALYSIS OF POLITICAL  
IMMUNITY LAWS AND THEIR IMPACT ON  
DEMOCRATIC GOVERNANCE***

Trisha Lath

***IMPACT OF CYBERSECURITY LAWS ON  
DIGITAL PRIVACY***

Abhishek Singh

***UNIFORM CIVIL CODE: IMPLEMENTATION,  
ISSUES AND SUGGESTIONS***

Samia Asif

***SOCIAL MEDIA REGULATION:  
BALANCING FREEDOM OF SPEECH  
AND ACCOUNTABILITY***

Aarthi A

***COPYRIGHT LAW ON MEDIA INDUSTRY***

J Ranjusha

# TABLE OF CONTENTS

## ***ANIMAL CRUELTY: A NEGLECTED PHENOMENON DEMANDING ATTENTION***

Himanshi Kathait

## ***LAW AND POVERTY***

Ritu Kumari

## ***SHOULD INDEPENDENT DIRECTORS OF A COMPANY OWN STOCK OPTIONS?***

Biyas Ghosal

## ***FOOD ADULTERATION: A MENACE TO OUR SOCIETY***

Himanshi Kathait

## ***THE INTERSECTION OF MEDICAL LAW AND MENTAL HEALTH: LEGAL RIGHTS AND PROTECTION***

Aarthi A

# **EMPOWERMENT OF MALE RIGHTS: A NEED IN THE CURRENT SCENARIO**

BY HIMANSHI<sup>1</sup>

## **ABSTRACT**

Law is made for the people and by the people. Everyone is equal before law and no one is entitled to any special protection under law. However, the constitution providing power to the legislature to make special provisions in favor of women indicates a different perception. To promote women empowerment, the legislature failed to protect the male rights. The increasing crimes against men in the present scenario are the biggest example.

The research paper focuses on the challenges faced by men and initiatives taken to curb the issues. There are various instances where women take undue advantage of the laws favoring them and make false accusations against men. Although, there are some legal provisions protecting both male and female rights but, due to shortcomings in the legislations and negligence on the part of our system, male crimes have become a big issue. However, the law enforcement bodies are not the only one at fault, our society also plays a negative role in visualizing men as a being void of emotions.

The research sheds light on the movements promoting male rights and points the loopholes in the Indian legal system due to which the male crimes are increasing. Qualitative analytical research is performed which relies upon the constitution, case laws, articles, and textbooks. Gender is socially constructed and bringing change in the mentality of the society matters. Apart from it, making amendments in the laws favoring women also contributes in overcoming the obstacles faced by men in name of false accusations.

**KEYWORDS:** Men Empowerment, Male Rights Movement, Male Crimes, Men Victim, Gender Based Violence

## **INTRODUCTION**

---

<sup>1</sup> 5<sup>th</sup> year Law Student at Chander Prabhu Jain College of Higher Studies and School of Law (CPJ)

Change is an indispensable part of life and it is necessary to adapt to the changes accordingly to sustain in the society we live in. Law and society are co-related to each other as law is made for the people to follow and without any legal norms a society cannot function smoothly. Law shall be modified or amended according to the changing times. For instance, same sexual intercourse was decriminalized to protect the dignity and privacy of the LGBTQIA community.<sup>2</sup>

The Indian Constitution guarantees right to equality (Article 14) and right to non – discrimination based on gender (Article 15) to everyone. However, the legislature is granted with the power to make special provisions for women<sup>3</sup> and the rationale behind introducing it was based on two approaches “vulnerability” and “suitability.” Historically, the patriarchal system was prevalent and women and men were not treated equal. Women were considered inferior to men and their sole responsibility was to do household chores and to upbringing the children. While men were the breadwinners of the family and enjoyed a dominant position over women. There was a need to introduce provisions to save and protect women at that time. However, with time the situation has changed. Both men and women have the freedom to practice any profession of their choice and gradually the patriarchal system has faded. Is it justified that in the present scenario where all are treated equal, women are entitled to special privileges compared to men?

The increasing number of gender-based violence against men has taken a toll. False charges of dowry, harassment, rape, and adultery are on rise. Out of 1000, males 51.5% experienced violence at the hands of their wives/intimate partner at least once in their lifetime and 10.5% in the last 12 months. The most common spousal violence was emotional (51.6%) followed by physical violence (6%) (*Jagbir Singh Malik & Anuradha Nadda, 2019, p.36*). There is no doubt that women are prone to heinous crimes but at the same time, the increasing crimes against men cannot be neglected. Considering the “so called” gender stereotypes framed by our society regarding male and female, cases related to male crimes are not paid heed to and remain uncovered. The objective of the research unravels the biasness faced by men in different legal aspects. To satisfy the objectives, qualitative analytical research is performed and the research relies on the constitution, case laws, articles, and textbooks. The government needs to introduce strict laws to act against false or fake cases against men in terms of alimony, custody, paternity test, violence, rape, adultery, and harassment. The provisions

---

<sup>2</sup> Navtej Singh Johar and Ors. vs. Union of India ((2017) 9 SCC 1)

<sup>3</sup> Article 15(3) of The Indian Constitution, 1950

favoring women shall also be modified considering the adverse effects these laws have on the male rights.

### **MEN'S RIGHTS MOVEMENTS: A GLOBAL STUDY**

Historically, women were considered as a vulnerable section of the society and were deprived of rights and liberty that men were entitled to. To raise voice against this issue, feminism movements took place. The first wave of feminism mainly focused on the women's right to vote, the second wave focusing on the women's property rights, education rights, equal pay, reproductive rights, and the last wave of feminism raised equality concerns for black women, women from minority backgrounds and homosexual women. In response to the second wave of feminism, Men's Liberation Movement started in the first half of 1970s with the objective to free men from the traditional gender roles and to curb the negative impacts of women favoring laws.

Several movements were introduced to promote and protect the men's rights in different countries around the world. In Austria, three organizations were formed namely "*The League for Men's Rights (1926)*", "*Justitia League for Family Law Reform (1927)*" and "*Aequitas World's League for the Rights of Men*" with the aim to form an equitable and balanced family law system promoting co-parenting. The "*National Coalition for Men*" and "*National Organization for Men against Sexism (NOMAS)*" were founded in US and worked towards promoting gender equality and focusing in areas such as custodial rights, co-parenting, and discrimination in workplace. Other organizations like "*The Canadian Association for Equality*" in Canada and "*Father's Rights Movement*" in US also aimed to protect the men's rights and to build an equitable society for all.

The Men's Rights Movements in India began in 1990s. "*The Pirito Purush, Purush Haq ka Samrakshan Samiti, Patni Atyachar Virodhi Morcha*" were founded in response of S. 498 IPC. The SC in a judgement held that the section is to prevent dowry menace but there are many instances where the complaints are not bonafide and filed with oblique motive.<sup>4</sup> and initiates towards promoting gender equality and protecting men from false allegations of violence. "*The National Coalition for Men*" founded in Kolkata also aims for the same. A significant contribution has also been made by *Vastav Foundation* that introduced "*Malendar*" and recognized Father's Day and International Men's Day. The foundation also

---

<sup>4</sup> Sushil Kumar Sharma vs Union of India & others (JT 2005 (6) 66)

organized campaigns like “*Break the Silence*” and “*Challenge the Stereotypes*” to encourage and motivate men to speak about their mental health and their fears freely.

### **UNRAVELING THE CHALLENGES FACED BY MEN**

#### **DOWRY**

Section 498A IPC punishes the husband or his relatives for treating the woman with cruelty, with three years’ imprisonment and fine. The provision was introduced to reduce the dowry menace and protect women. Section 113B of Indian Evidence Act, 1872 states that the court shall presume the case of dowry death if it is shown that the deceased was subjected to cruelty due to the demand of dowry. However, the section is misused by women and her family. In a shocking incident, a false incident of woman suicide was reported in the year 2022 in which the husband and his parents were accused of cruelty in the name of dowry. However, in a recent case, the Calcutta HC labeled the misuse of the section as “Legal Terrorism.” According to the data of National Crime Records Bureau (NCRB), 2 lac people are arrested over dowry offences but only 14.4% of the accused are convicted as the rest are false (*Abhinav Garg, 2014*).

In India, out of the cases put to trial under 498A, 80 per cent is the acquittal rate which means the cases lack evidence (*Avneet Arora, 2018*). In *Savitri Devi vs Ramesh Chand*<sup>5</sup>, the court observed that the misuse of the section has hit the foundations of marriage and has proved to be toxic for the society. Although the intention of the legislature was bonafide in its initial stage, women taking undue advantage of it is not justified.

#### **CHILD CUSTODY**

Under the Hindu personal law, the custody of the children is with the father or the mother, taking into consideration the welfare of the child. The Muslim law is based on the principles of Shariah and grants custody of the children to the mother till a specific age. Both mother and father are considered the natural guardians but in most of the cases the custody of child is given to mother. The presumption of women having a caring nature towards the child and the socially constructed gender roles results in the custody being awarded to the mother which adversely affects the child’s mind. Women use their children as a pawn to abuse men due to

---

<sup>5</sup> 2003 Cri LJ 2759



which their behavior get influenced and they show no respect and affection towards their father.<sup>6</sup>

### MAINTENANCE & ALIMONY

There are several acts which deals with the maintenance rights of women. However, the legislations which deal with men's maintenance rights are "The Hindu Marriage Act, 1956 and The Parsi Marriage and Divorce Act, 1936. It is quite surprising that Cr P.C., i.e., the secular law, failed to provide equal rights to men and women. The increasing amount of false adultery and cruelty cases filed by women adversely impacts the mental health of men.<sup>7</sup> With rising incomes, increased ego, and professional competition between the partners, the number of divorce cases are rapidly rising. Education is also one of the variables due to which women decide to end up the marital compatibility (*Pinto Vincent & Laveena D'Mello, 2018, p.153-154*). Increasing number of divorced women indicates the false cases of cruelty filed by them against their husbands.

In a recent judgement, it was held that even if cruelty and occasional adultery are proved in a case, the right to alimony will not be denied to the wife.<sup>8</sup> If the husband is guilty, then he is liable to pay alimony and if the wife is guilty, then also the husband must pay the alimony. How far the statement is justified? Is this gender equality which our constitution aims for?

### HARASSMENT

Sexual Harassment is not limited to only females but men also face harassment at workplace, institutions or at social media platforms. As per the survey conducted by Save Family Foundation, out of 1,00,000 males, 98.2% faced domestic violence, wives and their family being the perpetrators (*Lalit Bhardwaj and Babu Shivnath Agrawal, 2022, p.7*)

A male student chose suicide as an option after getting harassed by his female classmates who labelled him effeminate. On November 26, 2023, Priyanshu Yadav, a 16-year-old boy took his life due to cyberbullying. Derogatory comments were passed on his sexuality and upbringing as he was a queer (*Gazi Abbas Shahid, 2023*). On a personal note, men acting as a feminine character or having a soft appearance are bullied and comments like "hijra" or "fatherless behavior" are passed on their social media accounts.

---

<sup>6</sup> Dr. Ashish Ranjan vs Dr. Anupama Tandon (2010 (12) Scale 577.32

<sup>7</sup> Narayan Ganesh Dastane vs Sucheta Narayan Dastane (1975 AIR 1534, 1975 SCR (3))

<sup>8</sup> SH Pradeep Kumar Sharma vs SMT Deepika Sharma (2021 CRL. REV. P. 417)

Men are also sexually harassed at workplace. They are forced to get into an intimate relationship with the female colleagues who are at a superior position. A recent incident took place where a Bengaluru intern accused the manager of the company of forcing himself on the intern and inappropriately touching him (*Sanath Prasad, 2023*)

The provisions introduced under IPC, 1860 and the Sexual Harassment Act for Workplace, 2013 punishes the perpetrators sexually harassing women. The disappointed part is that there are no men centric laws related to sexual harassment.

### RAPE

Rape is one of the heinous crimes. It does not matter what the gender is, rape laws shall be gender neutral. As per reports by the Centre for Disease Control and Prevention (CDC), among the male rape victims, 13.5% had female perpetrators involved (*Lalit Bhardwaj and Babu Shivnath Agrawal, 2022, p.6*). In a recent incident of 2023, which took place in Jalandhar, four women abducted a man, kept him as a hostage and raped him by taking turns after forcefully drugging him. An auto driver forced a drunk man after arguing him over fare amount and took away his ATM card in Ghatkopar. Another incident where two Bangladeshi men belonging from LGBTQ+ community were sexually assaulted by three men in Delhi.

Men are also charged with false accusations of rape by women. A woman residing in Gurugram made a false story where she accused the man for raping her to extort Rs 10 lac from him.<sup>9</sup> All these cases prove that the misuse of women centric laws is not only violating men rights<sup>7</sup> but also degrading their self-respect.

### PATERNITY LEAVE

There is no mandatory provision or law relating to paternity leave in India except the public sector under Central Civil Services Leave Rules. The responsibility of upbringing the child does not solely lies with the mother. Both mother and father play a significant role in inculcating good values to their children and providing maternity leave to women and denying paternity leave is not justified. Fathers face a lot of stress while doing their job and at the same time fulfilling their duties towards their child so it is upon the legislature to

<sup>9</sup> Woman files rape complaint, tries to extort Rs 10 Lakh; held

<https://timesofindia.indiatimes.com/city/gurgaon/woman-files-rape-complaint-tries-to-extort-10l-held/articleshow/100515468.cms#:~:text=GURGAON%3A%20A%20woman%20was%20arrested.against%20her%20on%20May%202020.>

introduce provisions supporting paternity leave and promoting gender equality. Introducing the provisions of paternity leave will not only promote gender justice but also help the mothers in reducing their dual stress of taking care of the newborn and doing household work.

## **LAWS SUPPORTING MALE RIGHTS IN INDIA: A COMPREHENSIVE STUDY**

### **THE CONSTITUTION OF INDIA, 1950**

*Article 14* ensures that law is equal and everyone is entitled to equal protection under law regardless of the gender, race, or ethnicity. Section 497 IPC was decriminalized by the Supreme Court<sup>10</sup> as it violated the principle of gender equality by punishing the men for adultery.

*Article 15* prohibits discrimination based on five grounds – sex, ethnicity, place of birth, caste, and nationality.

*Article 16* ensures equal employment and appointment opportunities to everyone and prohibits discrimination on seven grounds – religion, sex, caste, race, descent, place of birth and residence.

*Article 39(a)* ensures decent and adequate standard of living to both men and women equally.

*Article 39(d)* ensures equal wages for equal work to both men and women.

### **INDIAN PENAL CODE, 1860**

*Section 377* criminalizes sodomy. The provision punishes non-voluntary sexual act between two men with life imprisonment or imprisonment of 10 years and fine.

*Section 363* punishes the act of enticing any minor male or female out of their lawful guardianship, without the consent of guardian, with an imprisonment of 7 years and fine.

### **THE HINDU MARRIAGE ACT, 1956 (HMA)**

*Section 24 of HMA* provides right to temporary alimony and maintenance both to wife and husband. The section gives right to expense of proceeding as well as monthly sum during the

---

<sup>10</sup> Joseph Shine vs Union of India (2018 SCC OnLine SC 1676)

period of proceeding if the petitioner is not entitled to any independent source of income or support of whatever kind.

*Section 25 of HMA* provides right to permanent alimony and maintenance both to wife or husband in form of gross sum, monthly sum, or periodical sum. The income and property sources are considered by the court while giving a just and fair decision.

#### THE PARSI DIVORCE AND MARRIAGE ACT, 1936

*Section 39* of the act entitles the right to temporary alimony and maintenance during the pending litigation to both wife or husband in form of weekly or monthly sum as the court finds just according to the circumstances.

*Section 40* of the act provides the right to permanent alimony and maintenance to both wife or husband in form of gross sum, monthly sum, or periodical sum as the court finds just and equitable taking into consideration the sources of income and property of both the parties.

#### CIVIL SERVICE LEAVE RULES, 1972

The Central government introduced a right to paternity leave under *rule 551 (A) of the Civil Service Leave Rules, 1972*. The rule provides for 15 days leave to the male employees with less than 2 surviving children who are engaged in a public sector. The leave must be availed either before 15 days of delivery or within 6 months of the delivery date.

### **LOOPHOLES IN THE LEGAL SYSTEM**

#### NO LAW FOR PATERNITY LEAVE

There is not even a single law granting Paternity Leave in India. Paternity Benefit Bill, 2017 was introduced in the Parliament to provide paternity benefit to men after becoming a father in certain establishments specified in the bill itself (*Shri Rajeev Satav, 2017*). However, the bill was not given statutory recognition in India. The features of the bill are as follows:

- Paternal benefits to the natural as well as adoptive parents.
- Payment of paternity benefit at the rate of the average daily wage for the time he was absent, i.e., before the date of delivery.
- The notice for availing the benefit shall be sent before 7 days of the expected delivery date.

- Formulation of Parental Benefit Scheme and Parental Benefit Scheme Fund by the Central Government.

### ABSENCE OF GENDER-NEUTRAL RAPE LAWS

Section 375 and 376 IPC are women-centric and portray women as the victim and men as perpetrators. Section 377 is the only provision that favors men and criminalizes rape of men (sodomy). However, the Bharatiya Nyaya Sanhita, 2023 (BNS) do not mention the provision of “Unnatural Offences”, thus, destroying the last hope to protect the dignity of men.

### WOMEN-CENTRIC SEXUAL HARASSMENT LAWS

Anyone, irrespective of any gender, can become a victim of sexual harassment. Males are also sexually harassed which impacts their physical as well as mental health. In some cases, men also opt to commit suicide as the last resort.

The Sexual Harassment at Workplace Act, 2013 specifically provides protection to women from harassment but there is no law made to protect men from sexual harassment at workplace. Is the dignity of men of no value?

### INEFFECTIVE LAW AGAINST DOMESTIC VIOLENCE

The Protection of Women from Domestic Violence Act, 2005 gives the impression of being gender-neutral and protects both male as well as female. If truth be told, the law supports women and only listens to their part of story negating the men’ side due to which not only the man but his family or relatives also face disgrace in the society they live in.

### RECOMMENDATIONS/SUGGESTIONS

- ❖ Efficient gender-neutral rape and sexual harassment laws shall be introduced to protect the dignity of men.
- ❖ Legislature shall introduce provisions for granting paternity leave to men or can modify the existing maternity laws by inclusion of paternity benefit.
- ❖ Appointment of honest and attentive law enforcement agencies to deal with the cases violating men rights.
- ❖ The principle of confidentiality shall be followed while filing any rape case including men.

- ❖ Campaigns or awareness programs promoting men rights shall be conducted by NGOs to encourage and motivate men to express their personal experiences or opinions openly.
- ❖ Societal acceptance is also necessary. Men not adhering to the traditional gender roles shall not be abandoned by the society.

### **CONCLUSION**

Gender has been socially constructed and the gender roles framed by our society are social product. The concept of femininity and masculinity are always made up the society itself. Pink color for girls and blue color for boys, girls playing with barbie or kitchen set and boys playing with action heroes, women using makeup or elders asking boys to stop crying by saying “ladki hai kya” - these examples show how our society has impacted our mindset in a negative way. By creating the image of men as aggressive and women as soft or fragile, these roles have bound men and women in the shackles of the “so - called” stereotypes.

Men and women play a significant role to run the society. Both shall be entitled to equal rights and responsibilities. Gender equality is necessary for smooth and peaceful functioning of society and if one section of society is privileged, then the pother section shall also be provided the same privileges to maintain balance. Neglecting men rights and promoting rights of women is poisonous. Just like the stability of a house depends on its foundation, similarly, the functioning of the society depends upon the people it consists of. If there exist any conflict among the people, then the society’s tranquility can never be maintained.

### **REFERENCES**

#### *BOOKS*

- Ankit Tiwari and Ritanshi Jain, Socio-Legal Dimensions of Gender, Singhal Law Publications, Delhi, 2019
- Jain M.P., Indian Constitutional Law, Kamla House, Calcutta. 5<sup>th</sup> edn., 1998
- Eden Nicholson, Women Sexually Abuse Men, 2022

#### *STATUTES*

- The Indian Penal Code 1860 (Act No. 45 of 1860)
- The Indian Constitution 1950
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (Act No. 14 of 2013)

## JOURNAL

- Jagbir Singh Malik & Anuradha Nadda (2019). A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India. *Indian Journal of Community Medicine*, 44(1), 35-38.  
[https://doi.org/10.4103/ijcm.IJCM\\_222\\_18](https://doi.org/10.4103/ijcm.IJCM_222_18)
- Lalit Bhardwaj & Babu Shivnath Agrawal. Sexual Harassment of Men: A Crime That Is a Reality. *Indian Journal of Integrated Research in Law*, 2(3), 1-9.  
<https://ijirl.com/wp-content/uploads/2022/06/SEXUAL-HARASSMENT-OF-MEN-A-CRIME-THAT-IS-A-REALITY.pdf>
- Pinto Vincent & Laveena D' Mello. Changing Trends of Divorce in India: Issues and Concerns. *International Journal of Management, Technology, and Social Sciences (IJMTS)*, 3(2), 151-157.  
<https://doi.org/10.5281/zenodo.2203824>

## NEWSPAPER ARTICLE

- Sanath Prasad. (2023, September 20). *Forced himself on me, touched me inappropriately': male intern of Bengaluru company accuses manager of sexual harassment*. The Indian EXPRESS.  
<https://indianexpress.com/article/cities/bangalore/bengaluru-company-male-intern-sexual-harrassment-complaint-8948217/>
- Gazi Abbas Shahid. (2023, November 25). *Ujjain Queer Teen, 16, Bullied Online for Wearing Makeup, Sarees; Dies by Suicide*. India.com  
<https://www.india.com/madhya-pradesh/ujjain-gay-queer-lgbtqia-teen-pranshu-priya-nshu-yadav-16-bullied-online-for-wearing-makeup-sareest-dies-by-suicide-watch-viral-video-madhya-pradesh-glamitupwithpranshu-india-gay-teen-suicide-trending-6532669/>
- Avneet Arora. (2018, December 17). *80 per cent of all dowry cases in India end in acquittal*. SBS Punjabi  
<https://www.sbs.com.au/language/punjabi/en/article/80-per-cent-of-all-dowry-cases-in-india-end-in-acquittal/aets82803>

## WEBSITE

<http://164.100.47.4/billstexts/lbilltexts/asintroduced/678LS%20AS.pdf>







# ARTICLE 15 OF THE INDIAN CONSTITUTION

by P Monika<sup>1</sup>

## ABSTRACT

A fundamental component of the Indian Constitution's framework for guaranteeing social justice and equality in the country is Article 15. The provisions of Article 15, which forbids discrimination on a number of grounds, including religion, race, caste, sex, and place of birth, are thoroughly examined in this article.

The abstract explores the evolution and historical background of Article 15, linking its inception to the Indian Constitution's drafting and later changes. It looks at important court rulings and historical legal precedents that have influenced how Article 15 is interpreted and used over time.

The abstract also discusses the subtleties of each Article 15 sentence, emphasizing significant decisions and their ramifications. State discrimination is forbidden under Clause 1, and private organizations are also prohibited from discriminating in public areas by Clause 2. The state may provide particular provisions for women and children under Clause 3. In addition, the abstract addresses current problems and obstacles pertaining to the application of Article 15, such as the efficiency of reservation laws, the intersectionality of discrimination, and the requirement for legislative changes to handle new social injustices.

**Keywords:** Discrimination, Religion, Race, Caste, Sex, Place of Birth, Reservation, Social Injustice

## INTRODUCTION

Article 15 of the Constitution of India prohibits discrimination on the grounds of religion, racial origin, caste, gender or place of origin<sup>2</sup>. This right is laid down in the Fundamental Rights Section of Part III of the Constitution. However, despite the guarantee of equality,

---

<sup>1</sup> Law Student at Noida International University.

<sup>2</sup>[https://en.wikipedia.org/wiki/Article\\_15\\_of\\_the\\_Constitution\\_of\\_India#:~:text=The%20first%20two%20clauses%20of,is%20relevant%2C%20not%20the%20motive.](https://en.wikipedia.org/wiki/Article_15_of_the_Constitution_of_India#:~:text=The%20first%20two%20clauses%20of,is%20relevant%2C%20not%20the%20motive.)

discrimination based on religion<sup>3</sup> and caste has existed in India for long time. This was evident before independence in the form of practices such as untouchability and separation of upper and lower caste. Although discrimination continues to exist, it is now prohibited by law. In India, 22 languages are officially recognized<sup>4</sup>. However, there are more than 1,500 languages in the country. Due to the diversity of languages, there are differences of opinion which can lead to discrimination. One of the main sources of discrimination in India is caste discrimination. In the past, the society was divided into lower castes and upper castes with the former being untouchable. However, due to the unacceptable nature of this practice, this practice was prohibited.

Frequent newspaper headlines highlight stories of women beaten for fetching water from wells, people harassed if their shadow touches other men, devotees prevented from entering temples, and beaten for touching idols of gods. It's as if I'm living in a nightmare that is forcing me to research the regulations that ban this kind of discrimination<sup>5</sup>.

Discrimination in India has been widespread, stemming from a multitude of factors. Throughout its history, caste and religion have been significant drivers of discrimination. Discrimination based on gender, targeting women and LGBTIQ+ individuals, is not a recent development. The year 2018 saw the initial recognition of the LGBTIQ+ community with the decriminalization of section 377 of the Indian penal code. Discriminatory acts can cause emotional pain, mental distress, and social isolation. Since the inception of the Constitution, Article 15 has been a vital tool in combating discrimination, with five clauses strictly prohibiting different types of discrimination. Discriminatory behaviors have the potential to result in emotional suffering, psychological anguish, and social exclusion. Article 15 of the Constitution has played a crucial role in fighting discrimination since its establishment, containing five clauses that specifically forbid various forms of discrimination.

The current discussion provides a thorough examination of Article 15 in the Indian Constitution, which protects citizens from any type of discrimination. Due to India's varied population which includes a range of religions, beliefs, languages, cultures, and other

---

<sup>3</sup> <https://knowindia.india.gov.in/profile/fundamental-rights.php>

<sup>4</sup> [https://en.wikipedia.org/wiki/Languages\\_with\\_legal\\_status\\_in\\_India](https://en.wikipedia.org/wiki/Languages_with_legal_status_in_India)

<sup>5</sup> Ambedkar, B.R. (1936). *Annihilation of Caste*. Self-published.

elements that enhance diversity, it is impossible to completely eliminate discriminatory practices. Article 15's main goal is to safeguard citizens' rights and interests.<sup>6</sup>

### **Scope of the word 'Discrimination'**

Discrimination occurs when someone is treated in a manner that is unfair or different from others in a comparable situation. It may also happen when you are placed in a position of inferiority due to your disability, pregnancy, or other personal traits. These actions cannot be reasonably or objectively justified<sup>7</sup>.

Article 15 prohibits discrimination on the grounds of:

**Religion**- It should not be used as a reason for discrimination in accessing public places or policies.

**Race**- No one should encounter prejudice because of their ethnic background, regardless of the ethnic origins of others. For example, an individual of Afghan descent should not face discrimination from someone of Indian descent.

**Caste**- Caste discrimination is forbidden in order to prevent atrocities committed by the upper caste.

**Sex**- Sex-based discrimination is wrong, regardless of gender identification.

**Place of Birth**- Discrimination based on one's place of birth is unacceptable.

The word 'Discrimination' is sometimes seen as being antithetical to equality. People frequently confuse discrimination with an infringement on equality. However, something is not always discriminatory merely because it is unfavorable and goes against how people are often classified. "No" is the response. In certain circumstances, the Supreme Court has stated that not all classifications qualify as discriminatory.

---

<sup>6</sup> Sahgal, N. (2021) Religion in India: Tolerance and segregation, Pew Research Center's Religion & Public Life Project. Available at:  
<https://www.pewresearch.org/religion/2021/06/29/religion-in-india-tolerance-and-segregation/>  
(Accessed: 06 April 2024).

<sup>7</sup> Introduction to discrimination (2021) nidirect. Available at:  
<https://www.nidirect.gov.uk/articles/introduction-discrimination> (Accessed: 06 April 2024).

The state of Saurashtra established special courts in the 1952 case of *Kathi Raning Rawat v. State of Saurashtra*<sup>8</sup>. The Saurashtra State Public Safety Measures Ordinance 1949 established these courts to hear crimes pertaining to Sections 302, 307, and 392 read with Section 34 of the Indian Penal Code (IPC), 1860.

The argument made before the court was that these clauses discriminated against locals according to their territory. The court held that discrimination does not always result from legislative distinction. The law does not constitute discrimination because it did not target any particular person, but rather particular offenses committed in particular locations.

The Indian Succession Act of 1925 prevented the petitioners in *John Vallamattom v. Union of India* (2003)<sup>9</sup> from transferring their property for religious or philanthropic causes. The petitioner claimed that Christians who wanted to make testamentary dispositions were discriminated against by this law.

The Indian Succession Act, as the Supreme Court has noted, was passed in order to stop people from making foolish bequests on their deathbed while under the influence of religion. On the other hand, it had a big effect on anyone who wanted to give away their belongings when they passed away. Since the Act's provisions do not apply to the properties of any Hindu, Muslim, Buddhist, Sikh, Jain, or Parsi, the legislation is obviously discriminatory. Moreover, the respondents were unable to offer any convincing justification for why the clause only governs Christian bequests to charities and religious institutions.

## **CLAUSE 1 OF THE ARTICLE 15 OF THE INDIAN CONSTITUTION**

No citizen of India will be subjected to discrimination on the grounds of religion, race, caste, gender, or place of birth, as stated in Article 15(1) of the Indian Constitution. Castes are divided into reserved castes/tribes and backward classes, however discrimination is not acceptable. Discrimination is a wide, unfair term that encompasses a variety of practices. Unfortunately, there have been many occasions where persons from lower castes, including Dalits, have been treated unfairly. In fact, since 2009, there has been a 6% rise in negative bias towards Dalits, per a Hindu survey.

---

<sup>8</sup> *Kathi Raning Rawat v. State of Saurashtra*, AIR 1952 SC 123.

<sup>9</sup> *John Vallamattom v. Union of India*, (2003) 6 SCC 611.

Although there are laws protecting them, such as the Scheduled Tribes and Scheduled Castes Act of 1989, discrimination against SCs and STs still exists in some areas of the nation<sup>10</sup>. People from lower castes can confront several issues, like sexual assaults on women and fatalities brought on by demonstrations and caste-related disputes. A 19-year-old girl was raped in a gang rape case that happened in the Uttar Pradesh district of Hathras in September 2020<sup>11</sup>.

Dalits are also often the victims of crimes that don't seem to have a clear reason. For example, the homes of eighteen Dalits were set on fire in April 2010. A dog's barking at a man with a higher social rank caused the incident. Discrimination persists even after a number of laws protecting people's rights have been passed throughout the years. The lack of appropriate consequences and people's inability to adapt could be the main causes of this. People will continue to be discriminated against until all of us accept the laws that have been passed.

This clause addresses a lot of ground. It is aimed at any State activity pertaining to citizens' rights, be it political, civil, or otherwise. The prohibition on discrimination based on caste or religion preserves the diversity of Indian culture rather than eradicating it.

## **CLAUSE 2 OF THE ARTICLE 15 OF THE INDIAN CONSTITUTION**

Article 15(2) prohibits Indian citizens from discriminating against other citizens based on the reasons listed in Clause (1). People cannot be refused access to public places, such as stores, eateries, hotels, or any other place that is open to the public, on the basis of their gender, race, caste, religion, place of birth, or any other comparable reason, according to Article 15(2)(a).

Article 15(2) forbids an Indian citizen from discriminating against another Indian citizen on the grounds listed in Clause (1). People cannot be refused access to public places, such as

---

<sup>10</sup> Introduction to discrimination (2021) nidirect. Available at:  
<https://www.nidirect.gov.uk/articles/introduction-discrimination> (Accessed: 06 April 2024).

<sup>11</sup> Sharma, A. (2024) 17-year-old girl gang-raped in UP's Hathras, 1 arrested, The Indian Express. Available at:  
<https://indianexpress.com/article/india/uttar-pradesh-hathras-gang-rape-9194405/#:~:text=In%20September%202020%2C%20a%2019,all%20charges%20in%20the%20case.> (Accessed: 06 April 2024).

stores, eateries, hotels, or any other place that is open to the public, on the basis of their gender, race, caste, religion, place of birth, or any other comparable reason, according to Article 15(2)(a).

Clause (2) of the existing Article critiques any private parties that may be in control of the public spaces mentioned in it, in addition to the government. It's crucial to keep in mind that Article 15(2) is not self-executing and will remain void unless new legislation is created to make it work. The Protection of Civil Rights Act of 1955, notably, has restricted the penalty for breaking Article 15(2) to situations in which a private person's exclusion from such areas results from untouchability. Consequently, it is unclear what would happen if a citizen was refused access to a well that has been donated to the public by a private individual due to that person's sexual orientation, caste, or race.

Furthermore, the success of an action brought under Article 32 is hampered by the Apex Court's decision that the remedy is only available for proceedings taken against the State and not against private parties.

### **CLAUSE 3 OF THE ARTICLE 15 OF THE INDIAN CONSTITUTION**

The state may enact legislation providing for women and children under Article 15(3). Section 497 of the Indian Penal Code, 1860 charged the appellant in *Yusuf Abdul Aziz v. State of Bombay* (1954)<sup>12</sup> with adultery. Whether Section 497 of the Indian Penal Code violated Articles 14 and 15 was the primary question at hand in this case. It was argued that Section 497 prohibits women from being punished for aiding and abetting adultery, and only men are allowed to commit adultery. The question of whether this violated Article 15, which forbids discrimination based on gender, was brought up by this argument. It was also mentioned that nothing in Article 15 limits the state's authority to create particular arrangements for women and children, as stated in Clause (3) of the same article.

One argument made was that women shouldn't be shielded from crimes by Article 15(3). Furthermore, because the appellant in this case was not a citizen of India, they were not

---

<sup>12</sup> *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321.

eligible to use the fundamental rights outlined in Articles 14 and 15. As such, the appeal was turned down. In the 2009 case of *Paramjit Singh v. State of Punjab*<sup>13</sup>, the petitioner was chosen to fill a Panch (village council member) position that was designated only for women from Scheduled Castes.

Due to the fact that respondent number five was elected as Panch exclusively and not as a candidate for the reserved seat for SCs (women), the petitioner objected to respondent number five's election as Sarpanch, the head of the village council.

It was decided that both men and women who belonged to Scheduled Castes might run for election to become the Sarpanch of a village if the position was set aside for them. This is so because being a member of a Scheduled Caste and serving as the Panch for the constituency was a requirement for eligibility to run for the position of Sarpanch.

This section permits the State to make specific measures for women and children. It is an exception to clause (1). These clauses can be anything the State decides is required in the interest of women, not only ones that are advantageous. This clause would apply to such provisions. One could argue that Article 15(3) encourages affirmative action for women and children. According to the ruling in the 1995 case of *Govt. of A.P. v. P.B. Vijaykumar*<sup>14</sup>, Article 15(3) permits reservation for women as a specific measure to encourage status parity.

According to the Andhra Pradesh State and Subordinate Service Rule, 1996, women should be given preference when they are equally qualified as men, other things being equal, in order to select for direct recruitment to at least 30% of specific posts<sup>15</sup>. This was the provision that was at issue in the case.

In the 2003 case of *Vijay Lakshmi v. Punjab University*<sup>16</sup>, it was decided that women's colleges and hostels could legitimately reserve seats for them.

The National Commission for Women Act of 1990 established the National Commission for Women by the Indian Government. The Commission's mandate encompasses the investigation and documentation of all issues pertaining to the protections afforded to women

---

<sup>13</sup> *Paramjit Singh v. State of Punjab*, (2009) 3 SCC 104.

<sup>14</sup> *Govt. of A.P. v. P.B. Vijaykumar*, (1995) 4 SCC 520.

<sup>15</sup> (No date) *Government of Andhra Pradesh vs P.B. Vijayakumar & Anr* on 12 May, 1995. Available at: <https://indiankanoon.org/doc/34768/> (Accessed: 06 April 2024).

<sup>16</sup> *ijay Lakshmi v. Punjab University*, (2003) 3 SCC 69.



by the Constitution and other legal frameworks. This involves offering recommendations for enhancing the present security measures.

### **Special Provision For Women and Children**

Some may be concerned about the idea of law that gives total power to impose asymmetrical advantages, supposedly to the favor of women but at the expense of burdening men. Nonetheless, it can be justified as a way to make up for the early injustices that children and women suffered at the hands of a society that was ruled by men. The Maternity Benefit (Amendment) Act of 2017, Section 56 of the CPC 1908, and the Right to Free and Compulsory Education for Children Under the Age of 14 are a few examples of such legislation.

The Uttar Pradesh government implemented a rule for reserving seats in a BTC training program in the 2005 case of *Rajesh Kumar Gupta v. State of Uttar Pradesh*<sup>17</sup>. According to the reservation format, 50% of the chosen candidates had to come from the science stream and 50% from the arts stream. Furthermore, there should be 50% female and 50% male candidates chosen. The argument against this reservation structure was that it violated Article 15 of the Indian Constitution and was arbitrary. The Apex Court did rule, however, that the newly implemented reservation format—which went beyond the statutory reservations for underprivileged classes—was not justified by the Indian Constitution's provisions.

The railway administration chose to assign enquiry/reservation clerks to four major cities—Mumbai, Delhi, Kolkata, and Chennai—in the case of *Union of India v. K.P. Prabhakaran* (1997)<sup>18</sup>. The decision did specify that women would hold the position, though. The government contended that Article 15(3) protects this clause. The court dismissed this argument, stating that Article 15(3) cannot be read as a clause or an exclusion from the protections provided by Article 16(1)(2).

The cases discussed give a clear illustration of how the phrase "special provisions for women and children" relates to a variety of issues, including employment, education, and reservations. Can laws that discriminate against males or favor women over men still be deemed discrimination, though?

---

<sup>17</sup> *Rajesh Kumar Gupta v. State of Uttar Pradesh*, (2005) 7 SCC 555

<sup>18</sup> *Union of India v. K.P. Prabhakaran*, (1997) 9 SCC 292.

The petitioner in *Girdhar v. State* (1953)<sup>19</sup> was found guilty in accordance with Sections 342 and 354 of the Indian Penal Code. The petitioner argued that it is discriminatory to provide such regulations for women as there are no statutes pertaining to assaults against men that are intended to offend their modesty. According to the petitioner, Section 354 violates Article 15(1) of the Indian Constitution. The law was declared to be in compliance with Article 15(3) of the constitution, and the petition was thus denied.

The bail plea in *Choki v. Rajasthan State* (1957) was made on the grounds that Mt. Choki, who is imprisoned and without anybody to care for her small kid, plotted with her husband to murder her child. Noting that there were no mitigating circumstances and that the constitution did not contain any clauses permitting women to obtain leniency due to their gender, the judge denied the petition. The Supreme Court received an appeal of the same.

Women and children are given special consideration, as stated in Article 15(3). Because Mt. Choki is a lady with a small child who depends on her, she was granted bail based on this provision. The state decided that the child's rights needed to be protected as a result.

The Indian Constitution's Article 15(3) gives the State the authority to provide special measures for women and children as well as to take action against and outlaw sexual harassment. The fundamental rights to equality provided by Articles 14(2) and 15(3) of the Constitution are directly violated by sexual harassment.

The problem of women being sexually harassed has been extensively covered by the media, and in the historic case of *Vishaka & Ors v. State Of Rajasthan* (1997), the Indian Supreme Court took up the subject. The Vishakha rules, which provide a framework for handling sexual harassment allegations in India, were developed as a result of this case.

#### **Clause 4 of Article 15 of the Indian Constitution**

According to Article 15(4), the government may provide exceptions for citizens from socially and educationally disadvantaged backgrounds or for STs and SCs without going against Article 15 or Article 29(2). Two significant events led to the addition of this clause to Article 15. The first incident included the *State of Madras v. Srimathi Champakam* (1951) case, in which the Madras government imposed an order that divided up places in engineering and medical schools according to a student's caste and community. Nevertheless, this decree went

---

<sup>19</sup> *Girdhar v. State*, AIR 1953 All 193.

against Article 15's Clause (1), which said that seats should be distributed on the basis of merit rather than caste. Consequently, this order was overturned by a seven-judge bench.

In the 1952 case of *Jagwant Kaur v. State of Maharashtra*, the court determined that it was against Article 15(1) of the Indian Constitution to establish a colony that was solely for Harijans. Article 15(4) was introduced to support socially and educationally disadvantaged persons while addressing this issue.

No Indian citizen may be subjected to discrimination on the grounds of religion, caste, race, or language while requesting admission to a state-run school or when getting financial aid from public coffers, according to Article 29(2), which is also protected by Article 15(4). Thus, Article 15(4) is a specific provision intended to support the socioeconomically and educationally disadvantaged segments of society, not an exception.

The Supreme Court held in *A. Periakaruppan v. State of Tamil Nadu* (1971) that it was unconstitutional to use caste to classify socially and educationally inferior classes (4). However, since giving them a reservation was the primary justification, it was necessary for their circumstances to alter.

The Mysore government determined in *Balaji v. State of Mysore* (1963) to grant 68% reserve for students from backward classes when it came to medical and engineering college admissions. Just 32 per cent of the seats were reserved by the government for merit-based admissions. Students who scored higher than those in the reserved category were unable to secure a spot as a result of this reservation.

The Court held that Article 15(4) did not justify the categorization of backward and even more backward classes. People who are lacking in both social and educational resources may be classified as "backward." It is important to note that class, not caste, is mentioned in Article 15 Clause (4). As per the Court's ruling, 68% of the seats in medical and engineering schools would be reserved through constitutional fraud, since Article 15, Clause 4, forbids special arrangements for classes that are historically disadvantaged. As a result, bookings could not be more than 50%.

In the *State of AP v. USV Balaram* case of 1972, the Indian Supreme Court held that a person's caste should not be the only element considered when evaluating whether or not they belong to a backward class. Rather, a socially and academically inferior caste as a whole should be considered a backward class. The court further declared that the list of backward

classes shall be updated in accordance with any notable advancements made by a class in education and social upliftment, to the point where the class no longer needs special support from the state.

The Supreme Court held in *State of UP v. Pradeep Tandon* (1974) that it was unconstitutional to give reserved seats to students living in rural regions and that Clause (4) of Article 15 could not be used to support the practice. The state of Uttar Pradesh had made reservations for students from Uttarakhand, rural areas, and mountainous regions in medical institutes. Nonetheless, the Supreme Court determined that reservations for students from Uttarakhand and hill regions were justified because of their scholastic and social backwardness brought on by a lack of awareness and subpar educational facilities. However, the court decided that poverty by itself does not imply backwardness in rural areas, nor do these locations signify a lower social or educational level.

The Indian Constitution's Article 15(4) makes particular provisions for the advancement of Scheduled Castes and Scheduled Tribes—classes that are socially and educationally backward. The Constitution (First Amendment) Act of 1951 included this Article, allowing the government to provide specific protections for these underprivileged communities. Seat reservations in public educational institutions may be one of these exceptional measures. This modification ensures that all citizens, regardless of social position, have equal opportunity by aligning Articles 15 and 29 with Articles 16(4), 46, and 340.

The necessity of encouraging the socioeconomic empowerment of underprivileged people is emphasized in the following remark. Giving them the tools and chances they need to live with dignity and on an equal footing in society is how social equality is accomplished. Because economic equality raises everyone's standard of living, it also empowers people. Therefore, it is crucial to take into account whether the representation is sufficient and equitable in relation to the percentage allotted by the applicable rules or administrative instructions while evaluating the constitutionality of a reservation scheme or rule.

### **Clause 5 of Article 15 of the Indian Constitution**

The Indian Constitution's Article 15(5) gives the government the authority to enact special laws to enhance the lives of individuals who are socially and educationally disadvantaged as well as members of Scheduled Castes and Scheduled Tribes. This clause does not exclude the

government from taking particular actions to ensure that members of underrepresented groups, including members of the SC and ST, are admitted to all types of educational institutions—public or private—with or without state assistance. However, the minorities listed in Article 30(1) are not covered by this clause.

Furthermore, every Indian citizen is guaranteed the freedom to pursue any career, trade, company, or occupation of their choosing by Article 19(1)(g) of the Indian Constitution. Regardless of any special accommodations given for other groups, minority groups in India, whether religious or linguistic, are entitled under Article 30 to establish and run the schools of their choice.

It is significant to remember that the Supreme Court has decided that Article 15, Clause 5, does not conflict with Article 14 of the Constitution, which ensures that all Indian citizens have equal protection under the law and equality before the law.

The Constitution (Ninety-Third Amendment) Act of 2005 saw the addition of this specific clause. In the Ashok Kumar Thakur case, the amendment's validity was contested, but the Supreme Court maintained it with reference to government-funded educational institutions and state-run establishments. Furthermore, it was said that the "creamy layer" of backward classes would not gain from the modification, and the state was directed to exempt these backward classes from Article 15(5). In a court case, it was said that a reasonable standard must be used as caste classification can eventually have negative implications. The court decided that limited judicial review is necessary when the objective is to end caste prejudice and establish a caste-free society.

### **Clause 6 of Article 15 of Indian Constitution**

Clause 6 was introduced to Article 15 by the Constitution (One Hundred and Third Amendment) Act, which was passed by the Indian Parliament in 2019. This new paragraph gives the State the authority to create exceptional measures, such as reservations in educational institutions, for the advancement of any citizens who are economically disadvantaged. With the exception of minority educational institutions covered by Article 30(1), the clause is applicable to all educational institutions, including private institutions that are aided or unaided. There is a 10% cap on economically weaker section (EWS) reservations.

By a vote of 3-2, the Supreme Court maintained the 103rd Constitutional Amendment, which provides EWS reservation, in the case of Janhit Abhiyan v. Union of India (2022). The Court has broadened the definition of the net of reservation advantages to encompass only economic backwardness with this ruling.

### **Reservation**

Our analysis indicates that Article 15's clauses (3), (4), and (5) are an exception to the same article's clauses (1) and (2). According to these clauses, the legislature may create special laws for women and children, socially and educationally disadvantaged groups, Scheduled Castes, and Scheduled Tribes. Admission to educational institutions, both public and private, with or without governmental assistance may fall under certain provisions (excluding minority educational institutions).

These rules are a type of protective discrimination, also referred to as positive discrimination, even if they may appear to be discriminatory at first. This policy seeks to elevate the status of marginalized and oppressed groups in society by giving them a fair and equitable platform.

### **The Government's viewpoint**

The 10% reservation bill, which Prime Minister Narendra Modi described as a powerful step that guarantees fairness for all segments of society, has been heralded as a historic moment in the history of the country. The former Minister of Finance and Corporate Affairs, Mr. Arun Jaitley, provided an explanation of the rationale behind this quota. He maintained that two people cannot be treated similarly if their backgrounds differ because of where they were born or their financial situation. He went on to say that unfair people cannot receive equal treatment. Furthermore, he made it clear that the Economically Weaker Section reserve is unaffected by the Supreme Court's 50% reservation cap, which solely applies to caste-based reservations.

The former Union Social Justice and Empowerment Minister, Tha Awarchand Gehlot, said that because the Indian Constitution did not incorporate the idea of economic reservation, state laws intended to reserve seats for members of the community who are economically weaker have previously been overturned by the courts. But now that the necessary clauses have been added to the Constitution, the Supreme Court would not be able to overturn such legislation if they are challenged.

## **Socially and Educationally Backward Classes**

According to Article 15(4) of the Indian Constitution, the term "socially and educationally backward classes" refers to underprivileged groups of individuals who have experienced prejudice and discrimination from the more privileged class. People who fall under the socially backward category but aren't considered Scheduled Castes (SCs) or Scheduled Tribes (STs) are included in this group. This list of socially and educationally backward groups now includes Other Backward groups (OBCs), a group that is qualified for reservation.

## **The Limit of Reservation**

The Supreme Court of India set a cap on the overall percentage of reservations that the government may offer in the case of *Indira Sawhney v. Union of India* (1993). The 'Other Backward Classes' were granted a 27% reservation by the court. It was argued, therefore, that letting the cap go above 50% would deny others their equal rights. As a result, the Apex Court set a 50% cap on the overall percentage of reservations. The court further stipulated rules for exceptional circumstances in which the reservation cap may be exceeded.

## **Conclusion**

Assisting those in need has always been possible thanks to Article 15. Since its establishment in 1949, the situation of the oppressed has greatly improved. It gives lawmakers a starting point for creating laws that advance social peace. The amount of atrocities against disadvantaged groups has significantly decreased. Indeed, Article 15 serves as a barrier against prejudice and a protector of the oppressed. In spite of its diversity and different manifestations of racism, sexism, and the strict caste system, it has assisted Indian society in rising tall and proud. Forever, Article 15 will support India's equality and cohesion.

A wide range of variables, including gender, caste, religion, color, and place of birth are prohibited from being used as grounds for discrimination in any situation under Article 15. People have faced prejudice in a variety of ways throughout history, and the term "discrimination" encompasses a wide range of difficulties. Ensuring that every citizen has equal opportunity and that their rights are respected is the main goal of this article. The main objective of Article 15 is to promote the social, economic, and educational development of the classes that are economically, socially, and educationally disadvantaged.

Because reservations exist, Article 15 has been the subject of major disagreements. The weaker segments of society who might upset the broader public are given these reservations. Reservations, however, are intended to assist the nation's underprivileged populations rather than to classify people into regular and reserved groups. In India, prejudice and untouchability were pervasive even before the British colonial era. There has been some decrease in inequality as a result of the implementation of laws designed to protect the underprivileged class. Discrimination has decreased even though it hasn't entirely disappeared. In the preamble of the Indian Constitution, the word "equality" appears. The goal of Article 15 is to use this phrase extensively across the Indian subcontinent.



# **LGBTQ+ FAMILY RIGHTS: CHALLENGES AND PROGRESS**

**By Parul Sharma<sup>1</sup>**

## **ABSTRACT**

The Indian constitution's assurance of "*we the people*" seems paradoxical when one considers the LGBT community's actual lack of equal rights in the world's most populous democracy. However, it's odd that a constitution built on high ideals seems to have had little to no impact on this group of people considering that they still have to deal with prejudice and challenges. These raise the following queries: What roles do judges play in the advancement of society? What must be done to guarantee that gay people can be married? In addition, legislative change on the protection of queer rights is desperately needed. In a nation like India, where several traditions coexist, marriage is unavoidable. Despite the decriminalization of section 377 of the IPC by the Hon'ble Supreme Court of India, there has not been enough acceptance of the LGBTQ++ community in the country. To remove the cultural constraints imposed on these people, professional opportunities have been provided, and a third gender category has been added to the forms. However, Still, obstacles remain in the way of guaranteeing people full rights, genuine approvals, and acknowledgment of their true identities. The community's feeling of victory over dread has been expressed more publicly. The community is making progress toward its aspiration of creating a fair and equal platform in which all individuals can engage on an equal footing. The paper examines the legal developments and rulings that have influenced the country's progress toward LGBTQ++ equality, with a focus on the landmark decision that invalidated Section 377 of the Indian Penal Code. In addition, it evaluates the current legal framework considering the thorough investigation and assessment of LGBTQ++ rights and discrimination in India, noting advancements made, persistent issues impeding full legal protection and social inclusion, and future directions needed by the community to attain true equality and inclusivity. The study looks at media portrayals and their influence on public perceptions of LGBTQ++ rights, demonstrating how the media shapes society's viewpoints.

**KEYWORDS:** Queer Rights, Supreme Court, Marriage Equality.

---

<sup>1</sup> Ph.D. Research Scholar

## **INTRODUCTION**

Families that identify as LGBTQ+ comprise a wide variety of partnerships, such as same-sex partnerships, transgender parents, and non-binary caregivers. LGBTQ+ families are still impacted by discriminatory laws and societal biases, despite advancements in many nations. There is a section of society within the rich tapestry of cultures, customs, and history that make up India, whose rights continue to be withheld from them despite their unwavering bravery and fortitude amid acknowledgment. This is the more obscure story of LGBTQ+ people in India, who continue to endure discrimination and many obstacles in their pursuit of their basic rights, even despite the Indian Constitution's uplifting tenets. Accepting diversity and being equal has always been essential. Some of the fundamental rights that every Indian person is entitled to.

Article 15<sup>2</sup>: The Indian constitution forbids discrimination based on religion, ethnicity, caste, gender, or place of birth. Moreover, discrimination based on gender identity is prohibited. Article 15 of the Indian Constitution mandates that the state enact laws that forbid discrimination against its citizens, especially against women. This paper clarifies important topics and emphasizes the value of legal protection and acknowledgment. But before going into depth of this study, let's understand who LGBTQ+ people are:

LGBTQ+ individuals comprise a heterogeneous group with a range of sexual orientations and gender identities. Let's examine the meanings of each letter in an abbreviation:

- L (Lesbian): A lesbian is a woman or someone who identifies as a woman and is only drawn to other persons who are the same gender as them.
- G (Gay): Generally speaking, the term "gay" refers to guys or people who identify as men and who find themselves attracted to other people who share their gender. But the term "gay" can also apply to lesbians.
- B (Bisexual): People who identify as bisexual find attraction in all genders. It's critical to identify bisexuals because they are occasionally mistaken for exclusively gay persons.

---

<sup>2</sup> The Constitution of India, 1950, Art. 15

- T (Transgender): People who identify as transgender do not identify with the sex that was given to them at birth.
- Q (Queering or Asking): Although some people specifically identify as queer, the term is frequently used to refer to anyone who is heterosexual or non-cisgender. It should be used carefully though, as it has also been used as a slur. Those who may be uncertain of their gender identity or sexual orientation are referred to as "questioning".
- I (intersex): Refers to those who are born with variances in sex traits that do not conform to binary conceptions of what it means to be a male or female body.
- A (Asexual): Even though they may still feel romantic attraction, asexual people have little or no sexual interest.
- The symbol + (Plus) stands for all gender identities and sexual orientations that are not expressly addressed by the other letters. An example of a pan-Indigenous American identity is Two-Spirit.

People of diverse ages, financial backgrounds, races, and ethnicities comprise the LGBTQ+ community. They are more empathetic and united because they have experienced prejudice, discrimination, and historical injustice together.

We consider the law to be wholly deficient and careless. When we examine closely and consider how heteronormativity this community has been built, the latest Supreme Court ruling is one of the most obvious aspects. This judgment also reveals how uninformed the government has been in general by neatly classifying "Queerness" as an urban bourgeois idea. However, the Supreme Court ruled in *Supriyo @ Supriya Chakrab0rty & Anr.*<sup>3</sup> v. Union of India that sexual orientation is an idea that is seen throughout India and is n0t limited to metropolitan areas.

## **CHALLENGES FACED BY LGBTO+ FAMILIES IN INDIA**

<sup>3</sup> *Supriyo @ Supriya Chakrab0rty & Anr. Versus Union of India Writ Petition (Civil) No. 1011 of 2022*

Obviously! Families who identify as LGBTQ+ face several challenges that other families might not encounter. Let's look at a handful of the most significant:

**1. Stigma and Social Acceptance:**

- a. Problem: It's still hard for LGBTQ+ persons to find acceptance in their families, schools, and residences. Although corporate marketing and social media have increased awareness in urban areas, lesbian women and transgender persons still face issues.
- b. Impact: In addition to fostering discrimination, prejudice against the LGBTQ+ community harms mental health and well-being.

**2. Isolation and Biasness<sup>4</sup>:**

- a. Problem: LGBTQ+ individuals frequently encounter exclusion and discrimination, which results in dropout rates from school, leaving behind home and family, few job opportunities., neighborhood isolation, ignorance of one's rights and resources, and travel to cities.
- b. Impact: Their general quality of life and ability to obtain necessary services are impacted by these difficulties.

**3. Medication Inequalities**

- a. Problem: The LGBTQ+ group is systematically excluded from receiving healthcare. Targeted interventions are made more difficult by the absence of public data on sexual and gender minorities.
- b. Impact: The lack of access to LGBTQ+ acknowledging treatment is still harming the state of people's physical and mental health.

**4. Legal Advancement and Enduring Difficulties:**

---

<sup>4</sup> Meyer, I. H. (2003). Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence.

- a. Problem: Although Section 377's legalization of homosexuality was a historic moment, obstacles still need to be overcome to achieve marriage equality, end discrimination, and protect adoption rights.
- b. Impact: Positive advancements have been brought about by legal amendments; nonetheless, societal bias and restrictions still exist.

#### **5. Financial Risk<sup>5</sup>:**

- a. Problem: Many LGBTQ+ people work in the unofficial economy, doing jobs like sex work, begging, and other stigmatized jobs. The pandemic made economic inequality worse.
- b. Impact: Their well-being and ability to obtain necessary resources are impacted by economic volatility.

Despite legal progress, members of the LGBTQ+ community in India still face discrimination, acceptance, and unequal access to services and rights. Advocacy, education, and inclusive policies are crucial for a more equal society. We must acknowledge in this important conversation that LGBTQ people in India have long been disenfranchised, denied basic rights, and subjected to discrimination from society. Although the Indian Constitution outlines a vision of equality and justice, LGBTQ+ people's real experiences frequently run counter to these admirable goals. The recent decision by the Supreme Court to deny marriage rights to LGBTQ people raises important concerns about the distribution of power and the role of the judiciary in advancing social development.<sup>6</sup> Since the Judiciary is tasked with determining the intent of the constitution, which frequently entails dealing with problems involving legislation and the executive branch, striking this balance can be extremely difficult. Moreover, there is a lot of inconsistency in India's legal framework concerning LGBTQ+ rights. Despite the repeal of S. 377 of the statute, which made consenting homosexual conduct illegal, there are still notably few

---

<sup>5</sup> Hatzenbuehler, M. L. (2009). How Does Sexual Minority Stigma "Get Under the Skin"? A Psychological Mediation Framework.

<sup>6</sup> Live updates on same-sex marriage: The Supreme Court of India rules against same-sex marriage, leaving the legislature to make that decision. "Same Sex Marriage Live Updates: Supreme Court of India's Decision on Same-Sex Marriages - The Legislature Shall Make the Final Say on Same-Sex Marriages," (Hindu)Nov. 5, 2023, accessed Nov. 5, 2022

comprehensive anti-discrimination laws that protect LGBTQ people. The current legal loopholes support systemic prejudice.<sup>7</sup>

Chief Justice of India D.Y. Chandrachud led a five-judge Supreme Court<sup>8</sup> Constitution Bench that heard arguments opposing same-sex union affirmative action under constitutional law and reached a divided result of 3:25. As a result of this decision, the legislature rather than the courts was tasked with enacting laws about same-sex unions. The Supreme Court's ruling was not unanimous because the justices differed in their perspectives. Justice Narasimha states that it is constitutionally legitimate to acknowledge a right to a civil union that will resemble marriages and that a law that denies same-sex partners certain advantages should be reviewed. With Justice P.S. Narasimha joining Justice Bhat, they emphasized the legal rights of LGBTQIA+ people to cohabit, gender identity, and sexual orientation. He also emphasized the legal restrictions on marriage and the equality of transgender individuals in marriage compared to non-transsexuals. In conclusion, Justice Bhat ruled that there was no "unfettered" right to marriage and that legislation should be how a civil union is granted legal recognition, delegating the task of creating laws to Parliament. He said that because there were other concerns involved in the case, the Court was unable to create a legal plan for the queer couples.<sup>9</sup> The ruling by Justice Kaul emphasized the need to recognize non-heterosexual partnerships legally as a step toward same-sex marriage. He supported the establishment of a legal framework that might recognize these kinds of partnerships, emphasizing the need to interpret laws and recognize same-sex civil unions. The Chief Justice stressed the significance of associational liberty in this regard, stating that it is fundamental to the right to life.<sup>10</sup> People must first persuade society to acknowledge their ties through the government for them to be allowed to exercise their rights in society. Furthermore, the CJI maintained that homosexuality and queerness could not be confined to cities or the upper classes and that the state needed to intervene to democratize private places.<sup>11</sup> The right of partners to protect their families was at the center of the Indian campaign to legalize same-sex unions. Several privileges, advantages under the law, and safeguards that were not available to persons in such cultures were provided by marriage. These included having the

---

<sup>7</sup> The Indian Penal Code 1860 §377

<sup>8</sup> 'Plea for Marriage Equality: Judgment Matrix', 'Plea for Marriage Equality: Judgment Matrix' (5 November 2023) accessed 5 November 2023

<sup>9</sup> See Para 17 of separate Judgments of J. Bhatt and J. Hima Kohli

<sup>10</sup> Ibid para 168

<sup>11</sup> Ibid 399 (point v).

authority to raise children, being eligible for estate and tax deductions, and having one's connection recognized officially.

### **WHAT ADDITIONAL LEGAL MATTERS DID INDIAN JUSTICES TAKE INTO CONSIDERATION?**

Regulatory Authority: As a result, the Court has the authority to decide this matter under Article 32<sup>12</sup>, which gives it the authority to issue directives, writs, or orders to uphold the Constitution's Part III Rights. "The division of authority cannot prohibit this court from imposing an order, directive or writ regarding fundamental rights". However, the justices pointed out that Parliament and certain state legislators should handle matters about gay marriage.<sup>13</sup>

LGBTIQ+: According to CJI Chandrachud, queerness has long been acknowledged in India and is not limited to affluent or urban areas. Moreover, Justice Chandrachud, another judge, noted that while the Constitution does not specifically guarantee the right to marry<sup>14</sup>, it does recognize other qualities of marriage, such as dignity, that are related to the fundamental rights protected by the document. "Being queer does not require one to reside in a city. Not just the English-speaking professional in a city can experience queer feelings; a lady working in agriculture in a hamlet can also experience this".

The right to adopt by queer people: Regulation 5(3) of the 2020 Central Adoption Resource Authority Guidelines<sup>15</sup>, which restricted adoption by singles and married people who had been in a stable marriage for two years or more, was challenged by the petitioners. Furthermore, the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) stipulated in Section 57(2) that the consent of both spouses is necessary for adoptions. Justice Chandrachud drew his reference to S. 57 of the JJ Act<sup>16</sup>, which outlines the qualifying requirements for adoption. He pointed out that because the clause refers to "spouse" rather than "married couple", it does not expressly prohibit single couples from adopting a child. These sexual orientations can be queer in addition to heterosexual marriages b/w a male and a female. He maintained that the JJ Act and regulation were irreconcilable. He went on to say that the rule discriminates against unmarried

---

<sup>12</sup> The Constitution of India, 1950, Art. 32

<sup>13</sup> Supriyo @ Supriya Chakraborty & Anr. Versus Union of India Writ Petition (Civil) No. 1011 of 2022 para 340

<sup>14</sup> Ibid 185

<sup>15</sup> The Central Adoption Resource Authority Guidelines, 2011

<sup>16</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015

couples, which is against Articles 14 and 15 as explained in the Indian Constitution. He underlined, for instance, that the law views marriage as a "yardstick" for stable couples who are seen to be in the "best interest of the child". The chief justice said that the union has not supplied any information on their claim, claiming that only married relationships bring stability and that using the phrase "stable" was ambiguous. Judge Bhat stated that the adoption regime considers protection measures and legal privileges resulting from the legitimate marriage, although being married is not a morally superior choice for the adoptive parents.<sup>17</sup> Therefore, there will be no legal protection for anyone between the parents and the child or even among themselves. Its "state most undoubtedly ought to present the queer families and kids with an entire stretch of rights," he proceeded, stating that "the State requires to do its most effective to guarantee that every single child with limited good care deems himself or herself in safeguarded surroundings with a shining future ensured".<sup>18</sup> Justice Bhat, who led the majority, contended that CJI Chandrachud could not concur that, under section 57(2), adopting children does not differentiate between married and unmarried couples. He also emphasized that reading both is done with consideration for the fact that there is legislation of this kind in place to safeguard the children's best interests in the event of a divorce<sup>19</sup>. Nonetheless, marriage continues to be a prerequisite for obtaining protection from laws concerning, among other things, succession, custody, divorce, and guardianship.

Special Marriage Act: The Court states that it is unable to read the Special Marriage Act's language or invalidate its constitutional legitimacy due to institutional limitations. CJI Chandrachud went on to say that the lack of same-sex marriages does not mean that Section 4 of the Special Marriage Act<sup>20</sup> should be repealed. Claiming that the SMA's disdain for homosexuality rendered it unenforceable would have sent India back to the beginning of the colonial era when it was considered improper to wed someone who belonged to an alternate caste or religion.

## **RECENT LEGAL DEVELOPMENTS IN INDIA FOR LGBTQ+ RIGHTS**

---

<sup>17</sup> Plea for Marriage Equality: Judgement Matrix', 'Plea for Marriage Equality: Judgement Matrix' (1 November 2023) accessed 1 November 2023

<sup>18</sup> Ibid

<sup>19</sup> The Central Adoption Resource Authority Guidelines, 2011

<sup>20</sup> Special marriage act, 1954



1. **Decriminalization of Homosexuality (2018):** The Indian Supreme Court invalidated the portion of S. 377 of the IPC that made homosexual behavior consenting unlawful in a historic ruling. With its recognition of LGBTQIA+ rights, this decision was a major step closer to promoting equality and acceptance.
2. **Protection of Rights for Transgender Persons Act 2019:** This legislation was passed by the Parliament to protect transgender people's rights, welfare, and associated issues. For the very first time in Indian history, transgender people's rights were officially acknowledged.
3. **Despite advancements in the law, issues still exist.** The LGBTQ+ population in India is still impacted by social prejudice, a lack of acknowledgment, and inadequate advantages in rights and services. Continued advocacy work is needed to solve these problems and guarantee that everyone is treated equally.
4. **Sustained Campaign for Equal Marriage:** Although the Supreme Court's ruling to decriminalize homosexuality was a historic moment, the struggle for equal marriage rights is far from over. To guarantee inclusion, gender fairness, and nondiscrimination within India's family law system, legislative action is required. Despite legal advancements, issues persist for the LGBTQ+ community in India. They face social prejudice, lack of acknowledgment, and inadequate rights and services. Continuous advocacy work is required to address these problems and ensure everyone is treated equally. There is a need for a sustained campaign for equal marriage rights. Although the Supreme Court's decision to decriminalize homosexuality was a historic moment, there is still a long way to go in the fight for equal marriage rights. To ensure inclusion, gender fairness, and non-discrimination within India's family law system, legislative action is necessary.

### **CENTER'S ABUNDANCE OF CONUNDRUMS:**

The Center mostly addressed the conventional and conservative characteristics of marriage and how, because all laws are mainly focused on men and women, non-heterosexual marriage will provide a broader scope for misuse and confusion. This claim draws attention to a disagreement about conventional conceptions of marriage and the steps that should be taken by authorities to

change an ingrained idea. In the past, marriage was understood by several religions to be the union of a man and a woman. The concept of God is deeply ingrained in holy texts and religious rituals that have long been a part of many different faiths. Because it differs from the previously stated definition, some people view it as a transgression of strongly held religious beliefs. Importantly, Parliament, not a court, should reconsider the concept of marriage in this regard. This is in line with democratic countries' idea of the distribution of powers.<sup>21</sup> When it comes to creating, amending, and passing laws, Parliament—which is made up of elected representatives acting on behalf of the people—executes these functions through court interpretation and implementation. Legislation, therefore, is the best way to address significant societal changes since it allows for candid conversations, citizen participation, and shared accountability<sup>22</sup>. It acknowledges that redefining marriage has far-reaching effects, including on the opinions of religious establishments. It highlights the significance of appropriate legislation that considers various societal viewpoints and defends individual liberties against state interference in private affairs. With many discussions leading up to potential legislative action—legalizing homosexual marriage in most of the world, for instance—such change might produce a new era in societal beliefs and values. Considering the petitioners' contention that the state shouldn't be involved in regulating interpersonal relationships, Mr. Mehta responded that the state was entitled to oversee the institution of marriage. Laws should prohibit bigamy (marrying someone who is already married) and set a minimum age for marriage, both of which are unlawful.<sup>23</sup> This also pertains to the laws governing judicial separation and divorce, as well as forbidden marriage degrees. The state's primary defense is that there is a legitimate interest in controlling various aspects of marriage. It entails choosing who is eligible to get married, when to get married, and even how many times to get married. Consequently, the Center believed that the claim that a State has no right to become involved in situations concerning personal relationships has been exaggerated. CJI Dy Chandrachud provided an example of a state-controlled parent-child relationship in an oral observation. "The state insists the child receives an education," he said. "I am an absolute master," a parent cannot tell their child. In the momentous 2017 ruling that established the

---

<sup>21</sup> "Arguments Time Split: Plea for Marriage Equality - Supreme Court Observer" (Supreme Court Observer, October 9, 2023) accessed 1 November 2023

<sup>22</sup> *ibid*

<sup>23</sup> *Supriyo @ Supriya Chakraborty & Anr. Versus Union of India Writ Petition (Civil) No. 1011 of 2022 para 42(c)*

privacy right as a fundamental right<sup>24</sup>, the Supreme Court specifically ruled that a person's sexual orientation is an integral element of who they are.

## **AREAS FOR FURTHER PROGRESS FOR LGBTQ+ COMMUNITY IN INDIA**

### **1. Marriage Equality:<sup>25</sup>**

- a. Problem: In India, same-sex marriages are not sanctioned by the law. This disparity was recently brought to light by the Supreme Court's denial of appeals seeking permission to marry.
- b. Advancement Required: To guarantee marriage equality for LGBTQ+ couples, advocacy for equal marriage rights, outreach initiatives, and legislative improvements are crucial.

### **2. Anti-Discrimination Laws:**

- a. Problem: There aren't enough comprehensive anti-discrimination laws, making LGBTQ+ people more susceptible to prejudice in public accommodations, the workplace, and other settings.
- b. Advancement Required: Laws protecting LGBTQ+ individuals from discrimination must be passed and enforced.

### **3. Healthcare Awareness and Accessibility:**

- a. Problem: Due to prejudice from healthcare practitioners, lack of knowledge, and stigma, LGBTQ+ people have difficulty getting healthcare.
- b. Advancement Required: It is essential to support LGBTQ+-affirming healthcare providers, educate healthcare workers, and establish safe environments.

### **4. Parental Rights and Adoption<sup>26</sup>:**

---

<sup>24</sup> Fundamental Right to Privacy - Supreme Court Observer. (2022, August 24). Supreme Court Observer. <https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-casebackground/#:~:text=On%20August%2024th%202017%2C%20the,Opinion%20authored%20by%20Justice%20Chelameswar> (accessed on 1 November 2023)

<sup>25</sup> Diya Dutta, Comparative Analysis of Laws Developed in India, Britain & Germany with Special Preference to LGBT Rights

<sup>26</sup> Eline Frison & Steven Eggermont, Toward an integrated and differential approach to the relationships between loneliness, different types of Facebook use, and adolescents' depressed mood

- a. Problem: LGBTQ+ parents continue to face uneven legal recognition and rights in adoption.
- b. Advancement Required: It is imperative to promote parity in parental rights, optimize adoption procedures, and guarantee the legal standing of non-biological parents.

**5. Inclusive schooling:**

- a. Problem: The issue is that it's hard to find curricula in schools that cover LGBTQ+ concerns and encourage acceptance.
- b. Advancement Required: It is imperative to integrate LGBTQ+ education, provide teachers with training, and create safe spaces for LGBTQ+ pupils.

**6. Transgender Rights:**

- a. Problem: People who identify as transgender experience prejudice, lack of legal recognition, and restricted access to healthcare.<sup>27</sup>
- b. Advancement Required: Transgender rights require awareness efforts, gender-affirming policies, and legal reforms.

**7. Affirmation and Visibility<sup>28</sup>:**

- a. Problem: There is insufficient positive depiction of LGBTQ+ people in literature, the media, and public places.
- b. Advancement Required: Acceptance can be increased by promoting varied narratives, honoring LGBTQ+ accomplishments, and dispelling prejudices.

**8. Community Assistance and Mental Health Services<sup>29</sup>:**

- a. Problem: Because of social pressures, prejudice, and loneliness, there are still gaps in mental health.

---

<sup>27</sup> The Transgender Persons (Protection of Rights) Bill, 2016.

<sup>28</sup> x Ministry of Social Justice and Welfare, "Transgender Persons (Protection of Rights) Bill, 2016" available at <https://www.prsindia.org/billtrack/transgender-persons-protection-rights-bill-2016> accessed August 03, 2023

<sup>29</sup> Transgender Persons (Protection of Rights) Act, § 18, No. 40, Act of Parliament (2019)

- b. Advancement Required: It is essential to set up helplines, support groups, and mental health resources for LGBTQ+ people.<sup>30</sup>

Human rights in general are entwined with the rights of LGBTQ+ families. It will take activism, education, and legislative changes to build a more just society where every family is valued and safeguarded. As we proceed on this path, let us work toward a society in which families prosper without having to worry about prejudice and where love has no bounds.

## **CONCLUSION:**

In conclusion, even though there have been tremendous local and international advancements made to acknowledge and defend the rights of LGBTQ++ people, there is still a long way to go until complete equality and inclusion are realized. The landscape of LGBTQ++ rights has changed throughout time, moving from advocacy work to significant legislative developments, and from legal reforms to cultural attitudes.

The trip has been characterized by obstacles, disappointments, and victories, all of which have shaped the current environment. However, it is imperative to acknowledge that the fight for the rights of LGBTQ++ people is far from over. Different parts of the world still experience prejudice, violence, and discrimination, which impedes the full achievement of acceptance and equal rights. The multifaceted nature of cultural, religious, and socioeconomic elements persistently shapes perceptions of the LGBTQ++ population. Maintaining the momentum of change in the future requires governments, allies, and civil society organizations to work together. To dispel the myths and prejudices that encourage discrimination, it is crucial to prioritize the promotion of awareness, education, and candid conversations. Upon examining the advancements achieved thus far, it is apparent that although the path ahead may present difficulties, the dedication to a society in which every person, regardless of their gender identity or sexual orientation, can live without fear, bias, or discrimination endures unwaveringly. We can move toward a future where the values of equality, decency, and respect are respected for everyone, regardless of who they are or who they love, with sustained activism, education, and cooperation.

---

<sup>30</sup> v Karan Jajal, A social consciousness identity development and contemporary conundrums in LGBTQ community



# **LEGALITY OF LOUDSPEAKERS IN INDIA**

By Yagyawalkya Sharma<sup>1</sup>

## **Abstract**

The work deals with the legal aspects involving the use of loudspeakers in India. Loudspeakers have become a subject matter of great discussion and debate. They have occupied media for months in a row in recent past. A lion's share of all this discussion on loudspeakers and public address systems is based on the legality of its and its constitutional validity. Therefore, the research work tries to find out the real issue and the relevancy of this greater issue. A comprehensive study into what courts have said on this issue and what legislature has done on it, or what it is willing to do. Also, a glimpse into whether there is convergence between the judiciary and the legislature or not, on legality of loudspeakers is included in this research work. With reference to the rulings of various High Courts and supreme Court the analysis has been made so as to ascertain the stand of Indian judiciary in this important matter. The legislative wing of the Government, or the Parliament has made certain rules regarding loudspeakers and other public address systems, which is known as Noise Pollution Rules, 2000. A comprehensive study of this rule is also the part of the research work. Also, there is elucidation on how courts have dealt with the claims of fundamental rights associated with usage of or denial or usage of loudspeakers, sound amplifiers and other public address systems. At the end, a comprehensive position of the authorities is described and also the current position of the legality of using loudspeakers is also ascertained.

## **Key words**

- Noise Pollution (Regulation and Control) Rules, 2000
- Re Noise Pollution<sup>2</sup> Implementation v. Unknown
- (Forum, Prevention of Environment & Sound Pollution v. Union of India & Anr., 2005)
- Article 25, The Constitution of India, 1950
- Article 21, The Constitution of India, 1950
- Article 19, The Constitution of India, 1950<sup>3</sup>

---

<sup>1</sup> Student of Law, XIM University Bhubaneswar, Odisha

<sup>2</sup> (www.latestlaws.com, n.d.)

<sup>3</sup> (legalserviceindia.com, n.d.)

## **Introduction**

Loudspeakers for religious worship, loudspeakers for celebrations, loudspeakers for rallies, loudspeakers for what not. It may sound perplexing but loudspeakers seem to have become an essential part of people and their lives. Institutions too, of vibrant character do use loudspeakers for their own causes and purposes. Political rallies and overwhelming masses in such campaigns seems impossible if we disallow loudspeakers to them. If we think in general, of an Indian wedding all the sweets, and vibrant range of cushiness seems unpleasurable if we remove loudspeakers from it. Traditional Indian Barat (procession of bridegroom and his relatives dancing and overjoying) will become impossible if we disallow loudspeakers for them. Places of worship and of religious character do also demand loudspeakers for their ritual recitations. Mosque demands loudspeakers for doing Namaz five times a day. Similarly, many Hindu temples also demand and are using loudspeakers for their own ritual recitations. Moreover, religious preachers of various religion from Acharya or Purohit in Hinduism, Maulvi in Islam, Father in Christianity and so on in other religions also need and demand the use of loudspeakers for delivering their religious commentaries. The need and demand of loudspeakers by entities including individuals and institutions in India is however a matter of complex legal understanding. Involving intricate intermingling of various rules and regulations having the sanctity of law. Regarding the usage of loudspeakers article 19, article 21 and article 25 of The Constitution of India, 1950 come into a unique play. But this interplay of aforementioned articles of Constitution of India forms a complicating legal arena, raising many questions of great importance. Loudspeakers use by one is within Constitutional freedom of the concerned individual or institution, but what is this freedom unlimited? Can there be no bar on its use with regard to sound level, place and time? What if loudspeaker use by one disturbs the other? Is this person, so being disturbed is bereft of any constitutional or legal protection?

All these questions have brought the issue of loudspeakers to the notice of judiciary. The function of judiciary is to interpret the laws and open the knots and neutralise the conflicting points or slugfest between constitutional rights and legal rights of entities against each-other in a manner Constitution envisages. There is considerable history of judicial activism in the legal aspects around the use of loudspeakers in India. There are also, specific environmental laws to prevent noise pollution, and specific law on the usage of loudspeakers in India.

Besides this there are few landmark Supreme Court judgements and many Judgements by various High Courts on this issue. All these have shaped over the years legal standards permitting and imposing limits on the usage of loudspeakers.

### **Incidents of recent past relating to the use of loudspeakers in our country**

In April 2022 Maharashtra Navnirman Sena chief Raj Thackeray urged the government of Maharashtra to remove loudspeakers from all mosques<sup>4</sup>. He asserted in public rally that loudspeakers used for doing Azan, (prayers by Muslim people 5 times a day in praise of God) should be removed from all mosques using it. He raised question regarding the need of doing Azan on loudspeakers in high volumes for 5 times in a day. He further went on to claim that if the loudspeakers aren't removed from mosques, then as backlash Hanuman Chalisa will be played on loudspeakers in front of all mosques in volume double than that of Azan on loudspeakers. This incident drew sufficient attention of the people, media, activists, and legal experts also. The issue made headlines and remained a burning topic for months.

A famous singer to be kept unnamed created social media tussle on this issue. When he too questioned the loudspeakers for Azan, especially for the morning Azan. He declared it to be forced religiousness when it comes to usage of loudspeakers. He contended that due to loudspeakers he had to wake up early in the morning always as against his will. The tweet by the singer invited backlash and fuelled the discussion and debate on the legality and essentiality of loudspeakers in India. Backlash against the singer involved a fatwa being issued against him which provided 10,00,000 INR to anyone who would shave the singer's head. The singer then himself shaved his hairs completely, as a response which manifested his displeasure against such fatwa

### **Supreme Court on the issue of Loudspeakers**

On the matters of loudspeakers there are two most important judgements of the honourable Supreme Court of India. Both of these judgments were delivered in the year 2005 only. The first judgement came in the case of *Re Noise Pollution Implementation v. Unknown*<sup>5</sup> on July 18, 2005. The Honourable Supreme Court ruled in this case that the right to live without unwanted noise is encompassed by the breadth and extent of the Right to life and personal liberty ensured to people by article 21 of the Constitution of India.<sup>6</sup>

---

<sup>4</sup> (Ranjan, India Today, 2022)

<sup>5</sup> 2005 (3) AWC 2685 (SC)

<sup>6</sup> (southasiajournal.net, n.d.)



The apex court adopted the position that noise infringes upon persons' basic right to a quiet life and their freedom to shield themselves from what could be considered a forced audience. As part of its judgement the court banned the usage of loudspeakers between 10pm in night to 6am in morning. The court's logic behind this time frame was that, between 10pm of night to 6am in the morning, it is the time of the people to sleep and remain undisturbed against any forced sound or noise hindering their peace and sleep. The ratio decidendi of the court in this ruling was that, people have right to life and personal liberty under Article 21 of The Constitution of India.<sup>7</sup> And right against free audience and right against noise are two facets of Article 21. The court interpreted these terms as part of Fundamental Rights. Therefore, it held that people should be protected against noise at any and all cost. The ruling in this case became a problem for the government. This problem led to several state governments approaching the honourable Supreme Court to clarify the problem posed. This led to another major ruling by the Apex Court in the October month of the same year.

Regarding the loudspeaker issue, the honourable Supreme Court rendered its second significant ruling in the matter of (Forum for Prevention of Environment & Sound Pollution vs UOI & Anr., 2005)<sup>8</sup>. In this case court took a more liberal or perhaps loose stand regarding its previous interpretation on fundamental rights violation with regard to the use of loudspeakers. The reason for its more flexible stance in this case sprouted from the concerns that government was facing in practical implementation of its verdict in the previous case, mentioned in preceding paragraph. The landmark ruling of the top court in this matter held that the loudspeakers can be allowed till midnight that is to say between 10 pm to 12 am during festive and religious occasions. But such allowance should not exceed maximum of 15days in a year.

### **Rulings by various High Courts on the issue of loudspeakers**

In August 2016, Bombay High Court held that using of loudspeakers cannot be claimed as right secured under Article 25 of Indian Constitution. No religion or sect could claim loudspeakers use as right under Article 25. The court ruled that we believe the Noise Pollution Rules apply to all places of worship. The court made it clear that loudspeakers and other public address systems cannot be used without authorization from the authorities, and that all places of worship must abide by the Noise Pollution Rules.<sup>9</sup>

---

<sup>7</sup> (www.nishithdesai.com, n.d.)

<sup>8</sup> 2005 (8) SCC 796

<sup>9</sup> (Bhashin, 2016)

The Uttarakhand High Court ruled in June 2018 that no individual or group, including places of worship, is permitted to use loudspeakers without obtaining written consent from the appropriate authorities. The court additionally decided that using loudspeakers, even during the day, will require the user to promise that the volume won't go above five decibels. It is crucial to note that a pin dropping into the earth makes a sound that is ten decibels louder.

In May 2020, a division bench of Allahabad High Court observed that doing namaz constitutes as an essential religious practice of Islam but doing it on loudspeakers is not within the purview of fundamental rights. And dismissed the plea accordingly.<sup>10</sup>

In the matter of Mahendra Singh V. Uttarakhand State<sup>11</sup>, The Uttarakhand High Court overturned a previous ruling of itself, from June 2018 that set a 5 dB loudspeaker limit. And held its earlier verdict to be an accidental error. There are various more judgements by other high courts also including Karnataka, Gujrat and Punjab and Haryana high court. But what has been a common element in almost all of these judgements of High Courts is reference to the guidelines issued by supreme court regarding loudspeakers and other public address systems.

Looking for the specific guidelines of Supreme Court on loudspeakers and other public addressing systems we will find that the court has agreed to the constitutional validity of Noise Pollution (Regulation & Control) Rules 2000 in the landmark matter of (Forum for Prevention of Environment & Sound Pollution vs UOI & Anr., 2005)<sup>12</sup> Therefore the legislative action and decision on loudspeakers has been endorsed by the judiciary.

### **Looking into major provisions of Noise Pollution Rules, 2000.**

- The rules divide the areas for the purpose of the rules into industrial, commercial and residential/silence areas or zones. State government is given the responsibility and power to determine the sound limits permissible in decibel in these designated areas. The rules itself contains schedule dedicated to provide permissible limits of noise or sound in these areas.
- The rules require all the local authorities and other developmental organisations to take concern of noise pollution factor in their town planning and development activities.

---

<sup>10</sup> (Khan, 2020)

<sup>11</sup> (Mahendra Singh Vs. State of Uttarakhand and Ors., 2020)

<sup>12</sup> (SUPREME COURT OF INDIA, 28)

- According to the regulations, a 100-meter radius around the courts, hospitals and educational institutes to be declared as silence zone.

### **Responsibility to enforce the rules-**

- The ambient air quality requirement listed in schedule 1 of the regulations should not be exceeded by the noise level.
- It is further mandated on State Pollution Control Boards to collect data and publish the results in statistical manner regarding the noise pollution in their area, and the measure and the effectivity of the same in ebbing the noise pollution.
- For the aforementioned reason, Board of Pollution Control at state level and the Board for Pollution Control at the level of Centre must consult.<sup>13</sup>

### **Restrictions on public address systems and loudspeakers**

- Usage of public address system and loudspeakers are prohibited without having requisite permission for the same.
- Usage of loudspeakers and other public address system including sound amplifiers is prohibited to be used in night time, which is defined in the rules itself. However, there is exception in this rule for communication within closed premises like conference room and auditorium and also at times and occasions of emergencies of public threat.
- However, power is given to the authorities to allow the use of loudspeakers and sound amplifiers till midnight that is to say between 10pm to 12am, on festive occasions for a maximum of 15days in one calendar year. It should be noted that this rule was also challenged before the Supreme Court, which upheld its constitutionality after taking into account the rule's nature and the circumstances surrounding its application.
- When any loudspeakers in used is used in any public place it should not be more than 75decibels or the ambient air quality standard.
- When a public address system or loudspeaker is owned by a private entity, the sound it emits at the edge or boundary of the private area or place cannot be louder than five decibels.

### **Violations of rules in area declared Silence Zone under these rules**

---

<sup>13</sup> (shodhgangotri.inflibnet.ac.in, n.d.)

- Under the rules committing of below enlisted acts in silence zone will constitute violation –
- Using loudspeakers or playing of music.
- Beating drums, blowing pressure or musical horns, or producing sounds of any other instruments.
- Doing any performance, which is of such nature that it attracts the crowd or causes the crowd to gather to witness such performance being performed in the prohibited area.
- Bursting of crackers and using loudspeakers and other public address systems shall also amount to the violation of rules.

### **Special observation**

Based on the analysis of the rulings of numerous high courts and the two landmark verdicts of honourable supreme court we may say that the legality of loudspeakers and other public address systems in our country can be divided into two facets one regarding the fundamental rights involved in this aspect as also mentioned in the introductory paragraph and second regarding how to allow and to what extent in practical, the usage of public address systems and loudspeakers.

With regard to first facet relating to fundamental rights, we may say that the judiciary has denied the use of loudspeakers and public address systems as an aspect of fundamental rights. The religious institutions' claim that using loudspeakers is protected by Article 25 of our Constitution, under part III of constitution, has been overwhelmingly rejected by the courts.

The court has additionally adopted the stance that Article 19, which grants citizens, the right to freedom of speech and expression under sub-clause [a] of clause (1),<sup>14</sup> does so subject to the reasonable constraints provided under second clause of the article. And prohibition whatsoever imposed on loudspeakers derive their constitutional sanctity from the reasonable restrictions provided by the second clause to article 19. With regard to article 21, judiciary has taken the stand that allowing loudspeakers, sound amplifiers and other public address systems have implications on article 21 as it infringes the rights of people to good quality of life and peace and non-disturbance. Additionally, it results in a situation known as a compelled audience, which severely restricts the rights and protection provided or promised under article 21 of Constitution of India.

---

<sup>14</sup> (www.nishithdesai.com, n.d.)

Regarding second aspect of issue mentioned in previous page, the judiciary has determined that the legislative decisions are sufficient, lawful, and valid. The court has largely kept itself abstained from intervening into what the legislature has decided by far now on the matters of loudspeakers. It can be construed that there is convergence between judicial and legislative wings of government in dealing with loudspeakers Legislature mainly tackles the issue through Noise Pollution Rules of 2000. And the judiciary has held the same to be a valid approach.

### **Conclusion**

The convergence between the judiciary and legislature on the issue of loudspeakers closes the scope of any more doubt, ambiguity or confusion on the issue. It becomes therefore a settled law that denial of use of use of loudspeakers does not constitute violation of fundamental rights prima facie. And restriction can be imposed ion the same. Using loudspeakers is permissible but subject to the permission of relevant authorities and also, on abidance of Noise Pollution Rules.

But notwithstanding these jurisprudential understanding of Indian judiciary there exists huge ambiguity and confusion and dilemma regarding the usage of loudspeakers in our country, India. Judiciary has ruled on the issue, Parliament has made the law and the specific rules and standards to be adhered by the authorities and citizens. But people are unaware of all these. Even today huge number of loudspeakers are used in our country illegally. They aren't used illegally deliberately and intentionally by the people but due to their lack of awareness and knowledge and update with regard to the legal standards. There is need to let the common man of our country to be aware of these developments.

### **References**

1. (n.d.). Retrieved from shodhgangotri.inflibnet.ac.in: shodhgangotri.inflibnet.ac.in
2. (n.d.). Retrieved from shodhgangotri.inflibnet.ac.in: shodhgangotri.inflibnet.ac.in
3. (n.d.). Retrieved from www.latestlaws.com: www.latestlaws.com
4. (n.d.). Retrieved from www.nishithdesai.com: www.nishithdesai.com
5. (n.d.). Retrieved from www.nishithdesai.com: www.nishithdesai.com
6. (n.d.).

7. (n.d.). Retrieved from [legalserviceindia.com](https://legalserviceindia.com): [legalserviceindia.com](https://legalserviceindia.com)
8. Bhashin, R. (2016, August 17). *The Indian Express*. Retrieved from Use of Loudspeakers bot fundamental right : Bombay HC: <https://indianexpress.com>
9. Forum, Prevention of Environment & Sound Pollution v. Union of India & Anr., Appeal (civil) 3735 of 2005 (Supreme Court October 28, 2005).
10. Khan, R. (2020, May 28). *The Quint*. Retrieved from The Quint: <https://www.thequint.com>
11. Mahendra Singh v. State of Uttarakhand and others, Writ Petition (PIL) No. 112 of 2015 (Supreme Court of India July 22, 2020).
12. Mahendra Singh Vs. State of Uttarakhand and Ors., writ petiton (PIL)112 of 2015 (High Court of Uttarakhand July 22, 2020).
13. Ranjan, A. (2022, April 7). *India Today*. Retrieved from <https://www.indiatoday.in>
14. Ranjan, A. (2022, April 22). *India Today*. Retrieved from India Today: <https://www.indiatoday.in>
15. Santoshi, N. (2018, June 26). *Uttarakhand Court sets 5-decibel limt for loudspeakers*. Retrieved from Hindustan Times: <https://www.hindustantimes.com>
16. *southasiajournal.net*. (n.d.). Retrieved from [southasiajournal.net](https://southasiajournal.net)
17. *SUPREME COURT OF INDIA*. (28, October 2005). Retrieved from <https://main.sci.gov.in>: <https://main.sci.gov.in>
18. The Constitution of India, 1950, Art. 19(1)(a)
19. The Constitution of India, 1950, Art. 21
20. The Constitution of India, 1950, Art 25

# UTTARAKHAND'S UNIFORM CIVIL CODE

*By Aman Sahu<sup>1</sup>*

## **Abstract**

The Uttarakhand Uniform Civil Code aims to harmonize personal laws governing various religious communities within the state, promoting equality, justice and uniformity in matters pertaining to marriage, divorce, inheritance and succession. This legislation seeks to establish a common set of laws applicable to all residents, irrespective of their religious affiliations, while respecting cultural diversity and upholding constitutional values. Through the implementation of a uniform civil code, the state endeavors to foster social cohesion, gender equality and individual rights, thereby contributing to the progressive evolution of society.

## **Introduction**

The Uniform Civil Code is enumerated in Article 44, Part IV of the Indian constitution, which falls under the Directive Principles Of State Policy. Dr. B.R Ambedkar described this principle as 'novel feature' of the Indian constitution. Article 44 of the Indian constitution states, "The state shall endeavor to secure the citizen a Uniform Civil Code throughout the territory of India" meaning that all sections of society irrespective of their religion, custom, or caste, shall be treated equally.

On February 6, 2024 Uttarakhand Chief Minister Pushkar Singh Dhami Introduced the Uniform Civil Code bill in the Uttarakhand State Assembly. By passing the UCC Bill Uttarakhand became the first legislature in Independent India to establish uniform rules for all communities – except Scheduled Tribes – on marriage, divorce, inheritance and live-in relationships. In 2022, Uttarakhand Government formed a committee led by Retired Supreme Court Judge Ranjana Prakash Desai to prepare a draft for the UCC. The committee consisting of Pramod Kohli (Retired Judge), Shatrughan Sinha (Former Uttarakhand Chief Secretary), Surekha Dangwal (Vice chancellor of Dune University) and Manu Gaur (Social Activist). The committee compiled a draft report of 740 Pages divided into 4 Volumes (Hindustan Times,2024).

Uttarakhand Chief Minister Mr. Dhami said that the Uttarakhand govt. will end the injustice faced by women for centuries, citing Shah Bano and Saira Bano case. Mr. Dhami also stated,

---

<sup>1</sup> Law Student at Hitkarini Law College, Jabalpur, Madhya Pradesh.

“Anti-social elements want different communities to be divided for political benefits; this too will now end in Uttarakhand with the Uniform Civil Code giving equal rights to everyone”. The UCC Bill comes with complete ban on various dimension of personal law, polygamy and child marriage. But this bill comes with some of the debatable topic like registration for living in live-in relationship, ban on marriage between close relatives, which is typically practiced in Islamic law.

### **What is Uniform Civil Code**

The uniform civil code is a proposal to execute one law in one country which will apply to all the citizens irrespective of their religion, gender and sexual orientation. The concept of Uniform civil code is enshrined in Article 44 (Part IV) of the Indian constitution, aiming to promote equality and social justice. However, Article 44 comes under the Directive Principles Of State Policy which is not enforceable by any court. But when the UCC Bill becomes law it will be enforceable by the Court. UCC provides equality and social justice to all by granting equal property rights to both sons and daughters. It also ensures equal property rights for illegitimate children and extends these rights to both adoptive and biological children. Jurists argue that in order to be effective for citizens, understanding the historical context of those laws is crucial. Therefore, let's delve into the history of Uniform Civil Code in India to gain a better understanding of the Uttarakhand Uniform Civil Code.

### **History Of Uniform Civil Code**

There has always been a controversy in India due to Uniform Civil Code.

- **Pre Independence:**

1. Lex Loci Report:

In 1840's, the British codified law related to crimes, evidences and contracts, but they were aware of India's unique situation with Hindu and Muslim personal laws. Consequently, they only codified criminal, evidence and contract law by leaving Hindu and Muslim law untouched.

2. Queen's Proclamation;



After the mutiny of 1857, the Queen pledged absolute non-interference of the crown in religious matters of Hindus and Muslims.

- **Post Independence:**

1. Drafting of constitution:

The framers of the constitution, such as BR Ambedkar and Jawaharlal Nehru put the UCC in DPSP due to opposition from Religious Leaders. Several acts were enacted for Hindus and Muslims, such as The Succession act, The Hindu marriage act, Adoption and Maintenance Act etc. which fall under separate Hindu law and Muslim Law.

2. Shah Bano Case (1985):

Shah Bano, a 73-year old women, was divorced by her husband using triple talaq and her husband refused to provide maintenance. Then she approached the court regarding maintenance and the court ruled in favor of Shah Bano, leading her husband to appeal in Supreme Court, claiming that he had fulfilled all his obligation under Islamic law. The Supreme Court gave verdict in favor of Shah Bano in 1985 under section 125 of “Maintenance of Wives, Children and Parents Act”, which applies to all citizens irrespective of religion.

3. John Vallamattom Case:

This case concerns the constitutional validity of Section 118 of Indian Succession Act, which applies to non-Christians in India. Mr. Vallamatton, a priest from Kerela, challenged Section 118 of Indian Succession Act because it imposed unreasonable restrictions on donation of property for religious or charitable purpose by will. The Bench declared the Section Unconstitutional.

4. Goa Civil Code:

The Goa Civil code is derived from a Portuguese civil code that remained in force after independence or liberation of goa. The Goa UCC allows for equal division of property between children. Muslims who have registered in Goa cannot practice triple talaq and polygamy. It also permits equal distribution of property between legitimate and illegitimate children, and parents cannot entirely disinherit their

children. Every birth, marriage and death must be registered. After Divorce, spouse is entitled to half of the husband's property.

During pre and post-independence, while other laws were codified and became common throughout the country, personal laws were governed by different communities.

Now, Uttarakhand has introduced the Uniform Civil Code to reform all conservative laws.

### **Features of Uttarakhand Uniform Civil Code Bill 2024**

When any draft is presented, it contains both positive aspects and drawbacks. Some major features of Uttarakhand UCC draft are as follows:

- **Applicability**

The UCC applies to all residents of Uttarakhand except Schedule Tribes.

Section 2 of the bill specifies *“Nothing contained in this code shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 read with article 142 of the Constitution of India and the persons and group of persons whose customary rights are protected under Part XXI of the Constitution of India”*.

- **Live-in Relationships**

A significant and contentious provision of the UCC Bill involves mandatory registration of live-in relationships. Parental approval is also required for couples in live-in relationships. Children born out of such relationships are entitled to all legal rights.

- **Bigamy or Polygamy**

Section 4 of the bill prohibits Polygamy and Bigamy. It states that none of the parties to a new marriage should have another spouse alive at the time of the marriage.

- **Registration Of Marriage**

Every marriage must be registered within 60 days, failing with a fine of Rs 25,000 and three-months jail term may be imposed. Providing false information regarding marriage incurs a fine of Rs. 10,000.

- Illegitimate Children

For the first time in India, the concept of illegitimate children has been abolished. The Uttarakhand UCC Bill grants legal recognition to children born out of voidable marriages or live-in relationships.

- Property Rights

The UCC Bill ensures equal property rights for sons and daughters.

It also grants equal property right to illegitimate and adopted children.

- Divorce

The UCC Bill provides special rights to women for seeking divorce under two conditions;

1. If Husband is found guilty of Rape
2. If the Husband has more than one wife

India is a secular and federal country with a multitude of religions and customs. However, consolidating all of them into one law is one of the most challenging and stressful tasks. When the UCC Bill becomes law, it may cause social disturbance in the country. Each religion has its own customs, which are passed down from generation to generation. It takes time for change these customs and one bill cannot alter people's thought process or deny their religious customs. Doing so could potentially create social and political unrest in the country.

### **Arguments in Favor of Uttarakhand Uniform Civil Code**

- Reduce vote bank politics

Most political parties engage in vote bank politics based on religion or casteism in every election. The UCC Bill aims to promote equality among peoples.

- Integrate India

India is home to various religious and customs. The UCC will contribute to unite ever Indian, irrespective of his religion, caste, or tribe under a uniform code of conduct.

- Rights to women

Religious personal laws often perpetuate patriarchy and contribute to the mistreatment of women in society. A Uniform Civil Code will also aid in improving women's conditions.

- Secularism

Implementing a Uniform Civil Code does not imply limiting people's freedom to practice their religion, it simply means every person should be treated equally. Article 25 and 26 of our Indian Constitution guarantee Freedom of Religion, and the Uniform Civil Code is not antithetical to Secularism.

- Gender Justice

Discriminatory practices concerning divorce, marriage and religious personal laws would be eradicated through the implementation of Uniform Civil Code. The UCC Bill grants equal inheritance rights to both sons and daughters.

- Progressive Jurisprudence

The Uniform Civil Code is a progressive proposal that mirrors jurisprudence exercised by the Supreme Court in matters related to gender and inter-religious equality. For instance, in the Shah Bano Case of 1985, the Supreme Court allowed for granting maintenance to Divorced Muslim women. In the Shaira Bano Case of 2017, the Supreme Court banned the discriminatory practice of triple talaq.

### **Arguments Against Uniform Civil Code**

- Violation Of Fundamental Rights

Critics argue that the UCC Bill violates the Article 21- Right to Privacy and Personal Liberty and also Article 25- Right to Religious Freedom.

- Cultural Diversity

India boasts diverse religious and cultural practices observed by various communities. However, the Uttarakhand UCC Bill leads to the homogenization of laws, potentially erasing distinct customs and religious practices.

- Hindu's Personal Code

Critics also contended that the Uttarakhand UCC Bill signals the imposition of Hindu Law onto other communities. Uttarakhand UCC Bill aligns the Hindu Law regarding Marriage, Divorce and Inheritance.

- End of Personal Laws

Some Critics suggest that the implementation of UCC marks the end of personal laws for other communities, with only Hindu Law being enforced upon them.

### **Conclusion**

The Uniform Civil Code aims to eliminate orthodox customs and personal laws from society. Whenever a new law is passed, certain difficulty arises due to the mindset of people. Implementing such a code requires a fundamental shift in people's mindset. After its implementation in Uttarakhand and understanding its drawbacks, it can be extended nationwide. The Uttarakhand Uniform Civil Code will eradicate orthodox customs and personal laws, while granting equal rights to women and children. However, the Uttarakhand UCC Bill has some debatable topics and drawbacks, but it will ultimately pave the way for building a better society.

---



# **GENDER-NEUTRAL JUSTICE AGAINST SEXUAL VIOLENCE IN INDIA**

By: Harshika Arya<sup>1</sup>

## **ABSTRACT:**

The understanding of sexual violence encompasses various forms of coercion, manipulation, and non-consensual sexual acts, such as rape, sexual assault, abuse, harassment, and genital mutilation. Historically, society has perceived sexual violence as predominantly perpetrated by men against women, reflecting societal norms and patriarchal structures. However, recent years have brought attention to the reality of males who have been victims of sexual violence, challenging prevailing stereotypes and highlighting the need for gender-neutral approaches to justice.

In India, despite legal amendments addressing sexual offenses, there remains a significant gap in recognizing and protecting male victims of rape and sexual assault. The Indian Penal Code primarily focuses on female victims, leaving male survivors without adequate legal recourse. Societal stigma and misconceptions further compound the challenges that are posed to male victims, discouraging them from reporting their experiences and seeking justice.

Efforts to address male sexual assault cases globally have led to legislative changes in countries like the United Kingdom, Scotland, Northern Ireland, the United States, and Canada, where gender-neutral laws have been put in place to protect all genders from sexual violence.

However, in India, the legal framework continues to overlook male victims, perpetuating inequality and denying them the protection and support they deserve. Calls advocating for laws against rape that are not gender-specific have been met with resistance, highlighting the need for greater awareness, advocacy, and legal reforms to ensure justice for all survivors, regardless of gender.

Technology has played a dual role in raising awareness of sexual violence against men while also contributing to its prevalence through online harassment and exploitation. Public awareness campaigns, mental health support services, and legal reforms are essential steps in addressing the

---

<sup>1</sup> Student at Dr D Y Patil College of Law, Nakash pind p.o. begumpur, bypass patna city-800009.

unique challenges faced by male survivors and dismantling societal norms that perpetuate gender-based violence.

In conclusion, addressing sexual violence against men requires a multifaceted approach that includes legal reforms, public education, and mental health support. By recognizing the experiences of male survivors and advocating for gender-neutral laws, we can work towards a society that upholds the principles of equality, dignity, and justice should be extended to everyone, regardless of gender.

Keywords: Gender-neutral laws, Male Survivors, Societal Stigma, Legal reforms.

## **INTRODUCTION:**

**What do people understand by sexual violence?** Sexual violence refers to a situation when Sexual activity that is unwanted, such as rape and sexual assault, , sexual abuse, sexual harassment and genital mutilation is forced or manipulated by someone else without their consent. Rape is the fourth most serious crime in India and a serious problem worldwide. It is generally a crime committed by men against women, but have we ever thought about it vice-versa? Rape in general defined as the crime committed by men against women<sup>2</sup>. It has been conceptualized as sexual victimization of women by male preparators that manifest the rape-supportive patriarchal society. However, in reality, it has been found that there is a significant number of rapes and other sexual violence victims are male too but the mindset that rape cannot happen with men distanced these rape survivors from the research spotlight<sup>3</sup>. In India, only a woman can be legally considered as a victim of sexual violence and at the same time, only a man can be legally considered to be the perpetrator. In cases where a man is the victim is not considered a crime under the Indian Penal Code 1860<sup>4</sup>. In India, the discourse surrounding gender justice and equality has long been at the forefront of social and legal debates. Amidst these discussions, the laws pertaining to rape and the legal safeguards provided for both

---

<sup>2</sup> KALASKAR, K. D. (n.d.). *Rape Against Men By Women - No Neutral Law In India*. Lawyersclubindia. Retrieved May 9, 2024, from

<https://www.lawyersclubindia.com/articles/rape-against-men-by-women-no-neutral-law-in-india-14375.asp>

<sup>3</sup> Rai, D. (2020, April 16). *Critical Analysis of Rape of Male in India*. IPleaders.

<https://blog.ipleaders.in/critical-analysis-of-rape-of-male-in-india/>

<sup>4</sup> Mehta, J. (n.d.). *Sexual Violence against Men in India*. Legalserviceindia.com.

<https://www.legalserviceindia.com/legal/article-4685-sexual-violence-against-men-in-india.html>



men and women have garnered significant attention. Historically, the focus of rape laws and protective measures has primarily been on women, reflecting the prevailing societal perception of sexual violence as a crime predominantly perpetrated against women. However, recent years have seen a growing recognition of the need for gender-neutral approaches to justice, acknowledging that both men and women can be victims of sexual violence and require adequate legal protection.

The Indian Penal Code (IPC), which saw considerable revisions, particularly those pertaining to sexual offences, in the wake of high-profile instances that provoked public outcry, largely governs India's legal environment with relation to rape. Concerns about the suitability and efficacy of the legislative measures in addressing the complexity of sexual violence and guaranteeing justice for all victims, regardless of gender, remain in spite of these modifications. Additionally, despite the fact that the judicial system predominantly deals with the abuse of women, there is a rising acknowledgement of the incidence of male victims of sexual assault and rape, who frequently face social humiliation and no legal redress. This essay will explore the obstacles male victims encounter when trying to obtain justice and look at the legal resources that can help them.

Apart from scrutinizing the legal provisions, the purpose of this study is to investigate the wider societal attitudes and beliefs of sexual assault against men and women in India, namely rape. Comprehending these socio-cultural processes is essential to formulating all-encompassing legal approaches that advance gender-neutral justice and tackle the structural obstacles to reporting, prosecuting, and convicting sexual violence perpetrators. In conclusion, by offering a critical examination of rape laws and legal protections for both men and women, this study seeks to further the current conversation in India on gender justice. It looks for areas where the current legal system is deficient and needs improvement in order to support changes that preserve the values of justice, equality, and dignity for people of all genders.

### **GENDERED EXPECTATIONS IN CONTEMPORARY SOCIETY:**

Even though rape is one of the most horrible and brutal crimes in history, it has taken a long time for it to be recognized as a crime against women's sexual autonomy and bodily integrity. For the

most of history, women were regarded as nothing more than objects, and as such, rape was only considered illegal when it involved the infringement of another man's property. The belief that rape is exclusively a female-on-male issue excluded these rape survivors from the research spotlight, despite the fact that a sizable portion of rapes and other sexual assault victims are male. In Indian society, male rape is considered taboo and is associated with negative stigma. As a result, the majority of victims were afraid to disclose their experiences of sexual assault. Usually, their concern is that if they disclose the assault, people will question their sexual orientation, call them gay, or think worse of them if they are a man. Myths about men in society played a significant part in forcing thousands of male rape victims to conceal and deny their abuse, which led to thousands of rape cases remaining unreported. Any soul, regardless of age, sexual orientation, or gender identity, can experience sexual violence. Furthermore, this crime can occur anywhere—in offices, peopjails, businesses, schools, etc. It wasn't until after the 1980s that investigations into male rape victims started, and they were mostly focused on the sexual harassment of youngsters.

Certain nations' histories provide their triumphant soldiers the right to rape their vanquished adversary. The deed showed complete authority over the vanquished fighter. It was once thought that a man who engages in sexual activity, whether forced or consenting, loses his manhood and is hence unable to rule or fight. gang Male rapes were meted out as punishment for offences such as adultery in Rome and violating the harem's sanctity in Persia and Iran. The majority of people still think that rapes against men exclusively occur in jails, prisons, and hostels, although statistics show that traumatizing incidents against men happen elsewhere. More men than women fall victim to sexual. There is a common belief that a guy has to defend himself and that he has lost his manhood if he fails to do so. These victims begin to blame themselves for the injustice done to them, much like the majority of rape victims do. The belief that "they have lost their manhood" leads to their ongoing mistreatment. Most of them begin to have self-doubts and sometimes even fail to have satisfying sex with their partners. Reports of male rapes are extremely rare. The crime is seen to be hard to establish, and those who commit it are frequently found not guilty. Ironically, the entire community punishes the victim who comes out and admits to having been sexually assaulted or raped. He hates himself and his entire being because of the guilt and shame he feels. The Criminal Law (Amendment) Bill, 2018 stipulates that raping a girl younger than 12 years old carries the death penalty. The minimum sentence for raping a woman

has been raised from seven to ten years. Additionally, the maximum sentence for offenders whose victims are females under the age of sixteen has been raised from 10 to 20 years, with the possibility of life in jail. But there is absolutely no mention of men in the law. According to Section 375 of the IPC, rape is a crime that only affects women. According to Indian law, a woman is a "offender" and a guy is not a "victim."

One in five guys in India have been raped or molested at least once in their lifetimes, according to a survey on adult men. However, what precisely is male molestation? Many things count as "unwanted sexual experiences," even if a child or man was initially appreciative of the attention, according to an organization that serves as a helpline for male survivors. It can involve an incident that a man isn't comfortable classifying as "sexual abuse" or "sexual assault," or even comprehending the nature of the incident. Male rape and molestation are often associated with myths, which is one of the reasons why males fail to disclose the abuse. There are prevalent misconceptions that suggest sexual assault has no effect on males and undermines masculinity. For this reason, men frequently wait years to even admit that a violation has occurred. According to research, men survivors of assault experience similar impacts as their female counterparts. Post-traumatic stress disorder and rape trauma syndrome are frequent psychiatric aftereffects of sexual assault. For men who have experienced sexual assault, there are additional issues because of social constructions of men's emotional strength and stoicism. It is crucial to address the problems that both male and female survivors encounter.

**Let's discuss the many beliefs that society has about men, which are crucial to this:**

- ***Men are not vulnerable*** - In societies where men predominate, such as Pakistan and India. Because they are viewed as the strongest of all, men are forbidden from acting in ways that contradict their manliness, like crying in public. Men are seen as stronger than women in society, which implies that neither they nor their partners can be sexually assaulted. These societies think that sexual assault is limited to women.
- ***Men always want sex*** - Another common misconception about men in society is that they are constantly looking for sex and are readily aroused. This gave rise to the idea in

society that most male-to-male sex is voluntary and can only occur when both parties are open to have fun with it.

- **Traumatization** - One such stereotype about men in society is that they experience less trauma. As a result, they are less vulnerable to abuse of any kind.

**Due to these macho attitudes, men were quiet victims of sexual assaults. But now that most of the nation has acknowledged that males can also be raped, it has become illegal. A number of nations, including Australia, Denmark, and the United Kingdom, have introduced and approved gender-neutral legislation.**

#### **FACTORS INFLUENCING MALE SEXUAL ASAAULT CASES:**

- **Power and Dominance** - Male rape cases are frequently motivated by a desire to dominate and exert power over the victim. Sexual assault is a tactic used by perpetrators to establish their authority and weaken the victim's sense of self. It is critical to understand that this behaviour is motivated by a troubling need for power and control rather than just sexual cravings.
- **Revenge and Retribution** - Male rape is sometimes used as a form of retaliation or vengeance. Sexual assault may occur when men are singled out for perceived wrongdoings or disputes in order to cause the greatest amount of psychological and bodily damage. To properly address the problem, it is imperative to comprehend the underlying motivations that drive these kinds of actions.
- **Social and Psychological Factors** - Male rape cases are significantly influenced by psychological variables, including internalized views about sexual dominance and toxic masculinity. Sexual assault can be committed in part due to mental health issues like hostility or antisocial behaviour, as well as societal pressures and expectations.

Preventing such situations requires addressing these issues through comprehensive mental health awareness and support programme.

### **LEGAL APPROACHES TO MALE RAPE ACROSS NATIONS:**

The term "non-consensual anal as well as vaginal penile penetration" was added to the statute relating rape and buggery was removed in the UK's original "**Criminal Justice and Public Order Act, 1994**" rape statutes. For the first time, an attempt was made through this legislation to acknowledge male rape inside the UK judicial system. Subsequently, the "**Sexual Offences Act, 2003 (England and Wales)**" eliminated the ambiguous definition of indecent assault and further extended it to encompass even non-consensual penetration through the mouth. Penile penetration is still necessary for rape to be defined, though. Because women cannot currently be punished for raping males, the UK's rape laws are still not gender-neutral.

Rape was redefined as "the intentional or reckless penetration of the penis (to any extent) into the vagina, anus, or mouth of another person, without that person's consent and without any reasonable belief that consent was obtained" by the "**Sexual Offences (Scotland) Act, 2009**," which brought significant changes to Scotland's rape laws.

The gender-specific phrase "women" was substituted with "person" in this definition in order to accommodate male victims. In a similar vein, rape laws in Northern Ireland have also been modified to acknowledge rape of men. In order to give justice to male victims of rape and make the law gender-neutral, the term "non-consensual intercourse by a man" was removed from the former definition of rape and replaced with "non-consensual intercourse by a person" under the "**Criminal Justice (Northern Ireland) Order, 2003**". Furthermore, oral rape was added to this category by the "**Sexual Offences (Northern Ireland) Order, 2008**". Similar to these common law nations, civil law nations like the USA and Canada have made an effort to incorporate men in their rape laws by making them more gender-neutral. Definition of rape as per (**United States Department of Justice, 2012**) is: "The penetration, no matter how slight, of the vagina or anus with anybody portion, item, or oral penetration by a third party's sex organ without the victim's consent."

This definition of rape is not restricted to cases where men rape women; it encompasses victims and perpetrators of all genders. In addition, rape with an item can be just as painful and dangerous as non-consensual penile penetration, according to US law now in effect. Unlike other countries where penetration of an object is deemed different from penetration of the penis and normally offers separate laws for it, the US was the first to equate penetration of an object with penetration of the penis and consider it rape. The Canadian government has gone one step further in making the rape laws more gender-neutral. In 1983 “**Bill C-127**” was passed by the Canadian legislature that abolished offence of rape and provided three graded categories of sexual assault. Aligning with US laws, Canadian Law also recognizes penetration through object constitutes rape and penile penetration cannot be the sole ground for the offence of rape<sup>5</sup>.

Even if the rates of rape and other sexual assaults have decreased in many nations, some continue to view rape as a crime specific to a person's gender, such as India and Pakistan.

### **MALE RAPE AND INDIAN LAWS:**

**Section 375 of the Indian Penal Code (IPC)** defines rape as having sexual relations with a woman against her will, without her agreement, by force, deception, or fraud; it can also occur when she is under the influence of drugs or alcohol, mentally unstable, or both; it also occurs if the woman is younger than 18 years old.

*A man is considered to rape when the following conditions are met:*

- He forces a woman to sex with him or others, or he penetrates her mouth, urethra, vagina, or anus in any manner.
- Or, to any extent, push or introduce any object or body part other than the penis into a woman's urethra, anus, or vagina.

---

<sup>5</sup> Supra note 3.

- Or coerces a woman or someone else into entering her urethra, anus, or any other portion of her body by manipulating any part of her body.
- Or put his mouth on the woman's vagina, anus, urethra, or makes her do something to him or another person.

According to the above definition, under **section 375 of the Indian Penal Code**, it can be assumed that men always confront women. When a woman forces a man to have sex with her, it is not rape but a perpetrator. Thus, it is as assumed fact that a man is considered to rape a woman. However, it does not consider the man's consent regarding the sexual behavior of the woman and always considers the woman to be victim. In many cases, it is seen that a man false rapes a woman to take revenge or commit an illegal act<sup>6</sup>.

As a result, the definition as a whole exclusively addresses the rape of women; male rape is not covered. It is evident that there isn't specific legislation in India regarding the rape of a male by another male or a female by a male. They may be subjected to sodomization at maximum under **section 377 of the IPC**, which is based on **the Buggery Act, 1533** and states that anyone who willfully engages in sexual relations with a person or an animal defies the natural order, there are repercussions.

Both forced and consenting sodomy are punished under this law. For such crimes, the minimum sentence is ten years in prison, with the possibility of life in prison. The **Delhi High Court** ruled in **Naz Foundation v. Government of NCT and Ors** that non-consensual penile, non-vaginal, and penile non-vaginal sex involving minors shall still be governed by **Section 377 I.P.C.** Sodomites, paedophiles, and zoophiles may be punished under this section even if the honourable SC upholds the judgement. However, this part is insufficient to protect Indian men's rights.

The unequal treatment of male and female rapes has an impact on our constitution's equalitarianism. The **Indian Constitution's Article 14** provides the "**Right to Equality.**" However, because our laws do not address sexual assault committed against men or the reality

---

<sup>6</sup> Supra note 2.

that males are completely excluded from the rules governing rape sanctions, this provision is routinely broken. On the other hand, the "**Protection of Children from Sexual Offences Act, 2012**" applies to children of all genders. There is no justification for treating incidents of sexual assault on male children differently from those involving similar acts against male adults. Why can't we have a comparable provision for males if we have one for the rape of male children? The underlying concept is that men are viewed as being invulnerable and as using their position of authority to take advantage of women in India. The Indian judiciary and society have discussed the issue of gender equality. Sadly, these disregards for the gender neutrality of laws prohibiting rape or sexual harassment highlight the violation of people's **rights to equality**. The Indian Judicial system works hard to protect women from sexual violence, and while that is a great feat, it is discriminatory to neglect the plight of men who are subjected to sexual violence.

Since the interpretation of rape in India is only restricted to insertion of penis or object in the vagina, the cases of rape and sexual assault of male has been rising continuously there were very instances where the male was subjected to such crime but because of the paucity of law, nothing happened.

*Gender neutrality of rape laws* - In order to protect male victims as well, the **172nd Law Commission of India** proposed in **March 2000** that gender neutrality be included to the country's rape legislation. The premise that rape would become less of a sexual offence and that its stigma will disappear is its fundamental tenet. The government, however, did nothing to put the recommendations into practice. Later in **2017**, attorney Sanjiv Kumar filed a PIL in the Delhi High Court, contesting the legality of the Indian Penal Code's (IPC) rape laws. He said in his petition: "Gender neutrality is just acknowledging the fact that, on occasion, men are victims of acts that are identical to, or substantially comparable to, those committed against women. Male rape occurs far too frequently to be considered an isolated incidence. Contrary to popular belief, we are depriving much more men of justice by not having gender-neutral rape legislation."

On the same reasoning on **July 2019 KTS Tulsi**, a **senior lawyer and Parliamentarian** in the Rajya Sabha also brought a gender-neutral bill ("**Criminal Law Amendment Bill, 2019**") before parliament to make the rape laws gender-neutral in India. As per him: "Law needs to be



balanced. The balance has been disturbed. Sexual offences ought to be gender-neutral in nature. These offences can be committed by men, women, and people of different genders, as well as by victims. We must defend men women and other people.”

The fundamental idea of the bill was to suggest necessary modifications to the Indian Penal Code (IPC), the Criminal Procedure Code, and the Indian Evidence Act. Specifically, the bill sought to replace gender-specific terms like "any man" and "any woman" mentioned in **sections 354A, 354B, 354C, 354D, 375, and 376 of the IPC** with gender-neutral words like "any person." All genders—men, women, and transgender people—would be protected under this. Furthermore, it discussed the addition of **Section 375A to the Indian Penal Code**, which defines sexual assault as a behaviour in which a person intentionally touches another person's genitalia, penis, or breast, or forces another person to touch any of those areas without that person's consent, unless the touching is done for appropriate medical or hygienic reasons. This section made sure that improper contact with male or female anatomy also qualifies as sexual assault in addition to inappropriate contact with female anatomy. Additionally, this measure proposed adding **section 8A to the IPC's definition of modesty in section 354**.

*Resistance to gender neutral sexual offences* - Following the **Justice Verma Committee's** proposal, the government passed the Criminal Amendment Act in 2013, changing the term "sexual assault" to "rape" to encompass all genders. However, the revisions were later undone in response to criticism and opposition from feminists and women's organizations. These parties consider rape to be an overtly patriarchal crime and regard calls for gender-neutral legislation as an assault on feminism.

### **CRITICISMS OF CRIMINAL LAW'S:**

The most significant aspect of Indian rape laws might be their lack of gender neutrality. Indian law must be formulated with the demands and specifications of its subject matter in mind. History demonstrates that rules pertaining to women's safety and welfare have occasionally been misused, necessitating the intervention of lawmakers and judges to make corrections. When writing legislation against sexual harassment, it appears that our legislators have forgotten the

guarantee of equality and equal protection for all people found in **Article 14 of the constitution**. Although males are sadly not often considered victims of sexual harassment, the judiciary does not plan to treat them differently.

The government must enact rules pertaining to sexual harassment—which are unrelated—in order to prohibit inadvertent gender discrimination and guarantee equal protection. The Supreme Court, however, rejected the gender-neutral rule and declared that a transgression carried out by a woman against a man might legitimately be classified as such. According to **Cji Dipak Misra**, the court does not hold that a woman is incapable of raping a man; rather, it is stating that certain situations might fall under various IPC crimes.

A similar argument was made earlier at the Supreme court this year, contesting the legitimacy of the nation's adultery laws, which penalized married men for carrying out extramarital affairs with other married women. A bench made up of **Chief Justice Dipak Misra, Justices A M Khanwilkar and D Y Chandrachud, and others** took the initial stance that, while gender-neutrality is emphasized in criminal law, it is not covered by section 497 of the Indian Penal Code, which addresses adultery. Consequently, the matter was referred to a larger bench.

### **THE INTERSECTION OF TECHNOLOGY AND SEXUAL ASSAULT:**

Although men who have experienced sexual violence may feel similar emotions to other survivors, these feelings are sometimes dismissed because of prevailing assumptions about masculinity and a fear of social rejection. Men are hesitant to speak up against injustices they experience because they fear being teased, laughed at, or insulted by those around them. However, as education, technology, and information become more widely available, people are emerging from their shells and realizing that sharing their stories would not only reveal the tragedy but also free them on an emotional, physical, and mental level. For instance, a lot of initiatives, like the timeup and meetoo campaigns, which were initially created to support women in coming out and sharing their stories of sexual and domestic violence, have additionally inspired men to confront their abusers. Despite the fact that these campaigns have resulted in an 18% rise in the quantity of sexual assault reports against men, men who disclose their

experiences with domestic or sexual violence continue to face derision from the public and are frequently ignored or urged to "man up."

Although technology has raised people's awareness of these issues, it has had a detrimental effect on the number of sexual harassment charges. The internet and technological advancements have led to a sharp rise in sexual harassment of people of both genders. In light because of the reality that claiming otherwise demoralizes male victims, society must give up the idea that rape is a male-only crime or that sexual violence originated because of the nation's patriarchal heritage.

### **STEPS TO TAKE TO PREVENT MALE RAPES:**

- ***Legal reforms and protection*** - Entire legal reforms that identify and shield male rape victims are necessary to guarantee men's protection. This entails creating safe areas, enforcing strict punishments to dissuade potential offenders, and modifying current legislation to accommodate the unique requirements of male victims. We can encourage victims to step up and seek justice by establishing a legal system that recognises and addresses male rape.
- ***Public Awareness Campaigns*** - In order to reduce the stigma attached to male rape and shatter the taboo around it, public campaigns aimed at increasing awareness are essential. These campaigns ought to centre on dispelling stereotypes, educating the public about the frequency and consequences of male rape, and highlighting the value of understanding and support for survivors. We can enable victims and society as a whole to face and resolve this urgent issue by promoting empathy and understanding.
- ***Mental Health Support*** - It is essential to guarantee that male rape victims receive comprehensive mental health support services that are tailored to their needs. These services ought to be widely available and should place a strong emphasis on counselling and therapy, de-stigmatizing trauma, and promoting healing and recovery. By giving mental health interventions first priority, we can address the long-term effects of male rape and support the healing process of the survivors.

### **CONCLUSION:**

It is regrettable that many still equate sexuality with manhood. The victim of sodomization does not lose their manhood; rather, the one who perpetrated this horrible deed does not possess it. That only homosexual males perpetrate these kinds of crimes is a myth. The perpetrator may identify as straight, homosexual, or bisexual. Any crime should carry a punishment that is proportionate to its severity and ought not to be restricted to any one group of offenders. All citizens should be covered by it, regardless of gender. Nobody experiences pain differently, yet it is universal. The physical, mental, and emotional suffering experienced by survivors is the identical regardless of gender identity.

India is changing and adapting to become a prosperous nation. So why do we lag behind when it comes to the issue of guys being raped? There is no doubt that India needs distinct laws to address forced sodomy, child assault, and male rape. Since most of these crimes go unreported, awareness of this issue needs to be raised. Male rape victims must likewise be eligible for the same benefits as female victims under the Cr.Pc. Legislators in India have changed the country's criminal laws over the years to better suit societal demands. The amendment develops into a crucial tool throughout time to meet current needs. It is clear that the Nirbhaya Case-related modifications to the definition of sexual offences against women have significantly improved women's safety.

The bill grants recognition to a number of acts that were previously not considered crimes, allowing all victims who are women to seek justice; nonetheless, it is exclusively applicable to women. The necessity of gender-neutral rape laws becomes urgently necessary. To put everything in perspective, the Criminal Law (Amendment) Bill, 2019 seeks to advance this by include a gender-neutral provision that criminalises sexual assault in all its forms. Even the newly enacted Indian Penal Code, the modified **Bharatiya Nyaya Sanhita (BNS) 2023**, which was labelled and approved by the Lok Sabha on Wednesday, December 20, does not contain section 377 of the Indian Penal Code, contrary to the suggestion of a Parliamentary standing committee earlier in November.

Worldwide, there is a great deal of research being done on assault against men, and many nations have implemented laws in the law. It's time for the governments and courts in India to start treating cases involving sexual assault of males seriously and to pass laws shielding them from

such offences. They also explain the availability of helplines and online resources that could be useful in getting them psychiatric assistance. We can start to break the stigma, end the silence, and give male victims justice and assistance by addressing the causes of these crimes and putting preventive measures in place. Working together, we can create a society where each individual, regardless of gender, is protected and has a good quality of life.

## **REFERENCES:**

Kumar, Anant. (2012). Domestic Violence against Men in India: A Perspective. *Journal of Human Behavior in the Social Environment*. 22. 290-296. 10.1080/10911359.2012.655988.

Mehta, J. (n.d.). Sexual Violence against Men in India. *Legal Service India*. Retrieved from <https://www.legalserviceindia.com/legal/article-4685-sexual-violence-against-men-in-india.html>

Latala, A., & Agarwal, I. (2020). The Silent Male Rape Victims in India in 2020. *Law Writer Journal*, 12(4), 78-92. Retrieved from <https://ijlmh.com/wp-content/uploads/The-Silent-Male-Rape-Victims-in-India.pdf>

Kalaskar, K. D. (n.d.). Rape Against Men By Women: No Neutral Law In India. *Legal Service India*. Retrieved from <https://www.legalserviceindia.com/legal/article-6927-rape-against-men-by-women-no-neutral-law-in-india.html>

<https://www.legallyindia.com/views/entry/male-rapes-some-myths-statistics-true-incidents-and-legal-insight-html>

<https://www.gonewsindia.com/latest-news/health/sexual-abuse-of-males-shrouded-in-the-shadows-553>

[https://endsexualviolence.org/where\\_we\\_stand/male-victims/](https://endsexualviolence.org/where_we_stand/male-victims/)

<https://www.youthkiawaaz.com/2023/09/breaking-the-silence-shedding-light-on-male-rape-cases-in-india/>

<https://theguardian.com/jalandhar-male-rape-are-men-safe-in-india/>

<https://www.linkedin.com/pulse/rape-against-men-women-neutral-law-india-kishan-dutt-kalaskar/>

# DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA: A PUBLIC NUISANCE

By Dhruv Vijay<sup>1</sup>

---

## **Abstract**

Domestic Violence Against Women's is an issue which is prevalent all over the world which not only affects human beings but also affects the society by cutting down the socio-economic boundaries which are drawn by the society. As you all are aware that this not only prevalent from today but we can see this violence from Ancient Times . To Protect Women's From such kind of Cruelty Acts Domestic Violence Act was enacted in 2005 which guarantees Article-14,15,21 of The Indian Constitution. Through this article you will get to know that the legal framework through which the domestic Violence is surrounded and the relevant sections mentioned in law and their effectiveness in solving those Complex Situations and the drawbacks of the Legislature in creating a conflict between family Laws and the Amended laws by Legislature (I.P.C. , C.R.P.C. etc.)

**Keywords:** Domestic Violence , Legislature , Constitution , Article , Human Beings

---

---

<sup>1</sup> Student at B.S. Anangpuria Institute of Law, Alampur , Dhauj , Faridabad

---

## **Introduction:**

Domestic Violence also called as “Domestic Abuse” which is the ability of an individual in a relationship to operate the another. This kind of Violence is Chronic in nature which means that it can be start at any moment and can be ends at any moment. Domestic Violence can be seen in every section of Society irrespective of their caste, colour, creed, religion etc.

In the 21<sup>st</sup> Century various steps are embodied to deal with the topic of Domestic Violence . Government all across the earth have taken the cautious steps to extirpate the issue of domestic violence . Further more Governmental and Non Governmental Organisations have assisted individuals to admit that Domestic Violence is a Social Evil.

From the view point of India it is administered by the Domestic Violence Act , 2005. Under Section 3 of this it is clearly mentioned that any act, commission , omission or conduct of a person harms the health or safety of an individual whether physically or mentioned is termed as Domestic Violence. According to this Section 3 Domestic Violence is characterised by –

1. Threat to life or safety
2. Harassment
3. Injury

**“In the case of Vajresh Venkatray Anvekar v. State of Karnataka the court held that one or two incidents of beating are insufficient to drive a women to commit a self – murder”<sup>2</sup>**

### **Domestic Violence: -**

Domestic is not a present phenomena but it was present in our society from the ancient time . It is also called as the Intimate Partner Violence. Violence in the families against the women’s and children with in the four walls of the house are prevalent since the history began. We can see in the history that violence was used by the abuser to keep the women and the children with in the his control. It is a

---

<sup>2</sup> Pleadings Powered By Law Sikho: **The Protection of Women from Domestic Violence Act, 2005**  
<https://blog.ipleaders.in/the-protection-of-women-from-domestic-violence-act-2005/>



---

phenomena not only common to anyone specific country but it is a global phenomena which is present everywhere in the society whether it is developing or developed country. It is generally seen in the form of physical , sexual , emotional and financial harassment by one person to another .

**Objective Of the paper:**

The main objective of the paper are as follows:-

1. To analyse the forms of domestic violence present in our society
2. To get the data related to domestic violence faced by women's especially during the covid-19
3. To suggest some steps to be taken to eradicate this problem from our society.

**Scrutinization Methodology** :- The current study primarily relies on secondary data obtained from sources such as the Hindu App, Drishti Judiciary, Statista, Times Of India , Law Sikho , Michigan Legal Help and much more . Census and crime reported data constitute the focal points of analysis. A systematic approach has been employed to ensure rigorous examination. The analysis integrates both qualitative and quantitative methods to provide a comprehensive understanding of the phenomena under investigation. Qualitative techniques enable the exploration of underlying factors, motivations, and contextual nuances, while quantitative methods facilitate the numerical assessment and statistical inference. By combining these approaches, the study aims to offer insights into the dynamics of crime trends and their socio-economic correlates, contributing to a deeper understanding of the subject matter.

---

**Types of Domestic Violence Against Women's Prevalent Now a Days:**

---

Infanticide	It's an intentional killing of the unborn . It's an ancient practice to dispose of the unwanted child . “Section 315 of Indian Penal Code defines it so as to differentiate among the infanticide and numerous other crime committed.” <b>As per the sources there are 25 cases in Maharashtra followed by Madhya Pradesh with 11 cases.</b> <sup>3</sup>
Molestation	Commonly called as sexual abuse which means abusive sexual behaviour by an individual in a relationship upon another. Section 294 , 509, 354 , 323 of Indian Penal Code deals with Molestation which depends on circumstances and case to case according to which their punishment may vary . ‘ <b>The cases of Molestation which were 1,466 in 2021 were increased to 1,577 in 2022 out of total rape case 63 % were under the Protection of Children from Sexual Offences Act in which victims were minor</b> ’ <sup>4</sup> .
Dowry Deaths	It's a death when women' s were unable to face the torture of their in laws when she was unable to fulfil the dowry demands of her in laws ( Brother-Father-Sister-Mother in law , Husband etc.). ‘ <b>Section 304-B (2) of Indian Penal Code , 1860 deals with dowry deaths and it was found nearly 6.4 thousand cases in India</b> ’ <sup>5</sup> .
Foeticide	Killing of an embryo in the womb of mother outside the legal framework . ‘ <b>As per sources there are 18 &amp;</b>

<sup>3</sup> Statista : **Number of reported infanticide cases across India in 2022, by state :-**

<https://www.statista.com/statistics/633932/reported-cases-of-infanticide-by-state-india/#:~:text=The%20Indian%20state%20with%20the,cases%20of%20infanticide%20that%20year>

<sup>4</sup> Hindustan Times : **Praja Foundation report: Cases of thefts, rape and molestation surged in 2022:-**

<https://www.hindustantimes.com/cities/mumbai-news/praja-foundation-report-cases-of-thefts-rape-and-molestation-surged-in-2022-101700768188320.html>

<sup>5</sup> Drishti Judiciary: **Dowry Death :-**

[https://www.drishtijudiciary.com/to-the-point/ttp-indian-penal-code/dowry-death#:~:text=Under%20Section%20304%2DB%20\(2,extend%20to%20imprisonment%20for%20life](https://www.drishtijudiciary.com/to-the-point/ttp-indian-penal-code/dowry-death#:~:text=Under%20Section%20304%2DB%20(2,extend%20to%20imprisonment%20for%20life)

	<p><b>17 in Gujarat &amp; Maharashtra respectively followed by Chhattisgarh it was 16 in 2022.</b><sup>6</sup> The Government of India passed Pre Natal Diagnostic Techniques Act in 1994 to prevent a ban from female foeticide cases.</p>
--	---

**Outcomes Of Domestic Violence:**

Physical Outcomes	Mental Outcomes	Emotional Outcomes	Outcomes On Children
Contusion	Anxiety Attacks	Desperation	Anxiety
Sprained or broken Wrist	Suicidal Thoughts	Feeling of Unsuitable	Depression
Changes in Food Intake	Depression	Lack of Trust on others	Academic issues
Shortness of Breathe	Alcohol and Drug Abuse	Unmotivated	Fearful
Tautness	Posttraumatic stress Disorder	Confusion regarding Religious Faith	
Eating and Sleeping Disorder		Feeling of Discouragement about future	
Fertility Issues			

**Data Analysis : Domestic Violence During Covid -19 Lockdown in India**

<sup>6</sup> Statista : **Number of reported selective abortion cases across India in 2022, by state:-**

<https://www.statista.com/statistics/634050/reported-cases-of-feticide-by-state-india/#:~:text=The%20Indian%20state%20with%20the.of%20selective%20abortion%20that%20year>

---

During the Covid-19 Pandemic there was lockdown imposed in the four phases. During those four phases of lockdown we can see an increase in the number of domestic violence cases which more than that was filed in the last 10 years. But even after this abnormal rise in the number of cases almost 86% of the women's did not seek any kind of assistance.

In the year 2020 , from March 25 till May 31 , approximately 1,477 reports related to domestic violence were filed by the Indian Women's. During this time period only the reports of the cases were increased than those filed in the previous Ten (10) years.

**When we talked related to state wise data** we can be able to see that highest number of cases were recorded in the state of '**Uttar Pradesh (U.P.) that was 55 % followed by Delhi and Maharashtra have which have only 10% and 5% cases respectively . During the year of Pandemic in 2021 maximum complaints of Domestic Violence were from these Three (3) major States only<sup>7</sup>**'.

**Women's Buried themselves in Pandemic Silently:**

Almost 86% of the women's who experienced violence never sought help, and out of which 77% victims did not mention this to anyone. The mentioned below table shows that the women's who were abused physically as well as sexually were more in comparison to those who suffer only one form of abuse.

Type of Violence	Never told anyone	Told Someone	Sought help from a source
Physical	79.5	9.0	11.6
Sexual	80.6	9.5	9.8
Physical & Sexual	61.3	9.9	28.8
Total-	76.6	9.1	14.3

Source:- The Hindu App , Domestic Violence in Lockdown Chart-3 (June22, 2020 2:33 am | Updated 02:33 am IST)

**Data Unpublished :**

---

<sup>7</sup> The Times of India : **Over 6,900 domestic violence complaints filed by women in 2022:-**

<https://timesofindia.indiatimes.com/india/over-6900-domestic-violence-plaints-filed-by-women-in-2022/articleshow/96839600.cms>

---

As per the reports published by the Hindu app it was seen that among the 14.3% who were the actual victims and needed the help but due to the pandemic only 7% would be able to reach out the relevant authorities such as the police, doctors, lawyers or people belonging to social service organizations. But apart from these people other victims would take the help from their family members.

---

### **Factors Responsible For Increase in Number of Domestic Violence Cases**

- 1. Traditions-** As per traditions in our society it is always preferred to have males in society than females. Because many people thought that male (Son) will send us to heaven. Due to this many people in our society do the female foeticide. But with the advancement of technology people identify the sex of child and if it's found female they do the abortion of the child. But in ancient times when there is no technology people normally after the birth of the child when they found it was a female they drown the newborn in milk when mother is in unconscious state and inform the mother that the child was born dead.
- 2. Poverty-** India has a large abundance of poverty. Many initiatives are taken by government to eradicate but none of them are successful especially in rural India. Main cause of poverty is financial instability which leads to increase in tension and this escalates in domestic violence. Financial dependence on the culprit makes it more difficult for women's to live in the abusive relationship.
- 3. Lack of resources-** Women's are generally devoid of resources like education, opportunity, health care which generally trap them in an abusive environment. Without these essentials women's generally are forced to live in such abusive environment and they become a part of domestic violence.
- 4. Cognitive Factors-** Trauma, Mental Health Sickness, are some of the cognitive factors which can contribute to the implementation of domestic violence. Abusers may use such kind of cognitive skills to establish a control upon the victim.
- 5. Transfer of Violence through Generations-** Growing in a toxic kind of environment where violence is seen by an individual from his childhood they become prone to cycle of

domestic violence which is transmitted to them from their ancestors . Children's who experience domestic violence are more likely to become victims of adults.

6. **Societal Norms-** There are some kind of societal norms which prevent the women from being speak to the society about their mental conditions due to the social stigma and shame in Society from being getting judged due to which they became a part of domestic violence

---

### **Steps Taken To Eradicate This From Society**

On 26<sup>th</sup> October, 2006 an act called Domestic Violence Act , 2005 was registered by the Central Government in their official Gazette. The main purpose of the Act is to provide protection to Women's suffering Violence in four walls of their house and to make them aware about their rights. Section 18-23 of this act provides a relief to the victimized women therefore these sections are called as the heart and soul of the act. The relief under this act are also provided through the courts, order of protection, order for residence , Financial help , order of custody of children's , order for compensation , ex parte order ( '**order given by the court when the order party refused to respond**'<sup>8</sup>).

### **Balika Samridhi Yojana :**

Also called as Short Stay Home Schemes especially designed for women's & Girls in 1969 to provide them with a temporary residence who are facing some sort of Family obstacles , Mental Issues, Violence in the four walls of their residence etc.

### **Organizations:**

Various organizations like family courts, Police Station , Family Counselling Centre , Religious Institutions , International Foundation for Crime Prevention and Victim Care (PCVC), My Choices Foundation, Sayodhya Home, ActionAid Association India etc. are some of the organizations running in India to provide protection to women's against domestic violence .

### **Mass Awareness:**

---

<sup>8</sup> Michigan Legal help: **Ex Parte Orders in Family Court:-**  
<https://michiganlegalthelp.org/resources/family/ex-parte-orders-family-court#:~:text=An%20ex%20parte%20order%20is,are%20for%20emergency%20situations%20only>

✓ Principles of Democracy like Equality on the basis of Gender, Rights of Women's should be taught to the young minds at a very early age to bring a change in their thoughts for the betterment of Society.

✓ Legal Aid camps must be organized at the district level

✓ Public Should be aware about that what are policies of the government regarding this to solve it.

✓ Experienced Medical Service Providers like Doctors , Nurses and other para-medical staff must have the knowledge that how to deal with such kind of sensitized issue.

### **Counselling:**

Now , a days as there is rise in divorce between the married couples due to Domestic Violence , Lack of tolerance power so in order to prevent breakdown of families Pre and Post Marital Counselling must be made compulsory for every couples.

### **Employment Generation for Women's:**

Today's women are very much active in all fields whether it is in the field of science , technology , business which is not so uncommon now a days . In fact women's are mostly choose to become an entrepreneur to provide employment opportunities to other women's . In today's generation we can see women's are chief executive officer's of the company like **'Radhika Falguni Nayar who is the CEO of Nykaa ( a company dealing with beauty products) , Kiran Mazumdar Shaw founder of Biocon India Limited , Radhika Ghai Aggarwal who is the chief business officer of Shop clues. Com , Divya Gokulnath who is the co-founder of Byju's (an education platform where expertise teacher's solves the student's queries), Ghazal Alagh who is the co-founder of Mama Earth , Vineeta Singh Co- Founder of Sugar Cosmetics , Vani Kola who is the Founder and Managing Director of Kalaari Capital , Upasana Taku is the co-fonder of Mobiwik (India's First Fintech Company) , Aditi Gupta (a social Entrepreneur) runs Menstrupedia etc.'**<sup>9</sup> are some of the examples of women's who are actively engrossed in the fields of business by not providing only the employment opportunities but are also making the women's self – dependent for their financial needs to get fulfilled.

---

<sup>9</sup> Sugar Cosmetics : **10 Successful Women Entrepreneurs Who Made India Proud**  
<https://in.sugarcosmetics.com/blog/successful-women-entrepreneurs-who-made-india-proud>

### **Judiciary:**

- ✓ Proper Communication must be there between a Judge , Prosecutors and Police because they all are an important aspect of Civil as well as Criminal abuse of Domestic Violence.
- ✓ For the better accountability of a Judicial System a special court with women magistrate must be designed to provide fast and speedy justice to the victim
- ✓ Judges must punish an individual with rigorous punishment who violates the protection orders of the court.
- ✓ Women Magistrates must have the authority to deal with domestic violence cases.
- ✓ Strict implementation of laws must be there against the evils like dowry system

### **Role played by Government :**

1. Scaling up of helpline numbers for women's through advertisement , guides, newspapers , friends and family members etc.
2. Amendments must be done by parliament in Family Laws and the Judicial for speedy and effective disposal of the cases .
3. Government should make sure that the laws related to women's and their rights must be implemented properly
4. A separate department for women's like women's commission must be created at the central , state and district that deals with only the abuse and rights for women's.

### **Role Of Media:**

1. Media partnerships vital in addressing violence against women, amplifying societal awareness.
2. Media should be more sensitive in reporting violence against women, enhanced awareness.
3. Rising reports of violence against women dominates the various media outlets.
4. The government should actively consider the policies to tackle the problem of violence against women's , demonstrating responsiveness to the issue and a commitment to implement the measures for its prevention and eradication.



---

## **Conclusion :**

Domestic Violence is an earnest violence of human rights which is deeply rooted in our society from ancient times. It is clear that there are various forms of Domestic Violence which is Sexual , Physical, Mental , Psychological etc. This type of Violence don't have only impact on the victimized person but it also have impact on their children's which can be seen in the form of Anxiety, Depression etc. To combat the situation of Domestic Violence it is need to impart the education to females and abolish the old age traditions of preferring Male over female due to which females are becoming verge of Extinction. This requires comprehensive legal Education , Awareness to them so that they can protect their lives from the toxic environment. Furthermore , Survivors of violence are needed to be provided with basic amenities to lead a healthy life such as housing , clothing , shelter , food to eat and a monthly maintenance so that the victimized women can live a honourable and respectful life in the society. To eradicate violence from society is a complex issue which need the help from government , civil societies, public & private sector individuals. By working together we can change the patriarchal society , and will promoted equality which are basic norms of a democracy .

---

## **References:-**

1. Study of Domestic Violence among Currently Married Females of Haryana, India [Anuradha Nadda](#), [Jagbir S. Malik](#), [Ravi Rohilla](#), [Savita Chahal](#), [Vinod Chayal](#), and [Varun Arora](#) :- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6241177/>
2. Domestic violence in India- An analysis | Vimal Vidushy and Gagandeep Sethi | International Journal of Applied Research :- <https://www.allresearchjournal.com/archives/2016/vol2issue8/PartG/2-8-85-142.pdf>
3. Domestic Violence Against Women In India: A Family Menace| Dr.S.Prescila Sharon| Indian Journal of Applied Research:- [https://www.worldwidejournals.com/indian-journal-of-applied-research-\(IJAR\)/special\\_issues\\_pdf/December\\_2014\\_1418821458\\_48.pdf](https://www.worldwidejournals.com/indian-journal-of-applied-research-(IJAR)/special_issues_pdf/December_2014_1418821458_48.pdf)
4. Stop Violence Against Women's – A project of the Advocates for Human Rights:- [https://www.stopvaw.org/role\\_of\\_the\\_judiciary](https://www.stopvaw.org/role_of_the_judiciary)
5. UNICEF- Five ways governments are responding to violence against women and children during COVID-19 :-

---

<https://www.unicef-irc.org/evidence-for-action/five-ways-governments-are-responding-to-violence-against-women-and-children-during-covid-19/>

6. Data | Domestic violence complaints at a 10-year high during COVID-19 lockdown :-  
<https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>

# **"Legal Protection Or License For Abuse? A Critical Analysis Of Political Immunity Laws And Their Impact On Democratic Governance"**

*by Trisha Anil Lath<sup>1</sup>*

## **Abstract**

The framers of the Constitution of India, while incorporating the privilege did consider the question of making a reference to the privileges of the British House of Commons. The reasons, inter alia, were:

There was no time formulate privileges in a compendious form; It was difficult to formulate the privileges quietly and therefore; it was left to the future Parliament formulate the privileges.<sup>2</sup>

The powers, privileges and immunities of Parliament are given in article 105 of the Constitution. There is a freedom of speech in Parliament and immunity to its members from in any court in respect of anything said or any vote given in Parliament. There is an immunity to a person from any proceeding in any court publication by or under the authority of either House of Par report, paper, votes or proceedings.

The privileges of Indian Parliament and State Legislatures till the 42nd Amendment Act were governed by clauses 3 of Articles 105 and 194 respectively of the Constitution, which read,

*"In other respects, the powers privileges and immunities of each House of Parliament, and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution."*

(Art. 105-3) (Article 194(3) repeats the same in regard to the State legislatures. The purpose of these articles was that in view of their exalted and dignified position, as also the importance of their work, legislatures and the members thereof must enjoy certain privileges

---

<sup>1</sup> Student at Haveli institute of Legal Studies and Research affiliated with Mumbai University.

<sup>2</sup> . B. Shiva Rao (Ed.), The Framing of India 's Cons

to be able to perform their functions and duties in complete freedom from any interference or hindrance. But both the articles nonetheless left the position vague by not defining the privileges.

In Britain these privileges have not been codified and are based almost entirely on conventions. As a result, they are indefinite and elastic in nature. Canada and Australia following the British pattern have left these privileges unspecified. Malaysia and South Africa, on the other hand, have codified them.

In the USA, a general provision (Article 1, Section 5-Clause 2) has been inserted in the Constitution:

*"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-third, expel a member".*

In India, the question of codification of privileges has been the subject of discussion since 1921, if not earlier. In the beginning it was recommended that the privileges should be codified and defined

Parliament for they are admittedly necessary for a proper and dignified discharge of legislative functions. But to leave them in a nebulous state on the plea of difficulty in codification or for the fear that legislation will crystallize the privileges thereby eliminating the scope for the presiding officers to widen them through interpretation is, to say the least, quite unjustified, undemocratic and contrary to the intentions of the framers of the Indian Constitution. To bar the jurisdiction of the courts that amounts to disturbing the delicate balance in our Constitution.

## **Introduction**

Parliaments perform important functions as democratic institutions, which broadly fit into three main areas; legislation, representation and the oversight of executive government. To achieve these objectives and keep the executive accountable and transparent, parliaments

possess certain privileges, powers and immunities<sup>3</sup>. The term ‘parliamentary privilege’ refers to the powers, privileges and immunities enjoyed by Houses of Parliament and their Members in the performance of their duties. These privileges are an exception to ordinary law and are intended to allow parliamentarians to perform their duties without fear of intimidation or punishment, and without impediment<sup>4</sup>. Notwithstanding this, parliamentary privilege is the privilege of the Houses of Parliament as a whole and not simply of the individual Member.<sup>5</sup>

‘Privilege’ means a special or exceptional right or an immunity enjoyed by particular class of persons or individuals which is not available to the rest of the people. In its legal sense it means an exemption from some duty, burden, attendance or liability to which others are subject. In Parliament parlance the term ‘privilege’ means certain rights and immunities enjoyed by each House of Parliament and its Committees collectively, and by their members of each House individually without which they cannot discharge their functions efficiently and effectively.<sup>6</sup> The object of parliamentary privilege is to safeguard the freedom, the authority and the dignity of the institution of Parliament and its members.

It goes without saying that the foundation of a democratic framework and the entire constitutional system is parliamentary functioning. A democracy is defined by free, open, and fearless debate in the legislature. To allow them to do so without fear of repercussions for offenses like defamation and other similar ones, all members of the houses have been given a number of powers. In order for the members of the houses to exercise their authority effectively and efficiently, the Parliament has granted them specific privileges.

These privileges are known as Parliamentary privileges. Sir John Eliot and the Bill of Rights, landmark case that occurred in the United Kingdom in 1688, established the rule that, “the freedom of speech and debate in parliament should not be questioned anywhere else.” Due to our adoption of Britain's parliamentary system of governance, we also embraced the idea of parliamentary privileges. The Constitution, on the other hand, ensures that every citizen has

---

<sup>3</sup> Macreadie, R., & Gardiner, G. (2010). *An Introduction to Parliamentary Privilege*.  
<https://apo.org.au/sites/default/files/resource-files/2010-09/apo-nid22534.pdf>

<sup>4</sup> *Ibid.*

<sup>5</sup> United Kingdom, House of Lords (2007) Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, laid before the House by the Clerk of the Parliaments, p. 199.

<sup>6</sup> *Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha & Or's* on 10 January, 2007

Equivalent citations: AIR 2007 SC (SUPP) 1448, 2007 (3) SCC 184, (2007) 1 SCALE 448, (2007) 1 SCALE 241, (2007) 1 SUPREME 245

unalienable, sacred, and basic rights known as fundamental rights. There have been various discussions on whether parliamentary privilege should be constrained by fundamental rights or vice versa, as well as which would take precedence in the event of a conflict. Various judicial pronouncements have been issued<sup>7</sup>.

### **Nature of privilege**

According to Erskine May, “Parliamentary privilege is the sum of certain rights enjoyed by each House collectively and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members<sup>8</sup>.”

“When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish contempt, that is, actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its members or its officers.”<sup>9</sup>

These privileges are granted by the Constitution to enable them to discharge their functions without any let or hindrance. But they do not exempt members from the obligations to the society which apply to other citizens. Privileges of Parliament do not place a member of

---

<sup>7</sup> *Fundamental Rights And Parliamentary Privileges*. (n.d.). Legalserviceindia.com. Retrieved May 9, 2024, from <https://www.legalserviceindia.com/legal/article-12720-fundamental-rights-and-parliamentary-privileges.html>

<sup>8</sup> *Parliamentary Privileges - Academike*. (2014, August 12). Wwww.lawctopus.com. <https://www.lawctopus.com/academike/parliamentary-privileges/>

<sup>9</sup> . Erskine, May, *Parliamentary Practice*, Butterworths, London, 24th Edn., 2011, p. 203

Parliament on a footing different from that of an ordinary citizen in the matter of the applications of the laws of the land unless there are good and sufficient reasons in the interest of Parliament itself to do so. The fundamental principle is that all citizens including members of Parliament should be treated equally before the law. The privileges are available to members only when they are functioning in their capacity as members of Parliament and performing their parliamentary duties.

Parliamentary privilege, codified in Articles 105 and 194 of the Constitution, is integral to deliberative democracy in facilitating the functioning of a parliamentary form of governance. It ensures that legislators in whom citizens repose their faith can express their views and opinions on the floor of the House without ‘fear or favor’. With the protection of parliamentary privilege, a legislator belonging to a political party with a minuscule vote share can fearlessly vote on any motion; a legislator from a remote region of the country can raise issues that impact her constituency without the fear of being harassed by legal prosecution; and a legislator can demand accountability without the apprehension of being accused of defamation.

### **HISTORICAL DEVELOPMENT OF “PARLIAMENTARY PRIVILEGE”**

Arts. 105(3) and 194(3) of the Indian Constitution, shorn of the elliptically referring language, provide that the Privileges of the Indian Parliament and the State Legislature respectively, shall be the same as those of the House of Commons of Britain until such time as the Legislatures and the Parliament make a law codifying their Privileges. As against the press, the Commons enjoyed the privilege of prohibiting publication of even a true and faithful report of the debates or proceedings and punishing for any breach thereof. This privilege originally stemmed from the anxiety of the members to protect themselves from the sovereign.<sup>10</sup> This was a very wide, catch-all privilege, susceptible, in theory, to serious abuse. However, in quintessentially British democratic tradition, the Commons rarely used this privilege against the Press after the early nineteenth century. Free publication of debates continued to be permitted by sufferance of the Commons, so long as debates were correctly and faithfully reported.<sup>11</sup>

---

<sup>10</sup> TASWELL - LANGMEAD, CONSTITUTIONAL HISTORY 657 (10th Edn., 1946).

<sup>11</sup> MAY, PARLIAMENTARY PRACTICE 118 (16th Edn., 1957).

The struggle first manifested itself in the Searchlight case,<sup>12</sup> where for publishing a full account of a debate, despite an order of the speaker of Bihar State Legislature ordering some portions of the debate to be expunged, the editor of the newspaper was committed for breach of privilege and sentenced to imprisonment. The editor moved the Supreme Court for quashing the committal, inter alia, arguing that his freedom of the press under Art. 19(1)(a), which gave him the right to publish a fair and accurate report of the proceedings of the house, was violated by the Privileges under Art. 194(3) and hence the latter must be struck down as unconstitutional.

The Supreme Court held that its power of judicial review of legislation, applicable to ordinary law, could not be invoked to impugn Art. 194(3), which is part of the Constitution. Applying the harmonious construction theory, involving as it did, a conflict between two equally placed parts of the Constitution, the Court arrived at - no doubt some would question as baffling - the result that the freedom of the press under Art. 19(1)(a) was subservient to and should yield to the Privileges under Art. 194(3). In passing, the Court observed that if at all the legislatures or the Parliament were to ever codify their privileges, then such code, being an ordinary 'law' would be subject to judicial review. Perhaps, alerted by this dictum of the Supreme Court, none of the legislatures in India have till this date codified their Privileges, lest they invite judicial scrutiny.

The power of a House to punish for contempt has been described as "the keystone of parliamentary privileges." In India the power of the legislature to commit for contempt has been recognized, though there is no express provision for this in the Constitution. Since under the Constitution a legislature is not a court, no power to punish for its contempt is mentioned under article 19(2) where exceptions to the right of freedom of speech are enumerated. There is no mention of "contempt of a legislature," although "contempt of court" is mentioned.

The power to punish for contempt is enjoyed by the legislature in India by virtue of articles 105(3) and 194(3). There is a controversy over the issue of whether the power to punish for its contempt is enjoyed by the House of Commons because of its being a superior court or as a privilege of Parliament.

---

<sup>12</sup> M.S.M. Sharma v. Srikrishna Sinha, AIR 1959 SC 395 (Supreme Court of India) [hereinafter "Searchlight"]



## **STATEMENT OF ISSUE**

1. Would a legislator who receives a bribe to cast a vote in a certain direction or speak about certain issues be protected by parliamentary privilege? It is this question of constitutional interpretation that this Court is called upon to decide ?
2. Whether a parliamentary privilege can be struck down if it violates a fundamental right or would fundamental rights override the privileges?
3. Whether a Member of Parliament (MP) is immune from prosecution in criminal court for bribery under Article 105 of the Constitution, and whether an MP falls under the definition of "public servant" as per the Prevention of Corruption Act, 1988?
4. Does the House have such privilege? If so, does it have the power to punish? Further, has its action violated the fundamental right to freedom of speech and expression guaranteed to the citizens under Article 19 (i) (a) of the Constitution of India?
5. Also, can Parliament, without defining its powers and privileges and without disclosing to the citizen what these powers and privileges are, assume to itself a power to nullify a fundamental right?
6. Whether in exercise of the powers, privileges and immunities as contained in Article 105, are the Houses of Parliament competent to expel their respective Members from membership of the House. If such a power exists, is it subject to judicial review and if so, the scope of such judicial review. The unfortunate background in which the aforesaid questions have arisen is the allegation that the Members of Parliament (MPs) indulged in unethical and corrupt practices of taking monetary consideration in relation to their functions as MPs.
- 7.

## **Supreme Court of India**

**Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha & Ors on 10 January, 2007**

## **FACTS OF THE CASE**

In the case of Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha & Others, the inquiry report found 10 Lok Sabha members guilty of accepting money for parliamentary activities, leading to their expulsion. Similarly, another member was expelled from the Rajya Sabha for improper conduct related to the MPLAD Scheme. The Ethics Committee recommended expulsion, stating that the conduct of these members undermined the dignity of Parliament and breached its code of conduct. The expulsion was based on the recommendation of the Ethics Committee and was upheld by the respective houses of Parliament. The validity of these expulsions was challenged by the members in court.

The historical context of parliamentary privileges was also discussed, tracing back to the judicial functions of early Parliaments in England. Instances of asserting privileges in Indian legislative bodies were highlighted, showing the importance attached to the integrity of parliamentary proceedings. Additionally, the case of previous expulsions from Parliament, such as that of H.G. Mudgal and Indira Gandhi, was referenced to provide further context on the matter.

### **ISSUES OF THE CASE**

The case concerns the interpretation of Article 105 of the Indian Constitution regarding the powers of Parliament to expel its members and whether such powers are subject to judicial review. The background involves allegations of unethical conduct and corruption among Members of Parliament. The petitioners argue that Parliament lacks the authority to expel members as it is not provided for in the Constitution or parliamentary rules. The court delves into the historical context of parliamentary privileges, both in England and India, to determine the scope of Parliament's powers. It is established that while Parliament has the power to expel members, it must be exercised within certain constraints and subject to judicial oversight. Additionally, the court examines whether Parliament's power to punish for contempt extends to expulsion and whether such power is limited to remedial actions.

### **ARGUMENT'S**

- i. The case of Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha & Ors revolves around the contention regarding the power of Parliament to expel its members and the legality of such expulsions.

- ii. The petitioners argue that the power of expulsion exercised by the House of Commons is not inherited by Indian legislatures under Article 105(3) of the Constitution. They claim that expulsion is punitive rather than remedial and therefore cannot be justified under Article 105(3).
- iii. Additionally, they argue that the expulsions violate various constitutional provisions and principles of natural justice, as they were conducted hastily and without fair opportunity for the accused members to defend themselves.
- iv. The petitioners also contend that Parliament's power should be subject to judicial review to ensure adherence to constitutional principles. The petitioners highlight instances of past expulsions from Parliament to support their argument against expulsion.
- v. On the other hand, the respondents argue that expulsion is a legitimate power of Parliament, citing past instances of expulsions and asserting the need for disciplinary measures against members who engage in conduct deemed unfit for their position.
- vi. The scope of judicial review in such matters is discussed, with the conclusion that it should be limited to jurisdictional errors and violations of constitutional mandates.
- vii. In a legal case concerning the exercise of powers, privileges, and immunities by a Legislative Assembly, the petitioner argues that such privileges must be exercised in accordance with standing orders governing the assembly's procedures.
- viii. The petitioner raises objections regarding the timeliness of a motion of privilege, asserting that the matter in question did not constitute a specific matter of recent occurrence. However, the court holds that the determination of what constitutes a recent occurrence is at the discretion of the assembly's Speaker.
- ix. Additionally, the petitioner alleges mala fides on the part of the Committee of Privileges, claiming that the committee's actions are motivated by a desire to silence criticism rather than uphold parliamentary norms. This case underscores the importance of transparency and freedom of speech in democratic institutions,

particularly in relation to debates and publications regarding parliamentary proceedings.

- x. The petitioners challenge the expulsion of certain members from the two Houses of Parliament, arguing that such actions were unconstitutional and violated their fundamental rights. They contend that while Parliament has the power to regulate its internal proceedings, including disciplinary measures against its members, such power is not absolute and is subject to judicial review in cases of constitutional violations. The petitioners argue that the Indian Parliament's privileges cannot be equated with those of the House of Commons in the United Kingdom, and any exercise of privilege must be in accordance with the Constitution. They highlight the need for judicial scrutiny to ensure fairness, reasonableness, and adherence to constitutional principles in the exercise of parliamentary privileges.
- xi. On the other hand, the respondents, represented by the Union of India, assert that the expulsion of the members was a legitimate exercise of parliamentary privilege and falls within the exclusive jurisdiction of the Houses of Parliament.
- xii. They argue that Parliament's authority to regulate its internal affairs, including disciplinary actions against its members, is absolute and not subject to judicial interference.
- xiii. The respondents emphasize that while Parliament's actions may be reviewed for constitutionality, the courts must exercise restraint and deference to parliamentary sovereignty. They contend that Parliament's powers and privileges, including the power to punish for contempt, are necessary for its functioning and are not subject to strict judicial scrutiny.
- xiv. The debate also touches on the interpretation of Article 105(3) of the Constitution, which grants Parliament the power to define its privileges, and whether such privileges are subject to restrictions imposed by fundamental rights.
- xv. The respondents argue that Parliament's exercise of privileges must be presumed to be fair and reasonable, provided it complies with the Constitution, while the petitioners

stress the importance of ensuring accountability and adherence to constitutional principles in the exercise of parliamentary privileges.

### **ANALYSIS OF THE LAW**

Dr. Ambedkar emphasized India's adoption of parliamentary traditions, particularly from England, reflected in Articles 105 and 194 of the Constitution, mirroring the privileges of the House of Commons. Debate in the Constituent Assembly highlighted concerns about referencing the privileges of the House of Commons and the need for clarity on privileges.

The adoption of Articles 105 and 194 affirmed the powers and immunities of legislators, subject to rules and regulations of Parliament, while providing absolute freedom of speech and immunity from legal proceedings for statements made in the legislature. However, concerns were raised about potential conflicts with fundamental rights and the need for harmonious interpretation.

The power of expulsion, vested in the House of Commons, raised questions about its compatibility with other provisions of the Constitution, such as those related to vacancies, disqualifications, and fundamental rights. The distinction between disqualification and expulsion was highlighted, emphasizing that expulsion deals with unworthiness for membership rather than a lack of qualification.

Overall, the constitutional provisions regarding parliamentary privileges in India drew heavily from the British parliamentary system but raised questions about their compatibility with other constitutional principles and fundamental rights.

The Petitioners argue that the power of expulsion from Parliament is inconsistent with various provisions of the Constitution:

They claim that Articles 101 to 103, which relate to vacancy and disqualification of members, provide exhaustive grounds for termination of membership. However, the Court disagrees, stating that expulsion and disqualification are distinct concepts, and neither provision restricts the scope of the other.

The Petitioners assert that expulsion violates the constitutional rights of MPs regarding salaries and fixed terms. However, the Court holds that expulsion does not infringe upon these rights, as they are contingent upon membership.

Regarding the right of constituents to be represented and the right to vote, the Petitioners argue that expulsion undermines democratic principles. The Court disagrees, stating that expulsion does not bar re-election, and is necessary to uphold the dignity of the House.

Lastly, the Petitioners contend that expulsion violates the fundamental rights of MPs, such as the right to practice any profession and the right to livelihood. However, the Court finds no violation, as expulsion is a decision taken by representatives and does not prevent re-election.

In conclusion, the Court rejects the Petitioners' arguments and upholds the power of expulsion as constitutional and necessary for maintaining the integrity of Parliament.

The Court rejects the contentions of the petitioners regarding the power of expulsion from Parliament, stating that even if fundamental rights were to apply, they would not prevent the inclusion of the power of expulsion within Article 105(3) of the Constitution. The Court emphasizes that Article 105(3) itself is a constitutional provision, and where specific provisions exist, there is no need for additional laws to curtail fundamental rights.

As for Article 21, which ensures the right to livelihood, the Court notes that while the procedure established by law must be followed, it does not preclude the power of expulsion altogether. The legality of expulsion orders may be subject to judicial review based on specific facts, but this does not negate the power of expulsion as a whole.

The Court also addresses the argument concerning the power of self-composition of the House of Commons, stating that the power of expulsion is inherent to its privilege of regulating its own composition. The history of the House of Commons demonstrates the exercise of this power, which is considered integral to its functioning.

In conclusion, the Court holds that the power of expulsion does not conflict with any constitutional provisions and is a legitimate aspect of parliamentary functioning.

The petitioners argue that since the Parliament of India lacks the power to regulate its own constitution, the power of expulsion cannot be derived from Article 105. They cite the UP Assembly Case and assert that legislative organs in India are subservient to the written provisions of the Constitution concerning their composition and membership regulation.

They highlight various constitutional provisions, such as Articles 79, 81, 82, 83, and 84, which outline the composition, duration, and qualifications for membership in Parliament, demonstrating that Parliament cannot claim the privilege of self-composition.

The petitioners further contend that the power of expulsion historically stems from the House of Commons' ability to regulate its own composition, a privilege not inherited by legislative bodies in India.

They reference Halsbury's Law of England, which acknowledges the House of Commons' authority to expel members who conduct themselves in a manner unfit for parliamentary service, but note that this authority does not extend to disqualifying individuals from sitting and voting in the House.

In summary, the petitioners argue that the power of expulsion cannot be justified within the framework of the Indian Constitution, which lacks provisions granting legislative bodies the privilege of self-composition.

The power of expulsion from the House of Commons is a significant authority vested in the House, often utilized in cases where a member's conduct is deemed unsuitable for parliamentary membership. While traditionally associated with the House's prerogative to ensure its own composition, it also intersects with its penal jurisdiction regarding breaches of privilege and contempt.

May's Parliamentary Practice elucidates this power, emphasizing its remedial rather than punitive nature, aimed at purging the House of unfit members. The authority to expel is not solely tied to breaches of privilege or contempt but extends to conduct deemed incompatible with parliamentary membership.

Testimony by Sir Barnett Cocks underscores this understanding, highlighting expulsion as an aspect of the House's privilege to regulate its composition. May's treatment of expulsion within the framework of parliamentary punishment further reinforces its role as a measure to maintain the integrity and effectiveness of the House.

The text discusses the powers, privileges, and immunities of Parliament under Article 105(3) of the Indian Constitution, which are inherited from the House of Commons in the United Kingdom. It explores precedents from other jurisdictions, such as the Victorian Legislative Assembly and the Nova Scotia House of Assembly, to argue that Indian legislatures inherit all powers of the House of Commons, including the power of expulsion. It also examines English cases like *Keilley v. Carson* and *Fenton v. Hampton*, distinguishing between punitive powers of contempt and self-protection powers.

Furthermore, it delves into the resolutions passed by the 6th and 7th Lok Sabhas regarding the expulsion of members, emphasizing the importance of procedural fairness and adherence to established rules. The text also addresses the tension between parliamentary privileges and fundamental rights, citing cases like *Pandit Sharma* and the UP Assembly case.

Regarding judicial review, the text discusses Article 122 of the Indian Constitution, which bars courts from questioning the proceedings of Parliament. However, it argues that courts still have jurisdiction to review procedural irregularities or violations of constitutional principles.

Overall, the text navigates through various legal arguments and precedents to assert the breadth of parliamentary privileges while also acknowledging the importance of upholding procedural fairness and constitutional rights.

The text discusses the issue of parliamentary procedure and the limitations of judicial review in cases of alleged irregularities or unconstitutionality. While acknowledging the existence of Rules of Procedure and Conduct of Business in both the Lok Sabha and the Council of States, it emphasizes that the mere availability of rules does not ensure their proper adherence. The focus is on instances of illegalities or violations of constitutional principles rather than mere procedural irregularities.



Drawing a parallel with the discretionary power granted to the Central Government under Section 237(b) of the Companies Act, 1956, the text highlights the concept of "strictly limited" judicial review. In the case of Barium Chemicals Ltd. vs. Company Law Board [AIR 1967 SC 295], it was determined that judicial review would be constrained, particularly concerning the formation of an opinion by the government. The court differentiated between the absence of an opinion and the formation of an opinion based on inadequate or irrelevant grounds, indicating that the latter may still be subject to scrutiny within the confines of judicial review.

### **Sita Soren Vs. Union of India [Criminal Appeal No. 451 of 2019]**

#### **Factual Background**

This appeal stems from a decision dated 17 February 2014 of the High Court of Jharkhand in Writ Petition (Criminal) No 128 of 2013.

In an election on 30 March 2012 for two Rajya Sabha seats from Jharkhand, Sita Soren, a member of the Legislative Assembly from Jharkhand Mukti Morcha, was accused of accepting a bribe from an independent candidate in exchange for her vote. However, during the open balloting, she did not vote for the alleged bribe giver but for her party's candidate. Subsequently, a fresh election was held, and she again voted for her party's candidate.

#### **Procedural Background**

The appellant sought to quash the criminal proceedings against her citing Article 194(2) of the Constitution, but the High Court refused, stating she didn't vote for the alleged bribe giver. This refusal led to the current appeal.

The High Court's decision prompted this appeal. The matter was initially heard by a two-judge bench, but due to its significance, it was referred to a larger three-judge bench. The core issue revolves around the appellant's alleged acceptance of a bribe to vote for a particular candidate in the Rajya Sabha election for Jharkhand. This issue was addressed previously in PV Narasimha Rao Vs State (CBI/SPE), where two judges held that immunity under Article 105(2) and Article 194(2) wouldn't cover cases involving bribery for voting.

However, the majority disagreed. Given the importance and widespread implications of the matter, the three-judge bench referred it to a larger bench of five judges.

Previous attempts to challenge the ruling in PV Narsimha Rao were unsuccessful, as review petitions were dismissed due to a delay in filing.

### **Counsels' Argument**

- A petition under Article 32 of the Constitution was filed to challenge the correctness of the PV Narsimha Rao ruling. It was referred to a Bench of five judges but eventually dismissed due to maintainability issues.
- Senior counsel Mr. Raju Ramachandran argued that a reference on the correctness of the PV Narsimha Rao decision might not be necessary as none of the contesting parties challenged its ratio. While the appellant believed the PV Narsimha Rao judgment applied directly to the case, the respondent argued otherwise, stating that the polling for the Rajya Sabha election occurred outside the House precincts and hence, PV Narsimha Rao's ruling on parliamentary proceedings didn't apply. Thus, Mr. Ramachandran argued against the need for a reference based on this contention.
- Mr. R Venkata Ramani, Attorney General for India, concurs with Mr. Raju Ramachandran that a reference isn't necessary but disagrees on PV Narsimha Rao's applicability to the case. He argues that as a Rajya Sabha election isn't a "proceeding of the House," PV Narsimha Rao's correctness isn't relevant. However, the Court disagrees, noting that both the High Court's judgment and the defense rely on PV Narasimha Rao's majority view. Judicial discipline dictates that only a bench of equal strength can question a prior decision. Given that PV Narasimha Rao's correctness is pertinent to the case, the Court considers whether reconsideration and referral to a larger bench are warranted. The crux of both PV Narasimha Rao and the present case lies in interpreting Article 105(2) and Article 194(2) of the Constitution regarding parliamentary and legislative immunities, respectively.
- In PV Narasimha Rao, the interpretation of Article 105(2) was pivotal. It states that Members of Parliament are immune from court proceedings concerning their speeches

or votes in Parliament or its committees. Justice SP Bharuch interpreted this broadly, stating it covers proceedings related to or connected with their parliamentary activities. He emphasized that protection aims to allow MPs to freely express themselves and vote without fear of legal consequences.

## **JUDGMENT**

This criminal appeal arose from a judgment of the High Court of Jharkhand, which refused to quash criminal proceedings against the appellant, Sita Soren, a member of the Legislative Assembly. The allegation against her was that she accepted a bribe to vote for a particular candidate in a Rajya Sabha election. Soren moved the High Court to quash the charge-sheet, relying on Article 194(2) of the Constitution, which grants immunity to legislators for their actions in the House. However, the High Court rejected her plea, leading to this appeal.

During the hearing, it was noted that the issue was substantial and of general public importance, requiring consideration by a larger bench. The appellant argued that the decision in PV Narasimha Rao, which held that immunity did not extend to cases of bribery for voting in a certain manner, should not apply in her case as she did not vote for the alleged bribe giver. However, the Attorney General argued that the election to the Rajya Sabha could not be considered a proceeding of the House, therefore, the immunity did not apply.

The majority opinion in PV Narasimha Rao was analyzed, which held that immunity did not protect a member who accepted a bribe to vote in a certain way. However, a minority opinion argued for a broader interpretation of immunity. The court observed serious anomalies in the majority view, particularly regarding when the offense of bribery is complete.

Considering the importance of the issue, the court decided to refer the matter to a larger bench of seven judges to reconsider the correctness of the view taken in PV Narasimha Rao. This decision was based on the need to clarify the interpretation of Article 105(2) of the Constitution and its equivalent for state legislatures, Article 194(2), regarding the immunity of legislators for their actions in the House.

## **Constitutional Provision relating to Parliamentary Privileges**

## Article 105 in Constitution of India

### 105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof

1. Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
2. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
3. In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act 1978.

The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

[Editorial comment-The Constitution (Forty-Second Amendment) Act, 1976, Article 105 was amended so as to grant each House of Parliament, its members and committees the right to "evolve" their "powers, privileges and immunities", "from time to time". Article 194 was amended to grant the same rights as Clause 21 to State Legislatures, its members and committees. Also]

[Editorial comment-The Constitution (Forty-Fourth Amendment) Act, 1978, repealed Article 19 (1) (f) and also took out Article 31(1) has been taken out of Part III and made a separate

Article 300A in Chapter IV of Part XII. This amendment may have taken away the scope of speedy remedy under Article 32 for the violation of Right to Property because it is no more a Fundamental Right. Making it a legal right under the Constitution serves two purposes: Firstly, it gives emphasis to the value of socialism included in the preamble and secondly, in doing so, it conformed to the doctrine of basic structure of the Constitution. Also Refer]

### **Article 122 in Constitution of India**

#### **122. Courts not to inquire into proceedings of Parliament**

1. The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
2. No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

### **Article 194 in Constitution of India**

#### **194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof**

1. Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.
2. No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.
3. In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature,

shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (forty-fourth Amendment) Act, 1978.

The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

[Editorial comment-The Constitution (Forty-Fourth Amendment) Act, 1978, repealed Article 19 (1) (f) and also took out Article 31(1) has been taken out of Part III and made a separate Article 300A in Chapter IV of Part XII. This amendment may have taken away the scope of speedy remedy under Article 32 for the violation of Right to Property because it is no more a Fundamental Right. Making it a legal right under the Constitution serves two purposes: Firstly, it gives emphasis to the value of socialism included in the preamble and secondly, in doing so, it conformed to the doctrine of basic structure of the Constitution. Also Refer]

The Constitution of India specifies some of the privileges. These are freedom of speech in Parliament; immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof;<sup>13</sup> immunity to a person

---

<sup>13</sup> **Article 105 in Constitution of India**

**105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof**

(1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

*[Editorial comment-The Constitution (Forty-Second Amendment) Act, 1976, Article 105 was amended so as to grant each House of Parliament, its members and committees the right to "evolve" their "powers, privileges and immunities", "from time to time". Article 194 was amended to grant the same rights as Clause 21 to State Legislatures, its members and committees. Also Refer]*

*[Editorial comment-The Constitution (Forty-Fourth Amendment) Act, 1978, repealed Article 19 (1) (f) and also took out Article 31(1) has been taken out of Part III and made a separate Article 300A in Chapter IV of Part*

from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.<sup>8</sup> Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure. No officer or Member of Parliament empowered to regulate procedure or the conduct of business or to maintain order in Parliament can be subject to a court's jurisdiction in respect of exercise by him of those powers.<sup>14</sup> No person can be liable to any civil or criminal proceedings in any court for publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available for reports or matters broadcast by means of wireless telegraphy. This immunity, however, is not available to publication of proceedings of a secret sitting of the House.<sup>15</sup>

### **Parliamentary Privileges of Houses**

- Lists of Parliamentary can be drawn and have in fact been drawn.
- No such list, however can be exhaustive. The important privileges of each
- House of Parliament, its members and Committees may be said to be:
- Freedom of speech in Parliament.

---

*XII. This amendment may have taken away the scope of speedy remedy under Article 32 for the violation of Right to Property because it is no more a Fundamental Right. Making it a legal right under the Constitution serves two purposes: Firstly, it gives emphasis to the value of socialism included in the preamble and secondly, in doing so, it conformed to the doctrine of basic structure of the Constitution. Also Refer]*

#### <sup>14</sup> **Article 122 in Constitution of India**

##### **122. Courts not to inquire into proceedings of Parliament**

(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

##### <sup>15</sup> **361A. Protection of publication of proceedings of Parliament and State Legislatures.**

- (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

- (2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programmed or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation.-In this article, "newspaper" includes a news agency report containing material for publication in a newspaper.

- Immunity to a member from any proceeding in any courts in respect of anything said or any vote given by him in Parliament or any Committee thereof.
- Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- Prohibition on the courts to inquire into proceedings of Parliament.
- Freedom from arrest of members in civil during the continuance of the session of the House and 40 days before its commencement and 40 days after its conclusion.
- Exemption of members from liability to serve as jurors; where ever this system of juries prevails
- Right of the house to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
- Prohibition of arrest and service of legal process within the precincts of the House without obtaining the permission of the speaker.
- Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House.
- Members of officers of the House are not to give evidence or produce documents in courts of law, relating to the proceeding of the House without the permission of the House.
- Members of officers of the House are not to attend as witnesses before the other House or a Committee there of without the permission of the House and they cannot be compelled to do so without their consent.
- All Parliament Committees are empowered to send for persons, papers, and records relevant for the purpose of the inquiry by a Committee who may be required to produce such documents as are required for the use of a Committee.



- A Parliamentary Committee may administer oath or affirmation to a witness examined before it.
- The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid on the Table of the House.

**How are the parliamentary privileges classified?**

Parliamentary privileges are intended to protect the independence and integrity of the legislative process and to allow lawmakers to speak and act freely without fear of reprisal or legal consequences.

**Individual Privileges:** Individual privileges refer to the rights and immunities enjoyed by members of the Indian Parliament and State Legislature to enable them to perform their duties without fear of interference or prosecution.

**Collective Privileges:** Collective privileges in India refer to the rights and immunities that are enjoyed by both Houses of the Indian Parliament and State Legislature as a whole, as well as their members and officers.

Individual Privileges	Collective Privileges
<ul style="list-style-type: none"> <li>● Members cannot be arrested during the session of Parliament 40 days before the beginning and 40 days after the end of a session.</li> <li>● Members have freedom of speech in Parliament, and no member is liable to any proceedings in any court</li> <li>● They are exempted from jury service when Parliament is in session.</li> </ul>	<ul style="list-style-type: none"> <li>● Right to publish its reports, debates, and proceedings.</li> <li>● Right to exclude strangers from its proceedings</li> <li>● Right to make rules to regulate its own procedure</li> <li>● Right to punish members as well as outsiders for breach of its privileges</li> <li>● The courts prohibited inquiring into the proceedings of a House.</li> </ul>

	<ul style="list-style-type: none"> <li>• No person can be arrested without the permission of the presiding officer<sup>16</sup>.</li> </ul>
--	---

### **Legal Provision relating to Parliamentary Privileges in India**

The most important of parliamentary privileges is that of freedom of speech while performing parliamentary duties. Article 19(1)(a) of Indian Constitution also gives a citizen the right of freedom speech but Article 105 and 194 lay special emphasis on the right of free speech of members of the legislatures. Under Article 19(1)(a), the fundamental right of freedom speech is subject to reasonable restrictions imposed under Article 19(2), for instance, the law of libel. An ordinary person who speaks something libelous is liable to be proceeded against but a Member of Parliament speaking in the House or in one to its Committees is immune from any attack on the grounds that his speech was libelous or defamatory.

Members have to give expressions to public grievances and raise various matters of public importance. In doing this, members should not suffer any inhibition and they should be able to speak out Parliament, an express their views freely.

Inside the House or Committees of the Parliament, a member is absolutely free to say whatever he likes subject only to the internal discipline of the House or the Committee concerned; no outside authority has any right to interfere. Freedom of speech is absolutely necessary for a member to function freely without any fear or favor in the committees and in the Houses of Parliament. Unless whatever a member says enjoys immunity from legal action, he cannot be expected to speak freely and frankly. The Constitution provides, therefore, that no action can be taken against a Member of Parliament in any court or before any authority other than the Parliament in respect of anything said or a vote given by him in the Houses of Parliament or any Committee thereof. It is also a breach of privilege of privilege to molest a member or to take any action against him on account of anything said by him in the Parliament or a Committee thereof. Likewise, it would be a breach of privilege to institute any legal proceedings against a member in respect of anything said by him in Parliament or in a Committee thereof.

---

<sup>16</sup> *Parliamentary Privileges*. (n.d.). Vajiram & Ravi. Retrieved May 9, 2024, from <https://vajiramandravi.com/quest-upsc-notes/parliamentary-privileges/>

A member cannot also be questioned in any court or by any agency outside the Parliament for any disclosure he may make in the Parliament. It has been held by the Supreme Court in the Searchlight case that the freedom of speech conferred on members under Art. 105 is subject only to those provisions of the Constitution which regulate the procedure of Parliament and to the rules and standing orders of the Houses, but is free any restrictions which may be imposed by any law made under Article 19(2) upon the freedom of speech of an ordinary citizen. Any investigation outside the Parliament in respect of anything said or done by members in the discharge of their parliamentary duties would amount to a serious interference in the members right. Even though a speech delivered by a member in the house may amount to contempt of Court, no action can be taken against him in any Court. Court being an outside authority does not have the power to investigate the matter. Article 122 specifically forbids any inquiry by Courts into the proceedings of the Parliament.

The object of their privilege is to ensure the safe arrival and regulate the attendance of members in the Parliament. Although the members have immunity from arrest only in civil cases and it does not apply to arrests in criminal cases or under the law of Preventive Detention, the House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member. It is the duty of the concerned authority to intimate the Speaker immediately of every arrest, detention or imprisonment of a member of the Lok Sabha. The failure on the part of authorities to do so, constitutes a breach of privilege of the House. The arrested may be in any part of the country; the information must be sent telegraphically and later confirmed by a letter.

#### ❖ **Freedom of speech and immunity from court proceedings**

Members have freedom of speech in the House and enjoy immunity from proceedings in any court in respect of anything said or any vote given by them in Parliament or in any committee thereof. The freedom of speech of members in the House, in fact, is the essential prerequisite for the efficient discharge of their parliamentary duties, in the absence of which, they may not be able to speak out their mind and express their views in the House without any fear. Importance of this right for the Members of Parliament is underlined by the immunity accorded to them from civil or criminal proceedings in a court of law for having made any speech/ disclosure or any vote cast inside the House or a committee thereof.

Any investigation outside Parliament, of anything that a member says or does in the discharge of his parliamentary duties amounts to a serious interference with the member's freedom of speech in the House. Therefore, to attack a member or to take or even threaten to take any action against him including institution of legal proceedings on account of anything said or any vote given by him on the floor of the House would amount to a gross violation of the privilege of a member.

The immunity granted to members under article 105(2), covers anything said in Parliament even though it does not strictly pertain to the business before the House. As stated by the Supreme Court:

The article confers immunity, inter alia, in respect of 'anything said... in Parliament'. The word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament... Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business would be immune from proceedings in any court. This immunity is not only complete but is as it should be... The courts have no say in the matter and should really have none.<sup>17</sup>

The freedom of speech available to the members on the floor of the House is different from that available to the citizens under article 19(2). A law made under this Article providing for reasonable restrictions on the freedom of speech of the citizens would not circumscribe the freedom of speech of the members within the walls of the House. Members enjoy complete protection even though the words uttered by them in the House are malicious and false to their knowledge.<sup>18</sup> Courts have no jurisdiction to take action against a member for his speech made in the House even if it amounts to contempt of the court.<sup>19</sup>

The express Constitutional provisions contained in clauses (1) and (2) of article 105 are thus a complete and conclusive code in respect of the privilege of freedom of speech and immunity from legal liability for anything said in the House or for publication of its reports.

---

<sup>17</sup> Tej Kiran Jain v. N. Sanjiv Reddy, AIR 1970, SC 1573.

<sup>18</sup> Suresh Chandra Banerji v. Punit Goala, AIR 1951, Calcutta 176.

<sup>19</sup> Surendra Mohanty v. Balakrishna Choudhury, AIR 1958, Orissa, 168.

Anything which falls outside the ambit of these provisions is, therefore, liable to be dealt with by the courts in accordance with law. Thus, if a member publishes questions which have been disallowed by the Chairman and which are defamatory, he will be liable to be dealt with in a court under the law of defamation.

The right of freedom of speech in the House is, however, circumscribed by the constitutional provision and the rules of procedure. When a member violates any of the rules, the Chair has ample powers conferred by the rules to deal with the situation. In view of the immunity conferred on the member's right to speech and action in the House, its misuse can have serious effects on the rights and freedom of the people who could otherwise seek the protection of the courts of law. Members, therefore, as people's representatives, are under greater obligation to exercise this right with utmost care and without any prejudice to the law of the land.

The privilege of freedom of speech is an important and necessary element in the work of Parliament. However, because of the immunity it confers, its misuse can have serious effects.

This is essential for giving effect to their freedom of speech in the House. It is also a settled procedure that no member or officer of the House should give evidence in respect of any proceedings of the House or any committee thereof or any document relating to or connected with any such proceedings or in the custody of the officer of the House or produce any such document in a court of law without the leave of the House being first obtained.

The right of a Member of Parliament to function freely and without fear or favour is in India, as in the U.K., a constitutional guarantee. This guarantee is subject only to the rules of the House and ultimately to the disciplinary jurisdiction of the House itself... any investigation outside Parliament of anything that a member says or does in the discharge of his duties as a Member of Parliament would amount to a serious interference with the member's right to carry out his duties as such member.

❖ **Freedom from arrest**

A Member of Parliament is not liable to arrest or detention in prison, under a civil process, during the continuance of a session of the House or meetings of any committees, of which he may be a member, and during forty days before and after such session/meeting.<sup>20</sup>

The need for freedom from arrest of the Members of Parliament lies in the fact that every Legislature is entitled to have the first claim upon the services of its members and that any person or authority who prevents or obstructs a member from attending to his parliamentary duty is guilty of breach of privilege and the contempt of the House.

❖ **Arrest for criminal offences or under preventive detention laws**

The privilege of freedom from arrest, however, is not intended to interfere with the administration of criminal justice or laws relating to emergency legislation such as preventive detention. The immunity, therefore, has been limited only to civil cases. The Madras High Court has held that the privilege of freedom from arrest "cannot extend or be contended to operate, where a Member of Parliament is charged with an indictable offence".<sup>21</sup> The privilege of freedom from arrest thus ceases to operate where a Member of Parliament has been charged with a criminal or indictable offence, primarily on the ground that the House should not protect a member from the process of criminal law. He cannot, therefore, pray for a writ of mandamus directing the State to enable him to attend the session of the Legislature. In fact, there is no statutory provision granting such privilege or immunity.<sup>22</sup>

According to the Calcutta High Court, preventive detention partakes more of a criminal than of a civil character. It only allows persons to be detained who are dangerous or are likely to be dangerous to the State. It is true that such orders are made when criminal charges possibly would not be established, but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.<sup>23</sup>

Parliamentary Privileges In Relation To Fundamental Rights: A Brief History About The Conflict Between The Two And The Current Position Of The Relationship Between The Two

---

<sup>20</sup> Code of Civil Procedure, 1908, s. 135A

<sup>21</sup> . In the matter of Venkatachalam, AIR 1951, Madras, 269

<sup>22</sup> K. Ananda Nambiar v. Chief Secretary, Government of Madras, AIR 1966, SC 657

<sup>23</sup> Ans Umali Majumdar v. State of West Bengal, AIR 1952, Calcutta 632.

Any member of the public who has an interest can represent some other person in the court if that person's legal right is violated if the concerned person cannot approach the court due to poverty or some other valid reason, however the position is different when it comes to privileges.

These privileges even though they are a part of the law of the land are to a certain extent an exception from the ordinary law. Now, after the arrival of the Constitution of India there have been numerous conflicts between the Fundamental Rights and the Parliamentary Privileges throughout the years.

The questions which arose were whether the fundamental rights control the parliamentary privileges in any way, which would prevail in case of a conflict between the two, the fundamental rights or the parliamentary rights and immunities.

In an attempt to solve this question, I shall in this report refer to some of the cases which have come up in the past and have served as a major factor regarding the issue of conflict between the fundamental rights and the parliamentary privileges. The key question in each case has been whether a parliamentary privilege can be struck down if it violates a fundamental right or would fundamental rights override the privileges. To sum up all these questions and to put it in a different wording the main issue is does the power of Judicial Review extend to Parliamentary Privileges?

The power of Judicial Review is contained in clause (2) of Article 13.

According to this clause, the Supreme Court can strike down any law which violates any fundamental right. With respect to the power of judicial review, the Supreme Court had held that it would not extend to clause (1) and clause (2) because the language of these clauses itself prohibited judicial review.<sup>24</sup> However, with respect to clause (3), the Supreme Court held that the uncodified privileges were not 'law' within the meaning of Article 13 (2) and hence were not capable of being struck down.

As a result of this decision of the Supreme Court, the Parliament has, till this date, resolved to keep the privileges coming under clause (3) uncodified in the fear that if these privileges

---

<sup>24</sup> Pandit MSM Sharma v. S.K. Sinha AIR 1954 SC 636

are codified then they can and will be struck down by the Supreme Court when there is a conflict with any fundamental right.

This fear also stems from the fact that many privileges which are still enjoyed by the Indian Parliament today have been removed from the British Parliament and do not exist anymore. There are many privileges which are likely to cause a conflict with the fundamental rights and hence if codified into a statute, there will be many privileges which the Parliament will not be able to enjoy anymore. As a result of this, every Member of Parliament in India enjoys a large number of privileges, some of which are in direct conflict with rights in actual practice and which have ceased to enjoy the status of privileges in England and other countries.

❖ **Bribery is not protected by parliamentary privileges**

For the effective functioning of Parliamentary democracy, the freedom of speech in Parliament is guaranteed in India. The freedom of speech in Parliament is safeguarded by clause (1) and clause (2) of Article 105 in India. Freedom of speech in the Parliament is subject to the Constitution and to the rules and standing orders. However, a restriction is imposed on this Article by Article 121<sup>25</sup> (similarly Article 211)<sup>26</sup>. The said restriction is that no discussion shall take place in any House with respect to the conduct of a Supreme Court Judge or a High Court Judge in discharge of his duties except when a motion for his removal is under consideration.

The freedom of speech which is guaranteed by clause (1) of Article 105 is very different from that which is given under Article 19 (1) (a) which is enjoyed by the citizens of India as a fundamental right. The freedom of speech given in Article 19 does not protect an individual absolutely from what he says. There are reasonable restrictions given in clause (2) of Article 19 regarding the same.

---

<sup>25</sup> **Article 121 in Constitution of India**

**121. Restriction on discussion in Parliament**

No discussions shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided

<sup>26</sup> **Article 211 in Constitution of India**

**211. Restriction on discussion in the Legislature**

No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.



In Article 105, the term “freedom of speech” means that no Member of Parliament will be liable to any proceedings in any court for the statements made by him in the debates in the Parliament or any committee of the Parliament whatsoever. Therefore, the freedom of speech given under Article 105 cannot be restricted under clause (2) of Article 19 as was held by the Supreme Court in the case of Narasimha Rao.<sup>27</sup>

❖ **Clause (2) of Article 105 has two parts.**

The first part says that no Member of Parliament shall be liable to any court proceedings for anything said by him or for any vote given by him in the Parliament or any committee thereof.

The second part says that no person shall be liable in respect of the publication by order under the authority of a House of Parliament of any paper, report, vote or proceedings.

Though it has not been expressly stated but the Freedom of Speech given in Article 105 also extends to any other act which is done in connection with the proceedings of either House, for example, for notices of motions, questions or the resolutions as was held by the Supreme Court in the Tej Kiran case.<sup>28</sup>

**As was said by the Supreme Court in the Tej Kiran case,**

“This immunity is not only complete but is as it should be. It is of essence of the Parliamentary system of Government that people’s representatives should be free to express themselves without fear of the legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The courts have no say in the matter and should really have none.”

**This view came to be reiterated in the P.V. Narasimha Rao case.**

---

<sup>27</sup> P.V. Narasimha Rao v. State AIR 1998 SC 2120.

<sup>28</sup> Tej Kiran Jain v. M. Sanjiv Reddy AIR 1970 SC 1573

“Here, it was held that the privilege of immunity from court proceedings given by Article 105(2) to each Member of Parliament extended even to bribes taken by the members of the Parliament for voting in a particular manner.”

The Supreme Court said that by reason of Article 105(2), no Member of Parliament is answerable to any Court of law for anything said or done by him in the Parliament and that such a wide freedom of speech and vote is sine qua non for the effective functioning of a parliamentary system of Government. However, rejecting the view that the bribe givers and bribe takers had not committed any offence by reason of Article 105 (2), the Supreme Court said that the bribe givers and bribe takers had committed breach of privilege and contempt of the House (Lok Sabha) hence the Parliament could proceed against them for the same.

This decision however has been heavily criticized and has invoked so much controversy and dissatisfaction that its review was sought in the court. This review petition however was dismissed on the ground of delay. A much-appreciated critique of this case can also be found in Balwant Singh Malik’s work.<sup>29</sup>

However, clause (1) and clause (2) of Article 105 protect only what is said within the House. If a Member of Parliament publishes his speech outside the Parliament then the concerned immunity would not be available to him.<sup>6</sup> Also, this Freedom of Speech as given by Article 105 is only available to a Member of Parliament when he attends the session of Parliament.<sup>30</sup>

It can be said here that common law gives the defense of “qualified privilege” to fair and accurate unofficial reports of Parliamentary proceedings published in a newspaper or the like, as was held in the case of *Was on*<sup>31</sup>, wherein it was observed that it was of paramount public and national importance that Parliamentary proceeding be communicated to the public who have a genuine interest in knowing about the status of their country’s Parliament.

However, a fake report published with the intent to injure the reputation of an individual will not be permitted to take the protection of qualified privilege. The position of the law is the same in India as well.

---

<sup>29</sup> Balwant Singh Malik, “P.V. Narasimha Rao v. State: A Critique” (1998) 8 SCC J-1.

<sup>30</sup> Jitesh Chandra Ghose v. Harisadhan Mukherjee AIR 1956 Cal 433

<sup>31</sup> *Warson v. Walter* (1868) LR 4 QB 73.

The Parliamentary Proceedings (Protection of Publication) Act, 1956 enacts that no person shall be liable to any proceedings in any court in respect of the publication of a true report of the proceedings of either House of Parliament, unless it is proved that the publication has been made out of malice or if the publication was expressly ordered to be expunged by the Speaker<sup>32</sup> .

This position has become much stronger as a result of the insertion of Article 361-A by the Constitution (44th Amendment) Act, 1978.

A case was famously decided in 2007 which dealt with parliamentary privilege in relation to Article 21. The name of the case was Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha.<sup>15</sup> In this case, 11 members of the Parliament were caught taking bribes in the camera of a news channel. They had taken the bribes to ask certain questions in the Parliament thereby misusing their powers for illegal gratification and monetary gain. After the event of such an act becoming public, the Parliament suspended these members who in turn approached the Supreme Court for seeking remedy.

The Speaker and the Chairman of the Lower and the Upper House refused to come before the Supreme Court. They gave the reason that since the jurisdiction regarding the exercise of privileges was completely vested in the Parliament, the Supreme Court had no say in it. However, the Supreme Court still decided to proceed with the case in spite of the Parliament's stand. The first ever binding change in the law of privileges in India was brought about in this case. The Court held that the power of judicial review under Article 13 (2) would extend to privileges

On a case to case basis overruling its earlier decisions. The restrictive interpretation of Article 122 as mentioned above was done away with after this decision and a very wide interpretation was given to Article 122 in the judgment of this case. It was held that although Article 122 did not allow an inquiry into the procedure of Parliament by the judiciary or

---

<sup>32</sup> This act was repealed by the Congress Government during the Emergency in 1976. However, the Parliamentary Proceedings (Protection of Publication) Act, 1977 was passed by the Parliament and it received the assent of the President on 18.04.1977.

anyone on grounds of procedural irregularity, however, it did not exclude instances of review of a procedure if it was found to be illegal or unconstitutional.

In arriving in its decision, the Supreme Court relied on various foreign decisions<sup>33</sup> as well as its own decision in the Presidential Reference of 1964.<sup>34</sup> The change in law brought about by this judgment has crucial implications on the accountability of our Parliamentarians who until now were not liable to be questioned by any court in respect of their functions as parliamentarians.

**Delhi High Court Association For Democratic ... vs Union Of India (Uoi) And Anr. on 2 November, 2000 Equivalent citations: AIR 2001 Delhi 126, 2000 (57) DRJ 82**

Before we delve into the matter further it is very important to know about a certain party involved against government of India is Association for Democratic Reforms (ADR)

It is a political and non-partisan nonprofit organisation in India,[2] working on electoral and political reforms for over 25 years.

**History**

ADR came into existence in 1999 when a group of Professors from the Indian Institute of Management (IIM) Ahmedabad [3] filed a Public Interest Litigation (PIL) with the Delhi High Court regarding the disclosure of the criminal, financial, and educational background of the candidates contesting elections. The PIL was upheld by the Delhi High Court in 2000,[4] but the Government of India appealed to the Supreme Court of India against the High Court judgment. However, in 2002[5] and subsequently in 2003,[6] the Supreme Court made it mandatory for all the candidates contesting elections to disclose their criminal, financial, and educational background prior to the polls by filing an affidavit with the Election Commission of India.

**Summary of the above-mentioned case**

---

<sup>33</sup> House of Commons v. Vaid (2005) 1 SCR 667, Harvey v. New Brunswick 1996 (2) SCR 876, Prebble v. Television New Zealand Ltd. 1994 (S) WLR 970, Speaker of the House of Assemble v. Canadian Broadcasting Corp. (1993) 1 SCR 319

<sup>34</sup> (1965) 1 S.C.R. 413

- ❖ The case before the Delhi High Court revolves around a petition seeking the right for voters to make informed decisions based on the criminal backgrounds of candidates contesting elections. The petitioner urges the court to direct authorities to compile information on the criminal records of candidates and make it publicly available through print and electronic media.
- ❖ The petitioner also seeks amendments to the Representation of the People Act, 1951, in line with recommendations from the Law Commission's 170th Report. These recommendations include requiring candidates to declare their assets and any pending criminal charges against them. The petitioner argues that such measures are necessary due to the increasing criminalization of politics.
- ❖ The Election Commission of India supports the need for electoral law amendments to address criminalization in politics, but the Union of India emphasizes the need for consensus among political parties before making legislative changes.
- ❖ The court acknowledges the serious concern over the criminalization of politics, as highlighted by various authorities, including the Election Commission and the Law Commission. Despite recognizing the issue, the court emphasizes that the power to legislate on electoral matters lies with the Parliament and cannot be overridden by the judiciary.
- ❖ The court suggests that while it cannot directly amend laws, the fundamental right of voters to receive information about candidates' criminal backgrounds and other relevant details should be considered. It highlights the need for informed voting and suggests that this issue holds great relevance in the current political scenario.
- ❖ The Law Commission's 170th report highlighted concerns about the increasing criminalization of politics and electoral malpractices in India. Participants at a national seminar expressed strong opinions about the politicization of crime and the use of criminals during elections.

- ❖ Key figures such as Dilip Padgaonkar and V.R. Reddy supported measures to address these issues. The report proposed amendments to the Representation of the People Act, 1951, including creating a separate section for electoral offenses and serious crimes, disqualifying candidates facing charges, and requiring candidates to disclose criminal cases and assets.
- ❖ The report also cited the Vohra Committee Report, which outlined the extensive infiltration of crime into politics, including the influence of criminal gangs, smuggling syndicates, and their connections with politicians and bureaucrats. Additionally, it referenced instances of poll violence and the prevalence of candidates with criminal backgrounds, particularly in states like Bihar and Uttar Pradesh.
- ❖ The report emphasized the necessity of providing voters with information about candidates' antecedents to enable informed decision-making and safeguard the democratic process.
- ❖ The Constitution of India, particularly Article 19(1)(a), guarantees citizens the right to freedom of speech and expression, which includes the right to know and receive information on matters of public concern. This right is essential for maintaining a transparent and accountable government in a democratic society.
- ❖ Several landmark Supreme Court cases have affirmed the importance of the right to information as an integral part of freedom of speech and expression.
- ❖ In *State of U.P. v. Raj Narain*, the court held that citizens have the right to know every public act and transaction, which is crucial for holding public officials accountable. Similarly, in *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, the court emphasized that freedom of speech and expression includes the right to acquire and disseminate information through various mediums, such as print media, radio, and television.
- ❖ The right to receive information is particularly significant in the context of elections, as voters need access to relevant information about candidates to make informed decisions. The court has stressed that informed voting is essential for the functioning of democracy and preventing the criminalization of politics.

- ❖ To ensure the right to information during elections, the court directed the Election Commission to provide voters with essential information about candidates, including details of criminal charges, assets, qualifications, and party affiliations. Candidates are required to submit this information to the Election Commission, and non-compliance may result in legal consequences.
- ❖ Additionally, the court mandated pre-election debates to be televised by Doordarshan, where political parties can present their manifestoes, plans, and candidate backgrounds, and respond to questions from the audience.
- ❖ Overall, the court's rulings emphasize the importance of the right to information in ensuring transparency, accountability, and informed decision-making in a democracy.
- ❖ The case involves a Civil Appeal (No. 7178 of 2001) and a Writ Petition (C) No. 294 of 2001, heard in the Supreme Court of India. The Civil Appeal was filed by the Union of India against the Association for Democratic Reforms and another party, while the Writ Petition was filed by People's Union for Civil Liberties (PUCL) and another party against the Union of India and another party.
- ❖ The case originated from a judgment and order dated November 2, 2000, issued by the Delhi High Court in C.W.P. No. 7257 of 1999.
  - **Present during the proceedings were Hon'ble Mr. Justice M.B. Shah, Hon'ble Mr. Justice Bisheswar Prasad Singh, and Hon'ble Mr. Justice H.K. Sema.**
  - **Legal representatives present included Harish N. Salve, Solicitor General, along with other senior advocates and lawyers representing the parties involved.**
  - **The judgment of the Supreme Court was delivered.**
- ❖ The case revolves around the question of whether voters in a democratic nation have the right to access relevant information about candidates contesting elections before casting their votes. The petitioner, the Association for Democratic Reforms, filed a writ petition seeking the implementation of recommendations made by the Law Commission to make the electoral process fairer and more transparent. These recommendations included debarring candidates with pending criminal cases from

contesting elections and requiring candidates to disclose their criminal records and assets.

- ❖ Despite successive governments' failure to take action on these recommendations, the High Court of Delhi, in its judgment dated November 2, 2000, held that it was the Parliament's function to make necessary amendments to the Representation of the People Act, 1951, or the Election Rules. However, the Court addressed the issue of whether voters have a fundamental right to receive information about candidates' criminal activities to make informed voting decisions.
- ❖ After considering submissions, reports, and the Election Commission's stance, the High Court ruled that voters have the right to know about candidates' backgrounds to make informed choices. It directed the Election Commission to ensure that voters receive information about candidates' criminal records, assets, and other relevant details before elections.
- ❖ The submissions made in the case involve several key arguments. The Union of India, represented by Mr. Harish N. Salve, contends that until suitable amendments are made to the existing laws, the High Court should not have directed the Election Commission to implement any changes regarding candidate disclosures. Mr. Ashwini Kumar, representing the Indian National Congress, argues that educational qualifications and asset disclosures were rejected by the Constituent Assembly, indicating that such information is not relevant for elections. He emphasizes the need for Parliament to decide on such matters, maintaining a delicate balance between the roles of the judiciary and the legislature.
- ❖ On the other hand, the Election Commission, represented by Mr. K.K. Venugopal, supports the directions given by the High Court and suggests that candidates should be required to disclose information about their criminal records, assets, liabilities, and educational qualifications. The Commission proposes that this information should be furnished in a prescribed format and disseminated to voters through the Returning Officers.



- ❖ Mr. Rajinder Sachhar, representing the petitioners, relies on the decision in *Vineet Narain v. Union of India* to argue that judicial review can be an effective tool to ensure free and fair elections. He suggests that voters, especially the illiterate population, need access to comprehensive information about candidates to make informed decisions. Ms. Kamini Jaiswal, representing the respondents, supports the High Court's decision, emphasizing the importance of disclosing candidates' backgrounds for the sake of free and fair elections and the survival of democracy.
- ❖ The arguments presented touch upon constitutional principles, the powers of the judiciary, and the need for transparency in the electoral process. The case raises significant questions about the balance of power between the judiciary and the legislature, as well as the role of information in ensuring democratic elections.
- ❖ Based on the provided legal analysis and arguments, it appears that the Election Commission is indeed empowered to issue directions as ordered by the High Court. This power stems from the broad terms of Article 324 of the Constitution, which grants the Election Commission the authority for the superintendence, direction, and control of all elections. The phrase 'conduct of elections' is interpreted to include the power to make necessary provisions for conducting free and fair elections. Therefore, when there is a void or silence in legislation regarding a particular subject, the Election Commission can issue directions or orders to fill that vacuum until suitable laws are enacted by the Parliament.
- ❖ Regarding the second question of whether voters have the right to access relevant information about candidates contesting elections, the argument is based on the fundamental right to freedom of speech and expression. In a democratic society, citizens have the right to know about the public acts of public functionaries, including MPs and MLAs who are seeking election. This right is derived from the concept of freedom of speech and expression and is essential for informed decision-making by voters. Transparency about the antecedents of candidates, including their assets, qualifications, and involvement in criminal cases, is crucial for maintaining the integrity of elections and ensuring that voters can make informed choices.

- ❖ The legal analysis provided cites various court decisions and constitutional principles supporting the citizens' right to access information about candidates, emphasizing the importance of transparency in democracy and the need to combat corruption and criminalization of politics. Therefore, it can be concluded that voters have a legitimate expectation to know relevant information about candidates contesting elections, and measures to ensure such transparency are essential for upholding the principles of democracy.
- ❖ The document discusses a court case where the issue of transparency and disclosure of information by candidates contesting in elections is addressed. It begins by stating that individuals in government service, including MPs and MLAs, are required to declare their assets and liabilities. The court emphasizes the importance of MPs and MLAs in a democratic government and highlights their duty to the public. It refers to legal precedents to establish the status of MPs and MLAs as public servants.
- ❖ The court asserts that the Election Commission has wide-ranging powers to ensure free and fair elections, including the authority to issue necessary directions in the absence of specific legislation. It emphasizes the importance of disclosure by candidates to maintain the purity of elections and enable voters to make informed decisions.
- ❖ Based on this reasoning, the court directs the Election Commission to require candidates to provide detailed information on criminal records, pending cases, assets, liabilities, and educational qualifications as part of their nomination papers. The Election Commission is instructed to establish the norms and procedures for implementing these directives within two months.
- ❖ Ultimately, the court partially allows the appeal and modifies the directions issued by the High Court. The case is disposed of, with no costs awarded

The Association for Democratic Reforms (ADR) and National Election Watch (NEW) have analysed the self-sworn affidavits of 763 sitting MPs out of 776 seats of Lok Sabha and Rajya Sabha<sup>35</sup>

This data has been extracted from affidavits filed by the MPs prior to contesting their last elections and any subsequent by-elections. Four seats of the Lok Sabha and one seat of the Rajya Sabha are vacant and four Rajya Sabha seats of Jammu and Kashmir are undefined.

Out of the 763 sitting MPs analysed, 306 (40%) sitting MPs have declared criminal cases against them and 194 (25%) sitting MPs have declared serious criminal cases including cases related to murder, attempt to murder, kidnapping, crimes against women, etc, it said.

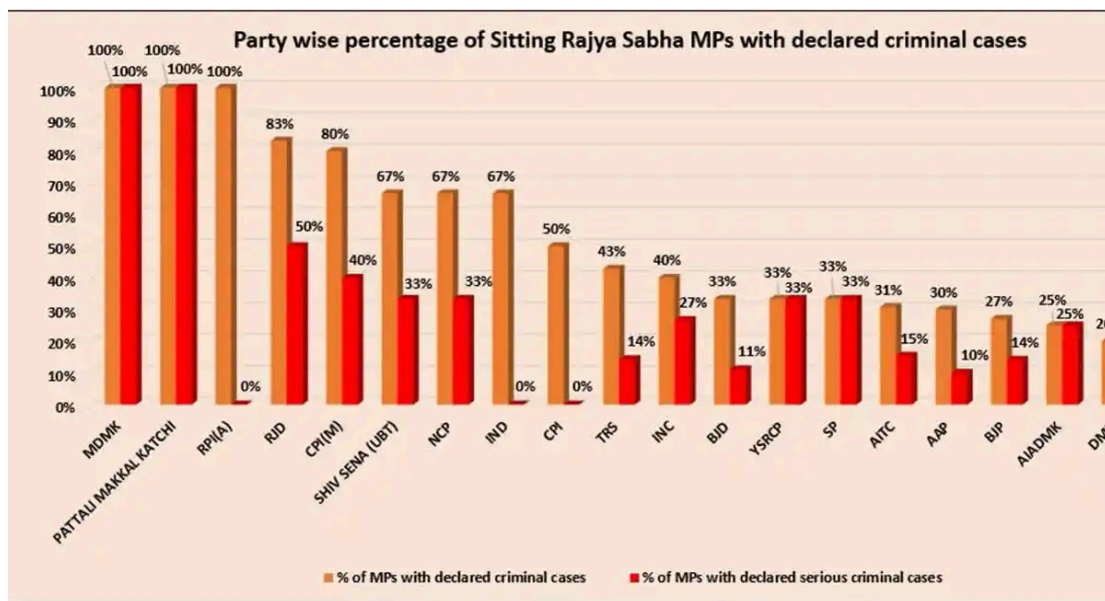
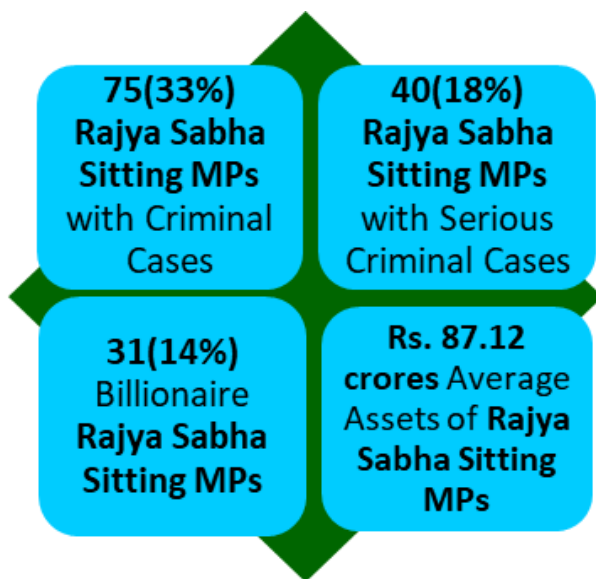


Figure: Party wise percentage of Rajya Sabha sitting MPs with declared criminal cases

<sup>35</sup> [40% sitting MPs have criminal cases, 25% serious criminal cases: ADR - The Hindu](#)

## Highlights



## Criminal background

- Rajya Sabha sitting MPs with criminal cases: Out of the 225 Rajya Sabha Sitting MPs analysed, 75(33%) Rajya Sabha Sitting MPs have declared criminal cases against themselves.
- Rajya Sabha sitting MPs with serious criminal cases: 40 (18%) Rajya Sabha Sitting MPs have declared serious criminal cases.
- Rajya Sabha sitting MPs with declared cases related to murder: 2 Rajya Sabha Sitting MPs have declared cases related to murder (IPC section 302).
- Rajya Sabha sitting MPs with declared cases related to attempt to murder: 4 Rajya Sabha Sitting MPs have declared cases related to attempt to murder (IPC Section 307).
- Party wise Rajya Sabha sitting MPs with criminal cases: 21(23%) out of 90 Rajya Sabha MPs from BJP, 14 (50%) out of 28 Rajya Sabha MPs from INC, 5 (38%) out of 13 Rajya Sabha MPs from AITC, 4(67%) out of 6 Rajya Sabha MPs from RJD, 4(80%) out of 5 Rajya Sabha MPs

from CPI(M), 3(30%) out of 10 Rajya Sabha MPs from AAP, 4(36%) out of 11 Rajya Sabha MPs from YSRCP and 2(20%) out of 10 Rajya Sabha MPs from DMK have declared criminal cases against themselves in their affidavits.

- Party wise Rajya Sabha sitting MPs with serious criminal cases: 10(11%) out of 90 Rajya Sabha MPs from BJP, 9 (32%) out of 28 Rajya Sabha MPs from INC, 3 (23%) out of 13 Rajya Sabha MPs from AITC, 2(33%) out of 6 Rajya Sabha MPs from RJD, 2(40%) out of 5 Rajya Sabha MPs from CPI(M), 1(10%) out of 10 Rajya Sabha MPs from AAP, 3(27%) out of 11 Rajya Sabha MPs from YSRCP and 1(10%) out of 10 Rajya Sabha MPs from DMK have declared serious criminal cases against themselves in their affidavits.

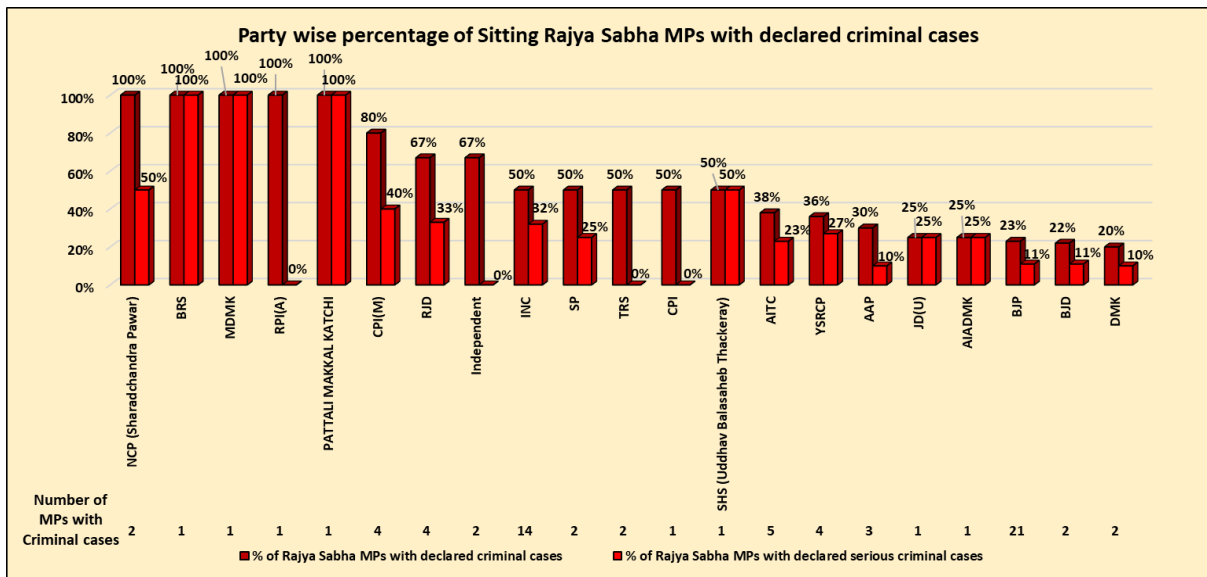


Figure: Party wise percentage of Rajya Sabha sitting MPs with declared criminal cases

State Wise Rajya Sabha sitting MPs with criminal cases: 11(61%) out of 18 Rajya Sabha MPs from Maharashtra, 8(50%) out of 16 Rajya Sabha MPs from Bihar, 9 (29%) out of 31 Rajya Sabha MPs from Uttar Pradesh, 6(33%) out of 18 Rajya Sabha MPs from Tamil Nadu,

6(67%) out of 9 Rajya Sabha MPs from Kerala and 7(44%) out of 16 Rajya Sabha MPs from West Bengal have declared criminal cases against themselves in their affidavits<sup>36</sup>.

## **LITERATURE REVIEW**

### **Treatise on the Law, Privileges, Proceedings and Usage of Parliament**<sup>37</sup>

This book is the really the principle source for deriving the ideas about parliamentary privilege and almost every other thing related to the parliament like the procedure followed and the like in the United Kingdom. As it is very clear that India took its parliamentary privileges from the House of Commons, this book undoubtedly plays an important role in the parliamentary privileges enjoyed in India as well. The Supreme Court has also in the past given a reference to the principles of Thomas Erskine May in many of its judgments.

## **CONCLUSION**

The Parliament of India represents the people of India and it mirrors the minds and aspirations of these very people. Many a times, legislators from the opposing benches while analyzing the work of the working government tend to make some serious attacks and this happens often in today's time. It is therefore of prime importance that the parliamentarians are given all the privilege which they need in order to perform their job effectively.

Clause (3) of Article 105 is the main reason why there is a demand for the codification of privileges because as a result of this clause the said privileges can be very unclear and vague at times. The reason for the silence of the Parliament in this issue is that they fear that if the privileges are codified then they will lose many of the privileges enjoyed by them.

---

<sup>36</sup> 33 percent sitting Rajya Sabha members have criminal cases against them: report | Association for Democratic Reforms. (n.d.). Adrindia.org. Retrieved May 9, 2024, from <https://adrindia.org/content/33-percent-sitting-rajya-sabha-members-have-criminal-cases-against-them-report>

<sup>37</sup> Thomas Erskine May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament (United Kingdom: Lexis Nexis 23rd ed. 2004)

# IMPACT OF CYBERSECURITY LAWS ON DIGITAL PRIVACY

*By Abhishek Singh<sup>1</sup>*

## **ABSTRACT**

In an age dominated by technological leaps and a constantly expanding digital footprint, the intricate interplay between cybersecurity laws and digital privacy emerges as a central theme in legal, societal, and technological dialogues. This expanded discussion delves into the multifaceted layers of this dynamic relationship, examining the profound implications of cybersecurity laws in the preservation and protection of individual privacy within the digital realm. This study looks at the conflicts and shared interests between cyber security and privacy. It focuses on how privacy and data protection issues are related to cyber security issues, examines how privacy may be impacted by cyber security policy, and emphasizes how cyberspace governance and security is a worldwide concern. Lastly, it lays forth significant policy guidelines in an effort to start a conversation about cyber security as a crucial component of online privacy protection. The mutually beneficial interaction between cybersecurity legislation and digital privacy becomes increasingly important in today's fast evolving legal landscape. This overview highlights the fundamental interplay between these two domains, emphasizing the critical nature of cybersecurity laws in safeguarding individual privacy within the expansive realm of digital interactions.

**Keywords-** *Cybersecurity Laws; Digital Privacy; Cyber Laws.*

## **Introduction**

In the contemporary landscape dominated by rapid technological advancements, the interaction between cybersecurity laws and digital privacy stands as a critical focal point. The seamless integration of technology into our daily lives has facilitated convenience but also raised concerns regarding the protection of personal information. The Impact of Cybersecurity Laws on Digital Privacy has become a paramount subject of legal, societal, and technological discourse.

In navigating this intricate relationship, it is imperative to acknowledge the profound implications that cybersecurity laws carry in safeguarding individual privacy within the

---

<sup>1</sup> Student at Deen Dayal Upadhyay Gorakhpur University.

expansive digital realm. As the Hon'ble Supreme Court of India asserted in the landmark judgment of Justice

*K.S.Puttaswamy (Retd.) v. Union of India (2017)*<sup>2</sup>, the right to privacy is intrinsic to life and liberty, forming an essential aspect of the fundamental rights guaranteed under the Indian Constitution.

This research embarks on an exploration of the common interests and tensions between privacy and cybersecurity. It delves into the challenges faced by both domains, considering the impact of cybersecurity policies on privacy, and recognizing the global nature of cyberspace governance and security. The analysis ultimately aims to propose key policy directions that harmonize cybersecurity measures with the imperative of protecting online privacy.

As "cyberspace" has become central to the global information and communication infrastructure, the security of cyberspace has now become a more urgent priority for April 2 corporations and governments around the world. In fact, the Digital Canada 150 strategy, launched, complements Canada's cyber security strategy by making Protecting Canadians one of its five pillars. According to the 2010 document Canada's Cyber Security Strategy (the "Strategy"), cyberspace is "the electronic world created by interconnected networks of information technology and the information on those networks. It is a global commons where more than 1.7 billion people are linked together to exchange ideas, services and friendship." The term "cybersecurity," though not defined in the Strategy, is generally understood to encompass any measures taken to protect online information and secure the infrastructure on which it resides<sup>3</sup>.

Technologies that are ubiquitous, interconnected, and allow easy access to the Internet have become deeply integrated in everyday life. As a result, we increasingly depend on cyberspace for social, economic and political interactions. The web provides a platform for a whole range of critical infrastructure sectors and services, such as health care, food and water, finance, information and communication technology, public safety, energy and utilities, manufacturing,

---

<sup>2</sup> 2019 (1) SCC 1.

<sup>3</sup> Office of the Privacy Commissioner of Canada (2015). *Privacy and Cyber Security*. [online] [www.priv.gc.ca](http://www.priv.gc.ca). Available at: [https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2014/cs\\_201412/](https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2014/cs_201412/).



transportation and government. Cyberspace connectivity augments all of these critical infrastructure sectors and is therefore vital to Canada's future economic growth<sup>4</sup>.

### **Cybersecurity Laws and Their Challenges**

In the contemporary digital landscape, the significance of cybersecurity laws is paramount as they play a crucial role in safeguarding sensitive information, protecting national security, and mitigating the rising threats posed by cybercriminals. However, these laws encounter formidable challenges in addressing the evolving nature of cyber threats.

The rapid pace of technological advancements contributes to an ever-expanding threat landscape, characterized by sophisticated cyber attacks, data breaches, and the emergence of advanced persistent threats (APTs). Cybersecurity laws face the intricate task of keeping pace with these evolving tactics employed by cyber adversaries.

Cross-border nature of cyber threats poses another challenge, requiring effective international cooperation and legal frameworks. Balancing the need for robust cybersecurity measures with individual privacy concerns remains a delicate task for legislators. Additionally, the integration of emerging technologies like artificial intelligence, Internet of Things, and blockchain presents new complexities for legal adaptation.

Addressing these challenges necessitates a comprehensive legal framework that is not only adaptable but also involves international collaboration. As we navigate a digitally interconnected world, the continuous evolution of cybersecurity laws becomes imperative to ensure a secure and resilient cyberspace.

A report from the World Economic Forum released in January 2014 examines the need for new approaches to increase resilience against cyber attacks and suggests that the failure to effectively secure cyberspace could result in an aggregate impact of approximately US\$ 3 trillion by 2020. However, many of the challenges for cyber security are also challenges for privacy and data protection. Cyber security is by no means a static issue with a permanent solution. Threats to information in cyberspace evolve quickly and, more recently, have expanded into new channels such as social media and mobile technologies. As organizations strive to keep pace with the changing landscape created by innovative technologies, social practices and ever-changing

---

<sup>4</sup> *Ibid.*

threats, data produced, collected and collated on a massive scale can be left vulnerable to those cyber threats. The following are some of the emerging challenges for data protection and cyber security<sup>5</sup>:

- **Advanced Persistent Threats (APTs):** Cyber adversaries are employing sophisticated and persistent techniques to infiltrate systems, emphasizing the need for robust defenses against APTs.
- **Ransomware Attacks:** The surge in ransomware incidents poses a significant challenge, with release.
- **Cloud Security Concerns:** As organizations migrate to cloud environments, ensuring the security of data stored and processed in the cloud becomes crucial, demanding effective measures to address potential vulnerabilities.
- **IoT Vulnerabilities:** The proliferation of Internet of Things (IoT) devices introduces new entry points for cyber attacks, requiring enhanced security measures to protect interconnected devices and networks.
- **Data Privacy Regulations:** The evolving landscape of data protection regulations, such as GDPR, poses challenges for organizations to ensure compliance and uphold individuals' privacy rights.
- **Insider Threats:** Malicious or unintentional actions by employees or insiders pose a persistent challenge, necessitating strategies to detect and prevent internal security breaches.
- **Artificial Intelligence (AI) Risks:** The integration of AI in cybersecurity introduces new challenges, including adversarial attacks and the ethical implications of autonomous decision-making in security measures.
- **Supply Chain Vulnerabilities:** Cybersecurity threats often exploit weaknesses in supply chains, emphasizing the need for organizations to assess and enhance the security posture of their entire ecosystem.
- **Critical Infrastructure Protection:** Protecting essential services and critical infrastructure from cyber threats becomes increasingly vital as these sectors are targeted for potentially devastating consequences.

---

<sup>5</sup> *Ibid.*

- **Global Collaboration:** Achieving effective international collaboration on cybersecurity matters remains a challenge, requiring harmonization of legal frameworks and sharing threat intelligence across borders.

Addressing these emerging challenges demands a proactive and adaptive approach, involving collaboration between governments, industries, and cybersecurity experts to fortify defenses and ensure the resilience of the digital ecosystem.

#### **Case Laws:**

- *Microsoft Corp. v. United States*<sup>6</sup> - The Supreme Court addressed jurisdictional challenges in accessing data stored abroad, impacting global cybersecurity practices.
- *WannaCry Ransomware Attack Litigation (2020)* - Various cases worldwide underscore the legal consequences and challenges arising from large-scale ransomware attacks.
- *GDPR Enforcement Cases (Various)* - Notable cases under the General Data Protection Regulation (GDPR) highlight legal actions against organizations failing to comply with stringent data protection standards

#### **Complexity of the connected environment**

The continuing evolution of cyberspace, as a fully electronic world created by interconnected networks in parallel with our physical environment, is characterized by an enormous amount of data. The modern economy increasingly depends on vast quantities of digital data that are generated through financial transactions, communications, entertainment, travel, shopping, online browsing, and hundreds of other routine activities. Data elements are continually being combined, connected, compared and linked to other information as organizations try to capitalize on its value and to offer new and improved services to their users. The electronic systems and digital networks that facilitate these transactions and communications also capture our preferences and other personal details, and track our online and, increasingly, physical movements. The volume of data generated in cyberspace can only increase exponentially once the "Internet of things" becomes a reality, and sensors within devices autonomously report on location, status, surrounding environment, provide real-time updates or help monitor and control devices remotely<sup>7</sup>.

---

<sup>6</sup> 584 U.S. (2018)

<sup>7</sup> *Supra* note 3.

The complexity of the connected environment refers to the intricate and interdependent nature of various elements within the modern digital landscape. In today's world, devices, systems, and networks are interconnected, forming an expansive web where information flows seamlessly. This complexity arises from several key factors:

- **Interconnected Devices:** The proliferation of smart devices, 14 Internet of Things (IoT) devices, and other connected technologies means that numerous gadgets and systems interact with each other. This interconnectedness enhances efficiency but also introduces vulnerabilities.
- **Data Interdependency:** In a connected environment, data is a critical asset that is shared among different platforms and systems. The interdependency of data across various applications and services increases the complexity of managing and securing this information.
- **Global Network Infrastructure:** The digital ecosystem operates on a global scale, involving a vast network infrastructure. This global connectivity introduces challenges related to jurisdiction, data sovereignty, and international cooperation in addressing cybersecurity issues.
- **Diversity of Platforms and Protocols:** Different platforms, operating systems, and communication protocols are utilized in the connected environment. Managing the security of diverse technologies and ensuring their seamless interaction adds to the complexity.
- **Emerging Technologies:** Continuous advancements in technologies such as artificial intelligence, blockchain, and cloud computing contribute to the 3 complexity of the connected environment. Integrating these innovations securely requires careful consideration of potential risks.
- **Dynamic Threat Landscape:** Cyber threats are dynamic and constantly evolving. The complexity increases as cybersecurity professionals need to anticipate, detect, and mitigate a wide range of cyber risks, including malware, phishing, and other sophisticated attacks.
- **Regulatory Compliance:** Adhering to diverse cybersecurity regulations and standards across different regions and industries adds 9 another layer of complexity. Organizations must navigate these regulations to ensure legal and ethical use of connected technologies.

Addressing the complexity of the connected environment necessitates a holistic approach that combines technological solutions, robust cybersecurity practices, international cooperation, and ongoing adaptation to emerging challenges. This complexity underscores the importance of a comprehensive cybersecurity strategy<sup>11</sup> to mitigate risks and safeguard the integrity and privacy of interconnected systems and data.

### **Policy Developments for Cyber Security**

Cyberspace is a complex environment consisting of interactions between people, software, and services, supported by the worldwide distribution of information and communication technology (ICT) devices and networks<sup>8</sup>.

Insider threats affect more than 34% of organizations worldwide each year because of this, cybersecurity needs to be a top priority and concern for all employees within a company, not just the senior management and IT staff. Employees are frequently the weakest point in a company's security strategy because they unintentionally click on malicious links and attachments, share passwords, and fail to encrypt sensitive files. A cybersecurity policy that details each employee's obligations for safeguarding the organization's systems and data is a useful tool for educating staff members about the significance of security<sup>9</sup>.

Cybersecurity plays a crucial role within the field of the digital world. Securing information and data became one of the most important challenges in the present day. Whenever we expect cybersecurity the primary thing that involves our mind is cyber crimes which are increasing immensely day by day. Various Governments and Organizations are taking many measures to stop these cybercrimes. Besides various measures, cybersecurity remains a massive concern to several<sup>10</sup>.

### **The Top Three Cybersecurity Trends**

- Ransomware
- Cyber attack Surface (IoT supply chain and Remote work systems)

---

<sup>8</sup> GeeksforGeeks. (2021). *Cyber Security Policy*. [online] Available at: <https://www.geeksforgeeks.org/cyber-security-policy/>.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

- Threats to IT infrastructure<sup>11</sup>

In the extensive growth of the IT sector in different countries, ambitious plans for rapid social transformation and inclusive growth, and providing the right kind of focus for creating a secure computing environment and adequate trust and confidence in electronic transactions, software, services, devices, and networks, has become one of the compelling priorities for all<sup>12</sup>.

Cyberspace is vulnerable to a wide variety of incidents, whether intentional or accidental, manmade or natural, and the data exchanged in cyberspace can be exploited for nefarious purposes. The protection of information cyberspace and preservation of the confidentiality, integrity, and availability of information in cyberspace is the essence of secure cyberspace<sup>13</sup>.

### **Initiatives Taken by Indian Government for Cyber Security**

Cyber Surakshit Bharat, The Indian Computer Emergency Response Team (CERT-In), National Critical Information Infrastructure Protection Centre (NCIIPC), Chief Information Security Officers, etc. Maintaining adequate cyber security measures in today's high tech digital environment is crucial and the best way to safeguard the IT infrastructure of the organizations. Not only are these threats harming the businesses, but also government authorities. Initiating cyber security measures by the government of India will help maintain a cyber-secure environment and mitigate the risks associated with the threat. The number of cyber security incidents has increased over the years. Mr PP Choudhary, minister of state for electronics and IT stated that 44679, 49455, 50362 cyber security incidents took place in India during the years 2014, 2015 and 2016, as stated by the information collected by India's computer emergency response team (CERT-in). Although the government has taken certain cyber security initiatives as discussed below, more aggressive measures are required to meet the challenge.

- **The Indian Computer Emergency Response Team (CERT-In)** -The advancement in the Indian Computer Emergency Response Team (CERT-In), which operates as the national agency to address the country's cyber security, has helped reduce the rate of cyber attacks on government networks

---

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

- **Cyber Surakshit Bharat** -Aiming to strengthen the cybersecurity ecosystem in India and following the Government’s vision of a “digital India,” the Ministry of Electronics and Information Technology (MeitY) has launched the Cyber Surakshit Bharat initiative.The program was in partnership with the National Electronic Governance Division (NeGD)
- **National Critical Information Infrastructure Protection Center (NCIIPC)** -NCIIPC is a central government establishment, formed to protect critical information about our country, which has an enormous impact on national security, economic growth, and public health care.NCIIPC has mainly identified the following as “critical sectors”-
  1. Power & Energy.
  2. Banking, Financial Services & Insurance
  3. Telecom Transport
  4. Government
  5. Strategic & Public Enterprises.
- **Appointment of Chief Information Security Officers** - The Indian Government has published a written guideline for CISOs of government organizations, outlining best practices for safeguarding apps, infrastructure, and compliance. Chief Information Security Officers (CISOs) can identify and document the security requirements that may arise with each technical innovation
- **Personal Data Protection Bill** - The most important one for Indian citizens is the approval of the Personal Data Protection Bill by the Union Government to protect Indian users from global breaches, which focuses on data localization.The bill involves the storage and processing of any critical information related to people only in India. It strictly states that individuals’ sensitive personal data is to be stored locally; however, it can be processed abroad under certain conditions. The bill also aims to make social media companies more accountable and push them to solve the spread of offensive content
- **Cyber Swachhta Kendra (Botnet Cleaning and Malware Analysis Center)** - The “Digital Swachhta Kendra” (Botnet Cleaning and Malware Analysis Center) is a part of the Government of India’s Digital India drive, overseen by the Ministry of Electronics and Information Technology (MeitY), determined to make secure cyberspace all through India by distinguishing botnet contaminations and advising, empowering cleaning, and

end-client security systems to forestall new diseases. The “Cyber Swachhta Kendra” (Botnet Cleaning and Malware Analysis Center) is intended to address the goals of the “National Cybersecurity Policy,” which calls for the development of a secure cybernetic ecosystem in the country

The center works in close coordination and collaboration with Internet service providers and antivirus/product companies. The website provides users with information and tools to help them protect their systems/devices. Following Section 70B of the Information Technology Act 2000, this center is run by the Indian Computer Emergency Response Team (CERT-In).

- **National Cyber Security Policy, 2013** - The Policy’s goal is to create safe and resilient cyberspace for citizens, businesses, and the Government, The mission is to provide protection to cyberspace information and infrastructure, develop capabilities to prevent and respond to cyberattacks, and minimize damage through coordinated efforts of institutional structures, people, processes, and technology. To create a workforce of 500,000 trained cybersecurity professionals in the next 5 years through capacity building, skills development and training. Through appropriate legislative intervention, enable effective cybercrime prevention, investigation, and prosecution, as well as the enhancement of law enforcement capabilities.

### **The Pros And Cons Of Privacy Laws For Consumers And Corporations**

In the age of the Internet and integrated digital technologies, the pros and cons of privacy laws is sometimes a gray topic. One cannot buy things or sign up for educational, medical, banking, telecommunication, entertainment, social media, or virtually any other services without giving up a lot of personal information. Likewise, one can hardly visit a website on the internet without leaving a trail of cookie crumbs containing all sorts of insight about their consumer tastes and habits. What happens to all that identifiable consumer information that is now harvested by technology and kept on record in different companies' databases? Without regulation, businesses don't view private consumer data as "borrowed": they buy and sell them as if it were their own property. As such, because, without them, today's consumers are unable to control what happens



to their personal data, leaving them vulnerable to unsolicited marketing, scams, and identity theft<sup>14</sup>.

## **The Pros And Cons Of Regulating Data Privacy**

Consumer rights advocates tend to be in favor of data privacy laws as they offer protections to individuals whose personal property could be used against them or exploited for financial gain without their knowledge. Others, from the corporate side of the debate, argue that the regulation of data privacy creates more problems than it solves, hindering business and costing money. Here are some data privacy pros and cons from both sides<sup>15</sup>:

### **Pros.**

- **Protecting / Enforcing Consumer Rights:** Consumers deserve to have awareness of and control over how their personal information is collected/shared/tracked, in-person and online. Data privacy laws ensure that there exists legal recourse for consumers to fight back against violations of those privacy rights.
- **Improvement in Security and Protection Of Sensitive Information:** If companies are legally required to be compliant with data privacy and cyber-security rules, the mandatory training/technology upgrades will prevent security breaches and data leaks, leaving the enterprises and their customers safer.
- **Protecting Crucial Human Rights / Civil Liberties:** Privacy legislation can restrict government and law enforcement agencies from easily accessing private citizens' information to use in unwarranted invasions (hence, the necessity for a warrant before collecting personal data).
- **Protection Of Vulnerable People From Predatory Online Behaviors:** Leaks of identifying information can sabotage the physical and mental well-being of a person spending time online (a child can become a target of inappropriate attention on social media, for example): privacy regulation can minimize such incidents<sup>16</sup>.

### **Cons.**

---

<sup>14</sup> easyllama (n.d.). *The Pros And Cons Of Privacy Laws For Consumers And Corporations*. [online] www.easyllama.com. Available at: <https://www.easyllama.com/blog/pros-and-cons-of-privacy-laws/>.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

- **Potential For Abuse:** As with any legally protected rights, the justice system can be exploited. Some worry that introducing/tightening data protection law will create new opportunities for "frivolous" legal action from some unscrupulous consumers that can cost corporations a lot of time and finances.
- **A Lose-Lose "Compromise" For All Sides:** The lack of bipartisan agreement and cooperation among legislators often means that, by the time a data privacy bill is passed into law, it can be so "gutted" / "watered down" that it fails to adequately protect consumer privacy rights (but still costs corporations time and money and imposes limitations of how they operate).
- **Separate State Laws Can Make Things Difficult:** Without a streamlined federal law, the multiple personal information privacy regulations passed by individual states can place extra burdens on companies. Additionally, having each state pass its own personal data protection bills precipitates potential incompatibility between separate state rules that can make legal data sharing complicated or impossible.
- **The Price Of Being Compliant:** In order to become/stay compliant with data protection and privacy legislation, businesses have to invest in installing new data management technology, and possibly hiring extra personnel and evaluators, incurring costs they did not have before<sup>17</sup>.

### **Influence on International Law.**

The influence of Grotius' theory<sup>22</sup> on the development of international law, particularly in the fields of international humanitarian law, international treaty law, and intellectual property law, has been an important factor in the evolution of global regulation. In this context, this study takes into account the positive impact of Grotius' theory in suggesting the implementation of new regulations globally. By considering the principles introduced by Grotius, such as state sovereignty, justice, and the protection of human rights, this research can offer a more holistic and inclusive view of regulation that can be widely applied at the international level. This allows the research to propose regulations that not only meet international legal standards, but also take into account universal values and the needs of the international community as a whole. As such, the research makes a significant contribution to supporting the development of cohesive and

---

<sup>17</sup> Ibid.

sustainable regulations at the global level, which promote peace, justice and common progress among countries around the world. By incorporating Grotius' natural law theory, this research not only adds philosophical depth but also strengthens the argument for regulation based on universal and unchanging moral principles. This helps in shaping a more just and sustainable legal framework for the digital age.

### **Consumer Protection.**

To ensure that consumer protection regulations are not just on paper but are actually and equitably implemented across jurisdictions, several steps can be taken. First, strong law enforcement involving cooperation between law enforcement agencies, regulatory bodies, and other relevant parties is needed to effectively crack down on violations. This involves consistent and strict enforcement of any violations that occur in the digital economy environment. Cooperation between various institutions and related parties is expected to ensure that existing regulations are enforced fairly and consistently, thus providing an effective deterrent effect for offenders. In addition, effective law enforcement also requires strengthening the infrastructure and capacity of legal institutions to handle challenges related to digital technology, including data privacy violations and cyber crime.

As such, strong law enforcement is an important cornerstone in ensuring the success of regulations in protecting consumers and maintaining the integrity of the digital business environment (Apandy et al., 2021; Nasution, 2017). Second, consumer education and awareness campaigns are important to increase consumer understanding and participation in the enforcement process (Gu et al., 2021). In the ever-evolving digital economic environment, consumers need to be equipped with sufficient knowledge of their rights as well as the risks and responsibilities associated with online transactions. Education and awareness campaigns can provide consumers with the necessary information on how to protect themselves from fraud, unethical business practices, and data privacy breaches.

In addition, awareness campaigns can also promote consumers' active participation in reporting violations or suspicious behaviour to competent authorities. By enhancing consumer understanding and participation, education and awareness campaigns can strengthen overall consumer protection and support effective law enforcement efforts in the digital economy.

## **Legal Process Efficiency.**

Technological advancements have played a key role in improving the efficiency of legal proceedings, particularly in the collection and examination of evidence. With the adoption of advanced information 15 technology, legal professionals can manage evidence more efficiently and effectively, resulting in faster and more accurate proceedings. The use of specialized software and case management systems allows for the collection, storage and analysis of evidence to be more structured and accessible (Fuad, 2007; Kania, 2022). In addition, technologies such as data analytics and artificial intelligence can be used to analyze evidence in greater depth, identify patterns that humans may miss, and present relevant information more systematically. This not only improves the quality of legal decisions, but also speeds up the overall process, saving time and costs for all parties involved. As such, technological advancements have brought about a positive transformation in the *Pena Justisia*: Vol. 16 23, No. 1, March, 2024 [PENA JUSTISIA: MEDIA KOMUNIKASI DAN KAJIAN HUKUM] efficiency of the legal process, providing easier and faster access to justice for society as a whole. In an era where information can be quickly accessed through the internet and other digital platforms, individuals have greater access to legal information, court procedures, and other legal resources. This allows them to understand their rights better and gain easier access to fight for justice before the judiciary. In addition, technology also enables the use of alternative dispute resolution methods, such as online mediation, which can be faster and more affordable than traditional litigation. Thus, technological advancements not only improve the efficiency of the legal process, but also expand access to justice for the wider community.

## **A Point Of Contention: Does Privacy Law Quash The American Freedom Of Enterprise?**

Some American critics of privacy law believe that imposing regulations on corporate entities and markets lead to a stifling of innovation, limiting companies' abilities from realizing their full entrepreneurial potential. Others, on the contrary, suggest that when under-regulated, companies have the ability to take advantage of consumers' data, which is unacceptable. The solution lies in striking a balance between the organizations' and consumers' needs and freedoms -- reconciling them fairly, safely, and with minimal costs to those willing to cooperate<sup>18</sup>.

---

<sup>18</sup> Ibid.

## **The Relativity Of Pros And Cons Of Data Protection Laws.**

Upon reviewing the "pros and cons" of data privacy law, it becomes obvious that whether something is perceived as a "pro" or a "con" depends on which side of the consumer vs. corporation divide of interests one is on. What is a "pro" for companies that can be a "con" for the consumer, and a "pro" in terms of consumer rights can be viewed as a "con" from the point of view of corporations who put their bottom line above all else?

While it is natural to feel concerned about the potential abuses of consumer rights law, it serves companies well to see the legislation. Businesses should not view their customers as adversaries: on the contrary, customers are a precious ally whose safety and trust should be a priority. Data privacy law does more than place limits on what the companies can do -- it also rewards the ones that take it seriously and comply readily by boosting their credibility with the consumer, the government, and the business community<sup>19</sup>.

## **Data Privacy Training Puts Companies Ahead Of The Curve.**

It is only a matter of time before data privacy law becomes ubiquitous in the USA: if your state does not have training requirements yet, it will in the foreseeable future. The longer a company resists getting on board, the more it risks succumbing to data breaches and offers a sophisticated yet easy way to bring the workforce to understand why this topic is so important and to become compliant with existing or anticipated data privacy / cyber- security requirements. Simple to implement and fun for users to engage with, our compliance training solves your company's problems affordably and with no learning curve to stress over<sup>20</sup>.

## **Case Laws**

**Justice K.S. Puttaswamy (Retd.) v. Union of India**<sup>21</sup> :This case is pivotal as it recognized the right to privacy as a fundamental right under Article 21 of the Indian Constitution. The judgment highlighted the evolving nature of privacy, including its digital aspect, and set the stage for future considerations on digital privacy.

---

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> (2017) 10 SCC 1

**Shreya Singhal v. Union of India**<sup>22</sup>: This case challenged Section 66A of the Information Technology Act, 2000, which allowed the arrest of individuals for posting offensive content online. The Supreme Court declared the provision unconstitutional, emphasizing the importance of protecting freedom of speech and expression on digital platforms.

**K.S. Puttaswamy (Retd.) v. Union of India**<sup>23</sup> (**Aadhaar judgment**): While primarily focused on the constitutionality of Aadhaar, this judgment reiterated the right to informational privacy. It emphasized the need for a robust data protection framework to secure individuals' personal information, especially in the context of digital databases like Aadhaar.

**Govind v. State of Madhya Pradesh**<sup>24</sup> : Govind is a classic case that laid the groundwork for recognizing the right to privacy as a fundamental right. The judgment highlighted that the right to privacy is inherent in the right to life and personal liberty under Article 21 of the Constitution.

**Ritesh Sinha v. State of U.P.**<sup>25</sup>: This case dealt with unauthorized access to personal data, emphasizing the importance of stringent cybersecurity measures to prevent privacy infringements. It highlighted the legal consequences for individuals involved in unauthorized access to digital information.

**Justice Puttaswamy (Retd.) and Anr. v. Union of India and Ors.**<sup>26</sup> (**WhatsApp-Pegasus Spyware Case**): This case raised concerns about the use of the Pegasus spyware to compromise the privacy of individuals, including activists and journalists. It underscored the urgency of addressing cybersecurity threats to safeguard digital privacy and prevent unauthorized surveillance.

## **Conclusion**

To address cyber security issues and improve their implementation at the national level, experts have suggested the setting up of a National Cyber Security Agency (NCSA). The agency is proposed to be equipped with staff that is both technically proficient and able to encrypt platforms. One other measure is the setting up of the National Cyber Coordination center as an e-

---

<sup>22</sup> (2015) 5 SCC 1

<sup>23</sup> (2019) 1 SCC 1

<sup>24</sup> (1975) 2 SCC 148

<sup>25</sup> (2019) 4 ADJ 650

<sup>26</sup> (2020) 3 SCC 224

surveillance agency to coordinate intelligence gathering activities of different agencies. This research has explored Legal Transformation in the Digital Age with a focus on the impact of new regulations in the digital economy. Through the content analysis method and grounded in the theory of natural law by Hugo Grotius, this research found that new regulations have had a significant impact on consumer protection and business adaptation to legal changes. They have created a more adaptive legal framework, improved the efficiency of legal processes, and strengthened consumer protection through preventive, repressive, protective, solutive, and alternative approaches.

This research also highlights the importance of regulatory harmonization between countries to support the growth of the global digital economy while protecting user rights and security. The implications of natural law theory suggest that regulations should reflect universal and immutable moral principles, emphasizing the importance of justice and humanism in law-making.

As such, this research provides recommendations for the establishment of effective and fair regulations, which support innovation and economic growth while ensuring sustainable legal protection for consumers in the digital age. This conclusion paves the way for further research and policy discussions to ensure that legal transformation can keep up with technological developments and meet the needs of modern society.

## References

1. easyllama (n.d.). *The Pros And Cons Of Privacy Laws For Consumers And Corporations*. [online] www.easyllama.com. Available at: <https://www.easyllama.com/blog/pros-and-cons-of-privacy-laws/>.
2. *Initiatives Taken by Indian Government for Cyber Security*. (n.d.). Unacademy. <https://unacademy.com/content/upsc/study-material/science-and-technology/initiatives-taken-by-indian-government-for-cyber-security/>
3. Office of the Privacy Commissioner of Canada. (2015, February 12). *Privacy and Cyber Security*. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.sconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>

4. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
5. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
6. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
7. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
8. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
9. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
10. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
11. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times.



<https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>

12. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
13. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
14. Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.scconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>
15. Www.priv.gc.ca. [https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2014/cs\\_201412/](https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2014/cs_201412/)
16. *Cyber Security Policy*. (2021, August 17). GeeksforGeeks. <https://www.geeksforgeeks.org/cyber-security-policy/>
17. *Top Landmark Judgments that Changed India: Indian Constitution*. (2023, April 10). Careers360. <https://law.careers360.com/articles/landmark-judgments>
18. *Privacy and Cyber Security Emphasizing privacy protection in cyber security activities*. (2014). [https://www.priv.gc.ca/media/1775/cs\\_201412\\_e.pdf](https://www.priv.gc.ca/media/1775/cs_201412_e.pdf)
19. *Right to Privacy verdict*. (2024, April 29). Wikipedia. [https://en.wikipedia.org/wiki/Right\\_to\\_Privacy\\_verdict](https://en.wikipedia.org/wiki/Right_to_Privacy_verdict)
20. *The Symbiotic Relationship: Cybersecurity and Legal*. (n.d.). Wwww.linkedin.com. Retrieved May 8, 2024, from <https://www.linkedin.com/pulse/symbiotic-relationship-cybersecurity-legal-paul-zarou-kk65e>
21. *Understanding the Legal Framework of U.S. Cybersecurity Laws - ePublic Safety*. (2024, January 1). <https://epublicsf.org/awareness/legal-framework-of-us-cybersecurity-laws/>

- 22.** Indulia, B. (2024, January 5). *75 Landmark Constitutional Law Judgments in 2023 by the Supreme Court of India [Part I of III]*. SCC Times. <https://www.sconline.com/blog/post/2024/01/05/75-landmark-constitutional-law-judgments-2023-supreme-court/>

# **UNIFORM CIVIL CODE: IMPLEMENTATION ISSUES AND SUGGESTION**

**by Samia Asif**

## **Introduction to Uniform Civil Code**

Rooted in the principles of equality, justice, and secularism, the Uniform Civil Code (UCC) has been a long-standing aspiration in India. The Uniform Civil Code (UCC) calls for the formulation of one law for India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption. The code comes under Article 44 1. of the Constitution, which lays down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

The issue has been at the center of political narrative and debate for over a century and a priority agenda for the Bharatiya Janata Party (BJP) which has been pushing for the legislation in Parliament. BJP was the first to promise the implementation of UCC if it comes to power and the issue was part of its 2019 Lok Sabha election manifesto.

A UCC primarily aims to promote social harmony, gender equality, and secularism by eliminating disparate legal systems based on different religions and communities. Such a code seeks to ensure uniformity of laws not only between the communities but also within a community.

## **Why is Article 44 important?**

The objective of Article 44 of the Directive Principles in the Indian Constitution was to address the discrimination against vulnerable groups and harmonise diverse cultural groups across the country. Dr. B R Ambedkar, while formulating the Constitution had said that a UCC is desirable but for the moment it should remain voluntary, and thus the Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.

Ambedkar in his speech in the Constituent Assembly had said, "No one need be apprehensive that if the State has the power, the State will immediately proceed to execute...that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so."

## What will Uniform Civil Code do?

The UCC aims to provide protection to vulnerable sections as envisaged by Ambedkar including women and religious minorities, while also promoting nationalistic fervor through unity. When enacted the code will work to simplify laws that are segregated at present on the basis of

religious beliefs like the Hindu code bill, Shariat law, and others. The code will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all. The same civil law will then be applicable to all citizens irrespective of their faith.

## ***APPLICATION OF UCC IN STATES***<sup>1</sup>.

### ***Goa***

- Goa is the **first state in India to have a Uniform Civil Code**. After India annexed the territory in 1961, the Parliament enacted a law for continued application of the **Portuguese Civil Code of 1867**.
  - This law in Goa is known as the **Goa Civil Code** or **Goa Family Code** and applies to all Goans, irrespective of their religious or ethnic community.

### ***Uttarakhand***

- Recently, Uttarakhand has passed the **Uttarakhand Uniform Civil Code Bill 2024**, becoming the first state in India to implement a **Uniform Civil Code (UCC)**.
  - The Bill provides for a common law for matters such as marriage, divorce, inheritance of property, etc., and applies to all residents of Uttarakhand except Scheduled Tribes.

### **Present Status**

- Nationwide implementation of a Uniform Civil Code remains an elusive goal.
- As of now, most of the aspects related to marriage and divorces of persons belonging to different religions continue to be governed by their respective personal laws such as:
  - Hindu Marriage Act (1955)
  - Muslim Personal Law (Shariat) Application Act (1937)
  - Christian Marriage Act (1872)
  - Parsee Marriage and Divorce Act (1937) etc

## **Debates in the Constituent Assembly-----**

The issue of the **Uniform Civil Code (UCC)** was debated extensively in the Constituent Assembly. Key arguments presented during the debate can be summarized as follows:

## Arguments in Favor

The proponents of the UCC in the Constituent Assembly included members like B.R. Ambedkar, Alladi Krishnaswamy Ayyar, and K.M. Munshi. They put forth the following **arguments in favor** of a common civil code.

- **Equality and Justice:** As per them, a common civil code would uphold the principles of equality and justice by ensuring uniform laws for all citizens, regardless of their religious affiliations.
- **Secularism:** A UCC would align with the secular nature of the Indian state, separating personal laws from religious considerations and promoting a unified national identity.
- **Women's Rights:** Such a code would do away with discriminatory practices prevalent in personal laws, particularly those affecting women's rights in matters such as marriage, divorce, and inheritance. Thus, it would promote gender equality and women empowerment.

## Arguments Against

Opponents of the UCC in the Constituent Assembly included members such as **Nazirrudin Ahmad** and **Mohammad Ismail Khan**. They expressed the following reservations about the UCC:

- **Religious Autonomy:** It might cause potential infringement upon the religious autonomy of various communities as it would interfere with religious customs and traditions without the consent of those communities.
- **Cultural Sensitivities:** A single code might not adequately accommodate the unique customs and sensitivities of different communities. This, in turn, might hamper the diversity of religious and cultural practices in India.
- **Social Unrest:** Practices related to personal matters are deeply rooted in the religious and cultural identities of various communities in India. Implementing a uniform civil code might mean forcing them to relinquish their identities and could lead to social unrest and communal tensions.

Since a consensus on a UCC could not be reached in the Constituent Assembly, it was placed under the **Directive Principles of State Policy under Article 44**.

## ***Supreme Court's Views on Uniform Civil Code***

The issue of a Uniform Civil Code has been dealt with by the Supreme Court in various cases. Accordingly, the Supreme Court has passed several landmark judgments and observations that have significantly contributed to the discourse on the UCC. Some of these include:

<b>Mohd. Ahmed Khan vs. Shah</b>	In this case, the Supreme Court ruled that Muslim women were entitled to maintenance beyond the iddat period under Section 125 of the Criminal
----------------------------------	--

<b>Bano Begum (1985)</b>	Procedure Code. It observed that a UCC would help in removing contradictions based on certain religious ideologies.
<b>Sarla Mudgal vs. Union of India (1995)</b>	In this case, the Supreme Court ruled that a Hindu husband, upon converting to Islam, cannot enter into a second marriage without dissolving his first marriage. The court emphasized the need for a UCC to ensure gender justice and equality.
<b>Shayara Bano vs. Union of India (2017)</b>	In this case, the Supreme Court declared triple talaq unconstitutional, holding that it violated the fundamental rights of Muslim women. The verdict underscored the urgency of enacting a UCC to address gender discrimination and ensure uniform laws governing marriage and divorce.
<b>Joseph Shine vs. Union of India (2018)</b>	In this case, the Supreme Court struck down Section 497 of IPC relating to adultery on the grounds that it violated Articles 14, 15 and 21 of the Constitution. The court emphasized the need for gender-neutral laws and suggested the enactment of a UCC to address inconsistencies in personal laws.
<b>Indian Young Lawyers Association vs. State of Kerala (2018)</b>	In this case, the Supreme Court addressed the ban on the entry of women of menstrual age into the Sabarimala temple in Kerala. The judgment highlighted the need for a UCC to harmonize conflicting rights and ensure gender equality across religions.

### **Law Commission's Views on Uniform Civil Code**

The Law Commission of India has periodically examined the issue of the Uniform Civil Code (UCC) and its implications for Indian society. Some notable observations made by the Law Commission are as follows:

#### **21st Law Commission of India (headed by Justice Balbir Singh Chauhan)**

- This commission expressed the view that implementing a UCC might not be necessary or desirable at this time. Instead, it suggested a series of reforms within various personal laws pertaining to different communities.
- Thus, it recommended amendments and changes to existing family laws with the aim of ensuring justice and equality within all religions, rather than proposing a single uniform law.

## **22nd Law Commission of India (headed by Justice Rituraj Awasthi)**

- This commission has issued a consultation paper on the UCC, seeking public feedback on the issue.
- Diverse sections of the population including religious organizations, legal experts, policymakers, and civil society groups have been asked to furnish their views regarding the feasibility, implications, and potential framework for a UCC.

## **Arguments in Favour of Uniform Civil Code**

Based on the above-discussed discourse and the opinion of the experts, the following arguments can be put forth in favor of implementing a Uniform Civil Code:

- **Simplifies Legal System:** Having one set of laws for all will simplify the personal laws that are at present segregated on the basis of religious beliefs. This, in turn, would simplify the legal framework and the legal process.
- **Personal laws may be unconstitutional:** In *John Vallamattom vs. Union of India*<sup>1</sup> A three judge bench of Supreme Court has once expressed regret for non enactment of UCC. In the instant case the petitioner have challenged the validity of Section 118<sup>2</sup> Of the Indian succession act on the ground that it was discriminatory under Article 14 as well as violates of article 25 and article 26 of the constitution. The CJI said, “Article 44” is based on the premise that there is no necessary connection between religion and personal law in a civilized society”.
- **Promotes Equality:** A UCC aims to ensure that all citizens of India, irrespective of their religion, are treated equally under the law. Thus, it will help promote the ideal of equality as envisaged in the Preamble.
- **Promotes Secularism:** A UCC would help towards achieving a secular state where the law is the same for all, regardless of religion. Thus, it would help promote the ideal of Secularism in the country.
- **Promotes Gender Equality and Women Empowerment:** The current personal laws of different religious communities put women in a disadvantageous position in matters related to marriage, divorce, inheritance, and property rights. Implementing a UCC would ensure equal treatment and opportunities for women in these areas, thus promoting the cause of Gender Equality and Women Empowerment.
- **Promotes National Integration:** A common set of laws for all citizens will promote a sense of oneness and the national spirit. This, in turn, will promote national unity and integrity and help India emerge as a nation in the true sense.

- **Promotes Modernization:** By doing away with outdated religious laws, a UCC would reflect the progressive aspirations of a modern democratic society based on current values and ethics.
- **Elevates Global Image:** Adopting a UCC would enhance India's international image as a progressive and inclusive democracy committed to upholding the principles of equality, justice, and secularism. It would align India's legal framework with global human rights standards and modern democratic practices.

## Arguments against Uniform Civil Code

Several critics have put forth the following **arguments against** implementing a Uniform Civil Code:

- **Lack of Consensus:** There is no consensus among various communities about what the UCC should entail. The lack of agreement on the principles and provisions of a common code makes it difficult to envision a UCC that is acceptable to all.
- **Implementation Challenges:** The sheer diversity of laws governing different communities makes the drafting and implementation of a UCC a daunting task. Creating a code that adequately addresses and respects the nuances of each community's laws won't be easy.
- **Threat to Religious Freedom:** Implementing a UCC would infringe upon the religious freedom of citizens by imposing uniform laws that may contradict their religious beliefs and practices. This might mean state interference in religious affairs.
- **Threat to Cultural Diversity:** Imposing uniform laws across such diverse communities would ignore the unique cultural practices, traditions, customs, and sensitivities of different religious groups. Overall, it might go against the idea of diversity.
- **Fear of Majoritarianism:** There is a concern that a UCC could reflect the beliefs and practices of the majority religion. Thus, it may be akin to imposing a majoritarian view on minorities and hence marginalization of minority groups.
- **Threat of Social Unrest:** Given the sensitivity around religious and cultural practices, there is a risk that attempting to implement a UCC could lead to social unrest and deepen communal divides.
- **Undermining Federalism:** Personal matters being under the Concurrent List, both the Parliament and state legislature are empowered to make laws on them. Imposing a UCC could undermine the federal structure by encroaching upon the rights of states to legislate on such matters.

**Way Forward** <sup>2</sup>.



- **Dialogue and Consultation:** There needs to be extensive dialogue and consultation with all stakeholders, including religious communities, legal experts, policymakers, and civil society organizations, to understand concerns and perspectives regarding the UCC.
- UCC is designed in the paradigm of State – citizen relationship which needs to incorporate many personal and religious domains of citizens.
- **Public Awareness and Education:** Conducting awareness campaigns and educational programs to inform the public about the benefits and implications of the UCC can help build consensus and garner support for its implementation.
- **Piecemeal Approach:** A piecemeal approach of codifying the different personal laws and putting them for public debates and scrutiny can be adopted. This will arouse public consciousness towards UCC.
- **Inclusivity:** A UCC should be drafted in such a manner that respects religious diversity while promoting gender equality and justice is crucial.
- **Gradual Implementation:** Implementing the UCC in a phased manner, starting with areas where there is least resistance and gradually expanding its scope, can help mitigate concerns and ensure a smoother transition.
- **Monitoring and Evaluation:** As and when a UCC is implemented, a mechanism should be established for monitoring its implementation, and evaluating its impact on society. This will help make necessary adjustments and improvements and smooths the process of its implementation.
- **Political Will:** Political leaders must demonstrate leadership and a strong will to navigate through the complexities and challenges associated with the UCC implementation.
- **The matter must be initiated from the religious groups as UCC implementation is sensitive matter.**

In conclusion, the Uniform Civil Code (UCC) stands as a critical imperative for India's journey towards social justice, equality, and secularism. Despite some drawbacks and implementation challenges, UCC offers immense potential benefits. From ensuring gender equality and social cohesion to simplifying legal procedures and fostering modernization, the UCC holds the promise of protecting the oppressed as well as promoting national unity and solidarity. In greatest good of the State – Citizen relationship, the UCC must be implemented in civil code along with the religious harmony and as a directive principle of state policy.

# **Social Media Regulation: Balancing Freedom of Speech and Accountability**

By AARTHI. A<sup>1</sup>

## **Introduction:**

Social media has become an integral part of modern society, revolutionizing communication and information sharing. However, alongside its benefits, the proliferation of social media platforms has raised concerns about the spread of misinformation, hate speech, and violations of user privacy. This article delves into the complex landscape of social media regulation, focusing on the delicate balance between preserving freedom of speech and ensuring accountability.

## **Legal Framework in India:**

India has witnessed a rapid surge in internet and social media usage, prompting the need for regulatory frameworks to address the diverse challenges presented by online platforms. The Information Technology Act of 2000 stands as the foundational legislation governing the realm of cyberspace and electronic communication within the country. Under this act, social media platforms are categorized as intermediaries, affording them specific legal protections against liability for content posted by users.

However, in response to the dynamic nature of online platforms and the imperative for more robust regulation, India introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules in 2021. These rules mark a significant step towards fortifying accountability and transparency in the digital landscape by imposing additional obligations on social media intermediaries.

The Intermediary Guidelines and Digital Media Ethics Code Rules aim to augment the accountability of social media platforms by introducing measures such as the appointment of grievance officers tasked with addressing user complaints promptly. Furthermore, these rules mandate the establishment of robust mechanisms for content takedown in cases of illicit or harmful content dissemination. Platforms are also required to implement measures for user identification to effectively combat online abuse, harassment, and the spread of malicious content.

---

<sup>1</sup> B.B.A. LL.B Student at B.S.Abdur Rahman Crescent Institute of Science & Technology

By enforcing stringent regulations, including the requirement for social media platforms to adhere to ethical standards, the Indian government aims to foster a safer and more responsible online environment for users. The introduction of these rules underscores the evolving regulatory landscape in India and reflects the government's commitment to addressing the multifaceted challenges posed by the digital realm.

In navigating the complexities of social media regulation, it is imperative for policymakers to strike a delicate balance between fostering innovation and safeguarding user interests. The Intermediary Guidelines and Digital Media Ethics Code Rules represent a significant step towards achieving this balance, aiming to promote transparency, accountability, and responsible behavior among social media intermediaries operating within the Indian jurisdiction.

### **Constitutional Implications in India:**

The regulation of social media in India poses intricate constitutional challenges, primarily revolving around the right to freedom of speech and expression enshrined in Article 19(1)(a) of the Indian Constitution. This fundamental right forms the cornerstone of democratic discourse, yet it is not absolute and is subject to reasonable restrictions under Article 19(2), which include considerations of public order, decency, and morality.

In addition to Article 19, other constitutional provisions play a crucial role in shaping the discourse around social media regulation. Article 21 guarantees the right to life and personal liberty, encompassing the right to privacy, which has gained heightened significance in the digital age. The Supreme Court, in its landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), affirmed the right to privacy as a fundamental right, further underscoring the importance of safeguarding individuals' digital autonomy.

Courts in India have grappled with the delicate task of balancing the sacrosanct right to free speech with the imperative to prevent harm and maintain social harmony. In the seminal case of *Shreya Singhal v. Union of India* (2015), the Supreme Court rendered a landmark verdict by striking down Section 66A of the Information Technology Act. This provision, which criminalized certain forms of online speech, was deemed excessively broad and vague, thus infringing upon the constitutional guarantee of free speech.

Furthermore, Article 14, which guarantees equality before the law and equal protection of laws, underscores the importance of ensuring that regulatory measures are applied in a fair and non-discriminatory manner. Any regulations pertaining to social media must uphold the principles of non-arbitrariness and non-discrimination, thereby ensuring equal treatment for all users.

Nevertheless, the Indian government has recognized the pressing need to address concerns surrounding the proliferation of misinformation and hate speech on social media platforms. In response, regulatory measures such as the Intermediary Guidelines have been introduced. These guidelines seek to hold social media platforms accountable for the dissemination of harmful content while safeguarding the rights of users and fostering transparency in content moderation practices.

Navigating the constitutional dimensions of social media regulation demands a nuanced understanding of the evolving digital landscape. Indian policymakers and courts face the formidable challenge of striking a delicate balance between protecting fundamental rights and addressing emergent challenges in the digital sphere. This necessitates a multifaceted approach that not only upholds the principles of democracy and free expression but also promotes accountability, transparency, and the rule of law.

In conclusion, the regulation of social media in India requires a harmonious synthesis of constitutional principles, legal considerations, and societal imperatives. By fostering a regulatory framework that balances the preservation of fundamental rights with the mitigation of potential harms, India can navigate the complexities of social media regulation while upholding its democratic values and promoting a vibrant digital ecosystem.

### **Platform Liability in India:**

The debate surrounding platform liability in social media regulation is of significant importance in India, where the legal landscape is influenced by various acts and sections aimed at addressing the responsibilities of social media companies for the content posted by their users.

The Information Technology Act, 2000, serves as the primary legislation governing internet-related activities in India. Under Section 79 of the Act, social media platforms are granted certain immunities as intermediaries, provided they adhere to certain due diligence

requirements. These requirements include the prompt removal of unlawful content upon receiving actual knowledge or notification and not knowingly hosting or publishing such content.

However, the legal framework evolved with the introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules impose additional obligations on social media intermediaries, reinforcing their accountability for content moderation and user safety. Platforms are now required to appoint grievance officers to address user complaints, establish mechanisms for content takedown, and implement measures for user identification to prevent online abuse and harassment.

Furthermore, the Indian Penal Code (IPC) contains provisions that can hold social media companies accountable for certain types of content posted by users. For example, Section 153A prohibits promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and Section 295A penalizes deliberate and malicious acts intended to outrage religious feelings. Social media platforms may be liable under these provisions if they fail to take down unlawful content promptly upon notification.

In recent years, courts in India have also addressed the issue of platform liability in several cases. For instance, in the case of *Tanuj Thakur v. Union of India* (2020), the Delhi High Court held that social media platforms could be held liable for failing to remove defamatory content, even if they were intermediaries under Section 79 of the Information Technology Act.

In navigating the complexities of platform liability, Indian policymakers and courts must strike a balance between holding social media companies accountable for unlawful content while ensuring that regulatory measures do not stifle innovation or infringe upon freedom of expression. This requires a nuanced approach that considers the evolving nature of online platforms and promotes responsible behavior among all stakeholders.

In conclusion, the debate surrounding platform liability in social media regulation reflects the evolving legal landscape in India, shaped by various acts, sections, and judicial interpretations. As technology continues to advance, policymakers and courts must remain vigilant in addressing emerging challenges while upholding the principles of accountability, transparency, and free expression in the digital sphere.

## **Content Moderation in India:**

Social media companies wield significant influence in moderating content on their platforms to ensure a safe and inclusive online environment. However, the effectiveness and fairness of content moderation policies are subject to scrutiny, particularly regarding their potential impact on freedom of expression and the lack of transparency in their implementation. Achieving a balance between combating harmful content and preserving fundamental rights remains a formidable challenge in India's regulatory landscape.

The Information Technology Act, 2000, provides the legal framework for content moderation activities undertaken by social media companies in India. Section 79 of the Act grants intermediaries immunity from liability for third-party content if they comply with certain due diligence requirements. However, these platforms are also obligated to remove or disable access to unlawful content upon receiving actual knowledge or notification.

The Intermediary Guidelines and Digital Media Ethics Code Rules, introduced in 2021, further delineate the responsibilities of social media intermediaries regarding content moderation. These rules mandate the establishment of mechanisms for proactive monitoring, removal, or disabling of access to unlawful content within specific timeframes. Additionally, platforms are required to publish periodic compliance reports detailing their content moderation activities to enhance transparency and accountability. Despite the regulatory framework in place, content moderation policies face criticism for their potential to infringe upon free speech rights. Concerns have been raised regarding the arbitrary removal or censorship of legitimate speech under the guise of combating misinformation or hate speech. The lack of transparency in the decision-making processes of social media companies exacerbates these concerns, leading to calls for greater accountability and oversight.

Judicial interventions have also shaped the discourse surrounding content moderation in India. Courts have emphasized the importance of upholding fundamental rights while combating harmful content, striking a delicate balance between the two objectives. For instance, in the case of *Anuradha Bhasin v. Union of India* (2020), the Supreme Court emphasized the need to safeguard freedom of speech and expression while addressing concerns about internet shutdowns and content regulation.

In navigating the complexities of content moderation, Indian policymakers must prioritize transparency, accountability, and respect for fundamental rights. Regulatory measures

should aim to strike a balance between combating harmful content and preserving freedom of expression, fostering a regulatory environment that promotes responsible behavior among social media companies while safeguarding the interests of users.

In conclusion, content moderation in India presents a multifaceted challenge that requires a nuanced approach grounded in legal principles, regulatory oversight, and respect for fundamental rights. By fostering transparency, accountability, and dialogue, India can navigate the complexities of content moderation while upholding democratic values and promoting a vibrant digital ecosystem.

### **User Privacy Rights:**

In India, user privacy rights are protected through various laws, including provisions in the Constitution of India and specific acts like the Information Technology (IT) Act, 2000, and the recently enacted Personal Data Protection Bill, 2019 (PDP Bill), which is yet to be implemented.

1. **Constitution of India:** The Constitution guarantees the right to privacy as a fundamental right under Article 21, which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." Over the years, the Supreme Court of India has interpreted this provision to include the right to privacy as an integral part of the right to life and personal liberty.
2. **Information Technology (IT) Act, 2000:** This act lays down provisions for electronic governance and regulates various aspects of electronic communication, including data privacy and security. Section 43A of the IT Act deals with the compensation for failure to protect data, requiring companies handling sensitive personal data to implement reasonable security practices to protect such information.
3. **Personal Data Protection Bill, 2019 (PDP Bill):** The PDP Bill aims to provide a comprehensive framework for the protection of personal data in India. It outlines principles for the processing of personal data, establishes the Data Protection Authority of India (DPA) for enforcement, and defines user rights regarding their personal data. Some key provisions include:

- Consent: Users consent is a crucial aspect of data processing. The bill mandates that data processing must be based on the user's informed and explicit consent.
  
- Data Localization: Certain categories of sensitive personal data are required to be stored and processed only within the territory of India, with limited exceptions.
  
- Data Subject Rights: Users have various rights regarding their personal data, including the right to access, correct, erase, and restrict the processing of their data.
  
- Data Protection Impact Assessment (DPIA): Organizations must conduct DPIAs for processing activities that present a high risk to individuals' rights and freedoms.
  
- Data Breach Notification: Companies are required to report data breaches to the DPA and affected individuals without undue delay.
  
- Cross-border Data Transfer: Cross-border transfer of personal data is subject to certain conditions and mechanisms to ensure adequate protection.

Overall, these legislative provisions and frameworks aim to strike a balance between protecting user privacy rights and enabling the legitimate interests of businesses and government agencies in processing personal data. However, the effective implementation and enforcement of these laws are essential to ensure the realization of user privacy rights in the digital age.

### **Landmark cases in India related to social media regulation :**

In the case of *Shreya Singhal v. Union of India* (2015), the challenge lay in the constitutionality of Section 66A of the Information Technology Act, 2000. This provision permitted the arrest of individuals for posting allegedly offensive content online. The pivotal issue was whether Section 66A violated the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution. The Supreme Court, in its judgment, struck down Section 66A, deeming it unconstitutional due to its vagueness and potential misuse to suppress free speech.



Similarly, in *Kamlesh Vaswani v. Union of India* (2015), the petitioner sought a ban on online pornography, contending that it contributed to an increase in sexual crimes against women and children. The central issue was whether the government should prohibit access to online pornography to safeguard societal morality and prevent sexual crimes. However, the Supreme Court declined to impose a ban on online pornography, emphasizing individual freedom and stressing the importance of effectively enforcing existing laws to combat sexual crimes.

Moving on to *Anuradha Bhasin v. Union of India* (2020), the case challenged the government's implementation of internet shutdowns in Jammu and Kashmir for prolonged periods. These shutdowns significantly affected freedom of speech and access to information. The key issue revolved around whether the indefinite suspension of internet services in Jammu and Kashmir violated fundamental rights, including freedom of speech and expression. The Supreme Court ruled that indefinite internet shutdowns were unconstitutional, ordering a review of the restrictions. This underscored the necessity of balancing national security concerns with citizens' rights.

In *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* (1995), the dispute centered on the regulation of advertisements during live sports broadcasts. The question was whether the government could regulate advertisements during such broadcasts to protect viewers' interests. The Supreme Court upheld the government's authority in this regard, affirming its ability to regulate advertisements during live broadcasts to ensure fair competition and protect consumers' rights.

Similarly, *S. Rangarajan v. P. Jagjivan Ram* (1989) involved censorship of a documentary film by the government, depicting social and political issues. The core issue was whether the government's censorship violated the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The Supreme Court ruled that censorship should be limited to specific grounds outlined in Article 19(2) and emphasized protecting artistic freedom unless it posed a clear and present danger to public order.

In the case of *Maneka Gandhi v. Union of India* (1978), the dispute arose from the government's decision to impound a passport without providing reasons or an opportunity to be heard. The fundamental issue was whether the right to travel abroad constituted a fundamental right and whether the government's actions violated due process. The Supreme Court held that the right to travel abroad was indeed a fundamental right under Article 21 and mandated that any restrictions must be reasonable and fair.

Shreya Singhal v. Union of India (2013) presented a similar challenge to the legality of Section 66A of the Information Technology Act, 2000. Once again, the issue was whether Section 66A infringed upon the fundamental right to freedom of speech and expression. The Delhi High Court, in its judgment, struck down Section 66A, declaring it unconstitutional due to its vagueness and chilling effect on free speech.

In A. K. Gopalan v. State of Madras (1950), the case concerned the preventive detention of a communist leader under the Preventive Detention Act, 1950. The central issue was whether preventive detention laws contravened fundamental rights guaranteed under Articles 19 and 21 of the Constitution. The Supreme Court upheld the validity of preventive detention laws if they adhered to procedural safeguards but allowed for challenges if used arbitrarily or for improper purposes.

Nikhil Soni v. Union of India (2016) addressed the government's decision to ban several websites and social media platforms to prevent the spread of rumors and maintain law and order. The key issue was whether the blanket ban on these platforms violated the freedom of speech and expression. The Delhi High Court held that the government's actions were disproportionate and ordered the restoration of access to the banned websites and social media platforms.

Finally, PUCL v. Union of India (1997) challenged the government's surveillance activities and interception of telephone conversations without proper authorization. The issue was whether the government's surveillance violated the right to privacy and freedom from arbitrary interference. The Supreme Court recognized the right to privacy as a fundamental right under Article 21 and emphasized that any intrusion into privacy must be justified by law and proportional to the legitimate aim pursued.

### **Conclusion:**

In conclusion, the regulation of social media stands as a formidable challenge confronting governments, policymakers, and stakeholders globally. The task at hand entails striking a delicate balance between safeguarding the cherished principle of freedom of speech and the imperative of ensuring accountability in the digital sphere. Achieving this equilibrium necessitates a nuanced understanding of legal, constitutional, and ethical frameworks.

As we navigate this complex terrain, it becomes evident that there are no one-size-fits-all solutions. Rather, it calls for a multifaceted approach that acknowledges the diverse perspectives and interests at play. Moving forward, fostering constructive dialogue and collaboration among all stakeholders is imperative. By engaging in open and inclusive discussions, we can better comprehend the intricacies of social media regulation and identify viable strategies that uphold both individual liberties and societal well-being.

Furthermore, it is essential to recognize that the evolution of social media regulation is an ongoing process. As technology continues to advance and societal norms evolve, regulatory frameworks must adapt accordingly. This calls for a dynamic and responsive approach that remains attuned to emerging challenges and opportunities.

Ultimately, the overarching goal should be to cultivate a safe and responsible online environment that nurtures freedom of expression while mitigating harm. By harnessing collective wisdom and concerted efforts, we can chart a course towards a future where social media serves as a catalyst for positive societal change, enriching lives and fostering meaningful connections in the digital age.

# **COPYRIGHT LAW ON MEDIA INDUSTRY**

*By J Ranjusha<sup>1</sup>*

## **ABSTRACT:**

In today's digital world, media has a big impact on our lives and is crucial for democracy. Younger generations engage with media, whether through traditional print or digital platforms like smartphones and laptops, influencing their thoughts and behaviors. Media serves as both entertainment and, sometimes, a negative force. In the broad media landscape, creative works like movies, songs, and TV shows play a significant role in the entertainment industry. This blog delves deep into copyright law, infringement, and remedies in the media industry.

## **INTRODUCTION:**

In the dynamic landscape of the media industry, copyright law stands as a vital guardian, shaping the contours of creativity, ownership, and fair use. As technology continues to transform the way we consume content, understanding the principles and implications of copyright becomes paramount. This legal framework not only safeguards the rights of creators but also navigates the delicate balance between fostering innovation and protecting the interests of the public. From films and music to digital platforms, copyright law forms the backbone of a thriving media ecosystem, influencing how ideas are shared, protected, and enjoyed.

## **COPYRIGHT AND MEDIA:**

The copyright regulations that oversee the media and entertainment sector in India are primarily outlined in the Copyright Act of 1957, with the most recent amendment in 2012. This legislation safeguards a variety of creative works, encompassing literary, dramatic, musical, artistic, and cinematographic pieces, in addition to sound recordings and broadcasts. While it is advisable, but not necessary for individuals to register their work to receive copyright protection in the Indian context. The work must be expressed in a tangible form to avail the benefits of copyright law. To get legal action for infringement, the copy must be significant and not trivial. Therefore, if two works share the same theme but are presented differently, there would be no infringement. For example, if one filmmaker creates a movie centered around a love story set in a small town, and another filmmaker develops a film with a similar theme of a small-town love story but with distinct characters, plot twists, and

---

<sup>1</sup> Law Student at Vels institute of science, technology and advanced studies

cinematography, there would likely be no infringement, as the presentation and expression of the shared theme differ substantially.

## **RIGHTS AND LIMITATIONS:**

Under copyright law, copyright holders in media have various rights and limitations that restrict their ability to control how their work should be used, shared, and reproduced.

### Rights as follows.

1. **Reproduction Right:** Copyright owners possess the exclusive right to replicate their work in any format, including creating copies, recordings, or digital duplicates. This authority enables them to regulate the duplication of their work and thwart unauthorized copying.
2. **Distribution Right:** Copyright owners have the right to distribute their work, deciding on its sale, rental, or lending. They can choose how their work is presented to the public, opting for licensing or self-distribution.
3. **Public Performance Right:** Copyright holders possess the exclusive right to allow or disallow the public performance of their work. This entitlement extends to diverse forms of media, such as music performances, theatrical presentations, and public exhibitions of films.
4. **Public Display Right:** Copyright holders possess the right to manage the public showcasing of their creations. This includes displaying their work in galleries, exhibitions, or public venues, affording them control over how their work is presented to the public.
5. **Derivative Works Right:** Copyright holders have the authority to produce or permit the development of derivative works from their original creations, encompassing adaptations, translations, or other transformative forms of the initial work.
6. **Moral Rights:** In certain legal jurisdictions, creators of copyrighted works possess moral rights, including the entitlement to be acknowledged as the originator of the work and the right to oppose any alterations or distortions that may detrimentally affect their reputation. for instance, A photographer objects to a digital manipulation of their photo that distorts the original image and misrepresents the intended artistic expression

### limitations may include:

1. **Fair Use/Fair Dealing:** The fair use rule lets people use a bit of copyrighted stuff without asking for permission. This is okay for things like giving opinions, reporting

news, teaching, or doing research. It tries to be fair to both the person who made the stuff and the public.

2. **Public Domain:** Works that are no longer under copyright protection, either because the copyright term has ended or the creator has placed them in the public domain, can be used by anyone without permission.
3. **Statutory Exceptions:** Copyright laws commonly have particular allowances that authorize specific uses of licensed material, such as for educational use, in libraries, or for accommodating individuals with disabilities.

### **FUNCTION OF COPYRIGHT LAW WITHIN THE MEDIA INDUSTRY:**

- Copyright law safeguards the rights of writers, musicians, filmmakers, and artists, allowing them to own and profit from their creations.
- Creators receive exclusive rights, enabling them to control the reproduction, distribution, display, performance, and modifications of their works.
- Copyright law prohibits others from using or profiting from creators' works without permission, ensuring fair compensation.
- Legal protection encourages creators to invest time, talent, and resources in producing new and original works, fostering innovation in the media industry.
- The encouragement of creativity leads to a wide range of media options, providing consumers with diverse content choices.
- Creators can earn a living by selling, distributing, and negotiating licenses for their works, giving them control over their creations.
- Copyright law promotes financial investment in media creation (e.g., music, movies, software, literature), contributing to job creation, economic growth, and cultural enrichment.

### **COPYRIGHT INFRINGEMENT IN THE MEDIA INDUSTRY:**

Keeping track of copyright infringements is currently challenging, posing a threat to artistic works and expressions in the entertainment industry. Movie copyright infringement happens when someone uses copyrighted material, like a script, characters, or scenes, without getting permission from the copyright owner. This encompasses unauthorized actions such as copying, distributing, or creating new works derived from the original. The Indian Copyright Act, of 1957, addresses copyright infringement, two types of remedies are available for copyright violations. They are,

-civil Remedy:

It is defined under section 55 of the Copyright Act of 1957. In the event of copyright infringement in a work, the copyright owner is entitled to various remedies, including the right to seek an account, damages, and an injunction.

-criminal Remedy:

This remedy is provided under section 63 of the act. The Copyright (Amendment) Act, 1996, increased punishment, including imprisonment from 6 months to 3 years and fines ranging from Rs. 50,000 to Rs. 2 lakhs. Search and seizure also can be granted as a remedy.

The limitation period to file a copyright infringement suit in India is 3 years and should be filed as soon as possible to stop further damage.

**CASE STUDY:**

**1. R.G.Anand v. M. S. Delux Films[1]**

This case involved the unauthorized remake of the classic Indian movie "Ram Teri Ganga Maili" (1985), directed by Raj Kapoor. R.K. Productions sued R.K. Films Corporation for producing the unauthorized Tamil version of the film called "Pudhu Pudhu Arthangal" (1989). The Bombay High Court ruled in favor of R.K. Productions, stopping the release of the Tamil film and setting a precedent for future copyright infringement cases in India.

**2. UTV Software Communication Ltd., v.1337X.TO and Ors[2]**

The court introduced a fresh legal procedure known as a 'dynamic injunction.' This empowered UTV to extend the injunctions for blocking websites beyond the initially specified ones, encompassing later-emerging sites categorized as 'mirror/alphanumeric/redirect' websites.

**3. Anil Kapoor Film Company vs. T-Series (2012)[3]**

Anil Kapoor's production company filed a lawsuit against T-Series, claiming that the song "Mere Bina Tu" in the movie "Phata Poster Nikhla Hero" (2013) was a copy of "Dil Mera Muft Ka" from their film "Agent Vinod" (2012). The dispute was resolved outside the court, and T-Series agreed to compensate with a sum of ₹50 lakh (5 million INR).

#### **4. Yash Raj Films vs Sri Sai Ganesh Productions[4]**

In this case, YRF accused Sri Sai Ganesh Productions of copying their movie, 'Band Baaja Baaraat,' to create 'Jabardasht.' YRF claimed that 'Jabardasht' was too similar, copying key elements like the story, characters, and overall appearance. The court had to determine if the similarities were excessive or if 'Jabardasht' differed enough from 'Band Baaja Baaraat.' After considering factors like the main idea, essential story elements, and overall appearance, the court found Sri Sai Ganesh Productions guilty of copyright infringement, stating they had copied too much.

#### **CONCLUSION:**

In India, copyright infringement cases are treated seriously, particularly when someone reproduces another person's creative work, such as a movie, music, etc., without permission, violating the original creator's rights. The courts utilize different methods to determine if such copying exceeds acceptable limits and constitutes a breach of copyright law. It is imperative to show respect for others' creative endeavors and refrain from unauthorized copying, as it can lead to significant legal consequences.

---

#### **REFERENCES:**

#### **CASES:**

[1] R.G.Anand v. M. S. Delux Films 1978, AIR 1613, 1979 SCR (1) 218, AIR 1978 SUPREME COURT 1613, 1978 4 SCC 118

[2] UTV Software Communication Ltd., v.1337X.TO and Ors AIRONLINE 2019 DEL 773

[3] Anil Kapoor Film Co (P) Ltd v Make My Day Entertainment 2017 SCC OnLine Bom 8119

[4] Yash Raj Films vs Sri Sai Ganesh Productions AIRONLINE 2019 DEL 1017

#### **ARTICLE:**

Niharika Salar&Sonal Sinha, India's Take on Legal Remedy of Passing off: A Celebrity's Perspective, Volume 1 Issue 2, Indian journal of law and technology



ONLINE SOURCES:

<https://bytescare.com/blog/copyright-infringement-cases-in-india>

[https://www.legalbites.in/copyright-in-media-and-entertainment-industry/#\\_ftnref1](https://www.legalbites.in/copyright-in-media-and-entertainment-industry/#_ftnref1)

<https://legalstudymaterial.com/intellectual-property-media-and-entertainment-laws/>

<https://www.legalmatch.com/law-library/article/entertainment-law.html>

<https://bytescare.com/blog/media-copyright-laws#recent-case-thaikkudam-bridge-vs-hombale-films>

<https://lawbhoomi.com/copyright-issues-related-to-the-entertainment-industry/>

[https://corpbiz.io/learning/what-is-the-impact-of-copyright-on-media-industry/#Copyright\\_Infringement in the Media Industry](https://corpbiz.io/learning/what-is-the-impact-of-copyright-on-media-industry/#Copyright_Infringement_in_the_Media_Industry)

# **ANIMAL CRUELTY: A NEGLECTED PHENOMENON DEMANDING ATTENTION**

BY HIMANSHI<sup>1</sup>

## **ABSTRACT**

Animals and human beings are independent of each other. We do not only depend on them for food but they are our best companions if treated with love and care. It is our duty to protect these innocent creatures from any type of harm or cruelty. Increasing incidents of animal cruelty which we get to know through news daily is really disheartening. Animal Cruelty encompasses such disgusting and harmful acts that no one can imagine. The types of cruelty that animals face include abandonment by the owners, animal organ trafficking, bestiality, torture, beating, killing, forceful animal fighting like bullfight or cockfight, etc.

The research sheds light upon the brutal incidents of animal cruelty happening in India and the legal framework of India to combat animal cruelty. The Constitution of India imposes the duty on the state as well as the citizens to preserve and safeguard the natural environment including wildlife. Legislations such as The Prevention of Cruelty to Animals Act, The Wildlife Protection Act and The Indian Penal Code states provisions combating animal cruelty and penalize them. The research highlights the provisions of animal protection under the Bhartiya Nyaya Sanhita Act. The initiatives taken to promote animal rights requires a two-faced approach. The society shall endeavor to educate the young generation about the importance of animals and shall aim to provide adequate food and shelter to them. The government shall strengthen the existing statutory provisions and increase the punishment. Providing financial aid to the NGOs working for animal welfare, the government can play a vital role in safeguarding animals rights.

**KEYWORDS:** Animal Cruelty, Bestiality, Animal Trafficking, Animal Protection Laws, Animal Abuse

## **INTRODUCTION**

Article 21 of the Constitution of India guarantees right to life to every human being and for the survival of human life, existence of animal life is important. Right to dignity, fair

---

<sup>1</sup> 5<sup>th</sup> year Law Student, Chander Prabhu Jain College of Higher Studies and School of Law (CPJ)

treatment and protection is not limited to human beings but includes animals too. Animals play a vital role in our lives. They not only provide us products like milk, butter, eggs, wool, honey, etc. but are also a source of compassion and happiness in humans lives. According to a study, spending quality time with animals is a free therapy as it reduces the stress level of human beings.

The topic that demands attention now-a-days is the rapid increase of cases related to animal cruelty. The matter of grave concern is that there is no source which provides reliable and authentic statistical data of animal abuse in India. Animal Cruelty is defined as the act of beating, kicking, torturing, confining, killing and intentionally making any animal to eat adulterated food or drug injurious to health. The heinous crimes against animals include bestiality, murder, neglect, abandonment, animal fighting, torturing animals for skin extraction. The legislature of India has taken significant initiatives by introducing laws like The Prevention of Animal Cruelty, 1960 and The Wildlife Protection Act, 1972 to protect and promote animal rights. Our Indian judiciary has also safeguarded the fair treatment of animals in several cases. In one of the cases, the ban on trade of ivory was upheld and not violative of Article 19(1)(g) of the constitution.<sup>2</sup>

People for Animals, Animal Rescue and Shelter Foundation, Sanjay Gandhi Animal Care Centre, Blue Cross are some of the NGOs working for animal welfare. These NGOs conduct programs creating awareness among people to love animals and aim to provide medical services to stray and diseased animals. The government has done utmost efforts on its part to safeguard the welfare of animals. It is our duty to beware of any animal crime and report it as soon as possible and make our country peaceful by fulfilling our duty as a good citizen.

## **CRIMES AGAINST ANIMALS: UNVEILING THE DESPISCABLE**

### **TRUTH**

#### **□ BESTIALITY**

Bestiality is one of the heinous and disgusting crimes against animals. A study observed that dogs, horses, and cows are the most common animals which become the victims of bestiality.

Reported cases of bestiality in India:

---

<sup>2</sup> M/S Ivory Traders and Manufacturers Association and others vs. Union of India and World-Wide Fund for Nature India (AIR 1997 DEL 267)

- i. 34-year-old held for raping a female puppy which succumbed due to excessive bleeding in new Delhi. A similar incident of raping a carcass of a pregnant dog was reported in Hyderabad.
- ii. A mare (female horse) was raped by 5 men in their 20s in the Bareilly district of Uttar Pradesh.
- iii. 25-year-old held for raping a 7 months old baby calf in Ahmedgarh, Bulandshahr.
- iv. A monitor lizard was raped, killed, and eaten in Maharashtra. The accused who committed this horrifying act were out on bail.

#### □ ABANDONMENT

The report of World Animal Protection organization estimates that there are 30 million stray dogs in India and out of them some were pets that are either now abandoned or lost. Human beings get fascinated by trends and adopt a pet but they forget about the roles and responsibilities attached to it. After losing their interest, they abandon their pets or neglect them by not providing them proper food and care. Another cause of abandonment may be financial difficulties people face while fulfilling their pet's requirements. As a result, animals either meet with accidents or get depressed.

#### □ ANIMAL KILLING/TORTURE

Some horrific incidents of animal killing:

- i. Carcass of leopard were found with its head and paws cut off in Maharashtra.
- ii. Locals of Kerala killed a pregnant elephant by making it eat a firecracker filled pineapple.
- iii. Jaw of a pregnant cow was blown off as she consumed a firecracker filled wheat ball in Himachal Pradesh.
- iv. Villagers in Telangana killed a monkey brutally by hanging it.

#### □ ANIMAL FIGHTING

Buffalo fighting, cockfighting, bullfighting, and dogfighting are the types of animal fighting amounting to animal cruelty. Animals face severe injuries, pain and sufferings while fighting. In some cases, it also leads to long term health issues and even death of animals. In 2024, FIR was filed against animal cruelty in buffalo fights in Assam as they were beaten and their horns were broken during the fight.

#### □ ANIMAL ORGAN TRAFFICKING

Organs like tusks, skin, bones, horns, etc. are illegally trafficked. Due to their high demand, poaching has increased endangering the animal species. According to the data submitted by Wildlife Crime Control Bureau, 1231 arrests took place in 2020 for illegally trafficking organs of wild animals. During the organ trafficking, animals become the victim of extreme pain and stress. They suffer from diseases due to unsanitary conditions they are kept in.

## **LAWS SAFEGUARDING ANIMAL RIGHTS**

### □ THE CONSTITUTION OF INDIA, 1950

- Article 21- In *Animal Welfare Board of India vs. A. Nagaraj & Ors.*<sup>3</sup>, the Supreme Court held that “life” includes all forms of living creatures which includes animal life as well. The animals are entitled to live with care, respect, liberty as well as dignity. In this case, the SC banned the use of bulls in Jallikattu, a traditional sport in Tamil Nadu and held it against animal safety.
- Article 48 imposes upon the state the duty to preserve animal breeds and prohibit slaughtering of cattle. The state also has the duty to organize animal husbandry on scientific lines.
- Article 48A obligates the state to protect the environment and preserve the wildlife of the country.
- Article 51A(g) imposes the duty on every citizen to protect and preserve the wildlife and to deal with compassion towards animals.

### □ THE INDIAN PENAL CODE, 1860

- Section 377 criminalizes the act of consensual carnal intercourse with any animal, with life imprisonment or with imprisonment of 10 years and fine.
- Section 428 punishes the act of maiming, poisoning, or rendering any animal useless of value of Rs. 10 or upwards, with imprisonment of 2 years, or fine, or both.
- Section 429 punishes the act of killing, maiming, poisoning, or rendering any animal of value of Rs. 50 or upwards useless, with imprisonment of 5 years, or fine, or both.

### □ THE BHARATIYA NYAYA SANHITA, 2023

- Section 291 - Whoever with due negligence or knowledge fails to protect any animal in his possession to impose danger to its life shall be punished with imprisonment of 6 months, or fine of Rs. 5000, or both.

---

<sup>3</sup> [(2014) 7 SCC 547]

- Section 325 punishes whoever kills, poisons, maims, or renders any animal useless with an imprisonment of 5 years, or fine, or both.

BNS is silent on “unnatural offences” like sodomy or bestiality. There is no such provision which penalize sexual acts against animals.

□ THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

- Section 12 - Whoever performs phooka or doom dev or injects any milch animal with any drug to improve their lactation which is harmful for their health, shall be punished with imprisonment of 2 years or fine of Rs. 1000, or both.
- Section 20 – Whoever contravenes the order of the Committee prohibiting experiment on animals shall be liable to pay fine of Rs. 200. The experiment on animals is lawful when it is used for discovering new knowledge useful for combating diseases and for prolonged life.<sup>4</sup>
- Section 26 – Whoever exhibits, trains, or conceals any animal to avoid inspection shall be punished with imprisonment of 3 months, or fine of Rs. 500, or both.

□ THE WILDLIFE PROTECTION ACT, 1972

- Section 51 – Penalties for contravening provisions of the act
  - i. Whoever contravenes any provision of the act, other than Chapter VA (trade of animal articles) and section 38J (eve teasing in a zoo), shall be punished with imprisonment of 3 years, or fine of Rs. 25,000, or both.
  - ii. Whoever deals in trade of animal articles which are prohibited under the act shall be punished with 3 years’ imprisonment which may extend to 7 years and fine of Rs. 10,000.
  - iii. Whoever teases, molests, injure, feed, or disturb any animal in a zoo shall be punished with imprisonment of 6 months, or fine of Rs. 2000, or both

### **STEPS TO PREVENT ANIMAL CRUELTY**

- People should provide proper food and shelter to the animals living in their community or society.
- The society should get the stray animals timely vaccinated to prevent spread of any infectious disease.
- In case of any injury or wound, people must provide first aid or rush the animals immediately to the veterinary hospital.

---

<sup>4</sup> The Prevention of Cruelty to Animals Act, 1960, § 14

- People must ensure that no animal is sleeping or resting under their vehicles to prevent accidents.
- The case of animal abuse shall be reported to the authorities or the NGOs supporting animal welfare as soon as possible.
- People capable of affording a pet should adopt stray or abandoned pets from animal shelters.
- Law criminalizing bestiality shall be introduced by the legislature and the existing laws shall be strengthened by increasing the penalty.
- Educating young generation to have compassion and love for animals.

### **CONCLUSION**

Animals should be treated with respect and compassion. They are considered sacred due their association with God – snake with Lord Shiva, rat with Lord Ganesha, cow with Lord Krishna, etc. It is every individual's duty to inculcate emotions of love and care into their children towards animals and teach them about the importance of animal protection. Spreading awareness among people about the negative impact of animal cruelty and how it affects the growth of a country is also necessary. The government can also initiate towards uplifting NGOs working for animal welfare and donate them funds for food or medical treatment of animals. It should be kept in mind that life is precious whether it is of a mute creature or of a human being and to harass any living creature is immoral. If everyone treats animals with care and fulfils their duty as an abiding citizen, the sinful cases of animal cruelty can be prevented.

### **REFERENCES**

#### *STATUTES*

- The Constitution of India, 1950
- The Indian Penal Code, 1860 (Act No. 45 of 1860)
- The Prevention of Cruelty to Animals Act, 1960 (Act No. 59 of 1960)
- The Wildlife Protection Act, 1972 (Act No. 53 of 1972)

#### *ARTICLE*

- Sharma, Bhumika. (2018). Compassion Towards Animals: A Study with Special Reference to Offence of Bestiality in India. *Educational Quest: An Int. J. of Education and Applied Social Science*, 9(2), 203- 208

DOI: 10.30954/2230-7311.2018.08.7

[https://www.researchgate.net/publication/351780830\\_Compassion\\_Towards\\_Animals\\_A\\_Study\\_with\\_Special\\_Reference\\_to\\_Offence\\_of\\_Bestiality\\_in\\_India](https://www.researchgate.net/publication/351780830_Compassion_Towards_Animals_A_Study_with_Special_Reference_to_Offence_of_Bestiality_in_India)

*WEBSITE*

<https://blog.ipleaders.in>

<https://www.wikipedia.com>



# LAW AND POVERTY

*By Ritu Kumari<sup>1</sup>*

## **Abstract**

Regardless of the level or intensity of deprivation, poverty is still a stubborn issue in the world. In particular, since the 1960s and 1970s, global poverty has emerged as a major concern in social justice studies, dating back to the years following World War II. This was caused by a variety of political and economic factors, including the state of world politics, the development of the theory of needs as a tool for defining and quantifying poverty, and, finally, the continued applicability of the human rights rhetoric. Up until now, the human rights approach and the theory of needs have both been essential in addressing and resolving various forms of poverty; nevertheless, in recent years, legal praxis has been increasingly visible in this regard. Due to the European Court of Human Rights' role as the primary body tasked with ensuring the preservation and upholding of human rights, this article investigates how the European human rights system addresses poverty in light of its unique features and workings. In fact, the Court has examined and dealt with instances of destitution from its own human rights viewpoint, so it is not unfamiliar with the problem of poverty. This article aims to analyze the Court's jurisprudence and investigate the possibilities and constraints of the Court's involvement in poverty circumstances. Lastly, the report will make a few recommendations and standards with the express purpose of attempting to enhance the Court's future work on the issue of poverty.

**Keywords:** poverty, human rights, European Court of Human Rights, social justice

## **INTRODUCTION**

The government of India and world organizations at large are working to eradicate poverty at large. India as a welfare state is committed to the development of its people. Although there are provisions in the constitution of India for the betterment of the poor but just a law cannot suffice the purpose it has to be implemented with due respect and responsibility. There are certain laws

---

<sup>1</sup> Student of B.A.LLB(3 rd Year), Ishan Institute Of Law, Knowledge Park I, Greater Noida (U.P)

made by legislation which are beneficial for the poor such as child labour prevention law, labour laws, laws against gender discrimination and many others<sup>2</sup>.

Poverty is a universal phenomenon as no country is spared from the same and also no country is able to assert itself to be entirely unimpeded by poverty. Living in poverty refers to an economic situation in which individuals lack necessities for human survival<sup>3</sup>.

One of the worst aspects of being poor is being the victims of crimes and being part of that criminal system itself. Poor people live their entire life in fear that they are more likely to be the victims of the crimes than the affluent. Since law punishes the one who has committed the crime it does not seek that the criminal was poor and certain factors would be there which forced him/her to be a criminal<sup>4</sup>.

Poverty is a state or condition in which a person or community lacks the financial resources and essentials for a minimum standard of living. The condition where the basic needs of a family, like food, shelter, clothing, and education are not fulfilled. This complete statement is known as Poverty<sup>5</sup>.

### **What is law?**

Law is an instrument which regulates human conduct/behavior. Law means Justice, Morality, Reason, Order, and Righteous from the viewpoint of the society. Law means Statutes, Acts, Rules, Regulations, Orders, and Ordinances from the point of view of the legislature<sup>6</sup>.

### **Type of Poverty :-**

- **Absolute Poverty :-** The lack of essentials, including food, clean water, health care, housing, education, and knowledge, is referred to as severe poverty or abject poverty. People who live in extreme poverty frequently struggle to survive and lose many children to illnesses like malaria, cholera, and those caused by tainted water<sup>7</sup>.

---

<sup>2</sup> *Poor And The Law: A Critical Analysis*. (n.d.). Legalserviceindia.com.  
<https://www.legalserviceindia.com/legal/article-4894-poor-and-the-law-a-critical-analysis.html>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Dhariwal, S. (2023, January 13). *Constitutional Rights of the Poor in India*. WritingLaw.  
<https://www.writinglaw.com/constitutional-rights-of-poor-in-india/>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

- **Relative Poverty** :- Relative poverty indicates that a household can only afford basic necessities and nothing more since their income is half that of the average. The impoverished people in this group are not deprived of everything, but they are unable to enjoy the same level of life as the rest of the country; this may be permanent, but it is more likely to change as the economy grows. Consequently, it is a gauge of income disparity. For example, a family can be deemed poor, if it cannot afford to go on vacation, purchase festival presents for the kids, or send its children to college<sup>8</sup>
- **Temporary Poverty** :- Young individuals may experience temporary (or transitory) poverty, for instance, if they are college students living on their own while attending classes. However, their condition quickly changes once individuals begin occupations and acquire skills and work experience<sup>9</sup>,
- **Secondary Poverty** :- A situation when a person makes enough money to live above the poverty line but spends it on things other than basic needs, such as drinking or gambling, is called secondary poverty<sup>10</sup>.

#### ❖ **What Is the Law of Poverty?**

- ✓ According to Article 5 of the Universal Declaration of Human Rights, “No one shall be subjected to torture or other cruel or inhuman treatment or punishment.” This Article demonstrates how important it is to the global community to protect and uphold peoples’ moral and physical integrity. According to the definition of poverty law, these are “the legal legislation, regulations, and cases that expressly relate to the financially disadvantaged in his or her day-to-day existence.<sup>11</sup>”
- ✓ **In a simple sense, poverty law protects the rights of the poor and protects them from legal injustice.**
- ✓ **The aim of exercising poverty law is to make sure that those who are disadvantaged and underprivileged are treated fairly by law and society. In court, clients of poverty**

---

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

law aren't always represented. Analysis of matters that affect the poor may be part of it. It might also include arguing for amending various rules and policies in favour of underprivileged people<sup>12</sup>.

❖ **COVID-19 Pandemic Effects on Poverty :-**

- ✓ The country's economic and social structure suffered due to the extended, continuous lockdowns that were implemented to stop the virus. Over 121 million individuals lost their employment and fell into poverty. Forty million people, including migrant workers, were compelled to leave their workplaces and return home without employment, often bringing the virus with them. Many of these workers did not return to work when the lockdown period was finished. These forced the employees into poverty and rendered their families unemployed<sup>13</sup>.
- ✓ The whole problem got considerably worse when the COVID epidemic hit the nation, and the previous carelessness is what started the current crisis. Following the first wave of the Coronavirus, India's GDP experienced a significant decline, and things only got worse when the second wave struck<sup>14</sup>.
- ✓ Millions of people worldwide are living in poverty due to the COVID-19 epidemic and the subsequent lockdown measures used to stop the virus' spread. Data are still being obtained, but the epidemic might reverse any progress achieved thus far. Governments, big businesses, and all other key stakeholders must therefore take the initiative to create policies that help the most vulnerable<sup>15</sup>.
- ✓ International organisations are attempting to assist the poor and put protections like human rights into place for the entire globe since poverty, like a pandemic, knows no borders and is a global problem. Similarly to this, the Indian government has to take extraordinary measures to improve the lives of those who are less fortunate<sup>16</sup>.

---

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

- ✓ Abolition of poverty is the fundamental objective. India has pledged to “Leave No One Behind,” making the most vulnerable people its top priority.

### **Constitution of India for the Poor :-**

#### **✓ Article 21: Protection of Life and Personal Liberty**

Humans have the right to life, which no state may deny its citizens until a legal process is followed. This goes beyond just saying that life cannot be taken away or destroyed, except by the imposition and carrying out of a death sentence. The right to work is equally fundamental since no one can survive without a source of support<sup>17</sup>.

According to the Supreme Court’s ruling in **the Board of Trustees of the Port of Bombay vs Dilipkumar Raghavendranath Nandkarni (1982)**, the right to life under Article 21 also includes the right to a living.

#### **✓ Article 39A: Equal Justice & Free Legal Aid**

As per Article 39A, the government is responsible for ensuring that the legal system operates in a way that promotes equality of opportunity and justice and must, in particular, provide free legal aid through appropriate legislation or schemes or in any other way to make sure that no citizen is denied the opportunity to secure justice because of their financial situation or other disabilities.

Each side of the dispute has a legal right to appear in court to submit their position, but the processes also necessitate hiring an experienced attorney and paying court costs<sup>18</sup>.

Since the poor find it difficult to pay the high fees, Article 39 of the Indian Constitution was amended to state that those needing legal assistance should receive it free of charge. This will ensure that all citizens have an equal opportunity to appear in court and that no one is denied justice because of their inability to pay<sup>19</sup>.

### **Sheela Barse vs State of Maharashtra :**

---

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

In this case the court observed that it is necessary to provide free legal aid to the poor who are arrested to represent themselves in front of the judiciary as it is their fundamental right under **article 14** and **article 21**, apart from Article 39A. The court also held that the prisoners should be allowed to meet any lawyer appointed by the legal committee with respect to any subject matter<sup>20</sup>.

✓ **Article 15 and Article 16: Reservation for Weaker Section of Society :-**

As per Article 15 and Article 16 of the Indian Constitution, the State is given the power to provide specific provisions for socially and economically disadvantaged castes and groups. They include measures to provide preference to members of society who are socially, educationally, and economically disadvantaged in state-owned businesses and government positions<sup>21</sup>.

✓ **Right to Education, Work and Equal Pay :-**

Education for children, youth, and women must come first in the effort to end poverty in the country. It will be challenging for a nation to develop and end poverty without education.

The provision of free education up to the age of 14 was included in Article 45 of Directive Principles of State Policy, which is where the right to education was first recognised as a directive concept rather than a component of a basic right<sup>22</sup>.

**In Mohini Jain vs the State of Karnataka :-**

A two-judge Supreme Court panel first considered whether education should be considered a fundamental right. The court implied that, under Article 21, the term “life” should include education because it serves as the cornerstone for ensuring and promoting a good and dignified life<sup>23</sup>.

**ARTICLE 41** of the Constitution also mentions the right to employment in Part IV (Directive Principles of State Policy).

---

<sup>20</sup> Supra note 2.

<sup>21</sup> Supra note 5.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

**ARTICLE 39** of the Constitution expressly and specifically calls on the state to implement policies that uphold values like “Equal rights of men and women to adequate means of livelihood” and “Equal pay for equal work for both men and women.

✓ **Right to Equality and Dignity for Poor People :-**

In the eyes of the law, everyone, rich or poor, must be treated equally. The Indian Constitution states the rights that are accessible to all populations, including all of the impoverished people in the nation, in **Articles 14 and 21**.

According to **Article 14**, the state must “give equal protection of the law” and must not “deny to any people equality before the law.”<sup>24</sup>

When addressing **Article 21**, the Supreme Court stated that the right to a life with dignity embraces all of humankind and is one of the more exquisite aspects of human civilization that makes life worthwhile<sup>25</sup>.

✓ **Right to Food, Livelihood and Housing :-**

The relationship between Article 21 and Articles 39(a) and 47 makes it evident how the Constitution requires the state to improve the standard of living and nutritional status of its citizens. Food is a significant means of subsistence within the definition of means of livelihood as stated in Article 39(a)<sup>26</sup>.

**Crime And The Poor :-**

The link between poverty and crime traces its existence way back in the times of Aristotle when he stated that Poverty is the parent of crime. This statement aptly summarizes how the two concepts are intrinsically linked. The link can be studied in two ways:

- The poor are likely to be criminals
- The poor are the victim of crimes

---

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

There is a vicious cycle between poverty, unemployment and crime. Due to poverty a person is mostly deprived of good education, poor education leads someone to unemployment and further the individual enters into crime. The inverse can also be true such as a person with a criminal record may not get a job which would lead him to remain poor. Hence this cycle does not allow the poor to get out of this chain and their whole life is doomed. So let's first discuss the former concept of poverty and crime.

The poor can be of different income levels, different caste, class, or anything which distinguishes them but they all suffer from one thing that is poverty itself. People are very clear about what they want: it is the policymakers or the law makers to make them legally empowered. Protecting the poor from crime is not only sending habitual offenders to prison but also to lower the term of punishment for them<sup>27</sup>.

## **CONCLUSION**

Poverty and the law go hand in hand. A vicious cycle of crime and legal proceedings typically involves impoverished people who are most deprived of their basic needs and education. It is common for people to exploit the poor as pawns out of sheer greed. The impoverished are more likely to consent to or occasionally unintentionally do things that get them in legal hot water because they lack resources and money. Law and poverty are intimately related to one another. Being the most deprived of necessities and education, the poor are mostly involved in a cycle of crime and court cases.

Poverty is a global issue that transcends national boundaries, much like a virus. International organizations strive to uphold principles like human rights for all people and to better the lives of the impoverished. In a similar vein, the Indian government should put particular policies into place that will help the less fortunate.

---

<sup>27</sup> Supra note 2.



**Topic:**

**Should independent directors of a company own stock options? Describe the legal situation and provide reasons in favor of or against the independent directors' ownership of stock options.**

---

The question of whether independent directors should hold stock options in a company is a complex and contentious issue that has garnered significant attention in corporate governance discussions. The role of independent directors in overseeing the management of a company and representing the interests of shareholders is crucial, and the question of whether their compensation should include stock options has implications for their independence, alignment of interests, and potential conflicts of interest.

**Position of Law:**

The legal framework surrounding the issue of independent directors holding stock options varies across jurisdictions. In the United States, for example, the Securities and Exchange Commission (SEC) has regulations governing the disclosure of director compensation, including stock options. The Sarbanes-Oxley Act of 2002 also introduced requirements for increased independence of directors, aiming to mitigate conflicts of interest and enhance corporate governance.

In the UK, the Corporate Governance Code issued by the Financial Reporting Council provides guidelines on the independence of directors and their remuneration. The code emphasizes the need for independent directors to be free from any relationships or circumstances that may affect their judgment and to have no financial or other ties that could compromise their independence.

In other jurisdictions, such as Canada, Australia, and various European countries, similar principles of independence and director remuneration are enshrined in corporate governance codes and regulations. However, the specifics of the regulations and guidelines regarding stock options for independent directors may differ.

**Arguments for Independent Directors Holding Stock Options:**

Proponents of independent directors holding stock options argue that it aligns the interests of directors with those of shareholders, thereby incentivizing directors to work toward the long-term success and profitability of the company. By having a direct stake in the company's performance, independent directors may be more motivated to make decisions that benefit the company as a whole, rather than pursuing their interests.

Furthermore, advocates of stock options for independent directors contend that it can attract high-caliber individuals to serve on the board, especially in cases where the company is not able to offer competitive cash compensation. Stock options can be a valuable form of long-term incentive, enticing experienced and knowledgeable individuals to take on the responsibilities of an independent director role. Additionally, proponents argue that independent directors holding stock options can contribute to better corporate governance by fostering a sense of ownership and accountability. When directors have a financial interest in the company beyond their board fees, they may be more vigilant in their oversight

duties and more engaged in strategic decision-making, ultimately benefiting the company and its shareholders.

### **Arguments Against Independent Directors Holding Stock Options:**

The question of whether independent directors should hold stock options in a company under the Company Act 2013 with relevant sections is a complex and multifaceted issue that requires careful consideration from both ethical and legal standpoints.

Section 149 of the Companies Act 2013 outlines the provisions for the appointment of independent directors, stating that they should possess appropriate skills, experience, and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations, or other disciplines related to the company's business. This section also mandates that independent directors should not have any pecuniary relationship with the company, its holding, subsidiary, or associate company, or their promoters, or directors, during the two immediately preceding financial years or the current financial year.

One of the primary arguments in favor of independent directors holding stock options is that it aligns their interests with those of the company and its shareholders, thereby incentivizing them to make decisions that are in the long-term interest of the company. By having a stake in the company's performance, independent directors may be more motivated to actively participate in strategic decision-making and governance, ultimately contributing to the company's growth and sustainability.

However, there are also valid concerns regarding the potential conflict of interest that may arise if independent directors hold stock options. The fiduciary duty of independent directors is to act in the best interest of the company and all its stakeholders, which includes shareholders, employees, customers, and the community at large. If independent directors have a financial stake in the company, there is a risk that their judgment and decision-making could be influenced by their personal financial gain, leading to a divergence from their primary responsibility of safeguarding the company's interests.

Furthermore, the Companies Act 2013 specifically prohibits independent directors from having pecuniary relationships with the company, its promoters, or directors, in order to ensure their independence and impartiality in decision-making. Allowing independent directors to hold stock options could potentially compromise this independence and create conflicts of interest that are detrimental to the governance and oversight role of independent directors.

In the context of the Companies Act, 2013, it is crucial to examine the specific provisions and regulations that govern the appointment and conduct of independent directors. Section 149(6) of the Act lays down the criteria for determining the independence of a director, including the absence of any pecuniary relationship with the company, its promoters, or its management. This provision underscores the importance of ensuring that independent directors are free from financial entanglements that could compromise their independence.

Furthermore, Section 149(7) specifies that independent directors are not eligible for stock options and may receive only sitting fees, reimbursement of expenses for participation in board and other meetings,

and profit-related commission as approved by the members. This statutory restriction reflects the legislature's intent to maintain the independence and objectivity of independent directors by precluding them from receiving stock options, which could potentially create conflicts of interest.

The Companies Act, 2013 specifically prescribes that an independent director shall not be entitled to any stock option.

The prohibition on stock options for independent directors is consistent with the principles of good corporate governance, which emphasize the need for a clear separation of ownership and management, as well as the alignment of directors' interests with those of the shareholders. Allowing independent directors to hold stock options could blur this distinction and lead to a divergence of interests, where directors prioritize short-term financial gains over the long-term sustainability of the company.

---

❖ (CII)

<https://www.cii.in/PressreleasesDetail.aspx?enc=%2Fqq8wm024ca9SCp9NtBOKYnXomZGCo kT0jAXrWd28De6oRmln3qMV9xR1eDVacZ9IuXLVL5P%2F4wuJRcvdIOdDw%3D%3D>

---

In the case of *Satyam Computer Services Ltd. v. Securities and Exchange Board of India (SEBI)*, the Supreme Court of India emphasized the fiduciary duties of directors, including the duty of care, duty of loyalty, and duty to act in good faith in the best interests of the company. The court underscored the importance of independent directors in providing oversight and strategic guidance to the company, and it held that their independence and objectivity are essential for ensuring effective corporate governance.

Furthermore, the *Satyam* case highlighted the risks associated with conflicts of interest and the failure of independent directors to exercise due diligence and independent judgment. The court's ruling underscored the need for robust safeguards to prevent such lapses in governance, and it reaffirmed the principle that independent directors should not have any financial interests that could compromise their autonomy and integrity.

Another significant case that pertains to the issue of stock options for independent directors is the *Securities and Exchange Board of India (SEBI) v. Sahara India Real Estate Corporation Ltd.* In this case, the Supreme Court addressed the obligations of directors to act in the best interests of the company and to avoid situations where their personal interests conflict with those of the company. The court emphasized the duty of directors to act with honesty and good faith, and it stressed the importance of maintaining the independence and impartiality of the board in decision-making processes.

The judicial decisions in the *Satyam* and *Sahara* cases underscore the paramount importance of preserving the independence and integrity of independent directors, and they provide persuasive authority for the position that independent directors should not hold stock options in the company. These cases reaffirm the fiduciary duties of directors and the need to prevent any form of self-dealing or conflicts of interest that could undermine the trust and confidence of shareholders and other stakeholders.

The provision of Section 149(9) under the Company Act 2013 clearly outlines the restrictions placed on independent directors in terms of remuneration. Despite any other provision in the Act, independent directors are not entitled to stock options. Instead, they may receive remuneration in the form of fees as specified in Section 197(5), reimbursement for expenses incurred while participating in board and other meetings, and profit-related commissions approved by the members.

It is essential to consider the specific provisions of the Companies Act 2013 that pertain to the remuneration of directors, including independent directors. Section 197 of the Companies Act 2013 outlines the overall maximum managerial remuneration and the maximum remuneration payable to directors, including independent directors. This section also requires that the remuneration of independent directors should be fixed at a higher amount than the sitting fees paid to other directors, but does not specify the inclusion of stock options as part of their remuneration.

From a legal perspective, the inclusion of stock options in the remuneration of independent directors would need to comply with the provisions of the Companies Act 2013, particularly those related to the approval of remuneration by shareholders and the requirement for the remuneration to be within the prescribed limits. Additionally, the Securities and Exchange Board of India (SEBI) regulations on corporate governance also play a crucial role in governing the remuneration and compensation practices for independent directors.

SEBI regulations mandate that the remuneration of independent directors should be fixed, and they should not be eligible for stock options. This regulation is aimed at preserving the independence and objectivity of independent directors in fulfilling their oversight and governance responsibilities, without being influenced by the potential financial gains from stock options.

**In conclusion**, the question of whether independent directors should hold stock options in a company is a multifaceted issue that requires careful consideration of the implications for corporate governance, director independence, alignment of interests, and potential conflicts of interest. The position of law and regulations governing this matter varies across jurisdictions, reflecting the nuanced nature of the debate. While there are valid arguments both for and against independent directors holding stock options, it is essential to recognize that there is no one-size-fits-all approach, and the appropriateness of stock options for independent directors may depend on the specific context of the company, its industry, and its governance structure. Ultimately, the decision regarding the inclusion of stock options in the compensation of independent directors should be guided by a thorough assessment of the potential benefits and risks, with a focus on promoting sound corporate governance, preserving director independence, and safeguarding the long-term interests of the company and its stakeholders.

- 
- ❖ (Companies act, 2013) <<https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>>
  - ❖ LawBhoomi, 'Sahara vs Sebi' (*LawBhoomi*, 8 September 2023) <<https://lawbhoomi.com/sahara-vs-sebi/>>

- ❖ **(Nlujodhpur)**  
<[http://www.nlujodhpur.ac.in/downloads/governance %20journal/contents-1.pdf](http://www.nlujodhpur.ac.in/downloads/governance%20journal/contents-1.pdf)>
  - ❖ **Consultants VK (Vinod Kothari Consultants, 3 March 2021)**  
<<https://vinodkothari.com/2021/03/sebis-move-to-allow-stock-options-to-independent-directors-whether-a-threat-to-independence/>>
-

# **FOOD ADULTERATION: A MENACE TO OUR SOCIETY**

BY HIMANSHI<sup>1</sup>

## **ABSTRACT**

The term “Food Adulteration” refers to adding, substituting, or abstracting any harmful or toxic substance to food products making them unhealthy and unsafe to eat. The harmful or toxic substance is called adulterant. There are various adulterants like artificial colours, starch powder, chemicals, preservatives, urea, lead chromate, argemone oil, etc. that can impose severe health risks. For example – adding urea to sweets lead to food poisoning and stomach infections, diluting water and urea in milk decreases its nutritional value, mixing food additives weakens our neurological system thus resulting in headaches, dizziness, fatigue and much more. The less supply and high demand of food production is the reason why use of chemicals, pesticides, urea, food additives and preservatives take place leading to contamination of food production. Another reason is the benefit (financial gain) earned by using low quality adulterants in the growth of produce. Food Adulteration is a socio-economic offence as it affects the welfare of the society. The research sheds light on the recent incidents of food adulteration occurring in India and the observations held by our judiciary in the famous judicial interpretations related to food adulteration. There are several statutory provisions under the Indian Penal Code (IPC), the Consumer Protection Act and the Food Safety and Standards Act that penalize the acts of food adulteration. However, to curb the evil of food adulteration, it is necessary that not only the government takes proper initiatives but the consumers must be aware about their rights too.

**KEYWORDS:** Food Adulteration, Food Safety, Food Safety Laws, Consumer Awareness, Food Adulteration Incidents

## **INTRODUCTION**

The famous quote “Health is Wealth” conveys that health is the most precious investment that we can make in our life. If we are not healthy, all the other valuable materialistic assets are not less than a waste. The biggest live example is the death of famous personalities due to

---

<sup>1</sup> 5<sup>th</sup> year Law Student at Chander Prabhu Jain College of Higher Studies and School of Law (CPJ)

COVID 19. Even after having all the riches of the world, they were unable to save their or their loved one's lives. A healthy life can only be ensured when there is intake of safe, standardized, and organic food items. The consumption of good quality as well as quantity food products help in maintaining full growth and development of the human body.

Article 21 of the Indian Constitution guarantees "right to life" as a fundamental right to everyone. The term "life" does not merely limit itself to "living with human dignity" but also includes within its ambit all those necessities that help in the smooth functioning of livelihood. "Right to Food Safety and Security" is one of the most important requisites for a decent and civilized subsistence and it is the duty of the state to raise the nutritional level and living standards by endeavouring to improve the public health.<sup>2</sup> However, the increasing cases of food adulteration in India highlight the failed efforts of the state in ensuring food safety to the people. Out of 3.7 lakh food samples taken for testing, 90,473 (one-fourth) of them were not conforming to the prescribed standards. Adulterants like Rhodamine B dyes, pesticide residues, artificial colouring agents, synthetic colours, lead powder, preservatives etc present in the edible foods items imposes severe health risks. Diseases like cancer, kidney failure, chronic disease, liver and stomach infection, ulcer, diabetes, variations in blood pressure, allergic reactions leading to skin rashes and breathing problems are the consequences of consuming high amount of adulterated food.

The Food Safety and Standards Authority of India (FSSAI) is an independent body responsible for specifying the standards to be conformed while manufacturing, processing, distributing, or selling any food article. The authority also monitors and regulate the implementation of the standards prescribed to ensure safe and wholesome food. However, stricter penal provisions and proper surveillance system shall be introduced by the government to stop the menace arising due to food adulteration.

### **FOOD ADULTERATION: DEFINITION AND TYPES**

In simple terms, "food adulteration" means adding or substituting any adulterant to any food substance making it unsafe to consume. A food is declared adulterated when:

- i. a food article is sold while representing it to be of a particular standardized nature which it is not,

---

<sup>2</sup> Article 47 of the Constitution of India, 1950

- ii. a substance is added or abstracted to a food article affecting its nature and quality injuriously,
- iii. a cheap, putrid, poisonous, rotten, inferior, or decomposed substance is substituted wholly or in part degrading the quality of the food article,
- iv. a food article undergoes processing making it injurious to health,
- v. a food article is packed or prepared in unhygienic conditions,
- vi. the amount of colour or preservatives present in the food article are beyond the limits prescribed or,
- vii. the food article is obtained from a diseased animal.<sup>3</sup>

The food adulteration is mainly of three types:

Intentional Adulteration – When a mala fide intent is present while adding any filthy or toxic substance to the food article making it unsafe. The main reason of intentional adulteration is to maximize profit. Sand, chalk powder, colour, mineral oil are some adulterants added intentionally.

Unintentional Adulteration – Adulteration occurring due to negligence, lack of knowledge, confusion, or carelessness while manufacturing, storing, or packing any food article. In 2018, “Family Farms” located in Santa Maria, California issued a warning to its customers to not consume lettuce or cauliflower as dirt from a reservoir was found and the consumption resulted in making more than 50 people sick. There is no oblique motive present.

Incidental Adulteration – Adulteration taking place during the growth, harvest, processing, transportation, or distribution period of food article. Residues of pesticides, lead from water, larvae, tin, synthetic colours are some examples of adulterants added incidentally.

### **INFAMOUS CASES / INCIDENTS OF FOOD ADULTERATION IN INDIA**

□ **M/S Nestle India Limited vs. The Food Safety and Standards Authority of India**<sup>4</sup>

Allegations were put on Nestle Company 9 variants of Maggie noodles contain non-permissible amount of lead, Monosodium Glutamate (MSG) which can have dangerous health risks like obesity, depression, headaches, and eye damage. The FSSAI revealed that not only lead was present beyond permissible limit but also the package contains misleading information. The Court imposed ban on those 9 variants and charged a penalty amounting Rs.

---

<sup>3</sup> The Prevention of Food Adulteration Act, 1954, § 2(ia)

<sup>4</sup> WRIT PETITION (L) NO. 1688 OF 2015



3 lakhs. The Nestle Company also agreed to remove the declaration “No added MSG” which was found misleading in public interest.

□ **Swami Achyutanand Tirth & Ors. vs. Union of India**<sup>5</sup>

The case highlighted the importance of taking appropriate measures to curb the sale of adulterated and synthetic milk and to protect the interest of public at large guaranteed under Article 21 of the Indian Constitution. The Supreme Court held the following observations:

- a) Adequate lab testing facilities and appointment of technical persons in laboratories testing food samples.
- b) An efficient complaint mechanism checking corruption practices of food authorities.
- c) Conducting awareness programmes among children regarding ill effects of adulterated milk.

□ **Centre for Public Interest Litigation vs. Union of India & Ors.**<sup>6</sup>

The petition aimed for the constitution of an independent technical committee which could spread awareness about the bad impact of carbonated soft drinks on human health. The case highlighted the ill effects of caffeine (methylated xanthine) which is used as an additive in soft drinks and imposing health risks such as anxiety, sleeping and eating disorders, nervousness, and insomnia. The SC stated that access to food safety is not only a statutory but a legal requirement as guaranteed under Article 21 r/w Article 47 of the Indian Constitution.

- The scandal of food adulteration in Mid-Day Meal Scheme was a shocking incident. The diluted milk mixed with urea and water was served to children. In 2019, an incident was also reported where vermin were found in dal.
- A recent incident of Jharswan village, Uttar Pradesh came into light where two girls died after they consumed adulterated sweet “Petha.” Adding adulterants like flour, starch, urea, foreign fats, palm oil, etc to enhance the taste of sweets imposes risky health hazards like bacterial infections, chronic diseases, and food poisoning.
- In March 2024, the Karnataka government banned the use of artificial colours in cotton candy and gobi Manchurian. Adulterants like Rhodamine B, Tartrazine and

---

<sup>5</sup> WP (C) NO. 159 OF 2012

<sup>6</sup> AIR 2014 SC 49

Carmoisine causing cancer, liver failure, asthma, skin rash and bronchitis were found in the food samples.

- In Hyderabad, an incident of selling adulterated ice-cream came into view. The accused was arrested and it was revealed that he mixed non-branded milk powder, synthetic colours, Glycerol Monostearate in those ice-creams. A similar case took place where a man was caught adding urine and semen into Falooda ice-cream. It is not only an indecent act but also a case of food adulteration as an impure substance was added into the food article.

**LEGISLATIONS/ STATUTORY PROVISIONS PENALISING FOOD ADULTERATION**

- **THE FOOD SAFETY AND STANDARDS ACT, 2006**

Chapter IX of the act deals with the offences and the penalties provided therein.

SECTION	OFFENCE	PENALTY
50	Selling food of quality either not demanded by customer or which contravenes the regulations of the act.	Rs. 5 Lakh
51	Manufacturing, storing, selling, distributing, or importing substandard food.	Rs. 5 Lakh
52	Manufacturing, storing, selling, distributing, or importing misbranded food.	Rs. 3 Lakh
54	Manufacturing, storing, selling, distributing, or importing food containing extraneous matter.	Rs. 1 Lakh
56	Manufacturing or processing any food article under unsanitary or unhygienic conditions.	Rs. 1 Lakh
57	Manufacturing, storing, selling, distributing, or importing food containing adulterant.	Rs. 2 Lakh (if adulterant is injurious to health)

		Rs. 10 Lakh (if adulterant is not injurious to health)
58	Contravening the provisions of the act for which no penalty is provided.	Rs. 2 Lakh
59	Manufacturing, storing, selling, distributing, or import unsafe food.	Rs. 1 Lakh (if no injury occurs) Rs. 3 Lakh (if non – grievous injury occurs) Rs. 5 Lakh (if grievous injury occurs)

THE CONSUMER PROTECTION ACT, 2019

SECTION	OFFENCE	PENALTY
90	Manufacturing, storing, selling, distributing, or importing product containing adulterant.	6 months imprisonment and fine of Rs. 1 Lakh (if no injury occurs)
91	Manufacturing, storing, selling, distributing, or importing spurious goods	1 year imprisonment and fine of Rs. 3 Lakh (if non-grievous hurt occurs) 7 years imprisonment and fine of Rs. 5 Lakh (if grievous hurt occurs) Life imprisonment and fine of Rs. 10 Lakh (if death of a consumer takes place)

THE INDIAN PENAL CODE, 1860

Chapter XIV of the code deals with offences affecting public health and safety.

Section 272 punishes the act of adulterating and selling any food article or drink being noxious in nature with an imprisonment of 6 months, or with fine extending to Rs. 1000, or both.

Section 273 punishes the act of selling or offering any food article or drink which is noxious in nature and unfit for consumption with an imprisonment of 6 months, or with fine of Rs. 1000, or both.

### THE BHARATIYA NYAYA SANHITA, 2023

Chapter XV deals with offences affecting public health and safety.

Section 272 punishes the act of adulteration of food or drink being noxious in nature and selling it intentionally, with an imprisonment of 6 months, or fine of Rs. 5000, or both.

Section 273 punishes the act of selling or offering any food article or drink which is noxious in nature and unfit for consumption with an imprisonment of 6 months, or with fine of Rs. 5000, or both.

### SUGGESTIONS TO SAFEGUARD AGAINST FOOD ADULTERATION

- Consumers shall purchase the food products from reputed and certified brands or vendors to ensure food safety and security.
- Consumers shall check the ISI certification mark before purchasing food articles to protect themselves from food adulteration. ISI mark ensures that the product is certified and safe to consume.
- The label and packaging of the food article shall be checked thoroughly before buying it to avoid the consumption of misbranded or expired products.
- Buying the torn packages of food articles shall be prevented.
- If the food article tastes different then it shall not be consumed and a complaint regarding it being adulterated shall be filed to the food authorities.

### CONCLUSION

The menace of food adulteration taking a toll on health do not only affect the life of the people but also impacts economy of the country because every individual contributes to the growth and development of a country. To stop the cases of food adulteration, the government shall introduce strict regulations by imposing both imprisonment and fine as punishment to the offenders. Regular inspection of food laboratories shall be conducted by the government

to ensure that the procedure of sample testing is duly followed. Awareness programmes should be conducted to inform the consumers about checking whether the food they are consuming is adulterated or not and to provide them knowledge about the complaint filing procedure against food adulteration. By taking these initiatives, the aim of a safe and healthy food supply can be achieved.

## **REFERENCES**

### *BOOKS*

- Keerty Dabas and Manya Batra, Socio-Economic Offences, Singhal Law Publications, Delhi, 2023

### *STATUTES*

- The Indian Penal Code 1860 (Act No. 45 of 1860)
- Food Safety and Standards Act, 2006 (Act No. 34 of 2006)
- The Consumer Protection Act, 1986 (Act no. 35 of 1986)

### *NEWSPAPER ARTICLE*

- Dipak K Dash. (2023, April 5). *One-fourth of samples tested by food safety regulator in past 3 year did not conform to standard: Govt.* The Times of India.  
<https://timesofindia.indiatimes.com/india/one-fourth-of-samples-tested-by-food-safety-regulator-in-past-3-years-didnt-conform-to-standard-govt/articleshow/99276609.cms#:~:text=NEW%20DELHI%3A%20Nearly%20one%2Dfourth,informed%20Lok%20Sabha%20on%20Wednesday.>

### *WEBSITE*

- <https://blog.ipleaders.in>

# **The Intersection of Medical Law and Mental Health: Legal Rights and Protection**

By AARTHI. A<sup>1</sup>

## **Introduction:**

In recent years, the intersection of medical law and mental health has garnered increased attention globally, particularly concerning legal rights and protections for individuals with mental illnesses. In India, where mental health issues are prevalent but often stigmatized, navigating the legal landscape becomes paramount to ensure the rights and protections of those affected. This article delves into the complexities of this intersection within the Indian legal framework, examining relevant laws, rights, and challenges.

## **Understanding Mental Health Legislation in India:**

India has made significant strides in addressing mental health through legislative measures. The Mental Healthcare Act, 2017, stands as a cornerstone in safeguarding the rights of individuals with mental illnesses. This comprehensive legislation reflects a paradigm shift in the approach towards mental health, moving away from the traditional custodial and paternalistic models towards a rights-based framework that prioritizes autonomy, dignity, and empowerment.

## **Key Provisions of the Mental Healthcare Act, 2017:**

- **Rights of Persons with Mental Illness:** The Mental Healthcare Act, 2017, unequivocally asserts the rights of individuals with mental illnesses, ensuring their entitlement to mental healthcare and treatment without discrimination, coercion, or undue influence. This provision is fundamental in addressing the historical marginalization and neglect faced by individuals with mental illness in India. By recognizing mental health as an intrinsic component of overall well-being, the act reaffirms the principle of equality and non-discrimination enshrined in the Indian Constitution.

---

<sup>1</sup> B.B.A. LL.B Student at B.S.Abdur Rahman Crescent Institute of Science & Technology

Moreover, the act emphasizes the right to confidentiality, privacy, and informed consent, thereby promoting trust and autonomy in the patient-provider relationship. By safeguarding confidentiality, individuals are encouraged to seek timely and appropriate care without fear of stigma or breach of privacy. Informed consent, on the other hand, ensures that treatment decisions are made collaboratively, taking into account the individual's preferences, values, and cultural context.

- **Advance Directives:** Another significant provision of the Mental Healthcare Act is the recognition of advance directives, allowing individuals to articulate their treatment preferences and nominate a trusted representative to make decisions on their behalf in case of incapacity. This empowers individuals to assert their autonomy and exercise control over their healthcare, even in situations where they may be unable to communicate or make informed decisions. Advance directives serve as a crucial tool in promoting patient autonomy and respecting their wishes, thereby enhancing the quality of mental healthcare delivery in India.
- **Establishment of Mental Health Review Boards:** The Mental Healthcare Act mandates the establishment of Mental Health Review Boards at the district and state levels to oversee the implementation of the act, protect the rights of individuals with mental illness, and ensure compliance with legal safeguards. These boards play a pivotal role in safeguarding against potential abuses of power and violations of rights, serving as independent arbiters tasked with upholding the principles of justice, fairness, and accountability.
- **Decriminalization of Suicide:** Perhaps one of the most groundbreaking provisions of the Mental Healthcare Act is the decriminalization of suicide, recognizing it as a manifestation of distress and mental illness rather than a criminal act. This transformative shift in legal discourse reflects a more compassionate and enlightened understanding of mental health, acknowledging the complexities and vulnerabilities inherent in the human condition. By decriminalizing suicide, the act seeks to destigmatize mental illness, promote help-seeking behavior, and foster a culture of empathy and support for individuals in crisis.

Overall, the Mental Healthcare Act, 2017, represents a watershed moment in India's journey towards achieving mental health parity and social justice. Its progressive provisions not only affirm the rights and dignity of individuals with mental illness but also underscore the government's commitment to addressing the systemic inequities and injustices that have long plagued the mental health landscape in India. However, the effective implementation of the act hinges on collaborative efforts from all

stakeholders, including policymakers, healthcare providers, civil society organizations, and the broader community, to ensure that its transformative potential is realized in practice.

### **Challenges in Implementing Mental Health Legislation:**

Despite the progressive provisions of the Mental Healthcare Act, challenges persist in its implementation. One major hurdle is the lack of awareness and stigma surrounding mental health, which contributes to underreporting and impedes access to services. In India, deeply ingrained cultural beliefs and social norms often perpetuate misconceptions about mental illness, leading to discrimination, social exclusion, and barriers to care. Stigma not only deters individuals from seeking help but also undermines efforts to promote mental health literacy and awareness within communities.

Furthermore, resource constraints pose a significant barrier to the effective implementation of mental health legislation, particularly in rural and underserved areas. India faces acute shortages of mental health professionals, including psychiatrists, psychologists, and psychiatric nurses, leading to limited access to quality care for millions of individuals in need. The uneven distribution of mental health facilities exacerbates disparities in access, with rural areas bearing the brunt of inadequate infrastructure and underfunding. Additionally, the high cost of mental healthcare services further marginalizes vulnerable populations, perpetuating cycles of poverty and inequity.

Another challenge lies in the fragmentation of mental health services and the lack of integration with primary healthcare systems. Mental health often takes a backseat in the broader healthcare agenda, resulting in siloed approaches and disjointed service delivery. The absence of a coordinated and holistic approach to mental health care undermines continuity of care, exacerbates treatment gaps, and hampers efforts to address comorbid physical and mental health conditions. Integrated care models that prioritize collaboration between mental health professionals and primary care providers are essential to bridge the gap between physical and mental health services and ensure comprehensive, person-centered care. Moreover, legal and policy barriers pose significant challenges to the effective implementation of mental health legislation. Despite the decriminalization of suicide, legal ambiguities and inconsistencies persist in areas such as involuntary admission, capacity assessment, and guardianship. The interpretation and application of these provisions vary across jurisdictions, leading to disparities in practice and potential



violations of rights. Clarifying legal standards, enhancing training for judicial and law enforcement personnel, and strengthening oversight mechanisms are imperative to uphold the principles of justice, fairness, and human rights in mental health care.

In addition, entrenched social inequalities and structural barriers further exacerbate disparities in mental health outcomes. Marginalized populations, including women, children, LGBTQ+ individuals, persons with disabilities, and ethnic minorities, face heightened risks of mental illness due to intersecting forms of discrimination and marginalization. Addressing these structural determinants of mental health requires a multifaceted approach that addresses socioeconomic inequities, promotes social inclusion, and empowers marginalized communities to advocate for their rights and access to care.

Overall, addressing the challenges in implementing mental health legislation requires a comprehensive and coordinated response that addresses the underlying social, economic, and political determinants of mental health. By fostering collaboration between stakeholders, promoting mental health literacy, and investing in robust healthcare infrastructure, India can realize the transformative potential of its mental health legislation and ensure equitable access to quality care for all individuals, irrespective of their mental health status.

### **Intersection of Medical Law and Mental Health:**

The intersection of medical law and mental health in India encompasses a myriad of legal considerations that govern the rights, treatment, and care of individuals with mental illness. From involuntary admission to capacity to consent and confidentiality, navigating this complex terrain requires a nuanced understanding of legal principles, ethical standards, and clinical realities.

- **Involuntary Admission:** One of the most contentious issues in mental health law is the criteria and process for involuntary admission of individuals with severe mental illness. The Mental Healthcare Act, 2017, outlines specific circumstances under which a person can be admitted to a mental health facility without their consent, including when they pose a risk of harm to themselves or others or are unable to meet their basic needs due to mental illness. However, the application of these criteria must be guided by principles of proportionality, least restrictive measures, and respect for individual rights.

Concerns have been raised about the potential for abuse and misuse of involuntary admission provisions, particularly in the absence of robust safeguards and oversight mechanisms. Instances of wrongful confinement, coercion, and violations of autonomy underscore the need for stringent legal protections to prevent abuse and ensure that involuntary admission is a measure of last resort. Mental Health Review Boards play a crucial role in safeguarding against arbitrary detention and upholding the rights of individuals subjected to involuntary admission, emphasizing the importance of independent scrutiny and due process in mental health law.

- **Capacity to Consent:** Determining an individual's capacity to consent to treatment is another complex issue at the intersection of medical law and mental health. Mental illness can impair a person's decision-making abilities, raising questions about their ability to provide informed consent for medical interventions. The assessment of capacity requires careful consideration of factors such as comprehension, volition, and the ability to appreciate the consequences of treatment decisions.

Medical practitioners have a legal and ethical duty to ensure that consent is obtained validly and voluntarily, taking into account the individual's ability to understand the nature and implications of treatment. In cases where doubts arise about a person's capacity to consent, mechanisms for supported decision-making and surrogate decision-makers may be invoked to safeguard their interests and ensure that their preferences are respected to the extent possible.

- **Confidentiality:** Confidentiality is a cornerstone of medical ethics and a fundamental aspect of mental health treatment. Protecting the privacy and confidentiality of patient information is essential to build trust, maintain therapeutic relationships, and encourage help-seeking behavior. However, the duty of confidentiality is not absolute and may be subject to exceptions in certain circumstances, such as when there is a risk of harm to the patient or others.

Navigating the balance between confidentiality and disclosure requires careful consideration of ethical principles, legal requirements, and clinical judgment. Mental health professionals must weigh the potential benefits of disclosure against the risks to confidentiality and privacy, ensuring that any breach of confidentiality is justified by

compelling reasons and is conducted in accordance with established legal and ethical standards.

Overall, the intersection of medical law and mental health presents complex challenges and ethical dilemmas that require careful navigation and adherence to principles of justice, autonomy, and beneficence. By promoting transparency, accountability, and respect for individual rights, India can foster a legal and ethical framework that upholds the dignity and well-being of individuals with mental illness while ensuring access to high-quality, person-centered care.

### **Legal Rights and Protections for Individuals with Mental Illness:**

In addition to the Mental Healthcare Act, several other laws and regulations in India aim to protect the rights of individuals with mental illness and ensure their access to justice and support. These legal instruments play a crucial role in promoting equality, non-discrimination, and inclusion for persons with mental illness, thereby advancing the principles of social justice and human rights.

1. **Rights under the Indian Constitution:** The Constitution of India guarantees fundamental rights to all citizens, including those with mental illness. These rights include the right to life, personal liberty, equality before the law, and protection from discrimination on grounds of religion, race, caste, sex, or place of birth. The Supreme Court of India has consistently affirmed the applicability of these fundamental rights to individuals with mental illness, emphasizing their inherent dignity and worth as equal members of society

Moreover, landmark judgments such as the Olga Tellis case (1985) and the Maneka Gandhi case (1978) have expanded the scope of constitutional protections to encompass the right to healthcare, dignity, and personal autonomy. These judicial pronouncements underscore the judiciary's role in safeguarding the rights and interests of individuals with mental illness and ensuring that they are not deprived of their constitutional entitlements on account of their psychiatric condition.

2. **Disability Rights:** The Rights of Persons with Disabilities Act, 2016 (RPWD Act), represents a significant milestone in India's commitment to promoting the rights and well-being of persons with disabilities, including those with mental illness. The RPWD Act

recognizes mental illness as a disability and mandates measures for accessibility, non-discrimination, and inclusion in various spheres of life, including education, employment, healthcare, and public services.

Under the RPWD Act, persons with mental illness are entitled to reasonable accommodations and support services to facilitate their full participation and integration into society. This includes provisions for reasonable accommodation in educational institutions, reservation in employment, accessibility in public buildings and transportation, and access to assistive devices and technologies. The RPWD Act also establishes mechanisms for the certification of disability and the appointment of guardians for persons with intellectual and psychosocial disabilities, ensuring that their rights are protected and upheld.

3. **Legal Aid and Advocacy:** Access to justice is a fundamental right guaranteed under the Indian Constitution, and legal aid services play a crucial role in ensuring that individuals with mental illness can exercise their legal rights and access legal remedies effectively. The Legal Services Authorities Act, 1987, provides for the establishment of legal aid clinics and services to provide free legal assistance to marginalized and vulnerable populations, including persons with mental illness.

Legal aid organizations and NGOs, such as the National Legal Services Authority (NALSA) and mental health advocacy groups, play a vital role in providing legal assistance, advocacy, and representation to individuals with mental illness. These organizations offer support in navigating legal processes, challenging instances of discrimination and abuse, and advocating for policy reforms to strengthen legal protections and promote social inclusion.

4. **Guardianship and Capacity Assessment:** The Indian Guardianship and Wards Act, 1890, provides mechanisms for appointing guardians for persons deemed incapable of managing their affairs due to mental incapacity. The act aims to balance the need to protect the interests of persons with mental illness with respect for their autonomy and dignity.

Capacity assessments are essential in determining whether an individual has the ability to make decisions about their personal welfare, property, or finances. These assessments must

be conducted in accordance with legal standards and principles of respect for autonomy and dignity. Additionally, guardianship proceedings must adhere to procedural safeguards to prevent abuse and ensure that the interests of the person with mental illness are adequately represented and protected.

In conclusion, legal rights and protections for individuals with mental illness in India are enshrined in various laws, regulations, and judicial pronouncements aimed at promoting equality, dignity, and social inclusion. By upholding these legal safeguards and advancing initiatives to raise awareness, combat stigma, and strengthen support services, India can create an enabling environment where persons with mental illness can realize their full potential and participate actively in society.

### **Conclusion:**

The intersection of medical law and mental health in India presents a complex landscape shaped by legislative measures, legal rights, and societal attitudes. While significant progress has been made in recognizing and protecting the rights of individuals with mental illness, challenges persist in ensuring equitable access to care, addressing stigma, and upholding legal safeguards.

The Mental Healthcare Act, 2017, stands as a testament to India's commitment to reforming its mental health system and promoting the rights and dignity of individuals with mental illness. Its progressive provisions, including the recognition of advance directives, decriminalization of suicide, and establishment of Mental Health Review Boards, represent significant milestones in advancing a rights-based approach to mental health care.

However, the effective implementation of the Mental Healthcare Act requires concerted efforts from policymakers, healthcare providers, civil society organizations, and the broader community. Addressing the systemic barriers to mental health care, such as stigma, resource constraints, and legal ambiguities, necessitates a multifaceted approach that combines legislative reforms, capacity-building initiatives, and public awareness campaigns.

Moreover, promoting mental health and well-being requires a holistic approach that addresses the social determinants of mental illness, including poverty, inequality, and social exclusion. By integrating mental health services into primary care, investing in community-based interventions, and empowering individuals to seek help without fear of discrimination or stigma, India can create a more inclusive and supportive environment for persons with mental illness.

In conclusion, the intersection of medical law and mental health in India is a dynamic and evolving field that requires ongoing attention, collaboration, and advocacy. By upholding the principles of dignity, autonomy, and equity, India can pave the way for a more compassionate and inclusive society where all individuals, regardless of their mental health status, can thrive and participate fully in social, economic, and political life.