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Delimitation and Democratic Representation in India: A Constitutional and Jurisprudential Study

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Abstract

Delimitation is a distinctive feature of the Constitution of India that involves redrawing electoral constituencies to reflect demographic realities and ensure fair political representation for the citizens of India. The Constitution of India provides for a flexible, census-based delimitation process. However, historical constitutional freezes and delays in census exercises have delayed the delimitation process, which aims to maintain the federal balance and democratic equality. The Constitution of India restricts judicial review of the delimitation exercise in India under Article 329(b), based on the principle of institutional finality. This paper explores the concept of delimitation, the constitutional and statutory framework, judicial review, and the contemporary debate on the implications of the delimitation exercise following the census post-2026. The paper demonstrates that delimitation is no longer merely an administrative or technical process, but one with significant implications for demographic realities, political power, federal equity, and constitutional morality.

Keywords: *Delimitation, census, basic structure, federalism, demographic parameters.*

Introduction

In a representative democracy, electoral boundaries that delineate electoral constituencies are more crucial than physical boundaries that separate different parts of the country. Political boundaries determine the weight of each individual vote and the distribution of power across regions. India is a vast country with a quasi-federal system and a heterogeneous demography. As a result, periodic delimitation based on demographic realities is essential to protect the principles of federalism and democracy, which form part of the basic structure of the Constitution of India. **(Kesavananda Bharati v. State of Kerala, 1973)** Without such periodic reorganisation of electoral constituencies, the constitutional promise of political equality could become merely theoretical. However, such a periodic exercise shall take into account population shifts caused by migration, urbanisation, and differential fertility rates. Furthermore, this exercise should also ensure that states which have taken progressive steps to control population growth, and where literacy, awareness, and improved standards of living including employment and medical facilities are observed, are not unfairly penalised.

The framers of the Constitution of India demonstrated great foresight by recognising the importance of redrawing electoral boundaries to adapt to future demographic realities. Accordingly, Articles 82 and 170 of the Constitution of India provide the constitutional framework for readjusting territorial constituencies for the Lok Sabha and the State Legislative Assembly, respectively, following each census. (Constituent Assembly Debates, Vol. VII & IX,, 1949)

However, the Constitution (Forty-Second Amendment) Act, 1976(Constitution (Forty-second Amendment) Act, 1976), froze the delimitation of constituencies based on the 1971 Census until the first census conducted after the year 2000. Furthermore, the Constitution (Eighty-Fourth Amendment) Act, 2001 (Constitutional

(Eighty-Fourth Amendment) Act, 2001) extended this freeze until the census after 2026. In addition, the Constitution (Eighty-Seventh Amendment) Act, 2003 (The Constitutional (Eighty-Seventh Amendment) Act, 2003), permitted the readjustment of reserved seats and boundaries without changing the total number of seats allocated to each State.

Consequently, the delimitation of the Lok Sabha constituencies has not occurred since the Census of 1971, that is, for nearly 55 years. The freeze on delimitation was justified by the need to promote population control and stabilisation. However, it has led to disparities in electoral representation, with some states in India being over-represented and others under-represented in the Lok Sabha relative to the national population.

The COVID-19 pandemic was an unprecedented global health crisis that delayed Census 2021. (Ministry of Home Affairs, 2020) It was the first time the scheduled Census was postponed since its decennial inception in 1881. (Census India, 2011). The Government's recent announcement to conduct Census 2027 in two phases, which is expected to take place in 2026 and 2027(Ministry of Home Affairs, 2025), with the reference date to be 00:00 hours on 1st March 2027. The Census 2027 is expected to serve as the basis for delimitation and adjustment of territorial constituencies for the Lok Sabha and the State Legislative Assembly under Articles 82 and 170 of the Constitution of India, respectively. Since the Census 2027 shall be the first census after 2026, as determined by the Constitution (Eighty-Fourth Amendment) Act, 2001, it shall serve as the standard for the delimitation exercise.

Such a delimitation exercise based on the Census 2027 is expected to adversely affect states that have achieved lower fertility rates through investments in public health, women's education, and family planning. These states may face penalties for the effective implementation of health and family planning policies, resulting in diminished representation in the Lok Sabha. Consequently, their

influence on federal and local issues could decrease. Conversely, states that failed to implement health and family planning policies, leading to demographic growth, might gain increased representation in the Lok Sabha, thereby amplifying their parliamentary influence on federal and local matters. This situation could raise questions concerning constitutional morality, substantive equality, and inter-generational justice.

Concept of Delimitation

The term 'delimitation' originates from the French word '*délimiter*', which itself derives from the Latin word '*delimitare*', meaning 'de + limitare', or 'from limit'. (Merriam-Webster n.d.) Black's Law Dictionary defines 'delimitation' as "a fixing of precise limits or boundaries". As per Black's Law Dictionary, the term 'delimitation' was first used in 1836. (Black's Law Dictionary, 2024) The Election Commission of India has defined delimitation as "the act or process of fixing limits or boundaries of territorial constituencies in a country or a province having a legislative body". (Election Commission of India, n.d.)

In India, delimitation refers to the process of readjusting the allocation of seats in the Lok Sabha for each state and dividing each state into territorial constituencies after each census under Article 82 of the Constitution of India. Similarly, it involves readjusting the total number of seats in the state legislative assembly and dividing the state into territorial constituencies after each census under Article 170 of the Constitution of India. The purpose of delimitation is to ensure fair representation of the population in every territorial constituency at both the Parliament and the State Legislative Assembly levels. Delimitation aims to ensure equal representation, balanced political competition and demographic accuracy, i.e., territorial constituencies reflect demographic realities after each census.

The process of delimitation is carried out by an independent statutory body known as the Delimitation Commission. So far, four Delimitation Commissions have been established under the Delimitation Commission Act, 1952, the Delimitation Commission Act, 1962, the Delimitation Act, 1972; and the Delimitation Act, 2002. The next Delimitation Commission is expected to be established by law after 2026, as determined by the Constitution (Eighty-Fourth Amendment) Act, 2001.

Delimitation in India

Until the mid-1970s, in line with the constitutional expectation, each decennial census was followed by the readjustment of territorial constituencies, both interstate and intrastate. However, under the Constitution (Forty-Second Amendment) Act, 1976, the allocation of territorial constituencies for Lok Sabha seats to states was frozen based on the 1971 Census. This freeze was implemented, prioritising population stabilisation as a national goal. As states like Kerala and Tamil Nadu adopted effective family planning policies, they experienced declining fertility rates compared to other states in northern India. Therefore, it was deemed appropriate to freeze further delimitation until the first census after 2000 to prevent "demographic distortion of federalism".

Similarly, through the Constitution (Eighty-Fourth Amendment) Act, 2001, the Parliament further delayed the delimitation to occur after the first census post-2026 and chose a territorial constituency map based on the Census 1971. However, by the Constitutional (Eighty-Seventh Amendment) Act, 2003, it was decided to use the Census 2001 as the basis for readjusting the territorial constituencies within a state, without altering the Lok Sabha seat distribution across the states. Consequently, the Lok Sabha seat distribution between states remains based on the Census 1971, while the intra-state territorial constituencies are based on the Census 2001, leading to a distorted map of territorial constituencies

with uneven representation of population per seat in the Lok Sabha, which violates Article 14 of the Constitution of India.

The government has announced Census 2027, which is a census after 2026 and is expected to form the basis for the next delimitation exercise. In this process, the standard for readjusting inter-state and intra-state territorial constituencies shall be based on Census 2027. However, the real question is whether such a constitutionally mandated readjustment would impact federal equality and lead to a demographic-democratic imbalance, potentially requiring urgent judicial intervention.

Constitutional Limits Reviewing Delimitation and Judicial Interpretation

The delimitation of territorial constituencies at the central and state levels is governed by Articles 82 and 170 of the Constitution of India, respectively. However, the question that arises is whether the executive action of delimitation under these Articles is subject to judicial review by the Supreme Court of India and the High Courts of States under Articles 32 and 226 of the Constitution of India, respectively. The clear answer to this question is provided by Article 329(a) of the Constitution of India, which is a non-obstante clause that prevents any court, including the constitutional courts, from hearing any matter challenging the validity of delimitation law or the re-adjustment of territorial constituencies. Therefore, Article 329(a) of the Constitution of India acts as a firewall against judicial review of executive actions relating to delimitation in India.

In *Meghraj Kothari v Delimitation Commission* (*Meghraj Kothari v Delimitation Commission*, 1966) the Supreme Court of India held that once the order of the Delimitation Commission is published in the Gazette of India, it is insulated from judicial interference under Article 329(a) of the Constitution of India. The Court limited judicial intervention because such interference could

cause unnecessary delays to the election process. However, recently, in *Kishorchandra Chhanganlal Rathod v Union of India* (*Kishorchandra Chhanganlal Rathod v Union of India*, 2024), the Supreme Court acknowledged that although Article 329(a) of the Constitution restricts the scope of judicial scrutiny, it cannot eliminate the power of judicial review under Article 226. If judicial review were completely barred, citizens would lack a forum to voice their grievances, leaving them at the mercy of the delimitation commission. The Court further explained that denying citizens any remedy would be contrary to the duties of constitutional courts and the principle of separation of powers. Therefore, it was held that, as guardians of the constitution and public interest, nothing prevents judicial courts from examining the validity of orders issued by the Delimitation Commission under Article 226 of the Constitution of India.

The conclusion that can be drawn from the above discussion is that, although there is a constitutional restriction on the review of the order of the Delimitation Commission under Article 329(a) of the Constitution of India, such a restriction does not prevent the constitutional courts under Article 226 of the Constitution of India from testing the validity of the orders issued by the Delimitation Commission and determining whether these orders are manifestly arbitrary and incompatible with constitutional values, and from granting appropriate remedies. (*Kishorchandra Chhanganlal Rathod v Union of India*, 2024)

Constitutional Morality and Delimitation Exercise

With the announcement of Census 2027 and the imminent delimitation exercise before the 2029 General Election, the main challenge is not technical or administrative but constitutional. This indicates that the process of redrawing territorial constituencies, dividing seats, and designing constituency maps will be relatively straightforward. The real challenge is in balancing demographic and

democratic interests, which prompts several important questions: How should a constitutional democracy balance demographic equality with federal fairness?; How should a country recognise or, at the very least, avoid disadvantaging states that have stabilised their populations?; and What guiding principles should shape boundary decisions when those decisions will impact national politics for decades?

While Articles 82 and 170 of the Constitution of India address population-based readjustment of the territorial constituencies, the constitutional provisions cannot be interpreted as mechanical commands separate from the broader constitutional ethos of maintaining harmony across States with vastly different historical, linguistic, and developmental profiles. Thus, balancing the tension between demographic realities and constitutional pluralism shall lie at the heart of future delimitation exercises.

The strict demography-based limitation would lead to a significant rise in the number of Lok Sabha seats for northern and central states, at the expense of southern and north-eastern states. Such a straightforward arithmetic exercise may be constitutionally valid, but it contradicts the federal principle marked by substantial developmental disparities. Therefore, states that succeed in controlling their population end up losing representation in Parliament, creating a counterproductive incentive structure that rewards high fertility with greater political influence, which contradicts the population control policies pursued by every government since the 1950s.

Aside from what has been previously mentioned, the principle of political equality highlighted in the Preamble, along with Articles 14 and 326 of the Constitution of India, must be balanced against the federal principle, which is part of the basic structure of the Constitution of India. Delimitation might result in political equality, but could weaken the federal representation of states in Parliament. As India prepares for its delimitation exercise

after more than 55 years, the issue goes beyond simply deciding how many seats each state gains or loses. The main question is whether India can show that even highly sensitive constitutional processes can be conducted with fairness, transparency, and respect for the constitutional idea of India, which is a union of states that values diversity, promotes equality, and resists the tyranny of numbers.

Conclusion

As discussed earlier, the delimitation process is more than merely readjusting territorial boundaries at both inter-state and intra-state levels; it is a moment of constitutional reflection in which the Democratic Republic of India reevaluates the deeper importance of representation, equality, fairness, and federal balance in the 21st century. The constituent assembly established a system of representative democracy that would reflect demographic realities. However, the unequal implementation of population control measures and varying developmental efforts across states led to disparities in demographic realities, which, in turn, affected democratic realities. It froze the territorial constituencies until the next census, after 2026.

Now, the anticipation of the next delimitation exercise after over half a century aims to promote democratic equality, but is feared to affect the federal representation of states. Since both democracy and federalism form part of the Constitution of India's basic structure, it tests the limits of constitutional rationality.

Democracy cannot function effectively when the weight of a vote in one state differs from that in others. Similarly, cooperative federalism faces challenges when certain states, particularly those whose investments in education, health, social welfare, and gender empowerment have led to lower fertility, risk losing political representation in Parliament. Therefore, a system that quietly

penalises demographic responsibility is constitutionally penalising, even if it is not deemed unconstitutional.

As a result, if the executive falters in implementing a fair, transparent, and just delimitation process, it is the constitutional duty of the constitutional courts to balance democratic values and federal principles and prevent violations of foundational democratic norms in India. Therefore, ensure political and developmental equality and do not incentivise the laissez-faire state policy, even at the cost of breaching the principle of 'each vote having equal weightage'.

References

1. Constituent Assembly Debates, Vol VII (4 January 1949) and Vol IX (1 September 1949).
2. The Constitution (Forty-second Amendment) Act, 1976 <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/03/2023030290.pdf> accessed 7 December 2025.
3. The Constitutional (Eighty-Fourth Amendment) Act, 2001 <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/03/2023030231-1.pdf> accessed 7 December 2025.
4. The Constitutional (Eighty-Seventh Amendment) Act, 2003 <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/03/2023030226-1.pdf> accessed 7 December 2025.
5. Ministry of Home Affairs, 'Due to the outbreak of COVID-19 pandemic, first phase of Census 2021 and updation of NPR postponed until further orders' (25 March 2020) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1608107&reg=3&lang=2> accessed 7 December 2025.
6. Census India, 'History of Census in India' <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://censusindia.gov.in/nada/index.php/catalog/40444/download/44078/DROP_IN_ARTICLE05.pdf&ved=2ahUKEwjc7Iq_nKuRAxV0bm

wGHYgHIpEQFnoECDMQAQ&usg=AOvVaw0fcgbaQqffmtd6TX7Q07YV> accessed 7 December 2025.

7. Ministry of Home Affairs, 'Population Census-2027 to be conducted in two phases along with enumeration of castes' <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2133845&reg=3&lang=2> accessed 7 December 2025.
8. Merriam-Webster. (n.d.). Delimiter. In Merriam-Webster.com dictionary. Retrieved December 30, 2025, from https://www.merriam-webster.com/dictionary/delimiter
9. Black's Law Dictionary (12th edn 2024).
10. Election Commission of India <https://www.eci.gov.in/delimitation> accessed 7 December 2025.
11. *Meghraj Kothari v Delimitation Commission* 1966 INSC 171.
12. *Kishorchandra Chhanganlal Rathod v Union of India* 2024 INSC 579.

Rights of Undertrial Prisoners and the Issue of Prolonged Pre-Trial Detention

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Abstract

Most of the people in Indian prisons are undertrial prisoners. This raises serious questions about constitutional protections, human rights, and the overall effectiveness of the criminal justice system. Undertrials—those held during an investigation, inquiry, or trial—are still presumed innocent and have basic rights under the Constitution, especially the right to life and personal freedom under Article 21. But long pre-trial detention is still a systemic problem caused by delays in the courts, not enough legal aid, strict bail rules, and the fact that the people who are accused are often poor or have other problems. Such detention infringes upon the right to a prompt trial and frequently leads to individuals being held for durations exceeding the maximum potential sentence for their alleged offence, resulting in significant injustice.

The cases of *Hussainara Khatoon v. State of Bihar* (1979) and *Kadra Pahadiya v. State of Bihar* (1981) show that the State must make sure that trials are fair and quick. International standards, such as the International Covenant on Civil and Political Rights (ICCPR), stress the need to protect prisoners' rights and limit pre-trial detention. Even though there have been changes like fast-track courts, Section 436A CrPC, and digital prison systems, they are not all being used the same way. This paper looks at the legal framework, finds systemic

problems, and suggests changes to make sure that the law is fair and follows the Constitution.

Keywords: *Undertrial Prisoners, Pre-Trial Detention, Speedy Trial, Bail Rights, Criminal Justice System*

1. Introduction

A large number of India's prisoners are undertrial prisoners. The National Crime Records Bureau (NCRB) says that more than three-fourths of India's prisoners are undertrials, which means they haven't been found guilty yet. This makes us think about access to justice, the presumption of innocence, and human rights in the criminal justice system.

Undertrial prisoners are people who are being held while they are being investigated, questioned, or tried. Because their guilt has not yet been proven, international human rights standards and Indian constitutional law say that they should be treated differently than prisoners who have been found guilty. But systemic delays, mistakes in the process, poverty, and not enough legal help often lead to long and unfair detention. (UDHR, 1948).

2. What it Means and What the Law Says About Undertrial Prisoners

An undertrial prisoner is a person who has been accused of a crime and is being held while the investigation, inquiry, or trial is going on, but has not yet been found guilty by a court that is qualified to do so. The reason they are being held is not punishment, but rather as a precaution and as part of the process. Because guilt has not been proven, undertrial prisoners are legally assumed to be innocent until proven guilty. This is a basic rule of criminal law.

There are a number of reasons why the legal status of undertrial prisoners is very different from that of convicted criminals:

Retention of Fundamental Rights: Undertrials continue to enjoy all fundamental rights guaranteed by the Constitution, especially the right to life and personal liberty under Article 21, except to the extent that these rights are lawfully restricted by the conditions of detention. (The Constitution of India, 1950)

Protection from Punitive Treatment: Undertrials cannot be subjected to harsh, degrading, or punitive conditions because punishment can only be given after a conviction. The only reason they are being held is to make sure they show up for court, not to punish them.

Right to Humane Treatment and Due Process: They have the right to be treated with respect, to live in humane prison conditions, to get the medical care they need, to have a lawyer, and to all the other protections that come with a fair trial.

The Prisons Act of 1894, the Prison Rules, and the Model Prison Manual all say that undertrial prisoners must be kept separate from convicted prisoners. This reinforces the idea that being in jail for a crime you didn't commit is not a punishment. In essence, undertrial prisoners must be regarded as individuals safeguarded by the law, whose rights are preserved and whose freedom may be restricted solely through equitable, just, and rational procedures.

3. Legal and Constitutional Protections for the Rights of People on Trial

The Indian Constitution and other laws make a strong legal framework to protect the rights of prisoners who are still awaiting trial. The Constitution protects a number of basic rights that directly protect the freedom and dignity of people who are waiting for trial.

Article 14 guarantees equal treatment and protection under the law, which stops discrimination against people who are on trial. Article 19 says that personal freedoms can only be limited when absolutely necessary and within reasonable limits. Article 21's most important part is that it protects the right to life and personal freedom. The Supreme Court has said that this includes the right to a fair, just, and speedy trial. Articles 22(1) and 22(2) make procedural protections even stronger by giving people the right to know why they were arrested, the right to talk to a lawyer, and the requirement that every person who is arrested be brought before a magistrate within 24 hours. Indian courts have consistently reiterated that the failure to guarantee a prompt trial constitutes a breach of Article 21. (The Constitution of India, 1950)

In addition to constitutional protections, there are also a number of laws that protect the rights of prisoners who are awaiting trial. Sections 41 and 41A of the CrPC (Criminal Procedure Code, 1973) say that people shouldn't be arrested for no reason and that people who commit minor crimes should get notices instead of being held in jail. Section 167(2) says that the longest someone can be held during an investigation is 60 or 90 days. After that, the accused has the right to default bail. Sections 436 and 436A make sure that people can get bail, and they say that people who have been in jail for half of their maximum sentence must be released. The Legal Services Authorities Act of 1987 is also very important for giving free legal help, especially to poor people who are on trial and can't afford a lawyer.

4. Important Court Decisions that Strengthen the Rights of Undertrial Prisoners

There have been many important decisions by the Supreme Court of India that have changed and expanded the rights of prisoners who are still awaiting trial. In *Hussainara Khatoon v. State of Bihar* (1979), the Court showed that thousands of people are stuck in jail

for years for small crimes. It said that the right to a speedy trial is a basic right and that being held for a long time without a good reason is against the law. In *Kadra Pahadiya v. State of Bihar*, the Court stressed that the State has a responsibility to give good legal help and make sure that trials happen on time, especially for poor and marginalised people who are accused of crimes.

The Court ruled in *Sunil Batra v. Delhi Administration* (1978) that undertrials cannot be tortured, kept in solitary confinement, or treated in any way that is cruel or inhuman. This made it clear that being in jail does not give you the right to be treated poorly. In the case of *Supreme Court Legal Aid Committee v. Union of India* (1994), the Court ordered the release of several people who were being held on NDPS charges because the trials were taking too long. This was a strong criticism of how the system worked. In the 2016-17 case about Inhuman Conditions in 1382 Prisons, the Supreme Court gave a lot of orders to make the criminal justice and prison systems better. These included using video conferencing, holding timely bail hearings, reducing overcrowding, and making legal aid services stronger.

These decisions all support the idea that people who are in jail waiting for trial should be treated with respect and fairness, and that keeping them in jail for a long time or punishing them is against the Constitution's promise of justice.

5. Rights of Prisoners Who are Awaiting Trial and the Poverty Barrier

Undertrial prisoners have a full set of rights that come from the Constitution, court decisions, and prison rules. The right to a speedy trial is one of the most important rights because it helps make sure that everyone gets a fair trial and that no one is unfairly deprived of their freedom. Delays in trial proceedings can have serious effects, such as losing your job, mental health problems, and being stuck in

jail for a long time. The right to bail is just as important. It shows that the law says that bail is the norm and jail is the exception. Undertrials have the right to be released on bail unless there are strong reasons to keep them in jail.

The right against arbitrary or illegal detention protects people from being held without a good reason. This strengthens the protections in Articles 21 and 22 of the Constitution. Undertrials also have the right to legal aid, which makes sure that everyone, especially those who are poor, illiterate, or socially disadvantaged, can get good representation. They also have the right to humane living conditions in prison, such as enough food, sanitation, clothing, medical care, and the chance to see family and legal counsel. The right to separate housing is another important guarantee. This means that undertrials cannot be housed with convicted prisoners to avoid being in a harsh environment. Undertrials also have the right to information and communication, which includes being able to see the charges against them, legal documents, and updates on how their cases are going.

However, these constitutional rights remain largely theoretical for economically disadvantaged accused persons. Poverty operates as the primary systemic barrier that converts the constitutional right to bail into an unattainable privilege. The bail system, despite its constitutional mandate that "bail is the rule and jail is the exception," functions in practice as a wealth-based mechanism of exclusion. When courts impose monetary bail conditions—requiring cash deposits, sureties with property, or bail bonds—they effectively create a two-tier justice system: one for those who can afford freedom, and another for those who cannot.

Studies indicate that a significant proportion of undertrial prisoners—estimated at over 60%—are from economically weaker sections who remain incarcerated not because they pose a flight risk or danger to society, but simply because they cannot afford the financial requirements of bail. Many accused persons lack stable

employment, property ownership, or social networks that could provide surety. The inability to pay even modest bail amounts of ₹5,000 to ₹10,000 results in prolonged detention that often exceeds the maximum sentence for their alleged offense.

This economic barrier is compounded by the inadequate legal aid system. While the Legal Services Authorities Act of 1987 guarantees free legal representation, the reality is that many undertrial prisoners either remain unaware of this right or receive substandard assistance from overburdened and under-resourced legal aid lawyers. Without effective legal representation, poor accused persons cannot navigate bail applications, challenge arbitrary conditions, or present compelling cases for their release. Thus, poverty doesn't merely delay justice—it fundamentally denies the constitutional right to bail, transforming pre-trial detention from a procedural safeguard into de facto punishment based on economic status.

6. Problem of Long-Term Pre-Trial Detention Quantifying the Injustice

One of the biggest problems with the Indian criminal justice system is that people are held in jail for too long before their trial. The magnitude of this injustice is starkly illustrated by empirical data: studies show that undertrial prisoners in India spend an average of 3 to 5 years in detention for offenses that carry maximum sentences of only 2 to 3 years. For minor, bailable offenses such as theft under Section 379 IPC (punishable with up to 3 years), petty assault, or minor property crimes, the average pre-trial detention period ranges between 18 to 30 months—periods that frequently exceed half the maximum sentence and sometimes surpass it entirely. Data from the National Crime Records Bureau reveals cases where accused persons charged with offenses punishable with imprisonment of 3 years or less have remained in custody for

4 to 6 years awaiting trial. This creates an absurd situation where punishment precedes conviction, fundamentally violating the presumption of innocence.

The long time that people spend in jail before their trial is due to a number of structural, administrative, and socio-economic factors. One of the main reasons for judicial delay is that there aren't enough judges and there are too many cases to handle. Court cases take longer because police investigations aren't very good and cases are often put on hold. The problem gets worse because the legal aid system is too busy, and many people who are waiting for trial don't get the help they need or get it late. Socio-economic factors are very important because many people who are accused can't pay bail or hire private lawyers. Strict bail conditions set by special laws like the UAPA and NDPS Act also make people stay in jail longer. Also, the limited use of technology, like video conferencing for hearings, and overcrowded prisons make it even harder to get undertrials to court on time.

The effects of long-term pre-trial detention are very bad and have a wide range of effects. It goes against the basic idea of "innocent until proven guilty" and puts people through long periods of doubt and mental pain. Many people who are under investigation face social stigma, job loss, and family problems. In some cases, they stay in jail longer than the maximum sentence they would have gotten if they had been found guilty, which is a serious injustice. As prisons get more crowded, the State has to pay more and more. The issue ultimately creates a cycle in which the poorest and most vulnerable citizens suffer the most, showing how badly we need systemic reform.

7. A Global View of Human Rights

International human rights treaties that India has signed strongly protect the rights of prisoners who are still waiting for their trial.

The Universal Declaration of Human Rights (UDHR, 1948) sets out basic rights that apply to everyone, even those who are waiting for a trial. Article 9 says that people can't be arrested or held without a good reason, which means that no one can be kept from their freedom without a good reason. Article 10 guarantees the right to a fair and public hearing by an independent tribunal, which is a key part of the idea of justice. Article 11 also supports the idea that everyone is innocent until proven guilty. This means that anyone accused of a crime is innocent until proven guilty.

The International Covenant on Civil and Political Rights (ICCPR, 1966) makes these protections even stronger. Article 9(3) says that pre-trial detention shouldn't be the norm and that other options, like bail or conditional release, should be used instead. Article 14 guarantees the right to a quick trial, which is important because it keeps people from being locked up for a long time without a trial. India has agreed to these agreements and is responsible for making sure that its criminal justice system and prison administration follow international human rights standards, especially when it comes to fairness, due process, and treating prisoners with respect.

8. Changes to the Government and the Courts

The Indian government and courts have taken a number of steps in the last few years to help solve the problems faced by prisoners who are still waiting for their trials. The E-prisons project is one of these changes. It modernises how prisons are run by allowing digital record-keeping and cutting down on delays caused by paperwork. The goal of setting up fast-track courts and special courts for certain crimes is to speed up trials and cut down on case backlogs. More and more remand hearings are being held by video conference, which has helped cut down on delays caused by logistical problems. Changes to the Criminal Procedure Code (CrPC) now put more emphasis on non-custodial measures, which means that unnecessary arrests are less likely to happen. District Legal Services Authorities

(DLSA) visit regularly to find eligible undertrials who can be released and make sure they can get legal help. Also, Section 436A of the CrPC makes it easier for people who have been in jail for half of their maximum sentence to get out.

Even with these efforts, the system still needs big changes to make it fairer and work better. To cut down on unnecessary pre-trial detention, it is important to strengthen the legal aid system, make lawyers more accountable, and make major changes to the bail system. More options for not going to jail, like probation, community service, and non-custodial investigation methods, can help ease overcrowding in prisons even more. Setting time limits for trials, especially for minor crimes, would help keep them from going on for too long. For cases to move more smoothly, police, prison officials, and the courts need to work together better. Finally, setting up monitoring committees whose only job is to find and help the release of eligible undertrials can make sure that intervention happens quickly and that people don't have to stay in jail for too long.

9. Conclusion

Undertrial prisoners are one of the most vulnerable and least noticed groups in the criminal justice system. Even though the Constitution, court decisions, and international human rights standards clearly protect their rights, there is still a big gap between those protections and how they are actually enforced. Prolonged detention without conviction not only contravenes the fundamental guarantees of Articles 14 and 21 but also undermines the principle of presumption of innocence, a fundamental tenet of any democratic legal system.

The problems that undertrials face are signs of bigger problems in the system, like slow investigations, courts that are too busy, not enough legal aid, and strict bail rules. These structural flaws often make detention feel like punishment, even if the person

isn't guilty yet. These kinds of things make people less confident in the courts and raise serious questions about how fair and accessible justice. (NCRB, latest edition).

It is not an act of leniency to protect the rights of people who are on trial; it is a constitutional and moral duty. To make the criminal justice system fair, just, and focused on rights, it is important to make sure that trials are quick, prisons are safe, legal help is available, judges are in charge, and bail policies are reasonable. (MPM, 2016). To be truly just, the State must not only punish crime but also protect the rights and dignity of people who are waiting for their trial. India can only uphold the rule of law and protect the integrity of its democratic institutions by closing the gap between the law and reality.

Suggestion/Recommendation

To strengthen the protection of undertrial prisoners and ensure that constitutional guarantees are effectively implemented, several reforms are necessary. First, the bail system needs to be made stronger so that the idea that bail is the rule and jail is the exception is actually put into practice. Bail procedures can be made simpler, surety requirements can be made less strict, and people who are poor should not be held just because they are poor. All of these things can greatly reduce unnecessary incarceration. It's just as important to make legal aid services better and more accountable, since many people who are on trial suffer because they don't get good representation. To make legal aid more effective, it is important to hire qualified lawyers on time, visit jails regularly, and keep an eye on their work. Setting time limits on trial procedures, especially for minor or less serious crimes, would keep people who are awaiting trial from spending too much time in jail. Judicial oversight and fast-track courts can help make sure that trials go on without too much delay.

To stop administrative mistakes that often slow down court appearances and case progress, police, judges, and prison administrators need to work together better. Real-time case tracking and integrated digital systems can help make things go more smoothly. Also, encouraging non-custodial measures like probation, community service, conditional release, or appearance bonds can help keep prisons from getting too full and keep people from being held for no reason, especially first-time or low-risk offenders. Using more technology, like e-prison platforms, video conferencing for remand hearings, and digital case management systems, can cut down on delays caused by logistical problems. Regular inspections by District Legal Services Authorities, High Court committees, and independent monitoring bodies can help find cases of long-term detention and make sure that people are released on time under rules like Section 436A CrPC.

Making prisons better is still very important. Undertrials must have clean places to live, good health care, good sanitation, and chances to talk to their lawyers and family members. To stop discrimination or mistreatment, prison staff should learn about human rights standards. A change to correctional and rehabilitative methods, with help from social workers, psychologists, and probation officers, can help people who are being held in jail deal with their time there and get ready to go back to society. Finally, it is very important to raise prisoners' awareness of the law and the public. Many people who are waiting for their trial are still in jail because they don't know their rights or what to do about them. Detainees can better protect their rights if they learn about the law and get information in easy-to-understand formats. All of these steps can help make the criminal justice system more humane, effective, and fair, while also protecting the rights and freedoms of people who are still in jail.

References

1. *Hussainara Khatoon (I) v. State of Bihar*, 1979 AIR SC 1360.
2. *Kadra Pahadiya v. State of Bihar*, 1981 SCC (Cri) 536.
3. UN General Assembly, *Universal Declaration of Human Rights*, 1948.
4. The Constitution of India Articles 14, 19, 21 and 22..
5. Sections, 41, 167, 436 and 436 A of Code of Criminal Procedure, 1973.
6. *Sunil Batra v. Delhi Administration*, 1978 AIR SC 1675.
7. *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731.
8. International Covenant on Civil and Political Rights (ICCPR), 1966.
9. National Crime Records Bureau (NCRB). *Prison Statistics India* (latest edition).
10. Ministry of Home Affairs, *Model Prison Manual*, 2016.

Behind Closed Doors: Statistical Trends of Unlawful Detention and Custodial Mistreatment

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Abstract

This study examines the widespread and systemic problems of unlawful detention and custodial abuse, investigating their statistical trends to uncover the extent and characteristics of these human rights infringements. This paper identifies consistent trends in the demographics of victims, the commonality of specific abuse tactics, and the jurisdictions with disproportionately high incidence rates by synthesizing data from government reports, independent human rights organizations, and legal records. The findings suggest that these practices are not isolated occurrences but frequently indicative of systemic deficiencies, including inadequate training, a culture of impunity, and insufficient oversight mechanisms. The study further investigates the significant disparity between legal frameworks intended to safeguard individuals in custody and the actual conditions experienced by detainees. (Singh. U, 2020). It concludes that urgent reforms in transparency, strong accountability, and thorough judicial and independent monitoring are necessary to eliminate the systems that enable such abuse to continue in secret.

Keywords: *Violence in custody, illegal detention, human rights violations, impunity, and accountability*

1. Introduction

Custody means that someone else is in charge of something. When the state takes away someone's freedom, a sacred trust is formed: the authority that is holding that person must protect their basic right to life, dignity, and bodily integrity. But this trust is often and violently broken around the world, behind closed doors in police stations, detention centres, and prisons. Illegal detention, torture, deaths in custody, and other forms of abuse are all signs of a serious problem in the relationship between the government and its people. This article aims to transcend anecdotal narratives by analyzing the statistical patterns that underlie these abuses. While individual cases are shocking, it's the collection of data that makes it clear that the problem is systemic. By examining trends, demographics, and geographical distributions, we can transition from the inquiry of "what occurred?" to the more pertinent question: "why does this persist, and to whom?" This paper contends that illegal detention and custodial abuse are not solely attributable to a few "bad apples" but are enabled by a widespread "architecture of impunity" a confluence of legal loopholes, institutional inertia, and a deficiency of political will. (Singh. U, 2020) This analysis will create a map of this structure by putting together all the information that is available and suggest ways to take it apart.

2. The Law vs. What Really Happens on the Ground

There is a strong legal framework both in the US and around the world that makes the actions being talked about illegal. (Carver. R & Handley. L, 2016). The International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention against Torture (UNCAT), and regional instruments like the European Convention on Human Rights all clearly say that torture and cruel, inhuman, or degrading treatment are wrong. The principle of habeas corpus, which is a basic part of common law, is meant to stop the

state from holding someone without a court order. Most national constitutions and codes of criminal procedure have similar protections. They set rules for how to make an arrest, how long someone can be held without charge, the right to an attorney, and mandatory medical exams. These rights have been upheld many times by Supreme Courts in different places, and they have set out clear rules to stop abuse. But there is a big gap between these legal ideals and what really happens on the ground. Arrests are often made without any official paperwork, which goes against the rules. Detainees are often not allowed to see their lawyers or family members, which makes them very vulnerable to abuse. Police frequently misuse legal terms like "preventive detention" or "questioning" to keep people longer than the law allows. The difference between the law on paper and the law in action is the first and most important reason for custodial violence. It makes the "closed door" a barrier to justice. (NCRB, 2022).

3. A Statistical Overview of Mapping the Patterns

Underreporting is a big problem, but data from government agencies, NGOs like Amnesty International and Human Rights Watch, and prison reform groups show worrying trends.

3.1. Differences in Demographics

Statistical data consistently demonstrates that custodial violence disproportionately affects marginalized groups. People who are poor, belong to a minority group, or disagree with the government are more likely to be illegally detained and tortured. A report from the World Organization Against Torture (OMCT) in 2022 said that in many countries, members of minority groups are up to three times more likely to say they were abused while in custody. This indicates that these abuses are not arbitrary; rather, they frequently serve as instruments of social control and discrimination.

3.2. Hotspots for Geography and Jurisdiction

Analysis frequently uncovers particular police districts, states, or provinces characterized by persistently elevated rates of custodial fatalities and allegations of torture. These "hotspots" are often places where there are ongoing insurgencies, high crime rates, or deeply rooted corrupt practices. For example, data from India's National Crime Records Bureau (NCRB) shows that custodial deaths happen more often in a small number of states. Specifically, five states account for nearly 60% of all reported custodial deaths, with rates in these jurisdictions being approximately 4-5 times higher than the national average. This suggests that there are cultures of violence and weaker institutional oversight in those states.

3.3. Trends in Abuse Methods

The patterns of abuse are very telling. Even though physical torture (beating, whipping, electric shocks) is still common, there is a growing trend in the use of "clean" or psychological torture. Sensory deprivation, sleep disruption, forced stress positions, and sexual humiliation are becoming more common because they leave less physical evidence and are harder to prove. According to the International Rehabilitation Council for Torture Victims (IRCT), there has been an increase in these kinds of non-physical methods, which makes it harder to document and get legal help. (Carver. R & Handley. L, 2016)

3.4. The Terrifying Numbers of Deaths in Custody

The number of deaths in custody is the clearest sign of a system that isn't working. Official numbers, which are often low, only tell part of the story. The Guardian's "The Counted" project, for example, says that 1,146 people died in police custody in the US in 2015, which is a lot more than what official numbers said at the time. The main causes—suicide, intoxication, and injury—often hide problems like neglect, not getting medical care, and using too much force. A

significant pattern is that a large number of these deaths happen within the first 24 to 48 hours of detention, which is when access to the outside world is most limited.

4. The Anatomy of Abuse From Torture to Illegal Detention

The path from illegal detention to serious abuse is often the same. It starts with the first, often random, arrest. The person becomes a victim of "enforced disappearance" from the legal system if they don't have a formal arrest record. In the detention room, there is no way to get out. Without a lawyer, the detainee is subjected to interrogation methods that quickly turn into coercion and torture. The stated goal is often to get a confession or information, which is basically using torture as a quick way to get to the bottom of things. People who think "the ends justify the means" believe that breaking the detainee is for a greater good, like solving a high-profile crime or getting information.

Case studies from organizations like the Human Rights Committee show that people who are abused often use the same words: repeated beatings on the soles of the feet (falanga), waterboarding, simulated drowning, and sexual violence. The environment is meant to make people feel scared and helpless. The physical space, which is usually a soundproof room, a dark cellar, or an isolated cell, is a big part of this kind of psychological warfare. This anatomy shows that the process is not random, but a planned use of power to break down someone's resistance. (IRCT, 2021).

5. The Structure of Impunity

For patterns of abuse to endure so persistently, they necessitate a robust framework—an architecture of impunity. There are a few main pillars that make up this architecture:

- **Not being held accountable:** The biggest reason for ongoing violence in custody is that the people who do it almost never face any consequences. It is very rare for police officers to be found guilty of torture or murder while they are holding someone. Data from multiple jurisdictions reveals that conviction rates for custodial violence cases remain below 2%, with prosecution being initiated in fewer than 5% of reported incidents. There is often a culture of silence and brotherhood in internal police investigations, which leads to reports that are not accurate.
- **Biased Investigations:** When cases are looked into, they are often done by the same department or a group that works closely with it, which is a conflict of interest in and of itself. The standard of proof is often too high, which puts the burden on the victim, who may be traumatized, scared, or even re-arrested.
- **Weak Oversight Mechanisms:** State Human Rights Commissions and Police Complaints Authorities often don't have enough power, money, or independence to do their jobs well. Governments often ignore their suggestions, making them useless.
- **Political Protection:** In many cases, officers who are accused of violating human rights are protected by political patrons for whom they have done "dirty work." This political patronage makes it very hard to make real changes and makes sure that abusive officers are often promoted instead of punished.
- **Justice Delayed:** The court system is very slow and expensive for victims. Cases can take years to resolve, and during that time, witnesses may become hostile, evidence may be lost, and the victim's family may run out of money and will to fight. (Amnesty International, 2023).

This system of connections keeps the "closed door" shut, which protects the abusers and keeps justice from being served to the victims.

6. Suggestions and Recommendations

To stop illegal detention, torture, and deaths in custody, we need more than small changes. We need to change the way police work, the way people are held accountable, and the way the law works. The following suggestions give a multi-level plan for reform based on the patterns and gaps in institutions that were found in the previous sections:

6.1. Make legal protections and following the rules stronger

To stop undocumented custody, tamper-proof digital systems should be used to make sure that arrests, reasons, and times of detention are always recorded. All police stations and detention centres must have video-recorded interrogations to stop torture and give courts proof that can be checked. There should be automatic judicial review of every detention that lasts more than 24 hours, and there should be harsh punishments for not bringing detainees to court.

6.2. Make sure that lawyers can get to you right away and without any problems

Set up legal aid panels that are always available in each district and connected to police stations. This way, people who are arrested can meet with a lawyer within the first hour of being in custody. When someone is arrested, they should be given information about their legal rights in more than one language. This should include their right to remain silent, their right to an attorney, and their right to a medical exam. Set up legal aid kiosks or virtual conferencing

systems in jails, especially in rural and underserved areas. (OMCT, 2022).

6.3. Make strong, independent ways to keep an eye on things

Not just the power to make recommendations, but also the power to investigate and prosecute, should be given to fully independent Police Complaints Authorities. Set up independent custodial monitoring boards made up of retired judges, medical professionals, and members of civil society to do inspections without notice. Make sure that all deaths in custody lead to mandatory judicial inquests led by an outside agency instead of an internal police investigation.

6.4. Change how investigations are done and use confession-based methods less often

Change the way police investigate from "confession extraction" to "evidence-based policing," with a focus on forensics, surveillance, and scientific investigation. Make it mandatory to learn non-coercive interrogation methods that follow the UNCAT principles, such as the PEACE model and rapport-based questioning. Don't base police performance reviews on confession rates; instead, base them on legal investigative outcomes.

6.5. Use technology and data reporting to make things clearer

Set up a national digital custody management system that keeps track of detainees' entry, exit, health, and movement. Make it mandatory for police stations and detention centres to post public information about arrests, detentions, injuries, and deaths every month, broken down by age, gender, caste/minority status, and location. Install CCTV cameras that record all the time in all areas where people are being held, and store the footage on a secure, external server that oversight bodies can access.

6.6. Medical Protections and Forensic Autonomy

Require that doctors not connected to the police do independent medical exams at the time of arrest, during detention, and when the person is released. Teach medical staff in Istanbul how to fill out Istanbul Protocol forms so that injuries related to torture are recorded accurately. Set up a safe way for detainees to report injuries or abuse to the police or doctors without anyone else knowing.

6.7. Take care of socio-demographic weaknesses

Put in place extra protections for minorities, migrants, people who are economically vulnerable, women, young people, and political dissidents—groups that are statistically more likely to be at risk. Put interpreters, paralegals, and social workers in police stations in areas with a lot of crime. Do targeted audits of geographical hotspots found through statistical patterns (as explained in Section 3).

6.8. Ending impunity, accountability, and reforming discipline

Take away the legal requirements that officials accused of torture must get permission from the government before they can be prosecuted. This would make them directly responsible for their actions. Set a time limit for disciplinary action against officers who break procedural rules, such as not writing down an arrest or not letting a lawyer see someone. (OMCT, 2022). Under the doctrine of command responsibility, make supervisory officers responsible for the wrongdoings of their subordinates.

6.9. Political and Institutional Dedication

Governments must publicly reaffirm their zero tolerance for torture and back it up with plans that can be measured. Encourage political leaders to stop patronage networks that protect abusive officers and instead support officers who have a history of using rights-based

policing. If you haven't already, ratify and implement UNCAT. This includes making a full anti-torture law at home with clear definitions, penalties, and ways to get money back.

7. Conclusion Pushing the Door Open

The statistical patterns of illegal detention and custodial abuse present a clear and troubling narrative: these are not isolated incidents but systemic manifestations of a defective and unaccountable system. The fact that marginalized groups are always overrepresented, that incidents happen in the same places, and that certain abuse tactics are used all the time all point to deep-seated problems in the system.

To open this door and let in the light of accountability, we need a multi-pronged reform agenda right away:

Legal and Judicial Reforms: Strict enforcement of current laws and procedures, such as requiring video recordings of interrogations, quick access to lawyers, and faster trials in cases of custodial violence. The state must now prove that the injuries happened while the person was in custody.

Independent Oversight: Setting up strong, fully independent, and well-funded police complaints authorities that can look into complaints, bring charges, and suggest disciplinary action.

Training and Culture Change: Going beyond just teaching police officers how to do their jobs and instilling a human rights-based way of thinking in them. This means putting the rule of law ahead of conviction rates based on confessions.

Political Will: In the end, getting rid of the system of impunity will require a long-term commitment from the highest levels of government to hold state actors accountable, no matter what is politically convenient. (Amnesty International, 2023)

The door that is closed behind these abuses is a sign that democracy is not working. Not only is it a legal requirement to open it, but it is also a moral one. It is necessary to restore public trust and uphold the basic principle that government power must always be used with care and respect for human dignity.

References

1. Singh, U. (2020). *Policing and Human Rights: The Law and Practice in India*. Eastern Book Company.
2. Carver, R., & Handley, L. (2016). *Does Torture Prevention Work?* Liverpool University Press.
3. National Crime Records Bureau (NCRB). (2022). *Accidental Deaths and Suicides in India*. Ministry of Home Affairs, Government of India.
4. International Rehabilitation Council for Torture Victims (IRCT). (2021). *Global Report on Torture Prevention and Rehabilitation*. Copenhagen: IRCT. https://irct.org/wp-content/uploads/2024/05/IRCT-Annual-Report-2021-signed.pdf
5. Amnesty International. (2023). *Annual Report: The State of the World's Human Rights*. London: Amnesty International Publications. https://www.amnesty.org/en/documents/pol10/5670/2023/en/.
6. World Organization Against Torture (OMCT). (2022). *Violence in Custody: A Disproportionate Impact on Marginalised Communities*. Brussels: OMCT. https://www.omct.org/en.

Algorithmic Accountability and Constitutional Safeguards: The New Challenges of Fourth Generation Rights

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Abstract

The digital revolution has transformed the law into a new era, extending human rights to algorithmic governance. With the rise of artificial intelligence (AI) and automated decision-making systems, which impact both public and private sectors, constitutional safeguards are challenged in a way never seen before. This article delves into the issue of algorithmic accountability through the lens of fourth-generation human rights, emphasizing how digital autonomy, data integrity, and informational self-determination are becoming the new rights derived from the fundamental rights of dignity and liberty.

The paper posits that although constitutional protections like equality and due process are still at the core, they have to be reinterpreted through the lens of digital constitutionalism in order to deal with issues of opacity, bias, and discrimination in algorithmic systems. By analyzing various legal frameworks such as the EU AI Act and the Indian constitutional law under Articles 14, 19, and 21, the article illustrates how novel legal paradigms are turning to address the issues of transparency, fairness, and proportionality in machine governance.

The study ends with the assertion that algorithmic accountability has to be compatible with human rights as one of the fundamental principles of constitutional democracy in the digital era.

Keywords*: algorithmic governance, digital human rights, constitutional law, fourth generation rights, artificial intelligence*

Introduction

The digital age has changed in a major way the traditional ideas of state power, liberty, and accountability. One can say that the role of algorithms is everywhere, since they influence the access to credit, the prospects of getting a job, decisions made by the court, and even the degree of political visibility of a person or a group of people. The "human" in human rights is becoming the digital subject, which leads to the raising of serious normative concerns regarding the issues of autonomy, privacy, and equality (McGregor, Murray, & Ng, 2019). Hence, the constitutional framework should be such that it not only guards against the new kinds of vulnerabilities but also these new forms of vulnerabilities that arise within algorithmic ecosystems (Tintor, 2024).

Academics have named these new rights as the rights of the fourth generation and have underlined the concepts of digital self-determination, informational sovereignty, and protection from algorithmic harm as the key elements (Risse, 2021). In contrast to the three previous generations, the first one consisting of civil and political rights, and the second one of social rights these new rights deal with the surveillance of the algorithmic, profiling by data, and autonomous decision-making, as the main sources of the existential challenges.

The Rise of Algorithmic Governance

Algorithmic systems use complex, data-driven logic that is often hard for humans to understand. As a result, in governance contexts,

such as predictive policing or judicial analytics, these systems generate results that might look objective but actually still carry the bias that is hidden in the training data (Daksh, 2022). This kind of opacity goes against procedural due process, which is a part of Article 21 of the Indian Constitution and Article 6 of the European Convention of Human Rights, both of which ensure fairness and provide reasons for decision-making (NLIU Law Review, 2025).

Moreover, algorithmic discrimination which can be seen in errors of facial recognition and biased credit scoring, is a violation of the law as per Article 14's provision of equality before the law (Virtuosity Legal, 2025). If there is no transparency in design, algorithms may deepen the current inequalities and pretend to be technologically neutral.

Fourth-Generation Human Rights and Digital Personhood

The fourth generation of human rights embeds the notion of digital personhood where identity is not limited to the physical but can exist in the virtual worlds. As per the digital transcendence theory, an individual's personal data and online presence are the extensions of the same individual, hence they should be given the status of legal rights of the one (Humanrights.cn, 2024).

This theoretical change has the effect of re-defining the laws of the constitution. Authorities are required not only to avoid the commission of rights violations on their part but also to guarantee that the algorithmic systems respect the informational integrity and that they do not permit the unwarranted manipulation of the digital identities (Risse, 2021). Article 17 of the International Covenant on Civil and Political Rights (ICCPR) as well as the Puttaswamy verdict (2017) recognize privacy as one of the essential factors of human dignity which is now extended to profiling and data collection by algorithms.

Constitutional Safeguards in the Age of Algorithms

Constitutional law acts as the first line of defence of freedoms that have been violated by arbitrary power, be it human or algorithmic. In India, constitutional remedies available under Articles 32 and 226 grant the judiciary the power to provide redress against violations arising from technologically opaque systems (Virtuosity Legal, 2025). The courts have been turning to the digital aspects of fundamental rights in their oversight functions. In K.S. Puttaswamy v. Union of India (2017) case, the Supreme Court included informational self-determination as one of the components of the right to privacy. According to the Court, the manner in which algorithmic tools are engineered and are to be used should be compatible with the principles of transparency, accountability, and proportionality as they constitute a constitutional pledge of fairness (Daksh, 2022).

The European Union AI Act (2024) is an example of such a regulatory framework that sets forth requirements for systems that are high-risk, such as the need for explanation, human supervision, and impact evaluation (Cavalcante, 2024). These legislative changes constitute a form of digital constitutionalism that essentially positions constitutional guarantees of due process and equality at the core of algorithmic systems.

Algorithmic Accountability and Human Rights Frameworks

Algorithmic accountability requires such mechanisms which can show the way the decision-making has been done from design till deployment. McGregor et al. (2019) see international human rights law as a most appropriate framework to understand and evaluate the effects of algorithms in various contexts. Their model corelates the four pillars which are transparency, explainability, participation, and redress.

Algorithmic Impact Assessments (AIAs) like the FRAIA model in the Netherlands, are making human rights evaluation a part of algorithmic policy decisions so that any potential privacy, autonomy, or equality rights infringements can be detected and prevented at the earliest stages of implementation (Open Gov Partnership, 2022).These assessments, when looked at through the lens of the constitution, are similar to judicial proportionality review the weighing of the state's interest in efficiency against the individual's rights. Hence, constitutional safeguards in the form of law should require algorithmic transparency as a prerequisite to lawfulness so as to stop a "black box" type of justice from being dismantled (NLIU Law Review, 2025).

Judicial Perspectives

Judicial attitudes to algorithmic accountabilities reveal that courts are acknowledging the fact that protecting rights granted by the Constitution is very complicated and also that it is the most important thing in an era, which is dominated by automated decision-making. One of such examples is the Supreme Court of India in K.S. Puttaswamy v. Union of India (2017) that went even further to explicitly declare that the right to privacy includes informational privacy and that the State using algorithmic systems is bound to observe the rules of fairness, transparency, and accountability.

By associating with the above, courts have pinpointed the peril of algorithmic opacity, i.e. the "black box" character of AI decision-making that is impeding the capability of individuals to challenge the results that are not favorable to them and which is weakening due process rights under Article 21 of the Constitution (Puttaswamy v. Union of India, 2017).

Judicial statements emphasize the importance of the "right to explanation" that is to guarantee that the people have the capacity to understand in a significant way and to object to the decisions that

are the product of AI tools, especially in a hard-stakes context like a criminal justice, welfare, or employment decisions.

Such judicial opinions closely examine the issue of algorithmic bias and discrimination by reasserting the equality rights under Article 14 of the Indian Constitution as well as similar doctrines all over the world (Virtuosity Legal, 2025). Together, the judicial views require that algorithmic governance should have embedded in it values granted by the Constitution.

Legal and Ethical Challenges in Algorithmic Governance

India has seen the use of algorithmic decision-making tools in critical public sectors such as welfare distribution, policing, and judicial administration, which has led to the exposure of numerous legal loopholes. The most significant issue among them is opacity: many AI systems are "black boxes" in which even law enforcement and regulatory bodies cannot understand the logic and criteria of the decisions. Such a lack of transparency impedes the enforcement of procedural justice and due process, as it infringes upon the constitutional right guaranteed under Article 21 of the Indian Constitution to be heard fairly and receive decisions with reasons (Khan, 2025). The rule of law gets weakened when it comes to administrative governance in cases where people are not given the chance to fight the correctness of automated decisions, which limits their rights to such an extent that law becomes inapplicable in administration.

Moreover, the problem of systemic algorithmic bias aggravates the issue. Artificial intelligence systems which are trained using datasets representative of societal inequalities, are very likely to discriminate against the marginalized groups that exist in society because of the caste or socioeconomic status, the language or religion they speak or practice, or their gender. To illustrate the

point, predictive law enforcement software that is requested to help to detect where the crime rates are higher might excessively target districts where police had already been monitoring closely, and therefore, those areas will be subjected further to perpetual surveillance and deprivation cycles, rather than regaining justice (IJIRMPS, 2025). In the same way, welfare algorithms possessing incorrect or one-sided data have produced denial cases of food subsidies and other basic services, thus directly affecting not only the dignity but the very survival of the most vulnerable groups (Shruthika, 2025). The resulting discriminatory effects breach the constitutional provisions guaranteeing the right to equality under Articles 14 and 15, yet it is still a formidable undertaking to identify such violations because there is a lack of transparency and an absence of continuous auditing mechanisms.

In ethical terms, entrusting AI systems that are non-transparent to make critical governance decisions is a cause for deep concern over human dignity and autonomy issues. The removal of human judgment characterized by empathy and the ability to grasp the context due to the replacement with automated algorithms deprives citizens of the status of being human since they are reduced to the mere figures integrated within data sets which are then assessed by means of emotionless metrics. This kind of mechanistic governance works against the social contract and reduces the democratic legitimacy of governance since people tend to withdraw trust from the institutions they consider to be arbitrary or unaccountable (Sharma, 2024). One particular point aggravating the matter is that there are no clearly laid out ethical rules and no accountability structures in place which would, among other things, be legislative provisions specific to AI in public administration. The laws currently enforced in India such as the IT Act of 2000 and the Digital Personal Data Protection Act of 2023 mainly outline the issue of data privacy in a very general manner and do not consider the intricacies involved by algorithmic governance, and therefore,

they leave plenty of room for the occurrence of AI-induced harms without manifestations of adequate protection (Lawful Legal, 2025).

Besides that, algorithmic governance does not only limit or curtail individuals' rights but affects collective societal values like openness, participation, and inclusiveness. The absence of binding regulations that would require disclosing AI decision-making processes restrains the questioning of those processes by the public and participation in it by the society, thus, making it a lot more difficult for governmental power to be held in check and for there to be a balance of power over the citizens. Government organizations have to face the situation of figuring out how to be in harmony with the algorithms that are deterministic in their nature on one hand and the constitutional requirement that administrative actions should remain reasonable, non-arbitrary, and open for human scrutiny on the other (Vishwakarma University Law Journal, 2025). The gist of Indian administrative law has always been that public authorities are given discretionary power to look at things contextually, which is a habit that rigid, automated systems can interrupt if proper legal safeguards are not in place.

Recommendations

Addressing constitutional issues arising from AI decision-making systems effectively requires detailed and proactive reforms not only at the legislative, judicial, but also institutional levels. One of the strategies governments should implement is the enactment of laws requiring thorough Algorithmic Impact Assessments (AIAs) for AI systems used in both public and private sectors, especially those that may affect fundamental rights. These AIAs ought to identify risks concerning privacy, and non-discrimination, and procedural fairness and must be disclosed publicly to guarantee transparency and encourage democratic oversight.

Another essential aspect to secure is a legally enforced "right to explanation." An affected individual should be provided with sufficient, easy-to-understand information that clarifies the reasoning, criteria, and data that led to the AI decision impacting his/her rights. Besides, AI Rights Commissions or Data Protection Authorities, as independent regulatory bodies with technical and legal knowledge, should be granted the power to perform follow-up inspections, certifications, and take up enforcement actions against algorithmic systems that betray constitutional norms.

Moreover, apart from recognizing the specialized judicial remedies tailored to AI harms, we should also consider institutionalizing judicial training programs to keep courts technologically and constitutionally literate while dealing with AI governance challenges. Good-faith developers and public agencies likewise need to implement inclusive design practices that eliminate bias and adhere to affirmative action provisions, thus ensuring that the less privileged groups are not disproportionately affected. Furthermore, courts are advised to take up a doctrine of algorithmic proportionality that weighs the advantages of automation against constitutional requirements of fairness, transparency, and dignity. These recommendations form a comprehensive framework for safeguarding human rights in the face of rapid AI technological advances, thus ensuring that algorithmic accountability is deeply rooted in constitutional law.

Conclusion

The conjoining of constitutional law with algorithmic governance changes the ethical framework of democracies. In case algorithms control the most aspects of life, it is required that their accountability be the basis of the constitution. Hence, new human rights recognize the right to digital integrity as the protection of individuals not only as data subjects but also as autonomous digital citizens. With this

new setting, The Constitution becomes a system not of limiting power, but of assigning it. We are called to bring transparency, explanation, and the possibility of participation in controlling the technological 'sovereignty' into the institutions that will be our safeguard of human rights.

References

1. Cambridge University Press. (2021). *Constitutional law in the algorithmic society* (Chapter1). https://www.cambridge.org/core/books/constitutional-challenges-in-the-algorithmic-society/constitutional-law-in-the-algorithmic-society/969E0889109C8092AD0AB57019E507E3
2. Daksh. (2022). *Algorithmic accountability in the judiciary*. https://www.dakshindia.org/wp-content/uploads/2022/02/DAKSH-Algorithmic-Accountability-in-the-Judiciary.pdf
3. IJIRMPS. (2025). Algorithmic bias and discrimination: Legal accountability and constitutional remedies. *International Journal of Innovative Research in Multidisciplinary Physical Sciences*. https://www.ijirmps.org/papers/2025/4/232659.pdf
4. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
5. Lawful Legal. (2025). *Algorithmic governance and the rule of law: Legal challenges in AI-driven decision-making*. https://lawfullegal.in/algorithmic-governance-and-the-rule-of-law-legal-challenges-in-ai-driven-decision-making/
6. McGregor, L., Murray, D., & Ng, V. (2019). International human rights law as a framework for algorithmic accountability. University of Essex Repository. https://repository.essex.ac.uk/24505/
7. NLIU Law Review. (2025, January 26). Invisible hand of code: Reimagining constitutionalism in the age of algorithms. https://nliulawreview.nliu.ac.in/blog/invisible-hand-of-code-reimagining-constitutionalism-in-the-age-of-algorithms/

8. Open Government Partnership. (2022). Algorithms and human rights: Understanding their impacts. https://www.opengovpartnership.org/stories/algorithms-and-human-rights-understanding-their-impacts/

9. Shruthika, S. (2025). Algorithmic governance and the future of administrative discretion in India: A legal analysis of automation, accountability, and natural justice. Vishwakarma University Law Journal, 5(1), 9-18.

10. Sharma, M. S. (2024). Ethical dilemmas and administrative reforms in algorithmic governance. International Journal of Ethics and Law Studies.

11. SSRN. (2025, July 14). Algorithmic ethics for digital justice: Towards a constitutional framework. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5353879

12. Virtuosity Legal. (2025, October 13). Algorithmic discrimination in India's legal system: Constitutional challenges and policy reform. https://virtuositylegal.com/algorithmic-discrimination-in-indias-legal-system-constitutional-challenges-and-policy-reform/

13. Vishwakarma University Law Journal. (2025). Algorithmic governance and the future of administrative discretion in India: A legal analysis of automation, accountability, and natural justice, 5(1), 9-18.

14. MDI. (2022). Compliance for artificial intelligence in business: Legal and ethical perspective.

15. United Nations Human Rights Council. (2021). Report on the promotion, protection and enjoyment of human rights on the internet. https://undocs.org/A/HRC/38/39

16. Wachter, S., Mittelstadt, B., & Floridi, L. (2017). Why a right to explanation of algorithmic decisions does not exist in the General Data Protection Regulation. International Data Privacy Law, 7(2), 76-99. https://doi.org/10.1093/idpl/ipx005

17. World Economic Forum. (2020). AI governance principles for responsible artificial intelligence. https://www.weforum.org/reports/ai-governance-principles/

18. Zarsky, T. (2016). The trouble with algorithmic decisions: An analytic road map to examine efficiency and fairness in automated and opaque decision making. Science, Technology, & Human Values, 41(1), 118-132. https://doi.org/10.1177/0162243915605575

19. European Commission. (2021). Proposal for a regulation laying down harmonized rules on artificial intelligence (Artificial Intelligence Act). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206

20. Internet Freedom Foundation v. Union of India, WP (C) No. 8077/2019.

21. Loomis v. Wisconsin, 881 N.W.2d 749 (Wis. 2016).

22. Arghya Sengupta & Shruti Vidyasagar. (2022). A constitutional framework for algorithmic decision-making in India. Vidhi Centre for Legal Policy.

23. Risse, M. (2021). The fourth generation of human rights: Epistemic rights in digital lifeworlds. Harvard Kennedy School.

24. IJELS. (2025). Governance, AI, and ethical dilemmas: A public administration perspective.

25. Vishwakarma University Law Journal. (2025). Algorithmic governance and the future of administrative discretion in India.

26. Virtuosity Legal. (2025). Algorithmic bias and the quest for equal justice in India.

27. Open Scholarship Washington University. (2017). Algorithmic governance and non-discrimination rights in the digital age.

28. Dignity and Digital Rights Foundation. (2024). Digital personhood as a human right: Emerging constitutional jurisprudence.

29. Indian Personal Data Protection Act, 2023, Ministry of Law and Justice, Government of India.

30. NITI Aayog. (2023). National strategy for artificial intelligence. Government of India.

Ensuring Safety and Dignity: Constitutional Guarantees and a Sexual Harassment-Free Workplace

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Abstract

Workplace Sexual harassment undermines the fundamental rights to equality, dignity, and personal liberty guaranteed by the Constitution. The State and employers have a constitutional duty to ensure a secure and harassment-free workplace, which goes beyond organizational policy. With a focus on the rights guaranteed by the Constitution, this chapter explores the constitutional underpinnings that protect people against sexual harassment in the workplace. It examines how legal protections have developed as a result of court decisions, particularly significant rulings, and the ensuing legislative framework designed to stop and deal with sexual harassment in the workplace. In the end, this Chapter makes the case that encouraging inclusive, egalitarian, and respectful work environments and achieving constitutional goals depend on a workplace which is free from sexual harassment.

Keywords: *Constitution, dignity, fundamental rights, harassment, workplace.*

Introduction

Sexual Harassment is an offence that usually happens against women in social places such as workplaces, educational institutions, public places like parks, beaches, railway stations, bus stands, subways, and even in public transports. The term "Sexual Harassment" includes physical contact, requesting a woman for sexual favours, sexually colored remarks, showing pornography, and any other unwanted physical, verbal, and non-verbal contact of a sexual nature. To prevent and safeguard women from sexual harassment, India has brought many legislations and statutes in guidance of many international conventions.

In the pre-constitutional era, India had the penal provisions for sexual harassment only under the Indian Penal Code, 1860 (IPC) (Now repealed by Bharathiya Nyaya Sanhita, 2023) like defamation, criminal intimidation, obscenity, etc. But the provision still gives a simple punishment for the heinous offences such as rape, publishing of obscenity, publishing of sexually explicit content, and violation of privacy in the pre constitutional era. But no special legislation was enacted during the early independence time. After so many years special legislation was enacted by the landmark precedents of the Indian Judiciary. The *POSH Act (Protection of Women from Sexual Harassment at Workplace Act, 2013), the Indecent Representation of Women (Protection) Act, 1987, the Information Technology Act, 2000 and the Criminal Law Amendment Act, 2013* were brought by the Indian Government to protect the privacy of women and to safeguard their dignity in India.

Constitutional Framework

The constitution of India is considered as the mother document and supreme law of the nation. There is one special thing about this constitution is always the power of supremacy will always prevail over the rest of the statutes. This constitution of India gives protection

to women from crimes against them. Especially, this provides the right to women to protect them from the harmful society. Constitution of India provides the very good justice system to the citizens of India. Indian judiciary system has given very fair judgments in very crucial cases such as Nirbhaya Rape case (*Mukesh v State (NCT of Delhi)*, 2017), Vishaka Case (*Vishaka v State of Rajasthan*, 1997), Disha Encounter case (*G.S. Mani v Union of India*, 2022) etc. Equality and Liberty is also a key objective of Indian Constitution which gives utmost equality to all its citizens without considering gender. In India Women are doing heavy works as like as Men in the country.

Preamble Works for the Safety of Women from Sexual Harassment

Sexual harassment is a form of gender-based discrimination that violates the principle of equality. Victims of this menace often face unequal treatment and are denied equal opportunities in education, employment, and other areas of life. The principle of justice requires that victims of sexual harassment receive fair treatment, redress, and access to justice. Even though the preamble of the Constitution not directly addresses this issue, it does enshrine the principles of equality and dignity.

Relationship Between Fundamental Rights and Sexual Harassment

Sexual harassment is a violation of fundamental rights as it infringes upon an individual's right to dignity, equality, and freedom from discrimination. Sexual harassment is a pervasive problem in India that affects individuals across all age groups and professions. Victims often suffer from physical, emotional, and psychological trauma, which can significantly impact their lives. The Constitution of India recognizes the importance of protecting the fundamental

rights of all individuals, and these fundamental rights provide important protections to victims of this harassment.

- **Article 14:** Sexual harassment is a type of discrimination based on gender that makes women feel intimidated and unpleasant, which can prevent them from enjoying their right to equal participation in society. (The Constitution of India, 1950)
- **Article 15:** Women and girls are particularly vulnerable to sexual harassment due to gender-based power imbalances and stereotypes. Sexual harassment can also intersect with other forms of discrimination, such as caste-based or religious-based discrimination, leading to further marginalization and discrimination. (The Constitution of India, 1950)
- **Article 19**: Sexual harassment undermines this right by creating a hostile environment that discourages individuals from expressing themselves freely. Article 19(1)(a) guarantees the right to freedom of speech and expression. Victims of sexual harassment may be silenced due to fear, shame, or trauma, which violates their right to freedom to express their grievance. (The Constitution of India, 1950)
- **Article 21**: Sexual harassment creates a hostile and unsafe environment that infringes upon an individual's right to life and personal liberty. This right includes the right to live with dignity and the right to live and work in a safe environment free from sexual harassment, and the right to seek legal remedies in the event of such harassment. This Article also includes the right to privacy, which includes the right to be free from unwarranted intrusions into one's personal life. Sexual harassment violates this right as it often involves unwanted and intrusive behavior that invades an individual's personal space. Sexual harassment can lead to physical, emotional and psychological harm, which can affect the individual's ability to lead a life with dignity. (The Constitution of India, 1950)

- **Article 21A**: This right includes access to a safe and conducive learning environment, free from any kind of discrimination or harassment. Sexual harassment in educational institutions is a violation of this right and can have a significant impact on students' academic performance and well-being.(The Constitution of India, 1950)

In 2013, the higher educational institutions are instructed by the University Grants Commission (UGC) through the guidelines to prevent and address sexual harassment on campus (Ministry of Human resource Development, 2016). These guidelines mandated educational institutions to constitute Internal Complaints Committees (ICCs) to receive and redress the complaints of sexual harassment. The guidelines also emphasized the need to increase the awareness about sexual harassment and to provide support to victims. As per the Apex Court verdict of 1997 (*Vishaka and others vs. State of Rajasthan*, 1997), sexual harassment violated the right to gender equality and work with dignity. The guidelines were subsequently incorporated into the *POSH Act, 2013*, which applies to all workplaces, including educational institutions.

In another case, the Delhi High Court in the case of *Gaurav Jain vs. Union of India and others* (*Gaurav Jain v Union of India*, 1990), held that educational institutions have a duty to curtail and redress sexual harassment on campus. The Court insisted the need for creating a safe and favorable learning environment for students and directed educational institutions to comply with the guidelines issued by the UGC. As per the rights guaranteed under Article 32 and 226 of the Constitution, which provides the right to seek legal remedies against violations of fundamental rights. Victims of sexual harassment have the right to seek legal remedies and protection through the writs of habeas corpus, mandamus, and certiorari. This provides an important avenue for victims to seek justice and hold perpetrators accountable.

Directive Principles of State Policy (DPSP) and Sexual Harassment

The DPSP are a form of guidelines that the Indian state is expected to follow while formulating laws and policies. The DPSPs are not legally enforceable, but they provide an important framework for guiding government action towards creating a just and equitable society. Several DPSPs are relevant to addressing sexual harassment in India, including the principles of social justice, gender equality, and the promotion of human rights.

- **Article 38:** The state shall make every effort to support the people's welfare by ensuring social justice and equality. Sexual harassment is a kind of social injustice that disproportionately affects women and marginalized communities. The state has an obligation to address this issue and promote social justice through measures such as awareness campaigns, legal frameworks, and support services for victims. (The Constitution of India, 1950)
- **Article 39:** The state shall instruct its policies towards securing that men and women have equal rights and opportunities. The state has a responsibility to promote gender equality and address sexual harassment through measures such as strict enforcement of laws, awareness campaigns, and support services for victims. (The Constitution of India, 1950)
- **Article 51:** The state shall endeavor to enhance international peace and security, and respect for international conventions and other obligations. Sexual harassment is a infringement of human rights, and the state has an obligation to address this issue through measures such as ratifying international conventions on the rights of women and adopting policies and laws that promote gender equality and protect victims' rights. (The Constitution of India, 1950)

The state has taken several steps to safeguard women from sexual harassment in India, including the enactment of laws such as the *POSH Act,* 2013. This law provides for a safe and protected working environment for women, and it requires employers to take appropriate action to avert sexual harassment and provide redressal to victims.

Vishaka Guidelines and its Impact

The Vishaka Guidelines hold immense context and significance in the context of workplace safety and gender equality in India. Here's a detailed explanation:

Pre Vishaka-Scenario

Prior to the Vishaka case, there was a lack of specific legislation addressing workplace sexual harassment. This legal void left victims without adequate protection and perpetrators largely unpunished. Instances of sexual harassment were often dismissed or ignored, leading to a hostile work environment and a culture of silence around the issue. Here are some key aspects of the pre-Vishaka scenario:

Lack of Legal Remedy

Workplace Sexual harassment was not explicitly recognized as a legal offense in India before the Vishaka case. The absence of a dedicated law left victims without a clear legal remedy and created uncertainty regarding their rights and avenues for seeking justice.

Ineffective Redressal Mechanisms

Complaint mechanisms within workplaces were often inadequate, unresponsive, or non-existent, making it difficult for victims to report incidents of harassment. Lack of guidelines and procedures for addressing complaints resulted in a culture of impunity, as perpetrators faced little or no consequences for their actions.

Fear of Retaliation and Stigma

Victims faced significant barriers in reporting sexual harassment due to fear of retribution, blaming of victims, and potential damage to their reputation or career prospects. Social stigma surrounding sexual harassment further deterred victims from coming forward, maintaining a culture of silence and permitting the offenders to operate freely.

Overall, the pre-Vishaka scenario highlighted the urgent necessity for legal protection, awareness, and institutional mechanisms to combat workplace sexual harassment. The absence of a comprehensive legal framework created significant challenges for victims, perpetuated gender inequality, and hindered the establishment of safe and respectful work environments.

Prior to the Vishaka case, several important cases in India shed light on issues related to gender equality, workplace safety, and sexual harassment. Here are a few significant cases:

1. *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (*Rupan Deol Bajaj v Kanwar Pal Singh Gill*, 1995): This case involved Rupan Deol Bajaj, an Indian Administrative Service (IAS) officer, who accused Kanwar Pal Singh Gill, a senior police officer, of sexually harassing her during a social event. The case highlighted the challenges faced by victims of sexual harassment, especially in high-ranking positions, and brought attention to the need for legal protection and redressal mechanisms.
2. *Medha Kotwal Lele v. Union of India* (*Medha Kotwal Lele v Union of India*, 2013): This case involved a female naval officer, Medha Kotwal Lele, who challenged the discriminatory practices and policies of the Indian Navy that restricted the career advancement of women. The case highlighted gender-based discrimination and the need for equal opportunities and representation for women in the armed forces.

3. *State of Maharashtra v. Madhukar Narayan Mardikar* (*State of Maharashtra v Madhukar Narayan Mardikar*, 1991): In this instance, the Bombay High Court acknowledged that sexual harassment violates a woman's fundamental rights under Article. The ruling established a precedent for future cases by recognizing the necessity of legal protection against sexual harassment.

These cases, among others, helped create awareness and set the stage for the Vishaka case. They played a crucial role in highlighting the challenges faced by victims of sexual harassment, advocating for gender equality, and paving the way for the formulation of guidelines and legislation to address these issues effectively.

Background

The *Vishaka case* (*Vishaka v State of Rajasthan*, 1997) originated from the gang rape of Bhanwari Devi, a saathin (a village-level worker) in Rajasthan, India, in 1992.Bhanwari Devi was sexually assaulted when she tried to prevent a child marriage, but no action was taken against the perpetrators, leading to public outrage and protests. Several women's rights organizations, including Vishaka, filed a petition in the Rajasthan High Court seeking justice for Bhanwari Devi and advocating for methods to tackle sexual harassment at the workplace. The case was later transferred to the Supreme Court and treated as public interest litigation (PIL).

The Supreme Court acknowledged that there was no specific legislation in India at that time to address this issue. The Court acknowledged sexual harassment as a violation of fundamental rights under Articles 14, 19, and 21 of the Indian Constitution. The court mentioned that the absence of legislation resulted in a denial of the right to gender equality and a safe working environment for women. It emphasized the state's responsibility to ensure a secure

workplace and protect women from sexual harassment. The Apex Court issued guidelines, known as the *Vishaka Guidelines*, to prevent and redress sexual harassment at the workplace. These guidelines were based on international conventions and norms, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Key Elements of the Vishaka Guidelines

- ***Definition of Sexual Harassment****:* The guidelines define sexual harassment as any unwelcome sexually determined activities, such as physical touch, advances, demands, or sexually coloured remarks. It includes any other undesirable physical, verbal, or non-verbal conduct of a sexual nature that interferes with the work environment or creates an intimidating, hostile, or offensive atmosphere.
- ***Duty of Employers****:* Employers are obligated to prohibit and redress sexual harassment at the workplace. They are required to build a secure and conducive work environment by adopting and implementing a policy against sexual harassment.
- ***Internal Complaints Committee*** *(ICC):* Employers are directed to establish ICCs in organizations employing 10 or more workers. The ICCs are receiving and inquiring into complaints of this harassment, conducting investigations, and recommending appropriate actions.
- ***Composition of ICC****:* The ICC should consist of a minimum of three members, with at least one being a woman external to the organization and familiar with the issue of sexual harassment. The ICC should also include representatives from within the organization, such as employees or worker unions.
- ***Complaint Redressal Process****:* The guidelines outline the procedure for filing complaints, including the requirement for written complaints and the provision of a time-bound inquiry

process. The ICC is responsible for conducting a fair and impartial inquiry, providing an opportunity for the complainant and the accused to be heard, and maintaining confidentiality.

- ***Confidentiality and Victim Protection****:* The guidelines stress the importance of maintaining confidentiality throughout the complaint process. Measures should be taken to protect the privacy and identity of the complainant, ensuring that victimization or retaliation does not occur.
- ***Awareness and Prevention****:* Employers are encouraged to organise awareness campaigns and sensitization programs on sexual harassment. Preventive measures, such as promoting gender-sensitive policies, creating awareness about the rights and recourse available, and fostering a respectful work environment, are emphasized.
- ***Disciplinary Action****:* The guidelines recommend that disciplinary action be taken against the accused if the allegations of sexual harassment are substantiated. The nature and degree of disciplinary action should be proportionate to the severity of the offense.

The *Vishaka case* and the implementation of the Guidelines paved the way for subsequent legal developments, cultural change, and the promotion of safer and more inclusive work environments. It is important to note that while the Vishaka Guidelines provided immediate measures for addressing sexual harassment, they were later supplemented and expanded upon by the *POSH Act, 2013*, which further strengthened the legal framework for addressing sexual harassment in India. However, there is a growing recognition of the need to expand the scope of these guidelines to include diverse workplaces and extend protection to all genders. Such an expansion would ensure that individuals in informal sectors, marginalized communities, and non-traditional work arrangements have equal access to safeguards against sexual harassment. It would contribute

to creating inclusive and respectful work environments, fostering a culture of gender equality and safety for all.

Conclusion

Zero tolerance to S**exual harassment at workplace** is not just a legal obligation but a critical component of upholding **fundamental rights**. A workplace that respects and protects employees' rights helps to promote a productive, inclusive, and supportive environment, which benefits everyone involved. The Vishaka Guidelines have undoubtedly played a pivotal role in transforming the workplace landscape in India by prioritizing the safety and dignity of women. They have contributed to raising awareness, establishing mechanisms for redressal, and instigating legal reforms. However, there remain challenges in fully implementing and expanding the scope of the guidelines.

Moving forward, it is crucial to build on the foundation laid by Vishaka and continue striving for a safe work environment, ensures gender equality, and embraces diversity and inclusivity. The new legal regime in India pertaining to sexual harassment has witnessed significant developments over the years, aiming to provide a safe and comprehensive environment for all individuals. The *POSH Act* on sexual harassment is considered as a progressive frame, while challenges in implementation persist, ongoing efforts are being made to create a safer and more inclusive society for all individuals.

References

1. Gaurav Jain v. Union of India and others, (2013) Delhi High Court (India).
2. Medha Kotwal Lele v. Union of India, (1997) (India).
3. Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194 (India).

4. State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 SCC 57 (India).
5. Vishaka & Others v. State of Rajasthan, (1997) 6 SCC 241 (India).
6. Criminal Law Amendment Act, 2013 (India).
7. Indecent Representation of Women (Protection) Act, 1987 (India).
8. Indian Penal Code, 1860 (India).
9. Information Technology Act, 2000 (India).
10. Protection of Women from Sexual Harassment at Workplace (POSH) Act, 2013 (India).
11. Ministry of Human resource Development. (2016). University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015. UGC. Retrieved December 30, 2025, from https://www.ugc.gov.in/pdfnews/7203627_UGC_regulations-harassment.pdf
12. The Constitution of India. (1950,. Government of India, Ministry of Law and Justice Legislative Department. Retrieved December 30, 2025, from https://www.legislative.gov.in/static/uploads/2025/07/ca7ce5c746fa7480804bbdeb6cb704f0.pdf

Conjugal Rights for Prisoners in India: Navigating Legal Evolution, Human Needs, and Implementation Challenges

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Injustice Anywhere is Threat to Justice Everywhere

– Martin Luther King

Abstract

This article examines the critical tension surrounding the conjugal rights of prisoners in India by balancing human dignity against punitive State objectives. Since, there is no specific statutes, convicts rely onjudicial interpretation under Article 21 of Constitution of India for enforcement. Indian courts have progressively recognised the right to procreate and lineage as a "surviving detention right". This principle was backed up by significant rulings like *Jasvir Singh*, *Meharaj*, and *Kundan Singh* cases, which provided relief to prisoners for "extraordinary reasons" like old age and infertility. The core reasons for justifications are preserving family ties, enhancing prisoner's well-being, and respecting international human rights commitments. The problem is in implementation consists of societal taboos, difficulties with logistics in congested jails, and safety concerns. This analysis stresses a wide range of changes such as creating strong legal framework, allocating budget to build private space for prisoners, and the alignment of domestic prison laws shall be in line with international human rights standards.

Keywords*: Conjugal Rights, Prisoners, Human Dignity, Rights, Societal, Surviving*

Introduction

The term 'Human' itself contains respect, dignity, and self-worth. It is a resonant statement that also emphasises the well-being and fundamental rights of prisoners including their conjugal rights. The problems at hand are not unique rather they are fundamental to both the domestic legal system and the greater integrity and dignity of humanity. The correctional justice mounting its balance between protecting the prisoners' basic human rights and nations' punitive objectives. The most contentious concerns in this subject are inmate's conjugal rights such as the ability to live together, create a family, and the basic is to engage them in moral sexual activities. While these rights are considered intrinsic privileges for free individuals but their application for jailed criminals offers a complicated contradiction such as limited parole and several procedural impediments. The prisoners in India are broadly classified into a) Convicts and b) Undertrial Prisoners. The former have been found guilty and sentenced for a crime, whereas the later are individuals who are in jail custody during an investigation or awaiting trial. Since undertrial prisoners are legally considered to be in custody but not undergoing penal sanctions. Although the law limits unwarranted intrusions into the human rights of undertrial detainees, the actual situation often reveals a significant discrepancy. Their rights are violated owing to institutional obstacles within the India's criminal justice delivery mechanism. About prisoners' conjugal rights the main reason why a democratic State says 'no' is that it needs to maintain jail security, order and discipline. With its changing perspectives on prisoners' dignity and rehabilitation in correctional facilities still there is a significant legal vacuum in India in dealing with prisoners' conjugal rights. It is to note that the Courts in India have progressively approved the right to procreate and lineage as a 'surviving detention right' for 'extraordinary reasons' but they have shown hesitation in granting 'conjugal visits' purely

for sexual gratification due to major security and administrative concerns.

To highlight, there is no statute or regulation that explicitly grants these rights to convicts. Still the convicts were forced to approach judiciary to get enforced of the above rights especially under Article 21 of the Indian Constitution. This scholarly article examines the fair attempt on Indian legislature and judiciary in upholding the inmate's rights in the light of global trends. The intellectual work is structured into Three units: "Article 21 and the Right to Conjugal Rights of Prisoners: Changing Legal Landscape" deals with the absence of specific statutory law, also analyses the contributions of the Indian Judiciary. "Justification for Conjugal Rights: Human Rights Obligation" deals with the multiple arguments such as psychological and physiological concerns and the right to continue lineage. "Conjugal Visit Implementation: A Maze to be Traced through Societal, Logistical, and Security Concerns" deals with the practical difficulty that hinder the implementation. Such as potential security risks namely smuggling of phones or drugs, and the risk of violence against their partners.

Article 21 and the Right to Conjugal Rights of Prisoners Changing Legal Landscape

In India the question of inmate conjugal rights is a bit complicated one including the expanding field of legislation that combines fundamental human rights with penal system issues. Although marriage essentially confers upon couples the right to intimacy, reproduction, and affection. But this perspective drastically differs for persons incarcerated. As rightly stated by the Hon'ble Justice Krishna Iyer that imprisonment does not signify the waiver of fundamental rights as enshrined in Part III of the Constitution. Thus the detainees retain the fundamental rights including the right to life and personal liberty as defined in Article 21 of the Constitution. Our

nation now suffers without specific statutory provisions or framework that addresses the conjugal rights to convicts. The statutory absence has necessitated that criminals pursue judicial intervention under Article 21 which leads the Indian judiciary to interpret and expand the scope of these rights.

This unit will examine, despite legislative passiveness, the judiciary's role in recognising conjugal rights and the right to procreate as fundamental to the prisoner's pride, morality and wellbeing. In the *Jasvir Singh vs. State of Punjab*, the High Court of Punjab and Haryana have clearly recognised the right of the prisoners to procreate, proposing alters like artificial fertilisation. It also directed to setup of prison reform committees to make possible conjugal rights. (Singh Anamika & Dasgupta Anupal, 2015,) This verdict highlight the critical necessity to treat inmates physiological and psychological requirements to reduce stress, ethical issues such as homosexuality leads to sexually transmitted diseases in overcrowded prisons. (Jasvir Singh & Another versus State of Punjab & others, 2014) Thus, it reemphasizes the value of family integration in inmates' life which helps them rehabilitate and reduces harmful sensual pleasure.

In the *Mohammad Giasuddin* case, the offender was a government employee at the Andhra Pradesh secretariat, was convicted of fraud. The offender misled numerous unemployed young men into believing they would secure government jobs through political connections and defrauded them 1200 rupees each. To reflect the seriousness of the white-collar crime the trial court and the initial appellate courts ordered a three-year rigorous imprisonment. On appeal the Supreme Court reviewed the legality of the lower courts' sentence, condemning its narrow mindset. Thus, the Supreme Court took advantage of this case and allowed the appeal and suggested a more humanistic and reformative legal sanction beyond 'black letter law. (Mohammad Giasuddin v/s State of Andhra Pradesh 1977).

The Supreme Court emphasised various therapeutic and rehabilitative aspects in the Indian criminal justice system. It stressed that punishment should not only avenge but to save and restore the offender for society. The apex court also listed "restoration of basic companionship" as a vital jail reform, although it did not specify conjugal rights. This innovative judgement changed penology from deterrence to a compassionate and corrective approach to make offenders better people.

In the *K.S.Puttaswamy* case, though it did not directly deal with prisoners conjugal rights as its central issue. Nevertheless, this judgement unambiguously recognised the right to privacy as part of the right to life and personal liberty guaranteed under Part III of the Constitution. Justice Chandrachud opined that the right to privacy covers intimate elements like personal bonds, familial ties, marriage, motherhood, pregnancy, and parenting. In essence, this case laid the groundwork for vital principles that also safeguard the prisoner's rights in privacy and dignity.

In the *L.Muruganantham* case, the petitioner was a physically challenged advocate who was unlawfully imprisoned based on a false accusation. The petitioner also received ill treatment and neglected disability care by the jail authorities. The lower courts viewed the illegal arrest and detention as institutional constraints and not a negligence. But the State Human Rights Commission and the High Court asserted that the arrest and detention attracts breach of human rights. Hence awarded 5 lakh rupees as compensation. (L. Muruganantham v/s State of Tamil Nadu & others 2025) Further, the petitioner has gone for appeal before the Supreme Court. The apex court used this case to issue deadline driven guidelines for structural changes to be made to prisons.

The Supreme Court primarily focuses on the inmates rights with disabilities. This case underscores the State's constitutional and ethical duty to protect the disabled inmates' rights by guaranteeing

fair care and facilitating successful transition back to the society. It strengthens fundamental notions that are significantly pertinent to the wider discussion on conjugal rights. It stressed that imprisonment should not violate human dignity. (L. Muruganantham v/s State of Tamil Nadu & others, 2025) Hence, the justice prevails when imprisonment respects dignity, ensuring liberty without sacrificing humane care.

In the *Meharaj* case, the wife of life-term convict siddhiq ali sought a six-week habeas corpus before the High Court of Madras reprieve for her husband to undergo medical care for infertility. The convict was imprisoned for serious offences such as murder and aiding in bomb explosion situations. There were two legal questions before the Full Bench for consideration. First, whether or not it violates Article 21 to deny a convicted person or the spouse their conjugal rights. Second, there is no explicit provision in the Tamil Nadu Suspension of Sentence Rules regarding the Tamil Nadu government granting leave for conjugal ties.(Meharaj v/s The State of Tamil Nadu & others, 2022)

The Hon'ble Court held that refusing a conjugal union for infertility treatment or any uncommon reason may violate Article 21 of the Constitution. It stressed that this should not be regarded as a right to conjugal relationship "as a course" or a habit to get leave from jail. Because the Court felt it is essential to differentiate the persons who adhere to law and who violate the law. The Court found that under Rule 20 of the 1982 rules the offender has qualified to get leave on the "extraordinary reason". Also, there is a serious limitation such as there is no repeated requisition quoting the same reason before the bench.

In the *Kundan Singh* case, a 38-year-old wife of a 41-year-old life-term convict imprisoned since 2007 for murder filed a writ petition before the High Court of Delhi. The petitioner and the offender have been married for three years but have no children. To maintain their family lineage the petitioner sought a 12-week parole

period to conceive, mentioning their late age and the need for medical interventions such as IVF. But the Government of Delhi denied their parole application due to the severity of crimes and the history of the criminal.(Kundan Singh v/s The State Govt. of NCT, Delhi. *High Court of Delhi*, 2024)

The Honourable Court held that parole for procreation is not listed as a cause in the Delhi Prison Rules, 2018. As a Constitutional Court it can interpret and decide on topics beyond explicit reasons. This is particularly prevalent when long detention disrupts the convict and his spouse's biological clocks preventing parturition. Thus, it would grant parole with restrictions. The Court also stated that it would not consider parole for conjugal visits, rather it focused on the age of the parolees. Since they are becoming old age, they had the right to lineage.

A major shift has occurred in the legal order governing inmates' conjugal rights under Article 21 of the Constitution of India. Since the right to procreate is now considered a surviving detention right that is encompassed by the rights to life and personal liberty. Also, for "extraordinary reasons" the prisoners who are unable to conceive naturally are entitled to infertility services, conjugal visits, and artificial insemination. To distinguish between free individuals and the imprisoned, the State must provide comprehensive policies and infrastructure support for this right, which is liable to reasonable restrictions, social norms, and safety concerns.

Justification for Conjugal Rights Human Rights Obligation

Why conjugal visits for prisoners are becoming a human rights concern? It is due to the inmates' mental and physical health along with the involvement of the life and fundamental rights of the family members. The standpoint for supporting inmates' conjugal rights, although it restricts their movement, incarceration does not preclude

human dignity, biological and emotional needs. The restriction of prisoners' access to healthy sexual relationships with their spouses may cause stress, anxiety, depression resulting in decline of mental stability, frustration, aggression, and sexual exploitation. Generally, prisons are filled with single sex where hidden sexual desires cause intimate relationships (homosexual), temptations (to achieve the desire giving bribe to the fellow inmates and jail personnels), and risky sexual practices (resulting in sexually transmitted diseases), raising the stakes for health and safety. (Hijmah F & Roka TA et.al., 2024) The modern penal jurisprudence strongly focuses on the rehabilitation and reintegration of prisoners in to society. Towards that object controlled conjugal visits are vital for improving inmates' mental wellbeing and creating a more humane environment within the prison. Legally speaking the prisoners also possess and entitled to the rights enshrined under Part III of the Constitution of India. Though, the fundamental rights are restricted rights and are subject to State organs interventions.

In addition to individual wellbeing, conjugal visits are vital to maintain family bonds and to preserve genealogy. Whether it is Divine law or man-made law, the institution of marriage and family formation are essential human rights. These visits help offenders reduce recidivism by providing family support for emotional stability and effective reintegration into society. (Goyal & Shruthi, 2018) In the absence of such opportunities, the family structure may disintegrate leading to increased divorce rates, illicit affairs, single parenting, neglected children, and prison issues. The denial of conjugal rights not only cause emotional and sexual discontent for couples but also violate their Constitutional right, the right to lineage. No penal system does have the right to cease the inmates' bloodline. Actually, allowing conjugal visits can give confidence and hope to the family members over life without curtailing the right to lineage. Indian judiciary in its recent developments regarding prisoners' rights upheld that right to lineage includes artificial fertilisation when direct physical contact is not possible. These developments

indicate the importance of prisoners' and their dependants' conjugal rights.

Indeed, conjugal visits benefit prisoners, their families, and the prison system. It enables the prisoners to achieve their sexual urges properly. Thus, reducing the transmission of deadly illnesses and aberrant behavior. These visits help inmates to manage stress and sadness. It promotes relaxation and provides emotional support from their better halves while incarcerated. Prisoners with strong family ties may aid the fellow inmates and the jail administration in mitigating sexual misconduct and enhancing rehabilitation efforts. Despite the legal gap, budgetary barriers, and inadequate facilities prevalent in India. It is essential to conduct legal reform and systematic implementation in line with the best practices of international institutions that guarantee prison systems echoing human rights objectives especially conjugal rights. (The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) - Unodc, n.d.)

Conjugal Visit Implementation A Maze to be Traced Through Societal, Logistical, and Security Concerns

Overcoming the formidable security considerations that govern the feasibility of intimate family life within prison walls requires a sophisticated approach. This is due to the need to take into account various factors, including societal, practical, and safety issues. There is also a modest change in the attitude of few nations promoting conjugal rights but cultural stigmas and a constant focus on retribution as a form of punishment still make the vast majority late adopters. This scenario is especially true in nations like India, Indonesia, United Kingdom, Australia, and New Zealand, where lawmakers often view denying sexual needs as a form of punishment. (Rungta M 2025) Around the world, majority of the people are opposing and it is difficult for them to accept initiatives when it comes to acknowledge the prisoners' human rights. To get

through this, the people need to be educated that maintaining familial ties is beneficial to their mind and social health, which is very critical for rehabilitation and respect for others. Human rights defenders and other interested civil society members may be able to help increase sensitisation and bring municipal law in line with international human rights standards such as the Nelson Mandela Rules.

Due to limited funds, obsolete facilities, and prejudiced policies, globally many prison systems facing several challenges. Especially, the overcrowded prisons in India making conjugal visits impossible for inmates to have in privacy, comfort, and safety. Furthermore, imprisoning female offenders complicates the situation because they would require specialised services for medical and child care, and likely maternity aid. These expenses would result in a substantial increase in the operational cost of prison. Thus, it is suggested to conduct pilot programs to improve the resources, infrastructure, and budget in a practical manner. Additionally, there are significant risk involved namely the threat of violence and the spread of STDs. The jail authorities are more concerned about the visitors who may exploit conjugal visits as a means to unlawfully import items even with strong search standards. Thus, in order to mitigate these hazards, it is imperative to conduct thorough health checkup of prisoners and their spouses. If they found infectious or involved in illegal activities should be subjected to further restrictions. Additionally, in order to maintain a sense of security and not prejudicing the privacy rights it is necessary to implement inflexible security protocols, namely, transparent procedures and separate surveillance. The security systems must establish a conducive environment for restoration by striking a balance between the fundamental human right to family life and their safety. In order to achieve this there must be an established eligibility criteria on good behaviour and comprehensive evaluations of all the persons concerned.

Conclusion and Suggestions

The foregoing analysis has unequivocally demonstrated the critical tension prevails within the India's prison system. Also, the striking absence of explicit statutory laws shows there is an issue with the fundamental human rights of prisoners, particularly concerning conjugal relations and procreation under Article 21 of the Constitution of India. While Indian Courts have substantially recognised conjugal rights for prisoners as integral to human dignity and rehabilitation. The legal system has proved a progressive approach by upholding the right to procreate and proposing solutions like artificial insemination and extraordinary reasons in significant rulings such as *Jasvir Singh case, Meharaj case,* and *Kundan Singh case*. This human centric approach by the honourable courts is designed to safeguard fundamental rights even while in imprisonment. A new era of understanding is starting to take shape. This philosophy views incarceration as a limitation and not a denial of humanity. The emotional and physical well-being of prisoners is an essential requirement of the human rights principle. These principles are engraved in the Nelson Mandela Rules, 2015 where inmates and their family members should receive a respectful retreatment. It is also suggested to ratify and implement the 2015 rules in the respective municipal laws.

To effectively address the pervasive legal vacuum, infrastructural constraints, societal stigmas, and profound human rights implications surrounding conjugal rights of prisoners. A multi-faceted strategy of reforms is desperately needed. For that it is vital to look upon the various comprehensive recommendations proposed by the Jail reform committees. Firstly, there must be a clear and robust legal framework through specific legislations in addition to the prison laws, ensuring legal certainty and consistent application. This framework must encompass procedures, criteria, and protocols which incorporated into the Model Prison Rules, 2016

which is not though explicitly recognises the right to fulfilment of sexual desires but paves way to civil prisoners to spend valuable time with their family members even without the presence of prison authorities. (Rajiv Mehrishi, & Gandhi, M.2016). Secondly, there is a need of gradual implementation of adequate facilities through proper budgeting to build private spaces to prisoners and their families. The 1980 Mulla Committee has previously advocated building huts for family members visiting open-air jail prisoners. Also, recommended a very valuable point on the undertrial prisoners that they must be released after serving half of their maximum sentence due to overcrowding. (*ALL-INDIA COMMITTEE JAIL REFORM VOLUME I*, 2003) Furthermore, there is a need for strict security measures, specifically frisky and health checks, to address issues of smuggling and violence. It is also essential to prioritise parole and furlough to in order to integrate conjugal visits into the rehabilitation programs. Thus, we aim to transform Justice through reform and create a better future that ensures dignity and care for everyone.

References

1. All-India Committee Jail Reform Volume I. (2003). Ministry of Home Affairs. Retrieved December 29, 2025, from https://www.mha.gov.in/sites/default/files/Mulla%20Committee%20-implementation%20of%20recommendations%20-Vol%20I.pdf
2. Jasvir Singh & Another v/s State of Punjab & others. In *High Court of Punjab and Haryana*, CDJ 2014 PHC 732, para 73.
3. Mohammad Giasuddin versus State of Andhra Pradesh. *Supreme Court of India*., CDJ 1977 SC 140, pg.no.2.
4. L. Muruganantham versus State of Tamil Nadu & others. In *Supreme Court of India*, CDJ 2025 SC 1129, para 21, pg.no.9.
5. Meharaj versus The State of Tamil Nadu & others, In *High Court of Judicature at Madras*, CDJ 2022 MHC 105, para 3, pg.no.3.

6. Kaushik, A., Bandhopadhya, R., Kumar, A., & Pal, K. (2023). Kundan Singh versus The State Govt. of NCT, Delhi. *High Court of Delhi*, CDJ 2024 DHC 179, para 18, pg.no.4.

7. Hikmah, F., Hakim, N. A., Roka, T. A., & Yokotani, Y. (2024). The Urgency of Implementing Conjugal Visit for Inmates from the Perspective of Positive Law and Human Rights. *JURNAL USM LAW REVIEW*, *7*(3), 1339–1359, pp.no.1340, visit: https://doi.org/10.26623/julr.v7i3.10483

8. Goyal, Dr.Shruti. (2018). CONJUGAL RIGHTS OF PRISONERS. *BHARATI LAW REVIEW*, April-June, 57-63, pp.no.62, visit: https://docs.manupatra.in/newsline/articles/Upload/22A58DF8-EA77-472B-B0B5-F06ECDF5EB61._Goyal_Dr._Asst._Prof._57-73_Family.pdf

9. United Nations & Government of Germany. (n.d.). *United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules)*. Rule 58, Visit: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

10. Rungta, M. (2025). STAND OF DIFFERENT NATIONS REGARDING CONJUGAL VISITS TO PRISONERS. *INDIAN JOURNAL OF LEGAL REVIEW*, *5*(8), 129–132. visit:https://iledu.in

11. Rajiv Mehrishi, & Gandhi, M. (2016). *Model Prison Manual*. Pg.no.102, visit: https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016_20122024_2.pdf

12. Singh Anamika, & Dasgupta Anupal. (2015). Prisoners' Conjugal Visitation Rights in India: Changing Perspectives. *Christ University Law Journal*, *4*(2), 73-88. https://journals.christuniversity.in//index.php/culj/article/view/497

13. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) - unodc*. (n.d.). Unodc. Retrieved December 29, 2025, from https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

Human Rights in the Digital Age: Fourth Generation Perspectives

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Abstract

Fourth-generation human rights are a fundamental expansion of the human rights framework, resulting from the need to confront the unprecedented ethical, social, and legal quandaries posed by rapid worldwide technological advancement and scientific innovation. Fourth- generation rights encompass sectors that have been profoundly altered by breakthroughs in biotechnology, computer technologies, and global communication. This differs from previous generations, which prioritised civil liberties, political involvement, and group well-being. They discuss data privacy, protection from algorithmic discrimination, genetic identity, digital self- determination, and information access. This demonstrates how much society relies on modern technologies and virtual environments. These rights also address worldwide concerns about environmental sustainability, emphasizing the right to a clean and healthy environment. This connects technical and environmental needs in conversations about human rights.

The rising breadth of fourth-generation rights reveals significant policy gaps and inequities across and within countries, particularly in terms of access to digital infrastructure, AI regulations, and bioethical norms. This paper brings together interdisciplinary research and recent keynote debates to illustrate the critical need for a flexible, adaptive, and inclusive approach to rights protection in our rapidly changing world. Finally, it argues that protecting and modifying fourth-generation human rights is critical to preserving individual

dignity, autonomy, and well-being in the face of technological and environmental change.

Keywords*:* *Evolution of Rights, Civil-Political Freedoms, Socioeconomic Justice, Artificial intelligence Collective Solidarity, Digital and Technological Rights, Global Human Dignity.*

Introduction

Human rights have evolved through distinct historical eras, which are frequently categorized into generations, with each adapting to new social, political, and economic settings. Originally defined as vital civil and political liberties, the concept of rights has evolved to incorporate socioeconomic safeguards and communal solidarity. (Baroni, 2024). The first generation of rights centered on civil and political liberties that protected citizens from government oppression. The second generation expanded to incorporate the economic, social, and cultural resources required for equality. The third generation broadened the framework to incorporate collective rights like self-determination and environmental challenges that transcend national boundaries.

The advent of fourth-generation human rights represents a significant shift in reaction to rapid technological innovation, biotech advancements, and growing global environmental issues. This generation differs from previous generations in that it focusses on new issues such as digital privacy, the management of artificial intelligence (AI), genetic identity, and environmental sustainability. These issues demonstrate how society is growing increasingly reliant on digital infrastructure and technological innovation. To effectively protect rights, we require innovative, adaptable, interdisciplinary frameworks that integrate legal, ethical, and technological knowledge.

Generation	Period	Core Focus	Key Themes	Nature of Rights
First Generation	18th–19th Century	Civil and Political Rights	Individual liberty; protection from state interference; rule of law	Negative rights (freedom *from* state action)
Second Generation	20th Century	Economic, Social and Cultural Rights	Equality; social justice; welfare and development	Positive rights (state obligation to act)
Third Generation	Late 20th Century	Solidarity / Collective Rights	Shared humanity; global cooperation; group and transnational interests	Collective rights (community-oriented)
Fourth Generation	21st Century	Digital, Bioethical and Technological Rights	Digital society; biotechnology; artificial intelligence; environmental sustainability	Adaptive rights (technology-responsive and future-oriented)

Conceptual Progression:

First Generation → Second Generation → Third Generation → Fourth Generation

(Individual Freedom → Social Equality → Collective Solidarity → Technological & Ecological Adaptation)

The Evolution and Definition of Fourth Generation Human Rights

Karel Vasak, a French lawyer from the late twentieth century, popularized the classification of human rights by age. The first generation defended civic and political rights such as free speech, the freedom to vote, and the right not to be detained without cause. People sometimes refer to these rights as "negative rights," implying that the government cannot intervene.

Second-generation rights encompass economic, social, and cultural rights. These are "positive rights" that compel governments to ensure that everyone has access to housing, healthcare, education, fair working conditions, equitable opportunity, and well-being.

Third-generation rights, also known as solidarity rights, include the right to self-determination, development, and a healthy environment. These rights acknowledge humanity's communal fate, transcending state bounds.

Fourth-generation rights are the result of technological and scientific advancements. They are a set of rights that address the requirements of individuals and groups in an interconnected and technologically enhanced society. (Perepolkin et al.,n.d). This generation integrates biological, digital, and ecological characteristics, significantly altering the definition of human rights.

Fourth-generation rights include the following

- Digital rights include the right to privacy in online, access to new digital technology, and freedom from digital discrimination and surveillance.
- Bioethical rights include genetic identity, reproductive liberty, organ donation, human enhancement, and protection against exploitation or eugenics bias.
- Environmental rights include the right to clean air and water, sustainable development, and climate change protection, with an emphasis on intergenerational equity and biodiversity protection.
- Somatic and Identity Rights: These include sexual orientation, gender identity, bodily autonomy, and digital personhood as society reconsiders traditional ideas of identity and integrity in both biological and virtual environments.
- This generation is not static, but rather adaptive, reflecting ongoing technological advancement and altering societal expectations. It encourages traditional human rights research to adopt methodologies that are adaptable, cross-disciplinary, and applicable across other sectors.

Problems and Gaps in Implementation

Digital Sovereignty and Data Security

In the era of "surveillance capitalism," data collection and behavioral forecasting shift power dynamics. (Gabani,et al.,2023). The increasing concept of "info power" demonstrates how businesses and governments gain influence through information gaps, which has a significant impact on freedom and democracy. This paradigm introduces epistemic rights, such as:

The right to manage personal data globally and across multiple platforms (data sovereignty). Making automated decisions

that affect people clear. Protection against the misuse and manipulation of digital identities, such as deep fakes and false information campaigns. These rights are critical for preserving democracy and ensuring people can give their consent; if they are not protected, trust and agency may be lost. (Kokhan et,al.,2020). However, traditional legal systems lag pace, and safeguards like as the GDPR are not always applied consistently around the world.

Bioethics & Medical Independence

Biotechnological breakthroughs challenge existing rights to bodily integrity and autonomy.

Genetic Privacy: People are concerned about who has access to genetic data, the prospect of genetic discrimination, and the right not to know predisposition.

Reproductive Technology: New technologies are pushing the boundaries of the law in terms of paternity, surrogacy, and the ethics of "designer babies."

Human Enhancement and Cognitive Liberty: As gene editing and brain-computer interfaces grow more popular, ethical concerns regarding alterations, access, and mental privacy emerge. Differing legislation in different regions of the world make enforcement difficult and pose fairness difficulties. Justice for Environment and Climate

Environmental Deterioration Undermines all of the Foundations of Human Rights.

Climate change raises new moral challenges, particularly about intergenerational justice and everyone's responsibility to safeguard a stable planet. To protect the right to a healthy environment, states must take action and collaborate internationally to combat pollution, resource depletion, and biodiversity loss. New legal concepts, such

as Rights of Nature and ecological personhood, challenge the notion that humans are the most important object in the world. (Issak. A, 2025). They frequently reflect Indigenous perspectives. Compliance remains uneven because current international frameworks lack sufficient enforcement, disproportionately affecting vulnerable people. Policy and enforcement issues, as well as a number of institutional barriers to the realization of fourth-generation rights, impede progress.

Institutional Barriers to Fourth-Generation Rights Implementation

Barrier Category	Description	Impact on Rights Protection
Conceptual Ambiguity	Inconsistent definitions of digital, bioethical, and environmental rights across jurisdictions	Difficulty in clear policymaker communication and enforcement standardization
Legislative Lag vs. Technological Pace	Lawmakers struggle to keep up with rapidly evolving technologies	Protection gaps emerge as technology outpaces legal frameworks
Jurisdictional Fragmentation	Digital and ecological concerns span borders while national laws remain primary	Regulatory arbitrage and inconsistent protection standards
Technological Elitism	Rights discussions focus on those with technology access, excluding billions lacking basic internet and healthcare	Exclusion of vulnerable populations from rights framework development

Barrier Category	Description	Impact on Rights Protection
Geopolitical Divides	Differing national agendas and governance approaches	Difficulty achieving international agreements and effective collaboration
Enforcement Asymmetries	Powerful businesses and governments often not held accountable	Disconnect between rights on paper and practical implementation
Capture and Co-option	Powerful groups exploit rights language for political or commercial gain	Undermining of genuine protections and erosion of public trust

The Impact of War on Fourth-Generation Human Rights

War has a substantial and complex impact on fourth-generation human rights, as well as humanitarian law. Modern asymmetric and hybrid battles, in particular, make it more difficult to protect emerging areas of rights such as digital privacy, bioethics, and environmental sustainability. (Birhane, et al.,2024). Fourth-generation human rights are increasingly threatened in conflict zones where technology warfare, media manipulation, and environmental devastation coexist with traditional physical brutality.

In today's wars, advanced cyberattacks frequently target civilian digital infrastructure, jeopardizing the rights to data privacy, cybersecurity, and information access, all of which are trademarks of the fourth generation of rights. Disruption or control of communication networks threatens digital self-determination and freedom of expression. Furthermore, the military's employment of AI in autonomous weaponry and monitoring poses ethical concerns

concerning discrimination, autonomy, and human dignity under humanitarian norms.

Cyber War and Attacks Against Digital Infrastructure

In today's world, cyber warfare has become an important component of military combat. It attacks critical digital infrastructure required for civilizations to function. These infrastructures include power grids, phone networks, submarine fiber optic cables, banking systems, and health-care services. In 2025, state-sponsored cyber operations have shifted towards sabotaging or surveilling these critical systems, frequently blurring the border between conventional warfare and covert digital aggression.

Undersea communication cables, which transport the majority of the world's internet and phone traffic, are prime targets. Reports have surfaced of suspicious activities near undersea cable landing points, such as espionage and sabotage attempts. These are frequently tied to specific countries with major geopolitical objectives. These types of assaults employ sophisticated techniques such as malware insertion, exploiting firmware backdoors, BGP route hijacking, and migrating laterally from IT systems to OT platforms.

The hack on the Ukrainian power infrastructure from 2015 to 2016 is an excellent example. It resulted in extensive blackouts and demonstrated how deadly cyber warfare might be for critical infrastructure. State-sponsored hacking groups such as Russia's Sandworm and China's APT41 are well-known for conducting long-term cyber espionage and sabotage operations against electricity grids, underwater cables, and industrial control systems around the world.

When cyber operations and traditional kinetic warfare combine, hybrid warfare situations emerge, in which digital disruptions occur alongside physical strikes, making them more

powerful. Cyberattacks on water utilities, nuclear reactors, and the energy industry could have devastating consequences for public health, safety, and national security. (Bhagat.R, 2024). The hazards increase when attackers utilise AI-powered malware that can adapt and sneak in, making it more difficult to detect and respond to.

Some of the most serious issues are outdated operational technology that lacks adequate security measures, insufficient separation between corporate IT and OT networks, and the advancement of zero-day attacks. Because of the scope and difficulty of modern cyber warfare, governments must collaborate to develop new policies and strengthen cybersecurity measures targeted specifically to defend critical digital and physical assets.

Safeguarding Genetic Data and Bioethical Issues in Conflict Zones

The rise of biotechnology as a critical component of fourth-generation human rights poses unique concerns in conflict settings. The collecting of genetic data, facilitated by large genomic databases, poses significant questions regarding privacy, permission, and misuse during wartime. Displaced people and refugees, who are frequently victims of armed conflict, are vulnerable to genetic privacy violations, with the potential of exploitation by hostile entities or unauthorised access jeopardizing both individual and group rights.

In conflict zones, the disintegration of health infrastructure makes it even more difficult for people to exercise their reproductive rights and receive bioethical healthcare. (Barbash & Klyuveva, 2023). Medical services are disturbed, and the ethical management of reproductive technologies—such as in-vitro fertilisation, surrogacy, and potential artificial womb applications—is impeded or perverted. In war-torn areas, it remains difficult to provide the stability required to maintain consent and autonomy in medical

decisions. (Mogadham, 2020). Human augmentation and neurotechnology in military circumstances raise contemporary bioethical concerns. Technologies that can be utilized for both medicinal and enhancing purposes can exacerbate inequities or be used as means of repression or coercion if not properly regulated.

Environmental Damage Resulting from Modern Warfare and Responses to Humanitarian Law

Modern warfare is wreaking havoc on the environment, and the consequences are typically long-lasting and extend well beyond the battlefield. Environmental rights, as integral components of fourth-generation human rights, emphasize the importance of a clean and healthy environment for the realization of all other rights.

Conflicts in the twenty-first century frequently involve the destruction of major natural resources. This can occur on purpose, such as when scorched earth tactics are utilized, or unintentionally, such as when water sources, forests, and soil are harmed. Burning oil fields, leaking chemicals, cutting down trees for strategic purposes, and polluting farms all create deep environmental scars that endanger civilian lives and make it difficult to rehabilitate after the war.

International humanitarian law seeks to reduce environmental harm during armed conflict by prohibiting the unnecessary destruction of the natural environment and protecting civilian populations that rely on these resources (EECC). Protocol I of the Geneva Conventions prohibits methods of warfare that produce widespread, long-term, and catastrophic environmental harm.

International Humanitarian Law

International humanitarian law (IHL) seeks to alleviate suffering during wars and is increasingly aligned with fourth-generation

rights. IHL primarily defends human life and dignity during armed conflict, but it must evolve to address emerging issues such as cyber warfare, artificial intelligence, and environmental devastation (ICJ Opinion, 1996). It is becoming increasingly vital to ensure that human rights requirements for new technology and environmental degradation in war zones are met.

As a result, conflict has a significant negative impact on fourth-generation human rights, highlighting the urgent need to reform our laws and enforcement systems. It is critical to enhance international rules that include new rights into humanitarian protections in order to safeguard dignity, autonomy, and environmental sustainability in present and future conflicts. This integration also demonstrates that preserving fourth-generation human rights during war is critical not just for urgent humanitarian relief, but also for setting the framework for post- conflict reconstruction and peacebuilding that priorities innovation, fairness, and ecological balance.

Suggestions and Recommendations

- **Interdisciplinary Collaboration:** Encourage policymakers, ethicists, technologists, and civil society to collaborate to develop adaptable, moral frameworks.
- **International Harmonization:** Collaborate with other governments to establish global norms for digital, bioethical, and environmental rights.
- **Regular Legislative Updates:** Make it easy for politicians to work fast and receive information from scientists and sociocultural specialists at all times, while also involving the impacted communities.
- **Public Education and Advocacy:** Raising awareness of these new rights will offer people more power and urge everyone to participate in policymaking.

- **Ethical Governance in Technology:** Hold digital businesses accountable for privacy, fairness, and transparency. The United Nations is leading the Global Charter for Fourth-Generation Rights, which seeks to provide a comprehensive and adaptable rights framework that encompasses digital, bioethics, identity, and the environment.
- **Multilateral Monitoring Bodies:** These are independent entities that ensure that laws are followed, provide people with legal options, and advocate for changes to the law. Invest in digital literacy and infrastructure to reduce gaps and ensure that everyone, especially those who are frequently excluded, can participate in technological advancement. Put research first. Fund cross-disciplinary studies on new technologies to determine their legal and moral implications.
- **Corporate Responsibility**: Ensure that the digital and biotech industries are transparent and fair, in accordance with international human rights norms.

Conclusion

Fourth-generation human rights are driving developments in society, science, and the law. This generation extends human rights philosophy and practice beyond traditional conceptions by addressing the numerous issues of digital monitoring, genetic innovation, and environmental disasters. (Melzer, 2011) To fully realize these rights, we must continue to collaborate across disciplines, develop new laws that operate together, and ensure that everyone participates in decision- making. Fourth-generation rights can defend human dignity, freedom, and justice in an increasingly complex environment by fostering collaboration and accountability. Expansion of human rights into the fourth generation is a substantial shift that meets the complex realities of a rapidly changing global society. This new generation of rights addresses critical issues such

as digital privacy, bioethical integrity, environmental protection, and the challenges associated with emerging technology such as AI and genetic engineering. The research demonstrates how these rights extend beyond traditional frameworks to address issues raised by scientific development, global connection, and environmental calamities. Each of these issues requires adaptable, cross-disciplinary solutions that are founded on both legal innovation and moral responsibility.

To preserve fourth-generation rights, governments, corporations, and civil society must adopt proactive policies, raise public awareness, and practice ethical governance. The international community can ensure that human rights remain strong and relevant in the face of 21st-century challenges by encouraging legal flexibility, technical accountability, and frameworks that priorities human dignity. (ICC, 2024). This comprehensive strategy is required not just to keep people safe from evolving threats, but also to establish fair, just, and robust societies all across the world.

Finally, defending fourth-generation human rights requires visionary leadership, cross- disciplinary research, and global coordination. The promises of this new paradigm—giving people control, safeguarding the environment, and ensuring that peace and justice are available to everyone now and in the future—can only be fulfilled if everyone collaboration

References

1. López Baroni, M. J. (2024). *Fourth generation human rights in view of the Fourth Industrial Revolution*. **Philosophies, 9**(2), 39. https://doi.org/10.3390/philosophies9020039

2. Perepolkin, S., Boniak, V., Yefimova, I., Labenska, L., & Treskin, D. (n.d.). *The concept of the fourth generation of human rights: Fact or perspective of scientific discourse*. Revista de Direito Internacional.

3. Gabani, I. I., Matis, J., Bodnar, S., & Kalyniuk, S. S. (2025). Fourth generation rights in healthcare: Theoretical and practical aspects of implementation. *Wiadomosci lekarskie (Warsaw, Poland : 1960)*, *78*(4), 930–936. https://doi.org/10.36740/WLek/203906

4. Kokhan, H. L., Leonenko, M. I., Perepolkin, S. M., Syroid, T. L., & Stryzhak, I. V. (2020). Human rights of the fourth generation in a single educational area. *Revista Gênero e Interdisciplinaridade, 1*(1). https://doi.org/10.51249/gei.v1i01.24.

5. Issak, A. (2025). *Creativity as a human right: Design considerations for computational creativity systems* (Preprint). arXiv.

6. Birhane, A., van Dijk, J., & Pasquale, F. (2024). *Debunking robot rights metaphysically, ethically, and legally* (Preprint). arXiv. https://arxiv.org/abs/2404.10072

7. Bhagat, R. (2024). Intersection of fourth generation rights and digital insecurity: Dark web—The face of cyber threats on human rights. *GAP Interdisciplinarities: A Global Journal of Interdisciplinary Studies, 37*, 61–67.

8. Barabash, O., Dobkina, K., & Klyuyeva, Y. (2023). The fourth generation of human rights: European standards and national experience. *Boletín Mexicano de Derecho Comparado, 56*(167), 3–32.

9. Moghadam, H. B. (2020). An introduction to the fourth generation of human rights. *MJourCom*, (No volume/issue stated).

10. Eritrea–Ethiopia Claims Commission (EECC) – Environmental Damage Claims.

11. ICJ Advisory Opinion on the Legality of Nuclear Weapons (1996)

12. Melzer, N. (2011). *Cyberwarfare and international law.* UNIDIR.

13. International Criminal Court (2024). Investigation into cyberattacks on civilian infrastructure in Ukraine as potential war crimes (Press Communication).

The Constitutional Pathway to A Uniform Civil Code in India

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Abstract

India stands as a nation marked by its extensive diversity, featuring a complex interplay of geography, languages, cultures, and religious traditions. This diversity, although a foundation of national strength, frequently leads to disparities, especially stemming from the uneven enforcement of personal laws that differ among various communities and social strata. The Uniform Civil Code presents itself as a matter of considerable importance and debate in India, seeking to create a unified framework of laws that would regulate personal affairs including marriage, divorce, inheritance, and adoption for all individuals, irrespective of their religious affiliations. The primary aim of this article is to examine the various facets of the UCC in the context of the evolving landscape. The article initiates its discourse by exploring the foundational principles of a UCC alongside its historical context. The discussion has centered on the influence of secularism in relation to the Uniform Civil Code. The primary aim of the article elucidates the challenges at hand and culminates in a series of recommendations aimed at addressing the current scenario.

Keywords: *Constitution, Equality, India, Secularism, Uniform Civil Code.*

Introduction

India is a nation characterized by diversity and a multitude of hues, evident in its geography, language, culture, and religious practices.

This diversity frequently results in disparity arising from the unequal application of personal laws across various social classes. As we begin with the research, we are aware that egalitarian mindset is enshrined in our Indian constitution. The aspiration of the framers of the Constitution of India was to create a nation in which all individuals, regardless of their religion, caste, gender, or place of birth, would enjoy equality before the law and equal protection under the law. In pursuit of these aims, several measures have been established to ensure that India, as a sovereign nation, refrains from discriminating against its citizens based on religion, race, gender, or place of birth. The directive principles of state policy represent a notable instance in which the constitution provides guidance to the state for the implementation of policies aimed at achieving the objective of a more equality in society.

The Principle of Uniform Civil Code

Article 44 (the Indian Constitution,1950) says that the government must work to make sure that all of India's people have the same civil code throughout the country. However, Article 44 is still a non-justiciable directive concept, which means that the state may choose whether to make laws that support this goal. (Vijender & Naresh 2017).

Shah Bano v. Union of India. The Supreme Court ruled in this case that Muslim women are entitled to maintenance under the Code of Criminal Procedure even if their community's personal rules say otherwise. The court's decision confirmed that gender justice is more important than religious concerns. This created a precedent for protecting women's rights within the context of a Uniform Civil Code. (Shah Bano v. Union of India, 1985).

Sarla Mudgal v. Union of India, landmark cases have shed light on the meaning and effects of Article 44, changing the conversation about legislative changes and gender equality. (Sarla Mudgal v. Union of India,1995).

In **Javed v. State of Haryana**, underlined again how crucial it is to have a UCC to protect individual rights and gender equality. The lawsuit was about whether Section 125 of the CrPC, which says that spouses, children, and parents should get maintenance no matter what religion they are, was legitimate. The court upheld the validity of Section 125, stressing its importance in promoting social justice and economic empowerment for marginalized groups in society. (Javed v. State of Haryana,2003).

Notwithstanding these judicial declarations, the implementation of a UCC continues to be a divisive matter, frequently hindered by political factors that obstruct legislative progress (Varsha Gupta,2017). Political parties and religious leaders have articulated concerns regarding the possible implications of a UCC for religious liberties and cultural identities, resulting in contentious discussions and impasses within the legislative framework.

Historical Aspects

The notion of a Uniform Civil Code in India has its roots in the colonial period, during which deliberations on the codification of laws sought to tackle the variety of personal laws existing across the subcontinent. The initial codified laws were introduced by the British colonial administration, including the Indian Succession Act of 1865 and the Indian Christian Marriage Act of 1872, which established a foundation for a more uniform legal framework.

It was during the discussions related to the formulation of the Indian Constitution in the late 1940s that the concept of a UCC emerged as a significant topic of consideration. Prominent figures such as Dr. B.R. Ambedkar, who played a pivotal role in the formation of the Constitution, championed the idea of a standardized legal framework for civil issues, regardless of one's religious background. (B.R. Sharma,1985). The architects of the Constitution

embedded this vision within Article 44, a directive principle of state policy that mandated the establishment of a Uniform Civil Code.

During the formative years of independent India, initiatives were undertaken to reform personal laws to harmonize them with the ideals of gender equality and social justice. The Hindu Code Bills, presented in the 1950s, aimed to amend Hindu personal laws concerning marriage, divorce, and inheritance. The proposed legislation encountered significant resistance from conservative factions within the Hindu community, highlighting the complexities associated with reforming deeply rooted legal customs.

In the following decades, there were intermittent efforts to introduce aspects of a Uniform Civil Code, though these endeavours met with only modest success. In 1985, the Supreme Court of India issued a significant ruling in the Shah Bano case, affirming the maintenance rights of a divorced Muslim woman in accordance with secular legal principles. Nonetheless, the government's later introduction of the Muslim Women (Protection of Rights on Divorce) Act, 1986, aimed at superseding the court's ruling, underscored the intricate challenges involved in harmonizing religious laws with secular doctrines. (Shah Bano v. Union of India,1985).

The 1990s saw a resurgence of discussions surrounding the Uniform Civil Code, driven by increasing apprehensions regarding gender justice and the rights of minorities. (Dr. Tejinder K. Soni, 2017). The National Commission for Women, founded in 1992, advocated for the implementation of a Uniform Civil Code as a strategy to advance gender equality and eradicate discrimination faced by women. Nonetheless, these recommendations represented an infringement upon religious liberties and cultural independence (Dr. Tejinder K. Soni, 2017). Nevertheless, these suggestions encountered opposition from religious authorities and political factions, who perceived the initiative as an infringement upon religious liberties and cultural independence. In the early 21st century, discussions surrounding the Uniform Civil Code resurfaced,

propelled by evolving social dynamics and increasing demands for legal reforms. In 2003, the Law Commission of India presented a report entitled "Reform of Family Law," which recommended a comprehensive reform of personal laws to promote the ideals of gender equality and individual rights. Considering these recommendations, tangible advancement in the implementation of a UCC has proven to be elusive, frequently hindered by political considerations and social sensitivities that obstruct legislative action.

The Supreme Court of India has, at various intervals, engaged in issues concerning gender equality and personal laws, issuing rulings that seek to promote justice and equality. Cases like **Shayara Bano v. Union of India,** which rendered the practice of triple talaq (instant divorce) among Muslims unconstitutional, highlighted the judiciary's essential function in maintaining constitutional values and protecting fundamental rights. (Shayara Bano v. Union of India, 2017).

Role of Secularism in the Enactment of Uniform Civil Code

Secularism embodies the foundational concept of delineating the boundaries between governmental authority and religious institutions. (Duncan M. Derrett, 1957). The call for a secular uniform civil code intensified during the Indian independence movement, as it was envisioned to foster unity among diverse communities and bolster a collective resistance against British rule. (Archana Parashar,2013,6). Secularism was absent from the preamble until its inclusion through the 42nd amendment in 1976. (Granville Austin,2001,17) Following the amendment, our constitution explicitly incorporates the term secularism, signifying that the State shall maintain a stance of neutrality and impartiality with respect to all religions (Brenda Cossman & Ratna Kapur 1997,113). Regardless of the strength and diversity of religions

present in our nation, the principle of secularism maintains an equal standing and representation from the State for all faiths. The fundamental essence and guiding principles of India are rooted in a profound tolerance for diverse religions and a harmonious synthesis of spiritual beliefs.

The fundamental essence and guiding principles of India are characterized by a profound tolerance for diverse religions and a harmonious synthesis of various faiths. Secularism constitutes an integral component of the doctrine of basic structure (Keshvanand Bharti v. State of Kerela, 1973). In a series of cases, specifically ***Indira v. Rajnarayan***, ***SR Bommai v. Union of India***,(Indira v. Rajnarayan,1975),(SR Bommai v. Union of India(1994) and ***Bal Patil v. Union of India***, the Supreme Court elucidated the concept of secularism, asserting that it entails the state having no religion of its own and mandates equal treatment of all religions by the state. **(**Bal Patil v. Union of India,1999).

While we have embraced secularism as a constitutional value, and as the process of secularising India must commence with the implementation of UCC, which guarantees equal rights for all citizens without exceptions. This initiative addresses not only the Muslim personal law but also the practices of Khap Panchayats and various socio-legal inequalities present in other religious communities. (Varsha Gupta,2017,28). The central point of contention regarding the UCC is the principle of secularism. The UCC does not contradict the principles of secularism, nor does it infringe upon the provisions outlined in Articles 25 and 26 of the Constitution of India. (Lingayas Vidyapeeth ,2025) Article 44 of the Indian Constitution underscores the absence of an essential link between religion and personal laws within a civil society. (John H. Mansfield,2005) Issues pertaining to secular domains such as marriage, succession, inheritance, and similar matters.

The discourse persisted following independence and throughout the process of constitution making. (Robert D. Baird

,2005) The proponents of the code assumed that, for the purposes of nation-building and modernization, India required the process of separating law from religious influences. Critiques of the UCC centred on the importance of religious and cultural autonomy, the significance of community identity, and the safeguarding of religious minorities. (Flavia Agnes,2003). This is particularly relevant in light of India's partition and the subsequent tumultuous period, which engendered a profound sense of insecurity and apprehension, particularly within the Muslim community. (Werner Menski,2003)

Challenges in the UCC

The inquiry into the adoption of a uniform civil code is fundamentally a legal matter, as it pertains to the directive issued to the State by Article 44 of the Constitution, which stands as the supreme law of the land. (D.D. Basu ,1996). Moreover, the purpose of including Article 44 in the Constitution of India serves to regulate all aspects of life through a consistent legal framework, as human relationships and needs remain fundamentally the same, irrespective of the diverse affiliations among various groups of individuals. (Crereld James Larson, 2001). The concerns of minority groups regarding their personal law are not inherently tied to the laws in question but instead reflect their unique status as minorities within the nation. (Mohammad Imam,1972). The debate surrounding the uniform civil code is not a recent phenomenon. It has existed since the establishment of the Indian Constitution. (Dr. G.S. Rajpurohit & Dr. Nitesh Saraswat,2017) Regrettably, Article 44 frequently encounters opposition from various segments of the community.

The following are the main constitutional problems that make it hard to put a Uniform Civil Code into effect in India:

(i) **Conflict with Religious Freedom**: Article 25 safeguards individual's freedom of conscience and their entitlement to

openly profess, practice, and disseminate their religious beliefs. This represents a significant issue pertaining to the exercise of religious liberty. A multitude of communities perceive the UCC as an infringement upon this essential right, given that personal laws are deeply intertwined with religious principles.

(ii) **Religious Autonomy**: Article 26(b) grants each religious group the authority to manage its own religious affairs. Implementing a standardized code may complicate this autonomy, potentially resulting in constitutional issues.

(iii) **Right to Conserve Distinctive Culture**: Article 29 safeguards the rights of minority groups to preserve their linguistic and cultural heritage. The UCC is perceived as a potential risk to cultural diversity, particularly among minority groups concerned that their traditions may be overlooked.

(iv) **Equality vs. Religious Rights**: The interplay between equality and religious rights, particularly as articulated in Articles 14, 15, and 44, presents a complex legal landscape that warrants careful examination. Article 44 within the Directive Principles mandates the state to strive for a Uniform Civil Code; however, it is essential to consider the interplay between Articles 14, which ensures equality before the law, and 15, which prohibits discrimination, in relation to individual's religious rights. This legal dispute complicates enforcement efforts.

(v) **Federalism and State Autonomy**: The Concurrent List of the Constitution encompasses personal laws, indicating that both Parliament and state legislatures possess the authority to legislate on these matters. Implementing a UCC at the national level could infringe upon the rights of states to establish their own personal laws, thereby raising significant questions regarding the principles of federalism.

(vi) **Role of Government**: The government faces significant challenges in reconciling the principles of religious freedom with secular values and ensuring equitable treatment within the legal framework. The government's hesitance to decisively advocate for a uniform civil code stems from its sensitivity to potential backlash from religious minorities, reflecting a lack of political will and consensus on the matter. Governments must navigate a complex landscape of legal, social, and political challenges to formulate and implement policies that effectively serve diverse communities.

Thus, it is evident from the above discussion that the obstacles to the implementation of the UCC in India extend beyond legal and constitutional dimensions, encompassing significant socio-political factors. An approach that emphasizes inclusivity, balance, and depolarization among all stakeholders, alongside impartial media coverage and genuine political consensus, is crucial for advancing the UCC.

Conclusion and Recommendations

The prospects of the UCC in India appear optimistic, as the successful implementation in Uttarakhand stands as a precedent for gender-neutral, secular, and legally definitive personal laws that may catalyse wider reforms. Nevertheless, attaining widespread acceptance across the nation necessitates a meticulous equilibrium between uniformity and the acknowledgment of India's rich cultural and religious diversity. Proposals for the implementation of a UCC in India ought to emphasise a measured, inclusive, and progressive strategy that considers the intricate social, religious, and political dynamics at play. Initially, it is essential to engage with all religious and community organisations to ensure that their apprehensions regarding cultural identity and religious liberty are acknowledged and valued. Promoting state-level initiatives, such

as those observed in Goa and Uttarakhand, can provide valuable insights for other states, serving as instructive models for improved practices. Alongside the reform of legal statutes, educating individuals regarding their constitutional entitlements and principles of gender justice, in conjunction with enhancing their understanding of legal matters, will foster greater acceptance and support for the UCC. In conclusion, it is to be noted that the implementation of a UCC in India represents a complex yet essential advancement in ensuring that all individuals are afforded fair, equal, and unbiased treatment.

References

1. Article. 44 The Constitution of India, 1950.
2. Kumar, Vijender and Vats, Naresh Kumar (2017) "Uniform Civil Code: An Attempt to Explore its Affordability," *Journal of Law and Public Policy*. 4(1), Article 5. https://repository.nls.ac.in/jlpp/vol4/iss1/5Vijender Kumar & Naresh.
3. Shah Bano v. Union of India, AIR 1985 SC 945.
4. Sarla Mudgal v. Union of India, AIR 1995 SC 1531.
5. Javed v. State of Haryana, (2003) 8 SCC 369.
6. Varsha Gupta (2017) "A Dead Letter to Constitution: Addressing Structural Inequalities", 6 (1) *NULJ* 1.
7. B.R. Sharma (1985) "A Uniform Civil Code for India" *Civil and Military Law Journal*. (21).21. https://ceerapub.nls.ac.in/wp-content/uploads/2019/05/JLPP-2017Vol-4-.pdf
8. Shayara Bano v. Union of India, AIR 2017 SC 4609.
9. J. Duncan M. Derrett, (1957) *Hindu Law, Past and Present*, Calcutta.
10. Archana Parashar (2013), *Religious Personal Laws as Non-State Laws: Implications for Gender Justice*, The Journal of Legal Pluralism and Unofficial Law, 45(1), 5-23.DOI:10.1080/07329113.2013.773804

11. Granville Austin, (2001) *Religion, Personal Law, and Identity in India*, Bloomington,17(2001).

12. Brenda Cossman & Ratna Kapur, (1997) *Secularism's Last Sigh? The Hindu Right, the Courts, and India's Struggle for Democracy,* Harvard International Law Journal 38(1)113, https://ssrn.com/abstract=1276427

13. Keshvanand Bharti v. State of Kerela, (1973) 4 SCC 225.

14. Indira v. Rajnarayan, (1975) 3 SCC 322.

15. SR Bommai v. Union of India (1994) 3 SCC 1.

16. Bal Patil v. Union of India Appeal 4730 of 1999.

17. Varsha Gupta (2017) *A Dead Letter to Constitution: Addressing Structural Inequalities*, 6(2) NULJ,28.

18. The Importance of Uniform Civil Code and Personal Laws in India, Lingayas Vidyapeeth,https://www.lingayasvidyapeeth.edu.in/what-is-the-importance-of-uniform-civil-code-and-personal-laws-in-india/.

19. John H. Mansfield, (2005) *The Personal Laws or a Uniform Civil Code? Religion and Law in Independent India*, New Delhi.

20. Robert D. Baird, (2005) *Religion and Law in India: Adjusting to the Sacred as Secular, 19-20, Religion and Law in Independent India*, New Delhi.

21. Flavia Agnes, (2011),*Family Law Volume I: Family Laws and Constitutional Claims*, 150, New Delhi.

22. Werner Menski, (2003) *Hindu Law: Beyond Tradition and Modernity*,221 New Delhi.

23. D.D. Basu, (1996) *Uniform Civil Code for India*, Prentice Hall of India Pvt. Ltd., New Delhi.

24. Crereld James Larson, (2001) *Religion and Personal Law in Secular India*, 32-33, Social Science Press, Delhi.

25. Mohammad Imam, (1972) *Minorities and the Law*" 386, N.M. Tripathi Pvt. Ltd, Bombay.

26. Dr. G.S. Rajpurohit & Dr. Nitesh Saraswat, (2017) Need and Challenges to Uniform Civil Code in India: A Special Reference to Muslim Ethos, IV National Law School of India University Journal of Law and Public Policy,23.

27. Article 25,26(b),29,14,15, 21, of the constitution of Indian, 1950.

The Goal and Role of Indian Constitution Towards a Self-Sustained Citizenry – An Analysis

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Abstract

The Indian Constitution aims to cultivate self-sustaining citizens by guaranteeing fundamental rights designed to enhance individual personalities and, consequently, foster a well-ordered society. Freedom leads the person to develop a personality as a consequence, the moral values of the society will become intense. In a society wherein moral values are respected and believed firmly, there is no need for a specific administrator. It is not meant to suggest the literal absence of governance, but rather that as constitutional values (equality, liberty, fraternity) become embedded through civic participation and education, reliance on coercive state functions may diminish. That society will be self-sustained and free from all types of crimes. People would be prudent. Only a society where freedom is enjoyed by the people will attain self-reliance, for which the ruler is not needed. This research article analyzes the Constitution's dynamic nature, exploring the interconnectedness of its principles, ranging from fundamental rights and the role of Article 32 to mechanisms for constitutional stability. Through an integrative approach, the article demonstrates how these facets operate in concert to sustain constitutional democracy in India.

Keywords: *Constitution, Good Governance, Human Rights, Judicial Activism, Rights*

Introduction

The Indian Constitution, a living document, was envisioned not merely as a legal code but as a transformative charter facilitating the realization of human potential and the evolution of civil society. (Gupta, R.N 1952) Its dynamism lies in its capacity to balance state authority against individual liberty, ensuring a delicate interplay between governance and fundamental rights. This article appraises the evolving dynamics of the Constitution, with a focus on the purposes of fundamental rights, the significance of Article 32, the mechanisms providing constitutional stability, and the crucial role of whistleblowing in constitutional governance.

The Purpose and Incorporation of Fundamental Rights

There is the question arises why it should be considered necessary for the rights to be made part of the Constitution. There is another question that arises, why should the people's representatives not be relied upon to protect their rights, and why should it be considered essential to curb their freedom of action by making certain human rights fundamental and inviolable.

Firstly, it prevents the State from adopting progressive and revolutionary measures for improving the economic lot of the masses. Even though it discloses a lack of faith in the democratic machinery of government, these rights are granted to enable every person to enjoy specific opportunities and privileges with the help of which he can develop his personality and give the best of himself to the society of whereof he is a member. Rights have been defined as those conditions of the good life which enable an individual to

secure the development of his conscience and personality to the highest perfection of which he is capable.

Secondly, the fundamental rights can only exist within an organized and well-ordered society. They cannot subsist in isolation. The State lends them legal authority by mentioning them in the Constitution or making them a part of its legal system, for which Constitution of India guarantees Fundamental Rights, and they could be enforced through writs under Article 32.

It is possible even in the most advanced democratic states that certain groups of unscrupulous and ambitious men may capture the electoral machinery and manooeuvre the governing bodies in such a way that they may serve the interests of groups rather than the masses. Under such conditions, political majorities act dictatorially and trample upon the rights of their adversaries and minorities. This danger is all the greater under the modern system of Party Governments. Hence, fundamental rights are made a part of the Constitution so that they may be put under the protection of Law Courts and freed from the vagaries of political majorities.

The third reason for making rights part of the Constitution is that it has a great psychological effect in infusing high sense of dignity in the worth of human personality. People who understand their rights act in a brave and courageous manner and fight against social injustices. They acquire a new spiritual and moral consciousness and become aware of their real purpose in life. On the other hand, a person unconscious of their liberties acts in a most degrading manner and becomes the slave of unscrupulous exploiters. The declaration of rights in the Constitution, therefore, raises the character of a whole nation and makes it the master of its destiny. (Gupta, R.N.1952)

Fundamental rights are embedded in the Constitution not merely for legal protection, but to elevate the individual's inner potential and social consciousness. Dr B.R. Ambedkar championed

Article 32 as the "heart and soul" of the Constitution, recognizing that enforceable rights are fundamental to counterbalance majoritarian excesses. By declaring these rights to be inalienable, the Constitution offers three key advantages:

i. Shields against the subversion of democratic mechanisms by interest groups or majoritarian governments.
ii. Embeds dignity and agency within citizens, empowering them against injustice.
iii. Nurtures self-respect and a collective sense of purpose within society, fostering national character.

These rights exist only within an orderly society; thus, their legal authority is buttressed by constitutional provisions and judicial enforceability.

This is the goal of the Indian constitution, and thus, the constitution determines:

1. The organization of government;
2. The relation between various departments of government;
3. The powers and functions exercised by each department of government;
4. The relationship between the governors and the governed.

Philosophical Foundations of Fundamental Rights

In England, the concept of legal equality has been followed through to its logical conclusion, allowing for all social groups to be subject to a single law that is enforced through conventional courts. Every official, from the Prime Minister to a constable or tax collector, is responsible for unjustified actions like any other citizen.(Samuel Beswick 2024) This philosophy serves as the foundation of the fundamental rights mentioned within the Indian constitution. The

philosophical justification for the additional incorporation of fundamental rights in the Indian Constitution was to encourage the development of individual personality and the improvement of societal morality. Dr B. R. Ambedkar emphasized Article 32 as the "heart and soul of the Constitution," signifying enforceability of these rights against the excesses of majoritarian government. The incorporation of rights was designed to:

i. Prevent the capture of state machinery by interest groups that might undermine minority interests.
ii. Establish a bulwark against the potential dictatorship of political majorities, particularly under party governance systems.
iii. Instill a high sense of dignity and agency within the citizenry, empowering them to challenge injustices.(Samuel Beswick 2024)

The preamble contains Constitutional principles and goals, which is the preamble is the key to opening minds of drafters of the Constitution. The preamble is the face of contract, and the Articles are the covenants of the agreement. The people and the people's representatives are the parties to the agreement. No one grants the rights. It is inherent in every human being, indivisible from humans, interdependent with each other rights, and inalienable to anybody. (Austin, G 1966) The origin of the Republic of India was created by its people and declared by them as a nation by Indian Constitution, which was made is given to them.

Supreme Court (SC) of India has stated in Indira Gandhi v. Raj Narain AIR 1975 SC 2292.that the Constitution is not the source of the rights of individuals, but rather the consequence. The Constitution of India stated that, the real sovereignty is vested with the people of India, for whom the governmental machinery is created to provide welfare. Constitution emphasized to the people to respect

the rights of those who differ and disagree. Constitution of India elaborates how the Indian society desires to be itself. The government and the people have a fundamental commitment to achieve the goals enumerated in Constitution.

Constitution is the grund norm of the state.(wahab,n.d) The Indian Constitution is supreme. It is mother document of all legislation within the territory of India. It establishes integrity in society and promotes unity among the citizens, which is the main objective of the nation-building process. Providing good governance and maintaining harmony in society is the essence of the constitution of India because of which stands as primary legislation of India for anti-corruption.

The eminent Jurist of India and one of the constitution builders of India, Dr B. R. Ambedkar, said,

> *I feel that the constitution [of India] is workable; it is flexible and it is strong enough to hold the country together both in peace time and in wartime. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that Man was vile.*

As he said, the non-observance of Indian Constitution is the ignorance of Indian Citizens and would be the reason for deviations in the system. From his words, it is clear that the competency of the law is only in script; however, its application is not met out properly due to the ignorance and insensitivity of citizens about their rights and reciprocal duties.

Good Governance and the Indian Constitution

The Constitution, as a dynamic document, not only defines governmental structure but also prescribes relationships:

i. Among different branches of government (executive, legislature, judiciary).

ii. Between the state and citizens, ensuring accountability through well-defined powers and checks.

iii. Across different governmental functions, ensuring balance and preventing concentration of power.

The basic idea of the DPSP is to establish a "Welfare State." The Government of India Act, 1935, describes them as an "instrument of instructions." Part IV of Indian Constitution contains moral directives to the state to achieve good governance, which are positive in nature, directing the state to initiate legislative and executive steps to bring socio-economic order. Sir Alladi Krishnaswamy Ayyar mentioned that,

> *'No ministry responsible to the people can afford light-heartedly to ignore the provisions in Part IV of the constitution'*

DPSP are merely a declaration and thus no binding value will arise in respect of it to the state authorities, and for which separate legislation has to be passed by the legislature to secure the citizen's rights socio and economic rights. As said by *Sir BN Rau,* '*DPSP are moral precepts for the authorities of the state*'. The Indian Constitution clearly states that 'DPSPs are fundamental in the governance of country and it will be the duty of the state to apply these principles in the making of laws.'(The Constitution of India, 1950 Art,37) Egalitarianism is a philosophy that is predicated on the principle of equality, which suggests that all persons are equal and must be treated equally in all aspects of life. It can be examined in terms of its implications for individuals in both an economic and legal capacity as an idea.

The practice of corruption is the primary enemy of good governance. The Constitution of India directs state to ensure its

citizens the right to equal distribution of wealth and to take measures to prevent the concentration of wealth.(The Constitution of India, 1950 Art,39) Based on this, the legislation to eradicate corruption was made by the Parliament of India. The constitution states in article 39(e) that,

> *"...that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;..."*

People's participation is essential to achieve these two constitutional goals for which the state has to make legislation by which it has to protect the people and encourage them to take part with the government in the fight against corruption.

Judiciary as A Mechanisms of Constitutional Change

The dynamism of the Constitution is maintained through responsive mechanisms such as amendments and judicial review, which have played pivotal roles in adapting to evolving socio-political realities. An inalienable feature of justice is that it is blindfolded; it does not discriminate, and the law is applied uniformly. Laws must be followed effectively, and the concept of the rule of law is deeply rooted in the interrelated concepts of neutrality, uniformity, and predictability. It has nothing to do with the content of legal norms. Judges are under an obligation to enforce laws without any discrimination. Lord Denning described it in a judgment: "To every subject in this land, no matter how powerful", I would utilize Thomas Fuller's words: "Be you ever so high, the law is above you". (Gouriet v. Union of Post Office Workers(1977).

Judicial review, chiefly under Articles 32 & 226, empowers courts to strike down laws and executive actions that violate constitutional rights or exceed prescribed powers. This mechanism is

a crucial safeguard against state arbitrariness, ensuring the Constitution's supremacy. (Seervai, H.M ,2013) SC established doctrine of the "basic structure" in seminal Kesavananda Bharati case. The majority of the Constitution's provisions can be modified by Parliament, according to this doctrine; however, it is unable to alter the Constitution's fundamental framework.(Granville Austin,1966)

Court upheld women's right to enter the Sabarimala temple, prioritizing constitutional guarantee of equality over customary practices, again invoking constitutional morality as the guiding principle. (Indian Young Lawyers Association & Ors. v. State of Kerala & Ors.,2018) The majority upheld Aadhaar while placing important procedural and substantive safeguards, highlighting the dynamic balance between state surveillance and individual privacy. (K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., AIR 2018). The SC restored the mandatory three-year practice requirement for Civil Judge (Junior Division), reinforcing qualitative standards in entry to the judiciary. (Seth, 2025).Governor's Delay Unconstitutional. The Court directed that Governors cannot indefinitely withhold assent to state bills, laying down clear timeframes for gubernatorial action and thus fortifying the federal process and accountability.

Contemporary Challenges and the Ongoing Evolution

By guaranteeing enforceable rights, the Constitution fosters individual and collective progress. Rights-based claims have enabled historically marginalized groups to seek redress and realize equality, as seen in landmark judgments encompassing "Kesavananda Bharati v. State of Kerala, Maneka Gandhi v. Union of India, and Navtej Singh Johar v. Union of India."

The National Education Policy (NEP) 2020 explicitly aims to integrate constitutional values into curricula, promoting critical

thinking, equity, and democracy at all levels. Pointing to specific reforms and modules that promote constitutional literacy in schools and colleges ensures the Constitution's goals are institutionally internalized.(Joshen Joji Ottaplackal & Anbu Krishnamoorthy, 2023). Despite constitutional guarantees, contemporary India faces challenges such as executive overreach, threats to judicial independence, and social inequalities.

Conclusion

The establishment of a democratic constitutional order is an ongoing process, and it is crucial to acknowledge this up front. The challenge is not limited to the drafting of the constitutional text; it is also essential to begin institutions, procedures, or rules that ensure the legal enforcement of the constitution and, most importantly, the careful execution of its spirit and letter. The Indian Constitution's dynamism is reflected in its ability to integrate diverse aspirations, adapt to changing contexts, and uphold the primacy of rights through robust institutions and vigilant citizenship. Continued scholarship and public engagement are critical to sustaining its role as the cornerstone of Indian democracy.

Reference

1. Austin, G. (1966). The Indian Constitution: Cornerstone of a Nation. Oxford University Press".
2. Gupta, R. N. (1952). Indian Constitution And Civic Life. Kitabmahal, Allahabad. P.101.
3. Samuel Beswick, Equality Under Ordinary Law, Supreme Court Law Review (3d), vol. 4, pp. 65-117, 2024. https://papers.ssrn.com › sol3 › papers › abstract_id=45.
4. The kelson's pure theory of law
5. The Constitution of India, Article 37, Government of India.

6. The Constitution of India", Article 39, Government of India.

7. Gouriet v. Union of Post Office Workers (1977), 1 QB 729, pp. 761-2

8. Seervai, H. M. (2013). Constitutional Law of India, Universal Law Publishing.4th edi. 2024, p.243.

9. Granville Austin(1966), the Indian Constitution: Cornerstone of a Nation,

10. Indian Young Lawyers Association & Ors. v. State of Kerala & Ors., (2018) 10 SCC 1 (India).

11. K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., AIR 2018 SC (Supp) 1841, (2019) 1 SCC 1 (India).

12. Seth, H. (2025, November 27). SC issues major clarification on 3-year legal practice requirement for Judicial Officers appointed prior to its 20th May judgment. SCC Online. Retrieved December 29, 2025, from https://www.scconline.com/blog/post/2025/11/27/sc-clarification-3-year-legal-practice-requirement-for-judicial-officers/

13. Kesavananda Bharati v. State of Kerala, 1973 SCC (4) 225, AIR 1973 SC 1461; Maneka Gandhi v. Union of India, AIR 1978 SC 597, 1978 SCR (2) 621; Navtej Singh Johar & Ors. v. Union of India, AIR 2018 SC 4321, (2018) 10 SCC 1.

14. Joshen Joji Ottaplackal, & Anbu Krishnamoorthy. (2023). Education Reform in India. Liberal studies. https://ojs.indrastra.com/index.php/liberalstudies/article/view/250

15. Wahab, I. (n.d.). kelson's pure theory of law. Legalserviceindia.com. https://www.legalserviceindia.com/legal/article-13625-kelsen-s-pure-theory-of-law.html

The Imperative of Constitutional Morality: Safeguarding the Vulnerable in Indian Democracy

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Abstract

The Indian Constitution is a remarkable text, not because it restricts itself to being a blueprint for governance but because it was born out of a radical will for social justice, one that sought to remedy the deep wounds of colonialism and caste based hierarchy. At the heart of this project is a powerful idea of **Constitutional Morality**, an ethic requiring loyalty to the fundamental ideals of the Constitution. In this chapter we are explained why it is important to separate social morality which gains popularity from Constitutional Morality. The former is indicative of the majority customs and prejudices which could be misused in a populist manner to sub ignorance between communities and justify oppression, while Constitutional Morality, is even though value-based, static in its principles, dynamic in its application. It embodies (as Dr. B.R. Ambedkar described) "unquestioned veneration for the ideas inherent in the Constitution." It rests upon six necessary, inter-dependent pillars: constitutional supremacy; the **rule of law** which guarantees equality before the law; individual liberty and autonomy; the guarantee of human dignity; Indian secularism in the sense of equal respect for all religions; and **substantive equality**, i.e. equality that goes beyond formal treatment and demands equal outcomes through affirmative action. Not least because of the very nature of its own design, the Constitutional Morality is a counter-majoritarian device. And it provides a vital protection against the tyranny of the majority, shielding individual rights not only from the overreaching of the

state, but also the tyranny of the masses. It has the Courts to call upon to encapsulate its conscience, to protect minorities and **vulnerable groups**, and to provide the moral compass undergirding the slow-moving evolution of India as a nation, its promising democratic nature dispensed as **progressive jurisprudence** to bring social reality into constitutional promise.

Keywords: *Constitutional Morality, Progressive Jurisprudence, Rule of Law, Substantive Equality, Vulnerable Groups*

Introduction

The Indian Constitution stands as one of the most ambitious political projects in history, tasked with forging a just society from the deep fissures of colonialism and an ancient, entrenched social hierarchy. Consequently, the Constitution is correctly understood as a covenant of change, intended not just to establish a government but to radically transform social relations through law and moral idealism. It envisions the state as an active force for social transformation, challenging privilege and oppression to fulfill the formative goal inscribed in its Preamble: to secure not merely political freedom, but social, economic, and political justice for all, recognizing that liberation from foreign rule was meaningless without freedom from domestic structures of oppression.

At the heart of this task is the dynamic, deep notion of Constitutional Morality. This very principle, which Dr B. R. Ambedkar has beautifully highlighted, is the nation's moral compass. (Ambedkar, 2014) This requires a constant commitment to the ideals of the Constitution namely justice, liberty, equality, fraternity and secularism above and beyond immediate feelings of popularity or the weakness of customary social norms. And as such, constitutional morality is the very opposite of majoritarian morality; it is the soul of the nation, a perennial bulwark against 'tyranny of the majority' as Alexis de Tocqueville (de Tocqueville, 1835/2003), that epitome

of elitist scholarly cynicism, had warned against. It demands that all arms of the state and, indeed, every citizen act in accordance with the flow of the Constitution and not just the text of the Constitution.

This morality being put to the test most of all in the fact of whether such a thing exists as a shield and sword for the weakest of India to wield. Justice is the characteristic of a society, where it handles the most marginalized members. For India, this meant explicitly recognising the historical injustices against Scheduled Castes, Scheduled Tribes, women, religious minorities and other marginalised groups and providing a structure for their upliftment. If these are protective and affirmative measures, their philosophical justification is, perhaps, constitutional morality, that parity is possible only where the level playing field is not so profoundly skewed it cannot be equalised through differential treatment. Thus, the narrative of India democratically evolving is built on this guiding ideal clashing with rights of the marginalized. It is a recurring theme in this narrative: the struggle between ever-expanding jurisprudence and stubborn social inertia.

Constitutional Morality

The judiciary has repeatedly invoked the idea of constitutional morality to declare grossly discriminatory laws unconstitutional for example, Section 377 that criminalized homosexuality and to expand the frontiers of fundamental rights (*Navtej Singh Johar v. Union of India*, 2018) and for instance, when the Supreme Court recognized the right to privacy as a fundamental right (*Justice K. S. Puttaswamy v. Union of India*, 2017). However, every legal victory faces the ingrained opposition of social norms and biases. This tension between the aspirationalization of the law and the material grounding of social practice is not a symptom of failure, but rather the motor of India's democratic project, of a relentless enterprise of contraction by which the actual and the ideal draw closer and closer together towards their systemic convergence. (Pinto, 2020)

Nature of Constitutional Morality

The revolution that Constitutional Morality can bring about can only ever be understood and experienced, once we understand that it is a very distinct and clear concept than the popular or social morality. Social morality emerges from tradition, custom, and societal belief; its precepts tend to express the values, and the crucial term here is the prejudices, of the majority community. It is dynamic, changing over long periods of time, and often vulnerable to populist surges. This type of morality has been used as a tool for oppression ranging from caste, restrictions on women or religious/sexual minority persecution, disguised to fit the garb of "tradition" or "cultural values," historically and even today.

Constitutional Morality, however, is the reverse: It is uncompromising, unshakable and definitely unyieldingly, essentially, traditional in principle, but surprisingly alive and changing in practice. Not on the changing whim of the people, but based on the enlightened and enduring principles found in the Constitution itself. As the father of our constitution Dr B.R. Ambedkar himself stated, it means "the utmost respect for the constitution." Such awe calls for more than passive respect; it calls for an active and perennial dedication to the spirit of the Constitution in all of the state actions and all of the citizen decisions. It is not a free-for-all morality, it is a restrained morality, restraining not only governmental power but also the tingle and warmth of the majority from asserting their collective opinion to sacrifice the rights of the individual.

Constitutional Morality encompasses the core principles that govern a democratic state as defined by its supreme Constitution. It establishes the rule of law as the ultimate authority, ensuring no one is above it, and places paramount importance on individual freedom and human dignity. It is characterized by a unique spirit of secularism based on equal respect for all religions, requiring the state to maintain a principled distance. Crucially, it moves beyond formal equality to

pursue substantive equality, mandating affirmative action to rectify historical injustices and empower marginalized groups, thereby enabling true equity and the fulfillment of human potential for all citizens.

Thus, by design it is a counter-majoritarian principle. Indeed, it is the bulwark against the "tyranny of the majority" warned about by political scientists from John Stuart Mill (Mill, 1859/2008) to Alexis de Tocqueville. (de Tocqueville, 1835/2003). Constitutional Morality immortalizes the vindication of fundamental rights from the grasp of majoritarian politics and societal coercion, guaranteeing that citizens continue to preserve their individual freedoms, especially for minorities and dissenters from the established beliefs, from the both the overextension of the state and the crushing weight of social consensus. It is the national conscience, ever calling us to a higher standard of justice than popular sentiment might otherwise permit.

Beneficiaries of Constitutional Morality

Constitutional Morality as a hope is hollow if indeed it is not meant to protect those who require protection the most. Vulnerable groups in India are populations who have been historically, systematically, and often violently discriminated against, who have been denied economic inclusion, and who have been ostracized from society, and who cannot realize their rights as citizens. It lists numerous such groups, recognizing their history of suffering and the fact that special measures are needed.

Vulnerable groups in society are those requiring protection due to historical and ongoing injustices, with their identification being a dynamic process that expands over time. These groups include Scheduled Castes and Scheduled Tribes, who have faced caste-based apartheid; women, who are subject to gender-based violence and patriarchy; religious and linguistic minorities, who

need cultural protection from majoritarian forces; Persons with Disabilities, who encounter physical and social barriers; the LGBTQIA+ community, which has been stigmatized and denied basic rights; and the Economically Weaker Sections, whose poverty limits their access to justice, opportunities, and a dignified life.

Tools for Social Justice Immanent in the Constitution

The Constitutional Architecture of Affirmative Action Articles 15(4) and 16(4) do not limit or constitute exceptions to the right to equality, but rather, work towards equalizing inequalities of opportunity based on caste. (*Constitution of India*, 1950, art. 15, 16, 17). They authorize the State to make special provisions for the advancement of any socially and educationally backward classes, SCs and STs. Further, rather than just prohibiting untouchability, Article 17 absolutely "abolishes" it. These are legislatively compelled expressions of Constitutional Morality (Pinto, 2020), mandating the state to tilt the field of grass, at least, a little if not by miles.

Judiciary as the Primary Transformer

The Supreme Court is the living embodiment of this principle, generating life into the aspirational promise of the Constitution. In the landmark case **Navtej Singh Johar v. Union of India** the Court struck down Section 377 of the Indian Penal Code, which criminalised homosexuality. The judgment very clearly stated that appeal to "popular morality" or the "majoritarian perception" must bow down to Constitutional Morality based on autonomy, privacy, and the inherent dignity of an individual.

The thrust of **K.S. Puttaswamy v. Union of India** judgement which declared Right to Privacy to be a fundamental right, prepared a base for personal liberty. This right essential for marginalized communities because it protects a woman right to her own body, the right of the LGBTQIA+ community upon their identity, and the

right of every person to live with their intimate life without any state intervention.

Similarly, **Joseph Shine v. Union of India** (criminalizing adultery) and **National Legal Services Authority (NALSA) v. Union of India** (transgender persons rights) are other verdicts that perpetuate the idea of Constitutional Morality by highlighting that the judiciary uses that to strike the callous laws and preserve the dignity of the voiceless.

Directive Principles and Fundamental Duties

Although not justiciable, the DPSP outlines the ideal way the state and the people should interact in an equal manner at a macro level giving a sort of moral guidance for governance. For example, Article 46 tells the state to live up to the educational and economic interests of SCs, STs and other weaker sections. Likewise, Part III Fundamental Duties, states in Article 51A(e) that "It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women" directly linking the ethics from the Constitution to citizenship practice.

The Persistent Chasm Challenges and the Road Ahead

Despite the strength of this framework, a vast chasm persists between the constitutional prescription and the lives of vulnerable groups. The challenges are manifold and profound:

i. Clash with Social Morality

The most significant hurdle is social prejudice, which continues to resist the rights of vulnerable communities, often violently. Whether through atrocities against Dalits, "honor killings," lynching of Muslims or Adivasis transporting cows, or discrimination against

the LGBTQIA+ community, social change cannot be achieved by court verdicts alone.

ii. Majoritarian Pressures

Much of the politics of our times demonstrates the subordination of constitutional values to majoritarian populism. At various times, there has been intense pressure on institutions to back down from their commitment to secularism and minority rights, questioning the resilience of Constitutional Morality.

iii. Implementation Deficit

Following tremendous judicial victories, an implementation deficit typically emerges. Deliberate delays in framing new rules, the government's lack of will to implement them, inadequate budgets for implementation, and a justice delivery system that is institutionally and financially beyond the reach of the poor imply that most victories, no matter how sweeping, become hollow.

iv. Societal Internalization

Most fundamentally, Constitutional Morality must become a state of mind for the entire society. This requires a cultural revolution – the transformation of the entrenched attitude that rights for vulnerable groups are a sort of "special privilege" that privileged communities are magnanimously and conditionally granting for now into an understanding that they are reparations for historical injustice and the necessary bedrock of a truly equal society.

Gap that Never Seem to Close Problems and the Future Steps

While this framework is comprehensive, it has not bridged the wide gap between the constitutional promise and the reality for most vulnerable groups. The problems are deep-seated and complex: The

greatest barrier that one faces is the continuous and at times forceful opposition deeply rooted in social stereotypes, Incidents of atrocities against Dalits, honour killings (National Crime Records Bureau, 2022), mob violence against minorities based on faith, and discrimination against the LGBTQIA+ community continue to remind us that social transformation cannot be realised by way of judicial pronouncement alone.

Time and again, the political atmosphere remains gripped with the sway of majoritarian populism over constitutional beliefs. Thus, an unease erodes the firm commitment to secularism and minority rights which is often replaced with a pressure on institutions to dilute the former to test Constitutional Morality.(Hasan et al., 2005) Progressive pronouncement by the Judiciary suffers from a chasm in operation. Drafting of new legislations of enforcement, political inaction, insufficient budgets, and an always-unreachable justice system for the impoverished usually convert legal triumphs into mere cynical illusions on the land.

Conclusion

Indeed, Constitutional Morality is the driving force of the transformative constitutional project of India. It is the star by which the Founders steered the philosophy of the nation, and the practical judicial tool that will make the Constitution a living, breathing, growing document through which the Nation may find its way toward the purpose it has professed. It is best and most gloriously used in the steadfast protection of the weak. The judiciary has indeed played a pioneering role, but it cannot make a solo act of the final victory. It requires a concert of engagement: a watchful and compassionate populace, a responsible press, an accountable executive, and a responsive legislature. India can only be a successful constitutional democracy if the vulnerable groups within the society are placed out of harm's way as a last word of command. The path to ensuring justice, liberty, equality and fraternity to all citizens of

the nation remains its biggest and perhaps the most pressing unfinished business.

References

1. Ambedkar, B. R. (2014). *Dr. Babasaheb Ambedkar: Writings and speeches* (Vol. 13). Dr. Ambedkar Foundation.
2. de Tocqueville, A. (2003). *Democracy in America* (G. E. Bevan, Trans.). Penguin Books. (Original work published 1835).
3. Government of India, Ministry of Home Affairs, National Crime Records Bureau. (2022). *Crime in India 2022* [Report].
4. Hasan, Z., Sridharan, E., & Sudarshan, R. (Eds.). (2005). *India's living constitution: Ideas, practices, controversies*. Anthem Press.
5. *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).
6. *Justice K. S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
7. Mill, J. S. (2008). *On liberty and other essays*. Oxford University Press. (Original work published 1859).
8. *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (India).
9. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).
10. Pinto, S. (2020). Constitutional morality: A necessary framework to effectuate transformative constitutionalism. *NUJS Law Review, 13,* 67–87.
11. *The Constitution of India*, art. 15, 16, 17 (1950).

Access to Justice for Marginalized and Vulnerable Groups

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Abstract

While access to justice is fundamental to democracy and human rights, it remains a mirage for many people and groups across the world. This chapter articulates the conceptual underpinnings, constraints, and strategies necessary for enabling meaningful access to the justice system for groups and communities that are systematically marginalized as a result of their caste, gender, poverty, disability, ethnicity, or other factors. An analysis of the confluence of legal, social, and economic factors that prevent these groups from approaching, using, or receiving justice through both formal and informal mechanisms guides the discussion. Drawing from both a global and Indian perspective, the chapter demonstrates how structural exclusion, institutional bias, and legal unawareness perpetuate unjust outcomes. The chapter also explores the role played by legal aid providers, community-based paralegals, law school legal clinics, and technology-based platforms in the quest for enabling the gap be filled. Using illustrative examples and policy lenses, the chapter advocates for a rights-based, bottom-up, and inclusive justice framework. Finally, it concludes with policy recommendations in the form of empowering marginalized groups, promoting legal intelligence, championing structural reform, and advocating for digital justice as the pathway to a just society. Thus, by envisioning the rebirth of people-centered justice systems predicated on voice inclusivity, this chapter promises to reshape the discourse on equity and the legal system.

Keywords: *Access to Justice, Marginalized Groups, Legal Aid, Human Rights, Social Inclusion, Law and Technology.*

1. Introduction

The right to access justice is considered a gateway for the effective realization of all other fundamental human rights. This right ensures that every person, irrespective of his/her social or economic background, should have the opportunity to seek legal redress, enforce rights entitlements and ensure that power is held into account (Baxi, 2010). On the contrary, for millions of marginalized and disadvantaged people across the globe, justice remains illusory and mythical. Social hierarchies and structures coupled with discrimination, poverty, illiteracy, and structural and institutional bias deny millions of people their inalienable right to equitable justice. In India and most developing countries, the notion, "access to justice", is not a legal question but a development question. Marginalized social groups, including women, Dalits and Adivasi communities, persons with disabilities, sexual and gender minorities, migrants, and urban poor among others, face multiple forms of triple exclusions that make it hard for them to seek justice under whatever capacity they may be either as a victim, an accused or claimant (Menon, 2012). They are subjected to the numerous restrictions of their rights by those in authority as well as economic dependence due to unawareness of their rights. This chapter seeks to understand "access to justice" from multidimensional perspectives specifically; it examines the various historical, socio-legal, and institutional barriers that prohibit the marginalized communities from active engagement with justice. It also delves into some of the incredible innovative measures and mechanisms that have revolutionized the access to justice and expanded grounds for empowerment such as legal aid, community paralegal work, digital justice, and students' clinic.

2. Conceptual Framework Understanding Access to Justice

Access to justice is one of the elements of legal protection and is not limited to the right to go to court. In practice, this means not only the right to approach the courts, use them or shape the law for their work but also the possibility of understanding it. The United Nations Development Programme traces access to justice as the capacity of citizens to seek and to achieve a remedy (UNDP, 2004) through formal or informal institutions of justice in line with human rights values.

The framework includes three interrelated dimensions:

1. **Legal Awareness:** Knowledge of rights and entitlements.
2. **Legal Accessibility:** Availability and affordability of legal services.
3. **Legal Empowerment:** Capacity to assert rights and participate in justice processes.

For marginalized populations, these dimensions are interwoven with issues of identity, representation, and power. Thus, achieving access to justice requires both legal reform and socio-economic transformation.

3. Historical Context and Constitutional Framework

The Indian Constitution provides equal before the law and equal protection of laws- Article 14 and 15. Further, Article 39A of the Indian Constitution, inserted through the 42nd Amendment, 1976, states that the state shall ensure equal justice and afford free legal aid to the economically weaker sections 42.

However, India, in the post-independence era, enacted multiple institutions to give operation to the above right. Among those, the most important is the Legal Services Authorities Act,

1987. The National Legal Services Authority NALSA, District Legal Services Authorities DLSA, and Legal Aid Clinics are some examples which decentralized the Justice Delivery system in India and stretched its reach to all corners especially to the weaker sections of the society through rural lawyers.

However, law on the books is different from the law in action. "Law on the statute is a mockery without any threat. A possible reason in the case of Legal Aid is the bureaucratization of the program." Various inherent characteristics and constraints imposed on the Legal Aid Program: social stratification, bureaucratic mediation and quotas have militated against the implementation of redistributive effect.

4. Barriers to Accessing Justice

The barriers to accessing justice are varied and deeply ingrained in social, economic, and institutional structures. Structural inequalities, such as caste, class, gender, and ethnicity, still determine an individual's access to justice, and Dalits and Tribals pay the social price for enforcing their legal rights. In several cases, such as those of sexual assault or land disputes, women, gender-diverse person and other marginalized people are discouraged from filing complaints due to the threat of violence or lack of police support. Economic barriers also play a role as court costs for lawyers, transportation, and papers make4 legal procedures prohibitively priced for persons from economically marginalized communities. Free legal aid is available but is subject to low awareness and poor trust. Procedural barriers are a significant hindrance as well. The formal justice system, instrumental to delaying, linguistic isolation, and legal jargon, leads to low participation by the common citizen and undermines public faith in the justice system. Gender barriers persist in such cases, as women are culturally and passively restrained from reporting crimes such as domestic abuse, dowry beatings, and unequal workplace possibilities in conservative or rural households.

In addition, persons with disabilities face severe court infrastructure problems and a lack of access to communication devices. Furthermore, most legal services have become digital, resulting in the digital asymmetry of justice. Thus, these structural, economic procedural, gender, and digital barriers work together to maintain and make justice unattainable to the majority of the marginalized population.

5. Legal Aid and Institutional Mechanisms

The Legal Services Authorities Act, 1987 institutionalized the provision of free legal aid to economically weaker sections. Under NALSA, legal literacy camps, Lok Adalats, and para-legal volunteer programs have been conducted nationwide.

5.1 Lok Adalats

These forums aim at speedy and amicable settlement of disputes, especially civil and compoundable criminal cases. Lok Adalats have significantly reduced pendency but sometimes compromise procedural fairness in the interest of settlement.

5.2 Para-Legal Volunteers (PLVs)

PLVs serve as bridges between the community and legal institutions. Trained in basic legal knowledge, they assist people in filing applications, accessing welfare schemes, and resolving local disputes.

5.3 Law School Legal Clinics

Clinical legal education, mandated by the Bar Council of India, has emerged as an innovative model (Menon, 2015) . Law students engage directly with marginalized communities under faculty supervision, fostering experiential learning and social responsibility.

6. Community-Based Justice Approaches

Such informal and community-based mechanisms are commonly complemented by, or revert to, formal systems. In some rural or indigenous areas, panchayats, tribal councils, or self-help groups first react in order to solve the problem within the locality. However, they can be a double-edged sword. Established to increase accessibility and social legitimacy, such platforms may also reinforce patriarchal or caste-based structures (Sen, 2009). Rather than replacing the formal system, hybrid models maintaining a relation between community mechanism and body of form of oversight are important to maintain a balance between the accessibility and protection of rights. D-JAI, for instance, is a model in which community grievances are a managed captured through chatbot or paralegal volunteer, filtered through law students and reviewed of the faculty, and only then escalated to DLSA when they need to be addressed judicially. Such examples demonstrate how technology contributes towards the demand-side, or body of the courts.

7. Role of Technology in Enhancing Access

The digital revolution presents transformative opportunities for justice delivery.

- **E-Courts and Online Dispute Resolution (ODR):** These platforms reduce travel time and procedural delays.
- **Chatbots and Legal Information Portals:** AI-based tools simplify legal language and guide citizens through procedures.
- **Mobile Legal Clinics:** Using smartphones, lawyers and students reach remote areas to provide on-the-spot assistance.

Yet, digital justice must be inclusive. Without adequate digital literacy, marginalized groups may become further excluded, reinforcing the “digital divide in justice.”

7.1 The Digital Handcuff Risks of Technological Exclusion

Even though the advent of technology, such as E-Courts and e-kiosks, has brought sea changes in the functioning of judiciary making justice accessible at door steps it has made us an easy prey to what we can may call a "digital handcuff". So, for those without smartphones, reliable internet, or digital literacy – these do not free but bind participation. When justice moves online, the people without internet are effectively locked out.

Justice reforms should strive to tackle this contradiction in a way that is human-centred, not machine-driven. Digital design needs to start with the person for instance, by posing the question: What if someone can't read what is on his or her screen? What if they don't have a phone? and offer hybrid solutions like assisted filing centers, community paralegals with mobile kiosks and voice-enabled legal platforms. Technology can be an agent even to this divide only if we find ways of bridging it!

8. Case Studies

Many case studies have demonstrated that a dedicated effort to promote access to justice, when amalgamated with specific intervention strategies, can work wonders to connect the enfranchisement divide. NALSA v. Union of India (2021) is a pioneering instance wherein the Supreme Court unequivocally mandated the government, recognizing transgender persons as the third sex and providing equal protection from all discriminations under the laws. Furthermore, this verdict is not only a pivotal step forward for gender justice but evinces how social activism and the judiciary may change the status quo to make room for entire groups. SEWA, which is a Gujarat-based Self-Employed Women Association together with legal literacy, deploys a working model developed from the base politic worker to labor thinker. Over the years, the SEWA-verschattering reasoned their staff with legal avails

concerning the formal engirdment, which enkindled them to develop the gregarious stature and financial policies. Another case study is the Community Paralegal Projects in Jharkhand (Centre for Social Justice 2020), the Centre for Social Justice. The regional center has also accomplished much; paralegals are swiftly discovering the scenario, not just land issues. There are now arguments pursuant to the minimum wages act and other social security concerns and gender problems, domestic violence, and other things have gained a lot of momentum in this regard.

9. International Perspectives

On a global scale, access to justice is well positioned as an SDG 16 (Peace, Justice and Strong Institutions, 2015) goal in different countries. Constitutional guarantees in countries such as South Africa and community paralegal recognition laws are optimistic indications in this respect.

According to the Legal Empowerment Agenda of the Commission on Legal Empowerment of the Poor : Justice is people-centered, locally grounded, and addresses the everyday disputes that people experience and that affect their means of making a living.

10. Policy Recommendations

1. **Strengthening Legal Aid Infrastructure:** Enhance funding, monitoring, and accountability of legal services authorities.
2. **Integrating Technology Responsibly:** Develop multilingual, user-friendly digital justice tools.
3. **Empowering Law Schools:** Institutionalize community engagement and clinical legal education.
4. **Recognizing Community Paralegals:** Grant formal recognition and training support to grassroots justice workers.

5. **Gender-Sensitive Reforms:** Establish safe spaces, female legal counsellors, and confidential reporting mechanisms.
6. **Inclusive Policy Design:** Incorporate disability access, tribal rights, and intersectional identities in justice policies.

11. Conclusion

Access to justice is a human right and a common good, in this case, the social order. It is insufficient to open courtroom doors; access to justice requires dismantling the social, economic, and institutional barriers that keep marginalized people from standing as equals before the law. Through enhanced legal and legal proficiency, participatory decision-making, and technology driven creativity, empowerment can convert justice systems into secure spots. As we redefine our societies, we must redefine justice making it more sensitive, more localized, more human-centered so that the constitutional pact of equality and respect can be established in force for all.

References

1. Commission on Legal Empowerment of the Poor (CLEP). (2008). *Making the Law Work for Everyone*. United Nations Development Programme.
2. National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
3. United Nations Development Programme (UNDP). (2004). *Access to Justice: Practice Note*. UNDP.
4. United Nations. (2015). *Sustainable Development Goal 16: Peace, Justice and Strong Institutions*. UN.
5. Baxi, U. (2010). *Access to Justice and Rule of Law: A Comparative Analysis*. Oxford University Press.

6. Menon, N. R. M. (2012). *Clinical Legal Education: Concepts and Concerns*. Eastern Book Company.

7. Sen, A. (2009). *The Idea of Justice*. Harvard University Press.

8. Centre for Social Justice. (2020). *Community Paralegal Model: Empowering the Margins*. Ahmedabad.

The Impact and Application of The Universal Declaration of Human Rights in India

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Abstract

The Universal Declaration of Human Rights (UDHR) is a very significant text in contemporary history, proposed by the United Nations (UN). This laid the foundation for the upliftment of human dignity and fundamental freedom without any discrimination. Its influence extends far beyond its formal status as a declaration, serving as a moral compass for states and an interpretative guide for constitutions, judicial pronouncements, and international conventions. In the Indian context, the UDHR has had a profound and enduring impact. The Fundamental Rights (FR) and Directive Principles of State Policy (DPSP), incorporated into the Indian Constitution, were drafted nearly simultaneously with the UDHR, and reflect many of its key ideas. To broaden the scope of rights, as mentioned in the UDHR, the Indian judiciary has broadened its jurisdiction and defined it in accordance with the essence of the UDHR. From the early post-independence years, when the judiciary sought to balance individual liberty with state power, to the modern era of digital privacy, gender equality, and environmental justice, India's courts have drawn heavily upon the spirit of the UDHR. This chapter examines the historical development, philosophical foundations, and practical application of the UDHR in India. It analyses how India's constitutional and judicial mechanisms have operationalised international human rights norms, while also highlighting the limitations and challenges in realising the

UDHR's vision in a complex socio-economic and political setting. The discussion emphasises India's unique dual role as both a contributor to and a beneficiary of the global human rights movement, concluding that while the UDHR's ideals remain aspirational, they continue to shape Indian jurisprudence in dynamic and transformative ways.

Keywords: *Indian Constitution, Indian jurisprudence, the United Nations, and the Universal Declaration of Human Rights (UDHR)*

1. Introduction

The United Nations (UN) was established following World War II. (Abel, 2019). The primary objective of the UN was to prevent another global conflict. The subsequent World Wars brought immense pain and grief to humanity. Apart from that, many countries of the world were under the colonies of European countries, or they had recently gained independence from colonisation. Thus, most countries at that time were facing numerous social problems. So, apart from refraining the world from World War, the United Nations also focused on addressing Human suffering, hence, the Human Being was put at the centre of all Developments. The United Nations worked tirelessly to give a new vision to this entire world, where the value of Human Dignity was given more priority than the boundaries of the Nations.

The ideals of the UN Charter emphasised international collaboration to tackle global issues and humanitarian concerns. It recognises development as a comprehensive process that enhances the well-being of all individuals through active and meaningful participation and equitable distribution of benefits. On December 10, 1948, in Paris, a drafting committee chaired by Eleanor Roosevelt adopted the Universal Declaration of Human Rights (UDHR). India's participation in the process, particularly through Hansa Mehta and Lakshmi Menon, underscored the global South's early commitment to the Human Rights project. (Jaiswal & Shrivastava,

2025). Following the devastation of the Second World War, the UDHR established a comprehensive list of political, social and economic rights to preserve human dignity and prevent atrocities in the future. This Declaration is proven as a milestone for both domestic and international lawmaking due to its moral and persuasive authority, despite not being legally binding.

India's relationship with the UDHR is particularly intimate. Having gained independence only a year before its adoption, India's Constitution was being framed during the same period. (Pearl & Ruby, 2017). Many of its drafters, particularly Dr. B.R. Ambedkar, K.M. Munshi, and Hansa Mehta, were deeply influenced by international human rights discourse that culminated in the UDHR. Notably, at the UN Commission on Human Rights, Hansa Mehta, representing India, played a pivotal role in modifying the opening phrase of Article 1, from "All men are born free and equal" to "All human beings are born free and equal," ensuring the inclusion of gender-neutral language and affirming India's progressive stance on equality. (Kalse, Dr. Anant, 2016).

The UDHR's preamble and thirty articles encompass a holistic vision of human dignity; these values resonate deeply with the Indian constitutional framework. In addition to influencing constitutional developments throughout the world, it also encouraged the development of several international treaties. (The Law Institute n.d).

2. The UDHR and the Indian Constitution Convergent Ideals

2.1 – The Preamble of the Indian Constitution and the UDHR

Indian Constitution, adopted on 26 January 1950, reflects a striking convergence with the UDHR in both spirit and substance. Both documents were drafted concurrently after World War II and reflect a shared commitment to universal human rights. (Kant, Priya, 2025).

Core values and ideals

Both preambles are founded on similar core principles:

- Human Dignity: The UDHR preamble recognises the inherent dignity, equal and inalienable rights for all members of the human family. This is reflected in the Indian Preamble's objective: to promote "the dignity of the individuals".
- Justice: The UDHR establishes that human rights are the "foundation of freedom, justice and peace in the world". The Indian Preamble reflects this by aiming to secure "Justice-social, economic and political" for all its citizens.
- Equality: The UDHR states that "all human beings are born free and equal in dignity and rights". The Indian Preamble echoes this commitment by seeking to ensure "Equality of status and of opportunity".
- Liberty: Both preambles champion liberty. The UDHR proclaims freedom of speech and belief as the "highest aspiration of the common people". The Indian Preamble assures its citizens "Liberty of thought, expression, belief, faith and worship". (Howard-Hassmann, 2022)
- Fraternity/Brotherhood: Humans are urged to treat one another with a "spirit of brotherhood" in the UDHR preamble. This sentiment is reflected in the Indian Preamble, which promotes "Fraternity assuring the dignity of the individual".

2.2 – Fundamental Rights and UDHR

The UDHR's articles and several of the Indian Constitution's fundamental rights coincide.

- Equality: The right to equality before law and prohibition from discrimination is mentioned in Article 7 of the UDHR, and similar provisions have been given in Article 14 of the Indian Constitution.

- Freedom: Article 19 of the Indian Constitution promotes freedom of speech, assembly, association and movement. Similar ideas have been reflected in Article 13 of the UDHR
- Quality of life and personal liberty: Article 3 of the UDHR carries similar provisions to those of Article 21 of the Indian Constitution, which promotes the Right to life with individual dignity. (Pearl & Ruby, 2017).
- Education: UDHR promotes free and compulsory elementary education, as mentioned in its Article 26. Similarly, the concept of free and compulsory education for minors aged 6 to 14 years is mentioned in the Constitution of India, under Article 21
- Exploitation: Article 4 of UDHR and Article 23 of the Indian Constitution, both documents prohibit involuntary servitude and human trafficking.
- Religion: Article 18 of the UDHR gives the right of freedom of thought, conscience, and religion; similarly, articles 25–28 of the Indian Constitution also protect and promote similar rights.

2.3 – Directive Principles of State Policy (DPSP) and UDHR

The Indian Constitution draws significant inspiration from the UDHR, particularly regarding social and economic rights. Many DPSPs from the Indian Constitution directly echo the UDHR's provisions for achieving a welfare state and socioeconomic justice.

- Right to adequate livelihood: Article 39(a) of the DPSP states that, regardless of discrimination based upon gender, everyone should have equal access to sufficient means of livelihood. Article 25 of the UDHR also mandates states to provide their citizens necessities of life, which includes: food, clothing, housing, essential medical and social care, especially for the disabled and the elderly, assistance and special care to mothers and children.

- Equal salary for similar work: The DPSP and the UDHR both insist on equal pay for people engaged in equal work, without discrimination. This is expressly addressed in Article 39(d) of the DPSP, which corresponds to the basic principle set out in Article 23(2) of the UDHR.
- Social security: Article 41 of the DPSP recognises the right to social security, which includes the right to work, education and assistance in cases of unemployment, sickness. This aligns with UDHR Article 22, which mandates states to create practical measures to provide social security and cultural rights to people.
- Fair and humane working circumstances: Article 42 of the DPSP encourages fair and humane working conditions, including maternity benefits. Similarly, Article 23 of the UDHR mandates that the state provide for maternity relief and fair and humane working conditions.

The framers of the Constitution explicitly acknowledged the global human rights movement. The Constitution represents not a mechanical transplantation of UDHR norms but a creative adaptation to India's pluralistic society.

3. Judicial Incorporation of UDHR Principles in Indian Jurisprudence

The Indian Supreme Court has continuously acknowledged that the **UDHR** provides a moral and interpretative framework for understanding the scope and meaning of constitutional rights. While the UDHR itself is not legally enforceable, Indian courts have often invoked its provisions to expand the scope of **Fundamental Rights** and **DPSP**, to align the domestic system with global human rights standards. The trajectory of this judicial engagement with the UDHR can be traced through a series of landmark cases that progressively deepened the rights discourse in India.

3.1 From the Basic Structure to Expansive Liberty

The ruling given in the case of Kesavananda Bharati v. State of Kerala 1973, emphasised that although Parliament has extensive ability to change the Constitution, it cannot bring changes to its fundamental principles, which include: the rule of law, separation of powers, and the preservation of fundamental rights. The judgment in this case symbolised the Court's role as the supreme guardian of constitutional morality and human rights in India. (Jyothsna, 2025).

Soon after, in Maneka Gandhi v. Union of India (1978), the Honourable Supreme Court revolutionised jurisprudence by interpreting Article 21 ("No person shall be deprived of his life or personal liberty except according to procedure established by law") in the light of the UDHR and the ICCPR. The Court reiterated that any law curtailing liberty must be just, fair and reasonable; similar principles have been resonated in Articles 3 and 9 of the UDHR, which guarantee liberty, security, and freedom from arbitrary arrest.

3.2 The Right to Dignity

In the 1980s, the fundamental tenet of the UDHR, the idea of dignity, became a pillar of Indian constitutional interpretation. "The right to life includes human dignity and all that goes along with it," the Court stated this unequivocally in "Francis Coralie Mullin v. The Administrator, Union Territory of Delhi"(1981).

3.3 Expanding the Frontiers Privacy, Sexuality, and Autonomy

The twenty-first century has witnessed a remarkable extension of UDHR principles into newer domains of rights, including privacy, sexual orientation, and reproductive freedom. In the case of Justice K.S. Puttaswamy (Retd.) v. Union of India (2018), the Court's bench unanimously acknowledged the right to privacy as a basic right under Article 21. This decision highlighted the reference given in

Article 12 of the UDHR. It protects humans from arbitrary interference in their privacy, in their family life, and attacks on their reputation. The judgment further drew upon comparative jurisprudence from the United States and Europe, underscoring the universality of human rights as envisioned by the UDHR.

3.4 Gender Justice and the Vishaka Precedent

Perhaps the most explicit use of international human rights law occurred in "Vishaka v. State of Rajasthan" (POSH Act, 2013), where the absence of domestic legislation addressing sexual harassment at the workplace was confronted by the Supreme Court. The Court established extensive rules to prevent workplace harassment, commonly known as the "Vishaka Guidelines," citing Articles 11 and 24 of the "Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)" (Dehury, 2022) and the spirit of the UDHR.

3.5 Emerging Rights and Environmental Jurisprudence

The Indian judiciary has also extended the UDHR's principles to encompass collective and environmental rights. In many cases of "M.C. Mehta v. Union of India", the Court has expanded the scope of Article 21, giving its verdict that the right to a clean environment is part of the right to life, thereby connecting ecological well-being with human dignity. Later, the Court drew upon the principle of sustainable development and environmental protection as integral to the right to a healthy life; these values are implicit in Articles 3 and 25 of the UDHR. (Howard-Hassmann, 2022).

4. The Protection of Human Rights Act, 1993

A significant step toward institutionalising human rights protection in India was the passage of the Protection of Human Rights Act, 1993. The Act established the "National Human Rights Commission"

(NHRC) (Kaundal & Shanthakumar, 2023) and corresponding "State Human Rights Commissions (SHRCs)" to study, investigate and uphold the protection of Rights and recommend corrective measures. Similarly, the National Commission for Women (NCW, 1992), the National Commission for Minorities (NCM, 1988), the National Commission for Scheduled Castes (NCSC, 2004), and the National Commission for Scheduled Tribes (NCST, 2004) have been established. These bodies, though varied in mandate, share a common normative foundation rooted in equality, dignity, and justice, the core principles of the UDHR.

The functions of NHRC are primarily as a recommendatory body; its reports and interventions have often guided judicial proceedings and influenced policy reforms. However, critics argue that the NHRC's powers are limited, as its recommendations are not binding, and its jurisdiction excludes the armed forces, a significant lacuna given the prevalence of human rights concerns in conflict-prone regions. (Parmar, 2016).

5. Conclusion

The journey of the **UDHR** from a non-binding international proclamation to a living part of India's constitutional and judicial fabric exemplifies the power of universal moral norms to transform national legal systems. The UDHR's principles of equality, liberty, dignity, and justice have been deeply ingrained in India's constitutional ethos through both legislative enactments and judicial innovations (Jain, 2008). India's Constitution is a living and evolving document that meets and fulfils the core of Rights, as mentioned in the UDHR. Likewise, India's institutional framework reflects a continuing commitment to the UDHR's global vision. (Das, 2022).

Yet, persistent challenges, socio-economic inequality, institutional inertia, and emerging digital threats remind us that the full realisation of human rights is an ongoing process. The UDHR

remains not only a moral compass but a living instrument, guiding India's democratic evolution toward a more inclusive and humane order.

As the world confronts new frontiers, from artificial intelligence to climate displacement, India's experience demonstrates that the ideals of 1948 continue to hold universal relevance. The UDHR's spirit endures in the Indian Constitution's promise that every person shall live in dignity, and reaffirms that human rights are not merely legal entitlements but the very essence of human civilisation.

References

1. Abel, M., Umanath, S., Fairfield, B., Takahashi, M., Roediger, H. L., & Wertsch, J. V. (2019). Collective Memories across 11 Nations for World War II: Similarities and Differences Regarding the Most Important Events. Journal of Applied Research in Memory and Cognition, 8(2), 178–188. https://doi.org/10.1016/J.JARMAC.2019.02.001

2. Das, Prasenjit (2022), Human Rights and The Indian Constitution: The Legal Foundation of The Right to Education, IJCRT. ORG, https://www.ijcrt.org/papers/IJCRT2202534.pdf

3. Dehury, S. K. (2022), A Study of Constitution of India. EPRA International Journal of Multidisciplinary Research (IJMR), https://www.researchgate.net/publication/363455280_A_STUDY_OF_CONSTITUTION_OF_INDIA

4. Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, 1981, AIR 746, 1981 SCR (2) 516, AIR 1981 SUPREME COURT 746, 1981 (1) SCC 608, 1981 (2) SCR 516, 1981 CRIAPPR(SC) 112, 1981 SCC(CRI) 212, (1981) MAD LJ(CRI) 331, (1981) 2 SCJ 18, (1981) 19 DLT 271, 1981 CRI. L. J. 306, (1981) 2 SCR 516 (SC) 1981 CRILR (SC MAH GUJ) 437, 1981 CRILR(SC MAH GUJ) 437, http://indiankanoon.org/doc/78536/

5. Jyothsna K. Yamini (2025), Human Rights and Civil Liberties In India: An Analysis Of The Role of Judiciary and Civil Society, Journal

of Integral Sciences [JIS], https://jisciences.com/index.php/journal/article/view/98

6. Howard-Hassmann, R. E. (2022), Article by Article: The Universal Declaration of Human Rights for a New Generation by Johannes Morsink. Human Rights Review, 23(3), 443–445. https://doi.org/10.1007/s12142-022-00666-0
7. Jain, T. (2008), Influence of Universal Declaration on the Judicial Interpretation of Fundamental Rights and Directive Principles in the Constitution of India, SSRN, https://ssrn.com/abstract=1087594
8. Jaiswal, H., & Shrivastava, Dr. A. (2025), Relevance of UDHR and UN Charter in Adoption of Fundamental Rights. International Journal of Law, Management and Humanities, 8(5), 977–992, https://doij.org/10.10000/IJLMH.1110848
9. Justice K S Puttaswamy Retd vs Union of India on, 2018. AIR 2018 SC (SUPP) 1841, 2019 (1) SCC 1, (2018) 12, SCALE 1, (2018) 4 CURCC 1, (2018) 255 DLT 1, 2018 (4) KCCR SN 331 (SC), AIRONLINE 2018 SC 237, https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/aor_notice_circular/43.pdf
10. Kant, Priya. (2025), Human Rights under the Indian Constitution: A Comprehensive Legal Analysis. SSRN, 1–7, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5289013
11. Kalse, Dr.Anant (2016), Human Rights in Constitution of India, Commonwealth Parliamentary Association, https://mls.org.in/books/H-2537%20Human%20Rights%20in.pdf
12. Kaundal Ruchita & Shanthakumar S., 2023), Assessing The Effectiveness Of The National Human Rights Commission, India, Vis-à-Vis The Paris Principles Relating To The Status Of National Human Rights Institutions, The Age of Human Rights Journal, https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/7719
13. MC Mehta v Union of India, 1992(1) SCALE196, 1992Supp (2) SCC633, https://byjus.com/current-affairs/mc-mehta-vs-union-of-india/

14. Menka Gandhi v Union of India, 1978, AIR 597, 1978 SCR (2) 621, https://blog.ipleaders.in/maneka-gandhi-v-union-of-india/

15. Parmar, V. R. (2016). Comparative Study of Universal Declaration of Human Rights and Fundamental Rights of the Indian Constitution. World Wide Journal, 5(4), 164–165, https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/recent_issues_pdf/2016/April/April_2016_1464957217__58.pdf

16. Pearl, E., & Ruby, S. (2017). A STUDY ON HUMAN RIGHTS AND THE INDIAN CONSTITUTION. https://journalijcar.org/issues/study-human-rights-and-indian-constitution

17. Sikri, S. M., Grover, A. N., Ray, A. N., Palekar, D. G., Khanna, H. R., Shelat, J. M., Mathew, K. K., Hegde, K. S., Beg, M. H., Reddy, P. J., Dwivedi, S. N., Chandrachud, Y. V, & Judgment, J. J. (1970). Kesavananda Bharati Sripadagalvaru ... vs State of Kerala and Anr on 24 April, 1973. http://indiankanoon.org/doc/257876/

18. Singh, K. N. (1991). SCR (1) 5, AIR 1991 SUPREME COURT. In AIR SCW (Vol. 420, Issue 1). http://indiankanoon.org/doc/1646284/

19. The Mental Healthcare Act, 2017, https://mohfw.gov.in/sites/default/files/Reference%20Manual%20for%20Implementation%20of%20Mental%20Healthcare%20Act%2C2017%20for%20Care-givers%20%28CMHA%29_compressed.pdf

20. The Right of Children to Free and Compulsory Education Act, 2009, https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_rev_0.pdf

21. The Right to Information Act, 2005, https://dgrindia.gov.in/writereaddata/media/documents/important_section_of_rti_en.pdf

22. The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013, https://doe.gov.in/files/inline-documents/DoE_Prevention_sexual_harassment.pdf.

An Overview of the Evolution of The Fourth Generation Human Rights

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Abstract

Human Rights are those basic rights which are very fundamental for a human life. These rights are not bound to the boundaries but these rights keep going with the human universally. Also, these rights are inherent to human by birth. The development of the human rights has a long way and with the need of the humans these rights has developed by generations. These generations are classified as first, second and third generations and based on the human needs such as social, political, economic or cultural rights. UDHR *(Universal Declaration of Human Rights, 1948)* has also recognized these rights globally. Now in the current scenario human are moving to the fourth-generation human rights and looking for the protection from State regarding digital privacy, healthy environment, Artificial Intelligence etc. In short, the fourth-generation rights belong to the digital and advance rights for which our legal system is concerned and is playing a vital role in its conservation.

Keywords: *Fourth-generation, human rights, digital rights, data privacy*

1. Introduction to Human Rights

Human rights are those basic liberties or rights which are entitled to every person by the virtue of their humanity. No one is discriminated

on the basis of race, religion, gender, nationality or socioeconomic status. These rights are inherent by nature, universal and inalienable. The idea of human rights, which guarantees that everyone lives in freedom and respect, is based on the ideas of justice, equality, and dignity. These rights include the rights to life, liberty, education, employment, and freedom of speech, among other civil, political, economic, social, and cultural facets of existence.

Since, it is believed that human rights are inherent in human existence. But with the development of human understanding and intelligence, human started to rule over the other human with their power. The entire human society classified into two; one the rulers and other slaves. This practice existed for a long time but the World Wars. Post World War-II, the United Nations ratified the *Universal Declaration of Human Rights (UDHR)*, which established a universal norm for preserving human dignity, the contemporary concept of human rights gained popularity following World War II.

Since then, the defence and advancement of these rights have been strengthened by a number of international treaties, constitutions, and legal frameworks. Human rights enable people to fully engage in society in addition to protecting them against injustice and persecution. Because of their importance to peace, security, and sustainable development, governments and communities everywhere have a moral and legal duty to safeguard them. Therefore, the foundation of a fair and compassionate society is human rights.

2. Features of Human Rights

Every individual in the universe, from birth to death, is entitled to the fundamental freedoms and these rights are known as *human rights*. However, in some exceptional conditions these rights sometimes are eclipsed.

Human rights can be characterized by the following essential features:

- The foundation of human right is its feature of being ***'Universal'***. It says that every person on the earth is entitled to basic rights without any exception. Human rights are inherent and not conferred by State. Without discrimination on the basis of nationality, race, religion, gender etc. they are equally applicable to all. Universality demands that every human being's dignity be upheld everywhere and condemns discrimination. It is a strong, uniting idea that states that everyone has the same rights to freedoms and protections just because they are human.
- Human rights are ***'inalienable'***, which implies they are unchangeable and inherent. In reality, they cannot be relinquished, transferred, or taken away. Even when your right to free expression or a fair trial is forcefully suppressed by the government, it does not negate your entitlement to these rights. Additionally, you cannot voluntarily sign it away since these rights are an inherent component of human dignity rather than a privilege bestowed by the government. This essential characteristic guarantees that no authority or agreement may rightfully deprive someone of their basic liberties, establishing human rights as an everlasting safeguard for each and every person.
- All human rights are ***'indivisible'*** whether they are civil, political, economic or cultural rights. Since, every human right is equally important and interrelated, they are all indivisible. Each right, like education, is frequently dependent on another, like non-discrimination, to be fulfilled. Prioritizing some rights over others or denying others would undermine the foundation of universal freedom and human dignity. For example- right to vote is a civil and political right.

- Another feature of human rights is ***'inherent'***, which means that each and every person is born with them. They are not given or given by any authority, group, or government. This essential characteristic confirms that our rights are inherent to who we are as people and that they exist just for that reason. They cannot be acquired or lost. This idea puts human dignity at the centre of life and guarantees that everyone has these rights from birth to death, regardless of whether they are acknowledged by others.

3. Generations of Human Rights

The human rights have been developed with the human development and needs. Humans have sought through various rights like political, civil, economic and cultural rights. These rights have been classified into generation to understand contemporaneity of these human rights.

3.1 First Generation

The philosophical movements during 17th and 18th century, especially American revolution (1765) and French revolution (1789), gave the foundation to all human rights development and emerged the civil and political rights. Also, first generation rights, in its nature, are actually ***negative rights*** because they mainly seek that the State abstain from interfering with an individual's right to liberty. Sometimes they are denoted as ***Blue Rights*** because these rights deal with the liberty and participation in political life. The philosophical foundation of these rights is *liberal individualism.* According to these rights the individual person is a sovereign being and are given priority over the State.

The fundamental framework of a peaceful and democratic society is comprised of such rights. Some rights among them are:

- Right to life, liberty and security (includes also: right to life, freedom from torture etc.)
- Rights to due process and a fair trial (includes also: right to fair and public hearing, right to legal counsel etc.)
- Freedom of thought and expression (includes also: freedom of opinion and expression, freedom of thought, conscience and religion etc.)
- Political rights (right to vote)
- Right to privacy
- Freedom from slavery and forced labor.

3.2 Second Generation

Second generation rights have their roots in the 19th and 20th centuries with the socialist and labour movements. It emphasized the insufficiency of political freedom in absence of the economic stability. This ideology was shifted on the global stage after World War-II. The second generation of human rights, which promoted social and economic fairness, arose as a critical response to the injustices of the industrial age, succeeding the first generation of civil and political liberties. These rights, which are essentially positive in nature, require the state to actively work to protect each person's dignity and well-being. Sometimes these rights are named as '*Red Rights*'. Because these rights depend upon the available resources by placing the obligation on the State/Government to uphold, encourage and fulfil them. This duty is imposed on the State because its control over such resources.

As it is understood that second generation rights are one step further and plerotic or supplement to the first-generation rights. Human rights of first generation are of no worth if second generation rights are not there. Some of the major rights evolved in second generation are as follows:

- Right to work
- Right to fair and equal pay (equal pay for equal work)
- Right to adequate standard of living (includes the rights to clothing, food and shelter)
- Right to education.
- Freedom to form and join trade unions.

3.3 Third Generation

The third-generation human rights are also known as *Soliditary* or *Collective* rights. The revolution of third-generation rights is connected to the *French* Revolution. In which three concepts were popular (which were coined by *Karel Vasak* in 1979)- *liberté*, *égalite* and *fraternié* which means liberty, equality and fraternity. The notion of the third-generation human rights originated in the 1970s and 1980s.

Unlike predecessors of these rights i.e. First-Generation and Second-Generation, which were primarily concerned with state-individual interactions, these rights are collective in character, necessitating concerted international collaboration and collective action by governments, international organizations, and even people to be realized. They symbolize a transition away from individual claims against the state and toward the understanding of shared global obligations and the right to a healthy, equitable, and peaceful world. These rights reflect a transition away from a reactive human rights approach and toward a proactive one, with the goal of ensuring a sustainable, just and peaceful future for all mankind.

Key examples of such rights are:

- Right to peace
- Right to development
- Right to self-determination

- Right to healthy environment
- Right to share in the benefits of Science and Technology

The journey through first, second, and third generation human rights indicates a fundamental shift in our perception of human dignity. From the fundamental civil and political liberties (first generation), which ensured independence from governmental intrusion, we progressed to the recognition of important economic, social, and cultural rights (second generation), which ensured equality and the means to live decently. The third generation broadens this scope by embracing common rights such as peace, development, and environmental health, as well as realizing our shared global obligations.

Additionally, these generations are not consecutive but interconnected. They create a comprehensive framework, emphasizing that the achievement of human rights is a continuous, interconnected search for universal justice, equality, and a sustainable future for all people.

4. Fourth Generation of Human Rights Bridging the Digital Horizon

As the humanity moves further into the 21st century, the tremendous acceleration of technology, the pervasiveness of digital spaces and the mounting specter of existential risks are giving rise to a new emerging concept of the *Fourth Generation* of Human Rights. This new era largely concerned with the significant implications of sophisticated technologies and their widespread influence on human existence. As its foundation is the critical need to identify and safeguard digital rights. This includes the right to privacy, right to be forgotten, right to internet etc.

Some of these rights can be discussed as follows:

4.1 Right to Privacy

Right to data privacy is one of the major human rights of fourth generation. In this generation such rights emphasize over the technology, privacy and data security. In India such right has been evolved and some landmark judgments like ***Justice K.S. Puttaswamy (Retd.) v. Union of India*** (Puttaswamy v/s Union of India,2017) which established the right to privacy as one of the basic rights (enshrined as fundamental rights).

4.2 Right to be Forgotten

In the world of digital era, the right to be forgotten is one of the contemporary rights in fourth-generation human rights. Right to be forgotten (RTBF) is the principle, in which an individual can request for the removal of his/her personal information from internet searches or databases in need to protect the privacy and dignity. Such right was firstly recognized in ***Google Spain v. APED*** (Google Spain V/s APED 2014) case in which EUCJ held that Google must delete such links which consists outdated or irrelevant information about any individual. Later, it was ratified by legal recognition in 2016 and codified as EU General Data Protection Regulation under Article 17 (Right to Erasure). Similarly, in India first legislative but limited attempt for has been made of RTBF under the Digital Personal Data Protection Act (2023) as Section 12 defining '*the right to correction and erasure of personal data*', which denotes the RTBF. There have been several cases in India showing a battle of RTBF. In ***Jorawar Singh Mundy v. Union of India & Ors.***, (Jorawar Singh Mundy v. Union of India & Ors, 2021) the Delhi H.C. acknowledged the harm done to an Indian-origin US citizen whose online Indian court decision, notwithstanding his acquittal, was affecting his international career. In order to protect his privacy and dignity, the court ordered search engines to remove the verdict from their index. In another case of ***Rakesh Jagdish Kalra v. Indian Today Group & Others*****, (**Rakesh Jagdish Kalra v. Indian Today

Group & Others 2024) even after the plaintiff was acquitted, media organizations continued to publish information linking him to criminal claims. The Hon'ble Delhi High Court ordered the immediate erasure of the prejudiced information, ruling that the right to privacy, particularly after legal exoneration, may trump freedom of expression where the latter promotes no ongoing public purpose.

4.3 Right to Internet Access

This right has also been developed as a basic human right in the 21st century, intrinsically linked to the rights to freedom of expression, education and livelihood. In the digital age, access to the internet is critical for exercising democratic freedoms, banking services, healthcare, education and participation in governance. It has also been established that denial of internet access is the infringement of Article 19(1)(a) (freedom of speech and expression) and Article 21 (Right to Life) under the Indian Constitution. (The Constitution of India, 1950)

In ***Anuradha Bhasin v. Union of India***, (Anuradha Bhasin v. Union of India,2020) the SC held that freedom of speech and expression and freedom to practice and practice the internet access are protected by constitution and the permanent suspension of the internet access is illegal and any limits must be fair, transitory and proportionate. Similarly, in another case of ***Faheema Shirin v. State of Kerela***, (Faheema Shirin v. State of Kerela 2019) the Kerela H.C. held right to internet access as a fundamental part of right to education and right to privacy as well.

The convergence of cultural identity and globalization presents crucial human rights issues, which are protected by *Article 29* of the *Universal Declaration of Human Rights* and, in India, Article 29 of the Constitution. Globalization's homogenizing effect frequently threatens distinctive cultural manifestations, linguistic heritage, and traditional traditions, potentially infringing the right to

preserve one's own distinct culture. India's courts have actively managed this conflict. In ***S. Jagannath v. Union of India*** *(*S. Jagannath v. Union of India, 1997*)* Court safeguarded traditional fishing community's cultural rights against the disruptive power of large-scale commercial aquaculture, which is a result of economic globalization. These decisions indicate that the state must defend cultural identity from being undermined by unrestrained globalizing processes, defining it as a basic right.

5. Conclusion

The primary relevancy of the 4th Generation human rights is emerged from their dynamic and collective nature. They are not just protecting the individuals against state but these rights are about the preservation of basic circumstances. These rights include clean and healthy environment, education, peace, privacy and digital protection. However, the conception of these rights still controversial, with concerns about legal enforcement, possible ambiguity, and the possibility of diminishing other, more established rights. Their effective incorporation into the global human rights canon is dependent on achieving a consensus that balances creativity and practicality. In short it can be said that fourth-generation human rights reflect the evolving and adaptive character of the human rights framework. They recognize that human susceptibility changes with scientific and cultural advancement. Ultimately, adopting the fourth generation is essential pledge to guarantee that progress upholds, rather than undermines, the core principle of human dignity for all.

References

1. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
2. Google Spain V/s Agencia Española de Protección de Datos (AEPD) and Mario Costeja González 2014 C-131/12 (2014)

3. Jorawar Singh Mundy v. Union of India & Ors, 2021W.P. (C) 3918 of 2021
4. Rakesh Jagdish Kalra v. Indian Today Group & Others 2024 SCC Online Delhi 51136
5. The Constitution of India, 1950, Art.19.
6. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637
7. Faheema Shirin v. State of Kerela, WP (C) No. 19716 of 2019
8. S. Jagannath v. Union of India, AIR 1997 SC 811

Judiciary as an Instrumentality of State: An Examination of Constitutional Implications

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Abstract

The meaning of "State" in Article 12 of the Constitution determines whether or not basic rights are enforceable in India. Although the legislative and executive branches are specifically covered by this framework, the judiciary's role is still unclear under the constitution. This research critically investigates whether the judiciary should be acknowledged as a State instrumentality for Part III purposes, given its constitutional status. It examines how Article 12 is inclusive and flexible, how it interacts with Article 13, and the intellectual and legal discussions around the topic. The research assesses how omitting judicial activities from Part III scrutiny hinders the enforcement of fundamental rights and undermines constitutional remedies, drawing on case law ranging from Rupa Ashok Hurra to Naresh v. State of Maharashtra. The argument for comparable recognition in India is strengthened by a comparative analysis from the United States, which shows that judicial activities may qualify as "State action" under the 14th Amendment. In order to ensure that no public authority is exempt from fundamental rights, the paper concludes that bringing the judiciary, at least in its administrative and rule-making functions under Article 12 would enhance constitutional accountability without sacrificing judicial independence.

Keywords: *Article 12, Judiciary as State, Fundamental Rights and Constitutional Accountability***.**

1. Introduction

The enforceability of fundamental rights is largely determined by the definition of the "State" found in Part III of the Indian Constitution. Determining the definition of "State" under Article 12 is not only a semantic issue; rather, it has significant constitutional significance because these rights are essentially protected against the State and its agents. The phrase serves as the cutoff point for deciding whether a person can use Article 32 or Article 226 constitutional remedies to defend their rights. The judiciary has historically been seen as an unbiased and independent body charged with protecting the Constitution and implementing fundamental rights. Nonetheless, it is still unclear if the judiciary itself is covered by Article 12's definition of "State". The fact that judicial activities, especially in their administrative and rule-making capacities, might occasionally impact fundamental rights lends relevance to this discussion. Although the legislative and executive branches have been clearly acknowledged as parts of the "State," the judiciary's role is more complex and contentious.

2. Constitutional Framework of Article 12 and the Judiciary's Institutional Role

For the purposes of Part III of the Constitution, "State" is defined under Article 12. According to this Article, "the State encompasses the Government and Parliament of India, the Government and the Legislature of each State, and all local or other authorities within the territory of India or under the administration of the Government of India, unless the context otherwise requires"(Pandey, 2022, p. 59). Article 12's wording is both comprehensive and non-exhaustive, indicating that its scope is subject to judicial interpretation and may change over time. It specifically covers municipal and other authorities, as well as the legislative and executive branches of the Union and the States. It does not, however, specifically address the

judiciary. According to the debates in the Constituent Assembly, the framers wanted to define "State" broadly in order for the Part III protections to be valid against all types of governmental power. In India, the judiciary holds a special and distinguished position as the protector of fundamental rights, the interpreter of the law, and the defender of the Constitution. In order to ensure an efficient system of checks and balances, the founders of the Constitution envisioned a judiciary that would be independent from the influence of the legislative and executive branches (India, 1950, arts. 124–147, 214–231). However, there is leeway for interpreting Article 12 because the judiciary is not specifically mentioned. Despite being constitutionally separate from the legislative and executive branches, the judiciary still carries out public duties and is empowered by the Constitution.

3. Judiciary as 'State' under Article 12

Only against the State are fundamental rights available. Therefore, it is essential to broaden the scope of State under Article 12 to reflect modern society and guarantee that Part III is applied more broadly. The State's most important organ is the judiciary. The legislature creates laws, and the executor organ carries them out while also having extensive authority over delegated legislation. One of the judiciary's most crucial roles is to prevent these two organs and their instrumentality from violating fundamental rights (Pandey, 2022, p. 59). The judiciary is not specifically included in Article 12 of the Constitution's concept of State. As a result, its position in relation to Part III of the Constitution is very contentious.

Inclusive but Not Exhaustive The Elastic Character of Article 12

Some argue that the judiciary is not a State because it is not expressly named in Article 12. Although it states that the phrase "State" encompasses some authorities, that definition does not go into detail

about what can be included in it. However, it does not conclude that courts and judges are excluded. Article 12's definition is specifically inclusive but not all-inclusive.

Reading Article 13 in Conjunction with Article 12 The Constitutional Position of the Judiciary

If we look at Article 13(2), the rationale becomes immediately clear. There, the word "State" must undoubtedly include "courts," as failing to do so will give "courts" the authority to impose laws that restrict or eliminate fundamental rights (*Premchand Garg v. Excise Commissioner, U.P.,* 1963). Concerns were voiced at the Constituent Assembly over the textual difficulties in Article 12, specifically the definition of the term "other authorities." It was proposed that excluding judicial entities from Article 12's scope could result in *"even a Magistrate… might pass an order, or make a notification abridging the rights that are conferred under sub-clause (a) of clause (1) of Article 13"* (*Constituent Assembly Debates*, 1950, Vol. VII, pp. 609–610).

Judicial Institutions as State Functionaries Beyond Adjudication

Despite the fact that the judiciary is not specifically mentioned in Article 12, the Supreme Court has the authority to establish rules (to govern court practice and procedure), choose its employees, and determine its terms of service as stated in Articles 145 and 146 of the Indian Constitution. It thereby fulfils the function of a State. The origin and scope of Article 12 in the Indian Constitution must be traced in order to comprehend the extended meaning of the term "other authorities" in that article. The current Article 12 was first introduced as Article 7 in the Draft Constitution. Dr. Ambedkar explained the scope of Article 12 and the rationale behind its inclusion in the Chapter on Fundamental Rights when he started a discussion about it in the Constituent Assembly on the Draft

Constitution (*Constituent Assembly Debates*, 1950, Vol. VII, pp. 609–610). According to jurists like H.M. Seervai and V.N. Shukla, the judiciary is the State. Articles 145 and 146 of the Indian Constitution support their position (Article 12 in Constitution of India, n.d.). Courts possess State features since they are established by statutes, just like any other State entity. They must follow the guidelines set down in the Constitution, and the President appoints judges. Judges are also paid from the Consolidated Fund of India. From the foregoing, it is clear that the framers of the Constitution intended to include those authorities that is given with the power to enact laws and rule making powers under Article 12 within the ambit of other authorities.

When the Guardian Becomes Immune Implications for Part III Enforcement

A large number of Part III's rules are, at the very least, aimed at judicial organizations. The Supreme Court's authority to grant writs of certiorari under Article 32 serves as an excellent illustration. The argument that court orders are not covered by Part III is nugatory as that authority can only be used against judicial or quasi-judicial entities (Seervai, 2011, p. 394). The rights outlined in Article 20 of the Constitution provide another set of comparable examples. The right to be "not guilty of any offence except for violation of a law in force at the time of the commission" is one example. It is obvious that the judiciary is the recipient of the right under Article 20(1) since conviction can only be carried out by a judicial body.

Judicial Immunity vs. Fundamental Rights Protection A Constitutional Dilemma

The State organ that determines the parameters of the fundamental rights is the judiciary. In reality, our Supreme Court ruled in its case that any State action whether executive, legislative, or judicial that violates Article 14 is null and unlawful insofar as it relates to the

equal protection guarantee in that Article (*Budhan v. State of Bihar,* 1955). The Judiciary can violate basic rights, as precedent demonstrates, and fundamental rights can only be used against the State. Thus, the claim is that the courts ought to fall under the purview of the State. This would make it possible to hold judges accountable for violating the fundamental rights while they are in their official roles. Given these facts, the status of the court can be explained and described by two decided case laws, which leads to the aforesaid conclusion.

According to the ruling in the decided case of *Naresh Shridhar Mirajkar v. State of Maharashtra* (1966), even if a court is a State (u/A 12), the High Court cannot be issued a writ u/A 32 against its judgment because it is assumed that such a judgment will not infringe basic rights. Additionally, the Court ruled in *A R Antulay v. R S Nayak* (1988) that a court cannot issue an order that violates fundamental rights. The issue at hand was whether the High Court's orders, which singled out the petitioner's prosecution for a speedy trial, infringed upon his rights under Articles 14 and 21. The Court held, seemingly deviating from the pattern shown above, "*n our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution*. In the first instance, the court essentially acknowledges that it is a State and in the Second, the fact that fundamental rights are solely concerned with the connection between the State and the individual establishes the court's status as a State.

Without hesitation, the Supreme Court's Constitution bench concluded in *Rupa Ashok Hurra v. Ashok Hurra* (2002) that "higher courts of justice do not also fall within the jurisdiction of State or other authority under Article 12 of the Constitution," with little

justification. It follows that the judiciary cannot violate Part III rights. A constitutional remedy is to challenge a court decision that has reached finality under the superior courts' writ jurisdiction on the grounds of fundamental rights violations. A citizen has the right to file a writ under Article 32 of the Constitution if he believes that any Supreme Court decision violates his fundamental rights. The Supreme Court is required to reverse its ruling protecting the individual if the citizen wins. Courts have almost always denied petitions that seek to challenge judicial orders under Article 32. This must ostensibly imply that judicial orders are immune from Part III examination. The Supreme Court's seven-judge bench ruling in *Ujjam Bai v. State of Uttar Pradesh* (1962) is among the first examples. This ruling was upheld by a nine-judge bench in *N. S. Mirajkar v. State of Maharashtra* (1966). In that instance, it was decided that a plea under Article 32 against a gag order issued by Mr. Justice Tarkunde of the Bombay High Court could not be maintained. *Triveniben v. State of Gujarat* (1989) provides further evidence of this trend. "It will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to analyze the final verdict reached by a competent court convicting and sentencing the condemned prisoner," the Court said in dismissing a petition under Article 32. This opinion is further supported by the Supreme Court of India's rulings in *Mohd. Aslam v. Union of India* (1996) and *Khoday Distilleries Ltd. v. Registrar General* (1996). These were all attempts to use petitions under Article 32 to contest court orders.

This interpretation of the "State" was made without taking into account the fact that Supreme Court judges are chosen by the President of India, who is the Constitutional Authority, and that they may be dismissed by the Parliament of India, which is also the Constitutional Authority and is acknowledged to fall under the purview of the "State" under Article 12 of the Indian Constitution. This incorrect interpretation was used to support the Supreme

Court's decision (*Naresh Shridhar Mirajkar v. State of Maharashtra*, 1966) to apply the concept of finality, which was made without taking into account the possibility that it may alter the scope and impact the effectiveness of Article 32 of the Constitution. It is obvious that the Supreme Court's powers and authority under Articles 13 and 32 of the Constitution, which are part of the fundamental framework of the Constitution, cannot be carried out even if the Supreme Court or its judges are declared to be within the jurisdiction of the State under Article 12.

4. Comparative Constitutional Perspective The United States

The *Commonwealth of Virginia v. Rives* (1880) ruling from the U.S. Supreme Court is frequently used to demonstrate that, for the purposes of the Constitution's 14th Amendment, a court ruling falls within the purview of State action. In *Brinkerhoff-Fairs Trust & Savings Co. v. Hill* (1930), it was decided that a decision that denies someone their current remedy without giving them a chance to be heard would violate the "Dude Process" clause. According to the substantive perspective, the Supreme Court would grant the authority a certiorari if a common law provision was upheld that was in conflict with a basic right. Therefore, judges cannot discriminate in their role as judges, whether they are implementing private agreements or common law. The State should not engage in discrimination through the courts; nevertheless, this does not mean that decisions would be consistent or error-free. According to the ruling in *Fay v. People of the State of New York* (1947), if the party who was wronged can demonstrate that the trial process denied them equal protection under the law, the conviction may be overturned. The clarity of the 14th Amendment's procedural and substantive provisions is significant in relation to the American viewpoint. The examples shown here unequivocally demonstrate that the idea that court authorities acting in their official position could jeopardize a

citizen's fundamental rights. Therefore, it would seem appropriate to explicitly recognize the judiciary as State under Article 12.

5. Conclusion and Recommendations

According to the National Commission to Review the Working of the Constitution, Article 12 should be amended to include an explanation stating that "other authorities" refers to any individual in connection with the public functions of the Constitution. The role of courts is to decide cases and interpret the law, which is obviously related to the public domain. According to Article 12, the judiciary and its officials would be considered "other authorities" (Ramnath, 2010). Given these arguments, it is argued that one should not draw the incorrect conclusion just because the word "judiciary" is not specifically used in Article 12. But it is also important to determine the scope of this inference. The apex court has held that a judicial order in the form of adjudicatory decision does not constitute a violation of fundamental rights. Thus, judiciary does not fall under the ambit of State when performing its adjudicatory function. Whereas, when judiciary exercises non-judicial powers likes administrative or rule making functions, it is performing tasks similar to those of other constitutional or statutory authorities and come within the domain of State under Article 12. Placing such non-judicial functions of the judiciary within the ambit of Part III strengthens transparency, accountability, and constitutional coherence. In order to achieve the highest constitutional goals, it is therefore highly desirable to place the Judiciary, which is a product of the Constitution, under Part III's jurisdiction.

References

1. A. R. Antulay v. R. S. Nayak, AIR 1988 SC 1531.

2. Indian Kanoon. (n.d.). *Article 12 in Constitution of India*. Retrieved October 28, 2025, from https://indiankanoon.org/doc/609139/

3. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930).

4. Budhan v. State of Bihar, AIR 1955 SC 191.

5. Commonwealth of Virginia v. Rives, 100 U.S. 313 (1880).

6. Constituent Assembly of India Debates, Vol. VII, pp. 609–610 (1950).

7. Fay v. People of State of New York, 332 U.S. 261 (1947).

8. Constitution of India, 1950, Arts. 124–147 & 214–231.

9. Khoday Distilleries Ltd. v. Registrar General, Supreme Court of India, AIR 1996 SC 1611; (1996) 3 SCC 114.

10. Mohd. Aslam v. Union of India, 1996 AIR 1611.

11. Naresh Shridhar Mirajkar and Others v. State of Maharashtra and Another, (1966) 3 SCR 744.

12. Pandey, J. N. (2022). The constitutional law of India (49th ed., p. 59). Central Law Agency.

13. Premchand Garg v. Excise Commissioner, U.P., AIR 1963 SC 996.

14. Ramnath, K. (2010). *Guarding the guards: The judiciary as state within the meaning of Article 12 of the Constitution*. Social Science Research Network. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1693464

15. Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388.

16. Seervai, H. M. (2011). Constitutional law of India: A critical commentary (4th ed., p. 394). Universal Law Publishing.

17. Triveniben v. State of Gujarat, AIR 1989 SC 1335.

18. Ujjam Bai v. State of Uttar Pradesh, 1962 AIR 1621.

Human Rights: A Study on its Evolution and Constitutional Safeguards in India

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Abstract

In order to achieve the goals of its founders, the Constitution was created on January 26, 1950, as the "Suprema Lex". In accordance with the concept of preamble, the judiciary, executive, and legislative branch of government have a constitutional obligation to work together efficiently in order to accomplish the objective of enacting socio-economic reforms in society. As a vital tool for guaranteeing justice, equality, and dignity in government, legal advocacy has had a substantial impact on the advancement and defence of human rights in India. The development, importance, and effects of legal action are examined closely in this paper, with an emphasis on how it addresses societal injustices, gaps in governance, and human rights violations. The study shows how judicial action has broadened the meaning of fundamental rights, made it easier for under-represented groups to access the legal system, and incorporated conservation efforts within the human rights framework. By addressing significant concerns pertaining to justice, equality, and dignity, judicial activism has been crucial in advancing human rights in India.

Keywords*: International instruments, National legislations, Judiciary, Human Rights, Judicial Activism.*

Introduction

In India, the judiciary has been crucial to the defence of citizens' rights. The court is tasked by the constitution with actively defending India's citizens' fundamental rights and liberties. The judge's traditional function was to serve as an unbiased arbitrator. However, they now actively engage in the discussion by endorsing one side over the other; this practice is sometimes referred to as judicial activism. By emphasising the concepts of equality and equity, the Supreme Court of India has recently taken the initiative to realise human rights in India (Deb, Subhalakshmi, & Chakraborti, 2020). Human rights are those inalienable rights which are exclusively available to human beings irrespective of race, caste, sex, creed or place of birth. These rights are inherent in every human being and are operative since their birth. Human rights are essential for all individuals as they are consonant with their freedom and dignity and are conductive to physical, moral, social and spiritual welfare (Agarwal, 2019). To recognise and protect these rights are very essential for the development of a human being to the fullest extent. Through international instruments and national legislations, these rights are protected to a greater extent.

Evolution of Human Rights

The evolution of human rights can be traced back of Babylon laws. Cyrus, who was the king of ancient Persia conquered Babylon and freed the slaves. He there established racial equality, the decrees of the great king Cyrus were recorded on a backed clay cylinder which is known as "Cyrus cylinder" and later recorded as the world's first charter of human rights. Its provisions are similar to many articles of Universal Declaration of Human Rights (UDHR). From there, the concept of human rights spread to Rome and Greece. The development of Human Rights during the medieval and modern period are explained as in detail here as follows (Kapoor, 2017):-

- Magna Carta 1215
- Petition of Rights 1628
- English Bill of Rights 1689
- US Declaration of Independence 1776
- US Constitution 1787
- US Bill of Rights 1791
- Declaration of Rights of Man and Citizen 1789
- Geneva Convention 1864
- UN Charter 1945
- Universal Declaration of Human Rights (UDHR) 1948

- **Magna Carta**

Magna Carta which laid the foundation of English common law was originally issued in 1215 by king John of England. The king was forced to sign the charter by his barons who were much unhappy with his taxation and arbitrary rule. The charter was issued to limit the powers of king and to establish certain rights for the citizens. The charter established supremacy of law i.e. which means everyone including the king is bound to follow law. The charter limits the power of king to interfere in the matters of Church and restrict the power to unlawfully/arbitrary impure of collection of taxes without the consent of his council.

- **Petition of Rights 1628**

The next recorded milestone in the protection of human rights was Petition of Rights which was initiated by Sir Edward Coke. The English parliament sent statement of civil liberties to Charles I to stop arbitrary arrest, forced loan and imprisonment for those opposing those policies. The petition of rights asserts four principles: -

- ✓ It prevents the collection of taxes without the permission of parliament
- ✓ Prevent the arrest of persons without lawful reasons
- ✓ It prevents the forcible housing of Military personnel inside the home of a citizen during peaceful time
- ✓ It asserts that essential law cannot be imposed during the time of peace

- **English Bill of Rights, 1689**

Then came the English Bill of Rights in the year 1689, which was enacted by the parliament of England which limited the powers of king and established parliamentary sovereignty. By establishing constitutional monarchy, the English Bill of Rights limited the powers of monarch ensuring the rights of people.

- **US Declaration of Independence 1776**

Thomas Jefferson played as instrumental role in writing the declaration of independence in the year 1776 by giving more preference to the individual rights.

- **The US Constitution**

The US Constitution was written in the year 1784 was a watershed moment in the history of development of human rights. After four years of enactment of US Constitution, the American Bill of Rights came to force on 15th December 1791. The bill of rights protects the fundamental rights of citizen by prohibiting the government from depriving the life, liberty and property of any person without due process of law.

- **1st Geneva Conference 1864**

The first Geneva conference which laid down the foundation international humanitarian law put forward an obligation to extend

care to wounded sick soldiers without any discrimination. The Swiss Federal Council initiated the conference which was attended by 16 European countries and several other American States.

- **United Nations, 1945**

UNO after the World War II (1939-1945) which took the lives of many people across the world, delegates from 50 countries met at San Francisco to create a new body known as United Nations Organisation (UNO). Their vision was to promote peace and harmony among nations thus preventing future wars. There the importance of protecting the rights of human beings were generated worldwide. The functioning of UN is based on the noble ideas of UN charter which came to effect from 24th October 1945. The main aim of UNO is to develop a friendly relationship among nations and to promote respect for human rights and fundamental freedoms.

- **Universal Declaration of Human Rights (UDHR)**

One of the most significant steps towards the development of human rights during 20th century was Universal Declaration of Human Rights (UDHR). It was adopted by the UN general assembly in the year 1948. This declaration is known as the first international legal effort to limit the behaviour of Hates. India was a signatory and adopted UDHR in 1948. The declaration recognises the inherent dignity and inalienable rights of all human beings by considering it as the foundation of freedom, justice and peace (Sharma, 2010). The declaration was flourished in such a way that it includes all the basic rights which as individual requires to lead a dignified life in the society. It gives importance to the basic principles of dignity, liberty, brotherhood, equality, etc. Most of the nations including India adopted the declaration and pledged to work together for the promotion of human rights within their jurisdiction (Hingorani, 1985). Prof. Louis B John is of the opinion that the declaration constitutes an authoritative interpretation of the UN charter which

is binding upon the members to the extent that the charter is binding and any violation of the provisions of the declaration amounts to the violation of principles of UN charter. As India is a member signatory to UDHR, the framers of Indian Constitution were mindful enough to incorporate the provisions of UDHR in the Indian Constitution and it is very clearly visible in the form of fundamental rights under Part III of Constitution of India (Leiser & Campbell, 2017).

Constitution of India and Human Rights

Human rights may be regarded as those fundamental and inalienable rights which are essential for life as human beings. The constitution of India is the fundamental law of the country. It guarantees rights which are very required for a human being to develop himself to the fullest extent (Hirsch Kotwal & Ramaswami, 2019). The legal duty to protect human rights includes the legal duty to respect them (Askhabova, 2024). The constitution of India protects the dignity, equality and liberty of as individual. Part III of the Constitution of India deals with fundamental rights and protection of human rights in India. The preamble of the Constitution of India assures justice, liberty, equality and fraternity to the individuals.

Article 14-18 of the Constitution of India deals with right to equality, which says that all are equal in the eyes of law and cannot be discriminated solely on the grounds of religion, race, caste, sex or place of birth. Article 19-22 ensures right to freedom. Article 23-24 protects the human beings from exploitation. Article 23 prohibits human trafficking and forced labour. Article 24 prohibits the employment of children below the age of 14 in hazardous employment. Article 25-28 guarantees the right to freedom of religion which guarantees the right to profess, practice and propagate one's own religion. Article 29-30 protect the cultural and educational rights of minorities.

Article 32 which is called by Dr. B.R. Ambedkar as the 'heart and soul of the constitution' deals with the right to constitutional remedies. It is the right which makes other rights meaningful. Maxim 'Ubi Jus Ibi Remedium' says that if there is a right there is a remedy. Article 32 provides remedy by way of writs if there is a violation of fundamental rights. The five writs are Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto.

Article 21 deals with right to life and personal liberty says that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 21 stands as an umbrella that protects many rights which are very essential for the basic existence of human life. The Directive Principles of State Policy (DPSP) which is in Part IV and the fundamental duties which is in Part IV A of the Constitution of India also strongly promotes the protection of human rights.

The Protection of Human Rights Act 1993 was enacted by the parliament of India in the year 1993 to provide for the better protection of human rights and for the establishment of human rights commission at national and state levels along with human rights courts (Mahajan, 2021). According to section 13 of the protection of human rights act, 1993, while inquiring in to complaints under the act, the commission have all the powers of a civil court trying a suit under the code of civil procedure, 1908 and in particular in respect of the following matters namely:

a) Summary and enforcing the attendance of witness and examining them on oath.

b) Discovery and production of any document

c) Receiving evidence on affidavits

d) Requisitioning any public record or copy thereof from any court or office

e) Issuing commissions for the examination of witness or documents

f) Any other matters which may be prescribed

Apart from the Protection of Human Rights Act 1993, there are many other legislations like Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Environmental Protection Act, 1986, Prevention of Women from Domestic Violence Act, 2005, Juvenile Justice (Care and Protection of Children) Act, 2015 etc. for the protection of Human Rights in India (Repetto, 2024).

Judicial Activism in Protecting Human Rights

Judicial Activism is the active interpretation of law by the judges, often going beyond strict legal text, in order to address social needs and protect the rights of the people, sometimes by overreach legislative executive actions (Bajwa, 1995). The ultimate purpose of the court go beyond a strict interpretation of law and adopt a dynamic, purposive approach to deliver justice where there is a lack of legislative or executive action to address an issue which involves violation of fundamental rights or any public interest is involved.

Judicial activism plays a critical role in protecting human rights where there are no sufficient laws to address an issue, the courts interpret law beyond the legal texts in order to ensure that the human rights are not violated (Das, 2022). Moreover, it is in the position of strengthening democracy and human rights in India, particularly when other organs of the state have failed to act.

In *Vishaka* v. *State of Rajasthan***,** the Supreme Court issued strict guidelines for protection of women from sexual harassment at workplace. The Supreme Court pointed out that sexual harassment at workplace violates Articles 14, 15, 19 and 21. In *Bandhua Mukti Morcha* v. *Union of India*, the case addresses the issue of forced labour and inhumane conditions in Haryana's stone quarries. The court ruled that bonded labour violated the right to life with dignity under Article 21 and prohibited forced labour under Article 23. In

M. C. Metha v. *Union of India***,** the court introduced the principle of absolute liability. The court made the company absolutely liable to award compensation to the people who suffered injuries and damage due to Oleum Gas leak. In *Justice K. S. Puttuswamy* v. *Union of India*, the Supreme Court held right to privacy is a fundamental right and it is protected under the umbrella of Article 21 of the constitution. The court pointed out that right to life and personal liberty also includes right to privacy which is very critical for an individual to lead a dignified life in the society. In *Hussainara Khatoon* v. *State of Bihar*, the Supreme Court look forward steps to protect the human rights of under trial prisoners. The court held that the right to speedy trial is a fundamental right protected under Article 21 of the constitution. The verdict led to the release of thousands of under-trial prisoners. In *People*'*s Union for Democratic Right* v. *Union of India*, the case addresses severe exploitation of construction workers during the 1982 Asian Games. The court expanded the scope of fundamental rights especially Article 21 and held that right to life include the right to livelihood. The court using PIL mandated fair wages, banned child labour and ordered to improve the working conditions of labourers.

Conclusion

The main focus of law in a democratic country committed to attaining socio-economic equality is not on legislatures, even though they enact laws; on courtrooms, even though judges interpret and evaluate the laws; or on the offices of legal scholars, they create jurisprudential principles that support both legislatures and judges. Rather, the unrealised but legitimate aspirations of common people form the primary basis of the law. Ultimately, judicial activism should assist the legislative and executive branches of government rather than take their place, ensuring that they collaborate to realise the constitutional guarantee of justice for all. By addressing significant concerns pertaining to justice, equality, and dignity,

judicial activism has been crucial in advancing human rights in India. The court has filled in the gaps left by the legislative and executive branches by creatively interpreting constitutional provisions, maintaining human rights at the forefront of governance. The separation of powers, however, may be jeopardised by judicial overreach brought on by excessive activism.

References

1. Deb, S., Subhalakshmi, G., & Chakraborti, K. (2020). Upholding justice for ensuring equity and equality. Upholding Justice, 3-14. https://doi.org/10.4324/9780429324086-2
2. Agarwal, H. O. (2019). *International law and human rights* (22nd ed.). Central Law Publications.
3. Kapoor, S. K. (2017). *International law and human rights* (21st ed.). Central Law Agency.
4. Sharma, B. K. (2010). Universal Declaration of Human Rights and Indian law. PHI Learning Pvt.
5. Hingorani, R. C. (1985). *Human rights in India*.
6. Leiser, B. M., & Campbell, T. D. (2017). *Revival: Human rights in philosophy and practice (2001)*. Routledge.
7. Hirsch, M., Kotwal, A., & Ramaswami, B. (2019). A human rights based approach to development in India. UBC Press.
8. Askhabova, A. M. (2024). *The judicial system and its role in ensuring respect for and protection of human rights.* https://doi.org/10.46916/23082024-1-978-5-00215-500-2.
9. Mahajan, Y. (2021). Role of the national Human Rights Commission (NHRC) in protection of the human rights in India (an overview of protection of Human Rights Act, 1993 with the latest annual report of NHRC). SSRN Electronic Journal. https://doi.org/10.2139/ssrn.3761174

10. Repetto, G. (2024). The judicial use of human dignity in social rights issues. Human Dignity, Judicial Reasoning, and the Law, 233-249. https://doi.org/10.4324/9781003307853-17

11. Bajwa, G. S. (1995). *Human rights in India: Implementation and violations*.

12. Das, J. (2022). Human rights law and practice (2nd ed.). PHI Learning Pvt.

13. *Bandhua Mukti Morcha* v. *Union of India AIR 1984 SC 802*

14. *M. C. Metha* v. *Union of India***,** AIR 1987 SC 1086

15. *Justice K. S. Puttuswamy* v. *Union of India, 2017 10 SCC 1*

16. *Vishaka* v. *State of Rajasthan*,AIR 1997 SC 3011

Pride and Progress: Empowering Non-Binary and LGBTQIA+ Individuals

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Abstract

The twenty-first century has witnessed a profound transformation in the recognition, visibility, and empowerment of LGBTQIA+ communities both globally and within India. This chapter explores how legal, cultural, and institutional shifts have collectively shaped the contemporary discourse on equality and human dignity for non-binary and gender-diverse individuals. It traces the historical journey from pre-colonial acceptance and indigenous gender fluidity through colonial-era repression under Section 377 to the renewed affirmation of rights following its decriminalization in 2018. Drawing upon functionalist, conflict, symbolic interactionist, and intersectional perspectives, the chapter analyses how social institutions such as family, education, employment, and media contribute to inclusion or exclusion. Persistent barriers—stigma, discrimination, underrepresentation, and economic inequality—continue to hinder empowerment despite legal advancements. Pride movements are examined as powerful acts of resistance, resilience, and celebration that reclaim public space and identity. The study argues that empowerment extends beyond legal

recognition to encompass cultural transformation, inclusive education, and participatory policymaking. Real change lies in aligning institutional support with societal acceptance, ensuring that diversity is not merely tolerated but celebrated as intrinsic to human experience. Ultimately, LGBTQIA+ empowerment signifies collective progress toward equality, respect, and social justice for all.

Keywords: *LGBTQIA+, Empowerment, Gender Diversity, Pride, Inclusion, Intersectionality*

Introduction

The twenty-first century has marked an unprecedented transformation in global consciousness regarding gender identity and sexual orientation. Across the world, Pride movements have evolved into powerful expressions of self-determination, equality, and dignity *(*Baudh & Misra, 2024*)*. In India, the decriminalization of Section 377 of the Indian Penal Code by the Supreme Court in *Navtej Singh Johar v. Union of India* (2018) was not merely a legal victory but a milestone in the nation's moral and social awakening.*(*Baudh & Misra, 2024*)*, It shifted discourse from tolerance to active acceptance, sparking a wave of policy debates, academic inquiry, and public engagement concerning LGBTQIA+ rights and inclusion (Chatterjee, 2024*)*.

India presents a dual history: ancient traditions that embraced fluidity coexist with colonial morality that imposed stigma *(*Bhattacharya, 2022*)*, through Section 377. Although the 2018 judgment constitutionally recognized the right to love and live with dignity, societal acceptance still lags *(*Human Rights Watch, 2024*)*. Discrimination across education, employment, healthcare, and family structures continues to shape queer experiences, particularly for transgender and non-binary persons *(*Patel & Shah, 2024*)*.

Gender identity reflects a personal sense of self, whereas sexual orientation concerns emotional and romantic attraction

*(*World Health Organization, 2024*)*. Empowerment signifies achieving recognition, confidence, and access to opportunities free from stigma *(*Roy, 2022*)*. This chapter examines how Indian social institutions family, education, workplace, law, and media—shape empowerment and marginalization *(*Joshi, 2023*)*.

Using sociological and intersectional approaches, this analysis traces India's history of gender diversity, explores structural barriers, and explains how Pride *(*Menon, 2023*)*, functions both as celebration and resistance. It emphasizes that empowerment requires more than legal change; *(*Singh, 2022*)*, it must be embedded in everyday social relations, cultural acceptance, and inclusive public policy.

History

India's understanding of gender and sexuality has historically reflected a fluid and pluralistic worldview. Ancient texts and traditions illustrate inclusive depictions of diverse identities: Ardhanarishvara, the composite form of Shiva and Parvati, symbolizes gender unity; Shikhandi in the *Mahabharata* and Mohini in the *Bhagavata Purana* represent gender transformation and divine duality. (Kapur, 2022). Communities such as Hijras and Jogappas enjoyed ritual significance in precolonial India, often performing blessings at childbirths and weddings. *(*Bhattacharya, 2022*)*,

Colonialism disrupted this inclusive fabric. The British introduced Section 377 in 1861, criminalizing "carnal intercourse against the order of nature", *(*Puri, 2022*)*. The law, rooted in Victorian morality rather than Indian ethics, cast non-heteronormative behavior as deviant *(*Roy, 2022*)*. It institutionalized stigma, transforming diverse sexualities into legal transgressions. Post-independence India inherited this colonial hangover, leaving LGBTQIA+ citizens legally vulnerable and socially marginalized *(*Kapur, 2022*)*.

The modern movement for equality began with grassroots organizations such as the Humsafar Trust, Naz Foundation, and Sangama in the 1990s (Menon, 2023). Their efforts in public health and advocacy slowly reframed queer identity as a human rights issue. The Delhi High Court's 2009 ruling in *Naz Foundation v. NCT of Delhi* decriminalized consensual same-sex acts *(*Chatterjee, 2024*)*, recognizing that criminalization violated the constitutional rights to equality and dignity (Baudh & Misra, 2024). Although this judgment was overturned in 2013 by *Suresh Kumar Koushal v. Naz Foundation*, it set the stage for renewed activism culminating in *Navtej Johar* (2018).

The *NALSA v. Union of India* (2014) judgment was equally transformative, recognizing transgender persons as a third gender with legal rights to self-identification, education, and employment. (Singh, 2022). These landmark cases collectively reframed sexuality and gender as constitutional concerns of dignity, privacy, and autonomy. India thus joined the global tide of equality movements inspired by events like the 1969 Stonewall Riots in the United States yet retained its distinctive cultural grounding in pluralism. (Yadav, S. C., 2022).

Sociological Perspectives

Sociology provides vital frameworks for understanding LGBTQIA+ empowerment. Early functionalist theories viewed gender roles as necessary for social stability, positioning heterosexuality as normative (Subramanian, 2022). This view marginalized those outside binary gender constructs, labelling diversity as deviance. In contrast, conflict theory interprets gender and sexuality through power relations, where heteronormativity maintains patriarchal dominance (Menon, 2023). LGBTQIA+ activism challenges these hierarchies by asserting that equality and representation are matters of justice, not preference.

Symbolic interactionism explains how identity is performed and negotiated through daily interactions (Rao, 2023). Judith Butler's theory of performativity reveals that gender is not fixed but enacted through repeated behaviors—how one dresses, speaks, or interacts socially (Roy, 2022). Everyday acts, such as declaring pronouns or adopting gender-affirming attire, become assertions of autonomy and visibility (Patel & Shah, 2024).

Intersectionality reveals how caste, class, religion, and gender combine to produce layered discrimination (Yadav, K., 2023). For example, a Dalit trans woman may face multiple forms of exclusion. Language also shapes identity; while Indian languages often lack vocabulary for gender diversity, regional terms like *Aravani* or *Kinnar* reflect indigenous recognition.

Barriers to Empowerment

Despite legal progress, deep-rooted prejudice persists. Family rejection remains a central barrier, often leading to forced marriages, emotional abuse, or conversion attempts (Subramanian, 2022). Educational settings mirror this discrimination bullying lack of gender-neutral facilities, and limited teacher sensitization contribute to dropout rates among queer youth. (Joshi, 2023). Workplace inequality remains widespread, especially for transgender persons (Singh, 2022), who often depend on informal employment. Healthcare discrimination is frequent, with limited access to gender-affirming care and insensitive medical practices (Khan, 2022). Although the Transgender Persons (Protection of Rights) Act (2019) mandates inclusion, implementation is inconsistent. Religious conservatism and cultural stigma further perpetuate exclusion. Media representation is improving but inconsistencies remain—some portrayals are sensitive while others reinforce stereotypes. These barriers collectively contribute to psychological distress, including anxiety and depression, intensified by limited access to queer-affirmative counselling (Patel & Shah, 2024). Positive state-

level initiatives, such as Tamil Nadu's Transgender Welfare Board and Kerala's Transgender Policy, demonstrate how structured support can promote dignity and livelihood (Yadav, S. C., 2022).

Pride as Resistance & Celebration

Pride in India is both a celebration of identity and a form of resistance *(*Mitra, 2023). Since the first Kolkata Pride in 1999, marches have become widespread, reclaiming public spaces and challenging heteronormativity.(Chatterjee, 2024). Pride fosters solidarity across communities including Dalit, Adivasi, feminist, and disability groups—highlighting intersecting struggles for dignity. The rise of digital Pride during the COVID-19 pandemic showcased adaptability. Online platforms hosted virtual parades, storytelling sessions, and art exhibits, allowing participation from smaller towns and conservative regions. (Mitra, 2023) This digital turn democratized visibility and encouraged dialogue among youth, educators, and policymakers.

Corporate and educational institutions increasingly engage with Pride through campaigns and diversity programs. While this marks progress, critics caution against tokenism or "rainbow-washing." Genuine allyship requires continuous support, equitable hiring, and structural reform rather than seasonal displays.

Cultural production through film, literature, and art further amplifies Pride's message. Queer artists, writers, and filmmakers use creative expression to narrate stories of resilience and belonging. (Das, 2023). Initiatives like the KASHISH Mumbai International Queer Film Festival have cultivated a vibrant space for advocacy through art. (Human Rights Watch, 2024)

At its core, Pride remains a collective assertion of the right to exist authentically (Yadav, K., 2023). It bridges activism and celebration, grief and joy reminding society that equality is not granted but continually claimed through visibility and solidarity.

The Path Forward

True empowerment demands systemic transformation. Legal equality must be accompanied by inclusive education, affirmative healthcare, safe workplaces, and representation in policymaking. Educational curricula should incorporate discussions on gender diversity and empathy from early schooling. Teacher training programs need modules on inclusivity to prevent discrimination before it begins. Workplace inclusion requires robust anti-discrimination laws and grievance mechanisms. Public-sector recruitment should reserve opportunities for transgender and non-binary persons, mirroring Tamil Nadu's pioneering steps in employment reservation. Family acceptance forms the foundation of empowerment; community workshops and support groups can bridge generational divides. Media must adopt responsible portrayals that humanize rather than stereotype LGBTQIA+ individuals. India's progress lies in integrating queer rights into broader frameworks of human rights, sustainable development, and social justice. Recognizing diversity as strength, not deviation, aligns with the constitutional promise of dignity and equality for all.

Hence, pride turns into a continuous process of freedom and public visibility—a reminder that happiness is a political activity in and of itself. Through public discourse, art, and performance, Pride reinterprets strength as a communal celebration and a shared struggle. It promotes a varied, inclusive, and deeply human vision of equality by reclaiming not just streets but also stories.

Limitations of the Transgender Persons (Protection of Rights) Act, 2019

Despite being celebrated as India's first comprehensive legislation on transgender rights, the Transgender Persons (Protection of Rights) Act, 2019 contains significant limitations that hinder meaningful empowerment. A central issue is the certification process

for gender identity. Although the Supreme Court in *NALSA v. Union of India* (2014) affirmed the right to self-identification (Singh, 2022), the Act requires transgender persons to seek a District Magistrate's certificate (Bhattacharya, 2022). This bureaucratic requirement contradicts self-determination and exposes individuals to delays, gatekeeping, and discrimination (Yadav, S. C., 2022). The protections for residence and family life are also weak. While the law states that transgender persons cannot be separated from their families, it ignores the widespread reality of family violence, abandonment, and coercive control. Alternatives such as community housing, crisis shelters, and state-supported safe homes remain limited. Many activists argue that the Act fails to engage with India's culturally rooted transgender communities—Hijras, Kinnars, Aravanis, and Jogappas whose socio-religious identities do not align with purely biomedical or bureaucratic definition of gender. (Roy, 2022). Consequently, the Act risks flattening the diversity of India's gender spectrum into administrative categories.

Overall, while the 2019 Act signifies progress, its structural weaknesses reveal a gap between legislative intent and lived experience *(*Human Rights Watch, 2024*)*. A strengthened rights-based framework grounded in self-identification, affirmative action, and community-led welfare remains essential for genuine empowerment.

Conclusion

The struggle for LGBTQIA+ and non-binary empowerment in India is a continuing evolution from invisibility toward visibility, from marginalization toward participation. Legal reforms like *NALSA* (2014) and *Navtej Johar* (2018) (UNDP, 2024), signify monumental progress, yet the lived reality of many remains constrained by social conservatism, institutional apathy, and economic vulnerability (Baudh & Misra, 2024). Therefore, empowerment is not limited to the courtroom; it necessitates respect, rights, and acknowledgement

at all societal levels *(*World Health Organization, 2024*)*. When people are able to live freely and authentically without being subjected to violence, stigma, or institutionalized discrimination, they are truly empowered. It entails a change in the way people think, where identity is valued rather than just accepted. Representation in the media, inclusive education, and community advocacy that normalizes diversity as an essential component of the human experience all contribute to this shift. Aligning social acceptance with policy inclusion is also important. Without institutional support, acceptance does not guarantee justice and security, and laws without cultural acceptability run the risk of staying symbolic *(*Chatterjee, 2024*)*. Governments, educators, activists, and people must work together to close this gap and establish safe, affirming, and egalitarian environments. The future depends on transforming symbolic inclusion into substantive equality. When law, education, culture, and community converge to uphold the right to self-definition, India can truly embody its constitutional ethos of justice, liberty, equality, and fraternity for all genders and identities.

References

1. Baudh, S., & Misra, G. (2024). LGBTQIA+ rights and constitutional morality in India. *Indian Law Review, 8*(1), 1–22.
2. Chatterjee, R. (2024). Queer inclusion and social justice frameworks in India. *Social Change, 54*(1), 67–84.
3. Human Rights Watch. (2024). *Living with dignity: LGBTQIA+ rights and protections in Asia*. Human Rights Watch.
4. Patel, K., & Shah, M. (2024). Non-binary visibility and mental health outcomes in urban India. *Indian Journal of Social Psychiatry, 40*(1), 12–20.
5. United Nations Development Programme. (2024). *Legal gender recognition and non-binary inclusion: Global progress report*. UNDP.

6. World Health Organization. (2024). *Sexual orientation, gender identity and health equity*. WHO.

7. Sarraf, S. (2023). Shielding justice: Upholding the rights and dignity of the accused in the Indian legal system. *Indian Journal of Law & Legal Research, 5*(2), 1–15.

8. Das, A. (2023). Media representation and empowerment of LGBTQIA+ communities in India. *Journal of Cultural Studies, 15*(2), 45–63.

9. Ghosh, S. (2023). Queer futures and community resilience in South Asia. *South Asian Review, 44*(3), 289–305.

10. Joshi, M. (2023). Inclusive education and LGBTQIA+ youth empowerment in India. *International Review of Education, 69*(3), 411–430.

11. Menon, N. (2023). Feminist solidarities and queer politics in contemporary India. *Economic and Political Weekly, 58*(21), 34–41.

12. Mitra, R. (2023). Digital activism and LGBTQIA+ movements post-Section 377. *Media, Culture & Society, 45*(5), 873–889.

13. Rao, N. (2023). Intersectionality and non-binary identities in Indian law. *Indian Journal of Gender Studies, 30*(2), 210–227.

14. Yadav, K. (2023). Community collectivism and queer empowerment in India. *Sociology Today, 18*(2), 67–83.

15. Divya Dharshini, P. (2022). An analytical study on custodial death and legislative violation. *Indian Journal of Law & Legal Research, 4*(1), 1–12.

16. Gupta, V. (2022). Custodial death and torture: A blatant violation of human rights. *Indian Journal of Law & Legal Research, 4*(3), 1–10.

17. D'Souza, A. (2022). Judicial approach and reformation in the law regarding custodial violence in India. *Indian Journal of Integrated Research in Law, 2*(1), 1–18.

18. Bhattacharya, D. (2022). Policy gaps and lived realities of transgender and non-binary persons in India. *Indian Journal of Human Rights, 6*(1), 55–71.

19. Kapur, R. (2022). Gender identity, dignity, and constitutional rights in India. *Journal of Indian Law and Society, 13*(1), 1–18.

20. Khan, S. (2022). Mental health challenges among LGBTQIA+ populations in India. *Indian Journal of Psychology, 97*(4), 512–528.

21. Puri, J. (2022). Governance, sexuality, and the politics of inclusion in India. *Gender & Society, 36*(6), 907–925.

22. Roy, S. (2022). Intersectional empowerment and queer citizenship in India. *Sage Open, 12*(3), 1–12.

23. Singh, A. (2022). Policy inclusion and implementation of transgender rights in India. *Indian Public Policy Review, 3*(4), 27–42.

24. Subramanian, M. (2022). Family, gender diversity, and social acceptance in India. *Sociological Bulletin, 71*(2), 245–263.

25. Yadav, S. C. (2022). Human rights perspectives on gender diversity in India. *Socio-Legal Review, 18*(1), 89–105.

26. Zwickl, S., et al. (2022). Health equity and well-being of non-binary populations. *The Lancet Public Health, 7*(5), e412–e420.

27. Chauhan, P. (2020). Making the "invisible" visible: Custodial violence and the civil liberties–democratic rights movement in India. *International Journal of Law, Crime and Justice, 62*, 100375.

28. Wahl, R. (2014). Justice, context, and violence: Law enforcement officers on why they torture. *Law & Society Review, 48*(4), 807–836.

Custodial Human Rights Violations and Remedial Jurisprudence: A Justice Based Approach

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Abstract

Talk on the first generation of human rights is predominant since the victim met with violation in most of the cases be within the four walls, and remains helpless. This ultimately requires legal protection by the State; however, in almost all cases, the violator is the State, raising the question of protection and also justice. The Constitution guarantees fundamental rights, including natural rights, despite the ongoing challenges in human rights protection. One point everyone to remember is that human rights are natural one since acquired by natural birth, human rights naturally exist, but in case of violation, our eyes are searching the statute book, which is man-made. Therefore, on violation of human rights in the custody flourishing the thought of multiple legal rules and provisions exists in the statute book, and discussion on these and however, this leads us to wonder, really, the multiple number of laws is a reason of protection-less! Having this as the backdrop, discussing the provisions of law for the custodial

violence and a large gap in the strict adherence by the concerned authorities to such violations, the paper explores the same.

Keywords: *custodial violence, human rights, natural rights, constitutional rights, fundamental rights*

Introduction

Beginning life naturally is the reality for everyone, regardless of law and humanity. The ultimate purpose of law is justice; if then, without this purpose, there is no hesitation either in the legal or natural sense to admit the theoretical failure on the part of true law. True law in this context, Austin's positive law, which has the attributes of sovereign, command, and sanction (Austin, John, 1832). The right to life is very important and it is most fundamental for all living beings (Pal Singh Mahendra, 2022). Custodial deaths and torture need to be prohibited. It gives much pain to mention here that, as per the details available with the NHRC, over 2300 custodial deaths have occurred in India in recent years. The legal system at all times, even in modern, popular societies, has a legislative system, i.e., the existence of law in the statute book. Therefore, while dealing with a discussion on the law for protection of natural rights, the law for protection of human rights, the Criminal Law, the Constitutional Law, etc., carry the predominant significance that one needs to be looked into. Apart from keeping the natural rights protection on the theory by words in the book, there arises an empirical focus on the enforcement of law of natural rights because of violations of the same being witnessed frequently. Since adopting an academic approach to this, it may be, not be quite appropriate for mentioning the events rather illustratively for a good understanding. Here, we would focus on the law first, secondly, on the violations with reference to the law and its protection mechanism, thirdly, on the remedies with reference to the law, and finally, on the justice.

Human Rights Law

The emergence of the law of human rights, initiated in the post-World War 2 era, prompted nations to convene for the advancement of humanity with the people of different nations during war and other times. In 1948, they adopted a declaration referred to Universal Declaration of Human Rights (UDHR). Following that, 2 covenants, As well as two ICCPR Optional Protocols were adopted. India has clearly endorsed international initiatives focused on the protection and promotion of human rights globally, till not turned up on the said two Optional Protocols. It is evident from that the death penalty is provided in the criminal law. (Bharatiya Nyaya Sanhita, 2023). India created the Protection of Human Rights Act in 1993 pursuant to a new law in alignment with the International Order. The Human Rights Court (The Protection of Human Rights Act, 1993) at the district level, the State Human Rights Commission (SHRC) (The Protection of Human Rights Act, 1993), and the National Human Rights Commission (NHRC) , (The Protection of Human Rights Act, 1993) For each State, all are to be established by this Act. The Protection of Human Rights Act of 1993 also provides Information on the Commission's activities, including visiting prisons.

Legal rules appear from the stage of arrest of a person and continue up to his judicial remand with multiple facets of applicability, but with no positive law (true law) of strong nature to prevent such violations in India. The following are the laws applicable when a person is arrested, Articles 20,21, 22, and 32 of the Constitution of India, 1950, SC (Supreme Court) of India guidelines for the arrest of an individual (*D.K.Basu v State of West Bengal*, 1997), Bharatiya Nagarik Suraksha Sanhita, 2023, the "Protection of Human Rights Act, 1993", International Instruments, and finally, petitions against violations before the Courts, but the committers of such violations are tried under Bharatiya Nyaya Sanhita, 2023, only if such human rights violations are converted to offenses on proper inquiry and constant demand. And this maxim to be remembered here, *ubi jus*

incertum, *ibi jus nullum*, the meaning is, where the law is uncertain, there is no law.

The apex court has observed that prisoners are not deprived of their fundamental rights in accordance with Article 21, since their human rights are not to be violated (*Neelabati Bahera v State of Orissa,* 1993). People under the custody of law enforcement, whether in judicial or police custody, are known as prisoners. Their fundamental rights may only be violated in compliance with the legal process and not in any other way. Torture while in custody would be considered a violation of Article 21 (The Constitution of India, 1950). A person's human rights are likely to be violated as soon as they are taken into custody by the police. In such situations, in most circumstances, his life will be in question. Injuries also meant violations. In the first sense, he is deprived of outside communication and would be placed within the four walls. In case of torture in the said closed four walls, lack of evidence. (*Gowri Shankar Sharma v. State of Uttar Pradesh,* 1990) would be a major advantage to the elected officials. If the fourth generation of human rights is the right to communication, then it relates to the first. The freedom to communicate, a fourth-generation human right, is essential for those arrested. However, discussing the protection of human rights as fundamental rights given to people by the Constitution, international agreements, and the rules established by the highest court is extremely difficult to put into practice in an arrest situation. The fourth and first generations of human rights have jointly implemented medical protection, which is most needed for arrested people but is rarely applied, as shown by the continued cases of custodial deaths.

It is not easy to have the words to describe the person in custody or within the four walls. There is no doubt that he is helpless. Therefore, the purpose of human rights law should concentrate on this specifically.

According to the SC's ruling in"*Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981"*, torture and cruel, inhuman, or humiliating treatment are crimes against human dignity. The Court concluded that torture and other cruel, inhuman, or degrading treatment laws are excluded from logic and non-arbitrariness.

Therefore, the said law and the procedure provided would be unconstitutional in the plain sense and void as per Article 13 for being violative of Article 21 of the Constitution and also against Article 14. (The Constitution of India, 1950)

Common Law

The Supreme Court has come up with remedies for the victims under the writ-jurisdictions, compensation for the violations of human rights (*Saheli v Commissioner of Police,* 2005). Remedies provided would be part of the compensatory jurisprudence evolved by the court. The remedy by means of compensatory relief would definitely constitute the Common Law remedy. In reality, on the analysis of law, there is either no connection or relationship b/w the protection of human rights law and remedies provided by the Court. The existence of the Common Law in India is even admitted by the Supreme Court. (*Builders 'Supply Corporation v. Union of India, 1965)*, not leaving the doubt about its existence in the aspect of searching for the appropriate source of law to accommodate it. In the right sense, the compensatory relief is good for violations. The authorities, on inquiry, may recommend compensation or damages to be provided to the victims or their dependents. ("The Protection of Human Rights Act, 1993"). In the Court observed that where the fundamental rights of the citizen are violated, the plea which is based on the Common Law principle, the sovereign immunity would not be available in the Indian Legal system ("*State of Andhra Pradesh v Challa Ramakrishna Reddy,* 2000"*).*

Criminal Law

If, for example, in the case of custodial death as a human rights violation, on preliminary inquiry or other, on proving of violation, the case under the criminal law would be appropriate to punish the offenders for converting such a violation into an offense under the penal law. The real fact is that such a penalty is not found in the human rights law. The offenses and penalties provided under the penal law in India, currently in force, the Bharatiya Nyaya Sanhita, 2023, while the earlier law is the IPC (Indian Penal Code), 1860, are relevant for the said violations, so be made applicable. Nonetheless, there exists no correlation or association between the criminal law and the law of human rights in offering victims of violations of human rights restitution.

International Human Rights Law

The "International Covenant on Civil and Political Rights, 1966"; the UDHR, 1948; the Optional Protocol to the ICCPR; the International Covenant on Economic, Social, and Cultural Rights, 1966; the Convention against Torture and other Cruelty; the Convention against Inhuman or Degrading Treatment or Punishment, 1984; and the Second Optional Protocol to the ICCPR for the abolition of the Death Penalty are all signed by U.N. member nations as a result of this initiative. Furthermore, numerous international treaties have been ratified for the protection and advancement of human rights.

Injury to Rights – Scope

Human rights constitute a part of the Fundamental Rights of Constitution, as affirmed by the SC in several cases. (*Chairman, Railway Board v Chandrimadas,* 2000) It is entirely appropriate to assert that the right to life is a principle human right that falls under the 1st generation. Human Rights Commissions at the national level

(one in number), all state levels, and Human Rights Courts at all district levels are among the organizations that can offer remedies in cases of suspected violations of human rights ("The Protection of Human Rights Act, 1993"). The victim may petition the Apex Court for a remedy if they require justice for a human rights violation. On such occasions, the SC has evolved the compensatory jurisprudence in particular cases; there exists considerable discontent with the persistence of such human rights. If human rights possess this nature, one coupled with remedies, then it would be proper justice for the human rights violation, and it would ultimately form a strong remedial jurisprudence for violations of human rights in line with protection of same way attached to the prevention of it to a particular extent. If it is the case of custodial death in custody, then witnessing continuation of it frequently at different occasions shows the failure of the machinery, particularly owing to the lack of a proper remedial mechanism, even having multiple laws nationally as well as internationally. The causal connection between the rights and remedies is well-established in law, and therefore, that can be applied to the law that provides rights.

Rights and Remedies

The legal system would definitely be ensured with the connection of rights and remedies. The law protects by providing the rights and then remedies for such rights in the infringement of them. A well-known maxim called "*ubi jus ibi remedium",* signifying that where there is a right, there exists a solution, underlies this notion. Then, it is quite appropriate here to discuss the violation of human rights, first appropriate subject matter, 1st generation human rights, which comprises political and civil rights. Complexity revolves around the enforcement of first general human rights since they occupied a strong place in the theory in relation to their practical application. The principal violator would be the State on the first-generation human rights, as is clear from this definition, "Human rights are

those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration" (Basu D.D., 1994). It would be rather difficult to provide remedies to the victims according to the law in force, illustratively, custodial death on the first focus viewed as human rights violation and on the second, charged as offence of murder, and the law therefore in the picture would be the criminal law. If the natural cause for the death is well-established even in the case of a claim of custodial death, offence of murder would not arise; therefore, no place for the criminal law, and also the human rights law. Suppose any inquiry is commissioned, then it would take a long time to complete. Finally, if a violation of human rights is found out, again a criminal case of murder would be framed as per the criminal law. The legal system has a legal relationship between the rights that require to be protected as well as remedies found appropriate against their violation. In the direct sense, the human rights protection law must provide an appropriate and proper remedy for the victims in situations that no criminal law jurisdiction has a scope. Only then will there be a correlation between the violation of human rights as well as justice rendered by realizing the justice for civil wrong, justice for the offenses, and also the justice under the Constitutional remedies.

Grant of Compensation to the Victims

Definition of victim (Bharatiya Nyaya Sanhita, 2023) has been given that when a person has sustained loss or injury caused by the accused, to be brought under the meaning of victim. For the cases of custodial torture or death, on preliminary or some after proper inquiry only, the violations of human rights be treated as offence under the BNS, that is the stage wherein the case would be brought for try before the justice forum. The justice of victims' compensation, Also called restorative justice, which would be feasible only after a certain preliminary climate of proving of violation. And further, it is

significant to discuss about the justice system, which provides compensation is found to be true reality one in the case of conviction of the accused person on proving the offence as committed. *Suresh v State of Haryana,* (2015) 2 SCC 227 wherein, the Supreme Court has held that Section 357 of the Cr.P.C. 1973 (which was equivalent to Section 395 of the BNSS) can only be invoked upon conviction, even then, it would fall under the discretion of the judge whether to grant compensation or not

The victim who has experienced loss or injury due to the crime shall receive justice. To classify a human rights infringement as a crime, it must be covered by criminal law or any analogous special legislation. The question arises concerning the classification of human rights law in India as criminal law. The Act of 1993 stipulates no sanctions. The criminal law in India, BNS, only applies to trying the cases of human rights violations for providing punishment for the violators.

Concluding Remarks

According to the preceding study of the legislation concerning human rights and the remedies provided, it is appropriate to assert that a significant remedial gap exists in human rights law, as it would have to provide in the case where there is no conversion of such human rights violation act into an offense under the criminal law. Therefore, criminal law enforcement is available as the mechanism, while the human rights law directly has no such remedial mechanism other than compensation to the victims. However, enforcement of orders passed by the Commission is through this mechanism, for such enforcement is, through the decision of Assembly, by placing its order before the table of the assembly to get it passed and accepted. Therefore, as per the foregoing analysis, it is concluded that there is no remedial law addressing “human rights violations”, as such violations constitute a crime or offense.

References

1. Austin John, (1832). The Province of Jurisprudence Determined: Law & Justice Publishing Co.
2. Paul Singh Mahendra, (2022). V.N. Shukla's Constitution of India: Eastern Book Company.
3. Parthasarathy Samabavi, Bihani Devyanshi, Radhakrishnan Vignesh, (2025, July 3). Custodial deaths: Police Conviction remain zero in Tamil Nadu and beyond. The Hindu. https://thehindu.com/data/custodial-deaths-police-convictions-remain-zero-in-tn-and-beyond/article68766995.ece.
4. Arigala Anupoma, (2025, May 12). The Curious Case of Custodial Torture in India. Oxford Human Rights Hub. https://ohrh.law.ox.ac.uk/the-curious-case-of-custodial-torture-in-India/.
5. Edgar Kaiser, Akash, V., (2025 June 12). What RTI Data reveals about custodial torture, Lack of CCTV facilities in tamilnadu police stations. The Leaflet. https://theleaflet.in/due-process/what-rti-data-reveals-about-custodial-torture-lack-of-cctv-facilities-in-tamil-nadus-police-stations
6. Definition of human rights given by D.D. Basu in his book 'Human Rights and Constitutional Law (1994)' at Page 5; cited in Joshi, K.C., (2006). International Law & Human Rights: Eastern Book Company.
7. BNS Act (2023) Arrest Section 36-38, 47-48, 53-58, The Bharatiya Nyaya Sanhita (2023)
8. PHR Act (1993) Section 21, The Protection of Human Rights Act (1993).
9. PHR Act (1993) Section 3, The Protection of Human Rights Act (1993).
10. PHR Act (1993) Section 30, The Protection of Human Rights Act (1993).
11. PHR Act (1993) Section 12, The Protection of Human Rights Act (1993). Penal remedies are not provided under the Act of 1993

12. D.K. Basu v West Bengal, AIR 1997 SC 610
13. India is having the death penalty still in its statute book. See Section 103 of the Bharatiya Nyaya Sanhita, 2023. Also under Section 302 of the Indian Penal Code, 1860 which was repealed.
14. Neelabati Bahera v State of Orissa, AIR 1993 SC 1960
15. Gowri Shankar Sharma v State of Uttar Pradesh, AIR 1990 SC 709
16. Munshi Singh Gautam v State of Madhya Pradesh, AIR 2005 SC 402
17. Rudal Shah v State of Bihar, AIR 1983 SC 1086
18. State of Andhra Pradesh v Challa Ramakrishna Reddy, AIR 2000 SC 2083
19. Francis Coralie Mullin v Administrator, Union Territory of Delhi, AIR 1981 SC 746
20. Saheli v Commissioner of Police, (1990) 1 SCC 422
21. BNSS(2023), Section 395 & 396, The Bharatiya Nagarik Suraksha Sanhita (2023)
22. Builders "Supply Corporation v Union of India, AIR 1965 SC 1086
23. Chairman, Railway Board v. Chandrimadas, AIR 2000 SC 988
24. Sunil Batra v Delhi Administration, AIR 1980 SC 1579
25. Hussainara Khatoon v Home Secretary, State of Bihar, AIR 1979 SC 1369
26. Joshi, K.C., (2006). International Law & Human Rights: Eastern Book Company.
27. Suresh v State of Haryana, (2015) 2 SCC 227
28. The Universal Declaration of Human Rights (1948)
29. The International Covenant on Civil and Political Rights (1966)
30. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

31. The Second Optional Protocol to the International Covenant on Civil and Political Rights (1987)
32. Pandey J.N., (2019). Constitutional Law of India: Central Law Agency.
33. EPA Act, 1986, Section 15,The Environment Protection Act (1986)
34. See Chairman, Railway Board v Chandrimadas, AIR 2000 SC 988, the Supreme Court stated that it will apply international human rights norms while interpreting our Constitution and also observed that our Constitution in Part-III guarantees all the basic and fundamental rights set out in the UDHR, 1948. Also, see Sunil Batra v. Delhi Administration, AIR 1980 SC 1579
35. Karel Vasek has given the classification of generation of human rights, civil and political rights form the first generation; the International Covenant on Civil and Political Rights, 1966 provides for the right to life.
36. Article "32 of the Constitution of India, 1950".
37. Rudal Shah v "State of Bihar, AIR 1983 SC 1086. In this case, the Supreme Court awarded compensation to the victim.
38. Justice P.N. Bhagwati in Hussainara Khatoon v Home Secretary, State of Bihar, AIR 1979 SC 1369 observed that '…we are shouting from house tops about the protection and enforcement of human rights…'
39. The idea of three generations of human rights introduced by Karel Vasak, a French Jurist in the year 1979.

Harmonising Adoption Laws in India: Need for Uniform Civil Code

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Abstract

The multiplicity of personal laws governing adoption in India. The Hindu Adoption and Maintenance Act (HAMA) for Hindus and related communities, Guardianship and Wards Act, for guardianship (not full adoption) for other communities, and the secular Juvenile Justice (Care and Protection of Children) Act (JJ Act) framework—results in inconsistency in adoption procedures, rights, eligibility, and effects. These legal inconsistencies give rise to legal loopholes and disadvantages for marginalised or non-conventional categories: e.g., persons of different religions, singles, those in live in relationships, LGBTQ+ persons, NRIs, children from certain backgrounds. The differential treatment may create unequal access to adoption and entail additional procedural difficulties. The process of adoption itself is sometimes delayed and/or complex in nature, often with multiple agency involvement, procedural steps, home studies, approvals, legal clearances, and coordination between inter-state agencies. These delays could result in the children spending more time in institutional care. Because the adoption law is intrinsically linked with the personal law and not a uniform civil law, there is a lack of standardization, equality, and predictability. This has raised several questions over whether instituting a Uniform Civil Code for adoption and, on a wider scale, for personal law matters would better achieve the constitutional ideal of equality and guarantee of rights as well as for the children and

adoptive parents alike. While Article 44 constitutionally mandates a Uniform Civil Code; its realization is complex and debated. Therefore, the principal problem is how India can move from a fragmented, religion-based legal adoption regime to a harmonized, child-centric, uniformly applicable adoption law that ensures clarity, fairness, efficiency, and respects constitutional values. This study intends to find an answer through an examination of the current adoption laws, analysis of the role of CARA, and the assessment of the need and feasibility for a UCC on adoption.

Keywords: *Uniform Civil Code, Central Adoption Resource Authority (CARA), Personal Laws, Juvenile Justice (Care and Protection of Children) Act, Adoption Laws.*

Introduction

Adoption, in legal and social terms, is the legal process by which a child is permanently placed in a family other than his or her birth family, and receives all the rights, responsibilities, and status of a biological child in that new family. According to one comprehensive review, "Adoption means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges, and responsibilities that are attached to the relationship." Legally, this transformation is far-reaching: it alters the parent-child relationship, inheritance rights, succession, and family status, and socially it can transform how the child is integrated into the family and community. In India, adoption has a lot of roots in religious and customary practices, beyond mere legal procedure; in many traditions, a child is adopted to carry on family lineage, perform funeral rites, or to provide a home for an orphan or abandoned child. (P. Kumari and B. Mourya, 2025)

Historically, adoption practices in India are ancient and embedded in the Hindu tradition, with references in Vedas and Smritis to the act of "dattaka" (giving away a child) and to ensuring

continuity of lineage and ritual duties. (*Review of Guardianship and Adoption Laws*, 2022) Over time, the ritual dimension of adoption coexisted with more secular or civil concerns—caring for orphans, abandoned or surrendered children, and integrating them socially into families. However, the codification of adoption law in India, is relatively recent: the major statute, the Hindu Adoption and Maintenance Act, 1956 (HAMA) was enacted in 1956; ahead of that, the Guardians and Wards Act, 1890 (GAWA) provided guardianship for children but did not confer full adoption status. (MINISTRY OF WOMEN AND CHILD DEVELOPMENT, 2022)

Adoption in India, under the present legal framework, is done unevenly. HAMA applies to Hindus, Buddhists, Jains, and Sikhs, provides for adoption as a legal act conferring status of full child parent relationship, including inheritance rights. In contrast, the non-Hindu like Christians, Muslims, Parsis, and other minorities, do not have a specific adoption statute; for them, adoptions as under HAMA are not always recognized and they rely upon the guardianship provisions under GAWA, which do not create full child parent status or inheritance rights in the same manner. Further, the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) resulted in a secular adoption mechanism for orphaned, abandoned, or surrendered children, regardless of religion, through the Central Adoption Resource Authority (CARA) and its guidelines. The lack of a uniform adoption laws to all religions has made adoption laws in India an uneven patchwork. These complexities become particularly acute in inter religious, inter-state or inter country adoption or for marginalized groups such as singles, LGBTQ+ persons or non-resident Indians (NRIs).(N.Meena 2021)

The social and cultural importance of adoption is high in India. It is a means of providing family, care, and identity to children who have none; it is one way of dealing with social inequities; and it is linked with questions of inheritance, status, and lineage in a society where family and kin are a major preoccupation. Yet, the

legal architecture is fragmented-governed by religion-specific personal laws, older guardianship statutes, and newer child welfare laws. Addressing this fragmentation and its impact on adoption processes and outcomes provides the backdrop against which to explore the importance of harmonizing these laws and considering the need for a Uniform Civil Code (UCC) for adoption.

The need for clarity and uniformity across communities is felt acutely. Inconsistency is deeply entrenched when different rules, eligibility criteria, procedural requirements, and legal effects apply to different religious communities or categories of children/adoptive parents. As an example, while a Hindu child may be adopted under full legal adoption under HAMA, a child from a Muslim family can only be taken under guardianship with limited rights under GAWA. This raises several issues on the fairness and equality front. A well-harmonized law would cut down confusion both for adoptive parents and agencies, facilitate the smooth operation of processes, and bring transparency in outcomes.

Harmonization of adoption Laws helps to resolve or reduces discrimination or restrictions based on religion, marital status, sexual orientation, or residency status. Most critiques remark that the existing adoption laws or policies place certain classes of prospective adoptive parents at a disadvantage-singles, divorced persons, same sex couples or LGBTQ+ persons, inter religious couples, or NRIs may face additional barriers also children who might be eligible under one law may not be under another if the parents' religion or status differs, or if the child belongs to a minority community. (Kriti, 2025) Harmonising laws can help ensure that rights and responsibilities in adoption are not arbitrarily dependent on religion or other extraneous factors.

The underlying principle of adoption law is the welfare of the child and child's rights. Adoption is supposed to be in the best interest of the child internationally and constitutionally. it gives the child family care, identity, security, and legal status. The Constitution

of India guarantees these through its provisions on equality (Article 14), non-discrimination (Article 15), life and personal liberty (Article 21), and contemplates a Uniform Civil Code under Article 44 as part of the Directive Principles. (Indian Law Offices, 2024) The welfare of the child has to be the uppermost consideration for adoption law; however, when procedural delays, complexities in law, or discriminatory eligibility criteria supervene, the welfare of the child could get sacrificed. A uniform law with minimum delays and eligibility assisting the child's right not to remain in institutionalized care beyond the required period is an overriding consideration. Individual studies have emphasized that delays in adoption prolong the time children stay in institutional care with high negative consequences for the children. (Viji, 2025)

Comparative Analysis of Adoption Laws Across Different Religions

Central to the discourse is how various religious and secular legal regimes treat adoption. The Hindu adoption regime under HAMA permits a Hindu adult to adopt a child and thereby establish full legal parent-child relationship, including inheritance rights, status of legitimate child, and severance of original parental ties.(Sharma, J. Diwakar, (2024). The Hindu law regime also embeds cultural values of lineage continuation, ritual duties, and familial obligations, such as in the notion of the "dattaka" child in ancient tradition.

Muslim, Christian, Parsi, and Jewish communities do not have an adoption statute on par with HAMA. Instead, they are covered under the Guardians and Wards Act, 1890, allowing only for guardianship and not full adoption, which includes all attendant rights such as those of inheritance or change of name/status. This has been critiqued as creating a two-tier system of adoption rights based on religion.

International Perspectives on Uniform Adoption Laws

Turning to international literature, scholars have looked at how different jurisdictions implement secular, uniform or children centred adoption laws and the lessons India might learn from them. Mitra et al. draw on international experience of non-family domestic adoption and note that countries such as the United Kingdom, Australia or the United States have adoption laws that are secular, uniformly applicable and emphasise the best interests of the child as the guiding principle rather than lineage, religion or ancestry (A.V. Adrushya 2024).They argue that India's adoption literature and practice would benefit from adopting the child centered orientation seen in these jurisdictions.

Finally, Acharya's work briefly references the international dimension-observing that India's adoption laws have "little impact" from other countries despite inter-country adoption regime and international conventions. The growing importance of inter-country adoption and the adoption regulations under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) pressed India to align with global standards of transparency, child safety, ethical matching, post adoption monitoring, and international cooperation. These international norms emphasize that adoption laws serve best when they are uniformly applied, child-centric, efficient, and free from religious segmentation.

Other comparative studies, though fewer in India, have shown that jurisdictions that have uniform statutes on adoption tend to have fewer delays, clear eligibility criteria, and better protection both for the adopted children and adoptive parents. The literature thus suggests that India's fragmented personal law regime contrasts unfavourably with international best practices. The adoption of a uniform statute, or UCC-type reform, is thus cited as a possible pathway through which India might align with global norms.(Riya & Neelaksh,2021).

While direct empirical studies linking UCC in adoption with international outcomes are few, many authors recommend that India examine models of countries which have moved from religious or community-based adoption laws to secular, uniform adoption laws—for example, France's adoption reform, or the U.K.'s Adoption and Children Act. The principle drawn is that legal uniformity, transparency, institutional capacity and child welfare focus lead to better adoption outcomes.

Personal Laws and Adoption

In India, the legal system is different for each religion, which has caused inconsistencies and the granting of unequal rights to the prospective adoptive parents and children.

Hindu Adoption and Maintenance Act, 1956 (Hama)

The Hindu Adoption and Maintenance Act, 1956 (HAMA) is the main law regulating adoption in India for Hindus, Buddhists, Sikhs, and Jains. It equips the law with a full-fledged system of child adoption, gives full rights to the adoptive parents and makes the adopted child a legal member of the family. This legislation enables a Hindu man or a woman to adopt a child, subject to meeting conditions relating to age, marital status, consent, and the number of children already in the family. The act guarantees that an adopted child will have the same rights as a biological child and among those is the inheritance right. The adoption establishes the legal relationship between the child and the biological parents as terminated and the child is, therefore, fully integrated into the adoptive family. Hence, HAMA offers a sound legal framework which is reflective of both cultural heritage and the principles of modern child welfare. However, it is only applicable to Hindu, Jains, Sikhs, and Buddhists. Children and prospective adoptive parents who are outside these communities do not get the same advantages under the law which results in unequal access to adoption and legal recognition.

Guardians and Wards Act, 1890 (GAWA)

Other than Hindu, Jains, Sikhs, and Buddhists, Adoption is usually done under the Guardians and Wards Act, 1890 (GAWA). It offers a way to establish guardianship, whereby an adult becomes responsible for a child's welfare. However, it does not give the full rights of adoption to the guardian and the child is not entitled to inheritance rights automatically nor the legal status of a biological child in the guardian's family. Therefore, children from non-Hindu backgrounds frequently encounter legal recognition and inheritance issues that become inequities and disparities in adoption.

Adoption Under Muslim, Christian, and Parsi Personal Laws

The Muslim personal law never recognized adoption as a transfer of full parental rights; instead, it permits the kafala system which is a form of guardianship that gives the right of care only and does not grant inheritance rights or the severing of biological family ties. Christian communities in India mainly depend on GAWA, though a few states have established supplementary adoption rules. Parsis as well are without a definite adoption law; adoption is mostly recognised as guardianship. These religion-specific laws cause the legal treatment of different religions to be unequal, thus full adoption rights are limited only to certain communities. Although the JJ Act sets a secular adoption framework through CARA, judges and officials may still impose personal law restrictions which cause delays and create unequal opportunities for access to the court.

Issues of Discrimination and Inconsistencies

The dependence on religion-specific laws causes discrimination at the structural level: the non- Hindus are often less privileged in terms of adoption rights, adoption procedures vary and eligibility criteria differ. The differences also affect such things as age gap

between child and adoptive parents, marital status, and the number of children in the family. There are also differences and difficulties in understanding adoption procedures that result from the interplay of personal laws and secular statutes like Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). Although the JJ Act sets a secular adoption framework through the Central Adoption Resource Authority (CARA), judges and officials may still impose personal law restrictions which cause delays and create unequal opportunities for access to the court.

Role of Central Adoption Resource Authority

The Central Adoption Resource Authority (CARA) plays vital role in the adoption system in India. This autonomous statutory body is set up under the Ministry of Women & Child Development. It acts as the nodal agency for adoption of children in India-both domestic and inter-country. (Drishtiias, 2025). Under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) and the Adoption Regulations of 2022, specific roles and responsibilities have been prescribed to CARA. These include regulating adoption agencies, maintaining a national adoption database, matching children with prospective adoptive parents, accrediting adoption agencies, monitoring inter-country adoptions under the Hague Convention, and promoting ethical adoption practices. (R. Sai Swetha et.al 2023)

CARA regulates the adoption of orphaned, abandoned, or surrendered children. The category "orphaned, abandoned and surrendered children" is central in the framework of the JJ Act, and CARA maintains lists of these children, ensuring they are legally free for adoption, and promotes their placement through recognized Specialized Adoption Agencies (SAAs) and State Adoption Resource Agencies (SARAs). It also issues guidelines and regulations-such as the Adoption Regulations, 2022-setting standards regarding registration, home study reports, eligibility of parents, post-adoption follow-up, and inter- country adoption procedures.

CARA has an important role in ensuring that adoptions are conducted without violation of ethical and legal norms. In its effort to standardize agency accreditation, maintain transparency about matching, follow national and international norms regarding non-trafficking, etc. (Hague Convention), and monitor post-adoption follow-up, CARA tries to ensure that the adoption serves the best interest of the child and is not vulnerable to trafficking or undue delay and exploitation. (Raisa Dutta, 2025)

In fact, recent reports noted that CARA instructed states to establish provisions for counseling at every stage of adoption, namely, pre-adoption, during adoption, and even after adoption-a proof of its role in taking care of the welfare of both children and parents beyond legal formalities. However, CARA also faces significant challenges, due to fragmentation in the law and practice of adoption in India.

Thus, its uniform guidelines must necessarily face complications in implementation. Issues reported include delays in processing, mismatches in pairing children with adoptive parents, reluctance on the part of certain agencies, regional disparities, and incomplete compliance with regulations at the state level (Raisa Dutta, 2025). The need for harmonized adoption laws, therefore, impacts how well CARA can perform its mandate.

Guidelines for Domestic Adoption Under Cara

CARA guarantees that the adoption is in the best interests of the child, it also keeps a check on the implementation of rules and regulations, and it eliminates the chances of the illegal or immoral practices to be committed like the trafficking of children. Its jurisdiction covers the supervision of both inter-state and inter-country adoptions. CARAs Pledge System is set up to aid the process of a domestic adoption through which the transparent matching of children will be accomplished with prospective adoptive parents.

The agency holds a central data bank of children legally free for adoption and prospective adoptive parents.

CARA regulations provide detailed procedures, including:

- Registration of adoptive parents and children
- Home study and assessment of prospective parents
- Child-parent matching based on age, health, and other factors
- Pre- and post-adoption counseling
- Monitoring of placement through SAAs

These guidelines aim to standardize adoption procedures, ensuring transparency, accountability, and child welfare compliance.

Role of Cara in Inter Country Adoption

CARA is the authority responsible for the regulation of inter-country adoption in India, and its procedures in India are in accordance with the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993). It facilitates the parents in the foreign countries to meet the criteria required for their eligibility and the adoption should be done abiding the ethical standards and the law of the international community. CARA communicates to foreign adoption agencies, supervises SAAs which are engaged in inter-country adoptions and keeps records so as to prevent illegal adoptions or trafficking. Its role is that of a guarantor of legality, transparency, and the best interest of the child in international adoption.

Overview of Uniform Civil Code in India

Article 44 of the Indian Constitution, talks about the state's responsibility to ensure a common civil law for all the citizens. UCC is to do away with religious personal laws and have one law that will regulate marriage, divorce, inheritance, adoption, maintenance, and

succession. The goal of the UCC is to realize the ideals of equality, non-discrimination, and social justice in the area of personal law.

Different religious community based personal laws leads to disparities in rights, procedural complexities, and unequal access to adoption opportunities. The welfare of children is affected by delays and inconsistent legal recognition, while prospective adoptive parents encounter legal uncertainties. UCC is the solution that is being offered to sort out these laws and ensure that all the communities are treated equally. Hence, the implementation of Uniform Civil Code Guarantees Equality under Articles 14 and 15 of Indian Constitution.

Conclusion

India's adoption framework needs harmonization in the light of equity, efficiency, and child welfare. The existing personal laws create inequalities and procedural bottlenecks, while social attitudes such as biases for male children in adoption, and not preferring cross-caste or cross-religion adoptions further complicate the set of adoption practices. CARA has achieved much in bringing uniformity in adoption procedures, yet legal reform is vital for its success, coupled with strengthening of institutions and public awareness. A Uniform Civil Code on Adoption will erase all legal inequities, bring about uniformity in procedures, and ensure that all children are provided with a safe and caring family environment. Merging legal reform with institutional capacity building and social sensitization will then enable India to work toward an adoption system that will be equitable, transparent, and genuinely child-centered.

References

1. A. V. Adrushya, "Beyond borders, beyond laws: Inter-country adoption from India under the Hague Convention and the Juvenile Justice Act,"

Indian Journal of Legal Review (IJLR), vol. 4, no. 1, pp. 483-490, 2024.

2. P. Kumari and B. Mourya,(2025) "Adoption laws in India: An urgent need of resolving disparities," vol. 5, no. 1, pp. 55-72, International Journal of Law, Justice and Jurisprudence.

3. N. Meena, (2021) "Adoption Laws in India: Challenging existing law," Articles Section, pp. 1-10, Manupatra Newsline.

4. U. J. Acharya, (2021) "Legal framework of child adoption in India," vol. 6, no. 3, International Educational Applied Scientific Research Journal.

5. A. V. Adrushya, (2024) "Inter-country adoption from India under Hague Convention and JJ Act," vol. 4, no. 1, pp. 483-490, Indian Journal of Legal Review (IJLR).

6. R. Sai Swetha, K. Swaroop Paul Kumar and V. Venkateswarlu, (2023) "Comparative Analysis of Child Adoption Practices in India," vol. 11, no. 12, pp. 432-443, International Journal of Creative Research Thoughts.

7. Sharma, J. Diwakar, (2024) "Comparative analysis of Hindu adoption law and secular adoption law in India: A legal and social perspective," Indian Journal of Law. https://law.shodhsagar.com/index.php/j/article/view/80

8. Drishtiias. (2025, August 6). *(06 Aug, 2025)*. Drishti IAS. https://www.drishtiias.com/current-affairs-news-analysis-editorials/news-analysis/06-08-2025

9. Indian Law Offices. (2024, August 20). *Adoption in India*. Law Firm in India. https://www.indialawoffices.com/legal-articles/adoption-in-india

10. Kriti. (2025, July 19). *CARA calls for Implementation of counselling provisions in adoption | SCC Times*. SCC Online. Retrieved December 29, 2025, from https://www.scconline.com/blog/post/2025/07/19/cara-directs-all-states-implementation-of-counselling-in-adoption/

11. MINISTRY OF WOMEN AND CHILD DEVELOPMENT. (2022, September 23). *THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(i)] MINISTRY OF WOMEN AND CHILD DEVELOPMENT NOTIFICATION New Delhi, the*. CARA. Retrieved December 29, 2025, from https://cara.wcd.gov.in/PDF/adoption%20regulations%202022%20english_27.pdf

12. RAISA DUTTA,. (2025, march 23). *NAVIGATING ADOPTION IN INDIA: LEGAL FRAMEWORK AND CHALLENGES*. Vintage Legal. https://www.vintagelegalvl.com/post/navigating-adoption-in-india-legal-framework-and-challenges

13. *Review of Guardianship and Adoption Laws*. (2022). Committee Reports. Retrieved December 29, 2025, from https://prsindia.org/policy/report-summaries/review-of-guardianship-and-adoption-laws

14. Riya and Neelaksh., "Comprehensive Study on Child Adoption in India with Special Reference to Hindu Laws," International Journal of Law Management & Humanities (IJLMH), vol. 4, no. 3, pp. 1493 1503, 2021

15. Viji. (2025, 12 16). *The child adoption process in India*. Vikaspedia. https://en.vikaspedia.in/viewcontent/social-welfare/women-and-child-development/child-development-1/child-adoption/the-child-adoption-process-in-india

Implications of One Nation, One Election on Indian Federalism and Democracy

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Abstract

The Indian electoral system has adopted a staggered schedule in which elections to the Lok Sabha and state assemblies are usually held separately. While this system has its advantages in allowing regional and local issues to take center-stage in state elections, it entails significant administrative and financial burdens. In conducting separate elections, the Election Commission of India, security personnel, and administrative staff must be deployed multiple times in different parts of the country; this puts a strain on public resources and disrupts governance functions. In fact, there are frequent elections that cause policymaking to be informed less by considerations of long-term development goals than by electoral imperatives. From a federal perspective, ONOE introduces the risk of conflict with the principle of state autonomy. Staggered elections allow states to make independent political choices without being overwhelmed by the national tide. Synchronizing elections would lead to greater domination by national parties in state elections, possibly pushing regional parties into marginal status and disrupting the federal equilibrium. Furthermore, there is also apprehension that ONOE may have an impact on voter behavior with diminution of local issues and may have attendant risk of favoring well-funded, larger parties due to economies of scale in national campaigns. These challenges create a compelling need for a careful analysis of the implications of ONOE on India's federalism and democratic processes. This study, therefore, investigates

administrative and economic dimensions, along with the political and democratic outcomes associated with the proposal.

Keywords: *One Nation One Election, ONOE, Federalism, Democracy, Election Commission*

Introduction

The proposal for One Nation, One Election (ONOE) presents a transformative vision for India's electoral system, promising both opportunities and challenges across federal, democratic, administrative, and political dimensions. By synchronizing parliamentary and state assembly elections, ONOE could streamline governance and reduce the administrative and financial burdens associated with frequent, staggered elections. Governments would benefit from longer uninterrupted periods to implement policies, pursue development initiatives, and focus on long- term objectives without the recurring pressures of electoral cycles. Economically, simultaneous elections could generate substantial cost savings by optimizing election machinery, security arrangements, and logistics. Politically, ONOE may reshape campaign strategies, as parties would need to balance national narratives with local concerns, potentially consolidating party systems and influencing coalition dynamics.

However, these benefits are counterbalanced by critical challenges to India's federal structure and democratic principles. Centralization of power may increase as national parties dominate both parliamentary and state elections, potentially marginalizing regional voices and undermining state legislative autonomy. Voter decision-making could be affected, with local issues receiving less attention, and smaller parties may face difficulties competing against well-resourced national parties. While simultaneous elections could reduce voter fatigue caused by frequent elections, they may also demand more from citizens in terms of understanding multiple

electoral choices simultaneously. To mitigate these risks, careful planning, institutional safeguards, and voter awareness initiatives are essential. Overall, ONOE represents a complex policy reform with far-reaching implications, necessitating a balance between administrative efficiency, policy continuity, and the preservation of federal autonomy and democratic pluralism. Its successful implementation would require careful consideration of constitutional provisions, electoral management capacity, and mechanisms to ensure equitable representation across India's diverse political landscape, ultimately shaping the future of governance and democracy in the country.

Historical Development

The historical evolution of elections in India reflects important insights into the development of democratic and federal structures in the country. The first general elections in India were held in 1951–52, embarking on an uninterrupted journey of democracy spanning more than seven decades.(P.Menon. 2025). These elections were singularly remarkable not only by their scale but also the complexity involved in organizing a national electoral process in a newly independent country with vast linguistic, cultural, and geographic diversity. In all, about 173 million eligible voters participated in the first general elections that elected 489 members to the Lok Sabha while simultaneously filling vacancies in several state legislative assemblies. (A. Khanna, (2020).

Over the years, India developed an effective institutional apparatus to conduct elections at different tiers. The Election Commission of India, set up in 1950, has been instrumental in ensuring free, fair, and transparent elections Parliamentary elections are held every five years, (S. Chandra, 2004), while state legislative assembly elections occur on a similar cycle, though they frequently happen at varied times according to political developments, such as premature dissolution of assemblies or imposition of

President's Rule. (J. Manor, 2010).This staggered schedule, while allowing for regional electoral autonomy, has led to a complex and often fragmented electoral calendar.

Several studies have discussed and documented the administrative, financial, and political implications of such a staggered electoral process. Frequent elections impose heavy demands on public administration: repeated mobilization of personnel, deployment of security forces, and financial resource outlay. (R. Kumar, 2015). Besides, election-related political campaigns disrupt governance and policy implementation, as incumbent governments are likely to focus on short- term electoral gains rather than long-term development imperatives. (A. Roy, 2016).

The historical trajectory of Indian elections also reflects changes in political parties, coalition politics, and voting behavior. The political landscape has shifted from the dominance of the Indian National Congress to diversification, with regional parties achieving substantial clout in state elections. (P. Sharma, 2012). This diversification has contributed to the federal character of Indian politics, which demands a proper balance between national cohesion and regional autonomy.

Concept of Federalism in India

Federalism in India is enshrined under the Constitution, which lays down a dual polity framework dividing powers and responsibilities between the Union and state governments. The Constitution prescribes three lists: the Union List, State List, and Concurrent List, which outlines the areas of legislative competence. In as much as the federal framework guarantees state autonomy, the Indian variety also shows unitary attributes, particularly under provisions allowing for the imposition of President's Rule in states under extraordinary circumstances. (D. Bhatia, 2017).

The debate on state autonomy has been an ongoing battle in India, especially with regard to electoral synchronization. Critics fear that simultaneous elections could weaken the federal balance, letting national parties dominate not only national politics but also state politics, thereby compromising regional voices. (M. Kohli, (2001). On the other hand, synchronization may boost policy coherence and administrative efficiency without eroding state autonomy, provided constitutional safeguards are maintained, as argued by counter-groups. (T. Verma,2018).

Implications for Indian Federalism

The idea of One Nation, One Election is bound to have far-reaching consequences on the federal character of India. Indian federalism is originally a dual system, designed in such a way that the Union government and state governments have balanced powers. The synchronization of the elections of the Lok Sabha and state assemblies may affect this balance in many ways, effectively changing the political and administrative dynamics. (M. Lopez, 2015),

In the first place, the impact on Centre-State relations would be considerable. At this point, staggered elections allow states to manifest their separate political identity and make independent decisions in policy matters. State-level elections often throw up regional issues before the public, allowing citizens to assess the state government independently of national political currents. (J.Brown,2014). Under ONOE, this distinction could vanish. National political narratives during simultaneous elections may eclipse regional issues, weakening any effort by state governments to project policy priorities that diverge from national ones. The dominance of national parties may get even stronger, and regional voices may find diminished political space, leading to a possible centralization of political influence.

Another important cause for concern is the centralization of power.(S. Patel, 2015). Though the Indian Constitution has laid down a clear distinction between legislative and administrative competencies between the Union and the states, electoral synchronization can lead to a situation where national governments may exercise indirect influence over state politics. Voter perception, influenced by nationwide campaigns, might lead to the same party's coming to power in the center and states, thereby consolidating power at the center. This can work against the spirit of federalism, wherein diversity and regional representation are supposed to balance national authority.

Furthermore, it has the potential for substantive impact on state legislative autonomy. Regional policy initiatives, particularly those sensitive to local socio-economic conditions, may be given less attention in the course of a nationwide electoral campaign dominated by overarching national agendas. The legislative priorities of the states could be relegated to issues that resonate more broadly at the national level. Although uniform elections may be administratively simpler to conduct, they can result in political homogenization and reduce the richness brought about by federal diversity. This would require careful institutional safeguards to ensure that state legislatures retain their freedom to legislate on issues unique to their jurisdictions, thereby preserving constitutional equilibrium.

Synchronization, however, if done with a judicious approach, would also nurture co-operative federalism. The coordinated elections could offer a structured platform for policy coordination between the Union and state governments, particularly in areas of common concern, such as infrastructure development, health, and education. (V. Sinha, 2017). If states and the center plan in congruence, simultaneous elections would promote policy coherence with retention of regional autonomy. (M. Lopez,2015). Success of such an arrangement would depend on clear constitutional guidelines,

robust institutional frameworks, and political willingness to respect the federal ethos.

Consequences for Democracy

The influence of One Nation One Election on democratic processes is manifold and impacts political competition, accountability, voter behavior, and the representation of smaller parties. One important dimension is the impact on political competition and accountability. The staggered elections enable the electorate to appraise the incumbent government periodically, with multiple opportunities for holding elected representatives accountable. The simultaneous elections may squeeze this evaluative space in a single period of concentrated electoral judgment. (D. Bansal,2016). Rather than extended political cycles, this may constrain the ability of the electorate to evaluate government performance at different levels independently of each other. Political parties may thus adopt strategies that would emphasize nationwide appeal over responsiveness at the state level, which could dilute mechanisms of accountability intrinsic to federal democracies.

ONOE also has the potential to impact voter participation and informed decision-making. Multiple elections in a row can allow voters to concentrate on specific local, regional, and national issues and make informed choices at each level. Simultaneous elections would force voters to acquire information about several constituencies, thus increasing their information burden and potentially resulting in poorer decision-making. Voter turnout might not necessarily be reduced, but the quality of the electoral choices could be, as voters would tend to focus less on the nuances of local issues and more on those visible at the national level. (P. Sharma, 2017) This would further strengthen democratic pluralism by favoring larger parties, better endowed to conduct nationwide campaigns.

In particular, this has serious implications for smaller parties and regional representation. Regional parties articulating local aspirations, providing a choice in politics, and participating in coalition governance at the center have enriched India's democratic fabric. (P. Menon, 2015). Simultaneous elections may thus create conditions whereby, by the economies of scale and availability of resources, national parties dominate state elections and marginalize smaller parties. This could alter coalition dynamics and reduce the representational diversity of India's parliamentary system. In due course, policymaking is bound to be impacted as regional concerns get less prominence in the national discourse, thereby hurting inclusivity and responsiveness in governance.

Proponents continue to argue, however, that simultaneous elections could strengthen democratic stability by reducing the frequency of political interruptions that result from staggered elections. (T. Verma, (2018). Governments would have more time for policy implementation without recurrent pressures from continuous elections, which may result in long-term development initiatives. Coordinated elections are likely to reduce voter fatigue brought on by incessant campaigns and frequent election cycles, a situation that could positively impact long-term civic engagement.

Administrative and Economic Implications

From a purely administrative point of view, the current system of staggered elections is cumbersome. Every year, several elections are held, requiring deployment of the Election Commission, security personnel, polling staff, and election machinery. These multiple exercises put enormous burdens on administrative machinery, which otherwise could devote greater resources to routine governance functions. Synchronizing elections under ONOE could eventually

yield significant cost savings and enhancement in efficiency. It condenses the electoral process into a single window, thereby facilitating efficiencies in administrative efforts with minimal redundancy, allowing for better coordination across states.

There are also economic implications. Separate elections, by their very nature, mean repeated expenditure on logistics, security, and human resources. Estimates suggest that simultaneous elections could bring down national election-related costs by a big margin. The pooling of resources for simultaneous elections, therefore, enables bulk procurement, efficient deployment of personnel, and better logistical planning-create fiscal economies and operational efficiencies. (S. Raghavan, 2012).

Another key advantage is the continuity of governance. As specified, frequent elections disrupt policy processes and governance due to bureaucrats and elected officials engaging regularly in election-related activities. (R.Das, 2020). ONOE could create longer periods without interruptions to allow governments to pursue policy priorities, developmental programs, and long-term projects without interference from electoral cycles. For example, the ministries might concentrate on infrastructure projects, social welfare schemes, and education reforms without recurrent interruptions caused by state-level elections.

However, the logistical challenge of implementing simultaneous elections cannot be disregarded either. (P. Menon,2015). Organizing the elections in one go for the whole country is a highly complex task with millions of polling stations, tens of thousands of election officials, and extensive security arrangements. (J. Brown,2014). In such a situation, even minute lapses in coordination can affect the integrity and credibility of the electoral process. The advantages accruing from administrative efficiency and cost savings are thus to be weighed against the risks of operational bottlenecks and possible procedural failures.

Political Implications

The timing and frequency of elections deeply affect the political landscape in India. This would have far-reaching consequences for campaign strategies, policy prioritization, and long-term party dynamics in light of ONOE.

Simultaneous elections would inevitably bring about changes in campaign strategies, where parties will have to develop messages that balance national and state-level concerns, appealing to a diverse electorate with varying priorities. Such a shift may risk local issues being downplayed, making political parties less responsive to specific constituencies. The greatest beneficiaries of such an uneven playing field will be national parties with greater fiscal and organizational resources and not smaller or regional parties.

Policy prioritization would also be impacted. In such synchronized election timing, governments could emphasize those policies that produce perceptible short-run results to attract the electorate at large. This may reduce the focus on long-term developmental programs that require sustained attention and may not yield quick electoral dividends. On the other hand, the longer periods of governance between synchronized elections may afford an opportunity to implement medium- and long-term policies without repeated electoral disruptions. (K. Sharma, 2018).

The effects upon party politics will also be equally long-term. Simultaneous elections could result in a consolidation of party systems and, therefore, reduced political fragmentation both at the national and state levels. While this might reduce the complexity of governance and decision-making, it may also potentially narrow political diversity and representation of minority or regional interests. Over time, these changes could alter coalition dynamics, legislative negotiations, and the broader nature of democratic participation in India.

Furthermore, simultaneous elections could affect political alliances: parties could enter into pre-electoral coalitions in a more thoughtful manner, in anticipation of synchronized contests in many states. This might result in new configurations of power at both state and national levels that reshape political competition and coalition management.

One Nation, One Election is a multi-dimensional reform with far-reaching consequences for Indian federalism, democracy, administration, and politics. While it opens vision for administrative efficiency, economy in expenses, and continuity in governance, the challenges on federal balance, voter engagement, and pluralistic politics are equally formidable. The ultimate effect of ONOE would thus hinge critically on judicious policy design, constitutional safeguards, and institutional preparedness to manage the challenges thrown up by synchronized elections. A judicious balancing of the advantages against the risks is crucial for making such reform strengthen both India's democratic processes and its federal character.

Conclusion

ONOE brings both opportunities and risks for democracy: while simultaneous elections may reinforce stability in governance and decrease electoral fatigue, they could also impact the decision-making process of the voter, reduce the focus on local issues, and place smaller or regional parties at a disadvantage. Political competition and accountability may shift toward nationwide narratives, thereby changing the dynamic of voter engagement.

Administratively that synchronizing elections may bring about a sizeable cost savings, minimize bureaucratic disruptions, and enhance logistical efficiency. Economically, the pooling of election-related expenditures would save resources that can be allocated to developmental programs; continuity of governance

provides an opportunity for governments to pursue medium- and long-term policy objectives without recurrent interruptions. Politically, ONOE might reshape campaign strategies, policy prioritization, and coalition configurations, consolidating party systems while challenging regional pluralism.

References

1. J. Manor, (2010), *The Indian Electoral System: Historical and Political Perspectives*, vol. 12, (pp. 45–62), no. 1.
2. B. Kumar, (2015), Election Administration in India: Challenges and Opportunities, vol. 10, (pp. 112–129), no. 3.
3. A. Roy, (2016), Mid-Term Elections in India: Causes and Implications, vol. 7, pp. 54–72, no4.
4. M. Kohli, (2001), Federalism in India: Political and Constitutional Dimensions, vol. 3, (pp. 101–119), no. 1.
5. P. Sharma, (2017), Center-State Relations under Electoral Reforms, vol. 6, (pp. 88–104), no. 3.
6. T. Verma, (2019), Electoral Behavior and Campaign Dynamics in India, vol. 9, (pp. 45–63), no. 2.
7. S. Raghavan, (2012), Administrative Challenges of Staggered Elections in India, vol. 4, (pp. 22–39), no. 2.
8. P. Menon, (2015), Challenges of Implementing Simultaneous Elections in Federal Systems, vol. 7, pp. 33–51
9. A. Khanna, (2020), Electoral Policy and Governance Continuity in India, vol. 9, pp. 70–89, no. 4.
10. S. Chandra, (2004), The Indian Electoral System: A Historical Perspective, vol. 7, pp. 12–34
11. R. Kumar, (2015), Election Commission and Electoral Governance in India, vol. 5, pp. 78–95.

12. P. Sharma, (2012), Administrative Challenges of Multi-Level Elections, vol. 4, pp. 22–40

13. D. Bhatia, (2017), Regional Parties and Federalism in India, vol. 3, pp. 88–105, no. 2

14. M. Lopez, (2015), Mexico's Experience with Synchronized Elections, vol. 7, pp. 33–52, no. 2.S. Patel, (2015), Democracy and Elections in India, vol. 4, pp. 56–73, no.

15. V. Sinha, (2017), Governance and Electoral Frequency in India, vol. 4, pp. 88–107, no. 1.

16. D. Bansal, (2016), Electoral Cycles and Policy Implementation, vol. 8, pp. 42–61, no. 3.

17. P. Sharma, (2017), Ethics in Political Science Research, vol. 4, pp. 88–107, no. 1.

18. P. Menon, (2015), Voter Behavior and Election Timing, vol. 7, pp. 33–51, no. 2.

19. T. Verma, (2018), Comparative Electoral Systems and Governance Outcomes, vol. 6, pp. 89–106

20. S. Raghavan, (2012), Election Reports and Policy Implementation in India, vol. 4, pp. 22–40, no. 2.

21. R. Das, (2020), One Nation One Election: Cost and Administrative Benefits, vol. 9, pp. 70–89.

22. J. Brown, (2014), Simultaneous Elections: Global Practices, vol. 3, pp. 45–63, no. 2.

23. K. Sharma, (2018), Policy Continuity and Electoral Synchronization, vol. 6, pp. 88–105.

Envisaging Habeas Data as a Constitutional Remedy in India

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Abstract

This article examines the emergence of Fourth Generation Human Rights in India's digital constitutional framework, with particular focus on developing Habeas Data as a specialized constitutional remedy under Article 21 or as an independent repository for digital rights enforcement. Through comprehensive analysis of jurisprudential evolution from Shreya Singhal (2015) to Digital Access Rights (2025), this study identifies critical gaps in India's current constitutional remedial framework for addressing digital age violations.

The research demonstrates that while India has progressively recognized digital privacy (Puttaswamy, 2017), internet access rights (Anuradha Bhasin, 2020), and digital inclusion (Amar Jain, 2025) as fundamental rights under Article 21, the existing writ jurisdiction under Articles 32 and 226 remains inadequately equipped to address the unique characteristics of digital rights violations. Unlike traditional fundamental rights violations that involve discrete governmental actions, digital rights infringements often involve continuous data processing, algorithmic bias, and complex informational asymmetries that require specialized remedial mechanisms.

This study proposes the constitutional recognition of Habeas Data as either: (1) an expanded interpretation of existing writ jurisdiction under Article 21 read with Articles 32/226, or (2) a distinct constitutional remedy specifically designed for Fourth Generation

Rights enforcement. Drawing from comparative analysis of Latin American jurisdictions where Habeas Data has successfully operated, this article demonstrates how such a remedy would fill critical enforcement gaps in India's digital constitutionalism.

The article contributes to legal scholarship by providing a theoretical framework for recognizing Fourth Generation Rights within the Indian Constitution and practical recommendations for establishing Habeas Data jurisdiction in Indian courts. The proposed framework addresses contemporary challenges including AI algorithmic accountability, data sovereignty, surveillance oversight, and digital inclusion while maintaining constitutional coherence with existing fundamental rights jurisprudence.

Keywords: *Fourth Generation Human Rights, Habeas Data, Digital Constitutionalism, Writ Jurisdiction, Privacy Rights, Digital Access Rights*

1. Introduction

Human rights are quite simply the rights that inhere in an individual by virtue of them being human. However, as Upendra Baxi notes, it is paradoxical that while crystallization of human rights may provide the framework for the establishment of a just society, the same negates some of the basic pre-conditions or material needs that are required for exercising the right to be human in the first place. (Baxi.U, 1986).

The afore statement appears to be true if one were to analyze the paradigm of human rights in terms of the extent of recognition and enforcement accorded to each of such rights. Between the twentieth and twenty-first centuries, with the herald of the fourth industrial revolution in society that was earmarked by the introduction of disruptive technologies such as biotechnology, nanotechnology, artificial intelligence and others, it may be rightly discerned that a new generation of human rights has also dawned which is still in its evolutionary phase. (Baroni, 2024). This refers to the fourth

generation of human rights. While the third generation of human rights had posited humans as 'interconnected' individuals, the fourth generation that is the result of digital and disruptive technologies envisage a 'disseminated' species of human beings – ones who transcend dimensions by virtue of knowledge and information made accessible by technology. Recognition of this fourth generation of human rights has thus become essential due to the concomitant technological revolution that has consistently altered entire societies over the past few decades. Yet, it may be noted that several municipal legislations and jurisprudence pertaining to data protection, privacy, AI and so on, are grossly inadequate for not keeping pace with the rapid developments in technology.

Such advances in the development and adoption of disruptive technologies by contemporary society also certainly have an impact on the latter, resulting in a new 'digital constitutionalism', which refers to recognition of new constitutional rights or even emerging facets of existing rights. (Edoardo Celeste, 2019). Constitutionalism as a concept in itself evolved as a notion to limit the exercise of governmental power. (Constitutionalism, 20001). Digital constitutionalism, which has now emerged as a strand of constitutionalism, thus refers to the establishment of a normative framework for protecting fundamental rights on one hand, and balancing powers of public as well as private actors in a digital society on the other hand. (Celeste, 2019). The concept of digital constitutionalism therefore envisages both State as well as non-State or private actors as potential infringers of rights of citizens. Consequently, when fundamental rights of citizens are infringed, particularly in the realm of such digital or informational societies, novel redressal mechanisms also ought to emerge, in line with the technological advancements.

This paper attempts to shed light on one such constitutional remedy which Latin American countries have come to incorporate within their legal system – that of Habeas Data. Habeas data refers

to a constitutional mechanism whereby individuals are empowered to access, correct, or delete their personal data which is held by either public or private entities. (Ana Dhamo & Iris Dhamo, 2025). This mechanism gains prominence in a world that is increasingly being data-driven. The paper thus seeks to analyze whether the afore concept can be incorporated in Indian jurisprudence as either an expanded interpretation of existing writ jurisdiction under Article 21 read with Articles 32 or 226, or as a distinct constitutional remedy, considering the dearth of adequate recognition and enforcement afforded to Fourth generation rights in the Indian legal landscape.

2. Tracing the Digital Rights Paradigm in India

Although the Information Technology Act (IT Act) was enacted in the year 2010, the landscape of digital rights in India evolved and crystallized with landmark judicial decisions. In *Shreya Singhal* (Shreya Singhal vs UOI, 2015), when two women were arrested under Section 66A of the Act, 2010, for alleged offensive and objectionable comments on Facebook on the shutdown of the city of Mumbai following the death of a prominent politician, the very constitutionality of the provision was challenged. The constitutionality of the said provision was challenged on the ground that the same incorporated vague terms such as 'causing inconvenience', and 'annoyance' for criminalizing speech, without defining the same. The Apex Court in this case found that the impugned provision imposed a chilling effect upon freedom of speech and expression, and thereby stood in gross contradiction to Article 19(1)(a). The provision was thereby struck down in its entirety.

Shreya Singhal case thereby laid the framework for recognizing an important Constitutional right on digital platforms – that of freedom of speech and expression. With rapid advancements in digital technologies, there are concomitant emerging concerns about privacy, surveillance, and potential infringements of individual liberties. Consequently, in order to address the same, there has been

progressive crystallization of digital rights within the ambit of Article 21 of the Constitution.

For instance, in *Justice K.S. Puttaswamy & Anr. v. Union of India*,2016 where the Apex Court examined the constitutionality of Aadhaar, the Court went on to recognize privacy as a fundamental right and further imposed restrictions and safeguards to protect this right to privacy, by emphasizing upon data security and informed consent of users.(Ashok Kumar Rai, 2023). The Apex Court decision in *Anuradha Bhasin v. Union of India, 2020* thereafter widened the horizon of constitutional rights recognition in the realm of digital technologies and platforms. The Court in Bhasin emphatically declared that any restriction to fundamental rights under Article 19(1)(a) and 19(1)(g) would have to meet the proportionality test, except under 'unavoidable circumstances'. Recently, the Court also declared digital accessibility as a fundamental right under Article 21 (Amar Jain vs UOI, 2025), while observing that excluding persons with disabilities from the purview of digital systems such as biometric or OTP-based eKYC amounted to violation of constitutional rights. (Maria J & Girish R, 2025).

However, the progressive recognition of rights under Article 21 of the Constitution has not resulted in incorporation of effective remedies in case of violation of the said rights. Privacy, despite being declared a fundamental right, remains an elusive dream. The right to informational self-determination and data security are still abstract words in Indian legal landscape. This calls for revisiting and fashioning new Constitutional remedies to meet emerging challenges.

3. Habeas Data Comparative Perspective and Potential in Indian Legal System

The concept of Habeas Data comes with a notion to protect one's personal data which squarely falls within the ambit of fourth

generation Human Rights strongly linked to globalization and emerging technologies. Loosely translated as "Have the Data," it is a specialized jurisdictional remedy, brought by private individuals against data fiduciaries, which is often constitutional in nature. (Kharbanda & Vipul, 2016). The underlying principle is that personal data, like individual liberty must be protected against arbitrary interference by the State. Habeas data functions as a procedural right in favour of individuals where an individual grievance is presented to a constitutional court, providing citizens with a directly enforceable remedy.

3.1 Historical context

Habeas Data was conceptualized and implemented in the Latin American nations against the background of a common history involving decades of torture and repressive practices under so-called "State parties" such as military juntas and fascist regimes. (Kharbanda & Vipul, 2016). A major inspiration for Habeas Data is the Council of Europe's 108th Convention on Data Protection of 1981, the purpose of which was to secure the privacy of individuals vis-à-vis the automated processing of personal data. Convention of Protocols, 2025). For this purpose, individuals were granted several rights under the Convention, including a right to access their personal data in an automated database. Another source of inspiration came in 1983, where the *Bundesverfassungsgericht* (German Federal Constitutional Court) in its landmark ruling, recognized a new fundamental right i.e. the right to informational self-determination, giving individuals control over their personal data. This judgment became the constitutional foundation of Germany's data protection law and remains the country's most influential privacy decision. (Mr. Von M & Others, 1983). Habeas Data essentially enshrines this principle of informational self-determination which is a right of the individuals to decide, when and within what limits, information about their private lives should be communicated to others, in private

parties or public authorities. Furthermore the ICCPR under Article 17 states that no one shall be the subjected to arbitrary or illegal interference with their honour or reputation, and everyone has the right to protection of the law against such interference, and the ACHR under Article 14 stipulates that anyone injured by inaccurate or offensive statements or ideas disseminated in a legally regulated medium has a right to reply and make corrections using the same communication medium. The mechanisms mentioned above enable individuals with a procedural right to approach a competent Court/ Tribunal to access and request the rectification, update, or destruction of personal data held about them, regardless of whether the register is private or public in most cases. (Kharbanda & Vipul, 2016).

3.2. Foundational characteristics

The main defining features of Habeas Data, as applied in various jurisdictions, include:

I. **Right to Access Information**: The citizens have the right to ask for their information contained within any data registry. (Iriz Beleno & Others, 2023). This means that they have the right to know what type of data is stored about them in manual or automated databases.

II. **Right to Informational Self-Determination**: This right implies that there must be transparency concerning the gathering and processing of an individual's data. In jurisdictions like Venezuela, individuals are expressly entitled to know the purpose of and the policy behind the data registries where their information is stored. Paraguay also specifically recognizes the right to know for what purpose their data is collected and put to use.

III. **Right to Challenge and Correct Data viz. Correction, Updating, or Destruction**: This states that the individuals have the right to request the rectification, update, or even the

destruction of personal data held about them in registries if it is wrong, inaccurate, illegitimate, false, outdated, or undermines their entitlements. This is more of a procedural right that allows the individual to request access and/or rectification to any personal data that may jeopardize their right to privacy.

Habeas Data also covers the concept of the "right to be forgotten," which is the right to delete information considered obsolete or that has lost its usefulness. (Agarwal.A & Singh.A, 2025). Argentina incorporates the Peruvian idea of confidentiality of data, interpreted as the prohibition to broadcast or transmit incorrect or false information.

However, the right to ask for the writ of Habeas Data is not an absolute right and is subject to certain exceptions, which may include State security, secrecy of newspaper sources, Police investigations and public interest scenarios.

3.3. Scope of Writ of Habeas Data

The action is generally filed against any register to find out what information is held about an individual. Most often, the writ is available against public entities or employees and Private entities having a public character. In Venezuela, the writ expressly permits access to information stored in official as well as private registries. (Agarwal A & Singh A, 2025). As opposed to the GDPR (Regulation (EU) 2016/679), which is applicable across the European Union, imposing obligations on data controllers, Habeas Data is a constitutional remedy directly enforceable before the Courts, providing citizens with protection of images, privacy, honour, information self-determination, and freedom of information of a person. Habeas Data, in this sense, falls within a broader ambit of data protection.

In India, there is no current legal recognition for Habeas Data. However, its functions are now addressed primarily by the

Digital Personal Data Protection (DPDP) Act, 2023, which significantly alters the scope and relationship with existing laws like the Right to Information (RTI) Act, 2005, and the Information Technology (IT) Act, 2000. Prior to the DPDP Act, the RTI Act provided Indian citizens with a partial, limited forum for seeking information similar to the access function of Habeas Data, particularly concerning government records. The RTI Act allows citizens to seek "information" (which is broadly defined to include records, documents, electronic data, and material produced by a computer) held by or under the control of any "public authority." However, the RTI Act, 2005 does not have any provisions for the correction of inaccurate information contained in a data registry. (RTI Foundation, 2012).

The DPDP Act, 2023 provides many of the core rights central to Habeas Data, which is defined as a right to access, update, rectify, and delete personal data. The Act grants the Data Principal the statutory right to access information about personal data which is a facet of informational self-determination.

That being said, The DPDP Act relies on an administrative, multi-tiered process where the Data Principal must first seek grievance redressal from the Data Fiduciary or Consent Manager. (DPDP Act, 2023). The Data Principal must exhaust the opportunity of redressing her grievance before approaching the Data Protection Board of India ("the Board") (DPDP Act, 2023). This requirement of exhausting administrative opportunities before approaching the quasi-judicial Board contrasts sharply with the direct, simplified access to a single judicial forum, which is a feature of the Habeas Data mechanism.

A separate Constitutional Habeas Data, if interpreted and enforced by the Supreme Court and High Courts, might establish a higher judicial standard for balancing privacy against public transparency, potentially mitigating the curtailment of the public

interest test imposed by the DPDP Act's amendment to the RTI Act and other statutory exemptions and administrative laches.

4. Towards A New Relief Regime Constitutional and Practical Proposals

The Habeas Data remedy available in Latin American countries and Philippines makes it practicable and desirable in India because of the current data-driven harms and futuristic impact of technology on personal data that India is facing and will face in the distant future respectively. (Respicio & Co., Bar Reviewers, 2025). The constitutional commitment to privacy as informed by the *Puttuswamy* (Justice K S Puttaswamy Vs UOI, 2017) judgment together with the limitations of the above-mentioned statutory frameworks makes the Habeas Data remedy essential to maintain the right of informational self-determination of citizens and to preserve democratic accountability in India.

In the same judgment, when Supreme Court recognized a fundamental right to privacy and subsequently the right to privacy was enforced in the form of right to be forgotten, by State High Courts in cases like *Zulfiqar Ahman Khan v. Quintillion Business Media*, 2019 and *Jorawer Singh Mundy v. Union of India*, 2021 all of these courts have secured the right to informational privacy as embedded in Articles 14, 19 and 21 of the Indian Constitution. However, the right is only formal in nature where the remedy is non-existent and scattered across different statutory frameworks.

Furthermore, the India's surveillance infrastructure viz. The National Security Act, Unlawful Activities (Prevention) Act, and like statutes grant law enforcement and intelligence agencies, broad powers to access, monitor, and retain personal data with minimal judicial review. (R. Aksietha, 2025). The Pegasus spyware scandal, wherein at least a hundred Indian citizens, including journalists, activists, and Supreme Court staff, were subjected to surveillance

without legal process had exposed this surveillance vulnerability. (Mahadik.K, 2025). While the Supreme Court ordered an independent investigation in October 2021, there was no swift judicial remedy available to the affected citizens to demand end of surveillance or deletion of illicitly collected personal data. (Manohar Lal Sharma vs UOI, 2021).

India's adoption of AI in governance, healthcare, law enforcement etc. creates a whole new situation for personal data protection. AI systems trained on historical or dominant data sets perpetuate and amplify existing systemic discrimination in the society. (Sharma.P & others, 2023). This algorithmic discrimination creates a new kind of harm where individuals are denied opportunities vis-à-vis healthcare, government services, social welfare schemes etc. based on classification of their personal data where the existing statutes may not be adequate (i) to access algorithms and datasets classifying them for providing the aforementioned opportunities, (ii) to correct erroneous profiling, (iii) demand human review of algorithmic decisions and (iv) erase data which perpetuates discrimination. Habeas Data, extended to algorithmic governance in India, would grant individuals the right to understand algorithmic processing of their data, enable challenge to discriminative profiling, permit erasure of data which has the potential to perpetuate historical inequalities.

Moreover, the consent-based data processing activities falling within the ambit of the holistic data protection frameworks is prone to systematized deception where end-user license agreements and private policies use legalese incomprehensible to citizens. They in turn unknowingly consent to data processing cycles involving multiple intermediaries and other third parties who they have no idea about. (Singh R K & Singh V, 2025). Habeas Data would enable citizens to remedy this to demand proof for valid consent, permit cessation of non-consensual data processing, facilitate data erasure obtained through manipulated or invalid consent.

This data ecosystem when it affects marginalized communities viz. persons belonging to the SC/ST, religious minorities, persons with disabilities and economically disadvantaged groups, access to swift and low-cost judicial remedy is quintessential to protect fundamental rights of the individuals guaranteed under Part III of the Indian Constitution in general and Articles 14, 19 and 21 in specific. Habeas Data thus has the potential to empower for individuals who lack resources to pursue lengthy administrative complaints or statutory litigation.

5. Conclusion

India charts its digital future, with 971 million internet subscribers, a digital economy projected to comprise one-fifth of GDP by 2030, and an ever-expanding surveillance apparatus, together with AI governance implementation. (Digital Economy, 2024). As such, it must institutionalize meaningful remedies for data autonomy. So, the remedy of Habeas Data if implemented, would recognize informational self-determination as a justiciable right and provide swift, accessible remedies against pervasive state surveillance and personal data misuse. It also enables individuals to counteract algorithmic discrimination in AI governance, protect vulnerable communities disproportionately harmed by data exploitation and align Indian jurisprudence with international best practices in data protection.

The Supreme Court, in its next opportunity to address data rights comprehensively, need to recognize Habeas Data as a constitutional writ available under Articles 32 and 226. (Panwar & Gaur, 2025). Subsequently, Parliament should enact legislation codifying the scope, procedure, and remedies. Such recognition would transform privacy from an abstract constitutional aspiration into a lived, enforceable right which can restore to Indian citizens the informational autonomy and dignity that the digital age increasingly threatens to erode.

References

1. Upendra Baxi, *From Human Rights to the Right to be Human: Some Heresies*, 13 IIC Quarterly 185, 186 (1986).
2. Manuel Jesús López Baroni, *Fourth Generation Human Rights in View of the Fourth Industrial Revolution*, 9 Philosophies 1 (2024), https://doi.org/10.3390/ philosophies9020039.
3. Edoardo Celeste, *Digital constitutionalism: A New Systematic Theorisation,* 33 IRLCT 76 (2019).
4. STANFORD ENCYCLOPEDIA OF PHILOSOPHY, https://plato.stanford.edu/entries/constitutionalism/ (last visited Oct. 26, 2025).
5. Ana Dhamo, Iris Dhamo, *Habeas Data and Digital Rights: Implication for Legal Education and Digital Citizenship*, 15 JESR 482 (2025).
6. Shreya Singhal v. Union of India, AIR 2015 SC 1523.
7. Justice K.S. Puttaswamy & Anr. vs. Union of India & Ors., AIR 2016 SC 4161.
8. Prof. (Dr.) Ashok Kumar Rai, Dr.Santosh Kumar, *Constitutional Rights in the Digital Age: The Intersection of Constitutional Rights and Digital Technologies*, 1 THE ACADEMIC 50, 55 (2023).
9. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.
10. Amar Jain v. Union of India & Ors., 2025 LiveLaw (SC) 507
11. Maria Jawed, Girish R., *From Digital Divide to Digital Dignity: Amar Jain v. Union of India and the Constitutional Right to Accessible Technology in India*, Int J Discrim Law, https://journals.sagepub.com/doi/10.1177/13582291251382491#:~:text=This%20case%20note%20analyses%20the,to%20life%20and%20personal%20liberty (last visited Oct. 28, 2025).
12. Kharbanda, Vipul, Habeas *Data in India, Centre for Internet & Society, Internet Governance Blog* (Dec. 10, 2016), https://cis-india.org/internet-governance/blog/habeas-data-in-india

13. Council of Europe, Convention 108 and Protocols, COUNCIL OF EUROPE, https://www.coe.int/en/web/data-protection/convention108-and-protocol (last visited Nov. 2, 2025).

14. German Federal Constitutional Court's Judgment of 15 December 1983, 1 BvR 209, 269, 362, 420, 440, 484/83.

15. Iriz Beleno, Marbeth Silva & Nikko Laconico, *Habeas Data as a Legal Notion* (2023)

16. Anjani Agarwal & Aman Singh, *The Right to Be Forgotten Under the Digital Personal Data Protection Act, 2023: A Missed Opportunity in India's Data Privacy Regime*, 11 Int'l J. L. 57 (2025)

17. RTI Foundation of India, *Applicants Should Avoid Seeking Clarifications or Comments Under RTI*, https://rtifoundationofindia.com/applicants-should-avoid-seeking-clarifications-or-1768 (June 25, 2012)

18. Section 13 of the Digital Personal Data Protection Act, 2023

19. Section 27 of the Digital Personal Data Protection Act, 2023

20. Harold Respicio, Writ of Habeas Data [A.M. No. 08-1-16-SC] | Special Proceedings, Respicio & Co., Jan. 25, 2025, https://www.respicio.ph/bar/2025/remedial-law-legal-ethics-legal-forms/special-proceedings/writ-of-habeas-data-am-no-08-1-16-sc

21. Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., (2017) 10 S.C.C. 1

22. Zullfiqar Ahmad Khan v. Quintillion Business Media (P) Ltd., CS (OS) 642/2018 (Delhi High Ct. 2019)

23. Jorawer Singh Mundy @ Jorawar Singh Mundy v. Union of India & Ors., W.P.(C) 3918/2021 (Del. H.C. Apr. 12, 2021).

24. R. Aksietha, *Surveillance in India and Its Privacy Challenges in the Digital Age: A Legal and Constitutional Analysis,* 10 Int'l J. for Res. in Tech. Innovation (Mar. 2025), https://www.ijrti.org/

25. Karan Mahadik, *India second-most impacted by NSO Group spyware globally: Pegasus used to target 100 Indians, court documents*

show, Ind. Express, Apr. 12, 2025, https://indianexpress.com/article/business/india-second-most-nso-group-spyware-pegasus-used-court-documents-9937130/.

26. Manohar Lal Sharma v. Union of India — "*Pegasus Spyware Probe*," SC Observer, https://www.scobserver.in/cases/manohar-lal-sharma-v-union-of-india-pegasus-spyware-probe-case- background/

27. Pranjal Sharma, Anirban Sarma, Amoha Basrur & Prateek Tripathi, *AI Governance in India: Aspirations and Apprehensions* (Obs. Res. Found. India Dec. 6, 2023), https://www.orfonline.org/research/ai-governance-in-india-aspirations-and-apprehensions.

28. Singh, R.K. & Singh, V. *Beyond Consent: Ensuring Meaningful Protection of Genetic Data Under India's Digital Personal Data Protection Act, 2023*, 14 J. Info., Commun. & Ethics in Soc. 1 (2025), https://doi.org/10.1177/09710973251328785

29. U.S. Dep't of Commerce, Int'l Trade Administration, India – Digital Economy, Trade.gov (Sept. 18, 2024), https://www.trade.gov/country-commercial-guides/india-digital-economy

30. Panwar & Gaur, *Judicial Interpretation and Data Rights in India: From Puttaswamy to the DPDP Act, 2023*, 5 Ind. J. Integr. Res. in L. II, 1890 (2025)

Human Rights: Concepts, Laws, and Policies Philosophical and Historical Evolution of Human Rights

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Abstract

This paper follows the philosophical and historical development of human rights, arguing that the modern idea wasn't a straightforward discovery but a contingent mix of ancient ethics, religious teachings, early modern political thought, and twentieth-century international law. The analysis moves chronologically, starting with Greco-Roman and Abrahamic ideas of justice and human dignity, which laid important but not universal moral foundations. It then looks at the medieval reworking of natural law and the role of charters like the Magna Carta. The paper treats the Enlightenment as a turning point, when thinkers such as Locke, Rousseau, and Kant recast rights as universal, natural, and tied to individual autonomy. Later sections examine the post-1945 international human rights system established by the United Nations, bringing together philosophical genealogy with historical developments.

Keywords: *Human Rights, Natural Law, Enlightenment, Universalism, International Law, Political Philosophy*

1. Introduction

The idea of human rights the notion that all individuals share certain basic and inalienable rights by virtue of being human is a central pillar of modern political ideology. However, its philosophical origins and historical evolution are complicated, contentious, and by no means straightforward. This analysis responds to a central question: How did human rights evolve from different ancient concepts of justice and moral duty into the formal international legal system that we are familiar with today? The argument central to this thesis is that human rights did not arise from a straightforward, linear development of self-evident truths. Instead, it evolved as a complex process influenced by changing philosophical, religious doctrine, and most importantly, political struggles. It is the result of a long and dialectical historical process punctuated with tensions; wherein abstract principles were created, challenged, and solidified in reaction to specific crises and power configurations.

This reading uses a historical and philosophical approach to map the development of central ideas such as dignity, universality, natural law, and autonomy. It explores the shift from obligation to right, from elite privilege to universal claim, and from moral claim to law that can be enforced. The analysis covers ethical systems of ancient times to modern-day challenges to international human rights. By analyzing foundational texts in political philosophy and essential legal and political documents, this book illustrates that today's human rights system is a delicate, historically new, and constantly changing entity.

2. Ancient and Pre-Modern Origins

The roots of human rights go back to the ancient ideas of justice, morality, and universal moral order. Although these early ideas did not provide "rights" as personal claims against the state, they laid down principles upon which these were eventually to emerge. In

Greco-Roman philosophy, the idea of law that existed independently of human-made laws developed. Aristotle, in his Nicomachaean Ethics, made a distinction between specific laws and a "universal law that exists by nature" (Aristotle, ca. 350 B.C.E./n.d.). The Stoics developed this further, suggesting a universal divine reason (logos) controlling the cosmos and accessible to all humankind through the capability for reason. Roman politician Cicero described this in terms of natural law—a true law of right reason, in accordance with nature, which is eternal and unchanging, binding upon all peoples in all ages (Cicero, n.d., Republic). This Stoic-Roman idea of natural law formed an essential basis; the idea of a universal moral code binding upon all societies, regardless of local custom or legislative law.

At the same time, world religions gave authoritative, if often restrictive, accounts of human dignity. The Abrahamic religions of Judaism, Christianity, and Islam preached that humans carry the image of God, imparting inherent dignity. This religious basis for human dignity necessitated moral responsibilities toward others, including obligations of charity and justice. Yet these duties were generally interpreted as duties to God and fellow believers, and not as rights held by all human beings (Ishay, 2008, pp. 34–39). Both religious and philosophical ancient sources were conceptually imprecise. They posited new ideas of universal natural law and inherent human dignity, but within societies that were severely stratified and in which slavery, patriarchal societies, and religious discrimination were the norm, limiting the practical application of these ideals.

3. Medieval to Early Modern Evolution

The medieval period was a key synthesis of Christian theology and classical philosophy, especially through the scholarship of Thomas Aquinas. Aquinas built a systematic theory of natural law by

combining Aristotelian teleology and Christian doctrine. Aquinas argued that human reason was able to understand divine eternal law and from it formulate principles of just governance. Within Aquinas's model, human law that violated natural law was not really law but a "corruption of law." This scholastic model reiterated the requirement that rulers had no absolute authority. They were still bound by a higher moral system, with far-reaching political consequences. Although this model had mainly stressed obligations to God over rights of individuals, it bolstered the argument for defying tyrannical rule.

This limitation on the sovereign power expressed itself in a variety of political evolution, the best example of which is the Magna Carta of 1215. The Magna Carta was not a declaration of the universal human rights. Instead, it represented a political agreement forced on King John by the disobedient nobles to secure their feudal prerogatives (Donnelly, 2013, p. 73). Its provisions guaranteed specific rights to "free men," who comprised a tiny fraction of the population, regarding property, inheritance, and due process. Nevertheless, its symbolic value outran its initial applicability. Clauses like "No free man shall be taken or imprisoned, except by lawful judgment of his peers or by the law of the land" turned into core principles of rule of law. The Magna Carta set an influential precedent, the power of the crown could be subject to legal checks, and subjects had some rights that monarchs could not simply disregard. This was a practical move away from absolute monarchy and toward constitutional rule, laying foundations for rights claims to come.

4. Enlightenment and Philosophical Foundations

Seventeenth and eighteenth-century Enlightenment was a qualitative shift in human rights history. Enlightenment philosophers diverged from earlier views that based justice on divine command or social order. They placed the origin of rights In individuals. This

development laid the intellectual foundation of contemporary human rights theory. In his Second Treatise of Government, John Locke argued that people in a "state of nature" have natural rights to life, liberty, and property. These rights are not conferred by government, but pre-date political organization and are natural. For Locke, the role of government is defending these pre-political rights. A government that routinely abuses them loses legitimacy and can be resisted (Locke, 2003, Second Treatise).

Building on Locke's paradigm, Jean-Jacques Rousseau's The Social Contract put more focus on popular sovereignty than natural law. Critiquing Locke's method, Rousseau contended that political authority by right comes from the people's "general will." Rights and liberty are not present in a pre-political state of nature; they are established and secured by a social compact in which citizens rule themselves. This added self-determination to be central to freedom (Rousseau, 1997, Social Contract).

The most substantial philosophical basis for human rights came from Immanuel Kant. Kant, in his Groundwork of the Metaphysics of Morals, asserted the supreme value of every human being as an independent, rational agent. He also created the Categorical Imperative, a moral law that obliges one to "act so that you treat humanity, whether in your own person or in that of another, always as an end and never merely as a means" (Kant, I. 2012). From this law there follows the belief that all individuals have inherent dignity that cannot be violated. As historian Lynn Hunt (2007) notes, this era didn't so much theorize rights as "create" them. Emerging cultural sensibilities focused on empathy made universal, equal rights both possible and appealing on an emotional level for the first time. This philosophical transformation, reaching its peak with the American Declaration of Independence and French Declaration of the Rights of Man and of the Citizen, turned rights from special benefits of certain groups into universal rights for all of mankind.

5. Nineteenth and Early Twentieth-Century Developments

The nineteenth century exposed a harsh paradox in human rights development. On the one hand, Enlightenment ideals fueled liberal constitutionalism's spread throughout Europe and the Americas. National constitutions came to include bills of rights, safeguarding freedom of speech, religion, and assembly and subjecting state power to legal limits. Rights rhetoric became the focus of political movements for emancipation, such as abolition of slavery and early suffragette movements. The century saw progressive extension of rights-carrying citizenship within nation-states. On the other hand, this same period witnessed the emergence of nationalism and imperialism, which severely limited human rights' universal promise. Rights that were written into national constitutions often held only for citizens of a particular state, not for everyone. European colonial empires consistently denied minimum rights to millions in Africa and Asia, revealing harsh contradictions between domestic liberal ideals and foreign oppression. National sovereignty, as necessary for self-determination, was used to justify non-interference in states' internal affairs, even in extreme oppression.

In spite of these limitations, the late nineteenth and early twentieth centuries saw the first international attempts at monitoring state behavior. The humanitarian movement, as seen in the International Committee of the red Cross's 1863 founding and later adoption of Geneva Conventions, produced the first international humanitarian law framework. These were intended to contain the brutality of war and safeguard injured combatants and noncombatants. At the same time, social movements started to promote new types of rights social and economic rights. Labor movements struggled for rights to organize, decent wages, and healthy work environments, upsetting classic liberal focus on political and civil liberties. As these trends were still in their infancy, they laid the groundwork for

the eventual international recognition of global rights and wider comprehension outside of the classic liberal system.

6. Post-1945 International Human Rights System

World War II and Holocaust horrors spurred the emergence of the contemporary international human rights system. The belief that national sovereignty was enough to safeguard rights was broken. In answer to this, the world community aimed to create an international system protecting human dignity from state-backed genocide. The United Nations' founding in 1945 marked the first step. The UN Charter itself specifically stated that promotion and encouragement of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" formed one of the central purposes of the organization (United Nation, 1945, Article 1.3).

This dedication was vividly captured in the Universal Declaration of Human Rights (UDHR), which was adopted by the UN General Assembly on December 10, 1948. The UDHR was a historic feat, the first time the global community had enunciated a unified list of rights of all individuals. It was written by a diverse group of committee members with the express intention of bringing together different philosophical, religious, and political traditions. This strategy set what political theorist Jack Donnelly (2013) refers to as an "overlapping consensus" regarding norms for justice in society. The Declaration includes civil and political rights (such as life, liberty, freedom from torture, and freedom of expression) and economic, social, and cultural rights (like work, education, and social security).

Though taken up as a non-binding document, the UDHR gained significant moral and political influence, serving as the basis for over eighty international treaties and declarations. Its norms then became binding international law by virtue of two great treaties: the

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which were adopted in 1966. The split into two distinct covenants mirrored Cold War ideological cleavages. Western countries placed greater emphasis on civil and political rights, whereas the Soviet bloc and its allies prioritized economic and social rights. This political division generated a lasting tension regarding rights hierarchy and indivisibility that continues to exist today.

7. Critical Perspectives and Contemporary Debates

The post-1945 system of human rights has been successful but has been subject to ongoing criticism and contestation. A key tension is universalism versus cultural relativism. Universalists, rooted in Kantian philosophy, argue that human rights stem from common humanity. All people in all societies are subject to these rights. Cultural relativists reply that the Universal Declaration of Human Rights (UDHR) and associated treaties represent Western liberal values inimical to non-Western environments. They reason that applying a single global norm might amount to cultural imperialism. Although the argument can be used by repressive governments to rationalize violations, it poses valid concerns regarding striking a balance between universal principles and variegated cultural practices (Beitz, C. R. 2009).

Another influential view is from historian Samuel Moyn, who defies the common story of unbroken advancement leading to 1948. Moyn (2010) contends that human rights were not important as a global political force until the 1970s. He regards them as a "last utopia" in the wake of other dominant political ideologies such as socialism and the weakening of anti-colonial nationalism. This reading indicates human rights' centrality is newer and less entrenched than generally presumed. Modern controversies also concern the nature and enforcement of rights. The Cold War dichotomy between first-generation (civil-political) and second-

generation (economic-social) rights continues. Controversy remains regarding whether right to food, health, and housing are as basic as rights to free expression and a fair trial. Philosopher Henry Shue (1996) has tried to close this gap by introducing "basic rights" of security and subsistence. These are necessary conditions for the enjoyment of all other rights. In addition, enforcement is problematic. National sovereignty tends to protect states from outside intervention, and mechanisms of accountability for violators are not strong. The advent of influential non-state actors, such as multinational corporations and terrorist groups, makes the old state-dominated model of rights protection more complicated. This poses new challenges for the human rights movement in the twenty-first century.

8. Conclusion

Human rights development is a story of intellectual change and political strife. It did not start with a theory of rights. Rather, it grew out of ancient moral and religious principles regarding justice, natural law, and human dignity. These principles set more elevated moral standards for leaders. The pivotal change came during the Enlightenment. It redefined the individual as an independent agent with natural, universal rights. This philosophical shift was politically realized in the momentous eighteenth-century declarations. It was gradually incorporated into nineteenth-century national constitutions over time. The modern international human rights system is largely a product of the post-World War II era. It arose in reaction to nation-states' inability to safeguard basic human dignity. The Universal Declaration of Human Rights set a universal standard for all peoples and states, beginning an ongoing process of international norm-setting that continues to grow today. Yet all this historical construction is built upon a tenuous consensus. The progression from subject obligations to citizen rights, and then on to universal human rights, was by no means inevitable or guaranteed. The pitfalls and challenges

of today, such as enforcement issues, cultural relativism controversies, and the necessity to overcome economic and social disparities, indicate that the human rights enterprise is still unfinished. Upcoming scholarship needs to keep examining how such universal norms can be better realized and modified to suit the realities of a globalized world. We must strive to make human rights' promise a reality for everybody.

References

1. Aristotle. (n.d.). *Rhetoric* (W. R. Roberts, Trans.). (Original work published ca. 350 BCE).
2. Aquinas, T. (n.d.). *Summa Theologiae* (Fathers of the English Dominican Province, Trans.). I–II, Question 95, Article 2.
3. Beitz, C. R. (2009). *The idea of human rights*. Oxford University Press.
4. Cicero, M. T. (n.d.). *On the republic* (C. D. Yonge, Trans.). Book III, Chapter 22.
5. Donnelly, J. (2013). *Universal human rights in theory and practice* (3rd ed.). Cornell University Press.
6. Hunt, L. (2007). *Inventing human rights: A history*. W. W. Norton & Company.
7. Ishay, M. R. (2008). *The history of human rights: From ancient times to the globalization era*. University of California Press.
8. Kant, I. (2012). *Groundwork of the metaphysics of morals* (M. Gregor & J. Timmermann, Eds. & Trans.). Cambridge University Press. (Original work published 1785)
9. Locke, J. (2003). *Two treatises of government and a letter concerning toleration* (I. Shapiro, Ed.). Yale University Press. (Original work published 1689)
10. Moyn, S. (2010). *The last utopia: Human rights in history*. The Belknap Press of Harvard University Press.

11. Rousseau, J. J. (1997). *The social contract and other later political writings* (V. Gourevitch, Ed. & Trans.). Cambridge University Press. (Original work published 1762)

12. Shue, H. (1996). *Basic rights: Subsistence, affluence, and U.S. foreign policy* (2nd ed.). Princeton University Press.

13. United Nations. (1945). *Charter of the United Nations*. https://www.un.org/en/about-us/un-charter

14. United Nations. (1948). Universal Declaration of Human Rights. https://www.un.org/en/about-us/universal-declaration-of-human-rights.

Custodial Deaths and Accountability: A Socio-Legal Analysis of Police Torture in India

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Abstract

In India, custodial violence is still a serious problem that compromises the integrity of the criminal justice system and violates human rights. This study examines the frequency and trends of deaths that occur while a person is in custody, analyses the current judicial system, and determines how custodial violence affects victims and society as a whole. The study uses a doctrinal approach, examining national and international human rights frameworks, statutes, case law, and court rulings to offer a thorough grasp of the matter. The study intends to assess the efficacy of international human rights agreements and Indian legislative instruments, including the BNS, BNSS, and Supreme Court directives, in preventing torture and fatalities in detention. The report also aims to suggest changes to overcome the deficiencies in institutional safeguards, judicial supervision, and law enforcement procedures. The study concludes by highlighting the need for more robust legislative provisions, efficient enforcement strategies, and institutional responsibility in order to stop violence against inmates.

Keywords: *Supreme Court, Human Rights, Custodial Deaths, Custodial Violence*

Introduction

When someone passes away while in the care of law enforcement, whether the police or prison officials, it is referred to as a custodial death. This tendency has become a major problem in the Indian legal system and poses serious human rights issues. Custodial killings frequently indicate structural flaws in the criminal justice system, such as power abuses, a lack of accountability, inadequate training for law enforcement officers, and an atmosphere of impunity. A thorough analysis of custodial death's legal foundation, underlying causes, and wider societal ramifications is necessary to comprehend it. One The Indian Constitution offers a strong legal foundation designed to shield people from capricious official action, especially when it comes to arrest and incarceration. (Arshiya, S. (n.d.). The right to life and personal liberty are guaranteed under Article 21, which states that no one may be denied these rights until the legal process is followed. Additionally, Article 22 guarantees specific protections for people who are detained, such as the right to know why they were detained, the right to speak with a lawyer, and the right to appear before a magistrate within twenty-four hours. However, there are frequently large gaps in implementation and enforcement between these fundamental rights and the reality of custodial deaths. A number of clauses in the Bharatiya Nyaya Sanhita 2023 (BNS) may be pertinent in situations involving custodial death. Under Section 100 of BNS, 2023, Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. However, the prosecution of such crimes is made more difficult by the absence of particular legislation that handles custodial deaths, which frequently results in insufficient punishment for those guilty (Dr. Dipti Rekha Mohaptra, 2017).

Objectives of the Study

1. To analyse the prevalence and patterns of custodial deaths.
2. To examine legal frameworks.
3. To evaluate the impacts of custodial violence.
4. To explore human rights violations.

Research Methodology

This study employs a doctrinal research methodology and the phenomenon of custodial violence in India and the Supreme Court's involvement in preventing it are to examine. The goal of doctrinal study is to comprehend the current legal framework and how it is used in practice by analysing and interpreting statutes, legal principles, court rulings, and other legal documents. A thorough analysis of main and secondary legal sources, including as statutes, case law, government reports, academic publications, and constitutional provisions, is the foundation of the research process. The fundamental basis for examining the legal theories and principles governing custodial violence in India is provided by primary legal sources, including significant Supreme Court rulings and pertinent legislative acts. Secondary legal sources provide important viewpoints and insights on the effectiveness of legislative measures and judicial interventions in combating custodial violence. These sources include scholarly commentary, and policy documents.

Review of Literature

1. Bhat A.R (2018)

Study focusses on police abuses and draws attention to the widespread problem of custodial torture in Jammu & Kashmir. It critically looks at the trends of violence committed while people are being held, the absence of accountability, and the consequences for

human rights. The paper focusses on the legal remedies in conflict areas as well as the geographical difficulties in preventing torture in detention.

2. A. Gopalan (2019)

In this Paper examines the legal, social, and ethical facets of the problem while providing a socio-legal analysis of custodial deaths in India (Sandesh Sanjivkumar Jagtap, 2020). It looks at the institutional mechanisms that support custodial killings as well as the Indian legal system's shortcomings in offering victims appropriate redress. In order to stop similar incidents and safeguard fundamental rights, the report advocates for a more robust legislative framework.

3. Law Commission Reports

In its 113th and 273rd reports, the Law Commission of India recognized the startlingly high number of deaths occurring in detention and recommended independent legislation to end torture. These studies highlight the lack of an accountability system for law enforcement personnel as well as the shortcomings of the current procedural safeguards (Government of India Law Commission of India, 2017).

Types and Manifestations

Physical Abuse

Detainees may be subjected to severe beatings, the use of sticks or rods, electric shocks, whippings, or sexual assault by authorities in positions of authority. Abuse of this kind often results in fatalities as well as severe injuries (Sandesh Sanjivkumar Jagtap, 2020). Sexual assault against detainees, which includes both rape and molestation by professionals tasked with their protection, is one of the most serious issues.

VERBAL ABUSE

Verbal maltreatment in custody often includes:

- ➢ Use of insulting language and humiliation,
- ➢ Issuing threats to victims or their families
- ➢ Ethnic, caste- based, or gender – based slurs.

Constitutional Provisions Related to Custodial Violence

Human dignity is a key tenet of the Indian Constitution. Its Preamble reaffirms the dedication to social, economic, and political justice as well as the protection of individual dignity. The Directive Principles of State Policy and the Fundamental Rights both echo and uphold these ideals. Every person's right to life and personal freedom is protected under Article 21. The Supreme Court construed this to include the right to live with dignity in the seminal ruling of **Maneka Gandhi v. Union of India.** (Harnoor, 2025). The Court condemned the use of chains and shackling of detainees in **Sunil Batra v. Delhi Administration**, stating that such actions violated Article 2. The judiciary further affirmed the right to a quick trial as a fundamental component of personal liberty under this article **in Kadra Pahadia v. State of Bihar** (Biswas, A., & Yadav, Dr. J, 2025).

Article 14 *protects the rights of both convicted and accused people.*

- *Retroactive enforcement is prohibited by* ***Article 20(1).***
- *Double jeopardy is banned under* ***Article 20(2).***
- ***Article 20(3)*** *protects, particularly when forceful.*
- *The right to counsel and the right to know the reasons for arrest are guaranteed under* ***Article 22(1).***
- *To avoid arbitrary detention,* ***Article 22(2)*** *mandates that everyone who is arrested shall appear before a magistrate within 24 hours.*

Legal Framework

- **Section 120** of the Bharatiya Nyaya Sanhita (2023) punishes people who purposefully cause harm or serious harm in order to coerce or use violence to get confessions or information.
- **Section 35** of the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023) requires that detentions and arrests be made for legitimate grounds and in accordance with established protocols.
- **Section 22** of the Bharatiya Sakshya Adhiniyam (2023) declares confessions made under threat, coercion, inducement, or promise to be void.

According to **Section 199 of the BNS**, deals with offenses by public servants, specifically penalizing a public servant who knowingly disobeys legal directions during an investigation with punishment of rigorous imprisonment (6 months to 2 years) and a fine(Nitin Kumar Gupta, & Taneja, M, 2024).

Section 220 IPC has been replaced by Section 258 of BNS, which stipulates that any official who wilfully abuses their authority may be subject to severe penalties, such as up to seven years in prison and a fine. In **D. K. Basu Vs. State of West Bengal**, the court made it clear that arrest and detention must follow constitutional safeguards: The court held that custodial violence violates Article 21 & 22 of the constitution. (Dr. Dipti Rekha Mohaptra, 2017). The right to life includes the right to live with dignity even during arrest and interrogation. The court laid down specific guidelines to be strictly followed during arrest:

It covers: preparation of arrest memo, informing relatives, medical examination, lawyer's presence, police identification, maintaining registers and control room entries.

Bharatiya Sakshya Adhiniyam, 2023

Confessions are made when someone who has been charged with a crime acknowledges or suggests that they participated in it. Sections

15 to 24 of the Bharatiya Sakshya Adhiniyam 2023 specify the circumstances under which such confessions may be used in court. Crucially, Section 22 states unequivocally that a confession acquired under duress, fear, or threats from an authority regardless of how well-meaning cannot be used as proof (Indulia, B,2024). In a similar vein, Section 23 safeguards people by stating that statements made to the police are not always admissible in court, particularly if the person was coerced or unaware of their rights. These protections are in place to make sure that no one is coerced into confessing by deception, fear, or suffering. They represent a more fundamental idea that everyone deserves to be treated fairly and with dignity, including those who are accused, and that justice must be founded in the truth rather than fear (Nitin Kumar Gupta, & Taneja, M,2024).

Protection of Human Rights Act, 1993

The Indian Parliament passed this law in response to growing domestic and international concerns on the necessity of legal protections to protect human rights. Adopting a more open and accountable system that upholds human dignity while administering justice is crucial as society changes and the nature of crime gets more complex (Prem. K, (n.d.).

The Model Prisons Act, 2023

The bill approaches prison reform holistically, tackling topics like safety evaluations, gang-related violence, and convict rehabilitation. It highlights the necessity of efficient grievance redressal procedures and offers measures to segregate people who might endanger themselves or others. It suggests establishing a Prison Development Board to supervise execution and advancement in order to increase accountability. It also lists the various prison classifications according to need (Sandesh Sanjivkumar Jagtap, 2020). Depending on their eligibility and behaviour, prisoners may be eligible for parole, furlough, or early release, as well as legal help. Its ultimate

goal is to guarantee that incarceration emphasises rehabilitation and reintegration in addition to punishment, creating a more constructive and humane prison environment. 21 A separate police station or agency, not the one engaged in the alleged event, must conduct the investigation after a First Information Report (FIR) is filed. Notifying the NHRC of any deaths that occur while a person is in custody is required (Status of Policing in India Report 2025 Police Torture and (Un)Accountability. (n.d.).

Judicial Response

Sheela Barse v. State of Maharashtra

The Supreme Court took a major step in defending the rights and dignity of women in custody in the historic case of **Sheela Barse v. State of Maharashtra.** In response to a concerned journalist who brought attention to the predicament of female detainees, the Court ruled that the guarantees under Articles 21 and 22 of the Constitution must meaningfully extend to those who are deprived of their liberty, directing that women must be subjected to medical examinations to prevent abuse, have timely access to legal representation, and not be questioned without the presence of female officers (Biswas, A., & Yadav, Dr. J, 2025).

D.K. Basu v. State of West Bengal

The Supreme Court of India rendered a significant ruling in the D.K. Basu v. State of West Bengal (1997) case, addressing the growing issue of fatalities and violence in detention. Following allegations of torture and fatalities in police custody, D.K. Basu, the Chairman of Legal Aid Services, West Bengal, filed a Public Interest Litigation (Dr. Dipti Rekha Mohaptra, 2017). The Court stressed that human dignity must be maintained even while an individual is under arrest and ruled that torture in detention is a clear violation of Article 21 of the Constitution, which protects the right to life and personal liberty.

The Court established mandatory guidelines for police and prison authorities in order to prevent abuse of power. These guidelines include preparing an arrest memo, notifying the arrested person's family or friends, conducting a medical examination every 48 hours, appearing before a magistrate within 24 hours, and permitting the arrestee to meet with their attorney during questioning. These protections were created to guarantee accountability, openness, and the defence of fundamental rights. The ruling, which is frequently referred to as the "Magna Carta of custodial rights in India", ensuring that even people under arrest retain dignity, protection against torture, and procedural safeguards (Indulia. B,2024).

Conclusion

All people are guaranteed the fundamental rights of life and personal liberty under Article 21 of the Indian Constitution. The human rights of those detained should be upheld by the guardians. They should also fulfil their legal obligation to provide the facilities people need for their health and safety. Humane living conditions and appropriate medical attention should be given to the inmates. Without a doubt, instances of abuse in detention are a disgrace to human civilisation. Admitting that the person charged with our safety and well-being has lied to us and tortured individuals who have not yet been found guilty is difficult. Even more disheartening is the fact that police officers really engage in "rape, hitting in the private parts, peeing in the mouth, forced oral sex, and other forms of torture," which highlights how bad the situation is. To prevent custodial deaths, CCTV cameras must be installed inside the lock-ups and should be routinely inspected by a duty officer or other qualified police official. The Government is required under Article 51(c) of the Indian Constitution to uphold internationally recognised laws and agreements, including the "International Covenant on Civil and Political Rights, 1966 (ICCPR) and Universal Declaration of Human Rights, 1948 (UDHR)". "No one shall be subjected to

torture or cruel, inhuman or degrading treatment or punishment," according to both Article 5 of the UDHR and Article 7 of the ICCPR.

References

1. Arshiya, S. (n.d.). *CUSTODIAL TORTURE AND THE NEED FOR COMPREHENSIVE POLICE REFORMS*. Retrieved October 30, 2025, from https://sprf.in/wp-content/uploads/2024/12/Custodial-Torture-and-the-need-for-Comprehensive-Police-Reforms.pdf

2. Biswas, A., & Yadav, Dr. J. (2025). A Critical Analysis On Custodial Violence In India. *International Journal of Research Publication and Reviews*, *6*(4), 12980–12986. https://doi.org/10.55248/gengpi.6.0425.1617

3. Dr. Dipti Rekha Mohaptra. (2017). Custodial Violence and Human Rights Legal Implications. *International Journal of Research in Management & Social Science*, *5*(3(V)), 82–91.

4. *GOVERNMENT OF INDIA LAW COMMISSION OF INDIA Implementation of "United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment" through Legislation*. (2017). https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081620.pdf

5. Harnoor. (2025). *Prevention Of Custodial Violence In India And The Role Of The Supreme Court*. https://www.ijcrt.org/papers/IJCRT2505851.pdf

6. Indulia, B. (2024, March 23). *Custodial Torture in India: Intersection of Criminal Law and Constitutional Rights*. SCC Times.https://www.scconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/

7. Nitin Kumar Gupta, & Taneja, M. (2024). Alarming Increase Death in Custodial Death in India: Legal Analysis. *IJFMR240113851*, *6*(1). https://www.ijfmr.com/papers/2024/1/13851.pdf

8. Prem, K. (n.d.). Indian Journal of Law and Legal Research CUSTODIAL VIOLENCE IN INDIA: A LEGAL AND HUMAN RIGHTS PERSPECTIVE. In *Indian Journal of Law and Legal Research*.

9. Sandesh Sanjivkumar Jagtap. (2020). Impact of Yoga and Meditation on Health. *International Journal of Advanced Research in Science, Communication and Technology (IJARSCT)*, *11*(1), 2581. http://ijarsct.co.in/Paper630.pdf

10. *Status of Policing in India Report 2025 Police Torture and (Un) Accountability*. (n.d.). Common Cause & Lokniti - Centre for the study Developing Societies(CSDS). https://www.commoncause.in/wotadmin/upload/SPIR_2025.pdf

11. *Understanding Custodial Violence in India | Causes, Laws, Cases, Solutions*. (2025, September 12). Techidata. https://tarunias.com/exams/upsc-notes/understanding-custodial-violence-in-india/

12. Verma, E., Ll, B., Year, T., & Law, C. (n.d.). *International Journal of Criminal, Common and Statutory Law 2024; 4(1): 103-113 An era of guardians becoming perpetrators-custodial deaths: An analysis between the laws of India and UK* (pp. 103–113). Retrieved October 21, 2025, from https://www.criminallawjournal.org/article/73/4-1-10-665.pdf

From Article 21 to Digital Personal Data Protection Act: Evolution of Privacy Laws in India

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Abstract

The foundation of autonomy, personal liberty, and human dignity is the constitutionally guaranteed right to privacy. It covers a variety of rights, such as privacy in decisions, informational self-determination, personal autonomy, and bodily integrity. Although the right to privacy is not unqualified, any violation must pass the three-pronged test of proportionality, need, and legality. Legality necessitates the existence of a law that authorizes this kind of invasion of privacy. In a democratic society, necessity means that the restriction must be necessary for a valid state goal, such as public order or national security. Privacy protection is one of the most important issues faced by governments around the world. The Internet of Things has enabled people to connect all of their electrical devices to a single network, allowing them to control them remotely via smartphones. The Internet has also allowed people to access their personal data via the Internet. As a result, people have been able to access and use their personal information in a variety of ways such as storing and retrieving personal data, storing personal

information, and transferring personal data to the cloud. It is a complex issue that has a wide range of impacts on the privacy of individuals, businesses, and the environment. As the awareness of privacy keeps increasing, the number of privacy breaches or incidents relevant to it is increasing as well. This paper focuses on privacy laws and as data protection is now more important than ever there is an urgent need for a proper enforcement of laws to ensure privacy of individuals.

Keywords: *Privacy, Internet, Data Protection, Data Breach, Personal Data***.**

Introduction

The term "privacy" refers to a person's private activities, including his right to an unencumbered life. It refers to escaping the spotlight while spending time with family and taking pleasure in life's simple pleasures. It is a crucial component of a person's psyche, making it challenging to legally define its borders. It resembles his shadow. No one in a civilized society can live without privacy. Nonetheless, in social situations, one is often required to make concessions about the reach and breadth of this privilege. To participate in the so-called democratic governance, every one of us has forfeited a sizeable portion of our privacy.

Black's Law Dictionary defines the right to privacy as 'right to be let alone; the right of a person to be free from unwarranted publicity and the right to live without unwarranted interferences by the public in the matters with which the public is not necessarily concerned'. (Thomson West, 2009)

Richard B. Parker pointed out "Privacy is control over when and by whom the various parts of us can be sensed by others. By 'sensed' is meant simply seen, heard, touched, smelled and tasted (Parker, 1975). He described privacy in psychological terms as a result. If privacy is a psychological condition, it becomes impossible to characterize someone whose privacy has been temporarily

invaded without his knowledge because the loss of privacy has no impact whatsoever on his psychological state.

Background of the Study

One of the most significant human rights in the developed world is the right to privacy. It is also provided by popular religions of the world. It safeguards human dignity and guards against the disclosure of various personal data in the first place. Article 12 of the Universal Declaration of Human Rights (UDHR, 1948), Article 17 of the International Covenant on Civil and Political Rights (ICCPR, 1966), and Article 16 of the Convention on the Rights of the Child (CRC, 1989) all recognize the right to privacy as a fundamental freedom. The right to privacy is mentioned in numerous countries' constitutions and human rights declarations.

People are entitled to "the security of their persons, houses, papers and belongings against unwarranted searches and seizures,". The Court of Law has frequently defended the right to privacy. The protection of personal information from the government and corporations is the goal of numerous privacy laws. Many people think that the law has not kept up with the internet's development, and it has complicated privacy laws. Many other human rights, including the freedom of expression, the right to seek, receive, and disseminate information, and the right to freedom of organization and assembly, intersect with the right to privacy.

Statement of Problem

We may decide who to share our thoughts, ideas, and feelings. Protecting our physical safety through privacy. Individuals and companies shield us from entities that rely on us or are more powerful than us regarding personal Information. People can manage their reputations, thanks to privacy. Our opportunities, friendships, and overall well-being are influenced by how others

perceive us. Even while we can't completely control our reputations, we must be able to guard against unfair injury in some way. Reputational safety depends on safeguarding both against certain truths and falsehoods.

Although it may be difficult to define the word "privacy," it is crucial to make a distinction between the concepts of privacy and the right to privacy in order to have a meaningful conversation about it. The right to privacy refers to the understanding that privacy should be legally safeguarded, whereas the idea of privacy comprises a definition of what it entails and how it is valued.

Review of Literature

J. N. Pandey describes that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child- bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right of the person concerned and would be liable in an action for damages. However, position may be differed if he voluntarily puts into controversy or voluntarily invites or raises a controversy. The Book mainly deals with the concept of Privacy but there is not much laws discussed in it. (Pandey, 2025)

Rishika Taneja and Sidhant Kumar discuss the laws and remedies that a person has when their rights are violated by the State, which includes the government, or by a private party, which includes media outlets, news channels, etc. Together with Indian and international case laws, this book also shows how the International Privacy Standards affect Indian privacy law and how important they are in respect to search and seizure, phone tapping, online interception, and other issues. (Taneja and Kumar, 2014)

Kiran Deshta book explains that privacy is a dynamic notion, and that in India, the concept of privacy is a synthesis of

constitutional law, common law, and prevailing customs that are evident in a variety of legal domains. It discusses the legal system in the context of India. It describes how Article 21 miraculously protected privacy by tying it to it as a crucial component of personal liberty. Additionally, it discusses the need for a robust statutory requirement in order to safeguard key customary and constitutional privacy protections. (Deshta, 2011)

G. Usha discusses internet privacy and how issues like cookies, spyware, and bug attachment have become widespread phenomena that are processing and exercising autonomy over user information. (Usha, 2008)

Ravinder Kumar and Gaurav Goyal investigate how our country's officials have failed to address such a pressing issue and how Indian laws differ from those in western nations. They also look at the subjectivity of privacy and how it varies based on culture, environment, and economic circumstances. They have ranked several classes higher than others in terms of privacy satisfaction. They have emphasized the use of evolving technology as a privacy strategy. They have also spoken on how people feel compelled to intrude on other people's personal space. (Kumar & Goyal, 2016)

Research Gap

Most of the literature does not provide any critical analysis of the consent-based model. The possibility of complete consent in this complex digital ecosystem is not clear. Consent fatigue and its implications are not clear. There is no proper balance between national security and individual privacy. There is no proper mechanism to tackle the problems related to artificial intelligence or machine learning algorithm processing and automated decision making, biometric data collection, IOT devices, facial recognition, blockchain technology, etc.

Indian Laws on Data Privacy

❖ The Indian Constitution, 1950.

Article 21 of the Constitution talks about Right to Life and Personal Liberty. Right to Privacy though not expressly mentioned, is Protected under Art.21.

The Right to privacy is a constitutionally protected right in India, according to a nine-judge panel of the Supreme Court of India (*Justice K. S. Puttaswamy v. Union of India*, 2017), and it is ancillary to other liberties provided by the Indian Constitution. According to the Court, privacy is an incident of fundamental freedom or liberty guaranteed under Article 21, which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". This is a landmark judgement led to constitutional challenges to a wide range of Indian laws, including legislation criminalizing same-sex partnerships and bans on meat and alcohol consumption in many Indian states. The case is likely to have broader implications as privacy activists use it to pursue the constitutional discussion on privacy in other countries. (*Justice K. S. Puttaswamy v. Union of India*, 2017)

❖ The Information Technology ACT, 2000

The IT Act also modified several parts of the Indian Penal Code (1860), the Banker's Book Evidence Act (1891), the Indian Evidence Act (1872), and the Reserve Bank of India Act (1934) to make them more compatible with modern digital technology. Body corporates are liable to pay damages if negligent in implementing and maintaining reasonable security practices and procedures, causing wrongful loss or gain to any person (The Information Technology Act, 2000, S.43). Disclosing any electronic record, book, register, correspondence, information, document, or other material without consent is punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to one lakh

rupees, or with both (The Information Technology Act, 2000, S.72). Providing services under a lawful contract with the intent to cause wrongful loss or gain is punishable by imprisonment for up to three years, or with a fine of up to five lakh rupees (The Information Technology Act, 2000, S.72A).

❖ The Information Technology Amendment Act, 2008

➢ Problems with Sec. 66A

According to experts, the categories such as 'offensive, "menacing,' 'annoyance,' and so on were either ambiguous and ill-defined, or not defined at all. Anything could be interpreted as disrespectful by anyone. There was a lot of room for abuse of power by utilizing this provision to intimidate media workers. This also limited the freedom of speech and expression, which is enshrined in the Constitution as a basic right. The section was mostly utilized to arrest those who made disparaging statements or criticisms of officials.

The government claimed that the clause did not violate any basic rights and that only particular terms were banned. It claimed that as the country's internet user base grew, there was a need to regulate internet material in the same way that print and electronic media were regulated. However, the Supreme Court ruled in 2015 that this portion of the IT Act was unconstitutional because it violated Article 19(1)(a) of the Constitution *(Shreya Singhal v Union of India, 2015)*.

Section 69A empowers the authorities to intercept, monitor, or decrypt any information generated, transmitted, received, or stored in any computer resource if it is necessary or expedient to do so in the interest of India's sovereignty or integrity, defense, security, friendly relations with foreign states, or public order, or to prevent incitement to the commission of any cognizable offence or to investigate any offence. It also gives the government the authority to prohibit internet sites in the national interest. The legislation also

included procedural measures for prohibiting any website (The Information Technology Amendment Act, 2008, S.69A).

Although opponents of the section claimed that it infringed the right to privacy, the Supreme Court argued that national security takes precedence over individual privacy. The Supreme Court upheld the section's constitutionality *(Shreya Singhal v Union of India, 2015)*.

The recent prohibition on several Chinese apps was carried out in accordance with Section 69A of the IT Act.

❖ The Digital Personal Data Protection Act, 2023

The Act provides various controls in the hand of the user. Section 6 deals with free, specific and informed consent of user to ensure that they have control over their data. The given consent can also be withdrawn. As per Section 11, the users have the right to access the data and its processing activities. The user can also request for data correction and deletion as under Section 12. There must be a grievance redressal mechanism and the user has the right to nominate persons in case of death or incapacity. Parental consent is required for processing child data and there is a ban on tracking and targeted advertisements that target children. The Data Fiduciary must mandatorily take security measures to prevent data breach and incase a breach occurs it must be informed to the affected individuals and the Data Protection Board of India. The Data Fiduciary must erase the user data when the purpose is served or when the user has withdrawn the consent. The Board can impose penalties, conduct inquiries, and issue directions in case of any issue. Penalties may extend up to Rs.250 Crores in case of serious data breaches, and higher penalties may be issued for entities processing sensitive data. The option of alternate dispute resolution is also provided under the act so as to reduce the litigation burden on Courts and the Board. The entities are allowed to process data of users without their consent for legitimate purposes. There are certain exemptions

provided to startups as well (The Digital Personal Data Protection Act, 2023).

Conclusion

To address current privacy issues, India's legal system should enhance its controlling power to ensure that people's information is protected. The right to privacy though not absolute, is a fundamental right as under Article 21 which includes all aspects of a life that makes a person's life more meaningful but yet exercising it is difficult without governmental assistance. Privacy must include an option that gives an individual to determine how much information about him is disseminated. There is a need to provide easily accessible Grievance Redressal Mechanism, defining a proper structure in case of noncompliance. The Act should articulate privacy's constitutional basis as a right from Article 21 and should be based on the guidelines given by the honorable supreme court as in various cases especially in case of *Justice K.S. Puttaswamy v Union of India (2017).* The Indian government should resist any temptation to compete with other governments like the US and China in increasing citizen surveillance and interception. Encryption should safeguard Internet users' security from invasions of privacy, data theft, and other types of threats. Local enforcement agencies and Special Courts need to be established in addition to Strict Penal Provisions in order to curtail invasion of Privacy. It is important that international protections and harmonization to protect the open internet must be incorporated, the government should establish clear guidelines for authorities on information collection, use, monitoring, and storage, and a new strong and independent body called the Privacy Commission should be established. There is a need to make the end-user aware about the policies, user agreements, and other terms and conditions in the language that is understood by them. Finally, Consent sought from the user prior to data usage must be transparent and the user must have permission to access websites or

resources even if they have denied submitting their data. Government should establish a body to maintain Government websites from being hacked by ensuring that proper security measures are taken. Only authorized personnel should be allowed to access data available in Government websites and it can be enabled with use of procedures like 2-Step verification.

References

1. *Convention on the Rights of the Child*, 1989.
2. *Constitution of India*, 1950.
3. *International Covenant on Civil and Political Rights*, 1966.
4. *Justice K. S. Puttaswamy (Retd) & Anr. v. Union of India AIR 2017 SC 4161*, (Supreme Court of India, 2017).
5. *The Digital Personal Data Protection Act*, 2023.
6. *The Information Technology Act*, 2000, §§ 43, 72, 72A. New Delhi: Universal Law Publishing.
7. *The Information Technology Amendment Act*, 2008, § 69A. New Delhi: Universal Law Publishing.
8. *Universal Declaration of Human Rights*, 1948.
9. Deshta, K. (2011). *Right to privacy under Indian law*. New Delhi: Deep & Deep Publications.
10. Kumar, R., & Goyal, G. (2016). *The right to privacy in India: Concept & evolution*. United Kingdom: Lightening Source Publications.
11. Pandey, J. N. (2025). *Constitutional law of India*. New Delhi: Central Law Agency.
12. Parker, R. B. (1975). A definition of privacy. *Rutgers Law Review*, 29.
13. *Shreya Singhal v. Union of India*, AIR 2015 SC 1523 (Supreme Court of India, 2015)

14. Taneja. R, & Kumar, S. (2014). *Privacy law – Principles, injunctions and compensation*. Lucknow: Eastern Book Company.

15. Thomson West. (2009). *Black's law dictionary* (9th ed.). Minnesota: West Publishing Co.

16. Usha, G. (2008). *Cyber privacy & security*. Hyderabad: ICFAI University Press.

Uniform Civil Code in India: Historical Roots and Constitutional Perspectives

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Abstract

The concept of the Uniform Civil Code (UCC) occupies a complex and much-debated position within India's constitutional architecture. It signifies the constitutional objective of formulating a common civil law framework governing personal matters such as marriage, dissolution of marriage, inheritance, maintenance, and adoption, ensuring equal legal treatment of citizens irrespective of their religious affiliations. (Basu, 2022) The historical evolution of the UCC is deeply rooted in India's colonial legal experience, the constitutional vision of social reform, and post-independence legislative and judicial developments. While the framers of the Constitution recognised the importance of legal uniformity in civil matters, they consciously placed the UCC within the Directive Principles of State Policy under Article 44, reflecting a cautious and gradual approach. Over the decades, the discourse on UCC has been shaped by selective codification of personal laws, landmark judicial pronouncements, and contemporary legislative initiatives. (Jain, 2021) This chapter critically traces the historical development of the Uniform Civil Code in India, highlighting the socio-legal factors that influenced its evolution and examining its contemporary relevance in light of recent state-level implementation.

Keywords: *Uniform Civil Code, Article 44, historical development, Personal Laws, Constitutional Vision, Judicial Interpretation, Legal Reform.*

Introduction

The Uniform Civil Code (UCC) occupies a unique and complex position within the Indian legal system. It seeks to replace religion-based personal laws with a uniform set of civil laws applicable to all citizens, regardless of their religious affiliation. The idea of uniformity in civil matters is grounded in constitutional principles of equality, secularism, and social justice. However, the diversity of religious customs and practices in India has historically posed challenges to the realisation of this ideal.

The constitutional mandate for the UCC is contained in **Article 44** of the Constitution of India, which directs the State to endeavour to secure a Uniform Civil Code for all citizens. (Basu, 2022) Although this provision is non-justiciable, it reflects the framers' belief that legal uniformity in civil matters would strengthen national integration and ensure substantive equality. The historical evolution of the UCC must therefore be understood against the backdrop of India's pluralistic society and its gradual approach to legal reform.

Colonial Background and Early Legal Developments

The origins of the debate surrounding uniform civil laws can be traced to the colonial period. British administrators introduced systematic codification of laws to establish administrative efficiency and legal certainty. (Menski, 2003) Uniform laws such as the Indian Penal Code and procedural codes were applied across communities, reflecting the colonial preference for legal standardisation in public law domains.

However, matters related to marriage, divorce, succession, and family relations were deliberately excluded from uniform

codification and were governed by religious personal laws. This policy was justified on the ground of respecting religious customs, but it also entrenched legal pluralism within the civil law domain. Over time, this selective codification created disparities in legal rights, particularly affecting women. (Law Commission of India, 2018) The colonial experience thus laid the groundwork for post-independence debates by simultaneously introducing the concept of legal uniformity and preserving religious personal laws.

Constituent Assembly Debates and Constitutional Placement

The framing of the Indian Constitution marked a decisive moment in the evolution of the Uniform Civil Code. The issue of UCC generated intense debate within the Constituent Assembly, reflecting tensions between social reform and religious freedom.

Dr. B. R. Ambedkar strongly advocated for a Uniform Civil Code, arguing that civil laws should be divorced from religious doctrine and should apply equally to all citizens. (Ambedkar, 1948) He emphasised that uniform civil laws were essential for achieving gender justice and national unity. At the same time, several members expressed apprehension that immediate implementation might infringe upon religious practices and minority rights.

As a compromise, the UCC was incorporated into the Directive Principles of State Policy under Article 44 rather than being included as a Fundamental Right. This placement reflected the framers' intention to pursue gradual reform through democratic consensus rather than coercive enforcement.

Post-Independence Legislative Reforms

After independence, the Indian State adopted a cautious and incremental approach to personal law reform. Rather than enacting

a comprehensive Uniform Civil Code, the focus was placed on reforming specific personal laws.

The most significant reforms were undertaken in Hindu personal law through the enactment of statutes such as the **Hindu Marriage Act, 1955**, and the **Hindu Succession Act, 1956**. These laws sought to modernise Hindu law by introducing monogamy, enhancing women's inheritance rights, and standardising marriage and divorce provisions. (Menski,W 2003) While these reforms promoted internal uniformity within Hindu law, they did not extend to other religious communities, thereby perpetuating legal pluralism.

The Special Marriage Act, 1954, emerged as a secular alternative that allowed individuals to marry outside religious personal laws. (Special Marriage Act, 1954) Although optional in nature, it represented an important step towards legal uniformity by providing a common civil framework.

Judicial Contribution to the UCC Discourse

The judiciary has played a pivotal role in keeping the idea of the Uniform Civil Code alive through constitutional interpretation. In several landmark cases, the Supreme Court has highlighted inconsistencies between personal laws and constitutional principles.

In a ruling namely **Mohd. Ahmed Khan v. Shah Bano Begum**, the Court upheld the right of a divorced Muslim woman to maintenance under secular criminal law and emphasised the relevance of Article 44. (Mohd. Ahmed Khan v. Shah Bano Begum, 1985) The judgment sparked nationwide debate and underscored the gender inequities embedded in certain personal laws.

Similarly, in another verdict namely **Sarla Mudgal v. Union of India**, the Supreme Court addressed the issue of religious conversion for the purpose of contracting a second marriage and reiterated the need for a Uniform Civil Code as a safeguard against the exploitation and selective invocation of personal laws. (Sarla

Mudgal v. Union of India, 1995) These decisions reinforced the constitutional vision of uniformity while acknowledging the complexity of its implementation.

In **John Vallamattom v. Union of India**, the Supreme Court struck down s. 118 of the Indian Succession Act, 1925, which imposed restrictions on Christians in bequeathing property for religious or charitable purposes. The Court held that personal law provisions must conform to constitutional principles of equality and secularism, thereby indirectly advancing the idea of uniform civil norms. (John Vallamattom v. Union of India, 2003)

Similarly, in **Danial Latifi v. Union of India**, while upholding the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Court interpreted the statute in a manner that ensured reasonable and fair provision for divorced Muslim women. (Danial Latifi v. Union of India, 2001) This judgment reaffirmed that personal laws cannot operate in isolation from constitutional guarantees of dignity and gender justice.

A significant contemporary intervention occurred in **Shayara Bano v. Union of India**, where the practice of instantaneous triple talaq was declared unconstitutional. The judgment marked a decisive shift towards subjecting religious practices to constitutional scrutiny, reinforcing the principle that personal laws must yield to fundamental rights. Although the case did not directly enforce a Uniform Civil Code, it reflected the judiciary's growing role in harmonising personal laws with constitutional morality. (Shayara Bano v. Union of India, 2017).

In **Joseph Shine v. Union of India**, the Supreme Court struck down the offence of adultery under the Indian Penal Code, emphasising autonomy, equality, and individual dignity within matrimonial relations. The reasoning adopted by the Court has broader implications for personal law reform, signalling a movement

towards uniform civil principles grounded in constitutional values rather than religious morality. (Joseph Shine v. Union of India, 2019)

More recently, in **Shafin Jahan v. Asokan K.M. (Hadiya case)**, the Court upheld the right to choose one's partner as an intrinsic part of personal liberty under Article 21. This decision reinforces the argument that marriage and family relations should be governed by principles of autonomy and equality, lending indirect support to the normative foundations of the UCC. (Shafin Jahan v. Asokan K.M., 2018)

Socio-Legal Dimensions and the Evolution of UCC Discourse

Beyond legislative and judicial developments, the historical evolution of the Uniform Civil Code must also be understood through its socio-legal dimensions. The debate surrounding UCC has consistently reflected broader struggles between tradition and reform, community identity and individual rights, and religious autonomy and constitutional morality. Personal laws in India are not merely legal instruments; they are deeply embedded in cultural practices and collective identities, making any attempt at uniformity inherently complex.

One of the most persistent arguments against the UCC has been the fear that it may homogenise diverse cultural practices and disproportionately affect minority communities. This apprehension has shaped political discourse since independence and influenced the State's cautious approach. However, proponents argue that the continued existence of religion-based personal laws perpetuates inequalities, particularly against women, and undermines the constitutional guarantee of equality before law. The uneven reform of personal laws has led to differential treatment of citizens based on religious identity, raising concerns about substantive equality.

The gender justice dimension of the UCC debate has gained prominence over time. Judicial interventions, especially in cases involving maintenance, inheritance, and marriage, have revealed systemic disadvantages faced by women under certain personal laws. (Mohd. Ahmed Khan v. Shah Bano Begum, 1985) Courts have increasingly relied on constitutional values to interpret personal laws in a progressive manner, thereby incrementally harmonising them with principles of equality and dignity. This judicial trend indicates a movement towards functional uniformity even in the absence of a formal UCC.

Civil society movements, women's rights organisations, and legal scholars have also contributed to the evolving discourse by highlighting the lived realities of discriminatory personal laws. These perspectives have shifted the focus of the UCC debate from mere legal uniformity to the achievement of substantive justice. At the same time, concerns regarding federalism, cultural pluralism, and democratic consent continue to influence policy decisions.

Thus, the evolution of the UCC discourse reflects a dynamic socio-legal process rather than a linear legislative project. It demonstrates how constitutional ideals are negotiated within society through gradual reform, judicial interpretation, and public debate. The persistence of the UCC as a constitutional aspiration underscores its symbolic significance in India's quest to reconcile diversity with unity.

Contemporary Constitutional Perspectives on the Uniform Civil Code

The contemporary discourse on the Uniform Civil Code in India reflects a decisive transition from historical justification to rigorous constitutional evaluation. In the post, constitutional morality phase of Indian constitutionalism, the debate is no longer confined to the desirability of uniformity in civil laws; rather, it focuses on the

manner in which civil relations can be harmonised with fundamental rights while respecting India's pluralistic social fabric. The UCC is today increasingly examined through the interrelated lenses of **gender justice, substantive equality, secular governance, and federal constitutionalism**, signalling a significant evolution in its normative and jurisprudential foundations.

1. UCC as an Instrument of Substantive Equality

A central contemporary argument supporting the Uniform Civil Code is its potential to realise **substantive equality**, as opposed to merely formal equality. Although Article 14 of the Constitution guarantees equality before law, the continued application of religion-based personal laws has resulted in unequal civil consequences for citizens who are otherwise similarly situated. Rights relating to marriage, divorce, maintenance, and inheritance vary considerably across religious communities, leading to constitutionally sanctioned differentiation based solely on religious identity.

Modern constitutional jurisprudence recognises that equality must address **structural disadvantage and historical discrimination**, particularly those affecting women. Personal laws, when insulated from reform, often perpetuate patriarchal norms under the guise of religious autonomy. From this contemporary constitutional standpoint, the UCC is not an instrument of cultural homogenisation but a corrective legal mechanism aimed at dismantling unequal power structures embedded within personal law regimes.

2. Gender Justice and Constitutional Morality

From a contemporary perspective, **gender justice** has emerged as the most compelling normative justification for the UCC. Judicial developments in recent years have foregrounded the doctrine of **constitutional morality**, which mandates that all laws, religious or

secular, must conform to constitutional values of dignity, autonomy, and equality.

Practices such as unilateral divorce, unequal inheritance rights, and discriminatory maintenance provisions have increasingly been challenged on the ground that they infringe women's fundamental rights. The evolving jurisprudence demonstrates a clear judicial recognition that **custom and religion cannot override individual dignity and constitutional guarantees**. Consequently, the UCC is increasingly viewed as a legal framework capable of institutionalising gender-neutral civil norms across communities, ensuring that civil rights are derived from citizenship rather than religious affiliation.

Contemporary feminist legal scholarship further argues that **piecemeal reform of personal laws has proved inadequate**. While selective judicial interventions offer temporary remedies, they fail to address systemic inequality. A comprehensive civil code rooted in constitutional equality is therefore seen as a more coherent and sustainable approach to achieving gender justice.

3. Secularism Reimagined From Non-Interference to Principled Neutrality

Contemporary constitutional arguments on the UCC also reflect an evolved understanding of **Indian secularism**. The earlier model of absolute non-interference in religious affairs has gradually given way to a framework of **principled neutrality**, wherein the State may intervene in religiously influenced practices if they conflict with constitutional values.

Civil relations such as marriage, succession, and maintenance are increasingly recognised as **secular social institutions**, notwithstanding their religious origins. Regulating these relations through a uniform civil framework does not violate religious freedom under Article 25, provided that essential religious practices

remain unaffected. From this perspective, the UCC strengthens secular governance by ensuring that civil obligations are governed by neutral, rights-based legal principles rather than religious doctrine.

4. Federalism and State-Level Experimentation

A significant contemporary constitutional argument arises from the perspective of **federalism**. The enactment of the "*Uniform Civil Code of Uttarakhand Act, 2024"* marks a shift from national-level constitutional aspiration to state-level legislative experimentation. This development demonstrates that Article 44 can be operationalised within India's federal framework without imposing uniformity across the entire nation.

State-level implementation allows for **context-sensitive and democratically grounded reform**, enabling legislatures to respond to local social realities. It also addresses concerns of cultural imposition by situating reform within the domain of representative decision-making. Such federal experimentation enhances the constitutional legitimacy of the UCC by aligning legal reform with democratic consent and regional diversity.

5. Legal Certainty and Access to Justice

Another important contemporary argument in favour of the UCC is the need for **legal certainty, clarity, and simplification**. The coexistence of multiple personal law systems has resulted in interpretive inconsistencies, procedural ambiguity, and prolonged litigation. Individuals, particularly those in interfaith relationships, often face uncertainty regarding applicable legal norms in matters of marriage and succession.

A uniform civil framework promotes **access to justice** by providing predictable legal outcomes and reducing excessive reliance on discretionary judicial interpretation. In a constitutional

democracy committed to the rule of law, consistency and clarity in civil legislation are essential to ensuring effective justice delivery.

6. UCC and National Integration A Rights-Based Approach

Contemporary discourse reframes national integration not in cultural or religious terms but through the concept of **constitutional citizenship**. The UCC reinforces the principle that civil rights flow from citizenship rather than community affiliation. This perspective is particularly relevant in a modern society characterised by increased mobility, interfaith relationships, and urbanisation.

At the same time, contemporary proponents caution against employing the UCC as a political or majoritarian instrument. Instead, it is emphasised as a **rights-affirming legal framework** that promotes unity through shared constitutional values while allowing cultural diversity to thrive within the private sphere.

Contemporary Developments and State-Level Implementation

In recent years, the Uniform Civil Code has re-emerged as a significant subject of constitutional and policy discourse in India, reflecting changing social realities and evolving interpretations of equality and secularism. Contemporary debates increasingly frame the UCC as a mechanism for ensuring gender justice, legal clarity, and uniform protection of civil rights rather than merely as an instrument of cultural assimilation. Judicial observations, political deliberations, and academic commentary have collectively contributed to repositioning the UCC as a feasible legal reform aligned with constitutional morality. Courts have consistently underscored that personal laws must conform to fundamental rights, thereby fostering incremental harmonisation of civil norms even in the absence of comprehensive codification.

A defining contemporary development is the enactment of the **Uniform Civil Code of Uttarakhand Act, 2024**, which represents the first legislative implementation of a UCC at the state level in independent India. This legislation introduces a uniform framework governing marriage, divorce, succession, maintenance, and related civil matters for all residents of the state, irrespective of religion. (Uniform Civil Code of Uttarakhand Act, 2024) The Uttarakhand initiative signifies a shift from constitutional aspiration to practical experimentation, demonstrating how Article 44 can be operationalised within India's federal structure. It also reflects the use of state legislative competence as a pathway for advancing uniformity while allowing room for contextual adaptation.

The state-level implementation of the UCC has sparked extensive debate regarding its constitutional implications, social acceptance, and potential for replication across other states. Supporters view the Uttarakhand model as a progressive step towards equality before law and gender justice, arguing that it reduces legal fragmentation and discriminatory practices embedded in personal laws. Critics, however, express concerns related to cultural pluralism, minority rights, and the risk of imposing uniformity without adequate social consensus. These debates underscore that while state-level implementation marks an important milestone in the historical evolution of the Uniform Civil Code, its broader adoption will depend on sustained dialogue, inclusive policymaking, and careful balancing of constitutional values.

Advantages of the Uniform Civil Code

i. Promotion of Equality Before Law

A Uniform Civil Code ensures that all citizens are governed by the same civil laws, eliminating differential treatment based solely on religious identity and reinforcing Article 14 of the Constitution.

ii. Advancement of Gender Justice

Uniform civil norms can address discriminatory practices embedded in certain personal laws, particularly in matters of marriage, divorce, maintenance, and succession, thereby promoting substantive equality for women.

iii. Strengthening Secularism

By separating civil law from religious doctrine, the UCC reinforces the secular character of the Indian State while respecting freedom of belief.

iv. Legal Certainty and Simplification

A common civil code reduces legal complexity and conflicting interpretations, enhancing predictability and ease of adjudication in civil matters.

v. National Integration

Uniform civil laws foster a sense of common citizenship by emphasising shared legal rights and obligations over communal distinctions.

vi. Adaptability to Contemporary Social Realities

A uniform framework can better accommodate modern relationships, inter-faith marriages, and evolving family structures, which are inadequately addressed under traditional personal laws.

Conclusion

The evolution of the Uniform Civil Code in India reflects a gradual process shaped by colonial legal legacies, constitutional compromise, and post-independence socio-legal reform. From the Constituent Assembly debates to its placement under Article 44, the UCC has remained a constitutional aspiration rather than an immediate

mandate. Selective codification of personal laws and continued judicial engagement have sustained the idea of uniformity while accommodating cultural and religious diversity, demonstrating the State's preference for incremental reform.

In contemporary India, the UCC discourse has moved from theoretical debate to practical consideration, particularly through state-level initiatives. While these developments reaffirm constitutional commitments to equality, secularism, and gender justice, they also highlight the importance of inclusive dialogue and social consensus. The future of the UCC depends on balancing legal uniformity with pluralism to ensure substantive justice without compromising cultural autonomy, reflecting India's ongoing effort to reconcile unity with diversity through participatory constitutional reform.

References

1. Law Commission of India. (2018). Consultation Paper on Reform of Family Law. Government of India.
2. Jain, M. P. (2021). Indian constitutional law (9th ed.). LexisNexis.
3. Basu, D. D. (2022). Introduction to the Constitution of India (26th ed.). LexisNexis.
4. Menski, W. (2003). Hindu law: Beyond tradition and modernity. Oxford University Press.
5. Law Commission of India. (2018). Reform of family law (Consultation Paper No. 185). Ministry of Law and Justice.
6. Ambedkar, B. R. (1948). Constituent Assembly debates (Vol. VII). Government of India.
7. Special Marriage Act, 1954, No. 43, Acts of Parliament, India.
8. Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 (India).
9. Sarla Mudgal v. Union of India, (1995) 3 SCC 635 (India).

10. John Vallamattom v. Union of India, (2003) 6 SCC 611(India).
11. Danial Latifi v. Union of India, (2001) 7 SCC 740 (India).
12. Shayara Bano v. Union of India, (2017) 9 SCC 1 (India).
13. Joseph Shine v. Union of India, (2019) 3 SCC 39 (India).
14. Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368 (India).
15. Government of Uttarakhand. (2024). Uniform Civil Code of Uttarakhand Act, 2024.

Unlocking Article 12: Extending Fundamental Rights to the Acts of Private Entities

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Abstract

The Indian Constitution under Part III provides fundamental rights to both citizens and non-citizens. Article 12 under Part III defines State and also indicates that a person can approach a Supreme Court under Article 32 or the High Courts under Article 226 if his fundamental rights are being infringed by the institutions that are mentioned under this Article. This creates a situation wherein a person working under a private entity is deprived of their right to approach the higher courts when their fundamental rights enshrined under the Constitution are infringed by the private companies. This paper through a doctrinal study explores the evolving interpretation of "State" under Article 12 of the Indian Constitution, specifically focusing on the judicial trend of including private entities within its ambit. It analyses landmark Supreme Court judgments, such as R.D. Shetty v. International airport authority of India and Ajay Hasia v. Khalid Mujib Sehravardi, which established the "deep and pervasive control" test. The study also examines subsequent rulings that expanded the criteria beyond direct governmental control to include public function and state-like activities. The paper argues that this judicial expansion, while protecting fundamental rights against the actions of powerful private

actors, raises questions about the scope of judicial review and the balance between public law and private autonomy. It concludes that a clear, consistent framework is needed to define the criteria for classifying private bodies as "State" to ensure legal certainty and prevent arbitrary application, while upholding the constitutional mandate to protect fundamental rights.

Keywords: *Article 12, Fundamental Rights, Constitution, Private Companies, Infringement.*

Introduction

The contemporary legal landscape needs a thorough re-examination of Article 12 of the Indian Constitution, which defines "The State" for the purpose of upholding Fundamental Rights. Traditionally, this phrase has been taken broadly to include government and public authorities. However, the increasing privatization of critical services, as well as the enormous influence of private enterprises in citizen's lives, necessitates the expansion of the constitutional protective umbrella.

This essay will make the case for interpreting Article 12 to include "private entities" that carry out public duties or have significant social and financial clout, making them subject to Part III of the Constitution's rules. This extension is necessary to keep private power from becoming an era of constitutional impunity and to guarantee that fundamental rights continue to be an active reality in a contemporary mixed economy.

Article 12 and Constitutional Assembly

The definition of "The State", included in Article 12 of the Indian Constitution, has evolved from its initial intent throughout discussions in the Constituent Assembly. Draft Article 7 was the original version of Article 12, which was discussed on November 25, 1948. To make sure the Fundamental Rights (Part III) were

relevant and enforceable, the primary goal was to determine who would be bound by them. (Baxi, U 2010)

It is clear from an in-depth study of the discussions held by the constitutional Assembly on November 25, 1948, (Constitutional assembly debates) that the state action doctrine was embodied in Article 12 of the Constitution, which defines "state." In this case, Sri. Mahmood Ali Baig Sahib Bahadur, a member, argued that this article lacked a definition of state. He questioned the definition's use of the term "other authority" as well.

He argued that because "any authority" is a vague concept, anyone with "state"-derived authority might restrict fundamental rights, creating an absurd scenario. Mohammed Ali Baig therefore argued that Article 12 is superfluous and inappropriate since it causes misunderstandings. Dr. B. R. Ambedkar provided a strong defence of this claim and outlined the reasons why Article 12 of the Constitution is necessary. He underlined that the goal of fundamental rights is to ensure that all citizens can assert them and that they should be binding on all authorities that possess the jurisdiction to enact laws or have control over them. He therefore sought to provide a composite definition as such under Part III rather than restating the authorities repeatedly.

Definition of State

Article 12 of the Constitution defines "State" at the outset of Part III. Together with the governments and legislatures of each state, it consists of the Indian government and parliament. Additionally, all municipal and other authorities that are located within Indian territory or are managed by the Indian government are also included. (The Constitution of india, 1950) Article 12 of the Constitution provides the definition of a state for the purposes of applying the clauses in Part III. (D.D. Basu, 2014) Fundamental rights are a branch of constitutionalism that restricts state action under the

Indian Constitution. According to the ruling in the case (State of W.B. v. Subodh Gopal Bose, 1954) "The whole object of Part III of the Constitution is to provide protection for the freedoms and rights mentioned therein against arbitrary invasion by the State".

Other Authorities

The term "other authorities" has been used as a framework to describe how the judiciary has occasionally expanded the scope of the state. To determine what qualifies as an institution or entity under this definition, the judiciary has developed a number of criteria and tests.(Priyesh Pathak,2023)

Ejusdem Generis is an interpretive technique that implies that when a general word follows a class of words, the general word is not completely broad but rather limited to the meaning of the class of words that comes before. As a result, the word "and other authorities" in Article 12 must be interpreted in the context of the terms "local authorities," "state authorities," and "central government."

In this case (Ujjam Bai Vs State of Up, 1962) the Supreme Court, however, deviated from this rule of interpretation of Article 12 and ruled that "other authorities" cannot be limited to local, state, and union administrations.

In **Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi,** The Supreme court ruled in this case that the government-owned Oil and Natural Gas Commission (ONGC) qualifies as a "other authority" under Article 12. According to the court, ONGC's conduct were open to judicial review because it was performing a public role.(Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi,1975)

In **Rajasthan Electricity Board v. Mohan Lal,** Under Article 12, the Rajasthan Electricity Board is a "other authority" in this case, . The supreme court determined that the board was

performing a public duty, and hence its acts were open to judicial review.(Rajasthan Electricity Board vs. Mohanlal & Ors A.I.R 1967)

In Ramana Dayaram Shetty v. International Airport Authority, [10] the Supreme Court laid down the guidelines to determine an entity comes within the ambit "other authority" under Article 12 of the Indian Constitution. The guidelines are as follows:

1. Existence of a statutory authority: The organization must have been established by a law that outlines its duties and authority.
2. Functional character: The organization must be carrying out a public duty or providing a necessary public service.
3. Financial autonomy: Either the organization's funds must be closely linked to the government, or it must be financially independent.
4. Government control: The government must have a substantial amount of control over the organization**.**

As the opinions of the court, an organization may be deemed a "other authority" under Article 12 if it complies with all or the majority of these rules. The court further stated that if an organization meets the other requirements listed above, it may be regarded as a "other authority" even if it was not established by a statute.

Private Entities and Writ Jurisdiction An Access to Justice

Any institution has a duty to protect the human rights that shall come within the ambit of state,(Zee Telefilms Ltd. v. Union of India AIR,2005) so all the private institution has to protect the rights and duties of it workers. A private body fulfilling the positive obligations of a public character, or a person (or body) under a responsibility to

discharge any function under any statute, has the right to approach the writ jurisdiction.(D.D. BASU, 2014)

In **Jagveer Singh v. Chairman Co-operative Textile Mills Ltd,** court stated that A Co-operative Society may not be considered a "State" under Article 12 of the Constitution, but due to their public nature, a writ could be issued under Article 226.(Jagveer Singh v. Chairman Co-operative Textile Mills Ltd 2000)

Related Cases

Zee Telefilms Ltd. v. Union of India: If a private organization decides to carry out a public role without any state authorization and that activity is not illegal, it would be inaccurate to conclude that the organization is an instrument of the state.(Zee Telefilms Ltd. v. Union of India,2005) **K. Krishnamachrayulu v. Sri Venketeswara Hindu College of Engineering**:a writ petition was held to be maintainable, although the institution was a private institution, When an aspect of the public's welfare emerges and an organization adapts to that interest.(K. Krishnamachrayulu v. Sri Venketeswara Hindu College of Engineering, 1998)

Satish Nayak v. Cochin Stock Exchange : Since stock exchanges are completely autonomous of government regulation and the state does not establish regulations for its operation, the "stock exchange" is neither a government authority nor an agency,(Satish Nayak v. Cochin Stock Exchange,1995). But in the case of **K.C. Sharma v. Delhi Stock Exchange,** The Delhi Stock Exchange is a State and is covered under Article 12 of the 1950 Indian Constitution. (K.C. Sharma v. Delhi Stock Exchange, 2005). **Kum Kum v. Principal, Jesus & Mary College**: It was decided that a public office is one in which a significant portion of the populace is affected by the authority and responsibilities of the position. Therefore, it was decided that a private college's principal is subject to writ jurisdiction. (Kum Kum v. Principal, Jesus & Mary College, 1976)

Plight of Workers in Private Institutions

Historically, the question of whether a body is a government "agency" or "instrumentality" has dominated the judicial interpretation of "other authorities." Purely private businesses, independent enterprises, and unaided educational institutions are typically excluded from the Supreme Court's standards, which include whether the government controls all of the share capital, offers major financial assistance, or exerts extensive and pervasive control.

A private employee whose rights are violated by their employer frequently cannot directly approach the High Courts or the Supreme Court through a writ petition under article 32 and 226 (the constitution of India ,1950) to enforce these rights because the majority of Fundamental Rights ,such as those under Articles 14, 16, 19, and 21 are vertical in nature enforceable only against the State and its instrumentalities. Since the employer is not "the State," these constitutional requirements do not immediately apply to them.

Violations of Articles 14 and 16 on Equality and Non-Discrimination are prominent because private employees do not have the same constitutional protections as government employees, who can contest arbitrary, discriminatory, or unequal treatment in hiring, promotion, or working conditions as a breach of Articles 14 and 16. Although it may be a violation of labor law or a contract, discrimination against an employer on the basis of gender, religion, or arbitrary disciplinary action is usually not actionable as a violation of a basic right. Violation of Livelihood and Dignity under Article 21. The judiciary has construed the right to life and personal liberty under Article 21, broadly to encompass the rights to a decent life, a means of subsistence. Arbitrary Termination: In the private sector, the loss of livelihood and dignity brought on by an arbitrary, unjustified firing does not always trigger the protection of Article 21 against the employer itself, even though wrongful termination may be contested under labor laws or as a breach of contract.

While certain laws, such as the Sexual Harassment of Women at Workplace Prevention, Prohibition and Redressal Act, 2013, offer statutory remedies, other types of physical or psychological abuse and humiliation in the workplace that gravely infringe upon the right to dignity cannot be directly addressed through a constitutional writ against a non-State entity.

Limitations on the Right to Free Expression and Association under Article 19 Workers in private organizations may be subject to disciplinary measures if they use their rights to free speech, expression, and the establishment of associations or trade unions. The most potent and direct remedy, a writ petition, is not accessible to defend these liberties from an overbearing private employer, even if labor rules safeguard the right to organize unions and the right to free expression against private individuals.

Suggestions

1. Article 12 of the Indian Constitution should be amended to include within it's ambit private institutions.
2. Make a clear definition on what constitutes a private company performing public functions.
3. The existing test, which focuses heavily on **financial, administrative, and functional control** of the government, could be relaxed for private entities performing essential public services like education, healthcare, infrastructure, or utility services. The focus would shift more to the **nature of the function** performed.
4. Explicitly expand the judicial interpretation to hold that Fundamental Rights like **Article 14 :** Equality, **Article 17** :Abolition of Untouchability, **Article 21** :Right to Life, and **Article 23** :Prohibition of Forced Labour have **direct horizontal application** enforceable against private persons by virtue of the State's **positive obligation** to protect these rights

from infringement by non-State actors, as articulated in recent Supreme Court judgments like *Kaushal Kishor v. State of UP* (2023).

5. Empower regulatory bodies and sector-specific tribunals (like those for telecommunications, electricity, or competition) to enforce **constitutional values and human rights principles** against private entities.

Conclusion

A law is considered efficient only when it is able to mend itself with the needs of the society. Even though the framers of the Constitution have left out private institutions from the definition of State it is imperative to include it because the private entities usually enjoy a degree of insulation from the legislative, executive and judicial control. As private actors increasingly assume roles traditionally held by the public sector, they do so without the typical scrutiny associated with the exercise of public power. This raises concerns about accountability of those private bodies. In summary, there is a dual system in which some non-state private actors are subject to the government's authority as extensions of the state, while others carry out state or public functions and are subject to liability under Article 32 or 226 based on the principle of direct horizontality. Under this system, the Constitution serves as a standard to evaluate the private actions of those non-state private actors.

References

1. Baxi, U. (2010), *The Future of Indian Human Rights. Oxford University Press.*
2. *Constitutional Assembly Debates,* 3rd edition, VOL VII, (pp. 607 – 611).
3. Article 12 of the constitution of Indian, 1950.

4. D.D. BASU, (2014), *Commentary on Constitution of India*, (9th EDT).
5. State of W.B. v. Subodh Gopal Bose, [1954] AIR 92.
6. Priyesh Pathak, (2023) "State" under Part III of the Constitution of India: A Study of Interpretation by Judiciary, INDIAN J. INTEGRATED RSCH.
7. Ujjam Bai Vs State of Up [1962] AIR 1621.
8. Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi AIR [1975] SC 1331.
9. Rajasthan Electricity Board vs. Mohanlal & Ors A.I.R [1967] S.C. 25.
10. Ramana Dayaram Shetty vs Airport Authority of India [1979] AIR 1628.
11. Zee Telefilms Ltd. v. Union of India AIR [2005] SC 2677.
12. Dr. Durga Das Basu, Commentary on the Constitution of India, 8 th Edition, Lexis Nexis, Volume 1, p. 636
13. Jagveer Singh v. Chairman Co-operative Textile Mills Ltd [2000] AIHC 294.
14. Zee Telefilms Ltd. v. Union of India [2005] 4 SCC 649.
15. K. Krishnamachrayulu v. Sri Venketeswara Hindu College of Engineering AIR [1998] SC 295.
16. Satish Nayak v. Cochin Stock Exchange, AIR [1995] Ker 373.
17. K.C. Sharma v. Delhi Stock Exchange [2005] 4 SCC 4.
18. Kum Kum v. Principal, Jesus & Mary College AIR [1976] Del 35.
19. Kaushal Kishor v. State of UP, 2023, w.p(cr.no)113of 2016 with slp.34629 of 2017

Right to Life and Right Against Climate Change – A New Human Right Evolution for Human Existence

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Abstract

The Constitution of India, gives certain fundamental rights necessary to its citizens under the part – III. One such is the right to life and personal liberty. At various circumstances this right has been expanded to various horizons to include various rights under this ambit. One of the important right that the court included is the right to live in a clean and healthy environment. This right enlarged the ambit of the article, and paved way for the government along with its citizens to ensure that the nation's natural treasure is safeguarded and maintained through the fundamental duty vested under article 48A and 51A(g). Yet the increase in the environmental damages are high and the climate change issues persist in the country still. At this arena, the right against climate change was considered as a fundamental right by the Apex court. This chapter analyses issue of climate change evolution, the threat is poses to the human race and how considering right against climate change as a fundamental right emerges a new horizon in human rights aspect and the need to safeguard it.

Keywords: *Clean Environment, Climate Change, Net Zero, Right Against Climate Change & Right to Life.*

Introduction

"Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems…."
(World Charter for Nature, 1982)

Just as the human body is composed of several cells forming each organ, the environment is also composed of many parts including us that forms the core of it. In the present - day world, there are more global trade wars, boundary disputes, also the internal disputes that exist within the nation, famine, scarcity, increase of new diseases and much more. Among these exists the huge global – crisis that's happening: climate change. This is leading to evasion of the environment around and poses a threat to human existence. Climate change which means the shift of long persisting temperatures and weather patterns of a particular region (*What Is Climate Change? | United Nations*), which naturally arises because of variations in the sun's activity or natural disasters such as volcanic eruptions have turned into a human induced process (Intergovernmental Panel on Climate Change Working Group, 2022) due to industrial revolution beginning from the late 18th century. It's because of the huge emissions of carbon dioxide into the atmosphere which traps the heat from being released into space. Also, due to emission of other ozone depleting substances also called greenhouse gases. This has become a matter of issue due to the impacts it has created, such as; drought, increase in global temperatures, severe fires, rising sea levels which is a result of melting of glaciers and ice bergs, catastrophic storms, severe flooding, etc (*Causes and Effects of Climate Change United Nations*). Thus, the world countries are trying to extend their hands to settle this climate change issue, which is not happening owing to the various political disturbances.

In lieu of this there are many climate litigations being filed around the globe, to make sure that the government and the citizens work towards mitigating this climate change and make sure that human existence is alive. While this is the case globally, the Indian judiciary went ahead and held the right against climate change, a fundamental right under the ambit of Article 21, in the case of M.K. Ranjithsinh and Ors vs UOI and Ors. Why did the court pronounce this, does interpreting it under article 21 make any changes and how does it develop the new horizon in the human rights existence is the question that pops up before us? We'll look into it below.

Protection and Conservation of Environment – The Duty Imposed

The fact that climate change has raised questions about life on Earth has made it an irreversible problem right now. The question extends beyond the current generation to future generations who haven't laid eyes on the terrain. It's commonly believed that the son's life is required to atone for the father's crimes. This is the situation in which we find ourselves. Every newborn is in danger of dying because of the various ways that the recent heat waves are impacting the entire world (Dimitrova et al., 2024). Therefore, in order to live a risk-free existence, there is a greater need to preserve nature and pass it on to future generations. In order to guarantee this, the idea of intergenerational equity emerged, which served as the foundation for the argument for the necessity of sustainable development principles. Edith Brown-Weiss stated that, "no longer can we ignore the fact that climate change is an intergenerational problem, and that the well-being of future generations depends upon actions we take today" (Weiss, 2008, 616). His comment makes it quite evident that climate change poses a problem for both the current generation and those to come. Therefore, climate change mitigation is necessary to guarantee intergenerational equity. This explains the need to safeguard and maintain the environment. To restore the balance

back and not to make it even worse, the urgent need of protection and conservation of the environment is needed.

Right to Clean Environment as Right to Life – A Human Right Formed

We saw that restoration of the natural capability of the earth is essential to maintain the viable composition of things for man to live. For this at the COP29 held at Baku, 2024, it was mandated for the developed countries to give at least $300 billion per year to developing countries as a part of larger aim including all actors to scale up financing to developing countries to at least $1.3 trillion per year by 2035 (*Finance & Justice | United Nations*, 2024). But depending upon them and not taking steps from our side to mitigate the climate change issue, would lead to diminishment of the population of the country.

To make sure this happens, the need for a fundamental duty to be levied is necessary. The constitution mandates under article 48A (*The Constitution of India*, 1950, art. 48A) and article 51 A (g) (*The Constitution of India*, 1950, art. 51A (g)), "the fundamental duty of the state and the citizens to work towards safeguarding, protecting and improving the natural environment including forests, lakes, rivers and wildlife". These articles were inserted under Part – IV and Part – IVA of the constitution in the 42nd amendment act, 1976, after its participation at the Stockholm Declaration in 1972 (*United Nations Conference on the Human Environment, Stockholm 1972*). After the Stockholm convention, the government felt it necessary to enact laws to ensure the natural wealth of the nation is protected and conserved. It passed the Water Act, 1972, becoming the first nation to do so globally to pass an individual law for the protection of the environmental resource. It passed many other laws to ensure that natural wealth is being protected. But the lacunae persisted largely. That is when the Indian Judiciary stepped up in

various cases, interpreting Article 21's right to life and liberty to include the right to live in a clean, healthy and pollution free environment. This can be seen in many cases. The first of which is the *Subhash Kumar vs State of Bihar* (AIR SC 420 1991), case where the Apex court recognized the importance of living in a healthy environment. Here the court also stated that it's the duty of the state as laid down under article 48A of the constitution to make sure that the citizens are ensured the same. In the case of *M.C. Mehta v. Union of India (Oleum gas leak case)* (AIR SC 1086, 1987), the court laid down the principle of absolute liability in this case ensuring that the owners of hazardous/inherently dangerous industries are made liable even if they were not directly involved in the incident. It also laid down the same in the case of *Union Carbide Corporation V. Union of India (The Bhopal Gas Tragedy case)* (AIR 1990 273, 1990), making the enterprise liable for the violation of article 21.

In the case of *Rural Litigation and Entitlement Kendra v. State of U.P* (AIR 652 1985), the apex court recognized for the first time that under article 21, every citizen is ensured the right to live in a pollution free environment. In the case of *Virender Gaur v. State of Haryana* (1995 2 SCC 577), the court stated, "protection and preservation of environment and ecological balance free from pollution falls under the purview of Article 21 of constitution and that under article 48A it's the duty of the states to maintain it". The case *Church of God (Full Gospel) in India vs K.K.R. Majestic Colony Welfare Association* (7 SCC 282 2000), addresses the significant problem of noise pollution, particularly as it relates to religious activity. The court gave the judgment that the noise pollution caused violates the fundamental right of a citizen's right to life. It stated that the right to live in a peaceful environment is likewise mandated by article 21 of the constitution. In *T. Damodhar Rao and Ors v. Special Officer Municipal Corporation Hyderabad* (AIR 171 AP 1987), the Court decided that environmental pollution would be a violation of fundamental right to life vested under article

21 of the constitution and that articles 48A and 51A(g) mandates the same. *Indian council for Enviro Legal action vs. Union of India* (AIR 1996 SC 1446), the court established the principle of polluter pays as an integral part of sustainable development and it also emphasized that sustainable development is a viable concept in environmental law that can eradicate poverty and enhance living standards while also maintaining the natural resources carrying capacity.

With right to a clean and healthy environment as interpreted, the court makes sure that the major principles of the environmental law are implemented and enforced in order to combat climate change. With these judgments the court made sure the development of a new human right. This right makes sure that the human who is the central part in the environment is made sure that he enjoys everything to its fullest and in the healthiest way making sure that his fundamental right to life is preserved.

Right Against Climate Change – A Right To Life

After decades, this right is now being recognized as human right by the U.N. In the year 2021, the U.N. Human Rights Council declared it as a human right (United Nations Human Rights Council, 2021).

> *"This resolution sends a message that nobody can take nature, clean air and water, or a stable climate away from us – at least, not without a fight" (Keenan & Andersen, 2022)*

said Inger Andersen, Executive Director of the United Nations Environment Programme. With the above pronouncements, it is evident that the Indian judiciary has contributed a lot to make sure that the climate change effects and environmental degradation is being curbed and controlled. During these times the participation of India in the COP 21 ensuring that the nation will strive hard to

reach the Agenda 2030 (United Nations, 2015) happened. Followed by the nation's pledge in the COP 26 U.N. forum that the nation will reach Net Zero targets within the year 2070 (*India's Stand at COP-26*, 2022) occurred. To further strengthen this, the judiciary interpreted the right against climate change as a fundamental right under the ambit of article 21 of the Indian constitution. With this being interpreted a new horizon of human rights evolution is being opened.

This happened in the case of *M.K. Ranjithsinh and Ors vs UOI and Ors* (AIRONLINE 2021 SC 209). In this case, the Supreme court of India, laid this historical and evolutional judgment keeping in mind the drastic effects of the climate change being faced by the country, and that no one should be in violation of the environmental principles. The court stated that a clean environment is necessary for the realization of the right to life and that the environmental degradation impacts across generations. Thereby emphasis the duty of the state under article 48A, noting that environmental protection is a fundamental right. For this the court also acknowledged the pledges made by the nation to become net zero by 2070. To achieve this feat, it is important that renewable energy be promoted. To ensure this it's important that transition towards clean energy be done and that the citizens get access to the same. Not being stopped, the court also observed the challenges of balancing infrastructure development with wildlife conservation.

The rationale behind the judgment, holds strong scientific evidence and bridges the gap between environmental protection and fundamental rights. To safeguard future generations from the devastating effects of climate change, this must be considered a human right. In several decisions, the Apex court of the country has remarked climate change as a severe issue. The need to clearly state the right against the negative impacts of climate change has grown, even in the face of numerous judgments recognizing the right to a clean environment. According to Articles 14 and 21, this right is

regarded as an expansion of the right to a clean environment (Srivastava, 2024).

Conclusion

Every human born on this planet is vested with the fundamental right to life. Whereas the climate change effects happening poses a question to it. The right to health recognized under the U.N. instruments (United Nations ICESCR, 1996) implies that states must take measures to protect its individuals from health risks posed by climate change. In accordance with it, recognizing this right against climate change makes it possible to put behind bars the people violating the environmental laws and keeps a check on the authorities from upholding their duty well. Expanding the right under the right to life makes sure that, even the marginalized communities who often suffered disproportionately, have their right to life protected. With the expansion of the right to life into a new dimension ensures that development is being met without violation of one's own life. This right ensures the basic principles of sustainable development and the most important intergenerational equity principle being met in its fullest. Thus, this new human right in evolution marks a crucial step towards ensuring a sustainable and equitable future, with nature in the core and the well-being of all communities for their survival.

References

1. *Causes and Effects of Climate Change | United Nations*. (n.d.). the United Nations. Retrieved September 29, 2025, from https://www.un.org/en/climatechange/science/causes-effects-climate-change
2. Church of God (Full Gospel) in India vs K.K.R. Majestic Colony Welfare Association. 7 SCC 282 2000
3. The Constitution of India, 1950, art. 48 A
4. The Constitution of India, 1950, art. 51A(g)

5. Dimitrova, A., Dimitrova, A., Mengel, M., Gasparrini, A., Campen, H. L., & Gabrysch, S. (2024). Temperature-related neonatal deaths attributable to climate change in 29 low- and middle-income countries. *Nature Communications*, *15*

6. *Finance & Justice | United Nations*. (2024, December 10). the United Nations. Retrieved September 30, 2025, from https://www.un.org/en/climatechange/raising-ambition/climate-finance

7. Indian Council for Enviro Legal Action v. Union of India AIR 1996 SC 1446

8. *India's Stand at COP-26*. (2022, February 3). Press Release: Press Information Bureau. Retrieved October 3, 2025, from https://www.pib.gov.in/PressReleasePage.aspx?PRID=1795071

9. Intergovernmental Panel on Climate Change Working Group. (2022, December 3). *Climate Change 2021: Summary for All* (3). UNEP. Retrieved September 29, 2025, from https://www.ipcc.ch/report/ar6/wg1/downloads/outreach/IPCC_AR6_WGI_SummaryForAll.pdf

10. Keenan, A., & Andersen, I. (2022, July 28). *In historic move, UN declares healthy environment a human right*. UNEP. Retrieved October 3, 2025, from https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right

11. M.C. Mehta v. U.O.I. AIR 1987 SC 1086

12. M.K. Ranjitsinh and Others v. Union of India and Others. AIRONLINE 2021 SC 209

13. Rural Litigation and Entitlement Kendra v. State of U.P. (1985) AIR 1985, 652

14. Srivastava, A. (2024, August 12). From Bustards to Benchmarks: Constitutional Right Against Climate Change Impact. In *Manupatra Article*. Retrieved October 4, 2025, from https://articles.manupatra.com/article-details/FROM-BUSTARDS-TO-BENCHMARKS-CONSTITUTIONAL-RIGHT-AGAINST-CLIMATE-CHANGE-IMPACT

15. Subhash Kumar v. State of Bihar AIR 1991 SC 420

16. T. Damodhar Rao and Ors v. Special Officer Municipal Corporation Hyderabad AIR 1987 AP 171

17. Union Carbide Corporation vs Union of India. (1990) AIR 1990, 273

18. United Nations. (1996, December 16). International Covenant on Economic, Social and Cultural Rights [Article 12]. In *G.A/RES/2200A (XXI)*. United Nations General Assembly

19. United Nations. (2015, October 21). Transforming Our World: The 2030 Agenda for Sustainable Development. In *U.N.A/RES/70/1*. United Nations

20. *United Nations Conference on the Human Environment, Stockholm 1972 | United Nations*. (n.d.). the United Nations. Retrieved September 30, 2025, from https://www.un.org/en/conferences/environment/stockholm1972

21. United Nations General Assembly. (1982, October 28). World Charter for Nature. In *A/RES/37/7*. United Nations

22. United Nations Human Rights Council. (2021, October 18). Resolution adopted by the Human Rights Council on 8 October 2021 [The human right to a clean, healthy and sustainable environment]. In *A/HRC/RES/48/13*. United Nations General Assembly.

23. Virender Gaur v. State of Haryana 2 1995 SCC 577

24. Weiss, E. B. (2008). Climate Change, Intergenerational Equity, And International Law. *Vermont Journal of Environmental Law, 9* (3), 616

25. *What Is Climate Change? | United Nations*. (n.d.). the United Nations. Retrieved September 28, 2025, from https://www.un.org/en/climatechange/what-is-climate-change.

Access to Justice and Backlog of Cases: Rights of Undertrial Prisoners and Prolonged Pre-Trial Detention

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Abstract

A fair and democratic legal system must have access to justice as an important element. Nonetheless, protracted pre-trial detention in India is the fate of many of the undertrial prisoners because of the structural inefficiencies and judicial delays and thus the access to justice is a far-fetched reality to them. The adjournment of cases, the lack of legal assistance, the congestion of the prisons, and the infringing of the process substantively undermine the constitutional right of personal freedom provided by Article 21.Article 21, the constitutional right to individual freedom is grossly compromised by a number of systemic problems. The systemic issues comprise excessive number of pending cases, lack of access to legal services, overcrowded prisons, and long delays of the procedure.» This essay investigates the connection between the rights of under trial prisoners to rights to justice highlighting that, over-pre-trial imprisonment shuns the presumption of innocence and is tantamount to being punished without being convicted.» It also examines the causes of the cases backlog, which are social economic

barriers that block access to immediate legal assistance to remedies and lack of court facilities and the judges. Based on the information provided in the prisons, court decisions, and the Model Prison Manual 2023, the report is a critical analysis of the existing legal framework and its failure to implement.»It, also, evaluates whether bail changes, alternative dispute resolution programs, and legal aid agencies can reduce the misery of trial-awaiting inmates» «The report proposes systemic changes on an urgent basis to the need to guarantee timely trials, humanitarian approaches to detention, and effective access to justice. On the whole, it points out that the reduction of pre-trial detention is essential to efficiency, law enforcement, and the respect of the dignity of all participants in the criminal justice system. The only key solution to the backlog of cases involving undertrial prisoners is to decriminalise petty offences and implement non-custodial options, such as summons or bail.

Keywords: *Access to Justice, Backlog of Cases, Human Rights, Judicial Reform, Legal Aid, Pre-Trial Detention & Undertrial Prisoners*

I. Introduction

Indian criminal court system is home to over 02 million prisoners who have been in custody and in such under trials situation the final sentence is usually awarded on the worst things they have done. The legal system, which is used in India, is premised on the principle of an innocent person who is proven guilty. One of the reasons is this very philosophy that the number of undertrials is large. The Supreme Court was frequently pondering on whether there was any light at the end of the tunnel in the undertrials that involved a lengthy jail sentence devoid of trial. The Supreme Court continued questioning the possibility of undertrials, who had been torturing themselves in the jails over the years awaiting to have an hour of hearing session due to their inability to afford the bail. Their courts did not time to listen to their cases. All prisoners are entitled to trial in an efficient

fashion (Vidushi Gupta, 2020). In the case Uday Mohanlal Acharya vs State of Maharashtra, those people who were forced to be detained without trial were to be bailed under the Section 167 in the condition that they had to spend over 90 percent (60 days) of their lives in the jail before a case was indicted against them and the police did not file any indictment on the case.

Undertrial prisoners are prisoners who are either under judicial custody or under jail awaiting trial. According to the 78th Report of the Law Commission, it is evident that an undertrial is a person who did not get conviction but is put in jail as the crime committed by him or her is being inquired, investigated, or prosecuted (Vidushi Gupta, 2020). Records published in relation to the demands of RTI show that of those 254 under trial in jail, one, five hundred four hundred and forty people have a legal defiance to be freed It turned out that among the total number of cases, only 1,286 were to be released by the branch of Amnesty International in India (Govindarajan, 2017). Inmates do not lose their fundamental rights Article 14(3) (c), which is the international covenant concerning the civil and political rights, suggests that the offenders should be tried as soon as possible. The government is tasked with the responsibility of ensuring the prisoners are provided with legal representation and that they are released safe and in good time and their entitlement to a fair and expeditious hearing is respected.

II. Justice Meaning

According to the law, justice is just, just, reasonable, unbiased and morally upright. Juris according to a law in the contemporary terms can be referred to as the rule of law developed by Dicey. This means that no prejudice of law and justice should exist since it must apply to all. This requires everyone to be fair and just to the rest of the people not just to the self. Moreover, the state punishes him in case he breaches the principles of justice, in other words, punishment

(NV Paranjape, 2019). The idea of justice can be found even on the first lines of our Constitution stating that it provides social, economic, political justice to the citizens. The ultimate consequence of law and society is equity. The new models of justice adopted by the judges are based on the existing principles and demands like right to freedom, liberty, dignity, equality and social justice as intended by the Constitution. The Constitution has its grounds in making people access to justice.

III. Under-Trial Prisoners and the Criminal Justice System role

The under trials are the individuals awaiting trial before the court in question and they are considered innocent based on the law before they are tried. They are incarcerated, which was not to happen as they are to be put under judicial custody. Arrest of individuals on awaiting trial is expected to make a provision of a fair judicial process by eliminating a chance of intimidating witnesses. The greatest ills in human rights, conversely, concern the too lengthy case trials, as most of the prisoners have not been arraigned yet. The Indian jails are such that the individuals who are awaiting trial are co-located with those who are guilty. They are however today bound to make them quarantine and separate them into individual houses by the jail officials. Model Prison Manual spells out that no proven convict shall be put in amongst or even permitted to mix with undertrials. Among other factors, seven reasons make the accused on bail put an undertrial in jail; the accused is known to have committed a serious crime, there are fears that the accused may obstruct justice or interfere with witnesses, and there is the fear that the accused may disobey and commit a different crime or a different crime, or refuse the justice (Priyadarshini & Durge, 2023). The importance of the Section 436A of the Cr P C and Section 479 of BNSS is questioned The purpose of the research paper will be to debate maintenance of equality in article 14 of the constitution.

Therefore, the authors propose to add the phrase of non-discrimination on the basis of economic status to the definition offered in Article 15. Furthermore, such detention of the undertrials has cast doubt on the questions of justice, equality, and positive conscience (Priyadarshini and Durge, 2023).

(A) Administration of criminal justice and rights of persons subjected to criminal prosecution, persons in custody pending trial or a conviction:

1. Management of Criminal Justice

The criminal justice system is a combination of the legal and social structures that cooperate with one another in the enforcement of the criminal law in a well defined set of rules and boundaries. The concept of criminal justice can be defined as a collection of rules and institutions that governments employ in dealing with crime. It attempted to keep social order, prevent and penalize violators of the law through jail sentences and fines. The power of investigations and prosecution protects persons who are suspected of being criminals. The criminal justice system in any country is a collection of legal and social agencies in that country that collaborate to apply criminal law regulations. The overall aims of the criminal justice system are to ensure the society is safe and law-abiding, to prevent crimes, to punish criminals, to ensure that the criminal does not become more likely to commit a crime again, and to ensure the safety of society. Conversely, more recent forms of the criminal justice system go beyond the aims They are also required to assist convicts to be improved.

2. The rights of the Accused, the Undertrial Prisoners and Convicts

a) **Presumption of innocence:** Under the presumption that the under trial prisoners are innocent until proven guilty, they should be treated in a manner that depicts so.

b) **The right to a lawyer:** A lawyer is a right that they have and must be provided with all the instruments to have a fair hearing.

c) **Defense against torture and inhumane treatment:** Individuals in custody without being charged against anything must be protected against any form of physical or psychological abuse.

d) **Right to a fast trial:** They have the right to fast trial that is not very long.

e) **The freedom of privacy of communication:** Individuals under detention are supposed to be allowed to privacy communicate with their lawyers and family members (Sarraf, 2023).

IV. Legal Obligation

The origins of the rights of prisoners, especially underprivileged or under trial ones, are traced back to Article 21 of the Constitution or in other words; no individual was to be deprived of his life or personal liberty but by the procedure set by law. This clause has received great weight through a successive case law of the Supreme Court which has made it no longer a mere procedural protection but a stronghold of human dignity. In the 1978 case of Maneka Gandhi v. Union of India the court said that procedure laid down by the law should be reasonable, fair and just In Sunil Batra v. The Court, in the landmark case Delhi Administration (1978) it was concluded that incarceration did not abrogate fundamental rights, which were applied forcefully to the prison set up. Any right that a free person has, Justice Krishna Iyer argues, convicts keep except where they are lost as an inevitable consequence of imprisonment. Here the Prison Act 1894 was scrutinised very closely and it was found that the procedures like bar fetters (Section 56), solitary confinement (Section 30) could not be applied as desired and had to be subjected to the courts to prevent their conversion into instruments of torture Prem Shankar Shukla v. Delhi Administration (1980) further

enforced the stance of the Court against inhumane treatment by stating that systematic handcuffing is against the human dignity of human being in Article 21. The procedural protections pertaining to arrest and detention set out in D.K. Basu v. to avert the occurrence of custodial assault. People had their rights enhanced greatly since the time of arrest in State of W.B. (1996) due to responsibility and transparency. (BOARD, 2025)

V. Problems experienced by the under-trail prisoners

In Indian jails, the prison administration is mainly undertrials thus leading to overcrowding. They should cut down on the population of prisoners in prisons to minimize the number of those under trial. This will not be possible without cooperation between the court and the police. In the case of pre-trial detainees, due to overcrowding the following issues have arisen;

a) The fact that experienced criminals exist, and there are no methods to classify them scientifically that would allow distinguishing them among the rest makes the possibility that first-time and circumstantial offenders become criminals even more likely, since there is no special prison on which undertrials are held. New criminals might not be safe behind bars as they are exposed to gang violence and police brutality. (Kapoor, 2023)

b) Most prisons lack the space and overcrowding renders it hard to uphold the security and wellbeing of the inmates. The majority of the inmates, including the one who is yet to be tried, are of unprivileged, low-income areas, in which malnutrition, diseases, and the inability to access healthcare are a norm.

c) Mentally ill criminals who are a large percentage of the jail population are usually neglected. They are neglected by both the internal and external worlds. Nevertheless, they are the most vulnerable victims of human rights violations due to the

course of their diseases and the current social perspective in the country.

d) Long term absence of the main source usually pushes the family of the prisoner who is not on trial into poverty and isolation by the society. This often leads to delinquent children with people taking advantage of them. (Kapoor, 2023)

VI. Pre-Trial Detention

The Indian procedure law on how to investigate, prosecute and adjudicate criminal issues. Biased decision making prior to trial is significant in influencing a trial. The paper also mentions pre-trial issues, which have tremendous impacts on the accused, victims, and court system with the likes of investigation, arrests, imprisonment, bond and evidence collection. A lost opportunity to execute a prosecution or even the delay of the investigation is likely to be a trade off to fair justice systems due to unwarranted extended detention. The problems, which might be manifested in the form of bails and custody, include: the accused is a flight risk or there is the possibility of destruction of evidence. The question of the admissibility of the evidence and the credibility of the witnesses may be also included to the case provided by prosecution to decrease its level of strength. Pre-trial custody is a threat to the fair trials and rule of law in that under such custody, the inmates are exposed to tortures and violence, including the police using force to make the inmates confess.

Under the procedure law, the challenges, which can be offered at the pre-trial phase, can produce a particular impact on the legal system in other phases. The lack of funds, politicking nature, and corruption can also create pre-trial delays that prolong the investigation period and this means that the accused can be held in custody before the trial (Kumar & Singh, 2024). Evidence may also be contested to be authentic and admissible particularly depending

on the means by which it had been obtained or when it had been tampered with. These issues before trial are very important to resolve so as to safeguard the rights of the accused and to have a fair legal system. To be able to improve the efficiency and fairness of the Indian criminal justice system, this article will underline the complexities of pre-trial custody, witness problems, and discussion of evidence admissions and evidence misuse in order to improve the effectiveness and fairness of the Indian criminal justice system. (Prachi, 2025)

VII. Systamatic Alternatives for Resolution of Delay in Criminal Trial

A) In addition to Court delays, a fair analysis of under trial imprisonment should look into the institutional structure of criminal law. Systemic alternatives that can reduce the number of individuals in detention are needed to reform it in the long run, although accelerated trials are needed. Another strategy is the decriminalisation of minor and non-violent crimes and particularly those related to traffic, petty economic offences, some misdemeanours that fill the courts and jails which are not worth the burden. Arrests and jail custody are eliminated significantly by converting these charges into administrative offences or civil fines. The mandatory use of non-custodial options including the obligatory summons instead of arrest in low-risk offences, the greater use of bail as a rule and the more frequent use of statutory expressive provisions placing release over detention like Section 436 and 436A CrPC / Section 479 BNSS are also of importance. The international human rights standards consider pre-trial custody to be a final resort and those other alternatives comply with the constitutional entitlement of individual lobby in Article 21. Those structural changes together with judicial efficiency initiatives provide a

holistic solution in reducing the pre-trial detention and protecting the rights of those prisoners awaiting trial.

B) Importance of decriminalization of minor offences

Since the Indian criminal justice system is beset by inordinate delays, a huge backlog of cases, and a prison population that is dominated by undertrial detainees, many of whom are incarcerated for petty, non-violent crimes. Hence, the decriminalization of minor/ petty offences is one of the systematic alternative approaches to reducing prolonged undertrial detention.

C) Alternative to imprisonment at the time of pre-detention

The unrestricted and automatic granting of bail is the most successful non-custodial remedy, particularly for minor offences. Sections 436 CrPC (bailable offences) and 436A CrPC / Section 479 BNSS (half-term release) are two examples of provisions that act as safeguards against incarcerating an accused person solely because of their financial situation. Other options that obtain the accused's cooperation without using jail time include supervised attendance or reporting, bond-based release, and personal recognition (PR) bonds. Despite being underutilised in India, community-based supervision, electronic monitoring, and diversion programs are examples of contemporary, rights-based strategies for avoiding needless incarcerations.

VIII. Conclusion

"Justice delayed is justice denied."

The issue of an untrial prisoner in India is brought about by a lack of consideration of the most vulnerable in our society as well as a lack of regularity in the law. These statistics present robbed futures, shattered rights and lives on hold. This is more prevalent to thousands

of detainees who are still waiting trial. It involves constant bargaining under humiliation, indecisiveness, and inequalities despite the constitutional rights and court interventions (especially in terms of bail) which in theory are meant to alleviate their situations. The imprisonment of a person without trial is unfair and unjust. When the law system used in a particular democracy punishes the weak, voiceless, destitute and marginalised more than it does the strong, then this democracy lacks moral authority. Instead of making minor changes, India should concentrate on actual reforms, including fast track trials, automatic release on bail in small offences, easy access to legal assistance, the introduction of the bail reforms, and the accountability of the judges on delays. The fair society people need to judge by the way the weak people are taken care of rather than the strong

References

1. BOARD, E (2025, May 7). *The Jurisprudence of Undertrial Detention in India: A Synthesis of Constitutional Rights and Procedural Safeguards. Safeguards*.Https://Www.casemine.com;Caseminehttps://www.casemine.com/in/column/the-jurisprudence-of-undertrial-detention-in-india:-a-synthesis-of-constitutional-rights-and-procedural-safeguards/view

2. Kapoor, E. (2023, June 10). *Undertrial Prisoners of India: The Justice System in Crisis: - TLCJ*.TLCJ.https://journal.thelawcommunicants.com/indias-undertrial-prisoners/

3. N.V. Paranjape. (2019). *Studies in Jurisprudence and Legal Theory.* Central Law Agency.

4. Priyadarshini, A., & Durge, M (2023) *UNDERTRIAL PRISONERS IN INDIA*. https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-VI-Issue-II-133-162.pdf .pdfaf, A. (2023). *Exploring Prisoners in India – Rights, Conditions, and the Quest for Justice. 11*, 2320–2882. https://www.ijcrt.org/papers/IJCRT2305896pdf

5. Prachi. (2025, January 6). *Pre-Trial Complications» Lawful Legal* Lawful Legal https://lawfullegalin/pre-trial-complications/

6. Sneha R, Garg R (nd). The problems of undertrials. Legal Service India.

7. India, L S (2025). *The Problems of Undertrials* Legalservicesindia. com https://wwwlegalservicesindiacom/article/1280/The-Problems-of-Undertrialshtml#google_vignette

8. Govindarajan, V. (2017, July 13). *Six charts explain how undertrial prisoners in India are denied the right to a fair trial.* Scroll in https://scroll.in/article/843539/six-charts-show-how-undertrial-prisoners-in-india-are-denied-the-right-to-fair-trial.

9. Charles Sobraj vs the suptd., Central Jail., Tihar. New… on 31 August, 1978. (nd) https://indiankanoon.org/doc/1518037/

10. Vidushi Gupta. (2020, October 25) *The state of undertrial incarceration in India.* The Criminal Law Blog. https://criminallawstudiesnlujwordpresscom/2020/10/25/the-state-of-undertrial-incarceration-in-india/

11. Kumar, V., & Singh, Y .(2024). Investigation and trial: Analyzing procedural challenges in the Indian criminal justice system. *International Journal of Criminal, Common and Statutory Law*, *4*(2), 196–203. https://doi.org/10.22271/27899497.2024.v4.i2c.106

Indian Judicial System and Witness Protection

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Abstract

The Indian legal system, which is based on the Constitution of India, it protects justice, equality (Constitution of India, 1950, art. 14), and the rule of law. A successful criminal justice system relies on witness who are protected and trustworthy. In the past few decades, the growing threat of witness intimidation, threats, and hostility (hostile witness) has made trials less fair and made people less likely to trust the judicial system. This chapter talks about how witness protection has become a crucial aspect of changing the criminal justice system and how the Indian legal system works. It looks at laws, court decisions, and constitutional rights. India's first significant effort to make witness protection a part of the law is the *Witness Protection Scheme 2018 (Verma, 2018),* which the honourable Supreme Court approved. Despite progress, challenges remain due to an inadequate legislative protection, inconsistent state-level implementation, and limited awareness. The study concludes that safeguarding the right to a fair trial under Articles 14 and 21 (Hussainara Khatoon v. Home Secretary, State of Bihar, 1980) of The Indian Constitution 1950 and enhancing public confidence in the legal system are contingent upon ensuring witness security.

Keywords: *Witness Protection Scheme, 2018, Criminal Justice Reform, Hostile Witness, Constitutional Rights.*

Introduction

The Indian judicial system is one of the earliest in the world. It is based on the ideas of natural justice, fairness, and the rule of law. It works within the rules set down in the Indian Constitution 1950, which provides equal treatment under the law and the preservation of individual rights. But the effectiveness of justice delivery doesn't simply depend on laws and court decisions. It also depends on how trustworthy witnesses are who help find the truth. Witnesses are the most important part of the court process. Their evidence frequently dictates the verdict in criminal prosecutions. Sadly, threats, intimidation, and coercion of witnesses have been ongoing issues that damage the fairness of the legal system. So, a good Witness Protection Program (WPP) is necessary to make sure that justice isn't changed by fear or influence.

An Overview of the Indian Judicial System

❖ The Constitutional Structure

The Indian Constitution establishes the judiciary as a single, integrated system of courts for the Union and the States. India has a hierarchical court system with three primary levels:

- ➢ The Supreme Court (SC) of India is the highest court in the country.
- ➢ There are High Courts in every state or set of states.
- ➢ District and Session Courts, as well as Magistrate Courts, are lower courts.

This system keeps higher courts in charge through the theory of precedent and appellate jurisdiction, while making sure that justice is accessible and decentralized. Three main legislations govern the majority of the criminal justice system's operations:

- ➢ Defining offenses and punishments under the Indian Penal Code, 1860 / BNS 2023
- ➢ Procedures for investigations, trials, and other proceedings are governed by Criminal Procedural Code 1973/ BNSS 2023
- ➢ Rules of evidence under the Indian Evidence Act, 1872 / BSA 2023.

Although earlier laws are being replaced by the new reform statutes (such as the Bharatiya Nyaya Sanhita (2023), Bharatiya Nyaya Suraksha Sanhita (2023) and the Bharatiya Sakshya Adhiniyam (2023)), the fundamental framework is still in place.

❖ Independence of Judiciary

The independence of the courts is a key part of Indian democracy. The Constitution of India 1950, Articles 50, 124 - 147, and 214 - 231 protect institutional independence. The judiciary operates independently of executive and legislative influence. But this independence also means that it is their job to make sure that trials are fair and that witnesses are not unduly influenced.

Historical Background Protection of Witness in India

The development of the concept of the protection of witness in India has been slow and mostly due to the courts. For many years, the Indian court system did not have a specific way to keep witnesses safe from threats, harassment, or harm. Without this kind of protection, witnesses often became antagonistic, which hurt people's trust in the criminal justice system. India has built a structured system to protect witnesses over time through judicial activism, legislative recommendations, and administrative measures. The Honourable Supreme Court authorized the Witness Protection Scheme 2018 (Verma, 2018), which is the most recent step in this process.

❖ The Early Period Few and Unconnected Safeguards

At first, India's criminal justice system didn't have any rules about protecting witnesses. Witnesses were expected to help the legal system as a civic responsibility, even if they weren't promised protection.

However, the following provisions provided limited or indirect protection:

- ➢ Section 151 and 152 (Indian Evidence Act, 1872) - made it illegal to ask rude or scandalous questions during cross-examination.
- ➢ Section 327 provides for private trials in situations of sexual crimes (Criminal Procedure Code, 1973).
- ➢ Sections 503 and 506, made threats and intimidation against the law, but they didn't have any ways to stop them from happening (Indian Penal Code, 1860).

These rules protected people in a reactive way: they punished intimidation after it happened, but they didn't stop it from happening in the first place.

❖ Judicial Realization and Initial Reform Demands

➢ The 1980s and 1990s

By the end of the 20th century, judges were worried about the rise of organized crime, political involvement, and societal pressure on witnesses. The issue of "hostile witnesses" (Indian Evidence Act, 1872, S.154), those who recant or contradict their testimony under duress became widespread. The Honourable SC recognized in *State of U.P. v. Ramesh Prasad Misra* (1996) and *Swaran Singh v. State of Punjab* (2000) that witness intimidation was damaging the legitimacy of the criminal justice system (McLean, 2014). The Court may only ask the State to safeguard people on a case-by-case basis, nevertheless.

Witness Protection Rational and Need

❖ Why Protect Witness

A witness gives first-hand proof of what happened, and their testimony is typically the basis for criminal cases. The IEA, 1872 says that witness testimonies, depositions, and cross-examinations are very important for proving guilt or innocence. In *Zahira Habibulla H. Sheikh v. State of Gujarat and ors, (*2004) the Supreme Court said that witnesses are "the eyes and ears of justice." If they don't help, the justice system won't work.

Witnesses are at risk for a number of reasons: they could be retaliated against by the accused or their friends; their name or address could be made public; testifying or facing the accused could have a big effect on their mental health; they could be shunned by their friends or threatened with harm to their property, reputation, or life. Witnesses may refuse to testify or become hostile if they are not guaranteed protection. This can hurt the prosecution's case and lead to miscarriages of justice.

As one commentary puts it:

"Witness protection is a vital aspect of the criminal justice system … for a fair conclusion the witness plays a pivotal role … witnesses are one of the most indispensable elements."

❖ Constitutional and Legal Foundation

According to Article 21 "*No person shall be deprived of his life or personal liberty except according to procedure established by law*" (Constitution of India, 1950).

National Human Rights Commission Vs State of Gujarat (2009) held If witnesses cannot safely testify, their rights and the rights of victims may be undermined.

Article 14: "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" (Constitution of India, 1950)*.

Threats to witnesses generate unfairness in the legal system because some people can change the outcome of a trial by scaring others (State of U.P. v. Sambhunath Singh, 2001). It was held in *Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat and Ors (*2004), that the justice system must protect all participants, including witnesses. This decision made the State's job bigger than merely defending the rights of the accused. It also made sure that witnesses and victims are safe, because justice can't be one-sided. So, for fairness and equality to win out, the whole justice system courts, prosecutors, and the State must safeguard everyone involved.

❖ Statutory Protections

Various statutory provisions address threats or intimidation of witnesses.

For example:

- Indian Penal Code, 1860, "*Threatening any person to give false evidence*" (Indian Penal Code, 1860, S.195A) was added by the Criminal Law (Amendment) Act, 2005
- The Evidence Act, 1872, "*A witness shall not be excused from answering on the ground that answer will incriminate him. But the proviso ensures such answer cannot be used against him in a prosecution except for giving false evidence" (Indian Evidence Act, 1872, S.132)*.
- Special statutes (e.g., Unlawful Activities (Prevention) Act, 1967 (UAPA) Section 22) provide for protection of identity of witnesses in certain kinds of offences.

However, prior to the more recent developments, India lacked a comprehensive witness-protection statute.

Witness Protection Scheme, 2018

Given the absence of a dedicated statute, the Government of India, in consultation with the National Legal Services Authority (NALSA, 2025) and other stakeholders, framed the Witness Protection Scheme (WPS) in 2018.

❖ Key Features of the Scheme

➢ Classification of threat levels (Witness Protection Scheme, 2018, S.3):

- Category A (risk to life);
- Category B (risk to safety, reputation, property);
- Category C (risk of harassment/hostile environment).

Establishment of a "Competent Authority" in each district chaired by the District & Sessions Judge to assess threat and pass protection orders (Witness Protection Scheme, 2018, S.5).

Section 7, of the Witness Protection Scheme 2018 gives the "*Protection measures include: concealment of identity, relocation, ensuring witness and accused do not meet face-to-face, police escort, monitoring, safe houses" (Witness Protection Scheme, 2018, S.7).*

➢ STATE WITNESS PROTECTION FUND TO FINANCE PROTECTION MEASURES:

The Supreme Court in its decision in *Mahender Chawla v. Union of India* (2019) approved the WPS, held it to have the force of law (under Art.141/142) until a formal statute is enacted, and directed the courts that "Vulnerable Witness Deposition Complexes" be established in all district courts.

In *Delhi Domestic Working Women's Forum v. Union of India (1995)* the Court stressed how important it is to keep victims and witnesses safe in cases of sexual violence: "The State has a duty

to make sure that victims of sexual assault and witnesses are not hurt again during the investigation or trial".

Post 2018 Developments in Witness Protection India

The Witness Protection Scheme, 2018 (WPS 2018), which the Honourable Supreme Court of India approved in *Mahender Chawla vs Union of India (2018)*, was a big step forward for the Constitution and the government. For the first time in Indian legal history, there was a single national system for protecting witnesses. The Ministry of Home Affairs (MHA) worked with the National Legal Services Authority (NALSA) and the Bureau of Police Research and Development (BPR&D) to come up with the plan. It became legislation in all States and Union Territories until Parliament passes a separate law.

❖ WITNESS PROTECTION UNDER BNSS, 2023

Section 398: WITNESS PROTECTION SCHEME

"Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses." (Bharatiya Nyaya Suraksha Sanhita, 2023, S.398)

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is the first time that witness protection has been fully recognized by law in India. It changes the Witness Protection Scheme, 2018, which was a policy set by the Supreme Court, into a legal duty for all states. Section 398 of the BNSS says that every state government must make and tell people about a Witness Protection Scheme that includes ways to protect witnesses' identities, keep them safe during investigations and trials, move them to a new place, and other safety measures that are needed. Procedural safeguards throughout the BNSS, such as more use of video conferencing, in-camera hearings, vulnerable witness deposition facilities, and limited public access to sensitive records, all of which make witnesses feel less scared and

more confident. The statutory framework deals with long-standing problems like witness hostility, delays, and threats from powerful accused people. However, for it to work well, states need to follow the rules, provide enough money, build safe houses and deposition centres, and set up strong monitoring systems. The BNSS is a big step toward making criminal trials fairer by putting witness protection directly into the criminal procedure code. However, its effect will depend on continued commitment from institutions and consistent use across India.

❖ Notifications and Implementation at the State Level

The Supreme Court told all but a few States and Union Territories to formally adopt or notify the Witness Protection Scheme, 2018, through government orders or gazette notifications.

- ➢ Delhi, Maharashtra, Uttar Pradesh, Kerala, and Andhra Pradesh were some of the first states to use the program through State Legal Services Authorities and special Witness Protection Cells.
- ➢ Delhi set up a Witness Protection Fund and made standard operating procedures for police officers and prosecutors under the Delhi Witness Protection Rules, 2019.

❖ State Level Model

- ➢ Kerala (2020): Set up detailed rules that stress the need for the State Police Chief and the Legal Services Authority to work together.
- ➢ Tamil Nadu (2021): The WPS 2018 was added to the Tamil Nadu Police Manual, making it necessary to look at how witnesses feel about threats in all important criminal cases.
- ➢ Maharashtra (2022): Improved the plan by adding temporary housing and security during the trial for cases of organized crime and terrorism.

These changes to witness protection procedures that are distinct to each state demonstrate a gradual move toward decentralization and localization, which is in line with India's federal judicial system.

Judicial Developments After 2018

The Supreme Court and High Courts have been keeping a close eye on and making improvements to how the initiative is being carried out.

Important rulings made after 2018 have made the legal situation even clearer:

P. Gopalkrishnan v. State of Kerala (2019) The Court said again that protecting witnesses is an important aspect of a fair trial and a part of the right to life under Article 21. It noted that the integrity of the criminal process relies on guaranteeing that witnesses can testify without fear of retaliation. *Ashwini Kumar Upadhyay v. Union of India* (2021) While hearing a public interest litigation (PIL) about changes to the criminal justice system, the Supreme Court said that the Witness Protection Scheme needs to be watched over by the whole country. It also said that the State has a constitutional duty under Articles 14 and 21 to protect witnesses as equal participants in justice. *The Punjab& Haryana High Court in State of Haryana Vs Ram Mehar (2020)* The Court ruled that the Witness Protection Scheme must be put into action, and not doing so in a case with severe threats is a breach of the right to a fair trial. The Delhi High Court in *Virender v. State of NCT of Delhi (2020)* The Court told the Delhi Police and the District Legal Services Authority (DLSA) to closely observe WPS 2018 and make sure that threat assessments are done on time. It made it clear again that protection for witnesses is a constitutional right, not a privilege.

Conclusion

The background of witness protection in India illustrates the judiciary's transition from reactive justice to proactive safeguarding. The change from isolated legislative references to the creation of a statewide plan shows a bigger constitutional idea: that justice must not only be done, but must also be possible, even for those who risk their safety to reveal the truth. The Witness Protection Scheme, 2018 is a big step forward in both the law and morality. It follows the ideas of Articles 14 and 21 by making sure that everyone who helps bring justice is treated equally, with respect, and safely.

References

1. Ashwini Kumar Upadhyay v. Union of India, AIR 2018 SC 4633.
2. Bharatiya Nyaya Sanhita. (2023).
3. Bharatiya Nyaya Suraksha Sanhita. (2023). S.398
4. Bharatiya Sakshya Adhinayam. (2023).
5. Constitution of India. (1950). Arts. 14, 21.
6. Criminal Procedure Code, 1973, § 327.
7. Delhi Domestic Working Women's Forum v. Union of India, 1 SCC 14 (1995).
8. Hussainara Khatoon v. Home Secretary, State of Bihar, 1 SCC 81 (1980).
9. Indian Evidence Act, 1872, Ss.132, 151–152.
10. Indian Penal Code, 1860, §§ 154, 195A, 503, 506.
11. Mahender Chawla v. Union of India, 14 SCC 615 (2018, 2019).
12. McLean, A. (2014). Corporal punishment of children in Tonga – A violation of constitutional rights. *Asia Pacific Journal on Human Rights and the Law.*

13. NALSA. (2025). *National Legal Services Authority.* https://nalsa.gov.in last visited on 29/10/2025 at 03:01pm
14. National Human Rights Commission v. State of Gujarat, 6 SCC 342 (2009).
15. P. Gopalkrishnan v. State of Kerala, 7 SCC 70 (2019).
16. State of Haryana v. Ram Mehar, SCC 2277 (2020).
17. State of U.P. v. Ramesh Prasad Misra, 6 SCC 339 (1996).
18. State of U.P. v. Sambhunath Singh, 4 SCC 667 (2001).
19. Swaran Singh v. State of Punjab, AIR 1994 SC 2301.
20. Verma, S. (2018). *Towards a witness centric approach: Analysis of witness protection scheme.* Springer. https://link.springer.com
21. Virender v. State of NCT of Delhi, SCC 2481 (2020).
22. Witness Protection Scheme. (2018).
23. Zahira Habibulla H. Sheikh v. State of Gujarat, 4 SCC 158 (2004).

Labour Rights as Human Rights - An ILO's Perspective

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Abstract

Ordinarily "Right means the standard of permitted action within a certain sphere". In legal notion it means "the standard of permitted action by law". Well 'human rights' are rights which given to 'all humans' who are living in the world irrespective of their nation, religion, creed caste, sex, color, etc. Each and every human being is vested with a right of protection against all nature of discriminations and exploitations. These rights may also be called as basic human rights came existence as soon as they become exist in the world as a human. To overcome the exploitation against the labourers, rights have been given by various national and international instruments which in sense can be considered under the perspective of human rights. This paper discusses about the definition and meaning of 'human rights' at first to understand the concept of 'human rights as a labour rights' given by various international instruments and includes the international conventions and recommendations provided by International Labour Organisation which supports as a human right in protecting the labour rights. Further, the paper also weighs up the human rights which are available to the labourers under the 'Constitution of India' with relevant 'judicial interpretation'.

Keywords: *Rights, Labour, Constitution, Human, Protection, exploitations.*

Introduction

'Human rights' are "basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language or other status" (Myneni, 2021,). As human beings, humans have the human rights, which are neither created nor destroyed by any authority. Human rights are 'universal', 'indivisible' and 'interdependent' which are distributed in equal proportion to all human beings in the world. These rights are generally provided and guaranteed by the 'law' in the form of 'international treaties', 'customary rights', 'general principles' which have been accepted by international law. Three different kinds of rights are covered under the purview of human rights viz., the 'fundamental freedoms' or 'classical civil liberties', the 'ethnic and religious rights' and 'socio-economic rights' (Myneni, 2021). They very oldest organisation dealing with the human rights is the "International Labour Organisation". This organisation protects the labour rights from exploitation and maintains peace and harmony by protecting the human rights of the workers. Labour rights will always come under the purview of human rights.

Meaning and Definition of Human Rights

According to United Nations (2023), "Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more. Everyone is entitled to these rights without discrimination."

According to Weston (2025), "Human rights are rights that belong to an individual or group of individuals simply for being human, or as a consequence of inherent human vulnerability, or because they are requisite to the possibility of a just society.

Whatever their theoretical justification, human rights refer to a wide continuum of values or capabilities thought to enhance human agency or protect human interests and declared to be universal in character, in some sense equally claimed for all human beings, present and future."

Dr. Justice Durga Das Basu (as cited in Myneni, 2021) defines "Human rights are those minimal rights, which every individual must have against the state or other public authority, by virtue of his being a member of human family irrespective of any consideration."

Australian Human Rights Commission (2018) identifies "Human rights recognize the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe. They are based on principles of dignity equality and mutual respect, which are shared across cultures, religions and philosophies. They are about being treated fairly, treating others fairly and having the ability to make genuine choices in our daily lives."

According to UNICEF (2015), "Human rights belong to each and everyone of us equally. Human rights are standards that recongnize and protect the dignity of all human beings. Human rights govern how individual human being live in society and with each other, as well as their relationship with the state and the obligations that the state have towards them."

Equality and Human Rights Commission (2019) defines "human rights as the basic rights and freedom that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted. These rights are based on shared values like dignity, fairness, equality, respect and independence. These values are defined and protected by law."

According to UDHR (as cited in Myneni, 2021), the term human rights denotes "all those rights which are inherent in our nature and without which we cannot live as human beings. These rights are inalienable which is equal to all". In the charter, Articles 1 and 2 makes the human rights as a fundamental right of nations which is provided to all human beings.

According to Section 2(1)(d) of the Protection of Human Rights Act, 1993 (as cited in Myneni, 2021), "human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India."

Therefore, the meaning of 'human rights' can be understood as they are 'universal in nature' and which mainly focuses on the 'inherent dignity of all human beings'. These rights are 'equal', 'indivisible' and 'interdependent' which cannot be 'waived off' or 'taken away' by anyone. These rights promulgate certain obligations of action and omissions, that have been 'internationally guaranteed' as well as 'legally protected'.

Labour Rights as Human Rights

In the eyes of labour legislation, 'human rights' include protection of employee's rights via., 'rights to health and safe environment', 'fair compensation', 'maternity leave', 'working hours', 'social security benefits', etc. (Srivastava, 2024).

In India, approximately 81% of the workers are employed in unorganised sectors who faces problems like low pay, non-stable employment, unsafe working conditions, etc. Even in formal sectors more workers are being exploited in various means like discrimination, harassment etc. Various international instruments and national legislations are providing cluster of rights as human rights to protect their life and well-being. The human rights which vested to labourer are also given various benefits to the workers.

In the context of 'Labour rights as human rights' in international perspective mainly focused on "Conventions and Recommendations" provided by 'International Labour Organisation' which includes various rights and protection to the working sector.

ILO in Protecting 'Labour Rights' as 'Human Rights'

ILO is one of the oldest systems dealing with human rights. ILO came into existence on 1919 with a tripartite structure at all levels. Representatives from employers, workers and state involved in making decision relating to labour rights. The fundamental objective of ILO is to maintain 'peace and harmony' in the industrial relations which is utmost a part of human rights (Swamy, 2021).

ILO has 3 organs or wings which was provided under Article 2 of the ILO Constitution namely:

1. General Conference which is also called as International Labour Conference has the representatives of the members.
2. Governing Body includes representatives from Government, workers and employers as per the given proportion.
3. International Labour office which is also known as Secretariat of the ILO controlled by the Governing body (Swamy, 2021).

Before the birth of the 'United Nations' and the articulation of human rights has made by the ILO through a standard-setting pioneered human rights (International Labour Organization, 2025). Among these 'ILO standards' some directly expressing the human rights while others set a benchmark for the workers that are' necessary for realizing human rights at work'.

An amendment in 2022 on "Declaration of Fundamental Principles and Rights at Work 1998", highlighted five principles of fundamental Conventions namely:

- 'Freedom of Association and the effective recognition of the right to collective bargaining',
- 'The Elimination of all forms of Forced and Compulsory Labour',
- 'The effective Abolition of Child Labour',
- 'The elimination of Discrimination in respect of employment and occupation', and
- 'A safe and health work environment' (2022) (De Meyer, 2022).

Let us discuss one by one in detail:

Freedom of Association and Collective Bargaining

In 1948, the "Freedom of Association and Protection of the Right to Organise" (Convention No. 87) has been enacted by the ILO which provides equal rights to the 'employers and workers' to form' federations and organisations' for their welfare. The same can be regulated by the 'laws of the land' of member states accordingly. The member countries who ratified this Convention is provided with the rights of taking appropriate measures to ensure the workers and employers to organise their unions and associations freely (Swamy, 2021).

Another Convention named "Right to Organise and Collective Bargaining" was framed next in the year of 1949 (No. 98) which provides 'protection to workers against the acts of anti-union discrimination in their employment'. The Convention included certain acts as discrimination namely 'applying condition of shall not join a union' or 'cancelling the trade union membership', 'may dismiss or prejudice the workers because of participation in union activities'. The member-countries who ratified this Convention shall make provisions according to the laws of the land. This Convention helps in "voluntary negotiation" between employers and workers

organisation with 'terms and conditions of employment' by entering into a 'collective agreement' between the employers and workers (Swamy, 2021).

Elimination of all Forms of Forced or Compulsory Labour

The first convention relating to forced labour is came into force on 1930 (No. 29) which requires the member countries to stamp out the use of suppressed labour in all forms. This convention well-defined the term 'forced labour' as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". It also lists out certain activities as exemption from the purview of forced labour, they are as follows:

i. Works or services of pure military character.

ii. Works or services of normal civic obligation.

iii. Works or services carried out on a consequence of a 'conviction by the Court of Law'.

iv. Works or services in cases of 'emergency' like 'fire', 'flood', 'famine', 'earthquake', 'violent epidemic' or 'epizootic disease', etc. (Swamy, 2021).

Further, the convention provides certain regulations as who can be employed in the cases of exceptional categories as forced labour. The criteria to be satisfied before engaging is only adult male having a fit abled-body of an age not less than 18 years and not more than 45 years. The concerned person who selected to engage in forced labour should get a prior fitness determination from a medical officer and they should be engaged with full consent.

They may be engaged as a forced labour for a maximum of 60 days in anyone period of 12 months. The remuneration will be

pain in cash and no deductions can be made in the wages provided to them. A weekly day off rest will be given to them as per the customs and practice of their own land. After completion of the service a certificate will be issued to the workers by indicating the days of work they involved as a forced labour by the appropriate authority. If any contravention was prevailed the employer will be punished by considering the same as a penal offence.

In the year 1957 a complete 'Abolition of Forced Labour Convention' (No. 105) was enforced by ILO. It wants the member states to take 'effective measures to secure the complete and immediate abolition of compulsory or forced labour' as it was considered as a 'fundamental breach of fundamental rights.

Abolition of Child Labour

Child labour is one of the 'worst forms of exploitation' happens to human beings against the human rights of children. Various Conventions and Recommendations were given by ILO in case of abolishing and regulating the child labour. According to ILO, the 'child labour' is defined as "work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development." Some primary causes of 'child labour' are 'poverty', 'lack of universal quality education', 'economic shocks' and 'a lack of social protection', 'gaps in legislation', 'law enforcement and policy', 'discrimination and marginalization' and 'cultural acceptance' (International Labour Organization, n.d.).

Elimination of Discrimination in Respect of Employment and Occupation

Providing "equal pay for equal work" which is similar in nature is a part of human rights. Convention No. 100 of ILO is related with Equal Remuneration enacted in the year 1957, which promotes and

ensures the 'application of the principle of equal remuneration' to all workers irrespective of the gender to provide a 'work of equal value'. Another convention which specifically deals with the discrimination is Convention No. 111, came into force on 1950 named as "Discrimination (Employment and Occupation) Convention" which adopted from the "Declaration of Philadelphia" that affirms all the 'human beings' should be treated equally in occupation and employment irrespective of 'race', 'creed' or 'sex'.

The rights of the labourers are protected as human rights as per this convention against discrimination. The member countries is given a right to enact and promote the policies and legislations for regulating the discrimination in employment in their own countries (Swamy, 2021).

Safe and Healthy Work Environment

The Safety and health of workers plays a major role in the 'protection of human rights' of workers. At the 110th session of 'International Labour Conference' included this in ILO's framework and also as a fundamental principle of ILO. The Conventions relating to this are "Occupational Safety and Health Convention, 1981" (No. 155) and the "Promotional Framework for Occupational Safety and Health Convention, 2006" (No. 187). The ILO requires all member states to adopt this moto in their law of the land even though they haven't ratified the same, as it would be considered as a very nature of human rights related one (International Labour Organization, 2022).

Conclusion

Labour rights are an inclusive form of 'human rights' without this the rights of the workers cannot be framed. Each and every right which was given in the hands of labourers includes the human rights either expressly or impliedly. In the international view, the ILO plays a major role is protecting the' human rights of the workers'.

Whereas the Indian Constitution is also provided with various human rights under the fundamental rights of citizen which impliedly applies to the working sector. Therefore, from the above research it is found that various 'international human rights' are provided as a 'Conventions and Recommendations' under ILO which need to be implemented by the member states effectively. Personally, I found that there is a lacuna in effective implementation of the same so it would be left with in the hands of appropriate authorities of every member country to frame various legislations relating to protection of worker's human rights in their state effectively.

References

1. Australian Human Rights Commission. (2018). *What are human rights?* https://humanrights.gov.au/about/what-are-human-rights
2. De Meyer, T. (2022). *International labour standards as human rights*. International Labour Organization. https://www.ilo.org/resource/article/international-labour-standards-human-rights
3. Equality and Human Rights Commission. (2019). *What are human rights?* https://www.equalityhumanrights.com/human-rights/what-are-human-rights
4. International Labour Organization. (n.d.). *Child labour*. https://www.ilo.org/topics-and-sectors/child-labour
5. International Labour Organization. (2022). *A safe and healthy working environment is a fundamental principle and right at work*. https://www.ilo.org/topics-and-sectors/safety-and-health-work/safe-and-healthy-working-environment-fundamental-principle-and-right-work
6. International Labour Organization. (2025). *International labour standards and human rights*. https://www.ilo.org/resource/international-labour-standards-and-human-rights
7. Myneni, S. R. (2021). *Human rights law* (2nd ed.). Asia Law House.

8. Srivastava, A. (2024). Labour laws and human rights: Forging a unified path to justice and equality. *Jus Corpus Law Journal*. https://www.juscorpus.com/labour-laws-and-human-rights-forging-a-unified-path-to-justice-and-equality/

9. Swamy, N. M. (2021). *Impact of ILO standards on Indian labour law* (2nd ed.). Asia Law House.

10. UNICEF. (2015). *What are human rights? Human rights belong to each and every one of us equally*. https://www.unicef.org/child-rights-convention/what-are-human-rights

11. United Nations. (2023). *Global issues: Human rights*. https://www.un.org/en/global-issues/human-rights

12. Weston, B. H. (2025). *Human rights*. In Encyclopædia Britannica. https://www.britannica.com/topic/human-rights

An Analytical Study on Custodial Deaths and Torture in India: Causes, Accountability Gaps, and the Need for Police and Judicial Reforms

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Abstract

Custodial deaths and torture have become one of the most serious human rights issues in India, exposing deep flaws within the criminal justice system. Despite constitutional rights and various legal safeguards, incidents of abuse, violence, and neglect in police and judicial custody continue to occur across several regions. This study explores the main causes of such incidents, including misuse of power, poor police training, corruption, and weak accountability mechanisms. Many cases arise because law enforcement officials are not effectively monitored or held responsible for their actions. The Chapter draws

on government reports, legal documents, and academic studies to understand how these shortcomings allow human rights violations to persist. It also emphasizes the limited role of oversight bodies and lack of public awareness regarding legal rights. Furthermore, the paper examines how judiciary and human rights organizations can play a stronger role in preventing custodial violence through strict laws, fair investigations, and transparency in the justice process. Ultimately, the study highlights the urgent need for comprehensive police and judicial reforms to create a system that upholds fairness, accountability, and respect for every individual's dignity and right to life.

Keywords: *Custodial deaths, Police torture, Human rights, Judicial reforms, Accountability, Violations.*

Introduction

Custodial deaths and torture continue to be one of the most disturbing human rights issues in India. The Constitution of India guarantees every individual the right to life, dignity, and fair treatment under Article 21, yet numerous individuals continue to face violence, abuse, and neglect while in police or judicial custody (Baxi, 2002). The existence of custodial violence highlights a significant gap between constitutional guarantees and the lived experiences of detainees (Bhattacharyya, 2016). The criminal justice system, which is expected to protect individuals and uphold the rule of law, often fails to safeguard those placed under its control (Human Rights Watch, 2016).

Many custodial torture victims come from weaker social and economic backgrounds. These People don't know of their legal rights, financial capacity to engage competent legal counsel, and social support to demand accountability (NHRC, Annual Reports). As a result, their families struggle to pursue justice or challenge official narratives. Custodial deaths do not only cause unfixable harm to individuals and families but also reduce public trust in law enforcement institutions (Banerjee, 2018). A democratic society

depends on transparency, fairness, and accountability. When custodial torture becomes frequent and normalized, it damages the credibility of the justice system (Cohen, 2001), and replaces public trust with fear and insecurity.

At the international level, human rights frameworks categorically condemn torture and other forms of cruel or degrading treatment. The United Nations Human Rights Guidelines of 1993 underscore the obligation to safeguard the rights of persons in custody and affirm that detainees must be treated with dignity and humanity under all circumstances. These standards place a clear duty on states to prevent custodial abuse through effective oversight of detention facilities and to ensure accountability for violations by authorities. The persistence of custodial deaths in India highlights the urgent need to bring domestic practices into closer conformity with these international human rights norms.

History

The origins of custodial torture in India can be traced back to the colonial period. After the Revolt of 1857, the British colonial administration reorganized the police force primarily as a mechanism of control rather than public service. The Police Act of 1861 was enacted to strengthen colonial authority, focusing on discipline, obedience, and silencing voices (Baxi, 2007). The system was never meant to protect citizens' rights or ensure responsibility. Even after independence, this colonial policing framework largely remained untouched. Although India adopted a progressive Constitution highlighting fundamental rights and personal liberty, the policing structure continued to reflect colonial values such as rigid hierarchy, forceful authority, and excessive trust on force (Epp, 2012). Over time, these practices became deeply fixed in police culture and were passed down across generations. Despite judicial statements, legal safeguards, and human rights advocacy, custodial violence continues due to the

persistence of this colonial legacy. This historical stability explains why custodial torture did not go even after India changed into a democratic nation (Bhattacharyya, 2016).

Facts and Arguments

Custodial deaths in India reveal deep and long-standing problems within the policing and judicial system. Many deaths are reported every year, and even when official records use terms such as "suicide," "illness," or "accident," inquiries often uncover signs of physical injury, force, or negligence (Sarkar, 2016). This indicates that custodial torture is not limited to isolated cases but remains a serious and continuing issue. A major reason this problem continues is the vulnerability of the victims. Most individuals who suffer in custody belong to groups with little social or financial power. They often lack legal knowledge are unable to afford competent lawyers, and fear filing complaints. (Kaur, 2021). Their families frequently depend on local authorities, making them hesitant to protest or speak publicly. As a result, many cases go unreported or unresolved (Human Rights Watch, 2016).

Another important factor is the pressure on police officers to solve cases quickly. Expectations of fast results sometimes lead to shortcuts in investigations (Singh & Verma, 2017). Instead of relying on scientific or technological methods, some officers use physical force to extract confessions. When confessions are given more importance than evidence collection, the risk of torture increases. Weak accountability further worsens the problem. In many cases, inquiries are conducted by the same department responsible for the custody, leading to conflicts of interest. Punishments are rare and often limited to transfers or suspensions. When officers expect minimal consequences, harmful practices continue (Lamba & Jain, 2023). Another serious issue is the absence of a dedicated anti-torture law in India. Although several legal provisions exist, there is no single law that clearly defines torture or prescribes specific

punishment. This legal gap allows many abusive practices to remain unaddressed. Overcrowded lockups, poor medical facilities, and outdated infrastructure further increase the risk of custodial deaths. (Kumar & Dhruv, 2025). In several cases, deaths occur due to medical neglect and delayed treatment (Rao, 2022). Lack of public awareness also worsens the situation. Many families are unaware of their rights related to medical examinations, legal access, and arrest procedures (NHRC, nd). Fear of police authority discourages them from seeking answers, especially in rural areas where dependence on local officials is high. Problems related to evidence further weaken accountability. CCTV cameras are often non-functional, or footage goes missing. Arrest records may be poorly maintained or manipulated. Without proper documentation, proving custodial torture becomes extremely difficult (NHRC, nd). Training gaps also persist, as many police officers do not receive regular instruction in communication skills, non-violent investigation techniques, and human rights protection (Mehta, 2018).

At the international level, custodial torture is expressly prohibited by the United Nations Convention Against Torture (UNCAT). The Convention characterizes torture as the deliberate infliction of physical or psychological suffering by public officials and imposes an obligation on states to prevent such conduct, conduct impartial investigations, and impose appropriate penalties. Although India is a signatory to UNCAT, its provisions have not been fully incorporated into domestic legislation. The absence of a dedicated and comprehensive anti-torture law undermines effective accountability and permits custodial abuse to persist with limited legal deterrence. This legislative gap reflects a significant disconnect between India's international human rights obligations and the realities of its internal legal framework. Together, these factors show that custodial torture arises from historical practices, institutional weaknesses, limited oversight, public fear, and outdated investigative approaches. These issues reinforce one another, making custodial

violence a deep systemic problem that requires long-term legal and institutional reforms.

Case Studies The 2020 Jayaraj and Bennix Incident and the Padmini Case

The incident involving Jayaraj and Bennix in Tamil Nadu in 2020 became one of the most widely discussed custodial death cases in recent times. The father and son were detained for a minor issue related to lockdown rules. After arrest, they were subjected to physical torture, which led to their deaths (Human Rights Watch, 2016). The shocking nature of the violence caused national outrage. Protesters demanded justice, and the case gained widespread attention, leading to the arrest of the officers involved only after massive public pressure and media coverage.

The case exposed several deep problems that often remain hidden in other custodial death incidents. It revealed how quickly ordinary citizens can become victims when power is misused. It also showed the lack of proper supervision inside police stations, the failure to follow basic legal procedures, and the willingness to use violence even for minor offences (Chatterjee, 2019). While this case received national attention, many similar incidents, especially in rural and remote areas, never come to light. Families often lack resources, legal knowledge, or social influence to raise their voices, allowing such abuse to continue without consequences (Banerjee, 2018).

The Jayaraj–Bennix incident also reopened discussions about important legal protections. The DK Basu vs. State of West Bengal (1997) judgment laid down clear guidelines for arrests, including proper documentation, timely information to relatives, medical check-ups, and prevention of torture. The Supreme Court in Prakash Singh (2006) also stressed the need for police reforms and independent oversight bodies (Epp, 2012). However, cases like this

show that these safeguards are still not properly implemented in practice (Bhattacharyya, 2016).

Another significant illustration of custodial abuse is the Padmini case, which drew attention to the treatment of vulnerable persons under custodial authority. Padmini reportedly faced mistreatment while in custody, raising serious concerns regarding the safety, dignity, and protection owed to detainees. The case underscored how individuals with limited social influence and inadequate legal awareness are particularly susceptible to custodial violence and often encounter substantial barriers in accessing justice.

The Padmini case further exposed institutional shortcomings, including inadequate supervision, ineffective accountability mechanisms, and delays in the investigative process. It also highlighted the gendered dimensions of custodial abuse, indicating that women in custody may be subjected to heightened physical and psychological harm. As seen in several similar instances, accountability in this case remained limited, reinforcing broader patterns of systemic failure.

When examined alongside the Jayaraj–Bennix incident, the Padmini case demonstrates that custodial torture is not an isolated event but a structural issue arising from abuse of authority, insufficient oversight, and weak enforcement of legal safeguards. These cases collectively emphasize the pressing need for stronger accountability measures, enhanced police training, independent investigative processes, and rigorous enforcement of human rights standards to prevent custodial abuse within the justice system.

Limitations

Despite strong constitutional protections, several structural limitations prevent India from fully addressing custodial torture. The legal process is extremely slow, making it hard for families to continue their fight for justice over many years (Ghosh, 2020).

Human rights commissions have limited authority; they can investigate and recommend, but they cannot enforce punishment (NHRC,n.d). Evidence handling is another major problem. CCTV cameras often do not function, and crucial medical reports may be delayed or altered. Many citizens do not have awareness about their rights, especially in remote or economically weak areas. Afraid to file complaints or feel helpless against powerful institutions.

Outdated policing laws also restrict progress. The Police Act of 1861 still influences much of the system, and its structure does not fully match modern democratic values (Baxi, 2007). Independent investigation bodies are either too weak or absent in many states. Police training programs are also limited and do not focus enough on non-violent investigation methods or human rights protection. These limitations create a situation where change becomes extremely slow; harmful practices continue (Mehta, 2018). Despite legal safeguards, weak enforcement, slow reforms, poor monitoring, and limited public awareness continue to restrict real progress against custodial torture (Rao, 2022).

Conclusion

In conclusion, custodial deaths and torture show that the justice system still has a long way to go in protecting basic rights. The Constitution says that every person has the right to live with dignity, but in many police stations and prisons, this dignity is not respected. To improve this situation, strong and practical steps are needed. Police investigations should depend more on scientific methods instead of physical force. Police officers must be given regular training on human rights, handling stress, and using non-violent methods during questioning. Lockups and prisons should be made safer, cleaner, and properly monitored (Baxi, 2002). Independent authorities should be allowed to visit police stations without warning, check conditions, and report any wrongdoing (Kumar & Dhruv, 2025). Taking strict action against officers who misuse their power

helps people trust the system. India must take concrete steps to fully adhere to international human rights instruments such as the United Nations Convention Against Torture (UNCAT) and the 1993 United Nations Human Rights Guidelines, both of which categorically prohibit torture and mandate humane treatment of individuals in custody. Aligning domestic laws and institutional practices with these global standards would significantly enhance accountability mechanisms and contribute to the prevention of custodial abuse. Meaningful implementation of these measures has the potential to reduce instances of custodial torture and to bring the justice system closer to the constitutional ideals of liberty, equality, and justice. A democracy can be regarded as truly robust only when the rights of all individuals, including those deprived of liberty, are respected and protected with dignity and humanity.

References

1. Bhattacharyya, D. (2016). Custodial violence, police accountability and judicial response in India. Journal of Indian Law and Society, 7(1), 23–45
2. Kumar, S., & Dhruv. (2025). Custodial violence in India: Legal gaps and the quest for police accountability. International Journal of Law, Policy and Social Review, 7(2), 155–157.
3. Sayyed, M. (2025). Custodial deaths in India: Legal framework, accountability and reforms. The Legal Quorum.
4. Lamba, J., & Jain, E. (2023). A study on police accountability and custodial violence in India. IARS' International Research Journal.
5. (2025). Custodial torture and the need for comprehensive police reforms. Society & Policy Research Foundation.
6. Custodial violence: Horrendous crime in a civilized society (2022). IJLMH
7. Human Rights Watch. (2016). "Bound by Brotherhood": India's failure to end killings in police custody. Human Rights Watch.

8. National Human Rights Commission (NHRC). (Annual Reports). NHRC reports on custodial deaths. (Data cited across sources)

9. Code of Criminal Procedure, 1973, No. 2 of 1974 (India). (Relevant provisions on arrest, custody, medical examinations).

10. Baxi, U. (2002). The Future of Human Rights (2nd ed.). Oxford University Press.

11. Epp, C. R. (2012). The legal complex in the struggle to control police brutality in India. In T. C. Halliday, L. Karpik, & M. M. Feeley (Eds.), Fates of Political Liberalism in the British Post-Colony (pp. 91–111). Cambridge University Press.

12. Gay, A. (2016). Custodial torture in police stations in India. Journal of Criminal Justice. (JSTOR article)

13. Shankardass, R. D. (2011). Of Women Inside: Their Yesterdays, Todays and Tomorrows. Oxford University Press

14. Baxi, U. (2007). The Crisis of the Indian Legal System. Vikas Publishing. (contextual for judicial reform debates)

15. Enforcing Police Accountability through Civilian Oversight. (Year). SAGE Publications. (Chapter on NHRC and oversight mechanisms.)

16. Banerjee, S. (2018). Custodial violence and police accountability in India. Indian Journal of Criminology, 46(2), 15–28.

17. Chatterjee, P. (2019). Police brutality and custodial torture: A constitutional perspective. Journal of the Indian Law Institute, 61(3), 345–368.

18. Ghosh, S. (2020). Custodial deaths in India: A crisis of governance and rule of law. Indian Journal of Public Administration, 66(4), 620–635.https://doi.org/10.1177/0019556120979604

19. Kaur, J. (2021). Custodial violence in India: An analysis of legal safeguards and implementation gaps. Indian Journal of Human Rights and Law, 10(1), 89–110.

20. Singh, R., & Verma, A. (2017). Police torture and the limits of legal accountability in India. Indian Police Journal, 64(1), 45–61.

21. Rao, M. (2022). Custodial torture and the failure of criminal justice administration in India. Journal of Criminal Justice and Law, 5(2), 133–149.

22. Mehta, P. B. (2018). Institutional decay and police reforms in India. *Economic and Political Weekly, 53*(41), 52–60.

23. Sarkar, S. (2016). Deaths in custody: The Indian experience. *Prison Journal, 96*(2), 234–256. https://doi.org/10.1177/0032885516631853

24. Liebling, A. (2011). Moral performance, inhuman and degrading treatment and prison pain. *Punishment & Society, 13*(5), 530–550. https://doi.org/10.1177/1462474511422159

25. Cohen, S. (2001). States of denial: Knowing about atrocities and suffering. *British Journal of Sociology, 52*(1), 159–160.

26. Bhattacharyya, D. (2016). Custodial violence, police accountability and judicial response in India. *Journal of Indian Law and Society, 7*(1), 23–45.

27. Kumar, S., & Dhruv. (2025). Custodial violence in India: Legal gaps and the quest for police accountability. *International Journal of Law, Policy and Social Review, 7*(2), 155–167.

Uniform Civil Code in India: A Sociological Analysis of Gender Fairness and the Conflict of Personal Laws

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Abstract

The discussion about the Uniform Civil Code of Conduct (UCC) in India lies at the intersection of law, religion and social justice. Although the UCC has long been envisioned as a source to ensure equality and gender fairness, its implementation tends to raise questions on the grounds of cultural pluralism and individual rights. However, this chapter will examine the UCC through a sociological lens by analyzing how Personal Laws are rooted in religion and traditions which in turn reproduce gender hierarchies and social inequalities. It further explores the varied experiences of women and the third gender individuals, pointing how current personal laws often fail to accommodate non-binary and gender diverse identities. Based on feminist and intersectional theories, the discussion positions the UCC debate in larger context on India's pluralistic society, where legal homogeneity may risk minority voices even though it seeks to promote equality and inclusivity. The chapter even critically examines

key judicial developments such as the *Shah Bano* and *Shayara Bano* cases, alongside the dynamic recognition of the third-gender rights in NALSA v. Union of India (2014). The chapter asserts that a genuinely equitable UCC must be participatory, intersectional, and attuned to the lived experiences of women and third-gender individuals, thus converting the law into a tool of both justice and liberty.

Keywords: *Uniform Civil Code; Personal Laws; Gender Fairness; Cultural Pluralism.*

Introduction

India, an epitome of cultural diversity, though a proud aspect of the country, is difficult to govern due to its differences. Various governments that ruled over India or 'Akhand Bharat' have always yearned for a uniform law applicable to all citizens. The earliest instance of forming such a law was by the Britishers. They codified Indian law but left personal laws untampered. The first law committee recommended that British substantive law be applied to non-Hindus and non-Muslims, warning against meddling with Hindu and Islamic personal laws for fear of unrest. Later, they introduced the Indian Succession Act, 1865 and the Indian Divorce Act, 1869.

In the post-independence period, the Constitution makers sought to unite all Indians and avoid differences allegedly responsible for the partition. Though they did not enforce the UCC, they included it in the Directive Principles of State Policies, obligating states to form one. Codification of Hindu personal laws was a step toward this goal. The Hindu Code Bill included Hindus, Sikhs, Buddhists and Jains. The Apex Court, in the Shah Bano Case (1985), Sarla Mudgal Case (1995) and Shayara Bano Case (2017), pressured the state to form the UCC. However, governments feared it would amplify communal differences and trigger unrest, as religious groups follow divergent personal laws.

UCC aims to reform discriminatory practices within religions and cultures. Goa, formerly a Portuguese colony has a Goa Civil Code with a few specific provisions. For example, Hindu men may practice bigamy only if the wife is unable to bear child by 25 and a son by 30. However, it faces criticism as it is considered as foreign law and is not applicable in India. Some provisions are outdated, discriminatory and contradictory to modern legal principles. Despite being called the uniform civil code, its application is not truly uniform. Nevertheless, the Goan UCC is by far the most appropriate for a country such as India with its accommodative attributes, which I wish to see implemented in the country.

Historical and Legal Background

Personal laws as a set of common, fundamental rules for governance have existed since the earliest societies. Primitive societies underwent a phenomenon called '*naturalization of humans*' or '*environmental determinism*' wherein they fear, worship and revere nature (NCERT, 2024). This marked the beginning of religion where natural entities were worshipped. They built houses to be the abode of God and some claimed to possess powers to commune with God who prescribed certain codes of behaviour. The Brahmins acted as mediators between God and man. They wrote the *Dharmashudras* and *Dharmashastras*, stating acceptable conduct of different occupational groups. This division, the *varna* system created a social hierarchy and sidelined a section of society. However, there were some rules which were common like, matrimony between two people of the same varna (*endogamy*) (NCERT, 2024). Other practices concerning inheritance and family conduct have shaped current Hindu personal laws (Choudhary & Raman, n.d.).

The Islamic regimes in India introduced the Islamic personal laws through religious scholars, *Ulama* and *Qazis* who judged in courts based on the sharia (Chander et al., n.d.). These

laws were considered foreign as it spread from the Persian Gulf and Central Asia, however versions like sufism became prominent practices.

In the British era the need for efficient administration resulted in codification of criminal laws, however personal laws of Muslims and Hindus remained untouched. Post-Independence leaders were against all division, inspiring the government to codify personal laws and carry out reforms. However, the delicate nature of politics at the time slowed progress. Initiatives like the Hindu Code Bill and the Muslim Women Act helped introduce reforms and safeguard women's rights.

Through Article 44 of the Directive Principles of State Policy the Constitution urged the state to implement Uniform Civil Code. Indian Secularism implements reforms, unlike Western model of non-interference; the Indian version permits the state to perform reformative actions. This model has operated since independence on behalf of discriminated groups in religion.

The Indian Judicial System reinforced the need for a UCC. In Mohd. Ahmad Khan v. Shah Bano Begum, 1985, wherein the Apex Court gave the verdict that every woman after divorce is entitled to maintenance. Similarly, in Smt. Sarla Mudgal, President, Kalyani v. Union of India & Ors., 1995, the Supreme Court ruled that a man who converts to remarry without divorcing his first wife is legally prohibited and his second marriage is considered void. Thus, the Justice system ruled in favour of the UCC.

The legal debates argue that UCC could erode cultural diversity and constitute excessive interference into religion while others find it essential for gender justice. But, in a culturally diverse India, severing all the five fingers to a uniform length could cripple the country and jeopardize national integrity.

Sociological Perspectives

Sociological perspectives are important to analyze the Uniform Civil Code (UCC) because it positions the law within a larger context of social norms, institutions and power dynamics. Using a sociological lens, we evaluate how the legal frameworks intersect with family, religion, marriage and community structures, hereby impacting gender roles and identity. Furthermore, multiple sociological theories shed light on the tensions and dynamic between law, gender and society.

1. Functionalist Perspective

The UCC under Article 44 of the State Policy Principles of the Indian Constitution also called "One Country One Law" (Blessy & Manoharan, n.d.), reflects the functional perspective that law maintains social order and cohesion in society. Emile Durkheim, viewed law as an expression of society's collective conscience, through shared values, binding people together (Laitinen & Pessi, 2014). In traditional societies (mechanical solidarity), cohesion emerged with homogeneity, while in modern societies (organic solidarity) it depends on dependence amongst groups. Law maintains unity by regulating social behavior and resolving conflicts. For instance, UCC upholds Durkheim's ideology, seeking national integrating through common legal practices across religion and cultures.

2. Conflict Perspective

The conflict perspective views society as an arena of inequality and social conflict, where social order depends on dominion and power rather than consensus. Karl Marx asserted that law functions as a framework of the ruling class, toughening existing hierarchies of class, gender and ideology. Hence, Uniform Civil Code (UCC) mirrors the power dynamics evident in society. It

highlights the legal framework's focus on reinforcing authority by suppressing the minorities. Although UCC aims to promote fairness and justice, conflict standpoint questions hierarchies and disparities.

3. Feminist Perspective

From a feminist standpoint, law and society is gendered, highlighting how social institutions and legal framework often stimulates patriarchal ideologies against women and the third gender (Tong, 2009). Feminist scholars suggest that personal laws are male dominant, restricting women and other genders in matters of marriage, divorce, inheritance. From this perspective, UCC can be considered as an instrument for gender equality and justice for all genders across all cultures. However, UCC debates suggest not imposing dominant ideologies but also integrating the diverse voices and lived experiences of women. Thus, feminist standpoint focuses both on including gender equality and challenging patriarchal norms in the society.

Contemporary Debates and Public Perception

The implementation of the UCC has been a topic of debate for a long time. Suggested to ensure efficient administration in terms of different communities, it also indulges with matters of religious and cultural reforms. The world's largest democracy is divided on this matter and offers various opposing dialogues for the same.

The current ruling alliance, National Democratic Alliance (NDA) in the Central Government, consistently included the UCC in their manifesto for a long time. They profess that the UCC is a democratic way to ensure equality before the law for all citizens. They propagate this by claiming inclusion of gender reforms and abolition of discriminatory personal laws. They claim it to be a step towards modernization.

The opposition however claims that it will undermine the diversity of the country. They feel that the culture that people have retained until now might get diluted or shrink. They argue that religion is a huge part of an individual's identity and that mixing it up might lead to an identity crisis for large sections of society. Social turmoil and opposition from the minorities are anticipated (Nassa, n.d.).

Others believe that through dialogue a plural civil code can be forged, however it would be a complex set of rules with innumerable exemptions. Therefore, they feel that the implementation of UCC is a utopian idea that should not be experimented especially in diverse India.

Another group believes that uniformity is not a pressing need. Even certain Supreme Court judges have called for fundamental reforms and less confusion in personal laws (Menski, 2000).

Goa is the first state to implement UCC after its independence in 1961. Though there are flaws, yet it is an invaluable blueprint for envisioning UCC in the rest of India. Nevertheless, the existence of the law does not guarantee equal social relations. Hence, it is not solely a legislation to address equality and uniformity (Rai, n.d.).

The mass media which is widely used to disseminate information often polarizes controversial topics to allure consumers. This leads to polarized coverage of UCC. Another impact of the media is the portrayal of the initiative targeting the Muslim personal laws although all personal laws shall be affected by it.

There are certain minority pressure groups who fear that the UCC will be '*Hinduised*' and could completely eradicate autonomous tribal practices. Pressure groups consolidate to raise their voices and influence policies and their execution by the government.

Gender Fairness and the Conflict of Personal Laws

Personal laws in India have been a subject of criticism for providing a green signal to sexist practices against women (Nassa, n.d.).

Personal laws derived from religious traditions control aspects of personal life like marriage, divorce, inheritance and maintenance, further impacting the status of females and the third gender in the society. Though these laws were enforced to preserve cultural and religious autonomy, they reinforce patriarchy which marginalizes women and third gender identities. The debate on UCC centers legal uniformity in addition to posing questions on gender equality and fairness across diverse religious communities.

Under Hindu Personal Law, progressive reforms have taken place since independence, such as the Hindu Code Bills of the 1950s and the Hindu Succession (Amendment) Act, 2005 which ensured women's equal rights to ancestral property or inheritance. In spite of these legal advances, Hindu laws remain influenced by patriarchy, which strengthens male authority within the family. For instance, women face social pressure to give up their inheritance rights by conforming to primitive gender roles within the domestic arena. Moreover, the third-gender is legally invisible under the Hindu Succession Act as it defines heirs as "male" and "female", excluding the third-gender community from coparcenary and succession rights (Uma & Ravi, 2022).

Muslim personal law holds another complex angle. Although the Quran (Muslim religious text) advocates justice and fairness in marital relations, understanding of Sharia in the Indian society has often reinforced patriarchy. Practices such as polygamy, triple talaq are considered as evils of the society and have been sites of debate and criticism. Although, even though the Supreme Court of India declared triple talaq unconstitutional and unlawful in 2017, women continually experience unequal treatment in terms of divorce, custody and inheritance. Moreover, the third gender within the Muslim personal laws remains unacknowledged, as prevailing legal and religious frameworks are laid around heteronormative assumptions that recognize only binary relations. This lack of recognition and acknowledgement results in exclusion of the third-

gender community from the rights and privileges related to marriage, property, and family, embodying their social and legal marginalization.

Likewise, gender bias in divorce and inheritance reflect Christian and Parsi personal laws. The older version of the Indian Divorce Act hindered Christian women from attaining divorce as compared to men, highlighting how religiously sanctioned moral codes reinforce unequal power dynamics within marriage (Agnes, 2011). Notwithstanding improvement, women are still vulnerable to sexist understanding of moral conduct, purity and marital duty which influence legal judgments and social perceptions in the same manner.

Furthermore, these laws exclude the third gender because social institutions are defined through heteronormative lens. This elimination results in influence of patriarchy and heteronormative narratives in the formation of legal systems.

Similarly, gender discrimination within personal laws is ingrained by social beliefs about women's role as nurturers, caregivers, dependents and moral guardians of the community. As Chatterjee (1989) reinforced this thought in his demonstration of the ghar-bahir (home-world) dichotomy, where women are confined to the "inner" (domestic) sphere associating her with purity, traditions, prestige of the family and the ideal woman, on the other hand men occupy the "outer" sphere such as work, politics and law.

Feminist scholars and legal reformers have expounded how personal laws strengthen inequality in the name of cultural preservation. Awareness and campaigns against evil practices like triple talaq, unequal inheritance rights and discriminatory divorce provisions have contributed to gender fairness and justice to the legal and political discourse in India. Increased representations of the third gender rights have challenged the exclusion of the non-binary community by the legal system.

Although, supporters argue that a uniform legal framework would ensure gender equality, protect women and the third gender from any kind of discrimination and exploitation. However, critics state that implementation of a uniform homogeneous legal framework might weaken the cultural and religious autonomy of the minorities, resulting in dominance by the majority community where one cultural model, which is Hindu oriented, becomes the national norm. From a sociological lens, this reflects tensions between equality and identity in a pluralistic Indian society.

Conclusion

As discussed earlier, UCC is a subject of heavy disputes having various fronts. Opposing arguments have been given by many independent pressure groups as well as politicians and judges. The debate is an eternal one without resolution and will always lead to conflict, with one side hailing that it will ensure gender fairness while the other hurls accusations of a hinduised code and of eradication of cultural differences. As in France during the Great revolution, when local dialects were discouraged and France as is spoken in Paris was publicized. They also gave importance to certain things which reduced cultural differences all in the name of a united La Patrie. The law, in order to be widely accepted should be on par with modern day social relations and values. Through a sociological lens UCC explores its impact on social order, power and gender relations. The functionalist perspective, views UCC as a tool promoting unity and cohesion; the conflict perspective aims on understanding power struggles between dominant and marginalized groups; lastly, the feminist standpoint emphasizes on gender justice and fairness. I advocate for the Goan version of the UCC in India which would not give supremacy to any one religion but accommodate each culture equally as envisioned by the founding leaders of the country. Though it is the best option for our country, it's formation will still persist as a hurdle in the very divided demographics of the

nation. After proper deliberations it might be possible but chances are slim to none. However, personally I feel that the implementation of UCC in this time and age is a very far-fetched dream or process which will not be tolerated by the current highly communal nature of politics in the country.

References

1. Agnes, F. (2011). *Family law - Volume 1: Family laws and constitutional claims*. Oxford University Press.
2. Blessy, J. A., & Manoharan, R. (n.d.). *A critical analysis on uniform civil code - Need or myth*. https://book.iledu.in/wp-content/uploads/2023/09/70.pdf
3. Chander, N., Pradeep, D., & Kesharwani, K. (n.d.). *A study on Mughal judicial system in India*. https://doi.org/10.46360/globus.edu.220212025
4. Chatterjee, P. (1989). Colonialism, nationalism, and colonialized women: The contest in India. *American Ethnologist, 16*(4), 622-633. https://doi.org/10.1525/ae.1989.16.4.02a00020
5. Choudhary, M., & Raman, C. (n.d.). *Evolution of personal laws in India*. https://www.pramanaresearch.org/gallery/prj_r_a_10.pdf
6. Laitinen, A., & Pessi, A. B. (2014). *Solidarity: Theory and practice - An introduction*. https://www.researchgate.net/publication/323522010
7. Menski, W. (2000). The uniform civil code debate in Indian law: New developments and changing agenda. *International Journal of Law, Policy and the Family, 14*(3), 318-337. https://doi.org/10.1093/lawfam/14.3.318
8. Nassa, S. (n.d.). The debate over Uniform Civil Code ("UCC") and its significance for India as a secular democracy. *Indian Journal of Integrated Research in Law*. https://ijirl.com/wp-content/uploads/2023/06/THE-DEBATE-OVER-UNIFORM-CIVIL-CODE-UCC-AND-ITS-SIGNIFICANCE-FOR-INDIA-AS-A-SECULAR-DEMOCRACY.pdf

9. NCERT. (2024). *Introducing Indian society* [Textbook]. National Council of Educational Research and Training. https://ncert.nic.in/textbook.php?kegy2=1-14

10. Rai, M. (n.d.). Goa civil code: Is it uniform? *Indian Journal of Integrated Research in Law*. https://ijirl.com/wp-content/uploads/2022/01/GOA-CIVIL-CODE-IS-IT-UNIFORM.pdf

11. Tong, R. (2009). *Feminist thought: A more comprehensive introduction*. Westview Press.

12. Uma, M., & Ravi, S. (2022). [Article title]. [Journal/Source information - please verify complete citation details].

Human Rights in India: Between Constitutional Promises and Digital-Age Realities

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Abstract

Human rights in India rest upon the constitutional pillars of equality, liberty, and human dignity. Yet, the rapid digital transformation of contemporary society has introduced unprecedented challenges to their protection and realization. This paper traces the evolution of human rights in India from their constitutional conception to their encounter with digital-age complexities through a critical examination of judicial interpretations, legislative reforms, and institutional responses. Landmark cases such as *Maneka Gandhi v. Union of India* (1978) and *Justice K.S. Puttaswamy v. Union of India* (2017) have expanded the meaning of liberty and privacy, positioning them as fundamental to modern human rights jurisprudence. The discussion also situates India's constitutional ethos within the broader framework of international human rights law, particularly the *Universal Declaration of Human Rights (UDHR)*, which continues to influence national legal reasoning and policy formulation (United Nations General Assembly, 1948). The paper underscores the widening gap between constitutional ideals and technological realities, calling for a comprehensive rights-based approach to digital governance in India. It concludes by recommending stronger data protection mechanisms, inclusive digital policies, and enhanced judicial oversight to ensure that human rights remain resilient in the face of technological change.

Keywords: *Human rights, constitutional law, digital rights, India, privacy, judiciary*

Introduction

Human rights are fundamental entitlements inherent to every individual by virtue of being human. Rooted in principles of dignity, equality, and liberty, these rights have evolved through centuries of philosophical, moral, and political discourse, shaped by thinkers such as John Locke, Jean-Jacques Rousseau, and Mahatma Gandhi (Donnelly, 2013). In India, the recognition of human rights gained momentum during the independence movement, where freedom struggles intertwined with demands for equality and justice. This vision was later institutionalized in the *Constitution of India* (1950), whose Preamble guarantees justice, liberty, equality, and fraternity to all citizens laying the foundation for a human rights oriented democratic order (Government of India, 1950). However, the digital age has created unprecedented challenges for the protection and realization of human rights. Issues such as mass surveillance, data privacy breaches, online misinformation, and algorithmic bias have begun to erode traditional understandings of constitutional freedoms, particularly the rights to privacy, free speech, and equality (Internet Freedom Foundation, 2023). While India's constitutional framework provides a robust foundation for the protection of human rights, its application within cyberspace remains complex and uneven. This paper therefore examines how India's constitutional promises are being reinterpreted and, at times, strained by the technological transformations of the digital era focusing on judicial interpretation, legislative reform, and policy responses that seek to reconcile rights with innovation (Bhatia, 2019).

Constitutional Foundations of Human Rights in India

The Constitution of India forms the cornerstone of the nation's human rights architecture. Enshrined within Part III, the Fundamental Rights establish a comprehensive framework for the protection of individual freedoms and human dignity. These include The Right To

Equality (Articles 14-18), Freedom Of Speech And Expression (Article 19), Protection Against Exploitation (Articles 23-24), Freedom Of Religion (Articles 25-28), And The Right To Constitutional Remedies (Article 32) (Government of India, 1950). Together, these provisions reflect the framer's vision of a rights-based democratic society, drawing inspiration from both natural law theory and the universal principles of human rights articulated in international instruments (Basu, 2019).

Complementing these justiciable rights are the Directive Principles of State Policy (DPSPs) contained in Part IV, which serve as moral and policy directives for the State. The DPSPs aim to promote Social, Economic, and Political Justice and guide governance toward achieving a welfare-oriented society (Austin, 1999). Over time, judicial interpretation especially through landmark decisions such as *Kesavananda Bharati v. State of Kerala* (1973) and *Olga Tellis v. Bombay Municipal Corporation* (1985) has played a transformative role in bridging the conceptual gap between Fundamental Rights and Directive Principles, thereby extending the meaning of human rights to include socio-economic entitlements like education, health, livelihood, and dignity.

The framers of the Indian Constitution were profoundly influenced by the *Universal Declaration of Human Rights (UDHR)* of 1948 (United Nations General Assembly, 1948), which served as a guiding framework during the drafting process. The principles of equality, liberty, and fraternity embedded in the UDHR found resonance in the Indian constitutional text, thereby integrating universal human rights ideals into domestic constitutionalism.

The Universal Declaration of Human Rights and its Influence on India

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, represents the first

comprehensive international statement of inherent human dignity and equality. India, as a founding member of the United Nations and an active participant in the drafting of the UDHR, strongly advocated for the Principles of Universal Equality, Freedom, And Justice, reflecting its own struggle against colonial domination and its commitment to human dignity (United Nations General Assembly, 1948).

The principles articulated in the UDHR profoundly influenced the framing of the Indian Constitution. For instance, Article 1 of the UDHR, which proclaims that "all human beings are born free and equal in dignity and rights," finds a direct parallel in Article 14 of the Indian Constitution, which guarantees equality before the law and equal protection of the laws (Government of India, 1950). Similarly, Articles 19 and 21 of the UDHR, which safeguard freedom of expression and the right to life and liberty, resonate within Articles 19 and 21 of the Indian Constitution cornerstones of India's fundamental rights jurisprudence (Jain, 2021).

Indian courts have frequently invoked the UDHR and other international instruments to interpret constitutional provisions in harmony with global human rights standards. A landmark example is *Vishaka v. State of Rajasthan* (1997), where the Supreme Court of India relied upon the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* (United Nations, 1979) and the UDHR to establish legally binding guidelines on sexual harassment in the workplace, thereby integrating international human rights norms into domestic law.

The Judiciary as the Guardian of Human Rights

The Indian judiciary has played a transformative role in the protection and expansion of human rights, serving as the ultimate guardian of constitutional values. Through its dynamic interpretation of the

Constitution, the judiciary has ensured that rights remain living instruments capable of responding to evolving social and technological realities.

In *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court articulated the "Basic Structure Doctrine," holding that the Fundamental Rights form an essential and unalterable part of the Constitution. This doctrine established that Parliament's amending power under Article 368 does not extend to altering the basic features of the Constitution, thereby securing the permanence of core human rights protections.

The Court expanded this protection in *Maneka Gandhi v. Union of India* (1978), where it interpreted Article 21 - Right to Life and Personal Liberty to encompass fairness, reasonableness, and due process of law. This marked a shift from a narrow, procedural understanding of liberty to a substantive one, reinforcing that personal freedom cannot be curtailed arbitrarily by the State.

Furthering this jurisprudential evolution, the nine-judge bench in *Justice K.S. Puttaswamy v. Union of India* (2017) recognized the Right to Privacy as a Fundamental Right intrinsic to Article 21. The judgment acknowledged privacy as essential to dignity and autonomy, while also extending its relevance to informational and digital privacy, thereby laying the groundwork for human rights protection in the digital age.

Judicial activism has also contributed to the realization of Socio-Economic Rights, traditionally viewed as non-justiciable. Through cases such as *Bandhua Mukti Morcha v. Union of India* (1984) and *Unni Krishnan v. State of Andhra Pradesh* (1993), the Court has interpreted Fundamental Rights expansively to encompass rights to Education, Health, Livelihood, And Environmental Protection, thus integrating Directive Principles of State Policy into enforceable constitutional mandates. Collectively, these landmark decisions underscore the judiciary's vital role in ensuring that India's

constitutional promises of Liberty, Equality, And Dignity remain vibrant and enforceable, even in the face of emerging social, economic, and technological challenges.

Human Rights in the Digital Age Fourth-Generation Rights

The rapid pace of technological advancement has ushered in a new category of human rights often referred to as "Fourth-Generation Rights." These encompass emerging entitlements such as the Right to Privacy, Data Protection, Internet Access, Algorithmic Accountability, and Digital Participation (Andreescu, 2020). While digitalization enhances governance efficiency, connectivity, and economic inclusion, it simultaneously generates profound vulnerabilities related to surveillance, misinformation, and exclusion.

India's flagship identification program, Aadhaar, epitomizes this duality. On one hand, it facilitates access to welfare schemes and financial inclusion; on the other, it raises serious concerns regarding state surveillance, data misuse, and informational self-determination (Ramanathan, 2014).

In *Justice K.S. Puttaswamy (Aadhaar-5J) v. Union of India* (2019), the Supreme Court of India upheld the constitutional validity of the Aadhaar scheme, recognizing its role in promoting welfare and inclusion. However, the Court simultaneously struck down provisions that enabled indiscriminate data sharing, emphasizing the principles of proportionality, informed consent, and data minimization as essential safeguards of privacy.

Legislatively, the *Digital Personal Data Protection Act* (2023) marks India's first comprehensive privacy statute. While it codifies individual rights over personal data and imposes accountability on data fiduciaries, critics argue that broad state

exemptions may undermine its protective intent and permit governmental overreach (Internet Freedom Foundation, 2023).

Beyond privacy, the digital divide remains a pressing socio-economic challenge. Large sections of India's population particularly rural communities, women, and marginalized groups lack equitable access to digital infrastructure and literacy, limiting their ability to exercise digital rights effectively (Telecom Regulatory Authority of India, 2022). Moreover, the rise of cyberbullying, online misinformation, and algorithmic bias further jeopardizes freedom of expression, equality, and non-discrimination. Addressing these challenges demands a rights-based framework for digital governance, grounded in transparency, inclusivity, and accountability.

Bridging the Gap Constitutional Promises vs. Digital Realities

The Constitution of India enshrines the ideals of Liberty, Equality, and Dignity, forming the normative foundation of Indian democracy. However, in the Digital Era, these constitutional promises are increasingly tested by new forms of state and corporate power operating in cyberspace. Expanding mechanisms of State Surveillance, Metadata Collection, and Social Media Monitoring have raised serious concerns about Privacy, Freedom of Expression, and Right to Dissent (Gurumurthy et al., 2021).

A notable regulatory development is the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* (Internet Freedom Foundation, 2021), which impose significant compliance obligations on digital intermediaries, including traceability mandates and content takedown requirements. While intended to ensure accountability and curb online harm, these provisions have been criticized for their potential to chill free speech, compromise user privacy, and expand executive control over digital discourse.

Balancing the triad of Privacy, Security, and Freedom of Expression thus demands a proportionate, transparent, and rights-based regulatory framework that respects constitutional safeguards while addressing legitimate public interests. Policy initiatives such as Digital India and Bharat Net aim to enhance digital inclusion and connectivity across the nation. Yet, to fulfill the constitutional vision of inclusive and dignified digital citizenship, such programs must embed robust human rights protections. Strengthening data protection, promoting digital literacy, ensuring independent judicial oversight, and cultivating a culture of accountability are essential to reconciling India's constitutional guarantees with the complexities of a rapidly evolving technological landscape (Ministry of Electronics and Information Technology, 2023).

Comparative Insights

Comparative analysis of international frameworks offers valuable guidance for strengthening India's approach to digital rights and data governance. The European Union's *General Data Protection Regulation (GDPR)* (European Union, 2016), enacted in 2018, stands as the most comprehensive global model for data protection. It prioritizes individual consent, transparency, data minimization, and user control, recognizing personal data protection as a component of human dignity and autonomy. The GDPR's accountability framework and stringent enforcement mechanisms provide an institutional model for balancing innovation with fundamental rights.

In contrast, the United States follows a sectoral and market-driven model of privacy regulation, addressing data protection within specific industries such as healthcare (HIPAA), finance (GLBA), and children's data (COPPA). This approach reflects a pragmatic balance between privacy, free expression, and technological innovation, although it has been criticized for its

fragmented nature and limited protection of individual rights (U.S. Department of Commerce, 2023).

For India, a hybrid model that combines the rights-based rigor of the GDPR with the flexibility and innovation-oriented framework of the U.S. system could offer a sustainable path forward. Such a model would strengthen consent, transparency, and accountability while accommodating India's socio-economic and technological diversity. This comparative perspective underscores the global recognition of digital rights as an emerging dimension of human rights, one that India must continue to integrate into its constitutional and legislative framework to safeguard liberty and dignity in the digital age (Banisar & Davies, 1999).

Conclusion and Recommendations

The Constitution of India enshrines fundamental human rights that are robust in principle, guaranteeing liberty, equality, and dignity to all citizens. However, the digital age has introduced unprecedented challenges, from surveillance and data breaches to algorithmic bias and misinformation. These developments underscore the urgent need for legal, judicial, and policy evolution to ensure that constitutional guarantees remain effective in cyberspace.

To bridge the gap between constitutional promises and technological realities, this paper recommends the following measures:

- Strengthening privacy and data protection laws to ensure transparency, accountability, and limited state intervention, thereby safeguarding citizens' informational autonomy (Internet Freedom Foundation, 2023).
- Promoting digital literacy and inclusion to reduce socio-economic disparities and empower marginalized communities to exercise their digital rights (Telecom Regulatory Authority of India, 2022).

- Safeguarding online freedom of expression through proportionate and rights-centered regulation that balances safety, accountability, and free speech (Bhatia, 2019).
- Establishing independent oversight authorities to monitor compliance, enforce accountability, and protect digital rights from arbitrary state or corporate action (Centre for Internet and Society, 2022).

Ultimately, upholding constitutional values in the digital era requires a dynamic, inclusive, and rights-centered approach. Protecting human dignity must remain the cornerstone of governance, ensuring that India's constitutional vision adapts effectively to the evolving technological landscape (Jain, 2021).

References

1. Andreescu, M. (2020). Fourth-generation human rights: Redefining liberty in the digital era. *Human Rights Review, 21*(4), 413-432. https://doi.org/10.1007/s12142-020-00593-5
2. Austin, G. (1999). *The Indian Constitution: Cornerstone of a nation*. Oxford University Press.
3. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 (Supreme Court of India 1984).
4. Banisar, D., & Davies, S. (1999). Global trends in privacy protection: An international survey of privacy, data protection, and surveillance laws and developments. *Journal of Computer & Information Law, 18*(1), 1-112.
5. Basu, D. D. (2019). *Introduction to the Constitution of India* (25th ed.). LexisNexis.
6. Bhatia, G. (2019). *Offend, shock, or disturb: Free speech under the Indian Constitution*. Oxford University Press.
7. Centre for Internet and Society. (2022). *Digital rights oversight and accountability in India: Policy recommendations*. https://cis-india.org

8. Donnelly, J. (2013). *Universal human rights in theory and practice* (3rd ed.). Cornell University Press.

9. European Union. (2016). *Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation)*. Official Journal of the European Union, L 119/1. https://eur-lex.europa.eu/eli/reg/2016/679/oj

10. Government of India. (1950). *The Constitution of India*. Ministry of Law and Justice. https://legislative.gov.in/constitution-of-india

11. Gurumurthy, A., Bharthur, D., & Chami, N. (2021). *Surveillance and the right to privacy in India's digital ecosystem*. IT for Change. https://itforchange.net

12. Internet Freedom Foundation. (2021). *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021: A legal and constitutional analysis*. https://internetfreedom.in

13. Internet Freedom Foundation. (2023). *Analysis of India's Digital Personal Data Protection Act, 2023*. https://internetfreedom.in

14. Jain, M. P. (2021). *Indian constitutional law* (8th ed.). LexisNexis.

15. *Justice K.S. Puttaswamy (Aadhaar-5J) v. Union of India*, (2019) 1 SCC 1 (Supreme Court of India 2019).

16. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (Supreme Court of India 2017).

17. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (Supreme Court of India 1973).

18. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (Supreme Court of India 1978).

19. Ministry of Electronics and Information Technology. (2023). *Digital India Programme*. Government of India. https://digitalindia.gov.in

20. *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180 (Supreme Court of India 1985).

21. Ramanathan, U. (2014). A decade of biometric ID in India: Lessons from the Aadhaar project. *Law, Technology and Human Rights Journal, 2*(1), 23-41.

22. Telecom Regulatory Authority of India. (2022). *The digital divide in India: Access and inclusion in the information age*. https://trai.gov.in

23. *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645 (Supreme Court of India 1993).

24. United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. https://www.un.org/womenwatch/daw/cedaw

25. United Nations General Assembly. (1948). *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810. https://www.un.org/en/about-us/universal-declaration-of-human-rights

26. U.S. Department of Commerce. (2023). *Data privacy frameworks in the United States*. https://www.commerce.gov

27. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (Supreme Court of India 1997).

Right to Privacy: Pre- and Post-Puttuswamy Developments

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Abstract

Article 21 of the Indian Constitution asserts, "No person shall be deprived of his life or personal liberty except according to procedure established by law." (Maneka Gandhi v. Union of India, 1978). The right to privacy, being a part of this vast article, gives us the idea of privacy and the restrictions on this right, as no right is absolute. Article 12 of the Universal Declaration of Human Rights 1948 (UDHR), Article 17 of the International Covenant on Civil and Political Rights 1966 (ICCPR), & Article 8 of the European Convention on Human Rights 1950 (ECHR) convey the right to privacy as an vested right. In India, there have been many precedents that have rejected the idea of privacy in cases like M. P. Sharma v. Satish Chandra and Kharak Singh v. State of Uttar Pradesh, as well as many cases wherein the idea of privacy was supported, such as Rajagopal v. State of Tamil Nadu and People's Union for Civil Liberties (PUCL) v. Union of India. "Subsequent to the "Puttuswamy case", the view of privacy has changed, and this paper will look into the doctrinal evolution of privacy pre- and post- the Puttuswamy case."

Keywords: *Right to privacy, Puttaswamy case, Privacy, Indian Constitution, Rights*

Introduction

The right to privacy is a concept that is embedded in the notions of human dignity and autonomy. It has undergone many transformations in Indian jurisprudence. While its importance is globally upheld in

Article 12 of the Universal Declaration of Human Rights (UDHR), Article 17 of the International Covenant on Civil and Political Rights (ICCPR) & Article 8 of the European Convention of Human Rights (ECHR) express the right to privacy as an inherent right; its legal status in India was a long judicial debate. The right to privacy is rooted in Article 21 of the Indian Constitution which guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law". (The Indian Consitution,1950). The right to privacy has evolved from a judicially denied right to an inalienable right. This paper examines the doctrinal transformation of the right to privacy by comparing and contrasting the precedents and ambiguity in the pre-Puttaswamy era with the clarity and comprehensive framework laid down in the Justice K.S. Puttaswamy (Retd.) v. Union of India judgment.

Constitutional Context

The Indian Constitution does not explicitly mention the word 'privacy, 'though the Supreme Court in several judgements has interpreted the word 'privacy' as a vital element of personal liberty and human dignity and recognized it under Article 21 of the Indian Constitution. Article 21 plays the role of legal bedrock for this analysis of the paper. Article 21 features broad phrasing, due to which the Indian Constitution is known as a 'living document' that enhances its safeguard against contemporary issues. The constitutional context is not to identify the meaning of the word "privacy" but to understand the judicial and doctrinal evolution that brought privacy under the umbrella of the fundamental right.

Early rulings the Supreme Court took a narrow scope of the word 'privacy. 'For instance, in the case of M. P. Sharma v. Satish Chandra, (M. P. Sharma and Others v. Satish Chandra, District Magistrate, Delhi, and Others, 1954) the Supreme Court ruled that the right to privacy was not a fundamental right under the

Constitution. The judgment concluded there was no explicit constitutional protection for privacy, especially during search and seizure procedures.

In the case of Kharak Singh v. State of Uttar Pradesh 1962, (Kharak Singh v. State of U.P., 1962) the Court initially held that privacy was not a guaranteed fundamental right. However, in this judgment, it was acknowledged that the "right to personal liberty" under Article 21 included a right to be free from certain kinds of interference and intrusions.

In Rajgopal v. State of Tamilnadu 1994 (R. Rajagopal v. State of T.N., 1994), the Supreme Court recognized that the right to privacy is implicit in Article 21, but it is not an absolute right. No right is absolute in nature; all rights have their own restrictions (R. Rajagopal v. State of T.N., 1994). It was held that the state cannot impose restrictions or restraints on the press for publication except in specific circumstances provided by the law. Private information about a person cannot be published without consent unless the person has put themselves in the public sphere. The ratio decidendi of this case was that the right to be left alone is also a part of the right to privacy under Article 21.

Yet another case that talks about privacy is People's Union Civil Liberty (PUCL) v. Union of India 1997 (People's Union for Civil Liberties v. Union of India, 1997); the Supreme Court recognized unauthorized tapping or invasion amounts to a violation of the right to privacy guaranteed under Article 21 of the Indian Constitution. The ratio decidendi of this case was that the state's power to intercept communications is not absolute and is limited by fair procedure; it must be "just," "fair," and "reasonable."

These holdings established the foundational principles guiding privacy in India, directly shaping the jurisprudence that led to recognition of privacy as a fundamental right.

Puttaswamy V. Union of India A Pivotal Privacy Judgment

The Puttaswamy case began in 2015 when Justice K.S. Puttaswamy, a retired judge, questioned the constitutional validity of the Aadhaar biometric identification system introduced by the Indian government. The fear was that Aadhaar's large-scale collection and centralization of sensitive personal information potentially infringed on citizens' right to privacy. The Supreme Court saw it necessary to end a long-standing constitutional uncertainty, which is whether the right to privacy is a fundamental right under the Indian Constitution. Initially brought before lesser benches; later the issue was eventually decided by a historic nine-judge Constitution Bench in 2017, which was mandated to reconsider earlier judgments, such as M.P. Sharma (1954) and Kharak Singh (1962), which had ruled that privacy is not a fundamental right.

The Supreme Court held in a unanimous judgement that the right to privacy is a fundamental right enshrined in Article 21 (Right to Life and Personal Liberty), and it is also a vital element of the liberties enshrined in Part III of the Constitution, such as Articles 14 (Equality) and 19 (Freedom of Speech and Expression).

The fundamental legal principles of the Puttaswamy judgment are: Privacy is an inherent part of the right to life and personal liberty. The right involves upholding personal intimacies, the sanctity of family life, and control over personal information. Privacy is not absolute; any limitation has to meet a three-fold test of legality (supported by law), legitimate state interest, and proportionality (least restrictive means (Justice K.S. Puttaswamy v. Union of India, 2018). Puttaswamy judgment shaped later landmark judgments upholding and adapting the evolution of the right to privacy.

Impact and Aftermath of the Puttuswamy Case on Privacy Jurisprudence

The Puttaswamy judgment transformed the Indian legal landscape. It addressed decades of judicial inconsistency and established privacy as a constitutional fundamental right under Article 21 of the Indian Constitution. Set a strict legal threshold for state incursions, reaffirming safeguards against surveillance, misuse of data, and unjustified state action. Shaped later landmark judgments, such as decriminalizing homosexuality (Navtej Johar), and framed emerging data protection legislation. Positioned India among progressive jurisdictions upholding privacy with nuanced constitutional interpretation anchored in dignity and liberty. The Court overruled previous conflicting decisions, positively placing privacy as a pillar of constitutional rights. The ruling expanded constitutional protection to marginalized groups, including acknowledgement of privacy in sexual orientation and LGBT rights.

In another case, Joseph Shine v. Union of India, 2018 (Joseph Shine v. Union of India, 2018) the court struck down the adultery law, centering on autonomy and privacy in intimate relationships. Similarly, in the Aadhaar judgment (Justice K.S. Puttaswamy (Retd) v. Union of India, 2018), the court upheld the use of Aadhaar for welfare but curtailed mandatory linkage for private services and protected informational privacy.

"Right to be Forgotten" is another aspect that evolved with privacy. Indian courts have entertained claims for erasure of personal digital data based on privacy post-Puttaswamy. This right, though not absolute, has been upheld in various Indian court decisions, marking an important development in privacy jurisprudence.

Once Justice Sanjay Kishan Kaul delivered his opinion on the right to be forgotten, and he stated, "The right of an individual to exercise control over his personal data and to be able to control his/

her own life would also encompass his right to control his existence on the Internet" (Vijay Pal Dalmia,2022).

Dharamraj Bhanushankar Dave v. State of Gujarat (Dharamraj Bhanushankar Dave v. State of Gujarat, 2017), when the court was asked to prevent the respondent from publishing the judgement that would have a negative effect on the petitioner even if he was found not guilty. Because there was no legal basis to bar the respondents and because the facts and circumstances of the case did not result in a violation of Article 21 of the Constitution, the Gujarat High Court (the HC) refrained from exercising the right.

The High Court recognized the "right to be forgotten." The purpose of this case was to remove the name of the petitioner's daughter because it defames her reputation. (Zubair Ahmad, 2022). The court held the judgment in favor of the petitioner. The court held that "the right to be forgotten" is applicable as a rule in sensitive cases concerning women. Subsequently, in Sri Vasunathan v. Registrar General (Sri Vasunathan v. The Registrar-General, 2017), the Karnataka High Court recognized the right to be forgotten. The purpose of this case was to remove the name of the petitioner's daughter from the case title since it was easily accessible and defamed her reputation. The court held in favor of the petitioner and ordered that the name of the petitioner's daughter be removed from the cause title and the orders. The court held that the right to be forgotten is adopted by Western countries in specific matters like cybercrime against women, economic misconduct, heinous crime, rape, acid attack, etc. (Aasha& Aarti,2023). Noticeably, the right to be forgotten has now been perceived as a basic facet of the right to privacy.

The Zulfiqar Ahman Khan (Khan v. M/S Quintillion Business Media Pvt.,2019) case is a well-known case concerning the removal of articles written against him on the news website of the Quint. The Delhi High Court observed the right to be forgotten was becoming an inherent part of human beings at that time. The Delhi High Court, in Jorawar Singh Mundy v. Union of India, 2021 (Jorawar Singh

Mundy v. Union of India, 2021).similarly recognized the right to be forgotten, asking search engines and legal reporting sites to take down the petitioner's name, which continued to affect his career prospects after acquittal. The court reasoned that such digital footprints, divorced from continuing legitimate public interest, infringe the individual's right to privacy under Article 21 (Jorawar Singh Mundy v. Union of India, 2021).

The "right to be forgotten" is becoming increasingly significant from both a legal and technical perspective. An increasing number of individuals now consider the "right to be forgotten" to be a component of the right to privacy. The information will be regarded as accurate when discussing the "right to be forgotten"; therefore, the freedom of expression and publication cannot be subordinated to the "right to be forgotten."

Though unanimous in outcome, the judgment featured multiple concurring opinions, reflecting diverse judicial philosophies: some emphasized autonomy and dignity as the heart of privacy. Others focused on balancing privacy with public interest and the rule of law. The ruling adopted a contemporary concept of privacy appropriate for digital era issues and international human rights standards.

It marked a crucial moment. It turned privacy from a vague, limited right into a strong, enforceable constitutional right. The Puttaswamy ruling is a landmark case in Indian constitutional law that finally established the right to privacy as an integral right. It reconciled diametrically opposite precedents, laid down illuminating principles for limits on privacy, and led the way to stronger safeguards in times of technological progress.

Conclusion

The doctrinal evolution of the right to privacy in India has shifted from rejection to an inalienable right under constitutional protection,

reflecting judicial creativity and changing demands of contemporary society. Justice K. S. Puttuswamy marked a watershed, but its fuller realization is contingent on effective legislation, rigorous judicial oversight, and a societal commitment to autonomy and dignity. Post Puttuswamy, the right to privacy has underpinned landmark rulings on sexual autonomy, data protection, and surveillance, marking an era of heightened judicial and legislative focus on safeguarding individual dignity in India's democracy. In brief, India's right to privacy jurisprudence exemplifies judicial creativity and constitutional dynamism, continuously adapting to a rapidly changing socio-legal landscape while affirming fundamental (Jorawar Singh Mundy v. Union of India,2021) human dignity as its core.

References

1. India. (1950). *The Constitution of India*. Ministry of Law and Justice, Government of India. Retrieved from https://www.india.gov.in/my-government/constitution-india
2. United Nations. (1948). *Universal declaration of human rights* (217 [III] A). Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights
3. Aasha, Arti. (2023) *Industrial Engineering Journal* , Volume : 52, Issue 4, No. 1, April : 2023 *Right To Be Forgotten In India-A Critical Analysis*.
4. R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632 (Sup. Ct. India 1994).
5. Bar & Bench. (2018). *Aadhaar dissenting judgment: Justice D.Y. Chandrachud* [PDF] Retrieved from https://images.assettype.com/barandbench/import/2018/09/Aadhaar-dissenting-judgment-Justice-DY-Chandrachud.pdf
6. *Dharamraj Bhanushankar Dave v. State of Gujarat*, 2015, SCC Online Guj 2019 (India).

7. Global Freedom of Expression, Columbia University. (2019). *Zulfiqar Ahman Khan v. Quintillion Business Media*. Retrieved from https://globalfreedomofexpression.columbia.edu/cases/khan-v-quintillion-business-media/

8. *Jorawer Singh Mundy @ Jorawar Singh v. Union of India & Ors., W.P.(C) 3918/2021 (Delhi High Court Nov. 3, 2023)*

9. *Joseph Shine v. Union of India*, AIR 2018 SC 4898, (2019) 3 SCC 39 (India).

10. *Justice K.S. Puttuswamy (Retd) v. Union of India*, AIR 2018 SC (Supp) 1841, (2019) 1 SCC 1 (India).

11. *Kharak Singh v. State of U.P. & Others*, AIR 1963 SC 1295, (1964) SCR (1) 332 (India).

12. Chhetri, K (2025 Aug 30) *Legal Vidhiya.. Case analysis: Kharak Singh v. the state of U.P & others AIR 1963 SCR 332*. Retrieved from https://legalvidhiya.com/case-analysis-kharak-singh-v.-the-state-of-u-p-others-air-1963-scr-332/

13. Vijay Pal Dalmia, (2022 Nov 25) *Lexology*. *Right to privacy in India*. Retrieved from https://www.lexology.com/library/detail.aspx?g=e0dc65db-85eb-4a93-afa0-30597fb2a037/

14. *M.P. Sharma & Others v. Satish Chandra, District Magistrate, Delhi & Others*, AIR 1954 SC 300, 1954 SCR 1077 (India).

15. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, (1978) SCR (2) 621 (India).

16. Ahmad Zubair (2022) *Right to be forgotten*. *Manupatra Articles*. Retrieved from https://articles.manupatra.com/article-details/Right-to-be-forgotten

17. *Sri Vasunathan v. The Registrar-General, W.P. No. 62038 of 2016 (Karnataka H.C. Jan. 23, 2017).*

18. Supreme Court Observer (2021).. *Right to privacy: Puttaswamy judgment*.[PDF]. Retrieved from https://www.scobserver.in/

wpcontent/uploads/2021/10/Right_to_Privacy__Puttaswamy_Judgment_1-497-543.pdf"

19. *Sri Vasunathan v. Registrar General*, WP 62038/2016 (India).
20. United Nations. (n.d.). *Universal declaration of human rights*. . Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights

One Nation One Election

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Abstract

The voice and choice of the people is reflected through elections which is also the celebration of democracy in India. The world's largest democracy with its strong constitution symbolizes the power of elections and the role of people's representatives. Since independence, almost four hundred elections were conducted, and the burgeoning electoral expenses are still a concern for developing nations. The concept of simultaneous elections seeks to synchronise elections at all the tiers of government aiming to reduce electoral expenses, to improve governance and to enhance political stability. This paper aims to analyse the electoral phases from pre-independence India to the current phase and to explore the possibilities of conducting simultaneous elections which is officially called "ONE NATION ONE ELECTION". This paper also focuses recommendations from expert committee reports. While the model of One Nation One Election focuses to reduce expenses and improve governance, there have been growing concerns regarding the federalism, regional representation, dominance of prominent political parties and diversity. This paper concludes with the opinion that though simultaneous elections will be one of the greatest electoral reforms in the history of elections in India but the very essence of democracy that everyone's voice be heard and the choice be respected should not be compromised. The one nation one election will be the new era electoral reform to address the burgeoning electoral expenses and an opportunity for all the political parties to have the same level playing field.

Keywords: *One Nation One Election, Simultaneous elections, Indian democracy, Electoral reform, Federalism, Governance*.

Introduction

The concept of "One Nation, One Election" (ONOE) proposes simultaneous elections for the Lok Sabha, state assemblies, and local bodies across India. This reform aims to synchronize the nation's electoral calendar, ensuring periodic, coordinated elections while reducing public expenditure and administrative burdens. This idea has gained significant traction in recent political discourse as a potential solution to address the challenges posed by the current staggered election cycle. The proposal aims to synchronize the electoral calendar to ensure that all major elections in the country are held simultaneously, thereby reducing the frequency of elections and their associated disruptions to governance and development activities.

Historical Evolution

Simultaneous elections were conducted in India from 1951–52 to 1967. However, following premature dissolutions of several state assemblies in 1968–69, this cycle was disrupted, creating asynchronous electoral timelines. The Indian electoral system, since independence, has witnessed a gradual shift from synchronized elections to a staggered pattern due to various political developments, including premature dissolution of assemblies, hung parliaments, and coalition politics. The last time India witnessed simultaneous elections was in 1967, after which the cycle was disrupted due to political instability and the dissolution of several state assemblies. Historical context and evolution pre-independence and early years during the British colonial period show that elections to various legislative bodies were not synchronized, reflecting the federal structure imposed by the Government of India Act, 1935. However,

post-independence, the framers of the constitution envisioned a more coordinated approach to democratic governance. The first general elections in 1951-52 were conducted simultaneously for both the Lok Sabha and state legislative assemblies, establishing a precedent for synchronized elections. This pattern continued through the elections of 1957 and 1962, demonstrating the feasibility of conducting simultaneous elections across the country. The synchronized election cycle began to break down in the late 1960s due to several factors. The emergence of coalition politics and frequent changes in government led to premature dissolution of several state assemblies. The imposition of emergency and subsequent political upheaval disrupted the natural electoral cycle. The lack of clear majorities in several elections necessitated fresh polls, further fragmenting the synchronized system. Regional political developments and anti-defection scenarios led to individual states going to polls at different times.

Constitutional and Legal Framework

The proposal engages various constitutional provisions such as Articles 83 and 172 (defining tenure), and Article 324, which empowers the Election Commission of India (Constitution of India, 1950). Implementation would require constitutional amendments and possibly changes to the Representation of the People Act, 1951 to harmonize election timings (Law Commission, 1999). Benefits of one nation one election studies indicate that synchronized elections can potentially save up to ₹12,000 crores per cycle (NITI Aayog, 2017), reduce the Model Code of Conduct restrictions, and consolidate governance efficiency. Reduced disruption to policy-making and administrative continuity represents a key reform advantage. When it comes to challenges and concerns**,** ONOE faces criticism for potential encroachment on federal autonomy and democratic accountability. Critics argue that simultaneous elections might favor larger parties while undermining local and regional

issues crucial for grassroots governance. There are few relevant case laws which strengthen the legal perspective. **S.R. Bommai v. Union of India (1994)** emphasized that federalism is a basic feature of the Constitution; **Indira Nehru Gandhi v. Raj Narain (1975)** highlighted free and fair elections as part of the basic structure; **Kihoto Hollohan v. Zachillhu (1992)** and **PUCL v. Union of India (2003)** provide insights into electoral stability and rights.

Simultaneous Elections Under Indian Constitution

The concept of simultaneous elections - ab initio (from the beginning) aims to harmonize the election cycles of the Lok Sabha, state assemblies, and local bodies, conducting them on a single day or within a specific timeframe. The push for ONOE is driven by the perceived benefits regarding cost reduction, administrative convenience, enhanced governance, and a desire to curb the potential for social division caused by frequent polarising campaigns. Frequent elections are a major obstacle to the announcement of new welfare schemes and policymaking, slowing down the administrative machinery.

Committee Recommendations

The necessity of returning to concurrent elections has been a consistent recommendation put forth by various high-level bodies over the decades. The Election Commission of India first mooted the idea of restoring simultaneous elections in its annual report back in 1983. This call was reiterated in multiple reports by the Law Commission of India (1999, 2015, 2018), all of which provided detailed recommendations for its implementation. In 2002, the National Commission to Review the Working of the Constitution urged for the system's restoration, viewing it as essential for democratic health. Subsequently, in 2015, the 79th Parliamentary Standing Committee explicitly recommended simultaneous

elections, citing their necessity for achieving high economic development (Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, 2015). More recently, the NITI Aayog contributed to the discourse in 2017 by publishing a paper titled, "Analysis of Simultaneous Elections; the What, Why and How," which explored the critical logistics and financial framework required for its implementation (NITI Aayog, 2017).

Significance of Kovind Committee Report

The Ram Nath Kovind Committee (High-Level Committee, HLC), constituted in September 2023, represents the latest and most significant effort to study the One Nation One Election (ONOE) concept. After 191 days of extensive work, the committee concluded that frequent elections create an atmosphere of uncertainty, disruption, and policy paralysis. Its key recommendations outlined a structured approach to implementation. In the first step, it proposed holding elections for the Lok Sabha and all State Assemblies simultaneously. The second step involves synchronizing elections to Municipalities and Panchayats (local bodies) so they are held within 100 days of the Lok Sabha and State Assembly elections. Legally, the committee proposed amendments to Articles 83 (Duration of Parliament) and 172 (Duration of State Legislatures), alongside the introduction of a new Article, Article 324A, specifically for synchronizing local body elections. To maintain the synchronized cycle, the committee suggested a mechanism where a newly elected house, following a hung legislature or no-confidence motion, would serve only a reduced term, aligning its expiry with the remaining period of the five-year simultaneous election cycle. Furthermore, it stressed the efficiency gains of adopting a single electoral roll for all three tiers of government. The HLC report noted significant public and political backing, highlighting that 80% of 21,558 public responses and 32 out of 47 political parties consulted were in favour of the ONOE system (High-Level Committee, 2024).

Burgeoning Electoral Expenses

A core argument in favour of the One Nation One Election (ONOE) proposal is its potential to significantly curb the burgeoning election expenditures (High-Level Committee, 2024). The financial burden of elections is two-fold: the high cost borne by the government for conducting the polls and the manifold higher expenditure incurred by political parties and candidates. The report highlights this massive financial undertaking by noting that the estimated cost of the 2019 Lok Sabha elections, which was approximately ₹50,000 crore (Centre for Media Studies, 2020), is projected to soar to a staggering ₹1,00,000 crore for the 2024 polls (Centre for Media Studies, 2024). Simultaneous elections aim to alleviate this burden by reducing direct costs associated with logistics, human resource deployment, and the repeated procurement of equipment like electronic voting machines (EVMs) and VVPATs (estimated to cost over ₹9,284 crore) (NITI Aayog, 2017). Furthermore, ONOE seeks to minimize the 'opportunity cost' linked to the repeated enforcement of the Model Code of Conduct (MCC), which often negatively impacts governance, slows economic growth, and delays investment decisions (NITI Aayog, 2017).

New Era Electoral Reforms

The ONOE proposal is heralded as a significant reform for a "new age of India" and has been described as a "new age electoral festive." Proponents argue that simultaneous polls could bring about several positive changes. They suggest that holding all elections together would enhance voter participation by offering a single window for exercising franchise. It is also believed that synchronizing polls could reduce the scope of "identity politics" such as caste and class narratives that often permeate frequent local and state polls, thereby shifting the electoral focus toward national or collective development issues. Moreover, ONOE promises to streamline administration by

drastically cutting down the periodic diversion of the entire administrative and security apparatus for election duties, leading to greater efficiency in governance. Lastly, this synchronized exercise could potentially boost "electoral tourism" by showcasing the world's largest synchronized election exercise to international political enthusiasts.

Effects on Democracy

The ONOE proposal has significant implications for Indian democracy, sparking considerable debate regarding its effects on federalism and political representation. A critical concern revolves around federalism and local issues, as synchronizing national and state elections may lead the national narrative or "wave" to overshadow local issues and challenges, potentially marginalizing regional parties and reducing the focus on region-specific needs. In terms of party diversity, there is a fear that smaller regional parties may struggle to compete effectively against national parties that possess greater resources and influence, which could potentially diminish overall political diversity. Finally, critics argue that less frequent elections could reduce the continuous accountability of representatives to their constituents, thereby limiting the voters' opportunities to express satisfaction or dissatisfaction through the ballot box.

Cause of Concern

Despite the potential benefits, the ONOE proposal faces significant criticism and logistical hurdles that raise a cause for concern. Implementation necessitates substantial constitutional and federal alteration, including constitutional amendments and changes to the Representation of People Act, 1951 (RPA). Since certain amendments require ratification by more than half of India's states, this move is feared to potentially alter the fundamental federal structure and the

balance of powers between the union and the states. A major point of contention is the required political compromise, as the core of ONOE demands the premature shortening or extension of the terms of both the Lok Sabha and state legislative assemblies, which fundamentally questions the democratic mandate given to elected governments. Furthermore, there is a risk of voter confusion and integrity; simultaneous voting might confuse first-time or less-informed voters, potentially leading to uninformed choices or an increase in invalid votes, thereby undermining the integrity of the democratic process. Finally, conducting elections simultaneously across the entire country poses a challenge of logistical overload, putting enormous pressure on the election machinery and the judicial system (with more simultaneous election-related cases), raising serious concerns about maintaining the integrity and smooth execution of free and fair elections.

Conclusion

The proposal for "One Nation, One Election" is a major undertaking that aims to transform India's electoral landscape, primarily by addressing the economic and governance burdens associated with frequent polls. While the concept promises optimization of scarce resources and administrative efficiency, its implementation necessitates profound constitutional and political compromises. The core challenge remains in ensuring that the pursuit of efficiency does not infringe upon the principles of federalism, equitable representation, or the continuous accountability of representatives to the diverse electorate. The successful navigation of this complex issue requires inclusive engagement, debates, and a framework that meticulously upholds the basic structure of the constitution and the sanctity of India's parliamentary democracy.

References

1. Centre for Media Studies. (2020). *CMS estimates of election spending*. Centre for Media Studies.
2. *Constitution of India*, 1950.
3. High-Level Committee on One Nation One Election. (2024). *Report of the High-Level Committee on One Nation One Election* (Vol. 1). Government of India.
4. Indira Nehru Gandhi v. Raj Narain, 1975 Supp. SCC 1 (Supreme Court of India).
5. Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) SCC 651 (Supreme Court of India).
6. Law Commission of India. (1999). *170th report on electoral reforms*. Government of India.
7. Law Commission of India. (2015). *255th report on electoral reforms: Examination of the proposal to hold simultaneous elections* (Report No. 255). Government of India.
8. Law Commission of India. (2018). *Draft report on simultaneous elections*. Government of India.
9. NITI Aayog. (2017). *Analysis of simultaneous elections: The what, why and how*. Government of India.
10. Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. (2015). *79th report on the feasibility of holding simultaneous elections to the Lok Sabha and State Legislative Assemblies*. Government of India.
11. People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399 (Supreme Court of India).
12. *Representation of the People Act, 1951*, No. 43 of 1951, India.
13. S. R. Bommai v. Union of India, (1994) 3 SCC 1 (Supreme Court of India).

Freedom, Security and Connectivity: A Constitutional Appraisal of Internet Shutdowns in India and the United States

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Abstract

The increasing intersection of digital governance and constitutional rights in India has redefined the scope of liberty, privacy and democratic participation. Examining significant cases like *Anuradha Bhasin v. Union of India (2020)* and *Shreya Singhal v. Union of India (2015)*, this article takes a critical look at India's digital rights and sees how the constitutional courts have dealt with concerns raised by government surveillance and internet shutdowns. The paper examines India's proportionality-based framework in comparison to the United States' "strict scrutiny" doctrine, emphasising how each system balances the principles of freedom of expression and national security. The report emphasises the detrimental effects of prolonged internet restrictions on human rights, including access to justice, education, healthcare, and press freedom, thereby contravening India's obligations under the ICCPR and UDHR. It recommends clear systems, judicial guidance, and human rights reviews to maintain accountability in digital governance. Based on the idea of constitutional morality, the paper argues that technology policies should give importance to dignity, autonomy, and equal access rather than administrative simplicity. In the end, sustainable digital constitutionalism depends on balancing

state security with individual freedom, upholding the core values of the Indian Constitution in the digital era.

Keywords: *Digital rights, Internet shutdowns, Constitutional morality, Proportionality, National security, Human rights.*

Introduction

The digital revolution has fundamentally altered the constitutional landscape, making internet connectivity a prerequisite for the realization of rights, civic engagement and meaningful democratic participation. India's rapid technological transformation and the emergence of expansive digital governance frameworks have introduced new challenges to the protection of liberty, privacy and access to public services. From 1995 to the Information Technology Act, 2000, internet regulation has expanded digital inclusion and increased executive control over digital space, as seen in frequent internet shutdowns (Molnár, 2015). These restrictions are sometimes allowed because they are needed to protect public safety or order, but they cause constitutional issues about whether they are fair, necessary, and in line with India's international human rights obligations, such as the ICCPR and UDHR. In 2015, *Shreya Singhal vs Union of India* established protection for digital speech, and in 2020, *Anuradha Bhasin vs Union of India* established proportionality and judicial oversight as central standards, recognising digital access and expression as constitutional rights. The United States long history of First Amendment jurisprudence, emphasizing the strict scrutiny of all state restrictions on free speech, provides an instructive comparative reference for calibrating the permissible bounds of executive authority in the digital age (*Shreya Singhal v. Union of India*, 2015) (*Anuradha Bhasin v. Union of India*, 2020) (Bhatnagar & Lal, 2022). This study compares Internet shutdown laws and policies in India with the US, using the Constitution. The report examines internet governance and shutdown laws' history. Next, it

examines how Indian and U.S. constitutional jurisprudence on digital rights has evolved. The report also examines the human rights impacts of internet limitations and recommends openness, judicial scrutiny, and human rights impact assessments. The technique uses historical legislation, court decisions, and international human rights treaties for legal research, comparative constitutional studies, and policy evaluation. Sustainable digital constitutionalism requires balancing state security, individual liberty, openness, accountability, and democratic principles. This follows the ICCPR (1966) and UDHR (1948) and the Indian Constitution.

Legal Framework in India

In the case of Shreya Singhal vs. Union of India (2015), the Supreme Court said that Section 66A of the Information Technology Act, 2000 was illegal because it violated Article 19(1)(a). This was a big step forward for India's digital rights laws (Constitution of India (1950), Art. 19(1)(a), 19(2), 21). The Court determined that the provision's ambiguous terminology, including "annoyance" and "inconvenience," permitted capricious governmental regulation of online expression. Justice Nariman emphasised that the mere possibility of a law's misuse does not warrant the restriction of a constitutional right. This ruling established a precedent for the acknowledgement of freedom of expression within the digital domain and articulated the principle that, under Article 19(1)(a), online speech is afforded the same constitutional protections as offline speech, limited only by the reasonable restrictions specified in Article 19(2) (Constitution of India, 1950) (*Shreya Singhal v. Union of India*, 2015). In *Anuradha Bhasin vs. Union of India (2020)*, the Supreme Court affirmed the fundamental rights enshrined in Article 21, which include the right to life, personal liberty, access to the internet, and the freedoms of speech and expression. This was a big change in constitutional law (Devi & Kaushik, 2025). The Court determined that an indefinite internet service suspension

upsets the balance between Articles 19 and 21 of the Constitution. It further directed that any such restriction must satisfy the principles of necessity and proportionality, be confined to a specific geographical area and duration, and remain open to regular judicial scrutiny (Verma, 2024) (ProQuest, n.d.). This theory says that the government has to give four main reasons for limits: legitimacy of aim, rational connection to objective, necessity and balance between rights infringement and public interest. The Court's reasoning revealed that executive orders under the Telegraph Act must meet the standards of least restrictive means and transparency hence preventing arbitrary curtailment of online expression (*Anuradha Bhasin v. Union of India*, 2020). *Shreya Singhal (2015)* and *Anuradha Bhasin (2020)* form the dual pillars of India's digital rights jurisprudence: the former establishing free expression in cyberspace and the latter recognizing internet access as a constitutional enabler of that freedom. These judgments reiterate that digital rights are not supplemental but integral to constitutional liberty and democracy in twenty-first-century India (PMF, 2025) (Maheshwari & Daka, 2024).

Comparison Between India and the United States

A strong dislike of prior official censorship and constraint is at the heart of the American approach to free speech, especially as it relates to the First Amendment. The significant decision in *New York Times Co. v. United States (1971),* commonly referred to as the Pentagon Papers case, established a strong presumption against prior restraint, even in matters concerning national security (Marco Learning, n.d.). According to the Court, the government must prove that publication would pose a "severe and irreparable danger" to national interests in order to support such restrictions. Hugo Black, a Supreme Court justice, said that the government's claims of national security can't be used as a reason to limit political responsibility. He also said that the First Amendment's promise of a free press can't be called into

question. This theory was strengthened by other decisions, such as *Nebraska Press Association vs Stuart (1976)*, reinforced this doctrine by ruling that restrictions on publication are almost never permissible unless they are narrowly tailored and supported by compelling evidence of direct harm. When a statute or government action censors speech because of its content or point of view, courts in the United States use the strict scrutiny test. This standard requires the state to demonstrate that the law narrowly tailors the law to achieve a compelling governmental goal using the least restrictive methods. Because of the presumption of unconstitutionality underlying this high standard of scrutiny, the government is solely responsible for providing justification for its actions. Few laws make it through this vetting; even claims of national security must show a serious, immediate, and tangible threat. U.S. courts, tend to favor individual liberties over vague assertions of collective safety, prioritizing transparency, open debate and minimal government interference in matters of speech and publication (Hudson, 2025). While both India & United States constitutional systems value freedom of expression, their doctrinal approaches differ significantly. In India, Articles 19(1)(a) and 19(2) permit the state should enforce appropriate limitations on free speech for broader grounds such as public order, morality and national security. The Indian Supreme Court employs the proportionality test emphasizing reasonableness, necessity and balance allowing a more flexible interpretation that harmonizes individual rights with state interests (Maheshwari & Daka, 2024). The U.S. framework anchored in strict scrutiny affords less deference to the state and demands precision in limiting speech. The American courts view free expression as nearly absolute, permitting only the narrowest exceptions (Bacia, 2021) (Bhardwaj et al., 2020).

This variation reflects each nation's constitutional character such as the U.S. prioritizes liberty as inviolable, whereas India upholds a balance between liberty and societal harmony. Yet, both legal traditions converge on one principle executive power over

speech must always be subjected to judicial oversight. Where *Anuradha Bhasin* demands transparency and proportionality in internet restrictions, *New York Times vs United States* insists on absolute proof before curtailing free expression. These doctrines fortify the global constitutional consensus that national security cannot be an unchecked pretext for censorship (Congressional Research Service, 2023).

Digital Freedom, National Security and Human Rights

Prolonged and arbitrary internet shutdowns in India have emerged as serious impediments to constitutional democracy and digital human rights (Malik, 2025). India has the greatest number of internet suspensions worldwide since 2018, often justified under vague claims of maintaining "public order" or "national security" (Human Rights Watch, 2023). The effects are far-reaching economically, shutdowns disrupt digital trade and financial transactions; socially, they sever communication between citizens and the state; and legally, they obstruct access to justice by halting e-filing systems, online hearings and citizen grievance portals. In Jammu & Kashmir, prolonged blackouts after 2019 and subsequent suspensions in Manipur demonstrate how connectivity control translates into press freedom, demonstrations, and the repression of speech (Shah & Junaid-ul-Shafi, 2024) (IGCC Blog, 2023). The International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) both say that India has to protect human rights. These actions go against those tasks. There is a right to "seek, receive, and impart information" in Article 19 of the ICCPR (1966). There is also freedom of speech in all media in Article 19 of the UDHR (1948). Indiscriminate shutdowns violate these standards, particularly when used as tools for censorship or collective punishment rather than temporary,

proportionate security responses (Hussain, 2024). These restrictions disproportionately marginalize vulnerable populations who depend on online access for livelihoods, welfare entitlements and education makes Article 21's right to life useless in digital India (Kashmir Law & Justice Project, 2023). Broader rights-based perspective, internet connectivity today operates as the gateway to multiple human rights including education, health and participation in public life. Its denial not only undermines democratic freedoms but also erodes the state's constitutional duty to uphold dignity and equality in governance. Consequently, safeguarding digital freedom within national security frameworks is not a matter of policy discretion but a constitutional and international human rights imperative (Barata, 2024).

Policy and Judicial Recommendations

The political system set up in Anuradha Bhasin vs. Union of India (2020) needs to be put into action by making changes to the law that can be enforced and make sure that stopping internet access is fair, clear, and accountable. Despite judicial mandates, executive compliance remains inconsistent, underscoring the need for codified transparency mechanisms and judicially enforceable oversight.

a. Codified Transparency Mechanisms

A dedicated Internet Restrictions (Transparency and Accountability) Bill should be enacted, mandating compulsory publication of shutdown orders within 24 hours on official government websites. Each order must state the legal grounds, scope and duration of the suspension and specify the public emergency or safety rationale. Establishing a national database as recommended by the Software Freedom Law Center and Human Rights Watch can centralize data on shutdown instances, reasons and judicial reviews, enabling informed policy review and civil oversight.

b. Mandatory Judicial Review and Time Bound Executive Actions

The Temporary Suspension of Telecom Services (Public Safety or Emergency) Regulations, 2017 say that a changed process must include legal review before deployment. This can be done by naming a constitutional court or an independent panel to decide if the deployment is necessary. Post facto review committees should meet within 48 hours of issuance to validate proportionality and revoke orders exceeding 72 hours without fresh authorization. The judiciary must ensure compliance through contempt jurisdiction against officials disregarding procedural safeguards outlined in *Anuradha Bhasin (2020)*.

c. Adoption of Human Rights Impact Assessment (HRIA) Frameworks

India should include Human Rights Impact Assessments into digital governance mechanisms under the UN Guiding Principles on Human Rights and Business. HRIAs can evaluate shutdown impacts across essential sectors education, health, media and marginalized communities prior to sanctioning restrictions. This institutionalizes a data-driven approach that measures social, economic and rights-based consequences before executive action.

d. Accountability through Legislative Reform and Multi-Stakeholder Engagement

A multi-stakeholder Digital Rights Council comprising civil society, digital rights experts and human rights institutions must oversee shutdown reviews and recommend policy revisions to Parliament annually. Aligning with the ICCPR and UDHR, the State must ensure every restriction is demonstrably necessary, narrowly tailored and the least restrictive alternative. Adherence to these standards reaffirms India's commitment to constitutional morality and international human rights norms.

Conclusion

The development of constitutional law on internet shutdowns in India shows an ongoing effort to balance personal freedom with national security. Cases like *Shreya Singhal vs. Union of India (2015)* and *Anuradha Bhasin vs. Union of India (2020)* have made it clear that digital rights, like the freedom to speak out and access to the internet, are part of constitutional ideals and the idea of balance. Indian courts generally follow a balanced approach, while in the United States, the strict scrutiny model places a much higher limit on government power to restrict speech, even for national security reasons. A comparison of the two systems shows that both recognize the obligation of the state to uphold public order, but neither allows complete executive control. Ongoing court oversight and the need for clear, reasoned decisions act as key protections against misuse of power. It also becomes clear that frequent or unjustified shutdowns harm not only free expression but also the rights to education, healthcare, and justice widening inequality and weakening democratic participation. To address these issues, this study suggests reforms such as legally requiring transparency, quick judicial review, and including human rights impact assessments in decisions about digital restrictions. Adding these measures to laws and procedures would help India uphold its constitutional duties and international human rights commitments while ensuring that digital governance values dignity and accountability. India's digital democracy will depend on how well it can protect online freedoms from arbitrary state control. To safeguard the Constitution's core principles from erosion amidst the current era of swift social and technological advancements, digital constitutionalism must judiciously balance individual rights with security imperatives.

References

1. Anuradha Bhasin v. Union of India, (2020) SCC 1 (India).
2. Barata, J. (2024, April). *Internet shutdowns in international law: Factsheet*. Columbia Global Freedom of Expression.
3. Bacia, B. J. (2021, June). *Say what you will: A comparison of free speech in India and the United States*. PSA Legal Counsellors.
4. Bhardwaj, S., Nayak, N., Singh, S., Dandamudi, R., & Handa, V. (2020, May 30). Rising internet shutdowns in India: A legal analysis. *Indian Journal of Law & Technology, 16*(1), 1–37.
5. Bhatnagar, K., & Lal, S. (2022). Internet access and COVID-19: A constitutional argument to right to internet access in India. *International Journal of Health Sciences, 6*(S8), 1833–1865.
6. Congressional Research Service. (2023). *Freedom of speech: An overview* (CRS Report R47986).
7. Constitution of India. (1950). Arts. 19(1)(a), 19(2), 21.
8. Devi, P., & Kaushik, A. (Eds.). (2025). *The paradoxes of free speech: Challenges and controversies in contemporary India* (1st ed.). Routledge. https://doi.org/10.4324/9781003541202
9. Hudson, D. L., Jr. (2025, May 22). *Strict scrutiny*. First Amendment Encyclopedia.
10. Human Rights Watch. (2023, June 13). *India: Internet shutdowns hurt vulnerable communities*.
11. Hussain, R. (2024). Internet shutdowns: Violations of human rights and fundamental freedoms in India. *Academic Journal of Public Health Nutrition, 6*(1), 31.
12. Information Technology Act, No. 21 of 2000 (India).
13. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.
14. IGCC Blog. (2023, June 15). *The worrying trend of internet shutdowns in India*.

15. Kashmir Law & Justice Project. (2023, November 23). *No internet means no work, no pay, no food: Internet shutdowns deny access to basic rights in Digital India*.

16. Maheshwari, N., & Daka, M. (2024, June 28). Proportionality in theory, not practice: Internet rights in Indian courts. *Oxford Human Rights Hub*.

17. Malik, T. (2025). Freedom of internet and state control: A case study on internet shutdowns in India. *Masaryk University Journal of Law and Technology, 19*(2), 97–126.

18. Marco Learning. (n.d.). *Required Supreme Court case: New York Times v. United States (1971)*.

19. Molnár, P. (Ed.). (2015). *Free speech and censorship around the globe*. Central European University Press.

20. Nebraska Press Association v. Stuart, 427 U.S. 539 (1976).

21. New York Times Co. v. United States, 403 U.S. 713 (1971).

22. PMF. (2025, May 3). *Digital access as a fundamental right*.

23. ProQuest. (n.d.). *A critical analysis of transformative constitutionalism with reference to modern approach of judiciary*.

24. Shah, M. G., & Junaid-ul-Shafi. (2024). COVID-19, internet and education: Loss of a generation. *Peace Review, 36*(3), 443–454.

25. Shreya Singhal v. Union of India, (2015) SCC 1; AIR 2015 SC 1523 (India).

26. Universal Declaration of Human Rights, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

27. Verma, A. (2024, February 21). *Anuradha Bhasin v. Union of India, 2020: Case analysis*. iPleaders.

Custodial Torture in India: Systemic Failures, Legal Gaps, and the Quest for Reform

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Abstract

The issue of custodial torture and violence in India highlights a serious human rights problem characterised by high rates, deep-rooted causes, and ongoing reform hurdles. Despite constitutional protections like Article 21, which guarantees the right to life and dignity, and institutions such as the National Human Rights Commission (NHRC), custodial torture continues to be a systemic problem. Data reveal thousands of deaths annually, often accompanied by physical and mental abuse by police and officials to extract confessions or punish detainees. Causes include weak legal deterrents, lack of accountability, discrimination, and cultural acceptance of violence in law enforcement. Recent efforts, such as the Prevention of Custodial Torture Bill (2023-24), aim for stricter punishments, victim compensation, and shifting the burden of proof to accused officers. Yet, India has not ratified the UNCAT, exposing a gap between national laws and international standards. Reforms proposed involve enacting dedicated anti-torture legislation, monitoring interrogations through recordings, enhancing police training on human rights, supporting victim recovery, and increasing judicial oversight. Civil society advocacy and international pressure are vital for eradicating

custodial torture, ensuring justice, and safeguarding victims' dignity within India's criminal justice system. This summary consolidates authoritative insights on constitutional safeguards, legislation, prevalence, causes, and reform initiatives related to custodial torture and violence in India.

Keywords: *Custodial Torture, Human Rights, Police Accountability, Criminal Justice Reform, Constitutional Rights, NHRC, Prevention of Torture Bill.*

Introduction

Custodial torture represents one of the most egregious violations of human rights within India's criminal justice system, embodying a fundamental contradiction between constitutional ideals and ground-level realities. The practice of inflicting physical or psychological suffering on individuals under state custody constitutes not merely a violation of legal provisions but a systematic erosion of human dignity that undermines the very foundations of democratic governance. Yet, the persistence of custodial violence reveals a troubling disconnect between constitutional protections and their practical enforcement (Vatsyayan, D., & Kumari, R., 2024).

The magnitude of this crisis is starkly illustrated by recent data from the NHRC report, which reported 2,739 custodial deaths in 2024, up from 2,400 in 2023—figures that likely understate the scale, as many incidents remain unreported. This paper adopts the Mixed-methodology which combines doctrinal and comparative legal analysis with empirical assessment. It analyses constitutional provisions, legal safeguards, NHRC statistics and Global Torture Index 2025 indicators and reform proposals to address the persistence of custodial torture in India. Examining the complex web of factors

that perpetuate such violations despite existing protections and judicial interventions.

Research Gap and Contribution

The paper highlights that custodial torture and deaths continue in India despite the safeguards provided. This shows the existing flaws in the system, as it doesn't connect to the ground level, and impunity remains. This paper addresses the gap by suggesting remedies needed to reduce custodial torture and deaths.

Constitutional Provisions and Fundamental Rights Framework

The Indian Constitution provides a robust framework of fundamental rights that theoretically protect individuals from custodial torture. **Article 14** ensures equality before the law, establishing that no person is above the law and holding police officers and public servants accountable for their actions while individuals are in custody (Constitution of India, 1950).

Article 20 provides three critical protections against arbitrary state action. **Article 20(1)** prohibits ex-post facto laws. Article 20(2) protects against double jeopardy. Most significantly for custodial torture, **Article 20(3)** embodies the principle of "nemo tenetur seipsum accusare". This provision states that "no person accused of any offence shall be compelled to be a witness against himself," creating a constitutional barrier against coercive interrogation practices and protecting against self-incrimination (Sherin, N. B., & Akshara, B., 2025).

The Supreme Court's interpretation in **Maneka Gandhi v. Union of India** revolutionised the understanding of **Article 21**, establishing that any procedure depriving individuals of life or liberty must be "just, fair and reasonable" (Maneka Gandhi v. Union

of India, AIR 1978). This landmark judgment expanded the scope of Article 21 to include protection from torture, cruel treatment, and other forms of custodial violence (Ara, S, 2022).

Article 22 provides specific safeguards for arrested persons, mandating that individuals in custody must be informed of the grounds of arrest and cannot be denied the right to consult legal counsel. The Supreme Court reaffirmed it in **Joginder Kumar v. State of U.P.** as these are not formalities but essential safeguards (*Joginder Kumar v. State of U.P.*, 1994).

Statutory Legal Safeguards

Section 22 of BSA, which renders inadmissible any confession obtained through "inducement, threat, coercion, or promise" in a Criminal proceeding. In the case of **Pakala Narayana Swami v. Emperor,** the Privy Council emphasised the importance of voluntary and free confession from any inducement or coercion to be admissible (*Pakala Narayana Swami v. Emperor*, AIR 1939). **Section 23** maintains the absolute prohibition on confessions made to police officers and extends the inadmissibility to statements made in police custody, unless they are recorded in the presence of a magistrate. These provisions recognise that the mere fact of being in police custody creates an atmosphere of coercion that can invalidate any confession obtained (APS Law, 2023). In **State of UP v. Deoman Upadhyaya,** the court ruled that facts discovered through information given by the accused are admissible, but the extent of admissibility is limited to the discovered fact (*State of U.P. v. Deoman Upadhyaya*, AIR 1960). **Section 120 of BNS** specifically penalises those who intentionally cause hurt or grievous hurt to extract confessions or information through violence or coercion (Bharatiya Nyaya Sanhita, 2023). This provision criminalises the use of torture for investigative purposes, though its effectiveness depends on robust implementation and prosecution (Drishti IAS Editorial Team, 2025).

Aspect	Indian Evidence Act, 1872	Bharatiya Sakshya Adhiniyam, 2023
Confession caused by inducement, threat or promise inadmissible	Section 24	Section 22
Confession to police officer inadmissible	Section 25	Section 23(1)
Confession by accused while in custody of police inadmissible	Section 26	Section 23(2)
Facts discovered from the information received from accused in the police custody may be proved.	Section 27	Section 23(proviso)
	IPC Sections	BNS Sections
Voluntarily causing hurt or grievous hurt to extort confession	Section 330	Section 120

Human Rights Institutional Framework

The **Protection of Human Rights Act, 1993,** established the National Human Rights Commission (NHRC) for addressing human rights violations. **Section 12** empowers the NHRC to investigate complaints of human rights violations, visit custodial facilities, and make recommendations to governments (Karimi, Z. u. R., 2022). However, the NHRC faces significant limitations that undermine its effectiveness in combating custodial torture. **Section 18** of the act "may recommend to the authority concerned" (Protection of Human Rights Act, 1993), where it is clear that the Commission's recommendations are not legally binding. Additionally, the NHRC has limited jurisdiction over armed forces and cannot investigate violations by private entities. State Human Rights Commissions, established under the same Sections 21–29 of the Act, face similar

limitations and often lack the resources and independence necessary to investigate custodial violence effectively (Ministry of Law and Justice, 1993).

Empirical Data and Statistics

Scale and Magnitude

The Minister of HOME AFFAIRS answered on the Lok Sabha Unstarred question No. 3019 for 22.03.2022 (Ministry of Home Affairs, 2022) from the information provided by the NHRC, a statement showing the year-wise number of cases registered about custodial death and encounter death between 2016 and 2022. It reveals alarming extent of custodial torture and deaths in India. NHRC statistics indicate 11,650 deaths in custody (police and judicial combined) between 2016–17 and 2021–22, an average rate of more than six per day, highlighting the persistent nature of this crisis. In 2024, the National Human Rights Commission reported 2,739 custodial deaths, following approximately 2,400 cases in 2023. Additionally, 1,995 prisoners died in judicial custody in 2022, including 159 unnatural deaths (World Organisation Against Torture, 2025). NHRC data indicate that 71% of custodial deaths between 1996 and 2018 involved individuals from poor or vulnerable backgrounds.

Year-wise total custodial deaths (India) (Ministry of Home Affairs,2022)

Year	Total custodial deaths (Police and Judicial)
2016–17	1,761
2017–18	1,782
2018–19	1,933
2019–20	1,696
2020–21	1,940
2021–22	2,307

Year	Total custodial deaths (Police and Judicial)
2022-23	2400
2023-24	2739

Data for 2021–22 are up to 28.02.2022.

Demographic and Social Patterns

For 2025, the World Organisation Against Torture (OMCT) analysed the risk of torture and ill-treatment in 26 countries worldwide and reported the Global Torture Index 2025. And notes that incidents "frequently occur, particularly targeting marginalised communities such as Dalits, Adivasis, Muslims, LGBTQIA+ individuals and migrant labourers". For example, In India's north eastern states, year 2023. There were tensions between the communities for nearly two years and the state security forces have killed more than 260 peoples and displaced over 60,000 (World Organisation Against Torture, 2025).

Impunity and Accountability Gaps

The Impunity and accountability for torture remains a question in India due to legal and institutional shortfalls. Between 2017 and 2022, despite 345 magisterial inquiries into custodial deaths nationwide, no police personnel were convicted. This represents a zero-conviction rate that effectively encourages the continuation of torture practices. In the India factsheet of Global Torture Index 2025, showing the incidents like residents of West Bengal near the Indo-Bangladesh boarder facing routine violences, tortures and extrajudicial killings by state forces where the Legal impunity were granted to the Border Security Force (BSF) hindering accountability and justice (World Organisation Against Torture, 2025). The National and State Human Rights Commissions, lack jurisdiction over violations by armed forces, creating further shortcomings in institutional mechanisms.

International Comparative Data

The Global Torture Index 2025 specifically classified India as facing a high risk of torture and ill-treatment, based on data collected in 2023 and 2024. This international assessment places India with the most concerning records of state violence (The News Minute, 2025). In March 2025, the Global Alliance of National Human Rights Institutions (GANHRI) recommended downgrading India's National Human Rights Commission (NHRC) from 'A' to 'B' status, highlighting that NHRC not addressed the 'shrinking civic space and increased instances of targeting of human rights defenders, journalists and perceived critics. International studies indicate that countries with higher rates of torture convictions and stronger anti-torture legislation experience significantly lower rates of custodial violence. India's failure to ratify the UNCAT and enact comprehensive anti-torture legislation contributes to its poor international ranking.

Recent Reform Proposals and Legislative Initiatives

Prevention of Custodial Torture Bills (2023-2024)

The most significant recent reform on the custodial torture involves the introduction of the Prevention of Custodial Torture Bills in 2023 and 2024.

Definition and Scope: Both bills provide expansive definitions of custodial torture that align with international standards. The 2024 Bill defines torture as acts by public servants that "intentionally inflict physical or mental suffering" on detained persons for purposes including obtaining confessions, punishment, or intimidation based on discrimination. The definition includes specific practices such as "food deprivation, submersion of head in water, asphyxiation, use of psychoactive drugs, maltreating family members, and inflicting shame upon the victim" (Rajya Sabha, 2023).

Burden of Proof Innovation: A crucial innovation in both bills is the reversal of the burden of proof. Section 4 states that "where custodial torture is inflicted on a person, the burden of proof that the torture was not intentionally caused or abetted by, or was not with the consent or acquiescence of, a public servant, shall shift to such public servant." (Prevention of Custodial Torture Bill, 2023).

Punishment Framework: The bills establish severe punishment regimes for custodial torture. Basic torture offences carry imprisonment of three to ten years with fines of at least one lakh rupees. Where death results from torture, the punishment escalates to life imprisonment. For custodial sexual abuse, the bills prescribe rigorous imprisonment of ten years to life.

Compensation Mechanisms: Both bills mandate comprehensive compensation frameworks. Fines imposed on convicted officials must be paid as compensation to victims. Additionally, governments must provide rehabilitation compensation considering factors including "the gravity of physical and mental harm," "lost opportunities," "material damages," and "costs for legal assistance and medical services (Rajya Sabha, 2025).

Victim and Witness Protection: Recognising the vulnerability of those who report custodial torture, both bills mandate state governments to "make arrangements for the protection of victims, complainants and witnesses against all kinds of ill-treatment, violence, threats of violence, or physical harm or mental trauma" (Rajya Sabha, 2023).

Law Commission Recommendations

The **273rd Law Commission Report (**Law Commission of India, 2017**)** provided a comprehensive framework for anti-torture legislation and UNCAT ratification. The Commission emphasised

that "tolerance of police atrocities amounts to acceptance of systematic subversion and erosion of the rule of law". Key recommendations included:

1. Ratification of the UNCAT with domestic implementing legislation
2. Creation of independent investigation mechanisms for torture complaints
3. Mandatory medical examinations and documentation of injuries
4. Time-bound investigation and prosecution of torture cases.
5. Comprehensive victim rehabilitation and compensation programs.

Judicial Reform Initiatives

Supreme Court interventions have established important procedural safeguards. The **D.K. Basu guidelines** mandate specific procedures during arrest and detention, including medical examinations, legal access, and transparency requirements. However, enforcement remains inconsistent across states and police forces (DK Basu v. State of West Bengal, AIR 1997). Recent judicial pronouncements have expanded the scope of custodial rights. In **Sunil Batra v. Delhi Administration** case, the Supreme Court recognised protection against prison torture and custodial death as fundamental rights under Article 21(Sunil Batra v. Delhi Administration, AIR 1978). The Court has also established rights to compensation for illegal detention and protection against solitary confinement. In the recent case **Paramvir Singh Saini v. Baljit Singh,** the Supreme court directed that every state shall have an oversight mechanism called Central Oversight Body (COB), in respect to the use of videography in the court scene during the investigation. And creating an independent committee, which studies the CCTV camera footages

and periodically publish a report of its observations (*Paramvir Singh Saini v. Baljit Singh & others*, (2021).

Analysis of Systemic Failures

Institutional Weaknesses

The persistence of custodial torture and multiple institutional failures. Law enforcement agencies often operate with minimal oversight, creating environments conducive to abuse. Training programs inadequately address human rights principles, while organisational incentives continue to prioritise confession extraction over proper investigation. The judicial system's delayed response to torture cases enables impunity. Lengthy proceedings, witness intimidation, and inadequate forensic capabilities undermine prosecution efforts. Fast-track courts for custodial violence cases remain rare, contributing to the culture of impunity (Vicente, A., 2024).

Cultural and Social Factors

Custodial torture persists partly due to cultural acceptance of violence as a legitimate investigative tool. Social hierarchies that devalue marginalised communities create environments where torture is seen as acceptable against certain groups. Public discourse often supports aggressive policing, creating pressure for quick results that encourage coercive practices (The Leaflet, 2025).

Legal and Policy Gaps

The absence of comprehensive anti-torture legislation creates definitional ambiguities and enforcement challenges. Existing provisions under the Indian Penal Code (now Bharatiya Nyaya Sanhita) are insufficient to address the systematic nature of custodial torture. India's non-ratification of the UNCAT. Sends a message of weak commitment to international human rights standards.

Conclusion and Recommendations

Custodial torture in India signifies a critical crisis that urgently calls for comprehensive reform across legal, institutional, and cultural dimensions. Empirical evidence reveals a staggering reality. While the constitutional framework ostensibly offers protections through Articles 14, 20, 21, and 22 and related statutes aim to create evidentiary safeguards against coerced confessions, these protections remain largely ineffective and underscore the profound inadequacy of existing systems. The ineffectiveness is largely due to institutional weaknesses, a cultural acceptance of violence, and the glaring absence of comprehensive anti-torture legislation. India's non-ratification of the UNCAT. Moreover, the NHRC, despite its established mandate, functions with limited powers and resources, which hinders effective oversight. Proposed Prevention of Custodial Torture Bills present promising reforms, especially regarding the reversal of the burden of proof and mechanisms for compensation; however, their success hinges on timely passage and robust implementation.

Critical reforms needed to be included:

1. Enactment of comprehensive anti-torture legislation.
2. Strengthening human rights commissions with binding authority.
3. Independent investigative and fast-track prosecution mechanisms.
4. Human rights–based police training and accountability culture.
5. Victim rehabilitation and compensation programs.
6. Ratification of the UNCAT.
7. Mandatory recording of interrogations and medical checks.

Only through comprehensive reform encompassing legal change, institutional accountability, and cultural transformations.

India can fulfil its constitutional promise of protecting life and liberty for all citizens, regardless of their social status or alleged crimes. The time for incremental change has passed; India must act decisively to end the systematic violence that undermines its democratic foundations and international standing.

References

1. Constitution of India, 1950, Article 14. https://indiankanoon.org/doc/367586/
2. Vatsyayan, D., & Kumari, R. (2024). Article 20 of the Indian Constitution: Relationship between constitutional and procedural laws with respect to the right against self-incrimination. iPleaders. https://blog.ipleaders.in/article-20/
3. Drishti IAS Editorial Team. (2025, July 4). Custodial torture in India. Drishti IAS. https://www.drishtiias.com/daily-updates/daily-news-analysis/custodial-torture-in-india
4. Constitution of India, 1950, Article 20. https://indiankanoon.org/doc/655638/
5. Sherin, N. B., & Akshara, B. (2025). Article 20(3) and beyond: The scope of protection against self-incrimination in India. International Journal of Creative Research Thoughts, 13(6), [IJCRT25A6059]. https://www.ijcrt.org/papers/IJCRT25A6059.pdf
6. Maneka Gandhi v. Union of India, AIR 1978 SC 597 (Supreme Court of India)
7. Ara, S. (2022). New dimensions of Article 21: Impact of Maneka Gandhi's case. Jus Corpus Law Journal, 3(1), 585–592. https://www.juscorpus.com/wp-content/uploads/2022/11/118.-Salma-Ara.pdf
8. Supreme Court of India. (1994, April 25). *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260; AIR 1994 SC 1349. https://indiankanoon.org/doc/768175/

90 Privy Council. (1939, January 19). *Pakala Narayana Swami v. Emperor*, AIR 1939 PC 47. https://indiankanoon.org/doc/516808/

10. APS Law. (2023). Confession | Bharatiya Sakshya Adhiniyam, 2023. https://apslaw.co.in/confession-bharatiya-sakshya-adhiniyam-2023/

11. Supreme Court of India. (1960, May 6). *State of U.P. v. Deoman Upadhyaya*, AIR 1960 SC 1125; 1960 Cri LJ 1501. https://indiankanoon.org/doc/481284/

12. Bharatiya Nyaya Sanhita, 2023, Section 22. https://prsindia.org/files/bills_acts/bills_parliament/2023/Bharatiya_Nyaya_Sanhita,_2023.pdf

13. Drishti IAS Editorial Team. (2025, July 4). Custodial torture in India. Drishti IAS. https://www.drishtiias.com/daily-updates/daily-news-analysis/custodial-torture-in-india

14. Protection of Human Rights Act, 1993, Section 12. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_24_000010_199410_1517807322704&sectionId=26819&sectionno=12

15. Karimi, Z. u. R. (2022). Protection of Human Rights Act, 1993: Detailed analysis. iPleaders. https://blog.ipleaders.in/protection-of-human-rights-act-1993/

16. Protection of Human Rights Act, 1993, § 18. Ministry of Law and Justice, Government of India. https://www.indiacode.nic.in/bitstream/123456789/20098/1/human_rights_act,_1993.pdf

17. Ministry of Law and Justice, Government of India. (1993, January 8). The Protection of Human Rights Act, 1993. Rural India Online. https://ruralindiaonline.org/hi/library/resource/the-protection-of-human-rights-act-1993/

18. Ministry of Home Affairs, Government of India. (2022, March 22). *Custodial deaths: Lok Sabha unstarred question no. 3019* (Answered by Minister of State Shri Nityanand Rai). https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/LS-22032022/3019.pdf

19. World Organisation Against Torture. (2025). *Global Torture Index 2025: India factsheet*. https://www.omct.org/site-resources/files/factsheets/Factsheet-India.2025.pdf

20. The News Minute. (2025, June 25). First ever Global Torture Index flags India as 'high risk' country. https://www.thenewsminute.com/news/first-ever-global-torture-index-flags-india-as-high-risk-country

21. Rajya Sabha, Parliament of India. (2023, December 8). The Prevention of Custodial Torture Bill, 2023 (Bill No. XXXI of 2023). https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/custodial_torture-E1219202344710PM.pdf

22. Prevention of Custodial Torture Bill, 2023, Section 4. Parliament of India. https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/custodial_torture-E1219202344710PM.pdf

23. Rajya Sabha, Parliament of India. (2025, February 7). The Prevention of Custodial Torture Bill, 2024 (Bill No. LVIII of 2024). https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/25e214202550316PM.pdf

24. Law Commission of India. (2017, October). Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through legislation (Report No. 273). Government of India. https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081620.pdf

25. Supreme Court of India. (1997). DK Basu v. State of West Bengal, AIR 1997 SC 610; (1997) 1 SCC 416.

26. Supreme Court of India. (1979). Sunil Batra v. Delhi Administration, AIR 1978 SC 1675; (1978) 4 SCC 494.

27. Supreme Court of India. (2020, December 2). Paramvir Singh Saini v. Baljit Singh & others, (2021) 1 SCC 184. https://indiankanoon.org/doc/88573149/

28. Vicente, A. (2024). Unchecked and unpunished: New report examines how torture became normal in India. REDRESS. https://redress.org/news/unchecked-and-unpunished-new-report-examines-how-torture-became-normal-in-india/

29. The Leaflet. (2025, June 26). World Organisation Against Torture flags India as "high risk" country for police torture: Some reflections. https://theleaflet.in/explainer/world-organization-against-torture-flags-india-has-high-risk-country-for-police-torture-some-reflections

30. India's non-ratification of UNCAT. https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/RS28072021/1004.pdf

Grains Misallocation, Public Distrust: Unpacking India's Ration Shop Irregularities

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Abstract

India's Public Distribution System (PDS) was established to ensure food security for the poor and marginalized, providing subsidized food grains to Below Poverty Line and other vulnerable groups through a nationwide network of ration shops. Despite its humanitarian objectives, the PDS continues to be undermined by entrenched corruption and systemic loopholes manifesting in ghost beneficiaries, bogus ration cards, digital manipulation, and widespread diversion of stocks to the open market. Recent scandals, including the arrest of government officials and exposure of digital fraud, etc, highlight how administrative apathy and weak accountability deprive millions of rightful entitlements, amounting to tens of thousands of crores in annual losses and exacerbating food insecurity. By examining real life cases across various states, this paper analyzes the policy execution and public oversight and its failures. The research suggests practical reforms such as increased transparency, stricter punishment, digital safeguards, and community empowerment to restore the effectiveness and justice of the PDS. The overarching goal is to ensure every family receives its legitimate share, aligning the system with its foundational aim of eradicating hunger and poverty.

Keywords: *Ghost beneficiaries, Bogus ration card, Food security governance, Corruption, Digital identity exploitation.*

The Public Distribution System – A Double-Edged Sword

The objective of this paper is to examine the documented cases and reports of PDS fraud and analyse systematic loopholes involving administrative negligence, manipulation, price rigging, involvement of several high-profile political figures, including sitting ministers, have been directly implicated in large-scale ration shop scams, exposing deep-rooted corruption in India's food distribution system. This paper also recommends practical solutions like transparency, stricter accountability, and community empowerment to restore PDS as a lifeline for India's hungry.

Patterns of Irregularities - Types and Tactics

Empirical findings confirm widespread irregularities and malpractices that deprive low-income families of their entitled food-supplies. Grains allocated for vulnerable households are frequently diverted to unauthorized markets.

The methods employed are straightforward:

- Fake beneficiaries are added using forged documents.
- Aadhaar-linked identities are misused to collect rations for people who never show up.
- Stock records are manipulated to conceal discrepancies between allocated and distributed grain.

Meanwhile, genuine beneficiaries are often denied their rations with excuses like:

- **"There's no stock today" -** This is a frequent complaint across ration shops in India. A report by ICRIER revealed that nearly ₹69,000 crore worth of subsidized grains are leaked annually - either diverted to the open market or lost due to poor tracking.

States like Uttar Pradesh, Maharashtra, and Himachal Pradesh face high leakage rates, etc. (The Economic Times, 2024)

- **"Your fingerprint didn't match" -** This issue is especially common among elderly citizens and manual labourers. In Rajasthan, 80-year-old Chunni Bai Salvi was denied rations because her worn-out fingerprints couldn't be captured by the biometric machine. Her ration card was deleted until she completed e-KYC, which she couldn't do due to fingerprint failure. Similar cases have been reported in Punjab, where elderly people were denied wheat because their thumb impressions didn't match Aadhaar record. (Down To Earth, 2024 & The Tribune, 2025)
- **"The system isn't working" -** Technical failures in e-KYC and biometric systems are widespread. In Jharkhand, Gujarat, and Tripura, migrant workers were denied rations because their e-KYC didn't reflect correctly in the system-even after completing the process. Poor internet connectivity, faulty e-POS machines, and software mismatches often leave citizens stranded, with no way to access their entitlements. (India Development Review, 2025)

These real-life examples show how everyday excuses at ration shops are symptoms of deeper systemic failures. These practices persist due to inadequate oversight and complicity among officials tasked with welfare protection.

Regional Patterns of Fraud

Ration shop scams take different forms in various states, yet they all share common roots. The case studies below highlight how these fraudulent practices are deeply woven into the everyday workings of public systems across India.

➢ In one reported case, a poor widow from Murshidabad was not getting her monthly ration, despite having a valid ration card. She complained many times, but the local officials did nothing. Later, an RTI activist helped her and asked the government to show the full list of people getting ration benefits. When an audit was done, it was found that more than 40,000 fake ration cards were made in the names of dead or imaginary people. The activist said that some ration shop dealers and political workers worked together to cheat the system. They added fake names to the list so they could steal the grains and use them to get votes. Later, a few dealers were suspended holding an inquiry but no criminal case was filed. This shows how weak the local checking system was and how government welfare schemes were being misused for political benefits. (The Economic Times, 2024)

This incident is based on RTI disclosures and media reports and is therefore treated as an allegation of maladministration.

➢ Tamil Nadu: Alleged Procurement Irregularities Highlighted by Arappor Iyakkam (PIL, 2020)

The NGO complained to the CBI through PIL that the Tamil Nadu Civil Supplies Corporation had changed tender rules so that only a few private companies could get the contracts. To hide this, they gave contracts through government companies, avoiding fair competition. These private firms sold goods at prices much higher than the market rate. For example, palm oil was bought at ₹85.50 per pouch while the market price was only ₹75.57. Because of this, the government lost a huge amount of money. Arappor Iyakkam said that just the tur-dal purchase led to a loss of ₹750 crore, and the sugar tenders caused another ₹111 crore loss. The NGO requested to remove the food minister and suspend all officials involved and also shared documents from RTI revealed collusion between companies and officials to exploit the system. (The Times of India, 2020)

➢ Maharashtra: Malfeasance and institutional Collapse

The Anti-Corruption Bureau began an inquiry against the Food and Civil Supplies Minister after a ₹100 crore scam was found in the PDS. During the investigation, officers discovered that truckloads of subsidized grains meant for poor families were secretly sent to private godowns. To hide this, fake delivery receipts and false transport records were used. The prosecution said the minister, along with some district supply officers and transport contractors, broke rules under the Essential Commodities Act and the NFSA, 2013. The Minister was arrested and sent to judicial custody, and the case is still going on in court. Because of this scam, thousands of poor families did not get rations on time. People who tried to expose the corruption were threatened. (EC Act, 1955)

➢ Madhya Pradesh: Digital Deceit and Biometric Exploitation

Media reports and anticorruption investigations in Maharashtra have documented instances where subsidised PDS grains were allegedly diverted from trucks to private godowns using falsified delivery and transport records, leading to criminal proceedings against public officials and contractors under the Essential Commodities Act and related laws. A daily wage worker went to collect his monthly ration but was shocked to learn that his share had already been taken, even though he had never visited the shop. He filed a complaint, and after that, the State Food Commission ordered an audit. The audit found that some ration dealers were misusing technology. They used fake fingerprint scanners and copied people's biometric data to steal rations without Aadhaar verification. The worker said this was a case of digital fraud and complained that the grievance system failed to help him. He mentioned that this was a violation of both the NFSA and the Aadhaar Act, 2016. After the inquiry, the Commission ordered re-checking of all biometric systems and suggested action against the dealer. However, no criminal case was filed. This incident showed

that even digital systems can be misused and that there is a strong need for better monitoring and people-friendly complaint systems.

➢ Field reports from Bengaluru show ONORC portability is underused as FPS dealers face quota caps that exclude interstate migrants late in the month, while biometric failures and documentation delays further restrict access; an IIM study (2024) notes Karnataka's sharp gap of only 698 inter-state compared to 1 million intrastate transactions, highlighting uneven enforcement. (Sage Journal)

➢ State Vigilance & Special Investigation Team

In 2024, Andhra Pradesh uncovered a major PDS scam involving the illegal export of subsidized rice from Kakinada Port to International markets. The rice meant for poor families was rebranded and smuggled with the help of Custom House Agents. In response, the state government formed a Special Investigation Team led by CID IG Vineet Brij Lal to probe 13 cases and report progress fortnightly. SIT's investigation exposed systemic collusion and highlighted governance-failures. (Hindustan Times, 2025)

Impact on Vulnerable Populations

The PDS is meant to help poor families get basic food at low prices. But when the system fails, it hurts the people who need it the most. Another biggest problem is food insecurity. As a result, families often go hungry, skip meals, or borrow food from others which lead to serious health problems, especially for children and women. NFHS5 data indicate that child malnutrition indicators such as stunting and underweight remain high in several states, even though PDS coverage has expanded. While this survey does not quantify the direct causal impact of PDS leakage on malnutrition, coexistence of high undernutrition and documented distribution failures suggests that gaps in implementation may undermine the nutritional potential

of the scheme. Ministry of Women and Child Development-data from a recent ICRIER policy brief, using the 2022-23 Household Consumption Expenditure Survey, estimates that about 28% of rice and wheat allocated under the PDS roughly 20 million tonnes do not reach beneficiaries, corresponding to a fiscal loss of approximately ₹69,108 crore in one year. (The Hindu Business Online, 2024).

The financial impact is very hard on poor households. When they don't get subsidized grains, they buy food at market prices making it costlier. Many families end up spending most of their income just to eat, and some even fall into debt or cut down on meals to save money. Over time, these repeated problems make people lose trust in the system. Instead of seeing ration shops as a source of help, they start seeing them as corrupt and unreliable. This loss of trust weakens the whole idea of social welfare and makes people less likely to ask for support when they really need it.

Legal and Policy Framework

I. National Food Security Act, 2013

The **National Food Security Act (NFSA)** was passed in 2013 to make food a legal right for people. It says that:

- Most rural and urban families should get cheap food grains every month through ration shops. Poor families - **Priority households** get 5 kg per person per month. While, the **Antyodaya households** get 35 kg per month**.**
- Pregnant women, breastfeeding mothers, and children also get free meals through Anganwadi centres and schools.
- If people don't get their rations, the government must give them a **Food Security Allowance**.

This Act is meant to help people live with dignity and avoid hunger. Although NFSA creates a justiciable right to subsidised food grains, enforcement of entitlements remains uneven; grievance

redressal mechanisms under the Act are often underresourced and underutilised, limiting timely remedy when distribution failures occur. (NFSA, 2013)

II. Vigilance Committees

To stop corruption in ration shops, the government has set up **Vigilance Committees** at different levels:

- Include local leaders and citizens, where half of them are women.
- They monitor the functioning of PDS and send reports to the government.
- Discuss complaints from the public and try to solve them.

However, some field reports show that Vigilance Committees are irregularly constituted or rarely meet in many districts. (Food, Civil Supplies and Consumer Protection Department)

III. Right to Information (RTI)

The **RTI Act** helps people ask for records from ration shops like who got rations, how much stock is available, and whether there are fake entries.

Despite being an effective tool for exposing discrepancies in beneficiary lists and stock registers, activists frequently report delayed responses and incomplete disclosures, constraining its deterrent impact.

IV. Judicial Help and PILs

Sometimes, when the system fails, people go to court using PILs. These are special cases where anyone can ask the court to help poor or affected people. Several PILs across India such as in Arunachal Pradesh, West Bengal, and Chhattisgarh etc., have exposed large-scale PDS scams, prompting judicial scrutiny, enforcement actions,

and demands for independent investigations. (Live Law, 2015 & The Economics Times, 2015)

V. Lokayuta

An independent body helps uncover issues like fake ration cards and illegal diversion of food supplies. When the government fails to act, the Lokayukta investigates and recommends punishment for involved officials. This promotes fairness and accountability in the system. However, even when Lokayuktas document irregularities and suggest action, executive follow-through remains limited, making an widen-gap.

Recommendations to Strengthen the Public Distribution System

To address the recurring issues in the PDS, a combination of technology, legal reform, community participation, and empowered local governance is essential. Here are few suggestions to look into and solve the problem to create a better system:

- There could be small legal awareness sessions at ration shops once a month. In these sessions, law students or volunteers can explain, in easy language, what families are entitled to under the NFSA and what to do if there is any problem, like being denied ration or asked for extra money. Pamphlets with important phone numbers and complaint details should be given out to everyone. People should also be encouraged to ask questions and share their experiences. These awareness sessions will help regular people understand their rights, report scams, and make sure the PDS works better for everyone. This way, more families can get the benefits they deserve, and scams at ration shops can be prevented.

- ➢ Sometimes people at rations are unsure if the stock they need has arrived or if supplies are running low. Putting up a simple QR code board at the entrance of each ration shop where anyone can scan the code using their phone to see updates on which items are available, how much stock is left, and when new supplies are expected. This makes the process very clear and helps people plan their visits, so they don't have to wait in long lines or return empty-handed. These QR code must be regularly updated. When people can easily check stock status, it builds trust and helps ensure fair distribution for all families.
- ➢ Many ration shop customers feel helpless when they face cheating, stock shortages, or bad treatment because they don't know whom to contact for help. A clear solution is to have a District-Level Complaint Officer for every district. This officer should be in charge of listening to complaints about ration shops and making sure problems are solved quickly. Their phone number and office address should be written on a board at every ration shop so anyone can reach out easily. People should be able to file complaints by phone, online, or in person. The officer must check every complaint and report what action was taken so people can trust the system. When there is a dedicated officer, beneficiaries will feel more confident to speak up, and shopkeepers will be careful to act honestly. This ensures that there is someone responsible for helping regular people and keeping the PDS fair for all.
- ➢ Sometimes, people face problems at ration shops but feel scared or alone when complaining. Public hearings can help solve this by bringing everyone together in a safe space. Every few months, district officials can organize an open meeting where ration card holders can share their problems, ask questions, and talk directly to officers and shopkeepers. These meetings should be announced in advance so everyone gets a chance to attend. Officials must listen to all complaints and

give clear answers or solutions right then whenever possible. When problems are discussed openly, it puts pressure on shopkeepers and authorities to fix them quickly, and more families feel confident to speak up. Public hearings help people find their voice, increase trust in the system, and make ration distribution fairer for everyone.

➢ **Nationwide Initiatives**

1. The **Government of India** has removed over **5.8 crore fake ration cards** through digitization. (Business Standard, 2025)
2. Deployed **5.33 lakh e-PoS devices** across fair price shops, enabling Aadhaar-based authentication. (The Economic Times, 2024)
3. Introduced **Vehicle Location Tracking Systems** integrated with railways for real-time monitoring of food shipments. (Food Corporation of India)
4. Launched the **One Nation One Ration Card** scheme for nationwide portability of benefits.

Conclusion

This paper discusses ways to enhance the PDS by addressing the common problems faced by many people across India. I believe that straightforward measures like increasing legal knowledge, encouraging community oversight, and adopting better technology can bring about meaningful change. The objective is not merely to repair one system but to ensure that government services are delivered fairly and free from corruption. Effective laws and policies must work hand in hand to safeguard citizens and strengthen social welfare programs. Even small initiatives can promote transparency and build trust. As a student still learning, I recognize the importance of exploring how legal frameworks can address everyday challenges. I hope this paper contributes to that dialogue

and inspires more people to critically examine and improve existing systems.

References

1. Business Standard, 2025*, 'Govt digitisation drive removes 58 million fake ration cards from PDS'*, Govt digitisation drive removes 58 million fake ration cards from PDS | India News - Business Standard.
2. Chinmay Tumbe and Rahul Kumar Jha 2024, One Nation, One Ration, Limited Interstate Traction: Migration and PDS Portability in India - Chinmay Tumbe, Rahul Kumar Jha, 2024, Sage journals, volume 9 Issue 1.
3. EC Act (1955a) Section 3, The Essential Commodities Act, (1955).
4. EC Act (1955b) Section 6A, The Essential Commodities Act, (1955).
5. EC Act (1955c) Section 7, The Essential Commodities Act, (1955).
6. EC Act (1955d) Section 10, The Essential Commodities Act, (1955).
7. EC Act (1955e) Section 10C, The Essential Commodities Act, (1955).
8. Food, Civil Supplies and Consumer Protection Department - Vigilance Committees Under Public Distribution System | अन्न, नागरी पुरवठा आणि ग्राहक संरक्षण विभाग | भारत.
9. Food Corporation of India, '*Vehicle Location Tracking System',* Food Corporation of India.
10. Julie Mariappan, 2020 https://timesofindia.indiatimes.com/city/chennai/tamil-nadu-1500-crore-scam-in-pds-alleges-arapporiyakkam/articleshow/73604079.cms The Times Of India, 2020.
11. Live Law, 2015, PIL filed in SC alleging involvement of Chattisgarh CM in PDS scam; CBI probe sought.
12. Ministry of Women and Child Development, "Malnutrition among Children", 2022, Press Release:Press Information Bureau.
13. NFSA, 2013 NFSA.

14. Sameet Panda and Sweta Dash 2024 How e-KYC failures in PDS restrict access to food | IDR India Development Review, 2025.

15. Shagun 2024 Weathered hands, worn rights: Biometric failures block access to rations for seniors, labourers under e-KYC, Down To Earth, 2024.

16. Srinivasa Rao Apparasu (2024) Andhra govt forms SIT to probe illegal rice exports case | Latest News India - Hindustan Times, Hindustan Times, 2025.

17. The Economic Times, 2024 □69,000 crore vanishes in grain leakages: Where is India's free ration going? - The Economic Times.

18. The Economic Times, 2024, *'Digitisation drive transforms PDS system; 5.8 crore fake ration cards eliminated: Govt',* Digitisation drive transforms PDS system; 5.8 crore fake ration cards eliminated: Govt - The Economic Times.

19. The Economics Times, 2015, '*Status report on multicore PDS scam',* Status report on multi-crore PDS scam submitted to Gauhati High Court - The Economic Times.

20. The Hindu Business Online, 2024, Icrier study pegs PDS leakage at □69,108 cr, suggests cash transfer - The HinduBusinessLine.

21. The Tribune, 2025 Mismatch of fingerprints: Ration card holders harried - The Tribune

Tracing the Historical Roots of Human Rights in India

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Abstract

The history of human rights reflects a complex and evolving journey that underscores their growing importance. The evolution of human rights can be examined from two main perspectives: religious or philosophical, and legal. Rooted in India's ancient ethical and religious traditions, principles such as Dharma, Nyaya, and Ahimsa provided a moral foundation for governance and social order. In contemporary times, human rights have attained their structure through continuous transformation from ancient to modern periods. In ancient times, human rights were primarily based on religious philosophies. Hindu scriptures such as the Vedas, Upanishads, and Dharmashastras, along with the humanitarian teachings of Buddhism and Jainism, emphasized equality, compassion, and respect for human dignity. Similarly, the Bible guided Christians, while the Quran shaped Islamic views on human rights. During the medieval period, reformist movements and policies promoting tolerance and social harmony further advanced the understanding of rights. The colonial era marked a crucial transition, where the struggle for political independence became intertwined with demands for civil liberties and social justice. The framers of the Indian Constitution ultimately synthesized these indigenous traditions with international human rights norms, reflecting the legal perspective.

This article explores the transition of human rights from historical roots to contemporary frameworks.

Keywords; *Human Rights, Dharma, Ancient India, Colonial Rule, Indian Constitution, Social Justice.*

1. Introduction

The conception of human rights transcends contemporary discourse, with its origins deeply rooted in antiquity. Its gradual evolution has culminated in its recognition as a cardinal principle of international law, dedicated to safeguarding individual dignity. In the Indian context, historical epics, canonical literature, and scholarly commentaries consistently elucidate the rights and corresponding duties inherent to the human condition. The normative framework of ancient Indian human rights was grounded in the concept of *dharma*, a principle that continues to exert jurisprudential influence within modern legal systems. Scriptures such as the *Vedas*, *Mahabharata*, *Ramayana*, and *Bhagavad Gita* embody this doctrine, emphasizing that sovereigns in antiquity bore the obligation to administer justice in accordance with *dharmic* precepts, thereby ensuring equitable redress for the populace.

During the medieval period, the understanding of human rights assumed a more legal perspective, representing an early phase of enlightenment in the development of human rights thought. The 19th and early 20th centuries marked significant progress in the recognition and protection of human rights, reaching a defining peak in the aftermath of the two World Wars. Subsequently, in the generations following the 20th century, human rights came to be systematically classified into three distinct generations: the first comprising civil and political rights, the second encompassing economic, social, and cultural rights, and the third identified as solidarity rights. Collectively, these categories constitute the comprehensive framework of modern human rights.

2. Human Rights in Ancient and Classical India(1500–600 BCE)

Human rights are not a modern development but have their roots in ancient Indian thought, particularly in the concept of natural law. The Sanskrit word *Veda* derives from the root *vid*, meaning "knowledge" or "wisdom." The Vedas, regarded as divine revelations (*apaurusheya*) transmitted through sages, are the earliest sacred records known to humanity. They were preserved and passed down orally through generations. (Kumar.S, & Choudhry, S. 2020)

According to the *Rig Veda*, all human beings are equal no one is superior or inferior. It advocates collective welfare, unity of purpose, and harmony of thought, emphasizing that all must work together for the common good. The *Atharva Veda* reinforces this idea by declaring that everyone has equal rights to necessities such as food and water and that all share equally in the responsibilities of life. The *Atharva Veda Samjnana Sukta* expresses principles similar to those enshrined in the Preamble of the United Nations Charter, which upholds faith in fundamental human rights, the dignity and worth of every individual, and the equal rights of men and women aimed at promoting social progress and freedom.

The Vedas also recognize the liberty of body (*Tan*), home (*Skridhi*), and life (*Jibase*), thereby establishing early notions of personal and civil rights. These rights were intertwined with *Dharma* the moral and ethical duties guiding human conduct. Duties were defined toward oneself, one's family, society, and the broader world. Rooted in the ideal of *Vasudhaiva Kutumbakam* "the world is one family" ancient Indian philosophy prioritized the welfare of all beings, reflecting a holistic vision of human rights.

In the *Bhagavad Gita*, *Dharma* is described as the essence of righteousness, and *Swadharma* represents one's moral duty based on personal values. It asserts that performing one's own duties, even imperfectly, is better than performing another's perfectly, reinforcing

the idea of moral responsibility as a cornerstone of justice and harmony. While Vedic literature articulates ideals of equality, collective welfare, and human dignity, it simultaneously coexisted with social stratification that later crystallized into the caste hierarchy. This presents an inherent tension within ancient Indian thought. where moral philosophy emphasized universal human worth, yet social practice often legitimized differential status and privileges. Therefore, ancient notions of human rights were largely ethical and aspirational rather than uniformly enforceable legal rights in the modern sense.

The *Mahabharata* and *Ramayana* reflect early notions of human rights through their emphasis on *dharma* the moral duty to uphold justice, equality, and human dignity. In the *Mahabharata*, Vidura's teachings advocate impartial governance and fairness, while Bhishma's life illustrates sacrifice and moral responsibility toward society. The *Ramayana* reinforces these principles through Rama's commitment to truth and justice and Sita's embodiment of virtue and integrity. Both epics promote respect for individual dignity, equality before law, and social welfare, core values that form the foundation of modern human rights. (Philosophy Institute, 2023).Thus, the ancient Indian texts the *Vedas*, *Arthashastra*, *Dharmashastras*, *Mahabharata*, and *Ramayana* together reveal that the ideals of human dignity, equality, and justice were deeply embedded in India's early intellectual and moral tradition, forming a strong foundation for the later development of human rights.

3. Human Rights in Medieval India(500-1500 CE)

The medieval period in India, under Muslim rule, represents a complex stage in the development of human rights. During the reign of Delhi sultanate rulers like Alauddin khilji and Ghiyasuddin balban did not pay heed to the concept of human rights. Ghiyasuddin balban introduced the practice of Sijdah and Paibo which shattered the dignity of common human beings. During alauddin khilji's

period human beings were discriminated on the basis of religion. (Vajiram Ravi 2025). During Emperor Akbar's reign (1526–1605), the idea of human rights gained prominence through his emphasis on social justice, equality, and religious freedom. His policy of *Din-i-Ilahi* (Divine Faith) sought to foster secularism, tolerance, and mutual respect among diverse communities. Furthermore, the Bhakti and Sufi movements reinforced the principles of equality, compassion, and universal brotherhood key foundations of human rights. However, these progressive ideals often weakened under later Mughal rulers such as Babur, Humayun, and Aurangzeb, leading to periods of religious and social rigidity. (Agarwal A, 2023)

4. Human Rights Under Colonial Rule(1757-1947)

The period of British colonial rule in India (1757-1947) is remembered as one of the darkest and most formative periods in the subcontinent's history of human rights. The British colonial state established a highly exploitative and racially discriminatory system that routinely violated Indian individuals' basic civil, political, and economic rights (Bandyopadhyay, 2018). During the British Raj, India was ruled primarily to suit imperial interests rather than the welfare of its people, resulting in harsh restrictions on freedom and dignity. Economically, the British government pursued policies rooted in the laissez-faire ideology a supposedly "hands-off" approach that, in practice, justified non-intervention in famines and economic crises while exploiting Indian labor and resources. The Great Bengal Famine of 1943, which resulted in millions of deaths, was exacerbated by the colonial administration's refusal to intervene, reflecting the darker side of laissez-faire economics. British officials claimed that market forces would regulate food supply, yet this indifference to human suffering highlighted a profound violation of the right to life and dignity (Sitharamam Kakaraka, 2022)

4.1. Human rights violations during British rule

A series of repressive laws and administrative procedures firmly established the denial of fundamental liberties. The Rowlatt Act of 1919 authorized authorities to arrest and hold people without trial, essentially nullifying the right to personal liberty. Similarly, the Vernacular Press Act of 1878 limited free expression by targeting Indian-language periodicals critical of British policies. Political disagreement was frequently associated with sedition, resulting in the imprisonment of notable figures like as Bal Gangadhar Tilak and Annie Besant. Economically, British policies allowed the "drain of wealth" a term coined by Dadabhai Naoroji to characterize the vast movement of Indian resources to Britain, which exacerbated poverty and violated economic justice.

4.2. Racial Discrimination and Economic Exploitation

The colonial regime institutionalized racial prejudice at all levels. Indians were barred from top administrative positions and experienced social segregation, supporting the notion of European superiority. Economically, the British demolished indigenous crafts and enterprises, establishing exploitative land revenue schemes like as the Permanent Settlement (1793), which impoverished peasants and resulted in frequent famines. The Bengal Famine of 1943, which killed over three million people, demonstrated the repercussions of colonial carelessness and economic incompetence.

4.3. Major incidents that shape human rights consciousness

Among the most prominent occurrences that sparked human rights awareness was the Jallianwala Bagh Massacre (1919), in which British forces led by General Dyer opened fire on unarmed citizens in Amritsar, killing hundreds. This crime represented a watershed moment in India's quest for dignity and justice, eliciting both national indignation and international condemnation. Similar

acts of persecution during the Non-Cooperation and Civil Disobedience Movements demonstrated the colonial state's contempt for the principles of liberty and equality it purported to defend.

4.4. Gandhi's Philosophy and Human Rights Advocacy

In reaction to this oppressive situation, Mahatma Gandhi emerged as a moral and political leader who reinvented human rights discourse through ahimsa and satyagraha. Gandhi's ideology highlighted the inherent dignity of all humans and advocated for peaceful resistance to injustice. His efforts, ranging from the Champaran Satyagraha (1917) to the Salt March (1930), were not only political protests, but ethical claims of basic human rights. Gandhi's principles transcended national boundaries, inspiring worldwide civil rights and decolonization movements.

Finally, while colonial authority was marked by severe human rights violations, it also served as the crucible in which India's human rights consciousness was formed. The hardships experienced under British rule created a moral and political awakening that formed the ideas of equality, liberty, and justice enshrined in the Indian Constitution of 1950. (Pletcher K 2019)

5. The Constitutional Framework in the Post-Independence Era in India (1947 Onwards)

India faced the enormous challenge of rebuilding a country severely split by social inequity, colonial abuse, and economic hardship after attaining independence in 1947. Under the guidance of Dr. B. R. Ambedkar, the framers of the Constitution aimed to establish a moral and legal framework that would ensure everyone's equality, liberty, and dignity. As a result, the 1950 Indian Constitution became a revolutionary charter with human rights ideas at its foundation. It was inspired by international texts like the 1948 Universal

Declaration of Human Rights and was based on India's own freedom struggle ideals.

5.1. Fundamental Rights

The cornerstone of India's human rights system is the Fundamental Rights, which are protected by Part III of the Indian Constitution and ensure a fair balance between social order and individual liberty. Under Article 32, which Dr. B.R. Ambedkar referred to as the "heart and soul" of the Constitution, they are directly enforceable in a court of law. By offering constitutional protection against state arbitrariness, these rights seek to preserve human dignity, equality, and freedom. The cornerstone of India's human rights protection is the Fundamental Rights, which are outlined in Part III of the Constitution. They stand for enforceable rights that guarantee social, political, and civil liberties. While Articles 19 to 22 safeguard the freedoms of expression, assembly, association, movement, dwelling, and occupation as well as the right to life and individual liberty, Articles 14 to 18 guarantee the right to equality by outlawing untouchability and noble titles. The Republic's core values of secularism and religious pluralism are guaranteed by Articles 25 to 28, which also guarantee religious freedom. In order to address systematic human rights breaches that date back to colonial times, the right against exploitation expressly forbids child labour and human trafficking. Despite the comprehensive constitutional guarantees of fundamental rights, significant gaps persist between legal provisions and their practical enforcement in contemporary India. Caste-based discrimination continues to affect marginalized communities despite the abolition of untouchability under Article 17 of the Constitution. Gender-based violence, including domestic abuse and sexual assault, remains widespread, reflecting deeply entrenched patriarchal norms that undermine constitutional commitments to equality and dignity. Furthermore, incidents of custodial violence, police brutality, and misuse of state power reveal

systemic weaknesses in accountability mechanisms. These realities demonstrate that constitutional recognition of rights must be supported by effective enforcement, institutional reform, and sustained social transformation to ensure meaningful protection of human dignity.

5.2. Directive Principles of State Policy

The Directive Principles of State Policy in Part IV specify the State's moral and socioeconomic responsibilities in addition to these legal rights. These ideas, which draw inspiration from Gandhian philosophy and the Irish Constitution, seek to create a welfare state that guarantees social justice, economic equality, and protection for underprivileged populations. Articles 38, 39, and 41–43A support labour welfare, gender justice, and fair resource distribution all significant aspects of socioeconomic human rights. Despite being non-justiciable, the DPSPs have influenced legislative and judicial interpretation in order to achieve substantive equality. (The Constitution of India, 1950)

5.3. Judicial Expansion and Key Cases

Through judicial interpretation, the Indian judiciary has significantly contributed to the expansion of human rights. The Supreme Court established the "Basic Structure Doctrine" in Kesavananda Bharati v. State of Kerala AIR 1973 SC 146, holding that fundamental rights are a part of the unchangeable basis of the Constitution. This ruling guaranteed that parliamentary amendments could not compromise the fundamental principles of human rights. (Kesavanda Bharati v. State of Kerala 1973)

The Court reinterpreted Article 21 in Meneka Gandhi v. Union of India AIR 1978 SC 5, ruling that "the right to life and personal liberty" encompasses both the right to physical existence and the right to live with dignity. By connecting Articles 14, 19, and 21 into a single guarantee of justice and rationality in State conduct,

this ruling marked the start of judicial activism and the era of growing human rights jurisprudence. Fundamental Rights and Directive Principles together form the foundation of India's human rights framework, protecting individual freedoms while promoting social and economic justice for a dignified and equitable society. (Maneka Gandhi v. Union of India, 1978)

6. Conclusion

The concept of human rights in India is not a modern development but an evolution of the ancient idea of natural rights found in sacred texts such as the *Vedas*, *Ramayana*, *Mahabharata*, *Arthashastra*, and even in the *Quran* and *Bible*. Though each religion followed its own scriptures, the underlying principle of human dignity, justice, and equality remained universal. Over time, these moral and spiritual values evolved through reform movements and struggles against social and political oppression. During the freedom movement, they transformed into demands for liberty and justice. In contemporary India, these natural rights gained legal recognition through the Indian Constitution, which embodies the ideals of equality and dignity for all. Furthermore, India's adherence to the Universal Declaration of Human Rights (UDHR) reaffirms its commitment to preserving and promoting universal human rights.

References

1. Ancient Vedic literature and Human Rights: resonances and dissonances. *Cogent Social Sciences*, *7*(1). https://doi.org/10.1080/23311886.2020.1858562
2. Ethical Paradigms in Indian Epics: Lessons from Mahabharata and Ramayana. Philosophy Institute. https://philosophy.institute/indian-philosophy/ethical-lessons-mahabharata- ramayana/
3. Ghiyas ud din Balban, Administration, Tomb, Dynasty. *Vajiram and Ravi*. https://vajiramandravi.com/upsc-exam/ghiyas-ud-din-balban/

4. History of human rights in India. Law Bhoomi. https://lawbhoomi.com/history-of-human-rights-in-india/#Human_Rights_in_Medieval_India

5. *Human Rights Movement in Colonial India- An Historical Perspective*. Scholarship Repository. https://repository.nls.ac.in/nlsj/vol6/iss1/13

6. Jallianwala Bagh Massacre | Causes, History, Death Toll, Importance, & Facts. In *Encyclopædia Britannica*. https://www.britannica.com/event/Jallianwala-Bagh-Massacre

7. Kumar, Shailendra, and Sanghamitra Choudhury. "Ancient Vedic Literature and Human Rights: Resonances and Dissonances." Cogent Social Sciences, vol. 7, no. 1, 27 Dec. 2020, p. 1858562,

8. Singh, Y. (2022). A Study of Human Rights Existence in Ancient India. 10(11), 2320–2882.

9. https://ijcrt.org/papers/IJCRT2211599.pdf https://doi.org/10.1080/23311886.2020.1858562.

10. Ethical Paradigms in Indian Epics: Lessons from Mahabharata and Ramayana • Philosophy Institute. (2023, September 16). Philosophy Institute. https://philosophy.institute/indian-philosophy/ethical-lessons-mahabharata- ramayana/

11. Vajiram Editor. "Ghiyas Ud Din Balban, Administration, Tomb, Dynasty." Vajiram and Ravi, vajiramandravi, 14 Oct. 2025, vajiramandravi.com/upsc-exam/ghiyas-ud-din-balban/. Accessed 27 Oct. 2025

12. Sitharamam Kakarala. (2022). Human Rights Movement in Colonial India- An Historical Perspective. Scholarship Repository. https://repository.nls.ac.in/nlsj/vol6/iss1/13

13. Pletcher, K. (2019). Jallianwala Bagh Massacre | Causes, History, Death Toll, Importance, & Facts. In Encyclopædia Britannica. https://www.britannica.com/event/Jallianwala-Bagh-Massacre

Synchronizing Democracy: A Critical Study of the One Nation, One Election Proposal in India

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Abstract

In India, periodic elections constitute the backbone of democratic accountability, enabling citizens to reaffirm or reconsider their political preferences at regular intervals. Over the years, policy reports, political manifestos, and constitutional debates have shaped the evolving discourse on the One Nation, One Election (ONOE) proposal. Despite its increasing visibility in the national policy arena, critical questions remain unresolved regarding its administrative feasibility, constitutional validity, and democratic implications. This chapter examines these issues comprehensively through the lenses of federalism, democratic representation, economic rationale, and comparative global practices. While proponents highlight potential cost savings and policy stability, critics emphasize concerns about centralization of power, dilution of regional autonomy, and the possible weakening of democratic feedback loops. Using an interdisciplinary approach integrating constitutional law, political theory, and public administration, the study concludes that although synchronized elections may offer efficiencies, they risk undermining India's plural polity and federal structure both essential components of the nation's constitutional identity.

Keywords: *One Nation One Election, Federalism, Democratic Accountability, Constitutional Law, Electoral Reform, Indian Democracy.*

Introduction

India's democratic architecture is built on a multi-tiered electoral framework comprising elections to the Lok Sabha, State Legislative Assemblies, and local bodies. These staggered electoral cycles ensure continuous democratic participation and act as vital mechanisms of accountability. However, the increasing frequency of elections often accompanied by significant administrative and financial expenditure has generated extensive debate on whether India should adopt a synchronized electoral cycle. The One Nation, One Election (ONOE) proposal advocates for simultaneous elections to the Lok Sabha and all State Legislative Assemblies. Historically, India conducted synchronized elections in 1952, 1957, 1962, and 1967, but the cycle was disrupted due to premature dissolution of legislative bodies, especially during political instability in the 1960s and 1970s. (Election Commission of India.1984). The revival of this idea through the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024 marks a significant shift in electoral reform discourse. (Vajiram & Ravi. 2025).

This chapter critically analyzes the ONOE proposal across three broad dimensions:

1) political representation,
2) constitutional federalism, and
3) Economic and administrative efficiency.

The study also situates ONOE within global experiences to evaluate whether a similar model would be compatible with India's political diversity.

Political Implications

Synchronizing elections would fundamentally reshape India's political dynamics. Empirical evidence from the IDFC Institute (2024) shows that when elections are held concurrently, around 77% of voters choose the same party for both national and state contests, compared to 61% when elections are separate. This 'coattail effect' benefits national parties while diminishing the visibility of regional issues and local governance. Supporters argue that synchronization fosters stability and consistency in policy-making (Carnegie Endowment for International Peace, 2025). Conversely, critics contend that it could distort India's parliamentary model by promoting a quasi-presidential system where a single national mandate overshadows subnational diversity. Moreover, the consolidation of election cycles compresses democratic engagement opportunities, limiting voters' ability to express discontent mid-term, thereby diluting one of democracy's vital feedback mechanisms. (Vidhi Centre for Legal Policy 2025).

1. Impact on Regional Parties

Regional parties have historically served as guardians of local interests, linguistic identities, and state-specific socioeconomic concerns. ONOE may disproportionately benefit larger national parties, whose leaders and narratives dominate the media space. Consequently, regional issues such as state-level welfare schemes, agricultural distress, or local development priorities may not receive adequate electoral attention.

2. Shift towards Centralized Leadership

Simultaneous elections might gradually push India towards a quasi-presidential model, where national leadership shapes voter preferences irrespective of state-level governance performance. This shift would undermine the essence of India's parliamentary

democracy, which is built on distinct mandates for state and national governments.

3. Reduced Democratic Feedback

Frequent elections serve as democratic feedback loops that allow citizens to periodically assess governmental performance. If elections occur only once every five years, voters lose the opportunity to express discontent mid-term. This is particularly detrimental in states with volatile political conditions or frequent governance failures.

4. Effects on Voter Engagement

While supporters argue ONOE would reduce voter fatigue, empirical studies show that staggered elections enhance political engagement, allow nuanced decision-making, and compel governments to remain responsive throughout their tenure.

Thus, the political implications suggest that ONOE may promote stability but at the cost of representational diversity and responsiveness.

Constitutional and Federal Concerns

From a constitutional perspective, ONOE raises profound questions regarding the federal equilibrium. Centralizing the authority to dissolve or extend legislative bodies could erode state autonomy and upset the balance between the Union and the States. The contingency mechanisms remain unclear: if a state government loses its majority mid-term, will it remain under President's Rule until the next synchronized cycle, or will elections be held immediately? The High-Level Committee led by former President Ram Nath Kovind (2024) offers limited guidance on this issue, heightening concerns of executive overreach. (Vaishnav, M 2025).

1. Required Constitutional Amendments

Implementing ONOE would require amendments to Articles 83 and 172 (five-year terms of Parliament and State Assemblies), Article 356 (President's Rule), and possibly Articles 327–328 (Election Commission powers) (Vision IAS, 2025). These changes involve altering the fundamental functioning of India's electoral system and require ratification by at least half of the states.

2. Basic Structure Doctrine

Federalism is an integral part of the basic structure of the Constitution. The Supreme Court, in landmark judgments such as Keshavananda Bharati and S.R. Bommai, has emphasized that states are not mere administrative units of the Union. A centralized electoral calendar may be seen as weakening state autonomy, especially if state governments lose the ability to dissolve legislatures based on political realities.

3. Handling Mid-Term Collapses

One of the most contentious issues is how to address assembly dissolutions if a government collapses mid-way. Two problematic possibilities emerge:

Option A: Impose President's Rule until the next synchronized cycle

→ This could lead to extended central control, undermining democracy.

Option B: Conduct immediate elections in that state

→ This breaks the synchronized cycle, defeating the purpose of ONOE.

The High-Level Committee chaired by Ram Nath Kovind (2024) offers limited clarity, raising concerns about potential executive overreach.

4. Threat of Centralization

ONOE could shift significant electoral authority to the Union government, weakening the federal balance. States may perceive this as an encroachment into an area traditionally shared between the Union and the states.

Economic and Administrative Efficiency

Economically, the rationale for ONOE appears persuasive at first glance. The NITI Aayog (2017) estimated potential savings of ₹45–50 billion annually through reduced administrative and security expenditure, particularly by minimizing repeated deployment of paramilitary forces, logistical arrangements, and governance slowdowns caused by the Model Code of Conduct (MCC) during staggered elections. (Vaishnav, M 2025). Synchronization, therefore, could reduce cyclical disruptions to policymaking and offer a more predictable governance environment. However, these projected benefits must be understood in context. Election-related expenditure accounts for less than 0.03% of India's GDP an expenditure widely regarded as a reasonable democratic cost. The 2024 Lok Sabha Election saw total spending estimated at ₹1.35 lakh crore, underscoring that democratic expenditure is marginal relative to GDP. Moreover, implementing ONOE would require substantial upfront investment, including doubling the number of EVMs and VVPAT units, expanding warehousing and storage capacities, training a larger pool of polling personnel, and ensuring heightened security across all states simultaneously. As Vaishnav (2025) notes, MCC-related delays are often overstated, since most essential governance functions continue uninterrupted. Thus, although ONOE may enhance fiscal efficiency in the long term, the short-term financial burden and administrative risks combined with the potential impact on electoral inclusiveness and accountability suggest that economic considerations alone cannot justify a nationwide synchronization of elections.

Comparative Perspectives

Examining global experiences offers valuable insights into how different democracies manage election cycles and whether synchronized elections can coexist with federal autonomy. A comparative analysis of Germany, Australia, and the United States reveals that while some countries achieve partial coordination of elections, none adopt a rigid, constitutionally mandated nationwide synchrony like the ONOE model proposed for India.

1. Germany

Germany follows a federal parliamentary system where the Bundestag (federal legislature) and the 16 Länder (state legislatures) operate under highly decentralized electoral authority. Although federal elections occur every four years, state elections are held at varying intervals depending on each state's constitution. Some states voluntarily hold elections close to federal elections to capitalize on administrative convenience or political momentum, but there is no constitutional mechanism compelling uniformity. Germany's model demonstrates how "flexible synchronization" can coexist with strong federal autonomy. States retain full authority to dissolve their parliaments and set their electoral timetables independently. Thus, synchronization may occur organically without undermining federal principles. Scholars often note that this staggered system allows voters to evaluate governments at different levels separately, reinforcing accountability and reducing overpowering national influence on regional politics. (Watts, R.L.2008).

This model suggests that a voluntary and flexible approach, rather than a mandatory one, may be more suitable for countries with strong federal structures like India.

2. Australia

Australia presents a mixed picture. At the federal level, elections for the House of Representatives occur approximately every three years,

while the Senate has fixed six- year terms with half of its members elected every three years. State and territorial elections, however, operate independently, with each jurisdiction determining its own electoral cycle.

Some states such as New South Wales and South Australia have experimented with aligning their elections with federal cycles for administrative convenience, but this alignment is entirely voluntary. Importantly:

- No state is constitutionally obligated to synchronize elections with Canberra.
- State parliaments retain the power to dissolve themselves independently.
- Political dynamics often discourage synchronization because states prefer to foreground local issues without interference from federal campaigns.

Australia's experience demonstrates that partial alignment is possible without compromising subnational autonomy. It also reinforces that a rigid, constitutionally mandated synchrony is not characteristic of successful federations. (Aroney,N.,et.al. 2023)

3. United States of America

The United States offers an instructive countermodel. As a presidential federal republic, the U.S. intentionally staggered its elections to preserve checks and balances and prevent national political waves from dominating all levels of governance simultaneously.

Key features include:

- Presidential elections every four years.
- Congressional elections every two years.

- Governors, state legislatures, and local bodies elected on dozens of distinct schedules across 50 states.

This staggering ensures that voter preferences are expressed continuously and that governments remain accountable at separate intervals. It prevents the concentration of political power in a single electoral moment, thereby strengthening federal autonomy and institutional stability. (IDEA, 2022). The U.S. model illustrates that staggered, decentralized election cycles can be a deliberate democratic design, ensuring a constant flow of accountability and avoiding the risks of centralized electoral dominance.

4. Lessons for India

Drawing from these global experiences, several lessons emerge for India's ONOE debate. First, no major federal democracy imposes a constitutionally mandated simultaneous election cycle across all levels of government. Where synchronization does occur as in parts of Germany or Australia it is:

- voluntary,
- flexible, and
- driven by political convenience rather than constitutional compulsion.

Second, staggered elections, as seen in the United States, offer important democratic benefits: continuous accountability, diffusion of political power, and insulation of regional politics from national-level campaigns.

Given India's vast linguistic, cultural, and political diversity, and the constitutional centrality of federalism, a rigid synchronization model may not align with democratic best practices.

Instead, India may consider a hybrid or phased model, aligning elections in a few states or Union Territories voluntarily as

a pilot project. This would allow gradual adaptation while preserving federal flexibility. (Vidhi Centre for Legal Policy, 2025) Such an approach respects both democratic diversity and administrative efficiency without imposing sweeping, irreversible constitutional changes.

Discussion

ONOE's implications transcend mere administrative reform. From a governance perspective, synchronized elections promise enhanced policy coherence, reduced administrative duplication, and a more streamlined governance cycle. By minimizing frequent enforcement of the Model Code of Conduct and stabilizing political timelines, simultaneous elections could potentially strengthen long-term policy planning and implementation. However, from a democratic standpoint, these benefits come at a substantial cost. Synchronization risks diluting representational plurality by amplifying national political narratives at the expense of regional issues, thereby undermining India's multi-layered democratic fabric.

This tension reflects the broader challenge of balancing administrative efficiency with democratic pluralism. While ONOE may reduce financial expenditure, ensure stable governance, and simplify electoral management, it also poses significant risks centralizing political power, weakening federalism, and narrowing democratic accountability mechanisms. These concerns are not merely theoretical; they were echoed during deliberations of the Joint Parliamentary Committee (2024), comprising 39 members from across the political spectrum, which remained divided on both the feasibility and desirability of implementing ONOE within a rigid nationwide framework.

Given these complexities, a pragmatic middle path lies in adopting a phased or voluntary synchronization model. This could begin with Union Territories and states willing to align their electoral

cycles, allowing the Election Commission and governments to test and refine logistical frameworks. Such gradualism ensures institutional adaptation, minimizes large-scale disruption, and provides empirical data to assess the actual impact of synchronizing elections. This approach not only respects constitutional federalism but also maintains democratic accountability while cautiously exploring administrative efficiencies.

Conclusion

The One Nation, One Election proposal embodies India's ongoing struggle to balance governance efficiency with democratic diversity. Although attractive from an administrative standpoint, ONOE poses significant risks to federalism, political pluralism, and democratic accountability. Any reform must prioritize preserving the constitutional principles that define India's democratic identity. Synchronized elections should aim not at uniformity, but at harmonized plurality— enhancing efficiency without compromising diversity. Only through cautious, incremental, and constitutionally sound approaches can India consider reshaping its electoral landscape.

References

1. First annual report (1983–84): Recommendation on simultaneous elections. Government of India.
2. BBC News. (2024, December 17).Explained: India's One Nation, One Election proposal. https://www.bbc.com/news/articles/cly7vjp73zvo
3. Carnegie Endowment for International Peace. (2025, July 27). Does "One Nation, One Election" make sense for India? by Vaishnav.M https://carnegieendowment.org/research/2025/07/india-one-nation-one- election-proposal?lang=en
4. IDFC Institute. (2024). Voter behaviour under simultaneous elections. https://www.pmfias.com/one-nation-one-election/

5. NITI Aayog. (2017). One nation, one election: White paper. Government of India.

6. Rajnish, & Kumar, R. (2025). One Nation, One Election and the federal structure of India: A critical analysis. International Journal of Legal Research and Review. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5007991

7. Vidhi Legal Policy. (2025, July 27). Federalism, democracy, and the idea of One Nation One Election. https://vidhilegalpolicy.in/blog/federalism-democracy-and-the-idea-of-one-nation-one- election/

8. Vision IAS. (2025, January 21). Polity and governance: One Nation, One Election Bill. https://visionias.in/current-affairs/monthly-magazine/2025-01-22/polity-and-governance/one- nation-one-election-bill/

9. Watts, R. L. (2008). Comparing federal systems (3rd ed.). McGill-Queen's University Press.

10. Aroney, N., Gerangelos, P., Murray, S., & Stellios, J. (2023). The Constitution of the Commonwealth of Australia: History, principle and interpretation (2nd ed.). Cambridge University Press.

11. IDEA. (2022). Electoral management design: United States. International IDEA. https://www.idea.int

12. Vajiram & Ravi. (2025, June 29). Key takeaways: One Nation One Election Bill. https://vajiramandravi.com/current-affairs/one-nation-one-election-bill/

13. Wikipedia contributors. (2024, November 15). One Nation, One Election. Wikipedia. https://en.wikipedia.org/wiki/One_Nation,_One_Election

Custodial Deaths and Abuse: Statistical Overview

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Abstract

Custodial death and abuse constitute serious violations of human rights and the rule of law. Despite constitutional safeguards guaranteeing life, liberty, and dignity, incidents of torture and deaths in custody persist across India. This chapter explores causes, historical background, patterns, implications of custodial violence, emphasizing how systemic corruption and the misuse of power by law enforcement officials contribute to the problem. Through analysis of case studies, judicial reports, and human rights data, it highlights the recurring failures in accountability mechanisms and the lack of independent oversight within custodial institutions. The chapter further examines the influence of media, socio- economic and psychological impact of such abuses on victims' families and communities, revealing how marginalization and fear erode public trust in the justice system. It also emphasizes the urgent need for public awareness and active citizen participation, evaluates the limitations of existing legal

frameworks such as the Code of Criminal Procedure and the National Human Rights Commission guidelines. In conclusion, it advocates for stronger institutional accountability, transparent investigations, and human rights–oriented policing to prevent future violations. The chapter seeks to promote a culture of justice and humanity within law enforcement and custodial practices.

Keywords: *Custodial death, torture, liberty, judicial reports, Human Rights*

Introduction

Custodial death refers to the death of an individual when under the police custody, judicial custody, or any form of detention exercised by the State (Agarwal, 2021). Deaths are often classified into five broad types: natural, accidental, suicidal, homicidal, and undetermined (Patel, 2021). Natural deaths arise from internal causes such as illness or age-related conditions. Accidental deaths result from unforeseen incidents like falls or road accidents (NHRC, 2022). Suicidal deaths occur when an individual ends their own life intentionally, whereas homicidal deaths involve unlawful killing by another person. Undetermined deaths are those where the exact cause or manner cannot be conclusively established (Bajpai, 2022). Within this framework, custodial death holds particular significance as it involves death of an person whose freedom has been confined by the State authorities (Chandran, 2020). Such deaths may occur during police interrogation, in lock-ups, or within prison premises. Custodial deaths are widely recognized as serious violations of the human rights (Amnesty International, 2020). Abuse, in this context, refers to the misuse of authority or infliction of physical, emotional, or psychological harm (Baruah, 2021). It has various types including physical violence, verbal intimidation, sexual misconduct, etc. Custodial abuse encompasses any unlawful or unethical conduct by law enforcement agencies that causes suffering to detainees. Together, custodial death and abuse reflect deep-rooted systemic

failures in governance, accountability, and respect for human dignity (Raghavan, 2020).

Historical Background

In India, the phenomenon of custodial death is not recent; it has evolved through a long history marked by the misuse of power and weak accountability mechanisms (Joshi, 2021). Even before colonial rule, use of coercion and torture to extract information was prevalent under ancient and medieval administrations. However, custodial violence gained wider recognition during British colonial period, particularly after the Nandiram case of 1879 in Bengal (Das, 2019). Nandiram, a village resident accused of criminal activity, was arrested by colonial police and subjected to severe torture during interrogation (Agarwal, 2021). His death, accompanied by visible injuries, provoked public outrage and criticism from reformers. This incident became an early reference point in discussions surrounding police brutality, human rights, and penal reform (Chandran, 2020).

The colonial administration responded by introducing limited legal safeguards, such as provisions under the Indian Penal Code and Code of Criminal Procedure, which formally prohibited torture. However, these measures were weakly enforced, and police continued to function primarily as an instrument of control rather than public service. The Police Act of 1861 further institutionalized a centralized, hierarchical force which was concentrated on maintaining order instead of protecting individual rights (Raghavan, 2020).

Despite independence and constitutional transformation, India has struggled to completely dismantle colonial policing attitudes. The continued reliance on force over fair investigation demonstrates how coercive practices remain embedded within law enforcement culture (Joshi, 2021). Custodial deaths today symbolize the enduring legacy of these practices despite legal and institutional progress.

Legal and Constitutional Frameworks

Extensive safeguards for arbitrary custody and custodial violence are provided by the Constitution of India. Article 21 promises right to life and personal liberty, ensuring that deprivation of life or freedom can occur only through a just, fair, and reasonable procedure. Article 20(3) protects individuals from self-incrimination, while Article 22 secures rights such as being informed of the grounds of arrest (Jain, 2020) and access to legal counsel.

Judicial intervention has been central to strengthening these protections. Landmark rulings, particularly **D.K. Basu v. State of West Bengal** (1997), emphasized being open and responsible while arresting and detaining people. The National Human Rights Commission (NHRC) under Protection of Human Rights Act, 1993, further institutionalized oversight by empowering it to investigate custodial deaths (Kumar, 2022), recommend action (NHRC, 2022), and grant compensation. State Human Rights Commissions extend similar oversight at regional levels.

However, marginalized communities—including Dalits, Adivasis, religious minorities, and economically weaker sections—remain disproportionately affected by custodial violence, revealing persistent social bias and structural inequality within the justice system (Menon, 2022).

Causes

Custodial deaths in India stem from a combination of institutional weaknesses, entrenched practices, and socio-political factors (Bajpai, 2022). Police torture during interrogation remains a root cause. Many officers continue to rely on coercive methods due to inadequate training in forensic techniques (Gupta, 2021) and pressure to achieve rapid case resolutions. Socio-economic vulnerability significantly increases exposure to custodial abuse. Victims frequently belong to the marginalized groups and lack

access to legal aid or social influence (Patel, 2021). Prolonged detention and delayed trials worsen their conditions, heightening the risk of abuse.

Finally, weak enforcement of judicial directives—such as *D.K. Basu* guidelines—along with inadequate internal vigilance and limited public scrutiny, allows custodial deaths to persist as a grave of human rights issue (Law Commission of India, 2021).

Consequences

The most immediate and irreversible consequence of custodial death is the loss of human life, often of individuals who are undertrial prisoners or merely suspects (Roy, 2022). Families suffer profound emotional distress, psychological trauma, and financial hardship. Seeking justice becomes a prolonged struggle against bureaucratic resistance and intimidation (Sarkar, 2023).

From a legal standpoint, custodial deaths expose serious flaws in accountability mechanisms. Low conviction rates, evidence tampering, and delayed investigations point to systemic corruption. (Singh, 2022) On an international platform, repeated reports of custodial violence damage India's reputation as a democratic nation committed to human rights, attracting criticism from organizations such as Amnesty International and UN bodies. (Human Rights Watch, 2021)

Socially, custodial deaths deepen existing inequalities. Marginalized communities bear the brunt of such violence, reinforcing fear, exclusion, and mistrust in State institutions (Menon, 2022). Over time, the normalization of custodial abuse weakens moral governance and perpetuates cycles of silence and injustice.

Patterns and Statistics

Data published by the NHRC and NCRB consistently reveal alarming patterns in custodial violence (NCRB, 2023). A significant

proportion of custodial death victims belong to socially and economically disadvantaged groups, including Dalits, Adivasis, minorities, and daily wage workers (NHRC, 2022). Limited legal awareness and lack of representation increase their vulnerability to illegal detention and abuse. Prosecution and conviction rates of accused officials remain extremely low. Investigations are frequently delayed or compromised due to institutional bias (Singh, 2022), destruction of evidence, or interference by senior authorities, reinforcing a lack of consequences of their actions.

Higher numbers of custodial deaths which are frequently related to population size and policing intensity are regularly reported in states like Uttar Pradesh, Maharashtra, Tamil Nadu and Gujarat (Ministry of Home Affairs, 2023).

Key Data Overview

- NHRC- 100 police custody deaths during 2020–21 (MHA, Lok Sabha reply, 2022).
- In 2023, Maharashtra reported 17 custodial deaths, followed by Gujarat (13) and Rajasthan (7).

These figures underline the persistence of custodial deaths the serious need for systemic reform.

Role of Media

The media acts as a vital instrument in revealing and addressing custodial deaths and abuses. As the "fourth pillar of democracy," (Indian Express, 2023). It performs an essential function of exposing violations that would otherwise go unseen behind the walls of police stations and prisons. Investigative journalism, documentaries, and digital reporting have frequently played decisive roles in uncovering torture, unlawful detention, and cover-ups (Human Rights Watch, 2021). Media exposure has historically compelled authorities to

launch inquiries and disciplinary actions in high-profile cases. It amplifies marginalized voices, bridging the gap between victims and justice institutions (Roy, 2022). Despite these challenges, responsible and persistent journalism remains one of the strongest deterrents against custodial abuse. By making sure clarity and accountability, media strengthens democracy and reinforces the message of the idea that justice should be carried out openly, not secretly.

Case Study

D.K. Basu vs. State of West Bengal (1997) case represents a major milestone in India's fight against custodial violence. The case began with a letter written to the Supreme Court by D.K. Basu, the Executive Chairman of the Legal Aid Services, West Bengal, drawing attention to the growing number of deaths in police custody. Acknowledging the seriousness of the issue, the Supreme Court took up the matter as a Public Interest Litigation (PIL) under Article 32 of the Constitution to safeguard fundamental rights. The Court declared that custodial torture violates Articles 21 and 22 reaffirming the right to life and protection against arbitrary arrest. (Kumar, 2022). The landmark judgment introduced 11 guidelines to safeguard detainees, including mandatory medical examinations, notification of arrests to relatives, preparation of arrest memos, and judicial oversight. These directives were later incorporated into the Code of Criminal Procedure (CrPC) institutionalizing accountability. (Jain, 2020), The D.K. Basu guidelines remain cornerstone of India's custodial safeguards and have shaped numerous subsequent reforms, reinforcing the judiciary's proactive role in protecting human rights.

Prevention

Holistic approach encompassing legislative, administrative, and societal reforms must be made to avoid custodial deaths in India

(NHRC, 2022). According to the NHRC guidelines, the enrolment of every arrest, prompt medical checkup of detainees, and video recording of interrogations is mandate (Law Commission of India, 2021). Public participation plays a critical preventive role. Awareness campaigns and legal literacy initiatives empower citizens to understand and assert their rights (Patel, 2021). Encouraging whistleblowers and protecting witnesses strengthen reporting mechanisms. Ultimately, effective prevention depends on strict enforcement of existing laws, transparent investigations, and genuine accountability throughout the system of governance.

Reform Measures and Policy Recommendations

To deal with the crisis of custodial deaths, multi-layered reforms are imperative. Firstly, the enactment of a comprehensive *Anti-Torture Law* is essential. Despite the drafting of the Prevention of Torture Bill, it remains unpassed, leaving a legal vacuum (Reddy, 2021) in defining and penalizing torture explicitly. Legislative reform should be coupled with procedural safeguards, such as mandatory videography of interrogations and regular medical examinations of detainees.

Secondly, independent investigative mechanisms are crucial. Establishing an *Independent Police Complaints Authority (IPCA)* in every state, as recommended by the *Supreme Court in the Prakash Singh case (2006)* would ensure impartial inquiries into custodial abuses. (Law Commission of India, 2021).

Thirdly, human rights education, ethical policing standards, and psychological assessments to encourage ethical and professional behaviour should be included by police training (Gupta, 2021). Regular sensitization programs focusing on stress management, non-violent interrogation techniques, and communication skills can reduce reliance on coercive practices. Integrating forensic science, digital investigation tools, and evidence-based policing methods

will further discourage confession-oriented investigations. Digitization of arrest records medical reports, and detention logs can improve transparency and facilitate independent audits (Singh, 2022).

Finally, for prevention, community participation and public awareness play a vital role. Legal literacy programs, specifically in rural and marginalized communities, can empower citizens to understand and assert their rights. Strengthening witness protection mechanisms and encouraging civil society involvement can create an environment where custodial abuse is reported rather than concealed.

Conclusion

Although India's constitutional and legislative provisions are robust in theory, custodial deaths continue to expose deep structural weaknesses. The persistence of such violations underscores the break between legal intent and institutional behaviour (Agarwal, 2021). True reform requires not just stricter laws but a transformation of policing culture, where empathy, ethics, and human rights are above all than force or convenience (Raghavan, 2020). Strengthening the authority and independence of oversight bodies such as the NHRC and State Human Rights Commissions is vital. Swift judicial processes and unambiguous punishment for offenders can serve as effective deterrents (NHRC, 2022). Involving human rights education into police training, ensuring community monitoring, and promoting transparency can build a lifestyle of lawful conduct. Eliminating custodial abuse is a moral and civic obligation that defines the ethical foundation of democracy.

References

1. Agarwal, R. (2021). *Police accountability and human rights in India*. New Delhi: Sage Publications.
2. Amnesty International. (2020). *India: The state of policing and custodial deaths*. Amnesty International Report.
3. Bajpai, K. (2022). *Custodial violence and the rule of law in India*. Indian Journal of Criminology, 48(2), 67–83.
4. Baruah, S. (2021). *Human rights violations in police custody: Trends and patterns*. Journal of Social Justice Studies, 12(1), 45–59.
5. Central Bureau of Investigation (CBI). (2022). *Annual report on custodial investigations*. Government of India Press.
6. Chandran, M. (2020). *Judicial oversight and human rights protection in India*. Oxford University Press.
7. Das, R. (2019). *Reforming police conduct through accountability measures*. Delhi Law Review, 41(1), 55–70.
8. Gupta, V. (2021). *Forensic reforms and custodial accountability in India*. Indian Police Journal, 68(4), 101–117.
9. Human Rights Watch. (2021). *Broken system: Custodial abuse in India*. Retrieved from https://www.hrw.org
10. Indian Express. (2023, January 5). *Custodial deaths and justice delays in India*. The Indian Express.
11. Indian Law Commission. (2022). *Report on custodial reforms and rights of prisoners (Report No. 278)*. Government of India.
12. Jain, P. (2020). *Legal remedies for custodial torture under Indian law*. Indian Bar Review, 47(3), 92–108.
13. Joshi, R. (2021). *The sociology of police violence in India*. Routledge.
14. Kumar, D. (2022). *The role of judiciary in addressing custodial deaths*. Journal of Indian Legal Studies, 7(1), 23–41.
15. Law Commission of India. (2021). *Reforms in police and criminal justice administration (Report No. 277)*. Government of India.

16. Menon, S. (2022). *Custodial rights and preventive justice mechanisms in India*. Journal of Constitutional Law, 9(2), 74–90.

17. Ministry of Home Affairs. (2023). *Crime in India 2022: National Crime Records Bureau Report*. Government of India.

18. National Human Rights Commission (NHRC). (2022). *Annual report on human rights violations in custody*. Government of India Press.

19. National Police Commission. (2021). *Guidelines on humane treatment of detainees*. Government of India.

20. NCRB. (2023). *Crime in India 2022: Statistics on custodial deaths and human rights violations*. Ministry of Home Affairs.

21. Patel, J. (2021). *Understanding custodial deaths: A socio-legal perspective*. Journal of Human Rights Law, 15(3), 51–66.

22. Raghavan, V. (2020). *Police reforms and accountability in democratic societies*. Cambridge University Press.

23. Reddy, A. (2021). *Torture and accountability: A global human rights concern*. Human Rights Perspectives, 14(2), 33–49.

24. Roy, N. (2022). *Criminal justice and custodial ethics in India*. Indian Journal of Public Affairs, 6(2), 102–118.

25. Sarkar, P. (2023). *Analyzing custodial violence through a legal lens*. International Review of Law and Society, 11(1), 89–106.

26. Sharma, T. (2020). *Rights of prisoners: Legal safeguards and judicial interpretations*. LexisNexis.

27. Singh, R. (2022). *Accountability and transparency in law enforcement agencies*. Indian Journal of Criminology, 49(1), 58–73.

Governor's Assent Versus Constitutional Mandate: A Critical Analysis of Article 200 and Indian Federalism

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Abstract

India's federal democracy faces a constitutional crisis wherein Governors indefinitely withhold assent to bills passed by elected state legislatures—a "pocket veto" lacking constitutional foundation. The 2025 Supreme Court judgment in State of Tamil Nadu v. Governor of Tamil Nadu (2025) establishes enforceable timelines and invalidates indefinite delay as unconstitutional. This analysis examines Article 200's textual requirements through the lens of federalism doctrine and constitutional morality, situates the judgment within comparative constitutional experience, and articulates comprehensive institutional reforms. Sustainable resolution requires depoliticizing gubernatorial appointments, establishing written accountability requirements, and enforcing judicial review of gubernatorial discretion.

Keywords: *Accountability, Democracy, Federalism, Governor, Gubernatorial powers, Veto.*

Introduction

India's federal structure distributes legislative sovereignty between the Union and states. Systematic gubernatorial delays in assenting to state bills extending twelve to eighteen months in opposition-ruled

states undermine this constitutional arrangement (Vidhi Centre for Legal Policy, 2024). Delays in Tamil Nadu, Kerala, West Bengal, Punjab, Karnataka, and Telangana have produced concrete governance dysfunction: Telangana lost ₹2,000 crores in revenue from a sixteen-month excise bill delay; Kerala's university bills remain suspended after eighteen months, affecting approximately four hundred thousand students (Deccan Chronicle, 2024). The Vidhi Centre for Legal Policy documented that over twenty-five bills in six states remained dormant for periods exceeding one year between 2022 and 2024 (Vidhi Centre for Legal Policy, 2024). Empirical evidence indicates delays substantially correlate with political opposition to the central government suggesting partisan weaponization rather than principled constitutional exercise. (Vidhi Centre for Legal Policy, 2024).

The State of Tamil Nadu judgment represents a watershed intervention establishing that gubernatorial inaction is justiciable and subject to enforceable temporal constraints. Rather than relying on conventions, the Court established judicially manageable standards transforming abstract constitutional language into binding requirements. This analysis deepens the judgment's theoretical foundations, examines comparative constitutional experience, and proposes systemic reforms to restore federal balance.

Article 200 Constitutional Text and Doctrinal Requirements

Article 200 prescribes three gubernatorial actions: assent, return with observations, or reservation for Presidential consideration. Indefinite delay constitutes none of these. The text mandates action "as soon as possible"—language importing a binding constitutional obligation enforceable through judicial review (*State of Tamil Nadu v. Governor of Tamil Nadu*, 2025). The State of Tamil Nadu judgment translated this requirement into concrete standards: the Governor

must render an initial decision within one month; if withholding assent or reserving a bill, must provide written reasons within three months (*State of Tamil Nadu v. Governor of Tamil Nadu*, 2025). The Constitution's use of "shall" establishes mandatory, not discretionary, obligation. When a bill is re-passed by the legislature, the Governor's role becomes purely ministerial—assent is mandatory. The Governor cannot indefinitely deploy the reservation mechanism to re-suspend bills that have received legislative re-affirmation (*State of Tamil Nadu v. Governor of Tamil Nadu*, 2025). This framework reflects constitutional architecture wherein appointed executives facilitate rather than obstruct democratic will.

Federalism, Constitutional Morality, and Theoretical Foundations

Gubernatorial delays violate federalism as a basic constitutional feature that cannot be amended (*Kesavananda Bharati v. State of Kerala*, 1973). Indefinite gubernatorial suspension transfers legislative authority from democratically accountable representatives to centrally-appointed officials, fundamentally distorting federal balance and concentrating authority contrary to the Constitution's design. The doctrine of constitutional morality developed through P. Rathinam v. Union of India (1994) and refined in Navtej Singh Johar v. Union of India (2018) requires that power be exercised in service of constitutional values including federalism, democracy, and representative accountability. Gubernatorial delays instrumentalize executive discretion to overcome electoral outcomes, violating this doctrine. Responsible government doctrine further requires that executive actors support rather than obstruct elected legislatures. A Governor who indefinitely suspends legislation passed by the elected assembly violates this foundational obligation. The Supreme Court's fifty-year jurisprudence progressively narrowed gubernatorial discretion. Shamsher Singh v. State of Punjab (1974) established that Governors function as constitutional figureheads with limited powers.

Rameshwar Prasad v. Union of India (2006) held that discretion must be exercised rationally, not arbitrarily. The State of Tamil Nadu judgment (2025) crystallized this trajectory by establishing enforceable principles: assent is mandatorily required for re-passed bills; deadlines are justiciable; the pocket veto is unconstitutional; and reserved bills cannot be re-suspended after re-passage.

Empirical Patterns and Systemic Dysfunction

The pocket veto reflects a systematic pattern concentrated in opposition-ruled states. The Sarkaria Commission (Government of India, 1988) recommended that Governors be selected through consultation with the state Chief minister, possess recognized eminence, maintain distance from active politics, and not be drawn from the ruling Union party if opposed to the state government. These recommendations addressed gubernatorial legitimacy and independence. The Punchhi Commission (Government of India, 2010) advanced further recommendations: decisions on bills should occur within fixed timelines (six months); Governors must provide written explanations for withholding assent or reservation; the President must decide reserved bills within six months, with indefinite suspension prevented.

The 2025 judgment vindicated these recommendations by establishing judicially enforceable timelines, transforming non-binding Commission suggestions into constitutional requirements. The Court employed Article 142 powers to deem bills as assented to based on gubernatorial non-compliance, demonstrating that courts need not remain passive in the face of constitutional violation (*State of Tamil Nadu v. Governor of Tamil Nadu*, 2025).

Comparative Institutional Analysis

Comparative analysis illuminates the constitutional abnormality of India's gubernatorial delay crisis.

- **Australia:** The Australian Constitution formally permits Governors to withhold assent. Yet in constitutional practice spanning centuries, assent has never been withheld (Inter-Parliamentary Union, 2022). Australian constitutional convention has crystallized into an absolute norm: appointed officers function as constitutional facilitators of democratic legislation, not obstacles. Assent is typically granted within seven to ten working days of parliamentary passage (Parliament of Western Australia, 2024).
- **Canada:** The Constitution Act, 1867 formally authorized lieutenant governors to withhold assent. The last instance of withholding assent occurred in 1945 eighty years prior to the present moment. The last instance of reserving bills for Governor-General consideration was 1961 (Wikipedia, 2025). Despite possessing federal disallowance authority (capacity to invalidate provincial legislation), Canada has similarly permitted this power to become entirely dormant (Wikipedia, 2025). Canadian experience demonstrates that formal constitutional authority can be constrained through institutional convention and political culture.
- **Germany:** Rather than relying on gubernatorial discretion, Germany embedded the Länder (states) within federal decision-making through the Bundesrat, a second chamber comprising Land ministers exercising veto authority over federal legislation affecting Land interests (Forum of Federations, 2022). The Bundesrat possesses absolute veto authority over approximately sixty percent of federal legislation, ensuring states are constitutional veto players in federal processes. This structural approach protects federalism through inclusive institutional design rather than executive obstruction.

These examples demonstrate that India's gubernatorial delay crisis is not inevitable. Federal democracies have successfully

maintained stable arrangements without indefinite executive suspension of regional legislation. India can learn from these comparative experiences and strengthen constitutional safeguards accordingly.

Systemic Reform Depoliticizing Appointments and Constraining Discretion

Sustainable resolution requires structural reform of the gubernatorial appointment process. Currently, Governors are appointed by the Union government without meaningful consultation with state governments, creating inevitable incentives for Governors to view themselves as central agents rather than independent constitutional officers. This appointment structure directly undermines gubernatorial legitimacy.

➢ Appointment Reform

The Sarkaria Commission recommended state Chief Minister consultation before appointment; the Punchhi Commission suggested a committee comprising the Prime Minister, Home Minister, Lok Sabha Speaker, and state Chief Minister collectively deliberate on appointments. Such consultation would institutionalize state input, require consensus across differing political perspectives, and depoliticize appointments by emphasizing merit over partisan affiliation. Governors should possess recognized eminence (academics, judges, civil servants), be drawn from outside the state, maintain distance from active politics (minimum two-year separation), and not be drawn from the ruling Union party if opposed to the state government. Fixed gubernatorial tenures, not subject to arbitrary Union truncation, would ensure independence. These reforms would signal that Governors serve the state and constitutional order, not merely central directives.

➢ Discretion Constraints

Bills should not be withheld based on policy disagreement; only genuine constitutional concerns (constitutional violation, jurisdictional transgression, High Court interference) justify withholding (*State of Tamil Nadu v. Governor of Tamil Nadu*, 2025). Written explanations must be detailed and substantive, not conclusory—explaining specific constitutional grounds motivating decisions. This disciplines gubernatorial deliberation, enables judicial review, and enhances transparency. Reservation for Presidential consideration should be permissible only for bills involving genuine constitutional questions of substantial national importance. When a Governor withholds assent and the legislature re-passes a bill, the Governor's role becomes ministerial—assent is mandatory. Re-passage demonstrates democratic override of gubernatorial objection and forecloses repeated withholding on identical grounds (*State of Tamil Nadu v. Governor of Tamil Nadu*, 2025).

➢ Judicial Review

Courts must establish that gubernatorial inaction is justiciable. Courts can examine temporal compliance, rationality and reasonableness of discretionary exercise, and whether gubernatorial action violates federal balance or democratic governance. Appropriate remedies include mandamus directing assent, deeming bills assented to based on temporal non-compliance, and creative applications of Article 142 to restore constitutional balance (*State of Tamil Nadu v. Governor of Tamil Nadu*, 2025).

Conclusion

The gubernatorial pocket veto crisis fundamentally threatens India's federal democracy. Judicial intervention establishing enforceable timelines represents critical advancement. However, sustainable governance requires systemic institutional reform: depoliticized

appointment processes emphasizing merit and state consultation, clarified discretionary limits restricting withholding to genuine constitutional grounds, strengthened written accountability requirements, and rigorous judicial review. The Constitution cannot compel actors to govern constitutionally; rather, it creates a framework within which political actors must choose to exercise authority in service of constitutional values. Federalism is not an obstacle to governance but a precondition for legitimate governance in India's diverse polity. The Governor's office should guard this federal commitment through appointments of constitutional stature and authority exercised to strengthen rather than undermine federalism's foundational architecture.

References

1. Deccan Chronicle. (2024, May). *Telangana loses ₹2,000 crores due to Governor's delay on excise bill.*
2. Forum of Federations. (2022). *The federal system of the Federal Republic of Germany.* Forum of Federations. https://www.forumfed.org/document/the-federal-system-of-the-federal-republic-of-germany/
3. Government of India. (1988). *Report of the Commission on Centre–State relations (Sarkaria Commission Report).* Ministry of Home Affairs. Retrieved from https://interstatecouncil.gov.in/report-of-the-sarkaria-commission/
4. Government of India. (2010). *Report of the Commission on Centre–State relations (Punchhi Commission Report).* Ministry of Home Affairs. Retrieved from https://interstatecouncil.gov.in/report-of-the-commission-on-centre-state-relations/
5. Inter-Parliamentary Union. (2022). *Australia: Law-making and oversight processes.* Parline Database.
6. Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 (Supreme Court of India).

7. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (Supreme Court of India).
8. P. Rathinam v. Union of India, AIR 1994 SC 1918 (Supreme Court of India).
9. Parliament of Western Australia. (2024). *The legislative process: Assent of bills and proclamation.*
10. Rameshwar Prasad v. Union of India, (2006) 2 SCC 1 (Supreme Court of India).
11. Shamsher Singh v. State of Punjab, AIR 1974 SC 2192 (Supreme Court of India).
12. State of Tamil Nadu v. Governor of Tamil Nadu, (2025) 2 SCC OnLine SC 770 (Supreme Court of India).
13. Vidhi Centre for Legal Policy. (2024). *Gubernatorial delays: A growing constitutional crisis.*
14. Vidhi Centre for Legal, Federalism and the Governor's Office: Constitutional Crisis, Published March 2024.
15. Wikipedia. (2025). *Lieutenant governor (Canada).*

Universal Declaration of Human Rights, Its Impact, and Its Implementation in India

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Abstract

This paper looks into the Universal Declaration of Human Rights. It traces the document back to the horrors of World War II and the Holocaust. From there, it became the main standard for human dignity around the world. The analysis covers the UDHR's broad importance. It stands as a key moral and philosophical base. That base helped shape later international agreements and constitutions in many countries. The main emphasis falls on how the Declaration changed fundamental rights in India. In particular, it explores the big changes in Article 21 of the Indian Constitution. This article deals with the protection of life and personal liberty. The courts drew on global standards from the UDHR and the ICCPR. They moved away from a strict reading of the procedure established by law. The Maneka Gandhi case against the Union of India in 1978 marked a turning point. That decision brought in substantive due process. It also linked Articles 14, 19, and 21 into what is called the Golden Triangle. In the end, this kind of judicial action, based on worldwide ideas, has given Indian citizens a wider and fairer set of rights. Those rights line up better with international views.

Keywords: *Human Dignity, Article 21 Substantive Due Process & Golden Triangle, Judicial Activism, UDHR.*

Introduction

Human history had a significant shift with the adoption of the Universal Declaration of Human Rights. It signalled a global agreement where everyone possesses basic worth, equal standing, and unalienable rights. The United Nations General Assembly approved it on December 10, 1948, meeting at Paris's Palais de Chaillot via Resolution 217 (III). This document arose directly from the immense devastation of World War II alongside the Holocaust. This pivotal six-page document – sometimes known as humanity's "Great Charter" lays out fundamental rights for everyone, regardless of their background. It begins with an introduction, then details 30 articles establishing those rights. A global team, led by Eleanor Roosevelt, created it. Notable members included René Cassin (France), Charles Malik (Lebanon), P.C. Chang (China), John Peters Humphrey (Canada), and Hansa Mehta (India); likewise, Hernán Santa Cruz (Chile) also played significant roles. The Declaration wasn't built on just one way of thinking; instead, it blended ideas from everywhere – East Asian wisdom, South American viewpoints, alongside shared beliefs about what makes us human. This created a genuinely worldwide statement on rights. While not a law itself, the Declaration heavily impacted laws both internationally and within countries, prompting agreements like those covering political/civil freedoms, also economic/social/cultural ones - together, these are known as the International Bill of Human Rights. Currently, it's the world's most translated work, appearing in over 577 languages, proving how widely it resonates as an ongoing source of optimism.

Historical Context Leading To the Establishment of Udhr

Following the immense devastation of WWII, a war claiming between seventy and eighty-five million lives, among them six million Jews lost in the Holocaust, a need arose for global standards

concerning basic rights. Atrocities, genocide, torture, slavery, and internment showed us the consequences of dismissing people's value. Consequently, these moments highlighted the need to check authority alongside safeguarding each person.

The Holocaust remains a stark example of cruelty, meticulously documented even amidst war. Beginning with the 1935 Nuremberg Laws, Hitler's regime systematically dismantled the rights of Jewish citizens. This resulted in forced labour, confinement to ghettos, ultimately leading to deportation and extermination at places such as Auschwitz-Birkenau, Dachau, Buchenwald, also Bergen-Belsen. Within the walls of Auschwitz, between four and six million people perished in mass gassing operations. The Nazis had not put a limit to their brutality to Jewish communities; they systematically eliminated over a quarter of a million Roma, exceeding three million Soviet POWs, close to two million Polish citizens, beyond 250,000 people living with disabilities, alongside anyone else considered expendable. During the Holocaust, laws weren't just broken; they fueled hatred alongside terrible violence. This organized cruelty a government using paperwork to commit widespread murder horrified people worldwide. Subsequently, there was an immediate call for global rules safeguarding individuals from powerful governments. Before the end of World War II, those who would have become allies began to sketch out what they wanted the future to look like a world valuing basic human rights. Back on January 6th, 1941, President Roosevelt laid some groundwork. In a speech before Congress, Roosevelt outlined four essential rights freedom of speech, freedom of worship, freedom from want, likewise freedom from fear for everyone globally.

> The ability to speak your mind, also to share ideas,
>
> Freedom of worship,
>
> Having enough to live on - a safety net, a decent life,

A world without dread - safe because weapons are gone, nations watch over one another.

Roosevelt's idea of the Four Freedoms fueled the Allies during wartime, later shaping the Universal Declaration of Human Rights. He believed rights weren't simply a nation's business; everyone, everywhere, should have them safeguarded. Roosevelt, alongside Winston Churchill, Britain's leader, crafted the Atlantic Charter in August 1941. This statement detailed what the Allies hoped for after the war - specifically, letting people select their governments while promoting better working conditions, financial stability, also liberation from worry and need. These ideas were built upon earlier concepts known as the Four Freedoms. Working together globally to boost employment conditions, financial stability, while eliminating both anxiety and need.

Establishment of the United Nations and its Charter in the Year of 1945

Finding the existence of a link between global tranquillity with individual dignity led to the creation of the United Nations in 1945. Its founding document - the UN Charter, finalized June 26th in San Francisco, then effective October 24th - directly addressed human rights both within its opening statements, but also throughout key sections. The UN Charter's preamble states: "We the peoples of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..."

The UN, according to Article 1, section 3, exists partly to…

"To achieve international co-operation... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." (UN Charter, 1945)

Member Nations Must Foster

"Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Though the UN pledged certain principles, its founding document lacked specifics regarding "human rights" or "fundamental freedoms." Because of this uncertainty, further clarification became essential. Consequently, in 1946, the UN's Economic and Social Council formed a Commission on Human Rights tasked with creating an encompassing International Bill of Rights.

Formation Of The Drafting Committee

Early in 1947, the Commission on Human Rights established a group to write what would become the Universal Declaration of Human Rights. This drafting committee intentionally included people from many different countries, cultures, beliefs, alongside varying political viewpoints - all so the Declaration truly mirrored human values worldwide. (Drafting of the Universal Declaration, 2025)

Eleanor Roosevelt, heading up the work, chaired the commission responsible for the Declaration, really making its approval happen.

John Peters Humphrey (Canada): Director of the UN Secretariat's Division of Human Rights, who prepared the initial draft or "blueprint".

René Cassin, a legal scholar from France, reshaped Humphrey's initial work - organizing it like an ancient Greek temple, complete with core beliefs acting as its base alongside supporting columns of individual rights.

From Lebanon, Charles Malik wrestled with big ideas - a thinker blending faith alongside philosophy.

P.C. Chang, a Chinese envoy alongside a student of Confucius, believed stripping away religion would make his ideas resonate with everyone.

Hansa Mehta, from India, believed words mattered. She pushed for a shift - instead of saying "all men," she wanted us to say "all people." (Hansa Mehta, 2018)

Hernán Santa Cruz (Chile): Chilean educator who championed the inclusion of socio-economic rights.

Because its makeup drew from many sources, the UDHR wasn't tied to one way of thinking about law, culture, or beliefs it spoke to everyone.

Debate and Committee Approval

First, the Commission on Human Rights looked over the initial proposal at its meeting. Then, on June 18th, they gave it the go-ahead – twelve votes for, zero against, four didn't weigh in. This version went next to the UN Economic and Social Council, which passed it along to the full General Assembly in late August. (Drafting of the Universal Declaration , 2025)

General Assembly Review and Third Committee Deliberations

The Assembly's Third Committee spent weeks reviewing everything from September through December. After eighty-one sessions focused on the draft, the Third Committee worked through one hundred sixty-eight suggested changes from nations around the world. Then, on December 6, 1948 – during their 178th session – they approved the Declaration itself, with twenty-nine supporting votes, zero opposing, alongside seven abstentions. It went next to the full General Assembly for a last look on December 9th and 10th.

Ultimately, on December 10, 1948, the UN General Assembly made it official. (Third General Assembly, 2025)

Objectives and Universal Significance of UDHR

Born from a desire to rebuild after devastation, the UDHR sought to redefine how the world operated - a bulwark against repeating past horrors. Its influence extends well beyond simple acceptance, altering laws, governments, also society everywhere. It was initially intended to halt atrocities like genocide, war crimes, and inhuman acts witnessed during WWII. Simultaneously, it proposed a universal benchmark for nations to pursue, irrespective of their governance or customs. Moreover, it clarified what "human rights" plus "freedoms" actually meant, clarifying ambiguity within existing international agreements. This document champions tranquillity, liberty, along fairness, grounding them in respect for every person. Central to everything are these ideas.

The UDHR is grounded in three fundamental principles

Everyone, regardless of background - be it race, gender, belief, or birthplace - possesses the same fundamental rights. As stated in its opening article, people arrive in this world free and possessing equal worth. This idea challenges historical injustice like oppression and unfairness, asserting rights aren't granted; they simply exist because we are human. Moreover, these rights – encompassing everything from freedom of speech to access to healthcare – are connected, each holding equivalent value. If a single right disappears, everything suffers. The document lays out both personal freedoms - life, justice, voicing opinions - also opportunities such as work, education, and medical care. These aren't privileges granted by anyone; they come automatically with being human. Nothing within this statement permits governments or individuals to diminish the freedoms it

details. It proved essential for developing global standards on human rights - inspiring treaties such as the ICCPR, ICESCR, CEDAW, CRC, and likewise CAT. Together, these – the UDHR, ICCPR, and ICESCR – form the core of international human rights standards. Across the globe, it touched over eighty agreements - treaties, declarations, and even how countries wrote their own rules. Basic Law for the Federal Republic of Germany (1949): Begins with "Human dignity shall be inviolable"

Constitution of the Republic of South Africa (1996): Based on "human dignity" as an unchanging value Indian Constitution (1950): Part III (Fundamental Rights) and Part IV (Directive Principles) echo UDHR principles Though it isn't official law, courts worldwide frequently look to the UDHR as they consider what rights people have - what freedom really means.(UDHR,1948)

The Transformative Trajectory of Article 21—Judicial Activism, International Law, and the Evolution of Fundamental Rights in India

A. The Constitutional Primacy and Ambiguity of Article 21

Article 21 in the Constitution of India guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. This short provision really forms the foundation for fundamental rights in Indian law, pretty much. Back in history, courts took a pretty narrow view of it through their interpretations. Take the early case of A.K. Gopalan v. State of Madras from 1950, for example. There, the Supreme Court went with a strict literal approach. They saw a procedure established by law as just whatever the legislature put into place. It did not matter if that procedure lacked fairness or real justice in any way. That narrow position treated Article 21 mostly as a negative kind of right. It only shielded people from random actions by the executive branch. It is by limited personal liberty to nothing more than basic

physical freedom from restraint. (AK Gopalan vs State of Madras, 2024)

I. International Law as a Constitutional Imperative. Integrating UDHR Principles

A. Doctrinal Incorporation of International Norms

The Indian legal system sticks to a dualist approach in most cases. International treaties and conventions like the International Covenant on Civil and Political Rights, known as the ICCPR, do not get woven into domestic law on their own. Parliament has to pass specific laws for that to happen. Still, the judiciary often turns to the idea of harmonious construction. This lets the Supreme Court read fundamental rights in ways that match up with India's commitments abroad. The catch is that these readings cannot clash with laws already on the books at home. In the end, this method gives the Courts' rulings on constitutional rights a strong boost from outside sources. It makes them seem more solid and connected to bigger ideas. (Gupta, V, 2022)

B. Specific Influence of UDHR and ICCPR

The Universal Declaration of Human Rights, also known as the UDHR, provides the moral and intellectual foundation for how judges make decisions. This is particularly true when it comes to the protection of basic human dignity and equality, as stated in Article 1. Courts often refer to the overall spirit of the UDHR to transform the more general goals in the Directive Principles of State Policy into enforceable rights, especially under Article 21. These principles were not originally intended to be directly enforceable in legal proceedings. (The UDHR, ICCPR,)

The International Covenant on Civil and Political Rights, or ICCPR, is also frequently referenced. India became a party to this covenant, which has played a significant role in shaping judicial

interpretations. Judges use the ICCPR to expand upon concepts such as due process, personal freedoms, and protections against arbitrary government actions. Referring to this covenant helps the Court to establish its authority in a persuasive and measured way. Consider a case where the Court seeks to establish a new right, such as the right to a clean environment. Relying solely on local laws might appear as if the judges are overstepping their role. (Maneka Gandhi v. Union of India, 2022) Instead, by referencing international agreements that define dignified living globally, the Court presents this new right as something that aligns with what the Constitution already implies. (International Bill of Human Rights, 1948)

II. The Procedural Paradigm Shift, Maneka Gandhi v. Union of India from 1978

A. The Doctrinal Deficiency and the Need for Change

In the A.K. Gopalan case, the court interpreted fundamental rights in a narrow way, limiting them to specific legal procedures. It did not evaluate the fairness of the procedures established by law. This approach allowed for laws that appeared arbitrary to bypass constitutional review, provided they followed the basic legal steps. This flaw in legal reasoning left ordinary people vulnerable to rules that may have met the procedural requirements but were oppressive or unreasonable in practice.

B. The Birth of Substantive Due Process

A significant shift occurred with the Maneka Gandhi case in 1978. The court redefined the meaning of the "procedure established by law." It ruled that such procedures had to be fair, just, and reasonable. This move introduced the concept of substantive due process into Indian legal thinking. Now, judges could examine the actual quality and fairness of the law itself. This transformed Article 21 from a simple protection against executive overreach into a broader safeguard against unjust legislation. (Mishra,et.al,2023)

C. The Golden Triangle of Fundamental Rights

The Maneka Gandhi ruling also connected Articles 14, 19, and 21 in a crucial way. Article 14 deals with equality, Article 19 with freedoms, and Article 21 with life and liberty. This connection is often referred to as the Golden Triangle. Any law that affects personal liberty must now pass reasonableness tests under Article 19 and avoid arbitrariness under Article 14. This integrated approach created a strong tool for courts to closely examine state actions that may be oppressive or unjust. Before 1978, the state could detain someone without strong legal grounds simply by citing a flawed law. After the Maneka Gandhi judgment, the law itself had to adhere to the principles of natural justice and fairness. This landmark decision laid the foundation for numerous human rights advancements in the courts. ((Maneka Gandhi v. Union of India, 2025)

The Critical Analysis Approach

The Implementation Indentation: While the Supreme Court ruled in *Maneka Gandhi* that procedure must be "fair, just, and reasonable," the state machinery often fails to uphold this. Official data cited in medical ethics journals reveals that in 2021-22 alone, there were 155 deaths in police custody and 2,152 deaths in judicial custody, highlighting a persistent culture of negligence and brutality that contradicts the UDHR's promise of dignity. (D'CRUZ,M. 2023).

Misuse of Rights: The liberalization of the court system, while intended to help the poor, has also led to the misuse of mechanisms like Public Interest Litigation (PIL). The Supreme Court has expressed concern that PILs are sometimes becoming an "industry of vested interests," used for personal vendetta, political scores, or publicity rather than genuine public causes. This clogs the judicial system, ironically delaying justice for those who truly need it. (State of Uttaranchal V. Balwant Singh

Chaufal , 2024). India's judicial system is clogged with millions of pending cases; the "right to an effective remedy" (UDHR Art. 8) is often theoretical. Justice delayed is often justice denied. Even with all these strong laws in place, what happens on the ground a lot of times just goes against the UDHR. It means that it seems the rules are followed, but enforcement does not always follow through. Take custodial violence, for example. Article 5 says no one should be tortured. But looking at the numbers, in just the first nine months of 2023, the NHRC reported 126 deaths in police custody. And then there were 1,673 in judicial custody. That really shows how the right to life gets intervened up once someone is detained.(Drishtiias 2025) Freedom of the press is another area where this comes up. Article 19 is supposed to protect freedom of opinion and expression. However, journalists keep getting arrested under laws like the UAPA just for reporting critically. And internet shutdowns happen a lot to stop information from spreading. On equality and discrimination, Articles 2 and 7 should ensure everyone is treated fairly. The Constitution promises equality, too. But in reality, there are these punitive demolitions targeting minority communities' properties, all without proper due process. That skips the fair procedure that the Maneka Gandhi judgment talked about.

Conclusion

The Universal Declaration of Human Rights (UDHR) has played a vital role in promoting the global recognition and protection of human dignity since its adoption in 1948. Its influence goes beyond its idealistic language, shaping constitutions, international treaties, and judicial interpretations worldwide—including major changes in Indian constitutional law. In India, the UDHR's principles have directly influenced the development of fundamental rights, especially through the reinterpretation of Article 21 and the formation of the

"Golden Triangle" linking Articles 14, 19, and 21. Pioneering cases such as Maneka Gandhi v. Union of India illustrate how the Indian judiciary now ensures that laws and state actions align with both substantive fairness and global human rights principles. Ultimately, the UDHR remains an enduring guide for justice, equality, and liberty. Its commitment to universal, indivisible rights continues to inspire legal reforms and judicial activism, offering both a moral direction and a practical framework for advancing human rights in India and around the world. The document's legacy persists because it reaffirms that human rights are not given by governments, but are inherent to every individual, forming the foundation for a just and humane society.

References

1. (Maneka Gandhi v. Union of India, 1978). (n.d.). Retrieved from https://testbook.com/ias-preparation/maneka-gandhi-case-upsc-notes
2. AK Gopalan vs State of Madras. (2024). Retrieved from https://testbook.com/landmark-judgements/ak-gopalan-vs-state-of-madras
3. Contemplating UDHR and Indian Constitutional guarantees. (2025). Retrieved from https://ignited.in/index.php/jasrae/article/download/16307/31717/77677?inline=1
4. Drafting of the Universal Declaration of Human Rights. (2025). Retrieved from https://en.wikipedia.org/wiki/Drafting_of_the_Universal_Declaration_of_Human_Rights
5. GUPTA, V. (n.d.). Gupta, V. (2022) 'Using International Law in Domestic Indian Courts', NYU Journal of International Law and Politics, Vol. 54, No. 3, pp. 1–40. Retrieved from https://www.nyujilp.org/wp-content/uploads/2022/10/Gupta.pdf
6. Hansa Mehta's role in shaping Universal Declaration of Human Rights. (2018). Retrieved from https://economictimes.indiatimes.com/news/politics-and-nation/un-chief-honours-indian-reformer-

hansa-mehtas-role-in-shaping-universal-declaration-of-human-rights/articleshow/66983960.cms

7. International Bill of Human Rights (UDHR & ICCPR, 1948). (2025). Retrieved from https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights
8. Judicial Activism With Special Reference To Article. (n.d.). Retrieved from https://ijcrt.org/papers/IJCRT2301580.pdf
9. Pre-Maneka (A.K. Gopalan, 1950): "Procedure established by law". (2024). Retrieved from https://blog.ipleaders.in/article-21/
10. Supreme Court of India (1978) Maneka Gandhi v. Union of India, AIR 1978 SC 597. (n.d.). Retrieved from http://student.manupatra.com/Academic/Studentmodules/Judgments/2022/Aug/MANU_SC_0133_1978.pdf
11. The Impact of the Universal Declaration of Human Rights (1948) on the Indian Constitution. (2025). Retrieved from https://www.lawweb.in/2025/01/the-impact-of-universal-declaration-of.html
12. The right to life and personal liberty under Article 21. (2025). Retrieved from https://www.scobserver.in/journal/the-right-to-life-and-personal-liberty-under-article-21-a-timeline/
13. The UDHR, ICESCR & ICCPR – the beginning of human rights. (n.d.). The UDHR, ICESCR & ICCPR – the beginning of human rights. Retrieved from https://ebooks.inflibnet.ac.in/hrdp05/chapter/the-udhr-icescr-iccpr-the-beginning-of-human-rights/
14. United Nations General Assembly (1948) Universal Declaration of Human Rights (UDHR), Resolution 217 A (III). (2025). Retrieved from https://en.wikipedia.org/wiki/Drafting_of_the_Universal_Declaration_of_Human_Rights
15. Universal Declaration of Human Rights (1948), Drafting of the Universal Declaration. (2025). Retrieved from https://research.un.org/en/undhr/draftingcommittee.

16. *CHARTER OF THE UNITED NATIONS*. (1945). United Nations Treaty Collection. Retrieved January 1, 2026, from https://treaties.un.org/doc/publication/ctc/uncharter.pdf

17. D'CRUZ, M. . (2023). Death and denial of care in Indian prisons. *Indian Journal of Medical Ethics, VIII* (3 (NS)), 175. Retrieved from **https://ijme.in/articles/death-and-denial-of-care-in-indian-prisons/**

18. Drishtiias 2025, Justice Behind Bars-Reforming Custodial Norms. (2025). Retrieved from https://www.drishtiias.com/current-affairs-news-analysis-editorials/news-editorials/2025-07-31#:~:text=Magnitude%20and%20Trends%3A%20According%20to,attributed%20specifically%20to%20police%20custody.