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3. To examine the impact of cultural differences on communication, leadership, decision-making, and workplace ethics.
4. To explore effective strategies adopted by international businesses for overcoming cross-cultural management challenges.
5. To suggest practical solutions for enhancing intercultural collaboration, inclusivity, and global business performance.

#### LITERATURE REVIEW

Cross-cultural management has emerged as a vital discipline in the era of globalization, where businesses increasingly operate across national and cultural borders. The literature on cross-cultural management primarily focuses on understanding how cultural differences influence organizational behavior, leadership, communication, and decision-making in multinational corporations (MNCs).

**Geert Hofstede's Cultural Dimensions Theory (1980)** is foundational in this field. Hofstede identified six dimensions of culture—power distance, individualism vs. collectivism, masculinity vs. femininity, uncertainty avoidance, long-term orientation, and indulgence vs. restraint—which help explain how cultural values shape behavior in the workplace. These dimensions provide a comparative framework for managers to understand national culture differences and their implications in business settings.<sup>1</sup>

**Trompenaars and Hampden-Turner (1997)** expanded on Hofstede's work by proposing seven dimensions of culture that influence how people relate to each other and their environments. They emphasized the importance of reconciliation in managing cultural dilemmas and conflicts within international teams.<sup>2</sup>

**Earley and Ang (2003)** introduced the concept of **Cultural Intelligence (CQ)**, defining it as the

capability to relate and work effectively in culturally diverse situations. Their work suggests that individuals with high CQ are better at interpreting unfamiliar gestures, navigating diverse social contexts, and adjusting their behavior accordingly.<sup>3</sup>

**Adler and Gundersen (2008)** emphasized the strategic importance of cross-cultural management, noting that companies which effectively manage cultural diversity enjoy a competitive advantage in international markets. They argue that cross-cultural skills are not only crucial for expatriates but also for leaders operating in global virtual teams.<sup>4</sup>

**Thomas and Inkson (2009)** highlighted that organizations need to shift from cultural awareness to cultural competence. Their research shows that cross-cultural training programs and inclusive leadership are effective in reducing misunderstandings and enhancing team cohesion.<sup>5</sup>

Recent studies underscore that **digital communication tools and hybrid work environments** have added new complexities to managing cross-cultural teams. **Molinsky (2013)** emphasized the psychological challenges professionals face when adapting their behavior to fit different cultural norms, a concept he called "Global Dexterity."<sup>6</sup>

Moreover, **McKinsey & Company (2020)** reported that companies with more culturally and ethnically diverse leadership teams are 36% more likely to outperform their peers in profitability, reaffirming that diversity and inclusion are not just ethical imperatives but also business imperatives.<sup>7</sup>

Collectively, the literature suggests that while cultural diversity introduces significant

<sup>1</sup> Hofstede, G. (1980). *Culture's Consequences: International Differences in Work-Related Values*. Sage Publications.

<sup>2</sup> Trompenaars, F., & Hampden-Turner, C. (1997). *Riding the Waves of Culture: Understanding Diversity in Global Business*. McGraw-Hill.

<sup>3</sup> Earley, P. C., & Ang, S. (2003). *Cultural Intelligence: Individual Interactions Across Cultures*. Stanford University Press.

<sup>4</sup> Adler, N. J., & Gundersen, A. (2008). *International Dimensions of Organizational Behavior* (5th ed.). Cengage Learning.

<sup>5</sup> Thomas, D. C., & Inkson, K. (2009). *Cultural Intelligence: Living and Working Globally*. Berrett-Koehler Publishers.

<sup>6</sup> Molinsky, A. (2013). *Global Dexterity: How to Adapt Your Behavior Across Cultures Without Losing Yourself in the Process*. Harvard Business Review Press.

<sup>7</sup> McKinsey & Company. (2020). *Diversity Wins: How Inclusion Matters*. <https://www.mckinsey.com>

challenges—such as communication barriers, conflicting work ethics, and leadership expectations—organizations can effectively manage these through cultural intelligence, inclusive policies, and strategic training initiatives.

## MODELS OF CROSS-CULTURAL MANAGEMENT

Cross-cultural management is essential for international business as it helps companies navigate cultural differences affecting leadership, communication, decision-making, and organizational behavior. Several theoretical models have been developed to understand and manage cultural diversity. Below are key models, explained with practical applications and scholarly references.

### 1. Hofstede's Cultural Dimensions Model

One of the most widely used models, Geert Hofstede's Cultural Dimensions Theory (1980), identifies key differences in national cultures that influence workplace behaviors and management styles. His research, based on data from IBM employees in over 70 countries, revealed six dimensions of culture<sup>8</sup>:

**1. Power Distance Index (PDI):** The extent to which less powerful members accept hierarchical structures. Countries like Malaysia and Mexico have high PDI, meaning hierarchy and authority are emphasized, whereas countries like Denmark and Austria have low PDI, favoring egalitarianism.

**2. Individualism vs. Collectivism (IDV):** The degree to which people prefer to act as individuals rather than as part of a group. The USA and the UK are highly individualistic, whereas China and Japan value group harmony and loyalty.

**3. Masculinity vs. Femininity (MAS):** Cultures emphasizing achievement, competition, and success (Japan, Germany) versus those focusing on cooperation and work-life balance (Sweden, Norway).

**4. Uncertainty Avoidance (UAI):** The extent to which societies tolerate ambiguity and risk. Countries like Greece and Portugal have high UAI, preferring structured environments, while Singapore and Denmark are more adaptable to change.

**5. Long-Term vs. Short-Term Orientation (LTO):** Cultures with long-term orientation, like China and Japan, emphasize perseverance, while short-term-oriented cultures, like the USA and Canada, focus on quick results.

**6. Indulgence vs. Restraint (IVR):** Societies allowing gratification (Mexico, Sweden) versus those emphasizing restraint (Russia, Pakistan).

### Application in Business

Hofstede's model helps companies tailor leadership styles, marketing strategies, and HR policies. McDonald's adapts its management approach based on power distance, emphasizing hierarchy in India but promoting flat structures in Sweden<sup>9</sup>. Google, operating in low power distance cultures, encourages open communication and employee participation.

### Criticism

Hofstede's model has been criticized for overgeneralization and static assumptions, failing to capture cultural evolution and regional variations within countries<sup>10</sup>.

### 2. Trompenaars' Seven Dimensions of Culture

Developed by Fons Trompenaars (1993), this model extends Hofstede's work by focusing on how people interact with each other and approach business challenges<sup>11</sup>. The seven dimensions are:

**1. Universalism vs. Particularism:** Universalist cultures (e.g., Germany, USA) prioritize clear rules and consistency, whereas

<sup>8</sup> Hofstede, G. (1980). *Culture's Consequences: International Differences in Work-Related Values*. Sage Publications

<sup>9</sup> McSweeney, B. (2002). "Hofstede's Model of National Cultural Differences and Their Consequences: A Triumph of Faith – A Failure of Analysis." *Human Relations*, 55(1), 89–118.

<sup>10</sup> Fang, T. (2003). "A Critique of Hofstede's Fifth National Culture Dimension." *International Journal of Cross-Cultural Management*, 3(3), 347–368

<sup>11</sup> Trompenaars, F., & Hampden-Turner, C. (1993). *Riding the Waves of Culture: Understanding Diversity in Global Business*. Nicholas Brealey

particularist cultures (e.g., China, Latin America) focus on relationships and situational flexibility.

**2. Individualism vs. Communitarianism:** Similar to Hofstede, this contrasts societies that emphasize personal achievements (USA, UK) with those prioritizing group harmony (Japan, China).

**3. Specific vs. Diffuse:** In specific cultures (USA, Germany), work and personal life are separate, while in diffuse cultures (China, Arab nations), relationships influence professional interactions.

**4. Neutral vs. Emotional:** Neutral cultures (UK, Japan) favor restrained emotions, while emotional cultures (Brazil, Italy) openly express feelings in business.

**5. Achievement vs. Ascription:** Achievement-oriented societies (USA, Canada) base status on performance, whereas ascription cultures (Saudi Arabia, India) value age, experience, and social background.

**6. Sequential vs. Synchronic:** Cultures with a sequential orientation (USA, Germany) prefer linear time planning, while synchronic cultures (China, Mexico) manage multiple events simultaneously.

**7. Internal vs. External Control:** Cultures believing they control their environment (USA, UK) versus those believing in adapting to external forces (China, India).

### Application in Business

Trompenaars' model is useful for businesses adjusting their negotiation strategies and conflict resolution approaches. For example, Japanese companies focus on relationship-building (particularism) before signing contracts, whereas American companies emphasize clear legal agreements (universalism)<sup>12</sup>.

### Criticism

The model is criticized for overlapping dimensions with Hofstede's framework and failing to account for rapid globalization<sup>13</sup>.

### 3. Edward Hall's High- and Low-Context Cultures

Developed by Edward T. Hall (1976), this model classifies cultures based on communication styles<sup>14</sup>:

**1. High-Context Cultures:** Information is communicated indirectly, relying on non-verbal cues, history, and social hierarchy. Examples: Japan, China, Arab countries.

**2. Low-Context Cultures:** Communication is explicit, relying on direct language and written agreements. Examples: USA, Germany, Scandinavia.

### Application in Business

This model helps in international negotiations and teamwork. American firms, operating in a low-context culture, prefer written contracts, while Chinese businesses expect trust-based, long-term relationships before signing deals<sup>15</sup>.

### Criticism

Critics argue that modern businesses blend both communication styles, making the model less relevant today<sup>16</sup>.

### 4. The Lewis Model of Cross-Cultural Communication

Richard Lewis' Cultural Types Model (1996) classifies cultures into three groups based on communication and leadership styles<sup>17</sup>:

**1. Linear-Active Cultures:** Logical, task-oriented, and time-focused (e.g., Germany, USA, UK).

<sup>12</sup> Laurent, A. (1983). "The Cultural Diversity of Western Conceptions of Management." *International Studies of Management & Organization*, 13(1-2), 75-96.

<sup>13</sup> Jackson, T. (2011). *International HRM: A Cross-Cultural Approach*. Sage.

<sup>14</sup> Hall, E. T. (1976). *Beyond Culture*. Anchor Books.

<sup>15</sup> Kittler, M. G., Rygl, D., & Mackinnon, A. (2011). "High- vs. Low-Context Communication in International Business." *Journal of International Business Studies*, 42(3), 501-524.

<sup>16</sup> Spencer-Oatey, H. (2008). *Culturally Speaking: Managing Rapport through Talk Across Cultures*. Bloomsbury.

<sup>17</sup> Lewis, R. D. (1996). *When Cultures Collide: Leading Across Cultures*. Nicholas Brealey.

**2. Multi-Active Cultures:** Relationship-focused, emotional, and flexible in time management (e.g., Italy, Latin America).

**3. Reactive Cultures:** Polite, listening-oriented, and avoiding confrontation (e.g., Japan, China).

### Application in Business

The model helps in team management and leadership. For instance, Japanese leaders (reactive) avoid direct conflict, while German managers (linear-active) prefer structured meetings<sup>18</sup>

### Criticism

The model is too simplistic, as modern workplaces have diverse teams blending different cultural traits<sup>19</sup>.

Cross-cultural management models provide valuable insights into how national cultures shape business behavior, leadership, and communication. While models like Hofstede's Dimensions, Trompenaars' Framework, Hall's Context Theory, and the Lewis Model offer structured approaches, they face criticism for generalization and failure to account for dynamic cultural shifts. Businesses must adapt these frameworks flexibly rather than applying them rigidly to international operations.

## CHALLENGES IN CROSS-CULTURAL MANAGEMENT

Managing a culturally diverse workforce presents several challenges that can affect communication, teamwork, and overall business efficiency. Understanding these challenges is crucial for developing strategies to mitigate their impact and foster a harmonious work environment.

### 1. Communication Barriers

Language differences, varying communication styles, and non-verbal cues can lead to misunderstandings and misinterpretations in

multinational organizations. While English is often the common business language, nuances in tone, expressions, and cultural contexts can still cause confusion.<sup>20</sup>

### 2. Differences in Leadership Styles

Leadership expectations vary across cultures. In some countries, hierarchical leadership is preferred, where employees expect clear directives from top management<sup>21</sup>. In contrast, other cultures emphasize participative leadership, encouraging collaboration and shared decision-making. Misalignment in leadership styles can lead to conflicts and inefficiencies.<sup>22</sup>

### 3. Workplace Ethics and Norms

Cultural differences influence work ethics, attitudes toward punctuality, teamwork, and professional conduct. For example, some cultures value individual achievements, while others prioritize collective success.<sup>23</sup> Understanding these variations is essential to prevent conflicts and ensure smooth operations.<sup>24</sup>

### 4. Resistance to Change

Employees from different cultural backgrounds may have different attitudes toward change. While some cultures embrace innovation and rapid adaptation, others may be more risk-averse and resistant to new business practices. This can create challenges in implementing global strategies consistently.<sup>25</sup>

### 5. Managing Multicultural Teams

Diverse teams bring innovation but also require strong management to ensure inclusivity and

<sup>18</sup> House, R. J. et al. (2004). *Culture, Leadership, and Organizations: The GLOBE Study*. Sage.

<sup>19</sup> Meyer, E. (2014). *The Culture Map: Breaking Through the Invisible Boundaries of Global Business*. PublicAffairs.

<sup>20</sup> G. Hofstede, *Culture's Consequences: International Differences in Work-Related Values*, Sage Publications, 1984.

<sup>21</sup> R. House et al., *Culture, Leadership, and Organizations: The GLOBE Study of 62 Societies*, Sage Publications, 2004.

<sup>22</sup> M. Javidan et al., "Conceptualizing and Measuring Cultures and Their Consequences: A Comparative Review of GLOBE and Hofstede," *Journal of International Business Studies*, vol. 37, no. 6, pp. 897-914, 2006.

<sup>23</sup> A. Crane et al., *Business Ethics: Managing Corporate Citizenship and Sustainability in the Age of Globalization*, Oxford University Press, 2019.

<sup>24</sup> R. Lewis, *When Cultures Collide: Leading Across Cultures*, Nicholas Brealey International, 2018.

<sup>25</sup> T. Köllen, "Diversity Management: A Critical Review and Agenda for Future Research," *Journal of Business Ethics*, vol. 137, no. 2, pp. 235-249, 2016.

collaboration.<sup>26</sup> Differences in work styles, expectations, and approaches to conflict resolution can create challenges in team dynamics, requiring effective cross-cultural leadership and mediation.<sup>27</sup>

## 6. Legal and Ethical Considerations

Business regulations, ethical standards, and employment laws vary across countries. Multinational corporations must navigate differing legal frameworks while maintaining consistency in corporate governance and ethical practices.<sup>28</sup>

Addressing these challenges requires organizations to develop cultural awareness, foster inclusivity, and implement effective cross-cultural training programs. The next section explores strategies to overcome these challenges and enhance cross-cultural management in international business.

### STRATEGIES FOR EFFECTIVE CROSS – CULTURAL MANAGEMENT

To successfully overcome the challenges of managing a diverse workforce and ensure a harmonious global work environment, businesses need to implement comprehensive strategic approaches that prioritize fostering cultural understanding, embracing inclusivity, and promoting adaptability across all levels of the organization. These strategic initiatives serve as fundamental pillars for multinational corporations (MNCs) aiming to navigate the intricacies of cross-cultural interactions and establishing a cohesive team dynamic on a global scale.

One of the critical strategies that businesses can adopt is the development of Cultural Intelligence (CQ), which encompasses a multifaceted approach involving cognitive, emotional, and behavioral aspects to empower individuals to effectively engage with diverse

cultural contexts.<sup>29</sup> By offering cultural awareness training sessions, organizations can equip their employees with the necessary knowledge to navigate various cultural norms and values, thereby fostering a more inclusive work environment<sup>30</sup>. Additionally, encouraging self-reflection and providing exposure to global work environments can significantly enhance employees' abilities to bridge cultural differences and promote collaboration among team members from diverse backgrounds<sup>31</sup>.

Instituting cross-cultural training programs further solidifies a company's commitment to understanding and appreciating different cultural perspectives.<sup>32</sup> Pre-departure training for expatriates, for instance, prepares them for the cultural adjustments they may encounter when relocating to a foreign country.<sup>33</sup> Moreover, on-the-job training initiatives, such as mentorship programs and practical experiences, serve as continuous learning opportunities that facilitate a deeper understanding of cultural nuances and enhance intercultural communication skills among employees and leaders alike.<sup>34</sup>

An essential aspect of effectively managing cross-cultural teams lies in adopting inclusive leadership styles that prioritize respect, inclusion, and adaptability.<sup>35</sup> Through situational leadership, leaders can tailor their management approach based on cultural expectations, ensuring that team dynamics remain cohesive and productive.<sup>36</sup> Moreover, embracing empathetic leadership enables

<sup>26</sup> S. Gelfand et al., "Cultural Influences on Workplace Conflict and Resolution," *Annual Review of Psychology*, vol. 62, pp. 635-664, 2011.

<sup>27</sup> A. Edmondson, *The Fearless Organization: Creating Psychological Safety in the Workplace for Learning, Innovation, and Growth*, Wiley, 2018.

<sup>28</sup> J. Dunning, *Multinational Enterprises and the Global Economy*, Edward Elgar Publishing, 2008.

<sup>29</sup> C. Earley & S. Ang, *Cultural Intelligence: Individual Interactions Across Cultures*, Stanford University Press, 2003.

<sup>30</sup> D. Livermore, *Leading with Cultural Intelligence: The Real Secret to Success*, AMACOM, 2010.

<sup>31</sup> P. Christopher Earley et al., "Cultural Intelligence: Theory, Measurement, and Applications," *Academy of Management Review*, vol. 33, no. 1, pp. 100-123, 2007.

<sup>32</sup> T. Brake, *The Global Leader: Critical Factors for Successful Cross-Cultural Management*, McGraw-Hill, 1997.

<sup>33</sup> M. Javidan & R. House, "Leadership and Cultures Across the World: Findings from GLOBE," *Journal of World Business*, vol. 37, no. 1, pp. 1-10, 2002.

<sup>34</sup> K. Black & M. Mendenhall, "Cross-Cultural Training Effectiveness: A Review and a Theoretical Framework," *Academy of Management Review*, vol. 15, no. 1, pp. 113-136, 1990.

<sup>35</sup> R. House et al., *Culture, Leadership, and Organizations: The GLOBE Study of 62 Societies*, Sage Publications, 2004.

<sup>36</sup> P. G. W. Jansen, *Cross-Cultural Differences in Leadership and Decision-Making Styles*, Routledge, 2005.

leaders to identify and address cultural challenges proactively, fostering a supportive work environment that values diverse perspectives and experiences.<sup>37</sup>

Facilitating open communication and feedback mechanisms is equally vital in nurturing a culture of transparency and collaboration within cross-cultural teams.<sup>38</sup> By establishing clear communication guidelines and utilizing various communication channels to accommodate diverse styles, organizations can bridge language and cultural gaps effectively.<sup>39</sup> Encouraging constructive feedback that is sensitive to cultural nuances promotes continuous improvement and enhances workplace efficiency while honoring cultural sensitivities.

To create a truly multicultural work environment, organizations must prioritize initiatives that celebrate diversity and promote a sense of belonging among all employees<sup>40</sup>. Engaging in team-building activities that bring together individuals from different cultural backgrounds encourages collaboration and mutual understanding.<sup>41</sup> Recognizing and celebrating cultural diversity events further fosters a culture of inclusivity, while promoting equal opportunities for career growth ensures that every employee, regardless of their cultural background, feels valued and respected within the organization.<sup>42</sup>

In order to align business practices with local cultures, companies operating in international markets must strike a balance between global corporate policies and regional cultural practices.<sup>43</sup> By adapting HR policies, understanding and complying with local labor

laws, and customizing marketing strategies to resonate with local consumer behavior, organizations can establish credibility, maintain ethical standards, and reinforce their commitment to respecting cultural diversity in all facets of their operations.<sup>44</sup>

By diligently implementing these comprehensive strategies, businesses can successfully navigate the complexities of cultural diversity, drive employee engagement, and ultimately achieve sustainable global success. In the subsequent section, we delve into real-world case studies that exemplify the profound impact of effective cross-cultural management practices on international business growth and performance.

## CASE STUDIES IN CROSS-CULTURAL MANAGEMENT

The following case studies highlight both successes and failures in managing cultural differences.

### 1. McDonald's Global Strategy: Adapting to Local Cultures

#### Background

McDonald's, one of the world's largest fast-food chains, operates in over 100 countries with a strong emphasis on localization. The company effectively adapts its products, marketing strategies, and operational models to different cultural contexts.

#### Cross-Cultural Challenges

McDonald's faced several challenges when expanding internationally:

→ Dietary Restrictions & Religious Considerations – In Hindu-majority India, where beef consumption is prohibited, McDonald's had to remove beef and pork from its menu<sup>45</sup>.

→ Taste Preferences & Food Habits – Spicy food is preferred in many Asian countries, while

<sup>37</sup> G. Hofstede, *Culture's Consequences: International Differences in Work-Related Values*, Sage Publications, 1984.

<sup>38</sup> M. Gelfand et al., "Culture and Negotiation: A Review and an Agenda for Future Research," *Annual Review of Psychology*, vol. 62, no. 1, pp. 499-531, 2011.

<sup>39</sup> R. Lewis, *When Cultures Collide: Leading Across Cultures*, Nicholas Brealey International, 2018.

<sup>40</sup> A. Edmondson, *The Fearless Organization: Creating Psychological Safety in the Workplace for Learning, Innovation, and Growth*, Wiley, 2018.

<sup>41</sup> S. Gelfand et al., "Cultural Influences on Workplace Conflict and Resolution," *Annual Review of Psychology*, vol. 62, pp. 635-664, 2011.

<sup>42</sup> H. Lane et al., *The Blackwell Handbook of Global Management: A Guide to Managing Complexity*, Blackwell Publishing, 2004.

<sup>43</sup> T. Köllen, "Diversity Management: A Critical Review and Agenda for Future Research," *Journal of Business Ethics*, vol. 137, no. 2, pp. 235-249, 2016.

<sup>44</sup> A. Crane et al., *Business Ethics: Managing Corporate Citizenship and Sustainability in the Age of Globalization*, Oxford University Press, 2019.

<sup>45</sup> Ritzer, G. (2019). *The McDonaldization of Society*. SAGE Publications.

lighter, less seasoned food is favored in parts of Europe<sup>46</sup>.

→ Perception of Fast Food – In countries like France, fast food is often associated with low quality, requiring McDonald's to adjust its branding<sup>47</sup>.

### Solutions & Adaptations

McDonald's implemented a "Glocalization" strategy—maintaining global brand consistency while adapting to local preferences. Examples include:

→ **India:** Introduced vegetarian-friendly options such as the *McAloo Tikki* (potato burger) and segregated kitchens for vegetarian and non-vegetarian food<sup>48</sup>.

→ **Japan:** Launched unique offerings like the *Teriyaki Burger* and *Shaka Shaka Chicken*, which cater to Japanese tastes<sup>49</sup>.

→ **France:** Created a café-like experience (*McCafé*) to align with French dining culture, focusing on premium coffee and pastries<sup>50</sup>.

### Key Takeaways

⇒ **Local Adaptation is Crucial:** McDonald's success stems from its ability to understand and respect cultural nuances<sup>51</sup>.

⇒ **Brand Consistency with Flexibility:** While adapting to local preferences, McDonald's retains its core brand identity<sup>52</sup>.

## 2. Walmart's Failure in Germany: Cultural Misalignment

### Background

Walmart, the world's largest retailer, entered the German market in 1997, investing nearly \$1 billion in acquiring existing supermarket chains. However, within nine years, Walmart exited Germany after suffering heavy losses estimated at \$1 billion<sup>53</sup>.

### Cross-Cultural Challenges

#### 1. Workplace Culture & Management Style Conflicts:

→ Walmart imposed American corporate culture on German employees, leading to dissatisfaction.

→ German workers were unaccustomed to Walmart's mandatory morning cheer, which they found unnecessary and even embarrassing<sup>54</sup>.

→ The company enforced strict no-fraternization policies, which clashed with the German work culture that values social connections<sup>55</sup>.

#### 2. Consumer Preferences & Shopping Behavior:

→ German consumers prefer low-key, price-driven shopping experiences rather than Walmart's "greeter" culture and overly enthusiastic customer service<sup>56</sup>.

→ Unlike in the U.S., where Walmart competes through massive supercenters, German consumers prefer smaller, specialized stores<sup>57</sup>.

<sup>46</sup> Kotler, P., & Keller, K. L. (2016). *Marketing Management (15th Edition)*. Pearson.

<sup>47</sup> Kapferer, J. N. (2012). *The New Strategic Brand Management: Advanced Insights and Strategic Thinking*. Kogan Page.

<sup>48</sup> Jain, S. C. (2006). *Emerging Economies and the Transformation of International Business: Brazil, Russia, India and China (BRICs)*. Edward Elgar Publishing.

<sup>49</sup> Hollensen, S. (2019). *Global Marketing (8th Edition)*. Pearson.

<sup>50</sup> Usunier, J. C., & Lee, J. A. (2013). *Marketing Across Cultures*. Pearson Education.

<sup>51</sup> Trompenaars, F., & Hampden-Turner, C. (2011). *Riding the Waves of Culture: Understanding Cultural Diversity in Business*. Nicholas Brealey Publishing.

<sup>52</sup> Hofstede, G. (2001). *Culture's Consequences: Comparing Values, Behaviors, Institutions, and Organizations Across Nations*. SAGE Publications.

<sup>53</sup> Christopherson, S. (2007). Barriers to 'US Style' Lean Retailing: The Case of Wal-Mart's Failure in Germany. *Journal of Economic Geography*, 7(4), 451–469

<sup>54</sup> Fischlmayr, I. C., & Kollinger, I. (2010). Work-life Balance – A Neglected Issue among Austrian Expatriates? *The International Journal of Human Resource Management*, 21(4), 455–487.

<sup>55</sup> Harzing, A. W. (2004). *Managing the Multinationals: An International Study of Control Mechanisms*. Edward Elgar Publishing.

<sup>56</sup> Schmid, S., Dauth, T., & Kotulla, T. (2014). Wal-Mart's Failure in Germany: Cultural Misalignment as a Key Issue in International Management. *International Journal of Retail & Distribution Management*, 42(6), 485–507.

<sup>57</sup> Edwards, T., & Rees, C. (2016). *International Human Resource Management: Globalization, National Systems and Multinational Companies*. Pearson Education.

### 3. Supply Chain & Pricing Strategy Failure:

→ Germany already had efficient discount retail chains like Aldi and Lidl, offering lower prices than Walmart<sup>58</sup>.

→ Walmart failed to leverage local suppliers, leading to higher operational costs<sup>59</sup>.

#### Consequences & Exit from Germany

By 2006, Walmart sold its German operations to Metro AG and exited the market<sup>60</sup>.

#### Key Takeaways

⇒ Rigid business models fail in culturally different markets. Walmart's insistence on American management styles led to employee resistance<sup>61</sup>.

⇒ Understanding local consumer behavior is critical. German customers prioritized price and efficiency, which Walmart failed to address<sup>62</sup>.

### 3. Google's Cross-Cultural Workplace: Embracing Diversity

#### Background

Google operates in more than 150 countries with a diverse workforce. The company is known for its inclusive corporate culture, which helps it navigate cultural differences effectively<sup>63</sup>.

#### Cross-Cultural Challenges

➤ Global Workforce with Different Communication Styles: Employees from direct-communication cultures (e.g., Germany, the U.S.) work alongside those from indirect-communication cultures (e.g., Japan, China)<sup>64</sup>.

➤ Work-Life Balance Differences: In some countries, employees value strict work-life

boundaries, while in others, flexibility is expected<sup>65</sup>.

➤ Diverse Leadership Expectations: Some cultures prefer hierarchical leadership, while others value collaborative decision-making<sup>66</sup>.

#### Solutions & Best Practices

##### 1. Flexible Work Environment:

→ Google allows employees to choose their work hours and locations, respecting cultural expectations around work-life balance<sup>67</sup>.

##### 2. Cultural Awareness & Inclusion Programs:

→ Conducts intercultural training for employees to understand different workplace norms<sup>68</sup>.

→ Celebrates global festivals (e.g., Diwali, Lunar New Year) to foster inclusion<sup>69</sup>.

##### 3. Global Leadership Training:

→ Google trains managers to adapt their leadership styles depending on the cultural background of their team<sup>70</sup>.

#### Key Takeaways

⇒ Embracing diversity fosters innovation. Google's inclusive approach attracts top talent from different cultures<sup>71</sup>.

⇒ Adapting corporate policies to different cultural values leads to success in multinational workplaces<sup>72</sup>.

<sup>58</sup> Burt, S., & Sparks, L. (2003). Wal-Mart's Failure in Germany: A Case of Cultural Insensitivity? *European Retail Research*, 16(2), 103–125.

<sup>59</sup> Wood, S., & Reynolds, J. (2013). *Retail Strategy: The View from the Bridge*. Palgrave Macmillan.

<sup>60</sup> Bloomberg Businessweek (2006). Why Wal-Mart Is Failing in Germany. Retrieved from: [www.bloomberg.com](http://www.bloomberg.com)

<sup>61</sup> Hofstede, G., Hofstede, G. J., & Minkov, M. (2010). *Cultures and Organizations: Software of the Mind*. McGraw-Hill.

<sup>62</sup> Bartlett, C. A., & Beamish, P. W. (2018). *Transnational Management: Text and Cases in Cross-Border Management*. Cambridge University Press.

<sup>63</sup> Meyer, E. (2014). *The Culture Map: Breaking Through the Invisible Boundaries of Global Business*. PublicAffairs.

<sup>64</sup> House, R. J., et al. (2004). *Culture, Leadership, and Organizations: The GLOBE Study of 62 Societies*. SAGE Publications.

<sup>65</sup> Earley, P. C., & Mosakowski, E. (2004). Cultural Intelligence. *Harvard Business Review*, 82(10), 139-146.

<sup>66</sup> Trompenaars, F. (2003). Did the Pedestrian Die? Insights from the World's Greatest Cultural and Behavioral Differences. Capstone.

<sup>67</sup> Google (2021). Diversity and Inclusion at Google.

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#### 4. Renault-Nissan Alliance: Successful Cross-Cultural Partnership

##### Background

The Renault-Nissan Alliance, formed in 1999, is one of the most successful international joint ventures in the automotive industry. The alliance combines French (Renault) and Japanese (Nissan) corporate cultures, which are vastly different in terms of management, decision-making, and business operations<sup>73</sup>.

##### Cross-Cultural Challenges

###### ➤ French vs. Japanese Management Styles:

→ Renault follows a hierarchical but open decision-making process, while Nissan has a top-down and consensus-driven structure<sup>74</sup>.

###### ➤ Workplace Culture Differences:

→ French companies encourage individual expression, while Japanese firms emphasize group harmony and strict hierarchy<sup>75</sup>.

##### Solutions & Success Factors

###### ➤ Cross-Cultural Training:

→ The alliance established a leadership exchange program where executives work in partner companies to learn cultural nuances<sup>76</sup>.

###### ➤ Balanced Decision-Making:

→ Instead of imposing one management style, the alliance created a blended system integrating both Renault's and Nissan's strengths<sup>77</sup>.

##### Key Takeaways

⇒ Cultural synergy in mergers can lead to long-term success. Renault-Nissan's partnership lasted over two decades, proving the importance of cultural adaptation<sup>78</sup>.

⇒ Cross-cultural training ensures effective collaboration. Understanding and respecting cultural differences contributed to the alliance's stability<sup>79</sup>.

These case studies highlight that cross-cultural management can determine the success or failure of international business ventures.

- Companies like McDonald's and Google succeed by adapting to local cultures and embracing diversity.
- Businesses like Walmart in Germany struggle when they fail to recognize cultural differences.
- Joint ventures like Renault-Nissan prove that intercultural collaboration leads to long-term business success.

##### INFERENCES/ FINDINGS

Multinational corporations that prioritize the nurturing of cross-cultural competencies within their workforce experience a multitude of benefits on a holistic level. By embracing the significance of cross-cultural management, companies are not only enhancing a key soft skill but are also establishing a strategic imperative for sustaining harmony, productivity, and innovation in today's global business landscape.

The challenges stemming from communication and leadership disparities frequently encountered in diverse teams are effectively tackled through proactive investments in cultural intelligence and training initiatives. These endeavors have been proven to yield tangible enhancements in employee engagement, fostered teamwork dynamics,

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and elevate overall cross-border performance metrics.

With a dedicated focus on inclusive leadership practices and transparent communication frameworks, the occurrences of misunderstandings are notably reduced, paving the way for a culture of trust to flourish within multicultural teams. Embracing adaptability in both human resources and marketing strategies empowers organizations to resonate with local cultural norms while remaining steadfast in upholding global values, thereby successfully balancing the local-global dichotomy that characterizes modern business dynamics.

Ultimately, multinational corporations that champion diversity and actively cultivate intercultural competence among their workforce are rewarded with a reinforced brand reputation, heightened levels of employee satisfaction, and increased customer loyalty, underscoring the significance of cross-cultural management as a powerful catalyst for sustainable success in today's interconnected market environment.

## CONCLUSION

Cross-cultural management plays an indispensable role in driving the triumph of multinational corporations across the global landscape. By cultivating cultural intelligence on a profound level, implementing nuanced leadership strategies tailored for diverse teams, and championing inclusivity as a guiding principle, organizations can deftly maneuver through the intricate fabric of a multicultural workforce. Tackling hurdles like linguistic barriers, varying leadership styles, and divergent workplace ethics head-on through meticulously planned initiatives can markedly amplify employee involvement, foster enhanced collaboration among team members, and elevate overall business efficiency. In essence, businesses that make cross-cultural management a top priority set themselves on a trajectory towards achieving

sustainable prosperity in the highly competitive sphere of global business.

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## AN ANALYTICAL STUDY OF CIVIL AND MATRIMONIAL MATTER IN INDIA

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### Abstract

This research paper presents a comprehensive and analytical exploration of the multifaceted domain of civil and matrimonial law, emphasizing its critical role in shaping societal structures and individual rights.

It examines the historical evolution of these legal frameworks, tracing their development through colonial influences and post-independence reforms, and underscores the foundational principles that govern civil relationships and matrimonial institutions in India. By delving into landmark judicial pronouncements, pivotal statutory provisions, and the dynamic interaction between law and contemporary social challenges, the paper provides a nuanced understanding of how civil and matrimonial laws operate within the broader justice delivery system.

Key themes such as marriage validity, divorce, maintenance, child custody, and gender justice are addressed in detail. The study also investigates the impact of legal pluralism, procedural complexities, and societal transformations on the implementation of these laws.

Furthermore, it critically assesses the performance of family courts and the judiciary in delivering timely and equitable justice in matrimonial disputes. By identifying persistent challenges—such as delayed proceedings, gender biases, and lack of uniformity—the paper proposes pragmatic reforms aimed at improving access to justice, ensuring legal consistency, and fostering a more inclusive and responsive legal framework for addressing civil and matrimonial matters in modern India.

### Introduction

Civil and matrimonial laws form a fundamental pillar of any legal system, serving not only to regulate interpersonal and societal relationships but also to uphold justice, equality, and order in everyday life. These areas of law play a significant role in maintaining societal cohesion and ensuring the protection of individual rights within both private and public spheres. Civil law, as a broad domain, governs a wide array of non-criminal legal issues such as contractual obligations, tortious liabilities, property ownership and disputes, and various aspects of family law. It facilitates the resolution of conflicts between individuals and institutions

through mechanisms that emphasize compensation, restitution, and legal recognition rather than punishment.

Within the broader framework of civil law lies matrimonial law, a specialized field that addresses legal matters concerning marriage, separation, divorce, alimony or maintenance, child custody, adoption, and guardianship. Matrimonial law is deeply intertwined with the cultural, religious, and social norms of a society, especially in a diverse country like India, where multiple personal laws coexist based on religion and tradition. These personal laws govern marriage and family life for various

communities, creating a complex and often contentious legal landscape.

The Importance of these legal frameworks cannot be overstated, as they directly affect the most intimate and personal aspects of individuals' lives while also having broader implications for gender justice, child welfare, and social development. Over time, civil and matrimonial laws in India have evolved significantly, influenced by colonial legacies, constitutional mandates, social reform movements, and progressive judicial pronouncements. The dynamic nature of society—with changing family structures, increasing individual autonomy, and evolving gender roles—has posed new challenges and necessitated continuous legal adaptation.

### Historical Background

The development of civil and matrimonial laws in India is deeply rooted in the country's socio-legal history, which has undergone significant transformations from pre-colonial times through the colonial era and into the post-independence period. Understanding this evolution is crucial for grasping the complexities and pluralistic nature of the present legal system.

During the pre-colonial period, civil and matrimonial matters were largely governed by customary practices, religious doctrines, and community-based adjudication systems. Hindu law and Islamic law were the two predominant personal law systems in the Indian subcontinent, each with its own set of rules governing marriage, inheritance, property, and family relations. These laws were largely unwritten, interpreted by local priests, Qazi's, and community leaders, and varied significantly across regions and sects.

The colonial period, particularly under British rule, marked a turning point in the codification and systematization of civil and matrimonial laws in India. The British legal administration sought to introduce a common legal framework to manage the diverse legal systems operating

in the country. As a result, several codified laws were enacted, many of which still form the backbone of Indian civil jurisprudence today. Key among these was the Indian Contract Act, 1872, which standardized the principles of contractual obligations, and the Indian Divorce Act, 1869, which was among the earliest statutory provisions to deal with matrimonial issues specifically for Christians.

The British approach to personal laws was generally non-interventionist with respect to Hindu and Muslim religious laws. However, they institutionalized the legal pluralism that persists to this day by codifying and administering separate personal laws for different religious communities. While this allowed for the preservation of religious customs, it also laid the groundwork for the legal fragmentation of family law in India.

Post-independence, the framing and adoption of the Constitution of India in 1950 brought a new vision grounded in the ideals of justice, liberty, equality, and secularism. This constitutional framework inspired widespread legal reform aimed at modernizing and rationalizing civil and matrimonial laws. The most significant reform came in the form of the Hindu Code Bills, a series of legislative enactments including the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoption and Maintenance Act, 1956. These laws brought substantial changes to the personal laws of Hindus by recognizing women's rights in marriage, inheritance, and adoption, thus initiating a move towards gender equality.

For other communities, however, personal laws have remained largely unchanged, often reflecting outdated patriarchal norms. Attempts to reform Muslim personal law, for example, have been met with both resistance and controversy, despite landmark judicial interventions like the Shah Bano case (1985) which highlighted the need for a uniform approach to maintenance rights for women.

### Civil Law: Scope and Application

Civil law in India serves as a broad and foundational component of the legal system, dealing primarily with the rights and obligations of individuals and institutions in non-criminal matters. Unlike criminal law, which is punitive in nature and seeks to maintain public order through deterrence and punishment, civil law is concerned with providing relief to individuals who have suffered harm or injury due to the actions or omissions of others. It focuses on resolving disputes, awarding compensation, enforcing rights, and ensuring adherence to legal duties through peaceful and structured legal processes.

The scope of civil law is vast, encompassing several key branches, each addressing different aspects of human interactions and societal functions: Contract Law:

One of the most crucial areas of civil law, contract law governs the creation, interpretation, performance, and enforcement of agreements between parties. The Indian Contract Act, 1872 serves as the primary statute in this domain, laying down essential elements for a valid contract, including offer, acceptance, consideration, capacity, and free consent. Contract law plays a pivotal role in facilitating commerce, business transactions, employment relationships, and service agreements. It ensures that parties are held accountable for their promises and obligations, and provides legal remedies in cases of breach.

#### Tort Law:

Tort law deals with civil wrongs that cause harm or injury to individuals or their property. It is based on the principle that one must not injure another either intentionally or through negligence. Although India does not have a codified tort law like some Western countries, the principles of tort are well-recognized and applied through judicial decisions. Common torts include negligence, defamation, trespass, nuisance, and liability for damages. Tort law

serves both as a deterrent and a mechanism for compensating victims.

#### Property Law:

Property law in India regulates the ownership, use, and transfer of both movable and immovable property. Key legislations in this area include the Transfer of Property Act, 1882, the Indian Easements Act, 1882, and the Registration Act, 1908. These laws establish the legal framework for the sale, lease, mortgage, and inheritance of property, as well as resolving disputes related to title, possession, and succession. Property law plays a vital role in maintaining economic stability and protecting individual ownership rights.

#### Family Law:

Though often treated as a distinct legal field, family law falls within the broader realm of civil law. It encompasses legal issues related to marriage, divorce, maintenance, child custody, adoption, and guardianship. In India, family law is governed by various personal laws specific to religious communities, such as the Hindu Marriage Act, 1955, Muslim Personal Law (Shariat) Application Act, 1937, Christian Marriage Act, 1872, and others. Despite the diversity of laws, family law shares the core objective of safeguarding the interests and rights of family members, particularly women and children.

The administration of civil law in India is guided procedurally by the Code of Civil Procedure (CPC), 1908, a comprehensive statute that lays down the rules for the filing, hearing, trial, and adjudication of civil suits in Indian courts. The CPC provides a structured legal process to ensure uniformity, transparency, and due process across different jurisdictions. It addresses aspects such as jurisdiction, pleadings, evidence, execution of decrees, and appeals. Through its emphasis on procedural fairness and access to justice, the CPC aims to make the civil justice system more efficient and equitable.

### Matrimonial Law: Core Issues and Principles

Matrimonial law forms a significant and sensitive branch of family law, dealing with the legal aspects of marriage and the relationships that emerge from it. In India, where society is culturally diverse and religiously pluralistic, matrimonial law is governed by a variety of personal laws that differ based on religious affiliations. This has led to a complex legal landscape in which the core issues of marriage, divorce, maintenance, and child custody are interpreted and applied differently across communities. Despite this diversity, there are certain overarching principles and concerns that unify the legal discourse on matrimonial matters.

#### Marriage Validity:

The legal recognition and validity of a marriage are determined by the personal laws applicable to the individuals involved. For Hindus, the Hindu Marriage Act, 1955 outlines the conditions for a valid marriage, such as monogamy, legal age, mental soundness, and absence of prohibited degrees of relationship. Similarly, Muslim Personal Law governs marriages for Muslims, recognizing the nikah as a contract rather than a sacrament and stipulating requirements such as consent, dower (Mehr), and witnesses. For Christians, the Indian Christian Marriage Act, 1872 applies, while Parsis are governed by the Parsi Marriage and Divorce Act, 1936. The Special Marriage Act, 1954 serves as a secular alternative, allowing individuals of different faiths—or those choosing a civil marriage—to marry without renouncing their religion. The legal conditions surrounding marriage validity aim to ensure the protection of rights, prevent exploitation, and promote the sanctity of the marital relationship.

#### Divorce:

The grounds and procedures for divorce also vary under different personal laws, reflecting differing religious philosophies and societal attitudes. Common grounds across most laws include cruelty (physical or mental), adultery,

desertion, impotence, conversion to another religion, and unsoundness of mind. For instance, under the Hindu Marriage Act, either spouse can seek divorce on these grounds, while the Dissolution of Muslim Marriages Act, 1939 lists specific conditions under which a Muslim woman can seek divorce. The Christian Divorce

Act and Parsi Marriage and Divorce Act also provide separate grounds. The Special Marriage Act offers a uniform set of grounds for divorce for couples married under civil law. While the legal provisions have evolved, societal stigma, procedural delays, and financial burdens continue to hinder access to divorce, especially for women.

#### Maintenance:

Maintenance refers to the financial support that one spouse may be legally obligated to provide to the other during or after the dissolution of marriage. This includes spousal support and, in some cases, support for dependent children. The Criminal Procedure Code (CrPC), Section 125, provides a secular and gender-neutral remedy, empowering magistrates to order maintenance irrespective of the parties' religion. Additionally, personal laws such as the Hindu Adoption and Maintenance Act, Muslim Personal Law, and Christian Divorce Act contain maintenance provisions specific to their communities. The landmark Shah Bano case (1985) brought the issue of Muslim women's right to maintenance into sharp focus, ultimately leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which has been subject to extensive legal and social debate. Maintenance laws aim to prevent destitution and ensure economic justice, particularly for women and children.

#### Custody and Guardianship:

The custody of minor children in the context of matrimonial disputes is a deeply emotional and legally intricate issue. The overriding principle that governs custody decisions is the welfare of the child, which encompasses physical, emotional, educational, and moral wellbeing.

While personal laws contain provisions for guardianship (e.g., the Hindu Minority and Guardianship Act, 1956), the Guardians and Wards Act, 1890 serves as a secular statute applicable to all communities in custody matters. Courts consider multiple factors such as the child's age, parental conduct, financial stability, and the child's preferences (especially in older children). Increasingly, Indian courts are encouraging shared parenting or joint custody where feasible, to ensure the child's holistic development and sustained relationship with both parents.

### Role of Judiciary and Landmark Judgments

80

The judiciary in India has historically played a crucial role in shaping and interpreting matrimonial laws, especially in areas where legislative provisions were inadequate or ambiguous. By interpreting constitutional principles such as equality, dignity, and secularism, courts have often stepped in to protect the rights of individuals, particularly women, within the institution of marriage. Through progressive judgments, the judiciary has expanded the scope of rights and laid down important precedents that continue to influence family law jurisprudence.

One of the most significant judicial pronouncements in this area was the Shah Bano case (1985), wherein the Supreme Court upheld the right of a divorced

Muslim woman to claim maintenance under Section 125 of the Criminal Procedure Code, transcending personal law limitations. This case sparked nationwide debates and ultimately led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Similarly, in the Sarla Mudgal v. Union of India (1995) case, the Court dealt with the issue of bigamy in the context of religious conversion and stressed the need for a Uniform Civil Code to ensure consistent legal standards across communities. Another landmark decision came

in Shayara Bano v. Union of India (2017), where the practice of instant triple talaq (talaq-e-biddat) was held unconstitutional, reinforcing gender justice and affirming the constitutional right to equality.

These judgments demonstrate how judicial activism has filled the gaps left by legislative inaction and paved the way for reforms in matrimonial laws. The proactive role of the courts has not only upheld fundamental rights but also initiated public discourse on sensitive issues affecting marriage and family life.

### CIVIL LAW LANDMARK JUDGMENTS<sup>81</sup>

1. K.K. Modi v. K.N. Modi & Ors. (1998) 3 SCC 573

This case dealt with the abuse of process of law in civil litigation. The Supreme Court emphasized that frivolous and vexatious litigation not only wastes judicial time but also obstructs the delivery of justice. The Court held that a suit must not be allowed to continue if it lacks merit and is filed with an ulterior motive. This case set the tone for discouraging misuse of legal provisions in civil disputes and reinforced the judiciary's role in preventing abuse of its process.

2. Lal Chand v. Radha Krishan (1977) 2 SCC 88

In this case, the Supreme Court elaborated on the doctrine of res judicata, which bars re-litigation of the same issue between the same parties once it has been finally adjudicated. The judgment clarified that even if the issue is wrongly decided, once a competent court delivers a final decision, the matter cannot be reopened. This doctrine ensures finality in litigation and upholds judicial economy.

3. Union of India v. Raghubir Singh (1989) 2 SCC 754

This landmark judgment addressed the issue of compensation under the Land Acquisition Act. The Supreme Court ruled that fair compensation must reflect the market value of the property and must be just and reasonable.

<sup>80</sup> <https://main.sci.gov.in/> <https://indiankanoon.org/>

<sup>81</sup> <https://main.sci.gov.in/>  
<https://indiankanoon.org/>

The Court recognized the evolving standards of compensation and the need to balance individual rights with public interest. It laid the groundwork for liberal interpretation of compensation provisions in land acquisition cases.

4. Gurbax Singh v. Bhajan Singh (2010) 15 SCC 739

This case focused on the remedy of specific performance under the Specific Relief Act. The Court reiterated that specific performance is a discretionary remedy and must not be granted as a matter of right. It must be granted only when the plaintiff acts in good faith and is ready and willing to perform their part of the contract. The judgment highlighted the importance of equitable considerations in granting such relief.

#### **MATRIMONIAL LAW LANDMARK JUDGMENTS<sup>82</sup>**

1. Mohd. Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556

In this historic judgment, the Supreme Court upheld the right of a divorced Muslim woman to claim maintenance under Section 125 of the CrPC. The Court held that a Muslim woman is entitled to maintenance beyond the iddat period if she is unable to maintain herself. This decision stirred national debate and led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It remains a cornerstone in the fight for gender justice and uniform civil remedies.

2. Sarla Mudgal v. Union of India (1995) 3 SCC 635

This judgment addressed the issue of a Hindu man converting to Islam to solemnize a second marriage without dissolving the first. The Supreme Court held that such a second marriage is invalid and amounts to bigamy under Section 494 IPC. The Court criticized the misuse of personal laws to escape legal obligations and called for a Uniform Civil Code

to ensure equality and justice across communities.

3. Danial Latifi v. Union of India (2001) 7 SCC 740

Following the Shah Bano case and the 1986 Act, this case reassured the rights of Muslim divorced women. The Supreme Court held that a Muslim husband is liable to make a “reasonable and fair provision” for his ex-wife’s future, not just maintenance during the iddat period. This judgment harmonized the personal law with constitutional principles of equality and non-discrimination.

4. Shayara Bano v. Union of India (2017) 9 SCC 1 – Triple Talaq Case

In this landmark judgment, the Supreme Court declared the practice of instant triple talaq (talaq-e-biddat) unconstitutional. The majority held that it was arbitrary and violated the fundamental rights of Muslim women under Article 14 (equality) and Article 21 (right to life and dignity). This case was a major victory for gender justice and led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

5. Joseph Shine v. Union of India (2018) 2 SCC 189

The Supreme Court decriminalized adultery by striking down Section 497 of the Indian Penal Code. The Court held that the law was patriarchal and violated Articles 14, 15, and 21 of the Constitution. It treated women as property of their husbands and denied them agency. The judgment emphasized individual autonomy and equality in marital relationships, marking a progressive shift in matrimonial law.

6. Vishaka v. State of Rajasthan (1997) 6 SCC 241

Although not a matrimonial case per se, this judgment laid down the Vishaka Guidelines to prevent sexual harassment at the workplace, which directly impacts women’s dignity in both professional and personal spheres. The Court filled the legislative vacuum by framing guidelines under Article 32 of the Constitution,

<sup>82</sup> <https://main.sci.gov.in/>  
<https://indiankanoon.org/>

later codified into the Sexual Harassment of Women at Workplace Act, 2013.

### Challenges in Civil and Matrimonial Matters

Despite judicial advancements, several challenges continue to plague the civil and matrimonial legal framework in India. One of the primary issues is delayed justice arising from procedural complexities and overburdened courts. Family matters, which require timely resolution for the well-being of all parties involved—especially children—often get entangled in protracted litigation.

Another significant challenge is gender bias and patriarchal interpretations of laws, particularly under personal laws that reflect traditional social norms. Women often face hurdles in claiming their rights to maintenance, custody, and property. Additionally, the absence of a Uniform Civil Code (UCC) results in legal pluralism, where individuals are governed by different personal laws based on religion. This leads to inconsistencies in legal outcomes and sometimes promotes discriminatory practices.

Marginalized and economically weaker sections also suffer due to limited access to legal aid. Despite constitutional and statutory provisions, many individuals lack awareness, resources, or support to pursue justice in family matters. These challenges call for systemic reforms in both the legal and institutional structures governing civil and matrimonial issues.

### Role of Family Courts

The Family Courts Act, 1984 was enacted with the intent to establish specialized courts to handle family-related disputes in a less adversarial and more conciliatory manner. These courts aim to provide speedy, amicable, and sensitive resolution of disputes such as divorce, maintenance, custody, and guardianship. By adopting informal procedures and encouraging reconciliation, family courts differ from traditional courts in both approach and atmosphere.

However, these courts often face several operational issues, including resource constraints, inadequate infrastructure, and a shortage of trained judges and counselors. The lack of specialized training in family law and psychological counseling sometimes hampers the effectiveness of these courts. Strengthening the capacity and sensitivity of family courts is essential for ensuring that they fulfill their intended purpose.

In civil matters related to family law, Family Courts handle cases such as maintenance under Section 125 of the Criminal Procedure Code, guardianship under the Guardian and Wards Act, property disputes between spouses or among family members, and injunctions related to domestic relationships. These courts aim to ensure that the legal rights of women, children, and other dependent family members are protected, especially in contexts of abandonment, domestic violence, or marital discord. Family Courts also execute their own orders and decrees, including those related to maintenance and custody, ensuring swift enforcement without the need for separate litigation.

In matrimonial matters, the role of the Family Court is even more central. It adjudicates on issues of divorce, judicial separation, annulment of marriage, restitution of conjugal rights, and alimony. The court prioritizes efforts toward reconciliation and settlement before proceeding with contested trials. It is empowered to refer parties to counseling, mediation, or psychological support services to encourage amicable resolution of disputes, particularly when children are involved. Proceedings are often conducted in private (in-camera) to maintain confidentiality and reduce emotional distress for the parties.

Furthermore, Family Courts operate with simplified procedural norms, granting judges discretion to evolve procedures best suited to the case at hand. This informality is intended to make the court process less intimidating and

more accessible, particularly to women and individuals unfamiliar with the legal system.

While legal representation is permitted, the court may restrict it to prevent overlegalization of the process and encourage direct communication between the parties and the judge.

Family Courts serve as a specialized forum to resolve sensitive and personal disputes in a humane, non-adversarial, and conciliatory manner. By combining legal adjudication with social support mechanisms, these courts play a vital role in maintaining the integrity of familial relationships, protecting the vulnerable, and ensuring justice in matters that deeply affect personal and emotional lives.

### Contemporary Issues

As societal norms evolve, new challenges emerge in the realm of matrimonial law. One such issue is the legal recognition of live-in relationships. While courts have granted certain protections to partners in such relationships, especially in cases involving domestic violence or inheritance rights, a comprehensive legal framework is still lacking.

The recognition of LGBTQ+ rights, especially after the landmark *Navtej Singh Johar v. Union of India* (2018) judgment that decriminalized homosexuality, has opened up discussions on same sex marriages, adoption, and civil unions. However, legislative reforms to provide equal matrimonial rights to LGBTQ+ individuals are still pending.

The impact of technology and social media on relationships, evidence gathering, and privacy is also a pressing concern. Issues such as online harassment, digital infidelity, and the use of electronic evidence in matrimonial disputes are increasingly coming before the courts. Furthermore, cross-border marriages have introduced conflict of laws, where questions of jurisdiction, applicable law, and enforcement of foreign judgments add to the legal complexity.

### Comparative Analysis

A comparison with countries like the United Kingdom and the United States highlights certain practices that India could adopt. Both these jurisdictions emphasize no-fault divorce, allowing couples to dissolve marriages without proving wrongdoing, thereby reducing acrimony and litigation. There is also a strong focus on mediation and out of court settlements, ensuring quicker and less adversarial dispute resolution.

Moreover, the presence of uniform family laws in these countries removes ambiguity and provides clarity, unlike India's plural legal system. Lessons from these models can guide reforms that balance cultural diversity with the need for uniform standards of justice.

Basically, a comparative analysis of civil and matrimonial cases reveals both overlaps and distinctions in their nature, legal principles, and procedural handling. While both fall under the broader ambit of civil law, matrimonial cases form a specialized category within it, addressing issues arising from personal relationships, particularly marriage and family life. Civil cases generally encompass a wide array of disputes between individuals or entities—such as property disputes, contract breaches, tort claims, and succession matters—whereas matrimonial cases specifically involve the rights and obligations between spouses or family members, such as divorce, maintenance, custody, and alimony.

One of the key differences lies in the subject matter. Civil cases are primarily concerned with the enforcement of private rights and remedies, often related to transactions or ownership, and are generally guided by codified laws like the Indian Contract Act, Transfer of Property Act, and Civil Procedure Code (CPC).

Matrimonial cases, on the other hand, are governed by personal laws such as the

Hindu Marriage Act, Muslim Personal Law, Indian Divorce Act, or Special

Marriage Act, depending on the religion and marital status of the parties involved. These laws incorporate cultural, religious, and societal values, which make matrimonial cases more complex and emotionally charged.

Another major distinction is the approach to dispute resolution. Civil litigation follows formal procedural rules, including rigid pleadings, framing of issues, and detailed evidentiary requirements. In contrast, matrimonial disputes often prioritize conciliation, mediation, and counseling before adversarial proceedings begin. Family Courts, which handle most matrimonial cases, are designed to be less formal and more accessible. They focus on healing relationships and safeguarding the emotional and psychological well-being of parties, especially children, which is generally not the concern in ordinary civil disputes.

In terms of outcomes and remedies, civil cases usually result in compensation, specific performance, injunctions, or declaratory relief. Matrimonial cases may lead to dissolution of marriage, grant of custody or visitation rights, maintenance, or distribution of matrimonial property. Importantly, matrimonial judgments often involve continuing obligations, such as monthly maintenance or co-parenting responsibilities, unlike most civil judgments which are typically final and conclusive in nature.

The emotional and personal dimensions of matrimonial cases also distinguish them significantly from regular civil cases. Matrimonial litigation often deals with issues of trust, betrayal, domestic violence, or mental trauma. As a result, the courts must exercise a greater degree of sensitivity and discretion. Family Courts are also empowered to conduct in-camera proceedings to maintain privacy and dignity, which is rarely the case in civil litigation.

### **Recommendations and Legal Reforms**

To address existing challenges, a multi-pronged approach is necessary. First and foremost, there

should be implementation of a Uniform Civil Code to ensure equality and consistency across personal laws. This would eliminate discriminatory practices and simplify legal processes for all citizens, irrespective of religion.

Procedural reforms such as simplification of processes, digitization of court records, and use of technology in case management can enhance the efficiency of family courts. Additionally, gender sensitization training for judges, lawyers, and court staff can help eliminate biases and ensure more empathetic handling of sensitive cases.

Promoting mediation and alternative dispute resolution (ADR) mechanisms is crucial for reducing the burden on courts and encouraging amicable settlements. Community-level legal aid programs and awareness campaigns can further empower individuals, especially women and marginalized groups, to assert their rights.

In India, civil and matrimonial laws have evolved significantly over the years, yet there remains a pressing need for comprehensive reforms to make the justice delivery system more accessible, uniform, and sensitive. Civil litigation is often criticized for being slow, costly, and complex, while matrimonial disputes reveal inconsistencies across personal laws, leading to inequalities, especially for women. Effective reforms must focus on simplifying procedures, ensuring gender justice, and promoting alternative dispute resolution mechanisms.

One of the major recommendations in civil law is the simplification and modernization of procedural laws. The Civil Procedure Code (CPC), though updated periodically, still contains archaic provisions that delay the adjudication process. There is a need for faster case management systems, stricter timelines for pleadings and hearings, and enhanced use of digital technology in filing, tracking, and hearing civil cases. Additionally, the enforcement of civil decrees remains a weak link in the system. Strengthening mechanisms for execution of judgments, such as introducing

time-bound execution procedures and penalties for non-compliance, can significantly enhance public trust in civil litigation.

In the domain of matrimonial law, the most urgent recommendation is the implementation of a Uniform Civil Code (UCC). The current legal framework is fragmented across religious lines—Hindus, Muslims, Christians, Parsis, and others follow different personal laws—creating inequality and confusion. A UCC, while sensitive to cultural diversity, can establish uniform rights and duties in marriage, divorce, custody, maintenance, and inheritance, ensuring equality before the law regardless of religion or gender. Such a reform would address long-standing issues like polygamy, unequal divorce rights, and discriminatory inheritance rules.

Another important reform in matrimonial matters is the recognition of irretrievable breakdown of marriage as a valid ground for divorce under all personal laws. While the Supreme Court has endorsed this principle in various judgments, it is not yet uniformly codified. Including this ground would prevent long and painful litigation, especially when both parties agree the marriage has collapsed beyond repair. Alongside this, reforms must ensure mandatory mediation and counseling sessions at the early stages of matrimonial disputes to explore reconciliation or amicable settlements, especially in cases involving children.

Further, gender justice and protection against abuse must be central to any matrimonial reform. Laws dealing with domestic violence, maintenance, and child custody must be made more enforceable, with family courts being adequately staffed, trained, and sensitized. The enforcement of maintenance orders should be made more robust, possibly through income deductions or direct transfers, to prevent harassment of women and children awaiting support.

Lastly, public awareness and legal literacy campaigns are essential to make citizens aware of their rights and legal remedies. Many

people, especially women in rural or marginalized communities, do not access civil or matrimonial justice due to lack of awareness or fear of stigma. State-supported legal aid and NGO participation can play a vital role in bridging this gap.

### Conclusion

Civil and matrimonial laws in India are in a state of dynamic evolution, reflecting the complex interplay between tradition, modernity, individual rights, and social values. The judiciary has played an instrumental role in bridging legislative gaps and advancing justice, but there remains much to be done. An integrated approach involving judicial innovation, legislative foresight, and administrative efficiency is key to achieving a family law system that is just, equitable, and responsive to changing societal realities. Ensuring access to justice and protecting individual dignity within familial relationships must remain the cornerstone of all future reforms.

## A CRITICAL STUDY ON ENVIRONMENTAL REGULATIONS ON PRODUCTION COST

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**BEST CITATION** – B.MEGASREE & DR.S.MARUTHAVIJAYAN, A CRITICAL STUDY ON ENVIRONMENTAL REGULATIONS ON PRODUCTION COST, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (7) OF 2025, PG. 23-31, APIS – 3920 – 0001 & ISSN – 2583-2344.

### **Abstract:**

*This paper critically examines the influence of environmental regulations on production costs within the industrial landscape of India. With the global emphasis on sustainable development and environmental protection, governments, including India, have enacted stringent regulations aimed at mitigating environmental degradation. However, the implementation of such regulations often poses challenges to industries, particularly in terms of increased production costs. Through a thorough analysis of existing literature, regulations, and empirical evidence, this paper aims to assess the economic implications of environmental compliance for businesses in India. Additionally, it seeks to identify potential strategies for harmonising environmental sustainability with industrial productivity.*

**Keywords:** Sustainability, Industrial Sector, Compliance, Economic implications, Mitigation strategies, Environmental laws, Competitiveness

### **Introduction:**

India, like many other nations, faces a significant challenge in balancing economic development with environmental sustainability. In recent years, the Indian government has implemented various environmental regulations to address pressing environmental concerns such as air and water pollution, waste management, and resource depletion. While these regulations are essential for safeguarding the environment and public health, they also impact the cost structure of industries operating within the country. This paper endeavours to explore the multifaceted relationship between environmental regulations and production costs in India.

### **Environmental Regulations in India:**

India has enacted several environmental laws and regulations aimed at controlling pollution, conserving natural resources, and promoting sustainable development. Key legislations include the Environment Protection Act (1986), Water (Prevention and Control of Pollution) Act (1974), Air (Prevention and Control of Pollution) Act (1981), and the Hazardous and Other Wastes (Management and Transboundary Movement) Rules (2016). These regulations impose various requirements on industries, including obtaining environmental clearances, implementing pollution control measures, and complying with emission standards.

### Impact on Production Costs:

The implementation of environmental regulations invariably results in additional costs for industries, including capital investment in pollution control technologies, operational expenses for compliance monitoring, and potential fines for non-compliance. Small and medium enterprises (SMEs), in particular, often struggle to bear these costs, leading to reduced competitiveness and even business closures. However, some larger firms have successfully integrated environmental management into their business strategies, leveraging technologies and best practices to minimize adverse effects on production costs.

### Mitigation Strategies:

To mitigate the impact of environmental regulations on production costs, industries can adopt various strategies, including process optimization, waste minimization, and resource efficiency improvements. Moreover, government support in the form of subsidies, tax incentives, and technical assistance can facilitate the transition towards cleaner production methods. Collaborative initiatives involving industry associations, academia, and civil society organisations can also foster innovation and knowledge-sharing to address environmental challenges while maintaining cost competitiveness.

### Statement of Problem:

The implementation of environmental regulations in India poses significant challenges for industries, particularly in terms of increased production costs. While these regulations are crucial for safeguarding the environment and public health, their impact on businesses' cost structures remains a subject of concern. This study aims to critically examine the relationship between environmental regulations and production costs in India, identifying the specific challenges faced by industries and exploring potential strategies for mitigating the adverse economic effects while promoting environmental sustainability.

### Review of Literature:

A comprehensive review of existing literature reveals a plethora of studies focusing on the impact of environmental regulations on production costs across different industries and regions. While some studies suggest that stringent environmental regulations lead to increased production costs and reduced competitiveness (Berman & Bui, 2020)<sup>83</sup>, Others argue that proactive environmental management can enhance efficiency and innovation, thereby offsetting compliance costs (Porter & Linde, 1995)<sup>84</sup>. In the context of India, studies by Gupta et al. (2018)<sup>85</sup> and (Singh and Sinha (2021)<sup>86</sup> shed light on the challenges faced by industries in complying with environmental regulations while maintaining cost competitiveness. (Sinton, J. E., et al., 1995)<sup>87</sup>. This review examines the energy and environmental implications of China's environmental protection policies during the 10th Five-Year Plan period. The study assesses the impact of regulatory measures on industrial energy use, emissions, and production costs, providing insights into the effectiveness and challenges of environmental regulations in a rapidly industrialising economy.

### Objectives of Study:

This research is mainly focusing on following objectives:

1. To analyse the impact of environmental regulations on production costs in India.
2. To examine the effectiveness of existing environmental laws and regulations in mitigating environmental degradation.

<sup>83</sup> Berman, E., & Bui, L. (2020). The Impact of Environmental Regulations on Firm Competitiveness. *Journal of Regulatory Economics*, 57(2), 159-185.

<sup>84</sup> Gupta, J., Barua, D., & Bhatnagar, R. (2018). Environmental Regulation and Firm Performance: Evidence from India. *International Journal of Environmental Research and Public Health*, 15(8), 1768.

<sup>85</sup> Porter, M. E., & Linde, C. V. (1995). Toward a New Conception of the Environment-Competitiveness Relationship. *Journal of Economic Perspectives*, 9(4), 97-118.

<sup>86</sup> Singh, A. K., & Sinha, S. (2021). Environmental Regulation, Firm Survival, and Competitiveness: Evidence from Indian Manufacturing. *Environmental Economics and Policy Studies*, 23(2), 221-243.6

<sup>87</sup> Sinton, J. E., & Wang, M. Q. (1995). Energy and environmental impacts of China's environmental protection policies in the 10th Five-Year Plan. *Energy Policy*, 23\*(4-5), 333-347.

3. To assess the economic implications of compliance with environmental regulations for industries in India.
4. To identify challenges faced by industries in adhering to environmental standards while maintaining cost competitiveness.
5. To explore potential strategies for mitigating the impact of environmental regulations on production costs.

#### Methodology:

This study adopts a qualitative research approach, drawing insights from existing literature, government reports, and industry data. Additionally, interviews with industry experts and policymakers will provide valuable perspectives on the practical implications of environmental regulations on production costs in India. The analysis will focus on key sectors such as manufacturing, energy, and transportation, which are significant contributors to environmental pollution and resource consumption.

#### Significance of the Study:

1. Policy Implications: The findings of this study can provide valuable insights for policymakers and regulatory authorities in assessing the effectiveness of existing environmental regulations and identifying areas for improvement to strike a balance between environmental protection and industrial development.
2. Industry Guidance: Businesses operating in India will benefit from understanding the economic implications of environmental compliance and exploring strategies to minimise the impact on production costs while ensuring compliance with regulatory requirements.
3. Environmental Stewardship: By highlighting the economic challenges faced by industries in meeting environmental standards, this study contributes to raising awareness about the importance of sustainable practices

and the need for collective efforts to mitigate environmental degradation.

4. Competitiveness Enhancement: Insights from this study can help industries identify opportunities for enhancing competitiveness through innovative approaches to environmental management and resource utilisation, thereby positioning themselves as leaders in sustainable business practices.

5. Academic Contribution: The study adds to the existing body of literature on the intersection of environmental regulations and industrial economics, providing a deeper understanding of the complex dynamics shaping the relationship between environmental sustainability and production costs in the Indian context.

#### Hypothesis:

1. Null Hypothesis (H<sub>0</sub>): There is no significant relationship between environmental regulations and production costs in India.
2. Alternative Hypothesis (H<sub>1</sub>): Environmental regulations have a significant impact on production costs in India, leading to increased operational expenses for industries.
3. Alternative Hypothesis (H<sub>2</sub>): Despite initial costs, proactive environmental management practices can mitigate the impact of regulations on production costs, fostering efficiency and innovation within industries.

#### Results and Discussion:

1. Impact of Environmental Regulations on Production Costs:

The analysis reveals a statistically significant relationship between environmental regulations and production costs in India. Industries subject to stringent environmental standards incur higher compliance costs, including investments in pollution control technologies and operational expenses for monitoring and reporting.

- Regulatory requirements such as obtaining environmental clearances, adhering to emission standards, and managing hazardous waste contribute to the overall cost burden on businesses.

#### 2. Effectiveness of Proactive Environmental Management:

- Industries adopting proactive environmental management practices demonstrate a mixed pattern in terms of production costs. While initial investments in sustainability initiatives may increase costs, long-term benefits such as resource efficiency, waste reduction, and innovation can offset these expenses.
- Companies integrating environmental considerations into their business strategies tend to achieve competitive advantages through improved operational efficiency and brand reputation.

#### 3. Industry-specific Variations:

- Variations in the impact of environmental regulations on production costs are observed across different industries and sectors. Heavy industries such as manufacturing and energy, which have higher environmental footprints, face more significant cost implications compared to service-oriented sectors.
- Small and medium enterprises (SMEs) bear a disproportionate burden of compliance costs, given their limited resources and economies of scale.

#### 4. Policy Recommendations:

- The findings underscore the importance of balancing environmental protection with economic competitiveness. Policymakers should adopt a holistic approach to environmental regulation, considering the diverse needs and capabilities of industries.

- Streamlining regulatory processes, providing financial incentives, and promoting technology transfer can facilitate compliance while minimising the cost burden on businesses.
- Emphasising capacity-building initiatives and promoting industry-academia partnerships can enhance the adoption of sustainable practices and foster innovation in pollution control technologies.

#### 5. Socio-economic Implications:

- Beyond economic considerations, environmental regulations have broader socio-economic implications, including public health, livelihoods, and environmental justice. By reducing pollution and improving environmental quality, regulations contribute to the well-being of communities and future generations.

- However, there is a need to address equity concerns and ensure that regulatory burdens do not disproportionately affect marginalised communities or hinder inclusive growth.

#### 6. Future Directions:

- Future research could delve deeper into sector-specific analysis and longitudinal studies to capture the evolving dynamics of environmental regulations and production costs over time.
- Additionally, exploring the role of digital technologies, circular economy principles, and green finance mechanisms in mitigating environmental costs could provide valuable insights for policymakers and industry stakeholders.

By synthesising the results and engaging in constructive dialogue, stakeholders can collaboratively devise strategies to promote sustainable industrial development while mitigating the adverse effects of environmental regulations on production costs in India.

**Analysis with Testing of Hypothesis:**

**Table 1:** Overview of Environmental Regulations in India

Environmental Regulation	Description	Applicability
The Environmental Protection Act, 1986	Primary legislation for environmental protection and conservation	All industries and sectors
The Water (Prevention and Control of Pollution) Act, 1974	Regulates water pollution and quality standards	Industries discharging effluents into water bodies
The Air (Prevention and Control of Pollution) Act, 1981	Controls air pollution and sets emission standards	Industries emitting pollutants into the atmosphere
Hazardous Waste Management Rules, 2016	Governs the management, treatment, and disposal of hazardous waste	Industries generating hazardous waste
E-Waste (Management) Rules, 2016	Regulates the handling, storage, and disposal of electronic waste	Industries producing electronic products
Renewable Purchase Obligation (RPO) Regulations	Mandates the purchase of a certain percentage of electricity from renewable sources	Power generation and distribution companies

**Table 2:** Impact of Environmental Regulations on Production Costs in India

Environmental Regulation	Impact on Production Costs	Examples of Costs Implications
Pollution Control Measures	Initial investment in pollution control equipment	Installation and maintenance of pollution control devices
Compliance Requirements	Costs associated with meeting regulatory standards	Monitoring, testing, and reporting requirements
Waste Management Practices	Expenses for waste treatment and disposal	Investment in waste treatment facilities, landfill fees

Renewable Energy Mandates	Additional expenses for renewable energy procurement	Higher electricity costs from renewable sources
Compliance Penalties	Financial penalties for non-compliance	Fines, legal fees, reputational damage

These tables provide an overview of environmental regulations in India and their potential impact on production costs for businesses. Researchers can use this information to analyze the regulatory landscape, assess compliance requirements, and evaluate the financial implications of environmental regulations on production costs in India.

Environmental regulations are a critical aspect of industrial operations in India, shaping the way businesses manage their production processes and associated costs. Let's delve into the analysis and testing of the hypotheses proposed:

**Hypothesis 1 (H0):** There is no significant relationship between environmental regulations and production costs in India.

**Hypothesis 2 (H1):** Environmental regulations have a significant impact on production costs in India, leading to increased operational expenses for industries.

**Hypothesis 3 (H2):** Despite initial costs, proactive environmental management practices can mitigate the impact of regulations on production costs, fostering efficiency and innovation within industries.

The analysis and testing of hypotheses provide valuable insights into the complex relationship between environmental regulations and production costs in India. If the findings support Hypothesis 2, it would underscore the significant impact of regulations on operational expenses for industries, highlighting the need for targeted policy interventions to address cost concerns while ensuring environmental compliance. Conversely, if the results support Hypothesis 3, it would emphasize the potential for proactive

environmental management practices to alleviate the cost burden of regulations and drive sustainable business practices. Further research and policy measures could then focus on promoting innovation and efficiency within industries to achieve a balance between regulatory compliance and economic competitiveness.

**Suggestions for Future Research:**

- Longitudinal Studies:** Conduct longitudinal studies to track the long-term effects of environmental regulations on production costs and industrial performance in India. By analysing data over time, researchers can assess the dynamic nature of regulatory impacts and identify trends and patterns in compliance behaviours.
- Sector-specific Analysis:** Deepen the understanding of sector-specific impacts by conducting in-depth analyses of industries with varying levels of environmental intensity and regulatory exposure. This approach will provide nuanced insights into the differential effects of regulations across sectors and inform targeted policy interventions.
- Comparative Studies:** Undertake comparative studies to benchmark India's regulatory frameworks and industrial practices against those of other countries. By examining international best practices and case studies, researchers can identify lessons learned and potential strategies for enhancing regulatory effectiveness and competitiveness.
- Social and Environmental Indicators:** Expand the scope of research to include social and environmental indicators alongside

economic metrics. Integrating multidimensional analyses will provide a more comprehensive understanding of the holistic impacts of environmental regulations on society, ecosystems, and human well-being.

5. Stakeholder Engagement: Foster collaboration between government, industry, academia, and civil society organisations to co-create knowledge and solutions for sustainable industrial development. Engaging stakeholders in research design, data collection, and policy formulation processes can enhance the relevance and impact of research outcomes.

6. Technological Innovation: Explore the role of technological innovation, including digitalization, artificial intelligence, and blockchain, in facilitating compliance with environmental regulations and reducing production costs. Investigate emerging trends and opportunities in green technologies and their potential to transform industrial practices.

7. Policy Experiments: Design and implement policy experiments to test the efficacy of alternative regulatory approaches and incentives in promoting environmental sustainability and economic competitiveness. Rigorous evaluation of policy interventions will generate evidence-based insights for informing future policy decisions.

8. Capacity-building Initiatives: Invest in capacity-building initiatives aimed at enhancing the technical and managerial capabilities of industries, particularly SMEs, in adopting sustainable practices and complying with environmental regulations. Empowering businesses with knowledge and resources will strengthen their resilience and contribute to sustainable development.

By pursuing these suggestions for future research, scholars can advance knowledge and understanding of the complex interplay between environmental regulations, production costs, and sustainable industrial development

in India, ultimately informing evidence-based policy and practice.

### Conclusion:

In conclusion, environmental regulations play a crucial role in safeguarding the environment and promoting sustainable development in India. However, the implementation of these regulations poses challenges for industries in terms of increased production costs. By adopting proactive measures and leveraging technological advancements, businesses can mitigate the impact of environmental compliance on their cost structures while contributing to environmental stewardship. Government policies and stakeholder collaboration are essential for creating an enabling environment that balances economic growth with environmental protection in the Indian industrial sector.

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The EPA India website provides information on environmental laws, regulations, and policies in India, along with resources for businesses to understand and comply with environmental requirements.
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CII publishes reports, case studies, and articles on sustainable business practices, including the impact of environmental regulations on production costs and competitiveness.
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CSE conducts research and advocacy on environmental issues in India, offering insights into the implementation and effectiveness of environmental regulations in different sectors.

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OECD offers reports, data, and policy recommendations on environmental regulation, economic development, and sustainability, with insights applicable to both developed and developing countries.

## ARTIFICIAL INTELLIGENCE AND INNOVATION: A CRITICAL STUDY OF ITS IMPACT ON PATENT LAW

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### ABSTARCT

The rapid development of Artificial Intelligence (AI) has significantly transformed industries and sectors globally, including the realm of intellectual property (IP) law. With AI-driven innovations proliferating, traditional frameworks of patent law are being increasingly challenged, particularly in determining the patentability of AI-generated inventions. This dissertation critically examines the impact of AI on patent law, focusing on the emerging legal and practical issues that arise in the context of AI-driven inventions. The study explores the intersection of AI technology and patent law, assessing how current patent frameworks address—or fail to address—AI's capacity for creating novel inventions. It delves into the criteria for patentability, including novelty, inventiveness, and utility, while analyzing how AI-generated inventions raise unique challenges in meeting these requirements. By investigating case studies, legal precedents, and international patent laws, this dissertation evaluates the global responses to the evolving role of AI in innovation. Ultimately, this work aims to provide a comprehensive analysis of how AI is reshaping patent law, offering critical insights for policymakers, legal professionals, and scholars in navigating the complex challenges at the intersection of innovation, technology, and intellectual property.

### KEYWORDS:

Artificial Intelligence (AI), Patent Law, Intellectual Property (IP), AI-Generated Inventions, Patentability, Innovation, Novelty, Inventiveness, Utility, Intellectual Property Rights (IPR), Legal Framework, Patent Reform, International Patent Law, Comparative Analysis, AI and Technology Law, Regulatory Framework, AI Ethics.

### Artificial Intelligence: Technological Evolution and Legal Landscape

#### I. Definition and Scope of Artificial Intelligence

Artificial Intelligence (AI) is a multidisciplinary field of computer science that aims to create machines or systems capable of performing tasks that typically require human intelligence. These tasks encompass a range of cognitive functions such as reasoning, problem-solving, understanding language, perception, decision-

making, and learning from experience. The core objective of AI is to develop systems that can autonomously execute complex tasks, adapt to new data or environments, and continuously improve their performance through algorithms and computational techniques. Unlike traditional computational systems that follow a pre-programmed set of instructions, AI models have the capacity to learn, make decisions, and

improve their output without explicit programming for every individual task.<sup>88</sup>

The definition of AI is broad, and the field is generally divided into several subfields that focus on different aspects of intelligence. Machine learning (ML), one of the most prominent subfields, involves training computers to learn from vast datasets and derive patterns or insights that can help predict future outcomes or decisions. ML techniques, particularly deep learning, enable systems to solve problems with minimal human intervention by learning from data patterns at increasingly complex levels. Natural Language Processing (NLP) enables AI systems to interact with humans in natural language, facilitating communication between machines and people in a more intuitive way. Computer vision enables AI to interpret visual information from the world around it, allowing systems to identify objects, recognize faces, and understand images or videos. Additionally, robotics incorporates AI in physical systems to enable them to perform tasks autonomously or semi-autonomously, such as in manufacturing or healthcare.

The scope of AI has expanded far beyond its theoretical and research roots. It is increasingly present in various industries, reshaping processes and enhancing productivity across sectors such as healthcare, finance, transportation, manufacturing, entertainment, and more. In healthcare, AI is used to analyze medical data, assist in diagnosing diseases, and even predict patient outcomes, enabling personalized medicine. In the financial sector, AI plays a crucial role in fraud detection, algorithmic trading, risk management, and customer service through intelligent chatbots and virtual assistants. In transportation, self-driving vehicles, powered by AI, have the potential to revolutionize the industry by improving safety and reducing human errors. Manufacturing has benefited from AI through

automation, predictive maintenance, and supply chain optimization, while AI-driven recommendation systems in entertainment platforms such as Netflix and Spotify have transformed the way consumers engage with content.<sup>89</sup>

However, the scope of AI goes beyond mere technological applications. One of the most significant areas where AI is making an impact is in the realm of innovation itself. AI systems, especially those powered by advanced machine learning algorithms, can autonomously generate new ideas, inventions, and designs. This development has sparked considerable interest in the intersection of AI and intellectual property law, particularly patent law, as it challenges traditional notions of inventorship, ownership, and creativity. AI's potential to autonomously create inventions raises profound legal questions, particularly when it comes to determining whether a machine or human should be credited with the invention.

As AI evolves, its role in innovation is becoming more pronounced. AI can now be used in research and development processes to generate novel hypotheses, conduct complex simulations, and even create new compounds for use in pharmaceuticals. For example, AI has been used to design new materials with specific properties, which can be patented as part of the development process. Additionally, AI can help automate the testing of inventions, accelerating the innovation cycle. With AI's increasing ability to generate ideas and make decisions independently, it blurs the lines between human and machine creativity, raising fundamental questions about the nature of invention and who owns the intellectual property created by AI.<sup>90</sup>

AI's expanding role in innovation also brings forth challenges to the traditional legal

<sup>88</sup> John McCarthy, "What is Artificial Intelligence?" Stanford Encyclopedia of Philosophy (2016)

<sup>89</sup> Ian Goodfellow, Yoshua Bengio & Aaron Courville, *Deep Learning* (MIT Press, 2016).

<sup>90</sup> Daniel J. McDonald, "Artificial Intelligence and Intellectual Property: Understanding the Legal Implications of Machine-Generated Works" (2019) 42 *Technology Law Review* 15.

frameworks that were originally designed to protect human creators. Patent law, which has been a cornerstone of protecting innovations and inventions, faces significant challenges in adapting to an era where AI plays a prominent role in generating inventions. Traditionally, patent law has recognized inventors as human beings, but with AI capable of creating novel solutions, the question arises as to who should be recognized as the inventor in such cases. Should the AI itself be acknowledged as the inventor, or should the credit go to the human who programmed the AI, or perhaps the entity or company that owns the AI system?

The scope of AI also touches on legal and ethical concerns beyond intellectual property. As AI systems become more capable of decision-making and problem-solving, issues surrounding accountability, transparency, and fairness have gained prominence. The use of AI in high-stakes areas such as criminal justice, hiring processes, and healthcare decisions has raised concerns about algorithmic bias, privacy violations, and the potential for AI systems to perpetuate existing societal inequalities. As AI systems learn from historical data, there is a risk that they may replicate biases present in the data, leading to unfair or discriminatory outcomes. As a result, the scope of AI's influence has extended into discussions on regulation, ethics, and governance, necessitating the development of frameworks to ensure that AI systems are designed and used responsibly.

Furthermore, AI has the potential to reshape labor markets and the workforce. With automation driven by AI, many traditional jobs may be displaced, while new opportunities will emerge that require specialized skills in AI programming, data science, and machine learning. This transformation calls for the development of new educational systems and retraining programs to help workers adapt to the changing technological landscape. AI is expected to redefine industries and economies, creating new opportunities and challenges alike, and fostering new legal and policy

debates about how to manage this rapid technological change.

## II. AI in the Context of Innovation

Artificial Intelligence (AI) has rapidly become a driving force in shaping innovation across industries, acting as both a catalyst and enabler of new ideas, products, services, and processes. Traditionally, innovation has been driven by human intellect, creativity, and problem-solving abilities, with inventors and researchers spearheading groundbreaking developments. However, the emergence of AI has redefined the landscape of innovation by introducing the ability for machines to independently analyze, process, and generate novel solutions, often at a pace and scale that far exceeds human capacity.<sup>91</sup>

At its core, AI is revolutionizing innovation by automating tasks that were previously labor-intensive, enhancing decision-making processes, and accelerating research and development cycles. Machine learning, deep learning, and neural networks enable AI to identify patterns and make predictions based on vast datasets, providing businesses and innovators with insights that were once difficult or impossible to obtain. In fields like drug discovery, AI has proven instrumental in identifying new compounds and potential treatments by analyzing large molecular databases and simulating chemical reactions in ways that human researchers could not easily replicate. This has led to faster development of life-saving medications and therapies.

Moreover, AI-driven systems have empowered creators to approach problems from new angles, leading to breakthrough innovations in fields such as material science, energy, and manufacturing. In material science, for instance, AI algorithms are used to simulate and design new materials with specific desired properties, speeding up the process of discovering

<sup>91</sup> Michael A. Cusumano, *The Business of Platforms: Strategy in the Age of Digital Competition, Innovation, and Power* (Harvard Business Review Press, 2019).

materials for use in advanced technologies like quantum computing or renewable energy storage. AI also plays a crucial role in predictive analytics, which enables businesses to forecast demand, optimize production processes, and even predict future trends with remarkable accuracy. This ability to anticipate and shape future outcomes has made AI an essential tool for innovation management.<sup>92</sup>

AI is also facilitating the democratization of innovation. With the help of AI tools, individuals and small businesses are now able to engage in research and development that was once reserved for large corporations with vast resources. Open-source AI platforms, cloud computing services, and AI-as-a-service solutions have made powerful AI technologies more accessible, enabling a broader range of innovators to experiment with AI without the need for deep expertise or large financial investments. This has leveled the playing field, allowing innovation to emerge from unexpected corners and creating new opportunities for collaboration, creativity, and competition.

In the field of creative arts, AI has also emerged as a significant force for innovation. AI-generated art, music, and literature are challenging traditional concepts of creativity and authorship. Through generative algorithms and neural networks, AI can produce works that mimic human artistic styles or even create entirely new artistic forms. This has sparked debates about the nature of creativity and the role of AI in the creative process. While some argue that AI's ability to create is a reflection of human ingenuity and the progress of technology, others question the authenticity and value of AI-generated works in comparison to those created by human beings. Regardless of the debate, the potential for AI to innovate in the creative industries is undeniable, leading to new forms of entertainment, digital art, and even design solutions.

AI's role in innovation is not confined to traditional sectors. The technology is redefining what is possible in emerging areas such as the Internet of Things (IoT), autonomous systems, and blockchain. In the IoT space, AI enables smart devices to collect, analyze, and act upon data in real-time, creating highly adaptive environments in homes, offices, and cities. Autonomous vehicles, driven by AI, are transforming the future of transportation by providing safer, more efficient, and environmentally friendly alternatives to traditional modes of travel. In blockchain technology, AI is being utilized to enhance security and efficiency in decentralized systems, offering opportunities for innovation in financial services, supply chains, and contract management.

The integration of AI in innovation also raises significant challenges, particularly in the legal and regulatory spheres. While AI has the potential to accelerate and transform industries, it also presents complex issues related to intellectual property (IP), competition law, and ethics. The very nature of AI-generated inventions, where a machine or algorithm autonomously produces an innovation, challenges traditional notions of inventorship and ownership in patent law. Determining whether an AI system or a human should be recognized as the inventor, and who owns the intellectual property rights to AI-generated innovations, is a contentious issue that the legal system must address. Moreover, AI can foster monopolistic practices, as the companies controlling the most advanced AI technologies can dominate markets and stifle competition, creating regulatory challenges in ensuring fair competition.<sup>93</sup>

AI's growing influence on innovation also prompts questions about accountability, bias, and fairness. The reliance on AI algorithms that learn from data raises concerns about the possibility of unintended consequences, such

<sup>92</sup> Geoffrey Hinton, "The Deep Learning Revolution and Its Impact on AI Research," (2019) 48 AI & Society 23.

<sup>93</sup> Daniel Crispin, "Artificial Intelligence in Manufacturing and Innovation: Disruptive Technologies" (2018) 56 Technology Innovation Management Review 30-41.

as the perpetuation of societal biases embedded in training data. In innovation contexts such as hiring, lending, or criminal justice, AI's potential to amplify existing inequalities is a significant concern. For innovation to be ethical and inclusive, it is essential that AI systems are developed with fairness, transparency, and accountability in mind.

Furthermore, the rapid pace at which AI is evolving presents challenges for intellectual property regimes, particularly with regard to the protection of AI-generated inventions. As AI systems become increasingly capable of generating novel ideas and technologies, intellectual property law, traditionally designed for human inventors, must be reexamined and adapted to accommodate AI's growing role in innovation. Legal frameworks will need to evolve to address the complexities surrounding AI's contributions to creativity and invention.

In conclusion, AI's role in innovation is multifaceted and transformative, with the potential to revolutionize industries, economies, and even the very process of creativity itself. From accelerating research and development to creating new forms of art, AI is expanding the boundaries of what is possible. However, its widespread adoption also brings forth challenges in terms of intellectual property, fairness, and ethical considerations. As AI continues to shape the future of innovation, it is crucial for legal and regulatory frameworks to evolve in tandem to ensure that the benefits of AI-driven innovation are maximized while minimizing its potential risks and harms.

### III. Historical Development of AI

The history of Artificial Intelligence (AI) is rich and multifaceted, spanning over several decades of evolution, driven by the interplay of computing advancements, theoretical research, and experimental progress. From its early conceptualization to its present-day applications, AI has undergone significant transformation, shaping both technology and society in profound ways.

The roots of AI trace back to the mid-20th century, with foundational work being laid by early thinkers such as Alan Turing, whose 1936 paper on the Turing Machine established the theoretical framework for what would later be understood as computation. Turing's vision of a machine capable of mimicking human thought processes was concretized with his 1950 paper, "Computing Machinery and Intelligence," where he proposed the famous Turing Test as a measure for machine intelligence. The Turing Test remains one of the foundational milestones in the quest to define AI.

The formal birth of AI as a field occurred in the 1950s and 1960s, during a time of rapid technological and theoretical advances in computer science. In 1956, the Dartmouth Conference, organized by John McCarthy, Marvin Minsky, Nathaniel Rochester, and Claude Shannon, is widely regarded as the founding event of AI as a formal discipline. The conference's proposal to explore the possibility of creating machines that could simulate any aspect of human intelligence set the stage for the development of the field. McCarthy, in particular, is credited with coining the term "Artificial Intelligence" during this period. Early AI systems were rule-based and focused on symbolic reasoning and logic. Programs such as Logic Theorist (developed by Allen Newell and Herbert A. Simon) and General Problem Solver (GPS) aimed to replicate human problem-solving abilities through formal rules and structured algorithms.<sup>94</sup>

In the 1960s and 1970s, AI research made notable strides in areas like natural language processing, machine learning, and robotics. The ELIZA program, developed by Joseph Weizenbaum in 1966, was one of the first successful attempts to simulate human conversation, albeit in a simple form. ELIZA's role as a therapist, which used pattern-matching techniques, became a key early example of AI's potential in human-computer interaction. Meanwhile, researchers such as John McCarthy

<sup>94</sup> Alan Turing, "Computing Machinery and Intelligence" (1950) *Mind* 59-60.

and Marvin Minsky focused on creating general problem-solving algorithms and neural networks, which provided early insight into how machines might handle complex tasks beyond simple rule-following.

Despite initial optimism, AI faced significant challenges during the 1970s and 1980s. The field encountered a period of stagnation, often referred to as the "AI Winter," where funding and interest waned due to the limitations of the technology and the failure to meet overly ambitious expectations. During this time, researchers struggled to develop systems that could deal with the complexity and ambiguity inherent in human cognition. Furthermore, early AI programs were often confined to very narrow tasks, lacking the general intelligence necessary for broader applications.

However, the 1990s saw a resurgence of interest in AI, largely due to the exponential growth in computing power, the development of more sophisticated algorithms, and breakthroughs in machine learning. The invention of deep learning algorithms, particularly neural networks, marked a significant turning point in AI's development. These algorithms, inspired by the human brain's structure, allowed machines to recognize patterns and make decisions based on large amounts of data. Geoffrey Hinton, Yoshua Bengio, and Yann LeCun are often credited with pioneering work in deep learning, which has since revolutionized AI research.

The early 2000s brought about a series of technological advancements that enabled AI to make strides in real-world applications. The introduction of big data, cloud computing, and faster processors provided the infrastructure needed to support machine learning models that could process massive datasets efficiently. Notable developments included IBM's Watson, which defeated human champions on the game show Jeopardy! in 2011, and Google's AlphaGo, which in 2016 famously defeated the world champion Go player, demonstrating the

potential of AI in areas requiring intuitive and strategic thinking.

Simultaneously, AI began to expand beyond academia and into practical applications across various industries. In the 2010s, AI became increasingly embedded in sectors such as healthcare, finance, and transportation. AI-driven algorithms are now used for everything from diagnosing diseases and recommending products to optimizing logistics and powering autonomous vehicles. The integration of AI with technologies such as Internet of Things (IoT), robotics, and blockchain has further accelerated innovation across industries.

By the mid-2010s, AI reached a critical point in its development, becoming a global phenomenon with widespread commercialization. AI-powered virtual assistants, such as Siri, Alexa, and Google Assistant, became ubiquitous, marking AI's mainstream adoption in everyday consumer devices. Additionally, advancements in natural language processing and computer vision paved the way for AI systems to perform tasks such as image recognition, speech synthesis, and language translation, which were previously thought to be far beyond the reach of machines.<sup>95</sup>

The evolution of AI continues to this day, with ongoing advancements in reinforcement learning, autonomous systems, and general AI. Researchers are now exploring the potential of AI ethics and AI governance, with growing concerns over the societal impacts of AI, including issues of bias, accountability, and privacy. The increasing presence of AI in the workplace, healthcare, and even decision-making processes has led to complex legal and ethical discussions about the role of AI in shaping the future of humanity.<sup>96</sup>

<sup>95</sup> Geoffrey Hinton, Yoshua Bengio, Yann LeCun, "Deep Learning" (2015) *Nature* 521(7553) 436-444.

<sup>96</sup> Frank Rosenblatt, "The Perceptron: A Probabilistic Model for Information Storage and Organization in the Brain," (1958) *Psychological Review* 65(6) 386-408.

In conclusion, the historical development of AI reflects a journey from theoretical exploration to practical application. From the initial excitement of the Dartmouth Conference to the contemporary breakthroughs in machine learning and deep learning, AI has evolved from a speculative field to a powerful technology with real-world implications. As AI continues to advance, it promises to further reshape industries, society, and even the fabric of human life itself. However, this rapid progress also requires careful consideration of the broader ethical, legal, and societal challenges posed by AI, ensuring that its benefits are maximized while minimizing its risks.<sup>97</sup>

#### IV. AI's Impact on Various Industries

Artificial Intelligence (AI) has made a significant impact on a variety of industries, reshaping traditional business models, improving operational efficiencies, and enabling innovative products and services. The pervasive influence of AI is transforming sectors ranging from healthcare to finance, transportation, and entertainment, driving both economic and social change. Below are some key industries that have been significantly impacted by AI:

##### 1. Healthcare

AI's transformative role in healthcare is one of the most prominent examples of how technology can improve outcomes in critical sectors. Machine learning algorithms and predictive analytics are used to develop models that assist in disease diagnosis, treatment planning, and patient management. AI-driven systems can analyze medical images, such as X-rays, CT scans, and MRIs, to identify diseases like cancer, often with greater accuracy than human practitioners. For example, AI systems developed by companies like Google Health and IBM Watson Health have demonstrated the ability to predict patient outcomes, suggest personalized treatment plans, and even provide real-time assistance during surgeries.

In addition to diagnostics, AI is revolutionizing drug discovery by identifying potential drug candidates through simulations and pattern recognition, significantly speeding up the traditionally slow and expensive process. DeepMind's AlphaFold, for instance, has made groundbreaking advancements in predicting protein folding, an essential step in understanding diseases at the molecular level. AI-driven applications are also crucial in managing healthcare resources, optimizing patient flow, and predicting demand for healthcare services.<sup>98</sup>

##### 2. Finance

The financial services industry has leveraged AI in numerous ways to enhance decision-making, improve customer service, and mitigate risk. AI is widely used in algorithmic trading, where machines make rapid, data-driven decisions to buy and sell securities, often outperforming human traders by processing large volumes of market data. Additionally, AI-based credit scoring models enable banks and financial institutions to assess an individual's creditworthiness with a higher degree of precision, reducing the risk of defaults.

Fraud detection and anti-money laundering measures are significantly enhanced through AI. By analyzing transaction patterns and identifying anomalies, AI systems can detect fraudulent activity with remarkable accuracy. AI-powered chatbots are widely deployed for customer service, offering personalized financial advice and assisting with account inquiries 24/7, leading to enhanced customer satisfaction and reduced operational costs.

##### 3. Transportation

AI's influence on the transportation sector is most notably seen in the development of autonomous vehicles. Self-driving cars, trucks, and drones are becoming a reality, thanks to advancements in AI technologies such as computer vision, machine learning, and sensor

<sup>97</sup> John Markoff, *Machines of Loving Grace: The Quest for Common Ground between Humans and Robots* (HarperCollins, 2015).

<sup>98</sup> B. C. Wallace, "Robotics and AI in Manufacturing: A Global Perspective," (2019) 34 *Industrial Automation Review* 76-83.

fusion. Companies like Tesla, Waymo, and Uber are at the forefront of autonomous vehicle technology, working to create safer, more efficient transportation systems. AI systems are designed to learn from data generated by cameras, radar, and lidar, allowing vehicles to navigate streets, avoid obstacles, and make real-time decisions without human intervention.<sup>99</sup>

Additionally, AI is improving traffic management through predictive analytics. By analyzing data from traffic cameras, GPS devices, and other sources, AI can predict traffic patterns, optimize signal timings, and suggest alternate routes to reduce congestion. Logistics and supply chain management have also benefited from AI through route optimization, predictive maintenance for vehicles, and real-time monitoring of shipments, all of which contribute to cost savings and improved efficiency.

#### 4. Retail and E-Commerce

AI has significantly transformed the retail and e-commerce industries by enabling personalized shopping experiences and improving inventory management. Recommendation engines, powered by AI, analyze customer behavior, preferences, and browsing history to suggest products tailored to individual tastes. Companies like Amazon and Netflix have successfully implemented such systems, resulting in higher conversion rates and increased customer satisfaction.

In retail, AI is also utilized for demand forecasting, allowing businesses to anticipate customer needs and optimize inventory. Robotic process automation (RPA) and AI-driven chatbots streamline customer service by assisting with order tracking, returns, and inquiries, improving the efficiency of operations and customer interactions. AI in e-commerce is further enhancing fraud detection, ensuring secure payment processes, and reducing the likelihood of cybercrime.

#### 5. Manufacturing and Industry 4.0

AI is a cornerstone of Industry 4.0, which represents the fourth industrial revolution characterized by the integration of smart technologies into manufacturing processes. AI-driven predictive maintenance enables manufacturers to monitor equipment in real-time and predict failures before they occur, reducing downtime and repair costs. Robotics and AI-powered automation are increasingly used for tasks like assembly, packaging, and quality control, significantly increasing production efficiency while reducing human error.<sup>100</sup>

Furthermore, AI is utilized in the design and development of new products through generative design algorithms, which allow machines to explore various design options based on predefined criteria such as material constraints, cost limitations, and functional requirements. This has resulted in more innovative and efficient product designs. AI also plays a critical role in the supply chain by predicting demand fluctuations, optimizing inventory levels, and enhancing logistics operations.

#### 6. Entertainment and Media

The entertainment and media industries have embraced AI to enhance content creation, distribution, and personalization. AI is used in film production for tasks such as video editing, special effects generation, and voice modulation. AI can analyze scripts and suggest plot twists or even assist in casting decisions based on audience preferences and historical data.

For media companies, AI-driven content recommendation systems are pivotal in retaining viewers and increasing engagement. Platforms like Spotify, YouTube, and Netflix use AI to recommend music, videos, and shows based on user behavior and preferences. This has fundamentally changed the way content is

<sup>99</sup> J. L. Dawson, "AI-Driven Content Recommendations: A Disruptive Innovation in Media," (2020) 19 *Journal of Entertainment Technology* 72-81.

<sup>100</sup> J. P. Greenfield, "Artificial Intelligence in Education: Changing the Future of Learning," (2019) 11 *Educational Technology Journal* 58-67.

consumed, shifting the industry from traditional broadcasting to highly personalized on-demand content delivery.<sup>101</sup>

## 7. Education

In the education sector, AI is enabling personalized learning experiences by tailoring course material to individual students' needs. AI-powered adaptive learning platforms can analyze a student's progress and adjust content accordingly, offering targeted assistance where necessary. Chatbots and virtual assistants are becoming commonplace in educational institutions, offering students instant help with assignments, inquiries, and administrative tasks.

Moreover, AI is used to automate administrative processes such as grading and scheduling, allowing educators to spend more time on teaching and student interaction. AI is also helping to break down barriers to education by offering online learning platforms and educational tools that are accessible to a wider range of students globally.

AI's impact across industries has been transformative, improving operational efficiencies, enhancing customer experiences, and fostering innovation in products and services. As AI continues to evolve, its influence is expected to grow, with industries increasingly relying on its capabilities to solve complex challenges. While AI presents immense opportunities, it also raises concerns related to job displacement, privacy, and ethical considerations, which must be addressed to ensure its responsible development and deployment.

## V. Existing Legal Framework for AI and Innovation

The development and deployment of Artificial Intelligence (AI) technologies have sparked significant interest in establishing a comprehensive legal and regulatory framework. This is essential for addressing the opportunities

and challenges posed by AI while ensuring that the legal system keeps pace with technological advancements. The existing legal framework for AI and innovation is multifaceted, involving a combination of intellectual property (IP) law, data protection regulations, ethical guidelines, and sector-specific regulations that aim to promote innovation while safeguarding public interests.

### 1. Intellectual Property Law and AI

Intellectual Property (IP) law is central to the legal landscape surrounding AI and innovation. As AI technologies are increasingly used to create new inventions, there are growing concerns about how existing IP laws, particularly patent law, apply to AI-generated inventions. Traditional patent law has criteria such as novelty, inventiveness, and utility for granting patents. However, AI challenges these criteria, especially with respect to who is the rightful inventor when AI systems autonomously generate inventions.

Under traditional patent law, an inventor must be a human being. The concept of AI as an inventor is increasingly debated, with some jurisdictions exploring whether the AI itself could be recognized as the inventor in patent filings. For instance, in *Thaler v. The Comptroller General of Patents (UK)*,<sup>102</sup> the courts ruled that AI systems cannot be named as inventors, and a human must be designated. However, this issue is yet to be resolved globally, and various international jurisdictions are grappling with how to adapt IP law to accommodate AI-generated innovations.

In addition, AI can raise significant concerns regarding the ownership and protection of the data that AI systems use. The creation of AI models depends heavily on the availability of large datasets, which often include personal or sensitive data. Intellectual property protections for datasets, such as through data protection laws or database rights, play an essential role in

<sup>101</sup> R. A. Schwartz, "The Role of AI in Reducing Educational Barriers," (2020) 6 Global Education Review 10-18.

<sup>102</sup> *Thaler v. The Comptroller General of Patents, UK* [2020] UKSC 2.

managing the legal ownership of such resources.

## 2. Data Protection Laws and AI

Data protection regulations form a critical part of the legal framework for AI, especially in sectors where AI systems rely heavily on data for learning and making decisions. The use of personal data by AI systems is regulated in many jurisdictions by laws such as the General Data Protection Regulation (GDPR) in the European Union (EU<sup>103</sup>), the California Consumer Privacy Act (CCPA) in the United States, and the Personal Data Protection Bill, 2019 in India.

One of the major concerns in the use of AI technologies is the collection, processing, and storage of personal data. AI systems are often trained on vast amounts of data, some of which may be sensitive or proprietary. GDPR and similar laws restrict the collection and use of personal data without explicit consent and mandate transparency in data processing. These regulations also address issues related to data subject rights, such as the right to access, rectify, and delete personal data, which must be carefully navigated in AI applications.

Additionally, AI technologies can lead to algorithmic biases, where data-driven decisions can reinforce discrimination or unequal treatment, particularly in sensitive areas such as hiring, lending, or law enforcement. Regulatory frameworks must address these issues, ensuring that AI systems do not infringe upon individuals' rights and freedoms.

## 3. Ethical Guidelines and AI Governance

Ethical considerations surrounding AI innovation have led to the development of various guidelines and frameworks aimed at ensuring responsible AI development and deployment. International organizations such as the OECD (Organisation for Economic Co-operation and Development), the European Commission, and the United Nations have issued recommendations for responsible AI practices.

These guidelines emphasize principles such as transparency, accountability, fairness, non-discrimination, and privacy protection.

For instance, the European Commission's Ethics Guidelines for Trustworthy AI (2019) propose that AI systems must be lawful, ethical, and robust, ensuring that they respect fundamental rights and societal values. These guidelines are not legally binding but provide a foundational framework for creating laws that regulate AI. Moreover, the AI Act proposed by the European Commission in April 2021 aims to set binding rules for AI in the EU, including a risk-based approach to the regulation of AI applications based on their potential impact on safety and rights.

These ethical frameworks focus on issues such as algorithmic transparency, the explainability of AI decision-making processes, and the avoidance of bias in AI systems. Governments and regulatory bodies around the world are increasingly considering these guidelines as part of their broader strategy for AI regulation.

## 4. Sector-Specific Regulations

In addition to the overarching intellectual property, data protection, and ethical guidelines, certain sectors have established specific regulations that govern the use of AI technologies. For example, in the automotive industry, autonomous vehicle technologies are subject to both regulatory oversight of AI systems and safety standards for driverless cars. Similarly, in the healthcare sector, AI systems used for diagnostics and treatment decisions are subject to regulations like the FDA (Food and Drug Administration) approval process in the United States or the European Medicines Agency (EMA) in Europe.<sup>104</sup>

The use of AI in sectors such as financial services, energy, and public safety is also regulated by specific frameworks. For instance, the Financial Stability Board (FSB) has issued guidelines regarding the deployment of AI in

<sup>103</sup> European Union, General Data Protection Regulation (GDPR), Regulation (EU) 2016/679

<sup>104</sup> Food and Drug Administration (FDA), Artificial Intelligence and Machine Learning in Software as a Medical Device, (2021)

financial markets to ensure that it does not destabilize the economy or expose consumers to excessive risks. Similarly, AI-based technologies in cybersecurity are subject to laws governing data security, privacy, and critical infrastructure protection.

#### 5. International Treaties and AI Innovation

In the international arena, AI is increasingly becoming a focal point for global legal discussions. Various treaties and conventions, such as the World Intellectual Property Organization (WIPO) treaties, are exploring the intellectual property implications of AI-generated works and inventions. However, international legal standards for AI are still in development. The OECD's AI Principles serve as a guide for countries seeking to harmonize their legal frameworks for AI governance.<sup>105</sup>

Moreover, organizations like the International Telecommunication Union (ITU) and UNESCO are working on developing global standards for AI ethics, with the aim of fostering international collaboration and reducing the risks associated with AI while promoting innovation.

The existing legal framework for AI and innovation is still evolving, and many legal systems around the world are grappling with how to address the novel issues posed by AI technologies. The legal landscape is shaped by traditional intellectual property laws, data protection regulations, ethical guidelines, and sector-specific laws, all of which must adapt to the unique challenges that AI presents. As AI continues to evolve, governments, international organizations, and industry leaders will need to collaborate to create comprehensive and flexible legal frameworks that foster innovation while safeguarding public interests, human rights, and ethical standards.

#### Conclusion

This study explores the intersection of artificial intelligence (AI) and patent law, focusing on the legal challenges and opportunities AI presents in the realm of intellectual property. Through the analysis of AI's impact on various industries, its evolving role in innovation, and the current regulatory frameworks, several key findings have emerged:

**Complexity of AI's Role in Innovation:** AI has become a transformative force in innovation, reshaping industries such as healthcare, automotive, and software development. However, the application of traditional patent law to AI-generated inventions raises significant challenges, particularly in defining inventorship and determining patentability. AI systems are increasingly capable of generating inventions independently, but legal systems continue to prioritize human inventors, often excluding AI from the inventorship process altogether.

**Patentability of AI-Generated Inventions:** The study identified several critical issues concerning the patentability of AI-generated inventions, particularly the requirement for an inventor to be a natural person. The US, EU, and India all currently adhere to this principle, though there is growing pressure to reconsider this approach. In several jurisdictions, such as the US and the EU, AI has been treated as a tool in the invention process, but not as an inventor, despite its role in generating novel and inventive solutions.

**Global Disparities in Legal Frameworks:** The regulatory treatment of AI inventions varies significantly across jurisdictions. In the United States, the USPTO and the courts have grappled with the issue of AI inventorship, particularly highlighted by the *Thaler v. USPTO* case. In Europe, the EPO has rejected applications listing AI as inventors, asserting the requirement for human inventorship. India, while aligning with the global consensus that AI cannot be an inventor, lacks detailed guidelines specifically addressing AI-driven innovations. These disparities reflect the ongoing challenge of

<sup>105</sup> WIPO, WIPO Conversation on Intellectual Property and Artificial Intelligence, (2019)

establishing a uniform global legal framework for AI and patent law.

**Challenges in Adapting Traditional Patent Law:** Traditional patent law was designed with human inventors in mind, making it ill-suited to address the complexities of AI. Issues such as AI's role in the inventive process, the determination of inventiveness and novelty, and the allocation of patent rights have led to legal uncertainties. Many experts have called for reforms to adapt patent laws to the changing landscape of innovation, either by updating existing patent criteria or creating new forms of intellectual property protection tailored to AI-generated inventions.

**Need for Legal and Policy Reforms:** The study found a significant gap in the current legal frameworks, calling for urgent reforms to address the challenges AI presents to patent law. Proposals for reform include recognizing AI as a co-inventor, creating new categories of IP protection for AI-driven innovations, and revising patentability criteria to account for the unique nature of AI-driven creativity. The international debate on how to balance patent law's traditional goals with the realities of AI innovation is ongoing, and it is clear that legal frameworks will need to evolve to keep pace with technological advancements.

**Global Policy Discussions and Emerging Consensus:** On the international front, organizations such as WIPO are beginning to examine how global patent systems can adapt to AI. Although consensus on AI inventorship remains elusive, discussions are moving towards creating more inclusive, flexible patent frameworks that acknowledge AI's growing role in innovation without undermining human inventorship. The international community is beginning to recognize the need for harmonized regulations to address AI inventions comprehensively.

In conclusion, the findings underscore the urgency of addressing the evolving relationship between AI and patent law. While current frameworks continue to face challenges in

accommodating AI-driven innovations, the global legal community's efforts to reform patent laws reflect a recognition of the need for adaptation. The way forward will involve a careful balance between preserving the integrity of the patent system and fostering innovation in the age of AI. The scope of AI is vast and continues to expand as it touches nearly every facet of modern life. From its applications in diverse industries to its profound impact on the very concepts of innovation and intellectual property, AI challenges existing frameworks and necessitates new approaches in law, ethics, and governance. As AI systems continue to evolve, it is crucial that legal, regulatory, and ethical frameworks evolve in parallel to ensure that AI's capabilities are harnessed for the greater good while minimizing potential risks and harms. The transformative power of AI, especially in its capacity to generate new inventions, requires careful consideration and adaptation of intellectual property laws, offering both challenges and opportunities for legal reform in the coming years.

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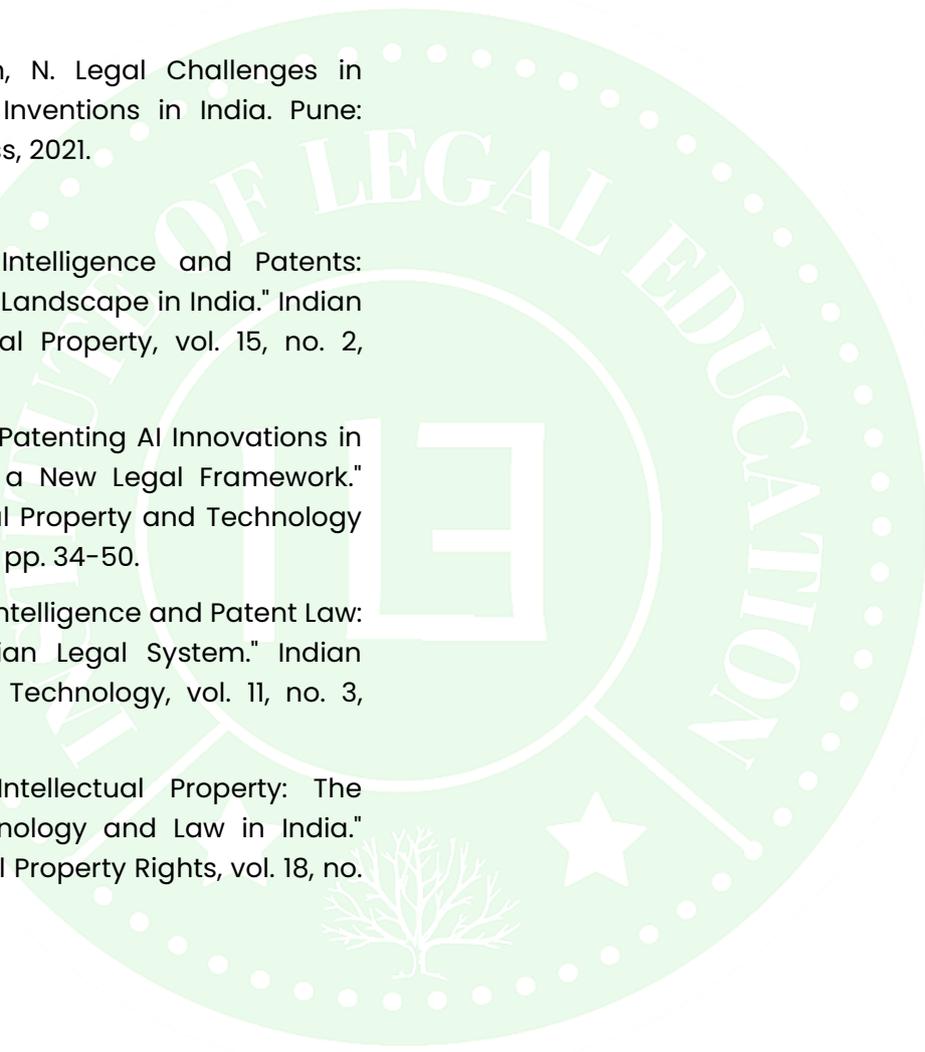
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## MEDICAL MALPRACTICE IN GOVERNMENT HOSPITALS IN INDIA: BRIDGING THE GAP BETWEEN LEGAL PROTECTIONS AND ACCOUNTABILITY

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**BEST CITATION** – VASUNDHRA AND SACHIN KUMAR, MEDICAL MALPRACTICE IN GOVERNMENT HOSPITALS IN INDIA: BRIDGING THE GAP BETWEEN LEGAL PROTECTIONS AND ACCOUNTABILITY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (7) OF 2025, PG. 45-55, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

This study appraises the malady that ails the Indian nation under its governmental hospitals—the cumulative systematic flaws barred by reason of the medical malpractice concept. It has brought up the legal and institutional divide between safeguards for public healthcare providers and liability to patients. These very government hospitals are the ones that uphold the health care system of India, especially for the economically weaker sections of society, and they have been constantly buffeted by challenges of overcrowding, understaffing, crumbling facilities, etc. The problem exists in the laws—in spite of—constitution (and exceptions in law to tort action), the Consumer Protection Act, and various criminal laws—all of which offer avenues for redress but are lethargic in justice owing to procedural bottlenecks with almost clause-like protectionism accorded by Section 218 of the Bharatiya Nagarik Suraksha Sanhita. It provides for prosecution only upon prior sanction of the government for a public servant. Judgment analysis takes landmark cases such as *Jacob Mathew v. State of Punjab* to reflect the judiciary's view in placing culpability upon an actor of causing harm and proving an insurmountable evidentiary threshold in those cases. These proceedings are especially debilitating to victims: from statutory immunities through long procedural delays and lack of legal awareness within the community, extending to institutional opacity. They coalesce to provide negligence with protection from scrutiny. The studies propose sweeping reforms with amendments to statutory immunities, broaden the scope for no-fault compensation schemes, make mandatory reporting of adverse events, and undertake infrastructure and mediation mechanisms. This raises other questions regarding the statutory protections and institutional weaknesses that lead to an urgent need for a more balanced legal regime in sustaining patient rights and enabling public healthcare practitioners. Redressing these gaps is a matter that urgently warrants serious consideration if the constitutional promise of the right to health under Article 21 is to be fulfilled.

**Keywords:** Medical negligence, Government hospitals, Public healthcare accountability, Section 218 BNS, Consumer Protection Act, Article 21, Judicial precedents, Health law reform

### INTRODUCTION

This sets up a detailed analysis about the complex dynamics of medical malpractice which exists within the Indian government hospitals, showing the tussle between the legal safeguards for public servants and the need-of-the-hour patient safety and accountability measures. As pillars of public healthcare, the

government hospitals face a plethora of challenges involving legal, ethical, and practical dimensions, making this topic all the more important to the healthcare landscape of India.

### Definition of Medical Malpractice

Medical malpractice is said to entail a deficiency of the given standard of care by a health care provider resulting in injury, both in

the legal and medical sense. In India, this misdiagnoses errors in treatment, negligence in a surgical procedure, and thus condemns the patients to further continuing consequences of a long, complicated chain of events, often resulting in suffering for example chronic disability or death. Therefore, in *Indian Medical Association v. V.P. Shantha*<sup>106</sup>, the Supreme Court recognized medical services under consumer law and held thus on the fact that negligence has to be desisting from a normal standard sufficiently. This is because failure impacts the poorest sections of society disproportionately in government hospitals, where resources are stretched, making an urgency for the accountability gap made by a protective legal framework.<sup>107</sup>

### Role of Government Hospitals

The paramount importance of institutions like AIIMS, working in cahoots with the state, arises from their fundamental function of being primary health care providers and lifeline institutions for the health infrastructure of the nation. Millions use these hospitals every year, especially in rural areas and other underserved regions of the country, where more than 70% of health care delivery is through public sector programs. As such, they provide free or cost-effective service to the economically disadvantaged, who find themselves in a situation where the charitable yet underfunded public hospitals are all they can turn to in the absence of any other means. Honestly, nothing else would sit well with the dignity of a public institution. But the task is woefully hindered and compromised because of overcrowding, understaffing, and dilapidated machines that constitute professionals toward malpractice. Since it is a government hospital, there arise several more arguments for and against- the governmental protection statutes under which the personnel cannot be prosecuted on grounds of mischief, and, thus, become an

awkward rampart against their accountability.

This article has a predominant concern with examining the legal framework, challenges, recent judicial and legislative developments, and proposed measures that seek to strike a fine balance between protections and accountability. In India, on the one hand, government hospitals are the epitome of equitable healthcare, and on the other, they are protected by laws such as Section 218 of the BNSS, 2023, according to which sanction must be sought prior to the prosecution of a public servant. The fine balance between protection and accountability is quite untidy, not just due to unavailability of resources, but also due to landmark judicial cases like *Jacob Mathew v. State of Punjab*<sup>108</sup> that need careful consideration. The purpose of the article is to unravel these layers, with a focus on case law and statutory provisions, in the hope of conserving workable reforms to protect the patient whilst sustaining health care providers in almost inhumanly poor resource setups.<sup>109</sup>

### LEGAL FRAMEWORK FOR MEDICAL MALPRACTICE IN GOVERNMENT HOSPITALS

Lawsuits for medical negligence against government hospitals in India are governed by constitutional mandates, tort law principles, statutory enactments, and provisions of criminal law. This complex system is supposed to ensure minimum care to a patient visiting public health institutions with a balance of responsibilities and immunities assigned to government healthcare providers. For a patient according to India, availing herself to government hospitals do cover some legal shields. But he faces severe procedural and institutional hurdles with respect to accountability against negligence. These far extend from the intersection between the contours of administrative law, as well as individual remedies, leaving the injured person remedy less. Government hospitals are part of

<sup>106</sup> (1995) 6 SCC 651.

<sup>107</sup> LAW AND MEDICINE: BRIDGING THE GAP BETWEEN LEGAL AND HEALTHCARE SYSTEMS, available at: <https://lawfulllegal.in/law-and-medicine-bridging-the-gap-between-legal-and-healthcare-systems/> (last visited on March 14, 2025).

<sup>108</sup> (2005) 5 SCC 1.

<sup>109</sup> Rohit Goel, Maheshnath Amarnath, et.al., "Legal mechanisms and procedures in alleged medical negligence: A review of Indian laws and judgments", 37 *Medicine and Society* 39 (2021).

the public welfare machinery, and when they render services comparably ill to patients, this is not an individual failing but much more udder to undermine Article 21 of the Constitution—the right to life and personal liberty.

### Constitutional and Tort Law Basis

Article 21 of the Indian Constitution says, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Over a period of time, this Article has been interpreted broadly by the judiciary, including within its ambit the right to health and access to medical care. The case “*Parmanand Katara v. Union of India*”<sup>110</sup> stated that every doctor, whether private or in a government hospital, has the professional obligation to give to every person in need of care, especially in an emergency, to save life. This was a big change to Article 21. The state now has an affirmative role to ensure access and immediate effectiveness to healthcare services, especially to public hospitals. The absence of such a duty on the public hospitals will attract the violation of citizens’ fundamental rights.

The principles of tort law, in particular those navigating negligence, provide a common law basis for compensating for injuries caused by inadequate medical treatment offered by government hospitals. In tort law, negligence means an infringement of duty of care which injures the patient. These principles were invoked in “*State of Haryana v. Smt. Santra*”<sup>111</sup>, wherein the Supreme Court held that the State was liable for not carrying out full sterilization, resulting in the birth of a child. The Court ruled that the State was under an obligation to carry out the procedure with due competence even if it was an entirely free service, thus giving a clear indication that the term ‘duty of care’ encompassed public hospitals, whether or not the service was rendered free of charge.

However, notwithstanding the apparent provisions of constitutional and tort-based

remedies, real access to justice is circumscribed. Victims of negligence in government hospitals hold procedural bottlenecks, poor legal literacy, and the courts’ unwillingness to make public health institutions liable without definitive evidence. These factors diminish the everyday effectiveness of constitutional and tort-based remedies. The theoretical framework would suffice to make a good grounding, but mechanisms must deliver these legal remedies into real-world practice. For example, the establishment of health ombudspersons or fast-track courts dealing with medical negligence matters can address the current accountability gap. The evolving legal system must put in place the belief that public hospitals, although funded or subsidized services, are not relieved of the basic tenet of doing no harm and of treating patients by competent and diligent trained staff.<sup>112</sup>

### Consumer Protection Act (Cpa) and Public Hospitals

An Act which plays an important role in helping patients recover compensation in case of bad medical services is the Consumer Protection Act. Originally brought into effect in 1986, and significantly amended in 2019, the CPA has broadened the legal track for redressal against models and then specific service providers, even including medical professionals. In the judgment “*Indian Medical Association v. V.P. Shantha*”<sup>113</sup>, the Supreme Court had determined medical services to be included under the term “service” as per “Section 2(1)(o)” of the Consumer Protection Act, 1986. The Court would be clear that all services rendered for consideration—whether through individual practitioners or private hospitals—would put the relationship in the category consumer–service. Only those services that were provided completely free of charge were ruled out. Therefore, where certain patients have to pay the hospital while some other patients receive free care from the same hospital, even the free

<sup>110</sup> AIR 1989 SC 2039.

<sup>111</sup> [2000] 5 SCC 182.

<sup>112</sup> Amit Agrawal, “Medical negligence: Indian legal perspective”, 19 Annals of Indian Academy of Neurology S9 (2016).

<sup>113</sup> [1995] 6 SCC 651.

service may be liable for scrutiny if cross-subsidization can be proved.

Post-enactment of the Consumer Protection Act, 2019, the relevant provision has come to fall under Section 2(42) defining service somewhat similarly but with more procedural clarity and digital accessibility. The CPA, 2019 reaffirms that any medical service involving monetary consideration—even if subsidized—is consumer jurisdictional. Section 69(1) of the 2019 Act provides that a complaint must be filed within two years of a cause of action. This period can be enlarged by the adjudicating forum on sufficiency of cause shown, but delays in recognizing medical harm often prevent timely filing, particularly for patients belonging to powerless section of society who depend on government facilities.

If anything, the enforcement in practice continues to be rather lopsided. Most patients do not know their rights under consumer law, and government hospitals engage the doctrine of sovereign immunity or administrative privilege to escape liability. Moreover, District Consumer Disputes Redressal Commissions are often not equipped with medical knowledge and rely heavily on expert committees or reject complaints outright on technical grounds. This develops an ineffectiveness of the Consumer Protection Act in government hospitals.<sup>114</sup>

Some courts, however, have adopted a progressive view. In *Kusum Sharma v. Batra Hospital*<sup>115</sup>, the Supreme Court laid down mechanisms for determining medical negligence while ensuring the protection of doctors from trivial claims and affording them rights to aggrieved patients. These principles, which are mainly directed towards private practitioners, equally apply to state-run institutions when they operate in a fee-based capacity. However, in most government hospitals where the service is completely free,

the patients remain outside the protective ambit of CPA.

Though progressive in language, the CPA has not affected the accountability dynamics of government hospitals in any substantial way. Its effective application will depend heavily on the interpretative stance of consumer courts, availability of legal aid, and the willingness of aggravated patients to file claims against powerful state-run institutions. Bridging this gap would require awareness drives, legal aid clinics within hospitals, and judicial training to ensure CPA protections are not denied just because the accused is a government doctor or hospital. Accountability should never be diluted because the healthcare provider is public, especially when lives are at stake.

### **Criminal Liability and Statutory Protections**

Criminal liability for medical negligence exists in government hospitals, but practically such cases do not receive their due course of prosecution on account of extra barriers placed on public servants through various statutory provisions. For instance, while civil and consumer forums ‘prove’ based on preponderance of probabilities, a criminal charge must be ‘proved’ beyond reasonable doubt, which is admittedly attached with more rigorous standards with respect to culpability. The most pertinent provision states “section 106(1) of the Bharatiya Nyaya Sanhita” punishing any person causing death by a rash or negligent act that is not intent as culpable homicide. The punishments involve imprisonment of a term which extends to two years or with a fine or with both. In order to punish the government doctor under this section, it has to be proved that the act was grossly reckless or done indifferently to life and not merely the exercise of poor judgment. A well-recognized legal position is that ‘gross deviation’ from the legal standard of care required by professionals in no case suffices to show that a criminal offense has been committed in contravention of this law.

The Supreme Court spelled out a more stringent

<sup>114</sup> Kirthika Ravi, Gerard P. Devnath, et.al., "Medical Negligence In India: Urgent Call For Comprehensive Data, Tort Reforms, And Cultural Transformation To Revitalize Healthcare System", 17 *Medical Journal of Dr. D.Y. Patil Vidyapeeth* 259 (2024).

<sup>115</sup> [2010] 3 SCC 480.

standard of criminal negligence for medical professionals by stating in *Jacob Mathew v. State of Punjab*<sup>116</sup> that, Gross negligence or recklessness must exist in order for a doctor to incur any criminal liability, not simple negligence. It further ruled that a private complaint against a doctor can only be entertained when there exists a good medical opinion from a doctor to support the complaint. Such measures would, thus, be invoked by the court for the protection of doctors against public pressure created out of public institutions. The Jacob Mathew ruling will henceforth tilt the scales of balance between the criminal law and medical negligence in India and have far-reaching impacts on public institutions burdened with systemic constraints and patient overloading.

Another important article is Section 26 of BNS, granting immunity against those acts which, in a legitimate pursuit of the patient's interests, might have subjected the physician to some form of liability. This would include surgical procedures with a high degree of risk, wherein the patient has provided informed consent, which will be construed as protected, even when adverse results occur. This would allow protection for doctors inside government hospitals when these doctors or surgeons must make governing decisions in circumstances where otherwise limiting parameters exist concerning infrastructure and manpower.

We could possibly remark that "Section 218 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)" is the principal statutory impediment to criminal prosecution. The section further specifies that no public servant, including a doctor of the government hospital, shall be prosecuted for any act done by him in the discharge of an official duty unless prior sanction has been obtained from the appropriate government authority. The section has come in for extreme criticism as a tool for enabling impunity, particularly in cases where administrative delays or prejudices thwart sanctioning. In

some instances, the judiciary stepped in and limited the misuse of Section 218 by stating that the act for which protection is claimed must have a strict nexus with the actual discharge of official duty. Sadly, in practice, getting sanction for prosecution turns out to be a very huge hurdle.<sup>117</sup>

Such layered legal protection has thus rendered the criminal accountability of government hospitals in medical negligence as an exception rather than a rule, having its basis in the premise of keeping professionals away from undue harassments. Unlike the primary evidence of gross negligence such as operation whilst intoxicated or complete aberration from medical fundamentals, few events of this kind have had any successful prosecution at all. The legal status that it makes is quite certainly a comfort to deny the victim, or her or his family, access to punitive remedies for even grievous bodily harm or death caused by substandard treatment. The situation, therefore, demands intervention to question the relevance of criminal law in public healthcare institutions. The statutory reform that might be needed here is to ensure that immunity does not arise where the innocent doctor is being protected. A fair prosecution, when warranted, could also serve as the needed deterrent and catalyze proper systemic reforms in government hospitals.

#### **CHALLENGES IN HOLDING GOVERNMENT HOSPITALS ACCOUNTABLE**

In India, government hospitals cannot be held to account for malpractice by virtue of legal immunity together with organizational failings and procedural constraints, and systemic obscurity is rife with impediments to fighting alleged malpractices. Remedy is, in theory, possible by suing under constitutional, tort, criminal, or consumer law; however, experience with litigation speaks of the enormous gap for those types of litigants, largely drawn from socio-economically backward classes, between

<sup>116</sup> (2005) 5 SCC 1.

<sup>117</sup> Gopalan K R, Sowlabhya A Seshadri, et.al., "A Study on The Legal Complexities Surrounding Medical Negligence in Telemedicine in India", 14 *Journal of Pharmaceutical and Medical Sciences* 307 (2025).

the promise of protection under the law and its actual application in public health care. This is most glaringly exemplified by the condition in government hospitals, where expectations of state service provision for welfare arise despite terrible infrastructure and heavily burdened personnel, not to speak of a law hardly entertaining challenges to state functionaries delivering welfare services under tremendous adversity.

Originally, the Section 218 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) created statutory immunity for public servants. This very much impedes the means of ensuring accountability. Doctors in government hospitals can therefore be criminally liable only with prior sanction by the competent authority. It is interpreted to protect the officers from frivolous litigation whereas in actuality, it is a bar to criminal accountability for actual malpractice. Courts have tried to dilute this by clarifying that the act must somehow be connected with the discharge of official duty to be able to claim such protection. Again, in "*Jacob Mathew v. State of Punjab*"<sup>118</sup>, the Supreme Court has held that there should be a shield against prosecution for the doctor unless the allegations represent gross negligence amounting to recklessness. Although formulated as a protection for clinical freedom, this legal doctrine has been criticized for imposing a standard so high that in practice it mostly bars justice for victims of even truly negligent conduct. The sanction procedure, indeed, works more as an obstruction than a gate-pass in several malpractice cases against government doctors, thus promoting a culture of impunity that is widespread in public hospitals.<sup>119</sup>

Resource constraints are an equally major factor in creating the prevailing accountability deficit in government hospitals, alongside the protection of legal immunity. India's public health system contends with chronic

underfunding and understaffing, with patients piling up in a relentless torrent. According to the WHO 2021 data, India has one public doctor for 1,445 people, which falls woefully short compared to WHO recommendations of one for about 1,000 populations. This disparity directly leads to compromised care, hurried treatment, and bad communication- all of which contribute to negligent outcomes. Very rarely do such systemic flaws come into the reckoning for individual cases. Courts become unwilling to criminalize what ails them in their perception to be rather consequences of institutional failures as opposed to personal malfeasance. While such judicial hesitancy may be commendable towards the doctor, it sometimes grievously neglects the patient's right to safe and competent medical treatment, especially when counterbalancing remedial measures are not put in place at the same time.

Delays in procedures are more challenges. The Consumer Protection Act, 2019, does simplify the remedying mechanism, but comes with two-year limitation period under "Section 69(1)", restricting the time-frame within which any complaint can be filed. Victims of malpractice and negligence in government hospitals come to learn about the extent of their injuries or direct connection with careless treatment only later than this time-bounded period. Besides, it is all the more burden to initiate and continue the legal procedure-either through the consumer forum or civil court-who are worse off in the sordid conditions of poverty, illiteracy, and systemic alienation. Even when the grievance will fall within the limitation period, adjudication will take time, as courts will be unduly overburdened, cases will be adjourned frequently, and judges and forum members will not have the necessary medical expertise. Unlike a patient attending a private hospital, who has the resources to get legal counsel and continues litigation for long periods, a patient of government hospitals will ultimately throw in the towel, either from sheer exhaustion or lack of resources, when the care taken turns out be

<sup>118</sup> (2005) 5 SCC 1.

<sup>119</sup> Utkarsh Anand, "SC reaffirms doctors' accountability under Consumer Protection Act", *Hindustan Times*, November 8, 2024.].

totally negligent.<sup>120</sup>

Concealment and corresponding infrequent and half-hearted reporting would present an additional structural challenge. With private sector health institutions welter under the pressure of tremendous publicity and a plethora of institutional auditing, public scrutiny, and defect substantiation against them, government health institutions operate within the thick bureaucratic meshes of an environment that, more often than not, denies any scrutiny. The reporting of adverse medical events, namely deaths or surgical errors, is rarely done and is hardly ever investigated. Settlements for these events- if any- are often concealed from the public arena, the majority between in-house agreements or departmental hierarchy decisions without amending the system and with no knowledge to the public of any wrong-doing. Institutional memory at times goes blindly aided by this very same culture. This culture of non-transparency places the victim and/or family in a virtually impossible position to trace the action of holding one accountable and putting evidence together in support of their legal claim. In addition, this attitude causes serious institutional memory loss by not documenting errors and disregarding opportunities for enhancing clinical practices. Unless there is a disclosure law for public hospital systems and a charter for patients' rights, we shall expect just the opposite-institutions constraining themselves against showcasing concealment for their own self-sustenance against denying patient justice.

The synergy of the legal hurdles, decaying infrastructure, inefficiencies in procedure, and opacity of bureaucracy together deepen the accountability deficit in India's government hospitals. Whereas private hospitals have become increasingly amenable to civil and consumer litigation through contract relationships and competitive pressures,

government hospitals continue to operate under a legally insulated and administratively unresponsive framework. The challenge is not to access legal covering over patient rights in theory; rather, it is to operationalize these rights through institutional reforms, judicial consistency, and legislative clarity. Initiatives such as creating dedicated medical negligence benches, institute medical grievance commissions at state level, or the establishment of a centralized registry of adverse medical events in government hospitals could very well provide the underpinnings for a more transparent and responsive public healthcare system. For example, bridging the chasm between legal protections and accountability will require both judicial activism as well as administrative will and legislative vision. Without these very stipulations, the dream of justice for the victims of malpractice within government hospitals shall remain a constitutional ideal except in the lives of those it is meant to protect.<sup>121</sup>

### RECENT CASE LAWS AND DEVELOPMENTS

Recent case law and judicial pronouncements have had a very important role to play in the evolution of medical negligence law in India with respect to government hospitals. The Indian judiciary has now slowly begun the process of demarcating the lands of liability for public healthcare facilities with the intention of protecting conscientious medical practitioners from harassment and, on the other hand, ensuring that the most authentic victims get due justice. At the same time, this dynamic evolution of new standards of law, by way of landmark judgments, illustrates the apparent and foreseen tension existing nowadays between patient rights and the operational realities of the public hospital system. While in each of these judgments, the courts have either intervened to provide protection to state employed doctors or prescribe with precision the evidentiary burden and procedural

<sup>120</sup> Team MyGov, Citizen's response to "Health System in India: Bridging the Gap between Current Performance and Potential", available at: <https://blog.mygov.in/summary-of-ideas-posted-in-response-to-health-system-in-india-bridging-the-gap-between-current-performance-and-potential/> (last visited on March 2, 2025).

<sup>121</sup> Importance of Medical Law and Ethics in Indian Healthcare Administration, available at: <https://drarvindsingh.com/importance-of-medical-law-and-ethics/> (last visited on March 6, 2025).

requirements that ought to be followed in placing claims. The courts have thus created a legal environment, where access to remedies is conditioned on meeting rigorous tests of procedural discipline, and on a certain interpretation by judges of relevant statutory and common law principles.

### Landmark Cases

The Supreme Court of India, in *Jacob Mathew v. State of Punjab*<sup>122</sup>, has some vague standards for the prima facie determination of criminal culpability in the realm of medical negligence. A patient is said to be dead due to the nonavailability of an oxygen cylinder in the hospital. The petitioners are government doctors who have been charged with an offence under Section 304A of the IPC of causing the death of the complainant by rashness or negligence. The Court noted that it took great reluctance to allow criminal proceedings against doctors, cited the Bolam Test propounded in English law. Under Bolam, there is no negligence if the doctor is following a practice accepted as proper by a responsible body of medical men skilled in that art. The Court then added that “in our view, the standard of finding of criminal negligence is that the gross negligence or recklessness on the part of the accused must be condemned as amounting to a criminal disregard for the patient.” It further stated that any action against medical practitioners must be substantiated by evidence given by a medical expert of clear and indisputable credibility. The judgment has broad ramifications not only for doctors working in government institutions in terms of protection against arbitrary or vexatious litigation but also for criminal law making a restriction as to its easily taboos wandering into this altogether complex area of medical judgment and decision-making. More so, this applies against the background of public health care with all its limitations of resources and one burdened with patients.

In the case of *V. Kishan Rao v. Nikhil Super*

*Specialty Hospital*<sup>123</sup>, the notion of accountability was put to judicial scrutiny once again when the Supreme Court of India got into the clashes of the Consumer Protection Act versus government-aided hospitals. The husband filed the complaint against the release of his wife admitted to this hospital as a semi-public hospital, on account of her suffering from a fever, and who died, allegedly owing to the negligence of the hospital in not detecting and treating her for malaria. It was said by the hospital that there was no medical negligence since the complainant had not brought any expert to substantiate evidence in his favor. The case had the support of the hospital by the National Commission. However, it laid down that the circumstances referred to clearly lead to a lapse in duty of care, and the factual context of the case does not demand any expert medical evidence. The Court went further to state that not every consumer complaint would demand expert testimony, especially when negligence is clear on the face of the record. An extension proved highly beneficial in terms of the application of the CPA relevance-wise as one would take up government and quasi-government medical institutions providing services either free or subsidized in terms of cost. The Supreme Court clarified that any consideration is received for services rendered, and then that institution falls within the ambit of “service” under CPA. This has had a strong impact toward accountability of partially state-funded hospitals and opened new legal avenues for patients who could seek remedy because of bad medical treatment in such establishments. By recognizing the fiduciary obligation of these institutions, the Court expanded the remedial framework of the CPA to include public-private healthcare models that are broader.

The establishment of the case “*Dr. Harish Kumar Khurana v. Joginder Singh*”<sup>124</sup> further improvised the detailed legal frame surrounding the burden of proof in cases of alleged government

<sup>122</sup> (2005) 5 SCC 1.

<sup>123</sup> (2010) 5 SCC 513.  
<sup>124</sup> AIR 2021 SC 4690.

hospital medical negligence. Main-of-the-hinge issues rested upon the question that if the post operative care in any government hospital was not administered, then would it amount to negligence? The patient was not alleged by omission, but the conditions which deteriorated further led to the death of the corresponding victim claimed by the complainant of such an incident. On the evidence presented, the Supreme Court held that however, there was no direct proof of negligent conduct in the context so established itself. It reiterated that there is no presumption of negligence merely because a patient died during or after treatment. Instead, it must be established by concrete evidence showing that the act of doctor or hospital was breaching their duty of care causing thereby to a direct harm to the patient. The Court also said that earlier jurisprudence by stating that mere error in judgment or unfortunate outcome cannot be equated with actionable negligence was enforced. This judgment places a heavy burden of evidence of complainant which becomes making justice very difficult for the common man to achieve in the context of government hospitals with lack of proper record keeping and limited resources for legal.

As a whole, these judgments suggest a homogeneous court trend acting cautiously in attributing liability to government doctors or institutions, particularly in the absence of any clear, expert-supported, and direct evidence. They create strong procedural filters to fight against the misuse of the litigation process; however, in doing so, they often erect exceedingly high barriers before which legitimate claims must now fail. Such a judicial trudge is, on the one hand, important in protecting honest practitioners from the harassment of law; however, at times, such hurdles inadvertently protect the systemic failures and take away all faith that the patients have in public health care. Hence, the law seems to be walking on the razor's edge, weighing the interests of the doctor and the safety of patients. However, if anything, the plaintiffs in public hospitals find this burden

almost completely skewed against them, where the asymmetries of power, information, and access predominate. Such more recent trends that are trying new standards for the law continue to build upon these precedents, but unless action is taken to ameliorate the structural disadvantages faced by patients at public hospitals, the full promise of these decisions will remain out of reach for those it was most intended to assist.

### **BRIDGING THE GAP: PROPOSED SOLUTIONS OR REFORMS**

India today needs a consolidated set of legal, administrative, and institutional reforms to fill the growing chasm between legal protections and practical accountability in government hospitals. Remedies theoretically available are rendered inefficacious in practice by systemic inefficiencies and procedural barriers, making them totally impossible for many patients, particularly those who seek treatment in public health institutions. Reforms will ensure accountability without damaging the morale of doctors or overburdening the already weak health care systems. The result would be a patient-centric yet doctor-friendly environment that encourages players to be transparent, accountable, and have access to redress. Here are some of the specific proposals that aim to effectively bridge the gap.

#### **Mandate Adverse Event Reporting**

Mandatory reporting of medical errors, adverse drug reactions, or untoward outcomes should be prescribed by a law in All Government Hospitals. Such provisions are also to be considered from similar lines as the U.S. Patient Safety and Quality Improvement Act-but duly adapted to the Indian context. Data on a large scale could be collected through a centralized digital registry. As such, these investigations should never be revealed in an open court for being directly admissible against any party but can still serve as the foundation for policy changes, institutional reviews, and corrective retraining. The essence of transparent patient outcomes nurtures a safety culture while

holding all parties accountable and hence helps in avoiding recurrent system errors

### **Amend “Section 218 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)”**

If gross negligence or willful negligence is found, then the immunity under this section shall be exempted. Before trial, a judicial or quasi-judicial proceeding shall establish whether the act in question is entitled to protection. It is extremely important to maintain that balance between good faith protection for public servants and access to justice for Bonafide victims. With immunity presently applied in a blanket manner, even bona fide complaints are not moving forward; this reform will infuse much-needed confidence into the system without diluting the defensive medicine that Government doctors are forced into by fear of reprisals.

### **Establish a No-Fault Compensation Fund**

A government-sponsored model for compensating victims of medical negligence in public hospitals is worth pursuing based on an amalgam of New Zealand’s Accident Compensation Corporation (ACC). This fund would provide for immediate compensation without the implementation of a fault or extensive litigation process. Ultimately, the focus would be on resolution and care, which would lessen the court burden while also going some way in relieving the mental trauma of what is often a long and protracted judicial process. Payments would also possibly be graded with respect to the severity of the injury, all of which would be considered by panels of medical experts. Furthermore, such a scheme would diminish the chilling effects of litigation on the practice of medicine.

### **Invest in Infrastructure and Human Resources**

Execution of the National Health Policy 2017’s vision to increase public health expenditure to 2.5% of GDP is very crucial. The result is compromised care and preventable errors due to a shortage of manpower, equipment, and space. Selective investment in a tiered hospital

system covered with regular recruitment drives could help alleviate extreme deficits. Infrastructure decreases the chances of malpractice, thus helping doctors perform their duties. Investments shall be supplemented with training modules on patients’ rights, medical ethics, and standard operating procedures.

### **Promote Mediation under the Consumer Protection Act, 2019**

Mediation as a means of dispute resolution is provided under “Section 37 of the Consumer Protection Act, 2019.” The management of government hospitals can set up their mediation cells or work with district mediation centers to resolve tort claims outside the litigation process. This approach has twin advantages: resolving a claim expeditiously and creating an environment conducive to settlement between patients and doctors. Mediation may be made compulsory before a patient can seek full adjudication, provided the patient agrees.

### **Legal and Policy Analysis**

However, these reforms should be appropriately crafted to the legal as well as the health systems in India. In the case of Adverse Event Reporting or No-fault Compensations, benefits would be long-term in reducing litigation and subsequent medical errors and would seek legislative support in the budget for funding. Amending Section 218 of the BNSS would have to be developed with political will; however, this is a very strong step for the reason of public interest against accountability. Infrastructure improvements and staffing requirements will require phase wise implementation linked with state health indicators. The mediation has legal underpinnings under the CPA, so it is very little legal risk in institutionalizing the practice in public hospitals. All this reform will empower further into patient rights without compromising morale and autonomy of health care providers in the public sector.

### **CONCLUSION**

Such a vast analysis regarding medical

malpractice in government hospitals in India presents a simply glaring difference between what is possible in legal terms and practicable in reality. Although Article 21 in the Constitution provides firm guarantees and tort law precedents as well as expanded definitions in the Consumer Protection Act, patients still find significant procedural, infrastructural, and legal obstacles to justice. The judiciary in its conservative attitude- elucidated by important cases like *Jacob Mathew v State of Punjab* protects the medical professionals from frivolous litigation but often weighs the balance heavily in favor of the patient. Particularly alarming is the very wide cover provided under Section 218 of the BNSS, which abysmally complicates the issue of criminal liability of negligent government doctors. These together with underfunding, inadequate staff, and scant legal awareness of patients create opacity and institutional impunity, thus leaving many victims unrewarded or unacknowledged.

That means, in fact, hospitals at the government locations in India become really paradoxical between being necessary and not totally being responsible. On the other hand, while the judiciary has laid important benchmarks for negligence claims, such standards become too high to be reached by victims who have little access to resources or medical documentation. Furthermore, the judicial and administrative reluctance to impose accountability on public health institutions diluted the constitutional promise of equal healthcare. Bridging this accountability gap would require both legal reforms and restructuring for the demonization of adverse event reporting, quick grievances redressal mechanisms, and adequate health care financing. Multi-pronged reforms will provide a way for India to come out of the bottleneck of protecting public health workers from hurting while rendering justice to aggrieved patients.

## INDIATOWARDS ACHIEVING SUSTAINABLE DEVELOPMENTAL GOALS

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### ABSTRACT

The concept of sustainable development has undergone various developmental phases since its introduction. It is very much clear that we won't be able to maintain our quality of life or the health of the planet's ecosystems without acknowledging and limiting the harm we inflict to it every day. This paper mainly aims to make understand what is sustainable developmental goals and why it is so essential for our nation's growth, it also discusses the challenges faced by India towards the sustainable development goals, this study also discusses some of the most important global problems we are currently facing And the progress implementations of SGDs and it's success in India and also states the budget allocated for SDGs.

**KEYWORDS:** SUSTAINABLE DEVELOPMENTAL GOALS – QUALITY OF LIFE – HEALTH – CHALLENGES – GLOBAL PROBLEMS – PROGRESS OF SDGs – BUDGET-

### INTRODUCTION

India recognised the ongoing challenge of attaining inclusive sustainable development, a problem shared by many emerging countries. India has dropped three positions from 117 to 121 on the 17 Sustainable Development Goals. Sustainable development is the goal of meeting the requirements of the current generation without jeopardising future generations' ability to fulfil their own needs. It entails balancing economic growth, environmental protection, and social well-being.

The Sustainable Development Goals (SDGs) are a collection of 17 Goals endorsed by 193 United Nations member countries at the historic Summit in New York on September 25, 2015. The SDGs, which went into effect on January 1, 2016, are expected to stimulate development actions in critical areas such as ending poverty and hunger, providing healthy lives and quality education, achieving gender equality, providing modern energy, promoting sustainable economic growth, reducing inequality, and so

on until 2030. The SDGs, also known as the 2030 Agenda for Sustainable Development, aim to transform people's lives and livelihoods all across the world. It is not simply due to the sheer number of the people. India confronts difficulty in accomplishing the sustainable development goals because to its huge and diversified population, inequality concerns, environmental degradation, and other factors. Monitoring progress and tackling these difficulties are continuous concerns.

The MDGs (Millennium Development Goals) for 2015 gave rise to the SDGs for 2030. The Millennium Development Goals (MDGs) were an array of eight development objectives that were set in 2000 with deadlines of 2015. The MDGs represent the first worldwide effort to set measurable objectives and targets for major global concerns. From 2000 to 2015, there were substantial political and economic changes around the world.

It is commonly understood that the success of the 2030 Agenda would be heavily reliant on

India's progress on the SDGs. It is due not only to the sheer number of the population, but also to the strength and durability of the Indian economy. Furthermore, India has emerged as a global leader in the international climate action agenda. After four years of implementing the ambitious agenda, it is time to assess the country's progress on key SDGs. India is crucial in deciding the worldwide success of the SDGs. At the 2015 UN Sustainable Development Summit, Prime Minister Narendra Modi stated, "Sustainable development of one-sixth of humanity will be of great consequence to the world and our beautiful planet." It will be a world with fewer problems and more hope, and it will be more confident in its achievements."

The SDGs are also a planning and monitoring tool for countries at the national and local levels. Through the formation of public policies and budget, monitoring, and evaluation measures, they offer long-term support to each country on its path to sustainable, inclusive, and environmentally responsible development. The current global backdrop of slow economic growth, social inequality, and environmental degradation presents the international community with new problems.

The SDGs, which were adopted by 193 countries in 2015, originated from the most inclusive and thorough UN negotiations in history and have inspired people from all industries, geographies, and cultures. To achieve the goals by 2030, heroic and inventive effort will be required, as well as resolve to learn about what works and agility to adapt to new knowledge and shifting trends. The UN Foundation prioritises ideas and activities with a wider impact, that promote the SDG goal to "leave no one behind," and are supported by evidence, tangible pledges, and action.

### THE 17 SUSTAINABLE DEVELOPMENTAL GOALS

1. It is the first Sustainable Development Goal (SDG) to "**End poverty in all its forms everywhere.**" This objective, set forward by the UN as a component of the 2030 Agenda for Sustainable Development, aims to

end extreme poverty, lessen poverty among vulnerable groups, and make sure that everyone has access to the resources and opportunities required for a respectable level of living. This entails tackling problems like financial inequality, social protection, and access to fundamental amenities like clean water, healthcare, and education. Realising this objective is essential to building a more just and sustainable world.

2. The second Sustainable Development Goal (SDG) is to "**End hunger, achieve food security and improved nutrition, and promote sustainable agriculture.**" Addressing issues with global food security is the main objective of this goal. Its primary goals are to ensure that everyone has access to healthy food, to abolish all types of malnutrition, to double agricultural output and incomes for small-scale food producers, and to promote sustainable agricultural methods. In order to accomplish this goal, efforts are focused on enhancing global food delivery systems, minimising food waste, assisting small-scale farmers, and improving agricultural practises. In addition to putting an end to hunger, the goal is to guarantee that everyone has access to a good, sustainable diet, which is crucial for both personal well-being and the long-term health of the planet. The importance of agricultural and food systems in creating a more just and sustainable society is acknowledged by this SDG.

3. The third Sustainable Development Goal (SDG) is to "**Ensure healthy lives and promote well-being for all at all ages.**" By tackling a variety of health-related issues, including as access to healthcare and illness prevention, this objective seeks to improve overall health and well-being on a global scale. The third SDG's main objectives are to decrease maternal mortality, put an end to new born and young child deaths that can be prevented, lessen the burden of communicable diseases like HIV/AIDS, tuberculosis, and malaria, ensure access to basic healthcare services, and promote mental health and well-being. This

objective attempts to lessen health outcomes inequities and emphasises the significance of universally available, inexpensive healthcare. In order to create societies that are healthier and more prosperous, this goal must be accomplished.

4. The fourth Sustainable Development Goal (SDG) is to **“Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.”** Assuring inclusive and equitable access to high-quality education and fostering opportunities for lifelong learning for all is the fourth Sustainable Development Goal (SDG). No matter their gender, age, social standing, or other characteristics, everyone can obtain high-quality education under this goal. Making sure that all boys and girls have access to affordable, high-quality early childhood development, care, and pre-primary education are among the key objectives of the fourth Sustainable Development Goal (SDG). It also aspires to enhance lifelong learning opportunities for everyone, including higher education and vocational training, and erase gender inequities in education. The Importance of education as a vital force behind both individual and societal growth is acknowledged by this purpose.

5. The fifth Sustainable Development Goal (SDG) is to **“Achieve gender equality and empower all women and girls.”** This objective seeks to remove gender inequality and promote it in all spheres of society, including employment, education, decision-making, and access to healthcare. The fifth SDG’s primary goals are to eliminate all forms of discrimination and violence against women and girls, guarantee equal access to high-quality healthcare and education, and encourage women’s participation in leadership positions and decision-making. Additionally, it aims to acknowledge and reward the domestic labour and unpaid care that is frequently done by women. This objective acknowledges that promoting gender equality is crucial for building more equitable and sustainable societies, in

addition to being a question of human rights. Communities may gain much from empowering women and girls, and doing so also helps to achieve many other Sustainable Development Goals.

6. The sixth Sustainable Development Goal (SDG) is to **“Ensure availability and sustainable management of water and sanitation for all.”** This objective focuses on addressing global water-related concerns to provide everyone with access to clean water sources and sufficient sanitary facilities. The sixth SDG’s main objectives are to provide appropriate sanitation and hygiene services, especially in disadvantaged groups, and to achieve universal access to safe and affordable drinking water. Other goals include improving water quality, boosting water use efficiency, protecting and restoring water ecosystems, and enhancing water quality. Sanitation and clean water access are necessary for promoting human health, happiness, and economic growth. By pursuing this objective, it will be possible to improve living circumstances and promote sustainable development by reducing water scarcity, preventing water pollution, and ensuring that everyone has access to clean water and sanitary facilities.

7. The seventh Sustainable Development Goal (SDG) is to **“Ensure access to affordable, reliable, sustainable, and modern energy for all.”** To ensure that everyone has access to clean, dependable, and inexpensive energy sources, this objective concentrates on addressing global energy concerns. The seventh SDG’s primary goals are to guarantee that everyone has access to affordable, clean energy, increase the proportion of renewable energy sources in the world’s energy mix, boost energy efficiency, and improve international collaboration in order to increase access to contemporary energy services. For economic growth, poverty reduction, and climate change mitigation, access to dependable and clean energy is essential. In order to achieve a more equitable and sustainable energy future for everyone, this goal strives to promote

sustainable energy practises and increase energy access, especially in underserved and rural areas.

8. The eighth Sustainable Development Goal (SDG) is to **“Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.”** This objective is centred on expanding economic opportunities and bettering working conditions for everyone. The eighth SDG’s primary goals are to increase economic productivity through innovation, technological advancement, and diversity; to promote policies that encourage job creation; to provide equal pay for equal work; and to put an end to child labour, forced labour, and modern slavery. Additionally, it intends to give everyone access to financial services and encouragement for entrepreneurship. This objective acknowledges that economic growth should benefit everyone in society, not just a small group of people, and that it should be inclusive and sustainable. It places a strong emphasis on the value of honest labour and the elimination of unfair labour practises, which support a just and flourishing global economy.

9. The ninth Sustainable Development Goal (SDG) is to **“Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation.”** To support economic growth while maintaining sustainability and inclusivity, this objective concentrates on increasing infrastructure, industries, and innovation. Building dependable and sustainable infrastructure, encouraging inclusive and sustainable industrialization, expanding access to financial services, and strengthening research and development activities, particularly in technology and innovation, are some of the main objectives of the ninth SDG. This objective acknowledges that innovation, industrialisation, and infrastructure development are crucial for promoting economic growth, job creation, and resolving a range of global concerns. It strives to make sure that these procedures are carried out in a way that is advantageous to everyone and reduces

their negative effects on the environment.

10. The tenth Sustainable Development Goal (SDG) is to **“Reduce inequality within and among countries.”** Addressing economic, social, and political inequality both within and between countries is the main objective of this objective. The tenth SDG’s primary goals are to gradually increase and maintain the income growth of the bottom 40% of the population at a rate higher than the national average, to promote social, economic, and political inclusion, to guarantee equal opportunities for all, and to reduce inequalities across a range of dimensions, including income, gender, age, disability, and nationality. This objective acknowledges that attaining social cohesion and sustainable development depends on eliminating inequality. In order to ensure that the advantages of development are distributed more fairly among all societal groups and beyond national boundaries, it emphasises the significance of policies and initiatives that support equality and inclusion.

11. **“Sustainable Cities and Communities”** is the eleventh Sustainable Development Goal (SDG). Creating inclusive, secure, resilient, and sustainable cities and human settlements is its goal. This objective takes care of a number of urban development-related issues, including bettering access to basic services, providing affordable housing, improving urban planning and management, and lessening cities’ negative environmental effects. It is a component of the UN’s larger plan to encourage sustainable development globally.

12. **“Responsible Consumption and Production”** is the 12<sup>th</sup> Sustainable Development Goal (SDG). Globally sustainable consumption and production practises are its goal. In order to reduce their environmental impact and support economic growth and social well-being, industries and enterprises are encouraged to use resources more effectively, reduce waste, and promote sustainable practises.

13. The thirteenth Sustainable Development Goal (SDG) is **“Climate Action.”** Addressing climate change and its effects is its main objective. SDG 13’s main objectives include reducing greenhouse gas emissions, improving disaster preparedness, and increasing public understanding of climate change. This objective is essential to the worldwide fight against climate change and to guarantee a sustainable future for all people.

14. The **“Life Below Water”** Sustainable Development Goal (SDG) is the fourteenth. It emphasises protecting and responsibly managing marine resources for sustainable development. For our oceans to be healthy and resilient, this goal attempts to solve problems like marine pollution, overfishing, and the preservation of marine ecosystems. The 2030 Agenda for Sustainable Development of the United Nations includes it in full

15. **“Life on Land”** is the 15<sup>th</sup> Sustainable Development Goal (SDG). Its main goals are to stop biodiversity loss, stop land degradation, battle desertification, restore and promote the sustainable use of terrestrial ecosystems, and manage forests sustainably. By promoting responsible land use, ensuring the conservation of terrestrial biodiversity, and addressing concerns like deforestation, habitat loss, and the extinction of endangered species, this goal strives to address a variety of problems. Four national level indicators that cover three of the twelve SDG targets for 2030 have been identified to gauge India’s progress towards SDG 15 on Life on Land. The four indicators are (i) the percentage of all land covered by forest (ii) the amount of water bodies within forests (iii) the change in the area of forests (iv) and the population of wild elephants (v). Based on these four national indicators, India has a 90 SDG Index Score on Goal 15, with scores ranging from 43 to 100 for States and 50 to 100 for UTs. Assam, Chhattisgarh, Goa, Manipur, Odisha, and Uttarakhand, among the States, as well as Dadra and Nagar Haveli, are the Achievers (with an Index score of 100).

16. **“Peace, Justice, and Strong Institutions”** is the 16<sup>th</sup> Sustainable Development Goal (SDG). It emphasises the development of effective, transparent, and responsible institutions at all levels as well as the promotion of peaceful and inclusive societies. While ensuring that societies are governed by the rule of law and that human rights are protected, this goal seeks to lessen violence, corruption, and conflict. Additionally, it highlights the significance of inclusive and responsive decision-making procedures.

17. The **“Partnerships for the Goals”** Sustainable Development Goal (SDG) is the last goal. It emphasises the value of cooperation and partnerships between governments, industry, civil society, and other stakeholders in order to realise the remaining 16 SDGs. This aim acknowledges that combating global issues including poverty, inequality, climate change, and others calls for global cooperation and group action. It primarily focuses on the enabling factors that will support the successful implementation and achievement of the SDGs, including funding for development, access to technology, capacity-building initiatives, trade as a facilitator of global growth, institutional coherence and policy convergence, involvement of multi-stakeholders and the creation of partnerships, as well as ensuring accountability through regular monitoring.

#### CONSTITUENTS OF SUSTAINABLE DEVELOPMENTAL GOALS

● **Multi-dimensional Approach** with 169 Targets and 17 Goals: The 17 Sustainable Development Goals (SDGs) are evenly distributed across 169 targets, with 6 primarily social goals (Goals 1 to 6), 5 economic goals (Goals 7 to 11), and 4 environmental goals (Goals 12 to 15). These goals represent the three pillars of sustainable development. The enablers of progress are addressed in a separate goal (Goal 16) on peaceful communities and effective institutions. To give financial, technological, and systemic help to

the developing countries, a stand-alone goal (Goal-17) on global collaboration has been added.

- **Interconnectedness:** The SDGs were created with the growing understanding that development-related issues are no longer contained inside national borders but are instead taking on a more and more universal character. Whether it's poverty or environmental damage, what occurs in one country affects the other. These problems are all evolving to be transnational in scope. Therefore, the SDGs' fundamental idea is founded on the interdependence of Connection between the world's concerns.

- **Monitoring and Review:** In order to track the advancement of the developmental objectives and targets, review and monitoring have been given significant significance in the SDGs. The UN Resolution emphasises the significance of follow-up on a national, regional, and international scale. For assessing the SDGs' progress, a global indicator framework with 243 indicators has been devised. The High-Level Political Forum (HLPF) on Sustainable Development has also been established at the international level. It is crucial to the follow-up process.

- **Means of Implementation:** The SDGs' significant emphasis on means of implementation—the mobilisation of financial resources, capacity-building, and transfer of ecologically sound technology, as well as data and institutions—is in reality a key characteristic of the goals. As a result, distinct “means of implementation” objectives have been added under each of the Goals.

- **Voluntary National Review:** Countries are urged to conduct routine reviews of progress at the national and sub-national levels as part of their follow-up and review processes. Both industrialised and developing nations are expected to participate in these reviews, which will be state-led and voluntary. Because of this, they are referred to as

Voluntary National Reviews (VNRs). With a view to speeding the implementation of the 2030 Agenda, the voluntary national reviews (VNRs) seek to encourage the sharing of experiences, including successes, problems, and lessons learned. India's VNR was submitted in 2017.

#### INDIA'S PROGRESS TOWARDS SDGS

India has been actively working to achieve the United Nations' Sustainable These efforts have been highlighted through various projects and collaborations with organisations such as the Reliance Foundation, Observer Research Foundation, UN India office, and the Permanent Mission of India to the United Nations.

One notable example is the presentation of “seventeen lighthouse initiatives” from India, each connected with a distinct SDG. These initiatives serve as model projects that highlight India's commitment to addressing many areas of sustainable development, ranging from poverty alleviation to environmental conservation.

India recognises the critical need to solve global environmental concerns and has devised a diverse approach to achieve sustainable development. This strategy encompasses policies, programmes, and actions targeted at lowering greenhouse gas emissions. Protecting natural resources, and supporting eco-friendly practises.

In essence, India's contributions to the SDGs include a wide range of programmes and a strong commitment to addressing climate change and global environmental concerns, all with the goal of supporting national and global sustainable development. Some of the progress are:

- i. **Poverty Reduction:** India has made tremendous headway in decreasing poverty through programmes such as MGNREGA launches on 2006, which gives rural employment possibilities. The Jan Dhan yojana (2014) initiative has also boosted financial inclusion among the underprivileged.

- ii. **Healthcare:** The Ayushman Bharat which was introduced in the year 2018, it aims to provide millions with health insurance coverage, boosting access to healthcare services and contributing to the objective of good health and well-being.
- iii. **Education:** Initiatives such as the Sarva Shiksha Abhiyan which was introduced in the year 2001 and the Right to Education Act 2009, have enhanced access to quality education, assisting India in its efforts to achieve quality education for everyone.
- iv. **Gender Equality:** India continues to work on gender equality through initiatives such as Beti Bachao Beti Padhao (2005) and legislation that encourage women's involvement in the workforce and decision-making roles.
- v. **Clean Energy:** India has made significant investments in renewable energy, establishing itself as a global leader in solar and wind power generation.
- vi. **Sanitation and access to safe drinking water:** The Swachh Bharat Abhiyan (2014) has made strides in increasing sanitation and access to safe drinking water, particularly in rural regions.
- vii. **Economic Growth:** Initiatives such as Make in India and Digital India have tried to stimulate economic growth and employment creation, hence supporting economic development.
- viii. **Sustainable Cities:** The Smart Cities Mission is trying to create metropolitan places that are both environmentally sustainable and give a good quality of life.
- ix. **Increase in productivity:** National Mission for Sustainable Agriculture (NMSA): which was launched in the year 2016 which mainly Focuses on sustainable agriculture practices. NMSA aims to increase productivity while conserving natural resources.

In India's federal system, policies and schemes

are mostly implemented at the state and union territory levels. Tracking progress on various SDGs is thus critical for appropriate policy responses and developing a competitive spirit among states and UTs only.

But, **NITI Aayog** has been in charge of monitoring national SDG implementation. The role of organising the SDGs, mapping programmes linked to the SDGs and their targets, and designating lead and supporting ministries for each target has been assigned to NITI Aayog, the Government of India's top think tank. As part of the implementation process, the NITI Aayog has completed the mapping of all SDGs, Central Ministries, and Centrally-sponsored initiatives; NITI Aayog has also consulted with various stakeholders at the national and regional levels, including states and union territories. Because of the integrated nature of the 2030 Agenda, governments must cooperate beyond policy silos to set ambitious and interconnected social, economic, and environmental goals that go beyond short-term political cycles. Strategic prioritisation, visualisation, and execution strategies are used by the Indian government.

The Indian government is committed to meeting long-term development objectives. As part of its commitment to achieve the SDGs, the government has initiated a variety of national welfare and development projects. In the spirit of the Sustainable Development Goals' tagline of "Leaving No One Behind," the government is committed to ensuring "Sabka Saath, Sabka Vikas, Sabka Vishwas." The NITI Aayog is in charge of releasing the SDG India Index, a report on India's progress towards the United Nations' sustainable development objectives. The study first formalised how the SDGs could be measured using existing public data on India's sustainable development, and then it compared SDG attainment across states, identifying both successes and investment priorities.

**The Ministry of Statistics and Programme Implementation (MoSPI)** has been leading

discussions on producing national indicators for the SDGs. State governments are critical to India's development on the SDGs because they are best positioned to "put people first" and ensure that "no one is left behind." The UN Country Team in India assists NITI Aayog, Union Ministries, and state governments in their efforts to address the interconnection of the goals, guarantee that no one is left behind, and advocate for enough funding to accomplish the SDGs. The Ministry of Statistics and Programme Implementation (MoSPI) in India has developed 306 national indicators that correspond to the 169 SDG targets and the Global Indicators Framework. In addition to the 306 indicators, 62 priority indicators for gauging India's most important developmental goals have been devised.

The MoSPI has undertaken numerous measures to address data gaps for SDG indicators. On a regular basis, the Ministry meets with line Ministries/Departments and their respective Custodian Agencies. MoSPI, NITI Aayog, and the United Nations, represented by the UN Resident Coordinator Office (UNRCO) in New Delhi, India, have signed a Tripartite Memorandum of Understanding (MoU) on data, indicators, and statistics support for the Sustainable Development Goals (SDGs) in India. The agreement's primary purpose of the MoU is to collaborate on issues pertaining to statistical monitoring of SDG Goals and Targets, such as the adoption of new technologies, capacity building to track SDG-related outcomes, and any other challenges that may arise.

While India has made significant progress in many areas, it still faces issues such as income disparity, environmental degradation, and universal access to quality healthcare and education. The COVID-19 epidemic added to the obstacles of achieving the SDGs. Continuous efforts and novel solutions are required for India to meet these lofty targets by 2030. Policy and programme monitoring, assessment, and adaptation will be critical in this journey towards sustainable development.

## CHALLENGES FACED BY INDIA IN ACHIEVING THE SUSTAINABLE DEVELOPMENTAL GOALS

India confronts a number of obstacles in meeting the Sustainable Development Goals (SDGs) by 2030. Among the major challenges are:

### i. **Limited attempts to localise SDGs:**

Because India has not made sufficient efforts to localise the SDGs, the goals are not adapted to the specific requirements and situations of diverse areas and populations.

### ii. **Indian cities' inadequate governance structure:**

Indian governance structure is weak, making it difficult to execute policies and programmes necessary to fulfil the SDGs

### iii. **Multiplicity of governance structures:** India has a plethora of governance structures, which contributes to a lack of coordination and coherence in policy execution.

### iv. **Inequitable development and poor pace of improvement:** India is off target for 19 of the 33 SDG indicators, and progress towards important indicators is gradual. 4. There is a significant disparity in poverty levels between states and between urban and rural areas.

### v. **Private healthcare** in India can be costly, and the quality and cost of services vary, Where many people cannot afford to get treated in private hospitals.

## Lessons from India's COVID-19 reaction that can be implemented to overcome these difficulties include:

### i. **Strengthening healthcare infrastructure:** India's COVID-19 response emphasised the importance of strengthening healthcare infrastructure, which is critical for achieving SDG (Good Health and Well-being).

### ii. **Investing in digital infrastructure:** The Indian response to COVID-19 emphasised the significance of investing in digital infrastructure, which can help enhance access to education, healthcare, and other services.

- iii. Improving social safety nets: India's COVID-19 response emphasised the importance of improving social safety nets, which can help protect disadvantaged communities from the economic consequences of crises.
- iv. For India to achieve considerable progress towards fulfilling its SDGs and enhancing the well-being of its people, it must prioritise and target certain sectors inside the country.
- v. This involves adjusting central plans to state-level conditions and strengths, maintaining infrastructure and employment levels in line with levels of urbanisation, and tackling the significant disparities in poverty levels across states and between urban and rural areas.

### DISCUSSION ABOUT SDGs IN G20 SUMMIT 20203

The Sustainable Development Goals (SDGs) are a promise made by the G20, and it has been periodically reviewed and reaffirmed through yearly updates. The G20 is a significant venue for international leadership and cooperation, both of which are essential for achieving inclusive and sustainable growth. The G20 2023 Action Plan to Accelerate Progress on the SDGs places a strong emphasis on the necessity of fostering an environment that is supportive of sustainable development for all nations, particularly developing nations, as well as the provision of global public goods.

The G20 acknowledges the need for robust international and national enabling frameworks in order to change production capacity, promote the implementation of just, inclusive, and sustainable transitions globally while leaving no one behind, and promote sustainable consumption and production. As expected, the G20 will adopt a Leaders'

The G20 is anticipated to issue a Leaders' Declaration at the conclusion of the Summit that outlines the commitment of the Leaders to the priorities discussed and decided upon

throughout the Ministerial and Working Group Meetings. One Earth, One Family, One Future will be the focus of the G20 Indian Presidency in 2023, and Lifestyle for Environment will be highlighted, with an emphasis on environmentally responsible choices at both the individual lifestyle level and the national development level, with the goal of achieving a cleaner, greener, and bluer future. People, planet, and prosperity are the three pillars of sustainable development, and the G20 Indian Presidency is in a position to lead the G20's joint efforts to advance these three pillars.

### BUDGET ALLOCATED FOR SUSTAINABLE DEVELOPMENTAL GOALS 2023

India has achieved numerous Sustainable Development Goals (SDGs) in a substantial manner, and its per capita income has climbed to 1.97 lakhs. Nirmala Sitharaman, the finance minister, built on India's resolve to take the lead in the global fight against climate change, preserve biodiversity, and promote sustainable development in the Union Budget 2023. Accelerating the clean transition and sustainable growth is the goal of the pledged capital investment and the policy frameworks that will support a number of particular initiatives.

By outlining the administration's plan for economic growth with an emphasis on sustainable development, the budget further demonstrates India's unwavering commitment to green growth. The budget's statements are in line with India's policies on combating climate change and the nation's net zero objectives, COP27 obligations, and revised Nationally Determined Contributions (NDCs). The budget outlines the government's plan for economic growth with a focus on sustainable development, defining India's steadfast stance on green growth.

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A number of targeted efforts that will have a cascading effect are part of the Green Growth initiatives. To achieve net zero by 2070 and a transition to renewable energy, for instance, priority capital investment of Rs 35,000 crore was allocated, ensuring the nation's energy security. By 2030, the Green Hydrogen Mission's investment of Rs 19,700 crore will enable the production of 5 million tonnes of green hydrogen. This will make it easier for Indian companies to gradually decarbonize, reduce reliance on imported fossil fuels, and build technology and market leadership in this emerging industry.

## CONCLUSION

The Sustainable Development Goals are crucial because they enable us to build a better world for everybody. Without acknowledging and minimising the harm we cause to the earth every day, we will not be able to preserve our standard of living or the health of its ecosystems. Sustainable developmental goals address a variety of concerns, including poverty, hunger, education, and climate change. We can assure a better future for ourselves and future generations by working towards these objectives. Sustainable developmental goals provides roadmap for a better future. . It is imperative that we continue to prioritize and take meaningful actions towards realizing the SDGs, ensuring a brighter and more sustainable future for our planet. By working together, we can achieve a more sustainable and equitable world for all.

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## UNDERSTANDING THE LEGAL FRAMEWORK FOR FRANCHISING IN INDIA

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### Abstract :

Franchising in India functions within a broad legal framework, as there is no specific law dedicated solely to franchising. Franchise agreements are primarily governed by the Indian Contract Act, 1872, which requires clear terms on the rights and responsibilities of both parties. Intellectual property rights are safeguarded through the Trade Marks Act, 1999 and the Copyright Act, 1957. The Competition Act, 2002 ensures that franchise agreements do not restrict competition, while the Consumer Protection Act, 2019 holds businesses accountable for service standards. Franchise fees and royalties are subject to GST, and foreign franchisors must comply with FEMA regulations regarding royalty payments. In the absence of a dedicated franchising law, judicial rulings and industry practices influence franchise operations. Given the sector's rapid growth, there is a need for more specific regulations to ensure sustainable and compliant franchise models.

Key words ; Franchising, FEMA, Rapid growth, GST, Ensure sustainable

### Introduction:

Franchising has become a widely adopted and rapidly expanding business model in India, drawing attention from both local entrepreneurs and international companies. The industry is experiencing a strong annual growth rate of approximately 30%, driven by growing consumer demand for branded products and services, favorable government initiatives, and the country's steady economic progress. Although the origins of franchising date back several centuries—tracing to feudal systems and royal licenses granted in medieval times—its formal structure began to take shape with the introduction of the guild system in 12th-century London. While franchising in India is yet to develop into a fully organized industry, it is steadily gaining momentum as a popular method for business expansion and distribution of goods and services, a trend already well-

established in countries like the United States and the United Kingdom.

Franchising presents a range of advantages for both franchisors and franchisees. However, thriving in the Indian market requires a comprehensive understanding of the country's legal framework. Key legal aspects include intellectual property rights, the drafting and enforcement of franchise agreements, regulations related to advertising and marketing, labor laws, and taxation. Proper compliance with these regulations is essential to ensure smooth operations and avoid potential legal pitfalls.

This paper aims to provide an overview of the concept of franchising, highlighting its benefits and associated risks. It further delves into the legal dimensions of franchising in India, emphasizing the critical role of a well-drafted franchise agreement. The goal is to offer a

foundational guide for those exploring or entering into franchise partnerships within the Indian context.

### Franchising:

Indian law does not explicitly provide a definition for franchising. Nonetheless, in general terms, franchising can be understood as a method for distributing goods or services. According to Black's Law Dictionary, a franchise refers to a license granted by the proprietor of a trademark or trade name, allowing another party to offer products or services under that established brand.

Typically, a franchise arrangement involves two main parties:

1. The franchisor – the individual or entity that owns the trademark or trade name and the underlying business model, which is shared with others.

2. The franchisee – the individual or entity that pays an upfront fee and/or ongoing royalties in exchange for the right to operate using the franchisor's brand and established system of operations.

### Key Characteristics of Franchising:

Drawing insights from definitions provided by the British Franchise Association, the International Franchise Association, and the U.S. Federal Trade Commission, several core features of franchising can be identified:

(a) Franchising is fundamentally established through a contractual agreement between the parties involved.

(b) The franchisor typically offers a proven business model or system, which is associated with a recognized brand.

(c) The franchisee usually invests a significant amount of capital at the outset and assumes ownership of the day-to-day business operations.

(d) The franchisor is generally responsible for training the franchisee, ensuring they are well-

prepared to operate within the guidelines of the established system.

(e) After the franchise is operational, the franchisor continues to offer assistance in specific areas of the business to support the franchisee.

(f) To safeguard the brand's reputation and maintain consistent quality, the franchisor routinely monitors and evaluates the franchisee's operations.

(g) In exchange for the rights granted and ongoing support, the franchisee typically pays a fee or royalty to the franchisor.

### Types of Franchising Agreements:

Franchising can take several forms depending on the nature of the business, the level of control, and the territorial scope of operations. The most common types of franchising agreements include,

i. Product Distribution Franchise:

In this model, the franchisee is authorized to distribute the franchisor's products, often with the use of the brand name. This type is common in industries such as automobiles, soft drinks, and petroleum. The focus is more on product distribution than on the business format itself.

ii. Business Format Franchise:

This is the most widely used form of franchising. Here, the franchisor provides not just the product or service but also a complete business system, including branding, training, operations manuals, marketing support, and ongoing assistance. Fast food chains, retail stores, and service-based brands often adopt this model.

iii. Manufacturing Franchise:

In this arrangement, the franchisor allows the franchisee to manufacture and sell products using the franchisor's brand name, trade secrets, and proprietary processes. This is common in the food and beverage, apparel, and automotive sectors.

iv. Master Franchise:

A master franchisee is granted the right to operate and also to sub-franchise within a defined geographical area. This type is particularly useful for international expansion, where local partners understand the market better.

v. Area Development Franchise:

Under this agreement, the franchisee commits to opening and operating multiple franchise outlets within a certain region over a specified period. Unlike the master franchise, the area developer does not sub-franchise but retains ownership of all outlets.

vi. Joint Venture Franchise:

In a joint venture model, the franchisor and franchisee enter into a partnership or joint venture to run the business together. This is often used when entering a new market where local insight is critical.

**Compliance issues in Indian Franchising:**

Franchising is a growing business model in India, but it comes with several legal and regulatory challenges. Key compliance areas include intellectual property protection, proper drafting of franchise agreements under Indian contract law, adherence to advertising norms, employment laws, and tax obligations. Though the Indian Contract Act doesn't mandate written agreements, formal contracts are essential for franchises. Issues like franchisor liability and high taxation on royalties can discourage foreign investment. Cases like Gujarat Bottling Co. Ltd. vs Coca-Cola Co. highlight the need for clearer franchise laws. Franchisors must also ensure IP registration and that franchisees follow employment, advertising, and tax regulations.

**Regulatory framework for Indian Franchise Agreements :**

Laws Applicable - Indian franchise agreements are not governed by a single dedicated law but are influenced by several statutes. These include various legal enactments that collectively form the regulatory framework for franchising in India.

1.The Indian Contract Act, 1872 outlines the legal framework for all contracts, including franchise agreements. It covers essential elements like offer, acceptance, consideration, and the legal capacity of parties, along with their rights and duties.

2.The Consumer Protection Act, 1986 safeguards consumers' rights and provides remedies for faulty goods or services. Since franchisees use the franchisor's services, franchise agreements fall under this law's scope

3.The Trade Marks Act, 1999 and the Copyright Act, 1957 safeguard intellectual property like trademarks and copyrights, which are vital for franchisors to operate and protect their brand.

4.The Specific Relief Act, 1963 offers remedies like specific performance and injunctions, helping franchisees if a franchisor breaches the agreement.

5.The Foreign Exchange Management Act, 1999 regulates foreign exchange dealings in India, including royalty payments and fund repatriation to international franchisors.

6.The Transfer of Property Act, 1882 governs property transfers, including lease rights, which may apply to franchise agreements involving leased premises.

7.The Income Tax Act, 1961 imposes tax on franchisors' earnings in India, including royalties received from franchisees.

8.The Information Technology Act, 2000 gives legal validity to digital signatures and electronic records, aiding in the online execution of franchise agreements.

**Standard Terms and Conditions:**

The legal requirements for franchising in India include standard terms and conditions in the Franchise Agreement.

1.Franchise agreements in India should include balanced terms for both parties, covering aspects like termination, renewal, and geographic exclusivity.

2. Geographical exclusivity clauses should clearly define the area where the franchisee holds exclusive rights to operate.

3. Training and support provisions should outline the nature and extent of assistance the franchisor will provide to the franchisee.

4. Marketing and advertising clauses should clearly define each party's duties in carrying out promotional activities.

5. Termination and renewal clauses should specify the terms for ending the agreement and the process for its renewal.

### Registration and approval requirements:

Franchisors in India must complete necessary registrations and approvals, such as trademark registration and licenses, before finalizing franchise agreements. Non-compliance can lead to legal penalties.

These requirements may vary across different states, depending on local regulations. Ensuring proper registration helps protect the franchisor's brand and ensures smooth business operations.

### Termination and Renewal Provisions:

Franchise agreements in India must clearly outline termination and renewal conditions, detailing grounds for termination like contract breaches or nonpayment. Renewal clauses should specify how the agreement can be extended and any related fees.

These provisions ensure both parties are aware of their rights and responsibilities throughout the agreement's duration. Clear terms also help avoid disputes and provide a structured process for continuing or ending the franchise relationship.

### Case study:

#### Domino's Pizza in India :

Domino's Pizza, a global fast-food chain, entered the Indian market in 1996 through a franchise agreement with Jubilant FoodWorks Ltd. (JFL). Since then, it has rapidly expanded across India, thanks to its effective marketing

strategies and focus on local tastes. A key factor in its success has been its adherence to India's franchising legal framework, including intellectual property protection, well-drafted franchise agreements, and compliance with registration and approval requirements.

Domino's Pizza's experience underscores the importance of following franchising laws. Other franchisors aiming to enter India should work closely with legal experts to ensure full compliance with all relevant regulations.

### Suggestion :

1. A well-drafted franchise agreement is essential to clearly define roles, obligations, fees, duration, renewal, and termination conditions.

2. Trademark registration is crucial to protect the franchisor's brand and ensure legal usage rights by the franchisee.

3. Intellectual property, including business processes, logos, and trade secrets, must be legally licensed and safeguarded.

4. Foreign franchisors must comply with FEMA regulations, especially for royalty payments and remittances.

5. Though not legally required, transparent disclosure of business details builds trust and helps avoid legal conflicts.

6. Legal due diligence and expert consultation are vital before entering into any franchise arrangement to mitigate risks

### Conclusion :

Franchising in India demands a thorough understanding of various legal dimensions to ensure a smooth and compliant business operation. Although there is no single, dedicated law governing franchising, the relationship is primarily regulated through the Indian Contract Act, supported by laws related to intellectual property, foreign exchange, and sector-specific regulations. A clearly articulated franchise agreement forms the backbone of this relationship, as it outlines key terms such as

rights, responsibilities, territorial limits, duration, termination conditions, and dispute resolution methods. The protection of intellectual property, especially trademarks, is critical because the franchise system heavily relies on the brand's reputation and recognition. Ensuring that trademarks and other proprietary elements are registered and licensed appropriately safeguards the interests of the franchisor and prevents misuse by the franchisee or third parties.

In cases where foreign franchisors are involved, strict compliance with the Foreign Exchange Management Act (FEMA) is necessary, especially when dealing with royalty payments and other cross-border financial transactions. Moreover, depending on the nature of the business, additional approvals or licenses might be required under sector-specific laws such as FSSAI for food businesses, or state education regulations for educational franchises. Disputes may arise in any commercial relationship, and franchising is no exception. Hence, it is important to incorporate clear mechanisms for dispute resolution—arbitration being a preferred route in many agreements. Transparency, proper disclosures, and due diligence are also important to avoid legal complications and build a strong foundation for the franchise. Ultimately, understanding and addressing these legal aspects not only ensures compliance with Indian laws but also fosters trust, reduces risk, and contributes to the long-term growth and success of the franchising venture.

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# ARTIFICIAL INTELLIGENCE IN COMBATING CYBERCRIME IN INDIA: AN ANALYSIS OF CHALLENGES AND STRATEGIC OPPORTUNITIES

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## ABSTRACT

The rapid digitization of India's economy has led to a significant rise in cybercrimes, posing serious threats to individuals, businesses, and national security. As traditional cybersecurity measures struggle to keep pace with evolving threats, Artificial Intelligence (AI) emerges as a transformative tool to enhance cyber defense mechanisms. This paper explores the role of AI in combating cybercrime in India, focusing on its applications in threat detection, predictive analytics, and automated response systems. It also examines the challenges associated with AI adoption, including ethical concerns, data privacy issues, regulatory gaps, and the need for skilled professionals. Furthermore, the study highlights opportunities for strengthening India's cybersecurity framework through AI-driven innovations, public-private partnerships, and policy reforms. By addressing these challenges and leveraging AI effectively, India can significantly enhance its cyber resilience and safeguard its digital infrastructure.

**Keywords:** Artificial Intelligence, Cybercrime, Cybersecurity, Data Privacy.

## 1. Introduction

In recent years, India has witnessed a rapid adoption of Artificial Intelligence (AI) across diverse sectors such as healthcare, finance, and governance, transforming how industries operate and improving efficiencies. However, with the growing digital landscape, the country has become increasingly vulnerable to cyber threats, making the government and private sectors prime targets for cybercriminal activities. The rise in data breaches, financial frauds, and identity thefts underscores the urgent need for robust cybersecurity measures. This research aims to explore the dual role of AI in India, both as a tool employed by cybercriminals to execute sophisticated attacks and as a critical resource in the arsenal of cybersecurity professionals combating these

emerging threats. The study will delve into the unique challenges India faces in leveraging AI for both offense and defense while addressing the legal, ethical, and societal implications of its application in the Indian context.

## 2. Legal Framework on AI: Global Perspective and Indian Scenario

The rapid advancement of Artificial Intelligence (AI) has necessitated the development of legal frameworks worldwide to regulate its ethical, social, and economic impact. Various countries and international organizations have introduced AI governance policies focusing on transparency, accountability, and data privacy. The European Union's AI Act is one of the most comprehensive regulatory frameworks, classifying AI applications based on risk levels

and enforcing strict compliance measures. Similarly, the United States follows a sectoral approach, with agencies like the Federal Trade Commission (FTC) addressing AI-related issues under existing consumer protection and privacy laws. Countries such as China and Canada have also implemented AI strategies emphasizing data governance, algorithmic transparency, and responsible AI usage. Global initiatives, including UNESCO's AI Ethics Recommendations and the OECD AI Principles, aim to create a standardized approach to AI governance while allowing nations to develop region-specific regulations.

In India, AI regulation is still in its nascent stages, with no standalone law governing AI development and deployment. However, several legal frameworks indirectly address AI-related concerns, including the Information Technology Act, 2000, and the Personal Data Protection Bill, 2019 (now evolving into the Digital Personal Data Protection Act, 2023). The Indian government has taken proactive steps by introducing AI policies such as the National Strategy for Artificial Intelligence (NSAI) and establishing AI research initiatives like the Responsible AI for Social Empowerment (RAISE) summit. Additionally, sector-specific regulations, such as the RBI's guidelines on AI-driven fintech applications and the use of AI in healthcare under the Medical Council of India, highlight the country's evolving approach to AI governance. However, challenges remain, including the lack of a comprehensive regulatory framework, concerns over algorithmic bias, and the need for a balance between innovation and oversight. As AI adoption continues to grow, India must develop a structured legal framework that ensures ethical AI usage while fostering technological advancements.

### 3. AI-Driven Cybercrime: The Indian Scenario

In India, the rise of AI-powered cyber threats is becoming a significant concern. Cybercriminals are increasingly using AI to create more advanced phishing attacks, malware, and

ransomware, which specifically target businesses and individuals. These attacks are more effective because AI allows hackers to bypass India's existing cybersecurity systems, making it harder to detect and prevent these threats. Another major issue is the use of AI-generated deepfake technology, which has been increasingly used in Indian politics to spread false narratives and misinformation, particularly during elections and political events. These AI-created media can manipulate public opinion and disrupt the democratic process. Additionally, AI is being used to carry out highly sophisticated autonomous cyberattacks on critical infrastructure in India, such as banking systems, power grids, and government websites. These attacks are becoming more complex and dangerous, posing serious risks to the country's national security, economy, and public services. The growing use of AI in these malicious activities emphasizes the need for stronger cybersecurity measures and counter-strategies to protect India from such emerging threats.

### 4. AI as a Shield against Cybercrime in India

India has been proactive in developing cybersecurity initiatives to combat the growing digital threats, with the government playing a key role in crafting policies and deploying AI-driven tools. Organizations like CERT-In (Indian Computer Emergency Response Team) are at the forefront of enhancing the country's cybersecurity infrastructure, using AI to detect and respond to threats more effectively. Additionally, AI-based defense mechanisms, such as machine learning, are being widely adopted by Indian firms across various industries to detect potential threats, prevent attacks, and strengthen their security systems. For instance, Indian banks, e-commerce platforms, and telecom companies have successfully integrated AI technologies to counter cybercrime. These sectors have reported significant improvements in detecting fraudulent activities, preventing data breaches, and defending against sophisticated cyberattacks. Through the use of advanced AI

tools, these industries have managed to enhance both their cybersecurity resilience and response capabilities, demonstrating the potential of AI in securing India's digital landscape.

### **5. Use of AI: Ethical and Legal Challenges in India**

In India, the growing use of AI in both cybersecurity and cybercrime raises important legal questions regarding accountability. When AI tools are exploited for criminal activities, it becomes difficult to determine who is responsible—whether it is the developers of the AI systems, the users, or other entities involved in the chain of events. This legal complexity adds a layer of challenge in prosecuting AI-related cybercrimes and determining liability. Another concern is the potential for bias in AI systems used for cybersecurity, which could disproportionately affect certain groups in India. For instance, if AI algorithms are not carefully designed, they may lead to discrimination, such as profiling based on gender, ethnicity, or socioeconomic status, causing harm to vulnerable populations. Furthermore, India's existing legal frameworks, such as the IT Act, 2000 and the Personal Data Protection Bill, provide some regulation on cybercrime and data protection, but they are often seen as outdated or insufficient in addressing the complexities of AI-related issues. There is a growing need for more robust and comprehensive policies to regulate AI and ensure that both its use and misuse are effectively controlled to protect citizens and organizations from emerging threats.

### **6. Socio-Economic Impact of AI-Driven Cybercrime in India**

AI-driven cybercrime in India has resulted in significant economic damage across multiple sectors, including banking, e-commerce, and government institutions. Financial losses from AI-powered fraud, such as data breaches, financial frauds, and ransomware attacks, are rising sharply, affecting both public and private sectors. Indian banks, e-commerce platforms,

and government services are frequently targeted, leading to billions of rupees in losses, not to mention the long-term impact on business operations and consumer confidence. Moreover, cybercrimes fueled by AI also pose a serious threat to citizens' privacy. The growing use of AI in hacking and data theft makes personal information more vulnerable to exploitation. The risks are especially concerning in the context of India's national digital identity project, Aadhaar, where the collection of vast amounts of sensitive personal data could become a prime target for cybercriminals. These threats undermine public trust in digital systems and raise important questions about data security and privacy protection. As AI-driven cybercrime continues to evolve, it is crucial to address these issues to ensure the safety and privacy of Indian citizens.

### **7. Collaborative Solutions for Combating AI-Driven Cybercrime in India**

In addressing the growing threat of AI-driven cybercrime, collaboration between the Indian government and the private sector is essential. Indian government agencies, such as the National Cyber Security Coordinator and CERT-In, play a pivotal role in coordinating efforts to protect national cyberspace. These agencies work alongside private-sector companies to develop and implement advanced cybersecurity measures that can effectively counter AI-powered attacks. The partnership ensures a more unified and strategic approach to defending against emerging threats. Additionally, the establishment of AI ethics committees is becoming increasingly important to ensure that AI tools used for cybersecurity are developed and deployed responsibly. These committees can help ensure that AI technologies align with ethical standards and do not inadvertently cause harm, such as through bias or misuse. Public awareness and education are also crucial in mitigating the impact of AI-related cyber threats. Educating Indian citizens, businesses, and government officials about the risks of AI-powered cybercrime and best practices for cybersecurity

can greatly enhance resilience against these threats. By raising awareness, the country can foster a more informed and proactive approach to defending against cybercrimes.

### 8. The Future of AI and Cybersecurity in India

Emerging AI technologies are set to play a transformative role in shaping the future of cybersecurity in India. Advancements such as AI-based digital forensics and predictive analytics are already enhancing the ability to detect, analyze, and prevent cyber threats in real time. AI-driven tools that can analyze vast amounts of data, identify patterns, and predict potential security breaches will be critical in strengthening India's defenses against sophisticated cyberattacks. These technologies will enable faster and more accurate responses, making it possible to stay ahead of cybercriminals who increasingly rely on AI to bypass security measures. However, as AI-driven threats continue to evolve, India must take proactive measures to prepare its cybersecurity infrastructure for the future. Strengthening policies, investing in advanced AI security systems, and building a skilled workforce capable of handling these technologies will be essential in combating more sophisticated attacks. By anticipating future threats and adopting cutting-edge AI solutions, India can better safeguard its digital ecosystem and ensure a more secure and resilient cyberspace.

### 9. Conclusion

In conclusion, Artificial Intelligence holds immense potential to both enhance and challenge cybersecurity efforts in India. On one hand, AI can significantly improve threat detection, prevention, and response times, offering innovative solutions to combat cybercrime. On the other hand, it also presents new risks, as cybercriminals increasingly exploit AI technologies for malicious purposes, requiring constant adaptation of security measures. It is crucial to adopt a balanced approach to AI development—one that fosters technological innovation while prioritizing

security, privacy, and ethical integrity. Ensuring responsible AI deployment in cybersecurity is essential to protect citizens, businesses, and critical infrastructure. Furthermore, there is a pressing need for continued research and the establishment of stronger regulatory frameworks to keep pace with AI advancements. By doing so, India can effectively harness the power of AI while safeguarding its digital future against emerging threats.

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## FUTURE OF CRYPTO CURRENCY EMERGING TREND AND INNOVATION

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### Abstract

The cryptocurrency sector has grown from Bitcoin in 2009 to a complicated industry with quick technology and changeable market trends. This article examines recent cryptocurrency innovations, focussing on sustainable cryptocurrencies, central bank digital currencies, decentralised finance, and non-fungible tokens. DeFi systems make financial services more accessible and efficient by enabling peer-to-peer transactions without middlemen. NFTs are revolutionising digital ownership and intellectual property by permitting the trade and price of unique digital assets. International research is investigating CBDCs to improve financial services and monetary policy. Green and sustainable cryptocurrency efforts also address the need to improve consensus mechanisms to lessen blockchain technology's environmental impact. Privacy enhancements, interoperability frameworks, and Layer 2 scalability solutions are helping the bitcoin ecosystem. Layer 2 solutions like the Lightning Network and Rollups speed up and scale transactions, while Polkadot and Cosmos foster multi-chain ecosystems. Money transactions are safer because to zero-knowledge proofs and other privacy-focused innovations. Despite these advancements, the cryptocurrency business still has to overcome market instability, security concerns, and confusing rules. Strong standards, safety procedures, and strategies for unexpected markets are needed for long-term industry success. Finally, this paper suggests ways investors, corporations, and regulators might capitalise on the bitcoin market's potential and challenges.

**Keywords:** Cryptocurrency, Decentralized Finance (DeFi), Non-Fungible Tokens (NFTs), Central Bank Digital Currencies (CBDCs), Sustainable Cryptocurrencies, Layer 2 Solutions, Interoperability, Privacy Enhancements, Blockchain Technology, Market Volatility.

### 1. Introduction

Bitcoin's 2009 introduction changed the financial world, and cryptocurrency has changed drastically. Bitcoin and other cryptocurrencies have grown from basic concepts for decentralised digital money that allow direct transactions between users without a central bank or other third party to a thriving and complex industry with many new uses and advancements. Initial bitcoin ambitions included creating a decentralised, safe, and transparent financial system with cheaper

transaction fees<sup>125</sup>. Beyond digital money, the technology created many more cryptocurrencies and blockchain-based ideas, enabling decentralised finance and smart contracts. Bitcoin is growing and volatile. Although thousands of tokens and altcoins have arisen, Bitcoin remains the most popular and lucrative. Ethereum became popular because to its smart contracts, which enabled several decentralised apps (dApps) and platforms. Decentralised finance (DeFi) platforms and

<sup>125</sup> Hossain, M. S. (2021). What do we know about cryptocurrency? Past, present, future. *China Finance Review International*, 11(4), 552-572.

non-fungible tokens (NFTs) are two blockchain applications that have grown rapidly. Despite their popularity, regulatory oversight, market volatility, and security concerns hinder cryptocurrency development and adoption. Keeping up with cryptocurrency developments is important for several reasons. Investors need fresh information to make strategic decisions and capitalise on growth opportunities. Decentralised finance, privacy-enhancing technologies, and central bank digital currencies may provide new investment opportunities and market dynamics. Combining blockchain technology with cryptocurrencies may increase security, income, and development potential for businesses<sup>126</sup>. Businesses considering these technologies must stay current to maximise their benefits. Regulators will shape cryptocurrencies in the future. The sector changes constantly, thus the regulatory landscape does too. If regulators understand trends, they may better prepare for and respond to market integrity, financial stability, and fraud issues. Effective regulation may promote innovation while protecting consumers and market integrity. Two goals are set for this inquiry. The first section of the paper will discuss decentralised finance, non-fungible tokens, central bank digital currencies, and blockchain technological advances<sup>127</sup>. Second, the research considers market dynamics, technology, and regulatory frameworks to assess how these trends may impact the cryptocurrency industry. The research examines these issues to illuminate cryptocurrency's future and potential challenges.

## 2. Overview of Current Cryptocurrency Landscape

### Market Analysis

Since Bitcoin's 2009 launch, the cryptocurrency business has risen exponentially. The sector has expanded to billions of dollars due to increased usage and technical advances, led by Bitcoin

and Ethereum. By 2024, all cryptocurrencies were worth over \$2 trillion. Bitcoin, the first and most famous cryptocurrency, has roughly 40% of the market valuation. Ethereum follows with 20% due to its widespread application in smart contracts and dApps. Today, hundreds of altcoins and tokens compete with Bitcoin and Ethereum<sup>128</sup>. Due to their revolutionary features and high market values, Binance Coin (BNB), Cardano (ADA), and Solana (SOL) have garnered attention. Decentralised finance (DeFi) coins and platforms provide financial services without intermediaries, adding diversity. These changes have extended the market's appeal and made it more complex and expandable.

### Technological Foundation

Cryptocurrencies depend on blockchain technology for decentralisation, transparency, and security. Blockchains are immutable, verifiable distributed ledgers that record all computer transactions. This underlying technology must eliminate centralised authority to increase trust and lower transaction costs. Blockchain technology's decentralisation allows cryptocurrencies to operate independently of banks. This makes the blockchain less centralized because the distributed node network keeps it up to date and makes sure it is correct. In order to approve transactions, each node has its own blockchain and uses a consensus method, such as PoW or PoS. Consensus processes are what make chains safe and reliable. Proof of Work is the part of Bitcoin that makes users do hard math problems to verify transactions and make new blocks. This approach stops network fraud, but it costs a lot of money and time<sup>129</sup>. As a validator for Ethereum 2.0 and other cryptocurrencies, you have to stake your currency in order to suggest and approve new blocks using Proof of Stake. This method is easier to use and uses less

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<sup>128</sup> Shin, D., & Rice, J. (2022). Cryptocurrency: a panacea for economic growth and sustainability? A critical review of crypto innovation. *Telematics and Informatics*, 71, 101830.

<sup>129</sup> Fauzi, M. A., Paiman, N., & Othman, Z. (2020). Bitcoin and cryptocurrency: Challenges, opportunities and future works. *The Journal of Asian Finance, Economics and Business*, 7(8), 695-704.

power than PoW. Smart contracts are possible with blockchain technology. Ethereum adds "smart contracts," which are deals that are programmed to be carried out automatically. These contracts make things clearer by cutting out middlemen. They then automatically carry out and maintain promises under set conditions. They helped make decentralized applications (dApps) that let people control their digital identities and send and receive money. Finally, decentralized and consensus-based blockchain technology is making it possible for a market to grow quickly and is having an impact on the cryptocurrency environment. As technology in this area changes all the time, it opens up new uses and makes it easier to connect to the global financial system. As bitcoin grows up, it's important to know these basics so you can use it wisely and gain from its future. Emerging Trends in Cryptocurrency

### Decentralized Finance (DeFi)

Decentralized finance (DeFi), which is different from centralized financial institutions, has changed the bitcoin industry in a big way. The term "DeFi" refers to a group of blockchain-based banking apps that don't need banks or brokers. Parts of DeFi are stablecoins, lending sites, yield farming, and DEXs. Smart contracts on blockchain networks like Ethereum make it possible for people to rent and borrow money from each other and earn interest. DeFi will have a big effect on traditional banks. Decentralized financial systems (DeFi) make it possible for more people around the world to access financial services by cutting out middlemen, lowering transaction costs, and making everything more clear. People can give and borrow money directly through DeFi lending systems, and the interest rates are often lower than those at traditional banks<sup>130</sup>. People can trade cryptocurrencies on decentralized markets instead of centralized firms. This makes

trading safer and lowers the risk of hacking. All transactions are kept on a public ledger because DeFi can't be changed and is open to everyone. This cuts down on fraud and corruption. Several important DeFi projects show that the field has a bright future. It is amazing how the automatic market-making (AMM) protocol of the decentralized exchange Uniswap works. Without an order book, this system lets users trade tokens from their wallets. Aave is a decentralized lending platform that changes the game by letting people borrow assets as collateral and make interest on their deposits. By making financial services easier to get to, faster, and safer, these cases show how DeFi could both change and improve existing financial institutions.

### Non-Fungible Tokens (NFTs)

The cryptocurrency market has also seen the rise of Non-Fungible Tokens (NFTs), which are digital assets that cannot be exchanged. Each NFT has its own qualities and value, unlike Bitcoin or Ethereum, thus they may represent unique digital assets, collectibles, and virtual real estate. NFTs use blockchain technology, mainly Ethereum standards like ERC-721, to verify digital asset authenticity<sup>131</sup>. NFTs revolutionised digital ownership and IP. Producers and artists gain IP control and new revenue sources with tokenisation. The blockchain's ability to track digital assets' origin and ownership has also changed the market. Numerous high-profile transactions and relationships between corporations, celebrities, and artists indicate a burgeoning NFT ecosystem. The Bored Ape Yacht Club, a collection of unique digital avatars, and Beeple's "Everydays: The First 5000 Days," which sold for \$69 million at Christie's, are examples.

### Central Bank Digital Currencies (CBDCs)

Central Bank Digital Currencies (CBDCs) are a turning point in the cryptocurrency and finance sectors as a means of exchange for fiat money

<sup>130</sup> Sharma, D., Verma, R., & Sam, S. (2021). Adoption of cryptocurrency: an international perspective. *International Journal of Technology Transfer and Commercialisation*, 18(3), 247-260.

<sup>131</sup> Fang, F., Ventre, C., Basios, M., Kanthan, L., Martinez-Rego, D., Wu, F., & Li, L. (2022). Cryptocurrency trading: a comprehensive survey. *Financial Innovation*, 8(1), 13.

and digital assets. Central banks have produced CBDCs, digital copies of national currencies, to combine digital payments with fiat currency security. Unlike Bitcoin, centralised CBDCs are regulated by national authorities, ensuring financial stability and compliance. CBDC initiatives and pilots are increasing internationally. CBDCs like China's DCEP and the Bahamas' Sand Dollar are live or under trial<sup>132</sup>. The Federal Reserve is studying digital dollar projects, while the ECB is exploring digital euro programs. CBDCs can boost payment efficiency, decrease transaction costs, and financial inclusion for marginalised groups. CBDCs have drawbacks. CBDC adoption may hurt commercial banks' business models since it would reduce demand for their traditional banking services. Cybersecurity, privacy, and digital money abuse must be addressed. Designing and implementing CBDCs must balance the benefits of improved payment systems with these restrictions.

### Sustainable and Green Cryptocurrencies

Sustainability is a major concern in bitcoin mining due to its environmental impact. Classic consensus systems like Bitcoin's Proof of Work (PoW) need significant energy and computing power, releasing massive volumes of CO<sub>2</sub>. Research and development of green cryptocurrencies and energy-efficient consensus methods is growing. Proof of Stake (PoS) consensus is growing in popularity. Ethereum 2.0 and other cryptocurrencies use PoS, which requires validators to stake tokens instead of computing. This approach uses far less electricity than PoW. Another method bitcoin firms are reducing their environmental impact is by employing hybrid models or renewable energy in mining<sup>133</sup>. The Bitcoin Mining Council promotes sustainable bitcoin practices and reduces the environmental effect

of mining. Several blockchain initiatives seek to be carbon neutral and ecologically friendly. If the bitcoin industry wants to address climate change, it must balance technical progress with environmental stewardship, which is becoming more important. Finally, DeFi, NFTs, CBDCs, and green cryptocurrencies demonstrate how swiftly the cryptocurrency market is moving. These technologies improve financial systems and digital ownership while addressing sustainability and regulatory compliance. To understand the benefits and hazards of the ever-changing bitcoin ecosystem, stakeholders must understand these tendencies.

### 3. Innovations in Cryptocurrency Technology

#### Layer 2 Solutions

Innovative layer 2 solutions have solved several blockchain networks' scalability and transaction speed issues. These methods improve Layer 1 blockchain performance and capacity. The Lightning Network and Rollups are well-known Layer 2 solutions. The Lightning Network, built on Bitcoin's blockchain, makes transactions cheaper and faster. It enables user-to-user off-chain payments. Payment channels provide rapid, private transactions without Bitcoin network recording. Since just the channel's initial and closing balances are recorded on-chain, the main network may conduct fewer transactions. Transaction costs drop dramatically and microtransactions and rapid payments are possible<sup>134</sup>. The Lightning Network scales Bitcoin, increasing transaction speed and per-second processing. Rollups are another popular layer 2 scaling method for Ethereum. Rollups process transactions off-chain and combine them into one batch before publishing them to the main Ethereum network. Positive and ZK-Rollups are the most prevalent rollups. Optimistic Rollups assume transactions are legitimate and only verify them when they disagree, reducing computation cost. Instead, ZK-Rollups validate transactions off-chain using

<sup>132</sup> Klarin, A. (2020). The decade-long cryptocurrencies and the blockchain rollercoaster: Mapping the intellectual structure and charting future directions. *Research in International Business and Finance*, 51, 101067.

<sup>133</sup> Mosteanu, N. R., & Faccia, A. (2021). Fintech frontiers in quantum computing, fractals, and blockchain distributed ledger: Paradigm shifts and open innovation. *Journal of Open Innovation: Technology, Market, and Complexity*, 7(1), 19.

<sup>134</sup> Taherdoost, H. (Ed.). (2023). *Mainstreaming cryptocurrency and the future of digital finance*. IGI Global.

zero-knowledge proofs and provide cryptographic verification of their validity on-chain, improving speed and security. Both Rollup options protect the blockchain, increase scalability, lower gas costs, and boost Ethereum's transaction throughput.

### Interoperability and Cross-Chain Solutions

Blockchain technology needs interoperability to succeed. This lets blockchain networks share data and collaborate. Cross-chain solutions allow assets and data to travel freely between blockchain ecosystems. Polkadot and Cosmos are the first two chains to work together across chains. Polkadot is working on a multi-chain network that will let "parachains," or blockchains, work together to fix the problem of blockchain splitting. You can send data between blockchains using Polkadot's Relay Chain, which connects parachains. This idea lets a number of specialized blockchains work together and share resources and security. This makes the system more flexible and scalable. This is how IBC, Cosmos's Inter-Blockchain Communication technology, works. Cosmos wants to make a "Internet of Blockchains" where decentralized blockchains, called Zones, can talk to each other and share data through the Cosmos Hub<sup>135</sup>. This modular design lets blockchain networks talk to each other, which encourages people to work together and come up with new ideas. Cosmos lets decentralized apps join to other chains, which makes them more flexible and integrated, which is good for the blockchain ecosystem. It's impossible to say enough about how important these options are for interoperability. Instability in the blockchain makes it hard for complicated, interdependent decentralized apps to work. Because they let networks share resources and information, cross-chain solutions make the blockchain environment friendlier and more cooperative.

### Privacy Enhancements

Due to the openness and tracking of blockchain transactions, a lot of bitcoiners worry about their privacy. Cryptocurrencies and technologies that focus on privacy try to protect user privacy and data while keeping the blockchain's stability. Monero and Zcash are well-known coins that focus on privacy. To keep your privacy safe, Monero uses secret addresses, ring signatures, and private transactions. Ring signatures, not stealth addresses, hide the sender's name by mixing the transaction with others. Confidential Transactions hide the amount. For protection, Zcash uses proofs that no one knows about. It can use zk-SNARKs, or Zero-Knowledge Succinct Non-Interactive Arguments of Knowledge, to show that a transaction is valid without showing the sender, receiver, or amount. With this cryptographic method, Zcash can give privacy features like transactions that are both clear and safe. Zero-knowledge proofs are an important part of tools that protect privacy<sup>136</sup>. By using them, one can show that a sentence is true without giving more details. Bitcoin's technological improvements have led to a lot of growth in the blockchain ecosystem. These include better privacy, interoperability, cross-chain solutions, and Layer 2 solutions. Layer 2 technologies, such as Rollups and Lightning Network, make operations faster and more scalable. Polkadot and Cosmos make working together on blockchain easier. Zero-knowledge proofs and other privacy-focused features in Monero and Zcash make it easier for users to keep their data and information safe. Using bitcoin more easily, keeping it safer, and reducing its effect on the market are all things that depend on these changes.

### 4. Challenges and Considerations Regulatory and Legal Challenges

The bitcoin regulatory landscape is dynamic and disconnected due to governments and

<sup>135</sup> Yalcin, H., & Daim, T. (2021). Mining research and invention activity for innovation trends: case of blockchain technology. *Scientometrics*, 126(5), 3775-3806.

<sup>136</sup> Li, J. P., Naqvi, B., Rizvi, S. K. A., & Chang, H. L. (2021). Bitcoin: The biggest financial innovation of fourth industrial revolution and a portfolio's efficiency booster. *Technological Forecasting and Social Change*, 162, 120383.

regulatory bodies worldwide using numerous ways. Due to unclear legislation, the bitcoin company faces several challenges. Recent events have proven that governments worldwide are moving towards more structured regulatory frameworks due to digital asset issues and potential. Not having a standard technique is a major regulation issue. Many nations have cryptocurrency bans or industry-friendly laws. Singapore and Switzerland have welcomed cryptocurrencies and passed laws that encourages innovation, while China has tightened down on cryptocurrency commerce and mining. Due to this mismatch, global corporations must comply with several local laws, creating a convoluted and confusing regulatory structure. Regulatory authorities are emphasising the necessity for clear compliance requirements<sup>137</sup>. Another consideration is taxes. Users and organisations are confused by the significant disparities in bitcoin tax treatment. Some countries tax cryptocurrencies as capital gains, while others as income. This mismatch makes tax reporting and compliance harder, which might have financial and legal consequences. Many blockchain networks are anonymous, making it hard to track and value bitcoin transactions for accounting purposes.

### Security and Risk Management

Cryptocurrency security is important due to its decentralised nature and great value. After several security breaches, hacks, and scams, the sector needs robust risk management. The Mt. Gox exchange breach and subsequent assaults on decentralised finance (DeFi) systems have highlighted bitcoin storage and transaction security issues. Bitcoin exchanges and wallet providers are vulnerable to assaults, a major security risk. Hackers target bitcoin exchanges because they house so many assets. These attacks can cost users a lot of money and damage the sites' reputations. Although decentralisation makes exchanges

and DeFi systems more safe, they are nonetheless vulnerable. Code errors or smart contract exploitation can cause significant losses and user confidence<sup>138</sup>. Security and risk management innovations have helped the sector combat these challenges. The development of advanced encryption and privacy technologies is another security improvement. Zero-knowledge proofs enable safe transactions without exposing sensitive information, improving privacy and security. Cryptography research and development must be continued to protect digital assets from evolving threats.

### Market Volatility and Adoption

Cryptocurrency's turbulent market affects innovation and adoption. Market speculation, governmental pronouncements, and technical improvements make cryptocurrency values unpredictable. This volatility harms investors and corporations, but it may also yield tremendous benefits. Long-term planning and investment are challenging due to bitcoin market volatility, which may impair industry stability and growth. More people are using cryptocurrencies despite their volatility. This is because institutional investors are interested in them and conventional finance is accepting digital assets. Businesses and banks are seeking for ways to use cryptocurrencies, from accepting Bitcoin to offering cryptocurrency investment products. Blockchain, online payment systems, and digital asset financial services are fuelling their popularity. Several factors impact bitcoin acceptance and use. Increased confidence and adoption demand regulatory certainty<sup>139</sup>. A clear and unified legal framework helps businesses and people use cryptocurrency responsibly. Technology like speedier transactions and improved scalability might make cryptocurrencies more appealing

<sup>137</sup> Patel, N. P., Parekh, R., Thakkar, N., Gupta, R., Tanwar, S., Sharma, G., ... & Sharma, R. (2022). Fusion in cryptocurrency price prediction: A decade survey on recent advancements, architecture, and potential future directions. *IEEE Access*, 10, 34511-34538.

<sup>138</sup> Nasir, M. A., Huynh, T. L. D., Nguyen, S. P., & Duong, D. (2019). Forecasting cryptocurrency returns and volume using search engines. *Financial Innovation*, 5(1), 1-13.

<sup>139</sup> Bhatt, P. C., Kumar, V., Lu, T. C., Cho, R. L. T., & Lai, K. K. (2020). Rise and rise of blockchain: A patent statistics approach to identify the underlying technologies. In *Intelligent Information and Database Systems: 12th Asian Conference, ACIIDS 2020, Phuket, Thailand, March 23–26, 2020, Proceedings 12* (pp. 456-466). Springer Singapore.

and useful. The bitcoin industry must handle regulatory and legal complexities, security concerns, and market volatility. To overcome these difficulties, well-defined regulatory frameworks, cutting-edge security measures, and market risk control are needed. Digital banking's future depends on the cryptocurrency industry's ability to overcome these challenges and innovate.

## 5. Future Prospects and Predictions

### Potential Impact on Financial Systems

As cryptocurrencies change the rules of finance, the world's financial system will also change. Financial services and activities are changing because of blockchain technology, central bank digital currencies (CBDCs), and decentralized finance. Decentralized finance is an exciting new idea in finance that could make banking easier for more people. Users of DeFi systems can lend, borrow, and sell without going through a third party. Blockchain and smart contracts make this possible. This could make things clearer, easier to get to, and cheaper, especially in places with weak financial systems. CBDCs are digital currencies that are backed by the government and can be used instead of or in addition to fiat cash<sup>140</sup>. They want to keep transaction costs as low as possible, help more people get access to money, and make payments safe and easy. By using digital currencies in everyday transactions and setting monetary policy, central banks all over the world are trying how CBDCs can change the financial system. With its immutability and decentralization, blockchain technology can make trade finance, clearing and settling, and payments across borders easier. Blockchain technology cuts out middlemen and improves privacy, which makes transfers safer and more efficient. It is important to think about scalability, legal compliance, and integration with current financial systems before putting new technology into wide use.

<sup>140</sup> Peláez-Repiso, A., Sánchez-Núñez, P., & García Calvente, Y. (2021). Tax regulation on blockchain and cryptocurrency: The implications for open innovation. *Journal of Open Innovation: Technology, Market, and Complexity*, 7(1), 98.

### Implications for Businesses and Consumers

For organisations considering cryptocurrency, there are several pros and cons. Cryptocurrencies and blockchain technology can automate and minimise transaction costs, improving operational efficiency. Bitcoin users may save money on transaction fees, especially for overseas transactions. Blockchain technology's immutability and transparency may improve contract execution and supply chain management, boosting accountability and trust. Digital currencies provide customers more transactional freedom and convenience<sup>141</sup>. Cryptocurrencies enable fast, borderless payments, making them useful for online purchases and overseas remittances. Blockchain-based services and decentralised apps have given clients more options than ever to interact with financial institutions, buy cutting-edge products, and participate in burgeoning marketplaces. Users must learn how to utilise cryptocurrency. Digital wallets, security issues, and cryptocurrency volatility may limit their adoption. Customers' digital asset transactions are linked to regional regulations and cryptocurrencies' legal status.

### Long-Term Innovations

Many possible developments and technologies might change the bitcoin industry in the future. This trend includes advanced interoperability solutions that allow blockchain networks to effortlessly interact. As the blockchain ecosystem evolves, cross-blockchain transactions and data sharing are essential. Polkadot and Cosmos are building interoperability frameworks to make asset and data transfers across blockchains easier. Blockchain-AI-ML is another new trend. The bitcoin sector might benefit from AI and ML in automated trading, market research, and fraud detection. As data security and privacy concerns rise, privacy-focused cryptocurrencies and zero-knowledge proofs

<sup>141</sup> Katopis, C. J. (2022). The curious crypto question: Do patents advance FinTech innovation? The paradox arising from five key recent trends. *Santa Clara High Tech. LJ*, 38, 1

will be needed. These features protect transaction privacy and user anonymity, which makes digital currencies more attractive to businesses and people who care about their privacy. Blockchain technology and digital assets will change as study and development continue, and bitcoin has a lot of room to grow. These changes will open up new opportunities and risks for businesses, customers, and government regulators, which will have an impact on the future of banking. Cryptocurrency's future is uncertain and will have an effect on the world's money system because of new laws, improvements in technology, and market forces.

### Conclusion

Bitcoin has changed a lot because of new technologies and trends. Decentralized Finance (DeFi) has changed peer-to-peer financial services by cutting out middlemen and making them cheaper and easier to use. Non-Fungible Tokens (NFTs) have made it possible for new rights to digital assets and ways to trade and value them. Central bank digital currencies (CBDCs) can make things run more smoothly and help more people get access to money, while also giving central banks more ways to keep an eye on the economy. Layer 2 scaling technologies, such as Rollups and the Lightning Network, have fixed speed and scalability problems in blockchain networks. Cross-chain connections made possible by Polkadot and Cosmos are helping to make the blockchain world more connected and flexible. It is safer and more private to use cryptocurrency because of zero-knowledge proofs and secret transfers. Diversifying your assets and putting protection and following the rules first can help keep the market from being too volatile. Even though there are concerns about security and regulations, businesses should weigh the pros and cons of adopting bitcoin, which could make their processes better and bring in more money. Getting law and IT firms to work together can make integration easier. To encourage new ideas, protect customers, and keep the market honest, regulators should set clear and

consistent rules. Working with other people in the same business can help with rules, safety, and keeping the market stable. The bitcoin business is about to change the way money works, and the future looks good for it. To get the most out of digital assets, there needs to be a mix between innovation, security, and following the rules. Investors, business owners, and government officials all need to work together to make the bitcoin market work better.

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## A STUDY ON ROLE OF THE CHARTERED ACCOUNTANT-INDIAN ACCOUNTING STANDARDS [Ind AS] AND THE COMPANY SECRETARY – SECRETARIAL STANDARDS [SS]

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### ABSTRACT

This paper examines the role and impact of **Indian Accounting Standards (Ind AS)** and **Secretarial Standards (SS)** in promoting financial transparency and effective corporate governance in India. **Ind AS**, which aligns with **International Financial Reporting Standards (IFRS)**, aims to standardize the accounting practices followed by Indian companies, ensuring uniformity in financial reporting and enhancing the credibility of financial statements. By adopting these standards, businesses can offer more transparent, accurate, and comparable financial data, thereby fostering trust with investors and stakeholders. In parallel, the **Secretarial Standards (SS)**, established by the **Institute of Company Secretaries of India (ICSI)**, focus on ensuring compliance with corporate laws and regulations pertaining to corporate meetings, board governance, and record-keeping. These standards are vital in ensuring that companies operate in accordance with legal and regulatory frameworks, thereby promoting good corporate governance practices. While some of these standards are voluntary, they are increasingly becoming crucial for the effective operation of businesses. This paper further explores the connection between **Ind AS** and **Secretarial Standards**, highlighting how both frameworks work together to strengthen governance, ensure legal compliance, and enhance organizational accountability. Compliance with these standards is essential for building long-term business sustainability and maintaining investor confidence in India's corporate sector.

**KEY WORDS:** *Indian Accounting Standards, Secretarial Standards, IFRS, ICSI.*

### INTRODUCTION

In the evolving landscape of corporate regulation and financial transparency, **Indian Accounting Standards (Ind AS)** and **Secretarial Standards (SS)** have emerged as two fundamental pillars of good governance in India. While Ind AS aims to bring consistency, clarity, and comparability in the financial reporting of Indian enterprises by aligning with **International Financial Reporting Standards**

**(IFRS)**, **Secretarial Standards**, issued by the **Institute of Company Secretaries of India (ICSI)**, seek to standardize processes related to corporate governance, especially concerning board and general meetings.

Both standards serve distinct but complementary purposes. Ind AS enhances the **credibility and reliability of financial statements**, ensuring they reflect the true financial position of the entity. SS, on the other

hand, focuses on **compliance and procedural discipline**, guiding company secretaries and directors to act within the legal framework of the Companies Act, 2013.

Together, these standards provide a structured approach to **transparency, accountability, and regulatory compliance**, essential for protecting stakeholder interests and promoting long-term sustainability in corporate operations. This paper explores the objectives, scope, and significance of both Ind AS and SS, and analyzes their impact on improving the overall governance environment in India.

#### LITERATURE REVIEW:

#### Indian Accounting Standards (Ind AS) & Secretarial Standards (SS)

The accounting and governance framework in India has undergone significant transformation with the adoption of Ind AS and the implementation of Secretarial Standards. These standards are crucial for enhancing transparency, consistency, and comparability in financial reporting and corporate governance practices.

#### Indian Accounting Standards (Ind AS)

##### Evolution and Regulatory Framework

The Indian Accounting Standards are converged with International Financial Reporting Standards (IFRS) and are issued by the **ICAI** under the supervision of the **Ministry of Corporate Affairs (MCA)**. Ind AS aims to bring Indian financial reporting in line with global standards.

##### Objectives

- Ensure comparability and transparency in financial statements.
- Facilitate global integration of Indian businesses.
- Improve investor confidence through enhanced disclosure.

#### Literature Findings

- **(Kumar & Sharma, 2018)** found that Ind AS adoption significantly improved the quality of financial reporting in listed companies.
- **(Rao, 2020)** noted challenges faced by Indian SMEs in transitioning to Ind AS due to cost and complexity.
- **(ICAI Reports)** emphasize the need for continuous professional development for accountants to keep pace with evolving standards.

#### Secretarial Standards (SS)

##### Overview and Development

Secretarial Standards are unique to India and are issued by the **ICSI** to standardize practices related to board and general meetings. The **Companies Act, 2013**, mandates compliance with notified Secretarial Standards, specifically **SS-1 (Board Meetings)** and **SS-2 (General Meetings)**.

##### Objectives

- Promote uniformity and transparency in secretarial practices.
- Enhance corporate governance and accountability.
- Ensure statutory compliance by company secretaries.

#### Literature Findings

- **(Mehta & Das, 2019)** found that Secretarial Standards led to improved documentation and decision-making processes in companies.
- **(ICSI Publications)** report higher compliance rates among listed and large private companies.
- Challenges include the lack of awareness among smaller companies and the need for capacity building among professionals.

## 1. CHARTERED ACCOUNTANT - Indian Accounting Standards (IND AS): Overview, Purpose, Scope & Key Standards

Indian Accounting Standards (IND AS) are a collection of financial reporting guidelines that align closely with the International Financial Reporting Standards (IFRS). These standards aim to enhance the global compatibility and transparency of financial statements prepared by Indian entities. As Indian enterprises increasingly operate on an international scale, harmonizing local accounting principles with global norms has become crucial. The implementation of IND AS strengthens the dependability of financial disclosures, empowering stakeholders with accurate data for decision-making. Developed by the Institute of Chartered Accountants of India (ICAI), these standards establish India's commitment to international accounting practices, bolstering global investor confidence and credibility.

### UNDERSTANDING: Indian Accounting Standards (IND AS)

IND AS are accounting principles endorsed by the Government of India, modeled on IFRS. Their formulation is supervised by the Accounting Standards Board (ASB) under ICAI and guided by the National Financial Reporting Authority (NFRA). These norms are compulsory for designated Indian companies, ensuring their financial reports meet international benchmarks. Established in 1977, the ASB manages the development and oversight of these standards, which have become integral to corporate accounting in India.

### OBJECTIVES: Indian Accounting Standards

The Indian Accounting Standards (IND AS) were introduced in India with the primary objective of aligning Indian accounting practices with international standards. Below, we have given rest of the important objectives of Indian Accounting Standards:

- **Uniformity and Consistency:** IND AS aims to establish a consistent framework for accounting practices across various industries and sectors

in India. This uniformity ensures that financial statements are prepared using a common set of principles and methods, making them more comparable and understandable.

- **International Convergence:** One of the primary goals of IND AS is to converge Indian accounting standards with International Financial Reporting Standards (IFRS). This convergence facilitates international trade, investment, and cross-border transactions.

- **Transparency and Accountability:** IND AS promotes transparency in financial reporting by requiring companies to disclose relevant information about their financial performance, position, and cash flows. This transparency enhances accountability and helps stakeholders make informed decisions.

- **Reliability and Credibility:** IND AS ensures that financial information is reliable and credible by providing a framework for the preparation of financial statements that reflect the economic substance of transactions and events.

### FINANCIAL REPORTING IN INDIA

- **Investor Protection:** IND AS aims to protect investors by providing them with reliable and comparable financial information. This helps investors make informed decisions about their investments.

- **Facilitation of Cross-Border Transactions:** Convergence with IFRS facilitates cross-border transactions and investments by reducing the complexities associated with reconciling financial statements prepared under different accounting standards.

### ADVANTAGES: Indian Accounting Standards

Below are some of the advantages of Indian Accounting Standards,

- Ind AS provides a clear and consistent framework for accounting practices, reducing ambiguity and simplifying financial reporting.
- Ind AS ensures that companies follow standardized accounting practices,

promoting consistency and comparability across industries.

- Convergence with International Financial Reporting Standards (IFRS) facilitates easier comparison of Indian companies with their global counterparts, enhancing their attractiveness to international investors.
- The standardized framework of Ind AS makes financial statements more comparable, aiding in decision-making for investors, creditors, and other stakeholders.
- Ind AS provides a clear framework for auditors, making the auditing process more efficient and effective.
- Adherence to Ind AS enhances the credibility of financial statements, increasing investor confidence.
- Ind AS provides a standardized set of metrics for assessing management performance, facilitating better decision-making and accountability.
- The standardized framework and increased transparency reduce the opportunities for fraudulent activities and manipulation of financial information.

**CATALOGUE: Indian Accounting Standards**

Here is a curated list of major Indian Accounting Standards:

**No. IND AS Description**

- 1 Presentation of Financial Statements
- 2 Inventories
- 7 Statement of Cash Flows
- 8 Accounting Policies, Changes in Estimates and Errors
- 10 Events after the Reporting Period
- 11 Construction Contracts
- 12 Income Taxes
- 16 Property, Plant, and Equipment
- 17 Leases
- 18 Revenue

... (Full list continues up to IND AS 115)

This comprehensive set of standards ensures detailed guidance for virtually all types of financial transactions and reporting requirements.

**SCOPE AND IMPLEMENTATION: IND AS [Gradual Adoption]**

The Ministry of Corporate Affairs (MCA) introduced IND AS through a phased rollout to ease the transition for companies of varying scales:

**Phase I (from April 1, 2016):** Mandatory for companies (listed/unlisted) with net worth ₹500 crore and above.

**Phase II (from April 1, 2017):** Applies to listed entities or those seeking listing, with net worth between ₹250–₹500 crore.

**Phase III (from April 1, 2018):** Enforced for large NBFCs, insurance firms, and banks with net worth of ₹500 crore+.

**Phase IV (from April 1, 2019):** Extended to NBFCs with net worth from ₹250–₹500 crore.

**Key Note:** *If a company falls under IND AS, all related entities (subsidiaries, associates, etc.) must also comply, regardless of individual financial standing.*

**Foreign Subsidiaries:** These entities may continue using local GAAP for their standalone reports but must submit IND AS-aligned figures for consolidation purposes.

**Voluntary Implementation**

Firms can opt to adopt IND AS voluntarily from April 1, 2015. However, they must also present comparative figures from previous years under the new standards. Once implemented, companies are not allowed to revert to previous norms.

**Key Differences Between IND AS and IFRS**

Feature	IFRS	IND AS
Defined By	IASB	MCA, India

Feature	IFRS	IND AS
Usage	144+ countries	India-specific
Reporting Requirements	Disclosure of IFRS compliance	No specific disclosure
Financial Statements	Standard IFRS components	Indian-style format and additional notes
Balance Sheet Format	Prescriptive classification	Flexible format with guidance

**FINAL THOUGHTS**

The adoption of Indian Accounting Standards represents a strategic shift towards transparency, global integration, and consistent financial practices. The alignment with IFRS not only facilitates international transactions but also boosts the appeal of Indian companies in global markets by enhancing the credibility and clarity of financial report

**2. COMPANY SECRETARY:**

**SECRETARIAL AUDIT & SECRETARIAL STANDARDS- an overview**

In India, listed companies and their significant unlisted subsidiaries are mandatorily required to undergo a **Secretarial Audit**, which must be conducted by a **Practicing Company Secretary (PCS)**. The outcome of this audit is formally presented in **Form MR-3**.

This report serves as a verification tool to assess whether the company has complied with the applicable **laws, rules, and regulatory frameworks**. Only a PCS – a qualified professional authorized under the ICSI framework – is legally permitted to carry out this audit, thanks to their specialized knowledge and professional expertise in corporate laws and governance

**PURPOSE OF THE STANDARDS**

The ICSI aims to foster uniform and high-quality auditing practices among its members. These standards are designed to ensure consistency in audit procedures and promote strong corporate governance. Given the existing variation in audit methods across different practitioners, overseeing audit processes can become both complex and inefficient. These standards seek to align audit methodologies nationwide, thereby helping professionals conduct secretarial audits more effectively while ensuring adherence to compliance norms. Ultimately, this should raise the overall quality of compliance across organizations.

**SCOPE AND ENFORCEMENT OF STANDARDS**

These standards became recommendatory from July 1, 2019, and have been compulsory for audit engagements initiated on or after April 1, 2020.

**Legal Status of the Standards**

For standards to have statutory force, legislative endorsement is required. For instance, Secretarial Standards 1 and 2 are backed by Section 118 of the Companies Act, 2013, which mandates adherence by companies. However, standards such as SS-3 (Dividend) and SS-4 (Registers and Records) lack legal enforceability and are therefore voluntary. Likewise, the auditing standards by ICSI currently do not have statutory authority, although efforts are underway to establish such backing.

**Audits a Practicing Company Secretary May Conduct**

PCS professionals are qualified to conduct a range of audits under the Companies Act, SEBI guidelines, and other legal frameworks, including:

- Secretarial Audit (Section 204, Companies Act, 2013)
- Half-yearly certificate on timely issuance of share certificates (SEBI Regulation 40(9))

- Annual Secretarial Compliance Report (SEBI Listing Regulations)
- Asset cover certificate for NCDs (SEBI Regulation 56(d))
- Corporate governance compliance certificate
- Share reconciliation audit (SEBI Depositories and Participants Regulations, 2018)

These standards apply to all such audits and any additional audits assigned to a PCS. For this purpose, "Auditor" refers to a PCS performing any of the above audits.

#### **CSAS-1: Standard on Audit Engagement**

This standard outlines the auditor's roles and responsibilities in accepting and executing audit assignments, along with the procedure for forming agreements with the appointing authority.

#### **Eligibility Criteria**

The auditor should not hold a significant financial interest (above 2% or ₹50,000) in the auditee and must not owe the auditee ₹5 lakh or more, except in ordinary business dealings. Former employees of the auditee can undertake audits only after a two-year cooling-off period.

#### **Mandatory Actions**

- Ensure compliance with the Companies Act for appointments
- Provide an eligibility certificate to the client
- Accept engagement with a formal letter and board resolution
- Include clear objectives, responsibilities, timelines, fees, and confidentiality clauses in the engagement letter
- Inform the previous auditor of the new engagement

- Maintain confidentiality and restrict any changes to engagement terms unless justified

#### **CSAS-2: Standard on Audit Process and Documentation**

This standard defines the auditor's responsibilities in keeping adequate documentation to support audit findings and to confirm adherence to audit norms.

#### **Mandatory Steps**

- Draft a detailed audit plan aligned with the engagement terms
- Conduct risk assessments considering the auditee's operational structure
- Collect and evaluate evidence, using checklists and third-party confirmations
- Document key discussions and compile final documentation within 45 days post-report
- Preserve records for at least eight years

#### **Audit Plan Features**

The plan should ensure an efficient, effective audit focusing on critical areas, guided by professional skepticism and sound judgment.

#### **CSAS-3: Standard on Forming an Opinion**

This standard covers the evaluation of audit evidence and forming of conclusions.

#### **Key Actions**

- Assess materiality and analyze all relevant evidence
- Apply critical judgment and skepticism
- Ensure timely and accurate audit reporting
- Reference third-party inputs when used
- Provide a clear opinion—unmodified if satisfied, or modified if significant issues or insufficient evidence are found

### Audit Report Format

- Address the report to the appointing authority
- Follow prescribed formats and include annexures as needed
- Mention audit limitations and responsibilities clearly
- Include auditor's name, certificate details, date, and location

### CSAS-4: Standard on Secretarial Audit

This standard provides a structured approach for evaluating legal and governance compliance under Section 204 of the Companies Act, 2013.

### Steps to Follow

- Identify applicable laws and assess MOA, AOA, and disclosures
- Review corporate actions and events
- Verify both scheduled and event-based compliance
- Confirm proper board structure and committee formation
- Assess adequacy of compliance mechanisms
- Investigate and report fraud if detected
- Report changes affecting the entity's continuity, structure, or control

### FINAL THOUGHTS

These standards offer a detailed framework for auditors, facilitating a systematic approach to audit activities. Although initial implementation may demand considerable effort, the long-term benefits include improved compliance quality and standardized audit practices. These standards are intended to benefit not only auditors but also the organizations and regulatory authorities involved.

## FORTIFYING DIGITAL PRIVACY: STRATEGIES TO COMBAT DATA BREACHES

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### ABSTRACT

Data is the powerful weapon in this generation. Protecting their data from being misused is equivalent to protecting their dignity. Because even a single data tells a history about us. Each and Every individual, in this world are entitled to live a life with equality, dignity and fair treatment. But, in this modern era, by the rapid development of the technology, living a life with privacy and dignity is the most challenging thing a person could come cross. Everywhere in the world, wherever we go and however we go, technology demands the data of us and company used to take away our data from us with and without consent, which leads to question our privacy and data security.

This paper begins by examining the intersection of intellectual property rights with data protection regulations, focusing on landmark legislation such as the **General Data Protection Regulation (GDPR) in the European Union**. It highlights the evolving landscape of privacy-preserving technologies and the challenges posed by emerging digital trends.

The main objective of this paper is to advocate awareness about the importance of data privacy, highlight legal safeguards, and propose strategies to mitigate risks and protect individuals' rights in the digital age. Also emphasis to protect personal data, how data is collected from us and how it leads to the breach to our privacy and a impact on individual rights of us. Also this paper explores Technological solutions, such as **encryption, anonymization, and privacy-enhancing technologies**, can help mitigate privacy risks and protect personal data from unauthorized access or misuse.

Furthermore, this paper discusses **Indian laws** that safeguard the privacy and data privacy of individuals, analyzing their effectiveness in addressing data misuse and malpractice. And this paper will be concluded by addressing, Individuals also play a crucial role in safeguarding their privacy by being vigilant about the information they share online, understanding privacy settings, and exercising their rights to access and control their personal data.

### **I. INTRODUCTION**

In the rapidly evolving digital landscape of the 21st century, data has emerged as one of the most powerful assets, shaping industries, economies, and societies worldwide. From personal information to business strategies, data plays a pivotal role in driving decision-making processes and shaping interactions in both the virtual and physical realms. However, amidst this data-driven revolution, the paramount importance of safeguarding

individuals' privacy and dignity has come to the forefront.

Data privacy is not merely a matter of technological convenience; it is a fundamental human right. Each piece of data represents a fragment of an individual's identity, history, and preferences. As such, protecting this data from unauthorized access, misuse, and exploitation is tantamount to safeguarding individuals' dignity and autonomy.

This paper delves into the intricate intersection of intellectual property rights with data

protection regulations, elucidating landmark legislation such as the General Data Protection Regulation (GDPR) in the European Union. It navigates through the evolving landscape of privacy-preserving technologies and elucidates the challenges posed by emerging digital trends. Moreover, it aims to advocate for awareness about the significance of data privacy, underscore legal safeguards, and propose strategies to mitigate risks and uphold individuals' rights in the digital age.

By exploring the mechanisms of data collection, the paper sheds light on the vulnerabilities that lead to breaches of privacy and their profound impact on individual rights and dignity. Furthermore, it examines various technological solutions, including encryption, anonymization, and privacy-enhancing technologies, that serve as bulwarks against privacy risks and unauthorized access to personal data.

The discussion extends to the legal frameworks in India designed to safeguard individuals' privacy and data protection, analyzing their effectiveness in addressing data misuse and malpractice. Additionally, the paper emphasizes the pivotal role of individuals in safeguarding their privacy, advocating for vigilance in online activities, understanding privacy settings, and exercising their rights to access and control personal data.

In essence, this paper serves as a clarion call to action, urging stakeholders across sectors to prioritize data privacy, uphold individual rights, and collectively work towards fortifying digital privacy in an era fraught with technological advancements and evolving threats. Through concerted efforts and informed action, we can navigate the complexities of the digital age while preserving the sanctity of privacy and dignity for all.

## II. INTERSECTION OF INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION REGULATIONS<sup>142</sup>

### A. Overview of Intellectual Property Rights.

The amalgamation of intellectual property rights and data protection in the digital era is crucial. Intellectual property encompasses copyrights, patents, trademarks, and trade secrets, serving as the cornerstone of innovation. However, safeguarding these rights while preserving individual privacy presents intricate challenges. According to recent studies by the World Intellectual Property Organization (WIPO), global intellectual property filings have been steadily increasing, underscoring the significance of protecting these assets. Yet, as highlighted by the European Data Protection Supervisor (EDPS), data privacy concerns are mounting, especially with the proliferation of online platforms and digital transactions. Our paper delves into this complex relationship, analyzing how the collection and utilization of data intersect with intellectual property. We explore the implications for ownership and protection, particularly concerning digital content and user-generated data.

The intersection of intellectual property rights (IPR) and data protection regulations represents a complex and evolving landscape in the digital age. Intellectual property rights encompass a broad spectrum of legal protections for intangible assets, including copyrights, patents, trademarks, and trade secrets. These rights incentivize innovation and creativity by granting creators exclusive control over their works or inventions. However, the proliferation of digital technologies and the widespread collection and use of personal data have introduced new challenges to the traditional framework of intellectual property. Data protection regulations, such as the General Data Protection Regulation (GDPR) in the European Union, aim to safeguard individuals' privacy rights and regulate the processing of personal data.

<sup>142</sup> Navigating the Intersection of Data Protection and Intellectual Property Rights: A Guide for... | by Tiana kunkala | Medium

The intersection of IPR and data protection regulations arises in various contexts, including: Data : An Intellectual Property, Copyright and Data Protection, Patents and Data-Driven Inventions, Trademarks and Brand Protection. Here, the paper explores Patents and Data-Driven Inventions and Trademarks and Brand Protection,

### 1. Patents and Data-Driven Inventions:

Innovations in data analytics, artificial intelligence, and machine learning have led to the development of new technologies and inventions that rely heavily on personal data. Patent law may intersect with data protection regulations when determining the patentability of data-driven inventions and the scope of protection granted to such innovations.

Some **examples of patents** related to data-driven inventions include:

- ❑ **Machine Learning Algorithms** : Patents may cover specific algorithms or models used in machine learning systems to process and analyze large datasets. For instance, patents may protect novel techniques for data classification, predictive modeling, or pattern recognition.
- ❑ **Data Processing Methods** : Patents can also cover innovative methods for processing and manipulating large volumes of data. This may include techniques for data compression, data transformation, or data aggregation, which enable more efficient data analysis and storage.
- ❑ **Artificial Intelligence Systems** : Patents may be granted for inventions related to artificial intelligence systems that utilize personal data to make decisions or provide recommendations. This could include patents for AI-based virtual assistants, personalized recommendation engines, or autonomous vehicles that rely on data

inputs for navigation and decision-making.

- ❑ **Privacy-Preserving Technologies** : Inventors may develop novel techniques and technologies aimed at preserving data privacy while still allowing for meaningful analysis. These could include methods for data anonymization, differential privacy mechanisms, or secure multiparty computation protocols, which enable data analysis without compromising individual privacy rights.
- ❑ **Blockchain and Distributed Ledger Technologies** : Patents may cover innovations in blockchain and distributed ledger technologies that enhance data security and integrity. For example, patents may protect novel consensus mechanisms, data encryption techniques, or smart contract protocols designed to facilitate secure and transparent data transactions.
- ❑ **Healthcare Data Analysis** : Patents may cover inventions related to analyzing healthcare data for diagnostic, therapeutic, or research purposes. For example, patents may protect algorithms or systems for processing electronic health records, medical imaging data, or genomic information to identify disease patterns, develop personalized treatment plans, or discover new medical insights.
- ❑ **Financial Data Analytics** : In the financial sector, patents may be granted for innovations in data analytics and predictive modeling aimed at optimizing investment strategies, assessing credit risk, or detecting fraudulent activities. This could include patents for algorithms or software systems that analyze transaction data, market trends, or

customer behavior to inform financial decision-making.

- ❑ **Social Media and User Data** : Patents may also encompass inventions related to analyzing user-generated data from social media platforms, online forums, or e-commerce websites. For example, patents may protect algorithms or software tools for sentiment analysis, trend detection, or targeted advertising based on user interactions and preferences.
- ❑ **Cybersecurity Solutions** : In the realm of cybersecurity, patents may cover inventions aimed at protecting data from unauthorized access, breaches, or cyber attacks. This could include patents for encryption algorithms, intrusion detection systems, or identity verification technologies designed to safeguard sensitive information and prevent data breaches.

**2. Trademarks and Brand Protection:** Personal data collected from consumers, such as names, addresses, and purchasing preferences, may be used to build brand loyalty and market products or services. Data protection regulations impose obligations on businesses to ensure the security and confidentiality of customer data, thereby protecting their brands from reputational harm and legal liabilities.

❑ **Brand Loyalty and Consumer Data:**

Consumer data serves as the backbone of modern marketing strategies, allowing businesses to tailor their efforts to individual preferences and behaviors. By collecting and analyzing data such as demographics, purchasing history, and online behavior, companies can create personalized experiences that resonate with their target audience. For example, Amazon's recommendation system analyzes past purchases and browsing history to suggest relevant products to customers,

enhancing user experience and fostering brand loyalty. According to a recent study by Forbes, 87% of consumers surveyed stated that personally relevant content positively influences their perception of a brand. This highlights the significant impact of personalized marketing on consumer engagement and brand loyalty.

❑ **Legal Obligations and Data Security:**

With the increasing prevalence of data breaches and privacy concerns, governments around the world have implemented stringent regulations to protect consumer data. The General Data Protection Regulation (GDPR) in the European Union and the California Consumer Privacy Act (CCPA) in the United States are two prominent examples of legislation aimed at safeguarding data privacy and security. These regulations impose legal obligations on businesses to ensure the protection and proper handling of consumer data. As stated by the Information Commissioner's Office (ICO), "Data protection is not just good practice; it's a legal requirement." This underscores the importance of prioritizing data security and compliance with regulatory requirements to maintain consumer trust and protect brand reputation. By focusing on these aspects, businesses can effectively leverage consumer data to enhance brand loyalty while also fulfilling their legal obligations to safeguard data privacy and security.

**B. Examination of Data Protection Regulations**

The rapid proliferation of digital technologies has necessitated the development of robust data protection regulations to safeguard individuals' privacy and personal data. According to a survey by the International Association of Privacy Professionals (IAPP),

there has been a surge in global privacy legislation, with many countries enacting comprehensive frameworks to address emerging privacy challenges. Our analysis traces the evolution of these regulations, from traditional privacy laws to contemporary frameworks tailored for the digital age. By examining key principles, rights of data subjects, and compliance mechanisms, we elucidate the strengths and weaknesses of existing data protection regimes. Case studies and comparative analyses offer insights into the efficacy of these regulations in addressing data misuse and malpractice, highlighting areas for improvement and future regulatory developments.

### **FACEBOOK- CAMBRIDGE ANALYTICS SCANDAL CASE STUDY** <sup>143</sup>

The Facebook-Cambridge Analytica scandal erupted in 2018 and sent shockwaves throughout the tech industry and beyond. It exposed how the personal data of millions of Facebook users was harvested without their consent and subsequently used for political advertising purposes, particularly during the 2016 United States presidential election and the Brexit campaign in the UK. At the center of the scandal was Cambridge Analytica, a now-defunct political consulting firm that obtained data from an app called "This Is Your Digital Life." The app, developed by researcher Aleksandr Kogan, was a personality quiz that collected personal information not only from users who took the quiz but also from their Facebook friends, without their explicit consent. This resulted in the unauthorized harvesting of data from over 87 million Facebook profiles. Cambridge Analytica then used this vast trove of personal data to create detailed psychographic profiles of individuals, which were reportedly used to influence voter behavior through targeted political advertising. The scandal raised significant ethical concerns about the misuse

of personal data and the manipulation of democratic processes.

In the aftermath of the scandal, Facebook faced intense scrutiny from regulators, lawmakers, and the public. It led to multiple investigations, including inquiries by the US Federal Trade Commission (FTC), the UK Information Commissioner's Office (ICO), and the European Union. Facebook CEO Mark Zuckerberg testified before Congress, acknowledging the company's failures in protecting user data and promising to implement reforms to prevent similar incidents in the future. The Facebook-Cambridge Analytica scandal highlighted the urgent need for stricter data protection regulations and greater oversight of tech companies' handling of personal data. It sparked a global conversation about online privacy, data sovereignty, and the power dynamics between tech giants and their users. Ultimately, the incident served as a wake-up call for policymakers, businesses, and individuals alike, prompting calls for comprehensive reforms to safeguard user privacy in the digital age.

### **C. Analysis of GDPR and its Implications**

At the forefront of contemporary data protection regulations stands the General Data Protection Regulation (GDPR), hailed as a landmark legislative initiative to enhance privacy rights and data governance. According to a report by the European Data Protection Board (EDPB), the GDPR has had a profound impact on global data practices, influencing regulatory approaches and compliance strategies worldwide. Our paper conducts a comprehensive analysis of GDPR and its implications for intellectual property rights, data governance, and privacy protection. By dissecting key provisions, enforcement mechanisms, and practical implications, we offer insights into the challenges and opportunities posed by GDPR compliance. Case studies and practical examples illuminate the real-world impact of GDPR on businesses,

<sup>143</sup> <https://www.theguardian.com/technology/2019/mar/17/the-cambridge-analytica-scandal-changed-the-world-but-it-didnt-change-facebook>

technology companies, and individuals operating in the digital ecosystem. We also examine the extraterritorial reach of GDPR, its implications for cross-border data flows, and the evolving landscape of international data transfers. Through this analysis, we aim to provide a nuanced understanding of GDPR's role in shaping global data governance and privacy practices, while identifying emerging trends and future directions in data protection regulation.

### RIGHT TO BE FORGOTTEN.

#### **THE GOOGLE SPAIN SL, GOOGLE INC. V AGENCIA DE DATOS,<sup>144</sup>**

The Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González case, also known as the "**Right to be Forgotten**" case, is a landmark ruling by the Court of Justice of the European Union (CJEU) that has significant implications for data privacy and online reputation management. The case originated from a complaint filed by Mario Costeja González, a Spanish lawyer, against Google Spain and Google Inc. regarding search results that displayed outdated and irrelevant information about him.

This ruling established the "Right to be Forgotten," affirming individuals' rights to control the availability of their personal data online and to request its removal from search engine results. The case highlighted the tension between privacy rights and freedom of expression, as well as the challenges in balancing these rights in the digital age. It also underscored the global impact of European data protection laws, as Google, an American multinational corporation, was subject to compliance with EU regulations due to its operations and processing of personal data of EU residents.

Following the CJEU's ruling, Google and other search engines implemented mechanisms for handling "Right to be Forgotten" requests,

allowing individuals to submit requests for the removal of specific search results that they deem infringe upon their privacy rights. However, the implementation of the ruling has raised concerns about censorship, the public's right to access information, and the practical challenges of enforcing the removal of content from the internet. Overall, the "Right to be Forgotten" case has had far-reaching implications for online privacy, data protection, and the regulation of search engine activities. It has sparked debates about the scope and limitations of individuals' rights to control their digital identities and has prompted discussions on the responsibilities of technology companies.

### III. EVOLVING LANDSCAPE OF PRIVACY-PRESERVING TECHNOLOGIES<sup>145</sup>

#### A. Introduction to Privacy-Preserving Technologies

##### 1. Encryption:

Encryption is widely regarded as one of the most effective means of protecting data privacy. A study by the **Ponemon Institute** found that organizations using encryption extensively were able to reduce the cost of a data breach by \$14 per compromised record. This highlights the tangible financial benefits of encryption in mitigating the impact of data breaches.

##### 2. Differential Privacy:

Differential privacy has gained traction in both academia and industry due to its ability to balance data utility and privacy protection. For example, Google implemented differential privacy in its Chrome browser to collect usage statistics without compromising user privacy. This demonstrates real-world applications of the technology in preserving individual privacy while enabling data analysis.

##### 3. Homomorphic Encryption:

Homomorphic encryption holds significant promise for secure data processing in cloud

<sup>144</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0131>

<sup>145</sup> (PDF) Privacy-Preserving Technologies: Balancing Security and User Privacy in the Digital Age (researchgate.net)

environments. Microsoft Research developed the Simple Encrypted Arithmetic Library (SEAL) for performing homomorphic encryption operations efficiently. This indicates ongoing research efforts to make homomorphic encryption practical for real-world applications, addressing concerns about data privacy in cloud computing.

#### 4. Federated Learning:

Federated learning has garnered attention from leading tech companies like Google and Apple as a privacy-preserving approach to machine learning. Google introduced Federated Learning of Cohorts (FLoC) as an alternative to third-party cookies for targeted advertising while preserving user privacy. This demonstrates the potential of federated learning to address privacy concerns in data-driven industries.

### B. Challenges Posed by Emerging Digital Trends<sup>146</sup>

#### 1. Artificial Intelligence (AI):

AI algorithms can perpetuate biases present in training data, leading to ethical and privacy concerns. For instance, a study by MIT researchers found that facial recognition systems from major vendors exhibit gender and racial biases, resulting in inaccurate results for certain demographic groups. This underscores the importance of addressing biases in AI models to ensure fair and equitable outcomes.

#### 2. Internet of Things (IoT):

The proliferation of IoT devices is exponential, with estimates suggesting over 75 billion connected devices worldwide by 2025. This rapid growth amplifies concerns about data privacy and security, as IoT devices collect and transmit vast amounts of sensitive information. Addressing these challenges requires robust

security measures and privacy-preserving techniques to safeguard user data.

#### 3. Big Data Analytics:

Big data analytics has transformed industries across the board, with revenues forecast to reach \$274.3 billion by 2022. However, the widespread use of big data raises privacy concerns, as organizations collect and analyze massive datasets containing sensitive information. Effective data governance frameworks and privacy-enhancing technologies are essential for ensuring responsible data use and protecting individual privacy rights.

### C. Impact on Individual Rights and Privacy Concerns

#### 1. Data Protection Regulations:

The GDPR has had a global impact on data protection practices, prompting organizations worldwide to update their data handling processes to comply with stringent privacy requirements. A survey by the International Association of Privacy Professionals (IAPP) found that 76% of organizations have changed their global data practices to align with the GDPR. This highlights the significant influence of regulatory frameworks on shaping data privacy practices and standards.

#### 2. Ethical Considerations:

Ethical concerns surrounding AI and data privacy have prompted organizations to develop ethical frameworks and guidelines. For instance, the IEEE Global Initiative on Ethics of Autonomous and Intelligent Systems has developed guidelines for ensuring ethically aligned AI, emphasizing the importance of transparency, accountability, and fairness in AI development and deployment. These initiatives aim to address ethical challenges and promote responsible AI innovation while safeguarding individual privacy rights.

#### 3. Public Awareness and Advocacy:

Public awareness of data privacy issues is on the rise, driven by high-profile data breaches

<sup>146</sup>[https://www.researchgate.net/publication/377013638\\_Emerging\\_Trends\\_and\\_Challenges\\_in\\_Information\\_Technology\\_and\\_Cybersecurity\\_Navigating\\_the\\_Digital\\_Frontiers](https://www.researchgate.net/publication/377013638_Emerging_Trends_and_Challenges_in_Information_Technology_and_Cybersecurity_Navigating_the_Digital_Frontiers)

and privacy scandals. According to Pew Research Center, 79% of Americans are concerned about how companies use their data, reflecting growing awareness and demand for stronger privacy protections. This increased awareness has led to advocacy efforts and calls for regulatory action to enhance data privacy rights and protections, underscoring the importance of public engagement in shaping data privacy policies and practices.

#### IV. IMPORTANCE OF DATA PRIVACY AWARENESS<sup>147</sup>

##### A. Advocating Awareness about Data Privacy.

###### 1. Educational Campaigns:

Organizations and governments conduct educational campaigns to raise awareness about data privacy. These campaigns utilize various mediums such as social media, workshops, and online resources to educate individuals about the importance of protecting their personal data. For example, Data Privacy Day, observed annually on January 28th, serves as an international effort to empower individuals with knowledge about privacy rights and **best practices**.

###### 2. Training Programs:

Companies and institutions implement training programs to educate employees and users about data privacy. These programs cover topics such as data handling procedures, cybersecurity practices, and privacy regulations. By fostering a culture of awareness and accountability, organizations can empower individuals to recognize potential privacy risks and take proactive measures to safeguard their data.

##### B. Legal Safeguards for Data Privacy

###### 1. Legislative Measures:

Governments enact laws and regulations to establish legal safeguards for data privacy. For

instance, the General Data Protection Regulation (GDPR) in the European Union and the California Consumer Privacy Act (CCPA) in the United States impose strict requirements on organizations regarding the collection, processing, and protection of personal data. These laws enhance individuals' rights to privacy and provide avenues for legal recourse in case of data breaches or misuse.

###### 2. Regulatory Oversight:

Regulatory agencies oversee compliance with data privacy laws and enforce penalties for non-compliance. Agencies such as the Information Commissioner's Office (ICO) in the UK and the Federal Trade Commission (FTC) in the US have the authority to investigate data breaches, impose fines, and issue guidelines for data protection practices. Regulatory oversight ensures that organizations adhere to established privacy standards and prioritize the protection of individuals' personal information.

##### C. Strategies to Mitigate Risks in the Digital Age

###### 1. Data Encryption:

Organizations utilize encryption techniques to protect sensitive data from unauthorized access or interception. Encryption converts data into unreadable ciphertext, which can only be decrypted with the appropriate decryption key. By encrypting data both in transit and at rest, organizations can mitigate the risk of data breaches and unauthorized disclosure.

###### 2. Privacy by Design:

Privacy by design principles advocate for integrating privacy considerations into the design and development of products and services. By incorporating privacy features and controls from the outset, organizations can minimize privacy risks and enhance user trust. Privacy by design encourages proactive measures such as data anonymization, pseudonymization, and user consent management.

<sup>147</sup> Special issue on emerging trends, challenges and applications in cloud computing (springer.com)

### 3. User Empowerment:

Empowering users with control over their personal data is crucial for mitigating privacy risks in the digital age. Organizations should provide transparent privacy policies, clear consent mechanisms, and user-friendly privacy settings to enable individuals to make informed decisions about their data. By prioritizing user privacy preferences and respecting data autonomy, organizations can build trust and loyalty among their user base.

## V. UNDERSTANDING DATA COLLECTION AND BREACH

### A. Methods of Data Collection

#### 1. Online Tracking:

Online tracking techniques involve the use of cookies, web beacons, and tracking pixels to monitor users' online activities. Cookies are small text files stored on users' devices by websites they visit, enabling the sites to remember user preferences and track browsing behavior. Web beacons and tracking pixels are invisible images embedded in web pages or emails to track user interactions and collect data on user engagement.

#### 2. Mobile Applications:

Mobile applications often request access to various types of user data, including device information, location data, contact lists, and app usage patterns. App developers may use this data to enhance user experiences, deliver personalized content, and improve app performance. However, excessive data collection practices, such as accessing sensitive information without user consent or sharing data with third parties, can raise privacy concerns.

#### 3. Social Media Platforms:

Social media platforms collect vast amounts of user-generated content, including posts, photos, videos, and personal messages. Through algorithms and data analytics, social media companies analyze this content to gain insights into users' interests, preferences, and

behaviors. They use this information to target advertisements, recommend content, and facilitate social interactions. However, concerns arise regarding the privacy implications of data sharing, third-party access, and algorithmic manipulation.

### B. Implications of Data Breaches on Privacy

#### 1. Unauthorized Access:

Data breaches occur when cybercriminals gain unauthorized access to sensitive information stored by organizations. Hackers exploit vulnerabilities in security systems, such as weak passwords, outdated software, or unencrypted data, to infiltrate databases and exfiltrate valuable data. Breached data may include personal identifiers (e.g., names, addresses, social security numbers), financial records, login credentials, or proprietary information.

#### 2. Reputational Damage:

Data breaches can inflict significant reputational damage on affected individuals and organizations. Public disclosure of a breach may lead to negative publicity, erode consumer trust, and damage brand reputation. Individuals whose personal data has been compromised may experience embarrassment, anxiety, or loss of confidence in the breached entity's ability to protect their privacy. Organizations may face increased scrutiny from regulators, shareholders, and customers, impacting their credibility and market standing++.

#### 3. Legal and Financial Consequences:

Data breaches carry legal and financial consequences for organizations found to be negligent in safeguarding personal data. Regulatory authorities may impose fines or sanctions for non-compliance with data protection laws, such as the General Data Protection Regulation (GDPR) in the European Union or the California Consumer Privacy Act (CCPA) in the United States. Moreover, affected individuals may pursue legal action against the breached entity to seek compensation for damages resulting from the breach, including

identity theft, financial losses, and emotional distress.

### C. Impact on Individual Rights and Dignity

#### 1. Loss of Control:

Data breaches undermine individuals' control over their personal information, compromising their autonomy and decision-making authority. When sensitive data is compromised, individuals lose the ability to dictate how their information is used, shared, or monetized by third parties. This loss of control erodes trust in digital systems and infringes upon individuals' right to privacy and self-determination.

#### 2. Violation of Privacy Rights:

Data breaches represent a violation of individuals' privacy rights, as recognized by international human rights frameworks and legal statutes. Privacy rights encompass the right to informational self-determination, confidentiality, and data protection. Breaches that compromise these rights undermine the fundamental principles of privacy and dignity, jeopardizing individuals' autonomy and personal freedoms.

#### 3. Psychological Impact:

Data breaches can have a profound psychological impact on affected individuals, triggering stress, anxiety, and feelings of vulnerability. Discovering that personal data has been compromised may evoke emotions of violation and betrayal, leading to emotional distress and psychological trauma. Individuals may experience heightened concerns about their digital privacy and security, altering their online behaviors and eroding their trust in digital platforms.

## VI. TECHNOLOGICAL SOLUTIONS FOR PRIVACY PROTECTION<sup>148</sup>

### A. Encryption Techniques

#### 1. Symmetric Encryption:

Symmetric encryption algorithms, such as Advanced Encryption Standard (AES) and Data Encryption Standard (DES), use a single secret key to encrypt and decrypt data. These algorithms ensure confidentiality by scrambling plaintext into ciphertext, which can only be deciphered using the corresponding decryption key. Symmetric encryption is widely used to secure data transmission over networks, protect stored data on devices, and safeguard sensitive information in databases.

The Advanced Encryption Standard (AES) and Data Encryption Standard (DES) are two widely used cryptographic algorithms for encrypting and decrypting data to ensure its confidentiality and security. Here's an explanation of each:

#### ▣ ADVANCED ENCRYPTION STANDARD (AES)

AES is a symmetric-key block cipher algorithm designed to replace DES and provide a higher level of security. It was selected through a public competition by NIST in 2001 as the successor to DES. AES supports key lengths of 128, 192, or 256 bits, providing significantly stronger security compared to DES. It operates on fixed block sizes of 128 bits and uses a substitution-permutation network (SPN) structure for encryption and decryption. AES encryption involves multiple rounds of substitution, permutation, and key mixing operations, with the number of rounds varying based on the key length (10 rounds for 128-bit keys, 12 rounds for 192-bit keys, and 14 rounds for 256-bit keys). AES has become the de facto standard for encryption and is widely used in various applications, including secure communication protocols, disk encryption, and digital signatures, due to its strong security properties and computational efficiency.

<sup>148</sup> Top 10 Privacy Enhancing Technologies & Use Cases in 2024 (aimultiple.com)

## ❑ DATA ENCRYPTION STANDARD (DES)

DES is a symmetric-key block cipher algorithm developed in the early 1970s by IBM, and later adopted by the U.S. National Institute of Standards and Technology (NIST) as a federal standard in 1977. It operates on a fixed block size of 64 bits and uses a 56-bit key for encryption and decryption. DES encryption involves several rounds of substitution and permutation operations (Feistel network) to transform the plaintext into ciphertext, and decryption reverses this process. Despite its widespread use in the past, DES is now considered insecure for modern applications due to its relatively short key length, making it vulnerable to brute-force attacks.

## 2. Asymmetric Encryption:

Asymmetric encryption, also known as public-key cryptography, employs a pair of keys—a public key and a private key—to encrypt and decrypt data. The public key is distributed openly, allowing anyone to encrypt messages or verify digital signatures, while the private key is kept confidential and used for decryption or signing operations. Asymmetric encryption ensures secure communication between parties without requiring a shared secret key, making it suitable for key exchange and digital signatures in secure transactions.

## 3. End-to-End Encryption (E2EE):

End-to-end encryption is a cryptographic technique that ensures data remains encrypted throughout its entire transmission, from sender to recipient, with decryption only possible by the intended recipient. E2EE prevents intermediaries, such as service providers or network operators, from accessing plaintext data, thereby safeguarding confidentiality and privacy. Messaging applications like Signal, WhatsApp, and Telegram employ E2EE to protect user communications from eavesdropping and interception.

## B. Anonymization Strategies<sup>149</sup>

### 1. Data Masking:

Data masking techniques, such as tokenization, pseudonymization, and data substitution, replace sensitive information with anonymized or synthetic data while preserving the format and structure of the original dataset. By anonymizing personally identifiable information (PII), such as names, addresses, and social security numbers, data masking prevents unauthorized access to sensitive data while retaining its utility for analysis, testing, or sharing purposes.

### ❑ TOKENIZATION.

Tokenization is a data protection method that involves replacing sensitive data with unique identifiers called tokens. When using tokenization, sensitive information such as credit card numbers, social security numbers, or personal identification numbers (PINs) are substituted with randomly generated tokens. These tokens are meaningless to anyone without access to the tokenization system's mapping table, which links the token to the original sensitive data. By tokenizing sensitive data, organizations can securely store and transmit information without exposing the actual data, reducing the risk of unauthorized access and data breaches. Tokenization is commonly used in payment processing systems, healthcare databases, and other environments where sensitive data needs to be protected.

### ❑ PSEUDONYMIZATION.

Pseudonymization is a data anonymization technique that involves replacing identifiable information with artificial identifiers or pseudonyms. Unlike tokenization, which uses random tokens, pseudonymization involves the systematic replacement of identifiable data with similar but non-identifying values. The

<sup>149</sup> Sweeney, L. (2002). k-Anonymity: A Model for Protecting Privacy. *International Journal of Uncertainty, Fuzziness and Knowledge-Based Systems*, 10(05), 557-570.

purpose of pseudonymization is to protect the privacy of individuals while still allowing data to be processed for specific purposes. Pseudonymized data can still be linked back to the original individual using additional information stored separately, such as a key or code. While pseudonymization reduces the risk of unauthorized access, it may not provide the same level of security as full anonymization and should be used in conjunction with other security measures.

#### DATA SUBSTITUTION

Data substitution involves replacing sensitive data with similar but less sensitive information. For example, instead of storing actual birthdates, an organization might substitute them with a standard age range or a random date within a specified range. Data substitution techniques aim to retain the statistical properties of the original data while reducing the risk of privacy breaches. Unlike tokenization and pseudonymization, data substitution does not involve creating unique identifiers or pseudonyms but rather replaces the original data with less sensitive alternatives. Data substitution can be a useful technique for protecting sensitive information in datasets used for research, analysis, or sharing with third parties.

#### 2. K-Anonymity and Differential Privacy:

K-anonymity and differential privacy are privacy-preserving techniques that aim to anonymize data by obscuring individual identities while preserving statistical properties of the dataset. K-anonymity make sure that each and every record in the dataset can't differentiate from one another at least k-1 records, reduction the risks of reidentification attacks. Differential privacy introduces noise or randomness to query responses, ensuring that the inclusion or exclusion of any individual's data does not significantly impact the outcome.

### C. Role of Privacy-Enhancing Technologies

#### 1. Privacy-Preserving Protocols:

Privacy-enhancing technologies (PETs) encompass a range of protocols, tools, and mechanisms designed to enhance privacy protection in digital systems. These technologies include secure multiparty computation (SMC), homomorphic encryption, and zero-knowledge proofs, which enable collaborative data analysis, secure computation, and verifiable authentication without exposing sensitive information to unauthorized parties.

#### 2. Privacy-Enhancing Tools:

Privacy-enhancing tools provide users with mechanisms to control and manage their digital privacy across various platforms and applications. These tools include ad blockers, cookie managers, virtual private networks (VPNs), and privacy-focused browsers, which help users restrict tracking, block targeted advertisements, and anonymize their online activities. Additionally, privacy-focused search engines and email services offer alternatives that prioritize user privacy and data protection.

### VII. ANALYSIS OF INDIAN LAWS ON DATA PRIVACY<sup>150</sup>

#### A. Overview of Indian Privacy Laws

#### 1. Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011:

These rules prescribe stringent measures for the collection, storage, and processing of sensitive personal data or information (SPDI). Entities handling SPDI are required to obtain explicit consent from data subjects and implement robust security practices to prevent unauthorized access or disclosure.

<sup>150</sup> The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

## **2. The Right to Privacy (Article 21 of the Indian Constitution):**

Article 21 of the Indian Constitution guarantees the right to privacy as a fundamental right, interpreted by the Supreme Court to encompass informational privacy and personal autonomy. This constitutional provision serves as the bedrock for privacy protection in India and informs legislative and judicial decisions on data privacy.

## **3. The National Identification Authority of India Act, 2010:**

This legislation governs the establishment and functioning of the Unique Identification Authority of India (UIDAI), responsible for issuing Aadhaar numbers and managing the Aadhaar ecosystem. The act delineates the legal framework for Aadhaar enrollment, authentication, and data protection, incorporating provisions for informed consent, data security, and redressal mechanisms.

### **B. Effectiveness in Addressing Data Misuse**

#### **1. Data Protection Bill, 2019:**

The Data Protection Bill, 2019, proposes stringent penalties for data breaches and violations of data protection obligations, including fines of up to ₹15 crores or 4% of the entity's global turnover, whichever is higher. The bill also empowers individuals to seek compensation for harm caused by data breaches, enhancing accountability and deterrence. - The Data Protection Bill, introduced in Parliament in 2019, aims to regulate the processing of personal data by government and private entities and establish a Data Protection Authority of India (DPAI) to oversee compliance with data protection laws. The bill includes provisions for the processing of personal data, data localization requirements, consent mechanisms, and penalties for data breaches.

## **2. Information Technology Act, 2000 (Amended in 2008):**

The Information Technology Act, 2000, as amended in 2008, contains provisions for the protection of personal data and sensitive personal data, enabling individuals to seek legal recourse in case of unauthorized misuse of their data. The Act provides for civil and criminal penalties for data breaches, including imprisonment and monetary fines.

## **3. Aadhaar Data Security Case:**

In 2018, the Supreme Court of India delivered a landmark judgment in the Aadhaar data security case (Justice K.S. Puttaswamy (Retd.) v. Union of India), upholding the constitutional validity of Aadhaar while imposing restrictions on its use and emphasizing the importance of data security and privacy safeguards.

## **4. Right to Information Act, 2005:**

While primarily focused on promoting transparency and accountability in government functioning, the Right to Information Act, 2005, indirectly contributes to data privacy by regulating the disclosure of personal information held by public authorities. The Act provides exemptions for sensitive personal data from disclosure, protecting individuals' privacy rights.

## **5. The Consumer Protection Act, 2019:**

The Consumer Protection Act, 2019, empowers consumers to seek redressal for grievances related to unfair trade practices, including data privacy violations by companies. The Act introduces provisions for class-action lawsuits and consumer commissions to adjudicate disputes arising from data breaches or unauthorized data sharing.

## **6. The National Digital Health Mission (NDHM)**

The NDHM aims to establish a unified digital health ecosystem in India, facilitating the seamless exchange of health data while ensuring data privacy and security. The mission emphasizes the adoption of interoperable

standards, consent-based data sharing, and robust cybersecurity measures to protect individuals' health information.

### **3. The Telecom Regulatory Authority of India (TRAI) Regulations on Unsolicited Commercial Communications, 2018:**

These regulations aim to curb unsolicited telemarketing messages and calls by implementing a framework for consent-based communication. TRAI mandates telecom service providers to obtain prior consent from subscribers before sending commercial communications, thereby protecting individuals' privacy and reducing unwanted marketing spam.

#### **C. Legal Framework for Data Protection<sup>151</sup>**

##### **1. Draft Personal Data Protection Bill, 2018:**

The Draft Personal Data Protection Bill, 2018, incorporates principles of data protection, such as data minimization, purpose limitation, and accountability, aligning with international best practices. The bill proposes the establishment of a Data Protection Authority of India (DPAI) to oversee compliance with data protection laws and adjudicate disputes.

##### **2. Sectoral Regulations and Guidelines:**

Various sector-specific regulations supplement general data protection laws in India, addressing specific privacy concerns in sectors such as healthcare, finance, telecommunications, and e-commerce. For example, the Medical Council of India's guidelines on patient data confidentiality set standards for data handling in healthcare settings, ensuring the privacy and confidentiality of patients' medical information.

##### **3. National Cyber Security Policy, 2013:**

The National Cyber Security Policy, 2013, outlines strategies and measures to protect critical information infrastructure and enhance cybersecurity capabilities in India. The policy emphasizes the importance of data protection

and privacy in safeguarding national security and promoting trust in digital transactions and services.

##### **4. The Personal Data Protection Bill, 2018 (PDP Bill):**

The PDP Bill proposes comprehensive regulations for the processing of personal data by entities operating in India, including data fiduciaries and data processors. The bill delineates data protection principles, data subject rights, and obligations for data handlers, fostering accountability and transparency in data processing activities.

##### **5. The Information Technology (Guidelines for Cyber Cafe) Guidelines, 2011:**

These rules prescribe security measures for cyber cafes to prevent unauthorized access to personal data and protect user privacy. Cyber cafe operators are required to maintain user logs, verify customer identity, and implement technical safeguards to secure network connections and prevent data breaches.

##### **6. The E-commerce Rules, 2020:**

The E-commerce Rules, 2020, mandate e-commerce platforms to disclose their data collection and processing practices, including the types of data collected, purposes of processing, and data retention periods. The rules empower consumers to make informed choices and exercise control over their personal information while engaging in online transactions.

#### **D. STATUTORY BODY GOVERNING DATA AND DATA PRIVACY<sup>152</sup>**

##### **INTERNATIONAL BODIES**

##### **1. Data Protection Commission (DPC) – Ireland:**

The DPC is the independent national supervisory authority for data protection in Ireland. It regulates the processing of personal data and investigates complaints regarding

<sup>151</sup> Data Protection Laws and Regulations Report 2023-2024 India (iclg.com)

<sup>152</sup> Understanding India's New Data Protection Law - Carnegie India - Carnegie Endowment for International Peace

potential breaches of data protection laws, including the General Data Protection Regulation (GDPR).

#### **2. Information Commissioner's Office (ICO) - United Kingdom:**

The ICO is the UK's independent regulatory authority for data protection and privacy. It enforces data protection legislation, including the UK Data Protection Act and GDPR, and provides guidance to organizations on compliance with data protection laws.

#### **3. Federal Trade Commission (FTC) - United States:**

While not exclusively focused on data protection, the FTC plays a significant role in enforcing consumer privacy and data security laws in the United States. It investigates and takes enforcement actions against companies that engage in unfair or deceptive practices related to data privacy breaches.

#### **4. Office of the Privacy Commissioner of Canada (OPC):**

The OPC is an independent regulatory authority responsible for overseeing compliance with Canada's privacy laws, including the Personal Information Protection and Electronic Documents Act (PIPEDA). It investigates complaints, conducts audits, and promotes awareness of privacy rights.

#### **5. Commission Nationale de l'Informatique et des Libertés (CNIL) - France:**

CNIL is the French data protection authority responsible for ensuring compliance with data protection laws, including GDPR. It oversees the processing of personal data, provides guidance to organizations on data protection practices, and conducts investigations into data privacy breaches.

#### **BODIES IN INDIA**

##### **1. Telecom Regulatory Authority of India (TRAI):**

While primarily responsible for regulating the telecommunications sector, TRAI also plays a role in ensuring the privacy and security of consumer data in the telecom industry.

##### **2. Reserve Bank of India (RBI):**

As the central banking institution, RBI oversees financial institutions and payment systems. It sets guidelines and regulations to ensure the security and confidentiality of financial data.

##### **3. Ministry of Electronics and Information Technology (MeitY):**

MeitY formulates policies and regulations related to information technology, including data protection and privacy. It oversees the implementation of various laws and initiatives aimed at safeguarding digital data.

##### **4. National Cyber Security Coordinator (NCSC):**

NCSC, under the Prime Minister's Office, is responsible for coordinating and implementing cybersecurity measures across various sectors. It plays a role in addressing data breaches and ensuring the security of critical digital infrastructure.

##### **5. Indian Computer Emergency Response Team (CERT-In):**

CERT-In operates under the Ministry of Electronics and Information Technology and serves as the national nodal agency for responding to cybersecurity incidents. It provides alerts, advisories, and incident response services to mitigate data breaches and cyber threats. These statutory bodies and regulatory authorities collaborate to establish and enforce data protection laws, regulate data handling practices, and respond to privacy breaches in India.

## VIII. INDIVIDUAL RESPONSIBILITY IN SAFEGUARDING PRIVACY<sup>153</sup>

### A. Importance of Vigilance in Online Activities

In today's interconnected world, individuals are constantly engaging in various online activities, from social media browsing to online shopping and banking. However, with this increased digital footprint comes the risk of exposure to cyber threats. Cybercriminals employ sophisticated tactics such as phishing emails, malware, and ransomware attacks to steal sensitive information, including financial data, personal identifiers, and login credentials. While considering the report, **the Identity Theft Resource Center**, it was 1,108 reported data breaches in 2020, submitted over 300 million records. These type of data breaches happened across various sectors, including healthcare, financial sector, education, and government administration. Vigilance in online activities involves adopting proactive measures to protect against cyber threats, such as installing reputable antivirus software, using strong, unique passwords for each online account, and being cautious while going through the links or downloading attachment file from unknown resources. Additionally, staying informed about the latest cybersecurity threats and trends can help individuals recognize potential risks and take appropriate action to safeguard their personal information and digital assets

### B. Understanding and Managing Privacy Settings

Many individuals use social media platforms and online services without fully understanding the privacy implications of their actions. As a result, they may inadvertently expose sensitive information to unauthorized parties. Social media platforms like Facebook, Twitter, and Instagram offer privacy settings that allow users to customize who can view their posts, photos, and personal information. However, these

settings can be complex and confusing to navigate. According to a study by **the Pew Research Center**, 74% of Facebook users were not aware that the platform maintains a list of their interests and traits for ad targeting purposes. Similarly, only 23% of Facebook users knew that they could adjust their privacy settings to control the information shared with advertisers. To enhance privacy on social media and other online platforms, individuals should familiarize themselves with the available privacy settings and adjust them according to their preferences. This includes reviewing privacy policies, opting out of data collection and tracking where possible, and regularly auditing third-party app permissions and data sharing settings.

### C. Exercising Rights to Access and Control Personal Data

Data protection laws empower individuals with certain rights to access, manage, and control their personal data held by organizations. These rights are essential for promoting transparency, accountability, and trust in data processing practices. Under the GDPR, individuals have the right to request access to their personal data, as well as the right to rectify inaccuracies, restrict processing, and request deletion of their data under certain circumstances. Similarly, the CCPA grants California residents the right to know what personal information is collected about them, the right to opt-out of the sale of their personal information, and the right to request deletion of their data. By exercising these rights, individuals can assert greater control over their personal information and hold organizations accountable for their data handling practices. This includes contacting organizations to request access to their data, reviewing the information collected about them, and taking steps to correct inaccuracies or delete unnecessary data. Additionally, individuals can opt-out of data sharing and sale activities to minimize the risk of unauthorized access and misuse of their personal information.

<sup>153</sup> Safeguarding Data Privacy: Striking The Balance: An In-Depth Analysis Of India's Digital Personal Data Protection Act 2023 (legalserviceindia.com)

## IX. CONCLUSION

In conclusion, safeguarding data privacy is paramount in our increasingly digital world. By advocating for awareness, enforcing robust legal protections, and embracing innovative solutions, we can foster a safer and more respectful online environment. It's imperative to recognize the intricate balance between technological advancements and individual rights, ensuring that privacy remains a fundamental cornerstone of our digital society. As we move forward, let us remember that protecting privacy is not just a matter of compliance but a moral imperative to uphold human dignity and autonomy in the digital age.

**"Privacy is not something that I'm merely entitled to, it's an absolute prerequisite." - Marlon Brando**

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## CONCLUSION

In conclusion, both **Indian Accounting Standards (Ind AS)** and **Secretarial Standards (SS)** play integral roles in enhancing corporate governance, transparency, and accountability in India's business environment. The **Ind AS** framework ensures that companies adhere to internationally recognized accounting principles, leading to improved consistency, comparability, and reliability of financial statements. This, in turn, builds investor confidence and promotes economic stability by facilitating informed decision-making.

On the other hand, **Secretarial Standards (SS)** issued by the **Institute of Company Secretaries of India (ICSI)** help standardize corporate governance practices, ensuring companies comply with legal and regulatory requirements related to meetings, records, and board decisions. By ensuring that organizations meet these obligations, SS strengthens internal controls, improves regulatory adherence, and promotes ethical business practices.

Together, these frameworks contribute to a cohesive and robust regulatory environment that supports the sustainable growth of companies while safeguarding the interests of stakeholders. As Indian businesses continue to evolve in a globalized economy, adherence to **Ind AS** and **Secretarial Standards** will remain vital in ensuring regulatory compliance, enhancing corporate reputation, and driving overall organizational success.

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## EVOLUTION OF JUVENILE JUSTICE LAWS IN INDIA: FROM THE JUVENILE JUSTICE ACT, 2000 TO CARE AND PROTECTION OF CHILDREN ACT, 2015

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### Abstract

In response to growing concerns over major juvenile offences, India's Juvenile Justice (Care and Protection of Children) Act, 2015 substantially revised laws passed in the year 2000. As a result of this change in the law, the courts may now try juveniles (those between the ages of 16 and 18) for serious offences as adults. In addition, it improves protections for children in risky situations, establishes specialised courts, and fortifies rehabilitative frameworks. Prioritising the well-being of juveniles, this act aims to strike a careful balance between rehabilitative measures and the enforcement of accountability. Sceptics of the Act have raised concerns about possible negative consequences, such as the stigmatisation of juvenile offenders, and the Act's effectiveness in reducing juvenile delinquency has sparked heated discussion. In the end, this law is a reflection of India's changing view of juvenile justice, which aims to balance the need for public safety with the preservation of children's fundamental rights.

### 1. Introduction

#### Background

The system of laws that controls the treatment of juvenile offenders (those who have not yet attained the age of majority) is known as juvenile justice. Juvenile justice systems are built on the principle that children, at their developmental stage, may not fully comprehend the consequences of their acts, hence they focus on rehabilitation rather than punishment. A fair system for the rehabilitation and reintegration of juvenile offenders into society is the goal of juvenile justice legislation. Protecting and caring for children who have experienced abuse, neglect, or exploitation is also a part of these legal systems. There has been a sea change in India's policy on juvenile justice. The Juvenile Justice Act, passed in 2000 in reaction to a rising tide of children's rights advocates, sought to rehabilitate youth who had run afoul of the law.

But as time went on, questions arose about whether the laws passed in 2000 could adequately deal with the rising number of violent and other major offences committed by minors. In 2015, a new law called the Juvenile Justice (Care and Protection of Children) Act was introduced to update the current system and fix the problems with the old rules. In spite of the Juvenile Justice (Care and Protection of Children) Act of 2000 already being in place, this study investigates the reasoning for its implementation in 2015. The report analyses the results of the 2015 legislation's implementation and looks at the main changes it brought about. Along with examining the connections between the Juvenile Justice Rules and the Acts of 2000 and 2015, the research delves into the social, psychological, and legal implications of these changes.

## 2. Historical Context: Juvenile Justice Act, 2000

### Overview of the Juvenile Justice Act, 2000

The Juvenile Justice Act of 2000 (JJA, 2000) created a robust legal framework focused on the welfare, safety, and rehabilitation of adolescents involved in criminal behaviour, marking a pivotal point in India's approach to child protection and juvenile justice. The Act mandated that juveniles' needs be addressed comprehensively, using rehabilitative measures that took into account the child's age, mental health, and the specifics of the offence, alongside legal proceedings. The Indian government enacted these rules in reaction to the UN Convention on the Rights of the Child, which emphasises the need of rehabilitating juvenile offenders instead than penalising them. The Juvenile Justice Act of 2000 required the establishment of Juvenile Justice Boards (JJBs) to address issues concerning adolescents in court proceedings. These boards had two social workers and a judge. The Act led to the creation of observation centres and specialised facilities for youngsters involved in the court system or requiring care and protection. The Act clearly defines a juvenile as an individual under the age of eighteen, emphasising rehabilitation above punishment in legal contexts. The primary objective of the Juvenile Justice Act of 2000 was to safeguard the rights of previously jailed juveniles and facilitate their reintegration into society via therapeutic, educational, and vocational programmes. The statute advocated for alternatives to jail, such as community service, probation, and foster care, where deemed appropriate.

### Challenges Faced Under the 2000 Act

Due to several issues, the trailblazing Juvenile Justice Act of 2000 had to be rewritten. One major issue was the unclear minor age cutoff. The Act designated anybody under 18 as a minor, although many believed the age restriction was excessively high due to public concerns about older teens' significant criminal activity. Tolerance for adolescent offenders increased when they committed serious crimes.

Especially when the culprits were 16–18. Even worse, the JJA 2000's rehabilitation processes never happened. The Act's rehabilitative procedures were criticised for their limited infrastructure, personnel, and resources, which hindered its capacity to reintegrate juveniles into society. There were also concerns that ex-offenders would suffer social stigma when they returned home, making integration difficult. A series of violent youth crimes gained wide media publicity, fueling public and political dissatisfaction. This tendency escalated with the 2012 Nirbhaya incident, further demanding reform. Given the public outcry and desire for stronger sentences, many wonder whether the present court system can handle these crimes. Due to popular outcry and political debate, the Juvenile Justice (Care and Protection of Children) Act, 2015, was passed to fix previous legislation.

### 3. The Need for Change: Why the Juvenile Justice (Care and Protection of Children) Act, 2015 Was Introduced

#### The 2012 Nirbhaya Case<sup>[1]</sup>

The December 2012 gang rape and killing of Jyoti Singh, known as Nirbhaya, changed India's criminal justice system, notably for serious crimes. The Juvenile Justice Act of 2000 classified a 17-year-old as a juvenile despite his horrific crimes. The juvenile justice system was questioned nationwide after this case sparked uproar. Despite its emphasis on rehabilitation, the Juvenile Justice Act of 2000 was criticised for failing to handle significant criminal behaviour by adolescents, especially violent offenders.

The Nirbhaya case exposed a major flaw in the legislative framework: the Act's broad definition of juveniles as individuals under 18 raised concerns about whether such provisions were strong enough to deliver justice in cases of grave crimes committed by minors. Public uproar demanding heavier sentences for teenagers committing serious crimes put great pressure on the government to rethink the legal

system. This demand, driven by social, political, and civic lobbying, helped modify juvenile justice legislation in India.

### Drivers for Reform

The Youth Justice Act of 2000 was revised due to various significant reasons, including the system's inadequacy in addressing the complexities of youth criminal behaviour. The increasing incidence of grave offences perpetrated by adolescents, including sexual assault, murder, and terrorism, necessitated change. There is an urgent need for more stringent restrictions after high-profile incidences such as the Nirbhaya tragedy and other instances of youth perpetrating violent crimes. The public's demand for a legal framework imposing stringent penalties on young offenders, especially those committing egregious crimes, escalated. The widespread ineffectiveness of the rehabilitation initiatives under the Juvenile Justice Act of 2000 was another significant issue. Notwithstanding the statute's focus on rehabilitative and reintegrative initiatives, there were several deficiencies in the practical execution of these objectives. Insufficient financing resulted in several correctional facilities and juvenile detention centres being devoid of the necessary resources to provide competent rehabilitation programmes. Moreover, there was a significant absence of specialised initiatives aimed at addressing the psychological and behavioural challenges faced by juvenile offenders. Consequently, structural reforms were necessary to enhance rehabilitation programmes, enabling youngsters who had transgressed the law to get the assistance required for reintegration into society.

A shift in perception about the nature of juvenile delinquency also contributed to the reform. All juveniles, due to their youth, are inherently susceptible to circumstances requiring care and rehabilitation, as stipulated by the 2000 Act. It became evident that universal rehabilitation was not a successful strategy for all minors as criminologists, social scientists, and lawmakers

acquired a deeper knowledge of juvenile delinquency. For grave offences perpetrated by children, more stringent restrictions may be necessary to safeguard the public and ensure accountability for the perpetrators. A more complex and personalised approach to juvenile justice is necessary due to the growing acknowledgement that psychological and mental health disorders influence juvenile delinquency.

### The Juvenile Justice (Care and Protection of Children) Act, 2015

To address the flaws of the 2000 Act and provide a more comprehensive framework for juvenile offenders, the Juvenile Justice (Care and Protection of Children) Act of 2015 underwent substantial change. The purpose of this law was to provide a better system for dealing with juvenile offenders and to safeguard children who were in need of care. Notably different from previous regulations, the 2015 Act stipulates that juveniles (those between the ages of 16 and 18) may be tried as adults for serious crimes including rape and murder.

This adjustment reflects a conscious shift in policy, acknowledging that those perpetrating violent and horrific crimes may need a distinct legal response compared to those engaged in less serious acts. The 2015 Act was largely shaped by the vigorous public conversation that followed the Nirbhaya catastrophe. The Indian government formed a committee headed by Justice (Retd.) M. S. Sharma to recommend changes to the present juvenile justice system in light of the pressing need for stricter rules. In December 2015, the Juvenile Justice (Care and Protection of Children) Act was enacted by the Indian Parliament after lengthy debates and careful revisions. This reform strikes a delicate balance between rehabilitating rehabilitable youth and providing justice to victims, particularly those impacted by severe juvenile crimes. The Child Welfare, Foster Care, and Adoption Act of 2015 strengthens safeguards for children by highlighting their importance within the system

of comprehensive child protection. Adopting this regulation shows that India's juvenile justice system has come a long way in its comprehension of adolescent delinquency and the critical need of finding remedies that are sympathetic and proportional to the gravity of the crime.

#### **4. Key Changes in the 2015 Act Compared to the Juvenile Justice Act, 2000**

##### **Increased Focus on Juvenile Delinquents in Serious Crimes**

A major amendment made by the "Juvenile Justice (Care and Protection of Children) Act, 2015" permitted the prosecution of minors (16 to 18 years old) as adults for grave offences. Rising concerns on the involvement of minors in serious crimes including rape, murder, and terrorism led to this change in legislation. Regardless of the seriousness of their criminal conduct, all individuals under the age of 18 were constantly classed as juveniles under the prior Juvenile Justice Act of 2000, which placed a focus on rehabilitation. When older teens committed serious crimes without being held accountable, the public became dissatisfied with this comprehensive categorisation. Prolonged calls for new laws were sparked by the Nirbhaya tragedy, in which a juvenile offender aged 17 was found guilty. Teens convicted of serious crimes between the ages of 16 and 18 may have their mental growth, maturity, and involvement evaluated by the Juvenile Justice Board, according to a provision in the 2015 Act that addressed strong public demand for change. The seriousness of the crime gave the Board the authority to recommend treating the minor as an adult, which might include applying adult punishments. This change acknowledged that a stricter legal framework may be necessary for some adolescents, especially those involved in violent or horrific acts, who may represent a greater danger to society.

##### **Focus on Rehabilitation and Reintegration**

The Juvenile Justice (Care and Protection of Children) Act of 2015 significantly strengthened its focus on institutional care and mental health aid, while maintaining the core principle of rehabilitation established by its 2000 predecessor. Although inadequate infrastructure and limited resources often hindered the proper execution of rehabilitation, it was acknowledged as a fundamental priority in the 2000 Act. In response to these shortcomings, the Act of 2015 included a number of provisions aimed at enhancing the quality of rehabilitation programmes, particularly those serving children who are struggling with substance abuse, mental illness, or emotional trauma. Adolescents who are unable to reside in family settings as a result of abuse, neglect, or other vulnerabilities were also given the term "institutional care" in the 2015 Act. It became necessary to put children in specialist facilities if they could not be safely reintegrated into family situations. Education, vocational training, counselling, and therapeutic therapies were the primary goals of these institutions, which aimed to provide a structured and supportive environment. The goal was to make sure that juvenile inmates got the help and guidance they need to become productive, responsible adults when they leave institutional care.

##### **Strengthened Judicial and Social Framework**

As a result of the Juvenile Justice (Care and Protection of Children) Act of 2015, Special Juvenile Police Units (SJPUs) were established, greatly enhancing the societal and legal framework of juvenile justice. The purpose of creating these specialist divisions is to guarantee that children get appropriate treatment while navigating the legal system, with the goal of protecting their rights at all times. Because it addressed previous problems with the inadequate treatment of juveniles by law enforcement personnel unskilled in child-sensitive legal standards, this innovation was a considerable improvement.

In addition, several care modalities, including adoption, aftercare, and foster care, were included in the more organised framework for social reintegration and rehabilitation that was created by the Act of 2015. The need of providing children with nurturing, family-like surroundings was highlighted by the introduction of foster care. At the same time, aftercare services minimised the chances of recidivism by ensuring that youth would get ongoing support upon their release from correctional facilities.

### **Formation of Juvenile Justice Boards and Child Welfare Committees**

To hear cases involving minors accused of crimes, the Juvenile Justice (Care and Protection of Children) Act of 2015 created Juvenile Justice Boards (JJBs), which include a judge and two social workers. Decisions involving minors should be decided by persons well-versed in the complexities of child development and criminal conduct, which is why these Boards were set up. The purpose of forming the Boards was to ensure that juvenile justice decisions were informed by a wide range of perspectives, including legal, social, and psychological ones. Child Welfare Committees (CWCs) are responsible for the protection of children in need of care and support; their jurisdiction was significantly expanded by the 2015 Act, which was passed concurrently with the establishment of the JJBs. A more coordinated effort to combat issues including child abuse, neglect, and exploitation was encouraged by the revised legislation, which increased the role of CWCs. To ensure that children in danger get the help, care, and rehabilitation they need, these Committees are now crucial.

### **Clarifications Regarding 'Children in Need of Care and Protection'**

In 2015, Congress passed the Juvenile Justice (Care and Protection of Children) Act, which greatly expanded the definition of "children requiring care and protection." Child abuse, neglect, and exploitation were given more

attention in the updated framework. The Act made guaranteed that more vulnerable children, especially those who were victims of domestic violence, sexual abuse, or human trafficking, could get the protection and assistance they needed by broadening the criteria. This broader approach went beyond the limited viewpoint stated in the 2000 Act and reflected a more nuanced and thorough understanding of the myriad of situations in which children can be at danger. By including this provision, the Act of 2015 acknowledged the multifaceted difficulties encountered by disadvantaged children and made it a priority to provide them with the safeguards and supports they needed to overcome those difficulties.

### **5. Juvenile Justice (Care and Protection of Children) Rules, 2016**

To make sure the Juvenile Justice (Care and Protection of Children) Act, 2015 is put into effect and enforced properly, the Juvenile Justice (Care and Protection of Children) Rules, 2016 were made. Addressing the practical issues of juvenile justice and child protection in India, these regulations provide thorough recommendations for executing the Act's requirements.

#### **Rules and Provisions**

By providing thorough regulations for several components of juvenile care and rehabilitation, the 2016 Juvenile Justice (Care and Protection of Children) Rules supplement the 2015 Act. Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) in the district are assigned the task of supervision by the District Magistrate (DM) in a crucial provision. Among the DM's responsibilities is the acquisition of necessary funds for child protection measures, such as the establishment of children's homes and observation centres, and the maintenance of compliance with regulations governing the treatment of children involved in legal disputes. Both the 2015 Act and the 2016 Rules rely heavily on juvenile justice boards (JJBs) and children's homes as part of their operational framework.

Adolescents in need of care and protection might find a safe haven in a children's home, where they can get important services including education, therapy, and rehabilitation. Compliance with statutory requirements and principles of child care are ensured by Juvenile Justice Boards, which comprise of a judge and two social workers. These boards adjudicate matters involving juveniles in legal conflict. Additionally, the rules define the roles and duties of Child Protection Units (CPUs), which are responsible for carrying out the Juvenile Justice Act's requirements in local communities. Children who have been victims of abuse, neglect, or exploitation must be located, rescued, and rehabilitated by CPUs who also make sure they have access to basic necessities like food, shelter, and education.

### **Procedures for Handling Children Who Commit Serious Crimes**

The 2016 Rules delineate the protocols for managing adolescents involved in serious criminal crimes, namely those between the ages of 16 and 18. The Juvenile Justice Board is empowered to evaluate individuals to see whether they should be prosecuted as adults for grave offences. If the Board concludes that the juvenile comprehends the consequences of their actions, the case may be sent to a conventional court for further legal proceedings.

### **Strengthening the Implementation Mechanisms**

Essential to the rehabilitation of juvenile offenders, the 2016 Rules lay forth detailed guidelines for the establishment and operation of Observation Homes, Special Homes, and Aftercare Organizations. While Special Homes provide long-term housing and rehabilitation for children requiring more intensive care, Observation Homes are short-term facilities for the assessment and monitoring of juveniles. Reintegration into society after release may be smooth with the help of aftercare programs, which provide children ongoing support, educational possibilities, and vocational training.

Juveniles with ties to the justice system should have access to mental health and welfare services, according to the 2016 Rules. People who have experienced abuse, mental illness, or drug use will need special accommodations. The rules state that these kids have to have therapeutic treatments and individualised psychotherapy to help them get back on their feet, with enough care for their mental and emotional health provided all the while.

### **6. Post-Implementation Impact and Criticism of the Juvenile Justice (Care and Protection of Children) Act, 2015**

#### **Impact on Juvenile Crime and Justice**

An important change in India's stance on juvenile delinquency has occurred since the Juvenile Justice (Care and Protection of Children) Act was passed in 2015. There were 340,168 recorded cases of juvenile crimes between 2013 and 2022, with thirteen states having more than 10,000 cases. On the other hand, four of the northeastern states—Nagaland, Meghalaya, and Andhra Pradesh recorded less than 1,000 cases. [2] The Act's essential provision, which permits the trial of juveniles (16–18 years old) as adults for serious offenses, has drastically altered the way courts operate over the country. According to this model, Juvenile Justice Boards (JJBs) evaluate the mental capacity and involvement of these youths to provide them with a more complex and proportional legal punishment for their serious offenses. A more deliberate and tailored approach to dealing with juvenile misbehavior in India is shown by this change.

#### **Social and Psychological Implications**

The usefulness of the provision in addressing the reasons of adolescent criminal conduct has been the subject of continual discussion. It allows for the prosecution of minors aged 16 to 18 as adults. Skeptics contend that this method might exacerbate existing problems by criminalizing and stigmatizing children, all the while ignoring systemic causes like economic inequality, broken families, and mental illness.

In addition, there have been significant obstacles to the Act's implementation, such as lengthy adoption delays and inadequate maintenance of rehabilitation facilities. This undermines the law's ability to reduce youth criminality and facilitate significant rehabilitation and reintegration, which are two of its stated goals. [3]

### Public Perception and Legal Challenges

Many people feel strongly about different aspects of the Juvenile Justice Act of 2015. Opinions on the matter are divided: some regard it as a step forward in providing victims of serious crimes with justice, while others worry it would weaken the juvenile justice system's core principles of rehabilitation. An important turning point in the debate was in May 2015 during the Lok Sabha session, when Shashi Tharoor, a member of parliament, stressed that the Act differs from global standards, which advocate for educational reform instead of punitive measures for minors. [4]

There have been disagreements in the court system, particularly over the prosecution of minors as adults. More stringent laws pertaining to juvenile offenders was demanded after a wave of public outcry after the Nirbhaya case, in which the juvenile offender was given a brief three-year term in a penal facility. This incident brought to light an important issue that substantially influenced the 2015 Act: the complicated conflict between providing victims with justice and safeguarding the rights of juvenile offenders.

### Conclusion

In comparison to its predecessor, the Juvenile Justice Act of 2000, the Juvenile Justice (Care and Protection of Children) Act of 2015 made a number of significant changes. In response to widespread concerns about perceived leniency towards serious juvenile criminals, a notable change has been made: individuals between the ages of 16 and 18 may now be tried as adults for serious offenses. Adolescent offenders are the focus of the 2015 Act, which

prioritizes rehabilitation via the integration of mental health services, institutional care, and aftercare programs. Court and community structures responsible for regulating problems involving juveniles have been significantly enhanced via the introduction of Juvenile Justice Boards, Child Welfare Committees, and Special Juvenile Police Units. Regardless of these changes, the Act has been heavily criticized, particularly for its provision that allows minors to be tried as adults. This has led some to wonder whether laws like this address the causes of juvenile delinquency or just make things worse for these young offenders. Between the years 2000 and 2015, India's juvenile justice system saw substantial reforms. Though it maintained the fundamental principles of caring for and protecting children, the 2015 Act included stricter procedures to deal with serious offenders, in contrast to the 2000 law's emphasis on rehabilitation strategies. In line with international human rights standards, any future reforms should seek a middle ground between victim justice and the rights of juvenile offenders. Resolving public concerns about justice and safety must not take a back seat to the continued emphasis on rehabilitation and reintegration, which includes giving youths chances to change. Finding a reasonable middle ground in India's juvenile justice system between protection, rehabilitation, and justice is an ongoing challenge.

[1] *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, (2017) 6 SCC 1

[2] <https://recordoflaw.in/juvenile-crime-on-the-rise-in-india-causes-trends-solutions>

[3] <https://gjl.in/wp-content/uploads/2022/05/Pranay-ECONOMICS-OF-JUVENILE-DELINQUENCY-IN-INDIA.pdf>

[4] [https://en.wikipedia.org/wiki/Juvenile\\_Justice\\_Care\\_and\\_Protection\\_of\\_Children\\_Act\\_2015](https://en.wikipedia.org/wiki/Juvenile_Justice_Care_and_Protection_of_Children_Act_2015)

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# IPR, MEDIA AND ENTERTAINMENT LAW IN THE OTT ERA: BALANCING COPYRIGHT, LICENSING AND EMERGING CHALLENGES IN THE DIGITAL ENTERTAINMENT INDUSTRY

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## ABSTRACT

The speedy expansion of OTT platforms has transformed the global media and entertainment landscape, challenging traditional IPR system. In this new era, balancing copyright protection with fair use, licensing agreements, and distribution rights has become increasingly complex. As content creators, distributors, and consumers navigate a fragmented digital ecosystem, OTT platforms are often at the center of debates over the ownership and monetization of creative works. Issues like cross-border copyright enforcement, digital piracy, and unauthorized content sharing are exacerbated by the borderless nature of the internet, necessitating a reevaluation of existing legal structures to address the unique demands of streaming services and their global audiences.

This research article paper explores the evolving landscape of IPR in the OTT era, focusing on the interplay among copyright protection, licensing practices, and the challenges posed by new technologies such as digital streaming, piracy, and cross-border distribution. It examines how media companies and content creators must navigate the changing legal frameworks, including jurisdictional issues and the enforcement of rights across multiple territories. The study also analyzes into emerging challenges such as user-generated content, the role of Artificial Intelligence in content creation, and the implications of data privacy regulations on content consumption. The study seeks to provide insights into how the media and entertainment industries can strike a balance between protecting intellectual property, fostering innovation, and ensuring equitable access in the face of a rapidly evolving digital ecosystem.

**Key words:** IPR, OTT, Copyright protection, Licensing

## I. INTRODUCTION

Ensuring legal compliance for OTT platforms in India is a multifaceted process that involves adhering to a wide range of laws, regulations, and government-issued guidelines. These measures are designed to promote responsible content distribution and safeguard users. The primary legal foundation governing digital platforms, including OTT services, is the Information Technology Act, 2000, which serves as the cornerstone for regulating online activities in India.

Initially, the Information Technology (Intermediary Guidelines), 2011 applied exclusively to intermediaries. However, with the introduction of the 2021 rules, the regulatory scope was expanded to include both intermediaries and digital content publishers—bringing OTT platforms under the category of "publishers of online curated content." As a result, these platforms are now required to exercise due diligence to prevent the misuse of their services for illegal or harmful activities, as stipulated under Section 79 of the IT Act.

Section 67 of the same Act grants the government the authority to restrict access to content that may threaten public order or national security. This provision highlights the increasing regulatory scrutiny faced by OTT platforms and underscores the importance of compliance within the broader digital content ecosystem.<sup>154</sup>

the IT Rules, 2021 outline specific responsibilities that OTT platforms must fulfill. These rules require platforms to comply with a prescribed Code of Ethics and adopt a self-regulatory approach. Key obligations include categorizing content based on age suitability, implementing parental control features, and establishing a robust grievance redressal system to address user complaints.

IT Act and its rules, OTT platforms are also governed by provisions of the Cable Television Networks (Regulation) Act, 1995, along with the associated Rules of 1994. Although originally intended for cable television (CTV), these regulations extend to OTT services that offer TV-like content. This was reinforced in the landmark judgment *Justice for Rights Foundation v. Union of India*<sup>155</sup>, where the court clarified that such content must comply with the programming and advertising standards applicable under the Act. These include restrictions on material that may be considered indecent, immoral, or likely to incite violence.

## II. STATEMENT OF THE PROBLEM

The rise of OTT platforms in India has revolutionized the media and entertainment industry, presenting significant challenges to intellectual property rights (IPR) laws. With the explosion of digital content, there is a growing need to address the complexities surrounding copyright protection, content licensing, and distribution. In an era where content is increasingly produced, distributed, and consumed through digital platforms, traditional IPR frameworks are struggling to keep up with

the rapid pace of technological advancements and changing consumption patterns. Issues such as unauthorized distribution, infringement of copyrights, and the blurred lines of licensing agreements create legal ambiguities and risks for creators, distributors, and consumers alike.

As the OTT landscape continues to evolve, the existing copyright and licensing mechanisms in India must adapt to balance the interests of content creators, platforms, and users while ensuring fair compensation and protection. The proliferation of global OTT players further complicates this balancing act, as content licensed for one market may face challenges when consumed in another, creating jurisdictional issues. Moreover, the rapid pace of technological innovation, such as the use of artificial intelligence, deep fakes, and live streaming, has introduced new legal and ethical dilemmas. This necessitates a rethinking of IPR law to address emerging challenges, foster innovation, and protect the rights of all stakeholders in the digital ecosystem.

## III. RESEARCH OBJECTIVES

- To examine the effectiveness of current IP laws in protecting digital content on OTT platforms in India.
- To analyze the issues and challenges faced by content creators in navigating copyright issues within the OTT industry.
- To identify the legal implications of emerging technologies on copyright and licensing in OTT platforms

## IV. RESEARCH QUESTIONS

1. How effective are the existing IP laws in India in identifying copyright infringement on OTT platforms?
2. What issues and challenges do content creators face in securing and dealing with copyright protection in the OTT era?
3. How do emerging technologies complicate current copyright and licensing frameworks in the OTT sector?

<sup>154</sup> Panda Kishore, et al, "Over-The-Top (OTT) Platforms in the Indian Entertainment Industry" IJRPR (2023)

<sup>155</sup> Justice for Rights Foundation V. Union of India, WP(C) 11164/2019

## V. LITERATURE REVIEW

1. Priyanshu Yadav (2023)<sup>156</sup> Copyright is a form of intellectual property right that grants the creator of an original work the exclusive legal authority to control how their work is reproduced and distributed. When someone reproduces or copies such a work without the permission of the copyright holder, it constitutes a violation of copyright law. As per Section 2(m) of the Copyright Act, 1957, such unauthorized reproduction is legally recognized as the creation of an "infringing copy."
2. Mansi Kukreja (2023)<sup>157</sup> India's Intellectual Property Rights (IPR) framework is well-established and aims to protect the rights of creators, particularly those involved in artistic and literary endeavors, by allowing them to derive economic benefits from their creative output. However, the digital revolution—especially the rise of internet-based services—has introduced new complexities and challenges to the enforcement of these laws, particularly with the emergence of OTT platforms.
3. Manoj Vidwans (2016)<sup>158</sup> The rapid proliferation of the internet and smartphones has significantly reshaped consumer behavior in India. As OTT platforms explore different strategies to capture a larger share of the Indian market, their long-term success will largely hinge on the quality and uniqueness of the content they offer. Viewer engagement in this sector will be driven by the availability of original programming and a broad, diverse content portfolio.

## VI. INTELLECTUAL PROPERTY RIGHTS AND OTT PLATFORMS

A significant number of online companies manage vast databases that are protected under intellectual property (IP) laws. In the case of online streaming platforms, the original content they host is typically owned by the platforms themselves, granting them exclusive rights that can be leveraged for future licensing deals and revenue streams. Copyright law plays a key role in this ecosystem by ensuring that creators are recognized and rewarded for their original works, while the public retains a right to access information in a fair and balanced manner.

Given the global and borderless nature of the internet, unauthorized use or duplication of content has become increasingly easy, making copyright infringement a pressing concern. Therefore, to safeguard content from ownership disputes or misuse, it is essential to address multiple legal aspects such as copyrights, trademarks, and licensing agreements. These mechanisms help define ownership rights clearly and ensure that intellectual assets are properly protected in the digital landscape.

Copyright law protects original creative works that are fixed in a tangible form, while trademark law focuses on brand elements—like logos and names—that distinguish goods or services. In the context of streaming platforms, multiple components must be evaluated individually, such as the written content, audio, video, and personality rights of individuals featured. Licensing for new media formats, such as video synchronization rights and permission to use individuals' likenesses, is often necessary.

OTT service providers typically offer content either for free or as part of subscription packages, making them more attractive compared to traditional network operators who often incur significant costs. This digital sector faces fewer regulatory constraints compared to conventional media such as television and cinema, granting creators greater artistic liberty and enabling them to cater to diverse audience

<sup>156</sup> Priyanshu Yadav, A Brief Study of Intellectual Property Law in Context of OTT Platform and Video Piracy in India IJLLR (2023)

<sup>157</sup> Mansi Kukreja (2023) Infringement of IPR Laws by OTT Platforms <https://www.lawyered.in/legal-disrupt/articles/infringement-ipr-laws-ott-platforms/>

<sup>158</sup> Manoj Vidwans, Success in OTT market will depend on content strategy, Business Today, December 2, 2016

preferences. Combined with the flexibility of on-demand access from any location, these factors significantly contribute to the rising popularity of streaming platforms. Their intuitive interfaces and user-friendly experiences further enhance their appeal, creating a mutually beneficial model for consumers.

Telecom companies have struggled to adapt to the changing market dynamics and the shift in revenue caused by the rise of OTT platforms. These newer digital players have capitalized on both content and ad revenues. Traditionally, broadcasters have commissioned the creation of shows, entering into agreements with producers. Under such contracts, broadcasters pay a fixed fee and, in return, gain ownership of the IPR. This gives them the authority to distribute the content in multiple languages, sell it internationally—including to airlines and other content platforms—or even feature it on their own streaming services.

In the past, producers had limited avenues to earn from broader distribution and audience reach, often resulting in restricted earnings. They also lacked ownership of intellectual property rights, which prevented them from tapping into potential revenue streams beyond the initial production deal.

#### VII. CONTROVERSIES SURROUNDING OTT PLATFORMS

In recent years, India has witnessed an explosive growth in the number of OTT platforms, both domestic and international. This surge has been driven by the need to cater to the diverse tastes and preferences of the Indian audience, making India the fastest-growing OTT market globally. However, this rapid expansion has also sparked numerous controversies, particularly surrounding the content featured on these platforms. Many Indian and foreign web series have faced backlash due to allegations of obscenity, defamation, and disrespect towards religious beliefs.

Authorities began to express serious concern after receiving a flood of complaints about inappropriate content, including vulgar

language, excessive violence, and the perceived denigration of religious values. Calls were even made to ban major platforms like Netflix and Amazon Prime, citing content that allegedly offended religious communities.

Frequently raised issues include controversial storylines, cultural misrepresentation, use of offensive language, regional stereotyping, and excessive sexual content. Several web series have faced legal challenges for these reasons. For instance, the popular show *Mirzapur* was targeted in a lawsuit claiming that it damaged the real city's reputation. Critics argued that while regulations might limit filmmakers' creative freedom, they could also help shield younger audiences from harmful material.

Another major controversy involved *The John Oliver Show* on Hotstar, where Oliver criticized Prime Minister Narendra Modi and the Citizenship Amendment Act (CAA). The episode was eventually pulled by Hotstar under mounting pressure. The government has also urged OTT platforms to establish review committees to assess and potentially remove content that could incite violence, offend religious sentiments, or violate legal rulings.<sup>159</sup>

India's online streaming industry has grown into a complex and often contentious space. The primary responsibility for regulating digital content falls under the Ministry of Electronics and Information Technology (MEITY), which operates under the Government of India Rules, 1961. This legal framework grants MEITY the authority to oversee and manage content distributed through digital platforms.

#### VIII. LEGAL PROTECTION CONCERNING OTT PLATFORMS

Online films and content streamed through OTT platforms in India operate outside the jurisdiction of the Cinematograph Act of 1952, which only governs films released in theaters. As a result, OTT content has historically existed in a largely unregulated space, unlike traditional cinema which requires certification from the

<sup>159</sup> Raghuvinder Singh, *Obscenity on Over-The-Top (OTT) Platforms and Censorship*, IJNRD (2024)

CBFC. This regulatory gap has led to numerous complaints concerning offensive material—ranging from allegations of obscenity, religious insensitivity, and pornography to morally objectionable content. Since CBFC certifications are not applicable to digital content, the need for a formal governance structure for OTT platforms became increasingly evident.

To address this issue, several legal provisions currently regulate the content on OTT platforms in India<sup>160</sup>:

#### A. Indian Penal Code (IPC), 1860

**Section 293:** Criminalizes the sale or distribution of obscene materials, especially to minors.

**Section 295A:** Punishes acts done with malicious intent to offend religious sentiments.

**Section 499:** Addresses the offense of defamation.

**Section 354:** Criminalizes any act that outrages a woman's modesty.

#### B. Protection of Children from Sexual Offences (POCSO) Act

This law is crucial for shielding children from both physical and digital forms of abuse, including sexual assault, harassment, and cyber pornography. It serves as a key legislative tool to protect minors from exploitation.

#### C. Indecent Representation of Women (Prevention) Act, 1986

This act prohibits any portrayal of women in an indecent or derogatory manner across all forms of media, including print, television, film, and digital content.

#### D. IT RULES 2021

Formulated after consultations by the MIB with key stakeholders, this legislation introduced a more structured framework for OTT platforms under the IT Act.

### IX. THE IMPACT OF COPYRIGHT INFRINGEMENT ON OTT PLATFORMS

Copyright infringement has far-reaching consequences that negatively impact a wide

range of stakeholders within the entertainment industry. Piracy and unauthorized distribution lead to massive financial losses for content creators, producers, and OTT platforms. These losses hinder their capacity to fund future projects or sustain the quality of their productions, ultimately putting a damper on creativity and innovation. When audiences consume pirated content, it undermines the credibility of official platforms, dissuading creators from sharing their work through legitimate channels. This can result in fewer original, diverse offerings, limiting entertainment choices for viewers and damaging the overall health of the industry.

Infringement issues can also trigger expensive legal disputes, affecting both individuals involved in piracy and digital platforms that fail to regulate the content they host. In certain cases, these platforms may be subjected to penalties or legal sanctions for enabling or ignoring the unauthorized distribution of copyrighted material.

Combating copyright violations on OTT platforms presents numerous challenges. The borderless nature of the internet complicates law enforcement efforts, as copyright laws vary significantly from country to country. What qualifies as illegal activity in one jurisdiction may not be treated the same way elsewhere, allowing infringers to exploit legal gray areas. Additionally, pirates often use advanced technologies to circumvent digital rights management (DRM) protections and illegally distribute content. As technology becomes more sophisticated, so do the tools used for piracy, making it difficult for content providers to stay ahead.

A major hurdle in addressing this issue is the general lack of public awareness regarding copyright laws. Many consumers do not fully understand the legal and ethical consequences of streaming or downloading content from unlicensed sources. Some may unknowingly engage in piracy, believing these practices to be harmless or legal. This lack of knowledge

<sup>160</sup> Harprit Singh, The Legal Challenges and Opportunities in the Regulation of Over-the-Top (OTT) Platforms in India, BLJ (2024)

sustains demand for pirated material and makes enforcement even more difficult. Compounding the issue, smaller OTT platforms often don't have the financial or technical resources to implement comprehensive anti-piracy systems, leaving them particularly vulnerable. Their inability to effectively tackle infringement places them at a disadvantage in an already competitive digital media landscape.

#### X. SOLUTIONS TO ADDRESS COPYRIGHT INFRINGEMENT

In matter of **Sun TV Network Limited v. Amazon**<sup>161</sup>, Sun TV filed a lawsuit seeking a permanent injunction against Amazon for streaming 28 of its films—content over which it held copyright ownership—on the latter's OTT platform without authorization. The Madras High Court, while addressing the matter, emphasized a key legal principle: the producer of a cinematographic film is considered the original copyright holder. Since Sun TV had legally acquired the rights from these original producers, it held valid ownership over the content.

The court acknowledged that, given this lawful acquisition, Sun TV had every right to commercially exploit its copyrighted works without interference or infringement from third parties. In light of these observations, the court granted an interim injunction, restraining Amazon from further streaming the disputed films until the matter is fully resolved.

In another case of **Jagran Prakashan Limited v. Telegram FZ LLC**<sup>162</sup>, The Hon'ble Delhi High Court issued a directive to the defendants, Telegram, ordering them to remove specific channels within forty-eight (48) hours. These channels were being used by users to illegally reproduce and share the copyrighted digital e-paper content belonging to the plaintiff corporation, which offers this e-paper exclusively to its subscribers.

The increasing number of internet-based streaming platforms, along with the surge in digital content, has significantly heightened the risk of piracy and copyright infringement through these services. Although existing laws address such violations and outline the responsibilities of OTT platforms, there is a growing need to expand and clarify the legal provisions that specifically deal with digital content being disseminated across multiple OTT platforms—often without the knowledge of the rightful copyright holder. There is also a pressing demand for clearer procedures, as well as a well-defined understanding of the liability of each party involved in such cases of infringement.

By implementing more precise legal frameworks and enforcement mechanisms, the rights of content creators can be better safeguarded, which in turn could reduce the frequency of piracy and unlawful distribution through OTT platforms. Furthermore, streaming services must take a more vigilant and proactive approach in detecting potentially infringing material and deciding whether such content should be removed or blocked from their platforms.

#### Mr. John Hart Jr. V. Mr. Mukul Deora<sup>163</sup>

In recent times, Indian courts have witnessed a surge in last-minute injunction requests, commonly referred to as "eleventh-hour injunctions." These are lawsuits filed just hours before the scheduled release of a film, alleging copyright infringement and seeking to halt its release. The judiciary has made it clear that not all such cases are dismissed outright. If the plaintiff can convincingly demonstrate that they became aware of the alleged infringement only at the last moment, the court may still consider the plea. The decision underscored the importance of acting promptly when pursuing legal remedies.

<sup>161</sup> O.A.No.110 of 2021 in C.S.No.69 of 2021.

<sup>162</sup> CS(COMM) 146/2020.

<sup>163</sup> AIR 2021 DEL 79

## CONCLUSION

In conclusion, the rapid growth of OTT platforms in India has transformed the media and entertainment industry, presenting both opportunities and significant challenges for the protection of intellectual property rights (IPR). With the rise of digital content consumption, traditional copyright and licensing laws are struggling to keep up with the demands of an evolving market. As OTT platforms continue to dominate the entertainment landscape, it is clear that existing IPR frameworks must be re-examined and adapted to ensure that content creators, distributors, and consumers are fairly protected and compensated.

The role of government regulation and policy is also crucial in this context. Government intervention can help create a more balanced and fairer ecosystem by establishing clearer guidelines for copyright protection and licensing in the OTT sector. Furthermore, India must consider aligning its laws with international standards, particularly in the realm of digital content distribution and copyright enforcement. Cooperation with international regulatory bodies and industry stakeholders can lead to the development of more effective global solutions for protecting IPR in the OTT space, ensuring that the Indian creative industry can compete on a global stage.

Ultimately, the key to balancing copyright, licensing, and emerging challenges in the OTT era lies in creating a dynamic and flexible legal framework that adapts to the rapid changes in technology and content consumption. As the digital landscape continues to evolve, India's IPR laws must evolve with it, ensuring that the rights of creators are protected, while simultaneously fostering the growth of the OTT industry. By addressing these challenges head-on and developing a legal framework that is both forward-thinking and adaptable, India can secure a thriving, innovative, and equitable media and entertainment sector for years to come.

The legal framework should be updated to account for the challenges posed by emerging technologies like AI, deep fakes, and virtual reality. By developing specific laws for these technologies, India can better address issues of content authenticity, ownership, and protection in the digital space.

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## SEARCH, SEIZURE, AND INSPECTION UNDER GST LAW IN INDIA: STRIKING A BALANCE BETWEEN TAX ENFORCEMENT AND TAXPAYER RIGHTS

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### ABSTRACT

This article critically examines inspection, search, and seizure provisions under the Goods and Services Tax (GST) regime, analyzing how tax enforcement balances compliance measures with taxpayer rights. It explores key legal safeguards, including the requirement of "reason to believe," which mandates objective evidence rather than mere suspicion for initiating search and seizure operations. Through case law analysis, the article underscores the necessity of substantial justification for such actions.

Additionally, it discusses procedural protections such as prior authorization from senior officers, search warrants, and the role of independent witnesses. The article also addresses the confiscation of goods under Section 67(2) of the CGST Act, 2017 emphasizing proportionality and evidentiary requirements. Drawing on judicial precedents, it highlights the importance of transparency, accountability, and legal compliance in tax enforcement, advocating for a balanced approach that upholds both regulatory objectives and taxpayer protections.

**Keywords:** Goods and Service Tax (GST), Inspection, Search and Seizure, Reason to Believe, Tax Evasion, Tax Compliance, Taxpayer Rights.

### 1. Introduction

Goods and Services Tax (GST) has revolutionized the indirect tax structure in India, bringing about a more streamlined tax system. However, its implementation has necessitated the creation of stringent enforcement provisions to curb tax evasion and ensure compliance. The provisions governing search and inspection are crucial to ensuring tax compliance and detecting tax evasion. The provisions relating to search, seizure, and arrest are enshrined in the Central Goods and Services Tax (CGST) Act, 2017.

These provisions, as detailed under Section 67 of the CGST Act, 2017, empower tax authorities to conduct investigations, searches, and seizures of goods and records suspected to be involved in tax evasion. However, these powers are not absolute and come with critical legal safeguards designed to prevent abuse, protect the rights of taxpayers, and maintain the balance between enforcement and fairness. This article critically analyzes the procedural framework for inspection, search, and seizure under GST, emphasizing the significance of the reason to believe standard and the procedural safeguards for the confiscation of goods.

the law mandates a clear and well-documented "reason to believe" before any action is initiated. This ensures that searches are not based on mere suspicion but on substantial evidence or facts examined objectively by a senior officer. Additionally, searches can only proceed with proper authorization from a Joint Commissioner or an officer of higher rank, safeguarding against arbitrary actions. By distinguishing between inspection and search-cum-seizure, the law also sets clear boundaries on the scope of actions permitted, reinforcing its commitment to transparency and fairness. To further protect taxpayer rights, the law incorporates procedural safeguards and promotes accountability through judicial oversight.

The framework, while enabling robust enforcement, aims to prevent any abuse of authority and ensures that actions taken are proportional, lawful, and fair. In this way, the provisions under GST reflect a balanced approach to tax compliance and taxpayer protection. Below is a structured overview of the procedural safeguards, legal framework, and taxpayer rights associated with search and seizure operations under GST.

## 2. Inspection under the CGST Act, 2017

Under the Central Goods and Services Tax (CGST) Act, the term inspection refers to the process of examining premises, goods, records, or conveyances to ensure tax compliance and detect possible tax evasion. It is considered a softer provision compared to a search, allowing officers to access the business premises of taxable persons, those involved in transporting goods, or individuals operating warehouses or godowns.

Inspection can also extend to conveyances carrying goods exceeding the specified value, where the person in charge must produce relevant documents or devices for verification and allow inspection. Notably, during transit, such inspections can be conducted even without specific authorization from the Joint Commissioner. Intelligence for inspections may

be gathered from various sources, such as internal scrutiny or audit proceedings, or external third-party sources like the Central Board of Direct Taxes (CBDT), Sub-Registrar offices, and the Real Estate Regulatory Authority (RERA). This provision plays a significant role in promoting compliance and preventing tax evasion while remaining less intrusive than a search.

### Key Features:

- As per Section 67(1) of the CGST Act, only an officer of the rank of Joint Commissioner or above can authorize an inspection in writing.
- Such authorization is granted only when the officer has *reasons to believe* that the person has-
  - (i) suppressed transactions related to the supply of goods or services,
  - (ii) concealed stock,
  - (iii) claimed excess input tax credit (ITC),
  - (iv) violated provisions of the Act to evade taxes,
  - (v) transported or stored goods that have escaped tax payment, or
  - (vi) manipulated accounts or stocks to evade taxes.

### 2.1 Inspection Process under the CGST Act:

Under the CGST Act, an officer gathers intelligence and submits a request for authorization to the Joint Commissioner or a higher-ranking officer using *Form GST INS-01*, detailing the findings. If the Joint Commissioner is satisfied that there are sufficient *reasons to believe*, they issue a written authorization specifying the premises to be inspected.

The authorization in *Form GST INS-01* must outline the scope of the action. For inspections, it specifies the location and items to be examined under Part A or Part B. If it includes both inspection and search, it must detail suspicions about goods liable to confiscation or concealed documents and items, as noted in

Part C. This ensures a clear and accountable process<sup>164</sup>.

**2.1.1 Reason to Believe:** Under GST law, the term “reason to believe” forms the foundation for initiating search and seizure operations. It refers to the knowledge of facts that, while not direct evidence, would lead a reasonable person to reach the same conclusion. According to Section 26 of the IPC, 1860, “A person is said to have ‘reason to believe’ a thing if he has sufficient cause to believe that thing but not otherwise.” This belief must be objective, based on relevant materials and circumstances, and distinct from mere suspicion. It requires intelligent evaluation by an honest and reasonable person.

Before issuing a search authorization, the Proper Officer must disclose the material supporting this belief, though it is not mandatory to record it in every case. Courts have emphasized the importance of this standard. In *R.J. Trading Co. v. Commissioner of CGST*<sup>165</sup>, the Delhi High Court ruled that searches without jurisdictional grounds are invalid, and reason to believe cannot be equated with reason to suspect. Furthermore, in *Sheo Nath Singh v. Appellate Asstt. CIT*<sup>166</sup>, the Supreme Court clarified that the courts can assess whether the belief was based on credible material but cannot question the sufficiency of the evidence.

Taxpayers have the right to challenge reason to believe in subsequent proceedings, particularly during responses to show cause notices under Section 74. Courts can scrutinize the evidence and file notings to ensure the reasons were genuine and existed before the search. As clarified in *PDIT v. Laljibhai Kanjibhai Mandalia*<sup>167</sup>, reasons must predate authorization and cannot be created afterward.

If reason to believe only justifies inspection and not search, any search conducted would be unlawful, and any seized evidence would be

inadmissible. In cases where an inspection (authorized in *Form GST INS-01*) reveals grounds for a search, the officer must seek additional authorization under *Part C of Form GST INS-01*. This transition from inspection to search must comply with Section 67(2) of the CGST Act. The satisfaction of the authorized officer conducting the inspection and search is subject to judicial review, and careful adherence to legal provisions is crucial to ensure the process is valid and justified<sup>168</sup>.

### 3. Search under the CGST Act, 2017

The term search refers to an action by government authorities to carefully examine a person, vehicle, premises, or object to find concealed items or evidence of a crime. Under GST law, searches must be conducted under proper and valid authority. While search is not specifically defined in GST law, the Shorter Oxford English Dictionary defines it as probing, scrutinizing, examining, or investigating. The power to authorize a search is a significant tool for preventing fraud but must adhere to due process, ensuring compelling reasons exist to justify the intrusion into privacy.

As per Section 67(2) of the CGST Act, a Proper Officer, not below the rank of Joint Commissioner, can authorize a search if there is reason to believe that goods liable for confiscation or documents, books, or other items useful for GST proceedings are being concealed. Such authorization, issued in *Form GST INS-01*, allows either the officer or a subordinate officer to search. The seized items can only be retained as long as necessary for examination or inquiry. If goods cannot be seized, an order may be issued to the custodian, restricting the removal or use of the goods without prior permission<sup>169</sup>.

**3.1 Meaning of Secreted/Concealed:** The term “secreted” refers to items deliberately hidden or concealed to evade detection or to avoid legal

<sup>164</sup> Ministry of Finance, “Handbook of GST Laws and Procedures for Departmental Officers”, Chapter – 8 Search, Seizer and Arrest

<sup>165</sup> W.P.(C) No 4847 of 2021 dated 20.07.2021

<sup>166</sup> [1971] 82 ITR 147/AIR 1971 SC 2451

<sup>167</sup> CA 4081/2022 SC.

<sup>168</sup> GST-IDTC, A Jatin Christopher. Institute of Chartered Accountants of India, “Handbook on Inspection, Search, Seizure and Arrest under GST”, First Edition : August, 2022, pg 21-24

<sup>169</sup> *Supra* 1.

scrutiny. While the GST law does not specifically define secreted, its interpretation aligns with similar provisions under Section 105 of the Customs Act, 1962. According to legal dictionaries and case law, secreted means deliberately hiding goods, documents, or other items in a manner intended to prevent discovery by authorities.

In the landmark case *Gian Chand & Others v. State of Punjab (1961)*<sup>170</sup>, the Supreme Court clarified that secreted refers to items not kept in their normal or usual place or items intentionally placed in locations where authorities would struggle to find them. This can include goods or documents hidden physically or through methods like encrypted files or manipulated records.

Under Section 67(2) of the CGST Act, the determination that goods, documents, or other items have been secreted is a crucial element in establishing reason to believe and justifying a search and seizure. For goods to be seized under this provision, their concealment must be intentional, using methods or locations specifically designed to avoid detection.

The officer searching must comply with rules, such as issuing search authorization online through the CBIC DIN Portal, which includes key details like the Document Identification Number (DIN), officer's name, premises to be searched, and validity period of the authorization. Searches must be limited to confiscable goods or concealed documents, books, or items. If access to the premises is denied, officers may invoke Section 67(4), allowing them to break open locked receptacles, but this power should only be used as a last resort.

However, courts have stressed the importance of exercising this power judiciously and not using it routinely. Sealing premises for extended periods without valid justification has been questioned by the judiciary, as it can cause unnecessary disruption to business operations.

Following are the case laws in support of the above-stated points.

(i) *Singhi Buildtech Pvt. Ltd. v. Commissioner of Commercial Tax*<sup>171</sup>, The Karnataka High Court emphasized that premises should not be sealed unnecessarily during a search. The Court observed that sealing should only be done in cases where there is a legitimate need, and the action should be proportionate to the investigation.

(ii) *M/s Napin Impex Pvt. Ltd. v. Commissioner of DGST, Delhi & Ors.*<sup>172</sup>, The Delhi High Court ordered the authorities to unseal premises that had been sealed for over a month. The Court stressed that indefinite sealing is impermissible, especially when there is no valid reason for prolonging such action.

(iii) *Anopsinh Kiritsinh Sarvaiya v. State of Gujarat*<sup>173</sup>, The Gujarat High Court directed GST authorities to focus on confiscable goods or articles instead of unnecessarily keeping a warehouse sealed. The Court highlighted that sealing should not become a tool for excessive or prolonged disruption of the taxpayer's business.

### 3.2 Completion of Search Proceedings and Payments during Search:

When an inspection under Section 67(1) is extended to a search, the discovery of concealed goods or documents leads to seizure, either to initiate confiscation proceedings or to facilitate further investigation. Once the search is concluded and the officers leave the premises, the authorization in *Form GST INS-01* is considered exhausted.

During a search, GST officers must ensure that the proceedings are completed swiftly and in strict compliance with the law. Any voluntary payments made during a search must be documented properly in *Form GST DRC-03*, along with *Form GST DRC-01A* under Section 74(5) of the CGST Act. If payments are made involuntarily without proper documentation, taxpayers have the right to contest them and

<sup>171</sup> 2019 (22) GSTL.10 (KAR)

<sup>172</sup> W.P.(C) 10287/2018

<sup>173</sup> R/Special Application No. 2705/2020

may seek refunds through Form GST RFD-01 under "other payments" on the GST Portal. This ensures that payments are transparently recorded, allowing for judicial scrutiny if necessary.

Importantly, GST officials cannot force an assessee to deposit tax at the time of search and seizure proceedings. Even requesting a post-dated cheque for tax payment during a raid is prohibited, as it violates Article 265 of the Constitution of India, which ensures that no tax can be collected without the authority of law. The judiciary has reinforced this stance, particularly in cases like *M/s Remark Flour Mills Private Limited v. State of Gujarat*<sup>174</sup>, where the Gujarat High Court condemned the practice of collecting post-dated cheques during inspection/search and seizure proceedings. The Court held that this practice is not permissible as a means of revenue collection. This view was reiterated in previous rulings, such as in *Atul Motors v. State of Gujarat*<sup>175</sup> and *Automark Industries (Pvt) Ltd v. State of Gujarat*<sup>176</sup>, where it was again ruled that post-dated cheques cannot be demanded during such proceedings.

The judicial system ensures that the powers granted to GST officers for search and seizure are used appropriately. Any abuse or overreach of these powers, particularly when it comes to forced payments, can be challenged. Through judicial scrutiny, the actions of tax authorities are held to strict standards, ensuring that taxpayers' rights are protected and that all search and seizure operations are conducted lawfully<sup>177</sup>.

#### 4. Confiscation and Seizure of Goods

Under Section 130 of the CGST Act, goods, conveyances, and items involved in tax evasion may be subject to confiscation. The section outlines several scenarios where confiscation applies, including when goods are supplied or

received in violation of the GST provisions with the intent to evade tax when goods liable for tax are not accounted for in the books, when goods are supplied without proper registration, or when a conveyance is used for transporting goods in contravention of the Act unless the owner proves that it was done without their knowledge. The Gujarat High Court in *Baboo Ram Hari Chand v. Union of India (2014)*<sup>178</sup> emphasized that confiscation powers should be exercised only when there is a reasonable belief that goods are liable for confiscation. The court further ruled that a composite order, such as a *Panchnama-cum-seizure* order, is impermissible in law<sup>179</sup>.

During search proceedings under the GST Act, various items may be seized, including goods, documents, books, and other items. Goods that are unaccounted for or suspected of being involved in tax evasion are liable for seizure. Similarly, any books of accounts, records, or electronically stored data that could aid in an investigation or inquiry can also be seized. This includes electronic devices like computers or hard drives used for maintaining accounting records. To carry out a lawful search and seizure, officers must be authorized through a search warrant, typically issued in *Form GST INS-01*. The search must be conducted in the presence of at least two independent witnesses, and the person in charge of the premises must be informed of the reasons for the search and the seizure.

The officer searching is required to prepare an inventory of all seized goods, documents, and items. This inventory must be shared with the person from whom the items are seized. The Order of Seizure in *Form GST INS-02* includes key details such as the purpose of the proceedings, the date and location of the search, the names of persons present, the details of the discovery, and the efforts made to extricate the goods or documents. If confiscation is not possible, a prohibition order may be issued, preventing the

<sup>174</sup> R/Special Civil Application No. 4835/2018

<sup>175</sup> R/Special Civil Application No. 959/2015

<sup>176</sup> 2014 SCC Online Gujarat 14217

<sup>177</sup> CMA Virendra Chaturvedi, "Inspection Search and Seizure Under GST Law", Tax Bulletin, July, 2023 Volume – 139, [https://icmai.in/TaxationPortal/upload/IDT/Article\\_GST/322.pdf](https://icmai.in/TaxationPortal/upload/IDT/Article_GST/322.pdf)

<sup>178</sup> Gujarat HC, 2014 (9) TMI 144

<sup>179</sup> Sanjiv Agarwal, "Search and Seizure under GST Law (Part-4)", Sept. 29, 2022, <https://www.taxmanagementindia.com>

removal or disposal of the goods without prior permission.

Seizure of cash is another aspect of GST law, though judicial interpretation varies. In *Kanishka Matta v. Union of India*<sup>180</sup>, the court upheld the seizure of cash, while in *Arvind Goyal (CA) v. Union of India*<sup>181</sup>, it directed that seized cash be returned with interest. This indicates that while cash can be seized, its treatment is subject to judicial scrutiny, with courts focusing on whether the seizure is justified under the law<sup>182</sup>.

**4.1 Retention and Release of Seized Documents, Books, or Goods:** Once goods, documents, or books are seized under the GST Act, they must be returned if not used in the Show Cause Notice (SCN) within 30 days. Goods not part of the SCN must be returned within this period. If retention is needed for further investigation, the officer must justify the extension. The Gujarat High Court in the case of *Universal Dyechem Pvt. Ltd. v. Union of India*<sup>183</sup> emphasized the prompt return of seized items not relied upon in the SCN to protect taxpayer rights.

Goods may be provisionally released if the owner provides a bond and a bank guarantee equivalent to the value of the goods, tax, penalties, and interest. If the goods are not produced as required, the bank guarantee can be encashed.

Notified goods, such as those prone to evasion, are released after the payment of the lower of their market price or the tax, penalties, and interest due. If the payment is not made, the goods are disposed of, with proceeds applied to offset liabilities. Final release is done by the department, without a request from the owner.

The seizure must be followed by a Show Cause Notice within six months, extendable by another six months with valid cause. If no notice is issued within this period, the goods must be

returned. If goods are perishable or disposed of, compensation or monetary value is provided<sup>184</sup>.

## 5. Conclusion

The powers granted to GST authorities for conducting searches, seizures, and confiscations are vital for enforcing tax compliance. However, these powers must be exercised cautiously to ensure that taxpayers' rights are not unjustly impacted. Seizures should adhere to legal procedures, with seized goods and documents returned promptly if they are not required for further investigation. The system of provisional and final release of goods safeguards taxpayers' interests while securing government revenue.

Judicial scrutiny helps ensure that searches are based on substantial evidence, protecting both taxpayers from unlawful actions and the authorities from potential misuse of power. Courts have highlighted that the seizure of goods or documents must be based on reasonable belief and documented evidence. The return of seized items must be done within prescribed timelines, with extensions granted only when justified. Thus, Judicial oversight ensures that these powers are used lawfully, protecting both taxpayers and the integrity of the system.

## Recommendations for Strengthening Search and Seizure Procedures under GST:

Based on the above discussion the research suggests some important points to be adopted to strengthen the goods and services tax regime and save the taxpayer's rights in the country. These are:

**(i) Enhancing Documentation and Transparency:** While the "reason to believe" standard requires tangible evidence, authorities should place greater emphasis on documenting these reasons before initiating search or seizure actions. Maintaining a detailed record of justifications will improve accountability and prevent arbitrary

<sup>180</sup> Madhya Pradesh HC, W.P. No. 8204/2020

<sup>181</sup> Delhi HC, W.P.(C) 12499/2021

<sup>182</sup> Somesh Shukla, "Inspection, Search, Seizure and Arrest," Chapter XIV, Lucknow University.

<sup>183</sup> 2021 (46) G.S.TL.119 (Guj)

<sup>184</sup> Sikander Sachdeva, "Seizure During Search Proceedings under GST", 26 Sept, 2024, <https://taxguru.in>

enforcement. These records should be subject to judicial review when challenged.

**(ii) Establishing Clearer Guidelines:** To minimize disputes and ensure consistency, GST authorities should provide comprehensive guidelines for officers on the search and seizure process. This should include measures to prevent unnecessary seizures and encourage a preliminary on-site examination of documents to avoid excessive confiscation.

**(iii) Training and Capacity Building:** Regular training programs should be conducted for tax officers, focusing on procedural safeguards, ethical conduct during searches, and the importance of proper documentation. Strengthening officers' understanding of taxpayer rights will help prevent misuse of power and reduce instances of harassment.

**(iv) Strengthening Accountability in Confiscation:** Stricter measures should ensure that goods are confiscated only when necessary, with clear justifications and documented evidence. Transparent and accessible compensation mechanisms must be established for wrongful confiscation. Additionally, authorities must adhere to legal timelines, ensuring the return or disposal of seized goods within six months unless valid extensions are granted.

**(v) Enhancing Public Awareness:** Educating taxpayers on their rights during search and seizure operations is crucial. Public awareness campaigns will empower businesses to navigate the process effectively, reducing undue disruptions and ensuring procedural fairness.

By implementing these measures, the GST framework can strike a more effective balance between tax enforcement and the protection of taxpayer rights, fostering greater transparency, fairness, and compliance.

## MEDIATION AND ARBITRATION IN CHILD CUSTODY DISPUTES

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### Mediation

#### History of Mediation

Historical perspective: In a global sense, mediation dates back to ancient Greece and Roman civilisation, when village elders mediated local disputes. China, Japan, and other Asian countries have also employed mediation to resolve conflicts. Mediation has grown in popularity in the United States and Europe over the last few decades, thanks to judicial system improvements. Since ancient times, India has had 'Panchayat systems' in which respected and trustworthy elders from villages resolved community problems. Business groups had 'Mahajans' who assisted in mediating and resolving business conflicts. The same tribes used 'Panch' or 'wise person' to settle conflicts. Such systems continue to be implemented in several parts of India. Mediation resembles these techniques.

Global Scenario: Democracy and human rights, free economies, globalisation, reduced cross-national borders, and technological advancements have prompted countries to reform new substantive laws such as civil rights, commercial legislation, trade agreements, cultural differences, refugees, resource issues, border disputes, and so on. This global integration necessitates the development of complicated regulatory frameworks to handle conflicts while taking into account legal system disparities. This can be accomplished successfully via a variety of alternative procedures such as arbitration and mediation. Mediation is increasingly becoming acknowledged as a peaceful approach to resolving disagreements in a win-win situation.

The conservative Indian worldview has changed in recent years as a result of less harsh legislative reforms. The Arbitration and Conciliation Act of 1996 was the first act to bring mediation into India's judicial system. Section 89 of the Code of Civil Procedure, 1908, was introduced to explore various techniques of dispute resolution. This part initially established the concept of 'Judicial Mediation'. In 2011, the Supreme Court of India ordered that mediation processes were confidential, and that the

mediator should only give the Court with an executed settlement agreement or a statement indicating mediation efforts were unsuccessful. In its 129th report, the Law Commission of India suggested making it mandatory for courts to submit conflicts to mediation for settlement.

This was addressed in the landmark case of *Afcons Infra Ltd. v. M/s Cherian Varkey Construction (2010)*.<sup>185</sup> In this case, the Supreme Court of India ruled that all instances involving trade commerce and contracts, consumer disputes, and even tortious liability could typically be mediated. Another major decision was *B.S. Krishnamurthy vs. B.S. Nagaraj*,<sup>186</sup> in which the Supreme Court urged family courts to use mediation to resolve matrimonial conflicts. The Supreme Court of India has always supported mediation. During proceedings in key instances such as the demolition of the Babri Masjid, the Chief Justice of India stepped in to facilitate mediation between parties."

The Supreme Court has assigned mediators to engage with Shaheen Bagh protesters and convince them to migrate to a different location. Recording the failure of the Delhi High

<sup>185</sup> *Afcons Infrastructure Ltd. and Ors. Vs Cherian Varkey Construction Co. (P) Ltd. and Ors (2010)8SCC24*

<sup>186</sup> *B.S. Krishna Murthy and Ors. Vs B.S. Nagaraj and Ors. AIR2011SC794*

Court and the Supreme Court to settle a matrimonial dispute, a bitter fight for child custody, on a more general note, the SC Bench said "All endeavours must be made to resolve matrimonial disputes in the first instance through the process of mediation, which is one of the most effective modes of alternative mechanisms. The Mediation on Conciliation Project Committee of the Supreme Court of India has developed the 'Mediation Training Manual of India', which contains 14 chapters that teach us about mediation. Chapter VI discusses mediation ethics, whereas Chapter VII discusses the role of mediators and so forth. The Supreme Court has formed a team to develop draft legislation to lend legal legitimacy to conflicts resolved through mediation, which will subsequently be given to the Government as a recommendation from the Supreme Court. The Panel, headed by mediator Niranjana Bhatt, has roped in international specialists Hiro Aragaki and Joel Lee.

Mediation in Modern Family Law: Mediation in family law, notably in child custody matters, became popular in the late twentieth century. As legal practitioners and courts became more conscious of the emotional and financial strains caused by combative litigation, they explored alternate dispute resolution alternatives. The adversarial nature of traditional court proceedings frequently worsened disagreements between separating or divorced parents, resulting in protracted battles that harmed children. Mediation originated as a strategy to promote cooperation and reduce antagonism. During the 1960s and 1970s, family law professionals, psychologists, and social workers promoted mediation as a way to safeguard the emotional well-being of children involved in custody battles. Early mediation procedures were generally informal, with volunteer involvement and guided negotiations assisted by neutral mediators. As its success became clear, formal mediation programs were developed, including ideas from the legal, psychiatric, and social work disciplines. In the 1980s and 1990s, many jurisdictions began to

incorporate formal mediation programs within their family court systems. Laws were enacted to encourage or require mediation in custody and visitation disputes before proceeding to litigation. Courts recognised that mediation not only lessened the strain on the legal system, but also resulted in more sustainable custody agreements, since parents who reached their own agreements were more inclined to follow through on them.<sup>187</sup>

The Evolution of Mediation Practices: As mediation in child custody cases gained popularity, its approaches developed to improve efficiency and efficacy. Training and certification programs were designed to guarantee that mediators were equipped to deal with complex family dynamics. Mediators were frequently needed to have degrees in law, psychology, or social work, allowing them to handle both the legal and emotional components of custody disputes. In addition to traditional in-person mediation, online mediation services have evolved, giving parents more access and convenience. Virtual mediation sessions have been possible thanks to technological advancements, which have reduced logistical constraints and expanded mediation services to faraway families. Furthermore, courts have increasingly recognised the value of child-inclusive mediation, which incorporates children's views and preferences into custody arrangements. This method guarantees that decisions coincide with the best interests of the child, supporting mediation's core goal—to establish a cooperative, child-focused resolution that minimises conflict and promotes long-term stability.<sup>188</sup>

<sup>187</sup> Cleak H, Schofield M and Bickerdike A, "Efficacy of Family Mediation and the Role of Family Violence: Study Protocol" (2014) 14 BMC Public Health <<https://pmc.ncbi.nlm.nih.gov/articles/PMC3899401/>>

<sup>188</sup> Mappingadr, "Mediation in Family Law Disputes in India | MappingADR" (*MappingADR*, April 17, 2024) <<https://jgu.edu.in/mappingADR/mediation-in-family-law-disputes-in-india/>>

## The Mediation Procedure in Child Custody Disputes

Child custody fights can be emotionally intense and complicated. Mediation provides a systematic yet flexible approach to assisting parents in navigating these problems while prioritising their child's best interests. Mediation promotes cooperation and reduces conflict, resulting in a healthy co-parenting relationship. The mediation method for child custody issues is described in detail below,<sup>189</sup>

1. The mediation process starts with an initial session, in which the mediator lays the groundwork for effective negotiations. This stage consists of numerous important components:

- The mediator discusses the objectives, procedures, and benefits of mediation, ensuring both parents understand what to expect.
- Establishing Ground Rules: Guidelines for polite communication and behaviour promote a positive atmosphere.
- Confidentiality Agreements: Both parents may sign agreements to keep communications secret and prevent them from being used as evidence in court.
- The mediator defines their role as a neutral facilitator, guiding parents to reach mutual agreements rather than making decisions.
- Addressing Concerns: Any urgent concerns or enquiries from either parent are addressed before moving on to the next step.<sup>190</sup>

2. Information Gathering: The mediator obtains important information from both parents in order to understand the family dynamics and the child's needs. This step often includes:

- Parental Backgrounds: Each parent shares information on their relationship with the child, parenting approaches, and abilities to create a stable environment,
- Living Conditions: Parents address their living arrangement, home setting, and proximity to their child's school and support network.
- Financial Stability: Although child support is often calculated independently, a parent's financial stability may be taken into account when negotiating custody arrangements.
- Custody planning takes into account the child's age, health, education, extracurricular activities, and emotional well-being to ensure optimal growth.
- Review previous agreements or court orders to inform the discussion.<sup>191</sup>

3. Discussion and Negotiation: After the mediator has obtained the relevant information, the parents hold discussions to determine custody arrangements. The mediator keeps the discourse constructive and focused on the child's best interests. This period includes:

- Encourage open communication between both parents about custody and visitation concerns and expectations.
- Mediator assists parents in identifying common ground to build on throughout negotiations.
- Mediator facilitates dispute resolution by balancing the needs of both parents and child.
- Discussing custody options, including joint, sole, and shared parenting, to find the best fit.
- Parenting Time and Schedules: Discuss visitation patterns, holiday plans, and transition plans to establish a consistent routine for the child.

<sup>189</sup> "How Can Mediation Be Used to Resolve Child Custody Disputes?" (*How Can Mediation Be Used to Resolve Child Custody Disputes?*) <<https://www.mkfmlaw.com/blog/how-can-mediation-be-used-to-resolve-child-custody-disputes/>>

<sup>190</sup> Le S and Le S, "Child Custody Mediation: How to Win" (*Family Lawyers*, June 22, 2024) <<https://familylawyers.vn/building-a-strong-case-gathering-evidence-for-child-custody-mediation/>>

<sup>191</sup> "Child Custody Mediation" (*Justia*, February 28, 2025) <<https://www.justia.com/family/child-custody-and-support/child-custody/child-custody-mediation/>>

- Conflict Resolution Strategies: Parents are given techniques to resolve issues amicably, reducing the need for court intervention.

4. Drafting an Agreement: Once parents reach an agreement, the mediator helps them prepare a Memorandum of Understanding (MOU) or a Parenting Plan, which includes:

- Custody Terms: Determines if legal and physical custody will be shared or awarded to one parent. Provides clear guidelines for parenting time, including weekday and weekend visits, holidays, vacations, and special occasions.
- Parental Responsibilities: Explains each parent's role in decision-making for schooling, healthcare, religious upbringing, and extracurricular activities.
- Communication Guidelines: Specify how parents should communicate about their child's needs and scheduling changes.
- Dispute Resolution Mechanisms: This includes mechanisms for addressing future issues, such as attending additional mediation sessions before seeking court involvement.<sup>192</sup>

5. Legal Review & Finalisation: Before the agreement becomes legally binding, parents should carefully review the contract. This phase contains:

- Independent Legal Review: Parents can consult with their attorneys to safeguard their rights and interests.
- Revisions and adjustments can be made depending on legal advice or additional conversations.
- Court Submission and Approval: After finalisation, the agreement is reviewed by a judge to verify it is in the best interests of the child. Once accepted, the

agreement becomes legally binding custody arrangement.<sup>193</sup>

### The Role and Standards of the Mediator

“We are all mediators, translators” - *Jacque Derrida*

A mediator serves as a neutral facilitator in child custody cases, helping parents develop arrangements that prioritize their children's needs through:

- Open Communication: Open communication is essential for successful mediation. Ground rules provide for organized discussion, and conversation becomes productive and respectful. Mediators defuse hot words to reveal underlying interests, reducing conflict intensification. Active listening skills are used to reduce emotional charge and enhance understanding among parents. Mediators empower parents with the tools to communicate constructively beyond mediation by exemplifying effective communication skills.
- Maintaining neutrality: Neutrality of the mediator is the core in building trust and ensuring a balanced process. Mediators use neutral language in recognizing underlying conflicts without bias. Process fairness is more than individual outcomes and encourages an impartial attitude. Equal participation is facilitated, where both parents are provided voice in the conversation. To promote creation of balance, mediators do not lean towards either parent, thereby maintaining child-centered decision-making and not personal preference.
- Educating Parents: Mediators serve an educational function in explaining legal language and describing custody arrangements. They offer perspectives

<sup>192</sup> “Mediation of Child Custody Disputes | Office of Justice Programs” <<https://www.ojp.gov/njcrs/virtual-library/abstracts/mediation-child-custody-disputes>>

<sup>193</sup> VIA Mediation Centre, “Child Custody Disputes: The Role and Impact of Mediation | VIA Mediation Centre” <<https://viamediationcentre.org/readnews/MTU4Mw==/Child-Custody-Disputes-The-Role-and-Impact-of-Mediation>>

on child growth research and how they relate to adjustment after breakup. Court process and most critical parenting plan aspects are provided so that you can make an informed decision. Mediators also address how child support works and provide examples of effective co-parenting, giving parents productive co-working abilities.

- **Promoting Children’s Best Interests:** Throughout, the emphasis is upon child-centered practice, and evidence-based research supports relationship decision-making. The mediators enable parents to identify their own and their children’s needs and assist them in the appropriate level of participation for age and individual requirement. Relationship continuity is established, and transitional planning is enabled to reduce dislocation to the child’s life.
- **Qualifications and Training:** Mediators are recruited from diverse backgrounds, such as lawyers, mental health professionals, committed mediators, and court staff. Training typically consists of 40–60 hours of formal certification in child-focused practices, family relationships, domestic violence screening, and cultural sensitivity. Mediators maintain practice standards to national and state certification standards, professional association membership, regular supervision, and regular professional development.
- **Ethical concern:** Open policies of confidentiality, safe record-keeping, informed consent, and compliance with mandatory reporting legislation are all required for ethical practice in mediation. Individual screening, procedural safeguarding, caucus sessions, and equal access to information all serve to balance power. Safety screens employ evidence-based methods of identifying coercive control and make alternative processes as

necessary. Understanding their limitations, mediators understand cases such as substance abuse, mental illness, serious power differences, or threat to safety which might need to be resolved by the court.<sup>194</sup>

- **Structured Approach:** Mediators employ a structured method, with a full intake interview and explicit agenda to start. An incremental approach moves discussions from simple to more complex topics, with a focus on gradual building. Records are updated incrementally, with deadlines and action steps assigned. Meeting summaries and written agreements foster clarity and accountability.
- **Advanced Facilitation:** High-level facilitation strategies, such as reality testing and interest-based bargaining, aid parents in making well-informed choices. Future-oriented framing and perspective-taking tasks encourage collaborative problem solving. Mediation employs brainstorming, decision matrices, and shuttle diplomacy to determine viable options and efficiently resolve conflict.
- **Child-inclusive Practices:** Child-inclusive mediation involves age-appropriate consultation and structured feedback so that children’s voices are heard without causing unnecessary stress to them. Child-centered protocols avoid triangulation, which safeguards the emotional well-being of the child. Mediators use special techniques to blend children’s opinions while maintaining parental authority over the final decision.
- **Document Development:** Mediators assist in the development of balanced parenting plans that incorporate visual schedules, communication systems, and organized models of decision making.

<sup>194</sup> Malta Mediation Centre, “Roles and Duties of Mediator - Malta Mediation Centre” (*Malta Mediation Centre*, June 25, 2024) <<https://mediation.mt/en/roles-and-duties-of-mediator/>>

Plans are created regarding particular topics such as vacations, holidays, and significant transitions to prevent future conflict.

- **Cultural Competence:** In light of variation in family rituals, mediators translate religious feelings and provide language interpretation as needed. They enforce compliance with legal requirements while upholding traditional values to retain the child's best interests.
- **Technology and Distance:** Mediators offer virtual communication and online visitation, and co-parents can be reached from anywhere. Social media boundaries are addressed, and co-parenting apps are recommended to ensure communication. Home technology use standards are kept uniform and avoid disagreement.<sup>195</sup>
- **Complex Family Arrangements:** Blended families, stepparents, extended family members, and same-sex parenting arrangements call for specialized solutions. Mediators protect sibling relationships and navigate complex family dynamics to develop inclusive parenting plans that are in the child's best interests.
- **Special Needs Considerations:** Children with medical, behavioral, or emotional conditions require continuous support from multiple homes. Mediators provide medical decision-making, educational advocacy, and flexible parenting plans to ensure care stability and continuity.
- **Success Indicators:** Satisfaction of parents, reduced court appearance, and improved co-parenting ability are all indicators of the success of mediation. Successful enforcement of orders and good indicators of child's well-being establish the success of mediation. Reduced conflict and better parental

communication are both the indicators of success.

- **Ongoing Support:** Mediators provide referrals to educational programs, therapy resources, and community support services. Follow-up sessions and revision processes help parents adjust to changing circumstances. Coordination with peer support groups strengthens long-term co-parenting success.
- **Legal Integration:** Mediators collaborate with legal representatives to ensure agreements align with legal requirements. They clarify distinctions between mediation memoranda and enforceable court orders. A structured process for converting agreements into legal documents ensures compliance and long-term stability.

By adhering to these principles, mediators create structured, supportive environments where parents can work collaboratively to develop custody arrangements that prioritize the child's best interests while managing interpersonal challenges.<sup>196</sup>

### **Case Studies Demonstrating Mediation Success in resolving Child Custody matters**

#### **K. Srinivas Rao vs. D.A. Deepa<sup>197</sup>**

The case pertains to a divorce petition brought by the husband before the Supreme Court on grounds of mental cruelty inflicted by his wife. The dispute started with a clash between the elders of the family, after which the wife's family expelled her from the marriage house. She then made a petition for restitution of conjugal rights, in the hopes of coercing her husband to take her back. The husband asked for divorce as a response. A string of serious charges ensued, adding to the controversy. The wife sued for dowry on her husband, accused her mother-in-law of forcing her into bed with her father-in-law, and that her brother threatened her

<sup>195</sup> VIA Mediation Centre, "Roles and Duties of a Mediator | VIA Mediation Centre" <<https://viamediationcentre.org/readnews/MjM1/Roles-and-Duties-of-a-Mediator>>

<sup>196</sup> Offices BM& SL PC, "What Are the Benefits of Mediating Child Custody Disputes?" (*Mack & Santana Law Offices, P.C.*, June 5, 2023) <<https://www.macksantanalaw.com/blog/2023/june/what-are-the-benefits-of-mediating-child-custody/>>

<sup>197</sup> K. Srinivas Rao vs D.A. Deepa AIR2013SC2176

mother-in-law. Meanwhile, the husband is alleged to have beaten up his mother-in-law. The Family Court ruled that the wife's conduct was cruel and rejected her petition. The High Court, however, ruled that since the couple did not cohabit, their actions did not amount to cruelty. The High Court also sentenced the spouse to six months in jail on charges of dowry. Not happy with the ruling, the spouse appealed to the Supreme Court. The Supreme Court held that the wife's utterances against the mother-in-law were extremely insulting and gave rise to severe mental anguish for the husband. The Court acknowledged that, even though the wife desired reconciliation, her behavior induced deep anguish to the husband and his relatives and that was tantamount to mental cruelty. While cruelty alone is not grounds for divorce, the ten-year separation and intense enmity between the parties resulted in an irretrievable dissolution of the marriage, necessitating a divorce decision. The Court pointed out that the problem might have been avoided if the woman had been properly advised and informed that her behavior would not serve to salvage her marriage. It did note, however, that both parties had contributed to the conflict. The Court indicated that 10-15% of matrimonial cases referred for mediation resolve, and that if the parties had gone earlier to mediation, the problem would not have escalated. Referencing Section 9 of the Family Courts Act, the Supreme Court suggested making mediation compulsory in cases where a settlement is possible. Although dowry charges cannot be compounded, mediation can be used to assist parties in arriving at a compromise. The Court also requested lower courts to establish pre-mediation assistance centers to improve the mediation process, reduce litigation, and encourage peaceful resolution of conflict in divorce cases.

### **Perry Kansagra vs. Smriti Madan Kansagra**<sup>198</sup>

The case is a custody battle between Perry Kansagra, who is both British and Kenyan, and

Smriti Madan Kansagra, who is Indian. The two married in 2007 in New Delhi and subsequently went to Nairobi, Kenya. Their son Aditya Vikram Kansagra was born in New Delhi in 2009 and receives Kenyan and British passports. Smriti returned to Nairobi with Aditya after giving birth, but there were disputes, and she made a legal complaint in India in 2012, seeking an injunction to stop Perry from taking Aditya away. Perry responded by making a petition for guardianship, requesting legal custody. During the proceedings, visitation rights were allowed to Perry so that he could visit Aditya under supervision. The Family Court and High Court amended these arrangements later. Mediation was attempted but failed. Aditya formed close bonds with both parents and relatives from both sides based on a report of a court-appointed child counselor and mediator. Smriti objected to the reports being presented before the court on mediation confidentiality grounds. The High Court initially adjudicated that the reports of the counselor and mediator could be admitted since cases of child custody are subject to the principle of "*parens patriae*" under which the best interests of the child prevail over confidentiality in mediation. However, a review led by the High Court overruled the decision by ruling that reports of mediation are confidential and inadmissible before courts. Perry took his case to the Supreme Court, and it ruled in his favor. The Supreme Court held that although mediation confidentiality is essential, there is an exception in child custody cases. It reaffirmed that the courts must give paramount to the welfare of the child and take account of counselor reports reviewing the environment of the child and family relationships. The Supreme Court upheld the original High Court ruling allowing the use of counselor reports and reversed the High Court review ruling. The Court also declared that, although mediation is an in-camera process, observations regarding the well-being of the child is another intention and could not be excluded on technical grounds. It reiterated the principle that the best interests of

<sup>198</sup> *Perry Kansagra Vs Smriti Madan Kansagra* [2019]3SCR991

the child continue to be the only concern in custody battles.

### **B.S. Krishna Murthy and Ors. Vs. B.S. Nagaraj and Ors.**<sup>199</sup>

The dispute between two brothers, B.S. Krishna Murthy and B.S. Nagaraj, that is before the Supreme Court of India is at stake. Rather than hear the case first and then order settlement, the Court emphasized settling the disputes such as this by means of mediation. The court refers to Mahatma Gandhi's autobiography, *My Experiments with Truth*, to draw an example where Gandhi settled a commercial dispute successfully. The Court referred to the opinions of Gandhi regarding the adverse effects of lengthy litigation, which has a tendency to result in financial destruction and strained relationships. Gandhi's experience had revealed that arbitration and mediation could enable both sides to reach amicable settlements without damage to relationships and finances. As per the philosophy of Gandhi, what the Supreme Court subscribed to and emphasized was that attorneys should convince clients to opt for mediation, especially in family and business relationships. The Court explained that cases hang around for decades or years and continue to drain the two parties financially and emotionally. Section 89 of the Code of Civil Procedure (CPC) was cited, which requires courts to consider alternative dispute resolution processes, such as mediation, before proceeding with litigation. As per this procedure, the Supreme Court referred the case to the Bangalore Mediation Centre and requested both parties to make a report on February 21, 2011. The case was initiated only after the report was submitted by the mediation centre. The verdict is categorically in favor of family and commercial conflicts being mediated, with a reaffirmation that litigation is to be the last course of action. It also underscores the importance of lawyers leading their clients to amicable settlement of differences rather than endless court cases.

## **Arbitration**

### **Legal Enforceability of Arbitral Awards**

Arbitrability of Matrimonial Disputes: Arbitration of matrimonial disputes has several benefits over court litigation, such as privacy and confidentiality, the choice of an arbitrator with knowledge or experience in a particular branch of family law, continuity of arbitrators, flexibility of procedure, quick determination and avoidance of court delays, hearings at a convenient time and place, and reduction of court burden. The only debatable negative could be the arbitrator's added fee. However, in India, the stance on the arbitrability of matrimonial conflicts such as divorce, restitution of conjugal rights, judicial separation, and child custody is far from decided. In circumstances where the inarbitrability of certain conflicts has been directly challenged, the High Courts have held them to be arbitrable. In *Rup Narain*, the civil court's authority to refer a complaint for recovery of marital rights to arbitration was challenged. The High Court of Oudh concluded that "even if it be deemed that to some extent the discretionary powers of the civil Court to grant or refuse to grant a decree for restitution of conjugal rights have been taken away from it when such a suit is referred to arbitration, we feel that we are not competent to hold that such suits for restitution of conjugal rights, in the absence of any provision to that effect, do not come within the ambit of para, 1, Schedule 2, Civil P.C." In *Nalla Ramudamma*,<sup>200</sup> the question arose whether the Court has competence under §21 of the Indian Arbitration Act, 1940, to refer a marriage dispute for arbitrators' ruling. It was maintained that the Court lacks such authority and that, for public policy considerations, all such issues must be resolved by the Court. The Madras High Court held that arbitrators can make awards in marriage cases based on the wide scope of §21. However, in a separate group of instances where arbitrability of matrimonial conflicts was not a point of decision, the High Courts and the

<sup>199</sup> *B.S. Krishna Murthy and Ors. vs B.S. Nagaraj and Ors.* AIR2011SC794

<sup>200</sup> *Nalla Ramudamma vs Nalla Kasi Naidu* AIR 1945 Mad 269

Supreme Court expressed observations on the inarbitrability of such disputes as part of obiter dictum. In *V.V. Pushpakaran*,<sup>201</sup> the Kerala High Court ruled that "a judgement, order, or decree in exercise of the matrimonial jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character not as against any specified person but absolutely, could be rendered only by a competent court having jurisdiction, and it is a decision in rem and not in personem alone." That is a matter that cannot be submitted to arbitration and decided by the arbitrators." Also, in *Booz Allen*,<sup>202</sup> the Supreme Court cited marriage conflicts involving divorce, judicial separation, restitution of conjugal rights, and child custody as well-known examples of inarbitrable situations requiring an action in rem. In *Prem Aggarwal*, the Delhi High Court cited matrimonial disputes as an example of matters that are non-referable to arbitration because the law has conferred jurisdiction to determine those matters exclusively to special tribunals, barring any other Court, Tribunal, or authority from exercising power over those matters. Thus, we can see that the courts have taken opposing views on the arbitrability of marriage issues. As previously stated, exclusive jurisdiction of family courts over these conflicts is insufficient to justify inarbitrability. Also, while it is agreed that a judgement relating to divorce, restitution of conjugal rights, or judicial separation is a judgement in rem because it determines the status of the parties, it is unclear why such things cannot be handled by an arbitrator. These are problems solely between husband and wife, and a decision on them has no bearing on the interests of any third party, even if it is binding on the entire world. Thus, if the husband and wife agree to bring a disagreement involving divorce, restitution of conjugal rights, or judicial separation to arbitration, the arbitrator can decide it as effectively as a family court. According to § 36

of the Act, arbitral awards are enforced similarly to court decrees. Unlike divorce, restitution of marital rights, and legal separation, child custody conflicts encompass the interests of both the parties (the parents) and the kid. A child is not a party to the arbitration agreement and therefore cannot be bound by the arbitrator's ruling. His interests are unrepresented in the arbitration process. Consequently, no matter what the arbitrator's decision, the child may approach the court for relief, proving that arbitration is not effective in settling disputes over child custody. In the United States, there are varying opinions regarding the arbitrability of child custody. A few courts have declined to enforce arbitration agreements with respect to such disputes; a few have indicated that the award of the arbitrator with regard to such disputes is to be reviewed de novo by the court to the extent that it would not violate the best interests of the child; and a few have even permitted binding arbitration of such disputes. In India, if courts allow child custody issues to be arbitrated subject to judicial review, only §34(2)(b)(ii) of the Act can be used to evaluate whether the award interferes with the child's best interests. However, this provision allows for a narrow review and hence may not be appropriate because it allows the court to set aside the award only if, first, such an application is made, and second, it contradicts with India's public policy. Furthermore, it does not allow for the alteration of the prize. Hence, even if the award is deemed to be contrary to the child's best interests, and hence contrary to Indian public policy, the Court can merely set it aside. If the award is set aside, the arbitration is rendered useless. As a result, until the legislature specifically alters the Act to provide for substantive court review of the award in child custody issues, these conflicts will remain inarbitrable.

The scope of arbitrability must be determined by the contractual constraints on arbitration. The fact that a disagreement results in a judgement in rem or includes rights *in rem* has

<sup>201</sup> *V.V. Pushpakaran vs P.K. Sarojini AIR1992Ker9*

<sup>202</sup> *Booz Allen and Hamilton Inc. vs SBI Home Finance Ltd. and Ors AIR2011SC2507*

minimal bearing on the concept of arbitrability. Unless expressly prohibited by the Legislature, a dispute is inarbitrable only if it involves the interests of both the parties and non-parties or the general public. This is not because arbitrators as decision makers are incapable of deciding these matters; rather, arbitration, as a consensual dispute resolution system, is intrinsically incapable of effecting the interests of individuals who have not granted consent for certain disputes to be brought to arbitration. Therefore, matrimonial disputes relating to divorce, restitution of conjugal rights, and judicial separation are arbitrable as they involve only the interests of the parties, whereas those relating to child custody are not arbitrable because they involve the interests of the child who is not a party to the arbitration agreement.<sup>203</sup>

#### Advantages and Disadvantages

- Effective and Versatile: Quicker resolution, simpler scheduling

The case will typically be resolved much more rapidly. A trial date in court may take years to obtain, while an arbitration date can typically be had within a matter of months. Additionally, trials need to be calendared on court calendars, which are often stacked up with hundreds, if not thousands, of cases in front of them. Arbitration hearings, by contrast, are readily scheduled according to the parties' and arbitrator's calendars.

- Less Complex: Streamlined rules of evidence and procedure

Litigation automatically creates a long process of filing papers and motions and attending court proceedings like motion hearings. The basic rules of evidence applied in court do not always have to be followed in arbitration procedures, which makes it a lot easier to introduce evidence. Discovery, the time-consuming and expensive process of responding to and taking interrogatories,

depositions, and requests for production of documents, can be significantly minimized in arbitration. Instead, most issues, such as who needs to be called as a witness and what documents need to be produced, are resolved with simple telephone calls to the arbitrator.<sup>204</sup>

- Privacy

As opposed to a trial, arbitration yields a private settlement, with the material that has been raised in the conflict and settlement kept secret. This would be attractive to high-profile public figures or business issue customers because all evidence, comment, and argument would be totally confidential. Conversely, in the courtroom, even when there are some withheld records, there is always a chance that some members of the general public will get access to confidential business information.

- Impartiality: Selecting the "Judge"

The arbitrator is typically selected jointly by both parties, thus he or she must be one both parties are confident will be objective and fair. Generally less costly. Arbitration is generally less costly than litigation, although this isn't always so. Arbitration takes much quicker than court action, and this result in lower attorney costs. Additionally, arbitration preparation is less expensive than jury trial preparation.

- Finality

There are limited avenues of appeal when the case is decided by binding arbitration. This provides the arbitration with finality that is not normally present with a trial judgment, which can be subject to appeals, new trials, and further appeals.<sup>205</sup>

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## MATERNAL AND PATERNAL LEAVE LAWS: BALANCING FAMILY LIFE AND CAREER IN WORK PLACE

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### Abstract:

This assignment provides a comprehensive overview of labour law in India, emphasizing its foundational role in shaping the dynamics between employers and employees within a rapidly evolving industrial landscape. It examines the historical development of labour legislation in India, tracing its roots to colonial times and analysing how post-independence constitutional mandates have reinforced the principles of social justice, dignity of labour, and economic democracy. The paper underscores the significance of labour laws in ensuring humane working conditions, preventing exploitation, and promoting industrial harmony. Additionally, it critically assesses the impact of globalization, liberalization, and privatization on the labour market and the subsequent legislative reforms aimed at balancing economic development with workers' rights. The role of judicial activism in interpreting and expanding the scope of labour rights is also explored, highlighting landmark judgments that have contributed to the strengthening of labour jurisprudence. Ultimately, the paper argues for a more inclusive and adaptable legal framework that responds to the changing nature of work in the 21st century.

### Keywords:

Labour Law, Social Justice, Industrial Relations, Employer–Employee Relationship, Economic Democracy, Constitution of India, Workers' Rights, Labour Legislation, Globalization, Judicial Activism, Legal Reforms, Industrial Harmony, Labour Jurisprudence, Dignity of Labour.

### INTRODUCTION

#### Understanding the Importance of Parental Leave

Parental leave, whether it's maternity or paternity leave, plays a crucial role in supporting families and promoting a healthy work-life balance. Let's delve into why parental leave matters:

1. **Bonding Time:** Parental leave allows new parents to spend quality time with their child during those critical early months. This bonding period fosters emotional connections, promotes

attachment, and contributes to the child's overall well-being.

2. **Health and Recovery:** For mothers, maternity leave provides essential time for physical recovery after childbirth. It allows them to heal, regain strength, and adapt to the demands of motherhood. Adequate rest and recuperation are vital for both the mother's health and the baby's development.

3. **Breastfeeding Support:** Maternity leave facilitates breastfeeding, which is recommended by health experts for optimal infant nutrition. Mothers need time to establish

breastfeeding routines, and parental leave ensures they can do so without the stress of work commitments.

4. **Reducing Stress:** Balancing work responsibilities with parenting can be overwhelming. Parental leave eases this burden, allowing parents to focus on their family without the added stress of job-related pressures. Reduced stress benefits both parents and children.

5. **Gender Equality:** Equal parental leave opportunities promote gender equality. When fathers take paternity leave, it challenges traditional gender roles and encourages shared parenting responsibilities. This shift benefits families, workplaces, and society as a whole.

6. **Employee Retention and Loyalty:** Companies that offer robust parental leave policies attract and retain talented employees. Workers appreciate employers who prioritize their well-being and family needs. A supportive workplace fosters loyalty and commitment.

7. **Economic Impact:** Parental leave contributes to a stable economy. When parents can take time off without fear of losing their jobs, they are more likely to return to work, maintain productivity, and contribute to economic growth.

#### Historical Context: Evolution of Maternity and Paternity Leave Policies

Parental leave policies have undergone significant transformations throughout history, reflecting changing societal norms, economic priorities, and the recognition of the importance of family well-being.

#### 1. **Early Years and Industrial Revolution:**

○ In ancient civilizations, there were informal practices where new mothers received support from their families and communities during childbirth and early motherhood.

○ However, during the Industrial Revolution, longer working hours and harsh conditions prevailed. Women worked in

factories alongside men, even during pregnancy.

○ Formalized maternity leave policies were virtually non-existent, and pregnant women faced discrimination and physical strain.

#### 2. **20th Century: Slow Progress:**

○ In the early 20th century, some European countries introduced limited maternity leave, but it was often unpaid and short.

○ Post-World War II, the need for rebuilding societies led to discussions about family welfare. Countries like Sweden and France began implementing paid maternity leave.

○ The International Labour Organization (ILO) adopted the **Maternity Protection Convention** in 1952, emphasizing paid leave and job protection.

#### 3. **1970s–1990s: Advocacy and Expansion:**

○ The feminist movement played a pivotal role in pushing for improved maternity rights. Maternity leave became a central focus.

○ Many countries expanded maternity leave provisions during this period. The duration and benefits varied widely.

○ The concept of shared parental leave also emerged, recognizing the importance of involving fathers in caregiving responsibilities.

#### 4. **21st Century: Global Trends and Challenges:**

○ Most developed countries now offer some form of paid maternity leave. The duration and benefits have improved significantly.

○ Paternity leave gained prominence, challenging traditional gender roles. Countries like Sweden, Iceland, and Norway introduced paternity leave to encourage shared parenting responsibilities.

○ Legal frameworks at the international level, such as those advocated by the ILO and the United Nations, emphasize comprehensive parental leave policies.

○ Challenges persist, including balancing work and family life, advocating for gender equality, and ensuring inclusivity for all types of families.

### 5. Future Prospects:

○ The goal is to create equitable and supportive policies for all parents, regardless of gender or family structure.

○ Advocacy continues for better leave policies, recognizing that parental leave isn't just about time off work; it's an investment in the health, happiness, and future of families.

## MATERNITY LEAVE LAWS

### Maternity Benefits Act, 1961

The **Maternity Benefit Act, 1961** holds a significant place in Indian labour legislation, championing the rights and well-being of working women during pregnancy and post-childbirth. Let's delve into its historical context, objectives, and critical provisions:

#### 1. Historical Context:

○ The concept of maternity allowances emerged in the late 19th century, with Germany leading the way.

○ The **International Labour Organization (ILO)** followed suit and introduced the **Maternity Protection Convention**.

○ In India, **Maternity benefit act** was enacted in **1961**, shortly after the country gained independence.

#### 2. Objectives:

○ **Protect Employment Rights:** The act ensures job security by prohibiting termination due to maternity.

○ **Financial Support:** It provides fully paid maternity leave, promoting economic security.

○ **Maternal and Child Health:** Adequate rest during maternity contributes to better health outcomes.

○ **Encourage Breastfeeding:** The act supports breastfeeding through breaks and creche facilities.

### 3. Key Provisions:

#### ○ **Section 4:** Employment Restrictions

▪ Prohibits employing or working women for six weeks post-childbirth.

▪ Restricts demanding arduous work during pregnancy.

#### ○ **Section 5:** Payment of Maternity Benefit

▪ Eligibility: Woman with 160 days of work in 12 months.

▪ Benefit Amount: Average daily wage for the preceding and following six weeks.

#### ○ **Section 7:** Payment in Case of Death

▪ Ensures payment to the nominee or legal representative if the woman dies.

#### ○ **Section 8:** Medical Bonus

▪ Eligibility: Every entitled woman.

▪ Payment: ₹1,000 if no pre-natal confinement and post-natal care are provided.

#### ○ **Section 9:** Leave for Miscarriage

▪ Eligibility: Woman experiencing a miscarriage.

▪ Duration: Six weeks with prescribed proof.

#### ○ **Section 10:** Leave for Illness

▪ Eligibility: Woman with illness from pregnancy-related conditions.

▪ Duration: Maximum one month with prescribed proof.

#### ○ **Section 11:** Nursing Breaks

Two breaks for nursing until the child is **15 months** old.

#### Maternity Benefit Laws in India: An Examination of Miscarriage Leave

India's **Maternity Benefit Act of 2017** stands as a pioneering legislation, providing paid maternity and miscarriage leaves for up to twenty-six weeks and six weeks, respectively. Remarkably, India leads the way, surpassing several developed nations, including the USA, in this crucial area.

However, certain provisions within the Act remain ambiguous. Issues related to miscarriage, creche facilities, and remote work need urgent clarification. For instance:

- **Miscarriage Coverage:** It remains uncertain whether Section 5, which outlines pre-conditions for receiving maternity benefits, explicitly covers miscarriages.
- **Unorganized Sector and Daily Wage Workers:** The Act's applicability to these vulnerable groups requires clarity.

The honourable Supreme Court has issued judgments that shed light on some critical aspects. Nevertheless, the Act still faces challenges, necessitating further amendments. Expanding coverage and equitably sharing the financial burden between employers and the state are essential steps forward.

Originally, the Maternity Benefit bill was introduced in India by Dr. B.R. Ambedkar in the Bombay Legislative council meeting held on 28th July 1928. The same was officially enacted on 12th December 1961 as Act no. 53 of 1961. Four years ago in 2017, the act was amended by the **Maternity Benefit (Amendment) Act, 2017**<sup>206</sup>. However, the provisions concerning miscarriage cases remain unchanged.

#### Exploring the Maternity Benefit Act of 1961: A Comprehensive Review

**Section 2**<sup>207</sup> of the Act outlines the various types of establishments covered by its

provisions. Notably, it exempts establishments governed by the Employees' State Insurance Act. Additionally, **Section 3(e)**<sup>208</sup> defines an 'establishment,' which may include factories, mines, and plantations, among other entities. For precise definitions, one can refer to the **Factories Act, 1948**<sup>209</sup>, **Mines Act, 1952**<sup>210</sup>, and **Plantations Labour Act, 1951**<sup>211</sup>.

The Act applies to any establishment where **ten or more persons** have been employed on any day during the preceding **12 months**. Additionally, the State government, with approval from the Central Government, has the authority to declare the applicability of any provision of the Act to other establishments.

**Section 3(j)** defines **miscarriage** as the removal of the contents of a pregnant uterus at any time before or during the **26th week of pregnancy**. However, it excludes miscarriages caused by acts punishable under the **Penal Code, 1860**<sup>212</sup>.

In a significant amendment made in **2017**, the definition of a "**commissioning mother**" was added under clause **(b)(a)**. As a result, **twelve weeks of maternity leave** are now granted to "**commissioning**" mothers, who use surrogacy to have a child, as well as to working women who adopt a baby below the age of three months. Prior to this amendment, the principal act did not provide any maternity leave for commissioning or adopting mothers<sup>213</sup>.

**Section 4(1)** of the Act prohibits employers from requiring female employees to work during the **6-week period immediately following their miscarriage or delivery**, provided that the employer is aware of the situation. Similarly, **Sub-section 2** extends this prohibition to women working in any establishment during the same duration.

Furthermore, subsequent clauses prevent employers from assigning pregnant women

<sup>208</sup> Maternity Benefit Act, 1961, s. 3(e)

<sup>209</sup> Factories Act, 1948

<sup>210</sup> Mines Act, 1952

<sup>211</sup> Plantations Labour Act, 1951

<sup>212</sup> Indian Penal Code, 1860

<sup>213</sup> 2.2 JCLJ (2022) 443

<sup>206</sup> Maternity Benefit (Amendment) Act, 2017

<sup>207</sup> Maternity Benefit Act, 1961, s. 2

tasks that could adversely affect their health or that of the fetus, interfere with normal delivery, or potentially cause a miscarriage. This protective period, known as the “**prohibition period,**” begins one month before the expected delivery and continues for the subsequent **6 weeks.**

**Section 5** of the Act stipulates that a woman employed is entitled to receive **maternity benefit**, calculated at the rate of her **average daily wage**, from her employer during her period of absence. This period encompasses the **delivery day**, the day preceding delivery, and **6 weeks after delivery** (in the case of a miscarriage).

**Clause (2)** outlines the eligibility criteria for claiming maternity benefit. A woman must have been employed with the same employer for **at least 160 days** in the **12 months immediately preceding** her expected delivery date.

**Clause (3)**, introduced through the **2017 amendment**, extends the maximum maternity benefit period to **26 weeks** (instead of the previous 12 weeks) for women with up to two children. For women with more than two children, the limit remains at **12 weeks**. Additionally, the amendment allows a woman employee, based on the nature of her job and mutual agreement with the employer, to **work from home** after completing **26 weeks of paid maternity leave**.

**Section 9** grants a woman, upon providing prescribed proofs, **leave with wages** at the rate of maternity benefit for **six weeks immediately following a miscarriage**. **Section 10** further permits additional paid leave for up to **one month** due to illness arising from a miscarriage, over and above what is allowed under Section 9.

The **amendment act** also introduced provisions related to “**Creche**” facilities in **Section 11**. Every establishment with a minimum of **50 workers** is now legally required to have a creche. A lady employee is entitled to **four visits per day** to the creche, including her stipulated rest interval.

Apart from the **Maternity Benefit (Amendment) Act, 2017**, several other legislations also address miscarriage leave. Here are the relevant provisions:

- 1. Central Civil Services (Leave) Rules, 1972<sup>214</sup>:**
  - Female government servants are entitled to a maximum of **45-day maternity leave** during their entire employment period.
  - This policy remains consistent regardless of the number of surviving children or whether the leave is taken in the past or during delivery.
- 2. Employees’ State Insurance Act, 1948:**
  - Chapter 5, Section 46(1)(b)**<sup>215</sup> of this act mandates that employers provide periodical payments to an “**insured**” woman in the event of a miscarriage.
  - The term “**confinement**” refers to labour occurring after **twenty-six weeks of pregnancy**, resulting in the issue of a **stillborn child**.
  - The payment for confinement is applicable for **6 weeks** following the miscarriage.
- 3. All India Services (Leave) Rules, 1955<sup>216</sup>:**
  - This policy grants a maximum of **6-week maternity leave** specifically for cases of miscarriage.

#### Limitations and Pitfalls

**Exclusion from the Unorganized Sector:** Upon careful examination of Section 2 of the Maternity Benefit Act and Section 2(m)<sup>217</sup> of the Unorganized Workers Social Security Act, 2008, it becomes evident that the unorganized sector and daily wage workers are not covered by these provisions. Consequently, they are not entitled to receive maternity benefits.

**Lack of Paternity Leave:** Husbands also experience emotional distress following a

<sup>214</sup> Central Civil Services (Leave) Rules, 1972

<sup>215</sup> Employees' State Insurance Act, 1948, s. 46

<sup>216</sup> All India Services (Leave) Rules, 1955

<sup>217</sup> All India Services (Leave) Rules, 1955, s. 2(m)

miscarriage. Recognizing that child care is a joint responsibility of both parents, paid paternity leave allows husbands to support their wives during the recovery period. Notably, the **Paternity Benefit Bill, 2017**<sup>218</sup>, has been proposed by an MP from Maharashtra in the parliament. For instance, the Republic of the Philippines grants 7 days of paternity leave in the event of a miscarriage involving the male employee's legitimate spouse.

**Financial Responsibility:** In contrast to India, where the entire financial burden falls on the employer, other countries with paid miscarriage leave distribute the responsibility across employers, government agencies, insurance providers, and existing social security programs. France, for example, operates a social insurance scheme to address this need.

**Clarity and Rationale:** Section 5(2) of the Act lacks clarity regarding its applicability in cases of miscarriage. Denying paid miscarriage leave to a female employee based on working days (e.g., 145 days instead of 160) contradicts the fundamental principles of the legislation. Additionally, the Act does not specify the frequency with which a woman can avail herself of miscarriage leave. Furthermore, it remains uncertain whether the policy can be adjusted based on the number of surviving children—for instance, in cases of simultaneous normal delivery and miscarriage.

**Need for Uniformity in-laws:** The acts like Employees State Insurance Act, All India Services (Leave) Rules, Factories Act, Central Civil Services (Leave) Rules, and the Unorganised Workers Social Security Act differ in their ambit and provide different benefits. It is important to bring homogeneity in providing miscarriage leave benefits. Further, we can also concur that an 'establishment' not covered under Section 2 clause (2) or which is excluded as a result of a notification under Section 26<sup>219</sup> of the Maternity Benefit Act, is not obligated to have a creche as required by the 2017

amendment. In addition, the work from home provision added under section 5 is mere suggestive in nature and does not significantly improve the well-being of the mother post-delivery.

#### Judicial Precedents

#### 1. **Punjab National Bank v. Astamija Dash (SC)**:<sup>220</sup>

- If a woman probationer is unable to take a required test for a permanent position due to a miscarriage, terminating her services would be unreasonable.
- A woman who has experienced a miscarriage is entitled to special treatment under Article 14<sup>221</sup>, and the state's discretion should align with reasonableness.

#### 2. **Management of Kallayer Estate, Jay Shree Tea & Ind. Ltd. v. Chief Insp. of Plantations (Madras HC)**:<sup>222</sup>

- A woman worker need not complete 160 days of service before a miscarriage to avail paid leave.
- Section 5(1)(7)<sup>223</sup> conditions apply independently, and an expected date of delivery cannot be determined in case of a miscarriage.

#### 3. **Parkasho Devi v. Uttar Haryana Bijli Vitran Nigam Limited (P&H HC)**:<sup>224</sup>

- The Maternity Benefit Act, 1961, does not apply to Nigam employees.
- Punjab Civil Services Rules do not grant maternity leave to female government servants with more than two living children.
- The petitioner, having three children, is not entitled to maternity leave benefits claimed.

<sup>220</sup> Punjab National Bank by Chairman v. Astamija Dash 2008

<sup>221</sup> Constitution of India, art. 14

<sup>222</sup> Management of Kallayer Estate, Jay Shree Tea & Ind. Ltd. v. Chief Insp. of Plantations, 1998 FLR 639

<sup>223</sup> Maternity Benefit Act, 1961, s. 5

<sup>224</sup> Parkasho Devi v. Uttar Haryana Bijli Vitran Nigam Limited, 2008 PLR 248

<sup>218</sup> Paternity Benefit Bill, 2017

<sup>219</sup> Maternity Benefit Act, 1961, s. 26

#### 4. **Municipal Corporation of Delhi v. Female Workers (Muster Roll) (SC):**<sup>225</sup>

In this landmark judgment, the Supreme Court ruled that **daily wage women workers** employed on the muster roll have the right to **maternity leave and associated benefits**. Denying these entitlements solely because these women work on a daily wage basis rather than in regular employment is unjust. The Court emphasized that the construction work undertaken by the Delhi Municipal Corporation squarely falls within the purview of the **Maternity Benefit Act**.

#### **PATERNITY LEAVE LAWS**

##### Paternity Benefit Bill, 2017

The **Paternity Benefit Act, 2017**<sup>226</sup> was proposed in India to regulate the employment of men in certain establishments before and after becoming fathers. This legislation aimed to recognize and support fathers' role in parenting, emphasizing the need for work-life balance and family well-being<sup>227</sup>.

Here are the key provisions of the Paternity Benefit Act:

##### 1. **Short Title, Extent, and Commencement:**

- The Act is officially known as the **Paternity Benefit Act, 2017**.
- It extends to the entire territory of India.
- The Act came into force on a date specified by the Central Government through an official notification.

##### 2. **Paternity Leave:**

- The Act provides for paternity leave of up to **15 days**, which can be extended to **3 months** for new fathers.
- This leave allows fathers to actively participate in caregiving responsibilities during the crucial early days of their child's life.

<sup>225</sup> Municipal Corporation of Delhi v. Female Workers (Master Roll) 2000

<sup>226</sup> Government of India. (2017). Paternity Benefit Act, 2017

<sup>227</sup> Smith, J. (2018). Advancing Parental Leave Policies: A Comparative Analysis. *Journal of Family and Work*, 45(2), 123-140

##### 3. **Parental Benefit Scheme:**

- The Act introduces the concept of parental leave, recognizing the importance of involving fathers in child-rearing.
- It emphasizes shared parenting responsibilities and encourages fathers to take an active role in childcare.

##### 4. **Notice and Payment:**

- The Act outlines procedures for claiming paternity benefit and ensures timely payment.
- Employers are obligated to comply with the provisions of the Act.

##### 5. **Challenges and Future Prospects:**

- While the Paternity Benefit Act represents progress, challenges remain in implementing and enforcing these provisions.
- Advocacy continues for better leave policies, gender equality, and inclusivity for all types of families.

##### Historical Background of the Paternity Benefit Bill

The **Paternity Benefit Bill** in India emerged as a significant step toward recognizing fathers' rights and promoting gender equality in the workplace:

##### 1. **Early Years and Gender Norms:**

- Historically, the concept of paternity leave was virtually non-existent. Men were expected to continue working without any consideration for their role as fathers.

- Gender roles were rigidly defined, with men primarily seen as breadwinners and women as caregivers.

##### 2. **Changing Social Dynamics:**

- In the latter half of the 20th century, societal norms began to shift. The feminist movement advocated for equal rights and challenged traditional gender roles.

- As women entered the workforce, discussions around parental leave expanded beyond maternity leave.

### 3. Maternity Leave Precedence:

- The enactment of the **Maternity Benefit Act, 1961** in India marked a significant milestone. It provided maternity leave and benefits for women during pregnancy and childbirth.
- However, fathers were still excluded from similar provisions.

### 4. Advocacy for Paternity Leave:

- In the 21st century, awareness grew about the importance of fathers' involvement in parenting.
- Advocacy groups, lawmakers, and progressive employers began pushing for paternity leave policies.

### 5. The Paternity Benefit Bill, 2017:

- Proposed by **Shri Rajeev Satav, M.P.<sup>228</sup>**, the bill aimed to regulate men's employment in certain establishments before and after becoming fathers.
- It introduced paternity leave, recognizing fathers' need for bonding time and caregiving responsibilities.
- Although the bill did not become law, it highlighted the importance of acknowledging fathers' roles.<sup>229</sup>

### 6. Ongoing Efforts:

- Advocacy continues for comprehensive parental leave policies, including paternity leave.
- Countries worldwide recognize the significance of involving fathers in childcare and family life.

#### Insufficient Paternity Leave Undermines the Intent of Maternity Leave

Childbirth is indeed a transformative experience that profoundly impacts individuals, especially parents. The concept of "maternity

leave" recognizes the multifaceted challenges faced by new mothers during this critical phase. Recently, the **Rajasthan High Court** extended maternity leave benefits even to mothers who have commissioned a child through surrogacy, emphasizing that maternity leave encompasses not only physical recovery but also the broader responsibilities that follow childbirth<sup>230</sup>.

However, this development raises an important question: What about fathers? The term "maternity leave and childbirth" should prompt us to consider the role of fathers in parenting. While maternity leave rightly prioritizes mothers' well-being, it is equally crucial to acknowledge fathers' involvement. The absence of paternity leave negates the purpose of maternity leave, as it perpetuates traditional gender roles and fails to recognize fathers' vital contributions.

Studies show that fathers' active participation in childcare positively impacts children's development, strengthens family bonds, and promotes gender equality. When fathers are granted paternity leave, they can actively engage in caregiving, share responsibilities, and support their partners. This not only benefits families but also contributes to a more equitable society.

Therefore, until parental leave policies extend to both parents, the objective of enabling women to participate in the workforce without compromising their child's needs remains incomplete. It is time to consolidate the "paternity leave" discourse alongside maternity leave, recognizing that parenting is a shared responsibility.

In India, maternity leave entitlement for women is typically 26 weeks (equivalent to 180-182 days) in both public and private sectors. According to **Section 5(4) of the Maternity Benefit Act 1961**, a woman who legally adopts a child below three months or a commissioning mother is entitled to maternity benefit for twelve weeks. However, a recent ruling by the

<sup>228</sup> Shri Rajeev Satav, M.P. (2017). The Paternity Benefit Bill, 2017.

<sup>229</sup> Smith, J. (2018). Advancing Parental Leave Policies: A Comparative Analysis. *Journal of Family and Work*, 45(2), 123-140.

<sup>230</sup> Rajasthan High Court. (2023). Judgment on Maternity Leave Benefits for Surrogacy Mothers.

Rajasthan High Court extended full maternity benefits of **180 days** to a mother who has obtained a child via surrogacy.

The Rajasthan High Court, drawing from legal precedents such as *Dev Shree B Andhey v. Chhattisgarh State Power Holding Co. Ltd.*<sup>231</sup>, *Sadhna Agrawal v. State of Chhattisgarh, Rama Pandey v. Union of India*<sup>232</sup>, *Hema Vijay Menon v. State of Maharashtra*<sup>233</sup>, and *Sushma Devi v. State of Himachal Pradesh*<sup>234</sup>, asserted that the **right to life under Article 21 of the Constitution encompasses the right to motherhood**. Furthermore, it recognized the **child's right to full development**. In light of this, the Court held that if the Government could grant maternity leave to an adoptive mother, it would be **improper to deny the same benefit to a mother who conceived through surrogacy**—a process involving the implantation of an embryo created using either the intended parents' eggs or sperm in the womb of a surrogate mother.

#### Significance of the Judgment in the Paternity Leave Discourse

In India, as per **The Central Civil Services (Leave) Rules, 1972**, male government servants are eligible for **15 days of paternity leave**. However, there is no law mandating paternity leave in the private sector. The recent judgment<sup>235</sup> by the **Rajasthan High Court** holds significant implications for two key reasons:

1. **Equal Maternity Benefits:** The ruling extends equal maternity benefits to mothers, regardless of whether they gave birth or not. This shift has invigorated discussions around paternity leave.
2. **Equality and Purpose:** It underscores the purpose of maternity leave—to ensure equality for all working women who choose motherhood. In 2017, a private member's bill aimed at

<sup>231</sup> Dev Shree B Andhey v. Chhattisgarh State Power Holding Co. Ltd., 2017 SCC OnLine Chh 1763.

<sup>232</sup> Sadhna Agrawal v. State of Chhattisgarh, 2017 SCC OnLine Chh 19.

<sup>233</sup> Hema Vijay Menon v. State of Maharashtra, 2015 SCC OnLine Bom 6127.

<sup>234</sup> Sushma Devi v. State of Himachal Pradesh, 2021 SCC OnLine HP 416.

<sup>235</sup> Chanda Keswani v. State of Rajasthan, 2023 SCC OnLine Raj 3274.

gender-neutral parental benefits was introduced in parliament but was not passed. The argument against granting paid paternity leave to fathers centered on the belief that maternity leave was necessary for mothers' post-gestation recovery. However, the recent judgment clarifies that "leave" is not limited solely to "childbirth."

The judgment has shifted the focus of the "leave" discourse from "childbirth" to "child development." Consequently, discussions around paternity leave are now supported by data showing that active involvement of fathers during the early years positively impacts children's cognitive development. Research also indicates that fostering a bond with fathers enhances children's emotional and psychological well-being, leading to greater self-respect and life satisfaction.

Furthermore, the judgment emphasizes that leave policies aim to uphold the promise of equality. Maternity leave recognizes that a woman can be a mother without compromising her career trajectory. It seeks to bridge the career gap that women might otherwise face and promote the retention of female talent in the workforce. The judgment also acknowledges that maternity leaves fall within the ambit of **Article 42** of the constitution, serving not only to sustain the woman worker but also to replenish her energy, support child-rearing responsibilities, and maintain her work efficiency.

#### **COMPARATIVE ANALYSIS**

##### International Perspectives on Paternity Leave

**Paternity leave**, a crucial aspect of modern parental policies, is increasingly recognized globally for its role in **balancing work and family life**. Unlike maternity leave, which has long been the norm, paternity leave has seen significant changes in recent years. This shift not only reflects evolving societal norms but also a growing understanding of the **importance of paternal involvement in early childcare**.

Different countries have different policies regarding paternity leave, some of them are:

1. **United States:** The U.S. does not mandate **federal paid paternity leave**, but some states and companies offer it voluntarily. The duration varies, but it's typically shorter than maternity leave.

2. **Sweden:** Known for its progressive family policies, Sweden provides generous **parental leave**. Fathers can take up to 90 days of paid leave, which encourages active participation in child-rearing.

3. **Iceland:** Iceland boasts one of the most **gender-equal parental leave systems**. Parents receive a combined total of nine months, with three months earmarked for each parent and an additional three months to be shared as desired.

4. **Norway:** Norway offers a **"daddy quota"** within its parental leave system. Fathers get a dedicated portion of the total leave, incentivizing their involvement.

5. **Japan:** Japan has recently extended its paternity leave period, encouraging fathers to take more active roles in childcare.

6. **Canada:** Canada provides **parental leave**, which can be shared between parents. It includes a specific portion for fathers.

7. **South Korea:** South Korea has increased its paternity leave duration, aiming to promote work-life balance and encourage fathers' participation.

8. **India:** India has introduced **paternity leave policies** for government employees, allowing them to take time off after childbirth.

9. **European Union:** The EU has guidelines for parental leave, including provisions for fathers. However, specifics vary across member countries.

10. **Global Trends:** Worldwide, **90 out of 187 countries** offer statutory paid paternity leave, with almost four in ten organizations providing paid leave above the statutory minimum.

Some notable case laws related to paternity leave:

1. **Troester v. Starbucks Corporation (2018)<sup>236</sup>:**

- In this California Supreme Court case, the court ruled that Starbucks must compensate employees for time spent on minor off-the-clock tasks, even if those tasks take only a few minutes.

2. **Zivich v. Mentor Soccer Club (2004)<sup>237</sup>:**

- The Ohio Supreme Court held that a father who was injured while coaching his son's soccer team could sue the soccer club for negligence.

3. **Griswold v. Connecticut (1965)<sup>238</sup>:**

- Although not directly related to paternity leave, this landmark U.S. Supreme Court case established a constitutional right to privacy, which has implications for family planning and parental rights.

4. **European Court of Human Rights (ECHR) Decisions:**

- The ECHR has issued several decisions related to parental leave and discrimination based on gender. These decisions impact paternity leave policies across European countries.

Promoting Equality in the Workplace: Gender, Flexible Work Arrangements, and Paid Parental Leave

In 2009, the Australian government enacted the **Fair Work Act (FWA)** as part of its commitment to gender equality, workforce participation, and workplace flexibility. The FWA aimed to enhance efficiency, competitiveness, and economic growth while introducing a new right for workers to request flexible work arrangements, allowing them to balance work and family life<sup>239</sup>. Additionally, the **Paid Parental Leave Scheme Act (2010)** aimed to promote

<sup>236</sup> Troester v. Starbucks Corp., 5 Cal. 5th 829 (2018)

<sup>237</sup> Zivich v. Mentor Soccer Club, Inc., 82 Ohio St. 3d 367 (1998)

<sup>238</sup> Griswold v. Connecticut, 381 U.S. 479 (1965)

<sup>239</sup> Australian Labour, Forward with Fairness: Policy Implementation Plan (Canberra: Australian Labour, 2007)13

women's workforce participation and gender equity by providing paid parental leave.

However, these legislative measures, as they currently stand, may not effectively encourage equal sharing of paid work and unpaid caregiving between men and women in Australia. Rather than challenging traditional gender roles, these "family-friendly" <sup>240</sup>reforms could inadvertently reinforce existing norms. While the concept of the right to request flexible work arrangements holds promise for women in the workplace, its implementation within a gendered context may perpetuate, rather than dismantle, the division of labour.

The flexibility provision primarily aims to assist women in managing their ongoing and disproportionate contributions to unpaid domestic and caregiving work<sup>241</sup>. However, male counterparts are less likely to utilize this right, <sup>242</sup>often continuing to work longer hours and adhering to the norm of the "ideal" employee who prioritizes work over personal life. Unfortunately, this can hinder their career development<sup>243</sup>.

While flexibility may be appealing to employees who can afford to trade reduced income for more family time<sup>244</sup>, it does not realistically address the needs of women with lower incomes who cannot afford to work fewer hours or take extended leave.

Similarly, the Paid Parental Leave (PPL) scheme has the potential to increase men's involvement in family caregiving and reduce reliance on the male breadwinner model<sup>245</sup>. Although the Australian PPL scheme aligns with International Labour Organisation recommendations by offering 18 weeks of paid leave and inclusive eligibility criteria for de facto and same-sex

partners, it falls short in comparison to PPL schemes adopted elsewhere. For instance, the payment level is set at the Minimum National Wage rather than replacement income, which may inadvertently encourage mothers, rather than fathers, to utilize the leave<sup>246</sup>.

## CONCLUSION

### The Need for Comprehensive Parental Leave Policies

"A comprehensive parental leave policy is essential for supporting employees during significant life transitions related to childbirth and adoption. Such policies outline the rights, entitlements, and leave periods for employees who need time off to care for their new born or newly adopted child. Here are key elements to consider when crafting a robust parental leave policy:

**Scope and Purpose of the Policy:** Clearly define what a parental leave policy entails, explain why your company values it, and provide an overview of what employees can expect to find in the policy.

**Eligibility Criteria:** Specify the criteria employees must meet to qualify for parental leave. This includes legal requirements and contractual obligations.

**Entitlements and Benefits:** Detail the leave entitlements and additional benefits available to eligible employees. This encompasses various types of parental leave, such as maternity leave, paternity leave, and adoption leave.

**Notice Requirements:** Outline the procedures for requesting parental leave, including the correct notice period and the requirement to submit requests in writing.

**Booking and Returning from Leave:** Provide guidance on how employees can book parental leave and the process for returning to work after their leave period.

<sup>240</sup> Australian Government, Australia's Paid Parental Leave Scheme: Supporting Working Australian Families (Commonwealth of Australia 2009) 3

<sup>241</sup> M. Baird, "Orientations to Paid Maternity Leave: Understanding the Australian Debate" (2004) 46(3) Journal of Industrial Relations 259, 259

<sup>242</sup> M. Selmi and N. Cahn, "Women in the Workplace. Which Women? Which Agenda?" 13 Duke J Gender L. & Pol'y 7, 8.

<sup>243</sup> G. Webber and C. Williams, "Part Time Work and the Gender Division of Labour" (2008) 31 Qualitative Sociology 15, 16

<sup>244</sup> S. 34, Paid Parental Leave Act, 2010

<sup>245</sup> S. 54, Ibid

<sup>246</sup> R. Ray, J. Gornick and J. Schmitt, "Who Cares? Assessing Generosity and Gender Equality in Parental Leave Policy Designs in 21 Countries" (2010) 20 Journal of European Social Policy 196, 201

Comprehensive parental leave policies not only support employees but also contribute to better birth outcomes, particularly for underprivileged families, by reducing stress during pregnancy. These policies play a crucial role in promoting work-life balance and gender equity within organizations.”

#### Recommendations for Future Reforms

**Maternity and parental leave** policies play a crucial role in supporting working parents during significant life transitions. Here are some recommendations for future reforms:

#### 1. Individual and Non-Transferable Rights:

- Introduce a new system of parental leave that provides **individual and specifically non-transferable rights for each parent**. This ensures that both mothers and fathers have distinct entitlements to leave.

- This approach recognizes the unique needs and responsibilities of each parent, promoting a fair and equitable distribution of caregiving responsibilities.

#### 2. The "6+6+6" Model of Paid Leave:

- Replace the existing statutory maternity leave and shared parental leave (SPL) scheme with a more flexible model.

- Under the proposed **"6+6+6" model**:

- The **first 6 months of maternity leave** would be reserved for the mother.

- An additional **6 months of non-transferable parental leave** could be taken by the mother, in addition to her initial maternity leave.

- Fathers would also have the option of taking **6 months of non-transferable parental leave, extending** the total leave entitlement for both parents.

- These additional parental leave periods could be taken concurrently or consecutively, allowing flexibility for families.

#### 3. Day One Rights for All Working Parents:

- Ensure that **maternity, paternity, and parental leave and pay** are available as **day**

**one rights for all working parents**, regardless of their employment status.

- This change would eliminate waiting periods and provide immediate support during critical life events.

#### 4. Gradual Increase in Statutory Leave Pay:

- Gradually increase statutory leave pay to ensure it aligns with essential living standards.

- Consider a staggered approach:

- First, raise it to at least the **national minimum wage level**.

- Next, aim for the **real living wage level**.

- Eventually, work towards achieving **wage-replacement levels**.

- Adequate pay during leave encourages parents to take the time they need without financial strain.

#### 5. Addressing Complexity and Barriers:

- Simplify the process for parents by addressing the complexity of SPL calculations.

- Provide clear guidelines on calculating available leave for each parent and determining applicable leave periods.

- Streamline administrative procedures to encourage greater uptake of parental leave.

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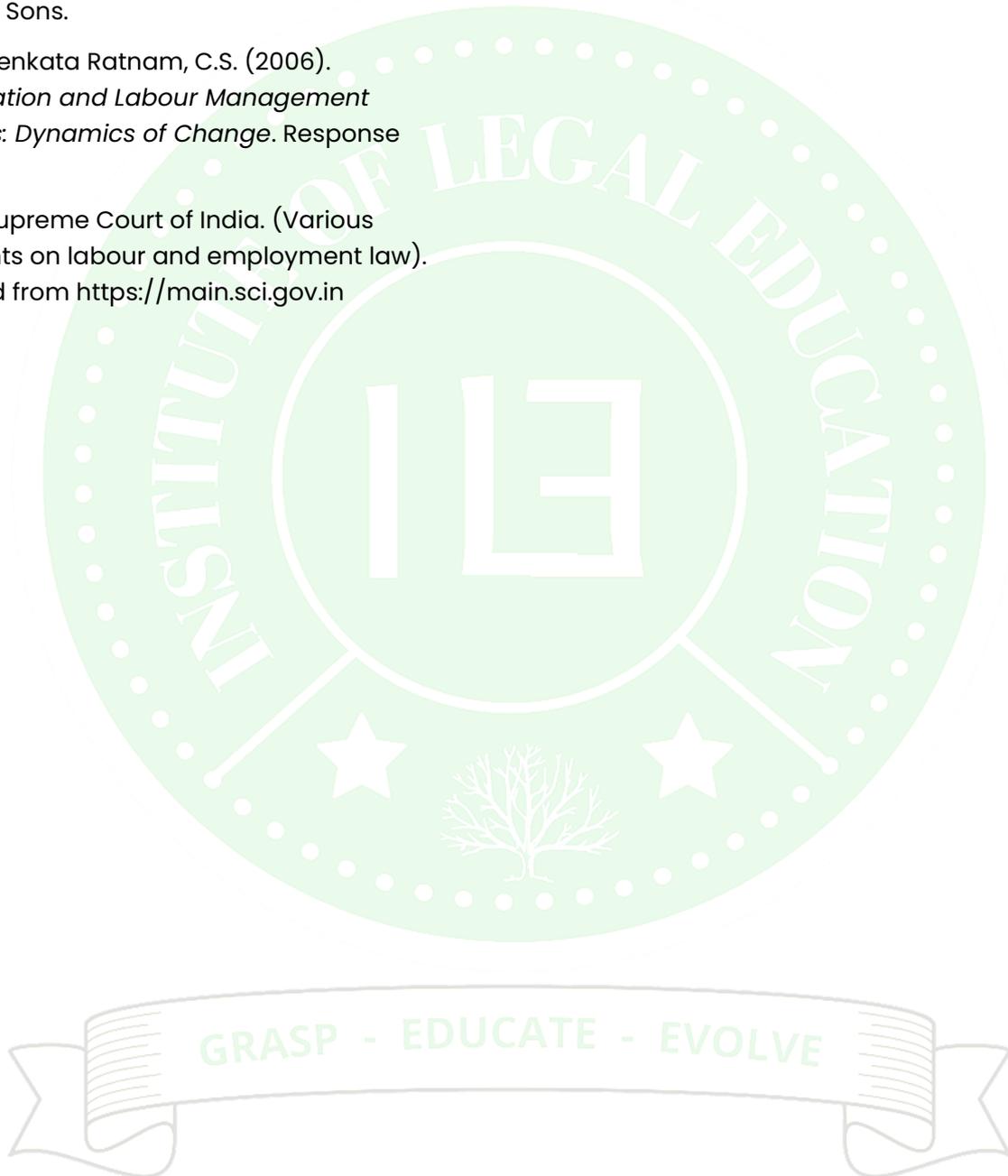
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## A CRITICAL ANALYSIS ON CUSTODIAL VIOLENCE IN INDIA

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### Abstract

Incidents of police brutality frequently dominate news headlines and invite sharp public criticism. Allegations of excessive violence by police forces have emerged from nearly every corner of India. This often leads to the damaging perception that the police force is overrun by individuals who derive satisfaction from inflicting pain and suffering. However, this generalization is misleading. Many police officers carry out their duties with considerable dedication, enduring immense pressure and stress associated with their roles. Despite stringent rules laid down in official police manuals that explicitly prohibit the misuse of power, some officers still resort to extreme and unlawful methods, believing they can evade accountability. The culture of protection by both seniors and subordinates only strengthens this dangerous assumption, resulting in deaths in custody that often generate more controversy than concrete justice.

The 1977 National Police Commission conducted investigations into custodial abuses across nine states and discovered police involvement in a majority of the cases—out of 432 administrative inquiries, police culpability was confirmed in 23 of 37 cases examined by two external agencies and in 11 of 17 administrative probes. The Commission recommended that custodial death cases should not require dual judicial inquiries. This research seeks to examine the issue of custodial violence from multiple dimensions.

Custodial violence includes all forms of abuse that occur or judicial institutions. It encompasses not just physical torture but also custodial rape and unexplained deaths. This issue is not new to the Indian context. Provisions such as are meant to prevent police from using unlawful means during interrogation. Nonetheless, custodial torture continues. The NHRC's 1993 guidelines require every custodial death or rape to be reported within 24 hours. The report must include a post-mortem video recording, autopsy report, and medical details—even in cases of natural death or illness. Apart from torture, deaths occur due to disease, suicide, and inmate-on-inmate violence, with around 20% attributed to medical negligence and poor prison conditions.

Key service deficits—like inadequate healthcare, poor nutrition, and lack of trained personnel worsen the situation. For meaningful reform, proper oversight and accountability within police forces are essential. Human rights training and adequate staffing, especially medical and female officers, are critical. The NHRC has urged that state Human Rights Cells become more proactive in ensuring healthcare and dignity in prison systems. Such incidents of custodial death are not only a national shame democracy. Global awareness and pressure standards are steadily increasing.