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# IMS LAW REVIEW

## STUDENT EDITION - IV


A PLATFORM FOR THOUGHT. A VOICE FOR JUSTICE

# About the School of Law

School of Law (SOL) is amongst the fastest growing law schools in northern India. It strives to impart exemplary legal education by making it inter-disciplinary where there is a convergence between the disciplines of law, social science, humanities, and management studies. Therefore, our curriculums are designed and developed to be both highly theoretical and intensely practical in nature. The school is a great teaching and research institution with a profound and distinctive commitment to undergraduate and post graduate education. To cater the student 's varied interests and educational backgrounds, the school offers a choice of two undergraduate courses - B.A.LL.B. (Hons.) and B.B.A.LL.B. (Hons.). At the post graduate level too, the students get to pick their choice of specialization from six exceptionally designed LL.M courses.

The Ph.D. program offered by the school is designed so as to be instrumental in enhancing legal scholarship. We, at School of Law understand the importance of a sound and wholesome environment for the students to flourish academically, socially, and intellectually. With this belief, we have designed a disciplined curriculum with focus on high standards of legal education, extra-curricular activities, and intellectual wellbeing to transform every student into a valued citizen of the society and an accomplished personality in the legal arena. Ever since its inception, School of Law aspires to inculcate humanistic approach, entrepreneurial skills, innovative outlook and academic focus in our budding lawyers. Our emphasis on learning, creativity and innovation is based on the belief, that our students can and will achieve prodigious success. Most importantly, the school provides an environment which prepares the students for meaningful lives and careers broaden their outlook and help shape their character.

## Faculty Advisors:

## Student Editors:

# From the Desk of Chief Editor

It is with immense pride and a profound sense of accomplishment that we present the **4th Edition of the *IMS Law Review: Student's Edition* (2026)**, as we mark yet another milestone in what has now become a well-established and deeply cherished academic tradition. Having successfully published three editions before this one, we step into this volume not as beginners finding their footing, but as a publication that has earned its place in the landscape of student legal scholarship.

Three editions, three years of relentless effort, careful curation, and an unwavering commitment to giving student voices the platform they deserve. Each volume has been a stepping stone, refining our editorial process, broadening our readership, and deepening the trust that our contributors and readers have so graciously placed in us. That trust, in fact, the very foundation upon which this 4th Edition has been built.

With every edition, the expectations have grown and rightly so. Our readers now come to us with a familiarity and a standard in mind, shaped by what we have delivered before. Meeting that standard is no longer enough; exceeding it is the only option we allow ourselves. The Faculty Editorial Board and the Student Editorial Board have, once again, risen to that challenge with rigour, diligence, and an uncompromising eye for quality. Every article in this edition has been scrutinised, deliberated upon, and selected for its ability to contribute meaningfully to legal thought and scholarship.

This edition, much like its predecessors, reflects our core belief that students are not merely the future of the legal profession but active and valuable participants in its present discourse. At a time when the legal landscape is evolving at an unprecedented pace, the perspectives offered by young, perceptive minds are more relevant than ever. The research featured in this volume engages with contemporary legal questions with both intellectual depth and analytical sharpness, and we are immensely proud of what our contributors have produced.

We extend our sincere gratitude to our contributors, peer reviewers, faculty mentors, and our ever-growing community of readers, without whom none of this would be possible. As we place this 4th Edition in your hands, we do so with the confidence of experience and the humility of those who know that there is always more to achieve.

**In Solidarity**
**Prof. (Dr.) Amit Adlakha**
**Dean, School of Law**

# From the Desk of Faculty Editorial Board

Welcome to the **4th Edition of the** *IMS Law Review: Students' Edition* **(2026).**

The *IMS Law Review: Student's Edition* (IMSLRW) is a non-profit, student-reviewed annual publication, and with each passing year, it has grown from a promising initiative into a publication we are genuinely proud to place before the academic community.

The challenge that this journal was born to address remains as relevant today as it ever was. Law students across the country find themselves in a difficult position, consistently encouraged to excel in academic research and writing, yet frequently denied meaningful opportunities to showcase that work in established publications. The assumption that student scholarship is somehow less worthy of serious engagement is one we have always rejected. At IMS Unison University School of Law, we have long believed that students do not merely have the potential for brilliant academic research; they are already producing it. What they need is not validation, but a platform.

What makes IMSLRW truly distinctive, however, is not just who writes for it, but who shapes it. The Student Editorial Board is not a symbolic gesture toward student participation; it is the engine that drives this publication. These are students who, in addition to their academic responsibilities, have taken on the demanding task of reviewing, refining, and curating scholarship submitted by their peers.

The 4th Edition is a reflection of the extraordinary dedication of our current Student Editorial Board. Their commitment has been nothing short of exemplary, meticulous in their editorial judgement, thoughtful in their engagement with each submission, and steadfast in their resolve to uphold the standards this journal has built over the years. As faculty, it has been deeply gratifying to witness their growth, not just as students of law, but as scholars and editors in their own right.

The articles presented in this edition engage with pressing and evolving questions of law and policy with clarity, depth, and intellectual honesty. We are confident that our readers, whether students, practitioners, or academics, will find this edition to be a worthy and enriching addition to their reading.

We extend our deepest appreciation to every contributor who trusted us with their work, every reviewer who gave it their careful attention, and every reader who continues to make this journal a meaningful endeavour. It is your engagement that gives IMSLRW its purpose.

We hope this 4th Edition leaves you informed, challenged, and inspired.

**Wishing all the readers success and health!**
**Faculty Editorial Board**

# Message from the Student Editors

After the success of our Third Edition, we are very happy and excited to present the Fourth Edition of *IMS Law Review: Student's Edition 2026*. It is often said that the first draft shows the idea, but revision makes it better. In the same way, this edition is an improved version of our previous work, with more fresh ideas and thoughtful discussions on important legal issues.

The main aim of this journal is to provide a platform for students and members of the legal community to share their views through articles, case comments, and legal essays. This edition covers a variety of topics related to current social, legal, and environmental issues in our country. These include the debate on Reservation, International laws, Gender equality, Sexual violence and the inclusion of the others genders in the society.

Through this journal, we hope to encourage students and researchers from all parts of the country to learn, think, and express their ideas. We are very thankful to our Faculty Editorial Board for their constant support and guidance, which made this possible.

We also sincerely thank all the authors who contributed to this edition. We hope to receive more such valuable contributions in the future to keep the exchange of knowledge going.

Lastly, we truly value the feedback and suggestions of our readers. Your opinions help us improve, and we are always open to them. We hope you enjoy reading this edition.

**With regards,**
**Student Editors**

# Contents

# Creamy Layer Conundrum: Examining the Challenges in the Inclusion of the Creamy Layer in SC/ST Reservation Policy

**Utkarsh Raj**
*Amity University Ranchi.*

## Abstract

*Recently the judgement passed by the Supreme Court emphasises the need for the inclusion of creamy layer in SC and ST reservation policy[1]. When policies allocate limited opportunities, they often spark contention, regardless of their intent. Reservation laws have always been opposed by some segments of society, particularly the upper castes, who believe that these rules will limit their possibilities. During the Mandal Commission deliberations, also known as Mandal, I and Mandal II, this resistance was clearly visible. When early resistance to the reservation laws failed to stop them from being implemented, the focus switched to the exclusion of the so-called "creamy layer," a group of people who were socially well-off but did not fall into the reserved categories. Based on data from the 61st wave of the National Sample Survey, a nationally representative sample of Indian households, estimations show that 46% of STs lived below the country's official poverty level in 2004–05, 37% for SCs, compared to 23% for non-SC/STs[2]. In addition, compared to 72.0% of non-minorities, only 52.4% of STs and 58.2% of SC youngsters (ages 6–14) are literate. Economic hardship was never intended to be the exclusive basis for reservations. Rather, their foundation lies in combating discrimination based on caste. This paper will examine the fallacious concept of income-based reservations and critically evaluate the efficacy of the creamy layer in reservation regulations. It will address important issues like the challenge of precisely determining income levels and demonstrate that caste-based prejudice still affects members of backward castes, even after achieving employment.*

**Keywords:** Creamy Layer, Discrimination, Caste, Income, Reservation.

## I. Introduction

Since the acceptance of the Mandal Commission Report in 1991, a significant volume of criticism has been directed at reservation policies in higher education and government services for Other Backward Classes (OBCs). However, perspectives from those who have actually benefited from reservations remain largely absent in mainstream discourse, whether in books or articles in national media. Individuals who are outspoken and vehement in their denunciation of reservations typically originate from dominant groups that have historically benefited from, if not monopolised, education, wealth, land, and public services. The most marginalized sections of society Shudras, Dalits (including those once labelled as untouchables, unseeable, and unapproachable), and women have historically borne the brunt of systemic discrimination and exclusion. Yet, when policies seek to address historical injustices, that face intense backlash and scrutiny.[3] When assessing whether a group of citizens is socially backward, caste is not just relevant it is often a crucial determinant. Social and educational disadvantages in India have been

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[1] State of Punjab v. Davinder Singh, 2024 INSC 562

[2] Report on National Sample Survey 61st Round, Department of Economics & Statistics Government of Kerala, (September 20, 2013)

[3] Bhagwan Das, Moments in a History of Reservations, 35 Econ. & Pol. Wkly. 3831, 3831-3834 (2000)

deeply rooted in the caste system for centuries, making it impossible to ignore caste when formulating policies for upliftment. However, relying exclusively on caste for identifying backward classes can be problematic, as it risks reinforcing caste divisions rather than addressing systemic inequalities. Social backwardness is largely a consequence of economic deprivation, and factors such as occupation also play a crucial role in determining a group's social standing[4].

**II. Historical Intent and the Recommendations of the Mandal Commission**

In 1937, Dr. B.R. Ambedkar, a prominent Indian leader and a staunch advocate for the rights of Dalits whom he referred to as the formerly untouchable communities declared his decision to renounce Hinduism. He believed that the deep-rooted caste system, which he saw as a fundamental cause of social injustice, was sanctioned by Hindu scriptures. For Ambedkar, caste was not merely a social practice but an institutionalized form of oppression that justified discrimination against millions. Mahatma Gandhi, India's revered spiritual leader, acknowledged the suffering of the untouchables but disagreed with Ambedkar's view that Hinduism itself was responsible for the caste-based injustices. Mahatma Gandhi said: "*Caste has nothing to do with religion. It is a custom whose origin I do not know and do not need to know for the satisfaction of my spiritual hunger ... The law of Varna teaches us that each one of us earns our bread by following the ancestral calling. It defines not our rights but our duties. It also follows that there is no calling too low and none too high. All are good, lawful and absolutely equal in status*".[5] Allocating employment based on caste is a core premise of many caste systems with lower-caste groups historically confined to occupations considered "impure" or socially degrading by the upper castes[6]. This rigid occupational hierarchy ensures that menial and stigmatized tasks are assigned to marginalized groups, while privileged castes retain control over more respected and economically rewarding professions. In India, Sri Lanka, Bangladesh, and Nepal, Dalits nearly exclusively conduct sanitation chores such as street sweeping and processing human waste and animal corpses. Dalits in Bangladesh, who came from India during British rule and stayed after the subcontinent was partitioned in 1947, generally work as municipal cleaners and domestic servants, low-wage jobs that are shunned by the country's Muslim Bengali majority. For instance, the great majority of Dhaka City Corporation's 5,500 cleaners are Dalits[7].

The mandal commission was set up under the chairmanship of B.P mandal. Ignited a debate that continues to shape public policy regarding the representation for the historical disadvantaged communities in India. It advocated for the reservation in government jobs and in educational institutions for other Backward classes[8] (OBCs) as a means to address deep-rooted discrimination and its persistent impact on the public employment[9]. The Commission's rationale was grounded in the principle that every community has an equal right to participate in governance and nation-building. However, systemic barriers had long denied nearly 52% of the population access to such opportunities, necessitating immediate corrective measures. Given legal limitations, the Commission proposed a 27% reservation, not only in recruitment but also in promotions and

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[4] Nanda Kishore Sharma vs State of Bihar, AIR1965PAT372

[5] Smita Narula, Caste discrimination, Human Rights Watch, (September 2001)

[6] Vinay Bahl, Terminology, History and Debate: "Caste" Formation or "Class" Formation, Vol. 17 Journal of Historical Sociology 265-267 (2004)

[7] Agence France Presse, Bangladesh Dalit Hindus Fight for Jobs and Homes, Indian Express, (September 20, 2000)

[8] Sukumar Muralidharan, Mandal, Mandir aur Masjid: 'Hindu' Communalism and the Crisis of the State, vol 18 Social Scientist. 27, 27-49 (1990)

[9] Arkoday Roy, Creamy Layer: The Mandal Commission View - The Present-Day Exclusion, legal services India, (February 13, 2011)

university admissions, to ensure a more equitable distribution of opportunities across all sections of society[10]. Positive liberty demands equal opportunities for all. Mandal commission[11] is criticised for advocating caste-based reservation instead of economic criterion. the controversy over the Planning Commission's poverty definition highlights the difficulty of such an approach. Caste-based discrimination[12] remains a deep-rooted barrier and ignoring it risks denying justice to historically oppressed communities[13].

### III. Deep-Rooted Disparities: Surveys Reveal Persistent Inequality

According to the Socio-Economic and Caste Census (SECC) data, the economic condition of Scheduled Castes (SC) and Scheduled Tribes (ST) remains precarious. At the national level, 5.63% of SC households rely on manual casual labour as their primary source of income. Engagement in the formal sectors among disadvantaged classes is extremely low, with only 0.73% of the SC population working in government, 0.17% in the public sector, and 0.45% in private firms. Furthermore, only 0.86% of the rural SC population earns more than ₹10,000 monthly. The unorganised income sources of around 9.80% of the Scheduled Tribes (ST) population. STs have an even lower proportion in the formal workforce, with only 0.48% working in government, 0.06% in the public sector, and 0.16% in private firms. Furthermore, just 0.49% of rural STs earn over ₹10,000 per month[14]. The most establishing indication of systemic discrimination is less than 1.5% of their members are in reputed jobs which eventually give access to a person mandatory perk, such as pensions, and job stability. The dependency of the community on the manual and physical labour clearly indicates no possession of generational inheritance. In the rural India where less than 1 in 100 SC members and less than 1 in 200 ST members barely have adequate living income that is over ₹10,000 per month, which clearly indicate that majority of the community members were living in the below the threshold of subsistence, that eventually make it nearly impossible to invest in other amenities such as health and education.

The issue of caste-based segregation of reserved[15] category students in AIIMS hostels is deeply troubling and has, over the years, been normalized rather than challenged. The administration's indifference towards such blatant discrimination has allowed these practices to persist unchecked. Even before the whole issue of caste-based discrimination[16] at AIIMS came up before the Commission, it had become widely known by way of independent investigations by more than one agency that a policy of caste-based segregation in the hostels seemed to be in practice at AIIMS. While no official policy mandated such discrimination, the fact that it was informally accepted both by students[17]and the administration points to a systemic issue. It was only when

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[10] Satija Kalpana and Patel Mohan, Mainstreaming Women Employment and Human Development in Kheda District India- Sustainable Livelihood Approach to Poverty by UNDP, vol 1 Int. Res. J. Social Sci. 26, 26-35, (2012)

[11] Durgaprasad Bhattacharya, The Mandal Commission in a Historical and Statistical Perspective, vol 51 Indian History Congress. 641, 641-648 (1990)

[12] Samarendra, Classifying Caste: Census Surveys in India in the Late Nineteenth and Early Twentieth Centuries, vol 26 South Asia: JSAS. 141, 141-163 (2003)

[13] Jha, G.M., Trehan, S., Rao, G., Vishwanath, B., Sarin, R. and Monga, A., 2013. Mandal Commission: Equality and Liberty, International Research Journal of Social Sciences, 2(6), pp.35-38.

[14] Report on SC & ST census, Socio Economic and Caste Census, (2011)

[15] C. Basavaraju, reservation under the constitution of India: issues and perspectives, vol. 51, JILI. 267, 267-274 (2009)

[16] Kumar, Rasipogula Vinod Admankar and Mahesh, Caste and medical education: exclusion of Dalit and Tribal students in state medical colleges in five states in India, vol 13 University of Malta. Faculty of Education. 325, 325- 336 (2024)

[17] Anuradha Bose, Learner Diversity in Higher Education: Articulations of Diverse Subjectivities Through Everyday Life Experiences, vol 9 Society and Culture in South Asia. 264, 264- 290 (2023)

caste tensions escalated that these long-standing discriminatory practices came to light. More concerning is the fact that caste-based divisions among students seem to persist even in periods of relative calm. One example that points towards this is the filming of a video by some students in the AIIMS hostels in which they burned the books of Dr B. R. Ambedkar and made obscene gestures at his photograph. This video, by the admission of Dr Shakti Gupta (the ex-spokesperson of AIIMS) himself was shot in the AIIMS hostels a few years back, at a time when there was no open caste conflagration. The AIIMS administration's response to such incidents has been nothing short of negligent. Despite the students involved in the offensive video being clearly identifiable, no action was taken against them. Similarly, when a surge of reserved category students requested room changes to specific hostels, the administration, instead of investigating the underlying cause, conveniently dismissed their concerns. The hostel warden, Dr. G.K. Rath, in his role as a committee member set up by the Director, attempted to downplay the issue by attributing the room change requests to trivial concerns like excessive noise and room seepage[18]. The concerns raised in the AIIMS case do not exist in isolation. A similar pattern of regulatory gaps and their impact can be observed in the *Kuravan* case, albeit in a more socially sensitive context.

Even after more than six decades of India's political freedom, the Kuravan[19] group continues to face institutional oppression, mainly from Tamil Nadu police. Law enforcement officers subject Kuravan men, women, and even children to constant harassment, illegal incarceration, and severe torture under the guise of labelling them as "habitual offenders." the widespread fear within the community where individuals live under the constant threat of arbitrary arrest and fabricated criminal charges. The police have used the persecution of Kuravan's to inflate their success rates in criminal investigations. Instead of conducting thorough investigations, law enforcement agencies reportedly target Kuravan individuals, forcing them into custody and coercing false confessions for crimes they never committed. The report claims that police accumulate pending unresolved larceny cases, task community members with presenting these cases as solved, and shield and defend actual offenders and anti-social groups in order to keep the racket operating. The "Kuravan[20]" Men are frequently seized from their domiciles and unjustly held in police custody, subjected to third-degree torture, and compelled to confess to numerous criminal offences. This corrupt practice not only works as a protective shield for original criminals but also ensures that an oppressive system of exploitation continues unchecked. The atrocities inflicted upon the Kuravan community are not limited to wrongful arrests and fabricated charges. Men are routinely dragged from their homes, unlawfully detained, and subjected to third-degree torture until they are compelled to confess to crimes, they had no part in. Police officers frequently verbally, physically, and even sexually assault Kuravan[21] women. The community has experienced particularly high levels of brutality in districts like Thanjavur, Ariyalur, Thiruvarur, Salem, Trichy, and Villupuram, where there have been shockingly many cases of fabricated criminal charges, wrongful detentions, torture in detention, sexual violence, and even deaths in detention[22].

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[18] Special Report on All India Institute of Medical Science (AIIMS), National Commission for Scheduled Castes, (2008)
[19] S.S. John, The Making of a Caste Group: A Case Study of the Kuravans in Tamil Nadu and Kerala, vol 18. The oriental Anthropologist. 59, 59-72 (2018)
[20] G. R. SUDAME AND A. P. THIAGARAJAN, Social distance among scheduled caste students -a case study, 44 Indian J. Soc. Work 35, 35-40(1983)
[21] S. Vijay, Identities of Narikuravars in Tamil Nadu, vol 9 SELP Journal of Social Science. 47, 47-52 (2018)
[22] Report on Police Atrocities against Kuravan Community in Tamil Nadu, National Commission for Scheduled Castes, (2016)

### IV. Judicial Scrutiny and the Justification for Sub-Categorization

In the *Akhil Bharatiya Soshit Karamchari Sangh v Union of India*[23], the Union of India made the argument that, despite efforts to close the gap in the issue of egregious under-representation in the Administration, no sufficient progress had been made. In order to perform its constitutional tryst with the discontented fifth of the population, known as SC & ST, the State has to take more proactive measures. The Administration took a number of cautious measures to increase the likelihood that these groups would enter the various government departments, not just at the beginning but also at promotional points and in appointments to supervisory posts so as to become members of the higher echelons, as a result of the stark reality of the tiny number of Harijan and Girijan in the public services. The Attorney General argued that such affirmative actions were not only in alignment with the principle of equality under Article 16(1)[24] but also explicitly justified under Article 16(4), which provides for reservations in public employment. Reservations may be seen by those outside the SC and ST categories as a hindrance to their professional growth, but this viewpoint overlooks decades of discrimination that denied Dalits and Adivasis fundamental rights and opportunities. Certainly, the most sophisticated and politically evolved democracies cannot compete with the socially centred attempt to build an equitable society, and constitutional therapy to eliminate it from the root is unprecedented.

The history of discrimination and segregation of the SC/ST and the socially, educationally, and economically disadvantaged is the worst chapter of our social history, and it has no counterpart anyplace in the globe. The principle of substantive equality focusing on outcomes rather than mere formal guarantees has guided this transformative process. The goal is not just to remove legal barriers but to actively bridge the socio-economic divide, ensuring that the most disadvantaged gain real access to power and opportunity. But without the policymakers putting aside irrelevant factors and addressing the issue honestly and compassionately, no attempt can be successful. As long as the backward class is not accurately and effectively identified[25], it will only benefit established interests. Additionally, the 'halves' of Sudra or the intermediate backward courses will not allow it to attain the actual and genuine backward classes[26]. A settled constitutional principle that Dalits and Tribes should be given facilities and opportunities for promotion to higher cadres or grades, Dalits and Tribes should gain accelerated seniority, and the seniority of former general candidates in lower cadres or grades should be limited in accordance with the roster point. As a result, Dalits and Tribes are gaining and accelerating advancement to higher cadre or grade levels. It is a constitutionally authorised classification with a legitimate connection to the goal of equality, as a component of economic and social empowerment[27]. The logic underpinning distinct reservation for SCs, STs, and OBCs validates classification as more backward or backward castes within Scheduled Castes and Tribes. The argument behind distinct reservations in Art. 15(4)[28] is that if SCs, STs, and OBCs are mixed together, OBCs will grab all of the vacancies, leaving SCs and STs high and dry. The same argument justifies categorising between more backward and backward[29].

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[23] Akhil Bharatiya Soshit Karamchari Sangh v Union of India, (1981) SCC 246
[24] See, Article 16 of Constitution of India, 1949
[25] M. Nagaraj v Union of India (2006) SCC 212
[26] Indra Sawhney & v Union of India, AIR 1993 SC 477
[27] Jagdish Lal v State of Haryana (1997) 6 SCC 538
[28] See, Article 15 (4) of Constitution of India, 1949
[29] State of Maharashtra v. Milind, (2001) 1 SCC 4

In *State of Punjab v. Davinder Singh*[30]*,* the supreme court explain the concept of sub-classification within backward classes is not constitutionally or legally prohibited. It is not mandatory, but if a state chooses to apply such categorisation, it cannot be declared invalid. The rationale for this differentiation stems from the various levels of backwardness across different castes and tribes under the larger group of Other Backward Classes (OBCs). The Mandal Commission determined backward classes using a scoring system, with groups getting eleven or more points qualifying as backward. However, backwardness among these populations is not universal. Some may score between 20 and 22, while others may score closer to 11 or 13. Treating all of these groups equally ignores the major differences in their socioeconomic status. A practical example of this issue is that both goldsmiths and vaddes (traditional stone cutters in Andhra Pradesh) are categorised as OBCs. Goldsmiths are less destitute than vaddes. If they are both categorised alongside and reservations are provided, the unavoidable outcome is that goldsmiths will take all of the reserved slots, leaving none for vaddes. To avoid this, states may choose to implement internal sub-classification, ensuring that the advantages of affirmative action reach those who require it the most.

However, *Justice Bela M. Trivedi* held, the distinctive opinion that the States have no possibility of dividing, subdividing, subclassifying, or regrouping the castes, races, or tribes among the "SCs" on account of the absence of administrative or legislative authority. Such an action would go beyond the constitutionally granted executive and parliamentary authorities. While it is true that sub-classification does not amount to an outright inclusion or exclusion of a caste from the Presidential List under Article 341(1), it nevertheless interferes with and modifies the notification, which is expressly prohibited under Article 341(2)[31]. The Presidential List of SCs is exhaustive, and it includes all castes, races, and tribes that are constitutionally recognised as SCs. As a result, any attempt to create preferential treatment for a certain caste among SCs by carving out additional quotas within the existing protected SC quota will immediately exclude other SC members from receiving the full benefits of reservation. Any such conduct by the State would be identical to tampering with Article 341 of the Constitution in addition to being discrimination in reverse and a violation of Article 14. If the State gives reservations under Articles 15 and 16 for education and public employment, these reservations must be made available to all SCs as a class, with no additional internal division or sub-classification. The Constitution treats all Scheduled Castes as one unit, and any attempt by the State to prioritise one group over another among SCs undermines the integrity of Article 341[32]. On the other hand, in the case of Other Backward Classes (OBCs), the sub-classification is widely recognised as an effective means to guarantee equitable distribution of the reservation and its benefits. The Supreme court in the case of the *Indra Sawhney v. Union of India*[33], categorically recognized that the OBCs are not a homogeneous group due which the exclusion and sub-classification become necessary for the prevention of a situation were more advanced communities consolidate larger benefits. This jurisprudence has been strengthened by institutional efforts such as the *Rohini Commission*

[30] Davinder Singh, 2024 INSC 562.
[31] See, Article 341 of Constitution of India, 1949
[32] Deeksha, Only Parliament can include in or exclude from SCs list under A. 341': A detailed breakdown of Justice Bela Trivedi's dissent in Sub-classification of SC/STs Verdict, SCC online, (August 6, 2024)
[33] Indra Sawhney v. Union of India, 1992 AIR SCW 3682

*report*[34] which was eventually constituted for the investigation within OBCs to identify sub-categories for a more equitable allocation of resources.

However, because of Articles 341 and 342 which recognise Scheduled Castes and Scheduled Tribes unified and exhaustive classes identified through the Presidential List and the sub-classification within these groups is constitutionally problematic and unauthorised. In comparison to OBCs who are identified family's socioeconomic status and educational backwardness SCs and STs are regarded as cohesive groupings due to their shared history of discrimination and exclusion. Any inner-class divide would thus indirectly modify the constitutional framework potentially causing a disparity among these classes.

**V. Judicial Apathy and Inconsistencies in Affirmative Action for SC/STs**

Legal experts, notably from the SC/ST communities, are still debating the legal logic behind the repeal of quota in promotions for SC/STs in Indira Sawhney, a case that was really about OBCs rather than Scheduled Castes and Scheduled Tribes. The decision raises a critical question: on what constitutional basis was this extension of the ruling made when the case itself had no direct relevance to SC/ST reservations? The judiciary's approach appears to lack a coherent rationale, creating unnecessary hurdles for those who have historically faced systemic exclusion. Further Courts are not sensitive enough to impose the death penalty on the persons guilty of killing SC/STs despite the fact that the Constitution bench of the Supreme Court had ruled in the Bacchan Singh[35] case that murder because of caste prejudices should be treated as a rarest of the rare cases, attracting death penalty. This judicial apathy reinforces structural injustices and dilutes the deterrent effect of the law. More broadly, judicial pronouncements on the rights of marginalized communities have been inconsistent, often unsettling established precedents rather than reinforcing them. The judiciary has yet to demonstrate either a firm commitment to substantive equality or an unbiased stance toward the cause of the deprived sections. Affirmative action rulings favouring weaker sections are frequently short-lived, only to be overturned by subsequent decisions, sometimes by smaller benches in disregard of the principle of stare decisis. The bureaucracy, in turn, is swift to implement adverse rulings while showing little urgency when judgments favour SC/STs[36].

Judicial pronouncements on the rights and interests of weaker sections have been anything but consistent. Rather than settling legal questions, they have created a confusing patchwork of opinions that offer no lasting clarity or justice. The judiciary has neither demonstrated genuine empathy nor impartiality toward marginalized communities. Whenever affirmative action rulings favouring SC/STs and other disadvantaged[37] groups emerge, they are short-lived quickly overturned by subsequent decisions, sometimes by smaller benches that disregard the principle of stare decisis. Meanwhile, the bureaucracy, which has historically shown bias against affirmative action, wastes no time in implementing adverse rulings that roll back hard-won rights. While the Supreme Court has acknowledged the importance of regional and religious diversity in judicial nominations to maintain some appearance of representation, it has purposefully

[34] Press Information Bureau, Recommendations for Equitable Reservation Benefits: OBC Sub-Categorisation Report Delivered to President, Ministry of Social Justice & Empowerment (July 31, 2023, 9:58 PM),

[35] Bachan Singh vs State of Punjab, (1982)3SCC24

[36] Prakash Louis, Scheduled Castes and Tribes: The Reservation Debate, vol 38 Economic and Political Weekly. 2475, 2475-2478 (2003)

[37] J. V. Meenakshi, Ranjan Ray and Souvik Gupta, Estimates of Poverty for SC, ST and Female-Headed Households, vol 35 Economic and Political Weekly. 2748, 2748-2754 (2018)

avoided addressing the issue of social background. The idea that includes caste and community representation in the judiciary will result in "communalisation" is fundamentally wrong. The Constitution does not prohibit equitable representation[38] in the higher courts and promoting diversity within the judicial ranks is vital to providing true justice. A judiciary that does not hear from historically oppressed communities cannot be expected to truly understand their struggles, let alone dispense justice with engagement and urgency. In its sense of autonomy, the court strives to establish *Imperium in Imperio*, which was not the objective of the constitution. Such a coveted institution should also exhibit the reality of the social milieu in which the judiciary has been created. After all, judiciary should reflect and meet the aspirations of the people. It cannot live in isolation and put itself outside the ambit of constitutional provisions through judicial pronouncements[39].

### VI. Reservation is not a poverty elimination scheme

The Supreme Court has consistently concluded that economic backwardness cannot be the principal reservation condition, and that reservation just provides access to under-represented groups and is not an anti-poverty system. The reservation was never created with the prospective make the people all over India financially equal.[40] The Constitution (103rd Amendment) Act of 2019, which has added two new clauses allowing the State to establish a reserve of up to 10% for economically vulnerable groups (EWS[41]) or communities other than the Scheduled Castes (SC), Scheduled Tribes (ST), and the non-creamy Other Backward Layer population, for the general people whose income is less than 8 lakh per year. Several cases of fake EWS[42]certificates have been reported due to the lack of a proper income verification mechanism. While income for government and organized sector employees[43]can be assessed, individuals in the unorganized sector often evade scrutiny, leading to fraudulent claims[44]. The fact that many individuals from Scheduled Castes (SC) and Scheduled Tribes (ST) still feel compelled to hide their caste identity due to the fear that they would be discriminated on the basis of their caste[45]. There is reason for this ongoing anxiety about revelation, a recent observation made by the Parliamentary Standing Committee on the Welfare of SCs and STs about the frequent usage of the "not found appropriate" tag in the process of recruitment and appointment which categorically denied the selection of SC/ST teachers despite their eligibility which clearly demonstrates how institutional procedures can be used to indirectly exclude members in reserved groups, even if they qualify for posts[46].

### VII. Conclusion

The concentration of the Supreme Court is for adoption of creamy layer within the ST and SC reservation is just an additional non-consideration policy which eventually compromises the

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[38] Sonkhothang Haokip, Reservation Policy in India: The Practice of Reservation Policy on Education in India., vol 6, JETIR. 619, 619-628 (2019)

[39] Special Report on Reservation in Judiciary, National Commission for Scheduled Castes, (2013)

[40] Garima Singh, Constitutional Validity in the Economically Weaker Section Reservation, vol 4 IJLMH. 631, 631- 652 (2021)

[41] Verma, Vidhu, Taking the EWS quota seriously: Is it fair and just? Vol 53 Social change. 98, 98-107 (2023)

[42] Dr Radhanath Tripathy, Breaking the Barrier: Universality, Inclusiveness and EWS Reservation in Private (Public) Schools, vol 1 RR journals. 27, 27-30 (2016)

[43] Naga Rama, Stigmatised SCs and De-Stigmatised EWS: Can We De-Mythify Academic Discourse on Reservation in India? Reservation Policy in India: State, Social Justice and Affirmative Action, Vol 19 JASS. 389, 389- 393 (2025)

[44] Piyush Kumar Sharma v. State of U.P., Writ-C No-30151 of 2022, All. H.C., (Jan.31, 2023)

[45] Amil Bhatnagar, Dalit teen shot dead in Amroha, fearful family wants to leave, The Indian Express, (June 12, 2020)

[46] ET Online, Parliamentary Panel Condemns 'Not Found Suitable' Tag Blocking SC/ST Teacher Recruitment, The economic times (Aug. 18, 2025, 03:11 PM),

foundation that were made for equity enforcement. The judgement will further dilute the original concern and the objective of reservation, which was intended to address decades of institutional discrimination and untouchability faced by the marginalised classes by sifting the emphasis towards economic indicator. Implementing an income or economic- based barrier will neglects the ground reality that cast based societal bias and disparity in not depended on the financial condition of the person's status. The members of socially supposed "privileged" members SC & ST individual faced societal cast-based discrimination even in their daily lives, at work, and in education institutes. The professor belonging to Adivasi & Dalit bureaucrat who earns a well and good amount money, the caste- based discrimination, isolation, and humiliation still impact them. Despite the priority on considering "creamy layer" statistics reveals that the less than 1% of rural population of SC & ST communities earn more than ₹10,000 per month[47]. The authorities categorically neglected the severe socioeconomic reality revealed by several research when a creamy layer is imposed within SC & ST reservations. It would be irrational to consider that there is an elite element in Scheduled Tribes and Scheduled Castes necessitates such exclusion, in the light of the fact that a sizable portion of their populations still live below the poverty line. By categorising the disadvantaged into imaginary economic categories instead of tackling caste-based societal discrimination this non-considerate pronouncement further alienates them and disregards long-standing injustice.

**VIII. Recommendations**

i. **Focus On Sub-Classification Over Exclusion:** The state should have to investigate within the community sub-classification while considering eliminating "creamy layer" based on the income. Parameters such as educational background (e.g., first-generation learners), occupation-related vulnerabilities (involvement in stigmatised employment), geographical isolation, access to public amenities, social exclusion, and lack of institutional representation can be utilised to prioritise the most marginalised groups without changing their constitutional status.

ii. **Address Systemic Hostility:** The state should formulate policy that focus alleviating discriminating activities from the educational institutions which is evident in top tier institute such as AIIMS. The current reliance on the 2012 UGC regulation, which was eventually restored during the 2026 statutory framework's sub judice status, is a reinforcement of statutory vulnerability as these rules are purely an advisory and recommendation, and not mandatory and binding to the institute.

[47] Report on SC & ST census, Socio Economic and Caste Census, (2011)

# A Comparative Study of The *Ultra Vires Doctrine*: Protecting Third Parties in Global and Indian Corporate Law

**Jhalak Singh**

*Dharmashastra National Law University Jabalpur, M.P.*

**Abstract**

*The doctrine of ultra vires was developed to protect shareholders by ensuring that directors work within the ambit prescribed by the Memorandum of Association which is a constitutional document for the company. The doctrine favours the interests of the shareholders protecting their corporate capital even at the expense of social expectations and third parties such as contractors and creditors who in good faith entered into transactions with the company not knowing it to be ultra vires. The rigidity of the doctrine can hamper economic progress so Jurisdictions like UK, Australia and Singapore have altered the doctrine to curtail its harsh effect on third parties but in India the doctrine is strictly followed meaning that any ultra vires act would render the transaction as void. Many jurists argue for mitigating rather than abolishing the doctrine since it still has a vestigial survival. It protects some creditors but can be a trap for others. This study analyses the doctrine of ultra vires in light of case laws. Further it also analyses the impact of the doctrine from a comparative lens focusing on Australia, Singapore, UK to examine its relevance and impact in India. The study is relevant as India is a developing economy with expanding capital market which is still in a maturing stage, adopting a completely liberal approach as in UK, Australia can lead to disruption of corporate discipline and uncertainty among various stakeholders apart from destabilization in markets. So, in Indian context the doctrine still holds relevance and it cannot be completely abolished, companies have grown to be a socio-economic institution with state taking the status of a welfare state from lassies' faire state. So, the companies owe social responsibility to public in proper utilization of their assets. Giving unlimited freedom in can hamper the interest of shareholders. Adopting the position as in UK or Australia would not be viable as the corporate environment has not matured enough to imagine the bulk of shareholders having direct control over company's management. Balancing corporate flexibility and stakeholder protection is crucial for developing economies like India. So, lessons can be taken from Singapore and a middle path can be adopted wherein the stakes of both the members and third parties are protected. The approach can be made flexible by allowing ratification to a certain extent.*

**Keywords:** Ultra Vires, Memorandum of Association, Void, Voidable, Third Parties, Comparative Analysis

## I. Introduction

The doctrine of ultra vires was developed to protect the shareholders by ensuring that the directors work in the ambit prescribed by the Memorandum of Association which is a constitutional document for the company. It is the function of the memorandum "to delimit and identify the objects in such plain and unambiguous manner as that the reader can identify the field of industry within which the corporate activities are to be confined."[1]

*Section 12* of the Companies Act, 1862[2] (the first of the modern Companies Acts) provided that "the objects of the company could not be altered." This provision played a major role in development of the doctrine.

Eventually, it became possible to alter the objects of the company, by practice, "memoranda of association were drafted with a plethora of objects so as to circumvent the restrictive nature of the ultra vires doctrine.[3]" So, the doctrine provided no protection for shareholders on one hand and created an inequitable position for the unwary third parties. Due to these positions the rule was amended in Australia and even Singapore incorporated Australia's modification in their Companies Act of 1967.

While Australia completely abandoned the doctrine, Singapore altered it to a great extent. As per the provision in Singapore, if directors undertake an ultra vires act, it would not render the transaction ultra vires, such transactions are voidable at the option of third party. Further the doctrine was also abandoned in UK.

The doctrine faces several criticisms as it adversely affects third parties by rendering entire transactions void. Many jurists argue for mitigating rather than abolishing the doctrine since it still has a vestigial survival.[4] It protects some creditors but can be a trap for others. The Jenkins Committee (1962)[5] proposed that *"a contract between a company and another party contracting in good faith should not be invalid as against the other party on grounds that it was ultra vires the company."* Further it recommended the *"abolition of the constructive knowledge rule in relation to third party dealings."[6]*

This study analyses the doctrine of Ultra Vires in light of case laws. Further it also analyses the impact of the doctrine from a comparative lens focusing on Australia, Singapore, UK to examine its relevance and impact in India where still an ultra vires act renders the entire transaction void ab initio.

## II. Overview of Doctrine of Ultra Vires

i. **Concept Of Doctrine of Ultra Vires**: A company is given personhood; it has a personality of its own. A company is required to work within the limits prescribed by the Memorandum of Association (hereinafter MoA) which is a constitutional document for the company.[7] The MoA reiterates the objectives for which the company is incorporated. *Section 4 (2)(c)* of The Companies Act, 2013[8] states,

   *"The Memorandum of a Company shall state the objects for which the company is proposed to be incorporated and any matter considered in furtherance thereof.*"

[1] Cotman v. Brougham, [1918] AC 514.
[2] Companies Act, 25 & 26 Vict., c. 89, S 12 (1862) (U.K.).
[3] *Supra* note 1.
[4] Avtar Singh, In Defence of Ultra Vires, 2 S.C.C. J. 25 (1971).
[5] Great Britain, Board of Trade, Report of the Company Law Committee (Jenkins Committee), Cmd. 1749 (1962).
[6] *Id.*
[7] Alan Dignam & John Lowry, Company Law (Oxford Univ. Press 2010).
[8] Companies Act, No. 18 of 2013, S 4(2)(c) (India).

Any act done beyond the objectives of the company is ultra vires and hence not enforceable by law. The doctrine was developed to protect the interest of creditors, shareholders etc. The doctrine aimed to protect corporate capital and manage the discretion problem as popularised by Berle and Means in their work *'The Modern Corporation and Private Property'*[9] that put forward the concept of ownership and control.

There are two views about the doctrine of Ultra Vires, the first being the wide view, according to which an act or transaction is ultra vires if it is entered for an improper purpose, notwithstanding that the act fell in the ambit of objects clause of the MoA. The second being the narrow view propounded by the Court of Appeal England in ***Rolled Steel Products (Holdings) Ltd* v. *British Steel Corporation***[10] as per which a transaction or act is ultra vires if it goes beyond the objects of the company.

ii. **Consequences Of Ultra Vires Acts:** The key consequences of ultra vires acts in India are that such a contract would be void ab initio and hence unenforceable, further the shareholders can obtain injunction from courts to restrain directors from undertaking ultra vires acts. There is also provision of personal liability of directors in case the corporate capital is utilized for an ultra vires act. It should be noted that an ultra vires act cannot be ratified by the shareholders even by unanimous consent, such act would remain unenforceable.

iii. **Impact of Doctrine of Ultra Vires Act on Third Parties**: The impact of the classic doctrine on third parties is harsh as ultra vires act by directors render the contract void. The doctrine of ultra vires favours the interests of the shareholders protecting their corporate capital even at the expense of social expectations and third parties such as contractors and creditors who in good faith entered into transactions with the company not knowing it to be ultra vires.[11] "Behaving at the expanse of the limited liability impedes the role of third parties their role becomes a sort of an individual protection exposed to any event of *commercial illusory*."[12]

The shortcoming was recognized to a certain extent and principles such as indoor management rule or the Turquand Rule[13] were formulated to cut down the harsh consequences of the doctrine. The rule protects the third parties to the extent that if an act is intra vires, the third parties need not know the compliance of internal matters and management in a company.

### III. Statutory Modifications of The Doctrine: Experiences from Uk, Australia, Singapore

The doctrine of ultra vires was developed to protect the shareholders by ensuring that the directors work in the ambit prescribed by the memorandum of the company.[14] When the first modern companies act was enacted it was not possible to alter the objects but eventually it became possible to alter the objects of the company, by practice, "memorandum of association were drafted with a plethora of objects so as to circumvent the restrictive nature of the ultra vires

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[9] Adolf A. Berle Jr. & Gardiner C. Means, The Modern Corporation and Private Property (Macmillan 1932).
[10] Rolled Street Products (Holding) Ltd v. British Steel Corporation [1984] BCLC 466.
[11] Shriya Tukaram Nandedkara, The Doctrine of Ultra Wires in Company Law, 3.2 J. Corp. Law & Jurisprudence 2087 (2023).
[12] Ali Qtaishat, The Doctrine of Ultra Vires: Commendable or Condemnable! 16 Asian Soc. Sci. 148 (2020).
[13] Royal British Bank v. Turquand (1856) 6 E & B 327.
[14] Alastair Hudson, Understanding Company Law (Routledge 2012).

doctrine."[15] So, the doctrine provided no protection for shareholders on one hand and created an inequitable position for the unwary third parties. Due to these positions the rule was amended in Australia and even Singapore incorporated Australia's modification in their Companies Act of 1967. While Australia and UK abandoned the doctrine, Singapore altered it to a great extent. In contrast India still follows a strict interpretation of the doctrine meaning ultra vires act would render the contract void ab initio. *Section 245(1)(a)* of the Companies Act 2013[16] aims *"to restrain the company from committing an act which is ultra vires the articles or memorandum of the company"*.

***i.*** **UK: Historical Evolution and Statutory Modification:** The origin of the doctrine can be traced back to UK. The UK gave the landmark case on doctrine of *ultra vires* Ashbury Railway Carriage and Iron Co. v. Richie[17] in 1875, which reiterated that an act beyond the memorandum of the company would be ultra vires. Over time, it was realised that the doctrine can create a disadvantageous situation for the third parties, this was first noted in the case of Attorney General v. Great Eastern Railway Co.[18], the case upheld the doctrine of ultra vires but observed that it should be applied reasonably and that anything which is regarded as incidental to the objects should not be held as ultra vires unless it is expressly prohibited.

***London Country Council v. Attorney General*** [19] observed *"no company can devote any part of its funds to an object which is neither essential nor incidental to the fulfilment of its objects, how beneficial so ever that object might seem likely to prove."*

Over a period of time the impact of the doctrine reduced due to its shortcomings, it failed to address the problem of broad drafting of objects clause. The Cohen Committee[20] in 1945 recommended to abolish the doctrine. It held that *"the doctrine of ultra vires was an illusory protection for the shareholders and yet could be a pitfall for third parties dealing with the company."*[21]

In English law objects are not required to be stated in the memorandum rather they are delineated in the Articles. Articles are a contract between the company and its members, so they don't have a binding effect on third parties unless they possessed the knowledge of the authority exercised is exceeded.

*Section 9(1)* of the European Communities Act[22] in England provides *"In favour of a person dealing with a company in good faith, any transaction decided on by the directors shall be deemed to be one which it is within the capacity of the company."* So, the doctrine cannot be claimed as against a third party acting in good faith.

"It is because of these developments that the rule of ultra vires has now virtually become a dead horse in English law. But the Indian conditions are different. Here, the horse is not

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[15] Cotman v. Brougham [1981] AC 514.
[16] Companies Act, No. 18 of 2013, S 245(1)(a) (India).
[17] Ashbury Railway Carriage and Iron Co Ltd v. Riche [1875] LR 7 HL 653.
[18] Attorney-General & Anor v Great Eastern Railway Co, [1880] 5 AC 473.
[19] London Country Council v. Attorney General [1907] UKHL TC 5 242.
[20] Great Britain, Board of Trade, Report of the Committee on Company Law Amendment (Cohen Committee), Cmnd. 6659 (1945).
[21] Great Britain, Board of Trade, Report of the Committee on Company Law Amendment (Cohen Committee), Cmnd. 6659, Para 12 (1945).
[22] European Communities Act 1972, S 9(1) (U.K.).

only very much alive but has also been made more formidable, capable of giving not only more violent kicks but probably even nasty kicks at times."[23]

**ii.** **Australia:** In 1998, the Company Law Review focused on modifying the doctrine of Ultra Vires in a bid to promote "straightforward, cost-effective and fair corporate law system.[24]" the doctrine not only affected the third parties acting in good faith but also restricted the scope of the business so the effect of the doctrine was abrogated through statutory intervention. As per *Section 125(1)* of the Corporations Act 2001[25] *"If a company has a constitution, it may contain an express restriction on, or a prohibition of, the company's exercise of any of its powers. The exercise of a power by the company is not invalid merely because it is contrary to an express restriction or prohibition in the company's constitution."* Further sub section 2[26] states *"If a company has a constitution, it may set out the company's objects. An act of the company is not invalid merely because it is contrary to or beyond any objects in the company's constitution."* At present the doctrine in its strict sense has become academic in Australia.

**iii.** **Singapore:** The 2004 amendment to the 1967 Companies Act[27] put forth *Section 23(1)*[28] which provided that a company *"has full capacity to carry on or undertake any business or activity, do any act or enter into any transaction."* Further *Section 25(1)*[29] provides *"No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by a company is invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer."*

As per the provision in Singapore if directors undertake an ultra vires act, it would not render the transaction ultra vires, such transactions are voidable at the option of third party.[30] So in Singapore a transaction would not render invalid on the ground that it is beyond company's power. The modifications to the doctrine are in line with the principle of estoppel. The amendment omitted *Section 22 (1B)* so now stating the objects in the MoA is not a prerequisite. But the doctrine is not completely abolished, *Section 25(2)* allows the shareholders to approach the court to obtain injunction for preventing an ultra vires act.

## IV. Case Law Analysis

### i. United Kingdom

**a)** ***Ashbury Railway Carriage and Iron Co Ltd v. Riche*[31]:** In the case the company was incorporated under the Companies Act 1862. The object clause of its memorandum provided *"to make and sell, or lend on hire, railway carriages and*

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[23] G.M. Sen, Rule of Ultra Vires in Company Law: Has It Outlived its Purpose? 27 J. Indian L. Inst. 283 (1985).
[24] Company Law Review Steering Group, Modern Company Law for a Competitive Economy: Final Report 3 (¶ 1.3 2001).
[25] Corporations Act 2001 (Cth) S 125(1) (Australia)
[26] Corporations Act 2001 (Cth) S 125(2) (Australia)
[27] Companies Act 1967 (Singapore)
[28] Companies (Amendment) Act 2004, S 23(1) (Singapore)
[29] Companies (Amendment) Act 2004, S 25(1) Singapore)
[30] Walter Woon Cheong Ming, Ultra Vires and Corporate Capacity in Singapore, 1 SAcLJ 52 (1989).
[31] Alastair Hudson, *Supra* note 14.

*wagons and all kinds of railway plant, fittings, machinery and rolling stock to carry on the business of mechanical engineers and general contractors...."*

The company agreed to finance Richie for construction of railway. The agreement was repudiated and on plea for damages it was contended that the act was ultra vires to the objects of the company. The House of Lords validated the claim and held that the contract would be void, even ratification by shareholders can't enforce it.

Lord Cairns LC hence reiterated *"The question is not as to the legality of the contract; the question is as to the competency and power of the company to make the contract... if it was a contract void at its beginning, it was void because the company could not make the contract."*[32]

b) ***Re Jon Beauforte (London) Ltd.***[33]***:*** In the case the company's object was to manufacture ladies' garments, however it decided to manufacture veneered panel-this was beyond the ambit of the company's memorandum. To carry out the business the company ordered fuel from another merchant. Eventually the company was wound up by the court and the fuel merchants sought payment from the company for the fuel supplied. The claim was rejected on the ground that the contract was ultra vires and hence void. Roxburgh J, held that the merchants were deemed to have a constructive notice of the ambit of the company's memorandum, and the liquidator had rightly rejected the claim.

The case shows the harsh impact that the doctrine coupled with the conception of constructive notice can have on innocent third parties. It also demonstrates how companies may try to evade contractual obligations by relying on the doctrine.

c) ***Bell Houses Ltd v. City Wall Properties Ltd***[34]***:*** The case is viewed as a marker of death of the doctrine of ultra vires. The company of the plaintiff used to acquire vacant sites for establishing housing estates on them. The directors of the company entered into contracts with financers to facilitate their business. Subsequently the company was approached by the defendant City Wall Properties Limited which needed funds to run their development schemes. The plaintiff introduced the defendant with financer in return of procuration fee of 20,000 pounds. Later the defendant refused to pay the plaintiff the requisite amount; it was contended that contract for commission was ultra vires the MoA of plaintiff's company. The trial court ruled in favour of the defendant deeming the act to be ultra vires but the court of appeal reversed the decision on the pretext that the MoA of the plaintiff's company contained a broad object clause stating "any other trade or business which can, in the opinion of the board of directors, be advantageously carried on by the company in connection with or ancillary to any of the above businesses or the general business of the company". The court acknowledged the directors' bona fide belief. The 'bell clause' gave considerable flexibility to the company. The case

[32] *Id.*
[33] Re Jon Beauforte Ltd. [1953] 1 Ch 131.
[34] Bell Houses Ltd. v. City Wall Properties Ltd., [1966] 2 All E.R. 674.

is significant as it led to gradual weakening of the doctrine that further motivated legislative changes.[35]

***ii.*** **Australia**

After the legislative reform, there was occasional instances where the doctrine was talked about, it now mostly exists as an academic concept.

*a)* ***Darvall v. North Sydney Brick & Tile Co Ltd[36]:*** Even after the doctrine is abolished and by 1984 amendment object clause has become option, some judges continue to use the term 'ultra vires' to refer to director's capacity. Mr. Darvall was a minority shareholder he alleged that the company's directors acted unfairly. There was a hostile takeover bid wherein the plaintiff offered to buy all the shares at 10 dollars each. In response the directors arranged a joint venture to raise funds, so that the shareholders could reject the plaintiff's bid. The NSW Court of appeal ruled in plaintiff's favour holding the directors act ultra vires.

*a)* ***Hawkesbury Development Co Ltd v. Landmark Finance Pty Ltd[37]:*** Hawkesbury Development Co Ltd held all the shares in Landmark Finance Pty Ltd. Landmark issued 2 debentures to another UDC (United Development Corporation). The issuance of the debentures was challenged by Hawkesbury for being ultra vires the objects of the company. The court held the act of Landmark as ultra vires but since UDC was a third party, Hawkesbury could not restrain the enforcement of debentures as against UDC.

**iii. Singapore**

**a)** ***Banque Bruxelles Lambert v. Puvaria Packaging Industries (Pte) Ltd[38]*** **:** The case involved the company called Puvaria, the directors of the company borrowed money and utilised it to pay off the previous debts of its associated company and didn't utilise it for its business directly. The bank (Banque Bruxelles Lambert) granted loan to the company on the pretext that it be utilised for its own business. Later the company went into liquidation. The loan of the company was challenged for being ultra vires by the liquidators. The Singaporean Court of appeal held that the transaction was not ultra vires and a narrow approach of the doctrine was adopted. The act was held to be voidable and bank was held not to be on inquiry i.e., the bank need not have known the internal management of the company and it could enforce the contract. The transaction is thus not void against third party automatically if the act is ultra vires, it can be voidable if the third party acted in good faith.

**iv. India**

*a)* ***Jahangir R. Modi v. Shamji Ladha[39]:*** The Bombay High Court cases is one of the initial cases that laid the foundation of doctrine of ultra vires in India. In the case the directors purchased shares in other companies such action was outside the ambit of the company's moa. The plaintiff, Jahangir Modi who was one of the company's

[35] Chrispas Nyombi, The Gradual Erosion of the Ultra Vires Doctrine in English Company Law, 56 Int'l J.L. & Mgmt. 347 (2014).
[36] Darvall v North Sydney Brick & Tile Co Ltd [1988] 14 ACLR 474.
[37] Hawkesbury Development Co Ltd v. Landmark Finance Pty Ltd [1969] 2 NSWR 786
[38] Banque Bruxelles Lambert v. Puvaria Packaging Industries, [1994] 1 SLR(R) 736 (Sing. Ct. App.).
[39] Jahangir R. Modi v. Shamji Ladha, [1866] 4 Bom. H.C.R. 185.

shareholders sued the directors to recover the losses sustained from the unauthorized transactions. The Bombay high court ruling in favour of the plaintiff held the act of the directors to be ultra vires the company's memorandum and the directors were held to be personally liable.

b) ***Lakshmanaswami Mudaliar v. Life Insurance Corporation of India*[40]*:*** The United India Life Assurance Co. Ltd that later became LIC passed a resolution at EGM to donate two lakhs to a trust for promotion of technical and business knowledge. When the company became LIC, the latter challenged the act of the former's directors of donating funds to the trust alleging it to be ultra vires of the company's memorandum. The Life Insurance Tribunal ruled in favour of the defendants and directed the trustees to repay the amount with interest. The Supreme Court on appeal affirmed the tribunal's decision and held that the donation resolution was ultra vires and hence void and the directors were held to be personally liable to refund the amount to LIC. The case is significant as it affirmed the strict application of doctrine of ultra vires in Indian context.

## V. Conclusion

The doctrine of ultra vires was originally formulated to protect the shareholders and the corporate capital but overtime with the expansion of businesses and corporate culture it proved to have a harsh impact on the third parties. The study noted that jurisdictions like UK, Australia and Singapore have altered the doctrine of ultra vires to curtail its harsh effect on third parties but in India the doctrine is strictly followed meaning that any ultra vires act would render the transaction as void. The comparative jurisdictions have significantly altered the harsh impact of the doctrine particularly on third parties through legislative amendments and judicial interventions. Through the doctrine originated in UK through the case of *Ashbury Railway Carriage and Iron Co. v. Riche and reached other common law nations; its impact was diluted by subsequent cases such as Bell Houses Ltd v. City Wall Properties Ltd and further, committee reports and legislative amendments mitigated the doctrine recognizing that ultra vires acts are not automatically void if the third party acted in good faith.* Similarly, Australia abrogated the harsh consequences of the doctrine through Section 125 of the Corporations Act 2001, reducing the doctrine largely to an academic concept. Additionally, Singapore amended its Companies Act in 2004, providing under Sections 23(1) and 25(1) that transactions by directors beyond company capacity are voidable at the option of third parties, while Section 25(2) allows shareholders to obtain injunctions against ultra vires acts, striking a balance between protecting shareholders and third parties. The comparative analysis highlights that jurisdictions with mature corporate cultures have recognized the harsh impacts of the doctrine on the innocent third parties and the expanding businesses in a global world and they have diluted its harsh impacts. In India lessons can be taken from Singapore and a middle path that protects the innocent third parties on one hand and shareholders' rights and corporate capital on hand can be adopted and the transactions that are ultra vires can be held voidable at the option of third party if they operated under a bona fide belief. The doctrine's harsh impact should be diluted and it should be given some flexibility by allowing limited ratification.

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[40] A. Lakshmanaswami Mudaliar v. Life Insurance Corporation of India, AIR [1963] SC 1185.

Further, there is a significant need for more comparative studies of the doctrine across jurisdictions, as in some developed countries ultra vires act does not renders the transaction void ab initio, while some deem such acts as voidable, in developing countries like India, an ultra vires act renders the transaction void ab initio. Comparative analysis across jurisdictions will facilitate policymakers to make decisions that mirror the economic realities of current times.

### VI. Recommendations for Reform of The Doctrine

i. **Problems with The Doctrine of Ultra Vires:** Due to the shortcomings of the doctrine, the rule was amended in Australia and later adapted in Singapore's Companies Act, *Section 25(1)*[41] provides that *"a transaction is not invalid by reason only that the company lacks capacity or power to enter into such transactions."*

The doctrine was formulated with the aim that companies function in a fixed ambit as enunciated in the objects clause, the justification seemed valid when companies were set up for a limited purpose. They efforts to mitigate the doctrine in many jurisdictions was in line with the changing economic realities. The doctrine became a hurdle in realisation of economic interests. "Sticking to original objects without changing to any other business however desirable and profitable the new business might be, could lead to rigidity and stalemate in days of economic progress, expansion and competitive capitalism."[42] "Like some dangerous mutant, the original benign doctrine became a trap for the unwary and an engine of oppression against persons who dealt with companies in good faith."[43]

Further a proviso was being inserted in the object clause that the stated objected be construed independently from the terms of the stated objects. That "independent object clause" was inserted to avoid the application of the principle of *ejusdem generis* in interpreting the object clause as done in various previous cases such **as *Re German Date Coffee Co.***[44]

ii. **Recommendations For Reform:** "The question today is not to be or to be, but rather what better arrangement can be found to replace the existing one."[45] The doctrine can be diluted in so far as it affects third parties i.e., it would operate within company and protect the shareholders as they would be able to bring action to prevent the directors from engaging in ultra vires acts. The Jenkins Committee was critical of the recommendations given by Cohen committee which proposed that the object clause operate between shareholders and company by limiting the powers of director.[46] This approach would not completely resolve the problems associated with the doctrine. The third parties would still need to ensure that the directors are not overarching their powers as delineated in the object clause. So, the burden to verify the director's authority would fall on the third party again leading to similar concerns regarding the doctrine.[47]

In light of these considerations the committee felt that the best course would be *"to attempt no general repeal of the existing law of Ultra Vires in relation of companies registered*

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[41] Companies Act (Cap. 50, 1967, rev. ed. 2006) § 25(1).
[42] John Kiggundu, The Never-Ending Story of Ultra Vires, 24 CILSA 1 (1991).
[43] Companies Act, 1967, (Singapore), *Supra* note 27.
[44]In re German Date Coffee Co. [1882] 20 Ch. D. 169 (Ch. Div.).
[45] Willburt D. Ham, Ultra Vires Contracts Under Modern Corporate Legislation, 46 Ky. L.J. 215 (1957).
[46] R. Baxt, Is the Doctrine of Ultra Vires Dead? 20 Int'l & Comp. L.Q. 301 (1971).
[47] Charles E. Carpenter, Should the Doctrine of Ultra Vires Be Discarded? 33 Yale L.J. 49 (1923).

*under the Companies Act but to provide protection to third parties contracting with companies (i) against the unfair operation of the ultra vires rule and (ii) by abrogating the rule, already mitigated by the decision in Royal British Bank v Turquand …that third parties are fixed with constructive notice of the contents of a company's memorandum and Articles of Association."*[48] It is recommended that the recommendation of Jenkins committee regarding third party protection should be adopted to a certain extent, the committee recommended that a contract should not be held void as against the third party which acted in good faith given that it has performed its part of the obligation at least to some extent.[49]

India is a developing economy with expanding capital market which is still in a maturing stage, adopting a completely liberal approach as in UK, Australia can lead to disruption of corporate discipline and uncertainty among various stakeholders apart from destabilization in markets.

In the Indian context, the doctrine still holds relevance and it cannot be completely abolished, companies have grown to be a socio-economic institution with the state taking the status of a welfare state from lassies' faire state. So, the companies owe social responsibility to public in proper utilization of their assets.[50] Giving unlimited freedom in Indian context can hamper the interest of shareholders. Adopting the position as in UK or Australia would not be viable as the corporate environment has not matured enough to imagine the bulk of shareholders having direct control over company's management.

Allowing the company to enter into transactions beyond its memorandum on the pretext of commercial wisdom would be meaningless in that sense.

So, lessons can be taken from Singapore and a middle path can be adopted wherein the stakes of both the members and third parties are protected. The approach can be made flexible by allowing ratification to a certain extent.

[48] Great Britain, Board of Trade, Report of the Company Law Committee (Jenkins Committee), Cmnd. 1749, Para 41 (1962).
[49] Great Britain, Board of Trade, Report of the Company Law Committee (Jenkins Committee), Cmnd. 1749, Para 42(a) (1962).
[50] European Communities Act, 1972, *Supra* note 22.

# The State Sovereignty in Contemporary International Law: Challenges in The Era of Globalization and Transnational Governance

**Adarsh Yadav**

*University of Allahabad*

## Abstract

*Historically, state sovereignty was the main principle of international law; it characterized the power, autonomy, and equality of states before the law in the international system. With its deep origins in the classical Westphalian approach, also based on the territorial integrity and non-intervention as fundamental principles of international order, sovereignty stressed the centrality of territory. But the modern international legal system has changed greatly because of the process of globalization, growth of international entities and because of the development of transnational issues like terrorism, cyber security, global warming, and enforcement of human rights. These trends have brought a long-term controversy on whether the state sovereignty is eroded or simply reinstated. This paper reviews how the concept of state sovereignty has changed in the present-day international law and how far the present day international legal regimes restrict state sovereignty. The paper takes a doctrinal approach by basing its claims on international treaties, judicial decisions of the International Court of Justice and state practice, demonstrating that the concept of sovereignty has not been eroded but has evolved into a responsibility-oriented and collaborative concept. It finds that the current international law represents a balanced solution in which sovereign equality is maintained alongside collective global regulation concerning common problems.*

*However, this position remains contested, with some scholars arguing that contemporary developments have significantly constrained state autonomy, while others view sovereignty as increasingly shaped by global governance structures.*[1]

**Keywords:** State Sovereignty; International Law; Globalization; United Nations; Transnational Governance; Human Rights

## I. Introduction

State sovereignty has long been considered the cornerstone of international law. It constitutes the legal capacity of one state to regulate its own territory and its own people as an independent entity and constitutes the foundation of the international legal order that is based on the equality of States. The classical international law understood sovereignty to be absolute and territorial in nature where states had exclusive authority over domestic matters and were defended against external intrusion.[2]

The doctrine of sovereignty in modern sense came about after the Peace of Westphalia of 1648, and the shift in the system of political organization was made into the modern system of the nation-state. The Westphalian settlement created the doctrine of territorial sovereignty and non-intervention, and in this way the states were accepted as sovereign states, in a decentralized

[1] Anne Peters, The Globalization of State Constitutions, in The Oxford Handbook of Comparative Constitutional Law 251, 255–57 (Michel Rosenfeld & András Sajó eds., 2012).

[2] Ian Brownlie, Principles of Public International Law 287 (7th ed. 2008).

international system.[3] For long, this conception has been the prevailing one in international legal thought, making states the main subjects of international law and consent the core element of international responsibility. The modern international legal regime, however, works in a completely changed global context. The trend of globalization has increased economic, political, and social interdependence and reduced territorial barriers. Global organizations like the United Nations, the World Trade Organization, and the International Monetary Fund have a significant impact on the behaviour of states, and quite frequently formulate the national policies by providing legal norms. There are also transnational issues such as international terrorism, climate change, pandemics, cyber warfare and mass human rights violations, and these problems often limit unilateral state action and require collective responses.[4]

The trend in these developments has led to the need to re-evaluate the classical understanding of sovereignty critically. Others claim that the expansion of international norms and institutions has undermined the sovereignty of the states so that they have become minor players in a system of global governance.[5] Other people argue that sovereignty does not disappear but has been modified to face new legal realities, not only focusing on co-operation, responsibility and adherence to international standards. This article attempts to examine how the concept of state sovereignty is evolving in the current world of international law.[6]

This divergence highlights a central tension in contemporary international law between formal sovereignty and functional constraints imposed by international cooperation.[7]

It discusses how classical ideas of sovereignty have been transformed by globalization and analyses the role of international legal institutions in ensuring a balance between the independence of states and the interests of the wider international community. The article provides an argument by examining the international legal tools, judiciary rulings, and the state practice that sovereignty still operates as a fundamental organizing principle of international law though in a re-defined and dynamic manner.

## II. Theoretical Foundations of State Sovereignty

International legal theory places sovereignty at its centre. In its most basic form, sovereignty refers to the highest jurisdiction of a state to have control over its people and land without any outside influence. With regards to the international law, the concepts of sovereignty are intricately linked to the notions of territorial sovereignty, political sovereignty, and sovereign equality of states. All these principles guarantee that states function as independent legal entities as far as the international system is concerned.[8]

Legally, sovereignty is not a political concept, but also a normative notion that is acknowledged and secured by international law. The equal sovereignty of all member states in Article 2(1) of the Charter of the United Nations serves to support the belief that no particular state of the world is under any legal obligation of inferiority to another.[9] This principle continues to be the guiding

[3] Stephen D. Krasner, Sovereignty: Organized Hypocrisy 20–25 (1999).
[4] Malcolm N. Shaw, International Law 23–26 (9th ed. 2021).
[5] Anne-Marie Slaughter, A New World Order 12–15 (2004).
[6] Martti Koskenniemi, The Future of Statehood, 32 Harv. Int’l L.J. 397 (1991).
[7] Nico Krisch, Beyond Constitutionalism: The Pluralist Structure of Postnational Law 75–78 (2010).
[8] James Crawford, Brownlie’s Principles of Public International Law 207 (9th ed. 2019).
[9] U.N. Charter Art. 2, Para 1.

principle to the operation of international law, where all the states are accorded formal equality irrespective of the differences in their power or influence.

Meanwhile, there is no such thing as absolute sovereignty. States even under the classical international law admitted restrictions of their sovereignty by way of treaties and customs of international law. The concept of pacta sunt servanda means that states are bound in good faith to fulfil their treaty commitments; this shows that sovereignty exists within a regulated legal system and not as a haven of complete discretion.[10] The international law has thus never failed to acknowledge that the sovereign authority is conditional to consent-based legal undertakings. Sovereignty in the modern international law is becoming more about a compromise between absolute liberty and duty. In their international activities, the states are supposed to employ their sovereign powers in a manner that is consistent with international norms, which refer to the human rights, environmental protection and international peace and security. The move represents an end to sovereignty as complete control and sovereignty as a legal position with responsibilities towards the international community.[11]

In this respect, the conceptual framework of sovereignty in contemporary international law should be interpreted as dynamic rather than static. The notion of sovereignty has been at the heart of the international legal order, though it has changed in content and application due to interdependence on the globe. This changing paradigm offers the basis on which to discuss how sovereignty functions in the global systems of contemporary international law, as well as preconditions the discussion of its correlation with globalization and international regulative systems.

## III. The Charter Framework of The United Nations and Classical Sovereignty

### i. Classical Concept of State Sovereignty

The doctrinal foundation of the international law is the classical concept of the sovereignty of the state. Conventionally, the sovereignty has been defined as ultimate and unique power of the state to its land, people, and domestic issues without external intervention or interference. This view developed together with the consolidation of the modern nation-state and gave the normative basis of the decentralized form of international law. The classical international law held states as the main entities of international law, and they had completed legal personality and autonomy.[12]

The Peace of Westphalia of 1648 is commonly characterized as the historical beginning of the modern sovereignty. The principles of territorial integrity, political independence, and non-intervention that were developed as part of the Westphalia settlement formed the legal personality of international states system.[13] The sovereignty in this model was a territorial one or based on the ideas of exclusive jurisdiction within certain limits. The international law lacked central authority which added more weight to the centrality of the sovereignty as a stabilizing instrument in the relations between states.

Classical sovereignty was strongly associated with the non-intervention principle. States were not allowed to meddle in the internal politics of other states which was meant to maintain political autonomy and avoid war. This precept was manifested in the common international law and

[10] Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.
[11] Ramesh Thakur, The Responsibility to Protect 34–36 (2016).
[12] Shaw, *supra* note 4, at 489–92.
[13] Krasner, *supra* note 3, at 26–30.

diplomatic practice which constituted one of the fundamental pillars of sovereign equality.[14] This led to the ex-post facto that domestic issues like government, the law systems, and even the economic policies were not subjected to foreign law investigation. The concept of consent was a major factor in the working of classical international law. States had a liability only to such international obligations to which they had assented, either by treaty or by custom. This system of consent gave more strength to the sovereignty of the states and reduced the international law. The international law was therefore more of a horizontal law, one that governs the relations among sovereign equals, and not one that brings a degree of subordination.[15]

Nevertheless, classical sovereignty never meant absolute power. States, even in the Westphalian system were aware of the legal restraint due to treaties and customary practices. The necessity of diplomatic immunity to be respected, the requirement to keep commitments to treaties, and to follow principles of warfare depict the fact that sovereignty functioned within a hierarchy of legal norms.[16] The concept of *Pacta Sunt Servanda* reiterated the idea that a sovereign power had the duty and responsibility *vis-a-vis* the international law.

The Montevideo Convention on the rights and duties of states (1933) also gave further understanding of legal attributes of a state, which included the permanent population, delimited territory, government, and ability to conclude relations with other states as key aspects in qualifying statehood.[17] Although the centrality of sovereignty was strengthened as a result of the Convention, it also helped to recognize that states exist in an international legal community that is governed by a mutuality of obligations. This acknowledgement was the precursor of the slow development of sovereignty due to the rising global collaboration. Simply, classical sovereignty released the international coexistence law, by establishing the stability, predictability, and equality between the states. Although over time its absolutist nature has been curbed, the principles that form the backbone of international law on territorial integrity and political self-sufficiency still affect modern-day international law.

### ii. State Sovereignty by the Charter of the United Nations

When the Charter of the United Nations was adopted in 1945, a paradigm shift occurred in the evolution of the history of international law and altered the idea of state sovereignty. The Charter aimed at developing a joint system of security that could stop the armed conflict without violation of the sovereign equality of the states. The Charter, through Article 2(1), reiterates the principle that the United Nations was founded on the principle of the sovereign equality of all its members, thus reaffirming sovereignty as one of the greatest principles of the international legal order of the post-war.[18] Simultaneously with it, significant restrictions on exercise of sovereign authority were brought forth by the Charter. Article 2(4) prohibits the threat or application of force by one state to territorial integrity or political independence of another state.[19] This clause is a break with classical international law whereby war was a legitimate tool of state policy. The Charter capped the arbitrary exercise of force in such a way that the concept of sovereignty was re-conceptualized as a part of collective security.

14 Crawford, supra note 8, at 207.
15 Brownlie, supra note 2, at 291–93.
16 Hersch Lauterpacht, International Law and Human Rights 62–65 (1950).
17 Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 165 L.N.T.S. 19
18 U.N. Charter Art. 2, Para 1.
19 U.N. Charter Art. 2, Para 4.

The Charter also upholds the sovereignty of states in Article 2(7) by ensuring that United Nations does not interfere with those issues that are under the domestic authority of the states.[20] This protection, however, is subject to the enforcement powers granted under Chapter VII of the Charter on the Security Council. Security Council can only impose measures that would impact on state sovereignty such as military force as well as economic sanctions when it concludes that there is a threat to international peace and security.

The power of the Security Council demonstrates the conditional character of sovereignty in the modern international legal order. Although states have the most important responsibility base in the internal affairs, their sovereignty is open to collective action which is directed at international peacekeeping. This new framework is an indication of the transition to regulated sovereignty as opposed to absolute sovereignty; state autonomy to global security interests.[21] The judicial interpretation has also helped in establishing the correlation between the sovereignty and the United Nations Charter. The principle of sovereign equality has always been affirmed by the International Court of Justice even though it has acknowledged the binding Charter obligation. The Court in the case of Nicaragua v United States stated that the prohibition on the use of force and the principle of non-intervention was seen as key rules of international law that affect all states in the same manner.[22] This is an assertion that allows one to note that sovereignty functions under a framework of legal restraints aimed at achieving global order.

The Charter structure therefore maintains the essentials of sovereignty, but it makes them pertinent in the context of the rapidly emerging globalized economy. Sovereignty on the system of United Nations is not abolished but organized, and states must employ their authority within the collective legal norms. This development is one indicator of the increasing understanding that peace, security, and stability cannot be attained by the unilateral action.

## IV. International Organizations, Globalization, And the Reconfigured State Sovereignty

### i. Globalization and The Implications It Has Had on State Sovereignty

Globalization has been a basic fact that changed the classical perception of the state sovereignty by strengthening economic, political, and social interdependence of states. In contrast to the previous times of global interaction, globalization now functions in the form of intense flows of trade, finances, communication, and governance exceeding territorial limits. Consequently, states tend to increase their sovereign abilities in a system which is ordered by the international regulations, institutions, and collaboration mechanisms.[23]

The globalization of the economy has had an especially important input in terms of the transformation of sovereignty. The international trade regimes under the administration of organisations like the World Trade Organization (WTO) bind states and restrict the freedom of states to take unilateral trade policies. Although these limits are taken voluntarily by states by the obligation to treaties, the obtained regulatory framework tends to limit domestic policy options in such aspects as tariffs, subsidies, and intellectual property.[24] This trend has made researchers

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[20] U.N. Charter Art. 2,7.
[21] Antonio Cassese, International Law 55–58 (2d ed. 2005).
[22] Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, 202–05 (June 27).
[23] Shaw, *supra* note 4, at 36–40.
[24] Peter Van den Bossche & Werner Zdouc, The Law, and Policy of the World Trade Organization 3–7 (4th ed. 2017).

claim that sovereignty has declined in the economic arena and it is in the form of interdependence rather than autonomy.

Political globalisation also jeopardizes the sovereignty of nations because it increases the reach of international and regional institutions on the actions of the states. A bright example is the European Union, which offers a variety of legislative and judicial functions at the level of supranational institutions with the membership of state parties. States end up exercising sovereignty in a shared rather than exclusive manner, despite retaining ultimate authority.[25] The fact that this is happening demonstrates that the sovereignty is ceasing to be indicated by non-interaction with the outside authority but by an increasing involvement into collective governance arrangements.

The issue of technological globalization has also undermined the applicability of geographical boundaries. Transactions within cyberspace, online surveillance, and the movement of data across borders pose challenges in regulation that cannot be dealt with successfully by individual states acting in isolation. The incapacity of states to act with exclusivity over cyberspace has brought about the need to cooperate internationally on the international law, further showing the weakness of traditional sovereignty on a globalized space.[26]

These limitations notwithstanding, globalization does not do away with sovereignty. Instead, it changes the way sovereignty is practiced. States remain the key players in the negotiation of international agreements, institutional directions, and international norm enforcement in domestic affairs. Sovereignty then continues its life as a status of interacting on the international level that being a complete protection against exogenous impact.

Some contemporary scholars argue that globalization has significantly weakened state sovereignty by shifting decision-making power to international institutions and global markets, thereby reducing the autonomy of states in domestic policy matters.[27] This has led to arguments that sovereignty is no longer exercised in isolation but is embedded within a network of interdependent legal and institutional frameworks[28]

Recent studies on global governance suggest that states increasingly operate within networks of international institutions where decision-making is shared rather than exclusively controlled at the national level.[29]

### ii. The International Organization and the formation of Sovereignty

The international institutions have become a new player in the modern order of international law affecting state sovereignty to a considerable extent. The presence of such institutions as the United Nations, World Health Organization, International Monetary Fund and World Trade Organization is a consequence of legally binding rules that govern power relations among the states in a variety of policy areas. Although such organizations get the power to do so through the consent of the state, their movements tend to have far reached consequences on local governance.[30]

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[25] J.H.H. Weiler, The Transformation of Europe, 100 Yale L.J. 2403, 2403 (1991).
[26] Nicholas Tsagourias & Russell Buchan, Research Handbook on International Law and Cyberspace 18–21 (2015).
[27] Nico Krisch, Beyond Constitutionalism: The Pluralist Structure of Postnational Law 68–72 (2010).
[28] Anne Peters *supra* note 1
[29] *Id*. at 585–88
[30]Jan Klabbers, An Introduction to International Organizations Law 14–17 (3d ed. 2015).

United Nations is at the centre stage of the same. The UN has powers that directly reflect on the state sovereignty through its main organs especially the Security Council. The resolutions passed by the Security Council under Chapter VII of the UN Charter are binding against all the member states and might also place sanctions, peacekeeping missions, or use of force.[31] These steps depict how the sovereignty becomes predisposed with collective security commitments with the view of ensuring international peace.

The international organizations-related judicial bodies also define sovereignty by way of authoritative interpretation of the law. An example is the International Court of Justice which settles interstate disputes and gives advisory opinions on legal issues referred to it by UN organs. Although the jurisdiction of the Court is founded on the state consent, the decisions of the Court contribute to the formation of the international law and affect the state practice.[32] This judicial role supports the notion that the concept of sovereignty exists in an order-driven international system.

The growing power of international organizations as a concern, critics say, acts to the detriment of democratic accountability and national autonomy. Proponents however argue that these institutions lead to effectiveness of sovereignty since states can deal with issues that have international effects.[33] International organizations can exercise authority therefore as an act of sovereignty and not actually the act of abdicating sovereignty.

### iii. Sovereignty as Responsibility, Human Rights, and Responsibility to Protect

The emergence of international human rights norms has emerged as one of the most significant changes in the modern international law which concerns state sovereignty. The classical international law considered the way people were treated as an issue that was solely subject to the domestic jurisdiction of states. The protection of individual rights has become internationalized thus restricting the state discretion through the adoption of international human rights treaties and monitoring machinery. [34]

Sovereignty as responsibility is a paradigm change in the international legal thinking. This method also highlights how the sovereignty of the nation implies commitments to the nation and to the world at large. This change is captured in the Responsibility to Protect (R2P) doctrine adopted in 2005 by the United Nations General Assembly according to which states owe a key duty to guard their citizens against genocide, war crimes, ethnic cleansing, and crimes against humanity. [35]

With the international community acting collectively through the United Nations under the R2P, the international community may enforce its action over a state when the latter fails to protect its people subjecting them to coercive measures, which have the mandate of the Security Council. This framework is a challenge to the theory of non-intervention since the human security is likened to the absolute state sovereignty.[36] Although controversial, R2P helps to see how the relationship between sovereignty and international responsibility changes.

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[31] U.N. Charter Arts. 39–42.
[32] Statute of the International Court of Justice art. 36, June 26, 1945, 59 Stat. 1031.
[33] Slaughter, *supra* note 5, at 9–12.
[34] Antonio Cassese, International Human Rights Law 38–41 (2d ed. 2005).
[35] G.A. Res. 60/1, Para 138–39 (Oct. 24, 2005).
[36] Thakur, *supra* note 11, at 27–30.

However, the practical application of the Responsibility to Protect has not been free from criticism. The selective invocation of R2P in certain geopolitical situations has raised concerns regarding inconsistency and political influence within the Security Council. In some cases, serious humanitarian crises have not resulted in collective action, which has led scholars to question whether sovereignty is truly conditioned by universal standards or shaped by power politics. This tension reflects the continuing struggle between legal principle and political reality in contemporary international law.

For example, the intervention in Libya in 2011 has been cited as a case where R2P was arguably extended beyond its intended scope, while the lack of similar intervention in Syria highlights concerns regarding selective application. Contemporary scholarship on R2P highlights that its implementation has remained inconsistent across different conflicts, raising questions about its effectiveness as a universal legal standard.[37]This selective practice has led to concerns that humanitarian intervention may at times reflect strategic interests rather than consistent legal principles.[38]This has been strengthened by judicial and quasi-judicial institutions that have taken states to task over human rights violations. The domestic law and policy may need to be reviewed, and international treaties are often evaluated by international human rights courts and treaty bodies, which determine whether a state is complying with its international requirements.[39] These processes evidenced the fact that the sovereignty in present day international law is becoming conditionalized under the respect to the fundamental human rights.

However, the use of R2P interventions and human rights is selective and is still a subject of political debate. There are still concerns about abuse and the violation of state autonomy. Despite those difficulties, the implementation of human rights into the international law represents a radical re-arrangement of the concept of sovereignty, which focuses on responsibility, legitimacy, as well as accountability.

## V. Security Problems, Transnational Dangers, And Judicial Exegeses of State Sovereignty

### i. The International Security, Terrorism, and the Boundaries of Sovereignty

The nature of the international security dilemmas that are being observed nowadays have created an enormous impact on the definition and practice of state sovereignty. Contrary to the old inter-state conflicts, the current threats to the system like international terrorism, organized transnational crime and asymmetric warfare cross national borders; they also often involve non-state actors. Such developments are undermining the classical concept of sovereignty, which rested based on territorial control and state-based threats. [40]

In the context of international terrorism, this has led to massive growth in international legal regulation. Subsequent to the 11 September 2001 terrorist attacks, the United Nations Security Council enacted a series of Chapter VII binding resolutions in the UN Charter and obligated states to criminalize terrorist financing, strengthen border controls and collaborate in intelligence sharing.[41] These commitments go a long way in limiting domestic law autonomy and it is a good example of how sovereignty is being exercised through a collective security framework.

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[37] Alex J. Bellamy, The Responsibility to Protect in Practice, 24 Global Governance 331, 334–38 (2018).
[38] Alex J. Bellamy, Responsibility to Protect: The Global Effort to End Mass Atrocities 210–15 (2009).
[39] Dinah Shelton, Regional Protection of Human Rights 5–8 (2013).
[40] Shaw, *supra* note 4, at 820–25.
[41] S.C. Res. 1373 (Sept. 28, 2001).

The fact that non-state actors are being realized to pose a significant security threat makes the aspect of sovereignty even more complex. The conventional international law emphasized on state liability on wrongful actions. But even today, the legal practice tends to place the blame on the states that have not managed to stop terrorist acts organized in their country.[42] This changing standard highlights how the sovereignty as control is giving way to sovereignty as responsibility, in which the states are supposed to play due diligence in eliminating transnational harm.

The self-defence doctrine has also been redefined to address the issues of security threats by non-state actors. Although the Charter of the United Nations in Article 51 acknowledges the inherent right of self-defence, its utility in attacks on terrorist organisations whose operations span over borders continues to be a subject of controversy.[43] Arguments in relation to anticipatory self-defence and whether force should be used against non-state actors within the territory of another state can illustrate a conflict between the sovereignty of states and the need to prevent conflicts.

**ii. Sovereign Authority, Cyber Threats, and Technology**

The rise of cyber threat is among the most complicated issues of the traditional concept of state sovereignty. The cyberspace does not define territorial boundaries, and this threatens the classical principle of sovereignty, which holds exclusive territorial jurisdictions. Cyber activities may be initiated by various jurisdictions, by individuals who act anonymously, and may cause considerable damage without necessarily having to move their physical location.[44]

The international law has had difficulties in aligning the current systems of the law with the cyber activities. Although such common principles as sovereignty, non-intervention, and due diligence can be still applicable, their application on the cyber context is still unclear. States are starting to realize that cyber activities that involve critical infrastructure or national security can be considered as violations of sovereignty and are yet to agree on any applicable thresholds and response.[45]

The attempt to formulate normative regimes governing cyberspace is indicative of the increased realization that unilateral state action is not enough. The actions of the United Nations Group of Governmental Experts and Open-Ended Working Group focus on collaboratively tackling the issue of cybersecurity and applying the international law to the cyberspace.[46] These phenomena indicate the shifting concept of sovereignty, where states are battling to strike a balance between individuality and community regulations, in an ever more technologically connected world.

Recent cyber incidents involving state actors, particularly in conflicts such as Ukraine, demonstrate the difficulty of applying traditional sovereignty principles in digital space.[47] The difficulty of attributing cyber operations to specific states further complicates the application of traditional rules of state responsibility.[48]

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[42] Crawford, *supra* note 8, at 221–24.
[43] U.N. Charter Art. 51.
[44] Tsagourias & Buchan, *supra* note 24, at 3–6.
[45] Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations 17–20 (Michael N. Schmitt ed., 2017).
[46] G.A. Res. 70/237, Developments in the Field of Information and Telecommunications in the Context of International Security (Dec. 23, 2015).
[47] Tallinn Manual, *supra* note 45
[48] Tallinn Manual, *supra* note 45

Recent studies on cyber operations indicate that existing international legal frameworks struggle to address issues of attribution and responsibility, particularly in State-sponsored cyber activities.[49]

### iii. International Cooperation and Transnational Crime

Transnational organized crime also demonstrates the constraints of the sovereignty of state. Crimes like human trafficking, drug trafficking, money laundering, and computer frauds are managed with elaborate networks that take advantage of loopholes in jurisdiction. The only way it can be well enforced is with a large-scale international collaboration in terms of extradition treaties, mutual legal assistance, and joint investigation systems.[50]

International networks that are documented to help in the reduction of transnational crime pose a negative pressure on states to align national laws and collaborate with foreign criminal justice systems. One example of such approach is the United Nations Convention against Transnational Organized Crime which obligates states to criminalize specific acts and to cooperate in enforcing laws across their borders.[51] Although these commitments limit national discretion, they augment the aggregate strength of states in dealing with international criminal menaces.

### iv. The International Court of Justice Interpretation of Sovereignty Judicially

Judicial interpretation is an important aspect of developing modern conceptualizations of state sovereignty. Sovereign equality based on the principle of international legal obligation has always been a matter of insistence by the International Court of Justice. The Court has also made it clear, through its jurisprudence, where sovereignty bounds offenders in such agendas as non-intervention, the application of force, and human rights.

In the *Corfu Channel case*, the Court reiterated the duty of states not to consciously permit their territory to be employed in carrying out deeds that are against the rights of other states rendering an early incarnation of the concept of due diligence.[52] The ruling denotes the perception that sovereignty suggests accountability towards other members of the international community.

Likewise, the Court upheld the doctrine of non-intervention and the ban on the use of force in the case of *Nicaragua v United States,* but the decision was made considering that the norms were conducted in a legal framework whereby autonomy of states and international order were balanced.[53] Later advisory opinions, including *the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, demonstrate even more the role of the Court in determining the legality of state conduct against sovereignty in connection with international requirements.[54]

The ICJ, by its jurisprudence, has helped to create a subtle conception of sovereignty that allows transformation of the current international norms. The rulings of the Court emphasize that sovereignty continues to be a central value of the international law, yet it operates under a framework of legal restrictions, aimed at helping to enhance peace, security, and justice.

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[49] Michael N. Schmitt, Cyber Operations and the Jus ad Bellum Revisited, 56 Vill. L. Rev. 569, 573–76 (2011).
[50] Neil Boister, An Introduction to Transnational Criminal Law 10–13 (2d ed. 2018).
[51] United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209.
[52]. Corfu Channel Case (United Kingdom v Albania) (Merits) [1949] ICJ Rep 4, 22.
[53] Military and Paramilitary Activities in and against Nicaragua (n 20) Para 202–205.
[54] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

This reflects a broader judicial approach that balances respect for state sovereignty with the enforcement of international legal obligations[55]

Recent academic analyses also suggest that the jurisprudence of the International Court of Justice continues to reflect a balance between sovereign equality and evolving international obligations.[56]

## VI. Findings, Conclusion, And Consolidated References

### i. Key Findings

The discussion conducted in this paper proves that the state sovereignty is still a primary concept of international law, albeit a concept that has been modified to reflect the modern global realities. The classical Westphalian notion of sovereign that is anchored to absolute territoriality and non-intervention ceases to be a complete mirror of the operation dynamics of the contemporary international order as defined by international law. Rather, the concept of sovereignty has become a non-rigid, conditional entity that has been adapted to globalization, international collaboration as well as normative evolution.

To start with, sovereignty has not been diluted or even discarded but re-calibrated. States still have legal personality, territorial jurisdiction, and political autonomy. But international obligations and membership of international bodies are gradually conditioning the exercise of sovereignty. This is a change in sovereignty as isolation to sovereignty as participation.

Second, globalization has limited the unilateral state action in economic, political, and technological fronts. The international trade regimes, financial institutions, and digital governance patterning provide regulatory demands, which restrict autonomy in domestic policies. However, such limitations are because of state approval and general will, and these strengthen, not weaken, sovereign authority.

Third, the development of international human rights norms and the Responsibility to Protect doctrine has changed the notion of sovereignty into the concept of responsibility. States are no longer closed off with respect to the international scrutiny of their treatment of the populations. Adherence to basic human rights and humanitarian standards is becoming a more crucial factor of sovereign legitimacy.

Fourth, the modern security issues like terrorism, cyber warfare, and transnational crime have prompted the integration of legal action at the collective scale that cannot be fulfilled within the conventional territorial scope. The example of international cooperation, sharing of intelligence and implementation of Security Council measures portrays how sovereignty works in a collective security structure.

Lastly, the reinterpretation of sovereignty by the International Court of Justice is important. And through its jurisprudence, the Court has continuously re-affirmed sovereign equality and made a clearer understanding of what the law limits that are placed on international obligations. This law judicial tradition points to the fact that sovereignty is compatible with international legal restraint and responsibility.

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[55] Shaw, *supra* note 4
[56] Crawford, *supra* note 8

### ii. Conclusion

The concept of state sovereignty still has a significant role in the framework and operation of the international law, though its definition and use has gone a long way in the modern age. The classical Westphalian approach, with its focus on absolute power and non-intervention, has developed and been replaced by a less paramount and more collaborative concept of sovereignty influenced by globalization, international policies, and collective global problems.

Instead of signalling the loss of sovereignty, the modern international law indicates its metamorphosis. The modern form of sovereignty is a status of the law that is facilitated by the obligation, collaboration, and the observance of the international standards. States retain their autonomy and equality, but they exercise their authority in a rule-established international system that aims at ensuring peace, security, human rights, and sustainable development. The conflict between the sovereignty of states and the international law is not a symptom of the loss of sovereignty but the adjustment to the law. States can expand their abilities to solve transnational problems that cannot be solved on the one hand by joining international regimes and undertaking mutual limitations. The sovereignty hence remains as a pillar of international law, though it remains dynamic.

Sum up, modern international law does not impair the sovereignty of the state; it redefines it. The concept of sovereignty must be considered in a mindset of flexibility and accountability to ensure the international order in the modern world that is becoming more interconnected. This dynamic structure will help to ensure that sovereignty is up to date, justified, and proper to deal with the complexities of the twenty-first century.

The future of sovereignty will therefore depend on how effectively states reconcile autonomy with increasing demands of global governance.

# Reforming Trade Secret Protection in India: A Legal Analysis Integrating Global Perspectives and Proposing Comprehensive Reform

**Madhumitha Gopinath**

*Advocate at Bar Council of Tamil Nadu & Puducherry, India*

**Abstract**

*The concept of trade secrets is very important in ensuring that a company has a competitive edge and enhances innovation in the corporate world. This paper analyses the protection of trade secrets in India and we will start with the conceptual and historical framework to realize what these trade secrets are and what is their role in the contemporary knowledge-based economy as a type of intellectual property. It examines the challenges in protecting trade secrets because there is no codified statutory framework of protection of trade secrets, and it reveals structural, procedural, and challenges of enforcement. The paper examines the economic consequences of these loopholes, their effect on the businesses, startups, and foreign investment, and takes a comparative approach to highlight the importance of trade secrets on an international scale and its universal nature. The paper ends by suggesting a holistic legal framework to ensure that trade secrets are acknowledged, preventive and remedial action steps are enhanced, digital and cross-border issues are addressed, and that the regime in India is aligned with the international best practices to maximize innovation, protect business confidential information and promote economic development.*

**Keywords:** Trade Secrets, Intellectual Property, Knowledge Economy, Corporate Innovation, Legal Protection, Enforcement Challenges, Cross-Border Issues, Economic Growth.

## I. Introduction

In contemporary business world, Intellectual property is one of the primary competitive factors, trade secrets being one of the most important parts of business strategy. Trade secrets involve secrets of information, formula, technique, or a process that gives companies some economic benefits. Trade secrets do not need official registration as patents do, and therefore, the legal protection of trade secrets is based on the contractual, common and statutory protection of trade secrets.

Trade secrets in India receive protection by mainly basing on the contract law, equity principles, and the provisions of Indian Penal Code, 1860, and Indian Contract Act, 1872. Nevertheless, the lack of specific laws poses difficulties in the enforcement, remedies and deterrence. The courts have tried to address this loophole but patchy jurisprudence and the length of time used in the courts undermine such protection.[1]

Countries such as the United States and the European Union have come up with certain acts to safeguard trade secrets globally. The US Defend Trade Secrets Act (2016) offers the statutory framework with civil remedies and criminal sanctions, whereas the EU Trade Secrets Directive (2016) facilitates the protection in all member states, focusing on confidentiality, anti-competitive disclosure and legal remedies. The paper is attempting to examine the Indian legal protection of trade secrets, find its weaknesses and compare with the best practices internationally. The paper

[1] Anubha Sinha, Protection of Trade Secrets in India: An Appraisal, 5 Indian J. Intell. Prop. L. 89 (2012).

aims at giving recommendations to reform the corporate governance to make it more effective, to encourage innovation, as well as to establish a robust legal system that would properly protect trade secrets.

**II. Conceptual and Historical Framework**

Trade secrets are the business secrets or trade secrets information i.e. trade secrets are confidential business information, processes, formula, design, instruments, or a collection of information, which give a commercial edge over other businesses.[2] In contrast to patents or copyrights, trade secrets do not need registration and protection depends on the secrets, the contractual regulations, and the fairness. Trade secrets usually entail the core elements of:

- **i.** The information should be a secret and it should not be publicly known.
- **ii.** Economic Value: The information gives an edge of competition or commercial.
- **iii.** Reasonable Measures-The owner should ensure that it keeps it a secret by taking reasonable actions, including non-disclosure agreements (NDAs) and internal policies.

Innovation, business growth, and competitive advantage in business are mainly dependent on trade secrets especially in such industries as technology, pharmaceuticals, manufacturing, and finance. They are part of corporate strategy and corporate governance and in many cases, they are the foundation of the intellectual property portfolio of a company.[3]

Trade secrets have been recognized legally over a period of centuries:

- **a) Early Common Law (England and the US)-** The principles of equity in common law, e.g. duty of confidentiality and safeguarding against misappropriation of information, were used to protect trade secrets. Courts realized that valuable secrets could be kept by holding employees or business partners.
- **b) Industrial Revolution -** As the nature of industries started taking an industrial approach, businesses started insisting on proprietary processes and innovations. The 19th and 20th century courts focused on enforcing contracts and damages in the event of breach.

Current Laws on Legal Frameworks and Protection to stop misappropriation of trade secrets have been codified in the US through the Defend Trade Secrets Act (2016) and the EU Trade Secrets Directive (2016), providing remedies within the civil sphere, criminal sphere and procedural means to prevent misappropriation. The frameworks are aimed at striking the balance between protection, innovation and competition.[4]

India has traditionally been slow to embrace contract law, equity as well as general principles of fiduciary duties in protection of trade secrets. Cases such as the *Rajasthan State Industrial Development and Investment Corporation v. Diamond Power Engineers* laid stress on confidentiality and commercial interest. Nevertheless, India does not have a specific statutory framework that provides difficulties in enforcement.

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[2] Prashant Reddy T., The Need for a Trade Secrets Act in India, 8 NUJS L. Rev. 45 (2015).
[3] Shamnad Basheer, Intellectual Property and Innovation Policy in India, 3 Indian J.L. & Tech. 1 (2007).
[4] Arul George Scaria, Confidential Information and Trade Secret Protection in India, 7 J. Nat'l L. Univ. Delhi 67 (2014)

## III. Legal Framework Governing Trade secrets: National and International Perspectives

Intellectual property includes trade secrets which are of vital essence in innovating and having an advantage over competitors. Their protection is done by a combination of national law systems and international frameworks instead of one unified law. This chapter focuses on legal mechanisms of trade secrets in India and significant international instruments as well as comparative approaches.

## IV. Indian laws that regulate trade secrets

### *i. Contractual Protection in the Indian Contract Act, 1872*

India is not presently equipped with an autonomous law that governs trade secrets. However, trade secrets protection is guaranteed by a set of contractual responsibilities, fair practices, legal regulations, and policy programs. This fragmented composite framework offers a fairly good mechanism of protection of confidential business information in India.

The main basis of protection of trade secrets in India is contract law with specific reference to the Indian Contract Act, 1872.[5] Non-disclosure agreements (NDAs), confidentiality clauses, and non-compete agreements are all types of contractual mechanisms commonly used by businesses to protect commercially valuable information. Indian courts have continued to support enforceability of such agreements, as long as they are reasonable in terms of its scope, duration and geographical coverage. Such contracts bind legally the employee, business partner as well as the third party and prohibit use or disclosure of the trade secrets without authorization. Therefore, the initial defence against confidential information is through contractual arrangements.

### *ii. Equitable Protection and Doctrine of Breach of Confidence*

Besides contractual redress, Indian law knows the equitable principle of breach of confidence where trade secrets are safeguarded in the absence of an express contract. This doctrine is based on the common law principles and has an obligation of confidentiality whereby information is divulged under circumstances that suggest trust.

The principle has been vigorously enforced by courts to deter misuse of confidential information such as technical know-how, business strategy, customer database and proprietary processes. To deter the unjust enrichment and to safeguard the interests of the legitimate owner, remedies like injunctions, damages and account of profits are awarded. This fair jurisdiction is very important in sealing the legislative loophole of the protection of trade secrets.

### *iii. Legal Protection under Indian Penal Code and Information Technology Act*

There are also some statutory provisions which protect trade secrets in India indirectly.

The Information Technology Act, 2000[6] deals with the problems of data protection, unauthorised access and cybercrimes. It has a major role to play in protecting trade secrets in the digital world by punishing hacking, stealing of data and unauthorized removal of confidential data.

The Indian Penal Code of 1860[7] also offers solutions to matters of criminal breach of trust, cheating and dishonest misappropriation. Such provisions can be applied in the case of obtaining

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[5] Indian Contract Act, 1872, Act No. 9 of 1872, section 10–27, 51–54 (India) (contractual basis for enforceability of NDAs and confidentiality agreements).

[6] Information Technology Act, 2000, Act No. 21 of 2000, section 43, 66 (India)

[7] Indian Penal Code, 1860, Act No. 45 of 1860, Section 405–409 (India)

or misusing the trade secrets in a wrongful way through fraud or even through criminal acts. These laws are not intended to protect trade secrets, but rather provide a larger protection framework.

### *iv. National Intellectual Property Rights Policy, 2016*

One of the most significant improvements in the intellectual property policy in India is the launch of the National Intellectual Property Rights Policy, 2016.[8] Although the policy does not lay down any legislation on the subject of trade secrets, it does recognize the significance of safeguarding confidential business information as part of an overall intellectual property ecosystem. The policy is aimed at raising awareness, capacity building and innovation. It promotes improved methods in managing and safeguarding proprietary information by companies. In addition, it encourages a balanced practice that facilitates innovation and fair competition and access.

### *v. Institutional Mechanisms: CIPAM role*

Since the institution of protection of intellectual property in India is strengthened by the institution of protection of intellectual property, the institution of the protection of intellectual property in India is a creation of the cell of IPR Promotion and Management (CIPAM) under the Department of Promotion of Industry and Internal Trade (DPIIT). CIPAM is an essential player in the achievement of the goals of the National IPR Policy through carrying out awareness programmes, training of stakeholders, and best practices in the management of intellectual property. Its programs contribute to the protection of trade secrets indirectly by creating a culture of secrecy and privacy of proprietary information.

### *vi. Draft Protection of Trade Secret Bill, 2024*

Considering that a special legal framework is required, the 22nd Law Commission of India presented the draft Protection of Trade Secrets Bill, 2024. The Bill gives an accurate definition of trade secrets, which includes any information that is a secret, commercially valuable, safeguarded by reasonable precautions, and would cause harm were it disclosed. It provides rights of utilization, licensing and restricting access to trade secrets to the holder besides specifying legitimate means of obtaining trade secrets, namely, independent discovery, reverse engineering, and observation of products or materials, which are publicly accessible. The Bill provides that no misappropriation exists when use or disclosure of trade secrets is done in good faith with a view to exposing illegal or unethical acts, or safeguarding the interest of the people.

The Bill also provides compulsory licensing with the Central Government being able to demand a holder to give access in case of national emergency, an outbreak of public health or a significant amount of public interest. Misappropriation claims will be initiated in Commercial Courts, which will be required to maintain the confidentiality of trade secrets in litigation. The courts are given the authority to issue injunctions, damages or account of profits, and the delivery or destruction of misappropriated material, such as electronic files.

The release of the draft Bill can be considered a huge move towards the creation of a complex legal framework that is able to safeguard trade secrets, promote innovation, and spur investment in technology-intensive sectors. Nevertheless, the issue of compulsory licensing provision is still of concern as it needs to have guidelines on what is meant by exceptional circumstances. The effectiveness of the legislation will hinge on the balance between individual proprietary interests

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[8] Govt. of India, National Intellectual Property Rights Policy 2016 (May 12, 2016)

and societal interests, in order that businesses are able to efficiently protect their trade secrets without compromising their competitive edge

Recent changes in the wider intellectual property environment, such as the changes to the trademark and patent regulations, suggest that India is dedicated to modernising its intellectual property environment. These reforms have no direct effect on trade secrets but help to create a business-friendly and efficient legal environment. Nevertheless, there are still a number of challenges, such as: Lack of statutory clarity, Inconsistent enforcement, Problems caused by employee mobility, Risks of reverse engineering, and tension between confidentiality and transparency. These challenges bring out the necessity of a more coherent and organized legal framework.

## V. International Legal Framework

### *i. Defend Trade Secrets Act, 2016 (USA)*

The United States has come up with one of the most elaborate legal regimes in protecting trade secrets by passing the Defend Trade Secrets Act (DTSA), 2016.[9] The law grants the federal jurisdiction to the trade secret misappropriation and allows the holder of trade secrets to bring direct civil actions to the federal courts.

There is a broad spectrum of remedies available under the DTSA, such as injunctions, damages as a result of actual loss, unjust enrichment, and, in extreme rare instances, exemplary damages. Another interesting aspect of the Act is the ex parte seizure provision, which grants courts the liberty to avoid leakage of trade secrets when there is need to do so in case of an emergency. Moreover, the Act has incorporated whistleblower protection, which protects employees who report the violations of law by reporting the trade secrets that they have in confidence. This is a balanced provision as both the enforcement of proprietary rights and ethical corporate governance are upheld.

### *ii. European Union Trade Secrets Directive*

The European Union Trade Secrets Directive (Directive (EU) 2016/943)[10] provides a harmonised system of protection of trade secrets across the EU Member States. It requires Member States to offer effective civil remedies, such as injunction, damages, and remedies like destruction or recall of infringing goods. Notably, the Directive focuses on upholding the secrecy of trade secrets in court. The legal certainty that the Directive creates, the ease with which it promotes cross-border enforcement, and the deterrence against the misappropriation of trade secrets in the European Union are improved.

### *iii. Safeguarding in Other Jurisdictions*

Some other jurisdictions like the United Kingdom and Singapore have a right based and enforcement-oriented approach to protection of trade secrets. The United Kingdom relies on the principles of common law of breach of confidence as the primary source of protection, with the

[9] Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, Section 2, 130 Stat. 376 (codified as amended at 18 U.S.C. Section 1831–1839)

[10] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, 2016 O.J. (L 157) 1

addition of statutory developments. Confidentiality obligations are recognised by courts as part of relationships and remedies such as injunctions and damages are imposed.[11]

Singapore has been pursuing a mixed strategy, consisting of contractual, fair, and statutory assistance, and intensive judicial enforcement mechanisms. Both jurisdictions have placed emphasis on preventative mechanisms including non-disclosure agreements (NDAs) and remedial actions, hence enhancing commercial certainty and business confidence.

### *iv. Paris Convention for the Protection of Industrial Property, 1883*

Paris Convention, 1883, which does not specifically discuss trade secrets, offers an indirect basis to it under its provisions on unfair competition, especially under Article 10bis. Article 10bis requires member states to provide effective protection against unfair competition and stipulates it as any action that is inconsistent with fair industrial or commercial practices. Although the Convention does not specifically within its context integrate trade secret misappropriation, its wide applicability of industrial property under Article 1 provides it with an opportunity to be applied indirectly. The Convention however has its shortcomings such as not having clear provisions concerning trade secrets and having no effective enforcement mechanisms. Therefore, its contribution towards the protection of trade secrets is still fundamental and not exhaustive.[12]

### *v. Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, 1995*

Another major development in protection of trade secrets in the international trade is in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995, especially in Article 39. Article 39 acknowledges the security of undisclosed information which practically entails trade secrets. It commits member states to the secrecy of such information, its acquisition or utilization without agreement in a way that is against honest commercial practices.

To be considered as under protection, information must:

Be confidential (not widely known or easily available), Have commercial value due to its secrecy, and be subject to reasonable measures to keep its secrecy. Also, Article 39(3)[13] guarantees confidentiality of test data which is provided to the regulatory bodies, especially in the pharmaceutical and agricultural industries. Yet this defence is none too great:

- **a)** It is only applicable to particular sectors,
- **b)** It secures against unfair commercial exploitation,
- **c)** Disclosure can be done in the interest of the people.

### *vii. North American Free Trade Agreement (NAFTA), 1992*

Article 1711 of the North American Free Trade Agreement (NAFTA), 1992[14] also offers a systematic system of protection of trade secrets. Trade secrets according to NAFTA refers to commercially valuable information that is not publicly available, and is governed by reasonable efforts to keep secret. It commits member states to offer legal means to curb illegal disclosure,

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[11] Rochelle C. Dreyfuss & Katherine J. Strandburg, A Functional Analysis of Trade Secret Law: A Framework for a Global Approach, 74 U. Cin. L. Rev. 849 (2006).

[12] Lionel Bently & Brad Sherman, Intellectual Property Law 403–04 (5th ed. 2018).

[13] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 39(2), Apr. 15, 1994.

[14] North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 289, art. 1711 (entered into force Jan. 1, 1994).

collection, or utilization of such information. The agreement guarantees that remedies like injunctions and damages will be available. In comparison to TRIPS, NAFTA is more protective as it acknowledges the real and possible commercial worth of confidential information and does not have limitations concerning the protection time. Finally, trade secret protection in India is now regulated by a set of contractual, fair and legal measures, complemented with policy-level programs and international commitments. Though this framework is a sensible source of protection, the lack of a specific statute makes it less effective and somewhat unpredictable.

The Author observed that implementing a comprehensive law on trade secrets would go a long way in ensuring that the confidential business information is better safeguarded, that the innovation is encouraged, investment comes in as well as the transformation of India to a knowledge-based economy. The global system regulating the protection of trade secrets is typified by a mixture of multilateral contracts, regional guidelines, and local laws. Although the instruments like the Paris Convention are intended to give the principles, agreements like the TRIPS and NAFTA are more concrete in establishing standards.

Meanwhile, other jurisdictions, including the United States and the European Union, exhibit superior legislative systems, which provide preventive and remedial means. Though there have been these developments, the lack of a common world regime remains to be a challenge especially in the enforcement across borders. However, the increasing appreciation of trade secrets as a significant intellectual property highlights the importance of enhanced harmonisation and enhanced international collaboration.

## VI. Landmark Judgements Related to Trade Secrets in India

Despite the lack of a separate Trade Secrets Act in India, the judiciary has been instrumental in developing trade secret protection through common law, equity, and contract law. Trade secrets and private information have long been acknowledged by Indian courts as valuable proprietary interests that should be protected by the law. The extent of confidentiality, employee responsibilities, restrictive covenants, and remedies like injunctions and damages have all been made clearer by the courts through significant rulings. These court rulings serve as the cornerstone of India's trade secret jurisprudence and demonstrate the advantages and disadvantages of the current system, underscoring the necessity of thorough statutory legislation.

The judicial system has been central in influencing the protection of trade secrets in India though there is no specific law enacted addressing the issue in India, the principles of equity, contract law, and breach of confidence have been applied. Confidential information has been long recognised by Indian courts as a good proprietary interest that should be granted protection under the law. Courts have provided guidance on the extent of confidentiality, employee responsibility, and enforceability of restrictive covenants, and remedies including injunctions and damages, through the case law. All the decisions are the basis of the trade secret jurisprudence in India.

In *Rajasthan State Industrial Development & Investment Corporation Ltd. v. Diamond Power Infrastructure Ltd*[15]*.,* the Supreme Court realised that business secrets that give an edge should be guarded. The Court underlined that in the case when this information is distributed on the basis of express or implied commitment of secrecy, the misuse of such information can be prevented

[15]Rajasthan State Industrial Development & Investment Corporation Ltd. v. Diamond Power Infrastructure Ltd (2013) 5 SCC 470

with the help of injunctions.[16] This ruling solidified the enforceability of confidentiality agreements and recognized trade secrets as proprietary interest's worthy of protection.

In *John Richard Brady v. Chemical Process Equipments Pvt. Ltd.*[17] the Delhi High Court ruled that even where there is no explicit agreement, an obligation of confidentiality may exist.[18] It noted that the information provided in a situation where there is an implication of trust cannot be exploited. This case played a vital role in enhancing the doctrine of breach of confidence in the Indian law.

In *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*[19], the Bombay High Court also determined that the obligation of confidentiality is not just limited to the initial recipient of the information but it also applies to third parties who obtain such information knowingly.[20] The Court provided protection where the idea revealed under the condition of confidentiality was later used without permission.

In *Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd.*[21], the Supreme Court affirmed that negative covenants are enforceable in the context of employment when such covenants are needed to safeguard trade secrets. It helped to clarify that such covenants get legalized as long as they are reasonable and do not constitute a restraint of trade.

In *Ambiance India Pvt. Ltd. v. Shri Naveen Jain,*[22], the Delhi High Court denied an injunction because the plaintiff did not provide any specific identification of the alleged trade secrets. The Court has pointed out that obvious identification and demonstration of confidentiality are prerequisites in any trade secret litigation cases, and therefore, the obligation to prove is very heavy on the complainant.

In *Bombay Dyeing & Manufacturing Co. Ltd. v. Mehar Karan Singh*[23], An Internal manuals and customised software were recognised by the Bombay High Court as a trade secret. It established the main criteria of defining the trade secrets such as the secrets, the economic value, and the efforts made to keep the secrets. Another decision made by the Court was that fraudulent actions could lead to protection even when there was no formal confidentiality agreement.

In *Tata Sons Ltd. v. Greenpeace International,*[24], Even though this was more of a defamation case, the Court recognized that spreading sensitive corporate information may be detrimental to business interests. The ruling supported in an indirect manner the necessity to maintain confidential business information.

In *Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*[25],the Supreme Court emphasized the need to safeguard business proprietary information including manufacturing process and

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[16] Rajasthan State Industrial Dev. & Inv. Corp. Ltd. v. Diamond Power Infrastructure Ltd., (2013) 5 S.C.C. 470 (India).
[17]John Richard Brady v. Chemical Process Equipments Pvt. Ltd. AIR 1987 Del 372.

[18] John Richard Brady v. Chemical Process Equipments Pvt. Ltd., A.I.R. 1987 Del. 372 (India).
[19] Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd (2003) 5 Bom CR 404,

[20] Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd., (2003) 5 Bom. C.R. 404 (India).
[21] Niranjan Shankar Golikari v. Century Spinning & Manufacturing Co. Ltd. AIR 1967 SC 1098

[22] Ambiance India Pvt. Ltd. v. Shri Naveen Jain, 2005 (31) P.T.C. 424 (Del.) (India).
[23] Bombay Dyeing & Mfg. Co. Ltd. v. Mehar Karan Singh, 2010 (44) P.T.C. 658 (Bom.) (India).
[24] Tata Sons Ltd. v. Greenpeace Int'l, 2011 (45) P.T.C. 275 (Del.) (India).
[25] Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73

marketing strategies. It emphasised that confidentiality and commercial value are essential elements for legal protection.

In *Maruti Suzuki India Ltd. v. Balbir Singh*[26], the Supreme Court ruled that the employees are bound to keep their confidentiality, even when they are not employed.[27] Technical and manufacturing secrets were kept under wraps, and this strengthened post-employment obligations.

In *Roshni v. DLF Ltd*.,[28] the Databases of customers and business strategies which were revealed in confidence were safeguarded by the Delhi High Court. It believed that information did not necessarily have to be explicitly identified as a trade secret provided it met the requirements of secrecy, economic benefit and reasonable precautions to assure secrecy.

In *Whirlpool Corporation v Registrar of Trade Marks,*[29] Though it was mostly a trademark case, the Supreme Court acknowledged that commercial valuable business information used in a malicious manner may negatively influence brand reputation and goodwill, hence the need to safeguard confidential information.[30]

*In M/s Onida Finance Ltd. v. Videocon Industries Ltd.*[31]*,* the Misuse of technical know-how and design specifications were handled in the Bombay High Court. It believed that in case of confidentiality and commercial value, such information can be considered as trade secrets.

As observed by the author above, Indian courts have come up with a relatively broad and disjointed system of trade secret protection in the context of the lack of a particular statutory regime. In the decisions of the courts, three key aspects have always been highlighted; confidentiality of information, commercial value, and reasonable attempts made to keep the information secret. It is also deduced that even though courts have been proactive in safeguarding proprietary interest by applying fair-minded principles and enforcing the contract, courts have ensured a balance between the courts and the government especially regarding mobility in employment and restrictive covenant. The lack of consistency in judicial interpretation and the burdensome standard of proof however presents real difficulties in enforcement. Thus, a special statutory framework would bring more clarity, uniformity and predictability to the protection of trade secrets which will empower India to compete better in the knowledge-driven global economy.

## VII. Comparative Analysis: India, United States and European Union

An analytical comparison of protection of trade secrets under Indian, United States and European Union laws and regulations reveal apparent structural and functional disparities.

i. **United States:** The DTSA is a powerful federal law enactment, the United States Defend Trade Secrets Act, 2016[32]. The DTSA is also explicit on what constitutes trade secrets and misappropriation as well as provide consistent protection across the country, access to

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[26]Maruti Suzuki India Ltd. v. Balbir Singh, (2014) 2 SCC 401

[27] Maruti Suzuki India Ltd. v. Balbir Singh, (2014) 2 S.C.C. 401 (India).

[28] Roshni v. DLF Ltd., 2013 S.C.C. OnLine Del. 1976 (India).

[29] Whirlpool Corporation v Registrar of Trade Marks, (1998) 8 SCC 1

[30] Whirlpool Corp. v. Registrar of Trade Marks, (1998) 8 S.C.C. 1 (India).

[31] M/s Onida Finance Ltd. v. Videocon Indus. Ltd., 1997 (17) P.T.C. 117 (Bom.) (India).

[32] U.S. Department of Justice, Trade Secret Enforcement,

federal courts. It offers strong solutions, such as injunctions, compensatory damages, exemplary damages, attorney fees and even criminal penalties in severe cases.[33] Notably, the DTSA has a whistleblower immunity on individuals who may disclose trade secrets to report any illegal activities so as to balance corporate immunity with ethical responsibility. Prejudice, investigation and investor confidence are provided by the proactive position of federal judicial system and enforcement departments.[34]

ii. **European Union:** The EU Trade Secrets Directive 2016/943 of the European Union takes the form of harmonization.[35] Rather than having a centralized body to enforce it, it sets minimum standards which should be adopted by all Member States. The Directive guarantees immunity against illegal acquisition, utilization, or exposure of trade secrets and provides solutions to the case, like interim relief, damages, and confidentiality during litigation. Its greatest advantage is that it will lessen the legal fragmentation within the EU market, which tends to encourage cross-border consistency. The quality of enforcement, however, relies on national implementation, which might not be consistent across the Member States. India on the other hand does not have a specialized trade secret law. The contract law (non-disclosure agreements), fiduciary liability under the company law and equitable principles and some of the provisions of the Information Technology Act provide protection.[36]

Based on the discussion above, the author has observed that the Indian courts have made a relatively comprehensive yet disjointed system in the protection of trade secrets in the absence of a particular statutory regime. In judicial cases, three key factors are always highlighted: the secrecy of information, its commercial worth and the reasonable precaution measures to keep the information confidential.

It is also deduced that, although courts have enthusiastically safeguarded proprietary interest based on fair principles and enforced contracts, the courts have also struck a balance with the consideration of the public policy, especially employment mobility and the restriction of covenant. Nonetheless, the judicial interpretation inconsistencies and high burden of proof introduce practical difficulties to the enforcement.

Thus, a special statutory protection would offer more transparency, consistency, and reliability to the protection of trade secrets, which would enhance the role of India in a knowledge-based global economy.

## VIII. Difficulties in The Protection of Trade Secrets and Sui Generis Legislation Necessary in India

The protection of trade secrets in India does not have a specific statutory framework, but is based on the concepts of equity, contract law, and judicial interpretation. Although courts have been very instrumental in protecting confidential information, there has been a lack of a sui generis legislation, thus resulting in a number of structural, procedural and enforcement related issues. This chapter critically examines these issues and explains the dire urgency of having a holistic

[33] Lisa Larrimore Ouellette, Do Trade Secrets Improve Innovation? 48 J. Legal Stud. 1 (2019).
[34] Robert G. Bone, Trade Secrecy, Innovation and the Requirement of Secrecy, 94 Va. L. Rev. 1 (2008).
[35] European Commission, Protection of Trade Secrets.
[36] Tanya Aplin, The EU Trade Secrets Directive: A New Era? 39 Eur. Intell. Prop. Rev. 1 (2017).

legal framework in order to secure effective protection of trade secrets in a fast-paced economic and technological environment.

### i. Problems with safeguarding trade secrets without Sui Generis Laws

The safeguarding of trade secrets in India is challenged by several interrelated issues that emanate mainly out of the lack of codified legal framework. Focusing on the lack of awareness and understanding of trade secrets as a valuable form of intellectual property is one of the leading problems. Corporates and individuals alike tend to underestimate the economic value of confidential information, resulting in a poor compliance culture and inadvertent breach of confidentiality commitments.[37]

One of the structural issues is the lack of a specific statutory regime which deals in trade secrets. Such regulatory vacuum brings ambiguity about the extent of rights, liability, and enforcement processes.[38] Considering that protection is highly reliant on court precedents, the relevant norms of law keep on developing, which leads to an absence of uniformity and predictability. The changing interpretations of these rules are usually hard to be adjusted to by businesses hence undermining effective protection of sensitive information.

The other issue of concern is the incoherent nature of legal remedies. Without an integrated framework, parties have to turn to many options of the law, including contractual terms like non-disclosure and non-compete agreements, the concepts of fiduciary duty, and some criminal provisions under the general law.[39] Nevertheless, the enforcement of a contract is limited by the articles like Section 27 of Indian Contract Act, which limits the restraints to trade, and Sections 73 and 74, which cause practical problems in the determination and enforcement of damages.

Moreover, trade secrets are not explicitly recognized as a specific category of intellectual property by statutes, which compromises their significance in the knowledge-based economy. Lack of definition leads to ambiguity as to key aspects like secrecy, commercial value, and reasonable protective measures. Trade secret protection is also undermined by procedural inefficiencies. A delay in the court process can be irreversible in that once the secret is out, its market worth is gone forever. Also, there is a danger of unintended disclosure in litigation, especially at the evidence stage, where tools like confidentiality clubs are still narrow in their application and ineffective.[40]

Another challenge is the growing mobility of workers, because the enforcement of non-compete contract is limited due to the constitutional protection of professional freedom, it is hard to avoid the leaking of confidential information.[41] Concurrently, the fast changes in technology have revealed trade secrets to digital theft, such as cyber theft and data breach that are not properly dealt with by the existing laws.[42] The enforcement mechanisms are weak because there are no specialized adjudicatory bodies, delays in the procedure, and duplication of the provisions in

[37] Tania Sebastian, Locating Trade Secrets under Indian Laws: A Sui Generis Mode of Protection, Journal of Intellectual Property Rights, Vol. 27, No. 3 (2022)

[38] Sawmiya Rajaram, Protection of Trade Secrets in India: Past, Present & Future, SSRN (2025)

[39] Rachcha Harshal Abhijit, From Common Law to Codification: The Future of Trade Secrets in India, 7 Indian Journal of Law & Legal Research (2025)

[40] Chinmaya K. Mohapatra & Amrita Mishra, Trade Secret Protection in India, PalArch's Journal of Archaeology of Egypt/Egyptology, Vol. 17 No. 6 (2020)

[41] Anil Dutt et al., Trade Secrets – India, Les Nouvelles, Journal of the Licensing Executives Society, Vol. LVI No. 2 (2021)

[42] R. Bharath Gaikwad & Ishwarya S, The Impact of Implementing an Exclusive Trade Secret Statute on Indian Businesses: A Comparative Study with a Model Statute, 6 Indian Journal of Law & Legal Research (2024)

statutes like the Indian Penal Code and the Information Technology Act. This multi-proceeding can be very inefficient and unpredictable. In addition, absence of proper cross-border enforcement systems also makes protection of trade secrets more challenging in a more globalized economy.[43]

### ii. Analytical Perspective

The author notes that the basic problem in India is not the total lack of legal protection of the trade secrets, but its situation is scattered and inconsistent. The dependence on a mixture of contract law, equity and a patchwork of statutory provisions provides a patchwork quilt that is not well adapted to respond to contemporary commercial realities. Such fragmentation results in procedural wastes, laxity in enforcement, and legal outcome uncertainty. Such restrictions are a major setback to the effectiveness of protection of trade secrets in the realm of digital transformation and global trade. These legal and practical gaps are a clear indication of the lack of strength of the current legal framework and the pressing necessity of a sui generis legislative framework to secure consistent, effective, and contemporary protection of trade secrets in India.

## IX. Protection of Trade Secrets in India: Legal Gaps, Economic Implications and The Case for A Codified Framework

The trade secrets have become an important aspect of intellectual property in the modern knowledge-based economy, especially the fields where innovation and technology are the driving forces. In contrast to patents and copyrights, trade secrets are valued by their secrecy and safeguarded more by contract and fair principles in India.[44] Nevertheless, the lack of an elaborate statutory framework poses a great legal ambiguity, thus impacting both local businesses and foreign investors. This chapter reviews the issues surrounding protection of trade secrets in India, its economic impacts especially with regard to foreign direct investment, and offers a systematic law framework to mitigate the gaps that are currently in place.

i. **Trade Secret Protection and Foreign Direct Investment (FDI) in India:** The issue of protection of trade secrets has become a major issue in the perspective of Foreign Direct Investment (FDI) and more especially among the multinational corporations attempting to offshore highly valued intellectual assets.[45] Trade secrets are proprietary technologies, business processes, algorithms, formulations, and commercially sensitive strategies which are not sufficiently safeguarded by the conventional intellectual property laws like patents and copyrights. The lack of a unified codified law on trade secrets in India has led to the use of contractual agreements and fair play which has brought about uncertainties in law.

   Such uncertainty creates a chilling effect on foreign investment in that multinational corporations are still wary of transferring sensitive technologies to jurisdictions where the enforcement mechanism is not well known or well enforced.[46] Economically,

[43] Rachcha Harshal Abhijit, From Common Law to Codification: The Future of Trade Secrets in India, 7 Indian Journal of Law & Legal Research (2025)
[44] Vartika Tickoo, Trade Secret Laws in India: A Critical Analysis, E-Journal of Academic Innovation & Research in Intellectual Property Assets, Vol. IV (2023)
[45] Pankaj Sekhsaria & Jaya Aiyer, Protection of Trade Secrets Under Indian Law: The Gaps and What Can Be Done, 6 J. IPR, Info. Tech. & E-Com. L. 1, 3-8 (2016)
[46] K.J. Klos & T.M. Johnson, Trade Secret Protection and Global Investment Patterns, 34 Geo. Wash. Int'l L. Rev. 681, 689-91 (2022)

intangible assets that are based on the need to maintain secrecy need to be well-protected by law. The absence of statutory support casts doubts on the enforceability, clarity of procedures and accessibility of remedies in misappropriation cases. As such, although India has been a key outsourcing and technological powerhouse in the world, lack of a structured trade secret regime is a major impediment to capturing innovation-based investments.[47]

ii. **Exposure of Startups, SMEs and MSMEs:** The problem of poor protection of trade secrets is not only in the context of multinational corporations, but it also affects local businesses, especially the startups, SMEs, and MSMEs in large numbers. These organizations are very dependent on non-statutory intellectual property which includes but is not limited to business models, customer databases, proprietary algorithms, manufacturing methods and data-driven innovations. They may not have the means to effectively enforce contractual protections unlike bigger corporations.[48]

The main asset of such enterprises is intellectual capital and any abuse of the same can have devastating economic implications. Lack of a written legal system puts them at risk of employee mobility, data theft, and unfair competition, which influences their scaling and investment attraction capabilities. A formal system of law is thus necessary not only in safeguarding the innovation but also in supporting the growth of entrepreneurship in India.

iii. **Comparative Value and Universality of Trade Secrets:** Trade secrets are more economically important than patents in a number of industries. This is notably in the fields of biotechnology, software, chemicals, food and beverages, financial technology, and renewable energy. Trade secrets maintain their value since unlike patents, which demand disclosure in the public in exchange of limited exclusivity, trade secrets are kept confidential. Where reverse engineering is particularly hard to conduct, secrecy provides a more lasting protection.[49]

Further, there are no industry-specific trade secrets since trade secrets are found almost everywhere in business operations. Trade secrets are implicitly involved in any product or service whose processes, systems, or materials cannot be seen through the veil of publicity. This is universality that highlights the necessity to appreciate trade secrets as a key element of intellectual property law. The lack of any statutory protection, therefore, has far-reaching consequences throughout the whole spectrum of economics.

iv. **Economic Effect of Codified Trade Secret Legislation:** A codified trade secret law should be introduced in India as it will go a long way in ensuring increased investor confidence and also ease the transfer of high-value intellectual property. Having legal certainty on protection, enforcement and remedies would minimize risks involved in offshoring sensitive technologies. Moreover, a framework of this kind would lead to knowledge transfer, capacity building and spreading of innovation in the domestic economy.[50]

[47] G.K. Venkatesh, Trade Secrets and Contractual Protection: India's Legal Landscape, 10 Intell. Prop. Q. 45, 47-52 (2018)
[48] D.S. Rao, Startups and IP Protection in India: A Policy Perspective, 5 Indian J. Bus. L. 23, 27-29 (2019)
[49] Rochelle C. Dreyfuss & Katherine J. Strandburg, Intellectual Property at the Edge: The Contested Contours of IP, 54 Harv. Int'l L.J. 257, 271-76 (2013)
[50] Mark A. Lemley, Rational Ignorance at the Patent Office, 95 Nw. U. L. Rev. 1495, 1520 (2001)

Statutory protection would be a crucial shield to startups and technology-based enterprises, especially those that operate in the data and artificial intelligence industry. Unlike the patent law, trade secret law is founded on the principle of misappropriation and only wrongful conduct is punished. Such a difference creates a level playing field that does not choke out innovation at the expense of fair competition.

With these economic, structural and technological issues, there is an urgent need to have a holistic and consistent legislative approach of protection of trade secrets. The next chapter suggests a systematic legal framework that can be used to fill these gaps and modernize the regime in India in line with international best practices.

## X. Proposed Legal Framework for Trade Secret Protection in India

This chapter suggests a systematic legislative model that will help to identify trade secrets as a special type of intellectual property and formulate clear guidelines to protect, enforce, and regulate them. The aim is to come up with a balanced and efficient model that will not only secure the confidential business information but also facilitate innovation, boost investor confidence and bring the legal regime of India to global best practices.

i. **Recognition of Trade Secrets as a separate Intellectual Property Right:** One of the pillars of the suggested reform is that trade secrets are now acknowledged as a separate type of intellectual property in the legislation. Trade secrets have their value based on confidentiality, unlike patents or copyrights that are based on disclosure. The lack of legal recognition in India has brought certain hypothetical confusion on their nature, ownership and enforceability. The proposed bill must be able to consider the definition of trade secrets to be broad to encompass business information that can be said to be trade secrets like formulae, processes, algorithms, computer programs, databases, financial strategies, technical know-how, and other commercially valuable information. Protection should only be granted to such information on the basis that it meets three main conditions, namely: it is not publicly known, it has independent economic value, and reasonable efforts have been made to keep it secret. When formulating this definition, one could be guided by international standards like the Defend Trade Secrets Act and EU Trade Secrets Directive, with the requisite modifications to fit the Indian constitutional values and business realities. The codification of a standard definition would remove any judicial inconsistency and promote better clarity in enforcement.[51]

ii. **Prevention and Compliance-Dominated Protection Mechanisms:** A good trade secret regime must be preventative by requiring reasonable steps to be taken towards the protection of confidential information. Protecting all types of business information should not be done blindly in the law, but on the basis of provable efforts being made by the holder to maintain secrecy. These steps can involve confidentiality, non-disclosure, and employment contracts, access control measures, encryption, digital surveillance, internal auditing, and data classification. The framework guarantees that only truly safeguarded and commercially worthy information falls under the statutory protection, by making these practices a precondition. This will not only ensure corporate responsibility, but will also

[51] Veena T. N., Misappropriation of Trade Secrets Under the Indian Legal Framework: An Analytical Study, 12 Christ Univ. L.J. 83 (2023)

ensure that businesses are willing to implement effective internal governance mechanisms to minimize conflicts and enhance the overall culture of data security.[52]

iii. **Enhancement of Civil remedies and adjudicatory mechanism:** An effective trade secret system should have powerful and effective civil remedies to deal with misappropriation. The suggested framework must enable the courts or better still a specialised Trade Secret Tribunal to issue interim and permanent injunctions, which will provide an immediate and protective measure against the actual or potential misuse. Along with injunctive remedy, the law must offer compensatory damages, restitution of unjust enrichment, and, in extreme cases, a seizure or destruction of misappropriated materials. Since trade secrets are very sensitive information, procedural precautions should be integrated to avoid any unintentional disclosure during litigation.[53] In-camera hearings, sealed records, and confidentiality orders are some of the mechanisms that ensure secrecy. It is also important that adjudication should take place in time because postponements can permanently destroy the commercial worth of trade secrets. To that end, they should have expedited procedures and specialised forums so that they can be effectively enforced.

iv. **Criminal Liability and Protection of public interest:** Civil remedies might be adequate in most cases, but some types of misappropriation of trade secrets, especially those that rely on intentional misconduct, corporate espionage, cyber theft, fiduciary misconduct, etc., should be punished by criminal penalties. Such offences should be well defined in the proposed legislation and appropriate penalties given to discourage malicious behaviour. Meanwhile, they should add certain mechanisms to discourage the abuse of the law. Trade secret protection cannot be used as a tool to hide the illegal or unethical practices. In this regard, whistleblower protection must be identified which means that people sharing confidential information in good faith in order to report wrongdoing by using legal means should be given limited immunity. The balanced approach will secure both legitimate commercial interests of the framework and also enhance transparency, accountability, and public interest.[54]

v. **Addressing Digital and Cross-Border Challenges:** Trade secret misappropriation in the digital age is being done digitally more often, such as by hacking or data breach and unauthorised access to digital systems. The suggested law should clearly identify such types of electronic misappropriation as criminal offences and the means of cooperation between the commercial courts and the agencies that should combat cybercrime. Considering the global aspect of today business practices, cross-border enforcing is also vital. This law must include clauses associated with international collaboration, acknowledgment and enforcement of foreign judgments and efficient ways of settling transnational disputes. These would promote the credibility of India as a safe and dependable place to do global business and innovate.[55]

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[52] Shruti Nandwana, Evolving Paradigms of Trade Secret Protection: A Comparative Study of the US, EU, and India, 2 Trends Intell. Prop. Res. 17 (2025)

[53] Ulla-Maija Mylly, Trade Secrets and the Data Act, 55 IIC Int'l Rev. Intell. Prop. Compet. L. 368 (2024**)**

[54] Tanya Aplin et al., The Role of EU Trade Secrets Law in the Data Economy: An Empirical Analysis, 54 IIC Int'l Rev. Intell. Prop. Compet. L. 826 (2023)

[55] Rembert Niebel et al., The EU Trade Secrets Directive: All Change for Trade Secret Protection in Europe?, 13 J. Intell. Prop. L. & Prac. 445 (2018)

vi. **Institutional Support, Compliance and Capacity Building:** Institutional capacity and awareness are crucial in the effectiveness of a legal framework. It would be more effective to create specialised commercial benches or a special Trade Secret Tribunal, which would increase expertise, consistency and efficiency in adjudication. Moreover, industry-specific guidelines need to be established in the information technology, pharmaceuticals, biotechnology and manufacturing sectors and deal with their specific risks and compliance needs.

    It would especially be helpful to startups and MSMEs to have government-issued guidelines on encryption standards, access control systems, and data protection practices. Moreover, an enforced compliance program, employee training and increased corporate governance requirements would help create a culture of confidentiality and decrease misappropriation cases.

vii. **Global harmonization and economic impact:** Conformity to internationally recognised legal standards is important in improving investor confidence and cross-border relations. India would be able to place itself as a uniform jurisdiction to innovation industries by embracing principles that are aligned with international structures. An effective Trade Secret Protection Act would protect intellectual capital, attract foreign investment, spur technology, and lead to sustainable economic growth. It would make the existing disjointed regime coherent and contemporary legal system that can tackle the contemporary challenges.

The suggested Trade Secret Protection Act is a holistic model of reform that would ensure the structural and functional gaps in the current legal system in India are resolved. The proposed legislation is an all-encompassing solution by combining statutory certainty, preventive protection, civil and criminal redress, protection in the digital realm, specialization of institutions and harmonization at the international level. This type of reform would go a long way in ensuring that India becomes more competitive through innovation ecosystem, improved corporate governance and a safe and good place to invest in knowledge-based industries worldwide.

## XI. Conclusion

Trade secrecy protection in India is experiencing a severe challenge because there is no specific statutory framework to address it, which results in gaps in the structure, procedure, and enforcement. This has far-reaching business, startup, and foreign investment implications since trade secrets are a key element of economic and technological innovation. Through examining the practices of international organizations and the value of confidential information in the economy, it is evident that the legal framework needs to be holistic and codified to offer a sense of clarity, consistency, and remedies. The model presented highlights the importance of recognition of trade secrets as a distinct intellectual property right, prevention, and enhanced civil and criminal remedies, protection in the digital and cross-border environment, and institutional assistance with compliance and capacity building. Such a framework would not only protect trade secrets but also build investor confidence, encourage innovation and make India an attractive and safe destination in the global market as a place to carry out knowledge-based industries

# A Study of Safety, Legal Exclusion, and Structural Inequalities for Women in the Gig Economy

**Mugdha Pathak**

*Tata Institute Of Social Sciences*

**Abstract**

*"The gig economy provides women with a unique opportunity to build a career around their priorities, rather than fitting their priorities around their career." –*

**Nithya Krishnan, founder of HerMoneyTalks**.

*Technological progress and proliferation, along with the rise of smartphones, have transformed the market landscape, which is offering consumers innovative methods to reach the retail market and the way people work around the globe.*[1]

*Due to the rapid expansion of India's platform-based gig economy, women are gaining flexible work opportunities, especially as they often balance paid and unpaid care responsibilities. The Indian Labour Organisation defines the gig economy as: "A labour market where work is mediated through digital platforms, offering specific tasks or services to clients. It is part of the broader platform economy and characterised by non-standard forms of employment"*[2]*. Many women who traditionally worked in home cleaning and caregiving have entered gig work because platform jobs offer flexible hours, allowing them to work four to five hours a day and still earn an income to support their families*[3]*.*

*Women's opportunities and bargaining power in the gig economy are further limited by limited digital access, a focus on low-skill, low-paying jobs, safety concerns, algorithmic bias, a lack of social protection, and unpaid care responsibilities.*[4]

*This research article critically analyses various challenges that women gig workers face. The research also examines and streamlines the inadequacy of existing labour and social protection frameworks. Additionally, several reports and insights from various sources are examined to address the precarity faced by them. This research article concludes that, since the gig economy presents opportunities for women's labour force participation, its current legal and regulatory gaps require urgent reform to secure dignity, safety, and fair work for women gig workers in India.*

**Keywords:** Gig Economy, Platform Workers, Opportunity, Women, Digital

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[1] Dhanya M.B., Gig and Platform Workers: Vision 2047, NLI Research Studies Series No. 173/2025 (V.V. Giri National Labour Institute, Ministry of Labour & Employment, Government of India, 2025).

[2] Expansion of the Gig and Platform Economy in India, International Labour Organisation, (2024)

[3] As per the news published in The Times of India, '85% of India's Workforce in Informal Sector; Women Increasingly Turning to Gig Work' The Times of India (April 2022).

[4] Radhicka Kasliwal, 'Gender and the Gig Economy: Opportunities and Challenges for Women Workers' (Observer Research Foundation Issue Brief No 359, 2020).

## I. Introduction

On-demand businesses[5] A notable innovation, and the foundation of on-demand commerce, is the gig economy, the group of markets that connects service providers with consumers of on-demand services, provided on a project (or task) basis.[6]

"Gig Worker" is defined under Section 2(35) of Code on Social Security, 2020, as a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship.[7] It also defines "platform work" under Section 2(60), as a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment.[8] A person engaged in or undertaking platform work can be defined as a "platform worker".[9] Examples of platform workers can include drivers for ride-sharing apps or delivery agents for food delivery apps.

A platform-based work can be classified into two types: location-based and web-based. Online platforms offer the freedom to work from anywhere, provided one has access to a smartphone, an internet-connected device, and a web connection. The market for remote platform work is commonly referred to as the "online gig economy" or "online freelancing". Nevertheless, location-based platforms enable work from designated areas that encompass carpooling, ride-sharing, food and grocery delivery, etc, services. The platform economy also includes various other forms of work, such as microtasks and crowd-based work[10].

The gig economy has expanded rapidly, affecting the labour market worldwide. The gig economy provides flexible working opportunities through online platforms. In India, the gig economy has developed alongside the rise of women in non-standard employment. However, this flexibility has been shown to hide precarious working conditions, a lack of labour rights, and unstable earnings. For women who face structural disadvantages in the labour market, gig economy jobs often reproduce these inequalities rather than overcoming them. The platform economy is not only a technological change but also a change in gendered labour relations.[11]

The risks that women platform gig workers face are distinct and are not adequately covered by the existing legal framework. These risks include the possibility of harassment in customer locations, unsafe travel conditions, and the lack of institutional mechanisms for grievance redressal. The fear of account deactivation and loss of livelihood prevents women from filing complaints about harassment, leading to systemic underreporting.[12]

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[5] On-demand companies such as Uber (which provides driver services) or TaskRabbit (whose providers perform household errands and tasks) use Internet- or application-based technological platforms to match consumers to a select pool of potential service providers. The on-demand aspect of these companies refers to their use of technology to respond to a customer's immediate need (e.g., for a driver or delivery) or specific need (e.g., for a particular rental or service provider skillset).

[6] Sarah A Donovan, David H Bradley & Jon O Shimabukuro, What Does the Gig Economy Mean for Workers? (Congressional Research Service 2016).

[7] The Code on Social Security, 2020, S 2(35)

[8] The Code on Social Security, 2020, S 2(60)

[9] The Code on Social Security, 2020, S 2(61)

[10] International Labour Organisation, Work for a Brighter Future: Global Commission on the Future of Work (ILO, Geneva 2019).

[11] *Id.*

[12] Naila Kabeer, Gender, Labour and the Informal Economy (Routledge, London 2014).

The lack of legally binding occupational safety norms in platform work is a serious concern for the protection of the dignity and bodily integrity of women gig workers. The lack of social security safeguards, such as maternity benefits, health insurance, and childcare facilities, hits women gig workers particularly hard. The inclusion of gig and platform workers in the Code on Social Security, 2020, is a significant positive development.[13]

A rights-based empowerment approach, strengthened by the constitutional values of equality, dignity, and livelihood, is necessary to ensure that women gig workers are not denied the protective scope of labour law.[14] This study situates women's gig work within the broader discourse of labour rights, gender justice, and social protection, and makes the case for constitutional reforms that address both technological and social inequalities.[15]

## II. About the Gig Economy

The word "gig" originated in the 1920s, when a number of musicians used it to refer to short-term performances, and has since been adopted in various fields to describe temporary or task-related work arrangements. Gig work is different from traditional employment in that it is non-standard and flexible.[16]

The Gig Economy is a labour market characterised by short-term, flexible jobs mediated by digital platforms. Kalleberg states that "A shift towards flexible work arrangements that replace stable, long-term employment with short-term engagements, often with reduced worker protections".[17]

India's gig economy continues to expand at an unprecedented pace, with government estimates suggesting that the sector could employ over 23.5 million workers by 2030[18], making it a central pillar of the country's future labour market. This growth is fuelled by the increasing demand for digital services, changing consumer behaviour, and the rise of platform-based work arrangements across urban and semi-urban regions. Yet, despite this remarkable growth, serious challenges persist, especially for women platform-based gig workers, who remain significantly under-researched within the group.[19]

Platform gig workers, whether they are women or men, operate in a legal grey area: platforms routinely treat them as "independent contractors" or "partners," which excludes them from many employer-linked legal protections. Today, platforms offer women the flexibility to work from home or any location of their choice, enabling them not only to contribute financially but also to manage their household responsibilities. The decline in the number of women in the formal workforce is due to the challenge of balancing domestic duties with paid employment. Gig

[13] Valerio De Stefano, 'The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowd Work and Labour Protection in the Gig Economy' (2016) 37 Comparative Labour Law & Policy Journal 471.

[14] National Commission for Women, Impact of Gig Economy on Women Workers (NCW, New Delhi 2022)

[15] IT for Change, Women Workers in India's Platform Economy: Beyond the Hype (IT for Change, Bengaluru 2020).

[16] Investigating the Construction of Labour Markets, Institutions and Movements on the Internet, The Labour Project, Oxford Internet Institute, University of Oxford, 2017

[17] Kallenberg A, Dunn M. 2016, Good jobs, bad jobs in the gig economy, Prospective on Work 2016, (2017)

[18] Oxford Internet Institute, Investigating the Construction of Labour Markets, Institutions and Movements on the Internet (University of Oxford 2017).

[19] Animesh Kumar Sharma & Rahul Sharma, 'The Gig Economy and the Evolving Nature of Work in India: Employment, Policy, and Platform Realities in the Age of Convenience' (2025) Journal of Digital Economy.

platforms appear to address this by offering flexibility that helps women manage both spheres more effectively.[20]

The Research conducted by ILO, indicates that women tend to choose work that offers autonomy and accommodates their household responsibilities, thereby keeping them close to the domestic sphere. Their choices are also shaped by the need to navigate social expectations while pursuing their own interests.[21] Women gig economy workers in Urban Company, Snabbit, Yes Madam, Swiggy Instamart, Zomato, or other home-based service apps face a different set of challenges. Problems like social security, maternity benefits, unpaid care work, online harassment, and algorithmic bias specifically target them and may restrict their ability to earn. Therefore, although the gig economy is often hailed as a force for empowerment and flexibility, the reality of gig economy jobs for Indian women workers is fraught with complex vulnerabilities that demand immediate policy attention.[22]

**III. Intersectional Vulnerabilities of Women Gig Workers**

The vulnerability of women gig workers is not uniform. It is mediated by different aspects at different locations, including caste, class, migration status, marital status, age, and area. Dalit and Adivasi women are more likely to be engaged in home-based services like cleaning and care-giving, where the risk of abuse and caste discrimination is greater. Migrant women gig workers have to face a lack of access to local identity cards, language, and access to state welfare schemes. Married women gig platform workers with caregiving obligations are likely to be forced into low-paying and short-hour gigs because of mobility and time constraints, while single women gig workers are more likely to be vulnerable to various risks during late-night gigs.[23]

An intersectional study tells that the exclusion of women from law making, algorithmic control, and the digital divide are not independently existing but intersect with existing social inequalities to further exacerbate the vulnerability of already marginalised women.

i. **Legal Vacuum enhanced vulnerabilities:** A major issue which exists everywhere, in every occupation, is the risk of sexual harassment or rape, which is not only an Indian issue faced by women but an issue faced by women globally. Women drivers and service providers frequently report harassment from customers but fear reporting incidents due to rating penalties, loss of work, or punitive company action. Studies show that most Indian platforms lack any real safety procedures, forcing women to self-restrict their work timings and locations, which further deepens the gender earning gap.

   In a case against an app-based aggregator acting as an employer, the aggregator contended to the Karnataka High Court that it cannot be held liable for a complaint under the *POSH (Prevention of Sexual Harassment) Act, 2013*, against one of its drivers, as they are not in an employer-employee relationship under the Act.[24]This app-based classification leaves women outside the purview of the statutory legal framework. Workplace laws like the

[20] Sakshi Sardana, Gaurav K Mangar & Monika Hanspal, 'A Conceptual Study on Women Workers in Gig Economy in India' (2022) 16 ENVISION – International Journal of Commerce and Management.
[21] International Labour Organisation, World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work (ILO, Geneva 2021).
[22] Messenger Jon C, Working Anytime, Anywhere: The Evolution of Telework and Its Effects on the World of Work (International Labour Organisation 2018).
[23] ILO, s*upra* note, 10
[24] Alok Prasanna Kumar, 'Gig Workers under the POSH Act' Economic and Political Weekly (2024).

POSH Act (which presumes a fixed workplace and employer) and conventional prevalent labour protections, which lead to a governance gap where harassment, sexual assault or unfair suspensions are difficult to challenge. In the case of *State v. Shiv Kumar Yadav (2015)*[25], involving an Uber driver who was accused of sexually assaulting a passenger, the Uber company initially attempted to disassociate itself from the incident by claiming that the driver was merely an independent contractor and not its employee. This led to a lengthy debate over the extent of responsibility platform companies owe to ensure customers' safety and the accountability of gig workers. Similar incidents have occurred across several platforms where customers have faced sexual harassment by platform partners, and companies often avoid taking liability. Since platform-based services are deeply integrated into everyday life, such evasion of responsibility exposes users to significant risks and leaves them without adequate protection.[26]

The POSH Act, 2013[27] was formulated to break the long-standing problems of sexual harassment cases against women, ensuring protection for any "aggrieved woman" who claims to have experienced sexual harassment, irrespective of whether she is formally employed or not. The Act's structure is intentionally broad, allowing not only employees but also clients, customers, and service users to file complaints if the harassment occurs in a workplace setting. However, for the Act to apply, two foundational conditions must be satisfied: the harassment must be committed by a person who falls within the Act's definition of an employer, and the incident must occur in a workplace as defined by the Act. Section 2(o)[28] of the said Act defines "workplace" in an expansive manner, covering offices, homes, transportation, and any place visited in the course of employment across seven categories. However, gig work creates a complication due to its unique employment setup. Platforms like Ola, Uber, Snabbit and Zomato do not operate within fixed office boundaries. Their workers constantly move between locations, rely on various modes of transportation, and work in fluid, shifting environments. This makes it challenging to categorise their workspaces neatly within conventional definitions. But legal precedent helps bridge this gap.

In Vishaka v. State of Rajasthan[29] the Supreme Court emphasised that workplaces should include extended or connected spaces where a worker performs duties. The principle of "notional extension" is now widely accepted in Indian jurisprudence, which holds that even incidents occurring outside a traditional office but related to work must be considered part of the workplace. Applying this reasoning, the vehicles driven by gig workers, the houses they visit for services, and other customer locations can reasonably be interpreted as their workplaces. Such an interpretation is necessary to ensure the Act is not read so narrowly that gig workers fall through its protection gaps.[30]

Both the Delhi High Court (2017) and the Kerala High Court (2021) have held that digital employer platforms cannot wholly escape responsibility for the conduct of the workers

[25] State v Shiv Kumar Yadav AIR 2015 SC 3501. (India)
[26] Mohit Chand & Khushi Sharma, 'Beyond the Boundaries: Rethinking Sexual Harassment Law for Platform Workers' (Centre for Labour Laws 2024).
[27] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, ACT NO. 14 OF 2013, 2013, (India)
[28] The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 2(o).
[29] Vishaka v State of Rajasthan AIR 1997 SC 3011. (India)
[30] SS Rana & Co, 'Sexual Harassment of Gig Workers in India' Lexology (2023).

who operate through them. That gig workers require protection under traditional labour laws, including safeguards against sexual harassment. However, even with these critical judicial observations, the actual implementation of the POSH Act and other labour laws regarding platform-based workers remains uneven and largely insufficient.[31]Though recently the online harassment of a female colleague was observed to fall within the ambit of the POSH Act, this is not broad enough to bring gig workplaces within the definition of a workplace under the POSH Act, but is a welcome recognition nonetheless.

It is thus submitted that the POSH Act must be amended to ensure the right to a safe workplace for female workers in the gig economy by widening the definition of a workplace. This is in line with the aim of the act, as held by the Supreme Court in the case of Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University[32], stated that "the definition of 'workplace' must be wide enough to bring within its ambit any place where a woman may be exposed to the possibility of sexual harassment."[33]

ii. **No statutory employment Benefits:** The labour law framework in India actually encompasses a wide range of benefits for women workers. In the formal sector, they are primarily entitled to a broad statutory framework, none of which currently extends to women gig workers.[34] Laws such as the Maternity Benefit Act, 1961[35], ensure paid maternity leave of 26 weeks, nursing breaks, job security during pregnancy, and protection from termination of employment during this period. The Act also prohibits assigning hazardous, strenuous, or long-hour work to pregnant women, ensuring holistic support for maternal health and employment security. These are some of the benefits which gig workers completely lack, as platforms do not recognise any maternity or reproductive-health entitlements. Under the Factories Act, 1948,[36] women received safeguards relating to flexibility in working hours, prohibitions on night shifts without adequate safety measures, workplace sanitation, crèche facilities, rest intervals, clean drinking water, and protection from hazardous work, none of which apply to gig workers who deliver food, drive cabs, or work inside client homes without guaranteed safety or sanitation support.[37]Similarly, under traditional labour laws, the Minimum Wages Act, 1948[38] and the Payment of Wages Act, 1936,[39] workers are legally entitled to timely payment of wages, a guaranteed minimum wage, and the protection against arbitrary deductions. These statutes ensure that employees are paid the minimum wage and that employers cannot unilaterally change the terms of employment. Conversely, women gig workers have no such legal protections. Their entire income depends on mysterious, ever-changing algorithms set by the platforms themselves, which determine rates, incentives, and penalties without transparency or consultation. There is no assured minimum earning, and platforms routinely impose unilateral commission cuts, surge changes, and deductions at

[31] Avik Biswas, Ivana Chatterjee & Animay Singh, 'Gig Workers Engaged by Taxi Aggregators Can Be Considered Employees under Sexual Harassment Law' (L&E Global, October 2024).
[32] Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University, 2014 SCC OnLine Bom 814. (India)
[33] Apurva Singhi, 'Female Workers in the Indian Platform-Mediated Gig Economy' Law School Policy Review (2023).
[34] Pranav Dixit, 'Indian Gig Workers Say Algorithmic Deactivation Has Left Them Without Income' Rest of World (2022).
[35] The Maternity Benefit Act, 1961. (India)
[36] The Factories Act, 1948. (India)
[37] Andres Schipani, Chris Kay & Veena Venugopal, 'India Gets to Grips with Biggest Labour Law Shake-Up in Decades' Financial Times (2025).
[38] The Minimum Wages Act, 1948. (India)
[39] The Payment of Wages Act, 1936. (India)

their discretion, leaving women workers financially insecure. Moreover, because gig platforms are not bound by labour law procedural protections, gig workers face a complete absence of job security. They can be "deactivated" or removed from the app at any time, often without notice, explanation, or an opportunity to be heard, violating basic principles of natural justice. This makes women gig workers particularly vulnerable, as the sudden loss of access to the platform directly deprives them of their livelihood, with no recourse to wage-recovery forums or grievance redressal mechanisms guaranteed to employees under such statutes.[40] Even though the Equal Remuneration Act, 1976,[41] mandates equal pay for equal work and prohibits discriminatory hiring practices, women gig workers continue to face unequal treatment through biased hiring, task allocation, and firing procedures, as platform-based work falls outside the protective framework of the Act.[42]

In essence, India's earlier labour law regime recognised women as rights-bearing workers deserving of maternity benefits, wage protection, safety, welfare facilities, and grievance mechanisms; yet, women gig workers today are entirely excluded from these protections, revealing a severe legal vacuum.[43]The denial of labour rights to female gig workers is a serious constitutional flaw under Articles 14, 15, 19, and 21 of the Constitution of India. The arbitrary denial of workers' livelihoods without notice violates the right to livelihood under Article 21, as held in Olga Tellis v. Bombay Municipal Corporation[44]. The gender-based denial of maternity benefits and safety at work is indirect discrimination under Articles 14 and 15(3).[45] The denial of the right to collective bargaining and unionisation is also an attack on freedom of association under Article 19(1)(c). The lack of transparency and accountability in algorithmic management, which replaces human decision-making, undermines procedural fairness and dignity, which are the essence of constitutional labour jurisprudence.

iii. **Digital access, affordability and literacy barriers (the gendered digital divide):** A major structural barrier faced by women gig workers is the gendered digital divide, which limits their ability to fully access and participate in platform-based work. Gig employment relies heavily on smartphones, continuous internet connectivity, app navigation, and digital financial tools; however, women in India, especially those from low-income, rural, and peri-urban backgrounds, often have limited access to smartphones, limited control over their personal devices, and lower levels of digital literacy than men.[46] Studies show that women are less likely to own internet-enabled phones, face affordability challenges in purchasing data, and often share devices with family members, which reduces their privacy and consistent access needed for gig work.[47]

These limitations hinder women's ability to discover online gigs, complete onboarding processes, manage real-time tasks, respond quickly to customer requests, and maintain

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[40]Kwan Haley, Gendered Precarious Employment in China's Gig Economy: Exploring Women Gig Drivers' Intersectional Vulnerabilities and Resistances, Oxfam Policy and Practice (2022).

[41] The Equal Remuneration Act, 1976. (India)

[42] Ruchika Chaudhary, India's Emerging Gig Economy and Women Workers (The Asia Foundation, June 2020).

[43] Ria Kasliwal; Gender and the Gig Economy: A qualitative study of Gig platforms for women workers; Research observed Foundation, 2023

[44] Supreme Court of India, Olga Tellis v Bombay Municipal Corporation (1985) 3 SCC 545. (India)

[45] B. K. Mathew, Right to Livelihood under Article 21, 37 Journal of the Indian Law Institute 1 (1995).

[46] Scroll, 'Women Delivery Partners Face Limited Access to Devices' (2022).

[47] Kaamil Ahmed, 'Women in Business Held Back by Mobile Data's Cost in Developing World' The Guardian (2025).

income stability.[48] Further, concerns over online safety, surveillance by family members, and inadequate digital training widen this gap, leaving women at a disadvantage in a labour market increasingly dependent on digital tools. Thus, digital access, affordability, and literacy gaps significantly restrict women's entry into and sustained participation in the gig economy.[49]

iv. **Limited financial inclusion, algorithmic bias, social protection gaps, and weak collective bargaining:** A significant challenge for women Gig workers arises from algorithmic control, opaque platform rules, and arbitrary deactivation practices. Research by the ILO (2021)[50], IT for Change (2020)[51], and Fair Work India Reports (2020-2023)[52] shows that platform algorithms determine nearly every aspect of gig work, from task assignment and worker visibility to pricing, performance scores, and the distribution of incentives, yet these systems operate with little transparency.[53]

Women workers report that algorithmic biases often reduce their task visibility due to mobility constraints, safety-based refusals of late-night work, or slower response times linked to caregiving responsibilities. Opaque customer rating systems further intensify this disadvantage: even a single unfair rating can lower their algorithmic ranking, leading to reduced work or punitive penalties for cancellations, despite cancellations often being tied to safety risks or household duties. Multiple journalistic investigations (including *Rest of World*, *The Ken*, and *Scroll*)[54] document cases of sudden, unexplained deactivations where workers permanently lose access to the platform without human review, appeals, or due process, effectively wiping out their livelihood overnight and disproportionately harming women who already face constrained labour market options.[55]Compounding this, women gig workers experience limited access to financial services, social benefits and collective voice, largely because platforms classify them as independent contractors rather than employees. Studies by NITI Aayog (2022), the World Bank[56], and the RBI reveal that irregular earnings, a lack of payslips, absence of employer verification, and inconsistent KYC documentation restrict access to credit, formal banking, insurance, and pension schemes.[57]

Women, who often earn less and face interruptions due to care work, are at an even higher risk of exclusion from financial products tied to stable weekly or monthly incomes. At the same time, their ability to organise collectively remains weak: Fair Work and IT for Change studies note that women's participation in unions or platform-worker collectives is low due to time constraints, domestic responsibilities, societal norms, and male-dominated leadership structures. Even where collectives exist, women workers face barriers in influencing collective bargaining outcomes or negotiating with platforms for

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[48] Kuhuo Bajaj; Digitisation and its Effects on Female Labour Force Participation in India; KREA University; 2024

[49] CLEDWYN FERNANDEZ, HAVISHAYE PURI, SHRAVANI PRAKASH; Digital Technology as an Instrument to Bridge the Gender Gap in Access to Labour Markets; United Nations Development Program, CRIER, policy brief; 2024

[50] International Labour Organization, Algorithmic Management and Gig Work (ILO 2021).

[51] IT for Change (2021). "Women Workers & Platform Economies."

[52] Fairwork India Team, Fairwork India Ratings 2023: Labour Standards in the Platform Economy (2023).

[53] Nisha Singh & Gayatri Murthy, On Gig Platforms, Women Workers Face Triple Barriers to Inclusion (CGAP 2023).

[54] Bhuvana Anand et al, Inside India's Platform Economy: Risks and Governance Gaps (The Ken 2021).

[55] Varsha Bansal, 'Urban Company Lured Women into the Gig Economy, Then Pushed Them Out' WIRED (2023).

[56] World Bank, The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience (World Bank 2021).

[57] Yashaswini Sri, 'Gig Workers Flag Exploitative Condition's The Times of India (2025).

safer working conditions, fairer algorithms, and dispute-resolution mechanisms. Thus, algorithmic precarity, financial exclusion and limited collective representation intersect to create a structurally unequal environment for women in the gig economy.[58]

**v. Comparative Table**

| **Challenges Faced by Women Gig Workers** | **Existing Legal Gaps** | **Impact on Women Workers** |
|---|---|---|
| Lack of social security benefits such as maternity leave, health insurance, and childcare support | Code on Social Security, 2020, provides recognition but does not mandate universal or enforceable benefits for gig workers | Women are forced to exit the workforce during pregnancy or illness, leading to income loss and long-term economic insecurity |
| Algorithmic control over work allocation, ratings, and deactivation | Absence of legal safeguards against arbitrary deactivation or algorithmic bias | Women avoid reporting harassment or refusing unsafe tasks due to fear of penalties and loss of livelihood |
| Safety risks during travel and at customer locations | No specific occupational safety standards for platform-based work | Women restrict working hours and locations, resulting in reduced earnings and limited career growth |
| Digital exclusion and a lack of awareness of welfare schemes | Inadequate awareness mechanisms and complex digital registration processes | Marginalised women workers remain excluded from benefits despite formal legal recognition |
| Absence of collective bargaining and union recognition | Gig workers are excluded from traditional labour laws governing trade unions | Women lack bargaining power and are unable to negotiate fair pay or working conditions |

## IV. Linking Women Gig Worker's Rights to Sustainable Development Goals (SDGS 5 And 8)

The issues of women gig workers in India must also be contextualised within the broader United Nations Sustainable Development Goals (SDGs), specifically SDG 5 (Gender Equality) and SDG 8 (Decent Work and Economic Growth). The SDGs acknowledge that sustainable economic growth cannot be achieved without gender justice, social protection, and decent working conditions. The gig economy, which is platform-based and employs women, has thus become a key area for assessing India's adherence to these global development goals. However, the lack of

[58] Ranjitha Kumar, The Realities and Aspirations of Women Gig Workers in India (IT for Change & LabourNet, Participatory Action Research Report, April 2023).

maternity benefits, childcare support, and income security affects the reality of empowerment. Rather than addressing gender inequality, platform work often perpetuates the existing gap by transferring risks to women workers without adequate social protection. The absence of grievance redressal facilities and protection against harassment further erodes the dignity and autonomy of women's bodies, which are at the heart of the goals of SDG 5.[59]SDG 5 seeks to achieve gender equality and empower all women by removing structural barriers such as discrimination, unpaid care work, and economic inequality. Women gig workers are drawn to the gig economy because of its flexibility, which enables them to balance their paid work and caregiving roles. SDG 8 focuses on decent work for all, including remuneration, secure working conditions, and social security. Women gig workers, who contribute immensely to the economic growth of the platform economy, are denied the essence of decent work. Algorithmic management, indiscriminate deactivation, denial of collective bargaining, and lack of job security violate the principles of decent work as enshrined in SDG 8. The status of women gigs workers as "independent contractors" allows platforms to disregard their obligations under labour laws, leading to growth without fairness and innovation without accountability.[60]

The nexus between SDG 5 and SDG 8 thus underlines the critical policy divide, whereby economic growth through digital platforms has not yet ensured gender-equitable or dignified work opportunities for women. This mismatch thus indicates a development paradigm that is more focused on efficiency and flexibility than on social justice and inclusion. Closing this divide would thus necessitate the convergence of gender-sensitive labour regulation, social security protection, and constitutional rights in the governance of the gig economy. The protection of maternity benefits, occupational safety, the security of income, and the freedom of association for women gig workers, for instance, would thus not only be a domestic labour reform issue but also a global development responsibility, consistent with India's commitment to the SDGs.[61]

By framing women gig workers' rights within the SDG agenda, this study emphasises that the regulation of platform labour is critical to achieving an inclusive, sustainable development. If the structural vulnerabilities of women gig workers are not addressed, then the agenda of gender equality and decent work would remain an illusion, making the goals of SDG 5 and SDG 8 more of a dream than a reality.

## V. Conclusion

The gig economy has grown rapidly in India, causing a paradigm shift in the labour market. However, this paper has shown that the gig economy is a deeply gendered and precarious system that has exacerbated the existing inequalities faced by women in the labour market.

Unlike workers in the formal sector, women in the gig economy are denied access to statutory rights related to maternity security, minimum wages, occupational safety, job security, and grievance redressal. This is particularly harmful to women, who already suffer from unequal access to resources, caregiving responsibilities, and labour market discrimination.[62] These

[59] NITI Aayog, India's Voluntary National Review on the Implementation of SDGs (Government of India, New Delhi 2020).

[60] International Labour Organization, World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work (ILO, Geneva 2021).

[61] United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development (United Nations, New York 2015).

[62] Aditi Mishra & Suyog Ghosh Dasttidar, Navigating the Challenges of the Gig Economy: A Legal Analysis of Protection to Gig Workers in India and Overseas, Indian Journal of Law and Legal Methods, (2021).

dynamics make it clear that women gig workers are not a single entity and that policies need to move beyond a gender-neutral approach to address the complexities of inequality.[63]

The lack of a clear definition of platform liability, in addition to the lack of effective enforcement of the existing laws related to workplace protection, puts women gig workers not only at the risk of harassment, violence, and exploitation but also violates their constitutional rights to dignity and livelihood.[64] Undisclosed rating mechanisms and one-sided deactivation of accounts affect women's procedural fairness and economic security. Such actions are contrary to the principles of natural justice and constitutional labour jurisprudence.[65]

By situating the experiences of women gig workers within Sustainable Development Goals 5 and 8, this paper also shows that the current paradigm of platform-driven growth is incompatible with sustainable development.[66] Growth that is unaccompanied by decent work, gender equality, and social protection may lead to growth without justice. Unless the structural vulnerabilities of women gig workers are remedied, the promise of empowerment through the gig economy will continue to be illusory, and India's obligations to gender equality and decent work will continue to remain unmet.[67]

The proposed reforms, such as a specific law for gig and platform workers, gender-sensitive social security, algorithmic accountability, improved grievance redressal systems, digital inclusion initiatives, and collective representation, provide a roadmap towards a more just and inclusive gig economy.[68] In the end, the gig economy should not become a realm where the historical trajectory of gender inequality is simply digitised and deepened. Rather, it must be transformed into a realm of opportunity based on fairness, accountability, and constitutional values. If the above-mentioned transformation does not take place, the gig economy has the potential to lock in inequalities rather than unlock empowerment, and the future of work will be very unequal for women in India.[69]

**VI. Suggestions**

i. **Enactment of a Dedicated "Gig and Platform Workers (Regulation and Protection) Act" with Gender-Responsive Provisions:** There is a dire need for a comprehensive, standalone statute that can address the precarity and misery of gig and platform workers as a distinct labour category with statutory rights, rather than treating them as informal

[63] R. C. Sharma, Industrial Relations and Labour Legislation 365 (Eastern Economy Edition, PHI Learning 2016).
[64] Prakhar Dubey, Gig and Platform Workers: A Way Towards Formal Labour Recognition, Symbiosis Law School Nagpur Multi-Disciplinary Law Review, (2022).
[65] Suresh Chand Aggarwal, 'The Status of Self-Employed, Contract and Gig Workers in India: Some Recent Changes', International Association for Research in Income and Wealth, (2022).
[66] Ramar Veluchamy, A Study on Work Life Integration of Gig Workers, in An Anthology of Multi-Functional Perspectives in Business and Management Research (Eureka Publications 2021).
[67] Tabassum Sultana J., Gig Economy and Laws Protecting Gig Economy in India's Gig Economy/Gig Worker, 2 journals of Legal Research and Juridical Sciences, (2014).
[68] Vinay Aravind, Swiggy Strike is a Reminder that Service Aggregators Care Little for Workers' Rights, Newslaundry (September 2, 2020),
[69] Subir Bikas Mitra & Piyali Ghosh, Engaging Contract Labour: Learnings from Landmark Judgements, 47 (1) Indian Journal of Labour Economics 1 (2021).

contractors. Drawing recommendations from the EU Platform Work Directive[70] and the ILO's Decent Work principles[71] Such a law should include:

Statutory recognition of rights includes minimum earnings and fair-pay guarantees, a prohibition on discriminatory task allocation, Maternity and health benefits - including paid maternal leave, and job security during pregnancy. Other benefits include accident insurance, pensions, health coverage, and gig-specific ESIC-like benefits, which are funded through shared contributions from the State and platforms.

Gender-sensitive workplace protections, explicitly applying the POSH Act, 2013, obligations to platforms, along with this, expanding the definition of "workplace" so to include vehicles, customer locations, and digital spaces as workplaces for these workers to be protected against any type of crimes. Additionally, there should be Mandatory safety mechanisms, including panic buttons, 24/7 helplines with trained female responders, platform liability for safety failures, and safe-time task allocation.[72]

Requirement of due procedure when deactivation or suspension is done, it should encompass advance notices beforehand, written and recorded reasons, an opportunity to be heard, along with a platform-level independent dispute resolution.

Algorithmic accountability should be tackled through requiring platforms to disclose criteria for ratings, task allocation, incentives, and penalties, with independent audits to detect gender bias (as recommended by Fair Work and IT for Change).

ii. **Gender-Responsive Digital Inclusion Measures (halting Digital Divide):** The government and platforms should jointly explore providing subsidised smartphones, data packs, and maintenance support exclusively for these gig workers, as well as digital literacy training and support for women onboarding to gig work. App interfaces are available in local languages, with voice navigation features.[73] These are some globally recommended and recognised measures (World Bank, ITU, NASSCOM Foundation[74] research) that directly address digital inequality, a major structural barrier to women's participation in gig work.[75]

Inspired by the US Portable Benefits model and NITI Aayog's 2022 Recommendations: Each worker should have a unified digital social security wallet. Platforms make micro-contributions for every task, which would be equivalent to PF/ESI.[76]

iii. **Creation of "Platform Worker Local Committees (PWLCs)" for Safety and Grievance Redressal:** Since gig and platform work is on the rise in India, each district should have a PWLC comprising platform representatives, women workers, labour experts, and government officials, inspired by the POSH Act. They should be involved in handling: sexual harassment complaints, grievances related to deactivation and

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70 European Commission, Platform Work Directive - Draft Reports (2021-2023).

71 International Labour Organization, World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work (ILO, Geneva 2021).

72 Organisation for Economic Co-operation and Development, Gender Gaps in Digital Financial Services (Organisation for Economic Co-operation and Development 2021).

73 International Telecommunication Union, Gender Digital Divide Reports (International Telecommunication Union 202020-22).

74 NASSCOM Foundation, Digital Literacy Among Women Workers in India (NASSCOM Foundation 2021).

75 Women Still Lag Behind in Smartphone Ownership, The Indian Express (2021).

76 NITI Aayog, India's Booming Gig and Platform Economy (Government of India, New Delhi, 2022).

suspension, redressal mechanisms for minimum Wage or equal pay disputes, and other customer-related violations. This ensures real-time accountability.[77]

iv. **Mandatory policy recommendation:** Lastly, establishing a legal or policy mandate for data sharing and transparency in earnings records is strongly recommended by Fair Work India and IT for Change. These gig workers often lack access to complete information about their incomes, deductions, suspensions, customer complaints, and performance metrics. Platforms should therefore be legally obligated and mandated to provide weekly or monthly detailed statements of everything. Such transparency is essential because opaque systems disproportionately harm women, whose incomes are already lower due to safety-based refusals of tasks or domestic responsibilities that reduce their daily working hours.[78]

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[77] Vijeta Banwari, Gig Economy: Challenges and Opportunities in India, Journal of Emerging Technologies and Innovative Research, (2018).

[78] Bidisha Ghosh & Priyanshi Upadhyay, Safety of Women Gig Workers in India: A Legal and Policy Review, Centre for Internet and Society (2021).

# When Faith Hurts: Ending Ritual Abuse in India

**Shreyas S Kulkarni & Shamitha BC**

*Symbiosis Law School, Nagpur*

**Abstract**

*Traditions must empower and not terrify. This research examines ritual abuse and superstition driven violence in India ranging from coercive exorcisms and occult fraud to witch-hunting and human sacrifice and argues that the present legal response remains uneven because it is largely confined to state enactments. Using a comparative doctrinal method, it analyses Maharashtra's Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 and Karnataka's Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, assessing their shared "harm-based" architecture (targeting conduct rather than belief) alongside the practical limits of schedule-based, closed-list offences. The study situates these statutes within India's constitutional framework, emphasizing that religious freedom is subject to public order, morality, health, and social reform, and that the constitutional commitment to scientific temper supports proportionate legal interventions against exploitative practices. Empirically, it draws on crime-pattern observations and illustrative case studies; to show how specialized offences can strengthen investigation and prosecution even when harms are psychological or difficult to capture through general penal provisions. This manuscript also identifies key gaps: inconsistent coverage across states, evidentiary and enforcement hurdles, and the risk that emerging practices (including online "tantrik" scams) fall outside enumerated schedules. It proposes a central "floor" legislation allowing stricter state measures defining core ritual offences, rejecting consent as a defence where bodily integrity is violated, establishing coordinated vigilance and victim-support mechanisms, and incorporating a robust savings clause to protect harmless cultural and religious observances, promoting uniformity.*

**Keywords –** Ritual Abuse, Anti-Superstition, Human Sacrifice, Witch Hunting, and Central Law.

## I. Introduction

Black Magic's malevolent nature is often considered to be alarming and dangerous. From antiquity, the Indian Tradition has recognized the existence of occult practices. Legal structure to counter such practices has been uneven, falling within the domain of state legislatures. This research paper examines the importance of enacting a central law with regard to ritual abuse and dark practices by focusing on two major state laws, i.e., Maharashtra's Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013[1] and Karnataka's Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017.[2] It aims to identify legislative gaps in existing laws and provide relevant policy recommendations for a uniform central legislation. It also highlights the contemporary significance of addressing the research gap in superstition-related laws.

[1] Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (India).

[2] Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017 (India).

## II. Existence and Recognition of Dark Practices

The Atharva Veda (i.e., The Veda of Spells) mentions hymns to ward off curses, which indeed reflect both knowledge of and warnings against dark, inhumane practices. In various religious sites across India, the tradition of warding off spirits and breaking sorcery has been incorporated through the application of ritualistic Vedic rites. This makes it evident that devotion can neutralize dark practices. The Supreme Court of India in State of U.P. v. Sahrunnisa[3] observed that superstitions are not confined to any particular faith or region. This reasoning is significant as it characterizes superstition as a social evil that cuts across communities, thereby justifying a religion-neutral and harm-based legal response. It also reinforces the principle that where such belief manifests in cruelty or fatal violence, constitutional guarantees and penal protections must prevail over practices defended in the name of custom or irrational faith.

Science does not recognize human sacrifice, spirit possession rites, or black-magic exorcisms as real supernatural phenomena. Instead, these can be termed as socially construed beliefs (as per science); they are not the direct evidence of actual spirits or occult powers. Neuroscience recognizes trance and possession states of an individual as dissociative phenomena or a psychiatric condition marked by altered consciousness, sometimes triggered by stress or cultural expectation, but not by external spirits.[4] Even the World Health Organization (WHO) warns that harmful witchcraft-related practices are directly linked to mental health stigma and social violence.[5] Nevertheless, State laws have been enacted to address harmful ritualistic practices carried out in the name of such beliefs, even though such underlying phenomena are not recognized by science. The adequacy of these sources is sufficient to establish the existence of such dark ritualistic practices.

## III. Inadequacy of Legislation

Maharashtra's Act of 2013 and Karnataka's Act of 2017 provide the core legislative framework addressing ritual abuse, each with a broadly similar scheme but also notable distinctions. Both Acts were born out of public outcry and reformist movements. Maharashtra's law, often dubbed the "Anti-Superstition Act", was pushed to fruition in the aftermath of the assassination of Dr. Narendra Dabholkar – a rationalist leader who campaigned for it for over a decade. Karnataka's law, passed four years later, was inspired by the Maharashtra model and demands from civil society to combat rampant superstitious practices.

Considering the state statutes of Karnataka and Maharashtra in particular, both consist of schedules appended at the end of the Act that specify which acts are deemed offenses under the respective laws. Moreover, Section 15[6] of Karnataka's Act, and Section 12[7] of Maharashtra's Act expressly clarify and mention what acts shall not be considered offenses under these statutes. Both these enactments have a twin-architectural structure, in order to target harmful conduct without policing belief. But they have failed to expressly mention standalone offenses for specific practices, such as inducing, importing, or instilling a spirit (soul) into another person's body, etc.

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[3] State of U.P. v. Sahrunnisa, AIR 2009 SC 3182 (India).

[4] Vishal Bhavsar et al., Dissociative Trance and Spirit Possession: Challenges for Cultures in Transition, 70 Psychiatry Clin. Neurosci. 551 (2016).

[5] Witchcraft and Human Rights, Office of the U.N. High Comm'r for Hum. Rts., https://www.ohchr.org/en/special-procedures/ie-albinism/witchcraft-and-human-rights (last visited Apr. 7, 2026).

[6] Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, S 15 (India).

[7] Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, S 12 (India).

Such dark ritualistic practices can be used for coercion, sexual exploitation, bodily assault, or financial extortion, and harm may occur irrespective of any consent or benevolent purpose. Karnataka's law (Section 3(4))[8] clarifies that consent is not a defence for offenses mentioned under the schedule segment of its code.

The absence of an expressed prohibition on forced possession and other practices allows the courts to fit these facts into other entries, which is an approach that risks inconsistent charging, uncertainty in determining evidence, and uneven protection for victims (hampering of justice). What about those practices which remain unidentified and unenumerated within the statutory schedules? By criminalising only those acts expressly stated, the statutes risk leaving other harmful practices beyond their immediate, imaginable ambit. Such exclusions highlight the limitations of a closed-list approach and raise questions on the adequacy or sufficiency of the protection afforded to individuals against evolving and context-specific manifestations of superstition-related harm. India is in urgent need of federal legislation as ritual abuse is national in scope, while legal protection remains unevenly local. State statutes have been framed in a manner that they are behaviour-focused prohibition of assault, exorcism, prevention of medical care, sexual exploitation, and human sacrifice, but leave jurisdictional gaps that offenders exploit and victims suffer.

**IV. Need for Central Legislation**

In several regions of India, such as coastal Karnataka and Kerala, the ritual of *Bhootha Kola*[9] is an elaborate spirit worship performance that illustrates a practice that is revered locally as a cultural and religious expression; its more intense elements could be misunderstood when viewed through the lens of a uniform central statute. Therefore, while framing legislation to curb genuinely exploitative or abusive ritualistic practices, it is essential for the legislature to carefully distinguish between harmful superstition and legitimate cultural and religious rituals such as *Bhootha Kola*, so that the law protects individuals from abuse without erasing or criminalising constitutionally protected cultural and religious diversity.

A uniform code must be enacted by the centre, standardising the definitions and penalties, departure from which must not be permitted, while allowing states to adopt stricter measures. Such legislation should function as a national floor rather than a ceiling. Constitutionally, this is viable as 'criminal law' as well as 'criminal procedure' fall within the purview of the concurrent list, and Article 254[10] resolves the conflicts or inconsistencies between state and central laws in favour of Parliament, provided the statute is carefully tailored around Article 25[11] for protecting harmless worship and complies with Article 14[12] reasonable classification test. Another reason for the requirement of a strong central law is that the courts face evidentiary hurdles in prosecuting such ritualistic crimes, such as in the case of State of Maharashtra v. Maroti (2022),[13] where minor tribal girls were sexually assaulted at a Rajura hostel, with an investigation revealing 17 victims. The Supreme Court in this case observed that occult motives rarely leave tangible forensic traces, testimonial evidence also becomes unreliable, and proving intent rooted in

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[8] Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, § 3(4) (India).

[9] Bhootha Aradhane, Karnataka Tourism, https://karnatakatourism.org/en/experiences/bhootha-aradhane-spirit-worship-dance/ (last visited Apr. 7, 2026).

[10] India Const. Art. 254.

[11] India Const. Art. 25.

[12] India Const. Art. 14.

[13] State of Maharashtra v. Dr. Maroti S/O Kashinath Pimpalkar, (2023) 4 SCC 298 (India).

superstition is challenging. This ruling underscores that silence or delayed reporting in cases of abuse involving minors can itself frustrate the statutory design of child protection law (POCSO act). By restoring the prosecution, the Court reaffirmed that investigative processes must be allowed to unfold fully where the allegations disclose a prima facie offence. The judgment is particularly relevant to research on ritual or belief-linked abuse because such harms often occur in closed environments marked by fear, dependency, and under-reporting. In that sense, the case supports a broader victim-centric principle where vulnerable victims are involved, evidentiary uncertainty at the threshold should not become a ground to abort prosecution.

On religious freedom constraints, the most defensible drafting technique is the one already used in Maharashtra and Karnataka i.e. drawing the line between physical harm and financial exploitation. Maharashtra's Section 12 lists exempted forms of worship and religious rites (including processions and prayers) and expressly conditions exemptions on "no physical injury or financial loss." Karnataka's Section 15 similarly lists exempted worship forms and observances. A central law can adopt this model but should add an interpretive clause clarifying that exemptions do not apply when the conduct includes confinement, assault, sexual exploitation, deprivation of medical care, or extortion.

In the case of Jitu Murmu v. State of Odisha (2020),[14] the victim was assaulted with a rope and an iron rod, branding her as possessed by an evil spirit. This incident led to a conviction under the Indian Penal Code and the Odisha Prevention of Witch-Hunting Act, 2013, in which the Orissa High Court observed the inadequacy of state anti-witch laws (Para 12) and urged a stronger, coordinated response (Para 16) by enacting a common central legislation to combat such evil practices. This case significantly strengthens the argument for central legislation by recognizing that state-wise enactments have produced an uneven and non-uniform legal regime. The Court observed that the Indian Penal Code alone has not been sufficiently effective in curbing witch-hunting and related superstition-based violence. Accordingly, the judgment supports the need for a stronger national response that addresses not only punishment, but also investigation, witness security, and public awareness.

## V. Conclusion

The struggle to end ritual abuse in India sits at the crossroads of law, society, and faith. The journey that began with state-level initiatives, catalysed by activists like Dr. Narendra Dabholkar has shown both the possibilities and the limitations of combating superstition through legislation. Maharashtra's and Karnataka's anti-black-magic laws have broken new ground by explicitly criminalizing practices once shrouded in cultural sanction, thereby empowering victims and deterring predatory frauds under the cloak of religion. They reaffirm the constitutional principle that no person's life or dignity can be subordinated to another's superstitious belief. Yet, as this analysis has highlighted, much work remains. Gaps in geographic coverage, enforcement inefficiencies, and enduring social acceptance of superstition mean that legal tools are sometimes firing blanks. A woman in a village who is accused of witchcraft or a child being subject to a dangerous ritual still face an uphill battle for justice, especially if they live outside the few progressive states.

Ending ritual abuse will require a concerted, multi-pronged approach. A robust central law would provide the backbone, creating consistency and emphasis at the national level. Equally crucial,

[14] Jitu Murmu v. State of Odisha, BLAPL No. 3707 of 2020 (Orissa H.C. Aug. 10, 2020).

however, is the continued role of judiciary and civil society in ensuring that these laws are used in the right spirit punishing real offenders, protecting the innocent, and not becoming instruments of harassment. As the Supreme Court wisely noted, social evils like superstition ultimately recede through enlightenment of society. Therefore, along with legal reforms, India must invest in education and awareness to erode the very belief systems that give rise to ritual abuse. The Constitution's vision of scientific temper and humanism must be translated into grassroots reality.

The phrase "When Faith Hurts" encapsulates a grim reality that faith, when perverted by ignorance or malice, can indeed hurt and even kill. The law's role is to draw a firm line: faith ends where another's harm begins. Maharashtra and Karnataka have made a start by drawing that line in their jurisdictions. It is now imperative for India as a nation to draw it everywhere, through thoughtful central legislation and resolute policy action. Only then can we hope to relegate human sacrifice, witch hunting, and black magic to where they belong – the dark pages of history – and ensure that no one in modern India suffers or dies in the name of superstition.

Traditions must empower and not terrify. Religious places are considered sanctuaries of care rather than sites of coercion, and belief never supersedes the worth of a human life. Bringing an end to dark practices and ritual abuse is not just a legal duty but also a moral choice of rejecting all forms of cruelty. Indian ritualistic traditions have always been powerful in terms of their spirituality (power to heal, to unite, to give meaning, etc.), but when distorted into rituals of fear, they become weapons. The challenge before the legislature is not to destroy the faith but to enact a strong central law that overcomes investigative and evidentiary hurdles, addresses the lack of awareness and institutional will, transforms societal mindsets, and prevents potential misuse or overreach in its application. The day our traditions nurture compassion instead of terror is the day superstition will finally lose its grip.

## VI. Policy Recommendations

The central law must be framed with a structure that clearly defines the core set of "Ritual Abuse Offenses" in the operative section (not only in a Schedule) – (i) violent exorcism (assault, restraint, torture, or humiliating acts in the name of expelling spirits), (ii) possession induction (administering substances or performing coercive acts to manufacture "possession"), (iii) ritual mutilation or branding, (iv) ritual deprivation of medical care (including preventing treatment for bites or illness in favour of "mantra-tantra"), (v) commercial occult fraud (obtaining property or sexual access by claiming supernatural power), and (vi) human sacrifice or attempted human sacrifice.

It must expressly mention that consent cannot be a defence when bodily integrity is violated. A national vigilance cell must be established, equipped with contemporary forensic tools and technology, and it must operate in coordination with vigilance officers appointed under the respective state statutes, wherever such provisions exist. To reduce evidentiary challenges, the statute must incorporate presumptions addressing group ritual complicity, ensuring victims are provided with compensation, medical, and psychological rehabilitation support. Such legislation must also adhere to constitutional guarantees of religious freedom (Articles 14, 21 & 25), and the law should contain a savings clause that exempts harmless religious rites and cultural practices that do not result in physical harm or financial exploitation.

Creating an updated mechanism that avoids the closed-list trap considering the issue of superstition being very dynamic in nature; as society modernizes, some practices wane, but new forms (like online occult scams) may emerge. A central law could mandate a periodic review (say every five years) by an expert committee to assess its effectiveness, recommend additions to the list of offences, or modifications. Section 14 of the Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act,[15] provides a concrete state-level precedent for this technique. Already, we see some modern twists, e.g., cases of people being cheated by online "tantriks" advertising on social media to remove curses in exchange for e-payments. The law must keep pace with such trends, perhaps by bringing such cyber-occult frauds within its scope. Ongoing research, data collection, and policy tweaking should be part of the legal regime, rather than a static one-time enactment.

The statute should also explicitly integrate with an existing central deception/advertising regimes such as the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954,[16] which prohibits advertising remedies alleged to possess "magic qualities" for specified purposes.

Finally, (and importantly for misuse prevention) the statute should include a calibrated "savings and safeguards" clauses: (i) a robust savings clause for harmless worship, (ii) an explicit statement that "mere belief" is not an offense, (iii) a requirement of demonstrable harm or exploitation for core offenses, and (iv) procedural safeguards against false implications such as supervisory approval for arrest in low-gravity cases or mandatory documentation of objective harm markers (injury reports, confinement indicators, financial transfers). This aligns with the Supreme Court's consistent insistence that superstition cannot morally justify violence (as in human sacrifice jurisprudence) while still requiring evidence that meets criminal standar

[15] Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, § 14 (India).
[16] Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, §§ 2(c), 3–5 (India).

# Sexual Violence in Armed Conflict and The Crisis of International Accountability

**Diksha Dabas**

*National Law Institute University, Bhopal*

**Abstract**

*This article critically discusses the problematic area of sexual and gender-based violence (SGBV) in war conflicts, specifically in the context of identifying rape as a crime of war and the continued breakdown of accountability systems in the context of armed conflicts. Although there have been tremendous legal advances such as the establishment of the International Criminal Tribunal of the former Yugoslavia (ICTY), the International Criminal Tribunal of Rwanda (ICTR), and the Rome Statute of the International Criminal Court (ICC), the responsibility of the crimes has not been sufficiently taken.*

*It explores the major issues such as weak legal systems, political meddling, lack of resources as well as the overall stigmatization of victims. The article shows how these systemic weaknesses have enabled impunity to persist even after sexual violence became a criminal offense against humanity through the analysis of the situations in Bosnia, Rwanda and Myanmar.*

*Moreover, this study suggests extensive reform-based interventions to empower legal frameworks, enhance international cooperation, and adopt survivor-oriented strategies. These remedies focus on balancing international legal norms, strengthening institutional capacity, and socio-cultural obstacles via education and advocacy, as well as focusing on long-term recovery interventions to survivors. It proposes in the article that meaningful accountability on SGBV in armed conflicts cannot be achieved without a comprehensive strategy, which encompasses the presence of sound legal frameworks, survivor-oriented support services, and long-term international collaboration to counter impunity and promote gender justice.*

**Keywords:** Sexual Violence, War Crimes, Accountability Mechanisms, Survivor Support, International Law.

## I. Introduction

The current international system has subjected civilians to serious human rights abuses especially the Sexual And Gender-Based Violence (SGBV) as a result of armed conflicts. Such violence still exists even after the international humanitarian and criminal law, which indicates a huge discrepancy between these laws and their actual implementation.

Aggression on sexual and gender-based violence in armed conflicts has come out as one of the gravest offences against the international humanitarian and human rights law. In the past, these acts used to be viewed as natural results of military conflicts, instead of being perceived as the intentional actions adopted to fulfil military and political goals. Nevertheless, the advancements in international criminal laws have increasingly recognized sexual violence, especially rape as a war crime, crime against humanity and in some situations as a form of genocide.

Although these developments have been made in legislation, there are still notable loopholes that are used to safeguard such offences. The article discusses the history of the recognition of sexual violence in armed conflict by international law, the institutional and structural constraints of the current accountability options, and the obstacles to access to justice by survivors. It also gives suggestions on legal and institutional changes which would enhance accountability and support systems to survivors.

## II. Recognition of Rape as a War Crime

Sexual violence, particularly rape, has historically been employed as a weapon of war to achieve military objectives such as ethnic cleansing, intimidation, and the breakdown of community resistance.[1] The establishment of the war crime of rape is a great move towards the international law and human rights community. Previously, sexual violence during armed conflict is a phenomenon that was typically overlooked or ignored as a normal consequence of the war rather than purposeful and punishable offense.

Although it is well known in international humanitarian law and human rights law, there is a sharp gap between the legal prohibitions and the reality that sexual violence is widespread in modern armed conflicts.[2] Only later in the 20th century, when rape began to be treated as a crime against humanity, the world began to consider gender-based violence in conflict cases in a new way. The development of the law has seen the progressive recognition of rape in this setting, and the major steps have been made by the ad hoc tribunals and international laws.

Key milestones in this evolution were the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the adoption of the Rome Statute of the International Criminal Court (ICC) which contributed significantly to the creation of precedents to prosecute sexual violence as a war crime, crime against humanity, and even genocide.[3] These institutions represented groundbreaking efforts to hold perpetrators accountable for sexual violence and to affirm that such acts constitute serious violations of international law. They established important legal precedents that continue to shape the prosecution of sexual violence in conflict settings.

The ICTY, established in 1993, was one of the first tribunals to explicitly address sexual violence in armed conflicts. It played a crucial role in recognising rape as a crime against humanity and a war crime under international law.[4] For instance, in the landmark *Kunarac* case, where systematic wartime rape and sexual enslavement were legally recognised as international crimes against humanity, fundamentally shaping modern international criminal law, the ICTY identified rape as a form of torture and an act that could constitute crimes against humanity.[5] This decision was groundbreaking, as it demonstrated that sexual violence was not merely incidental to conflict but could be systematically employed as a weapon of war. In this case the Chamber provided a modern definition of rape, Rape is sexual penetration without consent, caused by force, coercion, or circumstances preventing free choice.

Similarly, the ICTR, established in 1994 to deal with atrocities that were carried out during the Rwandan genocide, took another step in ensuring that sexual violence was recognised as a crime against humanity. The landmark case of *Prosecutor v. Akayesu* played a major role in this

[1] J. A. Jones, Addressing the Use of Sexual Violence as a Strategic Weapon of War, 5(4) Inquiries J. 1 (2013).
[2] Prosecutor v. Kunarac, Case Nos. IT-96-23 & IT-96-23/1-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001).
[3] S. Aroussi, Women, Peace and Security: Addressing Accountability for Wartime Sexual Violence, in Gender, Governance and International Security (Laura J. Shepherd ed., Routledge 2016).
[4] Stephen J. Rapp, Achieving Accountability for Atrocity Crimes in an Era of Resistance to International Justice and Human Rights, 21 Wash. U. Glob. Stud. L. Rev. 1 (2022).
[5] S*upra* note 2.

framework.[6] In its judgment, the ICTR defined rape as a physical invasion of a sexual nature committed under coercive circumstances and declared it an act of genocide when used to destroy a particular group. It was the first instance when an international tribunal explicitly associated rape with genocide, and the use of sexual violence as a method of ethnic cleansing and mass destruction.

Another major step in this direction was the implementation of the Rome Statute in 1998. As the founding treaty of the ICC, the Rome Statute explicitly criminalised rape and other forms of sexual violence as war crimes, crimes against humanity, and under certain circumstances, acts of genocide.[7] Article 7 of the Rome Statute specifically identifies rape, sexual slavery, enforced prostitution, forced pregnancy, and other forms of sexual violence as crimes against humanity when committed as part of a widespread or systematic attack. Article 8 extends this recognition to armed conflicts, categorising sexual violence as a war crime.[8] The provisions of the Rome Statute are an important milestone in dealing with the prevailing impunity of sexual violence in conflict regions.

International humanitarian law, particularly the Geneva Conventions and their Additional Protocols, explicitly prohibit outrages upon personal dignity, including sexual violence, against civilians, prisoners of war, and persons hors de combat. The international legal framework addressing conflict-related sexual violence was further strengthened by United Nations Security Council Resolution 1325, which emphasises the protection of women and girls during armed conflict and calls upon states to ensure accountability for gender-based violence.[9] The resolution also highlights the importance of women's participation in peacebuilding and post-conflict recovery processes, thereby linking the prevention of sexual violence with broader efforts to achieve sustainable peace.

Furthermore, impunity against sexual violence is an age-old practice that has existed in conflict environments where the offenders avoid justice through poor legal systems, political goodwill, or cultural taboos of sexual violence.[10] Legal frameworks created to prosecute rape as a war crime are meant to eliminate such gaps and allow the survivors justice. Accountability for sexual violence is essential not only for the victims but also for preventing the recurrence of such crimes in future conflicts. Despite legal recognition, implementation remains inconsistent due to variations in domestic laws and lack of state cooperation

The global consensus on the recognition and prosecution of rape as a war crime has not been achieved so far. Even though there are international treaties like the Rome Statute which create a path on how to address the issue of sexual violence, the difference in politics and culture between states can become an obstacle to the implementation process. A case in point is that of some countries adapting to the sovereignty, rather than international collaboration, they may fail to extradite suspects and recognize the international tribunal authority. Others lack the political goodwill to address sexual violence as they may fear political repercussions or lack awareness on the high rate of occurrence of such crimes in their territories.

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[6] Philipp Schulz & Anouk Kreft, Accountability for Conflict-Related Sexual Violence, in Oxford Research Encyclopedia of International Studies (Oxford Univ. Press 2022).
[7] Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90.
[8] *Id*. Art. 8.
[9] S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).
[10] A. Viscomi, System Accountability and Sexual Assault: The Past and Future of the Criminal Justice System, 22 Richmond Pub. Int. L. Rev. 1 (2018).

The survivors are likely to face significant difficulties in their pursuit of justice that may include lack of adequate support systems, long legal processes and re-traumatizing a person in court. Sexual violence should not be addressed only through legal reforms but also a change of the system so that the voices of the survivors could be heard and their needs are prioritised.

Despite these important legal developments, the recognition of rape as a war crime has not automatically translated into effective accountability. Significant weaknesses remain within international and domestic enforcement mechanisms, which continue to limit the delivery of justice to survivors. These structural weaknesses are examined in the following section.

**III. Flaws in Accountability Mechanisms**

Although rape has been acknowledged as a crime of war under international law, there are still major gaps in the accountability systems that do not serve justice to victims and hold offenders responsible. This section critically examines these flaws, focusing on inadequacies in legal frameworks, institutional and procedural challenges, and notable failures of accountability mechanisms in recent conflicts.[11] By addressing these systemic issues, the international community can better understand the barriers to justice and work toward meaningful solutions.

One of the primary obstacles in addressing sexual violence in armed conflicts is the inadequacy of legal frameworks at both international and domestic levels. Although international instruments, such as the Rome Statute of the International Criminal Court (ICC), recognise rape as a war crime and a crime against humanity, there are significant gaps in enforcement and interpretation.[12] For instance, the Rome Statute provides a broad legal basis for prosecuting sexual violence, but its implementation often faces challenges due to varying levels of political will and legal capacity among member states. It is an indication of how out of touch international legal norms are with their application, especially in those jurisdictions which do not have sufficient resources or political will to prosecute such offenses.

At the domestic level, many countries fail to explicitly criminalise sexual violence in armed conflicts or align their legal systems with international norms. This creates a dual accountability gap: while international tribunals may have jurisdiction over these crimes, the primary responsibility often lies with domestic courts. This is seen in cases like the war in Bosnia and Herzegovina where although the jurisprudential advancements were made by the International Criminal Tribunal for the Former Yugoslavia, its home counterparts still failed to prosecute and the survivors were still blocked to justice. This failure to harmonize laws, besides restricting the effectiveness of states in prosecuting culprits, also erodes the right of the survivors to pursue justice in their respective jurisdictions.

Moreover, the absence of universal definitions and consistent legal interpretations of sexual violence further complicates accountability efforts. For example, while the Rome Statute defines rape in the context of war crimes and crimes against humanity, its application varies across different jurisdictions and cases.[13] Prosecution of people on rape as a war crime has not been consistent as a number of cases have established relevant precedents and others have revealed the weakness of the international criminal responsibility. This inconsistency echoes other difficulties

[11] Sara E. Davies & Jacqui True, Reframing Conflict-Related Sexual and Gender-Based Violence: Bringing Gender Analysis Back In, 46 Security Dialogue 1 (2015).
[12] Aroussi, *supra* note 3.
[13] Schulz & Kreft, *supra* note 6.

reaching a global agreement on the legal and moral necessity to undertake sexual violence in armed conflicts.

Other than legal structures, institutional and procedural obstacles also negatively affect the success of accountability mechanisms to sexual violence in armed conflicts. The unavailability of resources and capability to probe and prosecute such crimes is one of the main problems. The study of sexual violence in the conflict environments demands special training, forensic skills and witness protection schemes most of which are usually inadequate in the conflict-stricken areas. Also, trauma may result in difficulties as the survivor may not be able to engage in legal action, which may make it more difficult to pursue justice.

Political interference further exacerbates these challenges, as governments and other actors may obstruct investigations or influence judicial processes to protect their interests. In some cases, states can also at times put political stability above accountability by offering amnesties or negotiating peace deals which will protect lawbreakers, preventing them facing justice. This weakens the legality of accountability systems and sends the message that impunity can be taken when it comes to sexual violence in armed conflicts.

There is also the problem of the absence of survivor protection in trials, and this is another problem that can repel the victims and make them not participate in processes of accountability. Survivors of sexual violence often face revictimization during legal proceedings, as they may be subjected to insensitive questioning, public exposure, or threats from perpetrators and their supporters. Without adequate safeguards to protect survivors' dignity and safety, the pursuit of justice becomes an additional source of trauma rather than a pathway to healing and accountability. Weaknesses in accountability measures of sexual violence against armed conflicts have been witnessed in a number of recent conflicts such in Bosnia, Rwanda and Myanmar. These case studies show the institutional failures that remain in place regardless of international efforts to combat sexual violence as a war crime.

In Bosnia, the rape as the weapon of war employed excessively during the conflict of 1992-1995, resulted in the creation of ICTY that tried various high-profile cases of sexual violence. Although the ICTY went a long way in enforcing rape as a crime against humanity, most of the culprits got away and victims still experience difficulties in receiving reparation and assistance.

Likewise, the International Criminal Tribunal for Rwanda made significant progress in addressing sexual violence during the 1994 Rwandan genocide. In the landmark case of Prosecutor v. Akayesu, the tribunal recognised that rape and other forms of sexual violence could constitute acts of genocide when committed with the intent to destroy a protected group.[14] This judgment represented an important development in international criminal law by establishing that sexual violence could be used as a method of genocidal destruction. However, despite these legal advancements, the tribunal faced several institutional challenges, including limited resources, political pressures, and difficulties in collecting reliable evidence in post-conflict environments.[15] Moreover, the tribunal primarily focused on prosecuting high-ranking officials, which meant that

[14] Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Int'l Crim. Trib. for Rwanda Sept. 2, 1998).
[15] Payam Akhavan, The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment, 90 Am. J. Int'l L. 501 (1996).

many lower-level perpetrators were not prosecuted, contributing to a continuing perception of impunity at the local level.[16]

Similarly, in Myanmar, the systematic use of sexual violence against the Rohingya population has been widely documented by international organisations and human rights groups.[17] Despite widespread international condemnation and calls for accountability, efforts to prosecute those responsible have faced significant obstacles due to the lack of cooperation from the Myanmar government and limitations within existing international accountability mechanisms.[18] This situation highlights a broader structural limitation of international criminal justice: where states refuse to cooperate with investigations or prosecutions, enforcing international legal norms becomes significantly more difficult.

The weaknesses in the accountability systems of sexual violence in armed conflicts are complex and comprise failures in the legal systems, institutional and procedural factors, and failures in case studies. Although international legal provisions such as the Rome Statute offer a framework on how to combat sexual violence as one of the war crimes, they are hampered by insufficiency in their applications, lack of resources and their politicization. Besides, absence of survivor protections and uniformity of interpretation of the law also complicate the delivery of justice to the victim and responsibility to the perpetrator.

The international community has to focus on creating more survivor-based and stronger accountability mechanisms to mitigate these challenges. This involves the harmonisation of legal standards throughout jurisdictions, the provision of more resources to aid investigations and prosecutions, and the protection and support of those who survived through the accountability process. It is only through these systemic weaknesses that the international community can hope to realize any real justice to those victims of sexual attacks in armed conflict situations.

**IV. Challenges Faced by Survivors**

Armed conflicts lead to sexual and gender-based violence (SGBV) that imposes traumatic marks to the victims who are as a rule subjected to a multiplicity of difficulties following the events. These obstacles lie in the root of socio-cultural obstacles, psychological and biological aftermath, and failure of support systems. The answer to these dilemmas lies in a mere realisation of the scenario of the survivor and coming up with effective and comprehensive systems that will support them. This part will explore the particular issues of the survivors and the remedies that are there, is an urgent necessity to correct the systems of justice and support provisions.

The majority of cultures where the sexual violence occurs alienate the victims and make them believe that there is a reason why they were being beaten in this way. A negative loop of the victim-blaming cycle prevents survivors to report, and shame and isolation have an impact on their life. Gender-based violence is strongly connected to society and its values, as well as the fact that the well-being of its victims is frequently subordinated to issues such as family honour or community reputation. This societal response compounds the trauma experienced by survivors, creating additional layers of suffering that extend far beyond the initial act of violence.

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[16] Phil Clark, The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda (Cambridge Univ. Press 2010).

[17] U.N. Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, U.N. Doc. A/HRC/39/64 (Sept. 12, 2018).

[18] Human Rights Watch, All of My Body Was Pain: Sexual Violence Against Rohingya Women and Girls in Burma (2017).

Despite the extensive needs of survivors, systemic failures in providing adequate support services remain a critical challenge. Survivors often lack access to counselling, medical care, legal aid, and economic support, leaving them vulnerable to further harm and marginalisation.[19] Such systemic failures are indicative of larger failures in post-conflict recovery operations, which frequently focus their efforts on political and economic rebuilding instead of focusing on the needs of individual survivors.

Legal systems also fail survivors in numerous ways. Survivors face insurmountable barriers to reporting abuse or seeking justice, including fear of retaliation, lack of trust in law enforcement, and complex legal procedures.[20] These barriers are particularly pronounced in conflict settings, where legal institutions may be weakened or corrupted, and where perpetrators may hold positions of power. The failure of legal systems to protect and support survivors undermines their access to justice and reinforces the impunity enjoyed by perpetrators.

Long-term recovery programs are often absent in post-conflict regions. Tailored policies and interventions are necessary to address survivors' unique needs, including vocational training, education, and community reintegration programs.[21] Without such programs, survivors may struggle to rebuild their lives and remain trapped in cycles of poverty and marginalisation.

The survivor-driven initiative can ensure the provision of a safe space in which survivors can engage and support one another to develop a sense of power and belonging. Moreover, the consultation of the survivors in policy and program development might ensure that the needs and worlds of the survivors are brought into focus.

Legal reforms are also important to help survivors gain access to justice. Streamlining legal processes, protecting victims during investigations and trials, and ensuring that legal systems are equipped to handle cases of sexual violence are essential steps.[22] These reforms must also encompass a way to bring those who committed the crimes to justice and give the victims a form of reparations due to the damage they have been caused and make them recover.

Lastly, the recovery programs must be long term-oriented so that the survivors can restore their lives. The need to offer vocational training, education and economic opportunities to empower the survivor and ensure they are self-reliant cannot be underscored. Government-NGO and international organization cooperation can result in sustainable solutions that can address the needs of the survivors and assist them in recovery.

In addition to these challenges, systemic failures significantly hinder survivor recovery and access to justice. In conflict-affected regions, survivors often lack access to essential services such as medical care, psychological counselling, legal aid, and economic support. Weak legal systems, inadequate infrastructure, and lack of trained personnel further obstruct effective responses to sexual violence. These gaps not only prevent accountability but also prolong the marginalisation and vulnerability of survivors in post-conflict societies.

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[19] S. Kalanj, Legal Barriers to Justice for Survivors of Sexual Violence in Conflict, 14 Int'l J. Transitional Just. 120 (2020).
[20] *Id.*
[21] S. Kalanj, Challenges in Post-Conflict Recovery for Sexual Violence Survivors, 34 Int'l J. Peace & Conflict Stud. 1 (2025).
[22] Viscomi, *supra* note 10.

### V. Proposed Solutions and Path Forward

Addressing SGBV requires a comprehensive approach combining legal reform, cooperation, and survivor support. Although significant progress has been made through the recognition of rape as a war crime and the establishment of accountability mechanisms such as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court, these mechanisms continue to face substantial challenges in enforcement and implementation. Past failures to prosecute perpetrators show that recognition alone is insufficient. In order to address these shortcomings, legal frameworks must be strengthened through the incorporation of international criminal law standards into domestic legislation, the establishment of specialised prosecutorial units for conflict-related sexual violence, the development of witness-protection programmes, and the adoption of mutual legal assistance agreements to facilitate cross-border investigations.

Legal reforms should align domestic laws with international standards. This means that all types of sexual violence in conflict need to be criminalised, and legal definitions should be harmonised across jurisdictions to ensure consistency in prosecution and accountability.[23] States should include in their domestic legal systems the provisions of the Rome Statute and other international instruments and bridge the responsibility gap that now persists between the international and the domestic structures.

Survivor-oriented approaches are also significant. Conflict and post-conflict recovery programs should include provision of full healthcare comprising of trauma-informed mental health services, reproductive services, and sexually transmitted infections treatment services. The lasting rehabilitation activities such as education, training on vocational activities and economic assistance are used in assisting the survivors to regain their independence and restore their lives. Social reintegration, decreased stigma and increased reporting of sexual violence can be supported by community programs as well. It is possible to confront the culture of harmful behaviour and attitudes towards victims through understanding awareness and advocacy by survivors.

International collaboration is significant in the gathering of evidence, exchange of knowledge and the building of institutional capacity in conflict-prone areas. The United Nations and other international organisations, non-governmental and domestic institutions ought to convene geared towards designing coordinated frameworks of documenting conflict based sexual violence, protecting the witnesses and facilitating the criminal investigations. International institutions, such as the International Criminal Court, could also help in enhancing prosecution, such as information sharing and mutual legal assistance, and training investigators and prosecutors to deal with cases of sexual violence in armed conflict. Enhanced institutionalization of these mechanisms would help the local legal systems to better implement international criminal law norms.

The solution to SGBV during armed conflicts must then be a holistic strategy which encompasses tougher legal systems, viable accountability systems, survivor-based support networks, and long-term international collaboration. States will have to strengthen domestic criminal legislation as required by the international law and create specialised jurisdiction and investigation agencies that could prosecute the sexual violence related to the conflict. Meanwhile, the recovery policies

[23] Schulz & Kreft, *supra* note 6.

should include rehabilitation programmes, which are involved in the provision of medical care, psychosocial assistance, and economic support as a part of the post-conflict recovery.

## VI. Conclusion

In conclusion, the ongoing prevalence of sexual and gender-based violence in armed conflicts shows that the internationalization of the said acts as crimes has to be followed by concrete enforcement and firm institutional dedication. The consolidation of the national legal systems, the enhancement of the investigative and prosecution systems and the formulation of survivor-focused recovery programmes are key actions that would permit meaningful accountability. It is also notable that there should be prolonged international collaboration so that the states can share resources, experience and legal support in dealing with these offenses. The international community can be brought nearer to achieving the elimination of impunity and ensuring justice, dignity and protection to victims of sexual violence in armed conflicts through a combination of legal reforms, enhancing institutions and providing victims of sexual violence with comprehensive support.

# Curable Defect, Incurable Controversy: Restoring Arbitral Autonomy in India

**Aashita Semwal**

*IMS Unison University, Dehradun*

**Abstract**

*This article examines the contentious intersection of the Indian Stamp Act, 1899 and the Arbitration and Conciliation Act, 1996*[1]*, focusing on the question of whether non-payment or insufficiency of stamp duty affects the existence, validity, or merely the admissibility of an arbitration agreement. Tracing a turbulent line of judicial authority the article argues that stamping is a curable fiscal defect that ought not to defeat the separability doctrine or the principle of minimal judicial intervention that underlies Indian arbitration law. The article further examines the doctrinal distinctions between void, invalid, and inadmissible instruments*[2]*, offers comparative perspectives from other jurisdictions identifying the practical mischief caused by treating stamp objections as a threshold jurisdictional bar, and concludes with reform proposals for legislative clarity and procedural efficiency.*

**Keywords:** Arbitration, Contract, Conciliation, Conflict, Agreements.

## I. Introduction

The Indian Arbitration Law has beheld conflicting views as regards to the question of what happens when an arbitration agreement, emanating from a contract has not been duly stamped under the Indian Stamp Act, 1899.[3] At the first instance, the answer seems to fall in the realm of revenue law, concerning the tax collector more than the arbitrator.[4] Yet, over the course of almost a dozen years, and no less than six Apex Court pronouncements, stamp duty transformed from a peripheral fiscal formality to a threshold jurisdictional barrier capable of halting the entire arbitral proceeding even before their commencement.

The Indian Stamp Act, 1899 is indeed an instrument of fiscal policy. Its foundational purpose is to secure revenue for the State by imposing a duty in the execution of specified instruments. Section 35 of the Act declares that no instrument chargeable with stamp duty shall be admitted in evidence, or acted upon, unless it is duly stamped. This provision, on its face, is an evidentiary rule, it does not communicate to the contractual validity of an instrument, nor does it purport to render any agreement void. The Indian Contract Act, 1872 contains no provision making stamp compliance a condition of contractual existence. The Arbitration and Conciliation Act, 1996, as amended in 2015, has a clear legislative philosophy: courts must intervene minimally in arbitration, complying with the literal rule of interpretation with regard to “out of court settlement”. Section 5 of the Act reflects the legislative intent to minimise judicial interference in arbitral proceedings, permitting court intervention only in circumstances expressly provided under the Act. Consistent with this framework, Section 11(6A) limits the court’s inquiry at the stage of appointing an arbitrator to a prima facie determination of whether an arbitration agreement exists between the parties. It does not authorise an extensive examination of issues

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[1] Indian Stamp Act, No. 2 of 1899, S 3, Sched. I (India).
[2] Stamping of Arbitration Agreements: Unravelling the Enforceability Sagas, Manupatra Arts. (Feb. 15, 2024).
[3] Indian Stamp Act, No. 2 of 1899, S 3, sch. I (India)
[4] State of Bihar v. Karam Chand Thapar, (1962) 1 SCR 827.

concerning enforceability or other procedural defects at that stage. Further, Section 16 embodies the doctrine of *kompetenz-kompetenz*, empowering the arbitral tribunal to rule on its own jurisdiction, including objections relating to the existence or validity of the arbitration agreement.

The tension emanates when courts, tasked only with the prima facie examination of whether an arbitration agreement exists under Section11, begin to also examine whether the underlying contract is properly stamped. This conflation of fiscal compliance with contractual existence has led to a cascade of conflicting decisions, strategic misuse of stamp objections as delay tactics and a chilling effect on India's aspiration to make itself an international arbitration hub. The research question central to this article is – Does non-payment or insufficiency of stamp duty affect the existence or validity of an arbitration agreement, or does it merely render the instrument inadmissible as evidence – a defect that is curable and procedurally manageable? This article argues that stamping is a curable fiscal defect, that it does not – and should not – touch irrespective of the existence or validity of an arbitration agreement, and the seven-judge bench in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899*[5] by unanimously settling that question in favour of arbitral efficiency, has correctly restored the proper doctrinal balance.

## II. Theoretical Framework

i. **The Nature and Purpose of Stamp Duty:** Stamp Duty in India is a result of legislative history which predates the Constitution.[6] The Indian Stamp Act, 1899, a colonial fiscal statute imposes duty on certain instruments specified in Schedule I. The Act's overarching purpose is revenue collection, not the regulation of private contracts.[7] As V. R. Krishna Iyer, J. observed, fiscal statutes are to be interpreted in a manner that advances their revenue collection purpose, not in a manner that permits technicality to obstruct justice. Three concepts in the Stamp Act require careful disaggregation; firstly, Section 3 imposes a duty to stamp on the person executing certain instruments; secondly, Section 33 imposes a duty on every public officer and court to examine, and if necessary, impound an instrument presented before them that appears insufficiently stamped; thirdly, Section 35 most consequentially declares that no instrument chargeable with duty shall be 'admitted as evidence' or 'acted upon' by any person unless it is duly stamped.

   The critical imperative point, clarified by the Supreme Court in December 2023 is that Section 35 speaks of admissibility in evidence, and not of the contract being void, which is expressed in Section 42 – once the appropriate stamp duty and penalty are paid, and an endorsement is made to that effect, the instrument becomes admissible. The very existence of a cure mechanism within the statute is conclusive proof that an unstamped instrument is not void. Void instruments cannot be cured; they must be recreated. The Stamp Act, on being perused barely is thus an admissibility statute, not a validity statute.[8] A critical distinction must therefore be maintained between three categories of contractual defects – a void contract is one that has no legal effect whatsoever – it confers no rights and creates no obligations. An unenforceable contract is one that, while in existence,

[5] In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899, 2023 SCC OnLine SC 1666.
[6] Indian Stamp Act History, Wikipedia (last visited Feb. 24, 2026).
[7] Bajaj Finserv, Understanding the Indian Stamp Act (May 8, 2024).
[8] Final Word on Enforceability of Unstamped Arbitration Agreements, Cyril Amarchand Mangaldas (Mar. 17, 2024).

cannot be specifically enforced owing to some bar, such as the absence of written form in the context of certain contracts. An inadmissible document is one that exists and is legally operative, but which a court cannot receive in evidence until a procedural defect is cured. Stamp non-compliance places an instrument in the third category, not the first or second.[9]

**ii.** **Foundations of Indian Arbitration Jurisprudence:** The Arbitration and Conciliation Act, 1996 is modelled on the UNCITRAL Model Law[10] on International Commercial Arbitration. Its foundational principles are party autonomy, *kompetenz-kompetenz*, separability and minimal judicial intervention.

Section 7 defines an arbitration agreement by which parties submit disputes to arbitration. The definition is consensual, i.e., it is premised on consensus ad idem between the parties, not on compliance with any fiscal requirement. Section 11 provides for judicial appointment of an arbitrator where the agreed procedure fails. The 2015 amendment to Section 11(6A) expressly confined a referred court's inquiry to the singular examination of the existence of an arbitration agreement, foreclosing deeper inquiries into validity or enforceability at that stage[11]. Section 16, embodying the *kompetenz-kompetenz* principle, empowers the arbitral tribunal to rule on its own jurisdiction, including objections to the existence or validity of the arbitration agreement. Implicit within *kompetenz-kompetenz* is the separability presumption – the arbitration clause is treated as an agreement independent of the main contract in which it is contained, so that invalidity or termination of the main contract does not necessarily vitiate the arbitration clause. Section 5, the overarching non-intervention provision states that no judicial authority shall intervene in matters governed by the Act except as expressly provided.

Together, these provisions construct a strong pro-arbitration framework that demands courts at the Section 11 stage to limit their inquiry to a prima facie examination of whether an arbitration agreement exists. The question of whether stamp duty has been paid on the underlying contract is, on any faithful reading of this structure, a question about the admissibility of the instrument, which is precisely the kind of jurisdictional question the *kompetenz-kompetenz* doctrine assigns to the arbitral award.[12]

## III. From Formalism to Harmonisation

**i.** **Primary Approach: Strict Fiscal Compliance:** The earnest ruling of the Supreme Court in *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd.*[13], led to the controversy when a two-judge bench held that before a court could act on an arbitration clause contained in an unstamped instrument, it must examine the stamping position and if the instrument is insufficiently stamped, impound it under Section 38 of the Act. The court held that it could not act upon the arbitration clause and by implication could not refer parties to arbitration, until the deficit duty and penalty were duly paid. The plaintiff however, was open to criticism on doctrinal grounds from the outset. The court treated the phrase 'acted upon' in Section 35 as extending to the judicial act of appointing an arbitrator, thereby importing

[9] No Stamps No Problem? Post-In Re Interplay, Arbitration Workshop (Mar. 1, 2024).
[10] U.N. Comm'n on Int'l Trade L., UNCITRAL Model Law on Int'l Commercial Arbitration art. 16 (1985).
[11] Law Comm'n of India, sweeping amendments to the Arbitration and Conciliation Act, 1996, Rep. No. 246 (2014).
[12] Kompetenz-Kompetenz in Indian Arbitration, Cyril Amarchand (2024).
[13] SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd., (2011) 14 SCC 66

a revenue-law constraint into an arbitral proceeding. The ruling made no engagement with the separability doctrine and preceded in 2015 amendments that narrowed the Section 11 inquiry to the existence of an arbitration agreement.

The second significant ruling was the 2019 decision of the Hon'ble Apex Court in *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.*[14], placing reliance on the SMS Tea Estates. A two-judge bench went further, holding that an arbitration clause in an unstamped commercial contract would not merely be unenforceable but would not 'exist as a matter of law.' The bench reasoned that an agreement becomes a contract only if it is enforceable by law; an unstamped agreement not being enforceable does not qualify as a contract and therefore, the arbitration clause contained within it does not 'exist.' This reasoning elevated a fiscal defect into a matter of contractual non-existence, which was perhaps an extraordinary doctrinal leap.

The criticism of this reasoning is substantial. Concluding that a stamp deficiency destroys the very existence of a contract conflates the concept of a 'contract' under the Indian Contract Act with the concept of an instrument's 'admissibility' under the Stamp Act, these are distinct regimes. A contract is formed upon offer, acceptance, consideration and the intention to create legal relations – not upon payment of stamp duty. Moreover, Garware made no reference to the 2015 amendment to Section 11(6A), which had expressly limited judicial enquiry at the referral stage.

ii. **The Pro-Arbitration Counter: Seeds of Conflict:** In the January of 2021, a three-judge panel in *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*[15] questioned the validity of both *SMS Tea Estates* and *Garware.* The bench affirmed the separability doctrine, holding that the arbitration agreement is a distinct and separate agreement from the underlying substantive contract, and that the non-payment of stamp duty a curable defect would not invalidate the arbitration clause. This was the correct analysis, consistent with international standards and with the bare reading of Section 11(6A).

However, a coincidental three-judge bench in *Vidya Drolia v. Durga Trading Corporation*[16], affirmed *Garware* and upheld the position that stamp non-compliance impacts the enforceability of an arbitration agreement. With two simultaneous three-judge benches taking contradictory stances, the conflict was irreconcilable without the intervention of a larger bench.

iii. **Constitution Bench Ruling: N.N. Global 2:** The reference came before a Constitutional Bench in the April of 2023. In *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*[17], the bench delivered a split verdict of 3:2. The majority, authored by K.M. Joseph, J. for himself and Aniruddha Bose, J. with a concurrence by C.T. Ravikumar, J. held that an unstamped instrument not being enforceable in law cannot be said to 'exist' as a contract, and therefore cannot be acted upon until duly stamped. The majority re-affirmed the reasoning of *S.M.S Tea Estates* and *Garware*, overturning the decision of *N.N. Global 1*.The majority further held that a court seized of a Section 11 application must impound the instrument if it is found to be insufficiently stamped, and can only proceed with the

[14] Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd. (2019) 9 SCC 209
[15] N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. (N.N. Global 1), (2021) 4 SCC 379
[16] Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1
[17] N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd., (N.N. Global 2), 2023 SCC OnLine SC 495

appointment of an arbitrator after the prescribed procedure payment of duty, penalty, and endorsement is completed under Sections 38 and 42 of the Stamp Act. Although the majority suggested a 45-day window for stamping, this was aspirational rather than legally enforceable, creating a practical lacuna. The two dissenting judges, Ajay Rastogi, J. and Hrishikesh Roy, J. cogently criticised the majority's reasoning, emphasising upon the separability doctrine, the limited scope of Section 11(6A), and the fact that the Stamp Act itself provides for cure which is inconsistent with treating an unstamped instrument as non-existent.

The dissent warned that the majority's approach would arm litigants with a potent delay weapon and undermine India's arbitral ecosystem, and soon enough, the practical consequences of *N.N. Global 2* were immediately felt, as parties began raising stamp objections routinely at the Section 11 stage, as a stratagem to delay the commencement of arbitration. The Section 9 interim relief mechanism was also potentially compromised: if a court, following *N.N. Global 2*, could not 'act upon' an unstamped instrument even for interim purposes, urgent injunctions in commercial disputes would be imperilled. The decision was also retrospective in effect, potentially allowing reopening of Section 16 rulings in ongoing arbitrations.

iv. **The Seven-Judge Bench: Settling the Stamp Duty Controversy:** Given the wide ramifications of *N.N. Global 2*, a five-judge bench, while hearing a curative petition[18] in September 2023, placed the matter before a seven-judge bench to reconsider the accuracy of *N.N. Global 2* havoc. On December 13, 2023, the seven-judge bench delivered a unanimous judgment in *In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*[19], authored by D.Y. Chandrachud, C. J. for six judges, with a concurring opinion by Sanjiv Khanna, J. which remains as the current, authoritative, and binding position in Indian law. The bench overruled *N.N. Global 2*, *S.M.S Tea Estates*, and the relevant paragraphs of *Garware Wall Ropes*. The key holdings may be summarised as:

a) *First*, an unstamped or insufficiently stamped instrument is inadmissible in evidence under Section 35 of the Stamp Act, but is not rendered void or *void ab initio*. A void instrument has no corporeality in law; an inadmissible instrument exists in law but cannot be relied upon in evidence until the stamping defect is cured. These are fundamentally different legal statutes, and conflating them is a serious doctrinal error.

b) *Second*, the curable nature of a stamping defect, expressly provided for within the Stamp Act's own procedural framework through Sections 35, 40, and 42, conclusively establishes that the legislature did not intend an unstamped instrument to be void. There is no procedure for curing a void instrument; the existence of a cure mechanism presupposes existence of the instrument.

c) *Third*, the Arbitration Act is a special law, and as between the Arbitration Act and the Stamp Act, the former's non-intervention mandate in Section 5 must be given effect. The seven-judge bench held that *N.N. Global 2* had effectively rendered Section 5 of the Arbitration Act otiose, and had prioritised the Stamp Act's revenue objectives at the

[18] Bhaskar Raju and Brothers v. Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram & Other Charities Curative Pet. (C) No. 44 of 2023

[19] *Supra* note 5

expense of the Arbitration Act's efficiency objectives an impermissible result where a special law is to be read harmoniously with a general law.

**d)** *Fourth*, a referral court under Sections 8 or 11 of the Arbitration Act need only make a *prima facie* determination as to the existence of an arbitration agreement. A stamping objection does not bear on the *prima facie* test of existence, and therefore courts must not examine stamping compliance at the Section 11 stage. The issue of stamping including impounding falls within the ambit of the arbitral tribunal by virtue of *kompetenz-kompetenz*. Arbitral tribunals themselves are persons empowered to receive evidence under the Stamp Act, and are therefore competent to impound instruments.

**e)** *Fifth*, the same principle applies at the Section 9 stage, a court granting interim relief need not inquire into stamp compliance. Urgent commercial protection must not be held hostage to a fiscal formality.

The In *Re: Interplay* judgment is a watershed. It restores doctrinal coherence, vindicates the separability presumption, and positions Indian arbitration law alongside the best international practice.[20] It also provides a template for the future iterating that stamp objections are not extinguished, but they are relocated from the pre-arbitration judicial stage to within the arbitration itself, where they can be handled procedurally without stalling the entire process.

## IV. Doctrinal Analysis: Existence, Validity, And Admissibility Distinguished

### i. Does Stamp Deficiency Affect 'Existence'?

An arbitration agreement is formed within the framework of Section 7 of the Arbitration Act. Its existence flows from the consent of the parties offer, acceptance, and the intention to arbitrate. Stamp duty is not a constitutive element of this consent. A party does not cease to have agreed to arbitrate merely because the document recording that agreement has not attracted the correct revenue stamp.

The 'existence in law' reasoning deployed in *Garware* and upheld in *N.N. Global 2* that an agreement which is not enforceable cannot 'exist' as a contract is vicious and flawed.[21] It confuses the question of what constitutes a binding contract under the Indian Contract Act with the separate question of whether an instrument is admissible under the Stamp Act.[22] The Indian Contract Act's definition of a contract an agreement enforceable by law refers to enforceability derived from contractual principles such as competence of parties, free consent, lawful object, and consideration.[23] It does not import fiscal compliance as a condition of contractual formation.

The seven-judge bench in *In Re: Interplay* correctly identified this conflation and explicitly held that an unstamped agreement is not *void ab initio*. The agreement exists; it simply cannot currently be admitted in evidence. This is an entirely different legal condition.

[20] Stamp of Approval: Supreme Court Says Yes to Arbitration, Wolters Kluwer (Feb. 5, 2024)
[21] Stamping of Arbitration Agreements: Unravelling the Enforceability Sagas, Manupatra Arts. (Feb. 15, 2024)
[22] 246th Rep. L. Comm'n India, Amendments to Arbitration Act Para 47 (2014) (distinguishing contractual existence from evidentiary admissibility).
[23] Indian Contract Act, No. 9 of 1872, S 10 (India)

### ii. Validity Under Contract Law

The Indian Contract Act, 1872 specifies the grounds on which an agreement may be void or voidable, i.e., the absence of consideration, incapacity of parties, coercion, fraud, misrepresentation, mistake, or unlawful object. Absence of stamp duty is not among these grounds. The Stamp Act itself does not declare unstamped agreements void. No provision of any statute deems a contract void for stamp non-compliance. This is not a technicality of statutory drafting, rather it reflects a deliberate legislative choice. Revenue law is not the Law of Contract. The State's interest in collecting stamp duty is fully served by the impounding mechanism and the penalty provisions within the Stamp Act.[24] It does not require the additional sanction of contractual nullity, which would extend far beyond what revenue protection demands and would cause disproportionate harm to private commercial relationships.

### iii. Admissibility and the Evidentiary Bar

The phrase 'admitted in evidence' in Section 35 is an evidentiary concept. An admissibility bar is lifted procedurally, upon payment of duty and penalty. The Stamp Act's own architecture with its detailed cure provisions, its distinction between instruments that can be validated and those that cannot, its endorsement mechanism under Section 42 confirms that inadmissibility is a procedural status, not a substantive one. The question of whether 'acting upon' in Section 35 extends to the judicial act of appointing an arbitrator under Section 11 was a source of prolonged confusion. The seven-judge bench authoritatively resolved this ruling that Section 11 inquiry is limited to the "*existence"* of an arbitration agreement, not its admissibility or evidentiary sufficiency. The court at the Section 11 stage does not 'admit the instrument in evidence' it does not rely on the instrument as evidence of a substantive right or fact; it merely examines, on a *prima facie* basis, whether an agreement to arbitrate exists between the parties, these being qualitatively two different acts. The constitutional bench in *N.N. Global 2* had erred precisely in treating the Section 11 court's inquiry as equivalent to admitting the instrument in evidence. The seven-judge bench corrected this, holding that the terms 'admissibility' and 'enforceability' have distinct meanings and that conflating them is analytically unsound and practically harmful.

## V. India in Comparative Perspective

i. **United Kingdom:** The United Kingdom's Arbitration Act, widely regarded as a model statute, does not treat fiscal formalities as conditions of an arbitration agreement's validity or enforceability. Stamp duty land tax and other fiscal obligations in the United Kingdom are administered by tax authorities and are entirely separate from the arbitration framework[25]. An arbitration clause in an agreement that is fiscally non-compliant in some respect remains fully operative. There is no mechanism in the English law by which a party can stall arbitration proceedings by raising a stamp objection.

ii. **Singapore:** Singapore, which has consciously positioned itself as Asia's premier arbitration seat, applies a strong separability doctrine and enforces a principle of minimal court interference in arbitration. The Singapore International Arbitration Act and the domestic Arbitration Act both reflect a philosophy that courts should support, not obstruct, arbitral proceedings. Fiscal non-compliance has no recognised role in the preliminary assessment of arbitral jurisdiction. Singapore's consistent and predictable pro-arbitration

[24] Understanding the Indian Stamp Act: Key Insights, Bajaj Finserv (May 8, 2024)
[25] UK Arbitration Act 1996: No Fiscal Barriers, English Law Comm'n Rep. (2020)

posture is widely credited with driving institutional arbitration growth at the Singapore International Arbitration Centre (SIAC).

iii. **France:** France adopts perhaps the most liberal approach to arbitration in the world. Under French arbitration law, the autonomy of the arbitration clause from the main contract is absolute an approach codified in the Code of Civil Procedure.[26] An arbitration clause is evaluated independently, governed by international public policy principles rather than domestic contract law restrictions. French courts have consistently refused to allow domestic fiscal formalities to interfere with the enforceability of arbitration agreements, particularly in international commercial contexts.

iv. **India as an Outlier:** The jurisprudential trajectory from *S.M.S Tea Estates* through *N.N. Global 2* placed India in a uniquely restrictive position among major arbitration jurisdictions.[27] No comparable jurisdiction conditions the referral to arbitration on prior verification of stamp duty compliance. This created real commercial anxiety among foreign investors and multinational enterprises considering Indian-seat arbitration, and contributed to a preference for Singapore or London as seats even in disputes with Indian parties.

The *In Re: Interplay* ruling of December 2023 brings India back into alignment with the mainstream international practice. The unanimous seven-judge bench's endorsement of the separability doctrine, *kompetenz-kompetenz*, and the limited scope of Section 11 review signals that India's highest court is committed to a pro-arbitration jurisprudence consonant with global standards. The ruling directly strengthens India's case for international arbitration business.

**VI. Practical Consequences and Policy Considerations**

i. **Tactical Use of Stamp Objections:** One of the most immediately identifiable consequences of the stricter approaches adopted in *S.M.S Tea Estates, Garware,* and *N.N. Global 2* was their susceptibility to tactical manipulation. A party wishing to delay arbitration particularly one that anticipated an adverse award could raise a stamp objection even where the instrument in question attracted minimal duty, forcing the opposing party to navigate the impounding procedure, pay penalties, and obtain an endorsement before the Section 11 application could even be heard. This 'front-loading' of litigation before arbitration the precise "mischief" that the 2015 amendments to the Arbitration Act were designed to prevent thus resurfaced through the stamp duty route.

ii. **Judicial Burden and Inconsistency:** The stricter approach also inflated the burden on the judiciary. Section 11 applications which were intended to be disposed of summarily began to require extensive evidentiary analysis of stamping positions under various state stamp laws. High Courts across India developed inconsistent approaches, with some applying the *N.N. Global 2* position strictly and others finding procedural workarounds. This inconsistency itself represented a systemic failure. A party in Maharashtra might face an adverse stamping determination at Section 11 that a similarly situated party in Delhi could avoid, not because the law was different, but because the court's application of the

[26] Code Civ. Proc. [France] art. 1447 (absolute separability).
[27] Judicial Trajectory: SMS Tea to In Re Interplay, HPNLU J.L. Rev. (2024).

law was inconsistent. Predictability a foundational virtue of commercial law was severely compromised.

iii. **Impact on India's Arbitration Ecosystem:** India has consistently articulated its aspiration to be a global arbitration hub. The Arbitration and Conciliation Act has been amended multiple times in 2015, 2019, and 2021 in pursuit of that goal. Institutional arbitration bodies have been established. Specialised commercial courts have been created. Against this backdrop, a line of jurisprudence that conditions the very commencement of arbitration on prior resolution of a fiscal technicality sent a disconcerting signal to international investors. The *In Re: Interplay* judgment, and its emphasis on India's commitment to the UNCITRAL Model Law's non-intervention principles, is thus not merely a legal ruling it is an institutional statement of intent.[28]

## VII. Reform Proposals

Despite the clarity provided by *In Re: Interplay*, judicial decisions remain vulnerable to future reinterpretation, particularly as benches change and new arguments are advanced. The most durable solution is legislative. The Arbitration and Conciliation Act should be amended to expressly provide that at the Section 11 and Section 8 stages, a court shall not examine, and shall not be required to impound, any instrument on the ground of insufficiency of stamp duty, and that all such questions shall be determined by the arbitral tribunal.[29] A corresponding express amendment to Section 35 of the Stamp Act, carving out proceedings under the Arbitration Act from the scope of the inadmissibility bar at the referral stage, would achieve harmonious statutory construction that no future bench could undo by creative interpretation.

For cases where stamp deficiency is not disputed, a fast-track impounding mechanism should be established, allowing the relevant stamp authority to adjudicate and endorse instruments within a strict, court-enforceable time limit of thirty days. The arbitral tribunal should be empowered to proceed on all non-stamp issues while the stamping defect is resolved in parallel, staying only such proceedings as strictly require the admission of the unstamped instrument in evidence. This parallel processing model would eliminate the all-or-nothing delay that characterised the *N.N. Global 2* regime.

Indian courts should explicitly affirm, in a series of consistent rulings following *In Re: Interplay*, that the separability doctrine operates entirely independently of fiscal compliance. An arbitration clause is separable from the main contract for purposes of the doctrine's applicability it is not separable only where the instrument is stamped. The separability doctrine is a rule of arbitration law, not a privilege conditional upon fiscal compliance. This doctrinal clarification is essential to prevent future benches from manufacturing exceptions that limit the doctrine's scope.

Additionally, a clear statement from the Law Commission of India, in the form of a dedicated Report, on the statutory relationship between the Stamp Act and the Arbitration Act would provide authoritative interpretive guidance to legislators, courts, and practitioners, reducing the risk of renewed doctrinal oscillation.

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[28] India as Arbitration Hub Post-2023, Daily Jus (Aug. 27, 2024).
[29] Reform Proposals: UNCITRAL Alignment, Manupatra Arts. (2024)

## VIII. Conclusion

The twelve-year journey is a study in the consequences of conflating distinct legal concepts. When a two-judge bench in 2011 held that an unstamped instrument could not be 'acted upon' for purposes of arbitral referral, it set in motion a chain of reasoning that through Garware's 'existence in law' theory and *N.N. Global 2's* split constitutional bench verdict came to condition the very commencement of arbitration on prior compliance with a revenue statute that says nothing about contractual validity. The doctrinal error treating admissibility as equivalent to existence, and fiscal compliance as a condition of contractual formation was compounded at each stage.

The unanimous seven-judge bench in *In Re: Interplay* subsequently corrected that error. By holding that an unstamped agreement is inadmissible but not void; that inadmissibility is a curable, procedural status; that the Section 11 court's mandate is confined to prima facie examination of the existence of an arbitration agreement; and that stamp objections fall within the competence-competence of the arbitral tribunal the court has restored the proper doctrinal architecture and aligned India with global arbitration standards.

This article has argued, and maintains, that the *In Re: Interplay* ruling represents not only the correct legal analysis but the necessary policy outcome for a jurisdiction seeking to establish itself as a world-class arbitration seat. Stamping is a fiscal obligation; arbitration is a mechanism for dispute resolution. The two should coexist, the Stamp Act's revenue objectives are fully achievable through the impounding mechanism before the arbitral tribunal without one being deployed to defeat the other. The reform proposals advanced in this article, legislative amendment to Section 11, a parallel fast-track cure mechanism, and a Law Commission report offering doctrinal guidance, are offered in the spirit of securing what the seven-judge bench has achieved judicially against the risk of future jurisprudential erosion. *"Procedure is but a handmaiden of Justice"*[30], law at its best is predictable, principled, and aligned with the practical realities of commercial life, *In Re: Interplay* moves Indian arbitration law decisively in that direction. The task now is to consolidate that movement through legislation and consistent judicial practice.

[30] P. N. Bhagwati, J., Smt. Ujjam Bai v. Union of India, AIR 1962 SC 1621.

# The Broken Bridge: Why Section 152 Of the Bharatiya Nyaya Sanhita, 2023 Is Constitutionally Worse Than the Sedition Law It Replaced

**Shivam Kumar**

*University of Allahabad, Allahabad*

**Abstract**

*When Parliament enacted the Bharatiya Nyaya Sanhita, 2023, it announced the end of sedition in India. The word was dropped. Section 124A of the Indian Penal Code, 1860 was formally repealed. What Parliament put in its place, under Section 152 of the new code, is the subject of this paper. The central argument is not the one most commentators have made: that Section 152 BNS is merely a renamed version of Section 124A IPC. That argument is true but incomplete. The more important point is that Section 152 is structurally worse than its predecessor in two specific ways that have gone largely unexamined. First, the shift from "Government established by law" to "India" as the protected object destroyed the judicial anchor around which the Supreme Court's 1962 read-down in Kedar Nath Singh was constructed, making any equivalent read-down of Section 152 judicially unmanageable. Second, the elevation of the maximum determinate sentence from three years to seven years tightened the bail position for persons charged under Section 152, in ways that make the new provision harder to survive as an accused than its predecessor. These two findings lead to this paper's core claim: Parliament did not merely fail to fix the constitutional problems the Supreme Court identified; it enacted a provision that is specifically resistant to the judicial fix the Court had previously applied. That is not decolonisation. It is the opposite.*

**Keywords**: Sedition, Contempt, Imprisonment, Protection.

## I. One Day, Two Firs, One Court Order

August 12, 2025 is a useful place to start, because it is not a hypothetical.[1] That morning, a bench of the Supreme Court of India heard a petition from the Foundation for Independent Journalism and its founding editor, Siddharth Varadarajan. The petition challenged the constitutional validity of Section 152 of the Bharatiya Nyaya Sanhita, 2023 and sought protection from a First Information Report registered by the Assam Police at Morigaon on July 11, 2025. The court granted protection and issued notice on the constitutional challenge.

That afternoon, the Guwahati Crime Branch served summons on the same journalists in a second FIR, also under Section 152 BNS.[2]

The Assam authorities filed a new Section 152 case against the same people on the same day the Supreme Court was in session hearing a challenge to Section 152. By the time the court extended protection to cover the second FIR as well, ten days had passed. The FIR itself concerned an

[1] Foundation for Independent Journalism & Siddharth Varadarajan v. Union of India & State of Assam, W.P.(Crl.) Nos. 207 & 316 of 2025 (Supreme Court of India). On August 12, 2025, a Bench of Justices Surya Kant and Joymalya Bagchi issued interim protection against coercive action in the Morigaon FIR (FIR No. 181/2025, P.S. Morigaon, Assam, dated July 11, 2025), registered under Sections 152, 197(1)(d) and 353(1)(b) BNS. On August 22, 2025, the Bench extended protection to cover a second FIR (No. 03/2025) naming Varadarajan and senior journalist Karan Thapar. The matter is tagged with S.G. Vombatkere v. Union of India and listed for hearing before a Constitution Bench.

[2] See *Id*. The second summons in FIR No. 03/2025 was served by the Guwahati Crime Branch on the same afternoon the Bench had extended protection in the first matter. The sequence illustrates the structural problem this paper identifies: a provision with no limiting principle at the point of first use.

article reporting a statement made by an Indian naval officer at a public university seminar in Jakarta.[3] The Wire had covered the seminar. So had many other news organizations. The Wire alone was booked.

This sequence is not an anecdote. It is evidence of something structural. A provision that can be invoked by state police against journalists on the day a Supreme Court bench is actively hearing a constitutional challenge to it, without those police officers having any reason to think the Court would stop them, is a provision with no effective limiting principle at the point where it matters most: at the moment of the FIR. The court's eventual orders of protection are meaningful. But they arrive after the summons, after the investigation, after the chilling effect has already been produced in every newsroom watching what happened to The Wire. The process, as legal scholars have long observed, is the punishment. Section 152 BNS appears to have been drafted, whether intentionally or not, to maximize the period during which the process runs before a court can intervene.

This paper traces how that structural feature came to exist and why it matters constitutionally. Part II sets out the history: Section 124A IPC, the Kedar Nath Singh read-down of 1962, and the Supreme Court's 2022 stay in Vombatkere that was meant to force a genuine reckoning. Part III examines the text of Section 152 BNS against its predecessor and identifies three specific changes, the most consequential being the replacement of "Government established by law" with "India" as the protected object. Part IV makes the constitutional argument: why Section 152 cannot be saved by the same read-down that saved Section 124A, and why vagueness and disproportionality independently ground a challenge. Part V raises the separation of powers problem created by Parliament's response to the Vombatkere stay. Part VI situates India against common law democracies that have abolished sedition outright. Part VII offers a concrete proposal: strike down Section 152 BNS, and if the Court reads it down instead, require prior magistrate authorization before any FIR can be registered. Part VIII returns to where the argument began—a judgment the Constituent Assembly already made in 1948, which has been deferred long enough.

## II. How We Got Here: 124a, Kedar Nath Singh, And A Stay That Was Meant to Be a Reckoning

i. **The colonial provision and its constitutional survival:** Section 124A of the Indian Penal Code was inserted in 1870, twelve years after the original code was enacted. The provision prohibited anyone from bringing or attempting to bring the "Government established by law in India" into hatred, contempt, or disaffection.[4] Mahatma Gandhi, prosecuted under it in 1922, described Section 124A as the "prince of the political

[3]The Morigaon FIR arose from an article published in The Wire on June 28, 2025: "IAF Lost Fighter Jets to Pak Because of Political Leadership's Constraints: Indian Defence Attache." The article reported a statement made by Captain Shiv Kumar of the Indian Navy at a university seminar in Indonesia, in which he acknowledged that the Indian Air Force lost fighter jets to Pakistan on the night of May 7, 2025 because of a "constraint given by the political leadership to not attack the military establishment or their air defences." The Wire updated its article to include the Indian Embassy's clarification the same day. The FIR nonetheless described the article as endangering India's sovereignty and integrity under Section 152 BNS.

[4]S.G. Vombatkere v. Union of India, (2022) 7 SCC 433 (order dated May 11, 2022). The three-judge Bench comprising CJI N.V. Ramana and Justices Surya Kant and Hima Kohli stayed all proceedings under Section 124A IPC across the country, including investigations, trials, and appeals. The Court observed that "it is desirable and in the interest of the nation that there should be a fresh look at the legislation in question" and that the Union Government had expressed a willingness to reconsider. The Court specifically directed that no FIR be registered under Section 124A unless the government first considered the appropriateness of the provision in the particular case.

sections of the IPC designed to suppress the liberty of the citizen." Jawaharlal Nehru called it "obnoxious" and said it should be removed the moment independence was achieved.

The founders did try to remove it. The original draft of what became Article 19 of the Constitution included "sedition" as a permissible restriction on free speech. The Constituent Assembly debated it and took it out.[5] The generation that had lived through prosecutions under Section 124A chose not to constitutionalize it. The provision has never been on secure constitutional ground, and its architects knew it.

The First Constitutional Amendment of 1951 added "public order" and "incitement to an offence" to Article 19(2), giving Section 124A a defensible home. And in 1962, in *Kedar Nath Singh v. State of Bihar*, a five-judge Constitution Bench upheld the provision, but only by narrowing it significantly.[6] The Court's central holding was that Section 124A could only constitutionally apply where the impugned speech had the tendency or intention to incite violence against the government established by law. Words that merely expressed disaffection or contempt without any incitement to violence could not be prosecuted under the section.

ii. **The gap between the judgment and the enforcement:** The problem with the *Kedar Nath Singh* read-down was not the legal principle. It was the distance between what the Supreme Court held and what happened at the police station. When a local politician filed a complaint alleging that a journalist's article caused "disaffection toward the government," the constable at the station did not pull out the AIR 1962 volume and apply the incitement test. They registered an FIR.

The data is stark. Between 2010 and 2021, approximately 867 persons were charged under Section 124A IPC.[7] The conviction rate was around 3%. That means roughly 97 in every hundred people charged with sedition were not convicted. The arrests were real, the bail battles were real, the loss of work and income were real. The acquittal, when it came, corrected nothing.

This is the context in which the Supreme Court's 2022 stay in *S.G. Vombatkere v. Union of India* must be understood.[8] The Court stayed all proceedings under Section 124A across the country and directed that no new FIRs be filed. It told the government to revisit the law. It was not a soft

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5 See *supra* note 4. The stay was one of the broadest ever issued against a criminal provision in India. It remained in force until the Bharatiya Nyaya Sanhita, 2023 came into effect on July 1, 2024, at which point Section 124A IPC was repealed and replaced by Section 152 BNS.

6 Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955 (Constitution Bench, five judges, decided January 20, 1962).

7 Article 14 Data Repository, Sedition in India: Cases, FIRs and the Law (2022), documenting 867 persons charged under Section 124A between 2010 and 2021, with a conviction rate of approximately 3.3%. See also National Crime Records Bureau, Crime in India (various years). The pattern is consistent across the data: the provision was used most intensively in cases involving political activists, journalists, students, and persons protesting government projects or policies, rather than persons presenting genuine threats to the stability of the state. In the period 2019 to 2022, sedition cases increased by over 28% compared to the previous three-year period.

8 Bharatiya Nyaya Sanhita, No. 45 of 2023, s. 152 [hereinafter BNS]. The section reads: "Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine. Explanation: Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section will not constitute an offence under this provision."

nudge. It was the Court's clearest statement in sixty years that the provision's operation had become constitutionally untenable.

Parliament's response was the Bharatiya Nyaya Sanhita, 2023. Section 124A IPC was repealed. The Home Minister announced that the colonial era in Indian criminal law was over. And Section 152 BNS came into force on July 1, 2024.

### III. What Section 152 Actually Says: Three Changes Worth Examining

Comparing the texts of Section 124A of IPC and Section 152 of BNS carefully produces a specific and troubling picture.[9] The word "sedition" is gone. But three specific changes to the substance of the provision deserve far more attention than the word deletion.

#### i. The most consequential change: from "Government" to "India"

Section 124A of IPC protected "the Government established by law in India" from hatred, contempt, and disaffection. Section 152 of BNS does not mention the Government at all.[10] It criminalizes acts that "endanger sovereignty or unity and integrity of India" and conduct that "encourages feelings of separatist activities."

This looks like a decolonising move, replacing a reference to a colonial government with a reference to the nation itself. But it destroys something that the previous provision, for all its faults, gave to courts: a specific, identifiable object against which to measure whether speech crossed the constitutional line.

The *Kedar Nath Singh* read-down worked because it could anchor itself to that object. The Court drew the distinction between "the Government established by law" (the constitutional institution) and "the persons for the time being engaged in carrying on the administration" (the political incumbents). Criticism of the incumbents was permitted; incitement to violence against the institution was not. That line was judicially workable.[11]

Now try applying the same analysis to Section 152 of BNS. What does "India" mean in this context? Is it the government? The territorial state? The constitutional order? The national culture or identity as the state defines it? The provision gives no answer. And because it gives no answer, a court attempting a *Kedar Nath* -style read-down faces a problem the 1962 Bench did not face: it would need to construct the referent from nothing. "Incitement to violence against India" is not a judicially determinable standard. It is an invitation for the court to write policy, not apply law.

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[9]Indian Penal Code, No. 45 of 1860, s. 124A (repealed with effect from July 1, 2024). The section read: "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine." The phrase "Government established by law in India" was the central object of protection around which both the Kedar Nath Singh read-down and six decades of case law were constructed.

[10] *Id.* The phrase "Government established by law" also appeared in the Kedar Nath Singh read-down as the specific object of constitutional protection, see *supra* note 6, making its removal in Section 152 BNS a change with direct doctrinal consequences for the continued applicability of that read-down.

[11]In Kedar Nath Singh, *supra* note 6, the Court specifically identified the phrase "Government established by law" as crucial to its constitutional analysis: "The expression 'the Government established by law' has to be distinguished from the persons for the time being engaged in carrying on the administration. 'Government established by law' is the visible symbol of the State." This distinction, between the government as a constitutional institution and the people temporarily running it, was what allowed the Court to say that incitement to violence against the government institution was a legitimate target of the criminal law. Section 152 BNS removes this anchor entirely by replacing "Government established by law" with the abstract and politically contested noun "India."

Justice Bagchi's observation during the August 12, 2025 hearing that "a general list of acts endangering sovereignty cannot be prepared by the court" is an inadvertent acknowledgment of exactly this problem. When a judge sitting in constitutional review of a provision says he cannot define the provision's core prohibition, that is not an argument for caution in striking it down. It is an argument for striking it down.

### ii. Three years to seven: the quiet bail trap

Section 124A of IPC provided for imprisonment for life or imprisonment up to three years. Section 152 of BNS provides for imprisonment for life or imprisonment up to seven years.[12] The doubling of the maximum determinate sentence looks like a policy judgment about proportionate punishment. Its practical effect under the Bharatiya Nagarik Suraksha Sanhita, 2023 is more significant.

Section 479 of the BNSS 2023 introduced a meaningful reform: a first-time offender who has served one-third of the maximum sentence is entitled to apply for bail as of right, but only where the maximum sentence does not exceed seven years and does not include life imprisonment. Section 152 of the BNS includes both. The practical result: a person charged under Section 152 of the BNS has a harder bail battle than their predecessor charged under Section 124A of the IPC. The government presented Section 152 of the BNS as a liberalising reform. In terms of the accused's liberty during investigation, it is a tightening.

### iii. Electronic communication and financial means: new territory

Section 124A of the IPC covered words, signs, and visible representations. Section 152 of the BNS adds "electronic communication" and "use of financial mean."[13] The first addition is unremarkable in the contemporary context. The second is more significant. Criminalizing the "use of financial means" to encourage separatist activities potentially reaches donating to an organization, contributing to a publication, or crowdfunding a protest subsequently characterized by state authorities as separatist-adjacent.

The Law Commission of India, whose 2023 report provided the immediate statutory background for the BNS drafters, did not recommend adding "financial means" to the provision.[14] It does not appear to have been the subject of any sustained parliamentary debate before it became law.

## IV. The Constitutional Analysis: Why Section 152 Cannot Be Saved the Way 124a Was

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[12] Compare Section 124A IPC (maximum determinate sentence: three years) with Section 152 BNS (maximum determinate sentence: seven years). Under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), Section 479 provides that a first-time offender who has served one-third of the maximum sentence for an offence is entitled to apply for bail as of right, but only where the maximum sentence is not more than seven years and does not include life imprisonment. Section 152 BNS provides for life imprisonment as well as for up to seven years, which means the Section 479 BNSS relief is significantly restricted because the presence of the life imprisonment alternative makes the offence a "serious" one for bail classification purposes. The net result: a person charged under Section 152 BNS has a harder bail battle than their predecessor charged under Section 124A IPC.

[13] The Law Commission of India, Report on Section 124A of the Indian Penal Code, Report No. 279 (2023). The Commission's recommendations did not include the addition of "financial means" to the provision; this was an addition made during the drafting of the BNS without parliamentary deliberation on its implications for the right to form associations under Article 19(1)(c). The extension of the provision to cover financial support for causes that authorities may characterize as separatist raises the prospect of criminal liability for persons donating to legitimate advocacy organizations, crowdfunding campaigns for protest movements, or publications that are subsequently labeled separatist by the state.

[14] *Id*. The absence of any parliamentary record or Law Commission recommendation supporting the "financial means" addition makes it particularly difficult to apply any purposive interpretation that might limit its scope. Courts seeking to read down Section 152 BNS would have no legislative history to guide the construction of this phrase.

There are three distinct constitutional grounds on which Section 152 BNS can be challenged: vagueness under the *Shreya Singhal* standard, disproportionality under the *Puttaswamy* framework, and the broken bridge argument that this paper identifies as the most important. Each is examined below.

i. **Vagueness: The Section 66A parallel:** In *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the IT Act as unconstitutionally vague.[15] The provision had criminalized sending electronic messages that were "grossly offensive." The Court held that these terms had no settled meaning and no person of ordinary intelligence could determine what conduct they prohibited. More importantly, the Court rejected the argument that Section 66A could be saved by reading it down, because the provision was so broadly drafted that no reading-down could identify a defensible core distinct from the overbroad provision as a whole.

   "Subversive activities," "encourages feelings of separatist activities," and "endangers sovereignty" are not terms with established legal meanings. They are substantially more abstract than "grossly offensive." The reading-down difficulty is more acute for Section 152 than it was for Section 66A, because Section 152 has been drafted to resist the specific reading-down tool that courts have historically used for this type of provision.

ii. **Proportionality: Necessityof Section 152 BNS:** The proportionality test from *Justice K.S. Puttaswamy* requires that a restriction on a fundamental right be necessary in the sense that no less restrictive means was available to achieve the same legitimate aim.[16] The BNS itself contains Section 196 (promoting enmity between groups), Section 353 (statements tending to public mischief), and Section 113 (recruiting for terrorist organizations). The Unlawful Activities (Prevention) Act provides a comprehensive regime for genuine threats to territorial integrity. Every piece of conduct that genuinely threatens India's sovereignty is covered by one or more of these targeted provisions. Section 152 adds nothing in terms of genuine threat coverage that these alternatives do not address. What it adds is reach into speech that is ambiguous, political, and contested. That is the definition of a provision that fails the necessity test.

iii. **The broken bridge: why the standard read-down cannot save Section 152 this time:** The *Kedar Nath Singh* read-down operated through a specific mechanism. It identified the constitutionally valid core of Section 124A as: "incitement to violence against the Government established by law." The logic depended on "Government established by law" being a workable legal concept. The Court in 1962 distinguished it from the political

[15] Shreya Singhal v. Union of India, (2015) 5 SCC 1. Per Nariman J.: a penal provision affecting speech must be "definite enough to convey, to a person of ordinary intelligence, the content of the prohibition." Section 66A IT Act was struck down as void for vagueness because phrases like "grossly offensive" and "menacing" had no settled meaning and would be applied differently by different police officers and courts. The Court explicitly held that the saving possibility of judicial read-down did not apply where a provision was so broadly worded that no reading-down could identify a constitutionally valid core distinct from the overbroad provision as a whole.

[16] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1. The unanimous nine-judge Bench held that any restriction on a fundamental right must satisfy a four-part proportionality test: (i) sanctioned by law; (ii) in pursuit of a legitimate aim; (iii) necessary in a democratic society; and (iv) procedurally fair. The necessity limb requires the state to demonstrate that a less restrictive measure was unavailable to achieve the same legitimate aim. As this article argues in Part V, the BNS itself contains multiple specific provisions targeting incitement to violence and public disorder that could achieve the legitimate aim of Section 152 without the broad sweep of "subversive activities" and "endangering sovereignty."

incumbents and identified it as the institutional apparatus of constitutional government. That distinction gave the read-down its content.

Section 152 BNS contains no equivalent phrase. The protected object is not a government but a nation. If a court attempts the equivalent read-down, limiting Section 152 to "incitement to violence against India," it immediately faces a question the 1962 Court did not face: what does "India" mean for this purpose? Is it the constitutional state? The territorial sovereignty? The cultural entity that nationalist discourse constructs? Each answer produces a different scope for the provision, and none provides the precision that the *Kedar Nath* read-down achieved.

This is what this paper means by the "*broken bridge*." The judicial correction tool that saved Section 124A IPC for sixty years cannot be applied to Section 152 BNS in the same form, because the structural feature that made it work, the specific identifiable object of protection, has been removed. Whether this was a deliberate drafting choice or an inadvertent consequence of the decolonisation rhetoric does not matter constitutionally. The effect is the same.

The *Balwant Singh* case from 1995 is instructive.[17] Two persons had shouted "Khalistan Zindabad" slogans outside a polling booth. The Supreme Court acquitted them because there was no incitement to violence and no evidence of actual public disorder. The *Kedar Nath* standard, strictly applied, produced an acquittal in circumstances where the political pressure to convict must have been considerable. Under Section 152 BNS, the same slogans could potentially constitute "encouraging feelings of separatist activities." An equivalent acquittal would require a court to effectively rewrite the provision.

### V. The Separation of Powers Question

In *Vombatkere*, the Supreme Court stayed Section 124A IPC on the basis of the government's own representation that it intended to reconsider the provision. The stay was a form of judicial-executive collaboration: the executive said it would reconsider, the Court suspended the provision in the meantime, and the Court retained jurisdiction to review the outcome. What Parliament then did was repeal Section 124A IPC, enact Section 152 BNS which reproduced and extended the substantive prohibition, and characterize this as having "reconsidered" the provision.

The constitutional argument here is not that Parliament lacked the power to enact Section 152 BNS. The argument is narrower: the representation made to the Supreme Court in *Vombatkere* was that Parliament would "reconsider" in light of the constitutional concerns the Court identified. A provision that addresses none of those concerns while adding new ones is not a reconsideration. It is a relabeling, performed under the cover of a constitutional representation that induced the Court to stay rather than adjudicate the original provision.[18]

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[17] Balwant Singh v. State of Punjab, (1995) 3 SCC 214. The Supreme Court acquitted two persons who had shouted slogans including "Khalistan Zindabad" and "Raj Karega Khalsa" outside polling booths on the day of a by-election to the Punjab Legislative Assembly after the assassination of Indira Gandhi. The Court held that slogan-shouting, without more, did not constitute sedition because there was no call to violence and no evidence that the slogans had actually excited feelings likely to lead to public disorder. Section 152 BNS, with its reference to "encourages feelings of separatist activities," would potentially cover exactly the conduct for which the accused in Balwant Singh were acquitted.

[18] State of Uttar Pradesh v. Lalai Singh Yadav, (1977) 1 SCC 864 (Parliament cannot by ordinary legislation deprive fundamental rights of their content by calling the restriction something other than what it is). See also Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625. The argument from legislative circumvention advanced in this article does not require invoking the basic

This has a consequence beyond any single provision. If the Supreme Court accepts that Parliament has "reconsidered" Section 124A IPC by enacting Section 152 BNS, it sets a precedent: any provision suspended pending reconsideration can be reproduced under a different section number, and the stay will be treated as resolved by repeal. That precedent makes future *Vombatkere* -style collaborative stays meaningless.

### VI. What the Rest of the World Decided

England and Wales abolished sedition in 2009. Scotland followed in 2010. Ireland repealed it the same year. Canada abolished the criminal code sedition provisions in 2019.[19] Post-apartheid South Africa never enacted one. The Law Commission of England and Wales, recommending abolition, said the provision was being used less to prevent genuine threats to the state and more to suppress speech that the government found uncomfortable. The chilling effect on legitimate political discourse outweighed whatever marginal security benefit it provided. This is almost exactly what the Supreme Court's *Vombatkere* order said about Section 124A IPC in 2022.

India's obligations under the International Covenant on Civil and Political Rights, ratified in 1979, point in the same direction. The UN Human Rights Committee's General Comment No. 34 states that laws penalizing expression that "endangers national security" in abstract terms are generally inconsistent with Article 19(3) ICCPR, which requires that restrictions on speech be necessary for protection of national security or public order.[20] A provision that criminalizes "encouraging feelings of separatist activities" without requiring any nexus to violence or any specific identifiable harm is not a necessary restriction under this standard.

### VII. What Should Happen Next: A Proposal

i. **The primary recommendation: strike down Section 152 BNS:** The strongest argument against striking down Section 152 BNS outright is that it will leave a gap in the law that Parliament will have to fill. This argument is less persuasive than it sounds. The existing BNS contains targeted provisions addressing incitement to violence, public mischief, and organized criminal activity against the state. The gap that remains after striking down Section 152 BNS is a gap in the ability to prosecute speech that is ambiguous, political, and does not incite any identifiable harm. That is not a gap the Constitution requires to be filled. There is also a specific reason why the Supreme Court should be more willing to strike down Section 152 BNS than it was to strike down Section 124A IPC in 1962. In 1962, the Court had the option of saving the provision through reading-down. As Part IV above argued, that option is not available this time in

structure doctrine; it relies on the simpler proposition that a provision which was subject to a Supreme Court stay pending constitutional review cannot be constitutionally replaced by a provision that addresses none of the identified constitutional concerns while substantially expanding the restriction.

[19] Coroners and Justice Act 2009 (UK), ss. 73 to 74 (abolishing the common law offences of sedition and seditious libel in England and Wales). Canada repealed Sections 59 to 61 of the Criminal Code through Bill C-75 in 2019. Scotland abolished sedition by the Criminal Justice and Licensing (Scotland) Act 2010, s. 51. For South Africa's approach, see Constitution of the Republic of South Africa, 1996, ss. 16, 36 (the limitation clause requires that restrictions on expression be "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom").

[20] UN Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of Opinion and Expression), UN Doc. CCPR/C/GC/34 (2011), para. 35. The Committee has stated that laws penalizing expression that "endangers national security" in abstract terms are generally inconsistent with Article 19(3) ICCPR, which requires that restrictions on speech be "necessary for respect of the rights or reputations of others, or for the protection of national security or of public order." India ratified the ICCPR in 1979 and is bound by these obligations.

the same form. The reading-down bridge has been broken. That makes the choice cleaner than it was before.

ii. **If reading down: mandatory safeguards must have constitutional force:** If the Court determines that Section 152 BNS can be saved, it must not repeat the mistake of leaving the reading-down in the jurisprudence without operational enforcement mechanisms. The *Kedar Nath Singh* experience showed that a read-down in case law provides no protection to the person arrested before their case reaches a court where that reading-down can be applied. What is needed, if Section 152 is to survive, is prior judicial authorization before any FIR under the section can be registered.[21] Not approval by a police officer. A finding by a magistrate that the impugned speech has a prima facie nexus to an identifiable, imminent risk to constitutional order. This requirement should be legislatively codified, not merely announced by the Court, so that it cannot be quietly dropped in future practice.

## VIII. Conclusion: What the Founders Already Decided

The Constituent Assembly debates of 1948 and 1949 were not theoretical discussions. The people in that room had been prosecuted under sedition law. Gandhi had been prosecuted under it. Nehru had watched. When they removed "sedition" from the list of permissible speech restrictions in Article 19(2), they were not making an abstraction.[22] They were making a judgment, based on direct experience, that a free republic should not operate with a provision that could silence the kind of political speech that had, in their own lifetimes, been the speech of freedom fighters.

That judgment has been overridden, repeatedly, by the same logic: national security requires it, public order demands it. The *Kedar Nath Singh* Court in 1962 found a way to honour the judgment partly, by reading the provision down. The exercise failed in practice, as sixty years of data demonstrate, because the provision on the statute book said more than the read-down permitted.[23]

Section 152 BNS is the third iteration of this cycle. The word changes. The structure deepens. The pattern remains: a provision too broad to be constitutionally sound, targeted selectively at speech the government finds inconvenient, producing arrests, bail battles, and chilling effects that no eventual court order can fully undo.[24]

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[21] This proposal draws on the model of prior judicial authorization developed in People's Union for Civil Liberties v. Union of India, (1997) 1 SCC 301 (laying down procedural safeguards for interception orders in the absence of statutory safeguards). See also Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 (mandatory notice before arrest for offences carrying less than seven years). A prior magistrate authorization requirement for Section 152 FIRs would not eliminate prosecutions but would introduce a judicial filter at the point of first use, which is where the provision currently has none.

[22] Constituent Assembly Debates, Vol. VII, Nov. 29, 1948, remarks of Dr. B.R. Ambedkar and T.T. Krishnamachari; Constituent Assembly Debates, Vol. VIII, June 2, 1949. The original draft of Article 13 (renumbered Article 19) included "sedition" as a permissible restriction. After debate, in which several members pointed out that the British had used sedition law against the independence movement, the word was removed from the final text. The First Constitutional Amendment of 1951 added "public order," "friendly relations with foreign states," and "incitement to an offence" to the permissible restrictions, but not sedition.

[23] See *supra* note 17. The deliberate removal of "sedition" from Article 19(2) by the Constituent Assembly is a constitutional history point that the Supreme Court has consistently acknowledged but not acted upon in the Section 124A context. It becomes especially relevant when evaluating a successor provision that achieves the same practical effect under different statutory language.

[24] For the Tejender Pal Singh matter, see Crl. Misc. Pet. No. 11498/2024 (Rajasthan High Court, Nov. 2024), where the Court quashed the FIR and held that political dissent alone does not endanger sovereignty. The Supreme Court extended interim protection to journalist Abhisar Sharma under Section 152 BNS on August 28, 2025, in Foundation for Independent Journalism, *supra* note 1. These cases indicate that Section 152 BNS is following the same pattern of misuse that the Vombatkere stay was intended to interrupt.

The Supreme Court has the opportunity to end the cycle rather than manage it. The question it asked on August 12, 2025, whether the potentiality of abuse is enough to strike down a provision, was the right question. A provision whose text and structure make abuse the expected outcome, not the aberration, is not a provision that can be saved by a read-down. It should be struck down.

The Constituent Assembly made a judgment in 1948. The Supreme Court sustained it, imperfectly, for sixty years. It is time to sustain it properly.

# An Empirical Study on Public Opinion Regarding the Legalization of Same-Sex Marriage with Reference to Chennai.

**Author:** Sharon Sabu

**Co-author:** Ryan Paul R

*Saveetha Institute of Medical & Technical Sciences Chennai, Tamil Nadu*

**Abstract**

*This study explores how people feel about the legalization of same-sex marriage, drawing on responses from 208 individuals. Most participants were young adults between 18 and 30, and the group leaned heavily toward women and people living in urban areas. Many were either still studying or had completed higher education, which gives the findings a perspective shaped largely by younger, educated voices. the responses suggest a generally supportive attitude toward same-sex marriage. A clear majority expressed approval, while a smaller group disagreed and a few remained unsure. Beyond simple support or opposition, many participants framed the issue as one of basic rights and fairness, indicating that for them, this goes beyond personal preference and into the realm of social justice. There was also a strong sense that legal recognition of same-sex marriage could help reduce stigma faced by the LGBTQ community. Many respondents felt that greater acceptance at a legal level would encourage broader social acceptance as well. Along similar lines, participants largely rejected the idea that family outcomes depend on whether parents are same-sex or heterosexual, expressing confidence that children raised in same-sex households can thrive just as well. The role of media also came up as an important influence. Most respondents felt that media coverage of same-sex marriage and LGBTQ issues has been fairly positive, suggesting that representation may be helping shape more accepting attitudes. Taken together, the findings paint a picture of a younger, urban, and educated group that is largely open-minded and supportive of same-sex marriage, while also recognizing the broader social and cultural factors like media and upbringing that shape these views*

**Keywords:** Same Sex, Marriage, Legalization, Impacts and Media.

## I. Introduction:

The recognition of same-sex marriage has sparked profound social and cultural discussions across the globe. Beyond the legal ramifications, societies and cultures are profoundly affected by the acceptance or rejection of same-sex marriage, which shapes attitudes, conventions, and interpersonal interactions. This paper explores the complex interactions between same-sex unions and their wider social and cultural effects. We acquire understanding of the transformative potential of this developing social issue by looking at how recognition—or lack thereof—influences society attitudes, cultural norms, and individual well-being.

The LGBTQ+ community in India has been profoundly impacted by the legalizing of homosexuality in the wake of the historic Navtej Singh Johar v. Union of India ruling in 2018. It has signaled a significant historical turn toward the acceptance of LGBTQ+ people's fundamental freedoms and rights in India. Before the decision, Section 377 of the Indian Penal Code—which had been in effect since colonial times—made homosexuality a crime. This law severely impacted the lives of LGBTQ+ people by limiting their access to healthcare, education, and work possibilities. It has also been used to harass, threaten, and discriminate against them. The illegality of homosexuality has come to an end, and the LGBTQ+ group is now more accepted and widely known

Currently, the legal system in India has undergone some recent changes that may have an impact on the future of same-sex unions there. The Personal Data Protection Bill, which the Indian government unveiled in 2020, has a clause that acknowledges the right to privacy as a basic right. This clause, according to some legal experts, might be used to support the legalization of same-sex unions because it acknowledges the right of people to regulate their own lives.

The issue of equality and human rights sits at the core of the situation. The legalization of same-sex unions is a sign of the greater fight for equality, which has been aimed at eradicating long-standing prejudice. By addressing the social and cultural ramifications, we are able to reveal the complex web of values, customs, and prejudices that influence how societies proceed along this revolutionary path. The analysis highlights the potential triggers for positive change by taking into account the impact of media, education, and awareness on changing society attitudes. Yet, it is vital to acknowledge that while progress has been made, challenges persist. Societies often grapple with deeply rooted biases that can manifest even after legal recognition. Resistance is still fueled by conservative ideas, religious beliefs, and cultural conservatism, which emphasizes the importance of a thorough investigation of the broad ramifications of this problem.

By getting to the root of the issue, we reveal the transformative power of acceptance and disprove the myths that support prejudice. This analysis seeks to provide insight into the challenging path taken in the direction of a more inclusive, equitable, and compassionate society as societies change and adapt, coping with the past and charting new courses.

## II. Literature review:

*Taylor et.al, (2009)* [1]*,* This article explores the impact of the 2004 San Francisco same-sex wedding protest on social movement scholars. It identifies three core features of cultural repertoires: contestation, intentionality, and collective identity. The study uses data from interviews, surveys, and participant interviews to highlight these dimensions and the protest's impact on subsequent activism. The results show that culture can be consequential, impacting participant solidarity, identity, and political change. *Lannutti (2005)*[2]*,* The study explores how LGBT men and women perceive legally recognized same-sex marriage and its impact on their understanding of the LGBT community. The findings suggest that same-sex marriage should be considered as a context for discussions about married and unmarried same-sex partnerships, with a focus on equality and tensions. *Hull (2005)*[3]*,* The study explores the legal consciousness of same-sex couples regarding marriage. It finds strong consensus on the desire for legal recognition of same-sex relationships, with varied cultural practices enacting marriage through terminology and public rituals. The research challenges the idea that marginalized social actors will resist legal consciousness, revealing that legal and cultural aspects of marriage are deeply intertwined, with many ascribing

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[1] Taylor, V., Kimport, K., Van Dyke, N., & Andersen, E. A. (2009). Culture and Mobilization: Tactical Repertoires, Same-Sex Weddings, and the Impact on Gay Activism. American Sociological Review, 74(6), 865–890. https://doi.org/10.1177/000312240907400602

[2] Lannutti, P. J. (2005). For better or worse: Exploring the meanings of same-sex marriage within the lesbian, gay, bisexual and transgendered community. Journal of Social and Personal Relationships, 22(1), 5–18.

[3] Hull, Kathleen E. "The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage." Law & Social Inquiry, vol. 28, no. 3, 2003, pp. 629–657., doi:10.1111/j.1747-4469.2003.tb00210

to law a cultural power that promotes social and cultural equality. *Masami (2016)*[4] Japan has seen limited public debates or social movements supporting same-sex marriage, with scholars and activists advocating for its legal protection. Despite recent developments, an anti-same-sex marriage perspective dominates, even among gay and lesbian scholars. The article examines Japan's legality, lack of political and historical progress, and cultural features like gay adoption, invisibility, and heterosexism. It also discusses the possibility of legalizing same-sex marriage in Japan. *Fingerhut et.al, (2011)*[5], The political debates surrounding civil marriage rights have significant psychological and social impacts on same-sex couples, their families, friends, and communities. This interdisciplinary collection of empirical research articles addresses three broad questions: the social and psychological effects of marriage amendment campaigns, comparisons to other statuses, and the impact of anti-gay initiatives on heterosexual allies and intergroup relationships. *Dawn (2010)*[6], The research note analyzes changes in attitudes towards same-sex marriage from 1988 to 2010, using OLS regression and decomposition techniques. It finds that opposition to same-sex marriage was generally higher in 1988, but later reduced for highly educated, urban residents, and less conservative individuals. By 2010, support for same-sex marriage was more broad-based, and opposition became more localized to specific subgroups. The decomposition analysis suggests that the liberalization in attitudes from 1988 to 2010 is primarily due to a general societal change.

*Hildebrandt (2011)*[7], This article examines the motivations behind progressive human rights policies in non-democratic states, particularly in China, and their impact on activism. It suggests that same-sex marriage legislation could enhance China's reputation, but it may also incur opportunity costs on activism and fail to address the larger social pressures faced by LGBT Chinese. *Singh et.al, (2023*[8]*),* Every change initiated by the courts has limited appeal to the masses. Courts' legal rationality produces the plethora of normative documentations but the behavioral change is often not perceptible. The legality of Same Sex Marriage in India is nowadays debated in the corridor of Supreme Court of India. Without the wider acceptance of the demos, however, such a normative change from the Apex Court would have little impact over the people. *Khan (2011)*[9], This ethnographic study explores five South Asian American Hindu wedding ceremonies, revealing how these events negotiate power and social inclusion. These ceremonies allow actors to claim ownership of tradition and insert their subjectivities into a fundamental institution, highlighting the power structures in these intimate experiences. *Vanita (2009),* The article explores the phenomenon of same-sex unions, particularly among young, low-income, non-English speaking women in India, over the past three decades. Most of these women are Hindus, and many of their weddings are conducted through Hindu rites. The article argues that traditional Hindu ideas about love, rebirth, and marriage can legitimize these unions. The article also highlights the

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[4] Masami Tamagawa (2016) Same-Sex Marriage in Japan, Journal of GLBT Family Studies, 12:2, 160-187, DOI: 10.1080/1550428X.2015.1016252

[5] Fingerhut, A.W., Riggle, E.D.B. and Rostosky, S.S. (2011), Same-Sex Marriage: The Social and Psychological Implications of Policy and Debates. Journal of Social Issues, 67: 225-241. https://doi.org/10.1111/j.1540-4560.2011.01695.x

[6] Dawn Michelle Baunach, Changing Same-Sex Marriage Attitudes in America from 1988 Through 2010, Public Opinion Quarterly, Volume 76, Issue 2, Summer 2012, Pages 364–378, https://doi.org/10.1093/poq/nfs022

[7] HILDEBRANDT, TIMOTHY. "Same-Sex Marriage in China? The Strategic Promulgation of a Progressive Policy and Its Impact on LGBT Activism." Review of International Studies, vol. 37, no. 3, 2011, pp. 1313–1333., DOI: https://doi.org/10.1017/S026021051000080X

[8] Singh, Chanchal Kr and Kumar, Mritunjay and Kohli, Aastha Naresh, Is India Ready to Debate Legality of Same-Sex Marriage? (May 20, 2023). Deccan Herald 2023, Available at SSRN: https://ssrn.com/abstract=4457295

[9] Khan, F. A. (2011). Powerful cultural productions: Identity politics in diasporic same-sex South Asian weddings. Sexualities, 14(4), 377–398. https://doi.org/10.1177/1363460711406789

ongoing debate among Hindu teachers and priests about the validity and desirability of same-sex marriage.

The data collected here mainly is secondary data and primary data includes the response collected. The research method followed here is empirical research. A total of 208 samples have been collected out of which all samples have been collected through convenient sampling. The tools used for the study includes SPSS(Statistical Package for the Social Sciences). The variables are age, gender, educational qualification, place of residence, occupation.

## III. Analysis:

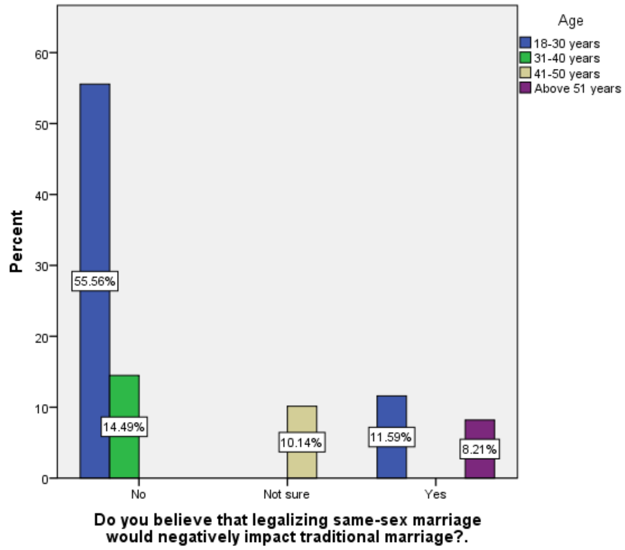


Figure1**:** shows the respondents view on whether legalizing same-sex marriage would negatively impact traditional marriage.

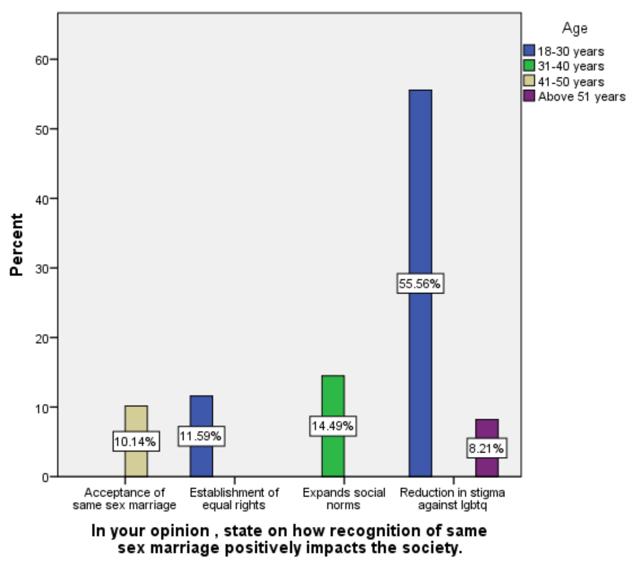


Figure 2: shows the respondents view on the positive effects of recognition of same sex marriage**.**

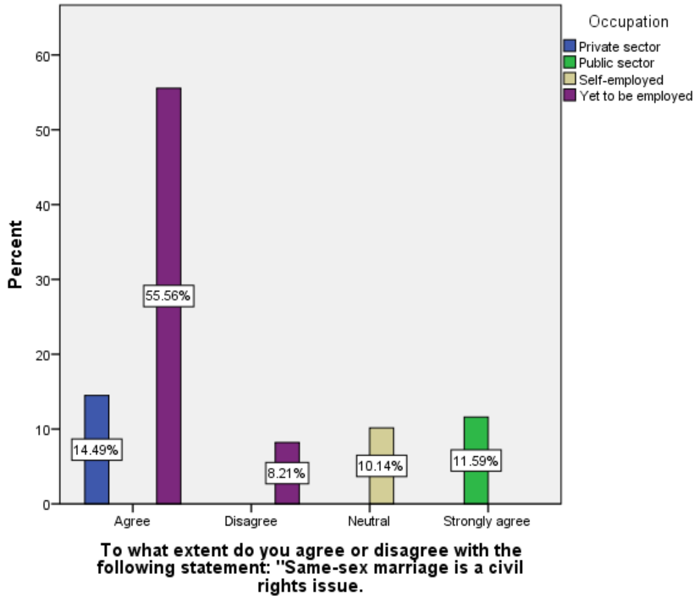


Figure3: shows the respondents view on the statement “same-sex marriage is a civil rights issue”.

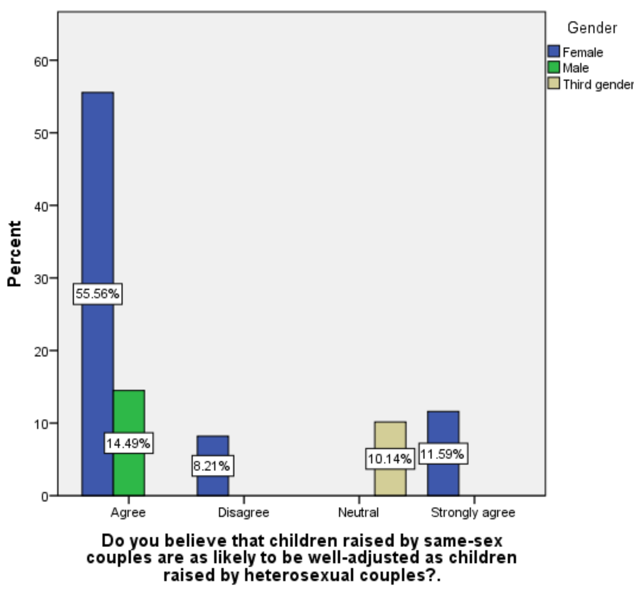


figure 4 : shows the respondents view on whether they believe that children raised by same-sex couples are as likely to be well-adjusted as children raised by heterosexual couples.

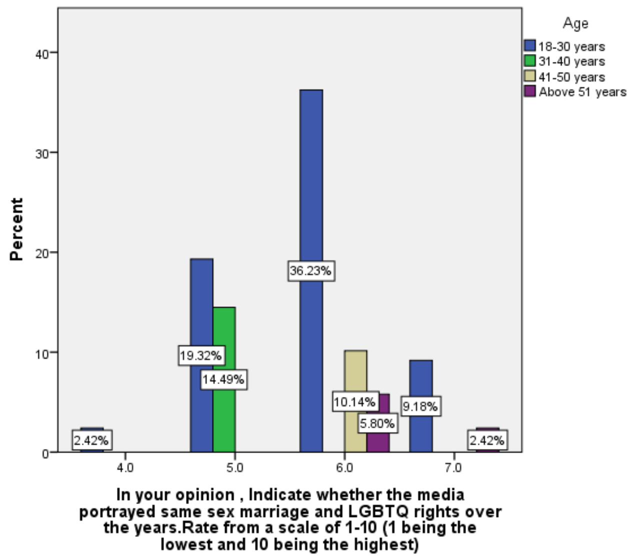


Figure 5: shows the respondents view on whether the media has portrayed same sec marriage and LGBTQ rights over the years.

Count

| | | Gender | | | | Total |
|---|---|---|---|---|---|---|
| | | | Female | Male | Third gender | |
| To what extent do you agree or disagree with the following statement: "Same-sex marriage is a civil rights issue. | | 123 | 0 | 0 | 0 | 123 |
| | Agree | 0 | 115 | 30 | 0 | 145 |
| | Disagree | 0 | 17 | 0 | 0 | 17 |
| | Neutral | 0 | 0 | 0 | 21 | 21 |
| | Strongly agree | 0 | 24 | 0 | 0 | 24 |
| Total | | 123 | 156 | 30 | 21 | 330 |

**Chi-Square Tests**

| | Value | df | Asymptotic Significance (2-sided) |
|---|---|---|---|
| Pearson Chi-Square | 677.944[a] | 12 | .000 |
| Likelihood Ratio | 588.260 | 12 | .000 |
| N of Valid Cases | 330 | | |

a. 6 cells (30.0%) have expected count less than 5. The minimum expected count is 1.08.

**Null hypothesis:** there is no association between "to what extent do you agree or disagree with the following statement: same sex marriage is a civil rights issue" and gender.

**Alternate hypothesis:** there is an association between "to what extent do you agree or disagree with the following statement: same sex marriage is a civil rights issue" and gender.

**IV. Interpretation:**

The calculated p value is .000 since p value is <0.05, null hypothesis is rejected at 5% level of significance. So There is an association between "to what extent do you agree or disagree with the following statement: same sex marriage is a civil rights issue" and gender.

## V. Results:

Figure 1:out of 208 responses, the majority of the respondents have chosen No (70.05%), followed by no (19.8%) and not sure (10.14%). Figure 2: out of 208 responses, the majority of the respondents have chosen reduction in stigma against LGBTQ (63.77%), followed by expands social norms (14.49%), and establishment of equal rights (11.59%). Figure 3: out of 208 responses, the majority of the respondents chose agree (70.05%), followed by strongly agree (11.59%), neutral (10.14%) and disagree (8.21%). Figure 4: out of 208 responses, the majority of the respondents have chosen to agree (70.05%), followed by strongly agree (11.50%), neutral (10.14%), and disagree (8.21%). Figure 5: out of 208 respondents, the majority of the respondents have rated a scale of "6" (51.87), followed by '5' (33.81%) and '7' (11.6%).

## VI. Discussion:

Figure 1 highlights respondents' views on whether legalizing same-sex marriage would negatively impact traditional marriage. The majority of respondents (70.05%) believe that legalizing same-sex marriage would not have a negative effect on traditional marriage, indicating a broad understanding that both forms of marriage can coexist without harm to one another. A smaller portion (19.8%) also responded with "No," further reinforcing this stance. However, 10.14% of respondents were uncertain, suggesting that some remain unsure about the potential impacts, highlighting the need for further discussion and education on the topic. Expanding on Figure 2, the data suggests that the primary perceived benefit of recognizing same-sex marriage is its potential to reduce stigma against the LGBTQ community. This indicates a widespread understanding among respondents that legal recognition would play a key role in normalizing LGBTQ relationships and improving their social acceptance. The view that it would "expand social norms" points to a recognition that such legal changes could challenge traditional ideas of marriage and family, making society more inclusive and adaptive to diverse relationships. This segment of the respondents seems to acknowledge that legalizing same-sex marriage has cultural implications beyond the LGBTQ community, influencing broader societal values. Additionally, respondents who highlighted the "establishment of equal rights" demonstrate an awareness of the legal inequality faced by LGBTQ individuals. They likely see the recognition of same-sex marriage as a step toward addressing broader issues of social justice and ensuring that all citizens, regardless of sexual orientation, have the same legal rights and protections. Together, these perspectives illustrate how respondents not only acknowledge the social and cultural impacts of same-sex marriage but also view it as a critical issue in the fight for equality and the acceptance of diverse relationships in society. Figure 3 reflects a strong consensus among respondents that same-sex marriage is viewed as a civil rights issue. A significant majority of participants agree with this statement, suggesting widespread recognition that the fight for same-sex marriage is fundamentally about ensuring equal legal and social rights for LGBTQ individuals. The fact that a substantial portion of respondents "strongly agree" further emphasizes the conviction among some that this issue is not only about marriage but about broader equality and human rights. This highlights the growing belief that denying same-sex couples the right to marry is an infringement on their civil liberties. A smaller segment of respondents who are "neutral" may indicate uncertainty or a lack of firm opinion on whether same-sex marriage falls under the category of civil rights. Meanwhile, the minority who "disagree" likely hold views that frame marriage either in a traditional or non-civil rights context, seeing it as a cultural or religious matter rather than a legal one. Overall, the responses demonstrate that a majority of participants understand same-sex marriage as a pivotal civil rights issue, while a minority remain unsure or opposed to this framing.

Figure 4 reveals that a substantial majority of respondents believe children raised by same-sex couples are just as likely to be well-adjusted as those raised by heterosexual couples. The high percentage of respondents who "agree" indicates broad acceptance of the idea that a loving and supportive family environment, regardless of the parents' sexual orientation, is key to a child’s well-being. Those who "strongly agree" reinforce this belief with even greater confidence, suggesting that many see no inherent difference in the parenting abilities of same-sex couples compared to heterosexual couples. These respondents may be more familiar with research or personal experiences that affirm the positive outcomes for children raised by same-sex couples. Figure 5 provides insight into respondents' perceptions of how the media has portrayed same-sex marriage and LGBTQ rights over the years. The majority of respondents rated the media’s portrayal a "6" on the scale, indicating a relatively positive view of the media's role, though not overwhelmingly so. This suggests that while many believe the media has made significant strides in covering LGBTQ rights, there may still be room for improvement in how these issues are represented. A considerable portion rated the media's portrayal as a "5," showing that some respondents view the media's coverage as more balanced or neutral—perhaps seeing both positive and negative aspects in the way LGBTQ rights have been presented over time. Meanwhile, a smaller group selected "7," indicating a strong approval of the media's handling of same-sex marriage and LGBTQ issues, viewing it as comprehensive and supportive. The responses suggest that, overall, the media is seen as playing a crucial role in shaping public perception of LGBTQ rights, with a generally favorable, though not perfect, representation according to most respondents.

## VII. Limitations:

The study sample predominantly consists of young adults, with a high proportion of female and urban respondents. This demographic skew may limit the generalizability of the findings to broader age groups, genders, and rural populations. The opinions expressed in the survey reflect the current social and cultural climate, which may change over time. The findings may not account for future shifts in public opinion or the evolving nature of societal attitudes toward LGBTQ issues. The study's reliance on specific survey questions and response options may limit the depth of understanding of respondents' attitudes. The framing of questions could influence responses, and the study may not fully capture the nuances of complex issues related to same-sex marriage.

## VIII. Conclusion:

This empirical study offers a comprehensive analysis of public opinion on the legalization of same-sex marriage. From my perspective, what stands out immediately is the predominant support for legalization, with a notable recognition of it as a civil rights issue though this support is not without its tensions, as the findings also reflect a significant divide in public attitudes that points to deeper cultural fault lines. Respondents expressed positive views on the social benefits of such a change, including reduced stigma and improved adjustment of children raised by same-sex couples, grounding what is often framed as an ideological debate in tangible, documented outcomes. The study also views the influential role of media in shaping public perceptions of same-sex marriage and LGBTQ issues and the generally favorable ratings of media portrayal suggest that while there is acknowledgment of progress, there is also room for continued improvement in how these issues are represented. Demographic factors such as the predominance of young, urban and female respondents play a crucial role in shaping these views and it is worth noting how much the sample’s profile likely tilts the findings toward more progressive positions. The study highlights the need for ongoing dialogue and educational efforts to address misconceptions and foster a more inclusive perspective on same-sex marriage. I conclude by that while there is a significant support for recognizing the civil rights of LGBTQ individuals and addressing societal stigma, the opposition to legalization indicates that the gap between accepting rights in principle and accepting marriage equality in practice remains wide and that continued advocacy and education are essential to bridging it.

# EDITORIAL POLICY OF THE JOURNAL

## PRELUDE

IMS Law Review: Student's Edition is a product of School of Law, IMS Unison University and is an annual peer-reviewed journal, Third Edition published in 2022. It seeks to promote original and diverse legal scholarship in a global context among the law students all across the country. It is a multi- disciplinary journal aiming to provide a platform to the students to communicate high quality original research work, reviews, short communications and case report that contribute significantly to further the knowledge related to the field of Law. The Editorial Board of the IMS Law Review: Student's Edition solicits submissions for its Fourth Edition (June 2026). While there are no rigid thematic constraints, the contributions are expected to be largely within the rubric of legal studies and allied interdisciplinary scholarship.

## CONTRIBUTION

We seek contributions in the form of:

1. Articles (Maximum 8,000 words inclusive of footnotes and Abstract)
2. Essays (Maximum 4,000 words inclusive of footnotes)
3. Case Comment/Legislative Critique & Notes (Maximum 3,000 words inclusive of footnotes)
4. Book Review (Maximum 2,000 words inclusive of footnotes) besides other forms of scholarly writing
   - Place tables/figures/images in text as close to the reference as possible. Table caption should be above the table. Figure caption should be below the figure. These captions should follow Times New Roman 11 point.

## SUBMISSION GUIDELINE

1. **Submission must be in Microsoft Word (MS Word)**

   The whole document should be in times new roman, single column, 1.15-line spacing. A soft copy of the document formatted in MS word 97 or higher versions should be sent as submission for acceptance.

2. **Main Text:**

   *Title* of the paper should be bold 16 point, and all paragraph headings should be Bold, 12point.

3. **Cover Letter:**

   ***First page***: It should include (i) Title of the Paper; (ii) Name of the Author/s; Co-authored papers should give full details about all the authors; Maximum two author permitted (iii) Designation; (iv) Institutional affiliation; (v) Correspondence address. In case of co- authored papers **First author will be considered for all communication purposes.**

   ***Second page:*** Abstract with Key words (not exceeding 300 words).

4. The following pages should contain the text of the paper including:

   Introduction, Subject Matter, Conclusion, Suggestions & References. Name (s) of author(s) should not appear on this page to facilitate blind review.

5. Plagiarism Disclaimer:

   Article should contain a disclaimer to the effect that the submitted paper is original and is not been published or under consideration for publication elsewhere. (Annexure I) The signed document must be e- mailed/ posted to The Editor along with manuscript.

6. Citations:

   All citations shall be placed in footnotes and shall be in accordance with format specified **(Annexure II)**. The potential contributors are encouraged to adhere to the Appendix for citation style.

7. Peer Review:

   All submissions will go through an initial round of review by the editorial board and the selected papers will subsequently be sent for peer-review before finalization for publication.

**All Correspondence/manuscripts should be addressed to:**

**The Editor – IMS Law Review: Student's Edition School of Law, IMS Unison University, Makkawala Greens, Mussoorie Diversion Road, Dehradun, Uttarakhand– 248009, (India).**

**Phone:** **+91-135-7155000**

**E-mail:** **imslrw@iuu.ac**

# Annexure I

## PLAGIARISM DISCLAIMER

To,

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I/We agree to indemnify the IMS Unison University, Dehradun, against any claim or action alleging facts which, if true, constitute a breach of the foregoing warranties.

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|---|---|---|
| **First author:** | **Name** | **Signature** |
| **Second author:** | **Name** | **Signature** |

# Annexure II

## CITATION STYLE

### CASES

IN MAIN TEXT:

*Jassa Singh* v. *State of Haryana*

IN FOOTNOTE:

Jassa Singh v. State of Haryana, (2002) 2 SCC 481

The full citation should be provided in the footnote even if the case name has been mentioned in full in the main body.

Government to be written in full.

**Example:** Kesavananda Bharati v. State of Kerala; M.C. Mehta v. Union of India.

### SHORTENED FORM

If the same case is going to be cited subsequently, the full citation used the first time should be followed by the shortened form by which the case will be referred to subsequently, in inverted commas, and in square brackets.

**Example:** M.C. Mehta v. Union of India, [1997] 2 SCC 353 [*Taj Trapezium case*] Subsequent references

*Taj Trapezium case*, [1997] 2 SCC 353

The shortened form should be used every time after the first time a case is cited.

### QUOTES FROM CASES

*Per* Subba Rao J., "*a construction which will introduce uncertainty into the law must be avoided. It is conceded by the petitioner that the power to amend the Constitution is a necessary attribute of every Constitution*". (Footnote original citation of case or shortened form as per rules state above)

Single Judge:

S.H. Kapadia J. Chief justice of India. Thakkur C.J.I.

More than one Judges

K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.)

### UNPUBLISHED DECISIONS

Name of the parties, Filing No of Year, Decided on date (Name of Judges) (Name of Court)

Example:

BP Singhal v. Union of India, W.P. (Civil) No.296 of 2004, Decided on May7, 2010(K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.) (Supreme Court of India).

## INTERNATIONAL DECISIONS

*Case name*, (Party names) Judgement, Year, Publisher, Page No (Court Name) **Example:**

*Case Concerning Right of Passage over Indian Territory* (India v. Portugal) Judgment, 1957, ICJ reports, 12 (International Court of Justice)

## LEGISLATIVE MATERIALS

When citing Constitution, it should be in Capital letters while other Statutes it should be First letter of the word in Uppercase followed by lower cases.

## CONSTITUTION

Art. 21, THE CONSTITUTION OF INDIA, 1950.

## OTHER STATUTES

Sec. 124, Indian Contract Act, 1872.

## BILLS

Cl. 2, The Companies (Amendment) Bill (introduced in Lok Sabha on March 16, 2016).

## PARLIAMENTARY DEBATES

Question/Statement by Name, DEBATE NAME, page no (Date) Example:

- Question by N.G. Ayyangar, CONSTITUENT ASSEMBLY DEBATES 116 (August 22, 1947).
- Statement of V. Narayanasamy, LOK SABHA DEBATES 5 (March 10,2010).

## BOOKS

Name of the Author, NAME OF THE BOOK, Volume (Issue), Page (Publisher, Edition, Year)

Example:

H.M. Seervai, CONSTITUTIONAL LAW OF INDIA, Vol. 3, 121 (Universal Law Publishing Co.Pvt. Ltd.,4$^{th}$Edn., 2015)

- In the case of a single author,

  M.P.Jain, INDIAN CONSTITUTIONAL LAW, 98 (Kamal Law House, 5th Edn., 1998)

- If there is more than one author and up to two authors,

  M.P.Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW, 38 (Wadhawa, 2001)

- If there are more than two authors,

  D.J. Harris et al, LAW OF THE EUROPEAN COMMUNITY ON HUMAN RIGHTS, 69 (2nd Edn., 1999).

- If there is no author then the citation would begin from the ***Title of the Book***.

- If the title of the book includes the author's name, then the book should be cited as an authorless book.

Example:

*Chitty on Contracts*, Vol. 2, 209 (H.G. Beale ed., 28th edn., 1999).

## EDITED BOOKS

Name of Editor/s (Ed.) NAME OF BOOK, page no./s (Publisher Name, Year of Publication)

- In the case of a single editor,

  Nilendra Kumar (ed.), NANA PALKHIVALA: A TRIBUTE, 24 (Universal Publishers, 2004).

- If there is more than one author and up to two editors,

  S.K. Verma and Raman Mittal (eds.), INTELLECTUAL PROPERTY RIGHTS: A GLOBAL VISION, 38(2004).

- If there are more than two editors,

  Chatrapati Singh et.al. (eds.), TOWARDS ENERGY CONSERVATION LAW 78 (1989).

## COLLECTION OF ESSAYS

- Name of Author, *Name of Article* in Name of Collected Book Page No (Editor Name, Year of Publication)
- M.S. Ramakumar, *India's Nuclear Deterrence* in NUCLEAR WEAPONS AND INDIA'S NATIONAL SECURITY 35 (M.L. SondhiEdn., 2000).

## REGILIGIOUS AND MYTHOLOGICAL TEXTS

- TITLE, Chapter/ Surar Verse (if applicable)

  Example: THE BHAGAVAD GITA, Chapter 1 Verse 46

## ARTICLES

Name of Author, *Name of Article*, Volume (Issue) NAME WHERE ARTICLE IS PUBLISHED page no (Year of Publication)

## LAW REVIEW ARTICLES

A.M. Danner, *Constructing a Hierarchy of Crimes in International Criminal Law Sentencing*, Vol. 87(3) VIRGINIA LAW REVIEW 415 (2001).

## MAGAZINE ARTICLES

- Articles in print versions of magazines

  Uttam Sengupta, Jack of Clubs and the Cardsharps, OUTLOOK 22 (June 11, 2016).

- Articles published in a magazine arranged by volume

  A. Bagchi, Sri Lanka's Experiment in Controlled Decentralization: Learning from India, 23(1) ECONOMIC AND POLITICAL WEEKLY 25 (January 2, 1988).

- Articles in print versions of newspapers

  Robert I. Freidman, India's Shame: Sexual Slavery and Political Corruption are Leading to an AIDS Catastrophe, THE NATION 61(New York Edn., April 8, 1996).

## MAGAZINE ARTICLES ONLINE VERSIONS

Name of Author, *Name of Article*, NAME WHERE ARTICLE IS PUBLISHED (Date of issue)

*available at* link where it is published (date of last visit)

It is mandatory to use exact link where the article of published removing the hyperlink

- Articles in online versions of newspapers

  Mehboob Jeelani, *Politics stretches list of Smart Cities from 100 to 109,* The Hindu (2 July 2016), available at http://www.thehindu.com/todays-paper/politics-stretches-list-of- smart-cities- from-100-to-109/article8799010.ece(Last visited on July 2,2016).

- Articles in online versions on magazines

  Uttam Sengupta, *Jack of Clubs and the Cardsharps,* OUTLOOK (11 June 2016), available at

  http://www.outlookindia.com/magazine/story/jack-of-clubs-and-the-cardsharps/297427(Last visited on July 2, 2016).

## REPORTS

LAW COMMISSION REPORTS 243rd Report of the Law Commission of India (2012)

## ONLINE REPORTS

World Trade Organization, *Lamy outlines "cocktail approach" in moving Doha forward*, (2010), *available at* http://www.wto.org/english/news_e/news10_e/tnc_chair_report_04may10_e.htm (Last visited on May 10, 2016).

## INTERNATIONAL TREATIES

Art. 5, UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), July 12,1998, ISBN No. 92-9227-227-6,

Available at: http://www.refworld.org/docid/3ae6b3a84.html (accessed July 2, 2016)

### GENERAL RULES FORMATING

- Single numbers do not begin with a "0"
- Remove hyperlinks in all citations of URLs
- The format of dates should be – June 25, 2016
- Capitalizations – The start of every sentence should be in capitals. In titles, do not capitalize articles, conjunctions or prepositions if they comprise of less than

four letters.

- Italics – Italics are to be used in the following instances:
    a) Case names when used in the main text
    b) Non-English words
    c) Emphasis in the main text, but not forming part of a quote
- Short forms – The short forms of words which are not mentioned in this guide are not acceptable. Short forms which are acceptable are:
    a. Art. for Article
    b. Cl. for clause
    c. No. for number
    d. Reg. for regulation
    e. Sec. for section
    f. Vol. for volume
    g. Edn. For edition
    h. Ed. For editor
    i. Ltd. for Limited
    j. Co. for Company
    k. Inc. for Incorporated
    l. Add "s" to the short form for the plural form.

**FOOTNOTES**

- Multiple citations in the same footnote should be separated by a semicolon.
- Connectors–
    - *Id.* and *supra* are the only connectors which may be used for cross referencing
    - These connectors can only be used to refer to the original footnote, and may not be used to refer to an earlier reference.
    - The format for referring to the immediately prior footnote shall be one of the following:
    - When the page number(s) being referred to are the same as in the previous footnote
    - *Id.*
    - When the page number(s) being referred to are different from the previous footnote
    - *Id., at 77-78.*
    - The last name of the author, when available, should be used before the supra.

The format for referring to footnote earlier than the immediately prior footnote shall be: Seervai, supra note 6, at 10.

- Introductory Signals
  - No introductory signal to be used when the footnote directly provides the proposition.
  - The signal ‘See’ shall be used when the cited authority clearly supports the proposition.
- All footnotes must not end in a period (full stop).

## QUOTES

- For quotations below fifty words in length, the quote should be in double inverted commas and should be italicized.

For quotations above fifty words in length, separate the text from the main paragraph, indent it by an inch from either side, and provide only single line spacing. If the main text has only single line spacing, the font size of the quote shall be reduced by 1.

# Ethics Policy for Journal

## 1. Reporting Standards

Authors of research paper should present an accurate account of the work performed as well as an objective discussion of its significance. Underlying data should be represented accurately in the paper. A paper should contain sufficient detail and references to permit others to replicate the work. Fraudulent or knowingly inaccurate statements constitute unethical behaviour and are unacceptable. Review and professional publication articles should also be accurate and objective, and editorial 'opinion' works should be clearly identified as such.

## 2. Data Access and Retention

Authors may be asked to provide the research data supporting their paper for editorial review and/or to comply with the open data requirements of the journal. Authors should be prepared to provide public access to such data, if practicable, and should be prepared to retain such data for a reasonable number of years after publication. Authors may refer to their journal's Guide for Authors for further details.

## 3. Originality and Acknowledgement of Sources

The authors should ensure that they have written entirely original work, and if the authors have used the work and/or words of others, that it has been appropriately acknowledged, cited, quoted and permission has been obtained where necessary. Authors should cite publications that have influenced the reported work and that give the work appropriate context within the larger scholarly record. Information obtained privately, as in conversation, correspondence, or discussion with third parties, must not be used or reported without explicit, written permission from the source.

Plagiarism takes many forms, from 'passing off' another's paper as the author's own paper, to copying or paraphrasing substantial parts of another's paper (without attribution), to claiming results from research conducted by others. Plagiarism in all its forms constitutes unethical behavior and is unacceptable. Plagiarism test of the content should not be more than 10% (Turnitin).

## 4. Similarity checks for plagiarism shall exclude the following:

i. All quoted work reproduced with all necessary permission and/or attribution with correct citation.

ii. All references, footnotes, endnotes, bibliography, table of contents, preface, methods and acknowledgements.

iii. All generic terms, phrases, laws, standard symbols, mathematical formula and standard equations.

iv. Name of institutions, departments, etc.

## 5. Multiple, Redundant or Concurrent Publication

An author should not in general publish manuscripts describing essentially the same research in more than one journal of primary publication. Submitting the same manuscript to more than one journal concurrently constitutes unethical behavior and is unacceptable.

In general, an author should not submit for consideration in another journal a paper that has been published previously, except in the form of an abstract or as part of a published lecture or academic thesis or as an electronic preprint.

Publication of some kinds of articles (e.g. clinical guidelines, translations) in more than one journal is sometimes justifiable, provided certain conditions are met. The authors and editors of the journals concerned must agree to the secondary publication, which must reflect the same data and interpretation of the primary document. The primary reference must be cited in the secondary publication. Further detail on acceptable forms of secondary publication can be found from the ICMJE

**6. Confidentiality**

Information obtained in the course of confidential services, such as refereeing manuscripts or grant applications, must not be used without the explicit written permission of the author of the work involved in these services.

**7. Authorship of the Paper**

Authorship should be limited to those who have made a significant contribution to the conception, design, execution, or interpretation of the reported study. All those who have made substantial contributions should be listed as co-authors.

Where there are others who have participated in certain substantive aspects of the paper (e.g. language editing or medical writing), they should be recognized in the acknowledgements section.

The corresponding author should ensure that all appropriate co-authors and no inappropriate co-authors are included on the paper, and that all co-authors have seen and approved the final version of the paper and have agreed to its submission for publication.

Authors are expected to consider carefully the list and order of authors before submitting their manuscript and provide the definitive list of authors at the time of the original submission. Only in exceptional circumstances will the Editor consider (at their discretion) the addition, deletion or rearrangement of authors after the manuscript has been submitted and the author must clearly flag any such request to the Editor. All authors must agree with any such addition, removal or rearrangement.

Authors take collective responsibility for the work. Each individual author is accountable for ensuring that questions related to the accuracy or integrity of any part of the work are appropriately investigated and resolved.

**8. Declaration of Competing Interests**

All authors should disclose in their manuscript any financial and personal relationships with other people or organizations that could be viewed as inappropriately influencing (bias) their work.

All sources of financial support for the conduct of the research and/or preparation of the article should be disclosed, as should the role of the sponsor(s), if any, in study design; in the collection, analysis and interpretation of data; in the writing of the report; and in the decision to submit the article for publication. If the funding source(s) had no such involvement then this should be stated.

**9. Notification of Fundamental Errors**

When an author discovers a significant error or inaccuracy in their own published work, it is the author's obligation to promptly notify the journal editor or publisher and cooperate with the editor to retract or correct the paper if deemed necessary by the editor. If the editor or the publisher learns from a third party that a published work contains an error, it is the obligation of the author to cooperate with the editor, including providing evidence to the editor where requested.

**10. Image Integrity**

It is not acceptable to enhance, obscure, move, remove, or introduce a specific feature within an image. Adjustments of brightness, contrast, or colour balance are acceptable if and as long as they do not obscure or eliminate any information present in the original. Manipulating images for improved clarity is accepted, but manipulation for other purposes could be seen as scientific ethical abuse and will be dealt with accordingly.

**11. Clinical Trial Transparency**

IMS Law Review: Student's Edition supports clinical trial transparency. Authors are expected to conform to industry best standards and regulations in clinical trial registration and presentatio

# Peer Review Policy

Peer review is an integral part of our research journal. All the research papers will be sent to Reviewer after concealing the name of the author and any other identification mark in this regard. We ensure that Peer review will be fair, honest and maintain confidentiality.

The practice of peer review is to ensure that only good research papers are published. It is an objective process at the heart of good scholarly publishing and is carried out by all reputable scientific journals. Our referees play a vital role in maintaining the high standards and all manuscripts are peer reviewed following the procedure outlined below.

**Initial manuscript evaluation** The Editor first evaluates all manuscripts. It is rare, but it is possible for an exceptional manuscript to be accepted at this stage. Manuscripts rejected at this stage are insufficiently original, have serious scientific flaws, have poor grammar or English language, or are outside the aims and scope of the journal. Those that meet the minimum criteria are normally passed on to at least 2 experts for review.

**Type of Peer Review:** *Our Policy* employs blind reviewing, where both the referee and author remain anonymous throughout the process.

**How the referee is selected** Whenever possible, referees are matched to the paper according to their expertise and our database is constantly being updated.

**Referee reports:** Referees are asked to evaluate whether the manuscript. Follows appropriate ethical guidelines - Has results which are clearly presented and support the conclusions - Correctly references previous relevant work.

Language correction is not part of the peer review process, but referees may, if so wish, suggest corrections to the manuscript.

**How long does the review process take?** The time required for the review process is dependent on the response of the referees. In rare cases for which it is extremely difficult to find a second referee to review the manuscript, or when the one referee's report has thoroughly convinced the Editor. Decisions at this stage to accept, reject or ask the author for a revision are made on the basis of only one referee's report. The Editor's decision will be sent to the author with recommendations made by the referees, which usually includes verbatim comments by the referees. This process takes one month. Revised manuscripts may be returned to the initial referees who may then request another revision of a manuscript or in case second referee the entire process takes 2-3 months.

**Final report:** A final decision to accept or reject the manuscript will be sent to the author along with any recommendations made by the referees, and may include verbatim comments by the referees.

**Editor's Decision will be final.** Referees are to advise the editor, who is responsible for the final decision to accept or reject the research paper for publication.

## IMS Unison University at a glance

IMS Unison University, a constituent of Unison Group, is a premier educational and research University nestled amidst beautiful and serene surroundings offering an environment that fosters learning and stimulates creativity.

The Journey started in 1996 as IMS Dehradun, a non-profit organization set by a group of visionaries dedicated to the cause of changing the face of professional education in Northern India.

The University today provides a platform for excellence in teaching, learning, and administration. Its State-of-the-art Infrastructure facilitates in developing well trained graduate, post-graduate and doctorate professionals to meet the ever-changing needs of the corporate world.

IMS Unison University aspires to become a world-renowned center for creation and dissemination of knowledge. It aims to provide a holistic career-oriented education that develops intellectual, moral and physical capabilities of the students.

University presently offers under-graduate, post-graduate and doctorate programs in several streams of Management, Law, Mass Communication, Hotel Management and Liberal Arts under the following five schools:

1. School of Management
2. School of Law
3. School of Mass Communication
4. School of Hospitality Management
5. School of Liberal Arts

The University is committed towards delivering quality education, developing strong industry interface and providing placement opportunities to its students.

The University brings out the following three Journals, one each in the three disciplines of Management, Mass Communication and Law, in an effort to fulfill our objective of facilitating and promoting quality research work. These are:

- Pragyaan: Journal of Mass Communication
- Pragyaan: Journal of Management
- Pragyaan: Journal of Law

Makkawala Greens, Mussoorie Diversion Road, Dehradun- 248009,
Uttarakhand, INDIA
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