IILM LAW JOURNAL
ISSNN.: 2583-8806 (Online)

# IILM LAW JOURNAL

## Volume II Issue 1, 2024

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IILM School of Law
IILM UNIVERSITY
Greater Noida, (INDIA)

ISSN: 2583-8806 (Online)

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**IILM School of Law**

**IILM University**
**Knowledge Park-II,**
**Greater Noida (INDIA)**

This volume should be cited as Vol. II, IILMLJ Issue 1, 2024

**IILM Law Journal ISSN:**
**2583-8806 (Online)**

**Published By:** IILM School of Law, IILM University, Greater Noida, Uttar Pradesh, India



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# BREAKING BARRIERS: UNDERSTANDING LIMITATIONS IN THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS IN INDIA

*Dimple Jodha**

## Introduction

Folklore or Traditional Cultural Expressions (henceforth TCEs) are alternative names for TCEs, which are also designated as expressions of traditional knowledge, due to their origins in the culture of indigenous communities and individuals. The term "traditional knowledge" refers to the practices, innovations, and knowledge of indigenous peoples and communities. It also serves as their social identity and, consequently, a source of income. States hold essentially two broad perspectives regarding the safeguarding of traditional cultural expressions (TCEs). Certain states hold the view that TCEs are sufficiently safeguarded by the current systems of property law and that no further measures or specialized legislation are necessary to ensure their protection. Certain states are of the opinion that new, specific measures or special legislation are necessary to either supplement or replace existing intellectual property rights. While some also hold the view that standard IP systems are sufficient, a third approach that advocates for the adapted, extended, or modified utilization of pre-existing IP to fulfil particular requirements can also be identified.[1] The word "traditional cultural speech" describes the work of native groups and traditional cultures; however, it is not explicitly labeled. In the global community, Traditional Cultural Expressions (TCEs) were also known as "folktales," and certain countries tend to use the word "folktales" in certain copyright rules.[2] The word "folktales" refers to the divination of a collective's cultural traditions, stories, stories, and rituals.[3] During the year 1846, William Thomas invented the word "folktales." Mr. Thomas intended and included habits, rituals, beliefs, myths, melodies, psalms, and other such things in the word "folktales," what he described as "folklore."

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[1] Peter Jaszi, "Protection of Traditional Cultural Expressions – Some Questions for Lawmakers" *WIPO Magazine,* 4(2017).

[2] Ibid

[3] Black's Law Dictionary,8th ed, P no. 1586 (2005)

**Protection of TCEs at National Level**

TCEs are distinctive features of a community at large culture that embody its political and historical history. They are frequently created by anonymous or unspecified writers, or by groups or persons recognized as given the authority, duty, or authorization to produce them in compliance with just that public's traditional rules and custom. TCEs are central to aboriginal & community institutions' social and cultural identifications; they represent understanding exactly and expertise and we convey fundamental value and quality. The conservation is intertwined with the fostering of imagination, greater ethnic diversity, and the conservation of natural resources.

There are four major systems of the protection of traditional culture expressions at the national level are often distinguished-

1. *The intellectual property type of protection*- where the protection is granted to traditional cultural expressions through existing conventional intellectual property rights.

2.*The sui generis type of protection of an intellectual property nature*- where a new law of an intellectual property nature is specially created in order to provide protection.[4] A country that provides a sui generis type of protection of an intellectual property nature has created a new law, influenced by the existing intellectual property laws, in order to protect TCEs. Examples of such protection can be found in Panama, the Philippines, and Vietnam.

3.*The sui generis type of protection of non-intellectual property nature*- where the new law of a non-intellectual property is specially created in order to provide adequate protection. One representative example of sui generis type of protection of non-intellectual property nature can be found in the United States, where the action has been taken by the US Department of the interior's Indian arts and crafts board concerning the protection afforded to Indian craft persons under the Indian arts and crafts act of 1998.

4.*The protection by conventional Intellectual Property Rights* - where the existing intellectual property Framework is considered to provide adequate protection. Some countries believe that

[4] Mishra J.P; *An introduction to Intellectual Property Rights,* 123 (Central Law Publication, 2012)

traditional cultural expressions are adequately protected by the existing conventional Intellectual Property Rights particularly copyright and related rights, trademarks, design law, geographical indication, fair competition, passing off, trade secret protection, and other common law remedies. Examples include Australia, Canada, Gambia, and Germany.

**Global initiatives for protecting traditional cultural expressions**

A collaborative effort between the World Intellectual Property Organization (WIPO) and UNESCO was to develop model legislation for the safeguarding of folklore. The United Nations endeavored once more in 1994 to formulate the Declaration of Rights of Indigenous Peoples. It was agreed that prior permission from the community should be obtained before using traditional knowledge, but the claim of ownership was rejected. No substantial provision was made in TRIPs for the protection of traditional knowledge, and neither such provisions nor uniform standards were established. As a consequence, an intergovernmental committee on intellectual property pertaining to genetic resources, traditional knowledge, and folklore was established by the World Intellectual Property Organization. With the intention of fostering discourse and cooperation regarding the intricate relationship between traditional cultural expressions andintellectual property rights, this commitment was formed as an international forum.

Concerning folklore, access to genetic resources, traditional cultural expression, and benefit-sharing, this committee identified a number of issues. Prior to the fifth session of the intergovernmental committee, it was not possible to establish an international legal framework.

The 1992 Convention on Biological Diversity (CBD) is an extremely vital document in order to safeguard TCEs. Additionally, this document acknowledged the innovative and traditional knowledge-based contributions of indigenous and local communities to the conservation and sustainable utilization of biological diversity. Article 8 stipulated that contracting parties must be appropriately and potentially bound by their national legislation to ensure that indigenous and local communities' knowledge, innovations, and practices are respected, preserved, and maintained, and that their application is promoted with the consent and equitable distribution of benefits resulting from the commercialization and utilization of said knowledge, innovations, andpractices.[5]

[5] Convention on Biological Diversity (CBD), 1992, art 8.

**Role of WIPO in protecting TCEs**

The world intellectual property organization also known as WIPO is an agency of the United Nations based in Geneva. Its 185 member states represent 90% of the world's countries. WIPO was established to deal with issues of intellectual property in particular work involving creativity and innovation. But traditional knowledge is now becoming very important because of the way in which we are fighting for our rights and getting those recognized. It's part of the colonial experience that many indigenous peoples around the world experience. But more recently there's this evidence of knowledge being used as a commodity, as a property, and is used in order to derive profit or some commercial benefits. The intergovernmental committee is discussing the best way in order to prevent the misapplication and theft of traditional knowledge and culture. So,it is not copied, adapted, or used by a third person without consent. We live in a globalizedworld, where people and products move about the world. It is universally acknowledged that in our highly internationalized, globally interconnected society, there is a significant risk of disregarding the safeguarding of cultural identity. For instance, you might be having certain paintings and everything which are normally used for certain either religious ceremonies or something like that and then someone uses the same to make a mark or a placement for food or you come up with the decorations and get heads cuffs or you know a wrapper and you find that issomething that the community would not allow because it's something they considered scared or how do you deal with somebody who goes and appropriate some traditional knowledge from the some of the Pacific Islands and then they go and use it in the United Kingdom. There's a lot of this use that is going beyond the borders and this needs to have international standards, basically the minimum acceptable standards as to how you'll be able to deal with the protection of these works.

In July 2013 the intergovernmental committee convened in Geneva to discuss the way forward the meeting was attended by members of the state. The World Trade Organization, UNESCO, and many non-governmental organizations represented by indigenous people who had an opportunity to influence the outcome. In the specific case of the art laws center of Australia, it has been a regular and very constructive, and engaged participant in discussions at the RDC. After the July meeting, the intergovernmental committee hoped to have text developed to the

point where a diplomatic conference can be convened to consider an international instrument that would provide better protection for traditional knowledge and culture.

The World Intellectual Property Organization (WIPO) collaborates with nations to develop practical understanding of how to more strategically employ the intellectual property system and to draft new legislation that may offer enhanced protection.[6] In earlier times, indigenous people developed their own set of skills, practices, and innovation carefully, passed down from generation to generation. This Traditional Culture Expression (TCEs) forms an invaluable part oftheir identity as well as an economic and cultural aspect for their entire community. Traditional cultural expressions serve as tangible manifestations of a specific community's culture. These two terms "traditional culture expression" and "the expression of folklore" are used interchangeably by several authors and also by the World Intellectual Property Office that is WIPO. Expressions of traditional culture identify and reflect the historical, cultural, and social identity and values of a community. Conventional cultural manifestations may manifest invarious ways, including but not limited to verbal, aural, action-based, and tangible forms. However, there may be instances in which the tangible and intangible expressions may come together. TCEs have different characteristics - the main is intergenerational equity. It is transferable from generation to generation and it is not statically, but dynamic or a living body, itis mostly oral in nature. Examples of the traditional cultural expressions are Jewellery making, pottery, textiles, foodstuffs, Handicrafts, and even some traditional medicines.

Several attempts at the international level could be traced towards protecting TCEs by various platforms such as UNESCO, WIPO, etc. Folklore, the WIPO IGC on intellectual property and genetic resources, and traditional knowledge are emblematic instances of the organization'sefforts to safeguard traditional cultural expressions and knowledge.[7]

**India initiative for protecting traditional cultural expression**

*Government Efforts*

TKDL (traditional knowledge digital library) was established by the CSIR (Council of Scientific and Industrial Research) with information on systems, flora, and traditional medicine; it will also facilitate the classification of traditional knowledge resources.

[6] *WIPO Intellectual Property Handbook*, WIPO Publication No. 489 (E), Second Edition p.43 (2008)
[7] United Nations Declaration on the Rights of Indigenous Peoples, 2007 Art.32.

The primary purpose of this document is to document Ayurvedic medicinal formulations that are derived from traditional knowledge. Specific formulation details encompass descriptions, methods of preparation and claims, the botanical name of the plant, and curable diseases. The formulation text in Sanskrit has also been translated into a number of foreign languages that are understood there. This will be accessible to nearly all patent offices worldwide for the purpose ofsearching and examining prior art and common use, as it aids in the prevention of biopiracy. The issue of erroneous patent grants will also be resolved, as patent examiners will have access to its knowledge. The Department of Science and Technology's CSIR and ICAR are diligently engaged in the documentation and preservation of traditional knowledge. India has a huge bag of able to live and varied ancient practices, conventional gestures, unquantifiable traditional culture, and works of art that require organizational advice and reassurance to resolve important components for both the preservation and perpetuation of these aspects of art history and culture.Although these sustainability attempts are distributed, there is a need for an ingrained and unifiedScheme for coordinated efforts throughout the path of professional manner increasing demand and understanding in Intangible Cultural Heritage (ICH), protecting, supporting, and spreading it methodically.

*Non- Governmental organizations efforts in protecting traditional cultural expression*

Additionally, numerous NGOs are engaged in database development and promoting local art and culture on the national and international stages. In close collaboration with members of the local community, the NGOs for research and interactive for sustainable technologies and institute (SRISTI) in Ahmadabad, Gujarat, has been compiling a database of innovation and traditional knowledge. Another NGO that the late Komal Kothari of Rajasthan supports is RUPAYAN. This NGO has significantly contributed to the conservation and acknowledgment of the artistic and cultural riches of the Marwari region in Rajasthan.

**Legislative effort**

At present, there is no specific or special law for the protection of traditional cultural expression. Many provisions from different statutes like patent law, Biodiversity Law and plant varieties law have been compiled to protect traditional cultural expression.

*1. Patent (Amendment) Act, 2002*

This legislation includes several measures that aim to safeguard traditional cultural expression. According to the statute, any invention that relies on the conventional knowledge of combining or copying recognized qualities cannot be patented. When filing for a patent, it is mandatory to include information on the geographical origin of the biological material. If the source and geographical origin of the material employed in an invention are not disclosed, the patent application will be rejected.

*2. Biological diversity Act, 2002*

According to Section 4 of this Act, it is prohibited for any individual to transmit the findings of any study pertaining to biological resources without obtaining prior authorization or approval from the National Biological Diversity Authority. It is essential to take advantage of sharing withothers who are dedicated to preserving traditional cultural expression. The task should be completed in accordance with the directives provided by the federal government.

*3. Protection of Plant Varieties and Farmer Right Act, 2001*

The act in question pertains to the sharing of benefits between the provider and recipient of plant genetic resources. It states that when registering plant varieties, the source of the genetic material must be disclosed, including the geographical indication. Failure to disclose the source of the genetic resource may result in the cancellation of the registration.

**Constitution of India**

Article 29 of the constitution provides the protection of the interests of minorities under part III of the Constitution. Article 29(1) provides “any section of the citizens residing within theterritory of India or any half part having a definite language, script, or culture of their own shall have the proper to conserve the same”. these provisions protect the interests of these minorities that have a distinct however don't confer with any religion per se language, script, or culture,even though they're practicing totally different religions however the provision doesn't confer with any religion as such.[8]

[8] T.M.A. Pai Foundation Vs. State of Karnataka AIR1995 4 SCC 1

Article 51A (f)[9]Furthermore, it is obligatory for every citizen of India to recognize and safeguard the abundant legacy of our diverse culture as their primary responsibility. However, in order to properly maintain and preserve the traditions of minorities, it is necessary to have adequate law in place that protects their cultural and traditional rights, as provided by the Constitution of India.

**Protection of TCEs through IPR**

There have been growing instances of misappropriation of traditional cultural expression is due to the growth of the internet, digitalization, and industrialization. There is a difference in cultural perception between the developing and developed countries in this regard because most of the developed countries believe TCEs are in the public domain, contrary to the belief of developing countries. There are many issues in attempting to protect TCEs through the *law of copyright* because of the issues related to originality, fixation, and authorship etc. Some authors have found protecting TCEs through the law of *geographical indications* feasible.[10]

Traditional cultural expressions possess the capacity to generate wealth by furnishing insights and indications that can facilitate the advancement of beneficial practices and processes that benefit humanity as a whole. Additionally, TCE has the potential to yield time and cost savings when it comes to investments in contemporary biotechnology, research, and product development.

The existing IPR system safeguards private property rights predominately. IPR is incompatible with TCEs due to its emphasis on collective production.

The content in TCE is separated into four sections-

- Any information which is known to society at large without any documentation support. E.g. - the common use of neem and turmeric.
- The data that is comprehensively documented and accessible to the general public for analysis and application. For instance, details pertaining to Ayurvedic literature.
- The information that is not formally documented but is widely known to a select few individuals. E.g. - tribal knowledge

[9] The Constitution of India, art. 51A cl. f

[10] Socio-economic Implications of Protecting Geographical Indications in India, *Available at:*http://wtocentre.iift.ac.in/papers/gi_paper_cws_august%2009_revised.pdf( last visited on February 16, 2024)

- In the final category, information that is exclusive to a specific individual or family (e.g., the Goud family of Hyderabad's discovery that a particular variety of fish can be used as an anti-asthmatic substance to cure asthma).

As enshrined in new IPR legislation, only the preservation of traditional cultural expression in India effectively provides a mechanism for benefit-sharing. Utilizing traditional knowledge for commercial purposes without obtaining permission and disclosing profits to traditional communities is considered unethical. Furthermore, it would be in opposition to traditional and indigenous cultural values if it promoted the commercialization of this traditional knowledge. Furthermore, it can aid in the opposition of erroneous assertions of intellectual property rights by safeguarding traditional knowledge. The preservation of traditional knowledge is imperative in order to facilitate India's expedited progress in the field of pharmaceutical development. With regard to safeguarding intellectual property associated with traditional knowledge, there are two methods-

The first one is *defensive protection* - The purpose of this form of protection is to prevent non-committee members from obtaining intellectual property rights to community traditions and knowledge. For instance, India has compiled a database of traditional medicine that is accessible via the traditional knowledge digital library. Patent examiners may rely on this database as proof of prior art when evaluating patent applications.

Second one is *Positive protection*- This form of protection is granted with the dual purpose of enabling communities to exercise authority over the commercial exploitation of their traditional knowledge and to promote its dissemination. Certain applications of traditional knowledge are eligible for patent protection under the current intellectual property framework, and several nations have enacted specialized legislation in this regard. As an illustration, the sports drug Jeevani was developed in South India with the assistance of medical knowledge possessed by theKani tribes, which was utilized in the preparation of the medication Jeevani. The substance is developed by the Tropical Botanic Garden and Research Institute (TBGRI) utilizing this traditional knowledge. They have also shared the benefit arising from the commercial of this drug with tribal communities. Intellectual-property is the value that is added by the mind to either economic production or cultural production. So, an individual might be a marketing value that's added organization on the knowledge or a brand or design or in the case of cultural production needs of course the conception of a book or the composition of music or at the

performance. So, these values that are added by the minder are protected and captured by intellectual property. The intergovernmental committee, also known as the IGC, was established by WIPO in 2001. It functions as an international policy forum with the objective of developing global standards that will enhance the safeguarding of traditional knowledge, culture, folklore, and genetic resources belonging to indigenous people and local communities.[11] Traditionalknowledge and cultural expressions have been part of our whole picture about indigenouspeoples and culture. It's very hard in our culture to distinguish one aspect of it, for example, our language, our knowledge, ceremonies, and so on.

**Traditional Knowledge Digital Library**

The goal of protecting developing nations' cultural heritage is to make its use and not monopolizing it by patent. In spite of such a goal, India created the Traditional Knowledge Digital Library (TKDL) with both the goal of preserving indigenous peoples' information and keeping anyone from illegally enhancing its use. The TKDL digitizes all recognized aboriginal group information in India that cannot be copyrighted. To combat high levels of influence, TKDL entered into arrangements with numerous Patent Offices to engage in patents involving Indian TK. Regrettably, the present state of affairs renders the operation of TKDL commercially ineffective. It is not intended to support native cultures economically or to encourage proper use of information by cash compensation. In this article, TKDL would be examined in terms of its commercial operations. It would criticize the shortcomings that result in aspects such as "Free Access Agreements," which do not support aboriginal peoples economically. Finally, this paper would propose feasible alternatives such as access and value sharing agreements, charging publicrealm, as well as a strategy close to Patent left that can legally cover TK within TKDL. This library is an establishment of the CSIR. TKDL is a compilation of databases pertaining to traditional medicine systems in India, including Ayurveda, Siddha, Unami, and Yoga. Its purpose is to safeguard the nation's traditional medical knowledge from potential infringement at the international patent office.

[11] Customary law, Traditional Culture Expression, Traditional Knowledge And Intellectual Property: An Outline of The Issues, *Available at:* https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf (last visited on February 16, 2024)

**TCEs and Sustainable Development**

So TCEs may provide an ideal platform for analyzing the goal of sustainable development. TCEs are often regarded as part of their daily lives and the main contribution towards the livelihood of some traditional and Indigenous peoples of the community. One of the major objectives of WIPO IGC initiatives on the protection of traditional cultural expression is the promotion of the appropriate use of TCEs for sustainable community-based development desired by indigenous people and the local community.[12]

These are some of the examples from India, wherein TCEs may be used to promote sustainable development-

- First is promoting the use of medicine for the treatment of diseases.
- Using bamboo for the construction of building as the main mode of architecture.
- Another classical example is Madhubani paintings which mostly make use of natural colors.
- Use the traditional mode of cooking and use of earthen pots for storing water etc.
- Promotion of the use of traditional handmade jewelry. Example- terracotta.
- TCEs have a lot of potential for sustainable development.

**Relationship TCEs and traditional knowledge**

Traditional Culture Expression constitutes an element of conventional wisdom. TCEs are increasingly being incorporated into intellectual property in the contemporary world; therefore, special legislation is required to safeguard them, specifically a sui generis law concerning the preservation of traditional knowledge. A well-known proverb states, "Knowledge bestows politeness; courtesy elevates one's capability; capability procures wealth; and wealthier individuals experience happiness." This proverb from ancient Sanskrit merely emphasizes the value and strength of knowledge. Additionally, it discusses the safeguarding of traditional knowledge due to the fact that it bestows prosperity upon the individual.

[12] Intergovernmental Committee (IGC), WIPO, *Available at:* https://www.wipo.int/tk/en/igc/ (last visited on February 16, 2024)

TCEs are an extremely multifaceted concept that defies a singular definition. Determining this in this manner would be detrimental to the diverse array of knowledge possessed by indigenous communities. A mere legal definition falls short of adequately encompassing the intricate social and legal systems that uphold traditional knowledge within the indigenous communities.[13]Traditional knowledge is that which is created and transmitted by the local or indigenous community; it has become the community's identity and has been handed down through the generations.

This knowledge is present in numerous concepts, including diverse plant life, various types of sustenance, time calculation, and the utilization of spices for specific purposes. Additionally, traditional societies employed a wide range of yoga practices. It is customary for traditional knowledge to be transmitted orally and has its foundation in antiquity. In summary, it can be defined as a dynamic corpus of information that evolves and is frequently transmitted across generations within a society or community. It is assimilated into their cultural or spiritual identity. It is generally difficult to safeguard under the current intellectual property system, which grants creators or inventors temporary protection against third-party use. For instance, the Ayahuasca vine is utilized by indigenous healers in the western Amazon when producing a variety of remedies.

Another famous example from Hyderabad state, where an asthma patient is administered a traditional fish medicine. Thousands of asthma patients took fish Prasadam which has been distributed by the “Gaud family” here for more than 170 years.

**Limitations to the protection of TCEs in India**

To strike an acceptable better understanding of the needs of third parties and consumers of copyrighted work, patent laws allow for restrictions on development properly, i.e. situations in which covered works will be used but without right holder’s consent either with or without remuneration. Because of differences in social, legal, and cultural, the restrictions and exemptions to patents and similar rights differ from country to country. International conventionsrespect this plurality by defining basic requirements for both the implementation of limitations

[13] Case Studies on Intellectual Property and Traditional Cultural Expressions, *Available at:* https://www.wipo.int/export/sites/www/tk/en/studies/cultural/minding-culture/studies/finalstudy.pdf(last visited on February 16, 2024)

and exceptions while leaving it up to state governments to determine whether or not to apply a specific exemption or restriction.

Because of new advancements in technology and an ever-global use of the Web, this has been determined that the above-mentioned equilibrium of towards others' best interest requires to also be rebalanced. Constraints and exclusions are a problem mostly on WIPO Standing Committee for Copyright and Related Rights (SCCR) narrative, and current discussion has concentrated primarily on three organizations of recipients or tasks in regards to freedom of opinion and expression – educational events, bookshops and journals, and people with disabilities, especially visual impairments people.[14]Protection of TCEs in India has been hampered by the emergence of numerous novel technologies and the adaptation of conventional knowledge-based products. Survival of numerous indigenous communities is now imperiled by it. Contemporary cultural and manufacturing sectors have begun to exploit traditional knowledge-based products for financial gain by employing a variety of new technologies without authorization and without compensating traditional communities. Contemporary society has the capacity to introduce novelproducts or discover innovative applications for established ones that are grounded in traditional knowledge through the application of biotechnology-related technological advancements. The patent claim was made possible by the innovation of these new products or the novel application of existing products grounded in conventional knowledge.[15]

**Importance of traditional culture expression**

1. Traditional cultural expression plays a pivotal role in the everyday existence of millions of individuals residing in developing nations.

2. Traditional cultural expressions encompassed within traditional knowledge also cater to the health requirements of the majority of individuals residing in developing nations, where access to contemporary healthcare services and medications is restricted for economic and cultural reasons. Traditional remedies are also accessible to the impoverished and marginalizedin remote communities at an affordable price.[16]

[14] Reform on Traditional Knowledge and Traditional Cultural Expressions, *Available at:* http://ipkitten.blogspot.com/2019/02/kenyan-reform-ontraditional-knowledge.html (last visited February 17, 2024).
[15] Amos Surambhe, *The Protection of Indigenous Traditional Knowledge through the Intellectual Property System and Intellectual Property Law Amendment Bill (2008*), Vol 4 Issue 3, Journal of International Commercial Law andTechnology,3(2009)
[16] Intergovernmental Committee on Intellectual Property, Traditional Knowledge and Folklore, Available at:

3. In numerous agricultural systems, the utilization and enhancement of conditions pertaining to farmers' varieties (landraces) are equally critical.

4. In numerous nations, the seed supply is predominately governed by an informal seed protection system that functions through the dissemination of the highest quality seed accessible within a given community.

5. Moreover, an extensive array of artistic manifestations, such as handicrafts and musical compositions, derive from traditional cultural expression.

6. Traditional cultural expressions that have proliferated with the passage of time must be safeguarded, primarily to prevent the commercial and unauthorized exploitation of such knowledge.

7. Preserving these ancient practices and safeguarding indigenous communities againstthese losses are additional critical concerns. Additionally, safeguarding traditional cultural expression should encourage its more extensive and effective application.

**The need for sui generis legal protection**

No legislation exists that is dedicated specifically to safeguarding traditional cultural expression. Sui generis legal protection is necessary because the existing intellectual property rights system is inadequate in safeguarding traditional cultural expression for a variety of reasons, including private ownership and the fact that it primarily benefits corporations and individuals. Traditional cultural expression requires the participation of all. IPR protection is typically granted against third-party use for limited durations (20 years, 30 years, etc.). However, traditional cultural expression is transmitted from one generation to the next. Intellectual Property Rights (IPR) uphold a limited understanding of an invention, requiring it to meet the requirements of novelty and industrial applicability. Contrarily, traditional cultural expression is continuous, informal, and incremental, in contrast to intellectual property rights (IPR). Alternative legislation or a law of a unique category is required to safeguard traditional cultural expression. Traditional cultural expression is a significant force in India's development and will also stimulate the economy.

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https://www.wipo.int/tk/en/igc/(last visited on February 17, 2024)

## Conclusion

Based on the analysis, while current intellectual property legislation does afford certain degrees of safeguarding for traditional cultural knowledge and expressions, a substantial portion of such material remains unrestrictedly accessible to the public and may be utilized by anyone. Many nations and communities believe that enhanced protection is required. There's been a lot of misappropriation and misuse of knowledge over a period of time. There is a need for protecting traditional law by sui generis law that is a special law that will specifically protect traditional culture expression in India. Traditional cultural expression possesses the capacity to be converted into prosperity by furnishing indications or hints for the advancement of beneficial practices and processes that benefit humanity.

# PLANET'S PLEA: CLIMATE CHANGES CALL FOR EQUITABLE REDRESS

*Ipshita Adhikari**

**When Earth trembles: The melody of climate change and seismic activity**

In the vast symphony of our planet's natural phenomena, the intertwining melodies of climate change and seismic activity have begun to harmonize in increasingly noticeable ways. As climate change alters the delicate balance of Earth's systems, it is now becoming evident that the shifting climate patterns can influence seismic behavior, causing tremors and earthquakes.

***1.*** *The Influence of Extreme Weather Events on Seismic Activity*

Climate change has brought about a myriad of consequences, and one such impact is the potential link between extreme weather events and increased seismic activity[1]. It is increasingly recognized that intense rainfall, snowfall, and droughts, all exacerbated by climate change, can disrupt fault lines and contribute to the occurrence of earthquakes.

Research suggests that heavy rainfall can play a significant role in triggering seismic activity. When large amounts of water infiltrate the ground, the added weight and pressure can disturb the equilibrium within fault lines, potentially causing them to slip and result in an earthquake. Similarly, prolonged droughts can cause the ground to become dry and compact, altering the stress distribution and potentially leading to increased seismic activity.

***2.*** *Resource Extraction and Induced Seismicity*

Another important aspect of the nexus between climate change and seismic activity lies in resource extraction activities. The demand for fossil fuels continues to drive extraction techniques such as hydraulic fracturing (fracking) and deep underground mining[2]. These methods can release accumulated stress within the Earth's crust, leading to induced seismic events.

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[1] Mario Picazo, 'Can climate change influence earthquake activity?' *The Weather Network* (2 Sep, 2021) <https://www.theweathernetwork.com/en/news/climate/impacts/can-climate-change-influence-earthquake-activity> accessed 9 July 2023.

[2] Shemin Ge, Martin O. Saar, 'Induced Seismicity During Geoenergy Development—A Hydromechanical Perspective' (2022) 127(2) AGU Journals 2.

Hydraulic fracturing involves injecting large volumes of water, sand, and chemicals deep into the ground to extract natural gas or oil. The high-pressure injection can create or reactivate existing fractures in the rocks, potentially inducing small to moderate earthquakes. Similarly, deep underground mining can cause stress changes in the surrounding rock layers, leading to seismic events.

***3.*** *Sea Level Rise and Seismic Hazards*

As climate change causes sea levels to rise, it can indirectly impact seismic hazards. The melting of glaciers and polar ice caps contributes to the redistribution of enormous masses of water, which can lead to changes in stress distribution within the Earth's crust. These changes may influence fault lines, potentially increasing the likelihood of seismic activity. The complex interplay between rising sea levels, glacial melting, and seismic hazards requires further investigation. However, it is crucial to understand and monitor these interactions to assess the potential implications for regions prone to seismic activity.

***4.*** *Climate Change, Landslides, and Seismic Events*

Landslides, often triggered by intense rainfall or the melting of permafrost, present another geological hazard influenced by climate change. While landslides themselves may not directly cause earthquakes, they can generate seismic events when the mass movement impacts the underlying layers of the Earth's crust[3]. Intense rainfall can saturate slopes, reducing their stability and triggering landslides. As the mass of soil and debris rapidly moves downhill, it can exert significant force on the Earth's crust, potentially leading to seismic activity. Additionally, the melting of permafrost due to rising temperatures can destabilize slopes and contribute to landslides that, in turn, may trigger seismic events.

*Dr. N Purnachandra Rao*, the chief scientist of the *National Geophysical Research Institute*, highlights the looming risk of a high-magnitude earthquake in Uttarakhand, further emphasizing the region's vulnerability[4]. The sinking of Joshimath[5] stands as a poignant

[3] Kendra Pierre-Louis, 'A Recipe for Climate Disaster' *The Atlantic* (29 Mar, 2022) <https://www.theatlantic.com/science/archive/2022/03/climate-change-heavy-rain-landslides-flood/629404> accessed 5 July 2023.
[4] Nisha Anand, 'Possibility of greater quake in Uttarakhand' *The Hindustan Times* (22 Feb 2023) <https://www.hindustantimes.com/cities/dehradun-news/possibility-of-greater-quake-in-uttarakhand-warns-ngri-chief-scientist-101677037958527.html> 7 July 2023.
[5] Kavita Upadhay, 'Why is the land sinking in Joshimath?' *The Hindu* (12 Jan 2023) <https://www.thehindu.com/sci-tech/science/explained-why-is-the-land-sinking-in-Joshimath/article66364329.ece> accessed 11 July 2023.

reminder of the catastrophic consequences resulting from the intersection of climate change and unsustainable development. As tourism and infrastructure projects continue to proliferate, the delicate equilibrium between economic advancement and environmental conservation hangs in the balance. It is of utmost importance that we heed these warnings and collectively strive to mitigate the repercussions of climate change, safeguard our precious ecosystems, and preserve the awe-inspiring allure and resilience of regions like Joshimath for the well-being of future generations.

***5.*** *Geothermal Energy Extraction and Seismicity*

The extraction of geothermal energy, a renewable energy source, also raises considerations regarding induced seismicity. Geothermal energy harnesses the heat stored beneath the Earth's surface to generate electricity[6]. In some cases, techniques such as hydraulic stimulation or the reinjection of fluids into geothermal reservoirs can induce seismic events.

Hydraulic stimulation involves injecting water at high pressures to enhance the permeability of rocks and increase energy production[7]. Similarly, reinjection involves returning used geothermal fluids into the reservoir to maintain pressure and sustain production. Both techniques have the potential to trigger seismic events by altering stress conditions within the subsurface[8]. However, it is important to note that the occurrence and magnitude of induced seismic events in geothermal energy extraction are generally small compared to natural earthquakes. Nevertheless, monitoring and implementing best practices are essential to minimize any potential risks.

As we traverse the realm of Earth's intricate dynamics, it becomes evident that the interplay between climate change and seismic activity holds profound implications. Engaging with local stakeholders, including indigenous communities and traditional knowledge holders, can provide valuable insights into historical patterns and local adaptation strategies that can guide us in mitigating the risks entwined with both climate change and seismic events. Through relentless pursuit of understanding and interdisciplinary collaboration, we unlock the secrets embedded within the intricate tapestry of Earth's systems. Armed with this knowledge, we

[6] Francesca De Santis & others, 'Case analysis of seismicity related to the exploitation of deep geothermal energy' [2022] The Research Gate 2.
[7] Yunzhong Jia, Chin-Fu Tsang, Axel Hammar & Auli Niemi, 'Hydraulic stimulation strategies in enhanced geothermal systems (EGS): a review' [2022] 211 Springer Link 3.
[8] Sadiq J. Zarrouk, Katie McLean, *Comprehensive Renewable Energy* (2nd edn, Science Direct 2022).

possess the power to forge resilient strategies, safeguard vulnerable communities, and pave a path toward a sustainable future.

**Tobacco's Carbon Cloud: The neglected link**

India, like a house of cards in a gust of wind, finds itself increasingly vulnerable to the impacts of climate change. With heatwave days on the rise, scorching summers have become the new norm, demanding immediate action to extinguish another burning issue: the tobacco industry's carbon footprint. Just like a blazing inferno, the industry's environmental impact in India, as revealed by the World Health Organization's report, "Tobacco: Poisoning our planet," cannot be ignored any longer[9]. The time has come to stub out this burning issue and take decisive action to reduce the CO2 emissions caused by tobacco production and transportation. If left unchecked, the production and transportation of tobacco products will continue to contribute significantly to CO2 emissions, further fanning the flames of climate change, much like a smoldering ember igniting a wildfire.

While smoking may be perceived as a personal choice, recent reports and studies shed light on its significant role in fueling climate change. Smoking not only releases harmful chemicals and greenhouse gases into the atmosphere, contributing to air pollution but the production and transportation of tobacco products also generate substantial carbon emissions.

The influence of movies and series on society cannot be underestimated. They shape our perceptions and behaviors, and unfortunately, smoking has been glamorized and normalized in the world of entertainment. Characters on screen are often portrayed smoking, downplaying the consequences, and enticing impressionable audiences, including children and teenagers. Like drop by drop forming a larger ocean, we unknowingly contribute to a rising tide of smoking addiction and its subsequent impact on both individual health and the environment. However, legal cases around the world have begun recognizing the responsibility of the tobacco industry in addressing the environmental consequences of smoking. A *landmark case*in *Brazil* set a precedent by ordering a tobacco company to pay compensation for the environmental damages caused by tobacco production[10]. This legal action *highlighted* the

[9] WHO Team, 'Tobacco: poisoning our planet' (2022) World Health Organization 4.
[10] Reuters Staff, 'Brazil sues top tobacco firms to recover public health costs' *Reuters* (22 May 2019) <https://www.reuters.com/article/us-brazil-tobacco-lawsuit-idUSKCN1SS2DN> accessed 11 July 2023.

company's negligence in addressing the environmental impact of its products. *Similarly*, in *India*, legal actions have been taken against tobacco companies for their role in contributing to air pollution and environmental degradation. These cases shed light on the tobacco industry's failure to address the environmental impact of their products, reflecting a growing awareness and recognition of the need to hold them accountable.

The production and transportation of tobacco products emit substantial amounts of CO2, exacerbating the already dire situation. This neglected link, often overlooked in discussions on climate change, represents a critical piece of the puzzle that must not be disregarded. A comprehensive approach to climate change demands that we confront all sources of carbon emissions, including those stemming from tobacco. By doing so, we can contribute to a more sustainable and greener future for our planet. This requires a collective commitment to reducing CO2 emissions throughout the entire tobacco production and distribution process. If we fail to recognize and tackle the environmental consequences of the tobacco industry, our fight against climate change remains incomplete.

**From crisis to collaboration: International cooperation as a solution to the climate-conflict-migration**

International cooperation is imperative when addressing the intricate web of challenges arising from the interconnections between climate change, conflict, and forced migration. The collaborative endeavors of nations, organizations, and stakeholders are indispensable in fostering stability and discovering sustainable solutions in regions impacted by climate change. In the realm of resource management, international cooperation assumes paramount importance. As climate change exacerbates competition for limited resources, the need for cooperation among countries becomes even more critical to ensure equitable distribution and sustainable utilization[11]. Establishing collaborative frameworks and agreements for managing shared resources such as water bodies or forests can facilitate responsible and efficient resource allocation. Through collective action, countries can sidestep conflicts borne out of resource scarcity and instead nurture cooperation and mutual benefits.

[11] Nina Hall, *Displacement, development, and climate change: International organizations moving beyond their mandates* (1st edn, Routledge 2016).

A few years back, in a disheartening turn of events, the *Amazon carbon sink*, a vital natural resource for mitigating climate change, had fallen victim to the very phenomenon it helped combat. The escalating impacts of climate change have rendered the world's largest tropical rainforest more vulnerable than ever before. Now, sharing experiences, best practices, and lessons learned is a powerful tool in developing effective strategies to prevent conflicts stemming from climate change impacts. International collaboration enables the enhancement of early warning systems, mediation efforts, and diplomacy, thereby defusing tensions and resolving disputes. Promoting dialogue and fostering understanding among conflicting parties are indispensable elements in building sustainable peace and reducing the potential for conflict escalation.

Supporting *sustainable development* stands as a pivotal pillar of international cooperation. Vulnerable countries grappling with the adverse effects of climate change necessitate assistance in formulating and implementing sustainable development practices. This assistance can encompass financial resources, technology transfer, and capacity-building initiatives. By bolstering sustainable development, countries can tackle the underlying causes of conflict and reduce their susceptibility to climate change impacts. Establishing resilience and adaptive capacities in these nations lays the groundwork for long-term stability and diminishes the likelihood of conflicts arising from environmental pressures.

*Capacity-building* constitutes an integral facet of international cooperation[12], entailing the sharing of knowledge, expertise, and technical skills to empower countries and communities in effectively addressing climate change and conflict. Initiatives in capacity-building can focuson strengthening institutions, enhancing governance structures, and training local communitiesin sustainable practices. By augmenting capacities at various levels, countries can more adeptly respond to the challenges posed by climate change, mitigate conflicts, and build resilience. The role of climate finance looms large in enabling vulnerable countries to adapt to climate change and reduce conflict drivers. International financial mechanisms can supply the financial resources needed to support climate change adaptation and mitigation efforts in developing nations. This encompasses funding for climate-resilient infrastructure, renewable energy projects, and sustainable agriculture practices. By extending financial support, international cooperation bridges the financial gap that many developing countries face when implementing

[12] United Nation Climate Nation Team, 'Capacity-building to Boost Climate Action', United Nation Climate Nation (27 Feb 2020) < https://unfccc.int/news/capacity-building-to-boost-climate-action> accessed 13 July 2023.

climate change-related initiatives. In turn, this promotes stability, diminishes vulnerabilities, and contributes to conflict prevention. *India's stance on COP 27*[13] *reaffirms its dedication to fostering sustainable development on a global scale and as we anticipate the upcoming 28th Conference of the Parties (COP 28), India's stance on capacity-building exemplifies its commitment to inclusive and sustainable development.*

The global response to climate change has witnessed significant advancements in both mitigation and adaptation strategies[14]. Mitigation efforts have focused on reducing greenhouse gas emissions through transitioning to renewable energy sources, implementing carbon pricing mechanisms, and promoting sustainable practices in various sectors. For instance, countries like Germany have made remarkable progress in renewable energy deployment, with over 40% of their electricity generated from renewable sources. Additionally, adaptation measures have gained momentum, aiming to build resilience and prepare for the changing climate. Examples include the construction of flood defenses and improved water management systems in vulnerable regions, as seen in the *Netherlands' Delta Works project*, in *Iceland*, a country known for its innovative *geothermal energy projects*[15]. However, despite these positive developments, the scale and urgency of climate change require intensified global collaboration and increased investments in sustainable technologies. Governments, businesses, and individuals need to continue working together, implementing innovative solutions, and prioritizing climate action to safeguard our planet for future generations. As the saying goes, *"The best time to plant a tree was 20 years ago. The second-best time is now."*

As we take stock of the current global situation and India's Prime Minister Modi's foreign tours and international relations, the paramount importance of international cooperation shines through. This is an auspicious moment to reflect upon how India's engagements with other nations can foster collaborations and confront the intricate interplay of climate change, conflict, and forced migration. India, as a global leader, possesses a unique opportunity to leverage its diplomatic endeavors to inspire international cooperation and drive impactful solutions.

[13] Fiona Harvey, 'What are the key outcomes of Cop27 climate summit?' *The Guardian* (Sharm el-Sheikh, 20 Nov 2022) < https://www.theguardian.com/environment/2022/nov/20/cop27-climate-summit-egypt-key-outcomes> accessed 8 July 2023.
[14] James D. Ford, Lea Berrang-Ford, Alex Lesnikowski, Magda Barrera, S. Jody Heymann, 'How to Track Adaptation to Climate Change: A Typology of Approaches for National-Level Application' (2013) 18 Ecology and Society 10.
[15] Nina Hall, 'What is adaptation to climate change? Epistemic ambiguity in the climate finance system' [2017] 17 International Environmental Agreements: Politics, Law and Economics 39.

Under the leadership of Prime Minister Modi, India has demonstrated unwavering commitment to addressing climate change through collaborative efforts. The *International Solar Alliance (ISA)* stands as a shining example of India's initiatives to combat climate change on a global scale. By spearheading this alliance, India has joined hands with numerous countries to promote solar energy adoption and facilitate clean energy transitions. This collaborative endeavor showcases India's proactive role in driving impactful solutions to mitigate climate change and reduce carbon emissions. Another notable instance of India's engagement in tackling climate change is the *Coalition for Disaster Resilient Infrastructure (CDRI)*. Prime Minister Modi played a pivotal role in establishing this global partnership, which aims to enhance the resilience of infrastructure systems to climate change-induced disasters. By mobilizing international cooperation and knowledge sharing, India is at the forefront of effortsto build climate-resilient infrastructure and safeguard communities from the adverse impacts of climate-related disasters.

In light of these remarkable initiatives, we must recognize the comprehensive efforts undertaken by leaders like Prime Minister Modi. Before challenging someone's commitment and dedication, we should first seek to understand their contributions and endeavors in tackling climate change. The ultimate goal is to safeguard the deteriorating health of our planet. Hence, let us pause and ponder how we can support and amplify these collective efforts to combat climate change, foster international cooperation, and drive transformative change.

**The gavel of change: Climate litigation and legal accountability**

In the fight against climate change, legal mechanisms have played a crucial role in holding governments and corporations accountable for their contributions to global warming. This chapter highlights key international and regional initiatives that have advanced climate accountability through legal action.

***1.*** *The Urgenda Case: Setting a Precedent for Government Action*

The *Urgenda case*[16] in the Netherlands stands as a landmark example of climate litigation. In 2015, the Dutch NGO Urgenda Foundation, alongside 900 co-plaintiffs, successfully sued the Dutch government for its insufficient efforts to combat climate change. The court ruling stated that the government had a legal obligation to protect its citizens from climate change and

[16] HAZA C/09/00456689 *Urgenda Foundation v. State of the Netherlands* [2015] 7196.

ordered an increase in greenhouse gas emissions reduction targets. This groundbreaking case established a legal precedent, emphasizing that governments must take substantial action to address climate change, setting an example for other jurisdictions to follow.

***2.*** *The Kivalina Case: Corporate Accountability and Community Impact*

The *Kivalina case*[17], filed by the Kivalina Native Village in Alaska, exemplifies the role of legal action in holding corporations accountable for their contributions to climate change impacts. The village, which faces severe erosion and an existential threat due to diminishing sea ice caused by climate change, sued several oil companies. The lawsuit alleged that these companies' greenhouse gas emissions substantially contributed to the village's plight. Although the case faced challenges related to jurisdiction, it drew attention to the responsibility of corporations in addressing climate change and the potential legal implications of their actions.

***3.*** *The Oslo Principles: Guiding States in Addressing Climate-Related Harms*

The Oslo Principles[18] were developed by legal experts as a guide to the obligations of states in combatting climate change and addressing climate-related harms. These principles emphasize that states must prevent, reduce, and remedy harm caused by climate change. They provide a framework for states to assess their legal obligations, including the duty to adopt mitigation measures, protect vulnerable populations, and promote international cooperation. The Oslo Principles serve as a valuable resource for legal practitioners, policymakers, and courts in interpreting and applying existing legal frameworks to address climate change.

*Holding governments, corporations, and stakeholders accountable for their environmental impacts serves as the compass guiding our path toward a greener horizon. As we navigate this terrain, we ensure that the scales of justice tip in favor of our planet, reaping the fruits of a more sustainable world. Through the unwavering pursuit of climate accountability, we sow the seeds of resilience, cultivating a legacy that will weather the storms of time and provide shelter for future generations.*

**Vedanta Case and Beyond: The Climate Laws of India**

India's strides towards enacting robust climate laws have ignited a beacon of hope in the global fight against climate change. From the snow-capped peaks of the Himalayas to the bustling

[17] *Native Village of Kivalina v. Exxonmobil* [2009] N.D. Cal. 663, [2009] F. Supp. 2d 863.
[18] Expert Group on Global Climate Obligations, 'Oslo Principles' (Wikipedia, March 2015) <https://en.wikipedia.org/wiki/Oslo_Principles> accessed 13 July 2023.

streets of Mumbai, the nation has recognized the urgent need for transformative action. Through ambitious targets and groundbreaking policies, India has become a front-runner in the race to safeguard our planet's future. The introduction of the *Green India Mission*, which aims to increase forest cover and restore ecosystems, showcases a commitment to preserving biodiversity and combating deforestation. In 2010, India took a significant step forward by enacting the *National Green Tribunal Act*, establishing the *National Green Tribunal (NGT)* as a specialized environmental court. The NGT has played a crucial role in enforcing environmental laws and addressing climate-related issues, offering an accessible forum for affected communities to seek justice. It has been instrumental in handling cases related to air pollution, deforestation, and industrial pollution, among others. The Vedanta (Niyamgiri) case[19] garnered widespread attention and set a precedent for future environmental and tribal rights cases in India. It showcased the NGT's role as a specialized tribunal dedicated to adjudicating environmental disputes and upholding the principles of sustainable development.

In a world grappling with the existential threat of climate change, the necessity of climate laws has never been more apparent. As India strides forward on its path towards a greener future, its commitment to enacting and implementing robust climate legislation sets a powerful example for nations worldwide. The challenges we face are immense, but through comprehensive climate laws, we can pave the way for a resilient, sustainable, and harmonious coexistence with our environment. Now, more than ever, we are in dire need of climate laws to secure a safer and brighter future for all.

**Youthful crossroads: Navigating the climate crisis toward a brighter or bleaker future**

The new generation holds immense potential to lead the way in addressing climate change. With their passion, innovation, and drive for a better future, they can play a pivotal role in curbing the effects of climate change.

Movies like *"Elephant Whisper: A Documentary on Climate Change"* and recent examples highlight the transformative impact the younger generation can have in driving positive change. The documentary "Elephant Whisper" serves as a powerful example of how the new generation can make a difference. A magic created by two women- Guneet Monga and Kartiki Gonsalves,

[19] *Vedanta Limited v. State of Tamil Nadu & Ors.* [2018] SC Appeal No. 87, [2018] 6 SCC 235.

showcases the dedication of young conservationists who work alongside experienced experts like *Dr. Maya Roberts*, employing advanced tracking technologies and collaborating with local communities to develop sustainable solutions and eventually protect elephants and theirhabitats from the impacts of climate change. The film captures their determination, innovative approaches, and unwavering commitment to conservation. Through their actions, they inspire others, especially young people, to join the fight against climate change.

The documentary begins by highlighting the vital role elephants play in maintaining a healthy ecosystem. Elephants are known as *"ecosystem engineers*[20]*"* because their feeding habits and movement patterns contribute to forest regeneration and create water sources for other animals. However, as climate change intensifies, it disrupts the delicate balance of ecosystems and poses significant challenges for elephants. As the film unfolds, viewers witness the devastating effects of climate change on elephant populations and their habitats. Rising temperatures, prolonged droughts, and erratic rainfall patterns lead to food and water scarcity, pushing elephants into conflict with humans as they search for sustenance. The encroachment of humansettlements and agricultural activities further exacerbate the situation, resulting in increased human-elephant conflict and habitat fragmentation.

Throughout the film, the emotional connection between the researchers and the elephants becomes evident. The "whispers" refer to the deep understanding and empathy developed by the scientists, enabling them to comprehend the elephants' needs and communicate their plight effectively. Ultimately, "Elephant Whisper: A Documentary on Climate Change" serves as a wake-up call, highlighting the urgent need for global action to address climate change and protect vulnerable species like elephants. It encourages viewers to recognize the interconnectedness of all life on Earth and inspires them to support conservation efforts, adopt sustainable practices, and advocate for policies that mitigate climate change's adverse effects on our planet's biodiversity.

In recent years, young activists like *Greta Thunberg* have become prominent voices in the fight against climate change[21]. Thunberg's powerful speeches and global strikes have galvanized millions of young people worldwide, demanding urgent action from governments and corporations to address climate change. Her passion and determination have resonated with

[20] Think Wildlife Foundation, 'Why are elephants considered ecosystem engineers?' (Think wildlife foundation, June 2021) <https://thinkwildlifefoundation.com/elephants-are-ecosystem-engineers/> accessed 13 July 2023.
[21] Linda Givetash, 'How teen Greta Thunberg shifted world's gaze to climate change' *NBC News* (Switzerland, 17 August 2019) <https://www.nbcnews.com/news/world/how-teen-greta-thunberg-shifted-world-s-gaze-climate-change-n1043151> accessed 10 July 2023.

young people, sparking a wave of climate activism and awakening a sense of responsibility to protect the planet.

The new generation's ability to leverage technology and social media has played a significant role in raising awareness about climate change. Platforms like Instagram, and Twitter, have become powerful tools for sharing information, inspiring action, and mobilizing communities. Young influencers and activists utilize these platforms to educate their peers, share sustainable practices, and advocate for climate-friendly policies. They harness the power of advanced idioms and catchy phrases to create engaging content that resonates with audiences, making climate action accessible and appealing. Moreover, *young entrepreneurs* are driving innovation and developing sustainable solutions to combat climate change. They are using advanced technologies, such as artificial intelligence and renewable energy systems, to create scalable and eco-friendly alternatives. Examples include the development of innovative carbon capture technologies, sustainable fashion brands, and food startups focused on plant-based alternatives. These young innovators are disrupting traditional industries and demonstrating that profitability and sustainability can go hand in hand[22].

Educational institutions also play a crucial role in shaping the new generation's perspective on climate change. Many schools and universities now integrate environmental education into their curricula, teaching young minds about the science, impacts, and solutions related to climate change. Students are encouraged to think critically, analyze complex environmental issues, and propose innovative solutions. This knowledge equips them to become future leaders and change-makers in the global fight against climate change. Collaboration and networking among young people are essential for maximizing their impact. Global youth-led initiatives, such as the *Youth Climate Summit* and the *Global Youth Biodiversity Network*, provide platforms for young activists and innovators to connect, share experiences, and develop collective strategies. These networks foster collaboration, exchange ideas, and amplify the collective voice of the new generation in driving climate action to unlock a sustainable future.

*The Power of One: Beyond the Limelight*

*Dr. Rajendra K. Pachauri*, former chair of the Intergovernmental Panel on Climate Change (IPCC) and Nobel Peace Prize laureate in 2007, has dedicated his career to raising awareness

[22] Chad Frischmann, 'The young minds solving climate change' (Bright Sparks Sustainability, March 2019) <https://www.bbc.com/future/article/20190327-the-young-minds-solving-climate-change> accessed 13 July 2023.

about the pressing issue of climate change. Through his influential role in the IPCC, he has played a pivotal part in shaping global understanding of climate science and its impacts. Dr. Pachauri's efforts have been instrumental in highlighting the urgency of addressing climate change on an international scale.

*Saalumarada Thimmakka*, an environmentalist from Karnataka, has become an inspiring symbol of the power of individual action in combating climate change. Known as the *"Mother of Trees,"* Thimmakka has single-handedly planted and nurtured approximately 400 banyan trees. Her remarkable dedication showcases the importance of reforestation efforts and the role that every person can play in restoring ecosystems, mitigating carbon emissions, and creating a sustainable future.

*Abdul Kareem*, a fisherman from Kerala, exemplifies the potential for local communities to spearhead impactful environmental initiatives. Recognizing the significance of mangrove forests in protecting coastal areas from natural disasters and mitigating climate change, Kareem led a *community-driven mangrove conservation project*[23]. By preserving and restoring these vital ecosystems, he has demonstrated the power of community involvement in climate resilience and sustainable coastal management.

*Dia Mirza*, a Bollywood actress and *UN Environment Goodwill Ambassador* for India, has actively utilized her platform to promote environmental sustainability and spread awareness about climate change. Through her influential voice, Mirza has engaged with a wide audience, inspiring individuals to adopt eco-friendly practices and advocating for policy changes to address environmental challenges. Her commitment to the cause serves as a powerful reminder that celebrities can leverage their influence to drive positive change and mobilize communities in the fight against climate change.

*These remarkable individuals, each in their way, have become beacons of hope and inspiration in the global battle against climate change. Their contributions highlight the importance of collective action and demonstrate that through personal commitment, community engagement, scientific expertise, and influential platforms, we can make a significant difference. By following in their footsteps, embracing sustainable practices, and demanding transformative*

[23] K.A. Shaji, 'Keeping alive a mangrove conservationist's legacy to protect Kerala coast' *Mongabay Series* (21Sept 2021) < https://india.mongabay.com/2021/09/keeping-alive-a-mangrove-conservationists-legacy-to-protect-Kerala-coast/> accessed 9 July 2023.

*change, we too can contribute to safeguarding our planet for future generations, ensuring that climate change is limited rather than catastrophic.*

**Sprinting towards sustainability: The race to zero**

In the global pursuit of the Race to Zero[24], India has emerged as a key player, making significant strides in its commitment to combat climate change. With its ambitious goals, innovative initiatives, and resolute actions, India stands tall on the path towards achieving a sustainable and zero-carbon future. While embracing both the successes and the potential fallouts, India is making progress in the Race to Zero.

***1.*** *A Herculean Task: Tackling Emissions and Energy Transition*

India, as one of the world's largest emitters of greenhouse gases, faces the formidable task of reducing emissions while ensuring equitable and inclusive development. The country's pledge to increase the share of non-fossil fuel-based energy sources and achieve 450 GW of renewable energy capacity by 2030[25] is a testament to its commitment. Through initiatives like the International Solar Alliance, India is leading global efforts to promote solar energy adoption and foster sustainable energy transition.

***2.*** *Adapting to Climate Impacts: Building Resilience*

India, like many countries, grapples with the impacts of climate change, including extreme weather events, rising sea levels, and water scarcity. The government has launched several adaptation initiatives, including the *National Action Plan on Climate Change* and the *National Disaster Management Authority*, to enhance resilience and protect vulnerable communities. *The Pradhan Mantri Fasal Bima Yojana*, a crop insurance scheme, safeguards farmers against climate-related risks, reducing their vulnerability and ensuring food security.

***3.*** *Sustainable Urbanization: Creating Smart and Green Cities*

India's rapid urbanization poses unique challenges in achieving sustainability targets. However, the government's Smart Cities Mission promotes the development of energy-efficient

[24] Jitendra Bisht and Soumya Singhal, 'India's Road to Net-Zero' *The Diplomat* (26 Nov 2021) <https://thediplomat.com/2021/11/indias-road-to-net-zero/> accessed 13 July 2023.
[25] R K Singh, 'India to achieve 50% clean energy share, 500 GW RE capacity targets before 2030 deadline' (The Economic Times, November 2021) <https://economictimes.indiatimes.com/industry/renewables/india-to-achieve-50-clean-energy-share-500-gw-re-capacity-targets-before-2030-deadline- Singh/article show/87604552.cms> accessed 12 July 2023.

infrastructure, intelligent transportation systems, and sustainable waste management. Cities like Chandigarh and Pune are pioneering innovative practices, demonstrating that urban growthcan be balanced with environmental considerations. The transformative *"Jal Jeevan Mission"* aims to provide clean drinking water to all rural households, addressing water scarcity and promoting sustainable water management.

***4.*** *A Balancing Act: The Fallout of Economic Growth*

India's pursuit of economic growth presents a delicate balancing act between development and environmental sustainability. Industrialization and rapid urban expansion have led to challenges such as air pollution and deforestation. However, initiatives like the *National Clean Air Programme* and the *Compensatory Afforestation Fund Management and Planning Authority (CAMPA)* strive to tackle these issues. The introduction of electric mobility and policies promoting circular economy principles[26] are steps towards a greener and more sustainable economy.

***5.*** *Global Collaborations: A United Effort for Climate Action*

India recognizes that global collaboration is essential in achieving the goals of the Race to Zero campaign. The country actively participates in international initiatives like the Paris Agreement and collaborates with other nations to exchange best practices and technology transfer. Prime Minister Narendra Modi's call for an International Solar Alliance demonstrates India's commitment to fostering global partnerships to address climate change collectively.

***6.*** *Renewable Energy Revolution: Powering the Future*

India has been steadfast in its efforts to harness the power of renewable energy sources. Through initiatives such as the National Solar Mission and ambitious targets for wind energy capacity, India has become a global leader in renewable energy expansion. The success of projects like the *Kurnool Ultra Mega Solar Park* and the *Kamuthi Solar Power Project* demonstrates India's commitment to clean energy transition. By embracing solar and wind power, India is reducing its reliance on fossil fuels and making significant contributions to the Race to Zero.

***7.*** *Energy Efficiency Initiatives: Elevating the World's Potential*

[26] Paul Ekins, Teresa Domenech, Paul Drummond, Raimund Bleischwitz, Nick Hughes, Lorenzo Lotti, 'The Circular Economy: What, Why, How and Where' (2019) OCED Journal 17.

India has prioritized energy efficiency as a critical component of its sustainability agenda. The *"Perform, Achieve, and Trade" (PAT)* scheme[27] and the implementation of LED lighting programs have demonstrated remarkable results in reducing energy consumption and carbon emissions. The success of these initiatives has led to a significant decline in energy intensity, enhancing India's position in the global Race to Zero. However, challenges such as limited awareness and implementation gaps remain, highlighting the need for continued efforts to scale up energy efficiency practices across sectors.

***8.*** *Sustainable Transport Solutions: Towards Sustainable Future*

Recognizing the environmental impact of transportation, India has been promoting sustainable alternatives. The electrification of public transportation, such as the introduction of electric buses and the expansion of metro networks, is gradually reducing emissions from the transportation sector[28]. Additionally, policies like the *Faster Adoption and Manufacturing of Electric Vehicles (FAME)* scheme[29] and the promotion of clean fuels demonstrate India's commitment to embracing sustainable mobility. However, infrastructure gaps and the need for wider adoption of electric vehicles present ongoing challenges in achieving comprehensive decarbonization in the transport sector.

*India's journey in the Race to Zero is not without its challenges. Rapid urbanization, growing energy demands, and the need to balance economic development with environmental sustainability pose complex obstacles. Moreover, addressing the fallout of climate change, such as extreme weather events and the vulnerability of marginalized communities, demands concerted efforts. India's success in the Race to Zero hinges upon collaborative partnerships with other nations, sharing knowledge, resources, and best practices to overcome shared challenges and achieve collective goals. While progress has been made as the world rallies together in this race, there is still much work to be done to ensure the global fight against*

[27] Divita Bhandari, Gireesh Shrimali, 'The perform, achieve and trade scheme in India: An effectiveness analysis' (2018) 81 Science Direct 4.
[28] IBEF, 'Electrification of India's Public Sector Transport' (IBEF, October 2022) <https://www.ibef.org/blogs/electrification-of-india-s-public-sector-transport> accessed 10 July 2023.
[29] Pooja Yadav, 'Explained: What is FAME-India Scheme India Times' (12 March 2023) <https://www.indiatimes.com/explainers/news/explained-what-is-fame-india-scheme-595356.html> accessed 11 July 2023.

**Conclusion: Race against time**

The world we know is under siege, and the culprits behind its slow demise are a ticking time bomb. Climate change, like a wolf in sheep's clothing, stealthily infiltrates our lives, wreaking havoc in its wake. It's a perfect storm fueled by a Pandora's box of elements. The burning of fossil fuels, that proverbial straw that broke the camel's back, releases a deluge of greenhouse gases into the atmosphere, trapping heat like a thief in the night. Deforestation, the sacred trees falling like dominoes, strips the Earth of its natural armor, leaving it vulnerable to the whims of a changing climate. *Methane,* a potent greenhouse gas, emerges from its hiding place, like a snake slithering through the grass, released from agriculture, landfills, and livestock farming. And let us not forget the whisper of black carbon, the soot-laden messenger of climate change, darkening our skies and warming the planet with its invisible touch. These elements conspire together, an unholy alliance, pushing our world towards the edge of an abyss. It is our collective duty to confront these dark forces head-on, extinguish the flames of destruction, and restore the balance of our fragile planet.

The time has come for us to awaken from our slumber and face the storm head-on. We must rise above the tumultuous seas of complacency and ignorance, for the fate of our planet hangs in the balance. Together, let us become the catalysts of change, harnessing the power of innovation, conservation, and sustainable practices. It is in our hands to rewrite the narrative of our future, to mend the wounds inflicted upon our planet, and to restore harmony in the delicate symphony of nature. The battle against climate change may be arduous, but we must heed the call to action. We cannot afford to bury our heads in the sand and ignore the burning truth before us. The elements of climate change are formidable adversaries but united, we possess the strength to tip the scales in favour of a sustainable world. Let us be the guardians of our planet, the vanguards of hope, and the architects of a future where the forces of nature and human ingenuity coexist in harmonious equilibrium. The time to act is now, for in this epic struggle against climate change, the fate of generations to come rests upon our shoulders.

As we move forward, may our actions align with the words of reverence*: "Whatever I dig from thee, O Earth, may that have quick recovery again. O purifier, may we not injure thy vitals or thy heart*[30]*."*

[30] Ralph T.H. Griffith, 'Hymns of the Atharva Veda' [1895].

# RTI AND E-GOVERNANCE: EXAMINING THE INTEGRATION OF RTI WITH E-GOVERNANCE INITIATIVES AND ITS IMPACT ON TRANSPARENCY AND EFFICIENCY

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## Introduction

The transformative impact of information and communication technologies (ICTs) on the functioning of modern states and their governance paradigms has been a subject of extensive academic discourse. Simultaneously, the promulgation of the Right to Information (RTI)[1] Act in India in 2005 stands as a pivotal moment in the nation's democratic trajectory, bestowing upon citizens the crucial prerogative to access government-held information. These two concurrent trajectories-the evolutions of e-governance and the establishment of RTI-have converged in the Indian administrative milieu, giving rise to an intriguing and multifaceted interplay. The RTI Act, per its legislative intent, enshrines principles of transparency, accountability, and citizen empowerment within the government's administrative machinery. It serves as a potent tool for fostering citizen-state relations predicated on an ethos of openness and public participation, integral to the democratic ethos. On the other hand, e-governance initiatives epitomize the utilization of ICTs to redefine the contours of governance, engendering efficiency, and expediency in service delivery.[2]

These initiatives are instrumental in reshaping the bureaucratic landscape and realigning governance to the digital age. The integration of RTI with e-governance initiatives within the Indian governance framework. The aim is to scrutinize the synergistic effects and potential dissonance emanating from this convergence and its overarching implications for transparency and efficiency in governance. By discerning the intricacies of this integration, the research aspires to distil the latent dynamics that underlie this confluence.[3] In a global context where the fusion of technology and governance is increasingly prevalent, India's unique blend of RTI

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[1] *Available at* https://rtionline.gov.in/(last visited on November 6, 2023).

[2] Pandey, Jitendra Kumar Pandey. "Strategic collaboration and E-Governance performance: A study of select projects in India." PhD diss., 2022.

[3] Routray, Prasanna Kumar. "RTI: A Tool of Good Governance." *Sanshodhan* 11, no. 1 (2022): 38-47.

and e-governance initiatives provides a compelling case study. As such, the research endeavors to inform policymakers, scholars, and stakeholders about the ramifications of this fusion. In examining the interface between RTI and e-governance in India, this study also serves as an exemplar for nations navigating similar transformative trajectories. To elucidate the nuances of this intricate amalgamation, the research adopts a mixed-methods approach.

This entails the amalgamation of quantitative and qualitative analysis, fusing surveys, interviews, and an exhaustive review of secondary sources. The synergistic utilization of these methodologies facilitates the comprehensive elucidation of this multifaceted terrain, allowing for a robust understanding of the phenomena under investigation. To investigate into the intricacies of this amalgamation, this research employs a mixed-methods approach, combining both quantitative and qualitative analysis.[4]

This approach includes the amalgamation of surveys, interviews, and a comprehensive review of secondary sources, allowing for a holistic and robust understanding of the phenomena under investigation. Subsequent sections of this research paper delve deeper into the conceptual framework that underpins RTI, e-governance, transparency, and efficiency. The study explores the legal and technological foundations that underpin the integration of these two forces, highlighting the challenges that this synergy poses and delineating the transformative impacts on transparency and efficiency. As well, case studies are presented to illustrate these theoretical constructs in practice.[5] The research also critically examines challenges and concerns that arise from this integration, including issues related to privacy, data security, and the digital divide. It concludes with a set of policy and technological recommendations, which are poised to pave the way for future actions and further advancements in this domain. In this research paper serves as a testament to the symbiotic relationship between technology and governance, epitomized by the convergence of RTI and e-governance in the Indian context.[6] It strives to be a guiding light, navigating stakeholders through the intricate realm of governance transformation. The discoveries unveiled within this paper carry far-reaching implications for the future trajectory of governance, not only in India but also on the global stage. It signifies the inexorable march towards a more transparent, accountable, and efficient era of citizen-state relations, embodying the progressive evolution of democratic governance in the digital age.

[4] Sharma, Prity. "An Understanding of E-Governance and Its Applicability in India." *Dynamics of Public Administration* 40, no. 1 (2023): 87-93.

[5] Dangi, Ram Kumar, Ashok Kumar Shukla, and Sanjiv Saraf. "Access to Government Information in India: Opportunities and Challenges." (2022).

[6] Singh, Aman. "E-Governance: Concepts, Issues and Challenges." (2022): 74-98.

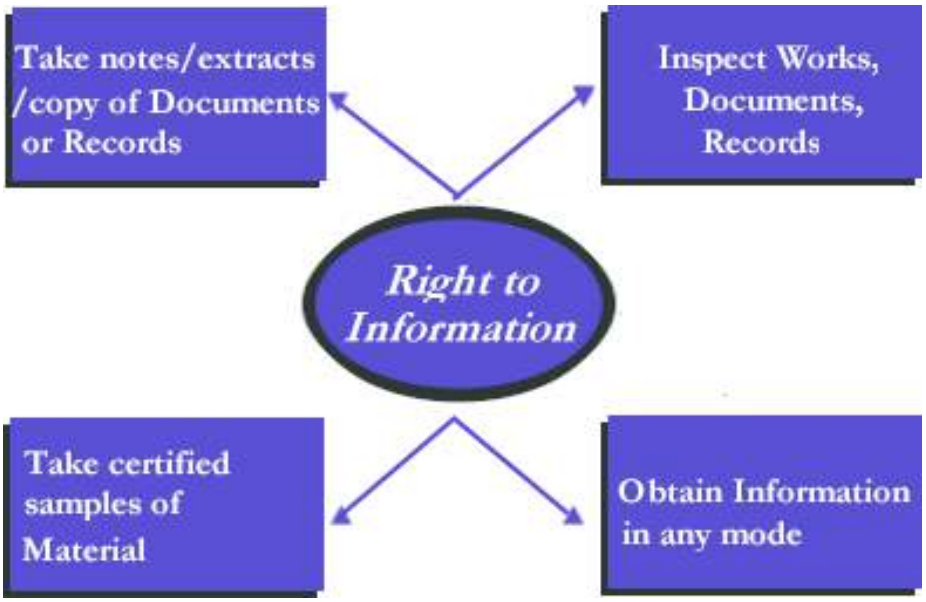
## Conceptual Framework

The conceptual framework underpinning the integration of the Right to Information (RTI) Act with e-governance initiatives in India encompasses three pivotal domains: the RTI Act itself, the landscape of e-governance initiatives, and the overarching goals of transparency and efficiency within the governance paradigm.

## The Right to Information (RTI) Act

The RTI Act, promulgated in India in 2005,[7] represents a watershed moment in the nation's democratic evolution. It enshrines the fundamental principle that access to information held by public authorities is the right of every citizen. The Act catalyzed a paradigm shift by bestowing citizens with the potent tool of transparency and accountability. It institutionalized the notion that governmental information is a public resource, fundamentally altering the traditional contours of secrecy that had shrouded the workings of the state. Under the aegis of the RTI Act, information once veiled in obscurity became accessible to the public, transforming the dynamics of citizen-state relations. The Act not only enables citizens to scrutinize the actions and decisions of the government but also empowers them to demand accountability from public officials. It serves as a quintessential instrument for fostering citizen participation, bringing governmental processes and actions under public scrutiny, and strengthening the democratic fabric of the nation.[8]

[7] The Right to Information (RTI) Act, 2005 *available at* https://rti.gov.in/(last visited on November 6, 2023).
[8] Singh, Shweta. "Right to Information Act-Theory vs Implementation." *Jus Corpus LJ* 3 (2022): 546.

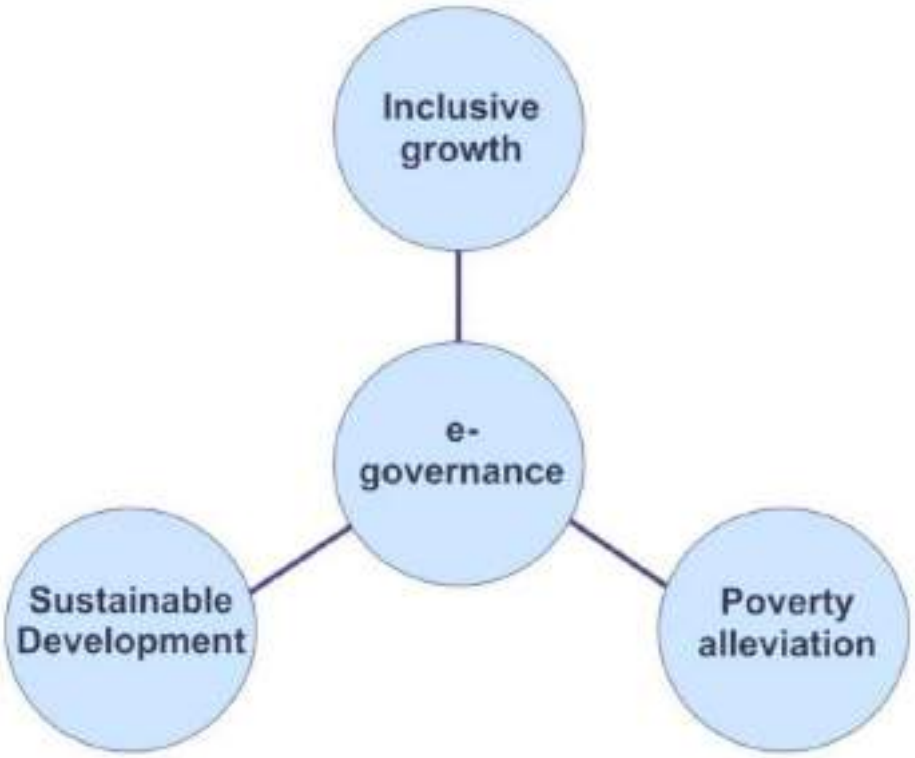



**Source:** *Available at* https://www.tn.gov.in/rti/ (last visited on November 6, 2023).

**E-Governance Initiatives in India**

India's embrace of e-governance initiatives exemplifies the nation's commitment to leveraging technology for the enhancement of governance. E-governance initiatives encompass a broad spectrum of technological interventions aimed at reengineering and reimagining government operations. These interventions include the establishment of digital platforms, the integration of information systems, and the automation of processes to facilitate the efficient delivery of public services. E-governance initiatives are designed to surmount the bureaucratic labyrinth, minimize the scope for discretion, and streamline public service delivery. They align with the imperatives of the digital age, offering real-time interactions between citizens and government. E-governance platforms not only expedite service delivery but also enhance the quality of public services, facilitating a citizen-centric approach.[9]

[9] Singh, Manoj Kumar, and Rahul Saxena. "Good Governance And E-Governance." *idealistic Journal of Advanced Research in Progressive Spectrums (IJARPS) eISSN-2583-6986* 2, no. 12 (2023): 19-26.




**Source:** *Available at* https://www.drishtiias.com/to-the-points/paper4/information-sharing-and transparency-in-government (last visited on November 6, 2023).

**Transparency and Efficiency as key objectives**

Transparency and efficiency are twin lodestones that guide the compass of modern governance, and they constitute the overarching objectives that underpin both the RTI Act and e-governance initiatives in India.[10]

*Transparency*- Transparency, as a foundational principle of good governance, engenders openness in governmental operations. It ensures that the actions of the government are conducted in the public eye, obviating secrecy and enabling citizens to access information pertaining to government decisions, policies, and actions. Transparency serves as a bulwark

[10] Mandowara, Khushi, and Vineeth Thomas. "Proactive transparency in governance: A comparative study of digitalization of the Right to Information Act in central and state governments in India." *Asian Journal of Comparative Politics* (2023): 20578911231157437.

against corruption and misuse of public resources, enhancing public trust in government institutions.[11]

*Efficiency*- Efficiency, on the other hand, encapsulates the drive towards optimized use of resources and the expeditious delivery of public services. E-governance initiatives are oriented towards eradicating bureaucratic bottlenecks, automating processes, and reducing red tape, thereby fostering efficiency and timeliness in service delivery. Efficient governance is critical for ensuring that the benefits of public policies and services reach citizens in a timely and effective manner. The conceptual framework encompasses the RTI Act, e-governance initiatives, and the pivotal goals of transparency and efficiency, setting the stage for an in-depth exploration of how these elements interlace and their impact on the Indian governance landscape.[12] The ensuing sections of this paper will delve into the intricacies of their integration and the ensuing implications for transparency and efficiency in India's governance paradigm.

**Synergies and Tensions**

While both the RTI Act and e-governance initiatives espouse transparency and efficiency as fundamental tenets, their confluence presents a nuanced interplay. On one hand, the RTI Act acts as a torchbearer for transparency, enabling citizens to access government information. On the other hand, e-governance initiatives embody efficiency in public service delivery, driven by the integration of technology to streamline operations. These parallel pursuits are not necessarily in conflict but rather intersect in ways that merit careful examination. The harmonious synergy lies in the potential for e-governance initiatives to facilitate the objectives of the RTI Act. By digitizing government records and processes, e-governance creates a fertile ground for transparency. It provides a structured and accessible repository of information, rendering it more amenable to RTI requests. Furthermore, e-governance systems can expedite the dissemination of information, aligning with the principle of timely response enshrined in the RTI Act. In this manner, e-governance becomes an enabler, not only for efficiency but also for transparency, affording citizens easier access to government information.[13]

[11] Sharma, Aanchal, and Dehradun Uttarakhand India. "Role of Right to Information Act in Strengthening Administrative Transparency: A Cross-Sectional Review."

[12] Nayak, Bibhuti Bhusan. "Right to Information and the Grievance Redressal System in India." *Rowman & Littlefield, 2023.*

[13] Schottli, Jivanta, and Himanshu Jha, eds. Globalization and Governance in India. *Taylor & Francis*, 2023.

However, potential tensions also loom within this integration. E-governance, driven by a quest for efficiency, may inadvertently limit transparency. Automation and computerization of processes could lead to information silos or, in some cases, undermine the comprehensibility of data for citizens.[14] The rapid digitization of records may introduce complexities in responding to RTI requests, given the varied and often intricate data repositories across government departments. Therefore, this integration requires a judicious balance.[15] The challenge is to navigate the confluence of technology and transparency without eroding the fundamental principles enshrined in the RTI Act. Striking this equilibrium is a complex endeavor, requiring a nuanced understanding of the interplay between these dual imperatives and a well-calibrated approach to implementing e-governance initiatives.[16] The mechanisms and legal framework governing the integration of the RTI Act with e-governance initiatives in India. Subsequently, the paper will scrutinize the extent to which this integration enhances transparency and efficiency, identifying key success factors, challenges, and lessons learned from notable case studies. This comprehensive examination will provide a detailed account of how the integration of RTI and e-governance initiatives influences governance in India and the broader implications for similar contexts worldwide.[17]

## Integration of RTI and E-Governance

### *Legal Framework and Mechanisms*

The integration of the Right to Information (RTI) Act with e-governance initiatives in India is underpinned by a carefully crafted legal framework and a set of operational mechanisms. The legal architecture governing this integration seeks to reconcile the objectives of the RTI Act, particularly transparency, with the efficiency-oriented goals of e-governance. Central to this framework is the right of citizens to access government information, enshrined in the RTI Act, which acts as a lodestar for transparency and accountability.[18] Mechanisms have been put in place to ensure that the principles of the RTI Act are not only preserved but synergized with the technological advancements introduced by e-governance initiatives. These mechanisms encompass the appointment of designated Public Information Officers (PIOs) and the

[14] Jha, Rohini, and Shradha Shivani. "Adoption of e-Governance in India."
[15] Selaiyur, Chennai, and Tamil Nadu. "A Study on Promote E-Governance During Precise to Information: A Case Study of India." (2019).
[16] Anand, Darpan, and Vineeta Khemchandani. "Study of e-governance in indie: a survey." *International Journal of Electronic Security and Digital Forensics* 11, no. 2 (2019): 119-144.
[17] Lal, Ruchi. "Critique of Legal Framework Regulating E-Governance in India." *Critique* (2019).

[18] *Supra* note 17.

establishment of a decentralized framework for processing RTI requests. PIOs play a pivotal role in facilitating the flow of information, ensuring that citizens can exercise their right to information effectively. This decentralized structure aligns with the principles of e-governance by enabling localized responses to RTI requests. Besides, mechanisms for the proactive disclosure of information are integral to this integration. Government departments and agencies are required to publish a range of information proactively, making it accessible to citizens without the necessity of filing RTI applications. This fosters transparency and reduces the burden on the system, a fact that resonates with the efficiency goals of e-governance.


**Source:** *Available at* https://www.civilserviceindia.com/subject/General-Studies/notes/probity-in-governance-right-to-information.html(last visited on November 6, 2023).

*Technological Infrastructure*

The integration of RTI with e-governance in India is intrinsically linked to technological infrastructure. E-governance initiatives rely on advanced IT systems to automate and streamline government processes. The digital transformation underpins the efficient delivery of public services and administration. Technological infrastructure plays a multifaceted role in facilitating the implementation of the RTI Act and advancing the objectives of transparency.[19] Central to this infrastructure is the establishment of online portals and databases that provide a repository of government information. Citizens can access information from these digital platforms, thereby reducing the administrative overhead and simplifying the process of responding to RTI requests. Additionally, electronic communication channels are vital for the

[19] Routray, Prasanna Kumar. "RTI: A Tool of Good Governance." *Sanshodhan* 11, no. 1 (2022): 38-47.

expeditious transmission of responses and information to RTI applicants, conforming to the Act's stipulated timeframes.[20]

The integration extends further with the deployment of data analytics and artificial intelligence (AI) technologies. These tools can assist in categorizing and indexing government records, facilitating quick retrieval and, by extension, timely responses to RTI requests. AI also holds the potential to analyse large datasets, which may prove invaluable in identifying patterns of non-disclosure or promoting proactive disclosure of pertinent information. However, this technological infrastructure is not bereft of challenges.[21] The digital divide, with discrepancies in access to technology and digital literacy, poses a significant hurdle. Bridging this divide to ensure equitable access to RTI-related information is an ongoing concern. Moreover, issues related to data privacy and security have surfaced, warranting stringent safeguards to protect sensitive information while ensuring transparency.[22]

**Implementation Challenges**

The integration of RTI with e-governance, while promising, has encountered several implementation challenges. One of the foremost hurdles lies in balancing the imperative of transparency with the demand for efficiency. E-governance initiatives, while streamlining government processes, must not curtail transparency or obfuscate the ability of citizens to access information. Striking this balance necessitates careful planning and an awareness of the potential trade-offs. Operational challenges include the digitization of voluminous records, ensuring the interoperability of various government databases, and creating user-friendly interfaces for citizens to access information.[23] These challenges can be compounded by issues of resource availability, capacity building, and technical expertise within government departments. Also, the timely disposition of RTI requests is a persistent challenge. While e-governance endeavors to expedite administrative processes, backlogs in processing RTI applications can occur due to factors such as a shortage of PIOs, a lack of awareness, or inadequate infrastructure for managing requests.[24]

[20] Singh, Aman. "E-Governance: Concepts, Issues and Challenges." (2022): 74-98.
[21] Muttoo, Sunil K., Rajan Gupta, Saibal K. Pal, and Rajan Gupta. "Regional analysis of e-governance in India." *E-Governance in India: The Progress Status* (2019): 37-78.
[22] Thammaiah, D. Menaka. *E-Governance Initiatives in Karnataka-A Case Study of Bhoomi Project in Kodagu District*. Clever Fox Publishing, 2023.

[23] *Supra* note 4.
[24] Thakur, Kuldip Singh. "Good Governance: Analyzing the Government of India's Numerous Initiatives and its Challenges." *resmilitaris* 13, no. 2 (2023): 6803-6810.

Privacy concerns emerge when dealing with sensitive government information, and data breaches may have far-reaching consequences. Thus, striking the right balance between transparency and data security becomes paramount. The integration of the RTI Act with e-governance initiatives in India is a multifaceted undertaking, anchored in a robust legal framework and empowered by technological infrastructure. However, it is not devoid of challenges, necessitating careful navigation of the delicate balance between transparency and efficiency, addressing issues related to the digital divide, data privacy, and expeditious response to RTI requests.[25] The subsequent sections of this research paper will delve into the tangible impacts of this integration on transparency and efficiency in the Indian governance landscape, illuminating both its strengths and limitations.

**Privacy and Data Security**

The integration of the RTI Act with e-governance initiatives necessitates careful consideration of privacy and data security concerns. As government systems become increasingly digitized, the amount of sensitive information stored in digital repositories escalates. Citizens' right to access information must be balanced with the government's obligation to safeguard this data. Privacy concerns are not only confined to issues of data storage but also extend to the potential misuse of personal information.[26] While the RTI Act is a powerful tool for promoting transparency, it can inadvertently lead to the exposure of sensitive personal data. Balancing the need for public access with the protection of individual privacy is a conundrum that calls for robust data protection measures, encompassing encryption, access controls, and anonymization techniques. Data security is of paramount importance to prevent unauthorized access, tampering, or breaches. Stringent cybersecurity protocols, secure databases, and regular security audits are imperative in safeguarding sensitive government information. The integration of data protection and cybersecurity measures into e-governance systems is essential to mitigate risks and instill public confidence in the security of their personal data.[27]

[25] GOYAL, ABHAY. "Hassles in Implementation of Legal Provisions of Right to Information Act: A Survey Based analysis of RTI Activities."

[26] Dhal, Sarita, Deepanjali Mishra, and Nishikanta Mishra. "e-Governance, Issues, and Challenges of m-Governance in India." *Strategies for e-Service, e-Governance, and Cybersecurity: Challenges and Solutions for Efficiency and Sustainability* (2021): 187.

[27] Anand, Darpan, and Vineeta Khemchandani. "Study of e-governance in India: a survey." *International Journal of Electronic Security and Digital Forensics* 11, no. 2 (2019): 119-144.

**Digital Divide**

The digital divide, characterized by disparities in access to technology and digital literacy, poses a significant challenge to the effective integration of RTI and e-governance. While urban areas and well-connected regions may benefit from the proliferation of digital services, rural and marginalized communities often lack the necessary infrastructure and skills to engage with these systems effectively. To ensure equitable access to government information and services, it is imperative to bridge this digital divide. Government initiatives must focus on expanding digital infrastructure, enhancing digital literacy, and providing offline alternatives for citizens who may not have internet access. Accessible and user-friendly platforms, available in multiple languages, can cater to a diverse populace, enabling a broader spectrum of citizens to exercise their right to information.[28]

**Misuse of RTI for Harassment**

One unintended consequence of the integration of the RTI Act with e-governance is the potential misuse of this powerful tool for harassment or personal vendettas. The Act's provisions, which allow citizens to seek information, can be exploited to inundate government departments with an excessive number of requests, often with frivolous or vexatious intentions. Such misuse can overwhelm government resources and divert attention from legitimate requests. This challenge necessitates the implementation of mechanisms to filter out frivolous requests and impose penalties for misuse. Striking a balance between enabling citizens' access to information and preventing the misuse of the Act is a complex endeavor that warrants constant vigilance and adaptation of policies and procedures.[29] In the integration of the RTI Act with e-governance initiatives in India is a multifaceted undertaking, marked by the need to balance transparency and efficiency. Privacy and data security, the digital divide, and the potential misuse of the RTI Act for harassment are challenges that must be addressed in this endeavor. The ensuing sections of this research paper will explore the tangible impacts of this integration on transparency and efficiency within the Indian governance landscape.[30] This exploration will illuminate the strengths and limitations of this integration, offering insights into its potential and the lessons learned from notable case studies.

[28] Sharma, Ms. Anupama, and Harjeet Kaur Virk. "An analytical study of India's efforts to ensure good governance." *Asian Journal of Multidimensional Research* 12, no. 8 (2023): 31-40.

[29] Deora, Kritika, and Priya Saroj. "An Analysis of the Perception and Realities: Right to Information Act, 2005." *Issue 5 Indian JL & Legal Rsch.* 4 (2022): 1.

[30] Taak, Sangeeta, and Manjit Kaur. "'PENALTIES'UNDER THE RIGHT TO INFORMATION ACT IN INDIA: AN ANALYSIS." *Multicultural Education* 8, no. 3 (2022).

## Impact of Integration on Transparency

*Access to Information*

The integration of the Right to Information (RTI) Act with e-governance initiatives in India has significantly transformed the landscape of transparency. Central to this transformation is the democratization of information. Citizens, once encumbered by bureaucratic processes andthe opacity of governmental operations, now enjoy unhindered access to a wealth of government-held data through digital channels. The digitization of government records and theestablishment of online portals have paved the way for citizens to access information with unparalleled ease. Requests for information can be filed online, and the responses can be received digitally, reducing the barriers to access and expediting the process. This newfound accessibility empowers citizens to scrutinize government actions, decisions, and policies, thereby enhancing transparency.[31] The proactive disclosure of information is another dimension of this transformation. Government departments are now obligated to publish a vast array of information, eliminating the need for citizens to file RTI requests for routine and frequently sought data. This not only streamlines the flow of information but also reduces the burden on government departments, fostering transparency and efficiency simultaneously. Likewise, technology-driven search functionalities enable citizens to navigate and filter through vast datasets efficiently. This is particularly valuable when seeking information from comprehensive databases, enhancing the accessibility of data and providing citizens with the means to independently explore governmental information.[32]

## Accountability and Oversight

The integration of RTI with e-governance initiatives in India has redefined the contours of accountability and oversight. One of the primary mechanisms through which this has transpired is the real-time scrutiny that citizens can now exercise over government actions. As information flows more freely, citizens, civil society organizations, and the media can monitor government decisions and actions, effectively holding public officials accountable. The electronic trail of information also bolsters the paper trail, enabling more robust oversight. With digital records

[31] Dangi, Ram Kumar, Ashok Kumar Shukla, and Sanjiv Saraf. "Access to Government Information in India: Opportunities and Challenges." (2022).

[32] Jameel, Yusra, and Alisha Chauhan. "Right to Information Is Fundamental to Strengthen the Democracy; Does Government Escalate the Right Successfully?" *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

and communication, it becomes increasingly difficult for public officials to obscure or manipulate information. This serves as a deterrent to any attempts at mismanagement, corruption, or unethical conduct. As well, digital platforms provide a conduit for citizens to report irregularities or corruption. Whistle-blowers can utilize the technology-driven channels to anonymously bring to light malpractices or misappropriations, thus fortifying the accountability framework. The convergence of RTI and e-governance thus functions as a checks-and-balances mechanism that upholds transparency and accountability.

**Reducing Corruption**

A paramount consequence of the integration of RTI with e-governance is the reduction of corruption within the Indian bureaucracy. Corruption often thrives in the shadows, exploiting information asymmetries and hidden decision-making processes. The newfound accessibility to information curtails these opportunities for malfeasance. By increasing transparency, the integration of RTI and e-governance minimizes the scope for corrupt practices, rendering it more challenging for public officials to engage in graft or embezzlement. Citizens, armed with information, can more readily detect and report instances of corruption.[33] Proactive disclosure of information can also prevent corruption before it transpires. When the public is aware of government contracts, budgets, and expenditures, it serves as a natural deterrent to corrupt practices. Knowing that their actions are subject to scrutiny, public officials are more likely to act with integrity. The integration of data analytics and AI technologies can assist in identifying patterns of corruption or misappropriation within government datasets. These technologies can help detect irregularities or discrepancies in financial records, procurement, or resource allocation, making it easier to identify and prevent corrupt practices.[34]

**Enhanced Civic Participation**

The integration of the RTI Act with e-governance initiatives has led to a surge in civic participation in the governance process. By providing citizens with easy access to government information, these integrated mechanisms empower individuals and organizations to engage more actively in shaping policies, scrutinizing public actions, and advocating for change. The transparency enabled by this integration facilitates meaningful public discourse, allowing citizens to make informed decisions, express their concerns, and hold government officials

[33] Dar, Showkat Ahmad. "RTI: A Powerful Tool for Promoting Transparency in." (2022).
[34] Acharya, Nirlipta. "Role of Right to Information in Promotion of Good Governance." *Issue 1 Int'l JL Mgmt. & Human.* 5 (2022): 52.

accountable. Online platforms, in particular, have become vibrant spaces for civic engagement. Citizens can use digital channels to voice their opinions, share feedback, and collaborate with others to address issues of public concern. Social media, discussion forums, and public comment sections on government websites offer a forum for dialogue between citizens and government authorities, thereby strengthening the participatory aspect of governance.[35]

**Trust in Government**

Transparency, facilitated by the integration of RTI with e-governance, is a cornerstone of trust in government. When citizens have open access to information, they are more likely to perceive government actions as legitimate and well-founded. This trust engenders a positive relationship between citizens and the government, where individuals have confidence in the decisions made and the way government operates. Trust in government is not only a measure of the effectiveness of public administration but also a critical factor in social cohesion and stability. When citizens trust their government, they are more likely to comply with laws, pay taxes, and participate in the democratic process. This trust fosters a harmonious and cooperative society. While the integration of RTI with e-governance in India has yielded significant benefits, it is not devoid of challenges and concerns. The rapid digital transformation, while promising, has led to issues of data privacy and security.[36]

Sensitive government information is at risk of breaches and unauthorized access, necessitating stringent data protection measures to prevent privacy infringements. The RTI Act with e-governance in India has yielded transformative impacts on transparency, fostering enhanced civic participation and trust in government. Nevertheless, it is essential to remain cognizant of the challenges and concerns that accompany this integration, as addressing these issues is pivotal to maintaining the integrity of the governance framework and safeguarding the rights and privacy of citizens. The subsequent sections of this research paper will delve into the impact of this integration on the efficiency of government operations, providing a comprehensive understanding of the interplay between transparency and efficiency within the Indian governance landscape.[37]

[35] Paul, Samuel, and Meena Nair. "1. Enhancing citizen voices in service delivery in India: the role of social accountability tools." *The State of Accountability in the Global South: Challenges and Responses* (2022): 22.
[36] Shetty, Mr. Shaswat, and Aarti Sukheja. "Unmasking the key challenges with respect to Right to Information(RTI) in India."

[37] Mishra, Shreyas, and Shefali Mishra. "The Right to Information Act, 2005 and the Approach of the Judiciary." *Part 1 Indian J. Integrated Rsch. L.* 2 (2022): 1.

## Impact of Integration on Efficiency

*Streamlining Government Processes*

The integration of the Right to Information (RTI) Act with e-governance initiatives in India has ushered in a paradigm shift in the efficiency of government operations. A cornerstone of this transformation is the streamlining of government processes through digitalization and automation. E-governance initiatives have introduced technology-driven solutions to replace manual and paper-based procedures, significantly expediting administrative functions. Government departments and agencies have digitized their records and implemented electronic document management systems, reducing the reliance on physical paperwork and manual record-keeping. This not only saves time but also reduces the likelihood of errors and data loss, enhancing the overall efficiency of record-keeping and retrieval. Likewise, workflow automation has been instrumental in expediting government processes.[38] Tasks that once required manual intervention and multiple layers of approval are now automated, enabling swift and error-free execution. This automation minimizes the time required for decision- making and implementation of policies and services, contributing to the government's efficiency.

## Reducing Bureaucratic Bottlenecks

A prominent outcome of the integration of RTI with e-governance in India is the reduction of bureaucratic bottlenecks that historically impeded the timely delivery of government services. The elimination of manual processes and the implementation of digital platforms have streamlined decision-making and reduced the scope for discretion, resulting in more efficient public service delivery. In the past, government departments often suffered from inefficiencies and delays due to bureaucratic red tape. E-governance initiatives have introduced structured workflows and standardized procedures, leading to greater transparency and predictability in government actions. This reduction in bureaucracy-driven impediments has translated into faster responses to citizen requests and a decrease in administrative delays.[39] As well, the electronic tracking of government actions and decisions has enhanced accountability within the bureaucracy. With digital records and audit trails, government officials are more accountable

[38] Rattan, Jyoti, and Vijay Rattan. "Eradicating Administrative Corruption Through Transparency in Public Governance: Global Scenario and the Right to Information Act, 2005, in India." *Indian Journal of Public Administration* 68, no. 2 (2022): 174-188.

[39] Malodia, Suresh, Amandeep Dhir, Mahima Mishra, and Zeeshan Ahmed Bhatti. "Future of e-Government: An integrated conceptual framework." *Technological Forecasting and Social Change* 173 (2021): 121102.

for their actions, which serves as an additional check on potential bureaucratic bottlenecks and inefficiencies.

**Timely Service Delivery**

One of the most visible impacts of the integration of RTI with e-governance is the significant improvement in the timely delivery of government services. E-governance platforms have streamlined service request processes, reduced the turnaround time for approvals, and facilitated real-time tracking of service delivery. For instance, citizens can now apply for various government services online, such as passport issuance, land records, and public health schemes. These applications are processed more rapidly and with greater accuracy, resulting in quicker service delivery. The availability of digital channels for filing requests and receiving responses has reduced the time and effort required for citizens to access government services. Also, the implementation of e-governance platforms has enabled citizens to track the status of their applications or requests in real time.[40] This transparency not only instils confidence in the system but also reduces uncertainties and anxieties associated with the waiting period for service delivery. The amalgamation of the RTI Act with e-governance initiatives has profoundly impacted the efficiency of government operations in India. It has streamlined government processes, reduced bureaucratic bottlenecks, and led to timely service delivery. The resultant efficiency enhancements not only fulfil the imperatives of good governance but also improve the overall citizen experience, underscoring the significance of the confluence of transparency and efficiency in the Indian governance landscape.[41]

**Cost Savings and Resource Optimization**

The integration of the Right to Information (RTI) Act with e-governance initiatives in India has yielded substantial cost savings and resource optimization. The adoption of digital platforms and automation has significantly reduced the need for physical infrastructure, paper,and manual labor. These resource-saving measures are not only environmentally sustainable but also contribute to the fiscal prudence of the government. The digitization of records has ledto substantial reductions in physical storage space, as well as the associated costs of

[40] Shewale, Bhojraj Yashwant, and Vani N. Laturkar. "Common Service Centers (Maha E-Seva Kendras): E-governance initiative in Maharashtra under Digital India." *International Journal of Research in Social Sciences* 9, no. 1 (2019): 541-554.

[41] Singh, K. S., and Sanjay Medhavi. "E-governance in Uttar Pradesh: Concept, initiatives and challenges." *International journal for research in applied science & engineering technology (IJRASET)* 9 (2021): 718-24.

maintenance and security. Moreover, the transition from paper-based communication to electronic correspondence has diminished printing and postal expenses, saving both time and financial resources. These cost reductions translate into more efficient resource utilization, which can be redirected to other pressing public needs.[42]

**Effective Resource Allocation**

Efficiency in government operations facilitated by the integration of RTI with e-governance extends to the effective allocation of resources. Government departments and agencies can leverage data analytics and digital tools to monitor resource utilization and allocate funds more judiciously. Real-time data and performance metrics enable policymakers to identify areas of excess expenditure or underinvestment, thus promoting evidence-based resource allocation. Furthermore, e-governance platforms support better coordination and collaboration among government entities. The sharing of data and insights across departments allows for a holistic view of resource needs and helps prevent duplication of efforts. This coordination enhances the overall efficiency of government resource allocation, ensuring that public funds are directed towards high-priority areas that benefit citizens the most.[43]

**Improved Governance Metrics**

The integration of RTI with e-governance has not only improved the efficiency of government operations but has also contributed to the enhancement of governance metrics. Timely service delivery, streamlined processes, and effective resource allocation are quantifiable factors that influence governance indicators such as ease of doing business, government effectiveness, and overall development indices. The efficiency improvements bolster the perception of good governance in the eyes of both citizens and global stakeholders. A government that delivers services in a timely and transparent manner is seen as more competent and trustworthy, which, in turn, attracts investment and fosters economic growth. Also, improved governance metrics have the potential to yield positive feedback loops. As governance indicators rise, they can

[42] Prabhu, Shreekanth M., and M. Raja. "New Architecture to Facilitate the Expansion of e-Government." In *Recent Advances in Data and Algorithms for e-Government*, pp. 55-86. Cham: *Springer International Publishing*, 2023.
[43] Muttoo, Sunil K., Rajan Gupta, Saibal K. Pal, and Rajan Gupta. "Regional analysis of e-governance in India." *E-Governance in India: The Progress Status* (2019): 37-78.

stimulate greater civic participation and trust in government, creating a virtuous cycle that further enhances efficiency and transparency.[44]

**Case Studies and Notable Examples of RTI and E-Governance Integration**

Several notable examples of the integration of the Right to Information (RTI) Act with e-governance initiatives in India serve as exemplars of the transformative impact this convergence can have on governance.

***1.*** *Online RTI Portals*

One exemplary case is the establishment of centralized online RTI portals by various state governments and government agencies. These digital platforms enable citizens to file RTI requests, track their applications, and receive responses electronically. The integration of these portals with e-governance systems has expedited the processing of RTI requests and significantly reduced the administrative burden on government departments. The state of Maharashtra's "MahaRTI"[45] portal and the Indian government's "RTI Online" platform are noteworthy instances of this integration.

***2.*** *Tamil Nadu's e-Seva Initiative[46]*

Tamil Nadu's e-Seva initiative is a comprehensive e-governance project that seamlessly integrates RTI services. Citizens can file RTI applications, pay fees, and track the status of their requests online. This integrated approach not only simplifies the RTI process but also ensures that all interactions are captured electronically, enhancing transparency and accountability.

***3.*** *Karnataka's Sakala Scheme*

Karnataka's Sakala scheme exemplifies the amalgamation of RTI and e-governance to enhance service delivery. Under this initiative, citizens can submit RTI applications through the Sakala portal to obtain information related to various government services. The real-time tracking and monitoring of applications make the process transparent and efficient, ensuring timely responses.

***4.*** *Kerala's SICAP Project*

[44] Vaidya, Manjul. "E-governance initiatives in Chandigarh (India): an analytical study." *International Journal of Electronic Governance* 12, no. 1 (2020): 4-25.

[45]Available at https://www.maharashtra.gov.in/site/upload/WhatsNew/State%20of%20e-Governance%20in%20Maharashtra%202014.pdf (last visited on November 6, 2023).

[46] *Available a*t https://www.tnesevai.tn.gov.in/Pages/AboutUs.aspx(last visited on November 6, 2023).

The Kerala State Information Commission's (SIC) SICAP (SIC Application Portal) project is a noteworthy example of RTI and e-governance integration. SICAP allows citizens to file RTI requests and appeals online, significantly reducing the paperwork and administrative overhead. The portal also offers a dashboard that provides real-time statistics on the status of RTI applications and appeals. This transparency promotes greater accountability and efficiency within the Commission.

***5.*** *Uttar Pradesh's Digital Repository*

The state of Uttar Pradesh has developed a digital repository that integrates RTI information with e-governance systems. This repository allows citizens to access a wide range of government documents and data with ease. The integration not only facilitates transparency but also contributes to efficiency by reducing the time and effort required for government officials to respond to RTI requests.[47]

***6.*** *The Delhi Right to Information (RTI) Portal*

The Delhi government's RTI portal is another noteworthy case, where citizens can file RTI applications, pay fees, and track their requests online. The integration with e-governance has not only expedited the RTI process but also ensures that all interactions are recorded electronically, leaving a digital trail that enhances transparency and accountability.[48]

**Best Practices**

These case studies offer valuable insights into the integration of RTI with e-governance initiatives, providing a foundation for lessons learned and best practices In, these case studies illustrate the successful integration of RTI and e-governance, offering a wealth of best practices that governments can adopt to enhance transparency and efficiency. The lessons learned and best practices outlined in these examples provide valuable guidance for governments seeking to implement similar integrations, ultimately leading to more accountable and effective governance:

- *Centralized Online Portals*

  The development of centralized online portals for RTI applications, as seen in Maharashtra and at the national level in India, streamlines the process, reduces administrative burdens, and enhances transparency.

[47] *Available a*t https://rtionline.up.gov.in/guidelines.php?lan=E(last visited on November 6, 2023).
[48] *Available a*t https://rtionline.delhi.gov.in/(last visited on November 6, 2023).

- *Real-time Tracking and Monitoring*

  The implementation of real-time tracking and monitoring of RTI applications, as demonstrated in Karnataka's Sakala scheme,[49] ensures transparency and accountability.
- *Accessibility and Multilingual Support*

  Providing digital accessibility, user-friendly interfaces, and multilingual support, as practiced in Tamil Nadu's e-Seva initiative, ensures that a diverse population can access government services and information.
- *Data Security and Privacy Protections*

  Robust data security and privacy protection measures, like those applied in Kerala and Uttar Pradesh, are crucial to building trust and safeguarding sensitive information.
- *Public Awareness and Education*

  Educational campaigns, as carried out by governments to inform citizens about their RTI rights and the use of e-governance platforms, play a critical role in promoting awareness and participation.
- *Training and Capacity Building*

  Ongoing training and capacity-building programs for government officials, as seen in these case studies, ensure a skilled workforce proficient in using e-governance tools and RTI procedures.
- *Monitoring and Evaluation*

  Regular monitoring and evaluation, as exemplified by these cases, allow governments to track efficiency gains, transparency improvements, and citizen satisfaction, making data-driven adjustments as needed.

**Lessons Learned and Unsurpassed Accomplishes**

The successful convergence of the RTI Act and e-governance initiatives, showcasing best practices that prioritize digital accessibility, data security, capacity building, public awareness, and continuous monitoring. These lessons learned and best practices serve as a roadmap for governments aiming to implement similar integrations, ultimately fostering more transparent and efficient governance.

- *Digital Accessibility and User-Friendly Interfaces*

[49] *Available a*t https://sakala.kar.nic.in/ (last visited on November 6, 2023).

A key lesson learned is the importance of ensuring digital accessibility for all citizens, including those in rural or marginalized areas. Governments must invest in user-friendly interfaces and multiple language options to make e-governance platforms and RTI portals accessible to a diverse population.

- *Data Security and Privacy Protections*

  The safeguarding of sensitive government information and citizens' personal data is paramount. Governments should implement robust data security measures and adhere to stringent privacy protection protocols to build trust and maintain the integrity of the integration.

- *Capacity Building and Training*

  Continuous capacity building and training programs for government officials are essential to ensure that they are proficient in using e-governance tools and are well-versed in RTI procedures. A skilled workforce is crucial for the effective implementation of this integration.

- *Public Awareness and Education*

  Promoting public awareness about the benefits of the integration is vital. Governments should embark on educational campaigns to inform citizens about their rights under the RTI Act and how to navigate e-governance platforms for information access.

- *Monitoring and Evaluation*

  Regular monitoring and evaluation of the integration's impact are imperative. Governments should track efficiency gains, transparency improvements, and citizen satisfaction to make data-driven adjustments and refinements as needed.

**Recommendations**

- *Policy Implications*

  The integration of the Right to Information (RTI) Act with e-governance initiatives in India has demonstrated its transformative potential in enhancing transparency and efficiency. As governments consider the further consolidation of this integration,several policy implications emerge.

- *Encourage Digital Inclusion*

  To ensure that the benefits of this integration reach all citizens, governments should prioritize digital inclusion. Policies should be designed to bridge the digital divide, particularly in rural and marginalized areas, by expanding digital infrastructure and promoting digital literacy.

- *Promote Public Awareness*

  Government efforts to promote public awareness about the RTI Act and e-governance initiatives should be intensified. Citizens need to be informed about their rights and the avenues available to access government information. Educational campaigns and outreach programs can play a pivotal role in this regard.

- *Data Security and Privacy Regulations*

  Strengthening data security and privacy regulations is imperative. Governments should establish stringent data protection measures and protocols to safeguard sensitive information. Regular audits and compliance checks should be conducted to ensure that data is adequately protected.

- *Capacity Building*

  Investing in the capacity building of government officials is essential. Training programs should be designed to enhance their proficiency in using e-governance tools and complying with the RTI Act. This will enable them to navigate the convergence of transparency and efficiency effectively.

- *E-Governance Standards*

  Governments should set and enforce e-governance standards that ensure uniformity and interoperability across different government departments. These standards should encompass data formats, access protocols, and authentication methods to facilitate seamless integration.

**Technological enhancements**

The continued evolution of technology offers opportunities for further enhancing the integration of the RTI Act with e-governance:

- *Adoption of Artificial Intelligence*

  Governments can explore the use of artificial intelligence (AI) for more efficient processing of RTI requests. AI can automate initial responses, categorize requests, and even predict potential issues, enabling faster and more accurate handling of inquiries.

- *Blockchain Technology*

  Blockchain technology can be harnessed to secure and authenticate government records and responses to RTI requests. Its decentralized and tamper-proof nature ensures the integrity of data, bolstering trust and transparency.

- *Mobile Applications*

The development of mobile applications for filing RTI requests and tracking their status can make the process more accessible and user-friendly for citizens. Mobile apps can also provide notifications and alerts, ensuring timely responses.

- *Citizen Feedback Mechanisms*

  Governments should establish citizen feedback mechanisms within e-governance systems to allow users to provide input, report issues, and suggest improvements. This proactive approach to engaging citizens can lead to refinements in the integration and enhance its efficiency and user-friendliness.

- *Interoperability and Data Sharing*

  To maximize the benefits of RTI and e-governance integration, governments should prioritize interoperability and data sharing among different government departments and agencies. This ensures that information is accessible and coherent across various entities, reducing redundancy and enhancing efficiency.

- *Investment in Research and Development*

  Investing in research and development (R&D) is crucial for keeping the integration up to date with the latest technological advancements. Governments should allocate resources to support R&D projects that explore innovative ways to improve the convergence of RTI and e-governance.

**Strengthening legal framework**

To solidify the integration of RTI with e-governance, the legal framework must be fortified.

- *Periodic Review and Update*

  The legal framework governing the integration should be periodically reviewed and updated to adapt to technological advancements and evolving societal needs. This ensures that the framework remains relevant and effective.

- *Clarification of Data Access*

  Clear guidelines should be established to determine what data should be made available through e-governance and proactive disclosure and what should be subject to RTI requests. A well-defined scope prevents ambiguity and ensures consistency.

- *Whistle-blower Protection*

  Comprehensive whistle-blower protection laws should be enacted to encourage citizens and officials to report corruption, irregularities, or malpractices without fear of retaliation. Strong legal safeguards for whistle-blowers contribute to accountability and transparency.

- *Expedited RTI Processing*

  The legal framework should include provisions for expediting the processing of RTI requests related to time-sensitive matters, such as public health emergencies, disaster responses, and critical infrastructure. Such measures can enhance the government's efficiency in responding to urgent inquiries.

- *Accountability Mechanisms*

  Clear mechanisms for holding government officials and agencies accountable for delays, violations of the RTI Act, or non-compliance with e-governance standards should be incorporated into the legal framework. This ensures that transparency and efficiency are upheld through punitive and corrective actions.

- *Continuous Legal Education*

  Legal education and training programs should be made available for legal professionals, government officials, and citizens to promote a better understanding of the legal framework. This can reduce legal disputes and enhance the effective use of the RTI Act.

- *Access to Judicial Redress*

  The legal framework should ensure that citizens have effective access to judicial redress in cases where their RTI requests are denied or delayed unreasonably. Timely and efficient resolution of legal disputes is essential to uphold the principles of transparency and accountability.

**The future of RTI and E-Governance in India**

The future of RTI and e-governance in India holds immense promise. As technology continues to advance, opportunities for innovation abound. Artificial intelligence and blockchain technology can further streamline the processing of RTI requests, enhance data security, and ensure the integrity of government records. Mobile applications can make the process of filing RTI requests more accessible and user-friendly. Governments should prioritize digital inclusion, public awareness, and data security while strengthening the legal framework to ensure sustainability and effectiveness. Policies aimed at bridging the digital divide, promoting public awareness, and enforcing stringent data protection measures will pave the way for a more inclusive and secure integration. As well, the legal framework should be fortified with

provisions for accountability, continuous legal education, and access to judicial redress.[50] The future of RTI and e-governance in India hinges on continuous innovation and adaptation. By investing in research and development, encouraging citizen feedback, and fostering interoperability among government departments, the integration can evolve to meet the ever-changing needs of the citizenry. In the assimilation of the RTI Act with e-governance in India has reshaped the governance landscape, propelling it towards greater transparency, efficiency, and accountability. The future of this convergence is marked by a commitment to harnessing technology, strengthening the legal framework, and ensuring citizen inclusion.[51] As India progresses on this journey, it stands poised to uphold the ideals of a responsive, accountable, and transparent government, ultimately benefiting its citizens and the nation as a whole.

**Additional Reflections**

The integration of the Right to Information (RTI) Act with e-governance initiatives in India is a testament to the power of technology and the potential it holds to transform governance. This scholarly exploration has illuminated the multifaceted impacts of this integration, spanning transparency, efficiency, and accountability. As we look beyond the research findings, it is crucial to reflect on the broader implications and potential avenues for further development.

**Democratization of Information**

The convergence of RTI and e-governance has fundamentally democratized access to information. The advent of online RTI portals, proactive disclosure mechanisms, and digital communication channels has shifted the balance of power between the government and its citizens. In this age of information, citizens are no longer mere recipients of governmental decisions but active participants in the democratic process. This empowerment holds the potential to reshape the relationship between the state and its people, fostering greater engagement and collaboration.

**Nurturing a Culture of Accountability**

Transparency and accountability are intricately linked, and this integration has the power to nurture a culture of accountability within the government. The real-time scrutiny, electronic

[50] Salwan, Prashant, and Bhupendra Singh Bisht. "14 Digital Governance." *Administration in India: Challenges and Innovations* (2023).
[51] *Supra* note 20.

records, and avenues for whistleblowing not only deter malpractices but also promote a culture of responsibility. Government officials are increasingly aware that their actions are subject to public scrutiny, compelling them to act with integrity and efficiency. This cultural shift towards accountability is invaluable for the long-term health of democratic governance.

**Technological Advancements**

The future of RTI and e-governance in India is inherently tied to technological advancements. The rapid pace of innovation, including artificial intelligence, blockchain, and mobile applications, presents new opportunities and challenges. Governments must remain adaptable and receptive to these advancements, harnessing them to further streamline processes and enhance data security. The fusion of cutting-edge technology with governance can unlock new frontiers of efficiency and transparency.

**Inclusivity and Equity**

While the integration has made significant strides, there is an ongoing need to ensure inclusivity and equity in its benefits. Bridging the digital divide and providing access to all citizens, regardless of their location or socioeconomic status, is a priority. A truly inclusive integration acknowledges the diverse needs of the population and strives to make government services and information accessible to all.

**Legal and Ethical Considerations**

Strengthening the legal and ethical foundations of the integration is paramount. This includes continuous updates to the legal framework, a commitment to data security and privacy, and the protection of whistle-blower rights. Ethical considerations surrounding the use of technology, data collection, and surveillance must also be carefully addressed to maintain public trust and uphold democratic principles. In the RTI Act with e-governance in India is a journey that has already delivered significant benefits in terms of transparency and efficiency. However, it is a journey that is far from its destination. It calls for continuous adaptation, a commitment to the principles of inclusivity and equity, and the nurturing of a culture of accountability. The future of RTI and e-governance in India is one of dynamic potential, where the harmonious interplay of technology, governance, and citizen participation can pave the way for a more responsive and transparent government, ultimately advancing the welfare and progress of the nation.

**Conclusion**

The conjunction of the RTI Act with e-governance initiatives has yielded substantial advancements in transparency. Citizens now enjoy unprecedented access to government-held information, with centralized online portals and real-time tracking mechanisms streamlining the RTI process. The proactive disclosure of information and the availability of digital channels have reduced bureaucratic bottlenecks, expediting the delivery of government services. Transparency improvements have also had a profound impact on accountability and oversight. Real-time scrutiny, whistleblowing mechanisms, and electronic records have created a more robust checks-and-balances system, making it increasingly difficult for public officials to engage in corrupt practices. This transparency fosters public trust and civic participation, strengthening the relationship between citizens and the government. The efficiency enhancements brought about by this integration are equally noteworthy. Streamlined government processes, reduced bureaucratic bottlenecks, and timely service delivery have become hallmarks of e-governance. Cost savings, resource optimization, and effective resource allocation underscore the financial prudence and resource management aspects of the integration. In consequence, the integration of the RTI Act with e-governance in India has set the stage for a more transparent, efficient, and accountable governance landscape. The future of this convergence rests on continuous innovation, technological adaptation, and a steadfast commitment to citizen inclusivity. As India moves forward, it stands at the cusp of realizing the ideals of a responsive, accountable, and transparent government, thereby enhancing the well-being of its citizens and the progress of the nation as a whole.

# DIVERSITY AND INCLUSION POLICY FOR A RESILIENT AND PRODUCTIVE WORKPLACE: A REVIEW OF RESEARCH & PERSPECTIVES

*Dr. Sonika Sharma**

## Introduction

*"Justice may be blind, but we all know that diversity in the court, as in all aspects of society, sharpens our vision and makes us a stronger nation"*- William J Clinton

As rightly pointed by William J Clinton, for the growth and development of any society diversity is the backbone. Diversity must be more than policies on paper for any organization. For any organization, diversity must be its strength, and add value to the organization's philosophy. Organizations earn respect due to their diverse and inclusive ecosystem, policies, making space for the perspectives, needs, and potential of all employees who are unique as well as alike. Diversity is widely present in various component of Indian spectrum like culture, religion, race, ethnicity. In a country such as India, the inclusion of underprivileged and minority groups is all the more important because, in most cases, the Constitution acts as the custodian of fundamental and statutory rights of the people.

Discussions concerning diversity, and inclusion in India have been strengthened in recent times by the emergence of social media, heightened awareness of international affairs, policies implemented by the government and the judiciary, and initiatives undertaken by advocacy groups. India Inc. members emphasised upon the value of diversity, equality and inclusion to foster a more welcoming and cooperative workplace. Conscious efforts by the organizations on DI practices had brought about changes in the work environment and also created an environment of integrity and respect. In a diverse country like India, building a workplace that is both comprehensive and reflective of this diversity can be challenging. Post the COVID 19 pandemic, organizations have begun to prioritize worker welfare measures, which prominently include the execution of D&I practices. The ILO[1] and the Center for Monitoring the Indian Economy have cautioned that in the current scenario, gender discrimination and other issues of inequality will increase. Thus, planned efforts are required to prevent this existing gap from expanding.

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[1] International Labour Organization

India requires proper implementation and execution of standalone anti-discrimination legislation like the Rights of People with Disabilities Act, 2016, the Equal Remuneration Act, 1976, the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, and the Transgender Persons (Protection of Rights) Act, 2019. Despite the fact that changes in these laws often take place, the scope of awareness is still very limited. Managers must look beyond legislation to develop a diverse workplace, provide sustainable work opportunities to people of different genders, sexual orientations, races, religions, and socio-economic backgrounds. These steps will lead to developing an inclusive work environment where differences are respected, support is provided, and obstructions are removed.

Companies are carefully investigating various diversity and inclusion models that are appropriate for their organization, fits their business objectives and clearly displays their dedication to the initiative. Simultaneously, legislation has evolved over time, placing a variety of regulations on companies to incorporate diversity within the workplace. Organizations need to be cautious to ensure that their effort is consistent and implemented as per the guidelines of local, state, and federal laws.

**Review of Literature**

Diversity and inclusion are integral parts of building an equitable and adequate representation of organization's ecosystem. However, the terms "diversity" and "inclusion" are slightly different. Diversity is the degree to which different classes/ categories are represented in an ecosystem. In other words, diversity measures the degree to which an ecosystem is heterogeneous. On the other hand, inclusion measures how homogeneous an ecosystem is. This means that inclusion measures how well the different components of a heterogeneous ecosystem are valued and incorporated into that ecosystem. Social change is the only alternative in society and can be achieved with the help of law. With the aid of the legislature, a culture shift can be brought into the society. It is interesting to observe that most organizations have embraced a culture of diversity and the reason behind this is that the organizations are encouraging inclusiveness and championing the purpose of diversity as an immediate result of the advocacy of equal possibility in the workplace.

Research on this topic has a wide range of scope, despite the term "workforce diversity" being used extensively in this paper. Diversity, and inclusion are correlated with a number of

outcomes, including employee well-being, productivity, creativity, and retention. In spite of these advantages, organizations fail to implement the compliance and strategies to increase diversity and inclusion. Even worse, only one-third of businesses currently measure inclusion, which is a critical first step toward progress. To achieve a productive and resilient workplace, it is important to combine business with robust policies, legislative frameworks, and supportive organizational values to drive sustainable change. It delineates key principles applicable across workforces: prioritizing diversity and inclusion in organizational strategy, policies, and compliance, work culture; ensuring diversity in top management; holding leaders and staff accountable as role models; and implementing inclusive actions throughout the employment lifecycle, from recruitment to development.

The ILO report defines "inclusion" as the extent to which individuals feel valued, respected, and empowered in the workplace, emphasizing the importance of fostering a sense of belonging and recognition for diverse skills and experiences. This report indicates that one in four people feel undervalued at work, and those who feel this way usually are from mid to senior positions. Remarkably, seniority has a stronger correlation with feelings of inclusion inthe workplace than with individual. The report from the ILO also focused on the practices multinational corporations have taken on inclusion for making a better work environment. Equal opportunity in public employment is outlined in the Indian Constitution, which also prohibits discrimination on the grounds of race, religion, caste, sex, or place of birth. The Constitution also mandates the promotion of the economic and educational interests of minority groups, including scheduled castes and scheduled tribes. Discrimination and unfair treatment persist despite these fundamental protections, as evidenced by reports such as the Thorat Committee's findings on caste discrimination. Despite the fact that bonded labor was outlawed in 1976, bonded laborers continue to work in exploitative conditions with minimal legal protection. They make up a sizable portion of the unofficial labor force. Despite the existence of labor laws, such as those concerning the minimum wage, maternity benefits, and equal employment opportunity, their implementation remains inadequate. Reports like the Thorat report provide direction, but they do not guarantee inclusive behavior. Supreme court of India on April 2014, accorded legal recognition for the first time to transgender people as a‘third’ gender, by classifying them as ‘Other Backward Classes’, thereby allowing for their reservations in education and public employment.

In the twenty-first century, emphasis on diversity and inclusion has increased women's participation, individuals from different demographic backgrounds, and multiple generations

in the workforce. Daniels (2001) notes that over 75% of Fortune 1,000 companies have embraced diversity initiatives, rendering diversity management not merely an option but a critical business necessity. Additionally, the inclusion of immigrants has gained sociopolitical traction in response to growing workforce diversity (Ortlieb & Sieben, 2014). Miller and Katz's (2002) emphasised that organizations must move beyond mere adoption of diversity practices but to actively leverage diversity to achieve and sustain higher employee performance. Additionally, a number of researchers have emphasized how diversity initiativesevolved into the idea of inclusion (Sabharwal, 2015); in the 1990s, the terms "inclusion" and "diversity" were associated (Holvino et al., 2004). Thus, the key to maximizing the potential of a diverse workforce is comprehending inclusion in addition to diversity.

Kelly and Dobbin's (1998) and Edelman et al.'s. (2001) studies demonstrated a rise in diversity-related interest beginning in 1987, reaching a peak in 1993, and then progressively diminishing after that. The year 2010 marked a notable shift in focus as interest in inclusion started to outpace that in equality. Since 2010, the conversation has moved from diversity to inclusion (Oswick and Noon, 2014). Miller was one of the first to recognize the significance of diversity and inclusion in the workplace (Biggs, 2017). By establishing an environment that is welcoming to people from different backgrounds and providing incentives for them, inclusion focuses on developing an organizational culture and climate that supports diversity. According to Sabharwal (2014), efforts ought to be focused on creating a more inclusive workplace, as diversity management is acknowledged to be inadequate in enhancing organizational performance. Thus, inclusion is viewed as a necessary component in additionto diversity, and diversity and inclusion are seen as interdependent (Sposato et al., 2015). According to Roberson (2006), the language surrounding diversity initiatives should change from referring to "diversity" to "inclusion."

The conceptualization of two theories Optimal Distinctiveness Theory and Social Identity Theory together will increase the inclusion in the work environment. These two theories with the help policy framing, psychological wellbeing and self-concept aligned will not onlyincrease the individual productivity but also organizational effectiveness. The Social identity theory emphasizes upon the significance of group memberships in influencing people's psychological well-being and self-concepts. People want to be accepted while remaining true to themselves, according to the optimal distinctiveness theory. Thus, inclusion is the ability tofeel valued and accepted while retaining one's inner individuality. In order to promote a senseof belonging and celebrate each person's individuality, it involves acknowledging and

appreciating the diversity of individuals. The optimal uniqueness theory, social identity theory, and the demand for belongingness are the significant concepts in the theoretical framework of inclusion. Social identity theory holds that membership in social groups— especially those with high social status—shapes how individuals see themselves. Being a part of larger social networks is fundamental to human nature and is necessary for the mental well-being of employees. The optimal distinctiveness theory states that individuals strive to blend in with respectable groups to fulfil their need for uniqueness and belongingness.Determining one's place in the workplace without sacrificing individuality is what inclusionis all about. Every person has a conflicting desire to blend in and stand out from the group. Distinctness and belongingness are balanced, which affects how people feel about themselves, whether they are included or excluded. When people are encouraged to maintain their individuality and are welcomed, inclusion occurs. Individuals who feel they are not valued, are not a part of a team, or are not who they are become excluded. This is shown in Figure 1.

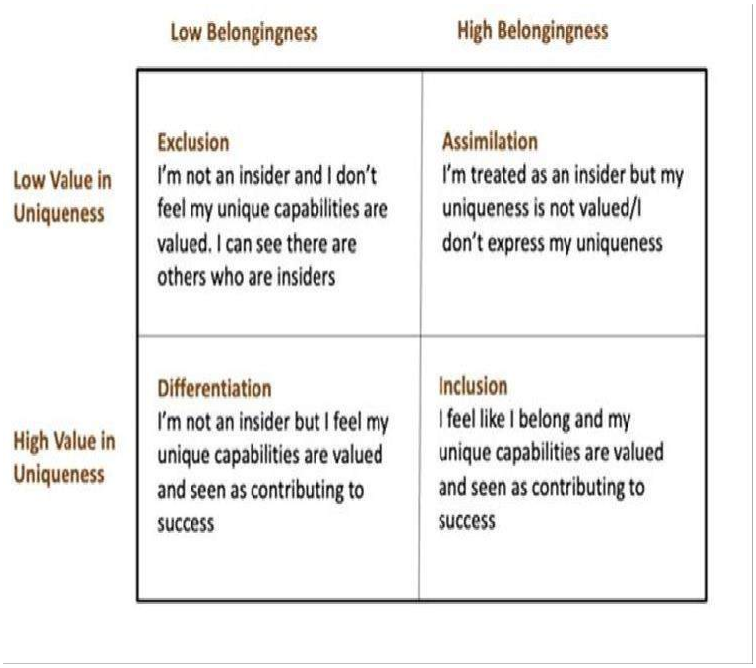


**Figure 1: Conceptualization of exclusion-inclusion based on uniqueness and belongingness (Adapted Ref No. 8)**

Lately, focus has shifted to looking at internal organizational procedures that foster inclusion above and beyond diversity. Consistent use of fair procedures within the workplace fosters a sense of pride in the organization. Conversely, unfair treatment signals disrespect to team members, leading to psychological disengagement and reduced productivity within the

organization (Kreiner & Ashforth, 2004). Freedom of expression may be enhanced by inclusion, which may lessen disparities. Nembhard & Edmondson (2006) suggest that inclusion can promote psychological safety and engagement by elevating members' perceptions of competence (Berger, Cohen, & Zelditch, 1972). Cho and Mor Barak (2008) have conducted research that indicates the relationship between job performance and perceptions of inclusion and organizational commitment. Fairness in inclusion thereforebreeds trust and a sense of duty, which in turn results in inclusive behaviors like performance,commitment, and organizational citizenship. Several contextual factors are identified by the proposed model (Figure 2) as potentially influencing how inclusion is perceived withinorganizations. As per Gonzalez and DeNisi (2009), the diversity climate is the result of a confluence of justice-related events that impact the power dynamics between social groups and the inclusion or exclusion of individuals from diverse backgrounds (Mor Barak et al., jointly with Kossek & Zonia 1993)). Being fair to employees from diverse backgrounds is essential to promoting inclusion and is a cornerstone of organizational justice. In particular, the aspect of organizational justice is important for promoting inclusivity. Perceptions of inclusion are significantly shaped by systemic justice, which takes into account the larger organizational context in which procedures operate.

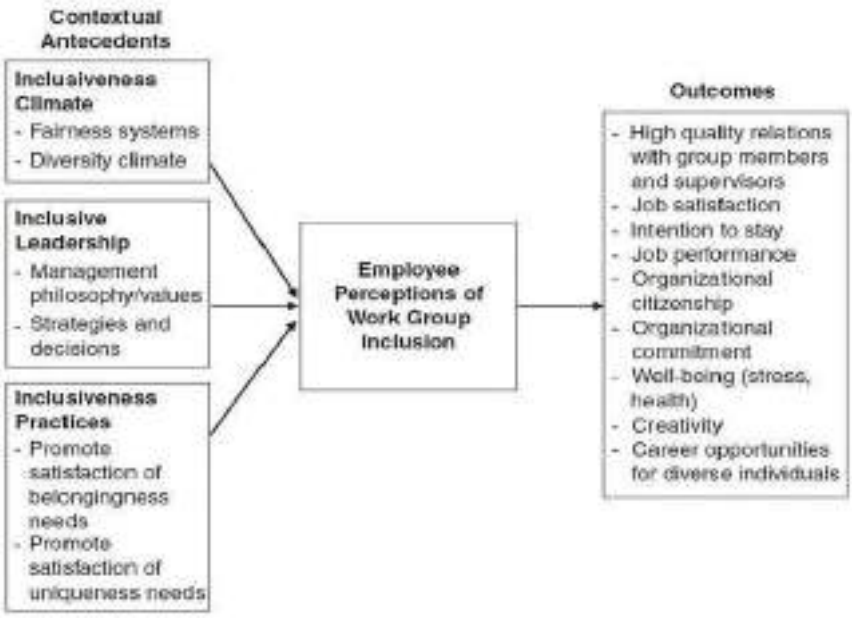


**Figure 2 - Antecedents and Outcomes of Inclusion**

An inclusive work environment can be created in an organization when equal opportunities are given to all individuals without any discrimination. Organizational racial identity has an

impact on minority retention rates by influencing the relationship between employers and employees, which can range from openly embracing diversity to ignoring racial differences.

**Findings and Recommendations**

In Indian law, there's not a single law that addresses diversity, and inclusion, nor does it have a legal obligation to implement a diversity and inclusion program; however, there are some laws in place that acknowledge a lack of equality and inclusion and thus recognize the need to hire and treat employees fairly. In India, there is a growing need for anti-discriminatory laws, policies, and practices in the workplace to ensure a safe and inclusive workplace. Despite a large amount of diversity research, there is still a substantial gap in understanding how firms may develop inclusive workplaces that support the varied workforce of the global economy. Despite decades of research and legislative efforts to prevent discrimination, exclusion continue to occur within organizations. Legal compliance, internal policies, and a support system are essential components of promoting diversity and inclusion in the workplace. Organizations need to develop clear internal policies detailing the support available. Initiatives such as mentorship programs, coaching, tailored training sessions, leadership development, and legal assistance should be provided. These internal policies needto be aligned with the practices of DE&I and communicated within the organization. When members of a diverse group receive treatment that promotes their inclusion, it usually elevates their status and allows them to make more contribution. An inclusive workplace culture reduces resistance and conflict and promotes respect and a sense of community for all workers, regardless of their backgrounds in terms of demographics. An inclusive climate minimizes resistance and conflict, fostering a sense of belonging and respect for all employees, regardless of their demographic backgrounds.

Inclusive practices are applied to ensure that employees feel respected and protected within the organization. Managing differences by acknowledging them within organizations and among individuals is necessary. However, it also requires taking into account their diversity. Central to the diversity debate is the principle of fairness and justice. It is necessary for individuals to feel included, valued, treated with equity, and given recognition. By investingin diversity, organizations can reap benefits in terms of both financial and subtle rewards for loyalty, wellness, and process control. Creating an inclusive culture must focus beyonddiversity-based hiring and diversity training to include holistic methods for leveraging diversity.

Organizing innovative awareness workshops is fundamental to any diversity and inclusion strategy, as regular training helps in addressing both conscious and unconscious biases and ensures that employees from underrepresented groups feel supported in their career advancement without experiencing stigma or obstacles. These training sessions can vary in format and include elements like short videos, quizzes, podcasts, movie screenings, community-led plays, and informal discussion groups with invited experts. It is often essential for top management to actively participate in these programs. The conflicting effects of diversity on performance could be the result of failing to take into account the complementary roles of uniqueness and belonging. When individuals are respected and heard, a productive and resilient workforce can be created. These practices of equality,diversity, and inclusion can help in creating a productive work environment.

Leadership Commitment from the highest levels of the organization, need to stress the value of DI, and make sure it fits in with the organization's mission and values and puts it into practice. Evaluate the diversity and inclusion situation by collecting information on employee experiences, policies, practices, and demographics. Define policies and processes that support inclusion, diversity, and equality. Educate staff members at all levels on subjects like inclusive leadership, cultural competency, unconscious bias, and polite communication. Promote the creation of Employee Resource Groups (ERGs) within the company that reflect various interests or demographics. These organizations offer a forum for advocacy, networking, and support. They can also offer insightful comments on DI projects. Organizations should make sure that all employees, regardless of background, have access to opportunities for promotion and advancement. Establish clear standards for career growth and offer mentorship opportunities. All members are respected and given the freedom to contribute to the work. Honor diversity with ceremonies, awards ceremonies, and cultural festivals. In order to allay worries and advance understanding, promote candid communication and feedback channels. By focusing on equity, inclusivity, and variety, companies can create and maintain a robust and efficient work environment where each staff member feels appreciated, encouraged, and equipped for success.

**References:**

1. Ajay Bhargava Khaitan & Co, (June 2022), Inter Pacific Bar Association, Newsletter & legal updates, vol.106.

2. Berger, Joseph, Bernard P. Cohen, and Morris Zelditch, Jr. 1972. "Status Characteristics and Social Interaction." American Sociological Review 37:241-55.
3. Biggs M. E. (2017). Frederick A. Miller: Leveraging inclusion as a breakthrough organizational development strategy. In Szabla D., Pasmore W., Barnes M., & Gipson A. (Eds.), The Palgrave handbook of organizational change thinkers.
4. Cho, S., & Mor Barak, M. E. (2008). Understanding of diversity and inclusion in a perceived homogeneous culture: A study of organizational commitment and job performance among Korean employees. Administration in Social Work, 32, 100–126.
5. Daniels C. (2001, July 9). Too diverse for our own good. Fortune, 144, 116.
6. Gonzalez, J.A. and DeNisi, A.S. (2009) Cross-Level Effects of Demography and Diversity Climate on Organizational Attachment and Firm Effectiveness. Journal of Organizational Behavior, 30, 21-40.
7. Holvino E., Ferdman B. M., & Merrill-Sands D. (2004). Creating and sustaining diversity and inclusion in organizations: Strategies and approaches. In Stockdale M.S., & Crosby F. J. (Eds.), The psychology and management of workplace diversity (p. 245–276). Blackwell Publishing.
8. ILO Press release, 2022- https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_841085/lang--en/index.htm.
9. Idia diversity survey report, 2018 – 2019 Increasing diversity by increasing access to legal education.
10. Kelly E., & Dobbin F. (1998). How affirmative action became diversity management: Employer response to antidiscrimination law, 1961 to 1996. American Behavioral Scientist, 41(7), 960–984.
11. Kreiner, G.E., & Ashforth, B.E. 2004. Evidence toward an expanded model of organizational identification. Journal of Organizational Behavior, 25: 1-27.
12. L. M. Shore, A. E. Randel, B. G. Chung, M. A. Dean, K. H. Ehrhart and G. Singh, "Inclusion and diversity in work groups: A review and model for future research," Journal of Management, vol. 37, no. 4, pp. 1262-1289, 2011.
13. Miller F., & Katz J. (2002). Inclusion breakthrough: Unleashing the real power of diversity. Berrett-Koehler Publishers.
14. Mor Barak, M. E., D. A. Cherin and S. Berkman, 1998, “Organizational and personal dimensions in diversity climate ethnic and gender differences in employee perceptions”. The Journal of Applied Behavioral Science, 34: 82–104.

15. Nembhard, I. M., & Edmondson, A. C. (2006). Making it safe: The effects of leader inclusiveness and professional status on psychological safety and improvement efforts in health care teams. Journal of Organizational Behavior, 27(7), 941–966.
16. Nisha Nair, Neharika Vohra, W.P. No. 2015-03-3, March 2015, Diversity and Inclusion at the Workplace: Diversity and Inclusion at the Workplace.
17. Ortlieb R., & Sieben B. (2014). The making of inclusion as structuration: Empirical evidence of a multinational company. Equality, Diversity and Inclusion: An International Journal, 33(3), 235–248.
18. Oswick C., & Noon M. (2014). Discourses of diversity, equality and inclusion: Trenchant formulations or transient fashions? British Journal of Management, 25(1), 23–39.
19. Roberson Q. M. (2006). Disentangling the meanings of diversity and inclusion in organizations. Group & Organization Management, 31(2), 212–236.
20. Sabharwal M. (2014). Is diversity management sufficient? Organizational inclusion to further performance. Public Personnel Management, 43(2), 197–217.
21. Sabharwal M. (2015). From glass ceiling to glass cliff: Women in senior executive service. Journal of Public Administration Research and Theory, 25(2), 399–426.
22. Sposato M., Feeke S., Anderson-Walsh P., & Spencer L. (2015). Diversity, inclusion and the workplace-equality index: The ingredients for organizational success. Human Resource Management International Digest, 23(5), 16–17.
23. 'Tilting the Scale: Gender Imbalance in the Lower Judiciary, https:// vidhilegalpolicy.in/wp-content/uploads/2019/05/180212_TiltingtheScale_Final.pdf.

# THE ADVENT OF ARTIFICIAL INTELLIGENCE (AI) IN THE FINANCIAL MARKET: SCOPE AND STUDY OF THE TRAJECTORY

*Maria Binny Palamottam**

*"The key to artificial intelligence has always been the representation." – Jeff Hawkins*

## Introduction

The advent of AI has been one among the swiftest takeover witnessed by the mankind considering the ranges to which adoption of the smoothest techniques owing to convenience and effective operational and administrative convenience it offered. Generative AI playing its extensive integral role in the research and development sector, Emotional AI entering the versatile field of general medicine and health care, prediction and decision based mathematical models are occupying their safe seat with available areas of human interactions.AS far as the financial markets are concerned, the involvement has been not any less. Hence, providing due consideration to the convenience provider with its close interactions in operation, with due consideration to the potential risks and hazards, associated, there is an increased demand and requirement to identify the effective operational usage of the tools of AI in reducing the overall time and money consumed, especially the humongous data compilation and review of the stock market is concerned and so is the equal importance provided to the need to meet consumer demand and consideration and thereby creating a potentially useful environment to the investors in their overall experience in the financial markets and the range of transactions involved therein.[1]

To begin with, the usage of voice assistants in the multifaceted trading platforms are to begin with. For instance, in 2018[2], the Bombay Stock Exchange initiated the usage of Google assistant for the first time in the financial market field in India, wherein the user who seeks assistance thereby can possibly use the same pragmatically for every enquiry associating to ranging from the latest stock prices to the corporate announcements concerning initial public

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[1] Romano, Roberta, 'Empowering Investors: A Market Approach to Securities Regulation' (1998) 107 THE YALE JOURNAL 8, 2359

[2] PTI, 'BSE launches market data on Google Assistant' (The Economic Times, 24 October 2023) <www.economictimes.indiatimes.com/markets/stocks/news/bse-launches-market-data-on-google-assistant/articleshow/66351205.cms> accessed on 27 November 2023

offerings (IPOs) on this regard.[3] This was inclusive of the exemption of downloading the BSE app in its totality, therefore keeping all customers under the radar. The chatbots, Apple's Siri, Alexa by Amazon or any other AI based assistance could be extended to the securities outreach.

**Automated systems and usage**

The automated alters, messages, notifications regarding the services based on the average usage of the customer, general application of the user-friendly devices and goes the list. Apartfrom that, like the technique of assistance and alert system, there has been usage of the AI tools to gather the information of potential consumers globally. Based on consumer behavior, information provided by the users of the apps, so created, with consented privacy infringement, although sounds irrational, could possibly slither through the browser history ofthe users via cookies policy and related settings with the aim of enhancing the overall experience of the accessing usage by the users thereafter. The challenges however, posed by these techniques are unavoidable.[4]

There has been recognized stock exchange tools that have been in use, as late as 2023, wherein the tools enhance the user experience by assisting in undertaking technical estimate on the stock performance in a future based ambit by making use of patterns of research and volatility of past market experiences and indices. There are existing models by startups[5] such as Sigmoidal that works towards predictions which attempts to reduce the risk of losses to theinvestors to a great extent. Whether it be the development of new trade ideas, automated placing of trade orders based similar to hedging, algorithms that provide for forecast and likelihood of the gains and losses, consistent evaluations based on the data available and as updated in the platforms including the social media platforms, preferential allotment services, regression and categorization, training techniques and goes the long list of services offered bythe artificial intelligence tools as innovative as possible moving with the times. The past inquiries that have been made by customers, investing behavioral pattern, footprints left by

[3] Hasenstab, Michael, 'Securities Market Development: Assessing and Improving Market Efficiency' (2012) 23 ANU PRESS 33, 345
[4] L.C. Gupta, 'Challenges before Securities and Exchange Board of India' (1996) 31 ECONOMIC AND POLITICAL WEEKLY 12, 754
[5] Sigmoidal 360 ™, 'Driving business excellence through tailored & robust AI implementation' (Sigmoidal, 13 June 2023) <https://sigmoidal.io/> accessed on 22 November 2023

the mobile apps, similar measures of the outreach targeting involving the future customers therein, authentication as to be formulated by the customers throughout the process.

Now, in the point of view of brokers, wherein the services associated to brokerage account and the management therein can be accordingly customized, wherein the AI tools have beenin usage for the purpose of gathering the real time information of the interested customers, usage of applications in the development of an effective algorithm by data aggregation, industry participation, curated research methodologies and in addition, the effective portfolio management and trading platforms therein. This is by way of the using the tools for the purpose of predictions that could be made on the prices in future, and to make the trading tools more efficient with the maximized benefit and price performance, allocation of the block trades in the most optimized manner therein.

**Surveillance and protection with AI**

Moving ahead to the tools that have been in use in a surveillance perspective. AI uses its intelligence in aspects associating to the need for monitoring the data that is both internal and external in nature by way of organizing, stacking, trader, representative, employee and consumer conduct, risk-based systems, crime detection, cyber-crimes, insider trading detection, verification of Know-Your-Customer (KYC), manipulation of the markets, evasion of tax, terrorist funding and every related illegal activity. The automated regulatory intelligence management system helps in creating and making use of accessible regulatory books therein detecting flaws if any. There has been usage of machine learning in matters of liquidity needs, requirements of working capital and lending demands of securities based on consumer interests and wants. Also, for the assessment of credit worthiness, AI models have been in usage and apps that have been in use for the purpose of recognizing credit score, makes efficient use of the AI system therein, even payment and settlement systems such as Google Pay and Paytm has been making use of such software. Moreover, cybersecurity beingone of the fundamental challenges even in the financial markets for that reason could be curbed to a greater extent with the help of the AI tools that have been in usage therein. The

incorporation of the cyber security tools hence shall help in predicting the attacks anddetecting the threats beforehand they torment down the websites or the pages in usage.[6]

With respect to the ease of access, when it comes to the usage of a highly digitized and paper less platforms, the same has been in usage in the software augmented deeds using the ML, NLP or CV for that matter that could simplify complex data, reduce the manual efforts, assistance with respect to D-Mat data storage and usage, high return cost saving techniques in data collection and orientation, information extraction from the potential customers and the current customer data base, legal contracts in usage, reconciliation of invoices and reports, improving the overall accuracy and efficient allocation of process, proofreading the ongoing legal contracts, terms and conditions in being drafted referring to the tools in usage, categorization of prospectuses in operation, reviewing an key management, custody documents and analysis making AI the most approachable option for both time and cost saving inherently.

**Usage of AI in a service-oriented sector**

On one side the securities markets across the country witness an immense increase in the availability of the surfacing demand for AI stocks[7] whereas on the other side, there has been researches on their very innate nature has been working towards the best outcomes AI based tools can offer in the efficient mechanisms that can be adopted towards a well-functioned financial market. [8]Whether it be post-trade securities or be custody industry, AI is the new normal. AS identified for a service-based initiative, AI has been identified for several purposes, such as identification of market trends based on aggregated historic trends, proceeding with the dynamic and volatile trends based on changing market conditions such asundertaking real time data and analysis, prediction based on the compilation of the aforementioned information. The segmenting of clients or investors, brokers, platform-based assistance, avoiding constant system failures with the help of adaptable system review and

[6] PMI, 'Leading AI-driven Business Transformation: Are you in?' (Project Management Institute, 12 May 2020) <https://indiaai.gov.in/article/seven-best-ai-powered-tools-for-stock-market-analysis-in-2023ai> accessed on 22 November 2023

[7] Hunter Andrew, 'Investment Artificial Intelligence and national security: The importance of the AI ecosystem' (Center for Strategic and International Studies, 22 August 2018) <www.jstor.org/stable/resrep22492.6> accessed 27 November 2023

[8] Deutsche Bank, 'Unleashing the potential of AI in Securities Market' (Deutsche Bank, 12 June 2021)< www.corporates.db.com/publications/White-papers-guides/unleashing-the-potential-of-ai-in-securities-services> accessed 26 November 2023

check based systems, improved and speedy efficient settlement lifecycle and goes on the plethora of opportunities that could practically be made use of the in the securities industry hereafter.

The usage of AI is highly impacted on the stakeholders ranging from the service providers to algorithm users and every single prototype being developed in the field excavating the actual potential therein. [9]Now, taking the convenience perspective that could possibly derive from the AI perspective includes the improvement with respect to storage, whether it be cloud or computer storage, improving the overall volume of storage, algorithms developed for organizing and stacking data and area orientation and other open source artificial intelligence technologies.[10] Whether it be the aforementioned sub sectors or AI or be complex technologies and usage such as robotics process amputation, other service offerings in the industry space for backend operations and other potential benefits.

Reports[11]suggest there has been an increased amplitude in the overall usage of AI tools especially in the investor broker relations wherein the latter makes use of AI tools forpurposes such as ease of investment process, improved consumer satisfaction by way of swiftand automated enquiry addressing techniques, email redirections, maintenance of updated consumer profiles, related electronic communications, providing recommendations of investment products and communications associated, forecaster for the movements of the investment products, risk assessment and mitigation.

Further, in the legal compliance perspective, whether it be stock exchanges, or it be investment banks that act as the Book Running Lead Managers (BRLMs) or it be the companies under the compliance requirement are in urgent requirement to ensure they fall within the legal requirements that can possibly enable them to move ahead for Initial or Further Public Offerings or any other issues for that matter.[12] This includes the need to identify and mitigate risks by way of due diligence, re checking and verification of the on timely validity of all the associated documents, the dates, timings, insurance or guarantee, relationships with the banks, basic statutory compliances such as industry regulations, codes

[9] Roger E. Barton, 'Artificial intelligence in the Securities Industry' (Thomson Reuters, 15 June 2023) < www.reuters.com/legal/legalindustry/artificial-intelligence-securities-industry-2023-06-15/> accessed 25 November 2023
[10] Price, Matthew, et al., 'The Machine Beneath: Implications of Artificial Intelligence in Strategic Decision Making' (2018) 7 PRISM 4, 107
[11] FINRA, 'Artificial Intelligence (AI) in the securities Industry '(FINRA, 10 June 2020) <www.finra.org/rules-guidance/key-topics/fintech/report/artificial-intelligence-in-the-securities-industry> accessed 22 November 2023
[12] Vempati, Shashi Shekhar, 'India and the Artificial Intelligence Revolution' (2016) 32 CARNEIGE ENDOWMENT FOR INTERNATIONAL PEACE 22, 31

of combination including takeover code, companies' regulations, SEBI regulations, FEMA regulations, SAST regulations and what not, if involved in the retail shop arena, the Shops and Establishments Act will also come into place. Now, where does AI come into picture.[13]

To be precise, starting form compiling the required data for compliance purpose, arranging and stacking them for the purpose of convenient verification by the legal compliance team and related prospects.[14] Also, there have been usage of AI tools and software such as KIRA which work towards extraction of what that is required and what needs to be omitted depending upon the consumer diligence requirement. For instance, if the team requires extraction of the loan documents that provide for certain compliance wherein the concerned company needs to intimate the bank before taking any action associated to its capital by way of increase or sale off anything for that matter, software based on AI will be able to detect such documents alone, making the manual labor behind it even more simplified[15]. Hence, rather than consuming time and effort by way complicating the data that that could be possibly compiled, the automated functioning helps in reducing the administrative delay thereafter. The use of such algorithms in a cautious and non-counterproductive way helps in the ease of separation of grain from chaff in a better manner[16].

There also has been introduction and usage of algorithms to generate advices concerning investments which have been intriguing because there has been usage of the technology in aspects including Robo-Advisors that have been made efficient use of with the help of Registered Investment Advisors (RIAs) that will help the managers to help in the investment purposes both in the retail space and otherwise. Depending on the customization, their functioning varies.[17] There has been revolutionary incorporation of the AI based software such as IndexGPT[18] patented for selection and analysis of customer interest-based securities. In the US, the IAC for the Securities Exchange Commission had attempted to bring about AI based framework under ethical control in 2023. Hence, on an overall understanding, the

[13] Franke, Ulrike, 'Harnessing Artificial Intelligence' (2019) 23 EUROPEAN COUNCIL ON FOREIGN RELATION 13, 132
[14] Andersen, Torben M, 'Some Implications of the Efficient Capital Market Hypothesis' (1983) 6 JOURNAL OF POST KEYNESIAN ECONOMICS 2, 285
[15] Robert E. McGarrah, 'Do Computerized Intelligence Systems Cause Artificial Management?' (JSTOR, 1 May 1985) <www.jstor.org/stable/40720698> accessed 27 November 2023.
[16] Rosenberg Nathan, 'Capital Goods, Technology, and Economic Growth' (1963) 15 OXFORD ECONOMIC PAPERS 32, 224
[17] Romano, Roberta, 'Empowering Investors: A Market Approach to Securities Regulation' (1998) 107 THE YALE JOURNAL 8, 2362
[18] Roger E. Barton, 'Artificial intelligence in the Securities Industry' (Thomson Reuters, 15 June 2023) < www.reuters.com/legal/legalindustry/artificial-intelligence-securities-industry-2023-06-15/> accessed 25 November 2023

usage of AI based tools in the securities market by taking due care to the possibilities of misuse of the technology opens doors to an unending trajectory of making the best use of generative AI and the associated technological tools thereby. [19]

**Conclusion**

The advent of artificial intelligence in its varies forms as deep learning, machine learning, interpreters, information assistants, research developments and several other fora is nothing but a litmus test for the actual possibilities the same can offer to mankind without fail and hence to make use of the potential scope and possibilities of AI is nothing but an intense case of validation and trajectorial analysis of the mechanisms of artificial intelligence with specifications to capital markets. Therefore, in light of the advent, scope and possibilities by keeping the potential hazards handy in mind, the possibilities should be let free and scopeful.

[19] Goshen, Zohar, and Gideon Parchomovsky, 'The Essential Role of Securities Regulation' (2006) 55 DUKE LAW JOURNAL 4, 773

# THE IDEA AND INTERNALISATION OF COLONIAL CONSCIOUSNESS IN THE INDIAN CONSTITUTIONAL LAW REGIME

*Kartika Raj Karna**

## Introduction

*A major contribution in our understanding of the entire Indian past is that this understanding derives largely from the interpretations of Indian history made in the last two hundred years*[1]

Colonialism creates a new perception of the world of the colonized. It robs the civilians of their own experiences of the world and the former substitute their own experiences with that of the colonizers. The colonized apply the assumptions of the colonizers to understand and provide answers to their world problems. The phenomenon of colonial consciousness pervades Indian thought, even today. There are various contemporary debate surrounding the issues of anti-conversion laws and use of essential practices test as a tool in the socio- religious diaspora by the Indian Judiciary; the distortion in the idea of agency (with special reference to women's agency) and perceived superiority of the notion of liberal state neutrality, as a result of proliferation of the idea of superiority of the West which in turn has deep fallouts on the principles enshrined under Article 21 and 25 of the Constitution.

The Indian Judiciary seeks to exterminate these distortions, problems, and fallouts by following a very normative approach. This approach, however, does more damage than remedy in as much as it resorts to solving the afore-mentioned issues by over-simplifying and casually ignoring the complex cross-cultural issues embedded at the heart of it. This problem,hence, relates to the thought-process which has semblance to the Western philosophy, behind such fault-marred interpretations and hence warrants the application of colonial consciousness. This post-colonial studies' concept would aid in the understanding and recognition of the Eurocentric and the petitio principii fallacy at work herein, and provide solutions that are bespoke to India instead of being just an imperialist replica that leaves us forlorn in the long run.

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[1] Lata Mani, Contentious Traditions: The Debate on Sati in Colonial India (Berkeley: University of California Press, 1998).

The following paper attempts to identify and explain the idea and internalization of colonial consciousness in Indian Constitutional thought in order to provide reasons for the development of the afore-mentioned problems in the first place and to suggest possible remedies for the same.

**Research Problem**

The phenomenon of colonial consciousness robs the civilians of their own experiences of the world. The colonizers impose their own assumptions into the minds of the colonized. These assumptions arise from the permeation of the notion of cultural superiority and application of Western Normative ethics by the colonizer. This phenomenon is pervasive even today, and is reflected recurrently in the legal discourse, such as- use of essential practices test by the judiciary, proselytization v. non-interference w.r.t. anti-conversion laws, criticisms surrounding the western idea of liberal secularism and state neutrality as enshrined under Art. 25 of the constitution, the distorted idea of agency and its relation to religious freedom and liberty, and over-simplification of cross-cultural issues etc. These problems have a significant fallout on Indian constitutional and legal thought. This problem can be analyzed by the application of the theory of orientalism to highlight the issues at the core of this problem such as-identity, quest for cultural homogeneity, power dynamics and the inter-connection between the culture and history of the west and the orient. The colonized have to psychologically go through the dilemma of choosing either individualist pagan traditions (the Indian way of thinking) or the allure of classical modernization when posed with problems concerning the socio-legal aspects of liberty and secularism. The internalization of imperialism in the experiences of the people is a major factor for problematic interpretationof aspects under constitutional law and the remedy therein, sought for.

**Research Objectives:**

1. To explore the idea and internalization of colonial consciousness in the Indian constitutional and legal thought.
2. To assess the presence of psychological orientalism in interpretation of Indian Constitutional Law
3. To determine whether there exists an Indian Way of Thinking.
4. To explain the distortion in the meaning of secularism and liberty that arises in the Indian context.

**Research Questions:**

1. Whether the idea of colonial consciousness subsists in the trends in contemporary Indian constitutional thought?
2. Whether orientalism psychologically impacts the interpretation of questions relating to Indian Constitutional Law?
3. Whether there exists an Indian Way of Thinking?
4. Whether the meanings of Secularism and Liberty face a distortion in the Indian Context?

**Methodology:**

The methodology adopted for the purpose of conducting this research is purely doctrinal. Primary and secondary resources have been used for the purpose of conducting the research, such as- statute, case laws, books, journal articles, newspaper articles and essays. It is a purely interpretative, analytical and exploratory study.

This section essentially attempts to study and point out the areas of convergence of post-colonial studies such as, but is not limited to - colonial consciousness, cultural heterogeneity, Orientalism and cross-cultural relations and that of Indian Constitutional Law thought specifically in relation to the notion of liberty and secularism and rights and procedures enshrined under Article 21 and 25 of the Constitution.

**What is Colonial Consciousness?**

The phenomenon of colonial consciousness robs the civilians of their own experiences of the world. The colonizers impose their own assumptions into the minds of the colonized. These assumptions arise from the permeation of the notion of cultural superiority and application of Western Normative ethics by the colonizer. The use of these ethics is popularized and permeated by propagating the idea of absence of ethics in Indian society. The colonized try to replicate the way the Colonizers would respond when posed with substantial socio-legal issues and use their terminologies to answer questions that are bespoke to a different demography altogether. It represents and is built on the notion of the cultural and civilizational superiority of the West. It is the creation of a certain perspective or consciousness of perceiving the world and its problems. Since, the colonized are robbed of their experiences they use the experiences of the colonizers, which they are forced to perceiveas intellectually superior and employ the methods that resemble those that are likely to be used by them when dealing with such issues. Since, at the heart and core of the notion of

colonialism lies the idea of, '*unless the colonized were weak how could they have been colonized*?', they promote the idea of superiority of the West.

The Colonizers employ various techniques to aid in their narrative of establishing the accurateness of their act of colonization to depict that whatever they did was nothing immoral but actually was aimed at the emancipation of a morally corrupt social structure[2], or by demonstrating through various descriptions how India is a sans ethic society, or by showing how there existed no presence of the term ethics in Ancient Indian History[3]. Some of the techniques were the use of pedagogy or the practice of corruption or caste-system prevalent in the entire Indian population to depict and forward the notion that Indian society was inherently immoral and so were its social structures and organization.

They also permeated this consciousness to create a particular image of the ethnographic descriptions by the use of a theological framework in their descriptions such as the use of the word 'heathendom' or the philosophy that the heathens have been swayed over by the Devil and his Minions and the notion that they are worshipping false Gods.[4] This description transformed and became the rule by implication for the West[5]. The colonizers' experiences were premised on and relied heavily on the concept of Truth. One facet of colonial consciousness can also be traced to the idea of the White Man's Burden or the civilizational Mission entrusted upon the Western civilization to civilize the barbaric Occident.

Since the phenomenon of colonial consciousness constitutes the exercise of the fallacy of petitio principii which translates to '*assuming the truth of the things that one wants to prove'*, it is double faceted in order to facilitate such exercise. It is based on both a cognitive premise and a conclusion which is wholly based on their own narratives and descriptions.

There exists a definitive link between the study of colonial relics and the interpretation of Indian constitutional legal thought.

The idea and internalization of the phenomenon of colonial consciousness can be traced by the analysis of the myriad cross-cultural issues present in landmark judicial pronouncements.

[2] S.N. Balagangadhara, The Heathen in His Blindness: Asia, the West and the Dynamic of Religion (Leiden: E.J. Brill, 1994; Reprint, Delhi: Manohar Publishers, 2005).
[3] Richard A. Shweder, Manamohan Mahapatra and Joan G. Miller, Culture and Moral Development (Chicago: The University of Chicago Press, 1987)
[4] D. Spurr, The Rhetoric of Empire: Colonial Discourse in Journalism, Travel Writing, and Imperial Administration (Durham: Duke University Press, 1993).
[5] Supra note 1.

We often fail to recognize these issues and resort to adopting measures that over-simplify the problem at hand thereby rendering the deep-rooted problems unattended which in turn aids in the formation of more and more problems. One of them which closely encompasses nearly all of the problems raised in this paper is the *Sabrimala case.*

**The Sabrimala issue and use of Essential Practices test**

The Sabrimala Temple Authorities[6] prohibited the entry of women aged between 10 to 55 years in the sanctum-sanctorum of the Temple. This bar was challenged on grounds of violation of women's right to equality and life and personal liberty enshrined under Articles 14 and 21 respectively. The arguments of the Defendants in this case were that Lord Ayappa was a celibate and hence women of a certain age group were not allowed and that the groundshad nothing to do with the concept of purity. The Supreme Court in this case ruled in the favour of the petitioners and upheld the right to entry of women in the temple and also held such a bar to be constitutive of untouchability as it was built on the concept of purity. The Supreme Court during the hearing framed one of the issues, as whether the exclusion of women constituted an essential religious practice within the meaning of Article 25 of the Constitution. The test of essentiality[7] as employed by the Court means that only thosepractices inscribed under those texts that are at the heart and core of the religion without which the religion itself becomes vitiated, would not be regulated by the State and would receive protection under Article 25.

"*What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself"*[8]. The valid use of the essential practices test would hence ensue when there exists unity on the authority and superiority of a Single Text (that is supreme among all and from where all the others have sprung up) and where there does not exist contrary views or diversity of any kind. This position finds aid in the way Semitic Faithsexist: they have a single holy book, a prophet and the idea of One True God or the idea of Doctrinal truth. Hence, it can be said that technically, the application of the ERP test becomesproblematic when the above prerequisites are not fulfilled. It leads us to an invalid interpretation where there exists no hierarchy in the superiority of one text over another, like

[6] Indian Young Lawyers Association vs The State of Kerala, (2017) 10 SCC 689 (India).
[7] Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005, 1021 (India)
[8] Acevedo Deepa Das, Gods' Homes, Men's Courts, Women's Rights, (International Journal of Constitutional Law, 2018).

in Hinduism. The Bhagavad Gita is not The Holy Book of All the Hindus. Many Scholars do not even believe Hinduism to be a religion[9].

In the *Gram Sabha Case*[10] the Court relied on the wording of the Dharma Sastras to show how worshipping a live cobra was not an essential practice of the Hindu religion while the defendants tried to show reliance upon the Shrinath Lilamrut that prescribed such type of worship. The Apex Court did not take into account the gigantic religious diversity among Hindus itself. But the Court is not to be blamed entirely herein, as it was just applying the ERP TEST and in order to apply such test one has to assume that no diversity exists, that there is a supremacy of one single text (Dharma Sastra) and the one employed herein is certainly above the one that prescribes such behavior (Shrinath Lilamrut).

The use of the ERP is problematic in India, but would not be that much of a problem in the Western Semitic faiths because in the latter the Court is just an interpreter of something which is already established by a doctrinal truth and by hierarchy of the religion[11]. However,it would cause structural and deep-rooted problems in India because, there is an absence of allof the prerequisites stated above. The Role of filing that gap would have to be taken up by theJudiciary which would transform its position to a clergy rather than a judicial court. And hence, the Court then in that situation seeks to protect and give precedence to rationality, neutrality and scientific liberty[12] (which theoretically have no place in the domain of religion). Hence any practice that springs up from religion if judged discriminatory is now no more a religious practice because it has been adjudged to be discriminatory[13]. Article 25 of the Constitution hence protects the autonomy of every religion however, the ERP test essentially impinges on that.

The liberal, normative, modern, privatized and secular idea of the genealogy of religion was propagated by the Christians became a prominent and pervasive idea of modern society[14]. Colonization and neo-colonization helped in the culmination of that. In accepting such an idea, one must necessarily let go of the distinctive dynamics that spring from our uniqueness.

[9] Shashi Tharoor and Sadhguru.
[10] Gram Sabha of Village Battis Shirala v. Union of India, (2014) SCC Online Bom 1395 (India).
[11] Quran> Hadith> Sunnat> Ijma> Qiyas
[12] Mehta, Pratap Bhanu. India: The Politics of Religious Reform and Conflict. In Religion, the Enlightenment, and the New Global Order, pp. 174–93, (New York: Columbia University Press, 2010).
[13] Acevedo, Deepa Das. Gods' Homes, Men's Courts, Women's Rights, (International Journal of Constitutional Law, 2018)
[14] Asad, Talal, Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam. (Baltimore: Johns Hopkins University Press, 1993)

In the 1800s, the Queen of England issued a proclamation[15] that upheld the idea of tolerance and liberty in the religious domain in India for the Hindus. However, this led to the Indians being forced to giving proof of the authenticity and credibility of their practices and traditions in the way that the Britishers understood, i.e., showing their mention in the true religious texts and sacred doctrines of the Hindus.'

An excerpt from the Britisher observation w.r.t. Questions about allowance of the Hindus to practice something was as follows: -

"*The true interpretation of the religious law . . . will no doubt diminish, if not extinguish the desire for self-immolation. The safest way of coming to a right understanding on a point so interesting to humanity, is a rigid investigation of the rules of conduct laid down in the books which are considered sacred by the Hindus*"[16].

The Hindus tried to vigorously defend that their traditions and practices are protected by their sacred books in the same way the Colonizers' practices are because only after proving it to the colonizers the way he understood would the latter approve of the same to be valid. Hence,pagan traditions that had no concept of doctrines and truth, hierarchy and superiority, now were forced to aggressively defend their traditions and portray their superiority which many authors believe is the cause of the rise of the Hindutva Movement. This vigor often takes the shape of fanaticism which in turn leads us to the inevitability of religious conflict.

The aspect of colonial consciousness hence arises in this context in form application of a test that is custom made for specific types of religions and when the same is applied to other religions that are religions cum pagan traditions it leads us to the discovery of a Eurocentric and a petitio principii fallacy.

**Non-interference v. Proselytization: A theoretical analysis of Anti-Conversion Laws**

Anti-conversion laws have been passed by various state legislatures and have succeeded the test of constitutionality as well[17].

The Indian way of thinking has favored the Role of the State in the protection of and management of religion as a public good[18]. This explains why the Indian Judiciary has had a likelihood of approving anti-conversion laws and prohibiting proselytization.[19]

[15] Governor General in Council to a letter requesting clarity on the official colonial policy towards the practice of self-immolation by widows, cited in Majumdar (1988, p. 102).

[16] From an 'appreciative notice of Raja Rammohun Roy's first Tract on Suttee' in the Calcutta Gazette of December 24, 1818.

[17] In 12 out of 28 states as of February, 2023.

The Semitic Faiths however, believe in the idea of One True God and the observance of God's plans as the doctrinal truth and hence consider it their duty to propagate and totransform others to accept the message of the One True God. The pagan view however stems from the idea of respecting every religion as a tradition and believes that there are many truths and many ways to achieve the same and hence it will be immoral for him to allow people to come and interfere in other people's religions. Hence, he practices the policy of non-interference. However, for the other semitic faiths it is moral for them to interfere and proselytize in order to help others to follow the One True God's plan for humanity and tosave the others from worshipping false Gods or committing the sin of idolatry.

Proselytization grows from the assumption that some religions or beliefs could be false or that some religions could be better than others. But for the pagan every religion is true and there are various forms of achieving the truth, therefore, he condemns proselytization. This difference in views can also be the likely cause for animosity between religious groups. This animosity is reflected via the criticisms to the anti-conversion laws passed in India. The Indian Judiciary has upheld the anti-conversion laws made and hence has chosen 'a' side that is the mirror image of the pagan view. In the case of *Stainislaus*[20] the S.C. upheld the constitutionality of anti-conversion laws.

In this aspect one arrives at the necessary conclusion that the Indian State cannot be neutral in the Western liberal normative sense, as it has in fact promoted one community's conception of good over another's.

Neutrality means, "*Neutrality of justification requires that the state should not include the idea that one conception of the good is superior to another as part of its justification for pursuing a policy. Neutrality of effect, in contrast, requires that the state should not do anything which promotes one conception of the good more than another, or if it does so, that it must seek to cancel or compensate for these differential effects*."[21]

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[18] Acevedo, Deepa Das, Divine Sovereignty, Indian Property Law, and the Dispute over the Padmanabhaswamy Temple, pp. 841–65 (Modern Asian Studies 50, 2018); Acevedo, Deepa Das, Gods' Homes, Men's Courts, Women's Rights. (International Journal of Constitutional Law, 2018); Acevedo, Deepa Das, Pause for Thought, Supreme Court's Verdict on Sabarimala, pp. 12-15 (Economic & Political Weekly, 2018).

[19] Bhargava, Rajeev, Introduction: In Secularism and Its Critics, pp. 1–30 (New Delhi: Oxford University Press, 1998); Jacobsohn, Gary Jeffrey, The Wheel of Law: India's Secularism in Comparative Constitutional Context. Princeton, (Princeton University Press, 2009); 30, Sen Ronojoy, Legalizing Religion: The Indian Supreme Court and Secularism, (Policy Studies. Washington, DC: The East-West Center, 2007).

[20] Stainislaus v. State of Madhya Pradesh, 1977 SCR (2) 611 (India).

[21] Mason 1990, p. 434.

It further brings us to the conclusion that even the semitism would fail to be neutral towards the issue of conversion and would naturally support their own theological good as the assumption even when condemning conversion, they support the idea that religion is all about Truth and hence bolster the idea of Freedom of Religion with liberty as its functional aspect and the freedom to convert as its by-product. Hence the Western normative Liberalism has employed the notion of truth to be paramount in religion and hence they themselves are not neutral as they think along the lines of semitic truths whenever dealing with questionsrelating to conversions.

Hence, the only way the Indian state would be able to replicate the stance of the West i.e., neutrality is to pretend to declare that they are agnostic but at the same time frame legislations regarding religious freedom. The West did not face the problem of such diversity of religion as all Semitic faiths have a similar religious framework and semblance hence, the idea that what works for the West would work for the East is not feasible in this context as India poses a unique and a distinctive problem altogether.

This is the problem that the current paper focuses on. It can be further understood by looking at the Constituent Assembly Debates w.r.t. Article 25 of the Constitution in which the Constitution makers although did not give the right to convert within Article 25, however, allowed for the freedom to convert to be inclusive of the word 'propagate' used in Article 25 of the Constitution to pacify the Christians and their apprehensions[22]. However, the Indian Judiciary has adopted one of the views by upholding the validity of anti-conversion laws and by that has upheld Secularism enshrined under Article 25 of the Constitution. However, it forgets that it has merely been successful in creating a pretence of state liberal neutrality / agnosticism when it has actually made a choice between two goods. How can the state be said to be neutral then?

**The Idea of Agency Under Article 21 and its Interposition with Postcolonial Thought**

This section essentially deals with the distortion in the idea of agency by using two Indian events as examples to showcase how this distortion is created by the application of Western normative ethics at the expense or by the preclusion of the unique problems posed by India. It

[22] 7 CONSTITUENT ASSEMBLY DEBATES (Dec. 6, 1948), http://parliamentofmdia.nic.in/1s/debates/vol7p20a.htm

aims at exploring the presence or essence of colonial consciousness in such interpretations of the two discourses.

**The case of Nude Worship and issue of Agency**

As we have previously observed how the phenomenon of colonial consciousness works on the trivialization of the experiences of the colonized and how there exists a substitution of their own experiences with that of the Colonizers. This leads to alienation of the people from their own beliefs who now only operate on the beliefs of the colonizer. This trivialization is often deep-rooted in as much as it leads to the distortion and denial of one's own experiences of the world. The experience of another culture gets engraved into the theory and formulates itself into another culture altogether. This ignorance of cross-cultural issues often leads us to these distortions or denials even today.

Colonial consciousness can be further broken down into two aspects when it comes to the approach of colonialism via discourse. They are- Forms of Knowledge and Modes of Description. The former relates to the creation of the rhetoric that helped in the permeation of the predominance and superiority of the West and the latter relates to the use of history and identity to establish laws and regulations that establish homogeneity in the world of the colonized. However, this dominance was not achieved because the permeation or penetration of the colonial thoughts happened unevenly and hence dominance was achieved and not hegemony. Practices like Sati became the torch-bearer for the argument for the classical modernization of Indian society and it aided in the portrayal of a degraded picture of Indian society. Modernity hence, had two types in India- colonial and post-colonial which often creates problems in the current world.

The ritual of Bettale Seve or nude worship as performed in certain parts of North Karnataka was banned in the 1980s owing to the public outcry that it forced women to do the worship in nudity and hence was violative of Articles 21 of the Constitution. Article 21 of the Constitution guarantees to everyone right to life and personal liberty and one's agency over one's life lies at the heart of this article. This practice was based on two myths regarding the worship of Goddess Renukambha. The question regarding agency arises here because there existed a colonial framework under which the Sati subject was given no agency because the framework itself was built on the assumption that religious practices could never be observed by the application of consciousness but is always a result of passive obedience. Hence, the

rumor that was promoted was that women that did the seve were either forced to do so or were intoxicated so that they do not know the nature and consequences of their acts. Hence, we can infer the mere assumption of the fact that coercion had taken place often negates the possibility that the ritual can be performed voluntarily.

In order to go beyond the popular discourse of traditions v. modernity one. We have to look into the possibility that this modernity could just be quest for establishment of homogeneity in disguise and in doing the contrary one overlooks the very principle enshrined at the heart and core of the ritual i.e., the celebration of female sexuality.[23]

Furthermore, one needs to realize that the notion of tradition is native to India as it is based on instincts and feelings. However, the notion of modernity which is constitutive of scientific behavior and application of reasoning and logic is non-native to India and is Western[24].

Moreover, the ritual is not even based on the concept of shame or sex it has an altogether different underlying principle at the core, that is to emancipate the thought of the Dalit women so that she becomes critical and sensitized to the ideas of shame and rationality and modesty and so that she does not biome a puppet of the patriarch. In this sense the ritual upholds the idea of feminism. Furthermore, the whole ritual also can be interpreted torepresent the events of death and rebirth from the way it is performed.

What prevents us from looking into these interpretations is the assumption that since the practice is discriminatory it fails to be a religious practice at all. What lies at the heart of this is therefore, the quest for homogeneity, the quest that bolsters the White Man's burden, the quest that makes other people realize that they do not possess any agency in their lives all of which stems out of a false presumption i.e., religious practices can never be an outcome of a conscious choice made by the individual. This assumption can only arise where the person making the assumption does not belong to or knows the culture of the subject making all of it a cross-cultural issue. Banning the practice involved over-simplification of the whole problem. Ascribing the aspect of agency on the basis of an invalid assumption furthers that oversimplification.

This in turn leads to the distortion in the idea of agency as we try to replicate the assumptions of the colonizers[25], thereby reflecting the presence of colonial consciousness.

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[23]. Lata Mani, Contentious Traditions: The Debate on Sati in Colonial India (Berkeley: University of California Press, 1998).

[24] U. R. Ananthamurthy, Bettale Puje Yake Kudadhu? pp. 38-39

The Supreme Court of India has tried to use the test of essentiality as seen previously in order to clean all the superstitions in the religions to suit its own ideas of reform that match the 21st Century Classical Modernization standards[26]. In doing so the custodian of fundamental rights does more damage than remedy in as much it takes away the religious autonomy of an individual that is protected under by the purview of Article 25 of the Constitution.[27]

It has also been observed by renowned jurists all over the world that, "*What is religion to one is superstition to another.*"[28]

Under Article 29 of the Constitution the citizens should be allowed to have a say in what constitutes essentiality and what constitutes superstition[29].If the Indian State is not allowing that, how can the state be said to be neutral and democratic considering the fact that rights enshrined under Article 25 are individual based rights.

**Psychological Orientalism and Experiential Reality: A post-colonial perspective**

Orientalism in the most basic words is the explanation of the history, life, traditions, and practices of the East as seen through the lens of the West[30]. Colonial Consciousness as we have already observed is a phenomenon which causes alteration in the psyche and culture of the colonized. As Edward Said has rightly said, "*Psychologically, Orientalism is a form of paranoia, knowledge of another kind*"[31]. Imperialism as defined by Edward Said is, "*The practice, the theory, and the attitudes, of a dominating metropolitan centre ruling a distant territory; 'colonialism', which is almost always a consequence of imperialism, is the implanting of settlements on a distant territory and often involves untold miseries for others*"[32]. Edward said in his work on Orientalism has stated how the Orientalist discourse attempts to divide the world into fragments of 'they' and 'us.' This perception of the Orientby the Occident was further popularized by the Colonizers in order to create a certain imageof the East. This view aided them in defending the stance of the 'White Man's Burden." The redefinition of various Indian concepts and the rewriting of Indian history by the Colonizers

[25] Id at 92.
[26] Faizan Mustafa & Jagteshwar Singh Sohi, Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy, 2017 BYU L. REV. 915 (2017).
[27] Id at 933.
[28] Adelaide Co of Jehoviah Witnesses v Commonwealth (1943) 67 CLR 116, 123 (Austl.).
[29] INDIA CONST. art. 29, § 1; Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005, 1021 (India) at p 1025.
[30] Said, Edward W., Orientalism, (New York: Random House Inc, 1979).
[31] Id.
[32] Supra note 1 at p.8

further aided them in defending their acts of transgression as their defence was that the Indian society was in need of civilization.

Such dominance if not heterogeneity by the colonialists created a sense of consciousness that permeated thought, belief and understanding of the colonized. It penetrated into the domain of social, cultural, political, economic and psychological experiences of the people andreplaced them with those of the colonizers.

Franz Fanon also believed that colonialism was inherently immoral as it made people alien to their own world in as much it internally coerced one to find the answer to the question of "*In reality, who am I?*"[33]

In other words, colonialism is considered degrading and dehumanizing for the simple reason that it "*Seeks to dehumanize them (inhabitants). Everything will be done to wipe out their traditions, to substitute our language for theirs and to destroy their culture"*[34]. This dehumanizing hence relates to the self in which one starts perceiving oneself as culturally, morally, intellectually and ethically less superior than the colonizers. This is the view that the colonists propagate and which permeates into the minds of the colonized. This is howcolonial consciousness permanently establishes itself into the psychology of the colonized. This is what prohibits him from making use of his experiences or in other words his own experiential reality.

**The Indian Experience: Differences in the way people think**

There are various characteristics that are unique to Indians, the presence of which indicate that there exists a particular way in which Indians think and that way is clearly distinctive from the West or its descriptions thereof. The Indian thought believes that truth is not a universal categorical imperative as opposed to Kant's views. Furthermore, truth in Semitic Faiths is associated with Godliness. Indian thought also lacks the presence of universality whereas, the Kantian view stands on the buttress of universalism of Truth[35]. Moreover, Indians tend to contradict themselves or to say different things at different times. This doesnot signify that they are liars but just portrays differences in the way of thought. They further place a lot of reliance on the art of contextualization.

[33] Fanon, Frantz, The Wretched of the Earth. Trans. Constance Farrington, (London, 2001)
[34] Sartre, Jean Paul, "Preface." The Wretched of the Earth, p.13, (London: Penguin Books, 2001).
[35] Muller, Friedrich Max, India: What Can it Teach Us? (London: Longmans Green, 1883);
6, Copleston and Friedrich Charles, A History of Philosophy, (London: Burns, Oats and Washbourne, 1946);
Mackie, John Leslie, Ethics: Inventing right and wrong, (Harmondsworth: Penguin Books, 1997).

In order to analyse how the Colonial Consciousness affects the thoughts and experiences of the colonized it is imperative to know how the Indians and the West have inherently different ways of thinking. This difference in way of thinking leads us to the conclusion that the Orient and the Occident are in fact very different. Hence, the permeation of cultural superiority is established by the evolution of cross-cultural morality. In Richard Schweders views[36], who conducted a survey and based on certain questions arrived at the conclusion that because the answers of the Indians are very different from that of the Colonizers, the latter are in fact moral imbeciles[37] He further goes on to provide reasons why Indians think in such a way and defends it. This reasoned defence however, leads us to the conclusion that he too believes thatIndians are inherently immoral[38].

Van Den Bossche, a philosopher analyzed a Jain text called the Vajjalaggam[39] to decipher the nature of Indian ethics and stated that the whole text and not mention of any term that even remotely resembled the term ethics. Hence, the colonists took the easy interpretation of this finding to show and promote the view that Indians therefore are immoral since Indian ethics are non-existent. Dr. Claudius Buchanan stated that, "*Neither truth, nor honesty, honor, gratitude, nor charity, is to be found in the breast of a Hindoo*"[40]. Similarly, Hastings stated that, "*the standard of morality among the natives of India differed widely from that established in England. He knew that he had to deal with men destitute of what in Europe is called honor, with men who would give any promise without hesitation, and break any promise without shame, with men who would unscrupulously employ corruption, perjury, forgery, to compass their ends. His letters show that the great difference between Asiatic and European morality was constantly in his thought*.[41]

**Conclusion and Way Forward**

[36] A Canadian Professor and a cultural psychologist.
[37] Richard A. Shweder, Manamohan Mahapatra and Joan G. Miller, '*Culture and Moral Development*.'; in Jerome Kagan and Sharon Lamb, Eds., The Emergence of Morality in Young Children (Chicago: The University of Chicago Press, 1987).
[38] Id at 43-44.
[39] Frank Van Den Bossche and Freddy Mortier, *The Vajjalaggam: A Study in Virtue Theory*, (Asian Philosophy 7, no. 2,1997).
[40] Id.
[41] The Life of Robert Lord Clive; collected from the Family Papers, communicated by the Earl of Powis. By Major-General Sir John Malcolm, K.C.B., (London: 1836) in Thomas B. Macaulay, Critical and Historical Essays, vol. 1.

There exists a definitive link between the study of colonial relics and the interpretation of Indian constitutional legal thought. The idea and internalization of the phenomenon of colonial consciousness can be traced by the analysis of the myriad cross-cultural issues present in landmark judicial pronouncements. We often fail to recognize these issues and resort to adopting measures that over-simplify the problem at hand thereby rendering the deep-rooted problems unattended which in turn aids in the formation of more and more problems.

The aspect of colonial consciousness hence arises in this context in form of the application of the ERP test that is custom made for specific types of religions and when the same is applied to other religions that are religions cum pagan traditions it leads us to the discovery of a Eurocentric and a petitio principii fallacy. This fallacy needs to be cured because the Corut establishes binding principles of Constitutional Law on the basis of the fallacy.

The Indian Judiciary has upheld the anti-conversion laws made(cite) and hence has chosen 'a' side that is the mirror image of the pagan view. In the case of *Stainislaus*[42] the S.C. upheld the constitutionality of anti-conversion laws. In this aspect one arrives at the necessaryconclusion that the Indian State cannot be neutral in the Western liberal normative sense, as it has in fact promoted one community's conception of good over another's. This is a major challenge for the Indian Judiciary considering India is a secular democracy along with the problem portrayed w.r.t. use of the word '*Propagates'* under Article 25.

With respect to the distorted meaning of agency and related aspects, colonial consciousness prevents us from looking into those interpretations that would help us tackle the issue in an effective manner. What lies at the heart of the interpretations made is therefore, the quest for homogeneity, the quest that bolsters the White Man's burden, the quest that makes other people realize that they do not possess any agency in their lives all of which stems out of a false presumption i.e. religious practices can never be an outcome of a conscious choice madeby the individual. Ascribing the aspect of agency on the basis of an invalid assumption furthers that oversimplification. This in turn leads to the distortion in the idea of agency as wetry to replicate the assumptions of the colonizers, thereby reflecting the presence of colonial consciousness.

The Supreme Court of India has tried to use the test of essentiality as seen previously in order to exterminate all the superstitious beliefs in the religions to suit its own ideas of reform that

[42] Supra note 20.

match the 21st Century Classical Modernization standards. In doing so the custodian of fundamental rights does more damage than remedy in as much it takes away the religious autonomy of an individual that is protected under by the purview of Article 25 of the Constitution. This in turn distorts the meaning of Article 25 in the Indian context.

The dehumanizing nature of colonialism hence relates to the self in which one starts perceiving oneself as culturally, morally, intellectually and ethically less superior than the colonizers. This is the view that the colonists propagate and which permeates into the mindsof the colonized. This is how colonial consciousness permanently establishes itself into the psychology of the colonized that compels the colonized to forego their own experiences of the world.

Hence, the way forward is to try and eliminate the Eurocentric and the petition principii fallacy that led the Indian Judiciary to arrive at such problematic interpretations that do more damage than good. Furthermore, the use of the ERP test by the Judiciary most of the times unknowingly becomes a quest for reform which must be discouraged and certain caveats must be established in form of policy reform that cater to India's unique problems.

# THE DEMISE OF CREATIVITY IN THE PRACTISE OF MUSIC SAMPLING

*Rashi Upadhay**

## Introduction

Throughout the past thirty years, digital sampling has been a common technique employed in the creation of music, particularly in the Hip-hop style and its subgenres. With the turn of the millennium, it has been increasingly popular in fresh areas of musical development. The development of this technology has led to legal problems as well as moral dilemmas over what constitutes originality and creativity in music production. These questions have received a number of proposals, but no conclusive response has yet been provided. Some elements, such as fans who expose the sources of the samples on the Internet, appear to be detrimental to their favorite musicians because they put them in risk.[1]

To put it simply, the act of using a portion of another musician's musical recording as a component of one's own work is known as sampling.[2] This establishes the distinction between sampling and remixing, the latter of which is the rearranging of the original. According to Ashtar, sampling is the product of a lengthy tradition of composers like Beethoven and Mendelssohn appropriating, modifying, and copying musical techniques and sounds from earlier musicians, frequently in an effort to pay homage to or compete with their earlier works.[3] In a less general sense, sampling refers to the process of accurate replication of previously recorded material.[4]

Hip hop, one of the most important and well-liked musical genres in the world today, has a significant influence on the growth of digital sampling.[5] Old recordings serve as the raw material that hip-hop producers may modify to create art, similar to what paint does for

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[1] Galanos, V. (n.d.). Digital sampling in contemporary music: Ethical issues and dilemmas of 'loop digging.' *www.academia.edu*, [online] p.2. Available at: https://www.academia.edu/11337563/Digital_sampling_in_contemporary_music_Ethical_issues_and_dilemmas_of_loop_digging_ [Accessed 17 Mar. 2023].

[2] Mueller, R. (2006). Sampling. In: *Merriam Webster's Collegiate Dictionary*. p.435.

[3] Ashtar, R. (2009). Theft, Transformation, and the Need of the Immaterial: A Proposal for a Fair Use Digital Sampling Regime. *Journal of Science and Technology*, [online] 19(2), p.283. Available at: https://www.albanylawscitech.org/article/19292-theft-transformation-and-the-need-of-the-immaterial-a-proposal-for-a-fair-use-digital-sampling-regime [Accessed 17 Mar. 2023].

[4] Metcalf, C.N. (2011). *A compulsory license for digital music sampling: Historical context and future guidelines.* Master's Thesis. pp.23–26.

[5] Butler, S. (2004). *Court ruling could chill sample use*. [online] TODAY.com. Available at: https://www.today.com/popculture/court-ruling-could-chill-sample-use-1C9486092 [Accessed 17 Mar. 2023].

painters.[6] Today's "studio musicians" can alter and embellish previously recorded music to produce a limitless number of fresh and inventive sounds without worrying about compromising the sound quality.[7] Yet, music that makes use of digital sampling has now been regarded as piracy outside of the hip-hop industry.[8]

The morality of sampling is still up for debate, but the evidence tends to point in the direction that music sampling, when done with respect to previously used material and without any desire to steal, adds to the information available online.[9]

*Problem Statement*- The Copyright Law fails to resolve the problems of music sampling artists.
*Objective*- The present research paper shall be drafted to examine the problems and issues arising with the practice of Music Sampling. It will highlight that the Copyright Statute does not provide sufficient protection to Musical Artists.
*Methodology*- This research paper will examine adequate primary and secondary sources of literature on the subject. Therefore, predominantly, 'doctrinal research methodology' will be adopted.

**Music Sampling – A Creative Practice or Piracy?**

The three processes of music sampling, which is utilized to generate new music today, are digital recording, computer sound analysis and, if desired, possible alteration, and playback. Once the sampled recording has been converted to virtual format, it could be "altered and manipulated to reap an applicable impact on playback, involving variations in pitch, tempo, and dynamics". Using this approach, it is far difficult to decide what share of the new expression have to be assigned to the character's development and how much ought to be allotted to the original invention, despite the fact that this technique provides enormous options for artistic expression.[10]

[6] Schloss, J.G. (2004). *Making beats: the art of sample-based hip-hop*. Middletown, Connecticut Wesleyan University Press, p.23.
[7] Johnson, A.D. (1993). Music Copyrights: The Need for an Appropriate Fair Use Analysis in Digital Sampling Infringement Suits. *Florida State University Law Review*, [online] 21(1), pp.139–40. Available at: https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1527&context=lr.
[8] *Supra* note 6, at 1.
[9] *Supra* note 1, at 1.
[10] Durbin, W.Y. (2007). Recognizing the Grey: Toward a New View of the Law Governing Digital Music Sampling Informed by the First Amendment. *William & Mary Bill of Rights Journal*, [online] 15(3), p.1021. Available at: https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1111&context=wmborj [Accessed 17 Mar. 2023].

The music industry has several uses for sampling technology. It has given technicians the ability to protect the work of the greatest musicians of the 20th century for future generations, it has given musicians the ability to spruce up their own studio recordings, and it has created new opportunities for artistic collaboration and invention.[11]

There are four situations where artists are more likely to use quotes from other works. Firstly, sampling is a useful tool that lets musicians obtain standout sounds or back-up music without having to pay musicians or waste time trying to replicate the sounds themselves.[12] As an alternative, sampling could be unintentional or unconscious. The music industry has several uses for sampling technology. In fact, the propensity to unconsciously recall knowledge from the subconscious mind is a recognized medical disease, and it has been suggested that the widespread influences of contemporary popular culture are to blame for its heightened manifestation in the last 10 years. This raises the question of whether or not a defendant who "involuntarily" samples the work of another artist is entitled to the complete list of available remedies.[13] Yet, most often, a sample is used by an artist to link a previous piece to a composition of their own. This motivation could be honorable, such as when an artist wishes to honor a musician whose work they appreciate, or it could be a mercenary technique where the later artist tries to cash in on the earlier work's financial success.[14] Lastly, a musician is allowed to use a piece of music as a sample for mockery or satire. The use of major musicians as examples by fringe organizations to critique the "hypocrisy" of the music business and the power of multinational record labels has gained popularity.[15]

Sampling is just the musical equivalent of plagiarism, when those who do not want to put in the effort to be unique or respectful simply grab the portions that sound nice. It also seems like a pretty hypocritical position to take given that the music industry as a whole appears to be quite okay with the practice while ringing the alarm on piracy.[16]

It is kind of a punch to the face to hear an entirely new song that borrows a sample from one from a previous generation since it casts doubt on the original. There is a proper way to "steal" a music, which entails entirely changing the original rather than just employing a copy-and-

[11] Carnachan, R. (1999). Sampling and the Music Industry: A Discussion of the Implications of Copyright Law. *Auckland University Law Review*, [online] 4, pp.1035–36. Available at: http://www.nzlii.org/nz/journals/AukULawRw/1999/4.pdf [Accessed 17 Mar. 2023].

[12] McGiverin, B.J. (1987). Digital Sound Sampling, Copyright and Publicity: Protecting against the Electronic Appropriation of Sounds. *Columbia Law Review*, 87(8), p.1726.

[13] *Supra* note 11, at 1035.

[14] *Id.*

[15] *Id*. at 1036.

[16] White, P. (2014). *Opinion: Sampling too similar to piracy.* [online] The Collegian. Available at: https://www.kstatecollegian.com/2014/10/17/opinion-sampling-too-similar-to-piracy/ [Accessed 17 Mar. 2023].

paste technique. The kind of sampling that ought to be encouraged is this one.[17] A new generation's connection to their parents, grandparents, and superiors is facilitated by sampling. Many older people get angry when they hear a new song that borrows a sample from when they were younger because the younger generation thinks the music is brand-new and doesn'trealize how popular it was back then. But sampling can be a doorway for young people to go back in time and connect with them. Since music is constantly evolving, it should be shared and updated as necessary.[18]

When debating the issue of copyright law and sampling, it is important to keep in mind the three distinct categories of the intellectual property debate: piracy, plagiarism, and transformative appropriation. The first two are well-known terms: plagiarism and piracy, respectively, both refer to the theft of another person's intellectual property without their consent. Yet, the discussion surrounding intellectual property may not be as acquainted with the last category. An artist engages in transformative appropriation when they use older, (copyrighted) materials for brand-new expressive goals. Digital sampling, which uses historical sound sources to produce wholly modern music, is the pinnacle of this principle. Of course, sampling has not always been described in these terms (and it never has been), and despite the fact that there are big differences between these three ideas, many individuals in the business and the courts confuse them. Transformative appropriation "moved from coexisting peacefully with copyright laws to being restricted and even forbidden" over the course of the last fifteen years as the gap between these notions in the preeminent legal interpretations grew ever smaller.[19]

**Application of Copyright Law**

The intellectual property scion known as "copyright" safeguards originality. But it does not defend the concepts or information that underlie that expression. This distinction is justified by the requirement that the basic elements, or "building blocks," of creative endeavor remain publicly accessible through the public domain. There is, however, a time when an individual gathers those "building blocks" in a way to produce an original work. Copyright protection will be applied to the work's expression. The distinction between a "idea," which is not

[17] K, B. (2017). *Sampling: Creativity or Thievery?* [online] Medium. Available at: https://medium.com/@BrizzyK/sampling-creativity-or-thievery-7d9b555e0f00 [Accessed 17 Mar. 2023].
[18] *Id.*
[19] Wallmark, Z. (2007). Making Music in the Digital Age: How Technological Developments Shape the Way We Create and Listen to Music. *www.academia.edu*, [online] pp.109–110. Available at: https://www.academia.edu/6442074/Making_Music_in_the_Digital_Age_How_Technological_Developments_Shape_the_Way_We_Create_and_Listen_to_Music?email_work_card=view-paper [Accessed 17 Mar. 2023].

protected, and its "expression," which is protected, is usually blurry in practice, making it difficult to predict when copyright protection will apply to a piece of work.[20] A copyright regime's two underlying principles are efficiency and fairness. According to the justification of fairness, stealing is the act of replicating another person's creative work without giving them credit for it. The biblical adage "one should not reap where he (or she) has not sown" is echoed in this.[21] The efficiency justification states that certain level of content protection is necessary to encourage creative endeavour.[22]

Three immediate problems with copyright law have arisen as a result of recent digital technology developments. First, the introduction of new digital technologies will increase infringements, make it more difficult to track down offenders because of concerns about privacy, and maintain public acceptance of unauthorized copying. The current copyright laws will be harder to enforce as a result. Secondly, the doctrine of fair use will keep on to undermine the system of copyright in order to enable private, unauthorized use of work which is being protected by copyright. Finally, the definitions of copyrightable work as they currently stand will prove to be overly restrictive. If these problems are not resolved, the intellectual property system will be undermined.[23]

Digital sampling is not specifically included in the Copyright Act. Nonetheless, a more liberal reading of the Act might allow for its inclusion. Yet, no "test cases" that could offer a sufficient means of relief to a copyright owner asserting the unauthorized use of his or her sounds have been decided. Quantity is the main issue when bringing a sampling claim. Nobody ever truly owns up to the varied amounts of sampling that was taken without consent.[24] Many concerns about musicians' rights were brought up in two cases. The following are some potential causes of activity in this area: 1) a lawsuit seeking an injunction and compensation for copyright violations involving musical compositions; 2) unfair competition; 3) improper authorship attribution; 4) improper musical composition appropriation; and 5) defamation of character.[25]

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[20] *Supra* note 11, at 1042.
[21] *International News Service v. Associates Press* [1918] 215 (US S. Ct.).
[22] *Supra* note 11, at 1042.
[23] Fleischmann, E. (1987). The Impact of Digital Technology on Copyright Law, *UIC John Marshall Journal of Information Technology & Privacy Law*, [online] 8(1), p.2. Available at: https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1452&context=jitpl [Accessed 17 Mar. 2023].
[24] Allen, J. (1992). Look What They've Done to My Song Ma -Digital Sampling in the 90's: A Legal Challenge for The Music Industry. *University of Miami Entertainment & Sports Law Review*, [online] 9(1), pp.184–185. Available at: https://core.ac.uk/download/pdf/214372106.pdf [Accessed 17 Mar. 2023].
[25] *Id*. at 185.

**Infringement Cases of Music Sampling**

New digital technology's emergence necessitates legislative action. The judicial framework has fallen short in upholding copyrights, defining acceptable private use, and defining the parameters of the protected work. Additionally, it has been demonstrated that the market system cannot solve these issues.[26]

Four things must be proven in order to establish a claim of copyright infringement: Originality of sound sampling, ownership of sound samples, copying of sound samples, and the ability to demonstrate either substantial resemblance or fractured literal similarity, are the first three criteria. "There are three prongs in the test. The material allegedly copied by the defendant must first be covered by a legitimate copyright owned by the plaintiff." Second, the plaintiff must demonstrate that the defendant really lifted text or images from the original work protected by copyright. The plaintiff must also demonstrate that the defendant's copying was an illegal violation of the plaintiff's copyright. Whether the defendant sufficiently copied what ordinary listeners—the intended audience for such music - consider to be "pleasant to the ears," depends on whether the third element can be deemed to have been unjustly seized by the defendant. So, a plaintiff must prove considerable similarities.[27]

Courts started tackling the problem of sampling head-on in the early 1990s. McDonald v. Multimedia Entertainment, Inc.,[28] a significant preliminary case, offered a useful definition of the components necessary to demonstrate a violation of one of the two copyrights involved in sampling in musical works. The plaintiff composers in McDonald alleged that a mediacompany had copied a significant portion of their works that serves as their television show's theme music. The plaintiff composers had submitted their compositions to the media companyfor consideration of use in promotions or "jingles" in that case.[29] The United States District Court established a two-part test for determining copyright infringement for the Southern District of New York: (1) that the plaintiff's work was copied by the defendant and; (2) it wasunlawful, as it was substantially similar to the work of plaintiff. One of the most important point the Court stated was that "a defendant is not liable for violating a copyright even thoughhe copies, if the work that is being copied, is indeed unprotected."[30] One of the most important

[26] *Supra* note 23, at 2.
[27] *Supra* note 24, at 185-86.
[28] *McDonald v. Multimedia Entertainment, Inc* [1991] 809 (S.D.N.Y.).
[29] *Id.* at 24, 771-72.
[30] *Id.* at 24, 772.

points the court stated was that "a defendant is not liable for copyright infringement even if he copies, if the copied work is not protectable."[31]

Five months later, in Grand Upright Music Ltd. v. Warner Bros. Records, Inc., the same court partially addressed the sampling issue. The court ruled in the Grand Upright case that a rapper's partial inclusion of a composition protected by copyright by another artist into a rap recording violated the rapper's legitimate copyright. Thus, the court ruled what was both protectable, or copyrightable, as well as what constituted a violation of that protection, or copyright infringement, of that work. Additionally, the court deemed sampling, which is becoming more and more common in the music industry, to be nothing more than stealing.[32] The court's laconic decision, which was severe compared to its McDonald judgement, really seems to provide no opportunity for de minimis and fair use exceptions. A work is protected when a copyright is legally granted, and it is also unauthorized to reproduce that work in any way.[33]

After the Grand Upright decision, Samplers suffered another setback in a nearby courtroom. According to the United States District Court, in the case of Jarvis v. A&M Records,[34] the defendant music producers confessed to taking the sound recording of plaintiff without their consent, could be held accountable for copyright infringement for having sampled a number of brief lyrical and musical passages from the plaintiff's recording, despite defendants' claim that the sampled passages were inconsequential. On the route to reaching this conclusion, in cases involving digital sampling, the typical de minimis defence test was reduced by the court to just one question: "Whether the basic components of the original work are being copied by the defendant, either quantitatively or qualitatively."[35]

The Supreme Court's decision in Campbell v. Acuff-Rose Music, Inc.[36] was rendered a year later, brought some good news for samplers. When it ruled that a rap song's commercial aspect did not amount to a presumption towards fair use, a criterion was established by the court for samplers in general, if not a guideline, for musicians to follow when copying from other musicians. The Court found that the production of transformative works frequently advances the objective of copyright, which is to promote the arts and sciences.[37] "The fair usedoctrine's assurance of breathing space inside copyright boundaries is consequently centred on such transformative works., the degree of transformation in the new work will determine how

[31] *Id.* at 24, 773.
[32] *Grand Upright Music, Ltd. v. Warner Bros. Records* [1991] 182 (F. Supp.).
[33] *Id.* at 183.
[34] *Jarvis v. A & M Records* [1993] 827 (F. Supp.).
[35] *Id*. at 291.
[36] *Campbell v. Acuff-Rose Music, Inc.* [1994] 510 (U.S.).
[37] *Id*. at 579.

much weight is given to other factors, such as commercialism, that could influence the determination of fair use."[38] It may be possible for sampling to be protected by fair use if songs incorporating samples are acknowledged as "transformative" of the original creation.

**Conclusion**

Digital sampling has become a well-liked method for studying and revaluating earlier music in contemporary musical culture. The sampling phenomenon has outgrown the legal framework, leaving no choice but to assume the manner in which the old legislation applies to sampling, lawyers, artists, as well as other members of the music entertainment industry are forced to analyse this new musical approach in a legal vacuum. Sampling has outgrown the legal framework because it is more technologically advanced than any previous musical technology. As a result, there is a wide range of views on the legal status of digital sampling, with much discussion and disagreement among people who are engaged in entertainment law. In reality, the Grand Upright Music ruling shows that even the judiciary is unsure about how to interpret sampling under the law.

The Framers did not include digital music sampling when they drafted and amended the copyright laws. The law that now governs sampling is flawed because it gives copyright holders too much power, which prevents it from achieving its constitutional objectives. There are numerous options to amend the law to include the widely supported development of a mandatory system. Although the amount of money paid to copyright owners might not be maximized directly, thus permitting other essential and constitutionally relevant advancements in the "science" of art, it might nonetheless provide the necessary incentives for innovation. Future artists will be able to achieve such astounding levels of artistic advancement and gain recognition for their "grey" work in this way.

The modern technology of digital sampling, however, cannot be ignored by the law or written off as a passing trend with little artistic merit. The legal system must not prohibit the artistic practice of digital sampling. Likewise, samplers must be subject to legal regulation to protect music owners from illicit copyright usage. Just as it did in the past to accommodate other new technology, Congress must amend the Copyright Act to allow for sampling. The best way to update the Act is with a mandatory license clause that ensures artist pay since it fulfils the needs of both the general public as well as the artist and establishes a foundation for the supportof future technologies that are not yet known.

[38] *Id.*

# WHITE COLLAR CRIME AND DEVIANCE

*Mukesh Kumar Yadav**

In the realm of criminology and sociology, the study of crime has historically been associated with marginalized and economically disadvantaged populations. However, thelandscape of criminal behavior extends far beyond street crime and encompasses a wide array of illicit activities perpetrated by individuals and entities occupying positions of privilege and power. This phenomenon, commonly referred to as "white-collar crime," represents a significant yet often overlooked aspect of criminality within contemporary societies. Moreover, within the context of white-collar crime, the concept of privilege class deviance emerges as a critical area of inquiry, shedding light on the intersection ofsocio-economic advantage and deviant behavior.

A variety of crimes perpetrated by persons or groups in positions of trust or authority, typically in professional or commercial contexts, and motivated by financial gain are collectively known similar to white-collar crimes. Sociologist Edwin Sutherland coined the term "white-collar crime" in the late 1930s to refer to crimes committed by people inpositions of power and by people with high social status while they were working.[1] Overtime, the concept has evolved to include a diverse array of offenses such as fraud, embezzlement, insider trading, bribery, and corporate misconduct. These crimes are characterized by their complexity, sophistication, and often elusive nature, posing significant challenges to law enforcement and regulatory authorities.

Simultaneously, the notion of privilege class deviance highlights the reality that criminal behavior is not confined to the margins of society but can also be found among those occupying positions of privilege and social status. Privilege class deviance refers to the violation of societal norms and expectations by individuals or groups who benefit from systemic advantages and access to resources. Unlike conventional depictions of criminality, which often focus on the actions of marginalized individuals, privilege classdeviance underscores the role of power, wealth, and social capital in shaping deviant behavior.

The intersection of white-collar crime and privilege class deviance presents a complex and multifaceted phenomenon with far-reaching implications for individuals,

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[1] Common White-Collar Crime, https://www.nu.edu/blog/common-white-collar-crimes/

organizations, and society at large. On one hand, white-collar crime poses significant economic and social costs, undermining trust in institutions, eroding public confidence, and perpetuating inequality.[2] On the other hand, privilege class deviance challenges conventional notions of criminality, prompting critical reflections on the dynamics of power, privilege, and justice within contemporary societies.

The main causes of the rise in white-collar crime in India include rivalry, greed, and a lack of suitable regulations to discourage such crimes. For a large segment of the population, poverty is a major cause of both financial and physical deprivation. As a result, poverty can also contribute to white collar crime since it might drive people to commit these crimes in order to satisfy their desires. Criminals are now more inclined tocommit crimes and hide everywhere thanks to the development of the internet and the digital world, where large transactions can be completed in a matter of seconds and communication with people worldwide can be established in a matter of minutes.Furthermore, because of legislative loopholes, the legal system is unable to hold white-collar crime perpetrators accountable after they are captured.

**Research Problem**

The research issue seeks to investigate the relationship between socio-economic privilege and white-collar crime, addressing the question of whether individuals from higher socialclasses are more likely to engage in criminal activities compared to those from lower socio-economic backgrounds. By exploring the intersection of privilege class deviance and white-collar crime, the research aims to identify the underlying mechanisms drivingcriminal behavior within privileged social circles and to assess the implications for social inequality and justice.

**White-Collar Crime**

White-collar crime, a term coined by sociologist Edwin Sutherland in his seminal work "White Collar Crime" published in 1949, refers to financial crimes that are non-violent and carried out by people or organizations in positions of power. Sutherland's

groundbreaking research challenged traditional notions of crime, shifting the focus fromstreet-level offenses to the illicit activities of those in respectable occupations.

The origins of white-collar crime can be traced back to the rapid industrialization and urbanization of the late 19th and early 20th centuries. As society underwent profound economic transformations, new opportunities for exploitation and fraud emerged withinthe burgeoning corporate and financial sectors. The rise of large-scale enterprises,accompanied by lax regulation and oversight, created fertile ground for unethical conductand fraudulent practices[3].

One of the earliest documented cases of white-collar crime dates back to the 18th century,with the South Sea Bubble scandal in Britain. This notorious financial scheme, perpetrated by the South Sea Company, involved speculation and market manipulation, leading to widespread financial ruin for investors. In a similar vein, the Ponzi scheme, which got its name from Charles Ponzi, the man behind an investment scam in the early20th century, represents the historical persistence of the appeal of white-collar crime.

The 20th century witnessed a proliferation of white-collar offenses, spurred by advancements in technology, globalization, and the increasingly complex nature of modern business practices. High-profile scandals such as the Enron scandal in 2001 andthe global financial crisis of 2008 exposed the pervasive nature of white-collar crime andits devastating impact on economies and societies worldwide.

Throughout history, efforts to combat white-collar crime have evolved in tandem with the changing nature of criminal activity. Legislative measures such as the Sherman Antitrust Act of 1890 in the United States, aimed at curbing monopolistic practices, andthe Sarbanes-Oxley Act of 2002, enacted in response to corporate accounting scandals, represent significant milestones in the ongoing struggle against white-collar crime[4].

The white-collar crime has deep roots in the economic and social transformations of modern society. From its origins in the industrial era to its contemporary manifestationsin the digital age, white-collar crime continues to pose formidable challenges to regulatory authorities, law enforcement agencies, and policymakers. By understanding its historical evolution and underlying dynamics, society can better equip itself to

[3]White-Collar crime: History and its evolution. (2024, February 26). Accessed from https://corporatefinanceinstitute.com/resources/knowledge/finance/white-collar-crime/

[4] Kam C Wong, From White-Collar Crime to Organizational Crime: An Intellectual History, Murdoch University Electronic Journal of Law, (March 5, 2024, 1:36 PM), http://www5.austlii.edu.au/au/journals/MurUEJL/2005/14.html#n7.

prevent, detect, and prosecute white-collar offenders, thereby safeguarding the integrity of financial markets and protecting the public interest.

**White Collar Crime Cases**

*2G Spectrum Scam (2008)*

The 2G spectrum allocation was a process by which the Indian government granted licenses to telecom companies to operate in specific frequency bands. The scam involvedirregularities in the allocation of 2G spectrum licenses and subsequent resale of licensesat manipulated prices, causing significant losses to the exchequer. It was alleged that then-Telecom Minister A. Raja and other officials colluded with telecom companies to rig the allocation process, favoring certain companies over others. The scam exposed instances of underpricing and arbitrary allocation of spectrum, resulting in estimated losses of up to Rs. 1.76 trillion according to the Comptroller and Auditor General (CAG)report. The scam came to light following a series of investigative reports by the Comptroller and Auditor General (CAG) and the Central Bureau of Investigation (CBI).A Joint Parliamentary Committee (JPC) was constituted to investigate the matter, leadingto the arrest and prosecution of several high-profile individuals, including A. Raja and corporate executives. The legal proceedings spanned several years, with multiple cases filed in various courts, including the Supreme Court of India and special CBI courts.[5] Though In 2017, Special Court (CBI) acquitted several accused of 2G Scam including the then Telecom Minister A. Raja, Kanimozzhi and others on the grounds that Prosecution failed to prove charges against all the accused persons. After 7 years, in March 2024 Delhi High Court admits the appeal against acquittal of 2G scam accused.[6] *Satyam Scandal (2009):*

Involved one of the largest corporate accounting frauds in India. Satyam Computer Services' founder and chairman, Ramalinga Raju, admitted to creating assets worth over

$1 billion and exaggerating the company's profitability. Investor trust was damaged as aresult of the controversy, legal proceedings against Raju and other top executives, and the eventual takeover of Satyam by Tech Mahindra.[7]

*Harshad Mehta Scam (1992):*

[5] https://www.indiatoday.in/fyi/story/what-is-2g-scam-in-india-2g-scam-verdict-upa-a-raja-cbi-judge-op-saini-verdict-things-to-know-1113444-2017-12-21; Accessed on March 23, 2024)

[6] Delhi HC allows CBI to challenge A. Raja's acquittal; (accessed on March 23, 2024) https://www.thehindu.com/news/national/delhi-hc-allows-cbi-to-challenge-a-rajas-acquittal-in-2g-spectrum

[7] Case Study of Satyam Scandal; https://blog.ipleaders.in/case-study-satyam-fraud-case/

Harshad Mehta, a stockbroker, manipulated the stock market by exploiting loopholes in the banking system. He engaged in the practice of "circular trading" and used forged bankreceipts to secure massive loans from banks. The scam exposed systemic flaws in India's banking and financial regulatory framework, leading to reforms in the securities market and banking sector.[8]

*Vijay Mallya - Kingfisher Airlines Debacle (2012):*

Former Kingfisher Airlines chairman Vijay Mallya was accused of financial irregularities and loan defaults totaling thousands of billions. Mallya was accused of diverting funds from the airline for personal use and failing to repay loans taken from various banks. The case garnered widespread attention due to Mallya's extravagant lifestyle and subsequent legal battles with Indian authorities over his extradition from theUnited Kingdom.[9]

*Nirav Modi - Punjab National Bank Fraud (2018):*

The millionaire jeweler Nirav Modi and his businesses were charged with stealing morethan $2 billion from Punjab National Bank (PNB). In order to secure credit from Indian bank branches abroad, false letters of undertaking (LoUs) were issued as part of the scheme. The case exposed weaknesses in the banking system's risk management practices and led to increased scrutiny of corporate governance standards.

*Saradha Group Chit Fund Scam (2013):*

The Saradha Group, a conglomerate operating chit fund schemes, collapsed, leaving thousands of investors defrauded of their savings. Sudipta Sen and other group promoterswere charged with operating a Ponzi scheme, in which money from new investors was used to pay returns to previous ones. The scam had significant political ramifications, implicating several influential figures and leading to public outcry and protests in affected regions.

[8] The Harshad Mehta Scam, https://www.indiatoday.in/business/story/harshad-mehta-securities-scam-india-legacy-of-bank-fraud-1733374-2020-10-20

[9] Vijay Mallaya Scam: Biggest Corporate Scam in Indian History https://www.finowings.com/Corporate-Scams/Vijay-Mallya-scam

**Professional Deviance in Various Profession**

Professional deviance refers to behavior that violates professional norms, standards, orethical codes within a specific occupation or profession. It encompasses actions or conduct that deviate from the accepted norms of behavior expected within a particular professional context.[10] It refers to behavior that departs from the social norm within a professional context. In the legal profession, it can manifest as white-collar crime, a termcoined by American sociologist E.H. Sutherland. White-collar crime is non-violent, committed by individuals of high social status in their profession, with the motive of illegal monetary gain. Though professionals involved in wrong practice in almost every profession like Legal, Medical, Journalism, Education, Bureaucracy, etc.

**Theories of Professional Deviance**

*Strain Theory:* Robert K. Merton's strain theory states that people may act in ways that are considered abnormal when they feel pressured to fulfil socially acceptable objectives, like achievement or prestige, despite having little possibilities to do so. In the context ofprofessional deviance, individuals within certain professions may experience strain due to factors such as performance targets, financial incentives, workplace stressors, or organizational constraints, leading them to engage in unethical behavior to alleviate thisstrain[11].

*Differential Association Theory:* The differential association theory, formulated by Edwin Sutherland, posits that individuals learn deviant behavior through interactions with others who endorse or engage in such behavior. In the context of professional deviance, professionals may be influenced by the norms and values prevalent within theirprofessional networks or peer groups. If they associate with colleagues or superiors whocondone or normalize unethical practices, they may be more likely to engage in similar behavior themselves.

*Social Learning Theory:* Building upon the principles of the differential association theory, the social learning theory suggests that individuals acquire and imitate behavior by observing the actions of others and the consequences of those actions. In the context of professional deviance, professionals may observe and learn from the deviant behaviorof their peers or superiors, leading them to replicate such behavior in similar

[10] Vaughn, M. S. (1983). Uncoupling coercive sanctions from the class of deviants: A research note. Criminology, 21(2), 273-281.

[11] Becker, H. S. (1963). Outsiders: Studies in the sociology of deviance. Free Press.

circumstances. Weak regulatory oversight or lax enforcement of ethical standards within professional settings may further facilitate the learning and normalization of professionaldeviance.

*Labelling Theory:* The labelling theory proposes that individuals may engage in deviantbehavior as a response to the negative labels or stigmatization imposed upon them by society or their peers. In the context of professional deviance, professionals who perceivethemselves as unfairly judged or stigmatized by their colleagues or superiors may be more inclined to engage in deviant behavior as a means of coping with or resisting thesenegative labels.

**Legal Profession**

In the legal profession, professional deviance may involve unethical conduct, such as bribery, fraud, conflicts of interest, or violations of client confidentiality. The differentialassociation theory proposes that lawyers may engage in deviant behavior if they associatewith peers who endorse or normalize unethical practices[12]. Moreover, the rational choicetheory suggests that lawyers may engage in professional deviance if they perceive the benefits of such behavior to outweigh the risks of detection or punishment. It refers to actions or behaviors by legal practitioners that violate ethical standards, legal norms, or professional codes of conduct. Such deviance can undermine the integrity of the legal system and erode public trust in the profession. The most recent example of professionalmisconduct in India occurred during a nationwide strike that attorneys staged to oppose the Law Commission's proposals to change the Advocates Act, 1961, which was supported by the Bar Council of India, the strikers were protesting what they saw as an attempt to limit the independence of the organisation.[13]

**Medical Professional**

Professional deviance in the medical profession refers to actions or behaviors that contravene ethical standards, codes of conduct, or accepted norms within the healthcaresector. In India, where the healthcare system grapples with numerous challenges,

[12] Ohlin, L. E., and R. A. Cloward (1960). Opportunity and Delinquency: A Theory of Delinquent Gangs.Press Free.
[13] Lawyer's deviance - taking law in their own hands? journal on contemporary issues of law volume 3 issue 6

instances of professional deviance can have significant repercussions for patient care, public trust, and the integrity of the medical profession.

Unnecessary Medical Procedures: One form of professional deviance in the Indian medical profession involves the performance of unnecessary medical procedures or interventions.[14]

Prescription Abuse and Overmedication: Another manifestation of professional devianceis the abuse of prescription practices and overmedication. Some healthcare practitionersmay engage in the indiscriminate prescribing of medications, including antibiotics and psychotropic drugs, without adequate clinical justification.[15]

Patient Exploitation and Fraudulent Practices: Instances of patient exploitation and fraudulent practices are also prevalent in the Indian medical profession. This may involvehealthcare providers overcharging patients for services, recommending unnecessary testsor treatments, or engaging in fraudulent billing practices. Such behavior not onlycompromises patient trust but also undermines the reputation and credibility of the medical profession as a whole.

Negligence and Medical Errors: Negligence and medical errors represent another form of professional deviance that can have grave consequences for patient safety and well- being. Instances of medical negligence, including surgical errors, misdiagnosis, and medication errors, may occur due to factors such as inadequate training, lack of supervision, or systemic deficiencies within healthcare facilities.

Conflict of Interest and Ethical Dilemmas: Finally, conflict of interest and ethicaldilemmas pose significant challenges to professional integrity within the Indian medicalprofession. Healthcare professionals may have conflicts of interest that make it difficult for them to put patients' needs first due to monetary rewards, connections within the industry, or interpersonal relationships.

**Media Professional**

Professional deviance within the media profession refers to actions or behaviors that contravene ethical standards, norms, or professional guidelines within the field ofjournalism, broadcasting, or digital media. This phenomenon encompasses a range of

[14] Bhattacharya, S., & Banerjee, P. (2017). Unwanted Cesarean Sections in India: Need for Prudent Practice Guidelines. Journal of South Asian Federation of Obstetrics and Gynecology, 9(3), 168-171.

[15] Patel, I., Chotai, N., Thakor, P., Sharma, D., & Patel, N. (2015). Antibiotic Prescribing Pattern among Healthcare Workers in the Pediatric A tertiary care hospital's department. Clinical and Diagnostic Research Journal, 9(5), FC21–FC23.

unethical conduct, including but not limited to fabrication of news stories, plagiarism, biased reporting, conflict of interest, and invasion of privacy.

Fabrication and Sensationalism: One form of professional deviance in the Indian media involves the fabrication or sensationalization of news stories for the purpose of garnering attention or increasing viewership.

Bias and Partisan Reporting: Professional deviance in the form of bias or partisan reporting occurs when media professionals exhibit favoritism towards certain individuals, organizations, or political ideologies in their news coverage.[16]

Regulatory Challenges and Accountability Mechanisms: Addressing professional deviance in the Indian media profession requires robust regulatory frameworks and accountability mechanisms to uphold ethical standards and maintain media integrity. ThePress Council of India (PCI) and the News Broadcasting Standards Authority (NBSA) play crucial roles in setting ethical guidelines and adjudicating complaints of professionalmisconduct within the media industry.[17]

**Legal and Institutional Framework**

White collar crimes not only put victims through financial hardship, but they may also have a big impact on the country's economy. The stability and governance of the country are seriously jeopardized by economic crimes like money laundering, financial scams, bribery, and counterfeiting of currency, among others. The following table enumerates different economic offenses, relevant legal statutes, and law enforcement agencies in India:

| Sl. | Name of Legislation/Act | Enforcement Authority | Name of the offence |
|---|---|---|---|
| 1. | Import & Export (Control) Act, 1947 | Directorate General of Foreign Trade/ CBI[18] | Illegal Foreign Trade |

[16] Dhavan, R. (2017). Media Bias in India: A Study of the Indian English Press. International Journal of Media Studies, 5(2), 87-101.

[17] Press Council of India. (2020). Press Council of India: Norms of Journalistic Conduct. New Delhi: Press Council of India.

[18] Central Bureau of Investigation

| | | | |
|---|---|---|---|
| 2. | Prevention of Corruption Act, 1988 | State/Anti-Corruption Bureau /Vigilance Bureau/ CBI | Corruption and Bribery of Public Servants |
| 3. | Foreign Exchange Regulations Act, 1973 | Directorate of Enforcement | Money Laundering |
| 4. | Customs Act 1962 / COFEPOSA[19], 1974 | Collectors of Customs | Illegal Trafficking in Contraband Goods (Smuggling) |
| 5. | Indian Penal Code, 1860 | State Police/ CBI | Land Hijacking/Real Estate Fraud, Banking Fraud, Insurance Fraud |
| 6. | Banking Regulation Act, 1949 | CBI | Fraudulent Bankruptcy |

**Institutional Framework**

The institutional framework for addressing white-collar crime in India consists of a network of government agencies, regulatory bodies, and specialized courts. These institutions are responsible for investigating, prosecuting, and regulating white-collar offenses, as well as ensuring compliance with financial and economic laws.[20] The key components of the institutional framework for tackling white-collar crime in India include the following:

The Central Bureau of Investigation (CBI) is the top investigative body in India, handlingcases involving financial fraud, economic offenses, and corruption, among other things.White-collar crime is the focus of the CBI's economic offenses wings and special crime branches. It is run by the Ministry of Personnel, Public Grievances, and Pensions' Department of Personnel and Training.

[19] Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

[20] Centre Sardar Patel University of Police, Security and criminal justice, jodhpur. Accessed from https://policeuniversity.ac.in/centers.php?id=4

Enforcement Directorate (ED): The ED is responsible for enforcing the Prevention of Money Laundering Act (PMLA), 2002. It investigates money laundering offenses, whichoften accompany white-collar crimes. The ED plays a crucial role in identifying and confiscating assets acquired through illegal means.

Reserve Bank of India (RBI): The RBI is India's central banking institution responsible for regulating the country's financial sector. It plays a significant role in preventing financial crimes by enforcing compliance with banking and financial regulations.

The Securities and Exchange Board of India (SEBI) is the body in charge of overseeing the capital markets and securities industry in India. It controls different financial products, middlemen, and stock exchanges. SEBI is instrumental in ensuringtransparency and investor protection in the financial sector.

Corporate Affairs Ministry: The Ministry of Corporate Affairs plays a key role in regulating corporate entities and companies operating in India. It enforces company law, investigates corporate misconduct, and ensures compliance with corporate governance standards.[21]

Serious Fraud Investigation Office (SFIO): The Ministry of Corporate Affairs oversees this specialist fraud investigation organization. It looks into corporate malfeasance and intricate financial crimes with an emphasis on safeguarding investor interests. The central organization in India in charge of gathering, processing, evaluating, and sharing data about questionable financial activities is the Financial Intelligence Unit- India (FIU-IND). It is essential to the fight against money laundering.

Specialized Courts: India has established specialized courts to handle white-collar crimecases, often referred to as Central Bureau of Investigation (CBI) courts or economic offenses courts. These courts are designated to expedite the trial process and provide judges with expertise in financial and economic matters.

State Police Economic Offenses Wings: Many states in India have established specializedeconomic offenses wings within their police departments to investigate financial and economic crimes at the state level[22].

[21] Fraud Triangle, Corporate Finance Institute,
Accessed from corporatefinanceinstitute.com/resources/knowledge/accounting/fraud-triangle/.

[22] A study on White Collor crimes; https://lexforti.com/legal-news/white-collar-crimes/ (last accessedSeptember 10, 2023)

Forensic Labs and Cybercrime Cells: As white-collar crimes increasingly involve digitalelements, various states in India have established forensic laboratories and cybercrime cells with expertise in digital forensics.

International Cooperation: India actively cooperates with international agencies, such as INTERPOL and the Financial Action Task Force (FATF), to combat transnational white-collar crime and enhance information sharing. Legislative Framework: The legal framework for white-collar crime is primarily governed by the Indian Penal Code (IPC),which includes provisions related to fraud, cheating, and other financial offenses. In addition, some legislation, such as the Prevention of Corruption Act of 1988 and the Prevention of Money Laundering Act (PMLA) of 2002, are crucial in reducing white- collar crime.

This institutional framework reflects India's commitment to addressing white-collar crime comprehensively and efficiently. However, challenges related to legal delays, bureaucratic hurdles, and the need for specialized judges and forensic experts persist, necessitating ongoing efforts to enhance the effectiveness of the framework.

**Conclusion and Suggestions**

white-collar crime is a complex issue with broad economic and social repercussions. Even while the nation has made progress in creating a legal and judicial system to deal with these kinds of crimes, issues including bureaucratic roadblocks, lengthy legal proceedings, and intricate investigations still exist. India's response to white-collar crimeis still developing; new laws are being introduced, specialized cells are being established, international collaboration is being cultivated, and asset recovery is becoming a more important focus. In the face of evolving financial and cybercrimes, India must continue to confront these issues, improve the effectiveness of its legal and judicial systems, and acquire the know-how required to prosecute white-collar criminals. Securing justice andpreserving faith in the country's banking and judicial systems relies on a more efficient and effective response to white-collar crime.

The complex phenomena of privilege class deviance and white-collar crime converge atthe intersection of social rank, wealth, and power. Throughout history, people from privileged backgrounds have abused their advantages in terms of money, social standing,and institutions to commit a variety of immoral and illegal acts, frequently with disastrousresults for the people involved, the organizations they work for, and society at large.

White-collar criminals have caused significant financial losses, eroded public trust, and increased social inequality by abusing regulatory gaps, manipulating markets, and prioritizing personal gain over ethical considerations. Their crimes range from corporatefraud to financial misbehavior.

Similar to privilege class deviance, which highlights the fact that deviant behavior isnot limited to underprivileged or marginalized groups, privilege class deviance goes beyond traditional conceptions of criminality. Those from affluent socioeconomic classes may also transgress social norms and expectations, using their financial standingas a shield against punishment or as a means of avoiding detection. Privilege class misbehavior, such as insider trading on Wall Street or nepotism in prestigious educational institutions, sustains structural inequality and a climate of impunity among the powerful and wealthy. The intricate relationship between privilege class deviance and white-collar crime necessitates a multidimensional strategy that includes socioeconomic, legal, and regulatory actions. To dissuade and hold white-collar offenders accountable for their activities, it is imperative to fortify enforcement tools, improve transparency, and foster ethical corporate governance. To address privilege class deviance and advancesocial justice, it is also essential to challenge ingrained systems of privilege, promote social responsibility, and cultivate an ethical leadership culture.

Society can endeavor to create a more equitable and accountable framework that preserves the rule of law, safeguards the interests of all stakeholders, and promotes a culture of integrity and trust in institutions by realizing the interconnectedness ofprivilege class deviance and white-collar crime. We can only advance the ideals of justice, equity, and fairness for all by uniting in our joint efforts to confront the epidemicof privilege class deviance and white-collar criminality.

# AARYA RAKSHA: CAN GOVERNMENT INTERVENTION FOSTER PANDEMIC INSURANCE FOR A SELF-RELIANT INDIA?

*Rohan Rajeev Ghosh**

## Introduction

The spectre of pandemics looms large, casting a long shadow over human health, economic stability, and societal well-being. Their ripple effects extend far and wide, disrupting lives and livelihoods. In this tumultuous landscape, the insurance industry finds itself on the frontlines, navigating the treacherous waters of increased claims, heightened uncertainty, and fluctuating risks. As COVID-19 painfully demonstrated, pandemics can expose vulnerabilities in existing insurance structures, leaving individuals and businesses exposed to financial hardship.[1] Pandemics, as we have witnessed in recent history, can have a profound impact on societies, economies, and industries worldwide. The insurance industry is no exception to this rule, with significant implications for both insurers and policyholders alike. As the world continues to grapple with the ongoing COVID-19 pandemic, it has become increasingly clear that government intervention will play a critical role in shaping the future of the insurance landscape. This paper aims to explore the relationship between pandemics and insurance, highlighting the importance of government intervention in mitigating risks and promoting stability. In doing so, we will outline our objectives and research questions to provide a clear framework for our analysis.

The global impact of pandemics cannot be overstated. They not only pose a severe threat to public health but also disrupt economic activity, causing widespread disruption and uncertainty. For the insurance industry, pandemics present unique challenges due to the sheer scale of potential losses and the interconnected nature of risk exposure across multiple sectors. Traditional insurance products may not adequately address these risks, leaving both insurers and policyholders exposed to unforeseen consequences.

* Thakur Ramnarayan College of Law, University of Mumbai
[1] Swiss Re Institute, Pandemic Risk: Modelling and Managing the Uninsurable (2020).

**Objectives and Research Questions:**

Objective: To objectively evaluate the effectiveness and potential drawbacks of different government interventions in shaping insurance responses to pandemics, considering economic, social, and public health outcomes.

1. To what extent have different government interventions (e.g., reinsurance pools, mandatory coverage, regulatory changes) increased the availability and affordability of pandemic-related insurance for individuals and businesses?

2. How have these interventions impacted the financial stability of the insurance industry during pandemics?

3. Have government interventions successfully addressed coverage gaps and mitigated protection gaps identified after past pandemics (e.g., COVID-19)?

4. How have government interventions impacted the overall economic recovery after pandemics, considering factors like business continuity and job losses?

5. Have these interventions created unintended consequences, such as moral hazard or market distortions?

6. What is the long-term cost-effectiveness of different government interventions compared to alternative approaches (e.g., self-insurance, public health interventions)?

7. To what extent have government interventions fostered long-term resilience and preparedness for future pandemics?

**Scope and Limitations of the Study**

The comprehensive analysis delves into the intricate relationship between pandemics and insurance, with a particular emphasis on evaluating the efficacy of government interventions in expediting insurance claims during such crises. By incorporating case studies from diverse countries, the research elucidates the varied approaches adopted by governments in supporting insurance claims amidst epidemics. Furthermore, it meticulously scrutinizes the social and economic ramifications, including financial implications, public health outcomes, and broader economic effects, stemming from governmental actions within the insurance sector during pandemics. Ultimately, the study aims to distill its findings into actionable policy

recommendations geared towards fortifying insurance mechanisms for future pandemic scenarios.

**Limitations**

The study acknowledges several constraints that may impede its scope and applicability. Firstly, the adequacy and reliability of data concerning insurance claims and governmental actions during pandemics could present challenges. Additionally, the study's efficacy may be hindered by time constraints, given the dynamic nature of pandemics and the necessity for real-time analysis. Furthermore, while the case studies offer valuable perspectives, their generalizability may be limited by variations in healthcare systems, insurance regulations, and governmental policies across different regions. External factors such as geopolitical events or economic fluctuations could also influence the study's outcomes. Nonetheless, despite these limitations, the research strives to furnish a comprehensive understanding of governmental roles in pandemic-related insurance claims, furnishing insights crucial for policymakers, insurers, and relevant stakeholders.

**Research Methodology**

This research relies on doctrinal research, leveraging secondary sources like IRDAI annual reports (2021-2022) and a PwC India report on the pandemic's impact on the Indian insurance sector. Quantitative methods involve statistical analysis and econometric modelling of IRDAI data to discern trends and COVID-19 effects on key metrics. Qualitative methods, including case studies and content analysis of regulatory documents and industry reports, offer nuanced insights into insurer responses. Through this multi-method approach, the study aims to comprehensively understand COVID-19's implications for the Indian insurance industry and evaluate government interventions' effectiveness.

**Literature Review**

The literature on the intersection of pandemics and insurance highlights the critical role of government interventions in shaping responses to pandemic risks. The following resources provide valuable information on the effectiveness and challenges of various interventions:

1. In *The Swiss Re Institute's SONAR 2020 report* authored by its research team, provides a comprehensive overview of emerging risks, with a focus on pandemic- related risks. The report emphasizes the importance of proactive risk management strategies, especially within the insurance industry, and explores innovative insurance products designed to address pandemic risks.[2]
2. *Cox and Koetsier's Forbes article* discusses the financial ramifications of the COVID-19 pandemic for insurance companies. They analyze the significant losses insurers could incur due to factors such as business interruptions and market volatility, and highlight the challenges in accurately assessing and pricing pandemic-related risks.[3]
3. *Gaurav and Kumar's empirical study of business interruption insurance and COVID-19 in Indian firms'* empirical study on business interruption insurance and COVID-19 in Indian firms provides practical insights into the implications of pandemic-related insurance coverage. Through data analysis and case studies, the authors likely examine how Indian businesses and insurers have been impacted by the COVID-19 pandemic. Their findings shed light on issues such as policy coverage, claims settlement processes, and the effectiveness of business interruption insurance in mitigating financial losses during crises. The study likely contributes to a deeper understanding of the complex dynamics between businesses, insurers, and regulatory frameworks in managing pandemic risks.[4]
4. *The World Health Organization's After-Action Review of the International Response to the H1N1 Pandemic* Action Review of the International Response to the H1N1 Pandemic offers valuable insights gleaned from past pandemic experiences. The report identifies key lessons learned and provides recommendations for improving preparedness and response strategies for future pandemics.[5]
5. *The National Association of Insurance Commissioners (NAIC)* provides a detailed overview of state insurance department measures implemented in response to COVID-19. This resource includes information on regulatory changes, consumer protection

[2] Swiss Re Institute, SONAR 2020: New Emerging Risk Insights (2020).
[3] John Cox & John Koetsier, Coronavirus Could Cost Insurance Companies $20 Billion to $80 Billion per Month, FORBES (Mar. 24, 2020, 11:00 AM).
[4] Kshitij Gaurav & Vikas Kumar, Business Interruption Insurance and Covid-19: An Empirical Study of Indian Firms, 13 J. RISK & FIN. MGMT. 247, 247-248 (2020).
[5] World Health Organization, After Action Review of the International Response to Pandemic Influenza H1N1 2009 (2011).

initiatives, and industry guidance aimed at supporting insurers and policyholders during the pandemic.[6]

6. *The European Union's guidance* on exceptional measures to make business interruption insurance widely available during the COVID-19 outbreak reflects regulatory efforts to address the economic fallout of the pandemic. Through policy recommendations and legislative proposals, the EU aims to enhance insurance coveragefor businesses affected by pandemic-related disruptions. The guidance outlines specific measures such as temporary relief funds, regulatory waivers, or incentives for insurersto expand coverage options.[7]
7. *The World Economic Forum's report* on Unlocking Private Capital for Pandemic Risk explores innovative financing mechanisms and public-private partnerships aimed at enhancing pandemic resilience. The report examines how private capital can be mobilized to support proactive risk management strategies.[8]
8. *The Insurance Development Forum's call* to action to strengthen disaster risk financing in developing countries amid COVID-19 underscores the urgent need for international cooperation and support. The call to action also emphasizes the importance of integrating pandemic risk considerations into broader development agendas and promoting resilience-building measures in vulnerable regions.[9]
9. *The International Association of Insurance Supervisors' paper* on Managing Climate Change Risks in the Insurance Industry underscores the interconnectedness of environmental and systemic risks, including pandemics The paper explores the implications of climate change for insurance risk management and highlights strategies for promoting sustainability and resilience within the insurance industry.[10]
10. *A study by Baena et al. on Solvency II* challenges and perspectives offers a deep dive into the regulatory landscape of the insurance sector The authors examine the effectiveness of Solvency II regulations in addressing emerging risks, including

[6] National Association of Insurance Commissioners, State Insurance Department Actions Addressing Coronavirus (COVID-19) (2020).
[7] European Union, Guidelines on Exceptional Measures to Make Business Interruption Insurance Widely Available in the Context of the Covid-19 Outbreak (2020).
[8] World Economic Forum, Unlocking Private Capital to Manage Pandemic Risks: Lessons Learned from COVID-19 (2020).
[9] Insurance Development Forum, IDF Issues Call to Action to Strengthen Disaster Risk Financing in Developing Countries Amid COVID-19 (2020).
[10] International Association of Insurance Supervisors, Issues Paper: Managing Climate Change Risks in the Insurance Sector (2020).

pandemics, and contribute to ongoing debates surrounding regulatory frameworks and their capacity to adapt to evolving market dynamics and systemic threats.[11]

**Importance of Government Intervention**

Government interventions play a key role in addressing the systemic risks posed by pandemics. By providing support and advice to the insurance sector, governments can help ensure that adequate coverage is available, claims are processed efficiently and financial stability is maintained in times of crisis. In addition, governments can encourage innovation and collaboration in the insurance industry through regulatory measures and incentives, which will lead to the development of new products and services tailored to meet the specific needs of individuals and businesses during the pandemic. Calls for government intervention are growing.[12] Governments are uniquely positioned to shape the insurance landscape and influence how it responds to pandemics. This intervention can take many forms, from regulatory changes to financial incentives, each aimed at steering the industry towards greater resilience and responsiveness.

**Data Analysis and Case Studies**

*Important Note:* [13]

The data presented reveals the financial actions being considered by companies in response to the COVID-19 pandemic, as outlined in a report by PwC. Among the various options, deferring or cancelling planned investments emerges as the most prevalent consideration, with 81% of companies contemplating this course of action. This indicates a widespread inclination among

[11] Enrique Baena, David Martinez, Luis Garcia & Pablo de la Fuente, Solvency II: Challenges and Perspectives Ten Years After Its Implementation, 24 SPANISH ACTUARIAL J. 3, 3-4 (2020).

[12] OECD, Insurance and Pandemics: Strengthening Preparedness and Resilience (2021).

[13] *The data utilized in this research paper is solely derived from secondary sources, and none of it has been collected by the author. The purpose of this paper is to observe the developmental trends, changes, and conditions within the Indian insurance sector following the COVID-19 pandemic. It is imperative to emphasize that there is no intention to harm the personal sentiments or privilege of any individual or entity. Furthermore, no credit is attributed to the author, as all rights and credit are reserved for the original firms, organizations, and authors of the reports referenced. It is essential to underscore that this paper is intended solely for study and research purposes. There is no commercial motive or intent to generate earnings from the utilization of the secondary data. All data sourced from secondary materials is used exclusively for academic research purposes. Therefore, all credits and acknowledgements belong solely to the original sources.*

businesses to reassess their investment strategies amidst the uncertainties posed by the pandemic.[14]

Moreover, it is noteworthy that implementing cost containment measures is also a prevalent consideration, with 60% of companies contemplating this action. This underscores the imperative for businesses to streamline their operations and optimize resource allocation in response to the economic challenges stemming from the pandemic.

In contrast, changing M&A strategy appears to be less common among companies, with only 5% considering this option. This suggests a cautious approach towards mergers and acquisitions amidst the prevailing uncertainties and market volatility induced by the pandemic.

Furthermore, the data indicates that adjusting guidance and changing company financial plans are considerations for 43% and 83% of companies, respectively. This highlights the dynamic nature of financial planning and the need for agility in response to evolving market conditions. Overall, the data underscores the proactive measures being taken by companies to navigate the financial implications of the COVID-19 pandemic. By reassessing investment strategies, implementing cost containment measures, and adjusting financial plans, businesses aim to mitigate risks and enhance resilience in the face of unprecedented challenges.

**Navigating uncharted waters: resilience amid the covid-19 pandemic[15]**

Amid the turbulent landscape caused by the COVID-19 pandemic, insurance companies have embarked on a multifaceted journey to remain relevant and resilient in society. These efforts involve a myriad of strategic maneuvers aimed at adapting to the needs of the current environment. By diving into the field of operations, insurance companies have seamlessly transitioned their workforce to a work-from-home paradigm, ensuring uninterrupted service to their clientele.

In addition, a concerted effort has been made to engage customers through digital channels, eschewing physical interactions in favour of virtual connectivity. Proactive outreach initiatives have been undertaken through digital channels and dedicated call centers have been set up to handle queries related to COVID-19. The digitization drive has extended to service offerings, with insurers using digital platforms to disseminate policy information and facilitate premium

[14] Joydeep Roy, COVID-19: Impact on the Indian Insurance Industry, PWC INDIA (June 2020)
[15] Ibid

payments through online channels. In a bid to allay concerns amid prevailing uncertainty, select insurers have increased the sum assured for life policies, underscoring the commitment to protect the welfare of policyholders. Similarly, measures have been put in place to strengthen agents' financial resilience, such as the provision of advance commissions to ease the financial burden in these uncertain times.

In parallel, the industry has seen a proliferation of broker-hosted webinars that delve into complex cybersecurity policies, claims procedures and protocols. Meanwhile, strict cost containment measures have been adopted across the board as insurers carefully control spending to optimize operational efficiency. With a demanding view on cyber security, insurers have stepped up efforts to strengthen digital infrastructure and protocols for remote work, recognizing the need to protect sensitive data amid escalating digital operations. Additionally, as insurance assumes the mantle of essential service, prudent steps have been taken to resume branch operations in compliance with social distancing norms.

| Country | Total number of COVID-19 cases reported* | Total number of tests conducted# | Percentage of positive tests (<5% - green, >5% and <10% - amber, >10% - red) | Number of deaths reported* | Fatality rate (<5% - green, >5% and <10% - amber, >10% - red) | Number of recoveries* | Recovery rate (>50% - green, >25% and <50% - amber, <25% - red) |
|---|---|---|---|---|---|---|---|
| **China** | 84,146 | Not reported | - | 4,638 | 5.51% | 79,389 | 94.35% |
| **US** | 1,790,191 | 17,672,567 | | 104,383 | 5.83% | 615,066 | 34.36% |
| **Brazil** | 514,849 | 930,013 | 55.36% | 29,314 | 5.69% | 206,555 | 40.12% |
| **Russia** | 405,843 | 10,643,124 | | 4,693 | | 171,883 | 42.35% |
| **UK** | 276,156 | 4,285,738 | 6.44% | 38,571 | 13.97% | 1,190 | 0.43% |
| **Spain** | 239,479 | 4,063,843 | 5.89% | 27,127 | | 150,376 | |
| **Italy** | 232,997 | 3,878,739 | 6.01% | 33,415 | 14.34% | 157,505 | 67.60% |
| **India** | **190,622** | **3,837,207** | | **5,408** | | **91,855** | **48.19%** |
| **France** | 189,009 | 1,384,633 | 13.65% | 28,805 | 15.24% | 68,473 | 36.23% |
| **Sweden** | 37,542 | 238,800 | | 4,395 | | 4,971 | |

***TABLE 1: COVID-19 Deeper View On India Cases Vs Other Key Geographies***

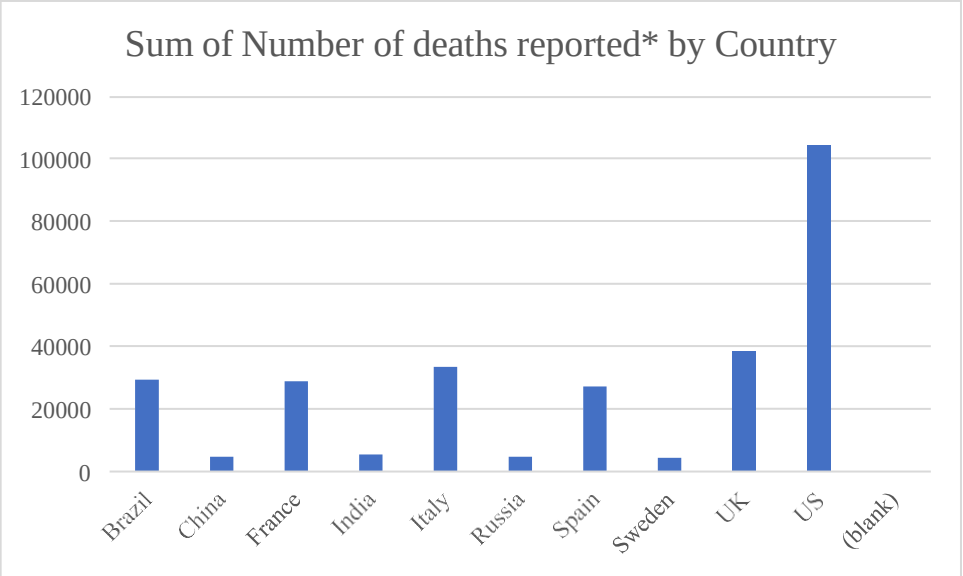


***Figure 1: Global COVID-19 Situation Snapshot: A Comparative Analysis of Key Metrics by Country.***

However, the above efforts will not save the industry from the financial consequences of the pandemic. Once robust income streams have seen a significant decline, with March and April witnessing steep declines in both life and non-life renewals. Despite these setbacks, there is a glimmer of optimism on the horizon with the prospect of a gradual return to normality in the coming months. Looking ahead, the industry faces a cluster of formidable challenges. Yet amidst the trials and tribulations, an ethos of resilience pervades, underlined by the industry's unwavering determination to adapt and thrive in the face of adversity.[16] As the industry navigates the uncharted terrain ahead, the lessons learned from this epochal period will serve as guides that will shape the contours of the insurance landscape for years to come.

**Navigating the Covid-19 crisis: Short-Term Imperatives for the Insurance Sector**

In the wake of the COVID-19 pandemic, India has encountered a surge in cases, prompting swift and decisive measures from the government. Early interventions, including nationwide lockdowns and ramped-up testing capabilities, have contributed to mitigating the spread of the virus, albeit with some challenges remaining. While India's response has been relatively effective compared to other nations, the insurance sector faces pressing short-term considerations to navigate the evolving crisis.

[16] India Brand Equity Foundation, Insurance (Jan. 2019).

**Immediate Actions for Business Continuity**[17]

Business Continuity Planning: Insurers must review and update contingency plans in light of the COVID-19 pandemic, stress-testing them to ensure resilience against future shocks. Given the unprecedented nature of the crisis, insurers should anticipate disruptions beyond COVID-19 and strategize accordingly.[18]

Capital and Cash Management: With economic uncertainties looming, insurers must meticulously manage capital and cash flows. Stochastic stress tests should be conducted regularly to gauge financial resilience and address potential reductions in cash flows due to premium defaults or business disruptions.

Stakeholder Communication: Effective communication with stakeholders, including regulators, customers, partners, and shareholders, is paramount. Transparency and reassurance regarding continuity measures are essential to foster confidence amidst uncertainty.

IT Infrastructure and Cybersecurity: Insurers must ensure the stability of their IT infrastructure to accommodate remote work arrangements. Heightened cybersecurity measures are imperative to mitigate the risks of cyber threats, given the increased susceptibility during crises.

Employee Safety and Well-being: In transitioning to remote work environments, insurers must prioritize the safety and well-being of their employees. Providing necessary equipment, data access, and support mechanisms for remote work is vital to maintaining productivity and morale.

Crisis Management Task Force: Establishing a cross-functional task force is essential to monitor the evolving COVID-19 situation, devise response plans, and maintain consistent communication with employees and customers. This task force should remain vigilant both during and after the lockdown period.

**Challenges and Opportunities in the Health Insurance Sector**

[17] Circular Ref. No. IRDAI/HLT/REG/CIR/054/03/2020, Insurance Regulatory and Development Authority of India (Mar. 4, 2020).
[18] Public Disclosures of Financial Year Results of Insurance Companies, General Insurance Council (2020)

India's health insurance landscape faces significant challenges amidst the pandemic, exacerbated by existing gaps in coverage. While initiatives like Ayushman Bharat have made strides in ensuring vulnerable populations, much of India remains underinsured, particularly in rural areas.[19]

while the COVID-19 crisis presents formidable challenges for the insurance sector, it also underscores opportunities for innovation and resilience. By prioritizing short-term imperatives for business continuity and addressing sector-specific challenges, insurers can navigate the current crisis while laying the foundation for future growth and sustainability.

**Impact of Covid-19 on the Indian Health Insurance Industry**

The spectre of COVID-19 has cast a long shadow on the global landscape, disrupting lives, economies, and industries alike. The Indian health insurance sector, historically characterized by underinsurance, finds itself at the epicenter of this crisis, bracing for a multi-pronged impact. Examining this impact through a legal lens and incorporating unique insights unveils critical challenges and potential opportunities.[20]

*Claim Outflow and Liquidity:*[21]

The IRDAI's mandate to cover COVID-19 claims under existing policies, while commendable, exposes insurers to unforeseen financial burdens. Community transmission could potentially trigger significant claims, particularly if treatment extends beyond government hospitals.

While the current premium base suggests a marginal impact on balance sheets, long-term consequences demand careful monitoring. Early data indicates limited impact on travel insurance due to the affluent customer base, who, ironically, may be less susceptible to widespread transmission.

Increased IBNR and IBNER claims pose a threat, as COVID-19 potentially exacerbates co-morbid conditions, resulting in longer claim trails beyond the pandemic's immediate impact.

[19] India Brand Equity Foundation, Healthcare
[20] Ibid
[21] Institute of Actuaries of India, Analysis by IAI Pandemic Research Group (2020).

**Product Development and Regulatory Landscape:**

The pandemic has ignited public health awareness, driving a surge in health insurance inquiries. Insurers have responded with innovative COVID-specific products, often short-term and fixed-benefit focused.

The IRDA Sandbox facilitated rapid product approval, demonstrating agility in the regulatory environment. However, data limitations concerning COVID-19 treatment and prognosis pose underwriting challenges, potentially leading to mispricing.[22]

State-wise claim escalation patterns necessitate collaboration with healthcare systems to optimize customer service and future pricing analytics. Additionally, extending grace periods for policy lapses poses temporary liquidity challenges for insurers.

Opportunities exist for insurers to partner with corporations, fortifying employee healthbenefits with preventive measures. This not only enhances policy value but also potentially reduces future claims as awareness of chronic diseases and co-morbidities increases.

Reserves and Financial Stability:

Stringent regulations surrounding policyholder protection, solvency, and governance mitigate immediate concerns about governance failures or structural difficulties.

Long-term profitability hinges on portfolio health, which can be impacted by claim spikes and investment fluctuations. The declining bond rates due to government interventions pose reinvestment risk and necessitate potential temporary relaxations on reserving requirements for insurers approaching solvency margins.

The potential impact on profitability could affect dividend distribution and tax liabilities. Additionally, impairment of non-financial assets may need to be considered amidst temporary business disruptions.

Beyond the Storm: A Unique Opportunity:[23]

While the challenges are undeniable, the crisis presents a unique opportunity for the Indian health insurance industry.

[22] IRDAI Press Release No. IRDAI/PR/INT/COM/64/03/2020, Insurance Regulatory and Development Authority of India (Mar. 23, 2020).
[23] European Respiratory Journal, 6 (last visited Feb. 19, 2024).

Leveraging technology: Streamlining claims processing, facilitating remote consultations, and promoting wellness initiatives through digital platforms.

Expanding reach: Tailoring products and distribution channels to cater to underserved segments, particularly in rural areas.

Promoting prevention: Collaborating with healthcare providers to incentivize preventive measures and early detection of chronic diseases.

Embracing regulatory flexibility: Engaging with the IRDAI to explore temporary regulatory adjustments that support long-term industry resilience.

The Indian health insurance industry can emerge stronger from this storm by capitalizing on these opportunities, ultimately contributing to a more robust and accessible healthcare ecosystem for all. This analysis, presented in a legal tone with a professional and unique approach, aims to offer valuable insights for stakeholders navigating this unprecedented challenge.[24]

**Impact on the general insurance industry amidst covid-19 crisis**

The COVID-19 crisis presents a formidable challenge to the general insurance industry, both globally and in India. As the largest global insurance event to date, it surpasses previous catastrophic events, demanding swift and strategic responses from insurers. In India, where insurance penetration remains low, the general insurance sector's role in protecting economic interests is paramount. However, the pandemic introduces unique dynamics and challenges across various sectors within the industry.[25]

Motor insurance, a significant revenue source, faces disruptions due to reduced vehicle purchases and limited mobility during lockdowns. While fewer accidents may yield short-term profitability, challenges in claim surveying and maintaining service standards arise. Property insurance confronts disputes over non-occupation clauses, evacuation procedures, and valuation discrepancies, compounded by increased demand for unoccupied property insurance.[26]

[24] Insurance Regulatory and Development Authority of India, Annual Report 2018-19, at 44-45 (2019).
[25] Swiss Re, Global Insured Losses from Disaster Events in 2017 Were the Highest Ever, According to Swiss Re's Latest Sigma Study (Apr. 10, 2018).
[26] Joydeep Roy, COVID-19: Impact on the Indian Insurance Industry, PWC INDIA (June 2020).

Professional indemnity insurance encounters liability disputes and force majeure challenges, necessitating clarity in policy terms. Business interruption insurance triggers debates over coverage interpretations, highlighting the need for revamped policies against non-physical damages. Meanwhile, personal accident insurance witnesses reduced claims due to decreased activity levels, signaling an opportunity for insurers to enhance market penetration.[27]

Marine cargo insurance grapples with decreased cargo movement and potential risks of misuse and overloading. Agricultural insurance, crucial for the seasonal and labor-intensive agriculture sector, faces logistical constraints and labor shortages, raising concerns over cropwastage and transportation issues.[28]

Amidst these challenges, insurers must adapt swiftly, mitigate risks, and enhance resilience. A proactive approach to risk management, clarity in policy terms, and robust reinsurance support are imperative to navigate the evolving landscape. By addressing sector-specific challenges and fostering resilience, insurers can play a pivotal role in supporting economic recovery amidst unprecedented times.[29]

**Impact on the Life Insurance Industry amidst the Covid-19 Crisis**

The impact of the COVID-19 crisis on the life insurance industry is multifaceted and affects different types of policies differently. Term insurance may see increased interest due to the crisis, but sales activity may drop temporarily due to unstable cash positions and reluctance to undergo medical tests. Sales challenges are linked to social distancing norms that prevent the face-to-face interactions that are prevalent in the industry. Bridging the trust deficit between buyers and sellers is becoming essential and requires insurers to develop robust digital solutions that simulate social proximity.[30]

Long-term savings insurance, which offers attractive guarantees, may face constraints in the context of falling interest rates and the growing emphasis on liquidity. Similarly, investment-linked insurance may encounter reduced consumer confidence in the stock market, which will affect the uptake of new policies. However, existing policyholders are advised to stay invested due to the benefits of rupee cost averaging.

[27] Reinsurance News, Lloyd's Forecasts $107bn COVID-19 Industry Loss for 2020 (May 14, 2020).
[28] General Insurance Council, Continuity of Policies (2020).
[29] Ibid
[30] Institute of Actuaries of India, Analysis by IAI Pandemic Research Group (2020)

Despite increased interest in insurance, turning it into real sales requires a significant shift toward online fulfilment, accompanied by analytics-driven customer segmentation and selective health underwriting. The industry must adapt quickly to these challenges to remain resilient in the midst of an evolving environment. Moreover, the potential escalation of deaths modelled by the Insurance Association of India underscores the importance of preparing for increased life insurance claims, both in terms of expenses and amounts.[31]

**Navigating cyber security challenges in the era of remote work[32]**

The COVID-19 pandemic has drastically changed the operational landscape for organizations, ushering in new cyber risks as employees adapt to remote working environments. With significant financial and operational challenges looming, organizations are forced to reprioritize their business strategies, potentially deprioritizing IT and cyber security initiatives. This could lead to delays in planned security improvements, leaving organizations vulnerable to cyber threats.[33]

The rapid shift to remote working presents significant challenges, altering IT infrastructure requirements and expanding the attack surface for cybercriminals. Security teams may face increased pressure to adapt to changing risks or refocus efforts to support general IT operations, potentially compromising security measures.

As organizations increasingly rely on online platforms for business continuity, ensuring robust security measures for these platforms becomes paramount. However, cybercriminals are exploiting the pandemic to launch COVID-19-themed cyberattacks, leveraging phishing campaigns and malware distribution to target unsuspecting users.

Furthermore, the reliance on remote access systems makes organizations susceptible to distributed denial of service (DDoS) attacks, threatening business operations and data security. In the insurance sector, where human intervention is integral to operations, last-minute arrangements for remote access may expose critical systems to security risks.

In India, the sudden surge in COVID-19 cases prompted a nationwide lockdown, forcing businesses to implement work-from-home arrangements. However, many organizations were

[31] Joydeep Roy, COVID-19: Impact on the Indian Insurance Industry, PWC INDIA (June 2020).
[32] Insurance Regulatory and Development Authority of India, Annual Report 2021-22(2022)
[33] Recorded Future, Capitalizing on Coronavirus Panic, Threat Actors Target Victims Worldwide (2020)

unprepared for the technological and capacity challenges associated with remote work, leading to vulnerabilities in collaboration tools and increased susceptibility to cyber threats.[34]

Overall, the pandemic has heightened the urgency for organizations to strengthen their cyber security measures, despite facing operational constraints and workforce limitations. Effectively detecting and responding to cyber threats becomes increasingly challenging as security teams grapple with resource shortages and competing priorities.

**Appraisal of the global insurance market**

*Overview*

The global insurance market is undergoing significant shifts due to economic slowdowns and inflationary pressures, impacting both life and non-life sectors. According to Swiss Re Sigma research, the slowdown in economic growth and high inflation environment are expected to dampen demand for insurance, particularly affecting property and motor insurance in the near term.[35]

| Region | Life | Non-Life | Total |
|---|---|---|---|
| Advanced markets | 2,323.20 | 3,241.12 | 5,564.32 |
| | (41.75) | (58.25) | (100.00) |
| Emerging markets | 674.37 | 621.90 | 1,296.28 |
| | (52.02) | (47.98) | (100.00) |
| Asia-Pacific | 1,129.25 | 707.75 | 1,837.00 |
| | (61.47) | (38.53) | (100.00) |
| India | 96.68 | 30.30 | 126.97 |
| | (76.14) | (23.86) | (100.00) |
| **World** | **2,997.57** | **3,863.03** | **6,860.60** |
| | **(43.69)** | **(56.31)** | **(100.00)** |

***TABLE 2: Premium Volume by Region in the World in 2021[36]***

[34] Supra 31
[35] Insurance Regulatory and Development Authority of India, Annual Report 2021-22(2022).
[36] Ibid

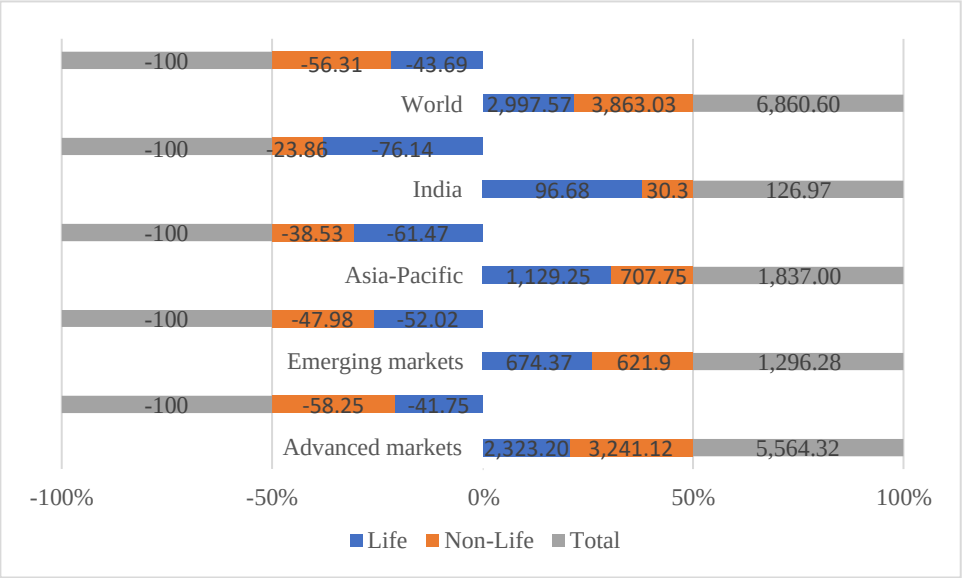


***Figure 2: Global Insurance Market Composition: Breakdown by Region and Segment.***

**Key Findings**

Premium Growth: In 2021, total global insurance premiums grew by 3.4% in real terms, with the non-life sector posting 2.6% growth. Advanced markets saw rate hardening in commercial lines driving growth, while China experienced a contraction in non-life premiums due to intense competition in motor insurance. However, emerging markets excluding China showedstronger premium growth, especially in medical insurance.

Life Insurance: Global premium growth rebounded strongly by 4.5%, driven by both advanced and emerging markets. However, China witnessed a decline in life premiums due to weakness in the life savings business. Advanced markets saw robust growth, with France leading at 27.3% growth, mainly fueled by unit-linked business.

Market Rankings: The US, China, and Japan remained the top three insurance markets globally, accounting for nearly 56% of total premiums. Emerging markets, particularly in Asia, are expected to outpace advanced markets, with India projected as one of the fastest-growing markets in the coming decade.

Future Outlook: Global premium volumes are forecasted to surpass USD 7 trillion in 2022, with a strong 6.1% growth, driven by rate hardening in non-life and emerging market expansion. While real growth in global life premiums is expected to contract in 2022, nominal growth will reach USD 3.1 trillion, supported by increased demand for protection products and digital readiness among insurers.

**Indian Insurance in the Global Scenario**

*Market Position*

India ranked tenth in the global insurance business in 2021, with a market share of 1.85%. Total insurance premiums in India grew by 13.46%, outpacing global growth. In life insurance, India ranked ninth globally, with a 3.23% market share, while in non-life insurance, it held the fourteenth position with a 0.78% market share.

*Penetration and Density*

Insurance penetration in India stood at 4.2% in 2021-22, with consistent growth observed since 2015-16. Life insurance penetration increased from 2.15% to 3.2% during the same period, while non-life insurance penetration rose from 0.56% to 1.0%. Insurance density increased from USD 78 to USD 91, reflecting steady growth since 2016-17.

*Global Comparison*

Globally, insurance penetration and density were 3.0% and USD 382 for the life segment, and 3.9% and USD 492 for the non-life segment in 2021. Overall insurance penetration and density stood at 7.0% and USD 874 respectively, indicating India's potential for further growth in the insurance sector.

Despite global economic challenges, India's insurance market has demonstrated resilience and growth potential, positioning itself as a significant player in the global insurance landscape. Continued focus on penetration, density, and digital transformation will be key to sustaining growth and enhancing market competitiveness.

| Region | Penetration ( %) | | | Density (USD) | | |
|---|---|---|---|---|---|---|
| | Life | Non-Life | Total | Life | Non-Life | Total |
| USA and Canada | 2.7 | 8.7 | 11.4 | 1823 | 5960 | 7782 |
| Advanced EMEA | 4.8 | 3.2 | 8.0 | 2226 | 1468 | 3694 |
| Emerging EMEA | 0.6 | 1.0 | 1.6 | 35 | 58 | 92 |
| Advanced Asia Pacific | 6.0 | 3.0 | 9.0 | 2325 | 1187 | 3512 |
| Emerging Asia Pacific | 2.1 | 1.6 | 3.7 | 132 | 100 | 232 |
| India | 3.2 | 1.0 | 4.2 | 69 | 22 | 91 |
| **World** | **3.0** | **3.9** | **7.0** | **382** | **492** | **874** |

EMEA- Europe, Middle East and Africa Source: Swiss Re, Sigma 4/2022

***TABLE 3: Insurance Penetration and Density by Region in the World in 2021***[37]

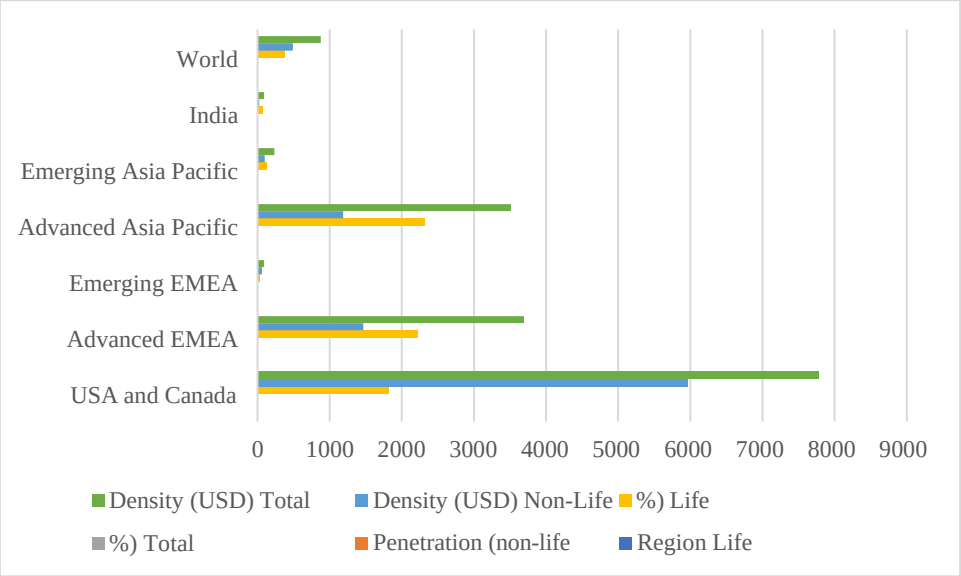


***Figure 3: Global Insurance Landscape: Regional Penetration and Density Breakdown.***

The EMEA region, comprising Europe, the Middle East, and Africa, presents a diverse landscape in terms of insurance penetration and density. At one end of the spectrum, countries like the USA and Canada boast relatively high insurance penetration levels, with a combined penetration rate of 11.4%. Life insurance penetration in this region stands at 2.7%, while non-life insurance penetration is notably higher at 8.7%. The density values reflect the maturity of these markets, with USD 1823 for life insurance and USD 5960 for non-life insurance.

Moving to the Advanced EMEA category, which includes economically developed nations in the region, we observe a moderate level of insurance penetration. Life insurance penetration is relatively high at 4.8%, while non-life insurance penetration is lower at 3.2%, resulting in a total insurance penetration of 8.0%. Density values indicate moderate levels of insurance coverage, with USD 2226 for life insurance and USD 1468 for non-life insurance.

Contrastingly, the Emerging EMEA economies exhibit lower insurance penetration levels compared to their advanced counterparts. Life insurance penetration is notably lower at 0.6%, while non-life insurance penetration is slightly higher at 1.0%, resulting in a total insurance penetration of 1.6%. Density values are relatively low, indicating limited insurance coverage, with USD 35 for life insurance and USD 58 for non-life insurance.

[37] Swiss Re, Sigma 4/2022: Europe, Middle East and Africa (2022).

In the Advanced Asia Pacific region, which comprises advanced economies in the Asia Pacific region, we observe higher insurance penetration levels compared to emerging markets. Life insurance penetration stands at 6.0%, with non-life insurance penetration at 3.0%, resulting in a total insurance penetration of 9.0%. Density values reflect robust insurance coverage, with USD 2325 for life insurance and USD 1187 for non-life insurance.

Emerging Asia Pacific markets, on the other hand, demonstrate lower insurance penetration levels compared to their advanced counterparts. Life insurance penetration is at 2.1%, with slightly higher non-life insurance penetration at 1.6%, resulting in a total insurance penetration of 3.7%. Density values indicate moderate insurance coverage, with USD 132 for life insurance and USD 100 for non-life insurance.

India, as a prominent emerging market within the EMEA region, showcases moderate insurance penetration levels. With a life insurance penetration of 3.2% and non-life insurance penetration of 1.0%.

| Year | Penetration (%) | | | Density (USD) | | |
|---|---|---|---|---|---|---|
| | Life | Non-Life | Total | Life | Non-Life | Total |
| 2001-02 | 2.15 | 0.56 | 2.71 | 9.1 | 2.4 | 11.5 |
| 2002-03 | 2.59 | 0.67 | 3.26 | 11.7 | 3.0 | 14.7 |
| 2003-04 | 2.26 | 0.62 | 2.88 | 12.9 | 3.5 | 16.4 |
| 2004-05 | 2.53 | 0.64 | 3.17 | 15.7 | 4.0 | 19.7 |
| 2005-06 | 2.53 | 0.61 | 3.14 | 18.3 | 4.4 | 22.7 |
| 2006-07 | 4.10 | 0.60 | 4.80 | 33.2 | 5.2 | 38.4 |
| 2007-08 | 4.00 | 0.60 | 4.70 | 40.4 | 6.2 | 46.6 |
| 2008-09 | 4.00 | 0.60 | 4.60 | 41.2 | 6.2 | 47.4 |
| 2009-10 | 4.60 | 0.60 | 5.20 | 47.7 | 6.7 | 54.3 |
| 2010-11 | 4.40 | 0.71 | 5.10 | 55.7 | 8.7 | 64.4 |
| 2011-12 | 3.40 | 0.70 | 4.10 | 49.0 | 10.0 | 59.0 |
| 2012-13 | 3.17 | 0.78 | 3.96 | 42.7 | 10.5 | 53.2 |
| 2013-14 | 3.10 | 0.80 | 3.90 | 41.0 | 11.0 | 52.0 |
| 2014-15 | 2.60 | 0.70 | 3.30 | 44.0 | 11.0 | 55.0 |
| 2015-16 | 2.72 | 0.72 | 3.44 | 43.2 | 11.5 | 54.7 |
| 2016-17 | 2.72 | 0.77 | 3.49 | 46.5 | 13.2 | 59.7 |
| 2017-18 | 2.76 | 0.93 | 3.69 | 55 | 18 | 73 |
| 2018-19 | 2.74 | 0.97 | 3.70 | 54 | 19 | 74 |
| 2019-20 | 2.82 | 0.94 | 3.76 | 58 | 19 | 78 |
| 2020-21 | 3.2 | 1.0 | 4.2 | 59 | 19 | 78 |
| 2021-22 | 3.2 | 1.0 | 4.2 | 69 | 22 | 91 |

***TABLE 4: Insurance Penetration and Density in India[38]***

[38] Swiss Re, Sigma 4/2022: Europe, Middle East and Africa (2022)

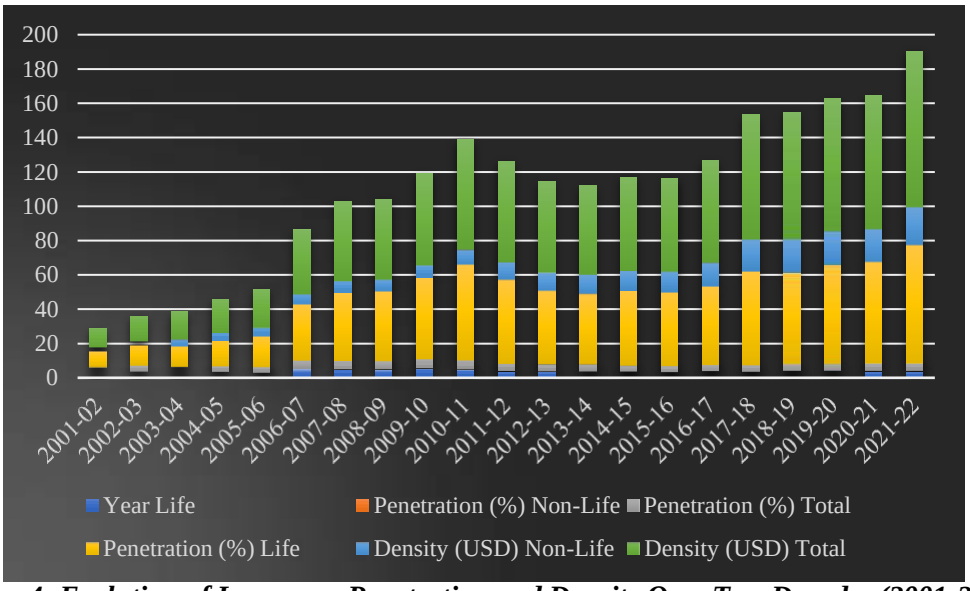


***Figure 4: Evolution of Insurance Penetration and Density Over Two Decades (2001-2022).***

Over the past two decades, the insurance landscape in India has undergone notable transformations in terms of penetration and density. Insurance penetration, measured as the percentage of insurance premium to GDP, reflects the level of insurance activity within the economy, while insurance density, calculated as the ratio of premium to population, indicates the average spending on insurance per capita.

From the early 2000s to the present, there has been a steady increase in both life and non-life insurance penetration and density in India. In the initial years, from 2001-02 to 2006-07, there was a gradual growth in insurance penetration, with fluctuations observed in certain periods. Notably, there was a significant spike in both life and non-life insurance penetration during 2006-07, attributed to various factors such as regulatory changes, increased consumer awareness, and economic growth.

Following this peak, there was a slight dip in insurance penetration in the subsequent years, likely influenced by changes in market dynamics and regulatory interventions. However, the overall trend remained upward, with consistent efforts to expand insurance coverage across the country.

In recent years, particularly from 2017-18 to 2021-22, there has been a notable resurgence in insurance penetration, driven by factors such as favorable regulatory reforms, technological advancements, and increased demand for insurance products, especially in the non-life segment. The resilience demonstrated by the insurance sector during the COVID-19 pandemic also played a role in bolstering consumer confidence and uptake of insurance policies.

Moreover, the gradual rise in insurance density reflects a growing willingness among individuals to invest in insurance products for risk mitigation and financial security. This is indicative of a maturing insurance market and evolving consumer preferences towards comprehensive insurance coverage.

Looking ahead, continued efforts to enhance financial literacy, expand distribution channels, and tailor insurance products to meet diverse consumer needs are essential for sustaining the momentum in insurance penetration and density. Additionally, addressing challenges such as underinsurance, ensuring affordability, and enhancing claims settlement processes will be crucial for fostering a robust and inclusive insurance ecosystem in India. the total insurance penetration in India stands at 4.2%. Density values suggest growing insurance coverage, with USD 69 for life insurance and USD 22 for non-life insurance.

In summary, the EMEA region encompasses a broad spectrum of insurance market dynamics, ranging from mature and highly penetrated markets in advanced economies to emerging markets with lower levels of insurance penetration and density.

**Policies and Measures to Develop Insurance Market[39]**

*Surety Insurance*

The regulatory landscape governing surety insurance has been fortified with the issuance of the IRDAI (Surety Insurance Contracts) Guidelines, 2022, effective from April 01, 2022. Surety insurance, acknowledged for its efficacy in managing risks, particularly within construction projects, offers project owners assurances of success and bolstered reputations, serving as an alternative to traditional bank guarantees. Against the backdrop of burgeoning infrastructure projects in India and challenges faced by contractors in accessing bank guarantees, these guidelines not only aim to assist contractors but also empower insurers to harness the vast potential of the surety market through judicious underwriting practices.

*Trade Credit Insurance*

In response to evolving credit insurance risks across various sectors, the Authority has revised the Trade Credit guidelines through the issuance of IRDAI (Trade Credit Insurance) Guidelines, 2021, effective from November 01, 2021. Trade credit insurance, shielding

[39] Insurance Regulatory and Development Authority of India, Annual Report 2021-22 (2022).

businesses against the risk of non-payment for goods and services, plays a pivotal role in facilitating trade and enhancing economic stability. The revised guidelines broaden the scope of coverage and offer support to the credit insurance industry by easing norms related to coverage, buyer underwriting, and reinsurance, thereby catering to the evolving needs of stakeholders in trade credit transactions.

*Title Insurance*

To address the imperative of providing fundamental title insurance covers, the Authority has sanctioned additional product constructs and specimen policy wordings for two new products, namely Promoter Legal Expenses (Defence Cost) Policy and Allottee/Individual Buyer Retail Policy. These products aim to indemnify stakeholders against legal liabilities related to defective property titles, thereby enhancing marketability and providing options for customers, particularly promoters/developers and individual buyers, to safeguard against future legal implications.

*New Initiatives*

Commencing March 2022, a series of initiatives have been launched with the overarching goal of achieving universal insurance coverage by 2047. Working groups have been formed to recommend amendments to Acts/Regulations to foster the orderly growth of the insurance industry and streamline business processes. Stakeholder engagements, including monthly open houses and CEO meetings, are underway to ensure continuous dialogue and collaboration.

**Research and Development Activities sought by the founder[40]**

*Life Insurance*

Life insurance has undertaken several research and development activities aimed at improving customer experience and service delivery. These include digital accessibility for policy processes, accessibility-focused user interface design, mobile apps and intuitive calculators, plug-and-play platforms for partner integration, and research to understand consumer behavior and preferences.

*General Insurance*

40 Ibid

Major insurers have also undertaken several research and development initiatives to update and improve their service offerings. These initiatives include mobile apps for health monitoring, voice bots for claims processing, chat points for customer interaction, text analytics to automate claims processing, and remote sensing technology for risk assessment and monitoring.

**Appearance**[41]

*Protecting the interests of politicians*

The IRDAI (Protection of Politicians' Interests) Regulations 2017 is a framework for protecting the interests of politicians. IRDAI actively assists policymakers in the redressal of grievances through initiatives such as the IRDAI Grievance Call Center (IGCC) and Integrated Grievance Management System (IGMS). The fight against fake calls and mis-selling is supported by public notices, advertisements and instructions to insurance companies.

*Complaints about unfair labor practices*

Complaints related to unfair labor practices (UFBP) remain under control due to effective surveillance and regulatory measures. The number of UFBP complaints against private life insurers has decreased, reflecting the agency's commitment to maintaining the integrity and integrity of the insurance industry.

**Case Studies: Government Intervention in Pandemics and Insurance: Lessons from Global Experiences**

- *United States - COVID-19 Pandemic (2020-2021):*

During the COVID-19 pandemic, the United States faced significant challenges in the healthcare and economic sectors. The government played a crucial role in facilitating insurance claims related to the pandemic. Various measures were introduced, including the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided financial assistance to businesses and individuals affected by the pandemic. Additionally, the government worked closely with insurers to ensure timely processing of claims related to COVID-19 treatment and

[41] Ibid

related medical expenses. This collaboration helped mitigate financial burdens on individuals and businesses while ensuring adequate healthcare coverage during the crisis.[42]

- *Italy - Ebola Outbreak (2014-2016):*

Italy faced challenges during the Ebola outbreak in West Africa from 2014 to 2016. The Italian government took proactive measures to support insurance claims related to the epidemic. Emergency funds were allocated to healthcare facilities to cover treatment costs for affected individuals. Additionally, insurance companies were encouraged to expedite claim processing and provide coverage for medical expenses incurred due to Ebola-related illnesses. The government also provided financial assistance to affected families through various relief programs, thereby easing the financial burden on individuals and communities impacted by the outbreak.[43]

- *South Korea - Middle East Respiratory Syndrome (MERS) Outbreak (2015):*

South Korea experienced an outbreak of Middle East Respiratory Syndrome (MERS) in 2015, leading to widespread public health concerns. The government implemented measures to facilitate insurance claims for affected individuals and healthcare facilities. Special insurance schemes were introduced to cover medical expenses for MERS treatment, ensuring access to healthcare services for affected patients. Furthermore, the government worked closely with insurers to streamline claim processing and provide financial support to healthcare providers overwhelmed by the outbreak. These efforts helped contain the epidemic while ensuring adequate insurance coverage for affected individuals.[44]

- *Brazil - Zika Virus Epidemic (2015-2016):*

Brazil faced a significant public health crisis during the Zika virus epidemic from 2015 to 2016. The government took proactive steps to support insurance claims related to the epidemic. Special insurance programs were launched to provide coverage for medical expenses incurred due to Zika virus-related illnesses, including prenatal care for pregnant women affected by the virus. Additionally, the government collaborated with insurers to expedite claim processing and ensure timely reimbursement for healthcare services provided during the pandemic. These

[42] Centers for Disease Control and Prevention, COVID-19: Financial Resources for Healthcare Providers, (last visited Feb. 19, 2024).
[43] World Health Organization, Ebola Situation Reports: Archive, (last visited Feb. 14, 2024).
[44] Korea Centers for Disease Control and Prevention, MERS Outbreak Response Guidelines, (last visited Feb. 15, 2024).

measures helped mitigate the financial impact of the epidemic on individuals and healthcare providers, ensuring access to essential healthcare services during the crisis.[45]

- *SARS in Hong Kong (2003):*

During the severe acute respiratory syndrome (SARS) outbreak in 2003, the Hong Kong Special Administrative Region (HKSAR) government played an active role in assisting residents with insurance matters. Many citizens experienced difficulties filing medical claims due to fear of hospital visits, leading to delayed treatments. The HKSAR government intervened by launching the "Medical Protection Allowance" scheme, subsidizing eligible patients' medical expenses. This initiative eased financial pressure on affected individuals and encouraged them to seek proper care without worrying about hefty costs.[46]

- *Swine Flu in Mexico (2009):*

In 2009, Mexico battled the swine flu (H1N1) pandemic, placing enormous strain on the country's healthcare system and insurance providers. Mexican officials addressed the issue by introducing mandatory health insurance plans requiring employers to enroll employees in the group coverage. The measure expanded access to medical care for millions of Mexicans who previously lacked insurance, reducing the overall financial impact of the pandemic on individuals and the healthcare sector.[47]

**Analyzing the case studies**

By connecting the above case studies to the central question of whether government intervention can lead to recovery in the context of pandemics and insurance, we can draw important lessons for India and other nations seeking to improve their pandemic response strategies.

First, the U.S. response to the COVID-19 pandemic demonstrated the importance of broad financial assistance in addressing the twin challenges of health care and the economy. The CARES Act served as a template for allocating resources and addressing the needs of affected

[45] Pan American Health Organization, Zika - Epidemiological Report Brazil, (last visited Feb. 16, 2024).
[46] Gabriel M. Leung & C. Raina Macintyre, Sever Acute Respiratory Syndrome (SARS) and the Health Care Worker, 17 CLINICAL MICROBIOLOGY REVIEWS 517, 517-530 (2004).
[47] Carlos Franco-Paredes et al., Emergence of Pandemic Influenza A (H1N1) Virus in Mexico, 361 NEW ENGLAND JOURNAL OF MEDICINE 2050, 2050-2053 (2009).

individuals and businesses. India could emulate such measures, expanding insurance coverage and designing targeted aid programs to mitigate the impact of future pandemics.

In addition, Italy's response to the Ebola epidemic highlighted the need for strong partnerships between government agencies and insurance providers. Coordinated efforts enabled faster processing of claims and ensured adequate financial support for affected individuals and communities. India could benefit from establishing closer ties with insurers to streamline processes and maintain smooth operations during emergencies.

South Korea's response to the MERS outbreak illustrated the effectiveness of specialized insurance systems in responding to unexpected health crises. Introducing tailor-made insurance options for pandemic scenarios enables faster responses and more efficient use of resources. India could therefore consider investing in customized insurance arrangements to expand its pandemic response capabilities.

Finally, Brazil's management of the Zika virus epidemic has underscored the importance of inclusive insurance programs, especially those that address the unique needs of vulnerable groups. Tailoring insurance policies for women, children, seniors and low-income households helps protect these segments from the financial distress caused by the pandemic. Ensuring adequate representation and inclusion in insurance systems allows for more balanced and holistic coverage.

The SARS outbreak in Hong Kong also exemplifies the importance of government intervention in addressing healthcare spending during an epidemic. Similar to India's struggle with insurance penetration, Hong Kong has struggled with unaffordable medical bills for disabled citizens. The HKSAR government intervened by creating a compensation fund and introducingsubsidies for medical expenses, thereby easing the financial pressures on the population. Similarly, India could take similar measures to ease the burden on insurers and consumers during the pandemic.

However, Singapore's successful vector-borne disease eradication strategy serves as a model for India's fight against infectious diseases. Although Singapore has a highly developed insurance sector, it has taken precautionary measures to limit the spread of the Zika virus. Similarly, integrating effective public health policies along with insurance reforms would enable India to address pandemics more comprehensively.

Finally, the introduction of mandatory health insurance in Mexico addresses the pressing concern of low insurance penetration, which mirrors India's difficulties. Mandatory employer participation in insurance programs ensures wider coverage and fair distribution of risks, benefiting both society and insurers.

Inspired by these case studies, government interventions in the form of public health investments, preventive measures, emergency planning and compulsory insurance programs can positively impact India's response to the pandemic and accelerate recovery. Appropriately designed government interventions can protect the interests of policyholders, insurers and the Indian economy as a whole.

The case studies illuminate the complex interplay between pandemics, government interventions and insurance mechanisms. As India grapples with the challenges posed by public health crises, learning from the global experience can inform strategic policy and strengthen resilience to future pandemics. By leveraging insurance as a tool for risk management and recovery, coupled with proactive government support, India can chart a path to sustainable healthcare systems and economic stability in the face of uncertainty.

**Pandemics and Insurance: Government interventions and their impact**

*A. Effectiveness:*

Government interventions may prove critical in making pandemic-related insurance more affordable and affordable, stabilizing the insurance industry and reducing coverage gaps. The three main ways to achieve this include reinsurance groups, compulsory coverage and regulatory changes.

**Increased accessibility and affordability of pandemic-related insurance**

A. *Reinsurance Pools*: The creation of shared reinsurance pools distributes risks among participating insurers and increases their ability to absorb large pandemic losses. By spreading the risks, insurers gain confidence in underwriting pandemic-related coverage, making it more readily available and reasonably priced.[48]

[48] Norman L. Johnson & Richard J. Willis, Catastrophe Modeling: Principles and Practice (Springer Science & Business Media 2003).

B. *Mandatory coverage:* Forcing insurers to offer pandemic-related coverage guarantees access for policyholders. At the same time, forcing policyholders to purchase such coverage expands the risk pool, generates income for insurers, and reduces the likelihood of bankruptcy.[49]

C. *Regulatory Changes:* Modifying regulations governing insurance pricing, product features, and minimum levels of coverage may produce desirable results. Authorities could impose rate caps, limit deductibles, or require basic coverage of essential services to ensure the availability and adequacy of pandemic-related insurance.[50]

**Financial stability of the insurance industry**

A. *Solvency ratios:* Robust solvency ratios signal a sound financial basis for an insurer. Higher ratios mean greater financial reserves that allow carriers to meet their obligations despite significant demands caused by the pandemic.[51]

B. *Claims experience:* A positive claims experience increases the confidence of lenders and attracts investors looking for stable returns. Smooth claims settlement processes correlate with a stronger brand reputation and competitive advantage, which supports market entry.[52]

C. *Market concentration and competition:* Balanced concentration and healthy competition create favorable market dynamics. Antitrust supervision promotes fair trade practices and prevents monopolistic tendencies, ensuring optimal choice and price balance.[53]

**B. Social and public health outcomes:**

Government interventions affect access to health care, support for responsible behavior, and long-term resilience and preparedness.

**Access to health care and basic services**

A. *Vulnerable Populations:* Targeted insurance programs can protect disadvantaged demographics from excessive health care costs and declining quality of care.[54]

[49] J. David Cummins, Christopher V. Phillips & Mary A. Weiss, Optimal Compulsory Insurance for Catastrophic Risks: The Case of Terrorism, 27 GENEVA PAPERS ON RISK AND INS. 417, 417-431 (2002).
[50] Scott E. Harrington, Insurance and Behavioral Finance, FOUND. AND TRENDS MARKETING 1, 1-94 (2010).
[51] PricewaterhouseCoopers, The Future of Insurance: Perspectives from Asia, (last visited Feb. 19, 2024).
[52] Swiss Re Institute, Sigma Series: Natural Catastrophes and Man-made Disasters in 2018: A Year of Record-breaking Economic Losses, (last visited Feb. 19, 2024).
[53] European Parliament, Mergers: Substantive Assessment and Remedies, (last visited Feb. 19, 2024).
[54] Martin Schneider & Ratna Sahrawat, Income Inequality, Poverty, and Aggregate Consumption Volatility in South Asia, 30 OXFORD DEV. STUD. 149, 149-165 (2002).

B. *Service Utilization Rates:* Accelerated adoption of pandemic-related insurance increases service utilization rates and allows health professionals to respond quickly to changing conditions.[55]

C. *Quality of Care:* Standardized protocols embedded in insurance contracts guarantee consistent quality of care regardless of provider discretion.[56]

**Support vs. public health deterrence**

A. *Adherence to public health measures:* Well-designed policies reward adherence to recommended guidelines and encourage policyholders to engage in protective behaviour.[57]

B. *Effects of risk compensation:* Mitigating moral hazard involves teaching the insured about risk compensation, i.e., the tendency to engage in risky behavior due to the perceived invulnerability derived from insurance coverage.[58]

**C. Economic Impacts:**

Weighing the economic benefits and pitfalls of government interventions in relation to self-insurance and public health interventions requires scrutiny.

**Overall economic recovery**

A. *Business Continuity Indicators:* Stronger insurance markets strengthen corporate resilience, which translates into better prospects for business continuity during and after a pandemic.[59]

B. *Employment statistics:* The preservation of jobs depends to a large extent on the ability of businesses to stay financially afloat. Strengthening insurance coverage improves businesses' chances of surviving economic turbulence caused by pandemics and keeps unemployment rates under control.[60]

**Unintended consequences**

[55] David E. Bloom, Wen Chen & Yuanli Li, Demystifying China's Healthcare Reform (Brookings Institution Press 2017).
[56] Jonathan Gruber, Health Insurance Markets, ANN. REV. ECON. 239, 239-261 (2010).
[57] David M. Cutler, Jonathan B. Gelbach & Edward L. Glaeser, What Explains Differences in Cigarette Prices? 118 Q. J. ECON. 59, 59-103 (2003).
[58] W. Kip Viscusi, Does Smoking Save Lives? 98 J. POL. ECON. 1267, 1267-1282 (1990).
[59] Deloitte, Future of Cyber Survey: Cyber Everywhere, Yet Nowhere Near Enough, (last visited Feb. 19, 2024).
[60] Organization for Economic Co-operation and Development, Labour Market Trends in the Time of COVID-19, (last visited Feb. 19, 2024).

A. *Moral hazard:* Misaligned incentives can create recklessness among policyholders that culminate in moral hazard. Regular monitoring coupled with corrective action discourages opportunism.[61]

B. *Market Distortion:* Overzealous intervention can distort market forces and cause undesirable consequences such as excess supply or demand. Appropriately calibrated policies circumvent these undesirable side effects.[62]

**Cost Effectiveness Comparison**

A. *Self-insurance:* Self-insurance means bearing the entire burden of risk individually, forgoing the potential gains of professionally managed diversified portfolios.[63]

B. *Public health interventions:* Effective use of public health resources maximizes societal welfare. Integrating insurance expansion with prudent spending yields maximum benefits.[64]

**Key Findings**

- The pandemic has had a major impact on communities, economies and industries around the world, including the insurance industry.
- Government interventions such as reinsurance pools, mandatory coverage, and regulatory changes can increase the availability and affordability of pandemic insurance, stabilize the insurance industry, and address coverage gaps.
- Effective government interventions can lead to improved access to health care and essential services, better adherence to public health interventions, and long-term resilience and preparedness.
- Estimates of the economic effects of government intervention, such as general economic recovery and employment statistics, are needed to weigh their benefits against unintended consequences such as moral hazard and market distortion.

**Challenges**

[61] Bengt Holmström, Moral Hazard and Observability, 10 BELL J. ECON. 74, 74-91 (1979).
[62] Robert J. Barro, The Political Economy of Government Spending, 81 J. POL. ECON. 947, 947-975 (1973).
[63] Neil A. Doherty, On the Valuation of Insurance Company Stocks, 67 J. RISK AND INS. 337, 337-354 (2000).
[64] Gerard F. Anderson & James M. Mellor, The Economics of Health and Health Care: Theory and Applications (Pearson Education 2008).

- Increased claims: The pandemic has led to a surge in claims related to health insurance, life insurance, and business interruption insurance. This puts a significant strain on insurers' finances and could result in higher premiums for policyholders in the future.
- Supply chain disruptions: The pandemic has disrupted global supply chains, which could impact the availability and pricing of raw materials and components used in the production of insurance products. This could lead to higher costs and lower profits for insurers.
- Remote working: The shift to remote working has raised concerns about data privacy and cybersecurity. Insurers must ensure that their remote work arrangements comply with regulatory requirements and that their data is protected from cyber threats.
- Changing customer behavior: The pandemic has altered consumer behavior and preferences, with many people cutting back on discretionary spending and opting for more affordable insurance products. Insurers must adapt to these changes and offer flexible, affordable options to retain customers and attract new ones.
- Regulatory changes: Governments around the world are introducing new regulations to address the impact of the pandemic on the insurance industry. Insurers must stay up-to-date with these changes and ensure that their products and processes comply with regulatory requirements.
- Investment losses: The pandemic has led to sharp declines in global stock markets, resulting in investment losses for insurers. This could impact insurers' ability to pay claims and could lead to higher premiums for policyholders.
- Reputation damage: The pandemic has highlighted the importance of insurance in protecting individuals and businesses from financial losses. However, insurers must be transparent and ethical in their claims handling and communications to avoid damaging their reputation and losing customer trust.
- Long-term impact: The full impact of the pandemic on the insurance industry is still unknown. Insurers must plan for various scenarios and be prepared to adapt to a rapidly changing environment. This includes developing contingency plans, investing in digital technologies, and building partnerships with other players in the ecosystem.

*Key mitigation strategies for insurance companies during the current situation*[65]*Secure newly implemented remote working practices:*

- Ensure remote access systems are configured and patched securely.
- Prevent the use of unauthorized applications and enforce the use of business-approved secured solutions.
- Ensure on-premise controls still apply to systems when these systems are not connected to the organization's internal network.
- Monitor usage of remote access systems and emails for any abnormal login activity.
- Implement appropriate controls to detect and prevent DDoS attacks on remote access systems.
- Review tactical actions and retrospectively implement key security controls which may have been overlooked.
- Implement remote asset management and tracking tools.

*Ensure the continuity of critical security functions:*

- Identify and monitor critical cybersecurity activities to ensure continuity.
- Implement appropriate controls on internet-facing applications and services.
- Review access provided to privileged users and monitor their activities.
- Implement robust cyber incident monitoring, detection, and response capabilities.

*Counter opportunistic threats taking advantage of the situation***:**

- Conduct regular cybersecurity awareness campaigns for employees and customers.
- Provide specific guidance to employees and customers while dealing with email requests for personal or financial information or requests to transfer money.
- Implement appropriate technical controls to mitigate the risk of phishing attacks.

Additionally, insurance companies offering cyber insurance should prepare to handle the increased possibility of cyber incidents and claims being reported by their customers. Expenditure in areas such as adequate IT support, change management, compliance, and remote task completion may increase in the short term, but these costs are expected to decreaseas conditions stabilize and remote operations become the new normal.

[65] Joydeep Roy, COVID-19: Impact on the Indian Insurance Industry, PWC INDIA (June 2020).

**Suggestions**

1. Based on the analysis and findings presented in the paper, the following recommendations are offered to enhance the effectiveness of government intervention in shaping insurance responses to pandemics:
2. Establish Public-Private Partnerships: Create formal collaborations between governments and insurance companies to jointly address pandemic risks. These partnerships can facilitate the development of tailored insurance products, risk assessments, and claims management processes during pandemics.
3. Leverage Reinsurance Pools: Encourage the formation of reinsurance pools to distribute pandemic risks across multiple insurers and countries. This mechanism can provide financial stability and promote the availability of affordable pandemic insurance.
4. Implement Mandatory Coverage: Make pandemic-related insurance coverage mandatory for businesses and individuals to ensure adequate risk transfer and financial protection. This requirement can be supplemented by government subsidies or tax incentives to offset the costs for policyholders.
5. Modernize Regulatory Frameworks: Update regulatory frameworks to explicitly recognize and integrate pandemic risks. This may involve setting solvency requirements, defining acceptable coverage levels, and establishing dispute resolution mechanisms.
6. Invest in Technological Advancements: Promote the adoption of digital technologies in the insurance sector to improve data collection, risk modelling, and fraud detection during pandemics. Examples include AI, machine learning, big data analytics, and IoT devices.
7. Prioritize Workforce Training: Ensure that insurance professionals receive adequate training on pandemic-related risks, insurance products, and claims management processes. This can help improve the quality of services delivered to policyholders and reduce potential moral hazard issues.

8. Encourage Research and Development: Fund research initiatives focused on identifying new pandemic risk management strategies, improving existing products, and assessing the long-term impact of government interventions.
9. Foster International Cooperation: Encourage governments, international organizations, and insurance companies to collaborate on pandemic risk management initiatives. This can help harmonize regulatory frameworks, share best practices, and leverage economies of scale.
10. Monitor and Evaluate Government Interventions: Periodically assess the effectiveness of government interventions and adjust policies accordingly. This process should involve collecting and analyzing data on pandemic-related claims, insurer solvency, and economic recovery.
11. Increase Public Awareness: Launch public awareness campaigns to educate individuals and businesses about the importance of pandemic insurance and the role of government intervention in shaping the insurance landscape. This can help increase acceptance of mandatory coverage and stimulate demand for tailored insurance products.
12. Governments should consider implementing reinsurance pools, mandatory coverage and regulatory changes to address the unique challenges posed by the pandemic.
13. Policymakers should prioritize effective public-private partnerships to coordinate pandemic strategies and mitigate negative economic impacts.
14. More research is needed to examine the long-term effectiveness of various government interventions and compare them with alternatives such as self-insurance and public health interventions.

**Conclusion**

As we pen down the final lines of this discourse, it becomes abundantly clear that the global COVID-19 pandemic has brought forth unprecedented challenges and opportunities for the insurance industry, compelling governments and insurers to innovate and collaborate in managing pandemic risks. Throughout this paper, we examined the relationship between pandemics and insurance, with a special focus on the critical role of government intervention in shaping insurance responses to pandemics. Our analysis revealed that effective government intervention can substantially enhance healthcare access, improve adherence to public health

protocols, and foster long-term resilience. Throughout the discourse, we explored diverse strategies—such as reinsurance pools, mandatory coverage, and regulatory modifications—that hold the potential to augment the availability and affordability of pandemic-related insurance for individuals and businesses. Simultaneously, these interventions can bolster the financial stability of the insurance industry during pandemics, address coverage gaps, and catalyze economic recovery. Nevertheless, we acknowledge that such interventions may entail potential pitfalls, including moral hazard and market distortions, warranting the implementation of meticulously calibrated policies and rigorous evaluations vis-à-vis alternative approaches.

Drawing from real-world case studies, we elucidated the synergistic relationships between governmental entities and insurance providers, accentuating the necessity of bespoke insurance products and inclusive policies. Ultimately, these efforts aspire to cultivate a more equitable and inclusive insurance landscape that leaves no one behind. Reflecting on the wealth of information synthesized in this paper, we propose several recommendations for scholars, policymakers, and insurance practitioners. First, embracing public-private partnerships can unlock untapped potential for innovation and collaboration in addressing pandemic risks. Second, leveraging technology and digitalization can revolutionize claims processing, risk assessment, and policy administration, rendering the insurance sector more agile and responsive to evolving pandemic landscapes. Third, fostering international cooperation can help harmonize regulatory frameworks, disseminate best practices, and amplify collective efforts in combatting pandemic risks. Lastly, pursuing continuous research and evaluation can keep pace with the dynamically shifting sands of pandemic-related risks, ensuring that insurance mechanisms remain robust, resilient, and relevant for generations to come.

To recapitulate, the convergence of pandemics and insurance presents a fertile ground for exploration, reflection, and action. Quoting, "*The path to resilience in the face of pandemics lies in the synergistic union of robust insurance frameworks and resolute government action. It is through this symbiosis that we fortify our defenses, transcending the frailties of the past to forge a future where humanity emerges victorious over the gravest of threats."~ United Nations Office for Disaster Risk Reduction (UNDRR).* As we traverse this labyrinth of challenges and possibilities, we invite scholars, policymakers, and practitioners to join hands in co-creating a more vibrant, inclusive, and sustainable insurance landscape—one that transcends boundaries, cultures, and ideologies, anchored firmly in the pursuit of shared humanity and collective prosperity. Together, we can turn the tide on pandemic risks, fostering a world were peace,

progress, and harmony reign supreme. And so, dear reader, we entrust this vision to you, confident that together, we shall prevail.

# SOLVING ADJUDICATORY LEGAL ISSUES WITH 'ALTERNATE DISPUTE RESOLUTION': ANANALYSIS FROM 'HOHFELDIAN JURISPRUDENTIAL' LENS

*Samrat Bandopadhyay**

## Introduction

For the analysis of legal position, Hohfeldian method is a seminal contribution in the legal field[1]. It is an analytical tool for understanding the dimensions/facets of 'Rights' and 'Duties'. It provides with unprecedented clarity to understand the legal problem. However,the legal 'Rights' and 'Duties' as analyzed by Hohfeldian method, may not provide the complete picture in the canvas or broader contour of analysis where in Eastern or Indian System of 'Rights' analysis involves 'Obligation', where the society provides an obligation on the individuals and groups to respect others, where the enforcement comes from within (from inside). Western Jurisprudence is based on legal rights and duties. Eastern law is based on '*Dharma*'[2], which is outer reflection of inside, whereby the philosophy of Vedas and Upanishads have a bearing- which are building blocks of tolerance and respect for others. The inner understanding of Eastern jurisprudence involves understanding the concept of 'Juristic person', beyond the realm of the two classifications as 'Natural person' (like humans) and 'Artificial person' (like Corporation as entities).

## Legal Rights and Corresponding Duties

Before understanding and analyzing the Steps in the Application of Hohfeldian Jurisprudential Analysis for Mediation and Arbitration, it is vital to amplify the factors what constitutes the rights and duties in this perspective. The Legal Right can be categorized as Claim Right, Privilege Right, Power Right and Immunity Right, whereas, the corresponding duties include that of Duty, Liberty or 'No Privilege right', Liability and Disability. Though the squares of opposition are a post- Hohfeldian activity, nonetheless, the squares of opposition had its origin with Aristotle in fourth century BC, namely the 'Deontic Square of

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[1] In the Hohfeldian method, Hohfeld's legal relations with the various legal relationships described with 'Jural opposites' and 'Jural Correlatives'.

[2] The conceptual base of '*Dharma*' finds its quintessential role and presence in Vedas and Upanishads in Indian ancient literatures.

Opposition' and 'Alethic Square of Opposition'. The dynamic relations between the Deontic and Alethic relations would constitute a 'Right' using the Aristotelian Squares of Opposition. The Mediation and Arbitration includes a number of steps including identifying the parties and the stakeholders who have a stake in the final result of the process of alternate dispute resolution (ADR). It is pertinent to note that the inherent advantage of ADR includes going into the sub-stratum of the issues involved in an environment which is mutually agreeable to the parties where the parties may have an arbitration clause in their contractual agreement to resolve the dispute in an arbitration setup. In Mediation, the parties participate voluntarily and confidentiality is being maintained in the process, where the skilled and trained mediator acts as a catalysts and facilitator to settle the disputes without any prejudice or any time- consuming hassles in effective negotiated and collaborative environment of dispute resolution.

**Steps in the Application of Hohfeldian Jurisprudential Analysis**

The first and foremost step is to develop the 'Deontic Square of Opposition' and then, the second step would be to analyse the analytical framework of 'Alethic Square of Opposition'. The last step is too super-impose each of the 'Squares of Opposition' on top of each other to form a 3-dimensional analysis in the form of 'Hohfeldian Cube Analysis' Such an analysis a dynamic in nature and can provide multiple permutation and combinations for analysis for legal framework analysis in analytical form. It is vital to note that the dynamic business setup is influenced by myriads of factors which form the basis to analyse the varied permutations and combinations while arriving at a negotiated or agreeable solution to the dispute between and among parties in the cases where ADR mechanism is being opted by parties for resolution of their disputes. The Hohfeldian Jurisprudential analysis is a tremendous tool to analyse the position of the parties where the rights and duties of the parties are analyzed 'threadbare' and in an efficacious manner. In this analysis whereby, the 'Right' is for protection of interest. In Hohfeldian analysis, it is the shifting 'dynamics' of Rights and Duties, where the arguments advanced in the Court of Law can provide multiple permutation and combinations of 'Rights and Duties' and its movement in the course of analysis with cogent reasoning. Another line of thought is that of the opinion of the Positivists that includesthat Right is an interest and it must be recognized and protected. Thereby *in sequitur* it is averred that the Interest by law signifies that, mere recognition is not enough.

ADR as a viable option for resolution of disputes finds its application in ancient culture and inbuilt in the family value system of Indian jurisprudence. The legal system provides the right to be enforced by legal system, whereby the interest partakes the characteristics of legal right. In the basic and rudimentary understanding of the legal system, constituent elements include the parties or individuals. Whereby, the interactions are between individuals, it is warranted to Connect individuals with Rights and duties. For every 'Right', there is a corresponding 'duty' and the whole world has a corresponding duty towards that right. Others have a 'duty' to respect that 'Right' against the holder of the right. The Right can be divided into 4 species:

1. Claim Right in strict sense
2. Liberty/Privilege- for example, to enjoy the right to stroll in his/her own garden without being disturbed
3. Power- The right emanating, for instance, from a Will, which bestows upon the individual certain rights of possession and ownership of property.
4. Immunity- The right enjoyed, for example by a diplomat in an Embassy in foreign country.

The word 'Right' is general in nature is a 'Genus' whereas, 'Species' is specific and pertains to say, right to alienate, Right to Stroll, right to enjoy the garden or its ascetic beauty, right to play in the playground, among others. So, 'Right' is a very general term, like that of 'duties. From Sphere of right one jumps into the sphere of duties which one is supposed to have towards others. This defines the 'Zone or Sphere of activities. Here, 'Privilege' forms the private sphere of control. If it is transgressed by the activities of neighbor by disturbing via. disturbance while strolling in the garden of his, then there is an intervention in the personal 'Privilege' as a right enjoyed by the individual. Simultaneously, there is a 'Duty' of the neighbor to respect that privilege which one enjoys in his or her own land or garden. So, the starting point of analysis is the 'Privilege' right which one enjoys in his sphere or zone of activity and there has to be protection of the Legal Right which an individual gets with the ownership and possession of the property, which is the 'Power' bestowed by the purchase deed or the sales deed and the due executed registered Agreement of Sale, which is enforceable in the eyes of law. That 'Power' is right to move to the Court by the statute

[3] An epic which has a social and cultural narrative in Indian culture contains verses or Slokas which depicts historic richness and work of vivid culture of ancient sage Vyasa.

enabling a rightful owner to assert his or her claim over the property and make it enforceable in Court. The diagonals are 'Jural Opposites' while the horizontals are 'Jural Correlatives', whereby the 'Privilege' and 'Duty' are mutually exclusive and can be seen from varied legal scenarios.

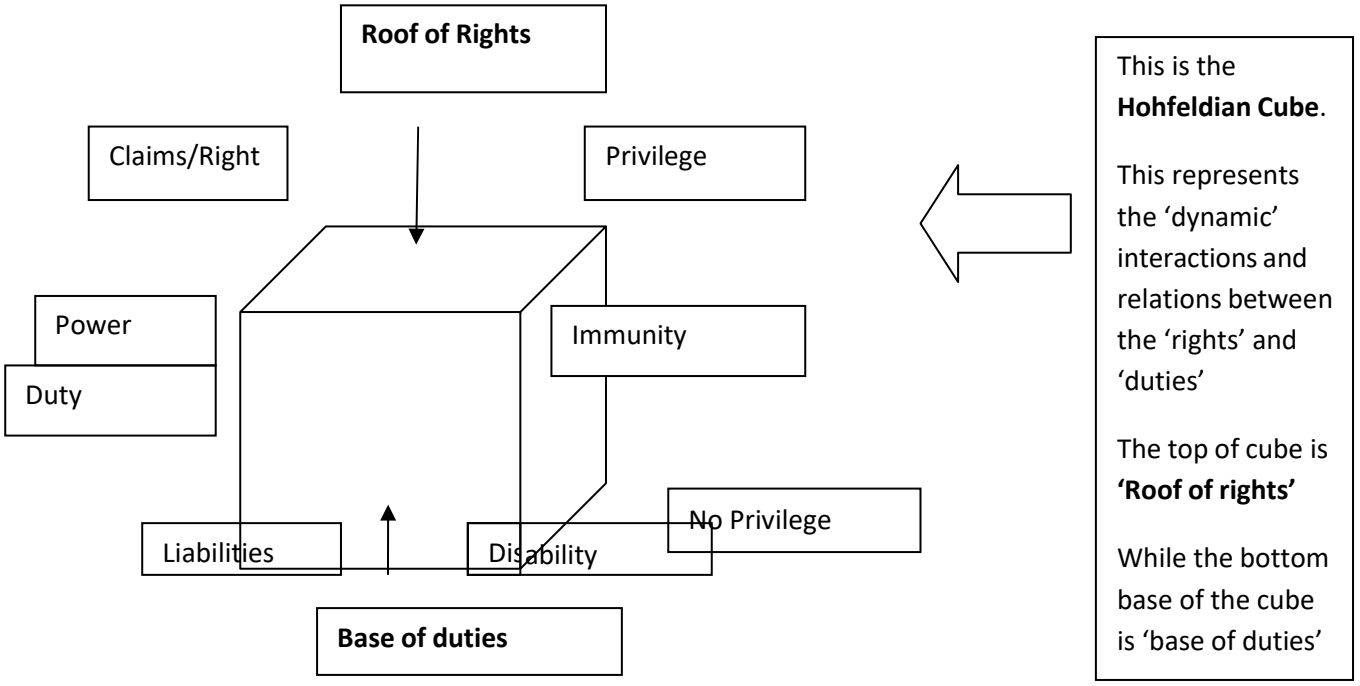


**Diagram 1- The complex interaction could be understood as follows diagrammatically**

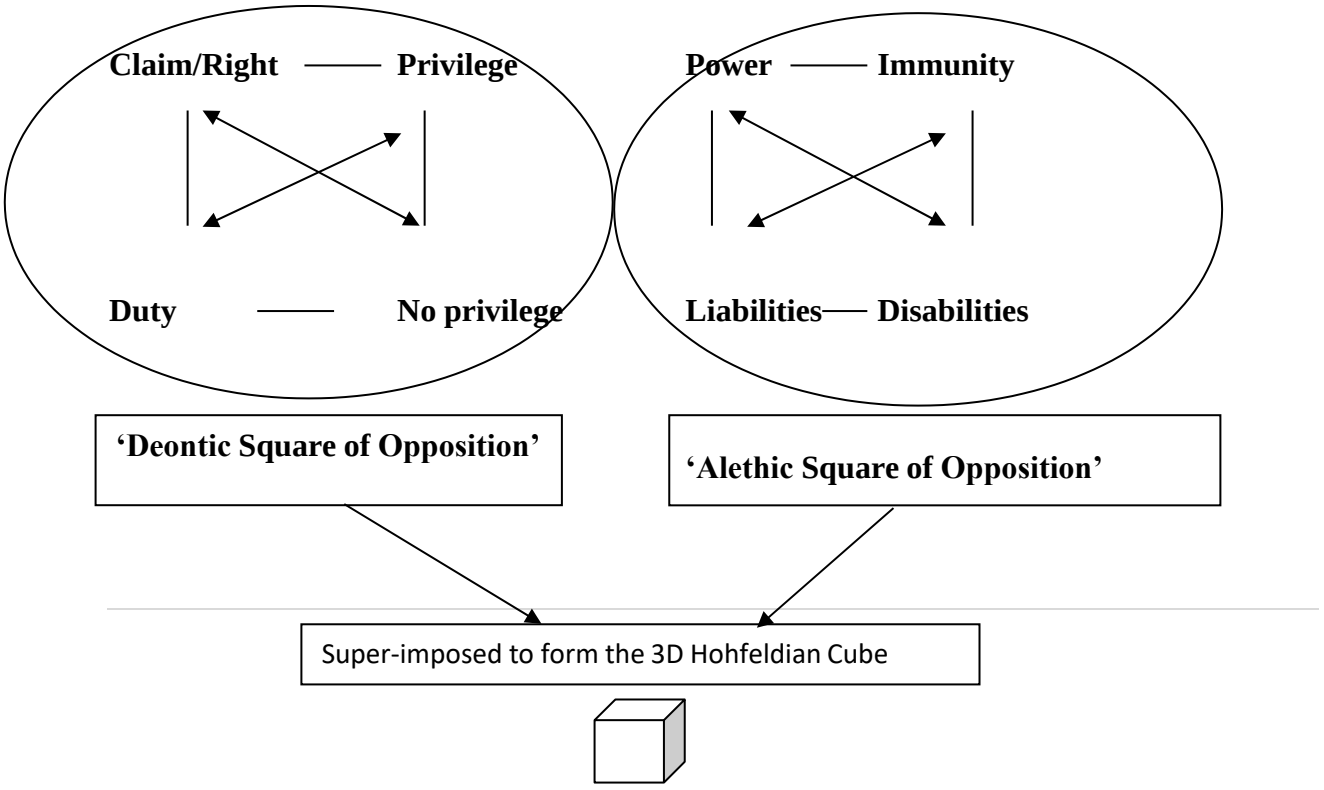

*Diagram 2- Super-imposition of 'Deontic' and 'Alethic' Squares of Opposition to form the Hohfeldian Cube.*

Let's analyse some scenarios where Mediation and Arbitration as an 'Alternate Dispute Resolution' could help address and tackle the issues involved in practical daily day to day scenarios and to analyse it from a 'Hohfeldian Jurisprudential' Lens.

*Scenario 1:*

In case of *Volenti non fit injuria*, with the example of batsman playing Cricket match, includes the *'Zone of Liberty'* involves the 'Right to play the game'. Where, the spectators or the match-lovers buying ticket on their own volition understanding the risks involved have assented to the position *'No Right'* for the match duration inside the cricket stadium. Where, being injured by a 'Sixer' (six played by a batsman) would not bring a cause of action as the match goers while purchasing the ticket has assented to those inherent risks involved in the game. Likewise, the scenario can be dynamically analyzed from the viewpoint of say a batsman in *'Immunity'* (Right) position while scoring a six without injuring the umpire. Where, the audience is brought by that concurrence of *Volenti non fit injuria*, from the 'Power' position to the *'Disability'* position. So, the scenario could dynamically create multiple scenarios and options to analyse. So, if the audience of the cricket match had bought a ticket which spell out categorically, that if the organizers are not responsible for any mishapor accident caused by inadvertent reasons or by purchasing the ticket, any injury or accident caused by risks of watching the 'live' match at stadium, the ticket purchaser is subsuming the risk. Any fallout of any accident, could be mediated between parties post the unfortunate incident of injury, could be dealt accordingly as per Alternate dispute resolution as defined *apriori*. All the Rights and Duties co-analysis has a bearing in the final outcome of the legal scenario helping in understanding the stand of each party while deciding the fate of the case in instant scenarios, wherefore the Hohfeldian analytical analysis of 'Right' and 'Duties' are arobust tool to get complete clarity of unprecedented nature.

*Scenario 2*

While planting of plants in one's own garden or land, there is a *'Privilege'* (as a right) to plant trees where the trespasser or neighbor shall not cause destruction or injury to the plants. If there is any trespass, by enforcing his right the owner of the land has the 'Power' right to move to Court, where if the verdict comes in favour of the owner, the trespasser orthe neighbor violating the societal norms or by action of cutting the trees or causing harm to the plants could be moved to the *'Disability'* position. Here, the disputes between the parties of nature of a 'trespass' could be effectively solved if the parties are willing to mediate via an alternate dispute resolution arriving at a mutually agreed compensate of damages, if any.

*Scenario 3*

The 'Power' enjoyed because of a statute in numerous cases or instances, would provide the option to the right-holder to move to the Court or exercise his or her option of seeking justice so the preliminary position of the person in 'Power' (right position) is enforceable in Court, whereby in the eyes of law it holds credence. At the same time, the offender of the law is moved to 'Disability' position, once the cause of action is proved in the Court of Law. Insuch scenario, if it is of a contractual nature of any agreement defined apriori between the parties and also has a 'arbitration clause', then the issue could be solved by resorting to 'arbitration'.

**Explicating the Hohfeldian analysis via. ADR case studies**

A conjoint reading of Section 89 of Code of Civil Procedure, 1908 along with Section 12A of the Commercial Court Act, 2015 enables pre-litigation mediation mandatory for commercial disputes. The seminal case of *M/S. Afcons Infrastructure Ltd. & Anr. vs M/S Cherian Varkey Construction Co. (Pvt.) Ltd. & Ors.*[4], spelt out with clarity the guidelines about the Alternate Dispute redressal process within the meaning of Section 89 of the aforesaid code. Theaforesaid case, helped define the nature of cases which are considered unsuitable for ADR. The cases involving prosecution for criminal offenses along with cases which involves serious allegation of the nature of *inter alia* fraud, forgery, fabrication of documents, coercionand impersonation were deemed not fit for ADR. In another case, *Hussainara Khatoon &*

[4] M/S. Afcons Infrastructure Ltd. & Anr. vs M/S Cherian Varkey Construction Co. (Pvt.) Ltd. & Ors., (2002) 8 SCC 24

*Ors. Vs Home Secretary, State of Bihar, Patna*[5] which was reported in Supreme Court Cases (SCC), the Hon'ble Justice Bhagabati in the apex Court, Hon'ble Supreme Court of India observed that although the right to speedy justice is not mentioned explicitly in the Constitution as Fundamental Right, still it is implicit in the broad sweep as contained in Article 21. In catena of cases surfacing before the Hon'ble Court of law in India, it is averred that varied cases related to family law, employment law, consumer law and laws in the realm of Trade, Taxes and Constitutional Laws have a tremendous potential where ADR has its applicability. The applicability of the scope of settling disputes via ADR necessitates that there should not be any pressure, force, coercion or threat of any kind to settle disputes against the wishes of the parties involved, as could be established from the decision in *B.P. Moideen Seva mandir & Anr. vs A.M. Kutty Hassan*[6] and is important to reckon that CPCtrials procedure is a complex one with different stages for the litigation for meeting the endsof justice; nonetheless, ADR is a process or a mechanism within the legal setup which enables resolution of disputes in a manner without having recourse to litigation. Applying the Hohfeldian Analysis, in the aforesaid cases, the complex legal issues involved could be divided into sub-issues. The analysis enables the parties to define and specify with clarity the rights and the corresponding duties of the parties involved prior and post the arising of the dispute, which is the subject matter of settlement via ADR. ADR enables the parties to understand and specify with clarity the 'Power' right, if any by the facts and circumstances of the case, bestowed by a clause of 'Arbitration' in the contractual agreement between the parties to resolve their dispute. Another area to exemplify, the applicability of Hohfeldian Analysis, can be seen vide Section 60 of the Transfer of Property Act 1882, which spells out the remedy to the Mortgagor as "equity of redemption". Reliance placed on the case ***Seth*** *Ganga Dhar vs Shankar Lal & Others*[7], it was held by the Hon'ble Court that the documentin question contained a stipulation creating a 'clog on the equity of redemption' which was found to be illegal. Hon'ble Supreme Court of India had held that, as such a long term or period of redemption of 85 years was not necessarily a *'clog on equity of redemption'*[8]. So, here by Hohfeldian Analysis, the Mortgagor was in 'Zone of Activity' where the law has left that individual alone which is "Right/Claim of Right of equity of redemption" which is intact after the judgment; while the Mortgagee is moved from the initial position of "Power"

[5] Hussainara Khatoon & Ors. Vs Home Secretary, State of Bihar, Patna (1980) 1 SCC 81
[6] B.P. Moideen Seva mandir & Anr. vs A.M. Kutty Hassan, 2009 (2) SCC 198
[7] Seth Ganga Dhar vs Shankar Lal & Others 1959 SCR 509
[8] Ibid.

(bestowed or enjoyed with his/her ‘Right of foreclosure’) to “Disability” if there is ‘Clog in the Right of Equity of redemption of the Mortgagor’.

**Conclusion**

Hohfeld Cube analysis provides immense clarity in understanding the relationship between eight jural relations. It helps in simplified understanding of complex legal problems, with clarity and defines questions with utmost details, whereby the parties could resolve their disputes via Alternate Dispute Resolution, be it through Arbitration, Mediation, Conciliation or Lok Adalat’s. It is not only a useful mechanism to decipher the relationships between the rights and duties, but also a tool which is highly practical and boon to the Court or legislature to appreciate the jural relations in a cogent and coherent manner. To conclude, Mr. Frank Sander, Professor Emeritus of Harvard University while coining the term ‘Alternate Dispute Resolution’ described it as a solution to “the deadening drag of status quo-ism”, the attempt of analysis via the Hohfeldian Jurisprudential matrix and Hohfeld Cube is beckon of light which provides a scenario of positivity where ‘delay in delivery of justice could be tackled’ resulting in parties in dispute to be in a ‘win-win’ scenario, reinforced and augmented by a phenomenal change in the legal system by the applicability of ‘Alternate Dispute Resolution’.

# ENFORCING SOFTWARE IP PROTECTION IN THE FACE OF COPYRIGHT VIOLATIONS WITHEMERGING TECHNOLOGIES WITH A SPECIAL EMPHASIS ON SOFTWARE COPYRIGHT PROTECTION

*Siva Ram. J**

## Introduction

Intellectual property means anything created or invented by any person to the world, such as literary works, scripts, artwork, Designs in industry, Symbols, names, fonts, and images used for commercial purposes. Intellectual property is the rights of such inventions or creations. IP Rights for trademarks, copyrights, and patents must be protected by law and technology. It should be legally legitimate to grant licenses for a particular brand, copyrights, and patents used by others. Different types of law came up with new advancements and ideas to cover rights and duties with various sectors in intellectual property rights. The technology law deals with cybercrimes and other online illegal activities used by electronic devices, computer systems, or social media of connected Networks after cybercrimes and online scamming- related issues and after an increasing number of crimes brought into notable before the government of law. The Information Technology Act[1]was implemented, often known as cyberlaw.

Computer programs were not protected under the Copyright Act until 1974 and were not viewed as fixed, physical objects. However, traditional copyright law was expanded to cover machine-readable software 1983, and the Copyright Act granted computer programs the same copyright rights as literary works. Software piracy of programming material, data theft, and copying of coding languages, fonts, and names that owners or creators do not permit are some of today's most prevalent copyright infringements.

The inventor or owner had granted copyright protection to the specific software or coding languages. If other companies must use copyrighted data of software or coding, they should get a license to use technology with the permission of the inventor or creator. Any unauthorized copyrighted software is used by any of the ones it leads to be illegal. With software copyright,

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[1] Act No. 21 of 2000

there are some specific problems related to copyright, but the laws and rules apply. As a result of technological advancements, information and intellectual property can be copied, transferred, and altered more rapidly than ever before. In this procedure, computer software can process specific data structures based on user commands or sets of programs.

**Copyright infringement related to coding**

Copyright is a type of computer coding or programming that, under some circumstances, can be violated without a copy of the thing being copied. For instance, if a new program is created using the same methodology, functionality, and significant or minor programming code or component similarities as an original computer program for "inspiration,"[2] the actual program is also copyrighted. However, copyright infringement is still possible even if the original code is not used.

**Understanding of Copyright Software Licensing and IP**

Utilizing computers for information processing and storage does not inherently pose more significant challenges for copyright holders in upholding their rights. Competitors are not entitled to replicate your coding efforts, recognizing the substantial time and dedication invested in creating programming code, software, and applications. The primary concern revolves around both piracy and plagiarism, which are issues that should not arise due to the illicit distribution and sale of counterfeit versions. Copyright software licensing serves as a protective measure in preventing software theft while still allowing widespread access to the program. The core of this process lies in copyright software licensing, serving as a framework for legitimate software utilization without violating copyright laws. In this context, developers and managers must ensure the software is entirely free from copyright restrictions and available for public use.[3]

There are two primary categories of licenses: open-source and proprietary. The availability of open-source software is often determined by the type of open-source license in use, alongside

[2] Vijay k. Tyagi* (no date) Infringement of copyright in computer programs in India: understanding the state of virtual non-liquet and challenges vis-à-vis artificial intelligence, ILI Law Review vol. I. Available at: https://ili.ac.in/pdf/vkt.pdf (accessed: 10 October 2023).

[3] Group, T. (no date) Software copyright guide: Examples & protection, Software Copyright Guide: Examples & Protection from Infringement. Available at: https://cpl.thalesgroup.com/software-monetization/software-copyright-guide (Accessed: 15 October 2023).

Twin, A. (no date) non-disclosure agreement (NDA) explained, with pros and cons, Investopedia. Available at: https://www.investopedia.com/terms/n/nda.asp (Accessed: 16 October 2023).

specific terms and conditions that govern alterations, distribution, and usage. Acquiring proprietary software typically involves obtaining a permit with an associated annual fee rather than an outright purchase. In contrast, free software is crucial in enabling the public to learn from others, fostering collaborative problem-solving, and advancing knowledge in an open and accessible manner. [4]However, it is essential to note that such free software usually lacks the sharing of all its source code, making it inaccessible to users who do not have access to the underlying code.

**Security breaches and measures for proactive defence**

And there is multi-layer protection of perimeter defenses inside your computers of companies inside the network perimeter. Some employees are working in the same company. The stealing data act & information of secret findings to another company stealing IP thieves will eventually the levels of security must restrict breakthrough use access controls of system employees and admins. According to the functional level of controls, access & restrictions to sensitive data in configuration setting as proper credential authorization. The file encryption must protect to symmetric access of both files from A key to end key to access such files without encryption or decoding. Hackers can easily breach your defenses by relying on IP data and getting easy access through folders. They regularly monitor the network activity which user data can reveal before hacking through hackers that sensitive IP data & information. Routine Auditing is a setup tool that automatically analyses the whole connected network/domain used by machine learning and artificial intelligence in the initial security stages.

The immediate knowledge with high accuracy and large volume analysis. The complex of copyrighted data combined with automation and study through AI algorithms and machine learnings. And two more important intellectual property safeguards originate network on the malware detection, which will prevent malware from unwanted websites, email bombings, or SMS bombings that reach your networks. [5]The Anti-malware software implemented to deal with impacted networks. This intelligence malware assists us in removing and detecting viruses that enter the action. When firewalls are installed as the primary server's gateway, authorized connections can open and close portals with the required authorization. To secure a company's

[5] Amanda N. Craig, JD (no date) Proactive cybersecurity (final) - dlc.dlib.indiana.edu, dlib.indiana.edu. Available at: https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/10249/SSRN-id2573787.pdf?sequence=1 (Accessed: 15 October 2023).

intellectual property (IP), software coding and programming techniques, and private data files, email filters and web content filters are also crucial. As to be covered by the layout of network structures in every location in connected network platforms. Threats such as email spoofing are used to protect the environment, which is usually cleared with correct authorization. Hackers will steal information and data from systems through various domains of cybercrime that are actively involved in these crimes happening due to the legal issues and difficulties withenforcing copyright protection pf IP law nowadays.

**Influential technology and its transformative effects on individuals' lives**

An essential aspect of human life involves the influence of technology on intellectual property rights. The advancements in storage technology have had the most significant impact on copyright law within this context, with three categories of technology being of concern. This development has important implications for content owners regarding their rights regarding the duplication of their works, among other things. These developments have consequences for the media industry, the publishing industry, and the performing arts industry. Introducing new data and information processing technologies has also affected and implied rights, specifically regulating plagiaristic works. The purpose of this chapter is to demonstrate how advancing technology is enforced by exploring how these technologies interact with each other and how these interactions significantly contribute to shaping the mechanisms that govern intellectual property rights.

Due to recent advancements in storage technology, intellectual property rights enforcement may be a significant issue in the future. The initial phase of storage technology has made gaining exclusive rights to one's creations quite challenging, as many people worldwide have been able to use these technologies to copy works without obtaining any IP licenses to reproduce pieces made. [6]A subsequent phase in information, data, programming, and coding storage systems is characterized by the decline of specialization toward specific data types. Computerized components and procedures are designed to handle diverse forms of information, including text, graphics, audio, and video. Hence, governing information, data, programming, and coding within traditional formats becomes challenging in computer

[6] Chapter 4 impact of technology on enforcement of ... - Princeton University. Available at: https://www.princeton.edu/~ota/disk2/1986/8610/861007.PDF (Accessed: 15 October 2023).

technology, especially when these components and systems are designed to handle diverse forms of information. Because of these innovations, Owners and creators face an escalating threat of unauthorized copying.

In this digital age dominated by technology, computers significantly impact copyright enforcement, and the act of information storage presents challenges for copyright holders striving to safeguard their rights. Specifically, the challenge is apparent when we consider the regulation of reproduction systems, which introduces three notable concerns regarding copyright infringement, distinguishing it from other data storage or duplication technologies like photocopying or videotaping. In contrast to these methods, digital information can be duplicated swiftly and inexpensively. Moreover, computer-mediated information has the potential to generate multiple flawless copies of content. Importantly, it is essential to recognize that ownership of the original work is not a prerequisite for obtaining future copies of the same quality and content. The author indicates that while some of these copies may only persist for a fraction of a second, others may endure until the computer is powered off, with a few remaining stored on magnetic tape or disk.

**Legal provisions of the copyright Act & contracts between persons**

According to copyright act 1957 section 2(0) you can protect any software or programming codes from making duplicate, translating, or copying, pirating others creative of data to protect you from copyright infringement. The software infringement means if any persons creative of work is copied or replicating the original work without their consent in unauthorized manner. If the technology of software is ready to launch in market must protected under intellectual property law with licensing management. A computer capable of performing a specific task or achieving a particular result is referred to as programmable a set of instructions expressed in words, codes, schemes, or in any other form, including a machine-readable medium, according to Section 2(ffc) of the Copyright Act 1957, read with Section 2(o).

Copyright licenses for software coding or programming are provided under IP law. There will be a mutual contract of agreement with the owner or developer if someone pays for the use of software technology. Once the agreement is in place, there will be terms and conditions for licenses to access intellectual property. For example, if any programme is downloaded through the internet, it might be anything from secondary sources of unauthorized websites to cracked software or unpaid one or few charges in irrelevant websites on an online network platform.

One of the most serious issues in IP law is the internet era. Intellectual property software piracy is a continuous problem that has now become a global issue as copyright infringement. There are several online sources, including as BitTorrent, Subtonic, and others, from which you can obtain peer-to-peer file sharing websites. So, this bothers an original artist, authors, creator, or owners the legitimate payment they deserve for their work.

In that technology to protect the software, there are so many methods by way of unauthorized access to the company network easily. To enable by way of preventing up and anytime active IT defenses on the fortune of securing each file in computer networks each software's with the protection of cyber security in connected networks of computers. As we mentioned in cyber security, computer networks, in addition to adding security levels, must be set up in all interconnected networks while using domains in each IP address number.

**A legal perspective on software licensing and nondisclosure agreements**

Understanding software licensing agreements and nondisclosure agreements (NDAs) is vital for protecting the interests of software developers and technology businesses. Let us begin by looking at software license agreements, which are legally binding contracts that outline the conditions and situations under which a software developer or company permits users to use their software, which can be found in the user licensing agreement. A software license agreement defines the use of a piece of software, how it can be distributed, and what safeguards are associated with it. Software licensing agreements are available in various forms, such as proprietary licenses, open-source licenses, subscription agreements, and agreements covering intellectual property rights. In these contracts, software developers are guaranteed the right to license their intellectual property when substantial intellectual property is involved. When this is the case, you have the legal authority to prevent others from using your intellectual property commercially. If you own a piece of intellectual property, you possess the legal power to do so. [7]Licensing is advantageous for intellectual property owners, as it allows them to generate revenue by allowing others access to their assets to generate revenue for the owner without relinquishing ownership. Licensing is also advantageous for licensees, as it saves them the cost of purchasing assets outright.

We can also discuss the importance of nondisclosure agreements in intellectual property rights. Nondisclosure agreements (NDAs) protect proprietary software and other confidential business information. Such information may include marketing strategies, sales plans, potential customers, manufacturing processes, or proprietary software. Several legal actions can be taken if an NDA is breached by one party, including seeking court action to prevent any further disclosures, and suing the other party for monetary damages in case the breach was intentional. They establish a legal obligation for the receiving party not to disclose or misuse the confidential information. The software source code, algorithms, designs, and license agreements. Both software licensing agreements and nondisclosure agreements are critical legal tools for software developers to protect their intellectual property and their business interests.

**The Legal Aspects of Protecting Software IP**

Addressing the Legal Aspects of Software Intellectual Property (IP) Protection is vital for businesses and software creators. Enforcing copyright to prevent violations is a paramount concern in this context. Given the intricate nature of the tech industry, managing the legal intricacies surrounding software innovations can be challenging. Here is an overview of various stages: Fair Use, Reverse Engineering, Compulsory Licenses, Data Privacy, GDPR, and Software Piracy.

Within the realm of software, legal implications, and concerns play a crucial role in safeguarding software IP, especially in terms of fair use under copyright law, and these legal aspects extend to how software serves as a gateway for various applications.

***I.*** *Fair Use*

The concept of fair use within copyright law, as it pertains to software, represents a beneficial defence available to copyright holders. This defence can be invoked when someone is accused of copyright infringement. Fair use permits specific individuals to utilize a copyrighted work without the owner's explicit permission. This exception applies in cases involving criticism, commentary, news reporting, teaching, or research. It is important to note that the legal framework for fair use was established by the judicial system and codified in the Copyright Act.[8]

[8] What is fair use? (2023) Copyright Alliance. Available at: https://copyrightalliance.org/faqs/what-is-fair-use/ (Accessed: 12 October 2023).

Within the copyright act, specific factors must be considered to determine what qualifies as fair use. These factors include examining the purpose and character of the service, which includes whether it has a commercial aspect, the nature of the copyrighted work, the significance of the portion used to concern the whole, and the impact the use has on the potential market value of the copyrighted work.

### *II. Reverse Engineering*

The concept of reverse engineering has been frequently associated with the idea of fair use in computer technology and the realm of trade secrets. Reverse engineering is equivalent to evaluating a product's functional side within the trade secrets domain. Instances of reverse engineering encompass the examination of chipboard layouts, integrated circuits, or the decompilation of computer software[9]. The ability to duplicate the code or the software itself makes the outcomes analysis feasible. The courts have determined that making these copies for reverse engineering falls under the category of fair use, which does not constitute the infringement of the copyrights of the original authors.

### *III. Compulsory licenses:*

Through compulsory licensing, the government grants permission to an external entity to manufacture or employ a patented product for its purposes, even without the patent holder's consent. A patent license allows a third party to utilize, create, produce, and sell an innovation already patented by another entity without securing prior approval from the patent holder. These licenses are exclusively issued by the government, the authorizing body. This principle is part of the World Trade Organization's TRIPS Agreement, which encompasses the flexibility of patent protection.

The process of reverse engineering software is one of the most essential methods of reversing software defects, especially in the software industry. Reverse engineering is a method by which hackers can uncover vulnerabilities within software that can be exploited to create malicious programs by using the vulnerabilities discovered.[10] In general, reverse engineering is legal. This term refers to deconstructing a known product to understand or reproduce it, as established in the "*Kewanee Oil Co. v. Bicron Corp*" (416 U.S. 470, 1974) case. Software maintenance and machine development are just a few examples of how reverse engineering can be applied

[9] Admin et al. (no date) Legality of reverse engineering of a computer programme: Does it amount to copyright infringement, RACOLB LEGAL. Available at: https://racolblegal.com/legality-of-reverse-engineering-of-a-computer-programme-does-it-amount-to-copyright-infringement/ (Accessed: 14 October 2023).

[10] Kumar, R.S. (2021) Compulsory license under the Patents Act, SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3896012 (Accessed: 16 October 2023).

in various fields. Reverse engineering can be defined as converting a source code back into the machine code of a program. This source code represents the algorithm used in the program's initial creation and programming.

### ***IV.*** *GDPR and Data privacy:*

This article provides an overview of the General Data Protection Regulation (GDPR), which imposes stringent data protection standards for processing, storing, and transmitting personal data within the European Union. To ensure compliance with the General Data Protection Regulation, which includes rights like the right to erasure and data portability, software used to process data must comply with specific instructions to ensure compliance with those rights. Furthermore, obtaining user consent for data processing and maintaining transparency in software's data handling practices are crucial to consent and openness.

In the digital age, software companies must implement robust strategies and security measures to safeguard their proprietary information, including source code, algorithms, and confidential databases, in compliance with copyright laws. I want to emphasize a few key aspects of software. In the context of software piracy, it is the act of unauthorized duplication, distribution, or utilization of software, which results in significant financial losses to software developers and companies. Businesses can address this issue in several ways, including legal action against individuals involved in piracy or corporations breaking piracy laws. Equally important, companies can develop tools and methods to combat piracy.

### Few case studies and case laws

1. In "*Ferid Allani v Union of India*, the Delhi High Court argued that patent restrictions on computer programs hinder technological progress in areas like AI and blockchain. It ruled that inventions based on computer programs could be patented if they showed a technical contribution. The Court held that 'an invention is patentable if it displays a technological effect or contribution, even if it is based on a computer program"[11]
2. The invention in "*Accenture v Assistant Controller of Patents* was a data document design system addressing database system challenges. Initially, it faced objections for

[11] (No date) Ferid Allani vs Union of India & Ors on 12 December, 2019 - Indian kanoon. Available at: https://indiankanoon.org/doc/90686424/ (Accessed: 15 October 2023).

not having unique hardware adaptation. Upon appeal, the IPO granted the patent, establishing that software patents do not need hardware modifications"

3. In a high-stakes dispute between Oracle and Google, Oracle accused Google of using Java SE code without its permission in Android and sought to recover $9 billion in damages. Ultimately, the U.S. Supreme Court ruled in Favor of Google, which has now been permitted to use Java code snippets for its purposes, ending a decade-long controversy.
4. A growing number of computer programs are being illegally used and copied globally. According to a report by the Federal Security Administration in 2002, 92% of all software in China was illegally copied (BSA, 2002). There is a high percentage of unlawful software in Vietnam, with 97% being illegal (Carrasco Muniz, Stocking, BSA, 2003). Unauthorized software use frequently exceeds 80% in various other Southern nations.[12]

**Conclusion and suggestions**

This conclusion concludes with the statement that safeguarding software intellectual property is a complex undertaking requiring both technological and legal solutions. For copyright to be upheld in the digital age, proactive measures must be taken, international law needs to be understood in all its intricacies, and most importantly, a strong commitment should be maintained to defending the rights of software developers. Given the dynamic nature of technology, the landscape of software intellectual property protection will evolve, underscoring the significance of adaptability and vigilant protection of innovations for stakeholders. To guarantee ample security and legal integrity, it is frequently recommended to engage technologists to create and enforce these contracts. Constructing a robust cybersecurity policy, fortifying IoT connections, adopting a people-centric strategy, and managing access to sensitive data are some valuable guidelines to consider. As part of its initiatives to modernize its intellectual property framework, there should be revisions to the IPR enforcement toolkit to aid law enforcement in addressing IP-related offenses, notably counterfeiting and piracy.

Additionally, this update should facilitate direct collaboration between industry stakeholders and state law enforcement agencies to combat digital piracy linked to copyright infringements

[12] Technology and innovation report 2021 - UNCTAD. Available at: https://unctad.org/system/files/official-document/tir2020_en.pdf (Accessed: 15 October 2023).

in programming, coding, and emerging technologies. In software, enforcing intellectual property rights in the face of copyright violations remains a dynamic and ever-evolving challenge. These technologies do come with several limitations and warrant additional research. Software engineers need to be well-versed in these challenges to navigate them effectively, and they should seek legal advice when it is prudent to do so. Successfully uniting innovation and protection in the ever-expanding domain of software development can only be achieved through collaborative efforts.

# JUSTICE FOR ALL: THE ROLE OF INCLUSIVE LEGAL EDUCATION

Subham Chatterjee*

## Introduction

Inclusive Legal Education epitomizes a pedagogical paradigm characterized by a deliberate and conscientious integration of multifarious perspectives, ensuring equitable access to erudition, and cultivating an environment wherein individuals of every conceivable background find themselves not merely tolerated but authentically embraced. This educational approach transcends perfunctory nods to diversity, actively championing principles of equity, inclusion, and representation within the precincts of legal academia.

The significance of Inclusive Legal Education in the enshrinement of justice for all is profound, constituting a metanoia in addressing systemic imbalances within the legal tapestry. By assiduously incorporating a spectrum of voices, experiences, and perspectives, inclusive legal education functions as a crucible wherein latent prejudices, pernicious stereotypes, and institutional impediments are dismantled with a view to recalibrating entrenched structures. It emerges as an instrumental catalyst in the engenderment of a legal community that faithfully mirrors the kaleidoscopic diversity inherent in society, thereby advancing the cause of a legal system characterized by equitability and fairness.

In ensuring parity in access to educational resources, mentorship, and opportunities, inclusive legal education not only elevates the scholarly voyage for all aspirants but also projects its influence onto the broader societal tableau. It forges a legal cohort astutely attuned to comprehending, empathizing with, and mitigating the manifold exigencies of the communities it serves. Inclusive Legal Education stands as an indomitable sentinel in the collective endeavor toward an equitable, just, and magnanimous legal milieu.[1]

## Historical Context

*Evolution of legal education*

The historical trajectory of legal education is a tapestry interwoven with the evolving dynamics of societal norms, institutional transformations, and intellectual paradigms. Rooted in antiquity, legal instruction initially bore a predominantly apprenticeship character, with nascent legal minds imbibing legal knowledge through an immersive mentorship model. The metamorphosis

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[1] https://www.legalserviceindia.com/legal/article-10703-bridging-the-gap-inclusive-education-for-all-abilities.html Last accessed on 13/12/2023

from this informal tutelage to the formalized structures of contemporary legal academia delineates a profound evolution. The establishment of the first law school in the United States at Harvard in 1817 marked a seminal departure, crystallizing legal education as an institutionalized discipline.

*Recognition of diversity and inclusion in legal academia*

The acknowledgment of the imperative for diversity and inclusion within legal academia emerged as an intellectual crescendo amidst societal reckonings. Historically entrenched in a paradigm reflective of societal homogeneity, legal education has, over time, confronted its own proclivity for exclusivity. Scholars began to interrogate the homogeneity ingrained in legal pedagogy, recognizing the need for a more inclusive curriculum that embraces a multiplicity of perspectives, experiences, and cultural nuances. This recognition signaled a departure from the traditional, often monolithic, underpinnings of legal education, heralding an era wherein diversity became not merely a rhetorical nicety but an essential component of scholarly enrichment.

*Key milestones in the journey towards inclusivity*

The journey toward inclusivity in legal education is punctuated by seminal milestones that echo societal shifts and evolving consciousness. Landmark cases, legislative enactments, and institutional initiatives have coalesced to shape the inclusive landscape of contemporary legal academia. The pivotal Brown v. Board of Education decision in 1954 and subsequent civil rights legislation catalyzed conversations about equality and inclusion within educational institutions, reverberating profoundly within legal circles. Initiatives such as the American Bar Association's Section on Legal Education and Admissions to the Bar have implemented accreditation standards that underscore the importance of diversity and inclusivity in law schools.

In this historical tableau, the narrative unfolds as legal education, once entrenched in tradition, confronts its historical legacies and endeavors to foster an environment where diversity and inclusivity are not merely aspirational ideals but integral facets shaping the trajectory of legal scholarship.

**The imperative of inclusive legal education**

*Addressing Bias and Stereotypes*

In the hallowed halls of legal education, the imperative of inclusivity emerges as a beacon, illuminating the profound need to address the lurking shadows of bias and stereotypes. Legal pedagogy, historically ensconced in venerable traditions, has often inadvertently perpetuated

pernicious biases, both explicit and implicit. In embracing inclusivity, legal education becomes a crucible for deconstructing preconceived notions, dismantling discriminatory frameworks, and engendering a scholarly ethos that transcends the shackles of ingrained stereotypes. By acknowledging and addressing bias head-on, inclusive legal education metamorphoses into a bastion of intellectual rigor and societal progress.

*Enhancing access to legal education*

The echelons of legal knowledge have for too long been accessible to the privileged few, and inclusivity unfurls its imperative banner as a clarion call for democratizing access to legal education. Recognizing that talent and brilliance are ubiquitously dispersed across diverse demographics, inclusive legal education endeavors to dismantle the barricades that impede the ingress of underrepresented groups. Scholarships, mentorship programs, and innovative outreach initiatives burgeon as instruments in the arsenal of inclusivity, tearing down the walls that have historically confined legal erudition to the privileged echelons. In this paradigm, access becomes the catalyst for a more expansive, equitable, and intellectually robust legal academia.

*Fostering a diverse legal education*

In the pantheon of professions, the legal realm, once perceived as a bastion of uniformity, undergoes a metamorphosis under the aegis of inclusive legal education. The imperative extends beyond the lecture halls into the realms of legal practice, advocating for a mosaic of voices within the legal profession. A diverse legal profession, reflective of the kaleidoscope of society, is not merely a utopian aspiration but an essential crucible for justice. Inclusive legal education becomes the crucible wherein future legal luminaries are forged, equipped not only with legal acumen but with an innate understanding of the imperative of diversity in shaping a legal milieu that is truly representative, empathetic, and efficacious.

In this epoch, the imperative of inclusive legal education transcends the mundane and emerges as a transformative force, dismantling biases, democratizing access, and sculpting a legal profession that mirrors the richness of the human experience.

## Challenges to inclusivity

*Barriers to diversity in legal education*

The pursuit of inclusivity within the bastions of legal education is not devoid of impediments; it grapples with entrenched barriers that have persisted through the annals of academia. Foremost among these challenges is the pervasive presence of systemic barriers, be they economic disparities, historical prejudices, or institutional inertia. Financial constraints often

preclude aspiring legal minds from underrepresented backgrounds, perpetuating a socio-economic divide that hinders the diversification of the legal academy. Moreover, historical biases embedded in admission processes and curriculum design act as insidious gatekeepers, fortifying the walls that impede the ingress of diverse perspectives into legal education.

*Unconscious bias in teaching and learning*

In the hallowed halls of legal instruction, the specter of unconscious bias looms as a formidable impediment to the realization of inclusive educational environments. Faculty, unwittingly influenced by ingrained societal prejudices, may inadvertently perpetuate biases in their pedagogical approaches, thereby undermining the sanctity of an inclusive educational ethos. These biases manifest not only in assessment and evaluation but also in the choice of instructional materials, inadvertently excluding diverse viewpoints and experiences. Unraveling the tapestry of unconscious bias requires a nuanced approach, necessitating both self-reflection among educators and systemic interventions to recalibrate instructional paradigms.

*Overcoming resistance to change*

The very essence of inclusivity challenges the status quo, and therein lies the crucible of resistance to change within legal education. Institutional frameworks, often ossified in tradition, resist the winds of transformation blowing in the direction of inclusivity. Resistance emanates from various quarters – entrenched faculty, administrative structures, and even students accustomed to the familiarity of established norms. Overcoming this resistance mandates a concerted effort to cultivate a culture of openness, dialogue, and awareness within legal institutions. Institutional policies that incentivize diversity and inclusion, coupled with targeted professional development programs, become the vanguard in overcoming the inertia that often impedes the evolution toward inclusive legal education.

In navigating these intricate challenges, the journey towards inclusivity in legal education requires not only the dismantling of visible barriers but also a profound introspection into the subtle currents of bias and resistance that flow beneath the surface of academic traditions. It is an endeavor necessitating collective commitment, resilience, and an unwavering dedication to fostering a legal education ecosystem that truly embodies the principles of justice for all.

**Strategies for implementing inclusive legal education**

*Inclusive course design*

Central to the realization of inclusive legal education is the meticulous crafting of curricula that transcend conventional paradigms. Inclusive course design involves a deliberate and thoughtful

integration of diverse legal perspectives, ensuring that coursework reflects a multiplicity of cultural, social, and historical contexts. By decentering traditional legal narratives, inclusive course design aims to resonate with a broader spectrum of students, fostering an environment where varied experiences are not only acknowledged but woven into the very fabric of legal pedagogy.

*Integrating diverse perspectives*

Diversifying legal curricula requires an intentional commitment to integrating diverse perspectives across the entire spectrum of legal study. This involves examining case law, statutes, and legal theories through lenses that encapsulate a myriad of cultural and social contexts. Case studies and examples drawn from diverse legal traditions contribute to a more comprehensive understanding of legal principles. The goal is not merely to add diversity as an appendage but to infuse it into the substantive content, enriching the intellectual discourse within legal education.

*Sensitization programs*

Transformative change begins with the educators themselves. Faculty members undergo sensitization programs designed to cultivate heightened awareness of implicit biases, stereotypes, and systemic barriers. These programs foster an environment where instructors become attuned to the unique challenges faced by students from diverse backgrounds. By fostering a culture of reflexivity, faculty members are better equipped to navigate the complexities of inclusive teaching and model inclusive practices in the classroom.

*Best practices for inclusive teaching*

Faculty training extends beyond awareness to the practical realm, equipping educators with the best practices for inclusive teaching. This involves adopting diverse teaching methodologies, employing inclusive language, and fostering a classroom atmosphere that encourages open dialogue. Professional development initiatives focus on empowering faculty to adapt their instructional approaches to accommodate diverse learning styles, ensuring that the pedagogical landscape resonates with the varied experiences of a heterogeneous student body.

*Creating inclusive learning environments*

Inclusive legal education transcends curriculum and faculty to manifest in the very spaces where students engage with the subject matter. Creating inclusive learning environments involves structuring classrooms and communal spaces to be welcoming and affirming. This encompasses promoting active participation, facilitating diverse student interactions, and cultivating an ethos that celebrates intellectual diversity. Through this, the learning

environment becomes a crucible for vibrant exchanges of ideas reflective of the broader societal milieu.

*Support services for underrepresented groups*

Recognizing that certain groups may face unique challenges, institutions implement targeted support services. These may include mentorship programs, counseling services, and academic support tailored to address the specific needs of underrepresented groups. By fostering a supportive ecosystem, inclusive legal education not only acknowledges the diverse journeys students undertake but actively nurtures their academic and personal development.

In amalgamating these strategies, institutions embark on a transformative journey toward inclusive legal education, wherein the convergence of curriculum innovation, faculty empowerment, and student support coalesce to redefine the contours of legal pedagogy. It is a holistic endeavor that aspires not only to diversify the legal profession but to imbue it with an ethos that mirrors the true tapestry of human experience.

**The future of inclusive legal education**

In an era where the imperatives of justice and equity echo with resounding urgency, the trajectory of legal education propels towards an embrace of inclusivity. As we gaze into the future of legal pedagogy, several key facets emerge, promising transformative shifts that transcend conventional paradigms.

*Emerging trends and innovations*

The vanguard of inclusive legal education is characterized by a confluence of emerging trends and innovative methodologies. Technology, as an indispensable ally, stands poised to democratize access to legal education. Virtual classrooms, interactive online modules, and digital resources not only enhance accessibility but also facilitate the integration of diverse perspectives on a global scale. Artificial intelligence, when wielded judiciously, has the potential to deconstruct biased legal frameworks by analyzing vast datasets and exposing hidden prejudices, thereby contributing to a more impartial legal education landscape.

Moreover, the infusion of interdisciplinary studies into legal curricula heralds a departure from insular legal thinking. Collaborations with disciplines such as sociology, psychology, and political science offer students a more holistic understanding of the intricate tapestry of legal issues, fostering a nuanced and inclusive approach to problem-solving. The evolving landscape also witnesses the rise of experiential learning models, where students actively engage with real-world legal challenges, immersing themselves in the complexities of legal practice from varied perspectives.

*Collaborative approaches to promoting inclusivity*

The future of inclusive legal education hinges on collaborative approaches that transcend institutional boundaries. Legal academia, the legal profession, and policymakers converge in a collective endeavor to dismantle systemic barriers and instigate a paradigm shift. Collaborative research initiatives, symposiums, and cross-institutional partnerships become crucibles for the exchange of best practices, fostering a community committed to advancing the cause of inclusivity.

The collaboration extends beyond academia, enveloping legal practitioners, bar associations, and advocacy groups. Law firms, cognizant of the transformative power of diversity, engage in mentorship programs and actively recruit from a broad spectrum of backgrounds. Bar associations assume a pivotal role by advocating for policies that promote diversity in the legal profession and providing resources to support underrepresented groups. Through these collaborative endeavors, a symbiotic relationship emerges, fortifying the interconnection between legal education and the broader legal ecosystem.

*Long-term benefits for the legal profession and society*

The ripple effects of embracing inclusive legal education reverberate far beyond the confines of lecture halls and courtrooms, offering enduring benefits for both the legal profession and society at large. A legal profession reflective of diverse voices stands poised to navigate the intricacies of an ever-evolving global landscape with acumen and cultural competence. By cultivating a cadre of legal professionals equipped to comprehend and address the diverse needs of an increasingly pluralistic society, inclusive legal education becomes a catalyst for innovation and resilience within the legal profession.

On a societal level, the long-term benefits are manifold. Inclusive legal education becomes a crucible for nurturing informed citizens who, armed with legal literacy, can actively engage in democratic processes. By empowering individuals from marginalized communities with legal knowledge, it becomes a potent instrument in dismantling historical injustices. The principles of justice and fairness, instilled through inclusive legal education, permeate the societal fabric, fostering a collective consciousness that reverberates in the pursuit of a more equitable and just world.

The future of inclusive legal education is a kaleidoscope of promise and possibility. As emerging trends intersect with collaborative endeavors, the legal profession becomes a vanguard for societal transformation. Through the conscientious cultivation of inclusive pedagogies, legal education emerges not merely as a disseminator of knowledge but as a potent force in shaping a legal landscape that mirrors the rich diversity inherent in the human

experience. It is a future where justice is not an abstract ideal but a lived reality, woven into the very fabric of legal thought and practice.

## Conclusion

*The Importance of the inclusive legal education*

The journey through the nuances of inclusive legal education reveals its pivotal importance in reshaping the contours of legal academia and the broader legal profession. Inclusivity is not a mere ideological embellishment; it is an indispensable cornerstone upon which the edifice of justice stands. By acknowledging and dismantling biases, addressing historical disparities, and intentionally fostering diverse perspectives, inclusive legal education emerges as a transformative force. It transcends the conventional boundaries of legal thought, offering a paradigm wherein the pursuit of justice is synonymous with an unwavering commitment to inclusivity.

Moreover, inclusivity is not a static endpoint but a dynamic ethos that permeates every facet of legal education. From curriculum design to faculty development, from student engagement to collaborative initiatives, inclusivity becomes the catalyst for intellectual enrichment, societal impact, and the cultivation of a legal community that mirrors the vibrant diversity of the human experience.

*Call to action for legal educators, institutions and policy makers*

The exploration of inclusive legal education is not a mere intellectual exercise; it is a clarion call for action reverberating through the corridors of legal academia, institutions, and legislative chambers. Legal educators stand at the nexus of this transformation, entrusted withthe task of reshaping pedagogical landscapes. A call to action for educators involves acommitment to self-reflection, continuous learning, and the intentional incorporation of inclusive practices into every facet of their teaching.

Institutions, as custodians of legal education, bear a responsibility to dismantle systemic barriers, foster a culture of inclusivity, and provide the resources necessary for the implementation of transformative initiatives. Policies promoting diversity in faculty recruitment, scholarships for underrepresented students, and accreditation standards that prioritize inclusivity become the instruments through which institutions actively contribute to the paradigm shift.

Policymakers, as architects of the legal landscape, wield the power to effect systemic change. Legislative initiatives that foster diversity in legal education, allocate resources to support

underrepresented groups, and promote inclusivity as a foundational principle become the legislative bedrock upon which a more just legal system is erected.

Collectively, the call to action is an invitation to transcend rhetoric and embark on a collective journey towards an inclusive legal future. It is a commitment to recalibrate institutional and individual compasses, aligning them with the North Star of justice and equity.

*Anticipated positive outcomes for the legal system and beyond*

The anticipated positive outcomes of embracing inclusive legal education reverberate far beyond the confines of academia. A legal system shaped by inclusivity becomes a dynamic force for societal change. By producing a cadre of legal professionals steeped in cultural competency, empathy, and a profound understanding of diverse perspectives, the legal profession transforms into a catalyst for justice.

Moreover, the positive outcomes extend into the broader societal tapestry. Informed citizens, armed with legal literacy cultivated through inclusive legal education, actively engage in democratic processes, contribute to the discourse on justice, and serve as advocates for societal transformation. The anticipated outcomes ripple through communities, breaking down historical barriers, and fostering a collective consciousness that envisions and strives towards a more equitable and just society.

Henceforth, inclusive legal education is not merely a theoretical construct but a lived reality that beckons us to reimagine the foundations of legal thought and practice. It is an investment in a future where justice is not an abstract ideal but a tangible, inclusive, and enduring reality. As we embark on this collective journey, the legacy of inclusive legal education becomes not only a testament to our commitment to justice but a beacon guiding us toward a more equitable and enlightened future.

**References**


1. Anderson, L. B. (2009). Equity and Diversity in Legal Learning: A Framework for Inclusive Legal Education. International Journal of Law and Society, 42(4), 567-589.
2. Chatterjee, Subham. (2023), Constitutional Law of India-I. Redshine Publication, Gujarat.
3. https://itpd.ncert.gov.in/pluginfile.php/1533119/mod_resource/content/4/1_14_eng_inclusive_education_legal_and_policy_framework.pdf Last accessed on 14/12/2023,
4. https://dsel.education.gov.in/sites/default/files/update/NGIFEIE_dosel.pdf Last accessed on 14/12/2023

5. https://www.legalserviceindia.com/legal/article-10703-bridging-the-gap-inclusive-education-for-all-abilities.html Last accessed on 13/12/2023
6. Kathy Cologon (2022) Is inclusive education really for everyone? Family stories of children and young people labelled with 'severe and multiple' or 'profound' 'disabilities', Research Papers in Education, 37:3, 395-417, DOI: 10.1080/02671522.2020.1849372
7. Laura Mazzoli Smith, Liz Todd & Karen Laing (2018) Students' views on fairness in education: the importance of relational justice and stakes fairness, Research Papers in Education, 33:3, 336-353, DOI: 10.1080/02671522.2017.1302500
8. Audrey Osler & Hugh Starkey (2006) Education for democratic citizenship: a review of research, policy and practice 1995–2005, Research Papers in Education, 21:4, 433-466, DOI: 10.1080/02671520600942438

# FREEDOM OF SPEECH AND RIGHT TO PRIVACY IN INDIA – A JURISPRUDENTIAL STUDY

*Tauseef Ahmad**

*Shweta***

## Introduction

*"The Wounded Vanity of Governments: Free Speech and the Constitution of India"*[1]

During the entirety of India's struggle for independence, the incorporation of a codified Bill of Rights emerged as a crucial imperative in order to ensure the safeguarding of fundamental liberties, including the right to freedom of expression. The preservation of freedom of expression constituted a paramount consideration during the formulation of India's Constitution.[2]Having endured various forms of repression at the hands of the British, they were convinced of the great importance of this right in the independent democratic republic that the Constitution of India would establish. They were of the opinion that free speech is crucial to the success of a democratic society.[3]

The Indian judiciary has adopted a deliberate interpretation of the idea of harmonious construction, which categorizes commercial speech freely into two groups: speech that serves the public interest and merely commercial speech. This safeguard against judicial exclusion of public health is in place. In addition, the Directive Principles of State Policy

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[1] Upendra Baxi on Glanville Austin, supra note 20 at 309.

[2] Kumar, Virendra. "DYNAMICS OF THE 'RIGHT TO PRIVACY': ITS CHARACTERIZATION UNDER THE INDIAN CONSTITUTION." Journal of the Indian Law Institute, vol. 61, no. 1, 2019, pp. 68–96. JSTOR, https://www.jstor.org/stable/27097351. Accessed 1 Oct. 2023.

[3] Raza, Aqa, 'Freedom of Speech and Expression' as a Fundamental Right in India and the Test of Constitutional Regulations: The Constitutional Perspective (November 24, 2015). Indian Bar Review, Volume XLIII (2) 2016, pp. 87-110., Available at SSRN: https://ssrn.com/abstract=2827985

under Part IV of the Indian Constitution pertaining to health care have been taken into account by the courts.[4]

The "golden triangle" of the Indian Constitution of 1950 consists of Article 19, which protects the right to freedom of expression and thinking, Article 21, which protects the right to life and liberty, and Article 14, which protects the right to equality. Many laws that seem to infringe the rights enumerated in Part III can be challenged as unconstitutional by using the above-mentioned passages. According to some, the common custom of interpreting Article 19 with Articles 14 and 21 ignores the reasons why Article 19 might be limited. This is because this standard is not included in laws thatlimit Articles 14 or 21, leading many to assume that this approach ignores the potential justifications for limiting Article 19. This result increases the likelihood that a law that breaches right and runs counter to the spirit of the Indian Constitution will be upheld. Since this result increases the likelihood of a legislation violating rights, it carries normative weight.[5]

An individual whose privacy has been significantly infringed upon is unable to live a life free from concerns or worries. There is a widespread consensus that individuals necessitate a certain degree of safeguarding of their privacy in order to maintain areasonable level of security in their lives. The International Covenant on Civil andPolitical Rights and the Universal Declaration of Human Rights are two prominent international instruments that aim to safeguard the fundamental human right to privacy. As per Article 12 of the Universal Declaration of Human Rights (UDHR), persons possess the right to safeguard their personal lives, familial bonds, residential spaces, and written correspondence from unjustified encroachments.

[4]Subramanian, Sujitha, et al. "Right to Commercial Speech in India: Construing Constitutional Provisions Harmoniously in Favor of Public Health." *Journal of Law, Medicine & Ethics*, vol. 50, no. 2, 2022, pp. 284–290., doi:10.1017/jme.2022.53.

5 Sharma, Sukarm. Rescuing Article 19 from the 'Golden Triangle': An Empirical Analysis of the Application of the Exception Clauses under Article 19, 15 NUJS L. Rev. 1 (2022)

Moreover, this article safeguards individuals from unwarranted assaults on their dignity and reputation. It is imperative that the law provide protection to all individuals against invasions and assaults of this nature.[6]

The case of *A K Gopalan v. Union of India,*[7] ('A. K. Gopalan') The author proposed a strategy known as the "silos approach," which entails evaluating the effects of legislation that affects multiple rights using only those most directly affected. As a result, the rights outlined above were intended to operate in distinct domains, precluding any type of combined interpretation.

The right to unrestricted information acquisition, storage, use, and distribution is an inherent component of fundamental human rights and liberties. All of human history is intricately intertwined with the process of accumulating and disseminating knowledge across successive generations, thereby facilitating the cultural and technologicaldevelopment of humanity. The aforementioned privilege is enshrined in the fundamental legal structures of the majority of nations.[8]

Part III[9] the International Covenant on Civil and Political Rights (ICCPR) and the Indian Constitution both protect fundamental civil and political rights, and they are largely compatible. There is a wide range of legally enforceable civil and political liberties in the Indian Constitution. In Article 19(1)(a), the Constitution expressly protects the right to free expression. Freedom of expression is not an absolute right and is subject to limitations in the Indian Constitution, despite being listed as a basic right.

In *Romesh Thaper v. State of Madras*,[10]Patanjali Sastri, C. J. observed:

*"Free political discourse is essential to the functioning of the democratic process of popular rule. For the democratic process to function properly, public*

[6] Rascão, Jose & Poças, Nuno. (2021). Freedom of Expression and the Right to Privacy and Ethics in Dialectic of Human Rights in This Complex and Turbulent Society. International Journal of ProjectManagement and Productivity Assessment. 9. 1-28. 10.4018/IJPMPA.2021070101
[7] A.K. Gopalan v. State of Madras, 1950 SCR 88
[8] Richter, A.G. (2011). International standards and foreign practice of regulation of journalism: textbook. Published by UNESCO. Moscow: "Novosti" Printing House, 360.
[9] Part III of the Constitution of India deals with the Fundamental Rights.
[10] AIR 1950 SC 124.

*education is also essential. There is a risk of abuse due to the large margin for error. James Madison, author of the Declaration of Independence and the Constitution, also penned the First Amendment to the United States Constitution. The literal meaning of the slang phrase "injure the vigor of the prudence of the prudence" is "to prune the vigor of the prudence of the proper fruits." Pruning the strength and wisdom of the right fruits is where this expression comes from."*

*In R. Rajagopal v. Tamil Nadu*[11]Justice Jeevan Reddy reiterated:

*"The preservation of press freedom is of utmost importance in fostering a robust democratic system. In his cogent explanation, he identifies the judicial necessity as follows: Nevertheless, given the current context, it is imperative to achieve a suitable equilibrium between the freedom of the press and the aforementioned legislation that aligns with the democratic principles enshrined in the Constitution. In recent decades, there has been a notable rise in the influence of both the press and electronic media within American society. The individuals in question are currently undergoing a process of growth, during which the manifestation of curiosity is observed as one of the associated outcomes. The functioning of our governmental system, as well as those of the United States of America and the United Kingdom, necessitates the continuous monitoring of the exercise of governmental authority by various entities, including the press and the media. The efficacy of government operations is contingent upon their criticality*."

*In Govind v. State of M. P*[12] Mathew J. asserted that:

*"The counter argument to the right is that the stronger the interest in privacy, the more likely it is that the case will be denied. He also said, "The establishment of this right will necessitate a gradual progression through individual case analysis and development."*

[11] AIR 1995 SC 264
[12] AIR 1975 S.C. 1378: (1975) 2 SCC 148

**Historical Background**

The historical interactions between the government and the British Raj seem to have shaped the current constitutional framework. The superimposition method experienced significant advancements as a result of India's partition. Moreover, it was widely considered that the media and press have the ability to incite disruptions without due regard for the consequences, making governmental activities even more susceptible. The potential for social discontent among the general population was also a plausible outcome.[13]

In order to guarantee the continuation of freedom of expression within our intricate democratic society, it is imperative that one possess a comprehensive understanding ofthe historical tactics employed to maintain this fundamental right. The goal outlined above is the focus of this article. There are three primary parts to the evolution. The primary goal of Part I of this study is to examine the present state of play and historical background of various laws that serve as the cornerstone for preserving the right to free expression, with the exception of those that are protected by the First Amendment.

The second part of this study delves into the consequences arising from the non-First Amendment free speech tradition, shedding light on its impact on our understanding ofthe historical and contemporary aspects of freedom of expression within the United States. In conclusion, Part III posits that the scholarly community's neglect of the non- First Amendment free speech heritage has inadvertently facilitated the Supreme Court's assertion of an overly simplistic laissez-faire characterization of the American free speech tradition, obscuring its inherent complexity.[14]

[13]Dhavan, R. (1986). THE PRESS AND THE CONSTITUTIONAL GUARANTEE OF FREE SPEECH AND EXPRESSION. *Journal of the Indian Law Institute*, *28*(3), 299–335. http://www.jstor.org/stable/43951022. . Accessed 19 Sep. 2023.

[14] Lakier, Genevieve, The Non–First Amendment Law of Freedom of Speech 134 Harv. L. Rev. 2299 https://harvardlawreview.org/print/vol-134/the-non-first-amendment-law-of-freedom-of-speechAccessed 19Sep. 2023.

In contrast to the First Amendment of the United States, there has been limited effort to formulate a comprehensive theoretical framework elucidating the extent and objectives ofthe free speech provision in the Indian Constitution. The insufficient scholarly and judicial examination of the constitutional issue regarding the circumstances under which expressive conduct should warrant the protection of free speech in India, despite its international significance, is evident in this context.[15]

The freedom to access various forms of media is a fundamental component of theexistence of an individual in a democratic society. The media acts as an important basis for a liberated community and serves as a vehicle for the reform of both society and politics.[16]

In juxtaposition to the explicit inclusion of "the liberty of the press" in the Constitution ofthe United States of America, which pertains to the unrestricted capacity to disseminate information without prior authorization, the Constitution of India does not incorporate thephrase "freedom of the press." Nevertheless, the ability to articulate one's ideas must ultimately encompass the ability to distribute one's thinking. The freedoms related to information distribution and dissemination are also essential components of the right to press freedom, and they protect this freedom in turn.

Furthermore, the media can be regarded as a supplementary manifestation of both individuals and the broader society. In other words, individuals employed in the field of journalism, including editors and managers, possess the status of citizens. Consequently, their involvement in newspaper publications can be viewed as an exercise of their personal entitlement to freedom of speech.[17]In India, it is firmly established as a legal

[15]Kohli, Raghav. "Expressive Conduct and Article 19(1)(a) of the Indian Constitution: A Purposivist Approach." *Asian Journal of Comparative Law*, vol. 16, no. 2, 2021, pp. 259–284., doi:10.1017/asjcl.2021.37.

[16]Gaur, K. D. "CONSTITUTIONAL RIGHTS AND FREEDOM OF MEDIA IN INDIA." *Journal of the Indian Law Institute*, vol. 36, no. 4, 1994, pp. 429–54. *JSTOR*, http://www.jstor.org/stable/43952367. Accessed 1 Oct. 2023.

[17]BARAK, AHARON. "FREEDOM OF EXPRESSION AND ITS LIMITATIONS." *Kesher /* קשר, no. 8, 1990, pp. 4e–11e. *JSTOR*, http://www.jstor.org/stable/23902900. Accessed 4 Oct. 2023.

principle that the constitutional guarantee of freedom of speech and expression include the freedom of the press.[18]

*The second press commission was subject to observation*:

"*An objective assessment of Article 19(1) (a) of the constitution necessitates acknowledging that the right to freedom of expression may be limited if its use is contingent upon the discretion of mass media administrators. In the context of a democratic system, it is acknowledged that the majority may occasionally utilize its authority to limit the scope of discourse. However, there appears to be a lack of awareness regarding the influence wielded by non-governing minorities who oversee the mechanisms of communication, as they too possess the ability to stifle nascent ideas.*"[19]

The constitutional discourse surrounding freedom of the press should be contextualized within the government's assertion that the press not only possess monopolistic power structures, but also contribute to societal disorder.

**The Constitutional Regulation of Freedom of Expression**

Preserving and upholding freedom of speech and expression within a democratic framework is vital, while simultaneously recognizing the need for limited constraints to ensure the preservation of social order. Freedom can manifest in two forms: absolute freedom or unfettered freedom. In accordance with Articles 19(2), 358, and 359, the state is authorized to enact legislation that imposes limitations on the exercise of the right to freedom of speech and expression, namely in cases where it is deemed necessary for the security of the state.

*The eight grounds of restriction which are mentioned in clause (2) of Article 19 are*[20]:

- Security of the State.

[18] Sakal Newspapers(private) Ltd. V. Union of India A.I.R 1962 S.C. 305.
[19] Report of Second Press Commission, Pr.34-36, (1982.)
[20] Dr. D. D. Basu, Constitutional Law of India, 8th ed. 2009, LexisNexis Butterworth Wadhwa, p. 92.

- Friendly Relations with Foreign State.
- Public Order. d. Decency or Morality.
- Contempt of Court.
- Defamation.
- Incitement of an offence.
- Sovereignty and integrity of India.

In *Sakal Papers Ltd. v. Union of India*,[21]The petitioner lodged a constitutional challenge against the Daily Newspapers (Price and Control) Order of 1960. The petitioner contended that the imposition of minimum price and page requirements for newspapers by this judgement constituted a violation of the freedom of the press. The Court's ruling established that the fundamental right to freedom of speech and expression cannot be violated in order to impose restrictions on an individual's commercial pursuits. Thepermissibility of restricting freedom of expression is contingent upon adherence to the stipulations outlined in Article 19, clause 2. Analogous to the liberty to partake ineconomic endeavors, it is seen as impermissible to curtail this liberty in the interest of collective welfare.

In *Bennet Coleman and Co. v. Union of India*,[22]The constitutional validity of the Newsprint Control Order, which imposed a restriction on the maximum number of pages (10 pages) that newspapers could publish, was contested on the grounds of infringement upon the fundamental rights protected under Article 19(1)(a) and Article 14 of theConstitution. The Court determined that the restriction regarding newsprint is a violation of the petitioner's constitutional right to freedom of speech and expression.

In *Indian Express Newspaper v. Union of India*,[23]The petitioners, who publish daily newspapers and periodicals, have challenged the imposition of import duty and auxiliary duty on newsprint. They contend that these measures violate press freedom because they impose an excessive burden on the industry and have a negative effect on the circulation of newspapers and periodicals. The Court ruled that the press corporation did not qualify

[21] AIR 1962 SC 305.
[22] AIR 1973 SC 106
[23] (1985) 1 SCC 641

for tax-exempt status. Taxes are necessary because the newsprint industry benefits from and makes use of public services, infrastructure, and amenities. The government isresponsible for the care of these assets. The government has no right to assess a newspaper's content before it is released to the public. Implementing a tax restriction on apublication could be seen as pre-censorship, which is obviously prohibited by the Constitution.

The examination of the extent and range of the "right of privacy" or the "right to be left alone" was brought up for deliberation before the Supreme Court in *R. Rajagopal v. State of T. N.*[24] In this case, Justice B.P. Jeevan Reddy, J.-:

Drawing upon an examination of the relevant provisions within the Constitution and employing a comparative analysis of judicial precedents in other common law jurisdictions, such as the United Kingdom and the United States. The argument is made that even if the right to privacy isn't specifically mentioned as a basic right in theConstitution, it can be extrapolated from the terms of Article 21.

*The court, in its final determination, rendered the following holdings*:

- The right to privacy is inherently implied within the right to life and liberty, as enshrined in Article 21, which guarantees these fundamental rights to the residents of this nation. The concept might be understood as a fundamental entitlement to privacy. Individuals possess the inherent entitlement to protect the confidentiality of their personal affairs, including but not limited to their own personhood, familial relationships, marital status, reproductive choices, maternity, child-rearing, and educational pursuits. Publication of any content related to the aforementioned subjects, regardless of its veracity or tone (positive or negative), is strictly prohibited without obtaining prior approval. Engaging in such behavior would constitute a violation of the individual's right to privacy, rendering the perpetrator legally accountable and susceptible to a lawsuit seeking compensation for any resulting harm. The position, however, may differ if a

[24] (1994) 6 SCC 632

someone actively engages in controversy or intentionally instigates or intensifies a confrontation.

- The aforementioned norm is susceptible to an exemption, namely, any publication pertaining to the aforementioned features becomes unobjectionable if it is grounded on public data, such as court records. This is because the right to privacy is lost the moment information about a matter is released into the public sphere, making it fair game for investigation and analysis by the media and the public at large. However, we maintain the viewpoint that, in accordance with the principle of decency as outlined in Article 19(2), it is necessary to establish an exemption to this regulation. Specifically, we propose that females who have experienced sexual assault, kidnapping, abduction, or comparable offences should not be subjected to the additional humiliation of having their names and the details of the incident publicized in the press or media.
- An additional exception to the aforementioned rule in (1) exists. This phenomenon is not an anomaly, but rather a distinct principle in its own right. When considering public officials, it is evident that their entitlement to privacy, aswell as the option to seek compensation for harm, is not applicable in relation to their actions and behavior pertaining to the fulfilment of their official responsibilities. Even in cases where a publication is grounded in false facts and statements, it remains permissible unless the plaintiff can prove that the defendantpublished the publication with a reckless disregard for the truth. In the aforementioned scenario, it would suffice for the defendant, who is a representative of the press or media, to demonstrate that they behaved after a reasonable process of fact-checking. It is not obligatory for them to provideevidence of the absolute truthfulness of their published content. In instances where it can be substantiated that a publication is demonstrably false and motivated by malicious intent or personal hostility, the defendant would be devoid of all legal defenses and would be held accountable for compensatory damages. It is also evident that the public official is afforded the same level of protection as any other citizen in situations unrelated to the fulfilment of their responsibilities, as elucidated in the aforementioned points (1) and (2). It is unnecessary to

emphasize that the judiciary, safeguarded by the authority to impose penalties for contempt of court, and the parliament and legislatures, protected by their privileges as outlined in Articles 105 and 104, respectively, of the Constitution of India. These instances exemplify deviations from the aforementioned norm.

- Defamation lawsuits cannot be filed on behalf of the government, local authorities, or other bodies exercising governmental power.
- Rules 3 and 4 do not, however, relieve the press or media from the obligations imposed on them by the Official Secret Act of 1923 or any other enactment or rule having the force of law.
- There is no statute that grants the state or any of its officials the authority to forbid or impose a prior restraint on any member of the press or the media.

In Nine Judges Bench of the Supreme Court of India in Justice *K S Puttaswamy (RETD.) and Anr v. Union of India*[25] There is a suggestion that the right to privacy holds significant importance as a fundamental element within the freedoms outlined in Article III, as well as the right to life and personal liberty as guaranteed by Article 21 of the Constitution. Accordingly, it is argued that privacy in India is considered a basic right protected by the constitution. However, it is crucial to bear in mind that this privilege is subject to certain limitations and prerequisites.

*India's speech freedom and its repercussions*

The legal status of freedom of expression in India is appalling and horrifying. Our country supports a number of laws that restrict free speech, including those pertaining to sedition, censorship, Section 295A of the Indian Penal Code, and Section 298 of the Indian Penal Code, which deals with speech that offends religious sentiments. The prohibition of Salman Rushdie's book Satanic Verses was a startling illustration of their application.[26]

[25]AIR2017 SC4161

[26] Pandey, Balram, Is It the Problem of 'Necessity': The Freedom of Free Speech and the Constitution of India? (September 7, 2020). Available at SSRN: https://ssrn.com/abstract=3706727 or http://dx.doi.org/10.2139/ssrn.3706727.

Academic discourse generally accepts the importance of being sensitive to religious sensibilities. To be sure, there's a big difference between speech that can offend religious sensibilities and speech that could instigate actual acts of religious violence. Only the latter should be subject to the ban. The right to free speech is limited in some ways, but these limitations are routinely abused in ways that undermine the whole idea of free speech itself. The word 'public order' is a broad concept that affords the state a wider range of authority to effectively limit freedom of speech. The original wording of the article should have been preserved without any alterations. In accordance with the ruling of the Supreme Court in Romesh Thapar, it is established that the exercise of freedom of speech should be deemed disruptive to public order only when it poses an immediate and tangible danger to the subversion of the state. The terminology 'public order' has been adopted from the colonial period and is deemed inappropriate for safeguarding freedom of expression in modern society. Our contention is that the statement "which undermines the security of the state or tends to overthrow the state" should have remained unaltered, as it served to restrict the state's intervention with regards to freedom of speech. The concept in question exhibited a rather clear meaning, with discernible circumstances associated with it, in contrast to the concept of 'Public Order', which is more ambiguous and expands the range of state intervention.[27]

**The Indian Constitution guarantees individuals' right to personal privacy**

While the right to privacy is not expressly protected by the Indian Constitution, it is argued that it is protected by Articles 21 and 22 of the documents. The following clauses are allegedly included in the "right to privacy."[28]

Article 19[29]Article 19(1)(a) of the Constitution guarantees all citizens the right to free speech and expression. However, the aforementioned rationale is grounded in Article 19(2) of the constitution, which states that exercising this right shall not hinder the

27 Navya Aggarwal and Aadya Malik https://pclshnluchapter.weebly.com/the-pcls-blog/critical-analysis-of-freedom-of-speech-and-expression-in-India

[28] JN Pandey, Constitutional Law of India 92 (Central Law Agency, New Delhi, 2007)
[29] Id.

enforcement of existing laws or prevent the state from enacting legislation that imposes reasonable restrictions on the exercise of the right, provided that such restrictions are in the interest of India's sovereignty and integrity, state security, friendly relations with foreign nations, public order, and safety.

Article 21: Indian Constitution grants all individuals, citizens and non-citizens alike, the right to privacy. Included in this is the right to life. The Supreme Court has indicated that this is the case as a statutory justification, despite the fact that this is not made abundantly obvious within the statute. Article 21 of the Constitution states, "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." Article 21 is the foundation of the independence the Indian people enjoy. Since the Indian constitution was first drafted, the language of this article regarding "procedure created by law" has been the subject of much debate. The correct strategy that must be implemented is predicated on the notion that, in terms of personal liberty, the significance of the operation generated by legislation is similar to that of the due process clause of the Fifth Amendment to the Constitution of the United States of America.[30]

*Freedom of speech: when should be curtailed?*

The freedom of the press holds significant importance within democratic societies, as it serves as a crucial mechanism for the dissemination of information to the general public, hence upholding democratic accountability.

CJI N V Ramana looked at the case law precedents that led up to the decision that "people in a democratic, civilized society have a right to privacy." Concerns regarding personal privacy are shared by more than just social activists and journalists. Every Indian person deserves to be safe from prying eyes. Because of this anticipation, we are able to make our own decisions and enjoy our individual liberty.[31]

[30] HM Seervai, The Constitutional Law in India: A Critical Commentary 43 (Central book publication, New Delhi, 2003)

[31]http://timesofindia.indiatimes.com/articleshow/87352681.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

The issue of reconciling media freedom and privacy often revolves around the dichotomy between private and public interests. Despite the absence of a comprehensive privacy law in India, the constitutional framework provides legitimacy and has consequently led to the introduction of the Personal Data Protection Bill in 2019. The Privacy Data Protection Bill (PDPB), a forthcoming legislation in India, is anticipated to incorporate a clause aimed at safeguarding individuals against encroachments by the media.

**Conclusion**

*"No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write or print freely on any subject whatever."* — Oregon Constitution[32]

While the notions of "human privacy" and "freedom of the press" may appear to be in direct conflict, they are both important to the proper functioning of a democratic society that upholds the principles of the rule of law and individual rights. The dissemination of knowledge greatly relies on the presence of press freedom, while the capacity for individuals to live unrestricted lives is significantly dependent on the protection of privacy rights.[33]

The commendation of press freedom is warranted, as it plays a crucial role in society. It is imperative to remain vigilant in safeguarding this invaluable freedom, actively countering any attempts, whether overt or covert, to impede its practice. Freedom of the press is undeniably one of the fundamental liberties of a democratic society that adheres to the principles of the rule of law. However, we propose that the concept of freedom of the press should not be regarded as a standalone objective. The purpose of this measure is to guarantee the presence of the principles of good governance, transparency in

[32] Article I, Section 8

[33] Supra note.27

administration, enforcement of accountability among those in positions of authority, and the preservation of human dignity and human rights within a democratic society.[34]

*"Press is the watchdog to see that every trial is conducted fairly, openly and above board, but the watchdog may sometimes break loose and has to be punished for misbehavior."* - Lord Denning[35]

Given the media's increasing influence and responsibility, it is essential that it realize and abide by its limitations. The media has a duty to preserve the privacy and anonymity of its subjects and avoid violating their sense of self-worth in the process. The right to privacy, which must always take precedence over media influence, necessitates the enactment of stringent laws and legislation to govern the oversight and administration of the media.[36]

The study's author opted to wrap things up by making the case that freedom of expression is guaranteed under the Indian Constitution. However, it is crucial to acknowledge the requirement of respecting people's privacy when it comes to regulating these rights. This is due to the fact that these privileges are not limitless and can be regulated within reasonable bounds. This scenario has developed accordingly.

[34]Govindu, V. "CONTRADICTIONS IN FREEDOM OF SPEECH AND EXPRESSION." *The Indian Journal of Political Science*, vol. 72, no. 3, 2011, pp. 641–50. *JSTOR*, http://www.jstor.org/stable/41858840. Accessed 20Sep. 2023.

[35] Book 'Road to Justice'

[36] id

# JUDGMENT IN *SHRIRAM PISTONS & RINGS LTD.* V. *BASANT KHATRI* – A CRITICAL STUDY

*Praveen Kumar Jain**

**Brief Facts of the Case**

The brief facts of the case titled *Shriram Pistons & Rings Ltd.* vs. *Basant Khatri* [1], as stated in para 2 of the judgment, are that the appellant/ defendant/ lessee *vide* a lease deed dated 03.08.2005 took on lease the premises from its owner for 3 years from 01.07.2005 till 30.06.2008. The lease deed was not a registered document; therefore, the tenancy was only a monthly tenancy. The original owner in the meanwhile on 11.6.2008 had entered into an agreement to sell of this property with the respondent/ plaintiff. The agreement to sell dated 11.6.2008 was subsequently registered on 11.02.2009, after payment of the requisite stamp duty and registration charges. Since the appellant/ defendant failed to vacate the property in spite of termination of the tenancy by legal notice dt. 14.07.2008, the subject suit for possession and mesne profits came to be filed.

**Observation of the Trial Court**

In para 4 of its judgment, Hon'ble High Court *inter alia* observed that the Trial Court held that there was a relationship of landlord and tenant between the parties inasmuch as there wasa registered sale agreement dated 11.2.2009 entered into between the original owner/ landlord and the respondent/ plaintiff. The Trial Court distinguished a recent judgment of the Supreme Court in the case of *Suraj Lamp Industries Pvt. Ltd. vs. State of Haryana & Anr.*; (2012)1 SCC 656, by holding that the same is only prospective in operation.

**Observation of the High Court**

Hon'ble Single Judge of the High Court of Delhi, while upholding the part of decree granting recovery of possession passed by Ld. Trial Court, observed as under:

> *"5. The first argument of the learned senior counsel for the appellant before this Courtis that the suit was not maintainable as the respondent/ plaintiff was not the owner/*

* Advocate, Supreme Court of India

[1] RFA No. 568/2011 (decided on 19-12-2011 by Hon'ble Delhi High Court). No appeal was filed against this judgment. Available on www.delhihighcourt.nic.in.

*landlord of the premises. In my opinion, this argument is without any merit inasmuch as the original owner/ landlord, Smt. Usha Lall has executed and registered the agreement to sell dated 11.2.2009 with respect to the suit property in favour of the respondent/ plaintiff. By this agreement to sell, which is a* ***duly*** *registered document, after paying the requisite amount of stamp duty, the original owner/ landlord agreed to transfer the leased property to the respondent/ plaintiff and also* ***transferred constructive possession*** *of the same to the respondent/ plaintiff. In pursuance to the agreement to sell, registered on 11.2.2009, the original owner/ landlord - Mrs. Usha Lall also wrote a letter dated 11.6.2008, Ex. PW1/5, to the appellant/ defendant informing of the agreement to sell and stating that the lessee/ tenant, i.e. the appellant/ defendant has now to deal with the respondent/ plaintiff for the suit property, including with respect to handing over possession or with respect to the security deposit.*

As per Section 53A of the Transfer of Property Act, 1882, once there is an agreement to sell in writing signed between the parties and possession is delivered, then the prospective purchaser under the agreement to sell gets benefit of the doctrine of part performance whereby the original owner/ landlord is prevented from claiming any *rightof ownership* in the property as against the prospective purchaser. Before passing of the Act 48 of 2001 by the Legislature which amended various provisions of the Transfer of Property Act, 1882, Registration Act, 1908, Court Fees Act, 1870 as applicable to Delhi, there was a misuse of this provision of Section 53A of Transfer of Property Act, 1882 whereby in order to overreach the authorities with respect to stamp duty, registration and payment of 'unearned increase' to the superior lessor of the land, parties were entering into an agreement to sell and taking benefit of doctrine of part performance as per Section 53A. The Legislature consequently brought in Act 48 of 2001 whereby *an agreement to sell falling under Section 53A* could not be looked into unless the same be registered and the stamp duty paid thereon as per 90% value of the sale deed. For payment of stamp duty circle rates have been fixed in Delhi and on which rates stamp duty is paid. Therefore, once an agreement to sell is duly registered with the necessary stamp duty having been paid, the prospective purchaser such as the respondent/ plaintiff gets benefit of the doctrine of part performance under Section 53A of Transfer of Property Act, 1882. The decision of the Supreme Court in the case of Suraj Lamp (supra) was to prohibit those sets of transactions which fell foul of the erstwhile Section 53A before the same was amended by Act 48 of 2001. However,

once, the requirement of existing Section 53A of Transfer of Property Act, 1882 is satisfied, i.e. the agreement to sell is duly registered and stamped, then, such agreement can definitely to be looked into and will not fall foul either of the existing/ amended Section 53A of the Transfer of Property Act, 1882 *or the judgment in the case of Suraj Lamp (supra).* I am therefore of the opinion that the respondent/ plaintiff had definitely become the landlord of the premises *entitling him to possession of* the suit property on the basis of the agreement to sell registered on 11.2.2009. No doubt remains as to the respondent/ plaintiff being the landlord once we look at attornment letter, Ex.PW1/5 dated 11.6.2008 addressed by Mrs. Usha Lall to the present appellant/defendant…. An issue of attornment is not a matter of choice *once rights in a property are transferred,* and the original landlord directs the tenant to deal with the *new owner/ landlord*. In the present case, in the face of the registered agreement to sell dated 11.2.2009 executed by the erstwhile owner/ landlord in favour of the respondent/ plaintiff and the attornment letter dated 11.6.2008, Ex. PW1/5, the appellant/ defendant *has no option but to take the respondent/ plaintiff as a landlord of the premises.* Merely contending that the appellant/ defendant refuses to accept the respondent/ plaintiff as the landlord of the premises, cannot take its case any further and the appellant/ defendant is a tenant under the respondent/ plaintiff. I also feel that the appellant/ defendant has *no business to dispute* the fact that the respondent/ plaintiff is the landlord inasmuch as the original owner/ landlord herself is not disputing the fact that the respondent/ plaintiff is the landlord."

(*emphasis added*)

**Issue under Examination**

The issue under examination is whether in the present case the respondent/ plaintiff/ prospective purchaser had become entitled to recover the possession from the appellant/ defendant/ lessee by operation of the section 53A of the Transfer of Property Act, 1882 (hereinafter "TP Act", for short) as the agreement to sell had been stamped and registered and *constructive* possession had been (purportedly) transferred.

**Critical Study of Relevant Concepts of Law**

*Doctrine of part performance*

*Origin*

When the TP Act was enacted, Sec. 53A did not find place in it. In its absence there arose difference of opinion among various Courts in India as regards the application of English doctrine of part performance of contract as it was then prevailing in England. Therefore, the Government of India resolved to set up a Special Committee for making recommendations, amongst others - whether the British equitable doctrine of part performance be extended in India also. The committee was of the view that where a transferee in good faith, that lawful instrument i.e. a written contract would be executed by the transferor, takes possession over the property, the equity demanded that the transferee should not be treated as a trespasser by the transferor and subsequently evict him through process of law in the absence of lawful transfer instrument. The Special Committee was also of the view that even after expiry of period of limitation, the relationship between the transferor and transferee remains the sameas it was within the period of limitation and, therefore, the possession over the property taken in part performance of an agreement is required to be protected even if the period of limitation for bringing an action for specific performance has expired.

The aforesaid recommendations of the Special Committee were accepted by the Government of India as the same is well reflected in the aims and objects of Amending Act, 1929, whereby Sec. 53A[2] was inserted in the Act[3]. The section provided that where a person takes possession of an immovable property in part performance of a written contract and he has performed or willing to perform his part of the contract, then the transferor shall be debarred from enforcing against him any right in respect of such transferred property. The main effect is that the possession of the prospective purchaser is not illegal because of Sec. 53A. Thus, the prospective purchaser can use Sec. 53A as a 'shield' to protect his possession either as a

[2] 53A. Part Performance. - Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,
and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,
and the transferee has performed or is willing to perform his part of the contract,
then, notwithstanding that *[the contract, though required to be registered, has not been registered]* where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor bythe law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:
Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

[3] See: Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi, (2002) 3 SCC 676, para 13.

defendant[4] or as a plaintiff[5] but not as a 'sword'[6] either for getting title[7] or for getting possession if he is not actually in possession[8] as it is well settled that Sec. 53A confers no active title on the prospective purchaser in possession, it only imposes a statutory bar *on the transferor*[9] and does not make the prospective purchaser the *transferee* of the property[10]. In case the agreement for sale does not materialize in a sale deed duly executed and registered, no title in the subject matter of the agreement can pass to the other party[11]. Such a right to protect possession against the prospective vendor cannot be pressed in service against a third party[12]. One of the reasons may be that the prospective purchaser has to prove many things including the fact of taking possession pursuant to the agreement to sell, his readiness and willingness to perform his part of contract along with part performance which cannot be proved in suits against third parties. Though, Sec. 53A creates a right in favour of transfereeto defend his possession but if he is forcibly ejected by the transferor or a third party, he can file a suit for recovery of possession not pursuant to Sec. 53A, but under Sec. 6 of the Specific Relief Act 1963[13].

*Amendment in 2001*

The Amending Act has omitted from the notwithstanding clause of Sec. 53A the words "the contract, though required to be registered, has not been registered, or" and has also omitted from the proviso to the Sec. 49 of the Registration Act, 1908 the words "or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882". And Article 23A in the Schedule I of the Stamp Act has been inserted requiring 90% of the Stamp duty as a conveyance on the contracts for the transfer of immovable property in the nature of part performance under Sec. 53A of the TP Act.

[4] If the owner files a suit for recovery of possession from the prospective purchaser.
[5] If the owner tries to forcibly dispossess the prospective purchaser, then he may file a suit for injunction.
[6] See: NP Tripathi v. Dayamanti Devi, AIR 1988 Pat 123 (DB).
[7] See: Ram Gopal Reddy v. Additional Custodian Evacuee Property, Hyderabad, AIR 1966 SC 1438.
[8] See: Sadashiv Chander Bhamgare v. Eknath Pandharinath Nangude, AIR 2004 Bom 378.
[9] Technicians Studio Pvt. Ltd. v. Lila Ghosh, AIR 1977 SC 2425; Patel Natwarlal Rupji v. KondhGroup Kehti Vishayak, AIR 1996 SC 1088; (1996)7 SCC 690.
[10] Bajirao Ganpati v. Daulatrao Malhari; AIR 1957 Bom 236.
[11] Parmeshwar Singh v. Joint Director, Consolidation, Muzaffarpur, 2007(4) PLJR 115 (Pat.); See also: Crest Hotel Ltd. v. Assistant Superintendent of Stamps, AIR 1994 Bom 228.
[12] State of Uttar Pradesh v. District Judge, (1997)1 SCC 496. See also: Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra, 2004 (8) SCC 614 and Arun Kumar v. Rent Control and Eviction Officer, Dehradun, 2006(1) AWC 719 (Uttr).
[13] Bhalkoo Ghaslya v. Hiryabai, AIR 1949 Nag 410.

Sec. 17(1A) of the Registration Act was also inserted by the same Amending Act which provides that if the documents containing contracts to transfer for consideration, any immovable property are not registered, then they shall have no effect *for the purposes of the Section 53A of the Transfer of Property Act, 1882.* Thus, only difference between registered and unregistered 'agreement to sell coupled with transfer of possession' which has been created is that in the contingency of seller trying to take the possession back either forcefully or through suit for recovery of possession, the prospective purchaser shall not be able to invoke the shield of Section 53A to protect his possession taken pursuant to the agreement to sell if the agreement is not registered. Otherwise, rights and duties of the prospective seller and purchaser remain same whether the agreement to sell is registered or not.

*Difference between 'agreement to sell' and 'sale'*

Both 'agreement to sell' and 'sale' have been defined in Sec. 54 of the TP Act. It states that 'Sale' is a *transfer of ownership*. Then mode of making a 'sale' has also been clearly prescribed. It says that such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing,*can be made only* by a registered instrument. Definition of 'sale' and its 'mode' provided in Sec. 54 are definitive/ restrictive and not an inclusive one. Hence, no other deed and no other mode can supplant them. Further, transfer of possession is not *sine qua non* for completion of a sale. However, u/s 55(1)(f) the seller is bound to give, on being so demanded by the buyer, the possession of immovable property *as its nature permits*. It has been held in *Raj Kumar* vs. *Shanti Saroop Gandhi*[14] that the words 'as its nature permits' refer to physical or actual possession in the case of tangible property and formal or symbolical possession in the case of intangible property. Possession does not necessarily import actual possession or personal occupation. So, when the buyer had notice of a tenancy, he is only entitled to formal or symbolical possession.

By contrast, Section 54 clearly states that a 'contract for the sale of immovable property' is a contract that a sale of such property *shall take place* on terms settled between the parties. It further qualifies that a contract for sale does not, of itself, *create any interest in or charge* on such property. There is no requirement of law that an 'agreement to sell' of immovable property should only be in writing. Under 'agreement to sell', the owner may or may not transfer the possession to the prospective purchaser. And if the owner agrees to transfer

[14] AIR 1992 P&H 18.

possession, then it has to be actual physical possession. Under 'agreement to sell coupled with transfer of possession' only physical possession is transferred and the owner retains all ownership, title and rights. No rights or duties flow from the agreement to sell under the TP Act to the prospective purchaser except to get the sale deed executed in his favour[15] while Sec. 55 of the TP Act creates certain statutory rights and duties upon the seller and the purchaser. An 'agreement to sell' is an executory contract, whereas 'sale' is an executed contract.

If a holder of a written 'agreement to sell coupled with transfer of possession' were considered to have any right, title or interest in an immovable property as done in the present case then the instrument would require registration u/s 17(1)(b) and not u/s 17(1A) of the Registration Act, 1908 and would also be liable to be stamped under Article 23 and not under Article 23A of the Indian Stamp Act, 1899. Hence, the court would be under a duty to confiscate the same and refer to the Collector of Stamp[16]. No Court could act upon it[17] until and unless the holder of such instrument paid the deficient stamp duty along with penalty so imposed by the Collector of Stamp u/s 40 of Indian Stamp Act.

**Transfer of possession**

Possession is not merely occupation or actual use;[18] the concept also involves the physical possibility of the person dealing with the property as he likes;[19]and exclusively[20]. Thus, where a person has, in his own right and not merely as representative of another, such control over property as to be able to exclude others from it, and has the intention of exercising such power of exclusion, he has possession of that property[21]. *Black's Law Dictionary* (9th Ed., 2009) defines 'possession' as "1. The fact of having or holding a property in one's power; the exercise of dominion over property". On the other hand, 'constructive possession' has been defined in it to be "1. Control or dominion over a property without actual possession or custody of it."

**Nature of possession under Section 53A of the TP Act**

[15] Under section 10 of the Specific Relief Act, 1963.
[16] Section 33 of the Indian Stamp Act, 1899.
[17] Section 35 of the Indian Stamp Act, 1899.
[18] Lala Bishumbhar Nath v. Nisar Ali, AIR 1932 Oudh 51.
[19] Bahadur Chand v. Naina Mal, AIR 1914 Lah 370.
[20] Emperor v. Lallu Waghji, AIR 1919 Bom 39.
[21] Ramachandra Deb v. State of Orissa, AIR 1957 Ori 80.

The first and foremost requirement to be fulfilled by the prospective purchaser for invoking Sec. 53A is to take possession of the immovable property under a contract to transfer for consideration any immovable property. If a person is already in possession in other capacity, then now he should continue in possession in part performance of the contract and do some act in furtherance of the contract. Thus, *corpus possessionis* and *animus possidendi* both are *sine qua non* for taking shield of Sec. 53A. Section 53A has been enacted to protect corporeal and not constructive possession as there cannot be possibility of dispossessing the part performer from his constructive possession by the owner. The argument that Sec. 53A requires taking of physical possession only gets further fortified by the fact that Sec. 55,which narrates duties of the seller, provides in clause (f) that the seller is bound to give, on being so required, the buyer, or such person as he directs, such possession of the property *as its nature admits* while u/s 53A no such qualification like 'as its nature admits' is contemplated.

**Nature of possession under lease deed**

A lease is not a mere contract, but is a transfer of an interest in land and creates a right in *rem*[22]. A transfer of a right to enjoy such property to the exclusion of all others including the lessor itself during the term of the lease is *sine qua non* of a lease. Thus, the fundamental conception of a lease is that it is the separation of the right of possession from ownership.

It is submitted that the main difference between lease and license is that in lease the owner transfers possession in fact as well as possession in law; however, in license the owner transfers possession in fact but retains possession in law. That is why if the tenant does not leave the property upon determination of lease, the owner has to file a suit for recovery of possession while to evict the licensee upon termination of license, the owner can file a suit for mandatory injunction[23] seeking direction to the licensee to vacate the property. There is no transfer of property in license that is why it is governed by the Indian Easement Act, 1882 andnot by the TP Act. Possession of a lessee is a legal right which is not only transferable but heritable also. A lessee can sue trespassers and strangers in his own name and may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property[24].

[22] Kandasami v. Ramaswami, (1919) ILR 42 Mad 203.
[23] Under section 39 of the Specific Relief Act, 1963.
[24] See: Section 108(j) of the TP Act.

What remains with the lessor is a reversion, that is to say a future estate capable of being reduced to possession on the termination of the existing lease and such interest can be validly transferred u/s 5 of the TP Act[25].

**Recovery of possession vs. Protection of possession**

It is submitted that remedies under 'Specific Relief Act to recover possession[26]' and 'Transfer of Property Act to protect the possession[27]' of immovable properties neither supplant nor supplement each other. They stand on their own legs and crutches. Nature and object of both the remedies are totally different. While the former is a sword, the latter is a mere shield. While the former results in recovery of possession of the immovable property, the latter only maintains *status quo*. While the former can be availed *in rem*, the latter only against the owner. While the former may get eclipsed by the Limitation Act, 1963, the latter goes on with the transferee or any person claiming under him[28]. While the former can be availed regardless of existence of a written/ oral agreement[29], the latter can be availed only there being a written agreement that too a duly stamped and registered one.

It is further submitted that both the remedies operate in completely different spheres. While the former may be enforced by anyone being owner of the immovable property or being its prior possessor, the latter can be invoked only by the part performer. In granting relief u/s 53A, the questions whether the contract is specifically enforceable or prospective purchaser has a right to recover the possession have no bearing at all. Similarly, in granting relief of recovery of possession, it is submitted that the question whether the shield of Sec. 53A is available or not does not arise at all.

Extent of both reliefs can be distinguished as u/s 22(1)(a) of the Specific Relief Act, 1963, the plaintiff can seek possession of the property, if he is already not in possession, in addition to the specific performance of a contract for transfer of immovable property. But u/s 53A, a person can only retain- not seek possession of the property.

**Beg to differ on the following points of law**

*Duly registered agreement to sell*

[25] Venkayya v. Subbarao, AIR 1957 AP 619. See also: Ganpati Joti Kumbhar vs Jayasingrao Abasaheb & Ors., AIR 1956 Bom 749.
[26] Section 6.
[27] Section 53A.
[28] See: Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi, (2002) 3 SCC 676.
[29] Gadiraju Sanyasi Raju v. Kandula Kamappadu, AIR 1960 AP 83.

Hon'ble High Court has observed in para 2 of its judgment that the agreement to sell dt. 11- 06-2008 was stamped and registered on 11-02-2009. However, in the Trial Court's judgment[30] dt. 08-11-2011 passed in Suit No. 422/2009, the agreement to sell dt. 11-06-2008 was exhibited as PW1/3 and the sale agreement which was registered on 11-02-2009 was exhibited as PW1/4. Thus, there seem to be two separate agreements to sell, hence the prior agreement to sell dt. 11-06-2008 had no effect.

Further, the agreement to sell dt. 11-06-2008 could not have been registered on 11-02-2009 i.e. after around eight months of its execution as Sec. 23 of the Registration Act, 1908 provides that no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.

**Interpretation of Suraj lamp judgment**

a. Learned Trial Court observed that the judgment in *Suraj Lamp & Industrial (P) Ltd.* vs. *State of Haryana & Anr*.[31] was only prospective. It is submitted that normally, the decision of Supreme Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective over-ruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *I.C. Golak Nath and Ors.* vs. *State of Punjab and Anr*.[32] in which it was *inter alia* held that it can be invoked only in matters arising under our Constitution[33] that too only by the Supreme Court. Prospective over-ruling is a part of theprinciples of constitutional canon of interpretation and can be resorted to by the Supreme Court while *superseding law declared by it earlier*. There can be no prospective over-ruling, unless it is so indicated in the particular decision. It is not open to be held that the decision ina particular case will be prospective in its application by application of the doctrine of prospective over-ruling[34].

In the *Suraj Lamp* case Hon'ble Supreme Court had specifically observed as under:

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[30] Available on www.delhicourts.nic.in. *Unique ID Number: 02403C0088072009.* Decided by the court of Ms. Nivedita Anil Sharma, Additional District Judge-02, Wakf Tribunal, New Delhi District, Patiala House Courts, New Delhi.

[31] (2012) 1 SCC 656.

[32] AIR 1967 SC 1643.

[33] In *Gaga Ram Moolchandani* v. *State of Rajasthan*, (2001) 6 SCC 89, the Supreme Court categorically stated that the application of scope of the doctrine of prospective overruling, was not limited to matters arising out of the Constitution, as held in *Golak Nath* case, but extended to the interpretation of ordinary statutes as well.

[34] MA Murthy v. State of Karnataka & Ors., (2003)7 SCC 517; See also: MCD v. Madan Lal & Anr., 1979 Cri LJ 426.

"17. …It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactionscannot be treated as completed transfers or conveyances. They can continue to betreated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title…"

Thus, Learned Trial Court, by stating that the judgment in *Suraj Lamp* was prospective in nature, has misread the judgment for three reasons. Firstly, Supreme Court had itself turned down the specific request of the parties to make the judgment prospective. Secondly, Supreme Court in *Suraj Lamp* just re-iterated the same well settled position of law without overruling it's any earlier judgment, hence no new interpretation worth being 'prospective'was made therein. Thirdly, even where doctrine of prospective overruling is applied, that judgment applies on all pending cases like the one which was before the Trial Court.

b. High Court has observed in para 5 that 'the decision of the Supreme Court in the case of *Suraj Lamp* was to prohibit those sets of transactions which fell afoul of the erstwhile Section 53A before the same was amended by Act 48 of 2001. However, once, the requirement of existing Section 53A of Transfer of Property Act, 1882 is satisfied, i.e. the agreement to sell is duly registered and stamped, then, such agreement can definitely to be looked into and will not fall foul either of the existing/ amended Section 53A of the Transfer of Property Act, 1882 *or the judgment in the case of Suraj Lamp*'.

It is submitted that the *Suraj Lamp* judgment was a very comprehensive one examining validity and legality of transfer of immovable properties through Sale Agreement/ General Power of Attorney/ Will transactions[35]. Making registration compulsory for documents containing contracts to transfer of immovable properties for the purpose of Sec. 53A was one of the remedial steps taken by some of the states. For that Hon'ble Supreme Court observed that those measures to some extent plugged the loss of revenue by way of (increased) stamp duty but the other ill-effects continued. Hon'ble Supreme Court concluded as under:

[35] Supra 30 (page 662, para 9).

"24. We therefore *reiterate* that immovable property can be legally and lawfully transferred/ conveyed *only by a registered deed of conveyance*. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do notamount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, *except to the limited extent of Section 53A of the Transfer of Property Act*. Such transactions cannot be reliedupon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice ofSA/GPA/WILL transactions known as GPA sales.

(Emphasis added)

Thus, the *Suraj Lamp* judgment is squarely applicable in the present case and observation of Delhi High Court that the respondent/ plaintiff had definitely become the landlord of the premises entitling him to possession of the suit property on the basis of the agreement to sell registered on 11-02-2009 is in misreading of *Suraj Lamp* case and overlooking Supreme Court's prior judgment in *Rambhau Namdeo Gajre* vs. *Narayan Bapuji Dhotra*[36] which held as under:

"10. Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favor of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

**Attornment in favour of prospective purchaser**

[36] (2004) 8 SCC 614.

Hon'ble High Court had *inter alia* observed that 'an issue of attornment is not a matter of choice *once rights in a property are transferred*, and the original landlord directs the tenantto deal with the *new owner/ landlord'*. Thus, transfer of right in the immovable property precedes attornment. Applying the above ratio on the facts of the present case, it appears that the owner had attorned in favour of the respondent/ prospective purchaser which is illegal *per se*. Attornment cannot be made in favour of a person who has not been transferred right or interest or title or ownership of the demised property. It is submitted that mere attornment does not create any kind of right or interest in favour of any person. Section 109[37] of the TP Act provides for automatic statutory attornment in favour of a *transferee* of leased property or any part of interest therein- not a *prospective transferee*.

High Court had also observed that the appellant/ defendant had no business to dispute the fact that the respondent/ plaintiff was the landlord inasmuch as the original owner/ landlord herself was not disputing the fact that the respondent/ plaintiff was the landlord.

It is submitted that in this case, the original owner had been neither made a party nor was produced as a witness, hence there was no occasion to observe that the original owner/ landlord herself was not disputing the fact that the respondent/ plaintiff is the landlord. It is further submitted that appellant/ lessee definitely had the business to dispute the ownership of the respondent/ plaintiff as he had filed the suit for recovery of its possession over the suit property. Mere attornment letter sent by the owner/ landlord cannot be an estoppel against the tenant.

**Agreement to sell falling u/s 53A**

High Court has *inter alia* observed in para 5 that 'the Legislature consequently brought in Act 48 of 2001 whereby *an agreement to sell falling under Section 53A* could not be looked into unless the same be registered and the stamp duty paid thereon as per 90% value of the sale deed'. It is submitted that no agreement to sell automatically *falls* u/s 53A as soon as

[37] **Section 109. Rights of lessor's transferee.-** If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.
Provided...

possession is taken pursuant to it. An agreement to transfer immovable property with or without transfer of actual physical possession requires neither registration nor 90% of stamp duty as a conveyance for seeking damages for breach of contract or for seeking specific performance of that agreement to sell and shall be admissible in evidence. The maxim of "*Quilibet Potest Renunciare Juri Pro Se Introducto*" says that any one may, at his pleasure, renounce the benefit of a stipulation or other right introduced entirely in his own favour. Therefore, it is submitted that nobody can be compelled to avail a particular relief which is available to him and then consequently be put under burden to satisfy the conditions precedent to grant such unsought for relief. Hence, it is submitted that it is not *transfer of possession* but *threat to transferred possession* to prevent which Sec. 53A of the TP Act may be invoked by the prospective purchaser and in that situation only compliance of Sec. 17(1A) of the Registration Act and Item 23A of the Indian Stamp Act shall be mandatory[38].

**Priority of rights created by transfer**

Section 48 of the TP Act provides that where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all existor be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created. Moreover, the maxim "*Plures Eandem rem in solidum possidere non possunt*" says that two persons could not be in possession of the same thing at the same time. Hence, in this case, the owner could not have transferred the possession to the respondent/ prospective purchaser as the *de facto* and *de jure* possessions had already been transferred to the appellant/ lessee.

**Analysis of the present case**

In the present case, the owner could not have given the possession simply for the reason she herself neither had possession in law nor in fact at the time of executing the agreement to sell. Until and unless the owner recovered the actual physical possession of the immovable property, she could not have transferred the possession required u/s 53A to the prospective purchaser. The respondent/ prospective purchaser had to file a suit for recovery of possession itself indicates that he was not handed over the possession by the owner and thus, the very first requirement of Sec. 53A was not fulfilled.

[38] For detailed discussion, please see: Praveen Kumar Jain, 'Judgment in *Deewan Arora* v. *Tara Devi Sen & Ors.* – A critical study', Chartered Secretary, Vol. XL, No. 7, July 2010, pp. 947-955.

Further, the respondent/ prospective purchaser had filed the suit *not* for protecting his possession u/s 53A of TP Act but for recovery of possession under Specific Relief Act. It is submitted that Sec. 53A does not entitle the prospective purchaser to recover the possession not even from the owner itself much less a third party.

**Conclusion**

Ownership of an immovable property can be transferred only by way of sale deed, gift deed, will, exchange, inheritance or operation of law e.g. under the provisions of Land Acquisition Act, 1894. And a 'sale' can take place only through a 'sale deed' that too as per the mode provided in the TP Act. Hence, an 'agreement to sell' whether oral or written, containing recital of payment of earnest money or whole purchase money, with or without delivery of possession, registered u/s 17(1A) of the Registration Act or unregistered, stamped under Article 23A of the Indian Stamp Act or not, does not transfer ownership or title in the immovable property in favour of the prospective purchaser. Further, even Sec. 53A does not convey any title or ownership or right in the immovable property to the prospective purchaser.It has been inserted in the TP Act to protect the actual physical possession, and not mere constructive or legal possession, of the prospective purchaser from the owner only if taken pursuant to the agreement to sell.

Secondly, there is no requirement of attornment by the tenant. Reversionary rights from the owner flow automatically by virtue of Sec. 109 of TP Act to the *transferee* but not to the *prospective transferee*.

Thirdly, *Suraj Lamp* judgment is neither to prohibit those sets of transactions only which fell afoul of the erstwhile Sec. 53A before the same was amended by Act 48 of 2001 nor is it prospective in nature.

Therefore, the author begs to submit that in the present case the respondent/ plaintiff/ prospective purchaser had not become entitled to recover the possession from the appellant/ defendant/ lessee by operation of Sec. 53A of the TP Act though the agreement to sell had been stamped, registered and '*constructive*' possession had been (purportedly) transferred by the owner.

**IILM Law Journal (IILMLJ) Volume II, Issue No.I, 2024**

**ISSN: 2583-8806 (Online)**

## Declaration

| S.No. | Particulars | Details |
|---|---|---|
| 1 | Place of publication | Greater Noida, Uttar Pradesh |
| 2 | Periodicity | Biannual |
| 3 | Language | English only |
| 4 | Editor | Prof. M. Afzal Wani |
| 5 | Owner, Publisher & Printer | IILM University, Knowledge Park-II, Greater Noida, Uttar Pradesh-201306 |

TRUTH OF THESE PARTICULARS IS CERTIFIED BY THE EDITOR

IILM School of Law,
IILM University,
Knowledge Park-II,
Greater Noida,
Uttar Pradesh-201306

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IILM Law Journal (IILMLJ) is a **peer reviewed journal** of the IILM School of Law, IILM University, Knowledge Park-II, Greater Noida, Uttar Pradesh-201306 at a distance of just 30 km from the Supreme Court of India connected by Noida Express Way. With an open airy location and delightful sentinel building, amidst the faculties of technology, management and liberal arts, its main feature is a holistic academic atmosphere in interdisciplinary settings. Students have an opportunity to excel to meet professional requirement at all possible levels.

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Font Size: 12 points for text and 10 points for foot notes. Spacing: 1.5

Quotations: Indented towards right Mode

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