ISSN 2581-7124

NCU LAW REVIEW

VOL. 6, ISSUE 1 & 2 (JANUARY – DECEMBER 2024)

Tel.: +91-124-2365811 to 13, Ext: 272
Email: nculawreview@ncuindia.edu
Website: www.ncuindia.edu

RNI Reg. No.: HARENG/2018/75464

NCU Law Review, Vol. 6, Issue 1 & 2 (Jan. – Dec. 2024)

ISSN 2581-7124

Date of publication: November 2025

Printed at:

Decorpac (I) Pvt. Ltd.

291 D, Sector 6, IMT Manesar

Dist. Gurugram - 122050

Recommended citation: 6 (1&2) NCU L. REV. (2024)

Design and Layout by Ms. Krishna Kaveri

NCU LAW REVIEW (ISSN 2581-7124)

Vol. 6, Issue No. 1&2, January – December, 2024

NCU Law Review is a peer-reviewed biannual academic publication of the Centre of Post-Graduate Legal Studies (CPGLS) at the School of Law (SoL), The NorthCap University (NCU), Gurugram (formerly ITM University, Gurgaon). This publication is an endeavour to serve as a forum for the promotion and circulation of views on contemporary legal issues among members of the legal profession, academicians, and students. The Law Review aims at legal research centres, policy makers, and government organisations. The views expressed in this publication are those of the authors and not necessarily those of the Editorial Board of the Law Review.

EDITORIAL NOTE

The NCU Law Review, since its birth, has endeavoured to deliver pioneering and unconventional research. This journal is in succession to the previous two issues, and like its predecessors, it aims to bring a variety of legal perspectives to the mind of the reader. This issue is particularly special in so far we received academic scholarships from across the borders, truly representing the expansive reach of the journal. We are proud to announce the arrival of this issue, which encompasses a broad spectrum of literature on diverse domains of law and policy, ranging from Law and Culture, Intellectual Property Rights, Artificial Intelligence, Anti-Competitive Market, Environmental Law, and Constitutional Law.

In the article titled "The Legal Culture Disconnect: Why Top-Down Intellectual Property Frameworks Fail to Protect Traditional Medicinal Knowledge", Dr. Ajay Sonawane & Vivek Trivedi argue that modern IPR frameworks cannot effectively protect traditional medicinal knowledge. The main barrier is the disconnect between state-led legal systems and healers' own cultural practices of secrecy and community-based protection.

In the article titled "Artificial Intelligence and the Ethics of Justice Delivery in Arbitration: A Roadmap for Responsible Integration", Dr. Showkat Ahmad Bhat, Sobiya Manzoor Pullo, and Dr. Mudassir Nazir highlight how AI is improving efficiency and reducing costs in international commercial arbitration while simultaneously creating ethical challenges such as bias, transparency issues, and unclear accountability. It argues that strong ethical frameworks and global standards are essential to ensure AI supports fairness, impartiality, and justice in arbitration.

Dr. Zubair Ahmed Khan, Vaani Negi, and Rudransh Bajpai, in their article, "Exploring the Nexus of Micro-level Designers, Sustainability, and Unregistered Designs in the Fashion Industry: A Comparative Study with the Israeli and EU UDR Regime" seeks to explore that India's lack of Unregistered Design Rights (UDRs) disproportionately harms small businesses and marginalized designers, especially within the fashion industry. It advocates adopting UDRs drawing from EU and Israeli models to ensure fair protection, sustainability, and greater empowerment for creators.

Anurag Singh and Neha Kumari argue that environmental law supports sustainable agriculture through international and national frameworks, illustrated by global case studies. It highlights the need for evolving legal approaches, including climate adaptation, circular economy models, and digital tools, to ensure long-term agricultural sustainability in the article titled "Promoting Sustainability: The Role of Environmental Law in Modern Agriculture".

Dr. Nisha Dhanraj Dewani & Dr. Mamta Sharma study the role of copyright law in the construction of course materials, and their photocopy for research and development and academic improvisation in their co-authored article, "Evaluation of Copyright Reproduction Right in the Light of Fair Dealing in the Educational Sector in India".

Navin Pal Singh, in his work, "Evaluation of India's Quest for Simultaneous Elections: Charting Administrative and Economic Challenges", examines India's growing challenges in conducting frequent elections and presents the proposal of "One Nation One Election" as a possible solution to reduce costs and disruptions. It critically evaluates the historical context, benefits, and the administrative, logistical, and federal challenges involved in implementing simultaneous elections.

Dr. Sourabh Ubale & Sameer Komati Gupta, in their article "From undefined to Concrete: Interpreting and Shaping Privacy as a Legal Concept & right across Jurisdictions", trace the evolution of privacy from a vague idea to a legal right across different jurisdictions, highlighting the lack of a universal definition. It argues for a structured framework to address modern privacy challenges, especially in the digital age, while balancing personal freedoms and state interests

Dr. Arunima Shrivastava & Dr. Neha Jain, in their jointly authored article, "Digital Dignity in the Age of People Analytics and AI: A Qualitative Analysis of Employees", explore how digital monitoring and people analytics impact employee trust, dignity, and perceptions of privacy beyond existing legal protections. It calls for a more human-centric approach, showing that perceived surveillance and data intrusion undermine employees' psychological well-being.

Dr. Gulafroz Jan, in her article "Human Embryonic Stem Cell Patenting: Navigating the Legal and Ethical Frontier", examines the ethical and legal dilemmas of patenting stem cells, especially when obtaining embryonic stem cells involves destroying embryos. It evaluates how different jurisdictions address these conflicts and questions the appropriateness of ethical exclusions in patent law.

In the article titled "An Overview of Anti-Competitive Practices in the Market and Penalties: A Study of Sections 3 and 4 of the Competition Act, 2002", Dr. Nisha Dhanraj Dewani analyzes how India's competition law addresses anti-competitive agreements and abuse of dominant position under Sections 3 and 4, comparing Indian practices with those in the US and EU. It also evaluates CCI procedures, penalties, and the economic factors influencing market dominance in India.

Lastly, Tauseef Ahmad & Shweta, in the article titled "Evolution of LGBT+ Rights in India, From Denial to Freedom: A Journey Towards Equality", analyse

global and Indian legal perspectives on LGBT rights, focusing on the evolution of Section 377 and the implications of the Transgender Persons (Protection of Rights) Act, 2019. It highlights key judicial interpretations and ongoing challenges in ensuring equality, dignity, and human rights for LGBT individuals.

The Editorial Board expresses heartfelt gratitude to the authors for their scholarly contribution. We would further extend our appreciation to Sh. Avdhesh Mishra, Hon'ble Chancellor, NCU, Hon'ble Members of the Governing Body, NCU; Prof. (Dr.) Prem Vrat, Hon'ble Pro-Chancellor, NCU; Prof. (Dr.) Nupur Prakash, Hon'ble Vice-Chancellor, NCU; Cmde. Diwakar Tomar (Retd.), Hon'ble Registrar, NCU, for their continuous support, guidance, and cooperation in this academic endeavour. We are also thankful to the reviewers, the dedicated staff of the University, and Decorpac (I) Pvt. Ltd.

Editorial Board

NCU LAW REVIEW

MESSAGE FROM THE VICE CHANCELLOR, NCU

It gives me immense pleasure to present Vol. 6, Issue 1 & 2 of the NCU Law Review, a peer-reviewed academic publication of the Centre for Post-Graduate Legal Studies (CPGLS) at the School of Law, The NorthCap University. Research lies at the heart of any higher education institution, not only as a pursuit of knowledge but as a profound responsibility to contribute meaningfully to society. This publication stands as a testament to our unwavering commitment to fostering a vibrant research culture that encourages critical thinking, intellectual honesty, and academic excellence.

The previous editions of the NCU Law Review have successfully captured the evolving landscape of law and legal thought, enriching scholarly dialogue across academic and professional circles. Their wide circulation and impactful insights have reached eminent jurists, educators, practitioners, and students, thus reinforcing our dedication to shaping legal discourse at both national and global levels.

This volume proudly carries forward that legacy. The articles featured in these issues delve deeply into contemporary legal challenges, exploring diverse perspectives and proposing innovative solutions. They reflect the spirit of critical thinking, legal reform, and academic rigor that the School of Law strives to cultivate among its scholars and students.

I invite eminent legal professionals, researchers, academicians, and students to contribute to future editions of the Law Review, and to continue strengthening this platform of meaningful dialogue and scholarly engagement.

I extend my heartfelt congratulations to the editorial team for their diligence, precision, and for reviewing and refining the contents. I also convey my sincere thanks to all the contributors for their valuable scholarly inputs and look forward to many enriching research contributions in future.

With best wishes for continued success and for attaining research excellence.

Prof. (Dr.) Nupur Prakash,
Vice Chancellor,
NCU, Gurugram

TABLE OF CONTENTS

THE LEGAL CULTURE DISCONNECT: WHY TOP-DOWN INTELLECTUAL PROPERTY FRAMEWORKS FAIL TO PROTECT TRADITIONAL MEDICINAL KNOWLEDGE

Dr. Ajay Sonawane [*] ***& Mr. Vivek Trivedi*** [**]

ABSTRACT

The protection of traditional medicinal knowledge (TMK) from misappropriation by commercial entities has become a critical issue in international policy. This paper examines the conflict between modern intellectual property rights (IPR) frameworks and the collective, ancient, and often oral nature of traditional knowledge. It analyses the three primary solutions proposed in the literature: (1) defensive protection, exemplified by "India's Traditional Knowledge Digital Library (TKDL)", which aims to prevent wrongful patenting by documenting prior art; (2) positive protection, which seeks to adapt existing IPR tools like patents (as in the "Jeevani" case)[4], trade secrets, and geographical indications to benefit TMK holders, and (3) the development of sui generis *(specialised) legal systems, a path fraught with conceptual and international hurdles. 6 This review argues that these top-down, state-led legal frameworks fail to address a critical gap: the legal culture of the practitioners themselves. Based on socio-legal fieldwork, the paper reveals that traditional healers often consciously avoid formal IPR due to cost and complexity, relying instead on their own models of protection rooted in secrecy, community norms, and non-litigious dispute resolution. This fundamental disconnect between legal policy and legal culture is identified as the primary barrier to the effective protection of traditional medicine.*

[*] The author is an Assistant Professor at the Faculty of Law, University of Delhi, and can be reached at ajaysonawane.law@gmail.com

[**] The Co-author is Ph.D. Research Scholar at the Faculty of Law, University of Delhi, can be reached at vivektrivedi@live.com

I. INTRODUCTION

The "protection of Traditional Knowledge (TK)" and the extension of economic benefits to its holders have attracted significant attention from policymakers globally for decades. This debate is particularly acute in the realm of Traditional Medicinal Knowledge (TMK), a subset of TK. The primary driver of this conflict has been the growth of the modern pharmaceutical industry and its search for new drugs, which has led the industry to mine the rich knowledge source of traditional medicine.[1] This practice, often termed 'biopiracy', involves the commercial exploitation of biological materials and associated knowledge without the prior informed consent (PIC) of the communities that have nurtured this knowledge for centuries and without any mechanism for benefit sharing.[2]

The high-profile cases of patents being granted on traditional remedies, such as those involving turmeric and the neem tree, brought this issue to international prominence. These cases crystallised a fundamental problem: the knowledge of traditional societies, being ancient and communally held, did not qualify for protection under existing intellectual property (IP) laws, which are designed to protect new, individual inventions.[3] "This created a distorted system that denied protection to the knowledge of the global South while requiring the South to pay for access to the protected knowledge of the global North." In response, the international debate has evolved along three distinct pathways, which this paper will analyse. The first is defensive protection, a strategy to prevent the misappropriation of TMK by ensuring it is recognised as prior art, thereby invalidating claims of novelty. The second pathway is positive protection, which

[1] World intellectual prop. org., Intellectual property and genetic resources, traditional knowledge and traditional cultural expressions 10–12 (2020) (outlining the history of the international policy debate within WIPO since the 1998–1999 fact-finding missions); *see also* Ajeet Mathur, *Who Owns Traditional Knowledge?*, ICRIER Working Paper No. 96, at 1 (2003) (noting that the protection of traditional knowledge was identified as a key issue for the TRIPS Council in the 2001 Doha Ministerial Declaration).

[2] WIPO, *IP AND TK GUIDE*, *supra* note 1, at 26 (describing TK as "created, maintained and passed on from generation to generation... often... collectively held")

[3] *Defensive Protection*, WIPO.INT, https://www.wipo.int/tk/en/tk/ (last visited July 20, 2024) (defining defensive protection as "a set of strategies to ensure that third parties do not gain illegitimate or unfounded IP rights over TK."); *see also* CSIR, *Traditional Knowledge Digital Library (TKDL)*, CSIR.RES.IN, https://www.csir.res.in/en/documents/tkdl (last visited July 20, 2024).

explores how existing IPR tools namely patents, trade secrets, and trademarks can be adapted to grant rights and economic benefits to TMK holders.[4] The third solution is the call for a *sui generis* system, an entirely new legal framework designed specifically for the unique characteristics of traditional knowledge.[5] This paper synthesises the literature on these three solutions, examining their mechanisms, successes, and inherent limitations. It argues that while this debate focuses intensely on designing the perfect legal framework, it overlooks a more fundamental element. Too little is known about the legal culture of the practitioners themselves, their behaviours, beliefs, and attitudes toward the law. By examining field research on this legal culture, this paper identifies a critical disconnect between top-down policy solutions and the bottom-up reality of traditional practitioners, who often operate within their own systems of secrecy and communal norms, actively avoiding the state's formal IPR system.[6]

1.1. The Misappropriation of Traditional Knowledge

The primary driver of this conflict has been "the growth of the modern pharmaceutical industry and its search for new drugs, which has led the pharma industry to mine the rich knowledge source of TM."[7] As stated earlier, this is commonly known as biopiracy, which entails the theft of biological material and other related knowledge devoid of any previous informed consent (PIC) of the individuals who had conserved, preserved and nurtured such knowledge over centuries or the sharing of any benefits accruing out of the commercial utilisation

[4] "R.V. Anuradha, *Sharing with the Kanis: A Case Study from Kerala, India* 1, *in* CASE STUDIES ON BENEFIT-SHARING ARRANGEMENTS, U.N. Doc. UNEP/CBD/COP/4/Inf/22 (1998)" (detailing the benefit-sharing model for the "Jeevani" drug derived from the Kani tribe's knowledge).

[5] *Ibid*

[6] T. C. James, *Traditional Medicine and Intellectual Property Rights: Law and Policy Perspectives*, FITM Discussion Paper No. 1, at 27–32 (RIS Nov. 2022) (analysing the application of trade secrets, trademarks, and geographical indications to traditional medicine).

[7] CARLOS M. CORREA, TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY 21–25 (Quaker U.N. Off. 2001) (analysing the conceptual and legal difficulties in designing a *sui generis* system, including issues of scope, beneficiaries, and duration of protection); *see also* WIPO, *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, WIPO.INT, https://www.wipo.int/tk/en/igc/ (last visited July 20, 2024) (detailing the ongoing, complex negotiations).

of such knowledge. The antecedents in this argument are high. The Secretariat of the Convention on Biological Diversity (CBD) has provided estimates that the world market for herbal medicines has reached US$ 43 billion.[8] In the European Union, additional estimates place annual sales for herbal medicinal products in the range of US$ 7 billion, while in the United States, annual sales were estimated (in 1997) to have increased to US$ 5.1 billion. [9] This conflict between the commercial pharmaceutical industry and the traditional holders of knowledge is best illustrated by several high-profile cases of misappropriation that drew international attention. In a landmark case, the "University of Mississippi Medical Centre" was granted patent number 5401504 by the "United States Patent and Trademark Office (US PTO) on 28 March 1995".[10] This patent, based on an application filed in 1993, had six claims covering the use of turmeric powder and its administration... for wound healing. The 'inventors' were two researchers of Indian origin. The patent broke the news caused tremendous agitations in India and the "Indian Council of Scientific and Industrial Research (CSIR)" appealed the case in the USPTO. The CSIR claimed that its people had used turmeric over centuries to treat wounds and therefore did not meet the novelty aspect needed to patent the product.[11] To support this, CSIR provided citations of documents ranging from scientific publications to... ancient Ayurvedic texts. "The USPTO revoked the patent... on 13 August 1997."[12] A similar conflict involved a "European Patent Office (EPO)" patent, number 436,257, granted in 1994 to the "W.R. Grace Company and the US Department of Agriculture". "This patent was

[8] U.N. Env't Programme, *Secretariat of the Convention on Biological Diversity, Analysis of Claims of Unsustainable Production and Trade of Medicinal and Aromatic Plants*, U.N. Doc. UNEP/CBD/ISOC/5 (2001) (providing the $43 billion estimate); *see also* R.A. Mashelkar, *Intellectual Property Rights and the Third World*, 40 CURRENT SCI. 955, 956 (2001) (citing the $43 billion figure).

[9] James, *FITM Paper*, *supra* note 5, at 1 ("The misappropriation of the TK, more particularly Traditional Medicinal Knowledge (TMK), by the modern pharmaceutical industry, has been a major concern...").

[10] U.S. Patent No. 5,401,504 (issued Mar. 28, 1995) [hereinafter *'504 Patent*].

[11] WIPO, *Use of Turmeric in Wound Healing*, WIPO/IP/TK/01/1, at 4 (2001) (noting the USPTO issued a Re-examination Certificate in 1998 cancelling all claims, following the patentee's failure to respond to the final rejection of Aug. 13, 1997); *see also* Levy & Green, *Biopiracy*, *supra* note 32, at 408.

[12] Ryan D. Levy & Spencer Green, *Pharmaceuticals and Biopiracy: How the AIA May Inadvertently Reduce the Misappropriation of Traditional Medicine*, 23 U. MIAMI BUS. L. REV. 401, 408 (2014) ("It demonstrated, through ancient Sanskrit texts and academic publications, that the patented method lacked novelty.").

for a method for controlling fungi on plants with the aid of... Neem (*Azadirachta indica*) oil. A group of Indian non-governmental organisations filed an opposition to this patent in 1995." They provided documentary evidence to the effect that in India the fungicidal effect of neem was long known. Based on this evidence, the EPO overturned the patent in 2000. The key issue was concentrated in these cases; the knowledge of traditional societies was not eligible in this new kind of legal protection, and as a result, a skewed system of laws was created that failed to protect the knowledge of the global South and instead, in order to gain access to the knowledge of the global North, the South has to pay royalties.[13]

II. THE MISMATCH: IPR FRAMEWORKS AND THE NATURE OF TMK

The global debates which were caused by these wars shifted to the way in which "Intellectual Property Rights (IPRs)" can be awarded to TK in the same way that it is awarded to modern pharmaceuticals. However, the existing IPR regime, which emerged in a post-Industrial Revolution Europe, presents a fundamental conceptual mismatch with the nature of traditional knowledge. Intellectual property laws are, by nature, territorial restricted to the territory of that country and temporal; patents, for example, are for 20 years only. Crucially, they lay down specific criteria for protection. For a patent, these criteria are novelty, inventiveness, and industrial application. Traditional medicinal knowledge, in contrast, is defined by entirely different parameters. The World Health Organisation (WHO) defines "traditional medicine" as "the sum total of the knowledge, skill, and practices based on the theories, beliefs, and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health". This knowledge presents several characteristics that clash directly with the criteria for IPR.[14]

[13] WIPO, *Intellectual Property and Traditional Knowledge*, WIPO/GRTKF/IC/1/3, ¶ 21 (2001) ("[E]existing IP mechanisms cannot fully respond to the characteristics of certain forms of traditional knowledge, namely, their holistic nature, collective origination and oral transmission and preservation.").

[14] B. Calixto, *Efficacy, Safety, Quality Control, Marketing and Regulatory Guidelines for Herbal Medicines (Phytotherapeutic Agents)*, 33 BRAZ. J. MED. BIOLOGICAL RSCH. 179, 180 (2000) [hereinafter Calixto, *Herbal Medicines*] (noting the "great interest" of the pharmaceutical industry in plants as sources for new drugs).

To start with, a majority of traditional knowledge such as traditional medical knowledge is old and fails to satisfy the test of novelty and inventive step. Because this knowledge is already in the public domain, it is debarred from patent protection.

Second, existing patent law does not recognise 'collective' or 'community' rights. Traditional knowledge, however, tends to be generated collectively, to the extent that no inventors are identifiable. In an anthropological approach, it is seen that traditional knowledge is validated by the use of knowledge in communal society, whereas the IPR regime is very individualistic. Third, a significant portion of TMK is transmitted orally (non-codified). This created a critical vulnerability in patent law. For decades, patent examiners had no access to this knowledge when conducting prior art searches. This vulnerability was exploited; until 2012, US law stipulated that an invention was not patentable if it was "known or used by others in this country".[15] Prior art was not taken to be the existence of a product or knowledge amongst people in other locations of the world. This fundamental mismatch has forced the international debate into two distinct pathways: defensive protection and positive protection.

III. DEFENSIVE PROTECTION AND THE TKDL

The first response to the problem of misappropriation was defensive. "Defensive protection" is not granted to the holder of the protection as a right but it is used to reduce the acquisition of the IP rights of the products and processes to outsiders.[16] This is a strategy to make "traditional knowledge" part of the recognised "prior art", thereby destroying its "novelty" so that others may not obtain patent protection. The principal mechanism for this defence is the creation of searchable

[15] U.N. Env't Programme, *Report of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing on the Work of Its Second Meeting*, U.N. Doc. UNEP/CBD/COP/7/6 (2003) (providing the framework that would become the Nagoya Protocol, based on Prior Informed Consent (PIC) and Access and Benefit-Sharing (ABS)); *see also* Shubha Ghosh, *Biopiracy: The Legal Perspective*, 1 J. INTELL. PROP. L. & PRAC. 517, 517 (2006).

[16] Calixto, *Herbal Medicines*, *supra* note 24, at 180 ("It is estimated that the European market alone reached about $7 billion in 1997."); *see also* E. Ernst, *The Risk-Benefit Profile of Commonly Used Herbal Therapies: Ginkgo, St. John's Wort, Ginseng, Echinacea, Saw Palmetto, and Kava*, 136 ANNALS INTERNAL MED. 42, 42 (2002) (citing the $7 billion figure for 1997 European sales).

databases. The most prominent example is India's Traditional Knowledge Digital Library (TKDL). The TKDL project was a massive undertaking designed to bridge the gap between ancient, non-codified knowledge and the technical databases used by modern patent examiners. This project entailed the translation of the formulations, and other prescriptions in the "Ayurveda, Siddha, Unani and Yoga" authoritative texts into the modern languages.[17] This database was then translated into the form of specifications in a patent application and digitised in an easily searching format based on a new "Traditional Knowledge Resource Classification (TKRC)", that was modelled after the "International Patent Classification (IPC)" used by WIPO. "On 2 December 2022, the number of traditional medicine formulations and processes listed in the database was over 424,000." Patent offices are provided with a free version of this database under a non-disclosure agreement. "The patent offices of Australia, Canada, Chile, Denmark, Europe, Germany, India, Japan, the United Kingdom, and the USA have concluded such agreements and are accessing the TKDL." The results of this defensive strategy have been empirically verified. According to the TKDL, a great deal of patent applications have been rejected and withdrawn. According to data published on the TKDL site, 58 cases of patent application withdrawal have occurred in the "European Patent Office" and one case of patent application withdrawal has been experienced in the US Patent and Trademark Office due to the TKDL evidence of prior art. The TKDL has been in a position to influence 272 patent applications since July 2009, with nearly half being registered in the European Patent Office. There is however a major drawback to this method. This model of defense does not give any benefits to the creator or holder of knowledge. Consequently, "discussions in the past on Traditional Knowledge... focused more on defensive protection... In recent years, many have been exploring the possibilities of positive protection."

[17] S.S. Rana & Co. Advocates, *supra* note 17 (listing "32 references written in different languages such as ancient Sanskrit, Urdu and Hindi texts, a paper published in 1953 in the Journal of the Indian Medical Association.").

IV. POSITIVE PROTECTION VIA THE EXISTING IPR SYSTEM

Positive protection, in contrast, grants rights to the creators or holders. This path explores whether the existing tools of IPR patents, trade secrets, and trademarks can be adapted to secure benefits for TMK holders.

4.1. Patent Protection

The use of patents for TMK is highly contested. To prevent the misappropriation seen in the turmeric case, India amended its patent law. The 2002 amendment provided that "an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of a traditionally known component or components" is not an invention. This is enshrined in the Patents Act of Section 3(p). Simultaneously, the Act is not an obstacle towards patents of new inventions within the sphere of "Indian Systems of Medicine". "Ayurveda, Siddha and Unani" have a possibility of patents on new formulations and processes provided they pass the test of patentability. The case of "Jeevani" can be considered the prime illustration of the given model.[18] This was a case about an herbal medicine that was invented by the scientists at the tropical botanic garden and research institute (TBGRI) in Kerala India. It is anchored on the folk medicinal experience of the Kani tribe in relation to the arogyapaacha plant (Trichopus zeylanicus). Researchers at TIBGRI realised that "without intellectual property protection they would not be able to generate much revenue by licensing the drug they developed."[19] TIBGRI registered three process patents in India and then entered into an agreement to transfer technology relating to arogyapaacha to the interested parties by paying them a licence fee. Under the advice of TIBGRI the Kani Samudaya Kshema Trust was established... money benefits, comprising of a percentage of the royalties have been deposited in the trust.[20] The Jeevani

[18] Manuel Ruiz, The Role of 'Prior Art' in the Context of Traditional Knowledge and Genetic Resources, at 4 (Ctr. for Int'l Env't L. Oct. 2002) (explaining defensive protection as using the patent system's own rules "to ensure that prior art searches fully take into account existing traditional knowledge...").

[19] CSIR, *TKDL Home*, *supra* note 3. This non-disclosure (confidentiality) requirement is a key feature, distinguishing the TKDL from a simple "public domain" database.

[20] WIPO, *Proposal for Inclusion of the Traditional Knowledge Digital Library (TKDL) in the PCT Minimum Documentation*, PCT/MIA/25/7 (2018) (listing the patent offices with access, including EPO, USPTO, JPO, UK, Canada, Germany, Australia, India, and Chile).

case represents a successful model of benefit sharing. However, Wilder (2000) identifies significant constraints that make this case an exception rather than the rule. First, most traditional knowledge is ancient and does not meet the requirements of novelty.[21] Second, traditional knowledge is held collectively, conflicting with the "inventor" requirement. Third, the process of draughting and prosecuting applications of patent is more complex and expensive than can be handled and afforded by holders of traditional knowledge.

4.2. Trade Secret Protection

The other mechanism that can be used in protecting the intellectual property rights in traditional medicine is through trade secret protection. Article 39.2 of the TRIPS Agreement sums up the following requirements of this protection:" the information must be secret, it must have commercial value since it is secret, and must have been taken by reasonable steps... to keep it secret." This is a limited mechanism that is somewhat in use.[22] "When the traditional medicinal knowledge is ancient, then the chances of it being a secret and thus guardable as a trade secret are low." The reason is that a certain piece of traditional medical knowledge might have become known either generally. Protection can only be practicable in situations whereby the traditional knowledge is shared by a small and closed group of traditional healers or is transmitted through generations within a family.

4.3. Trademarks and Geographical Indications

Trademarks and Geographical Indications (GIs) offer a more viable, though indirect, form of positive protection. Certification marks may be useful... in the event an organisation is established "to certify that medicinal products are made in accordance with established standards." Collective marks may be useful... to indicate that a particular product... complies with the rules of the collective. Examples of trademarks in the Indian traditional medicine manufacturing sector

[21] Manuel Ruiz, The Role of 'Prior Art' in the Context of Traditional Knowledge and Genetic Resources, at 4 (Ctr. for Int'l Env't L. Oct. 2002) (explaining defensive protection as using the patent system's own rules "to ensure that prior art searches fully take into account existing traditional knowledge...").

[22] *TRIPS Agreement*, *supra* note 42, art. 39.2. *See also* WIPO, WIPO GUIDE TO TRADE SECRETS AND INNOVATION 24–27 (2024) (detailing the TRIPS requirements for information to be considered a trade secret).

include Dabur, Baidyanath, Zandu, and Himalaya. Geographical indications are particularly relevant, as they identify goods... "where a given quality, reputation or other characteristic... is essentially attributable to its geographical origin".[23] This concept is of utmost importance in TM, as crude herbs prescribed in classical Ayurveda texts are geo-specific. "There are several examples of products with registered geographical indications which have TM applications, such as Navara... rice, Aleppy and Coorg cardamom" ... [and] Sangli turmeric.

V. SUI GENERIS SYSTEMS

Due to the challenges posed earlier to the application of intellectual property to the traditional knowledge, there are calls to create a *sui generis* system, a new system that would be tailored to the unique features of TMK. Proponents of this approach, such as Brazil, have argued in the WTO TRIPS Council that the "protection provided by the conventional IPR regime is limited... Traditional knowledge is often held collectively, which makes it difficult to determine its titleholders. It may also be intergenerational, which may not adequately fit the requirement of novelty. Dissemination... is often made orally." Several nations and organisations have experimented with this model, including the Andean Community (Decision 391), the Philippines (Indigenous Peoples Rights Act, 1997), and the Organization of African Unity (OAU) (African Model Legislation). Despite these efforts, the literature reveals deep scepticism regarding the feasibility of an international sui generis system. The "parameters, elements, and modalities" of such a system are still being worked out. Correa (2002), in a study on the subject, notes that "due to the principle of territoriality, protection at home would neither prevent the misappropriation of the protected knowledge in other countries nor allow the TK holders to obtain any type of protection abroad." [24] Correa also reveals the underlying, open questions that torment the sui generis

[23] T. C. James, *Traditional Medicine and Intellectual Property Rights: Law and Policy Perspectives*, FITM Discussion Paper No. 1, at 27–32 (RIS Nov. 2022) (analyzing the application of trade secrets, trademarks, and geographical indications to traditional medicine).

[24] CARLOS M. CORREA, TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY 21–25 (Quaker U.N. Off. 2001) (analyzing the conceptual and legal difficulties in designing a *sui generis* system, including issues of scope, beneficiaries, and duration of protection); *see also* WIPO, *Intergovernmental Committee on Intellectual*

argument: Who are the titleholders and in what form? What is the subject of protection? What type of rights are to be bestowed (exclusive rights or simply remuneration), and what must be the term of protection? Given these challenges, Wilder (2000) concludes that "it is premature to suggest proceeding with negotiations on an international sui generis system for the protection of traditional knowledge." This view is mirrored in the FITM discussion paper, which notes that "international acceptance... is as of now an insurmountable one, considering the experience of the discussions in the WIPO IGC."

VI. Conclusion

The intellectual architecture erected to shield TMK from misappropriation reveals a profound, perhaps systemic, preoccupation with formal legal mechanisms. This inquiry has navigated the three dominant, yet ultimately incomplete, paradigms proposed within the international discourse: the reactive fortification of defensive protection, exemplified by the TKDL's archival strategy; the adaptive, often contorted, application of positive protection through existing IPR frameworks; and the elusive, theoretically fraught quest for a specialized *sui generis* system. We have demonstrated that while the TKDL successfully invalidates spurious patent claims, it offers no affirmative reward to the knowledge-holders. Conversely, efforts to domesticate TMK within patent law, as in the *Jeevani* model, remain exceptional, stymied by prohibitive costs and fundamental mismatches concerning novelty and collective ownership. The *sui generis* path, while intellectually appealing, dissolves upon inspection into a morass of unresolved conceptual hurdles regarding titleholders, duration, and international reciprocity. The failure of these systems, however, is not merely technical. The central thesis advanced herein pivots from this critique of legal design to the identification of a more fundamental, sociological misalignment: the critical lacuna separating state-led policy from the lived legal culture of TMK practitioners. This paper argues that the preoccupation with jurisprudential

Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO.INT, https://www.wipo.int/tk/en/igc/ (last visited July 20, 2024) (detailing the ongoing, complex negotiations).

architecture has obscured the agency of the knowledge-holders themselves. As the socio-legal evidence examined reveals, the 'target' community is not a passive beneficiary awaiting legal salvation. Instead, practitioners exhibit a rational, conscious *avoidance* of the formal IPR apparatus. Their reality is dictated not by patent prosecution, but by the high transaction costs both financial and cognitive of engaging the state's complex legal machinery. This avoidance does not imply a vacuum of governance. Rather, the fieldwork illuminates a robust, parallel system of protection rooted in secrecy, familial transmission, and community-based norms a system that prizes non-litigious dispute resolution. When infringement occurs, the practitioners' recourse is not the courtroom, but negotiation, communal sanction, or even a form of “lumping it” underpinned by social or religious fatalism.

This finding suggests that the state-centric IPR debate is, in effect, speaking a language foreign to its intended subjects. We are attempting to impose a paradigm of individual, exclusionary rights upon communities whose protective mechanisms are relational, secretive, and integrated into a broader social fabric. Admittedly, the empirical basis for this cultural analysis drawing significantly from a localized study in Lamongan Regency invites caution against over-generalization. The specific modalities of this legal culture are undoubtedly context-specific. Yet, this localized insight serves as a powerful methodological critique. It compels a necessary pivot in the scholarly and policy discourse. The findings here challenge the very foundation of the international debate, suggesting that decades of high-level negotiations at WIPO and the WTO may be predicated on a false assumption: that *if we build it, they will come*. Future inquiry must, therefore, move beyond doctrinal analysis and architectural design. What is required is a profound ethnographic turn, a concerted socio-legal investigation into the diverse legal pluralisms governing TMK across different cultures. Before designing new laws, we must first understand the old norms. The ultimate challenge is not one of legal drafting, but of legal translation: bridging the existential gap between the state's paradigm of property and the community's paradigm of protection. Without this bridge, the most sophisticated IPR frameworks will remain, as they are now, magnificent but empty edifices.

ARTIFICIAL INTELLIGENCE AND THE ETHICS OF JUSTICE DELIVERY IN ARBITRATION: A ROADMAP FOR RESPONSIBLE INTEGRATION

***Dr. Showkat Ahmad Bhat*[•], *Sobiya Manzoor Pullo*[••], *Dr Mudassir Nazir*[•••]**

ABSTRACT

The adoption of Artificial Intelligence (AI) in International Commercial Arbitration is transforming the dispute resolution process, offering enhanced efficiency, cost-effectiveness, and consistency. AI integration can streamline processes such as document review, predictive analysis, and virtual hearing management, thereby reducing delays and costs in arbitration. However, it raises significant ethical and accountability concerns that must be addressed to preserve the fairness and integrity of the arbitration process.

This article explores the multifaceted ethical concerns related to the use of AI in Arbitration, including algorithmic bias, lack of transparency, and the erosion of human oversight. Moreover, biases embedded in training data can perpetuate discrimination, undermining the credibility of arbitration decisions. The issue of accountability also emerges as it remains unclear who should be held responsible for errors or issues – whether it is the developers, users, or the system itself.

Moreover, this article aims to explore potential solutions to these challenges, advocating for a multifaceted approach and contributing to the development of global standards and best practices. This would enable AI to enhance rather than undermine the principles of impartiality, equity, and justice in international commercial arbitration. Ethical AI frameworks and robust regulatory standards are imperative to ensure AI systems operate transparently and without bias

[•] The author works as Sr. Assistant Professor, School of Law, University of Kashmir can be reached at sabhat123@rediffmail.com

[••] The co-author is a Ph.D Scholar at the School of Law, University of Kashmir can be reached at sobiyamanzoor@yahoo.in

[•••] The co-author works as an Assistant Professor, Galgotias University, Noida can be reached at mudassirnazir62@gmail.com

I. INTRODUCTION

The convergence of international arbitration and artificial intelligence (AI) presents both revolutionary possibilities and formidable obstacles. Artificial intelligence (AI) tools, including natural language processing and machine learning algorithms, have the power to completely rethink arbitration in many ways, improving accessibility, accuracy, and efficiency. For example, AI is significantly more efficient than humans at organizing, analyzing, and summarizing large amounts of documents, which might improve case management. It can also assist in identifying patterns and trends in past arbitration decisions, strengthening parties' arguments during hearings, and even predicting potential case outcomes based on historical data.

Additionally, AI-powered solutions like chatbot-based support systems and automated legal research assistants can provide real-time advice to disputing parties, arbitrators, and attorneys, improving the efficiency and affordability of the arbitration process. AI-powered translation tools can also improve cross-border dispute resolution by minimizing language barriers, thereby facilitating smoother communication in international arbitration.

To preserve essential legal and moral values, such as openness, responsibility, dependability, and impartiality, incorporating AI into international arbitration necessitates close examination. Questions surrounding algorithmic neutrality, potential biases in training data, and the interpretability of AI-generated insights must be addressed to ensure that AI does not undermine fairness or due process.[1]

To preserve essential legal and moral values, such as openness, responsibility, dependability, and impartiality, incorporating AI into international arbitration necessitates close examination.

II. INTEGRATING TECHNOLOGY IN ARBITRATION: A NEW ERA OF DISPUTE RESOLUTION

The effectiveness of dispute resolution procedures has been significantly improved and revolutionized by the use of technology in international arbitration.[2] In order to satisfy modern demands, incorporating technology improvements has

[1] Ammar Zafar, *Balancing the Scale: Navigating Ethical and Practical Challenges of Artificial Intelligence (AI) Integration in Legal Practices* 4 Discover Artificial Intelligence (2024).

[2] P. M. Scherer, *International Arbitration 3.0 – How Artificial Intelligence Will Change Dispute Resolution*, 3 AUSTRIAN Y.B. Int' 'L Arb 43 (2019)

become crucial as globalization picks up speed and corporate transactions become more intricate. The emergence of online dispute resolution platforms, which have transformed arbitration by permitting remote participation, is among the most important advancements.[3] By reducing travel costs and saving time, these platforms give parties more flexibility and convenience. Artificial intelligence techniques have also greatly enhanced legal research, big data analysis, and legal document preparation, guaranteeing increased precision and effectiveness. The extensive use of teleconferencing and videoconferencing is another significant technological development in international arbitration. By removing geographical restrictions and enabling smooth communication between parties, arbitrators, and specialists, these communication tools have improved the viability and affordability of cross-border dispute resolution.[4] Specifically, videoconferencing mimics the experience of in-person hearings, encouraging direct participation and enhancing communication throughout the process. Arbitration proceedings are now more organized and aesthetically pleasing due to the integration of electronic evidence presentation technologies, which have also simplified the process of presenting intricate documents, exhibits, and multimedia resources.[5] Arbitration has been further transformed by the advent of virtual hearing rooms and the digitization of case management systems. Case management systems allow for efficient document organization and retrieval, enhancing accessibility for all stakeholders. Meanwhile, virtual hearing rooms recreate the traditional hearing environment.[6]

Therefore, technological advancements have significantly reshaped international arbitration, increasing efficiency, reducing costs, and broadening access to justice. The adoption of online dispute resolution platforms, teleconferencing, digitized case management systems, and virtual hearing rooms has modernized the field, making dispute resolution more effective and widely available.[7] As technology

[3] Samuel, *Artificial Intelligence and Learning About International Arbitration*, 41 ALTERNATIVES TO THE HIGH COST OF LITIGATION, 108–10 (2023).
[4] A.S. Zuckerman, *Artificial Intelligence – Implications for the Legal Profession, Adversarial Process and Rule of Law*, OXFORD L. S. 136 (2020).
[5] Harry Surden, *Artificial Intelligence and Law: An Overview*, 35 GA. ST. U. L. REV. 19, 19–22 (2019).
[6] Ibid.
[7] F.J. Zuiderveen Borgesius, *Strengthening Legal Protection Against Discrimination by Algorithms and Artificial Intelligence*, 24 INT'L J. HUM. RTS. 1572 (2020).

continues to evolve, arbitration practitioners must stay informed and leverage these innovations to meet the dynamic challenges of international dispute resolution.

2.1. Assessing the Influence of Artificial Intelligence on Global Arbitration Practices

International arbitration has seen a significant transformation due to technological improvements, which have improved the process's overall efficiency and accessibility. The advent of virtual arbitration sessions, which are made feasible by video conferencing technologies, is a significant advancement in this process.[8] Parties from all around the world can participate remotely because to these platforms, which remove geographical restrictions. This innovation promotes more inclusivity and diversity in arbitration procedures while simultaneously lowering travel costs and time restrictions.

The incorporation of artificial intelligence (AI) into case management systems is another noteworthy innovation. Large amounts of legal data may be processed quickly by AI-powered technologies, which can also evaluate precedents and give arbitrators predictive insights.[9] Furthermore, AI-powered translation tools facilitate communication during arbitration by removing linguistic obstacles. By streamlining case analysis and automating routine tasks, AI enhances both the speed and accuracy of decision-making.

By enhancing security and transparency, blockchain technology has also revolutionized international arbitration. It enhances accountability and trust in the system by enabling real-time tracking of procedural steps and securely storing evidence. Blockchain increases the legitimacy of arbitration procedures and lowers the chance of tampering by protecting data integrity.[10]

By speeding up case resolution, cutting expenses, enhancing access to justice, and fostering equality among parties, these technical developments taken together are changing international arbitration. Additionally, they increase confidence in the

[8] Michael Haenlein & Andreas Kaplan, *A Brief History of Artificial Intelligence: On the Past, Present, and Future of Artificial Intelligence*, 61 CAL. MGMT. REV. 5, 5–14 (2019).
[9] Nils J. Nilsson, *The Quest for Artificial Intelligence: A History of Ideas and Achievements 8* CAMBRIDGE UNIV. PRESS (2010).
[10] M.C. Bueitin, *Towards Intelligent Regulation of Artificial Intelligence*, 10 EUR. J. RISK REG. 41 (2019).

arbitration process, which makes it more dependable, inclusive, and effective. AI's expanding use in international arbitration presents both special benefits and difficulties.[11] Its capacity to improve the accuracy and efficiency of arbitration processes is among its most important advantages. AI can analyze extensive datasets, identify patterns, and generate swift, reliable predictions, thereby assisting arbitrators in making well-informed decisions. It also streamlines document review by quickly identifying relevant evidence, reducing the need for time-consuming manual work.[12]

However, there are significant issues with the use of AI in arbitration, especially with relation to accountability and transparency in the decision-making process. Bias and fairness are called into doubt by the use of sophisticated algorithms, which frequently function with no human control. Additionally, because arbitration hearings are delicate, concerns about data security and privacy need to be handled properly. For arbitrators everywhere, finding a balance between AI's benefits and its drawbacks continues to be a major obstacle. These issues can be addressed with a careful strategy that blends human knowledge with AI-powered skills, guaranteeing that technological developments strengthen rather than compromise the integrity and fairness of international arbitration.

International arbitration is being revolutionized by artificial intelligence (AI), which is changing many facets of the dispute settlement procedure. AI has developed into a vital instrument that greatly enhances arbitration processes as it continues to progress. Legal professionals can concentrate on the more intricate and strategic facets of dispute resolution by using AI to automate monotonous work and provide insightful analysis. In addition to increasing efficiency, this raises the standard of international arbitration decision-making.[13]

A new era of efficiency, cost-effectiveness, and dependability is being ushered in by AI's capacity to handle enormous volumes of data and learn from previous instances, which is changing the way conflicts are settled. AI enables arbitration specialists to focus more on the intricacies of each case by expediting time-

[11] S. Chauhan & A. Keprate, *Standards, Ethics, Legal Implications & Challenges of Artificial Intelligence*, IEEE Int l Conf. on INDUS. ENG'G & ENG'G MGMT. 1049 (2022).
[12] *Ibid.*
[13] Ashley Deeks, *The Judicial Demand for Explainable Artificial Intelligence*, 118 COLUM. L. REV. 1829 (2019).

consuming processes.[14] Additionally, its data-driven methodology guarantees that judgments are founded on thorough and well considered facts, increasing the overall precision of arbitral findings.

AI has many uses in the legal industry, including as document assessment, legal research, contract analysis, case prediction, and virtual hearings. Its capacity to process vast amounts of data quickly and precisely is one of its biggest benefits; it drastically cuts down on the time and expenses involved in conventional legal research.[15] AI systems examine previous cases and legal precedents using machine learning algorithms to forecast possible outcomes and settlement choices. This gives arbitrators the ability to base their decisions on thorough and pertinent information.

AI has the ability to completely transform international arbitration, but it shouldn't take the place of human skill. AI has the ability to change the face of cross-border conflict resolution by increasing efficiency, reducing bias, and producing more equitable and trustworthy results. By streamlining arbitration procedures, this technological development should give parties more confidence and ease while navigating complicated legal issues.[16] All parties involved stand to gain from the further development of AI integration, which will promote a more effective, easily accessible, and just arbitration process.

2.2. AI in Arbitration: The Indispensable Role of Human Judgment and Supervision

Arbitration is still being revolutionized by AI technology, but it still needs a critical component i.e., human judgment. Lawyers are essential in ensuring that AI in AI-powered arbitration stays within moral and legal bounds. In the end, they make well-informed decisions that take into consideration both data and human effect after interpreting AI-generated outcomes and examining the logic behind

[14] P.B. Marrow, M. Karol et al., *Artificial Intelligence and Arbitration: The Computer as an Arbitrator—Are We There Yet?*, 74 DISP. RESOL. J. (2020).
[15] Katja Grace, *When Will AI Exceed Human Performance? Evidence from AI Experts*, 62 J. AIR 729 (2018).
[16] Rahul Kumar & Priyanshu Kumar, *Future of ADR in India: "Alternative" to "Appropriate" Dispute Resolution*, 2 INDIAN J. INTEGRATED RSCH. L. (2022).

them. For AI-based arbitration to remain fair, transparent, and accountable, human monitoring is crucial.[17]

Even while AI systems are intended to be effective and impartial, they are devoid of the empathy, intuition, and contextual awareness that human arbitrators possess. Through application of ethical principles, evaluation of particular circumstances, and consideration of the intricacies of each case, human engagement assures fair and equitable outcomes. Moreover, experienced arbitrators provide a comprehensive assessment of complex cases, particularly those involving multiple variables. Overall satisfaction with the arbitration process is increased by their capacity to sympathize with the parties.[18]

Another essential component of reducing AI biases is human oversight. The impartiality of arbitration results may be impacted by machine learning models that inadvertently acquire biases during data collection and training. Legal experts contribute to preserving the integrity of the arbitration process by closely observing AI algorithms. In the end, a trustworthy arbitration system that preserves equality, fairness, and transparency is produced by a balanced blend of AI technology and human skill.

Any successful legal strategy is built on a foundation of legal study and analysis. Lawyers must become proficient with AI tools for document assessment, case prediction, and legal research to participate in AI-driven arbitration. They can gain a competitive edge in arbitration by using these technologies to expedite research, get pertinent case law, and effectively extract crucial insights. Effective AI use, however, necessitates a blend of technical know-how, legal knowledge, and human judgment. The secret to success is utilizing AI's promise while maintaining the core values of the legal profession.[19]

[17] Ethan Katsh et al., *Ten Years of Online Dispute Resolution: Looking at the Past and Constructing the Future*, 38 U. TOLEDO L. REV. 101 (2006).
[18] M. Ethan Katsh & Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* OXFORD UNIV. PRESS 7 (2017).
[19] Todd B. Carver & Albert A. Vondra, *Alternative Dispute Resolution: Why It Doesn't Work and Why It Does*, HARV. BUS. REV. 7 (May 30, 1994), https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-itdoes (last visited Sep. 30, 2025).

III. PRESERVING THE INTEGRITY OF ARBITRATION THROUGH FAIRNESS AND IMPARTIALITY

In order to find and remove any potential biases or discriminatory practices, lawyers must carefully assess AI systems. Confidentiality and data security must also be maintained. Given that AI handles enormous volumes of sensitive data, attorneys need to be knowledgeable about data privacy regulations and put strong safeguards in place to protect client information.

Proficiency in communication and negotiation is essential in the context of AI-powered arbitration. For non-legal stakeholders, such as clients and arbitrators who are not familiar with the complexities of the law, lawyers must make difficult legal concepts understandable. All parties are certain to comprehend the legal ramifications and the rationale behind choices when there is clear and straightforward communication.[20] Additionally, even in AI-assisted arbitrations, lawyers must push for positive outcomes, so bargaining skills are still essential.

In AI-based arbitration, cooperation is just as crucial. To guarantee seamless and effective procedures, legal practitioners must collaborate with AI systems and other specialists. Adaptability and ongoing learning are crucial as the area of AI-enabled arbitration develops. Lawyers can improve their tactics and maintain their effectiveness in arbitration by keeping up with developments in AI technology and comprehending both its advantages and disadvantages.[21]

3.1. The Merits and Drawbacks of Employing Artificial Intelligence in Arbitral Proceedings

Legal practitioners can use AI to advance their practice and increase the effectiveness of dispute resolution by acquiring the required skills. AI-driven arbitration must continue to prioritize justice, openness, and ethical considerations. Lawyers will be well-positioned to handle this changing sector if they support lifelong learning and flexibility. Lawyers may maximize arbitration results and guarantee a more effective, fair, and transparent dispute settlement

[20] Ihab Amro, *Online Arbitration in Theory and in Practice: A Comparative Study of Cross-Border Commercial Transactions in Common Law and Civil Law Countries* 7 CAMBRIDGE S. PUB. (2019).
[21] *Ibid.*

procedure by combining AI's analytical capabilities with their legal knowledge.[22] Legal practitioners must find a balance between utilizing technology and maintaining the human aspects that characterize justice as AI continues to influence arbitration.

IV. RECONCILING HUMAN DISCRETION AND AI AUTOMATION IN ARBITRAL DECISION-MAKING

A cautious and nuanced approach is needed to strike a balance between the responsibilities of AI and human judgment in arbitration. Even if artificial intelligence (AI) has the potential to improve productivity and expedite arbitration procedures, human judgment must always be maintained in order to preserve justice and integrity. AI can greatly save expenses and time by speeding up processes like data analysis, legal research, and document review. However, human oversight is required to validate results and give contextual interpretation because machine learning algorithms have inherent limits.[23]

When it comes to applying legal concepts to specific circumstances, arbitrators' interpretive abilities, discretion, and empathy are invaluable. Clear standards must be established to decide when automated judgments should be applied or overturned based on ethical considerations and case-specific elements in order to achieve the best possible balance between AI capabilities and human decision-making. [24] Arbitration may be made more effective while preserving accountability and justice by utilizing the advantages of both AI and human experience.

There are significant ramifications for the use of AI in arbitration and legal practice. The automation of time-consuming, repetitive work, such conducting

[22] Suzu Paisley & Margaret J. Foster, *Innovation in Information Retrieval Methods for Evidence Synthesis Studies*, WILEY ONLINE LIBRARY (Sept. 30, 2018), https://onlinelibrary.wiley.com/doi/abs/10.1002/jrsm.1322 (last visited Oct. 2, 2025).
[23] Ihab Amro, *Online Arbitration in Theory and in Practice: A Comparative Study of Cross-Border Commercial Transactions in Common Law and Civil Law Countries* CAMBRIDGE S. PUB. 2019).
[24] George Lawton, *AI Transparency: What Is It and Why Do We Need It?*, TECH TARGET (Mar. 3, 2023), https://www.techtarget.com/searchcio/tip/AI-transparency-What-is-it-and-why-do-we-need-it (last visited Oct. 5, 2024).

legal research or sifting through large amounts of papers during evidence hearings, is one of the biggest advantages. These procedures are sped up by AI-powered solutions, freeing up attorneys to concentrate on more intricate legal analysis and strategic decision-making. Predictive analytics is also made possible by AI algorithms, which enable arbitrators to evaluate case outcomes and settlement prospects by examining historical decisions and data trends.

Concerns around bias in AI-driven choices, however, continue to be a significant obstacle. Due to its reliance on past data, AI may unintentionally reinforce preexisting prejudices, producing biased results. To reduce these dangers, algorithmic transparency must be guaranteed, and AI-generated findings must be routinely examined. To protect the integrity of arbitration processes, ethical considerations must continue to be given top importance when implementing AI. Additionally, in order to successfully comprehend, interpret, and contest machine-generated outcomes, legal professionals might need to pick up new abilities.[25]

AI has the ability to completely transform arbitration by increasing accessibility to justice and efficiency, but its application needs to be done carefully. Preventing discriminatory outcomes in AI algorithms requires addressing potential biases. AI systems should be trained using representative, varied, and bias-free data, with frequent audits and monitoring to spot and address any discrepancies.

AI should never completely replace human judgment, even though it can improve accuracy and expedite arbitration. In order to preserve equity, empathy, and the capacity to take into account particular situations that algorithms are unable to adequately represent, the human factor is essential. AI shouldn't be seen as a replacement for legal experts' knowledge, but rather as a potent tool to help them. Arbitration can gain from greater efficiency while upholding the core values of justice and equity if AI is integrated appropriately.[26]

AI-assisted arbitration requires close examination since ethical issues and human participation are crucial. It is important to recognize artificial intelligence's (AI) limitations and potential biases, even if AI has made great strides in evaluating

[25] Ljiljana, *International Commercial Arbitration in Cyberspace: Recent Developments*, 21 NW. J. INT'L L. & BUS. 345 (2001).
[26] *Supra* note 21.

large datasets, producing accurate forecasts, and expediting decision-making processes. For AI-driven arbitration systems to be fair, accountable, and transparent, human oversight is essential.

Human knowledge is essential for correctly interpreting context, sustaining ethical norms, and minimizing unfair or unfavorable outcomes since arbitration involves complex legal concerns as well as the assessment of human behavior and intent. By rigorously evaluating AI-generated conclusions for biases or mistakes, taking into account subjective aspects beyond quantitative analysis, and taking cultural sensitivities into account when making significant choices, human arbitrators offer the required counterpoint. Additionally, human interaction adds a level of compassion and empathy that AI cannot completely replace.

Therefore, to achieve just and equitable resolutions, AI-driven arbitration must incorporate human judgment. Humans can resolve ethical issues with AI by actively engaging in the process, guaranteeing that choices are made honorably and in conformity with moral and legal standards.[27] Human participation also makes it possible to take into account special situations and exceptions that AI systems might overlook. This collaboration between AI capabilities and human skills promotes a more thorough and equitable arbitration system.

A number of ethical issues are also brought up by the use of AI in arbitration. The lack of explainability and transparency in AI-generated decisions is a significant worry since it may result in unfair outcomes and accountability problems. Furthermore, past data used to train AI systems may contain biases, which raises the possibility of biased decisions that perpetuate social injustices. As AI systems handle and store sensitive personal data, privacy and confidentiality issues also surface, posing worries about data security and the possibility of misuse or illegal access.[28]

[27] P.B. Marrow, M. Karol & S. Kuyan, *Artificial Intelligence and Arbitration: The Computer as an Arbitrator—Are We There Yet?*, 74 DISP. RESOL. J. (Am. Arb. Ass'n 2020), https://ssrn.com/abstract=3709032

[28] W.G. De Sousa, E.R.P. de Melo, P.H.D.S. Bermejo, R.A.S. Farias & A.O. Gomes, *How and Where Is Artificial Intelligence in the Public Sector Going? A Literature Review and Research Agenda*, 36 GOV'T INFO. Q. 101392 (2019).

Clear rules and legislative frameworks that support equity, openness, non-discrimination, and adherence to data protection regulations are necessary to guarantee the moral use of AI in arbitration. To preserve justice and equity, it is necessary to resolve the serious ethical and legal issues surrounding determining who is responsible for mistakes or biases. It is essential to continuously monitor and assess AI systems used in arbitration in order to identify and address any biases or discriminatory trends that may eventually surface. Such supervision is necessary to preserve the integrity of the arbitration process, sustain public confidence in it, and reinforce its impartiality.

V. CONCLUSION

The integration of artificial intelligence into international arbitration presents a transformative shift, offering efficiency, cost-effectiveness, and enhanced decision-making capabilities. AI-driven tools, including predictive analysis, automated legal research, and virtual hearing platforms, have the potential to streamline arbitration proceedings, making them more accessible and responsive to the demands of a globalized legal landscape. However, the introduction of AI into arbitration also brings forth significant challenges, including concerns about algorithmic bias, transparency, data privacy, and the potential erosion of human discretion in legal decision-making.

To ensure that AI strengthens rather than undermines the integrity of international arbitration, a balanced approach must be adopted. The way forward requires a structured framework that incorporates the following key principles. Firstly, clear regulatory frameworks must be established to ensure transparency in AI-driven decision-making. Legal practitioners, policy makers, and arbitration institutions must work together to develop ethical guidelines that promote fairness, prevent biases, and ensure explainability in AI-assisted arbitration. Secondly, while AI can enhance efficiency, it should not replace human judgment. Arbitrators must maintain an active role in reviewing AI-generated recommendations, ensuring that final decisions account for legal principles, contextual nuances, and the human element of justice. AI should function as an assistive tool rather than an autonomous adjudicator. Thirdly, the international arbitration community must establish common standards for AI applications to ensure uniformity and

reliability across jurisdictions. Fourthly, to mitigate risks of biased outcomes, AI models must be trained on diverse and representative datasets. Continuous auditing and monitoring should be implemented in order to detect and correct any systematic biases that influence arbitration decisions unfairly. Lastly, arbitrators, legal practitioners, and arbitration institutions must invest in AI literacy programs to equip professionals with the knowledge and skills required to interact with AI-driven tools effectively. Training initiatives will facilitate informed decision-making.

By implementing these measures, AI can be harnessed to enhance the arbitration process without compromising fundamental legal and ethical principles. The future of arbitration lies in a harmonious integration of AI's computational strengths with human expertise, ensuring that efficiency is balanced with fairness, transparency, and due process. As AI continues to evolve, the arbitration community must remain vigilant, adaptive, and proactive in addressing challenges while capitalizing on the opportunities that AI presents in advancing international dispute resolution.

EXPLORING THE NEXUS OF MICRO LEVEL DESIGNERS, SUSTAINABILITY, AND UNREGISTERED DESIGNS IN THE FASHION INDUSTRY: A COMPARATIVE STUDY WITH THE ISRAELI AND EU UDR REGIME

Dr. Zubair Ahmed Khan*, Vaani Negi**, Rudransh Bajpai*

ABSTRACT

This paper explores the critical necessity of Unregistered Design Rights ('UDRs') in India, focusing specifically on the fashion industry. It emphasizes the essence of the fashion realm, characterized by personalized craftsmanship and expressive flair, while highlighting the urgent need for fairness and recognition, particularly for marginalized groups, prominently the queer community, and small sector businesses. Despite the growing importance of the global fashion industry, India's current intellectual property rights laws only protect registered designs, rendering the present regime inadequate in protecting UDRs. Consequently, this inadequacy disadvantages small businesses and designers from marginalised communities by limiting their ability to fully capitalize on the existing Intellectual Property Rights framework. Advocating for the introduction of UDRs in India, the paper proposes a more sustainable approach to fashion product production and aims to mitigate the negative impacts of fast fashion. By taking inspiration from the UDR model of the European Union and Israel, the paper argues that granting automatic protection to unregistered designs would empower designers, especially those from marginalized backgrounds, to navigate the dynamic fashion landscape more effectively. Additionally, the paper suggests key reforms such as amending the Designs Act to recognize textile design as a distinct category, simplifying the registration process, and raising awareness among authorities about the unique requirements of small businesses and marginalised sectors.

* The author works as an Assistant Professor, School of Law & Legal Studies, GGSIP University, New Delhi can be reached at zubairkhan@ipu.ac.in

** The co-author is Associate at Anand & Anand can be reached at negivaani55@gmail.com

*** The co-author is 5th year BA. LLB (Hons.) Student at Legal Studies, GGSIP University, New Delhi, can be reached at rudranshbajpai@gmail.com

I. INTRODUCTION

The design of an industrial product can be the primary determinant of its appeal, underscoring the critical need to safeguard its protection. Fashion Design is one form of design which finds protection under the common framework of Industrial Design, as enshrined in Article 25 of the Trade-Related Aspects of Intellectual Property Rights Agreement (hereinafter, 'TRIPS'). In India, only the registered designs are protected under the Designs Act, 2000. Furthermore, the Copyright Act, 1957, only gives a quantitatively limited protection to Unregistered Design Rights (hereinafter 'UDR'). The sartorial realm, characterized by tailored clothes and bespoke craftsmanship, epitomizes attention to detail and individuality. Flamboyant in expression, creative in artistry, and often idiosyncratic in style, designers from marginalised sectors, such as prominently, the queer community, and small businesses (hereinafter, 'Micro-Level Fashion Designers') often seek uniqueness in their designs, an antithesis to conformity, to stand out from the mainstream industry – either as a means to self-expression or opulence. This paper highlights an exigency – the pressing need for fairness and acknowledgement, particularly for Micro-Level Fashion Designers within this sphere. Yet, the existing Intellectual Property Rights (hereinafter, 'IPR') regime in India underscores lamentable shortcomings, offering narrowly crafted remedies only to registered designs. This places Micro-Level Fashion Designers at a disadvantage in the fashion industry, bereft of the benefits and granted to registered designs under the current IPR regime.

In this challenging environment, unregistered design protection emerges as a vital remedy, offering a unique selling point that circumvents the obstacles and indignities faced by Micro-Level Fashion Designers during the registration process. This paper, therefore, advocates for the introduction of the UDR Regime in India, which would enable a sustainable pathway for the production of fashion products. Such an environment would also work to balance out the ill effects of fast fashion on society.

II. FASHION OF THE MARGINALISED GROUPS AND INTELLECTUAL PROPERTY: BRIDGING CREATIVITY WITH LEGAL PROTECTION

The aesthetic features of design are significant factors in terms of shape, size, colour, and texture. While analysing the visual and expressive quality of design, it may be important to consider its functional nature, emotional character, and possibly the realistic representation of art. However, such aspects need to be socially accepted by the marginalised groups, without any socio-economic discrimination. For marginalised groups – whether they be based on gender, caste, religion, or culture- fashion comes out as a way of self-expression, empowerment, and reclamation of identity.[1] Thus, it is important to comprehend the different dimensions of the convergence of IPR and identity perspectives. The existing IP discourse usually does not adopt any discriminatory approach and practice against a legitimate applicant in terms of its creativity, novel factor, and other distinguished criteria based upon the relevant law of the IPR regime[2]. The aesthetics and the identity of such communities are interlinked, and they should be recognized as part of modern societal norms in the interest of inclusivity and to prevent marginalization.

However, there is concern that the social hierarchy may neither encourage nor appreciate the creativity of marginalised groups and the cultural production rooted in their identity. With special reference to the LGBTQIA+ community and the prevalent caste system in India[3], it is undeniable that conservative proponents in the past often stigmatized these groups and their creative expressions, as a result of which they were victimized by discrimination. In such cases, prejudice toward their cultural identity may overshadow and lead to the perception of their traditional creative expression as mere folklore, rather than as a copyrightable work or a distinguished design eligible for IP recognition. Such a level of

[1] Nancy Aku Amekplenu, *exploring how individuals use fashion as a means of self-expression and identity construction*, 12(4) GSJ 1388 (2024).
[2] Eden Sarid, *Queer Theory and Intellectual Property,* in A RESEARCH AGENDA FOR INTE. PROPERTY LAW N. GENDER 73 (Jessica C. Lai and Kathy Bowrey eds., Elgar Online (2024).
[3] Philosophy Institute, *The Aesthetic Rebellion: Dalit Perspectives on Dress and Identity* (Nov. 6, 2023, 7 PM), https://philosophy.institute/dalit-philosophy/dalit-aesthetic-rebellion-dress-identity/.
[3] *Id*.

exclusion may create artistic barriers for Micro-Level Designers, thus leading to a systematic loss of IP recognition not only for marginalized creators but also for IP societies that promote inclusivity, justice, and universal fairness in recognizing original works. There is no doubt that such a prejudiced narrative will be further reinforced by traditional notions of creative acceptance and may eventually lead to epistemic injustice. In such cases, a cohesive approach is required to dismantle the constraints imposed by such negative stereotypes, which, in turn, may help strengthen the IP landscape toward the appreciation of originality, creativity, and universal fairness.

The essence of fashion's daily existence is intricately tied to its tangible, corporeal aspect, meaning thereby that it is intimately connected to societal norms and the cultural and historical context behind the same.[4] One such dimension manifests itself as the cause of queer representation, where fashion is a unique marker of identity and expression.[5] Similarly, the fashion elements of various Indian tribes have also been appropriated by the mainstream Indian populace.[6] Historically, systematic social oppression and discrimination have time and again placed the such communities at a disadvantage in terms of resource availability. For the community, therefore, fashion connotes a deeper importance than profitability and consumerism.[7] For this reason, they have consistently employed fashion as a statement of identity and expression.

[4]Yelaine Rodriguez, Laura Di Summa, and Kristen Evangelista, *Fashion is a Verb: Art, Performance, and Identity,* University Galleries, William Paterson University; CUNY DOMI. STU. INST. 2021 (Apr. 5, 2024, 3 PM) https://jstor.org/stable/community.36395645.

[5] Devan Rhiann Marin, *Fashion and Identity in LGBTQ+ Youth: A Case Study in Conjunction with Mapping Q*, MAS. THE. University of Arizona (2022).

[6] Gulbahaar Kaur, *How Indigenous Hair Traditions Define The Identities Of Tribal Communities Across India,* HOME GROWN (Sept. 22, 2022, 08:01 PM), https://homegrown.co.in/homegrown-explore/how-indigenous-hair-traditions-define-the-identities-of-tribal-communities-across-india. *See also,* Aastha Jani, *Our 'Ethnic/Tribal' Printed Clothes May Reek Of Cultural Appropriation, Here's Why*, Feminism in India (Sept. 16th 2020), https://feminisminindia.com/2020/09/16/ethnic-tribal-printed-clothes-reek-of-cultural-appropriation/.

[7]Sulagna Saha, *Fashion and the LGBTQ+ Community*, FIBRE2FASHION (Sept. 2022), https://www.fibre2fashion.com/industry-article/9468/fashion-and-the-lgbtq-community. *See also,* Philosophy Institute, *The Aesthetic Elegance of Indian Tribal Costumes and Jewellery: A Fashion Untold* (Sept. 10th 2023), https://philosophy.institute/tribal-philosophy/indian-tribal-costumes-jewellery-aesthetic/.

In the fashion industry, statistics show that designers identifying within the LGBTQIA+ community form a large chunk. Thus, queer subcultures[8] have immensely contributed by enriching the creative field with their diverse cultures, such as drag and leather cultures[9], effeminacy, male cross-dressing, androgynous dressing[10], and genderless and genderfluid clothing. It is, therefore, largely to the credit of the LGBTQIA+ community that experimentation and flamboyance are on the rise in the fashion industry. This transition shifts the spotlight from the traditional and typical dressing to a more fluid and evolving culture of dressing. Similarly, the fashion of the tribal and other marginalised communities in India[11] is seen as exotic and often appropriated by the mainstream populace, and in this regard, the prominent designers and corporates benefit by taking advantage of the existing IPR regime that fails to give protection to unregistered designs.

The IPR significance of this shift lies in terms of its transient nature juxtaposed with the formalities of registration of textile designs. Fashion trends evolve rapidly, and since the registration procedure and formalities involved do not match the pace, the void feeds rapid replication and piracy in the industry.

Unlike large fashion labels with resources for protection, micro-level fashion designers from marginalised groups often lack the means, knowledge or facilitation to safeguard their work.

It is often discussed among IP experts regarding the relevance of the principle of morality within the IPR regime, and it does play an important role in recognizing

[8] Minh Truong, *Queer Fashion and Identity*, THE ISSUE (June 21st 2021), https://wwwtheissuemagazine.ca/articles/queer-fashion-and-identity.
[9] Phillip Gwynn, *How Is LGBTQ+ Culture Connected to the Fashion Industry?*, Mindless Mag (Nov. 23rd 2021), https://www.mindlessmag.com/post/how-is-lgbtq-queer-culture-connected-to-the-fashion-industry.
[10] Prachi Raniwala, *India's long history with genderless clothing*, THE MINT (Dec. 16th 2020, 09:30 PM), https://lifestyle.livemint.com/fashion/trends/india-s-long-history-with-genderless-clothing-111607941554711.html.
[11] Kimi Colney, *Major brands and the mainland appropriate, misrepresent traditional attires: Northeast Indians,* THE CARAVAN (Dec. 4th 2020), https://caravanmagazine.in/culture/brands-mainland-appropriate-misrepresent-traditional-attires-northeast-indians/.

IP protection in the domains of patents, trademarks, copyrights, and designs.[12] At the same time, there is a need to reinterpret and redefine the discourse of morality while considering the interests of marginalised groups. While the LGBTQIA+ community may face moral policing under the current registration-heavy designs regime, other marginalised groups may face discrimination and oppression that is traditionally faced by them on account of their alleged "lower" social status and non-acceptability.

Often, their designs of reclamation of their identity may be seen as obscene by the registration authorities, considering the evocative expression they are fuelled with[13], thereby undermining artistic freedom and diversity. The originality of a design is closely linked to the level of creative freedom available to the designer.[14] This is not to suggest that there should be no scope for administrative or judicial review of the design, however the same should not be affected at the cost of defeating the aims and objectives of the IPR regime. Article 25(2) of TRIPS[15] reverberates the larger objective of the IPR regime, which includes ensuring that "measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade". According to Article 25(2) of TRIPS, every signatory to the TRIPS Agreement must guarantee that the conditions for obtaining protection for textile designs, including cost, examination, or publication, do not unduly hinder the ability to pursue and secure such protection.

Therefore, in light of the same, an unregistered design regime would be inclusive and would empower such designers to protect their designs and promote the ease of business for such groups in India.

[12] Ned Snow, *Moral Bars to Intellectual Property: Theory & Apologetics*, 28 UCLA ENT. L. REV. 75 (2021).
[13] Shefalee Vasudev, *Chamar Studio founder, wants attention beyond his caste. 'Find out what I make, what I think'*, THE PRINT (Feb. 14th 2025), https://theprint.in/feature/chamar-studio-founder-sudheer-rajbhar-caste-fashion/2493433/.
[14] Raveena R. Nair, *A Critical Study on Fashion Design and its Protection under Copyright Act, 1957 and Designs Act, 2000*, 15(4) BJLP 1064 (2022).
[15] Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, art. 25(2).

III. NAVIGATING PROCEDURAL REQUIREMENTS: THE CHALLENGE OF MEETING REGISTRATION REQUIREMENTS IN FASHION

The fashion industry operates within a dynamic environment characterized by rapid changes in trends and styles, often necessitating the introduction of new collections every six to twelve months in line with seasonal shifts. [16] Consequently, designers and fashion brands find it undesirable to go through the procedural formalities and incur expenses for the registration of their designs. In India, the entire process of registering a design, from applying for obtaining the registration certificate, typically spans about 10 to 12 months, which is especially unfavourable in an industry in which 'time is central'.[17] To add to the woes, the ever-advancing copying technologies pose a rapid threat to diminish the rarity and uniqueness of inherently distinctive goods. The solution lies in the capacity of the IPR regime to safeguard forms of distinction from imitation and excessive production, which has become more relevant than ever in today's tech-savvy age.

Taking inspiration from the IPR regime at the EU and Israel, this paper argues for automatic protection for unregistered designs. The USP of this kind of protection is that it would empower a micro-level fashion designer to gain ground in the market and gauge the success of a product before deciding whether to pursue formal registration. Consequently, granting protection to unregistered designs would, instead of discouraging registration, enable the designer to register those designs that stand the test of time. In essence, this UDR protection would ultimately promote the larger goal of promoting effective and adequate protection as envisioned in TRIPS.

To substantiate the abovementioned, under Article 1 of the TRIPS Agreement, while members are obligated to enact laws that offer protections equivalent to those guaranteed under the Agreement, they have the discretion to offer greater protection via the route of legislative action and policy changes. However, any such additional protection must not conflict with the provisions outlined within

[16] WIPO Magazine, *IP and Business: Intellectual Property in the Fashion Industry* (May 30th 2005), https://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html.
[17] Patrik Aspers, *Using Design for Upgrading in the Fashion Industry*, 10(2) JE GEORGIA 189 (2010).

the Agreement itself. India acceded to the TRIPS Agreement in April 1994[18] and therefore, finds its basis of affirmative action manifest in the text of the Agreement.

IV. UNPROTECTED DESIGNS, UNSUSTAINABLE FUTURE: THE CASE FOR STRONGER UDRS

The registration of a design is important to ensure that different artisans and creators of designs with distinct aesthetic characteristics are not divested of their bona fide claims by unauthorised persons who apply them to their products or services. Thus, a registered design owner will have exclusive rights to use their design, and any kind of forgery or explicit imitation of a design with the intent to sell amounts to piracy of the registered design.[19] Such issues become more complicated in the case of unregistered designs. The fashion industry is known for its vibrant economy, market trends, and its flexibility in approach due to strong competitive behaviour. In such cases, both registered and unregistered designers face diverse socio-legal complexities.

Due to the presence of financial constraints, high costs, and a lack of expertise or proprietary information, Micro Level Designers are reluctant to opt for the registration of their designs. Many of these Designers are also reluctant to register their designs due to the inadequate protection period offered by registration. It is also important to understand that the failure to meet the non-disclosure criteria for many small traders operating as proprietors in a competitive market is one of the major limitations of the registration of a design under the Designs Act 2000.

In the era of modern technology and a vibrant economy, it is significant to realize that section 15(2) of the Copyright Act, 1957, puts a barrier in the copyright protection to original and creative unregistered designs. The copyright protection to an unregistered design under the same provision is limited to reproduction of 50 (fifty) times by an industrial process by the copyright holder. Now, it is a subject matter of contemplation as to whether this cap of reproduction over fifty times of an item is practical & reasonable in the era of innovation, modern

[18] Prabhu Ram, *India's New "Trips-compliant" Patent Regime Between Drug Patents and The Right To Health*, 5 CHICAGO-KENT J.OF IP 195 (2005).
[19] Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India), s.22.

technology, and highly competitive market behaviour. In the totality of such issues, it has to be understood that in a given competitive market, there are different reasons for the prevalence of unregistered designs for Micro-Level Designers due to their own financial constraints or other socio-economic challenges.

Somehow, the attempt to protect unregistered designs through a passing off action doesn't seem to be successful in India. Resultantly, the registration process of designs is gaining recognition over the period of time.[20] It has been realized that successful registration of design not only enhances the public image of designers' creativity but also works as a deterrent against all sorts of piracy. However, there is a need to expand the horizon of awareness by the IPR office to use the registration process of their design and realize its true advantages for commercial interest.

The nature of clothing has changed from durable necessities only to be replaced upon becoming non-functional, to social symbols reflecting their consumers' contemporary standing. This social attribute attached to clothing gives a fillip to the demand for the latest trends in the market. It would be erroneous to consider this demand purely organic. On the contrary, in the 21st-century society plagued with rampant consumerism, it is the supply of products that generates their demand by creating a "Fear of Missing Out" in the minds of the consumers.[21] The consumers, therefore, give in to consuming the products out of the compulsion to keep up with the ongoing trend.

The nature of the fashion industry is cyclical. Once a Fashion article is disclosed by its Originator, i.e., enters the market, other players (hereinafter, **'Copyists'**) tend to imitate, counterfeit, or bootleg the Originator's design. The copied design is often less expensive, and for the same reason, there is *en masse* purchase of such products by a wide number of consumers. However, beyond a certain extent,

[20] DPS Parmar, *'Designer's Dilemma/Pirates Paradise',* LEXORBIS (April 5th 2025), https://www.lexorbis.com/docs/IPPro_issue-article%20lexorbis%20_015.pdf/.
[21] Brittany Sierra, *The Psychology of Fast Fashion: Why Conversation About Fast Fashion Evokes Such Strong Emotions In Us*, SUST. FASH. FOR. (Feb. 2nd 2024), https://www.thesustainablefashionforum.com/pages/the-psychology-of-fast-fashion-exploring-the-complex-emotions-fast-fashion-evokes-in-consumers.

at which the design becomes ubiquitous, the design becomes less sought for. The consumers then look for new designs to overcome this ubiquity-induced fatigue.[22] The consumption-fostering societies thus engage in the same cycle with another product.[23]

In the absence of Unregistered Design Rights, the copyright protection afforded to a design ceases after application of the same on the 50th article.[24] This therefore permits the effectual imitation of designs which are the creation of someone else's creative exertions, unless the concerned design is formally registered. [25] Registration of a design is a time and resource-consuming process and is not suited to the ephemeral nature of the Fashion industry. As a consequence, the designs remain unprotected and are subject to being copied by others. Conversely, it is the lack of protection for unregistered designs that acts as one of the facilitators of Fast Fashion, because it virtually allows the appropriation of popular designs by numerous copyists, until the same die out. In the absence of any deterrence in the form of UDRs, the copyists copy the original design at a vast scale, thereby expending resources at a like scale.[26]

Fast fashion is a typical business model that may be affordable for end-users. However, this model often results in low-quality and hurried manufacturing. While it increases the purchasing power of buyers, it also leads to disposable and short-lived trends due to inferior quality. Experts have noted that the fast fashion industry contributes to waste, particularly when recycling processes are inefficient. It may also encourage unregulated manufacturing and retail practices, resulting in an unstructured supply chain. Additionally, many traders following the fast fashion model engage in the unauthorized use of well-known designs,

[22] Whitney Potter, *Comment, Intellectual Property's Fashion Faux Pas: A Critical Look at the Lack of Protection Afforded Apparel Design Under the Current Legal Regime*, 16 IPLB 69-83 (2011).
[23] Raustiala, Kal and Christopher Sprigman, *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, 92(8) VLR 1687 (2006), http://www.jstor.org/stable/4144970.
[24] Rajesh Masrani v. Tahiliani Designs Pvt Ltd, 2008 SCC Online Del 1283.
[25] Raunak Kaur and Rishika Arora, *Satin, Sequin and Sustainability: An uncloak approach to define IPR,* 15(7) OIDA IJSD 47 (2022).
[26] Glynis Sweeny, *Fast Fashion Is the Second Dirtiest Industry in the World, Next to Big Oil*, ECOWATCH (Aug. 17, 2015, 01:15AM), https://www.ecowatch.com/fast-fashion-is-the-second-dirtiest-industry-in-the-world-next-to-big-1882083445.html.

infringing trademark laws. Some even partake in counterfeiting, producing cheap copies that discourage creativity and amount to intellectual property theft, harming designers and brands. While analysing Section 22 of Designs Act pertaining to piracy of registered design, it can be noted that it contains the penalty of sum not exceeding twenty-five thousand rupees payable to registered proprietor and a maximum of fifty thousand rupees in case of contravention in one design.[27] However, in the era of industrialization and innovation, such penalties appear inadequate in deterring rampant design piracy, and it is also not clear whether the penalty sum will be proportionate to the loss incurred to the genuine registered proprietor of the design in case of a high level of piracy.

The Section is also completely silent on taking action against piracy, violating the rights of unregistered proprietors of designed goods. Therefore, it has become important for the State to take necessary action and review the existing provision of Section 22 of the Designs Act in the interest of fair business related to the trade of designed goods. It is interesting to note that the Designs Act does not contain any explicit provision for the protection of unregistered designs. Section 21 of the Act only provides for an exhibition forum for unregistered proprietors of designed goods. While such exhibitions allow the display and description of designs at various forums, they do not prevent proprietors from registering their designs.[28]

In fact, it is expected from designers of unregistered designs to maintain proper documentation of their designs, including the specific date of the design process and when it was disclosed to the public. Such documentation may help the holder of an unregistered design protect it from counterfeiting and exact replication/imitation.[29] It is important to understand the nature of unregistered designs to determine how their protection arises automatically the moment they are recorded or disclosed to the public. However, the right of entitlement to an unregistered design is altogether different from that of a registered design. The

[27] Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India), s.22.
[28] Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India), s.21.
[29] Frances Caudron & Judith Busse, *The Unregistered Community Design: Unknown but not unloved in the fashion industry*, Fashion United (Feb. 28, 2019, 3:20 PM), https://fashionunited.be/nieuws/business/het-niet-geregistreerd-gemeenschapsmodel-ongekend-maar-niet-onbemind-in-de-modesector/2019022824985.

domain of counterfeiting or unauthorized copying in the form of imitation should also be viewed as an unfair competitive practice. Thus, it is important that such unfair competitive practices, including unauthorized copying, imitation, or counterfeiting, are properly addressed under the IPR regime.

V. The Cost of Neglect: How Weak IPR Protection Undermines Innovation

Not protecting the designs of Micro-Level Designers under the IPR regime can lead to opening a Pandora's box. In the absence of a legal bed of safeguards to fall back upon, Micro-Level Designers might hesitate to allocate resources towards marketing, production, or distribution of products showcasing the design, thereby inhibiting their capacity to fully exploit its commercial opportunities.

Apart from reducing the design's commercial viability, there is always a looming threat of replication and misappropriation. For instance, the phenomenon of dilutive copying diminishes the distinctiveness of the work and makes it less competitive.[30] In fact, this type of imitation not only erodes the uniqueness of current fashion trends but also generates a recursive demand for fresh designs. Further, the unauthorized use or dissemination of the design could adversely impact the designer's reputation and brand image due to the ensuing negative publicity or public backlash.

Therefore, in a Low-IPR Regime, wherein there is a flourishing of consumerism, fast-fashion, and appropriation of designs, there is a rise of Replication Factories. These 'Replication Factories', often known as Sweatshops, are epicentres of rampant human rights violations as they employ workers at very low wages, for long hours of work, in highly dangerous working environments.[31] These businesses, only driven by the profit motive, rely on the imitation of original ideas for the mass production of replicated designs. Especially relevant from the

[30] Peter M. Kort, et al, *Brand Image and Brand Dilution in the Fashion Industry*, 42 AUTOMATICA 1363 (2005).
[31] Ena Kapur, *Analysis of Knockoff Culture and the need for IP protection in the Fashion Industry in India*, SSRN (2021), https://ssrn.com/abstract=3875108.

procedural perspective is another consequence that directly strikes through the requirement of distinctness of design as laid down in the Act.

VI. DISINCENTIVIZING DISTINCTNESS OF DESIGN

In an environment where there is an absence of UDRs, the copyists get to exploit the weak IPR Regime to appropriate and plagiarize the designs of the Originator. In such circumstances, two consequences follow. Firstly, the Originator of a Design faces competition from the imitations of his own design in the market. There is a ubiquity of the same product, often sold at cheaper prices by individuals who did not exert their time, resources, and intellect in the creation of such a design, leaving the originator bereft of the profits of his own creation. Secondly, fashion articles are of an ephemeral nature, and large-scale imitation of such articles renders them unwanted in the eyes of the broader public that consumes them, simply because of the dilution of their uniqueness.[32] Consequently, the Originator of a design suffers financial losses and is disincentivized from further engaging in the creative process of product development.

It is also to be kept in mind that it is not only the famous established designers whose designs are subjected to plagiarism. In absence of adequate IP protection, all the players in the business are equally endangered by the threat of appropriation of their original designs. Many a time, it is the famous fashion designers who engage in the appropriation of the designs of freshly graduated designers. In other instances, it is the big corporations that are involved in the imitation and appropriation of designs of Small and Medium Local Businesses, which they then market under their widely popular brand names, as was the case in *People Tree v. Christian Dior.*[33]

More often than not, the small local designers lack adequate resources, strong identities, and legal awareness to enforce their Intellectual Rights. Unlike modern corporations and established fashion designers, who have the industrial means to

[32] Naan Ju and Kyu-Hye Lee, *The effect of consumers' need for uniqueness on fashion orientation and consumption values*, 25(1) THE RESEARCH JOURNAL OF COSTUME CULTURE 104 (2017).
[33] Karuna Ezara Parekh, *In Delhi, a People's Victory in Global Fashion*, THE WIRE (May 30th 2018), https://thewire.in/culture/people-tree-christian-dior-settlement.

produce a new line of products at the dawn of the new fashion cycle, local small and medium designers have only traditional knowledge and limited means to produce designs that are not adequately protected by the current Design regime. With large brands imitating their designs and their inability to adapt to the fast fashion business model, these small businesses, forming the backbone[34] of the Indian textile industry, suffer plight and are disincentivized to produce more designs. The Office of Controller General of Patents, Designs & Trademarks, Government of India, published a scheme for providing a mechanism and process for facilitating startups for IPR protection in the year 2016.[35] However, the scheme fails to provide any assistance to micro entities, MSMEs, and marginalized groups. The start-up policy in the area of IPR regime may provide support to all the stakeholders and original proprietors of unregistered designs for processing registration and business.

VII. BEYOND BORDERS: LESSONS FROM THE EU AND ISRAEL ON STRENGTHENING UDRS

In the EU, a Design receives protection as an 'unregistered community design' for a span of three years if it has been showcased to the public within the EU, in accordance with Article 11(2) of the Regulation on Community Designs No 6/2002 (hereinafter, 'CDR')[36]. The informal design right arises when a Design has been publicly disclosed for the first time within the EU, and when it could have reasonably become known to the specialized circles operating within the EU. The CDR provides a grace period of 12 months for the registration of such designs.[37]

[34] Bhavna Rathee, *Textile Industry in India - Garment & Apparels Market In India,* INVEST INDIA (Apr. 5, 2025, 5 PM), https://www.investindia.gov.in/sector/textiles-apparel#:~:text=The%20domestic%20apparel%20%26%20textile%20industry%20in%20India%20contributed%20to%202,10.33%25%20during%202021%2D22 .

[35] The Officer of Controller General of Patents, Designs & Trademarks, Government of India, Scheme for Facilitating Start-ups Intellectual Property Protection (Apr. 4, 2025, 4:30 PM), https://ipindia.gov.in/writereaddata/Portal/News/885_1_approved_SIPP_scheme.pdf.

[36] Birgit Kapeller-Hirsch, *Unregistered community designs: a secret weapon in design protection?*, SCHONHERR (Aug. 30, 2021, 3:15 PM), https://www.schoenherr.eu/content/unregistered-community-designs-a-secret-weapon-in-design-protection/.

[37] EUIPO, *FAQ: Designs – Unregistered EU designs*, https://www.euipo.europa.eu/en/help-centre/design/faq-unregistered-community-designs/.

Likewise, in Israel, the designs are now protected under the new Design Law (5777-2017)[38] that replaced the erstwhile Patents and Designs Ordinance, 1924[39]. While the earlier Israeli Law did not protect unregistered designs[40]This has been remedied by the 2017 legislation. The 2017 Designs law of the Design Legislation provided a protective regime for UDRs.[41]

In the era of operation of the 1924 Law, the Israeli Supreme Court highlighted that in cases where a claim doesn't fall within any existing IPR framework, but the defendant wrongfully uses the plaintiff's work, such a protection void may be filled by the doctrine of 'Unjust Enrichment' to protect the Unregistered Design Rights of the Plaintiff.[42]

Under the 2017 Israeli Designs Law, a three-year protection is granted to a designer along with a further twelve-month grace period for the purpose of registering the previously unregistered design.[43] The intention of affording UDRs in Israel is in line with the benefit to Micro Level Designers, as highlighted in this paper.[44]

The comparative protection granted to Unregistered Designs in India, EU and Israel is summarised as under –

	INDIA	**EU**	**ISRAEL**	
Legislation	Designs Act, 2000	Regulation on Community Designs No 6 / 2002	Patents and Designs Ordinance, 1924	Design Law (5777-2017)
UDR Protection	No	Yes	No	Yes

[38] The Designs Law, 5777-2017, Laws of the Knesset, Israel.
[39] Asa Kling, *Designs – Israel*, LEXOLOGY (November 21st 2021), https://cdn-media.web-view.net/i/etedwhwp/2022_designs_israel.pdf.
[40] Reinhold Cohn, *Quick Guide to Registering Designs in Israel – Frequently Asked Questions*, https://www.rcip.co.il/wp-content/uploads/2013/08/Quick-Guide-to-Registering-Designs-in-Israel.pdf.
[41] Pearl Cohen, *New Israel Design Law,* (Aug. 3, 2018, 11 AM) https://www.pearlcohen.com/new-israeli-design-law.
[42] Yedidya Melchoir, *Israel, in* THE IP. REV. (Dominick A Conde ed., 7th Edition, 2018), 148.
[43] The Design Law, 2017, Act of Knesset, 2017 (Israel), S. 4, 64 and 65.
[44] Dan Ady Intellectual Property Law Office, *The Designs Law versus the Designs Law in Israel – what has been updated* (2025).

Period of UDR Protection	-	3 years	-	3 years
Grace Period for Registration	-	12 months	-	12 months

The UDRs protect a design from being commercially exploited by anyone other than its Originator, without requiring any expensive formal registration process for protecting such a Design.[45] The UDRs are, therefore, like any other IPR, antithetical to imitation and appropriation. Since the designs would be available exclusively, the status of clothing would be sustained, and the demand for the clothes would not be dictated by fast-changing trends, thereby the devastating effects of fast fashion would be contained.[46]

Considering the UDRs would act as a deterrent against imitation of designs that are in appeal, the wasteful use of resources in the mass production of apparel with such designs to meet the popular demand would be reduced.[47]

VIII. CONCLUSION

In the realm of fashion, where design copying is rampant and mainstream trends clash with haute couture, it is clear that robust measures are necessary to protect fashion designs from violations and misuse within India's IP framework. In essence, the argument posits that the short-lived relevance of designs within the industry does not warrant the effort and cost required for formal registration. To address the challenges faced by designers in the fashion industry, particularly marginalized groups, there is a need to navigate a more holistic and inclusive approach to unregistered design protection. This approach should prioritize accessibility and affordability, allowing designers to protect their creations

[45] Chahat Abrol and Lisa P Lukose, *Need for Unregistered Design Rights in India: A Contemplative Cogitation*, 29(1) JIPR 33 (2024).
[46] Cassandra Elrod, *The domino effect: How inadequate intellectual property rights in the fashion industry affect global sustainability*, 24(2) IJGLS 575 (2017), https://www.proquest.com/scholarly-journals/domino-effect-how-inadequate-intellectual/docview/1965550231/se-2.
[47] Raunak Kaur and Rishika Arora, *Satin, Sequin and Sustainability: An uncloak approach to define IPR*, 15(7) OIDA IJSD 47 (2022).

without facing prohibitive costs and procedural hurdles. Additionally, raising awareness about the importance of intellectual property rights and providing support and resources to designers, especially those from marginalized communities, can help foster creativity and innovation while preserving the distinctiveness of designs.

The former can be achieved by bringing about certain key reforms. Firstly, an amendment should be brought in the Designs Act to delineate textile design as a separate head of design, aligning the Act with Article 25(2) of TRIPS. Consequently, the law will be able to better address the unique characteristics and requirements of the fashion industry. In furtherance of this, the grant of UDR, as in the case of the EU and Israel, for a succinct period of time, is the need of the hour. Secondly, the registration process under the Designs Act should be streamlined and made more accessible to designers. Simplifying the registration process and reducing associated costs would make it easier for designers to obtain registration for their creations that they so finally seek post-publication and dissemination in the market.

Finally, in order to tackle the discrimination that small businesses and designers from marginalised communities may encounter during registration, it's crucial to sensitise the Controller and other authorities involved in approving the registration about the contextual uniqueness of this community. This might include introducing initiatives such as workshops and training programs to enlighten the authorities on the art of the marginalised and sensuality. Furthermore, establishing clear guidelines and protocols for evaluating design registrations would help ensure that decisions are made impartially and without bias. Thus, by taking proactive steps to address the aforementioned issues, India can create a more inclusive and conducive environment for innovation and creativity in the fashion industry while protecting the rights of designers and promoting economic growth.

In today’s landscape of rapid technological progress and scientific innovation, the Office of the Controller General of Patents, Designs, and Trade Marks must establish a Standard Operating Procedure (SOP) to facilitate the formal recognition of unregistered designs. A structured framework allowing eligible

proprietors to mark their novel designs would not only reinforce their intellectual property claims but also aid in the creation of a centralized database of unregistered design proprietors. Such a database would enable the authorities to extend targeted incentives and technical support, ensuring that innovative designs receive due recognition and fostering a competitive yet fair industrial ecosystem.

Furthermore, a reassessment of the existing registration framework under the Designs Act 2000 is essential. A revision of registration fees and associated costs, particularly for Micro Level designers in the fashion industry, would encourage greater participation in the formal registration process. Easing financial and procedural barriers would not only enhance accessibility but also bolster the creative economy by ensuring that diverse voices and talents receive the protection and encouragement they deserve.

Beyond financial incentives, the State must actively promote collaboration, strategic partnerships, and business models that enable artisans, small enterprises, and marginalized creators to thrive. Encouraging alliances, joint ventures, and market integration would provide these stakeholders with the resources and networks necessary for long-term economic sustainability and broader market reach. It is, therefore, essential to uplift and empower all proprietors of unregistered designs in alignment with India's vision for 'Ease of Doing Business' and 'Viksit Bharat 2047'. Strengthening protections for unregistered designs is not merely a matter of legal reform- it is a commitment to nurturing innovation, fostering inclusivity, and building a more dynamic, equitable, and globally competitive design industry.

PROMOTING SUSTAINABILITY: THE ROLE OF ENVIRONMENTAL LAW IN MODERN AGRICULTURE

Anurag Singh[*] *& Neha Kumari*[**]

ABSTRACT

This paper examines the vital role of environmental law in promoting sustainable agriculture, addressing food security, environmental protection, and climate change. It analyses international, regional, and national legal frameworks that shape agricultural practices to conserve resources and enhance climate resilience. Key instruments like UNFCCC and the CBD guide sustainable practices. Case studies from the Netherlands, Costa Rica, and Kenya illustrate the successful integration of environmental law with agricultural policy. The paper emphasizes the importance of multi-stakeholder engagement and explores future directions for environmental law, including climate adaptation, circular economy principles, and digital technologies, highlighting the need for evolving frameworks to ensure long-term sustainability.

I. INTRODUCTION

Agriculture has been central to human survival and development for millennia, providing food, fibre, and livelihoods. It has enabled civilizations to grow, cities to thrive, and economies to prosper. However, the advancements in agricultural techniques, particularly since the Industrial Revolution, have brought both significant benefits and challenges. Modern agricultural practices, characterized by large-scale monocropping, the excessive use of chemical fertilizers and pesticides, and intensive land exploitation, have been vital in increasing food production. Yet, they have also contributed to significant environmental

[*] The author is a student at Manav Rachna University, Faridabad and can be reached at anurag.sgehlot@gmail.com
[**] The author is a student at Manav Rachna University, Faridabad and can be reached at jha93545@gmail.com

degradation. These practices have led to soil depletion, water contamination, loss of biodiversity, and significant contributions to climate change through greenhouse gas emissions.[1]

As the global population continues to rise, projected to reach nearly 10 billion by 2050[2]—the demand for food will intensify. This increased demand puts further pressure on already-strained natural resources like water and arable land. Additionally, climate change is exacerbating these challenges, threatening agricultural productivity with extreme weather events such as droughts, floods, and heatwaves.[3] These interrelated issues underscore the urgent need for a shift towards sustainable agricultural practices—farming methods that are both environmentally sound and socially responsible.[4]

Sustainable agriculture seeks to meet the challenge of feeding a growing global population while conserving natural resources, minimizing environmental impacts, and ensuring the long-term viability of farming systems. It involves practices that maintain the health of ecosystems, enhance biodiversity, and build resilience to climate change. Environmental law, with its capacity to regulate land use, resource management, and pollution control, is a critical tool for promoting sustainable agriculture. Legal frameworks at the national and international levels can enforce sustainable practices and guide stakeholders—farmers, agribusinesses, and governments—toward more responsible agricultural models.

II. Definition of Sustainable Agriculture

Sustainable agriculture is a holistic approach to farming that aims to meet the current needs of food production without compromising the ability of future

[1] *United Nations Environment Programme, Environmental Impacts of Agricultural Production,* U.N. Doc. UNEP/WG.LCA/2011 (2011), (Sept. 29, 2024, 3:30 PM), https://www.unep.org

[2] U.N. Dep't of Econ. & Soc. Affairs, *World Population Prospects: The 2019 Revision*, U.N. Doc. ST/ESA/SER.A/426 (2019).

[3] *Intergovernmental Panel on Climate Change, Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems, Summary for Policymakers (2019),* (Sept. 24, 2024, 10 PM), *https://www.ipcc.ch/srccl/*

[4] *Intergovernmental Panel on Climate Change, Climate Change 2021: Impacts, Adaptation, and Vulnerability,* U.N. Doc. WMO/UNEP (2021), (Sept. 17, 2024, 11 AM) https://www.ipcc.ch/report/ar6/wg2/

generations to meet theirs. It is built on a foundation of ecological health, economic viability, and social equity. Unlike conventional agricultural methods that often focus solely on maximizing short-term yields, sustainable agriculture emphasizes long-term environmental stewardship and resource management.

The concept of sustainable agriculture can be broken down into several key principles:

- **Conserving Natural Resources:** Sustainable agriculture prioritizes the preservation of vital natural resources, such as water, soil, and biodiversity. It involves practices that maintain soil health through crop rotation, cover cropping, reduced tillage, and organic farming techniques. These methods prevent soil erosion, enhance water retention, and improve the overall fertility of the land. Efficient water use, including rainwater harvesting and drip irrigation, ensures that agriculture does not deplete water resources.

- **Reducing Environmental Impacts:** Modern farming practices are responsible for significant greenhouse gas emissions, particularly methane from livestock and nitrous oxide from fertilizers. Sustainable agriculture seeks to minimize these emissions by promoting practices that sequester carbon, reduce the reliance on chemical inputs, and manage waste responsibly. In addition to reducing air pollution, sustainable farming aims to prevent water contamination from pesticide runoff and nutrient leaching, which can harm aquatic ecosystems.[5].

- **Enhancing Resilience to Climate Change:** Sustainable agriculture is designed to adapt to and mitigate the impacts of climate change. By promoting biodiversity and ecosystem health, sustainable farming systems can better withstand environmental stressors like extreme weather events. For example, diversified cropping systems are less vulnerable to pests and diseases than monocultures, and agroforestry practices can create microclimates that protect crops from excessive heat or wind.[6]

[5] *See Intergovernmental Panel on Climate Change*, *Special Report on Climate Change and Land*, *supra* note 3, at 80.

[6] *World Bank, Agriculture and Food,* (June 1, 2024, 10 AM) https://www.worldbank.org/en/topic/agriculture/overview (last visited Sept. 29, 2024).

- **Ensuring Economic Viability and Social Equity:** Sustainable agriculture must also be economically sustainable for farmers, particularly smallholders in developing regions. Practices that reduce input costs and enhance productivity can increase farm profitability, while equitable access to markets ensures that small-scale farmers can compete in a global economy. Social equity also extends to fair labour practices, community involvement, and access to resources like land and water.

By adhering to these principles, sustainable agriculture creates a farming system that is not only productive but also protective of the environment and beneficial to society at large.

III. Role of Environmental Law in Promoting Sustainable Agriculture

Environmental law plays a pivotal role in the promotion of sustainable agricultural practices by creating the legal framework within which agricultural activities are regulated. It establishes rules and standards that guide land use, water management, chemical input usage, biodiversity conservation, and pollution control. By defining the legal obligations of governments, farmers, and businesses, environmental law ensures that agricultural activities align with broader environmental and public health objectives.

3.1. Land Use and Zoning Regulations

Land use laws play a vital role in regulating agricultural practices. Zoning regulations can allocate specific areas for farming while safeguarding ecologically sensitive regions, such as wetlands and forests, from agricultural conversion. Environmental laws limit the expansion of farmland into critical habitats, promoting the use of existing agricultural areas instead. Sustainable land use planning advocates for crop diversification and agroforestry, which integrates trees into farming systems. These practices enhance biodiversity, sequester carbon, improve soil health, and reduce reliance on chemical inputs. Environmental regulations can incentivize such methods through subsidies and tax breaks, encouraging farmers to adopt sustainable management techniques.

3.2. Water Rights and Management

Water is essential for agriculture, making its sustainable management crucial for long-term productivity. Environmental laws govern water rights, usage, and quality, preventing over-extraction and contamination of sources. Unsustainable irrigation practices have often led to aquifer depletion and the degradation of freshwater ecosystems. By imposing limits on water withdrawals and requiring permits for irrigation, these laws promote sustainable agricultural water use. Additionally, they encourage water-saving technologies and practices, such as drip irrigation, rainwater harvesting, and utilizing treated wastewater for irrigation. These strategies alleviate pressure on freshwater resources and bolster agricultural resilience against droughts and other water-related challenges.

3.3. Pesticide and Fertilizer Regulations

Modern agriculture significantly impacts the environment, particularly through the use of chemical pesticides and fertilizers, which can cause soil degradation, water contamination, and loss of biodiversity. Environmental laws aim to mitigate these effects by regulating these inputs. For example, pesticide regulations may restrict the types and amounts used, mandate proper application techniques, and establish buffer zones to protect water bodies. Similarly, fertilizer regulations encourage the adoption of organic or slow-release fertilizers, reducing nutrient runoff into waterways. By promoting integrated pest management (IPM) and organic farming practices, environmental laws help minimize reliance on harmful chemicals while sustaining agricultural productivity.

3.4. Biodiversity Conservation

Biodiversity is critical to the sustainability of agricultural systems, as it supports ecosystem services such as pollination, pest control, and soil health. Environmental laws that protect wildlife habitats and promote the conservation of biodiversity can have a direct impact on sustainable agriculture. For example, laws that prevent deforestation or protect endangered species help maintain the ecological balance necessary for productive farming.

Environmental law can also promote the preservation of agricultural biodiversity by supporting the conservation of traditional crop varieties and livestock breeds.

These genetic resources are invaluable for developing resilient agricultural systems, as they can provide traits that enhance crop and livestock adaptation to changing environmental conditions.

3.5. Pollution Control

Agricultural activities are a significant source of pollution, particularly through runoff of fertilizers, pesticides, and animal waste into water bodies. Environmental laws address this issue by establishing standards for pollution control, such as limiting the amount of chemicals that can be applied to fields, regulating the disposal of animal waste, and requiring buffer zones around water bodies. These regulations are essential for protecting water quality and ensuring that agricultural activities do not harm the surrounding environment.

By enforcing pollution control measures, environmental law helps to prevent the degradation of ecosystems, ensuring that agricultural production remains sustainable in the long term.

IV. International Legal Framework

International legal frameworks, such as the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, play a crucial role in shaping sustainable agriculture, addressing the intricate relationship between agricultural practices, environmental conservation, and global food security.

4.1. United Nations Framework Convention on Climate Change (UNFCCC)

Agriculture plays a dual role in the climate change narrative, both contributing to greenhouse gas emissions and being highly vulnerable to its impacts. The UNFCCC, established in 1992, is the cornerstone of international efforts to combat climate change, and it recognizes agriculture as a critical sector. While agriculture accounts for a significant portion of global emissions, particularly methane and nitrous oxide, it also presents opportunities for mitigation and adaptation.

Under the UNFCCC, the Paris Agreement (2015) stands out as a key legal instrument guiding climate action. It includes commitments to reduce emissions

and build resilience, both of which are essential for promoting sustainable agriculture.[7] Many countries' Nationally Determined Contributions (NDCs), which outline their climate action plans, explicitly incorporate agricultural strategies to mitigate emissions and enhance climate resilience.[8] For instance, climate-smart agriculture (CSA) is promoted as a solution to reduce emissions while improving food security and adaptation to climate-related stresses like droughts or floods. This includes techniques such as crop diversification, agroforestry, improved water management, and soil carbon sequestration.

The Paris Agreement's emphasis on adaptation also highlights agriculture, with efforts to develop sustainable food systems and promote ecosystem-based adaptation approaches. These legal commitments place pressure on governments to implement policies that integrate agricultural practices with broader climate goals, ensuring that the sector transitions toward sustainability.

4.2. The Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD)[9], ratified in 1993, addresses the vital role that biodiversity plays in sustainable agriculture. Healthy, biodiverse ecosystems are essential for productive farming systems, providing ecosystem services such as pollination, soil fertility, and pest control. However, modern agricultural practices, particularly those involving monocropping and excessive chemical use, have led to significant biodiversity loss. The CBD aims to reverse these trends by promoting agroecology, which integrates biodiversity into farming systems to enhance ecosystem resilience and productivity.

The CBD's 2011-2020 Aichi Biodiversity Targets emphasized sustainable land use and the conservation of biodiversity within agricultural landscapes. These targets encouraged countries to restore degraded ecosystems and promote farming practices that maintain or enhance biodiversity.[10] The Post-2020 Global

[7] U.N. Framework Convention on Climate Change, *Paris Agreement*, art. 2, Dec. 12, 2015, T.I.A.S. No. 16-1104.
[8] U.N. Framework Convention on Climate Change, *Nationally Determined Contributions Under the Paris Agreement: Synthesis Report*, 2021, Nationally Determined Contributions (NDCs) | UNFCCC
[9] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.
[10] Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 5*, Montreal, 2020, (Sept. 4, 2024, 4 PM) https://www.cbd.int/gbo5.

Biodiversity Framework, adopted in 2022, continues these efforts, recognizing that agriculture must be transformed to halt biodiversity loss. It focuses on protecting critical ecosystems, promoting pollinator-friendly agricultural practices, and reducing the environmental impacts of farming, such as pesticide overuse.

International legal frameworks like the CBD compel nations to adopt laws and policies that ensure agriculture contributes to the conservation and sustainable use of biodiversity. This includes the protection of pollinators, which are essential for the productivity of many crops, and the promotion of practices that enhance soil biodiversity and health.

4.3. The Food and Agriculture Organization (FAO) and the International Code of Conduct on Pesticide Management

The Food and Agriculture Organization (FAO) has been instrumental in advocating for sustainable agricultural practices on a global scale. It plays a key role in setting international standards and providing guidance to governments on how to integrate sustainability into agriculture. One of the most significant contributions of the FAO is its International Code of Conduct on Pesticide Management, which sets guidelines for the responsible use of pesticides to minimize environmental harm and promote human health.[11]

The Code provides a framework for regulating pesticides, ensuring that they are used in ways that protect the environment and biodiversity while also safeguarding farmers and consumers. By promoting Integrated Pest Management (IPM)—a strategy that combines biological, physical, and chemical methods to control pests—the Code encourages a reduction in chemical pesticide use. IPM not only reduces the environmental impact of farming but also aligns with sustainable agriculture's goals of enhancing biodiversity and ecosystem health.

In addition, the FAO promotes organic farming, agroforestry, and other sustainable practices that aim to conserve natural resources, enhance resilience to

[11] Food & Agric. Org. of the U.N., *International Code of Conduct on Pesticide Management*, Rome, 2016, (Aug. 13, 2024, 1 PM) https://openknowledge.fao.org/server/api/core/bitstreams/7c65af6a-52ca-4e44-8c57-4303d076bea4/content

climate change, and improve the livelihoods of farmers. Its efforts help to shape national and regional policies that prioritize sustainability in agriculture.

4.4. Sustainable Development Goals (SDGs)

The United Nations Sustainable Development Goals (SDGs)[12]adopted in 2015, serve as a global framework for addressing the world's most pressing challenges, including food security and environmental sustainability. Two of the SDGs, in particular, are directly relevant to sustainable agriculture:

- SDG 2: Zero Hunger, specifically Target 2.4, calls for the establishment of sustainable food production systems and the implementation of resilient agricultural practices by 2030. This target emphasizes the need for agricultural systems that maintain the health of ecosystems, adapt to climate change, and enhance biodiversity.[13]
- SDG 15: Life on Land aims to halt biodiversity loss and promote the sustainable management of forests, combat desertification, and restore degraded lands. Achieving SDG 15 is crucial for sustainable agriculture, as healthy ecosystems are foundational to productive farming systems.[14]

By setting these targets, the SDGs encourage governments to integrate environmental law with agricultural policy, ensuring that food production contributes to both food security and environmental conservation.

V. REGIONAL LEGAL FRAMEWORKS

Regional legal frameworks play a vital role in promoting sustainable agriculture, with entities like the European Union and African Union implementing policies that integrate environmental protections with agricultural practices to address pressing ecological challenges.

5.1. European Union (EU)

The European Union (EU) has been at the forefront of integrating environmental law with agricultural policy. Its Common Agricultural Policy (CAP)[15], reformed

[12] United Nations, *Sustainable Development Goals*, (Jul. 14, 2024, 5 PM) https://sdgs.un.org/goals
[13] *See* id.
[14] *See* id.
[15] European Commission, *Common Agricultural Policy Overview*, EU CAP Network, (June 12, 2024, 9 AM), https://eu-cap-network.ec.europa.eu/common-agricultural-policy-overview_en

over the years to address environmental concerns, includes mechanisms to incentivize sustainable farming practices. One such mechanism is the Green Payment, which rewards farmers for adopting practices that benefit the environment, such as crop diversification, maintaining permanent grasslands, and creating ecological focus areas that support biodiversity.

The EU's Environmental Liability Directive (ELD)[16] also plays a critical role in promoting sustainable agriculture. The ELD holds farmers and other agricultural actors liable for environmental damage, creating a strong incentive to prevent harm to ecosystems. By attaching financial consequences to environmental degradation, the ELD encourages more responsible farming practices.

The Farm to Fork Strategy[17], introduced in 2020, aims to transform the EU's food systems to make them more sustainable. It focuses on reducing the environmental footprint of food production, promoting sustainable farming, and achieving a 50% reduction in pesticide use by 2030. This ambitious goal aligns with the broader objectives of sustainable agriculture, pushing the EU to the forefront of international efforts to create environmentally friendly agricultural systems.

5.2. African Union (AU)

The African Union (AU), through its Agenda 2063[18], recognizes sustainable agriculture as a key element for achieving socio-economic development and environmental sustainability across Africa. The AU's Comprehensive Africa Agriculture Development Programme (CAADP)[19] supports the implementation of sustainable land management practices, improved water utilization, and

[16] Directive 2004/35, of the European Parliament and of the Council of 21 April 2004 on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage, 2004 O.J. (L 143) 56, (June 12, 2024, 9 AM) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0035

[17] European Commission, *A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System*, COM (2020) 381 final (May 20, 2020), (June 12, 2024, 9 AM). https://food.ec.europa.eu/system/files/2020-05/f2f_action-plan_2020_strategy-info_en.pdf

[18] African Union, *Agenda 2063: The Africa We Want Overview*, (June 2, 2024, 2 PM).https://au.int/en/agenda2063/overview

[19] African Union, *Comprehensive African Agricultural Development Programme*, (June 12, 2024, 9 AM).
https://au.int/en/articles/comprehensive-african-agricultural-development-programme (June 12, 2024, 9 AM).

adaptation to climate change in agricultural policy. The CAADP framework encourages African nations to integrate sustainability into agricultural production, enhancing resilience to environmental stresses while improving food security.

In addition to CAADP, the African Convention on the Conservation of Nature and Natural Resources [20] mandates the sustainable management of natural resources, including those within agricultural ecosystems. This regional legal instrument ensures that agricultural practices in Africa contribute to the conservation of biodiversity, soil, and water resources.

VI. National Environmental Laws Promoting Sustainable Agriculture

Across the globe, national environmental laws play a crucial role in shaping sustainable agricultural practices, with countries like the United States, India, and Brazil implementing innovative legal frameworks to address environmental challenges while fostering agricultural productivity.

6.1. United States

In the United States, environmental law intersects with agricultural policy through several key regulatory frameworks. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[21] regulates pesticide use, requiring that they meet environmental safety standards before being approved for agricultural use. Similarly, the Clean Water Act (CWA)[22] and Safe Drinking Water Act (SDWA)[23] regulate agricultural runoff, preventing the contamination of water resources through nutrient pollution.

The Farm Bill, a comprehensive piece of legislation governing U.S. agricultural policy, includes conservation programs such as the Conservation Reserve

[20] African Union, *African Convention on the Conservation of Nature and Natural Resources*, July 11, 2003, (Sept. 9, 2024, 6 PM) https://au.int/sites/default/files/treaties/41550-treaty-Charter_ConservationNature_NaturalResources.pdf (last visited September 29, 2024).
[21] Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136y (2018).
[22] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (2022).
[23] Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26 (2022).

Program (CRP)[24] and the Environmental Quality Incentives Program (EQIP).[25] These programs incentivize farmers to adopt conservation practices, such as reducing soil erosion, improving water quality, and enhancing wildlife habitat.

6.2. India

India has developed a robust legal framework to promote sustainable agriculture. The National Green Tribunal (NGT), established under the National Green Tribunal Act[26], 2010, plays a crucial role in addressing environmental cases, including those related to agricultural pollution and land degradation. The National Mission for Sustainable Agriculture (NMSA)[27], a part of India's National Action Plan on Climate Change (NAPCC)[28], promotes climate-resilient farming practices, soil health management, and water-efficient technologies.

The Environmental Protection Act of 1986[29] in India offers a robust legal framework for environmental protection, including regulating pollution from agricultural activities, particularly chemical run-off from fertilizers and pesticides. It mandates adherence to environmental standards and promotes sustainable agricultural practices. In *M.C. Mehta v. Union of India (1987)*,[30] the Supreme Court emphasized the need to regulate industrial pollution, extending this principle to agricultural pollution, highlighting the Act's role in protecting environmental quality through responsible agricultural methods. The Water (Prevention and Control of Pollution) Act, 1974[31] also tackles agricultural pollution by enforcing strict water use guidelines. Similarly, in *Vellore Citizens*

[24] Conservation Reserve Program, 16 U.S.C. §§ 3831-3836 (2022).
[25] Environmental Quality Incentives Program, 16 U.S.C. §§ 3839aa-3839aa-9 (2022).
[26] National Green Tribunal Act, No. 19, Act of Parliament, 2010
[27] National Mission for Sustainable Agriculture, Ministry of Agriculture & Farmers Welfare, Gov't of India, (Jul. 24, 2024, 3 PM) https://nmsa.dac.gov.in
[28] Press Information Bureau, Gov't of India, *India's Updated First Nationally Determined Contribution (NDC) Under Paris Agreement*, (Jul. 24, 2024, 3:30 PM), https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/dec/doc202112101.pdf
[29] The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986
[30] M.C. Mehta v. Union of India, 1987 AIR 1086 (India)
[31] The Water (Prevention and Control of Pollution) Act, 1974, No. 6, Acts of Parliament, 1974

Welfare Forum v. Union of India,[32] the Court stressed the need to control pollutants to safeguard water resources.

Additionally, the Biological Diversity Act, 2002 [33] regulates biodiversity conservation, including agro biodiversity, preserving traditional farming practices and crop varieties for future generations. This was reinforced in T.N. *Godavarman Thirumulpad v. Union of India*[34] linking biodiversity conservation with sustainable agricultural ecosystems.

6.3. Brazil

Brazil, home to the Amazon, promoting biodiversity conservation while allowing agricultural production. The Rural Environmental Registry (CAR)[35] ensures that land use complies with environmental regulations, tracking deforestation and promoting sustainable land management. Brazil's ABC Plan (Low-Carbon Agriculture)[36], developed under the Paris Agreement, aims to reduce greenhouse gas emissions from agriculture by promoting sustainable practices like reforestation, no-till farming, and integrated crop-livestock-forest systems. These initiatives underscore Brazil's commitment to reducing deforestation and promoting sustainable agricultural practices.

VII. Challenges in Implementing Environmental Law for Sustainable Agriculture

While environmental laws provide a framework for promoting sustainable agriculture, significant challenges hinder their effective implementation across the globe:

7.1. Enforcement Gaps

Despite comprehensive environmental laws, many countries struggle with enforcement due to a lack of institutional capacity, resources, and political will.

[32] Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SUPREME COURT 2715 (India)
[33] The Biological Diversity Act, 2002, No. 18, Act of Parliament, 2003, Act & Rules.p65 (nbaindia.org)
[34] T.N. Godavarman Thirumulpad v. Union of India, AIR 2005 SC 4256 (India)
[35] Brazilian Forest Code, Law No. 12.651, of May 25, 2012, § 29
[36] CGIAR, *Brazil's Low-Carbon Agriculture (ABC) Plan*, (Sept. 3, 2024, 4 PM) https://csaguide.cgiar.org/csa/brazil-s-low-carbon-agriculture-abc-plan

In several developing countries, corruption and weak governance systems undermine the enforcement of environmental regulations. For instance, laws limiting deforestation or regulating the use of fertilizers and pesticides often go unenforced, especially in regions where agricultural expansion is prioritized over environmental protection. Without robust monitoring mechanisms, violations of environmental laws related to agriculture continue to occur, contributing to land degradation, water pollution, and loss of biodiversity.

7.2. Conflicting Policies

One of the critical challenges lies in the conflict between agricultural policies that prioritize productivity and environmental regulations that emphasize sustainability. For example, in many countries, subsidies for chemical fertilizers, pesticides, and water-intensive crops, such as rice and sugarcane, contradict environmental laws aimed at reducing water consumption and chemical runoff. Policymakers often face a trade-off between food security and environmental sustainability, which complicates the alignment of these two policy goals. Effective legal frameworks need to integrate agricultural and environmental goals to ensure a coherent approach to sustainable farming.

7.3. Market Pressures and Economic Viability

Farmers often face market pressures that push them toward unsustainable practices. The global demand for high-yield, low-cost agricultural products incentivizes practices that prioritize short-term gains over long-term sustainability. For instance, monoculture farming and the excessive use of agrochemicals may result in immediate yield increases but cause long-term damage to the environment. Environmental laws that promote sustainable practices need to be accompanied by economic incentives such as subsidies, tax breaks, and access to green markets to ensure that farmers can afford to adopt these practices. Without such economic support, farmers may find it difficult to transition to sustainable methods.

7.4. Climate Change

Climate change intensifies the challenges of sustainable agriculture by altering temperature, rainfall patterns, and increasing the frequency of extreme weather

events, disrupting traditional farming practices. Environmental laws must adapt to these changes by incorporating climate-smart techniques that improve resilience. In areas like Sub-Saharan Africa, shifting growing seasons necessitate legal frameworks that promote water-efficient and drought-resistant crops. Additionally, addressing climate change's impact on agriculture requires international cooperation and policies aimed at reducing greenhouse gas emissions from farming, ensuring long-term sustainability in agricultural practices.

VIII. CASE STUDIES

The following case studies from the Netherlands, Costa Rica, and Kenya illustrate how innovative policy frameworks and environmental laws are effectively steering agricultural practices towards sustainability, demonstrating the potential for regulatory measures to enhance both environmental health and agricultural productivity:

8.1. Netherlands: The Nitrate Directive[37]

The Netherlands serves as a successful case study in integrating environmental law into sustainable agriculture through the enforcement of the EU Nitrates Directive. This directive aims to reduce water pollution caused by nitrates from agricultural sources. The Dutch government has implemented strict nutrient management plans, requiring farmers to minimize the use of chemical fertilizers and prevent nitrate runoff into water bodies. As a result, the Netherlands has witnessed improvements in water quality and the adoption of more sustainable agricultural practices, such as precision farming and organic agriculture. This case highlights the importance of regulatory enforcement and compliance in achieving sustainable agricultural outcomes.

8.2. Costa Rica: Payment for Ecosystem Services (PES)

Costa Rica is a global leader in promoting sustainable agriculture through its Payment for Ecosystem Services (PES) program.[38] The PES program, established

[37] European Commission, *Nitrates and Water Pollution*, (Sept. 29, 2024, 11 AM), https://environment.ec.europa.eu/topics/water/nitrates_en

[38] United Nations Framework Convention on Climate Change, *Payments for Environmental Services Program*, (Aug. 10, 2024, 3:30 PM) https://unfccc.int/climate-

under Costa Rica's Forestry Law, compensates farmers for maintaining forest cover, practicing agroforestry, and managing their land in ways that conserve biodiversity and provide ecosystem services, such as carbon sequestration and water regulation. Farmers who participate in the PES program receive financial incentives for adopting sustainable practices that benefit both agriculture and the environment. This program has led to significant reforestation, improved soil health, and enhanced biodiversity in agricultural landscapes.

8.3. Kenya: Climate-Smart Agriculture and Environmental Law

In Kenya, environmental law has been integrated with agricultural policy to promote climate-smart agriculture. The National Climate Change Action Plan (NCCAP) [39] and the Environmental Management and Coordination Act (EMCA)[40] mandate sustainable land use, water conservation, and the reduction of greenhouse gas emissions from agricultural activities. Kenya's legal framework also supports sustainable irrigation practices and integrated pest management, reducing the reliance on water and chemical inputs. Through a combination of legal instruments and farmer education programs, Kenya has promoted agricultural practices that increase resilience to climate variability, improving food security while mitigating environmental impacts.

IX. Role of Policy Instruments in Promoting Sustainable Agriculture

Policy instruments play a pivotal role in shaping the landscape of sustainable agriculture, serving as essential levers that guide farmers toward environmentally friendly practices while promoting economic resilience and resource conservation.

action/momentum-for-change/financing-for-climate-friendly-investment/payments-for-environmental-services-program

[39] Kenya Ministry of Environment & Forestry, *National Climate Change Action Plan 2018-2022 (NCCAP)*, Climate Change Laws of the World, (Aug 10, 2024, 3 PM) https://climate-laws.org/document/national-climate-change-action-plan-2018-2022-nccap_a381

[40] Environmental Management and Co-ordination Act, No. 8 of 1999, https://eregulations.invest.go.ke/media/emca_1.pdf (Kenya).

9.1. Subsidies and Financial Incentives

Subsidies and financial incentives are powerful tools for promoting sustainable agriculture. Governments can use subsidies to encourage practices that conserve resources and enhance environmental quality, such as organic farming, agroecology, and the use of renewable energy in agriculture. For example, the European Union's Common Agricultural Policy (CAP) provides payments to farmers who meet environmental standards. In the United States, programs such as the Environmental Quality Incentives Program (EQIP) offer financial assistance to farmers who adopt conservation practices like cover cropping, water conservation, and habitat restoration.

9.2. Certification and Labelling Schemes

Environmental law often supports certification schemes that recognize sustainable agricultural practices. Labels like "organic," "fair trade," and "sustainably sourced" help consumers make informed choices and create market incentives for farmers to adopt environmentally friendly practices. Certification standards are typically supported by both domestic regulations and international agreements. For instance, the European Union's Organic Regulation sets criteria for organic farming, ensuring that certified products adhere to sustainable agriculture principles, such as biodiversity conservation, soil fertility, and restricted use of synthetic chemicals.

9.3. Tradable Permits and Environmental Markets:

Tradable permits and environmental markets, such as carbon trading, provide economic incentives for sustainable agriculture by allowing farmers to monetize the environmental benefits of their practices. Programs like carbon sequestration credits reward farmers who adopt practices that reduce greenhouse gas emissions or capture carbon, such as no-till farming or reforestation. These markets are often established through national or regional legislation that sets caps on emissions and creates tradable credits. In countries like Australia, the Carbon Farming Initiative allows farmers to earn credits for emissions reduction, which they can sell in carbon markets.

9.4. Land Tenure and Property Rights

Secure land tenure and property rights are crucial for sustainable agriculture, as they provide farmers with the long-term stability needed to invest in sustainable practices. Environmental laws that protect land tenure can reduce land degradation, prevent deforestation, and encourage sustainable resource management. In many developing countries, lack of secure land rights leads to overexploitation of resources, soil degradation, and unsustainable farming practices. Strengthening legal frameworks for land tenure is a critical step in promoting sustainable agriculture.

X. Promoting Sustainable Agriculture Through Multi-Stakeholder Engagement

Sustainable agriculture cannot be achieved through legal mechanisms alone; it requires the active participation of multiple stakeholders, including governments, farmers, civil society, and the private sector. Environmental law can play a catalytic role in facilitating collaboration between these actors.

10.1. Government and Policy Makers

Governments have a critical role in developing and enforcing laws that promote sustainable agricultural practices. They can also lead by example through public procurement of sustainably produced agricultural products, supporting research and innovation in sustainable farming, and fostering public-private partnerships to scale up sustainable practices. Environmental law also empowers governments to address transboundary agricultural issues such as shared water resources and cross-border environmental impacts through international treaties and regional agreements.

10.2. Farmers and Agribusiness

Farmers are the primary actors in implementing sustainable agriculture, and environmental law must be designed to support them in this role. Laws that promote access to sustainable technologies, training, and financial resources are essential for helping farmers transition to more sustainable practices.

Agribusiness, as a key driver of agricultural practices, also has a responsibility to adhere to environmental standards and support sustainable farming through supply chain management and corporate social responsibility (CSR) initiatives.

10.3. Civil Society and NGOs

Non-governmental organizations (NGOs) and civil society groups play a vital role in advocating for sustainable agriculture and holding governments and businesses accountable for their environmental commitments. They often provide the technical expertise and on-the-ground support needed to implement sustainable practices, especially in rural and underdeveloped regions. Environmental law frequently recognizes the role of public participation in decision-making processes, ensuring that farmers and communities have a voice in the policies that affect their livelihoods and environments.

10.4. International Organizations

International organizations such as the United Nations, FAO, and the World Bank provide critical support for sustainable agriculture through funding, research, and policy guidance. These organizations help develop global standards and agreements that promote sustainable practices, facilitate knowledge exchange, and provide financial resources for developing countries to implement sustainable agricultural practices.

XI. Future Directions for Environmental Law in Sustainable Agriculture

The future of sustainable agriculture is closely tied to the evolution of environmental law. As new challenges arise, such as the growing impacts of climate change, soil degradation, and biodiversity loss, legal frameworks must evolve to address these issues in innovative ways.

11.1. Climate Adaptation and Resilience:

As climate change intensifies, environmental law will need to focus on climate adaptation strategies in agriculture. This includes promoting drought-resistant crops, water-efficient irrigation systems, and resilient farming techniques that can

withstand extreme weather events. Laws that integrate climate adaptation into agricultural policies will be crucial for ensuring long-term sustainability.

11.2. Integration of Circular Economy Principles:

The circular economy offers a new paradigm for sustainable agriculture by promoting the recycling of resources, minimizing waste, and regenerating natural systems. Environmental law can support the adoption of circular economy principles in agriculture by incentivizing practices such as composting, waste-to-energy technologies, and nutrient recycling.

11.3. Strengthening Biodiversity Conservation in Agricultural Landscapes:

Biodiversity is integral to the health and resilience of agricultural ecosystems. Future legal frameworks must place greater emphasis on conserving biodiversity within agricultural landscapes. This could involve stronger protections for pollinators, legal incentives for maintaining diverse cropping systems, and regulations that limit habitat destruction caused by agricultural expansion.

11.4. Enhancing Digital Technologies for Sustainable Agriculture:

The rise of digital technologies, including precision farming, satellite monitoring, and blockchain for supply chain transparency, presents new opportunities for promoting sustainable agriculture. Environmental law can facilitate the adoption of these technologies by creating regulatory frameworks that ensure data privacy, protect smallholder farmers, and encourage technological innovation.

XII. Conclusion

Environmental law plays a crucial role in promoting sustainable agriculture, addressing the complex challenges of food security, environmental protection, and climate change mitigation. Through international agreements, regional frameworks, and national legislation, legal mechanisms have been instrumental in shaping agricultural practices that conserve natural resources, reduce environmental impacts, and enhance resilience to climate change.

The integration of environmental law with agricultural policy has led to significant advancements, including the reduction of chemical inputs, conservation of biodiversity, and promotion of climate-smart farming techniques.

However, challenges persist, such as enforcement gaps, conflicting policies, and economic pressures that can undermine sustainable practices.

The future of sustainable agriculture depends on the continued evolution of environmental law to address emerging challenges. This includes strengthening climate adaptation strategies, integrating circular economy principles, enhancing biodiversity conservation in agricultural landscapes, and leveraging digital technologies for sustainable farming.

Ultimately, the success of sustainable agriculture relies on multi-stakeholder engagement, with governments, farmers, civil society, and the private sector working collaboratively within the framework provided by environmental law. As global population growth and climate change intensify pressures on agricultural systems, the role of environmental law in guiding the transition to sustainable agriculture becomes increasingly vital for ensuring food security and environmental sustainability for future generations.

EVALUATION OF INDIA'S QUEST FOR SIMULTANEOUS ELECTIONS: CHARTING ADMINISTRATIVE AND ECONOMIC CHALLENGES

Navin Pal Singh[1]

ABSTRACT

India consists of 28 states and 8 union territories, and it has a total population of 1450 million. The Election Commission of India says that the official date for the 2024 General Election is 977.9 million citizens are registered to vote in India. In the 2024 General Elections, 642.1 million of the 977.9 million eligible voters cast their votes. It is a huge job to hold General Elections at the national level and State Assembly elections in India's largest democracy. Every year, it gets harder to hold different elections in India. Every year, there are 5 to 6 elections for State Assemblies. Frequent elections in India not only cost the government a lot of money, but they also stop all development-related activities until the Model Code of Conduct is lifted.

The NDA-led central government has proposed the idea of "One Nation One Election" (ONOE) in India to hold elections for the Lok Sabha, state legislative assemblies, and possibly even local bodies all at the same time. This is to make India's electoral system work better. This paper examines the history of simultaneous elections, critically evaluating their advantages, while also highlighting the administrative and economic challenges that may arise from the implementation of One Nation One Election. It talks about how logistics can be a problem, how resources are needed, how federalism is a worry, and how the budget will be affected.

[1] The author is Ph.D. Scholar, National Law University, Delhi, can be reached at navinsingh.law@gmail.com.

I. INTRODUCTION

India has the biggest democracy in the world, and it holds elections on a huge scale, with more than 96 crore voters and more than one million polling stations[2]. These elections happen at different levels—national, state, and local—so they happen often, which puts a lot of strain on the economy and the government.

India holds elections at three levels: national, state, and local. Local elections are held in places like panchayats and municipalities. The Election Commission of India is in charge of running elections for the House of the People (Lok Sabha) and the different state legislative assemblies. The State Election Commission runs elections for the panchayats and municipalities in a State. In Indian history, the idea of having elections at the same time is not new. The first elections after independence were in 1951-52, when the Lok Sabha and state assemblies were held at the same time. The same thing happened in the elections of 1957, 1962, and 1967. After 1967, there were no more simultaneous elections because some state assemblies were dissolved early before the completion of their full term[3].

In order to identify the need for One Nation One Election, the researcher has analysed the frequency of Lok Sabha and Various State Assembly elections conducted in the last 5 years, i.e., from 2019 to 2024.

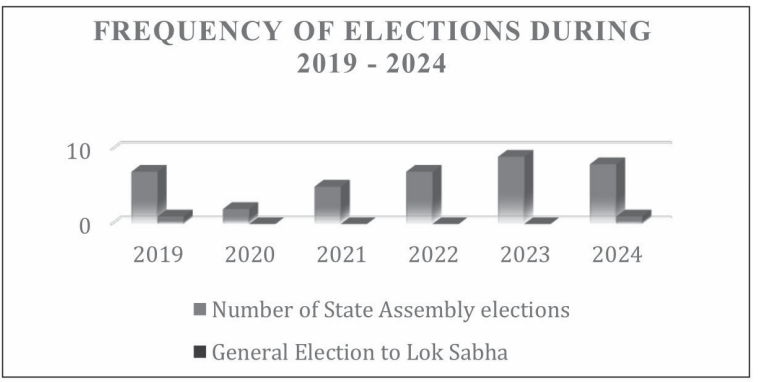


Figure 1: Frequency of Elections during 2019 – 2024[4]

[2]One Nation, One Election Bill, VISION IAS, https://visionias.in/current-affairs/monthly-magazine/2025-01-22/polity-and-governance/one-nation-one-election-bill. (Last visited on Jan. 22, 2025).

[3] Ashutosh Bairagi, One Nation One Election in India: A Contemporary Need vis-à-vis a Matter of Mere Discussion, 5 INT'L J.L. MGMT. & HUMAN. 1726 (2022), https://doij.org/10.10000/IJLMH.113009.

[4]Election Commission of India, Statistical Reports, https://www.eci.gov.in/statistical-reports.

It can be analysed from Figure 1, highlighting the frequency of elections from 2019 to 2024, a total of 40 elections (38 State Assembly and 2 General Elections to Lok Sabha) were conducted by the ECI. It can be seen that, on average, more than 6 elections every year are held in different parts of India. Such frequent elections not only hinder the economic growth of the particular State but also put a heavy financial burden on the public exchequer's fund. The concept of ONOE proposes aligning these elections to occur simultaneously or within a short timeframe, potentially reducing disruptions and costs[5].

The NDA government, led under the Prime Ministership of Mr. Narendra Modi, proactively advocated for the viability of One Nation One Election in India. The Government of India appointed High High-Level Committee on Simultaneous Elections under the chairmanship of Shri Ram Nath Kovind, former President of India, via a notification issued on 2nd September 2023[6]. The High-Level Committee submitted its report in March 2024. The Report, which is 18,626 pages long, is the result of a lot of research and talks with stakeholders and experts over the course of 191 days. The Committee received responses from various stakeholders to get a sense of the viability of simultaneous elections in India. There were 47 political parties that submitted their opinions and suggestions. Of those, 32 were in favour of holding elections at the same time. There were 21,558 responses from people all over India to a public notice that was published in newspapers in all the States and Union territories. Eighty percent of the people who answered said they were in favour of holding elections at the same time. While preparing the report, several Chief Justices of India, the Chairman of the Law Commission of India, State Election Commissioners, and twelve high court chief justices were consulted by the High-Level Committee[7].

The HLC recommended phased synchronization, and to implement the recommendation, the Constitution (129th Amendment) Bill, 2024, and the Union

[5]One Nation, One Election, WIKIPEDIA, https://en.wikipedia.org/wiki/One_Nation%2C_One_Election.
[6] Press Information Bureau, High Level Committee Submits Its Report on One Nation, One Election—Simultaneous Elections Core to Aspirational India https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2014497. (Last visited on Mar. 14, 2024),
[7] Id.

Territories Laws (Amendment) Bill, 2024, were introduced in the Lok Sabha on December 17, 2024[8]. These bills, now under scrutiny by a Joint Parliamentary Committee (JPC), aim to amend Articles 83, 172, and 327, and insert Article 82A to facilitate simultaneous polls starting from an "appointed date." Proponents argue that ONOE would minimize the Model Code of Conduct (MCC)-induced policy paralysis, cut electoral expenditures estimated at Rs 60,000 crore for the 2019 Lok Sabha polls alone, and boost voter turnout[9]. However, critics contend it threatens federalism by centralizing power, risks voter confusion in multi-tier voting, and overlooks practical implementation challenges in a federation with varying state dynamics[10].

II. HISTORICAL BACKGROUND AND EVOLUTION OF ONOE

Simultaneous elections were the norm in post-independence India, with the first four general elections (1951-52, 1957, 1962, and 1967) aligning Lok Sabha and state assembly polls. This synchronization facilitated efficient resource use and minimized governance interruptions. However, the practice eroded due to premature dissolutions under Article 356 (President's Rule), coalition instabilities, and extensions during emergencies, leading to desynchronized cycles by 1968-69. For instance, the Lok Sabha's early dissolution in 1970 and state assemblies in various years created a staggered system that persists today.

The Election Commission of India (ECI) first advocated reviving simultaneous elections in its 1983 annual report, emphasizing reduced administrative strain. The Law Commission's 170th Report in 1999 endorsed the idea, suggesting constitutional amendments to Articles 83, 85, 172, 174, and 356 to synchronize terms. In 2015, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice explored the feasibility, recommending a two-phase

[8] Damini Nath & Apurva Vishwanath, One Nation, One Election Bill: Key Highlights of the Proposed Bills, and Takeaways, INDIAN EXPRESS (Dec. 17, 2024), https://indianexpress.com/article/explained/explained-politics/one-nation-one-election-bill-9729721/.

[9] Milan Vaishnav, Caroline Mallory & Annabel Richter, Does “One Nation, One Election” Make Sense for India?, CARNEGIE ENDOWMENT FOR INT’L PEACE (July 28, 2025), https://carnegieendowment.org/research/2025/07/india-one-nation-one-election-proposal.

[10] Exploring the Prospects of One Nation One Election, DRISHTI IAS (Sept. 27, 2024), https://www.drishtiias.com/daily-updates/daily-news-editorials/exploring-the-prospects-of-one-nation-one-election.

implementation and highlighting savings in manpower and funds. The Law Commission's 2018 draft report reinforced this, proposing ratification by at least 50% of states and noting benefits like timely policy implementation.

The Kovind-led HLC, established in 2023, consulted stakeholders and submitted its report in 2024, advocating synchronization of Lok Sabha and state assemblies first, followed by local bodies within 100 days. It projected economic gains, including a 1.5% GDP boost from stable cycles.

III. The Concept Of ONOE And Its Potential Benefits

ONOE envisions conducting elections for the Lok Sabha, state assemblies, and eventually local bodies (panchayats and municipalities) simultaneously or in phases within a defined period. The HLC report proposes a common electoral roll and voter ID, jointly managed by the ECI and State Election Commissions (SECs), to streamline processes. Implementation requires fixing five-year terms, with provisions for premature dissolutions resulting in elections only for the unexpired term, ensuring resynchronization.

Potential benefits are multifaceted. Financially, it could reduce the annual electoral expenditure of approximately Rs 4,500 crore by consolidating logistics. Governance-wise, it minimizes MCC disruptions, which currently halt development projects for months annually, allowing sustained focus on policies. Voter turnout may increase, as evidenced by higher participation in concurrent polls; for example, proximate elections (within 12 months) saw a 4.4% turnout rise. Administratively, optimizing security forces—over 15 lakh personnel are deployed per cycle—frees resources for other duties. Economically, the Kovind Committee estimates enhanced investments and a 1.5% GDP growth post-synchronization due to stability.

IV. Administrative Challenges In Implementing ONOE

Implementing ONOE in India presents profound administrative obstacles, rooted in the country's scale, diversity, and institutional frameworks.

4.1. Logistical arrangements and requirements of trained poll workers

Logistically, managing elections for over 96 crore voters across one million polling booths demands unprecedented coordination[11]. The ECI would require procuring additional EVMs and VVPATs, estimated at Rs 9,284.15 crore by the 2015 Parliamentary Committee[12]. Phased polling in large states like Uttar Pradesh already strains resources; simultaneous nationwide polls could amplify risks of delays, technical glitches, or disenfranchisement in remote areas[13]. Even though there would be regional phasing, synchronization would put many polls into one national window. This would lead to a short-term increase in the need for trained presiding officers, technical teams for EVM/VVPAT, IT operations staff, and logistical staff. Getting more EVMs and VVPATs, making room for them in warehouses, and making a permanent training pipeline more professional are all things that need to happen right away[14]. For general elections, the poll workers usually have to go through training cycles months in advance. A synchronized calendar would necessitate concurrent extensive training across all states, advocating for enduring institutional capacity (including a national polling academy, recurring digital modules, and accredited state-level training centres) instead of the existing ad-hoc surge recruitment model.

4.2. Constant fear of frequent polls

The idea behind One Nation, One Election (ONOE) promises to hold elections for the Lok Sabha and all State Legislative Assemblies at the same time. It promises better governance continuity, political stability, and fiscal efficiency. But, strangely, putting it into action could make people more afraid of more polls, not less. The instability of coalition politics, the constitutional allowance for premature dissolutions, and the regional heterogeneity of India's political landscape collectively guarantee that synchronized elections may engender a

[11] Vision IAS, supra note 1.
[12] Supra Note 25.
[13] Vaishnav et al., supra note 8.
[14] HIGH LEVEL COMM. ON SIMULTANEOUS ELECTIONS, REPORT OF THE HIGH-LEVEL COMMITTEE ON SIMULTANEOUS ELECTIONS (2024), https://onoe.gov.in/report-web/volume_I/volume_I.pdf

persistent atmosphere of electoral uncertainty. The Indian Constitution sets up a parliamentary system in which the executive can only stay in power if the legislature trusts it. Article 83(2) of the Constitution says that the Lok Sabha can only serve for five years, "unless sooner dissolved." Article 172(1) says the same thing about the State Legislative Assemblies[15]. These provisions assume that governments may fall apart in the middle of their term because of political instability or losing their majority. The framers intentionally maintained this flexibility to safeguard democratic accountability.

ONOE, on the other hand, wants to make simultaneity a permanent part of the system, which could limit this flexibility. If any government, whether Union or State, falls apart in the middle of a cycle, holding only a by-election for that one government would break the schedule. On the other hand, it would be impossible to logistically and constitutionally resynchronize the entire nation's electoral cycle for one collapse. So, ONOE creates a double tension: it either artificially extends caretaker governments or forces early national elections. Both outcomes would keep people living in fear of political upheaval. The sad reality of Coalition and fragile governments and reasonable apprehension of Chain Reaction is also a major concern. Since 1990, India's political scene has been characterized by coalition governments and regional parties that have had a lot of power. The 255th Law Commission Report (2015) said that "hung legislatures or fragile coalitions" are common in parliamentary democracy[16]. If a state government or the Lok Sabha falls under ONOE, it could set off a chain reaction of elections across the whole country, putting stability at risk at many levels of government. The High-Level Committee on Simultaneous Elections (2024) knew about this risk but only suggested limited solutions, like a "constructive vote of no confidence," which means that a government can only be removed if a new leader is elected at the same time[17]. This measure, taken from the German Basic Law, cannot completely get rid of political crises. If governments fall and no one candidate is agreed upon, ONOE could force frequent synchronized dissolutions, which would go against its main goal. Political scientists contend that

[15] *INDIA CONST.* arts. 83(2), 172(1).
[16] *Law Commission of India, Report No. 255,* ELECTORAL REFORMS 23 (2015).
[17] *High-Level Comm. on Simultaneous Elections*, Report, Vol. I, at 42–43 (2024).

synchronization "amplifies the stakes of each election," as any mid-term dissolution attains national significance[18]. This gives opposition parties a reason to try to bring down governments, knowing that the polls that follow could change the balance of power in both the national and state levels. The fear of collapse grows, which makes politicians more cautious and less willing to take risks.

The Carnegie also highlights a key challenge involved with the implementation of One Nation One Election. Carnegie's analysis highlights this as a "heavy-handed" approach, potentially increasing midterm elections if governments collapse, leading to more frequent polls rather than fewer[19].

4.3. Unprecedented Deployment of Security Forces

Security deployment poses another critical challenge. Elections necessitate over 15 lakh personnel, diverting them from regular duties and heightening vulnerabilities in conflict zones like Jammu and Kashmir [20] . The HLC acknowledges the need for phased rollouts but underestimates violence risks in a single mega-event[21]. Historical data show that staggered elections allow flexible force allocation; synchronization could overwhelm central paramilitary forces[22].

4.4. Concerns regarding Constitutional principles

4.4.1. The Constitutional Battle: A Labyrinth of Changes

There are a lot of constitutional problems that need to be solved before "One Nation, One Election" can be implemented in India. In the present form, the Indian Constitution doesn't provide the mechanism for a fixed election calendar. Article 83(2) and Article 172(1) regulate the terms for the Lok Sabha and State Assemblies, which are five years long "unless sooner dissolved."[23] The challenge

[18] Suhas Palshikar, *The Logic and Risks of Simultaneous Elections*, 53(16) ECON. & POL. WKLY. 10, 12 (2018).
[19] Milan Vaishnav, Caroline Mallory & Annabel Richter, Does "One Nation, One Election" Make Sense for India?, CARNEGIE ENDOWMENT FOR INT'L PEACE (July 28, 2025), https://carnegieendowment.org/research/2025/07/india-one-nation-one-election-proposal.
[20] Vision IAS, supra note 19.
[21] Supra Note 26.
[22] Business Today Desk, One Nation, One Election: Benefits, Challenges, Way Forward; All You Need to Know, BUS. TODAY (Sept. 18, 2024), https://www.businesstoday.in/india/story/one-nation-one-election-benefits-challenges-way-forward-all-you-need-to-know-446486-2024-09-18.
[23] INDIA CONST. art. 83, cl. 2; INDIA CONST. art. 172, cl. 1.

is based on the idea of premature dissolution, which is a key part of parliamentary democracy that lets a government that has lost its majority ask for a new mandate. To make the election cycle work together, some changes to the Constitution would need to be made. These would include, but not be limited to:

- **Amendments to Article 83 and Article 172**: These articles would need to be changed to either set the terms of the legislature or give them a way to extend or shorten their terms to match the date of the next election. This would be a big change from how things are now.
- **Amendments to Article 85 and Article 174:** These articles give the President and the Governor, respectively, the power to dissolve the Lok Sabha and State Assemblies with the help and advice of the Council of Ministers[24]. If the electoral cycle were to be changed, these powers would have to be limited in some way.
- **Article 356:** Another big problem is that Article 356 allows for President's Rule, which can lead to the dissolution of a State Assembly[25]. A system would need to be set up to deal with situations where a state's constitution breaks down without messing up the national election schedule.

In its 170th report, the Law Commission of India said that holding elections at the same time is not possible "within the existing framework of the constitution."[26] It said that any such move would need major changes to the Constitution. Because these changes would affect the federal structure, they would also need to be approved by at least half of the states, as stated in Article 368(2)[27]. This shows how important it is to have a huge legal and political agreement for such a change.

4.4.2. Concerns regarding Federalism

Apart from the amendments to the Constitution, the introduction of "One Nation, One Election" raises serious concerns about how it will affect India's federal

[24] INDIA CONST. art. 85, cl. 2(b); INDIA CONST. art. 174, cl. 2(b).
[25] INDIA CONST. art. 356.
[26] LAW COMM'N OF INDIA, REP. NO. 170, REFORM OF THE ELECTORAL LAWS ¶ 3.2.1 (1999).
[27] INDIA CONST. art. 368, cl. 2.

structure. In his important book The Indian Constitution: Cornerstone of a Nation, Granville Austin called the Indian model of federalism "co-operative federalism," which means that the Centre and the States work together[28]. Critics of simultaneous elections say that it could make this delicate balance of power even more in Favor of the central government. Out of many, one of the main concerns is that national issues will take over the election debate, pushing regional and local issues to the side. In a country as diverse as India, where each state has its own problems and priorities, separate state elections give these issues a chance to be heard. People are worried that having elections at the same time could lead to a "nationalization" of state elections, where voters are more influenced by how well the central government and national leaders do than by how well their state representatives do[29]. This could make regional parties less powerful and go against the idea of state-level accountability. The state government can dissolve its assembly and ask for a new mandate. This is an important part of its political independence. This power would be limited if states had to follow the national election schedule. If a state government loses its majority, putting President's Rule in place for a long time until the next synchronized election could be seen as taking away the democratic rights of the people of that state. Varying assembly terms require curtailments or extensions, risking misuse of Article 356, historically invoked over 100 times for political reasons[30]. Amendments to Articles 83 and 172 bypass state ratification, eroding state autonomy and potentially allowing central overreach[31]. Regional parties fear national issues overshadowing local agendas, diluting representation[32]. The Law Commission

[28] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 186 (1966).

[29] LAW COMM'N OF INDIA, DRAFT REPORT ON SIMULTANEOUS ELECTIONS ¶ 8.5 (2018). The report acknowledges the argument that simultaneous elections might lead to national issues overshadowing regional ones.

[30] Md Zakariya Khan, Explained: 'One Nation One Election Initiative', Key Reforms and Challenges, BUS. STANDARD (Dec. 18, 2024), https://www.business-standard.com/india-news/one-nation-one-election-indiareform-bills-2034-124121800589_1.html.

[31] PRS Legislative Research, supra note 14.

[32] Adv. Rajiv Sharma, 'One Nation, One Election': A Heinous Conspiracy to Destroy the Constitution, INDIAN NAT'L CONG., https://inc.in/congress-sandesh/comment/one-nation-one-election-a-heinous-conspiracy-to-destroy-the-constitution.

noted that without 50% state ratification, such changes could face legal challenges[33]. Moreover Any plan that alters state legislative tenures or emergency powers must be constitutionally sound and adhere to federal safeguards, according to the Supreme Court's judgment in S. R. Bommai[34] case which strengthened the federalism jurisprudence states that change of representation, delay by-elections, or modify terms will be subject to judicial review under constitutional guarantees, the Court's stance on centre-state relations and the application of Article 356 (President's Rule) has a direct bearing on ONOE design.

Applying the various factors as discussed, the implementation of ONOE in India would have to stand up to scrutiny on the following grounds:

- **Freezing Terms and Elected Governments:** If ONOE requires a set election cycle, even if there are early dissolutions, it could stop States from holding elections quickly after losing trust. This could lead to longer caretaker governments or central rule, which goes against the democratic idea that governments should be accountable to their legislatures. This model could be contested for infringing upon the federal-democratic equilibrium safeguarded by the Hon'ble Supreme Court in landmark cases such as S.R. Bommai [35] and Kesavananda Bharati[36].
- **Abuse of Article 356:** The Bommai decision says that President's Rule can only be used when the Constitution is broken, not when it is politically useful. Using Article 356 to "align" election cycles across States would go against what the courts have said. Synchronization cannot be a valid justification for the imposition of President's Rule.
- **Change in State Autonomy:** The people of each State give their legislative assembly its power. By forcing a centralized electoral schedule, India is moving closer to a unitary system, which goes against the "quasi-federal" design recognized in State of West Bengal v. Union

[33] Drishti IAS, supra note 16.
[34] S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1.
[35] Id.
[36] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225.

of India[37]. So, any changes to ONOE must follow the federal diversity rules in Articles 245–263.

The late Mr. Nani Palkhivala was a strong supporter of the Constitution. He often talked about how important "constitutional morality" is, saying that the spirit of the Constitution is just as important as its letter[38]. In the context of "One Nation, One Election," this means making sure that any changes to the electoral system, no matter how well-intentioned, do not undermine the democratic and federal principles that are the foundation of Indian politics.

4.5. Mammoth task of electoral roll integration

Institutional readiness is lacking. Integrating electoral rolls between ECI and SECs requires harmonizing differing state laws, a process fraught with errors like duplicate entries[39]. Training millions of polling staff for a unified event would strain budgets and increase human errors[40]. Contingencies such as hung assemblies demand new mechanisms, like "constructive no-confidence" votes, adding procedural complexity. Voter education is crucial to avoid confusion in multi-ballot voting, but resource constraints may hinder effective campaigns[41].

In essence, administrative challenges could undermine ONOE's intent, necessitating infrastructure upgrades, inter-agency collaboration, and safeguards against centralization.

V. ECONOMIC CHALLENGES IN IMPLEMENTING ONOE

While ONOE promises cost efficiencies, its economic challenges encompass high initial outlays, transitional disruptions, and uncertain long-term gains.

5.1. Scaling the entire election machinery would require immediate cost scaling

A NITI Aayog paper that backed this idea said that the union government would require investing more than Nine Thousand crores to buy the required number of Electronic Voting Machines and Voter Verifiable Paper Audit Trail systems.

[37] State of W. Bengal v. Union of India, A.I.R. 1963 S.C. 1241.
[38] NANI A. PALKHIVALA, WE, THE PEOPLE (1984) (discussing the values and spirit underpinning the Indian Constitution).
[39] PRS Legislative Research, supra note 18.
[40] Vision IAS, supra note 1.
[41] Exploring the Prospects of One Nation One Election, Drishti IAS (Sept. 27, 2024), https://www.drishtiias.com/daily-updates/daily-news-editorials/exploring-the-prospects-of-one-nation-one-election.

Also, the need for more security guards and election officials to run the larger-scale simultaneous elections could make operational costs even higher, which raises questions about whether the whole project is financially possible[42]. Synchronization (a hypothetical 2029 simultaneous exercise across all Houses and Assemblies) would need a lot of extra purchases. For example, press reports of ECI submissions to Parliament's Joint Committee talked about needing tens of lakhs of extra balloting/control units and VVPATs, with initial cost estimates in the range of several thousand crore rupees (for example, an ECI-linked estimate reported around ₹5,300 crore for necessary units and logistics). These kinds of purchases require an immediate capital phase (one-time) that needs to be paid for and managed before savings can start happening regularly[43]. The Kovind report's optimistic 1.5% GDP boost is contested; critics argue that frequent midterm polls could negate savings[44]. Administrative expenditures, though only 0.03% of GDP, would surge during synchronization[45]. Transitional disruptions are inevitable. Premature dissolutions may trigger President's Rule, historically delay projects, and hamper growth[46].

5.2. High surge in operational cost due to concentrated elections

To synchronize elections, a huge number of resources would have to be mobilized all at once, including security personnel, election officials, and transportation. This would make operations more expensive. The Election Commission of India (ECI) thinks that holding Lok Sabha and state assembly elections at the same time could cost Rs 4,500 crore. This number does not include local body elections or

[42] Record Record-Breaking Election Spending Set to Ignite Rural Demand, Feel Experts, ECON. TIMES (India) (May 5, 2024), https://economictimes.indiatimes.com/news/elections/lok-sabha/india/record-breaking-election-spending-set-to-ignite-rural-demand-feel-experts/articleshow/109852310.cms.

[43] One Nation, One Election: Simultaneous Polls May Need ₹5,300 Crore in Expenditure, Over 1 Crore EVM Units, ECON. TIMES (May 20, 2025), https://economictimes.indiatimes.com/news/india/one-nation-one-election-simultaneous-polls-may-need-5300-crore-in-expenditure-over-1-crore-evm-units/articleshow/121275378.cms.

[44] Vaishnav et al., supra note 8.

[45] Id.

[46] One Nation, One Election Bill, Vision IAS (Jan. 22, 2025), https://visionias.in/current-affairs/monthly-magazine/2025-01-22/polity-and-governance/one-nation-one-election-bill.

unexpected events like having to hold new elections[47]. Critiques of One Nation One Election point out that staggered elections spread these costs out over time, while ONOE puts them all in one place, which could lead to budget overruns if not phased in slowly. The Institute of Chartered Accountants of India (ICAI) has been given the job of doing a detailed study, which shows that these issues are understood, but exact numbers are still not available[48].

5.3. Risk highly intensive increase in election expenditure by candidates and political parties

Even if it is presumed that administrative costs would go down, but One Nation One Election could still cause private election spending to become more intensive. When private campaign spending rises quickly in a short amount of time, it can lead to more rent-seeking and capture risks, such as pressures on procurement or regulatory favours. These can raise indirect fiscal costs and make policy decisions less accurate. The empirical literature presents conflicting views on the potential decline, increase, or mere concentration of total private political spending; this uncertainty constitutes a governance and prospective fiscal risk[49]. Concentrated private spending may be linked to short-term rises in lobby-driven discretionary allocations or to temporary violations of procurement rules, both of which lead to fiscal leakages that are hard to measure.

5.4. *Policy paralysis due to the Model Code of Conduct*

Nationwide MCC imposition could paralyze investments, as seen in reduced economic activity during election seasons[50]. Businesses face uncertainty, with

[47] Zaheer Ahmed & Samuel Jacob Kuruvilla, The Idea of One Nation-One Election: Its Potential Risk and Significance for India, 16 J. POL'Y & SOC'Y 115 (2024), https://journalspoliticalscience.com/index.php/i/article/download/737/135/2948.
[48] ICAI to Assess Financial Aspects of 'One Nation One Election', ECON. TIMES (May 4, 2025), https://economictimes.indiatimes.com/news/politics-and-nation/icai-to-assess-financial-aspects-of-one-nation-one-election/articleshow/120867886.cms.
[49] Vineeth Thomas, Assessing the Feasibility of "One Nation-One Election" in India, ECON. & POL. WKLY. (Nov. 11, 2023), https://www.epw.in/journal/2023/45-46/commentary/assessing-feasibility-%E2%80%98one-nation-one-election%E2%80%99.html.
[50] Yogendra Yadav, Yogendra Yadav Writes: One Nation One Election Is a Desire to Cut Down Clutter of Democratic Politics, INDIAN EXPRESS (Sept. 24, 2024), https://indianexpress.com/article/opinion/columns/yogendra-yadav-writes-one-

supply chains disrupted; the NITI Aayog estimates MCC applies for longer period of time every year, affecting productivity[51]. The 2019 Lok Sabha polls cost Rs 60,000 crore, but campaign spending—often involving black money—remains unregulated[52]. Horse-trading to stabilize governments could escalate corruption costs[53]. Federal economic disparities exacerbate risks. National focus could sideline state-specific investments, as regional issues get subsumed[54].

VI. CONCLUSION

One Nation One Election offers a visionary reform for electoral efficiency, but administrative and economic challenges—from logistical overloads to fiscal strains—demand meticulous planning. Presently, there is no study to actually present the real data regarding how much of the public exchequer's fund will be saved by synchronising elections in India. Moreover, the implementation of One Nation One Election also faces the challenges on the constitutional front, as India follows the federal structure of government with a strong centre. In order to make it constitutionally viable, the government will require a constitutional amendment with ratification of more than one-half of the States. To streamline the process and implementation of One Nation One Election, a broad discussion on how to maintain the federal character of India is required. Ultimately, One Nation One Election must align with India's democratic ethos, prioritizing inclusivity over uniformity.

nation-one-election-is-a-desire-to-cut-down-clutter-of-democratic-politics-9584686/.

[51] Examining One Nation, One Election, DRISHTI IAS (Jan. 23, 2024), https://www.drishtiias.com/daily-updates/daily-news-editorials/examining-one-nation-one-election.

[52] Sahil Sinha, 'One Nation One Election' Savings: Half of Our Health Expense, INDIA TODAY (Sept. 20, 2024), https://www.indiatoday.in/diu/story/one-nation-one-election-cost-gdp-economic-advantages-2603612-2024-09-20.

[53] Vaishnav et al., supra note 8.

[54] Simultaneous Elections in Plural Societies, ECON. & POL. WKLY., https://www.epw.in/tags/one-nation-one-election.

FROM UNDEFINED TO CONCRETE: INTERPRETING AND SHAPING PRIVACY AS A LEGAL CONCEPT & RIGHT ACROSS JURISDICTIONS

Dr. Sourabh Ubale [*] ***& Mr. Sameer Komati*** [**]

ABSTRACT

This paper explores the evolution of 'privacy' from an abstract, often ambiguous concept to a more concrete legal right across global jurisdictions. The study underscores the absence of a universally defined notion of privacy within the legal field, presenting challenges for consistent interpretation and application. By analysing legislative and judicial perspectives from various nations, this research highlights diverse approaches to understanding privacy as a right, emphasizing the tensions between personal freedoms and state interests. The analysis delves into how different legal systems interpret privacy within the context of constitutional protections, particularly focusing on the right to privacy. This paper advocates for a structured approach to define privacy, examining contemporary interpretations while proposing future frameworks that may address emerging privacy concerns in the digital age. Ultimately, this study seeks to contribute to the ongoing discourse on shaping privacy into a legally robust concept that aligns with modern societal values, technological advancements, and fundamental human rights.

I. INTRODUCTION

Privacy, as a concept, occupies a unique position in contemporary legal and philosophical discourse. In a rapidly evolving digital age, the boundaries of privacy have become increasingly fluid, raising complex questions about its nature, scope, and protection. Despite its universal relevance, privacy remains a

[*] Assistant Professor (PG) at MM Shankarrao Chavan Law College, Pune (Permanently Affiliated to Savitribai Phule Pune University)
[**] LL.B student at MM Shankarrao Chavan Law College, Pune (Permanently Affiliated to Savitribai Phule Pune University)

challenging and often ambiguous construct, shaped by cultural, technological, and legal factors. The absence of a cohesive and universally accepted definition further complicates efforts to protect this fundamental right. Recognized as intrinsic to human dignity and liberty, privacy is essential for the exercise of autonomy and personal choice. However, its protection often collides with competing interests such as national security, public welfare, and technological advancement.

In India, the recognition of privacy as a fundamental right under Article 21 of the Constitution in *Justice K.S. Puttaswamy v. Union of India* marked a watershed moment. This landmark judgment not only elevated privacy to a constitutional pedestal but also acknowledged its interconnection with other fundamental freedoms, including equality, free speech, and religion. Yet, the contours of this right remain unsettled, particularly in the face of emerging challenges like data breaches, surveillance, and artificial intelligence.

Globally, legal systems grapple with defining and safeguarding privacy within an increasingly interconnected world. The Digital Personal Data Protection (DPDP) Act, 2023, India's first comprehensive data protection legislation, exemplifies the ongoing struggle to balance individual rights with collective interests. This paper delves into the multidimensional nature of privacy, analysing its legislative, judicial, and philosophical underpinnings. It also explores how contemporary and future challenges, particularly in the digital realm, necessitate a cohesive legal framework to ensure privacy remains a fundamental and enforceable right. Through this lens, the research advocates for a defined, adaptable approach to privacy, one that aligns with constitutional values and addresses emerging realities.

II. Understanding Privacy As A Concept In Law

Privacy, as a legal concept, is both dynamic and multifaceted, often defying precise definition. Its evolving nature reflects societal, cultural, and technological complexities, making it a subject of significant legal and academic debate. While essential to individual autonomy, privacy remains inconsistently defined, necessitating a deeper exploration of its historical and legal foundations. Privacy,

though often considered elusive and difficult to define, is far from being a vague or insignificant right. The inability to provide a precise definition does not undermine its legitimacy as a fundamental right; rather, it reflects the complexity of its scope and relevance in modern life. Privacy forms the foundation of all liberties, enabling individuals to decide how best to exercise their freedoms. It is an inalienable natural right rooted in universal moral principles, particularly the innate dignity and autonomy of human beings.

At its core, privacy safeguards personal choices that define an individual's way of life. It enables individuals to protect their "zone of privacy," thereby realizing the full value of life and liberty. While liberty encompasses broader dimensions, privacy is a vital subset. Not all liberties are exercised in privacy, but privacy remains indispensable for the autonomy of the body and mind, allowing individuals to make critical decisions about their lives. Privacy extends to the physical and mental integrity of individuals. The privacy of the body ensures the protection of personal and physical integrity, while mental privacy fosters freedom of thought, belief, and self-determination. This intersection between privacy and autonomy underscores its role as a postulate of human dignity. Without privacy, the exercise of personal liberty and freedoms guaranteed by the Constitution would be incomplete.

Privacy is more than a derivative constitutional right; it is an essential and inevitable component of the rights enshrined in the Constitution. The right to privacy can be viewed through three essential facets: repose (freedom from unwarranted intrusion), sanctuary (protection of personal space), and intimate decisions (freedom to make critical life choices). Together, these facets are fundamental to human liberty and are inherently linked to the dignity guaranteed under Article 21 of the Indian Constitution.

Importantly, privacy is not a privilege of the privileged few but a universal right accessible to all. It governs personal and intimate aspects of life, such as the sanctity of marriage, procreation, family choices, and overall dignity. Moreover, it is both a common law and fundamental right. While interference by the state may constitute a violation of a fundamental right, interference by non-state actors may be addressed under common law. Privacy also preserves cultural and

educational rights, recognizing the plurality and diversity of society. It extends beyond solitude, protecting the rights of groups to maintain their distinct identities. Furthermore, privacy is not lost in public spaces but remains attached to the individual, underscoring its significance as an essential facet of human dignity.

In the digital age, privacy encompasses informational and technological dimensions, addressing challenges such as data mining, metadata, social media surveillance, and network privacy. While privacy differs from anonymity—where the former hides information and the latter hides identity—both play crucial roles in safeguarding individual rights in a rapidly evolving technological landscape. Ultimately, privacy is a dynamic, multifaceted concept that is essential for human liberty, dignity, and the preservation of individuality in an increasingly homogenized world.

2.1. Exploration of Privacy and Legal Discourse

Privacy, as a legal concept, remains one of the most debated and elusive subjects in jurisprudence. It lacks a universally accepted definition, largely because of its deeply contextual and evolving nature. While commonly associated with the protection of individual autonomy, bodily integrity, and information security, privacy resists confinement within rigid legal parameters. This ambiguity is partly due to its multidimensional character, intersecting with areas like personal dignity, freedom of expression, and state surveillance. Scholars like Alan Westin have described privacy as the ability of individuals to control access to their personal information, yet this interpretation has been criticized for being overly narrow.[1]

In India, the lack of a precise statutory definition of privacy created legal uncertainties until the Supreme Court's landmark judgment in *K.S. Puttaswamy v. Union of India*.[2] The Court declared privacy a fundamental right under Article 21 of the Indian Constitution, emphasizing its centrality to human dignity. However, the judgment also left the term undefined, allowing courts and

[1] Alan F. Westin, *Privacy and Freedom*, 25 WASH. & LEE L. REV. 166 (1968)
[2] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

legislatures to interpret it situationally. This vagueness, while providing flexibility, has resulted in inconsistent applications in issues like surveillance, data protection, and bodily autonomy, underscoring the urgent need for a clearer legal framework.

2.2. Conceptualizing Privacy through Evolution and Challenges

The conceptualization of privacy has evolved over time, influenced by societal, cultural, and technological shifts. Early references to privacy can be traced to the 1890 Harvard Law Review article by Warren and Brandeis, which defined privacy as "the right to be let alone."[3] Their work laid the foundation for privacy as a distinct legal interest, particularly in the United States.

In the Indian context, the legal recognition of privacy began with *Gobind v. State of Madhya Pradesh*,[4] where the Supreme Court observed that certain aspects of privacy were implicit in the right to life and personal liberty. However, privacy was not explicitly recognized as a constitutional right until the *Puttaswamy* case. The historical challenge in India was balancing privacy with competing interests like public safety and societal values, particularly in a diverse and hierarchical society where the notion of personal space varies significantly.

Moreover, rapid technological advancements have posed new challenges, blurring traditional boundaries of privacy. Issues like mass surveillance, data breaches, and artificial intelligence have outpaced legal frameworks, making it increasingly difficult to conceptualize privacy in a manner that remains both adaptable and robust.

III. COMPARATIVE ANALYSIS OF PRIVACY RIGHTS THROUGH JUDICIAL INTERPRETATIONS ACROSS JURISDICTIONS

The right to privacy is recognized across the globe as a critical component of human dignity and liberty. However, the conceptualization, scope, and enforcement of this right vary significantly from one jurisdiction to another, reflecting cultural, social, and political differences. While some nations have

[3] *See* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).
[4] *Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148 (India).

established privacy as an explicit constitutional right, others rely on judicial interpretations or statutory protections. This section explores how various nations define and safeguard privacy, emphasizing the role of cultural, societal, and political factors in shaping its interpretation.

3.1. Nations Defining and Protecting the Right to Privacy

In India, the right to privacy attained constitutional recognition through the landmark judgment in *K.S. Puttaswamy v. Union of India*.[5] The Supreme Court ruled that privacy is an intrinsic part of the right to life and personal liberty under Article 21 of the Indian Constitution. This decision marked a pivotal moment in Indian jurisprudence, particularly in the context of government surveillance, data protection, and individual autonomy. Despite this judicial recognition, legislative frameworks, such as the proposed Digital Personal Data Protection Bill,[6] are still evolving to address technological advancements and data-related concerns.

In contrast, the United States approaches privacy as a right derived from constitutional guarantees, such as the Fourth Amendment, which protects individuals against unreasonable searches and seizures.[7] While the U.S. Constitution does not explicitly mention privacy, landmark cases like *Griswold v. Connecticut*[8] and *Roe v. Wade*[9] have established its implicit existence, particularly in matters related to personal autonomy and bodily integrity.

The European Union (EU), however, offers a more comprehensive legal framework for privacy. The General Data Protection Regulation (GDPR)[10] is one of the most advanced privacy laws globally, emphasizing the protection of personal data and granting individuals control over their information. The EU's approach is rooted in the European Convention on Human Rights, which explicitly recognizes the right to privacy under Article 8.

[5] *See Supra note 2.*
[6] Draft Digital Personal Data Protection Bill, 2023 (India).
[7] U.S. CONST. amend. IV.
[8] Griswold v. Connecticut, 381 U.S. 479 (1965).
[9] *Roe v. Wade*, 410 U.S. 113 (1973).
[10] Regulation (EU) 2016/679 (General Data Protection Regulation).

Countries like South Africa and Canada have also adopted distinct approaches. South Africa's Constitution explicitly guarantees privacy under Section 14, focusing on safeguarding personal communications and information.[11] In Canada, privacy is protected as part of the broader rights to liberty and security under the Canadian Charter of Rights and Freedoms.[12]

3.2. Comparative Study of Cultural, Social, and Political Influences on Privacy Interpretations

Cultural, social, and political contexts significantly shape privacy rights across jurisdictions. In India, privacy debates often intersect with the country's collectivist traditions, where individual rights are balanced against societal values. Issues like the Aadhaar biometric identification program illustrate how privacy concerns are weighed against the state's interest in welfare delivery.[13]

In the United States, privacy is closely tied to individual autonomy and freedom, reflecting the country's liberal values. However, post-9/11 surveillance programs and the rise of big tech have sparked debates on balancing national security and corporate accountability with personal privacy.

European societies, with their emphasis on human dignity and personal autonomy, tend to adopt a more robust approach to privacy protection. The GDPR's stringent regulations reflect Europe's commitment to treating privacy as a fundamental human right. This contrasts with countries like China, where privacy takes a backseat to state interests. China's laws, such as the Personal Information Protection Law (PIPL), focus more on controlling data within the state's surveillance-oriented framework rather than protecting individual freedoms.[14]

Social factors also influence interpretations of privacy. For instance, India's diverse socio-economic landscape highlights disparities in access to privacy protections, particularly for marginalized communities. Similarly, indigenous groups in Canada and Australia emphasize the collective dimensions of privacy, linking it to cultural preservation and autonomy. The comparative analysis reveals

[11] S. Afr. Const., 1996, § 14.
[12] Canadian Charter of Rights and Freedoms, 1982, § 7.
[13] *Justice K.S. Puttaswamy (Retd.) v. Union of India,* (2018) 1 SCC 809 (Aadhaar Case).
[14] Personal Information Protection Law (PIPL), 2021 (China).

that privacy, while universally acknowledged, is deeply influenced by the unique cultural, social, and political contexts of each nation. Understanding these variations is essential for shaping a globally relevant and context-sensitive approach to privacy rights.

3.3. Debates over the right to privacy through diverse lenses

The Supreme Court's landmark hearings on the right to privacy became a focal point for debates surrounding its recognition as a fundamental right and its relevance in a modern technological era. Discussions revolved around the "amorphous" nature of privacy, challenging its definition and exploring whether it could be disregarded merely due to the lack of precision in framing. With citizens voluntarily sharing personal data in the digital age, the discourse sought to crystallize privacy's legal and philosophical essence.

3.4. Judicial Perspectives

Justice S.A. Bobde highlighted privacy as intrinsic to human dignity, remarking that a person cannot die with dignity without privacy. Justice Rohinton Nariman emphasized that privacy extends beyond Aadhaar, advocating for laws that adapt to modern needs and protect individuals against both state and non-state actors. He underscored the role of courts, rather than legislatures, in interpreting privacy as a fundamental right rooted in India's obligations under the Universal Declaration of Human Rights, 1948.

Justice D.Y. Chandrachud rejected the notion of privacy as elitist, linking it to the essence of human life. He gave the example of marginalized women who may face forced sterilization without privacy protections. Chief Justice J.S. Khehar voiced concerns over the misuse of personal information, asserting that any compelled disclosure of information violating personal autonomy infringes on the right to privacy. Justice J. Chelameswar emphasized that judgments have consistently recognized privacy as a fundamental right and that its interpretation transcends a single constitutional provision or amendment.

3.5. Bar Perspectives

The government presented a cautious approach to privacy. Attorney General K.K. Venugopal argued that privacy is not a homogenous right but rather a collection of rights scattered across the Constitution, making only some facets fundamental. Additional Solicitor General Tushar Mehta, representing the Aadhaar project, downplayed concerns over fingerprints and asserted the need to use technology for societal benefit while maintaining confidentiality under the Aadhaar Act.

Senior advocate C.A. Sundaram contended that privacy lacks the precision required for a fundamental right, warning that its recognition could lead to excessive litigation. By contrast, senior advocate Kapil Sibal supported privacy as a constitutional but non-absolute right, stressing the importance of a robust data protection framework. Advocates like Soli Sorabjee and Gopal Subramanium argued that privacy, while not explicitly mentioned in the Constitution, could be inferred from other fundamental rights, much like the freedom of the press.

Senior advocate Shyam Divan focused on informational self-determination, asserting that individuals should have control over their data in the internet age. Sajan Poovayya distinguished privacy from secrecy, tying it to dignity and emphasizing the need for restrictions when the State collects personal data. Lastly, Gopal Subramanium articulated privacy as essential for liberty, personal development, and dignity, while Anand Grover highlighted the fluid and evolving nature of privacy, requiring case-specific interpretations.

The hearings culminated in the acknowledgment that privacy, as an inherent aspect of liberty and dignity, deserves recognition as a fundamental right, regardless of its absence from explicit constitutional text. The debates also underscored the pressing need for a comprehensive data protection regime to safeguard citizens in a rapidly digitizing world.

3.6. The UK Perspective on Privacy Rights

In the UK, the evolution of privacy rights has been shaped significantly by judicial decisions. Two landmark cases, ***Wainwright v. Home Office*** **(2003)** and ***Campbell v. Mirror Group Newspapers Ltd*** **(2004),** highlight the development of privacy law and the interplay between individual rights and public interests. In

***Wainwright v. Home Office* (2003)**[15]**,** Alan Wainwright and his mother were subjected to degrading strip searches by prison officers during a visit to a relative in prison. They alleged a violation of their right to privacy. However, the House of Lords held that English common law did not recognize a general tort for invasion of privacy. Instead, the court ruled the search unlawful based on statutory provisions. This judgment emphasized the limitations of common law in protecting privacy and underscored the necessity of statutory or judicial intervention, paving the way for the **Human Rights Act 1998** to incorporate Article 8 (Right to Privacy) of the European Convention on Human Rights (ECHR). In Campbell v. Mirror Group Newspapers Ltd (2004)[16], Supermodel Naomi Campbell sued the *Mirror Group Newspapers* after they published covertly taken photographs of her leaving a Narcotics Anonymous meeting alongside details of her treatment. Although the court acknowledged the public interest in exposing her earlier denial of drug use, it ruled that publishing intimate details of her medical treatment and photographs breached her privacy. This case was pivotal in recognizing privacy under the law of breach of confidence. The court emphasized balancing privacy against freedom of expression (Article 10, ECHR). It established the principle of a "reasonable expectation of privacy," especially in sensitive matters like health. These judgments have shaped privacy law in the UK, reinforcing the balance between individual dignity and public interest.

3.7. The USA Perspective

The case of *Griswold v. Connecticut* [17] dealt with a Connecticut statute criminalizing the use of contraceptives. The executive and medical directors of the Planned Parenthood League of Connecticut were convicted as accessories for providing information on contraception to married couples. On appeal, the U.S. Supreme Court invalidated the statute, holding it unconstitutional under the Fourteenth Amendment. Justice Douglas, writing for the majority, identified a right to privacy implicit in various constitutional provisions, including the Third,

[15] Wainwright v Home Office [2003] UKHL 53.
[16] Campbell v Mirror Group Newspapers Ltd [2004] UKHL 22.
[17] *Griswold v. Connecticut* (381 U.S. 479, 1965).

Fourth, Fifth, and Ninth Amendments. This right was found to encompass a married couple's decision to use contraceptives. Concurring opinions further elaborated that personal liberty and fundamental rights protected under the Fourteenth Amendment extended to privacy. However, dissenting justices contended that no explicit constitutional provision guaranteed a right to privacy. In *Lawrence v. Texas*[18], the Court invalidated a Texas statute criminalizing consensual same-sex sexual conduct. Overruling *Bowers v. Hardwick*[19], the Court held that the law violated liberty and privacy under the Fourteenth Amendment's Due Process Clause. Justice Kennedy emphasized the dignity of private relationships, rejecting the imposition of moral judgments through criminal laws. Dissenting opinions argued for upholding *Bowers* and defended the statute as a legitimate exercise of state authority. The landmark decision in *Roe v. Wade*[20] established that the constitutional right to privacy encompassed a woman's decision to terminate a pregnancy. The Court held that this right was not absolute and permitted states to regulate abortion based on compelling interests in maternal health and potential human life. Dissenting justices criticized the ruling for judicial overreach, asserting that abortion rights were not rooted in constitutional text or history.

IV. LEGISLATIVE PERSPECTIVES ON PRIVACY

Privacy, a fundamental human right, finds its roots in legal frameworks worldwide, yet its scope and definition remain fluid. Legislative approaches to privacy reflect cultural, social, and technological dynamics that shape societies. Across jurisdictions, privacy laws address a spectrum of issues, from personal data protection to safeguarding against state intrusion. However, these laws vary significantly, reflecting divergent legal traditions and philosophies. In an era dominated by digital technologies, legislative bodies face growing challenges in balancing individual privacy with legitimate state and societal interests. This section examines global privacy legislation and its diverse interpretations across legal systems.

[18] *Lawrence v. Texas* (539 U.S. 558, 2003).
[19] *Bowers v. Hardwick* (478 U.S. 186, 1986).
[20] *Roe v. Wade* (410 U.S. 113, 1973).

4.1. Legislation Addressing Privacy Rights: The Global Scenario

Globally, privacy laws aim to regulate data collection, usage, and dissemination, particularly in light of the technological revolution. The European Union's General Data Protection Regulation (GDPR) sets a benchmark by establishing stringent requirements for personal data handling and offering robust individual rights. The GDPR mandates consent-based data processing and incorporates principles like the right to be forgotten and data portability, emphasizing user empowerment.

In the United States, privacy protections are more sector-specific and decentralized. Laws such as the Health Insurance Portability and Accountability Act (HIPAA) safeguard medical information, while the California Consumer Privacy Act (CCPA) focuses on data rights, reflecting a market-driven regulatory model. However, the absence of a comprehensive federal privacy framework exposes inconsistencies.

India's legislative journey on privacy culminated in the recognition of privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India*.[21] Subsequently, the Digital Personal Data Protection Act, 2023 (DPDPA) was enacted, drawing parallels with the GDPR. The DPDPA seeks to regulate data processing while balancing innovation and security concerns. Yet, critics argue it provides excessive leeway to the government, potentially undermining individual rights.[22]

Other jurisdictions like Japan, South Africa, and Brazil have also introduced comprehensive privacy laws. Japan's Act on the Protection of Personal Information (APPI) emphasizes cross-border data transfers, while Brazil's Lei Geral de Proteção de Dados (LGPD) adopts GDPR-like provisions. South Africa's Protection of Personal Information Act (POPIA) highlights the intersection of data privacy with constitutional rights, emphasizing accountability and transparency.

[21] *See Supra note 2.*
[22] The Digital Personal Data Protection Act, 2023, No. 22 of 2023, India Code (2023).

4.2. Definition and Protection of Privacy in Diverse Legal Systems

Legal systems worldwide interpret privacy differently, influenced by historical, cultural, and philosophical underpinnings. In common law countries like India and the United States, privacy often emerges through judicial precedents. In India, *Puttaswamy* established privacy as intrinsic to dignity under Article 21 of the Constitution.[23] U.S. courts, notably in *Griswold v. Connecticut* and *Lawrence v. Texas*, have interpreted privacy within the Due Process Clause, protecting personal liberties.[24] Civil law jurisdictions, on the other hand, rely heavily on codification. The GDPR exemplifies this by providing explicit definitions and structured regulations. This contrasts with the United States' fragmented framework, where privacy depends on overlapping statutes and interpretations. In socialist legal systems like China's, privacy laws coexist with state interests. The Personal Information Protection Law (PIPL) emphasizes state sovereignty, permitting expansive government surveillance while restricting corporate misuse of data. Similarly, Russia's data localization laws prioritize national security over individual privacy. The divergence in legislative approaches underscores the complexity of privacy as a legal construct. While jurisdictions like the EU adopt rights-centric models, others prioritize economic or security interests. Harmonizing privacy protections across borders remains a significant challenge, particularly in addressing transnational data flows and ensuring equitable enforcement mechanisms.

V. CONCLUSION, SUGGESTIONS & RECOMMENDATIONS

5.1. Towards a Defined Legal Framework for Privacy

Before the enactment of the DPDP Act, 2023, privacy rights in India were governed by various legal frameworks, including the Information Technology Act, 2000, the Constitution of India, 1950, the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. These laws indirectly addressed privacy concerns but lacked a comprehensive, sector-agnostic framework.

[23] *Ibid.*
[24] Griswold v. Connecticut, 381 U.S. 479 (1965); Lawrence v. Texas, 539 U.S. 558 (2003).

In August 2023, India introduced its first cross-sectoral data protection law with the passage of the DPDP Act, 2023.[25] This legislative milestone followed the landmark 2017 Supreme Court judgment in *Justice K.S. Puttaswamy v. Union of India*, which recognized privacy as a fundamental right under Article 21.[26] While the judgment underscored the importance of informational privacy, it did not outline specific mechanisms for its protection. There are various Key Features of the DPDP Act, 2023, such as follows:

***Applicability*:** The DPDP Act applies to personal data processed within India, including data of non-citizens residing in India when connected to goods or services offered outside the country.[27]

***Data Collection and Processing*:** Data processing is permitted for lawful purposes, either with consent or under "legitimate uses" as defined by the Act.[28]

***User Rights*:** Individuals have rights to access summaries of collected data, know third-party data sharing, and seek erasure of personal data.[29]

***Data Fiduciary Obligations*:** Obligations include ensuring data accuracy, security, breach notification, and compliance with safeguards, particularly for minors.[30]

***Data Localization*:** Unlike earlier proposals, the Act does not mandate data localization but allows restrictions on transfers to specific countries via government notifications.[31]

The recognition of privacy as a fundamental right in *Puttaswamy* was transformative, but the absence of a cohesive legal framework still leaves the right vulnerable to various interpretations. Privacy is no longer a static concept; the evolution of technology and societal norms requires a dynamic, legally defined approach that balances individual rights with public interests.

[25] Digital Personal Data Protection Act, 2023, No. 22 of 2023, India Code (2023).
[26] *See Supra note 2.*
[27] DPDP Act, § 4.
[28] DPDP Act, § 5.
[29] DPDP Act, § 11.
[30] DPDP Act, § 7, § 9.
[31] DPDP Act, § 17.

5.2 Recommendations for Shaping a Cohesive Legal Concept of Privacy

A robust legal framework for privacy should begin by addressing the gaps left by existing legislation. While the Digital Personal Data Protection (DPDP) Act, 2023, establishes a foundation, it must be supplemented with clear definitions of privacy that encompass both informational and physical dimensions.[32] The state must also recognize the dual nature of privacy: the negative duty to prevent state intrusion and the positive obligation to protect individuals from non-state actors.[33]

To achieve this, regulatory authorities like the Data Protection Board (DPB) should establish consistent guidelines for interpreting privacy laws. This includes clarifying the scope of terms such as "legitimate use" and defining mechanisms for seeking redress against data breaches.[34] Additionally, a framework for oversight and accountability in the functioning of data fiduciaries and consent managers is crucial.

Judicial interpretation will also play a pivotal role. Courts must ensure that privacy-related decisions adhere to constitutional principles, considering factors like proportionality, necessity, and reasonableness of state or corporate actions that may infringe upon privacy.[35]

5.3. Addressing Contemporary Issues and Future Challenges

The rapid growth of digital technologies has introduced unprecedented threats to privacy. Issues like data localization, surveillance, and artificial intelligence demand urgent attention.[36] Data fiduciaries must adopt robust measures for safeguarding personal information, particularly of vulnerable groups like children, whose data is prone to misuse through behavioral monitoring and targeted advertising.[37]

[32] *See Supra note 25.*
[33] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
[34] DPDP Act, § 15.
[35] *Id.* at § 10.
[36] Malhotra, S., *Data Privacy in the Digital Age: Challenges and Solutions*, 18 Indian J. L. & Tech. 212, 220 (2023).
[37] DPDP Act, § 9(3).

Emerging technologies such as biometrics and blockchain also present privacy risks that require preemptive regulation.[38] Additionally, cross-border data flows raise concerns about jurisdiction and enforcement, necessitating international cooperation to harmonize privacy standards.

The framework must also address future challenges, such as genetic data privacy, cybersecurity in quantum computing, and ethical considerations in AI decision-making. A flexible, resilient interpretation of privacy under constitutional law will allow the legal system to adapt to these evolving concerns.[39]

5.4. The Way Forward

The journey toward a cohesive legal framework for privacy is both essential and inevitable in the modern era. As technology continues to advance at an unprecedented pace, the concept of privacy must evolve to address the intricate challenges posed by digitalization, global connectivity, and the increasing commodification of personal data. The recognition of privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India* has laid a strong constitutional foundation, emphasizing its intrinsic link to dignity, liberty, and autonomy. However, translating this recognition into actionable, enforceable safeguards remains an ongoing challenge.

The enactment of India's Digital Personal Data Protection (DPDP) Act, 2023, signifies a significant step in bridging this gap. It provides a structured mechanism for protecting personal data, balancing individual rights with the legitimate interests of businesses and the state. However, the Act's implementation, alongside the evolving jurisprudence of the Data Protection Board of India, will determine its true efficacy in safeguarding privacy. Globally, similar efforts are being undertaken to address the tension between privacy, security, and technological progress, highlighting the universal relevance of this issue.

Moving forward, a dynamic and adaptive approach is needed to address both contemporary and future challenges. This includes not only refining legislative

[38] A. Singh, Biometrics and Privacy: Balancing Security and Rights, 42 NAT'L L. REV. 5 (2022).
[39] *See Supra note 2.*

frameworks but also fostering judicial resilience to interpret privacy in the context of emerging technologies such as artificial intelligence and biometric surveillance. Moreover, an inclusive dialogue between policymakers, legal scholars, technologists, and civil society is vital to ensure that privacy is not merely a theoretical right but a practical and enforceable one.

Ultimately, privacy must be recognized as a cornerstone of human dignity and freedom. Its protection, while subject to reasonable restrictions, must remain unwavering in the face of technological and societal transformations, ensuring that individuals retain control over their personal lives in an increasingly interconnected world.

DIGITAL DIGNITY IN THE AGE OF PEOPLE ANALYTICS AND AI: A QUALITATIVE ANALYSIS OF EMPLOYEES' PERCEPTION OF WORKPLACE SURVEILLANCE AND DATA PRIVACY

***Dr. Arunima Shrivastava*[*], *Dr. Neha Jain*[**]**

ABSTRACT

Organizations are increasingly leveraging people analytics and digital monitoring to optimize performance and to make critical decisions. However, this practice has also intensified concerns around data privacy, data protection, and employee dignity. While regulatory frameworks like GDPR and India's DPDP Act establish some legal boundaries, they do not fully capture the psychological impact of how employees perceive the use of their data and constant monitoring. This paper explores how privacy, data protection, and digital dignity are represented within organizational contexts and how these shape employees' perceptions around trust, fairness, and engagement. Through systematic coding and theme development, the study identifies themes and reflects on how employees interpret these data practices. This paper integrates psychological perspectives from self-determination theory, organizational justice, and psychological ownership to explain why perceived intrusions into the 'personal data' erode trust and dignity. This paper redirects the organization's attention towards a more humanistic approach to people analytics. It also emphasizes the notion that technological advancements shouldn't interfere with employees' dignity and trust.

[*] The author is an Assistant Professor, Department of Psychology, The NorthCap University, and can be reached at arunimashrivastava@ncuindia.edu

[**] The author is an Associate Professor, Department of Psychology, The NorthCap University, and she can be reached at nehajain@ncuindia.edu

I. INTRODUCTION

The field of People Analytics has significantly evolved from being a core Human Resource function into a strategic one, optimising every HR practice from hiring, developing, to managing its workforce [1] . People Analytics leverages comprehensive people-related data to make evidence-based decisions, analyse skill gaps, and build an equitable workplace.[2] It is steadily positioning itself as a rational, bias-free decision-making approach to replace subjective human decision-making.[3] There are a variety of people metrics available, ranging from performance data, satisfaction surveys, to biometric data, which help people analysts and leaders make strategic decisions.

People Analytics is undoubtedly enriching the domain of evidence-based decision-making, but it is also posing many ethical and psychological concerns around privacy and trust.[4] Research indicates that employees remain uncertain about how their data is being used. Furthermore, the invasive collection and dissemination of employee data that extends beyond their work lives tends to evoke resistance and negative responses from employees.[5] For instance, many organizations are leveraging employees' social media handles to collect personal data without taking their consent. This paradox highlights the fact that, on the one hand, people analytics can foster commitment and empowerment; on the other hand, misuse of data can erode trust and dignity.

With workplaces undergoing dramatic shifts, we also see the rise of Artificial Intelligence (AI) and intrusive digital surveillance, especially since the upsurge of remote and hybrid work. Technologies such as webcams, keystroke tracking,

[1]Mark A. Huselid, *The science and practice of workforce analytics: Introduction to the HRM special issue*, 57 (3) HRM, 679–684 (2018). https://doi.org/10.1002/hrm.21916

[2] Uri Gal, Tina B. Jensen & Mari-Klara Stein, *Breaking the vicious cycle of algorithmic management: A virtue ethics approach to people analytics,* 30(2*)* 100301 *I* & O. (2020). https://doi.org/10.1016/j.infoandorg.2020.100301

[3] Lisbeth Claus, *Hr disruption—time already to reinvent talent management*, 22(3) BRQ, 207–215 (2019). https://doi.org/10.1016/j.brq.2019.04.002

[4] R. H. Hamilton & William A. Sodeman, *The questions we ask: Opportunities and challenges for using big data analytics to strategically manage human capital resources,* 63 (1) B H, 85–95, (2020). https://doi.org/10.1016/j.bushor.2019.10.001

[5] Matthew T. Bodie, Miriam A. Cherry, Marcia L. McCormick, & Jintong Tang, *The law and policy of people analytics*, 88(4), UCLR, 961–1042 (2016). http://lawreview.colorado.edu/wp-content/uploads/2017/05/10.-88.4-Bodie_Final.pdf

biometrics, GPS, and AI-backed people analytics enable organizations to collect enormous amounts of data, but at the same time, they raise concerns around 'human rights and dignity'. Research suggests that the fast proliferation of digital technologies and digital surveillance methods at the workplace leads to an increase in anxiety levels, stress, and decreased trust and dignity in employers.[6] [7] The perceptions of constant monitoring and intense penetration of AI are proving to be overwhelming and stressful for the employees and raising many questions around dignity and employees' basic human rights.

The concept of human dignity is deeply entrenched in Kant's philosophy, which looks at dignity as inherent worth possessed by all human beings.[8] In an organizational context, workplace dignity refers to employees' perception of being treated with respect, trust, and fairness.[9] Workplace traits such as purpose, meaningful work, and autonomy instil a sense of dignity among employees, whereas micromanagement, coercion, and lack of autonomy lead to diminished dignity. The presence of digital technologies is supposed to enhance dignity by allowing more transparency and flexibility at the workplace, but unfortunately, many employees perceive the use of technology as negative and intrusive. [6]

From a psychological perspective, three theoretical frameworks are highly relevant to understanding dignity: 1) Organizational Justice and Fairness theories, [10] 2) Self Determination Theory (SDT), and 3) Psychological Ownership Theory.[11] Greenberg's phenomenal work on justice identified four forms of justice — distributive, procedural, informational, and interactional — each shaping how employees interpret fairness.[11] Procedural justice refers to how employees perceive organizational processes and practices in their organizations and how

[6] KAREN LEVY, DATA DRIVEN: TRUCKERS, TECHNOLOGY, AND THE NEW WORKPLACE SURVEILLANCE (Princeton, NJ: Princeton University Press 2023).
[7] Alexandra Mateescu, *Explainer: Challenging worker datafication*. D&SRI, (2023). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4584505
[8] Matt McManus, *Kant's Theory of Human Dignity,* (2022). https://philosophynow.org/issues/150/Kants_Theory_of_Human_Dignity
[9] Martha Crowley, *Gender, The Labor Process and Dignity at Work*, 91(4), SF 1209-1238, (2013).
[10] Wallace I Matson, *A theory of justice by John Rawls,* EBSCO KA, (2022). https://www.ebsco.com/research-starters/literature-and-writing/theory-justice-john-rawls
[11] Jon L Pierce, Tatiana Kostova, & Kurt T. Dirks, *Toward a theory of psychological ownership in organizations,*26(2), AMR, 298–310, (2001).

they react to unfair policies or legal procedures. Distributive justice refers to employees' perceptions around disbursements of rewards and their reactions to inequitable payments and rewards. Informational justice refers to employees' perception of how information is communicated and used in decision-making, while interactional justice indicates perceived fairness of treatment by others. Greenberg's taxonomy of justice provides a strong structure to understand how employees perceive organizational practices and disbursements [11]. Contextual Integrity (CI) [12] and Rawls' [10] theory of justice highlight the importance of 'context' in maintaining privacy. It simply posits that only if context-specific rules are respected and followed, then privacy is protected; otherwise not. Rawls' theory of justice as fairness believes in treating every individual as free and equal, irrespective of their ranks and hierarchies, and that they should be given equal distribution of rights and protections.

Self-determination theory professes autonomy, competence, and relatedness as core psychological needs. [12] Digital monitoring challenges autonomy, leading to reduced intrinsic motivation. The third theory, psychological ownership, suggests that people derive meaning and identity from what they perceive as "theirs". When personal data is collected and used without consent, employees experience a loss of ownership and control. [13] Together, these theoretical frameworks provide a rich perspective to guide the present study.

The past few years have witnessed many incidents of employee data breaches [13], which shows that mishandling employee data may lead to risk of reputational loss, regulatory penalties, and loss of trust for organizations. To mitigate some of the risks associated with privacy violations, many big corporations like IBM, Microsoft, and Google have adopted transparent and fair data communication, protection, and surveillance practices, and given their employees the requisite rights against any privacy violations. Furthermore, the 2025 theme of Data Privacy Day, "Take Control of Your Data," underscores the importance of

[12] Edward L Deci, & Richard M Ryan, *The "what" and "why" of goal pursuits: Human needs and the self-determination of behavior*, 11(4), PI, 227–268, (2009). https://doi.org/10.1207/S15327965PLI1104_01

[13] IBM, *Cost of a data breach report*, (2025) https://www.ibm.com/reports/data-breach

accentuating individual empowerment in the face of the fast-growing digital landscape.

To address some of the data privacy concerns, there are regulatory frameworks like the European Union's General Data Protection Regulation (GDPR) and India's Digital Personal Data Protection (DPDP) Act of 2023; however, these do not fully capture the psychological impact of how employees perceive the use of their data and constant surveillance.

Though there exists extensive literature on people analytics, workplace surveillance, and data and privacy concerns, there is a limited understanding of how these constructs are perceived by employees in digitally governed workplaces[14]. Furthermore, the emerging concept of digital dignity remains underexplored, which indicates the need to investigate how dignity is preserved or violated in organizations involving AI and people analytics. This study seeks to fill the gap by qualitatively examining how organizations drive data-driven practices, articulate data protection policies, and how employees perceive and make sense of these dynamics. The study attempts to integrate relevant theoretical narratives to redirect the organization's attention towards a more humanistic approach to data protection and analytics.

II. METHODOLOGY

This study conducted a qualitative content analysis of around forty curated sources to interpret meanings and patterns in textual data. An online search was conducted, in which the following key terms were explored, 'employees' perceptions of data privacy and fairness', 'people analytics', 'surveillance issues', and 'data protection' The following sources were included in the study: (a) industry benchmark reports on people analytics, data privacy, and surveillance (b) peer-reviewed research on employee perceptions of justice and fairness, trust and breach; and (c) reputable blogs/news reports around data protection, policies and laws. The sources were published mostly between 2019 and 2025. The content

[14] Vivek Prem Daswaney, & Harita Shinde Bangali, *Data protection laws in India and its impact on employees and employers*. 26(S1), SEEJPH, 2163–2175, (2025). https://doi.org/10.70135/seejph.vi.4101

was analysed and coded using Braun and Clarke's six-step framework[15] 1) familiarization with the data, 2) generating initial codes, 3) theme generation, 4) theme review, 5) theme definition, and 6) reporting. The entire analysis was carried out with the help of NVivo software.

III. RESULTS

NVivo-assisted analysis produced 206 coded excerpts grouped under 10 core themes and subthemes. Appendix 1 presents the key findings from the content analysis, combining both qualitative thematic insights and quantitative frequency counts. After studying the patterns, relationships, and overlaps, the subthemes that talked about similar ideas or processes were grouped together to create more meaningful and higher-order themes. Table 1 presents the condensed, researcher-defined themes, along with their definitions and related subthemes. The identified themes are: 1) Data Management, Trust and Ethical Governance, 2) Privacy, Consent and Awareness, 3) Workplace Surveillance and Monitoring, 4) Employee Experience, Autonomy, and Voice, and 5) Organizational Justice and Power Dynamics. Inter-coder reliability was ensured through independent coding of 20% of data, yielding a Cohen's kappa of 0.82, indicating substantial agreement.

Table 1 Key Themes, Sub-themes, and Definition

Key Theme	Definition	Example Subthemes
Data Management, Trust and Ethical Governance	An ethical way of collecting, storing, and using data to build trust and accountability. Having robust data policies and practices to offer data protection.	Data policies, data breaches, data misuse, fear, sensitive data, ethical concerns, trust.
Privacy, Consent, and Awareness	Perceptions around privacy concerns, consent, and communication.	Privacy paradox, awareness training, consent.

[15] Virginia Braun, & Victoria Clarke, *Using thematic analysis in psychology*, 3(2), QRP, 77–101, (2006).

Workplace Surveillance and Monitoring	Surveillance mechanisms and their impact on trust, transparency, and control.	Remote work monitoring, electronic monitoring, surveillance anxiety.
Employee Experience, Autonomy, and Voice	Employees' subjective experiences, feelings, and reactions to data practices and surveillance.	Employee voice, trust, feelings, autonomy.
Organizational Justice and Power Dynamics	Aspects of justice and fairness in organizational data practices and surveillance.	Power imbalance, justice, fairness, safety

IV. DISCUSSION

Data Management, Trust, and Ethical Governance emerged as a dominant theme, highlighting the growing concerns around ethical collection, storage, and utilization of employee data. In modern organizations, data has emerged as an asset as well as a concern – every data record represents a part of personal identity and must therefore be treated with ethical care. The results revealed that employees were concerned about how their data is being used. Employees showed their apprehensions around 'data misuse' and 'breach risks', which highlighted the perceived vulnerability of current data management. Previous studies support the finding that digital tools used for monitoring productivity often led to data misuse and stress. [16],[17] Employees also raised apprehensions around future data use and invisible consent– reflecting that organizations often collect data for one purpose, which may later be used for other analyses without employees' explicit consent. Employees perceive such forms of consent as symbolic rather than substantive. From a psychological perspective, invisible consent undermines autonomy- one of the pillars of self-determination theory. When autonomy is

[16] Rahul Chawda, *Data breach—An oblivious threat and its consequences*, 5(2), IJEAS&T, 468-470, (2020). 10.33564/IJEAST.2020.v05i02.078

[17] Ozlem Ayaz, Seyedeh Asieh Hosseini Tabaghdehi, Ainurul Rosli, & Prerna Tambay, *Ethical implications of employee and customer digital footprint: SMEs perspective,* JBP, 188, 115088, (2025). https://doi.org/10.1016/j.jbusres.2025.115088

challenged, trust and engagement in the system weaken. The observations align with the broader concepts around trust, digital ethics, and transparent governance, which encourage organizations to operate with trust, fairness, and proportionality.

The second theme- Privacy, Consent and Awareness- highlights how employees perceive, negotiate, and address privacy concerns. Furthermore, the concept of privacy paradox, where employees deeply value their privacy yet willingly share their data for professional growth and benefits, was persistently observed in the dataset.[18] While some employees expressed confidence in their organization's privacy policies, others felt excluded from key decisions related to their personal information. A mention of privacy communication being overly legalistic and complex was recorded, which employees found hard to understand. As employees mostly rely on organizational communication to interpret data policies, they want communication to be plain-language, clear, and continuous so that they find it easy to understand and implement.

The third major theme – Workplace surveillance and Monitoring, highlights the fast proliferation of digital monitoring mechanisms within organizations. The analysis revealed a variety of surveillance mechanisms that are being used in the organizations - audio-video, hybrid, and remote work surveillance, and electronic performance tracking. [19] These forms of monitoring are often implemented to increase accountability, efficiency, and productivity, but these forms are widely perceived as intrusive, stressful, and distrustful. Many employees expressed their anxiety and emotional discomfort with being constantly "watched" or "observed". Surveillance anxiety highlights the ever-widening psychological unease tied to continuous monitoring at the workplace. Many believed that this constant surveillance blurred the line between personal and work space and felt like a direct invasion of privacy. Especially in remote settings, the feeling of being digitally

[18] Nina Gerber, Paul Gerber, & Melanie Volkamer, *Explaining the privacy paradox: A systematic review of literature investigating privacy attitude and behavior*, 77, C&S, 226–261, (2018).
[19] Kate Morgan & Delaney Nolan, *How worker surveillance is backfiring on employers*, (Jan. 30, 2023, 1 PM).
https://www.bbc.com/worklife/article/20230127-how-worker-surveillance-is-backfiring-on-employers

watched created a kind of 'psychological pressure to perform'[20]. The results of the present study align with the previous studies that suggest that continuous monitoring may disrupt perceptions of autonomy and psychological safety - a tendency of individuals to feel safe to voice their opinions, ask questions, and share ideas without fear of being judged.

The fourth theme- Employee experience, autonomy, and voice reflects employees' subjective experiences, feelings, and reactions to data practices, surveillance, and control. The analysis revealed that employees often expressed feelings of helplessness, mistrust, and compromised autonomy over how their data is collected, used, and controlled. This finding aligns well with the psychological ownership theory, which highlights the fact that individuals like to have some control over things they call 'theirs' and they want to behave like owners but not participants. However, when employees sense that this control is being taken away from them, a sense of unease and discomfort is expressed. Employees, at times, voiced out their opinions and feelings of discontent. They also encouraged the idea of participatory approaches in decision-making related to data handling, emphasizing that employees should be consulted for any surveillance-related activity where their personal data is involved. The present analysis also revealed some generational differences in digital awareness and expectations towards privacy- usually, younger employees, particularly Gen Zs and millennials, were more aware and voiced out their feelings around data control as compared to older employees.[21] They expected clear consent and transparency and wanted their organization to abide by data protection laws and regulations.

The final theme- Organizational Justice and Power Dynamics – reflect employees' perceptions of justice and equity around data analytics and surveillance practices. Employees raised concerns around procedural, distributive and informational aspects of justice- they observed how data collection and handling practices are

[20] Paul Glavin, Alex Bierman, & Scott Schieman, *Private eyes, they see your every move: Workplace surveillance and worker well-being*, 11(4), SC, 327–345, (2024). https://doi.org/10.1177/23294965241228874

[21] Cisco, *The privacy advantage: Building trust in a digital world-Cisco 2025 Data Privacy Benchmark Study*, (September 11, 2025, 4:15 PM). https://www.cisco.com/c/dam/en_us/about/doing_business/trust-center/docs/cisco-privacy-benchmark-study-2025.pdf

communicated and practiced in the organization. Kayas in his study linked surveillance with justice and noted that workplace surveillance is raising many questions around distributive justice and data privacy. Some employees questioned whether monitoring decisions were made transparently or applied equally across hierarchical levels. Introna, [22] in his study, revealed how surveillance systems may create injustice and unfair outcomes. He raised concerns about how surveillance unfairly targets certain groups and dehumanizes employees by treating them merely as data points.

V. IMPLICATIONS AND SUGGESTIONS

The present study offers several actionable insights for organizational leaders, HR practitioners, researchers, and employees. The study strongly recommends organizations to preserve digital dignity by taking cognizance of employees' perceptions around data practices, surveillance, and data privacy. Organizations may conduct timely audits to gather employees' perceptions around the fairness of surveillance systems, data management practices, and dignity. Such audits will throw valuable insights about how employees feel about the current systems and practices around data and privacy. People Analysts and HR practitioners may adopt a tiered model of data sensitivity and collaborate with IT and legal teams to categorize employees' data into personal and professional to avoid any data misuse and data leakage. This categorization will also comply with GDPR and DPDP mandates. Further, employers should thoroughly know the laws and policies regarding data protection and privacy, and the same should be institutionalized fairly across the organization. Clear and transparent communication about how employees' personal data will be used should be prioritized. Organizations should also impart 'data literacy and privacy awareness training' to its employees so that they may become aware of various laws/policies. The training should be imparted in simple, plain language and not in a complex, legalistic manner. Similarly, the policies and other legal documents should be

[22] Lucas D Introna, *Workplace surveillance, privacy, and distributive justice,* 30(4), ACM SIGCAS Computers and Society, 30(4), 33–39, (2000). https://doi.org/10.1145/572260.572267

framed in easy-to-understand language. Research suggests that organizations that encourage participatory decision-making and data literacy training report higher retention and satisfaction. [23] Organizations can also design and implement specialized training programs around 'ethical governance and fairness' to sensitise their key stakeholders about the importance of having transparent and trustworthy processes and practices in place. Together, these strategies can help organizations transform their culture from one of mistrust and control to one rooted in ownership and responsible compliance.

VI. Limitations and Directions for Future Research

The present research is qualitative and exploratory in nature, which limits its ability to make generalizations. Future research may look at collecting primary data around employees' perceptions of various data-driven processes and surveillance mechanisms in organizations. There is a paucity of research in the field of People Analytics, which is still an emerging field, so more research should be directed to understand the dynamics better. Additionally, quantitative validation of identified themes would strengthen construct development, particularly around measuring digital dignity as a multidimensional psychological variable. Furthermore, the curated sources that include industry reports, journals, and news articles, used in the present study, while diverse, may not capture the full range of industry practices and cultural variations in perceptions of privacy and dignity. Future research may also undertake cross-cultural research to understand cultural variations with respect to data protection laws, perceptions of fairness, and digital dignity. Future studies may also come up with standardized scales that measure the nature of people analytics and surveillance practices in organizations and their impact on employees' perceptions of fairness, trust, and dignity.

[23] PwC, *Global workforce hopes and fears survey,* (2024). https://www.pwc.com/gx/en/issues/workforce/hopes-and-fears.html

Exhibit 1: Hierarchical Comparison of Themes and Subthemes (NVivo)

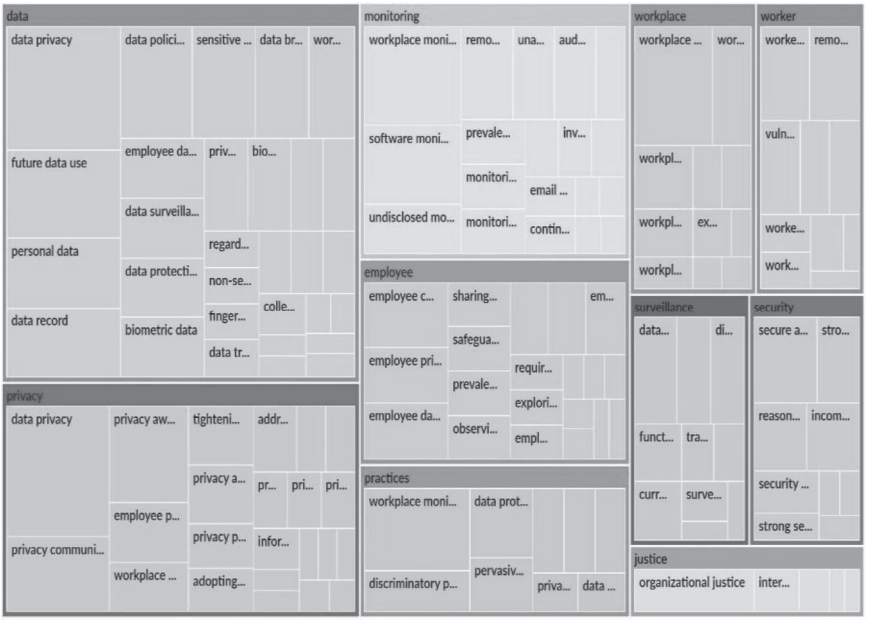


Exhibit 2: Identified Themes and Subthemes by NVivo

Themes in your files have been identified. Please review the information provided below.

A code or case will be created for each selected theme.

Identified themes:

Themes	Mentions
data	48
privacy	33
monitoring	25
employee	24
workplace	14
worker	14
justice	14
practices	13
surveillance	11
security	10

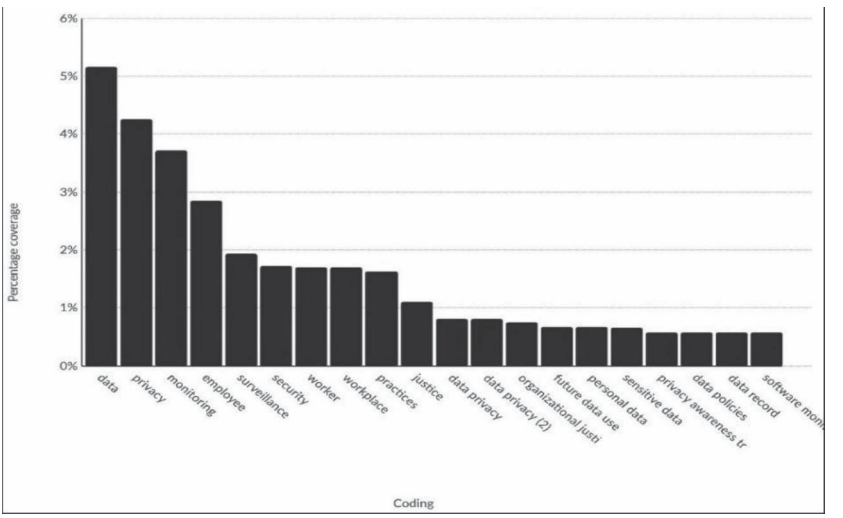
Exhibit 3: NVivo-generated analysis showing distribution of Themes, Frequencies, and Subthemes

Themes and Frequency	Subthemes
Data (48)	
	Sensitive data
	Personal data
	Data Privacy
	Data Protection Policies
	Biometric data
	Future data use
	Employee data challenge
	Private data
	Data breaches
	Data collection practices, purpose, and process
	Workplace data collection
	Data and Surveillance Risk
	Work-related data
	Sharing data
	Data misuse fear
Privacy (33)	
	Data privacy
	Addressing privacy concerns
	Employee Privacy
	Privacy violation
	Workplace Privacy Debate
	Privacy Attitudes
	Privacy Paradox
	Privacy Policy Documents
	Tightening Privacy Regulations
	Privacy Expectations and Perceptions

	Privacy Awareness training
	Violation of privacy rights
	Privacy Communication
Monitoring (25)	
	Workplace monitoring practices
	Remote work monitoring
	Undisclosed monitoring
	Electronic performance monitoring
	Invasive monitoring
	Excessive and unacceptable monitoring
	Email monitoring
	Audio and video monitoring
Employee (24)	
	Employee privacy, communication
	Safeguarding trust
	Employee consent
	Employee theft
	Employee feelings, perspectives, expectations
	Employee consent
	Employee expectations
	Employee voice
Workplace (14)	
	Workplace monitoring practices
	Workplace privacy debate
	Workplace power imbalances
	Excessive workplace monitoring
	Workplace data collection
	Workplace safety
	Workplace solidarity and morale
Worker (14)	
	Productivity

	Vulnerable
	Remote work monitoring
	Workers right
	Tracking worker location
Justice (14)	Distributive, procedural, interactional, and informational
Practices (13)	Workplace surveillance and data collection, and protection practices
	Ethical practices
Surveillance (11)	Methods of it
	Surveillance tools
	Transparent Surveillance
Security (10)	Risk, secure access control
	Protocol

Exhibit 4: Graph showing distribution of themes and subthemes



HUMAN EMBRYONIC STEM CELL PATENTING: NAVIGATING THE LEGAL AND ETHICAL FRONTIER

Dr. Gulafroz Jan*

ABSTRACT

Biotechnology has expanded patent protection to living biological materials, particularly stem cells, which have immense potential in treating diseases like diabetes, cancer, Parkinson's, and spinal cord injuries. However, patenting stem cells—especially human embryonic stem cells—raises ethical concerns, as their extraction involves destroying embryos, equated by many with ending human life. Supporters argue that using surplus embryos for lifesaving research is ethically justifiable and promotes a "pro-life" stance for the greater good. This creates a conflict between respecting embryonic life and enabling medical innovation. Legally, approaches to this dilemma vary globally, notably within the European Union, where the Biotechnology Directive incorporates ethical exclusions to patentability. The debate continues over whether such exclusions are appropriate, considering that a patent grants only a limited right to exploit an invention, not automatic approval for commercial use. An attempt is made in this paper to analyse and highlight the ongoing debate of legal and ethical balances and imbalances, and the scope of such exclusions in relation to patents involving human embryonic stem cells.

* The Author is a Senior Assistant Professor at Central University of Kashmir, Ganderbal, and can be reached at gulafrozjan@cukashmir.ac.in.

I. INTRODUCTION

Patenting Life refers to the extension of intellectual property protection to living organisms and biological materials. With rapid advances in biotechnology, the scope of patent law has expanded beyond traditional mechanical inventions to encompass genetically modified organisms, microorganisms, and biological processes.[1] Over the last decade or so, the inventions in the field of biotechnology have been growing, particularly from classical biotechnology such as fermentation, yeast isolation, etc., to modern biotechnology, viz, DNA technology, vaccines, Monoclonal Antibodies, Stem Cells, Transgenic Cells, Gene Sequencing, genomics, gene therapy, CRISPR gene technology, etc. Stem cells and the research in stem cells are one of the latest biotechnological developments, which demand an especially high level of consideration from a business perspective and a patent prosecution perspective. The stem cells appear to be a major and constant presence in scientific news media. The discovery, isolation, and culturing of human embryonic stem cells have been described as one of the most significant breakthroughs in bio-medicine of the century. This description would be warranted by virtue of not only the biological uniqueness of these cells, their ability to self-renew infinitely (while retaining a remarkable capacity to differentiate into any form of cell tissue), but also because the culturing of embryonic stem cells holds tremendous potential for the development of new forms of regenerative medicine to treat debilitating or fatal conditions that would not otherwise be curable. They are regarded as a potential panacea for a wide range of diseases, illnesses, and injuries like diabetes, Cancer, Parkinson's disease, Heart diseases, Spinal cord injury, etc., and as such, they are generating patent protection. Thus, Stem cell research represents a transformative frontier in modern medicine, offering the potential to regenerate damaged tissues and cure a wide range of degenerative diseases. **Human embryonic stem cells (hESCs)**, in particular, hold immense therapeutic promise due to their pluripotent nature — the ability to develop into any cell type in the human body. However, despite their potential, the patenting of hESCs has ignited intense ethical, legal, and

[1] Shawn H. E. Harmon, *Biotech Innovation and Patenting in the Developing World: China—A Giant Among Nations*, 12 J. INTELL. PROP. RTS. 125 (2007).

philosophical debate. The research is regarded as politically volatile and morally and ethically sensitive because extracting the stem cells involves the destruction of a human embryo. [2]At the heart of this controversy lies a fundamental question: **can human life, even at its earliest developmental stage, be subject to private ownership and commercial exploitation?** Proponents of such patents contend that granting exclusive rights over stem cell innovations is essential to incentivize biomedical research, attract investment, and accelerate the development of life-saving therapies. They argue that without patent protection, innovation in regenerative medicine could stagnate due to the lack of commercial motivation.

An attempt is made in this paper to analyze and highlight the ongoing debate of legal and ethical balances and imbalances and the scope of such exclusions in relation to patents involving human embryonic stem cells. The paper considers arguments for and against property rights relating to human embryonic stem cells and presents the background information on stem cells as a basis for the patenting, law on patentability of stem cells, and moral and ethical issues on stem cell patenting.

Now, before considering the legal aspect in patentability of the stem cells and the controversy attached to it, it might be helpful to look at some of the basic science and technology relating to stem cells.

II. STEM CELLS IN GENERAL

Every living thing, including a human being, is made up of a fundamental unit of life called. The Adult Human body is estimated to contain $\mathbf{50 \times 10^{13}}$ cells within as many as 300 cell types. But as different as these are, they all have the same ultimate origin: the totipotent cells of the human embryo. These totipotent cells can form any type of cell present in the human body, and each totipotent cell is capable of developing into a complete embryo. In the course of normal embryological development, these totipotent cells give rise to genetically identical copies of themselves that in turn become the specialized cell types of the body by switching particular genes off and on. The process by which cells go from stem

[2]A. Lakshminath, *Stem Cell Patenting: Law and Policy*, 49 J. INDIAN L. INST. 179 (2007).

cells to specialized cells is known as differentiation.[3]Thus, stem cells possess two fundamental defining properties

1) They are capable of growing and dividing in a sustained manner to give more cells of their own kind, and

2) When a correct stimulus occurs, of gives rise, by a process of differentiation, to particular other types of cells.

During the development phases of an individual animal or person, the stem cells are actively dividing and differentiating to produce the required types of cells necessary at a particular time. When the animal, or individual, has reached a state of maturity, the main role for the stem cells is to replace worn-out or damaged cells. It is this ability to repair or replace tissues that has led to the conviction that stem cells might be used to treat an enormous range of degenerative diseases or injuries.[4] Cultures of stem cells with particular genetic lesions are also likely to provide useful model systems for the study of inherited diseases. Eg. Israeli scientists recently announced that they had succeeded in transforming human embryonic stem cells into immature heart tissue cells in their lab. It has been estimated that 3000 Americans die every day from diseases that may be treatable in the future from therapies derived from ES cells research.

III. CLASSIFICATION OF STEM CELLS

Stem cells can be classified according to their developmental potential. The most versatile stem cells are capable of differentiating into any type of mature cell found in the human body. Because of this property, these are referred to as pluripotent stem cells. Other types of stem cells are capable of differentiating into a more limited range of mature cell types and are classified as multipotent. Some stem cells may be able to give rise to only a single type of mature cell and are consequently referred to as unipotent.

Stem cells can be classified with reference to their source.

[3] James J. McCartney, *Embryonic Stem Cell Research and Respect for Human Life: Philosophical and Legal Reflections*, 65 Alb. L. Rev. 597 (2002).
[4] Amy L. Davis, *Patented Embryonic Stem Cells: The Quintessential Essential Facility*, 94 GEO. L.J. 205 (2005).

- **Human Embryonic Stem Cells**: - Are derived from the totipotent cells of the early human embryo. Embryonic stem cells can be isolated from the inner mass at 5 days. An old post-fertilization human embryo, called a blastocyst, usually comprises 200-250 cells. This extraction process renders the embryo non-viable, i.e, it leads to the destruction of the embryo, leading to much ethical debate. The embryonic stem cells are pluripotent; they can give rise to differentiated cell types (i.e, any human body cell) from the ectoderm, endoderm, and mesoderm, leading scientists to conclude that they can be used for treating various diseases and that they offer greater promise than any other stem cells.[5]

  In addition to being pluripotent embryonic cells are also capable of unlimited and undifferentiated proliferation in vitro i.e, when E.S.C. are cultured in the laboratory will divide infinitely and will remain stem cells as opposed to differentiating into specialized cell types. Human embryonic stem cells have been propagated in vitro for approximately two years and several hundred population doublings. This characteristic makes it possible to use one Embryonic stem cell to create an ES cell line. In other words, once you have one ES cell, you theoretically have an infinite supply of that ES cell that can be used for research, medical, and other purposes. These ES cell lines provide the Human ES cells that researchers use for their work.
- **Human Germ Cells**: - Are the early-stage precursors of eggs and sperm and can be isolated from the gonadal ridge of aborted 6–11-week-old foetuses. In principle, these can be spontaneously aborted foetuses, but a rapid collection is essential following abortion; this is not a practical source. The most practical source is consequently from medically terminated pregnancies, which implicated the procedure in the whole abortion debate. EGC is different from ESC. But they are similar in that they are pluripotent.
- **Adult Stem Cells**: - Are stem cells associated with mature or partly

[5] Peter Yen-Hong Lee, *Inverting the Logic of Scientific Discovery: Applying Common Law Patentable Subject Matter Doctrine to Constrain Patents on Biotechnology Research Tools*, 19 HARV. J.L. & TECH. 79 (2005).

mature tissue. The adult stem cells. designation is not proper as it could, in principle, be isolated from foetuses, umbilical cord, blood, children, adults, and recently dead people. Adult stem cells can be either multipotent or unipotent and have limited differentiation as compared to Embryonic Germ Cells, Embryonic Stem Cells. The best-established therapies are the use of bone marrow cells containing blood cell-producing (haematopoietic) stem cells to treat leukaemia's and extreme immune deficiencies. Some scientists believe that Adult Stem cells might be induced to undergo redifferentiation (retro-differentiation) to produce pluripotent stem cells.[6] In this could be achieved; it would clearly go some way towards circumvention of the ethical objections to the use of Embryonic stem cells.[7]

IV. LEGAL PROVISIONS RELATING TO PATENTABILITY OF STEM CELLS

A patent is basically an agreement to limit commercial exploitation of an invention to the inventor for a fixed period of time in exchange for publication of details of the invention. Patenting in the area of biotechnology or patenting life forms is a new phenomenon developed very recently in the patent law regime. Where the invention can be useful in the diagnosis or treatment of disease, the majority of the public may accept the need for such patents. Consequently, claims for patents on these living inventions have started coming up along with demand for better patent protection. This led to a situation where the law and legal system were compelled to address the issue of getting patents and living beings.

4.1. Trips Agreement

It is the first international treaty that makes it legal and compulsory to patent life. Art 27(1)[8] of the TRIPS agreement clearly states that patents should be granted for inventions in any field of technology without discrimination, subject to certain

[6] Sheng Ding, Qiang Zhang, Xiao-Wei Wu, Peter G. Schultz & David L. Dings, *De-Differentiation of Lineage-Committed Cells by a Small Molecule*, 126 J. AM. CHEM. SOC. 410 (2004).
[7] David J. Pearton, Yang Li & D. Dhouailly, *Trans-Differentiation of Corneal Epithelium into Epidermis by Means of a Multistep Process Triggered by Dermal Developmental Signals*, 102 PROC. NAT'L ACAD. SCI. U.S.A. 3714 (2005).
[8] Regulation in EU member states and non-EU members regarding human embryonic stem cell research, EU survey, status July (204)

clauses. This means biotechnological inventions are patentable subject matter under TRIPS. But at the same time, there are certain exceptions carved out by 27(3).[9] Accordingly, patent protection is excluded in relation to plants and animals, and patentable subject matter shall not be contrary to public order and morality. Moreover, the TRIPS agreement provides 5–10-year transition period for different countries to introduce basic policy changes during this period to structurally adjust their economies, making it compatible with the global market. For those countries there is no product patent protection at the time of entering into the TRIPS agreement, they are given 10 years. A transitional time to introduce product patenting in their laws. The patent protection in the field of biotechnology is especially given to developed countries, especially the U.S, Japan, and the EU hold 93% of patents, and the rest world, which includes less than 7% of patents granted in this field.[10]

How stem cell patenting is treated on the legal front varies widely.[11] Not unlike any promising new technology, stem cell research has resulted in a bevy of patent applications. While it is generally possible to obtain patent protection for stem cell-related inventions, some jurisdictions place restrictions on the patentability of embryonic stem cells as such or processes using such cells.[12] while others do not, for instance, in the U.S.A. Human embryonic stem cell and their uses are patentable. Foetal and adult stem cells, hematopoietic stem cells (from which all Red and white blood cells develop) have been patented in Europe.[13] However, embryonic stem cells as such are not patentable in Europe according to EU directives on the grounds of the ethics and morality involved.[14] Thus, all patents

[9] B. Rutz & S. Yeats, *Patenting of Stem Cell–Related Inventions in Europe*, BIOTECHNOLOGY J. 1 (2006).
[10] They fall under EPC Rule 23(e), allowing the patenting of isolated elements of the human body as long as they do not constitute a mere discovery. On the other hand, under EPC Rule 23 (a) and (c), processes of cloning human beings and uses of human embryos for industrial or commercial Purposes are not patentable.
[11] EU Directives (98/44/EC) Legal protection of biotechnological inventions; (Oct. 7, 2025, 3:15 PM) http://europa.eu. int/scad plus/leg/en/lvb/126026.htm.
[12]Nichogiannopoulou, Patenting human stem cells. Medical lifeline or ethical high water? http/searchwarp.com/swal/10291.html
[13]Malathi Lakshmikumaran, *Patenting Genetic Inventions*, 12 J. INTELL. PROP. RTS. 45 (2007).
[14]K.S. Kardam, *Patenting in Emerging Fields of Technology*, 12 J. INTELL. PROP. RTS. 15 (2007).

relating to human pluripotent stem cells to date have been from the USA. These include product patents on embryonic stem cells and embryonic germ cells, and some processes associated with these. The award of patents associated with stem cells has been slowed down at least in part because of the ethical exclusion from patentability incorporated into the European Biotechnology Directive of 1998. It requires the exclusion from patenting of inventions that were 'contrary to the order of public order or morality'. This article reflected Article 53 of the European Patent Convention of 1973, which established the European Patent Office.[15] Article 6 of the European Biotechnology Directive went further than the European Patent Convention in specifying certain inventions which should not be patentable.

These were:

- Processes for cloning human beings.
- Processes for modifying the germ line identity of human beings.
- Uses of human embryos for industrial or commercial purposes.
- Processes for modifying the genetic identity of animals, which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

It was clear from the explanatory documentation provided with the Directive that this list was not the last word. Recital 38 of this stressed that the list was 'to provide national courts and patent offices with a general guide to interpreting the reference to order public and morality, and obviously cannot presume to be exhaustive.

It may or may not have been prudent for the European Parliament to include this ethical exclusion in the Directive, but it does mean that the Patent Offices and Courts of the EU states have to work within its framework. Strictly speaking, the list of exclusions need not apply to the European Patent Office as this is not an EU institution. Nevertheless, the European Patent Office is constrained by the European Patent Convention, which has a similar exclusion, if only presented in

[15] P. Whittaker, *Human Embryonic Stem Cell Patents: A European Perspective*, 45 J. INDIAN L. INST. 123 (2003).

broad terms.[16]

4.2. Stem Cell Patenting in the United Kingdom

The debate on moral, ethical, and religious values ended up in the United Kingdom with the Human Fertilization and Embryology Act 1999. The Act allows the use of an embryo for research for less than 14 days of fertilization. The research work can be carried out only after taking a license for the same purposes from the authority established under the Act. Cloning the embryos for research was also made legal by the Act. The Human Fertilization and Embryology Authority is a statutory supervisory body established to issue licenses to laboratories taking up research work on embryos and checking proper compliance with the rules and regulations under the Act. However, the Act itself underlines certain conditions before applying for the license. For example, embryos must not be used beyond 14 days for research purposes. They must be shown that it is necessary or desirable to use embryos to achieve the research aims. In 2001, the Act was amended with a regulation allowing embryo research for specific other purposes, including understanding the development of an embryo and treating severe diseases. The UK has also passed the Human Reproductive Cloning Act 2002, which bans the cloning of embryos for reproductive purposes. In 2008, a new authority called the Regulatory Authority for Tissue and Embryos (RATE) was set up under the Human Tissue Act 2004 to govern HESC research[17].

4.3. Stem Cell Patenting in the United States of America

In the USA, there is no federal law that regulates Stem cell research. Thus, Stem cell research was never been banned, but there were certain restrictions on funding for the same, which were changed from time to time. For reference, former President of the U.S.A., George W. Bush, bypassing an ordinance in 2001, permitted the funding for hESC research only if such cell lines were obtained from previous stem cell lines. Then, later in 2009, President Barack Obama extended

[16] Lone Nielsen & Peter Whittaker, *Opinion on the Ethical Aspects of Patenting Inventions Involving Human Stem Cells*, EUR. GRP. ON ETHICS IN SCI. & NEW TECHS. TO THE EUR. COMM'N, Opinion No. 16 (2002).

[17] *Patentability Of Human Embryonic Stem Cells in India*. Available from: https://www.researchgate.net/publication/371677733_Patentability of Human Embryonic Stem Cells in India [accessed Oct 14 2025].

the scope further by another executive order, which permitted the use of hESC even if they are not obtained from the previously generated stem cell lines. However, in the absence of any federal legislation, individual states are free to make their own legislation. In the US, despite conflict for funding to stem cell research, the US Patent Law allows that stem cells and methods of making or using stem cells can be patentable[18]. It is because the US patent law has no requirement of morality for patentability[19].

4.4. Indian Patent Laws and Scope for Stem Cell Patenting

To encompass the technological advancements, India has amended the patent laws three times in the period of five years from 1999-2005. The first was in the year 1999 to give effect to the provision of TRIPS and hereby meet the first deadline, and some provisions were made retrospective from 1995. The second amendment was made in 2002, and it brought India substantial compliance with the agreement. The third amendment was made in December 2004, which came into force on 1 January 2005, to make the Indian Patent Act fully TRIPS compliant. The deletion of Section 5 in the Patent Act 1970 was important to allow product patents in the areas of biotechnology, chemicals, and pharmaceuticals.[20]Thus, up to 2005, product patents on biotechnological inventions were barred under the Indian Patent Act, but now, over from past few decades or so, inventions in the field of biotechnology have been growing, particularly from classical biotechnology like fermentation yeast, etc, to modern biotechnology like DNA technology, vaccines, stem cells, transgenic cells, etc. Now the inventions are regarded patentable although there was no specific mention of these things in the 1970s Act; thus, now amendment in 2005 amendment enabled the grant of product

[18] ibid

[19] The most significant human embryonic stem cell patents are undoubtly those awarded to James Thompson us pat. No. 5,843780 (Ist Dec. 1998) private embryonic stem cells US pat no. 62,00806 (13th of March 2001) primate embryonic stem cell·Us pat. No. 5,843,708 claims a purified preparation of private embryonic stem cells and includes human within primate grouping. US pat No, 6,200,800makes specific claim to a purified preparation of human embryonic stem cell. These patents are owned by WARF (Wisconsin Alumni Research foundation) with sole license being Geron Corporation. US patent no.6,090,622(18th July 2000) and 6,245566(12th July 2001) were granted to John Gearhart and Michael Shamblott and assigned to Jones HopKins school of Medicine, Balti More Maryland USA.

[20] It might be necessary to eliminate undesirable genes in stem cells to be used for therapy.

patent in biotechnology, also, and the Indian patent law is now in consonance with the TRIPS agreement.[21]

While the TRIPS Agreement (Article 27.3(b)) permits limited exclusions from patentability, nations differ widely in their approaches. The United States adopts a liberal view (Diamond v. Chakrabarty), the European Union applies strong ethical exclusions, while India pursues a middle path balancing innovation with morality and public interest through Sections 3(b), 3(c), and 3(j) of the Patents Act, 1970. The Indian Patent Office has a practice of rejecting patents related to stem cells obtained through embryo destruction or commercial use of human embryos, consistent with public order and morality exceptions. Currently, there is no specific legislation or judicial precedent clearly addressing stem cell patentability, leading to some ambiguity and inconsistent evaluation by the Indian Patent Office. Adult stem cells or inventions involving non-embryonic stem cells and novel processing methods may be considered on a case-by-case basis. Thus, it can be seen that India has, by and large, been very supportive of stem cell research[22].

V. Ethical and Moral Issues about Stem Cell Research

The discovery, isolation, and culturing of human embryonic stem cells have been described as one of the most significant breakthroughs in biomedicine of the century. This description would be warranted by virtue of the biological uniqueness of these cells alone—their ability to self-renew infinitely while retaining a remarkable capacity to differentiate into any form of cell tissue. But as well as this, the culturing of embryonic stem cells holds tremendous potential for the development of new forms of regenerative medicine to treat debilitating or fatal conditions that would not otherwise be curable.[23] It is somewhat of an irony

[21] Use of undifferentiated embryonic stem cells for therapy may lead to tumour formation. Thus, it will be necessary to differentiate e.g., to neutral cells or to skin cells for particular regenerative therapies.

[22] Thomson and his co-workers had repaired the differentiation of ESC lines from human blastocysts. Thomson J.A. Itskovitz Elder J, Shapiro SS, Waknite M.A., Swiergiel JJ, Marshal VS, and Jones JM, "Embryonic stem cell lines derived from human blastocysts Science 282 (5391) 1998 p. 1145k

[23] Every day, people die because there are insufficient tissues available for transplantation. J. Savulescu, *The Ethics of Cloning and Creating Embryonic Stem Cells as a Source of Tissue for Transplantation'* 30 Australian and New Zealand Journal of MEDICINE,

that the discovery of cells with such a tremendous potential for improving and prolonging our own lives should bring with it some of the most trenchant and intractable questions about the value of life itself.

The harvesting of embryonic stem cells destroys the embryos from which they are harvested. It results, in other words, in the expiration of the very beginnings of a possible human life. Issues about the value of life emerge here in perhaps their most stark and poignant form in the question of whether life for those already existing should be improved at the seeming expense of a possible human life that has just come into being. [24]Thus, on the one hand, Human Embryonic stem cells have incredible medical potential, but on the other hand, there comes a catch: serious ethical and moral concerns over them. Current techniques for deriving human embryonic stem cells require the extraction of cells from a human embryo, which leaves the embryo non-viable. This fact has led to widespread opposition to research using Human Embryonic stem cells, among others, from prolife groups and religious institutions.[25] Their argument against ES cell research is analogous to their argument against abortion, and that is life begins at conception, so the destruction of an embryo in the process of creating human embryonic stem cells is equal to killing the human being.[26] Opponents of ES cell research counter with the fact that embryonic stem cells medical promise is currently unproven.[27]

5.1. Arguments in favour of the Embryonic Stem Cell Research

Evaluating the benefits of embryonic stem cell research presents significant complexity due to the uncertainty surrounding its potential outcomes and the ethical dilemmas it raises. While the medical prospects—such as somatic gene therapy for genetic disorders and the development of replacement tissues or

492–98(2000)

[24]38 Maurice Rickard, Key Ethical Issues in Embryonic Stem Cell Research, Social Policy Group

12 November 2002at: http://www.aph.gov.au/library/

[25] US patent No. 6,280,718 (28 Aug 2001) Haematopoietic differentiation of human pluripotent embryonic stem cells awarded to Dan Haufman and James Thomson, assigned to WARF.

[26] Damon J. Whittaker, *Patentability of Embryonic Stem Cell Research Results*, 13 J.L. & PUB. POL'Y 377 (2002).

27 Stephen S. Hall, *Adult Stem Cells*, TECH. REV., Nov. 2001, at 42. available at http://www.techreview.com/articles/hall/101.asp.

organs—are highly promising, these benefits remain largely hypothetical. Scientific progress, particularly in new and evolving fields like stem cell research, is unpredictable, as advances and setbacks often occur unexpectedly. Hence, any assessment must weigh these uncertainties carefully.

The proponents of ES cell research have been patient groups representing individuals afflicted with the maladies for which ES cell technology seems to hold the most promise. The most notable ES cell proponents are Nancy Regan lobbying on behalf of Alzheimer's disease patients, Christopher Reeve Lobbying on behalf of victims of spinal cord injuries, Mr. Tyler Moore lobbying on behalf of diabetes patients, and Michael. J. Fox is lobbying on behalf of Parkinson's disease patients. The justification that they gave is that the sacrifice of an unwanted human embryo is justifiable if done for the benefit of human beings suffering from maladies treatable by ES cell-derived techniques. This argument is echoed by the same legislations that insist that supporting the destruction of human embryos for the purpose of developing life-saving medical treatments is effective, a "Prolife" position. One more justification is that embryos used to create ES cell lines and stem cells are typically surplus embryos that were created by in vitro fertilization for reproduction purposes and are no longer needed. Because these embryos, if not implanted, will simply be destroyed, many question the harm in using them to benefit others[28].

5.2. Arguments against Stem Cell Research

5.2.1. Ethical Issues in Patenting Human Embryonic Stem Cells

The patenting of human embryonic stem cells (hESCs) raises complex ethical dilemmas at the intersection of science, law, and morality. While stem cell research holds remarkable promise for regenerative medicine and the treatment of otherwise incurable diseases, the moral implications of claiming proprietary rights over human biological material—particularly embryonic cells—remain deeply contentious.

[28]J. Savulescu, *The Ethics of Cloning and Creating Embryonic Stem Cells as a Source of Tissue for Transplantation* 30 AUSTRALIAN AND NEW ZEALAND JOURNAL OF MEDICINE 492–98 (2000).

5.2.2. Commodification of Human Life

One of the most fundamental ethical concerns is that patenting hESCs could lead to the commercialization and commodification of human life. Granting ownership rights over cells derived from human embryos may reduce life's intrinsic value to an object of trade or economic gain, undermining respect for human dignity. Critics argue that human embryos, even at the earliest developmental stages, possess moral status and should not be treated as property.

5.2.3. Destruction of Human Embryos

The derivation of embryonic stem cells typically involves the destruction of human embryos, which raises profound moral questions. Opponents—especially from religious and pro-life perspectives—view this process as ethically unacceptable, equating it to the taking of potential human life. This moral objection has led some jurisdictions to restrict or prohibit patents involving hESCs derived through such methods.

5.2.4. Equity and Access to Healthcare

Ethical concerns also arise regarding access and distributive justice. If stem cell-based therapies become patent-protected commodities, high licensing fees and monopolistic control could limit access to life-saving treatments, especially in developing countries. This scenario would exacerbate global inequalities in healthcare and restrict the availability of therapies to only those who can afford them.

5.2.5. Moral Ownership and Consent

Questions of ownership, consent, and donor rights add another layer of complexity. When embryos or genetic materials are donated for research, ethical considerations demand informed consent, transparency, and fair use. The idea that biological materials donated altruistically could later become subjects of lucrative patents raises concerns about exploitation and moral fairness.

5.2.6. Balancing Innovation and Ethical Responsibility

The overarching ethical challenge is to strike a balance between encouraging biomedical innovation and preserving moral integrity. While patent protection can

stimulate research and investment, unchecked commercial interests risk overshadowing ethical considerations. This calls for robust regulatory oversight, transparent research practices, and policies that ensure benefit-sharing without compromising respect for human life.

5.2.7. Religious Issues Involved in Human Embryonic Stem Cell Patenting

The patenting of the human embryonic stem cells is also an issue of debate among different religious groups on religious grounds. The attitudes of christens, Jews Muslims. Buddhists, Hindus, etc, to stem cell therapy. Some refuse it because it is against religious teachings; no religion allows the killing of a human being, but some have carved out a harmonious construction between religion and technology relating to the research.

The Roman Catholic perspective

The source of the stem cells has been a point of contention among Roman Catholic thought. Some see somatic cell nuclear transfer (SCNT) as free from complicity with abortion. The embryo is seen as a form of human life and as such is worthy of the moral status granted to a fully developed human. While other Catholic ethicists state that research involving such cells is no different than using cells obtained from discarded embryos. Margaret A. Farley, a contributor to the National Bioethics Advisory Commission of the United States (NBAC)[29]Presentations describe the Catholic justification against stem cell use in a different way. This quotation appears in her essay "Roman Catholic Views on hES Cell Research": "At the heart of the tradition, however, is a conviction that creation is itself revelatory, and knowledge of the requirements of respect for created beings is accessible at least in part to human reason." She develops this

[29] In 1999 The National Bioethics Advisory Commission of the United States produced a two-volume response to President Clinton's request for a review of the issues, both medical and ethical, related to stem cell research. In these documents the NBAC presented the president with thirteen recommendations concerning stem cell research: Perhaps the most importnt recommendations reflect the Commission's view that federal sponsorship of research that involves the derivation and use of human embryonic stem cells and human embryonic germ cells should be limited in two ways. First, such research should be limited to using only two of the current sources of such cells; namely, cadaveric fetal material and embryos remaining after infertility treatments. Second, that such sponsorship be contingent on an appropriate and open system of national oversight and review.

statement to mean that conducting stem cell research would negate or be in defiance of the divinity of the creator.

These interpretations are associated with the prohibition of all embryonic stem cell research. Research utilizing embryos created specifically for the obtainment of stem cells would be considered unethical. Cadaveric fetal tissue, whether resulting from clinical abortions or other sources, is also not seen as permissible research material. The concept of "complicity" is central to this belief. Using discarded tissue in research, or in therapy derived from such research, would be inadvertent support of abortion.[30] The use of human adult stem cells is also accepted by many Catholics; however, there by no means exists consensus in the church.[31]

Buddhist perspective

The conclusions reached by some Buddhist ethicists are similar to those within the Roman Catholic Church. Damien Keown, editor of the *Journal of Buddhist Ethics,* describes the fundamental beliefs directing Buddhist ethical perspectives on embryonic stem cell use:

> *The Buddhist religion places great importance on the principle of ahimsa, or non-harming, and therefore has grave reservations about any scientific technique or procedure that involves the destruction of life, whether human or animal... Buddhism teaches that individual human life begins at conception. By virtue of its distinctive belief in rebirth, moreover, it regards the new conceptus as the bearer of the karmic identity of a recently deceased individual, and therefore as entitled to the same moral respect as an adult human being.*

As described by the NBAC, the Eastern Orthodox, Islamic, and Jewish ethicists are generally more receptive to stem cell research. The Eastern Orthodox perspective is primarily directed by a belief in the progression of each human toward the likeness of God, a progression which begins at conception. In this

[30] Biotechnology and Biosciences Research Council, (Sept. 7, 2025, 4:30 PM), http://www.bbsrc.ac.uk>
[31] Eliot Marshall, *A Versatile Cell Line Raises Scientific Hopes, Legal Questions*, 282 SCIENCE 1012 (1998).

tradition, life is sacred and elective abortion is seen as active defiance of "God's grace". As with Roman Catholicism, complicity with abortion is to be avoided by not researching stem cells derived from aborted fetuses. The creation of embryos for obtaining stem cells is, of course, prohibited as well. The Eastern Orthodoxy does, however, approve of research done on cells obtained from certain other sources. These acceptances arise from a view that medicine is a divine gift. Humans have an obligation to heal. Research done on already existing cell lines or on stem cells obtained from miscarriages is more than accepted, but expected. The goals of any such research, however, must be focused on medical therapy[32]

Jewish Perspective

The conclusions reached in Jewish ethics are very similar to those of Eastern Orthodoxy. Elliot N. Dorff, a rabbi and professor of philosophy at the University of Judaism in Los Angeles, states that in the Jewish tradition, "Our bodies belong to God; we have them on loan during our life. God, as owner, can and does impose conditions on our use of our bodies. Among those is the requirement that we seek to preserve our life and health." This concept of a divine charge to heal has led many Jewish scientists and theologians to become strong proponents of stem cell research.

Laurie Zoloth, director of the program in Jewish studies at San Francisco State University, says that halachas, the Jewish tradition of using sacred textual sources to reach ethical conclusions, almost always produce evidence to justify stem cell research itself. "It is mandated to use the best methods available as soon as they are proven efficacious and not dangerous to the patient. Paradoxically, it might violate rabbinic premises to stop [stem cell] research if such research is lifesaving." This statement shows the extent to which Jewish scholars may approve of stem cell research. She expresses concern, however, that such an optimistic embrace of the research fails to acknowledge more specific problems arising from the logistics of research and the ultimate applications of any discoveries.

[32] Anne McLaren, *Ethical and Social Considerations of Stem Cell Research*, 414 Nature 129 (2001).

Islamic Perspective

Islamic interpretations lead to even greater tolerance of obtaining and doing research using embryonic stem cells. describe the belief which informs the Muslim perspective: "The general Islamic view is that, although there is some form of life after conception, full human life, with its attendant rights, begins only after the ensoulment of the fetus, most Muslim scholars agree that ensoulment occurs at about 120 days after conception; other scholars, perhaps in the minority, hold that it occurs at about 40 days after conception." This belief has led Muslim ethicists to approve of stem cell research conducted on cells obtained from embryos aborted before ensoulment and on cells obtained from blastocysts created expressly for harvesting stem cells.[33]

VI. CONCLUSION AND SUGGESTIONS

Stem cell technology holds enormous potential for new cures and treatments for a host of diseases, yet the research is politically volatile and ethically sensitive. The examples quoted illustrate the very significant difference between outcomes of potent application in the USA, Europe, and India. It is debatable whether ethical exclusion in patent law is appropriate in a situation where granting a patent is not a passport to commercial exploitation but merely a right to exploit an invention for a limited period of time. The fine ethical judgment shall be made by patent offices after consulting the suitably qualified ethicists. There is no justification why a grant of patent shall be refused; it is not against morality. In the case of human embryonic stem cells, it can be argued that the use of an embryo surplus to requirements for in vitro fertilization to produce stem cells for research or therapy of serious disease is ethically more acceptable than non-productive destruction of these as they pass the date beyond which they are deemed to be unsuitable for reproductive purposes. Moreover, a bit of good news that has recently emerged is the fact that an alternative to controversial embryonic stem cell technology has been discovered. Scientists in Singapore have recently claimed to have discovered an easy source of stem cells, the outer layer of the

[33] Abdallah S. Daar & A. Binsumeit Al Khitamy, *Bioethics for Clinicians: 21. Muslim Bioethics*, 164 CAN. MED. ASS'N J. 60 (2001).

umbilical cord (amniotic lining). It possesses stem cells that are not only easily accessible but also possess both epithelial and mesenchymal cells, which are responsible for producing every cell in the body. Thus, stem cells can not only be easily obtained from biological waste (Umbical Cord) this can also be seen as alternative, to the moral ethical religious issue relating to human embryonic stem cell technology and if this gain can be exploited in time and results of the experiments live upto expectations, it could actually lead to eliminating the controversy involved in stem cell research forever. Therefore, steering research toward adult stem cells or other ethically sustainable alternatives may offer a more acceptable path forward, aligning medical innovation with moral responsibility

In view of the conclusion, certain suggestions are made

- Patents on ES cells, products, and related technologies may be granted only when applicants state definite, plausible uses for their inventions, and these patents should not be excessively broad.
- There may be a research exemption in ES cell patenting to allow academic scientists to conduct research in regenerative medicine.
- It may be appropriate to take steps to prevent companies from using patents in ES cells, products, and related technologies only to block competitors.
- As the field of regenerative medicine continues to develop, societies should revisit issues relating to property rights continually to develop policies and regulations to maximize the social, medical, economic, and scientific benefits of ES cell research and product development.

AN OVERVIEW OF ANTI-COMPETITIVE PRACTICES IN THE MARKET AND PENALTIES: A STUDY OF SECTIONS 3 AND 4 OF THE COMPETITION ACT, 2002

Dr. Nisha Dhanraj Dewani*

ABSTRACT

India's competition law is based on fair market principles, which restrict and prohibit unfair business practices and practices abusing the dominant position. Dealing with this, sections 3 and 4 are significant for a relevant market focusing on anti-competitive practices. The functioning of both provisions is different. Section 3 focuses on agreements between businesses that damage the competition. In Section 4, the focus is on actions taken by a dominant company that takes advantage of its market dominance. This article discusses the anti-competitive practices and how a dominant position is abused. Further, this research delves into the kinds of anti-competitive practices and relevant market with the help of case studies of India, the USA, and the European Union. This paper lastly discusses in detail the penalties and procedural practices used in CCI and courts. The paper thoroughly observes the advantages, disadvantages, dangers, and restrictions of using it in the Indian market, taking into consideration the economic and structural factors that impact dominance.

I. INTRODUCTION

Since the MRTP (Monopolistic and Restrictive Trade Practices) Act of 1969[1] was established to prohibit the monopolistic behaviours and regulate restrictive trade practices in India under the Ministry of Corporate Affairs. The MRPT has primary emphasis on monopolistic control, predatory pricing, and production regulation,

* The author is an Associate Professor, Department of Law, MAIMS, and can be reached at nishadhanrajdewani.faculty@maims.ac.in

[1] Monopolies and Restrictive Trade Practices Act, 1969.

and secondly, most prominently, the prevention of restrictive trade practices. Nonetheless, various limitations were included, such as the exclusion of specific sectors like agriculture, small-scale enterprises, and services, an absence of mechanisms for leniency or case settlement, and comparatively reduced fines for infractions. The MRTP Act primarily aimed at regulating monopolies, whereas the Competition Act provides a thorough framework to promote competition, avert market exploitation, and safeguard consumer interests. The MRTP Act was abrogated in 2002, with its fundamental provisions integrated and augmented within the Competition Act, signifying India's transition to a more contemporary and economically-focused competition law framework. Subsequently, the Competition Act, 2002 was established to cater, foster, and safeguard competition throughout all economic sectors and is administered by the Competition Commission of India (CCI). CCI provides a complete framework covering not only anti-competitive practices but also penalties and compensation for violating the rules, regulations, and guidelines issued by the CCI. Referring significantly to the objectives and transparent methodology, the CCI deals with how dominance becomes an abuse of dominance, the extent of anti-competitive acts while enforcing increased fines, and incorporates progressive measures such as leniency policies and case resolutions. In contrast to the MRTP Act, the Competition Act does not govern pricing or output.

The fair competition in CCI aims to safeguard consumers, consumer welfare, and the independence of enterprises, restricting the monopoly, in any form, which poses a significant threat to the free market. Observing it, the correlation between the effective enforcement of competition regulations and economic development cannot be overlooked in this legislation. Consequently, comprehending the notion of "abuse of dominant position" is essential, given that the majority of competition regulations prohibit it across various countries[2]. With the globalization of India's economy through innovation and FDI, the economic restrictions have been liberalized. India has made substantial advancements by startups and new business entities by implementing a new competitive framework, keeping in view

[2] Paul L. Joskow Alvin K. Levorick, '*A Framework for Analysing Predatory Pricing'*, 89 (2) Yale Law Journal 245-258 (1979).

the digital market. Thus, the present legislation is not only to promote competition but resolve the issues in a holistic manner occurring at different levels in all forms.

Consequently, the exploitation of monopolistic positions by corporations is a significant concern due to various variables particular to (such as market share and economic strength) that collectively or individually become the reasons for abuse of a dominating market position and are detrimental to customer interests. Dominance is not inherently detrimental. Exploitation of a dominant position is intrinsically anti-competitive unless a dominant entity exploits its authority by marginalizing or taking advantage of those under its influence. The CCI delineates a thorough enumeration of practices deemed prohibited due to their representation of the misuse of a dominant position. Numerous countries have implemented alternative legislative ways to determine the existence of a dominating position. For example, the law on the Functioning of the European Union forbids the misuse of a dominant position; however, it lacks a definition for this term while defining the term prohibited practices[3]. According to European Competition law, dominance is a form of "economic strength" within its market. It's capable of obstructing the maintenance of effective competition in a relevant market, where a substantial degree of autonomy in behaviour exists independent of competitors, customers, and ultimately, consumers. Conversely, the enforcement goals of the EU, as stated in Article 82 of the Treaty Establishing the European Community (now the Treaty of Rome) and Article 102 of the Treaty on the Functioning of the European Union (TEFU), are efficacious in addressing abusive activity by entities in a dominating position. The requirements that must be adhered to are delineated by the exclusionary conduct of dominating enterprises. The European Commission considers various factors when evaluating dominance, specifically the limitations set by current suppliers, the market position of actual competitors (the dominant entity and its rivals), the plausible threat of future expansion by existing competitors or the entry of potential competitors, and the bargaining power of purchasers (countervailing buyer power). Apart from the EU, in the United States, the notion of dominant position remains unclear; nonetheless, the Supreme Court has historically characterized it as "the power to control market

[3] See Article 102 of EU Competition Law

prices or exclude competition," as established in *United States* v. *E.I. du Pont de Nemours and Company*[4]. The Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, and the Federal Trade Commission Act of 1914 prohibit monopolization, price fixing, and agreements restraining trade. In Japan, there is Anti-Monopoly Act of 1947 prohibits private monopolization and unreasonable restraint of trade, like cartels and bid-rigging[5].

II. ANTI-COMPETITIVE PRACTICES

Anti-competitive practices refer to actions and acts undertaken by organisations, businesses, or even governments that restrict, distort, or reduce fair competition within a market. These kinds of practices are typically aimed at securing an unfair advantage or maintaining dominance et the interest of consumers. To prevent these unfair tactics, antitrust laws are established to ensure that enterprises operate within a framework that promotes fair competition, innovation, and consumer welfare. In order to promote a competitive market, the firms are encouraged to enhance the quality of their products and services, offer reasonable prices to the consumers, and enhance technological progress. Some dominant enterprises often exploit their market power to impede the entry or survival of new entities, thereby undermining market efficiency. Anti-competitive practices are not in favour of consumers since they limit choices and low low-quality service. Thus, not all but some practices are illegal, which significantly lessen or eliminate competition in the market. Consequently, only firms possessing substantial market power, such as monopolies or dominant entities in oligopolistic structures, can be held liable for engaging in anti-competitive behaviour that adversely affects market dynamics and consumer interests[6].

III. KINDS OF ANTI-COMPETITIVE AGREEMENTS

Anti-competitive agreements that have or are likely to have a significant negative impact on competition in India are prohibited by Section 3 of the Competition

[4] (1956) 351 US377, 391.
[5] See Section 3 and 19 of Japan Anti-monopoly Act 1947.
[6] Ralph M, Braid (2017). "Efficiency-enhancing horizontal mergers in spatial competition". *Papers in Regional Science*. 96 (4): 881–895. Bibcode:2017PRegS..96..881B. doi:10.1111/pirs.12228

Act, 2002[7]. It is assumed that horizontal agreements—agreements between businesses involved in the same or comparable trade—have this kind of effect when they directly or indirectly set prices, restrict markets or production, divide market resources, or lead to collusive bidding or bid-rigging[8]. [2]However, this presumption can be refuted, and the accused party has the burden of proving that there isn't anti-competitive. The Competition Commission of India ("CCI") explained in *Uniglobe Mod Travels Pvt. Ltd*. v. *Travel Agents Association of India*[9] that the presumption under Section 3(3) may be disproven if the parties demonstrate that their actions have pro-competitive effects or do not negatively affect competition. Joint ventures that improve production, supply, or distribution efficiency are also exempted from the presumption, according to Section 3.

Section 3(4) deals with vertical agreements, which are contracts between businesses at various stages of the supply chain or production process. These consist of refusals to deal, exclusive supply and distribution agreements, tie-in agreements, and maintenance of resale prices[10]. In contrast to horizontal agreements, the "rule of reason" is used to evaluate vertical agreements, weighing their effects on market competition by weighing their pro- and anti-competitive implications[11]. In contrast to the European Union's stance as discussed earlier, that it is a "hardcore restriction," the Indian approach to resale price maintenance is in line with the U.S. model, which approaches it using a rule-of-reason analysis. Section 4 of the Competition Act 2002 forbids any business or organization from abusing a dominant position. Abuse can take many forms, such as limiting production, denying access to markets, imposing unfair or discriminatory conditions or prices, or using market dominance to influence another market. Several factors, including market share, size, resources, entry barriers, and consumer dependence, are evaluated by the CCI to determine dominance.

[7] Competition Act, No. 12 of 2003, § 3(1), India Code (2003).
[8] See Section 3(3).
[9] Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Association of India, MANU/CO/0052/2011 (Competition Commission of India)
[10] See 3(4) expl.
[11] Cont'l T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977)

IV. RELEVANT MARKET

The idea of the relevant market is very important in the domain of competition law. It helps to decide whether the business that has a dominating position has been abused or not. There are two main parts of the relevant market. Firstly, the relevant product market and secondly, the relevant regional market. The important product market includes all the goods and services that customers think can be used instead of one another based on their features, costs, and planned purpose. In India, Sections 2(t) and 19(4) of the Competition Act of 2002, as changed by the Competition (Amendment) Act of 2007, set the rules for determining which products are in the relevant market and what factors should be used to decide if two products are interchangeable.

The Competition Commission of India (CCI) looks at supply-side factors like the costs and viability of moving production to replacement items as per the full analysis of the market. In the same way, the relevant region (geographic) market is the area where businesses can function in competitive conditions that are the same for both supply and demand. This area can be different from nearby areas, as explained in Section 2(s) of the Act[12]. A big part relating to the 'control is the size of the market' was discussed in *Belaire Owners' Association* v. *DLF Limited*[13], where the CCI defined the term relevant market as "*high-end residential apartments in Gurgaon*," and led DLF the market leader in that specific sector and held that keeping hidden terms and conditions against the interest of consumers is somehow anti- competitive. Another interpretation of the relevant market was heard in relation to the Coca-Cola case, where the accusations of abusing power regarding setting prices for bottled water and carbonated drinks in multiplex theatres were raised. The CCI expanded the meaning of relevant market to include all multiplex theatres in India since Coca-Cola did not have a dominant position[14]. This shows how the market can have a big impact on the assessment of dominance. Since 2002, under section 4 of the Competition Act, the CCI has observed various and different industries, such as real estate, public

[12] See The Competition Act 2002
[13] Case No. 19 of 2010, CCI, 2011)
[14] Consumers Guidance Society v. Hindustan Coca-Cola Beverages Private Limited [UTPE 99/2009]

utilities, stock exchange, publishing houses, and the food and beverage industry, where dominance is exercised. This demonstrates that the CCI is moving toward a more in-depth and data-driven approach to examination. To do this, statistical and sector-specific data must be used to get a better sense of market power and how competition works. By deciding on the most important market factors, the CCI makes sure that dominance is judged in a structured and economically significant way. This keeps the analysis from being skewed by either too many or too few participants. In short, figuring out the relevant market (both for the product and the area it covers) is an important first step in any Section 4 of the Competition Act of 2002 abuse of dominance investigation. This is because it lets you figure out market power, competitive constraints, and the possible effects on consumer welfare.

V. Dominant Position And Its Abuse

In the reference above, the "dominant position" refers to an organization's high standing and strength that enable it to

"(i) operate independently of competitive forces prevailing in the relevant market;

(ii) affect its competitors or consumers or the relevant market in its favor."

Dominance cannot be measured because it is not determined by a formula or quantitative computation, but rather by comparison. It only matters for competition when there is a market that is relevant[15]. The Commission has the authority to determine the market by considering either the relevant product market, the relevant geography market, or both. According to the description given above, as the notion of a relevant market is thus connected to the product or geographic dimensions. In essence, the product market shows how commodities and services are portrayed in relation to the geographical market, which deals with the locations of the manufacturers and sellers of such goods and services. This implies that while determining whether or not there is dominance, the market and the market share of the company or group in question are crucial. Determining a company's or a group of companies' market influence also involves a number of

[15] Preeti Manderna, *Corporate Laws: Abuse of Dominance*, 3 *Amity International Journal of Juridical Sciences* 61 (2017)

other factors[16]. When assessing whether a company has a dominant position or not, the Commission is given broad authority by Section 19(4) of the Competition Act 2002 to look at all or any of these factors, including the company's market share, size, resources, and economic power in comparison to competitors, as well as the networks of sales and services that these companies provide and the degree of customer dependence. The ability of a business to behave in an interdependent rather than reliant manner is another aspect of dominance. When a business has a dominant position, it can benefit from the market without depending on outside forces.

There are numerous case studies in India where the CCI has addressed the topic of dominating position. For instance, in 2013, the BCCI was fined Rs. 53 crores for abusing its market dominance. According to the circumstances, on November 2, 2010, a cricket enthusiast named the Informant complained to the CCI about the OP in the BCCI under Section 19 (1) (a) of the Act[17]. His accusations pertained to the anomalies that transpired during the T- 20 and professional league competition known as the Indian Premier League, which was overseen by the BCCI. Franchise rights, broadcast rights, sponsorship rights, and other local contracts pertaining to the IPL's organization in relation to league and team organization are just a few of the problems he was interested in.

According to the evidence above, CCI argued that since there is a prima facie case, the DG must look into the matter through a special inquiry in accordance with Section 26(1). This case study demonstrates the need for reasonable power restrictions.

VI. Anti-Competitive Practices and Abuse of Dominant Position In The Market

Competitors may not influence an organization. Nevertheless, the matter at hand is not whether a company occupies a dominant position in the market. But it is whether dominance is accompanied by the term "abuse." In the context of

[16] CCI Provisions Relating to Abuse of Dominance, Advocacy Series. Available on cci.gov.in (Last visited on 30 September 2021).
[17] Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI); case No. 61/2010.

competition laws, abuse is the wrongful use of a dominant position by a firm that exploits its market supremacy. Abuses can be classified into two categories-

- Exclusionary abuse and
- Exploitative abuse.

Exploitative abuse is the act of a dominant firm exploiting its market power to impose unfair trading conditions on consumers or suppliers, such as charging excessively high prices or imposing unfair terms[18]. Exclusionary abuse refers to strategies that are designed to prevent competitors from entering the market or excluding them, such as predatory pricing, exclusive dealing agreements, or refusal to supply[19]. Referring the reasons, the predatory price is closely connected with exclusionary abuse where goods and services are sold at below the cost of their actual price. It is defined in the Indian Competition Act, 2002, as "the sale of goods or the provision of services at a price less than the cost, as determined by regulations of manufacturing goods or providing services, with the intent of reducing competition or eradicating competitors[20]. Conversely while studying the interface between Intellectual Property rights and competition law, it is concluded that the protection of intangible rights, i.e., IPR, is not prohibited by the Indian Competition Act's scheme of reasonable requirements. The Act does not specifically address IPR in the context of misuse of a dominant position, nor does it target anti-competitive agreements. Nevertheless, if such activities lead to unfair conditions or unreasonable pricing that impede market access, maintain price discrimination, hinder productivity through manufacturing or other means, or involve any of the aforementioned, they may constitute a misuse of a dominant position.

VII. PRICE DISCRIMINATION

After Predatory pricing discussed above, another anti-competitive practice is Price discrimination, both in its price and non-price forms, which is explicitly prohibited under Section 4 of the Indian Competition Act, 2002, as it constitutes

[18] British Airways plc v. Commission [2007] ECR I-2331, C-95/04.
[19] AKZO Chemie BV v. Commission [1991] ECR I-3359, C-62/86
[20] See Section 4(2)(a)(i) of Competition Act 2002

a potential abuse of a dominant position in the market. The Competition Commission of India (CCI) and the Competition Appellate Tribunal (COMPAT) have provided significant jurisprudence on this matter through various landmark cases. In the *Schott Glass India Pvt. Ltd. case*[21], the COMPAT ruled that price discrimination occurs when two conditions are met: (1) different handling of identical transactions, and (2) injury or likely harm to competition, where purchasers are at a disadvantage to one another. The COMPAT emphasized that pricing and conditions could be considered discriminatory only if they were different for the same quantities of the same product. However, the Supreme Court upheld the COMPAT's decision, noting that Schott Glass's target-discount scheme was based on purchase volume and uniformly applied to all converters, thereby not constituting discriminatory pricing. Similarly, in the Travel *Agents Federation of India* v. *Lufthansa Airlines case*[22], the CCI examined whether Lufthansa's practice of offering different fares through travel agents and its official website amounted to price discrimination. The CCI concluded that since the tickets sold through these channels were not identical, the practice did not constitute price discrimination under Section 4(2)(a)(ii) of the Competition Act.

Contrastingly, in *Telefonaktiebolaget LM Ericsson* v. *Competition Commission of India*[23] The CCI found that Ericsson's royalty rates were not based on the functioning of the patented product but on the ultimate selling price of the end product, which could lead to discriminatory pricing. In the present case, the Delhi High Court held that charging different license fees for the same technology usage could amount to discriminatory conduct, thereby affirming the decision of CCI.

The CCI had found Grasim Industries Ltd. guilty of abusing its dominant position in the *Viscose Staple Fibre (VSF) market in XYZ* v. *Association of Man-Made Fibre Industry & Ors.*[24] Grasim was found by the CCI to have been engaged in discriminatory pricing, by offering lower rates to export-oriented units and higher

[21] *S*chott Glass India Pvt. Ltd. v. Kapoor Glass Works Ltd., Civil Appeal No. 5843 of 2014, Supreme Court of India, Judgment dated May 13, 2025.
[22] Travel Agents Federation of India v. Lufthansa Airline*s*, Case No. 04 of 2020, Competition Commission of India, Order dated May 8, 2020.
[23] Telefonaktiebolaget LM Ericsson v. Competition Commission of India, LPA 550/2016, Delhi High Court, Judgment dated July 13, 2023.
[24] XYZ v. Association of Man-Made Fibre Industry & Ors. (Case No. 62 of 2016).

prices to domestic buyers. Along with the same, the unreasonable conditions were imposed by the company under its discount schemes. And affected not only the competition but also the consumer welfare, which was deemed exploitative and exclusionary. The CCI then assessed a penalty of ₹301.61 crore for violating Section 4 of the Competition Act, 2002.

Recently, the Competition Commission of India (CCI) has mandated an inquiry into PVR Inox for purportedly using its dominant position by persistently imposing a Virtual Print Fee (VPF) on filmmakers. The Film and Television Producers' Guild of India asserted that the levy, implemented to facilitate the shift from film reels to digital projection, had become unjustifiable as the industry transitioned entirely to digital by 2014. PVR Inox was accused of imposing the charge unjustly and exhibiting discrimination between major studios and independent creators. The CCI has initiated a 90-day investigation to ascertain if the ongoing collection of VPF constitutes an abuse of power under Section 4 of the Competition Act, 2002, potentially restricting competition in the film exhibition sector[25].

Observing above above-listed cases, discrimination of price becomes abusive when a dominant organisation controls the market, affecting certain consumers or competitors, directly or indirectly. Among other factors, the predatory pricing is closely linked to this concept as a form of exclusionary abuse. Further, the Essential Facilities Doctrine (EFD) also traverses with price discrimination and abuse of dominance. It emphasises that firms controlling critical infrastructure or non-substitutable facilities must provide fair access to competitors, as denial would restrict market entry and reinforce monopolistic control[26].

VIII. Refusal to Deal

According to the Indian Competition Act of 2002, refusal to deal is a restrictive trade practice that impedes fair competition[27]. It occurs in vertical arrangements,

[25] Ghosh, A. (2025, October 16). *CCI orders investigation into PVR INOX's pricing practices in film exhibition market*. King Stubb & Kasiva. https://ksandk.com/newsletter/cci-probes-pvr-inox-over-virtual-print-fee-practices/
[26] CUTS Institute for Regulation & Competition, *Is There a Case for Essential Facilities Doctrine in India? Working Paper No. 04* (Jaivir Singh, ed., CUTS Inst. for Regulation & Competition 2013).
[27] Competition Act, No. 12 of 2003, § 3(4)(d).

where businesses at various production or distribution stages sign contracts that prevent other players from participating in the market. As discussed, section 3(4)(d) of the Act, forbids "*any agreement that restricts, or is likely to restrict, the persons or classes of persons to whom goods are sold or from whom goods are bought, in any manner whatsoever.*" When combined with a dominant market position, these vertical restraints amount to refusal to deal and can cause markets to foreclosure in an anti-competitive manner. It was discussed in the case of *Automobile Manufacturers Case*[28], in which the CCI fined fourteen major automakers a total of ₹25.44 billion for placing unjust restrictions on the sale of auto parts. In order to effectively block access to the aftermarket, the manufacturers had signed restrictive agreements with their authorized dealers that prohibited them from selling authentic spare parts to independent repairers. In the case of *Honda Siel Cars India Ltd.* v. *Shamsher Kataria*, the CCI ruled that these agreements were in violation of Sections 3(4)(d) and 4(2)(c) of the Act. The actions amounted to an abuse of dominant position through refusal to deal since they have limited market access, raised prices, and eliminated competition. This conclusion was later maintained by the Competition Appellate Tribunal (COMPAT), which emphasized that when a refusal to provide necessary inputs leads to harm to consumers or a denial of market access, it is abuse[29].

The Essential Facilities Doctrine (EFD) as elaborated in Price discrimination guarantees equitable access to essential infrastructure or inputs required for competition, has a close relationship with the anti-competitive practice of refusal to deal as well. The theory has gradually impacted the Indian antitrust since it was first acknowledged in U.S. and EU competition law. Section 4(2)(c)[30] makes it specifically illegal to deny someone access to the market. Furthermore, restricting production or service delivery in a way that harms customers is prohibited by Section 4(2)(b). Together, these clauses serve as the cornerstone for the application of EFD principles in India, especially in situations where a bottleneck facility is controlled by a dominant enterprise.

[28] Automobile Manufacturers Association v. CCI, Competition Appellate Tribunal, Appeal No. 75 of 2014.
[29] Shamsher Kataria v. Honda Siel Cars India Ltd., (2014) SCC 195.
[30] See The Competition Act, 2002

Further, the complainants in *Arshiya Rail Infrastructure Ltd. case*[31] argued that railway tracks and terminals were essential infrastructure, and that Indian Railways' denial of them amounted to an abuse of power. Indispensability, non-replicability, potential foreclosure of competition, and the viability of granting access without undue burden were the EFD requirements that the CCI looked at. The Commission rejected the complaint, determining that the facility was not "essential" in the sense of competition law because container train operators could build their own terminals in a reasonable amount of time. This case made it clear that the EFD only applies in situations where it is impractical or impossible to replicate the facility, not when there is only a minor commercial inconvenience. Another landmark judgment was passed in Air *Works India (Engineering) Pvt. Ltd case*[32] for the market in line maintenance services, which was refused access by GMR, owned by Rajiv Gandhi International Airport (RGIA). The RGIA was deemed an essential facility by the CCI, using the EFD, because it was non-replicable, necessary for market entry, and GMR's rejection prevented effective competition. According to Section 4(2)(c), the Commission determined that GMR's control over access and the lack of workable alternatives amounted to prima facie abuse and ordered the Director General (DG) to look into the matter. In *Bronner* v. *Mediaprint Zeitungs und Zeitschriftenverlag GmbH & Co. KG*[33], the European Court of Justice held that denying someone access to a facility is abusive only if (i) the facility is necessary, (ii) the denial eliminates competition, and (iii) the denial is feasible without an unreasonable burden. The CCI's reasoning was similar to that of the court.

Henceforth, the access to essential facilities must be granted on fair, reasonable, and non-discriminatory terms, particularly in sectors like railways, telecom, and aviation where dominant entities control critical infrastructure, the CUTS Institute for Regulation & Competition (CIRC) stressed in its 2016 policy brief, further elaborating the Indian perspective on EFD[34]. The doctrine prevents dominant

[31] Arshiya Rail Infrastructure Ltd. v. Indian Railways & Ors., Case No. 63 of 2011 (CCI).
[32] Air Works India (Engineering) Pvt. Ltd. v. GMR Hyderabad International Airport Ltd., Case No. 30 of 2012 (CCI).
[33] Bronner v. Mediaprint Zeitungs und Zeitschriftenverlag *GmbH & Co. KG*, Case C-7/97, [1998] E.C.R. I-7791.
[34] CUTS Institute for Regulation & Competition, *Is There a Case for Essential Facilities Doctrine in India? Working Paper No. 04* (Jaivir Singh ed., 2013).

players from turning their economic power into structural market exclusion and encourages a level playing field, the report emphasized. The CCI has extended the use of EFD and refusal-to-deal concepts in digital markets in recent years. The Essential facility doctrine was examined in the case of *Fast Track Call Cab Pvt. Ltd. & Meru Travel Solutions Pvt. Ltd.* v. *ANI*[35] the CCI investigated claims that Ola exploited its market dominance in Bengaluru's radio taxi service market by using exclusionary incentives and predatory pricing. The Commission examined whether Ola's algorithmic control and ride-hailing platform could qualify as an essential digital facility. Then, CCI determined that Ola was not dominant in the relevant market and, as a result, did not establish a violation of Section 4, even though it acknowledged the potential relevance of the essential facility doctrine in digital markets. In the context of competition law enforcement, refusal to deal and denial of access to necessary facilities are closely related. Both result in diminished consumer welfare, market structure distortion, and foreclosure of competition.

IX. REBATE SCHEMES

Indian competition regulations do not explicitly define discounts and rebates. However, it is conceivable that rebate programs could be perceived as activities that restrict or regulate the production of products or related services and methods, thereby denying them access to the market. Consequently, they could be eligible for inclusion in the Act. The Intel case is a significant study in this regard[36], as the Competition Commission of India (CCI) determined that the incentives and target programs did not exclude competitors, distributors, and original equipment manufacturers (OEM) who distributed competing microprocessors. The complaint falsely asserted that distributors were prohibited from doing business with rival products. The CCI also determined that Intel's incentive programs were designed to boost the sales of commodities that were in short supply. This was regarded to be a fair business practice because both activities were concurrently providing non-predatory discounts to compete. Based on the aforementioned factors, it is evident that the primary function of CCI is to regulate the abuse of dominance in the market through the granting of conditional approval and the

[35] Case Nos. 6 & 74 of 2015,
[36] Intel Corp. v. European Commission, Case C-413/14 P, [2017] E.C.R. I-632.

enforcement of penalty provisions. The purchase of 100% of WABCO Holdings Inc. ("Wabco") shares by ZF Friedrichshafen ("ZF") was approved by CCI in February 2020[37]. Regarding foundation brakes, clutches, and other brake and clutch components for commercial vehicles, both ZF (through its joint venture with the TVS group, Brakes India) and Wabco were active in the Indian automotive goods market and had achieved a significant position[38]. The CCI warned that the merger could have a detrimental effect on the Indian market, even though they demonstrated their capacity to integrate and separate. Subsequently, ZF voluntarily altered its plans by disposing of 49% of its Brakes India stock and consenting to refrain from repurchasing Brakes India stock or establishing another joint venture with the TVS group in the same product categories.

Further, regarding loyalty rebates and discounts, the Competition Commission of India (CCI) doesn't often go after businesses that provide too many loyalty rebates and big discounts, unless the business is the biggest player in the industry. The CCI looked into Reliance Jio's offer of free 4G internet services in the matter of Bharti Airtel Limited v. Reliance Industries Limited and Others[39]. The Commission said that the subject of abuse did not come up since there was no dominance. In these situations, it is necessary to show either the removal of competitors or a decrease in competition to prove anti-competitive behavior. For rebates or discounts to be deemed abusive, it is essential to establish both dominance in the relevant market and a anti-competitive objective. The CCI also looked at a number of concerns, such as Resale Price Maintenance (RPM), in the case of Fx Enterprise Solutions India Pvt. Ltd. and Hyundai Motor India Limited (HMIL)[40]. The Commission decided that setting a maximum discount limit constituted a kind of RPM. The CCI was needed to look at these kinds of practices in light of the elements listed in Section 19(3) of the Competition Act and also look at competition between brands and within brands. The CCI also observed

[37] Press Release: CCI approves the acquisition of 100% shareholding of WABCO Holdings by ZF, PIB (Feb. 17, 2020).
[38] ZF Friedrichshafen / WABCO," Global Competition Review, Merger Remedies Guide (5th ed.).
[39]Re: Bharti Airtel Limited v. Reliance Industries Limited and Others*, Case No. 03 of 2017, CCI, determined June 6, 2017
[40] Re: Fx Enterprise Solutions India Pvt. Ltd. and Hyundai Motor India Limited*, Case Nos. 36 & 82 of 2014, CCI, determined June 14, 2017.

that HMIL had told all of its dealers to get engine oil from only two approved sources. If the company didn't follow this rule, then dealership agreements would be cancelled. This was a "tie-in agreement" and broke Section 3(4)(a). Still, the Commission stood by its pro-business stance, saying that exclusivity as a whole is not anti-competitive.

X. PENALTIES

The Competition Act, 2002, prohibits all types of agreements, practices, and actions that harm fair competition in India. As discussed above, Agreements involving price fixing, market sharing, supply limitation, refusal to deal, red tapping, or bid rigging, etc., are called anti-competitive practices and are absolutely forbidden unless specifically allowed by the Act[41]. These agreements obstinately affect the market by limiting the market's equal and reasonable freedom, suffocating innovation, and hurting consumers by raising costs, creating unnecessary pressure, and narrowing options. Also, when a corporation uses its superior market power to restrict competition is a serious offense which is called abuse of dominant position as referred above in detail.

The (CCI) plays an important role in implementing these regulations and guaranteeing fair competition in the market[42]. The CCI is authorized by the Act to impose large financial penalties on firms deemed to be in breach of such provisions. In the case of anti-competitive agreements or abuse of power, the penalty can be up to 10% of the enterprise's average turnover for the previous three financial years[43]. The linking of penalties to the enterprise's turnover serves a reasonable and deterrent purpose: it ensures that larger enterprises, whose acts have a greater potential to distort markets, pay proportionately higher fines[44].

The framework is well consistent under the principles of fairness and proportionality; whereby large firms are forbidden to undermine the good practices of competition and customer welfare. Not only this, but cartel formation is also a big concern for CCI, where competitors usually conspire to control prices,

[41] The Competition Act, 2002, Section 3(1), No. 12, Acts of Parliament, 2003.
[42] Competition Commission of India vs. Steel Authority of India Ltd. (2010) 10 SCC 744
[43] See Section 27(b) The Competition Act, 2002
[44] Excel Crop Care Ltd. v. Competition Commission of India (2017), 8 SCC 47 (India).

limit output, or split markets among themselves. Thus, this legislation's strategy imposes harsh penalties. As per the past practices, cartels are regarded as the most harmful type of anti-competitive behaviour, which not only operate secretly but also directly abuse customers by altering market spheres. Thus, in reference to penalties, it can be imposed up to three times the profit earned from cartel activities or ten percent of the turnover for each year of involvement, whichever is greater[45]. This punishment stems from the reality that cartels give no efficiency or innovation benefits. In fact, their primary purpose is to raise costs, decrease consumer options, and kill healthy competition. The deterrent aspect of this kind of statutory penalties indicates the legislature's goal to preserve market integrity and protect consumer interests[46].

Furthermore, the other procedural directives by the CCI or the Director General (DG) during investigations are discussed under sections 36(2) and (4), which allow the CCI to serve a summons, demand documents, and issue inquiry orders. As per section 41(2) and sec. 42, the DG is empowered during investigations to pass effective orders like non-compliance with directives without fair cause, resulting in a daily penalty of ₹1 lakh, which can accumulate to ₹1 crore[47]. These statutory provisions enlarge the importance of procedural compliance during the competition enforcement process. These are actually needed in compensation cases for example, contravention of orders of the Commission under section 42A. It says that any person may move to the Appellate Tribunal for compensation if they have suffered a loss or harm as a result of an enterprise's violation of the Competition Commission of India's (CCI) directions or rulings.

This involves violating any condition or restriction imposed on a permission, sanction, or exemption granted by the CCI, as well as disregarding or delaying the execution of orders made under Sections 27, 28, 31, 32, or 33 of the Competition Act. Fair, open, and effective investigations are ensured by adhering to the Director General's and CCI's regulations[48].

[45] See Section 27(b) The Competition Act, 2002
[46] Competition Commission of India v. Coordination Committee of Artists and Technicians of West Bengal Film and Television, (2017), 5 SCC 17
[47] See Section 42(2) The Competition Act, 2002
[48] See Section 42A The Competition Act, 2002.

In order to deter businesses in an anti-competitive manner and to guarantee adherence to the rules, directives issued by DG and CCI the fines. Under the penalty regime, which is mainly outlined in Sections 43 to 48, the Competition Commission of India (CCI) is empowered to take legal action against both corporate entities and individuals.

- Anyone who disobeys the Commission's or the Director General's directions during investigations without a good reason faces penalties under Section 43 of the Act. Indeed, the CCI has the authority to impose a fine of up to one lakh rupees, with a maximum penalty of one crore rupees, for each day of non-compliance. This provision guarantees that both individuals and companies adhere to investigative procedures and uphold procedural discipline.
- Section 43A addresses the failure to notify combinations in accordance with Section 6(2) of the Act. Companies must first acquire Commission clearance before engaging in mergers or acquisitions that exceed the designated asset or turnover limitations. Up to 1% of the combination's total assets or turnover, whichever is higher, might be penalized for noncompliance. By doing this, mergers are guaranteed to be transparent and combinations that could gravely impair competition are avoided.
- Section 44 penalizes filing a combined notice, failing to disclose material facts, or making false statements. Willful falsification of facts can result in fines of between fifty lakh and one crore rupees. The integrity of the merger review process is ensured by this clause. By punishing those who willfully provide inaccurate information or omit crucial details during operations,
- Section 45 is to promote accountability and truthful disclosures. The Commission has the authority to impose fines of up to one crore rupees for misconduct.
- The concept of tolerance for cartel members is introduced in Section 46. Businesses or people involved in cartels may be eligible for a reduced penalty if they provide the CCI with comprehensive, accurate, and essential disclosures that aid in the identification and investigation of the cartel. However, if the disclosure is later shown to be inaccurate or

lacking, the Commission has the authority to withdraw the leniency and apply the entire penalty. This section encourages self-reporting and makes it easier to identify cartels that would otherwise be difficult to spot.

- To ensure fiscal responsibility, Section 47 requires that all fines imposed under the Act be credited to the Consolidated Fund of India. Although it does not impose fines, it does control the financial management of recovered quantities.
- Section 48 extends the culpability of persons within corporations. It states that if a firm violates the law, both the company and all of the people who were in charge of its actions at the time of the violation will be held accountable. However, if a person can show that the offense was committed without their knowledge or despite their best efforts, they are exempt. In addition, any offense committed with the approval, collusion, or negligence of directors, managers, or officials carries personal responsibility.

All of these clauses work together to ensure that the Competition Act maintains its deterrent effect. They impose heavy financial liability, encourage corporate responsibility, and strengthen investigatory integrity. By combining tolerance provisions with punitive measures, the Act achieves a balanced approach that penalizes non-compliance and encourages collaboration. The framework highlights how important the CCI is to maintaining fair competition and openness in India's market economy.

In order to make this legislation more robust, sections 53A and 53B of the *Competition Act, 2002* deal with the appellate framework. It is significant for reviewing decisions of the Competition Commission of India (CCI). Section 53A discusses the framework and functioning of the National Company Law Appellate Tribunal (NCLAT). It is constituted[49] under the *Companies Act, 2013*, as the Appellate Tribunal for competition matters. The NCLAT is empowered to hear and dispose of appeals against directions, decisions, or orders issued by the CCI.

[49] See Section 410 of the Companies Act, 2013

The NCLAT is working under sec. 53A can hear the matters of sections 26(2) and (6), 27, 28, 31, 32, 33, 38, 39, 43, 43A, 44, 45, and 46 of the Act, among others. It is also authorized to adjudicate compensation claims that may arise from findings or orders of the CCI or the Appellate Tribunal itself. It can pass orders for the recovery of compensation under Section 53N of the Act. In addition, section 53B provides that any person, enterprise, or governmental authority aggrieved by an order of the CCI may prefer an appeal to the Appellate Tribunal within sixty days of receiving the decision. The Tribunal may, however, condone delays if it is satisfied with the reasons provided for not filing the appeal within the stipulated time. After hearing the concerned parties, the Appellate Tribunal may confirm, modify, or set aside the order appealed against.

Apart from this appeal process, the CCI's 2009 Leniency Regulations provide a structured relief scheme for cartel members who willingly divulge important information. The first applicant to present crucial evidence that supports the formation of a prima facie opinion or establishes a violation may be granted immunity by having the penalty reduced by 100%. Depending on the value and timing of their collaboration, the second applicant who provides a substantial amount of added value may be eligible for a reduction of up to 50%, and the third applicant may be eligible for a reduction of up to 30%.

Further, an appeal to the Supreme Court of India may also be filed by any party aggrieved by a decision or order of the Appellate Tribunal (NCLAT)[50]. This includes the Central Government, State Government, the Competition Commission of India (CCI), any statutory or local authority, enterprise, or individual. An appeal of this nature must be submitted within sixty days of the Appellate Tribunal's decision or order being communicated. Nevertheless, the Supreme Court has the authority to permit the filing of an appeal after the sixty days has elapsed if it is satisfied that the appellant had a valid reason for the delay. Additionally, Section 53U grants the Appellate Tribunal the same jurisdiction, powers, and authority as a High Court in terms of contempt of court. This provision guarantees that the Tribunal can preserve its dignity, enforce its orders,

[50] See Section 53T of the Competition Act, 2002

and prevent any impediment to the administration of justice. The Appellate Tribunal is subject to the Contempt of Courts Act, 1971, with the following modifications: references to the High Court in the Act are to be interpreted as references to the Appellate Tribunal under the Competition Act.

XI. CONCLUSION

Based on the discussion above, anti-competitive behaviours, whether they take the shape of cartels, vertical arrangements, or horizontal agreements, pose a danger to market efficiency, justice, and consumer welfare. Price-fixing, bid-rigging, market allocation, exclusive supply, and resale price maintenance are some of the techniques that may help a business grow, but they also threaten the welfare of consumers and the fair market. This research paper's second half discusses how the Competition Commission of India (CCI), which has been given the power to detect, look into, and punish anti-competitive behaviour through directives and corrective actions in line with the Competition Act of 2002, not only makes this law a deterrent but also guarantees a fair and consistent process. The additional sanctions, such as the leniency framework's cooperative disclosure requirements, agreement termination or modification, and monetary fines of up to 10% of average turnover, serve a specific function in upholding the efficacy of this statute's principal goal. Together with the CCI's regulatory and adjudicatory processes, which offer a systematic framework for redress and deterrence, this Act improves consumer welfare and market efficiency while operating under the oversight of the Supreme Court and appellate courts. When taken as a whole, these clauses highlight India's commitment to maintaining an open, honest, and competitive marketplace, opposing monopolistic activities, and safeguarding the interests of both companies and consumers.

EVOLUTION OF LGBT+ RIGHTS IN INDIA, FROM DENIAL TO FREEDOM: A JOURNEY TOWARDS EQUALITY

Tauseef Ahmad* & Shweta**

ABSTRACT

This research examines the global and legal viewpoints about the rights of individuals who identify as LGBT (Lesbian, Gay, Bisexual, and Transgender), focusing particularly on the infringement of basic rights as outlined in Section 377 of the Indian Penal Code. LGBT rights pertain to the legal and social entitlements of individuals who self-identify as lesbian, gay, bisexual, or transgender. This report provides a comprehensive analysis of the dynamic legal environment and the potential impact of the Transgender Persons (Protection of Rights) Act, 2019, on individual rights and gender identity. This study presents a comprehensive analysis of scholarly literature and legal precedents, highlighting the widespread agreement at the global level regarding the significance of protecting the rights of individuals identifying as LGBT as inherent to their basic human rights. Furthermore, it elucidates the dynamic interpretations of Section 377 within the judiciary of India, along with the intricate issues surrounding the Transgender Persons Act. This contributes to a multifaceted comprehension of the advancements and obstacles encountered in the pursuit of equality and justice.

I. INTRODUCTION

The advocacy for LGBT (lesbian, gay, bisexual, and transgender-) rights 0stands out among the various endeavors for human rights due to its profound and

*The author is pursuing Ph.D from the Faculty of Law, Jamia Millia Islamia can be reached at tauseefahmads@gmail.com

** The Co-author is pursuing Ph.D from BPSMV, Khanpur Kalan, Sonipat, and can be reached at shweta.aggarwal544@gmail.com

emotionally charged trajectory. This narrative will be chronicled in the annals of history as a testament to the enduring spirit, courage, and progress. The ongoing endeavor to achieve equal rights and societal acceptance for individuals, regardless of their sexual orientation or gender identity, has been characterized by a combination of triumphs and disheartening setbacks.

Considerable progress has been achieved in various global regions in recent years regarding the acknowledgment and preservation of the rights of individuals who identify as lesbian, gay, bisexual, or transgender (LGBT). Furthermore, it has shed light on enduring biases and discriminatory practices that persist in contemporary society. This article explores the multifaceted domain of LGBT rights, examining its historical origins, the notable legal advancements that have influenced the movement, and the ongoing and urgent obstacles that persist in the present era. Furthermore, this analysis will provide insight into the interconnectedness of LGBT rights, the worldwide dimension of this endeavor, and the crucial contribution of allies in the continuous pursuit of parity and inclusivity.[1]

The trajectory of the LGBT community serves as evidence of the efficacy of collaborative advocacy, unwavering determination during challenges, and the steadfast conviction that love transcends all boundaries, irrespective of one's identity or romantic preferences. The modern LGBT rights movement was catalyzed by the Stonewall riots, which subsequently led to significant transformations in both legislative frameworks and societal perspectives. In this article, we will explore the historical context, current status, and prospects of LGBT rights, with the aim of fostering a global environment that embraces diversity and ensures the unhindered expression of personal identity, while mitigating the impact of discrimination and bias.[2]

II. HISTORICAL BACKGROUND

The struggle for the rights of the LGBT (Lesbian, Gay, Bisexual, and Transgender) community in India is a significant narrative that has unfolded over

[1] Amber Tanweer, *LGBT Rights in India,* 2 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, (2018)
[2]Aparup Khatua et al., *Tweeting in Support of LGBT? A Deep Learning Approach*, CODS-COMAD'19, (January, 2019).

time, characterized by notable legal advancements, societal transformations, and persistent obstacles. The struggle has undergone a series of transformations throughout its historical development. Within the scope of this discourse, the historical narrative of India can be characterized as a voyage marked by stark juxtapositions, encapsulating not only an ancient ethos of tolerance but also the prevalent subjugation experienced during the colonial period. This research explores the historical trajectory of lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights in India, examining their development from the pre-colonial era to the contemporary period.

The presence of a societal framework in pre-colonial India that displayed greater inclusivity towards individuals with diverse sexual orientations and gender identities is supported by several ancient texts and sculptures. Hinduism, a prominent religion in India, encompasses narratives and representations that acknowledge the presence of transgender individuals and same-sex affection. An instance illustrating the concept is the deity Ardhanarishvara, which served as a symbolic representation of gender fluidity by embodying both male and female characteristics. The Kama Sutra is a historical Indian manuscript that explores various aspects of human sexuality. The book contained various sexual expressions that were not subjected to moral condemnation.[3] During the period of British colonial rule in India, significant transformations occurred within the legal framework of the rights of individuals identifying as LGBT. The Indian Penal Code, enacted by the colonial administration in India in 1860, incorporated Section 377, a provision that criminalized acts of "carnal intercourse against the order of nature." Subsequently, this ambiguous and antiquated legislation was employed to specifically target and legally pursue individuals involved in same-sex relationships or individuals identifying as transgender. The enduring impact of British colonialism, exemplified by the presence of Section 377, has had a profound and lasting effect on the LGBT community in India, leading to successive generations experiencing persistent mistreatment, prejudice, and feelings of disgrace.

[3]Dr. Rekha Mewafarosh & Dr. Devjani Chatterji, *Deprivation and Social Exclusion of LGBT Community in India*, 4 INT. J. OF RESEARCH AND BUSINESS STUDIES, (2019).

Despite the oppressive legal environment prevailing during that period, there existed individuals who demonstrated remarkable bravery by daring to question and contest the established norms. In the 1970s, Dr. Shakuntala Devi, a notable advocate for the rights of individuals identifying as lesbian, gay, bisexual, transgender, and queer, publicly disclosed her own sexual orientation as a lesbian. During the latter half of the 20th century, there were sporadic occurrences of legal disputes about Section 377. Nevertheless, these challenges were often met with opposition.

The decriminalization of consensual same-sex acts between adults in private by the Delhi High Court in 2009 represented a pivotal milestone in the trajectory of LGBT rights in India. The event marked a pivotal moment in the trajectory of LGBT rights within the historical context of India. The Naz Foundation case represented a significant turning point in the trajectory of LGBT rights, signifying a notable transition towards increased societal acceptance and acknowledgment of the rights pertaining to individuals within the LGBT community. Nevertheless, the legal dispute was far from concluded.

The Supreme Court of India, in 2013, reversed the ruling of the Delhi High Court, thereby leading to the restoration of the criminalization of homosexuality under Section 377. The defeat, commonly referred to as the "377 setback," elicited extensive public indignation and catalyzed the LGBT community and its supporters to renew their dedication to the pursuit of equitable treatment.[4] The culmination of the dispute occurred in 2018, when a panel of five judges from the Supreme Court, presiding over the matter of Navtej Singh Johar, decisively invalidated Section 377 of the Criminal Procedure Code. This pivotal ruling served to reassert the constitutional tenets of egalitarianism, liberty, and respect for every person, irrespective of their sexual orientation or gender identity. Furthermore, it resulted in the decriminalization of consensual activities involving individuals of the same sexual orientation.

[4]Dr. Renu &Pawan, *Homosexuality with Special Reference Case:* Navtej Singh Johar V. Union of India, 3 INT. J. OF TREND IN SCIENTIFIC RESEARCH AND DEVELOPMENT (IJTSRD), (2019).

III. International Perspective On LGBT Rights

The global viewpoint regarding LGBT (Lesbian, Gay, Bisexual, and Transgender) rights is firmly rooted in the principles of human rights, as delineated in numerous international agreements and conventions. LGBT rights pertain to the legal and social entitlements afforded to individuals who self-identify as lesbian, gay, bisexual, or transgender. The Universal Declaration of Human Rights (UDHR), ratified by the United Nations in 1948, asserts the fundamental principle that every individual is inherently entitled to freedom, equality, and the preservation of their inherent worth and entitlements. This document holds significant prominence among various international legal instruments. The acknowledgment of the rights of individuals who identify as lesbian, gay, bisexual, and transgender (LGBT) as fundamental human rights can be attributed to a significant document that serves as the foundation for this line of reasoning. The Universal Declaration of Human Rights (UDHR) serves as the foundational document for the global endeavour aimed at safeguarding the rights of individuals who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ). Fundamentally, this movement is driven by the principles of non-discrimination, equality, and the absence of persecution.

In 2006, a consortium of international human rights scholars convened to formulate the Yogyakarta Principles to address instances of human rights transgressions predicated upon an individual's sexual orientation or gender identity. Over the course of time, these principles have evolved into an essential asset for comprehending and promoting LGBT rights within the framework of human rights. The guidelines offer recommendations to governmental bodies, policymakers, and advocates regarding the preservation of these rights, underscoring the principle that individuals who self-identify as LGBT should be afforded equivalent human rights safeguards as any other individual.

The United Nations has played a significant role in facilitating the progress of global LGBTQ+ rights. In 2011, the United Nations Human Rights Council passed a resolution of significant importance, which denounced acts of discrimination and violence directed towards individuals based on their sexual orientation and gender identity. The Office of the United Nations High

Commissioner for Human Rights is currently engaged in ongoing efforts to address these matters, wherein it has been offering states guidance and facilitating initiatives aimed at safeguarding the rights of individuals who identify as lesbian, gay, bisexual, or transgender (LGBT).[5]

When examined from a legal perspective, several countries have made notable advancements in acknowledging and safeguarding the rights of the LGBT community. Canada and the Netherlands were among the pioneering nations that enacted legislation to legalise same-sex marriages, thereby setting a precedent for other countries to emulate. Numerous nations have enacted legislation that renders it unlawful to engage in discriminatory practices against individuals based on their sexual orientation or gender identity within various domains, including but not limited to employment, housing, and the accessibility of public services.

Despite the advancements that have been achieved, challenges persist. LGBT individuals persistently encounter discriminatory practices and adverse consequences stemming from the existence of laws and cultural norms in certain countries. Numerous individuals belonging to the LGBT community are compelled to confront the stark realities prevalent within their community, encompassing instances of violent hate crimes, persecution, and social marginalization. In numerous regions across the globe, advocates and entities dedicated to promoting the rights of individuals who identify as lesbian, gay, bisexual, or transgender (LGBT) often encounter resistance from conservative factions and governmental bodies. Consequently, the pursuit of progress in the realm of LGBT rights becomes a challenging endeavor characterized by significant obstacles.

The acknowledgment of the intersectionality between LGBT rights and other dimensions of identity, including race, ethnicity, religious affiliation, and disability, is of utmost importance. The occurrence of discrimination and violence towards individuals who identify as LGBT often coincides with other forms of discrimination, leading to an accumulation of vulnerabilities for these individuals.

[5] Hall, K., *Middle-class timelines: Ethnic humour and sexual modernity in Delhi,* LANGUAGE IN SOCIETY, (2019).

It is crucial that endeavors to promote the rights of individuals who identify as lesbian, gay, bisexual, and transgender (LGBT) on an international level duly consider these intersections and ensure that the policies and initiatives they implement are inclusive of all individuals and attuned to the diverse experiences of LGBT individuals across the globe.

The present state of LGBT rights at a global level is characterized by complexity and uncertainty. Certain nations have made notable advancements in acknowledging and safeguarding these rights through the enactment of laws that validate same-sex unions, prohibit discriminatory practices based on sexual orientation and gender identity, and grant legal recognition to transgender individuals. Other nations have not made substantial advancements in acknowledging and safeguarding these rights. These nations, including Canada, the United States, the United Kingdom, the Netherlands, and Germany, among others, exemplify principles of equality and inclusivity, serving as models for other nations.[6]

Conversely, individuals who self-identify as lesbian, gay, bisexual, or transgender (LGBT) persistently encounter substantial levels of discrimination, criminalization, and physical violence in various geographical areas worldwide. In certain countries, same-sex relationships are still criminalized, and individuals involved in such relationships may face severe consequences, including incarceration or capital punishment. The prevalence of challenges faced by individuals identifying as homosexual or transgender is notably higher in certain regions of Africa, the Middle East, Asia, and Eastern Europe, where societal attitudes and political climates exhibit lower levels of acceptance.

The safeguarding of transgender rights, which constitute a fundamental aspect of LGBT rights, presents distinct challenges. Certain countries have not yet acknowledged and safeguarded the rights of individuals who identify as transgender to legally change their gender, receive suitable healthcare, and lead their lives in alignment with their gender identity. Consequently, transgender individuals residing in these countries are susceptible to experiencing

[6]Kealy-Bateman, W., *The possible role of the psychiatrist: The lesbian, gay, bisexual, and transgender population in India,* 60 IND. J. OF PSYCHIATRY, (2018).

discrimination and acts of violence. Nevertheless, certain countries have already taken this step.[7]

The global progress of LGBT rights is significantly facilitated by international advocacy and support. Numerous entities, such as the United Nations, the European Union, and a plethora of non-governmental organizations (NGOs), have expressed their unequivocal endorsement of the LGBTQ+ community and its rights. The United Nations has released reports and resolutions that denounce acts of discrimination and violence targeting individuals who identify as lesbian, gay, bisexual, or transgender (LGBT). These documents additionally advocate for governmental measures aimed at safeguarding the rights of LGBT individuals and fostering an environment of acceptance and equality.

Despite the advancements that have been achieved, the rights of the LGBT community still encounter resistance from conservative entities, religious establishments, and certain governmental bodies. Consequently, substantial challenges and intermittent regressions persist in this domain. The persistence of anti-LGBT attitudes and policies, in their various manifestations, underscores the imperative for continued advocacy and activism to safeguard and uphold the advancements achieved in recent times.[8] The concept of intersectionality, which underscores the notion that an individual's lived experiences are shaped by various dimensions of their identity, including but not limited to race, ethnicity, religion, and disability, has garnered significant attention within the discourse surrounding LGBT rights. The discussions have shed light on the increasing prominence of the concept of intersectionality. The convergence of discrimination and other manifestations of bias often occurs, thereby intensifying the vulnerable status of marginalized communities within the LGBT spectrum.

The global visibility and celebration of LGBT identities are steadily increasing, with Pride events being held in numerous countries. Within the continuous struggle for parity and inclusivity, these occurrences function as simultaneous expressions of elation in response to advancements and compelling appeals for

[7] LAW COMMISSION OF INDIA, REVIEW OF RAPE LAWS. -172ND REPORT, MINISTRY OF LAW. (2014
[8] *See* id.

additional transformation, effectively exemplifying the unwavering fortitude and resolve of the LGBT community and its supporters.

IV. SECTION 377: VIOLATION OF FUNDAMENTAL RIGHTS

The widespread criticism of Section 377 of the Indian Penal Code stems from its violation of the fundamental right to equality, as guaranteed by Article 14 of the Indian Constitution. This constitutional provision guarantees the equitable treatment of all individuals in the eyes of the law, ensuring that they receive equal protection under the law. The unconstitutionality of Section 377 was established due to its criminalization of consensual sexual activity between adults, irrespective of their sexual orientation. Due to the discriminatory treatment they encountered, individuals who self-identified as LGBT were subjected to disparate legal standards, effectively branding them as offenders solely based on their sexual orientation. The disparate treatment constituted a blatant infringement upon the fundamental tenet of egalitarianism, as it bestowed differential legal treatment upon individuals based on an inherent attribute beyond their volition. In essence, it engendered discrimination towards individuals based on an inherent characteristic beyond their control.

Article 15 of the Indian Constitution, titled "Prohibition of Discrimination," establishes legal provisions that render any form of discrimination based on religion, race, caste, sex, or place of birth impermissible. Due to its discriminatory nature towards individuals based on their sexual orientation, this constitutional provision was widely perceived as a conspicuous indication that Section 377 was in direct contravention of the Constitution. The enactment of legislation criminalizing same-gender relationships established a legal structure that facilitated the potential for discrimination and stigmatization against individuals identifying as LGBT. The discriminatory practices extended beyond the legal realm of criminality and had wide-ranging implications, such as the curtailment of individuals' opportunities to obtain healthcare, education, employment, and housing, among other notable effects. Individuals who self-identified as lesbian, gay, bisexual, or transgender (LGBT) often experienced instances of

discrimination and marginalization within society, a phenomenon that was perpetuated and intensified by the presence of Section 377.[9]

Article 21 of the Indian Constitution, entitled "Right to Life and Personal Liberty," ensures the protection of an individual's fundamental rights pertaining to their life and personal liberty. The courts have construed this provision to encompass an individual's entitlement to privacy and dignity as well. Section 377 underwent significant scrutiny due to its infringement upon this fundamental right. The legislation rendered the act of engaging in consensual sexual activity within the confines of one's private residence unlawful, thereby encroaching upon individuals' personal boundaries and subjecting them to potential persecution. The act of intrusion was perceived as a direct encroachment upon the fundamental entitlements of personal liberty and privacy, which were initially breached. The denial of the freedom to express one's sexual orientation and engage in consensual relationships without state interference violates the fundamental rights of the LGBT community, impeding their ability to live with dignity and without fear of prosecution.

Section 377 of the Indian Penal Code faced significant and pervasive criticism primarily on the grounds of contravening the fundamental rights enshrined in Articles 14, 15, and 21 of the Indian Constitution. The aforementioned actions transgressed individuals' entitlements to equal treatment, non-discrimination, privacy, and personal autonomy, as they were subjected to unjust treatment within legal frameworks, invasion of their private spheres, and prejudice based on their sexual orientation. The recognition and safeguarding of the fundamental rights of LGBT individuals in India witnessed a notable progression through the Supreme Court's 2018 ruling, which ultimately invalidated the provision of Section 377 that rendered consensual same-sex acts in private as criminal. The determination represented a noteworthy achievement in the ongoing progression.

V. The Transgender Persons (Protection Of Rights) Act, 2019

A notable piece of legislation that acknowledges and seeks to protect the rights of transgender people living in India is the Transgender Persons (Protection of

[9]Max Issacs, LGBT Rights and the Administrative State, 92 NEW YORK UNIVERSITY LAW REVIEW (2014).

Rights) Act, 2019.[10] Section 4 of the aforementioned legislation pertains to the matter of identity recognition and confers upon individuals who identify as transgender the entitlement to exercise agency in determining and declaring their own gender. This is a positive development because it gives individuals the freedom to define their gender identities however, they see fit. The Act's definition of transgender individuals remains problematic, thus necessitating a thorough analysis of this provision to identify its inherent limitations. The definition of a transgender individual, as outlined in the second paragraph of section 2(i), pertains to individuals whose gender identity does not align with the gender assigned to them at birth. This definition encompasses various subgroups, including trans-men and trans-women, individuals with intersex variations, gender-queer individuals, and those who identify with socio-cultural identities such as kinnar, hijras, aravani, and jogappa. While the current definition exhibits a greater degree of inclusivity compared to prior legal frameworks, it remains centred around the binary notion of gender, thereby failing to sufficiently acknowledge the wide range of gender identities. This includes individuals who do not align with either of the two binary genders or who do not identify with any gender at all.

Section 5 of the Act imposes additional limitations on the principle of self-identification by mandating that transgender individuals must seek a "certificate of identity" from the District Magistrate, thereby creating a contradiction with the self-identification provision outlined in Section 4. The screening process gives rise to notable concerns regarding privacy and dignity. The potential for abuse or discrimination during the certification process may impede the acquisition of legal recognition and identity documents. Additionally, there are no provisions in the Act that specifically deal with non-binary individuals or the process for recognising their gender identity. As a result, some transgender people do not have enough legal protection, which emphasises the need for a definition that is more

[10] Zivi, K. 2014. *Performing the Nation: Contesting Same-Sex Marriage Rights in the United States*. JOURNAL OF HUMAN RIGHTS 13(3): 290–306. DOI: 10.1080/14754835.2014.919216.

inclusive and thorough as well as in line with the most effective international standards for recognising gender diversity.

Section 16 of the Act encompasses provisions pertaining to healthcare access for individuals who identify as transgender. These regulations ensure that individuals who identify as transgender will not face discrimination when accessing healthcare services. The government is also required by Section 20 to take action to provide medical care, including care that is affirming of both genders. The provisions under discussion demonstrate commendable efforts to address the distinct medical requirements of transgender individuals. However, the Act is deemed inadequate as it lacks specific guidelines for practically implementing gender-affirming treatments. The lack of clear guidelines will lead to uncertainty and inconsistency in the provision of healthcare services. To effectively tackle this matter, it is imperative to establish and implement precise protocols that ensure transgender individuals are provided with comprehensive healthcare services in a manner that is inclusive and devoid of discrimination. It is imperative that comprehensive healthcare services, including hormone replacement therapy, gender-affirming medical procedures, and mental health assistance, be made available to individuals seeking gender-affirming care. These regulations must be formulated and implemented expeditiously.

The Act includes criminal provisions outlined in Section 18, stipulating that individuals who compel transgender individuals to engage in forced or bonded labour or other forms of exploitation may face penalties of imprisonment for a period of up to two years, as well as a maximum fine of $2,000. While acknowledging the positive aspect of acknowledging the vulnerabilities faced by transgender individuals, it is important to note that the Act lacks a clear definition of what constitutes an "offence." This ambiguity may potentially result in the misuse of power and subjective interpretations within the legal framework. There exists a necessity to enhance the precision of the delineation of transgressions, along with the prescribed procedures for reporting and prosecuting said offences, to ensure the sufficient safeguarding of transgender individuals and the administration of justice.

The Transgender Persons (Protection of Rights) Act, 2019, represents a significant advancement in acknowledging the rights of transgender individuals residing in India. Upon undergoing a comprehensive examination, it has been determined that the Act's delineation of transgender individuals, the prerequisites for acquiring identity certificates, the regulations governing healthcare accessibility, and the lucidity of the penal provisions necessitate enhancement. The resolution of these issues is of utmost importance in the establishment of a legal framework that effectively recognises and safeguards the autonomy and dignity of transgender individuals in India. This measure will ensure comprehensive protection of all transgender rights.

VI. JUDICIAL DELINEATION

The judiciary has played a pivotal role in the promotion and protection of LGBT (lesbian, gay, bisexual, and transgender) rights on a global scale, with its impact being particularly evident in cases that have achieved landmark status. One illustrative instance of a similar nature is the legal case of *Navtej Singh Johar v. Union of India*[11] (2018) in the Indian context. The Supreme Court of India rendered a significant ruling by invalidating a specific provision of the Indian Penal Code, namely Section 377. This section had previously imposed criminal liability on adults engaging in consensual same-sex acts conducted in private settings. The court arrived at a unanimous decision. The court reached the determination that criminalizing homosexuality constituted a breach of various fundamental rights, such as equality, privacy, and dignity, all of which are safeguarded by the Constitution of India. The aforementioned ruling not only resulted in the decriminalization of homosexuality but also conveyed a powerful affirmation to the lesbian, gay, bisexual, and transgender (LGBT) community in India, signifying their inclusion and recognition of equal rights.

The recognition of the right to privacy has been a crucial element in the judicial efforts that have played a pivotal role in the progress of LGBT rights. The Supreme Court of India, in the notable case of *Justice K.S. Puttaswamy (Ret.) v. Union of India*[12] (2017), commonly known as the "Privacy judgement," rendered

[11]Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.
[12]Justice K.S. Puttaswamy (Ret.) v. Union of India, AIR 2017 SC 4161.

a decision affirming the fundamental nature of the right to privacy. This landmark ruling established the foundation for acknowledging and safeguarding the personal lives and associations of individuals who self-identify as lesbian, gay, bisexual, or transgender in subsequent instances. This statement underscores the significance of personal autonomy and the entitlement to make intimate decisions without undue interference from the government, thereby carrying direct implications for individuals within the LGBT community and their relationships. Furthermore, the significance of personal autonomy and the entitlement to exercise agency in matters about sexual orientation and gender identity was underscored.

Furthermore, the judicial system has played a pivotal role in the progression of transgender rights, encompassing both their legal acknowledgment and safeguarding. The Supreme Court of India, in the landmark case of *National Legal Services Authority v. Union of India*[13](2014), acknowledged the entitlement of transgender individuals to exercise self-determination in determining their gender identity. Consequently, the court mandated the government to extend legal recognition to transgender individuals. The court also acknowledged the entitlement of transgender individuals to exercise self-determination in identifying their gender. The decision holds historical significance as it represents a notable advancement in the legal recognition and societal inclusion of transgender individuals. It serves to reinforce the fundamental principles of self-determination and non-discrimination for this marginalized population.

Furthermore, the utilization of judicial rulings has proven to be highly advantageous in the interpretation and implementation of anti-discrimination legislation, thereby safeguarding the rights of the LGBT community from instances of discriminatory treatment. For example, within the United States, the landmark case of *Obergefell v. Hodges*[14] (2015) resulted in the nationwide legalization of same-sex marriage due to the ruling rendered in that case. The decision was based on the Equal Protection Clause of the Fourteenth Amendment, which underscored that the denial of marriage rights to same-sex couples

[13]National Legal Services Authority v. Union of India, 2014 INSC 275.
[14]Obergefell v. Hodges, 576 U.S. 644.

constituted a discriminatory practice. This ruling not only affirmed the principle of equal legal rights and protections for individuals within the LGBT community, but it also actualized the concept of marriage equality.

Furthermore, the impact of judicial rulings on LGBT rights has been substantial, contributing to increased public consciousness and stimulating public dialogue. Court rulings often attract considerable public attention and scrutiny, thereby stimulating more extensive discussions regarding the discrimination and prejudice experienced by individuals belonging to the LGBT community. The platform provides an opportunity for activists, legal professionals, and individuals from the wider community to engage in meaningful discussions and promote social change.

The judiciary has played a pivotal role in the promotion of LGBT rights, as demonstrated by significant legal rulings that have resulted in the decriminalization of homosexuality, the acknowledgment of the right to privacy, the affirmation of transgender individuals' rights, and the establishment of safeguards against discrimination. The judicial measures have not solely resulted in legal consequences, but have also played a pivotal role in shaping societal perspectives and fostering increased inclusivity and equity for individuals who self-identify as LGBT.

The absence of explicit pronouncements by the Supreme Court of India regarding matters on marriage, adoption, divorce, and maintenance for individuals within the LGBT community has raised significant concerns necessitating a comprehensive examination. The Navtej Singh Johar case has witnessed notable progress towards the decriminalization of homosexuality as a result of the Supreme Court's ruling. Nevertheless, the issue of recognizing same-sex marriages has not been directly acknowledged by the relevant authorities, leading to a legal vacuum. The absence of unambiguous guidelines has substantial implications for the legal protections and societal status of individuals identifying as LGBT residing in India.

The prevailing marriage legislation in India predominantly aligns with the conventional understanding of marriage as a legal union between individuals of opposite genders. This concept finds manifestation in diverse personal laws, including the Hindu Marriage Act and the Muslim Personal Law, both of which

serve as illustrative instances of such legislation. Consequently, Indian law does not explicitly recognize marriages between individuals of the same gender. The decriminalization of homosexuality was achieved through the Supreme Court's ruling in 2018. However, this decision did not offer explicit guidance regarding the legal recognition of same-sex marriages. Consequently, the current legal status of these unions remains uncertain. The absence of precise legal provisions has resulted in the denial of fundamental legal entitlements, including inheritance, property rights, and spousal benefits, to individuals belonging to the LGBT community. These rights are integral aspects of the institution of marriage.

An additional crucial element of this issue pertains to the legal framework that regulates the act of adultery within the jurisdiction of India. Adultery is recognized as a valid ground for divorce under Section 13(1) of the Hindu Marriage Act. The Supreme Court has yet to provide a definitive answer to the question of whether sexual relations between individuals of the same sex can be classified as adultery. The absence of clear legal provisions creates a sense of ambiguity among individuals, leading to uncertainty regarding their rights under Indian law. This lack of clarity raises apprehensions about the legal susceptibility of the LGBT community, leaving them in a state of vulnerability.

The absence of well-defined legal frameworks on same-sex marriages and the ambiguous nature of adultery statutes have significant societal implications. In addition to the curtailment of legal rights and protections for individuals within the LGBT community, this phenomenon contributes to the perpetuation of discrimination and social stigmatization. Moreover, this phenomenon poses challenges for individuals who self-identify as members of the LGBT community in their pursuit of securing fundamental legal entitlements, consequently leading to disparities in legal treatment.

The Supreme Court's lack of engagement with these matters is notable, particularly when considering the dynamic and evolving nature of LGBT rights globally, as observed through an international and comparative lens. Several countries have enacted legislation that legalizes same-sex marriages and recognizes the rights of individuals who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ+) in various legal domains, including adoption,

divorce, and child support. India's lack of recognition and protection of the rights of its LGBT citizens is evident due to its failure to address these matters, thereby deviating from established international norms and standards.

The significance of this silence in relation to both the Constitution and human rights carries substantial implications. The Indian Constitution safeguards fundamental rights such as personal liberty and equality for all individuals. Furthermore, it explicitly forbids any form of discrimination. There is a potential occurrence of a violation of fundamental rights when individuals who self-identify as LGBT are deprived of the right to marry or the legal acknowledgment of their relationships. Furthermore, considering its status as a signatory to various international human rights treaties, India bears the responsibility to harmonies its legal structure with globally recognized standards. These norms emphasize the importance of acknowledging and safeguarding the rights of all individuals, irrespective of their sexual orientation.

The Supreme Court's choice to abstain from addressing LGBT rights is poised to yield substantial ramifications, encompassing both social and psychological dimensions. The aforementioned policy perpetuates social stigmatization and discrimination towards individuals belonging to the LGBT community, thereby conveying the notion that their relationships are not deserving of legal recognition and safeguards. The mental and emotional well-being of individuals who identify as lesbian, gay, bisexual, or transgender (LGBT) may be adversely affected due to these circumstances, potentially resulting in sentiments of marginalization, exclusion, and discrimination.[15]

The Supreme Court of India has refrained from addressing matters about same-sex marriages and the extent to which adultery laws apply to same-sex relationships, thereby creating a significant void in the existing legal structure. The action contradicts fundamental constitutional principles about equality and nondiscrimination, while also infringing upon established international human rights norms. These factors collectively contribute to the ongoing state of uncertainty and vulnerability experienced by individuals within the LGBT

[15]McGoldrick, D., *Challenging the Constitutionality of Restrictions on Same-Sex Sexual Relations: Lessons from India*, 19 HUMAN RIGHTS LAW REVIEW, (2019).

community. The judiciary's provision of clarity is crucial to guarantee the unhindered exercise of fundamental rights for LGBT individuals, while also eliminating any ambiguity or discriminatory practices. Furthermore, this clarity is necessary to align Indian law with the international trajectory of acknowledging and safeguarding the rights of the LGBT community. Furthermore, it is imperative to emphasize the significance of judicial clarity to guarantee the unhindered exercise of fundamental rights for individuals within the LGBT community, thereby eliminating any potential ambiguity or discriminatory practices. The attainment of such a high degree of lucidity would not solely entail legal consequences but would also contribute to the societal transformation of India into a more inclusive and receptive entity that embraces a wide range of viewpoints.

VII. LGBT And Personal Rights

Throughout its historical trajectory, the legal status of the LGBT (lesbian, gay, bisexual, and transgender) community in India has been a topic of extensive deliberation and has experienced substantial transformations. Despite considerable progress in the movement towards the decriminalization of homosexuality, there remain certain legal ambiguities within the existing framework, particularly concerning matters such as marriage and adultery. This research critically examines the ambiguities and assesses their impact on the individual rights and overall welfare of the LGBT community residing in India.

The issue of marriage equality holds significant importance for individuals identifying as lesbian, gay, bisexual, transgender, and queer (LGBTQ) within the context of India. The prevailing understanding of marriage in India, characterized by its perception as a union between a male and a female, is deeply ingrained in the nation's legal framework and is evident in diverse personal legislations. The current framework lacks explicit recognition of same-gender marriages. The Supreme Court's landmark ruling in 2018, known as the Navtej Singh Johar judgement, effectively decriminalized homosexuality. However, it is important to note that the court did not offer a conclusive stance on the issue of recognizing same-sex marriages. Due to the absence of legal precision, individuals in same-

sex relationships encounter a complex situation wherein their personal rights and obligations become entangled.[16]

Due to the inherent lack of clarity surrounding this matter, individuals in India who self-identify as lesbian, gay, bisexual, or transgender (LGBT) encounter significant challenges in attaining essential legal entitlements that are conventionally assumed by heterosexual couples. Unresolved inquiries persist for same-sex couples in relation to subjects encompassing inheritance, property rights, and spousal benefits. The absence of legal safeguards not only infringes upon fundamental rights but also fosters societal discrimination and reinforces the notion that relationships involving individuals of diverse sexual orientations and gender identities are less valid compared to those involving heterosexual individuals.

The application of laws about adultery in the context of same-sex relationships is an additional subject of apprehension. According to Section 13(1) of the Hindu Marriage Act, adultery is recognized as a contributing factor that may lead to the dissolution of a marriage. However, the Supreme Court has not yet rendered a definitive position regarding the issue of whether engaging in sexual relations with an individual of the same sex can be classified as adultery. Due to the absence of clear legal provisions, individuals who self-identify as lesbian, gay, bisexual, or transgender (LGBT) find themselves in a vulnerable legal position.

The presence of ambiguity in this situation gives rise to various consequences. Firstly, this situation presents a scenario where individuals who identify as LGBT may face potential legal consequences within the realm of their intimate relationships due to the potential misinterpretation of their actions as acts of adultery. Due to the potential legal liabilities, they face, individuals are at risk of experiencing infringements upon their personal freedoms and rights. Furthermore, it exacerbates the persistent ambiguity surrounding the legal acknowledgment of same-sex partnerships and the corresponding entitlements they entail within the framework of Indian legislation. The absence of clear guidelines presents

[16]M. P. Singh, *Constitutionality of Section 377, Indian Penal Code– A case of Misplaced Hope in Courts*, 6 NUJS LAW REVIEW, (2013).

challenges in establishing a coherent and equitable legal structure for individuals who self-identify as members of the LGBT community.

The absence of clear delineation regarding the legal acknowledgment of same-sex marriages and the construal of laws on adultery carries substantial ramifications for both constitutional principles and the protection of human rights. The Indian Constitution encompasses several fundamental legal principles, such as non-discrimination, equality, and personal liberty, which are upheld for all citizens. There is a potential violation of these foundational principles when individuals who self-identify as LGBT are deprived of these entitlements within the realm of matrimony and other intimate interpersonal connections.

Furthermore, India has ratified several international human rights treaties that emphasize the importance of acknowledging and protecting the rights of every individual, irrespective of their sexual orientation. The absence of legal clarity on same-sex marriages and adultery laws in India is incongruous with the international commitments that India has undertaken.[17]

The presence of these ambiguities will exert a substantial impact on society at large. The legal uncertainty surrounding same-sex marriages and adultery contributes to the establishment of a hostile environment for individuals who identify as LGBT. This phenomenon contributes to the perpetuation of social stigmatization, discriminatory practices, and a feeling of marginalization. The challenges experienced by LGBT individuals can have adverse effects on their mental and emotional well-being, as well as their overall quality of life.

In summary, the presence of uncertainties within the legal structure of India concerning LGBT rights, particularly about marriage and adultery, poses substantial obstacles for individuals who identify as LGBT. Because of these inherent uncertainties, individuals are deprived of their essential entitlements, leading to the perpetuation of societal marginalization and psychological distress. To ensure the unhindered exercise of rights and the prevention of discrimination against individuals who identify as LGBT, it is crucial to undertake a

[17]M. P. Singh, Constitutionality of Section 377, Indian Penal Code– A case of Misplaced Hope in Courts, 6 NUJS Law Review, (2013).

comprehensive clarification and reform of the current legal framework. Implementing such measures would not only serve to uphold constitutional principles but also foster the advancement of a more accepting and inclusive society in India. This would entail ensuring the protection and respect of personal rights, irrespective of an individual's sexual orientation.

Throughout its historical trajectory, the legal status of India's LGBT (lesbian, gay, bisexual, and transgender) community has been a topic of extensive deliberation and has experienced substantial transformations. Despite considerable progress in the movement towards the decriminalization of homosexuality, there remain several ambiguous aspects within the existing legal structure, particularly on the domains of marriage and adultery. This research critically examines the ambiguities and analyzes their impact on the personal rights and well-being of individuals identifying as LGBT residing in India. The Supreme Court's landmark ruling in 2018, known as the Navtej Singh Johar judgment, effectively decriminalized homosexuality. However, it is important to note that the court did not offer a conclusive stance on the recognition of same-sex marriages. Due to the absence of explicit legal provisions, individuals in same-sex relationships encounter a complex situation wherein their personal rights and responsibilities become entangled.

Due to the inherent lack of clarity surrounding this matter, individuals in India who self-identify as LGBT face considerable challenges in obtaining essential legal entitlements that are commonly assumed by heterosexual couples. Unresolved inquiries persist for same-sex couples in relation to subjects including inheritance, property rights, and spousal benefits. The absence of legal safeguards not only infringes upon fundamental rights but also fosters societal discrimination and reinforces the notion that relationships involving individuals of diverse sexual orientations and gender identities are inherently less valid than those involving heterosexual individuals.[18]

The application of laws on adultery in relationships involving individuals of the same sexual orientation is an additional subject of apprehension. According to

[18] *See* Id.

Section 13(1) of the Hindu Marriage Act, adultery is recognized as a factor that can contribute to the dissolution of a marriage. However, the Supreme Court has yet to establish a conclusive position regarding the classification of engaging in sexual relations with a person of the same sex as adultery. Due to the absence of clear legal guidelines, individuals who self-identify as lesbian, gay, bisexual, or transgender (LGBT) find themselves in a vulnerable legal position.

The presence of ambiguity in this situation gives rise to various consequences. Firstly, this situation places individuals who identify as LGBT at risk of facing negative legal consequences within the realm of their intimate relationships, as their behaviors may be erroneously perceived as acts of adultery. Due to the potential legal jeopardy they face, individuals are at risk of experiencing infringements upon their personal liberties and rights. Furthermore, it exacerbates the persisting ambiguity surrounding the legal acknowledgment of same-sex partnerships and the corresponding entitlements conferred upon them within the framework of Indian legislation. The absence of clear guidelines poses challenges in establishing a coherent and equitable legal structure for individuals who self-identify as lesbian, gay, bisexual, or transgender (LGBT).

The absence of clear delineation regarding the legal acknowledgment of same-sex marriages and the construal of laws on adultery carries substantial ramifications for both constitutional principles and the protection of human rights. The Indian Constitution enshrines several fundamental legal principles, such as non-discrimination, equality, and personal liberty, which apply to all individuals who hold the status of citizens. There is a potential violation of these foundational principles when individuals who self-identify as LGBT are deprived of these entitlements within the realm of marriage and other intimate interpersonal connections.

Furthermore, India has ratified several international human rights treaties, which emphasize the importance of acknowledging and protecting the rights of every individual, irrespective of their sexual orientation. The absence of legal clarity in India on same-sex marriages and laws concerning adultery is incongruous with the international commitments that India has undertaken.

The presence of these ambiguities will exert a substantial impact on the entirety of society. The legal uncertainty surrounding same-sex marriages and adultery contributes to the establishment of an inhospitable atmosphere for individuals who identify as LGBT. This phenomenon contributes to the perpetuation of social stigma, discrimination, and a sense of marginalization. The challenges experienced by LGBT individuals can have adverse effects on their psychological and emotional welfare, thereby influencing their overall life satisfaction.

In summary, the presence of uncertainties within the legal structure of India on the rights of the LGBT community, particularly in relation to marriage and adultery, poses notable obstacles for individuals who self-identify as LGBT. Due to the presence of these uncertainties, individuals are deprived of their basic entitlements, leading to ongoing encounters with societal prejudice and psychological distress. For individuals who identify as LGBT to exercise their rights without fear and discrimination, it is crucial to clarify and reform the current legal framework. The implementation of such measures would not only serve to uphold constitutional principles but also foster the advancement of an inclusive society in India. This would entail ensuring the protection and respect of personal rights, irrespective of an individual's sexual orientation.

VIII. CONCLUSION

In summary, the current legal environment concerning the rights of LGBT (lesbian, gay, bisexual, and transgender) individuals in India demonstrates notable advancements, yet it is also characterized by substantial uncertainties within the prevailing legal structure. This issue holds considerable significance. Despite the decriminalization of homosexuality through the Supreme Court's ruling in the significant case of Navtej Singh Johar, certain key elements about LGBT rights, including marriage and the interpretation of adultery legislation, remain uncertain.

Due to the absence of explicit recognition of same-sex marriages within the legal framework of India, enduring disparities are permitted to endure, resulting in the denial of essential legal entitlements to couples identifying as lesbian, gay, bisexual, transgender, and queer. These rights encompass but are not limited to inheritance, property rights, and spousal benefits. This not only contradicts the

constitutional principles of equality, non-discrimination, and personal liberty, but it also presents obstacles in the pursuit of a genuinely inclusive society.

Similarly, the absence of unambiguous guidelines on adultery legislation exposes individuals who identify as LGBT to legal vulnerabilities, while also adding complexity to the recognition of same-sex relationships. The absence of unambiguous guidelines is incongruous with India's international commitments to safeguard the rights of every individual, regardless of their sexual orientation.

The presence of these uncertainties within legal frameworks also carries substantial implications for the overall social and psychological welfare of the lesbian, gay, bisexual, and transgender (LGBT) community, as they serve to perpetuate instances of prejudice, social disapproval, and exclusion. The attainment of inclusivity and acceptance necessitates the implementation of legal reforms and the elucidation of existing legislation.

Consequently, it is imperative for the Supreme Court of India and the Indian legal system to effectively resolve these ambiguities in a manner that is thorough and unambiguous. To preserve the principles of equality, non-discrimination, and personal freedom that are enshrined in the Indian Constitution, it is imperative to establish unambiguous recognition of same-sex marriages and offer explicit guidance on the interpretation of laws about adultery. The implementation of such legal reforms would not only align India with global norms but also foster the advancement of a more inclusive and tolerant society. This would entail safeguarding and upholding personal rights, irrespective of an individual's sexual orientation. Ultimately, the realization of authentic equality and justice for all individuals in India necessitates the elucidation of prevailing legislation and the execution of comprehensive reforms.

NCU LAW REVIEW

Vol. 7, Issue 1 & 2 (2025)

ISSN: 2581-7124

SUBMISSION OF RESEARCH PAPERS

REVIEW POLICY

NCU Law Review believes in the encouragement of critical analysis and the interdisciplinary study of law. Submissions that view the subject matter from a comparative perspective shall be preferred. Therefore, the scholastic quality of the manuscript shall be the primary criterion for publication. The same shall be judged by an anonymous peer review of the manuscript. However, the final discretion as to the acceptance of the manuscript rests with the Editorial Board.

PUBLICATION POLICY

NCU Law Review publishes original material. Therefore, manuscripts must neither be under consideration for publication in any other place at any time during the period of consideration by the Journal, nor previously published. The Law Review also has a strict policy on plagiarism. Plagiarism shall render the manuscript liable for rejection.

SUBMISSION OF CONTRIBUTIONS

Contributions for the Law Review are solicited under the following heads:

1. **ARTICLES:** An article is expected to include a comprehensive review of the existing law in a particular area of study and is conservative in both choice and analysis of subject. The subject matter is expected to be dealt with in a detailed and thorough manner.

2. **ESSAYS:** Essays are usually more adventurous, challenging existing paradigms and innovatively addressing well-known problems. An essay doesn't need to be as comprehensive as an article, and it is strongly recommended that essays be considerably more concise, in terms of scope and conceptualization.

3. **CASE COMMENTS:** A study of any contemporary judicial pronouncement (Indian or foreign) must contain its analysis, the context in which the particular judgment has been delivered, its contribution to existing law, and must necessarily comment on the judicial process involved.

4. **LEGISLATIVE COMMENTS:** This entails a critical analysis of any existing Indian legislation or proposed bills, and their constitutional implications. The analysis is expected to be original and technical in nature.

Contributions should adhere to the following specifications:

1. **WORD LIMIT:** The word limit for articles and essays is between 7,000 to 8,000 words (inclusive of footnotes), while case/legislative comments must be confined to less than 3,000 words.

2. **CITATION FORMAT:** The citation format to be used is THE BLUEBOOK: A UNIFORM METHOD OF CITATION (Columbia Law Review Ass'n et al. eds., 21st ed.). Speaking footnotes are generally discouraged.

3. **ABSTRACT:** Every submission must be accompanied by an abstract of not more than 200 words, which outlines the area of study and any important conclusions that may be drawn by the author(s).

4. **COVERING LETTER:** All personal details, including name, year, name of college/university, postal address, phone number, and e-mail id, must be provided in a separate letter or file, and must not be mentioned in the document or file containing the submission.

We encourage the submission of contributions electronically. Kindly attach your contributions in MS Word format, mark the subject line of the email as **"CONTRIBUTION FOR NCU Law Review,"** and send it to **nculawreview@ncuindia.edu**. For any clarification, please write to us at the same email id.

ABOUT SCHOOL OF LAW

The School of Law at The NorthCap University (NCU) offers a 5-year BBA. LL.B. (Hons.), 3-year LL.B., 1-year LL.M. (Master of Laws), and Ph.D. programme through which students are equipped to face the new challenges and dimensions of the legal profession, current trends and demands of the industry. Ranked among the best Private law Schools in Delhi/NCR, the NCU School of Law is recognized and accredited by the Bar Council of India (BCI). NCU has state of the art well-equipped classrooms, moot courtrooms, legal research centres, and libraries with a vast collection of legal resources. Some of the attributes that distinguish NCU School of Law are that it has a diverse student and faculty body that fosters a rich learning environment with scope for different perspectives and experiences. It also has a strong mentoring programme connecting students and experienced legal professionals for guidance and advice on career development and academic pursuits. It offers opportunities to students for international exchange programmes, collaborations, and participation in International Moot Court competitions which in turn provides them with a global perspective.

The school has continually strived to achieve excellence in legal education through interactive teaching learning process, opportunities in clinical legal education, research, exposures to the legal profession through internships and externships, industry ready curricula and innumerable opportunities to interact with the stalwarts in the legal profession. As a testament to its excellence the school has been ranked No. 1 Law School in the State of Haryana by the Global Human Resource Development Centre (GHRDC), New Delhi and has also received the Gold Badge by QS I-GAUGE.