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ROLE OF ARTIFICIAL INTELLIGENCE IN PREVENTING CHILD SEXUAL ABUSE IN INDIA: A LEGAL INSIGHT

Sugato Mukherjee*

1. Introduction

Children constitute one of the most vulnerable sections of society due to their limited capacity to protect themselves from harm. Safeguarding childhood and child rights is essential for social justice and inclusive development, contributing to Sustainable Development Goal (SDG) 16. However, in India, multiple socio-economic challenges continue to undermine childhood. Many children remain engaged in labour rather than education due to poverty, inequality, and discrimination.

Among the various forces that undermine childhood, child sexual abuse is one of the most serious concerns. Child sexual abuse (CSA) refers to the exploitation of a child for sexual stimulation by an adult or older adolescent. Recent trends indicate an alarming rise in such offences. According to the National Crime Records Bureau (NCRB) Report 2022, India recorded an 8.7% increase in child abuse cases, reaching approximately 1,62,000 incidents. Notably, this rise occurred during the global lockdown period. An analysis by Child Rights and You (CRY), a child rights organisation in India, further reported that sexual violence against children increased by 96% between 2016 and 2022.

Against this backdrop, the present study undertakes a legal analysis of child sexual abuse in India, with particular emphasis on the role of Artificial Intelligence in its prevention. It examines the potential of AI in addressing CSA, the existing legal framework, emerging ethical and regulatory challenges, and possible pathways to overcome these obstacles. Before proceeding to the core analysis, the paper first outlines the concepts of Artificial Intelligence and child sexual abuse to provide a structured foundation for the discussion that follows.

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2. Concept of Artificial Intelligence-

Artificial Intelligence is an expression with which everyone is more or less acquainted nowadays, even though the legal definitional aspect of the concept may not be known to everyone. The expression was originally coined by John McCarthy, a computer scientist and a Professor of Mathematics at Dartmouth College in the year 1956. Artificial Intelligence refers to computer systems capable of performing tasks that typically require human intelligence. These tasks include, but are not confined to, learning, reasoning, problem-solving, understanding natural language and so on.

Based on its capabilities, AI can be broadly classified into three types: narrow AI, strong AI, and superintelligent AI. Narrow AI is task-specific, data-driven and lacks consciousness. Growth and development of mechanisms like virtual assistants, recommendation systems and autonomous vehicles are the relevant examples in this context.

Strong AI refers to a conjectural variety of AI that possesses cognitive abilities like natural human beings, and that is why it is characterised by adaptability to new situations, like the application of human intelligence. However, it is still in a maturing as well as nascent stage and yet to emerge as an indispensable option insofar as its practical implications in day-to-day life are concerned. Apart from these two categories, super-intelligent AI refers to an advanced form of Artificial Intelligence that exceeds human intelligence in virtually all aspects, including creativity, problem-solving, and emotional intelligence. This variety of AI is still conjectural, and its implications as well as implementations, raise significant ethical concerns insofar as its impacts on civilisations regarding control and safety are concerned.

Concentrating on the impact of AI on human civilisation, it can be pointed out that this variety of technological innovation has brought and also is in the process of bringing several socio-economic benefits, which include but are not confined to improving process efficiency, fostering

innovation, reducing errors, aiding risky operations, and addressing complex global challenges. However, AI algorithms have the potential to spread existing biases that are present in the data upon which they are trained. Moreover, unrestricted dependence on AI may become a significant factor in reducing the scope of employment, too, and since AI requires access to personal data, the possibility of its vulnerability to breach or misuse cannot be ignored in case there is misappropriation in this regard. So far as the Indian scenario is concerned, AI presents considerable opportunities for socio-economic development in our country. Its gradual development at a faster pace is a wake-up call for our policymakers, without any divergence of opinion, even though exigencies such as data privacy, skills shortages, and ethical considerations are necessary to address for its responsible disposition.¹

Altogether, the emergence of AI is a distinctive step in the journey of human civilisation. Since the emergence of all new things divides society in terms of its pros and cons, AI is also not an exception in this regard. It is up to the time and the approach of its users, which is supposed to be a determining factor in scripting the report card of this technological innovation.

3. Concept of Child Sexual Abuse: An Overview

Child Sexual Abuse (hereinafter referred to as CSA) is a form of child abuse in which a child is used for sexual stimulation by one or more adults. The World Health Organisation has defined child sexual abuse as *“the involvement of a child in sexual activity as he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society”*.² It includes diverse sexual activities

¹ Shashi Shekhar Vempati, *India and the Artificial Intelligence Revolution*, CARNEGIE INDIA (Aug. 11, 2016), <https://carnegieendowment.org/research/2016/08/india-and-the-artificial-intelligence-revolution?lang=en>.

² World Health Organization, *Report of the Consultation on Child Abuse Prevention*, WHO Doc. WHO/HSC/PVI/99.1, 15 (1999).

such as fondling, inviting a child to touch or be touched sexually, intercourse, exhibitionism, involving a child in prostitution or pornography, or online child luring by cyber-predators.

CSA is not confined to any particular setting. It cuts across communities and institutions. Its impact is not just confined to children belonging to any specific socioeconomic strata; it can affect children belonging to any socioeconomic level. It is not the case that CSA can happen with children belonging to any specific religious, ethnic or cultural backgrounds. Instead, it can happen with any racial, ethnic and cultural limits. Moreover, it hardly matters whether children are from rural areas or urban areas with respect to their impact. It is pertinent to point out that in contexts where child labour is prevalent, CSA takes place in a multitude of communities and institutions, which include but are not restricted to schools, homes and online spaces wherein adolescents are exposed to abuse and exploitation. The effects of child sexual abuse may include depression, post-traumatic stress disorder, anxiety and related psychological consequences. In case the same happens at the household level, it causes a long-term adverse effect (which may result in psychological trauma) upon children.

As far as the historical perspective is concerned, the issue of CSA started gaining popularity since the 1980s in various parts of the world. Mostly pro-women organisations in various parts of the world took the lead role in this regard. Accordingly, the popularity of the issue of child sexual abuse was confined mostly to girls. Gradually, the issue of child sexual abuse started gaining momentum since the end of the 1980s when the word ‘survivor’ started getting used frequently to narrate the experiences of girl children whose upbringings were in that type of setup. With the passage of time, the expression Child Sexual Abuse started getting media coverage too, but the noteworthy point is highlighting certain specific aspects, namely flaws in legal systems. In other words, the issue of child sexual abuse started getting popular and gaining momentum mainly through women’s rights movements. It took a long time for the international

community to realise that sexual abuse does not follow any particular gender and can happen to anyone, whether boys or girls. The kind of social taboos and stigmas that were prevalent, or better to mention, are still prevalent in our society, obstructing the growth of the above stated realization by people at large.

Finally, it was the year of 1989 when the UN General Assembly adopted the “Child Rights Convention” and opened the same for signature on 20 November 1989. The Convention has defined a child as a person below the age of 18 years unless and until the law applicable to the child states otherwise. Concentrating on the coverage of the child sexual abuse issue, it is relevant to point out that followed by the provision.³ According to the UN Convention on the Rights of the Child, children and young people have the right to be protected from sexual abuse. They are entitled to this right irrespective of gender and regardless of who they are attracted to. The core object of this provision is to protect children from all types of sexual exploitation and abuse. It covers not only physical abuse but also exploiting young people by means of prostitution, pornography and other types of illegal sexual activities. This provision serves as a powerful safeguard to curb and prevent the practice of child sexual abuse. The enforcement of this provision is based on the notion of collective responsibility. Article 34 of the Convention has made it mandatory on the part of every signatory country (which certainly does not exclude India) to take all the necessary measures as required to be taken to prevent child sexual abuse in its various forms. In India, the enactment of the POCSO Act is a reflection of legislative intent in a similar direction in this regard.

Thus, it can be briefly mentioned that the expression “child sexual abuse” got a codified reflection by virtue of the UNCRC. As of now, more than 180 countries have ratified this international legal instrument. It has inspired governments to change the law and policies to improve the health of children and to protect them from violence and malnutrition. Adopting the “Council of Europe Convention on the Protection of Children against

³ Convention on the Rights of the Child art. 34, Nov. 20, 1989, 1577 U.N.T.S. 3.

Sexual Exploitation and Sexual Abuse”; enactment of The Protection of Children from Sexual Offences Act, 2012, are certain instances of reflecting the spirit of UNCRC at the level of municipal laws to protect the notion and child rights by means of preventing child sexual abuse.

4. The Indian Perspective

As far as the Indian scenario is concerned, CSA remained a hidden problem in India for a long time. A culture of unquestioned trust within familial and community structures by elders in the Indian society has been nurtured by the Indians for a considerable span of time. This is what created a significant obstacle towards the development of the child rights movement in India, and when the issue is CSA, the same has received limited legislative and judicial attention for a significant period of time. Moreover, the prevalence of certain kinds of practices has been accepted all over the country, which amount to child sexual abuse, knowingly or unknowingly. Additionally, propagation of certain myths (e.g., sexual abuse may happen only to girl children, sexual abuse may take place only by unacquainted persons, abusers are always male; children will forget the incidents of sexual abuse, child sexual abuse happens only to poor families; no sexual abuse in case a child does not protest or complaint) also paved the way of child sexual abuse in India.

A child-sexual abuser can be anyone, irrespective of age, appearance, gender, or occupation, making identification difficult. They can easily get along with children. Usually, by telling stories and giving gifts, they first gain the love and trust of the children, and then facilitate abuse systematically. In this context, it is very relevant to mention that the term ‘paedophile’⁴ gets used very often to describe child sexual abusers, but that is not always the case. Not all offenders meet diagnostic criteria. The issue of child sexual abuse has emerged as a serious and persistent reality. Various statistics, as released from time to time, revealed this bitter truth repeatedly. Referring to the first-ever national-level study (as conducted in

⁴ TOM O’ CARROLL, PAEDOPHILIA: THE RADICAL CASE 68, PETER OWEN (1980).

April 2007) in this regard, it can be mentioned that 53.3% children reported experiencing sexual abuse. The study covered 13 states in India and found that both boys and girls are at equal risk in terms of experiencing CSA. Later on, similar facts and revelations took place through the National Crime Records Bureau, which reported that the number of reported crimes doubled between 2012 and 2014. Approximately 100,000 crimes were registered in 2014.⁵ The World Health Organisation also reported the prevalence of one in every ten children as victims of child sexual abuse in India.⁶

In the recent past, analysing the latest NCRB data makes it clear that child sexual abuse has increased at an alarming rate of 96% from 2016 to 2022. According to the information received from various High Courts, 2,99,759 cases have been registered in India under the POCSO Act since 2019, and 1,62,497 cases have been disposed of.⁷ Such unavoidable statistics are revelations of the bitter reality in India, insofar as the issue of child sexual abuse and protecting childhood is concerned. However, the most noteworthy point in this context is the occurrence of child sexual abuse by online means, which has become a matter of immense concern in India in the recent past. Concentrating on the contemporary state of affairs can make it clear that CSA became an acute problem during the COVID pandemic. Even thereafter, the growth of online CSA has become a matter of critical concern. In recent years, our country has experienced an enormous rise in the horrific crime of “Online Sexual Exploitation and

⁵ Chandrika R. Krishnan, *The World We Miss Today*, THE HINDU (Nov. 3, 2015) <https://www.thehindu.com/opinion/open-page/the-world-we-miss-today/article7834731.ece>.

⁶ See, PINKI VIRANI, *BITTER CHOCOLATE: CHILD SEXUAL ABUSE IN INDIA* 19 (Penguin Books India 2000).

⁷ *State/UT-Wise Number of Exclusive Protection of Children from Sexual Offences (POCSO) Courts and Cases Registered & Disposed*, DATA.GOV.IN, <https://www.data.gov.in/resource/stateut-wise-number-exclusive-protection-children-sexual-offences-pocso-courts-and-total>.

Abuse of Children” (hereinafter referred to as OSEAC).⁸ The upward trend regarding the use of technology and the internet has made child exploitation easier for offenders. Tendency of children towards spending more time online while staying away from the safety net of their parents has made this issue worse, especially since the start of the COVID-19 pandemic.

It is relevant to point out the findings of one study that was conducted by Child Rights and You (hereinafter referred to as CRY) and the Chanakya National Law University (hereinafter referred to as CNLU), Patna, in this regard. As an outcome of the study, it was found that online exposure for children with minimal parental supervision during lockdown allowed online offenders to identify potential victims, get access to their individual details and connect with them. Soha Moitra emphasised the necessity of reforming the existing legal frameworks in India in this regard.⁹ It is further reasonable to mention the fact that the National Human Rights Commission (NHRC) has taken suo moto cognizance of a media report that revealed about increasing flow of “Child Sexual Abuse Materials” (hereinafter referred as CSAM) 250 to 300 percent on social media in India. As per the media report, carried on 15th May, 2023, approximately 450207 cases of spread of CSAM have been reported in the year 2023. Out of these, the Delhi Police has taken action in 3039 cases. In certain cases, even photographs taken lovingly, of young children by respective fathers, brothers and sisters in India have been classified as child sexual abuse by an American NGO. There were 204056 cases reported in the year 2022, 163633 in the year 2021, and 17390 in the year 2020 of CSAM on social

⁸ Amrita Madhukalya, *Prevalence of online child sexual abuse material rises 87% since 2019, report shows*, DECCAN HERALD (Oct. 22, 2023), <https://www.deccanherald.com/india/prevalence-of-online-child-sexual-abuse-material-online-rises-87-since-2019-report-shows-2737506>.

⁹ DTE Staff, *Online child abuse escalated in India during pandemic: CRY, DOWN TO EARTH* (Jan. 18, 2023), <https://www.downtoearth.org.in/governance/online-child-abuse-escalated-in-india-during-pandemic-cry-87205>.

media in India. The Commission expressed its concern about the adverse, irreparable impact that such CSAMs will cause upon children.¹⁰

However, the subject of child sexual abuse is still taboo in India. One of the key reasons behind this is the traditional and conservative family structure, which strongly discourages talk or discussion about sex and sexuality. Consequently, all forms of sexual abuse that a child faces remain unreported to anyone. This silence is also because of the fear of indignity, denial from the community, social stigma, a lack of trust in government bodies, and the communication gap between parents and children about this issue. In short, it can be mentioned that the issue of child sexual abuse is not unknown but certainly unreported in most of the cases, not because we do not have the law but due to the larger influence of the prevailing social stigma.

5. Artificial Intelligence: A Key Tool in Preventing CSA

Both AI and Online Child Sexual Abuse are two pressing realities in today's world. However, the core emphasis of this contribution is to highlight the role that AI can play in combating the practice of online CSA. This section examines that part of the discussion accordingly. Since Online CSA (hereinafter referred to as OCSA) is an unavoidable reality, the same cannot be addressed effectively through traditional offline mechanisms alone, and here the importance lies in AI. So far as the preventive role of AI in curbing the practice of OCSA is concerned, the same can be summed up as follows.

¹⁰ *NHRC Notices to the Centre, States, and Union Territories over the Reported Increase of 250-300% in Child Sexual Abuse Material (CSAM) on Social Media in India*, NATIONAL HUMAN RIGHTS COMMISSION (May 16, 2023), <https://nhrc.nic.in/media/press-release/nhrc-notices-centre-states-and-union-territories-over-reported-increase-250-300>.

5.1. Detecting and Filtering Harmful Content-

One of the most straightforward but influential applications of AI is detecting and removing harmful content in the interest of protecting children from online sexual abuse. Companies like Google and Facebook take the help of advanced AI algorithms. These systems scan millions of posts, images, and videos daily. Content identified as harmful is flagged and removed with the help of this mechanism. These systems are trained on massive datasets so that inapt contents can be recognised. This, in turn, ensures that children can navigate digital spaces freely without any threat of getting exploited or abused. On the preventive side, AI supports educational campaigns to advance awareness of online risks. By creating targeted resources for children, parents, and professionals, AI empowers communities to safeguard themselves and take practical measures accordingly.¹¹

5.2. Preventing Cyberbullying-

Cyberbullying is a widespread issue in the online world. Eventually, it is troubling innumerable children and adolescents. AI technology takes the role of a trouble shooter on this point. The technology takes an indispensable role in identifying bullying behaviour in text, email and communications over social media. Social media platforms like Instagram adopted AI tools so as to identify those comments which are offensive prior to posting them. In similar situations, this also prompts users to reconsider before posting. This AI application stops not only cyberbullying in its tracks but also promotes kindness and reflection among young internet users.¹²

¹¹ See, Tijana Milosevic et al., *Effectiveness of Artificial Intelligence—Based Cyberbullying Interventions From Youth Perspective*, 9(1) SM + S 1 (2023), <https://journals.sagepub.com/doi/pdf/10.1177/20563051221147325>.

¹² *Id.*

5.3. Fight against Child Exploitation and Law Enforcement Assistance:

AI has become a valuable assistant in the fight against the exploitation of children. Organisations like Thorn and the National Centre for Missing and Exploited Children (NCMEC) use AI for the sake of identifying and rescuing victims of child trafficking and sexual exploitation. The partnership between Thorn, an NGO and Microsoft is particularly notable. The development of the Spotlight tool is the outcome of their collaboration. It uses AI for the purpose of analysing online platforms as well as finding out potential child trafficking victims. Thorn's AI-powered tool called Safer supports technology companies in detecting and removing CSAM from their platforms. By analysing images and videos at scale, these AI systems help identify victims faster, thereby rescuing them and identifying criminals. This technology helps law enforcement agencies in terms of prioritisation of cases, considering their gravity and seriousness, and accelerating victim identification accordingly. This, in turn, results in making the intervention much more efficacious and generating pro-victim outcomes.

Likewise, one more example is Honeycomb, which has been designed in the UK in collaboration with the Greater Manchester Police, and plays a catalytic role in fighting human trafficking. By anonymising data with MASC, Honeycomb allows and ensures securing data while sharing the same between agencies. Pictorial profiles of trafficking networks are being created through this AI. By analysing the stories of survivors, it is capable of pinpointing trends and evolving needs, and as a result, that becomes an obvious support (in the form of offering critical astuteness) for law enforcement.¹³

¹³ *From Detection to Education: Five Ways AI is combatting child exploitation*, TRILATERAL RESEARCH (Nov. 19, 2024), <https://trilateralresearch.com/safeguarding/from-detection-to-education-five-ways-ai-is-combatting-child-exploitation>.

Both Safer and Honeycomb exemplify how AI can bring a paradigm shift for protecting and improving collaboration, decision-making and promptness of intervention.

5.4. The Legal Framework in India:

The above stated narration makes one point very clear that AI is an indispensable means to deal with the issue of OCSA, which is causing the destruction of childhood in various parts of the world, including India. However, since it is a legal paper, the legal insight is spontaneously going to receive due importance herein. What is the legal framework in India on AI and CSA? How far has the role of AI in preventing CSA been acknowledged under Indian Law? Are there any challenges that are emerging/have already emerged in this regard? What sort of pathway can be followed to overcome those roadblocks? These are going to be the focal points in this portion of the research work.

5.5. Position of Indian Law on Child Sexual Abuse:

India ratified the United Nations Convention on the Rights of the Child (UNCRC) on 11 December 1992. Consequently, this created a legal obligation on the Government of India to develop national legislation in alignment with its standards. However, until the enactment of the Protection of Children from Sexual Offences Act in 2012, no specific law addressing this issue existed. This was despite the Constitution of India guaranteeing several rights to children and empowering the State to make special provisions for the protection of childhood. Such protection is reflected under Articles 15(3), 21, 24, 45, and 47, grounded in the constitutional principle of protective discrimination.

Before the enactment of the POCSO Act, sexual offences against children acknowledged by the law were covered by sections 375, 354, 377, and 509 of the then Indian Penal Code (IPC) 1860. Obscenity and pornography were dealt with under the Young Persons (Harmful Publications) Act, 1956. Under Section 67 of the Information Technology

Act, 2000, publication and transmission of pornography through the internet was an offence.

The then laws were inadequate in multiple ways. These provisions were not specific to address the needs of children. Moreover, these provisions did not include the common types of CSA or their impact on children. The restrictive interpretation of ‘penetration’ as used in the Explanation to Section 375 was an unavoidable impediment to cases of CSA. Moreover, having no provision regarding the trauma of children also emerged as an obstruction to protecting childhood and dealing with the issue of CSA in a just and fair manner, and this is what led to the enactment of the POCSO Act as a special legislation on this subject in the year 2012.

The POCSO Act has defined a child as any person below the age of eighteen years and thus, reflects the notion of gender neutrality in this regard.¹⁴ The legislation has defined penetrative sexual assault¹⁵ and incorporated provisions for punishment thereof.¹⁶ Certain points that have distinctively differentiated this legislation are as follows:

- The Act places due emphasis on maintaining the confidentiality of the identity of victims.¹⁷
- The Act defines various forms of sexual abuse, including sexual harassment, pornography and assault.¹⁸
- There is no specification of the time of reporting the abuse. Survivors can report the abuse at any time, even years after the incident.¹⁹

¹⁴ See, Protection of Children from Sexual Offences Act, 2012, § 2(1)(d), No. 32, Acts of Parliament, 2012 (India).

¹⁵ Protection of Children from Sexual Offences Act, 2012, § 3, No. 32, Acts of Parliament, 2012 (India).

¹⁶ *Id.* § 4.

¹⁷ *Id.* § 23.

¹⁸ *Id.* § 11, 2(1)(da), 7.

¹⁹ *Id.* § 19.

- The inclusion of a provision on mandatory reporting is another distinctive aspect of the legislation. Under Section 19, any person who knows the commission of an offence under the Act is required to report it to the Special Juvenile Police Unit or the local police. Failure to do so will attract the penal provision under this Act to be invoked in this regard.²⁰
- The Act provides for establishing special courts to try sexual offences against children.²¹ In addition, the legislation also provides for the Child Welfare Committee to ensure the rehabilitation of victims.²²
- Specifying a time limit for the disposal of cases is one more speciality of this legislation. As per the provisions of the Act, a POCSO case has to be disposed of within a year from the date of reporting the offence under this Act.²³
- With regard to the scope of the legislation, certain acts have been classified as aggravated penetrative sexual assault, for which the prescribed punishment is rigorous imprisonment for a term not less than 20 years, which may extend to life imprisonment or, in certain cases, death.²⁴
- The Act is not silent on the issue of online child sexual abuse. It is a fact beyond a reasonable doubt that the expression “Online Child Sexual Abuse” has not been used anywhere in this legislation, but that does not mean the Act did not put any emphasis upon the same. Insertion of the definition of “child pornography”²⁵ by virtue of the amendment in the year 2019 is a codified instance in this

²⁰ *Id.* § 21.

²¹ *Id.* § 28.

²² *Id.* § 19(6).

²³ *Id.* § 35.

²⁴ *Id.* § 6.

²⁵ *Id.* § 2(1)(da).

regard. The Act also contains provisions²⁶ for punishment in case of using children for pornographic purposes.

6. Ruling in JUST RIGHTS FOR CHILDREN ALLIANCE & ANR v. S. HARISH & ORS—A Forward Step:

Online Child Sexual Abuse (OCSA) is not a matter of speculation but a harsh and unavoidable reality in today's technological era. In bringing this issue to the forefront, the ruling of the Supreme Court of India in *Just Rights for Children Alliance & Anr. V. S. Harish & Ors.*²⁷ Has played a significantly important role.

How such kind of abuse impedes protecting childhood and promoting the notion of child rights in India, how does it cause adverse impact upon children, and how such kind of abuse does not fall outside the ambit of the POCSO Act—these aspects have been reflected in crystal clear fashion in this verdict of the Supreme Court of India. The issue in this case was whether mere storage of child pornography can be considered an offence under Section 15 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, and Section 67B of the Information Technology Act, 2000.

This issue was initially raised in the case of *S. Harish v. The Inspector of Police*,²⁸ in which there was receiving of a letter (with a specification of downloading of child pornographic materials by the petitioner) was received. Eventually, FIR was registered against the petitioner on 29.01.2020 for offences u/s. 67 B of Information Technology Act and Section 14(1) of the POCSO Act 2012. The mobile phone was seized during the investigation and sent to the Forensic Science Department for Analysis. Subsequently, the matter came up for hearing on 4th January 2024. The Madras High Court held:

²⁶ *Id.* § 13-15.

²⁷ Just Rights for Children Alliance & Anr. v. S. Harish & Ors (2024) INSC 716.

²⁸ S. Harish v. The Inspector of Police, 2024 MHC 5769, CRL. O.P. No. 37 of 2024.

“[T]o make out an offence under Section 14 (1) of Protection of Child from Sexual Offences Act, 2012, a child or children must have been used for pornography purposes. This would mean that the accused person should have used the child for pornographic purposes. Even assuming that the accused person had watched child pornography video that strictly will not fall within the scope of Section 14 (1) of Protection of Child from Sexual Offences Act, 2012. Since he has not used a child or children for pornographic purposes, at the best, it can only be construed as a moral decay on the part of the accused person.”²⁹”

Accordingly, the case was quashed. However, when based on the same issue, the case reached the Supreme Court of India through appeal in ***Just Rights for Children Alliance & Anr. V. S. Harish & Ors***³⁰, the Court took a contrary view. The Apex Court took the stand that watching and downloading child pornography is an offence under the provisions of the POCSO Act and the Information Technology Act, and accordingly, the judgment of the Madras High Court has been overruled.

The Court held:

[A]ny form of intangible or constructive possession of any child pornographic material will also amount to “possession” under Section 15 of the POCSO in terms of the Doctrine of Constructive Possession. There is no requirement of a physical or tangible “storage” or “possession” of such material in Section 15 of the POCSO. We may clarify with a view to obviate any confusion that, where any child pornographic material is in the constructive possession of an accused, there the

²⁹ S. Harish vs. The Inspector of Police 2024: MHC: 5769 CRL. O.P. No. 37 of 2024, ¶ 9.

³⁰ Just Rights for Children Alliance v. S. Harish, 2024 INSC 716.

failure or omission to report the same would constitute the requisite actus-reus for the purposes of Section 15 sub-section (1) of POCSO.³¹

For instance, say, ‘A’ is sent an unknown link by ‘B’, which upon clicking opened a child pornographic video on the phone of ‘A’. Now if ‘A’ immediately closes the link, although once the link is closed ‘A’ is no longer in constructive possession of the child pornography, this by itself does not mean that ‘A’ has destroyed or deleted the said material by merely closing the link. ‘A’ will only be absolved of any liability if he after closing the link further reports the same to the specified authorities. Thus, when it comes to constructive possession of an accused, it is the failure or omission to report that constitutes the requisite actus-reus for the purposes of Section 15 subsection (1) of POCSO.³²”

The Court took an enlightening approach towards the pertinent aspect for constituting an offence under Section 15 of the POCSO. The judgment stated:

“ [T]he term ‘storage’ and ‘possession’ that has been used in the said provision does not require that such ‘storage’ or ‘possession’ must continue to be there at the time of registration of an FIR or any criminal proceeding. The provision of Section 15 is not fixated any particularly time-frame. What is simpliciter required to constitute an offence under Section 15 of the POCSO is the establishment of ‘storage’ or ‘possession’ of any child pornographic material with the specified intention under sub-section(s) (1), (2) or (3), at any

³¹ Just Rights for Children Alliance v. S. Harish, 2024 INSC 716, ¶ 122.

³² Just Rights for Children Alliance v. S. Harish, 2024 INSC 716, ¶ 123.

relevant point of time. Even, if the said 'storage' or 'possession' no longer exists at the time of registration of the FIR, nonetheless an offence can be made out under Section 15 if it is established that the person accused had 'stored' or 'possessed' of any child pornographic material with the specified intention at any particular point of time even if it is anterior in time. We say so because, any other view aside from the above, in our opinion would lead to a chilling effect with drastic consequences, whereby the provisions of the POCSO may be defeated by a devious person. If for instance, a person immediately after storing and watching child pornography in his mobile phone deletes the same before an FIR could be registered, could it be said that the said person is not liable under Section 15, because at the time of registration of the FIR, such material no longer existed on the device of the person accused? The answer to the aforesaid, must be an emphatic "no". Thus, we clarify that there is no requirement under Section 15 of the POCSO that 'storage' or 'possession' must continue to exist at the time of initiation of the criminal proceeding, and no such requirement can be read into the said provision. An offence can be made out under Section 15 if it is established that the person accused had 'stored' or 'possessed' of any child pornographic material with the specified intention at any particular point of time even if it was before such initiation or registration of criminal proceedings.³³

³³ Just Rights for Children Alliance v. S. Harish, 2024 INSC 716, ¶ 124.

While clarifying the issue as raised in this case, the Court also gave reference to Section 67B of the Information Technology Act. It has been pointed out that

“[S]ection 67B of the IT Act is a comprehensive provision designed to address and penalize the various electronic forms of exploitation and abuse of children online. It not only punishes the electronic dissemination of child pornographic material, but also the creation, possession, propagation and consumption of such material as-well as the different types of direct and indirect acts of online sexual denigration and exploitation of the vulnerable age of children. Section(s) 67, 67A and 67B respectively of the IT Act being a complete code, ought to be interpreted in a purposive manner that suppresses the mischief and advances the remedy and ensures that the legislative intent of penalizing the various forms of cyber-offences relating to children and the use of obscene/pornographic material through electronic means is not defeated by a narrow construction of these provisions.”³⁴

With this decision, India joins a high-class club of countries which have unequivocally criminalised watching child pornographic material. However, as far as the contribution of the **Just Rights for Children Alliance & Anr. Vs. S. Harish & Ors** case is concerned in the direction of preventing Online Child Sexual Abuse and protecting and promoting the notion of child rights, it is also pertinent to point out certain suggestions and observations that the bench comprising the then Chief Justice **Dr. Dhananjaya Y. Chandrachud** and Justices **J.B. Pardiwala**

³⁴ Just Rights for Children Alliance v. S. Harish, 2024 INSC 716, ¶ 222, at 164.

have given. The exact version of those proposed suggestions is given below-

- i. *[T]he Parliament should seriously consider bringing about an amendment to the POCSO for the purpose of substituting the term “child pornography” with “child sexual exploitation and abuse material” (CSEAM) with a view to reflecting more accurately on the reality of such offences. The Union of India, in the meantime, may consider bringing about the suggested amendment to the POCSO by way of an ordinance.*
- ii. *We put the courts on notice that the term “child pornography” shall not be used in any judicial order or judgment, and instead, the term “child sexual exploitation and abuse material” (CSEAM) should be endorsed.*
- iii. *Implementing comprehensive sex education programs that include information about the legal and ethical ramifications of child pornography can help deter potential offenders. These programs should address common misconceptions and provide young people with a clear understanding of consent and the impact of exploitation.*
- iv. *Providing support services to the victims and rehabilitation programs for the offenders is essential. These services should include psychological counselling, therapeutic interventions, and educational support to address the underlying issues and promote*

healthy development. For those already involved in viewing or distributing child pornography, CBT has proven effective in addressing the cognitive distortions that fuel such behaviour.

- v. Raising awareness about the realities of child sexual exploitative material and its consequences through public campaigns can help reduce its prevalence. These campaigns should aim to destigmatise reporting and encourage community vigilance.*
- vi. Identifying at-risk individuals early and implementing intervention strategies for youth with problematic sexual behaviours (PSB) involves several steps and requires a coordinated effort among various stakeholders, including educators, healthcare providers, law enforcement, and child welfare services. Educators, healthcare professionals, and law enforcement officers should be trained to identify signs of PSB. Awareness programs can help these professionals recognise early warning signs and understand how to respond appropriately.*
- vii. Schools can also play a crucial role in early identification and intervention. Implementing school-based programs that educate students about healthy relationships, consent, and appropriate behaviour can help prevent PSB.*
- viii. To give meaningful effect to the above suggestions and work out the necessary modalities, the Union of India may consider*

constituting an Expert Committee tasked with devising a comprehensive program or mechanism for health and sex education, as well as raising awareness about the POCSO among children across the country from an early age, for ensuring a robust and well-informed approach to child protection, education, and sexual well-being.

- ix. *We urge the Parliament to consider amending Section 15 subsection (1) of POCSO to make it more convenient for the general public to report by way of an online portal, any instance of storage or possession of CSEAM to the specified authorities for the said provision.*³⁵

Thus, in short, it can be mentioned that the judgment in this case has become a pathway to deal with the issue of child sexual abuse by online means. This case is significant for multiple reasons. On one hand, it is solid proof of the acknowledgement of the occurrence of CSA by online means. On the other hand, this judgment is a solid clarification on the intent of the legislature behind the enactment of the POCSO Act and criminalising the issue child pornography since the point of view itself is undoubtedly a bold step on the part of the Apex Judicial body to destroy the probabilities as well as possibilities of OCSA at the beginning by punishing the motive than waiting for the attempt to or commission of the offence.

7. Position of Indian Law on AI:

So far as the Indian legal framework is concerned, India is yet to have any sound development regarding this. It is presently at a maturing stage. So far as the up-to-date phenomena are concerned, the related legal

³⁵ Just Rights for Children Alliance v. S. Harish, 2024 INSC 716, ¶ 260, at 195-198.

development is confined to certain frameworks and other laws which are applicable to AI. In this context, it is relevant to mention that there is an ongoing proposal to enact legislation called the Digital India Act, which is intended to replace the existing Information Technology Act and regulate AI. It is proposed to define and regulate high-risk AI systems. However, the development is still in a handi-dori situation.

Apart from the stated proposed law, there is the National Strategy for AI, as launched by Niti Ayog in the year 2018 to serve as an inclusive approach to AI. This strategy played an important role in identifying several critical but national priority areas, which include, but are not confined to, education, agriculture, transportation, smart cities and healthcare. In certain cases, there has been successful execution of the recommendations of this National Strategy. Creating high-quality datasets for the purpose of promoting research and innovation, and constructing legislative frameworks for data protection and security are certain supportive instances in this regard.

In addition, the Principles for Responsible AI have also been drafted through Niti Aayog in February 2021, so as to examine ethical considerations connecting the implementation of AI solutions in India, pigeon-holed into system and societal considerations. However, any solid legislative development is yet to be reflected insofar as the Indian reality on AI regulation is concerned, and consequently, when it comes to the application of AI as a tool to curb the CSA, the absence of any solid legal framework to regulate AI has spontaneously given birth to an unavoidable challenge regarding the same. As a result, various questions like the feasibility of applying AI to prevent CSA in India, if so, to what extent and in what manner remain unanswered.

8. Conclusion:

At the end of this chapter, it can be drawn that there is no divergence of opinion on certain points. First of all, child sexual abuse by online means is not a myth but a reality. It is another reality that AI has the potential to

resist the same, and human civilisation has experienced the same in different parts of the world. In fact, India is also not lagging in this point. The Population Foundation of India took a lead role in this regard by developing an AI-driven chatbot called Snehai to provide information in respect of sexual reproductive health as well as child sexual abuse and exploitation in a communicative fashion by using stories, videos, GIFs and illustrations.³⁶

However, when it comes to the legal position, India has a mixed outcome. When at the one hand we are having one in hand legislation to deal with the offences of CSA by online means in the form of child pornography and the Apex judicial body also acknowledged the same to solidify its basis with certain suggested modifications, on the other hand not having any exhaustive legislation on the issue of AI kept the door of fragmentation open in so far as application AI is concerned to combat the practice of child sexual abuse and exploitation. Thus, the position of Indian law on addressing the issue of AI and its role in relation to preventing CSA is neither completely positive nor completely negative, but a combination of both.

In summary, both the Indian legislature and judiciary have recognised the risks of CSA enabled by technology. However, using AI as a solution is still in its early stages within the legal framework. This leaves opportunities for future legal development. The following suggestions outline a possible roadmap for India.

India needs a comprehensive AI law that clearly mandates the removal of child sexual abuse material and enforces strict penalties for non-compliance. Legislation should avoid loopholes. The UK's online safety bill can serve as a useful model.

- As long as an exhaustive legislation is not being developed, certain initiatives can be launched with the supportive activism of Niti

³⁶ WEPROTECT GLOBAL ALLIANCE (Nov. 14, 2024) <https://www.weprotect.org/resources/case-study/snehai-ai-chatbot-young-people-india/>.

Ayog. The initiative needs to be of such a type so that it can take a catalyst role towards the formulation of new laws and their enforcement.

- Wide-ranging awareness campaigns are required to be organised in different parts of India to promote consciousness amongst people about the fact that children are not their belongings and they can also be sexually abused, irrespective of gender. It must be propagated regularly that child sexual abuse imagery is illegal, and in case anyone sees sexually explicit images or videos of minors, they are free to report the matter by using the helpline number 1930 for the sake of bringing the same to the notice of the competent authority regarding the same, so that needful preventive action can be taken without undue delay.
- Keeping a symmetrical direction with the suggestions as developed through the Just Rights for Children Alliance & Anr. Judgement, the POCSO Act has to be amended to change the nomenclature of child pornography to child sexual abuse material. It is essential because the reason for the use of apt terminology is a condition precedent for combating CSA. The expression ‘child pornography’ spontaneously undermines the adverse impact of visualisation that can be caused by other sexual abuse materials upon children, and thus, the seriousness of the abuse does not get sufficient weightage. That is why, necessary amendments are required to be executed under the POCSO Act accordingly.

In summary, it can be noted that online child sexual abuse is a growing reality in several countries, including India, and AI is capable of becoming a strong restraint in this context, but for its practical implementation, it is highly essential to develop the legal system in the same direction. Otherwise, childhood will be threatened, and the concept of justice will face a justification crisis.

DILEMMAS IN ASIAN FEMINISMS: ASSESSING THE NEED FOR A COMPARATIVE APPROACH TO FEMINIST JURISPRUDENCE

Suman Dash Bhattamishra*

Abstract

Creating a robust field of Intra-Asian comparative dialogues in Feminist Jurisprudence is necessary to shape gender equality laws in Asia. Asian women face unique challenges which are best understood in their relative contexts. In this article, the author explores the distinct problems that monolithic feminist dialogues pose for women in multi-cultural Asian societies and the crossroads where Asian women confront gender-based disabilities. The slow and almost negligible development of feminist laws in this region is detrimental to the interest of Asian women, not just within Asia but also in other parts of the world and therefore, the author inquires into the possible merits of applying the comparative method while studying Feminist Jurisprudence. She tries to assess if such studies may be able to make Asian women more visible in Feminist discourses. She questions the portrayal of Asian women in Eurocentric feminist dialogues and explores if unconventional methods like reinterpretation of religious concepts may aid in a more sustainable feminist movement in this region and thereby create a stable platform for reformation of existing laws.

1. Locating the Need for a Comparative Method in Feminist Jurisprudence

Feminist Jurisprudence as a discipline brings together many methods, waves of thought, interpretation and processes of legal reasoning that stand on the common platform of Equality of the sexes. Although feminist theories are strung together by a common history of

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discrimination against women and the latter's rise against such inequality, they are also separated by context, culture and similar factors that have, created rifts in feminist ideologies at different points of time. Feminist studies today reveal that feminism *cannot* use a uniform method/approach that applies equally to all women and is therefore, satisfactorily responsive to their needs irrespective of their differences. For a long time, these differences among women were ignored as irrelevant because womanhood was considered to be a unitary concept, one that was not capable of mutations in form and content. Perhaps, it was felt that women had to be heard and it did not matter, *who* among them spoke and *who* were silenced. Whether a woman was White or Black, Asian or European, heterosexual or homosexual, did not matter to the discipline of Feminism yet; it affected the dynamics of Feminist Jurisprudence as a concept by narrowing down its reach and ambit. When Feminists used Law as a channel to get their rights enforced or as a medium to highlight discrimination, they projected certain dimensions of inequality which affected the majority of them, or those who were politically superior to others at a point of time. In the process, many other dimensions which mattered to the minority or to a politically more fragile (not necessarily smaller) group of women, were either left out or obliterated. Feminism then, was not free from classism and feminists were accused of silencing their very own. In the process, feminism became more paradoxical because although its objective was equality of the sexes, it suppressed voices from within, on the ground that they were different. Feminism was accused of creating a different kind of Inequality- one that came from treating unequal women as equal, thereby coercively obliterating differences that existed among them.¹

¹ Nancy Levit & Robert R.M. Verchick, *Feminist Legal Theories*, in Richard Delgado & Jean Stefancic (eds.), *Feminist Legal Theory: A Primer* (N.Y.U. Press 2006).

A. Singularity, Equality and Unity in Feminist Narratives: Flawed Beginnings

Feminist Jurisprudence evolved from feminist movements and therefore, the political action marking these movements carries a significant imprint on the concepts that evolved in this discipline.² For example, the emphasis of feminists in the first wave was on political rights of women which gave rise to the Equal Treatment theory that was rooted in the idea of Formal Equality.³ So, during this phase, the evolution of Feminist Jurisprudence was marked by the growth of rights- consciousness in the form of equal treatment of women as citizens, individuals and human beings, in general. During this phase, the idea of equality of opportunities and equal protection of women in law were premised on the principle that women should not be treated differently from men who were “similarly situated”.⁴ Formal equality abandoned all conceptions of natural differences between men and women.⁵ Natural Inequality as a proposition was rejected because these differences could be used to justify unequal treatment in law and therefore, had the potential to relegate women to a disadvantageous position.⁶ It is important to note that while furthering the cause of formal equality, accepting and celebrating it, feminists opened the doors for men being a point of reference to determine the manner in which women would be treated in society.⁷ The pre- condition to equal treatment was that women would be treated equally only so long as they were positioned in the same way as men.

Formal Equality was not enough to respond to the needs of women when they were situated “differently” from men, as for example, in situations

² Id. at 16.

³ Id. at 17.

⁴ Id. at 18.

⁵ Id. at 18.

⁶ Id. at 16.

⁷ Id. at 16.

of pregnancy or childbirth. Although this idea of equality has its disadvantages, the political movements that marked the first wave were fired by the desire of women to make their way in a man's world. Their objective was to be recognized first as human beings, who were not inferior to their male counterparts and were by all means, equal. The political movements that contributed to the manifestation of this theory were aimed at securing suffrage rights for women, their right to education, employment and their right to not be treated as chattels in a patriarchal society.⁸ Therefore, jurisprudentially, formal equality of men and women was a logical outcome of that political context. The first wave feminist movement dealt with issues that *unified* women in their disadvantages all over the world.⁹ However, as feminism grew and transitioned from the first to the second, third and fourth waves, differences in its folds started becoming more prominent and for many, the opening of a new dimension became an unavoidable necessity.

The second wave of feminism, traced back to the 1960s is said to have begun with the publication of Betty Friedan's book, "The Feminine Mystique"¹⁰ in 1963 who herself was influenced by the French feminist philosopher Simone de Beauvir's work, "The Second Sex." Simone's book had discredited Sigmund Freud's assertion that an individual's biological gender determines automatically his/her role in society.¹¹ Along the same lines, Betty argued that women were historically conditioned to believe that their social relevance was based on their ability to reproduce and perform domestic chores skillfully. Like

⁸ J.A. Fisher, *First Wave Feminism: The Movement That Is Taken for Granted*, Being Feminist (Apr. 30, 2013), <https://beingfeministblog.wordpress.com/2013/04/30/first-wave-feminism-the-movement-that-is-taken-for-granted/>.

⁹ Id.

¹⁰ Linda Napikoski, *The Feminine Mystique: Betty Friedan's Book Started It All*, ThoughtCo. (Sept. 30, 2017), <https://www.thoughtco.com/friedans-the-feminine-mystique-3528957>.

¹¹ Dasa Bisignani, *Feminism's Second Wave*, Gender Press (Jan. 27, 2015), <https://genderpressing.wordpress.com/2015/01/27/feminisms-second-wave-2/>.

Beauvir,¹² Betty argued that women's social conditioning and not their anatomy, was the barrier in women's self-discovery and emancipation, the immediate consequences of which was their exclusion from equal rights in society.¹³

The second wave is historically relevant in the fight against uniformity in Feminism. Social conditioning of women and the creation of a specific social image into which all women were expected to fit, was one of the major arguments made by feminists in the second wave. The feminists' portrayal of that image and their narration of attributes depicted by that image lay the foundation for one of the first major differences that members of the movement were forced to confront. This, along with other differences like undue emphasis on heterosexual relationships and willful blindness towards socio-political issues of lesbian women and women of colour led to further cracks in Feminism.¹⁴ In the history of feminism and Feminist Jurisprudence, the second wave left an indelible imprint of the need for accommodating diversity in feminist thought and philosophy. It forcefully drove home the point that femininity is not *one* but *many* in its connotation and therefore, a purely inclusive method could not be the preferred modality for expanding the movement.

B. Shifting tectonics: "Intersectional" and "Critical Race" Debates

As a reaction to the homogenizing impact of the second wave, the movement against "essentialism" in Feminism revealed what was being left out of "inclusive" feminist dialogues. Critical Race theories in Feminism emerged as a response to the inclusive approach. In the 1980s, a bunch of feminists called "anti-essentialists" argued that feminism can be best understood when it is approached not from the centre of an oppressed group's membership but from the margins.¹⁵ Their argument was that the centre of the feminist movement at that time comprised of a

¹² Id.

¹³ Id.

¹⁴ Betty Friedan Quotes, Goodreads, https://www.goodreads.com/author/quotes/21798.Betty_Friedan.

¹⁵ Levit & Verchick, *supra* note 1.

homogenous class of women who were predominantly white, middle-class and heterosexual.¹⁶ As a consequence, a significant section of women who did not have the characteristics of that group were left out of the feminist movement.

On the other hand, champions of inclusive feminism emphasized on the fact that women all over the world have the same issues and therefore, differences in origin, race, colour, etc. were not significant from the perspective of their common goal, i.e. emancipation from the dominance of men in a patriarchal world. Their primary argument was that intersectionality unnecessarily multiplies and complicates gender-based dialogues and has a divisive impact on feminist political movements and¹⁷ as a consequence, feminism loses its focus and unity and in the process it becomes less forceful in its impact. The argument is refuted by intersectional feminists on the premise that intersectionality is not a theoretical framework but an instrument by which diverse experiences of women may be assessed and understood.¹⁸

Intersectional dialogues in Feminism emphasize on the fact that inclusive feminism is incomplete and myopic in its method as it oversimplifies seriously complex issues of women by illicitly generalizing their disabilities.¹⁹ In the process of such generalization, feminism and feminist movements tend to cater to the needs of *some* and *not all* women around the world.

Kimberle Crenshaw, who coined the term ‘intersectionality’ in an essay written by her in 1989 famously drew the analogy of a traffic intersection

¹⁶ Id.

¹⁷ Alison Bailey, *On Intersectionality, Empathy and Feminist Solidarity: A Reply to Naomi Zack*, 19 J. Peace & Just. Stud. 15 (2008).

¹⁸ Id. at 23.

¹⁹ Id. at 16.

to explain disabilities of women²⁰. She pointed out that when cars are moving in and out of roads at intersecting points, an accident which takes place at an intersection could be because of any car coming from any direction, or sometimes few of them from many directions or even because of all of them.²¹ However, it is not always possible to reconstruct the accident and sometimes, it is even impossible to trace which driver caused the injury.²² She goes on to say that in a similar manner, women may suffer disabilities and discrimination not just because of their gender but also because of their race. Sometimes, it is impossible to figure out whether a certain injury was because of gender alone or because of the race as both the factors may have contributed to the injury simultaneously. In a later essay²³, Crenshaw made further inroads into the concept by discussing that problems may be faced by women because of them being situated at the intersections of gender, sexual orientation, race, identity politics or several other factors, in combination. Arguing in the same lines were scholars like Patricia Hill Collins who emphasized that intersectionality was an *analytical tool* to assess varied individual experiences in diverse and complex socio-political configurations and therefore, could not be ignored in a movement as overpowering as Feminism.²⁴ The underlying principle of perceiving women as living products of their context is useful in the study of Feminist Jurisprudence because when one employs this technique, women's oppression is not just seen from a dominant or singular perspective but is capable of being analyzed from many other aspects. This capacity to perceive problems in Feminist Legal Theory has been called "Multiple Consciousness" by

²⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139, <https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>.

²¹ *Id.*

²² *Id.*

²³ Sharon Smith, *Black Feminism and Intersectionality*, Int'l Socialist Rev. (2013), <https://isreview.org/issue/91/black-feminism-and-intersectionality>.

²⁴ Jingzhou Liu, *A Review of "Intersectionality" by Patricia Hill Collins and Sirma Bilge*, 49 Can. Ethnic Stud. 145 (2017), <https://muse.jhu.edu/article/658506/pdf>.

Mari Matsuda.²⁵

2. Dilemmas in “Asian Feminisms”

Dominant discourses and voices in feminism are widely and popularly categorized as Western or European and are often found to be unacceptable in various parts of the world; the same being true even for Asian societies. Legal theory tells us that for laws to be effective, they should not be entirely divorced from the social contexts they are meant for. In the formulation of legal principles, the value of historical, sociological and cultural forces cannot be entirely dismissed.²⁶ Feminism as a political movement is relevant to the discipline of Law because of the former’s contribution to the evolution of legal principles that not only constitute the body of Feminist Jurisprudence but also alter the texture of basic legal concepts. For example, as a discipline and theory of law, Feminist Jurisprudence changes the manner in which legal concepts like rights, entitlements, possession, personhood, etc. are interpreted. Likewise, Feminism acts as a medium of refraction for the idea of Equality and adds a spectrum of colours by including within its ambit not just discussions pertaining to women but various other socio-political phenomena, people and communities, which have direct or indirect impact on the lives and identities of women. For instance, LGBTQ+ movements are famously known to be linked with feminist movements, their emphasis being on equality before the law irrespective of sexual orientations and expressions. By doing so, these movements not only benefit women in general by liberating the concept of Equality from unreasonable *differentia* but also benefit people (other than women) irrespective of their gender identity. In course of its evolution and progressive development, Feminist Jurisprudence brings a massive change in the recognition of individuals by the State, their legal

²⁵ Id. at 27; see also Mari J. Matsuda, *When the First Quail Calls*, 11 Women’s Rts. L. Rep. 7 (1989); Neil Gotanda, *Reflections on Mari Matsuda’s Multiple Consciousness*, 18 UCLA Asian Pac. Am. L.J. 103 (2013).

²⁶ W. Friedmann, *Legal Theory* (Stevens & Sons Ltd. 1949).

personalities and capacities.

Read in this context, feminism, as some scholars point out, can be more appropriately termed “Feminisms.”²⁷ They argue that feminism is not a monolithic ideology, confined to a specific connotation.²⁸ Like water, feminism is fluid and has the ability to acquire the shape of the context it flows into.²⁹ Therefore, feminism loses its texture when standardized because this process of standardization stagnates it, thereby taking away one of its fundamental features, i.e., fluidity. In order to trace the development of Feminist Jurisprudence from an Asian perspective, it is necessary to understand what challenges the discipline confronts. Some challenges which are significant for the current analysis are discussed below.

A. Stereotypes and the difficulty of locating Asian Women in Mainstream Dialogues

A major challenge confronted in feminist dialogues is identifying the Asian woman. The Asian woman is either completely invisible in mainstream feminist dialogues or at best, stereotyped with a uniform set of attributes, irrespective of her geographical and socio-political contexts. When stereotyped, she is a reticent, submissive woman who is willing to sacrifice her identity, needs and desires for others.³⁰ In that case, she remains socio-politically irrelevant and mostly non-existent.³¹ Concomitantly and interestingly, there is a more infrequent phenomenon of a superficially positive stereotyping of Asian women. It creates the image of an Asian woman who is outgoing, smart, educated and progressive. She is the kind of woman who does not need to be

²⁷ Kamla Bhasin, *Feminist Reflections on Neo-Liberalism*, in Nursyahbani Katjasungkana & Saskia E. Wieringa (eds.), *The Future of Asian Feminisms* (Cambridge Scholars Publ'g 2012).

²⁸ Id.

²⁹ Id.

³⁰ Yoko Arisaka, *Asian Women: Invisibility, Locations and Claims to Philosophy*, in Naomi Zack (ed.), *Women of Color in Philosophy* (Blackwell 2000).

³¹ Id.

protected and is often considered to be as independent as a stereotypical middle class American woman. The problem with this group of women is that they are often blended and assimilated in the larger group of modern progressive women on the global platform.³² Once assimilated there are equally troublesome consequences: they become invisible as a group in the dominant culture and are simultaneously discarded by groups that are racially minor.³³ That poses difficulties for many women who are rejected in their respective social and public spheres back in their home countries or are expected to be submissive, polite and obedient globally, by colleagues, friends or employers from other parts of the world.³⁴

A combination of traditions, culture and social realities of Asian women leads to stereotyping of Asian women. For example, Yoko Arisaka points out examples from the Confucian tradition which according to him has impacted the creation of the Asian stereotype, particularly with respect to women.³⁵ Confucianism is practiced in many Asian countries like Korea, Japan, Taiwan, and Singapore as well as among Chinese immigrants who dominate populations in many parts of Asia. According to Arisaka, Confucianism values certain traits like obedience to authorities, submissive spirit, placing the needs of others before one's own needs, leading an unselfish life, etc. An extension of these basic human virtues is also reflected in the creation of several gendered virtues like for instance, obedience of the wife to her husband. Such practices have helped in the creation of a feminine image which is docile and reticent, submissive and suitable to the interests of a patriarchal hierarchy.³⁶ Arisaka's interpretation may be extended to all other

³² Id.

³³ Id.

³⁴ Yoonj Kim, *#NotYourAsianSidekick Is a Civil Rights Movement for Asian American Women*, Guardian (Dec. 17, 2013), <https://www.theguardian.com/commentisfree/2013/dec/17/not-your-asian-sidekick-asian-women-feminism>.

³⁵ Arisaka, *supra* note 30.

³⁶ Id.

religious/cultural denominations in Asia like Hinduism, Islam, Christianity, etc. to understand their impact on creating gender stereotypes. It is not argued here that religious values, norms and traditions in Asia contribute to actual weakening of women's position however, they play a role in creating perceptions of Asian women and are often exploited by patriarchs to dictate rigid social patterns for them.

The problem of extreme categorization leaves us looking for balance and obstructs the search for locating the true identity of Asian women. So, to the Western world, Asian women remain an insignificant and highly misunderstood category. Added to that, their race is perceived as a homogenizing influence and that by itself, exaggerates the problem of locating the image of Asian women. Another factor which contributes to the confusion is the lack of acceptance by the community of women who choose to liberate themselves from established traditions, practices and social mores within their own social groups. By labelling such women as "un- Asian" within their own societies, further problems are created with respect to their identity.

Due to these factors, Asian women remain a marginalized, vulnerable group on the global platform. Their portrayal often makes them more vulnerable than others to a certain category of offences, e.g. sexual offences that are committed against them not only because of their gender but also because of their race. In 1997, Yen Le Espiritu pointed out the numerous complications faced by Asian American women at the intersections of race, class and gender, due to which many of them are victimized by Asian American men. Espiritu further analyzed that in racial dialogues, Asian American men are often typically portrayed as effeminate and less masculine and such portrayal further works towards confirming the notion that manhood is white.³⁷ According to her, Asian American women have 'higher value of employability', which adds to

³⁷ Id.

the frustration of their male counterparts.³⁸ Consequently, Asian American men try to dominate their female counterparts by physically and mentally abusing them, mostly at home and other private spheres. Perhaps, Espiritu tried to indicate that the portrayal of Asian American women's femininity as extremely delicate and therefore, more feminine contrasted with the portrayal of men as less masculine add to the complication of their equations and one of the most deadly manifestations of this imbalance is violence against Asian American women by their male counterparts. She made use of a joke that is very common among men and women in this community and it goes as follows: "when we get on the plane to go back to Laos, the first thing we will do is beat up the women!"³⁹ The feminist made a very important point at this juncture and said that such problems are extremely complex for Asian American women as they find themselves at the crossroads of a dilemma: whether to raise their voice against dominance of men in their community and the consequent gender based discrimination which brings with it, multifarious manifestations and disabilities or to share the burden of their men in their fight against racial bias and prejudice towards the Asian American community in general.⁴⁰

B. Intersectional Factors, Heterogeneity and Diversity in Asian laws with respect to Women

As argued above, despite strong points of commonalities, Asian women are not a homogeneous population and the wide range of cultural, ethnic and religious differences play a significant role in creating polarities in Asian feminisms. For instance, if religion is taken as a parameter, issues of gender in Asia among the Muslim population are in many ways different from such issues among the Hindu population. Likewise, in different Asian countries, women belonging to the same religion may face very different disabilities. Even when the nature of disability is the

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

same, the degree and extent of it may be significantly different. For example, issues among the Muslim population in Pakistan are very different from those in India. To illustrate this further, the system of Triple Talaq (a modality of divorce among Muslims) in India has a completely different status from the same system in Pakistan. Likewise, dowry as a social practice is prevalent among both Hindus and Muslims in India whereas in many parts of Asia this practice is seen to be irrelevant among Muslims. It refers to the social practice of exchanging property, either movable or immovable, or valuable security, typically from the bride/family of the bride to the groom and his family.⁴¹ In India, the system of dowry is commonly practiced and to tackle the menace, dowry prohibition laws have been passed. The Dowry Prohibition Act, 1961 was one of the earliest laws to prohibit the practice of Dowry. In fact, in many Asian societies, a concept contrary to dowry is present which requires men to compensate the woman's family before the marriage takes place by making some gift in exchange of the marriage. This practice is termed "bride price"⁴² by anthropologists and is generally in the form of money, property or other wealth which is paid to the bride's family, especially their parents, in exchange of the prospective groom's right of marriage to the woman. Anthropologically, "bride price" has been connected with the economics of social life, meaning thereby that the groom makes a payment to the bride's family to compensate for the loss that the family is likely to suffer, due to loss of 'labour and fertility' in the kinship, group or community. While this practice is called *belis*⁴³ in Indonesia, in Thailand it is called *sinsod*.⁴⁴

⁴¹ Dowry Prohibition Act, 1961, § 2 (India).

⁴² Tanyalak Thongyoojaroen, *It's Time to Stop Paying the Bride Price*, UN Women (Asia & Pac.), <https://asiapacific.unwomen.org/en/news-and-events/in-focus/youth-voice/2018/tanyalak-thongyoojaroen/its-time>.

⁴³ Rodliyah et al., *Belis and the Perspective of Dignified Women*, 5 J. Educ. & Soc. Sci. (2016), http://jesoc.com/wp-content/uploads/2016/12/KC5_11.pdf.

⁴⁴ Id.

Scholars point out that the traditional practice has started acquiring new and vicious forms, as it is operating like a reverse system of dowry.⁴⁵ According to sociologists, it is possible to find both the practices of dowry and bride price in the same community.⁴⁶ Instead of property, wealth or money, bride price may also include bride-service, which refers to the service delivered by the groom or groom's family. The service may be delivered as part of bride price or in lieu of it. In Indonesia, the practice of "belis" has been now connected with socio-economic status of the families. A similar practice of bride price is found in Thailand which is called *sin-sod* and the amount of *sin sod* paid by a groom is often reflective of the social status of the bride.⁴⁷

It is interesting and significant to note how two contrary practices (dowry and bride price) can have a deleterious impact on the social position of women in their respective communities. The factors on which higher bride price is determined like sexual purity of the woman, her beauty, educational or social status are likely to have the impact of treating women as commodities. Similar factors play a role in determining the quantity of dowry to be paid in several Indian communities.

Both practices have contributed significantly to an increase in domestic violence against women in their respective communities, which raises serious questions on the assumption that financial or economic contribution of women to the household may play a significant role in improving their position in Asian families. Intra-Asian comparative studies on such issues may help in identifying and analyzing problems of Feminists and also, in the long run, make room for resolving them constructively. Likewise, comparative studies of traditional methods of settlement of domestic disputes in various Asian countries, emphasis on mediation by family members in matters of divorce and such other

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

patterns of social behaviour may help in comprehending escalation of gender-based violence and methods by which formal settlement of domestic disputes may be made more convenient for women.⁴⁸ In one of the reports in the *Tribun Bali*, the story of a married woman's violent physical abuse by her husband was published. Kate Walton, a feminist blogger narrates the heart-rending story⁴⁹ which throws light on the deleterious impact of delayed divorces and mutual, informal, family-based settlements on the lives of women victimized by their partners in marriages.

Kate's narration of domestic violence against married women in Thailand highlights that there are strong points of similarities in patterns of abuse of Asian women despite contrasting social practices with respect to marriage in various states. By dissecting these social phenomena instead of ignoring or isolating them and by analyzing their content together with Critical Race feminist theories, it may be possible to overcome the problems posed by heterogeneity in Asian Feminist Jurisprudence.

3. Reorienting Cultural Debates: Towards Contextualization

Asian feminists have categorically spelt out that they have serious problems with the manner in which women from this part of the world are represented and portrayed in Western feminist movement and literature.⁵⁰ Very accurately, Asian feminists point out that the representation of all violence against women as the product of an unchanging patriarchal structure of Asian families deprives feminist dialogues in this region from its complex historical and political contexts.⁵¹ For instance, Chandra Talapade Mohanty argues that when women's lives and struggles are studied without their historical context,

⁴⁸ Kate Walton, *A Wife's Nightmare in Bali*, Coconuts Bali (Sept. 10, 2017), <https://coconuts.co/bali/features/wifes-nightmare-bali-sheds-light-indonesias-hidden-domestic-violence-epidemic/>.

⁴⁹ Id.

⁵⁰ Chandra Talapade Mohanty, *Under Western Eyes*, 12 Duke U. Press 345 (1984).

⁵¹ Id.

they are segregated from a political strategy, which poses significant challenges in their pursuit for equality within their own social groups.⁵² By labeling such women as “un- Asian” within their own societies, further problems are created with respect to their identity. Mohanty’s emphasis on the need for a political strategy is crucial because feminist law-making is almost impossible without political strategies. When feminism grows as part of the socio-political and historical structures of the society, the path becomes relatively easier for women. Not only that, gender equality is likely to become more promising and durable in such societies as the change is organic and therefore, deep.

The outright rejection of Asian culture, its norms, values and traditions as inherently anti-feminist, unequal and therefore, obsolete creates a barrier between Asian women and modern feminist movements as the latter are then, represented as foreign or alien ideas, warranting rejection. An even more hazardous impact of this approach is that with the rejection of ideas comes an equally forceful rejection of reforms in the legal framework, making it even more difficult for Asian feminists to make and execute progressive laws. A brilliant example of this is the problem faced by Asian feminists in creating anti-domestic violence laws in various states of this region. In fact, in many Asian states, feminists are struggling for mere recognition of domestic violence as a crime.

Stereotyping tends to work as a double-edged sword so far as Asian ‘feminisms’ are concerned. While on the one hand, Western feminists stereotype Asian women, on the other hand, stereotyped yet diverse Asian women struggle to carve out a distinct territory for themselves within the movement and in the process, there is a significant and deep disconnect between the two. Feminism loses its meaning and purpose in the maze created by the conflict among its many beneficiaries as it struggles to achieve the very objective it stands to accomplish, i.e.

⁵² Id.

Equality.

In order that feminism may work without being rejected as alien to Asian communities, it is necessary that the idea of equality may be studied in its socio-historical context in various Asian states. One way of accomplishing it is by reinterpretation of religious texts to inspire faith in the community about feminism being deeply rooted in every social structure. For example, in recent times, a segment of Indonesian feminists have been reinterpreting the Quran to demonstrate how Islam promotes the cause of equality of women.⁵³ Explaining the potential of female religious heads on feminist movements, Andrea Ó Súilleabháin profiles Inayah Rohmaniyah, a female Imam in Thailand, whose method of bringing equality to Thai women is by reinterpretation of the Quran.⁵⁴

The argument of women like Rohmaniyah is that feminism, religion and human rights activism need not necessarily exclude each other. On the other hand, they argue that ideas of equal and humane treatment of human beings irrespective of their gender are inherent in the spirit of Islam and every other religion but these concepts have been distorted to benefit fundamentalists and extremists.⁵⁵ According to this bunch of feminists, their strength lies in the fact that they come from the same community and can quote the same verses back to their male counterparts to argue that the interpretation of the latter is flawed and therefore, against religious prescription.⁵⁶ By doing so, feminism is easily accepted as something fundamental and not foreign to the community.

Since religions dominate the understanding of Gender equality, it may

⁵³ Andrea Ó Súilleabháin, *New Report Captures Wave of Homegrown Feminism in Indonesia*, IPI Global Observatory (May 9, 2013), <https://theglobalobservatory.org/2013/05/indonesias-religious-feminism-counters-extremism/>.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

not be entirely out of place to carve out the notion of Gender equality from a religious perspective in many Asian states.⁵⁷ While many religions talk about men and women being blessed with different strengths and weaknesses, the Asian notions of formal equality are not the same as that of the West. Asian cultures have valued human beings for their varied strengths. It would not be correct to assume that a formal, complete equality of men and women was always perceived. That does not however mean that Asian cultures inherently disregard or undermine the status of a certain sex. What the author intends to indicate is that in Asian societies there has been a historical stratification of the male and female population in terms of their social role, responsibilities and duties. For example, in many Asian countries, historically women have been ascribed a more prominent role in household chores and their abilities have been defined by their deftness in certain categories of arts and skills. Traditionally, Asian societies have distinguished between men and women having abilities that are different and in certain social phases, these abilities have been considered to be complementary to each other.⁵⁸ However, this demarcation of abilities has also played a prominent role in downplaying the social relevance of women on many occasions because of the nature of work that they were typically associated in such societies.⁵⁹ The category of skills by which women's abilities have been judged in many Asian societies are such that they do not indicate direct economic or political benefits, thus relegating the status of women to the background on many occasions.

It is important to realize that equality as a concept is not the dominion of one movement, geography, nationality or segment. Over a period of time, across societies, inequality on the basis of gender has been the output of patriarchal social structures, which were present in all societies alike. The portrayal of Asian societies as fundamentally detrimental to the progress

⁵⁷ Leti Volpp, *Feminism versus Multiculturalism*, 101 Colum. L. Rev. 1181 (2001).

⁵⁸ Id.

⁵⁹ Id.

of women can be replaced by a more meaningful re-interpretation of existing norms and values and this is possible when mainstream feminist movements allow space for indigenous feminisms to grow within these societies.

So as to conclude, intra-Asian comparative dialogues in Feminist Jurisprudence are necessary in order to enhance the visibility of Asian women. They may also enable Asian feminists to overcome problems stemming from homogeneity and appreciate intersectional factors in Asian feminism. The true ambit of Feminist Jurisprudence can be assessed only when there is a sharing platform in the form of comparative studies in this discipline and so, it goes without saying that Comparative Feminist Jurisprudence will enable Asian women to understand their feminisms better and support them in carving out their distinct identity in the struggle for equality.

THE WATCHED WEB: CENSORSHIP, SURVEILLANCE AND THE SHRINKING SPACE FOR DIGITAL FREEDOM

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“Big Brother is watching you.”

-George Orwell, 1984 (1949)

1. Introduction

When the World Wide Web was invented by Tim Berners Lee, even he was not aware of how his creation might change the world forever and usher in a technological revolution. Today, the internet has become much more than just a means of carrying information from one part of the world to another. It has become a powerful tool for people to express their opinion, to mobilize and to raise their voice against injustice. However, it is also true that global internet freedom has been free-falling for multiple years now.¹ Although the digital age holds great promise, states increasingly seek to hinder the free flow of information and curb dissent to consolidate their own power. Therefore, scholars now debate as to whether the internet serves to promote the welfare of the people or to curb their interests.²

There are also concerns regarding surveillance and press freedom. There has been an increase in harassment faced by journalists online in the form of trolling, blogging, 47eapon, etc.³ Human rights defenders have also been found to be particularly vulnerable to surveillance and privacy

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¹ JACOB MCHANGAMA & JOELLE FISS, THE DIGITAL BERLIN WALL: HOW GERMANY (ACCIDENTALLY) CREATED A PROTOTYPE FOR GLOBAL ONLINE CENSORSHIP 3 (Justitia & Authors 2019).

² Margaret E. Roberts, *Resilience to Online Censorship*, 23 ANN. REV. POL. SCI. 401, 402 (2020).

³ Silvio Waisbord, *Mob Censorship: Online Harassment of US Journalists in Times of Digital Hate and Populism*, 8(8) DIGITAL JOURNALISM 1030, 1030 (2020), <https://doi.org/10.1080/21670811.2020.1818111>.

threats.⁴ Many countries now mandate age verification, arguing that children need to be protected from the harms of the internet, and countries like the UK are implementing mandatory age verification.⁵ Companies like YouTube are also following suit,⁶ further sparking concerns around digital surveillance. Therefore, it becomes more important than ever now to closely examine the relationship between internet censorship, privacy and human rights.

2. Features of Censorship

2.1. Cost of Censorship

Censorship essentially blocks or prevents the flow of free information. In order to access information blocked by censorship, users usually have to circumvent it using alternate methods or tools. This, therefore, deters the average user from accessing information which would usually be easily accessible. Hence, it would be apt to say that censorship incurs a cost upon people trying to access information freely.⁷

Censorship can affect the behaviours and political beliefs of people. The flow of information that reaches an individual plays a great role in forming their political opinion. Therefore, political opinion can be swayed with censorship. Fear is also one of the costs that censorship imposes upon people.⁸ The threat of punitive action by the State for accessing information that is restricted is a deterrent used by various countries such

⁴ TANYA NOTLEY & STEPHANIE HANKEY, *Human Rights Defenders and the Right to Digital Privacy and Security*, in HUMAN RIGHTS AND INFORMATION COMMUNICATION TECHNOLOGIES: TRENDS AND CONSEQUENCES OF USE 157 (Jonathan A. Obar ed., IGI Glob. Sci. Publ'g 2013).

⁵ Ryan Browne, *Why the U.K. Age-Verification Law Has Led to Backlash*, CNBC (Aug. 12, 2025), <https://www.cnbc.com/2025/08/12/why-the-uk-age-verification-law-has-led-to-backlash.html>.

⁶ Clare Duffy, *YouTube Will Start Using AI to Guess Your Age. If It's Wrong, You'll Have to Prove It*, CNN (Aug. 14, 2025), <https://edition.cnn.com/2025/08/13/tech/youtube-ai-age-verification>.

⁷ MARGARET ROBERTS, *CENSORED: DISTRACTION AND DIVERSION INSIDE CHINA'S GREAT FIREWALL* 45 (Princeton Univ. Press 2018).

⁸ *Id.*

as China, Saudi Arabia, Russia and Iran.⁹ These punishments may range from heavy fines to imprisonment. The States also flood the information as a means of censorship. This is achieved through propaganda by filling the online landscape with messages, posts, blogs, etc., which align with the State's ideology, thereby suppressing other information.¹⁰ Censorship can also be imposed by making information harder to access through restrictions and bans. This sort of censorship has been termed as friction by scholars.¹¹

States also employ various methods and tools of censorship to restrict or prevent the free flow of information on the internet.¹² These measures range from internet shutdowns, whether partial or complete, to DNS blocking (including DNS manipulation), IP blocking that restricts access to specific addresses, and remote HTTPS blocking.¹³

2.2. Key Factors behind Censorship

A country's ruling system plays a crucial role in driving online censorship. Authoritarian regimes, which deprive their citizens of freedoms and rights, do so to stay in power and curb dissent without much opposition.¹⁴ In contrast, there is more opposition and debate around the issue of internet freedom in democratic nations.¹⁵ Whether a country is democratic or has

⁹ Adrian Shahbaz, *Freedom on the Net 2018: The Rise of Digital Authoritarianism*, FREEDOM HOUSE (Oct. 2018), <https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism>.

¹⁰ *Supra* note 81.

¹¹ *Id.*

¹² Alexander Master & Christina Garman, *A Worldwide View of Nation-State Internet Censorship*, 2023 FREE & OPEN COMM'NS ON THE INTERNET 1, 1 (2023).

¹³ Ram Sundara Raman, Prerana Shenoy, Katharina Kohls & Roya Ensafi, *Censored Planet: An Internet-Wide, Longitudinal Censorship Observatory*, in PROCEEDINGS OF THE 2020 ACM SIGSAC CONFERENCE ON COMPUTER AND COMMUNICATIONS SECURITY 49, 50 (Oct. 2020).

¹⁴ Vasilis Ververis, Sophia Marguel & Benjamin Fabian, *Cross-Country Comparison of Internet Censorship: A Literature Review*, 12 POLICY & INTERNET 450, 468 (2020).

¹⁵ Yana Breindl & Joss Wright, *Internet Filtering Trends in Liberal Democracies: French and German Regulatory Debates*, 2 INTERNET POL'Y REV. 6, 6–7 (2013), <https://doi.org/10.14763/2013.2.122>.

signed international agreements that ensure universal freedoms is also a significant factor in the level of online censorship imposed by that country.

The institutional framework of a state directly affects online censorship. Where constitutional checks and balances are present and institutional safeguards are strong, it is less likely that such a state would impose harsh forms of censorship.¹⁶ Where there is a lack of separation of powers, internet censorship is more likely to be prevalent. The level of technological advancement of a state also contributes to the level of censorship. If a state is technologically advanced, it does not have to rely on traditional or hard censorship and can subtly ensure censorship without letting the citizens be aware.¹⁷ It will also affect whether citizens are able to circumvent censorship easily or not.

The cultural identity of a state is also a key factor that influences censorship domestically. This affects what is accepted as part of national identity, religion or historic identity of the nation and what is deemed to be necessary to be censored.¹⁸ The moral and cultural values of a country also decide the degree of freedom and the limitations on speech and expression. Lastly, political opportunity is also a driver of censorship. Whether it is to stay in power to deter destabilisation or for the sake of national security, countries have used political opportunities to push for stringent legislation and a higher degree of censorship to control information.¹⁹

¹⁶ Stephen A. Meserve & Daniel Pemstein, *Google Politics: The Political Determinants of Internet Censorship in Democracies*, 6 POL. SCI. RES. & METHODS 245, 250 (2018).

¹⁷ *Supra* note 88, at 468.

¹⁸ Mustafa Akgül & Melih Kırılıdoğ, *Internet Censorship in Turkey*, 4 INTERNET POL'Y REV. 1, 14 (2015).

¹⁹ PAUL LASHMAR, *Crying Wolf: Invoking "National Security" as Grounds for Censorship*, in THE ROUTLEDGE COMPANION TO FREEDOM OF EXPRESSION AND CENSORSHIP 17, 17–18 (John Steel & Julian Petley eds., Routledge 2023).

3. The Effect of Censorship and Surveillance

Human rights defenders and activists are the people who bear the brunt of online censorship and surveillance.²⁰ Since the declaration of human rights defenders by the UN in 1998, the term human rights defenders has become popularised for people who safeguard and promote human rights. People have been targeted for using digital technology to highlight human rights abuses. For example, protesters in Burma and Iran are heavily targeted by the State, where footage from news and other media sources was used to identify the protesters who were then subsequently detained, arrested or tortured.²¹

State surveillance has also been hinted at by evidence that substantiates claims of persons facing surveillance activities and being systematically monitored in the UAE and Egypt.²² Many countries also make use of the Pegasus software, which is a military-grade surveillance tool available only to States. Concerns have been raised as the software has been found on the phones of journalists and activists around the globe.²³

Censorship can not only influence the perception of the masses, but it also influences their beliefs and choices. It has been seen that in Russia, censorship has resulted in the perception of the ruling government becoming more favourable while the opposition continues to slide backwards in terms of voter share.²⁴ In Germany during the Nazi reign, propaganda seemed to be effective as the support for the Nazi party was

²⁰ Jennifer Earl, Thomas V. Maher & Jennifer Pan, *The Digital Repression of Social Movements, Protest, and Activism: A Synthetic Review*, 8 SCI. ADVANCES eabl8198, 1 (2022).

²¹ Sam Gregory, *Cameras Everywhere: Ubiquitous Video Documentation of Human Rights, New Forms of Video Advocacy, and Considerations of Safety, Security, Dignity and Consent*, 2 J. HUM. RTS. PRAC. 191, 206–07 (2010).

²² NOTLEY & HANKEY, *supra* note 4, at 163.

²³ Richard A. Wilson, *Digital Authoritarianism and the Global Assault on Human Rights*, 44 HUM. RTS. Q. 704, 711 (2022).

²⁴ Ruben Enikolopov, Maria Petrova & Ekaterina Zhuravskaya, *Media and Political Persuasion: Evidence from Russia*, 101 AM. ECON. REV. 3253, 3253 (2011).

likely to be high in areas where propaganda was prominently spread.²⁵ It is also evident that in Rwanda, media control played a huge role in perpetuating and facilitating the genocide, which resulted in the killing of the Tutsi population.²⁶

It has also been seen that where there is a likelihood of backlash from the government for protest and criticism, even politically aware citizens tend to self-censor themselves. Since the state employs coercion, force and the aid of legislation, individuals tend to weigh the benefits of criticism against its harms. In the event that the cost of criticising online far outweighs the benefits, people tend to self-censor.²⁷ It has also been observed in regimes where criticism of authority is not permitted and is often brutally suppressed, satire, irony, dark humour and memes are employed by people to indirectly voice their criticism under the guise of humour.²⁸

Another form of digital censorship and surveillance is the collection of private data of individuals. One such concern emerges from the practice of age verification employed by governments and websites around the world. There have been concerns regarding privacy and data breaches raised in light of these developments, as well as recent data leaks, like the one surrounding the Tea app.²⁹ Scholars argue that although such reforms may be well-intentioned and aim to safeguard children, these may be politically

²⁵ Maja Adena, Ruben Enikolopov, Maria Petrova, Veronica Santarosa & Ekaterina Zhuravskaya, *Radio and the Rise of the Nazis in Prewar Germany*, 130 Q. J. Econ. 1885 (2015), <https://www.jstor.org/stable/26372641>.

²⁶ Angela Hefit & Jonas L. Ausserladscheider, *From Hate Speech to Incitement to Genocide: The Role of the Media in the Rwandan Genocide*, 38 BU INT'L L.J. 1, 1 (2020).

²⁷ Elvin Ong, *Online Repression and Self-Censorship: Evidence from Southeast Asia*, 56 GOV'T & OPPOS. 141, 142 (2021).

²⁸ Siu-Yau Lee, *Surviving Online Censorship in China: Three Satirical Tactics and Their Impact*, 228 China Q. 1061, 1062 (2016).

²⁹ Henry Chandonnet & Sydney Bradley, *Tea App Hit with 2 Class-Action Lawsuits After a Data Breach Exposed Private Messages and 72K Images*, BUSINESS INSIDER (July 29, 2025), <https://www.businessinsider.com/tea-dating-app-two-class-action-lawsuits-following-data-breach-2025-7>.

motivated. Therefore, this might lead to surveillance and censorship of minority communities and the vulnerable under the guise of protecting the welfare of children.³⁰

4. Censorship Around the World

4.1. Pacific Islands

The free dissemination of information on the internet has recently been under increased government control in the Pacific Islands. With an increasing number of internet users, the challenge to regulate internet usage has also emerged in these countries due to instances of bullying, harassment and defamation coming forward. The governments of the Pacific, therefore, cite reasons such as national security or protection of public morality as reasons to tighten their grip over the internet.³¹ In countries such as Fiji, Nauru and Papua New Guinea, there has been an increase in stringent legislation as well as attacks on the freedom of expression. There have been concerns raised regarding the Online Safety Act of 2018, passed by the Parliament of *Fiji*.³² As the country is still recovering from its 2006 military coup, the media framework in Fiji still finds itself fragile.³³

The Cybercrime Code Act 2016, passed by the *Papua New Guinea* government, has also been under scrutiny by activists and opposition,³⁴ as it came after the PNG spring, which saw the use of social media to express

³⁰ Annaleigh Hobbs, *Think of the Children! Unmasking the Rhetoric Behind Internet Censorship in the Digital Age*, 89 MO. L. REV. 967, 981 (2024).

³¹ Romitesh Kant, Jason Titifanue, Jope Tarai & Glenn Finau, *Internet under Threat?: The Politics of Online Censorship in the Pacific Islands*, 24 PAC. JOURNALISM REV. 64, 65 (2018).

³² Luke Nacei, *Online Safety Bill Passed*, THE FIJI TIMES (May 17, 2018), <https://www.fijitimes.com.fj/online-safety-bill-passed/>.

³³ Alex Perrottet & David Robie, *Pacific Media Freedom 2011: A Status Report*, 17 PAC. JOURNALISM REV. 148, 148 (2011).

³⁴ *Proposed PNG Cyber Crime Law an Attempt to Shut Down Criticism: Namah*, RNZ (2014), <https://www.rnz.co.nz/international/pacific-news/241559/undp-to-pay-ha%27apai-cyclone-victims-to-clean-debris>.

political dissent by the people of Papua New Guinea.³⁵ The act has been criticised on the point that it contains no express provisions that guarantee freedom of expression. The history of the legislation has also been marred by a series of issues, such as the survey, which was conducted for the purpose of forming cybercrime policy, only had around 300 participants, whereas the population of the nation is over 7 million.³⁶ The country had also contemplated a temporary ban on Facebook under the act.

In *Nauru*, the government revealed their plans to bring new cybercrime laws in 2015. The government claimed that websites with pornographic content need to be blocked to protect children. The government used the nation's only internet service provider for the purpose of blocking particular websites. Consequently, Facebook had also been banned in the country, which was opposed by the people, as concerns regarding the government's ulterior motives behind the bans were running high.³⁷ It has been seen that before 2015, the government had raised the application fee for visas to journalists up to 4000% to limit media coverage of detention centres containing refugees in the country.³⁸ Amnesty International has raised concerns about the neglect, violence and assault on the refugees while in detention.³⁹ Therefore, it can be inferred that the government of Nauru wishes to stifle dissent and political opposition.

³⁵ Sarah Logan, *Rausim!: Digital Politics in Papua New Guinea*, SSGM Discussion Paper 2012(9), The Australian National University (2012).

³⁶ *Supra* note 105, at 70.

³⁷ Paul Farrell, *Facebook Blocked on Nauru Due to 'Paranoia' About Media Scrutiny, Says Former President*, THE GUARDIAN (May 4, 2015, 4:11 a.m. CEST), <https://www.theguardian.com/world/2015/may/04/facebook-blocked-on-nauru-due-to-paranoia-about-media-scrutiny-says-former-president>.

³⁸ Bridie Jabour & Daniel Hurst, *Nauru to Increase Visa Cost for Journalists from \$200 to \$8,000*, THE GUARDIAN (Jan. 9, 2014), <https://www.theguardian.com/world/2014/jan/09/nauru-visa-to-cost-8000>.

³⁹ Amnesty Int'l & Human Rights Watch, *Australia: Appalling Abuse, Neglect of Refugees on Nauru*, PRESS RELEASE (Aug. 2, 2016), <https://www.amnesty.org/en/latest/press-release/2016/08/australia-abuse-neglect-of-refugees-on-nauru>.

4.2. Asia

Many countries in Asia have also experienced an uptick in online censorship and surveillance. Pakistan has seen the blocking of 800,000 websites in just a period of 1 year, from 2018 to 2019. These websites contained political, social and religious content. Websites which hosted blasphemous content or similar information have been blocked.⁴⁰

Singapore has used a wide array of laws to suppress political opinions and criticism. The country can be considered to be authoritarian.⁴¹ There have been crackdowns on activists who have accused the prime minister of corruption and posted dissenting views on the internet, including YouTube and Facebook. All of these instances were punished under laws which did not have any direct correlation with online speech. Laws such as the Penal Code's Section 298 and the Administration of Justice (Protection) Act of 2016 were used to charge the perpetrators.⁴²

In *Thailand*, the Cybercrime Act has been used by the government to criminalise opinions that are critical of the government. The rationale behind similar laws is given that their intention is to uphold law and order in society.⁴³ The legislation is intentionally broadly worded to provide a large amount of discretion to the government. It is worth noting that various countries in Asia, which include democracies as well as autocracies, make use of pre-existing colonial-era laws in conjunction with new legislation to restrict free speech online.⁴⁴

⁴⁰ MD. NURUL MOMEN, *Freedom of Expression in the Digital Age: Internet Censorship*, in THE PALGRAVE ENCYCLOPEDIA OF GLOBAL SECURITY STUDIES 3, 1–4 (Palgrave Macmillan, Cham 2019).

⁴¹ DIANE K. MAUZY & R.S. MILNE, SINGAPORE POLITICS UNDER THE PEOPLE'S ACTION PARTY 128–42 ROUTLEDGE (2002).

⁴² *Supra* note 101, at 146.

⁴³ Thomas Pepinsky, *Southeast Asia: Voting Against Disorder*, 28 J. DEMOCRACY 120, 120 (2017).

⁴⁴ Association for Progressive Communications, *Unshackling Expression: A Study on Laws Criminalising Expression Online in Asia*, GLOBAL INFO. SOCIETY WATCH, SPECIAL ED., 25–26 (2017).

Satirical artists and their work have come under fire for covering corruption scandals in Malaysia. Comedians and activists Fahmi Reza and Zunar were targeted by the government.⁴⁵ Although the situation in Malaysia is less difficult compared to other countries in the region.⁴⁶

4.3. India

Article 19 of the Constitution provides the fundamental right of speech and expression to its citizens. It also, however, places “reasonable restrictions” on this right in the interest of the nation.⁴⁷ Various precedents by the apex court have also upheld and protected this right, including the right to criticise public figures.⁴⁸ Despite these provisions, the nation ranks 133rd among 180 nations in the global press freedom index.⁴⁹

Article 19 of ICCPR and Article 19 of the UDHR both provide for the freedom of expression and opinion. There are limitations to these freedoms, provided that they are legal, carry a legitimate objective and are necessary and proportional.⁵⁰ India has found itself imposing internet bans during different times for a variety of reasons in areas such as Kashmir, Gujarat, etc., which, according to scholars, fail the proportionality test laid down by the UDHR and ICCPR.⁵¹

⁴⁵ James Griffiths, *The Cartoonists Who Helped Take Down a Malaysian Prime Minister*, CNN (May 28, 2019), <https://www.cnn.com/style/article/malaysia-1mdb-najib-zunar-fahmi-reza-intl/index.html>.

⁴⁶ *Supra* note 101, at 152.

⁴⁷ INDIA CONST. art. 19(2).

⁴⁸ ARPAN BANERJEE, *INTERNET CENSORSHIP IN INDIA: THE LAW AND BEYOND*, IN *DIGITAL DEMOCRACY IN A GLOBALIZED WORLD* 331, 325–42 (Edward Elgar Publishing 2017).

⁴⁹ Reporters Without Borders, *Press Freedom Index* (2025), <https://rsf.org/en/index>.

⁵⁰ G.A. Res. 217A (III), Universal Declaration of Human Rights, art. 29(2) (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 19(3), Dec. 16, 1966, 999 U.N.T.S. 171.

⁵¹ Pranesh Prakash, *Internet Blocking and Shutdowns in India and International Human Rights Law*, 5 INDIAN PUBLIC POLICY REV. 38, 42 (2024).

4.4. Middle East

Thanks to the rising popularity of social media, the Middle East saw increasing social activism online in a phenomenon which was termed the *Arab Spring*.⁵² In the wake of the Arab Spring, various countries in the region expanded the scope of their internet censorship. *Egypt* has been blocking certain websites which are political in nature and host content which can be deemed critical of the government. Since then, the list of URLs that are being blocked in Egypt has ballooned beyond 100. The reason given by the government is that these websites are affiliated with terror groups or are responsible for disseminating false news. News sources and sites that are blocked by Egypt include official Qatari media websites.⁵³

Iran regularly blocks websites which criticize its foreign policy in the region. Some of the nations whose websites get blocked are Kuwait, Saudi Arabia, Lebanon and Bahrain. In return, Saudi Arabia and the UAE block access to internet sites which are affiliates of Hezbollah or Iran.⁵⁴

4.5. Africa

In recent years, Africa has seen an emergence of Internet blackouts at an increasing rate. In many African states, social media is either state-owned or kept in line by the government with the threat of licence revocations. For example, in *Ethiopia*, the state owns a monopoly over telecommunications through the company *Ethio Telecom*. Accusations have been made against the state-run entity for disrupting the internet and connectivity during times of political protests.⁵⁵ Another example comes

⁵² Gabriel Wolfsfeld, Eytan Segev & Tamir Sheafer, *Social Media and the Arab Spring: Politics Comes First*, 18 INT'L J. PRESS/POLITICS 115, 118 (2013).

⁵³ Jonathan L. Zittrain, Robert Faris, Helmi Noman, Justin Clark, Casey Tilton & Ryan Morrison-Westphal, *The Shifting Landscape of Global Internet Censorship*, BERKMAN KLEIN CTR. RESEARCH PUBL. 2017-4, 17 (2017).

⁵⁴ *Id.*

⁵⁵ "Such a Brutal Crackdown": Killings and Arrests in Response to Ethiopia's Oromo Protests, HUMAN RIGHTS WATCH, (2016), <https://www.hrw.org/report/2016/06/16/such-brutal-crackdown/killings-and-arrests-response-ethiopias-oromo-protests>.

from *Eritrea*, where *EriTel*, the government-owned company, controls the internet as the ISPs in the country are mandated to utilise the government-authorised gateway.⁵⁶

Cameroon has been seen utilising internet shutdowns frequently. In 2011, the government restricted the *Twitter via SMS* service as the government anticipated mass protests near election time. The government justified the block citing national security concerns. The action was heavily criticised by international organisations.⁵⁷ The government in 2017 implemented another shutdown that lasted almost 90 days, followed by another ban 6 months later.⁵⁸ Similarly, in *Zimbabwe*, there was a WhatsApp outage in the country after activists were using social media to organise a countrywide shutdown in 2016. Despite the denial of any involvement by the government, it was believed by activists that the blackout was a deliberate act, as WhatsApp constituted an impressive 34 per cent of data on the internet in the country.⁵⁹

In *Nigeria*, the Cybercrimes (Prohibition and Prevention) Act of 2015 and the Freedom of Information Act of 2011 are some of the instruments used by the government to maintain control over the internet. These laws deal with the prevention, detection, prosecution, and punishment of cybercrimes and the transmission, retention or reproduction of classified information, respectively.⁶⁰ The nation has witnessed several internet

⁵⁶ William Gumede, *Rise in Censorship of the Internet and Social Media in Africa*, 8 J. AFR. MEDIA STUD. 413, 415 (2016).

⁵⁷ Press Release, *Access Now Files Supporting Intervention in Renewed Legal Challenge to Internet Shutdown in Cameroon*, ACCESS NOW (Aug. 2, 2018), <https://www.accessnow.org/press-release/access-now-files-supporting-intervention-in-renewed-legal-challenge-to-internet-shutdown-in-cameroon/>.

⁵⁸ Floribert Patrick C. Endong, *Internet Blackouts in Africa: A Critical Examination, with Reference to Cameroon and Nigeria*, 1 DIG. POL'Y STUD. 39, 45 (2022).

⁵⁹ *Supra* note 130, at 416.

⁶⁰ DESMOND ONYEMECHI OKOCHA, MAUREEN CHIGBO & MELCHIZEDEC J. ONOBE, *Digital Authoritarianism in Postcolonial Nigeria: Internet Control Techniques and Censorship*, in SUB-SAHARAN POLITICAL CULTURES OF DECEIT IN LANGUAGE, LITERATURE, AND THE MEDIA, VOLUME II: ACROSS NATIONAL CONTEXTS 237 (Esther Mavengano & Isaac Mhute ed., Springer Nature Switzerland 2023).

shutdowns, with the latest being the Twitter shutdown in 2021, with critics stating that the state labels all posts and information not posted by them as fake and illegitimate.⁶¹

4.6. Turkey

Turkey scores low regarding Internet freedom as per the published Freedom House report. Law 5651 has been used by the Turkish government to curb internet freedom and increase online censorship and surveillance.⁶² Although the law has been declared to be against the European Convention on Human Rights, it has been amended multiple times to increase its scope.⁶³ The country has banned YouTube multiple times and has also banned Facebook and Twitter temporarily. Additionally, various media outlets that are left-leaning and supportive of the Kurds find themselves blocked by the government, accused of spreading propaganda. The country had even banned Wikipedia until the constitutional court of the country ordered the lifting of the ban.⁶⁴

4.7. Russia

Russia, rather than increasing its efforts to block internet access, has shifted its focus towards flooding the internet and social media with propaganda that is pro-government in nature. Russia has been found to operate political bots on Twitter to promote certain news articles.⁶⁵ Scholars highlight that due to the lack of independent media in Russia, the ruling party receives more votes while the vote share of the opposition decreases.⁶⁶

⁶¹ *Id.* at 131.

⁶² Akgül & Kırılıdoğ, *supra* note 18, at 5–7.

⁶³ Burak Begüm, *Human Rights Violations in Cyberspace: Internet Censorship and Online Surveillance in Turkey*, 6 CYBERPOLITIK J. 202, 208 (2021).

⁶⁴ *Id.*

⁶⁵ Denis Stukal, Sergey Sanovich, Richard Bonneau & Joshua A. Tucker, *Detecting Bots on Russian Political Twitter*, 5 BIG DATA 310, 318–20 (2017).

⁶⁶ *Supra* note 97, at 711.

4.8. China

For centuries, China has embraced isolationism as a policy. The same has been translated into cyberspace as China heavily censors online websites and content. In fact, most of the practices used by States around the world for online censorship and surveillance can be traced back to China. China achieves its goals of censorship and surveillance through the Great Firewall and the Golden Shield Project, respectively. The country censors and blocks all foreign content and prevents users from accessing certain sites altogether.⁶⁷ For their surveillance system, the State makes use of street surveillance cameras, digital surveillance tools, a population database and facial recognition software.⁶⁸ China also employs the same technique as Russia when it comes to flooding the internet with propaganda. There are also groups which advocate for the government and can be categorised as patriotic trolls. Demonising and smearing the names and reputations of human rights defenders is a common occurrence.⁶⁹ With such rigid censorship exercised by the state, where outright criticism could even be punished, Chinese citizens have turned to satire to express their discontent.⁷⁰

5. Age Verification and the Concerns around Privacy

Today, children find themselves online more than ever, with them seeking entertainment and even education over online platforms. The pandemic has only contributed to the phenomenon as children were confined to their homes and could only look towards the internet for their educational and entertainment needs. Higher internet usage has also increased the risk of a mistyped search that could lead to children being exposed to adult

⁶⁷ Roya Ensafi, Philipp Winter, Abdullah Mueen & Jedidiah R. Crandall, *Analyzing the Great Firewall of China Over Space and Time*, 2015 PROC. ON PRIVACY ENHANCING TECH. 61, 61 (2015).

⁶⁸ Bulelani Jili, *China's Surveillance Ecosystem and the Global Spread of Its Tools*, ATLANTIC COUNCIL (Oct. 17, 2022), <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/chinese-surveillance-ecosystem-and-the-global-spread-of-its-tools/>.

⁶⁹ *Supra* note 97, at 711.

⁷⁰ *Supra* note 102, at 1062.

content.⁷¹ Therefore, legislators propose age verification as a potential solution to protect children from adult content.⁷²

Age verification has been present even outside the cyber world. For example, if a person were to buy alcohol and cigarettes, they would need to present their identification to make the purchase. The vendor would only ask for ID if the consumer is clearly not above the permitted age.⁷³ The use of ID card readers, where a person swipes their driver's licence as a means of verifying their age, has been in practice for almost 2 decades.⁷⁴ Such an approach is not possible in the online space because there is no way to ascertain who is on the other end of the screen. Hence, there has been a demand from countries around the world to put age verification methods in the online space to protect children from online pornography.

5.1. Methods of Age Verification

In the online space, there are various methods which are employed by authorities and private entities for the purpose of age verification. These may include both soft and hard checks. For instance, a soft check would merely display a disclaimer and ask the user to proceed with the site if they are above 18 years of age. Meanwhile, hard checks are those methods which do not provide access until the age of the user is reliably verified.⁷⁵

One method of verification relies on documentation such as government-issued identity cards for verifying users' age.⁷⁶ Another method employed

⁷¹ Christine Marsden, *Age-Verification Laws in the Era of Digital Privacy*, 10 NAT'L SEC. J. 210, 211 (2023).

⁷² Chelsea Jarvie & Karen Renaud, *Are You Over 18? A Snapshot of Current Age Verification Mechanisms*, 2021 DEWALD ROODE WORKSHOP 4 (Oct. 2021).

⁷³ J.J. Van Hoof, *The Effectiveness of ID Readers and Remote Age Verification in Enhancing Compliance with the Legal Age Limit for Alcohol*, 27 EUR. J. PUB. HEALTH 357, 357 (2017).

⁷⁴ J.T. Cross, *Age Verification in the 21st Century: Swiping Away Your Privacy*, 23 UIC J. MARSHALL J. INFO. TECH. & PRIVACY L. 363, 367 (2005).

⁷⁵ *Supra* note 104, at 976.

⁷⁶ Azfar Adib, Wei-Ping Zhu & M.Omair Ahmad, *Improvising Age Verification Technologies in Canada: Technical, Regulatory and Social Dynamics*, in 2023 IEEE

for age verification is based on a biometric approach. This includes facial recognition, retinal recognition, voice, fingerprint, etc.⁷⁷ Profiling is also used as a way to verify the age of a user. In this method, the online behaviour of the user is used to determine and estimate their age. This includes their interests, the sites they visit and their online activities.

Third-party verification or cross-account verification has also been used for the verification of the age of users. In this method, an existing account which has been verified is used to provide access. Lastly, aptitude testing is also employed by platforms. The aptitude of the user is measured through an online test or a quiz to distinguish whether the user is a child or an adult.⁷⁸

In India, the issue of age verification is also picking up. It has been proposed by the IT minister that virtual tokens may be used for age verification of users in the country. The token would provide the users with privacy as it would be securely generated for one-time use only, using the Aadhar card of the user from the Digilocker.⁷⁹ However, this whole premise falls through when we look at the ruling of the Supreme Court on the Aadhar card. The court has clarified that Aadhaar cannot serve as conclusive proof of age.⁸⁰ Therefore, if the issue of proof of age

INTERNATIONAL HUMANITARIAN TECHNOLOGY CONFERENCE (IHTC) 2, 1–6 (IEEE 2023).

⁷⁷ Liliana Pasquale, Paola Zippo, C. Curley, B. O'Neill & M. Mongiello, *Digital Age of Consent and Age Verification: Can They Protect Children?*, 39 IEEE SOFTWARE 50, 50–57 (2020).

⁷⁸ 5Rights Foundation, *But How Do They Know It Is a Child?* AGE ASSURANCE IN THE DIGITAL WORLD 31–35 (Oct. 2021), https://5rightsfoundation.com/wp-content/uploads/2024/09/But_How_Do_They_Know_It_is_a_Child-1.pdf.

⁷⁹ Shreya Arun & Aravind Ganapathy, *Verifiable Parental Consent and Age Verification: A Comparative Analysis of India's Draft Digital Personal Data Protection Rules and Children's Online Privacy Protection Act*, NUJS IPTLS (Mar. 19, 2025), <https://nujsiplaw.wordpress.com/2025/03/19/verifiable-parental-consent-and-age-verification-a-comparative-analysis-of-indias-draft-digital-personal-data-protection-rules-and-childrens-online-privacy-protection-act/>.

⁸⁰ *Saroj v. IFFCO-TOKIO Gen. Ins. Co.*, Civil Appeal Nos. 12077–78 of 2024 (India S.C. Oct. 24, 2024), 2024 INSC 816.

can be solved, a virtual tokenisation approach could protect the data of citizens from falling into private hands.

5.2. The Dangers of Age Verification

There are, however, various concerns associated with the trends in digital age verification.⁸¹ Age verification poses a huge safety and privacy breach risk. Private companies have been seen to sell the data of their users. The Facebook and the Cambridge Analytica scandal is a prominent illustration of this phenomenon.⁸² Similarly, in 2015, the Ashley Madison breach sent ripples across the whole internet. The data of several users was leaked, which could potentially have devastating consequences in the long run.⁸³ The fallout of the Ashley Madison data breach led to suicides, divorces, political scandals, reputational damage and huge lawsuits filed against the company.⁸⁴

There are various other concerns and harms associated with age verification as it is being employed all over the world. Storing the information of individuals who verify their age for accessing adult content is considered a serious risk to privacy by many. People's sexual preferences and their online activities could be stored in databases and could lead to devastating consequences if they are leaked or hacked.⁸⁵

Fraudulent websites may emerge in order to access the information of users under the guise of age verification. It has already been seen that credit card theft is prevalent in the real world. Therefore, the user would

⁸¹ Florian Reynaud, *Why Widespread Age Verification Raises Concerns Among Digital Rights Advocates*, *Pixels* LE MONDE (Aug. 13, 2025), https://www.lemonde.fr/en/pixels/article/2025/08/13/why-widespread-age-verification-raises-concerns-among-digital-rights-advocates_6744321_13.html.

⁸² Joanne Hinds, Emma Williams & Adam N. Joinson, *"It Wouldn't Happen to Me": Privacy Concerns and Perspectives Following the Cambridge Analytica Scandal*, 143 INT'L J. HUM.-COMP. STUD. 102498, 3 (2020).

⁸³ *Supra* note 146, at 6.

⁸⁴ Sakinah Jones, *Having an Affair May Shorten Your Life: The Ashley Madison Suicides*, 33 GA. ST. U. L. REV. 455, 455–56 (2016).

⁸⁵ Pandora Blake, *Age Verification for Online Porn: More Harm Than Good?*, 6 PORN STUD. 228, 228–37 (2019).

be left to the whims of private companies and individuals for the protection of their data. Although banks are able to compensate or redress for monetary loss caused by credit card fraud, it is difficult to restore the privacy and dignity of a person once their details are leaked. There is a very real possibility that the information of users might fall into the wrong hands. This may lead to violent crimes against the user, identity theft, where their information is used by hackers or misappropriated to gain access to their accounts or to commit crimes. There is also the fact that users whose information is leaked might get an increased frequency of junk mail and unwanted marketing targeted towards them.⁸⁶

There are also concerns that the vulnerable and marginalised may not be able to adequately provide identification and credentials for age verification. Many do not have passports, driving licences, credit cards, proof of age or other kinds of IDs. In the absence of those, these groups would be unable to verify their age and would have their access to various services cut off.⁸⁷

Age verification could also lead to political surveillance. As critics point out, using the excuse of protecting the innocence of children, state and non-state actors could make use of facial recognition and biometric tools for political purposes.⁸⁸ Age verification could also be used to closely monitor human rights defenders and stifle opposition. This could lead to particularly dangerous situations, such as posing a serious threat to the lives of activists and journalists, similar to the case of Jamal Khashoggi.⁸⁹

Surveillance may lead to governments and authoritarian regimes employing specifically targeted censorship measures instead of the

⁸⁶ Cross, *supra* note 74, at 392–97.

⁸⁷ Zahra Stardust, Abdul Obeid, Alan McKee & Daniel Angus, *Mandatory Age Verification for Pornography Access: Why It Can't and Won't 'Save the Children'*, 11 BIG DATA & SOC'Y 1, 3 (2024), <https://doi.org/10.1177/20539517241252129>.

⁸⁸ Chelsea Jarvie & Karen Renaud, *Online Age Verification: Government Legislation, Supplier Responsibilization, and Public Perceptions*, 11 CHILDREN 1068, 15 (2024).

⁸⁹ Marko Milanovic, *The Murder of Jamal Khashoggi: Immunities, Inviolability and the Human Right to Life*, 20 HUM. RTS. L. REV. 1, 1 (2020).

traditional collective and broadly targeted censorship. This could make it significantly more difficult for activists and human rights defenders to mobilise and coordinate efforts against censorship.⁹⁰

6. Conclusion

The evolution of the internet from a borderless medium of exchanging information into a heavily regulated and surveilled space presents before us a profound transformation in digital governance. What was once envisaged as a tool to democratize knowledge and empower communities now increasingly reflects the priorities of states that seek control over narratives, behaviours, and dissent. Across regions, whether in authoritarian regimes or democratic contexts, censorship and surveillance have become defining features of digital life. From overt shutdowns, IP blocking, and propaganda flooding to subtle profiling and age-verification systems, the methods employed by states may vary, but the effect is largely the same: the constriction of individual freedoms and erosion of privacy.

As demonstrated, censorship reshapes political opinion, encourages self-censorship, and imposes tangible costs on activists, journalists, and ordinary users who fear punitive state actions. Surveillance compounds these risks by creating an atmosphere of constant monitoring, where technologies like Pegasus or biometric tools extend state power deep into the personal and political lives of citizens. Therefore, the result is not only the weakening of public discourse but also the corrosion of democratic institutions, often under the guise of maintaining morality, security, or child protection. The parallel rise of age verification regimes has further complicated matters. While ostensibly designed to protect children, such measures open avenues for mass data collection, privacy violations, and exclusion of vulnerable populations. In contexts where biometric and profiling technologies are deployed, the risks of political surveillance and targeted censorship grow exponentially, thereby threatening democratic

⁹⁰ *Supra* note 81.

dialogue and the safety of dissenting voices. As past scandals and breaches show, the long-term consequences of data misuse can be utterly devastating, extending into personal, political, and societal domains.

What emerges from this analysis is not merely a technical or policy problem but a human rights challenge of global significance. The convergence of censorship, surveillance, and age verification has turned the internet into contested terrain, where freedom of expression, privacy, and dignity find themselves to be increasingly fragile, having lasting consequences in both cyberspace and the real world. Safeguarding internet freedom thus requires more than legal safeguards. It demands political will, institutional resilience, and active civil society engagement. The internet's promise as a borderless space of ideas can only be preserved if the global community actively defends it against creeping forms of digital authoritarianism.

7. Suggestions

The protection of children and limiting their exposure to pornographic content is certainly a noble cause. However, as per Ranum's law, social problems cannot be fixed with just software. There is very little evidence that age verification will serve to protect the children, as technologically savvy children can and already are using methods to bypass age verification.⁹¹ Therefore, it is imperative that instead of focusing on half-hearted measures, there is a need for the government to better spend their resources towards libraries, schools, better sex education and other programs which would lead to the holistic development of children and help young people. Instead of blaming porn for sexual violence and crime, more resources would be better spent on supporting victims of sexual harassment and assault, as well as bullying. Children need to be educated on consent and pleasure.

⁹¹ Molly Liebergall, *UK's Online Age Checks Are No Match for Young Brits*, MORNING BREW (July 29, 2025), <https://www.morningbrew.com/stories/2025/07/29/uk-online-age-checks-vpns>.

There is a genuine need to curb online hate speech and bullying and protect the well-being of children online. However, online censorship and lacklustre age verification are not the answer. There is a need to differentiate and prevent the weaponizing of the rhetoric of the children's well-being for the realisation and furthering of a political agenda. When we look at the fact that freedom of speech and expression around the world has been declining steadily, there is a need to continue the discourse and debate on the subject through social, literary and academic means.

Online censorship has posed new challenges to the free flow of information. However, in recent years, digital surveillance has proved to be just as powerful a tool of suppression, if not more than online censorship. Therefore, there is a need to critically examine our laws and policies to truly safeguard a transparent and free digital space for the protection of democracy.

BETWEEN BITES AND RIGHTS: RETHINKING INDIA'S STRAY DOG CRISIS

Aditya Raj*

1. Introduction

India's streets are home to approximately 60 million stray dogs. The incidence of stray dogs attacking children and the elderly is a serious concern not only in India but also worldwide. In India, this problem is no longer a simple social issue but has become a human rights, public safety, and public health crisis. Public concerns over stray dog attacks have fueled debate on stray dog population management, from the streets to the courts and Parliament.

According to government statistics, dog bite incidents in India are increasing year after year. In 2022, there were 21,89,909 dog bite incidents, while in 2023, these incidents increased to 30, 52,521. In 2024, these incidents increased unexpectedly and reached 37, 15,713 incidents.¹

These new rules, which aim to control the stray dog population through proper sterilisation and vaccination, were framed in 2023. The ever-increasing stray dog population in the country is the root cause of the dog crisis in India. Despite the availability of laws to address the stray dog crisis in India, dog bite incidents have been increasing steadily over the past few years. This clearly demonstrates the severity of human-animal conflict and the urgent need for legal intervention.

A theoretical research approach has been used to write this paper. Both primary and secondary sources have been used for this research article. To

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¹ Sumi Sukanya Dutta, High number of dog bites & poor post-exposure vaccination coverage drive India's rabies crisis, THE PRINT, (Aug. 15, 2025) <https://theprint.in/health/high-number-of-dog-bites-poor-post-exposure-vaccination-coverage-drive-indias-rabies-crisis/2721480/>.

enhance the credibility of the research, data from the legal system as well as national newspapers were included.

This research article will contribute to the development of a coherent, human rights-centred legal-policy framework to address the implementation gaps and minimise or eliminate the stray dog crisis in India.

Rabies is a viral disease that affects the central nervous system of mammals (dogs, cats, foxes, etc.), including humans.²

2. Disease Burden: Global and Indian Scenarios

According to the World Health Organisation, rabies kills an estimated 55,000 people worldwide each year. However, according to available data, rabies causes 18,000–20,000 deaths in India each year.³ Approximately 30–60% of reported rabies cases and deaths in India occur in children under 15 years of age because bites involving children often go unrecognised and unreported. The burden of rabies falls disproportionately on rural poor populations.⁴

3. Global Initiative to Eliminate Rabies Deaths

Dog bites cause rabies, which causes thousands of deaths worldwide, including in India. According to the World Health Organisation, 36 per cent of global rabies deaths occur in India. The World Health Organisation, along with three other international organisations, has joined forces to eliminate dog-borne human rabies deaths by 2030. These organisations are: (1) the World Organisation for Animal Health (OIE); (2)

² WORLD ORGANISATION FOR ANIMAL HEALTH, <https://www.woah.org/en/disease/rabies/>.

³ *Id.* at 2.

⁴ *Id.* at 2.

the Food and Agriculture Organisation of the United Nations (FAO); and (3) the Global Alliance for Rabies Control (GARC).⁵

4. Some incidents of stray dog bite & deaths in India

Recently, a resident of Uttar Pradesh and state-level Kabaddi player, Brajesh Solanki, died due to rabies caused by a puppy bite.⁶ After this, a 6-year-old girl died due to a dog bite in Delhi.

According to a report published in Dainik Bhaskar, a dog bit about 25 innocent children in just 2 hours.⁷ There are reports from other cities in India as well, where innocent children were brutally mauled by packs of dogs and later died.⁸

The videos of stray dog bites floating around on social media are extremely heart-wrenching, which a normal person cannot even watch.

5. Complex Issue of Human Rights, Public Health & Social Security

Currently, the stray dog crisis in India is no longer a minor social problem. The ever-increasing population of stray dogs and their frequent attacks on children and young people have transformed the issue into a complex issue from the perspectives of human rights, public health, and social security.

To understand the stray dog crisis, let's read this poignant story, as given below, about the consequences of a dog attack on a little girl that will move you to tears and reveal the complexity of the stray dog crisis.

In 2019, 9-year-old Anju died due to rabies caused by a dog bite. Following a complaint, the matter reached the National Commission for

⁵WORLD HEALTH ORGANIZATION (Sept. 21, 2020), <https://www.who.int/news-room/commentaries/detail/new-global-strategic-plan-to-eliminate-dog-mediated-rabies-by-2030>.

⁶YOUTUBE, https://www.youtube.com/watch?v=TliUOM_3syI.

⁷DAINIK BHASKAR, <https://www.bhaskar.com/local/rajasthan/bhilwara/news/terror-of-street-dogs-in-bhilwara-135488074.html>.

⁸KGNS (July 23, 2025) <https://www.kgns.tv/2025/07/23/7-year-old-child-dies-dog-attack-sheriffs-office-says/>.

Protection of Child Rights. The complaint sought a fair trial and the abolition of the Aadhaar card requirement for rabies treatment. In this incident, Ramveer, a resident of Kajuapur village in Agra's Bah town, had his daughter bitten by a dog on July 6th, 2019. When Ramveer went to the Bah health centre to get his daughter vaccinated against rabies, the pharmacist and doctor refused to administer the vaccine due to the lack of an Aadhaar card. The daughter contracted rabies, and when her condition worsened, she was rushed to Agra's SN Medical College. She was not admitted there. The innocent child died in agony at the hospital gate.⁹ This is the harrowing story of the consequences of stray dog attacks.

In July 2025, the Supreme Court initiated suo motu proceedings¹⁰ on the growing menace of stray dog attacks based on a media report that a 6-year-old girl had died of rabies after being bitten by a dog.

A bench comprising Justices J.B. Pardiwala and R. Mahadevan said, *"This news item contains some alarming and disturbing statistics and facts. Every day, hundreds of dog bites are reported in cities and outskirts, causing rabies and ultimately, small infants, children, and the elderly are falling prey to this dreadful disease."*¹¹

The relentless attacks by stray dogs across India are causing human rights violations in many ways. In addition to the physical and mental damage caused by stray dog bites, the resulting rabies disease and deaths are becoming a public health problem.

Children are being killed due to the terror of stray dogs, and the pain of their families is immense.¹² Due to the abundance of stray dogs in the colonies, children have stopped playing and cycling.¹³

⁹ *Supra* note 7.

¹⁰ In Re: "City Hounded By Strays, Kids Pay Price" (2025) 5 SCC Online 599.

¹¹ *Supra* note 7.

¹² YOUTUBE, <https://www.youtube.com/watch?v=U6q7oe1y7dM>.

¹³ YOUTUBE, <https://www.youtube.com/watch?v=22n8odEU-aA>.

Hundreds of victims line up daily at district hospitals in every district to receive anti-rabies injections after being bitten by stray dogs. People affected by dog bites harbour a growing hatred for dogs.

They are not shying away from cruelty to dogs and even killing them. Today, Indian society appears divided over the dog crisis.

People are so enraged by the suffering of children killed by stray dog attacks that they are not shying away from even committing acts against the law. Furthermore, a Karnataka MLC revealed that he had 2,800 dogs killed, poisoned their food, and buried them under trees. He also stated that he was willing to go to jail to protect children.¹⁴

According to the World Health Organisation, culling stray dogs is not effective in controlling rabies.

On one hand, there are the victims of dog attacks, and on the other, there are animal lovers. Social conflict over stray dogs has increased in society in recent times. This conflict can escalate at any time. Therefore, it is also a complex issue for social security.

6. Legal Framework Relating to the Stray Dog Crisis in India

India has several laws and policies in place regarding the management of stray dogs. Some of these are:

6.1. The Prevention of Cruelty to Animals Act, 1960

This Act prohibits cruelty to animals. Dogs are included among the animals covered by this Act. In India, legislation was enacted to protect animals and prevent cruelty against them. This law is available as the Prevention of Cruelty to Animals Act, 1960. The fines imposed as

¹⁴ “Killed 2800 dogs, can go to jail if needed: shocker from Karnataka leader”, NDTV, <https://www.ndtv.com/india-news/killed-2-800-dogs-can-go-to-jail-if-needed-shocker-from-karnataka-leader-9077886>.

punishment for animal cruelty are very low, up to 50 rupees, and amendments to this law have long been demanded.¹⁵

6.2. Indian Penal Code

According to Section 429 of the Indian Penal Code, anyone found guilty of killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or more is punishable with imprisonment of up to five years or a fine.

6.3. The Animal Birth Control (Dogs) Rules, 2001(as amended by the Animal Birth Control Rules, 2023)

The purpose of this rule is to effectively control the growing stray dog population. For this purpose, provisions have been made for the sterilisation and vaccination of stray dogs. The responsibility for this task has been placed on the local administration. According to the World Health Organisation, dog vaccination is the most cost-effective strategy for preventing rabies in people.¹⁶

Anubhav Shrivastava Shahai, a concerned citizen, in a complaint to the National Human Rights Commission, said that “*irregular sterilisation and inadequate infrastructure*” have made it difficult to effectively implement the Animal Birth Control (ABC) guidelines.¹⁷

According to the World Health Organisation, vaccinating all dogs, including puppies, through a mass vaccination program is the most cost-effective strategy for preventing rabies in humans, as it stops the infection at its source. These 2023 rules have replaced the 2001 rules.¹⁸ Under Rule 8 of the Animal Birth Control Rules, 2023, it has been provided that the

¹⁵ The Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

¹⁶ *Id.* at 2.

¹⁷ Deepak Bopanna, NDTV (Aug. 13, 2025) <https://www.ndtv.com/india-news/killed-2-800-dogs-can-go-to-jail-if-needed-shocker-from-karnataka-leader-9077886>.

¹⁸ Animal Birth Control Rules, 2023, notified under the Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

responsibility of vaccination and sterilisation shall be of the owner in case of pet animals and in case of street or stray animals, the local authority shall be responsible and may appoint any NGO recognised by the Board to run the animal control programme in compliance with these rules.¹⁹

6.4. Municipal Laws

There are various provisions that have been made under local municipal and village council laws for the management of stray dogs in urban and rural areas.

However, it is believed that inadequate implementation of these legal provisions has contributed to the dog crisis in India. Many local bodies lack adequate infrastructure for managing stray dogs, proper and adequate vaccination and sterilisation procedures, and proper care procedures.

A concerned citizen, Anubhav Srivastava Shahai, raised the issue of the lack of control over the stray dog population despite the existence of laws before the National Human Rights Commission. In his complaint, he stated that state governments have completely failed to control the stray dog population.²⁰

6.5. Poor implementation of existed Legal Framework

The best policy and provision for addressing the stray dog crisis in India is sterilisation and vaccination. It's not that the government hasn't implemented sterilisation programs in the past.

They certainly have, but the principle that, according to the World Health Organisation, 70 per cent of dogs must be sterilised rapidly to control the stray dog population has not been adequately implemented.

¹⁹ *Id.*

²⁰ LAWCHAKRA, 2024, <https://lawchakra.in/legal-updates/nhrc-directs-child-dog-bite-cases/>.

The existing laws in this regard, the Animal Birth Control (Dog) Rules 2001 and 2023, have never been properly implemented. Corruption has also been a significant reason behind this.

The biggest obstacles to the effective implementation of existing laws and policies for stray dog management have been corruption and the failure to meet the 70 percent sterilization target on time.

This is why, despite the so-called efforts of governments, the stray dog crisis in India has become serious. Due to this, not only have the victims of stray dogs approached the High Courts of different states, but the Supreme Court also took suo motu cognisance of the news of the death of a 6-year-old girl in Delhi after being attacked by stray dogs.

The Supreme Court's order stated that stray dogs should be captured and put in dog shelters, and they should be sterilised and vaccinated.

Animal lovers were enraged by this order of the Supreme Court, and in protest, they organised a massive demonstration at India Gate.

7. Obligation of the State

Attacks by stray dogs not only cause physical injury to individuals but also mental and economic harm. The frequent occurrence of stray dog attacks clearly points to the state's failure to fulfil its responsibility for social security and the health of its citizens. In this context, it should be clear that a human rights approach for the state is not merely a matter of principles, but of translating them into reality and practice. This should not only alleviate the fear of stray dog attacks from the minds of the common man, including children and the elderly, but also end the continuous attacks on them. To this end, concrete and practical measures must be implemented with vigour. It is the duty of the state to protect its citizens from all kinds of fears and threats, which is of utmost importance.

In Delhi, BJP leader Vijay Goel has taken cognisance of the increasing number of stray dog attacks and launched a movement called "*No Dogs on*

Streets.” He demanded that stray dogs be removed from Delhi’s streets and placed in shelter homes.²¹

8. Critical Analysis of Judicial Intervention

In the current stray dog crisis scenario, the important issue before all of us is how judicial intervention shapes the law and policies for reducing the dog crisis and associated other issues in practice. No doubt at present, the stray dog attacks have become a serious human rights, public health and social security question in India. It has been a long-running legal battle in various High Courts and the Supreme Court.

9. Suo- Motu Intervention by the Hon’ble Supreme Court of India

The Times of India, a reputed national newspaper, published an article about the death of a 6-year-old girl in Delhi due to rabies. The Supreme Court, after taking cognisance of the news, took suo motu cognisance of the matter. The Supreme Court, in its earlier order in the suo motu petition *‘In Re: City Hounded By Strays, Kids Pay Price’*, had ordered the removal of stray dogs from the streets of Delhi-NCR and keeping them in animal shelters and not to release them again, which was later changed after allowing animal lovers to be heard.^{22 23}

According to the Indian Constitution, every person has the right to live a safe and healthy life. From children to the elderly, everyone is forced to suffer physical, mental, and financial harm due to stray dog attacks. Apart from this, they also remain afraid for their safety, as to when a stray dog may attack them while walking on the road or strolling in the park. Due to this fear, their right to a safe life is violated. This is also a violation of the right to life under Article 21 of the Constitution of India. In support of

²¹ YOUTUBE, <https://www.youtube.com/watch?v=B8B2VK2gQ5U>.

²² Suo Motu In Re: Rabies Death Case of Delhi Girl, (2025) 1 SCC OnLine 541.

²³ Amit Anand Choudhary, *‘Delhi Hounded by stray dogs, kids pay the price: Key observations by Supreme Court in landmark decision’*, TIMES OF INDIA (Aug. 12, 2025), <https://timesofindia.indiatimes.com/city/delhi/delhi-hounded-by-stray-dogs-kids-pay-the-price-key-observations-by-supreme-court-in-landmark-decision/articleshow/123248010.cms>.

these facts, the case laws given below of the Supreme Court and High Courts are very much relevant.

The Supreme Court's ruling in ***Francis Coralie Mullin v. Union Territory of Delhi***²⁴ established that the right to life and personal liberty is a fundamental right of every citizen under Article 21 of the Indian Constitution. In this regard, the Supreme Court has repeatedly clarified that the right to life is not limited to mere survival, but also includes the right to live a healthy and safe life.

The increasing incidence of stray dog attacks on children and the elderly, and the resulting deaths from life-threatening diseases like rabies, is a direct violation of this right. Therefore, this is not just an animal welfare crisis, but a broader human rights crisis.

In the case of ***Nyay Bhoomi vs. Government of NCT of Delhi and Others***,²⁵ the Delhi High Court established that, "*Persons with Disabilities have a fundamental right to move around without the danger of being attacked by stray animals.*" India enacted a law to ensure the rights of persons with disabilities, known as the Rights of Persons with Disabilities Act, 2016.²⁶

The Orissa High Court held in ***Bali Parida v. Neera Parida***²⁷ that, "*Beating an animal does not constitute an offence punishable under Section 11(1) of the Act unless the beating is of such a nature as to cause unnecessary pain or suffering to the animal.*"

In ***Compassion Unlimited Plus Action v. Union of India***,²⁸ the Hon'ble Supreme Court also held that any act which causes unnecessary pain and suffering to animals is an offence, as such an act violates the statutory rights of animals under Sections 11 and 3 of the Prevention of Cruelty to Animals Act.

²⁴ Francis Coralie Mullin v. Union Territory of Delhi MANU/SC/0517/1981.

²⁵ Nyay Bhoomi v. Government of NCT of Delhi and Others, W.P.(C) 3346/2015 (India).

²⁶ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India).

²⁷ Bali Parida v. Neera Parida (1969) SCC OnLine Ori 129.

²⁸ Compassion Unlimited Plus Action v. Union of India, (2016) 3 SCC 53.

The Kerala High Court in *T.M. Irshad v. State of Kerala*²⁹ also established that, “Stray dogs pose a threat to our society. School children are afraid to go to school alone for fear of being attacked by stray dogs. Morning walks have become a habit for many citizens. These days, even morning walks are impossible in some areas due to the fear of stray dog attacks. If any action is taken against stray dogs, dog lovers will fight for them. But we believe that humans should be given priority over stray dogs. Of course, brutal attacks on stray dogs by humans should not be permitted.”

10. Intervention of the Indian Government after Judicial Intervention

The Indian government has taken several steps to address the stray dog crisis, including the goal of achieving a rabies-free city after taking cognisance of the order of the Supreme Court of India.³⁰

11. A Human Rights Approach to the Stray Dog Menace

Article 21 of the Indian Constitution guarantees citizens the right to life and liberty. When citizens are forced to postpone work or children miss school due to fear of stray dog attacks, or live in deep fear or are forced to live with the risk of rabies caused by dog bites, it is the responsibility of the state to provide relief to its citizens from the dog menace and protect their rights.

Several cases of stray dog attacks have reached Indian courts. Courts have also acknowledged the rights of animals and emphasised the importance of a balanced approach, while still prioritising human life. The National Human Rights Commission (NHRC) had supported the fact that “in a

²⁹ T.M. Irshad v. State of Kerala (2024) Supreme(Ker) 166.

³⁰ PRESS INFORMATION BUREAU, July 22, 2025, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146978>.

situation where human lives are endangered by animal attacks, human rights must prevail over animal rights''³¹

12. NHRC Approach towards Victims of Stray Dogs

The National Human Rights Commission has also acknowledged that putting the lives of ordinary citizens at risk due to stray animals is a result of the state's negligent responsibility. This clearly constitutes a human rights violation for which the state is liable for compensation.

65-year-old Safdar Ali Khan was out for a morning walk in a park on the Aligarh Muslim University (AMU) campus in Uttar Pradesh, when he was attacked by a pack of stray dogs. He subsequently died. The NHRC, Delhi, took suo motu cognisance of the matter (NHRC Case No. 288/10/0/2017) and found negligence on the part of the authorities in the death of Safdar Ali Khan. The NHRC recommended that the Uttar Pradesh government provide a compensation of ₹7.5 lakh to the victim's next of kin.³²

Concerned over the growing menace of stray dogs, which claimed the life of a seven-year-old boy in Jamia Nagar in August 2015, the National Human Rights Commission (NHRC) had said that "*in a situation where human lives are endangered by animal attacks, human rights must prevail over animal rights*", and called for a wide-ranging debate on the issue.³³

According to the World Health Organisation, deaths from rabies in humans are 100% preventable with prompt and appropriate medical care.

13. India and the Netherlands: A Comparative Legal Framework

The Netherlands has an Animal Welfare Act that criminalises the abandonment of domesticated animals. This offence carries a penalty,

³¹ NATIONAL HUMAN RIGHTS COMMISSION, <https://nhrc.nic.in/media/press-release/nhrc-finds-negligence-the-authorities-in-last-year-s-stray-dog-attack-resulting-in-the-death-a-person-at-the-amu-campus-uttar-pradesh>.

³² *Id.*

³³ *Stray dog attacks: Human rights should come first, NHRC says*, TIMES OF INDIA (2015) <https://timesofindia.indiatimes.com/city/delhi/Stray-dog-attacks-Human-rights-should-come-first-NHRC-says/articleshow/48489402.cms>.

including punishment. The law mandates the sterilisation of every stray dog. This mandatory provision fulfils the World Health Organisation's standard for controlling the dog population, paving the way for addressing the stray dog crisis. The law also mandates that those breeding foreign-bred dogs face higher taxes, and it discourages people from breeding foreign-bred dogs. It encourages everyone to adopt stray dogs. The government has provided legal protection for those adopted stray dogs, in addition to government assistance. Due to these legal and policy provisions and their proper implementation, the Netherlands has now become a stray-dog-free country. This is a significant achievement for the Netherlands.

The Prevention of Cruelty to Animals Act, 1960, was primarily enacted for animal welfare in India. This law was enacted to prevent cruelty against animals. This law has not contributed to solving the stray dog problem in India. Cruelty to animals only provides for a maximum fine of ₹50-₹100. For a first offence, the fine can be imposed up to a maximum of ₹50, and for a second offence, the fine can be imposed up to a maximum of ₹100. These fines are currently insignificant for the offence. Therefore, this law is proving ineffective in curbing cruelty to dogs. To address this social and human rights challenge of controlling the stray dog population in India, the Ministry of Animal Husbandry and Dairying has notified the Animal Control Rules, 2023,³⁴ under the Prevention of Cruelty to Animals Act, 1960.³⁵ This rule replaces the Animal Control (Dogs) Rules, 2001.

These rules provide for the sterilisation of stray dogs. However, in reality, the government has not implemented this law with strong political will. Despite the excellent legal provisions available for stray dog control, sterilisation programs have been implemented at a very slow pace. As a result, the stray dog menace has increased rather than decreased or been

³⁴ Animal Birth Control Rules, 2023, notified under the PREVENTION OF CRUELTY TO ANIMALS ACT, 1960, No. 59, Acts of Parliament, 1960 (India).

³⁵ The Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

eliminated. Today, people believe that the lax implementation of the law is responsible for this crisis.

14. The Interesting Story of the Netherlands, a Stray Dog-Free Country

The Netherlands' journey to becoming free of stray dogs has been quite interesting. They have adopted a combination of legal strictness and flexibility. Very few countries have truly overcome the stray dog problem. The Netherlands is one of the few countries that, through hard work and strong political will, has achieved a stray dog-free existence. This is not a small achievement. Animal protection has even been raised as an election issue in the Netherlands.

You might wonder how the Netherlands achieved this feat. The first thought that comes to mind is whether they killed all the dogs. No, they achieved this through strict enforcement of the law and social cooperation.³⁶

15. Call to Action:

The future path to address the serious problem of stray dog attacks in India is given below:

- 1. Ensure availability of free rabies vaccination** – Provisions should be made for free vaccination, especially for the poor. No poor or helpless person should be turned away from health centres citing vaccine shortages.
- 2. Compensation Policies** – In case of injury or death due to a dog bite, immediate financial compensation should be provided, and the compensation process should be simplified.

³⁶ Human Rights Guru, *Netherlands: World's first country without stray dogs*, HUMAN RIGHTS GURU BLOG (Sept. 2025), <https://humanrightsguru.blogspot.com/2025/09/stray-dogs-free-Netherlands.html>.

16. Equitable, sustainable, and practical model for better management of stray dogs

- 1. Construction of Dog Shelters** – In compliance with the recent guidelines of the Honourable Supreme Court, dog shelters should be systematically constructed rapidly in every city.
- 2. The need to Accelerate Vaccination and Sterilization Intensive Campaigns** – In accordance with the World Organisation for Animal Health, the government should earnestly achieve the goal of rapidly vaccinating and sterilizing 70% of stray dogs. It should be done at the highest priority.
- 3. Awareness Campaign-** Like the Netherlands, heavy taxes should be imposed on keeping foreign-bred dogs, and some government facilities and protection should be provided to the public when they adopt indigenous breed dogs. A public awareness campaign should be launched across the country to encourage the adoption of indigenous stray dogs.
- 4. Mandatory Accountability Provisions** – Municipal corporations and administrations should be held accountable for not following the directions for dog sterilisation and vaccination. Fines and penalties should also be imposed in case of negligence.

17. Conclusion

The stray dog crisis in India is not just a problem of administrative responsibility or animal welfare—it is a human rights, public health, and safety issue. This debate, “Between Bites and Rights,” forces us to consider how to balance the rights of humans and animals. Cruelty to animals or their killing is not a solution today, as the World Health Organisation has also protested. This serious and complex problem can be easily addressed through policy, justice, ethics, and a human rights approach, where no child or elderly person will live in fear of stray dog attacks and no animal will be victimised or killed.

CUSTOMARY LAWS: THE FUEL TO GENDER DISPARITY IN THE NAGA TRIBES OF NORTH EASTERN INDIA

Anewsha Bhowmick^{*}
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1. Introduction

Every society's own traditions and practices serve to define it. Customs are social norms that members of a community observe voluntarily because they have been ingrained in the institution and shaped through many generations. Customary laws have been developed by the State to preserve these social entities because every individual is defined and rooted by specific customs and traditions. According to Malinowski, the customary law is the positive law governing all the phases of tribal life; it consists of a body of binding obligations, regarded as a right by one party and acknowledged as a duty by another, kept in force by a specific mechanism of reciprocity and publicity inherent to their society.¹ It is ubiquitous and affects all aspects of a person's existence in a society. Because customary law develops from regionally distinct conventional usages and customs, it reflects community norms and beliefs, depicting the customs and cultural ethos of a specific population. Durkheim's work on collective consciousness is also integral when it comes to the working of customary laws, as it is essentially a shared set of beliefs and practices among all members of the society. It is integral as it evolves and influences the community's beliefs and ideas, implementing a sense of commonality in the entire community, thus making these laws almost

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¹ BRONISLAW MALINOWSKI, CRIME AND CUSTOM IN SAVAGE SOCIETY 58 (1926).

obligatory norms.² But even though it is portrayed as a “positive” law, protecting the cultural ethos of a particular society, is it always positive?

Customary law is not always viewed positively, as its recognition and implementation face challenges within the legal systems of various countries like Indonesia, Bali, India and so on. Despite being rooted in local wisdom and serving as a source of justice and peace within communities, customary law encounters obstacles in coexisting with positive law, which often takes precedence in legal matters.³ The “positivization” of customary law involves integrating it into formal legal frameworks, which is a process that can be complex due to the dominance of state laws and regulations.⁴ However, in autonomous regions, these laws play a significant role in addressing issues like land disputes and inheritance.^{5 6} Thus, while customary law embodies the ideals and values of the people, its interaction with positive law can lead to both positive recognition and challenges in its application within legal systems.

2. Custom as a Legal Source

Custom is the most ancient of all sources of law⁷. Customs played a major role in forming the law, and it also added to the laws of nations prevailing across the world based on the culture, practices and beliefs of civil societies. Custom laws are not written laws like statutory laws, but they

² Mercie Gangte, Gender and Customary Law: A Case Study of Mizo Tribe in North East India, 46 INDIAN ANTHROPOLOGIST 17, 17–30 (2016).

³ Mutawali Muhammad, Customary Law of Dou Donggo Bima from the Perspective of Islamic and Indonesian Positive Law, AL-IHKAM: J. HUKUM & PRANATA SOSIAL (2022).

⁴ Alfian Budianto et al., Restorative Justice: Positivization of Customary Law in Resolving Land Disputes Based on Local Wisdom of Papuan Citizens, J. L. POL’Y & GLOBALIZATION (2022).

⁵ Warjiyati Sri, The Existence of Customary Law in Resolving Conflicts in Autonomous Regions (2018).

⁶ Tamaulina Br Sembiring et al., Challenge of Customary Law Implementation in the Optimistic Law Era in Saving the Healthy Indonesian Environment, INT’L RES. J. MGMT., IT & SOC. SCI. (2022).

⁷ Christopher Greenwood, Sources of International Law: An Introduction, LEGAL UN ORG (Aug. 17, 2024, 11:32 PM), https://legal.un.org/avl/pdf/ls/greenwood_outline.pdf.

are developed over time when society accepts them and accords them legitimacy. These laws are traditional, and some are even-handed from one generation to the next, possibly through word of mouth, and these laws are therefore an embodiment of cultural beliefs and past experiences of the people who practice them. The nature of custom laws is defined by several key characteristics: they have to be exercised on a daily basis, for a long period, be deemed obligatory and complied with by the members of the community as well and be reasonable and proportional. A custom should be rational, reasonable and not inapplicable with the statutory laws or the constitution of the state. This is because where there is a clash of customs and statutory laws, the custom loses the legal battle to the form of the written laws. As an example, in India, Saptapadi is an example of customs as a source of law. It is a rite of a Hindu marriage ceremony. The word Saptapadi means “Seven steps”. The newlywed takes seven steps around the holy fire that is called Saptapadi. The customary practice of Saptapadi has been mentioned in Section 7 of the Hindu Marriage Act⁸.

Custom laws are those laws which are developed from cultural beliefs, earlier practices, judicial notice, and agreement between people of the community. These sources earmark the variety of ways in which customs may emerge and turn into legally obligatory norms. Custom laws can be classified into different types based on their scope and application, as we have seen local customs are confined to specific regions or communities, general customs are more or less known to everyone, particular customs are confined to the tribes or any religious group or any other grouping and last but not least is usage; this normally refers to the custom manifested by the people in specific professions or industries.

As the laws of custom in the present-day legal systems, they play a significant role in common law countries such as the United Kingdom and India, where the courts give effect to the customs laws if they satisfy certain conditions, which include, inter alia, that the custom has been in

⁸ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

existence for a long time and is reasonable. Custom laws also have a very significant function in an indigenous legal system, where they may be the main legal instruments regulating different areas of life, from marriage and inheritance to land tenure.

A custom to get the tag of validity should be:

- **Certain** - A custom should be certain to become a valid custom⁹. It should be specific and free from obscurity.
- **Reasonable** - The reasonableness of the custom is necessary, and it should have some reasons behind following it¹⁰.
- **Consistent** - A custom must be consistent with the general principles of law, with fairness in it.
- **Continuity** - The practice of the custom must not be interrupted; the continuing process of a custom is necessary to become a valid custom.
- **Following the Public Policy**- A custom needs to be aligned with the public policies, as it should not oppose them.
- **Ancient** - A custom followed for a time immemorial and uninterrupted in between.

In civil law systems, the role of customary laws is not so vast since these systems are based on the written legislation. However, as it has been seen, legal interpretation does not necessarily exclude customs entirely but may apply to aspects of legal interpretation where customs may still play a role, for instance, when addressing issues related to family or property. Also, the principles of customary international laws, which are the practices and standards followed by states in international relations, are used in such subjects as diplomatic immunity and the protection of human rights.

⁹ Subodh Asthana, Custom as a Source of Law, IPLEADERS (Aug. 17, 2024, 11:48 PM), <https://blog.ipleaders.in/customs-source-law/>.

¹⁰ *Id.*

However, custom laws encounter some challenges, criticisms, and the following are the challenges encountered: First, custom laws could be highly different from each other within one country or even in a region; thus, it can contribute to inconsistencies and legal non-transparency. Further, in our dynamic world, some traditions become obsolete or unbeneficial and thus the society has to adjust its practices to the constant social, economic and cultural changes. This process is gradual and may take years to complete; in the process, there is a possibility for a particular cultural practice to remain entrenched even though it is against the basic standards of equity and rights of human beings. This puts courts in a dilemma inasmuch as they are expected to respect cultural practices, as they are bound to respect statutory laws and constitutional provisions on rights of equal protection before the law, non-discrimination among them. Secondly, because of the fact that the normal customs are not written, there is a tendency for them to be deleted, misunderstood or even ignored by the new generation. It is for this reason that attempts made to archive these customs are significant for their juridical effect and for the role they continue to play in the welfare of those societies.

Thus, customary laws could be viewed as essential components of many legal and governance systems, as they always seem to be closely linked with respective cultural, historical and social realities of respective communities. Although they are informal and accommodate cultural relativity they need to be moderated with the formality of statutory laws in order to arrive at justice, equity as well as a measure of uniformity. Cooperatively, where societies remain dynamic, shifting and globalising in characteristics, the role of customary laws in official legal structures will probably forevermore assume new facets, directions and significance among legal systems across the sphere.

3. Evolution of Customary Laws in India

The fundamental principle of the Indian Constitution's provisions was that the customary laws used by these indigenous communities would be

regarded seriously in the administration of justice and in the administration of the villages they lived in. Up until 1947, the British basically clung to this strategy. Since gaining independence, the Indian government has constitutionally sanctioned this non-interference policy in the local governments of these indigenous people of north-eastern India. This was done under the direction of a philosophy that stressed the preservation of tribal ethos and culture while also working to integrate the residents of the area into the larger Indian population. The goal was to maintain a variety of ways of life, traditions, and political structures while ensuring that they did not jeopardise the security and interests of the country. The Indian government has made numerous efforts since India declared independence to respond to the demand for autonomy voiced by various tribal people in North-east India.¹¹ Such demands covered several aspirations for varying degrees of autonomy under the Indian constitution to withdraw into the privacy or solitude of sovereign states. But the fear of having their culture and identity absorbed by conventional culture was lurking behind these requests for autonomy. Although these communities were granted several constitutional protections and political packages, it was hoped that their socio-cultural customs and self-governing institutions would be preserved and that their region would be permitted to grow in the manner of their respective regions. Whether it be the fifth and sixth schedule of the constitution or the special article designated in the constitution for the creation of states like Nagaland or Mizoram, all these constitutional provisions, political arrangements, and administrative packages have in one way or another involved the customary laws of tribal communities in the project of state formation, but it is also helping in the growth of gender inequality in the state. True gender equality is when women and men have a voice. In the Urban jungles, we come across multiple incidents of gender inequalities and injustice against women, like domestic abuse and workplace harassment, incidents which come into the limelight, the idea of

¹¹ Poukho Stephen, Customary Law and Women Status of North East India: With Reference to Poumai Naga Tribe, 10 INT'L J. HUMANITIES & SOC. SCI. INVENTION 34, 34–38 (2021).

patriarchy known to us is very different from the actual victims of it. Like in the Customary law, the right to inheritance of the movable and immovable property is different for the male representative and women representative, proving the aforesaid point.¹²

We have always been told and read about the pride of being a woman of the Naga community and how strong they are, but when we look through the curtains, we get to see the actual picture.

4. Synthesizing Customary Laws with Human Rights

Customary laws have quite a substantial role when it comes to influencing human rights, particularly in the context of indigenous or tribal communities, along with environmental protection of natural resources, as Article 371A of the Indian Constitution mainly concentrates on protecting the indigenous land from being exploited and captured by others. And further acknowledging and accepting them can benefit the environment. These indigenous societies hold good knowledge on how to conserve the environment. As various South African and Ugandan cases have shown, however, it is possible to use customary law principles to import some measure of reform back into compliance with human rights norms, indicating that customary laws are actually more consistent with those rules than with state law.¹³ Thus, the connection between customary laws and human rights standards has been analysed, pointing out the significance of giving legal effect to customary laws for indigenous people's rights to be realised and the challenges of harmonising customs practices with human rights benchmarks.¹⁴

However, these laws not only protect the lives of people but also put them in danger, especially for women. Customary laws have, for a long time,

¹² *Id.*

¹³ Anthony Tcantho et al., African Law and the Status of Women's Access to Justice in Cameroon, INT'L J. INNOVATIVE RES. MULTIDISCIPLINARY EDUC. (2024).

¹⁴ Laksana Arum Nugraheni et al., The Dynamics of Customary Inheritance Law from the Perspective of Gender Equality in Klungkung District-Bali, INT'L J. RES. INNOVATION BUS. & SOC. SCI. (2022).

favoured men in some cases, resulting in an unequal inheritance distribution and marginalisation of women and girls in society.¹⁵ As evidenced by patrilineal kinship systems notably found among the Nagas, men occupy superior positions to their female counterparts, thus making it disadvantageous for the widows as well as daughters on issues like inheritance.¹⁶ Thus, such communities in culturally diverse regions like North-eastern India have traditionally been male-dominated, limiting women's growth and reinforcing gender inequities.¹⁷ This is because, while the reformed legislations seek to address issues of gender equality, customary and formal laws co-exist in several states (for example, Kenya), which call for a harmonisation process that would exploit the positives of using aspects of the customary law. This would foster gender equality in addition to formal law.¹⁸

As all these laws have existed since the beginning of time, they can be acclaimed as the basic codes of conduct. But we only include those that are based on oral tradition or personal memory. Both criminal law and civil law are a part of customary laws, which has its roots in prehistoric times. These are, therefore, laws of wrongs and should actually be called tort laws (private wrongs or injuries). In the case of other offences, whether they fall within the current definitions of civil or criminal, the custom is for the party who has been wronged or injured to file a lawsuit using standard civil procedures and, if successful, to receive compensation in the form of monetary damages.¹⁹ In a society with multiple cultures, tribal customary law is fundamental to tribal identity. This is mostly due to

¹⁵ E. Chumthunglo Yanthan, *Gendered Practice of Naga Customary Laws: A Critical Analysis*, J. EDUC., SOC'Y & BEHAV. SCI. 34, 34–44 (2023).

¹⁶ Patricia Kameri-Mbote, *Constitutions as Pathways to Gender Equality in Plural Legal Contexts*, OSLO L. REV. 23, 23–34 (2018).

¹⁷ Mardiansyah et al., *Environmental Protection and Management Policy for Customary Law Community in the Perspective of Human Rights* (2019).

¹⁸ Obatusin Simisola, *Customary Law Principles as a Tool for Human Rights Advocacy: Innovating Nigerian Customary Practices Using Lessons from Uganda and South African Courts*, SSRN (2017).

¹⁹ TOBIN BRENDAN, *INDIGENOUS PEOPLES, CUSTOMARY LAW AND HUMAN RIGHTS — WHY LIVING LAW MATTERS* (2014).

the indigenous people's impressive tenacity in adjusting their institutions and laws to the difficulties they encounter. It serves the purpose of assisting in preserving social harmony and order without regard to gender, caste, creed, colour, or any other factor.

But even though the customary laws have been fashioned to protect the interests of the "indigenous groups", as stated by the Indian government, a lot of pressing issues have been unseen in the regions. One of the pressing issues is that of the gender inequalities that have led the Naga women to raise their voices against the laws. Thus, this closely discusses how these customary laws, which were intended to protect these masses, have become a suffocating issue for the Naga women, and problematize the actual necessity of the existing "Customary Laws" in the north-eastern states of India. But the question arises, where do women reach out for their justice to the law administrative bodies, and are these laws the main reason for the injustice against women?

5. How Customs are Causing Disparities

On December 1st 1963, Nagaland, with Kohima as its capital, became the 16th state of India, housing a huge variety of indigenous population, including Ao, Angami, Chang, Konyak, etc., among the state's 16 major tribes, along with a handful of smaller ones. Every tribe has its own distinctive traditions, language and garb. These cultural norms have been carried on from generation to generation, giving this community a sense of pride in their ethnicity, almost worshipping them. According to them, if one abides by it, they can help them reach their full potential as it is catered specifically for their own culture. Many of the laws were passed down orally by their ancestors and are now codified in oral tradition. There are similarities in every tribe's unwritten customary rules, and each one operates in accordance with them.²⁰

²⁰ Imtilemla Jamir, *Naga Customary and Traditional Laws Affecting Naga Women in Decision Making* (Tilak Maharashtra Vidyapeeth 2018).

The Nagas assert that their politics, economy, language, and historical background set them apart from their other Indian contemporaries. The state of Nagaland is given specific provisions under Article 371A of the Indian Constitution. The administration of civil and criminal justice, including decisions made in accordance with Naga customary law, has a special sanctity. The Naga society adheres to democratic principles and practises, yet they also uphold customary and traditional law. In addition to governing these matters, the majority of laws are applied in line with customary and conventional norms.²¹ But when these rules are put into practice, women have been very frequently ignored, denied their rights, and oppressed by men.

In Naga society, the construction of gender identity is based on myths and folklore told orally. Such an instance can be seen in the creation stories told by different tribes about how man became the first living thing. The Ao tribe holds that the main clans of the Ao tribe were descended from six males who were originally formed from six stones (Long Terok). Two brothers who sprang from the soil were the Angami's first ancestors. The younger descendants are known as "Pepfuma", while the elders are known as Pepoma.²² Women have traditionally had a lower status in the patriarchal Naga society than men. They were kept hidden in their various homes during the headhunting exercises because they were not permitted to participate in the fighting. In the prehistoric Naga society, cultivation, hunting, and livestock raising were essential to the Nagas' way of life, and the division of labour according to the many tasks involved was obvious, but only the subordinate tasks entitled to the women were cooking, cleaning, weaving, and fetching.²³

Despite the modernisation process, the women in the Naga community still have a low socio-economic status. In terms of inheritance and

²¹ INDIA CONST. Art. 371A.

²² Imtilemla, *supra* note 56.

²³ Shellunglu Kamei, Customary Inheritance Practices and Women among the Kabui Naga of Manipur, 41 INDIAN ANTHROPOLOGIST 55, 55–69 (2011).

marriage, the Angami tribe's traditional concept of marriage involves a woman leaving her home to become a part of her husband's family. Even though women have gained the right to participate in political activities, their decisions remain subordinate to those of men.²⁴ This is because customary laws still have a strong influence on their status. Male chauvinism is still constantly present in the context; women are expected to be homemakers and are not permitted to attend any meetings, and men always make decisions regarding numerous topics. The prevailing laws are "Rigid". Women are expected to follow their husbands' and fathers' orders because they are regarded as the highest beings in existence. Women had no idea of their rights, but they left that behind in order to live in harmony with their families and spouses. Taking care of one's family was a woman's most important responsibility, and she continued the cycle of life. Their participation in decision-making was extremely low, but they still had less influence over decision-making in both public and private spheres. But has anything really changed?

It can still be seen that these sections of cultural rules within the customary laws are deeply gendered, limiting women's opportunities and reinforcing the traditional gender roles, which is leading to deprivation of social and economic rights such as accession of land, inheritance, political deprivation of speech and so on.

One prominent issue is the inheritance laws, often exemplifying male heirs, neglecting women's access to property and resources. This patriarchal structure is reinforced by traditional practices that prioritise male lineage, failing to recognise the property rights of women, as well as their role in decision-making processes.²⁵ To contradict that women in the rest of the country are allowed to inherit property, as declared by the Hindu Succession Act 1956. It has removed any kind of difference

²⁴ Naomy Sale, Codification of Naga Customary Law: Need of the Hour?, THE MORUNG EXPRESS (Mar. 12, 2024), <https://morungexpress.com/codification-naga-customary-law-need-hour>.

²⁵ *Id.*

between male and female heirs. Women (specifically daughters) would be entitled to an equal share in the whole property as the son²⁶. But then why are the Naga women not entitled to this right? Is it just because their custom doesn't permit this? Wouldn't this be considered a breach of human rights?

These mechanisms enshrined within customary law apply to marriage, presenting women in subordinate positions, in which they may have little agency in their matrimonial affairs and pressure to fit into the heteronormative gender roles expected of them.²⁷ The enforcement of these laws also varies, leading to discrepancies about how these laws apply to affect women within communities. The legal framework impacts the socio-economic standing of the Naga women and has an influence on their reliance on men, strengthening the male control over their basic human rights, such as land rights, human rights and so on. As a result, women face financial dependence, which is a deprivation of their socio-economic empowerment.²⁸

Women frequently find it difficult to devote time to the public sphere because of the gendered division of domestic labour, the idea that women must take care of the home, the obligation to put food on the table, and other responsibilities that leave them with little time to engage in public life. Furthermore, if a woman participates in the public sphere without first fulfilling her domestic responsibilities, her character will be questioned.

A very vivid narrative analysis was presented by *The Wire*, showcasing the problems of the Anagami Naga women. The idea that women are emancipated is mostly untrue, especially in Naga society. Although there has been significant advancement in the areas of employment and education, particularly in urban areas, “empowerment” in the true sense is contested because women lack real decision-making authority in their

²⁶ Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

²⁷ KAMEI PAMEI ROSELIMA, CUSTOMARY LAW AND WOMEN IN NORTH EAST INDIA (2014).

²⁸ E. Chumthunglo Yanthan, Gendered Practice of Naga Customary Laws: A Critical Analysis, *J. EDUC., SOC'Y & BEHAV. SCI.* 34, 34–44 (2023).

homes, communities, over land resources, over marriage, over reproductive health, and other areas, according to Monisha Behal, NEN chairperson and well-known women's rights activist.²⁹ The NEN report also reveals domestic abuse against women in rural Nagaland. The customary laws offer them no redress. Alcohol is viewed as the adversary, not the man's actions, if a man gets drunk and beats up his wife. Men mistakenly believe that verbal abuse of women is "OKAY" as long as it doesn't escalate to physical abuse, according to Behal, who cites study findings. A male village chief in the Phek district said to the researchers in reference to instances of sexual abuse against women, such as rape, "On the one hand, the guilt can be on the man, but on the other hand, even the woman may be at fault. In a nearby town, a recent rape incident took place in a forest."³⁰ Rape would not have occurred randomly in a public or open area if the lady had not followed him or kept in touch with him. So, there would not have been an opportunity for a rape if the woman had not followed that man into the forest.

Another report by the Morung Express captured the Angami tribes of Nagaland, where, in case of divorce due to the husband's infidelity, there is an equal distribution of property between the husband and wife. But in case the wife wants to claim maintenance for her children, and her husband abandons her and their children. "In the absence of some written code of customary laws, what will be the result if their father refuses to give them maintenance?"³¹ People will lose faith in the traditional courts and lean more towards the formal courts. The court generally does not interfere in the customary domains of tribal communities in India. Hence, women are unable to use the penal provision effectively, as section 125 of

²⁹ Sangeeta Barooah Pisharoty, The Myth of Nagaland's Empowered Woman, *THE WIRE* (Jan. 25, 2024, 8:43 PM), <https://m.thewire.in/article/gender/gender-discrimination-nagaland-northeast>.

³⁰ *Id.*

³¹ Naomy Sale, Codification of Naga Customary Law: Need of the Hour?, *THE MORUNG EXPRESS* (Mar. 12, 2024), <https://morungexpress.com/codification-naga-customary-law-need-hour>.

the Code of Criminal Procedure, 1973 provides an effective remedy for neglected persons to seek maintenance.³²

Thus, this shows how brutal the conditions are that women have to face in the North-Eastern communities, and yet their voices cannot reach out to the higher authorities. The intersection of legal pluralism and the socio-cultural barriers illustrates how Naga women are doubly marginalised—first by the legal structures that fail to protect their rights and second by societal norms that perpetuate their exclusion. This situation calls for a re-evaluation of both legal frameworks and societal attitudes to ensure that women's rights are recognised and upheld within the Naga context.

6. Article 371A and Re-Presentation

Article 371A of the Indian Constitution is a special provision concerning the state of Nagaland. It is the Customary law in order to save the rich culture and tradition of the tribes in the states and protect their interests. The law states there cannot be any act of Parliament with respect to the religious and social practices of the Nagas, Naga customary laws and procedures, administration of civil and criminal cases and the transfer of the ownership of the land. The Governor of the said state is given special responsibilities with respect to law and order. But is it really serving its purpose? Or is it just used as a tool to deprive women of their fundamental rights, which the other citizens enjoy? Article 371A was used as a tool in order to argue and diminish the Constitutional mandate of 33% of women's reservation in Urban local bodies (ULBs)³³. In 2011, the Naga Mothers' Association (NMA) filed a writ petition challenging the State's refusal to hold the municipal election, which had not been conducted in over 10 years, before the Kohima bench. Upon which the state government countered, claiming that such a law would "upset the peace". The voices of the women were silenced by the Nagaland state assembly on 22nd of Sept, 2012, when they adopted a resolution rejecting women's

³² The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

³³ INDIA CONST. Art. 371A .

reservations, showing the Patriarchal cage the women are in due to the law, which was actually incorporated to protect the society of the Nagas and prevent them from being backward.³⁴ Laws like this bring in the lack of the female narrative on matters of their own interests.

Gayatri Chakravorty Spivak makes a study about the voices of women by looking through the post-colonial lens. She points out two very integral points regarding the condition of women. In her very first point, she talks about the distinction between *Vertretung* and *Darstellung*. The former she defines as “stepping in someone’s place ... to tread in someone’s shoes.” Representation in this sense is “political representation” or speaking for the needs and desires of somebody or something. *Darstellung* is represented as re-presentation, “placing there”. For Spivak, representation is thus “proxy and portrait”.³⁵ The complicity between “speaking for” and “portraying” must be kept in mind. She also addresses the problem of “speaking in the name of”, which I feel almost speaks about the injustice and suppression of these Naga women. Therein she also states that “It is not a solution, the idea of the disenfranchised speaking for themselves, or the radical critics speaking for them; this question of representation, self-representation, representing others, is a problem”.³⁶

Thus, the voice of Naga women is not able to reach outside; isn’t this just a stepping stone to all the injustice the Naga women have to face? Where they don’t even have the chance to address their issues and to even have a say in the solutions of their own interests, thus resulting in a solution which only helps and pleases the men of the society. Secondly, she talks about silence as a speech, and how even the silence of the women speaks volumes about their condition in this society. Their silence screams for help in the community in order to uplift them.

³⁴ Important Events Pertaining to Elections to ULBs, THE MORUNG EXPRESS (Apr. 16, 2024), <https://morungexpress.com/important-events-pertaining-elections-ulbs>.

³⁵ GAYATRI CHAKRAVORTY SPIVAK, THE POST-COLONIAL CRITIC: INTERVIEWS, STRATEGIES, DIALOGUES (Sarah Harasym ed., Routledge 1990).

³⁶ GAYATRI CHAKRAVORTY SPIVAK, CAN THE SUBALTERN SPEAK?: REFLECTIONS ON THE HISTORY OF AN IDEA (Columbia Univ. Press 2010).

Thus, Naga women's standing is a product of the society's patriarchal sociocultural ideals and ethos. Women grew dependent on men because they were accustomed to living under the direction and control of men; this cycle of reliance is still present today. Because they believe they are too weak to overthrow the patriarchal system, which has persisted from generation to generation, Naga women choose to ignore and turn a blind eye to their inability to participate in decision-making. It has been noted that Naga women lack the self-confidence to question the patriarchal system. In addition, they lack the self-assurance to speak up for their rights and describe the hopeless state of society. Women are accustomed to relying on men. Women who are seeking change are aware of the shortcomings of customary law and how it affects women's rights. Women are frequently made fun of if they speak up or do things that go against social conventions. Because so many of these women are reluctant to stand out for their rights, they are stigmatised by society.

It has been noted that women are hesitant to step outside of their comfort zones and question the status quo. They are content in the space that cultural traditions have provided for them, and they believe that neither their opinions nor their participation in decision-making will result in any changes. They unquestioningly accept the socially manufactured idea of being a woman and continue to pass it on to the next generations. Males frequently believe that women have pity issues, and when women participate in decision-making, it becomes more and more difficult because women are constantly critiquing other women. Several women have been observed to not support the women themselves, but rather believe that it is preferable to live under the male-dominated institutions rather than fighting and wreaking havoc in society.³⁷ It has been observed that some women do not support the idea of including women in decision-making because cultural teachings do not teach women to compete with

³⁷ Tatum Kodak, Customary Law and Gender Inequality of Tribal Society with Special Reference to Tagins of Arunachal Pradesh, 8 INT'L J. MULTIDISCIPLINARY RES. (2022).

men or to interfere in their work. Women frequently bring themselves and other women down.

Because women's morals will be judged instead of men's, problems affecting women, like domestic violence and abuse, molestation, family strife, etc., are frequently kept under wraps. Low women's engagement in decision-making is plainly evident, demonstrating bias and a conservative mentality about the idea of gender fairness. All political parties in the state have their own female wings, such as the Mahila Congress of the INC or the women of the Naga People's Front; these wings are barred from participating in politics on a national level.³⁸ Customary law has been regarded so highly for a long time that Naga women themselves believe it is just a fact of life and are afraid to speak out against the injustice done to them. As modernity and education spread, more and more educated Naga women emerged and recognised the oppressive character of the customary rules and the necessity of resisting the entrenched patriarchal system. More and more Naga women are speaking out against the persistent denial of their rights and the unequal treatment of men and women in politics as a result of awareness campaigns and education. Women who have grasped the true nature of democracy and the importance of empowering women have paved the path for reforms in society.

7. How To Balance Tradition and Equality?

Through a vivid analysis in the paper, it can be understood that bridging the gap between the customary laws and gender equality in the Naga tribes primarily requires a "mainstreaming" approach, which would balance the preservation of culture as well as the protection of the Naga women's rights. These laws play a vital role in maintaining the social and cultural fabric of these indigenous communities, be it the Naga tribes in India or any other community worldwide.

³⁸ Susan H. Williams, *Democracy, Gender Equality, and Customary Law: Constitutionalizing Internal Cultural Disruption*, 18 IND. J. GLOBAL LEGAL STUD. 1 (2011).

However, in the Naga community, the patriarchal norms are embedded within these laws, which causes gender imbalance relating to property inheritance, marriage, and the powers of decision-making within the Naga community. Thus, legal development should aim at reinstating the best practices with the norms of the constitution and the international human rights, in order to address this disparity. One approach could be to encourage dialogue between tribal leaders, women's rights advocates, and legal experts to develop inclusive interpretations of customary laws. Along with that, educating and establishing gender-sensitive legal frameworks that respect cultural traditions while ensuring women's access to justice, property, and decision-making roles is essential. Additionally, the state must play a proactive role in ensuring that customary laws do not violate fundamental rights, and the legal system should provide clear avenues for women to seek redress.

It has to be stated that the law should be the one protecting the interests of women, and not one which keeps them backwards in society. If it is to protect a community, the law-governing administration should be vigilant on these inequalities and torture faced by these Naga women. The customary laws, as they are flexible, should be changed or rather, should be rectified in order to give women their rights, especially the ones they are entitled to. They have the right to inherit their familial property, and also represent themselves not only as an ideal daughter or wife, but also in any sector she wishes to. Thus, to conclude, the difficulty for the Naga tribes and other indigenous communities is essentially to balance the need for the customs along with the demands of gender equality so that women's rights and dignity are not compromised in the process of cultural preservation.

HUMAN TRAFFICKING AND EXPLOITATION IN THE HOSPITALITY INDUSTRY IN INDIA

Piyush Raj Geddam*

1. Introduction

Human trafficking is considered as one of the biggest violations of human rights that imply the application of force, defraud, or coercion towards individuals.¹ It can take many forms, such as forced labor, domestic servitude, and sex trafficking. This affects millions of people worldwide including women, children, and the migrants. Victims are trapped situations where they are extremely exploited like being forced into prostitution or being used as labor force in certain industries, and even organ trafficking. The United Nations Office on Drugs and Crime (UNODC) defines human trafficking as "*the recruitment, transportation, transfer, harboring, or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or a position of vulnerability*".²

Human trafficking has increasingly taken advantage of the hospitality industry as a significant scene for such illicit activities. Hotels, restaurants, and other tourist area serve as major hot-spots for various forms of trafficking; including sex trafficking, labor trafficking, and child trafficking. The Hospitality industry is particularly vulnerable to these illicit activities, and commercial sexual exploitation has become a regular phenomenon in various hotel premises. Similarly, labor exploitation occurs in the guise of forced labor conditions wherein most cases, individuals are imitated into working in harsh and abusive work

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¹ Paul Dixon, Sanctions Compliance Is Crucial in Combatting Human Trafficking, SANCTIONS.IO (Jan. 16, 2024, 10:00 AM), <https://www.sanctions.io/blog/sanctions-compliance-is-crucial-in-combatting-human-trafficking>.

² Human Trafficking in Greece, WIKIPEDIA (Nov. 13, 2024), https://en.wikipedia.org/wiki/Human_trafficking_in_Greece(last visited June 10, 2025).

environments. Child Trafficking is very much prevalent in areas which draw significant tourist activities. To deal with these issues and challenges, many major hotel chains have launched awareness campaigns that aim in combatting human trafficking. Such initiatives are centered around training staff to identify any potential indicators of trafficking, enforcing more stringent security protocols, and partnering with the law enforcement and Non-Governmental Organizations to combat such vices in a more effective manner.

It has increasingly become an unescapable issue in hotels, restaurants, lodges, and motels among other related entities. The sector presents a significant vulnerability to exploitation by the traffickers because of the vast and fragmented nature of the landscape coupled with its transient workforce. The large scope of operations and frequent turnover of staff, which usually engage in precarious or informal employment arrangements, render an environment that allows illicit operations like trafficking. Such consolidation of the problems makes it more challenging to counteract trafficking in the industry, and it is therefore becoming a significant concern for the regulatory bodies and the industry stakeholders.

The composition of the group called "*traffickers*" is most varied, encompassing transnational criminal gangs gaining enormous profits through the whole chain of minor agencies like employment bureaus, transit hotels, travel agencies, local brothels, bars, night clubs, and massage parlors, all operating at the micro level, to numerous recruiters, middlemen, pimps, and employers, that facilitate the movement and placement of trafficked persons.³

2. Understanding the Prevalence of Human Trafficking in the Hospitality Sector

The hospitality sector around the world has been synonymous with comfort, luxury, and a remarkable experience to its clientele. Over the

³ Marie Vlachová, Trafficking in Humans: The Slavery of Our Age, 4 CONNECTIONS 4, 4 (2005).

years, the growth of this industry has been enormous in the India's economic landscape. It is, in fact one of the most significant sectors in India. The rich cultural heritage and scenic landscape attract tourists to India with the mantra "*Atithi devo Bhava*", the guest is God, as a guiding ethos which has helped the country to harness its richness through both the economic benefits and significant employment opportunities across various regions. However, as the industry expands and grows, the trafficking has become a common practice in the industry with various individual getting trafficked across borders to escape the harsh conditions back at home. It has increasingly infiltrated the industry. Research shows that while human trafficking is often perceived as a transnational issue, a significant majority, approximately 75% occurs within national borders. In India, the states most significantly impacted by trafficking, particularly concerning women exploited for sexual purposes and children subjected to domestic work or forced labor, include West Bengal, Jharkhand, Assam, and Chhattisgarh. This data underscores the urgent need for targeted interventions and policy measures to address the domestic dimensions of trafficking in these regions⁴. With the increase of demand in the hospitality industry, the vulnerabilities that lead to the exploitation are also increasing, especially in areas with a lot of tourists or those that are poorly regulated. The traffickers take advantage of the industry structure - hotels, resorts, and other accommodations offer anonymity and are frequently changing places, thus it is very difficult to supervise and prevent unlawful activities.

Alarming, many victims within this industry include minors, who are lured or coerced under the pretense of economic opportunity or escape from adverse conditions. This often results in slave labor or sex trafficking, affecting both International and local victims. India's children are more susceptible, as they are trafficked in the guise of employment as domestic help or lured into more severe forms of exploitation. This has

⁴ Siddharth Tripathi, Critical Analysis of Human Trafficking in India, 6(2) GLS L.J. 76 (2024).

placed the hospitality industry at a crossroad where the growth and reputation ought to be accompanied with ethics of accountability and maximize efforts to prevent exploitation and uphold human dignity. The National Crime Records Bureau (NCRB) reported over 1,000 cases of human trafficking in 2020, but this figure likely underrepresents the actual prevalence due to underreporting and lack of awareness.⁵

While Government has taken to ameliorate the problem of human trafficking, it has yet to fully comply with the internationally recognized minimum standards required for the comprehensive elimination of this crime. Compared to their previous efforts, the government has step up various its initiatives to tackle trafficking, thus reflecting a clearer strategic intent. Notably, the issuance of several advisories for state governments to ramp up domestic and regional activities was a major pointer of a collaborative approach change, thus partnership among the states being deemed crucial for enhanced communication and better coordination. Nevertheless, there are still large gaps especially in law enforcement and victim protection. To begin with, although more trafficking victims have been identified, the severe lack of judicial and protective responses has resulted in the overall effectiveness of these efforts being very low.⁶ The rate of convictions for trafficking crimes is still very low which, therefore, acts as a deterrent and weakens the accountability framework that is necessary for the reduction of trafficking. This very low rate of convictions has allowed many perpetrators to evade justice, undermining the message that trafficking is a punishable offense.

The quality and availability of victim services vary significantly across states, pointing to an inconsistent implementation of protection measures. Many trafficking victims have still been hampered by the lack of essential

⁵ National Crime Records Bureau, Crime in India 2020: Volume III, PEOPLE'S ARCHIVE OF RURAL INDIA (Library) (Sept. 15, 2021), <https://ruralindiaonline.org/en/library/resource/crime-in-india-2020-volume-iii/> (last visited June 1, 2025).

⁶ Ministry of External Affairs, Government of India, Human Trafficking, MEA (2024), <https://www.mea.gov.in/human-trafficking.html> (last visited Mar. 29, 2025).

assistance, and the government has not provided the precise data on the number of the victims that have been assisted or taken to care. Court-ordered restitution for trafficking survivors remains uncommon, with many victims enduring prolonged delays in receiving compensation mandated by the central government.⁷ Additionally, the lack of regular audits of government-run or funded shelters has contributed to an inconsistent standard of care. In some cases, the victims have been confined to the shelter without being able to leave until a magistrate's order is given, prolonging their detention. Notably, the inter-ministerial committee was constituted by the government to synchronize anti-trafficking efforts are coordinated between the departments, but it ceased operations which created a gap in centralized coordination.

Addressing these structural and operational shortcomings will require an enhanced commitment towards the systematic policy reform, frequent monitoring of the victim service, and robust accountability mechanisms which will ensure that these anti-trafficking mechanisms are just and effective across the nation. The alarming reality is that, human trafficking within the hotel industry casts a pervasive shadow over businesses that may be directly or indirectly associated with such crimes. This is not an issue of compliance and social responsibility but is regarded as one of the core aspects of integrity and reputation of a business to the hoteliers.

3. Forms of Human Trafficking

Human trafficking generates billions of dollars annually and impacts millions of lives around the world; no industry or nation remains untouched by this pervasive issue. The hospitality industry holds an integral part in combating trafficking due to its infrastructure, which traffickers may exploit to facilitate their operations. Traffickers may use hotels and lodges as temporary housing for victims or as locations for forced services. This criminal activity threatens the safety of hotel

⁷ Press Information Bureau, Government Efforts to Prevent and Counter Human Trafficking, PIB (Dec. 15, 2021), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1784153>.

employees and guests and risks damaging the reputation and integrity of the business itself. To have a better understanding of human trafficking in the hospitality industry, the article has divided the forms of trafficking into three types –

3.1. Labor trafficking

Labor trafficking has been a significant and troubling aspect of the hospitality industry. Victims often work as housekeepers, kitchen staff, front desk personnel, and in other service roles. They may endure long hours with little or no pay, often under threats or coercion to prevent them from leaving their jobs. Traffickers may be part of the hotel management or subcontractors who exploit workers through deceptive practices. Many victims are misled about job conditions, wages, and immigration benefits, leading them into situations where they feel trapped. In India, most of the victims of the labor trafficking come from backward areas and neighboring countries like Bangladesh, Nepal, Myanmar, and even from Africa. The victims are subject to physical abuse, confinement, or restrictions on movement and communication.

In many cases, they are deceived through false promises regarding job conditions or wages which is used as a common tactic. Similarly, Indians in various countries face this problem, especially Indians who seek job opportunities in the Middle East and fall into traps like altered contracts or visa fraud. The transient nature of hotels allows traffickers to operate with relative anonymity. Driven by the pursuit of better opportunities, many Indian citizens attempt to migrate abroad through legal channels or, in some cases, by risking clandestine routes (The Donkey Route). This pursuit of economic security often leads vulnerable individuals into the hands of traffickers, who exploit their vulnerability. Such trafficking networks entrap migrants and transfer them to various locations, where they may be coerced into forced labor or even conditions resembling modern slavery.

As a result, there have been concerted efforts within the hotel industry to both educate employees on identifying signs of trafficking and implement preventive measures. Some hotels now train staff to recognize suspicious behavior, establish protocols for reporting potential trafficking cases, and collaborate with local law enforcement. By fostering partnerships with anti-trafficking organizations and government bodies, hotels can and have, in various cases, strengthened their capacity to detect and report trafficking. Continued efforts in this regard contribute to a safer environment for all and reinforce a commitment to ethical standards and social responsibility, which are essential for the long-term credibility and success of the sector.

3.2. Child Trafficking

India is considered one of those countries with a significant child trafficking industry due to its large population, socio-economic inequalities, and geographical diversity. While the global rankings are challenging to determine due to underreporting and the clandestine nature of trafficking, India is among the nations with a high prevalence of child trafficking. The country accounts for a substantial portion of trafficking victims globally, especially in South Asia. Thousands of children go missing each year, with many of them ending up with traffickers for free or cheap labor, sexual exploitation, forced marriage, or even illegal adoption. In the hospitality Industry, these trafficked children are employed as cleaners, servers, sex workers, kitchen helpers, and maintenance staff in various restaurants, hotels, and roadside dhabas as well. These children often work longer hours without pay, frequently in harsher conditions. Also, multiple children work as tourist guides around famous places as a way to earn a living. Most of these children do not voluntarily take up the job but are told to be done by either the traffickers or the people who brought the child from the traffickers to run their businesses. The situation is commonly seen throughout the country. Though the government and NGOs have taken various initiatives, this situation still exists in the country.

Child Trafficking has long plagued the hospitality industry with various exploitative practices that target children. In addition to labor exploitation, the industry has served as a conduit for child sexual exploitation. Children are forced into prostitution, with many hotels and lodges accommodating them as sex workers to cater to illicit demands. This heinous practice not only inflicts severe psychological and physical trauma on the victims but also perpetuates the cycle of trafficking by enabling a market for such abuses to occur. The prevalence of child trafficking in the industry is deeply associated with systematic problems such as poverty, lack of education, weak enforcement of child protection laws, and societal indifference to the plight of marginalized communities. Despite efforts to regulate and monitor the industry, the clandestine nature of these crimes and the complicity of some stakeholders create significant hurdles to eradicating this scourge.

Human trafficking, especially the exploitation of minors, represents a modern form of slavery that demands a holistic and collaborative approach involving multiple sectors to tackle its multifaceted challenges effectively⁸. Minors are often isolated from their families and communities and subjected to psychological manipulation by their traffickers. These traffickers instill fear in children by portraying law enforcement as untrustworthy or dangerous, warning them that approaching authorities could lead to arrest or detention. Such tactics aim to keep children compliant and prevent them from seeking help. Additionally, traffickers exploit vulnerabilities in children's lives such as an abusive home environment, extreme poverty, or prior experiences of neglect to maintain control. By capitalizing on these pre-existing challenges, traffickers create a dependency that ensures the child remains under their influence, making it even more difficult for the victim to escape or seek intervention.⁹

⁸ Sonika Yadav, Human Trafficking as a Violation of Human Right, 3(1) J. CONST. & LEGIS. STUD. 1487 (2022).

⁹ Jackie Taylor, Sex Trafficking of Children and Youth: A Summary of the Research and Recommendations for the Field, National Advisory Committee Literature Review, U.S. Dep't of Health & Human Servs. 7 (2018).

3.3. Sex Trafficking

Sex trafficking is a form of human trafficking where individuals are coerced, deceived, or forced into performing commercial sex acts. It is a grave violation of human rights and is a form of modern-day slavery. Traffickers often use these hotspots to exploit victims because they provide a convenient and discreet location for their illegal activities. This puts the victim's life at risk and jeopardizes the hospitality establishments' safety and reputation. Traffickers often run sex rackets in hotels and lodges in and around vast and medium urban settlements where victims are forced into performing sexual activities with their customers. These locations are primarily temporary and very discreet, which allows traffickers to move their operations frequently, reducing the risk of being caught. There are cases where the proprietors of certain establishments are entirely unaware of the operations within them. Law enforcement often conducts raids on these venues. For instance, in December 2013, the Delhi police raided a hotel in Aero city and uncovered a flesh trade racket operating on the premises. This operation was brought to light after advertisements promoting escort services surfaced on social media in anticipation of Christmas and New Year celebrations.¹⁰ According to a comprehensive global report by UNODC, the most prevalent form of human trafficking worldwide is trafficking for sexual exploitation. This specific type accounts for an alarming 79% of all identified cases of human trafficking. Victims of sexual exploitation are predominantly women and girls, although men and boys can also be affected. Societal stigmas surrounding victims often contribute to their marginalization, making it even harder for them to seek help or escape¹¹.

¹⁰ Cops Raid Aerocity Hotel, Claim Flesh Trade Racket Busted, THE TIMES OF INDIA (New Delhi, Mar. 14, 2024), <https://timesofindia.indiatimes.com/city/delhi/cops-raid-aerocity-hotel-claim-flesh-trade-racket-busted/articleshow/106242716.cms> (last visited Feb. 2, 2025).

¹¹ International Justice Mission, Human Trafficking, IJM INDIA, <https://ijmindia.org/human-trafficking/>.

4. How Traffickers Used the Hospitality Industry to Recruit, Transport, and Exploit their Victims

The Indian government's National Crime Records Bureau (NCRB) gathers data and reports the number of trafficking cases based on Sec 370 of the Indian Penal Code. According to the data, approximately 95% of individuals trafficked in India are coerced into prostitution.¹² Section 370¹³, 370A¹⁴, 372¹⁵, and 373¹⁶ of the Indian Penal Code, as well as section 143¹⁷ of the Bharatiya Nyaya Sanhita, delves into the trafficking of persons and minors. Most sex workers are either children or women coerced into this predicament by sex trafficking, which is a significant social issue as it endangers the lives of women and children¹⁸. Traffickers frequently exploit the anonymity and seclusion provided by the hospitality industry. Because employees and visitors might not be aware of the warning indications of human trafficking, they can operate covertly. Traffickers frequently target victims who have little to no social safety net, such as unstable housing, a lack of family or social support networks, a history of abuse or trauma, a dubious immigration status, or an inability to recognize exploitative circumstances. Traffickers have many different faces. They may be from any background or be of any gender¹⁹.

¹² Jaffer Latief Najar, Human Trafficking in India: How the Colonial Legacy of the Anti-Human Trafficking Regime Undermines Migrant and Worker Agency, LSE HUM. RTS. BLOG (Feb. 11, 2021), <https://blogs.lse.ac.uk/humanrights/2021/02/11/human-trafficking-in-india-how-the-colonial-legacy-of-the-anti-human-trafficking-regime-undermines-migrant-and-worker-agency/>.

¹³ Indian Penal Code, 1860, § 370, No. 45, Acts of Parliament, 1860 (India).

¹⁴ *Id.* § 370A.

¹⁵ *Id.* § 372.

¹⁶ *Id.* § 373.

¹⁷ Bharatiya Nyaya Sanhita, 2023, § 143, No. 45, Acts of Parliament, 2023 (India).

¹⁸ Mayank, Legalization of Prostitution in India: A Hard-Earned Victory or A Judicial Pretence, 3(1) J. CONST. & LEGIS. STUD. 267 (2022).

¹⁹ Blue Campaign, Human Trafficking Response Guide for the Hospitality Industry (2024), <https://www.dhs.gov/blue-campaign/hospitality-industry-guide>.

Human trafficking typically begins with the abduction or recruitment of individuals from their place of origin, referred to as the "*source area*".²⁰ This process is often orchestrated by professional traffickers or intermediaries who employ methods such as force, coercion, deception, or threats to manipulate or control the victims. These traffickers are part of intricate networks that vary depending on the region and the type of exploitation being targeted. The trafficking process can be broadly divided into three stages: origin, transition, and destination.

4.1. Origin Stage

The origin stage marks the beginning of the trafficking cycle. Victims are identified and recruited from vulnerable populations, which may include individuals living in poverty, those lacking education or employment opportunities, or people affected by conflicts or natural disasters.²¹ Traffickers exploit these vulnerabilities, often posing as employers, friends, or romantic partners to lure victims.²² In some cases, families or acquaintances may unknowingly or deliberately play a role in the recruitment process. Once the victim is under the trafficker's control, they are prepared for transportation to another location.

4.2. Transition Stage

Victims are moved from their source area to another location during the transition stage. This stage can involve travel over short or long distances and may require crossing national or international borders. Transportation is often clandestine and may involve fraudulent documentation,

²⁰ *Supra* note 205.

²¹ UNODC, Human Trafficking FAQs, UNODC (2024), <https://www.unodc.org/unodc/en/human-trafficking/faqs.html>.

²² Human Trafficking Front, Online Recruitment of Children for Sex Trafficking, HUMAN TRAFFICKING FRONT (2023), <https://humantraffickingfront.org/online-recruitment-of-children-for-sex-trafficking/>.

smuggling, or illegal border crossings.²³ Victims may be held at intermediary locations, such as safe houses or transit hubs, for a period ranging from a few days to several months. These temporary stops conceal the victim's movement, provide logistical coordination for traffickers, and reduce the risk of detection by authorities. During this time, victims may face isolation, abuse, or indoctrination to increase their dependency on traffickers.

4.3. Destination Stage

The last step or the stage is the destination stage which entails arriving at the place where the victim is being utilized. This is also referred to as desire market which humans are constructed to sell services or labour. These services can be sexual services, forcible service within sectors like agriculture sector, building and construction sector, hand services within the home or even criminal acts like drug trafficking. At this stage, victims are subjected to various forms of physical, psychological, and emotional abuse to maintain control and compliance.²⁴ This domination of human lives subjects them to a second kind of slavery in the modern days where they are deprived of the freedom, dignity and even their basic rights as human beings.

All the cycles of traffic are identity-based in which specific strategies and operations concentrate on the maximization of profits and any chance of detection by the traffickers is minimized. Human trafficking can be prevented only with the profound knowledge of these measures and the joint actions aimed at discontinuities in the chain with the help of which this perverted business can be run.

²³ Migration Data Portal, Human Trafficking, IOM (2024), <https://www.migrationdataportal.org/themes/human-trafficking>.

²⁴ Makisaka M, Human Trafficking: A Brief Overview, INT'L J. MED. STUD. (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6661886/>.

5. How Human Trafficking is Affecting the Country

As the issue of human trafficking in Indian hospitality industry is becoming increasingly topical nowadays, the country is grappling with profound harsh social, economic, and moral repercussions. Among the vulnerable groups are women, children and even marginalized populations, who disproportionately are often forced labour victims, victims of sexual abuse and other abuse. Unscrupulous establishments that exploit trafficked labour gain an unfair competitive edge by cutting operational costs, thereby undermining ethical businesses that adhere to labour laws and provide fair wages. Trafficked children are deprived of education and a normal childhood. Such unethical practices distort market forces which discourages the tourists and business travellers as well, hence creating significant loss of revenues to the tourism sector which is a major contributor to India's GDP. The misuse of hospitality establishments for trafficking activities tarnishes India's reputation as a safe and ethical travel destination. Such negative publicity of these issues may lead to a fall in international tourism that constitutes the crucial source of foreign exchange in the country. Furthermore, India has been criticized in the international forums, due to its unwillingness to combat trafficking in the hospitality sector, adversely affecting its standing in international human rights indices. Addressing this issue is imperative to safeguard the nation's social fabric, economic interests, and global reputation. Most of the establishments and business within the industry are not commonly undertaking due diligence like conducting background checks on their employees, guest verification and anti-trafficking training for staff.

Despite the existence of stringent laws and comprehensive schemes aimed at combating human trafficking, enforcement in India remains weak and inconsistent. Traffickers often operate with impunity, exploiting systemic loopholes, corruption, and a lack of accountability. These criminal networks frequently serve as fronts for organized crime, engaging in activities such as drug smuggling, money laundering, and human

trafficking. By bribing officials to evade detection, they undermine national security and hinder law enforcement efforts.

Victims of the trafficking are forced to face severe social stigmatization which prevents them easily resuming a life in society and limit their opportunities to secure employment. Additionally, they have a greater risk of being contracting with sexually transmitted diseases (STIs), such as HIV/AIDS, due to unsafe working conditions and their limited access to health care. The psychological trauma endured by victims and survivors further exacerbates the growing mental health crisis in the country. Unfortunately, access to adequate counselling and rehabilitation services remains limited, leaving many without the support they need to recover and rebuild their lives. Addressing these systemic issues is critical to effectively combat trafficking and support survivors.

The hospitality sector's commitment to social responsibility is weakened and ethical standards are eroded by its involvement in human trafficking. Businesses and establishment in the sector have a moral duty to make sure their activities do not support abuses of human rights. The industry may significantly contribute to the fight against human trafficking and the advancement of a more secure and just society by adopting preventive measures.

6. NCRB Report on Human Trafficking Cases Reported in India

State/UT-wise Human Trafficking Cases- Reported from 2018 to 2022 as per the NCRB Report.²⁵

²⁵ Rajya Sabha, Unstarred Question No. 1907: Human Trafficking and Women's Safety (Aug. 7, 2024), MINISTRY OF WOMEN & CHILD DEV., GOV'T OF INDIA, <https://www.ncrb.gov.in>.

Sl. No.	State/UT	Cases Reported				
		2018	2019	2020	2021	2022
1	Andhra Pradesh	240	245	171	168	163
2	Arunachal Pradesh	3	0	2	3	4
3	Assam	308	201	124	203	140
4	Bihar	127	106	75	111	260
5	Chhattisgarh	51	50	38	29	26
6	Goa	55	38	17	15	1
7	Gujarat	13	11	13	13	9
8	Haryana	34	15	14	37	13
9	Himachal Pradesh	6	11	4	5	5
10	Jharkhand	140	177	140	92	100
11	Karnataka	27	32	13	13	18
12	Kerala	105	180	166	201	135
13	Madhya Pradesh	63	73	80	89	81
14	Maharashtra	311	282	184	320	295
15	Manipur	3	9	6	1	0
16	Meghalaya	24	22	1	1	2
17	Mizoram	2	7	0	0	0
18	Nagaland	0	3	0	0	0
19	Odisha	75	147	103	136	121
20	Punjab	17	19	17	15	21
21	Rajasthan	86	141	128	100	117
22	Sikkim	1	0	1	0	0
23	Tamil Nadu	8	16	11	3	1
24	Telangana	242	137	184	347	391
25	Tripura	2	1	1	1	0
26	Uttar Pradesh	35	48	90	103	126
27	Uttarakhand	29	20	9	16	16
28	West Bengal	172	120	59	61	67
29	A & N Islands	0	0	0	0	0
30	Chandigarh	0	2	2	2	1
31	D & N Haveli and Daman & Diu	0+	0+	2	0	0
32	Delhi UT	98	93	53	92	106

33	Jammu & Kashmir	1*	0*	2	4	8
34	Ladakh	-	-	0	0	0
35	Lakshadweep	0	0	0	0	0
36	Puducherry	0	2	4	8	23
	TOTAL ALL INDIA	2278	2208	1714	2189	2250

*'+' combined data of erstwhile D & N Haveli and
Daman & Diu UT '*' data of erstwhile Jammu &
Kashmir State including Ladakh*

7. International Legal Framework on Addressing the Issue of Human Trafficking

Human trafficking stands as one of the most heinous violations of fundamental human rights and human dignity, by using the means of exploitation and suffering of individuals at a massive scale. Over the years, India has made progress in addressing these issues through enactment of comprehensive legislations and formulation of progressive policies of International, regional and national significance. These implementations are made to combat and curtail the practice of trafficking and safeguard the rights of victims of human trafficking. The key international frameworks for combating human trafficking in the hospitality industry include several key conventions, protocols, and collaborative initiatives, with India being an active participant in many of these frameworks. Article 253²⁶ of the constitution gives the parliament to make laws for the implementation of international agreements, treaties, conventions.

The thematic debate on human trafficking also took place in the general assembly where the member states had an option of discussing strategies to be used to reduce the three Ps - prevention, protection, and prosecution.

²⁶ INDIA CONST. art. 253.

Building on this momentum, the Assembly held an interactive thematic dialogue titled “Taking collective action to end human trafficking”. This dialogue underscored the importance of coordinated efforts among Member States and key stakeholders, including regional and international organizations, non-governmental organizations, the private sector, and the media, to strengthen the global fight against human trafficking. The United Nations Convention on Transnational Organized Crime is highly critical in enhancing the capacity of the States Parties to deal with transnational organized crime. It also has the responsibility in the successful introduction of Convention and their respective Protocols, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, giving special consideration to women and children. These Decisions of the Conference have prioritized the need to provide means to combat human trafficking and protect vulnerable groups including women and children.²⁷. These decisions underscore the importance of coordinated international efforts to prevent trafficking, prosecute offenders, and safeguard the rights and well-being of victims.

A regional framework pertinent to South and South-East Asia, the Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime encourages cooperation between governments, the commercial sector, and civil society in the fight against human trafficking. India participates in this process and holds discussions to combat human trafficking in sectors like travel and hospitality collaborating with victims to identify and protect them. The South Asian Association of Regional Cooperation agreement on SAARC Convention on Preventing and Combatting Trafficking in Women and Children address the issue of trafficking of women due to sexual exploitations even in the hospitality industry. India is a signatory and engages in bilateral and regional initiatives under this convention. Also, India has a propensity towards

²⁷ CTOC/COP/2008/19, ch. I, Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its fourth session (Vienna, 1 December 2008).

partnering with ECPAT (End Child Prostitution and Trafficking) the formation of awareness and child safe tourism in the nation.

8. National Legal Framework on Addressing the Issue of Human Trafficking

The legislation used in the country of India to manage the issues related to the human trafficking can be seen in the sophisticated mixture of laws governing the human trafficking, the laws governing the penal cases and the various industry-related regulations with the aim to avoid the achievement of the goal of human trafficking and the security and protection of the individuals. Article 23(1) of the constitution of India is part of fundamental rights portion which expressly forbids trafficking in human beings and forced labour as this is cruelty to human dignity and personal freedom. Article 21 provides a privilege to an existence and personal liberty, and Supreme Court of India has supposedly supposed that it comprises a safeguard of the human trafficking. Articles 20 and 21 are non-derogable articles of the constitution which means that they cannot be suspended even during an emergency and are considered fundamental and essential human rights that cannot be taken away under circumstances. *ADM Jabalpur v Shivkant Shukla* case²⁸ has solidified this. Article 24 of the constitution provides prohibition of employment of children in any factory or mine or engaged in any other hazardous employment. Employment of child labour in hotels and restaurants is prohibited under Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (amended in 2016) as work in hotels and restaurants are considered as hazardous occupation for children below 14 years of age. The Immoral Traffic (Prevention) Act, 1956 primarily deals with human trafficking, specifically targeting commercial sexual exploitation and provides punishment for traffickers, pimps, brothel keepers and clients. The act includes provisions for rescue and rehabilitation of victims of human trafficking. India Penal Code (IPC), 1860 provides with section 370 and

²⁸ *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521.

370A defines and penalizes trafficking for exploitation. Section 366A and 366B punishes procurement and importation of minors for illicit purposes. Section 372 and 373 criminalizes the sale and purchase of minors for prostitution.

The Bhartiya Nyaya Sanhita (BNS), 2023 replaced the IPC in 2024. It provides section 365 which defines trafficking as the recruitment, transportation, harbouring, or receipt of a person by force, fraud, coercion, or inducement for exploitation and corresponds with section 370 of IPC. Section 366 corresponds with section 370A of IPC which criminalizes employing or including a child in trafficking-related activities, including prostitution and forced labour. Section 367 punishes importing or bringing girls below 21 years into India for immoral purposes. This section corresponds with section 366B of IPC. Section 318 to 321 covers kidnapping and abducting people for exploitation, forced, ransom and slavery.

With a lot of victims of human trafficking end up in working as forced labour in hotels and restaurants without any proper wages and are often victims of harassment and torture. Children are especially used by these establishments for a very low wage and sometimes are not given any wages at all. The Bonded Labour System (Abolition) Act, 1976 prohibits debt bondage and forced labour. The Protection of Children from Sexual Offences Act, 2012 (POCSO) criminalizes child sexual abuse, which also includes trafficking for sexual exploitation. In 2015, the Juvenile Justice (Care and protection of Children) Act, 2015 was passed by the government which provides for the care and protection of trafficked children. The Transplantation of Human Organs and Tissues Act, 1994 regulates organ transplantation to prevent trafficking in human organs in the country. The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill was introduced in the parliament in 2021. Though the bill has not passed in the parliament, the Bill aims to create a comprehensive framework addressing all forms of trafficking including labour and organ trafficking.

Over the years, the government has also introduced various policies and institutional framework which helps in tackling which the issue of human trafficking. Some of these ensure to reduce trafficking in the hospitality industry and not be misused as a hub for exploitation by traffickers by mandating policies like guest verification, employee training, and corporate accountability.

The government has introduced Anti-Human Trafficking Unit (AHTU) to the police departments to investigate and prevent trafficking cases in the country. They are made u of trained police offices and officials from the Women and Child Welfare Department, and local NGOs as well. Their main goal is to coordinate action at the ground level to curb human trafficking and strengthen the law enforcement response against human trafficking.²⁹

The National Commission for Women (NCW) play a very important role in addressing human trafficking. NCW has been actively involved in combating sex trafficking, which often intersects with the hospitality sector. It conducts research, organizes awareness programs and collaborates with police to address the exploitation of women in hotels, guesthouses, other establishments.

The National Commission for Protection of Child Rights (NCPCR) focuses mainly on trafficking of children. While children being more vulnerable part of the society and are often exploited. The hospitality industry has been a hub for their trafficking activities including forced labour and sexual exploitation. The commission has played a key role in ensuring compliance of hotels, restaurants, and tourism businesses with child protection laws. Initiatives such as Operation Smile or Operation Muskaan was launched by the government with an aim to rescue trafficked

²⁹AHTU Notice, Setting up and strengthening Anti Human Trafficking Units in all Districts of States and UTs under 'Nirbhaya Fund', <https://ppl-ai-file-upload.s3.amazonaws.com/web/direct-files/attachments/34551282/bc7fba04-b682-44f1-b0c1-9ea15ce5cf74/AHTU-notice.pdf>(last visited on Apr. 5, 2025)

children. Several inceptions in various hospitality establishments are done to ensure compliance and identify violation with child protection policies.

The UJJAWALA scheme, initiated by the Government of India in 2007, is a comprehensive program designed to address the issue of human trafficking, with a specific focus on combating the commercial sexual exploitation of women and children. It is a multifarious scheme, encompassing prevention, rescue, rehabilitation, reintegration, and repatriation of posttraumatic trafficking victims. Implementation is primarily carried out through partnerships with non-governmental organizations (NGOs), ensuring grassroots-level outreach and effective execution. Additionally, the scheme incorporates the Scheme for Adolescent Girls (SAG), introduced in 2010 as a targeted intervention to empower and support adolescent girls. SAG aims to address their unique vulnerabilities, providing them with resources and opportunities to enhance their socio-economic well-being and reduce their susceptibility to exploitation. The SWADHAR GREH scheme is a social welfare housing project which aims to provide all the requirements needed for women under distress situations, which includes the survivors of human trafficking. The scheme plays an integral role in the provision of essential resources, such as shelter, nutritious food, clothing, and medical treatment, along with the necessary support, which includes counselling, legal aid, and vocational training. The scheme intends to empower women, help them undergo the process of rehabilitation and then be able to live again successfully in the society.

Swadhar Greh scheme, which was aimed at catering to the women in distress and the Ujjawal scheme which aimed at preventing women trafficking have now been combined under a single program called Shakti Sadan Scheme under the umbrella of the Mission Shakti. This is an integrated program that serves as a holistic relief and rehabilitation home for women in dire need of assistance including the victims of trafficking. Such schemes provide security and empowerment that help women

navigate and overcome their adversaries. At present, there are 404 functional Shakti Sadan across all states and UTs and have assisted more than 2 lakhs women.³⁰

India's legal and institutional framework, coupled with targeted schemes reflects a comprehensive approach to combating human trafficking and protecting vulnerable populations. The hospitality industry, through ethical practices and collaboration with rehabilitation initiatives, can play a transformative role in empowering survivors and preventing exploitation.

9. Indian Judiciary on Addressing the Issues of Human Trafficking in Hospitality Industry

Tackling of the issue of human trafficking has been played out by the Indian judiciary over the years but hardly could any judgment be delivered on the specific issue of human trafficking in hotel sectors as many ground breaking judgements are made in the area of human trafficking, exploitation and related crimes which can be attributed to the hospitality industry.

In the landmark case of **Bachpan Bachao Andolan v. Union of India** (2011)³¹, a public interest litigation was initiated by the NGO Bachpan Bachao Andolan, highlighting severe issues of child trafficking and exploitation within the Indian circus industry. A comprehensive study found out that numerous children, primarily from impoverished regions of Nepal and India were trafficked and coercion to work with them in the circuses against their mandate of choice and are abused mentally, physically, and sexually. Supreme Court in its decision prohibited the use of children in the circuses and requested the government to conduct raids to liberate children from exploitative circumstances. The Court also put

³⁰Ministry of Women and Child Development, Government of India, Mission Shakti – Statistics Dashboard (2025), <https://missionshakti.wcd.gov.in/statisticsSadan> (last visited Feb. 3, 2025).

³¹ *Bachpan Bachao Andolan v. Union of India & Ors.*, AIR 2011 SC 3361 (India).

emphasis on the need for rehabilitation programs for rescued minors and imposed the burden on the hospitality premises to determine the identities of the guests and report any suspicious activities involving minors. The judgment marked a significant step in protecting children's rights in India, catalysing broader legislative reforms concerning human trafficking and reinforcing the judiciary's role in addressing human rights abuses.

In the landmark case of *Gaurav Jain v. Union of India* (1997),³² the Supreme Court of India addressed the critical issue of rehabilitating victims of trafficking, particularly women and children forced into prostitution. The court noted the necessity to have expansive rehabilitation and reintegration programs; the state has an obligation to ensure the rights of such vulnerable groups are safeguarded. Notably, the decision alluded straight to the rights of the sex workers children and their welfare and future rights. In doing so, the court invoked principles of international law, including the Convention on the Rights of the Child (CRC), thereby aligning India's domestic legal framework with global human rights standards.³³

In the landmark case of ***Bandhua Mukti Morcha v. Union of India***,³⁴ the Supreme Court of India delivered a seminal judgment addressing the rights and rehabilitation of bonded labourers. The court emphasized the state's obligation to ensure the effective rehabilitation of rescued bonded labourers, directing the Government of India to provide compensation to victims under the provisions of the Bonded Labour System (Abolition) Act, 1976. The ruling underscored the grave violations of fundamental and human rights faced by bonded labourers, reinforcing the imperative for systemic measures to protect their dignity and ensure their socio-economic

³² *Gaurav Jain v. Union of India & Ors.*, AIR 1997 SC 3021, (1997) 8 S.C.C. 114 (India).

³³ ACRISL, *Gaurav Jain v. Union of India & Ors.*, ACRISL CASE NOTES, <https://www.acrisl.org/casenotes/m2l18m8skjpglk8-83mk2-k5yza-dcafy-x5ztr-bjfxk-c9y55-5ryfp-dwdgr>.

³⁴ *Bandhua Mukti Morcha v. Union of India & Ors.*, (1984) 3 S.C.C. 161 (India).

reintegration. This judgment remains a cornerstone in India's legal framework for combating forced labour and upholding human rights.³⁵

10. Strategies to Combat Human Trafficking in the Hospitality Industry

Even though human trafficking has been among the pressing issue in India, the government has established several policies that regulate the problem. However, a critical need to amend and strengthen existing mechanisms such as Protection of children by sexual offences (POCSO) act, 2012, and Immoral Traffic (Prevention) Act, 1956 to address gaps in the legal framework and impose stricter penalties on traffickers and complicit establishments. Additionally, expediting the passage of the Trafficking in Persons (Prevention, Care, and Rehabilitation) Bill in Parliament, after incorporating necessary amendments, is essential. This comprehensive law has a potential to combat human trafficking, because it devises a law methodology capable of addressing the entire human trafficking factors including the aspects of labour and sexual exploitation. In addition, establishment of special courts to prosecute the case related to trafficking would ensure the quickness with which the victims will get justice and hence the successful application of the legal system to hedge the susceptible populations. To combat human trafficking adequately, there is need to establish the capacity of the Anti-Human Trafficking Units (AHTUs) through equipping them with trained personnel, modern equipment and highly-technological resources. These improvements will improve the effectiveness of these units not only in investigative skills but also the cooperation between the government and the law enforcement agencies with the non-governmental organizations (NGOs) which will ensure that a consistent and unified response to trafficking. It should also include the training of the police, judiciary and hotel staffs on a regular

³⁵ Human Trafficking: Or a Modern-Day Slavery, MANUPATRA (Sept. 1, 2023), <https://articles.manupatra.com/article-details/Human-trafficking-Or-a-modern-day-slavery>.

basis and the local capacity building should take place so that these agencies can be able to better respond to the realities of the trafficking.

To effectively combat human trafficking, a multi-faceted approach is essential, focusing on rehabilitation, prevention, and systemic change. Comprehensive rehabilitation programs must be prioritized to support survivors, offering shelter, healthcare, counselling, and vocational training through initiatives like UJJAWALA and SWADHAR GREH. Mental health services should be expanded to address the psychological trauma experienced by survivors, ensuring access to therapy and counselling. Additionally, legal aid must be made readily available to help survivors navigate the justice system and secure compensation under relevant legislation, such as the Bonded Labour System (Abolition) Act, 1976. These measures not only aid in recovery but also empower survivors to reintegrate into society with dignity and independence.

Prevention efforts must target the root causes of trafficking, including poverty, lack of education, and gender inequality. Economic empowerment programs, such as skill development and livelihood initiatives, can reduce the vulnerability of at-risk populations. Education and awareness campaigns, particularly in marginalized communities, are critical to equipping individuals with the knowledge to recognize and resist exploitation. Furthermore, integrating anti-trafficking education into school curricula and community programs can foster a culture of vigilance and resilience among younger generations. Public awareness campaigns and industry-specific training, particularly for stakeholders in the hospitality sector, can further strengthen preventive measures by promoting ethical practices and accountability.

International cooperation and robust monitoring mechanisms are equally vital to addressing the transnational nature of trafficking. Cross-border collaboration, including intelligence sharing and joint operations with neighbouring countries, can disrupt trafficking networks. Adopting global best practices and partnering with organizations like the United Nations

and the International Labour Organization (ILO) can enhance the effectiveness of anti-trafficking efforts. Domestically, regular assessments of anti-trafficking initiatives should be conducted to evaluate their impact and identify areas for improvement. Transparency in fund allocation and the establishment of a centralized database to track trafficking cases will ensure accountability and inform evidence-based policy decisions. Engaging civil society organizations and supporting community-driven initiatives can further amplify these efforts, fostering a collaborative approach to eradicating human trafficking at all levels.

11. Conclusion

In conclusion, human trafficking, and exploitation within the hospitality industry in India represent a profound and multifaceted challenge that demands urgent and comprehensive action. The hospitality sector, while a cornerstone of India's economic growth and cultural identity, has inadvertently become a hotspot for trafficking activities, including labour exploitation, sex trafficking, and child trafficking. The transient nature of the industry, coupled with its fragmented workforce and lack of stringent regulatory oversight, creates vulnerabilities that traffickers exploit with alarming ease. Despite the existence of robust legal frameworks, international conventions, and national policies aimed at combating human trafficking, significant gaps remain in enforcement, victim protection, and systemic accountability. The hospitality industry, therefore, stands at a critical juncture where its growth must align with ethical responsibility and stringent enforcement to prevent exploitation and uphold human dignity.

Prevention efforts must target the root causes of trafficking, such as poverty, lack of education, and gender inequality, through economic empowerment programs, awareness campaigns, and gender equality initiatives. International cooperation and cross-border collaboration are equally vital to disrupt transnational trafficking networks. By fostering partnerships between government agencies, law enforcement, NGOs, and the private sector, India can create a robust framework to combat

trafficking, ensuring accountability, transparency, and justice for victims. Only through a collective and sustained effort can the hospitality industry reclaim its role as a beacon of comfort and safety, free from the shadows of exploitation and modern slavery.

DOES PUNISHMENT WORK? EXPLORING INDIA'S CARCERAL SYSTEM

Jea Saran*

“An eye for an eye will leave the whole world blind” - Mahatma Gandhi.

1. Introduction

To err is human, and to forgive is divine. While divinity in itself is not a realistic standard which we can impose on legal systems, the humanity of error is however an undeniable truth. Crime, in this sense, isn't a deviation from society but actually a reflection of its inherent imperfections. A crimeless society, as many scholars and reformers have noted, is a myth.¹ Human beings will falter, and when they do so, it is the State's responsibility to respond - through laws, courts and a justice legal system which evolves over centuries.

The State's approach to punishment has walked through a long road, experimenting with theories ranging from retribution - where punishment is viewed as *just deserts* - to deterrence and now, more progressively towards reform and rehabilitation. Yet even today, the Indian criminal justice system largely clings to retributive models of justice, often prioritizing punishment over healing, meaningful or real change.

This paper essentially seeks to explore an alternative path of restorative justice and its possibility of surviving in the Indian justice system. Rather than focusing only on punishing the offender, this kind of a justice system asks how the harm caused by the crime can be acknowledged, repaired, and ultimately healed. It aims to bring the victim, the offender and sometimes even the larger community into a process which values dialogue, accountability, and rebuilding trust. It encourages and pushes us to think about justice as not only a legal outcome but also as a human process.

Restorative justice isn't a new invention or discovery. It was in fact, found in the roots of similar principles in Indian cultural and religious texts.

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¹ Ananya Marwah, *Restorative Justice and Reformation of Offenders*, ILI L. REV. (2020).

Ancient scriptures like the *Ramayana*, *Mahabharata*, *Vishnu Purana*, and *Durga Saptashati* reflect ideas of atonement, dharma, and restoration. These early reflections on justice were often less restricted to punishments and more focused on balancing relationships and perpetual moral consequences.² India's legal framework today - spanning from the Constitution of India, 1950 and the Indian Penal Code, 1860 to recent laws like the Bharatiya Nyaya Sanhita, 2023 - do although provide structure for justice, but still leaves an open question - What kind of justice do we want to build? This research paper aims to focus on integrating restorative justice within India's legal and cultural context, especially by aligning it with the reformative goals of our system. It aims to foremost unpack what restorative justice truly means and its functioning in theory versus practice. It will then go on to explore how this approach can support rehabilitation of offenders - not simply by reducing their punishment but by truly transforming their understanding of the harm they caused and helping them take responsibility for it in a constructive way.

At its heart, this paper seeks to ask as well as answer a fundamental question: Does punishment, as we currently understand it, truly serve justice? Or is there a more compassionate and an effective path - one that acknowledges harm, empowers victims, and offers offenders a chance to genuinely make amends?

2. Is the Indian Legal System Perfect?

The execution of Nirbhaya's convicts on March 20, 2020 in Delhi's Tihar Jail was a watershed moment which exposed deep divides in public opinion and perception on ideals of justice and punishment in India. While many roared in celebration of the death penalty as a long-awaited act of justice and a solid deterrent for similar future crimes, there were still others who condemned the act by choosing to see it not as justice but as a reflection of a punitive, retributive system - a system which prioritized vengeance over a true idea of justice, one which may easily be swayed by public perception and media pressure rather than being driven by

² Manu S.R., *Adoption of the Restorative Criminal Justice System in India*, 5 INT'L J. FOR MULTIDISCIPLINARY COLLABORATIVE RSCH. (2023).

principled and logical legal reasoning. This polarization forces us to ask ourselves a fundamental question - Do harsher and stringent punishments actually deter crime, or they simply perpetuate a cycle of harm?

Recent history coupled with empirical evidence has suggested that harsher punishments have not necessarily led to a reduction in crime. In spite of the more stringent rape laws being introduced in 2013 after the Nirbhaya incident, barbarous and heinous crimes including sexual violence and resultant murders have continued to occur.³ This pattern indicates the flaws of a legal justice embodied on principles of retribution and deterrence. Legal experts and criminologists have long argued that the threat of stringiest forms of punishments more often than not, fail to address primary causes of criminal behaviours, neither does it provide any closure, support, acknowledgement or healing for victims.

India's legal justice system, although founded over robust legal principles, does however struggle with chronic implementation gaps - such as overburdened judiciary, resultant delayed trials, inconsistent sentencing, inadequate support mechanisms and so on.⁴ The resultant system eventually fails both the victims as well as the criminals, neither being able to truly redress the former nor being able to provide any meaningful opportunity for reform for the latter.

3. Types and Theories of Punishment

Punishment is a response to crime which has evolved parallelly to human societies. Theories of punishment are primary to foundations of criminal law and deeply reflect a society's changing attitude towards crime, justice, and the resultant social order. The underlying purpose of punishment is not only punishing and penalizing the wrongdoer but also deterring similar future crimes, protecting society and in some cases, reforming the offender.

³ Garima Sachan, *Towards Consistency: Addressing Disparities in Sentencing Practices in India's Criminal Justice System*, NLIU L. REV. (2025).

⁴ *Id.*

In ancient history of India, different kinds of punishments were laid down in ancient texts of Manusmriti under the heading of “*Danda*” - which meant punishment which was the King’s duty to be carried out with the support of legal advisors and ministers. This system was deeply rooted in upholding “dharma” or rule of law, and maintaining social order in society.

Punishments were then categorized into four types - Admonition (Vakdanda), Social Censure (Dhikdanda), Financial penalties (Dhanadanda) and Physical punishment (Badhadanda). Each category of punishment was imposed proportionately to the severity of the offense committed, ranging from a simple warning to severe corporal punishment which included flogging, mutilation or sometimes even execution.

India’s approach to justice and punishment evolved through time. The Constitution of India was adopted in 1950 which marked a turning point for the Indian legal system by introducing the concept of fundamental rights and rule of law. The contemporary Indian penal system shifted from ancient practices of deterrence and retribution to explore methods of reformation and expiatory theories of punishment. Legislations such as IPC and CrPC formalized types and procedures of punishments. Recent reforms in new laws like Bharatiya Nyaya Sanhita 2023 pushed the evolution further by not only updating and expanding categories of offences and resultant punishments but also by going a step ahead and introducing community service as a category of punishment (penalty) for minor crimes. This was done in the faith of shifting from inflicting pain to a more rehabilitative effort for encouraging rehabilitation and restoration of social harmony. Over in all, as a part of theory, punishments can be broadly categorized under five different theories.

3.1. Retributive Theory

Being followed as one of the oldest theories, this category of punishment is the most instinctive approach to a crime. It comes from the concept of revenge and moral vengeance and embodies the idea of “an eye for an eye”. According to this theory, punishment is justified and is understood as a proportionate response to the offence committed. This theory believes

that the criminal deserves the suffering for having violated society's moral codes and the punishment awarded restores the balance which was disturbed by causing the offence.

This theory is not concerned with redemption of the offender or the broader impact on society at large or the bigger picture in general. It merely focuses on the act committed and stresses on the fact that justice will be served when the offender is punished for having committed the offence. This form of punishment is often criticized for being too harsh and stringent and in hindsight failing to address underlying causes of criminal antecedents, behaviours, and actions.⁵

3.2. Deterrent Theory

This theory is driven by the idea that punishment granted to an offender should serve as a warning to other offenders as well as the public at large. The aim of this type of punishment is to discourage the offender - which is also called specific deterrence - while also discourage and desensitize from general public from engaging in similar conduct. The effectiveness of this method is said to depend upon three main factors -

- **Severity** which refers to how harsh the punishment is. The punishment imposed should be proportionate to the kind of offence committed, otherwise the point of deterrence shall fail to be achieved.⁶
- **Certainty** which refers to the likelihood of punishment being imposed upon a crime being committed. It must be certain in minds of offenders that his criminal acts will not go unpunished.
- **Swiftness** which refers to how quickly and promptly the punishment follows the crime. The quicker the prosecution is implemented, and punishment imposed, the greater impact it is believed to have.

⁵ Divyanshi Gupta, *Theories of Punishment*, MANUPATRA (2024).

⁶ *Id.*

The deterrent theory is the foundation of many legal justice systems throughout the globe, especially during prescribing mandatory sentences for certain offences in codified statutes.

Critics and experts have however also concluded that there is no solid correlation which causes increase in severity of punishment to cause decrease in crime rates. While severity as such is not an effective ideal, the certainty and fear of being caught and punished is however a more effective idea of deterrence.

3.3. Preventive Theory

This theory believes in protecting society from criminals by incapacitating them. The underlying idea is to remove these criminals from society through methods like exile, imprisonment or even death penalties - all to prevent future crimes.⁷ This kind of punishment is less concerned with deterrence or retribution of any kind and more concerned with ensuring public safety in general.

Under this theory, other restrictive methods such as parole, probation or community supervision can also be included for the purpose of limiting the offender's ability to relapse while also granting some degree of reintegration into the society. This theory comes in handy when dealing with habitual criminals or those who can be categorized as a continuing threat to society at large. Even though this theory may prove to be useful at times, it still often raises ethical concerns about balancing individual rights and community safety.

3.4. Expiatory Theory

A comparatively ancient form of punishment rooted in ethical principles, this theory views punishment as a method of moral cleansing of the offender with an aim of genuine repentance through acts of atonement. This theory focuses on inner transformation and runs on the ideas

⁷ Mukul Mondal, *Preventive or Deterrence Theory: A Doctrine Concerning Punishment*, 7 INT'L J. HUMAN. & SOC. SCI. STUD. (2021).

prescribed in ancient texts such as “*Manusmriti*” such that offenders “pay for their sins” through compensatory measures like spiritual penance or providing reparations to the victims they injured. Measures like these are adopted over imposing harsh punitive suffering.

This kind of justice encourages dialogue between victims and their offenders, with the mere aim of restoring harmony through measure like compensation or community service, whatever seems appropriate on a case-to-case basis. However, such kind of justice and punishment cannot ideally work in the modern legal system which prioritizes deterrence and retribution, viewing moral repentance as proportionately insufficient to address serious crimes. While such methods, including reparation and compensation can be and is used in civil wrongs, such methods are difficult to apply in criminal cases. While this method can be used for trivial and petty offences, it doesn’t seem to do much justice in the hard and dangerous criminal world.

3.5. Reformatory Theory

This theory reflects a significant shift from punishment imposed as a means of suffering to punishment imposed as an opportunity granted for personal transformation on a moral level. This kind of categorization of punishment aims to recognize the potential for change in every individual, even criminal offenders since it is driven by humanitarian ideals. This theory seeks rehabilitation of offenders over awarding of punishment to them.

The famous words said by Gandhi - “*An eye for an eye will leave the whole world blind*” is essentially the ideal on which this theory runs. The quote as well as the theory aim to capture the essence of a reformatory idea. Under this theory, crime is not seen in isolation but as a result of certain social and psychological factors and circumstances, thus viewing the offender as someone who can be brought back into society through appropriate intervention, and not as someone who is inherently evil. The aim of this theory is not to exile the offender from the society or impose

stringent punishments on him, but on individualized and appropriate treatment for such behaviours, counselling, and education for understanding implications of one's actions, vocational training to have a means of income, and therapeutic measures to understand and change criminally associated tendencies and behaviours.

This theory proves most effective and in fact essential particularly for juveniles and first-time offenders on some level. It aims to strengthen the character and essentially aims to understand and address the underlying root causes of such criminal behaviour. Measures taken under this category of punishment are taken to reform the individual and may be in the form of parole, probation, juvenile homes, and correctional programs which are particularly designed to help the process of facilitating the offender's reintegration into society as a respectable, morally good law-abiding citizen. While this theory is appropriate for juveniles and occasionally first-time offenders, it does however prove difficult to follow through in cases involving hardened and habitual criminals, where possibilities of reform are next to none.

4. India's Carceral System

India's prison system is governed by various laws such as Prisons Act of 1894, Prisoners Act of 1900, and Transfer of Prisoners Act of 1950. These laws distribute and allot prison management responsibilities to State where each State is expected to oversee its own jurisdiction of facilities.⁸ The Inspector General of Prisons of each jurisdiction in every State is appointed with the task of ensuring smooth operation of the prisons in line with prescribed rules and regulations. Across India, there are eight kinds of prisons, each of them designed for a specific purpose with a specific role within the broader framework of correction and rehabilitation.

- 1) The most recognized and prevalent ones in our country ought to be **Central Prisons**. They are usually meant for prisoners serving

⁸ Maya Devi, *A Study of Prison System, Punishment and Types of Prisons in India*, 8 INT'L J. NOVEL RSCH. & DEV. 12 (2023).

longer sentences, usually those more than two to three years and are hence typically larger in size than other kinds of prisons and facilities. They are ideally supposed to be better equipped, inclusive of more comprehensive facilities and services such as education, healthcare, vocational programs etc. Several big states with considerable crime rates have within them several central prisons. Delhi holds nine central prisons within the Tihar complex, six central prisons within the Mandoli complex and one central prison within Rohini complex.¹² Other states like Uttar Pradesh, Tamil Nadu, Bihar, Karnataka, Rajasthan, and Maharashtra also facilitate several central prisons.

- 2) **District Prisons** are the answers in states and union territories which lack the existence of central prisons. These are typically meant for housing under-trial prisoners and those serving comparatively shorter sentences. Uttar Pradesh alone runs 61 district prisons.⁹ Bihar runs 31 district jails.
- 3) Running down to an even smaller scale, we come to **Sub Prisons** which run on a subdivisinal level. The main purpose of such kind of prisons to make sure the inmates serving short sentences and on undertrial remain close to their home jurisdictions. The purpose is to provide and support a much more accessible and localized approach to prison management which is served by the proximity. Andhra Pradesh alone runs 99 sub-jails.¹⁰ Other States like Maharashtra, Tamil Nadu, Bihar also have increased numbers of sub prisons, reflecting an effort towards decentralized administration.
- 4) **Women's Prisons** are special facilities provided for exclusively female prisoners. The primary aim is to address specific needs of

⁹ 'Citizen Charter, U.P. PRISON ADMIN. & REFORM SERVS., <https://www.upprison.gov.in/Citizen-Charter.aspx> (last visited May 10, 2025).

¹⁰ *State/UT Wise and Jail Type Wise Number of Jails, Their Location and Video Conference Facilities*, MINISTRY OF HOME AFFS. (Dec. 13, 2013), <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/NoOfPrioners13122013.pdf>.

women. While women prisons can be housed in ordinary prisons, this is an effort towards understanding varying and specific needs of women specifically in times of menstruation, menopause, pregnancy and so on. This is done through dedicated gender-sensitive programs, support, and resources. Women prisons are not widely prevalent in India as of now, as only a dozen states and union territories currently run them. Rajasthan, Tamil Nadu and Kerala have led the way to the rest of the country, currently running 6, 5 and 3 women prisons each.¹¹

- 5) **Open Prisons** shift towards a more progressive approach. This system provides for a minimum-security institution which is exclusively reserved for prisoners with a record of good behaviour during their sentences. We shall explore more on this kind of a system later in the paper.
- 6) **Special Prisons** is a special-category of prisons designed for high-security purposes to house prisoners convicted for unnaturally violent and grave crimes, terrorism and repeat offenders. The aim is to provide a secure establishment to shield the community from those who pose a greater risk to society and those who have violated prison rules in their past conduct. State of Kerala holds the record of having the greatest number of special prisons. Running a total of 16 special jails, the highest number can be accorded to Kerala's result of historical evolution, decentralized administrative strategy, and most importantly, a correctional philosophy of jail systems which prioritizes prisoner classification.¹⁶
- 7) **Borstal School** are kinds of detention centers established exclusively for juvenile offenders. The primary aim is to build a system which encourages redemption and reformation of such juvenile offenders. An effort is sought to provide for a child-friendly environment to avoid exposure of harsh reality of prisons.

¹¹ *Id.*

Educational and vocational training is provided for along with moral guidance which acts as most important for reformation and prevention of any possible future criminal antecedents.¹²

5. Prison Conditions in India

India's carceral system stands at critical crossroads, reflecting foundational historical legacies on one side while posing contemporary challenges on the other. The intention behind prison systems was rehabilitation, justice, and social order but the ideals have fallen short in contemporary prison system in India. Rather, the Indian prison system reveals a harsh reality marked by intense overcrowding, systemic violence, prolonged detention, inadequate health care, caste-based discrimination, inadequate infrastructure and so on. These conditions seriously undermine respect, dignity, and rights of prisoners. Despite constitutional guarantees and human rights obligations, these harsh realities plague over basic dignity of the inmates.

5.1. Overcrowding

One of the most severe and consistent problem faced by Indian carceral system has been overcrowding. This challenge has been rooted deep both in historical legacy as well as contemporary systemic failures.

The Indian carceral system was designed keeping the retributive approach in mind rather than rehabilitation. Most of the prisons in use today have been constructed in 19th and early 20th centuries based on the population and conditions then, not keeping in mind contemporary consideration and standards of prison conditions, accommodation, and human rights. The architecture was suited to the earlier centuries and do not sit well with the exponential growth in prisoner population. National Crime Records Bureau Data has revealed that Indian prisons operate far beyond their intended and sanctioned population capacities. The Human Rights Watch report of 1991 revealed that occupancy rates exceeded 150% in many

¹² Samiksha Jain, *Indian Prison System*, 3 INT'L J. HUM. RTS. L. REV. (2024)

states across the country including some prisons housing more than double their sanctioned population.¹⁸

The situation has not bettered, but only worsened over the decades. The average occupancy remains alarmingly high, with most jails running at 200% or more of their intended capacity.¹³ The Tihar Jail for example, the biggest jail in India currently houses around 20,500 prisoners, while the approved capacity is only 10,500.¹⁴ For a cell designed for roughly 3 people, 8 people are cramped into it. 75.8% of the country's prison population comprises of undertrial prisoners.¹⁵ *Arnesh Kumar vs State of Bihar* was the outcome of overcrowding, where the Apex Court asked the police not to cause unnecessary arrests, especially in cases involving sentences lesser than seven years.¹⁶

Overcrowding results in dire consequences which further degrade the lifestyle of prisoners. Lack of basic amenities results in insufficient bedding, ventilation, shortage of food, water, toilets, bathing amenities and so on. This often results in prisoners sometimes having to sleep in shifts, or on bare floors.¹⁷ Access to clean water also grows fairly limited. The increased proximity of prisoners due to overcrowding results in unsanitary conditions which further leads to rapid spread of communicable diseases. These kinds of risks are exacerbated during outbreaks such as COVID-19, where mandates like social distancing and quarantine are rendered impossible. This resulted in the extreme step taken by the Supreme Court to direct temporary release of prisoners to control the spread of the

¹³ *Supra* it 17.

¹⁴ *Tihar Jail Prison Population 20,500 Against a Sanctioned 10,500 Inmates, Delhi HC Refers Matter to Delhi Government*, ETV BHARAT (2025), <https://www.etvbharat.com/en/bharat/tihar-jail-prison-population-20500against-a-sanctioned-10500-inmates-delhi-hc-refers-matter-to-delhi-govt-enn25051404984>.

¹⁵ *Supra* it 17.

¹⁶ *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).

¹⁷ Human Rights Watch, *Prison Conditions In India*, HRW (1991), <https://www.hrw.org/reports/INDIA914.pdf>.

pandemic.¹⁸ Excessive population also makes effective management extremely difficult. The staff grows extremely overwhelmed unable to perform their functions and duties effectively which ultimately leads to increased violence and unrest within the prison, increased opportunities for corruption and abuse by staff and influential prisoners and increased challenges in conducting rehabilitation, educational and vocational programs. Indian prisons are running on decades of neglect. Decayed infrastructure, crumbling walls, leaking roofs, broken toilets, non-functional sanitary systems are very common in all prisons today. Maintenance budgets are largely insufficient since they do not account for the increased population over the sanctioned numbers. All repairs are either delayed or superficial. Overcrowding is not merely a logistical problem but a deep-rooted fundamental issue in the foundation of Indian prison system and a gross violation of prison rights and human dignity violation.

5.2. Undertrial Prisoners and Prolonged Detention

A defining feature of Indian prison system is the overwhelming unnatural proportion of undertrial prisoners. Undertrial prisoners are those who have not legally been convicted and are awaiting the completion of their judicial trials. As per the Prison Statistics India 2022, the National Crime Records Bureau revealed that undertrials constitute over 75.8% of India's prisoner population.¹⁹

A major contributing factor to this issue is the persistent issue of judicial backlog. A mitigating factor also includes socio-economic conditions since most of the undertrials hail from poor and marginalized backgrounds who cannot afford bail and legal representation as a result of which they languish in jail for years for mostly minor and non-violent crimes, sometimes for periods longer than the maximum sentence for the

¹⁸ *Covid 19: Overcrowded Jails to Release Prisoners on Parole, but This May Just Kick the Can*, COMMONWEALTH HUM. RTS. INITIATIVE (2019).

¹⁹ *Undertrial Prisoners*, PRESS INFO. BUREAU (Feb. 6, 2024), <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2003162>.

alleged crime they committed. Inefficient police and administrative procedures are also contributing factors to this problem since delays in due procedure, investigation, filing of charge-sheet, production of witnesses further prolong detention.

Prolonged detention without even being convicted of a crime amounts to a gross violation of the right to speedy trial which is guaranteed under Article 21 of the Constitution of India. This flaw effectively results in punishment before even found guilty, undermining and violating the legal principle of innocent until proven guilty. Undertrial prisoners are often kept within the same facilities as convicted prisoners despite the Model Prison Manual which mandates their segregation. This essentially exposes the undertrials who have to be presumed innocent - to the same violence, risks, and deprivation as convicted prisoners.

The quality of life of the undertrial prisoners is marked by lack of legal aid, poor rehabilitation and financial support for those who get released after their trials, significant exposure to police torture and inhumane and degrading treatment, especially for the disadvantaged, poor and marginalized prisoners. One of the saddest realities also remains the highly disproportionate representation of Dalits, Muslims and Tribals which reflects the inherent systemic bias and deep-rooted social exclusion and discrimination.

It also highlights the failure of the legal system to implement S436A of the CrPC which provides for release of undertrials who have spent half of the maximum possible sentence in detention for the crime they are allegedly detained for. Even though the legal system has put in efforts towards fast-track courts and digitization of court proceedings and records, the undertrial prisoner population has however not reduced significantly. The core issue however still remains the excessively delayed trials which ultimately leads to undertrials languishing in jail for longer sentences than they would have if they would have been convicted

5.3. Violence, Abuse and Torture

One of the harshest realities of Indian prison system is violence - both between prisoners themselves and between the staff and prisoners. Abuse

of such kind takes all forms including physical, mental, emotional, psychological, extortion and sexual violence. Overcrowding, inadequate supervision and prisoners coming together from different backgrounds and walks of life creates a hostile and volatile environment. Moreover, first time-offenders and repeat offenders and hardened criminals coming together also creates a hostile and unsafe environment. Powerful and influential prisoners and gangs exert dominance and control over weaker and marginalized prisoners. The Human Rights Watch reports have shown various instances of violence which have resulted in deaths in custody, which are swept under the carpet by attributing them to either “*natural causes*” or “*suicide*” without even being accorded proper investigation.²⁰ These reports have also revealed unchecked power of prison staff over the prisoners which have resulted in routine use of physical punishments, solitary confinement being used as a regular disciplinary measure, and denying basic necessities like food, medical care or visitation rights as a measure of punishment.²⁷ Torture being used for extracting confessions and maintaining discipline is the new “*normal*”.

Sexual abuse is also a prevalent form of violence, usually subjected on vulnerable groups such as juveniles, women, and members of LGBTQ community within the prison. Take the story of X, a 13-year-old girl child who was raped by police officers and the bus driver during a transfer from jail to court.²¹ In prisons in Bengal, female prisoners were consistently getting pregnant while in custody even though there were no conjugal visitation rights being accorded to them by law.²² Since the state only has one dedicated women’s prison, majority of the women prisoners of the state are kept in separate sections but within the men’s quarters. Tapas Kumar Bhanja, a lawyer who spent years advocating for female prisoners

²⁰ Mahuya Bandhopadhyay, *Carceral Cultures in Contemporary India*, in DECOLONIZING THE CRIMINAL QUESTION (2023).

²¹ Sarah Aziz, ‘*The Staff Gets Hush Money*’: *The Hidden Scandal of Rape in Indian Prisons*, THE GUARDIAN (Feb. 23, 2024), <https://www.theguardian.com/global-development/2024/feb/23/rape-sexual-abuse-women-babies-indianprisons-west-bengal>.

²² *Id.*

revealed heartbreaking harrowing stories of women in the prison.²³ While the women themselves confided in him narrating how they were sexually assaulted by male prisoners and resultantly got impregnated, the authorities still claimed that those women were already pregnant upon arrival to the prison. The Government representatives outrightly dismiss any reports of assault as exaggerated or slanderous. The horrid truth behind Bengal jails is that female prisoners are “supplied” to male prisons within the jails.³¹ What strikes the chord the most is the invisibility of these victims, most of them being undertrials. They do not speak up with the fear of stigma, further violence or retaliation and their voices remain silenced forever.

Similarly, transgenders and other members of the community too endure a daily reality of violence and degradation in the Indian prisons. Kiran Gawli, one of only 5 trans women among 2000 other male prisoners in Nagpur Central Prison revealed the constant threat of sexual assault hanging over their heads, from both inmates as well as staff.²⁴ Complaint mechanisms don't work since despite repeated complaints about molestation, assault and rapes, the lived experiences have suggested that neither did the prison authorities intervene, nor did the judiciary, leaving such prisoners all alone in their survival. Repeated requests for transfer to women's prisons were blatantly denied, citing the absence of any law or prison rules for such possibility.

What then ends up happening is isolation since it is a common practice to then isolate them under the guise of providing “special attention”, confining them to tiny cells and going to the extent of denying them basic rights such as being able to wear civil clothes and participation in jail programs and activities.²⁵ They are even stripped of their personal dignity by being made to bathe and wash themselves in common areas, leaving them even more susceptible to harassment. Medical care is often denied

²³ *Id.*

²⁴ Sukanya Shantha, *Misgendering, Sexual Violence, Harassment: What It Is to Be a Transgender Person in an Indian Prison*, THE WIRE (2021), <https://thewire.in/rights/transgender-persons-indian-prisons-rights>.

²⁵ *Id.*

and there are reportedly practices of burning complaint letters detailing abuse, at the hands of prison authorities to prevent word from getting out.²⁶

While prisoners of the LGBTQ+ community have to endure harassment and violence in the prisons, discrimination in the prison system is not limited to sexuality alone. Another deeprooted form of prejudice in Indian culture is caste-based discrimination, which sadly continues to shape the realities of prisoners. After decades of waiting for the legislation and judiciary to address this deep-rooted problem of violence and discrimination in Indian prison system, the landmark case of ***Sukanya Shantha vs Union of India*** paved the way for the same.²⁷ Shantha, a senior journalist began this journey by filing a PIL in the Supreme Court of India seeking the repeal of discriminatory and violative directions and provisions in State Prison Manuals. She claimed that these provisions grossly violated Articles 14,15,17,21 and 23 of the Indian Constitution. The Supreme Court scrutinized three main forms of caste-based discrimination being

- Segregation of Barracks: Prisoners were separated into different barracks on the basis of their caste. Surprisingly, this was sanctioned by the State Prison manuals themselves. The justification given for such a practice was to prevent inter-caste violence since several fights used to break out between the alleged upper-caste and lower-caste prisoners which the authorities found very difficult to control and handle. This justification was however rejected.²⁸
- Division of Manual Labour: Labour within the prisons is divided according to caste which means that menial tasks like sanitation and washroom-cleaning was routinely assigned to

²⁶ *Id.*

²⁷ *Sukanya Shantha v. Union of India*, 2024 INSC 753 (India).

²⁸ Mrinalini Ravindranath, *The Contours of Caste in the Criminal Legal System*, 60 ECON. & POL. WKLY. (2025), <https://www.epw.in/journal/2025/2/commentary/contours-caste-criminal-legal-system.html>.

prisoners who were Dalits or members of De-Notified Tribes (DNTs). Such practices, although allegedly abolished in our country a long time ago, still exist in prison functioning and reinforce caste hierarchies, subjecting prisoners from marginalized and lower caste backgrounds to degrading and undignified tasks.

- Provisions against 'Habitual Offenders' and 'DNTs': Various State Prison Manuals continued to use colonial terms such as 'habitual offenders' which disproportionately targeted DNTs and perpetuated further, stigma and degraded treatment against such groups of prisoners.²⁹

The Supreme Court led a visionary judgement by holding all such provisions as unconstitutional. Any and all provisions furthering practices of caste-based segregations, discriminatory labour divisions, unfair use of stigmatizing labels in all these Prison Manuals were held to be grave violations of constitutional principles, and hence invalid. All States and Union territories were asked to revise their prison manuals within 3 months and bring it into compatibility with the Model Prison Manual. The caste column and any such references in respect to a prisoner's caste in the prison registers were to be deleted promptly. References to the term 'habitual offenders' must be made strictly in line with nothing but its statutory definitions and should in no way be used as a tool for caste-based discrimination. This case turned out to be a watershed moment in the field of prison reform and social justice,

5.4. Health, Hygiene and Medical Care

Overcrowding which is already a prevalent problem gives birth to another major disadvantage. The health and hygiene conditions worsen, and inadequacy of medical staff and facility grows. Prisoners are often exposed to extreme temperatures, with no ventilation in times of heat and no bedding in times of cold.

²⁹ *Id.*

Mental health is a farce in prisons. Various studies have reported current prevalence of wideranging mental illnesses ranging from 21% to 33% among Indian prisoners.³⁰ No efforts for implementation of any rules to better the situation are made. The Hindu reported that not a single State or Union Territory met the benchmark of one psychiatrist or psychologist per 500 prisoners, as set by the Union.³¹ There were about 70 sanctioned posts for such psychiatrists and psychologists, out of which not even half were filled. This highlights the government's systemic failure of implementation.

Due to lack of basic hygiene and sanitary conditions, prisons also become breeding grounds for infectious diseases. Outbreaks of easily communicable diseases such as tuberculosis, hepatitis, HIV/AIDS, skin diseases are very common in prisons, which are exacerbated by poor hygiene and overcrowding. Even preventive measures such as health education and awareness, vaccinations are rarely implemented. Reports have revealed that the prevalence of HIV/AIDS within Indian prisons is several times more than what is prevalent in the outside among general public.³² The Director of Indian Central Secretariat Service noted that this happens due to low awareness, overcrowding, close physical proximity of prisoner, loneliness, lack of access to contraceptives, lack of social control and entertainment, long periods of being away from family and loved ones, and a lot of these factors leading to homosexuality.⁴²

³⁰ Harpreet Singh Dhillon, *Prison Mental Health—An Indian Perspective*, AIP (2024).

³¹ Bindu Shajan Perapaddan, *Indian Jails Plagued by Overcrowding, Lack of Medical, Mental Health Professionals: Report*, THE HINDU (2025), <https://www.thehindu.com/news/national/indian-jails-plagued-by-overcrowding-lack-of-medical-mental-health-professionals-report/article69460831.ece>.

³² Rita Acharya, *Sensitization to Prison Inmates on HIV/AIDS*, MINISTRY OF EXTERNAL AFFS., <https://www.mea.gov.in/> (last visited May 13, 2025).

⁴² *Id.*

6. Prison Systems in other Jurisdictions

A comparative analysis of prison models worldwide reveals diversity in approaches, ideologies, philosophies, and outcomes, where some countries excel in progressive and humane approaches while some portray stringent punitive approaches. While nations like Pakistan, Greece, Mauritius and so on have displayed worse prison conditions than our country, it is surprising to note that even superpowers like the United States and Russia have not displayed any ideal prison conditions for the rest of the world to follow as an example. All these countries grapple with problems such as overcrowding, stringent and harsh conditions, high recidivism rates and so on.

Since we are looking for ways to better our own prison conditions, we shall attempt to look at nations who have hacked model prison conditions which should serve as inspiring and influencing to all other nations struggling with their prison conditions.

Among the most notable are the Nordic countries which have set the best examples for the rest of the world. Norway, Sweden, and Finland are among the best nations to follow, since prison systems here are motivated by commitment towards normalization, humane spirit, and reintegration. Finland in particular is famous for its open prison model, an example which India has already begun to follow. Similarly, Germany and Austria too have established prison systems which prioritize rehabilitation over retribution and resultant reintegration. Let us look at these countries one by one.

6.1. Norway

Norway's carceral system is internationally appreciated for its humane, progressive, and rehabilitative approach. The Norwegian philosophy is grounded in the belief that loss of liberty is the biggest punishment in itself, subjecting a person to further suffering or degradation is neither justified nor necessary. This principle is evident in the way the prisons of the country run.

Norwegian prison system operates on the "*import model*" which basically means that apart from the general restriction of movement, the prisoners

retain access to the exact same public services as the rest of the general population does, which includes education, health care and social welfare.³³ This helps in reducing stigma and isolation as well as providing of continuous care and support.

Most prisoners have private rooms with attached toilets, and they share kitchens and common living spaces in small “*pod*” type communities.³⁴

Most prisons in the country have brightly painted wooden houses, each house accommodating up to six prisoners who have access to individual rooms and shared facilities. Prisoners prepare their own meals, by shopping for supplies at the mini supermarket with the food allowance provided to them and maintain their own living spaces. One communal meal is served every day, while the rest has to be taken care of by the prisoners themselves.³⁵ This reinforces the expectation of self-sufficiency. All prisoners engage in meaningful daily tasks, rehabilitation programs and education. Their jobs range from animal care, to bicycle repair and all such participation is remunerated.

One of the most crucial highlights of this model is the relationship between the authorities and prisoners. The correctional officers in these prisons undergo mandatory extensive training of three years as opposed to a few weeks in other jurisdictions.³⁶ They are taught to prioritize understanding and dialogue over power and control. The staff themselves view their role as someone helping the prisoners to change, and not someone meant to punish them. This positive approach helps fosters a mutual sense of respect and safety. Life in these prisons is meant to resemble the life outside as much as possible such that the release does not end up the prisoner in a traumatic transition. A distinctive feature is also their “Daddy in Prison” Scheme to which a prisoner can apply to, once every three months under which a prisoner is allowed to spend couple of nights with their partner and children in cozy chalets within the

³³ Hedda Giertsen et al., *Norway: Prisons in 2019*, PRISON INSIDER (2019), <https://www.prisoninsider.com/countryprofile/prisons-norway2019>.

³⁴ Erwin James, *The Norwegian Prison Where Inmates Are Treated Like People*, THE GUARDIAN (Feb. 25, 2013), <https://www.theguardian.com/society/2013/feb/25/norwegian-prison-inmates-treated-like-people>.

³⁵ *Id.*

³⁶ *Id.*

prison grounds.³⁷ This shows Norway's commitment in maintaining and strengthening familial bonds, acknowledging the crucial role a family has to play in rehabilitation, reintegration and reducing recidivism.

The results of such kind of a prison system are remarkable. Norway leads the way in having its recidivism rate the lowest in the world - about 20% overall.³⁸ Prisoners have often described their time and experience in the prisons as transformative.

6.2. Finland

Finland's prison approach stands out in the world for its innovative approach and use of "open prison" model. This model makes up about one third of the nation's prisons.³⁹ This approach runs on the fundamental belief that rehabilitation and not retributive is the central and primary goal of incarceration. Under this prison model, the environment is designed to resemble real outside life as much as possible. There are no bars, no chains, and no locks.

Inmates wear their own clothes, cook their own meals, wash their own laundry, carry their own cell phones, manage their own bank accounts, and even order takeout pizza!⁴⁰ The lifestyle closely resembles that of a hostel dormitory rather than a traditional prison.

Prisoners in these facilities are permitted to leave the premises for study or work. They can attend university and go on their daily jobs. Every Friday, they are taken to grocery stores where they pick up their own food. Work is an integral part of their daily lives since they support themselves financially. Activities like these foster independence, trust, responsibility and encourage a smooth transition back into society upon release.

³⁷ *How Norway Turns Criminals into Good Neighbors*, BBC (2019), <https://www.bbc.com/news/stories48885846>.

³⁸ *What We Can Learn from Norway Prison System: Rehabilitation and Recidivism*, FIRST STEP ALLIANCE (2024), <https://www.firststepalliance.org/post/norway-prison-system-lessons>.

³⁹ Natalia Moore, *No Bars, No Chains, No Locks: How Finland Is Reimagining Incarceration*, PULITZER CTR. (2021), <https://pulitzercenter.org/stories/no-bars-no-chains-no-locks-how-finland-reimagining-incarceration>.

⁴⁰ *Id.*

The prison policies are shaped by experts and not politics, with the primary goal of reducing recidivism. The system does not discriminate between violent and non-violent criminals when considering their eligibility for open prisons. Even those offenders serving sentences for serious crimes such as murders are also transferred to open prisons if showcasing rehabilitation progress and good behaviour.⁴¹

All prisons are required to have visiting rooms for children for prisoners who are children. Parents are also permitted to apply for special family visits for several days where they are transferred to rooms similar to real living rooms with tables, couches, and toys. Pregnant women and mothers with young children can live in spaces specially dedicated as mother's dormitory wings and children are allowed to stay with their mothers in the prison until they attain the age of three.

This model has led to a significant decrease in crime and recidivism rates. Finland is among the countries with the lowest incarceration rates in the world, of around 3000 for a population of over 55 Lakhs.⁴²

6.3. Sweden

A powerful foundation on which Swedish prison system stands on is that prison should be about transformation of the individual into a successful return into society and not suffering and punishment. Similar to Norway prisons, prisoners here too are given private cells which are equipped with basic amenities and common spaces are also provided.⁴³

One inspiring factor is that the system realizes and acknowledges the fact that most of the prisoners come from backgrounds blotted with trauma, mental illness, and addictions. It is because of this that rehabilitation programs are tailored according to the very need of the prisoner. Staff members are provided with sensitivity training on how to build constructive relationships with prisoners and act not as guards and enforcers but as mentors or facilitators of change.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Erwin James, *Prison Is Not for Punishment in Sweden. We Get People into Better Shape*, THE GUARDIAN (Nov. 26, 2014), <https://www.theguardian.com/society/2014/nov/26/prison-sweden-not-punishment-nils-oberg>.

Practices like strict discipline and solitary confinement were very prevalent in Sweden in the nineteenth century. But the nation has consciously shifted towards a more welfare-oriented model where the sole purpose is now rehabilitation. The result of this shift has become evident with reports of considerable decline in incarceration and recidivism rates to an extent that a few prisons recently had to be closed down due to lack of inmates.⁴⁴

6.4. Germany

Similar to all other prison systems we have seen up until now, this country also focuses on principles of proportionality, resocialization, and normalization. A distinctive feature here is the introduction of a social worker's role. Here, social workers play central roles in policy planning, sentencing policies, parole decisions and provide support services as well.⁴⁵

All states in Germany have separate legislations for their prisons, a practice similar to that of India. Several states within Germany have abolished practices of solitary confinement as a disciplinary measure. Germany has also introduced independent and neutral oversight mechanisms, such as National Agency for Prevention of Torture to monitor the ethical considerations of prison systems in the country. The result of these efforts has led Germany to rank amongst one of the nations with the lowest rates of incarceration and recidivism.⁴⁶

7. Open Prisons in India

Open prisons are a concept of transformative approach towards crime. Such prisons which are also known as open correctional institutions and are categorized by characteristics such as absence of chains, locks, high

⁴⁴ Roddy Nilsson, *The Swedish Prison System in Historical Perspective: A Story of Successful Failure?*, 4 J. SCANDINAVIAN STUD. CRIMINOLOGY & CRIME PREVENTION 1 (2003).

⁴⁵ Alexandra Weingart et al., *Germany: Prisons in 2019*, PRISON INSIDER, <https://www.prisoninsider.com/countryprofile/prisonsgermany-en> (last visited Feb. 17, 2026).

⁴⁶ *Id.*

walls, barbed wires, and minimal security measures.⁴⁷ Prisoners are allowed to move around freely, highlighting the importance of discipline, trust, and responsibility among prisoners. Unlike traditional prisons, prisoners here are allowed to move out of the premises for work and earn for themselves and are also let to maintain familial contact and participate in community life, although under supervision.

India's first open prison was established in the city of Lucknow in the year 1949, followed by cities in Rajasthan.⁴⁸ They were initially designed for non-violent offenders or those demonstrating good behaviour in their sentences in prisons. The legal framework for open prisons can be found in the Prisons Act of 1894 and has subsequently evolved through various judicial decisions.⁴⁹ The Supreme Court has time yet and again endorsed the concept of open prison in the country.

A significant feature of this model is the maintenance of family ties which allows prisoners regular contact with their families. Several research studies have revealed that maintaining family ties is crucial for aiding rehabilitation and reducing recidivism.⁵⁰ Such kind of prisons are not only more humane but also comparatively much more cost effective and less-resource intensive. This also effectively solves the problem of overcrowding in prisons and improving living conditions for both convicts and undertrials. Research has revealed that open prison system in Rajasthan is among the best practices in the country, with decreased recidivism rates and 78 times more cost effective than regular prisons.⁵¹

However, concerns about security still remain a challenge. There may be inconsistencies in eligibility criteria to implementation across states. In the

⁴⁷ Moiz Rafique, *Beyond Bars: Understanding the Potential of Open Prisons for the Indian Subcontinent*, BAR & BENCH (2024), <https://www.barandbench.com/law-firms/view-point/beyond-bars-understanding-potential-ofopen-prisons-india>.

⁴⁸ Aman Pathak, *Open Prisons in India: A Correctional Approach to Imprisonment*, INT'L J. CREATIVE RSCH. THOUGHTS (2024).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Anmol Paniya, *A Study of Open Prison System in India with Special Reference to State of Rajasthan*, SHODHGANGOTRI (2024), <https://shodhgangotri.inflibnet.ac.in/bitstream/20.500.14146/16485/1/synopsis-9020192007%20anmol%20synopsis.pdf>.

past five years, reports have revealed that 28 inmates escaped from open prisons in Maharashtra, which highlights consistent efforts needed to better the system and make use of the system to its fullest effect.

8. Key Takeaways for Indian Prison System

Upon a close examination of carceral systems as seen in Norway, Sweden, Finland and Germany, we can discover principles and practices which stand in stark contrast to punitive models, including those which are often seen in India. The commonality found in all these jurisdictions is the deep commitment towards rehabilitation and reintegration. Another striking point to notice is that all these jurisdictions earlier too were on the lines of Indian principles with regards to punitive measures.

Since Indian Constitution is also the result of our country taking away the best principles from all nations, we can adopt to a similar measure by adopting the best practices followed across the globe with regards to carcerality.

India can adopt the “import mode” followed in Norway ensuring that prisoners can retain access to public services of education, social welfare, and medical services. Schemes like “*Daddy in Prison*” can also be adopted since maintaining familial ties is known to reduce recidivism and foster rehabilitation and transformation. Sweden’s practice of individual cells and common places can be taken away from, effectively also solving the problem of spreading of communicable diseases caused by living in close quarters. Finland’s practice of open prison models has already inspired India to begin a similar practice in the country as well. However, the model is still fairly new and can be bettered by using implementation techniques from Finland as well, considering its success rates.

These jurisdictions collectively demonstrate that prisons needn’t be places of punishment and suffering, but can be environments of transformation. Their models highlight the importance of trust and responsibility, the crucial aspect of maintaining family and community ties and the need for comprehensive support services along with a constructive relationship between prisoners and staff. The successful results of these models challenge the assumption that harsher punishment yield better outcomes

and reduction in crime and instead point towards a future where humanity and justice go hand in hand.

9. Conclusion

The exploration of carceral systems of India and across the globe has revealed one thing for sure - that the effectiveness and success of a prison system is not measured by its severity, but by its capability to foster real change, restore dignity of the prisoners and protect the society in the long term and not temporarily.

India's current reliance on a retributive and punitive model has done nothing but contribute to persistent overcrowding, prolonged undertrial detention and a cycle of harm which does good to neither victims nor the offenders. In contrast, nations like Norway, Finland, Sweden, and Germany have portrayed how humane and rehabilitative approaches have yielded lower incarceration and recidivism rates, safer and trusting communities, and more meaningful justice.

The key lesson to take away from is that deprivation of liberty and imposing additional suffering is neither justified nor necessary. But normalizing prison life, keeping the prisoners as close to reality as possible is what helps bring about a real change. The success is rooted not in stringent punishments, but in trust and support, regardless of their past actions.

India can embrace the best global practices and move towards a carceral system which does not only punish, but heal, which does not only deter, but redeems. Such a notable shift will honour the country's constitutional values and its ancient traditions of spiritual atonement and restoration, forging a justice system which truly serves society as a whole, in its truest and fullest sense. After all, - "*We repeat what we don't repair*" - Carl Wilkens.

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