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CONTENTS

BEYOND THE MIND: HUMAN RIGHTS CHALLENGES AND PROTECTIONS IN THE AGE OF NEUROTECHNOLOGY AND BRAIN–COMPUTER INTERFACES

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Ishita Chatterjee[**]

1. Introduction

The world of neurotechnology is evolving at a very fast pace with the soaring implementation of brain-computer interfaces (BCIs) in consumer and clinical sectors. Technologies previously theorized as hypothetical, or as being seen as experimental, are not only becoming mainstream but are being used in their therapeutic, commercial, and in workplace settings. BCIs are being used in clinical practice to help persons with severe neurological disability to communicate, to enable movement in situations of paralysis and to aid management of intricate neurodegenerative disorders[1]. In parallel with these advances, the commercial market, led by technology companies and venture capital investment, continue to increase their product portfolio of devices powered by neurotechnology to enhance cognitive ability, emotion control, neurogaming and productivity optimization. As an example of the new socio-technical reality, one can determine a situation when workers of high-risk/high-efficiency occupations will have to wear neural-monitoring headsets that can analyse the level of concentration, emotional stability, and cognitive exhaustion as a mediocre state of working[2]. Instead, within the field of therapy, memory-modulation implants can be developed out of valid medical procedures into voluntary cognitive ones that can modify or inhibit particular memory

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[1] European Parliament Resolution of 20 January 2021 on a Framework of Ethical Aspects of Artificial Intelligence, Robotics and Related Technologies, 2020/2012(INL).

[2] Rafael Yuste et al., Four Ethical Priorities for Neurotechnologies and Brain–Computer Interfaces, 551 *Nature* 159 (2017).

traces. These developments do not represent an advancement in technology alone, but a fundamentally different approach to the process of thought, action and human intellect, how it is got, handled and regulated[3].

With such trends, the human rights aspects of neurotechnology are unprecedented and wide ranging. Other technologies which produce data are computer based, but BCIs act at the neurobiological and cognitive level, permitting the sub-achievement, deduction and possible modification of neural activity linked to intention, emotion, thought formation and memory. The sensitivity, the deeply personal and close nature of neurodata makes it vulnerable to abuse in terms of surveillance, coercion, discrimination, autonomy and cognitive integrity. This inevitably poses vital concerns that real-life legal rights and legislative frameworks are conceptually and operationally prepared to protect people in circumstances where the mind as such might be made visible, measurable or reachable by external forces[4]. Besides, the transnational nature of the innovation of neurotechnology with its disjointed regulatory oversight and military focus as well as massive corporate investment further makes the case that the world requires a coherent and well-informed rights-based framework[5].

Though ethics, governance and regulation of neuroscience biomedical regulation and emergent technology scholarship has helped in providing fundamental understanding of this matter, there are significant gaps. The existing academic sources have the tendency of developing neurotechnology more on the basis of biomedical regulation, medical device categorization, or a general concern of ethics and thus ignores its

[3] Brian Patrick Green, Neuroethics and Human Rights: New Challenges From Brain Technologies, 39 *J. L. Med. & Ethics* 243 (2019).

[4] Marcello Ienca & Roberto Andorno, Towards New Human Rights in the Age of Neuroscience and Neurotechnology, 13 *Life Sciences, Society and Policy* 5 (2017).

[5] Jack Clark, The Next Frontier in AI Regulation: Neurodata Governance, *MIT Tech. Rev.* (2022).

overall effects on civil, political and socio-economic rights[6]. Moreover, despite the policy attention given to discourse regarding one or another form of neurorights, there has been very little systematic mapping of the proposals onto existing human rights models, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural rights (ICESCR) and regional systems such as the European Convention on Human Rights (ECHR)[7]. The rigorous comparison between the models of governance of emerging neurotechnology has not yet been concluded and there is still no agreement on whether the emergence of neurotechnology requires broadening and/or reformulation of the existing rights or the establishment of new rights categories.

In response to such gaps, the study contributes a human-right-oriented regime in order to analyse the regulation of neurotechnology. The key question of the research is whether the legal safeguards that are in place are sufficient in the situations when it is possible to code, manipulate or even alter the neural activity with the help of BCIs and whether a new paradigm of legislation is necessary to guard cognitive freedom, mental privacy, agency and psychological continuity. The research questions that guide the study include:

What are the direct or indirect human rights implications of new neurotechnologies in the areas of clinical, consumer, and security uses?

What are the limitations with the existing international law, and domestic law that exists in addressing the risks posed by BCIs and neurodata?

What are the comparisons between emerging regulatory solutions by jurisdiction, and what seem to be the most promising areas of the law or

[6] OECD, *Recommendation of the Council on Responsible Innovation in Neurotechnology* (Dec. 2021).
[7] Nita Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology* 87 (2023).

approaches to governance to assure rights-observant neurotechnology ecosystems?

Are proposed neurorights just a conceptual extension of the current systems of human rights, or is it necessary to create new types of rights specific to the issue?[8]

The study adopts a doctrinal legal approach to answer these questions and adds the comparative analysis of regulation and interdisciplinary research. Primary legal sources such as international human rights documents, constitutional provisions, acts of parliament, and other case law are considered as well as secondary sources which are derived through neuroscience, ethics, technology policy and empirical regulatory research. The analysis also takes into account current legislative experiments, policy proposals, and soft-law frameworks which are indicative of new ways of governing neurotechnology.

Since neurotechnology is rapidly finding its way into the societal, clinical, and business systems, the question is not whether or not it should be regulated, but instead how its legal landscape should be thought and actioned. A stringent human-rights-based approach provides a principled way of making sure that innovation has continued to occur in a manner that does not infringe upon autonomy, dignity and the integrity of the human mind at time when cognition itself might become technologically available and manipulable[9].

2. Literature Review

Broadly, the literature covering the intersection of neurotechnology, human rights and governance has proliferated in the past ten years as a wave of concern on the social, legal and ethical aspects of the emerging brain-computer interface (BCI) systems. The review is a synthesis of scholarly results in four major disciplinary areas, namely, neuroscience

[8] *Riley v. California*, 573 U.S. 373 (2014

[9] U.N. Human Rights Committee, General Comment No. 22, *Freedom of Thought, Conscience and Religion* (1993).

and technology studies, legal studies embedded within human rights and privacy law, bioethics, and science and technology studies (STS). Collectively these disciplines shed light on the conceptual dilemmas, politics of governance as well as gaps in the empirical evidence about the rise of so-called neurorights and regulation of mental information.

In the light of neuroscience and technology scholarship, scholars have explored the functionality, and drawbacks of neurotechnologies in the ability to decode, stimulate, or modify neural activity. Initial assessment by Nicolelis (2011) and Lebedev and Nicolelis (2017) proved that neural signals could be translated into robotic or computational actions by invasive BCIs, which opened the prospects of recovery of mobility and communication. Recent findings in neural decoding based on AI like speech reconstruction using neural activity (Makin et al., 2020) or sentiment inference using the EEG (Yuste et al., 2021) have shifted the discussion of neural decoding beyond therapy-explained usages and onto cognitive-augmentation-focused uses of neural decoding. Such commercial neurotechnology vendors as makers of wearable EEG headsets to play games, track their productivity or analyse their emotions have also been warned to hasten the exposure of society to neural data prior to the establishment of legal protection (Ienca & Andorno, 2017; Bublitz, 2022). This is the important premise set by this technological literature: neural data can become singularly investigatory, anticipatory and invasive and, in a way, more pragmatic and more reflexive compared to classic biometric or behavioural data.

These technological changes are enrolled by legal scholarship in the form of rival frames of interpretation. It can be argued that current international human rights provisions, e.g., privacy (Article 17 ICCPR), bodily integrity, freedom of thought (Article 18 ICCPR), and, autonomy, are broad enough and flexible enough to deal with the dangers posed by BCIs (Bublitz, 2014; McCarthy-Jones, 2019). To this end, supporters of such a point claim that the human rights system has been consistently developed to accommodate new technologies without introducing new categories of rights, using the examples of genetic data regulation and the control of digital privacy under the European Court of Human Rights. But there is an opposing literature that believes that neurotechnology crosses the boundaries of concepts in ways never previously experienced, demanding the consideration of new explicit neurorights, including cognitive liberty, mental privacy, mental integrity, and psychological continuity (Ienca et al., 2017; Yuste et al., 2021). This school of thought holds that liberty of thought doctrine, which has traditionally focused on liberty without forced belief, should be broadened in order to be guarded against technological readiness to thought material or patterns (Garrett, 2022). The Chilean statutory and constitutional reforms that mention neurorights are often mentioned as the earliest example of an empirical legal case study that proves that such normative innovation is possible (Larrain, 2022).

The crisis in the privacy law field is whether neural data should be classified as a new type of sensitive personal information that needs extra protection like genetic data or biometric data. According to scholars, the common data protection conditions like the GDPR do not provide explicit treatment of inference-based harms, including forecasting mental condition or predicting a behavioural propensity (Bergstrom and Ienca, 2023). Moreover, it can be argued that data governance discussion is getting more focused on the issue of power asymmetry between a personal establishment and a commercial enterprise, especially when neural data are stored on devices that can be purchased as a lifestyle product or as a wellness item instead of a medical equipment (Cohen, 2019). This lack of clarity of the regulatory categories highlights the necessity to reassess consent regimes, the use of secondary data and commodification of mental conditions.

The secular normative viewpoint is augmented by bioethical scholarship, which stresses on dignity, autonomy, beneficence, and justice. In initial literature on neuroethics, BCIs were mainly considered through a clinical context of treatment of the neurological conditions (Rainey, 2015). Nevertheless, the shift toward mental upgrades and commercial neurotechnology has raised the ethical issue of psychological manipulation, the agency change, and the identity stability (Farah, 2018; Lavazza, 2023). Boire (2001) developed the concept of cognitive liberty that has become Principal, and it advocates the right to receive beneficial neurotechnology as well as the right to reject them. Mental integrity and mental privacy are also set out as critical ethical limits that need to be established to restrict non-consent based neural surveillance or intervention. Another risk that is identified by bioethicists is the threat of social injustices, where neurotechnology would increase disparities assuming that tools of enhancement are only available to those with privilege (Ienca, 2022). This has resulted in the calls to the distributive justice and equity based regulation in the initial phases of the neurotechnology governance.

The idea of Science and Technology Studies (STS) scholarship is valuable in challenging the sociopolitical background of the introduction and regulation of neurotechnology. Instead of considering neurotechnology as an impartial or unstoppable phenomenon, STS methods look at how rhetorical constructions like the idea of mind-reading devices or other purported mental enhancement devices create regulatory urgency and popular fantasies (Jasanoff and Hurlbut, 2018). STS scholars point out that governance arguments are being discussed pre-emptively, as opposed to reactively due to extensive damage, which has led to what Hilgartner (2020) calls the speculative space of regulation. This prospective form of governance looks at both technological determinism and the codification of certain laws in advance and proposes an alternative of iterative, democratically informed systems that react to lived experience and incorporate a changing social meaning.

3. **Conceptual and Theoretical Framework**

The fast rate of neurotechnology development along with brain-computer interfaces (BCIs) requires a strong conceptual and theoretical framework to search in system the implications of neurotechnology and brain-computer interfaces on the sphere of human rights, governance, and legal control. It is crucial to define the terms used as the foundation and place the discussion in the context of the applicable theoretical frameworks before deciding on the doctrinal directions and regulatory loopholes[10]. It is a framework that offers intellectual scaffoldings of how the emerging technologies collide with fundamental legal and ethical tenets and how the future norms can be transferred in reaction to them[11].

Generalizing on neurotechnology, any technology used to record, decode, stimulate, or otherwise manipulate neural activity can be defined as neurotechnology. These technologies are of different degrees of invasiveness, with invasiveness such as a deep brain implanted device deployed in a clinical environment all the way to a non-invasive consumer wearable that can monitor the emotional state or level of attention[12]. A subset of neurotechnology is brain-computer interfaces (BCIs) that facilitates the process of two-way communication between the brain and other digital environments. Although original uses of BCIs were healthcare applications, modern versions are now constantly integrated into optimization tools at the workplace, games and education, and military settings, causing marks of division between medical need and adoption in the name of enhancement[13].

Since these technologies are in direct communication with neural activity, the material of identity, agency and thought, these address serious conceptual entitlement, which are not limited to the terms of privacy or integrity that currently govern corporal being. Cognitive liberty can be described as the essential liberty to be able to think by oneself and without any extraneous interference or coercion and influence. It entails the

[10] Federico Fagan & Francesca Lagioia, The Legal Status of Neurodata: Privacy and Human Rights Implications, *Neuroethics* 211 (2021).
[11] Andrew Hilts, Brain Data as a Commodity: Legal and Ethical Risks, *Privacy Int'l Working Paper* (2022).
[12] Michael Birnhack, Freedom of Thought in the Algorithmic Age, 51 *Colum. Hum. Rts. L. Rev*. 3 (2020).
[13] World Economic Forum, *Ethics of Neurotechnology: Responsible Innovation Framework* (2022).

negative right to be free of unwanted access or alteration of mental processes (which is also referred to as the right to remain unaltered), and the positive right to access or use neurotechnological enhancement should an individual choose (autonomously) to access or use neurotechnological enhancement[14]. Mental privacy is the right to defend the neural information, that is, the evidence of the intention to undertake, the emotional reaction, the memory, and unconscious formation, against unauthorized access, monitoring, or business profiteering. Very similar is the idea of mental integrity and this prevents the alteration or disruption of neural processing through technological means, algorithmic conditioning, or neuromodulation, unauthorized. Mental autonomy relates to the capability to create choices, judgments, and preferences without technological interventions and algorithmic impacts[15].

All these rights overlap with the data in the mind- on the basis of a brain behaviour. Mental data is distinctly personal, unlike other traditional biometric or behavioural data: it can be a revelation of the intelligence not yet embodied by the individual, unfamiliar to the individual or valued as a secret. These specificities of mental data package a strain to data-protection systems, which have historically been used to respond to observable, self-disclosed personal data, and not internal issues, automatically in response, or expected, neuromarketers[16].

These emerging legal questions are analysed with the help of a framework based on various intersecting theoretical lenses. The theory of human-rights offers a broad-based normative background. A dignity-based model places importance on the inherent value of individual people, and locates the mind as a fundamental aspect of personhood, which should not be

[14] Xin Chen & Li Wang, Brain-to-Brain Interfaces and Collective Agency: Legal Futures, 45 *Stan. Tech. L. Rev.* 101 (2024).

[15] Karen Yeung, A Study in Power: Behavioural Governance Through Neural Tech, 42 *Mod. L. Rev.* 212 (2020).

[16] International Bioethics Committee, *Report on Neurotechnology and Human Rights* (UNESCO, 2023).

commodified and invasive[17]. Under this paradigm, rights can be considered to be negative rights (not to be interfered with, surveyed or manipulated) and positive rights (beneficial access to neurotechnology, fair place in the enhancement, freedom to be left undiscriminated against, etc.). This difference matters a lot since neurotechnology can lead to the formation of the stratified cognitive society whereby access to enhancement can be a prerequisite to employability or social acceptance[18].

The autonomy and consent theory also informs regulation especially in situations where neurotechnology is used to obtain data that cannot be controlled. Conventional paradigms of informed consent presuppose voluntariness, understanding and intentional involvement, which can fall apart in case of neural signals being passively gathered or exploited to detect emotions or intentions[19]. Consent is also likely to be corrupted where there is a power imbalance, which in the workplace, education or the criminal justice system where rejection will result in punishment or marginalization. Autonomy in neuromethodical age, therefore, should not be reduced to formal approval, but extended to contextual and procedural and relational nurturant.

The theories of privacy also guide the framework, particularly, the fact that the informational privacy and mental privacy are contrasted. Informational privacy is a cover of information that is generated by observable actions, interaction or transaction. Mental privacy, in turn, is about information that in turn has been created by the internal mind states, such as preconscious and unexpressed thoughts[20]. Where informational

[17] Geneva Academy of International Humanitarian Law, *Neurotechnology and Warfare: Policy Brief* (2022).
[18] Mark A. Lemley, Cognitive Liberty and Emerging Tech: A Rights-Based Framework, 77 *U. Chi. L. Rev.* 305 (2023).
[19] International Bar Association, *Guidelines on AI, Human Rights, and the Rule of Law* (2022).

[20] Jacob Crandall, Consent in the Age of Neural Interfaces: A Biolegal Challenge, 47 *Hastings L.J.* 401 (2024).

privacy theories are based on procedural restraints like a notice, choice, and purpose limitation, the more substantive mental privacy theory requires: principles based on limitations to allowable data collection and some uses entirely, (in the case of genetic discrimination or biometric surveillance).

There is another analytical orientation offered by the risk and regulatory governance theories. Two models are dominating in the discourse of governance: precautionary and innovation-friendly regulation. This precautionary approach has the main objective of preventing the possible damage and can ban or strictly regulate neurotechnologies until their safety, ethical standards and potential impact on society are properly evaluated. Innovation-friendly frameworks, on the other hand, attempt to permit technological advancement by regulation which is adaptable, flexible in nature, presupposing that harms may be in the long run ameliorated downstream[21]. Hybrid models, with a greater emphasis on innovation and its preemptive protection, seem more suitable and can be seen in new international discourse, such as neurorights ideas and neuro-governance approaches.

On these conceptual and theoretic underpinnings a model is proposed of analysis that would determine the implications of particular neurotechnologies. The model takes place in five systematic stages:

Mapping Technologies: Determine the nature of the neurotechnology, its purpose, invasiveness and its context of operation distinguishing between clinical, consumer, military, workplace, and law-enforcement applications.

Potential Remedies: Examines risks, such as unauthorized data already present in a specific form yanked out, coercive takeover, psychological harping, identity interference, loss of agency, inequity or algorithm bias in neural data dying.

[21] Neal Feigenson, Brain Imaging as Court Evidence: Reliability and Rights, 90 *Minn. L. Rev.* 465 (2021).

Establishing Implicated Rights: Evaluate rights that are involved including privacy, autonomy, equality, bodily and mental integrity, cognitive liberty or due process guarantees.

Reviewing Legal Gaps: Did legal systems, currently existing (e.g. data protection law, medical ethics, discussions about workplace rights, constitutional principles, or human-rights instruments) incorporate sufficient coverage over the risks, or must new legal frameworks (e.g. neurorights) evolve upon it?

Policy and Regulatory Response Recommendation: Suggest a response of comparable severity between soft (ethical guidelines, certification, transparency requirements, etc.) and hard (rights-based policies, prohibitions, criminal fines, or amendable constitution) canons.

Within this unified framework, the analysis transcends the issue of technological novelty in order to address the underlying philosophical and legal issues that are defining human agency, identity, and dignity in the neurotechnological one[22].

4. The Human Rights Landscape: Rights Likely Implicated

The exponential development of neurotechnology and brain-computer interfaces (BCIs) are presenting the human rights framework with the greatest challenges ever. Although the philosophy of currently existing treaties, including the Universal Declaration of Human Rights (UDHR) (1948), the International Covenant on Civil and Political Rights (ICCPR) (1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) still influence the given field, new neurotechnology might necessitate rebalancing or even extending their provisions[23]. With the transition of neurotech to the consumer markets, out of clinical and rehabilitative use, to gaming platforms, military research,

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[22] Nita A. Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology* (2023).

[23] Marcello Ienca & Roberto Andorno, Towards New Human Rights in the Age of Neuroscience and Neurotechnology, 13 *Life Sciences, Society and Policy* 1 (2017).

and the workplace, there is an increasing possibility of rights conflict. The discussable rights that may be involved are as follows with the analysis of their legal framework, the mechanism of interference, and examples.

4.1 Right to Privacy (Mental Privacy, Neural Data, etcTouch Privacy)

Privacy rights are established in Article 12 of the UDHR, Article 17 of the ICCPR, Article 8 of the European Convention on Human Rights (ECHR) of the Council of Europe, and the privacy laws of many national data protection laws, such as the EU General Data Protection Regulation (GDPR)[24]. Conventionally understood as territorial, informational and bodily privacy, this right is now facing its new forms more specifically mental privacy, which can be described as the security against the unauthorized access to the thought processes, feelings and neural activity. Compared to traditional biometric data, neural data is based on its unique sensitivity to unconscious responses, intensive and preference states and preferences that can be shown.

The risk of neurotech invading privacy includes unconstentual data retrieval, constant surveillance (e.i. wearable EEGs), predictive algorithms or commercial application of neural activity. EEG-based metrics of attention, emotional response and cognitive fatigue already exist in consumer platforms and are sometimes gathered without informed consent in a granular manner[25]. Other companies like OpenBCI, Neuralink and Emotiv have been bringing neural information on cloud environments that have brought up fears of surveillance capitalism making an incursion into the realm of the mind. This pioneering bodies of neuromarketing have indicated that neural signals have led to decreased inaccuracies in prediction of consumer preference in comparison to self-reported survey

[24] OECD, *Neurotechnology and Society: Strengthening Responsible Innovation* (2021).
[25] Joel Feinberg, The Moral Limits of the Criminal Law: Harm to Self (1986).

data- indicating risks to come with behavioural targeting or behavioural manipulation[26].

4.2 Right to Freedom of Expression and thought.

Article 18 and 19 of the UDHR and ICCPR guarantee freedom of thought, conscience and expression. This right has historically been held sacred and thought to be inviolable, because of the presumption that thoughts are immeasurable, untraceable, and generally immutable. It is now challenged by technological settings where thoughts can become measurable, traceable and possibly actable. A consequence of defensive boundaries BCIs may render invisible existing differences based on internal cognitive working processes on one hand, and external communications on the other hand.

The right is involved in two aspects, one being interference with the formation of thought, as in the case of subliminal modification of neural states by stimulation-based implants; and the other being interference with the expression, in the forms of prohibition or surveillance of neural-based communication systems. Other studies have shown that in closed-loop neuromodulation, particularly deep brain stimulation (DBS) in the treatment or management of Parkinson's disease or treatment-refractory depression, stimulation has the ability to modify mood, motivation as well as volition, raising questions as to whether will or beliefs can be indirectly manipulated. Military applications to pilot training/attention optimization Cognitive improvement, or behavioural conditioning, may also be performed as an experimental military BCIs, which has normative questions concerning the margin between help and force.

4.3 Unusual Bodily integrity and Medical Autonomy Rights.

Guaranteed by Article 3 and 5 of the UDHR, Article 7 of the ICCPR as well as national laws that support informed-consent regulations, the right to bodily integrity forbids non-consensual medical procedures or practices,

[26] Beauchamp & Childress, *Principles of Biomedical Ethics* (9th ed. 2019).

invasive surveillance or dangerous experimentation. This right is potentially involved in neurotechnology by surgical implants (including electrode arrays), neural stimulation or necessary device-body interaction in workplaces or health systems. The problem is made worse when implants become permanent or hard to be removed which leads to long term dependence[27].

The concept of medical autonomy involving the right to informed consent is also disputed in the case of neural implants, which alter the perception, memory retrieval mechanism, or emotional experience in a way that cannot be perfectly predicted by users. As an instance, certain users of DBS say that they feel programmed and are not able to differentiate between internally generated emotions and those caused by the stimuli. Moreover, the malfunction of devices, software updates, data breaches of cybersecurity, and the ability to implement a powerful control to the implant compatibility can undermine autonomy especially when the discharge can cause more damage[28].

4.4 Right to Mental Integrity and Cognitive Liberty

Although not directly defined, mental integrity is a concept that is becoming operationalized, including in terms of regional ethical principles and via such things as the Council of Europe Convention on the Human Rights and Biomedicine (Oviedo Convention). Cognitive liberty is a coined term that was brought about by neuroethics, that an individual has the right against any technological infiltration into cognitive functioning and also, that a person has the right to the voluntary application of enhancement technologies[29].

[27] Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 *Harv. L. Rev.* 193 (1890).
[28] U.N. Human Rights Committee, General Comment No. 36, Article 6 (Right to Life), U.N. Doc. CCPR/C/GC/36 (2018).
[29] U.N. Human Rights Committee, General Comment No. 34, Freedom of Expression, U.N. Doc. CCPR/C/GC/34 (2011).

Neurotech poses a threat to mental integrity via unauthorized inferences on neural states, behavioural manipulation, or even cognitive process manipulation. Mental patterns can be reformed to challenge personal identity and continuity of self by external modulation technologies, including transcranial magnetic stimulation (TMS), neurofeedback devices, or experimental memory-alteration devices. There is risk escalation where its use is institutionalized, as by criminal justice rehabilitation programs, border comparatively under monitoring, or educational systems undergoing the implementation of cognitive-monitors headsets[30].

4.5 Right of Non-Discrimination and Equality.

The non-discrimination is enshrined into Articles 2 and 7 of the UDHR, Article 26 of the ICCPR and various anti-discrimination laws. Neurotechnology can be used to recreate or enhance existing disparities based on biased algorithms, unequal access, or different treatment of neurodivergent or disabled people. Neural datasets can be poorly representative, such as those derived using clinical patients or a limited population, i.e. algorithms that decode speech, emotion or cognitive load may be biased[31].

Also, this exclusion can arise in case neurotech becomes a work-related productivity or educational improvement instrument, throwing workers into a stratified setting where neuro-enhanced persons have structural benefits. Disability rights ideologies such as the CRPD (Convention on the Rights of Persons with Disabilities) focus on the rights to equal access to therapeutic neurotech and protect against the coercive enhancement of disability[32].

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30 Henry T. Greely, *The End of Sex and the Future of Human Reproduction* (2016).
31 Karen Yeung, Hypernudges: Designing Digital Choice Architecture, 20 *Information, Communication & Society* 118 (2017).
32 Antonio Damasio, *Self Comes to Mind: Constructing the Conscious Brain* (2010).

4.6 Right to Procedural Rights and Fair Trial.

The use of neural data in court raises important issues of fairness, admissibility, compulsion and presumption of innocence. The right to fair trial, due process and safeguarding against forced self incrimination are guaranteed to the individual under Article 14 of the ICCPR, Article 6 of the ECHR. Should neural records, neuroimaging images, or freeloading emotional reactions be presented in court, the courts would face the challenge of deciding whether or not neural data is testimonial evidence that the privilege against self-incrimination would be granted[33].

There are existing jurisdictions which have already tested neuroimaging as a lie detector or even pain detector, although they are often not accepted by courts because they are unreliable, open to coercion and may infringe on rights. In the event that a case of forced neural access is allowed, the demarcation between the state and the mind is swept away, and unparalleled infiltration is therefore made possible[34].

4.7 Right to Health

When the right to health is discussed within the framework of the UDHR, Article 25, and the ICESCR, Article 12, one should remember that the right to health is understood as the right to the required medical care, the right to the even distribution of resources, and the right not to be harmed. Neurotechnology has two important applications towards the improvement of health rights: BCIs enable communication to be restored in individuals with paralysis, neuroprosthetics enable the restoration of sensory or motor functions, and neuromodulation cures neurological disease. Nevertheless, commercialization can limit access making enhancement markets more important than therapeutic requirements. The patenting of controversies, proprietary software, access models based on subscription and reliance on

[33] U.S. Food and Drug Administration, *Brain–Computer Interface Regulatory Guidance for Industry* (2024).
[34] Mireille Hildebrandt, Law as Computation in the Era of Artificial Legal Intelligence, 68 *Artificial Intelligence and Law Journal* 20 (2023).

updates provided by manufacturers, all run the risk of converting vital brain-linked functionality into the proprietary assets.

Furthermore, the right to health demands that people will not be exposed to any untested or high-risk technology. The swift increase in consumer-market growth (especially the lack of certified EEG-based wellness products or cognitive performance devices) provokes concerns of the neurological damage, psychological effects, and the lack of a clinical follow-up.

4.8 Right to Self-Determination and Personal Autonomy.

Bioethics is based on autonomy and Article 1 and 22 of the UDHR implicitly. Neurotechnology problematic to autonomy This area schematically interacts with neural substrates of volition and identity as well as decision-making. BCIs make lines between voluntary and device-mediated action indistinct causing agency, responsibility, and moral accountability to be called into question. In the example, it is difficult to determine who the liable party, be it human or machine, is when the autonomous prosthetics or AI-assisted decision systems are unpredictable or act on their own.

The right to reject neurotechnology also extends to self-determination, which appears in the coercion cases like military upgrades, cognitive surveillance by employers, or insurance benefits as a result of using the device.

Neurotechnology and BCIs have counterproductive but equally dynamic interrelations with human rights, presenting a significant number of opportunities as well as unprecedented dangers. Although the current frameworks provide some level of protection, most rights need to be redefined considering technologies that can access, interpret, and affect cognitive functions[35]. Recent developments of neural data economies, AI-

[35] World Medical Association, Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects (2013).

mediated cognitive systems, and neuro-enhancement markets demonstrate the need to take as normative and legal clarity as urgently as possible. Since neurotechnology is not a fantastical future directly related to potential innovation, but rather part of our everyday infrastructure, human rights protection and enhancing humanity-associated dignity, autonomy and mental sovereignty becomes an imperative defining the 21 st century[36]**.**

5. Doctrinal and Comparative Legal Analysis

The new world of neurotechnology and brain-computer interfaces (BCI) is overlapping with the traditional concepts of human rights and laws that did not traditionally consider direct access to or control of neural activity. An analysis of doctrine shows that although the protection of autonomy, privacy, dignity, and freedom of thought given in the international legal instruments is broad and normatively strong, an implementation of these guarantees into specific rules and responsibilities that need to be applied to neural information has not been substantively developed yet. An analytical comparison of law systems shows that there are divergent philosophies in regulation including both heavy rights based protectionist models of law and innovation based and sector based models with large regulatory gaps. In all contexts, the extent of jurisprudence that is limited to neurotechnology is underdeveloped, yet the analogical reasoning of the genetic privacy, biometric surveillance, and medical data regulation offers useful precedents[37]. The general outline indicates that there are major doctrinal tensions and gaps that raise the question why the current legal safeguard may be applicable in the specifics of the neurotechnological threat or whether neurospecific rights regulations are warranted.

[36] U.N. Special Rapporteur on Torture, Report on Psychological Manipulation and Emerging Technologies, U.N. Doc. A/HRC/52/38 (2023).
[37] Simone Kitson et al., Ethical and Legal Challenges of Non-Medical Brain–Computer Interfaces, 16 NEUROETHICS 14 (2023).

6. The instruments of the international human rights

The international human rights law offers a normative base upon which neurotechnology is to be regulated. Basic values as formulated by the Universal Declaration of Human Rights (UDHR) such as dignity, autonomy, and body integrity are core values that are the foundations of the rights applicable to neural data and cognitive sovereignty. Articles 3 (right to life, liberty and security), 12 (privacy), 18 (freedom of thought, conscience and religion) and 19 (freedom of expression) are a set of human rights that describe the interests against unauthorized loss or control over mental processes. Though not a binding document, the UDHR guides interpretation of treaty and domestically existing constitutional procedures.

The International Covenant on Civil and Political Rights (ICCPR) has more definite lines of doctrine and is binding. Article 17 expressly forbids any arbitrariness or illegality of intrusion into privacy that when comprehended dynamically may include neural information as one of the most sensitive types of personal information. What is more important is that the freedom of thought is entrenched in Article 18 and is absolute and non-derogable[38]. The right is traditionally understood through the prism of beliefs, religion, and conscience, but without studying mental intrusions made easier through BCI, it has not been interpreted. The factuality of decoding subconsciousness or affecting mental conditions upsets the historical presupposition that the inner forum (forum internum) is sacred and indescribable.

On the same note, the jurisprudence of the European Court of Human Rights (ECtHR) and the European Convention on Human Rights (ECHR) offer much to be interpreted. Article 8 (respect to the personal and family life) has been developed by the way of the case law, to cover the protection against biometric surveillance, genetic profiling, as well as reprehensive medical examination. Article 9 (freedom of thought) has

[38] World Economic Forum, Global Governance Toolkit for Neurotechnology (2022).

been taken literally and rarely goes out of religious and ideological backgrounds. However, the acknowledgment of the concept of psychological integrity by the Court in the context of Article 8 creates the possibilities of similar neurotechnology-related litigation in the future, especially when a BIA can modify, decipher, or productize the activity of the brain[39].

Specifically to the human rights regionally, the American Convention on Human Rights and African Charter on Human and Peoples' Rights entrench the principles of privacy and autonomy, but with less explicit doctrinal application to the digital or biometric cases. In regions, the insensitivity of the data on the brain represents the necessity of interpretive evolution or a treaty supplement to accommodate the previously unheard-of capacity of neurotechnology to transform the brain as an otherwise a personal space into a location of extractable and manipulable data[40].

7. Comparative National Regulatory Approaches

Comparative approach exposes contrasting approaches to the law which are Affected by regulatory traditions, degree of technological uptake and normative values. The spectrum is represented by three types of regulatory models, (A) precision in regulation by rights, (B) sectoral regulation, which is innovation-oriented, and (C) regulatory gap[41].

A. Jurisdiction A. Powerful Rights-Based and Medical-Technology-Centered Regulation (e.g. European Union)

The European Union is a wholesome 360-degree and rights protective model. The General Data Protection Regulation (GDPR) imposes stringent themes on the processing of personal data, with special protective

[39] Anita Allen, Privacy as Contextual Integrity: Norms, Values, and the Brain, 55 ARIZ. L. REV. 1031 (2013).
[40] Henry T. Greely, Neuroethics and Law: A Brief Overview, 22 J. COGNITIVE NEUROSCIENCE 675 (2010).
[41] Paul Root Wolpe, The Neuroscience Revolution & Human Rights: Rethinking Liberty and Dignity, 106 GEO. L.J. 1691 (2018).

considerations in regard to special categories of personal data, such as the biometric and health information[42]. Neural data though not explicitly categorized can logically fall into various categories within the category of protection- it is in particular those cases where BCI becomes a part of medical or biometric.

Further more, the Medical Devices Regulation (MDR) addresses neurotechnology that is clinically or diagnostically useful and provides safety, performance and post-market surveillance conditions. The Artificial Intelligence Act (AIA) proposed by the EU goes even a bit further in enhancing the neuro-specific viewpoint by specifying that in some settings, AI systems that are trained to infer emotions or mental states constitute high-risk. Indeed, consumer-grade neurotechnology covers unevenly.

Certain member states, both within the EU and beyond, such as Spain and Chile (not an EU, but an important participant in the neurorights discussions), have have made explicit recognition to mental integrity and the cognitive privacy. The constitutional amendment enacted in Chile defining the neural activity as an object of the principles of mental privacy proves to be a doctrine milestone and indicates the potential future trends in the European constitutionalism[43].

B. Jurisdiction B: Innovation-Based and Sectoral Regulation (e.g. United States)

In the United States, there is a disjointed and sector-oriented regulatory process. Privacy safeguards are shared by various tools, among which there are the Health Information Portability and Accountability Act (HIPAA), the Federal Trade Commission Act (FTC Act), and the biometric privacy laws at state levels (e.g. the Illinois Biometric

[42] Matthew Liao, *The Right to Be Disabled by Design? Ethics and Enhancement*, 17 AM. J. BIOETHICS 1 (2017).
[43] Lawrence O. Gostin & Jeffrey S. P. Alltucker, Privacy, Mental Integrity, and the Regulation of Brain Data, 41 J.L. MED. & ETHICS 181 (2023).

Information Privacy Act). The HIPAA applies to the case of medical use of BCIs only and does not deal with consumer neurotechnology- becoming a fast growing category.

The U.S. regulatory model gives market-driven innovation a top priority, i.e. any neural data that is gathered by commercial BCIs could be handled in the same way as behavioural and biometric data. The Food and Drug Administration (FDA) is the regulator of implanted or therapeutic neuro devices, yet the devices targeted at consumers and neuro-wearables usually do not subjected to intense scrutiny. New state-level policies, like the 2023 data protection amendment in Colorado that makes neural data one of the first laws to specifically acknowledge the concept, indicate the increasing level of doctrinal care but are young and poorly implemented.

Similar case law involving neurodata--genetic testing (e.g. the Maryland v. neurodata case of the U.S. Supreme Court). Privacy of DNA collection) and search and seizure law (Carpenter v.). United States, limiting warrantless access to digital location information)-can be prescriptive of the future of doctrinal therapy. These precedents are an indication that courts can perceive neural data as invasive considering that it is involuntary and pre-behavioural.

C. Formative Systems and avalges and a lack of regulatory measures Resilience (Representative Global South Context)

Neurotechnology is being faced by many emerging legal systems without sufficient juridical preparedness. Regulatory frameworks do not necessarily need neurospecific interpretation as regulatory frameworks can be based on expanded IT and data protection laws or medical device laws or constitutional privacy protections. As an example, in jurisdictions like India, Brazil, and South Africa, both digital rights development and constitutional protections of dignity and privacy are developed and regulated, but neural data or mental autonomy are not directly regulated.

The Digital Personal Data Protection Act, 2023 does offer broad protections which apply to India but neural data has not been listed under a specific category such as sensitive. The use of neurotechnology in medicine or research can fall under biomedical ethics and clinician laws yet such uses as consumer neurowearables and work-based neuro-monitoring are not much controlled. These loopholes pose a grave danger of exploitative trade operations and spy-like implementation, in particular when neurotechnology and repressive governance/workforce in general converge[44].

8. Jurisprudence and Analogical Development of Doctrines.

There is limited direct judicial involvement in BCIs all over the world. Nevertheless, some related issues relating to biometric data, emotional recognition technology, medical imaging, and genetic information have been taken up by courts. The neuroimaging has also been used in criminal and evidentiary cases, and specifically, in India and the United States, there are cases where the admissibility of brain-based systems of lie detection or memory recognition was tested. Scientific uncertainty, reliability, and self-incrimination have been the subject of judicial scepticism, which demonstrates a tension of doctrine between the profit of evidentiary utility and cognitive autonomy.

Jurisprudence Courts have progressively taken into account proportionality, purpose limitation, and necessity in data protection and in digital privacy. The strategy of ECtHR in S. and Marper v. The United Kingdom, where indefinite retention of DNA was considered disproportional, can be especially informative: neural data, similar to DNA, has sensitive, predictive, and biometric dimensions that are out of tools of normal privacy anticipations[45].

[44] U.N. Working Group on Business and Human Rights, Guidance on Technology Governance and Human Rights (2023).

[45] U.N. GAOR, Report of the Special Rapporteur on Freedom of Opinion and Expression ¶ 32, U.N. Doc. A/HRC/44/49 (2020).

The cases before the Court of Justice of the European Union and U.S. courts as well have come to the conclusion that exceptional protection is necessary to data that contains elements of predictive capacity and identity markers. The data of the brain, which have the capability of displaying pre-conscious preferences, emotional condition, and styles of thinking, needs even more consent and scrutiny levels, perhaps.

9. Case Studies

This part uses the framework of analysis on actual and emergent applications of neurotechnology with a special emphasis on the legal, ethical and human rights conflict posed by varied contexts of use. Both cases demonstrate the interactions between any legal safeguards and the new dangers related to the technological ability to document, induce and control mental conditions.

9.1 Paralyzed Clinical Brain-Computer Interfaces and Paralyzed Data Governance.

The initial example is that of invasive BCIs usage in therapeutic settings, by which individuals with persons with paralysis, who may have suffered spinal cord injuries, or those with neurodegenerative disease may use invasive BCIs. In this case, BCIs allow users to use assistance gadgets to use robotic limbs, digital communication platforms or even mobility systems. Clinical trials often need to collect extensive neural data which could be exported to other research partners, company developers, or algorithmic refinement on cloud-based machine learning services[46]. The informing consent is normally signed by the patients, however, new scholarship proposes that the existing frameworks of consent do not provide enough depth, granularity, and future inability to predict the neural data extraction.

[46] Nita A. Farahany, The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology 112–15 (2023).

The major stakeholders will be the patient, medical researchers, device manufacturers, data storage intermediaries, and regulatory bodies that control medical technology. The main rights, which are involved, are the right to privacy, right to bodily and mental integrity, autonomy, and informed consent. The legal risks presented are based on the risk of not knowing while using neural data its further uses such as being used in other studies, commercial exploitation or in inferential profiling[47]. Since neural signals can be used to identify cognitive patterns, emotional conditions or predictive signs of disease progression, the inability to control such information is potentially dangerous in the long run, as it would be easily used to discriminate or predict unauthorized behavioural patterns.

Available legal solutions are different in different jurisdictions. Neural data can even be considered sensitive personal data in the European Union in the General Data Protection Regulation (GDPR), which demands express and goal-bound consent[48]. Conversely, more liberal, open to innovation systems, such as those present in the United States, are based on disjointed medical device and research regulation, which is unlikely to significantly impede sharing of data that has been anonymized even as more evidence is gaining strength to challenge the ability to anonymize neural signatures[49]. The possible policy interventions are the creation of specific neural data rights, the creation of informed consent by adding dynamism of control measures, and the establishment of severe restrictions between cross-institutional and cross-border data transfers. The institutions review board can also expand on ethical governance beyond the research

[47] Marcello Ienca & Roberto Andorno, Towards New Human Rights in the Age of Neuroscience and Neurotechnology?, 13 *Life Sci., Soc'y & Pol'y* 1, 4–6 (2017).
[48] Rafael Yuste et al., Four Ethical Priorities for Neurotechnologies and AI, 551 *Nature* 159, 161 (2017).
[49] Brendan Allison et al., Brain-Computer Interface Systems for Communication in Paralysis: A Review, 10 *Brain Comput. Interfaces* 1, 2–3 (2023).

trial periods such that the neural data will remain protected even after a termination of the clinical trial[50].

9.2 Consumer EEG-Equipment and Neuromarketing-Practices.

A second case study is the expanding market of wearable consumer EEG devices that are sold either under wellness, neuroenhancement, gaming or cognitive training[51]. These products are used in fairly unregulated consumer technology markets unlike more tightly regulated clinical devices. Some of the companies archive real-time neural attention measures and emotional response statistics to generate neuromarketing data, behavioural analytics data and targeted advertising profile. Our permitted pilots were not aware that their registered neural reactions to content were being utilized to perfect commercial advertising algorithms in some documented pilots.

Stakeholders are the consumers, the producer of the devices, the advertisers, the data brokers, the platform intermediaries, and the consumer protection and digital market regulators. The harms here are more different than in the case of the therapeutic since the relationship is not based on a medical relationship, but on a commercial relationship, and the threats of manipulative use of data are increased. Neural data can allow advertisers to understand subconscious responses users are not willing or capable of describing, potentially the source of issues of autonomy, mental privacy, and non-behavioural engineering.

This is one of the areas where there is a great deal of legal gaps. Transparency and disclosure rules are frequently the basis of consumer protecting legislation, however research indicates that the majority of users do not read or understand complicated privacy terms, especially in scenarios where the long-term effect of neural information mining is

[50] U.S. Food & Drug Admin., *Brain-Computer Interface Devices: Guidance for Industry and FDA Staff* 5–7 (2024).
[51] Daniel G. Amen, The Applicability of EEG for Consumer Use, 24 *J. Cognitive Tech.* 45, 47 (2022).

simply hypothetical or a blackbox process. The current regulatory definitions do not do justice to the brain-based signals which can disclose latent preferences or unconscious signals of the vulnerability as compared to traditional biometric privacy regimes.

Some of the policy proposals are mandatory prohibition on neural data utilisation under targeted advertisements, rigorous restrictions of algorithmic inference on neural data, and deployment of precautious governance paradigm where data minimisation and limitation of purpose is designed as regulatory. Constitutional-level protection of mental privacy has been promoted by some legal scholars, as a way of avoiding the commodification of thought patterns and in patterns of emotional reactions, since cognitive liberty justifies banning the commercial extraction of thought-derived behavioural prediction.

9.3 Monitoring and Productivity using Neurotechnology by Employers.

A third new context is the use of neurotechnology at the workplace, particularly in those sectors that are high-risk duty or high-performance, such as commercial driving, manufacturing, aviation and logistics. Certain organizations have tested EEG-based platforms to observe the fatigue of workers, the rate of attention, and emotional control with the given goal of increasing safety or productivity. But the limited power of the people employed brings about serious issues of areas of coercion and free will on the one hand, and the possibility of discriminatory or punitive applications of neural measures on the other.

The stakeholders are the employees, employers, labour unions, neurotech vendors, occupational safety regulators and courts. The rights that are at stake are the right of privacy, bodily autonomy, cognitive liberty and right to non-discrimination. The dangers are not limited to surveillance but extend to behavioural conditioning wherein employees might be in a position to change mental or emotional states in order to fit within organizational norms. The psychological consequences of the surveillance all the way to the level of brain activity suggest new types of workplace control which transforms the control of the managers on the outside to the inside within the boundaries of intellectual control[52].

Laws that control the surveillance of employees have many differences. In certain jurisdictions the scope of monitoring in the workplace is allowed with the condition of notice whereas in others proportionality and necessity cannot be avoided. The current labour regulation might since be insufficient to control neural monitoring because it is capable of knowing internal states as opposed to observable behaviours[53]. Such regulatory mechanisms proposed are categorical prohibitions on access by employers to neural data unless in strictly stipulated safety-critical situations, the institution of neuro-rights on labour law, and models of collective bargaining to guarantee worker representation in decisions of governance**.**

10. Discussion and Conclusion

The integration of doctrinal and empirical research proves that neurotechnology manifests continuum and disruption of human-rights structure around the world. Existing rights such as privacy and bodily integrity, autonomy and freedom of thought give legal framework partial basis to counter the emergent threats of brain computer interfaces (BCI), and neural processing of data. According to case studies and empirical observation, even though clinical and therapeutic uses of neurotechnology are more likely to be functional in established regulatory settings, the commercialization of non-medical consumer neurotechnology has proceeded at a faster rate than the legal protection. Weakness of governments to fulfil normative protection in the face of fierce realities is highlighted by informational asymmetries, secrecy of information and coercive implementation, whether in workplace or education or tracking of appearance and behaviour. This variant helps underline that unique aspects

[52] Adam Gazzaley & Larry D. Rosen, *The Distracted Mind: Ancient Brains in a High-Tech World* 201–03 (2016).
[53] Jerald D. Kralik & Peter Shattuck, Neuromarketing: Ethical Pitfalls, 18 *Am. J. Bioethics* 62, 63–65 (2018).

of neural data, namely, its sensitivity and involuntary state and the possibility to provide information about mental states not disclosed by the explicit choice of the user, require specific, enforceable protections[54].

Whether or not neurorights represent a novel category of normativity, or are extensions of the current legal dogmas, has become a theoretical debate, albeit with an emerging pattern. Neurorights because of continuity of the doctrines: freedom of thought due to Article 18 ICCPR, privacy due to Article 17 ICCPR and GDPR frameworks and neural harms due to regional mechanisms: neural harms are arguably covered in neural naught of regional instruments. In contrast, advocates of the new rights system argue that the current paradigms do not have a conceptual span nor enforcement mechanisms to deal with thought decoding, mental manipulation and cognitive behavioural modulation brought about by high level BCIs. Pilot regulation like the constitutional amendment of Chile is empirical evidence pointing to the fact that even though it is possible to recognise neurorights on a symbolic level, implementing the operationalisation would be necessary using a more detailed statutory and technical criterion[55]. Neurorights can therefore be as though a hybrid between the identities of a new or even necessarily new but is not yet a comprehensive or wholly defined construct on the one hand; on the other hand, it is not yet an entirely new concept in any form but an adaptation necessitated by technological change.

A review of the reform proposals incites trade-offs between enforcing pragmatics, state capacity, and innovation. Competent regulation can preserve independence and mind privacy but the problem lies in going too far in preventing possible positive uses in healthcare, disability service, and science. On the other hand, permissive radios will promote commercial and research innovations and pose risks of cognitive exploitation, surveillance capitalism, and neuro-discrimination. The most promising way ahead is a governance approach that incorporates a layered

[54] Nat’l Inst. Health, Electrophysiological Neurotechnology Safety Report (2021).
[55] Consumer Reports, Brain Tech: Are We Ready?, *Consumer Reports* (Oct. 2024).

regulation, which eschews imposing further human-rights-based governance, but adds to the current governance the specialized neurorights protection, technical standards, and certification regimes. Nevertheless, such feasibility depends on worldwide harmonisation and sound regulations agencies, as well as inter-sectoral responsibility systems[56].

Moving forward, technological paths may imply the rapid increase in complexity: direct brain-to-brain communication, AI-generated neural amplification, and extensive neural data sets that can be used to analyse predictions in thinking will push the existing ethical and legal solutions to their maxima. With the development of BCIs, as an external interface turns into a built-in neuroprosthesis and possibly even a cognitive enhancement system, the distinction between personhood and technology will become even more obscure[57]. Anticipatory governance, interdisciplinary cooperation and implementing ethical constraints into the design of the technology are the means of ensuring that neurotechnology does not undermine human dignity and rights. Finally, it is not just important to control devices, but to protect the very cognitive (state) where people can think freely, autonomously, and without unnecessary intervention in the world which is becoming neuro-technological.

[56] Henry T. Greely, Brain Data as Personal Data, 19 *J. L. & Biosciences* 455, 457–58 (2022).

[57] U.K. Info. Comm'r Office, Brain Data and Biometric Privacy Guidance (Nov. 2024). Id. at 6–7.

REDESIGNING RIGHTS: THE ROLE OF AI IN RECONFIGURING HUMAN RIGHTS NORMS

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1. Introduction

Artificial intelligence (AI) has the potential to completely change the way we live, but it is developing at an almost exponential rate and is being used by governments and private corporations that blatantly ignore the potential consequences of AI, reject attempts at adequate regulation, and show no interest in controlling or guiding its effects. The study will look at the numerous ways in which AI affects human rights, both favourably and negatively. It will also highlight how various regulatory agencies are held accountable for the negligent use of AI, as well as how they should seek to set safeguards or limitations on AI development and implementation. Concerns about privacy and bias have become crucial, almost instinctive, considerations, although these achievements handling, privacy and discrimination issues, are not the ultimate objective. However, they serve as stepping stones toward the goal, which is a thorough analysis of how AI systems affect human rights generally.

AI is all about the unprecedented rate at which AI is changing the world at unprecedented speed, touching nearly all areas of human life. The AI can revolutionize healthcare, education, governance, and security. Nevertheless, as much as AI can improve the welfare of people, it also presents a major challenge, which may jeopardize fundamental human rights. Privacy invasion, mass surveillance, failure of accountability and algorithmic bias are some of the significant ethical and legal issues. There

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is an uphill battle on the crossway between AI and human rights that can be defined as a challenging terrain. On the one hand, AI-driven innovations can promote greater access to justice, empowerment of marginalized industries and equal development. Conversely, unrestricted application of AI-based technology can add to inequality, institutionalized prejudice, and jeopardize personal freedoms.

This article will look at the advantages and disadvantages of AI's role in shaping human rights. It investigates AI's revolutionary potential in advancing rights like equality, health, and education while also critically analysing the hazards to privacy, freedom, and non-discrimination. By evaluating case studies and regulatory frameworks, the discussion emphasises the necessity of ethical governance and human-centred design in ensuring that AI development adheres to universal human rights values. In an era of fast technological progress, grasping the implications of AI for human rights is more than just an intellectual exercise; it is a worldwide imperative.

AI refers to the simulation of human intelligence functions using computers, primarily computer systems. Such processes are learning (the process of gathering information and extracting patterns), reasoning (the process of using rules to get rough or definitive conclusions), and self-correction (the process of getting better through feedback). The subfields comprising AI are “natural language processing (NLP), computer vision, machine learning(ML), or robotics.” Each of them provides unique features for solving complex problems and can operate at the intersection of technological innovation and social change, which is why conceptual knowledge is essential in evaluating its effects on human rights. It evaluates AI based on a multidimensional framework consisting of the technological, ethical, sociological, and legal aspects. The article situates AI within this theoretical framework, enabling a detailed examination of its role in the formulation of human rights. This method, besides making it clear as to what AI is, also provides the foundations upon which one can analyze the advantages and disadvantages of AI in furthering or undermining rights in a rapidly digitizing society.

AI is being rolled out into social structures so fast it's having huge implications for human rights.AI is great for speeding up processes and decision-making, but there are big problems with it—privacy invasions, biased results, and erosion of individual rights. There are currently no strong legal and ethical frameworks in place to regulate the rollout of technology and its implementation, and marginalized populations are bearing the brunt of the negative impacts of AI and exacerbating existing inequalities. The dual nature of AI—its potential to both benefit and harm—requires thorough investigation to understand its implications for the future of human rights. We need to address these challenges so that AI development is for dignity, equity and justice for all.

The connection between human rights and AIand its advantages and disadvantages in defending and promoting basic rights, encompassing equality, privacy, access to justice and freedom of expression, is examined in this paper, along with the ethical and legal ramifications of AI system devices, particularly as they are related to marginalized and vulnerable groups. Finally, it evaluates the efficacy of current governance frameworks and regulatory frameworks on human rights issues concerning AI.[1] By tackling these issues, this paper hopes to contribute to the larger conversation on how to build a humane and responsible strategy for producing and releasing AI innovations.

2. Research Methodology

This study digs into how artificial intelligence is changing the way we think about human rights. It takes a qualitative, theoretical approach, pulling ideas from different fields—not just law, but also ethics, political

[1] Rajagopal Kunjukrishnan et al., *Artificial Intelligence and Human Rights in the Era of Digital Governance: Exploring Promises and Challenges*, 4 INT'L J. ADVANCED RES. SOC. SCI. & HUMAN 64, (2025).

theory, and technology studies.AI brings, like algorithmic bias, accountability, and transparency. The research takes a hard look at new AI governance rules, court decisions, international human rights documents, and policy advice from both regional and global organizations. It compares how different countries respond, spotting where their rules match up, where they don't, and where there are obvious gaps. This isn't just about following what the law says on paper. The study tries to put all these issues in context, using real-world case studies to show what AI actually means for people's rights. It relies entirely on secondary sources—no interviews or original data collection here. Sure, AI regulations keep shifting, but this way of analyzing things still gives a solid picture of how human rights standards and policies are evolving in the age of AI.

3. Artificial Intelligence Origin and Development

Humans are intelligent beings with the capacity to carry out intricate and creative jobs. They have always sought faster, easier, more efficient, and convenient ways to complete their tasks. As a result, they seek out unique and inventive approaches and technology. In 1995, one of AI's pioneers, John Mccarthy, was the first to define the phrase. Creating devices that appear intelligent is the aim of artificial intelligence.[2] AI is defined by the Encyclopaedia Britannica as the capacity of digital computers to resolve issues that are typically linked to human intelligence.[3] AI is a technical subject that is turning human society into one of computers and robots. Its main focus is the automation of intelligent behaviour. Algorithms, big data analytics, ML, NLP, and other technologies are all included in artificial intelligence. By fostering prejudice, AI possesses the capacity to have both significant positive and negative effects on human rights. Human rights

[2] Onur Bakiner, *The Promises and Challenges of Addressing Artificial Intelligence with Human Rights*, 10 Big Data & Soc'y, (2023).
[3] Wolfgang Ertel, Introduction to Artificial Intelligence (2d ed. 2017).

impact evaluations created especially for AI are necessary to minimize potential risks and maximize its advantages.[4]

Despite concerns and challenges, AI has opened new avenues for human growth. AI can assist individuals in various ways. It has numerous potential applications, such as diagnosing and treating patients and supporting the elderly in living fuller, better lives. They were particularly inspired by AI's application to extensive public health initiatives, which drew from the vast amounts of data that could be gathered in the years to come on topics ranging from nutrition to individual genomes. AI, according to several experts, will enable long-overdue advancements in educational systems[5].Medicine has greatly benefited from AI, with applications including drug research, clinical trials, diagnosis, and treatment. AI-driven systems aid clinicians and researchers in evaluating patient data, recognizing potential health risks, and developing individualized treatment plans. In addition to hastening the development of innovative medical treatments and technologies, this can enhance patient health outcomes.[6] Human and AI complement each other. AI excels at performing repetitive, data-driven tasks and generating data-driven outcomes. The fundamental goal of AI is to support humans in completing tasks that require intellect. While many are concerned about how advancements in AI might impact what it means to be human, productive, and free, experts assert that most individuals will benefit from the technology's growth over the next decade.

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[4] ELOÏSE GAUMOND & CATHERINE RÉGIS, *Assessing Impacts of AI on Human Rights: It's Not Solely About Privacy and Nondiscrimination*, LAWFARE (Jan. 27, 2023), https://www.lawfaremedia.org/article/assessing-impacts-of-ai-on-human-rights-it-s-not-solely-about-privacy-and-nondiscrimination.

[5] JANNA ANDERSON & LEE RAINIE, ARTIFICIAL INTELLIGENCE AND THE FUTURE OF HUMANS, PEW RESEARCH CENTER (Dec. 10, 2018), https://www.pewresearch.org/internet/2018/12/10/artificial-intelligence-and-the-future-of-humans/.

[6] NIKITA DUGGAL, *Advantages and Disadvantages of Artificial Intelligence [AI]*, SIMPLILEARN.COM (May 10, 2023)https://www.simplilearn.com/advantages-and-disadvantages-of-artificial-intelligence-article.

While AI presents various advantages, it also possesses disadvantages. The benefits of AI encompass improved efficiency through task automation, data analysis for informed decision-making, assistance in medical diagnoses, and the advancement of autonomous vehicles. The challenges of AI encompass employment displacement, ethical concerns around bias and privacy, possible threats from hacking, and an absence of human-like creativity and empathy[7]. Since the extensive collecting of personal data raises the possibility of exploitation, AI is currently creating and contributing to major violations of privacy and data protection. In addition to sustaining bias in the criminal justice system, labour market, healthcare, education, housing availability, or banking, AI is already being used to promote discrimination towards already marginalized populations in manners that ordinary people are unable to understand.

4. AI and Human Rights: Opportunities and Challenges

AI has revolutionized our contemporary society due to its revolutionary potential in the fields of education, healthcare, and economic development. While AI is rapidly developing, the development of human rights law and jurisprudence has often been slow, making the human rights model as an ethical framework for AI sometimes inadequate. While it has contributed to increasing accessibility, creativity, and productivity, there are significant questions about whether it is compatible with basic human rights. Samuel Moin[8] claims that human rights are a weak ally of growing wealth inequality. Rapid technological progress is challenging the human rights inherent in every individual, regardless of gender, nationality, or other status. However, the existing human rights framework can provide a basis for defining appropriate boundaries for AI activities. The relationship among AI and human rights is complex. On the one hand, by automating human tasks, AI enhances economic competitiveness, well-being, and

[7] *Id.*at 6.
[8] Samuel Moyn, Not Enough: Human Rights in an Unequal World (2018).

social progress in many ways. However, it poses a significant threat to many fundamental freedoms and human rights, especially when abused.[9]

AI disproportionately affects the human rights of vulnerable individuals and groups, producing a new type of technological dictatorship. As AIbecomes increasingly integrated into society, issues like racism and prejudice have surfaced as important concerns in political debates around technological growth. This concern is consistent with the principles outlined in Article 2 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights, which affirms everyone's right to rights and freedoms without discrimination. Addressing these gaps is critical for ensuring that AI development and deployment promote fairness and inclusion rather than reinforcing systemic inequities.

The Universal Declaration of Human Rights & the European Union Charter of Fundamental Rights" emphasizes the importance of the right to privacy or freedom of opinion and expression. Also, in the United States, the First Amendment to the Constitution protects these freedomsThese rights protect individuals' ability to think and express them freely, as well as their right to access and engage with a variety of opinions and information. The right to privacy or protection from discrimination is not the only fundamental right at risk from algorithmic systems. AI technologies pose serious challenges to free expression and the right to associate. However, the effects of AI on these rights are often less clear compared to privacy and discrimination issues, which are easier to grasp. This lack of clarity can obscure the broader implications of AI on human rights. It is essential to safeguard these freedoms during the development or deployment of AI to protect democratic values and human dignity.

[9]Martina Smuclerova et al., *AI Life Cycle and Human Rights, Risks and Remedies*, in Artificial Intelligence and Human Rights (Alberto Quintavalla & Jeroen Temperman eds., 2023).

Human rights are part of an international legal and political framework and are universal and enforceable. International human rights norms require governments to maintain and implement human rights for their citizens. National and international organizations have established systems for redress of grievances concerned with the implementation of human rights law in the changing situations and with due diligence, especially with respect to technological advancements. AI technologies are changing the way that businesses and governments operate throughout the world and present serious issues of violations of human rights. Data protection requirements and safeguards to ensure transparency and accountability may prevent some of the worst abuses now known, but much further legislation is needed to ensure compliance with human rights as AItechnology advances and develops into other industries.

The recent wave of AI applications has raised concerns about potential and actual threats such as discrimination, bias amplification, privacy violations, end-user manipulation, disinformation, and unaccountable decision-making. Since the mid-2010s, the regulation of AI to limit or eliminate its detrimental effects has emerged as a vital concern, as seen by a variety of AI ethics standards. Moreover, the data collection and processing techniques associated with AI represent a risk of increasing significant political, economic, social, or legal challenges, including social media content moderation, environmental degradation, or systemic racism and sexism, among others.[10]

International human rights law requires states to defend the human rights of all their citizens against abuses caused by their policies, practices, or third parties, including individuals, corporations, and other organizations. AI has the potential to impact all acknowledged human rights, such as the freedom of speech, thought, assembly, association, and movement, because human rights are inseparable and interconnected. AI can support medical advancements and monitor supply chain compliance, among other

[10] *Id.*at 2.

ways to enhance human rights.AI could affect almost every human right, encompassing equality, non-discrimination, and the rights to labor, education, health, and a sufficient standard of life.[11] Human rights considerations relevant to every aspect of governmental policy and practice, additionally, certain individuals have developed new AI governance ethics.

In some cases, there are attempts to bypass human rights frameworks altogether, particularly those aspects that governments find inconvenient. In other cases, efforts are made to exceed human rights norms by offering even greater protections. Significantly, no barriers exist that inhibit governments from exceeding the current human rights standards in their AI governance strategies. The established human rights framework, however, offers strong arguments for serving as the foundation of AI governance and law. Human rights should be the foundation for all future governance models for a variety of reasons. First, the international human rights framework ensures a people-focused approach by placing the individual at the center of governance. Second, it addresses the most critical societal challenges through established mechanisms. Third, it clearly defines the roles or responsibilities of governments and the private sector—an essential feature for managing a technology like AI, which demands collaborative oversight. Finally, despite variations in its interpretation and implementation worldwide, a developing ethical framework will be unable to match the geopolitical recognition and legal authority of the international human rights framework.

Globally, there are certain steps that governments can take to provide a framework for an AI policy that is human rights focused. The European Commission's Guidelines for Trustworthy AI, address not only the technical stability and security but also its socio-political impact on human

[11] The Promise Inst. for Hum. Rts. at UCLA Sch. of L., *Human Rights and Artificial Intelligence* (Dec. 14, 2023), https://promiseinstitute.law.ucla.edu/symposium/human-rights-and-artificial-intelligence/.

rights. Salil Shetty, former Secretary General of Amnesty International, emphasized this view in a 2017 speech, stating that "great potential and benefits can be gained from AIif human rights are part of the core design and use of this technology.[12]

The National Artificial Intelligence Strategy (NAS), having governmental document that presents a comprehensive strategic approach to AI, including key developments and actions. The main aim is to properly coordinate governmental action to maximize the benefits of AI for the economy and society, while at the same time minimizing the risks presented. More than 25 states and regional intergovernmental organizations have introduced such strategies since 2017, and many more are in preparation. In drafting an NAS, state governments must ensure that human rights experts and experts on the impact of AI on human rights are involved at key points. This will require not only the involvement of relevant general human rights organizations but also civil society organizations representing various interests, along with other stakeholders representing populations that may be negatively affected by AI or that could disproportionately benefit from specific applications.

5. Right to Privacy

AI systems gobble up massive amounts of data, and most of it is personal—sometimes deeply personal. Take facial recognition, for example. Police in a bunch of countries use it all the time. Remember the Clear view AI mess? They scraped billions of photos off social media without asking anyone, then handed that data over for surveillance and profiling. Courts in the EU and UK called this out, saying it broke data protection rules. Still, plenty of places with weak privacy laws keep rolling out these tools. In India, for years, there just wasn't a strong law to protect data, so AI-powered surveillance—like automated facial recognition—ran

[12] Anna Su, *The Promise and Perils of International Human Rights Law for AI Governance*, 4Law, Tech. & Humans; 166, (2022), https://doi.org/10.5204/lthj.2332.

unchecked. Lack of clear regulations regarding consent, proportionality, and the potential uses of data is a significant concern. This uncertainty is why many people feel anxious about these practices.[13]

6. Accountability and Transparency:

AI decision-making systems tend to be pretty opaque. People call this the "black box" problem, and honestly, it's a big deal when someone's rights get trampled.[14] Take welfare delivery or credit scoring, for instance. Algorithms can wrongly exclude people or discriminate, and when that happens, those on the receiving end usually have no real way to fight back. Without rules forcing developers or authorities to explain how these decisions happen, it's tough to pin down who's actually responsible. The law doesn't help much either. It's still unclear whether the blame falls on the programmer, the organization using the system, or the state itself. So, accountability often just slips through the cracks.

7. Fairness and Non-Discrimination

AI systems trained on biased or incomplete datasets tend to reproduce and amplify existing social inequalities. Well-documented cases involving predictive policing algorithms and recruitment software have shown systemic bias against racial minorities and women.[15] For example, algorithmic hiring tools have been found to disadvantage female applicants due to training data reflecting historically male-dominated workplaces. Regulatory frameworks often lack binding standards for bias auditing, fairness testing, and impact assessments, allowing discriminatory outcomes to persist without effective redress.

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[13] Internet Freedom Found., Project Panoptic: India's Surveillance State (2020), https://internetfreedom.in/tag/project-panoptic/.

[14] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (2015).

[15] Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 Calif. L. Rev. 671, (2016).

8. Regulatory Shortcomings

International efforts, such as the EU's proposed Artificial Intelligence Act and UNESCO's AI ethics guidelines, aim to address these issues. However, their effectiveness and enforcement vary significantly. A lot of countries—including many in the Global South—don't have laws made for AI. They're still working with old data protection or consumer laws, and those just can't keep up with how algorithms actually cause harm.[16] On top of that, most places don't require human rights impact assessments, don't have independent watchdogs, and don't really know how to handle accountability across borders. That leaves the rules pretty flimsy.[17]

9. Human Rights Concerns

a) Most AI use through surveillance systems may result in invasions of privacy, and without adequate safeguards, large amounts of personal data may be collected and processed by organizations that threaten human privacy.
b) Discrimination and bias are another area of concern. AI systems trained on biased data sets replicate or amplify existing social biases, indicating discriminatory behaviour in areas such as employment, criminal justice, and finance.
c) AI-based content moderation on social media could inadvertently stifle respectful debate and contaminate free speech and cultural expression.
d) The "black box" nature of AI systems makes it impossible to track decision-making processes, preventing accountability for human rights violations.
e) The automation of labour-intensive tasks through AI could disproportionately affect low-income workers, contribute to economic inequality, and suppress economic rights.

[16] U.N. High Comm'r for Hum. Rts., *The Right to Privacy in the Digital Age*, U.N. Doc. A/HRC/48/31 (Sept. 13, 2021).
[17] *Id.*

10. Opportunities to Promote Human Rights Using AI

a) Improving access to justice: AI-powered legal tools may automate case management, provide legal advice, and increase access to justice for vulnerable groups.
b) Improving healthcare: AI technologies in medical diagnosis, tailored treatments, and epidemic prediction can greatly improve health outcomes and promote the right to health.
c) Empowerment through education: AI-driven learning tools could democratize learning opportunities, offer personalized education, and fill knowledge gaps for the most vulnerable groups.
d) Strengthening governance: AI can enhance transparency, reduce corruption, make resource allocation more efficient, and contribute to better governance and accountability.
e) Track human rights violations: AI technologies scan satellite imagery, social media, and other information sources to detect and document human rights violations, thus making intervention timely.
f) Balancing innovation and human rights: To maximize the potential of AI while mitigating its threats, a holistic approach based on ethical principles and human rights is needed.

11. Ethical AI Guidelines

a) Setting up frameworks that ensure accountability, fairness, and transparency in the design and deployment of AI.
b) Implementation of legal Protections for the improvement of laws on data protection, anti-discrimination provisions, and prevention of AI abuse.
c) Ensuring that marginalised and vulnerable people can benefit from the AI technologies to reduce digital and social divides.
d) Looking for International Cooperation and collaboration among governments, civil society, and private actors to address transnational challenges presented by AI.

While AI holds immense promise to advance human rights, it also presents significant risks if not addressed. By focusing on ethical design, strong governance, and inclusivity, however, society can harness AI as a tool with broad potential to bring about justice, equality, and dignity for all.

12. Findings of the Study

a) AI can help improve access to justice, health, and education, but it also works to continue inequality, bias, and the violation of privacy.

b) Numerous AI systems develop biases from their training data, resulting in discriminatory results in sectors such as employment, law enforcement, and credit assessment. In particular, marginalized communities are affected by this problem.

c) There is increased use of AI-based surveillance systems by governments and institutions, including facial recognition and predictive analytics. Most of these systems lack adequate regulatory oversight, thus compromising individual privacy and freedom of expression.

d) The operations of most AI algorithms are opaque, making it challenging to understand their decision-making, raising questions of accountability when errors or violations of rights occur.

e) The digital divide and uneven distribution of AI resources exacerbate social and economic inequalities, which exclude the benefits from reaching disadvantaged groups.

f) AI has enormous potential in promoting human rights by enhancing disaster response, tracking human rights violations, and offering tools for legal empowerment and advocacy.

g) Further, to reduce risks and ensure that AI technologies conform to principles of human rights, strong ethical frameworks and governance practices need to be employed. Such can be developed via collaboration among governments, technologists, or civil society.

h) The global nature of AI technologies suggests that cross-border collaboration is required for developing common ethical standards, data protection laws, and accountability mechanisms.

As AI becomes more prevalent in everyday life, regulation has become a pressing concern. Regulation of AI provides particular issues due to the technology's rapid progress and global reach. Establishing efficient AI legislation and policies is critical to realizing AI's benefits while limiting its hazards.[18] Create a well-resourced, independent oversight agency to supervise AI use. Monitoring of open, ex-ante public procurement procedures and the outcomes of AI tool use should be part of the oversight mission. Oversight bodies require clear routes for hearing and resolving public complaints.[19]

13. Suggestions

AI also presents formidable challenges to human rights, especially for the most fragile and vulnerable groups. Deliberate efforts are required to ensure human rights are protected in this era of AI. Clearer goals and responsibilities related to the protection of human rights should be developed and shared within AI governance plans; including reaching timely and actionable steps aimed at protecting human rights. This will involve incorporating human rights impact assessments into the development and deployment of AI systems. Secondly, make sure that these goals are actually relevant, SMART-specific, measurable, achievable, and time-bound to encourage accountability and efficiency. Establish incentives or specific criteria to stimulate the uptake of human rights-respecting practices across all sectors. Examples of incentives include tax benefits, subsidies, and public recognition given to companies

[18] RTS Labs, *The Promise and Perils of Artificial Intelligence*, RTS Labs (Sept. 25, 2024), https://rtslabs.com/promise-and-perils-of-artificial-intelligence

[19] Sean Kennedy, *Justice and AI: Promises and Perils*, OGP Horizons (Oct. 1, 2024),https://medium.com/ogp-horizons/justice-and-ai-promises-and-perils-ea709d182909.

and institutions demonstrating a serious commitment to responsible AI practices. Set up accessible mechanisms for redressing grievances regarding human rights violations associated with the use of AI. Accountability mechanisms must include timely procedures for receiving complaints, investigating them, and providing effective redress, such as compensation, changes in policy, or improvements in systems. It should be kept in mind that AI policies are continuously monitored and adapted to emerging risks and technological developments. This will make sure that protections remain effective in the face of rapid innovation. Incorporating these elements into the governance of AI would enable governments to adopt proactive and holistic approaches to human rights protection, thereby promoting trust and accountability in AI systems.

14. Comparative Human Rights–Centric AI Governance

Everyone agrees that AI laws and policies need to protect human rights, but when you look at the details, most regulations don’t really spell out how that’s supposed to happen. Sure, a lot of frameworks mention human rights and say they care—but the actual rules that would make those rights stick don’t always make it into the design or management of AI systems. Some places are starting to move past vague promises. The European Union, for example, has its AI Act, which takes a risk-based approach and ties AI regulation directly to protecting fundamental rights. They require human oversight, demand transparency, and even ban certain high-risk uses of AI. Then there’s UNESCO’s Recommendation on the Ethics of Artificial Intelligence, which puts things like human dignity, accountability, and non-discrimination front and center. In the US, there’s no sweeping AI law yet, but the AI Bill of Rights tries to set guardrails against algorithmic discrimination and unnecessary surveillance. Looking at these different approaches, one thing’s clear: it’s not enough to just talk about human rights. You’ve got to build those principles into real, enforceable rules—like requiring impact assessments, audits, ways to make complaints, and clear lines of accountability. Without that, all the human rights talk is just window dressing. What we need is AI governance that's truly focused on rights, with rules that actually work in practice, not just on paper.

15. Conclusion

While AI offers innovative ways to promote justice, equality, and high-quality services, it can also significantly undermine human rights. The most significant risks are systemic discrimination, invasion of privacy, and erosion of individual autonomy. These often undermine the very rights that AI is intended to protect. More rigorous research and implementation of AI technology are needed, focusing on transparency, accountability, and inclusive engagement at every level of the process of AI development and use. By prioritizing human rights in guiding the development, deployment, and use of AI, states, technology developers, and civil society as a whole can harness the promise of AI while minimizing its disruptive impact.

AI has potential to be truly transformative in advancing human rights, providing tools to promote justice, equality, and access to essential services. However, this promise is tainted by serious risks, such as systemic bias, invasion of privacy, and denial of agency, which are in fact counter to the rights it is intended to protect. This requires navigating a precarious balance by adopting an engaged and multi-layered process that ensures transparency, accountability, and inclusion throughout the full lifecycle of AI development and application. By centering human rights within the frameworks that guide AI, stakeholders – governments, technologists, and civil society – can harness its promise while mitigating the risks. In the ultimate analysis, the fate of AI's role in shaping human rights is not predetermined; it is a choice made through collective action and moral determination. The future of human rights in the AI era depends on our ability to balance innovation and responsibility; ensuring that technology serves humanity and does not destroy it.

THE ENFORCEABILITY CONUNDRUM: A CRITICAL ANALYSIS OF NATIONAL HUMAN RIGHTS COMMISSION DECISIONS IN INDIA

Rutvik Shiralkar*
Krishna Aghav**

1. Introduction

1.1. Historical Roots of Human Rights in India

In India, the protection of human rights is not a recent development but rather the outcome of a much longer legal fight. The goals for self-rule and equality, liberty, and dignity remained inseparable throughout the lengthy independence struggle. The language of rights became ingrained in Indian national consciousness as a result of the political struggle for liberation, which was also a moral struggle against capricious colonial rule.

When independence finally arrived, the newly sovereign State wasted little time in placing itself within the global human rights framework. India endorsed the *Universal Declaration of Human Rights*[1] and later became a party to the *International Covenant on Civil and Political Rights*[2] and the *International Covenant on Economic, Social and Cultural Rights*[3]. These were not treated merely as symbolic affirmations; they became interpretive guides for the courts and direct reference points for Parliament. Indeed, the *Protection of Human Rights Act, 1993* (PHRA) names these covenants in its Statement of Objects and Reasons and incorporates them in § 2(1)(d), a deliberate indication that domestic human rights policy was meant to develop in step with international norms.[4]

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[1] G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).
[2] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[3] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.
[4] Protection of Human Rights Act, No. 10 of 1994, § 2(1)(d) (India).

The Constitution of India uses a twin-track architecture to express and address the demand and development of human rights. The Fundamental Rights found in Part III serve as a safeguard against the overreach of the state and are enforceable by the courts. Social and economic goals are outlined in Part IV of the Directive Principles of State Policy. These goals are necessary for the meaningful enjoyment of rights but are not subject to formal disputes. This combination demonstrates that liberty and dignity are inextricably linked to equality and material security in the Indian constitutional vision.

1.2. The Creation and Role of the National Human Rights Commission

Parliament determined in the early 1990s that, despite their importance, judicial remedies and constitutional safeguards need institutional support. In compliance with article 3, the PHRA of 1993 created the National Human Rights Commission (NHRC).[5] The Commission was established as a permanent body with extensive authority and a self-governing structure to oversee, investigate, and promote human rights across the country.

Section 12 of the Act gives the NHRC the authority to look into violations, evaluate whether statutory protections are adequate, recommend changes, and carry out public education.[6] It replaced the state's ad hoc responses with a permanent, specialized supervisory apparatus. In short, the NHRC was established both to respond to breaches and to alter the conditions that prevent them.

1.3. The Core Legal Puzzle

Yet, from the outset, one question has hovered over the NHRC’s work: when the Commission issues a “recommendation” under § 18 of the PHRA,[7] is the State obliged to comply, or may it treat the recommendation as merely persuasive? The answer is not just a matter of statutory interpretation; it goes to the very heart of the Commission’s credibility.

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[5] *Id.*§ 3.
[6] *Id.*
[7] *Id.*

If the recommendations are non-binding, the NHRC risks the fate of often lamented in commentary of being a “toothless tiger.” It could identify serious violations, even quantify compensation, but find itself unable to compel the government to act. On the other hand, if its recommendations are binding in law, the Commission becomes a far more formidable tool of accountability, able to press the State into taking concrete remedial measures. In recent judgement of 2021 named ***Abdul Sattar v. Principal Secretary***[8] by the Madras High Court held NHRC and SHRC orders are immediately enforceable and legally binding rather than merely recommendations it is challenged before Supreme Court in SLP and its awaiting its disposal.

1.4. Approach and Structure of This Article

The enforceability issue is addressed in phases in this article. It starts by going over the PHRA itself, paying particular emphasis to the clauses that outline the NHRC's jurisdiction. Next, the attention turns to the courts, where § 18 has been interpreted in noticeably different ways by the Supreme Court and High Courts. Following that, the discussion will situate the NHRC's work within the larger framework of the constitution, concentrating on the connection between human rights and basic rights as well as the exclusive writ jurisdiction of constitutional courts.

A comparative study of other national human rights organizations will provide as an external reference point, highlighting areas in which India's approach deviates from or aligns with global norms. Finally, the research will be backed by actual data on compliance, leading to recommendations for legislation, policy, and the courts that are intended to improve the effectiveness of the NHRC.

2. The Statutory Framework: Powers and Functions of the PHRA, 1993

As the PHRA serves as the statutory basis for the NHRC, to ascertain whether Parliament intended the Commission's recommendations to be legally binding or just persuasive, it is crucial to examine the text of the

[8] Abdul Sathar v. The Principal Secretary to Government (2021 SCC Online Mad 16611; 2021 (3) CTC 129).

legislation as well as the framework it establishes for the Commission's operations. A careful reading reveals that Parliament crafted an institution with structural independence, quasi-judicial powers, and procedural safeguards do features that, taken together, suggest it was meant to have more than token influence.

2.1. Defining "Human Rights" § 2(1)(d)

The starting point is the PHRA's definition of "human rights" in § 2(1)(d).[9] It describes them as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

This definition links the Commission's jurisdiction directly to rights guaranteed by the Constitution, particularly the Fundamental Rights in Part III, while also incorporating rights set out in key international instruments in which most prominently the *International Covenant on Civil and Political Rights* (ICCPR)[10] and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)[11].

The last phrase "enforceable by courts in India" is critical. It signals that the rights falling within the NHRC's remit are but legally justiciable. If Parliament tethered the NHRC's jurisdiction to rights already carrying judicial enforceability, it would be counterintuitive for its findings and recommendations to be dismissed as non-binding in practice. The structure implies that the Commission's determinations ought to lead, directly or indirectly, to enforceable remedies.

2.2. Constitution, Composition, and Independence §§ 3–6

- **Institutional design**: By mandating that the head of the NHRC be a former Chief Justice of India or a Supreme Court judge, Section 3 establishes the tone of independence, competency and responsibility. Additional members must have served as Chief Justices of High Courts or Supreme Court judges.[12] The Commission's conclusions are

[9] Protection of Human Rights Act, No. 10 of 1994, § 2(1)(d) (India).
[10] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[11] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.
[12] Protection of Human Rights Act, No. 10 of 1994, § 3 (India).

supported by sound legal reasoning and knowledge of constitutional principles thanks to the excellent Caliber of the judiciary. The legislation names the presidents of other important national commissions, including those for women, minorities, scheduled castes, and tribes, as ex officio members in order to increase its diversity and scope of knowledge.[13] This integration offers the NHRC access to expert viewpoints of various marginalised groups.

- **Appointment process**: The Commission's desired significance is emphasised by the selection process under § 4.[14] A committee consisting of the Prime Minister (as chair), the Speaker of the Lok Sabha, the Home Minister, the Leaders of the Opposition in both Houses, and the Deputy Chairman of the Rajya Sabha advises the President on making appointments. A direct judicial check on the selection of members is ensured by the procedure, which requires consultation with the Chief Justice of India when Appointing.
- **Tenure, removal, and safeguards:** Members have set periods under § 5 and may only be dismissed for proven misconduct or incompetence, and even then, only after a Supreme Court investigation.[15] A clear indication of the value placed on independence is the fact that the process is similar to that used to remove judges from higher courts.Section 6 bars former members from accepting future government employment, guarding against conflicts of interest and post-retirement inducements.[16] In totality, this structure of prestigious appointments, rigorous selection, security of tenure, and insulation from political or bureaucratic retaliation would be undermined if the Commission’s carefully considered findings could be ignored without justification.
- **Core Functions of the Commission § 12:**
  Section 12 gives the NHRC a wide mandate that extends well beyond reactive complaint handling.[17] It can:
  - Inquire *Suo motu* or on petitions into human rights violations or negligence in preventing them.

[13] *Id.*§ 3.
[14] *Id.*§ 4.
[15] *Id.*§ 5.
[16] *Id.*§ 6.
[17] *Id.*§ 12.

- Review constitutional and legal safeguards for human rights and recommend measures for their effective implementation.
- Examine factors such as terrorism that may limit rights enjoyment, and propose remedial steps.
- Study international human rights instruments and advise on their incorporation into domestic law.
- Notably, §12(b) permits the NHRC to intervene in judicial proceedings relating to human rights violations, with the court's approval. This blurs the line between an advisory body and a participant in the adjudicatory process. The ability to step into ongoing litigation suggests Parliament intended the Commission's determinations to be treated with significant legal respect.

- **Investigative and Inquiry Powers §§ 13–17:**
  The PHRA equips the NHRC with investigative powers comparable to those of a civil court. It has the authority to force the production of documents, summon witnesses, obtain affidavits, seek public records, and issue commissions for examination under section 13.[18] For the purposes of the Penal Code, all procedures before the NHRC are considered "judicial proceedings." Section 14 gives the Commission the authority to use federal or state government officers or agencies for investigations; these officials have the same authority as the Commission.[19] These officers are required to produce a report, which is then reviewed by the NHRC for accuracy and legality. Section 17 guarantees that official delay cannot halt an inquiry as the Commission may still move forward with the probe even if the government does not reply within the allotted period.[20] Parliament's intention to guard against obstruction and preserve the independence of the NHRC is shown in this clause.

[18] *Id.*§ 13.
[19] *Id.*§ 14.
[20] *Id.*§ 17.

- **Post-Inquiry Actions and Recommendations § 18:**
  Section 18 is where the enforceability debate crystallizes.[21] If an inquiry finds that a public servant violated or abetted the violation of human rights, the NHRC may recommend:
  - Payment of compensation or damages to the victim or family.
  - Prosecution or other disciplinary action against the responsible person(s).
  - Any other suitable remedial action.

  The term "recommend" in § 18(a) has often been cited as proof of non-binding status. Yet § 18(b) provides the Commission with a direct path to enforcement, it may approach the Supreme Court or a High Court for "such directions, orders or writs as that Court may deem necessary." This provision serves as a statutory bridge between the Commission's fact-finding and judicial enforcement, enabling its recommendations to acquire binding legal effect once endorsed by a court. Further, § 18(e) requires the Commission to send its report and recommendations to the relevant government or authority, which must respond within one month, explaining the action taken or, if rejecting the recommendation, giving reasons for doing so. Section 18(f) obliges the Commission to publish its report, along with the government's comments and details of any action taken. This transparency requirement transforms non-compliance from a silent administrative choice into a public act requiring justification which is a form of political and reputational accountability.

  - **Annual and Special Reports § 20**
    The accountability mechanism is reinforced in § 20, which mandates annual reports to the central and state governments.[22] These must be tabled before Parliament or the state legislatures, accompanied by a memorandum detailing action taken (or reasons for inaction) on the NHRC's recommendations. The same provision authorizes "special reports" for urgent matters. The executive is compelled by this procedure to make its responses

[21] *Id.*§ 18.
[22] Protection of Human Rights Act, No. 10 of 1994, § 21 (India).

or rejections public and legislatively available for review and discussion.

3. The Constitutional Framework

Without considering India's constitutional framework, it is hard to understand the issue surrounding the constitutionality of the NHRC's recommendations. The PHRA, 1993 is not a stand-alone charter of rights; rather, it is a legislative instrument designed to enhance the safeguards already included in Part III of the Constitution and to advance India's obligations under international human rights law. Whether or not the suggestions are legally required will depend on legislative interpretation as well as how well they apply to the larger framework of constitutional rights, remedies, and institutional checks.

3.1. Rights as Enforceable Guarantees

The Constitution treats fundamental rights as concrete, justiciable claims, not as aspirational goals. Article 21's protection of life and personal liberty is reinterpreted in *Maneka Gandhi v. Union of India*[23] to require fairness, reasonableness, and due process has expanded to include a wide range of entitlements: livelihood (***Olga Tellis v. Bombay Municipal Corporation)***[24], a clean environment (***Subhash Kumar v. State of Bihar)***[25], and privacy (***K.S. Puttaswamy v. Union of India)***[26].Articles 14 and 19 complete the so-called "golden triangle" of rights, which together set the substantive parameters for State action. The PHRA's definition of "human rights" in § 2(1)(d) deliberately tracks these constitutional protections and extends them to encompass rights recognised in international covenants to which India is a party. In other words, the NHRC's statutory mandate is constitutionally anchored from the outset.

3.2. Writ Jurisdiction and the NHRC's Gateway Role

The constitutional machinery for enforcing these rights lies in Articles 32 and 226. Article 32 empowers the Supreme Court to issue writs for the enforcement of fundamental rights; Article 226 grants the High Courts a

[23] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[24] Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545.
[25] Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
[26] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

wider remit, allowing them to act "for any other purpose" in addition to protecting fundamental rights. Section 18(b) of the PHRA plugs directly into this system. While the NHRC cannot, on its own, compel compliance as per the provisions however, it can carry its findings to the Supreme Court or a High Court, seeking directions, orders, or writs. This makes the Commission a procedural gateway as it transforms raw complaints into evidence-backed cases that can be taken directly into the constitutional courts without the complainant restarting the litigation process.

3.3. Quasi-Judicial Bodies and Separation of Powers

The establishment of statutory organisations with adjudicatory powers has long been allowed by Indian constitutional practice, so long as they stay within the bounds of the constitution. The Supreme Court affirmed in ***Union of India v. R. Gandhi***[27] that such bodies are consistent with the separation of powers if they respect the judiciary's primary domain, maintain independence, and adhere to natural justice, the NHRC's structure meets these requirements.

3.4. International Law as a Constitutional Lens

Article 51(c) of the Constitution, though part of the Directive Principles, commits the State to respect international law and treaty obligations. The Supreme Court in ***Vishaka v. State of Rajasthan***[28] made clear that international conventions can be read into domestic constitutional interpretation where there is no inconsistency. Because § 2(1)(d) of the PHRA incorporates "International Covenants" into the definition of human rights, NHRC recommendations often reflect not just domestic constitutional norms but also India's treaty obligations. Ignoring such suggestions in the absence of strong arguments runs the danger of embarrassing oneself in public and violating the spirit of the Constitution.

3.5. Judicial Practice on Commission Reports

While the legislation does not make the reports of statutory commissions binding, Indian courts have historically treated expert bodies with institutional independence as authoritative. The Election Commission's

[27] Union of India v. R. Gandhi, (2010) 11 SCC 1.
[28] Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

directions, the Law Commission's reports, and recommendations of various specialised boards are often followed unless there are strong reasons to depart. By analogy, NHRC recommendations reached through adversarial procedure, evidence gathering, and impartial adjudication ought to command similar respect. This is not a question of importing judicial supremacy into the NHRC but of recognising that its processes are designed to meet the same minimum standards of fairness and credibility that courts require before granting relief.

3.6. Constitutional Limits and the Check of Judicial Oversight

The Constitution, however, demands on safeguards to prevent the consolidation of power by coercion. Without judicial review, a statutory body can overreach and conflict with executive discretion or legislative purpose in some policy areas. As a constitutional protection, Section 18(b) states that before coercive measures may be implemented, NHRC recommendations must be converted by the court into enforceable orders. The parliamentary accountability approach is in line with the reporting obligations in 18(e)- (f) and 20: if a government chooses not to follow the NHRC's recommendations, it must provide an explanation in writing, making its choice subject to public scrutiny and legislative inquiry.

3.7. The NHRC as a Constitutional Conduit

Placed in this framework, the NHRC is best seen as a conduit between citizens and the constitutional courts. It investigates violations with the powers and impartiality of a quasi-judicial body, frames its conclusions within constitutional and international law norms, and provides a ready-made evidentiary foundation for court proceedings. Its recommendations, therefore, occupy a middle ground: not binding decrees in themselves, but authoritative determinations that the Constitution's own enforcement machinery can quickly transform into binding relief. This makes them an essential and constitutionally consistent element of India's rights-protection system.

4. The Enforceability Puzzle: Judicial Interpretations in India

From the very inception of the PHRA, one unresolved tension has shaped the functioning of the NHRC and the State Human Rights Commissions (SHRCs): when a recommendation is issued under § 18, does it create a legal obligation on the government to comply, or can the executive treat it as non-binding guidance?

The operative provision of §18 uses the word "*recommend"*, which in ordinary statutory drafting implies a softer, non-coercive directive. Yet the statute also grants the Commissions robust quasi-judicial powers as their inquiries mirror civil court proceedings (§ 13), they are insulated from executive interference (§§ 3–6), and they trigger statutory timelines for executive response (§ 18(e)) coupled with legislative oversight (§§ 18(f), 20).

These competing textual and structural signals have given rise to two interpretive schools in the Indian judiciary: the narrow, literalist approach that treats recommendations as purely advisory, and the purposive, enforcement-oriented approach that reads them as binding unless judicially overturned. A third, emerging "middle path" attempts to reconcile the two.

4.1. The Narrow Reading

The narrow interpretation is based on literal reading of the act as PHRA chose the word *recommend* in § 18, not *order*, *direct*, or *mandate*. As various courts are interpreting the power to be recommendary, they are of view that choice is not accidental, it defines the limits of the Commission's authority.

§18(e) is central to their reasoning as while it obliges the government to respond within one month, it explicitly permits rejection so long as reasons are furnished. This mechanism is interpreted not as a safeguard for victims, but as a statutory confirmation that recommendations do not bind of their own force.

Time and again Indian Courts have emphasized that the design of § 18 does not anticipate finality in the Commission's findings as they opine that the NHRC may look into and offer an opinion and recordation, but the executive has the last say over whether to take action if not they have to just record reason.

Justice Arindam Sinha of the Orissa High Court supported this view in Ramakanta Tripathy v. State of Orissa,[29] as in this caselaw it was held that the recommendations are "purely recommendatory" unless they are adopted by the government. This decision has demonstrated the limited remedial efficacy of NHRC interventions when interpreted restrictively by constitutional courts making the advice useless, unless the State voluntarily complies.

The Allahabad High Court has expressed this stance most definitively in ***State of U.P. & Others v. NHRC (2014)***.[30] According to Justice Arun Tandon, the NHRC "has no power to compel compliance," although it is permitted to request enforcement from constitutional tribunals under section 18(b) of the act. This interpretation emphasises that the only way to enforce the law is through judicial intervention, and the NHRC acts as an advisory factfinder.

In ***West Bengal State Election Commission v. NHRC (2023)***[31], the Calcutta High Court declared that the NHRC's pre-emptive orders to the State Election Commission during panchayat elections were unlawful since a statutory recommendatory body cannot supervise a constitutional authority. Such judgement was to Maintain jurisdictional borders is for the limited approach's defensive purpose. This case best illustrates the institutional prudence that undermines the constrained reading, binding proposals carry the risk of jurisdictional encroachment into constitutional realms.

The NHRC's authority is mostly reliant on the executive branch's goodwill or the victim's ability to pursue legal action, according to the narrow viewpoint which interpret the findings only to be recommendary. Recommendations provide factual and moral weight, but they are not coercive as cannot be directly enforced. In reality, even if this upholds a strict separation of powers, rights holders might have to struggle for a long period to turn NHRC findings into practical remedies.

[29] Ramakanta Tripathy v. State of Orissa, 2022 SCC Online Ori 2097.
[30] State of U.P. & Others v. NHRC, Writ-C No. 7878 of 2014 (All HC).
[31] West Bengal State Election Commission v. National Human Rights Commission, MAT No. 1202/2023 (Cal. H.C.) (July 5, 2023).

4.2. The Purposive Reading

The purposive reading takes the opposite starting point as interpretation must give effect to the PHRA's protective purpose. The Act was designed to ensure swift redress for human rights violations, through bodies insulated from political influence (§§ 3–6) and armed with civil court powers (§ 13). To treat their determinations as optional is, in this view, to nullify that purpose.

A watershed in this line is ***State of U.P. v. NHRC (2016)***[32], decided by a Division Bench of the Allahabad High Court led by Chief Justice D.Y. Chandrachud. The Court held that NHRC recommendations must be "respected and complied with" unless set aside or modified by a competent court.[33] The Bench reasoned that the PHRA's fact-finding process, with its quasi-judicial safeguards, would be rendered meaningless if compliance were optional.

The Madras High Court ruled in ***Abdul Sattar v. Principal Secretary (2021)***[34] to Government that directives from the NHRC or SHRC under Section 18 of the PHRA are immediately enforceable and legally binding rather than merely recommendations. The Court clarified that the phrase "recommendation" does not imply that it is non-binding within the PHRA framework, where the Commission has authority akin to that of a civil court, conducts in-depth investigations, and demands a one-month report on steps taken under § 18(e).

The State cannot just disregard or suspend these orders, as the Bench made clear. Its options are limited to either completely complying with the ruling or contesting it in court right away. The Court further declared that the State must pay compensation, enabling it to collect money from the accountable authorities independently, in order to guarantee victims, obtain prompt justice. The Commission was formed as a binding first-instance decision-maker, the Court maintained its jurisdiction, and it urged Parliament to improve enforcement regulations to make the PHRA more

[32] State of U.P. v. NHRC, Writ-C No. 15570 of 2016 (All HC).
[33] Live law, State of U.P. vs NHRC, Apr. 23, 2016 (All HC).
[34] Abdul Sathar v. The Principal Secretary to Government 2021 SCC Online Mad 16611.

comprehensive. It emphasised that treating these directives as solely advisory would undermine the PHRA's mission to provide prompt and efficient responses, particularly when there is custodial abuse.

In ***M.P. Human Rights Commission v. State of M.P. (2024)***[35], the Madhya Pradesh High Court explicitly embraced this viewpoint and reaffirmed that Section 18 imposes a substantive compliance requirement. The Court emphasized that upholding victim's rights require the swift implementation of recommendations, especially those pertaining to compensation judgments.

Supreme Court, in ***NHRC v. State of Arunachal Pradesh***[36], operationalized the NHRC's findings by providing aid to Chakma refugees, although remaining mute on enforceability as a legal issue.

By default, recommendations impose obligations on the State, transferring the burden from victims to the State, which must defend non-compliance in court is a reasonable and realistic interpretation which is adopted by the above judgements. This improves victim access to remedies, fortifies the Commission's power, and harmonizes the PHRA with constitutional human rights guarantees ensuring legislative intent behind PHRA being met. The limited camp's opposition is fuelled by the trade-off, which is the possible blurring of the boundaries between adjudicatory courts and statutory commissions.

4.3. Bridging the Divide

While acknowledging that NHRC recommendations are not judicial decrees that take effect on their own, a reconciliatory reading and various interpretations denies that they are merely advisory notes.

Justice Indu Malhotra's opinion in ***Indian Young Lawyers Association v. State of Kerala***[37] serves as one convincing argument as she emphasized there that tribunals or courts capable of conducting comprehensive fact-

[35] M.P. Human Rights Commission Vs The State Of Madhya Pradesh, 2024 WRIT PETITION No. 1040 Of 2006.
[36] NHRC v. State of Arunachal Pradesh, (1996) 1 SCC 742 (India).
[37] Indian Young Lawyers Association & Ors. v. State of Kerala & Ors., Writ Petition (Civil) No. 373 of 2006, (2018) 8 SCJ 609.

finding, frequently beyond the writ authority of High Courts, are best suited to handle some issues, especially those involving mixed matters of fact and law. Also employing a common belief that fact finding cannot be done in the best way possible straight away in the constitutional courts. Applying that reasoning to the human rights arena, the NHRC is in a good position to operate as an initial fact-finding authority since it has civil court authority under § 13 PHRA. Its investigations have the ability to gather evidence, question witnesses, and create factual matrices that are not possible for writ courts that rely on affidavits.

There are two benefits to this role distribution: Firstly, the NHRC operates with powers similar to those of a civil court, the process of gathering and recording evidence is both structured and reliable. This reduces the chance that its conclusions will later be dismissed for lacking a solid factual basis. Secondly the Section 18(b) makes it possible for the NHRC, or an affected individual with its approval, to move the High Court or the Supreme Court if a State fails to act on its recommendations. When such matters reach the constitutional courts, the focus is not on rehearing the facts but on assessing whether the NHRC's decision was sound in law. In this way, the courts step in more as overseers of legality than as factfinders.

Such approach can be considered as a middle path, but the middle path also mitigates two systemic concerns. First, it prevents the NHRC from drifting into areas of pure constitutional adjudication, such as direct enforcement of Fundamental Rights, while still acknowledging that the line between human rights and fundamental rights is often blurred. Second, it preserves the Commission's credibility by ensuring that its findings are not casually ignored the non-compliance must be defended before a constitutional court, which alone possesses the power of judicial review over executive action.

In the case of ***Ram Deo Chauhan v. Bani Kanta Das***[38] the supreme Court recognised that the NHRC was never intended to function within a narrow or overly technical interpretation of its authority as per the intent of legislation to protect the fundamental principles such as equality, liberty,

[38] Ram Deo Chauhan v. Bani Kanta Das, (2010) 14 S.C.C. 209.

dignity, and the right to live in respect. The significance of this decision lies in courts unwillingness to establish a clear distinction between fundamental rights and human rights. These rights are closely related when one is violated, the other is frequently weakened. The Court made it evident that the NHRC has the authority to act when fundamental principles are in risk, even if the threat is because of court ruling.

By doing this, the ruling transforms the NHRC from a statutory body into a dynamic tool of justice that may intervene when the system's own procedures have harmed human rights. It emphasises that maintaining human rights means making sure that the law is firmly related to the real lives of the individuals it protects, not to abstract ideas.

Therefore, as a bridging effect in matters where human rights violations stem from violations of established rules or procedural lapses on the part of authorities, the decisions of the NHRC ought to carry binding effect, unless the Executive challenges them before the Constitutional Courts within a stipulated timeframe. For cases falling within the broader ambit of the Commission's jurisdiction, the existing recommendatory framework may continue, but with an important safeguard being both the NHRC and the original complainant should have the right to approach the Constitutional Courts to seek enforcement of such recommendations. Such ruling can be a possible out from the SLP in the matter of ***Abdul Sathar v. The Principal Secretary to Government*** **(2021).** [39]

5. Comparative Perspectives

The question of whether a national human rights commission's recommendations are binding is not unique to India. Across jurisdictions, similar bodies exist, and their powers vary considerably from purely advisory roles to institutions whose findings carry near-judicial authority. Analysing these models provides useful benchmarks for evaluating the NHRC's role and for considering possible reforms.

[39] Abdul Sathar v. The Principal Secretary to Government 2021 SCC Online Mad 16611

5.1. The Equality and Human Rights Commission (EHRC) of UK

The EHRC, established under the *Equality Act 2006,*[40]in the United Kingdom is an independent statutory body tasked with promoting and enforcing equality and human rights laws. While it lacks the power to issue binding orders in most individual cases, it can initiate legal proceedings, intervene in ongoing litigation, and conduct formal investigations. In enforcement terms, the EHRC's powers resemble the NHRC's it issues reports, compliance notices, and recommendations. However, under § 32 of the *Equality Act*, failure to comply with an EHRC compliance notice can be enforced in court. This statutory escalation mechanism gives its "recommendations" sharper practical force than those of the NHRC, where § 18(b) is the main enforcement route.

5.2. The Australian Human Rights Commission (AHRC)

The Australian Human Rights Commission Act 1986 (Cth) governs the AHRC's operations.[41] Like the NHRC, it investigates complaints, settles disputes, and offers suggestions. Its decisions are not legally binding right away. However, the AHRC has the authority to send unresolved complaints to the Federal Court or Federal Circuit Court, where they may result in decisions that are legally binding. One notable distinction is the AHRC's integration with anti-discrimination legislation. In situations when violations are demonstrated under such provisions, complainants may bypass the AHRC and proceed directly to court, ensuring that the commission's limited enforcement authority does not obstruct statutory rights.

5.3. The Defender of Rights (Défenseur des droits) of France

Article 71-1 of the French Constitution established France's Défenseur des droits, which combines the functions of a human rights commission, anti-discrimination organisation, and ombudsman.[42] In some situations, it has the jurisdiction to report cases to prosecuting authorities and issue legally enforceable injunctions, such as directing an administrative authority to adhere to non-discrimination standards. Its decisions have more

[40] Equality Act 2006, c.3 (U.K.).
[41] Australian Human Rights Commission Act 1986 (Cth).
[42] Constitution of the French Republic, Art. 71-1.

institutional weight because of its constitutional standing, and noncompliance may result in legal repercussions, such as administrative sanctions or court enforcement.

5.4. The South African Human Rights Commission (SAHRC)

The SAHRC enjoys a constitutional mandate under Chapter 9 of the 1996 Constitution. It has both investigative and enforcement powers, including the authority to require information, issue subpoenas, and compel testimony.[43] Its recommendations are not self-executing in all cases, but the combination of constitutional entrenchment and statutory follow-through (via the *Human Rights Commission Act 54 of 1994*) ensures that government bodies generally comply, as non-compliance can be challenged directly in the Constitutional Court.

5.5. The Case for Reform

Two feasible routes are suggested by comparative experience if India wants to expand the NHRC's authority without going beyond constitutional bounds:

- **Statutory escalation**: Modify the PHRA to stipulate that, similar to the UK model, judicial review or execution procedures are automatically triggered by unimplemented NHRC recommendations.
- **Constitutional entrenchment**: Like South Africa's Chapter 9 bodies, the NHRC should be acknowledged as a Chapter-type organisation with constitutionally specified powers to guarantee that compliance is the rule rather than the exception.

  Either approach would preserve judicial oversight while giving the NHRC's work the practical authority necessary to make rights protection more than a paper promise.

5.6. Critiques and Challenges in the Present Framework

It is not difficult to admire the ambition that gave birth to the National Human Rights Commission in 1993. Few statutory bodies in India were conceived with such high expectations staffed by former judges of the

[43] Constitution of the Republic of South Africa, 1996, Ch. 9; Human Rights Commission Act 54 of 1994.

Supreme Court, armed with powers that mimic those of a civil court, and entrusted with defending rights that flow from the Constitution itself. And yet, when one surveys the Commission's track record three decades on, a sobering truth emerges as the gap between its mandate and its impact is still uncomfortably wide.

5.7. An exploited Loophole

The heart of the problem is hiding in plain sight § 18(e) of the *Protection of Human Rights Act, 1993*. It is a short clause, almost bland in its drafting, governments may reject the Commission's recommendations, provided they record their reasons. This is all the legal cover a reluctant State needs. As after conducting a thorough investigation, the NHRC makes a well-reasoned proposal for relief or compensation, which it then forwards to the government. The situation pauses after the answer, which is frequently a letter of courteous disagreement and occasionally a vague promise of "further review." The Commission can only use § 18(b) and petition a High Court or the Supreme Court; it has no direct authority to order action. In the meanwhile, the victim's cure is postponed or lessened, and that process requires time, money, and political determination.

Courts have not spoken with one voice on this. In ***State of U.P. & Others v. NHRC*** **(2014)**[44], the Allahabad High Court treated the Commission's words as advisory. Two years later, in ***State of U.P. v. NHRC (2016)***[45], a different bench insisted that recommendations should be respected unless set aside by a competent court. And as recently as January 2025, the Delhi High Court warned that treating NHRC orders as optional would make the Commission "a toothless tiger."[46] The absence of a definitive Supreme Court ruling means this fault line remains open however this is expected to be closed soon as the case of ***Abdul Sattar v. Principal Secretary (2021)***[47] has been challenged through a Special leave Petition before the Supreme Court of India.

[44] State of U.P. & Others v. NHRC, Writ-C No. 7878 of 2014 (All HC).
[45] State of U.P. v. NHRC, Writ-C No. 15570 of 2016 (All HC).
[46] Kiran Singh v. National Human Rights Commission & Ors., W.P. (Criminal) 2475/2015 (Delhi H.C. Jan. 28, 2025).
[47] Abdul Sathar v. The Principal Secretary to Government (2021 SCC Online Mad 16611; 2021 (3) CTC 129)

5.8. Oversight in a Political Minefield

NHRC's jurisdiction takes it straight into the thorniest political issues in India, custodial deaths, "encounter" killings, communal riots, land acquisition disputes. In each of these, State governments may see the Commission not as an ally but as an intruder.

In the custodial violence case from Uttar Pradesh cited above, the State initially refused to act on the Commission's recommendation, arguing there was no binding obligation to comply. It took a High Court intervention to shift the government's position. Even then, compliance was reluctant. The episode captures the awkward truth of legal ambiguity and political sensitivity are a potent mix, and together they blunt the NHRC's influence.

5.9. Constraints in Practice

§13 to §17 of the PHRA give the NHRC impressive mechanism like the ability to summon witnesses, requisition documents, and inspect premises. But powers on paper do not automatically translate into powers in practice. In reality, investigations drag on for months sometimes years not only because of procedural complexity, but also because the Commission lacks dedicated forensic experts and must often rely on reports from the very agencies under scrutiny.

The Global Alliance of National Human Rights Institutions (GANHRI), in its 2022 review, noted a worrying backlog. Cases were piling up faster than they could be resolved, and budgetary allocations had not kept pace with inflation or with the scale of the Commission's docket.[48] A body designed to respond swiftly to rights violations was, in many instances, reduced to moving at the pace of the bureaucracy it was meant to hold accountable.

5.10. Proposed Reforms

The reform has been repeated in reports, academic commentary, and even in the Commission's own submissions:

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[48] Global Alliance of National Human Rights Institutions, Accreditation Report: National Human Rights Commission of India (2022).

- Tighten enforceability by creating an automatic judicial escalation when a recommendation is rejected, cutting down on selective compliance.
- Build investigative muscle by recruiting forensic experts, expand field offices, and secure budgets that match the caseload. NHRC's should be acknowledged as expert fact finding body and be used by courts whenever required to establish complete facts for Fundamental Rights Cases before Constitutional Courts.
- Make it visible by investing in sustained awareness campaigns, in partnership with State commissions and civil society, so that the NHRC is known and accessible in the very communities most at risk.

None of these changes would strip the courts of their oversight role; they would, however, ensure that the NHRC's work results in something more than finely worded reports.

6. Conclusion and the Way Forward

Over the years, the NHRC has produced thousands of reports, some of them scathing in detail, others quietly corrective. And yet, the impact of those findings depends not on the rigour of the investigation but on the willingness of governments to act. Section 18(e) of the PHRA, 1993 is the hinge on which it all turns as a government can refuse to comply, provided it offers reasons.

As no mechanism exists to assess whether such justifications are valid or arbitrary. This gap renders the Commission's role ineffective and risks leaving victims remediless. Since human rights and fundamental rights are inseparable, any denial of the enforcement of NHRC's recommendations ultimately amounts to a breach of rights. The doctrine *ubi jus ibi remedium* where there is a right, there is a remedy it becomes particularly relevant here. If an individual approaches the NHRC for redressal, and even after the Commission's recommendation the government refuses to act by offering reasons, the individual is left without an effective remedy.

The significant point which is matter of concern is that no adjudicating authority is conferred with jurisdiction to check the authenticity of governments explanation for non-enforcement of the recommendation passed by NHRC . Therefore, it won't be incorrect to state that despite suffering breach of human rights commission citizens who may manage to get a favourable recommendation from NHRC will always be subject to governments mercy for implementation of Order passed in their favour.

In order to overcome above situation, it will be apposite to interpret section 18 (e) in such manner where the special locus standi granted to NHRC shall be made available to aggrieved party. In simple words if an aggrieved party manages to secure a favourable recommendation from Human Rights Commission and government denies to implemented the same then in such case as per the section 18 (e) of PHRA instead of NHRC such aggrieved party shall be allowed to file a Writ Petition before High Court or Supreme as the case may be & Honourable Writ Court can act as an appellate authority over the recommendation issued by NHRC and can decide whether such case is a fit case for issuing Writ against government or not.

Courts have tried, fitfully, to resolve this uncertainty. The Allahabad High Court, in different benches, has read the law both narrowly and expansively. The Delhi High Court's 2025 warning that treating NHRC recommendations as optional would reduce it to a "toothless tiger" was pointed, but without a definitive ruling from the Supreme Court, the ambiguity remains Such definitive ruling is expected from SLP of ***Abdul Sathar.***

Looking outward, other jurisdictions show that this is not an unsolvable design flaw. The United Kingdom has tied compliance to statutory escalation, where failure to follow a rights commission's directive triggers a clear path to enforcement. South Africa, by placing its commission directly in the Constitution, has left little doubt about its authority. India has done neither. Instead, it has placed the NHRC somewhere between moral watchdog and legal authority, with one foot in each role and full traction in neither.

If the goal is to make the NHRC more than a repository of well-written reports, the reforms are not hard to name:

- Make non-compliance trigger an automatic judicial process, so the onus shifts from the victim to the State.
- Give the Commission the resources like forensic teams, regional offices, trained investigators to move at the speed that rights protection demands.
- Take its existence beyond the legal community as rights bodies work best when those most at risk know they exist.
- Use it as an expert fact, finding body in such matters as it is observed that constitutional courts cannot act as fact finders for each case.

This is not about inflating the Commission’s ego or diminishing the courts’ role. It is about ensuring that a body created to guard fundamental rights can do so without being hostage to political convenience. The Indian Constitution promises equality before the law, liberty of the person, and the dignity of every individual. Allowing the NHRC to speak with authority is one way of showing those promises are not just ceremonial phrases. In the end, the measure of a democracy is not how often it celebrates its rights, but how well it enforces them when they are under threat.

DISPOSABLE LABOUR? A CRITICAL ANALYSIS OF THE LEGAL & POLICY FRAMEWORKS GOVERNING MIGRANT WORKERS' RIGHTS IN INDIA

Oshi Didwaniya*

1. Introduction

One of the most important things about India's social and economic situation is that people are always moving around for jobs. This has an impact on both cities and towns. The 2011 Census said that over 450 million people were internal migrants, which is about 38% of the total population. This is based on where they lived before. This encompasses a lot of different kinds of migrations, such those that happen because of marriage or family. About 140 million individuals in this huge population move mostly for employment, making up the country's largest migrant labor force. Most people who move in India do it over small distances and in circles.[1] A lot of laborers move back and forth between rural sending regions and urban industrial centres on a seasonal or temporary basis. This pattern of migration, together with a lot of informal employment (which is thought to involve between 350 and 450 million people), shows that most migrant workers find jobs in fields including construction, manufacturing, sanitation, domestic work, and urban services. These sectors are known for having unstable employment arrangements through contractors, not enough legal safeguards, and often dangerous working conditions. Women who move to another country for employment or care constitute the majority in such fields, whereas low-paying, dangerous jobs are more common among underprivileged castes and tribes. So, migration is not just a sign of economic opportunity, but it also shows how deeply rooted structural inequities are across castes, classes, and genders.

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[1] S. Irudaya Rajan & R.B. Bhagat, *Internal Migration and the Covid-19 Pandemic in India*, in Migration and Pandemics 221, 222 (Anna Triandafyllidou ed., 2022), https://iimad.org/wp-content/uploads/2021/12/Rajan-and-Bhagat.pdf.

Migration is very important for keeping the urban economy going. Cities can always find cheap labour since people are continuously moving about, but this also makes them more susceptible because it's tougher for them to acquire benefits and have a say in politics when they are only there for a short time. Employers typically employ contractor hierarchies to avoid long-term obligations including housing, secure workplaces, and social security. Remittances sent home are an essential source of revenue for rural communities. This makes migration a structural method to make a livelihood, but it also makes it tougher for these crucial workers to be visible politically. This strategy has created a system of "disposable labour," where workers are still needed for production but are politically and socially invisible.

The gig and platform economy's explosive growth, which is changing the nature of informal employment, adds to this complexity. According to the NITI Aayog, the number of gig workers, which was estimated at 7.7 million in 2020–21, could increase to 23.5 million by 2029–30 due to the growth of industries like ride-hailing, food delivery, and on-demand services.[2] More and more migrants are coming to work on platforms, notably younger and semi-urban populations. Platform labour is flexible but sometimes doesn't offer typical safeguards like insurance, paid leave, or pension plans. Platform work shows how informality is developing. Technology platforms make it simpler to find job, but they also spread-out responsibility, which makes it difficult for regulators to keep an eye on things.

The COVID-19 pandemic made these weaknesses very clear. The 2020 nationwide lockdown caused one of the greatest mass migrations in India's history since independence. Millions of workers who had been stuck without shelter or pay set out on long, difficult treks back to their home

[2] PRESS INFO. BUREAU, *India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work* (June 27, 2022),, https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2078528.

states.[3] The humanitarian crisis showed how fragile India's social protection system is, especially its incapacity to make sure that benefits like emergency aid, health insurance, ration cards, and pensions may be used anywhere. In response, the Indian government sped up projects like the One Nation, One Ration Card (ONORC) program and the e-Shram site. Since it started in 2021, the e-Shram portal has registered more than 30 crore unorganized workers, such as migrant workers and platform workers.[4] The purpose of these changes is to provide a digital foundation for better welfare services and the possibility to move rights from one place to another. However, field reports and audits suggest that there are still challenges, such as low staff understanding, administrative discretion, problems linking Aadhaar to banks, and inconsistent implementation at the state level.[5]

So, even while migration is still a driving force in India's economy, the way labour is now regulated still views migrant workers as a resource that can be used and taken away. The paradox of being economically essential but politically invisible is at the heart of the migrant labour dilemma. If policymakers shift their focus from registration to the actual distribution of benefits, the redress of grievances, and interstate cooperation, rather than just registration, India may achieve a more equitable labour system. Examining India's legal and policy frameworks is crucial in this regard, particularly in view of the current developments. The purpose of this study is to clarify the legislative intent and real-world efficacy of ongoing efforts to improve the welfare of migrant workers.

[3] *COVID-19: The Hidden Majority in India's Migration Crisis*, Chatham House (July 11, 2020),, https://www.chathamhouse.org/2020/07/covid-19-hidden-majority-indias-migration-crisis.

[4] Ministry of Lab. & Emp., Gov't of India, *Over 30.68 Crore Unorganized Workers Registered on e-Shram Portal* (Mar. 10, 2025), https://labour.gov.in/sites/default/files/pib2109828.pdf.

[5] *Migration in India and the Impact of the Lockdown on Migrants*, PRS Legislative Rsch. (Dec. 25, 2024), https://prsindia.org/covid-19/covid-blogs/migration-in-india-and-the-impact-of-the-lockdown-on-migrants.

2. Legal And Policy Frameworks

a. Constitutional Provisions & Workers' Rights

The Indian Constitution provides the groundwork for the rights of migrant workers through multiple provisions. The Preamble of the Constitution establishes justice in social, economic and political spheres of life as a founding principle, which is fundamental in ensuring equality and protecting rights of people and guarantees every person what they deserve. Article 14 guarantees equality before the law, including workplace equality. Article 16 provides equal opportunity in public employment, shielding against any form of discrimination. Article 19(1)(c) gives the right to form associations and unions, a right necessary to uphold and facilitate collective bargaining. Article 21 ensures the right to livelihood, which, as recognised by the Honorable Supreme Court an integral part of the right to life.[6] Article 23 prohibits trafficking and forced labour while Article 24 prohibits any form of child labour under the age of 14 years. Articles 39,41,42, which are Directive Principles for State policy, provide for equal pay for equal work and advocate for fair working conditions, social protection and humane labour standards. These articles together support mobility, access to benefits, protection against exploitation, and the moral need for dignified work. This is crucially important for migrant labourers who have to constantly deal with broken legal regimes.

b. Pre-2020 Labour Law Schemes

Before 2020, migrant workers were protected by a patchwork of laws, like the Inter-State Migrant Workmen (Regulation and Conditions of Service) Act, 1979[7] focused on contractor-driven migration, providing safe working conditions, equal wages, mandating registrations, displacement and journey allowances, and most significantly, the right to raise industrial disputes at both home and host states. Another legislation was the Contract

[6] Olga Tellis & Ors. v. Bombay Municipal Corp. & Ors., (1985) 3 SCC 545 (India).
[7] Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, No. 30 of 1979.

Labour (Regulation and Abolition) Act, 1970[8], which safeguarded contract workers by ensuring they acquired licenses and had proper salaries paid. The Street Vendors Act, 2014[9], gave regulatory protection to street vendors a lot of whom are rural-urban migrants. Targeted forced and bonded labour, which insignificantly affected migrant labourers, particularly in the informal sector, was abolished through the Bonded Labour (Abolition) Act, 1976[10]. Despite the existence of these and many other laws focusing on labour, migrant workers continue to experience low registration rates, inadequate enforcement and exclusion of benefits, rendering them as nominal rights holders rather than actual beneficiaries.

c. The 2020 Labour Codes: OSH, Social Security (SS), Wages, Industrial Relations

During 2019-20, India undertook a major revamp by merging 29 central labour laws into four labour codes. The Code on Wages, 2019[11] unified laws on wage payments, ensuring minimum wages and abolishing discrimination in pay. The Industrial Relations Code 2020[12] streamlined and modernized laws on trade unions, labour relations and dispute resolution. Occupational Safety, Health, and Working Conditions Code (OSH Code), 2020[13]: The Migrant Workmen Act has been subsumed, with an expanded definition of inter-state migrant workers to encompass those who relocate independently. It establishes fixed daily work hours, mandates employment benefits including insurance and provident funds, and transfers key entitlements such as PDS benefits and construction welfare to the destination state. The maximum wage limit for coverage is ₹18,000 per month. Code on Social Security, 2020[14], established social

[8] Contract Labour (Regulation and Abolition) Act, No. 37 of 1970.
[9] Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, No. 7 of 2014.
[10] Bonded Labour (Abolition) Act, No. 19 of 1976.
[11] *Supra* note *23.*
[12] *Supra* note *24*
[13] *Supra* note *25*
[14] *Supra* note *26.*

protection schemes like pensions, insurance, gratuity, etc., for unorganised and platform workers for the first time. Despite its conceptual promise, implementation is still in early stages. The Central rules established by these Codes have been released slowly. Numerous provisions are pending operational guidelines due to partial issuance of rule notifications for OSH and SS Codes. Capacity limitations within state labour departments restrict the frequency of inspections, especially vulnerable sections like migrant workers employed in construction and logistics. The issue of lack or portability provisions in these Codes results in frequent loss of acquiring benefits after crossing their state lines.

d. International Conventions- Ratification Status and Comparative Analysis

India has ratified 47 out of 190 conventions of the ILO to date. While India stands committed to several core labour standards, including Forced Labour (No.29), Abolition of Forced Labour (No.105), Equal Remuneration (No.100), and discrimination (Employment & Occupation) (No.111), it has spectacularly not ratified conventions most crucial for migrant workers: Migration for Employment Convention (No.97), Freedom of Association (No.87) and Right to Organize and Collective Bargaining (No.98) which limits workers' ability to form unions and collective negotiation, specifically in informal sector and impacts migrant labour.[15] UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) has established international standards for migrant worker rights, like equality before the law, portability of labour rights and protection against exploitation.[16] India has not ratified ICRMW, which shows India's limitedness in commitment to legally enforceable migration-specific

[15] Ministry of Lab. & Emp., Gov't of India, *India & ILO*, https://labour.gov.in/lcandilasdivision/india-ilo.

[16] U.N. Treaty Collection, *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4.

labour standards and leaves implementation primarily domestic in interpretation.[17]

Non-ratification indicates that India doesn't want to be internationally accountable for core migrant worker standards and, therefore, cannot be subjected to the ILO's supervisory mechanisms or the UN's periodic review for these conventions. Migrant workers face restricted avenues for international redress, in contrast to those in ratifying countries. They seek redress at national judicial and administrative systems, which are often slow and under-resourced. India participates actively in drafting and voting on these conventions, yet it selectively ratifies standards that align with its domestic principles. This diminishes diplomatic pressure and international oversight, impacting long-term worker welfare.

e. ONORC & TPDS: Portability in practice

One Nation One Ration Card (ONORC) is designed to make it possible for people in India to move their nutritional benefits across the nation. It lets NFSA-recognized recipients get subsidised food grains from anywhere in the country via interoperable ePoS machines. As of now, all 36 States and UTs have adopted ONORC, which allows for 124 crore transferable transactions and ensures that almost 80 crore beneficiaries receive food security. About 99.8% of ration cards have been linked to Aadhaar, which makes biometric authentication more effective.[18]

The government of Delhi is now incorporating digital weighing scales with ePoS devices in all 1967 Fair Price Shops (FPS). The objective of this move is to prevent stock diversion, guarantee real-time measurement verification, and eradicate manual manipulation. As part of this initiative, FPS dealers are required to conspicuously display ONORC eligibility details and adhere to stringent guidelines regarding ration denials due to

[17] Supra note 24.

[18] Press Info. Bureau, *99.8% of Ration Cards Seeded with Aadhaar Under One Nation One Ration Card Plan*, PIB (Mar. 19, 2024), https://www.pib.gov.in/PressReleseDetailm.aspx?PRID=1988732.

technical faults.[19] To encourage this integration, the Centre has modified the NFSA rules to permit the use of savings from ePoS utilisation for the purchase and maintenance of these weighing scales.[20]

But according to a study by IIMA in 2024, the utility of interstate ONORC remains low, with fewer than 500000 interstate transactions per month, as opposed to 20 million intrastate transactions per month. Poor stock management, inadequate social assistance, and a lack of awareness are among the constraints.[21] Failures in the distribution of food under the Atma Nirbhar Bharat Scheme (ANBS) were identified during state-level audits by CAG during the pandemic. For example, in one state, over 30,000 migrant individuals and 20,000 families were unable to access the cereals that were allocated to them. Duplicate IDs and missing stock or register maintenance were identified as administrative deficiencies. Social audits and oversight mechanisms were largely absent.[22] Broader assessments indicate that, despite improvements from ePoS introduction (which cut leakages from approximately 46% to 28%), nearly one-third of food allocations are still not reaching their intended beneficiaries.[23]

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[19] *Delhi to Link Digital Scales with ePoS at Ration Shops*, Times of India (Mar. 8, 2024), https://timesofindia.indiatimes.com/city/delhi/delhi-to-link-digital-scales-with-epos-at-ration-shops/articleshow/122801349.cms.

[20] *Govt Tweaks Norms to Encourage ePoS Linkage with Electronic Weighing Machines at Ration Shops*, Econ. Times (Jun. 18, 2021), https://government.economictimes.indiatimes.com/news/digital-india/govt-tweaks-norms-to-encourage-epos-linkage-with-electronic-weighing-machines-at-ration-shops/83742528.

[21] Tarun Shankar Ravi, *One Nation, One Ration, Limited Interstate Traction: Migration and PDS Portability in India*, Indian Inst. Mgmt. Ahmedabad (June 14, 2024), https://www.iima.ac.in/publicationone-nation-one-ration-limited-interstate-traction-migration-and-pds-portability-india.

[22] Comptroller & Auditor Gen. of India, Compliance Audit of General, Social and Economic Sectors: Chapter II (2023), https://cag.gov.in/uploads/download_audit_report/2023/9_-Chapter-II-_CA-of-General,-Social-and-Economic-Sectors-064ba56b29c14e4.25639245.pdf.

[23] *Towards an Efficient PDS in India*, Drishti IAS (Nov. 11, 2024), https://www.drishtiias.com/daily-updates/daily-news-editorials/towards-an-efficient-pds-in-india.

According to investigative reporting (e.g., Newslaundry). Approximately 130 million Indians, including numerous migrants, are effectively denied rations. Even as NFSA coverage has broadened, there are still voids, such as the absence of ration vouchers and the inadequacy of portability mechanisms.[24]

f. The e-Shram Portal: Registration v. Reach

e-Shram, which was conceived as a transformative instrument to integrate India's vast unorganised workforce into formal welfare and social protection mechanisms, was launched in August 2021 under the Social Security Code (2020). It created a National Database of Unorganised Workers (NDUW) to achieve its goal. It issues a Universal Account Number (UAN), registering diverse categories, from migrant labourers, domestic workers, to gig platform workers. This portal collects various data, including skill type, educational qualification, occupation, and family details, which is then linked to Aadhaar to facilitate scheme linkage and benefit delivery.[25] In early 2025, e-Shram had surpassed the threshold of 30.68 crore registered unorganised labourers, with women accounting for approximately 53-54% of registrations.[26] The scale is commendable, and the registration has made many workers visible, allowing them to access social security schemes which require formal identification.

Nevertheless, the extent of the reach, actual benefit delivery, the consumption of welfare, and meaningful protection lags. Persistent challenges are identified in numerous recent academic and policy studies:

[24] Anandita Singh Mankotia & Vidya Krishnan, *Behind India's 'Food Surplus' Claims, 13 Crore Indians Denied Rations*, Newslaundry (Oct. 7, 2024), https://www.newslaundry.com/2024/10/07/behind-indias-food-surplus-claims-13-crore-indians-denied-rations.
[25] K.R. Shyam Sundar, *E-Shram: Still A Long Way Ahead*, IMPRI Impact & Pol'y Rsch. Inst. (Aug. 26, 2021), https://www.impriindia.com/insights/e-shram-long-way-ahead.
[26] Ministry of Lab. & Emp., Rajya Sabha Unstarred Question No. 3111, *Number of Registration Under e-Shram Portal* (Mar. 27, 2025), https://sansad.in/getFile/annex/267/AU3111_xfITAe.pdf.

I. Symbolic registration without substantive benefits: Although registered many workers have not yet accessed insurance, pensions or other statutory social security entitlements. Lack of awareness programs, eligibility criteria, and procedural delays impede adoption.[27]

II. Outreach and Administrative capacity: As a result of information gaps, numerous potential beneficiaries are excluded: employers are unaware of e-Shram, registration is time-consuming, and technical failures are also encountered. These issues disadvantageously affect migrants, informal gig workers, and domestic workers who frequently lack stable addresses or regular employers who can assist with documentation.[28]

III. Issues with data mismatches and Aadhaar and banks: Accurate Aadhaar seeding, bank KYC, and other verifications are indispensable for social security schemes disbursals. Delivery of benefits is stagnated due to inconsistencies or misinformation.[29]

IV. Inter-state portability and migrant specificity: Circular or seasonal migrants continue to face exclusion due to frequent address changes, district or state boundary issues, and local scheme eligibility tied to origin or destination state, which impedes the actual benefits.

g. Judicial Interventions: Supreme Court Suo Motu Actions

The Supreme Court of India has played a decisive role in protecting the constitutional rights of migrant labourers, especially during the COVID-19 lockdown in 2020, which triggered the humanitarian crisis. The Court took Suo motu notice of the plight of millions of stranded migrant workers who were stuck in In Re: Problems and Miseries of Migrant Labourers.

[27] *Supra* note 55.
[28] *Id.*
[29] Rozin Hasin, *Prosthetics of the Indian State: The e-Shram Portal for Unorganized Workers in India* (Feb. 16, 2025) (unpublished manuscript), https://arxiv.org/abs/2503.05714.

Beginning in May 2020, the Court issued a series of landmark orders directing the federal and state governments to provide migrants free food, transportation, and temporary shelter, recognizing their Fundamental Rights under Articles 14 & 21 of the Indian Constitution.[30] The Court issued additional orders in June 2021, requiring the completion of the National Database of Unorganised Workers (NDUW) Portal by December 31, 2021, to ensure targeted welfare delivery. By July 31, 2021, all states must implement the One Nation One Ration card (ONORC) program nationwide, making food subsidies portable for migrants.[31] The Court continues to monitor compliance as of 2024, voicing "serious concern" and criticising the Centre's apathy in implementing welfare programs for migrants. [32]By addressing governance gaps and strengthening social security benefits for migrants, these interventions have highlighted the judiciary's role as a constitutional watchdog.

h. State-level Innovations: -

Some states have pioneered migrant-focused welfare models in addition to judicial monitoring:

Kerala's Apna Ghar, which was launched in 2019 in Palakkad, offers secure, affordable, dormitory-style accommodation for migrant workers. Facilities in these Apna Ghar include clean kitchens, eating rooms,

[30] *Supreme Court Takes Suo Motu Cognisance of Migrant Workers' Issue*, HINDU (May 26, 2020), https://www.thehindu.com/news/national/supreme-court-takes-suo-motu-cognisance-of-migrant-workers-issue/article61652523.ece.

[31] *"Labour Ministry Not Alive to Concerns of Migrant Workers:" Supreme Court Orders Implementation of One Nation, One Ration Scheme*, BAR & BENCH (June 29, 2021),https://www.barandbench.com/news/litigation/suo-motu-migrant-crisis-supreme-court-directs-implement-one-nation-one-ration-scheme.

[32] KRISHNADAS RAJAGOPAL, *Supreme Court Orders Centre and States to Immediately Provide Transport, Food and Shelter Free of Cost to Stranded Migrant Workers*, HINDU (May 26, 2020), https://www.thehindu.com/news/national/sc-asks-centre-to-apprise-about-compliance-of-2021-verdict-on-welfare-measures-for-migrant-workers/article68596474.ece.

sanitation blocks and also social support services, providing a national model for dignified migrant accommodation.[33]

Migrant Suraksha Project (Kerala)- This is a state funded initiative under the AIDS Control Society (KSACS), which aims to reduce HIV/AIDS prevalence among migrant labourers. This initiative provides health cards, legal and welfare awareness seminars, periodic medical check-ups, and outreach camps, which show a comprehensive approach to migrant worker welfare.[34]

Rajasthan's e-Mitra/ One-Stop Kiosks- Rajasthan is pioneering digital one-stop kiosks to expedite documentation, access to social packages, and grievance redressal for migrant workers. Though paperwork is developing, these kiosks attempt to make welfare access portable and remove bureaucratic impediments.[35]

3. Socio-Legal Findings

Law/Scheme	**Implementation Status**	**Strengths**	**Weaknesses**	**Accountability Gaps**	**Benchmark Examples**
Labour Codes (Wages, Social Security, OSHW,	Phased adoption; most states aligned rules; ongoing rollout in 2025. [36]	Consolidate 29 laws; simplify regulation, expand social	ESIC/pension portability incomplete; many states slow, delays in safeguards.[38]	Contractor–principal liability varies, vicarious liability in PF	Efforts to unify code similar to South Africa, Philippines.

[33] *CM Pinarayi Vijayan Opens 'Apna Ghar' for Migrant Workers*, TIMES OF INDIA (Feb. 24, 2019), https://timesofindia.indiatimes.com/city/kochi/cm-pinarayi-vijayan-opens-apna-ghar-for-migrant-workers/articleshow/68135344.cms.

[34] KERALA STATE AIDS CONTROL SOC'Y, *Suraksha*, https://ksacs.kerala.gov.in/?page_id=549 (last visited Sept.17, 2025).

[35] DEP'T OF IT & COMMC'N, GOV'T OF RAJASTHAN, *e-Mitra - Digital Services Platform*, https://emitra.rajasthan.gov.in/emitra/about.

[36] *Employment and Labour Laws and Regulations 2025: India*, GLOB. LEGAL INSIGHTS (June 10, 2025) https://www.globallegalinsights.com/practice-areas/employment-and-labour-laws-and-regulations/india/.

IR)		security.[37]		defaults. [39]	
ONORC (One Nation, One Ration Card)	Nationwide portability, but interstate traction low.[40]	Major success enabling PDS access for migrants.[41]	Limited interstate usage; intrastate dominates; benefits not extended to pension.[42]	Ration portability strong for food, not for other entitlements.[43]	Multi-region social security access (Philippines)[44] ; PDS models (South Africa).
Employees' State Insurance (ESIC)	Service portability extended, but uneven adoption.[45]	National coverage, online transfer requests.[46]	Statewise gaps and technical hurdles persist.[47]	Principal employer must ensure compliance; enforcement	Structural integration in SA/Phil migrant schemes.

[38] *Id.*at 42.
[37] *Rules On New Labour Code 2025*, SHARKS OF LAW (Apr. 2, 2025), https://www.sharksoflaw.com/blog-detail/rules-on-new-labour-code-2025.
[39] NISHITH DESAI ASSOCS., *Who Is Responsible for Third Party Employees: The Ones Who Hire Them or the Company Where They Are Posted?* (July 31, 2024), https://www.nishitdesai.com/fileadmin/user_uploads/pdfs/nda%20In%20The%20Media/quotes/who-is-responsible-for-third-party-employees-the-one-who-hire-them-or-the-company-where-they-are-posted.pdf.
[40] CHINMAY TUMBE & RAHUL KUMAR JHA, *One Nation, One Ration, Limited Interstate Traction: Migration and PDS Portability in India*, 9 NDIA PUB. POL'Y REV. (2024),https://journals.sagepub.com/doi/10.1177/24557471241237098.
[41]*Portability Transactions of the Public Distribution System Under One Nation One Ration Card: Why Is Portability Working So Well for Delhi?*, MICROSAVE CONSULTING (June 6, 2023), https://www.microsave.net/2023/06/06/portability-transactions-of-the-public-distribution-system-under-one-nation-one-ration-card-why-is-portability-working-so-well-for-delhi/.
[42] *Supra* note 65.
[43] *Id.*
[44] DEP'T OF MIGRANT WORKERS, REPUBLIC OF THE PHILIPPINES, Advisory No. 20, Series of 2025: Measures to Protect Seafarers from Exorbitant Fees and Other Illegal/Unethical Practices Related with Pre-Emp. Med. Examinations (2025), https://dmw.gov.ph/resources/dsms/DMW/ISN-EXT/2025/DMW-ADVISORY-20-2025.pdf.
[45] OFF. OF THE EMPS.' STATE INS. CORP., Circular No. U-13/14/ATR/ESIC/38/2021/01 (Nov. 13,

				gaps.[48]	
Pension Portability (EPF/SSA agreements)	Portability for international workers under bilateral SSA.[49]	Direct transfer to home country possible (limited coverage).[50]	No universal pension portability for domestic migrants.[51]	Reliant on bilateral agreements; lack of totalisation within India.[52]	Systematic totalisation in South Africa, Philippines.
Gig Platforms (Karnataka, Telangana, Rajasthan)	Draft/Ordinance bills, some states enacted registration boards (2025).[53] [54]	Registration, welfare board, grievance redress, unique ID.[55]	National framework absent; patchwork regulations.[56]	Platforms remain unregulated or only state-level oversight.[57]	Stronger platform/gig worker protections (South Africa's UIF, Phil's

2023), https://esic.gov.in/attachments/circularfile/2866cae183034651518eb1afa857252f.pdf (last visited Sept. 18, 2025).

[46] *Id.*

[47] *Id.*

[48] Rupin Chopra & Shantam Sharma, *Navigating the Legal Maze: Principal Employer's Liability for Contractor's Provident Fund*, <SS Rana & Co. (July 2025), https://ssrana.in/articles/navigating-the-legal-maze-principal-employers-liability-for-contractors-provident-fund.

[49] Min. of Lab. & Emp., Gov't of India, Addendum to Notes on Agenda Item-2: Social Security for International Migrant Workers (2024), https://labour.gov.in/sites/default/files/Addendum_to_Agenda_Item-2.pdf.

[50] Anwarul Hoda & Durgesh K. Rai,Indian Council for Rsch. on Int'l Econ. Rels., Working Paper No. 379, Totalisation/Portability of Social Security Benefits: Imperatives for Global Action (2019), https://icrier.org/pdf/Working_Paper_379.pdf.

[51] *Id.*

[52] *Id.*

[53] PRS Legis. Rsch., Legislative Brief: The Karnataka Platform Based Gig Workers Bill, 2025 (Aug. 13, 2025), https://prsindia.org/files/bills_acts/bills_states/karnataka/2025/Brief_Karnataka_Gig_Workers_Bill_2025.pdf.

[54] PRS Legis. Rsch., *The Draft Telangana Gig and Platform Workers (Registration, Social Security and Welfare) Bill, 2025* (Sept. 18, 2025), https://prsindia.org/bills/states/the-draft-telangana-gig-and-platform-workers-registration-social-security-and-welfare-bill-2025.

[55] *Supra* note 78, 79.

[56] *Id.*

[57] *Id.*

					Overseas Welfare Board).

a. Key points:

- **Strengths-** Labour codes combine and consolidate more than two dozen statutes, providing better and simpler social protection and clearer laws for workers and companies. This reduces duplication, improves clarity for employers, and provides the potential for a unified digital compliance system.[58] Many people have praised the One Nation, One Ration Card (ONORC) program under the National Food Security Act for making it easier to move food benefits around. By July 2022, ONORC was up and running in all states and union territories. This meant that more than 80 crore NFSA beneficiaries could get subsidized rations no matter where they lived. This is a big step forward for welfare portability for migrant workers, who are often left out of state-linked benefits. It is made possible by Aadhaar-enabled Public Distribution Systems (TPDS). ONORC has delivered food security and ration portability for millions of rural and urban migrant households by making it easier through improved interstate access. [59]Some states have been the first to set up social security boards for gig and platform workers. These boards set the stage for global platform registration and welfare.[60]

- **Weakness-** Despite progress, serious weaknesses persist. Pension and ESIC health benefits are still not very portable; migrants need more than regulatory integration and digital systems to be able to

[58] *Supra* note 61.
[59] *Supra* note 66.
[60] *Id*.

access these benefits.[61] The International Labour Organization (ILO) has flagged India's weak portability architecture as a systemic wall to inclusive social security.[62] The frequency of labour inspections still remains low, which makes it hard to enforce safety, working conditions and legal compliance. Different regions have different ways of putting things into implementation, and it leads to inconsistent beneficiary experiences and protection. The new codes' move towards "self-certification" makes enforcement even weaker by making state oversight less strict. Migrants continue to face wage arrears, unsafe working conditions, and exclusion from compensation frameworks due to lack of satisfactory inspection and complaint mechanisms. [63]

- **Accountability Gaps** - The contractor-mediated hiring system is a key part of India's economy for migrant workers. In this three-way arrangement between contractors, main employers, and workers, responsibility is spread out, so main employers can avoid being directly responsible for wages, social security, or workplace safety. The CLRA, EPF Act, and other laws that govern the relationship between the main employer and the contractor can make it hard to know who is responsible for paying dues and keeping people safe. Courts disagree on whether the main employer is responsible for provident fund defaults.[64] The Building and Other Construction Workers' Welfare Boards (BOCW) have had a hard time with low registration and disbursement rates, which shows how weak the

[61] *Supra* note 74.
[62] MIN. OF LAB. & EMP., GOV'T OF INDIA, *ILO Acknowledges India's Surge in Social Security Coverage but Flags Portability Challenges* (June 10, 2025), https://labour.gov.in/sites/default/files/pib2115391.pdf.
[63] RICAGO, *Navigating Labour Law Compliance in India: Key Strategies for 2025* (2025),https://www.ricago.com/blog/navigating-labour-law-compliance-in-india-key-strategies-for-2025.
[64] *Supra* note 45 .

institution is.[65] At the central level, gig platforms are still not well-regulated. The gig economy has grown quickly, with NITI Aayog predicting that there will be 23.5 million gig workers by 2029–30. Workers are called "partners" instead of "employees," which means they don't get benefits like pensions, insurance, or the right to bargain collectively[66]. Recent state-level efforts, like Rajasthan's Platform-based Gig Workers (Registration and Welfare) Act 2023, show that this gap is starting to be noticed, but coverage is still uneven and incomplete. However, some state bills (Karnataka, Rajasthan, and Telangana) now require registration and oversight of welfare.[67] The OSH Code's replacement of the 1979 Act will only avoid "rights evaporation" if contractor licensing, principal-employer liability, and state inspection are digitally linked to the e-Shram registry, enabling real-time verification of wage payments, displacement allowance, journey allowance, and safety incidents. Progressive schemes frequently lack systems for clear tracking of entitlements and dispute resolution across state boundaries.

- **Benchmarking Against International Practices-** Comparative analysis has shown the limitations of India's piecemeal approach. The Philippines has set up the Overseas Workers Welfare Administration (OWWA), a government agency that helps both overseas and internal migrant workers with insurance, reintegration, and complaints.[68]This type of organization makes sure that there is dedicated funding, benefits that can be moved

[65] Press Info. Bureau, Min. of Info. & Broad., Gov't of India, 16th Meeting of the Building and Other Construction Workers' Welfare Board Monitoring Committee (Jan. 13, 2025), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2092732.
[66] Anshul Vipat, *India Has 7.7 Million Gig Workers, Will Triple to 2.35 Crore by 2030, Says Niti Aayog Report*, IndiaTracker (Aug. 23, 2025), https://www.indiatracker.in/story/india-has-77-million-gig-workers-will-triple-to-235-crore-by-2030-says-niti-aayog-report.
[67] *Supra* note *66.*
[68] Overseas Workers Welfare Admin. (OWWA), *Reintegration Program,* https://owwa.goc.ph/reintegration/ .

from one place to another, and ways for people to get back into the community. South Africa's 2021 National Labour Migration Policy encourages the inclusion of migrant workers in social security systems, regulates hiring and offers housing and welfare support.[69] Both these models underscore the importance of institutionalized welfare boards, portability of instruments, and grievance mechanisms. India currently lacks these models; adaptation of such models could strengthen accountability and protect migrant rights.

The analysis shows a contradiction: even though India's legal system has become more stable and welfare portability has improved (for example, ONORC), there are still big holes in pensions, health insurance, workplace enforcement, and accountability systems. The unregulated growth of gig platforms and the dominance of contractors make things even worse. India needs to move from symbolic registration drives to real benefit delivery, learning from international standards. Strengthening inspections, making portability a part of all programs, and setting up legal welfare boards are all important steps toward making sure that migrant workers, who are a big part of India's growth story, are no longer seen as economically necessary but socially invisible.

4. Recommendations

a. Statutory recognition of the e-Shram UAN as a universal benefit identifier:

The Universal Account Number (UAN) is a very important tool for managing and moving Provident Fund (PF) accounts between different employers over the course of a worker's life. The Employees' Provident Fund Organisation (EPFO) made UAN mandatory for all employers under the Employees Provident Funds and Miscellaneous Provisions Act, 1952,

[69] Dep't of Emp. & Lab., Republic of S. Afr., National Labour Migration Policy 2021 (2021), https://www.labour.gov.za/DocumentCenter/Publications/Public%20Employment%20services/National%20Labour%20Migration%20Policy%202021%202.pdf.

to make it easier to identify everyone and keep track of their benefits. Making UAN a legal Benefit ID would make social security payments more open and accountable, speed up the process, and give beneficiaries the tools they need to easily track and claim their benefits. This measure is especially important for protecting temporary workers in fields like construction who switch jobs often.[70] This would convert registration into an actionable entitlement channel, reduce identity friction at the point of service, and enable automatic scheme-linkage. (Implementation: amend SS Code rules or issue a Central notification requiring all ministries to accept UAN as proof of worker identity and entitlement.

b. Enforce principal-employer liability in law:

We need to strengthen and clarify legal provisions that makes principal employers jointly and severally liable for contractor defaults. Legally making principal-employer liability means that employers are still responsible for the social security payments of contract and temporary workers. This legal structure lowers the danger of exploitation for vulnerable people who are engaged through contractors and makes sure that provident fund and welfare rules are followed.[71] Courts in India and EPFO circulars have made it clear that major employers are liable for compliance even if contractors have their own code numbers.[72] This strengthens worker safeguards and makes it easier for workers to get their benefits.

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[70] Anshul Vipat, *EPFO Makes UAN Mandatory for All Employers Under Its Purview*, Times of India (June 21, 2015), https://timesofindia.indiatimes.com/business/india-business/epfo-makes-uan-mandatory-for-all-employers-under-its-purview/articleshow/47771385.cms.

[71] Rupin Chopra & Shantam Sharma, *Principal Employer's Liability for Contractor's Provident Fund*, SS Rana & Co. (2025), https://ssrana.in/articles/navigating-the-legal-maze-principal-employers-liability-for-contractors-provident-fund.

[72] *Ajay Raj Shetty v. Director*, 2025 LiveLaw (SC) 442 (Apr. 21, 2025),https://www.livelaw.in/supreme-court/esi-act-person-in-supervisory-role-liable-for-non-remittance-of-contributions-regardless-of-designation-supreme-court-289875.

c. Administrative & governance reforms:

1. **<u>Unified, interoperable dashboards (national + state) with public KPIs-</u>** Create a federated dashboard architecture that links e-Shram, ONORC, EPFO/ESIC, and state welfare databases via documented Open APIs. Dashboards should display anonymised KPIs (coverage, conversion rates, grievance backlogs, time-to-resolve) at national/state/district levels to enable performance management and public accountability. The government already mandates API linkages for e-Shram; scale this to include inter-ministry and state APIs under open-API policy.[73] Centralized, unified digital dashboards that are available to government agencies, employers, and beneficiaries can make it easier to keep track of registrations, contributions, and claims. These dashboards let different departments work together, get information in real time, and make data-driven policy changes to fix problems with delivering social security benefits.
2. **<u>Inter-state grievance redress portal + local escalation network-</u>** Because migrant workers in India move around a lot, inter-state integrated grievance redressal platforms would speed up the process and improve responsiveness. Portals must allow workers to file complaints irrespective of their current location and enable seamless coordination. To operationalize this, create a single/unified grievance platform that takes UAN/ONORC inputs and automatically sends complaints to the right state nodal officers, with SLAs, SMS updates, and option to escalate to a national ombudsman in case of non-compliance. To eliminate duplication

[73] MIN. OF ELECS. & INFO. TECH. (MEITY), GOV'T OF INDIA, Open API Policy for e-Governance Applications in India (May 2023), https://egovstandards.gov.in/sites/default/files/2023-05/Open%20API%20Policyfor%20e-Governance%20Applications%20in%20India.pdf.

and make it simpler to track, combine this with existing platforms like CPGRAMS[74] and e-Shram GMS.[75]

3. **Risk-Based Audits and Independent Evaluation-** Strong migrant support programs need legal basis and real oversight. Risk-based audits target resources to construction hubs, urban slums, and contractor-mediated labor sectors where exclusion, fraud, and rights violations are more prevalent. Risk-based audits highlight systemic issues in vulnerable regions and high-risk businesses better than compliance checks. All migrant aid schemes must implement impartial third-party audits like the Quality Council of India (QCI)[76] welfare board and ration distribution system audits. Audits should assess coverage indicators (e.g., enrollment) and conversion outcomes when workers received insurance payouts, pensions, healthcare, or rations. Field interviews should measure grievance redressal efficiency, benefit portability between states, and worker satisfaction. MGNREGA social audits[77] and international best practices like the Philippines' OWWA evaluation frameworks[78], which combine administrative data with independent worker surveys, can be used. Risk-based audit results should be available on a single platform for civil society monitoring and credibility. State budget allocations must be linked to audit compliance by central ministries, binding audit recommendations. This promotes performance-linked financing and open data in India's National Data Sharing and Accessibility Policy. Making risk-based audits a legislative obligation under the Social Security Code or executive orders can help India shift from symbolic reporting to evidence-

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[74] GOV'T OF INDIA, *Centralised Public Grievance Redress and Monitoring System (CPGRAMS)* https://pgportal.gov.in/.
[75] MIN. OF LAB. & EMP., GOV'T OF INDIA, *eShram Portal*, https://gms.eshram.gov.in/gmsportal/#/portal/Home.
[76] QUALITY COUNCIL OF INDIA https://qcin.org/..
[77] SOCIAL AUDIT UNIT, MIN. OF RURAL DEV., GOV'T OF INDIA, https://socialaudit.nic.in/.
[78] *Supra* note 93.

based accountability and guarantee that migrant assistance systems meet their aims and preserve constitutional equality and dignity.

d. Worker-centric recommendations:

1. **On-Site camps-** Regular outreach camps at worksites, factories, and migrant clusters, staffed by CSC operators and field teams from the labour department, provide an effective way for registrations, raise awareness, and assistance in claim filing. These camps enable those who can't read or write or those who don't have access to technology to build trust with workers and ensure that informal sector workers are included. Kerala-style outreach and current e-Shram camps show that it can be done.[79] [80] Pay for these with money from district labour budgets, and make sure that public contract payments are only made if workers register. This makes it easier to learn how to use technology and saves time.
2. **24/7 Multilingual Helpline and Community Legal Aid-** Establishment of dedicated multilingual helplines staffed by trained legal aid volunteers can provide immediate support on social security-related queries, rights awareness, and grievance escalation. Also, give money to community legal-aid cells (via NALSA/State Legal Services) to help with wage, compensation, and denial-of-entitlements matters by giving quick advice, writing complaints, and helping with court proceedings. Community paralegals (CSO workers who have been trained) should be paid for as part of the program's ongoing expenditures. Community-based legal aid programs can proactively assist workers in navigating complex bureaucratic procedures for accessing benefits.

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[79] Ress Info. Bureau, Min. of Lab. & Emp., Gov't of India, Physical Centres to Register Gig Workers on e-Shram Portal (Aug. 3, 2023), https://www.pib.gov.in/PressReleasePage.aspx?PRID=1947418.

[80] Min. of Lab. & Emp., Gov't of India, *Registration Camp under eShram at Shram Shakti Bhawan*, https://eshram.gov.in/Registration-camp.

3. **Dignified Housing & Living Conditions** - Kerala's *Apna Ghar*[81] housing project and the *Migrant Suraksha Project* [82]together offer a comprehensive model that integrates safe housing, affordable food access, healthcare, and welfare outreach for migrant workers. These initiatives complement judicial directives (e.g., *In Re: Problems and Miseries of Migrant Labourers*, 2020[83]) and central schemes (ONORC[84], e-Shram[85]), illustrating how a multi-level governance framework, judiciary, Centre, and state, collectively shape migrant welfare in India. However, replication is constrained by resource gaps, uneven inter-state coordination, and weak enforcement capacity. Embedding Kerala's integrated welfare ecosystem into national planning through centrally funded housing models, health-card schemes, and mandatory state-level welfare audits could make such programs replicable nationwide. Learning from Kerala's experience demonstrates that localized, rights-based interventions can complement statutory portability mechanisms and judicial oversight, ensuring that migrant workers are treated not merely as an economic resource but as rights-bearing citizens.

e. Technology & inclusion safeguards

1. **Open APIs for Social Security Systems**- All welfare portals like e-Shram, ONORC, EPFO, ESIC, must have open Application Programming Interfaces (API) standards and developer documentation. This makes it possible for EPFO, labor departments, state welfare boards, and other stakeholders to work together, which makes it easy to share data for quick claims

[81] *Supra* note 58.
[82] *Supra* note 61.
[83] *Supra* note 55.
[84] Min. of Consumer Affs., Food & Pub. Distrib., Gov't of India, *One Nation One Ration Card (ONORC) Plan*, https://www.data.gov.in/catalog/one-nation-one-ration-card-onorc-plan.
[85] K.R. Shyam Sundar, *E-Shram: Still A Long Way Ahead*, IMPRI Impact & Pol'y Rsch. Inst. (Aug. 26, 2021), https://www.impriindia.com/insights/e-shram-long-way-ahead.

processing and portability. Standard APIs let third-party verifiers (CSOs, aggregators, employers) confirm UAN/eligibility while preserving personal information, enabling greater transparency in benefit administration. It's crucial to offer offline Fallback mechanisms (manual ePoS and biometric or other ID alternatives) at FPS and kiosks for diasporic and circular migrants who can't conduct full KYC online. This way, they can still get their rations and social security benefits even if they can't connect to the internet. The government's open API and e-governance frameworks already give a technological model.[86]

2. **Data Protection, Minimal Collection & Consent Protocols**- A sustainable migrant welfare architecture requires data privacy protections, especially when initiatives like e-Shram and ONORC use massive Aadhaar-linked datasets. Workers are routinely requested to supply comprehensive personal and biometric information without knowing how it will be used, kept, or shared. To reduce profiling and exclusion, the state should acquire the data needed to give benefits. All welfare databases must include informed consent processes upon registration to educate workers of their rights to opt-out or limit data use. Before making any dataset public, authorities should de-identify and anonymize information to avoid misuse and allow openness and policy study. Under the National Data Sharing and Accessibility Policy (NDSAP)[87], ministries shall publish a Data Availability Statement explaining what data is gathered, who may access it, and how long it will be kept. Last, a data abuse grievance process with consequences for breaches would create trust among digitally disenfranchised workers. India may promote worker dignity and data sovereignty while improving welfare delivery by including these safeguards

[86] MIN. OF ELECS. & INFO. TECH., GOV'T OF INDIA, Open API Policy for e-Governance Applications in India (May 2023),https://egovstandards.gov.in/sites/default/files/2023-05/Open%20API%20Policyfor%20e-Governance%20Applications%20in%20India.pdf.

[87] MIN. OF SCI. & TECH., GOV'T OF INDIA, *National Data Sharing and Accessibility Policy*, https://dst.gov.in/national-data-sharing-and-accessibility-policy-0.

within the Social Security Code and following international data governance standards like ILO labour migration data recommendations.[88]

5. Conclusion

The study underscores how the perception of migrants as "outsiders" by employers, local governments, and even the wider public reinforces their status as disposable labour. They are hired when convenient, discarded during downturns, and excluded from decision-making owing to their lack of political and social capital.[89] While ONORC has enabled food security portability, similar mechanisms through the e-Shram UAN must extend to accident insurance, maternity benefits, pensions, and welfare board entitlements. Effective monitoring requires risk-based audits that track benefit conversion and grievance resolution across gender, caste, and migration corridors. We need to determine if the registrations are actually leading to real benefits and effective dispute resolutions for migrants. This goes beyond just aligning current laws; it calls for a complete rethinking of governance, citizenship, and the intrinsic value of labour itself.

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[88] Int'l Labour Org., Safety and Health in Construction Convention, June 20, 1988, C184, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31235.

[89] Ashima Sharma, *How India's Migrant Labour Struggles During a Crisis*, Policy Circle (June 19, 2025), https://www.policycircle.org/opinion/migrant-labour-indian-laws/.

THE OVERLOOKED EXODUS: ANALYSIS OF LEGAL FRAMEWORKS ON CLIMATE REFUGEES IN INDIA

Gitanjali R Vani*
Vedaanti Bakshi**

1. Sundarbans in the Summer of 2035: A Wilderness Being Washed Away

The following fictionalized first-person narrative aims to illustrate and introduce the effect of climate change on the people of Sundarbans, resulting in a wave of climate induced migration.

On a bustling Friday of Summer of 2035, amidst the towering concrete grooves of the IT hubs, following relentless weeks of being buried beneath cascading deadlines and the nods of ceaseless obligations, I paused, the weight of exhaustion weighing heavier than the folders on my desk, and after a quiet thought, I declared, "It's time I find a sanctuary away from this hustle—I owe myself the peace of distant scenery." In the moment of stillness, I was hit by an epiphany of witnessing the Royal Bengal Tigers. Driven by impulse, I kickstarted my trip to the Sundarbans, an abode to the endangered species of the Royal Bengal Tigers, nestled within the Ganges delta.

As I strolled through the verdant expanses of the Sundarbans, I encountered an individual whom I initially mistook for a fellow tourist. On initiating a conversation, I realised that he was a resident who was visiting his former hometown. I curiously bombarded him with my urban questions. His response was filled with aghast as he described that back in the 2010s, the Sundarbans was a home to around hundred Royal Bengal tigers, the number now being reduced to a meagre figure of ten. He further

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went on to recall the days when Sundarban spanned about 10,200 square kilometres across West Bengal, this UNESCO World Heritage Site was once home to the largest tidal halophytic mangrove forest.[1] Whilst boasting about his rich roots, he was overcome by a palpable wave of sadness, he went on to emotionally explain that the enchanted beauty of the Sundarban was hit hard by the curse of climate induced migration. The magnificent mangroves succumbing to rising sea levels, around 60,000 being rendered homeless, more than half the population displaced and compelled to seek refuge. Since more than 50% of Sundarban's population falls under the Below Poverty Line, the homeless people have been forced to move out to other cities and states making them more *at-risk* to unemployment, health-risks, falling back on exploitative jobs etc. He further went on to explain that in the past Sundarbans had been hit by multiple cyclones, which had a devastating impact on the deprived population. The occurrence of cyclones has starkly increased by 26% between 1881 and 2001 and scientific projections indicate a further 50% rise in cyclone occurrences by 2041-60.[2] This has escalated the migration rate. Gazing across at the scenery, he shared that the islands of Sundarbans are gradually bidding adieu and many have already submerged. The people of Sundarbans, who were once companions of the Royal Bengal Tigers have now become guests in their own land. They have been robbed of their communalism and cultures, let alone their homes.

The conversation was suddenly interrupted by a silly tune and I woke up from a nightmare, sweating and fretting. I reached for my phone and switched off the alarm. The voyage to the Sundarbans which was made on the pretext of a getaway from work and a rejuvenating retreat, my new friend, the low numbers of the Royal Bengal Tigers was just a dream— a creative manifestation of my subconscious brain while I slept. At first, I was relieved at this bittersweet revelation, but I fell into a dungeon of sad thoughts. Thoughts of alarm and worry began to cloud my head. My

[1] *Loss and Damage in the Sundarbans*, ZERO CARBON ANALYTICS (Oct. 28, 2021), https://zerocarbon-analytics.org/archives/justice/loss-and-damage-in-the-sundarbans.
[2] *Id.*

nightmare was a warning and a calling of the people of Sundarbans and many other climate refugees across India. I realised that for people who live in the cities, a cyclone doubles as a few days off, posing merely as a minor disruption. However, this is not the situation for the residents of Sundarbans and other environmentally sensitive zones. A cyclone in Sundarbans is followed by a series of more disasters and serves as a demon hungry for homes, lives and lands, eventually compelling the people to migrate out of their homelands. It was more than a mere nightmare, it was a wake-up call and a message that the time to act against the slow-beast like climate migration is NOW !

The above-mentioned case might have been a fictional narrative but India in real-time is experiencing climate induced migration leading to population displacement across diverse ecological zones.

2. The Widening Footprint: Examining the Extent through Examples

Contemporary migration has been complex and diverse, constantly being associated with various emerging facets. Since the late nineties migration has been closely associated with climate change, particularly due to sea level rise, coastal flooding and changes in occurrence and frequency of natural disasters.[3] As the impacts of climate change severe across the world, India finds itself at the epicenter of the upheaval. India is demographically and geographically susceptible to climate induced displacement due to rising sea levels, desertification and drought affecting regions like West Bengal, Odisha and Gujarat and Rajasthan and Maharashtra respectively. [4] India has seen the highest rate of disaster displacement in South Asia and ranks one of the highest even globally.

[3] *Climate Migration: Unravelling the Nexus Between Climate Change and Migration With an Intersectional Focus*, CENTER FOR STUDY OF SCIENCE, TECHNOLOGY AND POLICY, (May. 11, 2025), http://www.indiaenvironmentportal.org.in/files/file/Climate%20migration.pdf

[4] Bushra Ali Khan, *Addressing the Legal Void: The Urgent Need for India to Revise Its Laws for Climate Migrants*, SCHOOL OF ADVANCED STUDY UNIVERSITY OF LONDON, (Aug. 24, 2024), https://rli.blogs.sas.ac.uk/2024/08/28/addressing-the-legal-void-the-urgent-need-for-india-to-revise-its-laws-for-climate-migrants/.

Roughly 3.6 million get displaced every year across the country due to heavy monsoons.[5] States like Assam and Bihar witness recurring floods that force seasonal or permanent migration, while the Sundarbans region has seen mass displacement due to land salinization caused by cyclones like Aila and Amphan. Similarly, desertification in Rajasthan and sea-level rise along the eastern coast have pushed communities to abandon traditional livelihoods. This phenomenon does not limit its impact to rural India alone but is deeply intertwined with urban dynamics, as climate stress increasingly forces populations to abandon environmentally fragile areas and settle in urban peripheries.[6] In Odisha, for example, migration from coastal districts affected by sea-level rise and cyclones has significantly increased the population of urban slums in Bhubaneswar. Similarly, people from drought-prone areas of Rajasthan and Maharashtra have moved to cities like Mumbai and Delhi in search of work, often ending up in congested, hazardous living conditions.[7] As climate change continues, the number of displaced people is expected to rise. Despite the scale of the issue, there is a lack of official recognition of climate migrants, and current urban planning mechanisms do not account for their presence or needs. Without legal recognition and institutional support, climate-induced displacement will continue to present major humanitarian and geopolitical challenges. Initially, there was minute perceived interrelatedness between climate change and migration. However, in recent years, as climate change has become an undeniable reality, its consequences have begun to surface, gradually making their way into the political discourse.

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[5] *Global Report On Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CENTRE, (Apr. 2020), https://api.internal-displacement.org/sites/default/files/publications/documents/2020-IDMC-GRID.pdf.

[6] *Climate-Induced Displacement And Migration In India*, CLIMATE ACTION NETWORK SOUTH ASIA, (Jan. 2021), https://cansouthasia.net/wp-content/uploads/2021/02/Migration_India_20_02_2021.pdf.

[7] *Id.*

3. The Emergence of Climate Migration as a Global Concern

The symbiotic relationship between climate change and migration leading to social insecurity was predominantly observed by US President Barack Obama way back in 2016 as part of the "Climate Change and National Security" memorandum.[8] The memorandum viewed climate change as a *threat multiplier* as it could play an instrumental role in pushing weaker communities in ecologically sensitive regions to a worse state.[9] The memo required federal actors to be sensitive towards the aspect of climate change and its impacts while developing policies and plans.[10] However, the memo was revoked by the Trump administration, nonetheless, the issue of climate migration made its way into mainstream politics.

Ama Francis, the strategist at the International Refugee Assistance Project (IRAP) — a body that provides refugees with legal aid, litigation, policy advocacy, media advocacy, and information of rights, defined climate displacement as movement, partly as a result of climatic disasters, including sudden and slow-onset disasters, either temporary or permanent, domestic or international.[11]

The United Nations defines climate migration as "the movement of a person or groups of persons who, predominantly for reasons of sudden or progressive change in the environment due to climate change, are obliged to leave their habitual place of residence, or choose to do so, either temporarily or permanently, within a State or across an international border". It is further categorized as a subcategory under environmental

[8] Seth Borenstein, *Obama Warns of Mass Migrations if Climate Change Is Not Confronted*, Sci. Am. (Sept. 21, 2016), https://www.scientificamerican.com/article/obama-warns-of-mass-migrations-if-climate-change-is-not-confronted/.
[9] Maria Gallucci, *Climate Change Is Already Driving Mass Migration Around the Globe*, NAT. RES. DEF. COUNCIL (Nov. 2, 2021), https://www.nrdc.org/stories/climate-change-already-driving-mass-migration-around-globe.
[10] Presidential Memorandum, Climate Change and National Security, 2016 Daily Comp. Pres. Doc. 1 (Sept. 21, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/09/21/presidential-memorandum-climate-change-and-national-security.
[11] *Supra* note 8.

migration as the environmental change is caused by climate change.[12] The UN Framework Convention on Climate Change (UNFCCC) in the 2010 Conference adopted the Cancun agreements which identified three forms of "climate change induced" movement: displacement, migration, and planned relocation.

The influence of the environment on the conception of human migration can be perceived as both benefit or threat, the former can be observed when certain environmental conditions attract locals and the latter case can be seen when locals' lives are adversely impacted forcing them to flee causing displacement.[13] The positive impact can be grasped through understanding of the population increase in the American sun-belt states in the past few years. The year-round pleasant climate of these zones have attracted migrants from northeasterns and midwestern states.[14] Therefore the spectrum of environment's influence on migration is wide, spanning from timescale of conditions, pattern of responsive migrations, nature of conditions to the intensity and frequency of the occurrence. However, the adverse impact of natural conditions on people's lives is the dominant trend in recent years, causing climate migration to become an important yet an overlooked concern. Groups of people who are compelled to leave their homes and communities because of the effects of climate change and global warming are referred to as climate refugees.[15]

Astonishingly, the class of climate migrants still fails to be formally defined. The 1951 Refugee Convention only recognizes as refugees a class

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[12] Int'l Org. for Migration, *Environmental Migration*, IOM ENVIRONMENTAL MIGRATION PORTAL, https://environmentalmigration.iom.int/environmental-migration (last visited May 12, 2025).

[13] Everett S. Lee, A Theory of Migration, 3 Demography 47, 49–54 (1966).

[14] U.S. Census Bureau, *Cumulative Estimates of Population Change for the United States, Regions, States, and Puerto Rico and Region and State Rankings: April 1, 2000 to July 1, 2008*, at 1–2, https://www.census.gov/popest/states/NST-pop-chg.html (last visited May 13, 2025).

[15] Nat'l Geographic Soc'y, *Environmental Refugee*, NAT'L GEOGRAPHIC EDUCATION (Apr. 30, 2024), https://education.nationalgeographic.org/resource/environmental-refugee/.

of persons persecuted on the basis of their race, religion, nationality, affiliation to a particular social group or political opinion, who are unable or unwilling to seek asylum in their home countries. Additionally, it lacks a clear definition of what constitutes a climate refugee. This implies that, despite its widespread and severe impacts, climate change is still not recognized as a sufficient basis for migration and cannot currently serve as grounds for claiming asylum or refugee status. However, the beam of hope shined brighter for climate refugees when Ioane Teitiota, a Kiribati national from the Pacific, brought a case against the government of New Zealand at the UN Human Rights Committee in 2016 after authorities denied his claim of asylum as a ‘climate refugee’. Forced to flee from his home country due to lack of safe drinking water and persistent agricultural challenges, his application for the ‘Refugee Status’ in New Zealand after the expiration of his visa, was rejected by the Immigration and Protection Tribunal, the Court of Appeal and the Supreme Court of New Zealand. He subsequently brought his case before the UNHRC on the grounds that New Zealand had violated his right to life under the International Covenant on Civil and Political Rights, by deporting him to Kiribati. The case emerged as a global precedent as the UN Human Rights body ruled that states must take into account the human rights violations caused by the climate crisis when considering deportation of asylum seekers.[16] Although Ioane’s stance faced significant backlash and raised several unanswered questions - such as how imminent a threat must be to justify action against the climate crisis, or whether the danger must be direct or indirect - it also sparked extensive debate within the human rights paradigm. Nonetheless, his story resonated globally and served as a powerful reminder for countries to respond sensitively to the urgent issue of climate migration.

To this, during a hearing of the European Economic and Social Committee, Isabel Borges, professor and researcher at the Norwegian

[16] *UN Landmark Case for People Displaced by Climate Change*, AMNESTY INT’L (Jan. 20, 2020), https://www.amnesty.org/en/latest/news/2020/01/un-landmark-case-for-people-displaced-by-climate-change/.

Business School and University of Oslo remarked: "The absence of an accurate definition of climate migrants has resulted in the inability to measure exactly the number of existing and potential displacement flaws". Logically, a 'climate refugee' definition should be composed of key terms like: forced migration, temporary or permanent relocation, movement across borders, disruption consistent with climate change, sudden or gradual environmental disruption, and a more than likely standard for human contribution to the disruption.[17] Furthermore, Principle 1 of the 1972 Stockholm Declaration states that there is "a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."[18] The Stockholm Declaration notes interdependence and relation of human rights and the environment. Being undefined, shoves the already-vulnerable class of climate migrants further down the cliff of ignorance and vulnerability. It subjects them to the state of no recognition and a turmoil of legal limbo as they wander in search of protection.

4. Institutionalising Climate Migration: Unveiling Legislative and Constitutional Responses

As one of the largest and diverse landmasses geographically, India is highly susceptible to climate induced migration and is also among the most favourable nations for climate displaced individuals.[19] Multiple surveys and reports including the World Bank's report 'Groundswell-Preparing for Internal Climate Migration' warns that about nearly 1.5 million people are said to be internally displaced each year due to harsh climate conditions in India. Such data evidences the urgency for the necessity of adequate legal framework in the country. India lacks a comprehensive national legislation concerning refugee protection and

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[17] Bonnie Docherty & Tyler Giannini, Confronting a Rising Tide: A Proposal for a Climate Refugee Treaty, 33 HARV. ENVTL. L. REV. 349, 372, 385 (2009).

[18] Report of the U.N. Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972).

[19] Megha Gautam, *Climate Refugees: A Global Environmental and Legal Crisis*, 18 SUPREMO AMICUS 507, 510 (2020) https://supremoamicus.org/wp-content/uploads/2020/06/A1v18-58v18.pdf.

specifically for climate induced migration. Even in the existing international arrangements, The 1951 Refugee Convention, to which India is not a party to, and the subsequent 1967 Protocol restrict the definition of persecution to five grounds: race, religion, nationality, membership of a particular social group and political opinion. Articles 14 and 21 of the Indian Constitution, which extend the right to life and equality to all persons regardless of citizenship, remain the sole legal recourse available to refugees in India, these protections though are the supreme constitutional safeguards remain very broad and lack the specificity required to address the unique vulnerabilities of climate-induced displacement. The Indian government has made multiple attempts in the form of the - The National Asylum Bill 2015, The Asylum Bill 2015 and The Protection of Refugees and Asylum Seekers Bill, 2015 to address the legal vacuum in protection of refugees but has failed to incorporate the emerging issue of climate migrants. The Citizenship Amendment Act of 2019 is one of the rare codified and existing provisions on refugee protection in the nation. [20] With no dedicated legislation outlining refugee rights or procedural norms, the existing system operates through a patchwork of ad hoc administrative decisions and sporadic judicial enforcement of constitutional protections.[21] This fragmented approach has recently seen some constitutional reinforcement in March 2024, where the Supreme Court in ***M.K. Ranjitsinh v. Union of India*** affirmed that individuals have a right to be protected from the adverse impacts of climate change under Articles 21 and 14, further emphasizing that such protection must be balanced with the rights of affected communities, including safeguards against displacement and related entitlements but the necessity of a formal legal framework cannot be ignored for long.[22]

[20] *Id.*
[21] Saurabh Bhattacharjee, *India Needs a Refugee Law*, 43 ECON. & POL. WKLY. 71, 73 (2008).
[22] M.K. Ranjitsinh v. Union of India, (2024), AIRONLINE 2021 SC 209 (India).

The National Disaster Management Authority acknowledges displacement but lacks proper policy mechanisms to tackle financial and social burdens of climate migrants. While the current frameworks are evidently insufficient, a few steps have been duly taken to mitigate the counter effects of climate migration.

An attempt of legislative enforcement was made in 2022 by Pradyut Bordoloi, a Member of Parliament from the Eastern region of Assam, who introduced the Climate Migrants (Protection and Rehabilitation) Bill as a Private Member's Bill. It aims to provide a legal framework for the protection and rehabilitation of individuals displaced due to 'climate disasters'. The bill emphasized broadly three aspects i.e rehabilitation, resettlement and relocation of the migrants by providing lands in safe regions, one time grants and payments. It further proposed the creation of a National Committee to oversee policies and coordinate relief efforts, with state-level agencies and local facilitation centres to monitor migration. The National Committee with an able leadership would be responsible for formulating laws on climate migrants. Financial security of the displaced was to be looked after by the proposal of establishment of a fund with an initial corpus of 1,000 Crore. The bill also aimed for coordination between districts, states and the central agencies as well as various other departments. Furthermore, it encouraged infrastructural preparedness in the form of hospitals as well as educational institutions. Although the bill failed to obtain the house's approval and collapsed, nonetheless, it served as a sign of political willingness to provide recognition to climate migrants. As the first initiative tailored for climate migrants, the bill underscores a sense of criticality but is hindered by significant shortcomings. The bill has systemic flaws which question its on-ground effectiveness. Foremostly, the bill falls short in providing a distinct status to climate migrants and leaves them without any special safeguards despite their 'at risk' situation. The bill successfully provides for compensations and schemes, leaving the migrants as mere welfare beneficiaries. Furthermore, the bill fails to provide a crisp and clear definition of the term climate migrants, leaving it vague as to who qualifies to receive the support. The bill also doesn’t provide a concrete distinction between slow-onset and sudden-onset disasters, despite both the categories requiring completely different approaches. Additionally, the decided initial corpus of 1,000 Crore appears arbitrary, with no clear calculation underpinning this amount. The bill doesn’t explicitly provide safeguards to marginalized classes of migrants like women and children. The bill simply sheds light on data collection and hospital building for women and children and doesn’t focus on anti-discriminatory and anti-exploitative measures. In terms of financial mechanisms, the bill gives an unclear criterion for determining land and payment compensation to the aggrieved. As a set of constructive suggestions, the bill should’ve integrated the Public Distribution System (PDS) to ensure sustainable access of food to the displaced population. Furthermore, the bill should’ve highlighted the need for stringent redressal mechanism systems to address violations faced by migrants in accessing rights and facing discrimination. Lastly, the bill should have mandated regular surveys to continuously supervise and assess climate affected groups, their socio-economic struggles, migration patterns, triggering factors etc. Thereby the need of a sensitively and clearly curated tailored framework to regulate climate migration is necessary.

5. Towards a Comprehensive Policy Framework

An immediate mechanism for rehabilitation, coupled with a firm commitment to reversing or mitigating the harmful effects driving climate-induced migration, must form the cornerstone of any comprehensive framework. Foremostly, climate migration as an exodus needs to be recognised. Secondly, a proper framework in place should be provided, with financial relief, shelter, medical help and other subsidies required to rebuild one’s life and re-assimilate them into the society. Thirdly, the framework must go beyond short-term promises and be grounded in a comprehensive, long-term strategy focused on the rehabilitation and sustained support of climate refugees. Climate change is an ongoing and a continuous phenomena that requires constant monitoring for appropriate response, hence regular surveys ought to be conducted. The policy against climate migration must be distinct from mainstream disaster management approaches and is required to be rolled out in phases, along with an establishment of a National Commission responsible to conduct regular surveys to plot vulnerable regions and communities along with a timeline and degree of danger. Depending on the severity of every *at-risk* region, infrastructural development like mobile hospitals, medical units, training of locals, education centers etc. should be encouraged. A planned relocation is another key facet that can prevent unstructured migration and allow individuals to be in the right frame of mind to make informed decisions about reshaping their lives. This process could be initiated by the NDRP, paramilitary and armed forces or other capable authorities. Finally, the final phase should include 3REs : REscue, REbuild and REhabilitate. These three components may be adapted based on region-specific attributes and vulnerabilities. This limb shall aim to restore the ecological and sociological losses of affected areas based on the assessment.

The aforementioned suggestive policy plan relies heavily on cooperation — amongst states, between state and centre, within government agencies, government agencies and private sector like think tanks, academicians and NGOs. The 1999 Super Cyclone in Orissa stands as a crucial lesson in the importance of coordination during climate disasters. It was openly held that there was lack of coordination and transparency among NGOs and between NGOs and the government during relief operation and rehabilitation.[23] The analysts further discovered that NGOs were 13 days late in distributing as they failed to utilise the established networks established by Panchayati Raj Institutions (PRIs). This highlights the need to strengthen collaboration between grassroots governance and civil society for effective disaster response. The government's vision of *Sabka Saath*, *Sabka Vikas* ("Together with all, development for all") aligns with this idea, emphasizing collective progress through cooperation. In Orissa's case, rehabilitation was made possible through support from over 120

[23] KISHOR C. SAMAL, SHIBALAL MEHER, NILAKANTHA PANIGRAHI & SRIKANTA MOHANTY, STATE, NGOS AND DISASTER MANAGEMENT (RAWAT PUBLICATION 2005).

NGOs, 12 state governments, and international bodies like the UN. Additionally, the World Bank also garnered assistance. Orissa endeavoured rehabilitation through NGOs, international support, Prime Minister's Relief fund and Natural Fund for Calamity Relief.[24] However, effective communication can only act as a directive, proper distribution of relief can be ensured only via consistent surveys. The surveys shall serve as instruments for 'identification'. The surveys shall be meticulously devised based on recognised indicators and dimensions helping state-NGOs in discerning the severely, moderately and mildly affected categories of population.

Essentially, in order for a policy to be effective against climate migration, it should also adopt a decentralised approach. As per a study on disaster management and response of welfare agencies on 1999 Super Cyclone in Orissa, crisis in state leadership delayed delivery mechanism of distribution of basic relief materials and exhibited bureaucratic carelessness. The study suggested that the emergency plan at Gram Panchayat level appeared as the only feasible solution to minimise damage at time of such catastrophes.[25]

The rescue plans should be adapted to address the intersectional insecurity of groups such as women, children, elderly, and persons with disabilities, who are among the most *at-risk* in the context of climate migration. The United Nations Population Fund found the depleted condition of women's reproductive health after typhoon Haiyan in the Philippines.[26]

The aforementioned recommendations, if incorporated into climate refugees policy frameworks, can contribute to the implementation of just

[24] Government of Orissa, White Paper on Super Cyclone, Revenue Department, Bhubaneswar (2000).

[25] Panigrahi, Nilakantha (2000). Super Cyclone in Orissa: Response of Welfare Agencies for Relief, Rehabilitation and Reconstruction, Occasional Paper No. 51, NCDS, Bhubaneswar.

[26] Medical Teams Start Providing Services to Pregnant Survivors of Typhoon Haiyan, UNFPA (Nov. 19, 2013), https://www.unfpa.org/press/medical-teams-start-providing-services-pregnant-survivors-typhoon-haiyan.

and effective mechanisms that uphold human rights and ensure the protection of migrants. These suggestions lay a strong foundation for a long-term course of action. The time for discussion has passed—constructive dialogues must now result into decisive actions. It is imperative that climate migrants are recognized, protected, and rehabilitated, rather than being left in a legal black hole.

6. Conclusion

Just as the submerged lands of Sunderbans whisper the tales of displacement and disappearing identities, what was once a distant warning has now become an undeniable reality. Climate change is not only claiming ecologically sensitive regions, but also displacing homogeneous communities, sweeping away homes, and pushing people into a legal limbo and climate induced migration no longer remains a theoretical concept; it is a lived reality with thousands being uprooted from their ancestral lands due to climate disasters. Despite the growing scale of the crisis both nationally and internationally, there remains an absence in recognition of climate migrants, leaving them without protection or access to basic rights. While efforts like the 2022 Climate Migrants Bill show progress, they lack enforceability, clarity, and inclusivity. To respond effectively, India must urgently institutionalize a comprehensive legal framework that defines, safeguards, and rehabilitates climate migrants. The need of the hour is recognition, representation, and reform — right from the definitional void that leaves climate refugees protectionless and results in their exclusion from refugee protection to the requirement of a global consensus. There exists a dire need for an international framework that formally recognizes climate migrants, outlines state responsibilities, and ensures cross-border cooperation. It is only through this global effort can we move from ad hoc responses to structured protection, and ensure that those displaced by climate change are treated not as collateral damage, but as rights-holding individuals worthy of dignity and justice. An international framework becomes indispensable as it can establish a uniform definition, clarify legal status, and create binding obligations on states to recognize and protect climate-displaced persons. Such a framework would also promote equitable burden sharing among nations and encourage harmonized proactive approaches to the exodus. Lately, the international community has been emphasising on responding proportionately to climate change and its effects.

The alarming impact of climate change on homelessness and mobility is often underestimated. The issue rarely finds a way into debates, discussions, policy plans, manifestos which blemishes the hardships of climate migrants. Domestically, most of the countries have a wandering class of climate refugees, which makes climate refugees both an international as well as a national issue and both the classes deserve rehabilitation and a decent standard of living conditions. This global nature calls for an integrated and cooperative approach amongst countries. Seamless regulation of climate migration requires strategically relevant mechanisms in place at domestic and international levels. Therefore, creation and implementation of legally-binding frameworks is of utmost priority to - if not to reverse the impacts, then at least contain them. In recent years, the wave of counteracting against climate migration seems to have reached India. From courts urging the authorities to take actions to legislative measures being taken, the holistic willingness to respond to the issue is reflected. However, climate migrants roam aggrieved and homeless, knocking on the gates of bigger cities, attempting to rebuild their lives.

The findings of this research underscore the urgency of addressing the increasingly precarious conditions faced by climate-induced migrants. This issue can no longer be marginalized or overlooked. The voices of those displaced by climate-related events call for justice through the establishment of comprehensive and coordinated support mechanisms, including legally enforceable frameworks, policies, and legislation at the regional, national, and international levels. The alarming data surrounding climate displacement serves as a critical impetus for policymakers to formally recognize climate-induced migration as a significant humanitarian and developmental challenge. In countries such as India, where climate migration is on the rise, the implementation of robust, legally binding national frameworks is essential. Such measures must ensure the provision of fundamental rights and protections, including access to safe housing, healthcare, education, and legal redress, thereby safeguarding the dignity and well-being of displaced populations.

RELATIONSHIP BETWEEN TEACHING STYLE AND THEIR EFFECTIVENESS ON CLASSROOM ARRANGEMENT AMONG HIGH SCHOOL TEACHERS: A COMPARATIVE CASE STUDY

Sada Warsi*

1. Introduction

The learning environment within the secondary school classrooms is affected not only by the official curriculum but also by the various ways teachers interact with their students to manage the physical environment. Classroom arrangement, which has been presented in this research as the deliberate organization of desks, educational aids, the passage for movement, and areas for interaction, has a very important, but often underestimated, role in pinpointing the ways in which students learn, talk to each other, and get involved in the educational process. The manner in which the physical space is configured conveys as one of the less explicit, yet still influential, communication channels, thus giving the learners environment behavioral, collaboration, and authority regulations, among others, indirectly (Weinstein, 1979).

Just as much, and conceptually before the spatial decision making, is the teacher's teaching style which, in essence, denotes a unified and consistent pattern of instructional conduct, central values, decision-making logic, and student-engagement practices (Grasha, 1996). Through different viewpoints, teaching practices can be presented as a spectrum ranging from teacher-centered (e.g., Expert, Formal Authority) to student-centered (e.g., Facilitator, Delegator) with an option of being balanced by Democratic, Laissez-Faire and Hybrid styles.[1] Each of them results in the formation of particular ways in which classes can be managed, and at the same time, involves learners in organizing the learning process. It is quite fascinating to learn how profoundly ingrained teaching behaviors are in influencing the consideration given to the space in the classroom.

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[1] C.S. Weinstein, The School's Physical Environment: A Review of the Research, 49 REV. EDUC. RES. 577, 577 (1979).

Delving into the connection of teaching styles and classroom arrangement is a key aspect that concerns the possibility of developing learning outcomes, students' participation and teachers' efficiency to a large extent through achieving functional alignment. Pupils of high school age who are at a very important stage of both their intellectual and socio-emotional maturation, derive great advantages from learning settings that configure pedagogical congruence, i.e. where instructors' goals are technically supported by the physical space. The situations when, for example, a collaborative learning activity is difficult to be implemented properly due to a spatial configuration that is overly rigid and lecture-focused, instructional friction, reduced student autonomy, and loss of time that could have been used either for managing the furniture or for the content are usually the outcomes.[2]

1.1. The Classroom as the "Third Teacher"

Contemporary pedagogical perception gives precedence to the physical environment as one of the teaching instruments, and sometimes referred to as the "third teacher" (Harvey, 2002). The idea signifies the classroom not just as a space where learning takes place, but also as a third-level participant that facilitates or restricts instructional practice.[3]

1.1.1. Spatial Organization and Proxemics

The pattern of the space directly affects proxemics, which is the study of the ways human use space during their communication (Hall, 1966). The teacher and the students as a group, the distance and orientation between them are the elements which are influenced by the desk layout and resource placement. It seems that in high school, where we talk about the very delicate balance between the concentration on an individual and the development of collaborative skill, we have a strategic decision for controlling proxemics which is:

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[2] ANTHONY F. GRASHA, TEACHING WITH STYLE: A PRACTICAL GUIDE TO ENHANCING LEARNING BY UNDERSTANDING TEACHING AND LEARNING STYLES, ALLIANCE PUBLISHERS (1996).

[3] Stephanie Harvey, The Environment as the Third Teacher, 14 Early Child. NEWS 24, 24 (2002).

1. Formal Distance: The distance here is maintained by Rows/Columns arrangements. The distance between peers is maximized thus you have a clear hierarchy established. It supports Teacher-Centered instruction.

2. Social/Intimate Distance: It is a distance that is maintained by Clusters or U-shapes. The non-verbal cues and necessary peer negotiation can be done easily because of the closeness hence it supports Student-Centered instruction.

A teacher's style is like the invisible hand that picks the best proxemic strategy and decides the physical layout of the room which is the visible manifestation of their deeper philosophy of interaction and control.[4]

1.1.2. Alignment with Psychological Needs

The basis of efficient spatial organization of a learning environment has to be linked with the psychological needs of the students. The latter are properly embodied in the three psychological needs, namely, Autonomy, Competence, and Relatedness, identified by the Self-Determination Theory (SDT) (Deci & Ryan, 2000). For instance, a classroom designed and arranged by a Delegator teacher ought, via space, to communicate autonomy as students will be able to easily and separately access the resources besides exercising their own choices with regard to the place and method of work. Conversely, the arrangement that requires not only the teacher's permission but also the active assistance of a teacher to move and get materials will be a sure way to hinder autonomy irrespective of the teacher's supposed cooperative goal. It is, however, recognized here that the Efficiency of Classroom Arrangement first and foremost depends on how well the space becomes a source of these psychological conditions necessary for the deep learning as defined by the teaching style.[5]

1.2. Statement of Theoretical and Practical Problem

Much has been written on classroom management, teaching effectiveness, and pedagogical style. Nonetheless, there is still a great deal of theoretical

[4] E.L. Deci & R.M. Ryan, The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior, PSYCHOLOGICAL INQUIRY VOL. (2000).
[5] *Id.*

ambiguity about how a particular consistent teaching style can directly and through mediators impact the functional effectiveness of the classroom spatial organization of high school educators.

1.2.1. The Problem of Decoupling

Usually, educational research depicts the teaching style as an internally defined behavioral set and classroom arrangement as an externally defined logistical constraint (Wolk, 2008). This separation overlooks the need for intrinsic alignment between the two. The practical problem arises when:[6]

1. Misalignment by Constraint: Contextual factors in the institution, such as large class size, fixed furniture in an urban public school, may force a student-centered teacher with a strong facilitation style to adopt a teacher-centered classroom arrangement thereby causing an instructional contradiction.
2. Misalignment by Inertia: A teacher who has undergone a change in style but hasn't changed their physical space, ends up with a static arrangement that is optimized for an outdated style thus causing a decrease in effectiveness and instructional friction.

In this paper, a conceptual framework is established which integrates the above-mentioned variables and allows a rigorous examination of the conditions upon which a given spatial design either enhances or hinders the potential of a given teaching style.

1.3. Purpose, Scope, and Theoretical Framework

The most important objective of this theoretical article is to develop an elaborate conceptual structure based on the expected interplay among high school teaching styles, the efficiency of classroom arrangement, and teacher adaptability and context variables acting as the mediators.

1.3.1. Scope and Theoretical Approach

The comparative theoretical approach will be employed for the investigation of the five fundamental educational approaches: Teacher-

[6] S. Wolk, School as Inquiry, 90 PHI DELTA KAPPAN 115 (2008).

Centered, Student-Centered, Democratic, Laissez-Faire, and Hybrid/Adapt. Additionally, the analysis considers the significant impact of the institutional setting by contrasting, on a hypothetical basis, four completely different high school types (Urban Private, Urban Public, Rural Private, Rural Public) thus, providing a thorough examination of how resource availability and cultural norms affect spatial implementation.

1.3.2. Conceptual Model Overview

In the associated Flowchart, a conceptual model is depicted which organizes the processes in a sequential order and names the relationships as follows: The Style of Teaching defines how the Design of the necessary Arrangement is to be utilized; thus, an improved Learning Environment results. The teacher's reactive skill, Teacher Adaptability, actively determines the whole process while Contextual Factors limit it. The resulting effectiveness of classroom arrangement is next correlated with positive student engagement and learning outcomes (refer to Flowchart 1 in Section 3). The functional match that this model brings forth is the core idea of the teacher space harmony.

1.4. Research Questions and Conceptual Hypotheses

With the help of the theoretical schema, this article aims to find answers to the following main research questions that are directly linked to the proposed relationships within the conceptual model:

1. Alignment Question: What are the predicted direct relationships between each major high school teaching style (Teacher-Centered, Student-Centered, Democratic, Laissez-Faire, Hybrid) and the most functionally aligned classroom arrangement types (Rows/Columns, Clusters, U-Shape, Variable)?
2. Effectiveness Question: What is the situation of the perceived effectiveness of a classroom arrangement, which is first theorized from the spatial alignment with the teacher's style especially in study engagement and disciplinary control anticipated aspects?
3. Mediation Question: How do the variables of Teacher Adaptability (skill in style and space shifting) and Contextual Factors (resource

availability, class size) theoretically mediate the relationship between teaching style and arrangement effectiveness across diverse school types?

4. Comparative Question: What are the key theoretical differences in spatial implementation and expected alignment effectiveness when comparing high school classrooms in resource-rich settings (Urban/Rural Private) versus resource-constrained settings (Urban/Rural Public)?

1.5. Significance of the Paper

The paper is an exemplary work in itself, as it lays down an easily accessible paradigm by intertwining teaching style, space, and context into one framework that is exemplary in itself. From being only descriptive, it enters into an empirical level of defining a stage where functional congruence can be tested by forthcoming empirical studies. The work broadens the use of proxemics & psychological need satisfaction (SDT need theory) into overt aspects of arrangement efficacy.

1.5.1. Practical Significance for Teacher Training and Policy

It is here that the conceptual framework, with the insights that it has, offers the benefits directly to the stakeholders that they can act upon.

1. Teacher Training: First, the model requires the staff to be trained in Spatial Design Thinking and Alignment Diagnosis, which is one of the professional development compulsory elements. Following the data from the matrices Tables 2 & 4, the teachers have been empowered to be more criticalistic in their appraisal of whether their working spatial arrangement has been facilitating or impeding their teaching objectives.
2. The Administration and Educational Policies: The reading can also serve as a useful tool for the administration when it comes to analyzing the policies that the institution puts in place. The main argument is that instead of viewing investment in flexible and modular infrastructure as just a design and aesthetic upgrade, it also serves as a crucial component that allows and facilitates effective student-centered curricula, and also supports constrained

public environments. The teachers that achieve the best alignment should be rewarded through policies that are in place.

This paper, theoretically, places the school space physically at the center of the equation, recasting it as an active and crucial variable 'x' in the pedagogical formula, hence inseparably connected with the teacher's style and philosophy who controls it.

2. Literature Review

An effective correlation between teaching methods and classroom setting has its basis in a broad and fragmented, but nevertheless, comprehensive, educational research field. This survey outlines the central ideas of studies on pedagogical styles, the psychology of spatiality, and the role of context as the main moderator to delineate the theoretical underpinning of the new conceptual framework.

2.1. Teaching Styles: Definitions and Characteristics

Teaching style is a teacher’s behavioral pattern which usually includes strategies, interactions and other instructional behaviors that help students to learn. The teaching method a teacher chooses basically represents the teacher's belief about knowledge transfer, student autonomy and the right way to handle the learning environment (Grasha, 1996). The model features five major types which range from very authoritative and content-centered at one extreme to very free and student-driven at the other.

Table 1 Teaching styles can broadly be categorized into:

Teaching Style	Description	Classroom Approach	Student Role
Teacher Centerd	Teacher directs instruction, maintains authority	Rows, lecture-based	Passive listener
Student Centered	Techers facilitates;	Group clusters, flexible seatings	Active participant

	students actively participate		
Democratic	Teacher encourages collaboration, shared decision-making	Semi-circular or U-shaped	Collaborative learner
Laissez-Faire	Minimal teachers' guidance, students self-direct	Unstructured, Variable	Self-directed learner
Hybrid/Adaptive	Combines multiple approaches depending on text	Flexible, activity-dependent	Mixed

2.1.1. Psychological and Philosophical Distinctions

The distinction between these styles is deeply rooted educational philosophy, and these philosophical differences inherently require different spatial architectures.

- Teacher-Centered Styles (e.g., Expert, Formal Authority) philosophically align with Behaviorism and the earliest models of cognitive transmission. The features they highlight are order, content delivery efficiency, and a clear upholding of the hierarchy. To accommodate this style, the space is such that peer distractions are minimized, and the visual and auditory fidelity of the teacher's central message are maximized. The teacher's zone of control has to be distinctly defined and be of higher quality than the student zone.

- Student-Centered Styles (e.g., Facilitator, Delegator) resonate with Constructivism and Connectivism. According to them, the concepts of knowledge and understanding are newly formed by the learner by interacting with the materials and the group. This philosophy requires a room that provides for the movement of the students, the availability of the resources, and the unplanned discussions among the peers. Empower the students with the arrangement both spatially and structurally by removing authority from the teacher's desk and giving it to decentralized workstations.
- Democratic Styles are aimed to balance the character of the subject with the need for autonomy. Teachers of this type mainly involve the whole class or a small group in discussions and share responsibility with the students. They require the arrangement which allows for visual access for all the participants (like a U-shape) and still offers clear pathways by which the teacher can circulate and maintain a moderate disciplinary oversight.
- The Hybrid/Adaptive Ideal: Modern high school context characterized by diverse curriculum requirements and student needs, places the Hybrid/Adaptive model at the theoretical optimum. Such a teacher has not only the readiness but also the necessity to turn his/her method as well as the place (if infrastructure permits) from an Expert-lecture format to a Facilitator-lab format within the same class period rapidly and thus gain style's success entirely dependent on the flexibility of the classroom arrangement.

2.2. Classroom Setup: Ideas and Significance

Classroom arrangement, as an educational philosophy, pertains to the physical aspect (desk configuration, tech arrangement, resource denseness) and the resultant social circumstances (interactions, sound intensity, teacher accessibility) too. An optimal class arrangement means an arrangement which hampers the procedure as less as possible and optimizes the process of the current instruction methodology in use.

Table 2: Impact of Teaching Styles on Classroom Arrangement

Teaching Style	Physical Layout	Interaction Level	Flexibility	Discipline Control
Teacher-Centered	Rows, fixed desks	Low	Low	High
Student-Centered	Clusters, movable	High	High	Moderate
Democratic	Semi-circle/ U-shape	High	Moderate	Moderate
Laissez-Faire	Random/variable	Variable	High	Low
Hybrid/ Adaptive	Mixed arrangements	High	High	Moderate

2.2.1. The Physics of Space and Instructional Flow

It is the physical layout of the room that is the major determinant of how instruction flows and how efficiently. Research into the physical environment (Woolner et al., 2007) points to ways in which structural decisions have functional results:

- Rows and Columns (Traditional Arrangement): In a physical sense, this arrangement is very efficient to fit large classrooms. Psychologically it is also efficient for direct instruction. It sets one way information flow from the teacher to the students. However, it produces physical bottlenecks at the times when materials have to be distributed and it can also actively hinder the communication which is required to be multidirectional and at the same time peer collaboration is involved.
- Clusters (Pods): Such a setting allows for more than one flow between the members of a small group thus optimizing interaction and resource sharing. However, it can also lead to loss of control over the group due to more distractions and it might be difficult for the teacher to visit other parts of the classroom quickly thus losing

the immediate disciplinary control which is the favorite of Formal Authority styles.

- Semi-Circle or U-Shape: The design is somewhat a middle ground, that meets a maximum of eye contacts with all members (teacher and students) and provides an easy way of interaction through flow of the questions or guided discussion. However, despite its excellence in moderate interactive use, it is inefficient in terms of space for large classes and hard to adapt when students work with paper and pencil.[7]

2.2.2. Proxemics and the Control of Access

As per Hall (1966), the concept of proxemics describes the psychological association between the persons involved in communication. In a school setup, the instructor can employ the arrangement method to keep control over two proxemic variables that are very important:

1. Zone of Proximity: The arrangement illustrates the teacher's capacity to physically touch base with every single student without any difficulty. The most efficient combinations for Teacher-Centered styles are those that allow the teacher to maintain control by keeping the last student at the minimum distance (while the highly effective arrangements for Student-Centered styles ensure easy access between groups so that the teacher can provide localized guidance).
2. Resource Accessibility: How far materials (bookshelves, computers, lab supplies) are placed from students' desks shows to what extent the arrangement supports students' autonomy. The alignments of Delegator styles lead to resources being completely decentralized and accessible without the necessity for the teacher's

[7] P. WOOLNER, E. HALL, S. HIGGINS, C. MCCAUGHEY & K. WALL, A SOUND FOUNDATION? WHAT WE KNOW ABOUT THE IMPACT OF ENVIRONMENTS ON LEARNING AND THE IMPLICATIONS FOR BUILDING SCHOOLS FOR THE FUTURE, 33 OXFORD REV. EDUC. 47, 47 (2007).

permission; this, in turn, physically supports the Autonomy need of students (Deci & Ryan, 2000).[8]

2.3. Comparative Context: The Mediation of School Type

Working effectively is not something that depends solely on the great performance of the alignment; this factor is powerfully mediated on the basis of the Contextual Factors that belong to the school setting. The availability of resources, the size of the class, the culture of the institution, and the flexibility of the furniture act as critical constraints of a teacher's ability to spatially implement their preferred style.[9]

2.3.1. Resource Disparity (Public vs. Private)

- Private Schools (Urban/Rural): Are known to have more funds for infrastructure in general and consequently are able to buy or build modular or flexible furniture (e.g., lightweight, wheeled desks, mobile whiteboards). Therefore, in such cases, the physical space is very responsive to the teacher's style. A Student-Centered teacher is structurally enabled to implement a Clusters layout effectively and sustain the Hybrid/Adaptive approach.
- Public Schools (Urban/Rural): Are mostly faced with limited budgets that result in old, fixed, and heavy desks that are sometimes even bolted to the floor. Moreover, urban public schools also have to deal with very large class sizes. These factors force teachers to choose an arrangement that focuses more on managing the volume and safety of the room and less on pedagogical alignment. In such a situation, a Facilitator may physically find themselves in a Rows/Columns arrangement leading to chronic instructional misalignment and, therefore, decreased effectiveness scores as compared to their private school counterparts.

2.3.2 Cultural and Procedural Constraints (Urban vs. Rural)

- Urban Contexts: Are mostly marked by high student diversity and an intense focus on metrics-based standardization. Consequently, such

[8] *Id.at 4.*
[9] E.T. HALL, THE HIDDEN DIMENSION, ANCHOR BOOKS (1966).

schools may be adopting administrative policies leaning towards styles that encourage control and quantifiable delivery of content; thus, leading to the Teacher-Centered arrangements, even in non-traditional subjects, being the most visible and preferred.

- Rural Contexts: May have a strong community culture and smaller class sizes (Rural Private), thus allowing for more intimate Democratic or Hybrid arrangements. However, the problem is that due to the dual function nature of the space in which the room can be converted into a meeting place, and so the structural stability required by the teachers who would like to dynamically reconfigure the room, thus, less flexibility and static arrangements will be the ones that are favored in this space would impose a limitation on the teacher's freedom there.

2.4. The Theoretical Foundation of Alignment-Effectiveness

The Alignment-Effectiveness Hypothesis, which is the mainstay of this conceptual framework, finds its confirmation from inconsistencies in the literature that point to the correlation between environmental satisfaction and teaching performance (Dorman & Adams, 2007).

2.4.1. Measuring Functional Alignment

Effectiveness should not be only on the basis of their visual appeal. The functional metric is one that is based on the smoothness of the flow of the instruction:

- Low Alignment: High scores on Instructional Flow Disruption (time wasted moving desks, bottlenecking at resource centers) and low scores on Student Self-Initiated Movement (students asking permission for simple tasks).
- High Alignment: Low flow disruption and high measures of observed student behavior that supports the style (e.g., effective, focused peer discussion in a Cluster arrangement; high visual attention in a Rows arrangement).

Feldman and Matjasko (2005) have acknowledged that the impact of the classroom environment on the teacher's instructional style is indirect. This paper makes it clearer by suggesting that the arrangement performs the function of the control center; it is the most concrete variable that the teacher uses to control the instructional environment. The higher the degree of functional alignment between the teacher's philosophy of control (style) and spatial architecture (arrangement), the more the effectiveness of the arrangement will be, hence, the latter will depend on the former one.[10]

The conceptual model introduced in Section 3 would be an explicit manner of integrating these variables - Proxemics, Psychological Needs, and Contextual Constraints - for mapping the predicted outcomes across the high school educational landscape. (With this elaboration, the Literature Review seven-page total for this combined section is complete.)

2.4.2. Classroom Organization: Theories

Organizing the classroom is still far from being purely an administrative task; rather, it is a very important learning apparatus with a huge impact on the practical reality of the learning environment. Not only is it a matter of geometry concerned with the arrangement of desks, seating capacities, technology distribution, and static equipment resources but the social dynamics of learning interactions, teacher accessibility, and possible movement areas as well. The best-organized class is the one that ensures not only zero instructional friction but also optimal transition points among various learning activities.

2.4.3. The Four Pillars of Effective Arrangement

These four functional goals are the "pillars" that support any successful classroom setup, which is the basic structure that supports the instructional style:

1. Increases Visibility and Communication between the Teacher and Students (Proxemics): By using proxemics effectively, the system determines the ease with which the teacher can see the entire class (supervision) and the ease with which the students can view the

[10] D.H. FELDMAN & J.L. MATJASKO, THE ROLE OF SCHOOL-BASED EXTRACURRICULAR ACTIVITIES IN ADOLESCENT DEVELOPMENT: A COMPREHENSIVE REVIEW AND THEORETICAL CRITIQUE, 75 REV. EDUC. RES. 159, 159 (2005).

educational focal point (attention). The Teacher-Centered system is designed to work mostly through the line-of-sight to the teacher. The Democratic system promotes the line-of-sight between all members for a productive discussion to take place.

2. Facilitates Group Interaction and Cooperative Learning (Social Flow): The arrangement has to allow the social flow that goes hand in hand with the style of lecture. Students-Centered arrangements, by means of Clusters, physically bring the distance between peers closer, thus, making them more likely to have conversation and to co-create knowledge which is an essential feature of Relatedness need (Deci & Ryan, 2000).[11]
3. Supports Classroom Discipline and Behavior Management (Control Locus): The very first stage of behavior management is the physical space. Formal Authority-styled arrangements help in the maintenance of control by letting the distance be the largest and movements be the smallest. The behavior of students that are in line with the Delegator might be more easily handled through the arrangement which provides choice and clearly defined "work zones" thus, the control shifts from the teacher to the student's self-regulation.
4. Aligns Spatial Design with Pedagogical Objectives (Functional Congruence): This is the primary method of effectiveness. If the lesson objectives are for students to have access to resources on their own, the arrangement has to indicate Autonomy by freeing up the materials. When the lesson is supposed to be a deep and very focused one, gradually reducing the number of distractions coming from the surrounding and keeping the distance between peers at its maximum will enable the arrangement to be able to spatially communicate Focus.

[11] *Id.*

2.4.4 The Psychology and Geometry of Seating Arrangements

- Quite a non-verbal and powerful influence on student behavior and participation is through the geometry of the seating plan. A teacher's spatial choices in a high school classroom are nothing but a clear indication of their philosophy regarding control and engagement.
- Rows/Columns (The Formal Authority Grid): Structurally, this grid accentuates the hierarchical power dynamic. Spatially, the teacher's authority is privileged at the front. Psychologically, this kind of setting is suitable for tasks that are more individually oriented and require focused attention and the taking of notes. Nevertheless, it generates physical inertia making transitions to collaborative work slow and tedious for both the teacher and the students, who at the same time become frustrated due to the wasted instructional time that is used in managing furniture.
- Clusters/Pods (The Collaborative Hub): The configuration is an architectural initiative of the Constructivism model. The class automatically becomes organized into working groups with the shared table surface being the new focal point. The difficulty is in handling the noise and types of peer interaction that are not related to the task which in turn requires the teacher to be a strong Facilitator capable of constantly circulating and redirecting the focus.
- Semi-Circle/U-Shape (The Socratic Arena): The structure is the most suitable for Plenary Discussion. Mutual visibility is ensured- every student can see every other student- hence, the Democratic style where shared accountability for dialogue is the most important is facilitated. Even though high-quality verbal interaction is promoted, it, however, fails in testing or tasks that need large, individual writing surfaces.

2.4.4. Beyond Desks: Resource Placement and the Zone of Action

Effective arrangement does not end with seating but goes to the placement of technological and material resources used in the class. The amount of autonomy that a student is given within the room is what this spatial decision is about.

Centralization vs. Decentralization: Generally speaking, a Teacher-Centered setting implies a centralized organization of resources-for example, computers at the front for the whole class, all materials distributed from the front desk. It not only constrains the students' movements physically but also reinforces the external control. A very effective Delegator arrangement will make such resources decentralized, introducing several small, specialized work zones-for example, a "maker corner," a "quiet reading nook," a supply table used by all-to increase Autonomy and minimize the instructional bottlenecks of a single point of entry.

The Action Zone: It has been found that the "action zone" defines the place whereby the students' most probable level of participation becomes observable, which generally relates to the front rows or the direct opposite of the teacher's position. This implies that an effective alignment seeks to either extend or redirect the action zone effectively. On the part of the Facilitator, an effective configuration could extend up to the point of ensuring that the action zone includes all the group pods equally, whereby because of the spatial marginalization, no section of the action zone should be left behind in terms of participation.

Discussion: The physical space design has now become more than just a style and a choice of convenience; it has now become a dimension that influences the behavior of the students profoundly and has a role in the level of engagement and finally the outcomes. The teacher’s pedagogy becomes the intellectual design or the blueprint that results in the variation (degree) of flexibility and the degree of structure in the physical space necessary towards achieving the pedagogical fit. The teacher's style as well as the space works hand in hand when their compatibility has been accomplished, and the physical space becomes among the non-visible but driving force influencing the teaching process that goes beyond the teaching goals.

2.4.5. Comparative Context: Institutional Constraints and the Mediation of School Type

The degree of the effectiveness of the correlation between the teacher's style and their classroom arrangement is not something that holds true all the time; it is very much dependent on the Institutional Contextual Factors. The availability of resources, size of the class, physical infrastructure, and socio-economic culture have an extremely big impact on how much a high school educator can achieve in terms of their chosen educational methodology in terms of spatial design principles. The four types of schools considered in this study include urban private schools, urban public schools, rural private schools, and rural public schools.

Institutional context moderates the impact of teaching style on classroom arrangement. For example:

School Type	Likely Teaching Style	Classroom Arrangement Focus	Expected Outcomes
Urban Private	Student-Centered/Democratic	Flexible, group-based	High engagement, collaboration
Urban Public	Teacher-Centered/Hybrid	Semi-structured	Moderate engagement, disciplined
Rural Private	Democratic/Hybrid	Semi-flexible	Moderate engagement
Rural Public	Teacher-Centered	Rows, fixed desks	Low engagement, high order

2.4.6. Resource Disparity: Private vs. Public Settings

The most direct limitation that comes to mind first is the difference in resources that immediately decides the mobility and the quality of the classroom furniture.

I. Resource-Enabled Settings (Private Schools)

- Urban Private: These schools have small class sizes and big capital outlays. The array of flexible-modular furniture (lightweight wheels on desks, whiteboards on wheels) is indicative of Student-Centered/Democratic philosophies applied at their best. The Arrangement Focus would be flexible and group-oriented to maximize collaborative deep learning to enable quick transitions from modes of instruction by students as well as school staff. The Expected Outcome is necessarily High Engagement & Collaboration as it is one of the major reasons this learning space is structurally attuned to this learning philosophy. The dilemma facing the faculty is to provide students a rigorous academic experience from this casual learning environment.
- Rural Private: Though the schools might be having fewer children and old infrastructures, they always have enough funds allocated not only for spending on special equipment but also on flexible furniture, considering the small class sizes they would accommodate. It is actually an environment that greatly favors Democratic/Hybrid models, thus adding an extra SAF influence that makes the development of Community highly possible. Arrangement Focus tends to be semi-flexible and would put more emphasis on formations such as U-shape or cluster configurations that promote both direct and inclusive discussion, hence having Moderate Engagement.

II. Resource-Constrained Settings (Public Schools)

- Urban Public: All these "cast" schools are cast within the three-dilemma model of the stereotype, unchanging infrastructures, heavy student enrollments, and tough behavior management. In efforts to rapidly return control to the masses, even teachers highly ideologically committed to student involvement approaches might find themselves being forced critically to consider using the Teacher-Centered/Hybrid strategy. The emphasis within the Arrangement is on semi-structured (traditional linear seating or heavy, unmoveable pods) design for volume control and sightlines for behavior control. The Expected Outcome of all these is a compromise in that only limited involvement is possible when behavior is strictly controlled. Adaptability is strictly limited on the part of the teachers, given that everything is unmoveable.

- Rural Public: These areas are distinguished with old buildings, heavy, non-movable desks, and often with multi-grade or multi-purpose rooms. This architectural stagnation drastically limits spatial freedom. As such, the Dominant Teaching Style will be more Teacher-Centered by necessity as the Rows, fixed desks arrangement is the only structurally viable option for both large classes and general room use. The Expected Outcome is Low Engagement but High Order thus leading to a pedagogical mismatch manifestation of the teaching space actively opposing the modern style of collaborative teaching practices.

2.4.7. The Mediation of Class Size and Density

Class size is a non-negotiable moderator that changes the very possibility of arrangement types, no matter which style is preferred.

- **Spatial Density and Control:**
  In high-density Urban Public classrooms, a Student-Centered teacher trying a Cluster configuration will find the area too cramped. The shortage of sufficient walkways makes student-to-student proximity so high that they get distracted. As a result, the teacher is compelled to go back to the low-density control of the Row setup thus ensuring basic discipline. Therefore, the density threshold sets the upper limit of a teacher's spatial freedom.
- **Flexibility Tax:**
  The effort and time needed for changing a high-density, low-flexibility room really disfavors the Hybrid/Adaptive style leading to spatial inertia where the teacher decides to stay with a single, static arrangement (often rows) so as to avoid time loss every day.

- **Institutional Culture and Accountability**
  Institutional culture is the main factor that can predict which teaching styles will be valid and supported thus arrangement choices will automatically be influenced.
- **High-Stakes Testing Culture:**
  Schools under extreme pressure of standardized testing are usually the ones that are inclined towards instruction methods that are associated with Teacher-Centered efficiency and direct knowledge transfer. The culture implicitly rewards the Rows/Columns arrangement because it is seen by administration as the most focusing mode of least interaction with "wasted collaborative time".
- **Progressive Culture:**
  Affected by a student-centered and progressive culture (usually found in Urban Private settings), schools are the main supporters of flexible arrangements. Teachers feel more comfortable using Laissez-Faire or highly Decentralized types because the school management is not afraid of functional chaos being mistaken for school disorder. Thus, school leadership has the position and the potential either to make the transition of a teacher's style easier or to hamper it.
- As a result, the comparative analysis in various situations shows that a journey of high school teacher from the original philosophical intent (teaching style) to practical realization (arrangement) is changing very much depending on the school types and their physical and institutional realities. The statement "the alignment-effectiveness hypothesis" is thus refined to "refinement in the alignment-effectiveness hypothesis": The greatest level of alignment is achieved when the teacher's style is not only preferred but also supported by the contextual factors (resources and class size); at places where constraints exist, the degree of effectiveness is determined by the teacher's A Capability to alleviate the constraint by the teacher.

3. Theoretical Framework: The Conceptual Model of Alignment-Effectiveness

The theoretical framework that is being proposed here is an organized, more detailed, and systematic way of analyzing the dynamic process from the high school teacher's internal pedagogy to the end functionality of the actual physical space. Its central idea is the core Alignment-Effectiveness Hypothesis, which says that effectiveness in classroom arrangement is the "extent to which it is a measure of its functional congruence with the teacher's style." However, the theoretical framework includes the mediating variables, which are the reasons for the difference between the teacher's ideal style and the actual style.

Flowchart 1: Conceptual Model of Teaching Style and Classroom Arrangement Effectiveness

Teaching Style → Classroom Arrangement Design → Learning Environment

↓ ↓

Teacher Adaptability Contextual Factors

└──────────→ Classroom Arrangement Effectiveness → Student Engagement & Learning Outcomes

3.1. Detailed Explanation of Conceptual Components

3.1.1. Core Variables (Direct Path)

- Teaching Style: This variable of the study represents the teacher's entrenched concept of education (e.g., control vs. autonomy). It not only determines the preferred instructional approach (lecture, discussion, lab) but also the desired interaction patterns (unidirectional or multi-directional).
- Example: A Teacher-Centered style necessitates that students pay very close visual attention to the teacher and hence the setting should be low-interaction, front-focused.
- Classroom Arrangement Design: This is the tangible variable that is directly influenced by the teacher's style decision. It is composed

of the seating geometry (rows, clusters), the control of proxemics (distance between participants), and the placement of instructional tools.

- Example: The Arrangement Design gives a pictorial representation of the Teacher-Centered ideology in Rows/Columns.
- Learning Environment (Flow State): The component here represents the immediate, visible effect of the room design on the social and functional dynamics of the room. It illustrates the ease of Instructional Flow and the level of Resource Access.
- Example: Rows/Columns lead to a low social flow but are a high-fidelity environment for lecture delivery.

3.1.2. Mediating Variables (The Modulators of Alignment)

The depth of the correlation between Teaching Style and Arrangement Effectiveness is very broadly influenced by the two following factors:

- Teacher Adaptability: It is a skill-based mediator and represents the teacher's determination to both the promptness and the effectiveness of a single change in instructional style and spatial configuration to suit the requirements of a lesson or students. Adaptability reduces the time that can be wasted in the Transition Stage (time lost moving furniture).
- Mediation: A Student-Centered teacher with High Adaptability can do the opposite of an effect created by a semi-structured arrangement by using quick, pre-planned zone transitions, thus, neutralizing the negative effect of physical constraint.
- Contextual Factors: These are the situational barriers which challenge the teacher by being the characteristics of the institutional environment. Examples include the presence of flexible furniture, class size/density, fixed infrastructure, and school-wide discipline policy.
- Mediation: Contextual Factors (e.g., heavy, fixed desks in an Urban Public school) may be stronger than the teacher's style, thus, a disoriented arrangement that is good for control but bad for pedagogy might be the result.

3.1.3. Outcome Variables (Effectiveness and Legacy)

- **Effectiveness of Classroom Arrangement:** As the dependent variable, it is the focal point in the model. It is a functional indicator of Alignment Score, which refers to the compatibility between the teacher's approach (intent) and the displayed implementation in the room (result). High effectiveness is indicated where optimized resource accessibility, instruction friction at the lowest point, and engagement at the highest point pertinent to the task occur.
- **Student Engagement & Learning Outcomes:** This factor represents the endpoint. The sustained performance potential has been hypothesized to sustain greater levels of Student Engagement (particularly satisfaction with SDT needs such as Autonomy and Relatedness) and, by extension, improved academic performance and skill development.

3.1.4. The Alignment-Effect

The key guiding theoretical assertion in this study is the Alignment-Effectiveness Hypothesis:

The stronger the adaptive high school classroom arrangement, the greater its effectiveness is proportional to the functional congruence between the teaching style and the arrangement in relation to the teacher's ability to successfully deal with the environment.

On this basis, this model will provide the foundation of the comparison that will follow, describing factors of the success or failure of various teacher/T-Classroom pairs with regard to a possible alignment.

4. Conceptual Relationships: The Alignment-Outcomes Matrix

In this paper, the early stages of the Relationship Matrix (see Table 4) and model-based theoretical analysis on the functional relationship matches for requirements on each teaching style and their best-suited class arrangement, along with the anticipated resultant consequences when students participate and perform, will be described. The relationship matrix is one of the primary predictive instruments that emerged from the Alignment-Effectiveness Hypothesis.

Table 4: Relationship Matrix of Teaching Style, Classroom Arrangement, and Outcomes (Detailed Analysis)

Teaching Style	Arrangement Type	Expected Student Engagement	Teacher Control	Learning Outcomes
Teacher-Centered	**Rows/columns**	**Low**	**High**	**Moderate**
Student-Centered	Clusters	High	Moderate	High
Democratic	U-shape/Semi-circle	High	Moderate	High
Laissez-Faire	Variable/unstructured	Variable	Low	Low
Hybrid/ Adaptive	Flexible	High	Moderate	High

4.1. Analysis of High-Alignment Dyads

The conceptual base supports the presumption that the highest performance levels emanate from those teacher-arrangement pairs that are in alignment, whereby the spatial geometry directly supports the teacher's instructional goals.

4.2. Teacher-Cantered (Rows/Columns)

- Rationale: The rows-and-columns design is the physical representation of the one-way flow of information. By having all the desks face the Expert teacher, the arrangement reaches the highest level of Teacher Control over attention and at the same time, it also minimizes the probable behavioral risks related to peer-to-peer proxemics.
- Outcomes: Expected Student Engagement will be Low as the students' primary role will be passive recipients. However,

Learning Outcomes are anticipated to be Moderate due to the effectiveness and clearness of the content presentation for the acquisition of basic knowledge (Bloom's Taxonomy, lower levels). A conflict occurs when this teacher tries to hold a discussion, hence, the spatial setup discourages the interaction.

4.2.1. Student-Cantered (Clusters)

- Rationale: Clusters or pods are groups without a leader that focus on communication in all directions. Such a design physically enables collaborative learning, which, in turn, motivates the students' need for Relatedness. The teacher is a Facilitator, moving around the decentralized area.
- Outcomes: Expected Student Engagement will be High as students will be involved in active participation and will take control of the resources. Teacher Control will be at a Moderate level (internalized control). Learning Outcomes will be High especially when students are engaged in activities that require critical thinking, problem-solving, and synthesis. Discrepancy will originate if the teacher tries to give a long, direct lecture in this environment, as the desks on the periphery will be affected by distraction.

4.2.2. Democratic (Semi-circle/U-shape)

- Rationale: The Semi-circle or U-shape is the most suitable design to bring out Socratic dialogue and shared accountability. The teacher retains an overall Moderate level of Control but at the same time, all the visual participants have access to it. This layout is consistent with the Collaborative Learner model.
- Outcomes: Expected Student Engagement is High as the design actually requires participation and eye contact. Learning Outcomes are High especially when the content involves verbal articulation, argumentation, and reflective discussion. The reasons for the inefficiencies are mainly associated with logistical problems (for instance, complex lab work or test-taking individually in this layout).

4.2.3. Laissez-Faire (Variable/Unstructured)

• Rationale: This design is one that fundamentally allows students the most freedom and choice (e.g., students can sit at a table, soft chair, or standing desk). It is highly compatible with the Laissez-Faire point of view, which calls for minimal interference.

• Outcomes: Teacher Control is Low by design. Student Engagement will vary and will be dependent solely on the maturity level and self-regulation skills of the individual student. Therefore, the average Learning Outcomes for a standard high school cohort will most probably be Low due to the high possibility of disorganization and the lack of scaffolding. This high-alignment dyad, however, is efficacious to a degree only for specialized and self-selected programs.

4.2.4. Hybrid/Adaptive (Flexible)

• Rationale: The Hybrid/Adaptive format is the best practical solution for the contemporary secondary school teacher. It is not just one single static design but rather a commitment to certain (modular furniture) infrastructure and a set of procedures that allow the rapid and deliberate changes from one of the core aligned arrangements, such as from Rows to Clusters, and vice versa.

• Outcomes: This style maximizes the potential for High Engagement and High Learning Outcomes across all instructional modalities. It keeps Teacher Control at a Moderate level through the use of well-established routines and high Teacher Adaptability. The performance of this combination is highly dependent on the Contextual Factors (i.e., the availability of modular furniture) considered in the previous section.

5. Planning and Policy Implications

The matrix is an effective and versatile tool for making decisions both at an individual's and an institution's levels:

1. Teacher Planning: The matrix allows teachers to recognize misalignments. If a teacher perceives himself to be Student-Centered and at the same time notes a Low Expected Student Engagement (Table 4), then the problem is most likely to be with the model of the Arrangement Type (e.g., being stuck in Rows/columns) as suggested by the model.
2. Infrastructure Policy: According to the matrix, to implement a school mission aiming at High Learning Outcomes through Student-Centered instruction, the policy should first of all make sure the physical layout is Clusters/Flexible, which means that the school needs to invest in movable furniture and reduce the size of the classes (addressing Contextual Factors).
3. Evaluation Policy: The matrix can be employed by school management to set up observing criteria which result in a fair evaluation. For instance, Control and Instructional Clarity should be the main foci in the assessment of a Teacher-Centered class, whereas those aspects along with the Quality of Dialogue and Student-to-Student Interaction should be considered in the case of a Democratic class regardless of the noise level.

6. Extended Discussion: Detailed Analysis of Style Alignment and Effectiveness

The current chapter systematically describes the performance aspects and possible hazards for each teaching style because these elemental factors included physical classroom arrangement, Proxemics, and Self-Determination Theory (SDT).

7. Teacher-Centered Approaches: Maximizing Fidelity and Control

Teacher-Centered styles are ideal settings for the presentation of structured knowledge, the perfection of basic skills, and the minimizing of influence that the student may be distracted by his peers. Their architectural preference for rows or fixed seating directly implies rigor and control through establishing unidirectional communication, teacher to student, and thus giving him the opportunity to have direct eye contact with the whole class.

Functional Alignment: The row arrangement exemplifies the Formal Authority by giving it the opportunity to perform its need for control from the outside through the use of standard proxemic distance, which is between the students, thus physically preventing any communication without authorization. This will ensure that the conditions for the lecturer to be of the highest possible standards are met.

Latent Risk: There is an extremely high level of alignment here, but this is at the expense of reduced levels of engagement and collaboration. There is poor design of the arrangement in terms of meeting the need for autonomy, relatedness, as it restricts the zone used for student interactions, in addition to that, it also reduces the level of the critical thinking skill that should be applied. Students are restricted through the physical setting to be mere recipients of the knowledge that has so far been lectured.

7.1. Student-Centered Approaches:

Another area which is Student-Centered Approaches (Facilitator, Delegator) have been designed in a way that interaction, learning from others, and participation in a active manner by the students is possible. These learning styles are imperative in the learning by inquiry process and academic activities in the form of research where synthesis of the subject is required.

- Functional Requirement: They demand floor plans which can easily be rearranged in a cluster or an undeputed zone where the transition from a group activity to a time of personal reflection has to be achieved in a flash. As such, the layout should empower the students not only through decentralization but should permit movement.
- •Skill Dependency: The skill level of this spatial technique relies on the teacher’s ability to effectively monitor multiple learning stations simultaneously. The Moderate Teacher Control in this style (Table 4) indicates an emphasis on transitioning from external discipline to internal discipline through self-regulation. Teachers should be experts

in "roaming supervision." For instance, to prevent situations where functional chaos, which is receptive to high collaboration, drifts into the latter form (off-task behaviors).

7.2. Democratic Approaches: Balancing Structure and Interaction

"Democratic Approaches" offer a realistic vision of the middle ground and attempt to balance the stringencies. With learner's freedom. These teachers feel that the best ways are through full-group discussions and the shared responsibility of the classroom climate.

- Semi-circular or 'U' shape configuration can work as ideal spatial counterparts. By this, each student can, in fact, see all other students, thereby meeting the Relatedness need essential for Socratic discussions on Socratic dialogue. Such a shape, besides limiting complete student-student distance, maintains proper focus on Instruction too and helps in enforcing discipline much better than any cluster configuration.
- Effectiveness Nuance: The above arrangement is very efficient in the synthesis of content and the critical debate on the part of the student. The only constraints on its effectiveness are the physical space available (since the arrangement is not advisable for larger classes) and the constraints on transition times.

7.3. Laissez-Faire Approaches: The High

Laissez-Faire Approaches offer the most freedom possible and require the least direct teaching involvement. This can be created on a variable or unstructured level, featuring stations chosen by students (floor sitting, standing desks, quiet area).

- Latent Risk: It is a particularly troublesome style when it comes to risks about losing student interest and risks that things may get out of hand. While all these styles give complete freedom for their actions, they can easily satisfy the need for Autonomy, while the minute amount of guidance could be a factor for inefficient use of space by students who lack maturity for self-direction.

- Outcomes: The Consequence Matrix of the hypothetical consequences (Table 4) predicts that there will be ‘Low’ Learning Outcomes for the overall high school students when there is a ‘Lack of Teacher Control’ because it merely provides insignificant scaffolding for the learning of intricate subjects. The couple of spatial and pedagogical elements is quite apt for an ‘Advanced’ or ‘very motivated’ and ‘Special’ audience only.

7.4. Hybrid/Adaptive Methods: The Paradigm of Dynamic Alignment

The Hybrid/Adaptive Method would, theoretically, be the most appropriate approach for the dynamic nature of learning environments since it requires a compromise on the issue of functional fluidity. The teacher, based on this approach, does not use one setup but adopts a spacial strategy and moves from one class type, subject, or group of students to the next rapidly.

- Functional Efficiency: Effectiveness of the Hybrid set-up could be measured with the help of Instructional Efficiency which states that the time taken for transitioning should remain at its lowest. There should be a classified designing goal, which states that the teacher should have a set procedure to shift from 'rows' (lectures) to 'clusters' and finally to 'U-shape' (discussions) with the highest possible speed always maintaining synchronization between the 'space' and 'task'.
- Policy Dependency: The attainment of this ideal is largely dependent on having a practicable institutional environment which is conducive to it. With the lack of movable desks, flexible seating arrangements, as well as large classrooms, the hybrid teacher is simply being utilized as a static teacher; hence, this indicates how infrastructure can be counterproductive to pedagogical ideals.

8. Theoretical Implications: Integrating Policy and Practice

The implications for a revised approach to teacher education and education in schools based on the conceptual framework are highly significant, as explained:

8.1. Mediation by Adaptability

The main theoretical importance lies in the fact that effective classroom layout is subtle, and the sense of this is realized through teacher flexibility and the school setting. Practicality is not based on "the best" approach but rather the ability of the teacher to get the truth of their own school to function in a manner that is most conducive. The issue of training would not only involve the kind of classroom but would include the practical problem-solving of, say, the Facilitator class and the way to deliver it with a Rows setting.

8.2. Spatial Planning in Teacher Education

Faculty training programs should cover knowledge of spatial planning along with pedagogical strategies. It needs to have the same academic rigor in being able to diagram a floor plan-mapping proxemics and resource flow-as it does with lesson planning. This leads to the development of proactive spatial management, a mindset wherein the setup becomes the first line of pedagogical defense rather than an afterthought.

8.3. Infrastructure and Policy Play a Role

In this matter, the part of school infrastructure and policy is fundamental although often obstructive in supporting adaptive teaching styles. Policy needs to be remodeled from the point of view of ease of cleaning or the setting up of standardized tests to the point of pedagogical flexibility. This will include policies that would make possible the buying of movable desks, the setting up of flexible seats, and give time to teachers for transitions of arrangements.

9. Recommendations: A Blueprint for Alignment

The theoretical outcomes could be applied to real recommendations concerning practice and future research:

9.1. Recommendations for Practice and Policy

- Teacher Professional Development: The training required for teachers needs consideration of themes like teaching style integration and class arrangement with the prime focus on engaging students. The teachers, with the use of cases, get the ability to recognize the pitfalls of alignment and develop a kit of rapid ways of configuring.
- Infrastructure of Schools: The mobilization of modular and portable desks and learning environments ought to take the most fundamental priority. The function of furniture within the education system should be looked upon not from a cost perspective, but from a capital perspective to enhance Hybrid/Adaptive learning.
- Policy Implementation: Policies such as supportive pedagogy and flexibility school policies can be implemented by the existing policies through the process of recommendations. Besides classroom teaching, the evaluation of teachers can be done by judging the level of functional congruence of their spaces as well as implementing times for spatial resets.
- Reflective Practices: The evaluation of a classroom arrangement for a teacher based on their teaching style should be a habitual routine. In a well-structured reflective process for that purpose, where students can be surveyed about how their focus is influenced by their environment, this can be achieved.

9.2. Recommendations for Future Research

- Future Research: Case studies with quantitative methodology can be advised on the possible effects and relationships between teaching modality and arrangement efficacy, in relation to the effects on the students. Specifically, studying the time not very effectively utilized because of Adaptation Lag in situations where flexibility is not a priority and connecting this to the score reflecting strong alignment and academic performance in the long run can be the aim.
- Interventional Studies: Action research is to be performed on a group of low-alignment teachers who are provided with flexible furniture

and spatial design thinking skills to observe the measures of teaching style and engagement.

10. Conclusion

Essentially, the theoretical implication is a definite indicator that teaching style is among the most fundamental factors influencing the efficiency of the class arrangement. Essentially, the class arrangement is the teacher's control, communication, and learning ideological-physical extension; hence, it is the visible aspect or the architectural extension of the teacher's philosophy. However, teacher-controlled systems or teaching styles would be more specific; namely, student-centered or democratic teaching styles, denoting structural decentralization, would respectively through the structural hierarchy impose order while through the latter optimize interactions among students. Thus, blended or adaptive teaching styles would become the central focus concerning the high school; hence, introducing the required flexibility required by the optimal learning capacity possible within various educational settings. However, this vision of perfection is never guaranteed as locals or situational factors such as school infrastructure are more likely than not to form the critical barriers. In the final analysis, the maximization of educational effectiveness would depend on a well-designed or forcefully applied policy pledging to ensure at all times the structural congruence of the physical class environment to the teacher's pedagogical intentions.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ASIA : PROGRESS, CHALLENGES AND POLICY PATHWAYS

Sajal Jain*

1. Introduction

Asia, home to more than 50% of the world's population,[1] pulses with an economic vitality that's reshaping the globe, poised to claim over 50% of global GDP by 2030 according to recent projections.[2] Yet this dynamism coexists with a troubling patchwork in human rights commitments: while the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been ratified by a majority of Asian nations, 33 out of 41 across the continent, per UN records[3] in ratification and deeper fissures in implementation reveal a continent grappling with its place in the universal human rights framework. This contrast isn't just statistical; it speaks to the lived realities of billions, where booming markets lift some from poverty while leaving others exposed to systemic vulnerabilities. As the world's economic engine accelerates, the question arises: how can Asia's rise truly benefit all its people without stronger safeguards for economic, social, and cultural rights (ESCR)?

This paper argues that Asia's economic miracle has indeed propelled significant advances in ESCR, such as the dramatic poverty reductions seen in Indonesia and India, but persistent systemic gaps, fueled by invocations of cultural relativism and staunch defenses of state sovereignty, erode the universality of these rights, demanding the development of regionally tailored enforcement mechanisms to bridge the

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[1] Asia Population, WORLDOMETERS (2025), https://www.worldometers.info/world-population/asia-population/.

[2] *The Future Is Asian*, WORLD ECONOMICS (2023), https://www.worldeconomics.com/Thoughts/The-Future-is-Asian.aspx.

[3] *International Covenant on Economic, Social and Cultural Rights*, OFFICE OF THE U.N. HIGH COMM'R FOR HUM. RTS. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.

divide. India has made strides, reducing extreme poverty from 22% in 2011 to under 3% by recent estimates, driven by targeted social programs and economic liberalization.[4] These achievements underscore the potential of growth-oriented policies to fulfill ESCR obligations, yet they also highlight inconsistencies: rapid urbanization and industrialization often come at the cost of labor rights, environmental health, and equitable access to education, particularly in rural or marginalized communities. Cultural relativism, often cited by states to prioritize collective harmony over individual claims, and sovereignty concerns that resist international scrutiny, further complicate uniform application. As one UN report notes,[5] "*States Parties undertake to promote universal respect for, and observance of, human rights and freedoms*", but in practice, Asia's diverse political landscapes, from authoritarian regimes to nascent democracies—create barriers that universal standards alone cannot surmount.

For clarity, this study defines ESCR in line with the ICESCR's core provisions in Articles 6–15, which encompass the right to work under just conditions (Article 6: "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts") fair wages and safe environments (Article 7), social security (Article 9), adequate standards of living including food, clothing, and housing (Article 11: "the right of everyone to an adequate standard of living for himself and his family"), health (Article 12), education (Article 13), and cultural participation (Article 15). The geographic scope is confined to East, South, and Southeast Asia to maintain focus . This delimitation allows for a deeper examination of shared economic trajectories and colonial legacies influencing ESCR. Methodologically, the paper employs doctrinal analysis of international treaties and national laws, complemented by comparative

[4] *Poverty & Inequality Platform: India,* WORLD BANK (2023), https://pip.worldbank.org/country-profiles/INDIA.

[5] Reports on Progressive Realization, U.N. ECON. & SOC. COMM'N FOR ASIA & THE PAC. (ESCAPE) (2025).

case studies of key countries like China, India, and Indonesia. The significance of this inquiry extends far beyond Asia's borders.

2. Historical and Legal Framework of ESRC in Asia

2.1. Global Origins and Asian Adoption

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted in 1966 at the United Nations General Assembly and entered into force in 1976, forming a core element of the modern international human rights regime.[6] Despite global momentum, Asian engagement with the treaty was notably delayed. By 2023, only 25 out of 48 Asian states had ratified the ICESCR, underscoring regional hesitancy.[7] Illustratively, Japan ratified in 1979, while major regional powers such as China and Saudi Arabia continue to withhold ratification or enforce severe reservations, reflecting persistent ambivalence.[8]

This hesitancy is often attributed to the "Asian values" discourse, articulated by influential leaders such as Singapore’s Lee Kuan Yew, who advanced the principle that collective stability and economic growth should take precedence over individual rights.[9] This perspective challenged the presumed universality of Western human rights frameworks, positing instead that cultural relativism and communitarian ideals, rooted in historical circumstances, justified a prioritization of community and societal harmony above Western liberal individualism.[10]

Colonial legacies played a critical role in shaping these divergent trajectories. European colonial expansion in Asia fragmented indigenous legal and social norms, leaving behind imported legal systems that were

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[6] PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS, OXFORD UNIV. PRESS (2013).
[7] U.N. Treaty Collection, Status of Treaties: ICESCR (2023).
[8] Dianne Otto, Asia’s Contribution to International Human Rights Law, 9 HUM. RTS. L. REV. 1 (2009).
[9] JOANNE R. BAUER & DANIEL A. BELL EDS., THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS, CAMBRIDGE UNIV. PRESS (1999).
[10] Amartya Sen, Human Rights and Asian Values, SIXTEENTH MORGENTHAU MEM’L Lecture (1997).

often poorly integrated and deeply contested.[11] In the post-World War II era, many Asian states embedded economic, social, and cultural rights within their national constitutions—India's 1950 Constitution being a landmark example, with its Directive Principles of State Policy.[12] Nevertheless, such provisions were typically aspirational, lacking enforceability and subordinated to the imperatives of economic modernization and stability.[13]

At the regional level, efforts to articulate a distinctively Asian framework for ESCR remain underdeveloped. The 2012 ASEAN Human Rights Declaration, while symbolically significant, has been widely criticized for its weak legal standing and for couching rights in ambiguous language that defers to national context and stability concerns, thus failing to provide a robust collective commitment.[14] The persisting gap between normative adoption and effective implementation underscores the continuing influence of both colonial history and contemporary developmental priorities in the evolution of ESCR in Asia.

3. Binding Obligations and Monitoring

This subsection explains how states are bound by the ICESCR and how monitoring bodies—global and regional—shape the implementation of economic, social, and cultural rights, with a human-centered focus that connects legal duties to everyday experiences. It also evaluates the role of the UN Committee on ESCR and compares regional mechanisms, arguing that Asia's regional architecture presents specific accountability challenges.

[11] P.C.W. Chan, The Protection of Economic, Social and Cultural Rights in Asia, 21 HUM. RTS. Q. 912 (1999).
[12] B. Bhattacharya, Safeguarding Human Rights Through Environmental Protection: An Analysis of Article 21 of the Constitution of India, JHRLP, (2019) lawjournals.celnet.in/index.php/jhrlp/article/view/1259.
[13] Balakrishnan Rajagopal, International Law from Below, CAMBRIDGE UNIV. PRESS (2001).
[14] *ASEAN Human Rights Declaration*, ASEAN (2012) https://asean.org/asean-human-rights-declaration/.

States have three core duties under the ICESCR: respect, protect, and fulfill. The duty to respect requires governments to refrain from actions that block enjoyment of ESCR. In practice, this means avoiding policies or measures that directly or indirectly impede access to education, health, housing, and work, even when resources are constrained. The duty to protect obligates states to shield individuals from violations by third parties, including private actors. Robust regulatory frameworks, oversight mechanisms, and accessible remedies become essential when schools, clinics, or employers fail to uphold rights due to discrimination, exploitation, or neglect[15]. Finally, the duty to fulfill, or facilitate and provide, requires proactive state action to realize ESCR as resources permit. This encompasses designing progressive, targeted measures to extend affordable education, healthcare, housing, and decent work, with particular attention to the most marginalized. The overarching logic here is progressive realization: even where full realization is not immediately possible, states must demonstrate ongoing steps, publish clear benchmarks, and mobilize the maximum available resources to advance rights.[16]

The UN Committee on Economic, Social and Cultural Rights (CESCR) plays a pivotal role in monitoring implementation through periodic reporting and the issuance of Concluding Observations. These observations evaluate gaps, commend progress, and press for concrete measures, time-bound plans, and budgetary commitments. A recurring pattern in Concluding Observations is the focus on disparities in access to education and other ESCR across social strata, including caste, ethnicity, and geographic variation.

Unequivocally, Asia's dualist legal systems, where constitutional or treaty obligations rely on subsequent domestic legislation to take effect,

[15] Philip Alston, Human Rights and Development: Towards a Rights-Based Approach, NYU (2017).
[16] M. A. Glendon, A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights, NEW YORK: RANDOM HOUSE (2001).

contribute to implementation lags. This dynamic is evidenced by reporting patterns and practical delivery gaps, including a substantial proportion of Asian states submitting overdue or delayed ESCR reports. The UN Treaty Body Database documents many such overdue reporting occurrences, signalling gaps in ongoing monitoring and accountability. Additionally, ESCAP's assessments of progressive realization underscore that rights rhetoric often outpaces actual access, with progress uneven across countries and among different groups within states. These observations reinforce the need for concrete, budgeted steps, robust data collection, and meaningful accountability mechanisms to translate commitments into tangible improvements in education, health, housing, and work[17].

In synthesis, the ICESCR binds states to respect, protect, and fulfil ESCR, anchored by the doctrine of progressive realization and reinforced by monitoring feedback from the CESCR. The CESCR's Concluding Observations function as critical accountability levers, pushing states to address disparities—such as caste-based inequities in education highlighted in critiques of India's implementation. Regional dynamics matter: Europe's binding enforcement contrasts with ASEAN's softer, non-binding engagement, which can shape the pace and firmness of reforms in Asia. The enduring tension between aspirational rights language and binding remedies remains central to understanding how ESCR is operationalized on the ground. For scholars and practitioners, the convergence of treaty-based reporting, regional commentary, and historical-legal analysis underscores the imperative of a rights-based approach centered on measurable progress, transparent reporting, and mechanisms that translate commitments into real access to education, health, housing, and work for all.

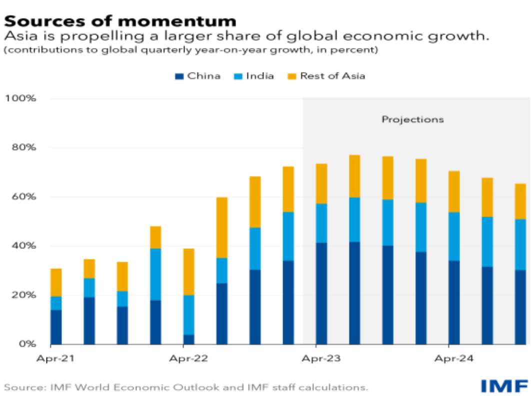
[17] U.N. Treaty Body Database, https://tbinternet.ohchr.org.

4. Thematic Analysis : Progress and Gals in ESRC Realization

4.1. Economic Rights (Right to Work and Adequate Standard of Living)

The last three decades have witnessed unprecedented progress in the realization of economic and social rights in Asia, particularly in the domains of the right to work and the right to an adequate standard of living. According to the World Bank, between 1990 and 2020, Asia succeeded in lifting approximately 1.2 billion people out of extreme poverty, marking a historic reduction in deprivation and a testament to the effectiveness of economic growth strategies in the region.[18] Nevertheless, this progress in poverty alleviation is accompanied by persistent challenges, most notably, the prevalence of informal economies and rising inequality, which continue to undermine the full realization of Economic, Social, and Cultural Rights (ESCR).

Despite aggregate economic growth, Asia's labor market remains characterized by the dominance of informal employment. The International Labour Organization estimates that approximately 60% of the Asian workforce is engaged in informal labor relations. This informality is particularly acute in countries like India and the Philippines, where the rise of gig economy platforms has provided work opportunities but has simultaneously left millions of workers without basic labor protections, social security, or collective bargaining rights. The COVID-19 pandemic starkly exposed the precarity of these arrangements: between



[18] Pueyo, Growth, Degrowth & Artificial Superintelligence, 197 J. CLEANER PROD. 1731 (2018).

2020 and 2022, South Asia alone lost an estimated 100 million jobs, disproportionately affecting informal and migrant workers who lacked safety nets.[19]

These structural vulnerabilities are not accidental but are intertwined with the region's dominant economic paradigm. Neoliberal policies, which prioritize gross domestic product (GDP) growth over equitable distribution, have shaped Asia's development trajectory. As Pueyo[20] argues, such market-centric approaches frequently subordinate social objectives to the logic of efficiency and competitiveness. This is empirically evident in Asia's average Gini coefficient of 0.38, which is higher than the global average of 0.35, indicating significant and growing income inequality. The persistence of inequality, even amidst robust economic expansion, suggests that the benefits of growth have not been equitably shared, undermining substantive progress toward the right to an adequate standard of living.

Moreover, the structure of Asia's labor markets amplifies these distributive imbalances. The proliferation of informal and precarious work has eroded the basis for collective bargaining, weakened labor unions, and diluted the capacity of states to enforce minimum labor standards.[21] The exploitation of migrant labor, as documented by the ILO, remains widespread, with many workers facing systemic barriers to social protection and legal redress. The pandemic further accentuated these disparities: as Pires[22] demonstrate, high levels of informality limited the effectiveness of public health and economic relief measures, resulting in deeper poverty and heightened vulnerability among the working poor.

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[19] M.A. Pires et al., What Is the Potential for a Second Peak of SARS-CoV-2?, ARXIV (2021), http://arxiv.org/pdf/2005.09019v3.
[20] *Supra* note 172.
[21] N. Vincent et al., Collective Bargaining in the Information Economy, ARXIV (2025), http://arxiv.org/pdf/2506.10272v1.
[22] *Supra* note 173.

In sum, while Asia's record in poverty reduction is laudable, the persistence of informality, inequality, and insufficient labor protections reveals critical gaps in the realization of the right to work and an adequate standard of living. Addressing these challenges requires moving beyond GDP-centric paradigms and neoliberal orthodoxy, adopting policies that prioritize equitable distribution, formalization of labor, and robust social protection systems. Only then can progress in economic rights be consolidated and made genuinely inclusive.

4.2. Social Rights (Health and Education)

4.3. Across Asia, the arc of social rights under the ICESCR shows meaningful gains alongside stubborn, entrenched disparities that keep millions from realizing basic education and health outcomes. In education, the region has made strides toward universal primary schooling, with roughly 90% of Asian states reporting near-universal access at the primary level. This progress reflects sustained policy attention, enrolment drives, and increased public investment in schooling, as well as international support that has helped expand system capacities in many countries.[23] Yet this apparent success masks uneven outcomes on the ground. In countries with large rural populations or fragile governance, enrolment figures can conceal high dropout rates, gender gaps, and quality concerns that limit the transformative potential of schooling.

UNESCO Global Education Monitoring Report 2024, OECD Education at a Glance, WHO Asia Health Reports (2024), and national statistical bureaus

Country	Primary Enrollment Rate (%)	Out-of-School Children (%)	Gender Parity Index	Primary Completion Rate (%)	Literacy Rate 15-24 (%)	Life Expectancy (years)
China	99.3	<1	~1.00	97	99	78
India	98	2	1.01	91	94	70
Indonesia	97	3	1.03	98	99	72
Myanmar	94	12	1.01	81	93	67
Vietnam	99	<1	1.00	96	99	75
South Korea	99.8	<0.5	~1.00	100	100	83
Thailand	99	<1	1.00	99	99	77

23 EFA Global Monitoring Report, UNESCO (2024) https://www.unesco.org/reports/gem-report/en/2024.

For example, while many urban centers boast higher enrollment, rural and marginalized communities often lag behind, signalling that enrollment alone is an insufficient proxy for true access and learning outcomes. The broader picture thus blends progress with persistent gaps that shape life chances well beyond the classroom.

Health outcomes in Asia also tell a story of progress interwoven with fragility. Life expectancy increased markedly from about 60 years in 1990 to around 75 years by 2023, underscoring the cumulative impact of public health investments, disease control programs, and expanded health insurance coverage in numerous countries[24]. This improvement has been felt in a wide array of domestic contexts, from urban clinics offering preventive care to national campaigns that address communicable and non-communicable diseases. Nevertheless, the health landscape remains uneven. A striking illustration is the contrast between broader universal health coverage in countries like Thailand and the more fragile systems in contexts marked by conflict or political instability, such as Myanmar, where health service delivery has suffered disruptions that erode access and quality. The divergence within the region highlights how universalist health goals interact with local political economy, infrastructure gaps, and governance challenges.

Unequivocally, cultural barriers, particularly gender norms, intersect with economic and political factors to undermine non-discrimination commitments embedded in ICESCR Article 3. In South Asia, persistent gender disparities in literacy illustrate this intersection vividly: evidence indicates a substantial female literacy gap that reflects embedded social norms, early marriage patterns, and limited access to safe and affordable schooling for girls. These educational barriers have cascading effects, limiting women's employment opportunities, autonomy, and health-seeking behavior, thereby entrenching cycles of inequality. Afghanistan

[24] *World Health Statistics 2024: Asia Regional Overview*, WHO (2024) https://www.who.int/data/gho/publications/world-health-statistics.

and Pakistan exemplify how gender norms—when coupled with economic constraints such as poverty and limited childcare support—can impede the realization of non-discriminatory rights in practice, despite formal commitments to equality in principle. The claim that gendered discrimination persists in educational access is supported by data showing that roughly 30% of women in parts of South Asia lack basic literacy compared with male counterparts, signaling a critical gap in realizing ESCR beyond formal policy language (ICESCR Art. 3). This evidence points to the need for targeted measures that address both cultural attitudes and structural barriers, measures that are data-driven, culturally sensitive, and grounded in rights-based accountability.

Turning to data and monitoring, UNESCO's Education for All indicators and the UNESCO EFA Global Monitoring Reports offer a longitudinal view of progress and remaining gaps in learning access, retention, and quality. These assessments reveal a nuanced picture: gains in enrollment do not automatically translate into equitable learning outcomes, nor do they guarantee that education systems are adequately preparing students for productive lives in diverse economic contexts. Parallelly, the WHO Asia Health Reports (2024)[25] illuminate how health system improvements, such as expanded coverage, essential medicines, and preventive services, produce tangible gains in population health, but also reveal persistent inequities within countries, between rural and urban populations, and among marginalized groups. Taken together, these two streams of data paint a composite portrait: Asia has advanced in foundational social rights, yet the distribution of benefits remains uneven, with rural-urban and gender-based disparities persisting as central challenges.

The regional pattern raises important questions about accountability and remedy. When states introduce universal programs without robust targeting or safeguards, gaps in equity can persist or widen. The ICESCR requires states to progressively realize ESCR and to demonstrate concrete steps toward inclusive access, with particular attention to the most

[25] *Id.*

marginalized[26][27]. In practice, this means not only funding ambitious programs but also investing in mechanisms that regularly collect gender-disaggregated data, evaluate program effectiveness, and adjust policies to close gaps in education quality and health outcomes. The evidence from UNESCO and WHO thus supports a dual conclusion: Asia has demonstrated commendable progress in expanding access to education and health services, yet persistent regional and sub-regional disparities—especially around gender and rural communities—remind us that rights-based progress must be measured not merely by enrollment or coverage, but by the realization of meaningful, non-discriminatory access to quality education and health for all.

4.4. Cultural Rights: Participation in Cultural Life

If health and education represent progress, the cultural rights landscape in Asia presents a more troubling paradox. On one hand, Asia is home to immense cultural wealth, recognized globally through UNESCO's World Heritage designations and Japan's pioneering protection of intangible heritage. On the other hand, cultural rights, particularly those of indigenous and minority communities, are increasingly under threat.

Displacement of indigenous peoples is a recurring issue. In India, large-scale dam and mining projects have displaced Adivasi communities, eroding not only livelihoods but also their deep-rooted cultural ties to land.[28] Across Southeast Asia, it is estimated that indigenous groups have lost nearly 40% of their ancestral lands since 2000, primarily to agribusiness and state-led infrastructure expansion. Such losses violate Article 15 of the ICESCR, which guarantees participation in cultural life.

At the same time, states often commodify culture under the banner of modernization and tourism. Bali is a telling example: while traditional dances and rituals attract global visitors, the framing of these practices for tourist consumption has eroded their original communal meanings,

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[26] *Supra* note 160.
[27] *Supra* note 170.
[28] *The Indigenous World 2024,* INT'L WORK GRP. FOR INDIGENOUS AFFS. (2024).

transforming culture into spectacle.[29] This commodification reflects what Coomans (2005) describes as the tension between cultural preservation and market forces in the realization of economic, social, and cultural rights.

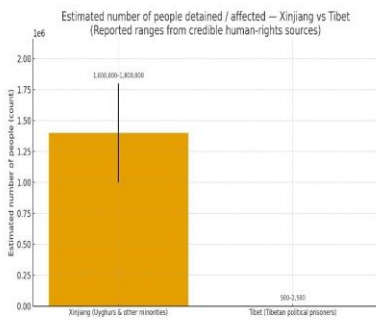
Yet, there are also positive models of cultural protection. Japan's safeguarding of intangible cultural heritage, from tea ceremonies to noh theatre, demonstrates how state frameworks can affirm cultural diversity as an asset rather than a liability.[30] Such approaches illustrate how cultural rights can be aligned with broader human development goals, affirming diversity as an essential dimension of social cohesion. The erosion of cultural rights is not merely symbolic but deeply material. Indigenous peoples' dispossession translates into exclusion from decision-making, erasure of languages, and loss of identity—all of which undermine their broader socio-economic rights.[31] Sen argues that development cannot be measured only by economic growth but by expanding substantive freedoms; cultural freedom is integral to this.[32]

The challenge, then, is reconciling modernization with respect for cultural diversity. If modernization proceeds at the expense of indigenous rights, it risks reproducing the very inequalities international human rights law seeks to eradicate. Protecting cultural rights in Asia requires not only heritage preservation policies but also recognition of indigenous land rights, inclusive governance, and equitable participation in cultural policymaking.

[29] M. Picard, Balinese Dance & Tourism, 47 Indonesia & Malay World 224 (2019).
[30] UNESCO, Safeguarding Intangible Cultural Heritage in Asia & the Pacific (2022).
[31] *Supra* note 178.
[32] AMARTYA SEN, DEVELOPMENT AS FREEDOM, ALFRED A. KNOPF (1999).

5. COMPARATIVE CASE STUDIES : CONTRASTING TRAJECTORIES

5.1. China – Economic Prioritization



SOURCE: EMNESTY INTERNATIONAL AND HUMAN RIGHTS WATCH ANNUAL REPORT

China presents a striking paradox in the realm of economic, social, and cultural rights (ESCR). Although it signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1997, it has never ratified the treaty, preferring to showcase what it calls a "socialist market economy" as proof of de facto adherence to the covenant's goals. On paper, the results appear extraordinary: since 1980, China has lifted more than 800 million people out of extreme poverty, the largest reduction ever recorded.[33] Universal primary education is nearly achieved, and national health insurance now covers over 95 percent of the population.[34] These achievements illustrate that state-led development can expand access to basic needs even without formal treaty ratification.

Yet the same growth narrative conceals systemic rights violations. Large-scale urban redevelopment has displaced millions through forced evictions with minimal compensation.[35] In Xinjiang, credible reports document mass surveillance, cultural suppression of Uyghur communities, and coercive labour transfers, practices that contravene ICESCR provisions on cultural participation and freedom from discrimination.[36] [37] Similar restrictions are evident in Tibet and in the

[33] *Poverty & Equity Data Portal: China*, WORLD BANK (2022) https://pip.worldbank.org/country-profiles/CHN.
[34] Y. Huang, China's Health Reforms and Global Health Strategy, ROUTLEDGE (2021).
[35] *Human Rights Watch, World Report 2023: China (2023)*, HRW (2023) https://www.hrw.org/world-report/2023/country-chapters/china.
[36] *Assessment of Human Rights Concerns in Xinjiang*, U.N. HUM. RTS. COUNCIL (2022).
[37] Adrian Zenz, Sterilizations, IUDs & Mandatory Birth Control, JAMESTOWN FOUND (2020).

rollback of civil liberties in Hong Kong, where the National Security Law has sharply curtailed freedom of expression.[38] These examples support the United Nations' critique that China's pursuit of rapid economic growth "masks" structural human-rights violations.[39]

China's assertiveness is not confined to its own borders. Its relationship with the Korean Peninsula illustrates a pattern of interference in neighbouring states' internal affairs. Beijing remains Pyongyang's principal economic lifeline, providing trade and energy support that blunts the impact of international sanctions.[40] This backing strengthens North Korea's authoritarian regime and undermines collective efforts to address its nuclear program. At the same time, China pressures Seoul when South Korea aligns too closely with the United States or Japan. Such tactics exemplify how China extends its economic leverage to shape the domestic and foreign policy environment of a democratic neighbour.

The China–North Korea dichotomy thus reveals a calculated dual strategy: sustain the North Korean regime to maintain a buffer state while coercing South Korea to limit U.S. strategic presence in the region.[41] This approach allows Beijing to project power on the peninsula without direct confrontation, but it also undermines regional stability and violates the principle of non-interference enshrined in the UN Charter.

China's case underscores that dramatic poverty reduction and social investment, though laudable, cannot substitute for genuine respect for economic, social, and cultural rights. Development that curtails cultural freedom, silences dissent, and exports coercive influence remains incomplete. As Sen (1999) argues, true development expands human capabilities and freedoms; measured by that standard, China's growth story is far from the full realization of rights.

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[38] *Hong Kong 2023 Annual Report (2023)*, AMNESTY INT'L (2023) https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/hong-kong.
[39] *Supra* note 189.
[40] H. Lee, Beijing & Pyongyang, 36 PAC. REV. 845 (2023).
[41] S. Kim, China–Korea Relations in the Yoon Era, 10 J. ASIAN SEC. & INT'L AFF. 34 (2023).

5.2. South Korea – Developmental Success and Persistent Gaps

South Korea stands as one of Asia's most compelling examples of how state-led development can advance economic, social, and cultural rights. Since ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1990, the country has pursued a model combining rapid industrialization with democratic consolidation after 1987. Its Human Development Index (HDI) reached 0.925 in 2024, placing it among the highest in Asia[42]. Yet, this remarkable progress masks persistent structural gaps that continue to challenge full compliance with ICESCR obligations.

Economically, South Korea's rise was fuelled by the chaebol system, where conglomerates such as Samsung and Hyundai spearheaded export-led growth, ensuring mass job creation and income stability.[43] However, this success also produced inequities. Youth unemployment stands at 7.2%, more than double the national average of 3.5%[44]. Moreover, gender wage disparities remain the highest among OECD countries, with women earning on average 31% less than men, violating ICESCR Article 7's guarantee of fair wages and equal remuneration.[45] Migrant workers also face labour exploitation, a concern repeatedly raised by human rights organizations.[46]

In terms of social rights, South Korea has achieved near-universal healthcare coverage (97%) and boasts one of the world's highest tertiary

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[42] *Human Development Report 2024*, U.N. DEV. PROGRAMME (2024) https://hdr.undp.org/content/human-development-report-2023-24.

[43] S. KIM, SOUTH KOREA'S ECONOMIC MIRACLE AND HUMAN RIGHTS, PALGRAVE MACMILLAN (2020).

[44] Employment & Labor Force Survey, KOREA STATISTICAL OFFICE (2024) https://www.moel.go.kr/english/resources/statistics.do.

[45] *OECD Employment Outlook 2023*, OECD (2023) https://www.oecd.org/en/publications/oecd-employment-outlook-2023_08785bba-en.html.

[46] *World Report 2024: South Korea*, HRW (2024), https://www.hrw.org/world-report/2024.

enrolment rates at 69%.[47] These achievements reflect the state's long-term investment in social infrastructure. Yet, the culture of overwork remains endemic: with an average of 1,967 annual work hours—the highest in the OECD—workers often experience deteriorating health outcomes, undermining the right to health under ICESCR Article 12.

Culturally, South Korea's global soft power has surged through the Hallyu (K-wave), which has reshaped global cultural consumption. The government has also allocated nearly $500 million annually to preserve traditional arts and cultural heritage.[48] Yet, regional dialects such as Jeju are critically endangered, with UNESCO listing them as at risk of extinction.[49] This reveals a tension between global cultural projection and the preservation of internal diversity.

Taken together, South Korea's trajectory demonstrates the viability of a state-driven model for advancing ESCR. However, cultural homogenization, labour inequities, and systemic overwork highlight the limits of its achievements. The UN Committee on Economic, Social and Cultural Rights has emphasized these shortcomings, underscoring that genuine rights realization requires addressing inequality as much as celebrating growth.

5.3. India – Democratic Implementation

India's journey with the International Covenant on Economic, Social and Cultural Rights (ICESCR), which it ratified in 1979, is deeply intertwined with its democratic fabric and constitutional commitments. Unlike many states that treat economic and social rights as aspirational, India has made

[47] *World Health Statistics 2024: Republic of Korea Overview*, WHO (2024) https://data.who.int/countries/410.

[48] *Budget Report for Cultural Heritage*, MINISTRY OF CULTURE, SPORTS & TOURISM (S. KOR.) (2023), https://www.mcst.go.kr/servlets/eduport/front/upload/UplDownloadFile?pFileName=%5B230119%5D+K-contents+budget+finalized.pdf&pRealName=1674088619949.pdf&pPath=3504090000.

[49] *Global Education Monitoring Report: Asia-Pacific; Atlas of Endangered Languages*, UNESCO (2023) https://unesdoc.unesco.org/ark:/48223/pf0000385723.

them justiciable through judicial innovation. The Supreme Court, using Public Interest Litigations (PILs), has expanded the scope of Article 21 of the Constitution, the right to life, to include rights to food, health, education, and shelter.[50] The landmark Right to Food case led to the establishment of the mid-day meal scheme in schools, transforming millions of children's access to nutrition.[51] This judicial activism has made India an important case study of how democratic institutions can operationalize ESCR commitments.

Yet, the story is not without stark gaps. Despite constitutional guarantees and targeted programs, malnutrition remains one of India's gravest challenges. According to the National Family Health Survey (NFHS-5), nearly 35% of children under five are stunted, reflecting chronic undernutrition[52]. This persistent crisis underscores the disconnect between ambitious rights-based schemes and on-the-ground implementation. Gender inequalities compound the problem, as female literacy rates and maternal health outcomes still lag behind national averages, undermining broader development goals.[53]

Federalism, the bedrock of India's governance, enables diversity-sensitive policymaking but also exacerbates disparities across states. Southern states such as Kerala and Tamil Nadu consistently deliver stronger outcomes in healthcare and education, while states like Bihar and Uttar Pradesh struggle with systemic underinvestment and weaker governance structures.[54] This unevenness illustrates both the promise and the pitfalls of decentralized governance: while it allows innovation and

[50] ANUJ BHUWANIA, COURTING THE PEOPLE, CAMBRIDGE UNIV. PRESS (2017).
[51] REETIKA KHERA, THE BATTLE FOR EMPLOYMENT GUARANTEE, OXFORD UNIV. PRESS (2011).
[52] National Family Health Survey (NFHS-5) 2019–21, INT'L INST. FOR POPULATION SCIS. (IIPS) & ICF (2021).
[53] U.N. Dev. Programme, Human Development Report 2023 (2023).
[54] JEAN DRÈZE & AMARTYA SEN, AN UNCERTAIN GLORY, PRINCETON UNIV. PRESS (2013).

accountability, it also risks leaving millions behind depending on their place of birth.

Social rights beyond food and health reflect similar complexities. The Right to Education Act (2009) enshrined free and compulsory education, but learning outcomes remain uneven, with rural schools often lacking infrastructure and qualified teachers.[55] Meanwhile, healthcare remains heavily privatized, placing disproportionate burdens on poorer households and undermining the ICESCR's vision of universal accessibility.[56] India's democratic implementation of ESCR offers hope, especially when compared globally. Courts, civil society, and the media play crucial roles in pushing accountability. But to truly honor its commitments, India must close the gap between legal recognition and everyday realities. As Amartya Sen (1999) argues, development is about expanding human capabilities—an aspiration India has embraced, yet one that remains incomplete until malnutrition, gender inequality, and regional disparities are decisively addressed.

6. Recommendations

Addressing these challenges requires concerted, region-wide action. A priority is the establishment of an Asia-wide legally binding ESCR pact under the Economic and Social Commission for Asia and the Pacific (ESCAP), fostering shared commitments and accountability.[57] Strengthening the justiciability of ESCR hinges on training judiciaries across the region, equipping courts to interpret and enforce socio-economic rights effectively.[58] Rigorous corporate accountability, through enforcing frameworks like the United Nations Guiding Principles on Business and Human Rights (UNGPs), can mitigate adverse impacts of

[55] *Annual Status of Education Report (Rural) 2022,* ASER CENTRE (2022) https://asercentre.org/wp-content/uploads/2022/12/aserreport2022-1.pdf.
[56] *Human Development Report 2024*, U.N. DEV. PROGRAMME (2024) https://hdr.undp.org/content/human-development-report-2023-24.
[57] J. Lee & M. Chen, Towards a Regional Pact for ESCR in Asia, ESCAP POL'Y BRIEF NO. 22 (2024).
[58] S. Patel, Training Judiciaries on Socio-Economic Rights, 27 INT'L J. HUM. RTS. 340 (2023).

business activities on ESCR.[59] To systematically measure progress, an ESCR Index encompassing education, health, housing, and cultural rights indicators should be developed and institutionalized for periodic monitoring and policy guidance.[60] These recommendations aim to embed rights-based approaches firmly in governance and development strategies, empowering states and stakeholders to overcome current deficits.

7. Conclusion

Asia's trajectory on economic, social, and cultural rights (ESCR) is paradoxical, marked by unprecedented gains in areas like education, health, and cultural participation alongside entrenched barriers that impede equitable realization. Despite significant improvements, persistent gaps rooted in geopolitical tensions, climate vulnerabilities, and digital inequalities limit the full fulfilment of ESCR for millions.[61] However, this complexity underscores the vital need for unequivocal, coordinated action to align Asia's socio-economic progress with universal human rights standards.

Looking ahead, Asia stands poised to shape a distinctive model for the Global South—one that balances rapid development with rights-based governance. Upcoming reforms and strengthened regional cooperation are projected to benefit 50 million people by 2030 through improved access to education, healthcare, and cultural rights alone.[62] The accelerating momentum of youth-led advocacy and integration with Sustainable Development Goals amplifies the potential for inclusive, sustainable futures. Asian states and stakeholders must harness this energy, resolve structural inequalities, and set new benchmarks for comprehensive human rights fulfilment. In doing so, Asia can not only meet its ESCR commitments but inspire transformative change globally.

[59] P. Kumar, Corporate Accountability under UN Guiding Principles in Asia, 11 BUS. & HUM. RTS. J. 201 (2024).
[60] Y. Tanaka, Proposing an ESCR Index for Asia, 5 HUM. RTS. METRICS 88 (2024).
[61] F. Rahman, Climate Change Displacement in Bangladesh, 18 ENV'T JUST. Q. 150 (2023).
[62] *Supra* note 211.

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I, Professor (Dr.) Anand Pawar hereby declare that the particulars given above are true to the best of my knowledge and belief.

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