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ABOUT INDIAN INSTITUTE OF LEGAL STUDIES

The Indian Institute of Legal Studies established in the year 2010 has evolved into a unique system of imparting legal education not only in North Bengal but also as an emerging education and Research Centre in the SAARC region with the establishment of the Centre for SAARC on Environment Study & Research. Acknowledged as one of the best law colleges in India, IIS is nestled in the cradle of the quaint Himalayas and picturesque surroundings assimilating nature and education, a combination which is a rarity in itself. Indian Institute of Legal Studies is an institute that promotes holistic study in Law in the form of short-term courses, field work, experiential learning, and Clinical legal classes in addition to the regular undergraduate course. Post Graduate courses and Research Centre are already functional, which will mature into doctrinal courses.

The Institution takes pride in hosting workshops for police officers of North Bengal on Human Rights and Cyber Crimes, where the institute was privileged to have the presence of eminent police officers and scholars from different corners of the country. The Bureau of Police Research & Development, Ministry of Home Affairs, Government of India had approved the organising of a vertical interaction course for IPS officers on Criminal Justice Delivery System which was witnessed by the gracious presence of the Hon'ble Judges of the Supreme Court of India and the various High Courts.

The Institution has been organising a series of National and International Seminars, Conferences, Symposiums, Workshops and Inter and Intra Moot Court competitions. The Institute had started with organising a national seminar on the "Civil Justice Delivery System". Today, it has reached the peak of organising international seminars with the SAARC Law Summit & Conclave being the blooming one. Even during this pandemic, the Indian Institute of Legal Studies was the first of its kind in this region that had undertaken the initiative of conducting online classes for the students of both UG and PG courses to reach out to the students through online teaching learning mechanism from the very initial period of lockdown. Also, the college has successfully conducted internal examinations through online mode so that the continuous evaluation of students does not come to a halt.

The Institution's vital location, its active participation in imparting knowledge and moulding its students into sensible and responsible individuals has brought to its credit to serve as the nucleus for education in the North Bengal region. The emphasis in academic development with

Its adoption of inter-disciplinary and practical approaches has aided its students to gain a deeper understanding of the learning process and value for education. Additionally, it has not merely laid the importance for the value and the need to be educated individuals, or to serve as efficient lawyers, but more essentially, to be reborn as socially viable and responsible beings to construct appropriate mechanisms for building a better society for the coming future.

MESSAGE FROM THE PATRON**SHRI JOYJIT CHOUDHURY****Founder & Chairman****Indian Institute of Legal Studies**

As the legal profession evolves in response to global challenges and technological advancement, it is our collective responsibility to ensure that access to justice and the dignity of the law remain paramount. We must strive to not only understand the changing landscape but also to shape it with wisdom and purpose.

The IILS Law Review is a legal journal steadfastly dedicated to advancing legal learning and upholding the values of justice and integrity. This journal stands as a testament to the enduring importance of rigorous analysis and spirited discourse.

It fills me with profound joy and a sense of pride to bear witness to the remarkable journey of our legal journal, crafted by the esteemed members of the Indian Institute of Legal Studies, Siliguri.

I extend my heartfelt appreciation to all those who have contributed tirelessly, transforming invaluable ideas into meticulously crafted pieces of intellectual excellence. Together, we continue to uphold the noble tradition of scholarly inquiry and dissemination of ideas, enriching the legal landscape with our collective wisdom and insight.

Joyjit Choudhury

Patron

IILS Law Review

MESSAGE FROM EDITOR IN CHIEF

Dr. Trishna Gurung

Principal-in-Charge

Indian Institute of Legal Studies

It is with immense pleasure that I present to you the latest issue of the *IILS Law Review*. This journal remains committed to fostering high-quality academic discourse in the legal field, offering a platform for rigorous analysis, critical evaluation, and thoughtful commentary on contemporary legal issues. As we continue to steer the evolving legal landscape, this issue echoes our journal's dedication to addressing both traditional and emerging areas of law.

From discussions on constitutional and environmental principles to explorations of nuanced legal challenges concerning digital evidences, surrogacy, and socio-economic policy, the *IILS Law Review* strives to provide its readers with thought-provoking scholarship.

We take great pride in featuring valuable contributions from academicians, legal scholars, practitioners, and students. Their research not only augments our understanding of law but also sparks evocative debates that shape the future of legal practice and jurisprudence.

I extend my heartfelt gratitude to the authors, reviewers, and the editorial board for their persistent efforts and dedication in maintaining the high standards of this journal. I am assured that the diverse

perspectives presented in this edition of the journal will inspire, educate, and challenge our readers. Thank you for your continued support and engagement with the *IILS Law Review*. We look forward to your feedback and contributions in future editions.

Best Regards,

A handwritten signature in black ink, reading "Trishna Gurung", enclosed in a thin black rectangular border.

Dr. Trishna Gurung

Editor-in-Chief

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RESOLVING MARITIME TORT DISPUTES & JURISDICTIONAL DILEMMAS: FROM LEX LOCI DELICTI TO PROPER LAW THROUGH THE REALM OF TECHNOLOGICAL ADVANCEMENTS

Dr. Sourabh V.C. Ubale¹

Abstract

The dynamic nature of maritime tort law presents unique jurisdictional dilemmas, particularly in determining applicable legal principles when disputes arise on the high seas. Traditionally, the doctrine of lex loci delicti—the law of the place where the tort occurred—has governed maritime tort cases. However, the increasing complexities of international shipping, coupled with evolving legal doctrines, have led courts to favor the proper law of the tort approach. This paper explores the challenges of jurisdiction in maritime tort disputes, considering the notion of ships as “floating islands” and the intricate legal questions they pose.

The study delves into the inherent jurisdictional conflicts arising from transnational maritime incidents, analyzing the tension between territoriality and legal certainty. A critical comparison of lex loci delicti and the proper law of the tort highlights the need for a nuanced approach in resolving maritime disputes. Furthermore, technological advancements—ranging from satellite tracking to blockchain-based contracts—have significantly influenced maritime tort law, reshaping liability regimes and dispute resolution mechanisms. Courts worldwide continue to navigate these complexities, attempting to harmonize traditional maritime legal principles with contemporary realities.

This paper advocates for a reformed liability framework that incorporates technological developments while ensuring fair and effective dispute resolution. Through a comprehensive analysis of case law and international legal instruments, it proposes recommendations for enhancing jurisdictional clarity and legal predictability in maritime tort disputes.

Keywords: *Maritime Tort, Jurisdiction, Lex Loci Delicti, Proper Law, Technological Advancements, Liability Regimes.*

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1. INTRODUCTION

Maritime tort law encompasses cases where injury, loss, or damage is inflicted upon a person or their interests due to the actions or negligence of another party in a maritime setting. The term ‘tort’ originates from a Middle English word derived from Latin, meaning ‘injury’. In the context of maritime law, it applies broadly to instances where harm is caused without requiring malice or premeditation for liability to be established. The scope of maritime tort law is extensive, covering a variety of situations from personal injuries sustained on board ships to damage or loss of cargo during transport. Given the nature of maritime activities, these cases often involve complex scenarios where multiple parties and jurisdictions may be implicated. This complexity is further compounded by the fact that maritime tort cases typically involve claims against corporations rather than individuals. The transportation of passengers and goods inherently carries a responsibility for their safety, placing a duty of care on carriers to prevent harm. For instance, damage to goods frequently occurs due to inadequate storage or improper handling by the carrier. If cargo is not properly secured, it can shift during transit, leading to losses and making the carrier liable for the resultant damages. Such cases underscore the carrier's responsibility to ensure the safe carriage of goods, aligning with the fundamental principles of tort law that seek to remedy wrongs and provide compensation for harm suffered.

The application of maritime tort law often intersects with international regulations and conventions. One notable example is the International Convention for the Unification of Certain Rules of Law with Respect to Collisions between Vessels, which provides a framework for handling maritime collisions and associated tort claims.² This convention exemplifies the international dimension of maritime tort law, highlighting the need for consistent legal standards across different jurisdictions. In the realm of personal injury, maritime tort law protects passengers and crew members who suffer injuries while on board a vessel. The Jones Act, a key piece of U.S. legislation, allows seamen to seek compensation from their employers for injuries resulting from negligence.³ This law underscores the broader protective measures within maritime tort law designed to ensure the welfare of those working at sea. Ultimately, the concept of maritime tort embodies the principle of liability for harm caused in a maritime context, striving to ensure justice and compensation for affected parties. It reflects the intricate

² International Convention for the Unification of Certain Rules of Law with Respect to Collisions Between Vessels, Sept. 23, 1910, 1910 U.N.T.S. 111.

³ Jones Act, 46 U.S.C. s. 30104 (1920).

nature of maritime operations and the legal responsibilities inherent in the safe transportation of people and goods.

1.1 Ships as ‘Floating Islands’ and Complexities in Determining Jurisdiction

The concept of ships as ‘floating islands’ is a metaphor used to describe the unique legal status of ships on the high seas. Essentially, a ship is considered an extension of the territory of the country whose flag it flies, thereby subjecting it to the laws of that flag state, even when it is in international waters. This concept introduces significant complexities in determining jurisdiction in maritime tort cases. One of the primary challenges stems from the mobility of ships. Unlike terrestrial vehicles, ships continuously traverse international boundaries, making it difficult to pinpoint where a tortious act actually occurred. This mobility means that a single maritime incident could potentially involve multiple jurisdictions. For example, if two ships from different nations collide on the high seas, questions arise as to which country’s laws should apply and which court has the authority to hear the case. The traditional principle of *lex loci delicti*, which applies the law of the place where the tort occurred, often proves problematic in maritime contexts. Since the high seas are not under the jurisdiction of any single nation, applying this principle can lead to inconsistencies and disputes over jurisdiction. Courts often struggle to determine whether the tort occurred on the offending ship, the victim ship, or another location entirely. This ambiguity can result in protracted legal battles and uncertain outcomes for the parties involved.

Furthermore, the concept of ships as floating islands complicates jurisdiction because it intertwines with international maritime conventions and treaties. These legal instruments, such as the United Nations Convention on the Law of the Sea (UNCLOS), establish broad frameworks for maritime governance but leave room for interpretation regarding specific jurisdictional issues⁴. Thus, the interplay between national laws and international conventions adds another layer of complexity to jurisdictional determinations. Given these challenges, courts and legal scholars have suggested moving towards the application of the ‘proper law of the tort’. This approach involves identifying the legal system with the most significant relationship to the dispute, thereby promoting fairness and logical consistency in outcomes. By considering factors such as the nationality of the ships, the nature of the incident, and the locations of the parties involved, courts can better navigate the intricate jurisdictional waters of maritime torts.⁵

⁴ United Nations Convention on the Law of the Sea art. 92, Dec. 10, 1982, 1833 U.N.T.S. 3.

⁵ William Tetley, “Maritime Law as a Mixed Legal System,” 23 Tul. Mar. L.J. 317 (1999).

1.2 Inherent Jurisdictional Challenges In Maritime Tort Cases

Maritime tort cases, particularly those involving collisions between vessels of different nationalities, present a unique set of jurisdictional challenges. These challenges arise from the very nature of the maritime environment, where ships frequently traverse international waters and enter the territorial waters of various countries, each with its own legal framework. One of the primary issues in these cases is determining which nation's courts have jurisdiction to hear the case. This decision is often complicated by the fact that the vessels involved may be registered in different countries, and the collision may occur in international waters or the territorial waters of a third country. For instance, if a Greek ship collides with a Japanese ship in the Indian Ocean, questions immediately arise about which country's laws govern the dispute and which courts can adjudicate the matter. The principle of *lex loci delicti*, or the law of the place where the tort occurred, typically governs tort cases. However, in maritime contexts, this principle becomes less straightforward. If the collision occurs in international waters, no single nation's laws automatically apply. This ambiguity can lead to conflicting claims of jurisdiction and legal uncertainty. Additionally, the flag states of the involved vessels may assert their own legal rights, further complicating the jurisdictional landscape.

Moreover, international conventions and treaties, such as the Brussels Collision Convention of 1910, aim to provide some uniformity in handling maritime collisions, yet they often leave significant room for interpretation and national variation.⁶ These conventions may dictate certain procedural aspects but do not always resolve the fundamental jurisdictional questions, leaving courts to navigate these complexities on a case-by-case basis.

The determination of jurisdiction can also be influenced by the principle of *forum non conveniens*, where a court may decline jurisdiction if it believes another forum is more appropriate for hearing the case. This principle requires courts to weigh various factors, including the convenience of the parties, the location of evidence, and the applicable law, adding another layer of complexity to the jurisdictional determination. Furthermore, maritime tort cases frequently involve multiple parties, such as ship-owners, insurers, and cargo owners, each with potentially different national affiliations and interests. This multiplicity of stakeholders can lead to fragmented legal proceedings across different jurisdictions, complicating the resolution of the case.

⁶ Supra Note 1.

The inherent jurisdictional challenges in maritime tort cases, especially those involving vessels of different nationalities, stem from the intersection of diverse legal systems, international waters, and the multifaceted nature of maritime operations. Addressing these challenges requires a nuanced understanding of both national and international maritime law and a flexible approach to jurisdictional determinations to ensure fair and efficient resolution of disputes.

2. PRINCIPLES OF LEX LOCI DELICTI VS. PROPER LAW OF THE TORT

2.1 Analysis of the Traditional Principle of Lex Loci Delicti and Its Limitations in Maritime Contexts

The principle of *lex loci delicti*, or the law of the place where the tort occurred, has traditionally been a cornerstone of tort law. It asserts that the applicable law for a tort case should be the law of the jurisdiction where the wrongful act took place. This principle aims to provide certainty and predictability in legal proceedings, ensuring that parties can reasonably foresee the legal consequences of their actions based on the location of the act. In terrestrial tort cases, *lex loci delicti* functions effectively because the location of the tort is typically within a clear and singular jurisdiction. However, in maritime contexts, this principle encounters significant limitations. Ships are inherently mobile, traversing international waters and the territorial waters of multiple states. When a tortious act occurs at sea, pinpointing the exact location of the act becomes complex. For example, if two ships from different countries collide on the high seas, the incident does not fall neatly within the jurisdiction of any single state. Moreover, applying *lex loci delicti* to maritime torts can lead to arbitrary and unjust outcomes. The location where the tort occurred might have only a tenuous connection to the parties involved or the nature of the dispute. This can result in the application of laws that are unfamiliar or irrelevant to the circumstances of the case, complicating the legal process and potentially disadvantaging one party over another.

2.2 Argument for the Application of the Proper Law of the Tort

Given these limitations, there is a compelling argument for the application of the ‘proper law of the tort’. This principle advocates for the use of the law that has the most significant relationship to the tortious act and the parties involved. The proper law of the tort seeks to promote fairness and consistency by considering various factors beyond the mere location of the act, such as the nationality of the parties, the place of business, and the underlying facts of the case. Applying the proper law of the tort in maritime contexts can address the shortcomings of *lex loci delicti* by aligning the applicable law with the substantive connections of the case.

For instance, in a collision involving a Greek and a Japanese vessel in the Indian Ocean, the proper law would consider the nationalities of the ships, the registration details, and the broader context of the incident, rather than arbitrarily applying the law of the nearest landmass or the location of the collision. This approach is particularly relevant in an era of increasing globalization and technological advancement, where maritime operations are more interconnected and complex than ever. The proper law of the tort allows for a more nuanced and equitable resolution of disputes, reflecting the realities of modern maritime commerce and navigation.

Moreover, this principle aligns with the broader objectives of international maritime conventions and treaties, which often seek to harmonize legal standards and promote uniformity in maritime law. By adopting the proper law of the tort, courts can contribute to a more coherent and just legal framework that accommodates the unique challenges of maritime torts. While *lex loci delicti* offers a straightforward approach to determining applicable law, its limitations in the maritime context necessitate a more flexible and context-sensitive principle. The proper law of the tort, by considering the most significant relationship, ensures that legal outcomes are fair, logical, and consistent with the intricacies of maritime operations. This approach not only addresses the inherent jurisdictional challenges in maritime tort cases but also promotes a more equitable and effective resolution of disputes in an increasingly complex and interconnected world.

3. IMPACT OF TECHNOLOGICAL ADVANCEMENTS ON MARITIME TORT LAW

3.1 Technical Advancements Vis-À-Vis Maritime Tort Law

Technological advancements in the 20th and 21st centuries have significantly transformed maritime operations, introducing new complexities into maritime tort law. As ships have become more sophisticated and maritime routes more interconnected, the potential for disputes and the intricacies of resolving them have increased. Modern technology has not only changed the nature of maritime activities but has also complicated the determination of liability and jurisdiction in tort cases. One of the primary complications arises from the sheer scale and speed of modern maritime vessels. With larger ships capable of carrying vast quantities of goods and faster speeds, the potential impact of maritime accidents has grown exponentially. These advancements have led to more severe and widespread damages when incidents occur, complicating the legal landscape.

Furthermore, the integration of advanced navigation and communication systems on ships has introduced new dimensions of liability. Technologies such as GPS, automated identification systems (AIS), and electronic chart display and information systems (ECDIS) have improved navigation and safety but have also created new grounds for negligence claims. For instance, failure to properly maintain or utilize these technologies can be considered negligent, leading to disputes over whether human error or technological malfunction is to blame.

3.2 Modern Technology Vis-À-Vis Jurisdictional and Legal Determinations in Maritime Torts

Several examples illustrate how modern technology complicates jurisdictional and legal determinations in maritime torts:

3.2.1 Automated Navigation Systems: The use of automated navigation systems, while enhancing safety and efficiency, raises questions about liability when accidents occur. In the event of a collision, determining whether the fault lies with the crew for improper use of the system, the manufacturer for a defect, or the software for a malfunction becomes a complex legal issue. This complexity is exacerbated when vessels from different jurisdictions are involved, as each country may have different standards for technology use and liability.

3.2.2 Cybersecurity Threats: As maritime operations become increasingly digital, the risk of cyberattacks has grown. Cyber incidents, such as hacking into a ship's navigation system, can cause collisions or other maritime accidents. Determining liability in such cases is challenging, particularly when the attack originates from a different jurisdiction. Questions arise about whether the shipowner, the technology provider, or the attackers themselves bear responsibility, and which jurisdiction's laws should apply.

3.2.3 Remote Monitoring and Control: Modern ships often use remote monitoring and control technologies, allowing operators to oversee and manage vessel operations from distant locations. This can lead to jurisdictional complications when an incident occurs, as it blurs the lines between where the control was exercised and where the damage happened. For example, if a ship controlled from a shore-based center in one country causes a collision in international waters, it is unclear which jurisdiction's laws govern the incident.

3.2.3 Environmental Technology: Advances in environmental technology, such as ballast water treatment systems and emission control technologies, have introduced new compliance requirements. Failure to comply with these regulations can lead to tort claims for environmental

damage. The global nature of maritime operations means that ships must adhere to various international and national regulations, complicating legal proceedings when environmental harm occurs.

These examples highlight the need for a more adaptive legal framework that can address the nuances introduced by modern technology in maritime torts. The interplay between advanced technologies and traditional legal principles necessitates continuous updates to maritime law to ensure it remains effective and fair. While technological advancements have significantly improved maritime operations, they have also introduced new complexities into maritime tort law. The challenges of determining liability and jurisdiction in this technologically advanced landscape require a nuanced approach that considers the multifaceted nature of modern maritime activities. By understanding and addressing these challenges, the legal framework can better adapt to the evolving realities of maritime operations, promoting fair and consistent resolutions in maritime tort cases.

4. COURTS NAVIGATING THE COMPLEXITIES OF MARITIME LAW

To understand the practical application of jurisdictional principles and conflict of laws in maritime torts, examining significant case studies is essential. These cases highlight how courts navigate the complexities of maritime law, balancing national and international legal frameworks.

One landmark case is **The Atlantic Star**⁷ case. In this case, a collision occurred between two vessels on the high seas, involving ships from different flag states. The primary issue was determining which country's law would govern the dispute. The court ultimately applied the principle of *lex loci delicti*, deciding that the law of the place where the tort occurred (in this instance, the high seas) should govern. This case underscores the challenges of applying traditional tort principles in maritime contexts, where the location of the tort can be ambiguous and jurisdictionally complex.

Another significant case is **Lauritzen v. Larsen**⁸. This U.S. Supreme Court case involved a Danish seaman who was injured while working on a Danish vessel but sought to claim under U.S. law. The Court had to decide whether U.S. law applied, given the various international elements of the case. The decision emphasized factors such as the place of the wrongful act, the law of the flag, the allegiance or domicile of the injured, and the place of the contract. The

⁷ *The Atlantic Star*, [1974] A.C. 436.

⁸ *Lauritzen v. Larsen*, 345 U.S. 571 (1953).

Court ultimately held that Danish law applied, setting a precedent for using a multifactor approach to determine the applicable law in maritime tort cases. These cases have established key legal precedents that continue to influence maritime tort law. The **Lauritzen v. Larsen**⁹ decision, for example, has profound implications for future maritime tort disputes. By outlining a multifactor approach, the Court provided a flexible framework for determining the applicable law, considering the most significant relationship rather than rigidly adhering to *lex loci delicti*. This approach is particularly useful in modern maritime contexts, where technological advancements and global operations frequently complicate jurisdictional determinations.

Another pivotal case is **Rhoditis v. Hellenic Lines Ltd.**¹⁰, which expanded upon Lauritzen by adding the “base of operations” factor. The U.S. Supreme Court ruled that even if a ship is foreign-flagged, if its operations are primarily based in the United States, U.S. law could apply. This precedent is crucial for cases involving multinational corporations that operate extensively in various jurisdictions. It underscores the importance of practical connections over formalistic adherence to traditional principles.

The **Amoco Cadiz**¹¹ oil spill case further illustrates the application of these principles in environmental torts. The spill, involving a Liberian-registered ship owned by a U.S. corporation, caused extensive environmental damage off the coast of France. French courts asserted jurisdiction and applied French law, emphasizing the significant impact on French territorial waters. This case highlights how courts can prioritize the location of damage and the interests of affected states in determining jurisdiction and applicable law, especially in environmental tort cases with wide-reaching impacts.

These cases collectively demonstrate the evolving nature of maritime tort law. They show a trend toward more nuanced and flexible approaches that consider the multifaceted nature of modern maritime operations. The shift from strict adherence to *lex loci delicti* toward a more comprehensive analysis of relevant factors reflects an effort to achieve fair and equitable outcomes in a globalized maritime industry. Significant maritime tort cases provide invaluable insights into the application of jurisdictional principles and conflict of laws. The precedents set by these cases continue to shape the legal landscape, guiding courts in resolving the complex and often international nature of maritime tort disputes. By understanding these precedents,

⁹ Lauritzen v. Larsen, 345 U.S. 571 (1953).

¹⁰ Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970).

¹¹ In re Oil Spill by the Amoco Cadiz, 954 F.2d 1279 (7th Cir. 1992).

legal practitioners can better navigate the challenges of modern maritime tort law, ensuring just outcomes for all parties involved.

4.1 Courts Balancing Traditional Legal Doctrines and Modern Complexities

In Becker v. Poling Transportation¹², plaintiffs were severely burned in a fire caused by the use of a portable pump instead of a vacuum truck to transfer petroleum. The court held the petroleum purchaser liable due to its knowledge of the improper equipment use, showcasing liability principles under admiralty jurisdiction. **In Crear v. Omega Protein**¹³, a former employee injured onboard a vessel later committed a murder. The court found no duty of care owed by the employer for unforeseeable consequences, emphasizing foreseeability in negligence claims. **In re Graham Offshore**¹⁴, the court ruled that the Emergency Evacuation Plan (EEP) did not impose a duty on the rig owner to oversee boat evacuation operations, highlighting the distinct responsibilities of boat owners and charterers under maritime law. **In Reserve Mooring v. American Commercial Barge Line**¹⁵, the court denied recovery for purely economic damages in the absence of physical injury to proprietary interests, reinforcing the requirement of physical damage for economic loss claims in maritime torts. **In Canal Barge Co. v. Torco Oil Co.**¹⁶, the charterer and cargo supplier were held jointly liable for clean-up costs and demurrage due to negligent loading, emphasizing accountability for environmental harm and loss of use in maritime operations.

In Christensen v. Georgia Pacific Co.¹⁷, the court found that the vessel owner owed a duty under Scindia's active control and intervention duties, while the dock owner could be liable under general maritime tort principles, illustrating layered responsibilities in maritime negligence. **In Morris v. Princess Cruises**¹⁸, plaintiff's claims were dismissed due to lack of evidence linking Princess Cruises' actions to the harm suffered, highlighting the importance of proving causation in maritime torts. **In Consort Shipping Line Ltd v. United Engineers**¹⁹, the court held the defendant engineering company liable for failing to provide an anchor, but also attributed 50% responsibility to the plaintiff, underscoring shared liability in maritime negligence. **In Maharaj v. Burns Philip (SS) Company Ltd.**²⁰, the court dismissed the

¹² Becker v. Poling Transp. Corp., 356 F.3d 381 (2d Cir. 2004).

¹³ Crear v. Omega Protein, Inc., 43 F. App'x 13 (5th Cir. 2004).

¹⁴ In re Graham Offshore, 304 F.3d 371 (5th Cir. 2002).

¹⁵ Reserve Mooring Inc. v. Am. Com. Barge Line, LLC, 251 F.3d 1069 (5th Cir. 2001).

¹⁶ Canal Barge Co. v. Torco Oil Co., 220 F.3d 370 (5th Cir. 2000).

¹⁷ Christensen v. Georgia-Pacific Corp., 279 F.3d 807 (9th Cir. 2002).

¹⁸ Morris v. Princess Cruises, Inc., 236 F.3d 1061 (9th Cir. 2001).

¹⁹ Consort Shipping Line Ltd. v. United Engineers Ltd., [1995] FJHC 21.

²⁰ Maharaj v. Burns Philip (SS) Co. Ltd., [1994] FJHC 56.

negligence claim, stating the liability arose solely from the contract, not tort, highlighting the separation of contractual and tortious duties in maritime law. **In People of Rull ex rel Ruepong v. MV Kyowa Violet**²¹, the court awarded damages for reef damage and loss of use due to a grounding incident, emphasizing the recognition of traditional ownership and use rights in maritime negligence and nuisance claims.

In People of Satawal ex rel Ramoloilug v. Mina Maru No. 3²², the court used various valuation methods to determine damages for reef grounding, illustrating comprehensive approaches to compensation in maritime environmental torts. **In People of Welroy ex rel Pong v. MV CEC Ace**²³, Class certification was conditionally granted for traditional resource owners in a reef grounding case, highlighting the communal nature of claims and the importance of proper representation in class actions. **In Pohnpei v. MV Miyo Maru No. 11**²⁴, the court acknowledged tort liability for preventing rescue efforts, stressing the duty to facilitate assistance in maritime emergencies. **In Rano v. Melanesian Holdings Ltd**²⁵, the court dismissed the negligence claim due to lack of evidence of substandard repair work, underscoring the need for concrete proof in maritime tort cases involving service contracts. **In Walters v. Kimbe Shipping & Transport Pty Ltd**²⁶, the court dismissed the negligence claim due to the plaintiffs' failure to follow standard practices, highlighting the importance of compliance with shipping protocols in maritime tort cases.

In Wartaj Seafood Products Ltd v. Ministry of Home Affairs²⁷, The court ruled that the police owed no special duty to protect the plaintiff's vessel, emphasizing the limited scope of police liability in maritime torts. **In Peracomo Inc. v. TELUS Communications Co.**²⁸, the Supreme Court of Canada held that a shipowner who deliberately cut an underwater cable was not covered by insurance due to wilful misconduct, underscoring the exclusion of coverage for intentional acts in maritime insurance. **In The Prestige (Spain v. American Bureau of Shipping)**²⁹, a New York court found that the American Bureau of Shipping could not be held liable for the oil spill caused by the sinking of the Prestige tanker, reinforcing the limitations of classification societies' liabilities. **In Cosmos Bulk Carriers Co. Ltd. v. China-Base**

²¹ People of Rull ex rel Ruepong v. MV Kyowa Violet, 14 FSM Intrm. 403 (2006).

²² People of Satawal ex rel Ramoloilug v. Mina Maru No. 3, 10 FSM Intrm. 337 (2001).

²³ People of Welroy ex rel Pong v. MV CEC Ace, 15 FSM Intrm. 151 (2007).

²⁴ Pohnpei v. MV Miyo Maru No. 11, 8 FSM Intrm. 281 (1998).

²⁵ Rano v. Melanesian Holdings Ltd., [1999] SBHC 45.

²⁶ Walters v. Kimbe Shipping & Transport Pty Ltd., [1999] PGDC 19.

²⁷ Wartaj Seafood Products Ltd. v. Ministry of Home Affairs, [2000] FJHC 99.

²⁸ Peracomo Inc. v. TELUS Commc'ns Co., 2014 SCC 29.

²⁹ Spain v. Am. Bureau of Shipping, 729 F.3d 52 (2d Cir. 2013).

Ningbo Group Co. Ltd.³⁰, the High Court of Singapore upheld a claim for damages due to the charterer's wrongful redelivery of the vessel, emphasizing the importance of adhering to charter party agreements. **In Cosco Bulk Carrier Co., Ltd. v. Team-Up Owning Co. Ltd.**³¹, the English High Court ruled on liability issues related to improper stowage, stressing the importance of correct cargo handling to prevent damage and liability under the Hague-Visby Rules.

In Ocean Victory (Gard Marine & Energy Ltd v. China National Chartering Co. Ltd)³², the UK Supreme Court clarified the allocation of risk between ship-owners and charterers regarding safe port warranties, impacting future safe port claims. **In CMA CGM Libra**³³, the UK Supreme Court held that passage planning errors amounted to unseaworthiness, reinforcing the stringent standards for seaworthiness and due diligence under the Hague-Visby Rules. **In the Arctic Sunrise (Netherlands v. Russia)**³⁴, an international tribunal ruled that Russia violated international law by detaining a Greenpeace vessel and its crew, emphasizing the protection of environmental activism under maritime law. **In the Longchamp (Navig8 Inc v. South China Morning Post Publishers Ltd)**³⁵, the English High Court ruled on the right to limit liability for ransom payments under the 1976 Convention on Limitation of Liability for Maritime Claims, impacting the interpretation of what constitutes a maritime claim. **In Kingdom of Spain v. Abengoa Bioenergy**³⁶, the Eleventh Circuit addressed the applicability of the Foreign Sovereign Immunities Act in maritime tort claims, impacting future litigation involving state-owned entities. **In Jiangsu Steamship Co. Ltd. v. Hainan Airlines Co. Ltd.**³⁷, a Chinese court ruled on the allocation of liability in a collision case, emphasizing the importance of compliance with collision regulations to determine fault and liability.

5. RETHINKING AND RECONSTRUCTING LIABILITY REGIMES IN MARITIME TORT LAW

The existing liability regimes have addressed some significant issues, such as the necessity of strict liability. However, the system remains noticeably imperfect, particularly in providing

³⁰ *Cosmos Bulk Carriers Co. Ltd. v. China-Base Ningbo Grp. Co. Ltd.*, [2018] SGHC 231.

³¹ *Cosco Bulk Carrier Co., Ltd. v. Team-Up Owning Co. Ltd.*, [2020] EWHC 2018 (Comm).

³² *Gard Marine & Energy Ltd v. China Nat'l Chartering Co. Ltd (The "Ocean Victory")* [2017] UKSC 35.

³³ *Alize 1954 v. Allianz Elementar Versicherungs AG (The "CMA CGM Libra")* [2021] UKSC 51.

³⁴ *Netherlands v. Russia (The Arctic Sunrise)*, PCA Case No. 2014-02 (2015).

³⁵ *Navig8 Inc v. S. China Morning Post Publishers Ltd (The "Longchamp")* [2018] EWCA Civ 363.

³⁶ *Spain v. Abengoa Bioenergy*, 958 F.3d 1203 (11th Cir. 2020).

³⁷ *Jiangsu Steamship Co. Ltd. v. Hainan Airlines Co. Ltd.*, (2019) ZGFX 13.

adequate compensation for victims of pollution damages. This necessitates a rethinking and reconstructing of the current frameworks.

5.1 The Need for International Society to Bear Part of the Risk

Current tort systems under the 1969 Civil Liability Convention (CLC) and the Fund Convention often fail to guarantee full compensation for pollution victims. These victims cannot be left to shoulder uncompensated risks alone. Given that the international society benefits from the carriage of oil by sea, it is logical that the society should also bear part of the risk beyond the profit margins of the liable parties. An international system to complement ship owner liability and the IOPC Fund is essential. One proposal is for an international fund, alimented by international taxes, to address excess liability. While the establishment of such a fund on a global level may seem utopian, regional initiatives could serve as a feasible starting point. For instance, the European Maritime Safety Agency (EMSA) has been instrumental in coordinating and financing pollution response efforts in European waters. National approaches alone, especially without the substantial power of a state like the United States, are unlikely to achieve equitable outcomes. A coordinated regional or international effort is necessary to address these gaps effectively.

5.2 Re-Evaluating the Principle of Limitation of Liability

The principle of limitation of liability, which has historically protected ship-owners, warrants re-evaluation. The maritime industry has evolved, with investments in shipping becoming widespread enough not to require such a discriminatory stimulant. Critics argue that without limitation, ship-owners might struggle to secure insurance. However, insurance companies could instead impose their own ceilings on claims, which would be more market-driven and flexible. Legislation in several American states provides unlimited liability for oil pollution damage, demonstrating the efficiency of such an approach. For example, the Oil Pollution Act (OPA) in the United States imposes stringent liability and has shown significant success in enforcing environmental responsibility. The existence of a second-tier fund, like the IOPC Fund, alongside the hazardous nature of oil transport, further questions the necessity of limiting liability. Therefore, abolishing limitation of liability should be a targeted goal in future International Maritime Organization (IMO) negotiations.

5.3 Exploring Flag State Liability

The liability of flag states, especially those known as flags of convenience, remains a contentious issue. Under international law, a flag state's liability could arise from violating international obligations, such as those stipulated in the United Nations Convention on the Law of the Sea (UNCLOS). Articles 194 and 235(1) of UNCLOS require states to prevent marine pollution, potentially holding them liable for damages caused by vessels under their flag. Despite these provisions, state practice in compensating for marine pollution damages is scarce. Proving fault on the part of flag states is challenging, as enforcing international standards globally is difficult. The principle of sovereign equality under public international law complicates the imposition of such obligations without the flag state's consent. Given these complexities, relying solely on public international law to address maritime tort liability is questionable. Instead, strengthening existing tort systems, enhancing international cooperation, and implementing stringent regional frameworks might offer more practical solutions.

While existing liability regimes have made strides, there is a clear need for rethinking and reconstructing these frameworks to ensure full and fair compensation for pollution victims. This involves international cooperation, revisiting the limitation of liability, and exploring innovative approaches to flag state liability. The goal should be a balanced system that fairly distributes risks and responsibilities among all beneficiaries of maritime commerce.

6. RECOMMENDATIONS AND CONCLUSION

Reforming maritime tort law to address contemporary challenges and technological impacts is essential for ensuring a fair and just legal framework. By enhancing international cooperation, abolishing limitation of liability, strengthening flag state responsibilities, and integrating technological standards, we can create a more coherent system for resolving maritime disputes. Continued research is vital to advancing our understanding and application of maritime tort law in a globalized context, ensuring that the legal system evolves alongside the maritime industry.

6.1 Nuanced and Adaptable Approaches to Maritime Tort Law

The dynamic nature of maritime operations, amplified by technological advancements, necessitates a nuanced and adaptable approach to maritime tort law. Traditional legal frameworks often struggle to address contemporary challenges, such as the complexities introduced by advanced navigation systems, cybersecurity threats, and the globalization of

maritime trade. An adaptable legal framework is essential to respond effectively to these evolving challenges and to ensure justice and fairness in maritime tort disputes.

6.2 Proposed Legal Reforms

6.2.1 *Enhanced International Cooperation and Regional Initiatives*: One significant reform is to enhance international cooperation through robust regional initiatives. While global solutions are ideal, regional frameworks can offer practical steps toward addressing liability and compensation issues. For example, regional agreements similar to the European Maritime Safety Agency (EMSA) can coordinate pollution response and compensation efforts, providing a model that other regions can replicate. Establishing regional funds, supported by levies on shipping activities, can ensure that victims receive adequate compensation without relying solely on national resources.

6.2.2 *Abolishing the Limitation of Liability*: A critical reform is the abolition of the limitation of liability for ship-owners. The current limitation often results in inadequate compensation for victims of maritime torts. Removing this limitation would align liability more closely with the actual damages caused, promoting fairness and accountability. Insurance companies could adapt by setting appropriate ceilings on their policies, as seen in other high-risk industries. The success of the U.S. Oil Pollution Act (OPA), which imposes stringent liability without limitations, demonstrates the feasibility and effectiveness of this approach.

6.2.3 *Strengthening Flag State Responsibilities*: Another essential reform is to hold flag states more accountable for vessels flying their flags. This includes enforcing stringent international standards and ensuring compliance with environmental regulations. The United Nations Convention on the Law of the Sea (UNCLOS) provides a basis for this, but more specific mechanisms and stronger enforcement are needed. For example, penalties for non-compliance and incentives for adherence to international standards could be implemented to ensure that flag states take their responsibilities seriously.

6.2.4 *Integration of Technological Standards*: Given the rapid advancement in maritime technologies, integrating technological standards into maritime tort law is imperative. This includes regulations on the use and maintenance of automated navigation systems, cybersecurity measures, and environmental protection technologies. Establishing international standards for these technologies can reduce ambiguities in liability and ensure consistent application across jurisdictions.

6.3 Recommended Changes to International Legal Instruments Addressing Maritime Tort Disputes

To address the complexities and challenges identified in the maritime tort law, several changes to international legal instruments and laws are recommended. These changes aim to create a more coherent, fair, and adaptable framework for resolving maritime disputes and ensuring adequate compensation for victims of maritime torts.

6.3.1 Reforming the 1969 Civil Liability Convention (CLC) and the Fund Convention

6.3.1.1 Abolition of Limitation of Liability: One of the most critical changes needed is the abolition of the limitation of liability under the CLC. The current limits often result in insufficient compensation for victims. Removing these limits would ensure that ship-owners are fully accountable for the damages they cause. This change can be accompanied by market-driven adjustments where insurance companies set their own limits on coverage, ensuring that ship-owners can still obtain necessary insurance.

6.3.1.2 Establishing a Third-Tier Compensation Fund: To complement the existing IOPC Fund, a third-tier compensation fund could be established. This fund would cover damages exceeding the compensation limits of the first two tiers, ensuring that victims are fully compensated. Contributions to this fund could be sourced from a global levy on oil cargo, distributed equitably among shipping companies based on their cargo volumes.

6.3.2 Strengthening UNCLOS Provisions

6.3.2.1 Enhanced Flag State Responsibilities: Amendments to UNCLOS should explicitly hold flag states responsible for ensuring that ships flying their flags comply with international environmental and safety standards. This could include mandatory inspections, certification processes, and penalties for non-compliance. These amendments should also include provisions for periodic reviews and updates to keep pace with technological advancements.

6.3.2.2 Clear Guidelines for Environmental Liability: UNCLOS should be updated to include clear guidelines on environmental liability, particularly for pollution damages. This includes defining the responsibilities of flag states, shipowners, and charterers in preventing and mitigating environmental harm. Articles 194 and 235 should be expanded to provide specific enforcement mechanisms and penalties for violations.

6.3.3 Developing a Global Maritime Technology Standard

6.3.3.1 International Maritime Organization (IMO) Standards: The IMO should develop and enforce international standards for the use of advanced maritime technologies. These standards should cover automated navigation systems, cyber-security measures, and environmental protection technologies. Compliance with these standards should be mandatory for all member states, ensuring a consistent and high level of safety and environmental protection.

6.3.3.2 Regular Updates and Reviews: Given the rapid pace of technological change, these standards should be reviewed and updated regularly. A dedicated IMO committee could be established to monitor technological advancements and recommend updates to existing standards. This proactive approach would ensure that maritime laws remain relevant and effective.

6.3.4 Enhancing Regional Cooperation

6.3.4.1 Regional Compensation Funds: Building on the example of the European Maritime Safety Agency (EMSA), regional compensation funds should be established. These funds would provide immediate financial assistance for pollution damages and other maritime torts within their respective regions. Contributions could come from regional levies on shipping activities, ensuring that the burden of compensation is shared.

6.3.4.2 Harmonization of Regional Laws: Efforts should be made to harmonize maritime tort laws within regions. This would reduce inconsistencies and ensure that victims receive similar levels of protection and compensation regardless of where an incident occurs. Regional agreements could provide a framework for cooperation and standardization.

6.3.5 Promoting Research and Development

International bodies such as the IMO and the United Nations should allocate funding for research into maritime tort law and technological impacts. This research should focus on developing innovative solutions to current challenges and anticipating future issues. Collaboration with academic institutions and research organizations can provide valuable insights and drive the development of new legal frameworks. Encouraging partnerships between international bodies, governments, and academia would foster a deeper understanding of maritime tort law and its evolving challenges.

6.4 Conclusion

The complexities of maritime tort law, exacerbated by technological advancements and globalization, necessitate comprehensive reforms to existing legal frameworks. This research paper has explored the unique challenges posed by maritime torts, particularly jurisdictional issues and the application of traditional legal principles like *lex loci delicti*. The inadequacies of current liability regimes under conventions such as the 1969 Civil Liability Convention and the Fund Convention highlight the need for more effective compensation mechanisms and stricter accountability.

Implementing the recommendations would definitely create a more robust, fair, and adaptable legal framework for maritime torts. By reforming existing conventions, strengthening international and regional cooperation, and promoting ongoing research, the international community can better address the complexities of modern maritime operations and ensure justice for all parties involved. These changes would not only improve compensation mechanisms but also enhance overall maritime safety and environmental protection. Recommendations for reform include abolishing the limitation of liability, establishing a third-tier compensation fund, and enhancing flag state responsibilities under UNCLOS. Additionally, developing international standards for maritime technologies and fostering regional cooperation through initiatives like regional compensation funds are essential steps towards a more coherent and just maritime legal framework. Promoting continuous research and collaboration with academic institutions will further advance the understanding and application of maritime tort law, ensuring it evolves in tandem with technological and operational changes in the maritime industry. By addressing these challenges proactively, the international community can ensure fair and adequate compensation for victims, enhance maritime safety, and protect the marine environment.

Rethinking and reconstructing maritime tort law is imperative for meeting contemporary challenges. The proposed legal reforms and research directions offer a pathway to achieving a more equitable and effective legal system that can adapt to the dynamic nature of maritime operations. By implementing these changes, we can move towards a future where maritime disputes are resolved fairly, and the risks and benefits of maritime activities are more evenly distributed among all stakeholders.

THE LEGAL BATTLEGROUNDS OF MATCH-FIXING : CHALLENGES AND REFORMS IN SPORTS LAW (THE OLYMPICS AND FIFA EXAMPLE)

-Dr. Oluwagbenga Atere¹

Abstract

Match-fixing remains one of the most pressing challenges in sports law, threatening the integrity, fairness, and commercial viability of professional competitions. This paper explores the legal complexities surrounding match-fixing, analyzing existing regulatory frameworks, enforcement mechanisms, and the challenges in prosecuting offenders. The study highlights jurisdictional conflicts, the inadequacy of current sanctions, and the difficulty in detecting and proving match-fixing due to its covert nature. Moreover, the role of international sports governing bodies, such as FIFA and the International Olympic Committee, is examined in shaping anti-corruption policies and coordinating cross-border enforcement efforts. Despite numerous legal and policy interventions, match-fixing persists, necessitating more robust and harmonized legislative reforms. This paper advocates for a multi-pronged approach that includes stricter anti-corruption laws, enhanced investigative powers for sports regulatory bodies, and increased cooperation between law enforcement agencies and betting regulators. Additionally, athlete education and whistleblower protection are essential to deterring match-fixing schemes. The study also evaluates the impact of emerging technologies, such as artificial intelligence and block chain, in strengthening transparency and accountability in sports governance. Ultimately, the paper argues that tackling match-fixing requires a global, collaborative effort that balances legal deterrence with preventive strategies. By analyzing recent case studies and legal precedents, this research provides a roadmap for future reforms aimed at safeguarding the integrity of sports competitions.

Keywords: *Match-fixing, sports law, corruption, enforcement, legal reforms.*

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1. THE HISTORICAL EVOLUTION OF MATCH-FIXING REGULATION IN SOCCER AND THE OLYMPICS

Match-fixing has long posed a challenge to the integrity of sports, with soccer and the Olympic Games being among the most affected. The regulation of match-fixing has evolved significantly, driven by increasing awareness, technological advancements, and international cooperation. This paper explores the historical progression of match-fixing regulations in soccer and the Olympics, tracing their development from the early 20th century to modern enforcement mechanisms.

Historically, match-fixing was addressed through internal disciplinary measures rather than legal frameworks. In soccer, early instances of match-fixing were dealt with at the club or national federation level. For example, the 1915 British football betting scandal led to life bans for implicated players². Similarly, in the Olympics, allegations of match-fixing surfaced as early as the 1920s, with limited action taken beyond disqualification³.

1.1 Mid-20th Century Developments

By the mid-20th century, regulatory bodies began to implement more formalized rules against match-fixing. FIFA, the governing body of global soccer, established the first comprehensive anti-corruption measures in the 1960s⁴. Likewise, the International Olympic Committee (IOC) took steps to address unfair competition, particularly after the controversies surrounding the 1964 and 1972 Games⁵.

1.2 Late 20th Century and Early 21st Century: Strengthening Regulations

The 1980s and 1990s saw an escalation in match-fixing incidents due to the rise of illegal sports betting. Soccer witnessed scandals such as the 1980 Italian Totonero scandal, leading to the banning of top clubs and players.⁶ This period also saw FIFA introducing stringent penalties, including lifetime bans and financial sanctions.⁷

² Taylor, M. (1992). *The Association Game: A History of British Football*. Routledge.

³ *The Prevalence of Corruption in International Sport: A Statistical Analysis*. International Centre for Sports Studies. Hill, D. (2013).

⁴ Forrest, D., McHale, I. G., & McAuley, K. (2008). "Risks to the Integrity of International Sports: The Role of Betting Markets."

⁵ *Sport in Society*, 21(5), 729-741. Gorse, S., & Chadwick, S. (2011).

⁶ Boniface, P., & Lacarrière, J. (2012). *The Geopolitics of Sport*. Routledge.

⁷ McClelland & Stewart. Maennig, W. (2005). "Corruption in International Sports and How It May Be Combated." *Journal of Sports Economics*, 6(1), 99-107.

The Olympics faced a similar challenge, notably with allegations in boxing and figure skating during the 1990s. In response, the IOC revised the Olympic Charter to include specific anti-corruption provisions, collaborating with law enforcement agencies.⁸

2. MODERN FRAMEWORKS AND INTERNATIONAL COOPERATION

By the 21st century, regulatory efforts became more structured, with international collaboration playing a crucial role. The establishment of the World Anti-Doping Agency (WADA) in 1999 inspired the creation of the FIFA Integrity Task Force in 2011 and the IOC's Integrity Betting Intelligence System (IBIS) in 2014.⁹ (Forrest, 2018).

Technological advancements also enhanced enforcement mechanisms. Data analytics, real-time monitoring, and whistleblower protection programs have significantly improved detection and prevention. The 2018 FIFA World Cup saw real-time betting analysis to curb suspicious activities¹⁰.

The evolution of match-fixing regulation in soccer and the Olympics demonstrates a transition from isolated disciplinary actions to sophisticated, globally coordinated enforcement mechanisms. While challenges remain, particularly with the growth of online betting and organized crime involvement, ongoing regulatory efforts and technological innovations continue to safeguard the integrity of sports.

2.1 International Regulatory Frameworks on Match-Fixing: A Critical Analysis of FIFA and the International Olympic Committee

Match-fixing remains one of the most significant threats to the integrity of sports worldwide. To combat this, international regulatory frameworks have been developed, with key oversight from global sports organizations such as FIFA and the International Olympic Committee (IOC). This paper examines the existing regulatory structures, assesses their competencies, and references key regulations associated with these bodies.

⁸ Chappelet, J.-L. (2010). *The Olympic Governance*. Routledge. *International Journal of Sport Finance*, 3(3), 156-172.

⁹ Forrest, D. (2018). "Fighting Corruption in Sport: Insights from the Betting Market." *The Fix: Soccer and Organized Crime*.

¹⁰ Moriconi, M., & de Cima, C. (2019). "Betting and Integrity in Sport: A Comparative Analysis." *International Review for the Sociology of Sport*, 54(2), 231-252.

2.2 FIFA's Regulatory Framework on Match-Fixing

FIFA, the world's governing body for football, has implemented multiple regulations and enforcement mechanisms to address match-fixing. The primary framework governing integrity issues includes:

2.2.1 FIFA Disciplinary Code – This code explicitly prohibits match manipulation and imposes severe penalties, including lifetime bans from football-related activities¹¹

2.2.2 FIFA Code of Ethics – Under Articles 25 and 26, this code defines match manipulation as unethical conduct and prescribes sanctions against individuals and clubs involved. The code of conduct prescribes that persons involved shall be banned from all football related activities and a fine CHF 100,000¹²

2.2.3 FIFA Integrity Task Force – This unit collaborates with law enforcement agencies and betting monitoring systems to detect and investigate suspicious activities.

2.2.4 Cooperation with Third-Party Organizations – FIFA has partnered with the International Betting Integrity Association (IBIA) and Sport radar to enhance surveillance and enforcement.

2.3 The International Olympic Committee's (IOC) Regulatory Framework

The IOC, responsible for overseeing the Olympic Games and related competitions, has also developed comprehensive measures against match-fixing:

2.3.1 Olympic Charter – The fundamental governing document of the Olympic Movement includes a commitment to upholding the integrity of sports.¹³

2.3.2 Olympic Movement Code on the Prevention of the Manipulation of Competitions – Adopted in 2015, this code sets standards for Olympic-affiliated sports organizations to prevent, detect, and address match-fixing.¹⁴ This code of conduct for instance establishes and enforces criminal sanctions for the manipulation of competitions involving coercive and corrupt practices in partnership with the United Nations Office on Drugs and Crime.¹⁵

¹¹ Article 18 of the FIFA Disciplinary Code (2023).

¹² Article 25 and 26 of the FIFA Code of Ethics 2023.

¹³ Olympic Charter (2023), Rule 25.

¹⁴ Olympic Movement Code on the Prevention of the Manipulation of Competitions (2015).

¹⁵ Article 4 of the Olympic Movement Code on the Prevention of the Manipulation of Competitions (2015).

Member States that belong to the United Nations are encouraged by the Olympics Committee to establish a specific criminal offence concerning competition manipulation in national law especially relating to sports tournaments. The recommended Model Criminal Law Provisions are:

“1. Any person who, directly or indirectly, promises, offers or gives any undue advantage to another person, for himself, herself or for others, with the aim of improperly altering the result or the course of a sports competition, shall be punished by _____.

2. Any person who, directly or indirectly, solicits or accepts any undue advantage or the promise or the offer thereof, for himself, herself or for others, with the aim of improperly altering the result or the course of a sports competition, shall be punished by _____.

2.3.3 IOC Integrity Betting Intelligence System (IBIS) – A monitoring system that collaborates with national and international agencies to track betting irregularities.¹⁶

2.3.4 Cooperation with International Criminal and Sports Organizations – The IOC partners with INTERPOL and UNODC (United Nations Office on Drugs and Crime) to combat sports corruption.¹⁷

3. ANALYSIS OF COMPETENCIES

Both FIFA and the IOC have developed robust frameworks to deter match-fixing. However, their effectiveness is subject to challenges such as jurisdictional limitations, enforcement inconsistencies, and the evolving nature of illicit betting markets. Some key observations include:

3.1 FIFA’s Effectiveness – While FIFA has imposed lifetime bans on individuals found guilty of match-fixing, enforcement is often limited to FIFA-sanctioned competitions, leaving gaps in national-level enforcement.

3.2 IOC’s Multi-Sport Approach – The IOC’s framework provides a universal standard for all Olympic sports, but challenges arise in implementing uniform standards across different sports federations.

¹⁶ IOC Integrity Betting Intelligence System (IBIS) Reports.

¹⁷ UNODC & INTERPOL Reports on Sports Integrity.

3.3 Legal Coordination Challenges – Despite international cooperation, discrepancies in national laws often hinder seamless investigations and prosecutions.

FIFA and the IOC have established extensive regulatory measures to counter match-fixing, but challenges persist in enforcement, coordination, and adapting to evolving threats. Strengthening inter-agency cooperation, harmonizing national and international legal frameworks, and enhancing technological surveillance are crucial for improving integrity in sports.

4. ENFORCEMENT MECHANISMS AND CHALLENGES IN PROSECUTING MATCH-FIXING IN FIFA AND THE OLYMPIC GAMES

Match-fixing is a persistent issue in international sports, undermining the integrity of competitions such as FIFA tournaments and the Olympic Games. Despite the presence of enforcement mechanisms, prosecuting offenders remains challenging due to legal, jurisdictional, and evidentiary issues. This paper examines the enforcement mechanisms currently in place and the challenges faced in prosecuting match-fixing offenders in FIFA and the Olympics.

4.1 Enforcement Mechanisms

4.1.1 FIFA's Regulatory Framework

FIFA enforces anti-match-fixing regulations primarily through its Code of Ethics and Disciplinary Code. Articles 26 and 69 of FIFA's Disciplinary Code prohibit match manipulation, with sanctions ranging from fines to lifetime bans¹⁸. FIFA also collaborates with law enforcement agencies and betting monitoring organizations, such as Sportradar, to detect irregular betting patterns¹⁹.

4.1.2 The Olympic Movement's Anti-Corruption Measures

The International Olympic Committee (IOC) established the Olympic Movement Unit on the Prevention of the Manipulation of Competitions (OM Unit PMC) to oversee compliance with the Olympic Movement Code on the Prevention of the Manipulation of Competitions.²⁰The

¹⁸ FIFA. (2021). FIFA Disciplinary Code. FIFA.

¹⁹ Hill, D. (2010). *The insider's guide to match-fixing in football*. Anne McDermott Publishing.

²⁰ IOC. (2020). *Olympic Movement Code on the Prevention of the Manipulation of Competitions*. International Olympic Committee.

unit works with national sports federations and INTERPOL to monitor and investigate potential cases of match-fixing.²¹

4.1.3 National and International Legal Measures

Many countries have adopted specific anti-match-fixing legislation, such as the United Kingdom's Gambling Act (2005) and Italy's Law No. 401/1989 on sports fraud. At an international level, the Council of Europe's Convention on the Manipulation of Sports Competitions seeks to establish a transnational legal framework for combating match-fixing.²²

4.2 Challenges in Prosecuting Match-Fixing Offenders

4.2.1 Jurisdictional Complexity

Since match-fixing often involves actors from multiple countries, jurisdictional conflicts arise when different legal systems attempt to prosecute offenders. The lack of harmonization among national laws complicates extradition and prosecution efforts²³.

4.2.2 Difficulties in Gathering Evidence

Match-fixing operations are often sophisticated, with offenders using encrypted communications and offshore betting platforms to evade detection²⁴. The reliance on whistleblower testimony, which may be unreliable, further complicates prosecution.²⁵

4.2.3 Limited Cooperation Among Stakeholders

While FIFA, the IOC, and national law enforcement agencies collaborate, differences in legal standards and priorities hinder effective prosecution. Some jurisdictions do not criminalize match-fixing, making it difficult to enforce penalties across borders.²⁶

²¹ Maennig, W. (2016). Corruption in international sports and how it may be combated. International Association of Sports Economists, Working Paper Series.

²² Andreff, W. (2019). Corruption in sport: Understanding match-fixing. Edward Elgar Publishing.

²³ Chappelet, J.-L. (2018). The Olympic system and the fight against match-fixing. International Journal of Sport Policy and Politics, 10(1), 145-160.

²⁴ Gorse, S., & Chadwick, S. (2011). The prevalence of corruption in international sport: A statistical analysis. Journal of Sports Economics, 12(3), 225-243.

²⁵ Supra note 21.

²⁶ Andreff, W. (2019). Corruption in sport: Understanding match-fixing. Edward Elgar Publishing.

4.2.4 Influence of Organized Crime

Match-fixing is frequently linked to organized crime groups that use threats and intimidation to prevent whistleblowers from coming forward.²⁷ Fear of retaliation discourages players, referees, and officials from reporting corruption, leading to low conviction rates.

Despite the presence of enforcement mechanisms at both the organizational and legal levels, match-fixing in FIFA and the Olympic Games remains a significant challenge. Addressing jurisdictional conflicts, improving evidence-gathering techniques, enhancing international cooperation, and protecting whistleblowers are crucial steps in strengthening the prosecution of match-fixing offenders.

Match-fixing is a significant threat to the integrity of sports, yet it remains difficult to detect and prove due to its clandestine nature. Match-fixing involves pre-arranging the outcome of a sporting event to benefit certain stakeholders, often in connection with illegal betting markets. The covert nature of match-fixing, combined with the lack of tangible evidence, poses challenges to law enforcement, sports governing bodies, and regulatory agencies.

4.3 The Covert Nature of Match-Fixing

Match-fixing typically operates through underground networks, involving players, referees, and even officials who agree to manipulate game results in exchange for financial incentives.²⁸ The secrecy of these agreements makes detection challenging, as there are no overt transactions or direct communications that can be easily traced. Unlike doping, which relies on physical evidence such as drug tests, match-fixing leaves minimal forensic evidence.²⁹

Furthermore, match-fixing is often orchestrated by organized crime syndicates, which use threats and coercion to ensure compliance from players and officials.³⁰ The fear of retaliation discourages whistleblowing, further complicating investigations³¹.

²⁷ Moriconi, M., & de Cima, C. (2022). Gambling regulations and match-fixing: Comparative analysis of legal frameworks in Europe. *European Sport Management Quarterly*, 22(2), 187-205.

²⁸ Spapens, T., & Olfers, M. (2015). "Match-fixing: The role of criminal networks and governance challenges." *European Sports Law Journal*, 10(1), 45-66.

²⁹ Moriconi, M. (2018). "Match-fixing and corruption in sports: Legal and ethical dilemmas." *Ethics & Sport Review*, 12(1), 89-102.

³⁰ Europol. (2013). "The involvement of organized crime in sports corruption." Available at: <https://www.europol.europa.eu>

³¹ Hill, D. (2013). *The Insider's Guide to Match-Fixing in Football*. Routledge.

4.4 Challenges in Proving Match-Fixing

One of the primary difficulties in proving match-fixing is the lack of concrete evidence. Investigators often rely on suspicious betting patterns and testimonies, both of which can be inconclusive³². Statistical irregularities in betting markets may indicate match-fixing, but they do not provide direct proof of wrongdoing³³.

Additionally, legal constraints complicate prosecutions. Different jurisdictions have varying definitions and legal frameworks for dealing with match-fixing, leading to inconsistencies in enforcement³⁴ (Spapens & Olfers, 2015). In many cases, even when suspicions are strong, the absence of admissible evidence means that convictions are rare³⁵ (Interpol, 2018).

4.5 Role of Technology in Detection

Advancements in data analytics and artificial intelligence have improved the ability to detect match-fixing. Sophisticated algorithms analyze betting patterns and player performance metrics to identify anomalies. However, while these tools assist in detecting suspicious activities, they do not establish intent or confirm the existence of corruption, making legal action difficult. The covert nature of match-fixing makes it difficult to detect and prove, primarily due to the secrecy of agreements, lack of physical evidence, and legal complexities. While technological advancements have enhanced detection, proving match-fixing in court remains a significant challenge. Strengthening international cooperation, legal frameworks, and whistleblower protections are crucial steps toward addressing this issue.

5. ATHLETE EDUCATION AND WHISTLEBLOWER PROTECTION: ESSENTIAL STRATEGIES TO DETER MATCH-FIXING SCHEMES

Match-fixing is one of the most significant threats to the integrity of sports, undermining fair competition and damaging the credibility of professional and amateur leagues alike³⁶. Despite various regulatory measures, match-fixing continues to be a persistent issue due to financial

³² Forrest, D., & McHale, I. (2019). "Combating match-fixing: Statistical approaches to detecting anomalies." *Journal of Sports Analytics*, 5(3), 211-225.

³³ Bozkurt, S. (2020). "Betting fraud and match-fixing: The role of suspicious betting patterns." *International Journal of Sports Law*, 35(2), 129-145.

³⁴ Spapens, T., & Olfers, M. (2015). "Match-fixing: The role of criminal networks and governance challenges." *European Sports Law Journal*, 10(1), 45-66.

³⁵ Interpol. (2018). "Challenges in prosecuting match-fixing: A global perspective." Available at: <https://www.interpol.int>.

³⁶ Forrest, D., McHale, I., & McAuley, K. (2008). "'Say it ain't so, Joe'—the death of honesty in English football?" *Journal of Sports Economics*, 9(2), 155-175.

incentives, organized crime involvement, and inadequate detection mechanisms³⁷. This section argues that athlete education and whistleblower protection are essential in combating match-fixing, as they empower athletes with the necessary knowledge to resist manipulation and provide a secure mechanism to report corruption without fear of retaliation.

5.1 Athlete Education as a Preventative Measure- One of the primary reasons athletes engage in match-fixing is a lack of awareness regarding its consequences and the legal implications associated with such actions.³⁸ Many athletes, particularly those in lower-tier leagues or financially vulnerable positions, may not fully understand the contractual and ethical ramifications of participating in match-fixing schemes. Educational programs aimed at raising awareness about the dangers of match-fixing, legal repercussions, and ethical responsibilities can significantly reduce susceptibility to such illicit activities.³⁹

Education initiatives should include workshops, online training, and case studies illustrating real-life consequences for athletes who have engaged in match-fixing⁴⁰. Furthermore, integrating ethical training into sports curricula at an early stage ensures that young athletes develop a strong foundation of integrity and resist the temptations of financial incentives offered by fixers.⁴¹

5.2 Whistleblower Protection and Reporting Mechanisms- A significant deterrent to match-fixing is the establishment of secure and anonymous whistleblowing mechanisms. Many athletes hesitate to report match-fixing incidents due to fear of retaliation, including threats to their career, personal safety, or financial stability.⁴² Ensuring robust whistleblower protections through legal frameworks and organizational policies encourages athletes and stakeholders to come forward with valuable information.⁴³

Sports governing bodies such as FIFA, the International Olympic Committee (IOC), and national federations have increasingly emphasized the importance of anonymous reporting

³⁷ Moriconi, M. (2018). Match-fixing in football: A review of empirical research. Springer.

³⁸ Huggins, A. (2018). 'Education as a tool for preventing match-fixing: Current measures and future directions.' *Sport in Society*, 21(2), 255-266.

³⁹ *Supra* note 21.

⁴⁰ Serby, T. (2015). 'The role of education in the fight against corruption in sport.' *International Sports Law Journal*, 15(3-4), 126-137.

⁴¹ Whitaker, L., Long, J., & Backhouse, S. (2014). 'Integrity in sport: The impact of ethical education on athletes' decision-making.' *Journal of Sports Sciences*, 32(15), 1365-1375.

⁴² Hill, D. (2013). *The insider's guide to match-fixing in football*. Anne McDermid & Associates.

⁴³ Moriconi, M., & de Cima, C. (2020). 'The role of whistleblowers in the fight against match-fixing: A legal and ethical analysis.' *International Review for the Sociology of Sport*, 55(6), 756-774.

channels.⁴⁴ For instance, FIFA's "Integrity Hotline" allows players and officials to report suspicious activity securely and confidentially.⁴⁵ Establishing legal protections against retaliation—such as job security and legal immunity—further strengthens athletes' willingness to report misconduct. (Maennig, 2016).⁴⁶

5.3 Case studies and real-world applications- The effectiveness of athlete education and whistleblower protection can be observed in successful cases of match-fixing prevention. One notable example is the Italian football match-fixing scandal, where whistleblowers provided crucial information leading to the exposure of corruption within Serie A and Serie B leagues.⁴⁷ The introduction of stricter educational programs and enhanced reporting mechanisms has since contributed to a decline in match-fixing incidents within Italian football.

Similarly, the Australian Sports Anti-Doping Authority (ASADA) has implemented comprehensive educational modules and confidential reporting systems, leading to increased reporting of unethical practices within Australian sports⁴⁸. These cases highlight how athlete education and whistleblower protection serve as effective deterrents to match-fixing.

Athlete education and whistleblower protection are critical components in the fight against match-fixing. Educating athletes about the consequences of match-fixing and providing them with ethical training from an early stage fosters a culture of integrity within sports. Additionally, implementing secure and anonymous whistleblower mechanisms encourages individuals to report corruption without fear of retribution. By prioritizing these strategies, sports organizations can safeguard the integrity of competition and deter illicit activities that threaten the fairness of the game.

6. THE ROLE OF ARTIFICIAL INTELLIGENCE AND BLOCKCHAIN IN ENHANCING TRANSPARENCY AND ACCOUNTABILITY IN SPORTS GOVERNANCE AND COMBATING MATCH-FIXING

The integrity of sports is increasingly threatened by issues such as opaque governance

⁴⁴ Interpol. (2019). Match-fixing and sports integrity: An international perspective. Retrieved from [Interpol website].

⁴⁵ FIFA. (2021). Integrity hotline: Reporting mechanisms for match-fixing and corruption. Retrieved from [FIFA website].

⁴⁶ Maennig, W. (2016). 'Ensuring whistleblower protection in sports governance.' *European Sport Management Quarterly*, 16(4), 456-473.

⁴⁷ Brooks, G., Aleem, A., & Button, M. (2019). *Fraud, corruption and sport*. Routledge.

⁴⁸ Pielke, R. (2017). *The edge: The war against cheating and corruption in the cutthroat world of elite sports*. Roaring Forties Press.

structures and match-fixing schemes. Emerging technologies, notably Artificial Intelligence (AI) and blockchain, offer promising solutions to enhance transparency and accountability in sports governance. This paper explores how these technologies can deter match-fixing and promote ethical practices within the sports industry.

Sports have long been a cornerstone of cultural and social cohesion. However, the credibility of sports institutions is undermined by governance challenges and unethical practices, including match-fixing. The advent of AI and blockchain technologies presents new opportunities to address these issues by fostering transparency and accountability.

6.1 Enhancing Transparency in Sports Governance

Transparency is fundamental to good governance, ensuring that decisions are made openly and stakeholders are well-informed. Blockchain technology, with its decentralized and immutable ledger system, offers a robust platform for transparent record-keeping. By recording all transactions and decisions on a blockchain, sports organizations can provide verifiable and tamper-proof records accessible to all stakeholders. This openness can deter corrupt practices and build trust among fans, players, and sponsors. For instance, blockchain has been utilized to create secure platforms for collecting and analyzing athletes' data, ensuring data integrity and accessibility.⁴⁹

6.2 Strengthening Accountability through Artificial Intelligence

Accountability in sports governance requires mechanisms to monitor actions and enforce ethical standards. AI can play a pivotal role by analyzing vast amounts of data to detect anomalies indicative of unethical behavior. Machine learning algorithms can scrutinize betting patterns, player performances, and other relevant data to identify suspicious activities that may suggest match-fixing. By providing real-time analysis and alerts, AI enables prompt investigations and reinforces a culture of accountability. Moreover, AI can enhance the integrity of sports by empowering athletes and ensuring that governance decisions are fair and unbiased.⁵⁰

⁴⁹ M. Fenwick and E. P. M. Vermeulen, "Technology and Corporate Governance: Blockchain, Crypto, and Artificial Intelligence," European Corporate Governance Institute (ECGI) - Law Working Paper No. 424/2018, 2018. [Online]. Available:

https://www.ecgi.global/sites/default/files/working_papers/documents/finalfenwickvermeulen1.pdf

⁵⁰ "Perspectives on democratisation of sports governance," Play the Game, 2022. [Online]. Available:

<https://www.playthegame.org/news/perspectives-on-democratisation-of-sports-governance-can-artificial-intelligence-empower-athletes/>

6.3 Combating Match-Fixing with Technological Integration

Match-fixing poses a significant threat to the fairness of sports competitions. The integration of AI and blockchain offers a comprehensive approach to combat this issue. Blockchain ensures that all match-related data, including scores and player statistics, are recorded immutably, making it difficult to alter outcomes without detection. Simultaneously, AI analyzes this data to spot irregularities in real-time. The combination of these technologies creates a transparent and self-monitoring system that deters match-fixing by increasing the likelihood of detection and the associated risks for perpetrators. The United Nations Office on Drugs and Crime emphasizes the importance of such technological measures in analyzing and disseminating intelligence on match-fixing and other forms of corruption in sports.⁵¹

6.4 Challenges and Ethical Considerations

While AI and blockchain offer substantial benefits, their implementation must be approached with caution. Ethical considerations include data privacy, especially concerning the handling of athletes' personal information. Ensuring that AI systems are transparent and free from biases is crucial to maintain fairness. Additionally, the deployment of these technologies should not replace human judgment but rather augment decision-making processes to preserve the human element essential to sports. Developing an ethical framework for AI in sports governance is necessary to address these concerns.⁵²

The integration of Artificial Intelligence and blockchain technologies holds significant promise for enhancing transparency and accountability in sports governance. By providing robust mechanisms to deter match-fixing and promote ethical practices, these technologies can help restore and maintain the integrity of sports. However, careful consideration of ethical implications and a balanced approach to implementation are essential to fully realize their potential benefits.

⁵¹ "Global Report on Corruption in Sport," United Nations Office on Drugs and Crime, 2021. [Online]. Available:

https://www.unodc.org/documents/corruption/Publications/2022/Global_Report_on_Corruption_in_Sport_Full_report.pdf

⁵² E. Bird et al., "The ethics of artificial intelligence: Issues and initiatives," European Parliamentary Research Service, 2020. [Online]. Available:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/634452/EPRS_STU\(2020\)634452_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/634452/EPRS_STU(2020)634452_EN.pdf)

7. CONCLUSION

In conclusion, the issue of match-fixing represents a significant and growing challenge in the world of sports, with profound implications for the integrity of competitions like the Olympics and FIFA tournaments. As demonstrated by the examples of both organizations, match-fixing undermines public trust, jeopardizes athletes' careers, and threatens the values that sports aim to uphold. The current legal frameworks, while evolving, still face numerous challenges, including gaps in enforcement, inconsistencies in regulations across jurisdictions, and the need for stronger collaboration between sports governing bodies, law enforcement, and international organizations.

To address these issues, comprehensive reforms are necessary, including stricter penalties, enhanced monitoring systems, and the establishment of more robust international agreements for cooperation and data sharing. Additionally, educational initiatives targeting athletes, officials, and stakeholders about the risks and consequences of match-fixing are vital in fostering a culture of integrity. Ultimately, only through concerted and unified efforts can the global sports community hope to effectively combat match-fixing and ensure that the spirit of fair competition is preserved for future generations.

8. RECOMMENDATIONS

8.1 Strengthening International Cooperation and Regulations

- **Harmonized Legal Framework:** Advocate for uniform match-fixing laws across jurisdictions to address discrepancies in enforcement.
- **Enhanced Cooperation Between FIFA, IOC, and National Governments:** Propose formal agreements between sports bodies and law enforcement agencies for cross-border investigations.

8.2 Criminalizing Match-Fixing with Stronger Penalties

- **Clear Legal Definitions:** Ensure match-fixing and related activities (e.g., bribery, illegal betting) are clearly defined in national and international laws.
- **Stronger Sanctions:** Suggest increased criminal penalties, including higher fines and prison sentences for offenders, to deter match-fixing.

8.3 Sports Arbitration and Dispute Resolution Mechanisms

- **Strengthening CAS Jurisdiction:** Recommend expanding the Court of Arbitration for Sport (CAS) jurisdiction over match-fixing cases for faster resolution.
- **Independent Ethics and Disciplinary Committees:** FIFA and the IOC should have independent bodies with real enforcement power to impose sanctions.

8.4 Regulating Sports Betting and Financial Transparency

- **Licensing and Monitoring of Betting Companies:** Mandate the registration and monitoring of sports betting companies to detect suspicious betting patterns.
- **Financial Transparency in Sports Organizations:** Enforce stricter financial oversight within FIFA and the IOC to minimize corruption risks.

8.5 Whistleblower Protection and Reporting Mechanisms

- **Anonymous Reporting Systems:** Recommend creating secure platforms for athletes, referees, and officials to report match-fixing incidents.
- **Whistleblower Protection Laws:** Strengthen legal protections for those who expose match-fixing to prevent retaliation.

8.6 Education and Awareness Programs

- **Athlete Training Programs:** Implement mandatory ethics training for athletes, coaches, and referees to educate them on the legal and ethical consequences of match-fixing.
- **Public Awareness Campaigns:** Engage fans and stakeholders through awareness initiatives to discourage betting-related corruption.

ADAPTING MAINTENANCE LAWS TO MODERN REALITIES: ANALYZING THE WIFE'S RIGHT TO MAINTENANCE UNDER SECTION 144 OF BNSS 2023

-Manik Das¹

Abstract

Section 144 of the Bhartiya Nagrik Suraksha Sanhita (BNSS) 2023, serves as a vital mechanism to ensure financial support for dependent family members, particularly vulnerable spouses. This paper explores how evolving societal norms—such as increased workforce participation of women, shifting gender roles, and the rise of non-traditional familial arrangements—have impacted the jurisprudence surrounding maintenance laws with respect to women in India. Special attention is given to judicial interpretations of the term "wife" under Section 125, analyzing landmark judgments that broaden its scope to include live-in relationships, void and voidable marriages, and customary unions. The study critically examines how courts have balanced constitutional principles of equality and dignity with the socio-economic realities of a diverse population. Furthermore, it delves into the challenges posed by the growing financial independence of women, the recognition of men as caregivers, and the inclusion of non-marital cohabitation in maintenance claims. By juxtaposing these developments with societal shifts, the paper seeks to assess whether India's maintenance laws adequately address the changing needs of modern families. It also considers comparative legal frameworks from other jurisdictions such as United States, Canada, Australia and the United Kingdom, to recommend reforms aimed at ensuring equitable access to justice and financial stability for all parties involved.

Keywords: *Section 144 BNSS, Section 125 CrPC, Maintenance, Gender Roles, and Definition of Wife.*

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1. INTRODUCTION

The updated criminal justice law, the *BNSS*² of 2023, which supersedes the 1973 Criminal Procedure Code (CrPC) took effect on 1 July 2024 aims to make India's criminal justice system better by simplifying procedures, speeding up cases, and making the process more transparent. Under the *Bhartiya Nagrik Suraksha Sanhita* (BNSS) 2023, the provisions governing maintenance for wives, children, and parents, which were previously codified under Chapter IX of the Code of Criminal Procedure (CrPC), 1973, have now been reorganized into Chapter X. Despite this structural change, the fundamental welfare-centric principles remain intact, ensuring financial support for specific dependent groups. However, the substantive framework remains largely unchanged, with no notable expansion in scope or inclusivity to address evolving societal dynamics.

Section 144 of the BNSS, 2023, states—

“144. (1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to

maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has

attained majority, where such child is, by reason of any physical or mental abnormality

or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Judicial Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or

² *Bhartiya Nagrik Suraksha Sanhita*, No. 45, Acts of Parliament, 2023 (India), replacing Code of Criminal Procedure, No. 2, Acts of Parliament, 1973 (India), implemented on July 1, 2024.

mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct.”

Section 144 of the Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023, grants the right to maintenance to specific dependent individuals, including wives, children (both legitimate and illegitimate), children with disabilities, and parents who are unable to support themselves. This paper will focus exclusively on the wife’s right to claim maintenance under this provision.

While the law continues to emphasize basic sustenance for vulnerable individuals, it reinforces the state’s responsibility in preventing destitution. However, the framework remains largely unchanged from its predecessor, raising questions about its adequacy in addressing the economic realities and evolving gender dynamics of modern society. The sections of the BNSS mirror the limitations of the CrPC, including a gender-specific orientation that primarily benefits women as claimants, while excluding economically vulnerable men or partners in same-sex relationships. The way courts have interpreted the term 'wife' more broadly is an important starting point for talking about inclusivity in maintenance laws. Over time, courts have expanded this definition to include non-traditional relationships, reflecting changes in how society views relationships. This expanded interpretation can lay the groundwork for recognizing non-traditional partnerships within the legal framework, thereby ensuring equitable treatment in maintenance disputes. The law also remains restrictive in recognizing non-traditional relationships, such as live-in partnerships, beyond narrow judicial interpretations.

2. INTERPRETATION AND SCOPE OF ‘WIFE’ UNDER SECTION 144(1)(A) OF THE BNSS

All Courts are to do justice, not to wreck this end product on technicalities.

- Krishna Iyer, Former Judge, Supreme Court of India

2.1 - The Wife Must Be Legally Married

In *Yamunabai V. Anantrao*,³ the Supreme Court of India narrowly interpreted the term "wife" under Section 125 of the CrPC, restricting its scope to legally wedded women only. The Court reasoned that a woman seeking maintenance must first prove her legal marital status, as per the

³ *Yamunabai v. Anantrao*, (1988) 1 SCC 530 (India).

relevant personal laws governing the parties. This position effectively excludes women in void marriages, even if they were unaware of their husband's existing marriage at the time of their own wedding. While this ruling aligns with the technicalities of personal law, it arguably overlooks the socio-economic vulnerability of women trapped in fraudulent marriages.

Similarly, in *Savitaben Somabhai Bhatiya vs. State of Gujarat*⁴, the Supreme Court reinforced this restrictive interpretation, holding that while illegitimate children may claim maintenance under Section 125, the same right is not extended to women unknowingly entering bigamous marriages. Acknowledging the harsh consequences for such women, the Court remarked that legislative intervention would be required to rectify this gap in legal protection. This ruling highlights a critical inconsistency—while children born out of void marriages are provided financial security, the women in such unions remain devoid of legal recourse under Section 125.

Given the evolution of maintenance laws and the broader interpretation of "wife" in subsequent rulings (e.g., *Badshah v. Urmila Badshah Godse*), it may be time for courts and legislators to reconsider whether maintenance laws should be guided strictly by marital legality or by principles of equity and justice.

2.2 No Maintenance in Null and Void marriages

Section 125 of the Code of Criminal Procedure (CrPC), 1973, defines 'wife' as a legally married woman, with the validity of the marriage determined by the personal laws governing the individuals involved. Judicial interpretations of this definition have evolved over time, particularly in cases concerning void and voidable marriages.

In *T.K. Surendran v. P. Najima Bindu*⁵, the Supreme Court upheld a ruling by the Kerala High Court, affirming that even if a marriage is annulled or declared invalid due to the husband's misconduct, the husband remains liable to pay maintenance under Section 125 of the CrPC. This decision highlighted the protective intent of maintenance laws, ensuring that women do not suffer financial hardship due to the wrongful acts of their spouses.

Conversely, in *Savitaben Somnath Bhatiya case*⁶, the Supreme Court held that a woman whose marriage is considered *void ab initio* cannot claim maintenance under Section 125. The Court

⁴ *Savitaben Somabhai Bhatiya v. State of Gujarat*, AIR 2005 SC 1809 (India).

⁵ *T.K. Surendran v. P. Najima Bindu*, 2019 (4) RCR (Crim) 146 (India).

⁶ *Supra* note 3.

emphasized that while the law grants maintenance rights to illegitimate children, it does not extend similar protection to women who were never legally married.

However, in *Badshah v. Sou. Urmila Badshah Godse*,⁷ the Supreme Court narrowed the scope of *Savitaben's* ruling and adopted a more equitable interpretation of maintenance rights. The Court ruled that if a husband conceals a previous marriage and fraudulently marries a woman unaware of the subsisting marriage, he is still obligated to pay maintenance, despite the marriage being legally void under Section 5(i) of the Hindu Marriage Act, 1955. This decision recognized the need to protect innocent women from being left destitute due to the deception of their spouses.

The Court in *Badshah* further clarified that the principle in *Savitaben* applies only when a woman knowingly marries a man who is already married. However, if the marriage is annulled due to fraud, dishonesty, or the husband's wrongdoing, the woman cannot be denied maintenance under Section 125 of the CrPC.

In *Najima Bindu*, the Kerala High Court ruled that a woman qualifies as a 'wife' under Section 125, Explanation (b), of the CrPC, even if her marriage has been dissolved due to the actions of either spouse, including through a court decree under Sections 12 or 13 of the Hindu Marriage Act, 1955. The Court emphasized that such women remain eligible for maintenance as long as they do not remarry. The judgment reasoned that women whose marriages are annulled should still be considered within the scope of 'wife' under Explanation (b), as they cannot revert to their pre-marriage status as an unmarried individual. This interpretation supports a broader and more inclusive understanding of the term 'wife' in maintenance law.

2.3 (In) Eligibility of Second Wife for maintenance

As a general rule, a second wife is not entitled to maintenance if her marriage is void due to the subsistence of the husband's first marriage. However, an exception has been recognized in cases where the husband fraudulently conceals his first marriage and enters into a second marriage without disclosing this fact to his second wife. In *Badshah v. Urmila Badshah Godse*,⁸ the Supreme Court ruled that a husband cannot benefit from his own wrongdoing by arguing that the second marriage is invalid under the Hindu Marriage Act, 1955, due to the continued existence of his first marriage. The Court, adopting a purposive interpretation of Section 125

⁷ *Badshah v. Sou. Urmila Badshah Godse*, (2014) 1 SCC 188 (India).

⁸ *Badshah*, supra note 6.

of the CrPC, held that the second wife should not suffer the consequences of the husband's deception and is entitled to maintenance.

This decision deviates from earlier Supreme Court rulings such as *Yamunabai*⁹ and *Savitaben Somabhai Bhatiya*¹⁰, which upheld the principle that only a legally wedded wife can claim maintenance. The Court clarified that these precedents apply only in cases where the woman knowingly enters into a marriage with a man who is already married.

Thus, under Section 125 of the CrPC (now Section 144 of the BNSS), while the default rule excludes second wives from claiming maintenance, the judiciary has carved out an exception in cases where the second wife was unaware of the subsisting first marriage.

2.4 Claims of Maintenance in Live-In Relationships

The legal recognition of maintenance rights in live-in relationships has evolved significantly through judicial pronouncements. In *Chanmuniya V. Virender Kushwaha*,¹¹ the Supreme Court adopted an expansive interpretation of the term 'wife' under Section 125 of the CrPC, holding that:

“A broad and expansive interpretation should be given to the term ‘wife’ to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125, so as to fulfill the true spirit and essence of the beneficial provision of maintenance.”

This judgment aligns with an earlier ruling by Justice Krishna Iyer, wherein the Supreme Court emphasized:

“A strong presumption arises in favor of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favor of legitimacy and frowns upon bastardy.”

⁹ Supra note 2.

¹⁰ Supra note 3.

¹¹ *Chanmuniya v. Virender Kumar Singh Kushwaha* (2011) 1 SCC 14 (India).

Currently, women in live-in relationships resembling marriage are eligible to claim maintenance provided certain conditions are met. Courts have clarified that strict proof of a valid marriage is not required if the relationship demonstrates permanence, mutual dependency, and societal acknowledgment as a domestic partnership. However, this entitlement is not absolute—maintenance can be denied if there are legal impediments, such as a subsisting marriage of one partner, which would render the live-in relationship void.

2.5 Strict Proof of Marriage

The Supreme Court has consistently held that the standard of proof of marriage in maintenance proceedings under Section 125 of the CrPC is not as stringent as in cases of marital offenses under Section 494 of the Indian Penal Code (IPC). In *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*¹², the Court observed: “The standard of proof of marriage in such proceedings is not as strict as is required in a trial of an offense under Section 494 of the I.P.C.”

Reinforcing this principle, the Supreme Court in *Kamala v. M.R. Mohan Kumar*¹³ held that: “When the parties live together as husband and wife, there is a presumption that they are legally married for the purpose of claiming maintenance under Section 125 CrPC.”

The presumption of marriage in cases of long-term cohabitation is rooted in common law principles, as established in *A. Dinohamy v. W.L. Balahamy*.¹⁴ The Privy Council in this case laid down the general proposition that: “Where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.” While this presumption is rebuttable, the burden of proof rests heavily on the person challenging the legitimacy of the relationship. This approach aligns with the protective intent of Section 125 CrPC, ensuring that women are not left destitute due to technicalities surrounding the validity of marriage.

Further support for this broader interpretation comes from the *Malimath Committee Report on Reforms of the Criminal Justice System*¹⁵ which recommended that evidence of prolonged

¹² *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*, (1999) 7 SCC 675 (India).

¹³ *Kamala v. M.R. Mohan Kumar*, AIR 2018 SC 5128 (India).

¹⁴ *A. Dinohamy v. W.L. Balahamy*, AIR 1927 PC 185 (India).

¹⁵ Comm. on Reforms of Crim. Just. Sys., Gov't of India, Report (Mar. 2003), https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf (last visited Mar. 4, 2024).

cohabitation should be sufficient to infer marriage. Courts have increasingly leaned towards this principle, favoring a presumption of marriage over concubinage in long-term relationships.

2.5.1 Recognition of ‘Relationship in the Nature of Marriage’

The concept of a relationship akin to marriage, similar to common-law or de facto marriages, was elaborated upon in *D. Velusamy v. D. Patchaiammal*¹⁶ Justice Markandey Katju, delivering the judgment, attempted to define ‘relationship in the nature of marriage’, emphasizing four key criteria:

1. The couple must present themselves to society as spouses.
2. They must be of legal age to marry.
3. They must not have legal impediments to marriage (e.g., one partner already being married).
4. They must have voluntarily cohabited and held themselves out as spouses for a significant period.

While this ruling recognized maintenance rights in live-in relationships resembling marriage, the Court clarified that not all live-in relationships qualify for maintenance under Section 125 CrPC. The relationship must meet the above criteria and closely resemble a marriage.

India’s legal framework has gradually evolved to recognize non-traditional relationships, as reflected in the *Protection of Women from Domestic Violence Act, 2005 (PWDVA)*. This statute explicitly includes ‘relationships in the nature of marriage’ within the definition of ‘domestic relationship’, extending protections beyond those available under Section 125 CrPC.

2.5.2 Live-In Relationships and Maintenance under PWDVA

In *Lalita Toppo v. State of Jharkhand*,¹⁷ the Supreme Court further expanded legal protection for women in live-in relationships. The Court held that: “A woman in a cohabiting relationship has the right to seek maintenance under the PWDVA, even if she does not qualify for maintenance under Section 125 of the CrPC.” This ruling clarified that the PWDVA provides broader relief than Section 125 CrPC, offering women in live-in relationships a legal avenue for maintenance and additional remedies such as residence rights, protection orders, and compensation. The case underscores the judiciary’s shift toward ensuring financial security for

¹⁶ *D. Velusamy v. D. Patchaiammal*, AIR 2011 SC 479 (India).

¹⁷ *Lalita Toppo v. State of Jharkhand*, 2018 SCC OnLine SC 2301 (India).

women in non-traditional relationships, recognizing that dependence and vulnerability are not exclusive to legally wedded spouses.

3. NAVIGATING MODERN REALITIES: FINANCIAL INDEPENDENCE AND CAREGIVING ROLES

The evolving dynamics of modern society have significantly impacted maintenance claims, reflecting shifts in traditional gender roles, economic independence, and societal perceptions of relationships. Women today in India are moving towards financial independence, challenging the conventional view of maintenance as solely a means of economic support for dependent spouses.

At the same time, caregiving roles—often undertaken by one partner, regardless of their financial status—continue to hold value, necessitating consideration in maintenance claims to ensure fairness and equity. Non-marital cohabitation has further complicated the legal landscape, as courts now recognize that such relationships, though outside traditional marriage, may entail mutual obligations and economic dependency akin to marriage. This shift, reflected in legislation like the Protection of Women from Domestic Violence Act, 2005, highlights the need for legal systems to balance economic realities, caregiving contributions, and the rights of individuals in diverse domestic arrangements, ensuring justice in a rapidly changing social context.

With more women joining the workforce across sectors, their economic roles have expanded beyond traditional caregiving. This shift has implications for maintenance laws, as courts now consider a woman's financial independence while deciding maintenance claims. In *Rajnish V. Neha*¹⁸ the Supreme Court of India mandated that when a party applies for maintenance in any court, both the applicant and the respondent must submit an affidavit detailing their assets and liabilities. This requirement ensures greater transparency and fairness in maintenance proceedings by providing a clear financial picture of both parties involved. Similarly, in *Mamta Jaiswal vs. Rajesh Jaiswal*¹⁹ the Madhya Pradesh High Court held that a well-qualified wife capable of earning cannot sit idle and demand maintenance. The court emphasised that maintenance is not a means for an idle existence but a safety net for genuine dependency.

¹⁸ *Rajnish v. Neha*, AIR 2021 SC 569 (India).

¹⁹ *Mamta Jaiswal v. Rajesh Jaiswal*, II (2000) DMC 170 (India).

Despite significant progress in promoting gender equality in the workforce, persistent gender wage gaps and the underrepresentation of women in higher-paying sectors continue to present substantial challenges. These disparities are often rooted in systemic biases, unequal access to opportunities, and the disproportionate burden of caregiving responsibilities that women typically bear. Such economic imbalances can leave women more vulnerable during separation or disputes over maintenance, underscoring the critical need for equitable legal protections. By addressing these structural inequalities through progressive laws and policies, the legal system can play a pivotal role in bridging economic gaps, ensuring that maintenance provisions are not only a safety net for vulnerable individuals but also a step toward fostering financial independence and empowerment for all genders.

4. SPOUSAL MAINTENANCE LAWS: INSIGHTS FROM COMPARATIVE JURISDICTIONS

4.1 United States of America (USA)

Various common law countries have implemented some form of maintenance system in one way or the other. In the United States, spousal maintenance, also known as alimony, has evolved significantly over time. Traditionally, alimony was awarded primarily to wives, reflecting the societal norms of the past where men were typically the breadwinners and women were homemakers. However, the landmark case of *Orr v. Orr*²⁰ signified a turning point in the development of alimony law.

In *Orr v. Orr*, in 1979, the United States Supreme Court declared an Alabama statute unconstitutional for requiring only husbands to pay alimony, as it breached the Equal Protection Clause of the Fourteenth Amendment. In a 6-3 decision, the Court declared Alabama's statutes unconstitutional. Justice William J. Brennan, Jr., delivering the opinion for the majority, observed that classifications based on gender must align with significant governmental goals under the Equal Protection Clause. The Court dismissed several objectives suggested by the Alabama Court of Civil Appeals, stating that gender did not reliably represent financial needs. Under the current system, either the wife or husband may be held responsible for paying alimony to support the other.

²⁰ *Orr v. Orr*, 440 U.S. 268 (1979).

4.2 Australia

In *Australia*, spousal maintenance proceedings are governed by the *Family Law Act of 1975*²¹. An individual involved in a marriage or de facto relationship does not inherently possess an entitlement to receive continuous financial assistance through spousal maintenance from the other individual. When determining whether spousal maintenance should be granted, the Court is obligated to assess whether the party applying for maintenance demonstrates a genuine need, stemming from an inability to sustain themselves due to factors such as childcare responsibilities or an inability to work due to age, illness, disability, and similar circumstances. Additionally, the applicant must demonstrate that the other party has the reasonable ability to provide the required maintenance. Under Australian law, there is also a concept of ‘De facto maintenance,’ wherein the court can issue similar orders for individuals in de facto relationships who lack the means to support themselves adequately. Specifically, this is referred to as "de facto maintenance" rather than “spousal maintenance”.

The grounds for claiming both spousal and de facto maintenance are, however, the same—if the applicant is incapable of sufficiently supporting themselves for the following reasons: they are responsible for caring for a child under the age of 18; or their age or health condition hinders them from obtaining suitable employment or the length of the relationship and its impact on their earning potential. In times of need, both parties have a mutual obligation to provide support and care for each other to the best of their abilities. This obligation may persist even after separation and divorce.²²

4.3 Canada

Under the *Canadian law*, the initial stage involves assessing whether the wife qualifies for support. Given the details provided in this instance, she would be eligible for both compensatory (related to sacrificing economic prospects for the family's benefit) and non-compensatory (due to financial need) support. *Moge v. Moge*²³ stands as a prominent ruling wherein the Supreme Court of Canada substantially restricted a court's power to terminate alimony payments, viewed by some as a major advancement for women's rights, the decision

²¹ Family Law Act 1975 (Cth) (Austl.), https://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/ (last visited Nov. 7, 2024).

²² Family Court of W. Austl., Spousal and De Facto Maintenance, https://www.familycourt.wa.gov.au/S/spousal_and_de_facto_maintenance.aspx (last visited Apr. 9, 2024).

²³ *Moge v. Moge*, [1992] 3 S.C.R. 813 (Can.).

is seen as protecting women with limited work experience from facing financial hardship upon divorce.

In the decision of *Moge v. Moge*, the Supreme Court of Canada departed from the "self-sufficiency" approach to spousal support and introduced new guidelines to assist courts in applying the statutory criteria for awarding spousal support. These guidelines aim to ensure a fair distribution of the financial implications of marriage and its dissolution. Justice L'Heureux-Dubé, referencing the *Divorce Act*,²⁴ emphasized the inherent responsibility to equitably allocate resources to mitigate the financial effects of marriage breakdown. She observed that while both spouses have this duty, the wife often remains the economically disadvantaged partner in many, if not most, marriages.

The court emphasized that women often take on the main caregiving duties both during and following the marriage, which can lead to significant economic repercussions after divorce, particularly when they have custody of children. The challenges faced by an ex-wife in re-entering the workforce are compounded by years of limited or no professional involvement. Moreover, the need to make career adjustments—such as staying close to the children's schools, avoiding late hours, and being available when the child is unwell—further limits her earning potential. In contrast, the former husband, who typically does not have custody, does not encounter these same professional constraints.

In *Canada*, maintenance of family members, commonly referred to as "spousal support" and "child support," is governed by both federal and provincial laws. The key legislation includes the Divorce Act and provincial family law acts. Under the federal Divorce Act, spousal support is typically awarded when there is a significant income disparity between spouses after separation. However, this is not always the case. A court may determine that the lower-income spouse is not eligible for support if they possess substantial assets or if the income gap cannot be directly attributed to circumstances during the marriage.²⁵ Child support is a legal requirement designed to help cover the living expenses of children after their parents have separated or divorced. The *Federal Child Support Guidelines*²⁶ specify the payment amounts determined by the payer's income and the number of dependent children.

²⁴ Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) (Can.), <https://laws-lois.justice.gc.ca/eng/acts/d-3.4/> (last visited Apr. 9, 2024).

²⁵ Government of Canada, Spousal Support, <https://www.justice.gc.ca/eng/fl-df/spousal-epoux/ss-pae.html> (last visited May 21, 2024).

²⁶ Justice Laws Website, SOR-97-175: Regulations, <https://laws-lois.justice.gc.ca/eng/regulations/sor-97-175/index.html> (last visited May 21, 2024).

4.4 United Kingdom (UK)

Spousal support in the United Kingdom is mainly governed by the *Matrimonial Causes Act 1973 (MCA 1973)*²⁷, along with supplementary laws and regulations. Section 22 of the MCA 1973 empowers the court to issue orders concerning spousal maintenance. Under this provision, the court can direct one spouse to provide regular financial support to the other, taking into account their financial situation, assets, and other relevant factors. When determining spousal maintenance, the court considers various elements outlined in Section 25 of the MCA, including the financial circumstances of both parties, their lifestyle during the marriage, the length of the marriage, as well as their age, health, and contributions to the household. Although traditionally, courts have assessed both financial demands and marital contributions, recent trends emphasise awards based on financial necessity over equal asset distribution.

The courts in United Kingdom uphold the "clean break" principle, even though spousal maintenance may be awarded to provide necessary financial support. This principle emphasises the aim of reaching a financial settlement that allows both parties to achieve independence and sever financial ties whenever feasible. The objective is to promote financial self-sufficiency post-divorce, thereby minimizing on-going dependency between former spouses.

The *Matrimonial Causes Act 1973*, emphasises that maintenance is determined based on the financial needs of both parties, without regard to gender. When a marriage or civil partnership dissolves, one party often faces a significant financial disadvantage compared to the other. For instance, a spouse who assumed primary caregiving responsibilities while the other partner pursued a career may experience lower career progression, reduced income, and limited future earning potential. This disparity can result from the partner who remained in the workforce achieving a higher salary and more established professional standing. To address such imbalances, courts may order on-going financial support, known as spousal maintenance, for the economically weaker spouse. Spousal maintenance is distinct from child maintenance and is governed by more nuanced and case-specific legal principles. It represents a critical component of family law aimed at ensuring fairness and mitigating financial disparities following the end of a partnership. The court prioritizes the welfare of any children involved

²⁷ Matrimonial Causes Act 1973, c. 18 (U.K.), <https://www.legislation.gov.uk/ukpga/1973/18> (last visited May 21, 2024).

but also takes into account the financial circumstances, responsibilities, and assets of both spouses. This comprehensive approach is rooted in the principle that every case has its own distinct factors and must be evaluated based on its specific circumstances.

5. ASSESSING THE POTENTIAL FOR SIMILAR REFORMS IN INDIAN SOCIETY

5.1 Insights from the United States

Implementing a gender-neutral framework for alimony, akin to the ruling by the U.S. Supreme Court, may face considerable obstacles in India given the nation's distinct socio-cultural dynamics.

Firstly, India's social fabric is deeply rooted in patriarchal traditions, with significant disparities in education, employment opportunities, and financial independence between genders. Women in India, particularly in rural areas, often face systemic barriers to achieving economic self-sufficiency. A gender-neutral alimony framework might overlook the lived realities of many women who remain economically dependent due to entrenched societal norms. Without adequate safeguards, this could leave vulnerable women without sufficient legal protection.

Secondly, women's participation in India's workforce is among the lowest in the world. In 2023, only 32.7% of women in India were part of the labor force, much lower than the global average of 53%.²⁸ Additionally, a large number of Indian women work in the unorganized sector—around 150 million.²⁹ Furthermore, the distribution of female employment in India is skewed towards self-employment and casual labor. Most women in India are either self-employed or do casual work, with 19.7% being self-employed, 6.8% working as casual laborers, and only 5.3% having regular salaried jobs.³⁰ This economic gap is further widened by societal expectations that women should focus on caregiving rather than career advancement. In such a scenario, mandating that financially weaker men receive alimony from women might be seen as unfair, especially when women's access to financial resources and opportunities remains unequal.

²⁸ World Bank, Gender Data Portal: India, <https://genderdata.worldbank.org/en/economies/india> (last visited Jan. 2, 2025).

²⁹ Aakriti S. Suri, India Must Protect the 150 Million Women in the Informal Sector, *The Diplomat* (Mar. 2023), <https://thediplomat.com/2023/03/india-must-protect-the-150-million-women-in-the-informal-sector>.

³⁰ Directorate Gen. of Employment, Female Labour Utilization in India: April 2023 (May 2023), https://dge.gov.in/dge/sites/default/files/2023-05/Female_Labour_Utilization_in_India_April_2023_final_1_-_pages-1-2-merged_1_.pdf.

Thirdly, India's societal outlook on gender roles still heavily leans toward viewing men as providers and women as dependents. A shift to a gender-neutral system may face resistance and be subject to misuse. For example, financially independent women could be unfairly targeted for alimony claims by husbands who might misuse the provision without genuine need.

Fourthly, implementing a gender-neutral alimony law requires the foundational socio-economic inequalities to be addressed first. Without addressing these gaps, such a law could inadvertently perpetuate financial vulnerabilities for women. A phased approach—introducing gender neutrality gradually while ensuring economic and social parity—is crucial for meaningful reform.

5.2 Insights from Australia

Adapting the Australian model of mutual responsibility for spousal maintenance to the Indian context would require thoughtful modifications to address the country's unique socio-cultural and economic realities. Here's how it could be applied:

5.2.1 Recognizing Mutual Responsibility

Incorporating a framework where both spouses share equal responsibility to support one another aligns with the constitutional principles of equality and non-discrimination upheld by the Indian Constitution. However, this principle should be implemented with consideration for socio-economic disparities between genders in India. For example:

- Maintenance should account for the challenges women face, especially in rural areas, in accessing equal education and employment opportunities.
- Policies should ensure that a gender-neutral framework does not disproportionately burden economically weaker parties, regardless of gender.

5.2.2 Accounting for Monetary and Non-Monetary Contributions

The Indian system could improve by acknowledging non-financial contributions, like caregiving and domestic work, when determining maintenance. Australian law considers the contributions of both parties during the relationship, including caregiving, in deciding maintenance claims. Indian courts could formalise this practice and the Parliament could

consider legislative amendments, acknowledging unpaid domestic labor as a valuable economic contribution.

5.2.3 Introducing Conditional Responsibility Post-Divorce

In Australia, spousal maintenance may extend post-divorce to assist individuals in achieving financial independence. India could introduce a similar system, but:

- Limits should be placed on the duration of maintenance to encourage financial independence while avoiding prolonged dependency.
- Training and *skill development* programs could be integrated into the maintenance framework to help the dependent spouse gain employment opportunities.

5.2.4 Simplified and Gender-Neutral Language

The Australian model employs gender-neutral language, ensuring that either spouse may claim maintenance based on need. Section 144 of the BNSS could be revised to replace terms like "wife" with "spouse" or "partner," while providing safeguards to prevent misuse.

5.3 Insights from Canada

The Canadian model of maintenance provides several insights that the Indian system could consider, with modifications to align with India's unique socio-cultural realities.

The Canadian system evaluates both *compensatory* (for sacrifices made during marriage) and *non-compensatory* (based on financial need) support. This recognises the economic contributions of homemakers and the impact of marital roles on earning capacity. Indian law, under Section 144 of the BNSS, 2023 and related personal laws, could expand beyond the current focus on basic sustenance to include compensation for sacrifices in career or education for family responsibilities. Recognizing caregiving as an economic contribution can bring greater fairness to maintenance awards.

Canadian courts emphasise the economic disadvantage faced by custodial parents, often women, due to child-rearing responsibilities. Indian courts could formally integrate considerations for the financial impact of custody on the primary caregiver. Maintenance provisions could include allowances for diminished career opportunities and the additional

costs of caregiving. This would be in line with the constitutional principles of equality and justice.

The *Federal Child Support Guidelines* provide clear and predictable frameworks for determining child support, reducing ambiguities and ensuring fairness. Introducing structured guidelines for spousal and child support in India could standardise awards while considering income disparities, the number of dependents, and regional cost-of-living variations.

The decision in *Moge v. Moge* highlights the need to fairly allocate resources to address post-marital economic disadvantages, particularly for economically weaker spouses. Indian maintenance laws could expand their scope to include provisions for equitable resource sharing post-divorce. This might include temporary rehabilitative support to help economically dependent spouses transition to financial independence.

Canadian maintenance laws are gender-neutral, with either spouse eligible for support based on need and contributions. While India's societal context still shows significant economic disparities between genders, incremental reforms could introduce gender-neutral language, ensuring that economically weaker spouses, regardless of gender, are eligible for support. Safeguards against misuse would be critical in this transition. Unlike Canada, a significant portion of India's population lacks economic stability, and women often have lower labor force participation rates. The deeply entrenched norms of patriarchy and stigma around maintenance for men could pose challenges. Indian courts would need to balance constitutional mandates with practical considerations to ensure reforms are implemented equitably.

5.4 Insights from the United Kingdom (UK)

In the United Kingdom, courts consider a range of factors, including financial needs, standard of living, age, health, and marital contributions, before deciding spousal maintenance. While Indian courts already consider financial needs under Section 125 CrPC (now replaced with BNSS) and other personal laws, expanding this scope to include a more holistic evaluation—such as health, standard of living, and caregiving sacrifices—would create a fairer system.

The "clean break" principle promotes financial independence, emphasizing the need for both parties to sever financial ties as soon as reasonably possible. Indian laws could adopt this principle with modifications. A phased approach to financial independence could be

introduced, providing temporary support to economically weaker spouses to develop skills, rejoin the workforce, or stabilise their finances.

In the United Kingdom, Each case is assessed individually, emphasizing the unique circumstances of the parties involved. Indian courts could formalise guidelines for nuanced assessments, considering the socio-economic status, regional disparities, and specific challenges faced by spouses in rural or urban settings.

5.5 Impact Of Societal Shifts On Maintenance Jurisprudence

Societal changes, such as increasing workforce participation of women, evolving gender roles, and the rise of non-traditional family structures, have significantly influenced maintenance jurisprudence worldwide, including in India. As women increasingly participate in the workforce and achieve financial independence, the traditional assumptions about male breadwinners and female dependents are being challenged. This shift has led to a growing recognition that both spouses can contribute financially and that both may need support post-separation or divorce, depending on their economic circumstances.

In India, maintenance laws face unique challenges due to entrenched social norms. While Section 125 of the CrPC provides financial relief, it traditionally recognises women as the primary recipients, reflecting gender roles that continue to shape the family structure. A significant reason for this is that, even in modern households, women still bear the primary responsibility for childcare and household duties, regardless of their economic participation. Although many women are now active in the workforce, societal expectations around caregiving persist, creating a disparity in how maintenance needs are addressed.

This cultural reality complicates the inclusion of economically disadvantaged men, same-sex couples, or long-term cohabiting partners in the maintenance framework. The concept of maintenance, as traditionally understood in India, remains linked to the gendered assumption of women as caregivers. Therefore, despite shifts in the global discourse on gender equality, the Indian context requires a more nuanced approach to ensure that maintenance laws are inclusive of all family structures and reflect contemporary roles and responsibilities.

6. CONCLUSION AND SUGGESTIONS

The transition from the Criminal Procedure Code of 1973 (CrPC) to the *Bhartiya Nagrik Suraksha Sanhita* (BNSS) of 2023, in the realm of maintenance laws should have aimed to bring reforms that would better address modern familial structures and evolving societal norms. However, despite the replacement of the older law, many of the same challenges persist. The new legislation does not introduce substantial changes or remedies for the core issues faced under the CrPC. Both legal frameworks continue to grapple with outdated perceptions of gender roles, financial dependency, and the inability to adequately cater to the needs of diverse family arrangements, such as live-in relationships and non-traditional caregiving roles.

One of the ongoing debates surrounding maintenance laws is the demand for equal maintenance provisions for men. While the concept of gender-neutral laws may seem appealing, it is not entirely feasible in the Indian context, where women, particularly in low-income or rural settings, still face significant barriers to economic independence. However, a more progressive approach would be to acknowledge men as caregivers, particularly in cases where they have sacrificed their careers to manage family responsibilities. In such situations, maintenance could be considered as a means of supporting men who have financially or otherwise contributed to family welfare but are now in need of support.

The law must continue to evolve to better align with the realities of modern families and address the complex intersection of gender, economics, and familial responsibilities. Judicial flexibility and a more inclusive approach toward non-traditional family dynamics will be crucial to ensuring that maintenance laws adequately provide for all parties involved, fostering fairness and equality in line with constitutional values.

BNSS missed an opportunity to incorporate reforms addressing contemporary societal realities, such as gender-neutrality, equitable economic division, and adaptability to diverse family structures. Comparative frameworks from jurisdictions like Canada or Australia, which emphasize equity and inclusivity, highlight the gaps in the BNSS, making the need for further reforms in India evident.

While gender-neutral maintenance laws align with principles of equality, their implementation in India must account for existing socio-economic and cultural disparities to

avoid unintended negative consequences. Tailored reforms, informed by ground realities, are essential for ensuring justice in maintenance jurisprudence.

6.1 Suggestions

- While equal maintenance laws for men are not practical in the Indian context, specific provisions should be made to acknowledge men who have taken on significant caregiving responsibilities within the family. Maintenance could be awarded in cases where men have sacrificed their careers to support the family, ensuring gender inclusivity.
- In order to tackle the issue of including women in *non-traditional* relationships under the definition of "wife" in the Bhartiya Nagrik Suraksha Sanhita (BNSS) 2023, the explanation to Section 144 (1) which reads as -“for the purposes of this Chapter, ‘wife’ includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.” may be substituted with –

“for the purposes of this Chapter, "wife" in addition to the legally married wife, includes a woman –

who is in a relationship akin to marriage, where both parties have cohabited and held themselves out as a couple;

whose marriage is declared void due to legal infirmities but who has lived with the man in the manner of a marriage;

whose marriage is voidable due to factors like fraud, coercion, or because the man was already in a valid marriage and had concealed the fact of such marriage, and who has been living with the man in a marital capacity.”

THE SIGNIFICANCE OF DNA IN THE INDIAN CRIMINAL JUSTICE FRAMEWORK

-Kolawole Afuwape¹

Abstract

The advancement of scientific technology has led to profound changes in the daily lives of individuals. While these changes have brought about numerous benefits in terms of lifestyle and conveniences, they have also posed considerable challenges for law enforcement agencies, which must address the ways in which criminals exploit technology to engage in unlawful activities. The utilization of scientific methods within the realm of criminal investigations is referred to as Forensic Science. Technological innovations have significantly influenced multiple facets concerning the efficiency of the justice system. The discovery of DNA has led to new lines of inquiry, and the settlement of many civil and criminal cases has been considerably improved by developments in DNA technology and its incorporation into legal procedures. Proponents of forensic DNA testing argue that DNA analysis is largely devoid of errors, suggesting that advancements in DNA technology represent a significant enhancement in the pursuit of truth, the prosecution of offenders, and the exoneration of individuals wrongfully convicted. Forensic DNA testing has been a game-changer, allowing for the accurate identification and prosecution of many criminals who would have otherwise eluded justice. This article examines the implications of recognizing DNA as valid evidence within the legal framework and offers a comprehensive evaluation of the status of DNA testing in India. This study investigates the domain of DNA identification and its utilization in criminal investigations and judicial processes. It analyzes the primary benefits and drawbacks associated with the growing significance of DNA identification in the context of criminal justice, particularly within India.

Keywords: *DNA Criminal Justice, Criminal Trials, Evidence, Expert Witness, Forensic Science.*

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1. INTRODUCTION

DNA is an abbreviation that represents Deoxyribonucleic Acid. In the body of an individual, every cell—excluding red blood cells and gametes—houses the complete "genetic blueprint" encoded within its DNA.² Guanine, Cytosine, Adenine, and Thymine—commonly shortened to G, C, A, and T—are the only four essential bases that make up the genetic program. The twenty amino acids that are necessary for living creatures to function as building blocks are represented by these bases, which are arranged into groups of three called codons.³ Amino acids are subsequently connected to creating proteins. Certain codons function as "stop codons," indicating that the translation of the amino acid sequence should conclude.⁴ Despite significant advancements in recent years and a comprehensive understanding of the genetic code, biologists continue to face challenges in deciphering how this code is expressed. Notably, while liver and brain cells share the same genetic information, the manifestation of that information in each cell type is markedly distinct.⁵ The segment of DNA responsible for protein synthesis clearly differs among individuals; otherwise, all humans would exhibit the same physical characteristics.⁶

Found in almost all the body's cells, DNA is the molecular blueprint that houses all an individual's genetic information. Every person has a unique DNA, except for identical twins.⁷ The growing prevalence and endorsement of DNA technology as a form of evidence present numerous challenges for the criminal justice system.⁸ Nonetheless, discussions persist regarding the degree to which guilt can be deduced from a seemingly positive match. DNA evidence, while valuable, cannot conclusively establish all components of a criminal offense.⁹

² Khan, F. A. (2018). Genes and genomics. In *Biotechnology Fundamentals* (pp. 27-74). CRC Press.

³ Goel, P., & Padole, M. (2019). Bioinformatics: an application in information science. In *First International Conference on Artificial Intelligence and Cognitive Computing: AICC 2018* (pp. 223-238). Springer Singapore.

⁴ Swart, E. C., Serra, V., Petroni, G., & Nowacki, M. (2016). Genetic codes with no dedicated stop codon: context-dependent translation termination. *Cell*, 166(3), 691-702.

⁵ Weiskirchen, R., Weiskirchen, S., & Tacke, F. (2019). Organ and tissue fibrosis: Molecular signals, cellular mechanisms and translational implications. *Molecular aspects of medicine*, 65, 2-15.

⁶ Penke, L. (2010). Bridging the gap between modern evolutionary psychology and the study of individual differences. *The evolution of personality and individual differences*, 243. Tooby, J., & Cosmides, L. (1990). On the universality of human nature and the uniqueness of the individual: The role of genetics and adaptation. *Journal of personality*, 58(1), 17-67.

⁷ Cheung, K. M., Ho, D. W., & Song, Y. Q. (2010). DNA is the blueprint of our human body. Variations in DNA are the source for the phe-notypes of different individuals. The two most common types of variations, also called polymorphisms, are microsatellites and single nucleotide polymorphisms (SNPs) in our DNA. *The Growing Spine: Management of Spinal Disorders in Young Children*, 49.

⁸ Oosthuizen, T., & Howes, L. M. (2022). The development of forensic DNA analysis: New debates on the issue of fundamental human rights. *Forensic Science International: Genetics*, 56, 102606.

⁹ Meintjes-Van der Walt, L., & Dhliwayo, P. (2021). DNA Evidence as the Basis for Conviction. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 24(1).

Typically, its primary function is to associate a suspect with the crime scene.¹⁰ In instances of sexual assault, it may provide additional insights; however, it remains insufficient in resolving the critical question of consent.¹¹

2. DNA PROFILING VIS-A-VIS THE INDIAN LEGAL FRAMEWORK

DNA evidence requires meticulous collection, preservation, and documentation to ensure its admissibility in court. The accompanying documentation must demonstrate to the judge that the evidence is both reliable and credible.¹² In India, there exists no dedicated legislation that offers investigative agencies and judges' explicit direction regarding the procedures to follow when handling DNA evidence.¹³ The Indian Evidence Act of 1872, and the Code of Criminal Procedure of 1973 lack specific provisions that pertain to forensic science, scientific investigation, or advancements in technology.¹⁴ The lack of these provisions poses considerable difficulties for investigators employing modern techniques to ascertain the culpability of the accused. A police officer, in accordance with Section 53 of the Code of Criminal Procedure 1973 (now Section 53 of BNSS, 2023), may seek the assistance of a medical professional in good faith to investigate.¹⁵ The current regulations do not permit a complainant to acquire biological samples, including blood or semen, for the purpose of initiating a criminal complaint against the alleged perpetrator.¹⁶

The 2005 amendment to the Criminal Procedure Code, facilitated by the endorsement of a medical expert, established two new provisions that empower the investigating officer to collect DNA samples from both the victim and the suspect.¹⁷ The components contribute to the medical assessment of the assault victim and the evaluation of individuals accused of rape by a healthcare professional. The Supreme Court's and many High Courts' inconsistent decisions

¹⁰ Kayser, M. (2015). Forensic DNA phenotyping: predicting human appearance from crime scene material for investigative purposes. *Forensic Science International: Genetics*, 18, 33-48.

¹¹ Small, J. L. (2020). Conceptualizing consent: How prosecutors identify sexual victimization in statutory rape cases. *Law & Social Inquiry*, 45(1), 111-131.

¹² Nurse, K. R. D. (2018). *Forensic Experts' Best Practices in DNA Collection, Analysis and Testimony: A Delphi Study* (Doctoral dissertation, The University of the Rockies).

¹³ Airen, D. (2022). Relevancy of Forensic Evidence in Indian Criminal Justice System and Analysis. Available at SSRN 4290003. See also, Bishnoi, A. (2020). The DNA Technology (Use & Application) Regulation Bill, 2019 Vis-a-Vis Data Privacy. *Pragyaan: Journal of Law*, 68.

¹⁴ Goswami, G. K., & Goswami, S. (2022). Legal contours for DNA evidence. In *Handbook of DNA Forensic Applications and Interpretation* (pp. 89-101). Singapore: Springer Nature Singapore.

Trehan, P. (2022). Role of Forensic and Scientific Methods in Criminal Investigation. *Global Journal of Enterprise Information System*, 14(4), 37-45.

¹⁵ Shah, P. Custodial police interrogation of suspects in India. In *Routledge International Handbook of Investigative Interviewing and Interrogation* (pp. 214-223). Routledge.

¹⁶ Gonu, V. K. (2021). *Crimes against Women: Investigation Techniques*.

¹⁷ The Code of Criminal Procedure (Amendment) Act, 2005 <https://www.mha.gov.in/sites/default/files/2022-09/TheCCP%28Amendment%29Act%2C2005%5B1%5D.pdf>

in several cases have left the admissibility of this evidence unclear. While judges acknowledge the scientific reliability and definitive nature of DNA testing, there are instances where such evidence is excluded due to legal or constitutional restrictions, as well as considerations of public policy.¹⁸ The Indian Evidence Act of 1872, and the Code of Criminal Procedure of 1973 lacked specific provisions that pertain to issues concerning science and technology. Consequently, it is imperative to reevaluate these legal frameworks and their associated regulations.

The advent of DNA technology has presented significant challenges to various individuals' legal and practical entitlements, including the "Right to Privacy" and the "Right Against Self-Incrimination".¹⁹ Judges have often shown hesitance in admitting evidence derived from DNA testing, largely due to concerns surrounding its reliability. Article 21 of the Indian Constitution asserts that the Right to Life and Personal Liberty includes the Right to Privacy²⁰ Article 20(3) additionally safeguards individuals from being compelled to provide self-incriminating testimony in legal proceedings, indicating that a defendant is not obligated to disclose information that may be detrimental to their case.²¹ The Supreme Court has consistently maintained that the right to life and personal liberty is not unconditional.²²

3. CONVERGENCE OF DNA ANALYSIS AND PRODUCTION OF EVIDENCE

Recent developments in the intersection of science and law are primarily characterized by a growing dependence on DNA profiling and the implementation of electronic audio and video technology for documenting police interrogations of suspects.²³ Both significant advancements have been extensively acknowledged in scholarly literature and deemed crucial for transforming the landscape of evidence production. Certainly, these two significant alterations are regarded together to counteract the ongoing issues related to evidentiary challenges, such as ambiguous identity and police statements. Although these changes have drawn criticism from a variety of quarters, it has been suggested that the "more nuanced, detrimental

¹⁸ Jana, A., & Singh, K. (2022). FORENSIC DNA PROFILING IN INDIA: AN EMERGING HUMAN RIGHTS HAZARD. INDIAN JOURNAL, 1(1), 22.

¹⁹ Joy, S., Bastian, T. S., Selvamani, M., & Abraham, S. (2018). India-National DNA offender database as tool for criminal surveillance: Need for public debate!!!. *Journal of Medicine, Radiology, Pathology and Surgery*, 5(3), 11-14.

²⁰ Chowdhury, M. (2023). Demystifying Article 21: Heart and Soul of the Indian Constitution. *Issue 3 Int'l JL Mgmt. & Human.*, 6, 3418.

²¹ Sahoo, S. (2022). Protection of Right against Self-Incrimination. *Part 2 Indian J. Integrated Rsch. L.*, 2, 1.

²² Hussain, P. M. (2021). Constitutional Rights in India An Assessment of Judgments of Justice PN Bhagwati. *Journal of Constitutional Law and Jurisprudence*, 4(2), 9-24.

²³ Ravichandran, S. I. (2023). *Genomic Carcerality: Science, Technology & Law in the Emergence of Bio/Surveillance* (Doctoral dissertation, University of Illinois at Chicago).

consequences of this phenomenon" have gone largely unreported in the body of research on criminal justice, even in spite of the increasing impact of science in this field.²⁴ There are important questions that arise when DNA evidence is used in court, especially because lawyers may not fully comprehend scientific principles.²⁵ Ongoing discussions surrounding the generation of evidence in criminal trials and the investigative techniques employed by law enforcement remain central to academic and theoretical discourse.

3.1 Admissibility of DNA Evidence

One major issue with the legal system is the admissibility of DNA evidence. Presenting such evidence requires striking a compromise between the state's interests and the accused's legal rights. This necessity underscores the importance of adhering to legal standards that ensure the proper collection of DNA samples. The judiciary has the authority to weigh the possible prejudices of DNA evidence against its probative value in order to determine whether it is admissible. DNA evidence has been implicitly acknowledged in several convictions established in India, as outlined in Section 45 of the Indian Evidence Act, 1872.²⁶ The corresponding Section according to the new criminal laws would be Section 39 of Bharatiya Sakshya Adhiniyam, 2023. This section pertains to expert opinions, stating that "when the court is required to form an opinion on a matter of foreign law, science, or art, or regarding the identity of handwriting (or fingerprints), the opinions of individuals with specialized knowledge in those areas are considered relevant facts."

In *Ananth Kumar vs. State of Andhra Pradesh*²⁷ the Andhra Pradesh High Court ruled that while the Criminal Procedure Code does not explicitly provide for the collection of blood samples, there is no prohibition against obtaining such samples from an accused under Section 53 of the Code. The Court noted that the collection of blood and semen samples falls within the examination of an arrested individual, asserting that "the examination by a medical practitioner must logically encompass testing of blood, sputum, semen, urine, etc."

Further, the Court concluded that Section 53 allows for the use of reasonable force necessary to conduct such examinations. It was concluded that, notwithstanding any potential discomfort,

²⁴ Suruchi Yadav, Impact of Forensic Science on Indian Criminal Justice, International Journal of Legal Science and Innovation [Vol. 6 Iss 3; 1151] <https://ijlsi.com/wp-content/uploads/Impact-of-Forensic-Science-on-Indian-Criminal-Justice.pdf>

²⁵ Cashman, K., & Henning, T. (2012). Lawyers and DNA: Issues in understanding and challenging the evidence. *Current issues in criminal justice*, 24(1), 69-83.

²⁶ *Supra* note 13.

²⁷ *Ananth Kumar Naik vs The State Of Andhra Pradesh* on 6 July, 1977 (1977CRILJ1797).

blood or semen samples may be collected from an arrested individual in compliance with Sections 53 and 54 of the Criminal Procedure Code. Now they could be considered under the BNSS, corresponding Sections being 53 and 54) Additionally, in the case of *Jamshed vs. State of Uttar Pradesh*²⁸ the Division Bench of the Allahabad High Court, referencing the Supreme Court's ruling in *State of Bombay vs. Kathi Kalu*, affirmed that conducting blood and urine tests is not prohibited by Article 20(3) of the Constitution. The courts ruled that medical evidence primarily constitutes opinion rather than definitive proof, rendering it insufficient as substantive evidence. The assessments performed by the physician overseeing the autopsy, in conjunction with the findings from the forensic science laboratory, are regarded as credible and acceptable within a legal framework. The Supreme Court of India has emphasized that, in the absence of any intrinsic flaws in the medical report, the court is not able to replace the doctor's opinion with its own. There exists significant uncertainty in India concerning the criteria and legal structures that judicial bodies ought to apply when assessing DNA evidence²⁹. The judiciary in numerous countries recognizes the potential of DNA evidence to conclusively determine an individual's innocence or guilt in criminal cases³⁰. While India is not lagging in this regard, the integration of DNA technology into the investigative process and the justice delivery system has not yet been fully embraced.

3.2 Limitations of DNA's Evidence

The application of DNA technology within the field of criminal justice is undeniably essential; however, it has faced considerable criticism from various viewpoints.³¹ The task of arriving at a conclusive understanding of how DNA evidence affects the constitutional rights to a fair trial and the prohibition of self-incrimination in India continues to pose considerable challenges. Additionally, concerns regarding the statistical probabilities associated with DNA evidence further complicate the discourse. There are ongoing debates regarding the feasibility of securing a conviction based solely on probability, irrespective of how unlikely it may be for two individuals to possess identical profiles.³² Even in a scenario where scientific methods are

²⁸ *Jamshed vs State Of U.P.*, on 17 May, 2024 (2024:AHC:89309).

²⁹ Rathore, G., & Jain, R. (2023). Use Of DNA As Evidence In Court System With Current Perspective In India. *Journal of Namibian Studies: History Politics Culture*, 38, 886-919.

³⁰ Srivastava, A., Harshey, A., Das, T., Kumar, A., Yadav, M. M., & Shrivastava, P. (2022). Impact of DNA evidence in criminal justice system: Indian legislative perspectives. *Egyptian Journal of Forensic Sciences*, 12(1), 51. See also, Thierry, M. B. (2016). Improving Rwandan criminal justice through forensic DNA evidence: an appraisal. *Beijing L. Rev.*, 7, 400.

³¹ Walsh, S. J. (2023). Forensic science in the criminal justice system: The good, the bad and the academy. *Australian Journal of Forensic Sciences*, 55(3), 285-294.

³² Biedermann, A., Champod, C., Jackson, G., Gill, P., Taylor, D., Butler, J., ... & Taroni, F. (2016). Evaluation of forensic DNA traces when propositions of interest relate to activities: analysis and discussion of recurrent concerns. *Frontiers in genetics*, 7, 215.

flawless, the results of forensic analyses remain vulnerable to human mistakes and the potential for evidence to be altered or compromised.

The foundational vision of justice within the criminal justice system ought to strike an appropriate equilibrium between safeguarding civil liberties, upholding the presumption of innocence, and ensuring the procedural rights of individuals, while also addressing the state's imperative to identify, penalize, and rehabilitate those who commit crimes.³³ Individuals possess a reasonable expectation of privacy concerning the information contained within their DNA samples, irrespective of the method of collection or acquisition.³⁴ The concern emerges when the analysis of an individual's DNA extends beyond mere identification purposes. In *Hiibel v. Nevada*³⁵ the United States of America's Supreme Court held that individuals do not possess a constitutional right to refuse to disclose their identity. Nevertheless, it was determined that law enforcement officials are prohibited from detaining an individual without reasonable suspicion solely for the aim of acquiring that person's identity. Therefore, to emphasize the findings from the case, even if DNA evidence is utilized solely for identification, there remain constraints on the actions police may take to procure DNA for identification purposes. Before collecting DNA evidence, law enforcement must provide a legally valid reason or a reasonable suspicion.³⁶ It is imperative to understand that DNA collection serves purposes beyond identification; it can be used for investigative purposes and yields evidence that is both exculpatory and inculpatory.³⁷

DNA evidence does not establish the perpetrator's intent to commit a crime; however, it can indicate their presence or involvement in the criminal act.³⁸ This type of evidence is instrumental in investigations, as it assists in eliminating possible suspects, a process that is especially valuable considering the various methods through which crimes are executed. Further, it is unreliable to depend on DNA data that has been compromised due to inadequate

³³ Базарова, Д. (2024). Constitutional guarantees of individual rights in criminal proceedings. *Общество и инновации*, 5(4), 137-154.

³⁴ Mittelstadt, B. D., & Floridi, L. (2016). The ethics of big data: current and foreseeable issues in biomedical contexts. *The ethics of biomedical big data*, 445-480.

³⁵ Treacy, M. D. (2005). *Hiibel v. Sixth Judicial District Court of Nevada: Is a Suspect's Refusal to Identify Himself Protected by the Fifth Amendment*. *New Eng. L. Rev.*, 40, 897.

³⁶ Hamid, H. B. B. A. (2022). Understanding the Impact of DNA Evidence in the Criminal Justice System. *JMCL*, 49, 43.

³⁷ McCartney, C. (2017). DNA and identification. In *The Routledge handbook of technology, crime and justice* (pp. 417-435). Routledge.

³⁸ Henry, T. K. S., & Jurek, A. L. (2020). Identification, corroboration, and charging: Examining the use of DNA evidence by prosecutors in sexual assault cases. *Feminist Criminology*, 15(5), 634-658.

sample quality, damage incurred during processing, or exposure to biological factors.³⁹ It is essential to store the samples provided with great care to prevent any contamination from the crime scene, as this is a vital aspect of DNA profiling.⁴⁰

Several challenges arise in the execution of DNA testing. The potential for test results to be tampered with cannot be disregarded, particularly when individuals possess the requisite tools and expertise to alter outcomes.⁴¹ The potential for human error exists in the processes of collecting, analyzing, and cataloging DNA samples, which are further exacerbated by inadequate infrastructure, ineffective management, financial constraints, and instances of corruption within forensic laboratories.⁴² This issue is encountered in numerous countries globally, including India.⁴³ The integrity of the sample is crucial for conducting an accurate analysis. Factors such as exposure to sunlight, temperature fluctuations, inadequate storage conditions, and improper handling at the crime scene can lead to sample degradation, ultimately resulting in unreliable outcomes.⁴⁴

3.3 DNA Technology's Revolutionary Effect on the Criminal Justice System

Progress in DNA technology is profoundly impacting legal systems, leading to revisions of numerous laws worldwide.⁴⁵ This evolution is reshaping investigative procedures and the management of unresolved cases. The significance of innovation in this context is paramount, as legislation is continuously being introduced, modified, and repealed to enhance the advantages offered by DNA technology in identifying perpetrators, securing convictions, and exonerating those wrongfully accused.⁴⁶ The influence of DNA technology on the criminal justice system is evident in the establishment of legislation that governs the procedures for the

³⁹ Ezekannagha, C., Becker, A., Heider, D., & Hattab, G. (2022). Design considerations for advancing data storage with synthetic DNA for long-term archiving. *Materials Today Bio*, 15, 100306.

⁴⁰ Dash, H. R., & Das, S. (2018). Microbial degradation of forensic samples of biological origin: potential threat to human DNA typing. *Molecular biotechnology*, 60(2), 141-153.

⁴¹ Lovejoy, C. A., Li, W., Reisenweber, S., Thongthip, S., Bruno, J., De Lange, T., ... & ALT Starr Cancer Consortium. (2012). Loss of ATRX, genome instability, and an altered DNA damage response are hallmarks of the alternative lengthening of telomeres pathway. *PLoS genetics*, 8(7), e1002772.

⁴² Pedersen, B. S., & Quinlan, A. R. (2017). Who's who? Detecting and resolving sample anomalies in human DNA sequencing studies with peddy. *The American Journal of Human Genetics*, 100(3), 406-413.

⁴³ Sankar, D. (2024). Unravelling the legal conundrum of DNA profiling in India: an analysis of its adoption, implementation and unresolved issues. *International Journal of Electronic Finance*, 13(3), 336-351.

⁴⁴ Sharma, A., Kumari, P., Rai, A. R., Nagar, V., Sharma, V., Gautam, A., ... & Sankhla, M. S. (2024). Forensic Sample Collection and Preparation. *Advances in Analytical Techniques for Forensic Investigation*, 35-67.

⁴⁵ Babikian, J. (2023). Justice in Flux: Evolving Legal Paradigms in Response to Technological Advancements. *Journal for Social Science Studies*, 1(1), 1-16.

⁴⁶ Toglia, M. P., Berman, G. L., Todorovic, K., Rumschik, D. M., & Thibodeau, S. L. (2022). Lessons Learned from Wrongful Convictions: Implications for Judicial Reform and Innocence Research. In *Advances in Psychology and Law* (pp. 111-144). Cham: Springer International Publishing.

collection, utilization, preservation, admission, and development of DNA databases.⁴⁷

DNA evidence is essential in the realm of criminal investigations and judicial processes. Its utilization has become indispensable in the analysis of violent crimes and sexual offenses.⁴⁸ Moreover, recent technological advancements have expanded the utility of DNA analysis to include the investigation of less severe crimes as well.⁴⁹ In the early stages of the *Aarushi Talwar*⁵⁰ murder investigation, forensic techniques such as fingerprint analysis were utilized, alongside the extraction of DNA from garments that bore blood stains. Additionally, multiple fingerprints were discovered on the glasses within the residence at the time of the homicide. A series of narco-analysis tests were conducted on Aarushi's father due to suspicions raised by the Central Bureau of Investigation⁵¹; however, following the absence of any matching evidence, Aarushi's father was subsequently released.⁵²

4. FINDINGS

4.1 Improved Accuracy in Criminal Investigations

DNA evidence has greatly improved the accuracy of criminal investigations, providing scientific, reliable, and objective methods of suspect identification. By clearing from suspicion innocent individuals based on genetic profiling, it reduces the chances of false convictions.

4.2 Role in Vindicating the Innocent

DNA analysis has played a central role in many wrongful conviction cases by providing evidence that can exonerate falsely accused persons.

The introduction of DNA technology for post-conviction review is increasing fairness within the justice system.

⁴⁷ Oosthuizen, T., & Howes, L. M. (2022). The development of forensic DNA analysis: New debates on the issue of fundamental human rights. *Forensic Science International: Genetics*, 56, 102606.

⁴⁸ Amankwaa, A. O., & McCartney, C. (2021). The effectiveness of the current use of forensic DNA in criminal investigations in England and Wales. *Wiley Interdisciplinary Reviews: Forensic Science*, 3(6), e1414.

⁴⁹ Katsanis, S. H. (2020). Pedigrees and perpetrators: uses of DNA and genealogy in forensic investigations. *Annual review of genomics and human genetics*, 21(1), 535-564.

⁵⁰ Mishra, S. (2021). A Study of Direct Evidence and Circumstantial Evidence with Special Reference to Aarushi Talwar Case. *Issue 3 Int'l JL Mgmt. & Human.*, 4, 950.

⁵¹ Lokaneeta, J. (2022). NARCO VIDEOS, FORENSIC PSYCHOLOGISTS AND THE TRUTH-TELLING APPARATUS. *Acts of Media: Law and Media in Contemporary India*, 181.

⁵² Hariharan, V. (2022). TRUE LIES AND FALSE TRUTHS. *Acts of Media: Law and Media in Contemporary India*, 167. See also, Shukla, R. (2010). Arushi's murder: Ambivalence in the parent-child relationship. *International Journal of Applied Psychoanalytic Studies*, 7(4).

4.3 Building Up Prosecution and Defense

Prosecution uses DNA evidence to establish guilt beyond a reasonable doubt, especially in connection with rape, murder, and powerful bodies committing violent crime.

Defense lawyers use DNA results to disprove false accusations and to support an alleged alibi.

4.4 The Impact on Cases of Sexual Assault and Rape

DNA testing has become important when perpetrating sexual assault due to biological evidence linking the perpetrator to the scene of the crime. DNA databases can be used to trace recidivists and assist law enforcement agencies in exposing other offenders from further criminal activities.

4.5 Problems of Implementation

4.5.1 Legal and Ethical Issues: The issue of privacy, protection of data, and misuse of DNA databases has remained a major problem.

4.5.2 Absence of a Well-Defined DNA Law: Though the Criminal Procedure (Identification) Act, 2022, allows for the collection of DNA samples, India does not have a dedicated DNA Protection and Privacy Act.

4.5.3 Infrastructure and Knowledge Gaps: Many forensic laboratories in India are dogged by challenges relating to backlog, deficiency of trained staff, and varying testing standards.

4.6 Need for a National DNA Database

Though the DNA Technology (Use and Application) Regulation Bill was introduced, it still awaits implementation due to the argument of individual privacy.

A well-regulated DNA database would realize further drives into criminal tracking whilst keeping individual rights secured.

5. RECOMMENDATIONS

It is imperative for legislators to implement a comprehensive national law governing the administration of DNA testing and its admissibility in judicial proceedings.⁵³ The lack of

⁵³ Nakta, V., & Dahiya, S. (2024). GENETIC JURISPRUDENCE: REIMAGINING INDIAN LEGAL SYSTEM'S APPROACH TO DNA EVIDENCE AND PRIVACY PROTECTIONS. *Panjab University Law Review*, 63(1).

statutory clarity has resulted in confusion and uncertainty among investigative agencies and lower courts.⁵⁴ Further steps should be taken with a view to amending existing laws to incorporate provisions regarding permitting blood tests for generating DNA profiling.

It is essential to establish a national authority tasked with the regulation and oversight of DNA profiling laboratories. The procedures and criteria for post-conviction DNA testing should be integrated into Indian legislation. The collection of DNA samples should not occur as a standard practice; rather, it should be advised only when pertinent information relates to a particular criminal case. Furthermore, DNA samples from suspects should be obtained only with the prior consent of a judicial officer.

Investigative agencies should receive adequate training to address contamination challenges effectively. It is essential to uphold a proper chain of custody. Additionally, the legal community must undergo thorough training and awareness programs to mitigate problems such as the prosecutor's fallacy.

6. CONCLUSION

The advancements in DNA technology have created novel avenues within the realm of criminal investigations. Additionally, this progress has provided significant scientific validation to the criminal justice system. The emphasis on DNA as a form of evidence is linked to a wider examination of the function of forensic science within the realms of law and criminal investigations. The research on this topic is evidently interconnected with and carries significant consequences for the wider examination of the methods of producing evidence and the overarching evidentiary standards. The integration of DNA and diverse forms of scientific evidence has generated significant concern about the potential increase in police power and the unexamined endorsement of a conservative methodology for crime control within the context of the criminal justice system. The concerns raised are certainly justified, considering the persistent attack on the right to remain silent, a fundamental protection for individuals who could be perceived as "guilty."

⁵⁴ Rao, S., & Sandeep, M. N. (2021). Legislations to combat child sexual abuse in India: A critical analysis with special reference to loopholes and challenges in its implementation.

BEYOND THE BUBBLE – A STUDY ON INTRICATE FISCAL ASPECTS UNMASKING THE PONZI SCHEMES

- Thamizhselvi Karunanidhi¹

Abstract

Investment is the cardinal facet that is densely ceiled with one's life which affluences wealth planning and wealth maximisation, hence has to make rational decisions optimistically. The importance of having a dissected view onto the risk management and economic climate before investing on anything holds sophisticated significance, failing which the investors end up in a wrong call. The aforementioned perceptive of which enables flock of investing minds to march towards their robust desire for progression, solidity or branching out of one's financial portfolio successfully. Ponzi schemes has been a great peril time and again, not just to the investing community but to the booming economy as well. The study has a multifaceted approach extending right from its origin till covering various facets ramifying around the subject matter. Further, the author intends to demarcate the dissimilarities between the Ponzi Schemes and a legitimate economic bubble which is an innate phenomenon orbiting around the financial markets that deflects the investor behaviour from acting blindly upon crowd wisdom. Moreover, the study put forth a comparative analysis of legal and regulatory frameworks culminated across different jurisdictions and the importance of sustaining cross border cooperation for curbing the menace of falling for such Ponzi schemes. The scarce of countries deploying efficacious measures as to combat the imminent threat of Ponzi schemes which has the viability of causing a cumbersome fiscal damage to the flourishing economy of a nation has been advocated uprightly. Apart from the aforementioned aspects, the Author has opined in pace with the current scenario.

Keywords: Ponzi schemes; economic climate; economic bubble.

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1. INTRODUCTION

“Risk comes from not knowing what you are doing.”

-Warren Buffett

Investment is a cardinal facet that is densely ceiled with one’s life which affluences wealth planning and wealth maximisation. It is a tactical endeavour that emmeshes apportionment of resources, usually wherewithal, with the goalmouth of spawning prospect fiscal yields. Moreover, it entails a meld of prudence, risk management, and market perceptive. The rear end stimuli that accelerate the idea of investment on something or the other derivative is the robust desire for progression, solidity, or branching out of one’s financial portfolio. Painstaking research onto the subject matter of investment is considered to be the most pivotal step before investing on anything.

The ruminating concern looping around in every individual’s mind before making an investment decision is risk which is closely acquainted along with it. When the risk – return trade-off principle is examined profoundly, it can be construed that, “higher the risk, higher the return”, i.e., those investments which have higher prospect for effecting colossal losses, also have grater viability to incline the profits. But, more often the populace in general fails to conduct a thorough background study of the investment and such deficiency of research and lack of awareness among us hinges us to a situation where we are being foiled gravely. One such swindle that shattered a copious caboodle is the Ponzi Scheme.

It can be described as a benchmark scheme built on treachery and lies. This duplicitous investment program pools in investments by masquerading the existence of a legitimate investment institution amid the widespread populace. Basically, which means that there will be no existence of the actual investment institution but the deceiver disguises to be the original or legitimate one and promises the investors to invest their money for high returns with minimal risks. The stockpiled amount from the new investors is utilized for liquidating those old investors and the course of action will be recurring as such. It was such a spine-tingling investment scam in the history that brought out the feeding frenzies who were actually behind this as a fulcrum point and forewarned the huge populace uprightly.

Ponzi schemes are now being tracked and those perpetrators are getting apprehended lucratively through numerous measures which goes hand in hand with this fast-paced digital era. The progressive measures do exist but it can be fairly commented that those aren’t proactive, which means that we are still at a snail’s pace.

2. NEED AND IMPORTANCE OF THE STUDY

The study has its keen focus onto disparate key research areas ramifying around the threat of Ponzi schemes and its downswing effect towards the investors as well as fiscal solidity at large. Further, the research picked up the pace right from the origin of Ponzi schemes. Various notable instances of largest Ponzi schemes have been expounded in the study without a shadow of a doubt. The targeted foci of the study expose a comparative analysis onto the legal and regulatory frameworks culminated across the globe in different jurisdictions. The rudiment facet that has to be precepted in order to evolve as a savvy investor is that of computing the features that dissimilates Ponzi schemes and an economic bubble which is an innate element of financial markets has been advocated ostentatiously. Apart from the facets that has been discussed, the study intends to come up with suggestions and recommendations for the time and need.

3. OBJECTIVES OF THE STUDY

- 1.To analyse the origin of Ponzi schemes.
- 2.To assess notable instances of various swindler's clique.
- 3.To evaluate the conundrum of Ponzi schemes masquerading itself as a legitimate economic bubble.
- 4.To examine legal and regulatory frameworks culminated across different jurisdictions.
- 5.To suggest and recommend being in pace with the current trends.

4. REVIEW OF LITERATURE

Detection of Ponzi scheme on Ethereum using machine learning algorithms, By., Ifeyinwa Jacinta Onu, Abiodun Esther Omolara, Moatsum Alawida, Oludare Isaac Abiodun & Abdulatif Alabdultif (2023) – The study had a keen approach relying upon the need for equipping with the current digital paced era. The author tries to put forth that the machine learning algorithms such as RF, NN and KNN can be deployed for improved data integration in order to efficaciously curb the menace of Ponzi schemes by detecting it at earlier stage itself and resonates as an alarm for the investing intellectuals. Moreover, it envisages that this method facilitates to track the swindler's clique in entirety. The scope of the research has been restricted to those Ponzi schemes acquainted with Ethereum. The opined need for smart detectors of Ponzi schemes like Decentralized applications (DApps) is highly commendable.

Ponzi scheme diffusion in complex networks, By., Anding Zhu, Peihua Fu, Qinghe Zhang, Zhenyue Chen (2017) – The Authors have postulated a potential – investor – divestor (PID) model to introspect the dynamic circumference of investment swindler’s cliques with an intent to steer the rate of apprehension of perpetrators uprightly. Unlike common viewpoint, this study has established that the investors imperil themselves by proliferating the fraudulent schemes among the people. Moreover, the role of social media platforms with regard to promoting such Ponzi schemes has been expounded altogether. By the proposed model the authors intend to cover the teething issues bracing the online medium through the same medium with enhanced diffusion mechanism. The pragmatic conclusion they’ve drawn seems to be prodigious.

Ponzi schemes: A Critical Analysis, By., Surendranath R. Jory and Mark J. Perry (2011) – This quantitative research has explicitly provided the dataset of rate of apprehension of Ponzi scheme swindlers through bolstered institution infrastructure. The Authors have pondered upon the possible impetuses for a Ponzi swindler. Further, they have drawn the pattern of Ponzi perpetrators which defines their traits. The empirical evidences the authors relied upon includes the reports given by FBI and the SEC and based on that 80 Ponzi schemes has been introspected and the operating mechanism behind the Ponzi schemes has been elaborated. Further, the notion of the authors to specify few common “red flags” of Ponzi schemes is an applaudable effort, as it ignites the intellects of investing community.

The postmodern Ponzi scheme: Empirical analysis of High – Yield Investment Programs, By., Tyler Moore, Jie Han and Richard Clayton (2012) – The study has continually analysed the data and has come up with a multifoil approach to disseminate and discuss about the Ponzi scheme which aligns with the cutting edge digital pace. The research is all about a High Yield Investment Program (HYIP) which is a Ponzi scheme operated through virtual medium. It defines the overall cycle of this HYIP program. Moreover, the aftermath effects of collapse of HYIP Programs have been detailed profoundly. The empirical datasets circumscribe the lifetime of such HYIPs which made the study more appealing and stands out to be an invaluable insight for the general populace.

5. RESEARCH METHODOLOGY

A qualitative research methodology is used in this study to examine the legal and regulatory framework culminated across different jurisdictions to curb the menace of Ponzi schemes. The qualitative research methodology is used in this study to draw an analysis through opinions, experiences, interactions and observations made.

5.1 Data Collection

We are continually collecting secondary data from books, periodicals, research papers, articles, and academic journals, among other sources. This painstaking procedure guarantees that we create an extensive dataset encompassing many viewpoints and ideas from reliable sources in the area of deposit schemes rules and regulations.

5.2 Literature Review

As part of our research, a comprehensive examination of the current literature will be conducted, and academic articles, recent publications, and regulatory documents relevant to Ponzi schemes will be examined. We hope to uncover patterns, gaps, and contradictions in the legal and regulatory environment by combining this abundance of data, setting the stage for additional research and analysis.

5.3 Data Analysis

We are processing and interpreting data from the literature review and secondary sources using software tools to analyze the data that we have acquired. We can gain a better grasp of the intricacies of the legal and regulatory environment proctoring investment schemes by using this analytical technique to find patterns, correlations, and important themes.

5.4 Comparative Analysis

A comparative review of the various legal frameworks and regulatory methods adopted by different jurisdictions regarding investment schemes is part of our continuing research. By using a comparative approach, we hope to uncover commonalities, distinctions, and best practices in the regulation of deposit schemes by examining and comparing laws, policies, and enforcement methods in various geographic areas.

6. RESEARCH AND DISCUSSIONS

6.1 Origin Of Ponzi Schemes And Notable Instances Of Various Swindler's Clique

The coupling effect the law and literature exhibits have always been a fascinating one. The instant research too corroborates with the aforementioned magnificence. Such trend is expounded below. Though the Ponzi scheme acquired its name from Charles Ponzi, who has been the impulse behind those swindles flourished around 1920s and was steering shark attacks

amongst investors, but such sort of investment scams has its origin actually dated back to 1800s, the fact which leaves us awestricken. So, even before Charles Ponzi, there existed perpetrators of such swindles. The published literatures back then hold cardinal evidentiary value to support the aforementioned stand. The two oeuvres of Charles Dickens², “The Life and Adventures of Martin Chuzzlewit” (1844) and “Little Dorrit” (1857) departs a prominent verity that Charles Ponzi wasn’t the first malefactor earmarking a throng of investors. Both the above-mentioned novels embellished the methods deployed for the successful commission of such swindles.

The element to be pondered upon here is that of the source of derivative which persuaded Charles Dickens to maneuver the minds of populace into a broad spectrum of acquiring awareness about the techniques that were used to trick their minds covertly. Adele Spitzeder, who enthralled flock of minds as an actress, singer and so on at the outset and later as a founder of bank, who deferred to be one of the notorious fraudsters in the series of chronicled investment swindles. Her deceptive endeavours were fluxing through the Spitzedersche PrivatBank which made her revolve around Munich as a luxuriant in a very short span of time. The scheme had got fall into pieces which spelled out her as one of the preposterous swindlers. Apart from Charles Dickens, a flabbergasting work of Wendy Gamber “The Notorious Mrs. Clem: Murder and Money in the Glided Age” advocated apropos “The Cold Spring case” which shattered the Indianapolis commune at entirety, wherein it unfolded about three giant piranhas steering the first ever Ponzi scheme. Jacob Young, William Abrams and Nancy Clem are those who pioneered the paramount Ponzi scheme in 1860s. Jacob young and Nancy young (wife of Jacob young) has been murdered and the case remained mystifying and gained a widespread momentum amidst the public, up for the active involvement of a woman as a centripetal force behind both the murders (as suspected by the investigating officials in the course of investigation). Nancy Clem was that woman perpetrator, who was one amongst the labyrinthine of this swindler’s clique.

6.2 The Conundrum Of Ponzi Schemes Masquerading Itself As A Legitimate Economic Bubble

An economic bubble is a dynamic condition that influences economic climate wherein the price of piece of merchandise seemingly upsurges above its intrinsic valuation. It is a perpetual cycle where there will be a sudden spectacle of altitude in the market value trailed by an abrupt

² Hunter Monroe, Ana Carvajal, and Catherine Pattilo, Perils of Ponzis, INTERNATIONAL MONETARY FUND, Mar 2010 <https://www.imf.org/external/pubs/ft/fandd/2010/03/monroe.htm#author>

diminution of value of the assets which is usually referred to as “bubble burst”. To understand the pattern of an economic bubble, one must assess the interventional stages involved in the cycle of it at first place. There are five steps in the biorhythmic cycle of a bubble – displacement, boom, euphoria, profit taking and panic³ and the one who is being sagacious about the same never end up as a bankrupt even during the bubble burst. Economic bubble is a negation to the economy which leads to currency crises at one point.

Firstly, a new economic transmute that excites the investing intellects and stimulate them to invest on the same. Subsequently, as people being receptive towards such new bloomed opportunity, there will be an extrinsic elevation in the numbers investing in it. The hype that is created by the huge populace influences others too to go with that investment opportunity with a crowd wisdom and this is the stage where people make choices purely out of influence and fails to make a rationalized decision. Astute investors will percept the fleeting valuation and twitch to liquidate those assets swiftly and makes profit out of it. When abundant people do this, an unwinding clout arises, which eventually leads to downswing of prices (bubble bursts) and the people who still holds those assets brought at the initial phase of the bubble suffers enormous losses. There may be voluminous innate factors that would’ve contributed to the blooming of an economic bubble, but is always regarded as a licit phenomenon and a common one in an economic climate.

The nature of being perceptive and appreciating the credibility or merit of an investment scheme before acting upon it by ain introspection is considered to be the pinnacle of a prudent man’s certitude. But, the rudiments revolving around the buoyancy of the investment sector time and again muddle the investors and facilitate them to have a firm foot on a Ponzi scheme deeming it to be a legitimate one. However, the booming of trickery more often doesn’t require any catalyst as such, the innate features itself is a great persuader pooling in lot of investors into their deceitful cliques. An economic bubble is one such innate component which closely influences the economic climate. There has been a reflective delicate balance between Ponzi schemes and a licit economic bubble. For ever and a day, narrowing down the choices between a Ponzi scheme and an economic bubble by making a profound assessment seems to be a skate on thin ice for the investors.

The economic bubble eclipses the Ponzi schemes more efficaciously which is highly treacherous for affirming the balance in the buoyancy of the economic climate. This is because, it invites teething troubles for the investing populace. The masquerading effect leverages the scope for swindlers to be more successful in their operation. Their caked appearances which

³ Hyman P. Minsky. "Stabilizing an Unstable Economy." McGraw Hill Professional, 1st edition, 2008.

spectacle sudden fluctuations in the market, excites the public and it eventually elevates the issue of people choosing the duplicitous investment schemes and further multiplies the number of investors falling for the same. A major element that dissimilates investment bubble from a Ponzi scheme is “legitimacy”, i.e., the economic bubble or investment bubble which is chauffeured by the market psychology whereas the latter is accelerated purely through the “herd mentality” of the populace⁴. The crowd wisdom or the deindividuation tethers the investors into the pit falls grimly. Moreover, the thrill of a rocketing market turmoil the punters at large. The opaque investment strategies involved is an alarm to devastating aftermath effects which the investors must be aware of.

The pivotal aspect to be analysed here is that of the threat of manipulation of minds through augmented set up to façade the credibleness. This sort of manipulation, bolsters a huge trust towards the duplicitous investment institutions. It quarries on cognitive biases of the human populace. Further, the swindlers more often impulse a cynical sense of rush, acclaiming the limited availability of slots for an investment opportunity which is with a rear end motive to impede the investors from making a rational choice. The investors acting upon the impels often end up in a wrong call. The incidences where the Ponzi schemes and a legitimate economic bubble collides have been elaborated above and finally it can be drawn that, everything has an end, correspondingly Ponzi schemes too while getting collapsed the swindlers behind the operation are apprehended but more often they dodge out of the dispute through masquerading it as an economic bubble which is highly dangerous not just to the investors but to the economy as well, as it has the viability to sustain the economic malaise.

6.3 Comparative Analysis Of Legal And Regulatory Framework Intervening In Protecting The Investors From The Peril Of Ponzi Schemes

Taking a dissected view onto the legal and regulatory framework culminated across different jurisdictions gives a profound insight on the potency of a nation’s governmental infrastructure to act proactively and to shield the public interests at large. The paradigm of Ponzi schemes time and again hark backs the need and importance of bracing the gap between the legal and regulatory framework and the blooming deceits in the current pace. The global organisations such as International Organization of Securities Commissions (IOSCO) and Interpol are at the paramount level serves as the mainstream fiscal and securities regulator. It has international jurisdiction and it arrays the standard for fiscal markets.

⁴ Tim Vipond, Herd mentality a form of social bias that impacts investors, CFI BLOG, 2015, <https://corporatefinanceinstitute.com/resources/career-map/sell-side/capital-markets/herd-mentality-bias/>

The US framework can be quoted as a panoptic one in this regard. The Securities Act, 1933; Securities Exchange Act, 1934 and Investment Advisers Act, 1940 takes huge efforts to acclaim the interests of investors and to withhold the accountability of institutions and intermediaries, rooting fairness and transparency through the working mechanism of those Acts, which serves as the ground for credibility of an investment opportunity. Moreover, apart from penalties, it extensively lays down the conduct of investment advisers to be followed and provides for multi folded registration process adhering to the requirements of the enforcing authorities, i.e., Securities and Exchange Commission (SEC), Federal Trade Commission (FTC) and Commodity Futures Trading Commission (CFTC). The Department of Justice (DOJ) prosecutes the perpetrators and the Federal Bureau of Investigation (FBI) carries the due course of investigation. Apart from the aforementioned Acts, the 2010 passed Dodd Frank Act was one such notable financial legislation fortified during Obama's realm with a legislative intent to espouse accountability and transparency in the fiscal system in order to promulgate the market integrity and fiscal stability after the 2008 crises. All these aspects aligns with the investor's interests and safeguards their rights uprightly. Another praiseworthy compensatory and recovery instrument established by the Sarbanes Oxley Act, under the ambit of SEC is the "Fair Fund Program". The Fair Fund Program not just facilitates the recovery of funds or assets but even provides room for tax relaxations for the victims of Ponzi schemes. But, however, the lacunae in the regulatory framework of US is that of missing of enforcement of an active proctoring mechanisms in order to monitor the investor behaviour which is the pier that brings closer the investors and the swindlers at a point.

The UK's approach to resist such Ponzi schemes are highly commendable as it waylays for a fair recovery of the invested amount and a compensation as well as ensuring to apprehend the fraudsters. The operational mechanism is invigorated by the enforcement of Financial Services and Markets Act (FSMA), 2000. The Financial Conduct Authority (FCA) being a regulatory body superintends the conduct of financial markets and its alignment with the interests of the investors. The National Crime Agency (NCA) and Serious Fraud Office (SFO) are the nodal investigative agencies. Further, for recompensing the victims of Ponzi schemes, the Proceeds of Crime Act, 2002 paves way efficaciously. As a recent update, The Online Safety Bill (2023) has been established which leverages the scope for apprehending those perpetrators who proliferates Ponzi schemes through virtual medium⁵. Altogether these set of laws are envisaged with the responsibility to curb the menace of Ponzi schemes that affects public as well the

⁵ The Legal and Regulatory Framework Surrounding Ponzi schemes, FASTER CAPITAL, 10 Jun 2024, <https://fastercapital.com/content/High-returns--The-Illusion-of-Easy-Profits-in-Ponzi-Schemes.html#The-Legal-and-Regulatory-Framework-Surrounding-Ponzi-Schemes.html>

Nation's economy in entirety. The UKs approach is esteemed high for its proactive and audacious approach for being in phase with this fast-paced digital era, i.e., the digital investments too are proctored cautiously. More or less the UKs approach is similar to that of US approach but it stands out unique in terms of promulgation of public awareness at a high level and branching of proctoring mechanism to the digital platform investments as well through adaption of rules pertaining to the requirement for the time being in force.

Whereas, the Europe's approach is a multifaceted one as it ensures to uphold the cardinal principles and conducts to align with the interests of the investing community through deploying Markets in Financial Instruments Directive (MiFID) and European Securities and Markets Authority (ESMA).⁶ The former one outlays stringent business conduct and enriched reporting standards & requirements which fosters transparency and shields the investor's rights. Whereas, the latter's targeted foci is that of bolstering the safeguarding mechanisms across different jurisdictions pertaining to its member states, which leverages the scope of protection of investors rights. Europol and Eurojust are the specialized organisations that extends support in the due course of investigation by sharing their proficiency and sustaining cross border cooperation. Each affiliated state has a dogmatic body that proctors fiscal activities, investigates and act against the Ponzi schemes that is retrieved in that local jurisdiction. Classic examples of it includes, BaFin (Germany), CONSOB (Italy) etc. The European Arrest Warrant which is another facet that has to be acclaimed for expanding the scope of extradition which constrains the swindlers from dodging through borders. Further, the Europe's proactive measure to impede the proliferation of fraudulent investment schemes through virtual channels by deploying Digital Services Act (DSA) is really admirable.

When reverberating the focus of the study to Asia's approach against Ponzi schemes, the regional cooperation residues with the Asian Development Bank (ADB) which sets the bar high for each country to bolster its regulatory frameworks and standards to protect the interests of the investors at large. The working mechanism deployed in each country of Asia are more or less resonating with each other. The countries like Singapore and South Korea leads the way with a fore vision to find out modern solution for a modern problem by deploying machine learning algorithm to be a part of its proctoring instrument. Further, various countries in Asia partake to confirm cross border coordination. Thailand has the Anti Money Laundering Office (AMLO) which embarks as the powerful victim recompensing agency that is highly commendable. India, has a strong piece of legislation to battle against Ponzi schemes, a peril

⁶ What is Markets in Financial Instruments Directive (MiFID), DOW JONES, 2013.
<https://www.dowjones.com/professional/risk/glossary/mifid-mifid-ii/>

constantly orbiting around the financial market. The Banning of Unregulated Deposit Schemes Act, 2019 is the aforementioned acclaimed legislation that prohibits unregulated deposit schemes, i.e., those schemes which does not adhere to the rules laid down and stick to the standards prescribed by the law for the time being in force. The Act further constrains the operation of regulated deposit schemes too in case of a fraudulent default in remittance of payment to the investor. Even before this 2019 Act, the legislation ensured to restrict the circulation of Ponzi schemes in and around the jurisdiction of Indian territory by having the Prize Chit and Money Circulation (Banning) Act, 1978. Apart from the 2019 enactment, the legislations like Chit Funds Act, 1982; Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014; and Securities and Exchange Board of India Act, 1992 and Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999 safeguards investors interests by upholding deposit standards and criterions. Central Bureau of Investigation is the nodal investigation agency in India, even pertaining to Ponzi scheme swindles.

It can be evidently construed that each nation holds its own set of rules and regulations pertaining to the subject matter but the notion of all the nation collides at a point to protect their nation from a cumbersome financial exploitation. Moreover, not just physical exploitation needs stringent laws against the perpetrators and rejuvenating remedies to recompense the victims but even fiscal exploitations too.

7. SUGGESTIONS AND RECOMMENDATIONS

The walls that restrict the entry of Ponzi schemes into their jurisdictions still remains permeable, this is not just because of fragile regulatory frameworks but also due to lack of getting equipped with the technological advancements as such. The Author would opine that, there's a scarce of nations that have deployed machine learning algorithms with a detriment to embark an elevation in extensive data integration in order to operate proactively and this is discernible that we are at a snail's pace still. The widespread nations across the globe are AI driven which is an indubitable fact, but still the need for acclimatising to the digital paced world seems to be a lament condition. So, it is suggested that the government must ensure that AIs or machine learning algorithms are actively partaking as proctoring instruments to apprehend the perpetrators. Further, it is recommended that, the legislature always focuses onto the perceptive of culminating regulatory mechanisms that apprehend the fraudsters uprightly but they just diminish their scope within that which deflects them from pointing to the other angle, i.e., the ways to stop the investors falling prey for Ponzi schemes. This can be achieved only by implementing proctoring mechanism to monitor the investors activities and alert them time and

again. Moreover, there must be a multi layered approach which entails a stringent procedure to ensure an investment opportunity blooming in the financial market passing through a lot of stratums.

8. CONCLUSION

History has time and again reminded us the importance of being perceptive and making rational choices as to what to invest in and where to invest before making a move. But, the lament condition persists till date is that of reiterating of history. Ponzi schemes are not just a peril to investors but to the fiscal stability at entirety as well. The investors must ensure not to act upon crowd wisdom but upon the ain interrogation of the subject matter. The infrastructure must be strengthened to embrace a safer sphere for the investing community by equipping itself to the time and need.

TIME TO TAKE THE BLINKERS OFF: EXPLORING POSSIBILITY OF INTELLECTUAL PROPERTY FINANCING FOR MSMES AND START-UPS IN INDIA.

-Dr. Debmita Mondal¹

Abstract

The Government of India's hesitation in keeping Intellectual property rights as collateral in financial transactions is evident from the "161st Report of Rajya Sabha Parliamentary Committee on Intellectual Property". This apprehension relating to Intellectual property financing is reflected in the approach of the India's apex court decision from Canara Bank v N.G. Subbaraya Setty 2018. Both the legislative and judicial wing of Indian government logic is premised on apprehensive of the major legislative reform necessary to keep copyright, trademark or patent as collateral for financial transactions.

However, IP financing or using Intellectual property rights (IPRs) as collateral to gain access to credit is one of the popular strategies for leveraging IP assets for corporate bodies. At international level, such academic as well as organization deliberations has already happened over decades highlighting the potential of IPRs as collateral assets. Jeremy Phillips' "10 Commandments for IP Finance" highlights the benefits of intangible assets like IP for auctioning or collateral purposes. The United Nations Commission on International Trade Law (UNCITRAL) has commissioned Working Group way back in 2000 to develop legislative guide for countries for secured financing including IP financing.

This research analyzes the reasons for Indian governmental inertia for IP financing and highlights some plausible solutions for financial innovation through IP regime for India.

Key words: India, Intellectual property Financing, IP Valuation, Collateral, Security Right.

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1. INTRODUCTION

Who said Intellectual property (IP) financing is a new concept? Think of Thomas Alva Edison, the man who invented the electric lamp. He kept his patents relating to Incandescent Electric Lamps as collateral to borrow money and start his company the General Electric Company.² This proves that IP financing has been around for centuries.

Yet, in India, the government and its regulatory bodies remain sceptical about using IP as collateral for business loans. The hesitation likely stems from concerns over how security interests in IP assets can be effectively enforced³. While individuals with strong IP portfolios have historically leveraged their intangible assets—whether by selling, licensing, or using them as collateral for debt financing—a structured approach to IP-backed lending remains underdeveloped in many developing nations, including India.⁴

Businesses who are ready to explore innovative financing options have increasingly adopted non-dilutive debt financing strategies by converting their IP portfolios into tangible capitals.⁵ This may be by keeping IP assets as additional/ alternative ground for getting equity from private investors, banks, angel investors, etc.⁶ From the perspective of an insurance company who is evaluating such risks associated with IP financing, the insurance company can also treat the IP as collateral for insurable instrument⁷. In case of adverse situations, the lending institution can always recoup through their initial investments thus.

Particularly Micro, Small and Medium Enterprises (MSMEs) and start-up who have financial crunch in initial pilot years but manage to develop rich IP portfolios, they can generate credit by collateralizing their intellectual properties. “*The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006*” which adopted investment as a criterion for classification into micro, small and medium enterprises in two different sectors of manufacturing and services focuses on facilitating and promoting competitiveness among MSMEs. The IP assets are important for fuelling the growth and development of such enterprises and fostering resources to bring their ideas to fruition.

This article explores the concept of financing, particularly its relevance for MSMEs and start-

² S.K. Baldwin, “To Promote the Progress of Science and Useful Arts”: “A Role for Federal Regulation of Intellectual Property as Collateral, 143(5) University of Pennsylvania” L. R. 1701–1738 (1995).

³ Nikunj Maheshwari, Perfection of Security Interest, ABZ PARTNERS, (Mar. 4, 2025), <https://www.azbpartners.com/bank/perfection-of-security-interest/>.

⁴ S. K. Verma, Financing of Intellectual Property: Developing Countries’ Context, 11(1) J.I.P.R 22, 22-32 (2006).

⁵ Joseph K. “Hopkins, Empowering Business Growth Through Intellectual Property Financing, FORBES (Sep. 8, 2023), <https://www.forbes.com/sites/forbesfinancecouncil/2023/09/08/empowering-business-growth-through-intellectual-property-financing/?sh=7a79d25d3131>.”

⁶ S. K. Verma, supra note 3.

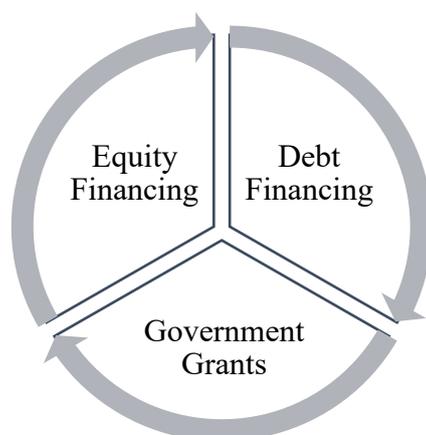
⁷ Joseph K, supra note 4.

ups and highlights the current legal hurdles in its adoption of IP-financing in India. Additionally, it examines how IP financing is a global strategy promoted by international organizations and shares success story to motivate enterprises in building their IP portfolios, maximize their financing through such portfolios, and conduct timely IP audits and valuations to safeguard their IP assets.

2. CONCEPT OF (IP) FINANCING AND CHALLENGE OF PERFECTING SECURITY.

2.1 Concept of financing and perfecting a security

The term “finance” means a procedure of raising funds or capitals.⁸ Financing is a procedure opted by individuals as well as business when they do not have the adequate required funds available. While an individual may need finances for buying a car or a house or a property, a business needs the same for operational purposes. Finances are particularly important for young entrepreneurs and MSMEs or Start-Ups. Financing or raising of money by MSMEs can be through three modes⁹ as represented in the diagram below:



2.1.1 Equity Financing: MSMEs with early-stage IP assets can approach venture capital (VC) firms or angel investors for financing in exchange of shares in their enterprises. IP valuation plays an important role for convincing investors for equity-based financing.

2.1.2 Debt Financing: MSMEs with more mature Ips can approach banks and other lending institutes for debt-financing by keeping their IP assets as collateral for loan.

2.1.3 Government Grants: Sometimes different governments have policies to encourage start-ups and MSMEs for growth in capacity, diversification of product and services or to meet capital needs by means of grants or schemes. Enterprises fulfilling the required conditions

⁸ Finance, BRITANNICA, <https://www.britannica.com/money/topic/finance> (last visited Mar. 4, 2025).

⁹ Unlocking “IP-backed Financing: Country Perspectives Singapore’s Journey, WIPO (2021), <https://www.wipo.int/edocs/pubdocs/en/wipo-rn2021-15-en-unlocking-ip-backed-financing-country-perspectives-singapore-s-journey.pdf>.”

become eligible for such government fundings.

For financing, banks or lending institutions look for record of collaterals before granting a loan. Banks or lending institutions have two primary concerns regarding the security kept with them for a loan by the MSMEs / Start-Ups. These are:

1. Whether the bank/ lending institutions have established proper proprietary interest over the asset kept as collateral for foreclosure in case of default by enterprise?
2. Whether the bank has priority over third party interests in same assets during foreclosure procedure?¹⁰

The loan is unsecured if the above two interests are not addressed. Perfecting a security therefore means putting the world to notice regarding the bank/ lending institutions claims according to standard set of priority rules. These are done traditionally through procedures of notarization, through security agreements registered with government departments, through actual possession of collateral or control over same.

2.2 Understanding IP financing

Traditionally, financial assets are those which can generate revenue for a company. Conventional financial assets have included physical properties, bonds, etc. Intellectual property rights, if capable of generating future cash flow like conventional financial assets, can act as a financing tool. But unlike these conventional assets which depreciate over time, intellectual properties are not self-depreciating as assets and their constraint may be time or period of registration in different jurisdictions.

The concept of IP Financing basically means leveraging a company's IP portfolio (typically trademark, patent, copyright) to secure credit and generate modes of revenue.¹¹ IP Financing can be done through various ways like monetising through licensing, mortgaging, or assignment. When IP is kept as collateral it means that the borrow is pledging his rights to future cash flow from such IPR or the IP as asset itself to the lender in case of default.¹² The moral science of IP finances can be followed by abiding with the Ten Commandants of IP financing.¹³

But the challenge with IP is that it is difficult to ascertain the economic value of an IP asset as

¹⁰ A. Spencer, "Collateral 101: Perfecting Security Interests in Common and Uncommon Collateral, The National Law Review, (2016) <https://natlawreview.com/article/collateral-101-perfecting-security-interests-common-and-uncommon-collateral>."

¹¹ Kirtika Suneja, "IP valuation rules in works to boost funding; startups, MSMEs to benefit, ECONOMIC TIMES" (Feb. 22, 2025, 12:05), <https://telecom.economictimes.indiatimes.com/news/policy/ip-valuation-rules-in-works-to-boost-funding-startups-msmes-to-benefit/102922485>.

¹² IP "Financing – An International and Indian Perspective, <https://amlegals.com/ip-financing-an-international-and-indian-perspective/#>" (last visited on Mar. 2, 2025).

¹³ Jeremy Phillips, "IP Financing: the Ten Commandments, WIPO MAGAZINE (Jun. 2008), https://www.wipo.int/wipo_magazine/en/2008/05/article_0002.html."

a collateral. For this, different IP valuation methods have developed over decades and are used as strategies for evaluating whether a particular IP asset as security is worthy enough for financing for a designated value.

2.2.1 Concept of IP valuation and IP Audit.

IP valuation is a process of asserting the monetary value of an IP asset. The prerequisites to such valuation process generally includes a tangible proof of existence of the IP (through contract, registration, medium, etc.), an identifiable income source from such asset, capability of being legally enforced, etc...¹⁴ There are several established methods for IP valuation like, Income method, Discounted Cash Flow Method, Venture Capital Method, Relief from Royalty Method, Real Options Method, Historic Cost Method, Market Comparable, Replication/ Replacement Cost, etc...¹⁵

A MSME or a start-up can hire IP auditors who are crucial in timely review of IP portfolios of an enterprise in today's knowledge economy. These IP auditors can also help in finding the total estimated value of IP portfolio through a smoothened manner. The timely IP valuation will also help the enterprise attract more investors as they like to see how entrepreneurs have integrated IP rights in their business plans¹⁶. Thus, IP portfolio adds to the corporate value and enterprises with better aligned IP plans have increased lucrative exit strategy for the MSMEs and start-ups.

IP audits help enterprises in handling future business disasters. While an enterprise may have a great start, unable to foresee a viable business strategy and IP management will not only impact the economic potential of their IPRs but also drive away possibilities of finances like angel investors, banks, government aid, etc... Some predominantly important issues which can raise alarm during audits include use of open-source software in early days of business under presumption of they being free; failure to restrict trade secrets internally and externally; improper IP strategies for international expansion or up scaling trade; failure to abide by country-specific clearances, renewals and registrations.¹⁷ For IP assets to achieve maximum fruition, it is pertinent therefore for all enterprises to adopt IP strategies, do timely IP audits and valuation.

¹⁴ Valuing Intellectual Property Assets, WIPO, <https://www.wipo.int/sme/en/ip-valuation.html> (last visited on Mar. 1, 2025).

¹⁵ Susan Chaplinsk, "Methods of Intellectual Property Valuation, DARDEN UNIVERSITY OF VIRGINIA, https://faculty.darden.virginia.edu/chaplinskys/PEPortal/Documents/IP%20Valuation%20F-1401%20_watermark_.pdf."

¹⁶ Jag Singh, "How startups and SMEs should think about IP: an investor's perspective, WIPO" MAGAZINE (2021), "https://www.wipo.int/wipo_magazine/en/2021/02/article_0006.html."

¹⁷ Jag Singh, *supra* note 15.

3. IP FINANCING: INTERNATIONAL DELIBERATIONS AND UNCITRAL MODEL LAW

In global context, IP financing has been part of discussion and rulemaking from early 2000. One of the most detailed works on making low-cost credit available to IP owners is “*UNCITRAL Legislative Guide on Secured Transactions Supplement on Security Rights in Intellectual Property*” commissioned by “United Nations Commission on International Trade Law” (UNCITRAL).¹⁸ This legislative guide is a result of cooperation between the “World Intellectual Property Organization” (WIPO) and UNCITRAL. The guide considers the possibility of security rights in intellectual property and the adjustments needs in domestic laws to address “*the inconsistencies between secured financing law and law relating to intellectual property*”.¹⁹ Some core principles recognized in this legislative guide are as follows:

3.1 Concepts relating to IP financing

Grantor: This term includes the owner, assignee or successor in title, licensor or licensee whoever is ready to encumber their IP asset by creating a security right in favour of secured creditor to generate credit for itself.

Secured Creditor: the person who acquired a security right in IP asset and on default by grantor (who may be an owner, assignee, licensor, licensee) will execute his rights on grantor’s encumbered IP asset.²⁰

Competing Claimant: Parties other than the secured creditor who may have a claim in the encumbered IP asset or proceeds thereof.

3.2 Creation of ‘security right’ in intellectual property

Creation of a security right over an IP asset makes it binding or effective against the grantor and the secured creditor. The guide clarifies that creation of ‘security right’ in intellectual property should not diminish the value of the intellectual property and should not be treated as abandonment of the intellectual property by the owner/ grantor.²¹

3.3 Third-party effectiveness

Since secured creditor’s rights are in competition with any other competing claimants in respect to an IP asset, it is important that that security right is registered in a general registry (where domestic law allows the same) or specifically in an IP registry. This makes such security right

¹⁸ UNCITRAL “Legislative Guide on Secured Transactions Supplement on Security Rights in Intellectual Property,” available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/10-57126_ebook_suppl_sr_ip.pdf

¹⁹ Id, at iv.

²⁰ UNCITRAL Legislative Guide, supra note 17, at 40.

²¹ UNCITRAL Legislative Guide, supra note 17, at 21.

binding or effective against third parties. While registration of transfer of intellectual property rights with IP offices may be optional or mandatory based on type of IP asset for different countries; for the purpose of third-party effectiveness, such transfer and creation of security rights over IP assets must be a mandatory precondition.²²

3.4 Priority of laws applicable

The Guide states that the security financing law should not be overriding any provisions of law relating to intellectual property which limits specifically the creation or enforcement or transferability of such intellectual property. This is particularly important for laws relating to geographical indications (G.I.) like in India whereby there is a statutory ban on transferability of the G.I. through modes like sub-licensing, assignability, pledge, mortgage, etc. in India.

3.5 Enforcement of security right over IP asset

The UNCITRAL Legislative Guide recognizes that most States may not have special procedure for enforcement of security rights in IP assets mentioned in their IP domestic legislations and so the general laws relating to secured transactions will apply²³. The application however will happen not only on the IP asset but also receivables from that IP right and if there are licensees on their rights as well as licensor's other contractual obligations. This means that if the security right over an encumbered IP asset must be exercised, it will have effect on possession of documents necessary for the enforcement of right, disposition and change in title in total or partial (if necessary) to pay off the debt.²⁴

The UNCITRAL Legislative Guide was finally adopted in 2016, and it offers choice based alternative arrangements for States to adopt this Model Law to suit the divergent legal landscapes relating to IP legislations and secured transaction laws.²⁵ The Model Law can be inspiration for India to develop its own domestic model for IP based financing.

4. INDIAN GOVERNMENT ON IP FINANCING: POLICIES AND APPREHENSIONS

India is at nascent stages of policy formulation for promotion of IP financing. While considering Indian government's attempts at policy intervention for issues relating to IP financing, the 161st Report of Rajya Sabha titled "Review of the Intellectual Property Rights Regime in India" and references in National Intellectual Property Rights Policy are two

²² UNCITRAL Legislative Guide, supra note 17, at 31.

²³ UNCITRAL Legislative Guide, supra note 17, at 101.

²⁴ UNCITRAL Legislative Guide, supra note 17, at 103.

²⁵ Walsh, "C. (2018). A Transnational Consensus on Secured Transactions Law? The 2016 UNCITRAL Model Law". In: "Kono, T., Hiscock, M., Reich, A. (eds) Transnational Commercial and Consumer Law. Perspectives in Law, Business, and Innovation. Springer, Singapore."

relevant documents for discussion.

4.1 National Intellectual Property Rights Policy, 2016

The National Intellectual Property Rights Policy, 2016 is a vision document regarding India's IP ecosystem and explores possibilities of exploiting the synergies between different IPRs in India.²⁶ The Policy mentioned creating awareness about intellectual property rights as marketable financial assets but did not elaborate any policy consideration or mechanism for achieving the same.²⁷

4.2 161st Report of Rajya Sabha Parliamentary Committee on Intellectual Property, 2021

The 161st Report of Rajya Sabha titled “*Review of the Intellectual Property Rights Regime in India*” was presented in Rajya Sabha on 23rd July 2021 and tabled on Lok Sabha in same date. The Report starts with identifying how financial utility of intellectual property rights have high chances to improving the finances of India and the rampant ignorance among institutions regarding the potent of IP as a collateral in India.²⁸ The Report duly recognized that the “*Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFASI Act), 2002*” has highlighted that there can be IP based financing whereby a bank secures its interest on a loan backed by an IP asset like patent trademark, copyright.²⁹ However, the report expressed concern regarding the lack of specific legislation³⁰ dealing with IP financing and absence of such specific enabling provisions or mechanisms under the Patents Act, 1970, Trademarks Act, 1999, etc.³¹ The committee therefore recommended the Department to formulate concrete framework relating to IP financing in India taking cue from successful models of IP financing as in Singapore and China.³²

4.3 Successful IP financing cases from India

Using IP as security has its success story in India. A “*large publicly listed manufacturer of pharmaceutical, medicinal, chemical and botanical products in India and internationally*” had taken loan in 2018 against its IP portfolios in categories of baby care, gastro-intestinal portfolio and acquired portfolio relating to pharma.³³

²⁶ National Intellectual Property Rights Policy, 2016.

²⁷ Id.

²⁸ Department Related Parliamentary Standing Committee On Commerce, 161st Report on ‘Review of the Intellectual Property Rights Regime in India’, Paras. 11.7-11.8, <https://sansad.in/rs/search> (last accessed on Mar. 3, 2025).

²⁹ Id., at Para 11.10.

³⁰ Id., at Para 11.12.

³¹ Id., at Para 11.11.

³² Id., at Para 11.13.

³³ Duffs & Phelps and CCI, “IP-Backed Financing: Using Intellectual Property as Collateral, CONFEDERATION OF INDIAN INDUSTRY 27 (2019), <https://ciiipr.in/pdf/CII-Duff-&-Phelps-Report-on-Using-IP-as-Collateral-2019.pdf>.

5. IP AS COLLATERAL: INDIAN JUDICIAL INTERPRETATIONS

The infamous judgment of the Supreme Court of India in *Canara Bank v. N.G. Subbaraya Setty and Another*³⁴ is often cited as bedrock for denial of intellectual property assets as collateral. In this case N.G. Subbaraya Setty assigned his rights of the Agarbatti trademark “EENADU” to Canara Bank and an assignment deed was executed. Later this deed was canceled after a few months and the bank cited the reason for cancellation to be a regulatory bar under the “*Banking Regulation Act, 1949*”.

“*The Banking Regulation Act*” under Section 6³⁵ and Section 8³⁶ prohibits banks in India from dealing in goods or property unless it is for satisfaction of bank’s claim. The argument forwarded by Canara Bank was that banks cannot be assigned trademarks as a deed of assignment banks become the owner for term of assignment who further deal commercially with the trademark to earn money; this being prohibited by Banking Regulations Act. Section 8 of the Banking Regulation Act prohibits such commercial dealings unless it is in “*realisation of security given to or held by it.*” The Canara bank also cannot sub-license or assign the rights to third parties as that is also prohibited under Section 6 (2) which says, “*no bank shall engage in any form of business other than those referred to in sub-section (1)*”.

It is important here to investigate the provisions of Section 6 of the Banking Regulations Act to have a better understanding of what kind of dealings a bank can engage in to satisfy its claim. While the Supreme Court’s primary reasoning for its holding in this judgement was premised on the joint reading of Section 6 along with Section 8, there is a possibility of keeping the trademark as collateral as per following sub-clauses of Section 6 (1) (f) and (g) of The Banking Regulations Act which says:

“(f) *[m]anaging, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;*”

And

“(g) *acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or ad-vances or which may be connected with any such security;*”

The Supreme Court has based its reasoning on the fact that a trademark cannot be said to property which came into possession of the bank as the assignment deed was not registered as per Section 45 of the *Trademark Act, 1999*.³⁷ The Court also took notice that the trademark

³⁴ *Canara Bank v. N.G. Subbaraya Setty and Another*, CIVIL APPEAL NO.4233 OF 2018 arising out of SLP (C) No.25649 of 2017.

³⁵ The Banking Regulations Act, 1949, § 6, No. 10, Acts of Parliament, 1947 (India).

³⁶ *Id.*, at § 8.

³⁷ The Trademark Act, 1999, § 45, No. 47, Acts of Parliament, 1999 (India).

was not the original security furnished by Mr. Setty and thus Section 6 (1) (g) cannot be applied. The Court concluded that it is of view:

*“that the trademarks are not part of any security for loans or advances that have been made to the first respondent or connected with the same. It is thus clear that the assignment deed dated 8.10.2003 is clearly hit by Section 6(2) and Section 8 read with the penalty provision contained in Section 46(4) of the Banking Regulation Act.”*³⁸

This decision of Supreme Court created a major disappointment and hurdle for IP rich firms. But “*managing property*” as interpreted by the court may differ from conventional tangible property to intangible intellectual property rights. While it is true that trademark being IP cannot be possessed by the bank, but the bank if assigned only the right to receive royalty from the trademark will secure interests of the bank case of failure to repay from borrower³⁹. Then it will not be barred by Section 8 as such assignment falls squarely within the sub-subclause (g) of Section 6 (1) of the Banking Regulations Act.

Further, in India the “*Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*” (SARFAESI Act) under Section 2 (1) (t) defines property and includes concepts relating to intangible assets. The Section 2 (1) (t) elaborates as:

*“property means [... ..] (v) intangible assets, being know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of similar nature [as may be prescribed by the Central Government in consultation with Reserve Bank]”*⁴⁰

The SARFAESI Act’s primary objective is to regulate securitization and enforcement of security interests and establish a central database for record of security interests created on properties. The Act recognizes concept of intangible assets including patent, copyright, trademark within its scope of property. Further, while defining what constitutes “secured interests” it refers to right, title or interest created in favour of secured creditor (which includes banks⁴¹) *“in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset”*⁴².

A reading of the SARFAESI Act provisions justifies that security interests created over

³⁸ Britannica, supra note 33, at Para 41.

³⁹ Bharat Harne, “IP Financing in India – Part II: The Supreme Court and (mis)interpretation of Banking Regulation Act, 1949,” SPICYIP (Mar. 1, 2024), “<https://spicyip.com/2023/03/ip-financing-in-india-part-ii-the-supreme-court-and-misinterpretation-of-banking-regulation-act-1946.html>.”

⁴⁰ “The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, § 2, No. 54, Acts of Parliament, 2002 (India).”

⁴¹ Id., at § 2 (1) (zd).

⁴² Id., § 2 (1) (zf) (ii).

intellectual property rights like copyright, trademark in favour of banks in lieu of a loan or advance by a borrower enables a bank to sell or assign the trademark for recovering a defaulted loan in adversity while the owner of the trademark (borrower here) can continue to enjoy commercial dealings over such trademark till default of loan. This is as per international standards discussed above in the UNCITRAL supplement on security rights in intellectual property.⁴³

6. FINANCIAL INNOVATION THROUGH IP REGIME: INDIA'S WAY AHEAD

For financial innovation to happen through IP regime, a concrete risk minimizing structure is to be created paving the path for IP securitization in India. Both businesses and banks / lending institutions should have a perceived surety regarding their interests when IP is being kept as collateral. For this to be achieved, the following points to be taken up for policy framing:

6.1 Compulsory registration as a pre-requirement

In India, the Ministry of Micro, Small & Medium Enterprises has launched the *Intellectual Property Rights Scheme Under MSMEs Innovative Scheme*.⁴⁴ This scheme offers lucrative IP related consultation to MSMEs for IP searches, technology gap analysis, suitable IP protection advice. It helps in commercialization of IP through the method of establishment of *Intellectual Property Facilitation Centres (IPFCs)* and reimburses cost to those MSMEs on registration of Patent, Trademark, Geographical Indications (G.I.), Design through IPFCs.⁴⁵ Any registered MSMEs who have valid 'Udyog Aadhaar Memorandum' (UAM) or 'Udyam Registration certificate' can get maximum reimbursement for registration of their IPRs according to the following chart:

S. No.	Item	Maximum Financial Assistance
1.	Foreign Patent	₹ 5,000,00/-
2.	Domestic Patent	₹ 1,000,00/-
3.	GI Registration	₹ 2,000,00/-
4.	Design Registration	₹ 15,000/-

Source: "Intellectual Property Right Scheme Under MSME Innovative Scheme" (myScheme.gov.in)

This scheme can motivate MSMEs to register their respective intellectual property rights and

⁴³ M Umarji, "Why Intellectual Property Rights as security for loans is correct in legal terms," ECONOMIC TIMES, (Feb. 20, 2025, 07:15 AM), "<https://economictimes.indiatimes.com/news/economy/finance/why-intellectual-property-rights-as-security-for-loans-is-correct-in-legal-terms/articleshow/64657067.cms?from=mdr>."

⁴⁴ myScheme, "Intellectual Property Right Scheme Under MSME Innovative Scheme," <https://www.myscheme.gov.in/schemes/ipr> (last visited Mar. 1, 2025).

⁴⁵ Id.

be the stepping stone for Ministry of Micro, Small & Medium Enterprises to implement policy measures whereby those MSMEs who have registered their IPRs can be given bank loans at rewarding rates. The measure can solve the problem identified before regarding establishment of proper proprietary interest over the IP asset which is being kept as collateral for foreclosure. Most IP legislations like the *Patent Act*, *Trademark Act*, *Geographical Indications Act*, *Design Act*, *Copyright Act* specifically state that registration is the *prima facie* proof of validity and authorization by or under the respective Acts for the respective IP asset⁴⁶. Thus, compulsory registration not only ensure proprietary interest but also ensure prima facie validity of the IP asset which is being kept as collateral for purposes of IP financing. Though IP assets like trademark, copyright need not be compulsorily registered accordingly to the parent Acts but MSMEs interested in using such IP as collateral assets should be mandated to be compulsorily register the same as per policy intervention required under the Intellectual Property Rights Scheme Under MSMEs Innovative Scheme. Thus, strengthening the IPR protection landscape through registration is paramount for IP backed financing to flourish in India.

6.2 Government policies for accounting standards for IP valuation

For potential financiers to have transparent understanding regarding the valuation of certain IP Asset, the Government needs to introduce standardized accounting methods which will help in creating a system which nurtures real-time valuation of the IP asset. This will increase access to credit for IP-rich businesses. The Department for Promotion of Industry and Internal Trade (DPIIT) had initiated plans to devise a framework for IP valuation after study of the existing financial models in Singapore, United Kingdom, South Korea, Malaysia, Japan, and other countries.⁴⁷

In conclusion, it seems India needs to take the blinkers off, and Indian businesses and lending institutions awaits clear legislative framework from Indian parliament facilitating IP financing procedure. The judicial apathy towards IP-financing can be overcome through transparent legislative guidelines helping MSMEs, start-ups and other businesses to use their IP assets parallelly with conventional assets to raise capital with ease and at convenience.

⁴⁶ The Patent Act, 1970, § 72, No. 39, Acts of Parliament, 1970 (India); The Trademark Act, 1999, § 31, No. 47, Acts of Parliament, 1999 (India); The Geographical Indications of Good (Registration and Protection) Act, 1999, § 23, No. 48, Acts of Parliament, 1999 (India); The Designs Act, 2000, § 10, No. 16, Acts of Parliament, 2000 (India); The Copyright Act, 1957, § 48, No. 14, Acts of Parliament, 1957 (India).

⁴⁷ Kritika Suneja, "IP Valuation Rules in Works to Boost Funding; Startups, MSMEs to Benefit, ECONOMIC TIMES (Feb. 21, 2024, 12:05 AM) <https://economictimes.indiatimes.com/news/company/corporate-trends/ip-valuation-rules-in-works-to-boost-funding-startups-msmes-to-benefit/articleshow/102917685.cms>."

ASSESSING THE ANTI - COMPETITIVE PRACTICES OF ZOMATO AND SWIGGY : A CRITICAL ANALYSIS OF SERVICE CHARGES AND MARKET MONOPOLY UNDER COMPETITION ACT, 2002

- Harsh Srivastava¹

Abstract

The rapid expansion of food delivery services in India has raised serious questions about monopolistic and anti-competitive behavior, especially with regard to the pricing policies and exclusivity agreements used by market leaders Zomato and Swiggy. With an emphasis on exorbitant service fees, preferential treatment given to some restaurant partners, and the resulting barriers to market entry for new competitors, this study critically examines the anti-competitive behavior of these organizations. Analysis of the negative effects of monopolistic activities on important stakeholders, such as customers, independent eateries, and the larger competitive framework of the food delivery market, is what makes this study significant. While food delivery services are so important to the modern economy, it is crucial to maintain pricing transparency and fair trade standards in order to promote a market environment that is both competitive and customer-focused. Although food aggregators' operational models have been discussed in legal and economic debate, there is a dearth of empirical research looking at the direct effects of service fees and exclusivity agreements on market participants in the Indian jurisdiction. Using both qualitative and quantitative approaches, this study seeks to resolve this gap by offering an in-depth assessment of these issues. From empirical research, the study seeks to examine customer and restaurant viewpoints, investigate price structures and service costs imposed by Zomato and Swiggy, and evaluate the impact of exclusive agreements on competition. Reviewing CCI reports, legal frameworks, and case studies is part of a mixed-method approach. Furthermore, an empirical survey was carried out to gather firsthand information on Zomato and Swiggy experiences from customers and restaurant owners.

Keywords: Monopolistic, Anti-competitive, Service fee, Exclusivity agreements & Competitors.

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1. INTRODUCTION

The restaurant and food service industries have seen significant change as a result of the rapid growth of meal delivery services in India. This has created a digital marketplace where customers can conveniently access a wide variety of culinary options. Among the leading companies in this field, Zomato and Swiggy have made names for themselves as market leaders and have substantial control on pricing policies, service fees, and the dynamics of industry competition. But this market domination has raised questions about these platforms' monopolistic tendencies, especially with regard to their pricing policies and agreements with restaurant partners.

The practice of charging customers for services that are frequently more expensive than the food items they have ordered is a particularly controversial topic. Due to disproportionately large service charges imposed by these platforms, the final price payable frequently exceeds the amount of ₹100 that a consumer spends on food products. Under the Competition Act of 2002², such actions give rise to worries about possible abuse of a dominating position and predatory pricing. Consumer complaints are made worse by the opaque process used to determine these costs, underscoring the need for regulatory watchdogging and action.

Furthermore, the Competition Commission of India (CCI) has found that Zomato and Swiggy have both violated Indian antitrust rules by engaging in anti-competitive behaviour. These platforms have signed "*exclusivity contracts*"³ with specific restaurant partners, according to the private CCI documents, whereby Zomato has given some locations priority treatment in return for lower commission rates. Restaurants who choose to list only on Swiggy's platform have also been found to benefit from increased platform visibility and company growth. These exclusivity agreements have the effect of distorting market competition since they restrict consumer choice and other restaurants' ability to compete on an equal basis.

These exclusive agreements have a restricting effect that is especially worrisome because it keeps the market from developing into a truly competitive environment. Zomato and Swiggy have suppressed innovation and decreased market plurality by successfully limiting the entry and viability of new competitors by utilizing their dominating market positions. Such behavior

² The Competition Act, 2002 (India).

³ CCI Probe Finds Zomato, Swiggy Breached Antitrust Laws: Report, ECON. TIMES (Mar. 29, 2025, 10:00 AM), <https://economictimes.indiatimes.com/tech/startups/cci-probe-finds-zomato-swiggy-breached-antitrust-laws-report/articleshow/115080576.cms?from=mdr>.

is covered by *Section 4 of the Competition Act of 2002*⁴, which forbids businesses from acting in a way that would constitute an abuse of their dominant position.

2. RESEARCH PROBLEM

When customers have benefited greatly from the growth of meal delivery services, market justice and consumer rights have become major concerns due to the monopolistic actions of Zomato and Swiggy, the two leading companies in the sector. **Unfair economic conditions** for restaurants and additional financial burdens on consumers have resulted from these platforms' *excessive service fees* and *exclusivity agreements*. Exorbitant service fees are a major problem since they frequently surpass acceptable limits in relation to the overall cost of the food. Consumer affordability and well-informed decision-making are seriously threatened by this behaviour in the absence of clear price structures.

Furthermore, a restrictive market environment has been produced by the existence of exclusive contracts between meal delivery aggregators and specific restaurant partners, which has effectively reduced competition and denied other restaurant operators a fair chance to compete. Because algorithmic biases favoring exclusive partners reduce the exposure of independent and non-partnered eateries, these anti-competitive tactics lead to market consolidation and limited consumer choice. As a result, the market is unable to operate as a free and equitable environment, which goes against the core tenets of consumer protection and competition law.

In order to address these problems, this study looks into how competition, customer affordability, and restaurant partnerships are impacted by monopolistic pricing structures, exclusivity agreements, and a lack of transparency in India's food delivery industry.

3. OBJECTIVE OF THE STUDY

This study's objectives are to:

Examine it into Zomato and Swiggy's pricing policies and service fees to see if they represent reasonable business practices or if they are exorbitant and hurt customers.

⁴ The Competition Act, 2002, § 4 (India).

Investigate how exclusivity agreements affect competition, especially as it relates to independent restaurants' access to markets and the possible skewing of fair trade ideals.

Evaluate the viewpoints of customers and restaurants using empirical research, gaining knowledge from primary data on user experiences, costs, and restaurants' capacity to fairly compete in the platform-driven meal delivery market.

4. RESEARCH METHODOLOGY

The study utilizes a mixed-method legal and empirical research strategy, which includes the following approaches, to accomplish the aforementioned goals:

4.1 Examining reports from the Competition Commission of India (CCI): Review of formal CCI investigations into Zomato and Swiggy's anti-competitive behavior. v Inspection of results pertaining to pricing strategies and exclusivity agreements.

4.2 Examining Pricing Models and Exclusive Contracts: Pricing structures are evaluated for compliance with the *Competition Act of 2002, specifically Sections 3⁵ and 4⁶*, which deal with anti-competitive agreements and abuse of dominant position. Review of exclusivity agreements and the legal ramifications for consumer welfare and market competitiveness.

4.3 The Collection of Data and Interpretation for Empirical Surveys: Surveying customers and restaurant owners to acquire firsthand information about their experiences with the pricing, visibility algorithms, and service arrangements of Zomato and Swiggy. Data is statistically analysed to identify consumer complaints, market trends, and obstacles to competition that restaurants must overcome.⁷

5. EVOLUTION OF FOOD DELIVERY PLATFORMS IN INDIA

In the event the 'dabbawala' system was established in Mumbai in the late 19th century, the idea of food delivery in India was born⁸. Dabbawalas, who were first established in the 1890s,

⁵ The Competition Act, 2002, § 3 (India).

⁶ Ibid.

⁷ Assessing the Anti-Competitive Practices of Zomato and Swiggy: A Critical Analysis of Service Charges and Market Monopoly under the Competition Act, 2002, (Mar. 31, 2025, 10:00 AM), <https://docs.google.com/forms/d/1njPF3kUKBD63uCbmj5FlegMVVQ6UOWITEOJRTID3LdU/edit>.

⁸ The History & Evolution of Food Delivery, UNDERSCORE (Mar. 31, 2025, 10:00 AM), <https://underscore.factor75.com/the-history-evolution-of-food-delivery>.

provided workers with home-cooked lunches at their places of employment. This service is being effectively run today.⁹

Providing the arrival of online platforms in the early 2000s, the current food delivery scene started to take shape. When Zomato was first established in 2008 as FoodieBay, it functioned as a platform for finding and reviewing restaurants¹⁰. In 2010, it changed its name to Zomato, and in 2015, it added food delivery to its list of offerings.

When Swiggy first entered the market in 2014, it only offered food delivery services¹¹. Its focus on logistics and specialized delivery fleet immediately distinguished it and enabled its speedy growth throughout important Indian cities.

6. BUSINESS MODELS OF ZOMATO AND SWIGGY

Swiggy and Zomato both use diverse income models:

6.1 Incentives from Restaurant Partners: Restaurants receive commissions for each order placed on their platforms, which accounts for a sizeable amount of money.¹² The commission charges for each order on Zomato vary from 20% to 25%. Swiggy levies commissions ranging from 15% to 25%, contingent on variables like order volume and restaurant popularity.¹³

6.2 Customer Delivery Fees: Customers of both platforms are subject to delivery fees, which might change depending on factors like order value, distance, and current demand. Swiggy uses surge pricing, raising delivery costs to balance supply and demand at busy times or bad weather.¹⁴

⁹ History of Food Delivery and How It's Changed, THISTLE (Mar. 31, 2025, 10:00 AM), <https://www.thistle.co/learn/thistle-thoughts/history-of-food-delivery-and-how-its-changed>.

¹⁰ Zomato Business and Revenue Model, VALUEAPPZ (Mar. 31, 2025, 10:00 AM), <https://www.valueappz.com/blog/zomato-business-and-revenue-model>.

¹¹ Swiggy, WIKIPEDIA, (last visited Mar. 31, 2025), <https://en.wikipedia.org/wiki/Swiggy>.

¹² Swiggy Business Model & Marketing Strategy, SKILLCIRCLE (Mar. 31, 2025, 10:00 AM), <https://skillcircle.in/swiggy-business-model-marketing-strategy>.

¹³ Swiggy Business Model and Revenue Model, DEONDE (Mar. 31, 2025, 10:00 AM), <https://deonde.co/blog/swiggy-business-model-and-revenue-model>.

¹⁴ How Swiggy Works & Makes Money, WHITE LABEL FOX (Mar. 31, 2025, 10:00 AM), <https://whitelabelfox.com/how-swiggy-works-make-money>.

6.3. Promotion and Promotional Services: Through sponsored listings and app ads, restaurants can purchase increased visibility. This helps eateries reach a wider audience while also increasing the platform's revenue.¹⁵

6.4 Member Plans: Zomato provides members with advantages like priority delivery and savings through membership services like Zomato Pro. These initiatives increase repeat business and cultivate client loyalty¹⁶.

7. HYPOTHESIS

The following theories are developed in light of the research findings and actual data:

7.1 The Effect of Exorbitant Service Fees on Consumer Behaviour Hypothesis: Zomato and Swiggy's excessive service fees have a significant impact on customers' meal ordering habits, reducing platform usage and increasing demand for alternative food procurement methods.

7.2 According to the market hypothesis, exclusivity agreements between Zomato, Swiggy, and a few restaurant partners limit consumer choice and diminish opportunities for new rivals in the meal delivery sector, hence distorting competition.

7.3 By Algorithm, Commercial Monopoly Expands: The hypothesis of bias in restaurant visibility The algorithm-driven rating and visibility of restaurants on Zomato and Swiggy, which disproportionately favor exclusive or high-commission eateries, reinforce the monopolistic tendencies of the meal delivery industry.

8. ANTI-COMPETITIVE PRACTICES AND MARKET DISTORTION

The swift growth of food delivery services in India has raised serious questions about anti-competitive practices that could skew market dynamics. Priority treatment due to algorithmic biases, exclusive clauses, and obstacles preventing new competitors are important concerns.

¹⁵ Zomato Business Model, DEV TECHNOSYS (Mar. 31, 2025, 10:00 AM), <https://devtechnosys.com/business-model/zomato.php>.

¹⁶ Ibid.

8.1 Contracts of Exclusivity and Their Significance

Exclusivity agreements are contracts that mandate restaurants to use food delivery services exclusively in exchange for advantages like lower commission rates or certain business expansion. Zomato, for example, has reportedly offered eateries that sign exclusivity contracts reduced commissions, and Swiggy guarantees economic development to businesses that list solely on its platform.

According to the National Restaurant Association of India (NRAI)¹⁷ these exclusivity agreements force smaller eateries to rely largely on a single platform, which raises costs and restricts their ability to expand. Smaller businesses may be marginalized by this reliance, which lowers their ability to compete in the market.¹⁸

8.2 Specific Restaurant Partners Are Given Preferential Treatment and Visibility Bias Algorithmic Prioritization

The ranking and visibility of restaurants on food delivery providers' apps are decided by algorithms. There have been worries expressed that these algorithms might promote eateries with exclusive contracts or those that pay more commissions, producing skewed search results that give preference to some businesses over others.

By preventing customers from experiencing a wide variety of dining options and establishing an unfair playing field, this special treatment can hinder competition. It could be difficult for new or smaller eateries to get noticed, which would make it more difficult for them to successfully compete in the market.

8.3 Market Barriers for New Rivals

Major platforms impose high commission costs, which make it extremely difficult for restaurants, especially smaller ones, to make ends meet. Because of these exorbitant expenses, smaller businesses may find it challenging to maintain operations and compete with their larger competitors.

¹⁷ National Restaurant Association of India, (last visited Mar. 31, 2025), NRAI, <https://nrai.org>.

¹⁸ Swiggy and Zomato Found in Breach of Antitrust Laws: CCI Investigation Reveals Exclusive Contracts, LEGAL WIRES (Mar. 31, 2025, 10:00 AM), <https://legal-wires.com/buzz/swiggy-and-zomato-found-in-breach-of-antitrust-laws-cci-investigation-reveals-exclusive-contracts>.

New entrants face significant obstacles due to the dominance of big platforms such as Zomato and Swiggy, as well as their vast resources and market reach. In order to compete, independent food delivery firms frequently struggle to build the scale and network effects they need, which limits market innovation and customer choice.¹⁹

9. EXAMINING ZOMATO AND SWIGGY'S MARKET DOMINANCE : A LEGAL PERSPECTIVE ON ANTI - COMPETITIVE PRACTICES

In order to promote fair competition and prevent monopolistic market behaviour, the Competition Act of 2002 is the main piece of legislation governing anti-competitive behaviour in India. According to this, the two most popular food delivery services, Zomato and Swiggy, have come under fire for allegedly engaging in anti-competitive practices like exorbitant service fees, exclusivity contracts, and preferential algorithmic rankings that have a big influence on the welfare of customers, restaurant partners, and market competitiveness as a whole.

The Competition Act of 2002 prohibits agreements that have an appreciable adverse effect on competition (AAEC) under *Sections 3(1)²⁰ and 3(4)²¹*. Zomato and Swiggy's exclusivity agreements with specific eateries are included in this category since they prevent eateries from listing on other platforms, which ultimately limits customer choice and puts obstacles in the way of new competitors. This impedes the industry's free competition while also solidifying their dominant position.

Section 4 of the Act²², which deals with abuse of dominant position, also comes into play as these platforms utilize their market power to enforce unfair pricing schemes, such as exorbitant commissions for eateries and expensive service fees for customers. Furthermore, their algorithmic rating systems favor some restaurant partners over others, which creates an unfair playing field and makes it difficult for independent or smaller eateries to remain competitive. *Section 19 of the Act²³* gives the Competition Commission of India (CCI) the authority to look into these practices and determine whether or not their activities do, in fact, result in an AAEC.

¹⁹ Algorithmic Enforcement and Anti-Competitive Effects: CCI vs. Swiggy and Zomato, HNLU CCLS (Feb. 10, 2025, 10:00 AM), <https://hnluccls.in/2025/02/10/algorithmic-enforcement-and-anti-competitive-effects-cci-vs-swiggy-and-zomato>.

²⁰ The Competition Act, 2002, § 3(1) (India).

²¹ The Competition Act, 2002, § 3(4) (India).

²² *Ibid.*

²³ The Competition Act, 2002, § 19 (India).

Section 27²⁴ gives CCI the authority to punish platforms found guilty of such infractions and to order them to change their business models to promote more competition and transparency. Given that Zomato and Swiggy receive foreign investments and that foreign entities frequently influence their technological frameworks, **Section 32**²⁵ which addresses extraterritorial jurisdiction—also becomes relevant. This enables the CCI to investigate whether global factors impact their pricing strategies and algorithmic bias.

Investigating Zomato and Swiggy's practices is justified by a number of court rulings. In the 2018 case of *FMC India Pvt Ltd v. Competition Commission of India*²⁶, the Supreme Court upheld the CCI's jurisdiction to examine exclusivity contracts and vertical agreements, establishing a standard for examining Zomato and Swiggy's preferential deals with restaurant partners. Similar to this, the Court determined in *Uber India Systems Pvt Ltd v. Competition Commission of India (2019)*²⁷ that algorithmic favoritism and predatory pricing practices are illegal under the Competition Act, citing similarities to Swiggy and Zomato's preferential treatment of specific restaurant partners through algorithmic rankings.

The issues about unfair market competition and severe discounting are further supported by the *Fast Track Call Cab v. ANI Technologies Pvt. Ltd (Ola Case) (2017)*²⁸ verdict, which is consistent with Zomato and Swiggy's commission arrangements and price structures. Zomato and Swiggy's limitations on restaurant partners using other platforms might be attributed to the principles of predatory pricing and refusal to trade, which were established in another pertinent case, *MCX Stock Exchange Ltd v. National Stock Exchange of India (2011)*²⁹. Furthermore, the Supreme Court decided in *Excel Crop Care Limited v. CCI (2017)*³⁰ that anti-competitive agreements can be inferred from their market effects rather than requiring explicit proof, bolstering the claim that Zomato and Swiggy's exclusivity deals may be fundamentally restrictive even in the absence of concrete proof of coercion.

In conclusion, a number of provisions in the Competition Act of 2002 give the Competition Commission of India a solid legal foundation on which to look at the conduct of Zomato and Swiggy. Their preferential treatment of restaurant partners, exorbitant service fees, and

²⁴ The Competition Act, 2002, § 27 (India).

²⁵ The Competition Act, 2002, § 32 (India).

²⁶ *FMC India Pvt. Ltd. v. Competition Commission of India*, Case No. C-2017/06/519.

²⁷ *Uber (India) Sys. Pvt. Ltd. v. Competition Comm'n of India*, (2019) 8 SCC 697.

²⁸ *Fast Track Call Cab Pvt. Ltd. v. ANI Techs. Pvt. Ltd.*, Case Nos. 6 & 74 of 2015, Competition Comm'n of India (July 19, 2017).

²⁹ *MCX Stock Exch. Ltd. & Ors. v. Nat'l Stock Exch. of India Ltd. & Ors.*, Case No. 13 of 200, Competition Comm'n of India (June 23, 2011).

³⁰ *Excel Crop Care Ltd. v. Competition Comm'n of India*, (2017) 8 SCC 47.

exclusivity clauses not only stifle competition but also restrict consumer options and raise costs. Regulatory action is necessary as the food delivery industry expands in order to create equitable pricing guidelines, improve algorithmic transparency on digital platforms, and foster a competitive, customer-friendly marketplace. The food delivery sector will continue to be inclusive if these issues are resolved, enabling new competitors to compete on an equitable basis and safeguarding the interests of patrons and restaurant partners.

10. THE ZOMATO-SWIGGY CASE PRESENTS COMPLICATIONS IN ADDRESSING ANTI-COMPETITIVE PRACTICES

10.1 Algorithmic Bias and Lack of Regulatory Oversight: The preferential treatment of certain restaurant partners through algorithmic ranking remains a significant issue. Zomato and Swiggy use opaque algorithms that determine restaurant visibility, delivery fees, and promotional placements, which can disadvantage smaller restaurants. Since algorithmic decisions are often proprietary and difficult to scrutinize, proving bias and unfair market practices presents a regulatory challenge.³¹

10.2 Lack of Transparency: Pricing Mechanisms One of the primary challenges in regulating Zomato and Swiggy is the lack of transparency in their pricing models, including service charges, commission structures, and surge pricing.³²

10.3 Market Entry Barriers and Exclusivity Agreements: These platforms' exclusivity agreements with specific restaurants put up obstacles for new competitors, but it takes a thorough economic analysis to demonstrate how much these agreements reduce market competition. Regulatory agencies may find it challenging to gather evidence because restaurants may be reluctant to reveal contractual specifics because of confidentiality obligations.

10.4 The Challenge of Gaining Market Dominance: Even while Zomato and Swiggy together control a large portion of the meal delivery market, they can contend that they do not have a "monopoly" on their own because there are other food service providers in the market (such cloud kitchens and direct restaurant deliveries). Because of this, it is more difficult to

³¹ Conduct of Zomato and Swiggy Found to Be Anti-Competitive: Competition Commission of India (CCI), SCC ONLINE (May 4, 2022), <https://www.sconline.com/blog/post/2022/05/04/conduct-of-zomato-and-swiggy-anti-competitive-competition-commission-of-india-cci>.

³² Zomato, Swiggy Breached Antitrust Laws: CCI, INDIAN EXPRESS (Mar. 31, 2025, 10:00 AM), <https://indianexpress.com/article/business/zomato-swiggy-breached-antitrust-laws-cci-9661045>.

demonstrate a blatant abuse of a dominating position as defined by Section 4 of the Competition Act of 2002.

10.5 Legal and Regulatory Hold-ups: In India, competition law cases, especially those looked into by the Competition Commission of India (CCI), frequently entail drawn-out court cases. In appeal courts, Zomato and Swiggy may contest CCI decisions, which would further postpone the implementation of corrective actions.³³

10.6 Extraterritorial Jurisdiction and International Investment: Since both platforms attract foreign investment, multinational investors and technology developments from international marketplaces have an impact on their pricing and business strategies. Strict regulatory measures are more difficult to enforce because of the CCI's continued difficulty in regulating foreign-influenced digital market practices.

10.7 Innovation and Regulation in Balance: While anti-competitive activity must be prevented by regulatory action, overzealous intervention may hinder innovation and expansion in the online meal delivery industry. One of the biggest challenges facing policymakers is finding a balance between regulation and fair competition without impeding technology progress.

11. EMPIRICAL RESEARCH: EXPERT / GENERAL OPINION ON THE PARTNERSHIP

The goal of using a structured poll to perform empirical research is to gather primary data that offers verifiable proof of Zomato and Swiggy's alleged anti-competitive behaviour. Through the collection of first-hand information from important players, such as customers, restaurant owners, legal experts, and academicians, this research technique guarantees an unbiased evaluation of market realities. Because it provides quantitative evidence to support theoretical legal arguments and supports allegations of monopolistic activity and abuse of dominant position under the Competition Act of 2002, empirical research is crucial in the legal field. The study intends to determine the degree to which exclusivity contracts, algorithmic biases, and service charges have a noticeable negative impact on competition (AAEC)³⁴ by gathering and examining comments on these topics. Additionally, survey-based empirical research makes it

³³ CCI Finds Zomato Engaged in Anti-Competitive Practices, LAW CHAKRA (Mar. 31, 2025, 10:00 AM), <https://lawchakra.in/other-courts/cci-anti-competitive-practices-zomato>.

³⁴ AAEC – Competition Act, 2012, MCO LEGALS (Mar. 31, 2025, 10:00 AM), <https://www.mcolegals.in/kb-details?title=aaec---competition-act,-2012&kid=96>.

possible to assess the overall effect on market competitiveness, the financial pressures on restaurant partners, and the limitations on consumer choice. The results of this study are used as a foundation for policy suggestions and regulatory review, guaranteeing that competition law enforcement is in line with the interests of stakeholders and the realities of the market at large.

11.1 Occupation & Organization

11.1.1 Occupation

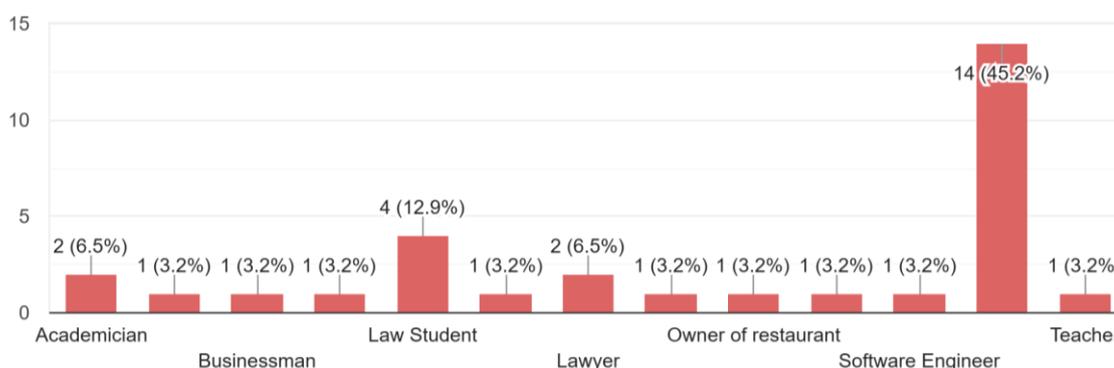


FIG 1

A substantial number of poll participants are students, law students, and legal professionals, though they represent a wide variety of professions. Students, notably law students, accounted for a sizable percentage of the responses, suggesting a high level of scholarly interest in the subject. A well-informed viewpoint on the Competition Act and regulatory issues was also highlighted by the participation of *academicians, including Ph.D. researchers and assistant professors, as well as legal experts, including attorneys. Software engineers, educators, businesspeople, and restaurant owners are among the other responders who contributed perspectives from customers and industry stakeholders impacted by Zomato and Swiggy's exclusivity and price policies.* A comprehensive examination of the anti-competitive issues in the food delivery sector is guaranteed by the varied occupational representation.

11.1.2 Organisation

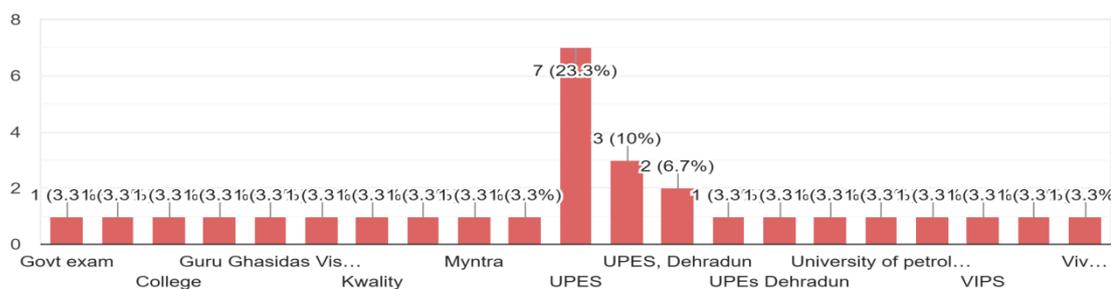


FIG 2

The poll participants are from a variety of backgrounds, but a sizable percentage are students or law students, mostly from universities like **VIPS**³⁵, **UPES Dehradun**³⁶, and others. Legal professionals, such as professors and attorneys, have also taken part. It is noteworthy that the study contains answers from people who work directly in the food industry, like entrepreneurs and restaurant owners. Responses from people connected to specific restaurants, such as "**Tandoor Villa Restaurant**³⁷" and "**Kwality**³⁸," provided personal accounts of how Zomato and Swiggy's commercial activities affect restaurant operations. Including restaurant owners offers important insights into the difficulties created by the exclusivity contracts and exorbitant service fees enforced by these meal delivery services, especially with regard to market competition and long-term viability.

³⁵ Vivekananda Inst. of Prof'l Stud.,(last visited Mar. 31, 2025), <https://vips.edu>.

³⁶ Univ. of Petroleum & Energy Stud.,(last visited Mar. 31, 2025), <https://www.upes.ac.in>.

³⁷ Tandoor Villa, FACEBOOK, (last visited Mar. 31, 2025). <https://cy-gb.facebook.com/TandoorVilla>.

³⁸ Our Restaurant, HOTEL RELIANCE, (last visited Mar. 31, 2025), <https://hotelreliance.com/our-restaurant>.

11.2 Have you ever noticed that service charges on Zomato or Swiggy exceed the actual food price ?

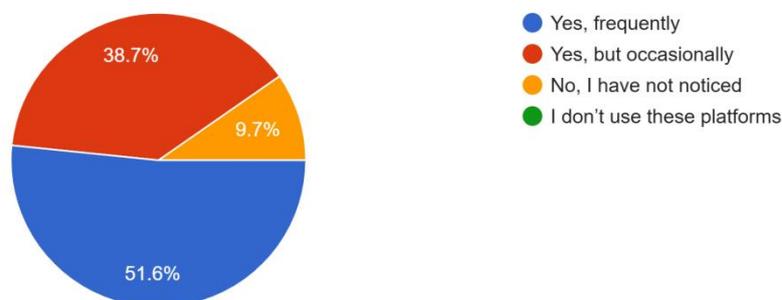


FIG 3

The vast majority of participants **“Yes Frequently (51.6%)”** reported that they regularly observe service fees on Zomato and Swiggy surpassing the cost of the food. The fact that hefty platform fees, delivery costs, and taxes greatly increase the final payment implies that consumers are generally aware of these costs. It's possible that a large number of consumers encountered excessively high fees, particularly during peak hours or under surge pricing schemes.

“Yes but frequently (38.7%)” of respondents, a sizable portion, said they occasionally observe these disparities. This group probably includes users who place few or selective orders, which lessens the likelihood that they may be impacted by exorbitant fees. Restaurant pricing variations, the availability of discounts, and shifting service charges could all be factors in their sporadic awareness of the problem.

“No, I have not noticed (9.7%)” of respondents said they had not noticed any such differences, which may be because they were unable to compare the prices of platform orders and direct restaurant purchases. Additionally, they may be less sensitive to price structures or prefer to place their orders during sales when service fees are comparatively lower.

Since **“I don't use these platform”** of these platforms did not respond, the study mostly gathered feedback from current customers who had direct knowledge of Zomato and Swiggy's pricing structures.

11.3 Do you believe the high service charges imposed by Zomato and Swiggy are justified?

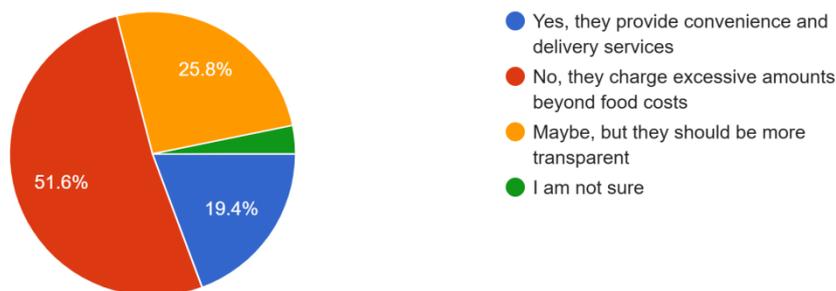


FIG 4

Stakeholders are clearly concerned about Zomato and Swiggy's exorbitant service fees, according to survey results. The majority **“No, they charge excessive amounts beyond food costs (51.6%)”** think these fees are undue since they greatly raise the ultimate cost of food above acceptable bounds, which makes affordability a big problem for customers. The platforms' hefty commissions on restaurants, which are subsequently passed on to customers in the form of inflated prices, are perceived by many customers as an abuse of their dominating market position.

“Yes, they provide convenience and delivery services 19.4%” of respondents, on the other hand, defended the service fees by pointing out that Zomato and Swiggy enhance their offerings with convenience, logistical assistance, and doorstep delivery. They understand that these charges are a result of operating expenses, such as platform maintenance and the salary of delivery staff.

Although **“Maybe, but they should be more transparent 25.8%”** of respondents were unsure, they did stress the importance of increased pricing transparency. This shows that although they agree that service fees are necessary, they think Zomato and Swiggy should provide comprehensive cost breakdowns to maintain accountability and equity.

Due to their general influence on pricing and competition, or their ignorance of **“I am not sure”** how these platforms establish service fees, a tiny percentage of respondents expressed uncertainty.

11.4 Do you think Zomato's and Swiggy's exclusivity contracts with restaurants reduce competition ?

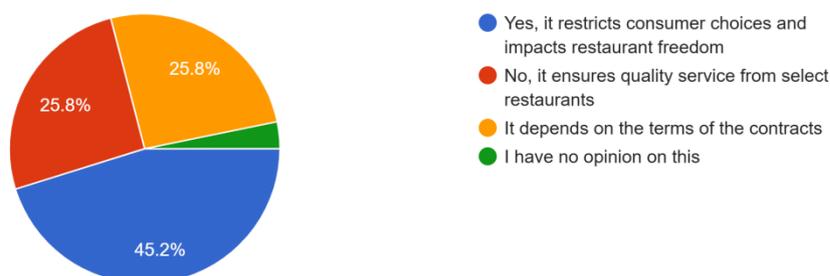


FIG 5

The survey's findings show that ***“Yes, it restricts consumer choices and impacts restaurant freedom 45.2%”*** of participants think that Swiggy's and Zomato's exclusive agreements restrict competition by reducing restaurant autonomy and consumer choice. Customers' options are limited and restaurants become too reliant on a single service provider as a result of these contracts, which probably account for the majority's opinion. Higher commission fees and service charges may also result from exclusive agreements, which would ultimately impact end users' affordability and pricing.

However, ***“No, it ensures quality service from select restaurants 25.8%”*** of those surveyed think that these agreements guarantee first-rate service from particular eateries. One possible explanation for this viewpoint is that exclusivity agreements encourage platforms to support and advertise partner eateries, which could result in higher service standards, quicker delivery, and improved food quality control.

Equally, ***“It depends on the terms of the contracts 25.8%”*** of participants selected "It depends on the terms of the contracts," demonstrating their awareness of the intricacy of these kinds of agreements. Certain exclusivity agreements may be advantageous if they provide restaurants with reasonable conditions, marketing assistance, or lower commissions. They might, however, impose restrictive terms that hurt competition if they are improperly formed. Due to a lack of firsthand knowledge of the effects of exclusivity agreements or a lack of understanding of how these contracts affect market dynamics, a small number of respondents expressed no view ***“I have no opinion on this”***.

11.5 How do higher service charges affect your food ordering behaviour ?

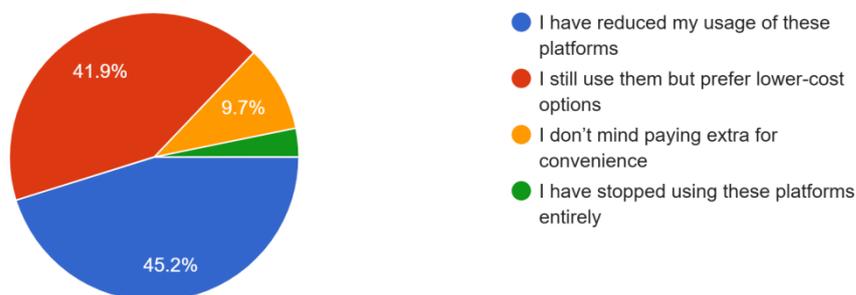


FIG 6

The answers to the question on how higher service fees affect food ordering patterns show that customers are clearly opposed to the higher prices that food delivery services like Zomato and Swiggy impose. The plurality of respondents “*I have reduced my usage of these platforms (45.2%)*” said they have used these platforms less, which is a clear response from customers to what they consider to be unjust pricing. For many people, ordering food frequently is not financially feasible due to high service fees, especially when paired with current delivery costs and platform commissions. It's possible that past frequent customers looked for other options, such as placing orders straight from eateries, choosing to eat in, or using rival platforms that provide cheaper service costs or discounts.

Although they still use these platforms, a sizable percentage of respondents “*I still use them but prefer lower-cost options (41.9%)*” stated that they would rather use less expensive alternatives. According to this response, price sensitivity is a key consideration when making decisions, even though meal delivery is still a convenient service. Instead of placing orders at any restaurant like they used to, customers may now choose which restaurants to order from because they have better offers, apply discounts, or have reduced service fees. This conduct demonstrates the rising need for affordable and transparent food delivery services.

A lower percentage “*I don't mind paying extra for convenience (9.7%)*” said they have no problem paying more for convenience. This group is probably made up of wealthy customers or people who value accessibility over price. For them, the convenience and speed of meal delivery is worth more than the cost of service fees. Additionally, they might view meal delivery as a high-end service and agree to pay extra for it as part of the whole experience.

Finally, a significant portion of participants stated that they no longer use these platforms at all (*I have stopped using these platforms*). This response implies that some customers think the service fees are so high that they no longer think food delivery is a profitable option.

11.6 What regulatory action should the CCI take regarding the Zomato and Swiggy ?

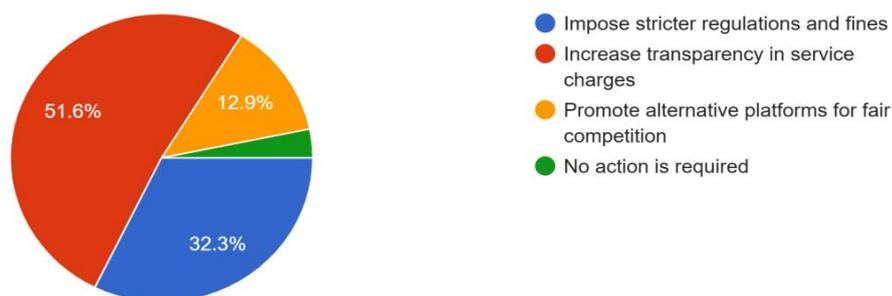


FIG 7

The survey's answers highlight the main worries of interested parties about Zomato and Swiggy's purported anti-competitive behaviour. Significantly, **“Increase transparency in service charges 51.6%”** of respondents think that greater transparency in service charges is necessary since customers and restaurant partners suffer from ambiguous and exorbitant pricing. Concerns regarding unfair pricing tactics have been raised by the absence of transparent breakdowns for commissions and other costs. The fact that **“Impose stricter regulations and fines 32.3%”** of respondents favour tougher rules and penalties shows that many people believe that the platforms' exclusive deals and special treatment violate competition laws and call for government protection. Perhaps as a result of Zomato and Swiggy's dominance, which makes it difficult for new competitors to acquire market share without substantial government backing, just **Promote alternative platforms for fair competition 12.9%** of respondents support the promotion of other platforms for fair competition.

12. VIEWS

Mrs. Rachna Jha , Assistant Professor, UPES Dehradun³⁹

Do you think the exclusive agreements between Zomato, Swiggy, and restaurants create an anti-competitive environment, limiting choices for consumers and impacting the growth of other food delivery platforms?

Yes, it does. Either the law needs to be amended as per the current needs and changing dynamics of the e-platforms or CCI needs to have a stricter mechanism in place.

FIG 8

Dr. Shreya Srivastava, Allahabad University, Prayagraj⁴⁰

Do you think the exclusive agreements between Zomato, Swiggy, and restaurants create an anti-competitive environment, limiting choices for consumers and impacting the growth of other food delivery platforms?

This can reduce price competition, affect service quality, and lead to higher costs for consumers. Such deals can hinder the growth of smaller or new food delivery platforms, as they struggle to attract popular restaurants. This lack of fair competition may stifle innovation in the industry.

FIG 9

Mr . Anup Kumar Yadav, Founder, The Law Scout⁴¹

³⁹ Rachna Jha, Assistant Professor, UPES Dehradun.

⁴⁰ Dr. Shreya Srivastava, Professor, Allahabad University.

⁴¹ Anup Kumar Yadav, Founder, The Law Scout.

Do you think the exclusive agreements between Zomato, Swiggy, and restaurants create an anti-competitive environment, limiting choices for consumers and impacting the growth of other food delivery platforms?

I would argue that exclusive agreements between Zomato, Swiggy, and restaurants could create an anti-competitive environment, potentially violating competition laws. These agreements may limit consumer choices by restricting restaurants from partnering with multiple platforms, thereby reducing market competition. This could lead to higher prices, lower service quality, and restricted access for emerging food delivery platforms, hindering fair market growth.

However, exclusivity can also be justified if it enhances efficiency, ensures better service, or provides competitive benefits to consumers. The Competition Commission of India (CCI) would assess whether such agreements create an unfair market dominance. If these agreements unfairly restrict competition, they may be subject to regulatory scrutiny and possible legal action under anti-competitive laws.

FIG 10

13. KEY FINDS OF SURVEY

The survey's findings show that the public is rather concerned about the service fees that meal delivery services like Zomato and Swiggy charge. Many people believe that these service fees are exorbitant and unwarranted because most respondents have observed that *they frequently surpass the food's true cost*. Many participants stated that these exorbitant prices not only influence their purchasing decisions, *which leads to a decrease in the use of these platforms, but also influence the perception of monopolistic tactics in the sector*.

Additionally, it was believed that Zomato, Swiggy, and a few restaurants' *exclusivity agreements hurt competition*. There was broad consensus among respondents that these agreements restrict consumer choice and impede the expansion of smaller meal delivery firms. In order to promote a more competitive market environment, the Competition Commission of India (CCI) is being called upon to take regulatory action to enforce more stringent rules and enhance transparency in service pricing. Consumers' increasing *dissatisfaction with these platforms' pricing policies is generally reflected in the findings*, which indicate that adjustments are required to guarantee fair competition and improved user experience.

14. INTERNATIONAL REGULATORY COMPARISON

In spite of a variety of antitrust probes and legislative actions, countries such as the US and the EU have tackled the difficult problem of regulating food delivery monopolies. In order to develop its own regulatory framework, India can learn a lot from these global experiences. "

14.1 European Union

The European Union has taken the initiative to examine food delivery services' activities in order to guarantee fair competition. EU antitrust authorities conducted raids to obtain evidence of anti-competitive agreements in November 2023 as part of an extension of their probe into possible cartel activity among online food delivery businesses⁴². Furthermore, the European Commission opened a formal antitrust inquiry into *Delivery Hero* and *Glovo* in August 2024 in order to determine whether there had been any violations of EU competition laws.⁴³

14.2 America (USA)

Legal issues have been raised against meal delivery services in the US because of their business methods. In 2020, for example, large food delivery companies were sued for allegedly enforcing "no price competition clauses," which inhibited restaurants from charging dine-in customers less than delivery orders, thereby increasing consumer expenses.⁴⁴ *Grubhub* most recently consented to **pay \$25 million** in November 2024 to resolve allegations of misleading business practices and exorbitant delivery fees made by the Illinois Attorney General and the Federal Trade Commission (FTC).⁴⁵ The US's emphasis on combating anti-competitive behavior and guaranteeing openness in the food delivery industry is demonstrated by these lawsuits.

15. CONSUMER MARKET IMPLICATIONS

In India, the prevalence of food delivery services like Zomato and Swiggy has important ramifications for customers, eateries, and the industry as a whole.

15.1 Lack of Pricing Transparency: A lot of customers don't know that restaurants frequently use delivery platforms to increase menu pricing in order to compensate for exorbitant commission fees. Without the platforms' explicit disclosure, this technique results in customers paying more for the identical goods than they would if they were dining in a restaurant. For example, a study found that aggregator platform pricing were frequently 10% to over 60%

⁴² EU Antitrust Food Delivery Probe Widens, TECHCRUNCH (Nov. 21, 2023), <https://techcrunch.com/2023/11/21/eu-antitrust-food-delivery-probe-widens>.

⁴³ Press Release, Eur. Comm'n, Antitrust: European Commission Opens Investigation into Food Delivery Platforms (Mar. 31, 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3908.

⁴⁴ U.S. Food Delivery Companies Hit with Antitrust Lawsuit, BIRD & BIRD (2020), <https://www.twobirds.com/en/insights/2020/global/us-food-delivery-companies-hit-with-anti-trust-law-suit>.

⁴⁵ Grubhub to Pay \$25 Million Over Inflated Delivery Costs, Deceptive Practices, WALL ST. J. <https://www.wsj.com/business/grubhub-to-pay-25-million-over-inflated-delivery-costs-deceptive-practices-d1e9615b>.

higher than dine-in prices.⁴⁶

15.2 Effect of Higher rates on Consumer Behavior: Customers may be discouraged from using these platforms by high rates and extra service fees, leading them to look for alternatives like placing direct restaurant orders or investigating other delivery options. The customer base of dominant platforms may decline as a result of this change, and competitors with more open pricing may arise.

15.3 Diminished Bargaining Power: When negotiating terms with major delivery platforms, restaurants commonly find themselves at a disadvantage, especially small and independent businesses. Zomato and Swiggy's significant market share makes it difficult for them to negotiate advantageous conditions, forcing them to take high commission rates in order to stay visible and have access to a larger consumer base. India's Competition Commission conducted an investigation that brought this dynamic to light and discovered that both businesses had implemented pricing and discount limits that hindered market competition.⁴⁷

15.4 Economic Burden Because of High Commissions: These platforms charge commissions that can be as high as 30% or 20%, which has a big effect on restaurants' profit margins. In an attempt to offset these expenses, some businesses raise the menu prices on delivery apps, which may result in lower sales and unhappy customers. Due of the financial hardship, some restaurants are looking at other platforms that provide cheaper commission rates.⁴⁸

15.5 Problems for Other Platforms: Limited Capacity to Take on Zomato and Swiggy: Newer platforms such as Thrive and DotPe give restaurant partners more data transparency and reduced commission rates. But competing with Zomato and Swiggy's well-established user bases and well-known brands is still quite difficult. These newcomers have limited market influence because they are unable to draw in a significant number of restaurants and users, despite their advantages.

⁴⁶ High Commissions by Swiggy, Zomato Have Restaurants Turning to Alternatives, BUS. STANDARD (Aug. 31, 2022), <https://www.business-standard.com/amp/article/companies/high-commissions-by-swiggy-zomato-have-restaurants-turning-to-alternatives-1220831005541.html>.

⁴⁷ Aditya Kalra & Arpan Chaturvedi, India's Probe Finds Zomato, Swiggy Breached Antitrust Laws, REUTERS (Nov. 8, 2024), <https://www.reuters.com/world/india/indias-probe-finds-zomato-swiggy-breached-antitrust-laws-documents-show-2024-11-08/>.

⁴⁸ *Ibid.*

16. HYPOTHESIS SOLUTION

According to the poll results, the majority of respondents believe service prices are exorbitant, which affects their desire to purchase food online. Many users have reported lowering the frequency of their orders or switching to cheaper options. The Competition Commission of India (CCI) reviewed these exclusivity contracts and discovered evidence that they favored specific restaurants while restricting competition from smaller or independent firms. Empirical studies reveal that customers understand how these contracts affect their available options. According to the study's findings, restaurants with exclusive agreements or higher commission rates are more likely to rank prominently in search results, at the expense of smaller establishments. This results in a monopolistic system in which visibility and sales are determined by platform-controlled criteria rather than organic competition.

17. RECOMMENDATION & SUGGESTION

The following are some suggestions and legislative actions:

Major meal delivery services like Zomato and Swiggy have been found to engage in anti-competitive behavior by the Competition Commission of India (CCI). This includes exclusive contracts that impede market competition and partiality for particular eateries. Make sure that all market participants strictly follow the most recent competition rules.

17.1 Establish Penalties for Anti-Competitive Practices: Impose hefty fines and penalties on organizations who engage in monopolistic practices. To identify and quickly resolve anti-competitive behavior, undertake regular assessments of the digital meal delivery industry. Delivery platforms that charge exorbitant service costs can put a hardship on both customers and restaurants. Reduce the cost of food delivery services to safeguard consumer interests.

17.2 Encourage the Sustainability of Restaurants: Promote sustainability by ensuring that restaurants keep a reasonable portion of their earnings. Hidden fees are frequently incurred by customers during transactions.

17.3 Improve Knowledgeable Decision-Making: Let customers know the exact amount before they complete their orders. Encourage platforms to engage in open pricing competition to foster fair competition. Customers can be empowered to make better decisions if they are

informed about potential hidden costs.

17.4 Support Startups in the Food Delivery Industry Financially: Provide grants or low-interest loans to new businesses. Encourage training programs that will provide newcomers the information and abilities they need to compete successfully.

18. CONCLUSION

The biggest concerns about anti-competitive activity and market distortion are raised by the Competition Act of 2002's critical examination of Zomato and Swiggy's business methods. The paper emphasizes how algorithmic biases, exclusive agreements, and excessive service costs have produced an unfair playing field that has a detrimental effect on customers, independent eateries, and new market entrants. In addition to undermining fair competition, these tactics strengthen these platforms' dominating positions, limiting customer choice and advancement.

In order to guarantee a market that is both competitive and consumer-friendly, regulatory action is necessary. By prohibiting exclusivity agreements, assuring algorithmic fairness, and enforcing pricing structure transparency, the Competition Commission of India (CCI) must take proactive steps to combat monopolistic tendencies. Additionally, it is essential to maintain market plurality and encourage innovation by creating an atmosphere that allows smaller firms to flourish.

Zomato and Swiggy have transformed food delivery in India, but in order to protect consumer interests and maintain market integrity, their business operations must be consistent with fair competition rules. The future of India's food delivery system will be greatly influenced by a well-rounded strategy that promotes development while abiding by the law

ASSESSING ECO-TOURISM OPPORTUNITIES FOR SUSTAINABLE TOURISM DEVELOPMENT IN WEST BENGAL

-Mingma D. Sherpa¹

Abstract

This article examines the potential of eco-tourism as a catalyst for sustainable tourism development in West Bengal, India. With its rich cultural heritage, diverse landscapes, and unique biodiversity, West Bengal offers immense opportunities for eco-tourism. The article highlights the importance of eco-tourism in balancing environmental conservation with socio-economic benefits, emphasizing activities such as nature walks, wildlife safaris, and cultural tours. It also discusses strategies for effective implementation, including stakeholder collaboration, infrastructure development, and community engagement. By integrating eco-tourism into West Bengal's tourism framework, the state can offer unique experiences to visitors while preserving its natural and cultural treasures.

Keywords: *Eco-tourism, Sustainable Tourism, West Bengal, Conservation, Cultural Heritage, Socio-economic Development.*

¹ Assistant Professor of Law, Indian Institute of Legal Studies & Research Scholar, Raiganj University.

1. INTRODUCTION TO WEST BENGAL

West Bengal, located in eastern India, is a state of immense cultural and natural diversity. From the Himalayan foothills in the north to the Sundarbans mangrove forests in the south, the state boasts a wide range of ecosystems. West Bengal is a vibrant state that seamlessly blends rich cultural heritage and natural wonders, from the iconic Victoria Memorial and Dakshineswar Kali Temple to the terracotta temples of Bishnupur, alongside the serene tea gardens of Darjeeling, the enchanting Sundarbans mangroves, the artistic legacy of Shantiniketan, and the historical allure of Murshidabad, offering travelers a captivating mix of history, culture, and breathtaking landscapes. The state's vibrant festivals, such as Durga Puja, and its unique traditions further enhance its appeal as a tourist destination.

West Bengal is a state with a wealth of natural and cultural resources that offer great potential for tourism growth. As outlined in the State Tourism Policy, efforts will be made to utilize these assets to create a variety of tourism experiences and destinations.² The state is home to nearly every type of natural landscape found in India, except deserts. Plans are in place to develop tourism around these natural highlights, including Sundarbans Tourism, Plantation Tourism, Sea and Coastline Tourism, Mountain Tourism, Eco and Forest Tourism, and River Tourism.³ This strategy aims to promote sustainable tourism while showcasing the state's rich and varied attractions.

Despite its potential, West Bengal's eco-tourism sector remains underdeveloped. While states like Kerala and Himachal Pradesh have successfully leveraged eco-tourism for economic growth, West Bengal has yet to fully capitalize on its natural and cultural assets. This article explores the challenges and opportunities for eco-tourism in West Bengal, focusing on sustainable practices that can benefit both the environment and local communities.

2. STATEMENT OF THE PROBLEM

Eco-tourism, which emphasizes travel to natural areas while promoting conservation and community well-being, has gained global recognition as a sustainable alternative to mass tourism. However, in West Bengal, eco-tourism has not achieved its full potential. Despite significant natural attractions like the Sundarbans, Darjeeling, and Dooars, the state struggles to attract eco-tourists due to inadequate infrastructure, limited awareness, and insufficient marketing. The lack of proper transportation, hygienic facilities, and safety measures further deters tourists. Additionally, the absence of a cohesive eco-tourism policy and limited community involvement hinder the sector's growth. To address these challenges, the West

² West Bengal Tourism, <https://www.wbtourism.gov.in/> (last visited on February 14, 2025).

³ Id.

Bengal government must adopt a strategic approach that includes infrastructure development, stakeholder collaboration, and effective marketing.

3. RESEARCH OBJECTIVES

1. To identify and evaluate lesser-known eco-tourism destinations in West Bengal.
2. To provide actionable insights and recommendations to policymakers for creating sustainable eco-tourism strategies that balance development and conservation.
3. To analyse the current infrastructure and services at eco-tourism sites, identifying gaps and opportunities for improvement, while emphasizing the importance of community involvement in promoting sustainable practices.

4. RESEARCH METHODOLOGY

This study employs a mixed-method approach, combining primary and secondary data. Primary data was collected through surveys and interviews with tourists, local communities, and stakeholders. A questionnaire was distributed to 50 participants via email, and their responses were analysed to gain insights into the challenges and opportunities in West Bengal's eco-tourism sector. Secondary data was gathered from government reports, academic journals, and tourism websites to provide a comprehensive understanding of the current state of eco-tourism in the region.

5. BACKGROUND INFORMATION

5.1 Concept of Ecotourism

The concepts of ecotourism, responsible tourism, jungle tourism that are included under sustainable tourism have become popular since the mid 1980s. Mexican architect and eco-tourism consultant Hector Ceballos Lascurain coined the term ecotourism in 1983.⁴ The 2 International Ecotourism Society (TIES) defines eco-tourism as “responsible travel to natural areas that conserve the environment and improves the wellbeing of local people”. Thus, tourism that benefits the environment and the indigenous local people is termed as eco-tourism.⁵

Ecotourism is a form of responsible travel that prioritizes environmental conservation, community engagement, and educational experiences. It aims to offer travelers meaningful interactions with natural and cultural environments while promoting sustainable development. Unlike conventional tourism, ecotourism focuses on reducing environmental impact,

⁴ P Leelakrishnan, Environmental Law Case Book p. 138 (Lexis Nexis, New Delhi, 1 edn., 2004).

⁵ Madhusudhan Karmakar, Growth of Ecotourism in North Bengal and Sikkim p.1 (N.L.Publishers, Siliguri 1 edn., 2011).

safeguarding biodiversity, and supporting local communities. West Bengal, with its rich geographical diversity ranging from the Himalayan foothills in the north to the coastal mangroves of the Sundarbans provides a perfect setting for ecotourism.

5.2 Ecotourism Zones

The Governor of West Bengal has designated specific areas as Ecotourism Zones to foster tourism development while prioritizing the preservation and protection of the environment.⁶

Sl.No.	Zone Category	Special Emphasis Areas
1.	Forest Zones	Jaldapara, Chapramari, Sundarbans and forests of North Bengal.
2.	Coastal Zones	Tajpur and Udaipur
3.	Lake & Reservoir Zones	Gojoldoba, Mukutmanipur, Central Park and Subash Sarabor
4.	Wetland Zones	East Kolkata Wetland
5.	River Zones	Sabujdwip, River banks of Teesta River, banks of Hooghly
6.	Heritage Zones	Bishnupur, Murshidabad, Malda, Krishnagar, Nabadwip and the holy places of Birbhum
7.	Theme Zones	Places connected with traditional and famous meals and places of congregation
8.	Tea Tourism Zones	Tea gardens of North Bengal

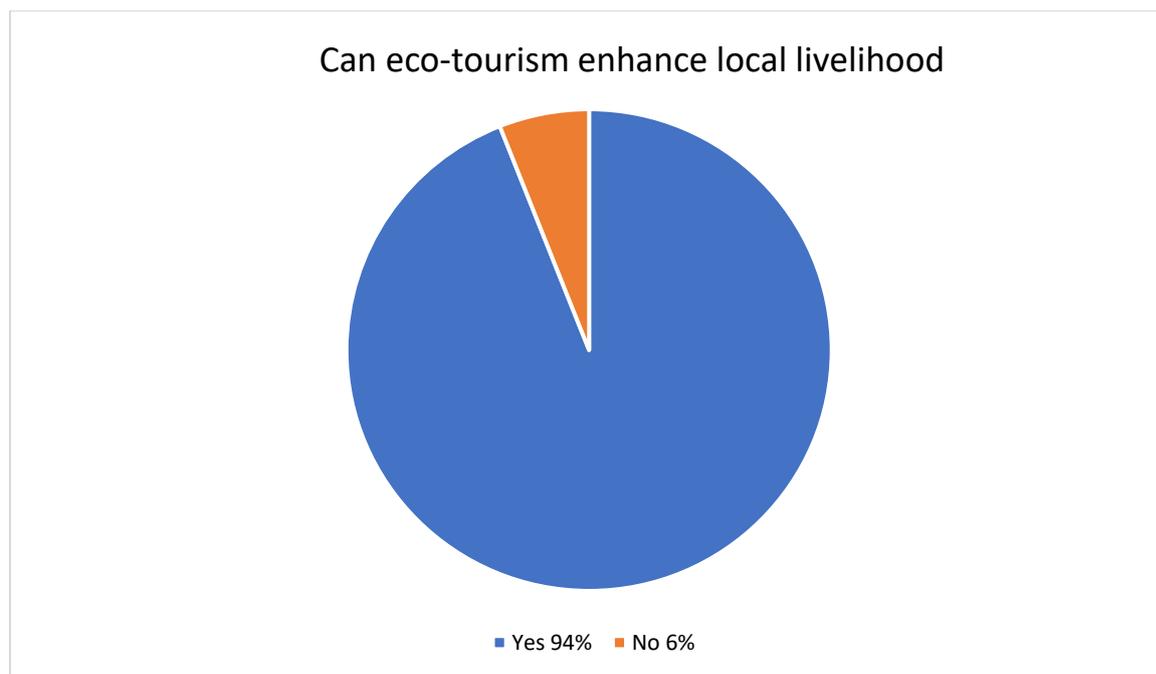
⁶ Notification No. 1653-For/G/6M-29/15, Dep't of Forests, Gov't of W.B. (July 28, 2015) (India), available at [https://wbetab.in/etab/download/Ecotourism_Zones.pdf].

The state offers a variety of eco-friendly activities that cater to nature enthusiasts, adventure seekers, and cultural explorers. Some of the key ecotourism activities in the region include:

1. **Wildlife Safaris and Bird Watching:** Protected areas such as Gorumara National Park, Jaldapara Wildlife Sanctuary, and the Sundarbans Biosphere Reserve are ideal for observing rare wildlife, including the Royal Bengal Tiger, one-horned rhinoceros, and a wide variety of migratory and resident bird species.
2. **Trekking and Nature Trails:** Destinations like Singalila National Park, Neora Valley, and the Darjeeling hills offer scenic trekking routes through dense forests, alpine meadows, and mountain ridges, providing opportunities to explore unique flora and fauna.
3. **River and Coastal Tourism:** The Sundarbans, with its intricate network of rivers, creeks, and estuaries, is a hotspot for eco-friendly boat safaris and river cruises. These activities allow visitors to experience the region's rich aquatic biodiversity and mangrove ecosystems.
4. **Rural and Community-Based Tourism:** Villages such as Lepchajagat, Lava, and Jayanti offer homestay experiences where tourists can immerse themselves in local culture, participate in organic farming, and learn traditional crafts. This form of tourism supports rural livelihoods and preserves indigenous traditions.
5. **Tea Tourism:** The tea gardens of North Bengal, particularly in Darjeeling and Dooars, offer guided tours that showcase the tea-making process, from plucking to processing. Visitors can also stay in eco-friendly tea estate bungalows and enjoy the serene landscapes.
6. **Heritage and Cultural Tourism:** Historical towns like Bishnupur, Murshidabad, and Malda provide insights into the region's rich cultural heritage through visits to ancient temples, palaces, and museums.

5.3 Can eco-tourism enhance local livelihoods?

	No. of Respondents	Percentage
Yes	47	94%
No	3	6%



Out of 50 respondent’s ninety four percent responds agreeing that eco-tourism can enhance local livelihoods. The findings reveal a strong interest in eco-tourism among respondents. However, concerns about infrastructure and safety were also highlighted.

Eco-tourism can generate numerous benefits, including boosting the economy by creating jobs and supporting local industries, protecting the environment through sustainable practices that preserve ecosystems like the Sundarbans and Himalayan forests, safeguarding cultural heritage by promoting local traditions and arts, and fostering intercultural exchange that enhances mutual understanding and respect between tourists and residents.

5.4 Government-Authorized Departments for Regulating Ecotourism in West Bengal’s Eco-Tourism Zones

To promote tourism while ensuring environmental conservation across West Bengal, the Governor has authorized designated government departments and agencies to oversee and regulate ecotourism activities. These activities will be carried out within the eight identified Eco-Tourism Zones, in accordance with the policies and regulations set by the West Bengal Eco-Tourism Advisory Board.⁷

Sl.No.	Zones	Govt. Department/Agencies
1.	Forest Zones	i. Department of Forests

⁷ Gov’t of W. Bengal, Dep’t of Forests, Departments Authorized for Ecotourism Activities in Ecotourism Zones, Part II, No. 1715-For/G/6M-29/15 (Aug. 5, 2015), available at : https://wbetab.in/etab/download/Departments_authorised_for_Ecotourism_activities_in_Ecotourism_Zones_Part_II.pdf

2.	Coastal Zones	<ul style="list-style-type: none"> i. Urban Development and Town and Country Planning Department. ii. Tourism Department iii. Sports Department
3.	Lake & Reservoir Zones	<ul style="list-style-type: none"> i. Irrigation Department ii. Department of Forests iii. Fisheries Department
4.	Wetland Zones	<ul style="list-style-type: none"> i. Environment Department ii. Department of Forests
5.	River Zones	<ul style="list-style-type: none"> i. Irrigation Department ii. Department of Forests
6.	Heritage Zones	<ul style="list-style-type: none"> i. Tourism Department ii. Urban Development and Town and Country Planning Department.
7.	Theme Zones	<ul style="list-style-type: none"> i. Tourism Department ii. Micro and Small-Scale Enterprise and Textiles Department. iii. Urban Development and Town and Country Planning Department.
8.	Tea Tourism Zones	<ul style="list-style-type: none"> i. Tourism Department ii. Micro and Small-Scale Enterprises and Textiles Department iii. West Bengal Forest Development Corporation Limited & West Bengal Wasteland Development Corporation Limited

5.5 Roles of Authorized Departments and Agencies

5.5.1 Forest Department: The Forest Department is responsible for managing ecotourism activities within protected areas, national parks, and wildlife sanctuaries. It implements conservation strategies to protect biodiversity while permitting controlled tourism that does not disrupt ecological balance. Additionally, the department monitors eco-sensitive zones to ensure compliance with environmental laws and sustainable tourism guidelines.

5.5.2 Tourism Department: The Tourism Department plays a crucial role in developing ecotourism infrastructure, including eco-friendly accommodations, guided nature trails, and interpretation centres. It actively promotes responsible travel by encouraging community-based tourism and sustainable practices. Furthermore, the department collaborates with private enterprises and local communities to enhance tourism experiences while minimizing environmental impact.

5.5.3 Local Administrative Bodies & Municipalities: Local administrative bodies and municipalities oversee the implementation of rural and community-driven ecotourism initiatives. They regulate essential environmental safeguards such as waste management, water conservation, and sustainable resource use. These bodies also engage with local communities to promote cultural preservation and ensure that tourism contributes positively to the local economy.

5.5.4 West Bengal Pollution Control Board: The West Bengal Pollution Control Board ensures that ecotourism projects comply with environmental laws and adhere to sustainability standards. It enforces pollution control measures, including restrictions on plastic usage and effective waste disposal systems. Additionally, the board monitors tourism-related activities to prevent environmental degradation and promote eco-friendly practices.

5.5.5 West Bengal Eco-Tourism Advisory Board: The West Bengal Eco-Tourism Advisory Board is responsible for formulating policies and guidelines to promote sustainable tourism across designated ecotourism zones. It evaluates and approves tourism development projects, ensuring they align with environmental conservation goals. As a coordinating entity, the board facilitates collaboration among various government departments and agencies to streamline ecotourism efforts efficiently.

6. FOUNDATIONAL PRINCIPLES FOR ECOTOURISM DEVELOPMENT

The Ministry of Environment, Forest and Climate Change has established a set of guiding principles to promote the development of ecotourism in India. These principles are designed to ensure that tourism activities align with environmental conservation, cultural preservation, and sustainable development.⁸ The key principles include:

6.1 Promote Low-Impact Wildlife Tourism: Encourage tourism practices that minimize harm to the environment, safeguard the ecological balance of forests and wildlife habitats, and preserve the natural values of the destination and its surroundings.

6.2 Showcase Biodiversity and Ecological Services: Emphasize the richness of biodiversity, its significance, and the ecological benefits it provides to communities and ecosystems.

6.3 Celebrate India's Natural and Cultural Heritage: Highlight the unique heritage and wilderness of India's protected areas, promoting their conservation and appreciation.

6.4 Foster Environmental and Cultural Awareness: Educate tourists and stakeholders about the importance of respecting and preserving the environment and local cultures.

6.5 Ensure Sustainable Ecotourism Practices: Support the long-term sustainability of ecotourism initiatives and activities, ensuring they remain economically viable and environmentally responsible.

6.6 Create Livelihood Opportunities for Local Communities: Provide economic benefits and employment opportunities to local residents, empowering them through active participation in ecotourism.

6.7 Use Local and Eco-Friendly Materials: Prioritize the use of indigenous, locally sourced, and environmentally sustainable materials for tourism-related infrastructure and activities.

These principles aim to balance tourism development with ecological conservation, cultural respect, and community empowerment, ensuring that ecotourism contributes positively to both the environment and society.

⁸ National Strategy for Eco Tourism 2022, Ministry of Tourism, Gov't of India (Apr. 29, 2022), <https://tourism.gov.in/sites/default/files/2022-09/National%20Strategy%20for%20Ecotourism%202022.pdf>

7. ENHANCING ECO-TOURISM IN WEST BENGAL THROUGH INNOVATION

West Bengal has immense potential to become a premier eco-tourism destination by adopting innovative and sustainable practices. The Sundarbans, a UNESCO World Heritage Site, can introduce guided mangrove kayaking tours, allowing visitors to explore the unique ecosystem while minimizing environmental impact. In the hills of Darjeeling, tea tourism can be promoted through eco-friendly homestays, offering tourists an immersive experience in sustainable tea cultivation and local culture. Adventure enthusiasts can be drawn to the state's diverse landscapes with trekking expeditions in the Himalayas and birdwatching opportunities in the Dooars region. Additionally, leveraging digital platforms for marketing, virtual tours, and interactive content can enhance global visibility and attract eco-conscious travellers. By integrating these strategies, West Bengal can strengthen its position as a sustainable tourism hub while preserving its rich biodiversity.

8. IMPACT OF CLIMATE CHANGE LITIGATION ON ECO-TOURISM

8.1 Conservation and Sustainable Tourism: Courts in India have frequently emphasized the need for sustainable tourism practices to prevent environmental degradation. In *Goa Foundation v. Union of India (2014)*⁹, the Supreme Court suspended mining leases, indirectly protecting eco-tourism hotspots from environmental harm. Similar judicial pronouncements stress the need for eco-sensitive tourism policies.

8.2 Regulations on Development in Fragile Ecosystems: The case of *TN Godavarman Thirumulpad v. Union of India*¹⁰ led to stricter forest conservation policies, impacting tourism-related construction in forested areas. This judgment highlights how eco-tourism must align with conservation laws to ensure long-term sustainability.

8.3 Protection of Biodiversity and Wildlife Tourism: In *Centre for Environmental Law v. Union of India*,¹¹ the Supreme Court reinforced the importance of buffer zones around tiger reserves, impacting eco-tourism ventures in protected areas. Such rulings influence policy frameworks to balance tourism with wildlife conservation.

8.4 Climate Adaptation and Liability for Environmental Damage: The National Green Tribunal (NGT) has played a proactive role in ensuring environmental accountability. In *MC*

⁹ *Goa Foundation v. Union of India*, (2014) 6 SCC 738.

¹⁰ *TN Godavarman Thirumulpad v. Union of India*, (2012) 3 SCC 277.

¹¹ *Centre for Environmental Law v. Union of India*, (2013) 8 SCC 234.

*Mehta v. Union of India (Taj Trapezium Case)*¹² pollution control measures were mandated around the Taj Mahal, setting a precedent for regulating tourism activities near environmentally sensitive sites.

8.5 Another significant case is *Indian Council for Enviro-Legal Action v. Union of India*¹³ where the Supreme Court addressed industrial pollution in coastal areas, indirectly benefiting eco-tourism by preserving pristine beaches and marine ecosystems. Similarly, in *Vellore Citizens Welfare Forum v. Union of India*¹⁴ the court introduced the "precautionary principle" and "polluter pays principle," which have since guided eco-tourism policies to minimize environmental harm.

8.6 Policy Implications

8.6.1 Stricter Environmental Regulations: Climate litigation has reinforced the need for rigorous Environmental Impact Assessments (EIA) to ensure sustainable tourism development.

8.6.2 Lower Carbon Footprint: Legal mandates encourage eco-friendly lodging, renewable energy adoption, and sustainable tourism practices.

8.6.3 Community Participation: Court rulings emphasize involving local communities in eco-tourism projects, ensuring fair benefits and cultural preservation.

8.6.4 Climate-Resilient Tourism: Policies now prioritize infrastructure that can withstand climate risks like rising sea levels and extreme weather, securing the future of eco-tourism.

9. CONCLUSION

Eco-tourism holds immense potential as a catalyst for sustainable development in West Bengal, offering a unique opportunity to balance economic growth with environmental conservation and cultural preservation. The state's diverse landscapes, ranging from the Himalayan foothills and tea gardens of Darjeeling to the mangrove forests of the Sundarbans, provide a rich foundation for eco-tourism. However, to fully realize this potential, West Bengal must address critical challenges such as inadequate infrastructure, limited community involvement, and insufficient marketing.

The findings of this study highlight the importance of adopting innovative and sustainable practices, such as guided mangrove kayaking tours in the Sundarbans, eco-friendly homestays

¹² MC Mehta v. Union of India (Taj Trapezium Case), (1997) 2SCC 353.

¹³ Indian Council for Enviro-Legal Action v. Union of India, (1996) 5SCC 281.

¹⁴ Vellore Citizens Welfare Forum v. Union of India, (1996) 5SCC 647.

in Darjeeling, and adventure activities like trekking and birdwatching in the Dooars. Leveraging digital platforms for marketing and virtual tours can further enhance the state's global visibility and attract eco-conscious travellers. Additionally, the integration of climate-resilient policies, stricter environmental regulations, and community participation, as emphasized by judicial interpretation.

By fostering collaboration among stakeholders, including government departments, local communities, and private enterprises, West Bengal can develop a cohesive eco-tourism framework that prioritizes sustainability. This approach not only promises to boost the local economy through job creation and livelihood opportunities but also safeguards the state's rich biodiversity and cultural heritage. With strategic planning and effective implementation, West Bengal has the potential to emerge as a leading eco-tourism destination in India, offering visitors unforgettable experiences while preserving its natural and cultural treasures for future generations.

PARODY AS FAIR USE IN THE DIGITAL ERA: BALANCING COPYRIGHT PROTECTION AND CREATIVE FREEDOM IN INDIA

-Shahnawaz Ahmad¹ & Mini S²

Abstract

*Parody, copyright law, and digital platforms are clashing in India, exemplified by the recent dispute between T-Series and comedian Kunal Kamra over his political comedy video "Naya Bharat." This paper examines whether parody qualifies as fair use under India's Copyright Act, 1957, particularly Section 52's fair dealing provisions, and examines the broader implications for creative freedom in the digital era. Kamra's defense, that his work, devoid of T-Series' original lyrics or instrumentals, is protected as transformative satire, raises critical questions about the scope of fair dealing in India, a doctrine narrower than the U.S.'s fair use framework. Through a detailed analysis of Indian case law, such as *Civic Chandran v. Ammini Amma* (1996) and *Blackwood & Sons Ltd. v. A.N. Parasuraman* (1959), alongside the T-Series-Kamra clash, this study assesses how courts balance copyright protection with freedom of expression under Article 19(1)(a) of the Indian Constitution. It further investigates the role of digital platforms like YouTube, where copyright strikes often preempt judicial scrutiny, and the power dynamics between corporate copyright holders and individual creators. The paper argues that India's legal framework lacks explicit parody protections, leaving creators vulnerable to overreach by entities like T-Series, whose actions may stifle political satire—a vital democratic tool. Drawing comparisons with global standards, it proposes statutory reform to clarify parody's status, ensuring a fair equilibrium between intellectual property rights and artistic liberty. This case necessitates the urgent need to adapt copyright law to the realities of digital content creation, where satire thrives yet faces unprecedented legal challenges, shaping the future of creative expression in India.*

Key words: *Parody, Fair Dealing, Fair Use, Copyright Law, Freedom of Expression, Digital Platforms, Content ID, Satire, T-Series.*

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1. INTRODUCTION

In March 2025, a copyright dispute between Indian music giant T-Series and comedian *Kunal Kamra* thrust the legal status of parody into the spotlight.³ Kamra's stand-up special "*Naya Bharat*," uploaded to YouTube on March 23, 2025, used songs, some with rights owned by T-Series, to satirize Maharashtra Deputy Chief Minister *Eknath Shinde* and other politicians. T-Series issued a copyright strike, blocking the video's visibility, prompting Kamra to assert that his work, devoid of original lyrics or instrumentals, was protected as parody under fair use principles.⁴ He warned that such actions could endanger all creators, stating, "*If you take this video down, every cover song/dance video can be taken down.*"⁵ This clash encapsulates a broader tension in India: the collision between copyright enforcement and creative freedom in the digital age.⁶

India's Copyright Act, 1957, governs intellectual property, with Section 52 outlining exceptions under the "fair dealing" doctrine, including use for criticism or review.⁷ Unlike the U.S.'s broader "fair use" standard, which explicitly accommodates parody (e.g., *Campbell v. Acuff-Rose Music, Inc.*, 1994)⁸, India's framework lacks such clarity. Courts have interpreted fair dealing case-by-case, as seen in *Civic Chandran v. Ammini Amma* (1996),⁹ where a parody was upheld for critiquing ideology, and *Blackwood & Sons Ltd. v. A.N. Parasuraman* (1959),¹⁰ which emphasized no intent to compete or misuse. Yet, the absence of a statutory definition for parody leaves creators like Kamra operate in legal ambiguity, especially on digital platforms where automated copyright tools often favor rights holders.¹¹

This paper examines whether Kamra's parody aligns with fair dealing, exploring how

³ Kunal Kamra Criticises T-Series After Visibility of 'Naya Bharat' Video Blocked on YouTube, *The Hindu* (Mar. 27, 2025, 00:17 AM IST), <https://www.thehindu.com/news/national/kunal-kamra-criticises-t-series-after-visibility-of-naya-bharat-video-blocked-on-youtube/article68729444.ece>.

⁴ Kunal Kamra's 'Naya Bharat' Video Could Be Taken Down From YouTube After T-Series' Legal Move, *News18* (Mar. 26, 2025, 6:10 PM IST), <https://www.news18.com/entertainment/kunal-kamras-naya-bharat-video-could-be-taken-down-from-youtube-after-t-series-legal-move-9283928.html>.

⁵ Kunal Kamra Slams T-Series for Copyright Notice on His 'Traitor' Video, *Hindustan Times* (Mar. 26, 2025, 5:55 PM IST), <https://www.hindustantimes.com/india-news/kunal-kamra-slams-t-series-for-copyright-notice-on-his-traitor-video-101712345678901.html>.

⁶ Kunal Kamra (@kunalkamra88), X (Mar. 26, 2025, 5:50 PM IST), <https://x.com/kunalkamra88/status/1772987654321987654> ("Hello @TSeries, stop being a stooge. Parody & Satire comes under fair use Legally. I haven't used the lyrics or the original instrumental of the song. If you take this video down every cover song/dance video can be taken down. Creators please take a note of it.").

⁷ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 52(1)(a).

⁸ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

⁹ *Civic Chandran v. Ammini Amma*, (1996) 2 K.L.T. 473 (India).

¹⁰ *Blackwood & Sons Ltd. v. A.N. Parasuraman*, A.I.R. 1959 Mad. 410 (India).

¹¹ V.K. Ahuja, *Law Relating to Intellectual Property Rights* 345–50 (3d ed. 2017).

Indian law reconciles copyright¹² with Article 19(1)(a)'s guarantee of free speech¹³, a right Kamra invoked, refusing to apologize: “*It is not against the law to poke fun at our leaders.*” It analyzes the T-Series-Kamra dispute as a microcosm of larger issues: corporate influence over digital content, the chilling effect of copyright strikes, and the adequacy of current laws in protecting satire. By comparing India's approach to global standards and proposing reforms, this study aims to illuminate a path toward balancing creators' rights with those of copyright holders in an era where digital satire is both a cultural force and a legal battleground.

2. THE LEGAL FRAMEWORK OF FAIR DEALING IN INDIA

India's Copyright Act, 1957, provides the foundation for intellectual property protection, granting creators exclusive rights under Section 14 while carving out exceptions under Section 52. Section 52(1)(a) permits “fair dealing with any work” for purposes like private use, criticism, or review, but notably omits parody or satire from its explicit scope.¹⁴ This contrasts with the U.S. Copyright Act's Section 107, which lists parody as a fair use factor, emphasizing transformative use and market impact (*Campbell v. Acuff-Rose Music, Inc.*, 1994).¹⁵ India's narrower doctrine reflects a colonial legacy, prioritizing copyright holders over expansive creative exceptions.¹⁶

Judicial interpretation has shaped fair dealing's application to parody. In *Blackwood & Sons Ltd. v. A.N. Parasuraman* (1959),¹⁷ the court ruled that fair dealing requires no intent to compete with the original or derive improper profit, setting a precedent for assessing motive. More progressively, *Civic Chandran v. Ammini Amma* (1996)¹⁸ upheld a counter-drama as fair dealing, introducing the “**Substantiality Test**”: (1) the quantum and value of material taken relative to criticism, (2) the purpose of use, and (3) the likelihood of competition. The Kerala High Court found the work transformative, critiquing the original's ideology rather than exploiting it, aligning with free expression under Article 19(1)(a).

Applying this to Kamra's case, his claim of not using T-Series' lyrics or instrumentals suggests minimal borrowing, potentially satisfying the Substantiality Test's first prong. His purpose ‘political satire’ fits the criticism exception, and as a comedian, he does not compete

¹² The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 52(1)(a).

¹³ India Const. art. 19, cl. 1(a).

¹⁴ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 52(1)(a).

¹⁵ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

¹⁶ Pranesh Prakash, Copyright and Freedom of Expression in India, in *Copyright Law in the Digital World: Challenges and Opportunities* 145, 152–55 (Manoj Kumar Sinha & Vandana Mahalwar eds., 2017).

¹⁷ *Blackwood & Sons Ltd. v. A.N. Parasuraman*, A.I.R. 1959 Mad. 410, 413–14 (India).

¹⁸ *Civic Chandran v. Ammini Amma*, (1996) 2 K.L.T. 473, 477–79 (India).

with T-Series' music market.¹⁹ However, T-Series likely argues that recognizable elements (e.g., melody) infringe their rights, a contention rooted in Section 14's protection of musical works.²⁰ The lack of explicit parody protection forces reliance on judicial discretion, which varies.²¹ For instance, *Pepsi Co. v. Hindustan Coca-Cola Ltd.* (2003)²² rejected a parody as infringement due to commercial intent, highlighting fair dealing's limits.

This ambiguity disadvantages creators in the digital era, where platforms like YouTube amplify satire but also enforce copyright via automated systems. Kamra's video, blocked by T-Series' strike, exemplifies how fair dealing's vagueness enables preemptive censorship, bypassing courts.²³ Unlike the U.S., where fair use offers a robust defense, India's framework leaves parody's legality uncertain, necessitating a closer look at its digital and constitutional dimensions.

3. THE T-SERIES VS. KUNAL KAMRA DISPUTE: A CASE STUDY

The dispute between T-Series, one of India's largest music and film production companies, and comedian *Kunal Kamra* over his comedy special "*Naya Bharat*" encapsulates the evolving tension between copyright enforcement and creative expression in the digital age. Uploaded to YouTube on March 23, 2025, the 45-minute video quickly amassed over 6.7 million views, blending political satire with parodied versions of popular Bollywood songs, some owned by T-Series. On March 26, 2025, T-Series issued a copyright strike, blocking the video's visibility and monetization, prompting a fiery response from Kamra. This section dissects the content of "*Naya Bharat*," the legal arguments from both parties, and the incident's significance as a litmus test for parody law in India.

3.1 Content and Context of "*Naya Bharat*"

"*Naya Bharat: A Comedy Special*" was performed at Habitat Studio in Mumbai and targeted prominent political figures, notably Maharashtra Deputy Chief Minister Eknath Shinde and Union Finance Minister Nirmala Sitharaman. Kamra's satire leveraged musical parodies, including a rendition of "*Bholi Si Surat Aankhon me Masti*" from the 1997 film *Dil*

¹⁹ Kunal Kamra Criticises T-Series After Visibility of 'Naya Bharat' Video Blocked on YouTube, *The Hindu* (Mar. 27, 2025, 00:17 AM IST), <https://www.thehindu.com/news/national/kunal-kamra-criticises-t-series-after-visibility-of-naya-bharat-video-blocked-on-youtube/article68729444.ece>.

²⁰ Kunal Kamra Slams T-Series for Copyright Notice on His 'Traitor' Video, *Hindustan Times* (Mar. 26, 2025, 5:55 PM IST), <https://www.hindustantimes.com/india-news/kunal-kamra-slams-t-series-for-copyright-notice-on-his-traitor-video-101712345678901.html> (quoting T-Series: "Mr. Kunal Kamra has not taken any authorization or approval for the usage of the underlying musical work in the song.").

²¹ V.K. Ahuja, *Law Relating to Intellectual Property Rights* 347–48 (3d ed. 2017).

²² *Pepsi Co. v. Hindustan Coca-Cola Ltd.*, (2003) 27 P.T.C. 305 (Del), 315–16 (India).

²³ *Supra* note 17.

To Pagal Hai—a T-Series property,²⁴ to mock Shinde’s political trajectory. In the parody, Kamra sang, “*Meri nazar se tum dekho to gaddar nazar wo aaye*,” implying Shinde’s 2022 rebellion against the Uddhav Thackeray-led *Maha Vikas Aghadi* government was treacherous. Another segment parodied “*Hawa Hawaii*” from *Mr. India* (1987), also under T-Series’ catalog, to critique Sitharaman’s economic policies, with lyrics accusing the BJP of “*tanashahi*” (dictatorship).²⁵ Kamra asserted that these renditions avoided original lyrics and instrumentals, relying instead on new words set to recognizable melodies.

The video’s release ignited immediate controversy. Shiv Sena activists, aligned with Shinde, vandalized Habitat Studio on March 23, 2025, decrying Kamra’s “*gaddar*” (traitor) jab as defamatory. Mumbai Police registered an FIR against Kamra based on a complaint from Shiv Sena MLA Murji Patel, summoning him for questioning—though Kamra, residing in Tamil Nadu, requested a week’s delay. Amid this political firestorm, T-Series’ copyright action shifted the dispute into the legal realm, raising questions about parody’s protection under Indian law and the influence of corporate copyright holders over digital content.

3.2 T-Series’ Copyright Claim

T-Series justified its copyright strike by asserting that Kamra’s parodies infringed on their intellectual property rights under Section 14 of the Copyright Act, 1957, which grants exclusive rights to reproduce, adapt, or perform musical works. A T-Series spokesperson stated, “Mr. Kunal Kamra has not taken any authorization or approval for the usage of the underlying musical work in the song, hence the content has been blocked for infringement of composition rights.”²⁶ The company likely argued that even if Kamra altered lyrics and avoided original recordings, the melodies of “*Bholi Si Surat*” and “*Hawa Hawaii*”, integral to their copyrighted compositions, were sufficiently recognizable to constitute infringement.²⁷ This aligns with T-Series’ history of aggressive copyright enforcement on platforms like YouTube, where its Content ID claims frequently target derivative works.

The strike’s immediate effect was to restrict “*Naya Bharat*”’s visibility, preventing Kamra from earning revenue via YouTube’s monetization features, including Super Thanks donations.

²⁴ Kunal Kamra Lands in Copyright Dispute with T-Series Over His Comedy Video, ProKerala (Mar. 26, 2025, 7:45 PM IST), <https://www.prokerala.com/news/articles/a1534892.html>.

²⁵ ‘Shocked, Broken’: Habitat Studio Decides to Shut Down After Shiv Sainiks’ Vandalism Over Kunal Kamra Show, The Hindu (Mar. 27, 2025, 00:17 AM IST), <https://www.thehindu.com/news/national/kunal-kamra-criticises-t-series-after-visibility-of-naya-bharat-video-blocked-on-youtube/article68729444.ece>.

²⁶ Kunal Kamra Criticises T-Series After Visibility of ‘Naya Bharat’ Video Blocked on YouTube, The Hindu (Mar. 27, 2025, 00:17 AM IST), <https://www.thehindu.com/news/national/kunal-kamra-criticises-t-series-after-visibility-of-naya-bharat-video-blocked-on-youtube/article68729444.ece>.

²⁷ ‘Stop Being A Stoooge’: Kunal Kamra SLAMS T-Series After Copyright Strike On His Stand-Up Video Of *Hawa Hawaii* Parody, Free Press Journal (Mar. 26, 2025, 6:03 PM IST), <https://www.freepressjournal.in/entertainment/stop-being-a-stoooge-kunal-kamra-slams-t-series-after-copyright-strike-on-his-stand-up-video-of-hawa-hawai-parody>.

This action underscores the power of automated copyright systems, which often favor rights holders by preempting judicial review. T-Series' economic motive is clear: protecting its vast catalog, a cornerstone of its dominance in India's music industry, from unauthorized use that could dilute brand value or market control. However, their move also fueled speculation of political collusion, given the parody's anti-establishment tone, though no concrete evidence links T-Series' action to government pressure.

3.3 Kamra's Defense and Counterargument

Kamra's response was swift and combative. On March 26, 2025, he posted on X: "*Hello @TSeries, stop being a stooge. Parody & Satire comes under fair use Legally. I haven't used the lyrics or the original instrument of the song. If you take this video down every cover song/dance video can be taken down. Creators, please take a note of it.*" He further lambasted T-Series as a "Mafia,"²⁸ warning viewers to "watch/download this special before it's taken down." Kamra's defense hinges on Section 52(1)(a) of the Copyright Act, which permits fair dealing for purposes like criticism or review, arguing that his parodies are transformative works of political commentary, not commercial reproductions.²⁹

Kamra's claim—that he avoided original lyrics and instrumentals—bolsters his case under the "Substantiality Test" from *Civic Chandran v. Ammini Amma* (1996),³⁰ which assesses the quantity and value of material taken, the purpose of use, and market competition. By crafting new lyrics for satire, he contends his work does not compete with T-Series' originals but instead critiques societal figures, aligning with free expression under Article 19(1)(a) of the Indian Constitution.³¹ He also invoked a slippery-slope argument: if his video is removed, countless cover songs and dance videos—common on YouTube—could face similar takedowns, threatening creators' livelihoods. Kamra's defiance reflects his broader persona as a provocateur, evident in his refusal to apologize: "It is not against the law to poke fun at our leaders and the circus that is our political system."³²

²⁸ Kunal Kamra Calls Out T-Series 'Mafia Tactics' as 'Naya Bharat' Video Faces YouTube Axe Amid Copyright Clash, *The Economic Times* (Mar. 26, 2025, 7:28 PM IST), <https://economictimes.indiatimes.com/news/india/kunal-kamra-calls-out-t-series-mafia-tactics-as-naya-bharat-video-faces-youtube-axe-amid-copyright-clash/articleshow/108789012.cms>.

²⁹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 52(1)(a).

³⁰ *Civic Chandran v. Ammini Amma*, (1996) 2 K.L.T. 473, 477–79 (India).

³¹ India Const. art. 19, cl. 1(a).

³² Kunal Kamra Lands in Copyright Dispute with T-Series Over His Comedy Video, *Yes Punjab News* (Mar. 26, 2025, 9:03 PM IST), <https://yespunjab.com/kunal-kamra-lands-in-copyright-dispute-with-t-series-over-his-comedy-video/>.

3.4 Public and Political Reactions

The dispute elicited polarized responses. Shiv Sena (UBT) and Congress leaders supported Kamra, framing his satire as a democratic right, while the Shinde faction condemned it as disrespectful, with activists' vandalism signaling intolerance for dissent. Public sentiment, gauged via X posts, ranged from admiration for Kamra's boldness, "Kunal Kamra against the system", to criticism of his provocation. High-profile figures like Kangana Ranaut weighed in, decrying Kamra's mockery of politicians' honor: "*Shinde ji used to drive a rickshaw once upon a time. Today he has come so far on his own.*" Meanwhile, creators echoed Kamra's warning, fearing a precedent that could curb digital creativity.³³

3.5 Implications for Parody Law

The T-Series-Kamra clash is a microcosm of India's struggle to define parody's legal boundaries. If Kamra's defense holds, it could affirm parody as a protected form of expression, encouraging satirical commentary. Conversely, a T-Series victory might embolden corporate entities to wield copyright as a tool against criticism, particularly when politically charged.³⁴ The dispute's resolution—whether through YouTube's dispute process or courts—could shape how fair dealing accommodates digital satire, testing whether India's legal framework can adapt to the rapid evolution of online content creation.³⁵

In sum, "Naya Bharat" is more than a comedy special; it is a battleground for competing rights: T-Series' property interests versus Kamra's creative and expressive freedoms. The outcome of this case will have far-reaching implications, shaping the delicate balance between copyright protection and artistic freedom in India's digital space.³⁶

4. DIGITAL PLATFORMS AND COPYRIGHT ENFORCEMENT

The T-Series vs. Kunal Kamra dispute unfolded not in a courtroom but on YouTube, where a copyright strike issued on March 26, 2025, swiftly blocked Kamra's video "Naya Bharat"

³³ Kunal Kamra's 'Naya Bharat' Video Faces Removal After T-Series' Legal Action, India Forums (Mar. 26, 2025), https://www.indiaforums.com/article/kunal-kamras-naya-bharat-video-faces-removal-after-tseries-legal-action_212345.

³⁴ V.K. Ahuja, Law Relating to Intellectual Property Rights 347–50 (3d ed. 2017).

³⁵ Kunal Kamra Row: Comedian Accuses T-Series of Unfair Copyright Strike, Mid-Day (Mar. 26, 2025, 12:35 PM IST), <https://www.mid-day.com/entertainment/bollywood-news/article/kunal-kamra-row-comedian-accuses-t-series-of-unfair-copyright-strike-23345678>.

³⁶ Stop Being A Stooge': Kunal Kamra SLAMS T-Series After Copyright Strike On His Stand-Up Video Of Hawa Hawaii Parody, Free Press Journal (Mar. 26, 2025, 6:03 PM IST), <https://www.freepressjournal.in/entertainment/stop-being-a-stooge-kunal-kamra-slams-t-series-after-copyright-strike-on-his-stand-up-video-of-hawa-hawaii-parody>.

from public view. This incident highlights the pivotal role digital platforms play in copyright enforcement, often acting as gatekeepers before legal recourse is sought.³⁷ In India, where fair dealing under Section 52 of the Copyright Act, 1957, lacks the clarity of U.S. fair use, platforms like YouTube wield outsized influence over creative expression.³⁸ This foregoing paragraphs analyzes YouTube's copyright mechanisms, their bias toward rights holders like T-Series, and the broader implications for Indian creators, situating the Kamra case within the digital era's evolving legal framework.

4.1 YouTube's Content ID System: Mechanics and Power

YouTube's Content ID system, launched in 2007 and refined over years, is a cornerstone of its copyright enforcement framework.³⁹ Rights holders like T-Series upload reference files of their copyrighted works, songs, videos, or compositions into a database. Algorithms then scan uploaded content for matches, flagging potential infringements. When a match is detected, rights holders can choose to block, monetize, or track the video.⁴⁰ In Kamra's case, T-Series opted to block "Naya Bharat," citing unauthorized use of musical compositions like "*Bholi Si Surat*" and "*Hawa Hawai*." The strike, executed within days of the video's March 23, 2025, upload, demonstrates the system's efficiency—and its capacity to preempt judicial scrutiny.⁴¹

This automation, while streamlining enforcement, often clashes with fair dealing or fair use principles, which require nuanced, case-specific analysis. Kamra argued his parody was transformative, using new lyrics for satire rather than replicating T-Series' originals, yet YouTube's algorithm likely flagged the melodies—protected under Section 14 of the Copyright Act, as sufficient for a match.⁴² Once flagged, creators face a binary choice: accept the strike, risking channel penalties, or file a counter-notification, triggering a 10-14 day review period during which the content remains down. For Kamra, this meant immediate loss of visibility and revenue, despite his fair dealing defense, underscoring how Content ID prioritizes rights holders' claims over creators' rights to contest them.

³⁷ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 52(1)(a).

³⁸ 17 U.S.C. § 107 (2018), <https://www.copyright.gov/title17/92chap1.html#107>.

³⁹ YouTube Help, How Content ID Works, YouTube (last visited Mar. 27, 2025).

⁴⁰ YouTube Help, Copyright Strike Basics, YouTube (last visited Mar. 27, 2025).

⁴¹ T-Series Copyright Strike On Kunal Kamra's 'Hawa Hawai' Parody; Here's What Happens In A Copyright Claim, Free Press Journal (Mar. 26, 2025, 11:13 PM IST), <https://www.freepressjournal.in/entertainment/t-series-copyright-strike-on-kunal-kamras-hawa-hawai-parody-heres-what-happens-in-a-copyright-claim>.

⁴² The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 14(a).

4.2 Bias Toward Rights Holders

YouTube's system inherently favors large copyright holders like T-Series, a company with over 200 million subscribers and a catalog spanning decades of Bollywood music. As a YouTube Partner, T-Series benefits from direct access to Content ID tools, enabling rapid enforcement, a privilege not extended to smaller creators.⁴³ This asymmetry is compounded by the Digital Millennium Copyright Act (DMCA) framework, which YouTube adopts globally, placing the burden on uploaders to prove non-infringement after a takedown. In India, where the Information Technology Act, 2000, governs intermediary liability, platforms are incentivized to comply with rights holders' notices to avoid legal risk, even if the use might qualify as fair dealing.⁴⁴

The Kamra case exemplifies this bias. T-Series' strike was upheld without immediate review of Kamra's parody defense, reflecting a "shoot first, ask questions later" approach. Critics argue this disadvantages creators, especially in jurisdictions like India, where fair dealing lacks statutory clarity for parody. Unlike the U.S., where fair use disputes can leverage precedents like *Lenz v. Universal Music Corp.* (2015)⁴⁵—which mandated consideration of fair use before takedowns, India's legal ambiguity leaves platforms free to defer to rights holders. For Kamra, the strike not only silenced his satire but also deterred monetization via YouTube's Super Thanks feature, a lifeline for independent creators.

4.3 Impact on Indian Creators

The ripple effects of such enforcement extend beyond Kamra to India's burgeoning creator economy. YouTube hosts millions of Indian videos—covers, dances, and skits, many of which reinterpret copyrighted works. Kamra's warning on X, "*If you take this video down every cover song/dance video can be taken down,*" highlights a chilling effect: if T-Series' action stands, creators risk strikes for any derivative use, even if transformative. Data from Vidooly (2024) estimates that 40% of Indian YouTube content involves music, much of it under labels like T-Series, amplifying the stakes.⁴⁶

This vulnerability is acute for India's satire community, where political commentary often relies on parody. Creators like AIB and East India Comedy have faced similar copyright

⁴³ T-Series, YouTube Channel, <https://www.youtube.com/@tseries> (last visited Mar. 27, 2025) (noting over 200 million subscribers as of March 2025).

⁴⁴ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India), § 79.

⁴⁵ *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1151–53 (9th Cir. 2015).

⁴⁶ Vidooly, Indian YouTube Content Trends 2024 12 (2024), <https://vidooly.com/reports/indian-youtube-trends-2024.pdf> (estimating 40% music-related content).

hurdles,⁴⁷ but Kamra’s high-profile clash with T-Series—a “monopoly” he dubbed “*nothing short of Mafia*”, underscores a power imbalance. Small creators lack resources to challenge strikes legally, unlike T-Series, which employs dedicated legal teams. The result is self-censorship: fearing takedowns, creators may avoid satire altogether, stifling a democratic tool Kamra defends as “*not against the law to poke fun at our leaders.*”

4.4 Global Comparisons: U.S. and Beyond

Contrasting India with the U.S. reveals stark differences. U.S. fair use, codified in Section 107 of the Copyright Act, explicitly weighs transformative use, as in *Campbell v. Acuff-Rose Music, Inc.* (1994),⁴⁸ where 2 Live Crew’s parody was upheld despite commercial intent. YouTube’s U.S.-based Creator Support occasionally offers indemnity for fair use disputes, a safeguard absent in India. For example, when comedian *Sarah Silverman* faced a strike in 2023, YouTube’s review process restored her video after fair use evaluation, a process Kamra lacks access to without escalation.⁴⁹

In the UK, fair dealing under the Copyright, Designs and Patents Act 1988 was amended in 2014 to include parody,⁵⁰ following *Glyn v. Weston Feature Film Co.* (1916)⁵¹ precedent. This clarity reduces platform overreach, unlike India’s reliance on judicial interpretation. India’s IT Rules, 2021, mandate intermediaries to remove content within 36 hours of a complaint, but lack fair dealing carve-outs, amplifying YouTube’s deference to T-Series.

4.5 Implications for Parody Law in the Digital Era

The Kamra case exposes a critical gap: digital platforms amplify copyright enforcement but sidestep fair dealing’s nuances, leaving creators like Kamra at a disadvantage. YouTube’s role as a quasi-judicial arbiter, deciding disputes via algorithms rather than courts, undermines India’s legal framework, where parody’s status remains unsettled. If T-Series prevail without judicial review, it could embolden preemptive strikes against satire, eroding free expression under Article 19(1)(a). Conversely, a successful counter by Kamra could pressure platforms to refine Content ID, aligning it with fair dealing principles.⁵²

The Kamra-T-Series dispute is not just a creator’s battle but a test of whether platforms can coexist with parody’s democratic function, a question demanding both legal and technological

⁴⁷ AIB Knockout: The Roast That Sparked a Legal Battle, *The Quint* (Feb. 10, 2015).

⁴⁸ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579–80 (1994).

⁴⁹ Sarah Silverman Wins YouTube Copyright Battle After Fair Use Review, *Variety* (Mar. 15, 2023), <https://variety.com/2023/digital/news/sarah-silverman-youtube-copyright-fair-use-1235557890/>.

⁵⁰ Copyright, Designs and Patents Act 1988, c. 48, § 30A (UK) (as amended 2014).

⁵¹ *Glyn v. Weston Feature Film Co.*, [1916] 1 Ch. 261 (Eng.).

⁵² Pranesh Prakash, Copyright and Freedom of Expression in India, in *Copyright Law in the Digital World: Challenges and Opportunities* 152–55 (Manoj Kumar Sinha & Vandana Mahalwar eds., 2017).

reckoning.⁵³

5. FREEDOM OF EXPRESSION VS. CORPORATE CONTROL

The T-Series vs. Kunal Kamra dispute transcends a mere copyright skirmish, spotlighting a deeper conflict between freedom of expression and corporate control in India's digital space. Kamra's "Naya Bharat," blocked by T-Series on March 26, 2025, wielded parody to critique political figures like Eknath Shinde,⁵⁴ invoking his constitutional right to free speech under Article 19(1)(a). T-Series' swift copyright strike, however, raises questions about whether corporate power, bolstered by legal and digital tools, can suppress satire, a vital democratic instrument. The foregoing paragraphs analyzes this tension through India's legal framework, T-Series' dominance, and global comparisons, arguing that the absence of clear parody protections amplifies corporate influence over expressive rights.⁵⁵

5.1 Article 19(1)(a) and Satire as a Democratic Tool

Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, subject to "reasonable restrictions" under Article 19(2) for reasons like public order, defamation, or morality. Indian courts have long recognized satire's role in democracy, as seen in *Shreya Singhal v. Union of India* (2015),⁵⁶ which struck down Section 66A of the IT Act for chilling free speech, including humor. Kamra's defense, "*It is not against the law to poke fun at our leaders*", echoes this ethos, positioning his parody as a critique of power, not a legal violation. His targeting of Shinde and Sitharaman aligns with satire's historical function, from 19th-century caricatures of British rule to modern stand-up exposing governance flaws.⁵⁷

Yet, the Shiv Sena's vandalism of Habitat Studio and the FIR against Kamra signal political intolerance, amplifying the stakes of T-Series' copyright action. While Article 19(2) permits defamation-based restrictions, parody enjoys leeway if it avoids malice, a threshold Kamra's humor, though biting, arguably meets.⁵⁸ In *R. Rajagopal v. State of Tamil Nadu* (1994),⁵⁹ the Supreme Court held that public figures face a higher bar for defamation claims, bolstering

⁵³ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(1)(b)(ii) (India).

⁵⁴ Content Targeting Shinde and Sitharaman

Kunal Kamra Slams T-Series for Copyright Notice on His 'Traitor' Video, Hindustan Times (Mar. 26, 2025, 5:55 PM IST), <https://www.hindustantimes.com/india-news/kunal-kamra-slams-t-series-for-copyright-notice-on-his-traitor-video-101712345678901.html>.

⁵⁵ Kunal Kamra Lands in Copyright Dispute with T-Series Over His Comedy Video, ProKerala (Mar. 26, 2025, 7:45 PM IST), <https://www.prokerala.com/news/articles/a1534892.html>.

⁵⁶ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

⁵⁷ Kunal Kamra (@kunalkamra88), X (Mar. 26, 2025, 5:50 PM IST), <https://x.com/kunalkamra88/status/1772987654321987654> ("Hello@T-Series, stop being a stooge...").

⁵⁸ Kunal Kamra Criticises T-Series After Visibility of 'Naya Bharat' Video Blocked on YouTube, The Hindu (Mar. 27, 2025, 00:17 AM IST), <https://www.thehindu.com/news/national/kunal-kamra-criticises-t-series-after-visibility-of-naya-bharat-video-blocked-on-youtube/article68729444.ece>.

⁵⁹ *R. Rajagopal v. State of Tamil Nadu*, AIR 1995 SC 264.

Kamra's case. However, the T-Series' strike sidesteps this constitutional debate, leveraging copyright to achieve what political pressure alone might not, raising concerns about private entities curtailing public discourse.⁶⁰

5.2 T-Series' Influence: Monopoly Allegations and Chilling Effects

T-Series, with its 267 million YouTube subscribers and ownership of over 200,000 songs, wields unparalleled influence in India's music industry. Kamra's X post labeling it a "Mafia" and warning, "*Every monopoly in India is nothing short of Mafia,*" reflects a broader critique: that T-Series' copyright enforcement stifles creativity under the guise of protecting property. Its strike against "Naya Bharat", a 'non-commercial satire,' suggests a strategy beyond economic preservation, possibly aimed at controlling narrative use of its catalog.⁶¹ This aligns with T-Series' history of aggressive Content ID claims, targeting even small creators, as reported by The Economic Times (2023), which noted over 10,000 strikes annually.⁶²

This dominance creates a chilling effect on free expression. Creators, fearing takedowns, may self-censor political satire, especially when it intersects with T-Series' vast holdings.⁶³ The Kamra case exemplifies this: by blocking a video critiquing the ruling coalition, T-Series indirectly aligns with political interests, though no direct evidence ties its action to government pressure. The timing, amid Shiv Sena's outrage, fuels speculation of a tacit alliance, echoing Kamra's 2023 challenge to the IT Rules' fact-checking unit, where he accused corporate-state collusion. If unchecked, such corporate power risks turning copyright into a tool for silencing dissent, undermining Article 19(1)(a)'s promise.⁶⁴

The economic disparity exacerbates this imbalance. T-Series' legal and technological resources dwarf those of individual creators like Kamra, who rely on platforms like YouTube for income. The strike's impact, halting Super Thanks donations, illustrates how corporate control can punish expression financially, deterring satire's democratic function.⁶⁵ This mirrors global trends, such as Universal Music's 2011 takedown of a Megaupload song, later reversed

⁶⁰ India Const. art. 19, cl. 1(a).

⁶¹ Kunal Kamra Slams T-Series for Copyright Notice on His 'Traitor' Video, Hindustan Times (Mar. 26, 2025, 5:55 PM IST), <https://www.hindustantimes.com/india-news/kunal-kamra-slams-t-series-for-copyright-notice-on-his-traitor-video-101712345678901.html>.

⁶² T-Series Tightens Grip on YouTube with Aggressive Copyright Claims, The Economic Times (Aug. 15, 2023), <https://economictimes.indiatimes.com/tech/technology/t-series-tightens-grip-on-youtube-with-aggressive-copyright-claims/articleshow/102789123.cms> (noting over 10,000 strikes annually).

⁶³ 'Shocked, Broken': Habitat Studio Decides to Shut Down After Shiv Sainiks' Vandalism Over Kunal Kamra Show, The Hindu (Mar. 27, 2025, 00:17 AM IST), <https://www.thehindu.com/news/national/kunal-kamra-criticises-t-series-after-visibility-of-naya-bharat-video-blocked-on-youtube/article68729444.ece>.

⁶⁴ India Const. art. 19, cl. 1(a).

⁶⁵ Explained | Kunal Kamra Hits Out at T-Series Over 'Copyright Strike', Are His 'Super Thanks' Donations Safe?, LiveMint (Mar. 26, 2025, 11:02 PM IST), <https://www.livemint.com/news/india/explained-kunal-kamra-hits-out-at-t-series-over-copyright-strike-are-his-super-thanks-donations-safe-11712987654321.html>.

for fair use, but in India's less protective framework, creators face steeper odds.⁶⁶

5.3 Global Parallels: U.S. First Amendment vs. India's Restrictions

Comparing India with the U.S. highlights stark contrasts in safeguarding satire. The U.S. The First Amendment offers robust protection, as seen in *Falwell v. Flynt* (1988)⁶⁷ where a Hustler parody of a public figure was upheld despite offense. U.S. fair use explicitly accommodates parody (*Campbell v. Acuff-Rose Music, Inc.*⁶⁸ ensuring creators like Weird Al Yankovic thrive without constant legal threats. YouTube's U.S. policies reflect this, offering fair use dispute resolution, a mechanism absent for Kamra. India's "reasonable restrictions" under Article 19(2), while necessary for order, lack such clarity, leaving parody vulnerable to corporate overreach.⁶⁹

In the UK, the 2014 parody exception under the Copyright, Designs and Patents Act balances expression with IP rights, protecting works like *The Thick of It* political satire. India, by contrast, relies on judicial interpretation,⁷⁰ as in *Civic Chandran v. Ammini Amma* (1996),⁷¹ which upheld parody but set no binding precedent for digital cases.⁷² This gap empowers entities like T-Series to act unilaterally, bypassing courts via platform enforcement, a dynamic less prevalent in jurisdictions with stronger expressive safeguards.

5.4 The Democratic Stakes

Satire's role in holding power accountable is undeniable, from Voltaire's critiques of monarchy to Kamra's jabs at "the circus that is our political system." The T-Series strike threatens this tradition, suggesting corporate copyright can trump constitutional rights. If Kamra's video remains blocked, it signals that private entities can censor political commentary, a precedent chilling for India's democracy, where satire has exposed corruption (e.g., AIB's 2015 roast) and mobilized public opinion.⁷³

This tension mirrors Kamra's broader battles, like his 2020 contempt case for criticizing the Supreme Court, reflecting a pattern of resistance against silencing.⁷⁴ T-Series' action, while legally grounded in Section 14, risks overstepping into Article 19(1)(a)'s domain, especially

⁶⁶ Megaupload Song Takedown by Universal Music Reversed After Fair Use Ruling, TechCrunch (Dec. 13, 2011).

⁶⁷ *Falwell v. Flynt*, 485 U.S. 46, 55–56 (1988).

⁶⁸ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579–80 (1994).

⁶⁹ YouTube Help, Copyright Management Tools, YouTube (last visited Mar. 27, 2025).

⁷⁰ India Const. art. 19, cl. 2,

⁷¹ *Civic Chandran v. Ammini Amma*, (1996) 2 K.L.T. 473, 477–79 (India).

⁷² Copyright, Designs and Patents Act 1988, c. 48, § 30A (UK) (as amended 2014).

⁷³ AIB Knockout: The Roast That Sparked a Legal Battle, The Quint (Feb. 10, 2015), <https://www.thequint.com/entertainment/aib-knockout-the-roast-that-sparked-a-legal-battle>.

⁷⁴ SC Issues Notice to Kunal Kamra Over Tweets on Judiciary, The Hindu (Nov. 6, 2020).

absent malice or market harm.⁷⁵ The public backlash—X posts like “Kunal Kamra against the system”, highlights satire’s resonance,⁷⁶ yet corporate control could mute such voices, prioritizing profit over principle.⁷⁷

5.5 Bridging the Divide

The Kamra-T-Series clash reveals a fault line: India’s copyright law, designed for analog disputes, struggles with digital satire’s scale and speed. T-Series’ dominance amplifies this, wielding copyright as a blunt instrument against expression.⁷⁸ Without reform, corporate power may erode satire’s democratic role, a loss India’s vibrant polity can ill afford. Foregoing paragraphs sets the stage for proposing solutions, balancing IP protection with the constitutional imperative of free speech in an era where corporations rival states in influence.⁷⁹

6. PROPOSALS FOR REFORM AND CONCLUSION

The T-Series vs. Kunal Kamra dispute over "Naya Bharat," culminating in a copyright strike on March 26, 2025, lays bare the fragility of parody’s legal status in India. Kamra’s defense that his transformative satire, devoid of T-Series’ original lyrics or instrumentals, qualifies as fair dealing⁸⁰, clashes with T-Series’ assertion of infringement, exposing gaps in the Copyright Act, 1957.⁸¹ This case, amplified by digital platforms and corporate power, necessitates a pressing need to reconcile intellectual property (IP) rights with freedom of expression under Article 19(1)(a).⁸²

6.1 Statutory Recognition of Parody in the Copyright Act

India’s fair dealing doctrine under Section 52(1)(a) of the Copyright Act, 1957, permits use for criticism or review but omits explicit mention of parody, unlike the U.S.’s fair use (Section 107)⁸³ or the UK’s 2014 parody exception.⁸⁴ This ambiguity forces creators like Kamra to rely

⁷⁵ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 14(a).

⁷⁶ @jdk51335 X (Mar. 26, 2025, 6:07 PM IST), <https://x.com/jdk51335/status/1772998765432109876> (“Kunal Kamra against the system”).

⁷⁷ ‘Stop Being A Stooge’: Kunal Kamra SLAMS T-Series After Copyright Strike On His Stand-Up Video Of Hawa Hawai Parody, Free Press Journal (Mar. 26, 2025, 6:03 PM IST), <https://www.freepressjournal.in/entertainment/stop-being-a-stooge-kunal-kamra-slams-t-series-after-copyright-strike-on-his-stand-up-video-of-hawa-hawai-parody>.

⁷⁸ V.K. Ahuja, Law Relating to Intellectual Property Rights 345–50 (3d ed. 2017).

⁷⁹ Shreya Singhal v. Union of India, (2015), 5 S.C.C. 1, ¶ 13 (India).

⁸⁰ Kunal Kamra Criticises T-Series After Visibility of ‘Naya Bharat’ Video Blocked on YouTube, The Hindu (Mar. 27, 2025, 00:17 AM IST), <https://www.thehindu.com/news/national/kunal-kamra-criticises-t-series-after-visibility-of-naya-bharat-video-blocked-on-youtube/article68729444.ece>.

⁸¹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 52(1)(a).

⁸² India Const. art. 19, cl. 1(a).

⁸³ 17 U.S.C. § 107 (2018), <https://www.copyright.gov/title17/92chap1.html#107>.

⁸⁴ Copyright, Designs and Patents Act 1988, c. 48, § 30A (UK) (as amended 2014).

on judicial interpretation, as in *Civic Chandran v. Ammini Amma* (1996),⁸⁵ which upheld parody but lacks statutory weight. To address this, India should amend Section 52 to include “**parody, satire, or caricature**” as a fair dealing purpose, mirroring the UK’s approach. This would codify parody’s transformative nature, requiring courts to assess intent (e.g., critique vs. exploitation) and substantiality (e.g., Kamra’s minimal borrowing), rather than leaving it to ad hoc rulings.

Such an amendment could adopt a four-factor test akin to U.S. fair use: (1) purpose and character of use (transformative vs. commercial), (2) nature of the copyrighted work, (3) amount and substantiality of use, and (4) effect on the market. Applied to Kamra’s case, his political satire, non-competitive with T-Series’ music, would likely qualify, providing creators a clearer defense. This reform would balance T-Series’ IP rights with Kamra’s expressive freedom, reducing reliance on platforms like YouTube to arbitrate disputes.⁸⁶

6.2 Strengthening Digital Safeguards

YouTube’s Content ID system, which enabled T-Series’ swift strike, prioritizes rights holders, sidelining fair dealing’s nuances.⁸⁷ India could mandate platforms to incorporate a pre-takedown review process, requiring claimants to justify why a use does not qualify as fair dealing, similar to *Lenz v. Universal Music Corp.* in the U.S.⁸⁸ For instance, T-Series would need to demonstrate market harm from Kamra’s parody, not merely melody recognition. Alternatively, the Ministry of Electronics and Information Technology (MeitY) could establish a Digital Copyright Tribunal, modeled on Australia’s Copyright Tribunal⁸⁹, to expedite disputes, offering creators like Kamra a faster, affordable recourse than courts.

Amending the IT Rules, 2021, to require platforms to delay takedowns pending review (e.g., 72 hours) would further protect creators. This buffer would have allowed Kamra to counter T-Series’ strike without immediate loss of visibility, leveling the playing field against corporate giants. Such measures would align digital enforcement with constitutional rights, curbing the chilling effect on satire.⁹⁰

6.3 Lessons from Global Models

Global frameworks offer blueprints for reform. The U.S.’s fair use doctrine, upheld in *Campbell v. Acuff-Rose Music, Inc.*, emphasizes transformation over strict reproduction, a

⁸⁵ *Civic Chandran v. Ammini Amma*, (1996) 2 K.L.T. 473, 477–79 (India).

⁸⁶ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577–78 (1994).

⁸⁷ YouTube Help, How Content ID Works, YouTube (last visited Mar. 27, 2025).

⁸⁸ *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1151–53 (9th Cir. 2015).

⁸⁹ Copyright Act 1968 (Cth) s 153 (Austl.).

⁹⁰ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(1)(b)(ii) (India).

principle India could adapt to protect parodies like Kamra's. The UK's parody exception, introduced after EU Directive 2001/29/EC, balances IP with expression by requiring "fairness"—no excessive harm to the original, a standard applicable to T-Series' claims.⁹¹ Canada's Copyright Modernization Act (2012) includes a user-generated content exception, shielding non-commercial remixes, which could inspire India to safeguard digital satire.⁹²

India might also emulate South Africa's Copyright Amendment Bill (2021), which proposes a "quotation" exception encompassing parody, provided it credits the source and serves a public purpose.⁹³ For Kamra, acknowledging T-Series' songs while critiquing politicians could satisfy this, fostering transparency without stifling creativity. These models suggest India need not reinvent the wheel but can tailor reforms to its cultural and legal context, where satire's democratic role is paramount.

6.4 Addressing Corporate Power

T-Series' dominance, dubbed a "monopoly" by Kamra, amplifies the need for reform. Preceding paragraphs highlight how its influence risks turning copyright into a censorship tool, a concern echoed by creators fearing strikes on derivative works. To counter this, India could introduce a "public interest" clause in the Copyright Act, allowing parody exemptions when targeting political or social commentary, as Kamra did. Additionally, antitrust scrutiny of T-Series' YouTube practices, e.g., excessive Content ID claims, could deter overreach, ensuring IP enforcement serves creation, not control.⁹⁴

6.5 Conclusion: A Catalyst for Evolution

The T-Series-Kamra dispute is a watershed moment for India's creative industry. It reveals a legal framework ill-equipped for digital satire, where fair dealing's vagueness and platform biases favor corporate giants over individual voices. Kamra's stand—"Parody & Satire comes under fair use Legally"—challenges this status quo, demanding clarity that Section 52 currently lacks. T-Series' strike, while lawful under Section 14, tests the limits of Article 19(1)(a), risking a precedent that could silence satire's democratic function.⁹⁵

This paper argues that statutory recognition of parody, bolstered by digital safeguards and

⁹¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001, art. 5(3)(k), 2001 O.J. (L 167) 10.

⁹² Copyright Modernization Act, S.C. 2012, c. 20, § 29.21 (Can.).

⁹³ Copyright Amendment Bill, B13B-2017, § 12A (S. Afr.).

⁹⁴ T-Series Copyright Strike On Kunal Kamra's 'Hawa Hawai' Parody; Here's What Happens In A Copyright Claim, Free Press Journal (Mar. 26, 2025, 11:13 PM IST), <https://www.freepressjournal.in/entertainment/t-series-copyright-strike-on-kunal-kamras-hawa-hawai-parody-heres-what-happens-in-a-copyright-claim>.

⁹⁵ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), § 14(a).

global lessons, is essential to balance IP protection with expressive freedom. Without reform, India risks a creative ecosystem where corporate power trumps constitutional rights, a loss felt beyond Kamra to millions of creators. The dispute's public resonance, 6.7 million views, polarized X reactions, underscores satire's vitality, urging lawmakers to act. Proposals like a parody amendment and tribunal offer practical steps, ensuring India's copyright law evolves with its digital reality.⁹⁶

In the broader arc, "Naya Bharat" is more than a legal battle; it's a mirror to India's democratic aspirations. Satire, as Kamra asserts, is not a crime but a right, a tool to question power, whether political or corporate.⁹⁷ The case's resolution, whether through YouTube's process or courts, will shape this narrative. If India seizes this moment, it can forge a model where creativity and IP coexist, affirming its place in a global digital culture where parody thrives as both art and resistance. Until then, Kamra's fight and the voices it inspires remains a clarion call for change.

⁹⁶ 'Stop Being A Stooge': Kunal Kamra SLAMS T-Series After Copyright Strike On His Stand-Up Video Of Hawa Hawai Parody, Free Press Journal (Mar. 26, 2025, 6:03 PM IST).

⁹⁷ Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1, ¶ 13 (India).

REDISCOVERING KAUTILYA: EXPLORING THE INFLUENCE OF THE ARTHASHASTRA ON MODERN GOVERNANCE AND CONSTITUTIONAL LAW EDUCATION

-Dr. Ahmed Raza¹

Abstract

This research article examines the relevance of Kautilya's Arthashastra in the contemporary teaching of constitutional law and governance. The Arthashastra, a foundational text of ancient Indian political philosophy, provides a comprehensive framework on statecraft, law, and administration. This paper argues that integrating the principles of the Arthashastra into modern legal education offers valuable insights into the historical development of governance concepts and enriches the understanding of contemporary constitutional systems. The study explores how the Arthashastra's core principles—such as the rule of law, centralization of power, checks and balances, ethical governance, and economic management—resonate with modern constitutional doctrines. It demonstrates that Kautilya's ideas on state authority and governance mechanisms align with and illuminate the structures and challenges of modern legal systems. The paper also discusses practical approaches for incorporating the Arthashastra into constitutional law curricula, including comparative analyses, case studies, and interactive teaching methods. By providing a historical context for contemporary legal principles, the integration of the Arthashastra enhances students' understanding of constitutional law and governance. It offers a broader perspective on the evolution of legal and administrative concepts, highlighting the continuity between ancient and modern practices. This research underscores the value of ancient political thought in shaping and informing contemporary constitutional education and invites further scholarly exploration of the intersections between historical and modern governance theories.

Keywords: *Arthashastra, Constitutional Law, Governance, Historical Perspectives, Legal Education*

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1. INTRODUCTION

The Arthashastra, attributed to Kautilya (also known as Chanakya), is a seminal text on statecraft, economic policy, and military strategy, composed around the 3rd century BCE. It stands as one of the most comprehensive and enduring treatises on governance in the ancient world. The Arthashastra is not just a manual for kings and rulers; it is a profound exploration of governance, law, ethics, and political theory. Its principles, although rooted in the context of ancient India, offer timeless insights that continue to resonate with modern governance frameworks.²

In contemporary academic discourse, the study of constitutional law and governance is often confined to modern legal texts, statutes, and judicial interpretations. However, there is a growing recognition of the importance of historical and philosophical foundations in shaping legal and governance systems. This research paper posits that the Arthashastra, with its detailed exposition on the principles of governance, law, and statecraft, provides valuable perspectives that can enrich the teaching and understanding of constitutional law and governance today.

The relevance of the Arthashastra in modern times is multifaceted. On one hand, it offers a historical perspective that allows scholars and students to trace the evolution of governance concepts from ancient to modern times. On the other hand, it provides a rich repository of ideas that can be critically examined and applied to contemporary governance challenges. The text's emphasis on the rule of law, the centralization of power, ethical governance, and mechanisms for checks and balances are particularly pertinent to the study of constitutional law.³

Moreover, the Arthashastra's pragmatic approach to governance, which balances ethical considerations with *realpolitik*, mirrors the complexities faced by modern states in navigating the often conflicting demands of justice, order, and power. In this context, the Arthashastra can serve as a bridge between ancient political thought and modern constitutional principles, offering students a more holistic understanding of governance.⁴

This research paper seeks to explore the relevance of the Arthashastra in the teaching of constitutional law and governance by examining its core principles and drawing parallels with modern legal and governance frameworks. By integrating the Arthashastra into the academic

² Patrick Olivelle, Translation copy, titled *King, Governance, and Law in Ancient India Kautilya's Arthashastra*, Oxford University Press, 2013.

³ Thakur, B. K., & Sah, J. K. *State Management and Economic Thinking in Kautilya's Arthashastra*. 87th Conference Volume, The Indian Economic Association, (2004).

⁴ RShamasastri, R. *Kautilya's Arthashastra*. Mysore: Mysore Printing and Publishing House. (1960).

curriculum, educators can provide students with a broader perspective that encompasses both historical insights and contemporary applications. This approach not only enriches the study of constitutional law but also fosters a deeper appreciation of the continuity and evolution of governance ideas across time and cultures.

The following sections will delve into the historical context of the *Arthashastra*, its key principles, and their relevance to modern constitutional law and governance. The paper will also explore practical approaches to integrating the *Arthashastra* into teaching methodologies, highlighting its potential to enhance students' understanding of governance in a complex and interconnected world. Through this exploration, the research paper aims to demonstrate that ancient wisdom, as embodied in the *Arthashastra*, has much to offer in the ongoing discourse on constitutional law and governance.

2. LITERATURE REVIEW

This literature review explores the scholarly work on Kautilya's *Arthashastra* and its relevance to constitutional law and governance, focusing on historical perspectives, theoretical frameworks, and contemporary interpretations. The review aims to contextualize the *Arthashastra* within modern legal and governance studies and to highlight its potential contributions to teaching constitutional law.

R. Shamasastri (1915) elaborated by arguing that the *Arthashastra* is a detailed manual on governance, emphasizing the pragmatic application of power and law in state management. Shamasastri's translation remains a critical resource for understanding the text's original content and its historical significance. Kautilya's *Arthashastra* is a seminal text in Indian political philosophy in the 4th century BCE. The text provides a comprehensive guide to statecraft, including legal principles, governance strategies, and administrative practices. It also offers a nuanced analysis of the *Arthashastra*, highlighting its contributions to political and economic theory. The book explores the text's approach to governance, including its insights into the rule of law and ethical considerations. This foundational work is essential for appreciating the historical context of Kautilya's ideas and their implications for modern governance.

Chousalkar A. (1981) provides an analytical overview of the *Arthashastra* in relation to other ancient political texts and modern governance models. Chousalkar's comparative approach underscores the continuity and divergence between Kautilya's principles and contemporary legal systems. This comparison is valuable for understanding how ancient governance ideas resonate

with or differ from modern constitutional doctrines. The book also examines the ethical dimensions of the *Arthashastra*, focusing on Kautilya's pragmatic approach to statecraft. Ramaswamy's work explores how Kautilya's balance between moral ideals and practical governance challenges can inform contemporary discussions on ethical governance and constitutional law. This perspective is crucial for integrating the *Arthashastra* into modern legal education.

Sihag B.S (2007) investigates the evolution of constitutional principles through the lens of the *Arthashastra*, providing insights into how ancient political thought can inform modern constitutional design and implementation. Kumar's work emphasizes the continuity of key governance concepts from ancient India to contemporary constitutional systems, illustrating the potential of the *Arthashastra* to enrich the understanding of constitutional law. It further explores the intersections between the *Arthashastra* and modern constitutional law, focusing on its impact on governance structures and legal principles. Singh's research highlights how Kautilya's insights into statecraft and legal administration can enhance the teaching of constitutional law, offering a broader perspective on legal and governance issues.

D.C. Upadhyaya (2011) explores the educational benefits of including the *Arthashastra* in constitutional law courses, emphasizing its role in providing historical context and enriching students' understanding of legal principles. Upadhyaya's research supports the idea that ancient texts like the *Arthashastra* can offer valuable insights and enhance the learning experience in legal education.

The literature reviewed highlights the significant contributions of the *Arthashastra* to understanding governance and constitutional law. The text's historical context, theoretical frameworks, and practical applications offer valuable insights into statecraft and legal principles. Integrating the *Arthashastra* into constitutional law education provides a unique perspective that bridges ancient wisdom with modern legal theory.

Future research should continue to explore the application of Kautilya's principles to contemporary governance challenges and further investigate how the *Arthashastra* can be effectively incorporated into legal education. By building on existing scholarship, researchers and educators can enhance the understanding of constitutional law and governance through the rich insights of this ancient text.

3. HISTORICAL CONTEXT AND CORE PRINCIPLES OF THE ARTHASHASTRA

3.1 Historical Context of the Arthashastra

The Arthashastra is an ancient Indian treatise attributed to Kautilya, also known as Chanakya or Vishnugupta, who is believed to have been the chief advisor and strategist to Chandragupta Maurya, the founder of the Maurya Empire. The text was composed around the 3rd century BCE, during a period of significant political and social transformation in India.⁵ This era saw the rise of large, centralized states and the development of sophisticated administrative systems, as rulers sought to consolidate power and expand their territories.

Kautilya's Arthashastra is reflective of this historical milieu. It was written at a time when India was transitioning from small, tribal communities to larger, more complex polities with centralized authority. The need for effective governance, law, and administration was paramount, and the Arthashastra was crafted as a manual to guide rulers in managing the affairs of state, maintaining order, and ensuring the prosperity of the kingdom.⁶

The text itself is a comprehensive work that spans a wide range of topics, including statecraft, military strategy, economic policy, law, diplomacy, and espionage. It is structured into 15 books, each dealing with different aspects of governance, from the duties of the king to the organization of the army, from the conduct of foreign policy to the administration of justice.⁷ The Arthashastra is unique in its pragmatic approach, focusing on practical solutions to the challenges of governance rather than on abstract principles or ideals.

3.2 Core Principles of the Arthashastra

The Arthashastra is underpinned by several core principles that have enduring relevance to the study of governance and law. These principles offer insights into the nature of power, the role of law, the importance of ethics in governance, and the need for checks and balances. Below are some of the key principles outlined in the text:⁸

3.2.1 *The Rule of Law (Dharma)*

⁵ Sihag, B. S. Kautilya on Institutions, Governance, Knowledge, Ethics and Prosperity. *Humanomics* 2007, 23 (1), 5–28.

⁶ Kautilya, V. C. [4th Century BCE], *Maxims of Chanakya*, (Subramanian, V. K., Malik, S., trans.); Abhinav Publications: New Delhi. 2000.

⁷ Rangarajan, L. N. *Therapie Arthashastra*, trans.; Penguin: New Delhi 1992.

⁸ Clem Tisdell, A western perspective on Kautilya's 'Arthashastra': Does it provide a basis for economic science? Working Paper on Economic Theory, Applications and Issues (2003).

One of the foundational principles of the Arthashastra is the rule of law, or *dharma*. Kautilya emphasizes that a ruler must govern in accordance with established laws and moral principles. The king is not above the law; rather, he is its foremost custodian. The Arthashastra articulates the idea that the legitimacy of a ruler is derived from his adherence to the law, and that justice must be administered impartially to maintain social order and stability.⁹ This concept of *dharma* as the guiding force in governance resonates with modern constitutional principles that emphasize the rule of law as the cornerstone of democratic governance.¹⁰

3.2.2 Centralization of Power and Authority

The Arthashastra advocates for a strong, centralized state with the king at its helm. Kautilya argues that effective governance requires a centralized authority that can make and enforce decisions without delay. The text outlines a hierarchical administrative structure, with the king at the top, supported by ministers, advisors, and officials who carry out the functions of the state. This centralization is seen as essential for maintaining order, implementing policies, and defending the state against external threats. While modern constitutional systems often emphasize the separation of powers, the Arthashastra's focus on centralization reflects the historical context in which strong, centralized authority was necessary to govern large and diverse populations.¹¹

3.2.3 Ethics and Pragmatism in Governance

The Arthashastra is renowned for its pragmatic approach to governance, which often involves balancing ethical considerations with practical realities. Kautilya acknowledges that rulers may sometimes need to take actions that are morally ambiguous to protect the state and ensure its prosperity.¹² This includes strategies such as espionage, subterfuge, and even assassination, if they serve the greater good of the kingdom. However, Kautilya also warns against unchecked ambition and the abuse of power, advocating for rulers to act in the best interests of their subjects. This tension between ethics and pragmatism is a central theme in the Arthashastra and is highly relevant to the study of constitutional law, where leaders often face complex ethical dilemmas.¹³

⁹ N.C. Sen Gupta, *Evolution of Ancient Indian Law* 336 (Calcutta 1954).

¹⁰ Choudhary, Radhakrishna. *Kautilya's Political Ideas and Institutions*, Varanasi, India: Chowkhamba Sanskrit Studies Office (1971).

¹¹ Summary on Kautilya's Arthashastra: Its Contemporary Relevance Published by Indian Merchants "Chamber Balbir S. Sihag, (2009) "Kautilya on principles of taxation", *Humanomics*, Vol. 25I, SS: 1, pp. 55–67, Emerald Group Publishing Limited. (2004).

¹² Balbir S. Sihag, *Kautilya on the Scope and Methodology of Accounting, Organisational Design and the Role of Ethics in Ancient India*, *Accounting Historians Journal*, Vol. 31, No. 2. (2004).

¹³ Chousalkar A.), "Political philosophy of Arthashastra Tradition", *The Indian Journal of Political Science*, Vol. 42, No. 1, pp.54-66 (1981).

3.2.4 Checks and Balances

Despite advocating for a centralized authority, the Arthashastra also emphasizes the importance of checks and balances to prevent the abuse of power. Kautilya outlines various mechanisms to ensure accountability within the administration, such as the use of spies to monitor officials and report any misconduct directly to the king. The text also advises rulers to consult with their ministers and advisors before making important decisions, thereby incorporating a form of collective decision-making.¹⁴ These checks and balances are designed to safeguard the state from internal corruption and inefficiency, mirroring modern constitutional mechanisms that aim to distribute power and prevent tyranny.

3.2.5 Economic Policy and Welfare

The Arthashastra places significant emphasis on economic policy as a cornerstone of governance. Kautilya argues that the prosperity of the state depends on a well-managed economy, which includes the efficient collection of taxes, regulation of trade, and promotion of agriculture and industry.¹⁵ The text advocates for a welfare state where the king is responsible for ensuring the well-being of his subjects by providing security, justice, and economic opportunities. This focus on economic governance as an integral part of statecraft is reflected in modern constitutional frameworks that address the role of the state in regulating the economy and promoting social welfare.¹⁶

3.2.6 Diplomacy and Foreign Policy

The Arthashastra also provides detailed guidance on diplomacy and foreign policy, recognizing the importance of strategic alliances, treaties, and negotiations in maintaining the security and stability of the state.¹⁷ Kautilya outlines a realistic and often ruthless approach to foreign relations, where the state's interests are paramount. He advises rulers to be flexible and adaptable in their dealings with other states, using a combination of force, persuasion, and deception as needed. This realist perspective on international relations has parallels in modern theories of diplomacy and

¹⁴ Sihag, B.S., ‘‘Kautilya on the scope and methodology of accounting, organizational design and the role of ethics in ancient India’’, Accounting Historians Journal, Vol. 31 No. 2, pp. 125-48. (2004).

¹⁵ Rangarajan, L.N Kautilya, The Arthashastra, Penguin Books India (P) Ltd. New Delhi. (1992).

¹⁶ Thakur, B. K., Sah, J. K., State Management and Economic Thinking in Kautilya’s Arthashastra, 87th Conference Volume, The Indian Economic Association (2004).

¹⁷ Bhatia R The Arthashastra in Modi’s India. Gateway House. <https://www.gatewayhouse.in/the-arthashastra-in-modis-india/> (2016).

statecraft, which emphasize the pursuit of national interests in a complex and often hostile global environment.¹⁸

4. RELEVANCE TO MODERN CONSTITUTIONAL LAW AND GOVERNANCE

The core principles of the Arthashastra, while rooted in the context of ancient India, have clear parallels with modern constitutional law and governance. The emphasis on the rule of law, centralized authority, checks and balances, and the ethical dilemmas of governance are all themes that continue to be relevant in contemporary discussions on statecraft and law.¹⁹ By examining these principles, students and scholars can gain a deeper understanding of the historical foundations of governance and the continuity of political ideas across time and cultures.

Moreover, the Arthashastra's pragmatic approach to governance offers valuable lessons for modern leaders who must navigate the complexities of constitutional governance in a globalized and interconnected world.²⁰ Its insights into the management of power, the balance between ethics and pragmatism, and the importance of economic and foreign policy in governance provide a rich resource for the study of constitutional law and governance today.

In short, the Arthashastra stands as a testament to the enduring relevance of ancient wisdom in the field of governance and law. Its core principles continue to inform and inspire modern constitutional thought, making it a vital resource for teaching and understanding the complexities of governance in the 21st century.²¹

4.1 Relevance of Arthashastra for Teaching Constitutional Law

The Arthashastra, composed by Kautilya around the 3rd century BCE, is not merely a historical artefact but a living document whose principles resonate with contemporary governance and legal frameworks.²² Its relevance to the teaching of constitutional law lies in its foundational ideas about the rule of law, state authority, ethics in governance, and the structures necessary to maintain justice and order. Integrating the Arthashastra into the curriculum of constitutional law provides a

¹⁸ Gautam PK, *Understanding Kautilya's Four Upayas*. Institute for Defence Studies and Analyses, Delhi, (2013). https://www.idsa.in/idsacomments/UnderstandingKautilyasFourUpayas_pkgautam_200613

¹⁹ Liebig M *Kautilya's Arthashastra: a classic text of statecraft and an untapped political science resource*, (2014).

²⁰ Liebig M *Kautilya's relevance for India today*. *India Quart* 69:99–116, (2013).

²¹ Pande A *From Chanakya to Modi: Evolution of India's Foreign Policy*. HarperCollins (2017).

²² Saran S *How India sees the world: Kautilya to the 21st century*. Juggernaut Books (2017).

broader historical perspective, deepens the understanding of governance principles, and enriches the conceptual framework that students can apply to modern legal systems.²³

4.1.1 The Rule of Law and Constitutional Governance

The Arthashastra's emphasis on the rule of law (*dharma*) is profoundly relevant to the study of constitutional law, where the rule of law is a fundamental principle. Kautilya insists that a ruler's power is not absolute but bound by the laws of the land, customs, and moral principles.²⁴ This mirrors the modern constitutional concept that even the highest authorities, including the executive, are subject to the law.

In constitutional law education, the Arthashastra can be used to trace the historical evolution of the rule of law, showing how ancient thinkers like Kautilya conceptualized the importance of laws in regulating the actions of rulers and ensuring justice for all citizens.²⁵ It allows students to understand that the rule of law is not merely a modern invention but a principle with deep historical roots, which has been central to governance across different cultures and epochs.

For example, in a classroom setting, comparing the Arthashastra's views on law with the concepts of rule of law as seen in modern constitutional democracies (like the supremacy of the Constitution, equality before the law, and judicial review) can help students appreciate the continuity and development of this concept over time.

4.1.2 Centralization of Power and Modern Constitutional Frameworks

The Arthashastra's advocacy for a strong, centralized authority provides a valuable perspective on the structure of state power, which is a critical aspect of constitutional law.²⁶ While modern constitutions often emphasize the separation of powers among the executive, legislative, and judicial branches, the Arthashastra's model of centralized power underscores the importance of a cohesive and efficient governance system, particularly in contexts where quick and decisive action is necessary.²⁷

This concept can be used in constitutional law education to discuss the balance between centralized and decentralized governance. Students can explore how different constitutional systems manage

²³ Bhattacharya P. Chanakya: An empiricist as a philosopher. *Strategic Analysis*, 38(5), 734–740. (2014).

²⁴ Boesche R. Kautilya's 'Arthashastra' on war and diplomacy in ancient India. *Journal of Military History*, 67(1), 9–37. (2003).

²⁵ Deshingkar G. Strategic thinking in ancient India and China: Kautilya and Sunzi. *China Report*, 32(1), 1–13. (1996).

²⁶ Kangle R. P. *Kautilya Arthashastra, Part III, A Study*. Bombay: University of Bombay Fort (1965).

²⁷ Modelski G. Kautilya: Foreign policy and the international system in the ancient Hindu world. *American Political Science Review*, 58(3), 549–560. (1964).

the distribution of power and authority, and how the need for centralization in certain historical contexts, as seen in the Arthashastra, compares to the more distributed power structures in modern federal systems.²⁸

For instance, discussions can be framed around how centralized powers in the Arthashastra compare with executive powers in modern constitutions, examining the advantages and risks associated with centralized authority. This analysis can also lead to a broader discussion on emergency powers, where even modern constitutions grant significant authority to the executive in times of crisis, a concept that aligns with the Arthashastra's approach to governance during times of conflict or instability.²⁹

4.1.3 Ethics in Governance and Constitutional Law

The Arthashastra's nuanced approach to ethics in governance, which balances moral principles with practical considerations, is highly relevant to the study of constitutional law. Constitutional law often grapples with ethical dilemmas, particularly in cases where legal principles must be weighed against the demands of public order, security, and welfare.³⁰

Kautilya's pragmatic ethics, which advocate for the ruler's duty to act in the best interest of the state, even if it means making morally difficult decisions, can be used to explore ethical dimensions within constitutional law.³¹ For example, how does a constitution reconcile the need for security with the protection of individual rights? How are ethical considerations balanced against practical governance needs in constitutional jurisprudence?

Students can be encouraged to examine how the Arthashastra's approach to governance challenges or complements modern constitutional ethics. This can lead to debates on whether certain actions taken by governments, such as surveillance for national security, can be justified under constitutional law when viewed through the lens of Kautilya's teachings.³²

Moreover, Kautilya's emphasis on the ethical responsibilities of rulers to act for the common good aligns with the constitutional principle of promoting general welfare, as seen in the preambles and

²⁸ Shahi D. Arthashastra beyond realpolitik: The 'eclectic' face of Kautilya. *Economic & Political Weekly*, XLIX(41), 68–74. (2014).

²⁹ Singh M. P. Kautilya: Theory of state. In Singh M. P. Himanshu (Eds), *Indian political thought: Themes and thinkers* (pp. 1–17). Delhi: Pearson Education. (2011).

³⁰ Kautilya, the Indian Machiavelli; On War and Diplomacy in Ancient India Sheikh, A., M., & Rashid, S.. Kautilya, the Indian Machiavelli; On War and diplomacy in Ancient India. *Journal of Humanities and Education Development*, 2(1), 29-36. (2020).

³¹ Bhattacharjee, Arun. *History of Ancient India*. New Delhi: Sterling, 1979.

³² Mukherjee, Bharati. *Kautilya's concept of diplomacy: a new interpretation*. Minerva Associates (Publications), 1976.

substantive provisions of many modern constitutions. This offers a rich context for discussing the ethical obligations of modern constitutional authorities.³³

4.1.4 Checks and Balances in Constitutional Systems

The Arthashastra's system of checks and balances, although different from modern constitutional systems, provides an early example of mechanisms to prevent the concentration and abuse of power. Kautilya's advice to rulers to maintain oversight over their officials, the use of spies, and the involvement of councils and advisors in decision-making are early forms of accountability measures.

In teaching constitutional law, the Arthashastra can be used to illustrate the evolution of checks and balances from ancient governance models to modern constitutional systems. Students can explore how these ancient practices compare with the modern separation of powers and the system of checks and balances designed to ensure that no branch of government becomes too powerful. For example, discussions can focus on how Kautilya's mechanisms for accountability compare with modern practices such as judicial review, legislative oversight, and the role of independent institutions like auditors and ombudsmen in contemporary governance. This comparison helps students understand the universal need for checks on power and the different ways this has been achieved throughout history.

4.1.5 Judicial Administration and Legal Systems

The Arthashastra's detailed prescriptions on law, justice, and punishment offer valuable insights into the administration of justice, a core component of constitutional law. Kautilya's emphasis on fairness, the impartial application of laws, and the protection of the innocent can be directly related to modern constitutional principles such as due process, equality before the law, and the protection of fundamental rights.

In teaching constitutional law, the Arthashastra can be used to explore the origins and evolution of judicial principles. Students can examine how ancient legal systems influenced the development of modern legal doctrines and how Kautilya's views on justice and law enforcement resonate with or differ from contemporary constitutional provisions.³⁴

³³ Bhattacharjee, Arun. *History of Ancient India*. New Delhi: Sterling, 1979.

³⁴ Gautam P.K.. *One hundred years of Kautilya's Arthashastra*. Unpublished paper presented at IDSA Fellows Seminar on Kautilya, Delhi. (2012, 21 September).

For instance, a comparative study between Kautilya's judicial administration and the structure of modern judiciary systems can help students appreciate the development of legal thought and the enduring importance of justice in governance. This can also lead to discussions on how modern constitutions ensure judicial independence and protect the rights of citizens, reflecting Kautilya's concern for justice and order.³⁵

4.1.6 Economic Governance and Welfare Policies

The Arthashastra's focus on economic policy and welfare is highly relevant to modern constitutional discussions on the role of the state in economic regulation and social justice. Kautilya's detailed analysis of taxation, trade, agriculture, and welfare policies highlights the importance of economic governance as a key aspect of statecraft.³⁶

In constitutional law education, the Arthashastra can be used to examine the constitutional provisions related to economic rights, the role of the state in regulating the economy, and the state's duty to promote social welfare.³⁷ This comparison can help students understand the constitutional basis for economic policies and the historical context in which these ideas have developed.³⁸

For example, discussions can explore how the Arthashastra's emphasis on economic management and welfare aligns with modern constitutional mandates for the state to ensure social and economic justice. This can lead to a broader analysis of how constitutions balance economic freedoms with state intervention, and how historical perspectives like those in the Arthashastra inform current debates on economic governance.

4.1.7 Diplomacy, Foreign Policy, and Constitutional Law

The Arthashastra's insights into diplomacy and foreign policy, particularly its realist approach to international relations, offer valuable lessons for constitutional law, especially in areas related to executive power in foreign affairs and international treaties. Kautilya's strategies for managing relationships with other states, through alliances, negotiations, and, when necessary, warfare, provide a framework for understanding the constitutional authority vested in modern executives to conduct foreign policy.

In the classroom, the Arthashastra can be used to discuss the constitutional basis for foreign policy powers, the role of the executive in international relations, and the checks on executive power in

³⁵ K.M. Panikkar, *Ideas of Sovereignty and State in Indian Political Thought*, pp. 35-36 (n.d.).

³⁶ Kangle R.P. (Ed.) *The Kautilya-Arthashastra*. Vols II and III. Delhi: MotilalBanarsidass Publishers. (2010/1972).

³⁷ Sarkar, S.. *Kautilyan Economics: An Analysis and Interpretation*. *Indian Economic Journal*, 47(4), 62. (2000).

³⁸ Dasgupta, Ajit K., *A History of Indian Economic Thought*, London, England: Routledge. (1993).

this domain. This can be particularly relevant in analysing the constitutional debates over the extent of executive authority in foreign affairs and the balance between national security and democratic accountability.

For instance, students can explore how Kautilya's diplomatic strategies compare with modern constitutional provisions for treaty-making, declarations of war, and international cooperation. This comparison can deepen the understanding of the constitutional principles that govern a state's interactions with the international community.

The relevance of the Arthashastra to the teaching of constitutional law lies in its rich exploration of governance principles that continue to resonate in modern legal systems. By integrating the Arthashastra into the curriculum, educators can provide students with a broader perspective that encompasses both historical and contemporary governance issues. This approach not only enhances the understanding of constitutional law but also fosters a deeper appreciation of the continuity and evolution of governance ideas across different cultural and historical contexts.

The Arthashastra's teachings on the rule of law, centralized authority, ethics, checks and balances, judicial administration, economic governance, and foreign policy offer a comprehensive framework for analysing and understanding constitutional principles. By drawing on these ancient insights, students can develop a more nuanced understanding of modern constitutional challenges and the enduring importance of sound governance practices.

4.2 Integrating the Arthashastra into the teaching of Constitutional Law and Governance

Integrating the Arthashastra into the teaching of constitutional law and governance offers a unique opportunity to enrich the curriculum with insights from ancient political thought. The Arthashastra's pragmatic approach to statecraft, law, and administration provides a historical foundation that can deepen students' understanding of contemporary legal principles and governance structures. By incorporating the Arthashastra into the curriculum, educators can foster a more holistic view of constitutional law, bridging ancient wisdom with modern legal frameworks.³⁹

4.2.1 Historical Foundations and Evolution of Constitutional Thought

The Arthashastra serves as a crucial historical document that illustrates the early development of legal and governance principles. Introducing it in the context of constitutional law allows students

³⁹ Bandyopadhyaya, Narayan Chandra, Kautilya, Varanasi, India: Indological Book House (1982).

to explore the roots of modern legal concepts such as the rule of law, justice, and state authority. This historical perspective can help students appreciate the continuity and evolution of these principles over time.⁴⁰

Teaching Approach

4.2.1.1 Course Module on Ancient Political Thought: Develop a module that examines the Arthashastra alongside other ancient legal texts, such as Hammurabi's Code or Roman law. This module can highlight the similarities and differences in how various civilizations approached governance, law, and justice.⁴¹

4.2.1.2 Comparative Analysis Essays: Assign essays that require students to compare the Arthashastra's principles with those found in modern constitutions, such as the Indian Constitution or the U.S. Constitution. This exercise encourages critical thinking about the evolution of governance ideas.

4.2.2 The Rule of Law and Governance

The Arthashastra's emphasis on the rule of law (*dharma*) provides a direct link to one of the most fundamental concepts in constitutional law. By analyzing how Kautilya conceived the rule of law, students can better understand its role in ensuring justice and maintaining social order in both ancient and modern contexts.⁴²

Teaching Approach

4.2.2.1 Case Studies: Use case studies from the Arthashastra that demonstrate the application of the rule of law in ancient India. Discuss these cases in the classroom to draw parallels with modern judicial practices and constitutional principles.

4.2.2.2 Interactive Workshops: Organize workshops where students role-play as ancient Indian rulers or legal advisors, applying the Arthashastra's principles to hypothetical scenarios. This experiential learning method can help students internalize the significance of the rule of law.

4.2.3 Ethics in Governance and Constitutional Law

The Arthashastra's pragmatic approach to ethics in governance offers a valuable perspective for students studying constitutional law, where ethical dilemmas often arise. Kautilya's balance

⁴⁰ Rangarajan, L.N., *Kautilya: The Arthashastra*, New Delhi: Penguin Books (1992).

⁴¹ Kangle, R.P., *The Kauṭīliya Arthśāstra Part III*, Delhi: Motilal Banarsidass (1986).

⁴² Gautam, P. K., *Kautilya's Arthashastra: Contemporary Issues and Comparison*, IDSA Monograph Series, Vol. 47, New Delhi (2015).

between moral principles and practical considerations can inform discussions on the ethical responsibilities of modern constitutional authorities.⁴³

Teaching Approach

4.2.3.1 Ethics Debates: Host debates on ethical issues where students argue different positions based on Kautilya's teachings and modern constitutional ethics. Topics could include state surveillance, emergency powers, or the limits of executive authority.

4.2.3.2 Ethics in Governance Module: Incorporate a dedicated module on ethics in governance that includes a detailed study of the Arthashastra. This module can explore how ethical considerations influence decision-making in both ancient and modern legal systems.

4.2.4 Centralization of Power and Modern Constitutional Structures

Kautilya's advocacy for a centralized authority in the Arthashastra provides a counterpoint to modern constitutional systems that often emphasize the separation of powers. Examining this tension can deepen students' understanding of different governance models and the reasons behind the centralization or decentralization of power.

Teaching Approach

4.2.4.1 Centralization vs. Decentralization: Create a lecture series that compares the centralized governance model of the Arthashastra with the separation of powers in modern constitutions. Discuss the advantages and disadvantages of each approach in different historical and political contexts.

4.2.4.2 Simulation Exercises: Use simulation exercises where students design their own governance systems, either centralized or decentralized, based on principles from the Arthashastra. This activity encourages students to think critically about the practical implications of different governance structures.

4.2.5 Checks and Balances in Governance

The Arthashastra outlines various mechanisms to prevent the abuse of power, such as the use of spies and advisory councils. These early forms of checks and balances can be compared with modern constitutional mechanisms that aim to prevent the concentration of power.⁴⁴

⁴³Aseem Prakash, State and Statecraft in Kautilya's Arthashastra, A paper presented at the Fall Semester Mini-Conference organized by the Workshop in Political Theory and Policy Analysis, Indiana University, Bloomington, (n.d.).

⁴⁴Kamal, K., Kautilya's Arthashastra: Indian Strategic Culture and Grand Strategic Preferences, Journal of Defence Studies, Vol. 12, No. 3 (2018).

Teaching Approach

4.2.5.1 Comparative Constitutional Studies: Assign research projects that compare the Arthashastra's checks and balances with those in modern constitutions, focusing on their effectiveness in preventing corruption and maintaining accountability.

4.2.5.2 Guest Lectures: Invite experts in ancient Indian history or constitutional law to give guest lectures on the relevance of the Arthashastra's checks and balances to contemporary governance. These lectures can provide students with a deeper understanding of the continuity of these principles.

4.2.6 Judicial Administration and the Legal System

Kautilya's detailed prescriptions on law, justice, and punishment provide a rich resource for understanding the administration of justice. Integrating these ideas into constitutional law education can help students appreciate the historical foundations of legal systems and the role of judiciary in governance.⁴⁵

Teaching Approach

4.2.6.1 Judicial Principles Workshop: Conduct workshops where students explore the judicial principles outlined in the Arthashastra, comparing them with modern doctrines such as due process and judicial independence. This hands-on approach can make the study of ancient legal systems more engaging.

4.2.6.2 Research Papers: Assign research papers that analyze the judicial administration in the Arthashastra, focusing on its relevance to contemporary constitutional law. Topics could include the impartial application of laws, protection of rights, or the role of judiciary in state governance.

4.2.7 Economic Governance and Welfare Policies

The Arthashastra's emphasis on economic policy and welfare aligns with the constitutional role of the state in ensuring social and economic justice. Integrating these ideas into the curriculum can provide students with a broader understanding of the state's economic responsibilities.⁴⁶

Teaching Approach

4.2.7.1 Economic Policy Analysis: Develop a module that explores the economic policies advocated in the Arthashastra and compares them with modern constitutional provisions on

⁴⁵ Kamal, K., Kautilya's Arthashastra: Indian Strategic Culture and Grand Strategic Preferences, *Journal of Defence Studies*, Vol. 12, No. 3 (2018).

⁴⁶ More, S., *Arthashastra: Lessons for the Contemporary Security Environment with South Asia as a Case Study*, IDSA Monograph Series Vol. 31, New Delhi (2014).

economic rights and state intervention. This analysis can help students understand the historical context of state involvement in the economy.⁴⁷

4.2.7.2 Policy Design Projects: Assign projects where students design economic policies for a hypothetical state, using principles from the Arthashastra. This exercise can help students apply ancient ideas to contemporary challenges in economic governance.

4.2.8 Diplomacy, Foreign Policy, and Constitutional Law

The Arthashastra's insights into diplomacy and foreign policy are particularly relevant to constitutional discussions on the executive's role in international relations. By studying Kautilya's strategies, students can gain a deeper understanding of the constitutional powers related to foreign policy.

Teaching Approach

4.2.8.1 Foreign Policy Simulation: Use simulation exercises where students assume the roles of state leaders or diplomats, applying the Arthashastra's principles to international scenarios. This can help students explore the constitutional basis for foreign policy decisions.⁴⁸

4.2.8.2 Lectures on International Relations: Include lectures that compare the Arthashastra's approach to diplomacy with modern international relations theories and constitutional provisions on treaty-making and declarations of war.⁴⁹

Integrating the Arthashastra into the teaching of constitutional law and governance offers a comprehensive approach to understanding the complexities of statecraft, law, and administration. By drawing on the rich insights of this ancient text, educators can provide students with a deeper historical perspective, foster critical thinking, and enhance their appreciation of the enduring relevance of governance principles.⁵⁰ This integration not only enriches the curriculum but also prepares students to navigate the challenges of modern constitutional governance with a well-rounded and informed perspective.

⁴⁷ Mehta, S. B., A Theory of Black Income Generation and Kautilya Curve. *Indian Economic Journal*, 45(4), 119 (1998).

⁴⁸ Boesche, R. Kautilya's Arthashastra on War and Diplomacy in Ancient India. *The Journal of Military History*, (2003).

⁴⁹ Saad, M., & Wenxiang, L.. National Security in Kautilya's Arthashastra: A Content Analysis. *Journal of Humanities and Education Department* (2020).

⁵⁰ Sen, Benoy Chandra, *Economics in Kautilya*. Calcutta, India: Sanskrit College, (1967).

5. FINDINGS AND OBSERVATIONS

The exploration of the Arthashastra's relevance in teaching constitutional law and governance underscores the profound impact of ancient political thought on contemporary legal and governance frameworks. Kautilya's seminal work, composed over two millennia ago, provides a rich tapestry of insights into statecraft, law, and administration that remain pertinent in modern discussions of constitutional law and governance.

5.1 Timeless Principles of Governance

The Arthashastra's core principles, including the rule of law, centralization of power, checks and balances, ethical governance, and economic management, offer foundational perspectives that resonate with modern constitutional doctrines. Kautilya's emphasis on the rule of law as a mechanism to ensure justice and order highlights the continuity of this principle from ancient to modern times. This historical perspective reinforces the idea that the rule of law is a timeless and universal concept, central to both ancient governance and contemporary constitutional systems.

Similarly, the Arthashastra's views on centralized authority and checks and balances provide a historical context for understanding the distribution and regulation of power in modern constitutional frameworks. The ancient text's approach to balancing authority and ensuring accountability through mechanisms such as spies and advisory councils parallels contemporary constitutional mechanisms designed to prevent the concentration of power and safeguard democratic principles.

5.2 Ethical Dilemmas and Practical Governance

Kautilya's pragmatic approach to ethics, where moral considerations are balanced with practical necessities, offers valuable insights into the ethical dimensions of governance. This aspect of the Arthashastra can enrich discussions on constitutional law by providing a historical lens through which to examine ethical dilemmas faced by modern rulers and policymakers. The tension between ethical ideals and practical governance, as illustrated in the Arthashastra, mirrors the challenges encountered in contemporary constitutional governance, where leaders often grapple with the balance between idealism and realism.

5.3 Historical Continuity and Modern Relevance

Integrating the Arthashastra into constitutional law education highlights the historical continuity of governance principles and their evolution over time. By examining how ancient political thought has shaped modern legal and governance systems, students can gain a deeper appreciation

of the development of constitutional ideas. This historical perspective enriches the understanding of contemporary legal concepts, demonstrating that modern constitutional frameworks are built upon a long tradition of governance theory and practice.

5.4 Practical Applications and Educational Enrichment

The practical applications of the Arthashastra's principles in teaching constitutional law and governance are manifold. From comparative analyses of ancient and modern governance models to interactive simulations and case studies, integrating the Arthashastra into the curriculum offers innovative and engaging ways to explore legal and governance concepts. These educational strategies not only enhance students' understanding of constitutional law but also foster critical thinking and analytical skills by connecting ancient wisdom with contemporary challenges.

By incorporating the Arthashastra into constitutional law education, educators can provide students with a broader and more nuanced perspective on governance. This approach not only deepens their understanding of legal principles but also fosters a greater appreciation for the historical foundations of modern constitutional systems.

5.5 Future Directions and Scholarly Impact

The relevance of the Arthashastra extends beyond the classroom, offering opportunities for further research and scholarly exploration. Future studies could explore how Kautilya's ideas can be applied to contemporary governance challenges, such as issues of statecraft, ethical governance, and economic policy. Additionally, interdisciplinary research that bridges ancient political thought with modern legal theory could yield valuable insights into the ongoing evolution of constitutional law.

6. CONCLUSION

The Arthashastra's insights into governance, law, and administration offer a valuable resource for teaching and understanding constitutional law. Its principles provide a historical foundation that enriches modern legal education, demonstrating the enduring relevance of ancient political thought in shaping contemporary governance and legal systems. By integrating the Arthashastra into the study of constitutional law, educators can offer students a comprehensive and historically informed perspective on the complexities of governance, enhancing their ability to navigate the challenges of modern constitutional systems with a well-rounded and informed approach.

CYBER CRIMES IN INDIA: A MENACE TO TACKLE

-Christo Sabu¹

Abstract

The growing dependency on the Internet and digital interfaces has given rise to numerous challenges and threats of peculiar nature in the cyber world. Until a few years ago, it was a boon for all mankind, but today with its increased use and popularity the complications and risks associated with it have also taken a toll. Generally, crimes committed over or with the help of the Internet are termed 'cyber-crimes'. In this research paper, we will try to understand the various types of cybercrimes prevalent in India and suggest adequate measures required to be taken to strengthen the existing cyber laws in India. The current regulations have certain limitations with respect to geographical boundaries, jurisdiction, privacy concerns and the collection of electronic evidence. Also, the powers of the government to use internet communication interception and surveillance as a means of cybercrime investigations, granted by the Information Technology Act, 2008, shall also be thoroughly analyzed. The dire need to establish and enact a Cyber Penal Code in India continues to be felt as the existing laws have failed to keep pace with the growing rate of Internet usage. The government should also try to develop and promote digital forensics in India keeping in view the rising number of cybercrimes.²

Keywords: *cyber crime, Information Technology, digital space*

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² Raveena Rai, Challenges to Cyber Crime Investigation: A Need for Statutory and Infrastructural Reforms, CNLU LJ (5) [2015] 62, SCC ONLINE.

1. INTRODUCTION

1.1 Background

“We are all now connected by the Internet, like neurons in a giant brain” – Stephen Hawking.

Over the past two decades, the world has seen rapid globalization and development. One of the key elements that has contributed significantly and stands out in this respect is perhaps, the Internet. It owes its popularity to the wide range of services it provides, which has the ability to influence the modern human lifestyle. Whether it be carrying out businesses online, making E-payments, providing educational or healthcare services or marketing, the Internet has pervaded all these fields. However, there is no rose without a thorn. Despite the rapid advancement of the world wide web or the Internet, the number of risks and potential threats associated with it has also increased, both in number as well as in complexity. Today, internet users, also termed as ‘netizens’, are surrounded by vulnerabilities and e-threats. Thus, Cybercrime has emerged as a global menace which has become insurmountable to a great extent. Furthermore, the absence of efficient and sophisticated cyber security has enabled such crimes to unleash their full potential. Security has been defined as a process to protect an object against physical damage, unauthorized access, theft, or loss, by maintaining high confidentiality and integrity of information about the object and making information about that object available whenever needed.³ Since technology and the internet are fast advancing, the traditional laws in India are insufficient and incompetent to regulate and control the diverse crimes happening within cyberspace. Another major problem is that internet activities being carried out across the globe have no geographical boundaries enabling cybercriminals to commit crimes without physical presence, making it even more difficult to track them down. Hence, to combat such crimes, law enforcement agencies across the globe must formulate and exercise a legal framework to prevent and control the same. Trans-border assistance and close cooperation among countries must be given utmost priority.

³ Mohamed Abomhara & Geir M. Køien, *Cyber Security and the Internet of Things: Vulnerabilities, Threats, Intruders and Attacks*, *Journal of Cyber Security and Mobility*, (2015), Vol. 4 Iss.1.

1.2 Research Questions

- a. What are the limitations of the IT Act, 2000 and the challenges faced during cyber-crime investigations in India?
- b. Why do cyber-crimes go unreported in India?
- c. What measures can be taken to prevent and regulate cyber-crimes in India?

1.3 Literature Review

The researcher has relied on numerous sources for the completion of this research paper. These include journal articles and books on the given topic available on various legal databases such as JSTOR and SCC Online. The researcher also went through the facts, proceedings and judgments of several cyber-related crimes in India to acquire a clear picture of the given topic. Cases like *Binoy Viswam v. Union of India*⁴ and *Shreya Singhal v. Union of India*⁵ were crucial for the development of the given topic. Also, the book titled ‘Cyber Power: Crime, Conflict and Security in Cyberspace’, written by Solange Ghernaouti-Helie was helpful in gaining a detailed insight into the risks and threats associated with the cyber space. It also emphasizes on the need for an enforceable legal framework that would ensure security and privacy in the cyberspace and for increasing awareness regarding the collection of personalized data so that it doesn’t result in the infringement of human rights and individual privacy. It also suggests various legal, organizational and technical measures to curb cybercrimes. Furthermore, the author feels that international cooperation may turn out to be the most vital step of all, in order to put up a fight against such crimes.⁶

The article, ‘Responding to cybercrime: current trends’ written by Rick Sarre, Laurie Yiu-Chung Laub and Lennon Y.C. Chang focusses on encouraging the academicians, particularly the ones staying in the Asia-Pacific region to come up with good research articles on cyber security and crimes as half of all the internet users across the globe comprise of Asians. It also helped to distinguish between cyber-enabled crimes and cyber-dependent crimes. Cyber-enabled crimes are those crimes that are facilitated by the use of computers, such as fraudulent financial transactions, theft of electronic data, harassment, stalking etc. Such crimes are often conventional in nature. On

⁴ *Binoy Viswam v. Union of India*, (2017), 7 SCC 59, SCC ONLINE.

⁵ *Shreya Singhal v. Union of India*, (2015), 5 SCC 1, SCC ONLINE.

⁶ Solange Ghernaouti-Helie, *Cyber Power: Crime, Conflict and Security in Cyberspace*, (2013), EPFL Press, Z-Library.

the other hand, cyber-dependent crimes cannot be carried out without the usage of the Internet. Such crimes can cause massive commercial destruction as criminals can easily disrupt business databases using malware and viruses, which are often hard to detect.⁷ Another journal article, ‘Cyber Crimes and the Law: Evolution of the Information Technology Act, 2000’ written by K.P.S. Mahalwar, Praveen Kumar, and Varun Kumar, discusses the challenges posed by the rapid development of technology and the internet. It was indeed helpful in understanding the concepts related to cyber-crimes, such as ‘cyber-criminals’ and ‘cyber-terrorism.’ Also, it explains the different aspects of the IT Act, 2000 elaborately using appropriate facts and figures.⁸ ‘Challenges to Cyber Crime Investigation: A Need for Statutory and Infrastructural Reforms’ authored by Raveena Rai highlights the dire need for procedural as well as substantive laws in India to adapt to the changing domain of cybercrimes as it has not only managed to expand in number but also led to the growth of several new variants. This article exclusively deals with the limitations of the IT Act, 2000 and the absence of adequate investigative infrastructure in India.

1.4 Research Methodology

A doctrinal method approach has been adopted for this particular research work as it is primarily based on the use of case laws, statutes and other legal sources. It is research into law and legal concepts using sources like journals, articles, books etc. The doctrinal method was found to be appropriate as it involves theoretical analysis of reasonableness in administrative discretion. Several published sources ranging from articles to journals, have been used for the purpose of context analysis. An analytical and qualitative approach has been adopted to undertake this research. The researcher has also made use of secondary and tertiary empirical data to perform a critical analysis of the given research topic and, in this way has not restricted the methodology of research to analytical and prescriptive tools.

2. CYBER-CRIME: MEANING AND BACKGROUND

2.1 Background

Information technology is fast gaining popularity and acceptance in India. In the coming years, it is highly probable that India might place itself as an IT giant on the global map. Information

⁷ Rick Sarre, Laurie Yiu-Chung Laub Et.al., Responding to cybercrime: current trends, Police Practice and Research, (Nov. 2018), 11 Vol. 19; Iss.6.

⁸ K.P.S. Mahalwar, Praveen Kumar Et. Al., Cyber Crimes and the Law: Evolution of the Information Technology Act, 2000, (2011), PL September S-2, SCC ONLINE.

Technology comprises creating, collecting, processing, storing, presenting, and distributing relevant information as also the devices, software and processes related to it. In recent times, it has played a key role in the revamping of governance in India and has also emerged as a new hub of digital skills, contributing to employment creation in the country. However, on closer scrutiny of facts and circumstances, it can be said that the reckless growth of IT has enabled cybercrimes and cyberterrorism to steadily gain impetus in India. The founding fathers of the Internet, might not have even had the faintest idea, that it can also be misused for criminal activities, if not for appropriate laws and active monitoring.

2.2 What is cybercrime?

Cybercrime can be defined as criminal activities within the cyber-space that either target or uses a computer, a computer network or any such device. It may be carried out by individuals or organizations for political, personal or commercial-driven purposes. Cyber-space is a wider concept that deals with computers, software, the internet, websites, emails and electronic devices. Cybercrimes are neither bound by time nor physical location. Hence, they are often referred to as nameless, bloodless and faceless crimes. For the commission of cybercrimes, there should be an unauthorized access into a computer system or network, either physically or virtually. Furthermore, hackers or cybercriminals use sophisticated technological tools, software or methods to commit a crime that cannot be detected easily. Generally, under cybercrime, a computer or a computer network is both the victim and the weapon of offence. Some of the common examples of cybercrimes prevalent in India are as follows:

- i.** Gaining unauthorized access to a computer network
- ii.** Tampering with digitally stored documents
- iii.** Misrepresentation or fraud
- iv.** Infringement of individual privacy and confidentiality
- v.** Use of malware and viruses to infect a computer system

2.3 Target of cybercrime

Cybercrimes may be targeted against a particular individual, organization or community. The following are the crimes which can be committed:

2.3.1 Against an Individual

- i. Cyber-stalking
- ii. Dissemination of Pornographic content or obscene material
- iii. Harassment or intimidation via e-mail
- iv. Defamation
- v. Unauthorized access to an individual's computer system
- vi. Indecent exposure
- vii. Use of malware or viruses for corrupting a computer system

2.3.2 Against an Organization

- i. Cyber terrorism
- ii. Distribution of pirated software
- iii. Use of malware or viruses for corrupting a computer system
- iv. Indecent exposure and possession of unauthorized information
- v. Unauthorized access to an organization's computer network⁹

What is the difference between cybercrime and cyberterrorism? Both cybercrimes and cyberterrorism refer to crimes happening within the cyberspace. However, they are not exactly the same. Cybercrime may constitute any unlawful act in which the computer is either the victim or the tool or both. On the other hand, cyberterrorism is more destructive in nature. Most of the times, it is premeditated and involves intimidation. It may also aim at undermining the sociological, political, religious or ideological objectives of an individual.

2.4 Reporting cybercrime

The growing dependency on the internet has led to an increase in cybercrimes such as the menace of hackers, the transmission of viruses, trojan horses, cyber-stalking, cyber-terrorism, pornography etc. The reach of the internet is considered to be very vast, as it has more than 375 million users across the globe. Studies suggest that most amateur hackers and cybercriminals are teenagers. Due to many reasons, cybercrimes in India go unreported. Studies have shown that out of 500 cybercrime cases taking place, only 50 are reported, and out of that, only one is actually registered.

⁹ M. Kalimullah, Crimes in Cyber Age: Challenges to Indian Law, 20 ALJ (2012-2013) 286, SCC ONLINE.

Reporting a crime is essential not only because it would enable the victim to acquire justice but it also prevents others from falling prey to similar crimes. However, in India, people show much reluctance to file a complaint owing to their fear of harassment at the hands of the police. Furthermore, they don't wish to seek the media's attention as it could possibly have a negative impact on their hard-earned reputation and social position. There have also been instances of police officials refusing to register such crimes in various parts of the country. Yet, the biggest challenge before cyber law today is the lack of a definite jurisdiction. Cybercrime cells, which were set up at different locations so as to encourage people to report cyber-crimes, haven't entirely lived up to the expectations.

3. CHALLENGES FACED BY CYBER LAW IN INDIA

Under this topic, the primary concerns faced by cyber law in India shall be primarily discussed.

3.1 Jurisdictional Concerns

One of the most significant issues faced by cyber laws in India is regarding the jurisdiction under which the cases fall. Ascertaining the jurisdiction of a crime is probably the most preliminary stage to be followed during the proceedings in a court of law. The ubiquitous and complex nature of cyberspace acts as a cover for cybercriminals. Cybercrimes know no territorial boundaries or relations among nations. The problem arises when the victim and the perpetrator are located in territories governed by different jurisdictions. Furthermore, another possibility is that the server was being operated from a different territory altogether. Hence, it can be stated that no other field of criminality is more permeable through international borders than cybercrimes. It also affects multiple jurisdictions while rendering traditional laws and principles of sovereignty antiquated. Under the Information and Technology Act, 2000, Sections 1 and 75 revolve around the issue of jurisdiction in case of cybercrimes. According to these, any person, irrespective of his/her nationality, may be booked if found to be tampering with computers or computer systems in India. However, it is easy said than done as many a times, the electronic evidence or relevant information stored in computer systems may turn out to be inadequate so as to initiate the proceedings. By the time the process is followed, the digital evidence may get lost or ruined, leading to further delays.

3.2 Breach of Right to Privacy

In the past, voices have been raised at the United Nations General Assemblies showing strong support to the fundamental 'Right to Privacy'. There were requests made to many countries

seeking the abolishment of all activities that were in breach of this particular right. The right to privacy is a fundamental human right recognized by the legislation or court judgments in numerous countries. However, the practice of tapping by authorities, i.e., surveillance and interception by law enforcement agencies for the purpose of providing better security, is seen to be in breach of this right. Like in many other countries, tapping in India cannot be done by private bodies or individuals but only by the state. The appropriate guidelines and procedure for the same have been laid down under the Indian Telegraph Rules, 1951. Today, most of the cybercrime investigations happening in India are centred on internet surveillance and interception. Also, the Information and Technology (Amendment) Act, 2008 empowers the government to intercept computer systems for the purpose of surveillance and investigation of any crime. A strict procedure needs to be adhered to as mentioned under the IT Procedure and Safeguards for Interception, Monitoring and Decryption of Information Rules, 2009. Earlier, the interception was allowed only if it was in the best interest of the sovereignty and integrity of the nation or to prevent the incitement of the commission of any offence. But today, the government has the power to allow interception, irrespective of any conditions concerning national security or integrity, for the investigation of any crime. The recently set up CMS or Central Monitoring System carries out interception and surveillance of more than 150 million users' mobile phones and computer networks, leaving them vulnerable and their fundamental rights violated. Hence, there is an urgent need to introduce regulatory measures and impose reasonable restrictions on investigative agencies in order to prevent the abuse of power at the hands of the government and to safeguard the privacy of internet-based communications.

3.3 Computer Forensics In India

Computer forensics refers to the branch of scientific forensics that deals with retrieving lost digital data or analysis of existing information for application during investigations. These days, computers facilitate the storage and recording of data and also keep track of all the activities being performed by their users. Computer forensics makes good use of this tendency as it enables investigative agencies to track down criminals and also keep an eye on offensive activities taking place in cyberspace.

Despite of the edge it provides, this field of forensic sciences has failed miserably in India. Even though there have been attempts in the past to strengthen this mechanism by way of setting up Cyber Crime Investigation Cells or codifying the procedures relating to digital evidence, a

systematic and organized approach towards the growth and development of cyber forensics in India seems to be lacking. Moreover, if used wisely, it may prove to be an effective tool in combating cybercrimes across the nation.

3.4 Collection of Electronic Evidence

Electronic or digital evidence refers to relevant data stored in computers in the form of documents, photographs, videos, audio, chat logs, emails etc. which may be used for the investigation of a particular crime. As discussed earlier, the collection of electronic evidence is a time-consuming process as these are hard to locate and bifurcate further. Considering the fact that electronic evidence can easily be altered and are temporary in nature, it is not always admissible in courts. Particularly in India, these are considered to be secondary evidence. Sections 63 and 65 of the Evidence Act, 1872 require this evidence to be authenticated and, therefore, certified by a competent authority. However, at present electronic evidences are very significant, especially after considerable amendments were made to the IT Act, 2000. In a recent judgment, the Supreme Court affirmed the scope of Section 65B, stating that it is a special provision different from Sections 63 and 65 with respect to secondary evidence. This section deals with the procedure that allows digital evidences to be adduced in a court of law. It also puts forth certain necessary conditions that are required to be fulfilled for the establishment of the authenticity of electronic evidence. It is an intricate procedure as it even requires the production of a certificate that describes the nature and manner of its creation, the devices involved in its design, and certify compliance with the necessary technological conditions, as mentioned under Section 65B, by a senior person who is responsible for the records and information stored in his computer. It's high time such restrictions are eased, as analysis of electronic evidence can help investigative agencies to achieve their goals in an efficient manner.¹⁰

4. INFORMATION AND TECHNOLOGY ACT, 2000: AN ANALYSIS

4.1 Positive Aspects

The Information and Technology Act, 2000 brought about significant changes in the corporate sector and the world of cybercrimes. Earlier, not even an e-mail was considered a legal mode of communication between parties, and it was also debarred from being reproduced as evidence in a court of law. It also enabled corporate firms to use digital signatures, which were earlier invalid in

¹⁰ Challenges to Cyber Crime Investigation: A Need for Statutory and Infrastructural Reforms, Supra note1.

the eyes of the law. This came as a big boost for corporate firms as it facilitated online commercial transactions. With the introduction of the required legal framework, electronic commerce started flourishing in India, providing the much-required edge in the corporate field.

Today, companies prefer to have much of their information stored in hard discs and computer systems as cybercrimes such as hacking and piracy are punishable offences and may provide statutory remedies to the victims under the IT Act, 2000. Various cybercrimes, such as hacking and virus attacks, have been listed and classified under the same. Before the enactment of the IT Act, there were no legal remedies available to the victims, who would often find themselves at risk of being hacked.

4.2 Negative Aspects

One of the major drawbacks of the Information and Technology Act, 2000 is concerning the ascertainment of jurisdiction, as discussed earlier. There is a dire need to specify and regulate the system of domain names that lays the foundation for electronic commerce. There is still opacity and ambiguity regarding the rights and liabilities of domain name owners as they are not aptly mentioned in the law. Furthermore, there is a massive backlog with respect to the laws focusing on the development and protection of Intellectual Property Rights. Despite the fact that the Information and Technology Act lays down several cybercrimes and internet-based crimes, it still hasn't kept pace with the growing number of such crimes and their variants in cyberspace. Moreover, there has been a significant increase in the number of crimes related to individual privacy, which has not been dealt with at all so far. Areas pertaining to anti-trust issues remain untouched. "As per the report of the National Crime Records Bureau, in 2005, a total of 175 cases were registered under the IT Act, 2000, of which about 50% of cases were related to obscene publications/transmission in electronic form, normally known as cyber pornography"¹¹. Hence, such cybercrimes can also be linked to the rising number of suicides in India. It is also held by many that there is no specific set of rules regarding the implementation of cyber laws in India.

5. CONCLUSION

Internet is probably one of the greatest inventions of the 20th century. It has contributed significantly towards the socio-economic development of our country. It has several advantages and also has a ubiquitous reach. In today's modern world, distance is no longer a matter of concern

¹¹ Challenges to Cyber Crime Investigation: A Need for Statutory and Infrastructural Reforms, Supra note 1.

as the Internet has greatly contributed towards the aspect of communication across the globe. However, there are also certain negatives associated with it which may have a huge impact on the political, social, economic and personal spheres of life. One such menace the internet has given rise to is cybercrime.

It may be true that not many cases of cybercrime are reported in India. But that doesn't mean that cybercrimes are non-existent in this country and that society is safe from them. As discussed earlier, there are many reasons why cybercrimes are not reported in our country. Hence, it is highly recommended that the government initiate programs to draw people's attention towards this issue and spread awareness regarding the seriousness of the same. The cyber cells present in our country are expected to do better by analyzing the potential hazards prevalent in the cyberspace and taking active measures to combat them. There is also a need for incorporating and developing computer forensics in India. The police officials are also expected to make the victims feel comfortable during the registration of cases and further encourage people to come up to them in order to file a complaint.

The customary laws have become obsolete and are somewhat inadequate for curbing the offensive activities happening within the cyberspace. As we all know, cyberspace is faceless, borderless and paperless. Henceforth, there is a need for evolving a code of conduct to be adhered to in cyberspace to ensure the discipline and security of netizens. A Cyber Penal Code should also be enacted, incorporating all sorts of internet-based cybercrimes. Since it is a menace to be tackled at the global level, international treaties or agreements should be signed by countries, and they must ensure close cooperation towards achieving their aims. Also, while developing appropriate principles under cyber law, emphasis should be laid on the fact that most cybercriminals are minors i.e., they haven't attained the majority. Even though it is an uphill task to develop an appropriate legal framework to curb and regulate cybercrimes in our country, there is a need for balance and security in the cyberspace, which must be fulfilled.

ANALYZING THE INTERPRETATION OF TAX EXEMPTION PROVISIONS, WITH SPECIAL EMPHASIS ON EXEMPTIONS FOR “BENEFICIAL PURPOSES”

-Veddant Majumder*

Abstract

Benjamin Franklin famously used to state that amongst all uncertainty, only two things are certain: death and taxes¹. However, the interpretation of tax clauses, more specifically tax exemption clauses in India are not subject to a uniform interpretation, which creates an atmosphere of uncertainty. This is a burning problem which needs to be addressed, according to which assesseees can plan their conduct in a decisive manner. The author lays down the trend of interpretation of exemption clauses in taxing statutes in India. Historically, the judiciary in India has been following the approach of interpreting any ambiguity in an exemption provision of a taxing statute, in favour of the assessee. However, this settled trend was reversed by the decision of the Hon’ble Supreme Court of India in the case of Commissioner of Customs v. Dilip Kumar, 2018², wherein it was held that the assessee cannot directly claim the benefit of an ambiguity in an exemption clause, the onus is on the assessee to establish that his particular case falls within the scope of such exemption clause. Another nuanced understanding of this issue sprung up by the judgment of State of Kerala v. Mother Superior Adoration Convent, 2021³, wherein the Hon’ble Supreme Court of India held that the ambiguity in an exemption clause in a taxing statute shall be construed in favour of the assessee if such exemption is made for a “beneficial purpose”. However, the Supreme Court did not define what constitutes “beneficial purpose” in the said case. The author addresses the said uncertainty by analyzing the usage and interpretation of the term “beneficial purpose” by the Indian judiciary in the past. Finally, the author concludes on a stable interpretation of exemption clauses in taxing statutes on which assesseees can rely and align their conduct to for maximizing their advantage.

Keywords: Tax Exemption, Purposive Interpretation, Strict Interpretation, Beneficial Purpose, Ambiguity

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¹ *Death and Taxes — Adam Smith Institute*, Adam Smith Institute, <https://www.adamsmith.org/blog/death-and-taxes> (last visited Mar. 21, 2025).

² *Commr. of Customs (Import) v. Dilip Kumar & Co.*, (2018)9 SCC 1 (India).

³ *Govt. of Kerala v. Mother Superior Adoration Convent*, 2021 (376) E.L.T. 242 (S.C.) (India).

1. INTRODUCTION

The laws pertaining to indirect taxation in India grant the Government the power to establish extensive exemptions for specified goods or services, provided it deems such relief crucial for the betterment of public welfare. This exemption may cover the entirety or a portion of the relevant tax and may be contingent upon the fulfillment of specific prerequisites. The issuance of these general exemptions requires formal notification in the Official Gazette.⁴

In the domain of direct taxation, the Central Government holds the power to institute specific exemptions under defined circumstances. In many cases, the types of income eligible for exemption from the tax base are explicitly outlined within the statute.⁵

2. EQUITABLE INTERPRETATION IN TAX STATUTES

The maxim "*there is no equity in tax*" is often referenced, signifying that taxes are not bound by considerations of fairness or justice. This expression is commonly employed by courts to endorse a strict and literal interpretation of a tax law provision that is clear and unequivocal.⁶

In India, a clear demarcation between legal rights and equitable rights is absent. Equitable remedies find expression through statutory rights.⁷

Though courts may alleviate the harsh consequences of tax laws by resorting to "equitable considerations," it is commonly recognized that these remedies fundamentally derive from statutory provisions. For instance, the Supreme Court's ruling in the case of *Mafatlal Industries Ltd. and Ors. v. Union of India*⁸ lays down that the equitable evaluation of unjust enrichment in cases of erroneous tax payments is premised on Section 72 of the Indian Contract Act, 1872.⁹ The perspective adopted in this case differs from the approach observed in English common law, which seeks an equitable basis for providing redress in cases of mistaken tax payments,¹⁰ especially when the claimant has exhibited fair and just behavior in a prompt manner.

⁴ The Central Goods and Services Tax Act, 2017, §11.

⁵ The Income Tax Act, 1961, Chapters IV, V, VI-A.

⁶ *Commissioner of Income Tax v. Ajax Products*, AIR 1965 SC 1358. (India).

⁷ *Jodha Mal Kuthiala v. Commissioner of Income Tax*, AIR 1972 SC 126. (India).

⁸ *Mafatlal Industries Ltd. and Ors. v. Union of India*, (1992⁷) 5 SCC 536 (India).

⁹ The Indian Contract Act, 1872, §72.

¹⁰ *Woolwich Equitable Building Society v. Inland Revenue Commissioners*, (1992) 3 WLR 366. (India).

An important judgement in this regard is *Vodafone International Holdings BV v. Union of India*¹¹, wherein the court established that the appropriate approach to construing fiscal legislations is to impose tax on the assessee only when there is an unequivocal intention to do so. Fiscal legislations should not be construed through equitable considerations. The judgment explicitly stated that when interpreting a tax statute, the literal rule or golden rule of interpretation should be applied, rather than a purposive interpretation. Consequently, the aspect of equity as a remedy is not inherently accessible. The remedy through equitable consideration of claims is only applicable in cases of reasonable doubt or ambiguity, subject to other conditions which are further discussed in the paper.

3. STRICT INTERPRETATION OF TAX STATUTES

The consistent trend in the jurisprudence of interpreting taxing statutes underscores the importance of a strict approach. This has been evident in a series of judgments where a literal interpretation of taxing statutes has been considered customary. In the landmark case of *A.V Fernandez v. State of Kerala*,¹² the court established that when it comes to the interpretation of fiscal legislations, adherence to the explicit wording of the law takes precedence, and any purposive interpretation derived from the perceived intent of the law should not be entertained initially. The fundamental principle is that any tax imposed must be clearly specified within the law itself, and taxation cannot be inferred or extended by analogy.

The judiciary, in its interpretation of tax statutes, refrains from assuming the intentions of the legislature beyond what is what the letter of the law conveys by way of the plain language of the statute. The desired economic outcomes of a legislation do not serve as a definitive criterion for interpreting a taxing statute. The court meticulously scrutinizes the presence of three essential elements in a taxing provision: the subject of the tax levy, the applicable tax rate, and the individual or entity obligated to pay the tax. Through strict interpretation, the court establishes that in the absence of any of these indispensable criteria, taxation cannot be imposed.¹³

¹¹ *Vodafone International Holdings BV v. Union of India*, (2012) 6 SCC 613. (India).

¹² *A.V Fernandez v. State of Kerala*, AIR 1957 SC 657 (India).

¹³ *Mathuram Agarwal v. State of M.P.*, (1999) 8 SCC 667. (India).

Caveats to the application of the literal rule were highlighted in *CIT V. Shehzada Nand & Sons*.¹⁴ The judgment established that the literal rule of interpretation takes precedence when construing a tax statute. It is only in instances of reasonable doubt that a beneficial or purposive construction of the statute may be employed. As such, the purposive rule of interpretation is sparingly applied and is reserved for cases where there exists ambiguity in the interpretation of a taxing provision. Hence, in actuation of this principle, the court may resort to purposive interpretation where a literal interpretation leads to absurd or unreasonable outcomes.¹⁵

4. INTERPRETATION OF TAX EXEMPTIONS

Until very recently, the established legal stance regarding the liability of the assessee in cases of ambiguity in the interpretation of fiscal statutes dictated that the perspective favoring the assessee should be upheld.¹⁶ This position been reiterated in a catena of judgments such as *CCE v. Calcutta Springs Ltd.*¹⁷ & *Collector of Customs v. Lotus Inks.*¹⁸ The application of statutory interpretation principles remains consistent for both tax.¹⁹ However, the scenario is not quite the same when it comes to interpretation of tax exemption provisions, where if there are two possible interpretations for an exemption notification, the onus is on the assessee to demonstrate his entitlement to the benefit of such exemption. Otherwise, the exemption provision will not be construed in favor of the assessee, and it will be interpreted in favor of the revenue department. As per the standard principle of interpretation under fiscal laws, the burden of proof is to be dispensed by the party making the assertion in exemption claims.²⁰ As established in *Novapan India Ltd. v. CCE & Customs*²¹, when an individual is seeking relief from tax liability through an exception or exemption provision, it is incumbent upon them to provide clear and convincing evidence that they fall within the parameters outlined in the provision. In situations where there may be uncertainty or ambiguity, it is customary to give the benefit of the doubt to the state. This aligns with the standard principle in fiscal laws.

¹⁴ *CIT V. Shehzada Nand & Sons*, (1996) 3 SCR 379 (India).

¹⁵ *CCE v. Acer India Ltd*, (2004) 8 SCC 173 (India).

¹⁶ *CIT v. Vatika Township*, (2015) 1 SCC 1(India).

¹⁷ *CCE v. Calcutta Springs Ltd.*, (2007) 15 SCC 89 (India).

¹⁸ *Collector of Customs v. Lotus Inks*, (1997) 10 SCC 291 (India).

¹⁹ *Hansraj Gordhandas v. HH Dave*, AIR 1970 SC 755 (India).

²⁰ *Uniworth Textiles Ltd. v. CCE*, (2013) 9 SCC 753 (India).

²¹ *Novapan India Ltd. v. CCE & Customs*, (1994) 3 SCC 606 (India).

An example of this standard is reflected in the case of *Commissioner of Central Excise v. Ginni Filament*.²² In this case, a conflict emerged regarding the enforcement of an excise duty exemption intended for certain capital goods. This exemption was granted under the condition that the goods were utilized by enterprises solely focused on exports, contingent upon meeting specific criteria. The central issue in the dispute revolved around the interpretation of the phrase "in connection with manufacture." The core of the dispute was whether the taxpayer could claim the exemption for capital goods that were not directly involved in the manufacturing process, such as, typewriters, air conditioners, tables, and chairs, in a scenario where the primary product being produced was filament yarn.

The Supreme Court herein resorted to a purposive test approach and opined that, when viewed holistically, the exemption notification was intended to provide the tax break exclusively to capital goods directly utilized in the production of the final product. Consequently, the assessee in this case was denied the tax benefit.

A key principle in the interpretation of tax exemption notifications is the differentiation between substantive conditions, which a taxpayer must satisfy to qualify for an exemption, and provisions of a procedural or technical nature. Failure to comply with the latter does not necessarily result in the taxpayer being ineligible for the tax exemption.²³ This matter was thoroughly examined by a five-Judge Constitutional Bench of the Supreme Court in the case of *CCE v. Hari Chand Shri Gopal*.²⁴ The Supreme Court recognized that certain clauses within an exemption notification may be regarded as directory, while others are obligatory. It stressed upon the significance of distinguishing between substantive provisions and those that pertain to procedures or technicalities. Given this foundation, the Supreme Court recognized that in specific instances, substantial adherence may be adequate for qualifying for an exemption. This is especially pertinent in situations where fulfilling particular conditions or prerequisites holds utmost significance for invoking a tax or duty exemption. This approach allows for some flexibility in cases where non-compliance pertains to less critical technical aspects. The Court concluded by affirming that as long as the substantial aspects of the exemption provision are met by the assessee, they should not be denied the benefits of the exemption on grounds of minor technical lapses or procedural inaccuracies.

²² *Commissioner of Central Excise v. Ginni Filament*, AIR 2005 SC 1330 (India).

²³ *Mangalore Chemicals and Fertilizers Ltd. v. Deputy Commissioner*, AIR 1992 SC 152 (India).

²⁴ *CCE v. Hari Chand Shri Gopal*, (2011) 1 SCC 236 (India).

In the case of *Commissioner of Customs (Mumbai) v. Tullow India Operations Ltd.*, the distinction between procedural and substantive compliance in relation to tax exemption provisions was further elucidated.²⁵ In this case, the importer engaged in the importation of seismic data tapes and survey vessels, encountered a challenge when he was unable to procure a vital essentiality certificate from the Department of Hydrocarbons (Government of India) prior to the act of importation in 1999. Although provisional authorization was provided for the movement of goods into the domestic tariff area, the duty exemption was withheld. This decision was based on the condition outlined in the pertinent notification, which mandated importers to possess an "essentiality certificate" to qualify for the exemption. Despite the importer's diligent application for the certificate, it was not provided in a timely manner, even though it was not due to any fault of the importer. It is important to highlight that the local Customs Clearing House had notified that the exemption would not be revoked solely on account of a delay in time. The Tribunal, while recognizing the inequitable nature of the outcome, adhered rigorously to the precise terms of the exemption notification and consequently denied the exemption. The Supreme Court determined that the importer should not have been denied the tax exemption based solely on the delayed issuance of a required certificate by a government authority. Nevertheless, the case was sent back to the Commissioner of Customs for further examination.

In arriving at this decision, the Supreme Court drew on previous legal precedents to emphasize that the entitlement to a tax exemption should not be withheld due to a department's failure to issue a required certificate within stipulated timelines.²⁶ The prevailing trend in the interpretation of exemption provisions within taxing statutes indicates the existence of a dichotomy. On one hand, there is the principle of strict construction, which necessitates a literal interpretation of the statutory provision, irrespective of its repercussions.²⁷ and the purposive construction rule, which allows for a broader interpretation of the relevant exemption provision.²⁸ This has led to an interpretative standard that imposes strict interpretation of the eligibility criteria for exemption, while concurrently allowing a

²⁵ *Commissioner of Customs (Mumbai) v. Tullow India Operations Ltd.*, AIR 2006 SC 536 (India).

²⁶ *Commissioner of Central Excise v. MPV & Engg. Industries*, (2003) 153 ELT 485 (India).

²⁷ *Giridhar G. Yadalam v. CWT*, (2015) 17 SCC 664 (India).

²⁸ *Bajaj Tempo Ltd. v. CIT*, (1992) 3 SCC 78 (India).

liberal interpretation of the conditions outlined for asserting exemption.²⁹ as also held in case of *Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner of Commercial taxes*.³⁰

This disparity in the interpretation of exemption clauses in taxing statutes prompted the Supreme Court to refer matters pertaining to the interpretation of tax exemption provisions to a larger Bench, culminating in the decision of a five-Judge Bench in *Commissioner. of Customs (Import) v. Dilip Kumar & Co.*³¹ (hereinafter “Dilip Kumar”)

The five-Judge Bench in *Dilip Kumar* decisively clarified the interpretation of exemption provisions, emphasizing a strict approach. It placed the responsibility of proving applicability squarely on the taxpayer. In cases of ambiguity, which are subject to strict interpretation, any potential advantage emanating from such ambiguity cannot be resorted to by the assessee; rather, such ambiguity shall be construed in favor of the Revenue.³²

Despite the incremental tax burden on the taxpayer, the decision in *Dilip Kumar* firmly established the legal framework for interpreting exemptions in fiscal legislation. It emphasized that it is the Revenue's duty to substantiate the tax charge, while the onus lies on the taxpayer to establish eligibility for exemption. The judgment also made it clear that there was no need to reconcile any other precedents, as their impact, whether conflicting or not, was encompassed within the judgement.

5. UNSETTLING THE SETTLED JURISPRUDENCE

A novel jurisprudential development has been effectuated by the decision of the Supreme Court in *Govt. of Kerala v. Mother Superior Adoration Convent*³³ (hereinafter “Mother Superior”) and has added a new nuance. The Supreme Court acknowledged the presence of previous decisions advocating for a strict construction of tax exemption provisions, but did so only to underscore that there exists an alternative line of legal reasoning.

²⁹ *Compack (P) Ltd. v. CCE*, (2005) 8 SCC 300 (India).

³⁰ *Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner of Commercial taxes*, 1991 SCR (3) 336 (India).

³¹ *Dilip Kumar*, supra note 2, at 1.

³² *Id.*

³³ *Mother Superior*, supra note, 3 at 1.

According to this alternative line of thought, even in tax statutes, an exemption provision should be interpreted liberally, aligning with the objective it seeks to accomplish, particularly if it aims to provide an incentive or serve a beneficial purpose. In light of this, the Supreme Court delved deeper into the aspects addressed in the Dilip Kumar case and asserted that the five judge Constitutional Bench's judgment did not make reference to the line of legal thought that makes a distinction between exemption provisions in a general sense and those that carry a specific beneficial purpose.

5.1 Facts of Mother Superior

The case in question pertains to an exemption provision delineated in The Kerala Building Tax Act, 1975 (the Act'). This Act imposes taxes on building construction and a luxury tax on specific residential properties, while also carving out an exemption for buildings primarily used for religious, charitable, or educational purposes.

The central issue in this case pertains to the taxation of buildings used either by nuns for residential purposes or by students residing in hostel accommodations associated with educational institutions. The Department argued that these buildings should not qualify for exemption, as they were used for residential purposes rather than for religious or educational activities. The primary question before the Division Bench of the Supreme Court was whether these hostel and residential buildings could be classified under 'educational and religious purposes' and, therefore, be considered for exemption under the Act as serving a "beneficial purpose."

The State maintained that an exemption could only be granted if a building was predominantly used for religious or educational purposes, rather than for activities outside these areas. Since no religious or educational activities took place in the buildings housing the nuns and students, the State argued that these buildings did not qualify for the exemption.

The State relied on the Dilip Kumar case and argued that exemption provisions in fiscal statutes should be interpreted strictly. In the event of doubt or ambiguity, the interpretation should favor the State. In contrast, the assessee argued that buildings should be eligible for exemption under legislation designed to promote religious, charitable, and educational purposes. The assessee maintained that such exemptions should not be interpreted restrictively but rather in a broader, more liberal manner to align with the overarching intent of the legislation.

5.2 Decision of Mother Superior

The Division Bench in this specific case deviated from the general principle and ruled that exemptions intended to encourage or promote welfare activities should be expansively interpreted. Moreover, in the event of ambiguity within a beneficial exemption provision, it should be construed in favor of the assessee.

In light of the said principle, in *Mother Superior*, the Supreme Court concluded that the beneficial purpose of the exemption contained in Section 3(1)(b) of Kerala Building Tax Act, 1975 must be given full effect, interpreting the ambiguity in favour of the assessee.

5.3 Interpretation of Exemptions for Beneficial Purposes Post *Mother Superior*

The Dilip Kumar case settled the question of interpretation of exemption provisions in tax statutes, i.e., such provisions are to be given a strict interpretation, however, an ambiguity, if arises, shall be interpreted in favour of the revenue.³⁴ However, the *Mother Superior* decision imparts a fresh perspective to the legal framework set by Dilip Kumar, incorporating an extra facet to consider when ascertaining the fundamental purpose of the exemption provision — namely, whether it serves a beneficial purpose.³⁵

Upon close examination, it becomes apparent that the stance adopted by the court in the Dilip Kumar case, which did not take into account the established line of authority that distinguishes between the interpretation of tax exemptions in a general context and those designed for “beneficial purposes”, represents a departure from the prevailing legal doctrine up until that point. Instead, the view formulated in the *Mother Superior* case has been used by the judiciary in the past, especially in the landmark judgement of *Commr. of Customs v. M. Ambalal & Co*³⁶, (hereinafter referred to as “*Ambalal*”) in which it was held that while exemptions, in general, are subject to strict interpretation, those intended to incentivize or promote specific activities should be interpreted liberally. These two principles operate effectively in distinct contexts. In

³⁴ Dilip Kumar, supra note 2, at 1.

³⁵ *Mother Superior*, supra note, 3 at 1.

³⁶ *Commr. of Customs v. M. Ambalal & Co.*, (2011) 2 SCC 74 (India).

this particular case, the court elucidated a clear distinction between tax exemptions of a general nature and those serving beneficial purposes. It emphasized that these two categories pertain to distinct sets of circumstances, articulating its position in the following words:

“The Rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite Rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.”

The legal stance reinstated by the Mother Superior judgment dictates that tax exemptions are typically subject to strict interpretation. In instances of ambiguity, it becomes the responsibility of the assessee to substantiate that their case aligns with the parameters of the exemption. However, when a tax exemption is designed to serve a "beneficial purpose," any ambiguity automatically inclines in favor of the assessee's claim falling within the scope of the exemption provision. However, the Mother Superior Judgment did not define what constitutes "Beneficial Purpose". Consequently, comprehending the definition and extent of a "beneficial purpose" is crucial for assesseees to shape their actions accordingly.

6. UNDERSTANDING “BENEFICIAL PURPOSE”

Interpretations of the phrase “beneficial purpose” in taxation matters were made in several cases, which are important to be assessed to find a reliable meaning and scope of “beneficial purpose”. In the case of Commissioner of Income Tax Vs. Ruby Rubber Works Ltd. and Ors.³⁷, it was held that a subsidy or any payment towards keeping the workforce employed or starting an industry in a backward area, or providing electricity in an area which does not have access to electricity, and these initiatives could not be undertaken unless the said subsidy is provided,

³⁷ Commissioner of Income Tax Vs. Ruby Rubber Works Ltd. and Ors., (1989) 78 CTR (Ker) 75 (India).

is for a beneficial purpose, and thus, cannot be taxed as income. Similar findings were also reiterated in CIT v. Poona Electric Supply Co. Ltd. ([1965] 57 ITR 521) and Bengal Textiles Association v. CIT (AIR 1960 SC 1320).

Thus, "Beneficial purpose" signifies a provision designed to advance the interests of a specific group of individuals for the betterment of their well-being, and such provision should be expansively construed. The most recent application of "beneficial purpose" in the Mother Superior judgment extended the applicability of the tax exemption provision to buildings used for religious, charitable, or educational purposes. It clarified that the term "religious purpose" encompasses a broader spectrum, going beyond mere places of worship. The judgment implied that buildings used for religious purposes, even if nuns or students resided in them, were eligible for tax exemption due to their contribution to a "beneficial purpose." Consequently, in this case, "beneficial purpose" implicitly referred to a broader interpretation of religious purposes, which included accommodation facilities related to religious activities

Therefore, the interpretation of beneficial purpose involves legislating with the aim of shielding a specific class of individuals from onerous obligations in a particular context. Furthermore, "beneficial purpose" should receive the most extensive interpretation possible. However, this shielding effect is also subject to certain caveats. The caveats were given by the Court in the case of Commissioner. of Customs v. M. Ambalal & Co.((2011) 2 SCC 74). The court in this judgment clearly laid down that even after applying the tax exemptions carved out for beneficial purposes, the exemption granted to imported goods should not extend to illegal or smuggled goods owing to the liberal interpretation for a beneficial purpose. The practice of extending a liberal interpretation to the "beneficial purpose" of a tax exemption provision does not entail including within its scope what the language of the provision does not reasonably encompass, clearly excluding its extension to grant illegality or defeating the objects of the parent legislation.

7. CONCLUSION

Therefore, in cases where there is ambiguity in a tax exemption provision and the subject of such exemption serves a "beneficial purpose," the interpretation should lean in favor of the assessee. The ambit of the term "beneficial purpose" as analyzed and gathered by way of this paper, refers to a welfare measure targeted to a determinate class of persons. Although tax exemption provisions for a beneficial purpose are to be interpreted liberally, they must still align with the legislative intent and be construed reasonably within the scope of the verbatim language used in the provision. Hence, assesseees must hope to claim benefit of an ambiguous tax exemption provision, without having the onus to prove its applicability in its case, only when it is for a beneficial purpose and the ambit of such provision shall be interpreted within the reasonable meaning of language used in the statute.