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IILS LAW REVIEW

INDIAN INSTITUTE OF LEGAL STUDIES
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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, IIIS 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

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Dr. Joyjit Choudhury

Founder & Chairman

Indian Institute of Legal Studies

The pursuit of legal education is not merely the study of statutes and judgments; it is the continuous search for justice, social responsibility, and intellectual growth. In this spirit, I am pleased to introduce the latest issues of the IILS Law Review, which stand as a reflection of our institution's enduring commitment to academic excellence and meaningful legal scholarship.

A strong academic journal serves as more than a collection of research articles—it becomes a platform where ideas are examined, perspectives are challenged, and contemporary issues are explored with depth and clarity. The IILS Law Review continues to provide such a space for thoughtful discourse, encouraging scholars and students alike to engage critically with the rapidly evolving legal and social realities of our time.

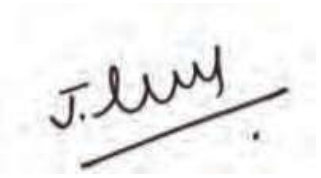
The contemporary legal landscape presents both opportunities and challenges. Questions surrounding constitutional values, technological advancement, environmental concerns, human rights, global governance, and socio-economic transformation increasingly demand careful analysis and informed discussion. It is encouraging to witness contributors addressing these complex themes with scholarly rigor, originality, and social awareness.

The dedication and hard work of the editorial board, reviewers, faculty members, and contributors deserve sincere appreciation. Their collective efforts have ensured that the IILS Law Review continues to uphold high academic standards while fostering a culture of research and intellectual inquiry within the institution.

Such commitment strengthens not only the journal itself but also the larger academic environment that nurtures future scholars and legal minds.

I hope these issues will inspire readers to think critically, explore new dimensions of legal understanding, and contribute positively to academic dialogue and social progress. May the IILS Law Review continue to grow as a respected forum for scholarship, innovation, and the exchange of ideas in the field of law.

With Best Wishes,



Dr. 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 issues 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 navigate the evolving legal landscape, these issues reaffirm our journal's dedication to addressing both traditional and emerging areas of law. From discussions on constitutional and environmental principles to explorations of contemporary legal challenges concerning technology, digital governance, human rights, and socio-economic policy, the IILS Law Review strives to provide its readers with thought-provoking scholarship and meaningful academic engagement.

We take great pride in featuring valuable contributions from academicians, legal scholars, and students whose research reflects both intellectual depth and social relevance. Their work not only strengthens our understanding of legal systems and institutions but also encourages constructive dialogue on issues that continue to shape the future of legal thought and jurisprudence.

I extend my heartfelt gratitude to the authors, reviewers, and members of the editorial board for their persistent efforts and dedication in maintaining the high standards of this journal. Their collective commitment and scholarly enthusiasm have played a significant role in ensuring the continued growth and credibility of the IILS Law Review.

I am confident that the diverse perspectives presented in these editions will inspire, educate, and encourage readers to engage critically with the dynamic and ever-evolving dimensions of law. We look forward to the continued support and participation of our academic community in the journey ahead.

Best Regards,

Dr. Trishna Gurung

Editor-in-Chief,

IILS Law Review

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ACHIEVING CULTURAL HOMOGENEITY THROUGH ETHNIC CLEANSING: A CONTEMPORARY STUDY

Rajarshi Mitra[1], *Dr. Nisha Thapa*[2]

Abstract

Ethnic cleansing represents one of the gravest violations of human dignity in contemporary international relations, aimed at achieving cultural or ethnic homogeneity through systematic displacement, violence, or extermination of targeted groups. Though not codified as an independent crime under international law, ethnic cleansing overlaps substantially with genocide, crimes against humanity, and war crimes. This study critically examines the concept of ethnic cleansing as a deliberate political and social strategy employed by states and non-state actors to reshape demographic realities. It explores the historical evolution, legal interpretations, and contemporary manifestations of ethnic cleansing across different geopolitical contexts. By employing a secondary research methodology, the paper analyses international legal instruments, judicial pronouncements, UN reports, and scholarly writings to assess the adequacy of existing legal frameworks in preventing and punishing such practices. The study further evaluates whether the pursuit of cultural homogeneity undermines pluralism, minority rights, and the foundational principles of international human rights law. It concludes that ethnic cleansing, irrespective of its terminology, constitutes a profound threat to global peace and necessitates stronger normative clarity and enforcement mechanisms.

Keywords: *Ethnic cleansing, Cultural homogeneity, Crimes against humanity, Minority rights, International criminal law.*

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1. INTRODUCTION

The idea of cultural homogeneity has long influenced the formation of nation-states, often presented as a means of fostering unity, stability, and collective identity. However, when pursued through coercive or violent means, this objective has resulted in one of the most egregious violations of international human rights **ethnic cleansing**. Ethnic cleansing refers to the systematic and deliberate removal of an ethnic, religious, or cultural group from a particular territory with the intention of altering its demographic composition. Although the term itself lacks a precise legal definition in international law, its manifestations are unmistakably linked with mass atrocities, forced displacement, destruction of cultural heritage, and grave breaches of humanitarian norms.[3] The concept entered global legal and political discourse prominently during the conflicts in the former Yugoslavia in the early 1990s, where organized campaigns of violence sought to create ethnically homogeneous territories.[4] Nevertheless, ethnic cleansing is not a modern invention. Historical examples from population transfers during the decline of empires to communal expulsions in colonial and post-colonial settings demonstrate that demographic engineering has frequently been used as a tool of political consolidation.[5] What distinguishes contemporary ethnic cleansing is its scale, bureaucratic organization, and its interaction with international legal norms that categorically prohibit such conduct.

In the contemporary international order, ethnic cleansing poses a direct challenge to the foundational principles of **pluralism, equality, and human dignity**. Modern constitutional democracies and international legal frameworks are built upon the recognition and protection of minority rights, cultural diversity, and the right of peoples to coexist within shared political spaces.[6] The pursuit of cultural homogeneity through forced means fundamentally contradicts these principles, replacing inclusive governance with exclusionary nationalism. As scholars have noted, ethnic cleansing often emerges where identity politics is weaponized, and differences are framed as existential threats rather than social realities.[7] From a legal standpoint, ethnic cleansing occupies a complex and often ambiguous position. While international law does not recognize it as an autonomous crime, international tribunals and human rights bodies have consistently treated acts of ethnic cleansing as constituting **genocide,**

[3] Andrew Bell-Fialkoff, *A Brief History of Ethnic Cleansing*, 72 *Foreign Aff.* 110, 121 (1993).
[4] United Nations, *Final Report of the Commission of Experts on the Former Yugoslavia*, UN Doc S/1994/674.
[5] Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* 7–15 (2001).
[6] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* 2–4 (1995).
[7] Rogers Brubaker, *Ethnicity without Groups* 56–59 (2004).

crimes against humanity, or war crimes, depending on the intent and context.[8] The jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has been particularly significant in clarifying that ethnic cleansing, when conducted as part of a widespread or systematic attack against a civilian population, attracts individual criminal responsibility under international law.[9] Despite this judicial clarity, the absence of explicit codification continues to create conceptual and enforcement challenges.

Ethnic cleansing also raises profound ethical and philosophical questions concerning the legitimacy of state power and the limits of sovereignty. While states often justify exclusionary policies in the name of national security, cultural preservation, or political unity, such justifications collapse when measured against peremptory norms of international law (jus cogens) prohibiting genocide, racial discrimination, and forced displacement.[10] The tension between sovereignty and international accountability becomes particularly pronounced when powerful states or non-state actors evade responsibility due to geopolitical considerations. In the present global context, ethnic cleansing remains a pressing concern, manifesting in varied forms such as forced migration, denial of citizenship, cultural erasure, and systematic persecution of minorities. These practices are often accompanied by legal manipulation, propaganda, and the normalization of exclusionary narratives.[11] The persistence of such practices highlights the inadequacy of purely reactive international mechanisms and underscores the need for preventive legal and institutional frameworks. This study situates ethnic cleansing within the broader discourse on international human rights law, humanitarian law, and minority protection. By examining ethnic cleansing as a means of achieving cultural homogeneity, the research seeks to expose the inherent incompatibility between homogenizing state projects and the normative commitments of the international legal order. In doing so, it aims to contribute to contemporary debates on accountability, prevention, and the protection of cultural diversity in an increasingly polarized world.

[8] William A. Schabas, *Genocide in International Law* 199–202 (2009).
[9] *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia Aug. 2, 2001).
[10] Antonio Cassese, *International Criminal Law* 64–67 (2013).
[11] United Nations High Comm'r for Hum. Rts., *Report on Minority Issues and Forced Displacement*, U.N. Doc. A/HRC/46/52 (2021).

RESEARCH OBJECTIVES

To examine the conceptual and historical evolution of ethnic cleansing **as a strategy aimed at achieving cultural homogeneity.**

To analyze the legal status of ethnic cleansing under international law**, particularly in relation to genocide, crimes against humanity, and war crimes.**

To assess contemporary instances of ethnic cleansing **and the effectiveness of international legal and institutional responses.**

To evaluate the implications of ethnic cleansing on minority rights, cultural diversity, and global peace.

RESEARCH METHODOLOGY

This study adopts a **doctrinal and analytical secondary research methodology**. The research is based on an extensive review of existing literature, including international conventions, UN resolutions, reports of international fact-finding missions, judgments of international criminal tribunals, scholarly articles, and authoritative textbooks. No primary empirical data has been collected. The methodology enables a critical evaluation of normative frameworks and judicial interpretations concerning ethnic cleansing, facilitating a comparative and contextual analysis across jurisdictions and time periods. The secondary method is particularly suitable due to the transnational nature of the subject and the availability of substantial documentary evidence.

REVIEW OF LITERATURE

Scholarly engagement with ethnic cleansing has largely emerged from disciplines such as international law, political science, and conflict studies. Andrew Bell-Fialkoff conceptualizes ethnic cleansing as a purposeful policy designed to remove unwanted populations through violent and non-violent means.[12] Norman Naimark traces its historical roots, arguing that ethnic cleansing is inseparable from the rise of the modern nation-state and nationalist ideologies.[13] From a legal perspective, William Schabas emphasizes the difficulty in prosecuting ethnic cleansing due to its absence as a standalone crime in international criminal law, despite its close proximity to genocide.[14] The International Criminal Tribunal for the Former Yugoslavia (ICTY) has played a pivotal role in jurisprudentially clarifying the concept by categorizing

[12] Bell-Fialkoff, *supra* note 1, at 121.
[13] Naimark, *supra* note 3, at 7–15.
[14] Schabas, *supra* note 6, at 199–201.

ethnic cleansing as a crime against humanity when accompanied by widespread or systematic attacks.[15]

UN reports, particularly those relating to Bosnia, Rwanda, and more recent conflicts, highlight the international community's reactive rather than preventive approach.[16] Contemporary scholars further critique the selective enforcement of international law, pointing to geopolitical interests that undermine accountability mechanisms.[17] Overall, the literature reveals a consensus on the moral reprehensibility of ethnic cleansing but exposes gaps in legal clarity and enforcement.

SCOPE OF THE STUDY

The scope of this study is confined to a **contemporary legal and analytical examination of ethnic cleansing** as a mechanism for achieving cultural homogeneity. It focuses primarily on international law and global practices, without undertaking a detailed country-specific empirical study. The research examines developments post–World War II, with particular emphasis on international humanitarian law, human rights law, and international criminal jurisprudence. While historical references are included for contextual clarity, the study does not attempt an exhaustive historical account. The scope further excludes detailed military or strategic analyses, concentrating instead on legal, ethical, and human rights dimensions.

CONCEPTUAL AND THEORETICAL FRAMEWORK OF ETHNIC CLEANSING

Ethnic cleansing, as a socio-legal phenomenon, represents a deliberate and systematic attempt to reshape the demographic composition of a territory by forcibly removing or eliminating a particular ethnic, religious, or cultural group. Unlike isolated incidents of communal violence, ethnic cleansing is characterized by **intentionality, organization, and policy orientation**, often involving state machinery or powerful non-state actors. Its ultimate objective is the creation of a culturally homogeneous space aligned with the dominant identity group.[18] The term ethnic cleansing does not enjoy formal recognition as an independent legal category under international law. Nevertheless, its conceptual clarity has evolved through academic discourse, United Nations documentation, and international criminal jurisprudence. The UN Commission of Experts on the Former Yugoslavia described ethnic cleansing as

[15] *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Judgment (Int'l Crim. Trib. for the Former Yugoslavia Trial Chamber Mar. 24, 2016).
[16] United Nations, *Final Report of the Commission of Experts on the Former Yugoslavia*, UN Doc S/1994/674.
[17] Makau Mutua, *Politics and Human Rights: An Essential Symbiosis*, 20 Harv. Hum. Rts. J. 1 (2002).
[18] Naimark, *supra* notes 3, at 4–6.

rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area.[19] This definition underscores both the coercive nature and the demographic intent inherent in the practice. From a theoretical standpoint, ethnic cleansing is closely linked with **exclusive nationalism and identity politics**. Nationalist theories premised on cultural uniformity treat diversity as a threat to political stability. Benedict Anderson's notion of "imagined communities" explains how collective identities are socially constructed and mobilized to define insiders and outsiders. Political elites often manipulate these constructions to legitimize exclusionary policies, transforming social differences into justifications for violence.[20]

Ethnic cleansing also intersects with theories of **state sovereignty and territorial control**. Historically, modern states sought to consolidate authority by homogenizing populations within fixed borders. Charles Tilly's state-formation theory demonstrates how coercion and territorial consolidation were integral to state-building processes.[21] In contemporary contexts, this logic persists despite the normative constraints imposed by international human rights law. Another critical theoretical lens is the concept of **"othering"**, wherein minority groups are portrayed as alien, disloyal, or dangerous. This process facilitates moral disengagement, enabling ordinary individuals to participate in or tolerate mass violence.[22] Ethnic cleansing thus operates not only through physical force but also through ideological conditioning, propaganda, and legal exclusion. Importantly, ethnic cleansing must be distinguished from genocide, although the two frequently overlap. While genocide requires specific intent to destroy a protected group, ethnic cleansing may aim primarily at removal rather than annihilation.[23] However, in practice, the distinction often collapses, as forced displacement is frequently accompanied by killings, sexual violence, and cultural destruction.

[19] UN Comm'n of Experts, *Final Report on the Former Yugoslavia*, U.N. Doc. S/1994/674.
[20] Rogers Brubaker, *Ethnicity without Groups* 58–60 (2004).
[21] Charles Tilly, *Coercion, Capital and European States* 32–34 (1992).
[22] Zygmunt Bauman, *Modernity and the Holocaust* 18–20 (1989).
[23] Schabas, *supra* notes 6, at 199.

2. HISTORICAL EVOLUTION AND CONTEMPORARY MANIFESTATIONS

The practice of ethnic cleansing predates the modern international legal order. Historical precedents can be traced to population expulsions during imperial conquests, religious persecutions, and colonial governance. However, the twentieth century marked a significant escalation in scale and organization. The dissolution of empires following World War I witnessed mass population transfers justified as mechanisms for conflict prevention.[24] These early practices, though normalized at the time, set dangerous precedents for demographic engineering. The most visible articulation of ethnic cleansing occurred during the Balkan conflicts of the 1990s. The disintegration of Yugoslavia unleashed nationalist movements that sought to establish ethnically pure territories. Systematic campaigns involving forced displacement, detention camps, mass rape, and destruction of religious and cultural sites were employed to erase minority presence.[25] The ICTY's findings revealed that ethnic cleansing was not incidental but a central military and political strategy. Beyond the Balkans, ethnic cleansing has manifested in various global contexts, often under different nomenclatures. In some regions, it takes the form of **forced migration**, where populations are compelled to flee due to targeted violence or economic deprivation. In others, **citizenship laws, land regulations, and administrative exclusion** are used to gradually displace minorities.[26] These indirect methods achieve demographic transformation while maintaining a façade of legality.

Contemporary ethnic cleansing is also marked by the **destruction of cultural heritage**. Attacks on places of worship, historical monuments, and linguistic institutions are intended to erase collective memory and sever a group's connection to the land. The UN has increasingly recognized cultural destruction as an integral component of identity-based violence. Technological advancements have further transformed the practice. Surveillance, digital propaganda, and misinformation campaigns are used to dehumanize minorities and justify exclusionary measures.[27] This evolution demonstrates that ethnic cleansing adapts to modern political and technological environments while retaining its core objective of cultural homogenization.

[24] Mark Mazower, *Dark Continent: Europe's Twentieth Century* 98–101 (1998).
[25] UN Sec. Council, *Report on Bosnia and Herzegovina*, U.N. Doc. S/1994/674.
[26] OHCHR, *Minority Rights and Forced Displacement*, U.N. Doc. A/HRC/46/52 (2021).
[27] UN Special Rapporteur on Minority Issues, *Annual Report* (2022).

3. ETHNIC CLEANSING AND THE INTERNATIONAL LEGAL FRAMEWORK

Despite its widespread recognition as a grave human rights violation, ethnic cleansing remains **uncodified as a standalone international crime**. International law addresses its constituent acts through multiple legal regimes, including international humanitarian law, international human rights law, and international criminal law. This fragmented approach has generated both flexibility and ambiguity. Under **international humanitarian law**, forced displacement of civilians is prohibited except for imperative military reasons. The Geneva Conventions and their Additional Protocols expressly forbid deportation and forcible transfer during armed conflict.[28] Violations constitute grave breaches, attracting individual criminal responsibility.

The Genocide Convention, 1948, becomes applicable where ethnic cleansing is accompanied by intent to destroy a protected group, in whole or in part. The International Court of Justice and international criminal tribunals have clarified that ethnic cleansing may amount to genocide when accompanied by specific intent.[29] However, the high threshold of intent often limits successful prosecutions. Crimes against humanity provide the most comprehensive legal framework. Article 7 of the Rome Statute of the International Criminal Court criminalizes deportation, persecution, and other inhumane acts committed as part of a widespread or systematic attack against a civilian population. The ICTY has consistently held that ethnic cleansing constitutes crimes against humanity when these elements are satisfied. Nevertheless, enforcement remains uneven. Political considerations, jurisdictional constraints, and lack of state cooperation undermine accountability. The selective application of international justice erodes its legitimacy and deterrent value.[30] Scholars argue that the absence of explicit codification reflects deeper structural weaknesses in the international legal order, particularly its dependence on state consent.[31] The Responsibility to Protect (R2P) doctrine represents a normative attempt to address these gaps by emphasizing prevention and collective action. However, its implementation has been inconsistent, often constrained by geopolitical interests.[32]

[28] Geneva Convention (IV) art. 49, Aug. 12, 1949, 75 U.N.T.S. 287.
[29] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro)*, 2007 I.C.J. 43 (Feb. 26).
[30] Mutua, *supra* notes 15, at 1.
[31] Cassese, *supra* notes 8, at 66.
[32] Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* 45–48 (2008).

ETHNIC CLEANSING, CULTURAL HOMOGENEITY, AND MINORITY RIGHTS

The pursuit of cultural homogeneity through ethnic cleansing stands in direct opposition to the modern international legal order, which is fundamentally premised on **pluralism, equality, and respect for diversity**. Minority rights are not peripheral but central to contemporary human rights discourse, recognizing that cultural, linguistic, ethnic, and religious diversity is an inherent feature of human societies rather than a deviation requiring correction.[33] Ethnic cleansing, by its very nature, negates this premise by treating difference as an existential threat rather than a social reality. International human rights law explicitly protects the rights of minorities to exist, participate, and preserve their identity. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) affirms that persons belonging to ethnic, religious, or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language. Ethnic cleansing renders these guarantees meaningless by physically removing minorities from the territories in which such rights are to be exercised. The violation is therefore not merely incidental but structural and irreversible.

Cultural homogeneity achieved through coercion also results in the **destruction of cultural heritage**, which has increasingly been recognized as a distinct human rights violation. The intentional demolition of places of worship, burial grounds, monuments, and educational institutions aims to erase the historical presence of a community and sever its connection with the land.[34] The United Nations Security Council has acknowledged that attacks on cultural heritage may constitute war crimes and are often linked to identity-based persecution. Such destruction forms part of a broader strategy of cultural erasure accompanying physical displacement. From a constitutional and democratic perspective, ethnic cleansing represents the abandonment of **constitutional morality**. Democratic constitutions are designed to manage diversity through accommodation, not elimination. The replacement of pluralism with majoritarian domination undermines the legitimacy of state authority and corrodes the social contract. Scholars argue that states engaging in ethnic cleansing ultimately weaken their own stability, as homogenization achieved through violence fosters long-term resentment, displacement-induced poverty, and cycles of retaliatory violence.

[33] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* 2–5 (1995).
[34] Francesco Francioni & Federico Lenzerini, *The Destruction of the Buddhas of Bamiyan*, 14 Eur. J. Int'l L. 619 (2003).

Ethnic cleansing also has transnational consequences. Large-scale displacement generates refugee flows, placing immense pressure on neighbouring states and destabilizing regions.[35] What begins as an internal project of demographic engineering often escalates into an international humanitarian and security crisis, thereby negating claims of domestic jurisdiction or sovereignty.

4. CHALLENGES OF ACCOUNTABILITY, PREVENTION, AND ENFORCEMENT

Despite the existence of robust normative frameworks, the international community has repeatedly failed to prevent or effectively respond to ethnic cleansing. One of the most significant challenges is the **reactive nature of international intervention**. Legal and political mechanisms are typically activated only after large-scale displacement and loss of life have already occurred. Early warning systems, although available through UN special procedures and civil society monitoring, are frequently ignored due to political expediency.[36] Accountability mechanisms also face serious limitations. International criminal tribunals, while normatively significant, are constrained by jurisdictional limits, dependence on state cooperation, and selective enforcement. The International Criminal Court, for instance, lacks universal jurisdiction and is often criticized for geopolitical bias.[37] As a result, perpetrators of ethnic cleansing particularly those backed by powerful states often escape prosecution. Domestic accountability presents an equally grim picture. Where ethnic cleansing is state-sponsored or tolerated, national courts are unlikely to provide remedies. Amnesty laws, judicial intimidation, and politicization of prosecution further entrench impunity.[38] This culture of impunity not only denies justice to victims but also normalizes demographic violence as an acceptable political tool.

Prevention requires a shift from punishment-focused responses to **structural and normative safeguards**. Strengthening minority protections, ensuring inclusive governance, combating hate speech, and promoting inter-community dialogue are essential preventive measures.[39] The Responsibility to Protect (R2P) doctrine embodies this preventive ethos by

[35] Upendra Baxi, *The Future of Human Rights* 121–24 (2008).
[36] UN Special Adviser on the Prevention of Genocide, *Framework of Analysis for the Prevention of Atrocity Crimes* (2014).
[37] Philippe Sands, *East West Street: On the Origins of "Genocide" and "Crimes Against Humanity"* 394–98 (2016).
[38] Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 Yale L.J. 2537, 2580–83 (1991).
[39] OHCHR, *Minority Rights: International Standards and Guidance for Implementation* (2010).

emphasizing state responsibility and collective international action. However, its inconsistent application has limited its effectiveness and credibility.[40] The failure to prevent ethnic cleansing ultimately reflects a deeper contradiction within international law: the tension between sovereign equality and the protection of fundamental human values. Until this tension is resolved through stronger enforcement mechanisms and genuine political commitment, ethnic cleansing is likely to persist.

5. CRITICAL ANALYSIS AND CONTEMPORARY RELEVANCE

In the contemporary global order, ethnic cleansing remains a disturbingly relevant phenomenon, particularly in an era marked by **resurgent nationalism, populism, and identity politics**. The increasing normalization of exclusionary rhetoric has created political environments in which demographic engineering is framed as a legitimate expression of self-determination.[41] This normalization represents a dangerous regression from the post–World War II consensus on human rights and minority protection. This study reveals that ethnic cleansing is not merely a humanitarian crisis but a **systemic failure of international governance**. The absence of explicit codification of ethnic cleansing as a standalone crime reflects a reluctance to confront the political realities underlying such practices. While existing legal categories are sufficient in theory, their fragmented application undermines coherence and deterrence. Furthermore, contemporary ethnic cleansing increasingly operates through **legal and administrative means**, such as discriminatory citizenship laws, zoning regulations, and development policies that displace minorities without overt violence.[42] These practices challenge traditional legal responses, which are often ill-equipped to address slow, structural forms of demographic exclusion. The continued prevalence of ethnic cleansing underscores the need for a paradigm shift from tolerance of homogenizing state projects to active protection of diversity as a global public good. Legal reform, while necessary, is insufficient without parallel political and social transformation. The defense of pluralism must be understood not as a concession to minorities but as a foundational requirement for peace, legitimacy, and justice in a diverse world.

[40] Evans, *supra* notes 30, at 48.
[41] Rogers Brubaker, *Why Populism?*, 46 Theory & Soc'y 357 (2017).
[42] UN Special Rapporteur on Minority Issues, *Annual Report* U.N. Doc. A/HRC/52/36 (2022).

6. CONCLUSION

This study has critically examined ethnic cleansing as a deliberate strategy aimed at achieving cultural homogeneity, revealing it to be one of the most severe and persistent violations of international human rights and humanitarian law. Through a chapter-wise analysis of its conceptual foundations, historical evolution, legal treatment, and contemporary manifestations, the research demonstrates that ethnic cleansing is neither an accidental by-product of conflict nor an inevitable consequence of diversity. Rather, it is a calculated political project rooted in exclusionary nationalism, identity-based politics, and the instrumentalization of state power. Despite the absence of explicit codification as a standalone international crime, ethnic cleansing is unequivocally prohibited under existing legal regimes governing genocide, crimes against humanity, war crimes, and minority rights. International jurisprudence, particularly from the International Criminal Tribunal for the Former Yugoslavia, has clarified that acts constituting ethnic cleansing attract individual criminal responsibility when committed as part of a widespread or systematic attack against civilian populations. However, the study reveals a significant gap between normative clarity and practical enforcement. Political selectivity, jurisdictional limitations, and weak international will have allowed many perpetrators to escape accountability.

The research further establishes that the pursuit of cultural homogeneity through coercive means fundamentally contradicts the values of pluralism, equality, and constitutional morality that underpin modern democratic governance. Ethnic cleansing not only annihilates minority communities but also destabilizes states, erodes the legitimacy of political institutions, and generates regional and global insecurity through mass displacement. In an era marked by rising populism and identity-driven politics, the normalization of demographic engineering poses a grave threat to the post–World War II human rights consensus. Ultimately, this study concludes that ethnic cleansing represents a systemic failure of international governance rather than a deficiency of legal norms alone. Addressing it requires a shift from reactive condemnation to proactive prevention, from selective justice to universal accountability, and from tolerance of homogenizing state projects to an affirmative commitment to protecting diversity as a foundational principle of global order.

7. POLICY RECOMMENDATIONS

1. Codification of Ethnic Cleansing as an Independent International Crime: The absence of an explicit legal definition of ethnic cleansing has contributed to conceptual ambiguity and inconsistent prosecution. The study recommends the **codification of ethnic cleansing as a standalone international crime**, either through an additional protocol to the Rome Statute or a dedicated international convention. Such codification would enhance legal clarity, facilitate prosecution, and strengthen deterrence without undermining existing categories of international crimes.[43]

2. Strengthening Preventive Mechanisms and Early Warning Systems: International responses to ethnic cleansing remain predominantly reactive. Preventive mechanisms must be institutionalized by strengthening the mandate of the UN Special Adviser on the Prevention of Genocide and integrating early warning indicators into Security Council decision-making.[44] States should be obligated to act upon credible evidence of demographic violence before it escalates into mass atrocities.

3. Enhancing International Criminal Accountability: Jurisdictional and political limitations continue to undermine international justice. Expanding the **jurisdictional reach of the International Criminal Court**, encouraging universal ratification of the Rome Statute, and supporting hybrid tribunals can mitigate accountability gaps.[45] States should be discouraged from using political vetoes to shield perpetrators from international scrutiny.

4. Domestic Legal Reforms and Universal Jurisdiction: States must incorporate international crimes related to ethnic cleansing into domestic legal systems and recognize **universal jurisdiction** for prosecuting such offenses. Judicial independence, protection of prosecutors, and victim participation should be strengthened to ensure effective domestic accountability.[46]

5. Protection and Empowerment of Minority Communities: Preventing ethnic cleansing requires addressing its root causes. States should adopt robust minority protection frameworks, ensure political participation, safeguard land and citizenship rights, and actively combat hate

[43] Schabas, *supra* notes 6, at 201–203.
[44] UN Special Adviser on the Prevention of Genocide, *Framework of Analysis for Atrocity Crimes* (2014) (UN Office on Genocide Prevention and the Responsibility to Protect).
[45] Cassese, *supra* notes 8, at 328–331.
[46] Orentlicher, *supra* notes 36, at 47–50.

speech and discriminatory narratives.[47] International monitoring bodies must be empowered to assess compliance and recommend corrective measures.

6. Recognition of Cultural Destruction as a Core Harm: International law should further recognize the destruction of cultural heritage as an integral component of ethnic cleansing. Legal accountability for cultural erasure alongside physical displacement must be strengthened through both criminal prosecution and reparative justice mechanisms.[48]

7. Reframing Sovereignty through the Responsibility to Protect (R2P): The doctrine of Responsibility to Protect must be revitalized through consistent application and genuine political commitment. Sovereignty should be understood not as a shield for demographic violence but as a responsibility to protect populations from mass atrocities.[49] Failure to uphold this responsibility should attract collective international action.

[47] Kymlicka, supra notes 31, at 152–156.
[48] Francesco Francioni & Federico Lenzerini, *The Destruction of the Buddhas of Bamiyan*, 14 Eur. J. Int'l L. 619 (2003).
[49] Evans, s*upra notes 30, at* 45.

DIVORCE, PETS, AND THE LAW: WHY INDIA MUST THINK IN THE DIRECTION OF PET CUSTODY LAWS?

-Aarya Dubey[1] & Kush Shanker[2]

Abstract

India ranks among the world's top five pet-friendly nations; yet, this growing affection for companion animals starkly contrasts with the absence of a coherent legal framework addressing pet custody after divorce or separation. This legislative vacuum has resulted in numerous disputes where these voiceless beings are left vulnerable, caught amid human conflicts and judicial uncertainty.

The article explores this critical gap in India's family law, contrasting it with progressive welfare-oriented models in jurisdictions. While countries across Europe and North America have progressively adopted welfare-oriented approaches in pet custody disputes, Indian family law remains conspicuously silent on this issue thereby attracting significant attention. A comprehensive reform is advocated for through legislative intervention or Supreme Court guidelines. Critically evaluating the feasibility of applying a "best interest of the pet" standard in Indian courts, the Article strongly highlights the need for such reforms that should not only resolve the current legal ambiguity but also signal India's shift towards a more inclusive and humane legal framework that acknowledges the value of all sentient beings within a family unit.

Keywords*: Companion animals; divorce; custody; welfare-oriented approach; best interest.*

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1. INTRODUCTION

Divorces often culminate in disputes concerning property division and child custody. However, the difficult question of who retains custody of pets is a significant topic that is rarely discussed during divorce proceedings. In contrast to animals that one encounters in natural or professional settings, a pet or companion animal is defined as "*an animal (usually one which is domestic or tame) kept for pleasure or companionship.*"[3]

India, listed as the fourth most pet-friendly nation across the globe, according to a recent survey by Mars Petcare[4], has witnessed a sharp increase in the number of companion animals over the past decade. The number of pets in the nation increased from about 26 million in 2019 to nearly 32 million in 2024, according to data analysed by the consulting firm Redseer.[5] According to Euromonitor International, dogs make up the majority- they surpassed 36.8 million in 2024 and are expected to surpass 51 million by 2028,[6] make up a relatively smaller fraction—nearly 4 million pets in 2024.[7] These figures make it abundantly evident how many Indians' lives are impacted by their pets.

Infact, the emotional bond that companion animals develop with their owners is just as important as their physical presence. This is supported by the Pet Humanisation Insights 2024 report, which shows that 16% of Indian pet owners even consider their animals to be their own children, and nearly 56% of them treat them as members of their family.[8] This complex relationship between humans and animals amply illustrates how pet dynamics have changed in contemporary homes.

However, a stark lacuna exists between this changing social outlook of man towards animal and the archaic legal framework governing animals in India, with the laws having historically failed in acknowledging them as anything beyond personal property. This parochial

[3] Benedikt Kretzler, *Pet ownership, loneliness, and social isolation: a systematic review*, 57 SOCIAL PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1935, 1935 (2022).
[4] GLOBAL PETS, https://globalpetindustry.com/news/global-pet-population-at-1-billion-cats-lead-the-way/ (last visited Sep. 12, 2025).
[5] Jasbir S Juneja, *From Kibble to Care: Understanding India's Evolving Petcare Market*, REDSEER (Sep. 12, 2025, 10:41 PM), https://redseer.com/articles/from-kibble-to-care-understanding-indias-evolving-petcare-market/.
[6] supra note 2 at .
[7] NEXDIGM, https://www.nexdigm.com/market-research/report-store/india-pet-food-market-report/ (last visited Oct. 13, 2025).
[8] TGM Research, https://tgmresearch.com/pet-humanization-report-india.html (last visited Oct. 13, 2025).

view has led to troubling consequences in pet custody disputes in case of owners wanting to divorce or separate.

While, in recent years, many countries like France, Portugal, Germany, Switzerland, Austria, Portugal and most recently Spain have legislated on the issue of pet custody in family disputes[9], India continues to lag significantly behind to adapt to this evolving need. In the absence of pet custody laws in force, the Indian judiciary has been in a constant tussle as to how should the custody of pets be decided- whether by applying the property law, or by considering the welfare of the animals involved, the approach which is followed in case of child custody matters.

While some courts across the globe have taken progressive steps in acknowledging the sentience of animals in deciding such disputes, in India, there is no uniformity within the judiciary governing such cases, leading to ambiguity and inconsistency in the application of law.

2. THE EVOLUTION OF SIGNIFICANCE OF COMPANION ANIMALS IN THE LIVES OF HUMANS

2.1. Changing Dynamics of Human- Animal Relationship

Human relationships with animals are not new; they date back to the Stone Age. Even before the advent of agricultural communities, human beings shared their lives with animals, not only for utility but often as companions.[10] Archaeological discoveries provide compelling evidence of this early bond. Recently, scientists unearthed a 12,000-year-old tomb in modern-day Israel, in which a woman was buried in a fetal position, with her hand cradling the head of a puppy, a gesture that suggests affection and emotional connection.[11]

Today, this human-animal relationship continues to be as strong as ever. Relying on the data presented by various research, in Australia and the United States, approximately 63% of households own pets.[12] In a world that is marked by uncertainty, chaos and stress, animals have

[9] Ashlea Begg, *Successfully Navigating Pet Custody Laws in Australia: What Every Pet Parent Should Know*, ALLIANCE LEGAL (Sep. 17, 2025, 12:00 AM), https://alliancelegal.com.au/navigating-pet-custody-laws-in-australia/.
[10] Marguerite O'Haire, *Companion animals and human health: Benefits, challenges, and the road ahead*, 5 J. VET. BEHAVIOR 226, 226 (2010).
[11] Bill Slott, *Man's best friend*, THE TIMES OF ISRAEL (Sep. 17, 2025, 6:49 PM), https://blogs.timesofisrael.com/mans-best-friend/.
[12] PET BACKER, https://www.petbacker.com/blog/facts/facts-about-pet-ownership-in-australia (last visited Oct. 13, 2025).

also assumed a rather crucial role in humans' life, becoming their silent companions, and in many ways, their saviours. Scientific research consistently highlights the positive impact of pets on human well-being. Pets have been shown to improve human well-being in numerous scientific studies. Due to activities like walking a pet or just playing with them, studies have shown that owning a pet is associated with better cardiovascular functioning, fewer medical visits, lower rates of depression, and increased physical activity.[13] According to a different study, healthy individuals who walked their dogs had better parasympathetic nervous system functioning than those who did not.[14] Physiological studies show that interacting with pets also reduces stress-related cortisol levels, anxiety,[15] and blood pressure[16]. One study discovered that the soothing presence of a pet was superior to that of a friend or spouse in "ameliorating the cardiovascular effects of stress,"[17] highlighting the unique therapeutic potential of the human–animal bond.

2.1.1 The Journey from Pets to Family

The human-animal bond is not only functional, but also serves as the most loyal and uncomplicated relationship in a person's life. This bond has grown stronger over time, to the point where people now view companion animals more as members of the family than as belongings. In India, over six out of ten pet owners regard their animals as integral parts of their families.[18] Some pet owners even contend that their pet's love is superior to that of human relationships. In fact, the courts have acknowledged this on numerous occasions.

In *Travis v. Murray*, the Supreme Court of New York went so far as to recognise that pets are now viewed as "*actual family members, often competing in importance with children*" rather than just as adjuncts to the family.[19] This viewpoint was also reaffirmed in *Deblase v. Hill*, where the court allowed a mother to sue for emotional distress damages after seeing her

[13] Dana Casciotti, & Diana Zuckerman, *The Benefits of Pets for Human Health*, NATIONAL CENTRE FOR HEALTH RESEARCH (Sep. 17, 2025, 8:35 PM), https://www.center4research.org/benefits-pets-human-health/.
[14] Stanisław Surma, Suzanne Oparil, & Krzysztof Narkiewicz, *Pet Ownership and the Risk of Arterial Hypertension and Cardiovascular Disease*, 24 CURR. HYPERTENION REP. 295, 297 (2022).
[15] Benedikt Kretzler, Hans-Helmut König, & André Hajek, *Pet ownership, loneliness, and social isolation: a systematic review*, 57 SOC'L PSHYC'RY & PSYCH EPIDEMOLOGY 1935, 1935 (2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9272860/pdf/127_2022_Article_2332.pdf.
[16] Nancy V. Wünderlich, *Animals in our Lives: An Interactive Well-Being Perspective*, 41 J. MACROMKTNG. 646, 650 (2021).
[17] Froma Walsh, *Human-Animal Bonds I: The Relational Significance of Companion Animals*, 48 FAM. PROCESS 462, 466 (2009).
[18]
[19] Travis v. Murray, 977 N.Y.S.2d 621 (2013).

son's dog get killed by a car.[20] This case confirmed that dogs can, in some situations, be considered immediate family members.

By giving their pets names, feeding them in separate bowls during regular mealtimes, getting veterinary care when they get sick, letting them share beds, dressing them, conversing with them, and even celebrating their birthdays, the owners exhibit anthropomorphism towards their pets.[21] Companion animals themselves display traits commonly associated with humans- such as loyalty, trust, joy, fear, and jealousy.[22] Recognizing these attributes helps people see animals as having humanistic traits, which explains why so many are considered essential family members.

Companion animals are valued members of society due to the increasing awareness of the emotional, psychological, and physical advantages they offer. However, this recognition has yet to find adequate reflection within the Indian legal framework, which poses a threat when social realities and legal systems intersect- for instance, in cases of divorce or separation, where companion animals are still treated merely as property thereby disregarding the deep emotional bonds and welfare considerations involved, when it comes to their grant of custody.

3. APPROACH ADOPTED BY THE COURTS WORLDWIDE IN PET CUSTODY DISPUTES

3.1. Traditional View of Animals as Property in India

In India, divorce rate continues to be low when compared to Western countries, with the National Family Health Survey conducted in 2015-16 reporting it at around 1%. This number, however, hides a quickly evolving reality in urban areas, where a sharp increase in divorce rates has been caused by social dynamics, economic independence, and changing views on marriage. At 18.7%, Maharashtra currently has the highest divorce rate, followed by Karnataka (11.7%) and Uttar Pradesh (8.8%). Telangana (6.7%), Tamil Nadu (7.1%), Delhi (7.7%), and West Bengal (8.2%) all exhibit an upward trend.[23] This suggests that although divorce is still viewed as a social stigma in many regions of the country, it is becoming a more common occurrence for couples in urban India. This presents special difficulties for companion

[20] Deblase v. Hill, 2025 NY Slip Op 25156.
[21] James A. Serpell, *Anthropomorphism and Anthropomorphic Selection—Beyond the "Cute Response"*, 10 SOC'Y & ANIMALS 437, 438 (2002).
[22] Marc Bekoff, Do animals have emotions?, NEW SCIENTIST (Sep. 19, 2025, 12:44 PM), https://www.newscientist.com/article/mg19426051-300-do-animals-have-emotions/.
[23] Saptadeepa Bhattacharjee, *Top 7 states in India with highest divorce rate*, INDIA TV NEWS (Sep. 21, 2025, 3:58 PM), https://www.indiatvnews.com/photos/india-top-seven-state-in-india-with-highest-divorce-rate-2025-07-04-997407.

animals, who are frequently entangled in custody battles and disturbed home environments. Given that disagreements over companion animals frequently prove to be just as intense and emotionally charged as those involving children during divorce proceedings, it is hardly surprising that pet custody has emerged as a common topic for matrimonial attorneys.[24]

When Bruno, a five-year-old Labrador from a divorced couple in Kolkata, was brought to a pet daycare earlier this year, it was discovered that he had anxiety-related aggression. The underlying issue? Well, neither of his owners could produce valid ownership documents, and their emotional bond with him held no weight in the eyes of the law.[25] Bruno's predicament is not unique. It illustrates the harsh reality that many Indian pets must deal with when they become entangled in marital conflicts and suffer as a result of a legal system that prioritises paperwork and property over love and care.

In India, none of the laws governing family law matters, including divorce, such as the Hindu Marriage Act[26], the Special Marriage Act[27], and the Divorce Act[28], which have actively developed to cater to alimony, child custody, and estate division matters, contain provisions that address the custody or welfare of pets. Despite having been given the familial status to pets by the Indians[29], the country's legal system continues to struggle in categorising what rights, if any, do these animals hold when deciding upon who should have their long-term care. While we may see our pets as our closest companions, often showering them with care, love, and affection just like any other family member, the law, whenever questions pertinent to their custody arose in divorce matters, has viewed them as a mere "item" of possession, treating them much like pieces of furniture, rather than as the cherished souls they truly are.[30] When this personal property approach is assumed for pets in the context of a custody dispute, or more precisely put, during the division of marital assets, they are ascribed an economic value and allocated in much the same manner as other items of matrimonial property.

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[24] ECONOMIC TIMES, https://economictimes.indiatimes.com/news/india/after-child-indian-couples-are-most-concerned-about-custody-of-pet-dog-or-cat-lawyers/articleshow/104645393.cms?from=mdr (last visited Sep. 21, 2025).
[25] Jaismita Alexander, *Legal lacuna: Who gets custody of the pet in case of a breakup, divorce?*, TELEGRAPH INDIA (Sep. 23, 2025, 10:44 PM), https://www.telegraphindia.com/my-kolkata/lifestyle/kolkata-advocate-animal-activists-and-pet-parents-on-the-ambiguity-of-pet-laws-in-india/cid/2096848?utm_source=chatgpt.com#goog_rewarded.
[26] The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).
[27] The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).
[28] The Divorce Act, 1869, No. 4, Acts of Parliament, 1869 (India).
[29] *supra* note at .
[30] Vikram Sharma, *Mission ImPAWsibble*, DECCAN CHRONICLE (Sep. 21, 2025, 5:02 PM), https://www.deccanchronicle.com/lifestyle/sex-and-relationship/251023/mission-impawssible.html.

The lawyers usually advise the separating couple to mutually resolve the issue of their "fur baby's" custody.[31] However, if neither party is willing to reach a compromise, the pet usually remains with the spouse that it is currently residing with, whether or not he or she is the best care giver. Those partners also get to decide whether the estranged partner gets to visit the pet or not, says Meera Kaura Patel, a Delhi-based Supreme Court advocate specialising in family disputes.[32]

3.1.1. The Growing Recognition of Pets' Welfare in Foreign Jurisdictions

In divorce proceedings, the courts worldwide have primarily relied on the "best interest of the child" while determining custody disputes,[33] a principle which is also incorporated in *Article 3(1)* of the Convention on the Rights of the Child, 1989[34]. This standard ensures that custody decisions are guided not merely by parental preference but by the overall welfare and development of the child.[35] While applying this, courts examine a variety of factors which inter alia includes the child's age, health, the expressed wishes of the parents regarding custody, the preferences of the child if the child is of sufficient maturity to voice them, and the child's relationship and level of interaction with parents, siblings, and other significant individuals who may influence his emotional wellbeing.[36]

In recent years, the growing recognition of companion animals as something more than mere property has prompted legal scholars to suggest extending a similar "best interest" standard to pet custody disputes.[37] Traditionally, courts have treated pets under property law, focusing solely on ownership rights[38], showing reluctance in granting their custody using the "best interest" approach. For instance, in *Nuzzaci v. Nuzzaci*[39], the Delaware Family Court

[31] Anup Satphale, *Separating?... Well, who gets the dog?*, TIMES OF INDIA (Sep. 23, 2025, 8:55 PM), http://timesofindia.indiatimes.com/articleshow/71162009.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.
[32] Riddhi Doshi, *Who gets custody of the pet in case of a divorce?*, LIVE MINT (Sep. 23, 2025, 10:15 PM), https://www.livemint.com/mint-lounge/ideas/need-for-better-pet-custody-laws-in-case-of-divorce-111712648943871.html?utm_source=chatgpt.com.
[33] Dr. N. Krishna Kumar, *Best Interest Principle: A Central Feature of Family Law*, 2 INT'L J. RSCH. & ANALYTICAL REV. 571, 574 (2015).
[34] Convention on the Rights of the Child, 1989, art. 3, cl. 1.
[35] Tejaswi Pandit, *Custody of Children*, SCC ONLINE (Oct. 1, 2025, 10:18 PM), https://www.scconline.com/blog/post/2019/11/25/custody-of-children/.
[36] Hardik Batra & Tanish Arora, *Welfare of the Child After Parents' Divorce or Separation - Key Analysis*, MANUPATRA (Sep. 26, 2025, 11:16 PM), https://articles.manupatra.com/article-details/WELFARE-OF-THE-CHILD-AFTER-PARENTS-DIVORCE-OR-SEPARATION-KEY-ANALYSIS.
[37] Rebecca J. Huss, *Separation Custody, and Estate Planning Issues Relating to Companion Animals*, 74 UNI. COLORADO L. REV. 181, 227 (2003).
[38] *Id.*
[39] Nuzzaci v. Nuzzaci, 1995 WL 783006 (Del. Fam. Ct. Apr. 19, 1995),

rejected the application of the "best interest of the animal" standard and declined to approve a Stipulation and Order granting visitation rights to a golden retriever. The judge noted that there was no statutory basis for such an order and raised concerns about the court's authority to decide custody or visitation matters involving animals without the parties' mutual consent. In a similar vein, the Florida District court in *Bennett v. Bennett*[40], ruled that it would be improper to give pets a special legal status during divorce proceedings and ordered the trial court to treat them similarly to other marital property under the equitable distribution statute.

However, despite the reluctance in applying the "best interest" standard, courts across various jurisdictions have begun to move away from a rigid property-based analysis in pet custody cases. Globally, courts are being confronted by the consequences of laws which fail to give a considered approach as to what happens to family pets upon their owners divorce. Questions of custody and access rights are being tackled whilst prioritising the welfare of an animal companion. Increasingly, judicial decisions reflect an understanding that animals hold intrinsic value as sentient companions rather than mere assets to be divided. In *Pratt v. Pratt*, while the Court of Appeals of Minnesota held that child custody statutes do not apply to disputes over pets, it allowed the trial court to consider evidence of mistreatment when awarding custody of two Saint Bernard dogs.[41] Similarly, a Connecticut court in *Vargas v. Vargas* awarded a dog to the wife after weighing the overall circumstances, including testimony that the husband had not treated the animal well, despite the dog originally being a gift to him.[42] In another case of *In re Marriage of Stewart*, an Iowa court clarified that it need not apply a "best interests" test to pets, but emphasized that animals should not be placed in situations where they may face abuse.[43]

It is, thus, evident that even in the absence of explicit statutory provisions, courts have started taking animal's welfare into account in custody disputes. Although no court has formally stated such a principle, an examination of court decisions in a number of cases indicates that it merits careful thought. This change represents a significant advancement in family law since it brings legal reasoning into line with changing public perceptions of animals and the understanding of their place in human families.

[40] Bennett v. Bennett, 655 So. 2d 109, 110-11 (Fla. Dist. Ct. App. 1995).
[41] Pratt v. Pratt, 1988 WL 120251 (Minn. Ct. App. Nov. 15, 1998).
[42] Vargas v. Vargas, 1999 WL 1244248 (Conn. Super. Ct. Dec. 1, 1999),
[43] In re Marriage of Stewart, 356 N.W.2d 611, 613 (Iowa Ct. App. 1984).

4. WHY COURTS SHOULD NOT APPLY PROPERTY LAW IN PET CUSTODY DISPUTES?

When deciding which spouse should retain pet after divorce or separation, Indian courts have historically applied property law. Legally speaking, pets are considered personal property rather than members of the family. According to Gary L. Francione, a professor of philosophy and law at Rutgers University and the author of Animals, Property, and the Law, society's interest in treating animals as property is so ingrained that, even in cases where individuals personally view their pets as members of their family, the legal system generally refuses to take that stance. While courts in a few jurisdictions are gradually beginning to recognise the unique role that pets play in our lives, India is lagging behind and still categorises them in this way.[44] While courts of few jurisdictions are witnessing a shift in this narrative and have gradually started acknowledging the special place, pets hold in our lives, India lags behind in adopting a similar approach and continues to classify them as mere personal chattels, with no legislation settling the debatable issue.

Treating pets strictly as property overlooks their interests, if any at all. Although many courts continue to approach pet custody through a property lens, some have acknowledged that pets are unlike ordinary assets divided in a divorce. For instance, in *Akers v. Sellers*, the Indiana Appellate court noted the unfortunate reality that awarding legal ownership to one spouse may disregard the animal's emotional attachment, loyalty, and affection toward the other.[45] Other courts, too, have acknowledged that pets have psychological and physical needs, and that failing to meet these needs may even constitute neglect or abuse.

Courts frequently ignore the fact that pets can develop strong emotional bonds with their human guardians by classifying them as property. Many pet owners contend that animals and inanimate objects are fundamentally different. For instance, dogs are frequently characterised as possessing some of the best human attributes, such as loyalty, trust, bravery, playfulness, and love, while lacking characteristics like greed, apathy, and hatred. Some courts have considered the emotional and mental health of animals when making custody decisions because they are able to recognise, respond to, and reciprocate affection. In these situations, courts have taken a broad view of the "welfare of the animal," taking into account things like

[44] GARY L. FRANCIONE, ANIMALS PROPERTY & THE LAW 24 (Temple University Press 1995).
[45] Akers v. Sellers, 54 N.E.2d 779, 779 (Ind. App. 1944).

the animal's access to exercise, whether there are kids or other pets living with them, and the caregiver's affection.

However, when it comes to dividing pets in divorce settlements, many courts continue to follow a strict property-based analysis, disregarding these factors. This approach also overlooks how circumstances can change after judgment. Since property distribution in divorce is generally final, courts lack the authority to revisit custody even if neglect or abuse arises later. Such rigidity disadvantages companion animals and illustrates how property law fails to account for their welfare. However, while there is clearly a rise in trend of advocating 'best interest' standard in pet custody disputes, the real question is- Is it really feasible? To what extent should the children be treated at par with the animals? Is it really even justified to treat them so?

5. PROBLEMS IN APPLYING THE BEST INTEREST OF THE PET STANDARD

The most immediate problem in applying the "best interest of the pet" standard is the difficulty in objectively determining what those best interests actually are.[46] Unlike a child, a pet cannot verbalize its preferences, attachments, or fears. As one court aptly noted in *Travis v. Murray*,

> *"…there is no proven or practical means of gauging a dog's happiness or its feelings about a person or a place other than, perhaps, resorting to the entirely unscientific method of watching its tail wag. The subjective factors that are key to a best interests analysis in child custody... are, for the most part, unascertainable when the subject is an animal.*"

The courts are therefore compelled to rely heavily on circumstantial evidence- photos, videos, testimony, and anecdotes, presented by the opposing parties, each with a vested interest in painting a specific picture. This makes it hard to prove anything because people often argue about who the pet is more attached to, with each side trying to make themselves look like the more loving, caring, or "beloved" carer.

This lack of factual evidence often results in anthropomorphic bias, causing both judges and litigants to unintentionally attribute human emotions, reasoning, and social behaviours to

[46] Houseman v. Dare, 405 N.J. Super. 538, 966 A.2d 24; Morgan v. Kroupa, 702 A.2d 630 (Vt. 1997), 167 Vt. 99 (1997).

the animal. For example, a pet's enthusiastic response to seeing an owner who has been gone for a long time might be misinterpreted as a sign of deeper attachment. In reality, it could just be excitement or relief at seeing someone familiar again after a long time apart. On the other hand, the calm comfort a pet shows with its main carer, which is often a better sign of attachment, might be seen as indifference.

The lack of standards for psychological or behavioural assessments for animals makes this problem even worse. Even when animal behaviour experts are consulted, their assessments are frequently disputed, lacking universal scientific endorsement or consistency across species. Consequently, in the absence of an objective metric or validated framework to assess an animal's "happiness" or "best interest," judicial determinations in pet custody disputes are predominantly subjective, interpretative, and susceptible to emotional bias.

6. WHAT'S THE WAY FORWARD?

The "best interest of the pet" standard presents significant challenges; however, it should not be entirely disregarded, as reverting to a rigid proprietary approach would neglect the established sentience of companion animals. Instead of giving it up altogether, the authors suggest that a better solution would be if Indian legislature and judiciary, both, could assume the task of refining the standard, and designing a structured legal framework to bolster it. India also has the opportunity to learn from the approaches, loopholes, and errors of other jurisdictions in deciding upon pet custody and build its own practically viable system.

A genuine shift begins by adopting a welfare-centric approach- one which discards the archaic concept of ownership and focuses on the more compassionate principles of guardianship and responsibility. For this, the first and foremost step should be to enact a statute which lays down a clear checklist of empirically grounded factors and tangible indicators which would guide the judiciary in applying the otherwise inconsistent welfare approach, objectively, and with uniformity. Some of the factors that the legislature can certainly look upon inter alia include primary caregiving like who walks the dog, takes him to the vet, plays with him, or gives him treats, environment of the household post-divorce- for instance, the wife's calm home with access to green spaces can be preferred over the husband's cramped apartment with chaotic setting. The pet's established routine, like, its sleep schedule, walking hours, and attachment to a particular spouse can also be relevant factors as there is plethora of research

which proves that sudden disruption to these can cause anxiety, depression, or even behavioral issues in animals[47].

The enactment of such a law on pet custody will not only settle the conundrum regarding what approach to apply in such disputes, bringing consistency and uniformity within the judiciary, but will also recognize once and for all the inherent sentient nature of companion animals, their ability to feel and respond. Although no personhood may be granted to these animals, even recognizing their sentience and treating them unlike chattels would be a progressive step towards their welfare, which till now was only a topic on the table, but a far-fetched reality.

The legislation could also introduce the concept of a *guardian ad litem* for the pet, i.e. a neutral officer appointed by the court to represent the best interest of the animal. Acting as the pet's voice, he would be tasked with assessing living conditions of the pet with each of the divorcing parties to understand the relationship they share with each other, consulting veterinarians, and suggesting which environment better aligns with the animal welfare. The introduction of such neutral party would ensure that the decisions concerning custody are made through an informed, and impartial manner rather than being swayed by the emotional tug-of-war between the separating couple.

However, given that India currently has no dedicated legislation governing pet custody, the immediate, practical, and more feasible approach lies in judicial intervention. The Apex Court, being the temple of justice, in light of achieving complete justice for the often-unheard part of the society, could take the lead in filling this legal lacuna by laying down structured guidelines to be followed by all the sub-ordinate courts in matters involving post-separation pet custody. In order to reduce subjectivity and guarantee consistency across court rulings, these guidelines may incorporate certain uniform factors for evaluating welfare, such as living arrangements, medical history, and caregiving patterns. In addition to serving as a guide for judges in resolving complex custody disputes, such guidelines issued under the Apex Court's constitutional powers[48], would also set the stage for upcoming legislative reforms.

[47] RIVERSIDE VET, https://riversidevetsc.com/back-to-school-back-to-stress-how-routine-changes-affect-pet-anxiety/ (last visited Oct. 12, 2025).
[48] INDIA CONST. art. 141.

7. CONCLUSION

It has been accurately stated that when society changes the law, it signifies the start of its development, and when society changes the law, it signifies the maturity of the society. As social realities gradually change over time, the law must also advance and develop to keep up with societal demands. Law serves as a tool to accomplish social goals, and it only loses value and becomes outdated if it cannot change to reflect societal shifts.

Pets feel all the same emotions as their human family members, making them an integral part of the family. As a result, the needs and welfare of animals should always come first when their owners divorce or separate. A major change in Indian jurisprudence would result from the adoption of the welfare-centric model, which acknowledges companion animals' capacity for sentience and emotional intelligence.

India is at a pivotal juncture in the history of pet custody disputes. Legislative reform is still the best long-term solution, but in the interim, the judiciary must also carry the torch. Courts can start using a welfare-centric model in animal-related disputes, departing from the antiquated ownership-centric reasoning, through the Supreme Court's mandated guidelines, bringing uniformity in deciding custody matters.

If implemented effectively and promptly, such actions would demonstrate a significant departure from anthropocentric legalism and a move towards a more inclusive coexistence framework, one that recognises that justice in its purest form cannot exclude those who suffer, form relationships, and lose something. Such reform, whether it is started by the legislature or the judiciary, would only serve to confirm that compassion is a moral obligation rather than a sentimental matter, guaranteeing that India's laws eventually reflect the compassionate ideals that its people already uphold.

ONE NATION, ONE ELECTION: A SOLUTION IN SEARCH OF A PROBLEM?

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Abstract

The proposal for "One Nation, One Election" (ONOE), which seeks to synchronize elections to the Lok Sabha and all State Legislative Assemblies, has sparked a national debate. Proponents argue that simultaneous elections can reduce costs, enhance governance stability, curb populism, and ease logistical burdens on the Election Commission. However, critics contend that such a shift may undermine federalism, dilute regional political voices, and pose serious legal and logistical challenges. This article examines the historical evolution of India's electoral cycles, analyzes constitutional and judicial constraints, and weighs both the merits and pitfalls of the ONOE initiative. Drawing on comparative perspectives from other democracies and evaluating India's political.

Keywords: *One nation one election (ONOE), federalism in India, electoral reforms, simultaneous elections, Indian Constitution and governance.*

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1. INTRODUCTION

India, the world's largest democracy, conducts elections more frequently than almost any other country. In any given year, some state or local body is usually headed to the polls. While this electoral vibrancy has long been celebrated as a marker of India's democratic maturity, it has also come under increasing scrutiny. Chief among the critiques is that frequent elections disrupt governance, impose excessive fiscal and administrative burdens, and promote a politics of populism over policy. In response, the idea of "One Nation, One Election" (ONOE), the simultaneous conduct of elections to the Lok Sabha and all State Legislative Assemblies, has emerged as a bold reform proposal.

This idea, though not new, has gained unprecedented traction in recent years. The central government and some policy think tanks argue that ONOE will lead to improved governance by eliminating the constant election mode, reduce public expenditure significantly, and enhance voter convenience. Proponents also argue that it would provide political stability and foster a more coherent policy environment by freeing elected representatives from constant campaign pressures.

Yet, despite these apparent advantages, ONOE raises a host of legal, constitutional, political, and logistical questions. Critics argue that the proposal could weaken federalism, marginalize regional voices, and lead to the centralization of power. Moreover, the legal and practical hurdles to implementation are formidable, requiring constitutional amendments, state ratifications, and enormous logistical reorganization.

This article critically examines whether the ONOE proposal genuinely addresses the challenges of India's electoral system or merely offers a simplistic solution to complex governance problems. Is this reform a bold step toward efficient democracy, or a potentially disruptive move cloaked in populist appeal? By analyzing the historical context, constitutional framework, legal precedents, and comparative global models, this article seeks to uncover whether ONOE is indeed a solution, or simply a solution in search of a problem.

2. HISTORICAL & CONSTITUTIONAL CONTEXT

2.1 The Early Years: Simultaneous Elections in Practice (1951–1967)

At the dawn of India's democracy, simultaneous elections were not an innovation, they were the norm. In 1951-52, India held its first general elections, with the Lok Sabha and all State Assemblies going to the polls simultaneously. This pattern continued for the next three general

elections in 1957, 1962, and 1967. The synchronization was facilitated by the alignment of the terms of both the central and state legislatures, which commenced and concluded almost concurrently.

However, political instability in the late 1960s and 1970s marked the beginning of the end of this alignment. In 1968-69, several State Assemblies were prematurely dissolved due to defections, political fragmentation, and imposition of President's Rule. This led to staggered elections and disrupted the synchronicity. The central government, too, saw early dissolution of the Lok Sabha in 1971, further widening the gap between central and state election cycles.

Thus, the staggered election calendar we see today is not by design, but the result of a dynamic and evolving political landscape. While frequent elections may seem inefficient, they also reflect the reality of a vibrant, multi-party democracy that responds to political flux.

2.2 Constitutional Provisions and Term Limits

The Constitution of India lays down clear provisions governing the term of legislatures. Article 83(2)[2] prescribes a five-year term for the Lok Sabha, "unless sooner dissolved". Similarly, Article 172[3] provides for a five-year term for State Legislative Assemblies. However, Article 356 enables the imposition of President's Rule in states, which can lead to the premature dissolution of State Assemblies. Additionally, Articles 85 and 174[4] empower the President and Governors respectively to dissolve the legislatures before the completion of their term on the advice of the Council of Ministers.

These provisions collectively indicate that while the term of legislatures is fixed in theory, it is often flexible in practice. Political contingencies, judicial interventions, coalition instability, and constitutional crises can all lead to early elections. As such, attempting to artificially align these terms through ONOE would not only require a significant constitutional overhaul but may also run counter to the spirit of democratic adaptability envisioned by the framers.

2.3 Past Efforts to Reintroduce ONOE

The idea of reverting to simultaneous elections has surfaced repeatedly. In 1999, the Law Commission of India, under the chairmanship of Justice B.P. Jeevan Reddy, recommended the reintroduction of simultaneous elections in its 170th Report, subject to certain preconditions to

[2] Constitution of India, Art. 83(2).
[3] Constitution of India, Art. 172.
[4] Constitution of India, Arts. 85, 174.

maintain democratic stability[5]. The report highlighted issues like excessive spending and the negative impact of the Model Code of Conduct on governance.

In 2018, the Law Commission again examined the feasibility of ONOE in its Draft Working Paper. While reiterating the potential benefits, the Commission acknowledged the immense constitutional and logistical challenges, emphasizing that simultaneous elections would require constitutional amendments, legal changes, and broad political consensus[6].

Thus, the ONOE debate is not new, but it has now acquired a sharper political edge and greater institutional interest, demanding a deeper and more nuanced evaluation.

3. THE CASE FOR ONE NATION, ONE ELECTION (ONOE)

Supporters of the ONOE proposal argue that simultaneous elections would produce wide-ranging benefits for governance, public finance, voter experience, and the political ecosystem. This section explores the major arguments advanced in favor of this reform.

3.1 Cost Efficiency: Reducing the Financial Burden of Democracy

India's electoral machinery is among the most expensive in the world. Conducting separate elections for the Lok Sabha and each of the 28 State Assemblies incurs massive expenditure every few months. According to data from the Election Commission of India (ECI), the 2014 Lok Sabha elections alone cost the exchequer around ₹3,870 crore[7]. The 2019 general election cost even more, an estimated ₹6,500 crore, making it the most expensive election in Indian history[8]. And these figures account only for official spending. When the campaign expenditures of political parties and candidates are included, the costs multiply.

Frequent elections mean that the government must repeatedly divert funds for administrative arrangements such as polling booths, security personnel deployment, EVM/VVPAT procurement, and electoral staff. For a developing country like India, where resources are scarce and demands on the public exchequer are high, such recurring expenses are a matter of concern. Simultaneous elections, by consolidating polling exercises, could significantly reduce the duplication of costs.

[5] Law Commission of India, 170th Report on Reform of the Electoral Laws, 1999.
[6] Law Commission of India, Draft Working Paper on Simultaneous Elections, 2018.
[7] Election Commission of India, Statistical Report on General Elections 2014.
[8] Centre for Media Studies, "*Poll Expenditure Report 2019*".

A 2017 report by NITI Aayog suggested that holding simultaneous elections could save the country thousands of crores in the long run, not only in direct costs but also in opportunity costs related to policy slowdowns and administrative paralysis[9].

3.2 Governance Stability: Escaping the 'Perpetual Election Mode'

One of the most frequently cited problems of staggered elections is that India remains in a perpetual state of electioneering. Every few months, some part of the country is either preparing for elections or under the enforcement of the Model Code of Conduct (MCC). The MCC, while essential to ensure free and fair elections, restricts governments from announcing new policies, launching welfare schemes, or taking significant administrative decisions during the election period.

When elections are frequent, governance becomes episodic, reactive, and short-term. Governments, especially at the Centre, often shift their focus from policy-making to vote-seeking. Ministers become unavailable due to campaign obligations, development work slows down, and bureaucratic priorities get misaligned. This cycle dilutes the capacity of governments to pursue long-term, consistent policy goals.

ONOE aims to remedy this by providing a five-year window of uninterrupted governance at both the central and state levels. By aligning electoral cycles, governments can focus on delivering promises and implementing policies without the looming pressure of impending elections.

Moreover, political instability triggered by state elections, especially when they are treated as referenda on national issues, can create unnecessary turbulence at the Centre. Synchronization might mitigate such volatility.

3.3 Voter Convenience and Increased Turnout

Voters in India frequently experience electoral fatigue. In politically active states like Uttar Pradesh, Maharashtra, or West Bengal, citizens may be called to vote as many as four or five times within a span of two years, Lok Sabha, Assembly, Municipal Corporations, Panchayats, and sometimes even by-elections. This repetition can lead to apathy, lower turnout, or confusion among voters about the issues at stake.

Simultaneous elections, held once every five years, could enhance voter engagement and convenience. Voters would have the opportunity to make a well-considered choice across

[9] NITI Aayog, "*Discussion Paper on Simultaneous Elections*", January 2017.

levels of government in a single electoral event. The logistical burden of travel, identification verification, standing in queues, and managing polling staff would also be reduced.

International examples support this claim. Studies in countries like Sweden and South Africa, both of which conduct elections to multiple tiers of government together, show that synchronized elections tend to increase turnout and reduce ballot errors[10].

3.4 Curbing Populism and Vote-Bank Politics

Frequent elections incentivize short-term populism. Political parties often resort to quick-fix welfare schemes, loan waivers, free electricity, or competitive identity politics to secure electoral gains. While such policies may offer immediate gratification, they rarely contribute to sustainable development.

ONOE could potentially encourage parties to adopt long-term manifestos and result-oriented policy thinking. When elections are held every five years, the incentive shifts from constant vote-seeking to continuous performance. This change in political calculus could raise the quality of policymaking, reduce fiscal imprudence, and bring discipline to public finance.

Additionally, election season often inflames communal, caste, and regional identities for political gain. With synchronized elections, the frequency of such high-stakes polarization may decline, providing more breathing space for constructive political discourse.

3.5 Administrative Efficiency and Reduced Disruption

Conducting elections is a massive administrative exercise, especially in a country with over 95 crore registered voters. Each election requires the deployment of lakhs of polling personnel, security forces, and logistical support. Schools are converted into polling booths, teachers are deputed as electoral officers, and essential services are often disrupted.

These recurrent disruptions affect education, transport, security, and governance delivery. Simultaneous elections would mean that this disruption occurs once every five years, rather than multiple times, reducing the strain on public infrastructure and human resources.

The Election Commission's staff and resources, which are already overstretched, could also function more efficiently if they had to organize elections in a consolidated manner. Moreover,

[10] ACE Electoral Knowledge Network, "*Comparative Electoral Systems Study: Simultaneous Elections and Voter Behavior*", 2016.

it would enable better security planning, avoid duplication of effort, and allow a more robust deployment of electronic voting infrastructure.

3.6 Global Precedents: Lessons from Other Democracies

Several democracies conduct simultaneous or near-simultaneous elections, providing useful insights for India. For example:

- South Africa holds elections to its National Assembly and Provincial Legislatures on the same day, every five years.
- Sweden conducts national and local elections simultaneously, ensuring coherence in governance priorities.
- Indonesia has also experimented with synchronizing presidential and legislative elections to reduce costs and improve voter efficiency.

These models suggest that synchronization is not inherently antithetical to democratic values. In fact, when executed with adequate institutional safeguards and public consensus, it can enhance efficiency and voter participation.

Of course, none of these countries share India's size, population, or political complexity. But the core idea of electoral streamlining can be adapted to Indian conditions with sufficient constitutional and procedural care.

The case in favor of ONOE rests on the promise of greater efficiency, policy coherence, voter empowerment, and reduced costs. While these benefits are persuasive, especially from a governance and administrative standpoint, they must be evaluated against the deeper structural and federal challenges they may unleash. The next section provides a critical look at the opposing view, and why ONOE, despite its appeal, might be a cure worse than the disease.

4. THE CASE AGAINST ONE NATION, ONE ELECTION: A CRITICAL ANALYSIS

While the arguments in favor of ONOE appear compelling at first glance, a deeper constitutional and democratic scrutiny reveals several structural flaws and political dangers inherent in the proposal. This section evaluates the critiques of ONOE through legal, political, and institutional lenses. Together, they demonstrate that ONOE is not just a logistical challenge, it is a complex constitutional conundrum that may do more harm than good.

4.1 Federalism at Risk: Eroding State Autonomy

India is a quasi-federal polity where the balance of power between the Centre and States is finely maintained. The Constitution provides states with their own elected governments,

legislative assemblies, and spheres of authority under the Seventh Schedule. Simultaneous elections raise the specter of centralizing tendencies, undermining the federal character of the polity.

In a country as diverse as India, states are not administrative units of the Union, they are political entities with distinct electoral dynamics, regional parties, languages, and socio-economic conditions. The synchronization of elections risks homogenizing political discourse, leading to the dominance of national narratives over regional concerns.

More critically, if ONOE is implemented, states may be forced to align their Assembly terms with the Lok Sabha. This would require premature curtailment or artificial extension of state legislatures, either of which is a direct assault on state sovereignty. Such central engineering of electoral timelines might violate the basic structure doctrine, which recognizes federalism as an essential feature of the Constitution[11].

4.2 What Happens When Governments Fall Mid-Term?

Perhaps the most legally ambiguous feature of ONOE is the "premature dissolution dilemma". Indian legislatures, both at the Centre and in states, often witness political churn, coalition breakdowns, floor-crossing, no-confidence motions, and President's Rule. If a state government loses its majority two years into its term, what happens under ONOE?

Two options arise, both problematic:

- Fresh elections in that state would defeat the purpose of synchronization.
- President's Rule or caretaker government until the next general election (potentially for years) would deny the people their democratic right to be governed by an elected representative.

This undermines the democratic principle of accountability and representativeness. The Constitution envisions continuous democratic legitimacy, not a frozen electoral calendar enforced through authoritarian rigidity.

In this context, ONOE may even require limiting the constitutional powers of Governors or the Assembly to dissolve prematurely, which would necessitate fundamental constitutional restructuring and risk judicial invalidation under the basic structure test.

[11] S.R. Bommai v. Union of India, AIR 1994 SC 1918.

4.3 Marginalizing Regional Voices and Dominance of National Parties

In staggered elections, regional parties have the opportunity to thrive based on local issues, identities, and leadership. These parties often form crucial counterweights to national parties and represent the plurality of Indian politics. Simultaneous elections would, by contrast, create a "nationalized political environment" where voters are more likely to vote the same party at both the central and state levels, the so-called coattail effect.

Empirical studies have shown that when elections are held simultaneously, national parties tend to perform better at the state level due to spillover effects of central leadership, branding, and national-level issues[12]. This may marginalize smaller, regional parties and dilute the federal diversity of India's legislature.

Moreover, simultaneous voting blurs the distinction between parliamentary and assembly mandates. Voters may be confused or feel compelled to vote for the same party at both levels, not necessarily based on performance but due to the psychological impact of "one nation, one event".

4.4 Logistical Impossibility: Can the Election Commission Handle It?

India's elections are already logistically colossal, with 11 million polling personnel, 2.3 million EVMs, and over 9 lakh polling stations in the last general election alone. Conducting elections for both Lok Sabha and 28 State Assemblies simultaneously would more than double these requirements.

While the Election Commission of India (ECI) has indicated that the idea is conceptually attractive, it has also flagged serious logistical constraints, including:

- Lack of double the number of EVMs/VVPATs needed for concurrent polling.
- Enormous strain on security forces, many of whom are drawn from paramilitary or state police units.
- Difficulty in mobilizing polling officers, especially in rural areas, for one consolidated event.

Moreover, India's elections are already vulnerable to heat waves, floods, monsoons, harvest cycles, and festivals, all of which vary state by state. Holding elections across the country in one limited window is operationally unrealistic and could reduce voter turnout due to local inconveniences.

[12] Palshikar, Suhas. "*Election Synchronisation and Federalism*", EPW, Vol. 53, Issue No. 15, 2018.

4.5 Misplaced Priorities: Reforming What Does Not Need Fixing?

While election fatigue and cost are genuine concerns, the ONOE proposal may be addressing the symptoms rather than the disease. India's electoral system is not broken because elections are frequent, it suffers more from money power, criminalization, voter inducement, and hate speech.

A focus on synchronizing elections risks ignoring deeper structural reforms that are urgently required, such as:

- Electoral financing regulation and transparency.
- Decriminalization of politics (over 40% of MPs have criminal cases).
- Independent internal democracy in political parties.
- Use of technology to prevent voter fraud and ensure transparency.

Instead of fundamentally altering the electoral calendar, reforms should aim at restoring credibility, fairness, and representativeness to the democratic process. ONOE offers a shiny fix to a problem that is arguably not at the heart of electoral dysfunction.

The ONOE proposal, though well-intentioned, appears to be constitutionally fraught, politically risky, and operationally unrealistic. It raises more questions than it answers, especially when tested against the bedrock principles of federalism, democracy, and electoral autonomy. Its adoption could fundamentally alter the Indian democratic experience, potentially in ways that centralize power, suppress regional aspirations, and undermine the Constitution's basic structure.

5. LEGAL & PRACTICAL CHALLENGES TO IMPLEMENTING ONOE

Even if the normative desirability of simultaneous elections were widely accepted, the legal and operational hurdles to its implementation are formidable. Unlike policy reforms that can be enacted through ordinary legislation, ONOE would require substantial amendments to the Constitution, overhaul of multiple statutes, coordination with the Election Commission of India (ECI), and most importantly, ratification by at least half of the Indian states. This section dissects the constitutional, statutory, judicial, and logistical challenges that stand in the way of implementing "One Nation, One Election".

5.1 Amending the Constitution: A Herculean Task

The first and most obvious challenge is constitutional. The Indian Constitution lays down clear provisions relating to the tenure of the Lok Sabha and State Legislative Assemblies. Articles

83(2) and 172(1)[13] respectively state that the Lok Sabha and State Assemblies shall continue for five years from the date of their first sitting, unless sooner dissolved.

To implement ONOE, the following constitutional provisions would need to be amended:

- Article 83 – Term of the Lok Sabha.
- Article 172 – Term of State Assemblies.
- Article 85 – President's power to dissolve Lok Sabha.
- Article 174 – Governor's power to dissolve Assemblies.
- Article 356 – Imposition of President's Rule.

Moreover, the proposal may also require the addition of a new constitutional mechanism that allows for either premature dissolution of all Assemblies or the extension of terms, based on electoral synchronization. Both actions, curtailment and extension of legislatures, may raise basic structure concerns, particularly around democracy, federalism, and representative government.

According to Article 368(2)[14] of the Constitution, any amendment that affects the federal structure must not only be passed by a two-thirds majority in both Houses of Parliament, but also ratified by not less than half of the state legislatures. In the current political climate, such cross-party and cross-state consensus is highly unlikely.

5.2 Legal Uncertainty Around Dissolution and Term Extension

There is no existing constitutional mechanism to synchronize the terms of legislatures that are currently at different stages of their tenures. As of now, state elections are held at various intervals, for example, Odisha, Andhra Pradesh, and Sikkim go to polls simultaneously with the general elections, but many large states like Maharashtra, Tamil Nadu, and West Bengal have election cycles far removed from the general timeline.

For ONOE to become a reality, either of the following must be done:

- Curtail the tenure of Assemblies/Lok Sabha whose terms are due to end later, which would violate the democratic mandate given by voters.
- Extend the tenure of legislatures through a constitutional amendment, an action that could be construed as anti-democratic unless done under emergency provisions, which require special circumstances.

[13] Constitution of India, Arts. 83(2), 172(1).
[14] Constitution of India, Art. 368(2).

Both options could be struck down by the judiciary as violating the principle of representative government under the basic structure doctrine, as laid down in *Kesavananda Bharati v. State of Kerala*[15].

5.3 Judicial Precedents: Federalism and Representative Governance

Several Supreme Court judgments have reaffirmed federalism and democracy as inviolable features of the Constitution. In *S.R. Bommai v. Union of India*, the Court held that state governments are not mere extensions of the Centre and cannot be dismissed arbitrarily[16].The judgment emphasized the sanctity of popular mandates at both the national and state levels.

Similarly, in *Kuldip Nayar v. Union of India*, the Court recognized diversity in representation and the need for autonomous democratic units within the Indian federal system[17]. A nationwide election calendar could indirectly suppress regional voices and disturb this equilibrium.

Therefore, any move to enforce ONOE by modifying or manipulating legislative terms may be open to challenge under the basic structure doctrine, which the Supreme Court has consistently upheld as a bulwark against authoritarianism.

5.4 Statutory and Electoral Law Amendments

Beyond the Constitution, several laws would also require amendment to implement ONOE, including:

- Representation of the People Act, 1951 - This Act governs conduct of elections, scheduling, notifications, and election procedures. It would need revision to allow synchronized elections and notification processes.
- The Conduct of Elections Rules, 1961 - The rules regarding election schedules, nominations, and code of conduct would need comprehensive overhaul.
- Rules on Disqualification, President's Rule, and Election Disputes - Since staggered elections also result from Assembly dissolution or disqualifications, mechanisms for such events would need to be changed to prevent off-cycle elections.

Each of these legal changes must be harmonized to preserve constitutional intent, electoral fairness, and judicial oversight. These amendments are not simply procedural, they strike at the core of electoral federalism.

[15] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.
[16] S.R. Bommai v. Union of India, AIR 1994 SC 1918.
[17] Kuldip Nayar v. Union of India, AIR 2006 SC 3127.

5.5 Logistical Overload on the Election Commission

The Election Commission of India has so far maintained a cautious stance. While acknowledging that simultaneous elections could enhance efficiency, it has flagged serious logistical concerns, including:

- Doubling of EVMs and VVPATs: Simultaneous elections would require more than 4 million EVMs and 4 million VVPAT machines, many of which would need to be manufactured, tested, deployed, and stored securely.
- Security Personnel: India often uses paramilitary forces and local police to secure polling booths. Simultaneous elections would require centralized deployment of hundreds of thousands of officers across all states, posing a significant strain on internal security.
- Poll Workers and Training: Polling personnel need to be recruited, trained, and deployed in massive numbers. Training lakhs of teachers and government workers to handle complex election tasks simultaneously is daunting.

Additionally, ensuring free and fair elections becomes far more difficult in a synchronized setting where the stakes are uniformly high. Political polarization, campaign frenzy, and electoral violence may spike during such nationwide events.

5.6 Election Calendar and Natural Disasters

India is a large country with diverse climatic conditions. In some parts of the country, summers are scorching and monsoons cause flooding, while in others, winter chills or harvest seasons may render elections impractical.

The current system allows the Election Commission to schedule elections state-wise considering local ground realities. ONOE would force the country into one fixed electoral window, making it difficult to avoid adverse weather or socio-cultural clashes in certain regions.

Even if an agreed-upon electoral window is set, say, April-May, it could disenfranchise voters in regions where environmental or social conditions are not conducive to polling during that period.

The legal, constitutional, and practical barriers to ONOE are enormous. It is not simply a question of will or policy, but one of fundamental constitutional architecture and operational feasibility. The requirement for multiple amendments, judicial tests, and massive logistical

coordination make ONOE not only a difficult reform to implement but one that may be inherently unworkable in India's complex democratic fabric.

6. COMPARATIVE PERSPECTIVES: LESSONS FROM OTHER DEMOCRACIES

The debate around simultaneous elections is not unique to India. Several countries across the world have experimented with, adopted, or discarded synchronized electoral systems at various levels of governance. While global experiences cannot be transplanted wholesale into the Indian context, given its size, diversity, and federal structure, they still offer valuable lessons on the benefits, limitations, and unintended consequences of such electoral models. This section explores both successful and unsuccessful experiments with simultaneous elections in other democratic systems.

6.1 Successful Models of Simultaneous Elections

6.1.1 South Africa: A Case of Coherent Electoral Design

South Africa conducts simultaneous elections to its National Assembly and Provincial Legislatures every five years. The synchronization is achieved through a constitutional provision that mandates concurrent elections for both levels of government. These elections are administered by the Independent Electoral Commission of South Africa, which ensures uniform procedures, campaign timelines, and media regulations.

The benefits of this system are visible in:

- High voter turnout, especially in the early years after democratization.
- Cost efficiency, as logistical and security expenditures are consolidated.
- Streamlined governance, with national and provincial governments assuming office around the same time.

However, South Africa's model works well largely because of its unitary executive structure and a dominant-party system, unlike India's multiparty, coalition-prone environment.

6.1.2 Sweden: Stable Governance Through Uniform Election Cycles

Sweden holds elections to the Riksdag (Parliament), County Councils, and Municipal Councils on the second Sunday of September every four years. The uniformity of the electoral cycle has enabled Swedish governance to function without the interruptions caused by staggered elections.

Sweden's experience offers several instructive features:

- It employs a proportional representation system, which ensures broad political inclusion and discourages polarizing majorities.
- Simultaneous elections promote accountability across levels of government and avoid fragmented mandates.
- Election administration is highly decentralized yet uniform, preserving local autonomy within a national framework.

Yet again, Sweden's political homogeneity, strong institutions, and small population differentiate it significantly from India.

6.1.3 Indonesia: Synchronizing Presidential and Parliamentary Elections

Indonesia, the world's third-largest democracy, moved to synchronize its presidential and legislative elections starting in 2019. The goal was to curb election costs, reduce voter fatigue, and promote political coherence. The reform, however, met with both logistical and democratic challenges.

On the positive side:

- Voter turnout remained high.
- Political parties found it easier to campaign under a unified message.
- Policy alignment between the President and Parliament improved.

On the downside:

- The synchronization placed enormous strain on the electoral machinery. Over 500 election officials died due to exhaustion during the 2019 elections[18].
- Voters experienced confusion due to long ballots and multiple choices.
- Smaller parties struggled to differentiate their campaigns amid a nationalized narrative.

Indonesia's case shows that synchronization, even if desirable, must be accompanied by institutional preparedness and safeguards for electoral personnel and voter education.

6.2 Failed and Abandoned Experiments

6.2.1 United Kingdom: The Repeal of the Fixed-term Parliaments Act

In 2011, the UK introduced the Fixed-term Parliaments Act (FTPA), which sought to hold general elections every five years. The Act attempted to eliminate the Prime Minister's discretion to call snap elections and align legislative stability with predictability.

[18] The Guardian, "*Overwork during Indonesia's Elections Leads to 500+ Deaths*", May 2019.

However, the FTPA was widely criticized for being inflexible and creating constitutional ambiguity. It failed to prevent two early elections in 2017 and 2019 and was ultimately repealed in 2022.

The UK experience underscores a critical point, rigid electoral cycles may clash with political realities, especially in times of instability or shifting mandates.

6.2.2 Pakistan: The Pitfalls of Overcentralization

Pakistan has historically attempted to align federal and provincial elections, often under pressure from military regimes. While simultaneous elections have occurred, they were typically enforced top-down and lacked democratic legitimacy.

The centralization of electoral calendars in Pakistan often led to:

- Suppression of regional dissent.
- Favoring of dominant national parties.
- Erosion of provincial autonomy.

This negative example serves as a cautionary tale for India, any attempt to enforce ONOE without democratic consensus could invite accusations of authoritarianism and weaken the federal fabric.

Global models of synchronized elections offer valuable insights, but they also confirm that such reforms require deep institutional alignment, political consensus, and constitutional design suited to local realities. India, with its intricate electoral landscape, must proceed cautiously, resisting the urge to transplant foreign templates into its constitutional soil without full deliberation.

7. ALTERNATIVE REFORMS: PRACTICAL PATHS WITHOUT CONSTITUTIONAL DISRUPTION

While the idea of "One Nation, One Election" (ONOE) is rooted in legitimate concerns, high election costs, governance disruptions, and populism, its constitutional and democratic costs may far outweigh the benefits. Instead of radically overhauling the election calendar and risking federal imbalance, India can pursue alternative reforms that address these same concerns more prudently, legally, and effectively. This section outlines a set of realistic, constitutional, and politically viable alternatives to ONOE.

7.1 Strengthening the Model Code of Conduct (MCC)

A major grievance among ONOE supporters is that frequent imposition of the MCC hampers governance. Under the current regime, whenever elections are announced, the MCC comes into force, restricting governments from announcing new schemes, inaugurating projects, or taking major policy decisions.

While the MCC is essential to prevent misuse of state machinery during campaigns, it can be recalibrated to minimize disruptions without compromising electoral fairness. Reforms may include:

- Sectoral exemptions: Allowing ongoing development schemes and essential welfare measures to continue under ECI supervision.
- Policy transparency norms: Governments could be allowed to announce decisions if they were already budgeted and cleared prior to the MCC notification.
- Technology-led disclosure: Enabling real-time public access to all policy decisions and government expenditures during the election period to ensure transparency.

These reforms would mitigate the governance paralysis cited by ONOE advocates, without touching the constitutional framework.

7.2 Clustered Election Scheduling: A Middle Path

Instead of full synchronization, India can explore regional clustering of elections, holding polls for certain sets of states within a six-month or one-year window. For example:

- Group 1: North Zone (e.g., Punjab, Haryana, Himachal Pradesh, Delhi)
- Group 2: South Zone (e.g., Tamil Nadu, Kerala, Andhra Pradesh, Telangana)
- Group 3: East & Northeast
- Group 4: West & Central

Under such a regime, elections can be partially synchronized, with four election events over a five-year cycle. This would reduce the frequency of election cycles without the need to amend the Constitution or manipulate Assembly terms.

The advantages of this approach include:

- Easier logistical management.
- Balanced campaign schedules.
- Protection of state-level political autonomy.
- More consistent administrative planning.

Most importantly, clustered elections would preserve democratic flexibility while reducing disruption.

7.3 Campaign Finance Reforms: The Real Cost-Saver

The argument that elections are too expensive often confuses electoral costs with campaign costs. The real drain on the system arises not from election administration, but from the unregulated, opaque, and often illicit campaign financing practices.

Reforms in this area are urgently needed:

- Cap total party expenditure, not just candidate spending.
- Ban anonymous political donations, including electoral bonds.
- Mandate real-time public disclosures of donations and expenditures via government-monitored platforms.
- Strengthen ECI's financial audit powers with legal backing.

The Election Commission has repeatedly flagged the danger of money power in distorting electoral outcomes and weakening public trust. A transparent, accountable financing regime would be far more effective in reducing election costs and enhancing fairness than ONOE.

7.4 Delinking Local Body Elections

One reason for frequent elections is that urban and rural local bodies (Municipalities, Panchayats, Zila Parishads) conduct separate elections, often overlapping with state and general elections. These are governed under State Election Commissions (SECs), independent from the ECI.

If states can voluntarily synchronize local body elections within their jurisdiction, say, once every five years, it would significantly reduce election frequency. This reform:

- Requires no constitutional amendment.
- Can be implemented through state-level consensus.
- Empowers local democracy while simplifying election calendars.

It would also help citizens focus more clearly on distinct governance layers, local, state, and national, without constant electoral noise.

7.5 Electoral Technology and Digital Infrastructure

India's elections have benefitted immensely from the introduction of EVMs and VVPATs. The next generation of reforms should aim to digitally streamline voter rolls, polling logistics, and electoral transparency.

Possible improvements include:

- National Voter Roll Management System (NVRMS) to avoid duplication and eliminate bogus voters.
- Remote Voting Machines to allow migrant workers and internal diasporas to vote without returning home.
- Blockchain-backed vote audit trails to build public trust and reduce litigation.

These innovations would enhance efficiency, reduce costs, and improve voter participation, directly addressing many of the concerns used to justify ONOE.

7.6 Institutional Strengthening of the Election Commission

The ECI remains India's most respected constitutional body. Yet, it suffers from underfunding, occasional political pressure, and inconsistent judicial support.

Reforms must aim to:

- Ensure a transparent, bipartisan appointment process for Chief Election Commissioners.
- Grant constitutional status to the Model Code of Conduct, empowering the ECI to penalize violations meaningfully.
- Provide full financial autonomy to the ECI, placing it on par with other constitutional bodies like the Comptroller and Auditor General (CAG).

A stronger, independent ECI would be better equipped to handle staggered elections without disruption, thereby reducing the perceived need for ONOE.

India's electoral system does face challenges, but none of them require a disruptive, legally risky overhaul like ONOE. Targeted reforms in governance procedures, campaign finance, election administration, and voter engagement can achieve the same goals more democratically. These alternatives preserve the spirit of federalism, respect constitutional boundaries, and reflect the ethos of gradual, participatory reform.

8. CONCLUSION

The idea of "One Nation, One Election" (ONOE) evokes a powerful image of national unity, democratic efficiency, and administrative coherence. In theory, it appears to address real challenges in the Indian electoral system, the spiraling cost of elections, governance disruption due to frequent imposition of the Model Code of Conduct, voter fatigue, and the dominance of short-term populism over long-term policymaking. ONOE may be a solution in search of a

problem. It seeks to cure a symptom, frequent elections, while ignoring the deeper illness, the erosion of democratic norms through money power, criminality, and declining institutional trust.

Democracy thrives not through uniformity, but through structured diversity, constitutional resilience, and participatory pluralism. India's success lies in embracing its democratic complexity, not flattening it in the name of efficiency. The future of Indian elections must be one of reform, not rupture, incremental, evidence-based, and grounded in the values of the Constitution. ONOE, though appealing in rhetoric, fails this test. Yet, as this article has shown in detail, ONOE is far more complex than its slogan suggests.

VIRTUAL AUTOPSY AND THE CONSTITUTIONAL MANDATE OF DIGNITY: RETHINKING FORENSIC PRACTICE UNDER ARTICLE 21

Vaibhav Yadav [1]

Abstract

Paper examines the evolving intersection between forensic science and constitutional rights by exploring virtual autopsy as a modern, non-invasive alternative to conventional post-mortem examinations. With technological advancements enabling high-resolution imaging and three-dimensional reconstruction of the human body, virtual autopsy offers a method that can potentially minimise physical intrusion while preserving evidentiary accuracy. This shift becomes particularly significant when viewed through the constitutional mandate of human dignity embedded in Article 21 of the Indian Constitution. Traditional autopsies, though indispensable for criminal justice, often raise ethical and emotional concerns for families due to their invasive nature. Virtual autopsy, by contrast, provides a means to uphold investigative integrity while reducing the violation of bodily privacy and post-mortem dignity.

The article re-evaluates existing forensic practices through a constitutional lens, arguing that the State's obligation to protect dignity does not cease upon death. It explores jurisprudence on dignity, privacy, and the right to a dignified treatment of the deceased, drawing attention to how technological methods can better align legal processes with constitutional morality. The study further analyses the challenges of adopting virtual autopsy in India ranging from infrastructural limitations and evidentiary admissibility to medico-legal training gaps while proposing a framework for policy reform and capacity building. By situating virtual autopsy within the broader discourse of rights-based governance, the article contends that integrating such technologies can strengthen both the forensic system and constitutional fidelity.

Keywords: *Virtual Autopsy; Article 21; Human Dignity; Forensic Science; Constitutional Right*

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1. INTRODUCTION: THE DIGITAL TURN IN DEATH INVESTIGATION

1.1. From Scalpel to Scanner: The Rise of Virtual Autopsy

The evolution of forensic science has consistently mirrored the technological progress of societies. In the twenty-first century, this evolution has reached a transformative juncture with the emergence of the virtual autopsy, or "virtopsy", as an innovative, non-invasive alternative to conventional post-mortem examinations. A virtual autopsy utilizes advanced imaging techniques including computed tomography (CT), magnetic resonance imaging (MRI), and three-dimensional (3D) surface scanning to examine the body without incision or dissection.[2] It offers a complete digital reconstruction of the human body, allowing forensic experts to identify internal injuries, causes of death, and pathological anomalies while preserving the physical integrity and dignity of the deceased.

Traditional autopsy, by contrast, involves invasive dissection of the body, often leading to physical alteration or mutilation. Although this method remains the gold standard in medico-legal investigation, it has been criticized for its psychological impact on families and its inconsistency with the cultural and religious sentiments surrounding death in India. In cases involving sexual assault victims, children, or individuals from communities that prohibit bodily mutilation after death, the conventional post-mortem procedure raises sensitive ethical and emotional issues. Such practices have sparked a crucial question does the physical violation of a deceased body in the name of justice compromise the right to posthumous dignity under Article 21 of the Constitution?[3]

Developed and first operationalized at the University of Bern, Switzerland, by forensic expert Michael J. Thali and his team, the concept of virtual autopsy has since gained global recognition. Countries like Japan, the United Kingdom, and Switzerland have incorporated virtopsy into medico-legal systems, particularly in cases where religious beliefs or family sensitivities necessitate non-invasive methods.[4] These developments underscore that technology can reinforce, rather than erode, the humanistic principles embedded in legal frameworks. Virtual autopsy, therefore, represents not just a scientific advancement but also

[2] Michael J. Thali et al., *Virtopsy: A New Imaging Horizon in Forensic Pathology*, 121 J. Forensic Sci. 20 (2003).
[3] Parmanand Katara v. Union of India, (1989) 4 S.C.C. 286 (India).
[4] Joseph A. Prahlow, *Forensic Pathology for Police, Death Investigators, Attorneys, and Forensic Scientists* 643 (2010).

an ethical reform one that bridges the gap between evidentiary reliability and respect for human dignity.

In the Indian context, however, forensic medicine continues to rely heavily on traditional post-mortem procedures under Sections 174 and 176 of the Code of Criminal Procedure, 1973, which mandate autopsy in cases of unnatural or suspicious deaths. While these procedures ensure evidentiary accuracy, they often neglect the constitutional promise of dignity, now well-established as a fundamental aspect of the right to life under Article 21. The continued absence of virtual autopsy in India's medico-legal practice reflects a wider lag between constitutional morality and technological adaptation. This gap becomes particularly evident when considering that the Supreme Court of India has repeatedly affirmed the continuity of dignity beyond death, framing it as a posthumous constitutional entitlement.[5]

1.2. The Constitutional Context: Dignity beyond Death

The jurisprudence of dignity under Article 21 has evolved dynamically through judicial interpretation. Originally conceived as a procedural right limited to life and liberty, Article 21 has been expansively interpreted to include a substantive right to live with dignity. Landmark cases such as *Maneka Gandhi v. Union of India* established that "procedure established by law" must be fair, just, and reasonable, thereby transforming Article 21 into a repository of humane values rather than a narrow procedural safeguard. In *Francis Coralie Mullin v. Union Territory of Delhi*, the Supreme Court further articulated that the right to life includes "the right to live with human dignity and all that goes along with it."[6]

Importantly, the Court's jurisprudence has not confined dignity to the living. In *Ashray Adhikar Abhiyan v. Union of India*, the Court emphasized the State's responsibility to ensure dignified treatment and disposal of dead bodies, affirming that the **r**ight to life under Article 21 encompasses the right to dignity even after death.[7] Similarly, in *Common Cause v. Union of India*, the Supreme Court extended the doctrine of dignity to end-of-life decisions, including the right to die with dignity, thereby recognizing that human dignity transcends the boundary of life and continues into death. When examined through this constitutional lens, the adoption of virtual autopsy becomes more than a matter of medical convenience it emerges as a

[5] Ashray Adhikar Abhiyan v. Union of India, (2002) 2 S.C.C. 27 (India).
[6] *Francis Coralie Mullin v. Union Territory of Delhi*, (1981) 1 S.C.C. 608 (India).
[7] *Common Cause v. Union of India*, (2018) 5 S.C.C. 1 (India).

constitutional imperative. The practice upholds the principle that even after death, an individual's body should not be subjected to unnecessary violation or indignity. Virtual autopsy exemplifies the fusion of science and constitutionalism, transforming forensic investigation into a process consistent with both ethical restraint and constitutional morality.

The implications of this are profound. In India, where religious and cultural diversity shapes death rituals, the manner in which the State handles the deceased becomes a question of constitutional pluralism. Respect for bodily integrity after death resonates with Article 25 (freedom of religion) and the fundamental duty under Article 51A(h) to develop scientific temper while respecting ethical boundaries. Virtual autopsy provides a balanced framework one that ensures accurate forensic outcomes without compromising individual or community sentiments.

The research problem thus lies at this intersection of law, technology, and constitutional ethics:

1. Does Article 21's guarantee of dignity extend to the forensic treatment of dead bodies?
2. Can virtual autopsy, as a scientific innovation, reinforce constitutional values of dignity and humane treatment?
3. What legal and institutional reforms are needed to integrate virtual autopsy within India's forensic and medico-legal systems?

This research adopts a doctrinal and comparative approach, examining Indian constitutional jurisprudence, forensic statutes, and comparative legal developments to explore the normative potential of virtual autopsy as a tool of constitutional justice. The inquiry proceeds in six parts. Part II examines the science and operational aspects of virtual autopsy. Part III traces the judicial evolution of posthumous dignity under Article 21. Part IV links virtual autopsy to constitutional ethics and human rights. Part V evaluates policy challenges and frameworks for its adoption, and Part VI concludes by articulating a vision for a dignity-oriented forensic future in India.

Ultimately, the digital turn in death investigation demands a rethinking of how constitutional democracies interpret the sanctity of the human body. Virtual autopsy is not merely a forensic technique it symbolizes an evolving constitutional consciousness that refuses to view the body

as mere evidence, but rather as a continuing subject of dignity. If life under Article 21 must be lived with dignity, then death, too, must be managed with restraint, respect, and humanity.[8]

2. UNDERSTANDING VIRTUAL AUTOPSY: SCIENCE, PRACTICE, AND PROMISE

2.1. The Science of Virtual Autopsy: Technology behind the Transformation

A **virtual autopsy** commonly known as **"virtopsy"** represents a paradigm shift in forensic medicine, replacing the scalpel with sophisticated imaging technologies. It is a **non-invasive post-mortem examination technique** that employs **computed tomography (CT), magnetic resonance imaging (MRI),** and **three-dimensional (3D) surface scanning** to visualize internal structures of the deceased without physical dissection.[9] The process generates digital cross-sectional images that can be reconstructed into detailed anatomical models, allowing examiners to assess injuries, diseases, or causes of death in a minimally intrusive manner.

The procedure typically unfolds in multiple stages. First, the **surface scanning** captures external features wounds, bruises, and patterns of trauma. Then, **CT scanning** detects internal skeletal injuries, fractures, and the presence of foreign objects like bullets or sharp weapons. **MRI** is used to assess soft tissue damage, brain injuries, or cardiac abnormalities. These datasets are combined through specialized software to produce **3D visualizations** that can be digitally rotated, magnified, and analyzed from any angle.[10] Such high-resolution imaging not only enhances diagnostic accuracy but also enables the preservation of evidence in a digital format for future reference or re-evaluation.

The origins of virtual autopsy can be traced to the **University of Bern, Switzerland**, where **Professor Michael J. Thali** and colleagues pioneered the technique in the early 2000s as part of the "Virtopsy Project."[11] The project sought to explore how imaging technologies used in clinical medicine could improve forensic investigation. Since then, virtopsy has evolved into an integrated platform combining radiology, pathology, and forensic science. Its use is now

[8] Sujit Choudhry, *The Transformative Constitution: A Comparative Study of the Indian Model*, 14 Int'l J. Const. L. 148 (2016).
[9] Michael J. Thali et al., *Virtopsy: A New Imaging Horizon in Forensic Pathology*, 121 **J. Forensic Sci.** 20 (2003).
[10] Anders Persson et al., *Postmortem Imaging as a Complement to Traditional Autopsy: Comparison of Findings in 50 Cases*, 41 **Forensic Sci. Int'l** 9 (2012).
[11] Michael J. Thali et al., *The Virtopsy Approach: 3D Optical and Radiological Scanning and Reconstruction in Forensic Pathology*, 56 **J. Forensic Sci.** 1235 (2011).

documented in several jurisdictions including **Japan, Germany, the United Kingdom**, and **Saudi Arabia**, where it has been incorporated into medico-legal protocols especially in cases where cultural, religious, or ethical concerns discourage conventional autopsy.

Unlike traditional autopsy, which requires **irreversible dissection**, virtual autopsy leaves the body physically intact. This innovation is particularly significant in multi-religious societies where **post-mortem mutilation** may be viewed as desecration. For instance, certain faiths, such as **Islam and Judaism**, emphasize prompt burial and oppose bodily interference. Virtual autopsy provides a constitutionally sensitive and ethically acceptable solution that respects these sentiments while maintaining forensic precision. Furthermore, digital imaging allows multiple experts to analyze the same evidence remotely, fostering **transparency and accountability** in medico-legal investigations.

Another major advantage lies in **data preservation**. Unlike traditional autopsy reports, which rely on handwritten notes and photographic documentation, the digital scans generated in virtopsy can be securely archived and revisited for **peer review or judicial scrutiny**. This digital traceability enhances the evidentiary robustness of post-mortem findings and minimizes subjective errors or manipulations. Consequently, virtual autopsy is being increasingly recognized as a method that **modernizes forensic practice** while aligning with global trends in digital transformation and ethical investigation.[12]

2.2. Evaluating the Promise: Legal, Ethical, and Practical Implications

Despite its scientific promise, the introduction of virtual autopsy raises complex questions at the intersection of **law, ethics, and public policy.** While the method has been widely embraced in technologically advanced nations, its integration into the **Indian medico-legal system** remains limited due to infrastructural, regulatory, and normative challenges. Understanding these implications is essential for assessing whether virtopsy can fulfill the **constitutional mandate of dignity** under **Article 21**.

From an **ethical standpoint**, virtual autopsy embodies the principle of **non-maleficence** the obligation to minimize harm. Traditional autopsy, though medically necessary, often involves disfigurement and delayed burial, causing emotional distress to the deceased's family. Virtual

[12] Joseph A. Prahlow, *Forensic Pathology for Police, Death Investigators, Attorneys, and Forensic Scientists* 647 (2010).

autopsy eliminates these intrusions, thereby reinforcing **posthumous dignity** and cultural sensitivity. This aligns with the **constitutional ethic of respect for bodily integrity** that the Indian judiciary has read into Article 21. Moreover, in cases of **custodial deaths, mass disasters**, or **religiously sensitive deaths**, virtopsy can ensure both transparency and respect, balancing the State's duty of investigation with the individual's right to dignity even after death.[13]

Legally, however, India lacks a **statutory framework** recognizing virtual autopsy. The **Code of Criminal Procedure, 1973**, and the **Indian Evidence Act, 1872**, both rely on conventional autopsy reports as admissible medical evidence. There are no guidelines or procedural rules for the use of digital post-mortem imaging. Consequently, even if a virtual autopsy were performed, its evidentiary value would depend on judicial discretion and expert testimony rather than explicit legal sanction. This **regulatory vacuum** restricts institutional adoption and perpetuates reliance on traditional post-mortem methods.

Nevertheless, **comparative jurisdictions** provide persuasive models. In **Switzerland**, virtopsy has been officially accepted in forensic medicine since 2004, with radiological findings treated as reliable forensic evidence. Similarly, in **Japan**, the technique is recognized under national forensic protocols, particularly in cases of natural death or where consent for dissection is unavailable. The **United Kingdom's Coroners and Justice Act 2009** also allows non-invasive imaging as an alternative to autopsy in appropriate cases. These international examples demonstrate that **legal recognition of virtual autopsy** can coexist with procedural rigor, ensuring that technological innovation supports rather than undermines evidentiary standards.[14]

Practical considerations, however, pose significant challenges in India. The **cost of imaging infrastructure**, the **shortage of forensic radiologists,** and the **lack of training programs** hinder large-scale implementation. A single CT scanner suitable for full-body post-mortem imaging may cost several crores, and most district hospitals lack even basic radiology facilities. Furthermore, the **absence of interdisciplinary collaboration** between pathologists, radiologists, and legal authorities slows innovation. To overcome these hurdles**, public–private partnerships**, government-funded pilot programs, and capacity-building initiatives in medical institutions are imperative. The **All India Institute of Medical Sciences (AIIMS),**

[13] Parmanand Katara v. Union of India, (1989) 4 S.C.C. 286.
[14] U.K. Coroners and Justice Act 2009, c. 25, Section 14 (Eng.).

New Delhi, and a few state forensic centers have reportedly conducted experimental studies on post-mortem CT imaging, indicating a gradual but promising shift.[15]

The **potential benefits**, however, far outweigh these challenges. Virtual autopsy can reduce the backlog of forensic cases, enable faster clearance of unidentified bodies, and promote humane treatment of the deceased. It can also be crucial during **pandemics** such as COVID-19 where physical autopsy posed infection risks to medical staff. Additionally, the integration of **artificial intelligence (AI)** into virtual autopsy could revolutionize forensic analysis by automating pattern recognition of injuries, estimating time of death, or identifying cause of death through predictive models. These developments point toward a future where forensic science becomes more **efficient, accurate, and constitutionally compliant.**

Virtual autopsy also holds value in **legal education and judicial training**. Interactive 3D models can assist in courtroom demonstrations, helping judges and juries visualize injuries without exposure to graphic images. This could enhance comprehension and impartiality in adjudication. The adoption of virtual autopsy, therefore, is not merely a medical reform it represents a **transformative legal instrument** that modernizes evidentiary practice while honouring the **constitutional sanctity of human dignity.**

In sum, the science of virtual autopsy demonstrates that technology can be both **empirical and ethical**. By reconciling forensic investigation with posthumous dignity, it embodies the spirit of **constitutional morality** envisioned under Article 21. The next phase of inquiry must focus on how India can integrate this innovation into its **legal, institutional, and constitutional framework**, ensuring that justice is pursued without sacrificing humanity.

3. THE CONSTITUTIONAL RIGHT TO DIGNITY UNDER ARTICLE 21

The Indian Constitution is a living document that breathes through judicial interpretation, constantly expanding its horizons to accommodate evolving understandings of human rights and dignity. Among its many transformative provisions, Article 21 occupies a central position, representing the moral and philosophical core of the Constitution. The phrase “No person shall be deprived of his life or personal liberty except according to procedure established by law” has undergone a remarkable evolution from a narrow procedural safeguard to a substantive

[15] All India Institute of Medical Sciences, *Post-Mortem Computed Tomography Study*, AIIMS Annual Report (2022).

repository of human rights. Within this broad sweep, the concept of dignity has emerged as the soul of Article 21, shaping its interpretation across multiple domains including health, privacy, autonomy, and even posthumous rights.

3.1. Evolution of Article 21 and the Emergence of Dignity

In the early years of constitutional jurisprudence, the interpretation of Article 21 was mechanical and confined to the literal meaning of "procedure established by law." In A.K. Gopalan v. State of Madras (1950), the Supreme Court adopted a restrictive reading, emphasizing that any deprivation of life or liberty would be valid so long as it followed a legislatively sanctioned procedure. This position, however, failed to appreciate the spirit of constitutionalism and the intrinsic worth of individual autonomy. The transformative shift occurred with the landmark decision in Maneka Gandhi v. Union of India (1978), where the Supreme Court dismantled the compartmentalized view of fundamental rights and declared that any procedure curtailing liberty must be "just, fair and reasonable." This interpretation breathed life into Article 21 and laid the foundation for embedding dignity within the concept of life itself.[16]

Following Maneka Gandhi, the Court began recognizing a range of derivative rights under Article 21 such as the right to livelihood, health, shelter, privacy, and education all anchored in the value of human dignity. In Francis Coralie Mullin v. Union Territory of Delhi (1981), the Court explicitly stated that the right to life is not merely a physical existence but includes the right to live with human dignity and all that goes along with it.[17] This affirmation marked the constitutional elevation of dignity as an enforceable right rather than a moral aspiration. The idea that dignity constitutes the essence of life introduced a human-centered approach to constitutional adjudication, transforming Article 21 into a normative standard of justice.

The jurisprudence of dignity further matured through cases like Bandhua Mukti Morcha v. Union of India (1984), where the Court emphasized that the right to live with dignity extends to laborers and marginalized populations who are denied humane working conditions. In Olga Tellis v. Bombay Municipal Corporation (1985), the right to livelihood was read into Article 21, recognizing the inseparable relationship between dignity and economic survival. The Court's insistence that "life" under Article 21 means a life of dignity, decency, and meaning,

[16] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
[17] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 S.C.C. 608

positioned dignity as both a constitutional value and an interpretive principle guiding the entire spectrum of fundamental rights.[18]

3.2. The Jurisprudence of Posthumous Dignity

While dignity in life has been widely acknowledged, the extension of this right beyond death represents one of the most profound developments in Indian constitutional thought. The recognition that death does not extinguish dignity signifies a moral continuity between the living and the deceased. This concept found its early expression in Parmanand Katara v. Union of India (1989), where the Supreme Court declared that the right to dignity and fair treatment is not only available to a living person but also to his body after death. The Court directed that the dead body must be treated with respect and that no interference should occur beyond what is necessary for lawful purposes such as investigation.[19]

In Ashray Adhikar Abhiyan v. Union of India (2002), the Court extended this recognition to unclaimed and homeless dead persons, holding that their bodies too must be accorded a decent cremation or burial in accordance with their religious faith.[20] This judgment crystallized the understanding that the protection of dignity is a universal and unconditional constitutional guarantee one that neither status, religion, nor circumstance can extinguish. The principle that even the dead are entitled to dignity is not merely symbolic but forms the ethical foundation of how a civilized society perceives human worth.

The jurisprudence surrounding the right to die with dignity also reinforces this continuum. In Common Cause v. Union of India (2018), the Supreme Court upheld the legality of passive euthanasia and recognized the right of terminally ill patients to die with dignity.[21] The Court interpreted dignity as an essential component of life that endures until its natural conclusion. Although the focus of the case was on end-of-life autonomy, the reasoning inevitably extended to the period following death, reaffirming the moral duty of the State and medical institutions to handle the body with care, consent, and respect.

The constitutional recognition of dignity after death has also been reflected in cases addressing the treatment of bodies during public emergencies and custodial deaths. In cases such as

[18] Bandhua Mukti Morcha v. Union of India, (1984) 3 S.C.C. 161
[19] Parmanand Katara v. Union of India, (1989) 4 S.C.C. 286
[20] Ashray Adhikar Abhiyan v. Union of India, (2002) 2 S.C.C. 27
[21] Common Cause v. Union of India, (2018) 5 S.C.C. 1

Reepak Kansal v. Union of India (2020), the Court emphasized the State's obligation to ensure that even during crises like the COVID-19 pandemic, the disposal of bodies must be carried out respectfully and in accordance with cultural and religious practices.[22] These developments demonstrate that dignity functions as a constitutional bridge between life and death, compelling the legal system to safeguard the moral identity of every human being even when physical existence ceases.

3.3. Dignity, Technology, and the Constitutional Ethos

The recognition of posthumous dignity creates a constitutional imperative to examine forensic practices through the lens of humanity and respect. Traditional autopsy procedures, though essential for justice, often entail dissection and disfigurement, which can conflict with the deceased's dignity and religious sentiments. Under the broader reading of Article 21, any State action that unnecessarily violates bodily integrity even posthumously must be subject to constitutional scrutiny.

Virtual autopsy, as a technological alternative, offers the potential to reconcile forensic necessity with constitutional morality. By minimizing physical intrusion, it aligns with the spirit of Article 21, which demands that every State procedure, even in death, must be "fair, just, and reasonable." If the law is to uphold the continuity of dignity beyond life, then the adoption of humane technologies like virtopsy becomes not just a scientific choice but a constitutional responsibility.

In this sense, the evolution of Article 21 reveals the Indian judiciary's deep commitment to transforming abstract values into concrete protections. From recognizing dignity in prisons, hospitals, and workplaces, the law now faces the challenge of extending the same ethical obligation to mortuaries and forensic laboratories. The constitutional narrative of dignity, thus, calls for a forensic reformation one where science and law converge to preserve the sanctity of the human form even in its stillness.

[22] Reepak Kansal v. Union of India, W.P. (C) No. 11190 of 2020.

4. VIRTUAL AUTOPSY AND POSTHUMOUS DIGNITY: ETHICAL AND LEGAL NEXUS

The intersection of technology, ethics, and constitutional law is becoming increasingly critical as India grapples with the dual imperative of ensuring justice and upholding human dignity. Forensic medicine, as a discipline situated between science and law, directly engages with the dead bodies that are simultaneously biological evidence and human remains. In this complex interplay, the **virtual autopsy** (or *virtopsy*) represents an emerging paradigm that seeks to reconcile evidentiary precision with ethical restraint. Its promise lies in the capacity to generate detailed internal imaging without the invasive and often disfiguring procedures associated with traditional autopsies. This section examines the relationship between virtual autopsy and posthumous dignity within the constitutional framework of Article 21, exploring the ethical, religious, and legal dimensions that justify the adoption of such a technology in India.

4.1. Virtual Autopsy as a Technological Response to Dignity Concerns

Traditional autopsies, though indispensable for criminal justice and medical research, raise profound ethical and emotional concerns. The process of dissection and the visible alteration of the body can deeply disturb the deceased's family, particularly in societies like India, where the body is imbued with religious and cultural sanctity. For many communities, bodily integrity is integral to spiritual beliefs about afterlife and reincarnation. Consequently, the mutilation of a corpse is often seen as a violation not just of the body but also of its dignity and sacredness.

Virtual autopsy, through non-invasive imaging technologies such as CT and MRI scanning, allows for internal examination without physical incision. This method preserves the external form of the body while offering detailed digital insights that can be used in courts or for medical understanding. The ethical advantage of this approach is significant it enables the pursuit of truth without desecrating the body. In the context of constitutional law, such a balance aligns with the principles of **fairness and reasonableness** under Article 21, where the State's duty to investigate deaths must coexist with its obligation to respect human dignity.[23]

In Parmanand Katara v. Union of India, the Supreme Court underscored that the right to dignity extends even after death, and that the bodies of deceased persons must be treated with

[23] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.

respect.[24]The reasoning in that judgment, though delivered in a different context, creates an ethical baseline that applies equally to forensic practice. Virtual autopsy, by avoiding unnecessary physical intrusion, exemplifies what might be called dignified investigation -a process that seeks truth without dehumanization. The technology thereby operationalizes the constitutional promise that no State action should be arbitrary or degrading, even when dealing with the dead.

4.2. Ethical, Cultural, and Religious Dimensions of Posthumous Dignity

In India's pluralistic social fabric, posthumous dignity is deeply tied to cultural and religious rituals. Different faith traditions prescribe specific rites of passage for the deceased, emphasizing bodily wholeness and ceremonial purity. For instance, Hinduism views the body as a vessel for the soul, deserving of sanctity until cremation. Islam mandates the burial of the body intact, discouraging unnecessary disfigurement. Sikhism and Christianity also attach spiritual importance to the treatment of the body before and after death. Interference with the body without compelling reason can therefore amount to a breach of religious freedom under Article 25 of the Constitution.

The introduction of virtual autopsy could help harmonize constitutional values by protecting both dignity under Article 21 and religious freedom under Article 25. In Ashray Adhikar Abhiyan v. Union of India, the Supreme Court mandated that unclaimed or homeless deceased persons be given a decent burial or cremation in accordance with their religious practices, recognizing posthumous dignity as a constitutional obligation.[25] This decision can be extended to support the view that forensic procedures should also conform to the principle of least intrusion, consistent with religious and cultural sentiments.

From an ethical standpoint, virtual autopsy also addresses concerns of **consent** and **privacy** of the deceased. Although the dead cannot exercise personal autonomy, ethical jurisprudence recognizes the residual interests of the deceased in how their body and data are treated. In the digital age, where virtual autopsies produce permanent, storable images of the body, new questions arise regarding the ownership, storage, and use of such data. Ensuring consent from the next of kin, limiting data access to authorized personnel, and protecting the images from misuse are ethical imperatives that must guide policy formulation.

[24] Parmanand Katara v. Union of India, (1989) 4 S.C.C. 286
[25] Ashray Adhikar Abhiyan v. Union of India, (2002) 2 S.C.C. 27.

4.3. The Constitutional Imperative: Towards a Humane Forensic Ethic

The Constitution of India, through Article 21, places upon the State a dual responsibility: to protect life and liberty, and to ensure that its procedures reflect fairness, justice, and dignity. When applied to the context of forensic science, this principle demands that even processes aimed at uncovering truth should be guided by respect for the deceased. The Supreme Court in Common Cause v. Union of India recognized that the right to die with dignity forms part of the right to live with dignity.[26] By logical extension, the duty to preserve dignity extends into the posthumous realm, where bodily treatment becomes a matter of constitutional ethics.

Virtual autopsy, therefore, represents not only a scientific innovation but a constitutional necessity. It is a manifestation of what may be termed **technological constitutionalism** the adaptation of scientific progress to realize fundamental rights. The adoption of virtopsy could also alleviate the moral and psychological burden faced by medical examiners who perform traditional dissections, while promoting transparency in forensic processes through digital documentation. This approach resonates with the spirit of constitutional morality articulated by Dr. B.R. Ambedkar, which emphasizes the alignment of public action with the values of justice, liberty, equality, and dignity.

To ensure this transition, it is essential that the Indian legal framework explicitly recognizes virtual autopsy as a permissible and preferred method in appropriate cases. The Ministry of Health and Family Welfare, in collaboration with the National Medical Commission and forensic boards, should develop standardized protocols that define when and how virtual autopsy may substitute or supplement traditional procedures. This step would bring India in line with evolving international practices while affirming its commitment to human rights-based governance.

Ultimately, the move toward virtual autopsy is not merely about technological modernization but about constitutional maturity a reaffirmation that the pursuit of truth in a democracy must never come at the expense of human dignity. It signifies the evolution of forensic practice into an ethically conscious and rights-respecting domain, where law and science coalesce to serve both justice and humanity.

[26] Common Cause v. Union of India, (2018) 5 SCC 1.

5. LEGAL AND POLICY FRAMEWORK: CHALLENGES AND THE WAY FORWARD

The integration of virtual autopsy into India's medico-legal framework presents both opportunities and challenges. While the technology aligns with constitutional principles of dignity and fairness, its formal adoption requires robust legislative, regulatory, and institutional support. Currently, India lacks a clear legal framework that recognizes or governs the use of virtual autopsy in forensic investigations. This absence not only impedes the systematic application of the technology but also raises questions regarding the admissibility of evidence, professional training, ethical oversight, and infrastructural preparedness. A comprehensive policy approach is therefore essential to harmonize the requirements of justice with the constitutional mandate of human dignity under Article 21.

5.1. Existing Legal Provisions Governing Forensic Practice

At present, the conduct of autopsies and medico-legal examinations in India is governed primarily by the Code of Criminal Procedure, 1973 (CrPC), and various departmental manuals issued by state governments. Section 174 and Section 176 of the CrPC empower police officers and magistrates to conduct inquiries and order post-mortem examinations in cases of unnatural or suspicious deaths. These provisions, however, were framed in an era when only traditional autopsy methods were available and have not been updated to reflect technological advancements such as digital imaging or virtual autopsy.[27]

The Indian Evidence Act, 1872, too, indirectly governs the admissibility of forensic evidence. Section 45 of the Act permits expert opinions on scientific matters, but there is no explicit mention of virtual imaging or digital forensic reconstruction as admissible forms of expert evidence.[28]This omission leaves room for interpretive ambiguity, especially concerning the authenticity and evidentiary value of digital scans compared to physical dissection reports.

In addition, the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, and guidelines issued by the Directorate of Forensic Science Services (DFSS) govern professional conduct and procedures in medical and forensic contexts. Yet,

[27] Code of Criminal Procedure, 1973, Sections 174–176.

[28] Indian Evidence Act, 1872, Section 45.

neither body provides explicit recognition to non-invasive or imaging-based methods for post-mortem examination.[29] This regulatory vacuum limits innovation in forensic practice and creates uncertainty for medical examiners who might wish to employ virtual autopsy techniques.

5.2. Gaps and Policy Challenges

Despite the ethical and constitutional appeal of virtual autopsy, several structural and policy-level challenges hinder its practical implementation. These challenges may be categorized into legal, infrastructural, institutional, and societal dimensions, as summarized in the table below.

Category	Challenges Identified	Proposed Solutions / Policy Measures
Legal and Regulatory	Lack of statutory recognition under CrPC or Evidence Act; absence of procedural rules for digital post-mortem reports.	Amend CrPC and Evidence Act to include "digital or imaging-based post-mortem examination" as valid medico-legal evidence.
Institutional	No standardized training or certification for forensic radiologists; limited coordination between hospitals and courts.	Establish national training modules; set up designated virtopsy centers in medical colleges under NMC supervision.
Infrastructural	High cost of CT/MRI equipment; inadequate funding for forensic modernization.	Encourage public–private partnerships (PPPs); integrate virtual autopsy units with existing radiology departments.
Ethical and Social	Concerns about data privacy, consent, and misuse of digital body scans.	Formulate guidelines ensuring informed consent from next of kin, secure data storage, and restricted access to images.

[29] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Gazette of India, Oct. 6, 2002.

Cultural and Religious	Skepticism toward technological intervention in death rituals; fear of cultural insensitivity.	Conduct awareness campaigns with religious bodies; promote virtopsy as a respectful alternative preserving body integrity.

The table demonstrates that the challenges surrounding virtual autopsy are not merely technological but systemic, requiring a multidimensional policy response.

5.3. Towards A Legally Recognized Framework

For virtual autopsy to achieve legitimacy and widespread use in India, it must be embedded within the existing legal and institutional framework through clear policy intervention. The following measures could be considered:

1. **Statutory Recognition:** Parliament or state legislatures should amend the CrPC and the Indian Evidence Act to formally recognize digital post-mortem imaging as admissible evidence. This will provide legal clarity to forensic experts, investigators, and courts regarding the evidentiary status of virtual autopsy findings.
2. **Standard Operating Procedures (SOPs):** The Ministry of Health and Family Welfare, in coordination with the Directorate of Forensic Science Services (DFSS) and the National Medical Commission (NMC), should develop SOPs outlining when and how virtual autopsy may be conducted. These SOPs should also address hybrid models combining limited dissection with imaging where necessary.[30]
3. **Capacity Building and Training:** Specialized training programs must be developed for forensic radiologists, pathologists, and technicians. These programs can be introduced in postgraduate forensic medicine curricula, with pilot centers established in institutions like AIIMS, NIMHANS, and state medical universities.
4. **Funding and Infrastructure:** Establishment of virtopsy centers requires significant financial investment in CT/MRI facilities, digital archiving, and secure data systems. Public–private partnerships (PPPs) and CSR-based funding can help bridge this gap, ensuring accessibility even in smaller states.

[30] Directorate of Forensic Science Services, Ministry of Home Affairs, *Manual of Forensic Science Laboratory Procedures* (2021).

5. **Ethical Oversight and Data Protection:** With the increasing digitization of post-mortem data, a robust ethical framework is essential to safeguard privacy and prevent misuse. Virtual autopsy images should be classified as sensitive medical data under forthcoming personal data protection laws, and their use restricted to legal or educational purposes.[31]

5.4. The Path Ahead: Constitutionalising of Forensic Reform

The ultimate goal of integrating virtual autopsy is not only to modernize forensic science but to align it with constitutional morality. As Article 21 guarantees the right to live and die with dignity, the State must ensure that its investigative mechanisms reflect compassion and respect even in death. By adopting virtopsy, India can transition toward a **dignity-based forensic model** that upholds both justice and humanity.

Furthermore, the concept of **constitutional empathy** where technological advancements are filtered through the lens of human rights should guide all forensic reforms. This approach ensures that technological innovation remains consistent with the principles of equality, non-arbitrariness, and human dignity. The adoption of virtual autopsy, therefore, represents not just a scientific advancement but a reaffirmation of the moral foundation of the Indian Republic.

As India stands on the threshold of forensic modernization, it must craft laws that reflect both the promise of technology and the sanctity of the human body. The shift from dissection to digital must thus be viewed not merely as a change in method, but as a constitutional transformation one that places the right to dignity at the heart of post-mortem justice.

6. CONCLUSION: TOWARDS A CONSTITUTIONALLY INFORMED FORENSIC FUTURE

The journey toward adopting virtual autopsy as part of India's forensic framework is not merely a technological transformation but a constitutional evolution. It signifies the movement from a procedure-centered understanding of justice to one that foregrounds human dignity, compassion, and respect even after death. The discussion across the preceding sections reveals that virtual autopsy, or *virtopsy*, embodies the constitutional ethos enshrined in Article 21 of

[31] Personal Data Protection Bill, 2023 (India).

the Indian Constitution the right to live and die with dignity. As India continues to reconcile law with science, it becomes essential to craft a forensic future that is both humane and constitutionally consistent.

6.1. Reaffirming the Constitutional Mandate of Dignity

The Indian judiciary has repeatedly held that dignity is not extinguished by death. The constitutional interpretation of Article 21 has expanded from protecting life to ensuring that the body, identity, and legacy of an individual are treated with respect even after death. The Supreme Court's judgments in *Parmanand Katara v. Union of India* and *Ashray Adhikar Abhiyan v. Union of India* highlight that the treatment of the dead body reflects the moral character of the State.[32] Virtual autopsy, as a non-invasive process, directly operationalizes this mandate by minimizing unnecessary mutilation and aligning forensic practices with constitutional morality.

It is time that India formally recognizes posthumous dignity as a **continuing constitutional right**, not merely a moral obligation. This recognition would ensure that every state action involving the deceased from custodial deaths to autopsies is governed by the principle of respect for human worth.

6.2. Key insights and reflections

The preceding analysis indicates that virtual autopsy:

- Serves as an ethically superior alternative to traditional dissection, preserving bodily integrity.
- Enhances forensic transparency through digital imaging and re-examinability.
- Upholds the constitutional principle of fairness under Article 21 by avoiding unnecessary physical invasion.
- Accommodates religious and cultural sensitivities protected under Article 25.
- Requires a coherent legal framework for recognition, regulation, and implementation.

[32] Parmanand Katara v. Union of India, (1989) 4 S.C.C. 286.

The convergence of law, ethics, and technology thus creates a new paradigm in forensic jurisprudence what may be termed **Constitutional Forensics**, where dignity, privacy, and truth co-exist as guiding principles.

6.3. The Road Ahead: Recommendations and Policy Directions

To transition from theory to practice, India must adopt a structured and multi-pronged strategy for integrating virtual autopsy into its legal and institutional systems. The following recommendations outline a feasible roadmap:

6.3.1. Legislative reform and statutory recognition

1. Amend the Code of Criminal Procedure, 1973, to include *digital or virtual post-mortem examination* as an approved method for medico-legal purposes.
2. Modify the Indian Evidence Act, 1872, to recognize imaging-based forensic evidence as admissible, ensuring parity with physical autopsy findings.
3. Introduce subsidiary rules under these statutes to regulate certification, documentation, and verification of virtopsy results.[33]

6.3.2. National Policy Framework

1. The Ministry of Health and Family Welfare, in consultation with the Ministry of Home Affairs, should frame a **National Policy on Dignified Forensic Practice**, emphasizing non-invasive methods, ethical handling, and consent-based procedures.
2. The National Medical Commission (NMC) should issue guidelines defining training, protocols, and infrastructure for virtual autopsy centers.

6.3.3. Institutional and Academic Initiatives

1. Establish pilot **Virtual Autopsy Units** in premier institutions such as AIIMS, JIPMER, and state medical colleges to test the operational feasibility and evidentiary reliability of the method.
2. Include *Digital Forensic Imaging and Post-Mortem Radiology* as elective modules in postgraduate forensic medicine programs.

[33] Code of Criminal Procedure, 1973, Sections 174–176.

3. Encourage interdisciplinary research involving forensic scientists, legal scholars, ethicists, and data protection experts.

6.3.4. Ethical and Data Protection Mechanisms

1. Ensure informed consent from the next of kin before conducting virtual autopsies, except in cases mandated by law (e.g., custodial deaths, criminal investigations).
2. Classify post-mortem digital scans as *sensitive personal data* under emerging privacy laws, mandating strict control on access and storage.[34]
3. Establish institutional ethics committees to oversee compliance and address grievances related to data misuse or procedural violations.

6.3.5. Public Awareness and Societal Sensitization

1. Launch public awareness campaigns to explain the benefits of virtual autopsy in preserving dignity and cultural sensitivity.
2. Collaborate with religious organizations and civil society to build trust and dispel myths regarding technological interference with funeral rites.[35]
3. Use educational media and documentaries to promote societal acceptance of virtual autopsy as an ethical advancement rather than a replacement of traditional faith-based practices.

6.3.6. Judicial and Administrative Integration

1. Sensitize judges, police officers, and prosecutors through specialized training programs on the admissibility and interpretation of virtual autopsy evidence.
2. Encourage judicial recognition of virtopsy findings in relevant cases, gradually establishing judicial precedent.
3. Integrate virtual autopsy reports into e-courts and digital case management systems, promoting transparency and traceability.

[34] Personal Data Protection Bill, 2023
[35] Ashray Adhikar Abhiyan v. Union of India, (2002) 2 S.C.C. 27.

6.3.7. Ethical Funding and Partnerships

1. Encourage Public–Private Partnerships (PPPs) to fund virtopsy infrastructure, while ensuring that such collaborations are governed by ethical standards and non-commercial motives.
2. Leverage Corporate Social Responsibility (CSR) initiatives of healthcare and imaging companies to establish virtopsy laboratories in government hospitals.[36]

6.4. Broader Reflections: Virtual Autopsy as a Constitutional Imperative

In essence, the shift toward virtual autopsy symbolizes India's commitment to humane governance and technological rationality. It affirms that constitutional morality must evolve with science, ensuring that legal institutions remain responsive to ethical advancements. The adoption of virtual autopsy would not only enhance forensic efficiency but also reaffirm India's global image as a democracy rooted in compassion and rights-based governance.

The moral test of a nation lies in how it treats its most vulnerable including those who can no longer speak for themselves. By extending dignity to the dead, the State reinforces the idea that human worth transcends mortality. Virtual autopsy, therefore, is not merely a procedural reform but a profound act of constitutional empathy, one that honors the living by dignifying the dead.

6.5. Concluding Observations

1. The fusion of constitutional ethics and forensic science represents the next frontier of justice.
2. Virtual autopsy provides a humane, efficient, and constitutionally compliant alternative to traditional dissection.
3. Institutional, legal, and ethical frameworks must evolve simultaneously to ensure equitable access and credibility.

[36] Ministry of Corporate Affairs, Government of India, *CSR Policy Framework for Healthcare and Research.*

4. Most importantly, the right to posthumous dignity under Article 21 must be recognized as enforceable, compelling the State to ensure that its forensic practices reflect respect, restraint, and responsibility.

In conclusion, the path forward lies in balancing **truth and tenderness, science and sanctity, law and humanity**. By embracing virtual autopsy, India can truly embody the spirit of its Constitution where justice is tempered by compassion, and dignity becomes the measure of civilization itself.

ARTIFICIAL INTELLIGENCE TAKEOVERS: RECONSIDERING DUE DILIGENCE AND ALGORITHMIC RISK IN HIGH - TECH MERGERS & ACQUISITIONS

Himanshi Yadav[1]

Abstract

In the near past, the concept of Artificial Intelligence (AI) began modifying the process of due diligence. High-tech M&A AI will be able to scan thousands of documents in a short period of time, detect risks, and anticipate issues in the future. This would assist companies to save on time and make improved decisions. Legally speaking, the application of AI in due diligence is associated with both opportunities and challenges. AI is able to identify contract, financial and rule violations that humans would fail to notice, which makes the deal safer. Nevertheless, AI also brings about new legal challenges, including malfunction, which is a result of machine-made decisions, or lack of clarity on who is to be held accountable. The positive effects of AI should be balanced with a cautious regulation of the law so as to safeguard the interests of all the sides of the transaction. The existing legal and financial due diligence procedures do not have the means to consider the risk of high – tech algorithms in Mergers and Acquisitions, and that is why this is a new and immediate field of study. Traditional due diligence models of M&A were modelled with respect to physical assets, IP portfolio, and financials. Nonetheless, algorithms, training data, and machine learning models as the elements of value are hard to measure in AI-driven corporations. This paper explains the way Artificial Intelligence is reshaping due diligence in high-tech mergers and acquisitions. It describes the functionality of AI tools, their advantages in the investigation of risks at the initial stages, and the legal issues they raise. We also propose how firms and lawyers can apply AI safely in M&A, and make sure that they do not breach the existing laws.

Keywords: *AI, Mergers & acquisitions, high- tech, algorithms, due-diligence*

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1. INTRODUCTION

"AI is likely to be either the best or worst thing to happen to humanity."

— Elon Musk, CEO of SpaceX and Tesla

Mergers and acquisitions (M&A) are much needed processes whereby one company acquires another to grow its business, acquire new technology or enhance its market share. These transactions can be millions or even billions of dollars' worth and are prone to risks and issues. Due diligence is one of the most significant actions in the M&A deal. Due diligence refers to the process of carefully reviewing the legal, financial, and operational information of the target company in order to find out any issue or risk prior to the transaction[2]. The process assists the buyers in coming to well-informed conclusions, preventing the unpleasant surprises in the future, and acquiring more favourable terms of the agreement.

Conventionally, due diligence has been highly manual, time-consuming and reliant on human-based expertise or lawyers, accountants and consultants. These professionals peruse through numerous documents, agreements, and information in order to figure out the real picture of the target company. Nonetheless, this manual analysis has its own limitations such as high rate of human error, excessive work hours, and failure to process extensive information within a short period of time.

Artificial intelligence (AI) has been gradually changing most business operations in the past years, including the way due diligence is conducted in M&A deals. AI can be defined as computer applications that have an ability to simulate human intelligence, through learning data and making decisions or predictions without specific commands. Machine learning (where computers become better as they get experience), and language processing (where computers learn how to comprehend human language) are examples of AI[3]. When it comes to the context of M&A, AI-driven software systems are able to analyse large volumes of documents and data faster and more precisely than a human being can. AI is able to identify in the shadowy corner

[2] M.E. Porter, Competitive Advantage and Technological Change, 115 HARV. BUS. REV. 92 (2023).

[3] D. Liu, Algorithmic Transparency in High-Tech M&A, 18 YALE J.L. & TECH. 129 (2025).

patterns, possible risks, contractual loopholes, or regulatory violations that might otherwise remain unnoticed in regular reviews.

Speed is one of the major opportunities of AI in M&A due diligence. Human reviewers may take weeks or months to examine thousands of pages of contracts, financial statements and emails among others which AI can examine in hours. This can be achieved through a fast analysis of deals that enables companies to expedite the deal making process and minimizes expenses. Moreover, predictive analytics, being an AI-based tool, will give an insight into the risk or opportunity in the future by analysing past deal patterns and market activities. As an illustration, AI can provide an idea of the potential success of a target company in the post-merger environment or find operations that will impact valuation through inefficiency[4].

In the modern business transactions, world companies of complex hierarchy and international jurisdiction are frequently engaged. At the same time, AI will be able to cross-reference databases, search legal precedents, and assess the adherence to various national regulations. This general summary averts the chances of overlooking important legal or financial matters which can bring down the deal.

But even though AI presents promising opportunities, it will pose new legal and ethical dilemmas. One of the biggest questions is who is liable in case AI tools commit errors in due diligence. Being AI-driven, as data is processed, and provides output that, in turn, can affect significant financial choices, mistakes or biased outcomes can result in incorrect conclusions, allegations of negligence, or losses. The issue of liability, who is at fault among the software provider, the user and the AI, is not clear under the existing law.

In addition, the application of AI requires high volumes of sensitive data, which also concerns the issue of privacy and safety of data. The use of the personal and corporate data can be regulated through laws like the General Data Protection Regulation (GDPR)[5] of the European Union or various other regulations that are beginning to be created in relation to AI[6]. Companies participating in M&A should pay close attention to the fact that the due diligence carried out by Artificial Intelligence can be done without violating these regulations to escape legal fines.

[4] Ibid.
[5] General Data Protection Regulation, 2023
[6] Impact of AI on M&A Valuations and Risk Management, Journal of Legal Studies in Technology, 2025, p. 51.

Transparency is another legal factor. AI models are frequently black boxes, i.e. it is not readily comprehensible how they make decisions. This obscurity makes the process of legal checks and regulation difficult, as businesses and regulators must understand how conclusions have been made. Thus, it is important to introduce explainable AI techniques that would allow insight into AI analysis to build trust.

The policing of AI as a field is a new field. The new laws, including the Artificial Intelligence Act by EU, suggest the standards of AI development and use, including risk management, responsibility, and human control. In the development of these laws, they will influence how corporations use and regulate these tools in due diligence.

The Indian legal system is slowly appreciating the role of technology in business dealings such as AI technology in due diligence. To provide transparency and adherence, regulatory agencies such as the Securities and Exchange Board of India (SEBI), Competition Commission of India (CCI) among others are becoming more cautious of M&A deals. To meet these regulatory requirements, it is possible to incorporate AI, although it must be clear legal guidance as well as ethical best practices[7].

This paper seeks to examine the influence that AI is having on due diligence within high tech M&A deals. It talks about the advantages of AI-based tools to enhance efficiency, risk identification, and predictive knowledge and outlines the legal issues of liability, transparency, privacy, and regulatory compliance. Through these dynamics, it suggests how firms, attorneys, and regulators can collaborate to use AI to its full potential without causing harm to anyone.

2. UNDERSTANDING HIGH-TECH M&A AND DUE DILIGENCE

High technology mergers and acquisitions also referred to as M&A are significant transactions whereby companies in technology driven industries come together or a company acquires another company[8]. Such deals are prevalent in such industries as software, hardware, digital platforms, telecommunications, and artificial intelligence. M&A assists firms to expand in a brief time, acquire new technology, reach out to the customers and compete effectively in a rapidly changing marketplace.

[7] Algorithmic Risk and Corporate Liability, Indian Journal of Corporate Law, Vol. 19 (2025) 2, p. 97.
[8] P singh, Impact of AI on M&A Valuations and Risk Management, Journal of Legal Studies in Technology, 2025, p. 51.

M&A transactions are of various types. Companies within the same industry sometimes form a larger and more formidable business, the so-called **horizontal merger**[9]. As an example, two software companies can merge and produce superior products with a mutual saving of money. There are other occasions when businesses at various levels of producing an item are involved such as a computer manufacturer acquiring a chip producing business- an example of vertical merger. It streamlines the business process and is able to reduce costs.

The other one is known as the **market-extension merger** where businesses in various geographical areas merge to increase their coverage. As an example, a company that is in India that is engaged in the field of technology merges with a company in the European market where both companies can access new markets and customers. In other scenarios a company may also have acquired another company simply due to the technology or expertise of the acquired company in what is known as an acqui-hire[10]. An instance of this is the acquisition of start-ups by big tech corporations with the primary goal of acquiring new talent and ideas.

One of the recent high tech acquisitions is the acquisition of LinkedIn by Microsoft. This provided Microsoft with an opportunity to integrate its business tools with the LinkedIn network capabilities to produce a strong platform of professionals. The next huge acquisition was the one made by Facebook on WhatsApp which provided Facebook with an even greater number of users and a stronger messaging service. These instances reveal that M&A in technology can generate an advantage through product enhancement, growth of users base, and innovation.

Due diligence is what is done by the buying company before any M&A deal is carried out. Due diligence implies diligent verification of all things about the company that is being acquired, its contracts, financial aspects, technology and legal considerations. This is done to ensure that the buyer receives what he wants and is more aware of any problems that could be concealed and make a reasonable offer. High-tech M&A Due diligence usually considers aspects such as patents, software license, data privacy, and adherence to technology regulations.

Tech M&A transactions are not always easy. As an example, an integration of two systems or teams of companies can cause some technical issues. In some cases, the Competition

[9] R. Kumar, Corporate Governance and AI Integration Post-Merger, Journal of Corporate Law Studies, Vol. 11 (2025), p. 98.
[10] Dr. Lea Sung, Impact of AI on M&A Valuations and Risk Management, Journal of Legal Studies in Technology, 2025, p. 51.

Commission of India (CCI) and other regulatory authorities in other countries will be very strict in looking at mergers to ensure that they do not adversely affect competition in the market of the economy. The other significant section is the post-merger integration, which implies ensuring the smooth cooperation between the companies once they have become one. These are essential measures to successful high-tech mergers and acquisitions.

Nowadays, technology M&A continues to accelerate due to the fact that digital markets and consumer demands continue to evolve. Firms need to evolve rapidly, and M&A assists them in doing so. Through mergers, companies have access to new technologies, new talents and market knowledge that puts them at a great competitive edge[11].

3. ARTIFICIAL INTELLIGENCE ROLE IN MERGERS AND ACQUISITIONS

The use of artificial intelligence or AI is assisting companies to be more productive, innovative, and successful than ever. AI is a form of computer code that is able to learn information, discover trends, and reason intelligently as a human being. AI is able to read and solve problems, learn and change over time and adjust to new circumstances unlike old software that only responds to orders[12].

Nowadays, AI is applied by numerous companies in various activities. A very common application today is forecasting what is to happen, which is known as predictive analytics. A company can give a massive volume of sales data to an AI tool that can rapidly identify trends, such as identifying that clients purchase particular products more often around holidays. This assists companies to make their plans more effective and never make assumptions. The companies are now providing services by using AI to forecast demand in travel, propose re-booking, or provide any deals depending on the profile of a traveler, which results in the better services and satisfied customers.

The next interesting field is process automation. Robotic AI will be able to work on repetitive tasks, including invoice checking, email sorting, or schedule management. This saves time besides allowing human beings to concentrate on innovative or strategic tasks. The AI-driven video systems allow retailers to observe errors or issues in real-time, e.g. detect a flawed item

[11] Dr. Rana Kunal, Due Diligence Challenges in AI-Driven Acquisitions, Journal of Business and Technology Law, Vol. 20 (2025), p. 78.
[12] Dr. Sarvesh Potdar, Impact of AI on M&A Valuations and Risk Management, Journal of Legal Studies in Technology, 2025, p. 51.

sooner than a human worker could[13]. These tools are able to make businesses run quicker and much more precise and sometimes even cost less by an alarmingly wide margin.

The interaction with customers is also changing with the help of AI. Chatbots are intelligent assistants that are capable of answering questions, recommending products, and solving problems 24 hours a day. Online shops apply AI in providing individual shopping guidance. The streaming services are also powered by AI and can tell users which songs or movies they would like to listen to enhance their experience and retain the customer.

Another sphere in which AI comes in handy is content creation. Generative AI is a program capable of automatically writing text, creating images or even producing videos based on brief descriptions. This saves marketing a ton of money by having plenty of content to utilize on social media or an advertisement campaign. According to marketing professionals, such AI writing and designing tools have enabled them to be more efficient in their job than in the past.

AI has also made supply chain management smarter. Companies also apply AI in shipping, estimating stock, and even planning supply to locations across the globe. Consequently, customers receive goods when required and the use of resources is well managed and this increases trust and saves money.

The new developments indicate that more forms of AI like decision intelligence will soon be used to assist companies in making decisions rather than providing suggestions. As an example, an AI-powered application might notice that a store is about to run out of stock, make a future demand based on the sales and weather data, and order one at the appropriate moment even without authorization by a manager. This enhances the performance and flexibility of the business and companies become competitive.

Recent studies indicate that a company that fails to employ AI stands to lose out. According to surveys, almost 9 out of 10 leaders of companies believe that the AI is now a key to the future strategy. As the global market of AI is predicted to be extremely dynamic within the coming five years, firms of all sizes are investing in AI to be ahead of the curve and find solutions to all daily problems at a higher speed[14].

[13] Sarvina Redu, Due Diligence Challenges in AI-Driven Acquisitions, Journal of Business and Technology Law, Vol. 20 (2025), p. 78.
[14] H. Redu, Algorithmic Bias and M&A Risk, Indian Law Journal on AI and Ethics, Vol. 3 (2025) 1, p. 45.

This rapid change is changing the ways in which businesses collaborate, relate with customers and develop new products and services. AI is not merely a tool, it is becoming a component of business strategy in more industries and companies are becoming smarter, more responsive and more successful in an ever changing world.

4. LEGAL AND REGULATORY ASPECTS OF AI-DRIVEN DUE DILIGENCE IN MERGERS & ACQUISITIONS

Regulatory and legal requirements of AI-based due diligence in mergers and acquisitions (M&A) are also dynamically changing to be sensitive to emerging risks, standards, and accountability. Among the emerging trends is the fact that Indian regulators now demand that the companies maintain transparent documentation of all the AI-informed decisions when they are reviewing the M&A[15]. This assists the authorities to track the way major decisions were made and facilitates justice in case problems occur in the future. As an illustration, organizations should be required to record the AI models that they utilized, the way they were tested, and how they had the outcomes assessed by human specialists, i.e. by an algorithmic audit. This new rule helps in trust and allows quick solving of disputes.

Privacy has also been altered. Any personal or confidential data utilized in AI analysis in the context of the M&A has to be collected and secured based on stringent rules with the newly implemented Digital Personal Data Protection Act in India[16]. When data is placed across the borders, the companies have to obey the rules that ensure privacy in each country, or they will risk fines and aborted deals. This implies that now AI systems within M&A can be built to operate with clean data, or data that does not disclose personal identities or secrets, to keep the business safe and ethical.

A new trend is the emergence of Ai-risk insurance. Other new services by M&A have special insurance that compensates in case of errors made by AI tools. Local laws teams create these policies and explain what errors they include, how an error can be proven to have occurred, and when the insurance can be utilized. It is a novel method of alleviating the worry of both buyers and sellers as sophisticated AI systems are in charge of the due diligence.

[15] S. Sinha, Corporate Governance and AI Integration Post-Merger, Journal of Corporate Law Studies, Vol. 11 (2025), p. 98.
[16] Digital Personal Data Protection Act, 2023

Global regulations are also significant, as well. In cross-border transactions, the Indian firms have to comply with global norms like AI Act in Europe and the best technology laws in America. This implies that a team should research international regulations, revise their compliance policies on a regular basis, and maintain staff training. When a firm is intending to merge with a new company abroad then it should ensure that it examines the Indian and foreign laws to ensure that it is not in trouble after they seal the deal.

AI-based due diligence in M&A has gained more legal and regulatory specifics and significance with the development of AI tools. In addition to documentation, privacy, insurance, and international compliance, now regulators pay heavy attention to the minimization of injustices and biases in AI algorithms[17]. A lot of artificial intelligence systems utilize massive datasets of past data, which can contain biased or outdated information accidentally. As an illustration, in case the historical data had been biased against some companies or regions, the AI may re-decision, or exacerbate such biases, in risk assessments or valuations, in due diligence. Indian as well as other governments worldwide have now begun asking firms and businesses to conduct regular periodic audits of AI systems to identify bias. Such audits verify that the results of AI are not discriminatory to all parties involved. The companies need to demonstrate that they have tried and improved biased results to evade liability and a damaged reputation.

The element of cybersecurity is also important. Making use of AI systems that handle confidential commercial and personal information in the course of M&A operations makes them useful targets to hackers[18]. The Indian laws such as the Information Technology Act and new data protection laws demand companies to put in place robust security controls, including encryption and annual security audits. Lack of protection of AI systems presents businesses with the risk of data breach, monetary fines, and deal breakage. Thus, the creation of AI systems based on security by design has become a best practice in corporate M&A[19].

Besides, special legal teams are emerging that specializes in examining AI in the execution of transactions. Such teams assist boards in risk management in AI and assist in the development of contract terms that are directly connected to the use of AI and coordinate adherence to

[17] Contractual Protections in High-Tech Acquisitions Involving AI, Technology and Law Journal, 2025(4), p. 122.
[18] Ibid.
[19] Manjeet Singh, Regulatory Perspectives on AI in M&A, Journal of Indian Regulatory Policies, Vol. 8 (2025), p. 39.

rapidly evolving AI regulations. These teams significantly contribute to decreasing uncertainty and leading companies through complex AI due diligence, which facilitates a deal and makes it legally safe.

Finally, regulators are urging organizations to invest in AI risk and legal training and education. Most Indian corporate law organizations now provide courses and certifications in the field of AI governance, as a result of the increasing relevance of AI legal literacy to lawyers, executives, and compliance officers.

5. ETHICAL PROBLEMS AND ALGORITHMIC RISKS IN M&A.

Artificial Intelligence (AI) is finding more and more applications in mergers and acquisitions (M&A) to accelerate the processes and enhance decisions. Nevertheless, AI is also associated with certain risks and ethical issues corporations need to be aware of and navigate with a lot of caution.

Biased algorithms are one of the major risks. Artificial intelligence is based on historical information, and in case the information contains some biases, the AI may replicate the same or even increase them in its evaluations during M&A. As an example, when historical data tends to favour specific industries, regions, or size of companies, AI may not rank target firms well thus coming up with poor or unfair decisions. This brings ethical concerns of discriminating against some groups of people or businesses without any clear explanation. To ensure such hidden biases are corrected, companies must, on a regular basis, monitor AI tools to ensure the process is fair.

The other major issue is the problem of handling erroneous or fake information made by AI. In other instances, AI applications make mistakes referred to as hallucinations in which the algorithm generates incorrect or deceptive data. An example of this is an AI proposing inaccurate financial comparison or contract depending on the poor data. Any blind use of AI without due verification may lead to significant financial or legal errors in a deal. To be used ethically, the outputs of AI should be thoroughly checked by human specialists to prevent some expensive unexpected outcomes[20].

[20] Samsingh Rana, Data Privacy Concerns in AI M&A, Journal of IT and Law, Vol. 15 (2024), p. 61.

The security of data is also a crucial issue. During M&A, AI systems work with a lot of confidential information, such as personal, financial, and intellectual property data. Without the appropriate protection of such data, someone can steal it, leak it, or abuse it. Not only are such violations detrimental to companies financially, but they also damage the business image and cause legal implications. There can be a strong emphasis on ethical AI application, which is a strong level of cybersecurity, data encryption, and adherence to the privacy laws to protect sensitive information[21].

Additionally, the boundaries of AI in the contextual comprehension are ethically dangerous. AI is superb at figures, trends but is incapable of comprehending qualitative aspects, including a company culture, quality of leadership or emotional complexities, which are pertinent to the success of mergers. The excessive use of AI in such fields can overlook the human element of assessing such difficult factors and result in the failure of integration or unaddressed risks.

Another ethical issue is transparency. Such stakeholders as investors and employees are becoming more interested in how AI impacts decision-making during M&A. In situations where firms apply AI, they are supposed to reveal which aspects of the due diligence and decision-making process are based on algorithms and how they are able to guarantee accuracy and fairness. The lack of communication may lead to a rise in distrust, and the legal aspects of these unclear procedures or unforeseen mistakes of artificial intelligence can occur.

Lastly, there is the liability issue in the case of AI error. Because AI usually operates independently, it is not clear who will bear the costs in case it leads to financial losses or a breach of the law. The solution to this is that companies are beginning to introduce contract provisions and AI error insurance policies. Establishing clear responsibility is a way of making sure that the parties understand their rights and obligations in regard to AI risks in M&A.

Overall, although AI has a huge potential in the M&A process, such risks as algorithmic, such as bias, false information, data security, need to be addressed ethically. This implies frequent AI audits, human control, transparency, and explicit liability and consideration of social

[21] Hemant Singh Regulatory Perspectives on AI in M&A, Journal of Indian Regulatory Policies, Vol. 8 (2025), p. 39.

responsibilities at large. The solution to these issues is to make sure that AI establishes more advantageous, equitable, and secure merger transactions that suit everyone[22].

6. HUMAN OVERSIGHT AND THE "BLACK BOX" PROBLEM IN M&A

Black Box problem in Artificial Intelligence (AI) is a scenario in which the users of an AI system do not understand how the system arrived at the decision it becomes very unclear. Consider a black box is a closed box: you can observe what is coming in i.e the inputs and what is coming out i.e the outputs but you cannot observe what is occurring inside to create the Outputs. In AI, and particularly in more complicated designs such as deep learning, the computer crunches through layers of data and trends in a manner that even the designers themselves do not necessarily comprehend[23]. This enigma complicates the explanation or tracing process of how the AI came up with a given decision or recommendation when performing crucial activities such as mergers and acquisitions (M&A).

Such non-transparency leads to a number of issues. On the one hand, it is difficult to determine whether the choice of the AI is just, correct, or objective. The lack of information about how or why the AI made a decision will increase mistrust in users, stakeholders, and regulators. As an illustration, when an AI system identifies risks or valuations in an M&A deal without justification, the buyers would hesitate to take the advice. Besides, the black box nature conceals possible faults, weaknesses, or injustices in the AI, and it is hard to remedy or enhance it.

This is where human control comes in. Human Oversight implies that experts take active control and check and scrutinize AI results and outputs rather than simply trust them. The ability to apply a context, ethical judgment and domain knowledge is a valuable and human-only ability absent in AI. Although AI can scan through hundreds of contracts and financial reports in a minute, human beings will be able to see some legal nuances, evaluate cultural or leadership fit in a merger, and doubt AI findings that appear dubious or unfinished.

The human oversight in practice requires a number of actions: inspections of the AI-generated reports, confirmation of the AI-identified risks by the manual verification, and explanations of

[22] Corporate Governance and AI Integration Post-Merger, Journal of Corporate Law Studies, Vol. 11 (2025), p. 98.
[23] A. Karipak, Risk Mitigation Strategies for Algorithmic Takeovers, Indian Journal of Business Risk, Vol. 5 (2025), p. 85.

the stakeholders regarding AI decisions. It also implies understanding when to ignore or supersede AI conclusions. This collaboration-AI is fast with human intuition and the result is smarter and safer M&A decisions. Additionally, human reviewers represent a kind of checkpoint to accountability since AI tools will never become black boxes which dictate significant business actions without making an appropriate assessment[24].

Nevertheless, human control is not endless. The human being is not as powerful as AI in analysing large volumes of data. Human judgment can never be sure to be able to see details or it can always be biased. As such, it is not aimed at displacing AI or humans but combining the two sources of excellence in a moderate manner. To uphold this balance in high stakes M&A processes, companies are forming teams comprising of AI professionals, business executives, and lawyers[25].

7. INTERNATIONAL TRENDS: STUDYING THE WORLD EXPERIENCES

The application of artificial intelligence (AI) in mergers and acquisitions (M&A) is increasing all over the world, and various countries are developing new regulations to ensure that AI is used in a safe and fair manner. The European Union (EU) and the United States (US) are two key locations that are on the frontline. Their laws define the way companies adopt AI in M&A deals and provide a lesson to other countries such as India.

AI Act in EU is one of the most developed AI laws in the world. It began in 2024 and is aimed at ensuring AI is trustworthy, transparent, and safe. In the case of M&A, AI Act mandates companies to evaluate the risks that AI may cause to fairness, privacy, and competition before they can seal a deal. The legislation also requires the documentation of the working of AI systems in details and the impact to decision-making. Of particular concern to regulators is an attempt by large technology firms to acquire startups or smaller companies that have advanced AI technology. The EU does not want killer acquisitions which are large companies acquiring their potential competitors in order to eliminate competition. Nevertheless, innovation is also promoted by the EU because it understands that collaborations between large and small AI firms can be healthy in the market development. As an example, the acquisition of the AI start-

[24] Anusha Samba, Algorithmic Bias and M&A Risk, Indian Law Journal on AI and Ethics, Vol. 3 (2025) 1, p. 45.
[25] S. Prachi, Ethical AI and Corporate Accountability Post-Merger, Journal of Business Ethics and Law, Vol. 12 (2025), p. 149.

up Run: Ai was approved by the EU following a thorough procedure, thus, there would be healthy competition[26].

The EU law also provided a new power which is called call-in which enables the national authorities to investigate smaller deals that are smaller than the traditional notification thresholds, yet can have an impact on markets. This allows the regulators to detect AI-related transactions that would otherwise have gone unnoticed. The Digital Markets Act (DMA)[27] of the EU, which has been in effect since 2024, further restricts the regulation of the so-called gatekeeper companies, i.e. large digital platform where the European Commission has to be informed about the given business actions, including M&A. Such prospective regulations demonstrate how Europe combines safeguarding with encouraging AI developments.

In the US, the regulations regarding AI are also being revised across the Atlantic. In 2025, another executive order asked federal agencies to advance American leadership in AI, as well as, providing stricter regulations by the use of AI in sensitive fields. The US is concerned about the dangers that AI can cause to consumers, competition, or national security. Numerous states in the US have enacted AI-specific legislations in pursuit of transparency and fairness, which companies should take into account when engaging in M&A. Although the US is yet to establish a single AI regulation as thorough as the one offered by the EU, there is increasing interest in the innovation-accountability balance in order to prevent harms.

These regions have case studies that are very useful. When Microsoft acquired the OpenAI-related firms, this attracted the interest of the EU and the UK due to the fears of market dominance and accessibility of the important AI talents[28]. The EU was also thorough in the due diligence of the deal, partly due to the fact that it entailed not only acquisition of companies, but also acquisition of valuable intellectual property and personnel. Equally, the US agencies have been examining big AI transactions on grounds of their likelihood of eliminating competition or forming a monopoly, which is an indication that the regulators will be prolific in regulating the involvement of AI in business mergers.

[26] Sinaur Singh, AI Decision-Making and Due Diligence Best Practices, Journal of Corporate Due Diligence, Vol. 18 (2025), p. 77.
[27] Digital Markets Act, 2024
[28] Ethical AI and Corporate Accountability Post-Merger, Journal of Business Ethics and Law, Vol. 12 (2025), p. 149.

Both the EU and the US emphasize the necessity to record the effects of AI on deals, control AI risks such as bias or data, and render AI processes transparent to the regulators. They also demonstrate that it is important to revise the old merger control regulations to accommodate the unique needs of AI. The lessons would allow the global firms, including those in India, to be more ready to AI-driven M&A by establishing solid legal compliance and ethical foundations[29].

8. PRACTICAL RECOMMENDATIONS ON THE SAFE AND RESPONSIBLE USE OF AI IN M&A

Since AI is increasingly involved in mergers and acquisitions (M&A), companies and law firms must have the steps necessary to apply AI safely and responsibly. Regular audits of AI systems are also one of the recommendations. Audits can be done to observe the functionality of AI tools and ensure that they do not contain any issues, such as bias or errors, or are not against the law. Audits are to occur prior to the beginning of the deal and in the process and after utilizing AI to identify problems at the earliest stage.

Training is another key step. All the participants of M&A, including lawyers and executives, must be familiar with the functioning of AI, its advantages, and its threats. Effective training programs can make teams identify AI tool limits and when human judgment is required. Continuous learning also helps to keep the teams informed of the evolving AI legislation and newly-developed ethical issues to make responsible and legally-compliant decisions.

Good compliance programs are also necessary. To ensure AI remains the tool of M&A, companies should establish regulations concerning the utilization of AI, such as those in charge of overseeing the AI, data privacy, and problem resolutions. These programs might also have AI transparency policies, recordkeeping policies, and process documentation policies in order to appease regulators, as well as to establish trust among stakeholders[30].

As part of the contract preparation, AI-risk clauses are increasingly becoming common in M&A contracts. These provisions definitely define the accountable party in case of errors or losses of the deal by AI. Contracts can specify the way parties distribute the risks associated with AI errors, warranties regarding AI tools, and the manner in which conflicts will be

[29] ibid
[30] Alexa Forvis, Future Legal Frameworks Governing AI in M&A, Journal of Emerging Legal Trends, Vol. 3 (2025), p. 102.

addressed. The presence of such clauses will decrease uncertainty and enable the parties to anticipate AI-related issues in the course of a merger.

In the future, law and technology will continue to coexist. It is anticipated that governments around the world will produce more precise AI laws that are based on transparency, minimization of bias, and accountability. This will probably compel frequent AI impact evaluation in approving large-scale deals. Technology providers will introduce more comprehensible AI tools that assist users to understand the process of decision-making, alleviating the black box problem[31]. There will come up with new business models of AI risk insurance that will assist companies in dealing with uncertainties better.

As well, in the future, AI may go past the stage of helping human beings make decisions to making certain business decisions independently, but there must be a limit to human supervision. The AI design will emphasize more on social impact and fairness rather than financial profits. Those companies that embrace such changes early enough by investing in strong AI governance, legal adherence and employee training will dominate the future of successful M&A deals.

Essentially, effective application of AI to M&A is practical in the case of integrating technology with robust legal structures and human skills. Businesses can use the power of AI and at the same time preserve the safety, fairness, and transparency of deals through adhering to the best practices in auditing, training, compliance and contracts and preparing to meet future legal and technological trends.

9. CONCLUSION: AI-DRIVEN M&A: THE TRADE-OFF BETWEEN TECH INNOVATION AND LEGAL PROTECTION

AI is transforming the mergers and acquisitions fast by accelerating the process and exposing risks that cannot be detected by humans. Nonetheless, with changes, there are legal and ethical issues, as well, that have to be addressed prudently. The trick to succeed in AI-based M&A is to strike the balance between adopting a technology innovativeness and adhering to solid legal protection.

[31] Jhon Sinba, Data Security and Intellectual Property in AI Acquisitions, Journal of Intellectual Property Law, Vol. 21 (2025), p. 56.

The lesson learned is one of the most important, which is that AI must be applied as an aid to human knowledge, rather than its substitution. The interpretation of AI results, use of context and final judgment require human judgment and legal knowledge. In the absence of such a balance, deals can depend excessively on automated systems that are able to commit errors or conceal bias. Such legal measures as explicit liability regulations, transparency policies, and privacy are used to establish accountability and develop trust in AI tools.

The other important fact is that corporations are supposed to come up with well-rounded AI governance programs. These are frequent audits to test AI on fairness, accuracy, employee training to inform teams about AI risks and legislation, and compliance programs to ensure compliance with the law. The AI risk should be covered by contract clearly assigning the responsibility of handling the mistake or damages due to AI decisions in the M&A process.

Moving forward, the AI laws are likely to keep on changing in the world to be more regulated and controlled and more so in such a sensitive field as merger and acquisition. The companies should be ready to face tighter transparency regulations, risk assessment, and enhanced cybersecurity demands. In the meantime, technology itself is becoming better with the advancements in the field of explainable AI, making AI decisions easier to comprehend and audit.

Lastly, it is important to be innovative and ethical. Use of AI responsibility entails taking into consideration not only speed or profits but also being equal, transparent, and considerate to all the parties involved in M&A deals. The balance will guarantee the complete realization of the benefits of AI without harming trust and adhering to the law. To companies, government watchdogs, and lawyers, this is a fine line the future of combining technology and law in business transactions.

To summarize, the future of AI-powered M&A lies in the ability to view AI as a mighty helper, with stringent legal constraints, ethical treatment, and humans. Those businesses that do this effectively will be more successful, trusted and stronger in an ever changing business world.

REPEALING RIGHTS – A CRITICAL ANALYSIS OF THE VIKSIT BHARAT – GUARANTEE FOR ROZGAR AND AJEEVIKA MISSION (GRAMIN) (VB-G RAM G) BILL, 2025

Kumari Eesha. S[1]

Abstract

The Viksit Bharat – Guarantee for Rozgar and Ajeevika Mission (Gramin) (VB-G RAM G) Bill, 2025 marks a very regressive shift in the India's framework of social welfare by repealing the Mahatma Gandhi National Rural Employment Guarantee Act (MGNEREGA), 2005. The new Bill disrupts the main idea of demand driven and justiciable employment guarantee by replacing it with a centralised approval system which depends on the plan made by the Gram Panchayat in advance compromising with the local autonomy. The Bill puts first the quality asset creation and mission driven priorities over the labour intensive work reducing the hampering with the protection that the earlier regime offered to the vulnerable workers especially against rural women for whom the MGNEREGA acted as a last resort, independent source of income. By implementing the work to be paused during the peak agricultural seasons, it ultimately institutionalises wage suppression while strengthening the rural elites bargaining power. The Bill through fiscal restructuring burdens State with planning and execution while Centre retains the control worsening the existing implementation and gaps in funding. All these features when taken together threaten the livelihoods of rural society, women's economic autonomy and significant importance of social and constitutional rights, therefore a necessity of a committee to review this Bill.

Keywords: *VB-G RAM G Bill, MGNEREGA, Employment, Guarantee, Demand Driven.*

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I. INTRODUCTION

The introduction of the Viksit Bharat – Guarantee for Rozgar and Ajeevika Mission (Gramin) (VB – G RAM G) Bill, 2025, marks a historical moment in India's legislative history, despite the fact that this trend moves the structure of social welfare backwards. By repealing the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005 the present administration is not only trying to rebrand the scheme but is also fundamentally destroying a framework based on rights that used to serve as an ultimate safety net for rural India for two decades.

Being a citizen of this democratic country with the lengthiest constitution in the world one must view this Bill through the eyes of constitutional duties and the "Right to Livelihood" as given under Article 21. The MGNREGA was considered to be a landmark legislation that shifted the concept of social welfare from aid based welfare to entitlement based rights. The VB-G RAM G Bill, 2025 has however replaced this concept by effectively terminating this legal guarantee of entitlement, changing the demand driven right with a supply limited goal.[2] This comment thus argues how the Bill ignores the ground realities of rural distress, shifting of biased fiscal burden on the States, impacting the economic independence of women and the introduction of structural hurdles that is going to leave the most vulnerable population in distress due to the impulse bureaucratic decisions and the market exploitation.[3]

2. THE EROSION OF LEGAL GUARANTEE:

The one of the most conflicting feature of the VB-G RAM G Bill, 2025, is the structured removal of the "demand driven" type of employment as under the MGNREGA framework any rural household had the legal right to demand for the 100 days of work and so the State was legally obliged to provide it within the 15 days or if not pay an unemployment allowance for the same.[4] According to the PRS Legislative Research analysis provisions in

[2] People Matters, New rural jobs Bill replaces right-to-work model with capped scheme: Here's what it changes, (Dec. 2025), https://www.peoplematters.in/news/economy-policy/new-rural-jobs-bill-replaces-right-to-work-model-with-capped-scheme-heres-what-it-changes-47733.

[3] Socialist Party India, Socialist Party India Demands That The Viksit Bharat G-Ram G Bill Be Withdrawn, Countercurrents (Dec. 2025), https://countercurrents.org/2025/12/socialist-party-india-demands-that-the-viksit-bharat-g-ram-g-bill-be-withdrawn/.

[4] Alok Sharma, Renaming MGNREGA an attempt to mislead nation by Govt, Garhwal Post (Dec. 2025), https://garhwalpost.in/renaming-mgnrega-an-attempt-to-mislead-nation-by-govt-alok-sharma/.

the Bill (section 4), the new law system requires the panchayats to plan projects in advance which will only then be approved by the Central government before the commencement.[5]

This suggests a complete shift in the decentralised decision making that focused on the people's welfare. By making the start of a work to condition based on pre-approved plan and clearance by Central practically kills the idea of guarantee. For example if a village is hit by a drought or an economic shock then the people can no longer demand work as a right they have to wait for that Annual Action Plan to be revised and approved by the Central and so this obstacle creates an idea of discretionary administrative scheme. Furthermore the data shows that the demand for the MGNREGA had consistently peaked during the times of distress especially during COVID-19. By the removal of immediate legal obligation to provide work that automatically stabilizes the economy as provided under the MGNREGA.

3. THE MYTH OF 125 DAY GUARANTEE

The advocates of the new Bill often argue that the old structure was not enough and failing but a critical look at the NREGA Dashboard and various academic studies (such as the IOSR Journal and Deepak Varshney's ISID paper) show that the failure was not due to the Act's design but due to its implementation and lack of finding.[6] In the past the average number of the days of the employment that was provided per household has mostly hovered between 47 to 50 days which is far below than the promised 100 days.[7] This deficit was never due to the lack of demand rather it was the result of the allocation done by the administration. The data also reveals that the central government ran out of funds almost every financial year which intentionally stalled the work.

SI. No.	Financial Year	Budget Estimate	Revised Estimate	Fund released

[5] PRS Legislative Research, The Viksit Bharat – Guarantee for Rozgar and Ajeevika Mission (Gramin) (VB – G RAM G) Bill, 2025, https://prsindia.org/billtrack/the-viksit-bharat-–-guarantee-for-rozgar-and-ajeevika-mission-gramin-vb-–-g-ram-g-bill-2025.

[6] *See supra* note 4 (NREGA Dashboard data); *see also* IOSR J. (for implementation studies); Deepak Varshney, *ISID Paper on NREGA Implementation* (for academic analysis).https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.isid.ac.in/~epu/acegd2014/papers/DeepakVarshney.pdf&ved=2ahUKEwjWwen8o9iRAxVTR2wGHd4HBboQFnoECBoQAQ&usg=AOvVaw2-Qa3G0xp3u2aVlYro4KzZ

[7] Ministry of Rural Dev., *MGNREGA Dashboard*, https://nreganarep.nic.in/netnrega/all_lvl_details_dashboard_new.aspx

1	2020-21	61500.00	111500.00	1,11,170.86
2	2021-22	73000.00	98000.00	98,467.85
3	2022-23	73000.00	89400.00	90,810.99
4	2023-24	60000.00	86000.00	89,268.30
5	2024-25	86000.00	86000.00	85,838.76

This budget allocations revealed on the PIB Release (PRID 1942377) for the 2023-24 shows that the government has continuously had to revise and add the MGNREGA budget every time mid-year because the initial decided allocation were repeatedly not at all enough. Also instead of fixing this gap in funding to ensure 100 day promise was met, the VB-G RAM G Bill of 2025 has simply made the 125 day target which is the maximum limit but subject to mission priorities rather than a legal floor. [8]

5 . SHIFTING BURDEN

The most tricky aspect of this new Bill is the fiscal restructuring because it appears to be an attempt by the Centre to get away with financial responsibility. With MGNEREGA for years the Central Government has been in debt to the various State governments relating to the wages and material payments for fulfilment of the scheme purpose. Recent reports also indicate that the Central Governments still owes about thousands of crores as unpaid dues to states to like West Bengal and others. [9]

This new Bill is trying to place the onus of planning and execution more heavily on the states and the panchayats whereas retaining the power of approval with the Centre by creating a funded mandate which is a nightmare for the states. It suggests a new model of cost sharing that could compel the states to out more from their already stretched wallets.[10]

[8] *Press Info. Bureau Allocation Under MGNEREGA* ,https://www.pib.gov.in/PressReleasePage.aspx?PRID=2148475&reg=3&lang=2.

[9] Press Info. Bureau, *PRID 2100661*,https://www.pib.gov.in/PressReleasePage.aspx?PRID=2100661&reg=3&lang=2.

[10] Economic Times, VBG-RAM G Bill gets President nod: Employment guarantee extended to 125 days, https://m.economictimes.com/news/economy/policy/vbg-ram-g-bill-gets-president-nod-employment-guarantee-extended-to-125-days-mgnrega/articleshow/126104986.cms.

This shift is very damaging specially for the poorer States that rely on Central transfers to sustain the rural employment as the Bill is indirectly saying that States have to manage the demand, plan the work moreover if the funds run out deal with the social unrest created.

6. THE AGRICULTURAL PAUSE

The most controversial provision in the VB-G RAM G Bill is the mandatory "pause" during the peak agricultural season[11] specified in Section 6(1) and Section 6(2) where state is required to notify in advance about a cumulative period of up to 60 days as per financial year covering the sowing and harvesting seasons when work under the scheme will not be permitted since the Bill specifies that the Mission will prioritize works during the lean season and may have to restrict work during peak periods to ensure for the availability of labour for the agriculture.[12]

This provision thus can be seen as a direct attack on the bargaining chip that existed during MGNEREGA of rural labour because it served as a "floor wage"[13] with an option for the workers where the private landowners were forced to pay at least the minimum wage to attract the labour. This change in provision brings back the idea of feudalism. By introducing the concept of pause during the peak season, the government is consciously removing the only alternative for the rural workers. Due to this reason during these periods workers, mainly the landless poor, will be made to work for the private landlords at wages which are far lower than the MGNEREGA based rate since they have nowhere else to go. This is not an economic policy but a formalised system of wage suppression that will benefit the rural landed elite at the cost of labourers by ignoring the main idea of providing work but as a safety net.

7. IMPACT ON WOMEN

Various reports highlight a crucial fact under the MGNEREGA scheme is that it had the single largest employment of women in rural India. In many states the women's participation exceeded 50% and in some as high as 80% which shows that for many rural

[11] Scroll.in, A Bill to destroy MNREGA: Why experts fear the worst from new job guarantee Bill, https://scroll.in/article/1089326/a-bill-to-destroy-mnrega-why-experts-fear-the-worst-from-new-job-guarantee-bill.

[12] PressInformation Bureau, Press Note 156634, https://www.pib.gov.in/PressNoteDetails.aspx?id=156634&NoteId=156634&ModuleId=3&reg=3&lang=1.

[13] Ideas for India, A short history of MNREGA: 20 years in 10 charts, https://www.ideasforindia.in/topics/poverty-inequality/a-short-history-of-mnrega-20-years-in-10-charts.

women MGNEREGA was not just "work" but it was their "last resort" for an independent income.[14] Since women have always faced a significant barriers in the private labour market including the gender wage gap and limited mobility. Under MGNEREGA by providing work within a certain radius of their homes and ensuring equal pay.

While the new Bill's pause and its shift toward the other schemes like the "Ajeevika Mission" under the "Lakhpati didi" initiative will fail to account for those women who are not entrepreneurs and need daily wage labour to survive. When the idea of guarantee of work is replaced by the mission based projects, it affects women who often have less political capital to influence the planning by the Panchayats and so they will be the first to be pushed out. This loss of a steady guaranteed days of work will result in a significant decline in the financial autonomy for the rural women which means undoing the progress that has happened till now since the last two decades for female labour participation.

8. STRUCTURAL FLAWS

The new Bill has claimed that it aims to empower the Panchayats but the provisions suggests otherwise as the requirement of the approval of the "Gram Panchayat Development Plan" by the Centre before the release of funds for the VB-G RAM G works can be seen as a strike against the 73rd Constitutional Amendment. Under the previous scheme MGNEREGA the supreme body for deciding the works to be undertaken was the Gram Sabha which ensured that the assets created like wells, ponds, road were those which actually were needed by the community.

But the new Bill introduces a top-down Viksit Bharat template[15] in which if a village is needed with a pond for drought relief and the Central "mission" is prioritizing the Digital Infrastructure or any other specific types of assets than the local need will have to be sacrificed for the national "template" which thus kills the spirit of local self-governance and ensures that the assets created may have to do little with the actual livelihood needs of the villagers.

[14]Press Information Bureau, PRID 1942377, https://www.pib.gov.in/PressReleasePage.aspx?PRID=1942377&reg=3&lang=2.

[15] PMF IAS, VB-G RAM G Bill 2025, https://www.pmfias.com/vb-g-ram-g-bill-2025/.

9. THE ASSET CREATION FALLACY

The governments' logic behind the Bill is focused heavily on quality asset creation and sustainable livelihoods which are just noble goals but they should not come at the cost of the employment guarantee. Since MGNEREGA was designed as a labour intensive scheme the previous central funding for wage and material was intentional to ensure that the money went into the hands of the poor while the new Bill leans toward mission mode like a project which often involves higher material costs and the involvement of contractors. Therefore the moment contractors enter in this struggle then the poor are marginalised as the Bill's focus on Viksit Bharat infrastructure suggest a move toward the capital intensive works which will naturally reduce the number of days work available for the unskilled and poor laborers.

10. CONCLUSION

The Viksit Bharat – Guarantee for Rozgar and Ajeevika Mission (Gramin) Bill, 2025 is just another example of a sweet deal with a sting. While the terms like Viksit (developed) and Ajeevika (livelihood) its provisions strike at the centre of rural society. To summarize this new Bill fails because:

It just strips the rural poor of their legal right to demand work and replaces it with a centralized approval system.

It fails to ignore the fact that the 100 days target was never met and instead institutionalized this failure.

It shifts the financial and administrative burden on the States while the Centre retains its power of the purse.

It provides a regressive step that will force the laborers into an exploitive employment by private and removing the most reliable source of income for the rural women which will threaten their social economic standing.

As a citizen of the State, I contend that this Bill is only a violation of the contract because a government's duty is to protect its most vulnerable citizens. And that by repealing the MGNEREGA and replacing it with the VB-G RAM G Bill, the state is withdrawing the only option from the hands of the poor in the sense that the constitutional provision of Right to Work under the fundamental Rights has lost its meaning to hope. Thus the Bill should

be referred to a committee for a thorough overall check so that it aligns with the necessity of work for the vulnerable to make it better.

SECURING THE CHAIN: EVALUATING THE NEED FOR ROBUST CYBERSECURITY REGULATIONS FOR VIRTUAL DIGITAL ASSETS (VDAS) AND TOKENS IN INDIA'S CRYPTO ECOSYSTEM

-Swathy Resmi S & Akhil Kumar K.S[1]

Abstract

Virtual Digital Assets (VDAs) have rapidly transitioned from specialty innovations to an important part of the international financial landscape, with paradigm-shifting potential in decentralized finance, tokenization, and creative markets. In India, the regulatory changes include prohibitionist regimes with taxation under the Income Tax Act, the inclusion of Virtual Asset Service Providers (VASPs) under the PMLA, 2002, and data protection obligations under the DPDP Act, 2023. Nevertheless, critical gaps exist in cybersecurity and investor protection, as current frameworks such as the IT Act, CERT-In directions, and FEMA are not specifically drafted for VDAs. Increased cyber-attacks like hacking, phishing, wallet hacks, and token scams underscore the need for a strong, VDA centric cybersecurity structure. Hence, this article attempts to provide an explicable overview of VDA in the Indian legal landscape and explains the current status. Further, it delves deep into the cybersecurity and regulatory gaps existing in the Indian legal system, which requires a holistic attention. The article also studies different jurisdictions to know what India can accommodate in its legal system to regularise the VDAs. Further, the article deals with the urgency of building a cybersecurity framework and regulatory mechanism for VDAs. It further analyzes judicial rulings, especially IAMAI v. RBI, which has highlighted proportionate regulation against ongoing loopholes and investor risk, and provides a judicial outlook on regulating VDAs. Then the article emphasises the need to balance innovation and regulation. The article concludes with various recommendations for India to encourage an open, secure, transparent, and internationally competitive VDA environment.

Keywords: *Virtual Digital Assets (VDAs), Cybersecurity Regulation, Investor Protection, Indian Legal Framework, Decentralized Finance (DeFi),*

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1. INTRODUCTION TO VIRTUAL DIGITAL ASSETS AND THE CYBERSECURITY IMPERATIVE

An asset is an item of value that can be converted into cash at some future event and may generate income or increase value until then. In the present digital world, the assets have also taken a digital form - Virtual Digital Assets (VDA). A virtual asset is a digital representation of value that can be digitally traded or transferred and used for payment or investment purposes. On the other hand, a digital asset is the instrument issued or represented through a distributed ledger or similar technology.[2] Hence, VDAs are the digital entities that exist as a medium of exchange, a unit of account, or a store of value. They have graduated from their obscure roots as niche innovations into a vital component of the international financial system. With a market capitalization of more than USD 3 trillion and a user base of 560 million globally,[3] VDAs can no longer be viewed as insignificant. With the emerging VDA landscape, the risks associated with it have also been significantly increased, and hence, there is a need for more stringent protection and regulation.

In the Indian legal scenario, the notion of VDA has moved beyond the introductory stage. In 2013, the RBI cautioned against VDAs like Bitcoin based on the possible dangers of unregulated supply, financial instability, cross-border transactions, money laundering, and terrorism financing.[4] Even though there was no explicit legal prohibition, exchanges were in a regulatory grey area, and RBI advisories created uncertainty among businesses, investors, and users within India. In 2018, the RBI banned institutions from offering services to businesses involved with virtual currencies.[5] However, in the case of IAMAI v. RBI,[6] the Supreme Court overruled this ban while observing that it violated the fundamental right to trade provided under Article 19(1)(g).[7] Though the Court recognized that the RBI was justified in its intention to safeguard financial institutions, it had not met the 'test of proportionality' when imposing a blanket ban.

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[2] 'What are virtual assests, crypto assets and (native) digital assests?' (*International Capital Market Association*) <2. What are virtual assets, crypto assets and (native) digital assets? » ICMA> accessed 28 November 2025.
[3] Daniel Liberto, 'Biggest Companies in the World by Market Cap' (*Investopedia*, 31 August 2025) <https://www.investopedia.com/biggest-companies-in-the-world-by-market-cap-5212784> accessed 28 November 2025.
[4] 'Blockchain & Cryptocurrency Laws and Regulation 2026 - India' (*Global Legal Insights*, 21 October 2025) <Blockchain & Cryptocurrency Laws & Regulations 2026 | India> accessed 28 November 2025.
[5] *Ibid*
[6] Internet and Mobile Association of India v. Reserve Bank of India AIR 2021 SC 2720.
[7] The Constitution of India, art 19(1)(g).

In 2021, an attempt was made to regulate the VDA ecosystem, with the introduction of the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021. The Bill aimed to provide a platform for the RBI to launch an official digital currency while banning all private cryptocurrencies in India, with exceptions granted to promote the development of blockchain technology and research into possible uses of cryptocurrencies. It also laid the ground for the Central Bank of Digital Currency (CBDC), providing greater certainty and government supervision to VDAs.

A significant shift occurred in 2022, the term 'Virtual Digital Asset' was incorporated under section 2(47A)[8] of the Income Tax Act of 1961 through the Finance Act of 2022,[9] which defined it precisely. The Act further charges income earned through the transfer of VDAs by 30% and 1% Tax Deducted at Source (TDS) for crypto transactions.[10] It was further refined through the Finance Act of 2025[11] by elaborating the definition, mandating reporting, including undisclosed assets under search and seizure, and strengthening compliance without modifying the tax rates. The finance ministry had,[12] in 2023, included VDAs or virtual digital asset (VDA) service providers (VASPs) under the ambit of PMLA. This sentiment carried over to exchanges, transfer platforms, custodial operations, and related companies. In doing so, VASPs are now subjected to stringent compliance policies akin to banks and harmonizing India's regulatory framework with global Financial Action Task Force (FATF) regulations while tightening the noose around money laundering in the crypto space. This shift represents India's gradual but irreversible transition away from prohibitionist tendencies towards a regulated, compliance-led approach. The taxation regime in India covers three major typologies of VDAs,[13] the Cryptocurrencies, which include Bitcoin, Ethereum, Tether, and XRP, Non-Fungible Tokens (NFTs), which represent unique digital ownership, and other digital tokens, which signify value.

[8] Income Tax Act 1961, s 2(47A) (India).
[9] The Finance Act 2022 (India).
[10] 'TDS on payment for the transfer of Virtual Digital Assets (VDAs)' (*Income Tax Department*) <https://incometaxindia.gov.in/tutorials/72.tds-on-payment-for-the-transfer-of-virtual-digital-assets.pdf> accessed 28 November 2025.
[11] The Finance Act 2025 (India).
[12] Ministry of Finance, Department of Revenue, Financial Intelligence Unit – India, *Registration of Virtual Digital Asset Service Providers in FIU India as Reporting Entity* (F.No. 9-8/2023/COMPL/FIU-IND)
[13] Treelife, 'Taxation of Virtual Digital Assets(VDA) in India – Complete Guide' (*Treelife*, 20 June 2025) <https://treelife.in/taxation/taxation-of-virtual-digital-assets/#:~:text=The%20Indian%20taxation%20regime%20for,a%20digital%20representation%20of%20value> accessed 28 November 2025.

VDAs are of immense economic and technological importance in empowering decentralized finance, fractional ownership, and transparent, safe transactions. With growing adoption comes the risk of cyberattacks in the form of hacking, phishing, wallet theft, and ransomware, putting security, trust, and regulatory protections in the digital economy in question. VDAs are also subjected to threats like wallet breaches, smart contract breaches, exchange hacks, rug pulls, token scams, and NFT scams, both at a systemic and user level. Financial losses in real-world Indian and global cases bring the urgency of examining and filling India's cybersecurity and VDA regulatory framework gaps.[14]

2. GAPS IN INDIA'S EXISTING CYBERSECURITY AND VDA REGULATORY FRAMEWORK

The Information Technology Act, 2000 (IT Act) is India's primary cyber law. It was initially designed to give legal recognition to electronic transactions and digital signatures and to address cybercrimes such as hacking, data theft, and unauthorized access to computer systems. Subsequent amendments and regulations aimed to strengthen cybersecurity duties under the original framework. The IT Act effectively handles standard cybercrime cases and digital security issues, but shows inadequate provisions when applied to VDAs. The law was enacted in 2000, which preceded the evolution of cryptocurrencies, tokens, and blockchain technology. Its language focuses on "electronic records" and "computer resources," but does not explicitly mention digital assets stored on decentralized networks.

Consequently, while VDA exchanges and wallet providers technically could come under the general definition of "intermediaries" or "digital businesses," they are not required by law to adhere to crypto-specific protections necessary to ensure user funds are adequately secured. For example, exchanges frequently hold most users' assets in "cold wallets" (offline storage) to decrease hacking risks. There is no such requirement under the IT Act. Most VDA platforms have automated smart contracts to handle funds, but there's no law that says individual must submit their code for an independent review, looking for holes. There should be multiple approvals for large crypto transfers, but there is no legal requirement.

The Ministry of Finance,[15] by a notification dated March 2023 has brought Virtual Asset Service Providers (VASPs) which include crypto exchanges, custodial wallets and other such

[14] Arindam Goswami and Nirupama Soundararajan, 'Regulating Virtual Digital Assets In India: Balancing Innovation And Risks' (*BW Businessworld*, 31 January 2025) <https://www.businessworld.in/article/regulating-virtual-digital-assets-in-india-balancing-innovation-and-risks-546567> accessed 28 November 2025.
[15] Ministry of Finance, n 11.

platforms are now covered under the ambit of Prevention of Money Laundering Act, 2002 (PMLA).[16] Consequently, while VDA exchanges and wallet providers technically could come under the general definition of "intermediaries" or "digital businesses," hence, they are not required by law to adhere to crypto-specific protections necessary to ensure user funds are adequately secured. For instance, exchanges tend to hold most user assets in "cold wallets" (offline storage) to minimize the threat of hacking. The IT Act does not mandate this practice. VDA platforms use smart contracts to manage funds, and there is no requirement by law to conduct independent code audits to track vulnerabilities. Multiple approvals are required to conduct large crypto transfers, but no statutory obligation exists.

This step was significant because it formally classified VASPs as "reporting entities." Hence, reporting entities, VASPs must conduct Know Your Customer (KYC) checks on their users, report suspicious transactions to the Financial Intelligence Unit (FIU-IND), and maintain detailed records of user activity for a minimum period.

These steps bring India on track with the FATF's advice, urging all nations to apply anti-money laundering (AML) rules to the cryptosphere. While it is a welcome initiative for financial disclosure sides, PMLA predominantly deals with money laundering and terror financing vulnerabilities. No such direct cybersecurity obligations were created. A crypto exchange in India could comply entirely with the PMLA and still be hacked, and millions of dollars of users' assets could be stolen. Critically, there's no legal requirement for customer restitution or elevating the technical security standards in the wake of such an attack.

In April 2022, Computer Emergency Response Team-India (CERT-In) introduced significant directions under the guidance of the Ministry of Electronics and Information Technology (MeitY).[17] These apply to all companies using digital systems, including crypto exchanges and wallet providers. As per the guideline, an organization should be required to report cybersecurity incidents within six hours of detection, keep system logs for 180 days of investigation, and enforce KYC compliance for VPNs, cloud services, and crypto exchanges. This direction aims to improve India's capacity to respond swiftly to cyber threats and strengthen accountability among digital service providers. Although useful, these rules are

[16] The Prevention of Money Laundering Act 2002 (India).

[17] Government of India, Ministry of Electronics and Information Technology (MeitY), Indian Computer Emergency Response Team (CERT-In), *Directions under sub-section (6) of section 70B of the Information Technology Act, 2000 relating to information security practices, procedure, prevention, response and reporting of cyber incidents for Safe & Trusted Internet* (No. 20(3)/2022-CERT-In)

generic and not designed specifically for VDAs, and they do not provide a comprehensive cybersecurity framework for VDAs.

India introduced its first independent data privacy regulation through the Digital Personal Data Protection Act 2023 (DPDP).[18] Organizations dealing with personal data, including crypto exchanges, must perform KYC verification to establish protective measures that prevent data misuse, unauthorized entry, and leaks. The DPDP Act allows VDA platforms to securely store personal data that has been collected. It dedicates its attention to data privacy issues instead of asset protection. While it protects users' personal information, it lacks measures to protect digital assets. In other words, even if an exchange complies fully with the DPDP Act, users' cryptocurrencies (such as Bitcoin or Ethereum) could still be stolen in a cyberattack. The law does not impose any obligation on platforms to secure wallets, audit smart contracts, or establish robust technical defences.

Since crypto currencies can easily be transferred across borders, the Foreign Exchange Management Act, 1999 (FEMA)[19] is relevant. FEMA regulates the flow of foreign exchange in and out of India and ensures that such transactions comply with government policy. The Reserve Bank of India (RBI) has concerns regarding the misuse of crypto currencies concerning foreign exchange regulations, unauthorized overseas transfers, and facilitating cross-border money laundering.[20] The FEMA could also be used in VDA-related transactions in foreign countries. To conclude, it is evident that the Indian legal system has gaps with respect to VDAs. To rectify this problem, comparing India with other countries is necessary, as it will provide valuable insights about VDAs.

3. COMPARATIVE REGULATORY MODELS FOR VDA CYBERSECURITY IN DIFFERENT JURISDICTIONS

The EU has created a unified framework through the Markets in Crypto-Assets Regulation (MiCA).[21] It requires crypto-asset service providers (CASPs) to obtain authorisation and demonstrate operational resilience, governance, and incident reporting mechanisms. At the same time, the General Data Protection Regulation (GDPR) applies to all personal data

[18] The Digital Personal Data Protection Act 2023 (India).
[19] The Foreign Exchange Management Act 1999 (India).
[20] Reserve Bank of India, *Reserve Bank cautions regarding risk of virtual currencies including Bitcoins* (Press Release: 2017-2018/1530).
[21] European Securities and Market Authority, *Draft technical Standards specifying certain requirements in relation to the detection and prevention of market abuse under the Markets in Crypto Assets Regulation (MiCA)* (17 December 2024, ESMA75-453128700-1278).

processed by CASPs.[22] The European Data Protection Board (EDPB) has blockchain-specific guidance that focuses on privacy by design, limiting personal data, and accountability for data controllers. EU crypto service providers find a balance between MiCA's security needs and GDPR's protection rules.

The U.S. approach is fragmented. At the federal level, the Securities and Exchange Commission (SEC) focuses on custody and investor protection, particularly who qualifies as a "qualified custodian" and how client assets must be safeguarded. The Financial Crimes Enforcement Network (FinCEN) requires exchanges to follow AML and Travel Rule requirements, which demand secure collection of customer ID information.[23] The BitLicense framework developed by New York is the most critical state-level regulation because it requires exchanges to implement thorough cyber security measures with multi-factor authentication and incident response protocols, and mandates breach reporting. U.S. VASPs must navigate overlapping federal rules on custody and AML with diverse state licensing requirements, making compliance more complex than in the EU.

Japan regulates VASPs under the Payment Services Act (PSA), requiring registration with the Financial Services Agency (FSA).[24] Licensed exchanges show robust system security, segregate customer assets, and undergo regular audits and inspections.

South Korea introduced the Protection of Virtual Asset Users Act,[25] which sets legal requirements for protecting customer assets through safe management practices. Financial institutions under VASPs follow strict custody regulations, which require them to perform audits and report security breaches to the Financial Services Commission (FSC). Both countries adopt a prescriptive, licensing-centric model that directly ties market entry and ongoing operation to demonstrable cybersecurity measures and audits.

Across all jurisdictions, three common elements appear: first, licensing or authorisation linked to security regulators requires proof of cybersecurity systems before approval. Second, custody and segregation of assets, safeguarding client funds through technical and operational controls, is a universal priority. Third, supervisors expect prompt disclosure of breaches and

[22]European Securities and Market Authority, 'ESMA finalises first rules on crypto-asset service providers' (*ESMA*, 25 March 2024) <https://www.esma.europa.eu/press-news/esma-news/esma-finalises-first-rules-crypto-asset-service-providers> accessed 28 November 2025.
[23] New York State Department of Financial Services, 'Virtual Currency Business Licensing' (*New York State Department of Financial Services*) <https://www.dfs.ny.gov/virtual_currency_businesses> accessed 28 November 2025.
[24] Payment Service Act 2009 (Japan).
[25] Protection of Virtual Asset Users Act 2023 (South Korea).

transparency in incident reporting and remediation plans. However, the main differences lie in regulatory style, the EU combines market oversight with strict data protection, the U.S. applies a fragmented but overlapping mix of rules, and Japan and Korea enforce prescriptive licensing and audits.

Cybersecurity has become a regulatory cornerstone for VDAs worldwide. The EU focuses on unified oversight and data protection, the U.S. focuses on federal and state regulations, and Japan and South Korea impose licensing and audit-heavy regimes, which is a stricter approach. For global VASPs, this means making systems that cover custody, AML, and incident response expectations while adjusting to each country's rules on data protection and regulatory supervision. These international approaches provide valuable lessons to the Indian VDA framework.

4. BUILDING A CYBERSECURITY FRAMEWORK FOR VDA IN INDIA

A thorough understanding of Gaps in India's Existing Cybersecurity and VDA Regulatory Framework is crucial to establishing a robust cybersecurity framework for VDAs in India. It is important to balance innovation with investor protection. Since there are risks like money laundering, fraud, and cross-border misuse, regulatory focus must extend beyond taxation.[26] This includes wallet-level KYC, DeFi registration, and more vigorous FIU enforcement. Combining VDAs with India's digital infrastructure, such as UPI (Unified Payment Interface) and CKYC (Central Know Your Customer), could improve traceability while maintaining user convenience. Another significant step is that license requirements for wallet providers and VASPs require strict governance and cybersecurity standards. Regulatory sandboxes, international cooperation, and awareness campaigns will build resilience and establish a secure ecosystem for India's VDA system.

Understanding the risks associated with VDAs in India is also pertinent to getting to the crux of the issue and building a strong and effective cybersecurity ecosystem. VDAs in India pose significant risks even with great economic potential. The prominent risks are extreme market volatility of tokens that are not backed, liquidity risk in centralised exchanges, and money laundering or terrorism financing through pseudonymous transactions. Operational and technical risks like cyberattacks and protocol failure undermine consumer confidence. Weak

[26] Arindam Goswami, 'A Roadmap for VDA Regulations in India' (2025) Policy Consensus Centre <https://www.researchgate.net/publication/394527598_A_Roadmap_for_VDA_Regulations_in_India?channel=doi&linkId=68a2f587ca495d76982dce7a&showFulltext=true> accessed 28 November 2025.

consumer protection, advertising misleads, and improper grievance redressal make investors vulnerable to fraudulent activities. There is also a risk for macroeconomic disruption, such as unstable capital flows.

Integration of VDAs in the existing legal frameworks would also play a significant role in building a vigorous cybersecurity framework for VDAs in India. The Income Tax Act of 1961, under Section 194S,[27] promotes tax transparency in VDA deals by providing for 1% TDS, thus ending unreported transactions and increasing accountability. Further, in its Cybersecurity and Cyber Resilience Framework, the Securities and Exchange Board of India (SEBI) already enforces stringent controls on regulated parties, providing a template for extending investor protection to VDA markets.[28] The RBI was critical of VDAs, and the RBI now encourages Central Bank Digital Currency (CBDC) while controlling the systemic risks of cryptocurrencies. The Digital Personal Data Protection Act, 2023, further builds user confidence by protecting financial information, and these regulatory measures create a regulatory platform for India's VDA ecosystem.[29]

However, the system encounters growing vulnerabilities because various authorities maintain individual operational systems that function separately from the legislative framework. The present enforcement of cyber laws is fragmented across multiple agencies, generating regulatory inconsistencies and agency overlap.[30] A unified cybersecurity law would simplify enforcement processes while removing unclear areas and bringing India's legal system into harmony with international standards. This would strengthen India's cyber resilience and foster greater trust in its digital infrastructure.

Therefore, effective regulation of VDAs in India requires firm institutional coordination. The Computer Emergency Response Team-India (CERT-In) plays a central role in cyber threat monitoring and timely incident reporting.[31] The RBI maintains two primary objectives: monetary stability and digital currency risk management for systemic threats. The Ministry of

[27] Income Tax Act 1961, s 194S.
[28] 'SEBI's Cybersecurity and Cyber Resilience Framework (CSCRF): Strengthening India's Financial Sector Amid Rising Cyber Threats' (*QNu Labs*, 19 September 2024) <https://www.qnulabs.com/blog/sebis-cybersecurity-and-cyber-resilience-framework-cscrf-strengthening-indias-financial-sector-amid-rising-cyber-threats> accessed 28 November 2025.
[29] Rohan Bagai, 'Virtual Currency Regulation Review 2025' (*AZB & Partners*, 12 June 2025) <https://www.azbpartners.com/bank/virtual-currency-regulation-review-2025/> accessed 28 November 2025.
[30] Ashish Sharma and Savyasanchi Pandey, 'Legal framework for cybersecurity in India: Overlaps, issues, and challenge' (2004) 6(4) International Journal of Law, Policy and Social Review 103-107
[31] Computer Emergency Response Team-India (CERT-In), Ministry of Electronics and Information Technology, Government of India

Finance establishes guidelines for preventing taxation, money laundering, and cross-border compliance requirements. At the same time, SEBI targets market integrity, investor protection, and possible categorization of VDAs as securities. Hence, firm interlinks among the authorities will, in a way, create a safe, transparent, and innovation-friendly VDA ecosystem, apart from dedicated legislation. In addition to changing regulations, the courts have been central to formulating the debate around VDAs, thus making it necessary to explore how courts have handled cybersecurity, legality, and investor protection concerns.

5. JUDICIAL OUTLOOK ON VIRTUAL DIGITAL ASSETS IN INDIA: ANALYSING THE EVOLVING ROLE OF COURTS IN CYBERSECURITY, LEGALITY, AND INVESTOR PROTECTION

Building a cybersecurity ecosystem for VDAs in India is as critical as examining the judicial interpretations and perspectives towards cybersecurity, lawfulness, and investor protection. The Supreme Court's 2020 landmark ruling in the Internet and Mobile Association of India v. Reserve Bank of India[32] struck down RBI's 2018 circular, which restricted banks from servicing crypto exchanges, holding it disproportionate since virtual currencies (VDAs) were not banned. The Court affirmed RBI's regulatory powers but emphasized that measures must be justified, non-arbitrary, and proportionate.

Recently, the Supreme Court dismissed an Article 142 plea for guidelines on curbing fraudulent cryptocurrency transactions while emphasizing that it comes under the domain of the legislature and the executive wing of the government. Petitioners pointed out that without a robust regulatory framework and an effective redressal mechanism, large-scale financial insecurity, trust deficit, and systemic risks remain. Investors were unsure about the uncertainty of money, exchange, and there were no proper assessments regarding Know Your Customer or Anti Money Laundering (KYC or AML). There wasn't any law or legal authority in India to safeguard users, businesses, or regulators, and the court was hesitant to provide its own rules.

In July 2025, the Delhi High Court, in the case of Umesh Verma v. State,[33] highlighted investor risks in unregulated exchanges of VDAs, and pressed for regulatory vigilance. In August, the Delhi High Court in another case ordered WazirX's Singapore entity, Zettai, to reveal Binance acquisition (cryptocurrency exchange) and restructuring information in the wake of a $230

[32] Internet and Mobile Association of India v Reserve Bank of India AIR 2021 SC 2720
[33] Umesh Verma v State CRL.M.A. 22040/2023

million hack.[34] The court highlighted problems with ownership transparency and directed RBI officials to attend the upcoming hearing. Scams like CoinZX fraud and the Assam RSN Token Scam exposed loopholes and grey areas in India's cryptocurrency system. Even though the court has stressed the need for cyber security and protection, the VDA framework is often ambiguous.

Hence, to conclude, it can be observed that the judicial outlook on VDAs in India is an underdeveloped approach that is cautious but also changing towards reconciling innovation, regulation, and protection of investors. Courts have invariably stressed that, though the exchange of cryptocurrencies is not illegal, unregulated activities can threaten financial stability and investor confidence. The Supreme Court established proportional regulation as its focus during the IAMAI v. RBI case.[35] The latter scams, like Gain Bitcoin and Pluto Exchange fraud, demonstrated the need for proper KYC or AML regulations and complaint handling systems. The High Courts of various states have also delivered several pronouncements focused on enhancing transparency and accountability and strengthening cybersecurity measures. The VDA system in India continues to function with its existing structure.

6. BALANCING INNOVATION AND REGULATION IN INDIA'S VDA FUTURE

Judicial insights highlight the need for India to strike a balance between innovation and regulation to frame the future of its VDA ecosystem. VDAs are more than speculative investments. They provide a base for new forms of financial innovation, digital governance, and ownership models. In India, where financial inclusion, digital literacy, and creative industries are rapidly growing, VDAs will form a transformative force.

Blockchain-based tokenization allows real-world assets such as land, gold, or works of art to be converted into digital tokens. Each token represents a fraction of the asset, making ownership divisible and easy to trade. This system would create equal investment possibilities, allowing typical investors to join markets that previously required wealthy participation. The tokenization system in India provides better transparency for real estate and other sectors, which have been struggling with transparency problems.[36]

[34] Ajinkya Kawale, 'Delhi High Court orders WazirX to disclose Binance acquisition details' (*Business Standard*, 07 August 2025) <https://www.business-standard.com/industry/agriculture/delhi-high-court-orders-wazirx-to-disclose-binance-acquisition-details-125080701899_1.html> accessed 28 November 2025

[35] Internet And Mobile Association of India v Reserve Bank of India AIR 2021 SC 2720

[36] Yuval Rooz, 'How tokenization is transforming global finance and investment' (*World Economic Forum*, 10 December 2024) <https://www.weforum.org/stories/2024/12/tokenization-blockchain-assets-finance/> accessed 28 November 2025

Another critical area is Decentralized Finance (DeFi), which enables users to perform borrowing and lending activities and trading operations through smart contracts that operate independently of banks and other financial intermediaries.[37] The economic system needs to transform because millions of people in our nation lack bank access, yet DeFi provides an opportunity to expand financial services and credit access. By lowering costs and removing intermediaries, DeFi could help bridge gaps in India's financial system while encouraging innovation in lending, insurance, and microfinance.

Understanding the concept of Non-Fungible Tokens (NFTs) is essential because of the digital ownership of unique assets such as digital art, music, videos, or even gaming collectibles.[38] For Indian creators such as artists, musicians, writers, and performers, NFTs allow them to skip traditional intermediaries in the art business. This could create such markets, which would enable Indian cultural goods to enter fresh international marketplaces. Blockchain identity systems function as secure digital identity solutions that protect user information through unchangeable records that users control.

These innovations show the transformative potential of VDAs for India's economy. The proper support strengthens financial inclusion, opens new creative markets, and builds secure digital infrastructure if the regulation supports.

The government must create rules to fight money laundering and cybercrime and protect investors, but excessive regulation creates new problems. The regulatory framework, which does not match the characteristics of VDAs, hinders innovation instead of promoting it. The Indian government faces various dangers because of its plan to implement strict regulatory measures for cryptocurrency operations. The strict regulations will force entrepreneurs and skilled professionals to move their businesses to Singapore, Dubai, and Switzerland, resulting in a brain drain that threatens India's leadership in digital assets. The strict control of new sectors, including DeFi and NFTs, results in underground market activities that become more difficult to track while increasing the potential for fraudulent schemes and money laundering. The government needs to establish protective regulations for investors and market stability. Yet, India needs to prevent any inflexible system that would block innovation and reduce

[37] IBC Laws, *RBI Report on Trend and Progress of Banking in India 2021-22* [**27.12.2022]**

[38] Paul Lee and Kevin Weatcott, 'From trading cards to digital video: Sports NFTs kick sports memorabilia into the digital age' (*Tech, Media & Telecom*, 01 December 2021) <https://www.deloitte.com/us/en/insights/industry/technology/technology-media-and-telecom-predictions/2022/sports-nfts-digital-media.html> accessed 28 November 2025

market competition, causing skilled professionals to leave the country. Hence, a balanced approach is essential.

Developing specialized regulatory capability needs to be a top priority among the essential tasks. The system of piecemeal regulation through various agencies would benefit from a nodal agency that functions together with self-regulatory organizations to enhance flexibility when addressing emerging threats.

Regulatory Sandboxes and Industry Self-Regulation (SROs) are necessary for the right balance between regulation and innovation in India's VDA sector. Sandboxes let innovators test new VDA products in a controlled environment under regulatory supervision, temporarily relaxing specific rules. The RBI and SEBI already use sandboxes in fintech, and extending this to VDAs allows safe experimentation in areas like tokenization and DeFi, while helping regulators assess risks in real time. SROs are industry-led bodies that set standards, codes of conduct, and dispute-resolution mechanisms, can promote ethical practices, reduce compliance burdens, and build investor trust. Similar models exist in securities markets, where exchanges and associations maintain discipline. By combining sandboxes with SROs, India can create a collaborative regulatory model that encourages innovation, safeguards investors, and adapts more effectively than rigid legal frameworks.

Promoting Responsible Growth through Public Education and Industry Guidelines is another factor.[39] The long-term success of India's VDA ecosystem depends on regulation and informed and responsible participation. Many scams happened because users lacked awareness about phishing, pump-and-dump schemes, or fake token offerings. Public campaigns by government agencies, industry associations, and consumer groups can promote digital financial literacy and safer practices, reduce fraud, and improve confidence.

At the same time, exchanges, custodians, and wallet providers should adopt and share best practices such as cold wallet storage, multi-signature authorization, independent smart contract audits, and transparent incident reporting. The measures create a system that generates safety and trust between people. Academic institutions perform essential research about blockchain risks, cryptography, and cyber resilience, which enables India to create its own security solutions instead of depending on foreign technologies. India can develop a protected, innovative VDA system through educational integration with industry benchmarks and

[39] Erik Feyen, Daniela Klingebiel and Marco Ruiz, *Can Crypto-Assets Play a Role in Foreign Reserve Portfolios? Not Today, and Likely Not in the Near Future* (World Bank, 2024)

academic partnerships, which will safeguard investors while promoting digital asset leadership on the global stage.

7. CONCLUSION AND THE WAY FORWARD

VDAs evolved as a revolutionary exchange tool but are now a core element of global financial systems. It has great potential to reshape finance and digital economies. In India, regulation has modestly shifted from prohibition to a model based on compliance through taxation, PMLA coverage, and judicial interventions. However, regulatory and cybersecurity frameworks are still fragmented, exposing investors to systemic risks, fraud, and cyberattacks.

The Income Tax Act, DPDP Act, PMLA, CERT-In regulations, and FEMA loopholes reflect that current frameworks are not explicitly designed for VDAs. Taxation and anti-money laundering efforts have been introduced to provide accountability, but cybersecurity and investor protection remain underdeveloped. A clear VDA-specific law is necessary to simplify enforcement, erase jurisdictional uncertainties, and align India's regime with global standards.

Therefore, India must shift toward multiple regulatory frameworks, which should become unified under one system. The primary element requires correct coordination between RBI, SEBI, CERT-In, the Ministry of Finance, and MeitY to build a unified VDA framework. Enforcing VASPs' licenses, wallet providers, and mandatory security parameters such as cold wallet storage, smart contract audits, and grievance redressal will also enhance consumer trust. It also integrates VDAs with India's digital public infrastructure (UPI, CKYC), facilitating transparency and providing convenience.

Judicial interpretations, especially in the case of IAMIA v. RBI,[40] put forward the principle of proportionate regulation while safeguarding RBI's regulatory authority and fundamental rights protection. The courts have also pointed out issues like ownership opacity and the absence of investor safeguards in unregulated exchanges. High-profile scams and hacks show that systemic reform is needed, and court decisions alone cannot be relied upon; there is a clear legislation and proper enforcement.

Moreover, there should be balanced and innovation-friendly regulations; stringent rules can cause entrepreneurs, investors, and skilled professionals to leave the country, killing off growth in areas such as DeFi, tokenization, and NFTs. Regulatory sandboxes and industry SROs are some of the tools that can facilitate controlled experimentation, promote ethical conduct, and

[40] Internet And Mobile Association of India v Reserve Bank of India AIR 2021 SC 2720.

minimize compliance. Additionally, public education and academic cooperation are also essential. Investor education campaigns, digital literacy efforts, and implementation of industry best practices will reduce fraud and build domestic platforms. Cryptography and cyber resiliency research and innovations can enable indigenous solution development in India. Therefore, India's future is building a secure, transparent, and innovation-focused VDA ecosystem that safeguards regulation and growth, protects investors, and places the nation as a global digital asset leader.

India must implement a single, integrated cybersecurity framework for VDAs that incorporates authorisation and data protection like the EU model, AML, custody protections like those of the U.S., and Japan or Korea's prescriptive licensing and audit system. Such a framework would have licensing, asset segregation, incident reporting, and privacy-by-design to ensure resilience, investor protection, and regulatory consistency by reducing fragmentation and building trust in India's digital ecosystem.

The way for India's VDA ecosystem to embrace a concerted approach is to unify legal clarity, institutional harmony, and anticipatory risk management. Taxation and compliance provisions have been in effect, but the lack of an integrated and sector-focused framework remains to push market players overseas.[41] To avoid capital flight and enhance domestic innovation, India needs to bring about predictable regulatory certainty through a comprehensively consolidated law defining VDAs, governance standards, and supervision mechanisms.

Developing specialized regulatory capability needs to be a top priority among the essential tasks. The system of piecemeal regulation through various agencies would benefit from a nodal agency that functions together with self-regulatory organizations to enhance flexibility when addressing emerging threats.[42] Additionally, India must institutionalize ongoing public-private partnerships in cybersecurity, based on recent industry-organized seminars organized by the Bharat Web3 Association, which have already showcased the effectiveness of knowledge-sharing and voluntary standardization.[43]

[41] Aseem Chawla, 'Taxman defines Crypto as Virtual Digital Assets: The Prescription comes across as Very Difficult Analysis' (*Taxmann*, 14 July 2022) <https://www.taxmann.com/research/income-tax/top-story/105010000000021830/taxman-defines-crypto-as-virtual-digital-assets-the-prescription-comes-across-as-very-difficult-analysis.aspx> accessed 28 November 2025

[42] Arindam Goswami, n 13

[43] 'Fostering Cybersecurity Dialogue on Virtual Digital Assets in India' (*CoinSwitch*, 23 May 2025) <https://coinswitch.co/building-blocks/fostering-cybersecurity-dialogue-on-virtual-digital-assets-in-india/> accessed 28 November 2025

Further, indigenous innovation and capacity-building must be given importance. AI- risk detection and research keep India ahead against cyber threats worldwide. At that time, consumer-friendly protection and open dispute-resolution policies will reinforce trust in VDAs to maintain compliance with constitutional and financial law norms.[44]

[44] Ashish Sharma, n 29.

UNLOCKING THE DIGITAL VAULT: A CRITICAL LOOK AT SEARCH POWERS IN VIRTUAL SPACES UNDER THE INCOME TAX ACT, 2025

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Abstract

The Income Tax Act of 2025 in India introduces significant reforms by extending search and seizure powers to intangible assets such as cloud servers, blockchain ledgers, encrypted databases, and cryptocurrency repositories, reflecting the rapid evolution of the digital landscape and the increasing creation of economic value within virtual spaces. This document offers a critical assessment of these expanded powers, examining their dual capacity to enhance tax enforcement against sophisticated evasion while also posing potential challenges to privacy, compliance, and economic vitality in an interconnected global environment.The analysis commences by contextualizing the Act within India's overarching Digital India objectives and the burgeoning fintech sector. It meticulously chronicles the evolution of search authorities, transitioning from physical raids under the 1961 Act to the cyber-centric mechanisms envisioned for 2025. Key provisions, including warrantless overrides and real-time data access, are thoroughly dissected. A comparative analysis explores how other jurisdictions, such as the EU's GDPR, prioritize proportionality through impact assessments. It also examines the US IRS's requirement for warrants in digital investigations and the UK's HMRC's integration of AI-driven oversight with human rights safeguards, offering valuable insights for India to achieve a balance between efficiency and equity. Looking forward, the paper evaluates futuristic implications, cautioning against potential chilling effects on innovation in nascent sectors like Web3 and Decentralized Finance (DeFi), the risk of capital flight amidst evolving global privacy norms, and threats to GDP growth if unchecked powers deter investor confidence. Nevertheless, it also identifies opportunities for ethical taxation to cultivate resilient digital ecosystems.

Keywords: *Virtual Digital Spaces, Digital Tax Enforcement, Privacy Proportionality, Indian Digital Economy.*

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1.1 INTRODUCTION

In the current digital landscape, where economic transactions, personal interactions, and societal governance increasingly occur within virtual environments, the convergence of taxation and technology has become a crucial area for policy innovation, ethical review, and progressive governance. India's Income Tax Act, 2025, enacted in August 2025, signifies a significant development in this evolution. This act comprehensively modernises the previous Income Tax Act, 1961, introducing transformative reforms designed for the realities of a digitised economy. A key aspect of these reforms is the expansion of search and seizure powers into virtual digital spaces, a newly defined category that includes a broad spectrum of computer-generated environments including email servers, social media accounts, cloud storage facilities, online trading platforms, remote servers, digital applications, blockchain ledgers, encrypted databases, and repositories for virtual digital assets like crypto-currencies and Non-Fungible Tokens (NFTs).[3]

This provision grants tax authorities the fundamental power to bypass access controls, decrypt data as needed, and obtain electronic evidence when there is reasonable suspicion of undeclared income or tax evasion. These powers extend beyond traditional physical raids, enabling in-depth and efficient examination of metadata, transaction histories, algorithmic footprints, and real-time data streams. Conceptually, this represents a significant shift from tangible asset-based enforcement to a cyber-centric, data-driven model, where information serves as the primary basis for compliance, accountability, and potential dispute. It adapts established legal principles of state sovereignty and fiscal responsibility to the dynamic, borderless nature of cyberspace, acknowledging that contemporary evasion strategies increasingly leverage digital anonymity, advanced encryption, Decentralised Finance (DeFi) protocols, cross-border data flows, and emerging metaverse economies.[4]

India's emergence as a global digital leader, fuelled by initiatives such as Digital India and the burgeoning fintech sector, and characterised by over 800 million internet users, a dynamic start-up environment, and a digital economy poised for substantial GDP contribution, necessitates strategic adaptations. Historically, enforcement deficiencies in virtual domains, where value is generated and exchanged instantaneously without physical footprints, have been exploited

[3] Vinod K. Singhania & Kapil Singhania, Direct Taxes Law & Practice (Taxmann Publications, 68th ed. 2025).
[4] Nupur Jalan, Taxation of Virtual Digital Assets, Asia-Pac. Tax Bull., Vol. 28, No. 1 (2023).

across platforms including UPI, GSTN integrations, e-commerce platforms, and blockchain applications. The 2025 Act addresses these vulnerabilities by integrating digital intrusion mechanisms directly into search protocols. This aims to enhance revenue mobilization, deter sophisticated non-compliance schemes, and foster transparency throughout the ecosystem, all while preserving existing tax rates and structures to support broader economic objectives.

This conceptual advancement, however, inherently presents significant tensions within contemporary taxation frameworks. There is a critical need to ensure fiscal equity and combat evasion in an increasingly globalised digital economy, while simultaneously upholding fundamental rights in a highly interconnected, surveillance-prone world. Privacy implications are a cornerstone concern, rooted in the principle of informational self-determination and closely aligned with India's evolving data protection framework under the Digital Personal Data Protection Act, 2023. Virtual digital environments, unlike physical spaces, inherently blur the lines between public and private domains.[5] A single authorised search could inadvertently expose not only financial records but also sensitive personal communications, behavioural inferences derived from AI analytics, and unrelated lifestyle patterns. Proportionality concerns are amplified by provisions that may permit warrantless intrusions under exigent circumstances, reflecting global trends in surveillance capitalism and necessitating rigorous scrutiny of safeguards against misuse, overreach, data breaches, and identity theft. The dynamics of compliance further intensify these challenges.[6] For a diverse range of taxpayers, including individuals, Small and Medium-sized Enterprises (SMEs), and multinational corporations, these regulations impose increased obligations for detailed digital record-keeping, heighten vulnerability to operational disruptions during investigations, and necessitate enhanced cybersecurity infrastructure along with collaborative data-sharing mechanisms. While integrated faceless assessment processes offer the potential for administrative efficiency, they also underscore the critical need for evolving compliance models that integrate predictive auditing tools without compromising fairness or imposing excessive burdens.[7]

[5] Indumugi C. & Apar Gupta, Privacy At Risk? Warrantless Access To 'Virtual Digital Space' Under Income Tax Bill 2025, LiveLaw (July 27, 2025), https://www.livelaw.in/lawschool/articles/access-to-virtual-digital-space-income-tax-bill-2025-critical-analysis-298954., last accessed on 19th December 2025.
[6] S. Rajaratnam, Sampath Iyengar Law of Income Tax (Bharat Law House, 13th ed. 2025).
[7] CA Mohammed S Chokhawala, Income Tax Officials Can Access Emails and Social Media Accounts Under Section 247 of the Income Tax Bill, 2025, ClearTax (Apr. 21,2025), https://cleartax.in/s/income-tax-officials-can-access-emails-social-media-accounts, last accessed on 19th December 2025.

From a future-oriented perspective, these expanded powers have transformative implications for the long-term trajectory of India's digital economy. Positively, they could catalyse resilient, sustainable growth by establishing a fair competitive landscape, stemming illicit financial flows, and enhancing investor confidence in cutting-edge sectors such as Web3 technologies, virtual reality commerce, AI-driven services, and tokenised assets. Conversely, without adequate checks, they risk precipitating a chilling effect, eroding public trust in digital infrastructures, deterring foreign direct investment amid heightened global sensitivity to privacy standards, such as GDPR equivalents, and hampering innovation through fears of intrusive oversight. As impending advancements like quantum computing and decentralised autonomous organizations redefine virtual interactions, the Act places India at a critical juncture: poised to emerge as a pioneer in ethical, balanced digital taxation or confronted with economic resilience challenges from stifled creativity and user adoption.

This paper critically evaluates the expanded search and seizure powers within virtual digital spaces under the Income Tax Act, 2025. It commences by outlining their historical development and examining key provisions, subsequently exploring the interconnected privacy and compliance implications. A comparative analysis of approaches in selected jurisdictions, including the EU GDPR framework, US IRS protocols, and UK HMRC practices, is incorporated to provide valuable insights into the balance between rights and enforcement. The paper then assesses the prospective impacts on innovation, economic growth, and investor confidence. It concludes with targeted recommendations for proportionate and safeguarded reforms, such as strengthened judicial oversight, data minimization principles, privacy-by-design integrations, and technological neutrality, aiming to establish an equitable and resilient fiscal ecosystem that harmonises enforcement efficacy with principled governance in India's rapidly evolving technological landscape.

1.2 Evolution and Key Provisions: Expanding Search and Seizure Powers into Virtual Digital Spaces

The evolution of search and seizure authorities within Indian income tax legislation reflects the nation's economic and technological advancements, transitioning from a primarily physical environment to one increasingly characterised by digital interactions. These powers, fundamentally intended to identify undeclared income and discourage evasion, have experienced substantial refinement since their establishment. The Income Tax Act of 1922 did

not include explicit provisions for intrusive searches, instead relying on voluntary compliance and fundamental assessments. It was not until 1956, through amendments introduced by the Finance Act, that authorities were formally granted the power to search premises and confiscate assets suspected of representing undisclosed wealth. This development signalled the commencement of a more assertive enforcement framework in post-independence India, addressing growing fiscal requirements and early examples of tax avoidance.[8]

The Income Tax Act of 1961 significantly enhanced the powers of authorised officers under Section 132, enabling them to enter and search any premises, including buildings, vehicles, vessels, or aircraft, if there was a "reason to believe" that undisclosed assets or documents were present. This authority permitted forcible entry when deemed necessary and allowed for the seizure of various assets, such as financial records, cash, precious metals, and jewellery. Initially, safeguards were limited, but however, subsequent judicial rulings mandated documented justifications and adherence to fair procedures. Over time, legislative amendments addressed evolving circumstances. The introduction of survey powers under Section 133A in 1975 facilitated less invasive inspections, while the 1987 reforms established more stringent timelines and documentation protocols to mitigate arbitrary actions.[9] The period of economic liberalization led to further modifications, particularly with the growing acceptance of electronic records as valid evidence, though the foundational framework continued to emphasize physical locations such as offices, residences, and vehicles.

As India transitioned into the digital era, the constraints of a physically-centric methodology became apparent. The expansion of online banking, e-commerce, cloud storage, and crypto-currencies introduced novel methods for income concealment that circumvented traditional investigative measures. Incremental adjustments, such as those implemented in the Finance Acts of 2017 and 2021, mandated digital reporting and authorised the examination of electronic data during routine evaluations, yet they lacked specific provisions for proactive investigations within purely virtual domains. The Income Tax Act, 2025, enacted in August 2025 and effective from April 1, 2026, comprehensively addresses this deficiency. It explicitly extends search and seizure authorities to "virtual digital spaces," signifying a deliberate strategic

[8] Supra note 4.
[9] Supra note 3

adjustment to harmonize enforcement capabilities with the dynamics of a progressively digitised economy propelled by Digital India initiatives and fintech advancements.

Virtual digital spaces are broadly defined to encompass the diverse environment of contemporary data storage and transactions. This term includes cloud servers, email accounts, social media platforms with integrated financial functionalities, online trading applications, blockchain networks, remote databases, digital wallets, and repositories containing virtual digital assets like crypto-currencies and NFTs. This comprehensive scope ensures the inclusion of both domestically and internationally hosted platforms, recognising the global nature of digital assets. The core stipulations establish specific protocols for access and enforcement. Authorised personnel, upon receiving prior endorsement from a Principal Chief Commissioner or a superior authority, are empowered to issue requisitions to service providers, including cloud hosts, exchanges, or application operators, thereby mandating the provision of access or data extracts. Override capabilities permit the decryption or circumvention of security protocols in instances where passwords are withheld, contingent upon technical support from specialised units. In exigent circumstances involving the potential destruction of evidence, temporary warrantless access is permissible, followed by obligatory judicial ratification within a brief timeframe.[10] Enforcement measures encompass the freezing of digital assets, the transfer of control to revenue authorities, and the imposition of transactional restrictions during the course of an investigation. To ensure accountability, the Act requires comprehensive logging of all access actions, limits data retention to information pertinent to taxation, and institutes substantial penalties for non-compliance by custodians or taxpayers. These stipulations signify a balanced yet robust expansion, empowering authorities to address sophisticated evasion while integrating procedural safeguards.[11] By proactively engaging with virtual environments, the 2025 Act prepares India's tax administration for the complexities of an increasingly intangible economic landscape, thereby initiating discussions on privacy, proportionality, and practical execution.

[10] Supra note 2

[11] Anirudh Burman, Balancing Tax Enforcement and Data Privacy in India's New Income Tax Regime, Carnegie India (Sept. 15, 2025), https://carnegieindia.org/2025/09/15/balancing-tax-enforcement-and-data-privacy-in-india-s-new-income-tax-regime-pub-90234., last accessed on 20th December 2025.

1.3 Privacy and Compliance Implications: Tensions between Enforcement, Data Protection, and Taxpayer Rights

The expansion of search and seizure authorities into virtual digital environments under the Income Tax Act, 2025, while essential for addressing complex forms of tax evasion within an increasingly digital economy, creates significant conflicts between effective enforcement and the safeguarding of privacy and taxpayer rights. The Supreme Court's pivotal ruling in Justice *K.S. Puttaswamy (Retd.) v. Union of India,*[12] unequivocally recognised the right to privacy as a fundamental right inherent in Article 21 and other Part III freedoms, thereby requiring that any state intervention must meet a stringent four-part proportionality test, a legitimate aim, a rational nexus to the objective, necessity, and a proportionate balancing of conflicting interests. This decision explicitly superseded previous restrictive interpretations articulated in *M.P. Sharma v. Satish Chandra,*[13] which had dismissed privacy-based objections to search powers.

Prior to the Puttaswamy decision, the Supreme Court, in *Pooran Mal v. Director of Inspection,*[14] affirmed the constitutionality of Section 132 of the 1961 Act, deeming such authorities essential for safeguarding revenue and ensuring social security, without acknowledging an absolute privacy impediment akin to the U.S. Fourth Amendment. Subsequent to Puttaswamy, however, the provisions of the 2025 Act, which permit encryption overrides, mandated password disclosures, and access to extensive digital domains including emails, cloud storage, social media profiles, online banking platforms, and cryptocurrency wallets based solely on a "reason to believe" in undeclared income, necessitate renewed constitutional examination. The prevalent lack of mandatory prior judicial warrants for digital access exacerbates the risk of failing the necessity and proportionality tests, as virtual searches can indiscriminately collect vast, interconnected data sets, potentially revealing highly personal and unrelated information such as private communications, medical records within applications, family photographs, or browsing histories that disclose political, religious, or lifestyle affiliations, significantly exceeding the circumscribed intrusions of conventional physical raids.[15]

[12] K.S. Puttaswamy (Retd.) v. Union of India,(2017) 10 S.C.C. 1 (India)

[13] M.P. Sharma v. Satish Chandra,A.I.R. 1954 S.C. 300 (India).

[14]Pooran Mal v. Director of Inspection, (1974) 1 S.C.C. 345 (India).

[15] Income Tax Act 2025: Digital Search Powers Raise Privacy Risks, Frontline (Oct. 14, 2025), https://frontline.thehindu.com/news/income-tax-act-2025-digital-power-data-privacy-risks/article69992742.ece., last accessed on 20th December 2025.

These concerns align with observations in *District Registrar and Collector v. Canara Bank*,[16] where the unbridled authority over documentary records was criticised for infringing upon privacy. Within the digital realm, absent stringent data minimization protocols, which would necessitate the extraction solely of tax-relevant material and the immediate deletion of extraneous content, these provisions present a challenge to the Digital Personal Data Protection Act, 2023, despite exemptions for legitimate state functions such as tax enforcement. Beyond individual privacy, such extensive powers could have a broader chilling effect on digital adoption and free expression. Citizens, aware that routine financial applications, messaging platforms, or social networks might be accessed during tax investigations, may engage in self-censorship, restrict legitimate online transactions, or completely avoid innovative digital services. Vulnerable groups, including journalists safeguarding confidential sources, activists organising movements, or minority communities, face heightened risks if searches inadvertently reveal sensitive associations under the pretext of revenue inquiries. This erosion of public trust could impact both tax administration and the broader digital ecosystem that India aims to promote.

Compliance requirements exacerbate these challenges, placing significant demands on all parties involved. Individual taxpayers are now obligated to maintain detailed, organised digital financial records across various platforms, ranging from UPI-integrated banking applications to decentralised cryptocurrency wallets. Users with limited digital proficiency, such as senior citizens and individuals in rural areas, are particularly susceptible to penalties for perceived non-compliance when they are unable to readily provide access credentials. Furthermore, account freezes or data requests during investigations can disrupt daily transactions and lead to genuine financial difficulties.[17]

Businesses, especially cloud-reliant start-ups and small-to-medium enterprises, encounter significant operational hurdles: service provider requests can temporarily obstruct access to vital data, resulting in downtime, financial setbacks, and eroded client confidence. Multinational corporations must reconcile conflicting obligations under international data protection regulations when addressing demands related to servers hosted abroad. Intermediary service providers, including cloud platforms, fintech firms, and cryptocurrency exchanges, now

[16] *District Registrar and Collector v. Canara Bank* (2005) 1 S.C.C. 496 (India).
[17] Supra note 4.

shoulder heightened compliance responsibilities, such as deploying rapid-response mechanisms and secure handover protocols, frequently incurring substantial expenses that may ultimately be passed on to consumers.[18] Revenue authorities encounter significant practical obstacles, including the acquisition of specialised digital forensics capabilities, the establishment of secure storage infrastructure, and the maintenance of tamper-proof audit trails to ensure evidentiary integrity throughout lengthy appeals. Established precedents, such as ITO v. Seth Brothers,[19] have underscored that search powers represent substantial invasions of privacy, necessitating strict statutory adherence. More recent rulings, like Principal Director of Income Tax (Investigation) v. Laljibhai Kanjibhai Mandalia,[20] continue to grant deference to administrative discretion based on principles of reasonableness. However, post-Puttaswamy academic and judicial discourse increasingly advocates for more stringent oversight when fundamental rights are implicated.

In conclusion, while the objective of mitigating evasion associated with digital assets is undeniably a legitimate public interest, the sustained effectiveness of these measures is contingent upon their proportionate implementation, reinforced by safeguards consistent with the Puttaswamy judgment. These safeguards include mandatory judicial oversight in sensitive cases, stringent data minimization protocols, independent auditing, transparent post-search data management, and robust internal controls. Achieving this balance is crucial for India to foster trust-based voluntary compliance, which is fundamental to any contemporary tax system. This approach will also prevent apprehension-driven resistance that could potentially hinder the nation's ambitious digital growth trajectory, all while upholding constitutional protections.

1.4 Comparative Analysis: Digital Search Powers in Select Jurisdictions

This analysis critically evaluates the expanded search and seizure powers within virtual digital spaces under India's Income Tax Act, 2025. A comparative examination with frameworks in the European Union (GDPR), the United States (IRS), and the United Kingdom (HMRC) highlights common challenges and distinct strategies for balancing tax enforcement with privacy protections. The study explores procedural nuances, technological integrations, and

[18] Surabhi Avasthi, Privacy Concerns in Digital Taxation: A Post-Puttaswamy Analysis, 65 J. Indian L. Inst. 45 (2023).
[19] A.I.R. 1969 S.C. 1273 (India).
[20] (2022) 13 S.C.C. 46 (India).

safeguards, offering a roadmap for India to refine its approach in an interconnected global digital environment.

The 2025 Act in India significantly updates the 1961 framework, specifically addressing virtual digital environments such as cloud servers, blockchain ledgers, encrypted databases, social media platforms with financial components, and digital asset repositories like cryptocurrency wallets. This legislation empowers authorities to conduct searches based on a "reason to believe" that undisclosed income exists. It incorporates override mechanisms to facilitate data decryption, compel password disclosure, and remotely freeze assets. Warrantless access is permissible in urgent situations, with a mandatory post-facto judicial review required within 48 hours. The Act also introduces faceless digital procedures and real-time audit logs to ensure accountability.[21] This enforcement-focused model utilises AI for algorithmic audits, aiming to combat evasion in emerging sectors like Decentralised Finance (DeFi) and Non-Fungible Tokens (NFTs), thereby aligning with India's Digital India initiative and anticipated digital economy expansion. However, its emphasis on efficiency over proactive privacy safeguards could potentially expose unrelated personal data and raise concerns regarding proportionality, particularly in light of increasing data breaches.

The General Data Protection Regulation (GDPR) of the European Union, implemented in 2018, does not directly grant taxation authority. However, it establishes a rigorous privacy framework that significantly impacts digital investigations conducted by national revenue agencies. Tax authorities within member states, including Germany's Finanzamt and France's Direction Générale des Finances Publiques, are mandated to ensure their data acquisition practices adhere to GDPR principles, specifically lawfulness, necessity, proportionality, data minimization, and purpose limitation. For example, the automated profiling of taxpayer data for the identification of tax evasion, a common practice in extensive analytical operations, necessitates comprehensive privacy impact assessments to mitigate potential risks. This requirement has been a key topic in discussions concerning the convergence of GDPR and AI-driven tax systems. While supervisory bodies possess the authority to request data disclosures and conduct audits, intrusive digital examinations, particularly those involving personal data, frequently require judicial warrants to prevent infringements such as unauthorised third-party data

[21] Income Tax Bill 2025: Digital Search Powers Explained, Universal Institutions (July 1, 2025), https://universalinstitutions.com/income-tax-bill-2025-digital-search-powers-explained/., last accessed on 20th December 2025.

exposure. Exemptions are provided for public tasks, including tax enforcement.[22] Nevertheless, companies responding to tax requisitions face the risk of GDPR penalties if they do not adequately verify compliance, as evidenced by cases in Belgium where firms were sanctioned for unverified data sharing. Cross-border collaboration, facilitated by platforms like SIRIUS, streamlines the collection of digital evidence across the EU. However, the GDPR's privacy-centric approach contrasts with India's more expansive discretionary powers, often leading to processes that, while potentially slower, are more respectful of individual rights. This model could serve as an impetus for India to implement mandatory pre-search impact assessments, thereby minimising incidental privacy infringements in digital environments.[23]

In the United States, the Internal Revenue Service (IRS) utilises a dual-track system under the Internal Revenue Code, integrating administrative summonses with criminal warrants, both subject to Fourth Amendment protections against unreasonable searches. Administratively, the IRS issues John Doe summonses to third-party entities, such as cryptocurrency exchanges, to obtain bulk digital records. Recent legal challenges contend that these summonses may constitute unreasonable seizures without probable cause. For criminal investigations conducted by its Criminal Investigation division, warrants are generally mandated for accessing digital communications, cloud data, or social media, aligning with Supreme Court precedents emphasising digital privacy. The IRS leverages sophisticated tools, including third-party Bitcoin attribution software for tracing cryptocurrency transactions and artificial intelligence for identifying discrepancies between reported income and social media lifestyles. Pre-seizure planning is meticulously conducted to ensure forfeiture viability, and seized digital assets are managed by specialised forensics laboratories. Taxpayer rights are paramount, emphasising minimal intrusiveness, with inquiries limited to necessary scopes. In contrast to India's options for warrantless searches, U.S. courts typically require judicial oversight for most digital intrusions, as evidenced by cases rejecting warrantless email seizures under the Stored Communications Act.[24] This rights-centric approach, while potentially impacting the speed of investigations, offers valuable insights for India in enhancing Fourth Amendment-like safeguards to foster taxpayer trust amidst digital enforcement efforts.

[22] Supra note 3.
[23] Eugenia Politou, Efthimios Alepis & Constantinos Patsakis, Profiling Tax and Financial Behaviour with Big Data Under the GDPR, 35 Comput. L. & Sec. Rev. 160 (2019).
[24] Ibid.

HM Revenue and Customs (HMRC) in the United Kingdom employ a technologically advanced and proactive approach, akin to India's, leveraging its AI-powered "Connect" system. This system meticulously cross-references extensive datasets, encompassing social media, financial records, and digital footprints, to identify discrepancies. Pursuant to the Taxes Management Act and the Police and Criminal Evidence Act (PACE), HMRC possesses the authority to request digital documentation, conduct inspections, and execute warranted searches for significant evasion cases, frequently in collaboration with the National Crime Agency. Digital investigations specifically target undeclared income from cryptocurrency or e-commerce activities, with the power to demand passwords and freeze assets. Non-compliance with these directives carries associated penalties. Artificial intelligence is utilised to monitor social media for criminal investigations, as recently disclosed.[25] However, these activities must strictly adhere to UK GDPR, post-Brexit, regulations concerning data protection, which includes maintaining recorded justifications and providing appeal rights. Routine compliance checks can escalate to comprehensive inquiries, with a graduated level of intrusiveness, emphasising transparency throughout the process. While mirroring India's use of fines and analytics, HMRC's integration of human rights assessments and safeguards against misuse presents a well-rounded framework that could potentially inform India's development of clearer escalation protocols for digital investigations.

In conclusion, India's enforcement-centric expansions, while mirroring the technological advancements of the UK and U.S., diverge from the EU's emphasis on privacy, potentially leading to overreach without robust oversight. Implementing GDPR-style impact assessments, IRS-mandated warrants for non-urgent matters, and HMRC-level oversight could alleviate compliance burdens, stimulate innovation, and align India with international standards, thereby ensuring equitable tax governance in its digital evolution.

1.5 Future Implications for India's Digital Economy

The expanded search and seizure authorities within virtual digital environments, as outlined in the Income Tax Act, 2025, emerge at a critical juncture for India's digital economy, which is recognised as one of the most rapidly expanding globally. With forecasts indicating the digital sector's contribution to GDP will exceed 20% by 2030, propelled by fintech unicorns, e-commerce leaders, blockchain innovators, and a dynamic Web3 ecosystem, the regulatory

[25] OECD, Addressing the Tax Challenges of the Digital Economy (2014).

framework is instrumental in defining long-term trajectories. While these powers are designed to ensure equitable taxation and mitigate illicit financial activities, their broader ramifications extend beyond mere revenue generation, impacting the core principles of innovation, sustainable expansion, and investor assurance.

A significant risk pertains to the potential for a chilling effect on innovation. India's startup ecosystem flourishes through experimentation with advanced technologies, including decentralised finance (DeFi), non-fungible tokens (NFTs), metaverse platforms, and AI-driven financial services. Entrepreneurs and developers frequently operate within evolving regulatory frameworks, rapidly iterating to identify sustainable models. The possibility of intrusive digital searches, where authorities could bypass encryption, access cloud repositories, or freeze digital wallets, may discourage audacious experimentation. Founders might become reluctant to store sensitive proprietary code, customer data, or transaction logs on Indian servers or platforms, due to concerns about exposure during investigations.[26] This could lead to the relocation of innovative activities offshore, with start-ups incorporating in jurisdictions perceived as more privacy-protective, such as Singapore or the UAE. Over time, such a migration risks undermining India's standing as a global digital hub, thereby diminishing the very ecosystem the government aims to foster through initiatives like Start-up India and Digital India.

Economic growth is also susceptible. A robust digital economy relies on uninterrupted data flows, user confidence, and broad adoption of online services. When taxpayers, both individuals and businesses, perceive virtual environments as subject to unpredictable scrutiny, behavioural changes ensue. Consumers might decrease their use of digital payment systems, cryptocurrency exchanges, or cloud-based collaboration tools, opting for cash or international platforms to mitigate risk. Small and medium-sized enterprises (SMEs), which are crucial to India's economy, often lack the resources to implement complex compliance frameworks or defend against lengthy investigations. Operational interruptions resulting from account freezes or data requests can lead to lost revenue, delayed funding rounds, and hindered expansion. In a competitive global market where ease of doing business rankings are significant, any

[26] Supra note 4.

perception of regulatory excess could deter venture capital inflow and impede the sector's contribution to employment and GDP.[27]

Investor confidence constitutes the third vulnerable pillar. Both domestic and foreign investors highly value predictability, legal certainty, and the protection of intellectual property. The extensive discretion afforded to tax authorities under the 2025 Act, combined with limited mandatory judicial oversight, could indicate an increased sovereign risk for digital ventures. Venture capitalists and private equity firms assessing Indian start-ups already account for policy volatility; enhanced enforcement powers might heighten perceived risks, potentially leading to elevated return expectations or a complete avoidance of specific sectors. Foreign direct investment in fintech and blockchain, which has seen significant growth recently, could decelerate if global funds perceive India's regulatory framework as less congruent with international privacy standards such as GDPR.[28] Multinational technology companies hosting data in India may re-evaluate their strategies, potentially opting for alternative regional hubs to safeguard client information. Such capital flight would not only restrict funding for indigenous innovation but also impede technology transfer and job creation. On the positive side, if implemented proportionately, these powers could enhance confidence by fostering a level playing field, deterring illicit activities such as money laundering or tax evasion that exploit digital anonymity, and thereby protecting legitimate participants. A transparent and equitable tax environment can attract quality investment seeking long-term stability. However, realising this upside necessitates careful calibration.[29]

The future direction is contingent upon achieving a delicate equilibrium. Absent robust safeguards, including mandatory judicial warrants for non-urgent digital accesses, stringent data minimization, independent oversight, and explicit guidelines for post-search data handling, the potential risks to innovation, growth, and investor confidence may eclipse any enforcement benefits. India is at a critical juncture, judicious enhancements can establish it as a frontrunner in ethical digital taxation, fostering trust and expediting progress toward a resilient, inclusive digital economy. Conversely, disregarding these considerations could

[27] Virtual Digital Assets in India: Booming Market, Heavy Taxes, and the Uncertain Future, IRCCL (Mar. 21, 2025), https://www.irccl.in/post/virtual-digital-assets-in-india-booming-market-heavy-taxes-and-the-uncertain-future., last accessed on 20th December 2025.
[28] Supra note 19.
[29] Nishith Desai Associates, Taxation of Virtual Digital Assets in India: Analysis of the Finance Act 2022 (2022).

inadvertently impede the very dynamism that has propelled India to its status as a global digital success story.

1.6 Conclusion: Pathways to Proportionate and Safeguarded Reforms

The Income Tax Act of 2025 in India represents a significant advancement in aligning tax enforcement with the realities of the digital era, where assets and transactions increasingly reside in virtual environments beyond traditional physical boundaries. By broadening search and seizure authorities to encompass cloud servers, blockchain networks, encrypted applications, and digital wallets, this legislation addresses longstanding vulnerabilities that have facilitated sophisticated tax evasion. This document will explore various aspects, including the historical evolution of these provisions, the complexities surrounding privacy and compliance, insights gleaned from international practices in the EU, US, and UK, and the potential risks to India's digital economic expansion. A clear conclusion emerges: robust enforcement is essential, but it must not compromise trust, equity, or innovation.

The fundamental challenge lies in achieving equilibrium. Without meticulous calibration, extensive digital access risks transforming routine tax oversight into perceived surveillance, potentially alienating the very entrepreneurs, investors, and users who fuel India's digital prosperity. An overly stringent regulatory environment could prompt start-ups to seek alternative locations, impede venture capital investment, and foster apprehension among citizens regarding the adoption of online financial instruments. Conversely, a judiciously balanced framework can bolster confidence, effectively identify genuine illicit activities, and establish a fair competitive landscape that attracts high-quality investment and fosters ethical engagement. To achieve this balance, practical and thoughtful reforms are within reach.

First, recommend requiring independent judicial approval for most digital searches, limiting warrantless entry to truly urgent situations with swift after-the-fact review. This straightforward measure would align the Act more closely with constitutional expectations of proportionality. Second, propose establishing strict rules for data handling, where officers should be technically equipped and legally bound to extract only information directly relevant to the tax inquiry, with automatic destruction of any unrelated data and regular independent audits to verify compliance. Third, suggest investing in specialised training and secure systems for revenue officials, ensuring they can conduct digital investigations efficiently while preserving evidence integrity and preventing leaks or misuse. Fourth, align the Act more

closely with the Digital Personal Data Protection Act, 2023, by requiring privacy impact assessments for high-risk scenarios and establishing clear protocols for managing data stored internationally. Finally, foster open communication channels through regular consultations with industry organizations, provide simplified compliance guidance for small businesses and individuals, and implement a dedicated grievance mechanism to alleviate burdens and cultivate mutual understanding.

These modifications would enhance enforcement rather than diminish it, by establishing it upon a foundation of legitimacy and public confidence. When taxpayers, encompassing individuals, start-ups, and multinational corporations, perceive that authority is exercised equitably and respectfully, voluntary compliance increases, disputes decrease, and the system operates more efficiently for all stakeholders. India has the potential to set a precedent by developing a model of digital tax governance that is both effective and principled. By opting for a path of proportionate and safeguarded reform, policymakers can ensure that leveraging digital resources contributes to justice and growth, thereby securing a more prosperous and inclusive digital future for the nation.

LIVE-IN RELATIONSHIPS AND THE MODERN INDIAN HOUSEHOLD: ISSUES OF LEGITIMACY, PROTECTION AND PUBLIC PERCEPTION

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Abstract

Live-in relationships have become a prominent aspect of contemporary Indian households, signifying transformations in social norms, individual autonomy, and the reconfiguration of intimate partnerships. The judiciary has progressively recognised such relationships through constitutional tenets of personal liberty, equality, and the right to cohabit; however, the lack of a comprehensive statutory framework perpetuates uncertainty concerning legitimacy, protection, and societal acceptance. This paper analyses current issues pertaining to live-in relationships in India, emphasising three principal aspects: the legitimacy of partners and offspring, the accessibility and sufficiency of legal protection, and the shifting yet contentious public perception of these relationships. Despite being made clear by court precedent, social stigma and procedural obstacles still affect the legitimacy of children born from cohabiting couples. The study also examines current discussions about honor-based violence, moral policing, and the increasing number of protection petitions filed with High Courts, highlighting the conflict between individual freedom and social conservatism. This study aims to provide a nuanced understanding of cohabitation in contemporary India by addressing policy gaps, social attitudes, and legal developments. In the end, it makes the case that to guarantee dignity, protection, and equal recognition for people who choose non-traditional family structures, social realities and legal reform must be balanced.

Keywords: *Live-in relationships, legitimacy, protection of partners, public perception, Indian judiciary.*

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1. INTRODUCTION

The structure of the Indian household has historically been anchored in marriage, kinship, and clearly demarcated social roles. Marriage, particularly heterosexual and sacramental in nature, has long been regarded as the sole legitimate foundation for intimate relationships, cohabitation, and family formation. However, with rapid urbanization, increased access to education, economic independence, and changing social values, intimate partnerships in India have begun to take diverse forms. Among these evolving arrangements, live-in relationships have emerged as a visible yet contested alternative to traditional marital unions.

A live-in relationship, broadly understood as a domestic arrangement where two consenting adults cohabit without formal marriage, challenges deeply entrenched social, cultural, and moral norms. While such relationships have gained relative acceptance in certain urban and metropolitan spaces, they continue to provoke resistance and moral scrutiny in large parts of the Indian society. This tension between personal choice and personal choice and societal expectation has placed live-in relationships at the center of legal, ethical, and constitutional debates.

The Indian legal system does not explicitly recognize live-in relationships through a dedicated statutory framework. Nevertheless, judicial discourse over the past two decades reflects a gradual shift towards acknowledging such relationships under the broader constitutional guarantees of personal liberty, dignity, and equality. The Supreme Court and various High Courts have repeatedly held that cohabitation between consenting adults fall within the ambit of right to life and personal liberty under Article 21 of the Constitution[3]. These judicial pronouncements indicate an evolving understanding of family structures, where autonomy and consent are prioritized over formal marital status.

Despite this judicial recognition, the absence of legislative clarity has resulted in fragmented and inconsistent protection for individuals in live-in relationships. Questions surrounding legitimacy, maintenance, inheritance, domestic violence, and the legal status of children born out of such relationships remain inadequately addressed. Women, in particular, are often placed in vulnerable positions due to the unequal power dynamics, economic dependence, and social stigma. While courts have attempted to extend certain protections; especially under the

[3] Indian Constitution, Art. 21.

Protection of Women from Domestic Violence Act, 2005[4], the lack of uniform standards continue to create uncertainty and legal ambiguity.

Legitimacy forms one of the most contentious aspects of live in relationships in India. Although courts have affirmed that children born from long-term cohabiting relationships should not suffer legal or social disadvantage[5], societal attitudes often lag behind legal developments. The stigma attached to non-marital cohabitation frequently spills over to affect children, raising concerns about identity, inheritance rights, and social acceptance. This disconnects between judicial reasoning and public perception underscores the broader challenge of translating constitutional values into lived social realities.

In recent years, live-in relationships have also attracted heightened attention due to rising incidents of moral policing, honor-based violence, and threats to couples who choose to cohabit outside marriage. High Courts across India have witnessed an increasing number of protection petitions filed by live-in couples seeking safeguarding against family members, vigilante groups, and community pressure. These cases highlight the persistent clash between individual freedom and collective morality, revealing the fragile space that non-traditional relationships occupy within Indian society.

Public perception of live-in relationships remains deeply divided. While younger generations and urban populations may view cohabitation as a legitimate exercise of personal choice, conservative social structures continue to regard it as immoral or socially unacceptable. Media representation, religious norms, and patriarchal values further complicate this perception, often framing live-in relationships as a threat to the institution of marriage rather than as an evolving form of companionship. This societal resistance not only affects the individuals involved but also influences the implementation and effectiveness of legal protections.

Against the backdrop, the judiciary has played a crucial role in balancing constitutional freedoms with social sensitivities. Landmark judgments such as *S. Khushboo v Kanniammal*[6], *D. Velusamy v D. Patchaiammal*[7], and *Indra Sarma v V.K.V. Sarma*[8] reflect the courts' attempts to define the contours of live-in relationships while safeguarding against misuse. However,

[4] Protection of Women from Domestic Violence Act, No. 43 of 2005, § 2(f).
[5] Tulsa v Durghatiya, (2008) 4 S.C.C. 520 (India); Revanasiddappa v Mallikarjun, (2011) 11 S.C.C. 1 (India).
[6] S. Khushboo v Kanniammal, (2010) 5 S.C.C. 600 (India).
[7] D. Velusamy v D. Patchaiammal, (2010) 10 S.C.C. 469 (India).
[8] Indra Sarma v V.K.V. Sarma, (2013) 15 S.C.C. 755 (India).

judicial intervention alone cannot address the systematic gaps arising from legislative silence and entrenched social attitudes.

This paper seeks to examine live-in relationships within the framework of modern Indian households by analyzing issues of legitimacy, legal protection, and public perception. It explores how judicial recognition has shaped the legal status of cohabiting partners and their children, while also highlighting the limitations of case-by-case adjudication. By situating legal developments within the broader social realities, the study aims to underscore the need for a more coherent and inclusive approach that reconciles evolving social practices with constitutional principles.

In doing so, the paper argues that the future of live-in relationships in India depends not merely on judicial acceptance but on a balanced interplay between legal reform, societal change, and policy intervention. Recognizing diverse family structures is not an erosion of traditional values but an affirmation of individual dignity, autonomy, and equality in a pluralistic society[9].

2. CONCEPT AND EVOLUTION OF LIVE-IN RELATIONSHIPS IN INDIA

2.1 Historical Context and Traditional Perspectives

The idea of live-in relationships is often portrayed as a contemporary or Western phenomenon; however, informal forms of companionship and cohabitation have existed within Indian society for centuries. Ancient Hindu texts refer to Gandharva vivaha, a form of union based on mutual consent without ceremonial formalities, indicating that consensual relationships outside ritualistic marriage were not entirely unfamiliar. Over time, with the consolidation of religious doctrines, patriarchal norms, and social institutions, marriage became the primary and socially sanctioned framework for intimate relationships. Consequently, non-marital cohabitation gradually came to be viewed as morally deviant and socially unacceptable.[10]

2.2 Defining Live-in Relationships in the Indian Context

In the modern context, a live-in relationship generally refers to a domestic arrangement in which two consenting adults cohabit without entering a legally recognized marriage. Unlike marriage, such relationships are not governed by personal laws or statutory provisions and are rooted solely in mutual consent and personal autonomy. The absence of legal formalities and

[9] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).
[10] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45-47 (Oxford Univ. Press 1999).

social sanction distinguishes live-in relationships from matrimonial unions and places them in a legally ambiguous space. This lack of definition has compelled courts to interpret the nature of such relationships on a case-by-case basis.

2.3 Socio-Economic Factors influencing the Rise of Live-in Relationships

The increasing visibility of live-in relationships in India is closely linked to broader socio-economic and cultural transformations. Rapid urbanization, migration for education and employment, increased financial independence, and greater exposure to global lifestyles have reshaped attitudes towards intimacy and partnership.[11] Women's participation in higher education and the workforce has played a significant role in challenging traditional expectations of early marriage. For many individuals, live-in relationships serve as a practical arrangement that allows emotional compatibility to be tested before marriage or, alternatively, as a conscious rejection of marital institutions altogether.

2.4 Uneven Social Acceptance and Gendered Implications

Despite their growing prevalence, live-in relationships continue to face uneven acceptance across Indian society. Metropolitan cities and urban centers display relatively higher tolerance, whereas rural areas and smaller towns remain largely resistant. Social disapproval is often rooted in concerns relating to morality, family honour, and cultural preservation. Women involved in live-in relationships are subjected to disproportionate scrutiny and stigma, reflecting entrenched patriarchal attitudes and gender biases. This societal resistance frequently exacerbates the vulnerability of women, particularly in cases of abandonment, exploitation, or domestic abuse.

2.5 Legal Evolution Through Judicial Interpretation

The evolution of live-in relationships in India has been predominantly shaped by judicial intervention rather than legislative reform. Indian statutes do not expressly recognize or regulate live-in relationships, resulting in legal uncertainty. Early judicial responses were conservative and often dismissive, equating cohabitation with immorality. However, over time, courts adopted a more progressive approach, recognizing live-in relationships as falling within the ambit of the constitutional right to life and personal liberty under Article 21.

[11] N.R. Madhava Menon, *Family Law Reforms and Social Change in India,* 44 J. Indian L. Inst. 1, 6-8 (2002).

The judiciary has introduced the concept of "relationships in the nature of marriage" to extend limited legal protections, particularly under the Protection of Women from Domestic Violence Act, 2005. While this judicial innovation has provided relief in cases involving long-term cohabitation, it has also created subjective criteria, leading to inconsistent application across cases.

2.6 Role of Media and Contemporary Social Discourse

Media representation and popular culture have significantly influenced public discourse surrounding live-in relationships. Films, television series, and digital platforms have contributed to normalizing cohabitation among younger generations, particularly in urban settings. However, increased visibility has also intensified social backlash, manifesting in moral policing, familial opposition, and instances of honor-based violence[12]. The rising number of protection petitions filed by live-in couples before High Courts highlights the fragile position of such relationships within Indian society.

2.7 Contemporary position and ongoing evolution

The concept and evolution of live-in relationships in India reflect a dynamic interaction between tradition and modernity, individual choice, and social conformity. While judicial recognition has acknowledged changing familial structures, the absence of comprehensive legislative regulations continues to leave individuals in a state of uncertainty. Live-in relationships in India remain legally recognized in principle but socially contested in practice, underscoring a need for a more coherent legal and policy framework that aligns with evolving social realities.

3. LEGAL LEGITIMACY AND STATUTORY POSITION IN LIVE-IN-RELATIONSHIPS

3.1 Constitutional Morality and the Right to Choose One's Way of Life

The constitutional legitimacy of live-in relationships in India is rooted not in express statutory recognition but in the judiciary's expansive interpretation of fundamental rights. The Supreme Court has consistently held that the Constitution protects individual autonomy, decisional privacy, and dignity, all of which extend to intimate personal choices, including the choice to cohabit outside marriage. Article 21 of the Constitution, which guarantees the right to life and

[12] Shafin Jahan v Asokan K.M., (2018) 16 S.C.C. 368, ¶¶ 84-86 (India).

personal liberty, has been interpreted to encompass the freedom to choose one's partner and the manner of living together.

This interpretation reflects a shift from morality-driven understanding of relationships to one grounded in constitutional morality. The Court has emphasized that the law cannot be dictated by prevailing social disapproval or majoritarian moral standards. In *S. Khushboo v Kanniammal*[13], the Supreme Court categorically observed that living together outside marriage is neither illegal nor immoral and falls squarely within the sphere of personal liberty protected under Article 21. The judgment marked an important moment in affirming that societal discomfort cannot justify legal sanctions against consensual adult relationships.

Article 14 of the Constitution further strengthens this position by prohibiting arbitrary discrimination. Denying legal protection to individuals solely because they are not married has been viewed as inconsistent with the principle of equality before law. Courts have increasingly recognized that marital status alone cannot be the basis for excluding individuals from constitutional protection. Read together, Articles 14,19, and 21 create a framework where personal choice, privacy, and dignity are tested as central constitutional values, even when such choices challenge traditional social norms.

3.2 Civil Law Responses: Protection without Formal Recognition

In the absence of a specific statute regulating live-in relationships, civil law protections have emerged through judicial interpretation of existing legislation. The most significant statutory intervention in this regard is the Protection of Women from Domestic Violence Act, 2005. The Act consciously adopts a broad definition of "domestic relationship" and includes within its scope relationships "in the nature of marriage."[14] This inclusion reflects legislative intent to protect women from abuse and exploitation, irrespective of formal marital status.

Judicial interpretation of the Act has enabled women in qualifying live-in relationships to seek protection orders, residence rights, maintenance, and compensation. However, the protection is not automatic. Courts first examine whether the relationship satisfies judicially evolved standards of stability and permanence. While this approach seeks to prevent misuse of the statute, it also places a significant evidentiary burden on women, who must prove the nature of their relationship to access relief.

[13] S. Khushboo v Kanniammal, (2010) 5 S.C.C. 600 (India).
[14] Protection of Women from Domestic Violence Act, No. 43 of 2005, § 2(f).

Maintenance rights have similarly evolved through judicial intervention. Section 125 of the Code of Criminal Procedure, 1973, though traditionally applicable to legally wedded wives, has been interpretated in a purposive manner in certain cases to extend maintenance to women in long-term live-in relationships.[15] The underlying rationale is that Section 125 is a measure of social justice intended to prevent destitution and vagrancy. Nevertheless, the absence of legislative clarity has resulted in inconsistent outcomes, leaving maintenance rights largely dependent on judicial discretion.

3.3 Criminal Law and the Limits of Moral Policing

From a criminal law perspective, the position is comparatively clearer. Consensual live-in relationships between adults do not constitute an offence under the Indian Penal Code. Courts have repeatedly held that criminal law cannot be used as an instrument to impose social morality or punish individuals for non-conforming personal choices. Attempts to criminalize cohabitation through charges of obscenity, public nuisance, or immorality have been firmly rejected by the judiciary.

At the same time, individuals in live-in relationships are fully entitled to protection against criminal acts such as domestic violence, physical assault, criminal intimidation, and harassment. Indian courts have increasingly intervened to grant police protection to live-in couples facing threats from family members or community groups. Such cases underscore the judiciary's recognition that the right to life and liberty cannot be compromised by honor-based notions or societal opposition.

3.4 When does Cohabitation become a "Relationship in the Nature of Marriage"?

One of the most complex legal challenges has been determining which live-in relationships merit legal protection. To address this, the judiciary has developed parameters to identify relationships "in the nature of marriage," particularly for the purpose of extending benefits under the Domestic Violence Act.

In *D. Velusamy v D. Patchaiammal*[16], the Supreme Court laid down illustrative criteria to assess whether a live-in relationship resembles marriage. These include the duration of cohabitation, shared household arrangements, pooling of financial resources, domestic responsibilities, social recognition of the couple as partners, and the intention of the parties to live together as

[15] Chanmuniya v Virendra Kumar Singh Kushwaha, (2011) 1 S.C.C. 141 (India).
[16] D. Velusamy v D. Patchaiammal, (2010) 10 S.C.C. 469 (India).

spouses. The Court clarified that casual, temporary, or clandestine relationships would not qualify for statutory protection.

The scope of this doctrine was further examined in *Indra Sarma v V.K.V Sarma*[17], where the Supreme Court identified different categories of live-in relationships and evaluated their eligibility for protection under the Domestic Violence Act. While the Court acknowledged the need to protect women from exploitation, it adopted a cautious approach, particularly in cases where one party was already legally married. The judgment reflects judicial unease in extending legitimacy to relationships perceived as undermining existing matrimonial institutions.

Although these judicial parameters aim to strike a balance between protection and prevention of misuse, they have been criticized for introducing subjective and moral considerations into legal analysis. Factors such as social visibility and public acceptance often disadvantage women who may have cohabited discreetly due to fear of stigma or familial backlash. The absence of statutory codification has further resulted in inconsistent application across courts, reinforcing the need for clearer legislative guidance.

3.5 Concluding Observations on Legal Legitimacy

The legal legitimacy of live-in relationships in India thus rests on a fragile and evolving foundation. Constitutional principles have affirmed the right to cohabit as an aspect of personal liberty, while selective statutory protections have been extended through judicial. However, the absence of a comprehensive legislative framework continues to create uncertainty, particularly for women and children in long-term cohabiting relationships. The current legal positions reflect a cautious acceptance, recognizing live-in relationships in principle while regulating them through judicially crafted thresholds that remain uneven and contested.

4. RIGHTS AND OBLIGATIONS OF PARTNERS IN A LIVE-IN-RELATIONSHIP

The legal recognition of rights and obligations arising from live-in relationships has primarily developed through judicial interpretation of constitutional values such as personal liberty, dignity, and equality, alongside purposive readings of welfare legislation like the 2005 Act safeguarding women against Domestic Violence. Courts have consistently held that cohabitation between consenting adults is neither illegal nor immoral, yet they have also maintained a clear distinction between marriage and non-marital relationships. As a result, the

[17] Indra Sarma v V.K.V. Sarma, (2013) 15 S.C.C. 755 (India).

legal consequences of live-in relationships are neither automatic nor uniform but depend on factual elements such as duration of cohabitation, economic dependence, shared household arrangements, and public perception of the relationship.

4.1 Right to Protection against Domestic Abuse

Indian domestic violence jurisprudence recognizes that protection from abuse cannot be made contingent upon the existence of a formally solemnized marriage. Where a live-in relationship satisfies the statutory requirement of a "domestic relationship" involving shared residence and relational stability, the aggrieved partner have a lawful claim to legal protection against domestic violence[18]. The scope of protection is intentionally expansive and extends beyond physical harm to encompass sexual coercion, emotional degradation, verbal intimidation, and economic deprivation. The law adopts a preventive and remedial orientation, enabling judicial authorities to restrain abusive conduct and secure the personal safety and dignity of individuals within non-marital domestic arrangements[19].

A significant safeguard available to women in live-in relationships is the legally enforceable right to reside in the shared household[20]. This entitlement operates independently of proprietary or ownership interests in the dwelling. The denial of access to the shared residence or forcible eviction is treated as a serious form of domestic abuse, particularly where it exacerbates economic or social vulnerability. Courts are therefore empowered to restrain dispossession or to direct alternative accommodation, recognizing secure shelter as a foundational element of protection from domestic violence and a prerequisite for meaningful access to justice[21].

4.2 Right to Monetary Relief and Financial Support

The statutory framework of Domestic Violence Law under Section 20 permits the grant of monetary relief to women subjected to domestic violence in live-in relationships, with the objective of mitigating the economic consequences of abuse. Such relief may include compensation for medical expenses, loss of income, and financial support necessary to meet daily living requirements. Judicial discretion in awarding monetary relief is guided by factors such as the duration and nature of cohabitation, economic dependence, and the functional

[18] Protection of Woman from Domestic violence Act,2005,ss.2(f).
[19] D. Veluswamy v D. Patchaiammal (2010) 10 S.C.C. 469 (India).
[20] Protection of Women from Domestic Violence Act, ss 17.
[21] S.R Batra v Taruna Batra, (2007) 15 S.C.C. 755 (India).

resemblance of the relationship to marriage. This right seeks to prevent economic abandonment and recognizes financial deprivation as a central dimension of domestic abuse[22].

4.3 Right to Access Legal Remedies without Stigmatization of the Relationship

The availability of civil remedies under domestic violence law is not conditioned upon the moral or legal status of the relationship. Consenting adults in live-in arrangements possess the right to seek protection and relief without the relationship itself experiencing criminalization or social stigma. The law draws a clear distinction between the legality of personal choices and the illegality of abusive conduct, thereby reinforcing individual autonomy while ensuring accountability for violence and exploitation within domestic settings[23].

4.4 Right to a Dignified Living and Safeguarding of Personal Well-Being

The legal safeguards available to individuals in live-in relationships are fundamentally rooted in the constitutional guarantee of life and personal liberty. Judicial pronouncements have consistently recognized that the right to life under Article 21 encompasses the entitlement to live with dignity, free from violence, coercion, or degradation. Extending protection from domestic violence to partners in live-in arrangements reflects the Constitution's commitment to substantive equality and the preservation of human dignity, ensuring that emerging forms of social relationships are not left exposed to legal marginalization or vulnerability.

4.5 Right to Maintenance and Financial Support

The right to maintenance constitutes a crucial protective mechanism for partners in live-in relationships, particularly where economic dependence or vulnerability arises from the nature of cohabitation. Indian courts have recognized that denying maintenance solely on the ground of absence of formal marriage may result in grave injustice, especially in long-term relationships resembling marriage in substance[24]. Accordingly, where a woman has lived in a stable domestic arrangement, shared household responsibilities, and relied economically on her partner, courts may extend maintenance or financial support through statutory remedies.

Maintenance in the backdrop of cohabiting partnership is not automatic but is determined through a fact-specific inquiry, including the duration of cohabitation, exclusivity of the relationship, social recognition, and absence of a subsisting lawful marriage. This cautious

[22] Indra Sarma v V.K.V. Sarma, (2013) 15 S.C.C 755 (India).
[23] Lata Singh v State of U.P., (2006) 5 S.C.C. 475 (India).
[24] D. Veluswamy v D. Patchiammal, (2010) 10 S.C.C. 469 (India).

judicial approach seeks to balance protection against exploitation with the need to preserve the distinct legal status of marriage. The right to maintenance thus functions as a welfare-oriented safeguard aimed at preventing abandonment, economic destitution, and unjust enrichment arising from unequal domestic arrangements[25].

4.6 Rights of Children Born from Live -In- Relationships

Indian law accords paramount importance to the rights and welfare of children born from live-in relationships, irrespective of the marital status of their parents. Judicial interpretation has consistently affirmed that such children cannot be subjected to discrimination or legal disadvantage due to the nature of their parents' relationship. The law recognizes their entitlement to dignity, care, maintenance, and protection as an intrinsic component of child welfare jurisprudence[26].

Offspring born from live-in arrangements are legally entitled to maintenance and financial support from their parents, with courts prioritizing the paramount interest of the child over social or moral considerations. Additionally, judicial developments have recognized the legitimacy of such children for the purpose of inheritance in their parents' self-acquired property, thereby safeguarding their economic security and social standing[27]. This rights-based approach reflects the constitutional mandate of equality and the principle that children should not bear the consequences of choices made by adults.

Alongside the recognition of rights, Indian Law also imposes certain obligations on partners in live-in-relationship to ensure that personal autonomy does not translate into exploitation or abuse.

4.7 Obligation to Act in Good Faith and Make Honest Disclosure

Partners in a live-in relationship are expected to conduct themselves with transparency and fairness, particularly in matters that materially affect the nature of the relationship. Judicial decisions have made it clear that concealment of relevant facts such as an existing marital relationship may disentitle a claimant from seeking protection or maintenance[28]. This obligation flows from equitable principles and seeks to prevent abuse of welfare legislation by ensuring that legal remedies are available only to relationships founded on genuine consent and mutual understanding.

[25] Indra Sarma v V.K.V. Sarma, (2013) 15 S.C.C. 755 (India).
[26] Revanasiddappa v Mallikarjun, (2011) 11 S.C.C. 1 (India).
[27] Bharata Matha v R. Vijaya Renganathan, (2010) 11 S.C.C 483 (India).
[28] Indra Sarma v V.K.V Sarma, (2013) 15 S.C.C. 755 (India).

4.9. Obligation to Refrain from Fraud and Misrepresentation

A partner must not induce cohabitation through deception, including false assurances of marriage or deliberate misrepresentation of personal circumstances. Courts have consistently held that relationships originating in fraud or manipulation cannot be equated with genuine domestic arrangements deserving statutory protection[29]. This obligation operates as a safeguard against exploitation and reinforces the principle that legal recognition is contingent upon the bona fide character of the relationship.

4.8 Obligation to Respect Sexual Autonomy and Consent

The existence of a live-in relationship does not dilute the requirement of free and informed consent in matters of sexual intimacy. Each partner remains under a continuing obligation to respect bodily autonomy and personal boundaries. Judicial interpretation has emphasized that consent cannot be presumed merely from cohabitation, and coercive sexual conduct within such relationships may attract both civil and criminal consequences. This obligation reflects the evolving recognition of individual autonomy within intimate relationships[30].

4.9 Obligation to Respect Privacy and Personal Dignity

Partners in a live-in cohabitation arrangement are bound to respect each other's privacy, reputation, and personal information. Acts such as unauthorized surveillance, disclosure of intimate details, or public defamation may amount to violations of constitutional and legal rights. Judicial recognition of live-in relationships is closely connected with the constitutional right to privacy, and misuse of personal data within such relationships is treated as a serious infringement of dignity[31].

Judicial acknowledgment of rights and safeguards for individuals in live-in relationships signifies a progressive shift in recognizing modern forms of companionship and the necessity of aligning legal mechanisms with evolving societal norms. Although such relationships do not carry the statutory recognition accorded to marriage, Indian courts have consistently upheld the entitlements of partners and extended protective measures to secure their dignity, safety, and welfare. By emphasizing fairness, social justice, and fundamental human rights, the judiciary has assumed a pivotal role in protecting the legitimate interests of individuals engaged in live-in arrangements under the Indian legal system.

[29] D. Veluswamy v D. Patchiammal, (2010) 10 S.C.C. 469 (India).
[30] K.S. Puttaswamy v Union of India, (2017) 10 S.C.C 1. (India).
[31] V.D. Bhanot v Savita Bhanot, (2012) 3 S.C.C 183 (India).

5. VULNERABILITIES ASSOCIATED WITH LIVE-IN-RELATIONSHIPS IN INDIA

While Indian courts have gradually extended recognition and some protections to partners in live-in relationships, such arrangements continue to expose individuals particularly women to significant legal, economic, and social vulnerabilities due to the absence of a specific statutory framework governing these relationships[32].

5.1 Lack of Dedicated Legal Framework

One of the most fundamental vulnerabilities stems from the fact that Indian law does not have a distinct statute that expressly governs live-in relationships. Courts rely on judicial interpretations and piecemeal application of existing laws, such as the Domestic Violence Law enacted in 2005, to extend protections. This results in uncertainty and inconsistent legal outcomes, especially in matters like maintenance, property division, inheritance, and the legitimacy of children born out of such relationships.

5.2 Property and Succession Challenges

Partners in a live-in relationship do not automatically acquire rights to each other's property or assets in the absence of formal marriage. Unless partners expressly document contributions or make mutual arrangements (e.g., through wills or agreements), the absence of legal recognition creates disputes about ownership and succession, particularly if a partner dies without a will. This gap places financially dependent partners often women in a precarious position when it comes to securing economic rights post-separation or after a partner's death[33].

5.3 Social Stigmatization and Cultural Resistance

Live-in relationships continue to face deep social stigma in many parts of India due to entrenched cultural and patriarchal norms that view cohabitation outside marriage as immoral. This stigma can manifest as family opposition, ostracism from the community, moral policing, or even violence, which not only affects personal dignity but also limits access to housing, social welfare, and community acceptance.

Marginalized groups such as inter-caste or interfaith couples may face heightened risks of honor-based violence or forced separation, reflecting broader societal resistance to alternative family structures.

[32] Uma, *Perception of Live-in-relationship in Indian Jurisprudence : A Legal Study*, 6 Int. J. Law, 141, 142-143 (2024).

[33] N Prabhawati & S.K. Surya, *Critical Analysis of the New trend of Live-In-Relationship in India – A Practical Approach with Judiciary Views*, 2 IOSR-JMR, 45, 54 (2025).

5.4 Gender power Imbalances and Abuse

Live-in relationships can mirror existing patriarchal patterns of power, rendering women more vulnerable to domestic abuse, emotional coercion, and financial exploitation. The unequal distribution of power in intimate relationships often results in women bearing the brunt of adverse outcomes when the relationship deteriorates.

Despite some legal protections, societal assumptions including the belief that female partner in live-in relationships implicitly consent to certain conditions or abuse can further marginalize victims and deter them from pursuing legal recourse.

5.5 Impact on Children and Social Identity

Children born out of live-in relationships are legally recognized and entitled to certain rights, including inheritance, but they may still face social stigma and identity challenges because of societal attitudes toward their parents' relationship. This societal reaction can affect their social integration, emotional wellbeing, and access to community support[34].

6. PUBLIC PERCEPTION AND SOCIAL ACCEPTANCE OF LIVE-IN-RELATIONSHIPS IN INDIA

6.1 Between Social Norms and Personal Choice

Public perception of live-in relationships in India is deeply shaped by long-standing social norms that associate intimacy, cohabitation, and family life almost exclusively with the marriage. Marriage is not merely a personal arrangement but a social institution intertwined with the notions of honor, legitimacy, and collective identity. Against this backdrop, live-in relationships are often perceived as transgressive, unsettling established moral and cultural expectations. While the law may recognize the autonomy of consenting adults, social acceptance continues to lag behind legal developments. For many individuals, particularly in conservative and semi-urban settings, cohabitation without marriage is viewed as a threat to social order and familial values.

6.2 *Gendered Stigma and the Burden on Women*

Social disapproval of live-in relationships is not experienced equally. Women face harsher scrutiny due to deep-rooted patriarchal expectations around morality and respectability. They are more likely to be judged, blamed, or socially isolated for choosing cohabitation. This stigma

[34] Chancha Singh & Prof (Dr) Reema Jaiswal, *Socio-Legal Dynamics of Live-In Relationships in India : A Comparative Analysis with Traditional Marriages*, 13 JPNR, 6936, 6941 (2022).

often discourages women from seeking legal remedies in cases of abuse or abandonment, as fear of reputational harm outweighs the promise of protection.

6.3 Moral Policing and Honor-Based Resistance

Moral policing remains a visible form of resistance to live-in relationships, especially where couples' cross caste or religious boundaries. Families and community groups often justify harassment, threats, or violence in the name of honor and tradition. Although courts have strongly condemned such actions and granted protection to live-in couples, the recurring need for judicial intervention highlights persistent social intolerance.

6.4 Media Representation and Changing Social Narratives

Media and popular culture have played a mixed role in shaping perceptions. While contemporary films and digital platforms increasingly portray live-in relationships as normal, news coverage often sensationalizes such unions. By focusing on the relationship rather than the underlying issues, media narratives sometimes reinforce moral suspicion instead of fostering understanding.

6.5 Social Acceptance as an ongoing process

Acceptance of live-in relationships in India remains uneven and transitional. While urbanization and education have encouraged greater openness, traditional notions of family and honor continue to resist change. Legal recognition, without broader social awareness and sensitization, leaves individuals legally protected yet socially vulnerable.

7. CONCLUSION

Live-in relationships in contemporary India exemplify a significant shift in the understanding of intimate partnerships, challenging the traditional confines of the Indian household. They offer individuals especially women the freedom to choose companionship without the formalities of marriage, promoting personal autonomy, emotional support, and equality within the relationship. Legally, the Indian judiciary has gradually recognized certain rights in such arrangements, including maintenance, protection against domestic violence, and the well-being of children born out of these relationships. These developments reflect a growing acknowledgment of the pressing necessity to protect individuals, even in non-traditional family structures.

Despite this progress, live-in relationships continue to face hurdles related to societal legitimacy and public perception. Cultural norms and moral values deeply ingrained in Indian society often stigmatize such relationships, labeling them as socially unacceptable or morally questionable. This societal disapproval can affect the participants' social standing, professional interactions, and even personal safety. Moreover, while the law offers some protection, it is not as comprehensive as the protections available to married couples, leaving gaps that can create vulnerabilities for partners, particularly women.

Critically, the societal manifestation of live-in arrangements highlights the tension between modernity and tradition in India. The modern Indian household is increasingly characterized by diversity in relationships, yet it remains influenced by historically accepted models of the family and social propriety. Live-in arrangements, therefore, act as a lens through which we can examine broader social transformations, legal adaptations, and the ongoing negotiation between individual rights and collective non-marital cohabitation in contemporary India exemplify a notable transformation in the understanding of intimate partnerships, challenging the traditional confines of the Indian household. They offer individuals especially women the freedom to choose companionship without the formalities of marriage, promoting personal autonomy, emotional support, and equality within the relationship. Legally, the Indian judiciary has gradually recognized certain rights in such arrangements, including maintenance, protection against domestic violence, and the welfare of children born out of these relationships. These developments reflect a growing acknowledgment of the need to protect individuals, even in non-traditional family structures.

8. RECOMMENDATIONS: LIVE-IN-RELATIONSHIP AND MODERN INDIAN HOUSEHOLD

Pursuant to a critical analysis of live-in relationships within the context of modern Indian households, the following recommendations are proposed to address issues of legitimacy, protection, and public perception

8.1 Strengthening Legal Frameworks

While Indian courts have recognized certain rights in live-in relationships, existing legal provisions remain fragmented and limited compared to the protections afforded to married couples. It is essential to codify comprehensive legislation that explicitly addresses maintenance, property rights, domestic violence protection, and custody rights for children

in live-in relationships. Such a law would provide clarity, reduce judicial ambiguities, and upholds fair and non-discriminatory protection for all partners.

8.2 Awareness and Education Campaigns

Public perception persists as a considerable barrier due to cultural stigma. Targeted awareness campaigns highlighting the legal rights, responsibilities, and social legitimacy of live-in partnerships can help reduce prejudice. Educational institutions and media platforms should promote understanding that these relationships, when consensual and responsible, are a valid form of modern family structure.

8.3 Counseling and Support Services

Establishing government-supported or NGO-driven counseling centers for individuals in live-in relationships can provide guidance on legal rights, dispute resolution, and family mediation. Such support systems can empower vulnerable partners, particularly women, to navigate challenges safely and confidently.

8.4 Integration with Family Law Reforms

Live-in relationships should be considered within broader family law reforms to bridge the gap between traditional marriage and emerging partnerships. Policy measures could include recognizing long-term cohabitation for purposes of inheritance, social security benefits, and spousal rights, thereby reducing legal and social discrimination.

8.5 Research and Data Collection

Empirical studies on live-in-relationships, including their prevalence, challenges, and social outcomes, should be encouraged. Data-driven insights will assist policymakers, social workers, and the judiciary in crafting informed interventions that balance individual autonomy with societal expectations.

8.6 Promoting Social Dialogue

Encouraging open conversations within communities about evolving family structures can gradually normalize live-in relationships. Engagement with ecclesiastical, ethnic and civic institutions can play a constructive role in harmonizing long-standing traditions with present day social conditions, thereby encouraging tolerance as well as thoughtful and informed acceptance.

8.7 Periodic Review of Judicial Guidelines

Courts should periodically review and refine judicial guidelines regarding live-in relationships to ensure they remain relevant, comprehensive, and sensitive to evolving societal norms. Consistent judicial clarity will strengthen confidence in the legal system among individuals choosing alternative forms of partnership.

By implementing these measures, India will be able to move towards a framework that not only extends concrete protection to individuals in live-in relationships but also foster social acceptance and legitimacy. Recognizing and supporting these partnerships is essential for promoting equality, personal autonomy, and a progressive vision of modern Indian households.

INVENTORS WITHOUT IDENTITY: RETHINKING IP FOR NO-HUMAN INTELLIGENCE

Smruti Mayee Dora[1]

Abstract

The world of Artificial Intelligence (AI) is ushering in revolutionary changes in the realm of intellectual property (IP), which challenge the established doctrines of authorship, inventorship, and ownership. With the advent of artificial intelligence, it is becoming increasingly unclear who or what can be considered the original creator, controller, and owner of liability, due to the similarities inherent in artificial intelligence and the blurred lines surrounding original work. This paper critically examines the intersection of AI and IPR, particularly in light of recent case law regarding international policy shifts and the emergence of regulatory gaps. There is, on one hand, the copyright dilemma concerning the commercial use of AI-generated material, and on the other hand, the challenge AI presents to patent law. The issue of whether a machine can be regarded as an author or inventor raises critical questions about ownership and the nature of AI-generated content. What can we do to preserve humanistic ethical practices in an AI-driven environment? The author proposes new dimensions for AI stewardship, decentralized attribution, and data governance by employing a technical-legal approach to address the challenges posed by permitting and licensing technologies, such as blockchain-enabled licensing and ethical watermarking. Furthermore, the definition of data stewardship has evolved; rather than designating specific roles, the responsibility now rests with the ethical obligations of all stakeholders involved in AI systems. The situation in India warrants particular attention: despite its rapidly developing AI ecosystem, there is currently no established legislation addressing the regulation of AI-generated inventions and the copyrights of their creators. The author concludes that the way forward should focus on intertwining legislative changes, collaborative policies, and a transition towards stewardship rather than ownership, ensuring that AI progresses in a human-friendly and legally compliant manner.

Keywords:- *Artificial Intelligence, Intellectual Property Rights, Block Chain.*

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1. INTRODUCTION

The topic of Artificial Intelligence (AI) grew rapidly from a vision of the future to the reality of applications, which have been integrated into the daily practice of many different areas, including law, medicine, media, design, and financial markets. Its ability to independently generate artistic works and inventions- copyrighted texts, program codes, paintings, and property inventions- has significantly challenged the intellectual property (IP) law across the globe. The established IP systems based on the human and conscious author theory have come under vast pressure as their systems cannot deal with an adequate response to the emergence of AI systems that can produce independently complex and creative content, yet have no legal status or moral autonomy. The author will discuss how the existing legal legislations are addressing the upheavals brought by the AI-powered technologies. On the legal plan of the copyright realm, AI violates the interlocutory risk of authorship. In courts like the United States, the United Kingdom, and India, it has always been determined that only human beings can be considered as authors, which was also seen in a landmark case like Naruto v. Slater[2] and Thaler v. Perlmutter[3]. Moreover, the fact that AI needs large amounts of data, usually gathered either publicly or at the expense of individuals or companies (without their consent), has put the legality and morality of the data usage in the spotlight. Besides discussing authorship and inventorship, this paper focuses on the rising significance of data stewardship. With an environment that is dominated by AI, the question that should be raised is not so much about ownership but the responsibility of data integrity, fairness, and ethical use; who is accountable? Since AI systems are becoming increasingly used to make decisions, as well as to create content, it becomes critical to develop a culture of ethical responsibility amongst all stakeholders, i.e., developers, users, regulators, and data providers. It also suggests innovative legal policies and policy recommendations, especially in terms of the legal structure and innovative climate in India.

[2] Naruto v. Slater, No. 16-15469 (9th Cir 2018) *https://law.justia.com/cases/federal/appellate-courts/ca9/16-15469/16-15469-2018-04-23.html* (accessed 1 June 2025).
[3] Thaler v. Perlmutter, No 23-5233 (DC Cir 18 March 2025*) https://law.justia.com/cases/federal/appellate-courts/cadc/23-5233/23-5233-2025-03-18.html* (accessed 1 June 2025).

1.1 AI as a creator: copyright complications

In the recent past, the development of artificial intelligence has reached its peak in every sphere, including the artistic and business arena, the creation of music, the delivery of research data, art, as well as the automatic updating of documents. Copyright is historically grounded on the originality of the piece of work and has to be done by a human author. Here, the point is, however:

I- Is it possible to envisage an AI as an author?

II- Is the output of AI original in a human legal sense?

III- Is it possible that a machine can claim IPR rights to the work (created by it)?

Does AI have the potential to dominate tech-land and finish off humankind? It is a question that does not have a proper and definite answer. However, this is certain: AI has begun finding its way in several markets of intellectual property. The problem here is that AI uses the resources which were already published or someone's patent and takes out all the information and merely paraphrases, and a human gives the command, and yet AI is demanding its intellectual property rights. However, the majority of the jurisdictions reject AI rights to copyright and fail to protect works or transfer them to developers or users. This landmark judgement was Thaler. The definition of an author under the Copyright Act of 1976 was brought out by Thaler v. Perlmutter[4]. The unanimous decision of the bench. The crucial point, the ability of an author to own a property, is stated in the definition explicitly, and this notion is also directly related to human ability and cannot be applied to machines. The identified element that the court concentrated on is that the copyright protection can be associated with the lifetime of the author and 70 years after his/her death, which does not apply to the case of AI, because it does not have a lifetime. The bench also ruled that the machine that is made using technology cannot be an author. Nothing can become the writing of an author unless it can be traced to human beings, and authorship is a term that implies that to qualify as a work to be copyrighted, it must have been the creation done by a human being first. The copyright office, in this case, is notified that it would deny registration of a claim in case it found that a human creation was not involved.

[4] *Ibid.*

The product of AI and data provided by AI is not an original product and does not belong it is an aggregation of things that already exist. The world governments are making attempts to balance the positive changes by AI development and fair IP protection rights. Computer-aided work is being safeguarded in most countries, but not computer-generated work, and no one seems certain that AI-generated and assisted work can have such protection. In the court decisions connected with the problem of copyright, there was explained the difference between the assisted by AI and the content generated by it was explained. Clarification of the copyright office further explained that the mere implementation of the tool AI as part of a creative process is not sufficient to deny a work the protection of copyright, and the human element has to be sufficiently contributing and at the same time creatively proven, more than mere hints or slight changes. The first necessity of every job is the copyright, to be granted such protection, there must be substantial, demonstrable, and independent to copyright by a creative human involvement, and human work is needed to obtain copyright.[5] In case a human is also involved in some work, even after having the utilization of AI in accomplishing simple tasks like editing or any other type of work, they are entitled to the copyright.

The safeguard would also cover the pieces written by humans, and the product of AI would not be covered. The practice has led to many copyright lawsuits against AI developers, on the basis that training algorithms with the use of copyrighted material is copyright infringement. This is the newly presented case of Thomson Reuters v. The intelligence[6], namely ROSS, is a radical change in the field of copyright among people, which is not yet disclosed and the controversy of whether to receive a copyright on the work of AI. In the landmark litigation, ROSS Intelligence v. Westlaw and LexisNexis[7], a Delaware federal court rejected a fair use defence and ruled that it was a copyright infringement to use Westlaw and Lexis headnotes to train a competing AI-based legal research program. The Thomson Reuters case seems not to fully exemplify other AI training scenarios, as the system in question is not generative, existing to explicitly substitute the market of the original content. In fair use analysis, it is feasible that cases involving generative AI systems that render the training data into original creative work

[5] US Copyright Office, *'Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence'* (US Copyright Office, 2023) *https://www.copyright.gov/ai/ai_policy_guidance.pdf* (accessed 1 June 2025).

[6] Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc, No 1:20-cv-613-SB (D Del 11 February 2025) *https://www.reuters.com/legal/thomson-reuters-wins-ai-copyright-fair-use-ruling-against-one-time-competitor-2025-02-11/* (accessed 1 June 2025).

[7] Thomson Reuters Enterprise Centre GmbH v Ross Intelligence Inc, No 1:20-cv-613-SB (D Del 11 February 2025) *https://www.lawnext.com/2025/02/breaking-federal-judge-rules-legal-research-startup-ross-infringed-westlaws-copyrights-rejecting-fair-use-defense.html* (accessed 1 June 2025).

would give different results, but as the Thomson Reuters case applied to non-generative AI system that seeks to replace the market with the original work directly, it may not be truly representative of other AI training circumstances.[8] Different countries have different attitudes toward how to treat this situation with AI copyright, and the European Union has tried to become more regulatory with its copyright directive in 2019 and the AI Act, which pays more attention to transparency and oversight of how the AI system uses data under the copyright protection. The provisions established by the European Union seek to strike a balance between copyright protection and the opportunities created by AI, which involves the option to have their works exempted from AI training data sets. This opt-out system contrasts with the US one that, in general, puts the burden of proving the fair use of copyrighted materials on the user. The Chinese ideas on copyright protection do not imply the legal AI-created works that do not demand significant human input, and this is quite similar to the US ones. The AI cases present themselves in two categories: i) the claims referring to AI training with copyrighted works. ii) assertions to the AI outputs, which are said to violate the existing copyrights. In 2025, in the publishing industry, journalists and big-name news agencies have launched civil actions against AI programmers. In January 2025, news organization ANI, based in India, filed suit against OpenAI in complaining that the company had used the content of its news in training ChatGPT without permission and that ChatGPT had mistakenly attributed false news stories to the agency. These examples raise the issue of concern over potential damage to the reputation and misinformation, alongside copyright infringements.[9]

The protection of the copyright is still based strongly on the human authorship, which has significant implications regarding the work created with the help of artificial intelligence. Although pieces entirely created by AI are not just copyrightable yet can be, in any case, copyrightable when they incorporate meaningful human creative material. Training of AI models on the material under copyright without a corresponding license remains a questionable matter, and in the recent legal cases, controversy arises concerning a potential limitation of the concept of fair use in this context.[10]

[8] Loeb & Loeb LLP, 'Thomson Reuters v. Ross Intelligence, Inc.' (Loeb & Loeb LLP, 1 February 2025) *https://www.loeb.com/en/insights/publications/2025/02/thomson-reuters-v-ross-intelligence-inc* (accessed 1 June 2025).

[9] US Copyright Office, *'Copyright and Artificial Intelligence, Part 3: Generative AI Training'* (US Copyright Office, 9 May 2025) *https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf* (accessed 1 June 2025).

[10] US Copyright Office, *'Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence'* (US Copyright Office, 2023) *https://www.copyright.gov/ai/ai_policy_guidance.pdf* (accessed 1 June 2025).

1.1.1 AI And Training Data: Copyright & Fair Use

Within the latest state of affairs, the U.S. Copyright Office published a so-called prepublication of the third part of a broader report on artificial intelligence based on the issue of generative AI training and relations with copyright law. Some questions were connected to this report:

i. The question is whether training a generative AI model or the very operation of the said model can be a breach of copyright prima facie.
ii. Would such activities have enjoyed protection under the idea of fair use?

The report explains that certain elements of AI amount to prima facie copyright violation, which may involve at least the models themselves and the fair use of defence even though the report notes that the training of these kinds of AI models on a comprehensive and diversified dataset will be revolutionary and the report explains that this will depend upon the method of deployment and upon training.[11] The intent and nature of the use focuses on the marketability of the work and the transformative use i.e. does this work add a new expression does it serve a new purpose as compared to the original. The report by the copyright office acknowledges that in particular the ruling of the U.S supreme court in the Andy Warhall case, since it was recognized that it is worth considering each and every situation of usage of a work during the AI training process other than making the process itself the subject of discussion. Rather the analysis must view as to how the AI model is finally used and it is also probable that the end purpose is whether by the developer or the user and that is critical in specifying whether the all inclusive use is either towards the satisfactory or the infringement of usage. In answering the question of whether AI training is transformative, the copyright office first addresses the fact that training a foundational generative AI model with a broad and large dataset is commonly transformative.[12] In such instances, the courts permitted reveres engineering of software by copying in a temporary form. Others believe that it creates a precedent to treat the training of AI under fair use. The Office rejects it by noting that AI models are capable of and frequently reproduce the expressive material, and therefore, using it might be infringing. The fact that AI learning is synonymous to human learning. This analogy is strongly refused in the report, on the grounds that although both the processes require information to be processed, AI training

[11] Perkins Coie LLP, *'Copyright Office Stakes Out Position on Use of Works for AI Training'* (Perkins Coie, 7 March 2024) *https://perkinscoie.com/insights/update/copyright-office-stakes-out-position-use-works-ai-training* (accessed 1 June 2025).
[12] US Copyright Office, *'Copyright and Artificial Intelligence, Part 3: Generative AI Training'* (US Copyright Office, 9 May 2025) *https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf* (accessed 1 June 2025).

is done in a vastly different way and is still limited by the copyright restrictions- just as is any other use of a creative work.[13]

2. PATENT LAW AND AI: THE INVENTORSHIP PROBLEM

According to the case Thaler v. Vidal[14], it was said that, it is not possible to be registered as an inventor in order to get a patent. Inventorship was questioned in case of Dabus, a landmark case. The case assisted in offering practical insight and comparative study of the openness of Artificial Intelligence as the patent inventor. To inventorship, the questions to consider would be:

- Who can be credited with what is invented by an AI system, otherwise, on its own?
- The AI user, the AI developer, or nobody?

According to US law, the person who created the matter of interest is the so-called inventor. In the case of DABUS, it was stated that it is not a particular obstacle between the AI and humans in the area of inventorship.[15] But AI alone cannot generate any data unless human involvement, or human interaction of some form. As an opposite of the above argument, the next way that should also be recognized is that AI can become innovative, and it will depend on multiple factors, namely creative and cognitive capabilities, connected with what it will learn. However, it is not so developed as human beings.[16] More than that, AI will be able to generate independent content, but the discussion is on whether the law will consider technology as an inventor. AI has some requirements to be given inventorship over any given work, and these are mostly self-awareness and intelligence to achieve this stage. Artificial intelligence can create something in a framework, but it requires data to work. The patent law is based on various legal principles; however, the basic goal is the same: to protect intellectual work, to cover the costs of research and development, to encourage innovation, and to give the owner the right to commercially exploit his or her innovation. The patent protection of AI-generated inventions is in existence, and this ensures that the owner, the creator, or the investor of AI will receive the rewards of their inventions.[17] Both AI and human-generated needs require

[13] *Ibid.*
[14] Thaler v Vidal, 43 F4th 1207 (Fed Cir 2022) *https://casetext.com/case/thaler-v-vidal* (accessed 1 June 2025).
[15] *Thaler v Vidal* No 2021-2347 (Fed Cir 2022), see summary at Reed Smith LLP, 'Sorry, DABUS. AI cannot be an inventor on a U.S. Patent' (8 August 2022*) https://www.reedsmith.com/en/perspectives/2022/08/sorry-dabus-ai-cannot-be-an-inventor-on-a-us-patent* (accessed 30 may 2025).
[16] BitLaw, 'AI Inventors and Patent Applications' (BitLaw, 2024) *https://www.bitlaw.com/ai/AI-inventors.html,* (accessed 30 may 2025).
[17] World Intellectual Property Organization, 'Patents' (WIPO, 1 June 2023) *https://www.wipo.int/en/web/patents* (accessed 30 May 2025).

inventorship, but in that case, when AI satisfies the conditions of the patent, it can obtain inventorship and reap the rewards of what it has internally created. The first option refers to the AI inventorship, i.e., to consider AI-created inventions as equal to the human ones; an invention should be registered due to the protection, novelty, This implies that an innovation that is produced by an AI system cannot be omitted out of patent protection simply because it was produced by an AI system. Because of this, such inventions could be theoretically patentable. However, this does not mean that ideas designed by AI can be automatically patentable, the idea though developed by AI still must meet the other substantive criteria, patentability requirements which include novelty, usefulness, and non-obviousness along with inventorship. The patentability cannot be measured merely by the aspect of inventorship; this should not act as a barrier in ascertaining the worth of an invention.[18]

The second, no less important is the fact that when AI will independently execute the process of creation and generate an idea, then who can be judicially declared its creator? In the case of the person who simply gave the AI the input data, he cannot be considered as an inventor. Over the years the patent law has ensured that the provision of information, provision of basic advice or provision of resources it all does not make one an inventor unless he is involved in the creation process. This concept captures one of the major prescribed principles in the patent law that only those who actually participated in the conception and progress of the invention can claim to be inventors.[19] This requirement fails to exist in the case of persons who have merely been included as a pre-requisite prior to the invention manifesting or even those who only assist in the case of minimal or even secondary assistance (e.g. the provision of materials or post invention assessment). Assigning an inventorship to the anyone thus becomes difficult or even not possible to do so in case the AI is considered unacceptable to be chosen as the inventor and no human has contributed to a meaningful degree to inventive activity.

At this point, since we have developed the possibilities that how AI can be regarded to take an inventorship, most of its problems lie in the fact that, on the one hand, it is more than obtaining an inventorship.[20] The main reason why one cannot consider the work of AI is because AI cannot have the intellectual property right in India because the Indian patent right does not

[18] S&R Associates, 'AI-Generated Inventions: New Questions for Patent Regimes' (S&R Associates, 5 April 2023*) https://www.snrlaw.in/ai-generated-inventions-new-questions-for-patent-regimes/* (accessed 1 June 2025).
[19] BitLaw, 'AI Inventors and Patent Applications' (BitLaw, 2024) *https://www.bitlaw.com/ai/AI-inventors.html* accessed (1 June 2025).
[20] DLA Piper, 'AI as inventor: Legal challenges and implications for patent law' (DLA Piper, 6 September 2023) *https://www.dlapiper.com/en/insights/publications/law-in-tech/ai-as-inventor-legal-challenges-and-implications-for-patent-law* (accessed 1 June 2025).

regard AI as an intellectual legal entity. This poses a question, who should own patent rights in a case an AI system outputs a patentable invention?[21]

It is possible that the conventional concepts of intellectual property rights and innovation incentives will be questioned in case AI is held as a creator. US, UK, and the EU courts rejected the AI patent liability, with the primary focus on the undesirability of exclusive human creators and have developed the route of openness toward AI inventorship in Australia and South Africa. India is now in the spot to either make a stand against AI inventorship or against the international stand or carve its own path by revising its patent legislations to permit AI-based innovation.[22]

3. INDIA'S POSITION ON AI AND IPR

A combination of artificial intelligence and copyright law in India poses rather complicated issues of originality, inventorship, and authorship under the different acts. The fundamentals of copyright protection are linked with creativity and the intellectual work of man. The argument has been that the originality engineered into AI training by human input, such as the choice of data sets, the creation of algorithms, makes such output non-original, whereas the output of AI can be too limited in creative expression to be original.[23] This definition of the term author is significant at this point; according to it, an author is a person who has started or made someone start and create a work, and in that way, it is excluded by AI systems, which do not have the status legal persona. The major concerns here are who says that he is the owner of the rights to AI works and whether such works can receive protection. The issue of inventorship and eligibility gives rise to complex problems in India because of AI. The Indian Patents Act, 1970, in section 6 only acknowledges a true and first inventor as the owner of rights to apply for a patent, i.e., a human being or otherwise the authorised assignee of such human being. This sends the signal of whether an AI system can work alone to create an invention that passes patentability standards. The use of AI is also challenging the established concepts in trademark law, which have always been dependent on human creativity and the sense of brand identity. When AI starts producing logos and other branding components, it destabilises traditional thoughts of authorship and ownership. The existing laws do not say

[21] Sanyam M Surana, 'DABUS Case: AI Inventorship in Indian Legal Regime' (Khurana & Khurana, 19 March 2025) *https://www.khuranaandkhurana.com/2025/03/19/dabus-case-ai-inventorship-in-indian-legal-regime/* (accessed 1 June 2025).

[22] *Ibid.*

[23] Kailash Chauhan, 'Artificial Intelligence and Copyright in India' (2025) SSRN *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5096997* (accessed 1 June 2025).

anything about the status of the trademarks produced by AI, which do not provide any clear regulations about their originality, protection, and recognition. In the Vikshit Bharat forum, there is a roadmap to the Vikshit Bharat India, which is in the perspective of changing marvelously in the artificial intelligence, wherein the visionary leadership of Narendra Modiji is leading the way. The government is playing a visible role in creating an ecosystem of AI in India, a first of its kind in Indian history, where research opportunities are available in the market.[24]

The path of Vikshit Bharat India is being changed significantly in artificial intelligence in the dream of Narendra Modiji in the forum of Vikshit Bharat. This would be the first time in the history of India when the government is proactively creating an environment of AI where research can be conducted. It is not reserved only to the area of lesser use anymore; it has already been experiencing breakneck speed, and with policies, the Modi regime is providing a world-class infrastructure in AI to students, startups, and innovators alike.[25] But now AI has stepped over the fine line of claiming inventorship on work which originally was not created by it. The significant advancements in AI in India, therefore, involve the scalability of AI compute infrastructure, the opening up of high-performance computing, building a strong supply chain of GPUs, the creation of native GPU solutions, affordable access to compute and the reinforcement of semiconductor manufacturing.[26] The AI has penetrated India in all sectors and its influence is gaining more and more relevance day by day, as it begins to take over jobs that were performed only by humans. Innovation and accountability make up the pragmatic regulation of AI in India because of the avoidance of overregulation that may kill the growth and on the other tip unregulated growth of the market because it forms. The economic and social developments form major dependence in the technological advancement. Recently the controller general of patents in India objected to the generation.[27] To satisfy the requirements and necessities of any invention in India, the invention should be considered novel, i.e. it should not be divulged to the world anywhere before the filing date of the patent document. The person

[24] Mondaq, 'Protection Of Trademarks In The Age Of Artificial Intelligence' (Mondaq, 30 January 2025) *https://www.mondaq.com/india/trademark/1576970/protection-of-trademarks-in-the-age-of-artificial-intelligence* (accessed 1 June 2025).

[25] Press Information Bureau, *'India's AI Revolution'* (Press Release, Ministry of Electronics and Information Technology, 17 June 2025) *https://www.pib.gov.in/PressReleasePage.aspx?PRID=2108810* (accessed 2 June 2025).

[26] Aishwarya Agarwal, *'The Impact of Artificial Intelligence on Intellectual Property Rights: A Case for Reform in Indian Patent Law'* (2023) Indian Journal of Law and Technology (Blog) *https://www.ijlt.in/post/the-impact-of-artificial-intelligence-on-intellectual-property-rights-a-case-for-reform-in-indian-p* (accessed 2 June 2025).

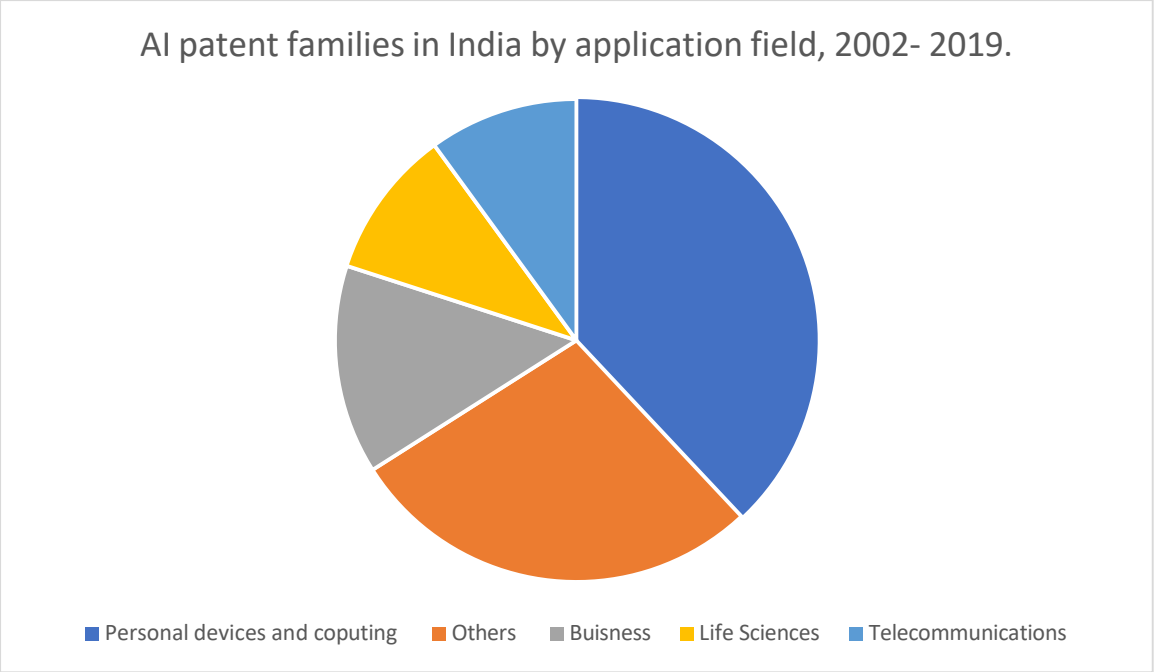
[27] *'Artificial Intelligence and Intellectual Property Rights in India: Legal Challenges and Opportunities'* (Record Of Law, 2024) *https://recordoflaw.in/artificial-intelligence-and-intellectual-property-rights-in-india-legal-challenges-andopportunities/* (accessed 2 June 2025).

who invents must incorporate the inventive step, and the invention must be applicable in an industry or be taken up in industry. A human can meet these criteria to come up with inventorship, and in this case, AI has failed in the determination of inventorship when it comes to a work that it has accomplished.[28] The intelligence is significant to human beings as man has taken thousands of years to understand and realize how it is that we think, forecast, perceive, and control a world much bigger and complex than we are. It has never attempted to know or create intelligent things in artificial intelligence. The Dabus case, though not an Indian case, dabus case has been the landmark case, which has spread all over the world and is taken as an important precedent in the case of AI inventorship. It has denied the application of AI inventorship.[29] When applying AI to come up with a logo or brand name, one may have questions regarding the distinctiveness of the mark.[30] As AI can create logos and marks based on current designs, there is a chance that AI would create marks that are neither original enough nor distinguishable enough compared to the existing trademarks, which can result in infringement problems. Conventionally, a trademark is said to be owned by a natural person or a legal entity that establishes or applies to a trademark. Nonetheless, in case AI produces a trademark, it is difficult to give the authorship, as AI is not a legal person. India has not experienced any monumental trademark cases directly involving AI systems. But there are such cases as Tata Sons Limited v. Hakunamatata Tata Founders & Ors[31]. (2022) involves the misuse of the trademark realm on the Internet and the focus on seeking protection against technological malpractices.[32] Demonstrates the significance of safekeeping trademark over the Internet. In Amway India Enterprises Pvt. Ltd. v. 1MG Technologies Pvt. Ltd[33]. (2020), it is concerned with Reinforces intermediary liability where the trademark is used in data. Dabur India Ltd. v. Emami Ltd.[34] (2004), this case was made before the beginning of AI, but it focused on comparative advertising. The case has established a precedent of tackling technological

[28] Aishwarya Agarwal, '*The Impact of Artificial Intelligence on Intellectual Property Rights: A Case for Reform in Indian Patent Law'* (2023) Indian Journal of Law and Technology Blog *https://www.ijlt.in/post/the-impact-of-artificial-intelligence-on-intellectual-property-rights-a-case-for-reform-in-indian-p* (accessed 2 June 2025).
[29] Sanyam M Surana, 'DABUS Case: AI Inventorship in Indian Legal Regime' (Khurana & Khurana, 19 March 2025*) https://www.khuranaandkhurana.com/2025/03/19/dabus-case-ai-inventorship-in-indian-legal-regime/* (accessed 2 June 2025).
[30] 'Artificial Intelligence and Intellectual Property Rights in India: Legal Challenges and Opportunities' (Record Of Law, 12 February 2025) *https://recordoflaw.in/artificial-intelligence-and-intellectual-property-rights-in-india-legal-challenges-andopportunities/* (accessed 2 June 2025).
[31] [2022] SCC OnLine Del 2968.
[32] 'Artificial Intelligence and Intellectual Property Rights in India: Legal Challenges and Opportunities' (Record Of Law, 12 February 2025) *https://recordoflaw.in/artificial-intelligence-and-intellectual-property-rights-in-india-legal-challenges-andopportunities/* (accessed 1 June 2025)
[33] [2019] 260 DLT 690 (Delhi HC).
[34][2004] 112 DLT 73 (Delhi HC).

advertisement and its implication on trademarks since mimetic ad scripts are now being created using AI technology. Analogically, in case AI produces a mark, its owner could be considered as the entity working with or possessing the AI system. Who Owns AI-Generated Marks In case an artificial intelligence produced a trademark, the question that comes up is who should own the trademark, the owner of the artificial intelligence or the owner of the system. The existing Indian trademark legislation is silent on such a situation and this puts the owners of AI systems in a grey legal zone.[35] All these factors are causing AI to develop at a rapid pace in India which will lead to legal innovations that may cover the following areas: IP types specific to AI and to count AI as a source of innovation and creativity which has the potential to safeguard and streamline intellectual ownership of the AI produced content.[36] The possibility through dual inventorship and authors where the patents act and the copyrights act can be changed, and AI can be considered a contributor or an assistant author would give a clearer definition of the definition of contributors. It ends with mentioning that the legal situation in India is such that AI cannot be seen as an inventor or an author. The person who owns or who controls AI system is described as being the one who creates the work, regardless of whether AI system has made a significant contribution in that respective area. But, as AI continues to evolve, the Indian legal system will need to adapt to address the challenges resulting from the present[37].

[35] Daisy Banakhede, 'AI-Generated Trademarks: Legal Ownership and Challenges in India' (Khurana & Khurana, 10 May 2025) *https://www.iiprd.com/ai-generated-trademarks-legal-ownership-and-challenges-in-india/* (accessed 1 June 2025).
[36] IndiaAI, 'India's AI-driven legal future: Opportunities and emerging trends in 2025' (IndiaAI, 2025) *https://indiaai.gov.in/article/india-s-ai-driven-legal-future-opportunities-and-emerging-trends-in-2025* (accessed 1 June 2025).
[37] Daisy Banakhede, 'AI-Generated Trademarks: Legal Ownership and Challenges in India' (IIPRD, 10 May 2025) *https://www.iiprd.com/ai-generated-trademarks-legal-ownership-and-challenges-in-india/* (accessed 3 June 2025).

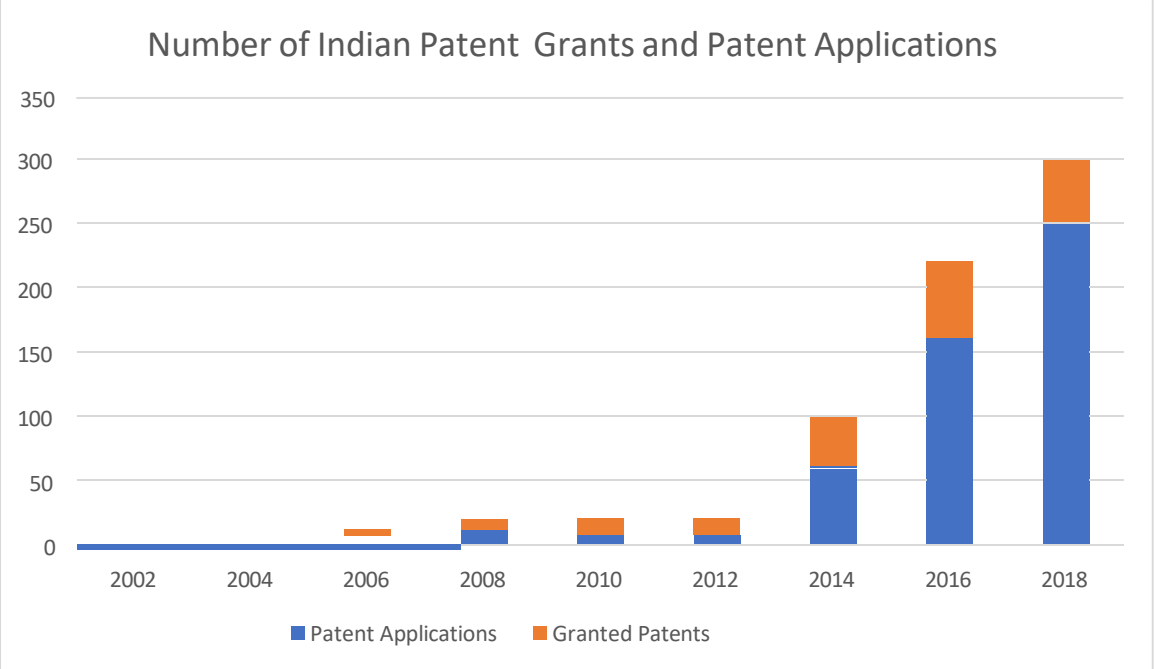


Source: CSET worldwide AI-relevant patents Database.[38]

28% of the others that is given here is:

- transportation
- banking and finance
- industrial and manufacturing
- energy management
- physical sciences
- agriculture
- semiconductor

[38] CSET, *Worldwide AI-Relevant Patents Database* (database) *https://cset.georgetown.edu/publication/cset-patent-database/*.



Source: CSET worldwide AI-relevant patent database, as of January 2021.[39]

From ownership to stewardship

With AI turning into one of the fundamental assets in our lives, be it in business or in personal decision making, in decision and policy making, in managing and governing data, AI has come to be crucial. In the AI-dominated world, their duties increase significantly. According to tradition, data stewardship has been involved with upkeep of quality, accuracy and accessibility of data in organisations. As far as AI is increasing at a progressive rate, the functions of data stewardship are growing as well. Since AI systems are completely reliant on the data, efficiency and equity of their outputs are directly related to the data on which it is trained. By virtue of AI, stewardship becomes not only significant, but also central in the achievement and responsibility of AI systems. The consciousness of the effect of the decisions made by AI is another important element of data stewardship in AI. The transition toward AI will not substitute human data stewardship, but it will advance and outline it. Context, judgment and ethical understanding are human inputs to data governance. NIDG model advocates a kind of stewardship according to which the highest goals of human intentions significantly influence the functioning directions of AI technologies and the compliance of AI technologies with the perspectives of the entire organisation and society. Data ownership is not just a technical

[39] CSET, 'Worldwide AI-Relevant Patent Database' (database, January 2021) *https://cset.georgetown.edu/publication/cset-patent-database/*.

situation rather; it is a social challenge. The line and question of ownership, control, and usage of the data is hazy and it remains to be an unanswered question in this technological world. At one point, Merav Yuravlivker, chief learning officer at Data Society explains that Ownership of data sounds like a myth to her. How we gather data is normally a single point of contact. It has several touchpoints, and information that you are giving is not your own.[40] Through generative AI, a different twist to the data ownership concept is brought about where the technologies need large quantities of both public and proprietary data to be trained on. Merav Yuravlivker also clarified that, one of the largest changes that we have experienced is that, now we know that any data we are making open and sometimes even closed and could even be seen by the parties to develop new models. In this, there exist some vital questions that has emerged to determine the use: i) Who should own the output of the generative AI systems trained on the data in the public data is the relevant question. ii)Is it possible to give people greater powers on how their data is utilized during AI training? The answer to these questions is not purely theoretical, but they will provide a new course, faith, and the governance of generative AI. The ownership issue is ambivalent and stewardship increasingly valued as a more finely targeted approach to responsible data stewardship. The realization that the practise of stewardship is also applicable in the sense of responsibility as well as its data practice is increasingly being accepted unlike focusing on the ownership or control to the data stewardship involves the capability to institute definite ethical principles as pertain to the process of its gathering, administration and utilization.[41] The camp on the side that the practice of stewardship also makes sense in terms of responsibility, in addition to requiring one to contend with the data practice rather than focusing whether one owns or controls the data, the practice of stewardship represents the capacity of establishing clear ethical rules in consideration of the collection, management, and utilization of the data. Data stewardship implies that all the stakeholders whether a single person or corporations or governments are sensitive to the rules of accountability and transparency in working with data. And despite distributed ownership and control by large platforms, the stewardship concept provides a model of responsible and accountable administration of data. These three ownership, control, and stewardship concepts have separate roles but are united under the larger term of data governance. Forbes calls the data governance, stipulates the mission, standards, and the goals that a company needs to follow

[40] Data & Society, 'The Complex Reality of Data Ownership in the Digital Age' (Data & Society, 25 October 2017) *https://datasociety.com/the-complex-reality-of-data-ownership-in-the-digital-age/* (accessed 3 June 2025).
[41] Data & Society, 'The Complex Reality of Data Ownership in the Digital Age' (Data & Society, 25 October 2017) *https://datasociety.com/the-complex-reality-of-data-ownership-in-the-digital-age/* (accessed 3 June 2025).

to draw their data strategy that would generate trust in their data quality and reliability.[42] A good governance framework helps organizations collectively address the issues of ownership, control, and stewardship, moreover, in the incorporation of the idea of generative AI in their operation. Governance in all these will allow one to govern them to facilitate compliance and innovations. It, thus, comes down to dragging around in a circle, seeing no way to any concrete conclusion. AI is a machine model of learning; it learns what the human puts into it, and it is fed too much data.[43]

AI is a machine learning model; it learns what humans put into it, and it thrives on vast amounts of data. A more comprehensive dataset is the accessibility and availability of data. The data ownership is to remain responsible and to maintain its quality. In the training and commanding of AI, the data that is added on it is more reliable and is properly labelled, which strengthens the algorithm. AI is advancing and is finding its way into more and more markets, data ownership is likely to grow in importance and the proper data governance, offering the guidelines about how data is possessed, shared, and utilised will play a crucial role in AI development being morally sound and secure, preserving the ethical principles and transparency.[44] Data ownership management may hold back AI development or expand it. In a governance model that is must-guiding, organizations will be able to establish an environment whereby data not only will be safe but can be disclosed in a way that will not harm the survivability of the AI systems with severe penalties and impacts. Striking the right balance between the advancement of technologies and ethical laws will become a major secret behind witnessing the real power of AI going forward.[45]

[42] Bernard Marr, 'What Is Data Governance and Why Does It Matter?' (Forbes, 6 December 2023) *https://www.forbes.com/sites/bernardmarr/2023/12/06/what-is-data-governance-and-why-does-it-matter/* (accessed 3 June 2025).
[43] IndiaAI, 'The Intersection of Data Governance and Artificial Intelligence' (IndiaAI, 2024) *https://indiaai.gov.in/article/the-intersection-of-data-governance-and-artificial-*intelligence (accessed 3 June 2025).
[44] Sogeti Labs, 'Data Ownership in the Age of AI: The Impact of Data Governance' (Sogeti Labs, 2024) *https://labs.sogeti.com/data-ownership-in-the-age-of-ai-the-impact-of-data-governance/* (accessed 3 June 2025).
[45] *Ibid.*

4. CONCLUSION

With Artificial Intelligence gradually transforming the creative spirit of the world, innovation, and authorship, the inherent frameworks of Intellectual Property Rights (IPR) are experiencing a crisis of re-examination. The world has been split in half: on the one hand, there are the regions where the importance of human creators and inventors is stressed, such as the United States or the European Union; on the other one, there are such countries as the South Africa or Australia that start to consider the role of AI as the possible legitimate owner of intellectual property. The question of whether India will preserve the traditional IP standards or set the example with progressive, AI-embracing legislation looms as the country now takes the stage as the locus of development, as far as technological advancement is concerned. The author has indicated that the current IP law design is not comprehensively equipped to face the dynamic issues presented by the autonomous AI systems. Although in most cases, the products created by AI fall under conventional definitions of originality and innovation, the lacking presence of a legally identified human creator or technologist precludes protection in many cases. Simultaneously, there still exist issues regarding the privacy of data that can be utilised to train these AI systems; if the data is obtained and processed by an unacceptable party, its privacy will be compromised, with serious concerns relating to data consent, fair crediting, and commensurate recompense. With such gaps, the paper proposes the new concept of data stewardship and the NIDG (Non-Institutionalized Data Governance) model as a progressive way of doing things rather than the traditional concept of ownership. This model provides an expansion in humanistic values: ethical responsibility, transparency, and accountability, in a world comprised of machines that can reproduce and create creative work. Stewardship, together with a set of new technological advances such as blockchain-based watermarking, automated licensing based on smart contracts, offers a scalable and ethical direction to even more responsible and enforceable AI-IP governance. The future of India would have a three-pronged approach, which should be undertaken in three parts:

- Legislative Reform revision of the Patents Act and Copyright Act, along with the changing aspect in which AI plays, including the possibility of shared authorship or inventorship.
- Judicial Adaptation- The process of persuading the courts to use more flexible interpretations that may adjust to the circumstances and challenges that AI technologies bring.

- Engaged Policy Making- Enabling supportive and participatory policy-making by use of white papers, consultations with stakeholders, and by creation of test beds, including sandboxes of experimenting regulatory environments to test AI-IP policies.

Essentially, this paper highlights that the big question at the meeting point of AI and IPR is no longer merely the matter of who should own rights- it is the question of responsibility in the age of digital creativity. Entering a new age where machine-created originality reigns, the law and legal systems should leave the binary definition of a human creator and a machine creator and adopt a collaborative and dynamic innovation paradigm. This is the only way through which AI can sustain human progress that is legally sustainable, ethically acceptable, and also socially justifiable.

HARNESSING ARTIFICIAL INTELLIGENCE FOR EQUITABLE AND SUSTAINABLE DEVELOPMENT: AN INCLUSIVE APPROACH TO RISKS AND GOVERNANCE POLICIES.

Supriya[350]
Dr. Subhi Subhani[351]

Abstract

Artificial Intelligence and emerging digital tools and technologies have drastically catalyzed the equitable and sustainable development at a global scale. By enabling data-driven decision making, these evolving technologies have revolutionized all the sectors that are significant to Sustainable Development Goals (SDG), renewable energy, environmental management, including healthcare system as well. For an instance, we may consider the complementary and significant role played by AI in the climate based agricultural practice, risk management during disaster, and, reducing waste and carbon footprints. Although, these potential inputs are too appropriate to negate, but along with the pros that it holds, there are also cons which include multiple biases arising out of different countries due to un-common AI based algorithm, data privacy risk factor, and extensive need for supportive infrastructure. With the help of adequate governance, the equitable and sustainable benefits of these technologies can be utilised with appropriate ethical standards and transparency.

Governance in this field must relate to assuring diversified stakeholders including both public and private sectors along with advanced and marginalised society so that each strata of communities get the opportunity to address the social, ethical and environmental challenges. Digitisation should be an effort that must have its foundation on transparency and empowerment of the indigenous who have protected the environment as the core principle of their lives. This paper intends to analyse the various methods in which AI and other emerging digital technologies can be resourceful aid for resilient future. It also examines the risks emanating from the adoption of AI and, encapsulates recommendation of policies for ensuring that equitable growth is ensured with no biases. The overall objective is to promote an understanding about how AI and inclusive governance can help to promote economic, social and environmental development.

Keywords**:** *AI, Algorithm, Digitisation, Sustainable Development Goals (SDGs), Transparency.*

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1. INTRODUCTION

Equitable and sustainable projects across the globe significantly addresses the challenges of inequality, climate change, and resource exploitation in today's interconnected world.[1] With more than 700 million people living in extreme poverty amid aggressive environmental crises, as severe as record breaking heatwaves and loss of biodiversity. We need sustainable development to ensure benefits for people of all strata of society without any compromise with the future generation's need.

The uniform framework is rooted in UN Sustainable Development Goals (SDGs) which is a prominent recognised body to promote inclusive growth, to align economic with social justice, exhibiting resilience against adversities such as geopolitical tensions and pandemics. Incorporating Artificial Intelligence and digital tools have revolutionised decision-making by operating on massive data for predictions, optimising tools and resource, scaling solutions across sectors healthcare, agriculture, and energy. For illustration, consider AI-driven farming in India would not only yield better results but also cut on excessive water use. Technologies such as IoT for blockchain and smart grids for supply chains further amplify these effects which not only enables real-time environmental monitoring but also ensures equitable access to services in remote as well as scarcity driven areas. But, at the same time their full potential and execution is within the grip of governance level to control or mitigate biases and the digital divide.

Artificial Intelligence and other digital technologies such as machine learning, blockchain, big data analytics, and edge computing serve as powerful catalysts for sustainable development by enabling precise, scalable solutions to challenges worldwide.[2] These are the tools that process massive datasets in the real-time, uncovering patterns and efficient predictions, thus driving efficient innovations across the social, economical and other environmental domains. Their role in the United Nations Sustainable Development Goals (SDGs) is direct, as

[1] Manjunath P. Eelager, Nagarjuna Prakash Dalbanjan, Suhasini Madihalli, Mahesh Madar, Naveenkumar P. Agadi, Karuna Korganokar, B.K. Kiran; Pathways to a sustainable future: Exploring the synergy between sustainability and circular economy; https://www.sciencedirect.com/science/article/pii/S2666188825007701 (2025)

[2] Vincenzo Varriale, Antonello Cammarano, Francesca Michelino, Mauro Caputo; Artificial intelligence in technology networks: A catalyst for achieving the SDGs; https://www.sciencedirect.com/science/article/pii/S0166497225002305 Volume 151, March 2026

supportive.[3]

The goals of Affordable and Clean Energy set as SDG 7, Good Health and Well-being set as SDG 3,[4] Sustainable Cities and Communities set as SDG 11, and Climate Action set as SDG 13, are all heavily relied upon data driven interventions that effectively promotes inclusivity and optimisation.

The grounds for reliance is extremely solid I.e. AI encompasses the similar algorithm as depicted by the human cognition.

There are complementary digital tools that amplify this calculation such as Internet of Things sensors collect environmental data, blockchain ensures transparency in supply chains, and big data platforms integrate different and origin inputs for an output of holistic nature.[5] The strategies are proactive, for instance as seen in AI's ability to forecast crop failures.[6]

2. MAJOR REVOLUTION AREAS LED BY AI

A. Agriculture and Food Security: Precision farming uses AI and IoT for boosting yields, monitoring soil quality, studying the variation in irrigation as per needs and directly advancing the goal of Zero Hunger (SDG 2). Solar Smart Irrigation is also one of the best AI based methods to ease the turmoil of ascertaining the timely irrigation.[7]

B. Climate Action and Environment Change: Satellite powered AI monitor carbon emissions and deforestation in real time. For example; tools like IBM's Watson track biodiversity loss,[8] while evidently, predictive analytics stands as absolute aid for disaster preparedness, aligning with SDG 13 and SDG 14 i.e. for Life on Land.

C. Energy Sector: AI optimises energy integration through predicting demand fluctuations,

3 Norichika Kanie & Frank Biermann, Governing Through Goals: Sustainable Development Goals as Governance Innovation (2017).

4 *17 Sustainable Development Goals: United Nations – Global Rewilding Initiative: Rewilding People & Nature*, https://glorew.com/articles/17-sustainable-development-goals-united-nations/?gad_source=1&gad_campaignid=11802760236&gbraid=0AAAABuL4GDadOtwTuazgtOVx2MyW9w35&gclid=CjwKCAiA7LzLBhAgEiwAjMWzCG6XBTZk-IkdGRt-WWYiwhPMkZZQOahtBJw9zl53QsXCf5kEobu7KBoCXEcQAvD_BwE (last visited Jan. 20, 2026).

5 *Id.*

6 *Id.*

7 Nurmalitasari, Nurchim, Retna Dewi, Lestari.; Artificial intelligence-driven solar smart irrigation for sustainable agriculture: Trends, challenges, and SDG implications – A systematic review; https://www.sciencedirect.com/science/article/pii/S2772375525008962 (2025)

8 Amar Causevic, Sara Causevic, Matthew Fielding & Julia Barrott; Artificial intelligence for sustainability: opportunities and risks of utilizing Earth observation technologies to protect forests; https://link.springer.com/article/10.1007/s44353-024-00002-2 (2024)

smart grids and reducing waste potentially, up to 15-20%. For instance, google DeepMind cut data centre cooling energy by 40% through AI algorithm, which is simultaneously scalable to wind and solar farms for SDG 7.

D. Healthcare: Diagnostics based on AI tools like telemedicine mobile platforms and predictive epidemiology models which improves access in undersized access in the remote areas, reducing mortality rate which also gets covered under SDG3.

E. Urban Development: Smart cities rely heavily upon AI for traffic optimisation, cutting urban emission and supporting SDG 11 which targets to achieve sustainable cities and Communities.

These revolutions depict the impact of AI and digital technologies on SDG and how they aid in an equitable deployment to avoid any divide which is already in an aggregated form in the society.

3. DATA-DRIVEN DECISION MAKING AND POTENTIAL ANALYSIS

Where vast datasets are transformed into potential insights through advanced analytics, enabling government to anticipate social challenges, allocate the records, and accordingly plan long-lasting resilience. AI enables the predictive modelling forecast of future scenarios with high accuracy using techniques like machine learning algorithms and time series analysis.[9] Resilient planning, as well integrates these tendencies to develop strategies that withstand mishaps like climate variability or economic disruptions, ensuring sustainable outcomes parallel to organisational goals. The contribution of AI in these processes are coverage real-time data to uncover hidden patterns, studying probable scenarios, generating algorithms like deep learning or random forests that predicts outcomes, facilitating scenario making and incorporating supply chain risks and climate data to create adaptive frameworks that minimize vulnerabilities.[10]

For example, computer vision and Natural Language Processing (NLP) analyse the satellite images to assess environmental changes and social media trends to evaluate the economic

[9]Mattew A. Olawumi, Bankole I. Oladapo *AI-driven predictive models for sustainability* https://www.sciencedirect.com/science/article/pii/S0301479724034583 (2025)

[10]Mobolaji Shobanke, Mehul Bhatt, & Ekundayo Shittu; Advancements and future outlook of Artificial Intelligence in energy and climate change modeling; https://www.sciencedirect.com/science/article/pii/S2666792425000058 (2025)

viability.

The vital roles of AI across different sectors in India involve with examples:

A. **Climate-Based Agriculture:** *Microsoft's FarmBeats*[11] platform integrates AI, IoT sensors, drones, and satellite imagery to deliver agriculture in water-scarce regions like hilly northern regions harvesting wheat and vegetables, while north-eastern cereal farms often faces droughts. Farmers get the access to the real-time insights on weather condition, nutrients, soil quality and moisture which enables them to take climate based decisions like prediction of pest and undertaking optimum irrigation. As a result, water usage was reduced upto 30%, the need of pesticide was cut down to 15% across more than 10,000 acres in trials. AI with traditional knowledge helped address climate unpredictability, empowered women-led households, which also boosted income by 25% and food security while reducing environmental strain.

B. **AI for Disaster Risk Management:** *Google's Flood Forecasting Initiative* in India was used to pilot the Patna (Bihar) region in 2018 and was expanded nationwide by 2020. This AI uses ML which is. a physics based hydrological models, real-time satellite data from agencies to map the riverine floods upto more than 7 days ahead across 250,000 sq. km. This helped to reach 200 million Indians and alerts via Google Search, Maps, and local languages which also integrated well with the Government policies. There was more than 90% accuracy, which prevented 1Billion plus of damages, and improved evacuation by 40% in events like Assam floods. Thus, it helped minimise casualties through better resource allocation and other management relating pre-disaster preparedness. Moreover, post disaster, AI aids damage assessment using Geography Information System (GIS).[12]

C. **AI for Waste and Carbon Reduction :** *Greyparrot's Waste Intelligence* was deployed in India in 50+ facilities across 20+ countries which used computer vision on conveyor belts to analyse 111+ waste categories, Green House Gases (GHG) Emissions, monitory worth and other recyclables in real-time through Greyparrot Analyser and Sync APT. This upgraded recycling efficiency by 60%, landfill diversion by 30%, reduction in CO2

[11]Zerina Kapetanovic; FarmBeats: Improving Farm Productivity Using Data-Driven Agriculture; https://www.siam.org/publications/siam-news/articles/farmbeats-improving-farm-productivity-using-data-driven-agriculture/

[12] Aabhas Sharma; Google Expands its Flood Forecasting in India; https://timesofindia.indiatimes.com/gadgets-news/google-expands-its-flood-forecasting-initiative-in-india/articleshow/71201447.cms (2019)

emission by 25%, and GHG from waste streams.[13]

D. **AI for Gas Management in Transportation :** *Intangles* AI optimises transportation and logistics, by analysing emissions in real-time with dynamic dashboards for pro-active interventions, applicable to to Indian Supply chains. This helped to bring down fuel consumption by 20%, and carbon emission by 30%. This aided businesses in equitable urban logistics and net- zero goals.[14]

The above examples demonstrate AI's measurable contribution, e.g. 20-60% efficiency gains while strengthening deployment to bridge digital development among different divisions and ensuring that benefits reached marginalized communities for truly sustainable progresses.

4. CHALLENGES AND LIMITATIONS

We can evidently see that AI and emerging technologies offer immense transformative potential for sustainable as well as sustainable development, yet their deployment is met with significant challenges that undermines the intended benefits. These risks cover technical, social and ethical, infrastructural domain and often leading to inequalities rather than alleviating them.

The major concerns lying here are algorithm bias, breach of data privacy, the digital divide, the infrastructural constraints, each of the mentioned concerns require proactive mitigation to ensure inclusive progress.[15]

Algorithmic Bias and Fairness Issues: When AI systems are trained on skewed datasets, the perpetuate biases based on histories, leading to discriminatory outcomes. For instance, darker- skinned individuals suffer error in facial recognition for upto 35% more than the othersIn sustainable applications, like obtaining credit score for the purpose of loans or disaster aid allocation, biased algorithms can exclude farmers and indigenous groups from resources, which simultaneously hindering SDG goals for equitable development.

Data Privacy Concerns: The reliance upon vast personal and environmental datasets raises profound privacy risks, particularly under non or weak regulatory regimes. AI model in

[13] IndiaAI.gov.in. (2020). Using AI to predict Floods and Save Lives. Retrieved from https:// indiaai.gov.in/case-study/ using-ai-to-predict-floods-and-save-lives.

[14] Smart Analytics for a Fuel Efficient Fleet; https://www.intangles.ai/case-studies/smart-analytics-for-a-fuel-efficient-fleet/ (last accessed on 12 January 2025).

[15]Thomas W. Sanchez; The Ethical Concerns of Artificial Intelligence in Urban Planning; https://www.tandfonline.com/doi/full/10.1080/01944363.2024.2355305 (2024)

healthcare and agriculture often caters sensitive data without sufficient consent mechanisms, exposing users to suffer the breaches that has already been witnessed affecting millions. While data localisation laws like the DPDP Act 2023 are evolving, cross border data flows for AI training for global operation which automatically hampers the sensitive-privacy sectors.

Infrastructural Limitations: High demands of AI in data centres consume energy equivalent to small nations. This strains power grids and exacerbate e-waste problems. In low-income nations, inadequate broadband, and unreliable electricity hinder deployment for instance less than 40% coverage in rural India. When large modes emit CO2, it is as comparable as to five cars' lifetimes, directly countering sustainability aims under SDG 13.

Governance, Ethics and Transparency

Governance for AI and emerging digital technologies are indispensable to steer their immense potential towards equitable and sustainable development, risks mitigation while amplifying benefits. There is very high risk of inequalities, privacy invasion, and unintended environmental harms especially in an era where AI influences everything from climate modelling to healthcare. Only a robust and regulated governance, ethical guidelines, transparency in mechanisms, inclusive decision- making can ensure that AI would serve humanity as a whole.[16]

AI has its benchmark from UNESCO Recommendation on the Ethics of AI (2021), the OECD AI Principles (2019), and India's National Strategy on Artificial Intelligence (2024) and Digital Personal Data Protection Act (DPDP, 2023), and these frameworks promote accountability through compulsory audits, human oversight, and adaptive regulations that has been evolving with technologies.

Comprehensive Governance Framework: Imperative and significance

Ethical AI demands principles of non-discrimination, fairness and human rights primacy, enforced through tools like algorithm impact assessments conducted at deployment and monitoring stages. Transparency is brought in operation only through "explainable AI (XAI)

[16]Chad Barr; Governance of AI and Other Emerging Technologies: Balancing Innovation and Responsibility; https://www.accessitgroup.com/governance-of-ai-and-other-emerging-technologies-balancing-innovation-and-responsibility/ (2025)

techniques, where models provide rationals for decisions which are highly interpretable. Inclusivity frameworks makes it compulsory for diverse training data to counter biases. It is only in the premises of Sustainable Governance that addresses AI's ecological footprint: data centres already consume 1-2% of global electricity, projected to rise to 8% by 2030; thus, regulations guarantee energy efficient models, hosting of green data, and e-waste recycling aligned with SDG 12 (Responsible Consumption and Production). Enforcement of regulation ensures mild yet significant measures (certifications and voluntary codes) with strict laws. These laws can be punitive as well, for example, EU AI Act's tiered risk classification, supported by independent bodies like national AI ethics councils.

For an effective governance, it thrives upon collaboration across diverse stakeholders, for diversified insights and accountabilities. A multi- sectoral approach may look as follows:

Public Sector (Governments and Regulators): Government enact binding policies, such as india's #AIforALL mission (10,000 crore Rs. allocation in 2024) for ethical AI in agriculture and health, the DPDP Act monitoring data minimisation and consent.[17]

They fund public goods such as open datasets for SDG- aligned research, enforce cross-border data flows with sovereignty safeguards, and also integrates AI into national p[lans (e.g., NITI Aayog's AI strategy in parallel also serves to the goals of SDGs). There are other challenges such as buruecratic inertia, addressed via agile sandboxes for testing AI which involves high risks.[18]

***Marginalised Communities and Civil Society*:** Indigenous peoples, rural farmers and low income groups who are often the data subjects rather than beneficiaries insist on mechanism to include community vetoes on land-use AI (e.g., in Amazonian or Indian tribal conservation projects), advisory boards with veto power, and free informed prior consent (FIPC) protocols. There are NGOs like the Centre for Internet and Society (India) advocate for digital rights audits ensuring AI amplifying local knowledge, such as indigenous weather prediction integrated into climate models.

[17] IndiaAI.gov.in. (2024). AI in Agriculture in 2025: Transforming Indian Farms For a Sustainable Future. Retrieved from https://indiaai.gov.in/ai-in-agriculture-in-2025-transforming indian-farms-for-a-sustainable-future. (Lastly accessed on 12 December 2025)

[18]NITI Aayog, Government of India. (2024). National Strategy for Responsible AI. (Lastly accessed on 12 December 2025)

Universality in Digitisation: Empowering the Indigenous and Bridging the Divides

Digitisation should be universal, rooted in equity to avoid an AI with "two-tier" world. These strategies include:

A. Infrastructure Equity: Subsidised rural broadband (e.g., India's BharatNet Phase III targeting 2.5 lakh villages by 2026), low-cost AI devices, and an offline-capable edge computing.

B. Indigenous Empowerment: Co-designing the traditional ecological knowledge holders with AI, e.g., indigenous communities using AI to map sacred groves and ensuring digital tools respect cultural sovereignty and integrate oral histories into datasets.

C. Global South Focus: Initiatives like the Global Digital Compact (UN Summit 2024) promote technology transfer, fair data sharing agreements, and debt relief tied too green AI adoption.

D. Capacity Building: Vernacular AI (Bashini platform supporting 22 Indian Languages) and training programs like Digital Saksharta Abhiyan empowering 10 crore citizens.

5. CONCLUSIONS

Regulated and inclusive AI emerges as a central force in progressive economy, social and environmental development, simultaneously bridging gaps between innovation and equity in an increasingly complex scenario. By imbibing ethical governance, transparency and stakeholder collaboration into its fundamentals, AI transcends its role as a mere technological tool to become a catalyst for the overall progress strategically aligned with the SDGS. Economic point of view, it drives efficiently by optimising agricultural yields by 20-30%, streamlining energy grids, and promoting new employment ecosystem in the form of green technologies.[19] This also potentially adds trillions to global GDP while, at the same time creating inclusive opportunities for entrepreneurs from all the social levels through accessible digital platforms.

[19] Xie Chen, The role of modern agricultural technologies in improving agricultural productivity and land use efficiency; https://pmc.ncbi.nlm.nih.gov/articles/PMC12481170/; 2025

Socially, AI empowers communities by proving personalised healthcare diagnostics, disaster alerts in local languages, skill building tools, reducing inequalities and enhancing resilience against climatic vulnerability.[20] Environmentally, regulated AI minimises its own footprint through carbon tracking algorithms, energy efficient models while enabling precise interventions such as monitoring deforestation and waste reduction, curbing emissions equivalent to entire industries.

The synthesis of case studies, from FarmBeats in Indian Farmlands to Google's Flood predictions, underscores that success hinges on addressing biases, and privacy risks through robust policies like India's AI Mission and Global frameworks such as European Union AI Act. Conclusively, the pathway demands unwavering commitment to "AI for all" policy wherein policy makers enacting adaptive regulations, civil society ensuring community voices shapes deployment and industries prioritising ethical design.When AI is regulated inclusively, AI not only accelerates SDG attainment but reassures sustainable development as a shared triumph where the economic vitality, and social justice collaborates to build an equitable future for generations to come.

[20] Khan, M.A., ETAL. (2023). Potential Use of Artificial Intelligence (AI) in Disaster Risk and Management . PMC, NCBI

BOOK REVIEW

HEALTH LAW (2019) BY ISHITA CHATTERJEE, CENTRAL LAW PUBLICATION DARBHANGA CASTLE, ALLAHABAD, PP. 532, PRICE: RS. 450, ISBN: 978-93-88267-26-7

Lakpa Doma Rumba[21]

Health is the state of being physically, mentally, and socially healthy as well as the absence of sickness. Health legislation is becoming to represent this comprehensive idea more and more. Policies like India's National Health Policy are intended to ensure access to preventative treatment, promote healthy lifestyles, and address mental health concerns. Since health law promotes both individual well-being and a healthy society, it is crucial in establishing a nation's health landscape. The primary objective of this book is to bridge the gaps in the policy and offer a multi-sectoral platform for doing so.

Health Law book is a comprehensive volume with VI Units organized into various chapters and 532 pages that deal on patients' rights, the role of health professionals, healthcare funding, rationing, public health, occupational health, and environmental health. The book includes international and Indian human rights and commercial law on a variety of issues. The book adheres to the social-individual rights dichotomy, addressing healthcare access difficulties, patient-financier and health professional-financier connections, and individual healthcare rights.

Unit 1, of the book is divided into 4 chapters, comprehensively dealing with the meaning and concept of health and health law. The author in the book correctly points out that the health is ‘what we have in our mind’, and it is our right to enjoy highest attainable physical and mental health. Health care institutions also play a crucial role in improving community health. The book points out that the country lacks health insurance. Healthcare providers can improve health through patient care and community health promotion. The author points out the factor affecting health which are namely adult obesity, binge drinking, smoking, drug abuse, poverty and household income, employment statues of the person, lack of education, minimum access to health care facilities, and effects of pesticides on human health. Followed by India's National Health Policy (NHP) which was enacted in year 1983 and 2002 (revision of 2001) to improve healthcare access and quality for its citizens. The author of the book has also shown the functioning of State with respect to health care of the entire nation.

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The author has divided Unit II into 6 Chapters putting the light on various International Law and its concept on Health Law. The author here points out the significance of International Institution and laws like World Trade Organisation (WHO), Universal Declaration of Human Rights, 1948, United Nation Declaration on the Rights of Mentally Retarded Person, 1971, Declaration on the Right of Disable Peerson, 1975, ALMATA and TRIPs agreement on health care where all of this institutions and law is trying to attain its only objective as to help attain by all the people highest level of health possible and to recognised the right to an adequate standard of living for health and well-being and to constantly work with various countries government and support partnership in order to achieve its set goal. The author also emphasising on the access to proper medical care and physical therapy as a fundamental right in overall Unit.

The author of the book in the Unit III has divided the chapters into 5 parts comprehensively dealing with Right to Health enshrined in Indian Constitution under article 21 of Fundamental Rights and Art. 38, 39, 41, 42, 48 A, and 51 A of Directive Principle of State Policy. The author also put a significance of Health care under Schedule VII, Preamble of India, as well as the importance of State Government in regulating the Trade and Commerce for securing Health of people with compromising people right to confidentiality and right to access to medical records as provided under the Right to information Act, 2005.

In the next Unit IV, which the author has divided into 4 Chapters emphasis on the public awareness of medical negligence in India, the author of this book has clearly distinguished between the civil and criminal negligence and also explain the liability that occur when it comes to medical negligence and gross negligence is done by hospital and professionals . Author also put the role of consent in medical practice be it implied consent, explicit consent, tacit or anticipatory consent. More importantly the author highlighted the important questions that 'Is Medical Negligence a civil wrong or criminal wrong'? To which she pointed out that "Medical Negligence of simple lack of care as such will constitute civil liability and Negligence of only severe or high degree shall constitute criminal liability".

The author separated Unit V into three chapters to provide an understanding of the intricate web of legal domains concerning medical negligence. Such as the Consumer Protection Laws and the Law of Torts, which offer a framework for civil suits and allow patients to seek compensation when health care providers violate their legal obligations and cause loss or damage. Criminal laws, on the other hand, are saved for the most dire situations in which a

medical professional's carelessness is so egregious that it amounts to a crime against the state and carries a sentence that goes beyond simple restitution.

In the last Unit VI, which the author has meticulously breakdown into 9 chapters briefly explaining about the various legislation. In order to prevent exploitation, the Transplantation of Human Organs Act, 1994 forbids commercial transactions and regulates the removal, storage, and transplantation of human organs. In order to prevent female feticide, the Pre-Conception and Pre-Natal Diagnostic Techniques Act of 1994 established regulations for sex determination processes and guaranteed the moral application of prenatal diagnostic technology. Patient rights and confidentiality are among the guidelines for doctors worldwide provided by the International Code of Medical Ethics. Education and practice requirements for Indian systems of medicine and homeopathy are governed by the Indian Medicine Central Council Act of 1970 and the Homeopathy Central Council Act of 1973, respectively. Dental practice registration and requirements are governed by the Dentists Act of 1948. The 1940 Drug and Cosmetic Act regulates the import, manufacture, distribution, and sale of drugs and cosmetics in India. The Drug Control Act of 1950 regulated the production, distribution, and management of drug misuse. Patient rights are protected, and mental health services are provided by the Mental Health Act of 1987. Collectively, these laws preserve moral principles, control medical procedures, safeguard patient rights, and guarantee the security and effectiveness of medical care in India. Additionally, the author purposefully draws attention to the gaps and shortcomings in the aforementioned act and suggests that they be fixed.

For readers interested in health and health law and reforms, the book under review is a useful and concise reference that draws heavily from many statutes and legislation for its structure and subject frame.

RIGHTS, RISKS AND DIGITAL LABOUR: LEGAL GAPS AND JURISPRUDENTIAL CHALLENGES IN REGULATING CHILD INFLUENCERS IN INDIA

Dr. Sheema S.Dhar[1]

Abstract

The rapid rise of child influencers within India's digital economy has revealed substantial gaps in the nation's legal and regulatory architecture, prompting urgent jurisprudential inquiry into the protection of minors engaged in monetized online activities. Although Indian legislation most notable the Child Labour (Prohibition and Regulation) Act 1986 offers limited safeguards for child performers in conventional media, it remains ill equipped to address the unique challenges of social media driven content creation where the lines between familial involvement, commercial exploitation and child autonomy are increasingly indistinct. Existing soft law instruments such as the guidelines issued by the National Commission for Protection of Child Rights recommend financial protection for minors but lack statutory backing and effective enforcement mechanisms thereby enabling parental control over a child's earnings in the absence of independent oversight. Compounding these issues contractual engagements involving child influencers are rendered void under the Indian Contract Act 1872 producing uncertainty for both brands and minors with respect to compensation, enforceability and dispute resolution. This article offers a jurisprudential and legal analysis of the existing legal landscape governing child influencer activity in India interrogates the ethical and practical consequences of this regulatory vacuum and advances a set of comprehensive reforms.

Keywords*: Child Influencers, Child Labour, Child Rights, Ethical and Practical Implications, Digital Labor Economy.*

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1. INTRODUCTION

The emergence of child influencers is reshaping the contours of children's participation in the digital economy raising pressing questions regarding child labour protections and the ethical and practical implications of monetized online activity. As children increasingly become the public face of brands, entertainment channels and social media campaigns the distinction between legitimate artistic participation and exploitative digital labour grows increasingly tenuous. This shift exposes the limitations of India's existing legal framework much of which was designed for traditional forms of child labour and performance rather than fluid, digitally mediated work.

This regulatory gap generates not only significant ethical concerns particularly around economic exploitation, coercion disguised as consent and the commercialization of childhood but also concrete risks including disruptions to education, adverse mental health impacts, privacy violations and diminished future autonomy. Against this backdrop the article undertakes a jurisprudential examination of legal regime governing child influencers in India and advances a set of comprehensive reforms informed by international best practices.

The central objective is to ensure that Indian law evolves in step with the realities of digital economy safeguarding children's rights and well-being while addressing the challenges of a future in which childhood is increasingly curate, performed and monetized online.

2. CHILD INFLUENCER: FOUNDATION FOR A CONTEMPORARY JURISPRUDENCE

Hohfeld's framework of rights, duties, privileges and powers is a foundational legal analytical scheme to clarify different types of legal relationships. Hohfeld argued that legal concepts often confused under the term "rights" should be distinctly defined as rights, privileges, powers and immunities. In legal terms whenever one person has a right there is a corresponding duty on another person to respect that right[2]. If one has a privilege to do something then he is free to do it and another has no right to prevent him ie., privileges are the opposite of duties. If one has power then he has the legal ability to alter another's legal relations such as by creating or extinguishing rights or liabilities. Finally if one has immunity another is disabled from affecting his legal relations through the exercise of legal power. Hohfeld further classifies these legal

[2] Wesley Newcomb Hohfeld, Fundamenta Legal Conceptions as Applied in Judicial Reasoning 23(1) YALE LAW JOURNAL 16 (1913)

positions as "jural correlatives" and jural opposites", where rights and duties, privileges and non rights, powers and liabilities and immunities and disabilities are key analytic pairs[3]. The conventional legal approach where parents or guardians exercise rights on behalf of minors faces significant challenges in the digital age especially with the rise of child influencers and content creation involving children online[4]. To critically analyse this using Hohfeld's framework of rights, duties, privileges and powers it is necessary to reconceptualize legal roles and relationships in cyberspace.

2.1 Jural Rights and Correlative Duties

In the classic regime a child's rights to privacy, protection, income from work etc., are typically exercised by their guardian who also owes duties of namely care, oversight and fiduciary responsibilities. However digital content creation creates new relationships in the form of platforms, advertisers and audiences who become correlative rights holders or duty bearers' and not just parents[5]. Therefore statutes or guidelines should assert the child's own rights as primary, assigning correlative duties not only to the parent or guardians but also to platforms. For instance platforms would have a duty not only to the parent but directly to the child for privacy, income protection and removal of exploitative content.

2.2 Privileges and Their Correlative No-Rights

Children making content may be viewed as possessing privileges of freedom to express, participate and earn yet the current law often grants parents to the privilege to override or utilize the child's persona, leaving children with "no-rights" against such uses unless statutory protection exists[6]. Instead of this, privilege over the children's digital personas creating a legally recognized "no-privilege" zones where guardians may not exploit or commercialize without the consent.

[3] WESLEY NEWCOMB HOHFELD, FUNDAMENTA LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING AND OTHER LEGAL ESSAYS 36 (Yale University Press 1919)
[4] Rachel Caitlin Abrams, Family Influencing in the Best Interests of the Child, 2 CHICAGO JOURNAL OF INTERNATIONAL LAW 97, 99-100 (2023)
[5] Crystal Abidin, The Regulation of Child Influencers in Australia and the Asia Pacific Region, SAGE PUBLICATION (Nov.14, 2025, 11:00PM) https://journals.sagepub.com/doi/10.1177/20563051251356152
[6] Sonia Livingstone and Amanda Third, Children and Young people's rights in the digital age: An Emerging Agenda, 19(5) NEW MEDIA & SOCIETY (Nov. 13, 2025, 07:00 AM) https://journals.sagepub.com/doi/abs/10.1177/1461444816686318

2.3 Power Liability Pair

Guardians currently hold legal powers like contracting, licensing, managing income etc but with digital content platforms acquire far reaching powers over data, monetization and exposure creating liabilities under privacy, exploitation or labour law[7]. Children as influencers arguably need new powers over the right to delete content, approve contracts and control income. Legal mechanisms whereby children have powers or statutory right to request deletion of their online content control over earnings with corresponding liabilities falling upon parents, platforms and third parties. State bodies should oversee these relations and review compliance through a best interest lens. Digital platforms should be viewed as having direct duties to child content creators, not just through parental mediation and with statutory obligations for welfare, privacy and fair earning practices.

Hohfeldian analysis is a powerful lens for clarifying legal relationship but it is not the only jurisprudential approach suitable for revising child rights in the digital era. Other major frameworks especially rights based, participatory and best interest approaches are increasingly influential in global and comparative child law particularly concerning the unique context of child influencers.

Approach	Key Legal Proposition	Implication for Child Influencers
Hohfeldian	Rights, Duties, Powers, Privileges	Clarifies direct, third party and parental legal relations
Rights-Based (UNCRC)	Child as direct rights bearer	Emphasizes privacy, expression, protection, direct enforcement

[7] Sonia Livingstone & Brian O'Neill, Children's rights online: Challenges, Dilemmas and Emerging Directions *in* VAN DER HOF, SIMONE, VAN DEN BERG, BIBI AND SCHERMER, BART, (eds.) MINDING MINORS WANDERING THE WEB: REGULATING ONLINE CHILD SAFETY. INFORMATION TECHNOLOGY AND LAW SERIES 2,3 (T.M.C. Asser Press, Hague 2014)

Participatory	Child voice and evolving autonomy	Mandates child consent, consultation, participatory mechanisms
Best Interest or Teleological	Well being as legal north star	Focuses on substantive, not just formal protection
Capability or Contextual	Enable children's flourishing	Prioritizes development, education and safe access

Table 1: Key Legal Implications of Child Influencer Laws

The child centric approaches aligned with Hohfeld's theory is implicitly emerging in the way that various jurisdictions are developing and debating tests and regulatory frameworks for child influencers. This progression is essential for recognizing the autonomy, agency and vulnerability of child influencers under emerging content creation dynamics.

3. CHILD INFLUENCERS: THE RECALIBRATED APPROACH

The jurisprudence of child influencer is evolving and varies significantly between jurisdictions reflecting different legal, cultural and policy priorities. In synthesizing comparative perspective three main axes emerge namely regulation, protection and the conceptual understanding of child agency versus parental authority. The jurisdictions use distinct legal tests and criteria to define and regulate child influencers with key differences shaped by labor law, child rights and digital regulation. Most of them focus on age, content frequency, earnings, consent and infrastructural safeguards.

3.1 Authorization and Earnings Test

French law requires official authorization for children under sixteen involved in monetized influencer work granting administrative oversight on frequency, schedule, school attendance, hygiene and risks[8]. Judges may intervene to prevent imminent harm if the child's content is unauthorized, parents must deposit a mandatory percentage of the child's earnings in protected accounts accessible only upon adulthood[9]. Definition hinges on whether the child's likeness is used in monetized online activity and the percentage of content featuring the child. The statute

[8] French Labour Code 1910 Article L.7124-1
[9] French Labour Code 1910 Article L.7124-9

considers the vulnerability of minors in online influencer culture and addressed the need to align protections with importance of schooling and balanced life of minors.

3.2 Content Frequency and Earnings Test

Several states of US use statutory thresholds such as percentage of output or time spent on camera to trigger protections. The laws require trust accounts for minor's earnings ie., Coogan-style accounts[10]; mandatory record keeping of participation, minutes and income[11]. The law reserves the right to request deletion or removal of content upon reaching adulthood.

3.3 Platform Responsibility and Risk Test

Chinese statutes and policy focus on platform moderation obligations scheduling risk or hygiene, privacy and educational impact[12]. Platforms or parents must secure administrative permission, monitor child welfare and facilitate rapid takedowns for harmful or unlawful content[13]. The test centers on commercial intent, exposure or participation time and content type[14].

3.4 Harm and Exposure Test

The UK's Communications Act 2003 aims to shield children from exposure to harmful online content[15]; proposals suggest that if a child's regular online presence exposes them to commercial exploitation or privacy loss, regulations are triggered. Focus is on safeguarding[16] against content that risks[17] psychological harm, exploitation or undue work hours rather than relying strictly on earnings or presence percentage.

4. CHILD INFLUENCER REGULATION: A COMPARATIVE NORMATIVE INQUIRY

There is currently no explicit legal definition or comprehensive regulation of "child influencers" in Indian law, not is there a standardized international legal framework. However

[10] Cal. Family Code 1992 Sections 6750-6753
[11] Cal. Labour Code 2024 Section 1308.5
[12] Law of the People's Republic of China on the Protection of Minors (adopted 29 December 1991, revised 17 October 2020, effective 1 June 2021)
[13] Regulation on the Protection of Minors in Cyberspace (Order No. 766 of the State Council of the People's Republic of China, adopted 16 October 2023, effective 1 January 2024).
[14] Measures for the Administration of Internet Advertising (Promulgated by the State Administration for Market Regulation, Decree No. 72, 25 February 2023; effective 1 May 2023)
[15] Section 319
[16] Section 3(4)(h)
[17] Section 368F(e) in Part 4A of the Act

the concept can be interpreted and anlysed through a patchwork of existing child protection, labour and digital rights instruments along with draft regulatory efforts and comparative international models.

Generally the term "child influencer" refers to any person below 18 years of age who creates content either independently or vial guardians on digital and social media platforms particularly for monetized or sponsored purposes. This certainly overlaps but is distinct from child actors or traditional media performers. Statutes like Child Labour (Prohibition and Regulation) Act 1986[18], the Juvenile Justice (Care and Protection of Children) Act 2015[19] and the Right to Education Act 2009[20] provides various definitions and safeguards relating to work, exploitation and welfare of children but none address online content creation directly. Current legal regime treat child influencer activities as part of family enterprise when parents or guardian orchestrate content allowing many to circumvent labour safeguards meant for more traditional work setting[21]. The legal tests for defining child influencer range from quantitative ie., based on time spend, percentage, earnings etc to qualitative ie., based on the risk, harm, nature of exposure etc for regulatory intervention.

JURISDICTION	CORE LEGAL TEST/ THRESHOLD	KEY SAFEGUARDS
France	Monetized content, child under 16, percentage of output	Administrative permit, income protected, school or hygiene schedule
USA (Illinois)	Child appears ≥30% in monetized vlogs or videos	Trust accounts, record keeping. Right to erase as adult
China	Platform moderation, participation, time, risk	Administrative approval, rapid takedown, privacy

[18] Sections 2(ii), 3, 3A,14
[19] Sections 2(12), 2(14), 75,79, 83
[20] Sections 2(c), 3, 4, 17,8,9
[21] Ahan Dhar, Playing or Being Played?: Legal Protections for Children in the Family Influencer Economy, JOURNAL OF SPORTS & ENTERTAINMENT (Nov. 12, 2025, 08:00AM) https://journals.law.harvard.edu/jsel/2025/11/playing-or-being-played-legal-protections-for-children-in-the-family-influencer-economy/?utm_source=chatgpt.com

UK	Harm or exposure test	Moderation, content limits, work hour restrictions
India	Not defined	General child artist, labour laws

Table 2: Safeguards via legal tests

4.1 Child Influencer Vis A Vis Child Labour: A Functional Analogy

Traditional child labour laws both national and international are designed to address manual, industrial or service sector work often characterized by hazardous or physically demanding conditions. Child influencing while potentially exploitative or invasive lacks many of these hazards and is deeply intertwined with creative, performative and communicative activity. They experience latent empowerment than those in traditional labour. The contents are being produced within family enterprises or for self expression and not always for sheer economic necessity. A literal application of child labour bans could therefore undermine autonomy and creative opportunities if not tailored appropriately.

However the core risk features of commercial pressure, loss of leisure or education, adult exploitation, loss of privacy, mental or emotional harm are present whether the work is in a factory or an online platform. Protective legislations is drafted to be technologically neutral so the existence of traditional risks and new risks in digital work place like public exposure, digital addiction, algorithmic exploitation all are signal for legal development and not exclusion. The fact that digital harms differ further highlights the need for flexible implementation rather than categorical exclusion. Harm, not just the method or setting of work, grounds child labour protections. When the risks are functionally analogous the courts have often invoked purposive and dynamic interpretation to bring the new forms of exploitation under existing laws. Article 32 of UNCRC mandates states to take all appropriate legislative, administrative, social and educational measures to ensure child labour protections justifying functional inclusion of new workspaces like digital platforms.

In *Bandhua Mukti Morcha v. Union of India*[22] the Supreme Court held that child labour protections in the Constitution and statutes must be given a wide, dynamic interpretation. The court stated that any form of exploitation whether or not it involves physical hazards should attract judicial intervention when a child's fundamental rights or welfare are threatened. The

[22] Bandhua Mukti Morcha v. Union of India(1997) 10 SCC 549

focus is on preventing all forms of exploitation not just what is explicitly listed in law. In the observation of Justice K. Ramaswamy that "Ban of employment of children must begin from most hazardous and intolerable bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like" an affirmative inference can be drawn on child digital labour.

Here the child referred to experiences exploitation for the economic gain of others whether employer, traffickers, exploiters or even family members and their dignity, childhood and future opportunities are undermined.

In *People's Union for Democratic Rights v. Union of India*[23] the court reiterated that child welfare laws should not be interpreted restrictively but should extend to all situations where children are subjected to exploitation or deprived of their rights, regardless of the form or type of work.

In *M.C.Mehta v.State of Tamil Nadu*[24] the court emphasized the need to interpret Art. 24 and 39(e) broadly to include "all forms of employment or work" that harm the child's development whether mental, emotional, educational or physical[25]. The court recognized that child labour exists in changing and diverse forms and the law must protect children from any situation of risk. The court declaring the cause of child labour really is not dearth of resources but lack of real zeal appealed to put all efforts together to assist child for its good and greater good of the country[26].

In *Sampurna Behrua v. Union of India*[27] the supreme court reaffirmed that child welfare statutes must be liberally construed to cover emerging forms of exploitation, instructing authorities to take proactive measures against all environment posing risks to children including those beyond strictly defined labour contexts. This case supports extending protections to new digital forms if risk or exploitation is present.

In *Bachpan Bachao Andolan v. Union of India* although focused on trafficking and child labour in media and circuses the cases[28] emphasized the need for legal adaptation and proactive

[23] People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473
[24] M.C.Mehta v.State of Tamil NaduAIR 1997 SC 699
[25] *Ibid* at Para 15
[26] *Ibid* at Para 32
[27] Sampurna Behrua v. Union of India(2018) 2 SCR 940
[28] Bachpan Bachao Andolan v. Union of India AIR 2011 SC 3361; (2014) 16 SCC 616

regulation whenever children's lives, education or dignity are endangered. These principles can guide the extension of legal protection to digital platforms and social media.

5. CHILD INFLUENCERS: INTERNATIONAL LABOUR AND CHILD RIGHTS INSTRUMENTS

The International instrument explain the legal standards, map their points of contact with influencer activity, identify interpretive gaps and suggests how states might implement these instruments to protect children active in monetized digital content.

5.1 Minimum Age Convention 1973[29] (C.138)

The significance[30] of this convention is that it distinguishes light work[31] and establishes higher minimum age for hazardous work. Where children are systematically producing monetized content under adult direction, subject to regular hours or performance demands or where content creation displaces schooling or rest, states that have ratified C.138 have a strong basis to treat such activity as work and to regulate minimum age thresholds[32], permitted light work exceptions and protections for hazardous categories[33].

5.2 Worst Forms of Child Labour Convention 1999[34] (C.182)

The Convention requires states to take immediate and effective measures to prohibit and eliminate the worst forms of child labour. "Worst Forms[35]" include sexual exploitation, trafficking and work likely to harm the child's health, safety or morals. States must assess[36] whether certain monetize digital practices constitute hazardous or exploitative labour and take immediate prohibition[37] and remedial measures where they do.

5.3 UN Convention on the Rights of the Child (UNCRC) 1989

[29] International Labour Organisation, Minimum Age Convention 1973 (Nov. 13, 2025, 12:00AM) https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312283&utm_source=chatgpt.com

[30] International Labour Organisation, ILO Convention No.138 At a Glance (Nov. 11, 2025, 08:00AM) https://www.ilo.org/sites/default/files/2024-04/C138_at_a_glance_EN.pdf?utm_source=chatgpt.com

[31] *Ibid* at Article 7

[32] *Ibid* at Article 2

[33] *Ibid* at Article 3

[34]International Labour Organisation, Worst Forms of Child Labour Convention 1999 (Nov. 11, 2025, 08:00AM) https://webapps.ilo.org/public/libdoc/ilo/1999/99B09_136_engl.pdf?utm_source=chatgpt.com

[35] *Ibid* at Article 3

[36] *Ibid* at Article 4(1)

[37] *Ibid* at Article 1

UNCRC is a comprehensive treaty guaranteeing civil, political, economic, social and cultural rights for children. Even where employment-style regulation is absent the UNCRC supplies normative grounds to limit commercialized use of children's time and image and to require States to prioritize children's developmental needs over commercial gain. Excessive content production that encroaches on a child's leisure, play and development conflicts with UNCRC principles[38]. Monetized appearances that are exploitative and interfere with schooling or are driven by adult commercial interests implicate Article 32. Article 36 is a broad catch all for commercial or other exploitative practices not expressly enumerated elsewhere.

5.4 General Comment No. 25[39] (2021)

This document forms the major authoritative guidance by the UN Committee on the Rights of Child on how the UNCRC applies in the digital environment. The digital specific duties include platforms and content producers must respect children's privacy and data protection rights[40]; states must regulate private actors[41]; children have a right to protection from exploitation and to have their best interests assessed in digital transactions[42]; parental consent is not always sufficient where exploitation or long term harm may result. GC 25 further addresses profiling, commercialization[43] of children's data and the obligations to provide remedies and take down mechanisms[44].

Interpretative gaps and practical challenges exist in applying child labour and child rights laws to child influencers in digital space. Employment definitions and thresholds remain unclear as neither ILO conventions nor UNCRC specify precise criteria for when family shared or parent led content crosses into "work". National laws must therefore translate such concepts to operational tests considering factors like regularity, remuneration, parental or managerial control and sponsorship to give effect to obligations under ILO Conventions 138 and 182. Another challenge is the overlap of legal regimes ie where ILO Conventions addresses the labour standards the UNCRC GC 25 focuses on the child's best interests, privacy and data

[38] UN Convention on the Rights of the Child (UNCRC) 1989 Article 31, General Assembly Resolution 44/25 adopted 20 Nov. 1989

[39] United Nations Human Rights Office of the High Commissioner, General Comment No.25 2021 on children's rights in relation to the digital environment (Nov. 13, 2025, 12:00AM) https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation?utm_source=chatgpt.com

[40] *Ibid* at 3

[41] *Ibid* at 7

[42] *Ibid* at 2

[43] *Ibid* at Para 40-43

[44] *Ibid* at Para 44-46

protection. Enforcement is further complicated by cross border nature of digital platforms that poses jurisdictional challenges. The consolidated analysis reflects both the interpretative gaps and the evolving regulatory needs surrounding child influencers as digital participants within child labour and child rights frameworks.

5.5 France

France offers one of the most direct statutory responses to the phenomenon of child influencers. The Law No. 2023-451of 9 June 2023 on the Regulation of Commercial Influence and the Fight Against Abuses by Influencers on Social Networks establishes transparency duties for influencers and advertising actors, aiming to curtail deceptive or harmful commercial practices on social media. This law builds upon Law No.202-1266 of 19 October 2020[45] which explicitly limits the commercial exploitation of minors' images, mandates prior administrative authorization for minors under sixteen featured in monetized online videos and guarantees a right to erasure when they reach majority. The implementation of these provisions is further reinforced by administrative measures from the ARCOM[46] and the Ministry of Labour which oversee compliance with working time limits and the safeguarding of minors income.

The French model is effective in recognizing the vulnerability of minors in digital commercial activity and establishing a preventive regulatory infrastructure. It explicitly targets the advertising and marketing mechanisms that incentivize the use of children in monetized content[47] thereby attacking the root cause of exploitation rather than treating the child's participation as employment. However while the legal framework successfully integrates privacy, consumer protection and transparency norms it stops short of introducing financial safeguards akin to blocked trust accounts, leaving the child's earnings potentially exposed to parental misuse. Enforcement across digital platforms remains administratively demanding and grey areas persist regarding sharenting where parents profit from their children's online presence. Nevertheless France's approach remains the most comprehensive statutory response in Europe and its recognition of children's image rights represents a meaningful extension of child welfare principles into the digital economy.

[45] Law aiming to regulate the commercial exploitation of the image of children under the age of sixteen on online platforms often referred to as Kidfluencer Law or Studer Law.
[46] French Regulatory Authority for Audiovisual and Digital Communication established from the merger of the High Audiovisual Council (CSA) and the High Authority for the Distribution of Works and Protection of Rights on the Internet (Hadopi)
[47]The Law No. 2023-451 Article 1, 2

5.6 United States (California and Other State Models)

In US the regulation of child influencers has evolved through state level adaptations of the Coogan Law originally enacted in California in 1939 after the financial exploitation of child actor Jackie Coogan[48]. The Coogan Act, Californian Family Code[49] requires that 15% of a child performer earnings be deposited into a blocked trust account accessible only upon adulthood. Recent developments such as the Illinois Child Influencer Act 2024[50] and California's own proposed influencer amendments of 2024 extent these principles to minors who appear substantially in monetized online content. These statutes use quantitative thresholds for instance where a child features in a specified percentage of a channel's output or earns beyond a defined proportion of total revenue to trigger regulatory protection. Parents or guardians are then obliged to maintain records of hours worked and earnings and platforms or brands may be held responsible for ensuring compliance.

The Coogan[51] style approach's greatest strength lies in its clarity of economic protection; it secures children's earnings and deters custodial exploitation through enforceable fiduciary obligations[52]. The model also provides bright line criteria that distinguish casual family content from professionalized influencer labour[53], preventing overregulation of everyday online activity. However its scope remains narrowly financial it does not address educational disruption, privacy or the psychological burdens of exposure. Furthermore as the United States lacks a uniform federal framework, state by state laws create a fragmented patchwork leading to uneven protection. Nonetheless this model offers a pragmatic precedent for India the trust account mechanism could be replicated to ensure children's online earnings are preserved and the "substantial appearance" threshold could serve as a useful regulatory trigger.

5.7 India

India currently lacks a dedicated legal regime addressing child influencers. The Child and Adolescent Labour (Prohibition and Regulation) Act 1986 prohibits employment of children

[48] Deanna Cooper, Child Content Creators and Just Compensation: A Policy Expansion on 'Coogan Law' for Child Social Media Stars, 10(2) LMU LAW REVIEW 136 (2023)
[49] Coogan Law 1939 Sec. 6750-53, 6752(4)
[50] 103RD GENERAL ASSEMBLY State of Illinois 2023 and 2024 SB1782 Introduced 2/9/2023 820 ILCS 205/0.5 (Nov, 19, 2025, 10:00PM) https://www.ilga.gov/documents/legislation/103/SB/10300SB1782.htm
[51] Coogan Law Full Text 2023 (Nov. 15, 2025, 08:00 AM) https://www.sagaftra.org/membership-benefits/young-performers/coogan-law/coogan-law-full-text
[52] Coogan Law 1939 Sec. 6752(2)
[53] Coogan Law 1939 Sec. 6750

under 14 in certain occupations[54] but does not contemplate digital or home based monetized content creation. The Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act) and the Commissions for Protection of Child Rights Act 2005 (CPCRA) provide welfare mechanisms[55] but not employment regulation in digital contexts. The Digital Personal Data Protection Act 2023 (DPDPA) introduces consent[56] based protections for processing children's personal data and prohibits data processing likely to cause harm[57] yet it frames children as data subjects not as workers or economic actors. Advertising is governed by the Advertising Standards Council of India (ASCI) guidelines which discourage exploitative depictions but do not cover family based monetized content[58].

India's system is therefore fragmented and reactive rather than preventive. Existing laws do not recognize influencer work as labour nor do they provide for the financial safeguarding of earnings or the right to erasure. Currently it lacks a tailored statutory regime for child influencers. The existing approach leads to regulatory friction and enforceability lacunae as enforcement is split among labour departments, child welfare authorities, data regulators and platform level moderation teams with limited interagency coordination and few clear mechanisms to register, monitor or audit monetized child content. India has no clear mechanism to ensure children's earnings from online content are preserved for their future benefit.

A significant development in India is the 2023 Guidelines for Child and Adolescent Participation in the entertainment Industry and Commercial Entertainment Activity issued by the National Commission for Protection of Child Rights (NCPCR). Framed under section 13 of the Commission for Protection of Child Rights Act 2005 these guidelines aim to safeguard the rights and welfare of children and adolescents engaged in the entertainment sector. Importantly they were introduced in response to the growing involvement of minors in digital content creation and expressly extend regulatory oversight to social media and OTT platforms thereby broadening the traditional understanding of the entertainment industry to include online influencer activity.

[54] The Child and Adolescent Labour Act 1986 Sec. 3, No 61, Acts of Parliament, 1986 (India)
[55] Juvenile Justice Act 2015 Sec. 27, No.2, Acts of Parliament, 2016 (India) & 30 & CPCRA 2005 Sec. 13, No 4, Acts of Parliament, 2006 (India)
[56] DPDPA 2023 Sec. 6, NO. 22, Acts of Parliament, 2023 (India)
[57] DPDPA 2023Sec. 9, NO. 22, Acts of Parliament, 2023 (India)
[58] ASCI Chapter III

The guidelines framed predominately applicable to any child or adolescent participating in entertainment activities including social media content, advertisements, films, television, performing arts and any other commercial activity connected to content creation and broadcast[59]. These apply all institutions, brands, agencies and individuals involved in production, hosting or monetizing content featuring children including content made for social media platforms.

For social media content the guidelines distinguish[60] between content produced by commercial entities or production houses or organizations which come under direct regulatory obligations and content created by children, parents or families for economic gain generally considered as family enterprise and covered under specific exemptions per Sec. 3(2)(a) of the Child Labour Act 1986[61]. Any content produced for commercial purpose regardless of whether a brand, agency, family or influencer is involved must adhere to safety, welfare and procedural standards laid down for entertainment activities. The major protections[62] include the following:

- Content must be age appropriate, non detrimental to the child's physical, mental and psychological well being and not exploitative or hazardous.
- Restrictions apply regarding hours, leave entitlements and prohibitions on infants below 3 months except in health promoting programs. The guidelines ban employment in hazardous occupations or bonded labour and do not allow content creation to interfere significantly with education.
- Children cannot legally enter into binding commercial contracts which must be signed via natural guardians. Any agreement should be terminable by the child and must not coerce or trap them into forced participation.
- Where economic gain is involved especially in family run social media channels, parental responsibilities increase. Parents and guardians become directly responsible for monitoring welfare adherence to statutory safeguards and ensuring that content does not override the child's best interests or developmental needs.
- Influencers and those engaged with child audiences must avoid promoting unsafe products and misleading claims. Liability under the Consumer Protection Act 2019

[59]NCPCR, Guidelines for Child and Adolescent Participation in the entertainment Industry and Commercial Entertainment Activity (Nov. 15, 2025, 02:00 PM) https://ncpcr.gov.in/uploads/16844053596465fc6f115d1_guidelines-for-child-and-adolescent-participation.pdf
[60]*Ibid* at Chapter 3
[61] *Ibid* at Para 11
[62] *Ibid* at Para 12

applies to influencers and brands alike for non compliance with possible takedown orders and legal notices.

Under Digital Data Protection Act (DPDPA) children under 18 cannot use social media without verifiable parental consent for data processing[63]. Brands and platforms must ensure strict privacy measures, obtain clear consent and be transparent about data collection and advertising practices[64]. They must process only data necessary for the intended purpose ensuring minimal risk and the best interest of the child. The DPDP Rules sets out detailed method for digital, document based or tokenized parental consent mechanisms. All platforms especially "risk Prone" services including social media must reengineer their algorithms and assure no personalized recommendations, profiling or ad targeting is performed for accounts flagged as under 18[65]. Non compliance can lead to significant penalties for platforms and supervising adults. However practical issues like consent and age verification systems may be circumvented and parental conflicts of interest remains a concern.

Aspect	India: NCPCR 2023 Guidelines	France: Child Influencer Law	Califiornia: Coogan Law (Child Performers)
Scope	Entertainment industry, OTT, digital platforms	All online commercial content including influencers	Film, TV, modeling, commercial entertainment (not online influencers yet)
Permissions/Consent	District Magistrate permission, parental consent needed	Administrative authorization, parental consent required	Court approval, guardian or parental involvement
Financial Protection	No guaranteed earnings nor trust requirement	Earnings deposited in state trust until majority	Mandates 15% of earnings in Coogan account

[63] DPDPA 2023 Sec.9, NO. 22, Acts of Parliament, 2023 (India)
[64] DPDPA 2023 Sec. 5 – 8, NO. 22, Acts of Parliament, 2023 (India)
[65] DPDP Rules Rule 10

Privacy & Image rights	Safeguards for privacy but not clear on digital or social media sharing	Explicit right to privacy, strict sharenting restrictions	Limited privacy coverage beyond workplace setting
Psychological protection	Health checks, guardian presence	Mandatory assessments for sensitive content	School participation, work hour limits, guardian required
Enforcement	Penal action under Child Labour Act, fines or jail possible	Heavy fines, criminal liability, platform or brand accountability	Civil liability for trust breaches, contract enforcement
Influencer Coverage	Not explicitly covered, social media in scope but no monetization rules	Explicit focus including Youtube, Instagram, "viral" content	No included, coverage under proposed reforms only

Table 3: Comparative Study

6. CONCLUSION & SUGGESTIONS

- Specific provisions addressing child influencers, covering monetization, digital platform and content creation.
- Mandate financial protections such as compulsory trust accounts for child earnings similar to the Coogan law and France's trust system.
- Enforce strict privacy safeguards including limits on usage of child images, videos online and right to be forgotten mechanisms for children in digital media
- Brands, sponsors and platforms must observe due diligence and assume liability for child protection when working with minor influencers.
- Provide psychological health assessments for all child participants not only in traditional entertainment but also across social media and digital content.
- Introduce centralized digital regulatory registration for productions involving children streamlining permissions, approvals and compliance tracking.

- Periodically review and update rules to address changing patterns of online engagement and commercial exploitation of minors.

These reforms will enable Indian law to better address the financial, psychological and digital realities faced by child entertainers and influencers closing critical gaps found in the current regulatory regime.

Digital technologies and the Internet provide children with extraordinary avenues for learning, communication, connection and recreation. At the same time they expose young users to unfamiliar and unprecedented risks. Although there is broad awareness of technology's influence on individuals and communities it remains difficult to anticipate long term consequences especially as practices such as self surveillance increasingly become normalized in childhood. Existing legal and regulatory framework many of which were drafted on the assumption that the internet is primarily an adult space have proved insufficient to safeguard children from these emerging harms. Placing the burden of responsibility solely on children or their parents is untenable as their data related decisions are largely shaped by the limited business driven choices presented by digital service providers. As a result, meaningful autonomy in navigating the digital environment is constrained. What is needed is a more calibrated, contextual approach the one that avoids the dichotomy of framing technology as inherently beneficial or harmful. Instead a shared and balanced perspective should be cultivated: one that acknowledges the economic, social and ethical implications of expanding digital ecosystems, embraces their substantial benefits and simultaneously seeks to mitigate adverse effects through nuanced regulation and coordinated institutional action.