

VOLUME XI

ISSUE-I ((JAN-MAR 2025)



QUEST

A Quarterly Journal of the Students published
by the Indian Institute of Legal Studies

INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law

Approved under Section 2(f) & 12B of the UGC Act, 1956

Accredited by NAAC

Affiliated to the University of North Bengal

Recognized by the Bar Council of India, New Delhi

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MESSAGE

FROM FOUNDER & CHAIRMAN'S DESK



SHRI JOYJIT CHOUDHURY

**Founder & Chairman
Indian Institute of Legal Studies**

It's been quite some time that I have used my prerogative for penning in a few lines under the Caption "From the desk of the Chairman." The pandemic has Pandemic has probably changed the preferred and known rules in education and it is disheartening to see the once buzzing campuses filled with vibrant and youthful energy being bereft of the exuberance that existed.

If we take a look at the history of the Corona Virus, it originated sometime in the middle of December, 2019 in China at a live seafood market and then spread to the Wuhan area. Gradually, it spread to Italy, U.S.A., Europe and other countries of the world. The affected countries

have been called to take immediate steps to detect, treat and reduce the further spread of the virus to save lives of the people. Presently the COVID-19 is no more confined to China, Italy or U.S.A. It has become a global issue. The economic impact has had devastating and cascading effect world- wide with closure of business entities, rampant job loss coupled with non-existent economic activities putting the lives and the livelihood of a large section of the world's population in peril.

The poor vulnerable daily wage earners and migrant workers are the ones who are worst affected. Concrete measures must be adopted by the governments to provide this section of the population with sustainability incomes or else the world shall witness an increase in the pre-existing inequalities. The Governments must strengthen social protection and livelihood, reorient public finance to augment human capabilities, introduce measures to limit bankruptcies and create new sources of job creation.

To my view, the Pandemic has caused a dramatic and perceived change in the socio-economic structure of the entire world. Millions of wage-earners in the United States have been bugged of leaving their current employment and demanding higher wages and they have chosen to be unemployed if wages are not commensurate with their expectations. This is probably the outcome as to how the pandemic has led to increased inequality and unequal income distribution amongst different

classes. According to Oxfam's "The inequality virus" report in the Indian context, India's billionaires increased their wealth by 35 percent while 25 per cent of the population earned just Rs. 3000 as income per month. The unforeseen and unpredictable nature of the mutant waves have caused immense distortions in the labour market which has exposed the migrant labourers to the destitution of low incomes at their native places or starvation at their outstation job sites.

Research based data shall illuminate us about the devastation caused by cyclical mutant waves in the times to come but in the meantime, we have no choice other than to maintain status quo till the pandemic subsides. It is heartening to see that in spite of closure of many educational institutions, the editorial team has put in their honest efforts to publish the journal in such antagonizing and unprecedented times. I sincerely laud and appreciate their endeavors in making this happen. Wish everybody good luck & health.

A handwritten signature in dark ink, appearing to read 'J. Choudhury', with a horizontal line drawn underneath it.

JOYJIT CHOUDHURY

MESSAGE

FROM PRINCIPAL'S DESK



I would like to convey my sincere thanks and congratulate the “Quest Editorial Board” and its contributors for their ethos and time. I believe that this edition will enrich the readers for enhancing their knowledge. In the journey of ‘Quest’ the tireless work of students, teachers and other contributors are appreciated. This edition will focus on the mind of the readers and its reflection spread around the society.

I would also like to thank the students and teachers who have shared their ideas, views, emotions, and expressions for fruitful completion of the journey of “Quest” (this edition), and I hope it will continue in future also. It also serves the purpose of Indian Institute of Legal Studies for which it is meant.

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

Dr. Trishna Gurung

Principal-in-charge,
Indian Institute of Legal Studies

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LONG ARTICLE



FREEDOM OF SPEECH VS HATE SPEECH- LEGAL CHALLENGES IN INDIA



-Sushmita Kumari & Chandan Sha¹

ABSTRACT

Indian Constitution's Article 19(1)(a)², which forms the foundation of a successful democracy, guarantees the freedom of speech and expression. However, Article 19(2)³ gives the power to put limitations, which are reasonable, when it comes to the interests of public order, morality,

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²INDIA CONST. art. 19, cl. (1) (a).

³INDIA CONST. art. 19, cl. (2).

decency, sovereignty, and national integrity. The true test is to strike the balance between this right and the rising threat of hate speech.

Through Sections 153A⁴, 295A⁵, and 505⁶, of the Indian Penal Code (IPC) make criminal offenses of speech that promotes enmity or defames religious beliefs. The judicial system has tried to interpret these provisions in landmark cases like Pravasi Bhalai Sangathan v. Union of India⁷ and Shreya Singhal v. Union of India⁸ Still challenges remain.

The emergence of digital platforms has increased hate speech on the Internet. Introduced to manage online content, the IT Rules, 2021 have been criticized as allowing too much state regulation.

The present paper examines constitutional clauses, statute laws, case laws and regulatory environment of hate speech in India. It also examines the effect on society and balanced legal reforms that can be made to protect both free speech and social order.

KEYWORDS: *Freedom Of Speech, Hate Speech, Online Platforms, Reasonable Restrictions, Morality.*

⁴Indian Penal Code, § 153A, Act No. 45 of 1860 (India).

⁵Indian Penal Code, § 295A, Act No. 45 of 1860 (India).

⁶ Indian Penal Code, § 505, Act No. 45 of 1860 (India).

⁷ Pravasi Bhalai Sangathan v. Union of India., (2014) 11 SCC 477.

⁸ Shreya Singhal v. Union of India, AIR 2015 SC 1523.

1. EVOLUTION OF FREE SPEECH AND THE CONSTITUTIONAL BALANCE

1.1 Foundations of Free Speech

Freedom of speech and expression has long been regarded as a society. It provides powers to citizens to question authority, express colourful opinions, and shape public converse.

Article 19(1) (a) of the Indian Constitution guarantees this right to all citizens.

The Constitution's framers, drawing alleviation from the American First Amendment and driven by the desire for freedom after social rule, elevated this right as a fundamental freedom in Part III of the Constitution. Dr. B.R. Ambedkar emphasized its role in maintaining democracy by way of enabling dissent and free speech.

1.2 Evolution in Indian Constitutional Jurisprudence

The Indian constitutional free speech jurisprudence changed considerably since the early post-independent times. In *Romesh Thapar v. State of Madras*⁹, the Supreme Court ruled that freedom of speech and of the press are essential pillars of democratic organizations. The judgment held that laws curtailing political expression were unconstitutional unless justified under Article 19(2). As per this judgement it showed the courts were committed to protecting free speech

⁹ *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.

in politics.

In *Maneka Gandhi v. Union of India*¹⁰, the Supreme Court brought about a basic change in the conception of personal liberty in Article 21 of the Constitution. The Court held that the “procedure established by law” must be “just, fair, and reasonable” and must satisfy the test of natural justice. It was different from the earlier narrow view taken in the *A.K. Gopalan* case. It is a new way of understanding the Constitution. Additionally, the Court harmonised Articles 14, 19, and 21, thereby ensuring that any restriction on Article 19(1)(a) — the freedom of speech and expression — must also meet the standards of fairness and reasonableness implicit in Article 21. This expanded attitude of the judiciary formed the basis of expanded, rights-based constitutional jurisprudence in India.

1.3 Reasonable Restrictions under Article 19(2)¹¹

The concept of reasonable restrictions on Article 19(2) is a constitutional device that helps in the determination of the balance between the interests of an individual and that of society as a whole. It does not mean unlimited power of the State but it allows restriction which is proportionate and demonstrable as reasonable in a free society.

While Article 19(1)(a) guarantees the right to free speech, Article 19(2) permits the State to impose "*reasonable restrictions*" in certain interests,

¹⁰*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹¹INDIA CONST. art. 19, cl. (2).

namely:

1. Sovereignty and integrity of India
2. Security of the state
3. Friendly relations with foreign states.
4. Public order
5. Decency or morality
6. Contempt of court
7. Defamation
8. Incitement to an offence

The term "reasonable" has been judicially interpreted to mean that the restriction must not be arbitrary, excessive, or disproportionate to the purpose it seeks to achieve. In *K.A. Abbas v. Union of India*,¹² the Supreme Court upheld the constitutional validity of pre-censorship of films under the grounds of decency and morality. The Court however cautioned that such censorship should be done with strict constitutional narrow limits. The Court observed that cinema as a medium has a deeper impact on the public and hence may justify prior scrutiny. Still, such restrictions must not be used as tools for excessive suppression and must always align with constitutional standards of reasonableness under Article 19(2).

1.4 Constitutional Morality and Balancing Doctrine

A set of beliefs and concepts that support the fundamental principles of

¹²*K.A. Abbas v. Union of India*, (1970) 2 SCC 780.

a constitution such as liberty, equality and fraternity and serve as a guide for both the government and its population is known as constitutional morality. It also demands institutions and the citizens to bear the constitutional vision, instead of being influenced by the customs of the times or the common moral (social morality).

The doctrine guarantees that the rights of individuals are not subject to bias by society.

As per *Navtej Singh Johar v. Union of India*¹³ constitutional morality is key to interpreting Article 19 and the Court clarified that morality under Article 19(2) must be understood as constitutional morality, not social morality. Hate speech which demeans the dignity of people and groups is offensive to the ethos of the Constitution and should be restricted.

In *Subramanian Swamy v. Union of India*,¹⁴ the constitutional validity of criminal defamation in Sections 499 -500 IPC was upheld by the Court, which held that right to reputation was part of Article 21. The Court held that freedom of speech is a fundamental right but not absolute and it has to go hand in hand with right of individuals to dignity and honour.

In criminal defamation, the Court was attempting to suppress unlimited and abusive speech that would result in reputations being tainted permanently. This ruling has nevertheless been censured as having a perspective of inhibiting free speech, particularly in the political discourse, where critique is synonymous with democratic responsibility.

¹³*Navtej Singh Johar v. Union of India.*, (2018) 10 SCC 1.

¹⁴*Subramanian Swamy v. Union of India.*, (2016) 7 SCC 221.

Therefore, the decision opens the discussion on the definite balancing between the freedom of speech and the right to personal reputation.

1.5 Free Speech v. Hate Speech

The border between freedom of speech and hate speech is narrow but significant. Hate speech is not a part of the freedom of expression, unlike the freedom of expression, which permits dissent and criticism, hate speech aims to exclude, dehumanize, or provoke harm towards certain communities and is therefore not a part of protected speech.

In the case of *Pravasi Bhalai Sangathan v. Union of India* (2014), the Supreme Court recognised the ineffectiveness of the current laws pertaining to hate speech and the necessity of legislative amendment.¹⁵ Similarly in *Amish Devgan v. Union of India*, the Court added that hate speech is not a simple offensive speech but a speech that can cause law and order problems and cause psychological damage to the targeted groups¹⁶.

1.6 Free Speech in Contemporary India

In the era of digitization, the Freedom of Speech in India is taking a new form like never before. The platforms of social media have turned into the fields of political opposition as well as hate speech.

In *Shreya Singhal v. Union of India*¹⁷, the Supreme Court did observe and set aside Section 66A of the IT Act, 2000 as vague and over broad and

¹⁵*Pravasi Bhalai Sangathan v. Union of India.*, (2014) 11 SCC 477.

¹⁶*Amish Devgan v. Union of India.*, (2020) 1 SCC 1.

¹⁷*Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

thus contravened Article 19(1)(a). The Court found that the provision had a chilling effect on legitimate expression and could not pass the test of reasonable restriction as allowed in Article 19(2). However, the Court did confirm the validity of Section 69A, which empowers the government to censor online content on the grounds of sovereignty, public order or decency.

Legislative parameters and procedural protections, as pointed out by the judgment, ought to be formulated to help prevent an abuse of regulatory power in cyberspace.

1.7 Critical Reflections

Freedom of speech is the foundation of democratic participation but cannot be unconditional.

The legislation must strike a viable difference between lawful expression and speech that touches on morality and public order that is unconstitutional. The absence of the legal definition of hate speech and the differences in the judicial understanding of the concept and its application only in some cases are critical threats to this balance.

Thus, it can be seen that in order to maintain the right to speech, India needs to develop a legal system which is strong and precise in punishing hate speech but at the same time does not suppress free thought.

2. LEGAL MECHANISMS AGAINST HATE SPEECH

India does not have one common law that defines and regulates hate speech. It relies instead on a hodgepodge of constitutional clauses, criminal legislations and statutory provisions to regulate speech that could cause violence, hatred or dissonance. In this chapter researcher is attempting to examine the laws that exist around hate speech in India, such as penal laws, election law, anti-discrimination law, and digital regulations.

The subsequent sections identify the statutory instruments that have been deployed to control hate speech and the challenges that are presented by their application.

2.1 Indian Penal Code (IPC), 1860

A number of sections of IPC are often used in the prosecution of hate speeches:

Section 153A: Punishes incitement of hatred between various groups on religion, race, place of birth, residence, language, etc.

Section 153B: Converts the prejudicial assertions against national integration into a criminal offense.

Section 295A: Punishes the act that is meant to offend religious feelings but only when it is done deliberately and mischievously.

Section 505(1) and 505(2): Deal with public mischief and incitement to

violence by speech or publication¹⁸.

Although the intentions behind these provisions are to maintain peace in the society, the generalities of such broadly written provisions usually begs subjective interpretation. In some cases courts have found it hard to draw the line between justifiable criticism and illegal incitement. This opens the doors to discretionary application and can be applied to gag harmless yet unpopular speech.

So, a more refined and better-defined statutory standard is needed so that state interests and individual freedoms could be balanced successfully.

2.2 Representation of the People Act, 1951

The Representation of the People Act, 1951 (RPA) deals with hate speech in the specific electoral sphere. Any appeal to religion, race, caste, community or language to gain electorally is declared as a corrupt practice under section 123(3A). Section 125 also criminalises an attempt to foster enmity between classes with reference to elections.¹⁹ These clauses promise constitutional dedication toward secularism and unrestricted elections. There is however inconsistency in its application and in many cases hate speech by political figures has not been enforced, this erodes the faith of the populace in the electoral process and also diminishes the principles of democracy.

¹⁸Indian Penal Code, 1860, §§ 153A, 153B, 295A, 505, No. 45 Acts of Parliament, 1860 (India).

¹⁹Representation of the People Act, 1951, § 125, No. 43 Acts of Parliament, 1951 (India).

The Supreme Court in Prabhakar Kashinath Kunte case held that religious appeals in political campaigns were unconstitutional and against the idea of secularism.²⁰.

2.3 SC/ST (Prevention of Atrocities) Act, 1989

The purpose of this Act is to defend the historically underrepresented groups Section 3(1)(x) punishes any intentional insults or intimidation in order to humiliate SC/ST persons in front of people. Section 3(1) (u) focuses on any speech that incites enmity, hatred, or ill-will towards them.²¹ Unlike broad statements in the IPC, this Act targets the dignity and security of susceptible groups of people.

2.4 The Information Technology (IT) Act, 2000 and Information Technology (IT) Rules, 2021

The IT Act provides regulation of digital platforms and the Section 69A that empowers the government to block access to content that tends to endanger public order The IT Rules, 2021 require platforms to remove objectionable content, including hate speech within 36 hours of a complaint.²².

Rules consisting of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were criticised for granting immoderate powers to the government. Internet Freedom

²⁰ Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte, AIR 1996 SC 1113.

²¹The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, §§ 3(1)(x), 3(1)(u), No. 33, Acts of Parliament, 1989(India).

²²Information Technology Act, § 69A, No. 21, Acts of Parliament, 2000 (India).

Foundation cautions that an imprecise criterion such as offensive, harmful, or contrary to public order is subject to arbitrary censorship, usually at the expense of valid criticism and satire. Such ambiguities express concerns of roughly chilling effects, in particular on dissent and political speech. With no means of the courts or parliament to monitor the situation it is difficult to see how regulation and freedom are interlinked.

This issue is even more relevant to discuss digital censorship and intermediary liability that will be considered in the following chapter.

2.5 Judicial Precedents on Hate Speech and Online Regulation

The Indian courts have been playing a critical role in defining the limits of free speech especially within the digital era. In the case of *Pravasi Bhalai Sangathan v. Union of India*, the Hon'ble with reference to the Supreme Court identified the gap in the Indian laws, which could be used to effectively prevent hate speech.

It highlighted the need to have a thorough law-making exercise by Parliament to create a comprehensive law against hate speech whose provisions could not be sufficient by relying on the immediate provisions of Sections 153A and 295A IPC to deal with modern forms of hate speech on the internet.²³

In *Amish Devgan v. Union of India*, the Supreme Court clarified that hate

²³*Pravasi Bhalai Sangathan v. Union of India.*, (2014) 11 SCC 477.

speech was not merely offensive or abusive speech but speech that was intended to incite hatred or discrimination against a specific group based on religion, caste, ethnicity, gender or other protected attributes.

The Court made a distinction between justified criticism and the speech that diminishes the order in the society and the dignity of people or groups of people. .²⁴

In the case of *Shreya Singhal*, a famous case, the Court invalidly abolished Section 66A of the Information Technology Act, 2000, because it was vague and had a chilling effect on free speech. The Court observed that the provision was so broadly worded and defied definition as well as prone to abuse hence contravened Article 19(1)(a) of the Constitution. The Court however did confirm the validity of Section 69A, which enables the government to censor websites, as a reasonable limitation under Article 19(2), with the due process.²⁵

Consequently, all these decisions highlight the role of judiciary in striking harmony between the freedom of expression and the State interest in preserving order in the society.

They also highlight how inadequately the contemporary criminal norms address the subtleties of the issue of using digital hate speech.

2.6 Law Commission's Recommendations

The 267th Report of the Law Commission of India (2017) provides a

²⁴*Amish Devgan v. Union of India.*, (2020) 1 SCC 1.

²⁵*Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

pivotal policy framework for reforming hate speech laws. The Commission reminded that speech could and should be criminalized not only on the incitement to violence but also on a probability to marginalize or stigmatize vulnerable communities. The report proposed an inclusion of newer sections such as Section 153C and 505A IPC strictly hate speech.²⁶

This recommendation, although non-binding, reflects the legislative vacuum in regulating harmful digital content. The Commission cautioned towards over-criminalization at the same time as stressing the importance of particular legal criminal definitions to prevent arbitrary software.

2.7 Academic Perspectives

In *The Harm in Hate Speech*, Jeremy Waldron claims that hate speech degrades the targeted persons and their social status and creates a hostile atmosphere.²⁷

On the same note, Gautam Bhatia recommends the protection of dissenting speech, but speaking against dehumanizing a community, he wants the legislators to create better demarcation between criticism and vilification²⁸.

In spite of a couple of legal guidelines, enforcement stays inconsistent. The purpose of such provisions is oftentimes watered down by political

²⁶Law Comm'n of India, Report No. 267, *Hate Speech* (2017), available at- <https://lawcommissionofindia.nic.in/reports/Report267.pdf>, (last visited- 01-05-2025).

²⁷ Jeremy Waldron, *The Harm in Hate Speech* (Harvard Univ. Press 2012).

²⁸ Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford Univ. Press 2016).

abuse, selective application and lack of readability in the definitions.

There is an urgent need of a uniform, narrowly tailored hate speech law conforming to the morality of the constitution and safeguarding both dignity and dissent

3. IT RULES 2021 AND HATE AMPLIFICATION ON SOCIAL MEDIA

3.1 Technology and the Speech Spectrum

The digital era has transformed the production as well as distribution of speech. The traditional speech spectrum which was sustained within a sphere of personal communication to mass broadcasting, has thoroughly transformed with the emergence of social media and networking sites, such as Facebook, X (formerly Twitter), Instagram, YouTube, and WhatsApp.

These are real time forums of public discussion. They have enabled the voice of marginalised people to be heard, and

This ambivalence is a big regulatory problem. Freedom of expression has been democratised, yet they are also the foundations of ordered harassment, hate speech, disinformation and Cyberbullying.

This design of such platforms, based on an algorithm, tends to give preference to sensational and provocative content, polarisation, and form echo chambers.

3.2 Role of Social-Media in Spreading Hate

It has been said that hate speech on social media is more dangerous than

the traditional forms of expression because of the so-called amplification effect, anonymity, and virality²⁹With the internet, malicious information does not have to go through the conventional gatekeepers such as performing editors or state censors.

In India, several events have occurred- Delhi Riots (2020)- Misinformation and incendiary posts on Facebook and WhatsApp were important factors that contributed to the escalation of communal tensions. Haridwar Hate Assembly (2021) A series of such videos containing hate speeches against religious minorities went viral on YouTube and Twitter, provoking the people and inciting them to violence. Bulli Bai App Case (2022) A malicious application that was hosted on GitHub bullied Muslim women by auctioning their photographs in an act that demonstrated dehumanization and shame that can be done through anonymity on the internet.³⁰.

These examples demonstrate the need and significance of active content moderation and responsibility of the platforms. A report by the Rights and Risks Analysis Group claimed that "the majority of hate speech in India is unleashed freely in Facebook and WhatsApp groups, typically in political election times, or when there is a communal flare-up"³¹. The

²⁹ Apar Gupta, 'Understanding the Amplification of Hate,' The Hindu, May 2022, available at- <https://www.thehindu.com/opinion/lead/hate-speech-social-media>),(last visited- 01-05-2025).

³⁰ Alt News, 'Fact-checking Delhi Riots Hate Campaigns,' March 2020, available at- <https://www.altnews.in/delhi-riots-fact-check>),(last visited- 01-05-2025).

³¹ Rights and Risks Analysis Group, 'Social Media and Electoral Hate in India,' 2021, available at-<http://www.rightsrisks.org>),(last visited- 01-05-2025).

geometric rise of smart phones and mobile data has made it more accessible and the platforms have had difficulties in regulating regional language content.

3.3 Legislative Framework:

IT Act and IT Rules, 2021 The Indian government introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 under Section 87 of the Information Technology Act, 2000. The rules apply to the intermediaries, including social media companies, messaging services or digital news publishers.³².

As per Rule 3(1)(b) requires the intermediaries to inform users that they are not allowed to host information that is ethnically offensive, fosters hatred, or threatens to disturb law and order. The requirements of Rule 4 are that significant social media intermediaries (those with more than 5 million users) must designate grievance redressal officers, compliance officers, and trace the originator of a message.³³

These sections are intended to maximize accountability, though they have been criticized as vaguely worded, and subject to criticism about infringement of privacy and freedom of speech rights. Harmful content is not clearly defined, and specialists are worried that this can be misused to remove criticism or satire.

³²Information Technology Act, § 87, No. 21, Acts of Parliament, 2000 (India).

³³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, GSR 139(E).

3.4 Judicial Scrutiny and Constitutional Concerns

The Indian judiciary has carefully examined the constitutional validity of laws and executive actions regulating digital content.

This part of the paper provides case laws that strengthen the position that freedom of expression should be preserved but with the regulation of harmful material.

In *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the IT Act, holding that vague and overbroad laws chill legitimate speech and violate Article 19(1)(a)³⁴. Though the IT Rules, 2021 do not reinstate Section 66A, critics argue they introduce indirect restrictions through delegated legislation.

In *Anuradha Bhasin v. Union of India*, the Supreme Court ruled that internet access is essential to the freedom of speech and expression, and established the "proportionality" test for internet shutdowns³⁵. These precedents guide constitutional scrutiny of the IT Rules, 2021, especially regarding Rule 3 and Rule 7, which empower intermediaries and the government to remove content without a robust judicial mechanism. The critics suggest that such provisions indirectly bring back the chilling effect lamented in *Shreya Singhal*, but via delegated legislation.

3.5 Civil Society and International Critiques

The Internet Freedom Foundation, a leading digital rights group, stated

³⁴ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

³⁵ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

that “the IT Rules, 2021 go beyond their parent statute by seeking to regulate digital news media and OTT platforms,” violating the principle of delegated legislation³⁶. Human Rights Watch noted that the rules “give the Indian government broad powers to censor online content and impose barriers on journalists and activists”³⁷.

International best practices like the UN Rabat Plan of Action indicates that hate speech could only be restricted when it tries to provoke violence or discrimination, which means that the threshold to intervention is high.³⁸.

3.6 Comparative Law: Global Approaches to Digital Hate Speech

It can be concluded that the analysis of international frameworks will offer valuable information on how to shape the Indian approach to digital hate speech.

Germany’s Network Enforcement Act (NetzDG) mandates social media platforms to remove clearly illegal content (e.g., hate speech) within 24 hours of receiving user complaints. Failure to comply is punishable by a fine of up to 50 million Euros. Though effective in prompt takedown, it

³⁶ Internet Freedom Foundation, 'Preliminary Analysis of IT Rules, 2021,' available at-<https://internetfreedom.in/it-rules-2021-analysis/>),(last visited- 01-05-2025).

³⁷Human Rights Watch, 'India: New Media Rules Endanger Rights,' February 2021, available at-<https://www.hrw.org/news/2021/02/25/india-new-media-rules-endanger-rights>),(last visited- 01-05-2025).

³⁸ UN Human Rights Office, 'Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred,'2012,available at-<https://www.ohchr.org/en/resources/documents>),(last visited- 01-05-2025).

has been criticized for over-censorship, leading platforms to err on the side of caution, even when the speech is legally protected.³⁹

The U.S. has the most protection of speech in the world, being governed by the First Amendment.

Under the *Brandenburg v. Ohio* test, only speech that incites "imminent lawless action" is punishable. This gives a hard time to prosecute hate speech unless it directly results to violence.

India follows a middle path, allowing "reasonable restrictions" under Article 19(2)⁴⁰. This gives the government some flexibility in filtering the harmful content, yet it puts a heavier burden on the legislature to limit those restrictions with precision.

These models are important to understand so as to shun the possibilities of oscillating between too much censorship and too much hate. The regulatory policy in India should be accountable but not at the cost of constitutional rights of freedom.

3.7 Reform Needs

1. Come up with a concrete definition of hate speech and offensive material so that it cannot be misused.
2. Create a non-executive digital regulatory body, e.g. the Data Protection Board, which is not part of the executive branch, and to which complaints, appeals, and takedowns may be submitted.

³⁹ German Federal Ministry of Justice, Network Enforcement Act, available at- <https://www.bmj.de/EN/topics/acts/NetzDG>),(last visited- 01-05-2025).

⁴⁰INDIA CONST. art. 19, cl. (2).

3. Introduce due process safeguards before ordering content takedowns, including notice to the affected party, opportunity to be heard, and appeal mechanisms.
4. Promote digital literacy movements to ensure the users are responsible and conversant with the measures of identifying, countering, and reporting any hate speech and misinformation.
5. Last but not least, invest in AI moderating technology that may comprehend the regional, linguistic and situation-based intricacies to identify and filter hate speech in local Indian languages.

The IT Rules, 2021 are a step in the direction that will allow regulating online abuse, but they will lead to overreach and constitutional breach without procedural safeguards and independent oversight. Any reform-based strategy should be anchored on technical soundness and democratic principles.

4. LEGAL ISSUES OF THE IMPLEMENTATION AND THE THREAT TO FREE SPEECH

Although India has a strong legal framework to tackle hate speech, implementation mechanisms are dogged by inconsistencies, selectivity and procedure related ambiguities. These systemic gaps do not only prove ineffective in curtailing hateful speech but also result into silencing of lawful

criticism, a phenomenon known as a chilling effect on free speech - occurs when individuals are afraid to exercise their right to free speech because they might be prosecuted.

4.1 Legal Definitions ambiguity

Among the underlying issues, there is the fact that hate speech has no legal definition. Law Commission of India in its 267th Report recognized that the current legislation such as Section 153A, 295A and 505 of IPC is undefined and broader than necessary and results in arbitrary application. Interpretive subjectivity and politicization is permitted by the use of undefined terms like malicious intent, public mischief and outraging religious feelings.⁴¹.

"Without a clear standard, law enforcement tends to view criticism as incitement and satire as sedition"⁴². This puts a blur on harmful expression and constitutionally permitted speech.

4.2 Selective Prosecution and political abuse

In many instances, hate speech laws have been applied in a partial manner to crack down on political critics whilst removing a blind eye on more severe offenses by individuals who support the ruling government.

For example, while comedians like Munawar Faruqui have faced preventive arrests over alleged religious insult, public calls for violence

⁴¹ Law Commission of India, Report No. 267, Hate Speech (2017, available at-<https://lawcommissionofindia.nic.in/reports/Report267.pdf>), (last visited- 01-05-2025).

⁴² Faizan Mustafa, 'Hate Speech and Free Speech: The Blurred Lines,' The Leaflet, Jan. 2022, available at-<https://theleaflet.in/hate-speech-and-free-speech-blurred-lines>), (last visited- 01-05-2025).

by fringe elements often go unchecked⁴³.

Such selective application not only erodes the rule of law but also undermines the credibility of the legal system. As Amnesty International pointed out in its 2022 India report, “Law enforcement authorities have shown a growing tendency to use hate speech provisions to suppress government criticism rather than address actual incitement”.⁴⁴

4.3 Judicial Delays and Ineffectiveness

However, implementation is still slow despite a number of landmark rulings. The Increase of hate speech has not gone unnoticed by courts which are however quite slow in responding. In the case of *Tehseen Poonawalla v. Union of India*, the Supreme Court laid down preventive and remedial guidelines to tackle lynching and hate crimes, but implementation has been patchy⁴⁵.

As per data from Article 14, between 2014 and 2022, only a fraction of FIRs registered under hate speech-related IPC provisions resulted in convictions⁴⁶. The problem is worsened by delays in trial, absence of digital evidence guidelines and undertrained police personnel.

⁴³ Arfa Khanum Sherwani, 'The Arrest of Munawar Faruqui and the Politics of Selective Outrage,' *The Wire*, Jan. 2021, available at- <https://thewire.in/communalism/munawar-faruqui-arrest>),(last visited- 01-05-2025).

⁴⁴Amnesty Int'l, 'India: Rights Erosion in 2022,'available at- <https://www.amnesty.org/en/documents/asa20/5306/2022/en/>),(last visited- 01-05-2025).

⁴⁵*Tehseen S. Poonawalla v. Union of India.*, (2018) 9 SCC 501.

⁴⁶ Article 14, 'Data Shows Low Conviction Rate in Hate Speech Cases,' available at- <https://article-14.com>),(last visited- 01-05-2025).

4.4 Chilling Effect on Free Speech

The chilling effect doctrine describes the indirect, negative impact on free speech. The ambiguity of hate speech regulations and their abuse has created an atmosphere of intimidation on journalists, artists, scholars, and activists. A chilling effect is a self-censorship that is caused by a fear of a criminal prosecution or harassment.

The Shreya Singhal judgment warned against this effect when it struck down Section 66A of the IT Act⁴⁷. In recent times, there have been instances of temporary blocking of news portals such as The wire and Caravan Magazine because of carrying reports which were critical of government action. In such cases, the invocation of public order justifications without due process restricts freedom of the press and undermines democratic accountability⁴⁸.

4.5 Transparency in Digital Takedowns

The IT Rules, 2021 give the government the power to send takedown notices to online content. Nonetheless, the nature of such requests or the criteria applied is not very transparent. The civil society bodies, including SFLC.in and the Internet Freedom Foundation, have raised concern repeatedly about the extra-judicial and non-transparent method of such

⁴⁷ Shreya Singhal v. Union of India, AIR 2015 SC 1523.

⁴⁸ Committee to Protect Journalists, 'Indian Media Under Pressure: Government Censorship on the Rise,' available at-<https://cpj.org/2023/04/india-press-freedom>),(last visited- 01-05-2025).

directions.⁴⁹.

These developments reflect a wider tendency to limit speech in the name of regulation, without the oversight of the courts.

4.6 Need for Institutional Reforms

To overcome these implementation barriers, it is suggested to change it in the following way:

- To Introduce a statutory definition of hate speech with proper objective standards.
- To Set up independent tribunals to adjudicate hate speech cases impartially.
- To Develop a code of conduct for police investigations in hate speech cases.
- To Introduce a transparent database of takedown orders so that some light could be introduced to the process of digital regulation.
- To Empower the judiciary to monitor compliance with its own anti-hate guidelines.

4.7 Case Study on The Ranveer Allahbadia Gag Order: Judicial Overreach and Free Speech Suppression

A recent Supreme Court order in February 2025 concerning YouTuber Ranveer Allahbadia has stirred significant legal and academic debate. The Court granted interim protection from arrest to Allahbadia and his

⁴⁹ Software Freedom Law Center (SFLC.in), 'Transparency in Takedowns: The Legal Black Hole,' available at-<https://sflc.in/takedown-data>),(last visited- 01-05-2025).

associates over allegedly obscene comments, but imposed a broad restriction: they were prohibited from posting any content on social media until further notice⁵⁰.

While the relief aligned with anticipatory bail principles under Section 438(2) of the Criminal Procedure Code, the social media ban raised serious questions regarding fundamental rights. Article 19(1)(a) guarantees freedom of speech, and Article 19(1)(g) secures the right to practice any profession. That the gag order violated both, without offering proportional or reasoned justification⁵¹

The order appeared to mirror prior restraint—restrictions imposed before speech occurs—which is widely discouraged in Indian and comparative constitutional law. The judiciary itself, in *Shreya Singhal v. Union of India*, warned against vague or sweeping restrictions that could chill legitimate discourse⁵².

Legal precedent also impairs the justification of the gag order. In *Mohammed Zubair v. State of Uttar Pradesh* (2022), the Supreme Court struck down a similar restriction on social media activity, noting that "a blanket order... would be disproportionate to the purpose of imposing

⁵⁰ Ajuni Bedi, *Obscenity In 'India's Got Latent 'Supreme Court Pushes for Social Media Rules – A Threat to Free Speech?*, LAW CHAKRA (Feb. 19, 2025), available at <https://lawchakra.com/obscenity-supreme-court-digital-gag-ranveer-article19-free-speech>), (last visited- 01-05-2025).

⁵¹ Faizan Mustafa, *'Chilling Speech: The Slippery Slope of Judicial Gag Orders,' The Leaflet*, March 2025, available at <https://theleaflet.in>), (last visited- 01-05-2025).

⁵² *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

conditions on bail”⁵³. The Court underlined that limitations should be strictly precise and should not affect the profession of the accused, which was journalism in that instance.

This study reveals a deeper concern about judicial inconsistency. While the Allahabadia gag order bans all forms of digital engagement, similar past conditions were deemed unconstitutional. The potential precedent here could lead to:

- Chilling effect on digital creators and journalists
- Overreach of judicial discretion under CrPC § 438⁵⁴
- Erosion of trust in Article 19 protections

The case signifies the significance of judicial accountability in bail jurisprudence and internet regulation. Courts must justify restrictions clearly and adhere to the proportionality principle. The gap between law and implementation has made India's approach to hate speech both overreaching and ineffective. Whereas certain people are severely punished because of uttering minor speeches, others are protected even though they preach violence.

Such selectivity coupled with vague laws and slow prosecution, has a chilling effect on democracy.

A transparent, proportionate, and rights-based model of enforcement is needed to win back the trust of people and to protect the constitutional

⁵³ Mohammed Zubair v. State of Uttar Pradesh, WP(Crl.) No. 197 of 2022.

⁵⁴ The Code of Criminal Procedure, 1973, § 438(2), No. 2, Acts of Parliament, 1974 (India).

ideals.

5. CONCLUSION AND SUGGESTION

5.1 Conclusion

Freedom of speech is an essential component of a democratic society, protected under Article 19(1)(a) of the Indian Constitution and Article 19(2) which balances this freedom by allowing reasonable restrictions in the interests of public order, decency, and national integrity. The tension between these two constitutional requirements emerges clearly where hate speech is concerned, which though seemingly expressive, has the potential of inciting violence, breeding discrimination and endangering pluralism.

Hate speech could be combated using the plethora of provisions available in the Indian legal system, Indian Penal Code, Representation of the People Act, SC/ST Act, Information Technology laws, among others.

These are however, unequally carried out and in some instances, politically provoked or procedurally weak. In the meantime, the Internet space has increased the scale and speed of hate speech distribution, and has presented additional difficulties to lawmakers, the judiciary system and non-governmental organizations.

This paper has traced the Free speech law in India, beginning with landmark rulings like Romesh Thapar and Maneka Gandhi to the relatively recent rulings, like Shreya Singhal and Amish Devgan.

The judiciary has been liberal in upholding civil freedom but at the same

time observed that there is a necessity of controlling hate speech in the greater common good.

Few Statutory provisions, especially Sections 153A, 295A, and 505 of the IPC, are frequently used but often lack clarity and precision. The IT Rules, 2021, although formulated with the motive of fighting online abuse, have raised the concerns of privacy, surveillance, and censorship. Specificity and proportionately of hate speech regulation has been emphasized upon by the Law Commission and other international guiding principles like the UN Rabat Plan.

The challenges that have led to issues of limitation on legitimate dissenting voices have been problems of definitional ambiguity, selective application, political abuse and problems of procedural delays.

5.2Recommendations

In order to have a rights-based, constitutionally acceptable, and enforceable framework, the following reforms are suggested:

1. Define Hate Speech Statutorily, enact a separate regulation or amend the IPC to outline hate speech sincerely, the usage of measurable and objective criteria aligned with the Rabat Plan of Action.
2. Safeguard Due Process in Digital Regulation, Amend the IT Rules, 2021 to include clear definitions, independent oversight of takedown orders, and judicial review mechanisms.

3. Strengthen Institutional Capacity, Train police and judicial officers in handling hate speech complaints sensitively and legally. Set up special digital content monitoring cells which observe civil liberties.
4. Cooperate with organizations that help people to know about online safety and how to deal with hate of speech.
5. Train individuals on their rights online and what to do in identification of hate speech.
6. Publish takedown information, complaint redressal resolution and government content moderation requests publicly.

In this manner, they will all be able to appreciate the significance of transparency, collaboration, and digital literacy when it comes to addressing online problems.

"Striking a balance between freedom of speech and preventing hate speech is neither easy nor binary "

RES JUDICATA AND ABUSE OF PROCESS: A COMPARATIVE ANALYSIS



- Archana Rampuria⁵⁵

ABSTRACT

This article provides a comprehensive comparative analysis of the doctrines of res judicata under the Indian Code of Civil Procedure, 1908, and the principle of abuse of process as developed in common law jurisdictions such as the United Kingdom, United States, and Australia. While res judicata in India is a statutory rule aimed at ensuring finality

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and preventing multiplicity of litigation, the common law doctrine of abuse of process emerges from the equitable jurisdiction of courts to prevent misuse of judicial procedures for improper purposes. The article explores the historical evolution, key judicial interpretations, conceptual distinctions, and shared objectives of these two doctrines. It also highlights the nuanced differences in judicial discretion, procedural application, and scope of exceptions. Through doctrinal and case-based analysis, the study reflects on how both systems strive to balance judicial economy with fairness and justice, while navigating the tension between finality and access to courts.

KEY WORDS: *Res Judicata, Abuse of Process, Civil Procedure Code (CPC), Common Law, Judicial Finality.*

1. INTRODUCTION

The doctrines of res judicata and abuse of process lie at the heart of modern civil justice systems. Both aim to curb unwarranted or repeated litigation and preserve judicial resources, but they differ significantly in legal architecture and application. Under the Indian framework, res judicata is statutorily embodied in Section 11 of the Civil Procedure Code, 1908, a provision designed to bar re-litigation of issues that are “directly and substantially in issue” between the same parties before a competent court and already decided.⁵⁶

Common law systems, exemplified in the U.S., U.K., and Australia adhere to similar principles through claim preclusion and issue preclusion, while also employing a distinct tort-based concept of abuse of process to address improper use of legal proceedings. Res judicata under the CPC requires four essential ingredients:

- (1) Same Parties or Privies,
- (2) Same Subject Matter and Cause of Action,
- (3) Competent Jurisdiction, and
- (4) Final Adjudication.⁵⁷

⁵⁶Res Judicata: An In-Depth Examination of Section 11 of the Civil Procedure Code, Legal Service India, <https://www.legalserviceindia.com/legal/article-17168-res-judicata-an-in-depth-examination-of-section-11-of-the-civil-procedure-code.html> (last visited May. 2, 2025).

⁵⁷Doctrine of Res Judicata under Section 11 of CPC,” LawFoyer, <https://lawfoyer.in/doctrine-of-res-judicata-under-section-11-cpc/> (last visited May. 2, 2025).

Notably, Explanation IV introduces the principle of constructive res judicata, which bars raising issues that ought to have been brought forward in earlier proceedings.⁵⁸ Landmark decisions, such as *Satyadhyan Ghosal v. Deorajin Debi* (1960) and *Daryao v. State of U.P.* (1961),⁵⁹ have reaffirmed the necessity of finality and judicial economy inherent in res judicata.⁶⁰ Conversely, in common law jurisdictions, particularly the U.K., courts have fashioned the doctrine of abuse of process, a more flexible tool aimed at suppressing litigious misuse. In *Johnson v. Gore Wood & Co.* (2000),⁶¹ the House of Lords revised the rigid injunction in *Henderson v. Henderson*, acknowledging that judicial intervention must balance prevention of vexatious litigation with fairness to claimants pursuing legitimate grievances.⁶²

This article examines how the CPC's structured, statutory approach compares with the common law's more equitable, flexible paradigms, particularly in doctrine formulation and judicial reasoning. It explores not only doctrinal congruities and divergences, but also considers contemporary challenges such as misuse of judicial processes. Ultimately, this comparative study argues that while India's CPC ensures

⁵⁸"Doctrine of Constructive Res Judicata," LawFoyer, <https://lawfoyer.in/doctrine-of-constructive-res-judicata/> (last visited May. 4, 2025).

⁵⁹*Satyadhyan Ghosal v. Deorajin Debi*, AIR 1960 SC 941 (India); *Daryao v. State of Uttar Pradesh*, AIR 1961 SC 1457 (India).

⁶⁰<https://www.legalserviceindia.com/legal/legal/article-14929-understanding-res-judicata-under-section-11-of-cpc-key-elements-case-laws-and-exceptions.html>

⁶¹*Johnson v. Gore Wood & Co.*, [2002] 2 A.C. 1 (H.L.) (U.K.).

⁶²*Johnson v. Gore Wood & Co.*, [2002] 2 A.C. 1 (H.L. Dec. 14, 2000).

legal certainty, there is room for adopting the principled discretion and tort based protections that characterize common law systems. Such integration could enhance the Indian system's ability to simultaneously uphold finality and fairness, thereby preserving the integrity of civil justice.

2. RES JUDICATA IN INDIAN LAW

The doctrine of res judicata, derived from the Latin maxim “*res judicata pro veritate accipitur*” (a thing adjudicated is taken to be true), is a well-established legal principle preventing multiplicity of litigation. Codified under Section 11 of the Code of Civil Procedure, 1908, this doctrine ensures that no court shall try a suit or issue that has already been directly and substantially decided in a former suit between the same parties or their privies by a court competent to try such subsequent suit.⁶³

2.1 Text and Essentials of Section 11, CPC

Section 11, CPC, reads:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties... and has been heard and finally decided by such Court.”⁶⁴

To invoke res judicata, the following essentials must be satisfied:

⁶³Code of Civil Procedure, 1908, § 11, No. 5, Acts of Parliament, 1908 (India).

⁶⁴*Id.*

- The matter in the subsequent suit must be directly and substantially in issue.
- It must have been directly and substantially in issue in a former suit.
- The former suit must be between the same parties or their privies.
- The issue must have been decided by a court competent to try the subsequent suit.
- The issue must have been heard and finally decided.

The doctrine reflects the policy of finality in litigation and judicial economy. The Supreme Court of India has often reiterated that the doctrine is not merely a technical rule but a fundamental principle grounded in public policy to prevent harassment through repeated litigation.⁶⁵

2.2 Constructive Res Judicata: Explanation IV

An important extension of this doctrine is Explanation IV to Section 11, which deals with constructive res judicata. It bars a party from raising issues that, although not expressly raised in the earlier proceeding, ought to have been raised as part of the same cause of action.⁶⁶

In *Gulabchand Chhotalal Parikh v. State of Gujarat*,⁶⁷ the Supreme Court laid down that the principle of constructive res judicata applies even to

⁶⁵Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941 (India).

⁶⁶Code of Civil Procedure, 1908, § 11, Explanation IV, No. 5, Acts of Parliament, 1908 (India).

⁶⁷*Gulabchand Chhotalal Parikh v. State of Gujarat*, (1965) 2 SCR 547 (India).

writ petitions filed under Article 226 of the Constitution, thereby expanding its application beyond ordinary civil litigation.

This was further affirmed in *Forward Construction Co. v. Prabhat Mandal (Regd.)*, where the Court observed that “an adjudication will operate as *res judicata* not only in respect of the actual matter decided but also as to the ground covered and matters which might and ought to have been raised as a ground of attack or defence”⁶⁸

2.3 Leading Judicial Precedents

2.3.1 Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941

The Court held that the rule of *res judicata* is based on two principles: (a) finality of judgment and (b) public interest. It emphasized that a decision once rendered should not be reopened, and litigation must come to an end.⁶⁹

2.3.2 Daryao v. State of U.P., AIR 1961 SC 1457

In this landmark case, the Supreme Court extended the doctrine of *res judicata* to writ proceedings under Articles 32 and 226. The Court noted that the rule of finality is applicable even to fundamental rights litigation and thus re-litigation is barred in public interest.⁷⁰

2.3.3 Sheoparsan Singh v. Ramnandan Prasad Narayan Singh, (1916) 43 IA 91

⁶⁸*Forward Constr. Co. v. Prabhat Mandal*, (1986) 1 SCC 100 (India).

⁶⁹*Id.*

⁷⁰*Daryao v. State of Uttar Pradesh*, AIR 1961 SC 1457 (India).

Although a Privy Council decision, it remains relevant in Indian jurisprudence. The court reiterated that judicial decisions must be binding, and parties cannot be allowed to re-agitate issues.

2.4 Exceptions to Res Judicata

Despite its rigid application, the doctrine admits exceptions where justice so demands:

- 2.4.1 Fraud or Collusion: If the previous decision was obtained through fraud or collusion, it is a nullity.⁷¹
- 2.4.2 Lack of Jurisdiction: If the earlier court lacked jurisdiction, res judicata will not apply.⁷²
- 2.4.3 Interlocutory Orders: Orders that are not final decisions on the merits (e.g., interim injunctions) do not attract res judicata.⁷³
- 2.4.4 Change in Law or Circumstance: If there is a material change in legal position or fact situation, courts may allow re-examination.

2.5 Nature of Doctrine: Rule of Procedure or Substantive Law?

The Indian judiciary has oscillated between treating res judicata as a procedural rule and a principle of substantive law. The Supreme Court in *Hope Plantations Ltd. v. Taluk Land Board*,⁷⁴ observed that while Section 11 is part of procedural law, the underlying principle of res

⁷¹Ashok Leyland Ltd. v. State of Tamil Nadu, AIR 2004 SC 2836 (India).

⁷²Union of India v. Pramod Gupta, (2005) 12 SCC 1 (India).

⁷³Shiv Kumar Sharma v. Santosh Kumari, (2007) 8 SCC 600 (India).

⁷⁴Hope Plantations Ltd. v. Taluk Land Bd., (1999) 5 SCC 590 (India).

judicata is grounded in public policy and thus attains a quasi-substantive character.

3. ABUSE OF PROCESS IN COMMON LAW

Unlike the Indian approach, which relies largely on the codified doctrine of res judicata under Section 11 of the CPC, common law jurisdictions supplement the principle of finality with the equitable doctrine of abuse of process. This doctrine empowers courts to strike out proceedings that amount to misuse of judicial machinery, even where the technical requirements of res judicata or estoppel are not fulfilled.

3.1 Meaning and Scope

The doctrine of abuse of process serves to protect the judicial process from being used for an ulterior or improper purpose. It is broader than res judicata, as it applies even in cases where the cause of action or the parties may differ, but where the plaintiff's conduct amounts to harassment, delay, or manipulation of the system.⁷⁵ Courts in these jurisdictions have recognized that ensuring justice also involves preventing injustice through procedural misuse.

In *Hunter v. Chief Constable of the West Midlands Police*,⁷⁶ Lord Diplock observed:

⁷⁵Jacob B. Stein, *Law of Preclusion*, § 1:1 (2020).

⁷⁶*Hunter v. Chief Constable of the West Midlands Police*, [1982] A.C. 529 (H.L.) (U.K.).

“This is not a rule of law in the strict sense but a judicial discretion to prevent misuse of the court’s procedure in a way which... would bring the administration of justice into disrepute.”⁷⁷

Abuse of process, thus, can be invoked even absent identical causes of action or parties, as long as continuing the proceedings would offend judicial conscience or lead to unjust results.

3.2 The United Kingdom: Henderson and Johnson

In the UK, abuse of process is governed by the inherent jurisdiction of the court and is often invoked where a party seeks to re-litigate an issue that ought to have been raised earlier.

The foundation was laid in *Henderson v. Henderson*, where Vice-Chancellor Wigram stated:

“Where a given matter becomes the subject of litigation in, and of adjudication by, a Court... the Court requires the party to bring forward the whole case.”⁷⁸

This principle, now referred to as Henderson abuse, was refined in the House of Lords decision in *Johnson v. Gore Wood & Co.*,⁷⁹ where Lord Bingham clarified that the test for abuse is not rigid, and courts must consider all circumstances.

The court rejected a purely formalistic approach and emphasized fairness and finality. While *res judicata* depends on strict identity of parties and

⁷⁷Id. at 536 (per Diplock, L.J.).

⁷⁸*Henderson v. Henderson*, (1843) 3 Hare 100, 115; 67 ER 313 (Ch.).

⁷⁹*Johnson v. Gore Wood & Co.*, [2002] 2 A.C. 1 (H.L.) (U.K.).

issues, abuse of process applies even where litigation is fragmented or repetitious, but technically outside *res judicata*.⁸⁰

3.3 Australia: Anshun Estoppel

Australian courts developed the concept of “Anshun estoppel”, a variant of *res judicata*, in *Port of Melbourne Authority v. Anshun Pty Ltd.*⁸¹

In *Anshun*, the High Court held that a party is precluded from raising a claim or defence inconsistent with a judgment in previous litigation if that matter should reasonably have been raised earlier. This is broader than *res judicata*, as it bars issues that were not actually litigated, but ought to have been.

The High Court emphasized that allowing such claims would:

3.3.1 Undermine the authority of the earlier decision,

3.3.2 Multiply litigation unnecessarily, and

3.3.3 Defeat the principle of finality.⁸²

Thus, *Anshun estoppel* functions similarly to the doctrine of constructive *res judicata* under Indian law but is rooted in equitable discretion rather than statute.

3.4 United States: Claim and Issue Preclusion, and Tort of Abuse of Process

In the United States, the doctrines of claim preclusion and issue preclusion function similarly to *res judicata* and collateral estoppel

⁸⁰Id. at 31–33 (per Bingham, L.J.).

⁸¹*Port of Melbourne Auth. v. Anshun Pty. Ltd.*, (1981) 147 CLR 589 (Austl.).

⁸²Id. at 603–04.

respectively. These doctrines bar a party from re-litigating matters that were or could have been raised in prior proceedings.⁸³

However, U.S. law also recognizes a tort of abuse of process, providing civil remedies for malicious use of court procedures. The elements typically include:

- 3.4.1 Ulterior purpose or improper motive,
- 3.4.2 Misuse of legal process (e.g., subpoena, summons, or complaint), and
- 3.4.3 Resulting harm to the defendant.⁸⁴

In *Komp v. Reliance Standard Life Insurance Co.*,⁸⁵ the court defined abuse of process as perverting legal procedure to achieve an end that the process was not intended to achieve.

Moreover, in *Parklane Hosiery Co. v. Shore*,⁸⁶ the U.S. Supreme Court applied non-mutual collateral estoppel to prevent a party from re-litigating issues already decided, reinforcing the balance between fairness and finality.

4. COMPARATIVE ANALYSIS OF RES JUDICATA AND ABUSE OF PROCESS: CPC VS COMMON LAW

⁸³Federated Dep't Stores v. Moitie, 452 U.S. 394, 398 (1981).

⁸⁴W. Page Keeton et al., *Prosser and Keeton on the Law of Torts*, § 121 (5th ed. 1984).

⁸⁵*Komp v. Reliance Standard Life Ins. Co.*, 420 F. Supp. 3d 1016 (E.D. Wis. 2019).

⁸⁶*Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979).

4.1 Foundation: Statutory Codification v. Equitable Jurisdiction

The doctrine of res judicata in India is codified under Section 11 of the Civil Procedure Code, 1908, which offers a clear, rule-based structure for its application. In contrast, the abuse of process doctrine in common law countries such as the UK, Australia, and the United States stems not from codification but from equitable and inherent jurisdiction of courts. This distinction signifies that while Indian courts follow a statutory checklist, common law courts exercise flexibility and discretion in applying the doctrine to bar vexatious and oppressive proceedings.

While Section 11 requires strict conditions such as identity of issues, parties, and previous adjudication by a competent court the doctrine of abuse of process does not require technical identity. Rather, it focuses on the intent, conduct, and purpose of the party initiating litigation, allowing broader judicial intervention.

4.2 Constructive Res Judicata and Henderson Abuse: Similar Yet Distinct

A meaningful point of comparison arises between Explanation IV of Section 11 (constructive res judicata) and the Henderson rule in English common law. Both doctrines prevent parties from raising claims that could and should have been raised in earlier proceedings. However, while Indian courts apply constructive res judicata based on statutory

interpretation, common law courts do so under the broader doctrine of abuse of process allowing them to take into account overall fairness, public interest, and judicial integrity, as seen in *Johnson v. Gore Wood & Co.*⁸⁷

This flexibility allows common law courts to block repetitive litigation that technically evades *res judicata* but nevertheless seeks to undermine judicial finality, whereas Indian courts may be limited by the more rigid contours of Section 11 unless the case falls clearly within the statutory language.

4.3 Multiplicity of Proceedings: Public Policy v. Procedural Tool

In both systems, preventing multiplicity of proceedings is a key objective. Indian courts emphasize that the rule of *res judicata* is not merely procedural but founded on public policy, as reiterated in *Daryao v. State of U.P.*⁸⁸ Similarly, in common law, especially in Australia's *Anshun* doctrine, courts stress that re-litigation leads to inconsistency, waste of judicial resources, and injustice.

However, abuse of process doctrine is more expansive, as it also bars proceedings that do not duplicate earlier claims, but which are nevertheless intended to harass or result in collateral advantage. For example, the US tort of abuse of process penalizes parties who file suits

⁸⁷ *Johnson v. Gore Wood & Co.*, [2002] 2 A.C. 1 (H.L.) (U.K.).

⁸⁸ *Daryao v. State of U.P.*, AIR 1961 SC 1457 (India).

solely to pressure settlements or delay proceedings, regardless of the technical validity of the legal claims.⁸⁹

4.4 Fraud, Collusion, and Exceptions: A Shared Recognition

Both Indian and common law systems recognize that the doctrine of finality is not absolute. A common exception is where the previous judgment was obtained through fraud or collusion. Indian courts, as in *Ashok Leyland Ltd. v. State of Tamil Nadu*,⁹⁰ have held that a fraudulent decree is a nullity and cannot operate as *res judicata*. Similarly, common law courts allow litigants to challenge earlier decisions tainted by deceit, affirming the maxim that fraud unravels all.

The key difference lies in method of redress: in India, such exceptions must still conform to procedural rules under the CPC, while in common law, equitable discretion allows judges to consider context and motive, granting greater flexibility.

4.5 Judicial Discretion and Its Limits

Perhaps the most significant difference between the two systems is in the latitude of judicial discretion. In India, the court's power under Section 11 is structured and limited. Judges must fit the facts within the statutory requirements. In contrast, common law judges are empowered to craft

⁸⁹ W. Page Keeton et al., *Prosser and Keeton on the Law of Torts*, § 121 (5th ed. 1984).

⁹⁰ *Ashok Leyland Ltd. v. State of Tamil Nadu*, AIR 2004 SC 2836 (India).

remedies and strike out claims *suasponete* if they find proceedings abusive, even in the absence of identity of claims or parties.

While this discretion can enhance justice, it may also lead to subjectivity and inconsistency, particularly when litigants are not given a clear rule to rely on. In India, despite being more rigid, the predictability of Section 11 provides legal certainty, whereas common law's equitable discretion involves a trade-off with judicial activism.

4.6 Role in Constitutional and Public Law Litigation

Interestingly, the Indian Supreme Court has extended *res judicata* principles to constitutional writs under Articles 32 and 226, as seen in *GulabchandChhotalal Parikh v. State of Gujarat*⁹¹ and *Daryao*. This mirrors common law jurisdictions where abuse of process doctrines also apply in public law litigation, including administrative and constitutional cases.⁹²

However, Indian jurisprudence still treats the application of *res judicata* in constitutional matters with caution, especially where fundamental rights are at stake. Courts maintain that finality must yield to justice in exceptional circumstances, as reaffirmed in *Amalgamated Coalfields Ltd. v. JanapadaSabha*.⁹³ Similarly, U.S. federal courts may allow re-

⁹¹*GulabchandChhotalal Parikh v. State of Gujarat*, (1965) 2 SCR 547 (India).

⁹²*Hunter v. Chief Constable of the West Midlands Police*, [1982] A.C. 529 (H.L.) (U.K.).

⁹³*Amalgamated Coalfields Ltd. v. Janapada Sabha*, AIR 1963 SC 1013 (India).

litigation of constitutional claims if substantial change in law or fact occurs after the earlier judgment.

5. CONCLUSION

The doctrines of res judicata under the Code of Civil Procedure, 1908, and abuse of process under common law systems serve a shared and indispensable purpose: to protect the finality of judicial decisions, ensure judicial economy, and maintain public confidence in the administration of justice. While India relies primarily on a codified and structured application under Section 11 CPC, common law jurisdictions employ a more flexible and equitable approach, allowing courts to strike down proceedings that constitute a misuse of the court's process, even when strict res judicata conditions are not satisfied.

A key distinction lies in judicial discretion. Indian courts are bound by specific preconditions under Section 11, whereas common law courts utilize inherent jurisdiction to prevent injustice and deter procedural abuse. The comparison also reveals that doctrines like constructive res judicata and Henderson abuse share functional similarities in preventing piecemeal litigation but differ in their doctrinal foundations.

Moreover, while both systems recognize fraud and collusion as exceptions, the common law's broader application of the abuse doctrine provides more nuanced tools for tackling vexatious or harassing

litigation. At the same time, India's emphasis on predictability and procedural integrity fosters legal certainty.

The comparative study thus demonstrates that while the principles are conceptually aligned, their practical enforcement diverges based on statutory rigidity versus equitable discretion. A hybrid approach that combines the doctrinal clarity of the CPC with the equitable flexibility of common law may better serve evolving challenges in civil litigation.

6. RECOMMENDATIONS

6.1 Codification of Abuse of Process Doctrine in Indian Law

Indian courts, though empowered under inherent jurisdiction (Section 151 CPC), lack a clear legislative framework akin to the abuse of process doctrine in common law. It is recommended that Parliament consider incorporating an explicit statutory provision to recognize and regulate abusive litigation conduct, especially in civil and writ proceedings.

6.2 Training and Sensitization of the Judiciary

Judges at subordinate and higher levels should be trained to identify subtle forms of vexatious litigation, including forum shopping, collateral attacks, and strategic delays. Judicial academies may include modules that reference comparative practices from UK, US, and Australian courts.

6.3 Strengthening Constructive Res Judicata Application

Courts must adopt a more robust interpretation of Explanation IV to Section 11, ensuring that litigants cannot bypass justice through procedural manipulation. Greater reliance on precedent such as *Satyadhyan Ghosal v. Deorajin Debi*⁹⁴ can reinforce this.

6.4 Case Management and Procedural Reforms

To minimize repeated litigation and procedural abuse, Indian civil courts should adopt stricter case management techniques, including pre-trial disclosures, litigation cost penalties, and summary disposal mechanisms similar to strike-out procedures in UK civil procedure.

6.5 Judicial Use of Inherent Powers with Caution and Consistency

While courts in India have inherent powers to prevent abuse under Section 151 CPC, inconsistent application may risk subjectivity. A set of guiding principles, either judicially evolved or codified, would bring uniformity to this discretion.

⁹⁴*Satyadhyan Ghosal v. Deorajin Debi*, AIR 1960 SC 941 (India).



SHORT ARTICLE



LIVE-IN-RELATIONSHIP: AN ANALYSIS FROM THE PERSPECTIVE OF INDIAN LEGAL SYSTEM



-Basudha Mitra⁹⁵

ABSTRACT

Live-in relationship is still viewed as an immoral and unsightly in modern Indian society. This is due to rich deeply rooted culture. In India although live-in relationship is made legal but is not properly accepted by the people of India. There are two parties involved in a live-in relationship

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who live together without getting married. The main question that arises is that of the rights of women in a live- in relationship. Although there are certain right which are given to a women leaving in a live-in relationship, are they follow in India? Are the rights given to women in a live-in relationship maintained in a society like India?How much each partner is liable to one another in a live-in relationship.

This type of relationship provides individual liberty to choose the partner they want to leave with. This article deals with the rights of women in a live-in relationship and what are the challenges face by them. This article also deals with various judicial judgement on live-in relationship. It also deals with the provisions of domestic violence act and its link with the live-in relationship.

KEYWORDS: *Legal, Women, Rights, Individual's liberty, Challenges.*

1. INTRODUCTION

A country like India which has a deeply rooted culture, rituals, customs of different religions makes it difficult to connect with the western culture. But still due to the growing mindset and modern thinking of the people, India has also come in par with the other western nations and gave live-in-relationship legal recognition. Yes, this might sound a bit weird for a country like India to legalize live-in-relationship, but it's a fact that the state cabinet raised its voice to amend Section 125⁹⁶ of Criminal Procedure Code, which seeks to protect the pecuniary interests of the other women. However, this would need the center's stamp to approve it as a law.

The amendment of section 125 of the Criminal Procedure will lead to change in the definition of the word 'wife'. Due to this amendment the mindset of the women must change that is women must believe in Live-in-relationship. The state has given a reasonable time period to the women to stay with the male, but the only drawback is that the state has not defined the duration of the period given.

1.1 Meaning of Live-in-relationship

Live-in-relationship is an agreement between two individuals where both of them are usually in a romantic or intimate relationship and live together without getting married. In this the couple follow a proper

⁹⁶Code of Criminal Procedure, § 125, Act No. 2 of 1974 (India).

domestic life and get time to build a deeper level of commitment without getting married. In this the couple also get certain time to get to know each other before marriage. This type of relationship is also known as cohabitation⁹⁷.

The Legal Commission and the Malimath Committee (2003)⁹⁸ contributed to the idea that a woman should gain access to the same legal status as her wife if she stays in the marital home for a longer period of time. However, there are still regulations needed for this because courts haven't yet established any. The Apex Court rendered numerous rulings in favour of cohabitation. The Supreme Court stated in one of its rulings that this was required to satisfy certain maintenance claim conditions. According to the rules, a couple living together must share characteristics and be treated similarly to married couples. Both parties must be of legal age to marry. To engage into a marriage contract, both parties must be consenting adults who have lived together voluntarily for a considerable amount of time. The Domestic Violence Act of 2005 also bans benefit claims by cohabiting women was taken into account by the court. The Supreme Court came to the conclusion that it was not the Court's job to change Section or the Act. According to the rules, a couple living together must share characteristics and be treated

⁹⁷Bharathi, A.P., Ramachandran,M.,Chinnasamy,S., &Mani,M.(2022)..Judicial Approach Amdist Growing Live-in-relationship. Law and World,8(21), 27-34,),(last visited- 01-05-2025).

⁹⁸ Law Comm'n of India, Report No.262, The Death Penalty (Aug. 2015),),(last visited- 01-05-2025).

similarly to couples. Both parties must be of legal age to marry. To engage into a marriage contract, both parties must be consenting adults who have lived together voluntarily for a considerable amount of time. The 2005 Domestic Violence Act⁹⁹ ban on benefit claims by cohabiting women was taken into account by the court. The Supreme Court came to the conclusion that it was not the Court's job to change Section or the Act.

Definition of Section 2(f)¹⁰⁰ of the Domestic Violence Act also does not address relationships requiring modification within the restrictive and comprehensive. Domestic violence, adoption of appropriate laws to protect interest groups covers children and wives, even if such relationships do not fall within the scope of relationships due to the nature of marriage. The above law considers marriage for an unmarried woman to live in the same shared apartment as her husband. Section 2(f) of the Act contains definitions of domestic relations between the two persons living in the same household or living together at different times. Thus, the broad definition of domestic relations includes not only marital relations, but also those that are “intrinsically marital”. These types of relationships are particularly prevalent in large cities and urban areas, where individuals have greater freedom to engage in them. While society has started to accept this trend and the law does not classify it as a crime,

⁹⁹The Protection of Women from Domestic Violence Act, No.43 of 2005, section 3, Indian Code(2005).

¹⁰⁰The Protection of Women from Domestic Violence Act, § 2(f), No. 43 of 2005 (India).

it is nonetheless causing significant harm to the social fabric and moral foundation of the community.

2. LEGAL STATUS OF LIVE-IN RELATIONSHIPS IN INDIA

There is no particular definition of Live-in relationship in the Indian legal system. Although there are many judgements by Indian courts which have acknowledged the presence of these relationship and has given certain rights to these partners.

In the landmark case of *S.Khushboo vs. Kanniammal & Anr.* (2010)¹⁰¹, where the Supreme Court has widen the scope of Article 21 of the Indian Constitution which protects the right to life and personal liberty. Supreme Court through this case held that live-in relationship are a part of a person's right to life and cannot be considered illegal. Further in was stated in this case it was stated that an adult has the right and freedom to choose their partner and cohabit with each other without marriage as guaranteed under Article 21 of the Indian Constitution.

Further in the case of *Indra Sarma v. VKV Sarma* (2013) the Supreme Court held that Live-in relationships between two adults are neither illegal nor criminal under Indian law. Through this case the court also brings in the concept of domestic violence in live-in relationship by

¹⁰¹*S. Khushboo v. Kanniammal &Anr.*, (2010) 5 SCC 600.

bringing them within the ambit of the Protection of Women from Domestic Violence Act, 2005, ensuring rights and remedies for women in live-in relationship.

There is no particular provision for live-in relationship in India but there are several existing law and judicial interpretation which protects the rights of the individual in such partnership.

In short it can be said that live-in relationship is legal in India. Its legality is proved through various judgements of the judiciary which also stated the rights of the consenting adults to live together without marriage. The rights however of the individual depends on various factors such as the nature of the relationship, age of the individual and their consent.

3. RIGHTS OF WOMEN IN LIVE-IN RELATIONSHIP

A man and a woman living together as husband and wife in a relationship without getting married is picking up its pace among youngsters especially in cities. By taking the burden of responsibility off their shoulders, both partners find living together easier than getting committed in marriage. Being involved in such volatile relationship, women are often the aggrieved party in the relationship. So there are certain rights for a women in a live-in relationship.

3.1 Maintenance to Women

In a live-in relationship the couple are seemed to be staying together

without marriage. So, it had been many a times questioned about the rights of the partners specially that of a women. Since there is no marriage in between the consenting adults as there will be no concept of divorce as in turn there will be no eligibility for maintenance of the women. But section 144¹⁰² of BNSS include women in live-in relationship to make sure her financial rights are protected. It also states that if a women is in a live-in relationship for a reasonable period of time then she can be considered as ‘wife’ to extend maintenance rights. If a women who is in a live-in relationship is unable to maintain herself then she will be eligible for maintenance.

The Supreme Court has laid down some guidelines based on which a live-in relationship can be given the status of marriage. The guidelines are as follows:

- a) **Duration of relationship** – although there is no set duration devised by law, the couple should have been in a relationship for a reasonable period ‘at any point of time’.
- b) **Shared household** – the couple should live together in a shared household
- c) **Pooling of resources and finances** – the couple should be supporting each other financially or one person supporting the other by sharing bank accounts, acquiring immovable properties,

¹⁰²Bharatiya Nagarik Suraksha Sanhita, § 144, Act No. 46 of 2023 (India).

shares in joint names or having separately in order to sustain a long-term relationship.

- d) **Domestic arrangement** – when their domestic set-up indicates nature of marriage such as entrusting the responsibility of the household in the hands of woman to run a home and do household activities such as cooking, cleaning, maintaining the home, etc.
- e) **Sexual relationship** – when the couple's relationship extends to intimate, emotional wellbeing which also includes procreation of children so as to give emotional support, companionship and also material affection, caring etc.
- f) **Having children** – the couple's inclination to have children, their mutual support in raising them is a strong indication to having a long-term relationship.
- g) **Socialisation** – Socialising in public as a couple and socialising with friends and relatives and others as if they are husband and wife is a strong indication that their relationship is in the nature of marriage.
- h) **Conduct of both parties** – the intention and conduct of the parties about what their relationship is and to be, their involvement, their roles and responsibilities determines the nature of their relationship.

4. CHALLENGES FACED BY WOMEN IN LIVE-IN RELATIONSHIP

Live-in relationship is a concept which is not relevant with the Indian society. Although it has been made legalised and many judgements are in favour of it, then also there are many issues which are faced by women in live-in relationship. There are certain grey areas that are still faced by women as mentioned below:-

4.1 Societal and moral acceptance

Even though live-in relationship is legalised in India, but it is still a taboo in Indian society. It is considered to be immoral and ethically wrong. Indian society has a very stereotypical thinking on the concept of live-in relationship; therefore women often face a lot of problems such as rejection from family, problem in getting house rent, negativity at work place.

4.2 Official documents

In India, for all official documents, there is still no column for a live-in relationship. Women face problems in having joint accounts, nominee's name, insurance, visas and so on.

4.3 Cultural issues

India is known for its diverse culture and religion. The impact of globalisation on human relations in our country has been unprecedented. The formally dominant family ties and values are witnessing rampant

changes. Every religion has its perspective towards a live-in relationship. Anti-religion is still a complicated issue and is only allowed under the Special Marriage Act, 1955. Live-in relationship is a step ahead, and Hinduism and Islam do not accept the concept, although Christianity somehow accepts it. The emphasis must be given to address the complications of anti-religion live-in relationship, which is still a sensitive issue.

5. ROLE OF JUDICIARY IN ADVANCING WOMEN RIGHTS

It is always a woman who faces more challenges in a society like India. It can be in any case be it education for women or a woman getting raped it is always a woman who is questioned. So as in a live-in relationship it is a woman who is questioned. So there comes the role of judiciary in advancing the rights of women in a live-in relationship by providing them with legal protection.

The protection of women in a live-in relationship is guaranteed by the judiciary through the PWDV Act that is Protection of Women from Domestic Violence Act that recognises a woman in a live-in relationship as a wife as that of a marriage. It also includes maintenance, inheritance rights in live-in relationship for a woman through various judgements. Courts have also balanced societal norms and expectation with the constitutional rights of individuals to choose their living arrangements

and relationships. Judiciary on making live-in relationship legal in India has to some extent reduced social stigma and has led to societal acceptance. The judiciary has also asked for clearer legal framework for live-in relationship, which can further lead to the protection of rights of women.

There are certain landmark judgements which state about the rights of women.

5.1 Indra Sarma vs. VKV Sarma¹⁰³

The Supreme Court of India has fulfilled a critical role in protecting women's rights. The Hon'ble Supreme Court addressed the subject of live-in relationships and how far they are associated with or authorized under the purview of the Protection of Women from Domestic Violence Act, 2005, in this context in the case of Indra Sarma v. V.K.V. Sarma. This decision addressed the distinction between 'live-in relationships' and 'relationships in nature of marriage' and is regarded as a major decision on the subject.

5.2 Chanmuniya v. Virendra Kumar Singh Kushwaha¹⁰⁴

The Hon'ble Supreme Court in a path breaking judgment Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Anr¹ held that "Where partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock".

¹⁰³Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755 (India).

¹⁰⁴Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 (India).

5.3 ABC v. State (NCT of Delhi)¹⁰⁵

The Supreme Court of India held that an unwed mother can be appointed as the sole legal guardian of her child without having to disclose the identity of the child's father. The Court emphasized that the welfare of the child is the paramount consideration, allowing for deviation from procedural rules to protect the mother's right to privacy and avoid potentially unnecessary involvement of an indifferent father.

6. NEED FOR LEGAL REFORMS

Reforms or changes are very important for a proper and improved legal system. Law is dynamic in nature that means the law must change with the changing needs of the society. So, as it is for the laws of live-in relationship, Indian society has progressed a lot and the mindset of people has as modernized a lot. So to have a proper legal system regarding live-in relationship legal reforms are compulsory.

As in the first stage live-in relationship in India was not legalised. It was in the year of 2010 after the case of *S. Khusboo v. Kanniammal & Anr*, live-in relationship in India got legalise. The scenario was not the same in the 19th century when there were no concept of live-in relationship in India and the people of India was also not aware of the fact of live-in relationship. But this is due to the increase in cases of live-in relationship in India, live-in relationship has been legalize in India.

¹⁰⁵ABC v. State (NCT of Delhi),(2015) 10 SCC 1 (India).

India is a country full of customs and religious believe which states live-in relationship as a matter of criticism. So although this kind of relationship is legal in India but are no accepted by the people of India. So the right which are given to the individuals in a live-in relationship is not properly followed in India.

There are several rights for women in live-in relationship as given under several provisions, but are they properly implemented for women? There must be legal reforms for proper implementation of the right and protection of women in a live-in relationship. But as the society is changing in a rampant way the time is not too far when we will have separate provision for live-in relationship.

7. CONCLUSION

Therefore, we see that although there are no legislations that govern live-in relationships, the Supreme Court has taken steps to ensure that women are protected in the country. In a society that is still patriarchal in nature, it is necessary to ensure that women are not mistreated on the basis of a legal loophole. While the concept of live-in relationships is still fresh, its becoming a common occurrence in metropolitan cities where the restraints of culture and traditional values are less binding and have a more progressive and liberal society. The legislature is also taking steps to normalize live-in relationships as seen in the state of Uttarakhand. The recently passed Uniform Civil Code of Uttarakhand

has an entire part dedicated to live-in relationships. Part 3 of the Act mandates the registration of live-in relationships with the registrar and also legitimizes children born out of live-in relationships. Along with this, Section 388 also allows a woman in a live-in relationship to claim maintenance if her partner deserts her. Similarly, other states in the country can also take a step towards normalization and recognition of live-in relationships to ensure safety and protection of women. The Supreme Court has initiated this process with the help of judicial decisions, which can further be emphasized with legislative backing. Although the morality of live-in relationships is still considered ambiguous by some, the women who are in such relationships cannot be denied their rights or protection against violence. Therefore, it is necessary for the legislature to adapt to the changes in society act accordingly. The Uniform Civil Code of Uttarakhand can be viewed as a step in the right direction towards establishing live-in relationships legislatively and therefore ensuring the protection of women in such relationships. However, due to the various issues surrounding UCC, there is hesitance to enact it on a nationwide scale. Rights in a live-in relationship need not be a product of UCC exclusively and a separate legislation can be enacted which follows similar provisions as in the Uttarakhand UCC, but on a national level. This can help ensure the safety and protection of women.

POEMS

BECAUSE THEY WERE HINDU



-Tapasya Paul¹⁰⁶

They came for peace, not for a fight,
to watch the snow, to hold the light.
Hand in hand, with hearts so true,
but paid the price for being Hindu.

A soldier came, not in command,
but with his wife, to hold her hand.
A honeymoon, not war, was planned,
still, fate had drawn a cruel strand.

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He didn't fall with boots and gun,
but with his love, beneath the sun.
She watched her world fade out of view—
he died because he was Hindu.

A couple flew from far South land,
With dreams like waves upon the sand.
From Karnataka's warmth they flew,
unknowingly it would be their last view.

They didn't speak of hate or war,
they came to see, to feel, explore.
But silence fell where bullets flew—
and they were killed for being Hindu.

No one asked the food they ate,
no one asked what stories they create.
No one cared what dreams they drew,
faith that was their due.

Shopkeepers, workers, just like me,
living life so quietly.
But now they sleep beneath the blue,
their only "fault" being Hindu.

We bow our heads, not proud, but shamed,
while justice still goes left unnamed.
We mourn the lives we never knew,
and all who died for being Hindu.

The snow remembers every sound,
the cries that fell to frozen ground.
And though the world may try to hide—
we'll speak the truth they locked inside.

They had no sword, they made no plea,
they only wished to breathe and be.
But hate had drawn a deadly cue—
and love was lost for being Hindu.

THE LEARNING PATH: AN ODE TO IILS



-Abhishek Tiwary¹⁰⁷

In the heart of North Bengal, where Siliguri stands,

There is a noble temple with outstretched hands.

IILS, our guiding flame,

Where hearts grew wise and minds became.

We entered young, with timid grace,

But found in law our rightful place.

With books in hand and eyes so wide,

We walked the halls with dreams as guides.

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Jurisprudence came - the root, the ground,
Where justice and thought so deep were found.

Bentham's reason, Austin's claim,
Taught us law is more than name.

The Law of Contract built the frame
Of offer, promise, and legal claim.
Where every handshake, every deal,
Was bound by duty, signed and sealed.

In Torts, we saw the wounded cry,
For wrongs unseen by the common eye.
Negligence, harm, a slip, a fall -
And we stood up to answer the call.

Through Consumer Law, we found our voice,
To help the wronged reclaim their choice.
Where justice met the everyday,
In markets fair and honest pay.

Constitutional Law gave us our spine,
Of rights and freedom, deeply divine.
In every Article, a story told,
Of battles fought and visions bold.

In Family Law, life gently stirred,

In marriage, kinship, vows and words.
We learned of bonds both made and broken,
Of silent laws and truths unspoken.

Administrative Law, quiet and deep,
Where power is checked and rights still keep.
With every writ and every plea,
We carved a space for equity.

Criminal Law cast shadows long,
Of what is just and what is wrong.
IPC CrPC, so stern and wise,
Showed crime and justice through clearer eyes.

Special Contracts shaped our thought,
With agency and duties taught.
Where trust and law together weave,
A promise no one dares to leave.

Labour Law, a working song,
Of rights for hands that toil so long.
We walked with workers, felt their strain,
And fought for justice in their pain.

Interpretation of Statues turned words to clay,
Where meanings shift, and laws must stay.

In every phrase, a puzzle waits,
Till reason unlocks the legal gates.

The Earth called out in silent plea,
And Environmental Law set it free.
To guard the sky, the soil, the stream,
We held the law behind the dream.

Professional Ethics lit the flame,
That guides us through the lure of fame.
To speak with truth, to act with grace,
To always honor the law's proud face.

Professional Advocacy taught with quiet charm,
The figures hidden in the legal arm.
To know the worth behind the case,
To balance justice, space by space.

The CPC - a battlefield drawn,
Where civil claims and rules are born.

With Limitation, time held sway,
And we learned when rights might fade away.

Evidence Act gave truth its ground,
Where facts, proof, and law are bound.
Presumption, burden, relevance -
Built justice with intelligence.

Through Company Law, we saw the stage,
Where commerce turns and markets age.
Of AGMs, shares, and power grand,
And governance is shaped by a steady hand.

ADR whispered softer ways,
Where peace prevails and justice stays.
In every word, in calm exchange,
We learned how hearts and law arrange.

With Insurance Law, we faced the risk,
And learned how promises turn brisk.
Indemnity, peril, and measured fate -
All structured by the underwriter's weight.

Land Laws dug into ancient soil,
Of tenure, tenancy, sweat, and toil.
Of titles passed through time and trust,
And every acre, fair and just.

In Property Law, the roots run deep,
With ownership that land must keep.
Through lease and gift, we saw the thread,
Where rights remain, though voices fled.

Health Law spoke in sacred tone,
Of patients' rights and pain unknown.
Consent, care, and ethics met,
Where law and healing both are set.

We drafted, pleaded, conveyed with pride,
With words that held the law inside.
Each comma placed, each phrase aligned,
To reflect the law and lawyer's mind.

Corporate Governance brought to light
The balance between power and right.
Of boardroom truths and whistleblown,
Of justice in decisions grown.

Then came the world in broader view,
With International Law in vibrant hue.
Of treaties, peace, and sovereign might -
The globe became our legal sight.

Human Rights, the heartbeat strong,
That called us to undo the wrong.
From voice to life, from speech to bread,
We learned to stand where hope had fled.

And Tax Law, complex as it seems,
Unveiled the shape of fiscal dreams.
With GST and forms precise,
We measured the law through numbers' slices.

The Moot Court stood - our final test,
Where nerves and knowledge met and pressed.
With internships, we grew and learned,
And earned the wisdom we had yearned.

To every mentor, every guide,
Who stood with us through legal tide -
Your words were lanterns, calm and bright,
That lit our path in the darkest night.

With patience vast and voices kind,
You nurtured both our craft and mind.
In every lecture, every pause,
You taught the soul beneath the laws.

We thank you not in passing line,
But with a love forever thine.
You shaped our thoughts, our hearts, our way -
We carry you in court each day.

So now we rise, with robes anew,
With all we've learned from all of you.
Forever proud, we'll always say:
"IILS made us who we are today."