

VOLUME XI

ISSUE-III (JUL-SEP 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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Print Media: [dpplprint@gmail.com](mailto:dpplprint@gmail.com)



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Webpage: [www.iilsindia.com/quest-editorial-board](http://www.iilsindia.com/quest-editorial-board)

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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 black ink, appearing to read "J. Choudhury", with a horizontal line 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 in a light gray rectangular box.

**Dr. Trishna Gurung**  
Principal-in-charge,  
Indian Institute of Legal Studies

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# **BLOG**

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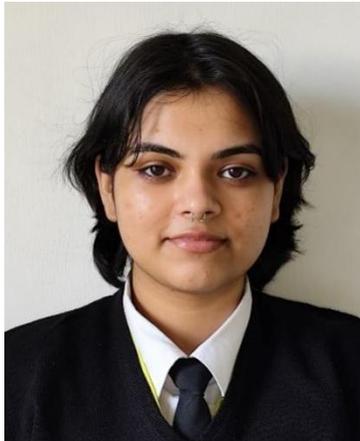
*By Abhoy Acharjee, Student of BA LLB(H), Semester VII.*



# LONG ARTICLE



# UTILITARIAN RHETORIC AND THE PROPAGANDA AGAINST SAME-SEX MARRIAGES IN INDIA



- Prenita Dutta<sup>1</sup>

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## ABSTRACT

*The historical and landmark 2018 judgment in **Navtej Singh Johar v. Union of India** may have decriminalized consensual queer relationships, yet it did not dismantle the prejudice that shadows queer lives in India. In its aftermath, equality has been conceded in law yet denied in practice – a hollow victory that exposes the gulf between constitutional promise and lived reality.*

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*The 2023 petitions on the Special Marriage Act made this gulf undeniable. Instead of affirming equal citizenship, the State mounted its defense by branding queer marriage an ‘urban elitist concept’ and a threat to social stability. Such rhetoric weaponizes utilitarian logic, reducing queer people to expendable variables in the calculus of majority comfort – a moral arithmetic that privileges numbers over justice.*

*As a result, queer citizens remain excluded from basic rights: adoption, succession, spousal privilege, medical decision-making, tax benefits, and more. This exclusion embodies what Dr. B.R. Ambedkar once warned against – the dangerous triumph of ‘social morality’ over constitutional morality. To accept such reasoning is to admit that rights are negotiable, and that equality itself can be sacrificed at the altar of propaganda.*

*This article argues that the debate over queer marriage is not merely about recognition, but about whether constitutional guarantees of liberty and dignity can survive when utilitarianism is twisted into a weapon of exclusion.*

**KEYWORDS:** *LGBTQ+ rights, propaganda, utilitarianism, queer marriage, social morality.*

# 1. DECRIMINALIZED NOT RECOGNIZED

What does it mean to be ‘free’ when your freedom is rationed, conditional, and constantly under suspicion? India’s queer community learned the answer the hard way. In 2018, they were told decriminalization was liberation<sup>2</sup>. By 2023, the façade shattered<sup>3</sup>. Decriminalization was nothing but a half-measure, a legal band-aid slapped over a festering wound. Freedom was granted with one hand, revoked with the other, reduced to a grotesque calculation where dignity was no principle at all but a number shuffled in someone else’s ledger. Is it truly justice when when a person’s humanity is negotiated? Inside the Supreme Court, queer citizens did not arrive as supplicants. They came as equals, demanding recognition. Yet instead of constitutional fidelity, there was cowardice dressed up as wisdom. Same-sex marriage, they were told, was an ‘urban elitist’ fantasy - a social contagion that would corrode tradition, unravel families, and poison society. The State’s message was unmistakable: you may live, but only in silence; you may exist, but never with celebration. Love was put on trial. Equality was rationed. Dignity was tossed aside like expendable scrap. This was not jurisprudence - it was propaganda in judicial robes, a betrayal of the very text the judges swore to defend. The Constitution was not being interpreted; it was being strangled.

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<sup>2</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

<sup>3</sup> Supriyo Chakraborty v. Union of India, (2023) 10 SCC 1.

## 2. HOLLOW JUSTICE, DISPOSABLE LIVES: ROTTING AT THE ALTAR OF POPULARITY

The rights of LGBTQ+ persons, that have been hitherto recognized by this Court, are the right to gender identity, sexual orientation, the right to choose a partner, cohabit and enjoy physical & mental intimacy...<sup>4</sup> Justice Narasimha's concurring opinion in 2023<sup>5</sup> painted itself as a moral compass - lofty in ideals, grounded in constitutional rhetoric, expansive in scope. Yet behind the elegance lurked a gaping silence: what, in the State's eyes, does marriage actually signify? Is it the recognition of shared responsibility, dignity, and care - a legal architecture that secures inheritance, agency, and protection? Or is it merely a guarded privilege, rationed out to unions that comfort the majority and uphold a fragile illusion of cultural purity? If the latter, then Narasimha's grand catalogue of rights collapses into hollow theater. Acknowledging intimacy while denying marriage reduces choice to farce. It transforms protection into a favor, obligation into charity. What meaning does partnership retain when stripped of legal consequence? What weight does love carry if it cannot safeguard property, spousal

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<sup>4</sup> P.S. Narasimha, J., concurring, in *Supriyo @ Supriya Chakraborty v. Union of India*, W.P. (C) No. 1011 of 2022, 2023 INSC 920, <http://www.judgement-plea-for-marriage-equality-ps-narasimha.pdf>.

<sup>5</sup> *Supriyo @ Supriya Chakraborty v. Union of India*, 2023 INSC 920.

agency, or the right to raise children? This mirrors the reasoning in *Obergefell v. Hodges*<sup>6</sup>, where the U.S. Supreme Court affirmed that exclusion from marriage deprives same-sex couples of central legal protections tied to inheritance, hospital visitation, taxation, and adoption. Enumerating rights while blocking marriage is to hand queer people an empty chalice - ornate in appearance, utterly barren in substance. Private dignity without public recognition is not equality; it is containment. It is a state-sanctioned compromise that whispers: you may exist, but only in the shadows. Narasimha's 'elevated list' collapses the moment marriage - the institution that grounds these rights in reality - is declared off-limits. That is not guardianship of the Constitution; it is its betrayal. To promise protection while denying marriage is not freedom at all. It is a gilded cage, confinement paraded as liberty.

### **3. RECLAIMING THE TAPESTRY OF QUEER HISTORIES**

In the *Bhagavad Gita*, Sri Krishna tells Arjuna, 'Each person has a role to fulfill.'<sup>7</sup> But what happens when society itself denies that role? The *Mahabharata* gives us its answer in Shikhandi - born Amba, betrayed by Bhishma, reborn as a man to deliver vengeance. Shikhandi's

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<sup>6</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>7</sup> *Bhagavad Gita* ch. 18, v. 47 (Eknath Easwaran trans., Nilgiri Press 2007).

transformation was not a costume change; it was a declaration of identity so uncompromising that even the gods intervened. Shiva's blessing allowed Shikhandi to carry memory across lifetimes, collapsing the myth of gender as a fixed category. When Shikhandi stood on the battlefield of Kurukshetra and brought down Bhishma, it was more than war - it was a historic reminder that queer and trans identities are not modern aberrations but woven into the very fabric of India's epics. Shikhandi was not tolerated. Shikhandi was essential.<sup>8</sup>

And India is not alone. The West, too, has its testimonies. Achilles and Patroclus - their names bound together in Homer's *Iliad*<sup>9</sup> - may have been left deliberately ambiguous, but later Greeks stripped away the pretense. Aeschylus<sup>10</sup>, Plato<sup>11</sup>, countless others recognized what the text left unsaid: that their bond was not just comradeship but love. Ancient Greece did not hide these truths; it enshrined them. Sappho of Lesbos<sup>12</sup>, writing in the 6th century BCE, etched desire into verse so raw that fragments still vibrate with erotic urgency. From her island comes the very word lesbian, a linguistic monument to queer love's permanence in human history. Even within Hinduism, the divine itself resists binaries.

Ardhanarishvara<sup>13</sup> - half Shiva, half Parvati - obliterates neat categories

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<sup>8</sup> Vyasa, *Mahabharata* (Kisari Mohan Ganguli ed., Bharata Press 1883–1896).

<sup>9</sup> Homer, *Iliad* (Richmond Lattimore trans., Univ. of Chi. Press 1951).

<sup>10</sup> H. D. F. Kitto, *The Greeks* (2d ed., Macmillan 1951).

<sup>11</sup> Plato, *Symposium* (Benjamin Jowett trans., Oxford Univ. Press 1892).

<sup>12</sup> Sappho, *Fragments* 42 (Diane Rayor trans., Loeb Classical Library 1991).

<sup>13</sup> Stella Kramrisch, *The Presence Of Siva* 468–72 (1981).

of ‘male’ and ‘female,’ affirming that divinity is not bound by gender but enriched by its fusion. Indigenous cultures across North America recognized the same truth, honoring Two-Spirit people healers and leaders, embodiments of duality<sup>14</sup>. Japan, during the Edo period, celebrated *wakashudō*<sup>15</sup>- same-sex bonds that existed not on the margins but in the mainstream, depicted proudly in art and literature.

The lesson is clear: queerness is not a Western export, not a modern fad, not an aberration. It is ancient, sacred, and global. To deny this history is not just ignorance - it is erasure. And every act of erasure is itself propaganda, an attempt to claim that queer existence began yesterday so it can be dismissed tomorrow.

## **4. UTILITARIANISM, HEDONISTIC CALCULUS, AND THE SACRIFICE OF QUEER LIVES**

Utilitarianism, in its polished textbook form, claims to be the simplest of moral guides: maximize pleasure, minimize pain<sup>16</sup>. Jeremy Bentham’s so-called brilliance was to turn ethics into bookkeeping - tallying joy and

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<sup>14</sup> Brian Joseph Gilley, *Becoming Two-Spirit: Gay Identity and Social Acceptance in Indian Country* (Univ. of Neb. Press 2006).

<sup>15</sup> Gary Leupp, *Malecolors: The Construction Of Homosexuality In Tokugawa Japan* (Univ. of Cal. Press 1995).

<sup>16</sup> N John Stuart Mill, *Utilitarianism* (Parker, Son & Bourn 1863).

suffering like profits and losses. His ‘hedonistic calculus’ promised neutrality: measure intensity, duration, certainty, purity, fecundity, proximity, extent - and out would tumble the ‘greatest good.’<sup>17</sup> But this arithmetic was never innocent. The moment happiness becomes a number, it becomes vulnerable to manipulation. And the hands holding the abacus have always belonged to the majority. What results is not impartiality but tyranny disguised as math. This is where queer lives are gutted by the ledger. The State, echoing Bentham’s calculus, casts same-sex marriage as ‘urban elitist,’ dismissing queer exclusion as a tolerable loss - collateral damage in the name of majority comfort. The Delhi High Court in *Naz Foundation v. Govt. Of NCT of Delhi*<sup>18</sup>, had already rejected such majoritarian rationales, holding that constitutional morality cannot be trumped by social discomfort.

Pleasure and pain are weighed not as universal realities, but as political expediencies. The queer citizen is not wronged; they are simply deemed ‘less useful,’ their dignity a disposable variable. Utilitarianism, in this application, ceases to be philosophy. It becomes propaganda: a scalpel that cuts away human worth and disguises the amputation as balance. Consider how the numbers fall. Adoption rights, inheritance, medical decisions, spousal recognition - all reduced to points on a ledger. A queer couple’s joy, no matter how profound, is written off as negligible when

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<sup>17</sup> Jeremy Bentham, *An Introduction To The Principles Of Morals And Legislation* (Clarendon Press 1789).

<sup>18</sup> *Naz Found. v. Gov’t of NCT of Delhi*, 160 DLT 277 (Del. H.C. 2009).

stacked against the phantom discomfort of the heterosexual majority. The State invokes the hedonistic scale not to ensure justice but to excuse its absence. Rights are downgraded into favors, liberties into permissions. Principles are swapped for popularity. This is the cruelty of utilitarianism: its false promise of fairness. It pretends to consider everyone, yet it begins with the assumption that some lives are expendable. To claim that queer marriage destabilizes ‘social order’ is to accept that queer pain is an acceptable cost of keeping the majority undisturbed. Bentham’s supposed rationality mutates into sanctioned bias, a mask for prejudice. Love is turned into a liability. Dignity is weighed against applause. Queer existence is tolerated, but queer happiness is treated as negotiable - a luxury the State refuses to underwrite. When deployed against queer rights, utilitarianism is not a moral safeguard; it is an instrument of erasure. It reduces love to arithmetic, transforms equality into an inconvenience, and records oppression as though it were rational truth. The legal system, still clinging to this calculus, pretends that denial is protection, that limitation is progress. But the only record being kept is a tally of casualties - queer lives assessed, diminished, and discarded in the name of the ‘greater good.’

## **5. THE TYRANNY OF THE GREATEST GOOD**

October 2023 was not a judgment - it was an indictment of the Court

itself. India's Supreme Court had the chance to honor the Constitution; instead, it chose complicity. Chief Justice DY Chandrachud and Justice Sanjay Kishan Kaul stood for equality<sup>19</sup>, recognizing that queer citizens had the right to marry. But the majority - Ravindra Bhat, Hima Kohli, and PS Narasimha - slammed the door shut. Their ruling did not merely 'defer' rights to Parliament. It entrenched inequality, reduced queer citizens to second-class status, and announced, with chilling clarity: you may exist, but not as equals. This stands in sharp contrast to *Minister of Home Affairs v. Fourie, 2005*<sup>20</sup>, where South Africa's Constitutional Court recognized that exclusion from marriage directly violated equality and dignity, and mandated legislative reform within a year. To dress this betrayal up as restraint was nothing but judicial cowardice. Rights delayed are rights denied, and queer couples were left stranded in legal limbo, stripped of protections that heterosexual couples take for granted - inheritance, medical decision-making, adoption, even basic tax benefits. The majority's cruelty extended to children, denying queer parents the ability to adopt despite Chandrachud's acknowledgment that no law prohibits it. Children who could have thrived under the care of queer parents were sacrificed to the altar of prejudice. This was not jurisprudence. It was homophobia in judicial robes.

And the violence does not end in the courtroom. In Kerala, a queer

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<sup>19</sup> *Supriya Chakraborty v. Union of India, 2023 INSC 920.*

<sup>20</sup> *Minister of Home Affairs v. Fourie, 2006 (1) SA 524 (CC) (S. Afr.).*

woman was forced into psychiatric ‘treatment’ by her own family in a grotesque attempt to ‘cure’ her sexuality. The High Court intervened -but only to provide police protection, acknowledging that for queer individuals, family can be the first site of abuse.<sup>21</sup> Without legal recognition, queer people remain exposed, vulnerable, and expendable. Across India, this pattern repeats: systemic discrimination backed not only by societal prejudice but by state indifference.

Meanwhile, heterosexual couples - even when negligent, abusive, or outright absent - are never asked to prove their worthiness. In Chennai, when a 13-year-old boy needed a kidney transplant, his father was nowhere to be found. The hospital still demanded paternal consent. Only the Madras High Court’s intervention allowed the surgery to proceed<sup>22</sup>. Straight parents, no matter how reckless, are presumed competent. Their failures are indulged, their privileges intact. Yet queer couples, before they have even raised a child, are preemptively disqualified - forced to prove in advance what straight couples are never required to show: that they can love, nurture, and protect.

This double standard is not oversight; it is design. Marriage and parenthood are treated as biological entitlements for heterosexuals, but as conditional favors for queer people. Straight couples can fail again and again, and society shrugs. Queer couples succeed even once, and society

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<sup>21</sup> Sreeja S. v. Comm’r of Police, Kollam, W.P. (Crl.) No. 297 of 2018 (Ker. H.C.).

<sup>22</sup> Re Minor X (Kidney Transplant Case), W.P. No. 22956 of 2023 (Madras H.C.).

recoils. That is not equality. It is a mechanism of exclusion dressed up as morality. By denying marriage and adoption, the State institutionalizes inequality. It reduces queer dignity to a bargaining chip, their happiness to a liability. It is utilitarian cruelty masquerading as principle, prejudice parading as law. The message is unmistakable: heterosexual mediocrity will always outrank queer excellence. And that, in the end, is not law - it is hypocrisy weaponized by the State.

## **6. JUSTICE ON HOLD, REFORM ON FAST- TRACK**

When did the State acquire the right to ration love? And why is this authority exercised only over certain citizens? The Court, by tossing the question of queer marriage to Parliament, effectively abandoned its duty as the guardian of fundamental rights. What makes this abdication worse is the speed with which the same government acts when the majority is at stake. In the span of months, India discarded the colonial-era IPC<sup>23</sup>, CrPC<sup>24</sup>, and Evidence Act<sup>25</sup>, replacing them with freshly minted codes- BNS<sup>26</sup>, BNSS<sup>27</sup>, BSA<sup>28</sup>. Sweeping, systemic reform was executed with

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<sup>23</sup> Indian Penal Code, 1860, No. 45 Acts of Parliament, 1860 (India).

<sup>24</sup> Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

<sup>25</sup> Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

<sup>26</sup> Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

<sup>27</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

<sup>28</sup> Bharatiya Sakshya Adhinyam, 2023, No. 47, Acts of Parliament, 2023 (India).

surgical precision and celebrated as modernization. But when it comes to queer citizens, suddenly the State becomes a philosopher of patience, insisting reform must trickle through the slow grind of legislative process. This is not caution-it is discrimination disguised as deliberation. And the pattern is old. For decades, India has postured on the world stage as a liberal democracy, promising progress, pledging equality, gesturing toward human rights. But domestically, those promises shrivel into excuses. The delay in recognizing same-sex marriage is not a procedural hurdle-it is a conscious choice to exclude. Western democracies have crossed this bridge years ago, while India drags its feet, invoking the tired language of ‘societal consensus.’ Consensus for whom? The majority already enjoys the institution of marriage without debate or delay. It is only the queer minority that is told to wait, to negotiate, to justify their dignity in increments.

If a government can rewrite the backbone of criminal law overnight, it can certainly recognize queer marriages. Internationally, legislatures have done precisely that. In Canada, the Civil Marriage Act, S.C. 2005, c. 33<sup>29</sup>, was passed in response to court rulings, explicitly recognizing same-sex marriage as a matter of equality, not convenience. The refusal to do so is not about feasibility-it is about priority. Human rights, in this framework, are conditional, granted when politically convenient and withheld when unpopular. By deferring the matter to Parliament, the

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<sup>29</sup> Civil Marriage Act, S.C. 2005, c. 33.

Court sustains a cycle of inertia: the judiciary points to the legislature, the legislature hides behind public opinion, and queer Indians are left stranded in legal limbo. This is not democratic caution-it is systemic betrayal.

## 7. ROOTS OF RESISTANCE

Consider this excerpt from Amir Khusro's poetry:

'O happiness, return to me; I was just about to leave, shattered and broken. Why, my friends, should life be so? With just a glance, I was captivated by him.'<sup>30</sup>

The verse captures Khusro's raw longing for his spiritual guide, Hazrat Nizamuddin Auliya-a devotion that spilled beyond ordinary boundaries. Such expressions remind us that love, in all its unruly forms, has always lived within our cultural and spiritual traditions. These are not marginal anecdotes but enduring evidence that societies, across time, have recognized relationships outside rigid binaries. Even in the Mughal courts, records speak of same-sex liaisons; poets like Bahadur Shah Zafar articulated desires that slipped past convention.<sup>31</sup> History itself refuses to be straightened into a single line.

Against this backdrop, the State's present arguments-branding queer marriage as 'urban, 'elitist,' or disruptive to majority comfort-sound

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<sup>30</sup> Amir Khusro, *Khusro: His Life and Poetry* (Muzaffar Alam ed., Oxford Univ. Press 2017) (adapted from *Chhaap Tilak Sab Chheeni*, trans. Paul Smith).

<sup>31</sup> Brown History, *The Queer Story of South Asia*, <https://brownhistory.substack.com/p/the-queer-story-of-south-asia> (last visited Nov. 27, 2025).

hollow. They dress up cowardice as principle. They pretend to preserve tradition while erasing the actual texture of that tradition, which was always plural, always complex, always unwilling to be confined by heteronormative limits. To deny queer marriage under the guise of protecting social order is not caution but fabrication, stitched from fear and political expedience. It rejects history, distorts culture, and breaks faith with the Constitution's command that justice stands above mere numbers.

Shikhandi and Ardhanarishvara, Sappho and Achilles, the Two-Spirit elders-our myths and our histories alike insist that dignity and love cannot be rationed. They demand recognition, not conditional charity. By claiming exclusion is necessary for the 'greater good,' the State does not invoke utilitarianism-it perverts it. Justice, love, and equality are not gifts the majority can hoard. They are elemental human claims, woven through India's past and demanded by its future. To deny them is not prudence. It is betrayal.

And so, we return to the question that has haunted every era, every society, every courtroom: what is the cost of denying love? When laws, culture, and tradition conspire to place human desire into neat, sanctioned boxes, they do more than constrain they declare which lives are worthy and which are dispensable. India's queer citizens are not asking for charity, nor for permission they demand acknowledgment, recognition, the simple dignity of existing without preconditions. Every myth, every poem, every story from Shikhandi to Khusro reminds us that love refuses

walls, defies calculation, and exists beyond the reach of legislative patience. And yet, in the halls of power, love is still measured, weighed, and rationed as if it were a commodity. The question has never been about procedure or timing. It is about whether India will continue to sanctify prejudice as law, or finally honour dignity without compromise. Until that moment arrives, the chalice remains empty, the ledger continues to tally queer lives as expendable, and justice itself remains the one truly on trial.



# **SHORT ARTICLE**



# **SUSTAINABLE DEVELOPMENT: A HOAX PERPETUATED BY MODERN SOCIETY?**



*-Avashesh Sharma<sup>1</sup>*

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## **ABSTRACT**

*Sustainable development means meeting today's needs without stopping future generations from meeting theirs. This idea became popular with the 1987 Brundtland Report. Yet, beneath this widely accepted ideal lies a profound North-South tension rooted in historical inequities. The*

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*Global North became rich and developed by using lots of resources and harming the environment. Now, the Global North wants to lead on climate action and pushes sustainable development policies on the Global South. Sustainable development rules often ignore the different situations of countries in the South. This creates a paradox where the South's right to economic growth conflicts with global environmental imperatives, casting doubt on sustainability as an emancipatory ideal. Emerging analyses suggest that for sustainable development to transcend this impasse, it must incorporate equitable power-sharing, respect local agency, and embrace context-specific solutions. The key will be ending one-sided control and building true partnerships that see the real history and realities of the Global South. This article will discuss the concept of sustainable development, highlighting North-South tensions and environmental neocolonialism, the impact of global climate rules on the Global South, enforcement gaps in international and Indian environmental law, and the need for equity, local agency, and partnership in global sustainability efforts.*

**KEYWORDS:** *Sustainable Development, Environmental Justice, Neo-colonialism, Inequalities, Climate Action.*

# 1. INTRODUCTION

Sustainable development, popularized by the 1987 Brundtland Report, seeks to balance economic progress, social justice, and environmental conservation by "meeting the needs of the present without compromising the ability of future generations to meet theirs."<sup>2</sup> However, underlying this allegedly noble objective is a geopolitically complex struggle, characterized by deep developmental and historical inequalities between the Global South, which consists of countries like the United States of America, Canada, Italy, France, Germany, Sweden, and Japan, and the Global North, in which countries like India, Brazil, Mexico, Egypt, Ghana, and Pakistan are included.

While the Global North developed at the expense of the environment, it now sets the agenda for climate action and enforces sustainable development templates on the Global South, which is still struggling to achieve economic development and poverty reduction. This creates tension that makes us wonder: is sustainable development emancipatory, or just another way of environmental neocolonialism that expects poor nations to give up their ways of living to suit the convenience of rich nations? As Vandana Shiva trenchantly noted, "Sustainable

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<sup>2</sup> World Comm'n on Env't & Dev., *Our Common Future* (Oxford Univ. Press 1987).

development? It is a myth, a new form of colonialism that demands poor countries sacrifice their livelihoods for rich countries' convenience."<sup>3</sup>

## **2. HISTORICAL BACKGROUND OF SUSTAINABLE DEVELOPMENT**

The idea of sustainable development initially took official form in the 1987 Brundtland Commission report.<sup>4</sup> It was subsequently championed through worldwide events like the 1992 Rio Earth Summit and the United Nations adoption of the 2030 Agenda with its 17 Sustainable Development Goals (SDGs).<sup>5</sup> Nevertheless, its implementation in strategies remains inconsistent and full of contradictions. Industrialized countries, having built up wealth through the exploitation of natural resources, now spearhead sustainability but demand uncompromising environmental adherence from developing countries. This usually serves to reinforce prevailing global inequalities instead of erasing them.<sup>6</sup> This unequal expectation reflects the historical deficit of injustice, with development opportunities not being distributed evenly.

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<sup>3</sup> Vandana Shiva, *Earth Democracy* (South End Press 2005).

<sup>4</sup> G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, U.N. Doc. A/RES/70/1 (Oct. 21, 2015).

<sup>5</sup> Ariel Dinar et al., *The Universality with International Differentiation of Environmental Responsibilities: The Implication of the Global North-South Division in Sustainable Development*, 7 *J. Sustainable Dev. Afr.* 1 (2017).

<sup>6</sup> Stephen Browne, *Transcending Boundaries on Unequal Ground: A Critical Reimagination of Global North-South Cooperation on Social Work Practice & SDGs*, 44 *J. Soc. Dev. Afr.* 45 (2024).

### 3. THE GLOBAL NORTH AND GLOBAL SOUTH IN SUSTAINABLE DEVELOPMENT: A CRITICAL PERSPECTIVE

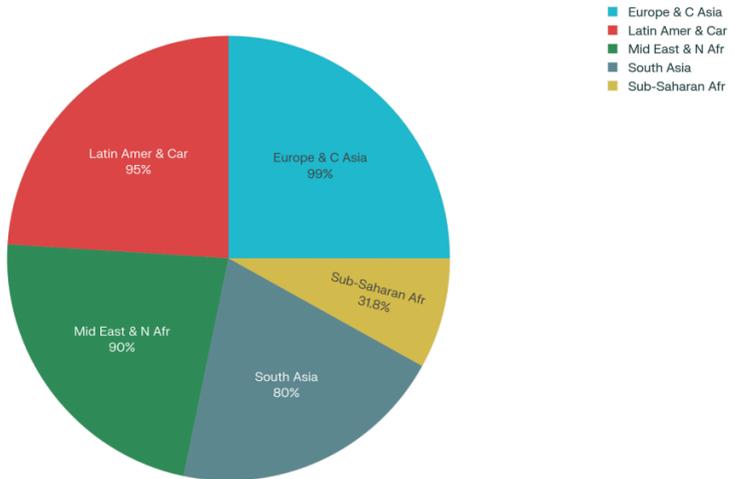
The development of the Global North was based on centuries-long intensive fossil fuel use and environmental degradation.<sup>7</sup> Even now, the nations in the North carry the highest burden of historical carbon emissions, about 70%, as opposed to the 30% carried by the Global South.<sup>8</sup> This comes into play in determining fairness regarding climate and sustainability requirements. The developed world promotes strong sustainable development policies but tends to impose heavy economic and technological demands on developing nations requirements that are oblivious to socio-economic factors. One glaring disparity lies in access to basic infrastructure, such as electricity. The following pie chart illustrates stark regional differences in electricity access:

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<sup>7</sup> Brooke J. Gillespie, *Sustainability Transitions in the Global South: A Multi-Level Perspective on Urban Service Delivery*, 14 Sustainability 12 (2020).

<sup>8</sup> World Bank, *Access to Electricity (% of Population)*, WORLD BANK DATA INDICATORS, available at <https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS> (last visited Sept. 19, 2025).

### Electricity Access by Region



### Electricity Access Rates by Region<sup>9</sup>

Whereas areas such as Europe and Central Asia have virtually universal access (99%), Sub-Saharan Africa trails at only 31.8%, which demonstrates the size of infrastructure gaps in most Global South nations. These disparities undercut the strict international sustainable development goals often imposed.

Look next at the net CO<sub>2</sub> emissions by region over time:

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<sup>9</sup> World Bank, *Access to Electricity (% of Population)*, WORLD BANK DATA INDICATORS, available at <https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS> (last visited Sept. 19, 2025).

Year	Global North (Million Metric Tons)	Global South (Million Metric Tons)	India (Million Metric Tons)
1990	22,000	9,000	500
2000	23,500	11,000	900
2010	25,000	15,000	1,600
2020	26,500	18,000	2,200
2025	27,200	20,500	2,500

Projections for 2025<sup>10</sup>

China, India, and other Global South countries have experienced consistent emission increases with growing economies, but these statistics need to be set against the backdrop of industrialization history and per capita emissions, which are still quite low compared to most wealthy nations. The historical emissions footprint of the Global North cannot be ignored in allocating climate responsibilities

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<sup>10</sup> Global Carbon Project, *Cumulative CO<sub>2</sub> Emissions*, <https://www.globalcarbonproject.org/carbonbudget/> (last visited Sept. 20, 2025).

## **4. LEGAL DIMENSIONS: INTERNATIONAL CONVENTIONS AND INDIAN LEGAL FRAMEWORK**

The 2015 Paris Agreement is an important global framework that supports "common but differentiated responsibilities" (CBDR) a recognition that not all countries have the same adaptive and mitigative capability or responsibility for the past.<sup>11</sup>

The enforcement mechanisms of the agreement are, however, toothless, and developing countries are disproportionately burdened in many instances.

India's Constitution enshrines environmental protection in Articles 48A and 51A(g), which obligate the state and citizens, respectively, to safeguard and enhance the environment. Other Indian Statutes include Environmental Protection Act, 1986; the Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974; Energy Conservation Act, 2001 (Amended 2010); and the Biological Diversity Act, 2002.

However, translating these constitutional principles is challenged by pressures of economic growth that tend to dominate ecological interests. Courts have intervened significantly in an attempt to reconcile these interests, as illustrated by several landmark judgments examined below.

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<sup>11</sup> Paris Agreement, art. 2, Dec. 12, 2015, T.I.A.S. No. 16-1104.

- *Vellore Citizens Welfare Forum v. Union of India (1996)* installed the precautionary and "polluter pays" principles essential to India's environmental law regime.<sup>12</sup>
- *M.C. Mehta v. Union of India (1987)* highlighted hazardous pollution control, correlating a clean environment with fundamental rights.<sup>13</sup>
- *Narmada Bachao Andolan v. Union of India (2000)* indicated conflicts between large development projects and environmental-social justice.<sup>14</sup>
- *Indian Council for Enviro-Legal Action v. Union of India (1996)* established a precedent for corporate responsibility for environmental damage.<sup>15</sup>
- *T.N. Godavarman Thirumulpad v. Union of India (1996)* mandated greater protection of forests through judicial vigilance.<sup>16</sup>
- *Centre for Environmental Law v. Union of India (2023)* emphasizes embedding sustainability objectives within policy.<sup>17</sup>

These instances document India's changing legal framework but also reflect the continued effort to put environmental principles into action on the ground.

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<sup>12</sup> *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

<sup>13</sup> *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

<sup>14</sup> *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

<sup>15</sup> *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

<sup>16</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1996) 5 SCC 632.

<sup>17</sup> *Centre for Env'tl. Law v. Union of India*, W.P. (C) No. 123 of 2023 (H.C. 2023).

## 5. SUSTAINABLE DEVELOPMENT GOALS

### PROGRESS: INDIA COMPARED TO THE GLOBAL AVERAGE

Various SDGs continue to pose formidable challenges for India compared to the global average:

Goal	India Progress (%)	Global Average (%)
Poverty Reduction	60	75
Clean Energy Access	80	90
Climate Action	65	70
Quality Education	70	85
Gender Equality	68	82

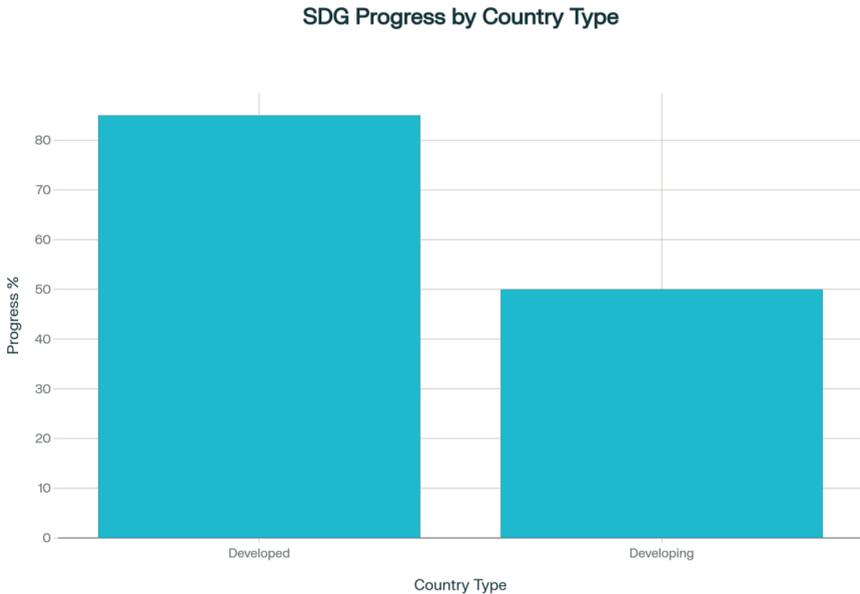
Sustainable Development Report<sup>18</sup>

This table evidently indicates India is behind developed nations in vital social and environmental indicators, demonstrating the uneven nature with which sustainable development needs burden its citizens.

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<sup>18</sup> Sustainable Dev. Sols. Network, *Sustainable Development Report 2023*, <https://sdgindex.org/> (last visited Sept. 28, 2025).

Complementing the table is the bar graph illustrating overall SDG progress:



Sustainable Development Goals Progress: Developed vs Developing Countries<sup>19</sup>

## **6. CRITICAL REFLECTIONS**

The paradox of sustainable development is tangible the same nations that created most of the environmental degradation insist the world's poorer countries<sup>20</sup> absorb most of the corrective measures. This lends itself to scathing criticism of sustainable development as a variant of the new imperialism disguised in environmentalist terminology.

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<sup>19</sup> *Id.*

<sup>20</sup> Vandana Shiva, *Earth Democracy* (South End Press 2005).

Author Vandana Shiva succinctly states: "*Sustainable development? It is a myth, a new variety of colonialism that requires poor nations to forgo their livelihoods in the interest of rich nations' convenience.*"

Seconding this, economic theorist Amartya Sen argues: "*Development is freedom,*" *but such freedom needs to be accompanied by environmental justice, or else it will reinforce injustices.*<sup>21</sup>

Sustainable development must then be redefined to focus on justice and equity with respect for historical situations and socio-economic obstacles.

## 7. CONCLUSION

Sustainable development's promise threatens to be a hoax if it goes on perpetuating structural imbalances by promoting Northern interests one-sidedly, to the detriment of legitimate development aspirations of the South. Genuine sustainability can only be realized through reforms in law and policy that acknowledge common responsibility, respect sovereignty, and empower marginalized voices. Only then can the ideal promise be a fair way forward for all.

Sustainable development is often promoted as the great world salvation an imaginary that fuses progress and prudence, growth and green ethics. But this sanctimonious tale hides a less palatable reality: for all its high-minded language, sustainable development threatens to entrench the very

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<sup>21</sup> Amartya Sen, *Development as Freedom* (Anchor Books 1999).

inequalities it promises to eradicate. It is a cosmic joke perpetuated on the Global South, where the punchline is constant sacrifice in the name of a noble cause.

Looking at this paradox with the guidance of the Bhagavad Gita provides a sobering perspective. Lord Krishna advises Arjuna: "*You have the right to work only but never to the fruits of work.*"<sup>22</sup>

This verse, although spiritual in nature, eerily reflects the dilemma of most developing countries today. They are told by the global community, the big powers, financial institutions to do the dirty work of greening their economies, cutting down on emissions, and adopting sustainable development, but the "fruits" of this work their own riches and social advancement are seldom theirs to enjoy. The Global South toils relentlessly but the benefits are inordinately harvested by the Global North, who frame the rules, set the agenda, and design the results.

Furthermore, the Gita's celebrated teaching of Karma Yoga acting without attachment to results may be retold here as a sour lesson for the developing world: continue working in endless environmental compliance, while the affluent indulge in development's benefits with no complete responsibility.

The satire intensifies when we understand that sustainable development, veiled in moral imperatives, can be a straitjacket. It is a new-age method of exercising control over society, under which the values and priorities

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<sup>22</sup> *Bhagavad Gita* ch. 2, v. 47 (Swami Sivananda trans., 1946).

of the Global North are made into universal imperatives. The influential sermonize on environmentalism but conveniently forget their own past emissions and current subsidies for fossil fuels. The poorer countries are caught in between the devil of economic stagnation and the deep blue sea of climate sin.

As Krishna also suggests: "*Better is one's own duty, though devoid of merit, than the duty of another well performed.*"<sup>23</sup>

This presents an uncomfortable challenge to international governing arrangements that enforce one-size-fits-all sustainability standards. Would not every nation's development path reflect its particular cultural, historical, and economic circumstances instead of mandating cut-and-dried policies designed far off in Global North boardrooms?

The Bhagavad Gita also teaches the balance between detachment and involvement, cautioning against rampant pursuit of sensuality and paralyzing inaction. The discourse on sustainable development has tended toward these two poles either pressuring developing countries to give up their pursuit of prosperity (as a sacrificial bribe to international sustainability) or permitting untrammelled exploitation dressed up as "development." Neither exemplifies actual balance or justice. This is not to exclude sustainability entirely but to add that the existing configuration is incomplete deficient in fairness, participation, and humility.

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<sup>23</sup> *Id.*

Sustainable development in its true sense involves not only ecological stewardship but also reparative justice, truth-telling, and remaking power relations. It has to empower the Global South as equal actors, not subservient agents forced to act on scripts written elsewhere.

In summary, sustainable development is a paradoxical dance. It is one of harmony, yet more often than not, it choreographs inequality; it is one of balance, yet is more often engaged in upholding dominance. Taking a cue from the Gita's spiritual philosophy and infusing a dash of earthly realism, we must ask: Are we practitioners of Karma Yoga acting selflessly for global good or unsuspecting pawns in a theatre staging old hierarchies in new disguises?

Until this question is honestly addressed, sustainable development threatens to be less of an emancipation and more of a life-long penance for the poorest, while the lucky few toast from gilded balconies.

# INVISIBLE HARASSMENT OF WOMEN ADVOCATES IN INDIA: HOW DOES THE POSH ACT FAIL TO ADDRESS IT?



-Kunal Adhikary<sup>1</sup>

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## ABSTRACT

*This article focuses on the legal and institutional contradiction faced by women advocates in India, despite being sensitive to sexual harassment, is effectively deprived of Security under the sexual harassment (prevention, prohibition and redressal) Act, 2013 (POSH Act) at the*

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*workplace. Although the POSH Act 2013<sup>2</sup> was implemented to ensure a safe work environment for all women, its application is based on the employer-employee relationship, a structure that excludes independent female advocates. The study analyses the implications of the Bombay High Court's 2025 UNS Women's Legal Association vs. Bar Council of India & Ors<sup>3</sup> judgement, which states that the Posh Act does not apply to advocates as there is no formal employer-employee relationship with Bar Council of India. The decision, which recast the complaints of sexual harassment towards existing disciplinary mechanisms under the Advocates Act 1961<sup>4</sup>, presents insufficient, indifferent and vague measures to the subtle and trauma-sensitive issue of sexual harassment. The article highlights the social-natural results of this difference, including its negative impact on reporting, confirmation of the culture of punishment in the legal fraternity, and its widespread social implications on justice and equality.*

**KEYWORDS:** *Women Advocates, Sexual Harassment, Employer-Employee Relationship, Bar Council of India, Justice and equality.*

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<sup>2</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

<sup>3</sup> UNS Women's Legal Association v. Bar Council of India & Ors., 2025 SCC On Line Bom 2647.

<sup>4</sup> Advocates Act, 1961, No. 25, Acts of Parliament, 1961 (India).

# 1. INTRODUCTION: THE PARADOX OF PROTECTION IN THE LEGAL PROFESSION

The fight for gender justice in India reached a legislative high point with the enactment of The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and redressal) Act, 2013 (POSH Act). Implemented to actualize the constitutional promise of dignity, equality, and a safe working environment, the POSH Act was designed to be a comprehensive legal shield for working women across the nation. However, a significant legal and institutional contradiction has emerged at the heart of India's justice system: women advocates, who serve as essential pillars of the judiciary, are effectively deprived of this statutory security.

This systemic exclusion is rooted in the Act's reliance on the employer-employee relationship as the jurisdictional basis for its application, a structural definition that fails to cover independent legal professionals. The contradiction was starkly illuminated by the Bombay High Court's 2025 judgment in *UNS Women's Legal Association v. Bar Council of India & Ors*, which ruled that the POSH Act does not apply to advocates because their relationship with the Bar Council of India (BCI) is not one of employment.

## **2. THE HISTORICAL FOUNDATION AND EVOLUTION OF THE POSH ACT**

The POSH Act did not emerge in a legal vacuum; it is the culmination of a decades-long struggle by women's rights movements to secure dignity and safety in public and professional life. Its genesis lies in a singular, defining tragedy that catalyzed judicial and legislative action.

### **2.1. THE GENESIS: THE BHANWARI DEVI CASE (1992)**

The foundation for the POSH Act was laid by the brutal gang rape of Bhanwari Devi, a social worker in Rajasthan. In 1992, while working under the state's Women's Development Programme, she attempted to prevent a child marriage, leading to her subsequent assault by men from the community. When the trial court acquitted the accused due to societal bias and a failure of the systemic response, it highlighted the profound legal vulnerability of women challenging patriarchal norms in the workplace. Women's rights organizations responded by filing a Public Interest Litigation (PIL) under the collective name "Vishaka" in the Supreme Court.

## **2.2. THE LANDMARK VISHAKA GUIDELINES (1997)**

The resulting judgment, *Vishaka v. State of Rajasthan*<sup>5</sup> became a watershed moment in Indian jurisprudence. The Supreme Court recognized that sexual harassment at the workplace violated the fundamental rights guaranteed under the Indian Constitution, specifically:

**2.2.1.** Article 14: Right to Equality.

**2.2.2.** Article 15: Prohibition of Discrimination.

**2.2.3.** Article 19(1)(g): Right to Practice any Profession or to carry on any occupation, Trade or Business.

**2.2.4.** Article 21: Right to Life and Personal Liberty (which includes the right to a life of dignity and a safe working environment).

Crucially, the Court drew inspiration from international law, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>6</sup>, which India had ratified in 1993. Since no specific domestic legislation existed to address workplace sexual harassment, the Supreme Court utilized its powers under Article 32 of the Constitution to lay down a set of mandatory "Vishaka Guidelines" for all workplaces. These guidelines were binding until Parliament enacted a suitable law.

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<sup>5</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

## **2.3. PRE-POSH LEGAL FRAMEWORK AND ITS LIMITATIONS**

Before the Vishaka Guidelines and the subsequent POSH Act, victims of workplace sexual harassment had extremely limited legal recourse. They could primarily invoke general criminal provisions under the Indian Penal Code (IPC)<sup>7</sup>:

**2.3.1.** Section 354<sup>8</sup>: Criminal assault or use of force on a woman with the intent to outrage her modesty.(Section 74 of BNS)

**2.3.2.** Section 509<sup>9</sup> : Act intended to insult the modesty of a woman.(Section 79 of BNS)

These provisions were inadequate because they:

- Criminalized only specific acts: They failed to address the spectrum of non-physical harassment that constitutes a hostile work environment.
- Lacked a preventive framework: They offered no institutional or structural mechanisms (like mandatory committees or internal policies) to prevent harassment from occurring.
- Shifted the burden: They often placed the burden on the victim to prove "outraging modesty" rather than on the organization to provide a safe workplace.

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<sup>7</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

<sup>8</sup> Indian Penal Code, 1860, § 354, No. 45, Acts of Parliament, 1860 (India).

<sup>9</sup> Indian Penal Code, 1860, § 509, No 45, Acts of Parliament, 1860 (India).

The need for a dedicated, comprehensive, and preventive piece of legislation was thus established, culminating in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

### **3. STATISTICAL ANALYSIS: THE IMPACT OF POSH IMPLEMENTATION**

The implementation of the POSH Act in 2013 represented a paradigm shift in how workplace sexual harassment was addressed, moving from a reactive criminal justice response to a proactive organizational and civil compliance framework. Statistical data confirms both the initial success of the Act in encouraging reporting and the persistent challenges in achieving full compliance and resolution.

#### **3.1. THE RISE IN REPORTING**

Data from major Indian companies shows a clear trend: once the POSH Act was implemented, reporting went up dramatically, showing that the law gave women the confidence to speak up<sup>10</sup>.

**3.1.1.** Before POSH (FY 2012-13)<sup>11</sup>: Only about 71 cases were reported across many top companies.

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<sup>10</sup> 38 Per Cent Women Say They Faced Sexual Harassment at Workplace: Survey, Indian Express (Aug. 24, 2017), <https://indianexpress.com/article/india/38-per-cent-women-say-they-faced-sexual-harassment-at-workplace-survey-4459402/>.

<sup>11</sup> Akshi Chawla, *A Decade of the POSH Act: What the Data Tells Us About How*

**3.1.2.** After POSH (FY 2014-15)<sup>12</sup>: The number of reported cases jumped to 465<sup>13</sup>, showing a huge increase.

**3.1.3.** Recent Trends: By FY 2022-23<sup>14</sup>, reported cases continued to rise significantly, showing the law is being actively used.

## **3.2. THE CHALLENGES REMAIN**

Despite more reporting, the POSH Act faces two major challenges:

**3.2.1.** The Resolution Gap: Even though many cases are reported, only about 50% <sup>15</sup>of them are fully resolved within the set timeframe. This suggests that the process can be slow or ineffective.

**3.2.2.** The Small Company Problem: Almost all reported cases come from large, established companies. Many medium and small companies report zero incidents year after year, which is highly unlikely. This means many smaller workplaces are either not following

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*India Inc. Has Fared*, CEDA, Ashoka University (May 16, 2024), <https://ceda.ashoka.edu.in/a-decade-of-the-posh-act-what-the-data-tells-us-about-how-india-inc-has-fared/>.

<sup>12</sup> After POSH (FY 2014-15) *For India Inc POSH complaints have grown faster than their resolution*, Business Standard (May 16, 2024), [https://www.business-standard.com/industry/news/for-india-inc-posh-complaints-have-grown-faster-than-their-resolution-124051600590\\_1.html](https://www.business-standard.com/industry/news/for-india-inc-posh-complaints-have-grown-faster-than-their-resolution-124051600590_1.html).

<sup>13</sup> INBA's 2nd Edition Sexual Harassment Survey, 2018, INBA Viewpoint, <https://inbaviewpoint.org/inbas-2nd-edition-sexual-harassment-survey-2018/>.

<sup>14</sup> Radhika Saxena & Anjali Chauhan, *POSH Act and Sexual Harassment of Women in Legal Profession with Special Reference to Gwalior Division*, *Indian Journal of Law*, Vol. 3, Iss. 3, at 11–20 (2025), <https://law.shodhsagar.com/index.php/j/article/download/94/117/228>.

<sup>15</sup> Akshi Chawla, *Strengthening the Implementation of the POSH Act – The Critical Role of Data*, Isaac Centre for Public Policy, Ashoka University (Aug. 22, 2024), <https://icpp.ashoka.edu.in/strengthening-the-implementation-of-the-posh-act-the-critical-role-of-data/>.

the law by setting up ICCs or are successfully covering up cases. This shows the law's reach is incomplete.

## **4. THE EXCLUSION: WHY WOMEN ADVOCATES ARE NOT COVERED**

The biggest issue for women lawyers is the "**employer-employee**" requirement, which is the foundation of the POSH Act.

### **4.1. THE LEGAL PROBLEM: INDEPENDENCE VS. EMPLOYMENT**

The POSH Act places the responsibility for safety and the ICC on the "employer". Women advocates are independent practitioners licensed under the Advocates Act, 1961. They are regulated by the Bar Council of India (BCI), but they are *not* employed by the BCI, the courts, or Bar Associations. Since the formal employer-employee relationship does not exist, the BCI is not legally required to set up an ICC under the POSH Act.

### **4.2. THE BOMBAY HIGH COURT'S 2025 JUDGMENT**

This issue came to a head in the Bombay High Court's 2025 ruling in *UNS Women Legal Association v. Bar Council of India*. A group of women lawyers asked the court to order Bar Councils to form ICCs to handle sexual harassment complaints.

**4.2.1.** The Court's Decision: The Court agreed that because there is no employer-employee relationship between the Bar Council and the advocates, the POSH Act does not apply to the Bar Council. The Court

suggested that women advocates must use the existing disciplinary mechanism under Section 35 of the Advocates Act, 1961. This mechanism allows Bar Councils to take action against lawyers for "professional misconduct."<sup>16</sup>

### **4.3. WHY ALTERNATIVE IS NOT ADEQUATE**

This is highly criticized because the disciplinary mechanism suggested by the Court itself does not work in cases of sexual harassment:

**4.3.1. Different Focus:** Section 35 of the Advocates Act deals with the professional conduct of a lawyer at large, such as lying in court or stealing client money, and punishes him for that. It does not focus on the safety and support of the victim.

**4.3.2. Lack of Sensitivity:** POSH committees must have a majority of women members and an expert external member to ensure sensitivity in Proceedings. Disciplinary committees are often presided over by senior (usually male) members of the Bar Council who have no training to handle sexual harassment matters with the requisite trauma sensitivity.

**4.3.3. Lack of Specific Relief:** The disciplinary action can only result in reprimand or suspension. It cannot provide specific reliefs that are

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<sup>16</sup> SSR & Assocs., *Applicability of the POSH Act to Female Advocates: A Legal and Judicial Overview*, SSR & Assocs., <https://ssrana.in/posh-law/articles/applicability-of-the-posh-act-to-female-advocates-a-legal-and-judicial-overview/> (last visited Nov. 23, 2025).

available under the POSH Act, such as granting the victim paid leave or transferring the harasser to another chamber.

In short, using Section 35 is like using a sledgehammer for a delicate procedure it lacks the specialized, victim-focused process needed for sexual harassment cases.

## **5. CONSEQUENCES: THE COST OF EXCLUSION**

Excluding women lawyers from POSH Act protection has serious consequences for them and for the entire legal system.

### **5.1. THE "HIDDEN CRISIS" IN LAW**

Sexual harassment is widely reported in the legal profession globally, mainly because the profession is often hierarchical (based on seniority) and male-dominated.

**5.1.1. High Rates:** Studies show that a significant percentage of female lawyers experience sexual harassment in the workplace<sup>17</sup>.

**5.1.2. Culture of Silence:** When there is no effective mechanism, women lawyers fear career destruction if they complain. They worry that their seniors (who might be the harasser or friends with the

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<sup>17</sup> *The Exclusion of Women Advocates from POSH: Call for Review of Judgment*, Lex Lumen Research J., <https://lexlumenresearchjournal.com/the-exclusion-of-women-advocates-from-posh-call-for-review-of-judgment/> (last visited Sept. 28, 2025).

harasser) will block their future opportunities. This fear leads to underreporting and maintains a culture of silence<sup>18</sup>.

## **5.2. IMPACT ON JUSTICE**

Women advocates are key parts of the justice system. When they are not protected:

**5.2.1. Gender Gap:** Many women leave the profession early because of harassment and the lack of support. This worsens the gender disparity in the legal field, especially at senior levels and in the judiciary.

**5.2.2. Undermining the Constitution:** Denying them the protection given to other working women violates their fundamental rights to equality and a life of dignity (Articles 14 and 21).

## **6. CONCLUSION AND RECOMMENDATIONS**

Women advocates are excluded from the protection of the POSH Act that stands out as a glaring loophole in India's gender justice framework. This loophole, based on a narrow interpretation of "employer-employee," leaves unprotected a category of professionals who are critical to the justice system. The existing mechanisms for disciplinary action are inadequate and thereby signify that the legal profession has failed in its

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<sup>18</sup> *Underreporting Culture*, Indian Masterminds, <https://indianmasterminds.com/news/supreme-court-notice-women-lawyers-reservation-in-state-bar-councils-158089/> (last visited Nov. 23, 2025).

primary obligation to ensure justice and dignity for all its constituents. Immediate and substantial reforms are necessary to broaden the protective ambit of this law to encompass all women who play a role in the nation's legal framework. To fix this legal and institutional contradiction, changes must happen at three levels: in the law itself, in the Bar Councils, and in the Supreme Court.

## **6.1. LEGISLATIVE REFORM (CHANGE THE POSH ACT)**

Parliament must amend the POSH Act to make it inclusive:

**6.1.1. Broaden "Workplace":** Clearly state that the definition of "workplace" includes all professional settings, such as courts, chambers, and Bar Association premises, regardless of a formal employment contract.

**6.1.2. Define a New Relationship:** Introduce a new category of relationship, such as "professional/regulator" or "service receiver/service provider," to replace the strict employer-employee requirement. This would make the regulatory body (the BCI) responsible for safety.

**6.1.3. Create Professional-Specific Rules:** Add special clauses to the Act that mandate professional regulatory bodies (like Bar Councils) to establish POSH-compliant committees for their registered members.

## **6.2. INSTITUTIONAL REFORM (CHANGE THE BAR COUNCILS)**

The BCI and State Bar Councils must act immediately:

**6.2.1. Mandatory ACC Formation:** They should be forced to create Apex Complaints Committees (ACCs) that follow all the guidelines of the POSH Act (gender-balanced, external member, time-bound inquiry).

**6.2.2. Training and Sensitization:** All members of the ACCs and Disciplinary Committees must receive mandatory training on gender sensitivity and handling sexual harassment cases.

**6.2.3. Confidential Reporting:** Set up systems that allow women to report harassment confidentially without fear of their career being damaged.

## **6.3. JUDICIAL INTERVENTION(SUPREME COURT REVIEW)**

The Supreme Court, which is currently reviewing the Bombay High Court decision, has a chance to set things right:

**6.3.1.** The Supreme Court can use its power to interpret the POSH Act broadly to include all professional women, arguing that the spirit of the law demands protection for everyone.

**6.3.2.** Alternatively, it can order the BCI to immediately set up a mechanism that is equivalent in power and protection to the POSH Act's ICCs, thereby enforcing the constitutional right to a safe workplace.

# MISUSE OF LEGAL SAFEGUARDS AND ITS EFFECT ON GENUINE VICTIMS



- Yesh Das<sup>1</sup>

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## ABSTRACT

*Legal safeguards refer to protections or measures established by law to ensure that individuals' rights are respected and upheld, particularly in situations where those rights may be at risk. Women's protection laws are a category of such legal safeguards specifically designed to protect women's rights. However, these laws are often misused by certain individuals for personal gain. Such misuse may involve exploiting legal provisions to unjustly threaten or manipulate male counterparts in order to fulfil unethical or immoral demands, or even to seek revenge.*

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*As a result of this misuse, men's rights or more broadly, their human rights are increasingly being violated. This article examines various legal safeguards that are susceptible to such misuse, including the Domestic Violence Act,*

*Dowry Prohibition Laws, Sexual Harassment Laws, and Rape Laws. This article also explains that there are a number of false cases that exist or are registered in India every year, and this number increases day by day due to the misuse of women's protection laws in India and the neglect of men's rights.*

*The article emphasizes the importance of ensuring gender equality in the justice system. This means that the Indian judicial system now needs to improve and update itself, as well as establish a proper balance and equality between males and females when delivering justice.*

**KEYWORDS:** *Legal Misuse, False Allegations, Gender Justice, Men's Rights, Criminal Law Reform.*

# 1. INTRODUCTION

The principle of ‘innocent until proven guilty,’ which is known as the presumption of innocence, applies to all individuals. But does this principle really apply when the accused is a man? There exist binding laws that protect victims against various kinds of crimes. Among them, men’s rights are often neglected. Men’s rights in India are legally unnoticed and ignored. Because of this ignorance, men suffer; that is why we see that many fake or false cases are filed against men, such as false rape, dowry, and domestic violence, etc. This means that the laws specifically created for women to protect them and their rights also give them many powers. However, these powers are misused by some women, which is why so many men suffer. This happens because of the neglect of men’s laws and rights, as well as the laws that provide punishment for false accusation.

The misuse of legal safeguards by women in India is a serious issue that has been receiving increased attention in recent years. A recent incident where a 34-year-old man named Atul Subhash died by suicide on 9<sup>th</sup> December, 2024, after accusing Nikita and her family members of harassing him and his parents by filing false cases against them.<sup>2</sup>

The misuse of protective laws is not only a serious issue for men but also for women themselves. When some women take unfair advantage of

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<sup>2</sup> BBC, *A Man’s Suicide Leads to Clamour Around India’s Dowry Law*, BBC News (Aug. 31, 2025), <https://www.bbc.com/news/articles/c33d6161z3yo>.

these legal protections for personal gain or revenge, it weakens the credibility of genuine victims. As a result, women who truly suffer from violence or injustice often face doubt and suspicion from society.

This misuse creates a damaging stereotype that all complaints made by women may be false or exaggerated. Consequently, real victims struggle to receive the justice and support they deserve. Society begins to view all women through the same lens, which undermines the purpose of the protective laws.

Therefore, while it is essential to maintain strong legal safeguards for women, it is equally important to ensure that these laws are not exploited. Stricter penalties for false accusations, along with better investigation procedures, can help balance justice. The goal should be to protect the innocent, punish the guilty, and uphold the integrity of the legal system for everyone.

## **2. HISTORICAL BACKGROUND OF MEN'S RIGHTS IN INDIA**

The men's rights movement in India comprises various independent groups focused on addressing issues that disproportionately affect men. Proponents of the movement advocate for gender-neutral laws, arguing that existing legislation is often biased against men. Key areas of concern include anti-dowry laws, divorce proceedings, and child custody battles, which activists contend frequently favour women. Additionally, they

highlight the growing problem of domestic violence against men, who are often reluctant to report abuse due to social stigma and fear of counter-accusations. Some activists also argue that India's rape and sexual harassment laws are skewed, unfairly targeting men.

## **2.1 KEY DEVELOPMENTS:**

Key developments in the men's rights movement in India include:

- 1990s-2000s: Initial groups formed to address misuse of Section 498A of the IPC (anti-dowry law).<sup>3</sup>
- 2005: Save Indian Family (SIFF) was founded.<sup>4</sup>
- 2006 – 2010: Between 2006 and 2010, Indian men's rights groups, including SIFF, raised concerns about media and legal biases against men. In 2007, First International Men's Day celebrated in India. In 2008, SIFF took a stand against advertisements perpetuating negative stereotypes of men, filing formal complaints to address these concerns. The following year, 2009, saw the establishment of the NGO Child's Rights and Family Welfare, dedicated to advocating for men's legal rights, particularly in regards to fairer custody laws. That same year, activists engaged in dialogue with the Ministry of Women and Child Development, highlighting concerns over the misuse of laws such as IPC Section 498A;

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<sup>3</sup> *Men's Rights in India Explained*, Men Helpline Org (Oct. 11, 2025), <https://menhelpline.org/mens-rights-in-india-explained/>.

<sup>4</sup> *Id.*

despite initial resistance, the ministry subsequently agreed to review the legislation. In 2010, SIFF extended support to Pakistani cricketer Shoaib Malik amidst legal disputes, citing apprehensions over the misuse of legal provisions.<sup>5</sup>

- 2010–2013: Between 2010 and 2013, the organization vocally opposed legislative bills, including the Marriage Laws (Amendment Bill), and criticized media portrayals, such as the TV show *Satyamev Jayate*, protesting the unfair treatment of men accused of crimes.<sup>6</sup>
- 2015–Present: Since 2015, men’s rights groups have continued to raise awareness through initiatives such as the ‘Malendar’ campaign and protests during the Mumbai Marathon, where participants carried banners with slogans like ‘Men as ATMs,’ drawing attention to issues of financial exploitation. New organizations, including Avijan Welfare, have emerged to support men navigating legal challenges. A poignant example of advocacy is the documentary ‘Martyrs of Marriage,’ which sheds light on the lesser experiences of men who have been victims of legal misuse, amplifying the call for reform and greater awareness of men’s rights issues.<sup>7</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

### **3. MEN’S RIGHTS AND THE INDIAN CONSTITUTION**

In India, rights are fundamental entitlements that enable individuals to live freely and safely within society, encompassing legal, social, and moral dimensions. The Constitution enshrines certain basic and essential rights, including freedom of speech, personal liberty, dignity, and the right to practice one’s faith, collectively known as fundamental rights. While Indian legislation has enacted numerous laws and policies aimed at safeguarding women from harassment and violence, men’s rights have often received relatively less attention. Nonetheless, the Indian Constitution guarantees certain rights and protections to all citizens, irrespective of gender.

#### **3.1 IMPORTANT CONSTITUTIONAL RIGHTS FOR MEN**

Key constitutional provisions relevant to men include

- Article 14, which asserts the principle of equality before the law, mandating that all individuals be treated equally. However, in cases of gender-based crimes, particularly under the Indian Penal Code or the new *Bhartiya Nyay Sanhita*, men are frequently presumed to be the primary offenders, creating an inherent bias.<sup>8</sup>

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<sup>8</sup> J. N. Pandey, *Constitutional Law of India* (58th ed. 2021).

- Article 15 of the Indian Constitution prohibits discrimination based on gender, religion, race, and other factors. However, it also allows special laws and protections for women, which sometimes create an imbalance because there are no similar protections for men in such laws.<sup>9</sup>
- Article 21 of the Indian Constitution guarantees the right to life and personal liberty, safeguarding every individual's freedom to live with dignity and protecting against unwarranted deprivation of life or liberty, except as prescribed by law. Although this fundamental right applies universally, including to men, their rights are occasionally disregarded, particularly in gender-related cases.<sup>10</sup>
- Constitutional Remedy: The Constitution provides a remedy for citizens whose fundamental rights are infringed, empowering them to approach the Supreme Court under Article 32.<sup>11</sup>

However, despite the Constitution's promise of equality and liberty, men's rights often receive inadequate attention, as the focus on protecting women under Article 15 can create an imbalance, underscoring the need

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<sup>9</sup> J. N. Pandey, *Constitutional Law of India* (58th ed. 2021) (discussing INDIA CONST. art. 15).

<sup>10</sup> J. N. Pandey, *Constitutional Law of India* (58th ed. 2021) (discussing INDIA CONST. art. 21).

<sup>11</sup> J. N. Pandey, *Constitutional Law of India* (58th ed. 2021) (discussing INDIA CONST. art. 32).

to address this disparity to ensure equitable treatment for all, regardless of gender.<sup>12</sup>

## **4. THE MISUSE OF LEGAL SAFEGUARDS: A CALL FOR BALANCE IN GENDER JUSTICE**

The primary objective of legislation is to safeguard individual rights and foster a fair and secure society. In India, numerous initiatives have been undertaken to promote gender equality and empower women, including the enactment of laws and regulations designed to protect women's rights and ensure equal opportunities in various spheres. However, it has been observed that certain laws intended to protect women are occasionally exploited by a minority for ulterior motives, a phenomenon often referred to as the "weaponization of laws." This misuse raises concerns about the fairness and credibility of these laws, highlighting the need for a more balanced legal system that protects the rights of all individuals, regardless of gender.

Examples of laws that are sometimes misused include:

- Dowry Laws (Section 498-A IPC): Dowry Laws (Section 498-A IPC), which, while aimed at protecting women from dowry

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<sup>12</sup> J. N. Pandey, *Constitutional Law of India* (58th ed. 2021) (discussing INDIA CONST. art. 14, 15 & 21).

harassment, are occasionally used to file false complaints against husbands and in-laws.<sup>13</sup>

- Domestic Violence Act: The Domestic Violence Act, designed to support women facing abuse, but sometimes employed to falsely accuse family members, including elderly parents or distant relatives.<sup>14</sup>
- Sexual Harassment at Workplace (POSH Act): The Sexual Harassment at Workplace (POSH Act), intended to ensure a safe work environment, but occasionally used to lodge false complaints for personal vendettas.<sup>15</sup>
- Rape Laws: Rape Laws, which protect women from sexual assault, but have been misused in cases of false allegations made for personal gain or reputational damage.
- Child Custody Laws: In divorce cases, some women misuse provisions that favour mothers to obtain full custody of children, even when it may not be in the child's best interest.<sup>16</sup>

There are thousands of cases where courts find that allegations are made with bad faith or malicious intent. It means that a disturbing trend of false accusations has been highlighted in so many cases.

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<sup>13</sup> Tarun Kaushik, *Weaponization of Laws by Women in India*, Samvedna, Maitreyi Coll., Univ. of Delhi, <https://www.maitreyi.ac.in/uploads/research/Samvedna/issues/vol6/issue2/Eng/E3.pdf> (last visited Sept. 3, 2025, 10:14 AM).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

For instance, in *Shivam Kumar Pal vs. State of Uttar Pradesh*,<sup>17</sup> a woman from Prayagraj was fined Rs 10,000 for misusing the judicial and legal system after she filed a false complaint against her husband.

In another case, Suresh, a tribal man from Basavanahalli in Karnataka, files a criminal appeal in the Karnataka High Court seeking ₹5 crore in compensation from five Bettadapura police officials for allegedly fabricating evidence against him in a false murder case.

Suresh spends 1.5 years in jail after being wrongly accused of murdering his wife, Mallige, who goes missing in 2020. Police arrest him after finding a woman's skeleton, but a DNA test later proves it is not his wife's. Mallige is eventually found alive, living with another man in Shettihalli village. Although the Mysuru District Court honorably acquits Suresh and directs the Home Department to pay him ₹1 lakh, it orders legal action only against Inspector Prakash B. G. Suresh appeals to charge all five officers under relevant sections of the BNS 2023 (equivalent to IPC Sections 193 and 195) and to replace the term "accused" with "victim" in court records.<sup>18</sup>

In another incident in Ajmer, a special POCSO court convicted a woman for falsely accusing two men of raping her minor daughter, a move the

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<sup>17</sup> Shivam Kumar Pal v. State of Uttar Pradesh, Crim. Misc. Writ Petition No. 11560 of 2023 (All. H.C.).

<sup>18</sup> *Karnataka Man Spends 1.5 Years in Jail for Wife's 'Murder', She Walks into Court Alive*, Times of India, <https://timesofindia.indiatimes.com/city/mysuru/cops-served-notice-after-dead-woman-surfaces/articleshow/119914813.cms> (last visited Sept. 3, 2025).

court deemed was motivated by revenge against the men who had filed a case against her husband. The court sentenced her to six months' imprisonment and a fine of ₹10,000, noting that such false cases not only waste the court's time but also undermine the credibility of genuine victims.<sup>19</sup>

In another incident, Amit Kumar, an assistant manager, took his own life, leaving behind a five-page note attributing his actions to the humiliation he suffered due to false sexual harassment charges leveled against him by his employer, Optum Global Solutions.<sup>20</sup>

## **5. FALSE RAPE CASES AGAINST MEN**

The investigation of crimes against women, particularly rape, is a sensitive and critical aspect of law enforcement. While the criminal justice system is designed to treat allegations of sexual assault with the utmost seriousness, it is equally important to acknowledge that not all reported cases are substantiated upon investigation. In some instances, investigations reveal that the facts do not support the claim, leading to the case being closed as "false." A false rape allegation, as defined by

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<sup>19</sup> *Woman Gets 6-Month in Jail for Framing Two in Daughter's 'Rape' Case*, Times of India, <https://timesofindia.indiatimes.com/city/ajmer/woman-gets-6-mth-in-jail-for-framing-two-in-daughters-rape-case/articleshow/102462161.cms> (last visited Sept. 3, 2025).

<sup>20</sup> Rattibha, <https://en.rattibha.com/thread/1569342010829729794> (last visited Sept. 3, 2025).

Kanin<sup>21</sup> involves the intentional reporting of a forcible rape by an alleged victim when no such assault has occurred. However, it is crucial to recognize that cases labelled as “false” may not always be fabricated; genuine cases may be misclassified due to insufficient evidence or investigative oversights, highlighting the need for meticulous and thorough investigations to ensure justice is served.<sup>22</sup> That said, there are indeed verified instances of malicious intent, where courts find that the allegations were made in bad faith.

A high-profile case that garnered significant attention was the ***Gurugram False Rape Case***,<sup>23</sup> in which a 20-year-old Delhi University English honors student was arrested following allegations that she was operating a blackmail syndicate, falsely accusing men of rape and extorting money from them. The accused woman had filed seven separate rape cases against seven different men across various police stations, with some cases already dismissed and others prompting court notices for her appearance.

In another disturbing incident, a 19-year-old girl in Indore fabricated a

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<sup>21</sup> Eugene J. Kanin, *False Rape Allegations*, 23 *Archives of Sexual Behavior* 81, 81–92 (1994).

<sup>22</sup> Hanif Qureshi, *The Truth Behind False Rape Cases*, *Psychology & Behavioral Science International Journal* (ISSN 2474-7688), <https://juniperpublishers.com/pbsij/pdf/PBSIJ.MS.ID.555978.pdf> (last visited Sept. 7, 2025, 10:02 AM).

<sup>23</sup> Azhar Ahmad Khan, *Case Study on False Rape Allegation in India*, *The Amikus Qriae*, <https://theamikusqriae.com/case-study-on-false-rape-allegation-in-india/> (last visited Sept. 7, 2025, 1:03 PM).

gang-rape claim, initially stating she had been abducted and assaulted by five men. Her changing narrative during the investigation led to a confession, revealing that she and an accomplice had concocted the story, reportedly to obtain government compensation, a tactic she had employed previously.<sup>24</sup>

In another case, a man spent 20 years in jail for a false rape conviction. In this instance, Vishnu Tiwari of Lalitpur spent two decades in jail for a crime he never committed. In September 2000, the police arrested Vishnu in a rape case in which the woman, her husband, and her father-in-law testified that Vishnu had taken advantage of the woman in the field. He was charged with sexual and physical assault on a woman who was five months pregnant. After 20 years, the Allahabad High Court, recognizing the truth, released Vishnu Tiwari from jail.<sup>25</sup>

The protective laws are often misused by women, which we better understand through the next case of *Nikki Devi vs State of U.P. and Another*<sup>26</sup>, decided on 26 July 2024. In this case, Nikki Devi files a false gang rape complaint (FIR No. 144 of 2022) against Bhupendra Kumar Pandey, Wasim, Arun Pandey, and Shubham Giri. It is later revealed that she does this along with Vinod Shanker Tripathi to take revenge and extort money. This is in response to earlier legal action taken against Tripathi. Soon after, several other complaints come up, pointing to a

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Nikki Devi v. State of U.P. & Anr.*, 2024 AHC 124167.

bigger conspiracy. A disturbing pattern of exploitation emerged as Saira Bano, wife of Wasim, filed a rape complaint against Tripathi and others, merely a day after Nikki's FIR. Further investigation revealed a larger web of deceit, with multiple individuals, including advocate Rakesh Nath Pandey, Rajesh Patel, Chandra Bhushan Singh, and Deva, falsely accused of rape by Archana Singh and her husband Awadhesh Singh. Concrete evidence, including affidavits, audio clips, and money transfer records, exposed a quid-pro-quo system where names were added or removed from FIRs in exchange for monetary gain. For instance, Rajesh Patel paid ₹50,000 to Awadhesh Singh, prompting Archana Singh to admit in writing that she had falsely implicated him. Similarly, Chandra Bhushan Singh and Deva alleged they were framed due to non-payment of bribes or coerced payments. These cases starkly illustrate the misuse of protective laws, causing irreparable harm to innocent individuals and undermining the credibility of genuine victims, thereby underscoring the imperative need for legal reforms to prevent such exploitation while safeguarding the vulnerable.

## **6. REMEDIES AGAINST FALSE RAPE CASES**

Filing a false rape case is a serious offense, and the legal system provides remedies to protect the innocent and ensure justice.

## **6.1 DISMISSAL OF FIR BY THE HIGH COURT**

If a First Information Report (FIR) is found to be baseless or filed with malicious intent, the High Court has the authority to dismiss it under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.<sup>27</sup> The accused must present evidence proving their innocence and demonstrate that the complaint is false or intended to cause harm.

## **6.2 UNDERSTANDING CONSENT AND FALSE PROMISE OF MARRIAGE**

The Supreme Court clarifies important aspects of consent in sexual relationships:

6.2.1 In *Shivashankar @ Shiva v. State of Karnataka (2018)*, the Court rules that sex within a consensual live-in relationship cannot be classified as rape, even if a promise of marriage is later broken. Consent must be voluntary and free from force or fraud.<sup>28</sup>

6.2.2 In *Dhruvaram Murlidhar Sonar v. State of Maharashtra (2018)*, the Court dismisses a rape charge where the complainant knowingly engages in a consensual relationship with a married man. Mere regret or feeling misled later does not invalidate the consent already given.<sup>29</sup>

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<sup>27</sup> Drishti Judiciary, <https://www.drishtijudiciary.com> (last visited Sept. 9, 2025).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

## **6.3 PENALTIES FOR FALSE ACCUSATIONS**

False complaints attract legal penalties. Under Section 22 of the POCSO Act, 2012, knowingly making false accusations of sexual offenses can lead to imprisonment of up to six months, a fine, or both. This provision aims to prevent misuse of the law.

While false rape accusations are uncommon, it is vital that every case is investigated thoroughly. This balance ensures that genuine victims receive justice while innocent individuals are protected from wrongful punishment.<sup>30</sup>

## **7. FALSE DOMESTIC VIOLENCE CASES AGAINST HUSBAND AND HIS FAMILY**

Under Indian laws such as the Hindu Marriage Act and the Domestic Violence Act, filing false criminal cases against a husband and his family is considered a form of cruelty.

Indian courts have made it clear in several cases that making fake or baseless accusations can seriously affect a husband's life, mental peace, and reputation.

Here are some recent court decisions:

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<sup>30</sup> *Id.*

- ***Bombay High Court (May 1, 2024)***: Dismissed a woman's request to reunite with her ex husband after she had filed a false domestic violence case.<sup>31</sup>
- ***Punjab and Haryana High Court (October 11, 2022)***: *Ratandeep Singh Ahuja v. Harpreet Kaur*: The husband was granted divorce because the wife had made false and baseless accusations. The court said such fake cases damage trust and make it hard to continue the marriage.
- ***Supreme Court (April 25, 2017)***: Ruled that fake criminal charges are cruelty and valid grounds for divorce.
- ***Patna High Court (December 27, 2023)***: Called false abuse claims harsh but still ordered the husband to pay temporary alimony.
- ***Allahabad High Court (October 7, 2024)***: Held that false allegations are cruel and no extra proof is needed to show cruelty in such cases.

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<sup>31</sup> Jus Corpus, *Cruelty Against Husband: The Rise of False Cases*, Jus Corpus L.J. (Sept. 9, 2025, 8:30 PM), <https://www.juscorpus.com/cruelty-against-husband-the-rise-of-false-cases/>.

## **8. KEY OBSERVATIONS REGARDING THE NUMBER OF CASES ENDED AS FINAL REPORT FALSE AS PER NCRB DATA**

The National Crime Records Bureau (NCRB) categorizes false cases into two types: those declared false due to errors in law or fact, and those where investigations concluded without a charge sheet. However, the NCRB's lack of clear definitions and guidelines for these categories can lead to inconsistencies in reporting. In 2012, 24,923 rape cases were registered, with 7.4% found to be false due to errors, and 3.9% ending without charges, totaling 11.3% of cases without charges. This figure showed a slight decline over the next two years. However, from 2016 to 2022, the percentage of false cases gradually increased from 4.95% to 5.65%, with a notable spike between 2018 and 2019. In 2022, rape, attempted rape, and assault cases accounted for 7.23% of all false cases, with 11,921 out of 1,64,866 active cases found to be false, highlighting concerns about potential misuse of laws and false reporting.<sup>32</sup>

## **9. CONCLUSION**

While laws designed to protect vulnerable individuals, particularly women, play a vital role in upholding justice, equality, and human dignity, their misuse by a minority poses a serious challenge to the

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<sup>32</sup> *Id.*

credibility of the legal system. These protective statutes were established to provide a voice and a shield to those who have historically faced discrimination and violence; however, when they are exploited for personal vendettas, financial gain, or revenge, the very essence of justice is compromised. The consequences of false accusations are far-reaching: the falsely implicated often endure immense psychological distress, social isolation, and irreparable damage to their reputation and career. Families suffer emotional and financial strain, while communities become polarized by suspicion and mistrust. Over time, such misuse not only destroys individual lives but also weakens faith in the rule of law, making it harder for genuine victims to seek justice and be believed. Therefore, achieving true justice demands a balanced approach: one that fiercely protects the rights and dignity of genuine victims while simultaneously ensuring that safeguards exist against deliberate manipulation of legal provisions. Strengthening investigative processes, promoting accountability, and encouraging legal literacy can help reduce instances of misuse. Ultimately, a fair and transparent legal system must strive for equilibrium: empowering the vulnerable without enabling exploitation, and upholding justice in both spirit and practice.



**BLOG**



# SHADOWS OVER THE REPUBLIC: CORRUPTION, CRISIS, PEOPLE'S UPRISING



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-Abhoy Acharjee<sup>1</sup>

## ABSTRACT

*This blog examines the significant effects of governance issues and corruption on contemporary republics, highlighting recent global occurrences wherein people's displeasure towards their maladministered government led to widespread revolution. The focus of the discussion is Nepal's Gen Z-led anti-corruption movement (2025), which gained enormous traction after the government banned social media. There were*

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*numerous accusations of financial mismanagement as well as political nepotism. Amidst violent clashes, arson, and widespread mobilization calling for accountability and systemic reform, the youth-led protests expeditiously turned into a national upheaval that ultimately led to Prime Minister K.P. Sharma Oli's resignation.*

*These incidents are reminiscent of global trends of youth-led resistance in South Asia and elsewhere, where generations with access to technology use it to oppose established elites and call for transparency, inclusion, and democratic renewal. The blog identifies that corruption blinds the democratic institutions, forcing the citizens—mainly the youths to come out of their comfort zone and rise with urgency with the ambition to shape a better political landscape.*

**KEYWORDS:** *Governance Issues, Corruption, Maladministered Government, Political Nepotism, Transparency.*

# **1. CORRUPTION: THE SAME OLD SONG, BUT LOUDER**

Let's be real, Nepal's government isn't going to be exactly winning any "Most Transparent" awards anytime soon. There's the joke that half the reason someone winds up in office is because their cousin's barber's son is friends with someone. The #NepoBabies scandal wasn't just some Twitter rofl-storm, though the videos about rubbing with luxury holidays and new whips while regular people fight over crumbs? That's going to make people mad.

## **1.1 FLASHPOINT ISSUES:**

More than enough corruption scandals to squander on: earthquake relief funds going into who-knows-where, family members of politicians landing the crème-de-la-crème of jobs. Politicians' children parading it on Instagram in Europe while over a quarter of the country lives under the poverty line. The picture? Worse than worst. #NepoBabies serving up actual tea on who's actually getting the pie and who's actually just settling for licking the crumbs.

# **2. SOCIAL MEDIA BAN: BASICALLY POURING GASOLINE ON THE FIRE**

You would think by now the government would have learned: shutting down the internet is ironically the worst way of taking the din and making

it an even greater din. Maybe they thought, "No TikTok, no protests." Well, here is what transpired:

## **2.1 FACTS AND FALLOUT:**

September 4, 2025, and in the style of an awful wizard, Prime Minister Oli's administration attempted to send 26 social media sites to the depths of oblivion. (Spoiler: It kind of didn't.) Official excuse? "National security and regulatory compliance." Actual atmosphere? "Let's not get roasted as corrupt." Businesses collapsed, migrant families could not welcome, activists were stumped. No local alternatives, just radio silence unless you possessed technical know-how. VPN downloads through the roof, literally, Nord VPN had to have popped champagne bottles at the numbers Nepal saw. Making the government totally look out of touch. When 90% of your population are on the net, you can't ghost.

## **3. YOUTH AND DIGITAL REBELLION: KEYBOARD WARRIORS GO IRL**

This is where Nepali Gen Z said, "Nah, we're not about to take this lying down." Forget TikTok dances this was bona fide digital rebellion becoming street theater.

### **3.1 KEY MOVES:**

Gen Z (1997-2012!) made up nearly 30% of the country; that's a whole lot of people who can download an app. Encrypted group chats went dark, Signal and Telegram became strategy HQs. Memes and rapid

videos made the elites into clowns, cutting actual employment and poverty rates.

### **3.2 OFFLINE UPRISING:**

Protests started in the legendary Kathmandu hangouts Thamel and Durbar Square were no longer just a tourist selfie spot, but fields of democracy. Tie-dye-clad students (so much more photogenic than uniformed students, all right) held up signs reading "Audit the Elites" and "End Nepotism Now." They demanded peace to be real, no other 2006 with blood running in the streets for them, but tension filled the air.

## **4. HARD TRUTHS: ECONOMIC PRESSURE COOKER**

Behind all that anger? A sense of unfairness in the system. You can't eat your heart out for love of country, and hope does not bring bread on the table. Money's in short supply, hopes are shorter.

GDP at a whopping 3.8% (that is about a weary shuffle, not a sprint). Youth joblessness at less than 20%, it's not "find your passion," it's "find something to do, somewhere." So many Nepali youths leap to the Gulf to labour, remitting money back in the economy is remittance-dependent (hello, 24% of GDP!). Not exactly a long-game strategy of a sort.

## **5. THE FLASHPOINT: SEPTEMBER 8, 2025**

### **WHEN EVERYTHING BLEW UP**

Actually, the week had been shaping up like a storm. When September 8th came around, everyone anticipated it'd be close but no one anticipated just how ugly it became.

Five thousand-plus protesters attempted to push through Singha Durbar, the seat of government. The message? That's all.

Police released tear gas, water cannons, and (to everyone's surprise) live bullets. Not exactly keeping calm and carrying on, then. During the night, 21 protesters, the majority under thirty, killed. 500+ others wounded, hospitals bursting. The revolution shook the country to its core, and, come on, those videos and live feeds reached the world a whole lot faster than any government release of PR footage possibly could.

## **6. RIPPLE EFFECTS: WHERE DOES NEPAL GO FROM HERE?**

Yes, the PM quit. Parliament was pillaged. But in a nation accustomed to churn kings, coups, new faces with every election this revolution is distinct. The hashtags will change, but the anger will linger.

Somebody screamed pleadingly, loudly about asking for an actual anti-corruption commission, actual transparency (and not just words), and for goodness' sake, jobs, can't they please have some? Nepal's youth have

cyber strength... they won't let go now. Everyone is watching, not in interest, but also because they are witnessing the trend. If it is possible in Paris, Tbilisi, Kathmandu... who is next?

Ultimately, it was never about apps or hashtags or even a specific individual prime minister. It's about a generation yelling, "You, you can't govern a 21st-century nation with 19th-century politics and 20th-century excuses." Nepal may have made international news for its war, but underneath that is a raw, stunning effort to do better. And that's worth the telling of.

## **7. CHAOS IGNITES: THE KATHMANDU UPRISING**

It would in fact boil over, much to the glee of Amnesty International and the rest of their euphoria, who were screaming around ringing bells, essentially declaring the government mad for releasing a full-fledged havoc on protesters. That just contributed to the insanity. Professor Moriarty types hurled tires and objects out onto Ring Road like smoke and fire-hued blocks obstructing key areas of the city. It was personified insanity, plain and simple end-of-the-movie fodder.

Thousands stormed New Baleshwar on September 9. Parliament was not "seized" but lit up with impromptu Molotov's (yes, real homebrewed bottle bombs). The main hall and admin block? Reduced to ashes. Documents on those ever-useful corruption files? Ashes, sweetheart. The

Nepali Congress Party headquarters was not lagging torched out of an '80s riot film. Even the ministers' residences in Maharjan got mob treatment smashed windows, loot, additional fires. A personal tantrum.

## **8. POLITICAL DOMINOES: POWER FALLS, PEOPLE RISE**

So with smoke chokes-hold-Ing the metropolis and fire trucks keening, Prime Minister Oli was on television, all solemn, discussing "stability." Clearly, his time at the top was finished he didn't concern himself with the greater good; he was bugging out before the going got rough.

The Parliament was dissolved in a swift stroke by the President, and Nepal was suddenly plunged into the usual "interim government scramble mode." The Ministers were helicopter-flown out like we were an end-of-the-world movie. When they finally removed the curfew (September 13), the tally was pathetic:

- i) 72 killed (60 protesters, 9 "prisoners" who died in detention, you do the math)
- ii) 3 cops killed in the spree
- iii) More than 1,000 hurt
- iv) Dozens of arrests, with the whole lot more nowhere to be seen

## **9. DIGITAL DISSIDENTS: PROTEST GOES ONLINE**

Following the street fights and teargas surges, young leaders did what young leaders do. They scouted out the revolution to where adults didn't want to go. Discord servers overnight were rebranded from gamer hangouts into rebel headquarters.

Social media blockades? Ha. VPNs for days. The #NepoBabies trended hard, ruining the fun of the elites by unearthing all the political "princelings" abroad on public dime. Even when the official ban was lifted, nobody was having much faith in the government. Trust had effectively been zeroed out.

## **10. A WORLD ON FIRE: NEPAL ONE EPISODE IN GLOBAL YOUTH REVOLT**

Thing is, this wasn't just Nepal losing its cool. There's a trend, young people everywhere tired of being sold the same boring, crooked templates.

- France, Early 2025: Gilets Jaunes brought it to the streets. Pensions, pay gaps, police raids, isn't that familiar? With a Gini index of 0.32 (i.e., very uneven wealth), the average French teenager's pipe dreams were just that.

- Bangladesh, Summer 2024: University students lost their minds over job quotas basically, if your old man served in '71, hi there, public service. Nepotism level: comic book supervillain. Over 200 dead in protests, Prime Minister Hasina removed.
- Georgia, 2024: Tbilisi's avenues were crammed with young folks protesting a "Foreign Agents" law that screamed "we hate free speech. "The political puppet master? That's right, Ivanishvili.
- USA, Still Burning: BLM didn't happen in 2020. New demands to defund egregious policing kept Portland and Minneapolis in a perpetual state of rolling chaos. Black Americans? Still nearly three times more likely to be murdered by police. Systemic isn't even the word.

## **11. THREADING IT TOGETHER: WHAT'S THE REAL CONTAGION**

What is the elixir that splices together those embers everywhere? Outraged young people and trending hashtags, it is not all. There is a pattern: Corruption flickers on social timelines, virality within seconds.

a) Politicians crush establishments, deploy goons, silence debates.

b) Social media is the slingshot Telegram, Discord, Facebook Live become the fount of resistance.

For Better and worse:

- a) Facts galore as nobody believes what they are reading (deepfakes, fabricated vids, astroturfing, all on the menu).
- b) Governments listening in, censoring, and snooping, which in turn pushes more people off the grid and into darker conspiracies.

## **12. ON TO NEPAL: NEW FACES, SAME PROBLEMS?**

Nepal, after the revolution, attempted its own face-lift named its first-ever female Prime Minister (caretaker, nonetheless), requested a government of national unity, and promised elections in six months.

Paper-perfect. Protesters? Not so easily placated.

What they really want:

- a) A genuine, tooth-brush-scouring anti-corruption agency
- b) Reforms to the civil service that do more than exchange one dynasty for another
- c) Ancient dynastic politics won't creep back in six month's time

Stats call out the big hammer for this one:

Nepal corruption index: 34/100 not quite a medal-winning performance. Ranked 108 out of 180. Around 40% of the nation are young people a youth army who aren't going to accept better speeches.

## **13. CONCLUSION: THE RULEBOOK'S ON FIRE**

Soon, you cannot tape revolutions together with duct tape. Revolution here is not going to culminate in slightly more enlightened law-making or another celeb politician. The entire affair is a warning shot to all the nations still trundling along with dynastic politics, fixed systems, and hold on stupid old-fashioned power. In Nepal and elsewhere, farewell, old, and if they do not listen? Well, the tire fires have only just started.