VOLUME XI ISSUE–IV (OCT-DEC 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
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Dagapur, Siliguri, P.O.-Salbari, P.S.-Matigara, Dist.-Darjeeling, West Bengal 734002, India
Telephone: 0353-2960665 / 2960668
Mobile No.: +9197755- 09999;E-mail:iils.siliguri@gmail.com
Webpage: www.iilsindia.com/quest-editorial-board

Design: koseliarts@gmail.com
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Mobile No.: +91- 97755- 09999; E-mail: iils.siliguri@gmail.com
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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.

JOYJIT CHOUDHURY

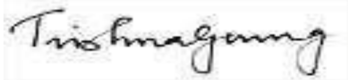
Patron-in-Chief

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.



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

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LONG ARTICLE

THE DEATH PENALTY QUESTION: JUSTICE, REVENGE, OR REFORM?

-Shubhasree Biswas[1], Meghna Das[2]

ABSTRACT

Capital Punishment, or the death penalty, is one of the most debated and severe punishments a legal system can impose, in which the State takes away the life of an offender. Even today, the death penalty divides opinion: some see it as a justice for victims, while others argue it violates the basic right to life. In India, the death penalty is legally retained but restricted to the "rarest of rare cases", and awarding capital punishment on such grounds includes a lot of controversies in different

[1] Student of 5 years BA LLB(H), Sem V, Indian Institute of Legal Studies, Siliguri, shubhasreebiswas09@gmail.com.

[2] Student of 5 years BA LLB(H), Sem V, Indian Institute of Legal Studies, Siliguri, meghnadas2802@gmail.com.

judgments. The intention of study is to find out that awarding such type of punishment in rarest of rare case is just and fair, and to identify on what basis the judiciary terms a particular criminal act as rarest of rare. It looks at constitutional provisions like Article 21 (Protection of life and personal liberty) and Article 14 (Equality before law), as well as the Bharatiya Nyaya Sanhita, 2023, which still provides for death penalty in serious offences such as terrorism and rape-murder. Landmark judgments such as Jagmohan Singh (1973), Bacchan Singh (1980), and Dhananjoy Chatterjee (2004) show how courts have struggled to balance justice and excess. The article also considers the human impact on victim's families and the ethical dilemmas faced by courts, illustrating that legal decisions affect real lives. Furthermore, the article explores capital punishment in India through key themes, including justice and morality, historical and legal evolution, landmark judicial decisions, societal responses, comparative perspectives, and future directions.

KEYWORDS*: Death Penalty, Constitutional Provisions, Landmark Judgments, Human Dignity, Capital Punishment.*

1. SETTING THE STAGE: JUSTICE, REVENGE, OR REFORM?

"To take a life when a life has been lost is revenge, not justice."

— Desmond Tutu[3]

The death penalty, also called capital punishment, is the most severe punishment in law, where the State ends the life of a person found guilty of a crime. Supporters see it as a way to ensure justice, deter grave crimes, and provide closure to victim's families. Critics argue that it is irreversible, undermines human dignity, and violates the right to life guaranteed by the Constitution of India.[4]

Although capital punishment has existed across civilizations, from ancient Mesopotamia to medieval Europe, its evolution in India presents a unique journey shaped by ancient customs, colonial influence, and constitutional safeguards.

India retains capital punishment but restricts it to the "rarest of rare" category.[5] It's a contradiction that India, a democracy that values human rights, still allows executions and this is what keeps the debate alive. Internationally, while more than 120 countries have abolished the

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[3] Desmond Tutu, *To Take a Life When a Life Has Been Lost Is Revenge, Not Justice*, DEATH PENALTY INFO.CTR., https://deathpenaltyinfo.org/archbishop-desmond-tutu-nobel-peace-laureate-passionately-opposed-to-the-death-penalty-has-died (last visited Sept. 20, 2025).

[4] INDIA CONST. art. 21; V.R. Krishna Iyer, *The Death Penalty: A Judicial Gamble*, 12 J. Indian L. & Soc'y 45 (2013).

[5] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.

practice, India remains among the few that continue it, though only in exceptional cases. The issue is not merely theoretical. High-profile cases, including the execution of Dhananjoy Chatterjee in 2004, the Nirbhaya gang rape case in 2013, and the Hanskhali rape-murder in West Bengal, demonstrate how judicial decisions are shaped by a combination of legal reasoning, public sentiment, and media influence. The families of victims suffer unbearable grief and also have to face delays in the justice system as they try to find peace. Justice V.R. Krishna Iyer described the death penalty as "a judicial gamble," highlighting that life and death outcomes often depend on judicial perspective rather than uniform legal principles.[6]

This article follows a doctrinal research method, examining constitutional provisions, the Bharatiya Nyaya Sanhita, 2023, landmark judgments, and comparative perspectives. The main goals are: (1) to examine the constitutional and legal basis of the death penalty in India, (2) to analyze how courts apply the "rarest of rare" rule, and (3) to evaluate whether the death penalty actually delivers justice, prevents crime, or simply fulfills the desire for retribution.

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[6] V.R. Krishna Iyer, *The Death Penalty: A Judicial Gamble*, 12 J. INDIAN L. & SOC'Y 45 (2013).

2. THE LAW BEHIND THE LASH: EVOLUTION OF CAPITAL PUNISHMENT IN INDIA

The idea of capital punishment is not new to Indian society. In ancient times, punishments were often guided by the principle of *"an eye for an eye, a tooth for a tooth"*.[7] In earlier times, people faced very harsh punishments, sometimes even for small crimes, showing a belief in revenge-based justice. Ancient writings and traditions often supported the death penalty as a way to keep order and stop others from committing crimes.

During the medieval and colonial periods, the death penalty continued to be a prominent sanction. With the introduction of the Indian Penal Code, 1860 by the British, capital punishment became a codified part of Indian criminal law. It was prescribed for serious offences such as murder, treason, and waging war against the State. The colonial administration viewed it as an essential instrument to maintain authority and suppress dissent.

After independence in 1947, India retained the death penalty in its legal system. The framers of the Constitution did not abolish it but instead provided safeguards against arbitrary deprivation of life through Articles

[7] *The Code of Hammurabi*, § 196 (L.W. King trans., 1910), https://avalon.law.yale.edu/ancient/hammprea.asp (last visited Sept. 20, 2025).

21, 72, and 16.[8] In the early years, the judiciary upheld the constitutionality of the death penalty, most notably in *Jagmohan Singh v. State of Uttar Pradesh* (1973), where the Supreme Court reasoned that it was a matter of legislative policy and judicial discretion.[9]

Over time, however, debates around its fairness and human rights implications gained momentum. This ultimately led to the Supreme Court's formulation of the "rarest of rare" doctrine in *Bachan Singh v. State of Punjab* (1980),[10] which sought to restrict the imposition of the death penalty to the most exceptional circumstances. The evolution reflects not only legal reform but also the changing understanding of justice and societal ethics.

3. WHEN LIFE HANGS IN THE BALANCE: LANDMARK JUDICIAL PRONOUNCEMENTS

A doctrinal analysis of India's death penalty jurisprudence, supported by scholarly commentary, demonstrates the Supreme Court's careful balancing of justice, deterrence, and human rights.[11] Experts agree that the "rarest of rare" principle helps ensure that the death penalty is used only in very serious and exceptional cases.

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[8] INDIA CONST. arts. 21, 72 & 161.
[9] Jagmohan Singh v. State of Uttar Pradesh, AIR 1973 SC 947.
[10] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[11] S.C. Srivastava, *Capital Punishment in India: Constitutional and Judicial Perspectives*, 9 IND. J. CRIM. L. 23 (2018).

In *Jagmohan Singh v. State of Uttar Pradesh* (1973), the Supreme Court upheld the constitutionality of capital punishment,[12] emphasizing the necessity of judicial discretion. Legal scholars point out that the Court, even at this early point, realized the huge responsibility of deciding life-and-death cases, which helped shape future decisions.

The *Bachan Singh v. State of Punjab* (1980)[13] case is widely regarded in academic literature as the cornerstone of India's death penalty jurisprudence. The judgment makes it clear that the Court limited the death penalty to only the worst crimes, such as very cruel acts, multiple killings, or cases that disturb society's conscience. Experts highlight that the Court looked at both aggravating and softening factors, like the criminal's reason, background, and chances of change, to avoid unfair death sentences.

Subsequent rulings, such as *Machhi Singh v. State of Punjab* (1983), further elucidate the "rarest of rare" doctrine.[14] Analysis by legal commentators demonstrates that the Court consistently prioritized the nature of the offence, circumstances of the offender, and the broader societal impact, while always considering constitutional safeguards.

In the Dhananjoy Chatterjee case (2004), the Court applied the 'rarest of rare' rule carefully. Because the crime was extremely brutal and the

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[12] Jagmohan Singh v. State of Uttar Pradesh, AIR 1973 SC 947.
[13] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[14] Machhi Singh v. State of Punjab, AIR 1983 SC 957.

offender showed no chance of reform, the death penalty was given.[15] The Nirbhaya case similarly balanced extreme violence with the public demand for justice, while considering the offender's age and background.[16] Scholars and legal experts have often pointed out that cases involving the death penalty are a reminder that legal decisions in such matters are never just about rules and procedures they directly affect human lives. Every life lost to capital punishment carries immense consequences, not only for the offender but also for the victim's family and society at large.

When we carefully look at past judgments, a clear and consistent pattern emerges. Courts take a systematic approach, weighing the seriousness and brutality of the offence, the circumstances and background of the offender, and the broader impact on society. This careful consideration ensures that the death penalty is reserved only for the most extreme cases, where the crime is so severe that no other punishment would seem adequate.

At the same time, judges do not make their decisions based solely on public opinion or media pressure. While society's reaction can form part

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[15] *Dhananjoy Chatterjee v. State of W.B.*, (1994) 2 SCC 220 (India); *The Dhananjay Case: The Desirability of Capital Punishment*, AIR ONLINE, https://www.aironline.in/legal-articles/The%2BDhananjoy%2BCase%2B%3A%2BThe%2BDesirability%2Bof%2BCapital%2BPunishment (last visited Sept. 20, 2025).

[16] *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India); *Justice for Nirbhaya: 4 Men Convicted for Gang-Rape Hanged*, INDIA TODAY (Mar. 20, 2020), https://www.indiatoday.in/india/story/nirbhaya-gang-rape-murder-convicts-executed-hanged-delhi-tihar-jail-1657649-2020-03-20 (last visited Sept. 20, 2025).

of the social context, the courts are guided primarily by constitutional safeguards and detailed legal reasoning. This approach ensures that capital punishment is not applied arbitrarily, and that every case is examined on its own merits.

In this way, the doctrinal approach to the death penalty reflects a deliberate and thoughtful effort to strike a balance. It considers justice for the victims, the need to deter serious crimes, and the importance of protecting human rights. By following this framework, the courts provide a structured and careful method for evaluating when, if ever, the death penalty should be applied in India.

4. LIFE IMPRISONMENT AS THE RULE, DEATH PENALTY AS THE EXCEPTION

In India, the criminal justice system follows a fundamental principle: life imprisonment is the default punishment, while the death penalty is reserved for the rarest of rare cases.[17] This principle ensures that capital punishment is applied only in exceptional circumstances, balancing justice, societal protection, and the possibility of reform.

[17] INDIA CONST. art. 21.

4.1 Legal Framework: The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, under Section 393(3), mandates that when a conviction is for an offense punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the court must record special reasons in writing for imposing the death penalty.[18] This provision underscores that the death penalty is an extraordinary measure and that life imprisonment should remain the default sentence.

Similarly, the Indian Penal Code (IPC) governs the imposition of capital punishment. Section 302 prescribes the death penalty or life imprisonment for murder,[19] while Sections 53 to 56 clarify the scope and interpretation of these punishments.[20] Additionally, Section 354(3) of the Code of Criminal Procedure (CrPC)[21] mandates that courts explicitly state the reasons for awarding death sentences, ensuring transparency and accountability.

4.2 Judicial Perspective: The Indian judiciary has consistently emphasized that the death penalty must be imposed sparingly and only after careful evaluation of aggravating and mitigating factors. In

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[18] Ministry of Law & Justice, *Bharatiya Nagarik Suraksha Sanhita, 2023*, S.393(3), https://legislative.gov.in/bharatiya-nagarik-suraksha-sanhita-2023 (last visited Sept. 22, 2025, 11:45 PM).
[19] The Indian Penal Code, 1860, § 302, No. 45, Acts of Parliament, 1860 (India).
[20] The Indian Penal Code, 1860, §§ 53-56, No. 45, Acts of Parliament, 1860 (India).
[21] The Code of Criminal Procedure, 1973, § 354(3), No. 2, Acts of Parliament, 1974 (India).

Jagmohan Singh v. State of Uttar Pradesh (1973),[22] the Supreme Court upheld the constitutionality of the death penalty, noting that it could be applied only in the most exceptional circumstances.

The landmark case of *Bachan Singh v. State of Punjab* (1980)[23] firmly established the "rarest of rare" doctrine. The Court held that the death penalty should be imposed only when life imprisonment is clearly inadequate to achieve justice. The judgment instructed courts to weigh the nature of the crime, the manner in which it was committed, the motive, and the offender's potential for reform.

In *Machhi Singh v. State of Punjab* (1983),[24] the Supreme Court provided further guidance, outlining factors to determine whether a case qualifies as "rarest of rare," including the brutality of the crime, its impact on society, and the offender's background.

4.3 Notable Cases: Several prominent cases illustrate the careful application of this principle-

1. Dhananjoy Chatterjee v. State of West Bengal (1994)[25]: Dhananjoy was convicted of raping and murdering an 18-year-old schoolgirl in Kolkata. The Supreme Court applied the "rarest of rare" doctrine and upheld the death penalty, citing the extreme cruelty of the crime and the

[22] Jagmohan Singh v. State of Uttar Pradesh, AIR 1973 SC 947.
[23] Bachan Singh v. State of Punjab, AIR 1980 SC 898.
[24] Machhi Singh v. State of Punjab, AIR 1983 SC 957.
[25] Dhananjoy Chatterjee v. State of West Bengal, AIR 1994 SC 1.

offender's lack of potential for reform. He was the first person to be executed in West Bengal in decades.

2. Shankar Kisanrao Khade v. State of Maharashtra (2013)[26]: In this case, the Supreme Court commuted a death sentence to life imprisonment. The Court emphasized the need to balance aggravating and mitigating factors, reinforcing that life imprisonment is the norm and the death penalty the exception.

3. Navjot Sandhu v. State (NCT of Delhi) (2005)[27]: Commonly referred to as the Afzal Guru case, the Supreme Court upheld the death penalty for involvement in the 2001 Indian Parliament attack, citing the gravity of the offence and its impact on national security.

4. Recent High Court Decisions (2025)[28]: The Calcutta High Court and Orissa High Court have commuted death sentences to life imprisonment in cases where the "rarest of rare" threshold was not met, considering mitigating factors such as prior clean record and potential for reform.

[26] Shankar Kisanrao Khade v. State of Maharashtra, (2013) 1 SCC 417.
[27] Navjot Sandhu v. State (NCT of Delhi), (2005) 11 SCC 600.
[28] High Court decisions, Calcutta & Orissa, 2025 (cited in news reports; e.g., *The Hindu*, https://www.thehindu.com/news/national/other-states/ (last visited Sept. 22, 2025, 12:05 PM)).

4.4 NCRB Data & Recent Trends on Death Penalty Cases:

Recent statistics provide context for how the death penalty is applied in practice:

- **Prisoners on death row (end-2023):** 561 — the highest in 19 years.
- **Death sentences by trial courts in 2023:** 120 sentences; 53% for sexual offences including rape-murder.
- **Nature of death penalty cases in 2024:** Most sentences were for murder (62.6%), not sexual offences.
- **Murder FIRs in 2022:** 28,522 (78 per day, 3 murders per hour).
- **Rate of murder per lakh population (2022):** 2.1 per lakh.
- **Convictions for rape-murder in appellate/high courts:** Very few death sentences confirmed; many commuted or acquitted.[29]

Key Observations:

1. NCRB often records only the principal offence; "rape + murder" cases may appear under murder, underestimating sexual offence stats.

2.Death row population includes prisoners under appeal; actual executions are far fewer.

[29] National Crime Records Bureau, *Prison Statistics India 2023*, https://ncrb.gov.in/en/crime-statistics (last visited Sept. 22, 2025, 12:00 PM).

3.Research from sources like **Project 39A** highlights the impact of socio-economic status and legal representation on death penalty outcomes.[30] These figures reinforce the judicial approach: the death penalty remains rare, life imprisonment is the norm, and justice is administered with caution and fairness.

4.5 Recent Judicial Trends: Supreme Court and High Court Decisions on the Death Penalty (2024–2025)

In India, the judiciary continues to uphold the principle that life imprisonment is the default punishment, while the death penalty is reserved for the rarest of rare cases. Recent judgments from the Supreme Court and various High Courts illustrate a careful and cautious approach to awarding capital punishment. These decisions emphasize that the death penalty is an exceptional measure, applied only after thoroughly weighing aggravating and mitigating factors, the possibility of reform, and strict adherence to procedural safeguards.

4.5.1 Supreme Court Decisions:

- **Deen Dayal Tiwari v. State of Uttar Pradesh (2025)**

  The appellant was convicted of murdering his wife and four minor

[30] Project 39A, *Death Penalty in India: A Socio-Legal Study* 27–31 (2022), https://project39a.in/death-penalty-report (last visited Sept. 22, 2025, 12:05 PM).

daughters. Although the trial court had awarded the death sentence, the Supreme Court commuted it to life imprisonment. The Court observed that while the offence was grave, it did not fall into the category of "rarest of rare." Personal circumstances of the accused and the possibility of reform weighed heavily in the Court's decision.[31]

- **Ramesh N. Naika v. State of Karnataka (2025)**
  The accused, convicted of murdering his two children, was originally sentenced to death. The Supreme Court commuted the punishment to life imprisonment without remission. The Court highlighted mitigating factors, including the absence of prior criminal conduct and the good behavior of the accused during incarceration, reaffirming the preference for reformative justice.[32]
- **Jai Prakash v. State of Uttarakhand (2025)**
  The appellant was convicted of the rape and murder of a ten-year-old girl. While the brutality of the crime was undeniable, the Supreme Court commuted the death sentence to life imprisonment. The Court made it clear that brutality alone is not sufficient to impose capital punishment and that the possibility of reform and other mitigating circumstances must always be considered.[33]

[31] Deen Dayal Tiwari v. State of Uttar Pradesh, SCC Online (2025).
[32] Ramesh N. Naika v. State of Karnataka, SCC Online (2025).
[33] Jai Prakash v. State of Uttarakhand, SCC Online (2025).

- **Sk. Asif Ali v. State of Odisha (2024)**

  The accused was convicted under the POCSO Act for the rape and murder of a six-year-old child. The trial court had imposed the death sentence, which the Supreme Court commuted to life imprisonment. The Court noted the inordinate delay in the trial and took into account the broader mitigating factors, reiterating the need for fairness and restraint in awarding the death penalty.

- **State v. Mukesh Kumar (2025)**

  In this case, the accused was convicted of killing his wife and twelve-year-old daughter. The Supreme Court set aside the death sentence altogether, pointing to procedural irregularities, particularly the lack of effective legal representation at critical stages of the trial. The judgment underscored the importance of due process and the need for heightened safeguards in capital cases.

4.5.2 High Court Decisions:

The High Courts across India have consistently reinforced the principle that life imprisonment is the rule and the death penalty is the exception. Recent judgments illustrate the careful application of the "rarest of rare" doctrine, with courts considering both aggravating and mitigating factors, the possibility of reform, and procedural safeguards before confirming or commuting death sentences.

- **The State of Maharashtra v. Deepak Birbahadur Jath (Bombay High Court, 2024)**
  Deepak Birbahadur Jath was convicted of murdering two women and a two-year-old child by setting them on fire. The Bombay High Court commuted the death sentence awarded by the trial court to life imprisonment. While the crime was heinous, the Court found that it did not meet the "rarest of rare" threshold. Key mitigating factors included the accused's lack of prior criminal history and the circumstances surrounding the offense.[34]
- **Umend Kenwat v. State (Chhattisgarh High Court, 2024)**
  Umend Kenwat was convicted of murdering his wife and three minor children. The Chhattisgarh High Court commuted the death sentence to life imprisonment for the remainder of his natural life. The Court emphasized mitigating factors such as the accused's young age, absence of prior convictions, and the potential for reform, concluding that the case did not satisfy the "rarest of rare" standard.[35]
- **Rape-Murder of Minor Cousin Case (Allahabad High Court, 2025)**
  In this case, the accused was convicted for the rape and murder of his minor cousin. The Allahabad High Court commuted the death sentence to life imprisonment for not less than twenty-five years without remission. The Court observed that the brutality of the crime

[34] The State of Maharashtra v. Deepak Birbahadur Jath, Bombay HC (2024).
[35] Umend Kenwat v. State, Chhattisgarh HC (2024).

alone does not satisfy the threshold for capital punishment; mitigating circumstances must be carefully weighed.

- **Samar Patra v. State of West Bengal (Calcutta High Court, 2025)**
  Samar Patra was convicted of murdering a woman in a Bakkhali hotel in 2018. The Calcutta High Court commuted his death sentence to life imprisonment, noting that while the crime was serious, it lacked premeditation or extreme brutality and that the convict showed potential for reform. The Court reaffirmed that life imprisonment remains the default punishment.[36]
- **Sanjay Roy v. State of West Bengal (Calcutta High Court, 2025)**
  Sanjay Roy, convicted of the rape and murder of a trainee doctor in Kolkata, received life imprisonment from the Calcutta High Court. Although the crime was heinous, the Court held that it did not fulfill the "rarest of rare" criteria, underscoring the importance of due process and consideration of reform potential.
- **Gang Rape-Murder of a Five-Year-Old Girl (Calcutta High Court, 2025)**
  In this case, two convicts initially sentenced to death for the gang rape and murder of a five-year-old girl had their sentences commuted to life imprisonment without remission for sixty years. The Court highlighted the brutality of the crime but stressed that the death penalty should be reserved for cases demonstrating extreme cruelty

[36] Samar Patra v. State of West Bengal, Calcutta HC (2025).

and absence of any chance of rehabilitation.

5. WHEN SOCIETY SPEAKS: PUBLIC OUTRAGE AND THE DEATH PENALTY IN WEST BENGAL

The death penalty in India is more than just a legal issue; it touches society, morality, and public debate. Legal studies show that to understand how it actually works; we must consider how society sees it and reacts to it.

West Bengal gives some striking examples. The execution of Dhananjoy Chatterjee in 2004,[37] convicted of a horrific rape and murder, sparked nationwide conversations about justice, fairness, and the limits of the state's power. Scholars note that the Supreme Court carefully applied the "rarest of rare" principle, looking at the extreme cruelty of the crime, its effect on the community, and the offender's lack of potential for reform. Years later, the Hanskhali rape-murder case again brought public demand for the death penalty into the spotlight, showing how public outrage often meets cautious judicial reasoning.[38]

A key question in both research and court decisions is whether the death penalty actually stops crime or just satisfies a desire for revenge.

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[37] Dhananjoy Chatterjee v. State of West Bengal, AIR 1994 SC 1.

[38] *Hanskhali Rape Case*, WIKIPEDIA, https://en.wikipedia.org/wiki/Hanskhali_rape_case (last visited Sept. 21, 2025).

Supporters believe that the fear of execution prevents the worst crimes and helps maintain law and order. Critics, however, point out that there is no clear proof it deters crime and argue that it may violate the right to life under Article 21 of the Constitution.[39] These discussions show that the death penalty is not just a punishment; it is also a symbol of society's moral values and the very real human cost of crime.

Internationally, the debate adds another layer. United Nations resolutions and human rights conventions encourage countries to limit or abolish the death penalty. While more than 120 countries have done so, India is among the few that still retain it for exceptional cases.[40] West Bengal's experiences reflect this global tension: domestic courts must balance constitutional safeguards, social expectations, and human rights obligations.

A closer look at West Bengal cases shows that courts carefully consider three main factors before deciding on the death penalty:

- **The nature of the crime** – Was it extremely cruel or shocking to society's conscience?
- **The offender's circumstances** – What was their motive, age, background, and chance of reform?
- **The impact on society** – How does the crime affect public order and

[39] INDIA CONST. art. 21.
[40] Death Penalty Info. Ctr., *Global Death Penalty Overview*, https://deathpenaltyinfo.org/global (last visited Sept. 20, 2025).

social norms?

This careful, step-by-step approach ensures that the death penalty is applied only in the most exceptional cases. Scholars say it shows India's attempt to balance justice, crime prevention, and human rights, even in cases that stir strong public emotions. In conclusion, West Bengal illustrates how public outrage, media attention, and judicial reasoning come together in India's approach to the death penalty. Detailed analysis shows that while courts follow constitutional rules and legal safeguards, the human impact on both victims and offenders is always at the heart of the decision.

6. DEATH BY DELAY: MENTAL TORTURE, SOLITARY CONFINEMENT, AND THE WAIT FOR JUSTICE

When we talk about the death penalty, most people imagine the final moment, the hanging, the execution, the end. But for those on death row, the punishment doesn't begin and end with the gallows. It starts much earlier, and often lasts for years, even decades. This chapter focuses on that long, painful wait between sentencing and execution, and how delay itself becomes a form of punishment, mentally and emotionally destroying a person, often more than death ever could.

This is what's referred to as "death by delay." In many Indian prisons,

people sentenced to death spend 10–15 years or more waiting for their fate. During this time, they are mostly kept in solitary confinement, isolated from others, cut off from families, and left with no clarity on when their appeals, reviews, or mercy petitions will be decided. The result is not just delay, but psychological torture, which slowly eats away at the prisoner's dignity, mind, and basic sense of being human.

In theory, solitary confinement is supposed to be a preventive measure. But in practice, death row inmates are kept in near-total isolation, often for years on end. They are locked inside small, dark cells, sometimes with no electricity, for 22 to 23 hours a day. They're not allowed to mix with other inmates, participate in activities, or even meet their families regularly. For many, this becomes a slow, silent punishment that breaks the mind long before the body.

The Supreme Court, in Sunil Batra v. Delhi Administration (1978), [41] observed that solitary confinement causes "mental, emotional, and psychological damage," and should be used only in rare cases. Yet the practice continues, especially for death row prisoners, turning pre-execution custody into a form of prolonged torture.

Legal delays are often discussed as procedural flaws -a backlog in courts, slow disposal of mercy petitions, or mismanagement by prison authorities. But for the person on death row, every day of delay is another

[41] Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.

day of living in fear of death.[42]

In Jagdish v. State of Madhya Pradesh,[43] the prisoner had been on death row for over 18 years before his sentence was finally commuted due to inordinate delay. The Court recognised that delay itself can amount to cruel, inhuman, and degrading treatment something explicitly prohibited under Article 21 of the Constitution.

Shatrughan Chauhan v. Union of India (2014),[44] case marked a turning point in how the Indian judiciary began to understand the mental suffering caused by prolonged delays in carrying out executions.

In this case, the Supreme Court held that excessive delay in deciding mercy petitions, sometimes taking 10 years or more, can be a ground for commuting a death sentence to life imprisonment. The Court stressed that the mental agony caused during this waiting period violates the right to life with dignity under Article 21.[45] This case highlights:

1. Solitary confinement without reason is unconstitutional.
2. Mercy petitions must be processed within a "reasonable timeframe."
3. The death penalty cannot become an instrument of torture by delay.

This case showed that even a person sentenced to die does not lose their basic rights as a human being.

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[42] Project 39A, DEATHWORTHY: *Psychological Impact of Prolonged Death Row Incarceration* 15–20 (2016), https://www.nls.ac.in/wp-content/uploads/2017/04/Death-Penalty-India-Report.pdf (last visited Sept. 21, 2025).
[43] Jagdish v. State of Madhya Pradesh, (1995) 6 SCC 226.
[44] Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.
[45] INDIA CONST. art. 21.

It’s easy to debate the legality of delays or the constitutionality of solitary confinement. But behind all this are real people. Many prisoners on death row have been abandoned by society, their families too poor or powerless to fight long legal battles. Some develop severe mental illness due to years of isolation. Others don’t even understand why their petitions are taking so long, or what legal options they still have.

In many prisons, death row inmates have described hearing others being taken away for execution, not knowing whether they will be next. That constant fear becomes its own punishment. In the words of a former prisoner:

The death penalty is often justified as a deterrent or a necessary punishment for the most serious crimes but when justice is delayed for years and prisoners are left to suffer in silence and isolation, the punishment goes far beyond the sentence. It’s not just about whether someone deserves to die, it’s about whether they deserve to be broken first. And that’s something we, as a society, need to seriously question.

7. LOOKING BEYOND INDIA: COMPARATIVE PERSPECTIVES AND FUTURE DIRECTIONS

A doctrinal study of the death penalty in India becomes richer when examined in a comparative context. Legal scholars emphasize that understanding how other countries approach capital punishment helps highlight India’s unique position and informs potential reforms.

Globally, there is a clear trend towards abolition. Over 120 countries have completely removed the death penalty from their legal systems, citing human rights concerns and the irreversibility of the punishment.[46] Nations such as the United Kingdom, Canada, and South Africa have replaced capital punishment with life imprisonment, emphasizing rehabilitation over retribution. Scholars note that in these jurisdictions, careful procedural safeguards, appellate review, and societal consensus guided the move toward abolition.

At the same time, some countries including the United States, Japan, and Singapore still retain the death penalty, but use it only for the most serious crimes.[47] Comparative studies show that these countries, like India, rely on strict rules to prevent arbitrary or unfair use. Scholars argue that this selective approach shows a common concern across nations: balancing the protection of society, deterrence of crime, and respect for human rights.

India occupies a middle position. While the Supreme Court restricts the death penalty to the "rarest of rare" cases, doctrinal analysis shows that challenges remain. Courts often have to decide what counts as exceptionally heinous, which sometimes sparks debates over consistency and fairness. Comparing India with global trends, scholars suggest reforms such as clearer sentencing guidelines, stronger appellate review,

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[46] Death Penalty Info. Ctr., *Global Death Penalty Overview*, https://deathpenaltyinfo.org/global (last visited Sept. 21, 2025).
[47] *Id.*

and a greater focus on rehabilitation, striking a balance between legal precision and human concerns.

Looking ahead, India also needs to pay attention to international human rights standards. United Nations resolutions and treaties ask countries to reduce or get rid of the death penalty.[48] Since India has signed many of these treaties, it could slowly bring its practices closer to global standards while still keeping the constitutional safeguards for "rarest of rare" cases. This would help ensure both justice and respect for human dignity.

In conclusion, India's death penalty system is at an important turning point. Comparing it with other countries and studying past judgments shows a way forward that respects the Constitution, meets public expectations, and protects human rights, while improving how the "rarest of rare" rule is applied. By learning from the experiences of other nations and keeping careful judicial reasoning, India can make its system of capital punishment fair, trustworthy, and just.

8. CONCLUSION: JUSTICE, SOCIETY, AND THE PATH FORWARD

The death penalty remains one of the most debated aspects of Indian criminal law. While the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya

[48] U.N. General Assembly, *Moratorium on the use of the death penalty*, Res. 62/149 (Dec. 18, 2007), https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/149 (last visited Sept. 21, 2025).

Nagarik Suraksha Sanhita, 2023 (BNSS) continue to provide for capital punishment, Indian courts have made it clear that life imprisonment is the norm, and the death penalty is the exception. The principle first laid down in *Bachan Singh v. State of Punjab (1980)*,[49] and later clarified in *Machhi Singh v. State of Punjab (1983)*,[50] continues to guide sentencing today.

Recent rulings of the Supreme Court and High Courts confirm this approach. Even in cases of multiple murders or crimes against children, courts have often commuted death sentences to life imprisonment after carefully weighing mitigating factors such as age, personal circumstances, possibility of reform, and procedural fairness. At the same time, judgments such as *Dhananjoy Chatterjee v. State of West Bengal (1994)*[51] remind us that in crimes which shock the conscience of society, capital punishment may still be justified to meet the demands of justice and deterrence.

The NCRB data also reflects this cautious trend. While trial courts frequently award death sentences, higher courts commute most of them, resulting in few actual executions. This shows that India is moving towards a balanced position, neither abolishing nor excessively applying the death penalty.

As observed in *Bachan Singh v. State of Punjab (1980)*:

"A real and abiding concern for the dignity of human life postulates

[49] *Id.*
[50] *Id.*
[51] *Id.*

resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

Looking ahead, the debate on whether India should retain, reform, or abolish the death penalty will only grow stronger. What remains clear is that the judiciary's cautious, humane, and balanced approach ensures that justice is delivered without compromising constitutional values or human dignity.[52]

[52] V.R. Krishna Iyer, *Courts, Justice and the Rule of Law* 210 (1989).

BEYOND SUPERFICIAL WELFARE: RETHINKING WORKERS HEALTH PROTECTION UNDER THE FACTORIES ACT, 1948

-Riya Sancheti[53]

ABSTRACT

The Factories Act,1948 is a welfare statute that protects human dignity, worker health and safety. It provides social justice by mandating humane conditions and protect vulnerable groups like women, adolescents and children from industrial exploitation.

This welfare statue takes on the role of a stringent regulator by its rigorous structure. Section 2(m) ensures broad accountability, while

[53] Student of 3 years LL.B., Semester III, Indian Institute of Legal Studies, Siliguri, riyasancheti02@gmail.com.

section 11-41 enforce strict standards for sanitation, waste disposal, ventilation, and machinery safety. Chapter IV-A introduces scientific risk management, requiring the disclosure of hazardous substances, expert supervision, and medical surveillance to control hidden, potentially fatal industrial risks.

The act adopts a holistic welfare approach. Provisions for childcare, rest, and fair overtime pay recognize workers as complete human beings. These rights hold legal supremacy and cannot be diluted by private contracts or internal policies.

However, a critical gap persists between law and practice. Ongoing issues like easy of doing business, chemical exposure, excessive noise, and overcrowding reveal enforcement deficits. Moving beyond "paper compliance" requires rigorous and centralized inspections and coordination with environmental authorities. Only sincere, consistent implementation can transform these statutory promises into real protection. By prioritizing worker safety and environmental health, the Act fosters trust, productivity, and sustainable development, ensuring that dignity and justice are upheld daily across the nation's industrial landscape.

KEYWORDS: *Health, Safety. Accident Prevention, Risk Assessment, Workers Rights.*

1. GENESIS, OBJECTIVES, AND THE SOCIAL JUSTICE MANDATE

The Factories Act, 1948 (Act 63 of 1948),[54] represents a pivotal piece of social legislation enacted by the Government of India to standardize and regulate working conditions within manufacturing establishments. This statute was a substantial upgrade from previous, less comprehensive laws, receiving Presidential assent on September 23, 1948, and subsequently coming into force on April 1, 1949.

The core rationale of performing its duties is deeply founded on three non-negotiable guides: ensuring adequate safety standards are met, actively promoting and engaging in health and well-being initiatives for employees, as well as regulating their specific periods of work. It is particularly germane for regulating and addressing women workers, adolescents, and young children at work in factory settings. During its period of operation, numerous amendments had been introduced to the current Act, such as those in 1954 and 1976. This clearly indicates its ability as an evolutionary statute of compliance, as its form is constantly in flux, ensuring it is up-to-date and able to adequately cope with emerging issues of industry complexity and safety concerns, particularly in addressing processes. This has mandated all compliance officers to

[54] Factories Act, No. 63, Acts of Parliament, 1948 (India) (assented to Sept. 23, 1948, enforced Apr. 1, 1949).

constantly update their knowledge of central and specific amendments. The inherent basis upon which the F.A, 1948, was founded rests upon the concept of social justice. This basically, means that any considerations with respect to the legal prescriptions conferred to workers should take precedence. This viewpoint has been reinforced upon review, making it resoundingly clear that any amendments or agreements regarding regulations such as working rest days and leave cannot be hindered through Standing Orders or any other means. This ensures that any health, safety, and welfare benefits conferred via the act, or any other, constitute a non-derogatory requirement.

1.1 Defining Statutory Applicability and the 'Factory' Threshold

The scope and applicability of the Factories Act, 1948, are rigorously defined to ensure comprehensive coverage across India. The statutory definition outlines specific numerical thresholds linked to the use of power in the manufacturing process {Section 2(m)}.[55]

The Act is applicable to any establishment that meets one of two criteria:

- Any premises where a manufacturing process is carried on, or was carried on at any time during the preceding twelve months, and where ten or more workers are or were working, provided the process is being carried on with the aid of power.

[55] Factories Act, 1948, § 2(m), No. 63, Acts of Parliament, 1948 (India).

- Outside of these basic factors, State Governments have another major element of control, which is that it lies in their sovereign authority to be able to extend the applicability of the Act to all establishments that possess a manufacturing process, as long as this occurs regardless of the number of workers that may be present or if this work may be with or without the aid of power. This major element, therefore, guards against hazardous work or those that make expansive usage of manufacturing processes seeking to deliberately reduce employee capacity in order to stay below such limits, thereby evading regulatory authority.

2. THE HEALTH IMPERATIVE: STATUTORY REQUIREMENTS FOR THE WORKING ENVIRONMENT (SECTIONS 11 TO 20)[56]

The health provisions codified in Sections 11 through 20 of the Factories Act, 1948, establish mandatory standards for the factory environment, addressing parameters necessary for the physical well-being of the workers. These sections are designed to mitigate risks arising from unsanitary conditions, poor air quality, and overcrowding.

[56] Factories Act, 1948, §§ 11–20, No. 63, Acts of Parliament, 1948 (India).

2.1 Sanitation and Waste Management Obligations

The Act places explicit duties on the occupier concerning sanitation and waste handling. Cleanliness (Sec 11) requires that dirt and debris be swept and removed daily, ensuring continuous maintenance of hygienic standards throughout the factory. Furthermore, appropriate arrangements must be made for the Disposal of Wastes and Effluents (Sec 12), mandating that industrial by-products are easily and safely disposed of. This specific provision establishes the critical intersection between labour safety regulation and broader environmental compliance. Inadequate effluent disposal not only impacts the immediate working environment but can also compromise the general health standards of the surrounding community. Given documented evidence of industrial pollution in certain areas of West Bengal , meticulous compliance with Section 12 requires proactive coordination between the Factory Inspectorate and environmental audit bodies to uphold the protective purpose of the statute.

In addition to basic sanitation, the Act mandates the provision of essential amenities: standards for safe Drinking Water (Sec 18), sufficient Latrines and Urinals (Sec 19), and properly maintained Spittoons (Sec 20), which must be provided in convenient places and kept in a clean, hygienic condition.

2.2 Control of Atmospheric Conditions and Overcrowding

The regulation of the internal atmospheric environment is paramount for preventing occupational diseases. Ventilation and Temperature (Sec 13) obligate the factory occupier to ensure effective and suitable provision for securing and maintaining adequate ventilation and circulation of fresh air in every workroom. Closely linked are provisions for Dust and Fume Control (Sec 14), which require specific measures to prevent the inhalation and accumulation of dust and fumes, especially those that are injurious or offensive to workers. This chapter also addresses Artificial Humidification (where applicable) and Lighting (Sec 17), ensuring appropriate standards are maintained.

A common systemic failure in certain industrial settings is the non-compliance with atmospheric controls (Sec 13 and 14). Empirical data from regional surveys indicates persistent problems with poor ventilation and overcrowding in facilities like garment export units. Furthermore, assessments in industrial zones often reveal dangerously high levels of respirable suspended particulate matter (RSPM) and heavy metals. These breaches of atmospheric control provisions directly correlate with heightened occupational health risks, specifically increased hospital admissions for respiratory causes, acute and chronic bronchitis, and asthma attacks.[57] When non-compliance is prolonged, the risk of severe health outcomes, including elevated additional lifetime cancer cases

[57] Consumer Educ. & Research Ctr. V. Union of India, (1995) 3 SCC 42.

associated with heavy metal exposure, becomes a significant concern. Finally, Overcrowding (Sec 16) mandates minimum required cubic space per worker to prevent excessive density, a necessary measure to safeguard the health and well-being of the workforce.

3. SAFETY ASSURANCE: MACHINERY, INFRASTRUCTURE, AND ACCIDENT PREVENTION (SECTIONS 21 TO 41)[58]

Safety provisions, contained in Sections 21 through 41, form the cornerstone of the Act, specifically targeting the prevention of industrial accidents resulting from machinery and structural failures.

3.1 Mandatory Machinery Guarding and Operational Safety

The Act imposes strict regulations regarding the protection of workers against moving parts. Fencing of Machinery (Sec 21) states that all dangerous parts of the machinery shall be securely fenced. This includes new design and installation of the machine. Casing of New Machinery (Sec 26) is a regulation that excuses all power-driven machinery installed after the commencement of the Act, requiring all set screws, bolts, and keys on any revolving shafts, spindles, and wheels to be effectively

[58] Factories Act, 1948, §§ 21–41, No. 63, Acts of Parliament, 1948.

fenced.

The risk of working around machinery is controlled through fixed safety parameters. Work on Moving Parts (Sec 22) outlines strict criteria that have to be followed when workers have to investigate or maintain equipment when it is in motion. Along with these physical safety measures, there are restrictions on certain employees. Young Persons (Sec 23) cannot work with harmful equipment except for specified supervision, and "Women and children" or "Women and children section 27" must strictly be kept away from working around "cotton openers." The logic here is that while engineering methods like fencing must definitely be used, some equipment poses an inherent danger that is just too great for certain demographics.

The efficiency of these provisions is often tested by economic realities. The observed prevalence of "old machinery and equipment" in certain industrial sectors, such as garment manufacturing, creates a persistent compliance dilemma. While Section 26 addresses new installations, older equipment requires continuous, proactive safety audits and maintenance to meet the general safety duty under Section 21. Regulatory challenges arise because economic constraints frequently delay the necessary retrofitting or outright replacement, making old machines inherent safety liabilities that statutory fencing requirements may struggle to fully mitigate.

3.2 Structural and Mechanical Safety Standards

The Act also includes within its scope the structural integrity and safe operation of infrastructure within the factory. Specific regulations around the design, installation, inspection, and safe use are laid out for high-risk mechanical equipment: Hoists, Lifts, Revolving Machinery, and Pressure Plants (Sec 28-31). Minimum structural safety is also required: provisions related to Floors, Stairs, and Means of Access (Sec 39) require integrity and safe access for all parts of the building. Safety provisions in some elements also include Striking Gear and Devices for Cutting Off Power (Sec 24), to ensure that quick and accessible mechanisms be provided for emergency shutdown.

4. MANAGING HAZARDOUS PROCESSES AND SUBSTANCES (CHAPTER IV-A, SECTIONS 41A TO 41H)[59]

The introduction of Chapter IV-A, dealing with hazardous processes, marked a significant legal evolution, shifting the regulatory focus from general industrial safety to sophisticated, substance-specific industrial hygiene and risk management.

[59] Factories Act, 1948, ch. IV-A, §§ 41A–41H, No. 63, Acts of Parliament, 1948 (India).

4.1 Risk Assessment and Regulatory Mandates

Regulation of processes involved in the manufacture of such hazardous materials will be initiated during the pre-operational period with the review of risk assessment being made mandatory. Site Appraisal Committees, consisting of Sec 41A, may be formed for the assessment of the appropriateness of the site which involves hazardous processes.

The owner/occupier has the basic responsibility for risk management. This has already been stipulated in Section 41B. The owner or occupier has a legal obligation to reveal information on the hazardous substances that have been manufactured or stored or handled. However, the owner/occupier has the significant obligation to engage competent persons with the requisite qualifications and experience in the handling of hazardous substances to manage the processes within the factory. This would ensure that there is expert knowledge overseeing the processes.

4.2 Health Surveillance and Exposure Control

To protect workers from invisible chemical and physical hazards, the Act mandates systematic health monitoring. Mandatory Medical Examination (Sec 41C) requires medical assessment for every worker involved with a hazardous substance. This examination must occur:

(i) before the worker is assigned the job,

(ii) periodically while continuing in the job (at intervals not exceeding twelve months) and,

(iii) after the worker has ceased to work in that job. The worker must be provided with a copy of their results, printed in the local language.

Furthermore, Permissible Limits of Exposure (Sec 41F) establish the legal maximum exposure levels for chemical and toxic substances involved in manufacturing processes. These limits are enforced through prescriptive rules, such as those governing the control of asbestos dust within the work environment. The existence of documented high non-carcinogenic and carcinogenic risks, particularly from heavy metals, in industrial areas demonstrates a severe systemic breakdown in the effective enforcement of Section 41F and the corresponding surveillance requirements of Section 41C. When lifetime cancer risks are found to exceed regulatory limits, it indicates that the prescribed medical examinations are failing to adequately detect or prevent dangerous exposure, suggesting either insufficient rigor in testing or a widespread disregard for assessment outcomes by the occupier.

4.3 Worker Rights and Emergency Protocols

Chapter IV-A solidifies worker participation and right-to-know provisions. Workers are granted access to records related to hazardous substances. Furthermore, the Act explicitly recognizes the Right of workers to be warned about imminent danger (Sec 41H).

In situations involving extraordinary danger, the Central Government is vested with the power to appoint an Inquiry Committee (Sec 41D) to

investigate the causes of failure or neglect in adopting prescribed health and safety measures. Additionally, the Central Government can declare Emergency Standards (Sec 41E) if existing standards are deemed insufficient to prevent a catastrophic situation.

5. WELFARE PROVISIONS AND SOCIO-ECONOMIC SUPPORT (SECTIONS 42 TO 50)[60]

Welfare provisions, defined under Sections 42 to 50, require occupiers to provide facilities that improve the quality of life and working efficiency of the workforce, extending the statute's focus beyond mere physical safety.

5.1 Provision of Essential Facilities

The Act provides for facilities that serve to make the workers more comfortable and to respond promptly.

- **First Aid and Ambulance Room:** The factories should provide the basic first-aid appliances. For big installations, the provision gets amplified: factories which normally employ 500 or more workers are bound to provide and maintain a fully equipped ambulance room of prescribed size. It should be in the charge of prescribed medical and nursing staff and should be made readily

[60] Factories Act, 1948, §§ 42–50, No. 63, Acts of Parliament, 1948 (India).

available throughout the working hours of the factory.

- **Rest and Seating:** Provisions are made for shelters, rest rooms, and canteens where specified by state rules. Additionally, Seating Arrangements: Sec 44 has to be provided if the Chief Inspector of Factories is of opinion that a worker can perform a particular manufacturing process or work more efficiently in a sitting position.

5.2 Support for Women Workers and Welfare Officer Mandate

The Act recognizes the unique needs of women workers, who face the dual pressures of industrial work and rearing children. Crèches (Sec 48) are to be provided; the specific number is left to the discretion of the individual State Governments, generally involving a minimum number of women workers. In providing a crèche, facilities for washing and changing children's clothes are specified, with provision made to give free milk or refreshment to the children, and facilities given for mothers to feed their children at necessary intervals. Crèche provisions provide an important mechanism for social inclusion, whereby the required support can be given to women workers, especially those from socioeconomically vulnerable sections who often live in single- or two-room dwellings.

The management of comprehensive welfare programs requires designated personnel. Welfare Officers (Sec 49) must be employed in

every factory wherein 500 or more workers are ordinarily employed. The State Government is empowered to prescribe the duties, qualifications, and service conditions of these officers. The scaled nature of welfare obligations (e.g., 500+ workers triggering specific requirements for the ambulance room and Welfare Officer) is an effective regulatory strategy that ensures statutory demands are commensurate with the scale and complexity of the operation.

6. REGULATION OF WORKING CONDITIONS AND EMPLOYMENT STANDARDS[61]

6.1 Statutory Limits on Hours, Overtime, and Leave

Chapter VI of The Act scrupulously fixes time constraints for industrial employment so that employees do not end up working overtime and thus become fatigued, which often precipitates an accident. The weekly numbers of working hours have been strictly regulated by Sec 51, which emphasizes that no adult worker may work for more than 48 weeks in a week. The daily working hours have also been regulated under Sec 54 by emphasizing that no worker may work for more than 9 hours in a single day. As part of reinstating employees for work that involves working for more than regular working hours, The Act emphasizes that overtime work must be paid for double the normal wage. Mandatory rest

[61] Factories Act, 1948, chp. VI, §§ 51–66, No. 63, Acts of Parliament, 1948 (India).

periods and weekly holidays, as per Sec 52, add strength to The Socio-Economic Integrity of The Act.

Furthermore, apart from the regulations pertaining to the employment of adults, the “Employment of Young Persons (Sec 67-77)” chapter also contains strict restrictions on the employment of children who have not reached the age of 14 years in factories

6.2 The Legal Supremacy of the Factories Act

One fundamental principle on which the Act centers its authority is the legal supremacy that the act carries with itself. The precedents that have been invoked have clearly stated that the key legislative intent behind the mandate on health, safety, and the nature of working conditions, i.e., the ruling on a weekly holiday entitlement stipulated under Sec 52, cannot be breached or overridden on the grounds that the company has stipulated its own rules within the Standing Orders. For example, a ruling on a declaration that the company would have to provide the requisite declaration of pay to the petitioner company for the wage employees affected on account of the declaration of a prohibited holiday declared on account of the Standing Orders.

7. ENFORCEMENT MECHANISMS, OVERSIGHT, AND COMPLIANCE[62]

The practical efficacy of the Factories Act, 1948, relies critically on a robust enforcement framework administered by the Inspectorate and mandatory compliance systems maintained by the occupier.

7.1 The Inspectorate's Powers and Duties

The State Government is empowered under Section 8 of the Act to appoint Inspectors and a Chief Inspector for the purpose of enforcement. The Chief Inspector holds the administrative authority to oversee the work of all inspectors and ensure consistency across enforcement actions. In specialized cases, such as those related to safety officers, the Chief Inspector of Factories may exercise discretionary powers, such as relaxing specific qualification requirements for existing personnel.

Inspectors are granted extensive powers necessary for compliance verification.[63] Their authority includes the right to enter any factory premises, undertake safety and occupational health surveys, examine machinery and plant, conduct necessary testing, and collect relevant data and samples. The primary duty of the occupier or manager is to afford all necessary facilities for such surveys and inspections.

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[62] Factories Act, 1948, §§ 7–10, No. 63, Acts of Parliament, 1948 (India).
[63] Factories Act, 1948, § 8, No. 63, Acts of Parliament, 1948 (India).

7.2 The Compliance Audit Framework

Continual compliance with the varying and complex provisions that have been laid down under the FA, 1948, requires auditing, which has to be documented. Effective compliance can be achieved by developing a structured audit framework:

- Define Objectives: Clearly establish what the objective of the audit is (e.g., compliance, quality assurance, etc.).
- Prepare Checklists: Design a list which provides for all relevant necessary compliance issues, and if necessary, all necessary compliance issues relating to registration, licensing, display of notices, record and register preparation, and due and necessary payments relating to ESI, EPF, and EPT.
- Conduct the Audit: Observe and write down your records while carrying out the inspection.
- Document Findings: Carefully record all findings, indicating where non-compliances were found
- Generate Audit Report: Synthesis of findings and recommendation for action.

“Effectively, it highlights the ultimate reliance on the efficacy of the Inspectorate's working practices and, on the other, the openness and accuracy of the occupier’s documentation system. Failures in basic administrative standards, such as record-keeping and maintaining registers as specified in the statutes or on time remittances, are many

times evidence of underlying, as-yet-unaddressed failings in safety and health provisions."

8. CONCLUSION

The Factories Act, 1948 represents one of the earliest and most ambitious efforts of the Indian State to embed social justice into the industrial system. It was conceived not merely as a regulatory statute but as a moral and constitutional instrument to protect the dignity, health, safety, and equality of workers. Enacted in the context of a newly independent India aspiring to be a welfare State, the Act sought to transform factories from sites of mechanical production into spaces governed by rights and humane working conditions. It recognised that unregulated industrial labour leads to exploitation, exhaustion, and the silent erosion of human life.

The Act is deeply rooted in constitutional philosophy. Articles 14 and 21 guarantee equality and the right to life with dignity. Articles 38 and 39 mandate the State to promote social justice and ensure that workers' health and strength are not abused. Article 42 requires just and humane conditions of work, while Article 43 aspires to a dignified standard of living for workers. The Factories Act thus functions as an operational expression of constitutional morality in the industrial sphere.

However, contemporary enforcement reveals a disturbing contradiction between these ideals and their realisation. The Act has gradually shifted

from a preventive and welfare-oriented framework to a procedural compliance regime. Compliance is increasingly measured through visible, documentable, and easily inspectable requirements, rather than through substantive protection of workers' rights. As a result, the transformative potential of the Act has been diluted, and it risks becoming a managerial checklist rather than an instrument of social justice.

This analysis shows that such failure is not accidental. It reflects a deeper structural distortion in labour regulation: human dignity has been replaced by administrative convenience, preventive justice by reactive compliance, and constitutional values by bureaucratic ritual. Each thematic dimension of factory regulation demonstrates how the Act's original purpose has been systematically weakened.

9. SUGGESTIONS

The reform of factory regulation must move beyond the narrow objective of preventing visible accidents and ensuring marginal statutory compliance. It must be reoriented towards enhancing the overall quality of life of workers and realising the constitutional promise of dignity, equality, and social justice. The following suggestions aim to strengthen the Factories Act, 1948 by making it more inclusive, preventive, participatory, and humane.

First, there must be a fundamental shift in the way women's safety and employment are approached. Instead of restricting women from higher-paying or technically demanding jobs on the assumption of vulnerability, the law should focus on empowerment through protection and training. Factories must be mandated to provide advanced safety equipment and specialized training programs for women workers so that they can safely engage in skilled and hazardous industrial operations. Restrictive provisions should be limited only to the use of extremely dangerous chemicals or processes where scientific evidence clearly establishes an unavoidable threat to health or reproductive safety. A blanket prohibition on women's participation in certain categories of work reinforces economic inequality and perpetuates occupational segregation. True gender justice lies not in exclusion but in enabling equal access to opportunities through stronger safety mechanisms, better infrastructure, and continuous skill development. This approach would align with Articles 14 and 15 of the Constitution by promoting substantive equality rather than formal or paternalistic protection.

Second, a permanent worker–management safety and welfare committee must be made compulsory in every factory. This committee should include representatives of management and owners, but the number of worker representatives should be greater, ensuring democratic participation and genuine representation of labour interests. The committee must function as a bridge between workers and management, providing a formal institutional space where concerns regarding safety,

health hazards, welfare facilities, and working conditions can be raised and addressed. Such a committee would transform workers from passive recipients of protection into active participants in industrial governance. It would also give practical effect to the idea that safety and welfare are shared responsibilities rather than unilateral managerial decisions. Regular meetings, written recommendations, and recorded action plans should be mandatory, making this committee a central pillar of preventive regulation.

Third, the current inspection mechanism should be replaced with a unified and centralised inspection authority. Instead of multiple fragmented inspections for different regulatory purposes, a single officer or inspection body should be responsible for evaluating all aspects of compliance: health, safety, welfare, working hours, and hazardous processes. This inspection must be conducted quarterly, ensuring continuous monitoring rather than sporadic enforcement. The inspection report should be submitted through an online platform and must be treated as public information. Public accessibility would introduce transparency and social accountability into the system. When inspection reports become open to workers, trade unions, researchers, and civil society, compliance ceases to be a private negotiation between factories and inspectors and becomes a matter of public responsibility. Such transparency would discourage corruption, selective enforcement, and procedural manipulation.

Fourth, factory regulation must shift its emphasis from marginal monetary compliance to holistic quality of life improvement. At present, compliance is often reduced to payment of overtime wages, minimal safety equipment provision, or symbolic fulfilment of statutory requirements. This approach treats labour law as a financial transaction rather than a human rights obligation. The focus must instead be on ensuring physical well-being, mental health, dignity, nutrition, rest, sanitation, and social security. The true measure of compliance should not be how little money is spent to avoid penalties, but how far working conditions enable workers to live healthy and dignified lives.

Fifth, canteen facilities providing nutritious food must be made compulsory for all factories without any exemption. Nutrition is directly linked to productivity, immunity, mental alertness, and long-term health. When workers rely on irregular or unhealthy food, the factory indirectly contributes to malnutrition and occupational vulnerability. The canteen should not be treated as a luxury or as a facility only for large establishments. It must be recognised as an essential welfare right. The food provided should be affordable, hygienic, and nutritionally balanced, reflecting the understanding that nourishment is a foundational element of labour dignity. This reform would give substantive meaning to Sections 46 and 47 of the Factories Act and align them with the constitutional obligation under Article 21 to protect health and life with dignity.

Sixth, the Employees' State Insurance (ESI) system must be urgently modernised. Although ESI exists as a statutory social security mechanism, workers often cannot access free and proper medical care due to outdated infrastructure, lack of amenities, understaffing, and inadequate equipment in ESI hospitals. This gap between entitlement and accessibility destroys trust in the welfare system. ESI hospitals must be technologically upgraded, adequately staffed, and maintained with the same standards expected of modern public health institutions. Digital appointment systems, proper emergency facilities, diagnostic infrastructure, sanitation, and patient support services must become standard. A social security system that exists only on paper but fails in practice undermines the constitutional promise of a welfare State.

Finally, all these reforms must be guided by a single overarching principle: the prioritisation of workers' quality of life over procedural compliance. Labour law must not be evaluated by how efficiently it manages violations, but by how effectively it prevents suffering. The Factories Act must be restored to its original role as a preventive and welfare-oriented statute. Its success should be measured by reduced occupational disease, improved physical and mental health, increased gender equality in skilled employment, higher nutritional standards, greater worker participation in governance, and stronger public accountability.

SOCIAL SECURITY AND SOCIAL JUSTICE OF WORKERS IN LABOUR LAW AND ILO

-Abhijit Sarkar[64]

ABSTRACT

The importance of labourers to a country's development cannot be denied. As a developing nation, India's growth is largely dependent on its labour force, which works in a variety of productive industries. Any country's actual progress depends on how its workers are treated. In the Indian Constitution, provisions relating to labour and industrial laws safeguarding the working-class people's rights are included, keeping in mind the importance of social justice for them. The labour class of India

[64] Student of 5 years B.COM LLB (H), Sem VII, Indian Institute of Legal Studies, Siliguri, sarkarabhijit106@gmail.com.

has organized various trade unions for safeguarding their rights and overcoming discrimination and exploitation with impetus from the ILO. Through democratic ways, justice and fair play have been demanded by the workers using collective bargaining.

This study aims to clarify social justice among India's working class by highlighting the role of labour laws and the ILO. It shows how global teamwork and legal rules give power to employees. This ensures fair treatment, equal pay, and decent working conditions. The study reflects India's goals for inclusive and sustainable development. It highlights the continuous need for awareness, enforcement, and reform to achieve real social justice for workers.

KEYWORDS: *Indian Constitution, Workers, Trade Union, Labour Laws, Social Justice.*

1. INTRODUCTION

Social justice and economic development depend on workers' rights, especially in developing countries like India where the majority of population depends on wage labour to survive. These rights include social security, safe working conditions, fair compensation, and protection from exploitation and discrimination. Labour rights are essential for maintaining industrial harmony and productivity by balancing the interests of employers and employees. By encouraging countries to pass labour laws that safeguard all workers' rights to justice and dignity, the International Labor Organization (ILO) has significantly contributed to the advancement of these rights worldwide. Social justice is a core value since the Indian Constitution mandates that the state protect labour rights through progressive legislation. The cooperation between India's strong legal provisions, constitutional mandates, and the ILO's global standards highlights the nation's dedication to creating a fair and inclusive workplace, which is crucial for both social harmony and long-term economic growth. Indian labour laws uphold fairness, equality, and protection, and trade unions provide workers with a democratic platform to express their grievances and participate in collective bargaining. Despite challenges, maintaining labour rights is still essential to achieving inclusive growth and sustainable development, highlighting the critical connection between respectable employment and national progress.

The government must continuously amend its laws and policies to eliminate social and economic disparities in order to achieve social justice in labour law. The main objective is for all workers to have their rights respected, to live with dignity, and to be able to improve their lives, regardless of whether they work in offices, factories, farms, or other environments. Labor laws would be useless without social justice; they would just exist without helping or improving the people they are meant to safeguard.

2. SOCIAL JUSTICE IN LABOUR LAW

The fundamental objective of social justice in labour law is to guarantee that every worker, irrespective of their identities or backgrounds, is treated fairly and with dignity.

It involves things like ensuring that everyone is paid fairly for their labour not just enough to survive, but enough to live happy, fulfilling lives. It also means creating safe workplaces to avoid illnesses or injuries at work. In this context, social justice also means protecting vulnerable workers, like children or expectant mothers, and guaranteeing equal opportunities for all. It also means prohibiting discrimination based on caste, religion, or gender. Ultimately, the goal is to make sure that no one is exploited and that the benefits of everyone's efforts within a company are allocated equitably. It's about realizing that work is about more than just making money it's about human dignity and wellbeing.

3. OBJECTIVES OF THE STUDY

The main objectives of studying social justice and labour law in India are to understand how these laws protect workers from exploitation, promote equality, and ensure fair wages and safe working conditions. The study aims to explore the constitutional basis of social justice, evaluate key labour laws and their impact on marginalized workers, and analyse the role of judicial interpretation in enforcing rights. It also seeks to identify challenges in implementation and suggest ways to improve labour welfare for all.

4. HISTORICAL BACKGROUND OF SOCIAL JUSTICE AND LABOUR LAW IN INDIA

The concepts of social justice and labour law have existed for much longer than the modern era, they solidified during the Industrial Revolution in the 18th and 19th centuries. Prior to that, many ancient societies had fundamental laws governing labour and worker protections. For example, the Hindu Laws of Manu in ancient India and the Babylonian Code of Hammurabi in the 18th century BCE established some foundational principles regarding equitable treatment and obligations in labour relations.[65]

[65] LABOUR LEGISLATION IN ANCIENT INDIA, WisdomLib, https://www.wisdomlib.org/history/compilation/triveni-journal/d/doc67914.html (last visited Mar. 21, 2026).

However, modern labour law really began as a response to the huge changes brought by the Industrial Revolution. This period saw a fast shift from small, home-based work to large factories filled with machines and many workers. The new workplaces often had poor and unsafe conditions where workers, many of them women and children, faced long hours, low wages, and unhealthy environments. This harsh reality created a demand for laws to protect workers' rights and dignity and to promote social justice.

British colonial rule in India introduced labour laws that were mainly designed to control industrial workers and safeguard British industrial interests. Some of the first attempts to control working conditions and stop child labour were the Apprentice Act of 1850 [66] and the Factories Acts of 1881 and 1883.[67] These Acts established the framework for labour protection in India, despite their limitations and frequent colonial motivations.

With the passage of the Industrial Disputes Act in 1929 and the Trade Union Act in 1923, India followed the global trend of greater recognition of workers' rights in the years following World War I. The rights of employees to organize unions, engage in collective bargaining, and resolve conflicts amicably were upheld by these laws. In the *Bandhua Mukti Morcha case,*[68] an NGO fighting bonded labour, discovered that

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[66] The Apprentices Act, 1850, No. 19, Acts of Parliament, 1850 (India).

[67] The Factories Act, 1881, No. 15, Acts of Parliament, 1881 (India); The Factories Act, 1891, No. 11, Acts of Parliament, 1891 (India).

[68] Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

workers in Faridabad stone quarries were subjected to inhumane working conditions, including poor housing, unsafe environments, and a lack of proper wages and medical facilities. The organization filed a letter with the Supreme Court describing these conditions, which the court classified as a public interest litigation (PIL) under Article 32 of the Constitution. The Supreme Court established an inquiry commission, which confirmed that many labourers were bonded and denied basic rights. This case set a powerful precedent for judicial intervention in labour matters, expanded the use of PILs for social justice, and led to stronger enforcement of worker protection laws and constitutional guarantees.[69] It demonstrated how the judiciary could play a critical role in fulfilling constitutional promises for vulnerable members of society and laid the foundation for future legislation and action against labour exploitation.

5. EVOLUTION AND DEVELOPMENT OF LABOUR LAWS IN INDIA

Since the British colonial era, India has had labour laws for a very long time. The first piece of legislation intended to protect workers was the Factories Act of 1881,[70] which sought to regulate working conditions

[69] Case Summary: Bandhua Mukti Morcha v. Union of India, LegalFly, https://legalfly.in/bandhua-mukti-morcha-v-union-of-india/ (last visited Mar. 21, 2026).

[70] The Factories Act, 1881, No. 15, Acts of Parliament, 1881 (India).

and hours in factories. Over time, other important laws that granted workers' rights to form unions and resolve labour disputes emerged, such as the Trade Union Act of 1926[71] and the Industrial Disputes Act of 1947.[72]

After independence in 1947, India's labour laws rapidly expanded to protect worker's rights and promote social justice. The Minimum Wages Act (1948),[73] the Employees Provident Fund Act (1952),[74] and the Maternity Benefit Act (1961)[75] were significant laws that guaranteed minimum wages, social security, and maternity benefits. These laws sought to give workers better working conditions, fair pay, and social security. The Indian Constitution also had a big impact since it established worker's rights and made labour a concurrent subject, allowing both the federal and state governments to pass laws on it.

6. SOCIAL INJUSTICE AND LABOUR CLASS

India's labour class is severely impacted by social injustice, particularly the great majority of them who work in unorganized and informal sectors. Many workers experience discrimination on the basis of caste, gender, and social background despite constitutional protections, which

[71] The Trade Unions Act, 1926, No. 16, Acts of Parliament, 1926 (India).
[72] The Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India).
[73] The Minimum Wages Act, 1948, No. 11, Acts of Parliament, 1948 (India).
[74] The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, No. 19, Acts of Parliament, 1952 (India).
[75] The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).

results in unequal pay, unfavourable working conditions, and job insecurity. The caste system and social exclusion limit opportunities, forcing workers to work for low wages and in exploitative conditions. Furthermore, economic policies have made workers' jobs less stable. Many people now work on short-term or casual contracts that lack adequate legal protection and social benefits. This unfair system keeps poor workers in poverty and prevents them from progressing. As a result, making labour laws fair and just has become an important but challenging goal in India.

7. ROLE OF LABOUR LAWS AND CONSTITUTION IN SOCIAL JUSTICE

Labour laws, as well as the Indian Constitution, play an important role in promoting social justice throughout the country. In the labour context, social justice entails fairness and equality for all workers, regardless of background, ensuring that their rights are protected and that they are treated fairly at work. The Indian Constitution serves as the foundation for this by including several important provisions. Articles like 14 (equality before law), 16 (equal opportunity), 23 (prohibition of forced labour), 24 (prohibition of child labour), and the Directive Principles (like Article 39 promoting fair work conditions and living wages) guide

the creation of labour laws. These constitutional measures emphasize dignity of work and social security for all workers.[76]

Labour laws build on this by setting rules that protect workers from exploitation and discrimination. They govern wages, working hours, health and safety standards, social security benefits, and workplace disputes between employers and employees. Laws such as the Industrial Disputes Act, the Minimum Wage Act, and the Employees Provident Fund Act seek to reduce income inequality and enhance living conditions. In the case of People's Union for Democratic Rights v. Union of India (AIR 1982 SC 1473)[77] provided a powerful constitutional interpretation of Articles 14, 16, 21, 23, and 24, expanding worker protections and advancing judicial activism in labour rights. The Court ruled that non-payment of minimum wages constitutes "forced labour" under Article 23, and that employing children in hazardous work violates Article 24. It expanded Article 21 to include the right to live with dignity and fair working conditions, making labour law violations punishable as violations of fundamental rights. This case established the precedent for public interest litigation (PIL), allowing any public-spirited person to approach the Court on behalf of the oppressed, and reaffirmed the State's responsibility to enforce labour protections and ensure social justice for all workers.

[76] INDIA CONST. arts. 14, 16, 23, 24, 39.

[77] People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

Overall, the Constitution establishes the vision and principles of social justice, while labour laws serve as the means to put these ideals into practice in everyday working life. Together, they ensure social equity, fairness, and dignity for millions of workers in India, particularly those who are vulnerable to exploitation. However, additional efforts are required to improve law enforcement and expand protections for informal sector workers. The collaboration between constitutional mandates and labour legislation is critical to achieving meaningful social justice in India.

8. FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPELS

India's constitutional framework for advancing social justice and labour rights is made up of the Directive Principles of State Policy (DPSP) and Fundamental Rights. Equality, freedom of association, protection from child labour and forced labour, and the right to life which courts interpret as the right to a living and decent working conditions are all guaranteed by fundamental rights, particularly Articles 14, 19, 21, 23, and 24.[78] In *Unni Krishnan v. State of Andhra Pradesh* ,[79] the Supreme Court ruled that the right to life guaranteed by Article 21 includes the fundamental right to free and compulsory basic education until the age of 14. The

[78] INDIA CONST. arts. 14, 19, 21, 23, 24.
[79] Unni Krishnan, J.P. And Ors. Etc. ... vs State Of Andhra Pradesh and Ors. 1993 AIR 2178, 1993 SCR (1) 594

judgment linked this to Directive Principles, specifically Articles 41 and 45, emphasizing the State's obligation to gradually provide education within its economic capacity. This case emphasized education as a requirement for a dignified life and an essential component of social justice under the Constitution.

In *M.C. Mehta v. State of Tamil Nadu,*[80] the Supreme Court addressed the prohibition of child labour, citing Articles 21, 23, and 24 of the Constitution. The Court strictly enforced the prohibition on hazardous and exploitative child labour, interpreting the right to life to include protection from work that harms children's health and development, thereby upholding constitutional mandates for social justice and vulnerable worker protections.

Directive principles, while not legally binding, serve as a guide for the state when it comes to enacting legislation that ensures social, economic, and political justice. Important clauses like Articles 38, 39, 41, 42, and 43 require the state to provide social security, maternity benefits, fair wages, humane working conditions, and equitable resource distribution. Together, these clauses provide a moral and legal foundation for defending workers' rights, combating exploitation, and advancing social justice through progressive laws and policies. In order to safeguard the equality and dignity of all workers, Indian labour laws have been shaped by courts using judicial interpretation.

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[80] M.C. Mehta v. State of Tamil Nadu, (1996) 4 SCC 137, Writ Petition (C) No. 465 of 1986.

9. SOCIAL JUSTICE IN INDIAN LABOUR CLASS AND ROLE OF ILO

The objective of social justice in the Indian labour class is to guarantee justice, equality, and dignity for all workers, particularly those from marginalized and underprivileged backgrounds. India's labour laws seek to improve the working class's lot by guaranteeing fair wages, safe working conditions, social security benefits, and protection from exploitation. Social justice aims to reduce the gap between wealthier employers and less fortunate workers by guaranteeing that workers receive fair treatment regardless of their caste, gender, or financial status. The Indian Constitution encourages social justice through a number of provisions, such as the right to form unions, the prohibition of child labour and forced labour, and equal pay for equal work. Labor laws like the Industrial Disputes Act, Equal Remuneration Act, and Minimum Wages Act are implemented to protect workers' rights and promote social justice in the workplace. The International Labour Organization (ILO) has a significant impact on social justice in Indian labour laws. Since the ILO's founding in 1919, India has been a founding member and has actively supported the organization's efforts to enhance working conditions around the world. The ILO supports global labour standards and assists nations like India in creating laws that guarantee fair labour practices, social protection, and equality in the workplace.

The *Vishaka v. State of Rajasthan, 1997,*[81] decision was a watershed moment in Supreme Court history, addressing workplace sexual harassment of women. It recognized sexual harassment as a violation of fundamental rights under Articles 14, 15, 19(1)(g), and 21 of the Indian Constitution, and established the Vishaka Guidelines to combat it. These guidelines incorporated international conventions and norms to ensure a safe working environment and provided a legal framework for workplace sexual harassment until specific legislation was passed in 2013. This case was a significant step forward in promoting social justice and workplace safety for women in India, filling a legislative void through judicial activism and aligning domestic laws with international human rights standards.

India ratifies several significant ILO conventions, bringing its labour laws into line with international norms. These agreements place a strong emphasis on the elimination of discrimination, child labour, and forced labour as well as the provision of fair compensation and safe working conditions. The ILO's tripartite structure governments, employers, and workers promotes cooperation and communication, strengthening Indian labour laws.

Social justice in the Indian labour class is thus supported by both constitutional protections and the influence of international standards set by the ILO in order to create a fair and just working environment for all

[81] Vishakha and Ors. v. State of Rajasthan and Ors. AIR 1997 SC 3011.

employees. This reduces poverty and social inequality by granting the working class the rights and protections to which they are entitled.

10. KEY PRINCIPLES OF SOCIAL JUSTICE IN LABOUR LAW IN INDIA

According to labour law, social justice means treating every worker fairly and ensuring that they get the benefits and protections to which they are legally entitled. Several important social justice-promoting principles form the basis of India's labour laws. These policies aim to create an equitable and caring work environment for all.

10.1 Equality: The principle of equality ensures that every worker is treated fairly, regardless of caste, gender, religion, or social status. It means equal access to jobs and career growth without discrimination. For example, the Equal Remuneration Act guarantees equal pay for equal work between men and women, fighting gender wage gaps. Equality also means protecting vulnerable groups like women and children from exploitation.

10.2 Fair Wages: Fair wages are central to social justice. Labour laws specify minimum wages to prevent exploitation and guarantee a decent livelihood. The Minimum Wages Act ensures workers receive a wage that covers their basic needs and living expenses. Paying fair wages on

time respects the dignity of work and helps reduce poverty and inequality.

10.3 Humane Working Conditions: Labour laws regulate working hours, rest periods, and workplace safety to maintain humane conditions. This includes safeguarding employees from hazardous working conditions, long hours, and harsh treatment. Laws such as the Factories Act establish health, cleanliness, and safety standards to ensure that workers can work with dignity and without risking their lives.

10.4 Social Security: Social security protects against life's uncertainties, including illness, injury, maternity, and retirement. Laws such as the Employees' State Insurance Act and the Provident Fund Act ensure that workers and their families receive financial assistance during these times. It contributes to living a decent life and reducing economic hardship.

10.5 Collective Bargaining: Collective bargaining gives workers more power because it allows them to come together and negotiate better terms with their employers. Trade unions play an important role in promoting social justice, and labour laws protect their right to exist. Workers gain a stronger voice by joining unions to demand fair wages, safe working conditions, and dispute resolution.

10.6 Job Security: Job security protects employees from arbitrary dismissal or unfair treatment. Laws such as the Industrial Disputes Act

regulate layoffs and ensure that jobs are not taken away without justification. Secure employment reduces workers' fear of losing their income and helps to stabilize their lives.

These principles serve as the foundation of Indian labour laws, ensuring that workers, the economy's backbone, are treated fairly, respectfully, and with dignity, thereby promoting social justice in the workplace.

11. IMPLEMENTATION IN LEGISLATION

Indian national laws are firmly rooted in social justice ideals, particularly through labour laws and constitutional provisions intended to uphold equality and safeguard workers. These values seek to guarantee social welfare, equitable treatment, and equal opportunity for all employees, especially those from marginalized and vulnerable groups in society.
The Indian Constitution provides the fundamental framework for social justice in labour law. Article 38 commits the state to promote welfare and social order based on social, economic, and political justice.[82] Article 39 introduces directives for securing the right to work, livelihood, and equitable distribution of resources.[83] The Supreme Court has interpreted Article 21 (right to life) to include the right to livelihood, reinforcing this constitutional promise. Important constitutional mandates also include the prohibition of child labour (Article 24) and

[82] INDIA CONST. art. 38.
[83] INDIA CONST. art. 39.

forced labour (Article 23), as well as guaranteeing non-discrimination in employment (Articles 14 and 16) and equal pay for equal work (Article 39(d)).[84]

These constitutional provisions have been translated into specific laws that promote social justice. For example, the Equal Remuneration Act of 1976 mandates equal pay regardless of gender, thereby addressing gender inequality. The Minimum Wage Act ensures that workers receive a minimum wage to support a decent standard of living. The Employees State Insurance Act and the Maternity Benefit Act guarantee social security by ensuring health benefits and maternity leave, respectively.

Furthermore, the recent consolidation of multiple labour laws into comprehensive Labour Codes has expanded the scope of social justice by providing protections to both organized and unorganized sectors, benefiting millions of previously excluded workers. These Codes impose standards such as equal pay, the prohibition of discrimination, and the regular revision of minimum wages, thereby establishing social justice in everyday labour practices.

Though these laws incorporate social justice ideals effectively, challenges remain in implementation and enforcement, especially in regulating informal sectors and protecting vulnerable groups. Continuous efforts to strengthen labour institutions and increase awareness are essential for realizing the vision of social justice envisaged

[84] INDIA CONST. arts. 14, 16, 21, 23, 24, 49(d).

by the Constitution and the legislature. In all, social justice in Indian labour legislation is an ongoing journey. It reflects a commitment to equity, dignity, and fair treatment for workers, ensuring that India's economic progress includes social welfare for all its citizens.

12. LABOUR RIGHTS AND ROLE OF COURTS

In India, the courts are very important for upholding and promoting social justice in the workplace. Judicial interpretation has been a powerful tool to make sure that labour laws do what they are supposed to do: protect workers' rights and dignity. The Indian courts, especially the Supreme Court, have changed the way people think about the relationship between employers and employees from a simple contract to a relationship of status. This is in line with the idea of a welfare state, where the state must step in to stop exploitation. This paternalistic way of thinking is in line with the constitutional vision of social justice that is found in the Directive Principles and Fundamental Rights. For example, in *Air India v. Nergesh Meerza,*[85] the Supreme Court ruled in favour of equal service conditions and benefits for women employees. Similarly, in *Bandhua Mukti Morcha v. Union of India* (1984),[86] the court protected bonded labourers, affirming their right to live with dignity under Article 21. These decisions highlight the judiciary's

[85] Air India Etc. Etc. v. Nergesh Meerza & Ors., AIR 1981 SC 1829.
[86] Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

commitment to enforcing constitutional guarantees for workers such as equality, dignity, and social justice, as well as strengthening labour laws to reduce exploitation and promote workplace fairness.

Courts have consistently intervened to uphold minimum wages, fair working conditions, equal pay for equal work, and protection against unfair dismissal. They have also implemented social security measures to ensure that employees receive benefits such as overtime pay, maternity leave, and compensation for workplace hazards. To protect vulnerable workers, the Supreme Court has mandated that overtime wages be paid during crises such as the COVID-19 pandemic.

Public Interest Litigations (PILs) have also been effective, with courts appointing monitoring bodies and enforcing rehabilitation for bonded labourers and child workers. Courts have ensured not only legal compliance but also progressive interpretations that are consistent with human dignity, equality, and social equity, preventing workers from being treated as mere commodities.

13. SOCIAL SECURITY OF WORKERS AND SOCIAL JUSTICE OF WORKERS

Workers' social security is an important aspect of social justice in India, as it protects them from economic risks such as sickness, injury, maternity, old age, and unemployment. The Code on Social Security, 2020, which combines nine significant labour laws, including the

Employees' Provident Fund Act, Employees' State Insurance Act, and Maternity Benefit Act, was created by the government to provide comprehensive social security coverage to both organized and unorganized sector workers, including gig and platform workers.

Major social security laws include:

- Employees' State Insurance Act, 1948[87] – Provides medical care and cash benefits during sickness and maternity for employees in factories and establishments with ten or more workers.
- Employees' Provident Funds and Miscellaneous Provisions Act, 1952[88] – Ensures retirement benefits through provident funds, pension, and insurance schemes.
- Workmen's Compensation Act, 1923 [89] – Compensates workers for injuries, disabilities, or death caused by occupational hazards.

[87] The Employees' State Insurance Act, 1948, No. 34, Acts of Parliament, 1948 (India).
[88] The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, No. 19, Acts of Parliament, 1952 (India).
[89] The Employees' Compensation Act, 1923, No. 8, Acts of Parliament, 1923 (India).

- Maternity Benefit Act, 1961[90] – Grants paid maternity leave and benefits for female workers to promote social justice and gender equality.
- Payment of Gratuity Act, 1972[91] – Provides a lump sum payment as a token of gratitude to workers completing five or more years of service.

These laws collectively safeguard workers' rights to health, income security, and dignified working conditions, reflecting India’s commitment to social justice for its diverse workforce.

14. CONCLUSION

India's labour laws have played an important role in promoting social justice and protecting workers' rights. They establish a legal framework that ensures fair wages, safe working conditions, social security, and equality for all workers, including the most marginalized and vulnerable. The recent consolidation of labour laws into simplified codes aims to improve compliance, transparency, and inclusion by extending protections to informal and gig workers. While enforcement and coverage issues persist, these laws reflect India's commitment to balancing economic growth with social equity. Continuous efforts by the government, judiciary, and society are required to achieve true social

[90] The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).
[91] The Payment of Gratuity Act, 1972, No. 39, Acts of Parliament, 1972 (India).

justice in the labour sector, which ensures dignity, security, and equal opportunity for all employees. This ongoing journey toward labour justice contributes to India's vision of a socially equitable and prosperous society in which worker welfare is central to long-term development.

The International Labour Organization (ILO), India's Constitution, and Indian labour laws all contribute to a strong framework that promotes social justice and workers' rights. As a founding member of the ILO, India has ratified six key ILO conventions, demonstrating its commitment to eliminating forced labour, discrimination, child labour, and ensuring equal remuneration. The Constitution strengthens these goals by establishing fundamental rights that guarantee equality, non-discrimination, and protection from exploitation, as well as Directive Principles that require fair wages, social security, and humane work conditions. These principles are incorporated into Indian labour laws to govern employment relations, provide social security, and protect worker welfare. Together, these instruments aim to strike a balance between economic development and social equity, ensuring the dignity and justice of all workers. However, full realization of these ideals requires effective implementation and continuous alignment with international standards.

Going forward, India must prioritize stronger labour code enforcement, improved monitoring mechanisms, and better coordination between central and state governments. Expanding social security access for informal and gig workers, as well as promoting skill development, collective bargaining, and worker rights awareness, should continue to

be top priorities. Collaboration with the International Labour Organization and aligning domestic laws with global labour standards will help to improve social justice even more. A rights-based and inclusive approach that balances employer flexibility with worker protection can ensure that economic growth results in dignity, equality, and long-term development for all workforce members.

SHORT ARTICLE

THE SURROGACY (REGULATION) ACT, 2021: A STEP TOWARDS WOMEN EMPOWERMENT?

-Dhrubajyoti Barman [92]

ABSTRACT

The Surrogacy (Regulation) Act, 2021[93] *is an Indian law that bans commercial surrogacy and permits only compassionate surrogacy (where the surrogate receives no monetary compensation beyond medical expenses) for a limited number of intending couples and single women.*

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[92] Student of 3 years LL.B., Semester III, Indian Institute of Legal Studies, Siliguri, Barmandhrubajyoti286@gmail.com.

[93] The Surrogacy (Regulation) Act, 2021, No. 47, Acts of Parliament, 2021 (India).

Article 21[94] *of Indian constitution gives the right a woman to became a surrogate mother. Here a mother gives her reproductive cell for giving birth a child, after that she hand over the child to the couple. In India it is seen that the processing of surrogacy became a business where a poor woman gives her reproductive cell many times. According to a 2012 Confederation of Indian industry report the size of the Indian surrogacy industry was $2 Billion annually.*[95] *annually. And it's estimated that more than 3,000 fertility clinics around the country are doing it.*

The unregulated business of surrogacy has raised concerns such as unethical practices in which brokers and commercial agencies have profited the most, exploitation of surrogate mothers, abandonment of children born from surrogacy, riots like organ trade, importation of embryos, etc. to regulate surrogacy in the country has entered into validity. This article will further discuss the Act in detail and put light into the historical background and eligibility of surrogate mother.

KEYWORDS: *Surrogacy, Surrogate mother, Commercial surrogacy, Altruistic surrogacy.*

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[94] INDIA CONST. art. 21.

[95] Indian Surrogacy Industry Was $2 Billion – The Economic Implications of the Surrogacy Bill 2019 and the Act of 2021 on the Indian Surrogacy Industry, IJETMS, https://ijetms.in (last visited Mar. 21, 2026).

1. INTRODUCTION

The Surrogacy (Regulation) Act 2021, is an Indian law that came into effect on January 25, 2022, to regulate the practice of surrogacy. The act's primary goal is to prevent the negative impact (business) of surrogacy and protect the rights of the surrogate mother and the intending parents. It aims to create a more regulated and ethical framework for surrogacy in India, which had become a major hub for commercial surrogacy.

The legislation was introduced the law to protect the exploitation of surrogate mother and unethical practices that had become prevalent. By shifting the focus from commercial to altruistic surrogacy, the Act ensures that surrogacy is no longer a transactional business but a compassionate act. The Act outlines strict eligibility criteria for those who can be intending parents and surrogate mother, alongside establishing a regulatory board to oversee all surrogacy procedures.

2. HISTORICAL CONTEXT AND LEGISLATIVE INTENT

Before the enactment of the Surrogacy (Regulation) Act, 2021, India's surrogacy industry had grown into a significant and largely unregulated sector. The industry was predicted worth upwards of 2 billion dollars annually and a major component of medical tourism, attracting both

foreign and domestic clients. This period was characterized by a permissive environment with low costs and a large pool of skilled medical professionals, which positioned India as a global hub for commercial surrogacy. However, the rapid expansion of this market without robust legal and ethical safeguards led to a series of crises that exposed significant deficiencies in the system.

The lack of a clear regulatory framework prompted public and judicial scrutiny. In Landmark cases Baby ***Manji Yamada v. Union of India,***[96] highlighted the legal ambiguities surrounding parentage and the citizenship of children born to foreign parents through surrogacy. This and other incidents, including The ***Law Commission of India's 228th report in 2009,***[97] brought to light the exploitation of vulnerable women and the commodification of children. The legislative response that followed was not a proactive measure but a direct and necessary reaction to the ethical and legal breakdown of a system that had prioritized economic gain over human dignity. This direct relationship, where an unregulated commercial boom led to a societal and ethical crisis, is the foundational premise for the Act's existence.

[96] Manji Yamada v. Union of India, AIR 2009 SC 84.

[97] Law Comm'n of India, Report No. 228, Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy (2009), https://indiankanoon.org/doc/168220859/ (last visited Mar. 21, 2026).

2.1 Rationale for the Legislation:

A Response to Exploitation and a Move Towards an Ethical Framework The central objective of the **Surrogacy (Regulation) Act, 2021** is to address the issues of exploitation and unethical practices that plagued the industry. The law's intent is to "prevent the exploitation of women acting as surrogates, ban unethical commercial practices, and safeguard the interests of the surrogate mother, the intending couple, and the child". The Act seeks to move away from a transactional, profit-driven model and establish an ethical, altruistic framework for surrogacy. By doing so, it aims to protect the dignity of motherhood and prevent the commodification of human life. The Act represents a clear statement from the state that it views surrogacy as a compassionate act and medical necessity, not a commercial service.

2.2 The Definitive Legal Framework of the Act:

The Ban on Commercial Surrogacy: Definitions and Distinctions from Altruistic Surrogacy The central pillar of the Surrogacy (Regulation) Act, 2021 is the outright prohibition of commercialization surrogacy. The Act defines commercial surrogacy as an arrangement where surrogate mother gets monetary benefit that "exceeds the basic medical expenses and insurance coverage". The Act mandates that only altruistic surrogacy is permitted; under this definition, the surrogate mother is prohibited from

receiving any compensation other than reimbursement for medical expenses and insurance. This fundamental distinction re-frames surrogacy from a commercial transaction into a compassionate, unpaid service. The shift from a "right-based" approach, which would recognize a woman's right to compensated for her reproductive labour, to a "need-based" approach, focusing on the couple's need for a child, reflects a conservative moral stance. This legislative choice re-themes the entire process, prioritizing a moral framework over individual bodily autonomy and economic freedom. This philosophical change is foundational to the Act and underpins all of its subsequent provisions and the criticisms it has received.

The Act establishes a clear framework of legal prohibitions, aiming to deter unethical and exploitative practices. It strictly bans several activities, including commercial surrogacy, the sale of human gametes for surrogacy, sex-selective surrogacy, and the abandonment of a child born through surrogacy. The penalties for violating these provisions are severe, including imprisonment for up to ten years and a fine of up to ten lakh rupees. These offenses are classified as cognizable, non-bailable, and non-compoundable, which signifies the state's intent to treat them as serious crimes rather than mere civil disputes. This use of criminal law to enforce an ethical framework underscores the government's determination to control and regulate the industry.

A summary of these penalties is provided in the table below:

OFFENCE	PERIOD OF IMPRISONMENT	AMOUNT OF FINE
Offense Penalty Commercial Surrogacy	Imprisonment up to 10 years,	Imprisonment up to 10 years
Operating a Racket to Recruit Surrogates	Imprisonment up to 10 years,	fine up to ₹10 lakh
Operating a Racket to Recruit Surrogates	Imprisonment up to 10 years,	fine up to ₹10 lakh
Advertising Commercial Surrogacy	Imprisonment up to 10 years,	fine up to ₹10 lakh
Advertising Commercial Surrogacy	Imprisonment up to 10 years,	fine up to ₹10 lakh
Abandoning a Surrogate Child	Imprisonment up to 10 years	fine up to ₹10 lakh
Clinic Without Registration	Imprisonment up to 10 years	fine up to ₹10 lakh

3. DETAILED ELIGIBILITY CRITERIA

Eligibility for Intending Couples and Intending Women (Age, Marital Status, and Medical Necessity)

The Act imposes exceptionally stringent eligibility criteria for those seeking to become parents through surrogacy. An intending couple must be an Indian citizen and they have been legally married for at least five years, with the wife between 23 and 50 years of age and the husband age between 26 and 55. They must also have a medical certificate from a District Medical Board confirming their infertility or medical necessity for surrogacy. A crucial condition is that the couple should not any surviving biological, adopted, or surrogate-born child, with the only exception being if the child has a life-threatening or debilitating physical or mental condition.

The Act also makes a specific provision for an "intending woman," defining her as an Indian widow or a divorcee between the ages of 35 and 45. The law's narrow scope deliberately excludes single men, unmarried women, and LGBTQ+ couples from accessing surrogacy services.

4. ELIGIBILITY FOR SURROGATE MOTHERS (RELATIONSHIP, PARENTAL STATUS, AND HEALTH)

The criteria for a surrogate mother are equally specific. To be eligible, she must be a married woman and at least one biological child of her own. The Act initially mandated that the surrogate mother and intending couple must be a close relative. Although this requirement was later amended to include any **"willing woman**," it was a significant initial barrier that highlighted the Act's focus on "familial altruism". A surrogate is restricted from using her own gametes, meaning only gestational surrogacy is permitted. She is also limited to being a surrogate mother only once in her lifetime. A certified medical professional must attest to her physical condition and psychological fitness to carried a pregnancy.

The numerous and highly specific criteria for both parties can be complex to navigate.

4.1 Regulatory and Oversight Mechanisms

To enforce its new framework, the Act mandates the establishment of a robust regulatory and oversight system. This includes the creation of National Assisted Reproductive Technology and Surrogacy Boards and their state-level counterparts. These boards are tasked with advising the government on policy, laying down codes of conduct for clinics, and

supervising their functions. All surrogacy clinics must be registered with the appropriate authority and are subject to mandatory, unannounced inspections to ensure compliance with the Act's standards. This centralized structure is a direct response to the pre-2021 legal vacuum and aims to ensure that all surrogacy procedures are performed ethically and transparently within a regulated environment.

5. RIGHTS AND PROTECTIONS UNDER THE ACT

A key component of the legislation is the provision of rights and protections for the Surrogate mothers and the child. The Act stipulates that the surrogate mother's written, informed consent is mandatory, and She retains the right to revoke her consent at any time before the embryo transfer. To safeguard her health and well-being, the intending parents are necessary to provide a 36-month health insurance policy that covers any postpartum complications. The Act of surrogacy also provides legal clarity on parental rights and child welfare. A child born through surrogacy is legally considered the "biological and legal child of the intended parents" from birth, and the surrogate mother has no parental rights over the new born child. The law strictly prohibits the abandonment of the child for any reason, including birth defects or gender. These provisions address the legal ambiguities of parentage that

were common in the unregulated commercial era, ensuring the new child is not left in a state of legal limbo.

6. CRITICAL ANALYSIS OF THE ACT: LEGAL, ETHICAL, AND SOCIAL IMPLICATIONS

6.1 Arguments for the Ban: Preventing Exploitation and Commodification

The **banned** on **commercial surrogacy**[98] is rooted in the argument that it prevents the exploitation of vulnerable women and halts the "commodification of human life". Proponents of this Act argue that paying a surrogate reduces her to a "womb for rent," undermining human dignity and reinforcing gender inequalities. The law's intent is to ensure that the process is not a commercial transaction but an altruistic act.

6.2 Arguments against the Ban: The Economic Impact on Surrogate Mothers and the Potential Rise of the Underground Market

Conversely, critics argue that the ban denies economically

[98] Revisiting the Ban on Commercial Surrogacy in India, Research Communications, https://research-communications.cmpcollege.ac.in/ (last visited Mar. 21, 2026).

disadvantaged women a "legitimate source of income" and violates their “bodily autonomy and their right to employment”.[99] For many poor women, commercial surrogacy was a viable means of financial stability, enabling them to support their families and escape poverty. The Act, in its effort to prevent exploitation, may inadvertently push the practice underground. Without legal oversight and financial incentives, women who still require money might turn to unregulated black markets, where they face a greater risk of abuse, lack of proper medical care, and no legal protection. This unintended consequence is a critical second-order effect, where a seemingly well-intentioned law could produce the opposite of its stated goal, creating a more dangerous environment for the very women it seeks to protect. The central debate is clearly articulated in the table below.

The Act has faced significant legal challenges for its restrictive or prohibited provisions. Critics argue that the law infringes upon the citizens fundamental right to reproductive choice and privacy, which is enshrined under Article 21 of the Indian Constitution. The mandatory five-year waiting period for married couples and the ban on couples with an existing child from opting for surrogacy are perceived as unreasonable and an excessive intrusion by the state into

[99] The Impact of New Surrogacy (Regulation) Act, 2021 on Surrogacy Arrangement in India, LawBhoomi, https://lawbhoomi.com/the-impact-of-new-surrogacy-regulation-act-2021-on-surrogacy-arrangement-in-india/ (last visited Mar. 21, 2026).

a private matter. The law's rigid framework determines who can conceive and through what means, which is regarded as an infringement on personal freedom.

6.3 Discriminatory Exclusions:

The Act's Impact on LGBTQ+ Individuals and Single Men One of the most significant criticisms of the Act is its discriminatory nature. The law explicitly restricts surrogacy to a "legally married man and woman" or a single woman who is a widow or divorcee, thereby excluding single men, unmarried women, and LGBTQ+ couples from accessing these services. This exclusion is not based on medical or ethical grounds but on a conservative social framework. Legal analysis notes that this "reeks of moral conservatism and injustice" and highlights a "gender prejudice" that remains in society. This legislative stance is at odds with progressive Supreme Court rulings, such as

Case ***Navtej Singh Johar v. Union of India,***[100] which decriminalized homosexuality. The Act, therefore, functions as a legislative tool to enforce a narrow, traditional definition of "family," creating a significant disconnect between the judiciary and the legislature on issues of individual liberty.

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[100] Navtej Singh Johar vs. Union of India, AIR 2018 SC 4321.

7. RECENT AMENDMENTS AND JUDICIAL INTERVENTIONS

7.1 The 2023 Amendment and the Ban on Donor Gametes

The Act's rigid structure has been subject to recent legislative and judicial scrutiny. A gazette notification in March 2023 introduced an amendment that banned the use of donor gametes for surrogacy, requiring couples to use their own gametes.[101] This created a significant and often insurmountable hurdle for couples where one partner was medically unable to produce viable gametes.

Supreme Court Rulings and Their Impact on the Law's Application and Interpretation:

In a direct response to the ban on donor gametes, the Indian Supreme Court intervened. In January 2024, the apex court temporarily stayed the ban on donor eggs for seven couples based on their medical reports, which confirmed the women were unable to use their own eggs. This intervention led to a subsequent amendment in February 2024, which now permits the use of one donor gamete (egg or sperm) if medically required, subject to certification by a District Medical Board. This series of events demonstrates a crucial dynamic: the judiciary is acting as a

[101] Surrogacy Law: SC Questioned Purpose of Previous Rules, Express Healthcare, https://www.expresshealthcare.in/news/surrogacy-law-sc-questioned-purpose-of-previous-rules/442484/ (last visited Mar. 21, 2026).

check on a legislative framework that has proven to be overly rigid and insensitive to genuine medical needs. The initial ban was an example of legislative overreach, failing to account for real-world medical conditions. The Supreme Court's intervention and the subsequent legislative amendment reveals that the law is not static and is being refined in response to constitutional challenges and humanitarian concerns. This points to a potential trend of the judiciary softening the Act's most restrictive elements to align them with fundamental rights.

8. SOCIO-ECONOMIC AND INDUSTRIAL IMPACT

The ban on commercial surrogacy has had significant economic consequences. The once-thriving $2 billion industry has experienced a sharp contraction, leading to a decline in medical tourism and job losses for various professionals, including healthcare workers, legal advisors, and support staff. The loss of international clients, who were a major source of revenue, has contributed significantly to this contraction. The restrictive nature of the Act has driven both Indian couples and foreign clients to seek surrogacy services in countries with more lenient laws, such as Georgia, Ukraine, and Greece. This trend results in a substantial loss of revenue for India's healthcare sector and creates complex legal issues regarding child citizenship and parental rights in foreign

jurisdictions.

While the "familial altruism" model aims to prevent financial exploitation, it introduces its own set of challenges. This framework can lead to subtle coercion, familial pressure, and a lack of proper recognition for the physical and emotional toll on the surrogate. The Act re-frames a professional service into a form of unpaid, undervalued domestic labour, potentially creating a new, more insidious problem of emotional exploitation. The labour and health risks of surrogacy are not compensated, placing the surrogate in a vulnerable position of unrecognized labour within the family structure.

9. CONCLUSIONS AND THE WAY FORWARD

The Surrogacy (Regulation) Act, 2021, is a landmark piece of legislation that successfully addresses the pre-existing ethical vacuum and provides legal clarity on parental rights and child welfare. Its outright ban on commercial surrogacy and the establishment of regulatory bodies are significant triumphs in ensuring that the practice is conducted transparently and ethically. The Act has provided much-needed legal certainty and protections for the surrogate, the intending couple, and the child. However, these triumphs are overshadowed by the Act's significant shortcomings. Its stringent eligibility criteria and explicit exclusions of single men and LGBTQ+ couples are inconsistent with constitutional

principles of equality and reproductive autonomy. Furthermore, the ban on commercial surrogacy has led to an economic contraction of a once-thriving industry, potentially driving the practice into an unregulated, underground market. The law is a dual-edged sword, serving both as a protector against exploitation and as a gatekeeper that limits access and freedom.

The future of surrogacy law in India will likely be defined by a continuing dialogue between the legislature and the judiciary. The Supreme Court's interventions regarding the use of donor gamete9 signal a potential path toward a more inclusive and less restrictive framework that is sensitive to medical realities and constitutional rights. The challenge for policymakers will be to strike a delicate balance that protects vulnerable individuals without infringing upon the fundamental rights of those seeking to form a family. The law must evolve to reflect a more modern, rights-based understanding of reproductive autonomy that aligns with the broader principles of liberty and we may be a barrier of our medical tourism and revenue of our country but still this act a step towards the women empowerment where the woman is safe medically and their reproductive cell is not the business cell. It is one of the key steps of our Developed India 2047.

TRANSPARENCY AS A CONSTITUTIONAL IMPERATIVE: AN ANALYSIS OF THE RIGHT TO INFORMATION ACT, 2005

-Nayan Chandra Roy[102]

ABSTRACT

The Right to Information Act of 2005 is a change in the way India is governed. It makes sure that the government is transparent and accountable to the people. This law is based on the principles of the constitution. It was pushed by people's movements like the Mazdoor Kisan Shakti Sangathan. The Right to Information Act gives citizens the right to know what is going on which's a part of Article 19(1)(a) of the

[102] Student of 5 years B.COM LLB(H), Semester III, Indian Institute of Legal Studies, roynayan843@gmail.com.

constitution. This study looks at how the Right to Information Act came to be the laws that govern it and the systems that are in place to make it work. It also looks at things like what information the government should share on its own, how to make sure the process is fair and the role of Information Commissions in settling disputes about the Right, to Information Act. It critically analyses statutory exemptions and the public interest override, highlighting judicial interpretations that balance transparency with competing interests such as privacy, national security, and fiduciary relationships. A brief comparative analysis situates India's RTI framework within global transparency laws. The paper concludes that while the RTI Act remains a powerful democratic tool, its effectiveness depends on institutional autonomy, timely disclosure, and the application of proportionality in resolving conflicts between the right to information and the right to privacy. In the end, the report determines that although the RTI Act is regarded as the "oxygen of democracy,".

KEY WORDS: *Right To Information, Transparency, Accountability, Privacy, Information and Technology.*

1. INTRODUCTION

The Right to Information (RTI) Act, 2005, signifies a crucial transformation in India's democratic framework, moving the government from a realm of widespread secrecy to a culture of transparency and institutional responsibility. At its essence, the law is based on the understanding that in a sovereign democratic republic, the populace is the final holder of authority, while the government acts solely as a trustee or representative of the citizens. Information is frequently referred to as the "oxygen of democracy,"[103] crucial for active public involvement and safeguarding human rights. Through establishing a practical framework that enables citizens to gain access to information held by public authorities, the Act seeks to reduce corruption, promote transparency, and enable an informed populace to hold the executive responsible for all public transactions. This report offers a comprehensive analysis of the historical development of the RTI Act, its legal structure, institutional frameworks, judicial interpretation, and its position in the global legal landscape.

2. THE PHILOSOPHICAL AND POLITICAL GENESIS OF TRANSPARENCY

[103] S.P. Gupta v. Union of India, AIR 1982 SC 149 (India) (Bhagwati, J.).

The idea of the right to information is fundamentally grounded in the development of contemporary democratic principles and natural law. Philosophers like John Locke and Thomas Hobbes recognized the rights to life and property as rights granted by nature, while later theorists such as Rousseau highlighted the natural autonomy of individuals. The main basis for demanding transparency in government lies in the authority of the citizens. In a democratic system, although Parliament holds supreme authority in its legislative role, the people maintain ultimate sovereignty, possessing the highest power granted by that sovereignty. Since individuals cannot directly oversee the workings of government, the administration is viewed as an agent or fiduciary carrying out responsibilities on behalf of the people. This association requires that individuals possess the authority to choose who governs them and the regulations that apply, granting them the right to demand accountability from their representatives regarding their actions.

The particular rise of transparency as a legal requirement can be linked to the 18th century, when Sweden introduced the first RTI law in 1766. This precedent stayed mostly isolated until the mid-20th century, when the United States enacted the Freedom of Information Act (FOIA) in 1966, later followed by Norway in 1970 and France and the Netherlands in 1978. In India, the shift towards transparency was not a bureaucratic privilege bestowed from above but rather emerged from vigorous socio-political conflicts. For many years after independence, the Indian

administrative framework functioned under the colonial-era Official Secrets Act of 1923,[104] which effectively established a culture of secrecy. The drive for change emerged from grassroots organizations, particularly the ***Mazdoor Kisan Shakti Sangathan (MKSS)***[105] in Rajasthan. This movement, mostly formed of the rural poor, pushed for access to documents relating development expenditures, wages, and land use, realizing that without information, they could not battle the systematic corruption impacting their livelihood and justice.

LANDMARK HISTORICAL EVENT	YEAR	SIGNIFICANCE
Swedish Freedom of the Press Act	1766	World's first legislation on public access to government documents.
US Freedom of Information Act (FOIA)	1966	Established a legal right for citizens to access federal agency records.

[104] The Official Secrets Act, 1923, No. 19, Acts of Parliament, 1923 (India).
[105] People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399 (India).

State of U.P. vs. Raj Narain (India)	1975	Supreme Court declared RTI as implicit in Art 19(1)(a).
Freedom of Information Bill (India)	2002	Precursor legislation that lacked robust enforcement mechanisms.
RTI Act 2005 (India)	2005	Enacted on June 15 and became fully operational on October 12.

The RTI movement in India received judicial support in 1975 with the case of *State of U.P. vs. Raj Narain*,[106] where Justice Mathew stated that in a responsible government like ours, there should be minimal secrecy since the public is entitled to know all actions taken by their officials. This notion was reinforced in later rulings like *Bennett Coleman & Co. v. Union of India*,[107] which further connected the right to information with the Right to Life in Article 21, stating that an informed citizen is more capable of safeguarding their basic rights.

[106] State of U.P. v. Raj Narain, AIR 1975 SC 865.
[107] Bennett Coleman & Co. v. Union of India, AIR 1973 SC 106.

3. TRANSPARENCY AS THE BEDROCK OF DEMOCRACY

The Right to Information (RTI) Act of 2005 signifies a change in the Indian democratic framework, transforming from just a legal provision into a Constitutional Necessity. Even though the Constitution's text does not directly reference the "Right to Information," the Judiciary has been at the forefront of acknowledging it as a fundamental right. The Supreme Court has determined through significant rulings that the right to know is a fundamental aspect of Article 19(1)(a),[108] since citizens are unable to effectively exercise their freedom of speech and expression without being informed about the facts underlying governance. Moreover, it is associated with Article 21,[109] the Right to Life, based on the idea that an informed populace is crucial for living with dignity in a free society. By grounding the Act in these constitutional clauses, the law functions as a connection between the governed and those who govern, affirming that transparency is not a privilege granted by the state but a right belonging to the citizens.

The Legislature was pivotal in this initiative by passing the RTI Act to eradicate the colonial-era secrecy culture upheld by the Official Secrets Act. The goal of the Parliament was to establish a system through which

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[108] INDIA CONST. art. 19, cl. 1(a).

[109] INDIA CONST. art. 21.

the "sovereign" (the people) could oversee the "servant" (the state). This encompasses monitoring of public expenditure, execution of policies, and the behaviour of elected officials. Nonetheless, the relationship is intricate; although Parliament granted power to the public, later legislative changes—like those in 2019 concerning the tenure and independence of Information Commissioners—have ignited heated discussions about whether the Legislature is upholding its dedication to a strong transparency framework or attempting to regain executive authority over the oversight bodies.

The Judiciary holds a distinctive dual function in the RTI framework, acting as both the final interpreter of the law and a "Public Authority" governed by its regulations. Through their interpretative role, the courts have broadened the Act's reach, guaranteeing that exemptions are not exploited to facilitate corruption. On the other hand, the Judiciary has encountered its own difficulties in maintaining transparency while ensuring judicial independence. The landmark decision that brought the Office of the Chief Justice of India (CJI) within the scope of the RTI Act represented an important advancement for institutional accountability. Although confidential judicial discussions are safeguarded to maintain neutrality, incorporating the judiciary's administrative functions under the Act emphasizes that no government branch is exempt from the constitutional requirement for transparency. Collectively, these three

pillars establish the effectiveness of the RTI Act, converting it from a "paper law" into an active tool of democratic accountability.

4. THE LEGAL FRAMEWORK: DISSECTING THE RTI ACT, 2005

The efficacy of the RTI Act relies on its comprehensive and inclusive definitions, aimed at reducing the chance of administrative avoidance. The definitions in Section 2[110] delineate the limits of who is allowed to request, from whom requests can be made, and what can be obtained.

4.1 Defining Information and Records

According to Section 2(f),[111] "information" is broadly defined to cover any material in any format, including conventional forms like documents, manuscripts, and files, while also incorporating contemporary digital communications and physical specimens. A key insight into this definition is the incorporation of "file noting's." Although initial efforts by the executive to exclude them were made, the legal and regulatory consensus is that file notes are essential to the decision-making process and are included in the definition of "records" as outlined in Section

[110] The Official Secrets Act, 1923, § 2, No. 19, Acts of Parliament, 1923 (India).
[111] The Indian Contract Act, 1872, § 2(f), No. 9, Acts of Parliament, 1872 (India).

2(i).[112]This guarantees that the rationale for a policy or administrative action is as understandable as the ultimate decision.

4.2 The Scope of Public Authorities

The scope of the Act is defined by the term "public authority" as outlined in Section 2(h).[113] A public authority consists of any entity created by the Constitution, Parliament, or State Legislatures, in addition to bodies that are owned, managed, or heavily funded by the government. This encompasses non-governmental organizations (NGOs) that obtain substantial direct or indirect financial support from the government. Court decisions have made it clear that NGOs obtaining more than 95% of their funding for infrastructure from the government fall squarely within the Act's scope. Moreover, the Supreme Court has included the position of the Chief Justice of India within the RTI framework, emphasizing that no constitutional role is exempt from transparency.

4.3 Proactive Disclosure Obligations

[112] Right to Information Act, 2005, No. 22, § 2(i), Acts of Parliament, 2005 (India).
[113] Right to Information Act, 2005, No. 22, § 2(h), Acts of Parliament, 2005 (India).

Section 4[114] of the RTI Act imposes significant proactive responsibilities on public authorities to guarantee that transparency is the standard condition of governance. Section 4(1)(b)[115] requires all public authorities to proactively disclose 17 types of information within 120 days of the Act’s implementation. This "suo motu" announcement aims to lessen the necessity for individuals to submit official requests by providing crucial information—like organizational roles, officer authorities, decision-making processes, and budget distributions—accessible to the public. Section 4(2)[116] mandates that this information must be broadly shared and frequently refreshed via notice boards, newspapers, public announcements, and online platforms.

[114] Right to Information Act, 2005, No. 22, § 4, Acts of Parliament, 2005 (India).
[115] Right to Information Act, 2005, No. 22, § 4(1)(b), Acts of Parliament, 2005 (India).
[116] Right to Information Act, 2005, No. 22, § 4(2), Acts of Parliament, 2005 (India).

PROACTIVE MANUALTYPE	SECTION 4 REQUIREMENT	OBJECTIVE
Organization Details	4(1)(b)(i)	Particulars of functions and duties.
Officer Powers	4(1)(b)(ii)	Powers and duties of officers and employees.
Decision Making	4(1)(b)(iii)	Procedure followed, including supervision and accountability.
Norms for Functions	4(1)(b)(iv)	Standards set for the discharge of functions.
Rules & Manuals	4(1)(b)(v)	Rules, instructions, and records used for functions.

Directory & Salary	4(1)(b)(ix-x)	Contact details and monthly remuneration of staff.
Budget & Subsidies	4(1)(b)(xi-xii)	Budget allocations and beneficiary details of programs.

5. PROCEDURAL MECHANICS AND THE ROLE OF INFORMATION OFFICERS

- To streamline the request procedure, Section 5 [117] mandates that public authorities appoint Central or State Public Information Officers (PIOs).
- Assistant Public Information Officers (APIOs) across all administrative divisions.
- PIOs serve as the key figures in the RTI system, tasked with handling applications, delivering information, and aiding citizens—especially those who are uneducated or disabled—in crafting their inquiries.

[117] The Official Secrets Act, 1923, § 5, No. 19, Acts of Parliament, 1923 (India).

- According to Section 6,[118] a citizen may submit a request either in writing or via electronic methods in English, Hindi, or the local official language.
- Importantly, Section 6(2)[119] states that the applicant does not need to give reasons for requesting the information or any personal information beyond what is required for communication.

5.1 Timelines for Disposal

The Act establishes strict timeframes for the disposal of requests under Section 7.[120] A PIO must typically respond within 30 days. However, if the information sought concerns the "life or liberty" of a person, it must be provided within 48 hours. If a request relates to a third party, the timeline extends by ten days to allow for the third-party representation process under Section 11.[121]

5.2 Fee Structure and Exemptions

The Central Government and various state governments have prescribed fee rules under Sections 27 and 28.[122] For Central Public Authorities, the

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[118] The Official Secrets Act, 1923, § 6, No. 19, Acts of Parliament, 1923 (India).
[119] The Right to Information Act, 2005, § 6(2), No. 22, Acts of Parliament, 2005 (India).
[120] The Right to Information Act, 2005, § 7, No. 22, Acts of Parliament, 2005 (India).
[121] The Right to Information Act, 2005, § 11, No. 22, Acts of Parliament, 2005 (India).
[122] The Right to Information Act, 2005, § 27, No. 22, Acts of Parliament, 2005 (India).

standard application fee is ₹10, and additional fees are charged for photocopies (₹2 per page) or inspection of records (₹5 for every 15 minutes after the first hour). However, Section 7(5)[123] mandates that no fee shall be charged from persons living below the poverty line (BPL). Furthermore, if the public authority fails to comply with the 30day time limit, the information must be provided free of charge under Section 7(6).[124]

6. INSTITUTIONAL OVERSIGHT: THE INFORMATION COMMISSIONS

The RTI Act establishes a two-tier appeal mechanism to ensure compliance. The first appeal is made to an officer senior in rank to the PIO (First Appellate Authority) under Section 19(1).[125] The second appeal is filed with the Central Information Commission (CIC) or the State Information Commission (SIC) under Section 19(3).[126]

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[123] The Right to Information Act, 2005, § 7(5), No. 22, Acts of Parliament, 2005 (India).
[124] The Right to Information Act, 2005, § 7(6), No. 22, Acts of Parliament, 2005 (India).
[125] The Right to Information Act, 2005, § 19(1), No. 22, Acts of Parliament, 2005 (India).
[126] The Right to Information Act, 2005, § 19(3), No. 22, Acts of Parliament, 2005 (India).

6.1 Central Information Commission (CIC)

The CIC is a statutory body established on October 12, 2005, to enforce the Act at the federal level. It consists of a Chief Information Commissioner and up to ten Information Commissioners appointed by the President. The Commission's jurisdiction extends over all Central Ministries, Public Sector Undertakings (PSUs), and financial institutions.

SELECTION COMMITTEE MEMBER	ROLE
Prime Minister	Chairperson.
Leader of Opposition in Lok Sabha	Member.
Union Cabinet Minister	Nominated by the Prime Minister.

6.2 Powers and Functions of Information Commissions

Under **Section 18,**[127] the Commission has the duty to receive and inquire into complaints from any person who has been refused access or has received misleading information. While inquiring, the Commission has the powers of a civil court, including the power to summon persons, compel oral or written evidence on oath, and require the discovery and inspection of documents. The Commission also monitors the implementation of the Act and submits annual reports to the government.

7. WEST BENGAL STATE INFORMATION COMMISSION: A REGIONAL CASE STUDY

The West Bengal Information Commission (WBIC), headquartered in Kolkata, oversees the implementation of the Act for all public authorities under the Government of West Bengal. It operates under the West Bengal RTI Rules, 2006 which outline specific procedures for applications and appeals.

[127] The Right to Information Act, 2005, § 18, No. 22, Acts of Parliament, 2005 (India).

West Bengal RTI Rules and Fees

The West Bengal rules provide a detailed framework for the payment of fees and the formatting of appeals.

ITEM	WEST BENGAL RULE / PROVISION
Application Fee	₹10 (Court-fee stamp or non-judicial stamp paper).
Photocopy Charges	₹2 per page (A4/A3 size).
Inspection Fee	₹5 for every 15 minutes.
Electronic Mode	₹50 per diskette or floppy.
Language of Request	English, Bengali, or official local language.
Appellate Authority	Senior officer of the public authority (First Appeal).
Second Appeal	To WBIC within 90 days of First Appeal decision.

The WBIC has the power to order public authorities to compensate complainants for any loss or detriment suffered due to the denial of information. In the case of *Nazrul Islam v State of West Bengal,*[128] the Calcutta High Court ordered the Home Department to pay ₹70,000 in compensation for harassment and failure to supply information, reinforcing the proactive obligation of state departments to maintain records efficiently.

8. JUDICIAL SENTINEL: LANDMARK INTERPRETATIONS AND THE PROPORTIONALITY TEST

The Indian judiciary has played a dual role as both a champion and a regulator of the RTI Act. While the Supreme Court initially established the right as a fundamental one, subsequent rulings have had to balance it against competing rights such as privacy and judicial independence.

8.1 The Privacy vs. Transparency Tussle

The case of *Girish Ramchandra Deshpande v. CIC (2013)*[129] marked a significant shift toward the protection of privacy. The Court held that

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[128] Nazrul Islam v. State of W.B., (2021) 6 SCC 433.
[129] Girish Ramchandra Deshpande v. Cent. Info. Comm'n, (2013) 1 SCC 212.

service records, income tax returns, and asset details of public servants are "personal information" and are exempt under Section 8(1)(j) unless a larger public interest is demonstrated. This ruling has been criticized for giving PIOs excessive discretion to deny requests. The tension between transparency and privacy has further intensified with the Digital Personal Data Protection (DPDP) Act, 2023, which amends Section 8(1)(j) to remove the "public interest override" for personal information, potentially creating an absolute prohibition on disclosing data that can identify an individual.

8.2 Judicial Independence and the Supreme Court

In *Central Public Information Officer, Supreme Court v. Subhash Chandra Agarwal (2019),*[130] a five-judge Constitution Bench ruled that the office of the Chief Justice of India is a "public authority" under the RTI Act. The Court emphasized that judicial independence does not require a veil of secrecy but must be balanced against the public's right to know about judicial appointments and conduct. Justice Khanna observed that both disclosure and non-disclosure can be found to be in

[130] Cent. Pub. Info. Officer, Sup. Ct. of India v. Subhash Chandra Agarwal, (2019) 16 SCC 1.

the public interest, requiring a proportionality test to harmonize competing needs.

8.3 The Fiduciary Relationship in Education

In *CBSE v. Aditya Bandopadhyay (2011),* [131] the Supreme Court addressed whether students have the right to inspect their evaluated answer books. The CBSE argued that it held the answer books in a fiduciary relationship and thus was exempt under Section 8(1)(e). The Court ruled that an examining body does not have a fiduciary duty to test-takers and that transparency in evaluation is in the public interest, although re-evaluation remains subject to the board's bye-laws.

9. INTERNATIONAL AND COMPARATIVE PERSPECTIVES

The Right to Information is recognized globally as a foundational human right, supported by various international covenants and national legislations.

9.1 UN Standards and International Covenants

The United Nations has long advocated for access to information. Article 19[132] of the Universal Declaration of Human Rights (UDHR) and the

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[131] Cent. Bd. of Secondary Educ. v. Aditya Bandopadhyay, (2011) 8 SCC 497.
[132] INDIA CONST. art. 19.

International Covenant on Civil and Political Rights (ICCPR) explicitly include the right to "seek, receive and impart information and ideas" regardless of frontiers. The UN Human Rights Committee’s General Comment 34 clarified that Article 19 of the ICCPR imposes a positive obligation on states to ensure access to information held by public bodies and requires that such access be "easy, prompt, effective and practical".

9.2 Comparative Study: India vs. USA vs. UK

While many nations have transparency laws, their procedural and substantive frameworks vary significantly.

FEATURE	INDIA (RTI ACT, 2005)	USA (FOIA, 1966)	UK (FOIA, 2000)
Legislative Scope	All citizens; Central & State levels.	Any person; Federal level only.	National level.

Exemptions	10 specific clauses.	9 specific exemptions.	23 exemptions (qualified & absolute).
Public Interest	Strong override (Sec 8.2).	Presumption of openness (2016 Reform).	Subject to public interest test for most.
Oversight Body	Information Commissions.	Judicial Review in Federal Courts.	Information Commissioner's Office.
Time Limit	30 Days (48 hrs for life/liberty).	20 Business Days.	20 Working Days.

The Indian RTI Act is often considered one of the most robust due to its explicit public interest override and the severity of its penalty provisions. Unlike the US system, where denials are primarily challenged through expensive litigation in federal courts, India provides a specialized, low-cost administrative appeal mechanism through Information Commissions.

10. CONTEMPORARY CHALLENGES AND THE FUTURE OF TRANSPARENCY

Despite its successes, the implementation of the RTI Act faces several contemporary challenges that threaten its efficacy.

10.1 Legislative and Institutional Dilution

The Right to Information (Amendment) Act, 2019, has faced criticism for undermining the autonomy of Information Commissions by granting the government authority to determine the tenure and compensation of commissioners. Moreover, inadequate vacancy management in Information Commissions frequently results in substantial backlogs, where "information that is delayed is information that is denied." Bureaucratic red tape continues to be an obstacle, as numerous departments do not keep records in a way that allows for straightforward access.

10.2 The Data Protection Paradox

The rise of extensive data protection regulations may lead to a clash with transparency frameworks. The Digital Personal Data Protection Act,

2023, in India has eliminated the qualified clause of Section 8(1)(j),[133] rendering personal information a complete exemption. This change emphasizes privacy over the public good, potentially protecting public officials from being held accountable for their assets, appointments, and disciplinary histories.

10.3 The Role of Technology

The legislation requires the digitalization of records for extensive distribution. Although digital platforms have made it simpler to submit applications, they are also susceptible to technical issues and data loss, according to reports from activists in recent years. The future of transparency depends on strong "Suo Motu" disclosure on official websites, lessening the pressure on the formal request process and advancing toward a proactive "open data" culture.

11. CONCLUSION

The Right to Information Act of 2005 is a significant landmark in the development of Indian democracy. It has effectively transformed the democratic concept from a five-year voting tradition to a daily

[133] The Right to Information Act, 2005, § 8(1)(j), No. 22, Acts of Parliament, 2005 (India).

participatory system in which the government is consistently monitored by the public. By acknowledging information as a fiduciary obligation for the people, the Act has enabled the rural poor and marginalized groups to seek accountability for the public funds utilized in their name. The robustness of the legal structure is found in its broad definitions and the influential Section 8(2) override, which guarantees that national security or commercial concerns cannot serve as an absolute barrier to revealing corruption. The preservation of the Information Commissions' institutional integrity and the judicial safeguarding of the Act from legislative weakening are essential for its continued existence. As India manoeuvres through the intricate relationship between the right to information and the right to privacy, the "proportionality test" set by the courts should continue to be the key principle to balance these opposing interests while upholding the primacy of the democratic ideal.

The RTI Act of 2005 has transcended its status as a mere legislative tool to become the very lifeblood of Indian democratic practice. By intertwining the Legislative intent of accountability with the Judicial interpretation of fundamental rights, the Act has successfully transitioned the nation from a "culture of secrecy" to an "Architecture of Transparency." It serves as a critical check and balance, ensuring that the Parliament remains answerable to its constituents and that the Judiciary remains beyond reproach in its administrative functions. While

challenges such as legislative amendments and the balancing of judicial independence persist, the Act remains a "living instrument." It reinforces the constitutional truth that in a true democracy, transparency is not an administrative luxury but a foundational necessity. Ultimately, the success of this constitutional imperative lies in the continuous vigilance of the citizens and the unwavering commitment of the three pillars of the State to uphold the people's right to know.

The global context illustrates that India's RTI Act serves as a prominent example for transparency; however, the worldwide shift towards data privacy and government confidentiality presents continuing challenges. To realize the transformative potential of the RTI Act, the state needs to emphasize proactive disclosure, address commission vacancies, and maintain the "oxygen of democracy" within the administrative framework, promoting a culture of integrity and preventing power misuse.